

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> November 14, 2012 Time: 9:00 a.m.	<b>Agenda Item No.:</b> 1
<b>Project Description:</b> Consider Amendments to the 2010 Monterey County General Plan Implementing a Litigation Settlement with the Salinas Valley Water Coalition et al.	
<b>Project Location:</b> Countywide (non-coastal)	<b>APN:</b> N/A
<b>Planning File Number:</b> REF120078	<b>Owner:</b> N/A <b>Agent:</b>
<b>Planning Area:</b> Countywide (non-coastal)	<b>Flagged and staked:</b> N/A
<b>Zoning Designation:</b> : Multiple	
<b>CEQA Action:</b> Addendum No. 1 to EIR #07-01, SCH #2007121001	
<b>Department:</b> County Counsel; RMA - Planning Department	

### RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution recommending to the Board of Supervisors that an Addendum No. 1 to the Final Environmental Impact Report for the 2010 Monterey County General Plan (#07-01, SCH #2007121001) ("FEIR") be considered, and that the 2010 Monterey County General Plan ("General Plan) be amended to implement a settlement of litigation regarding the General Plan. An underline/strikeout and summary of the proposed amendments are enclosed as **Exhibits A and B**, respectively. A draft resolution is enclosed as **Exhibit C**, and a draft Addendum No. 1 is enclosed as **Exhibit D**.

The proposed Addendum No. 1 must be considered with the FEIR (consisting of the draft environmental impact report, comments, responses to comments, and supplemental materials). A CD of the FEIR, its approving resolution (No. 10-290), the Findings, Statement of Overriding Considerations, and the Mitigation, Monitoring and Reporting Program is enclosed to the members of the Planning Commission with this report as **Exhibit E** (a hard copy will be provided upon request). For members of the public, those materials are available on the County's website at

[http://www.co.monterey.ca.us/planning/gpu/GPU\\_2007/FEIR\\_Information/FEIR\\_Information.htm](http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm)

and will be available at the Planning Department counter, located on the second floor at 168 W. Alisal St., Salinas, CA.

### PROJECT OVERVIEW:

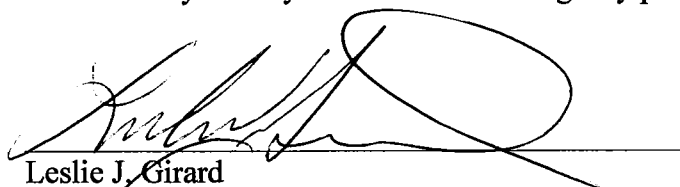
On October 26, 2010, by Resolution Nos. 10-290 and 10-291, the Board of Supervisors adopted the General Plan, certified its accompanying FEIR, and adopted findings, a Statement of Overriding Considerations, and a Mitigation, Monitoring and Reporting Program. Subsequently, a total of four lawsuits were timely filed challenging the adoption and certification. One of those lawsuits was filed in the name of the Salinas Valley Water Coalition ("SVWC") and the Monterey County Farm Bureau. The lawsuit was subsequently amended to include the Monterey/Santa Cruz Counties Building and Construction Trades Council, Monterey Peninsula Taxpayers Association, and the Howard Jarvis Taxpayers Association. The amended lawsuit, a copy of which is enclosed as **Exhibit F**, challenged the adoption and certification on a variety of grounds.

Pursuant to the requirements of the California Environmental Quality Act, settlement negotiations were begun with all litigant groups. Following extended negotiations, an agreement was reached with the SVWC et al. litigant group which requires the County to consider amendments to the General Plan, and the Board of Supervisors approved the settlement. A copy of the settlement agreement is enclosed as **Exhibit G**.

**DISCUSSION:**

The proposed amendments affect policies in the Public Services section of the General Plan only. The amendments would primarily call for a five year study of groundwater conditions in Zone 2C of the Salinas Valley Groundwater Basin, effectively testing the effectiveness of the Salinas Valley Water Project. Under certain conditions, as more fully discussed in **Exhibit B**, the County would be required to adopt measures to address deteriorating groundwater conditions in the Zone. Other revisions would make minor clarifying language changes for policies concerning new domestic and high-capacity wells.

**OTHER AGENCY INVOLVEMENT:** The County Counsel's Office headed negotiations regarding the settlement. The RMA-Planning Department, Environmental Health Bureau and the Monterey County Water Resources Agency provided input into the settlement.



Leslie J. Girard  
Chief Assistant County Counsel  
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November 6, 2012

cc: Front Counter Copy; Planning Commission; County Counsel; Environmental Health Bureau; Water Resources Agency; Jacqueline Onciano, Project Planner; Planning Files PLN 070525 and REF120078; Salinas Valley Water Coalition, et al.; Open Monterey Project; Landwatch Monterey County.

Attachments:	Exhibit A	<u>Underline/strikeout</u> of Policies
	Exhibit B	Summary
	Exhibit C	Draft Resolution
	Exhibit D	Draft Addendum No. 1
	Exhibit E	CD of FEIR and related legislative documents
	Exhibit F	Amended lawsuit
	Exhibit G	Settlement Agreement

# **EXHIBIT A**



## EXHIBIT A

### Proposed Amendments to Monterey County 2010 General Plan shown as changes from 2010 General Plan policies as adopted October 26, 2010

#### 1. PS-3.1

PS-3.1 Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development ~~related to agricultural land uses within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study report to for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following every five (5) years for Zone 2C examining the degree to which:~~
  - 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
  - 2) evaluates the total water demand for all existing uses and future uses ~~predicted~~ designated in the General Plan EIR for the year 2030 ~~will be reached;~~
  - 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
  - 2) 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary ~~have changed since the prior reporting period; and~~
  - 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;

- 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
- 7) addresses such other matters and the Board of Supervisors determines are appropriate.

~~2) other sources of water supply are available.~~

~~If, following the periodic report, the Board finds, based upon substantial evidence in the record, that:~~

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which ~~Thea~~ total water demand for all uses in Zone 2C in 2030 as predicted in the General Plan EIR for year 2030 will be reached; is likely to be exceeded; or it is reasonably foreseeable that the total water demand for all uses in Zone 2C in 2030 would result in one or more of the following in Zone 2C in 2030: b) declining groundwater elevations, further the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.; increased substantial adverse impacts on aquatic species, or interference with existing wells, then the County shall initiate a General Plan amendment process to consider removing this agricultural exception in Zone 2C. Development under this agricultural exception shall be subject to all other policies of the General Plan and applicable Area Plan; or

- ~~d. development in Zone 2C for which the decision maker makes a finding, supported by substantial evidence in the record, that the:~~
  - 1) ~~development is in a Community Area or Rural Center and is otherwise consistent with the policies applicable thereto;~~

- 2) ~~relevant groundwater basin has sufficient fresh water in storage to meet all projected demand in the basin for a period of 75 years; and,~~
- 3) ~~benefits of the proposed development clearly outweigh any adverse impact to the groundwater basin.~~

## 2. PS-3.3

PS-3.3 Specific criteria shall be developed by ordinance for use in the evaluation and approval of adequacy of all domestic wells. The following factors shall be used in developing ~~Criteria shall assess both for both~~ water quality and quantity including, but not limited to:

- a. Water quality.
- b. Production capability.
- c. Recovery rates.
- d. Effect on wells in the immediate vicinity as required by the Monterey County Water Resources Agency or Environmental Health Bureau.
- e. Existing groundwater conditions.
- f. Technical, managerial, and financial capability of the water purveyor of a water system.
- g. Effects of additional extractions or diversion of water on in-stream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead, for the purpose of minimizing impacts to those resources and species.

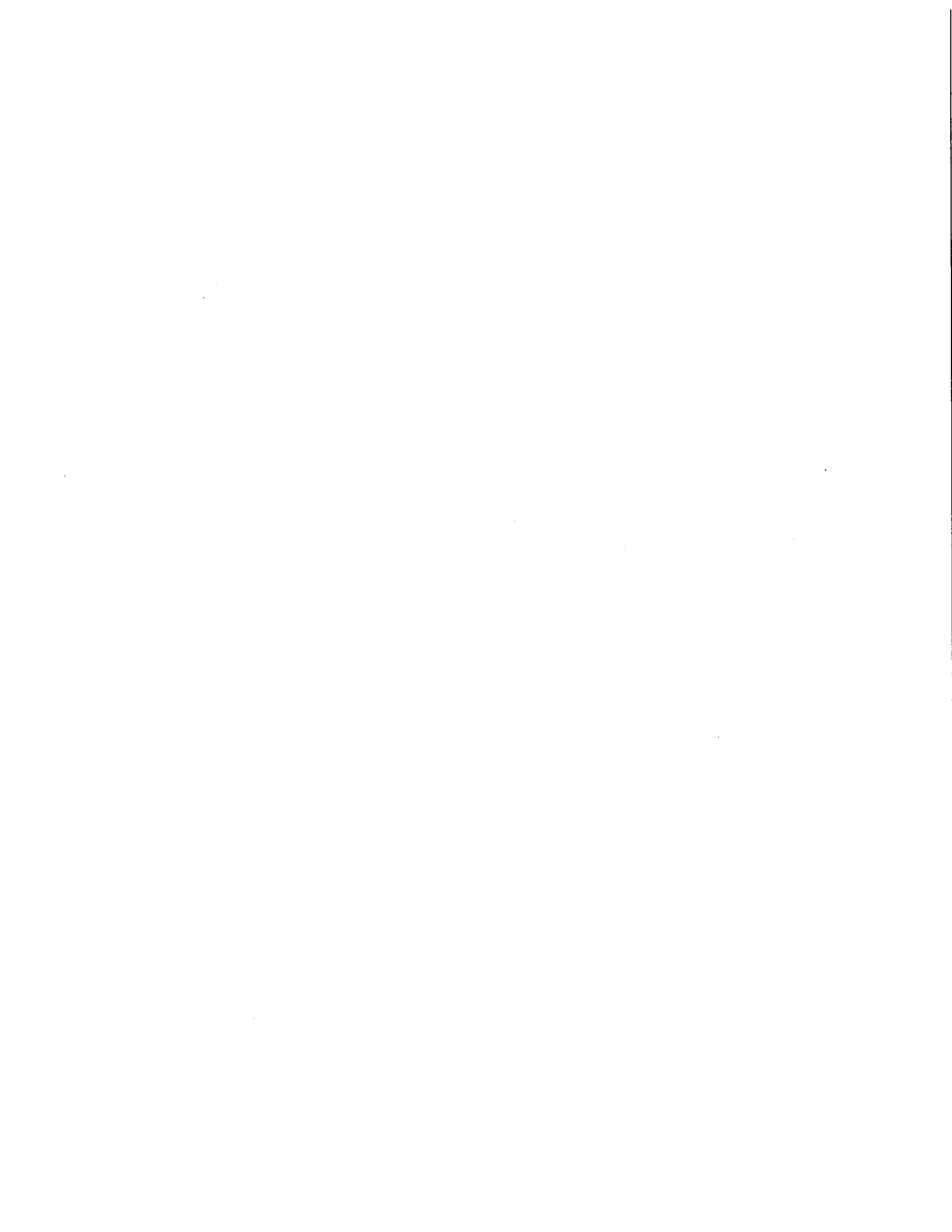
This policy is not intended to apply to replacement wells

## 3. PS-3.4

PS-3.4 The County shall request an assessment of impacts on adjacent wells and instream flows for new high-capacity wells, including high-capacity urban and agricultural production wells, where there may be a potential to affect existing adjacent domestic or water system wells adversely or in-stream flows, as determined by the Monterey County Water Resources Agency. In the case of new high-capacity wells for which an assessment shows the potential for significant adverse well interference, the County shall require that the proposed well site be relocated or otherwise mitigated to avoid significant interference. ~~Specific criteria shall be developed~~ The following factors shall be used in developing criteria by ordinance for use in the evaluation and approval of adequacy of all such high-capacity wells, including not limited to:

- a. Effect on wells in the immediate vicinity as required by the Monterey County Water Resources Agency or Environmental Health Bureau.
- b. Effects of additional extractions or diversion of water on in-stream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead, for the purpose of minimizing impacts to those resources and species.

This policy is not intended to apply to replacement wells.





# **EXHIBIT B**



## **EXHIBIT B**

### **SUMMARY OF PROPOSED 2010 GENERAL PLAN POLICY REVISIONS**

#### **1. PS-3.1; LONG-TERM, SUSTAINABLE WATER SUPPLY**

Policy PS-3.1 as adopted requires new development for which a discretionary permit is required to show a “long-term, sustainable water supply, both in quality and quantity to serve the development.” The policy further exempts from this requirement four classes of projects. One of those classes includes agricultural related development within Zone 2C of the Salinas Valley groundwater basin provided the County prepares a report every five years that examines whether a) total water demand predicted for the year 2030 in the General Plan EIR will be reached; b) groundwater elevations and the seawater intrusion boundary have changed; and, c) other sources of water have become available. If certain defined conditions occur or are likely to occur, then the County is required to initiate a General Plan amendment process to address those conditions. The policy also exempts development in Zone 2C if it meets all the following criteria: 1) it is in a Community Area or Rural Center; 2) it is in a groundwater basin where a 75 year supply of fresh water in storage is available; and 3) the benefits of the development clearly outweigh the adverse impacts to the groundwater basin.

The revised policy expands the exemption to all development in Zone 2C but would require the County to cause a five-year study regarding Zone 2C designed to evaluate groundwater elevations and the seawater intrusion boundary, and whether total water demand predicted in the General Plan EIR is likely to be reached or exceeded. If the study concludes that total water demand is likely to be exceeded, or groundwater elevations likely to decline and the seawater intrusion boundary likely to advance inland by the year 2030, the authors shall make recommendations to address those conditions. Shortly following the completion of the study, the Board of Supervisors must hold an open public hearing on the study and its conclusions, and if the study reaches the conclusions identified above, the Board must adopt one or more of the measures identified in the study to address those conditions. The Zone 2C exemption is a rebuttable presumption of a long term, sustainable water supply that will exist unless the five-year study reaches one of the conclusions identified above. Following the completion of the five-year study, the County will report every five years on the conditions in Zone 2C as currently required in the General Plan. Finally, the revised policy would delete the exemption for development in Community Areas and Rural Centers, where the groundwater basin has a 75 year supply, and where the benefits outweigh the impacts on the groundwater basin.

## 2. PS-3.3; DOMESTIC WELL CRITERIA

Policy PS-3.3 requires the creation of specific criteria by ordinance to be used in the evaluation and approval of all new domestic wells. The revised policy provides clarifying language that certain factors shall be used in the creation of the criteria, and also clarifies that one of the factors is the effect of additional extractions or diversions of water on instream flows.

## 3. PS-3.4; HIGH CAPACITY WELLS

Policy PS-3.4, similar to PS-3.3, requires the creation of specific criteria by ordinance to be used in the evaluation and approval of all new high capacity wells (whether for domestic or agricultural use), except for replacement wells. The revised policy would make the same language changes as the revised Policy PS-3.3 described above.

# **EXHIBIT C**



**EXHIBIT C**

**RESOLUTION RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENTS**

**Before the Planning Commission  
County of Monterey, State of California**

**Resolution No.** \_\_\_\_\_

Resolution of the Planning Commission )  
recommending that the Board of )  
Supervisors consider Addendum No. 1 to )  
FEIR #07-01, SCH #2007121001, and )  
amend Policies PS-3.1, 3.3 and 3.4 of the )  
2010 Monterey County General Plan )  
relating to Long-Term, Sustainable Water )  
Supply, Domestic Wells, and High )  
Capacity Wells. )

Proposed amendments to the 2010 Monterey County General Plan (“General Plan”) came on regularly for public hearing before the Monterey County Planning Commission (“Planning Commission”) on November 14, 2012. Having considered all the written and documentary evidence, the staff report and its attachments, oral testimony, and other evidence presented at the hearing, the Planning Commission makes this recommendation to the Monterey County Board of Supervisors (“Board of Supervisors”) with reference to the following facts and findings:

**RECITALS**

1. Section 65300 et seq. of the California Government Code requires each county to adopt a comprehensive, long-term General Plan for the physical development of each county.
2. On October 26, 2010, the Board of Supervisors adopted the General Plan and certified its accompanying Final Environmental Impact Report (#07-01, SCH #2007121001) (“FEIR”).
3. Subsequent to the adoption of the General Plan and certification of the FEIR, four lawsuits were commenced challenging those actions on a variety of grounds.
4. One of those lawsuits was filed in the name of the Salinas Valley Water Coalition (“SVWC”) and the Monterey County Farm Bureau. The lawsuit was subsequently amended to include the Monterey/Santa Cruz Counties Building and Construction Trades Council, Monterey Peninsula Taxpayers Association, and the Howard Jarvis Taxpayers Association.
5. Pursuant to the requirements of the California Environmental Quality Act (“CEQA”), settlement negotiations were begun with all litigant groups. Following extended negotiations, an agreement was reached with the SVWC et al. litigant group which requires the County to consider amendments to the General Plan, and the Board of Supervisors approved the settlement.
6. Pursuant to Government Code sections 65350 et seq., the County of Monterey (“County”) may amend the adopted General Plan provided the County follows certain

procedures, including that the Planning Commission hold a noticed public hearing and make a written recommendation to the Board of Supervisors on the proposed amendment of the General Plan.

7. While the California Government Code provides that any mandatory element of the General Plan may be amended no more than four (4) times during any calendar year, Policy LU-9.6 (d) of the General Plan provides that amendments to the County's General Plan be considered no more than twice per calendar year. There has not been a package of General Plan amendments considered in 2012.
8. The proposed amendments to the General Plan affect Policies PS-3.1 (Long Term, Sustainable Water Supply), 3.3 (New Domestic Wells), and 3.4 (New High-Capacity Wells).
9. All policies of the General Plan have been reviewed by the Planning Department staff and the County Counsel's Office to ensure that the proposed amendments maintain the compatibility and internal consistency of the General Plan.
10. An Addendum to the certified FEIR ("Addendum No. 1") has been prepared pursuant to Section 15164 of the CEQA Guidelines because substantial evidence in the record shows that the conditions requiring a Subsequent Environmental Impact Report ("EIR") or Supplement to an EIR do not exist.
11. A public hearing was scheduled before the Planning Commission on November 14, 2012, at 9 a.m. to consider the proposed amendments and the Addendum No. 1, and make appropriate recommendations to the Board of Supervisors. At least 10 days before the public hearing, notices of the hearing before the Planning Commission were published in the Salinas Californian and mailed to interested parties.
12. Prior to making recommendations on the General Plan amendments, the Planning Commission reviewed and considered the Addendum No. 1.

## **II. FINDINGS**

The Planning Commission finds as follows:

- A. The above recitals are true and correct.
- B. There are no substantial changes proposed to the General Plan that will require major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- C. There are no substantial changes that will occur with respect to the circumstances under which the General Plan is undertaken which will require major revisions of the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- D. There is no new information of substantial importance that shows any of the following:
  - i. that the General Plan will have one or more significant effect not discussed in the FEIR;



- ii. significant effects previously examined will be substantially more severe than shown in the FEIR;
- iii. mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the General Plan, but the County declines to adopt the mitigation measure or alternative; or
- iv. mitigation measures or alternatives which are considerably different from those analyzed in the FEIR would substantially reduce one or more significant effects on the environment, but the County declines to adopt the mitigation measure or alternative.

**III. DECISION**

**NOW, THEREFORE, BE IT RESOLVED** by the Monterey County Planning Commission that the Planning Commission recommends to the Monterey County Board of Supervisors as follows:

- I. That the Board of Supervisors consider the Addendum No. 1 to FEIR #07-01, SCH #2007121001, attached hereto as Exhibit A; and
- II. That the Board of Supervisors adopt the amendments to the 2010 Monterey County General Plan set forth in Exhibit B, attached hereto.

**PASSED AND ADOPTED** on this 14th day of November, 2012, upon motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, by the following vote, to-wit:

AYES:  
NOES:  
ABSENT:

By \_\_\_\_\_



# **EXHIBIT D**



## **EXHIBIT D**

### **Addendum No. 1 To Final Environmental Impact Report # 07-01, SCH #2007121001 Pursuant to California Environmental Quality Act Guidelines Article 11, Section 15164**

#### **2010 MONTEREY COUNTY GENERAL PLAN Planning File No. REF120078 Amendment of General Plan**

##### **1. Introduction**

On October 26, 2010, by Resolution Nos. 10-290 and 10-291 the Monterey County Board of Supervisors certified Final Environmental Impact Report #07-01, SCH #2007121001 (“FEIR”), and adopted findings, a Statement of Overriding Considerations, a Mitigation, Monitoring and Reporting Program, and the 2010 Monterey County General Plan (“General Plan”). As part of a settlement of litigation regarding the adoption of the General Plan and certification of the FEIR, amendments to General Plan Policies PS-3.1 (relating to “Long Term Sustainable Water Supply”), PS-3.3 (relating to domestic wells), and PS-3.4 (relating to high-capacity wells) are being considered. The proposed amendments are set forth and discussed in Exhibits A and B to the staff report for this matter.

This technical addendum has been prepared pursuant to Article 11, Section 15164 of the California Environmental Quality Act guidelines (“Guidelines”) to make minor technical changes to the project analyzed in the FEIR. None of the conditions described in Guidelines Section 15162 or 15163, calling for preparation of a subsequent EIR or supplement to an EIR, have occurred.

##### **2. Scope and Purpose of this Addendum**

This Addendum No. 1 describes whether any changes or additions are necessary to the FEIR as a result of the proposed amendments to the General Plan, or if any of the conditions described in Guidelines Section 15162 exist. Please see the attached memorandum from ICF International, incorporated herein by reference, that assesses the potential environmental impacts from the adoption of the proposed amendments, and whether any changes to the FEIR are required.

### 3. Conclusion

As the ICF memorandum discloses, the proposed changes to the General Plan Policies will not result in additional impacts or an increase in the severity of impacts; the identification of feasible mitigation measures or alternatives that were previously identified as infeasible; or the identification of considerably different mitigation measures or alternatives than those disclosed or discussed in the FEIR. Accordingly, none of the conditions described in Guidelines Section 15162, requiring a Subsequent EIR, exist. This Addendum No. 1 is considered sufficient because it discloses the proposed amendments to the General Plan Policies, and provides an analysis regarding the lack of environmental impacts.

FEIR #07-01 has been included as an attachment to the staff report and is available on the County's web site at

[http://www.co.monterey.ca.us/planning/gpu/GPU\\_2007/FEIR\\_Information/FEIR\\_Information.htm](http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm).



TO: Mike Novo, Monterey County Planning Director

FROM: Rich Walter, ICF International

CC: Les Girard, Monterey County Counsel  
Terry Rivasplata, ICF International

DATE: November 5, 2012

RE: Potential Changes to Monterey County General Plan Policy PS-3.1, PS-3.3 and PS-3.4

This memorandum presents ICF's review of the potential CEQA implications of potential changes to Monterey County 2010 General Plan policies concerning water supply. ICF also reviewed an Addendum (Addendum No. 1) to the 2010 GP EIR prepared by the County concerning the potential water supply policy changes.

Our review is limited to the potential for changes in environmental impacts due to policy changes relevant to the impacts disclosed in the certified EIR for the 2010 General Plan. Our review is based on our understanding of CEQA, the General Plan and the General Plan EIR. Our review does not constitute legal advice.

### **Policy 3.1 - Potential Changes**

Revisions to PS-3.1c expand the existing exceptions for demonstrating a Long-Term Water Supply (LTWS) in Zone 2C from agricultural land development and development within a community area or rural center to all development within Zone 2C. Revisions to PS-3.1(c) also require the County to prepare a study by March 31, 2018 that will evaluate seawater intrusion and groundwater and determine whether or not: 1) total water demand exceeds that estimated in the GP EIR by 2030; 2) groundwater elevations will decline by 2030; and 3) whether the seawater intrusion boundary is likely to move inland by 2030. If the study concludes that either the first, or the second and third of the above three conditions will occur by 2030, then the exception to the requirement for demonstrating a LTWS for Zone 2C would no longer apply except for the development covered in PS-3.1a and PS-3.1b. Further, the Board of Supervisors would be required to adopt one or more measures, as appropriate, to address the identified conditions.

No changes are being proposed to the GP land use designations. Therefore, the expansion of existing exceptions will not change the long-term land use projections.

Mr. Mike Novo, Monterey County  
November 5, 2012  
Page 2 of 3

The General Plan EIR found that there will be a LTWS for development within Zone 2C through 2030. As a result, the expansion of the exception to include all development in Zone 2C (and not just single-family dwellings, specified infrastructure, agricultural development, and development within Community Areas and Rural Centers) would not result in additional impacts to water supply through 2030.

Existing Policy PS-3.1 established an assurance mechanism requiring study of water supply conditions every 5 years to make sure that the General Plan EIR findings about water supply impacts for 2030 remained appropriate over time. However, this assurance mechanism in existing policy is only tied to agricultural land use development whereas the revisions would apply the assurance mechanism to all development in Zone 2C (except that development noted in PS-3.1a and PS-3.1b). The revisions would require the study to first be completed by early 2018 and then updated annually to evaluate groundwater elevations and seawater intrusion. The expansion of the assurance mechanism to all Zone 2C development would be more restrictive than the existing policy and thus would not result in new impacts to water supply not disclosed in the EIR. There is a possibility that if the study concludes that measures will be necessary in order to address the issue of total water demand exceeding that estimated in the GP EIR by 2030, or groundwater elevations declining by 2030 and inland movement of the seawater intrusion boundary, then the Board will adopt measures that may have some environmental impact of their own. However, whether this action will be necessary is unknown and the actual measures that may be proposed are unknown at this time. Therefore, any attempt at analyzing the impacts of such action would be purely speculative. In any case, should that Board action be necessary in the future, it would be discretionary and subject to its own CEQA analysis, disclosure, and mitigation, if necessary.

The proposed revisions would also delete any evaluation of adverse impacts to aquatic species or interference with existing wells for the PS-3.1c periodic study and would limit the study to water demand, groundwater drawdown and seawater intrusion only. The deletion of the exception language relative to aquatic species and well interference would narrow the study required in PS-3.1c. Policy PS-3.4 would still require analysis of well interference for high yield wells, so the deletion of reference to well interference in PS-3.1c, would not increase any environmental impact beyond that already disclosed in the 2010 GP EIR. In theory, the deletion of reference to aquatic resources in PS-3.1c could result in more impacts than with the existing PS-3.1c, when considered in isolation. However, groundwater drawdown and seawater intrusion are the vehicles by which increased water demand could affect aquatic resources in Zone 2C. The 2010 GP EIR concluded that through 2030, combined overall water demand in Zone 2C would not result in groundwater drawdown or seawater intrusion in Zone 2C, and thus any associated impacts to aquatic resources from drawdown or seawater intrusion were determined to be less than significant, regardless of the use or lack of use of an exception to the proof of LTWS, provided that the water demand was as estimated in the EIR. As such, the elimination of specific reference to aquatic species in PS-3.1c should not result in more impacts to water supply than disclosed in the 2010 GP EIR unless the 2010 GP EIR estimated water demand for 2030 were exceeded.



### **Policy 3.3 - Potential Changes**

Proposed changes include the describing PS-3.3a through PS-3.3g as “factors” for development of criteria instead of criteria subjects. The original policy clearly states that specific criteria shall be developed by ordinance following the adoption of the GP thus clearly indicating that PS-3.3a through PS-3.3g are not the criteria themselves. This change would not change potential environmental impacts compared to that disclosed in the 2010 GP EIR.

Proposed changes include adding the phrase “additional extractions or diversion of water” to PS-3.3g. The intent of this list is to identify the subjects to be addressed by criteria for evaluation and approval of adequacy of all domestic wells, but not to replacement wells. Since this policy does not apply to replacement wells, the policy is clearly limited to new wells which would have to involve additional extractions or diversion of water. As such, the addition of specific language would not change potential environmental impacts compared to that disclosed in the 2010 GP EIR.

### **Policy 3.4 - Potential Changes**

Proposed changes include the describing PS-3.4a through PS-3.4b as “factors” instead of “criteria” for development of an ordinance for use in evaluation and approval of adequacy of high-capacity wells with an identified potential for well interference or in-stream flow effects. The change from “criteria” to “factors” does not appear to be a material change in intent as the policy will still require an ordinance to consider the issues in PS-3.4a and PS-3.4b. If anything, it simply clarifies the factors to be used in developing the ordinance. This change would not change potential environmental impacts compared to that disclosed in the 2010 GP EIR.

Proposed changes include adding the phrase “additional extractions or diversion of water” to PS-3.4b. The intent of this list is to identify the subjects to be addressed by criteria for evaluation and approval of high-capacity wells, but not to replacement wells. Since this policy does not apply to replacement wells, the policy is clearly limited to new wells which would have to involve additional extractions or diversion of water. As such, the addition of specific language would not change potential environmental impacts compared to that disclosed in the 2010 GP EIR.



# **EXHIBIT E**

**CD OF FEIR, APPROVING RESOLUTION, FINDINGS, STATEMENT OF  
OVERRIDING CONSIDERATIONS, AND MITIGATION MONITORING AND  
REPORTING PROGRAM PROVIDED TO PLANNING COMMISSION**

**ON-LINE AT**

**[http://www.co.monterey.ca.us/planning/gpu/GPU\\_2007/FEIR\\_Information/FEIR\\_Information.htm](http://www.co.monterey.ca.us/planning/gpu/GPU_2007/FEIR_Information/FEIR_Information.htm)**



# **EXHIBIT F**



SUMMONS RECEIVED  
(CITACION JUDICIAL) MONTEREY COUNTY

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

2011 JAN 11 PM 1:26

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**

JAN 10 2011

CONNIE MAZZEI  
CLERK OF THE SUPERIOR COURT  
DEPUTY  
**M. OLIVEREZ**

COUNTY OF MONTEREY and DOES 1 THROUGH 99, INCLUSIVE  
CLERK OF THE BOARD

YOU ARE BEING SUED BY PLAINTIFF: SALINAS VALLEY WATER  
(LO ESTÁ DEMANDANDO EL DEMANDANTE): COALITION; MONTEREY  
COUNTY FARM BUREAU; MONTEREY/SANTA CRUZ COUNTIES BUILDING  
AND CONSTRUCTION TRADES COUNCIL; MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION; HOWARD JARVIS TAXPAYERS ASSOCIATION

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

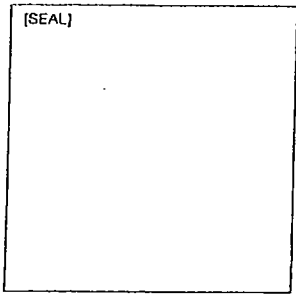
The name and address of the court is:  
(El nombre y dirección de la corte es): Monterey Superior Court  
1200 Aguajito Road  
Monterey, California 93940

CASE NUMBER  
(Número del Caso): M109451

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Pamela H. Silkwood, Esq. Horan, Lloyd Law Offices, 499 Van Buren St., Monterey CA 93940 (831)373-4131

DATE: JAN 10 2011  
(Fecha) CONNIE MAZZEI Clerk, by M. OLIVEREZ, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED: You are served
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify): County of Monterey  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify): public entity
  - by personal delivery on (date):

**FILED**

**JAN 10 2011**

CONNIE MAZZEI  
CLERK OF THE SUPERIOR COURT  
M. OLIVEREZ DEPUTY

1 Timothy J. Morgan, Esq. SBH 57847  
121 Jewell Street  
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Attorneys for Petitioners and Plaintiffs

9  
10 **SUPERIOR COURT OF CALIFORNIA**  
11 **COUNTY OF MONTEREY**

12  
13 SALINAS VALLEY WATER COALITION;  
14 MONTEREY COUNTY FARM BUREAU;  
15 MONTEREY/SANTA CRUZ COUNTIES  
BUILDING AND CONSTRUCTION  
16 TRADES COUNCIL; MONTEREY  
PENINSULA TAXPAYERS  
17 ASSOCIATION; HOWARD JARVIS  
18 TAXPAYERS ASSOCIATION

19 Petitioners and Plaintiffs,

20 v.

21 COUNTY OF MONTEREY; and  
22 DOES 1 THROUGH 99, INCLUSIVE,

23 Respondents and Defendants  
24 /

Case No. M109451

**AMENDED  
COMPLAINT FOR ANTICIPATORY  
BREACH OF CONTRACT (DAMAGES),  
BREACH OF CONTRACT (ESTOPPEL);  
AMENDED PETITION FOR WRIT OF  
MANDAMUS, DECLARATORY RELIEF  
AND INJUNCTIVE RELIEF; AMENDED  
COMPLAINT FOR CONSTITUTIONAL  
VIOLATIONS AND INVERSE  
CONDEMNATION**

25  
26 Petitioners and Plaintiffs SALINAS VALLEY WATER COALITION, MONTEREY COUNTY  
27 FARM BUREAU, MONTEREY/SANTA CRUZ COUNTIES BUILDING AND  
CONSTRUCTION TRADES COUNCIL, MONTEREY PENINSULA TAXPAYERS  
28 ASSOCIATION, HOWARD JARVIS TAXPAYERS ASSOCIATION (hereinafter collectively  
"Plaintiffs" or singularly "Plaintiff") allege as follows:



I.

INTRODUCTION

1  
2  
3 1. Plaintiffs seek a Writ of Mandate to set aside, void and annul Defendant and  
4 Respondent COUNTY OF MONTEREY's (hereinafter "Defendant COUNTY OF  
5 MONTEREY" or "County") October 26, 2010 decision to adopt the 2010 update of the  
6 Monterey County General Plan, otherwise referred to as GPU5, the 2007 General Plan Update  
7 and the 2010 General Plan Update (hereinafter collectively referred to as "General Plan") and to  
8 certify the Environmental Impact Report for the General Plan (hereinafter "EIR"). The Petition  
9 and Complaint are brought on the grounds that:

10 a. The EIR does not substantially comply with the requirements of the  
11 California Environmental Quality Act (hereinafter "CEQA"; California Public  
12 Resources Code §§ 21000, *et seq.*), Title 14, California Code of Regulations,  
13 section 15000, *et seq.* (hereinafter "CEQA Guidelines") including the State and  
14 Federal constitutional limitations explicitly set forth in the CEQA Guidelines, and  
15 other provisions of the law. (California Public Resources Code §§21168,  
16 21168.5.) Defendant COUNTY OF MONTEREY's action in certifying the EIR  
17 and adopting the General Plan is flawed, inadequate, incomplete, and constitutes a  
18 prejudicial abuse of discretion in that Defendant COUNTY OF MONTEREY  
19 failed to proceed in the manner required by law and Defendant COUNTY OF  
20 MONTEREY's decision is not supported by substantial evidence.

21 b. Defendant COUNTY OF MONTEREY violated Plaintiffs' due process  
22 rights set forth in the U.S. Constitutional Amendment §14 and California  
23 Constitution Article 1, § 7 by adopting mitigation measures that do not bear a  
24 reasonable relationship, nexus or rough proportionality with the identified  
25 impacts. (*Nollan v. California Coastal Comm'n* (1987) 483 US 825.) Moreover,  
26 Defendant COUNTY OF MONTEREY adopted an unconstitutionally overly  
27 broad and indefinite definition of the term, "Long Term Sustainable Water

1 Supply”, which definition was then invalidly applied to mitigation measures,  
2 creating legally infeasible mitigation measures that grants Defendant COUNTY  
3 OF MONTEREY unfettered discretion, without appropriate safeguards, which  
4 will result in arbitrary and discriminatory enforcement. Through these infeasible,  
5 unconstitutional mitigation measures, Defendant COUNTY OF MONTEREY  
6 overstepped its authority by creating an ad-hoc, legislative scheme for the  
7 adjudication of Monterey County’s groundwater basins in violation of Water  
8 Code sections 2000 *et. seq.* and 2500 *et seq.*

9 c. Through these constitutional violations, Defendant COUNTY OF  
10 MONTEREY has interfered with Plaintiffs’ investment-backed expectations,  
11 causing severe damage. Defendant COUNTY OF MONTEREY has denied  
12 Plaintiffs the right to make economically viable, productive, or beneficial use of  
13 their properties, and have thus taken Plaintiffs’ property without compensation.

14 d. Defendant COUNTY OF MONTEREY has caused an anticipatory breach  
15 of the contract formed between the property owners/property tax payers in certain  
16 areas of Monterey County by adopting policy measures which will prohibit  
17 certain development, including but not limited to wells, lot line adjustments, and  
18 “granny units,” absent proof of a sustainable, long-term source of water for such  
19 development, within a special assessment district, which district was formed  
20 pursuant to a vote held under the provisions of Proposition 218 in 2003, with the  
21 express purpose of providing adequate water supplies and flexibility to meet  
22 current and future needs through the year 2030. Defendant COUNTY OF  
23 MONTEREY has repudiated its obligations under the contract.

24 e. Defendant COUNTY OF MONTEREY violated Plaintiffs’ rights to the  
25 equal protection of the law under the 14th Amendment to the United States  
26 Constitution and the California Constitution, Article 1, § 7 and 42 U.S.C. section  
27 1983 insofar as Defendant COUNTY OF MONTEREY has adopted a policy  
28

1 which discriminates in the imposition of requirements for development projects  
2 where the sole distinction that determines whether the requirements are imposed  
3 is the nature of what industry within which the development is associated. Under  
4 the recently adopted policy, "development related to agricultural land uses within  
5 Zone 2C" are exempted "provided the county prepares a report every five years."  
6 (2010 General Plan Update Policy PS-3.1.) Development related to non-  
7 agricultural land uses is subject to the new requirements, with the exception of  
8 certain uses such as the first single family dwelling and non-habitable accessory  
9 uses, and also certain other development within Zone 2C "for which the decision  
10 maker makes" certain findings. No other distinction is drawn between  
11 development not subject to the new rules and development that is subject to the  
12 new rules. In essence, certain classes of uses are being discriminated against,  
13 even though all of the land uses within Zone 2C pay the same weighted  
14 assessment based on location in the zone with the same expectation of adequate  
15 water supply to year 2030. The distinction lacks any rational basis recognized  
16 under the United States or California Constitutions. Moreover, the distinction is  
17 irrational in view of the subject of the underlying policy, which is water use and  
18 supply.

19 **II.**  
20 **PARTIES**

21 2. Plaintiffs hereby incorporate by reference paragraph 1 as if fully set forth herein.  
22 Plaintiffs MONTEREY COUNTY FARM BUREAU, SALINAS VALLEY WATER  
23 COALITION, HOWARD JARVIS TAXPAYERS ASSOCIATION, MONTEREY PENINSULA  
24 TAXPAYERS ASSOCIATION, and MONTEREY/SANTA CRUZ COUNTIES BUILDING  
25 AND TRADES COUNCIL are non-profit corporations, organized under the laws of, and  
26 qualified and doing business in, the State of California, and the County of Monterey. Plaintiffs  
27 contain among their members individuals and companies who are property owners within Zone

1 2C, who are subject to and have been paying the assessments required under the Proposition 218  
2 measure approved in 2003, which levied assessments on land owners to assure adequate water  
3 supply in Zone 2C to 2030. Plaintiffs HOWARD JARVIS TAXPAYERS ASSOCIATION and  
4 MONTEREY PENINSULA TAXPAYERS ASSOCIATION are organized and existing for the  
5 purpose, among others, of advancing the interests of taxpayers. Plaintiffs SALINAS VALLEY  
6 WATER COALITION; MONTEREY COUNTY FARM BUREAU; and MONTEREY/SANTA  
7 CRUZ COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL are organized  
8 and existing for the purpose, among others, of protecting and advancing property rights.

9 3. Defendant COUNTY OF MONTEREY COUNTY is a public entity organized  
10 and existing under the laws of State of California.

11 4. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein  
12 as DOES 1 through 99, inclusive, and therefore sue these Defendants by such fictitious names.  
13 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.  
14 Plaintiffs are informed and believe and thereon allege that each of said fictitiously named  
15 Defendant is in some manner responsible for the injury and damage to Plaintiffs alleged herein.

16 5. Plaintiffs are informed and believe and thereon allege that all times herein  
17 mentioned, Defendants herein were the agents, servants, and employees of their Co-Defendant  
18 COUNTY OF MONTEREY, and in doing the things hereinafter mentioned were acting within  
19 the course and scope of their authority as such agents, servants and employees, with the  
20 permission and consent of their Co-Defendant COUNTY OF MONTEREY.

21 **III.**

22 **BACKGROUND FACTS**

23 6. Plaintiffs hereby incorporate by reference paragraphs 1 through 5 as if fully set  
24 forth herein.

25 7. Monterey County is a duly created political subdivision of the State of California,  
26 with ultimate executive and legislative authority invested in an elected five-member Board of  
27 Supervisors.

1           8.       The Salinas Valley is a geographic region of the northern part of Monterey  
2 County running generally north-south and underlain by aquifers which supply water for  
3 domestic, agricultural and industrial uses. Additional water is supplied to the valley from the  
4 Salinas River and stored in two regional reservoirs. The Salinas River meanders through the  
5 Salinas Valley floor, an area of about 1,000 square miles. Adequate water supply has been a  
6 major concern in the Salinas Valley for over fifty years due to overdrafts of the underlying  
7 aquifer and resultant intrusion of saltwater from the adjacent Pacific Ocean. Exhibit "A",  
8 attached hereto and incorporated by reference herein, includes a map of the Salinas River  
9 Watershed and the Salinas River.

10           9.       The Monterey County Water Resources Agency (hereinafter the "MCWRA") was  
11 created pursuant to the *Monterey County Water Resources Agency Act*, 1990 Stats. 1159, 1991  
12 Stats. 1130, 1993 Stats. 234, and 1994 Stats. 803. The MCWRA is governed by a Board of  
13 Supervisors which is coextensive with the Board of Supervisors of Monterey County, and which  
14 Monterey County Board of Supervisors has ultimate executive and legislative authority over the  
15 MCWRA, making the MCWRA an integral part of Monterey County Government. The  
16 MCWRA is, to all intents and purposes, an alter ego of Defendant COUNTY OF MONTEREY  
17 insofar as their ultimate control is invested in the same Board of Supervisors, the enabling  
18 legislation for the MCWRA effectively defines all employees of the County as employees of the  
19 MCWRA, with no additional compensation (with the exception of a single County employee: the  
20 County Surveyor), etc. MCWRA is a public entity under the essential control of Defendant  
21 COUNTY OF MONTEREY. Indeed, in the case of *Arreola v. County of Monterey* (2002) 99  
22 Cal.App.4th 722, 122 Cal.Rptr.2d 38, the Court determined that the County of Monterey  
23 exercised essential control over the MCWRA, and accordingly Defendant COUNTY OF  
24 MONTEREY is collaterally estopped from asserting the that the MCWRA is anything but a  
25 constituent part of the government of the County of Monterey.

26           10.       Over the years, various efforts at improving water distribution, efficiency, etc.,  
27 have been made by government entities, agricultural interests, industry, etc. An important part of

1 these efforts included the construction of a pipeline system for delivery of water for irrigation to  
2 the agricultural fields in the northern part of the Salinas Valley, to be served by pumping from  
3 the Salinas River.

4 11. In a process covering many years, involving many governmental and private  
5 organizations and citizens, a plan was developed to increase seasonal water storage and  
6 groundwater aquifer recharge which plan included the construction of a "rubber dam" on the  
7 Salinas River to increase seasonal water storage and provide a supply of water to be diverted into  
8 the pre-existing pipeline system. Additionally, improvements would be made to one of the  
9 reservoirs in the system. The principal goals of these efforts were to secure a stable supply of  
10 water for all water users in the Valley, halt and reverse salt water intrusion into the aquifer, and  
11 provide flood control measures. And extensive environmental impact and engineering reports  
12 were prepared and duly adopted during this process. Such reports are now settled and not  
13 subject to further debate or modification.

14 12. One of the projects developed through this process is known as the Salinas Valley  
15 Water Project (hereinafter the "SVWP"). The project development process culminated in a vote  
16 taken on January 14, 2003, wherein the Board of Supervisors of Defendant COUNTY OF  
17 MONTEREY, authorized, by unanimous vote in favor of Board Resolution No. 03-017, an  
18 Assessment Ballot Proceeding pursuant to California Proposition 218 (California Constitution  
19 Article 13D) to obtain landowner approval of the Salinas Valley Water Project Assessment  
20 (hereinafter the "Proposition 218 measure"), to fund the SVWP.

21 13. Defendant COUNTY OF MONTEREY actively supported the campaign in favor  
22 of the Proposition 218 measure by preparing and supplying information to private parties who  
23 disseminated such information and advocated on behalf of the measure. Additionally, Defendant  
24 COUNTY OF MONTEREY/MCWRA held at least seven informational meetings around the  
25 County as well as public hearings on the matter. Defendant COUNTY OF  
26 MONTEREY/MCWRA prepared and mailed two informational mailers, essentially supporting  
27 passage of the measure.

1           14.     On April 8, 2003, the election for the Proposition 218 measure was held,  
2 resulting in an affirmative vote in favor of the measure.

3           15.     Following the election, Defendant COUNTY OF MONTEREY, by action of its  
4 Board of Supervisors, enacted Ordinance No. 04203, which authorized the issuance of bonds to  
5 finance the construction, the collection of the assessments, and the designation of a portion of the  
6 Salinas Valley as "Zone 2C" in which zone property owners benefitted from the SVWP and paid  
7 special assessments for the SVWP. (See map of Zone 2-C as Exhibit "B", attached hereto and  
8 incorporated by reference herein.) The bonds were issued by an agency called the Monterey  
9 County Financing Authority, which is another alter-ego of Defendant COUNTY OF  
10 MONTEREY and over which the Monterey County Board of Supervisors exercise complete  
11 control by acting as the Financing Authority's Board of Supervisors.

12           16.     The physical infrastructure improvements, which were authorized as part of the  
13 SVWP, have been built, and bonds to finance the project have been issued by Defendant  
14 COUNTY OF MONTEREY through the Monterey County Financing Authority.

15           17.     Plaintiffs are informed and believe and thereon allege that Defendant COUNTY  
16 OF MONTEREY has been collecting the approved assessments from property owners within the  
17 special assessment zone created by the Proposition 218.

18           18.     In 2007, Defendant COUNTY OF MONTEREY began drafting the present  
19 General Plan to update the 1982 General Plan. The General Plan covers 1,878,748 acres of land  
20 located within inland areas of the unincorporated Monterey County, which is divided further into  
21 the following eight (8) inland areas in the General Plan: North County, Greater Salinas, Central  
22 Salinas, Greater Monterey Peninsula, Toro, Cachagua, South County, and Lands within the Los  
23 Padres National Forest. The General Plan required certification of a valid environmental impact  
24 report prepared in accordance with CEQA, applicable County codes and regulations, State and  
25 Federal laws, and State administrative guidelines and rulings.

26           19.     Accordingly, Defendant COUNTY OF MONTEREY prepared Draft and Final  
27 Environmental Impact Reports for the General Plan (hereinafter collectively, "EIR" or

1 individually, "Draft EIR" or "Final EIR") and held hearings on the General Plan and EIR. On or  
2 around October 15, 2010, about eleven (11) days prior to the certification of the EIR, Defendant  
3 COUNTY OF MONTEREY released to the public 148 pages of Supplemental Materials to the  
4 Final EIR. On or around October 26, 2010, the Board of Supervisors of Defendant COUNTY OF  
5 MONTEREY certified the EIR pursuant to CEQA (California Public Resources Code section  
6 21000, *et seq.*) through County Resolution No. 10-290, which included three exhibits relating to  
7 the EIR: Exhibit EIR1, CEQA Findings of Fact; Exhibit EIR2, Statement of Overriding  
8 Considerations; and Exhibit EIR3, Mitigation Monitoring Reporting Program. The EIR,  
9 Supplemental Materials to the Final EIR and the County Resolution with its exhibits are  
10 sometimes hereinafter collectively referred to as "EIR Documents."

11 20. Following the certification of the EIR, the Defendant COUNTY OF MONTEREY  
12 Board of Supervisors adopted the General Plan through County Resolution No. 10-291, which  
13 included Exhibit GP1, Government Code Compliance.

14 21. The EIR Documents describe the water supply available for Monterey County.  
15 Monterey County derives a majority of its total water supply from groundwater storage. The  
16 major groundwater basins in Monterey County are: (1) Salinas Valley (hereinafter referred to as  
17 "Salinas Valley Groundwater Basin"); (2) Monterey Peninsula; and (3) Carmel Valley. All of  
18 the water used in the Salinas Valley Groundwater Basin (for irrigation domestic, municipal, and  
19 industrial purposes) is supplied from groundwater (with the exception of an area near Greenfield,  
20 which uses a surface diversion from the Arroyo Seco River). As described in Paragraphs 12  
21 through 16, the SVWP is an approved project of the MCWRA.

22 22. The primary objective of the SVWP is to halt further groundwater degradation  
23 and seawater intrusion by bringing aquifer pumping and recharge rates into balance and  
24 providing adequate water supplies and flexibility to meet current and future needs to year 2030.

25 23. In certifying the EIR, Defendant COUNTY OF MONTEREY concluded that the  
26 level of significance of water supply impact varies between the three groundwater basins:



1 Salinas River, Monterey Peninsula, and Pajaro River. Thus, multiple findings were made for the  
2 water supply impacts.

3 24. Specific to the Salinas Valley Groundwater Basin, the EIR Documents conclude  
4 that the effect of the SVWP (halting further overdraft compared to baseline conditions) will,  
5 together with Mitigation Measure WR-2, mitigate groundwater impacts to less than significant  
6 levels, both for the life of the General Plan (i.e., year 2030) and at full build-out of the General  
7 Plan (i.e., year 2092) (with the exception of Impact WR-7 for 2092). Mitigation Measure WR-2  
8 requires Defendant COUNTY OF MONTEREY to pursue the expansion of the SVWP.

9 25. The EIR also considered potential secondary impacts of implementing Mitigation  
10 Measure WR-2. In analyzing these secondary impacts, the EIR states and in certifying the EIR,  
11 the County Board of Supervisor finds that there are currently no designs for any future storage,  
12 treatment, and conveyance facilities to meet all future water supply needs and concluded that is  
13 not technically feasible to analyze the secondary impacts of undefined future water facilities.  
14 For Impact WR-7, the EIR determined the impact to be uncertain.

15 26. Nevertheless, the EIR Documents conclude that even though these impacts are not  
16 known and not capable of further analysis at this time, the impacts are considered significant and  
17 unavoidable.

18 27. Although the EIR Documents correctly recognize that, if an agency finds that an  
19 impact is too speculative for evaluation, it should terminate the discussion of the impact (CEQA  
20 Guidelines section 15145), they do not consistently adhere to this guidance. The EIR Documents  
21 properly terminated the discussion of the proposed 2007 Local Coastal Program (hereinafter  
22 "LCP") amendment to incorporate the Castroville Community Plan into the LCP on the  
23 following grounds, "[T]he proposed 2007 amendment to incorporate the Castroville Community  
24 Plan into the LCP is not a known or foreseeable consequence of the adoption of GPU5, and the  
25 DEIR was not required by CEQA to analyze it." The same principle was not, however, applied  
26 to terminate the speculative analyses of secondary impacts of future water facilities and to find  
27 that there were no potentially significant impacts associated therewith.

1           28.     The EIR Documents similarly recognize the constitutional limitations upon  
2 CEQA mitigation, which are described, *inter alia*, in CEQA Guidelines section  
3 15126.4(a)(4)(A)-(B). Federal and State constitutional principles require an essential nexus (i.e.  
4 connection) between the mitigation measure and a legitimate governmental interest pursuant to  
5 *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). Defendant COUNTY OF  
6 MONTEREY's adherence to these principles is inconsistent. Defendant COUNTY OF  
7 MONTEREY found, for example, that because the cumulative loss of natural lands over the  
8 course of the next 82 years is unknown and speculative, mitigation was infeasible. Consequently,  
9 Defendant COUNTY OF MONTEREY did not impose mitigation which would have lacked an  
10 essential constitutional nexus. In contrast, the Defendant COUNTY OF MONTEREY adopted  
11 policies to mitigate the secondary impacts of undefined future water facilities which Defendant  
12 COUNTY OF MONTEREY determined to be speculative.

13           29.     Various mitigation measures such as Mitigation Measure Policies PS-3.1 and PS-  
14 3.2 adopted by Defendant COUNTY OF MONTEREY incorporate the term, "Long Term  
15 Sustainable Water Supply". Long Term Sustainable Water Supply is defined in the EIR  
16 Documents as the use of groundwater in a manner that can be maintained for an indefinite time.

17           30.     These Mitigation Measures also prohibit (with certain exceptions) new  
18 development without proof, based on specific findings and supported by evidence, that there is a  
19 Long Term, Sustainable Water Supply (i.e., for an indefinite time) to serve the development.

20           31.     The General Plan incorporates policies based upon other EIR mitigation measures  
21 that apply County-wide, including application to the Salinas Valley Groundwater Basin. For  
22 example, Mitigation Measure Policy PS-3.4, states that County shall require an assessment of  
23 impacts on adjacent wells and in-stream flows for new high-capacity wells, including high-  
24 capacity urban and agricultural production wells, where there may be a potential to adversely  
25 affect existing adjacent domestic or water system wells or instream flows, as determined by the  
26 MCWRA. In the case of new high capacity wells for which an assessment shows the potential  
27

1 for significant adverse well interference, Policy PS-3.4 requires that the proposed well site be  
2 relocated or otherwise mitigated to avoid significant interference.

3 32. The EIR Documents describe the importance of agricultural lands to Monterey  
4 County. In certifying the EIR, Defendant COUNTY OF MONTEREY found that that "the  
5 General Plan best protects the economic viability of agricultural land uses".

6 33. In 2009, Monterey County was the third largest agricultural county in the State of  
7 California according to the California Department of Food and Agriculture "California  
8 Agricultural Resource Directory 2009". The gross value of agricultural production in 2009  
9 totaled \$4.03 billion according to the 2009 Crop Report compiled by the Monterey County  
10 Agricultural Commissioner. Agricultural operations and related industries bring substantial  
11 benefits to the local economy, including substantial employment opportunities.

12 34. There are 1,185,000 acres in Monterey County that are designated as agricultural  
13 lands. Of this acreage, 236,142 acres are identified as Important Farmland. Important Farmland  
14 includes 167,636 acres of Prime, 43,402 acres of Statewide Importance and 25,104 acres of  
15 Unique Farmland. The remaining acreage (approximately 948,858 acres) is grazing land.

16 35. Important Farmlands stretch about five (5) miles on each side of the Salinas River  
17 and extend to the north along the Pajaro River and Elkhorn Slough area and to the south along  
18 other rivers such as Arroyo Seco River and San Lorenzo Creek. (See Important Farmland Map  
19 included as Exhibit "C" attached hereto and incorporated by reference herein.)

20 36. The EIR Documents analyze the impacts of the General Plan to Important  
21 Farmland from urban conversion and conclude that there would be a conversion of  
22 approximately 2,571 acres of Important Farmland to urban uses. The EIR Documents also  
23 disclose that, while the loss of 2,571 acres of Important Farmland would represent only about  
24 one percent of the total Important Farmland acreage in Monterey County, this impact is  
25 considered significant because the land would be permanently removed from agricultural  
26 production.

1           37. Defendant COUNTY OF MONTEREY certified the EIR, notwithstanding the  
2 significant and unavoidable impacts to Important Farmland (2,571 acres), based upon a finding  
3 of overriding significance premised on the California Housing Element Law (Government Code  
4 Section 65580, *et seq.*), which legally binds County to accommodate the housing needs of  
5 Californians of all economic levels, and upon the justification that farmland conversion to urban  
6 uses must occur as a result of population growth within the County and the cities.

7           38. In contrast, the EIR did not analyze the secondary impacts to Important Farmland  
8 from the General Plan policies and EIR mitigation measures associated with: a) setbacks and b)  
9 limiting or prohibiting use of Important Farmland for wildlife corridor, wetlands, riparian  
10 habitat, erosion control and other protection/preservation measures that would result in the loss  
11 of Important Farmland for farming activities. Consequently, Defendant COUNTY OF  
12 MONTEREY failed to adopt related findings of overriding significance.

13           39. Throughout the public comment process for the EIR and the General Plan,  
14 Plaintiffs submitted written comments and verbal testimony during public hearings, alleging  
15 concerns over the inadequacy of the water supply analysis and its associated mitigation measures  
16 in the Draft EIR, particularly as they relate to the SVWP.

17           40. On or about November 13, 2008, February 2, 2009, and April 13, April 28, July  
18 21, September 13, September 14, September 21, October 12, October 22, and October 26, 2010,  
19 Plaintiffs or their representatives, submitted written comments and/or verbal testimony alleging  
20 substantial inadequacies in the EIR analyses and mitigation measures and infeasible General Plan  
21 policies. Written comments were also submitted on February 2, 2009, and September 20 and  
22 October 26, 2010, by Plan for the People and the Refinement Group<sup>1</sup>, of which several of the  
23 Plaintiffs are members. The written comments and verbal testimony of Plaintiffs and these  
24 entities included the following: (1) significant deficiencies in the biological resources discussion  
25 in the Conservation and Open Space Element of the General Plan and associated discussions and  
26

27 <sup>1</sup> Plan for the People and Refinement Group are organizations comprising community, business and industry  
interests. Both organizations have actively participated in the General Plan process.

1 mitigation measures in the EIR; (2) the EIR's failure to consider impacts to agricultural resources  
2 from these biological resources mitigation measures and policies; (3) a request that County  
3 consult with the Monterey County Agricultural Advisory Committee<sup>2</sup> and the MCWRA Board  
4 of Directors on water-related policies and mitigation measures and related definitions in the  
5 General Plan; (4) concerns over Defendant COUNTY OF MONTEREY's last minute (i.e.,  
6 within several weeks of certifying the EIR), ad hoc changes made to the water-related mitigation  
7 measures and associated policies regarding water supply and water facilities and infrastructure;  
8 (5) the EIR's failure to properly apply the water-related mitigation measures and policies using  
9 basin-by-basin conclusions, particularly since the EIR included such analysis and provided such  
10 conclusions; (6) unreasonable and infeasible General Plan policies and EIR mitigation measures  
11 associated with proving long term sustainable water supply for an indefinite period of time; (7)  
12 unconstitutional application of mitigation measures with insufficient nexus and/or lacking rough  
13 proportionality to identified impacts, particularly for the Salinas Valley Groundwater Basin; and  
14 (8) Defendant COUNTY OF MONTEREY's abuse of its authority by legislatively creating an ad  
15 hoc adjudication of water basins through the General Plan policies and EIR mitigation measures.

16 41. On or about October 12, 2010, and again on October 22, 2010, Attorney Timothy  
17 J. Morgan, on behalf of the Plaintiffs, submitted written comments to Defendant COUNTY of  
18 MONTEREY detailing the unreasonable and infeasible General Plan Public Service policies  
19 associated with proving long term sustainable water supply, and Defendant COUNTY OF  
20 MONTEREY's potential breach of contract against taxpayers paying special assessment for the  
21 SVWP Zone 2-C if Defendant COUNTY OF MONTEREY adopts these policies. Additionally,  
22 these written comments contained in the October 12, 2010 letter raised question of equal  
23 protection based on the distinction between agricultural-related and non-agricultural-related uses  
24 and asked Defendant COUNTY of MONTEREY to exempt Zone 2C from the new water policy  
25 requirements.

26  
27 <sup>2</sup> The purpose of the Agricultural Advisory Committee is to advise and recommend to the Board of Supervisors, and  
28 other County boards, commissions and departments on matters affecting, or of interest to, the agricultural industry.  
SVMW, et al, v. COUNTY OF MONTEREY AMENDED PETITION FOR WRIT  
Monterey County Superior Court, Case No. M109451 OF MANDAMUS AND AMENDED COMPLAINT

1 42. On or after October 27, 2010, a purported notice of determination was posted, by  
 2 Defendant COUNTY OF MONTEREY.

3 IV.

4 STANDING AND VENUE

5 43. Plaintiffs hereby incorporate by reference paragraphs 1 through 42 as if fully set  
 6 forth herein.

7 44. Approval and implementation of the General Plan and the certification of the EIR  
 8 will adversely affect the public and private interests of Plaintiffs. Plaintiffs have submitted  
 9 comments on and objections to Defendant COUNTY OF MONTEREY's lack of CEQA  
 10 compliance, violations of State and Federal Constitutions, and failure to comply with other state  
 11 and local laws. Plaintiffs have participated at public hearings before the Defendant COUNTY  
 12 OF MONTEREY Planning Commission and Board of Supervisors regarding the General Plan  
 13 and the EIR.

14 45. Jurisdiction of this court is invoked pursuant to California Code of Civil  
 15 Procedure sections 1085, 1094.5; California Public Resources Code sections 21167, 21168 and  
 16 21168.5; CEQA Guidelines section 15112; the Constitution of the State of California; the  
 17 Constitution of the United States of America; and common law.

18 46. Venue is proper in this Court because the causes of action alleged in this Petition  
 19 and Complaint arose in the County of Monterey where the contract was executed, the General  
 20 Plan was adopted, and the EIR was certified.

21 V.

22 EXHAUSTION OF ADMINISTRATIVE REMEDIES

23 47. Plaintiffs hereby incorporate by reference paragraphs 1 through 46 as if fully set  
 24 forth herein.

25 48. Plaintiffs have performed all conditions precedent to the filing of this Petition by  
 26 raising each and every issue then known to them before Defendant COUNTY OF MONTEREY,  
 27

1 in compliance with California Public Resources Code section 21177, and California Code of  
2 Civil Procedure sections 1085 and 1094.5.

3 49. Plaintiffs have complied with the requirements of California Public Resources  
4 Code section 21167.5, by serving a written notice of Plaintiffs' intention to commence this action  
5 on Defendant COUNTY OF MONTEREY on November 24, 2010. A copy of the written notice  
6 and proof of service is **Exhibit "D"** attached hereto and incorporated by reference herein.

7 50. Pursuant to Public Resources Code section 21167.6, subdivision (b)(2), Plaintiffs  
8 filed concurrently with this Petition and Complaint, Request for Preparation of Record of  
9 Proceeding.

10 51. Plaintiffs have performed any and all conditions precedent to filing this instant  
11 action and have exhausted any and all available administrative remedies to the extent required by  
12 law.

## 13 VI.

### 14 STATUTE OF LIMITATION

15 52. Plaintiffs hereby incorporate by reference paragraphs 1 through 51 as if fully set  
16 forth here.

17 53. On October 27, 2010, Defendant COUNTY OF MONTEREY posted a CEQA  
18 Notice of Determination for the EIR.

19 54. This Petition was filed in Monterey County Superior Court not more than thirty  
20 (30) days after Defendant COUNTY OF MONTEREY posted the Notice of Determination.

21 55. Plaintiffs have filed the Petition and Complaint prior to the expiration of any  
22 applicable statute of limitations.

23 56. Plaintiffs have filed this amended Petition and Complaint to add additional  
24 parties.

25 //

## 26 VII.

### 27 FIRST CAUSE OF ACTION

1 VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT

2 57. Plaintiffs hereby incorporate by reference paragraphs 1 through 56 as if fully set  
3 forth herein.

4 58. As set forth in detail below, Defendant COUNTY OF MONTEREY's action in  
5 certifying the EIR and adopting the General Plan is flawed, inadequate, and incomplete and  
6 constitutes a prejudicial abuse of discretion. Specifically, Defendant COUNTY OF  
7 MONTEREY arbitrarily and capriciously failed to proceed in the manner required by law, and  
8 Defendant COUNTY OF MONTEREY's decision is not supported by substantial evidence in  
9 that Defendant COUNTY OF MONTEREY relied upon a legally inadequate EIR that fails to  
10 meet CEQA's requirements for analyzing and identifying lawful mitigation for significant  
11 project impacts.

12 **The EIR Mitigation Measures Violate Constitutional Limitations**  
13 **Contained in CEQA**

14 59. In violation of the CEQA provisions recognizing constitutional limitations upon  
15 mitigation, the General Plan incorporates policies intended to mitigate perceived impacts upon  
16 the Salinas Valley Groundwater Basin (including Zone 2-C) despite the lack of any reasonable  
17 relationship, nexus or rough proportionality between the policies and the purported impacts.  
18 (California Public Resources Code §21004; CEQA Guidelines §15126.4(a)(4)(A)-(B).)

19 60. An EIR discussion of mitigation measures is required for significant  
20 environmental effects only, and mitigation measures cannot constitutionally be applied to less  
21 than significant impacts. (California Public Resources Code §21100(b); CEQA Guidelines  
22 §15126.4(a)(4)(A)-(B).) Because the EIR concludes that the impacts to the Salinas Valley  
23 Groundwater Basin are less than significant to 2030, mitigation measures/policies applied to the  
24 Salinas Valley Groundwater Basin are in violation of the CEQA and the CEQA Guidelines.  
25 Under Public Resources Code section 21004, Defendant COUNTY OF MONTEREY may only  
26 exercise those express or implied powers provided by law in mitigating a significant effect of a  
27 project on the environment. Two such important limitations derive from the U.S. Constitution



1 Amendment 14, Section 1 and the California Constitution Article I, Section 7, and further  
2 described in CEQA Guidelines Section 15126.4(a)(4)(A)-(B) are as follows:

3 Mitigation measures must be consistent with all applicable constitutional requirements,  
4 including the following:

5 1. There must be an essential nexus (i.e. connection) between the mitigation measure and  
6 a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S.  
7 825 (1987); and

8 2. The mitigation measure must be "roughly proportional" to the impacts of the project.  
9 *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc  
10 exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City*  
11 *of Culver City* 12 Cal.4th 854 (1996).

12 61. In certifying the EIR, Defendant COUNTY OF MONTEREY concluded that the  
13 level of significance of water supply impacts vary between different parts of the County (i.e.,  
14 between the three groundwater basins), and thus, multiple findings for each of the three  
15 watersheds in Monterey County were needed and were subsequently made.

16 62. For the life of the General Plan (i.e., 2030) and for full build-out of the General  
17 Plan (i.e., 2092), Defendant COUNTY OF MONTEREY expressly found that all potential  
18 impacts of the General Plan upon the Salinas Valley Groundwater Basin will be less than  
19 significant, except Impact WR-7. Water Supply Impact WR-7 identified impacts associated with  
20 increased groundwater pumping, resulting in increased saltwater intrusion as a result of land uses  
21 and development for the 82 year time frame. The CEQA Findings of Facts found this Impact  
22 WR-7 significant and unavoidable for 2092 "due to future uncertainty" even with Mitigation  
23 Measures WR-2 and BIO-2.3.

24 63. More specifically, Defendant COUNTY OF MONTEREY Board of Supervisors  
25 made the findings that: (a) Water Supply Impact WR-4 (i.e., water supplies) is less than  
26 significant for the Salinas Valley Groundwater Basin until year 2030, and less than significant  
27 with Mitigation Measure WR-2 until year 2092; (b) Water Supply Impact WR-6 (i.e., demand on  
28 groundwater supplies resulting in decline of groundwater levels and accelerated overdraft) is

1 less than significant for the Salinas Valley Groundwater Basin (which includes Zone 2-C) until  
2 year 2030, and less than significant with Mitigation Measure WR-2 until year 2092; and (c)  
3 Water Supply Impact WR-7 is less than significant until year 2030 due to the effect of the SVWP  
4 on halting further overdraft compared to the baseline.

5 64. Defendant COUNTY OF MONTEREY nevertheless adopted Mitigation  
6 Measures/Policies, including Mitigation Measures/Policies PS-3.2, PS-3-3, PS-3.4, and BIO-2.3,  
7 to mitigate for the less than significant components of Water Supply Impacts WR-4, WR-2 and  
8 WR-7 to the Salinas Valley Groundwater Basin until the year 2030. Defendant COUNTY OF  
9 MONTEREY's conduct constitutes an arbitrary and capricious failure to proceed as required by  
10 law.

11 65. Defendant COUNTY OF MONTEREY further improperly applied mitigation  
12 measures to impacts of Mitigation Measure Policy WR-7 and secondary impacts of Mitigation  
13 Measure Policy WR-2, despite conclusions in the EIR Documents that these impacts cannot be  
14 meaningfully analyzed. (*Topanga Beach Renters Association v. Department of General Services*  
15 (1976) 58 Cal.App.3d 188, 196.)

16 66. By arbitrarily and capriciously adopting policies to mitigate speculative impacts,  
17 Defendant COUNTY OF MONTEREY violated CEQA, the Guidelines and the constitutional  
18 requirements for a nexus and rough proportionality referenced therein. (California Public  
19 Resources Code §§21100(b); CEQA Guidelines §15126.4(a)(4)(A)-(B).)

20 **EIR Failed to Evaluate Secondary Effects to Important Farmland**

21 67. In certifying the EIR, Defendant COUNTY OF MONTEREY failed to evaluate  
22 potentially significant impacts to agricultural resources arising from certain mitigation  
23 measures/policies that seek to preserve species, wildlife corridors, and habitats and protect  
24 against erosion. Identification of a project's significant environmental effects is one of the  
25 primary purposes of an EIR. (California Public Resources Code §21002.1(a); CEQA Guidelines  
26 §15126.4(a)(1)(D).)

1           68.     The EIR's identification of significant environmental effects and recommendation  
2 of mitigation measures is inconsistent. For example, the EIR identifies specific acreage of  
3 Important Farmland lost (2,571 acres) due to urban conversion, and disclose that, "While the loss  
4 of 2,571 acres of Important Farmland would represent only about one percent of the total  
5 Important Farmland acreage in Monterey County, this is considered significant because the land  
6 would be permanently removed from agricultural production."

7           69.     In contrast, the EIR fails to evaluate the loss of Important Farmland due to those  
8 General Plan policies and mitigation measures associated with erosion, species, wildlife corridor  
9 and habitat protection that would result in the loss of usable Important Farmland for farming  
10 activities. More specifically, the EIR did not consider the impacts to Important Farmland from  
11 Mitigation Measure BIO-2.1/Policy OS-5.22, which was revised near the date Defendant  
12 COUNTY OF MONTEREY Board of Supervisors certified the EIR. Mitigation Measure BIO-  
13 2.1 states that "the stream setback ordinance will delineate appropriate uses within the setback  
14 area that shall not cause removal of riparian habitat, compromise identified riparian wildlife  
15 corridors, or compromise water quality of the relevant stream."<sup>3</sup>

16           70.     Important Farmlands stretch about five (5) miles on each side of the Salinas River  
17 and extend to the north along the Pajaro River and Elkhorn Slough area and to the south along  
18 other rivers such as Arroyo Seco River and San Lorenzo Creek. Setback policies associated with  
19 the riparian habitat, wildlife corridor, wetlands and other species and habitat preservation will  
20 necessarily preclude the use of an unspecified amount of land classified as Important Farmland.  
21 The EIR failed to consider or recognize this impact to Important Farmland in violation of CEQA.

22           71.     Similarly, the EIR failed to recognize or evaluate the impacts to Important  
23 Farmland due to the stringent limitation (and prohibition for North County) on agricultural uses  
24 on slopes in excess of 25 percent in violation of California Public Resources Code section  
25 21002.1(a).

26 \_\_\_\_\_  
27 <sup>3</sup> The ordinance will apply to the conversion of lands uncultivated for the previous 30 years, despite their  
28 agricultural classification.

1           74. For the purpose of the impact analysis in Water Resources Chapter 4.3, the EIR  
2 relied on the concept of "Long Term Sustainable Water supply", not the term "Long Term Water  
3 Supply." For example, Policy PS-3.1 provides that new development for which a discretionary  
4 permit is required, and which will use or require the use of water, shall be prohibited (with  
5 certain exceptions) without proof, based on specific findings and supported by evidence, that  
6 there is a long-term, sustainable water supply, both in quality and quantity to serve the  
7 development.

8           75. "Feasible" means capable of being accomplished in a successful manner within a  
9 reasonable period of time, taking into account economic, environmental, social, and  
10 technological factors." (California Public Resources Code §21061.1.) Only where substantial  
11 evidence supports the approving agency's conclusion that mitigation measures will be effective,  
12 will courts uphold such measures against attacks based on their alleged inadequacy. (*Laurel*  
13 *Heights*, supra, 47 Cal.3d at p. 407.) Here, proving the availability of Long Term Sustainable  
14 Water Supply for an indefinite period cannot be accomplished in a successful manner within a  
15 reasonable period of time, taking into account economic, environmental, social, and  
16 technological factors, and is thus infeasible and inadequate in violation of CEQA.

17                           **Invalid Findings of Overriding Consideration**

18           76. Defendant COUNTY OF MONTEREY's finding of overriding consideration is  
19 unsupported and invalid. Under CEQA, a public agency cannot approve a project for which an  
20 environmental impact report has been certified which identifies one or more significant effects  
21 on the environment unless the agency makes one or more findings accompanied by an  
22 explanation of the rationale for the finding(s) for each significant environmental impacts  
23 identified. (*California Public Resources Code §21081; Village Laguna of Laguna Beach, Inc. v.*  
24 *Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1034.)

25           77. The findings of overriding consideration for approval of the General Plan and  
26 adoption of the EIR did not fully disclose or accurately reflect significant impacts to Important  
27 Farmland. Thus, Defendant COUNTY OF MONTEREY's adoption of the General Plan and

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The EIR's Definition of Long Term Sustainable Water Supply is  
Unconstitutionally Overbroad and its Mitigation Measures are Infeasible

72. The EIR and General Plan definition of "Long Term Sustainable Water Supply" is impermissibly over broad and indefinite, resulting in facially infeasible policies and mitigation measures. California Public Resources Code section 21002 requires agencies to adopt *feasible* mitigation measures to substantially lessen or avoid otherwise significant adverse environmental impacts. Proving the availability of a Long Term Sustainable Water Supply for an indefinite period of time is a factual impossibility and necessarily results in a lack of the constitutional nexus and proportionality required under CEQA between mitigation measures/policies and the adverse impacts identified in the EIR.

73. In the General Plan, the term "Long Term Sustainable Water Supply" means A water supply from any source (e.g., groundwater, surface water, aquifer storage recovery project or other) that can provide for the current and projected future demand for water from that source as determined pursuant to the criteria required to be adopted by Policy PS-3.2.

The EIR defines the term Long Term Sustainable Water Supply as follows:

[T]he use of groundwater in a manner that can be maintained for an indefinite time without causing unacceptable environmental, economic or social consequences taking into account the effects of pumping (safe yield) and the ability to reverse trends that are depleting supply and renew basin functions through various means.

The EIR further distinguishes between the terms "Long Term Water Supply" and "Long Term Sustainable Water Supply", which are used in various mitigation measures in the EIR:

"Long term sustainable water supply", as referenced in General Plan goal PS-3 and policies under goal PS-3, examines the groundwater basin or sub-area in a broader context and does not have a specific timeframe. "Long term water supply" typically would look at a more localized area than long term sustainable supply. Twenty years is the planning horizon for considering whether a water company, for example, has access to supply for 20 years, based on its technical, managerial and financial capabilities, permits from the CPUC and operational plans into the future. The 20-year time horizon is not part of the definition of "sustainable" supply. For a groundwater supply, a "long-term water supply" would need to have a safe yield for a minimum of a 20-year period.

1 certification of the EIR was not supported by substantial evidence and was arbitrary, capricious  
2 and invalid.

3 **Procedural Violation Under CEQA**

4 78. The General Plan adopted by Defendant COUNTY OF MONTEREY Board of  
5 Supervisors made substantial changes to the plan policies requiring revisions to the EIR.  
6 Defendant COUNTY OF MONTEREY released a 148-page document styled "Supplemental  
7 Materials to the Final EIR" eleven (11) days before Defendant COUNTY OF MONTEREY  
8 Board of Supervisors certified the EIR and adopted the General Plan. The magnitude of changes  
9 to the General Plan constituting the CEQA project required a subsequent or supplemental EIR  
10 under CEQA, and the "Supplemental Materials to the Final EIR" was a defacto subsequent or  
11 supplemental EIR requiring recirculation. Defendant COUNTY OF MONTEREY's failure to  
12 recirculate the Supplemental Materials to the Final EIR document for a 30 to 45-day period  
13 deprived the public and the decision makers of an adequate review period by arbitrarily  
14 bypassing the procedural requirements of California Public Resources Code section 21166 and  
15 CEQA Guidelines section 15162.

16 **VIII.**

17 **SECOND CAUSE OF ACTION**

18 **RESCISSION OR AMENDMENT OF GENERAL PLAN**

19 79. Plaintiffs hereby incorporate by reference paragraphs 1 through 78 as if fully set  
20 forth herein.

21 **Failure to Follow Procedural Requirements Under Government Code**

22 80. Defendant COUNTY OF MONTEREY Board of Supervisors improperly made  
23 substantial changes to the General Plan without remanding it back to the Planning Commission  
24 as required under section 65356 of the Government Code. As such, Defendant COUNTY OF  
25 MONTEREY failed to proceed in a manner required by law, and the General Plan must be set  
26 aside.

27 **Failure to Proceed in a Manner Required by CEQA**

1 81. As hereinabove alleged in Plaintiffs' First Cause of Action, Defendant COUNTY  
2 OF MONTEREY failed to proceed in the manner required under CEQA by, inter alia, adopting  
3 inadequate Statement of Overriding Considerations in violation of California Public Resources  
4 Code section 21081, subd. (b) and CEQA Guidelines §15093.

5 82. Defendant COUNTY OF MONTEREY's failure to follow the procedural  
6 requirement for certifying the EIR rendered the adoption of the General Plan arbitrary, capricious  
7 and invalid, and therefore, the General Plan must be set aside.

8 IX.

9 THIRD CAUSE OF ACTION

10 VIOLATION OF STATE WATER CODE

11 83. Plaintiffs hereby incorporate by reference paragraphs 1 through 82 as if fully set  
12 forth herein.

13 84. Through the adoption of the General Plan and the certification of the EIR,  
14 Defendant COUNTY OF MONTEREY has exceeded its lawful authority by creating an ad-hoc  
15 legislative scheme for the adjudication of Monterey County's groundwater basins. Defendant  
16 COUNTY OF MONTEREY have granted itself an unfettered discretion to determine water  
17 rights based on instream flow, interference, and other mitigation measures to deny applicants the  
18 reasonable and beneficial use of water rights.

19 85. The authority to adjudicate water basins is expressly granted to the California  
20 State Water Resources Control Board and the courts, either through a statutory procedure set  
21 forth in Water Code §2500 *et seq.*, or through a court procedure set forth in Water Code §2000 *et*  
22 *seq.* It is during these procedures that all water rights in a basin/river are considered, including  
23 those to preserve instream uses for recreation and fish and wildlife habitat. (Water Code §1500  
24 *et seq.*)

25 86. The extent and priority of water rights in a basin or river system must occur in a  
26 judicial or statutory proceeding and not through a defacto application-by-application adjudication  
27 of Monterey County's groundwater basins, subject to abuse without sufficient safeguard.

1 Defendant COUNTY OF MONTEREY abused its discretion in violation of Water Code sections  
2 2000 *et seq.* and 2500 *et seq.*

3 X.

4 FOURTH CAUSE OF ACTION

5 VIOLATION OF DUE PROCESS OF LAW

6 87. Plaintiffs hereby incorporate by reference paragraphs 1 through 86 as if fully set  
7 forth herein.

8 88. The following actions and inactions of Defendant COUNTY OF MONTEREY,  
9 taken together, constitute an invalid exercise of the police power, in as much as they deprive  
10 Plaintiffs the right to reasonable use and enjoyment of their property, in violation of the Fifth and  
11 Fourteenth Amendments of the Constitution of the United States:

12 A. Defendant COUNTY OF MONTEREY'S failure to comply with  
13 applicable law, including CEQA, in the adoption of the General Plan; and

14 B. Defendant COUNTY OF MONTEREY'S adoption of vague, imprecise  
15 and overly broad policies in the General Plan, lacking adequate procedural  
16 safeguards to limit the discretion of those administering them.

17  
18 XI.

19 FIFTH CAUSE OF ACTION

20 ANTICIPATORY BREACH OF CONTRACT

21 89. Plaintiffs hereby incorporate by reference paragraphs 1 through 88 as if fully set  
22 forth herein.

23 90. On or about April 8, 2003, Plaintiffs and Defendant COUNTY OF MONTEREY  
24 entered into a written contract by the effect of the passage of the Proposition 218 measure  
25 authorizing the SVWP. The essential elements of this contract are as follows:



- 1 A. The parties to the contract are property owners within Zone 2C subject to the  
2 assessment authorized by the Proposition 218 Measure and the County of  
3 Monterey/MCWRA.
- 4 B. The property owners within the newly-described Zone 2C would pay a new property  
5 tax assessment to repay bonds to be issued to fund the SVWP.
- 6 C. The County of Monterey/MCWRA would construct the SVWP, which consists of the  
7 following “components” as defined in two ballot mailers provided to voters in  
8 January and February 2003, in anticipation of the ballot measure election:

- 9 • Modify the spillway of Nacimiento Dam to meet state and federal flood  
10 control mandates and improve operational flexibility to store more water. The  
11 dam height and storage volume will be unchanged, but prolonged releases of  
12 water will be able to recharge the Salinas River aquifers with additional  
13 percolation.
- 14 • Construct a diversion facility (rubber dam) on the Salinas River near Marina  
15 that can be lowered in wet times and raised in drier times when water will be  
16 released from the Nacimiento Reservoir. Seasonally stored water from the  
17 temporary diversion will be delivered for irrigation through existing  
18 Castroville Seawater Intrusion Project pipelines, reducing the need for  
19 pumping groundwater.
- 20 • Provide infrastructure to help solve the Salinas Valley water challenges.
- 21 • Balance the Salinas Valley Groundwater Basin.
- 22 • Preserve fish passage on the Salinas River.
- 23 • Stop seawater intrusion and secure local water supplies for future generations.

- 24 D. A key element of the promise made by Defendant COUNTY OF MONTEREY is  
25 the promise of secure future water sources. The Executive Summary of the Final  
26 Engineer’s Report on the design of the SVWP opines that one of the “water  
27 supply goals” of the SVWP is: “Providing a sufficient water supply to meet water

1 needs through the year 2030.” Additionally, the Draft EIR for the SVWP opines  
2 that an objective of the project was to “Provid[e] adequate water supplies to meet  
3 current and future (year 2030) needs....”

4 91. Board Resolution No. 03-017, an Assessment Ballot Proceeding, adopted  
5 defendant COUNTY OF MONTEREY Board of Supervisors, included the following language,  
6 evidencing the guarantee of a long term source of water: “The MCWRA, after extensive public  
7 input over most of the past decade, has developed the Salinas Valley Water Project (“SVWP”) to  
8 increase flood protection, halt seawater intrusion, **and assure a sufficient quantity and quality**  
9 **of water supplies to meet agricultural and urban needs with the Salinas Valley and**  
10 **Monterey County through the year 2030.”** (Emphasis added.)

11 92. Plaintiffs are informed and believe and thereon allege that Defendant COUNTY  
12 OF MONTEREY was aware of and endorsed the provision of the contract guaranteeing an  
13 adequate supply of water. Ordinance No. 04203, unanimously approved by Defendant  
14 COUNTY OF MONTEREY on July 22, 2003, which ordinance “confirmed” approval of the  
15 SVWP by the Proposition 218 measure, includes the following finding and declaration:

16 “B. MCWRA developed the Salinas Valley Water Project (“SVWP”) based on  
17 extensive stakeholder, public, regulatory, and technical input over the last decade to  
18 increase flood protection, address seawater intrusion, **and assure a sufficient**  
19 **quantity and quality of water supplies to meet agricultural and urban needs**  
20 **within the Salinas Valley through the year 2030...”** (Emphasis added.)

21 93. Plaintiffs are informed and believe and thereon allege that under the terms of the  
22 contract created by the Proposition 218 measure, Defendant COUNTY OF MONTEREY has  
23 obligated itself to provide water for all contemplated development projects within Zone 2C  
24 through the year 2030.

25 94. Plaintiffs are informed and believe and thereon allege that Defendant COUNTY  
26 OF MONTEREY induced the property owners/votes in the Proposition 218 measure to vote in  
27 favor of the measure in significant part with the promise that the SVWP would provide for  
28 current and future water requirements, through the year 2030.



1 SEVENTH CAUSE OF ACTION

2 EQUAL PROTECTION

3 100. Plaintiffs hereby incorporate by reference paragraphs 1 through 99 as if fully set  
4 forth herein.

5 101. The General Plan does not define what sort of development is "related" to  
6 agriculture. Plaintiffs are unaware of any other document which would define uses "related" to  
7 agriculture.

8 102. The development requirement in the GPU Policies PS-3.1 and PS-3.2 is  
9 specifically related to water use - requiring certain developments to demonstrate long-term,  
10 sustainable water supplies sufficient for the proposed use before they can be approved.  
11 However, the distinction as to which types of development are required to meet to the new policy  
12 and those which are not is not based in any way on how such development will use water.  
13 Instead, the distinction is based on whether or not the development is related to agricultural land  
14 uses. For example, a farm equipment dealer might be considered "related" to agricultural land  
15 use and be exempt from the water requirements, while a car dealership, with identical impacts,  
16 would not be so exempt. As the underlying policy concern is impact to water supply, such a  
17 distinction would be flatly irrational. Plaintiffs are informed and believe and thereon allege that  
18 the distinction included in Policies PS-3.1 and PS-3.2 is not rationally related to the underlying  
19 policy regarding supply of water and constitute a denial of equal protection to Plaintiffs and  
20 other property owners within Zone 2C within the meaning of the 14th Amendment of the United  
21 States Constitution and the California Constitution, Article 1, § 7.

22 103. Plaintiffs are informed and believe that, even if the distinction created in Policies  
23 3.1 and 3.2 were not irrational, in the absence of any definition of what will be considered  
24 "related" to agriculture, the GPU Policies PS-3.1 and PS-3.2 invest excessive discretion in those  
25 County agencies which will be responsible for interpreting the Policies and will lead to  
26 capricious and improper abuses of discretion.

27 XIV.

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF CIVIL RIGHTS – 42 U.S.C. SECTION 1983**

3 104. Plaintiffs hereby incorporate by reference paragraphs 1 through 103 as if fully set  
4 forth herein.

5 105. By Defendant COUNTY OF MONTEREY's arbitrary and wrongful acts  
6 described herein, Defendant COUNTY OF MONTEREY has acted under color of state law to  
7 treat Plaintiffs in a discriminatory and unequal manner, in violation of Plaintiffs' federal  
8 constitutional and statutory rights.

9 106. As a direct and proximate result of Defendant COUNTY OF MONTEREY's  
10 actions, Plaintiffs have been deprived of federal and constitutional and statutory rights and is  
11 entitled to recover damages in an amount according to proof at trial together with its reasonable  
12 attorneys' fees and costs as determined by the Court.

13 107. Plaintiffs' cause of action based on 42 U.S.C. section 1983 is not a claim for  
14 money or damages with the meaning of Government Code section 905 and 905.2, and is not  
15 subject to claims presentation requirement.

16 **XV.**

17 **NINTH CAUSE OF ACTION**

18 **INVERSE CONDEMNATION**

19 108. Plaintiffs hereby incorporate by reference paragraphs 1 through 107 as if fully set  
20 forth herein.

21 109. As a direct and proximate result of Defendant COUNTY OF MONTEREY's  
22 violations of the Constitutions of the United States and the State of California and of California  
23 law, Plaintiffs have suffered damages and is entitled to recover damages in an amount according  
24 to proof at trial together with its reasonable attorneys' fees and costs and determined by the  
25 Court. Defendant COUNTY OF MONTEREY has denied Plaintiffs the right to make  
26 economically viable, productive, or beneficial use of their properties, and have thus taken  
27 Plaintiffs' property without compensation.

1 110. Plaintiffs' cause of action for inverse condemnation based on regulatory taking is  
2 not a claim for money or damages within the meaning of Government Code Sections 905 and  
3 905.2, and is not subject to claims presentation requirements.

4 XVI.

5 TENTH CAUSE OF ACTION

6 INJUNCTIVE RELIEF

7 111. Plaintiffs hereby incorporate by reference paragraphs 1 through 110 as if fully set  
8 forth herein.

9 112. An actual controversy has arisen concerning Defendant COUNTY OF  
10 MONTEREY' failure to comply with California Public Resources Code section 21000, *et seq.*  
11 and other provisions of law, all as set forth above, concerning the General Plan and EIR.

12 113. As a result of the above alleged violations of California Public Resources Code  
13 section 21000, *et seq.* and Government Code section 65300, *et seq.*, Defendant COUNTY OF  
14 MONTEREY have failed to proceed as required by law.

15 114. At all times mentioned herein, Defendant COUNTY OF MONTEREY has been  
16 able to reject approval or certification of the EIR and approval of the General Plan.  
17 Notwithstanding such ability, Defendant COUNTY OF MONTEREY has failed and continues to  
18 fail to perform their duty to reject the approval or certification of the EIR and approval of the  
19 General Plan.

20 115. Plaintiffs are informed and believe and thereon allege that Defendant COUNTY  
21 OF MONTEREY is threatening to proceed with implementation of the General Plan. Said  
22 implementation will irreparably harm Plaintiffs' constitutional, property and water rights.

23 116. Plaintiffs possess no speedy, adequate remedy at law unless this court grants the  
24 requested writ of mandate to require Defendant COUNTY OF MONTEREY to set aside its  
25 certification of the EIR and approval of the General Plan. In the absence of such relief,  
26 Defendant COUNTY OF MONTEREY's approval will remain in effect in violation of state law,  
27 and Plaintiffs as local residents, landowners, property stewards, citizens and taxpayers of the

1 County of Monterey will suffer irreparable and permanent injuries if Defendant COUNTY OF  
2 MONTEREY's actions herein are not set aside.

3 117. A stay and/or restraining order, temporary and permanent injunction should be  
4 issued restraining Defendant COUNTY OF MONTEREY from proceeding with implementation  
5 of the General Plan.

6 **XVII.**

7 **ELEVENTH CAUSE OF ACTION**

8 **DECLARATORY RELIEF**

9 118. Plaintiffs hereby incorporate by reference paragraphs 1 through 117 as if fully set  
10 forth herein.

11 119. Plaintiffs contend that the certification of the EIR and approval of the General  
12 Plan were invalid and were not lawfully adopted. Defendant COUNTY OF MONTEREY  
13 contends to the contrary.

14 120. An actual and justifiable controversy has arisen between the parties, and Plaintiffs  
15 are entitled to a judicial declaration of the rights and responsibilities of the parties.

16 **XVIII.**

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment as follows:

19 1. On the First Cause of Action, for extraordinary relief in the form of mandamus or  
20 injunction ordering Defendant COUNTY OF MONTEREY to rescind the approval of the  
21 General Plan, to rescind the certification of the EIR, and ordering Defendant COUNTY OF  
22 MONTEREY to expeditiously prepare and certify a legally adequate EIR for the General Plan;

23 2. On the Second Cause of Action, for extraordinary relief in the form of an order  
24 invalidating and staying the implementation of the General Plan, and for a preliminary injunction  
25 and permanent injunction enjoining Defendant COUNTY OF MONTEREY from engaging in  
26 any activity pursuant to the General Plan, until legally adequate EIR and General Plan are  
27

1 prepared in compliance with California regulations and statutes, State and Federal Constitutions,  
2 and all other applicable state and local laws;

3 3. In the alternative to the First and Second Causes of Action, for a declaration that  
4 Defendant COUNTY OF MONTEREY's actions in approving the General Plan and certifying  
5 the EIR violated CEQA, State and Federal Constitution, and all other applicable state and local  
6 laws;

7 4. On the Third Cause of Action for violations of the Water Code, for extraordinary  
8 relief in the form of mandamus or injunction ordering Defendant COUNTY OF MONTEREY to  
9 rescind the approval of General Plan Policies PS-3.1, PS-3.2, PS-3.3, and PS-3.4 and its  
10 definition of Long Term Sustainable Water Supply;

11 5. On the Fourth, Sixth, Seventh, Eighth, and Ninth Causes of Action for  
12 constitutional violations and property damages, for damages in an amount according to proof and  
13 exceeding the jurisdictional minimum of this Court, with interest thereon from the date of the  
14 damages;

15 6. On Fifth Cause of Action, for an order determining that Defendant COUNTY OF  
16 MONTEREY have breached the contractual obligation under the Proposition 218 measure  
17 creating the Salinas Valley Water Project; for an order withdrawing Policies PS-3.1 and PS-3.2  
18 of the General Plan Update and an order for Defendant COUNTY OF MONTEREY to  
19 specifically perform their obligations under the Proposition 218 measure; for reasonable  
20 attorneys' fees under California Code of Civil Procedure section 1021.5, California Government  
21 Code sections 800, 6261 and 54960.5, and other provisions of law;

22 7. On the Sixth Cause of Action for violation of civil rights, for damages in an  
23 amount according to proof and exceeding the jurisdictional minimum of this Court, with interest  
24 thereon from the date of the damages;

25 **Other Relief**

26 8. For costs of suit;

27 9. For reasonable attorneys' fees; and,



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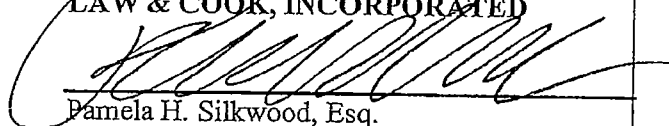
10. For such other and further relief as the court deems proper.

Respectfully submitted,

**LAW OFFICES OF HORAN, LLOYD,  
KARACHALE, DYER, SCHWARTZ,  
LAW & COOK, INCORPORATED**

Dated:

*January 10, 2011*



Pamela H. Silkwood, Esq.  
Attorney for Plaintiffs and Petitioners

**Law Offices of Timothy J. Morgan**

Timothy J. Morgan, Esq.  
Attorney for Plaintiffs and Petitioners

10. For such other and further relief as the court deems proper.

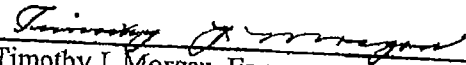
Respectfully submitted,

LAW OFFICES OF HORAN, LLOYD,  
KARACHALE, DYER, SCHWARTZ,  
LAW & COOK, INCORPORATED

Dated: 01-10-2011

Pamela H. Silkwood, Esq.  
Attorney for Plaintiffs and Petitioners

Law Offices of Timothy J. Morgan.

  
Timothy J. Morgan, Esq.  
Attorney for Plaintiffs and Petitioners

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VERIFICATION

I, Dirk Giannini, declare as follows:

I am the agent for Plaintiff and Petitioner Monterey County Farm Bureau in this action. I have read the foregoing AMENDED COMPLAINT FOR ANTICIPATORY BREACH OF CONTRACT (DAMAGES), BREACH OF CONTRACT (ESTOPPEL); AMENDED PETITION FOR WRIT OF MANDAMUS, DECLARATORY RELIEF AND INJUNCTIVE RELIEF; AMENDED COMPLAINT FOR CONSTITUTIONAL VIOLATIONS AND INVERSE CONDEMNATION and know the contents therein to be true and accurate as to my own knowledge, and to those statements based on information and belief, I believe them to be true. I make this Verification on behalf of Plaintiff and Petitioner Monterey County Farm Bureau.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Verification was executed on 1-7-11, in Salinas, Monterey County, California.

Dirk Giannini

Dirk Giannini  
President, Monterey County Farm Bureau

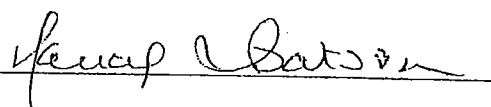
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VERIFICATION

I, Nancy Isakson, declare as follows:

I am the agent for Plaintiff and Petitioner Salinas Valley Water Coalition in this action. I have read the foregoing AMENDED COMPLAINT FOR ANTICIPATORY BREACH OF CONTRACT (DAMAGES), BREACH OF CONTRACT (ESTOPPEL); AMENDED PETITION FOR WRIT OF MANDAMUS, DECLARATORY RELIEF AND INJUNCTIVE RELIEF; AMENDED COMPLAINT FOR CONSTITUTIONAL VIOLATIONS AND INVERSE CONDEMNATION and know the contents therein to be true and accurate as to my own knowledge, and to those statements based on information and belief, I believe them to be true. I make this Verification on behalf of Plaintiff and Petitioner Salinas Valley Water Coalition.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Verification was executed on 1/7/2011 in Salinas, Monterey County, California.

  
Nancy Isakson  
President, Salinas Valley Water Coalition

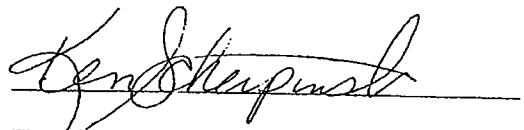
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VERIFICATION

I, Ken Scherpinski, declare as follows:

I am the agent for Plaintiff and Petitioner Monterey/Santa Cruz Counties Building and Construction Trades Council in this action. I have read the foregoing AMENDED COMPLAINT FOR ANTICIPATORY BREACH OF CONTRACT (DAMAGES), BREACH OF CONTRACT (ESTOPPEL); AMENDED PETITION FOR WRIT OF MANDAMUS, DECLARATORY RELIEF AND INJUNCTIVE RELIEF; AMENDED COMPLAINT FOR CONSTITUTIONAL VIOLATIONS AND INVERSE CONDEMNATION and know the contents therein to be true and accurate as to my own knowledge, and to those statements based on information and belief, I believe them to be true. I make this Verification on behalf of Plaintiff and Petitioner Monterey/Santa Cruz Counties Building and Construction Trades Council.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Verification was executed on 1/7/2011 in Castroville, Monterey County, California.



Ken Scherpinski  
President, Monterey/Santa Cruz Counties  
Building and Construction Trades Council

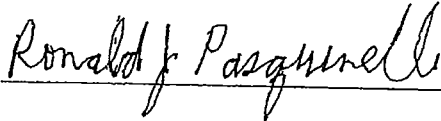
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VERIFICATION

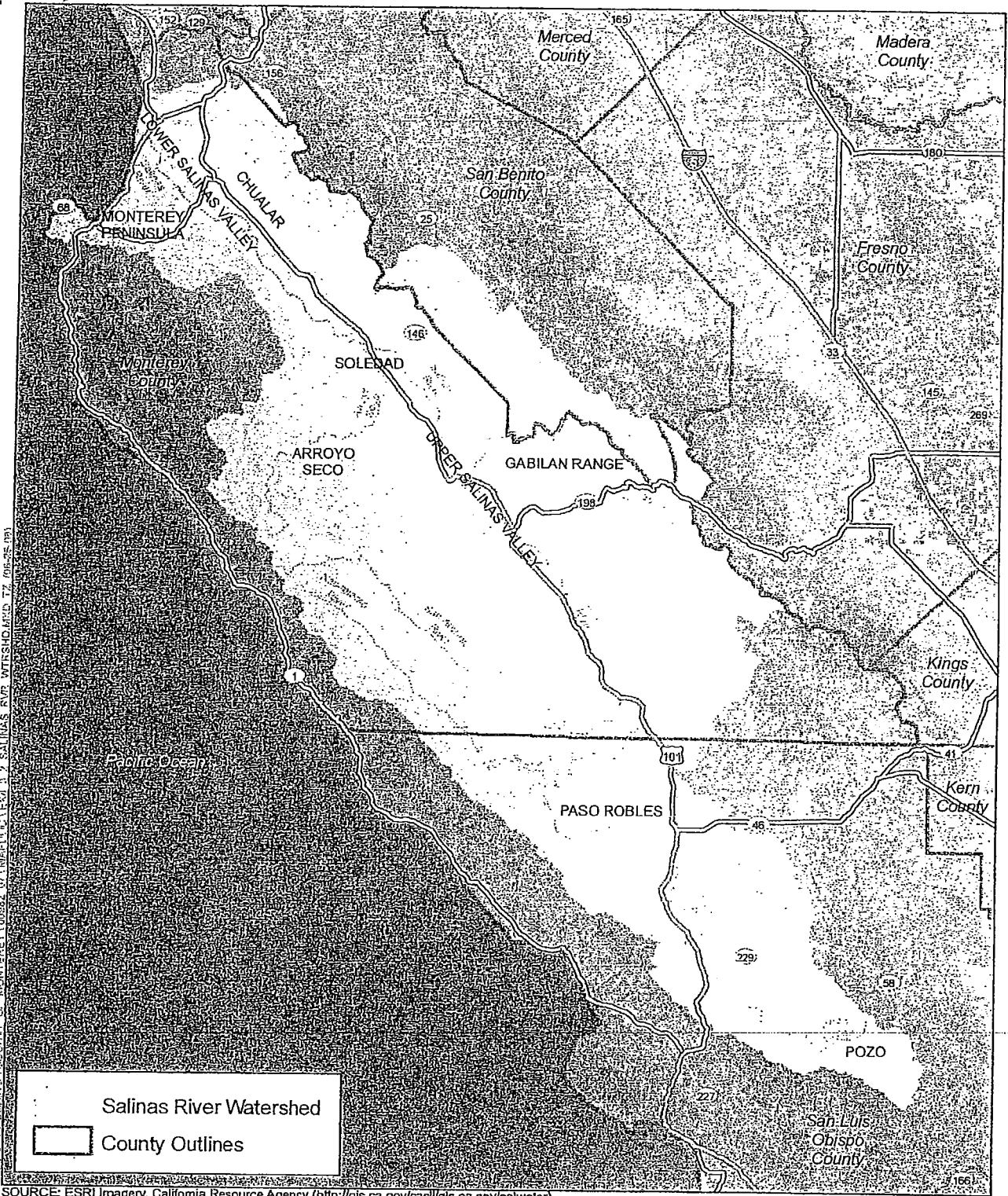
I, Ron Pasquinelli, declare as follows:

I am the agent for Plaintiff and Petitioner Monterey Peninsula Taxpayers Association in this action. I have read the foregoing AMENDED COMPLAINT FOR ANTICIPATORY BREACH OF CONTRACT (DAMAGES), BREACH OF CONTRACT (ESTOPPEL); AMENDED PETITION FOR WRIT OF MANDAMUS, DECLARATORY RELIEF AND INJUNCTIVE RELIEF; AMENDED COMPLAINT FOR CONSTITUTIONAL VIOLATIONS AND INVERSE CONDEMNATION and know the contents therein to be true and accurate as to my own knowledge, and to those statements based on information and belief, I believe them to be true. I make this Verification on behalf of Plaintiff and Petitioner Monterey Peninsula Taxpayers Association.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Verification was executed on 1/8/11 in MONTEREY, Monterey County, California.

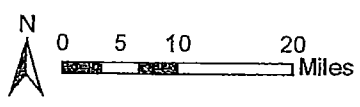
  
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Ron Pasquinelli, President  
Monterey Peninsula Taxpayers Association



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SOURCE: ESRI Imagery, California Resource Agency (<http://gis.ca.gov/cas/gis.ca.gov/calwater>)



**Exhibit 4.3.2**  
**Salinas River Watershed**

# Exhibit A



Note: The scale and configuration of information shown on this map are not intended as a substitute for a survey or design work.

Map Date: January 24, 2003

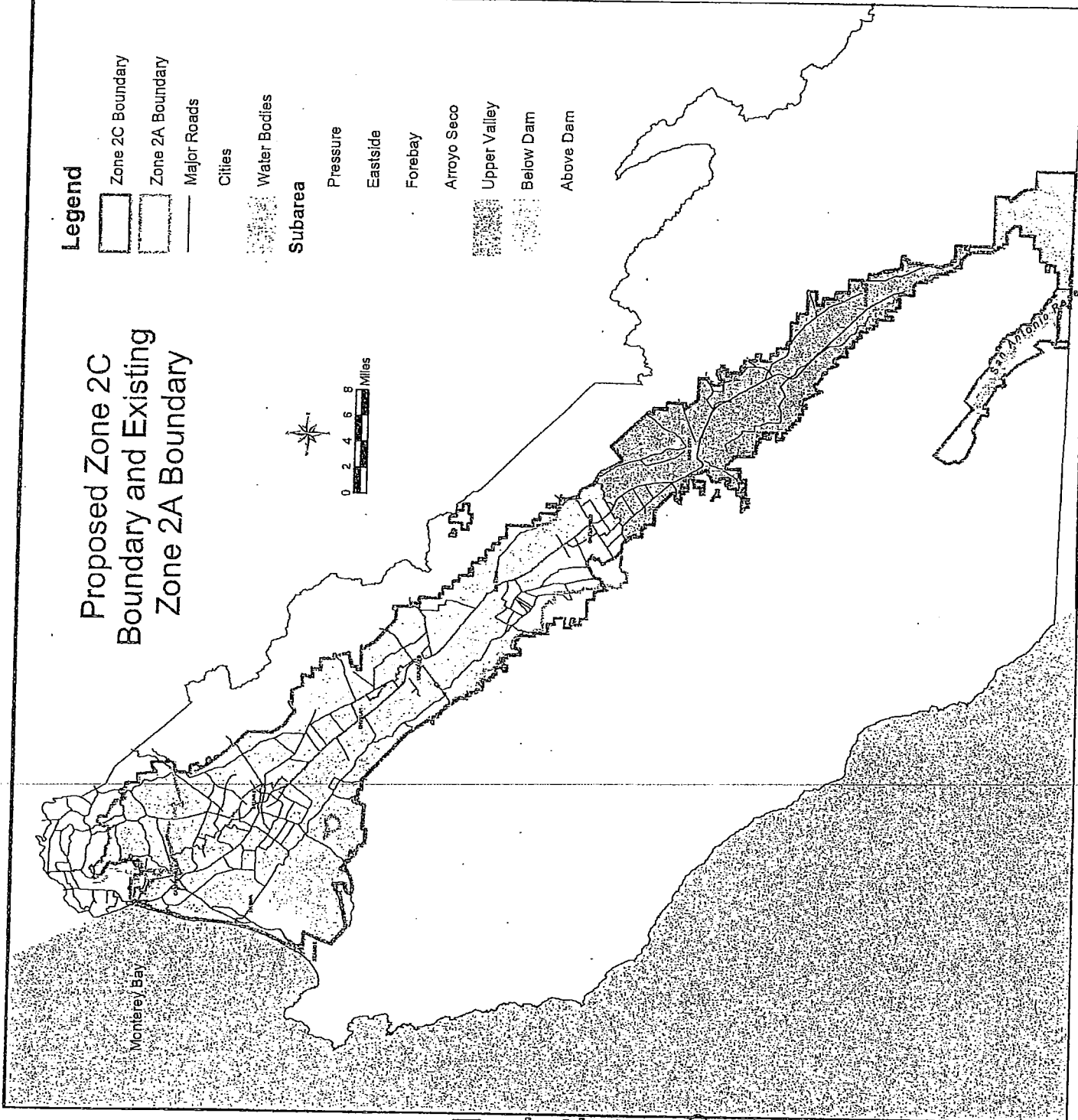


Exhibit B



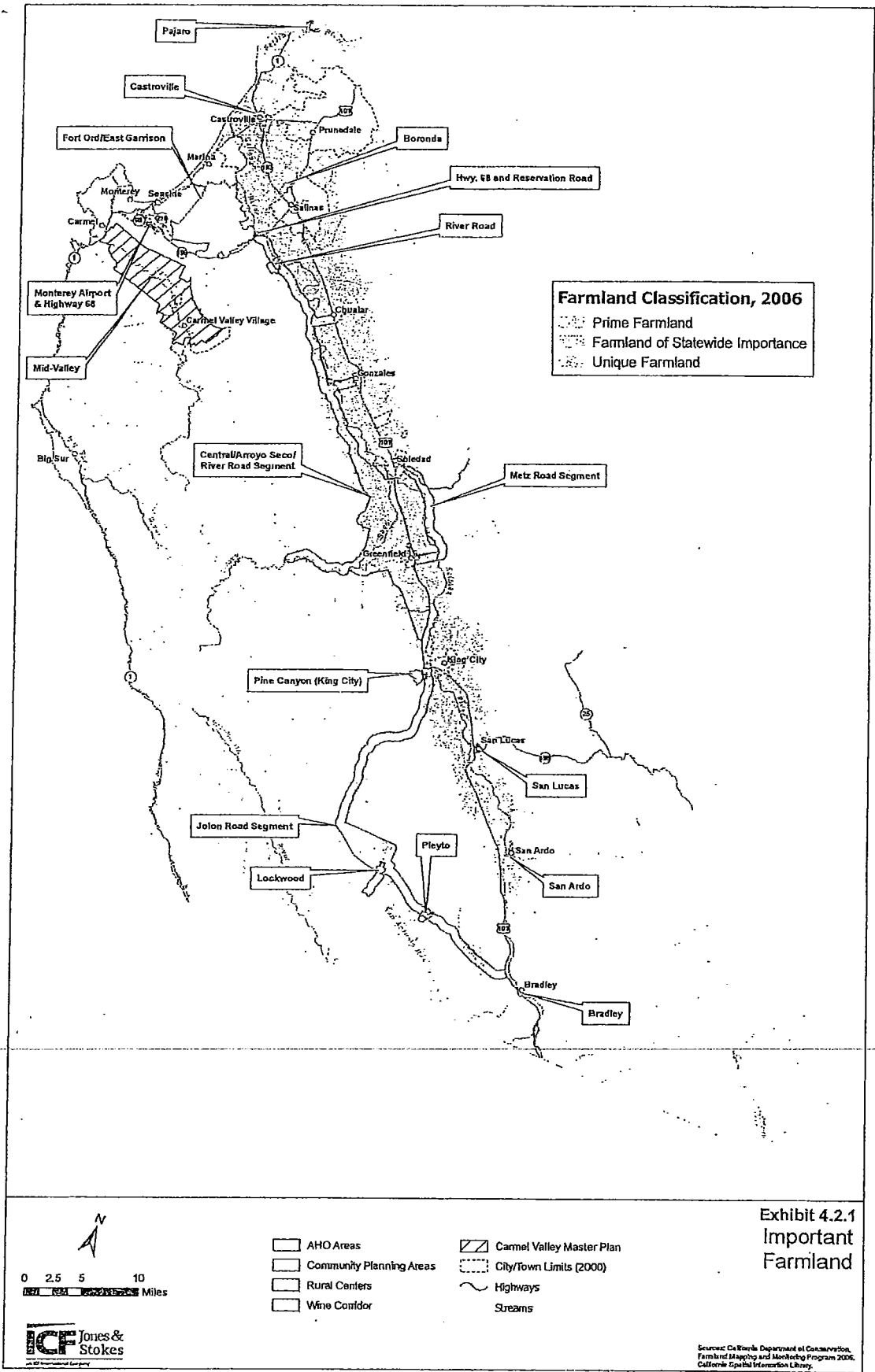


Exhibit 4.2.1  
Important  
Farmland

# Exhibit C

1 Timothy J. Morgan, Esq. SBN 57847  
121 Jewell Street  
2 Santa Cruz, CA 95050  
(831) 429-9841

3 Pamela H. Silkwood, Esq. SBN 232333  
4 Mark A. Blum, Esq. SBN 124316  
HORAN, LLOYD LAW OFFICES  
5 499 Van Buren Street  
P. O. Box 3350  
6 Monterey, CA 93942-3350  
(831) 373-4131

7 Attorneys for Petitioners and Plaintiffs  
8

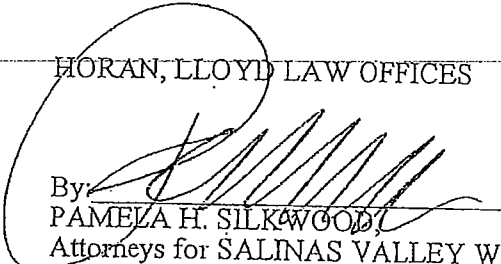
9 NOTICE OF INTENT TO FILE CEQA PETITION

10 To COUNTY OF MONTEREY:

11 PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that  
12 Petitioners and Plaintiffs SALINAS VALLEY WATER COALITION and MONTEREY  
13 COUNTY FARM BUREAU, intend to file a petition under the provisions of the California  
14 Environmental Quality Act (California Public Resources Code Section 21000, *et seq.*)  
15 against Respondents and Defendants COUNTY OF MONTEREY and DOES 1 through 99,  
16 challenging Respondent COUNTY OF MONTEREY's adoption of an update of the  
17 Monterey County General Plan and the certification of the General Plan Environmental  
18 Impact Report. A Notice of Determination was posted by the Monterey County Recorder's  
19 Office on October 27, 2010.

20  
21 ~~Dated: November 24, 2010~~

HORAN, LLOYD LAW OFFICES

22  
23 By:   
24 PAMELA H. SILKWOOD  
25 Attorneys for SALINAS VALLEY WATER  
26 COALITION and MONTEREY COUNTY  
27 FARM BUREAU

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PROOF OF SERVICE

I certify and declare as follows:

I am over the age of 18, and not a party to this action. My business address is Horan, Lloyd Law Offices, 499 Van Buren Street, Monterey, California 93940, which is located in Monterey County where the mailing described below took place.

I am familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 24, 2010, the following document:

NOTICE OF INTENT TO FILE CEQA PETITION

was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully paid to:

CLERK TO THE BOARD  
Monterey County Board of Supervisors  
168 West Alisal Street  
Salinas, California 93901

I certify and declare under penalty of perjury that the foregoing is true and correct.

Dated: November 24, 2010

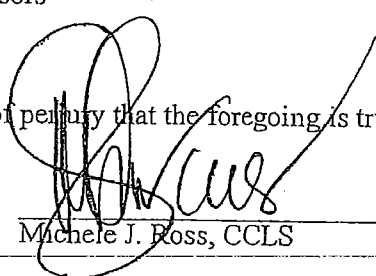
  
Michele J. Ross, CCLS

Exhibit D-2



# **EXHIBIT G**



# SETTLEMENT AGREEMENT

*Salinas Valley Water Coalition et al. v. County of Monterey*  
(Monterey County Case No. M109451)

This Settlement Agreement ("Agreement") by and among Petitioners and Plaintiffs, Salinas Valley Water Coalition, Monterey County Farm Bureau, Monterey/Santa Cruz Counties Building and Construction Trades Council, Monterey Peninsula Taxpayers Association, and Howard Jarvis Taxpayers Association ("Petitioners"), and Respondent and Defendant, County of Monterey and Does 1 through 99, inclusive ("County") (each a "Party" and collectively, the "Parties") is made effective on the date when all Parties have signed this Agreement ("Effective Date"). This Agreement is entered into by the Parties for the purpose of resolving the Case No. M109451 challenging the certification by County of the environmental impact report for the 2010 Monterey County General Plan ("2010 General Plan"), and raising other issues related to assessments levied in Zone 2C of the Monterey County Water Resources Agency. This Agreement is intended to serve in lieu of any determination by the Court as to the merits of Petitioners' allegations.

## RECITALS

- A. **WHEREAS**, Petitioners are non-profit corporations, organized and existing under the laws of, and qualified and doing business in, the State of California;
- B. **WHEREAS**, County is a public entity organized and existing under the laws of the State of California; and Petitioners have not identified Respondent Does 1 through 99;
- C. **WHEREAS**, Petitioners Salinas Valley Water Coalition and Monterey County Farm Bureau filed a Petition for Writ of Mandate and Complaint in the State of California Superior Court, County of Monterey against Respondent on November 24, 2010 (Case No. M109451) (the "Litigation") generally challenging the certification by Respondent of the environmental impact report for the 2010 Monterey County General Plan ("2010 General Plan"), and raising other issues related to assessments levied in Zone 2C of the Monterey County Water Resources Agency;
- D. **Whereas**, Petitioners Salinas Valley Water Coalition and Monterey County Farm Bureau filed an amended Petition for Writ of Mandate and Complaint in Case No. M109451, adding Monterey/Santa Cruz Counties Building and Construction Trades Council, Monterey Peninsula Taxpayers Association, and Howard Jarvis Taxpayers Association as Petitioners, and additional causes of action;
- E. **WHEREAS**, Petitioners First and Second causes of action in Case No. M109451 are currently consolidated with lawsuits filed by other parties [i.e., *The Open Monterey Project v. Monterey County Board of Supervisors* (Case No. M109441, filed November 24, 2010); *Carmel Valley Association v. Board of Supervisors* (Case No. M109442, filed November 24, 2010); and *Landwatch Monterey County v. County of Monterey* (Case No. M109434, filed November 24, 2010)] also concerning the Final EIR for the 2010 General Plan and the 2010 General Plan (the "Consolidated Actions");
- F. **WHEREAS**, the parties to the Consolidated Actions have, through a series of stipulations, extended time to prepare the administrative record. Further, County and Petitioners have, through two stipulations, agreed to stay proceedings on Petitioners' non-CEQA causes of action (i.e., its Third through Eleventh causes of action) presented in its

## **SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 2 of 14

amended petition and complaint. Throughout this time, County has engaged each of the parties in the Consolidated Actions in settlement negotiations;

- G. WHEREAS**, the County and Petitioners have mutually agreed that settlement is the most efficient and practical way to resolve the litigation, Case No. M109451, and now intend to settle Case No. M109451 on the terms and conditions set forth in this Agreement;
- H. WHEREAS**, the County and Petitioners have negotiated in good faith and agreed to the terms of this Settlement Agreement, including the terms as set forth below and those set forth in Exhibit A to this Settlement Agreement in final form and with strikethrough and underline text to show changes from 2010 General Plan policies as adopted by the County on October 26, 2010; and

### **SETTLEMENT PROVISIONS**

**NOW, THEREFORE**, in consideration of the promises and mutual benefits of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### **1. General Provisions**

- 1.1. No Admission of Liability.** This settlement is entered into by the Parties without any admission of fault, failing or liability by any Party.
- 1.2. Recitals True and Correct.** The above recitals are true and correct and are incorporated by reference as a part of this Agreement.
- 1.3. Mutual Consideration.** The Parties' commitments to abide by terms of this Agreement is mutual consideration.
- 1.4. Term of Settlement.** This settlement shall be operative from its Effective date until such time as the Parties fulfill their mutual obligations described in this Agreement.

#### **2. Disposition of Litigation**

- 2.1. Separation from the Consolidated Actions.** Within 30 days of execution of this Agreement, the Parties shall request that the Monterey County Superior Court bifurcate Case No. M109451 from the Consolidated Actions, and stay all judicial and/or administrative proceedings related to all claims associated with said case pending the implementation of this Agreement. County shall prepare the appropriate pleadings for signature by the Parties and make the filing with the Court.



## **SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 3 of 14

- 2.2. **Stay of Further Proceedings in Case No. M109451.** Concurrent with the filing described in Section 2.1, above, the Parties shall request that the Monterey County Superior Court stay all further proceedings in Case No M109451 on Petitioner's remaining causes of action (i.e., First, Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth and Eleventh causes of action) and, pursuant to Code of Civil Procedure Section 664.6, that the Court retain jurisdiction over this case solely for the purpose of enforcing the mutual obligations incurred by the Parties in this Agreement. County shall prepare the appropriate pleadings for signature by the Parties and make the filing with the Court.
- 2.3. **Dismissal with Prejudice.** Petitioners shall file a motion in the Monterey County Superior Court requesting the court to dismiss with prejudice all of Petitioners' causes of action in Case No. M109451, such filing to be made immediately upon County's adoption of the 2010 General Plan amendments described in Section 3 (the "Agreed Amendments"). Such dismissal shall be subject to the Material Default provisions of Section 5.8.
- 2.4. **Subsequent Amendments; Material Default.** Following adoption of the Agreed Amendments, should County adopt, prior to the completion of the Zone 2C Water Study described in Exhibit A ("Zone 2C Study"), any further amendment to the 2010 General Plan that obviates or nullifies the effect of the Agreed Amendments without Petitioners' written approval, such action shall constitute a Material Default of this agreement, unless such action was taken in response to a final court order, or final administrative order or action by a federal or state agency, in which case such action shall not constitute a Material Default, or a default of any kind, of this Agreement.
- 2.5. **Attorneys' fees.** Respondent shall pay reasonable attorneys' fees and costs of suit to Petitioner.
- 2.5.1. The Parties have determined that two hundred thousand dollars (\$200,000) is a reasonable sum for attorneys' fees and costs to be paid as set forth in section 2.5.2.
- 2.5.2. County shall pay the sum of (1) one hundred thousand dollars (\$100,000), payable to Salinas Valley Water Coalition, within 60 days of full execution of this Agreement and (2) one hundred thousand dollars (\$100,000), payable to Salinas Valley Water Coalition, within 60 days of completion of the tasks identified in sections 2.1, 2.2 and 2.3. The Parties specifically agree that Petitioners are not obligated to return any payments hereunder in the event this Agreement cannot go into effect for any reason beyond the control of Petitioners. Notwithstanding the forgoing, Petitioners shall return payment to

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 4 of 14

County in the event that Petitioners breach their obligations under this Agreement.

**3. Agreed Amendments.** County shall consider amendments to the 2010 General Plan in substantial conformance with the provisions of Exhibit A; any proposed amendments that do not include a rebuttable presumption of Long Term Sustainable Water Supply (“Rebuttable Presumption”) as described in Exhibit A shall not be in substantial conformance and shall constitute a Material Default.

3.1. The Agreed Amendments shall be processed in compliance with all applicable requirements in the California Public Resources Code, Government Code, Monterey County procedures and all other applicable laws for amending a general plan.

3.1.1. County shall consult with Petitioners in good faith regarding the preparation of necessary legislative actions for consideration of the Agreed Amendments; however, the final form and language for all proposed legislative actions shall be determined by County.

3.2.2 Environmental review for the Agreed Amendments shall be processed in compliance with CEQA. The final versions of the Agreed Amendments may vary from the language of the proposed policies as set forth in Exhibit A if required by environmental review.

3.2.3 County agrees to begin the process for considering the Agreed Amendments within 45 days following the Effective Date of this Agreement

3.2. Should any person or entity file litigation, or should an administrative action be commenced by a federal or state administrative agency, challenging the validity of the Agreed Amendments, as may be adopted by the County pursuant to this Section 3, County shall use its best, good faith efforts to defend against such litigation or administrative action. Petitioners shall request intervention in such litigation or administrative action to aid in the defense. Should a final court or administrative order be entered nullifying or setting aside the adoption of the Agreed Amendments, such act shall not constitute a default by any Party pursuant to this Agreement; however, the Parties shall confer in good faith to determine if other actions may be taken by County to implement the intent and purposes of this Agreement.

## SETTLEMENT AGREEMENT

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

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### 4. Release of Claims.

4.1. **Release by Petitioners.** Petitioners, and each of them, intend and agree that this Agreement shall, when fully implemented in accordance with the provisions hereof, be effective as a full and final accord and satisfaction and general release of and from all Released Claims, as described below. Upon adoption of the Agreed Amendments as set forth in Section 2.3, Petitioners, and each of them (the "Releasing Parties") shall be conclusively deemed to have released the County and Does 1 through 99, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors (the "Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, demands, and causes of action, whether known, suspected, or unknown, at law or in equity, which each of the Releasing Parties, or any of them, had, now has or as of the Effective Date of this Agreement has against the Released Parties, or any of them, arising from or relating to certification of the Final EIR for the 2010 Monterey County General Plan and approval of the 2010 Monterey County General Plan as adopted by the Board of Supervisors on October 26, 2010 and as may be amended pursuant to Section 3 of this Agreement, including without limitation, all costs and fees incurred by the Releasing Parties in, or arising from, such actions (collectively, the "Released Claims"). The Releasing Parties, and each of them, shall conclusively be deemed to have waived and relinquished to the fullest extent that it may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542") which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." This release does not extend to the right of each Party, including members of Petitioners, to institute legal action to seek specific performance of this Agreement, as set forth in Section 5.7.

4.2. **Understanding of Section 1542 Waiver.** By executing this Agreement, the Releasing Parties assume the risk that they are unaware of the subject matter of this Agreement, or are otherwise mistaken as to relevant facts, and acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true concerning the Released Claims and other matters contained in or concerning this Agreement. Subject to Section 2.3, each Party nevertheless agrees and intends this Agreement to be a complete release of the Released Claims, and to settle all disputes and differences relating to the Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now exist between or among the Releasing Parties and the Released Parties, unless as otherwise specifically set forth in

## **SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

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this Agreement. Unless otherwise specifically set forth in this Agreement, the Releasing Parties waive any and all rights they have or may have under California Civil Code Section 1542 and/or any successor section to it with respect to the Released Claims. The Releasing Parties hereby acknowledge and represent that (a) they understand the significance and the consequences of such specific waiver of unknown claims and hereby assume full responsibility for any injuries, damages, lawsuits or liabilities that they may incur, both now and hereafter, from the waiver of said unknown claims, (b) they may discover facts different from, or in addition to, those facts that they now know or believe to be true, and agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding any such subsequent discovery of different or additional facts, (c) they have undertaken their own independent investigation of all of the facts relating to the matters being released herein and this Agreement, and in entering into this Agreement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly set forth herein, and (d) this waiver is an essential and material term of this Agreement. Nevertheless, the Releasing Parties intend by this Agreement, and with and upon the advice of their own independently selected counsel, to release fully, finally and forever all Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different claims or facts relevant hereto, unless as otherwise specifically set forth in this Agreement.

### **5. Enforcement, Default and Remedies**

#### **5.1. Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce**

**Settlement.** The Parties have entered this Agreement for the purpose of avoiding litigation. Enforcement of this Agreement is to be brought solely through the procedures set forth in this section, which are designed to avoid resorting to court enforcement in the first instance, and, if resort to court is necessary, to provide simple, straightforward and predictable relief.

**5.2. Court Retains Jurisdiction Over Settlement.** The Parties shall request that the Monterey County Superior Court retain jurisdiction of the First, Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth and Eleventh causes of action in this case solely for the limited purpose of enforcing the mutual promises of this Agreement pursuant to the procedure set forth in this section.

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

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- 5.3. **Opportunity to Cure Alleged Default.** Failure by any Party to perform any obligation hereunder within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. A Party alleging a Default shall give written notice of Default to the other Party specifying in reasonable detail the nature of the alleged Default and, where appropriate, the manner in which the alleged default satisfactorily may be cured; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party sixty (60) days to cure the alleged Default commencing at the time of receipt of the notice of a properly detailed written Default notice. The Parties agree that time is of the essence in the performance by Petitioners and the County of their respective obligations under Sections 2.0 and 3.0 hereof.
- 5.4. **Mediation.** If an alleged default in performance has not been cured during the 60-day period provided in Section 5.3 above, any Party may request that the dispute first be submitted to mediation prior to judicial enforcement. The Party requesting mediation will pay for the services of the mediator. If mediation is requested by any Party, all Parties shall make a good faith effort to first resolve through mediation any dispute about another Party’s alleged default in performance. If the Parties cannot agree on the identity of the mediator, the judicial officer shall designate the mediator. The Parties will commence mediation within 15 days after notice of the mediation and designation of the mediator and shall conclude mediation within 45 days after commencement. Each Party shall bear its own fees and costs relating to the mediation.
- 5.5. **Effect of Modification of County’s Powers.** In addition to specific provisions of this Agreement, performance by the County hereunder shall not be deemed to be in Default, if the County’s powers are modified, by state or federal legislation or otherwise, in any way that precludes the County from performing its obligations under this Agreement as a matter of law.
- 5.6. **Extraordinary Financial Situations.** The County’s financial obligations under this Agreement, which include but are not limited to funding and carrying out environmental review, amending the general plan, undertaking the Zone 2C Study, and paying attorney fees and costs under the terms of this Agreement, shall be suspended in the extraordinary financial circumstances defined hereunder:
- 5.6.1. An extraordinary financial situation has been formally declared by the Board of Supervisors such that performing its obligations under this Agreement would necessarily result in a violation of the financial covenants the County has made to its creditors and lienholders in return for the extension of credit in the

## SETTLEMENT AGREEMENT

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

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form of bonds, loans, letters of credit and other forms of financing necessary to maintain the County's overall financial stability.

5.6.2. "Extraordinary financial situation" as used in this Section means circumstances that include, but are not limited to, the type of financial circumstances that County may experience in a formally declared state of fiscal emergency following natural disasters such as a major earthquake or fire; or other extraordinary events.

5.6.3. Upon the conclusion of these extraordinary circumstances, the County will promptly resume performance of its financial obligations under this Agreement.

5.7. **Institution of Legal Action.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, after expiration of the cure period provided in Section 5.3 above, any Party may institute a legal action to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default. The rights and obligations of any non-breaching Party shall not be affected by the institution of a legal action alleging breach against another Party. In the event of any action to enforce this Agreement, whether by judicial or non-judicial means, the prevailing party shall be entitled to recover from the other party its attorney fees, expenses, and any related court costs.

5.8. **Effect of Material Default.** In the event of a Material Default as described in Section 2.4, in addition to any other remedy provided in this Agreement, pursuant to the retained court jurisdiction set forth in Section 5.2, Petitioners may request the court to set aside this Agreement and reinstitute all or any portion of the Litigation.

6. **Representations and Warranties:** Each of the Parties represents, warrants, and agrees as to itself ("Such Party") as follows:

6.1. Each individual signing this Agreement on behalf of an entity represents and warrants that the individual has the right, power, legal capacity, and authority to do so, and that no further approval or consent of any person, officer, board of directors or other person or entity is necessary.

6.2. Such Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Such Party has been fully advised by its attorneys with respect to its rights and obligations under this Agreement and understands those rights and obligations.

## SETTLEMENT AGREEMENT

*Salinas Valley Water Coalition et al. v. County of Monterey*  
(Monterey County Case No. M109451)

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- 6.3. No other Party (nor any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney of or for any other Party) has made any statement or representation to Such Party regarding any fact Such Party relied upon in entering into this Agreement, and Such Party is not relying on any statement, representation or promise, written or oral, of any other Party (or of any director, officer, member, manager, partner, trustee, agent, employee, representative or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as otherwise expressly stated in this Agreement.
- 6.4. Prior to the execution of this Agreement, Such Party and Such Party's legal counsel have made such investigation of the facts and inquiries Such Party deemed necessary or desirable pertaining to this settlement, this Agreement and all the matters pertaining thereto.
- 6.5. Such Party or responsible director, officer, member, manager, partner, trustee or attorney thereof has read this Agreement and understands the contents hereof. Each director, officer, member, manager, partner, trustee or attorney executing this Agreement on behalf of Such Party is empowered to do so and thereby to bind Such Party.
- 6.6. Except as otherwise expressly represented, warranted or provided in this Agreement, Such Party assumes the risks that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Agreement, including, without limitation, unknown or unanticipated claims which, if known by Such Party on the Effective Date may have materially affected Such Party's decision to execute this Agreement, (ii) it may have mistakenly understood matters relevant to entering into this Agreement and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts in connection with the entering into of this Agreement. Notwithstanding any such unknown or unanticipated claims, misunderstandings, mistakes, negligent misrepresentations or negligent nondisclosures, Such Party intends that this Agreement thereafter shall continue in full force and effect and shall not be subject to rejection or rescission for any reason, provided that such Party reserves all rights provided for in this Agreement.
- 6.7. Such Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of Such Party to assume the risk that claims or facts now known or thought to be true may later be found to be different and to fully, finally and forever settle and release all of Such Party's Released Claims, unless as otherwise specifically set forth in this Agreement. In furtherance of such

## SETTLEMENT AGREEMENT

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

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intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters unless as otherwise specifically set forth in this Agreement, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto. This settlement shall not be subject to termination, rescission or modification by reason of any such change in claims or facts or knowledge of claims or facts.

- 6.8. Such Party shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.
- 6.9. Such Party acknowledges it has carefully read and fully understands all of the provisions of this Agreement and that Such Party is entering into this Agreement voluntarily.
- 6.10. Such Party acknowledges that it is within the contemplation of each of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process in connection with the filing of claims for relief, causes of action, counterclaims, or cross-complaints in the Litigation and matters undertaken in connection therewith; and that it is the intention of the Parties to this Agreement to release any such claims, to deny that any malicious prosecution of actions or abuse of process has occurred, and to represent and agree that the filing of all claims for relief, causes of action, counterclaims, or cross-complaints in the foregoing Litigation were done pursuant to the advice of legal counsel and upon probable cause.

## 7. General Provisions

- 7.1. **Governing Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of California.
- 7.2. **Construction.** This Agreement shall in all cases be construed according to its fair and plain meaning, and not strictly for or against any of the Parties. As used in this Agreement, the masculine or neuter gender and single or plural numbers shall be deemed to include the others wherever the context so indicates or requires. Nothing in this Agreement shall be deemed to restrict the County's land use authority or police power in any way with respect to future legislative, administrative or other actions by the County.
- 7.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein.



## SETTLEMENT AGREEMENT

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

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All prior agreements or understandings, oral or written, are merged into this Agreement and are of no further force or effect.

- 7.4. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.
- 7.5. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, and when joined together, all counterparts shall constitute one agreement, which shall be binding on all of the Parties, even though all signatures may not be on one original or the same counterpart.
- 7.6. **Amendment.** This Agreement may only be modified or amended by a written amendment thereto executed by all of the Parties. The Parties acknowledge that, due to the long term nature of the proposed general plan amendment represented by the policies contained in Exhibit A, it may be necessary and/or appropriate at some time in the future, or from time to time, for the Parties to execute additional documentation to clarify and implement the provisions of this Agreement. Each Party agrees to cooperate in good faith to negotiate and enter into such various additional documentation as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Agreement are permissible, so long as such actions are agreed to by all of the Parties and do not materially or substantially change or modify the general plan amendments described in Exhibit A and as they may be modified for adoption following environmental review.
- 7.7. **No Admission.** Neither the acceptance nor execution of this Agreement constitutes an admission of liability by any Party, nor shall it be construed as such.
- 7.8. **Notice.** Any notice, request, claim, demand or other communication required hereunder ("Notice") shall be in writing and shall only be effective upon delivery in person, by overnight courier with receipt requested, by facsimile transmission with confirmation of transmission or by registered or certified mail (postage pre-paid, return receipt requested) to the Party designated for receipt of the Notice upon such Party's actual receipt of the Notice.

To County:

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 12 of 14

Charles J. McKee, County Counsel and  
Leslie J. Girard, Chief Assistant County Counsel  
168 W. Alisal St.  
Salinas, CA 93901  
(831) 755-5045  
(831) 755-5365 (facsimile)

To Petitioners:

Pamela H. Silkwood, Esq.  
Horan Lloyd A Professional Corporation  
P.O. Box 3350  
Monterey, CA 93942  
(831) 373-4131  
(831) 373-8302 (facsimile)

- 7.9. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties, and their respective heirs, administrators, successors, assigns, agents, employees, officers, partners and directors. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement.
- 7.10. **No Waiver.** The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of any other Party will not constitute a waiver of such breach. No custom or practice which exists or arises between or among the Parties in the course of administering this Agreement will be construed to waive any Party's rights to (i) insist upon the performance by any other Party of any covenant in this Agreement or (ii) exercise any rights given it on the account of any breach of such covenant. A waiver of any particular breach will not be deemed to be a waiver of same or any other subsequent breach.
- 7.11. **Exhibits.** Exhibit A, attached hereto, shall be incorporated in this Agreement as if set forth in full herein.
- 7.12. **Headings.** The descriptive headings used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
- 7.13. **Cooperation.** Each Party agrees to cooperate with the other in implementation of this Agreement.

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 13 of 14

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

**COUNTY OF MONTEREY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Dave Potter  
Chair, Monterey County Board of Supervisors

**APPROVED AS TO FORM**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Leslie J. Girard  
Chief Assistant County Counsel

**SALINAS VALLEY WATER COALITION**

Date: August 8, 2012

By: Nancy Isakson

Nancy Isakson  
President

**MONTEREY COUNTY FARM BUREAU**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Norman C. Groot  
Executive Director

**MONTEREY/SANTA CRUZ COUNTIES  
BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

Date: \_\_\_\_\_

By: \_\_\_\_\_

John Papa  
President

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 13 of 14

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

**COUNTY OF MONTEREY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Dave Potter  
Chair, Monterey County Board of Supervisors

**APPROVED AS TO FORM**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Leslie J. Girard  
Chief Assistant County Counsel

**SALINAS VALLEY WATER COALITION**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Nancy Isakson  
President

**MONTEREY COUNTY FARM BUREAU**

Date: 8/8/2012

By: \_\_\_\_\_

Norman C. Groot  
Executive Director

**MONTEREY/SANTA CRUZ COUNTIES  
BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

Date: \_\_\_\_\_

By: \_\_\_\_\_

John Papa  
President

**SETTLEMENT AGREEMENT**

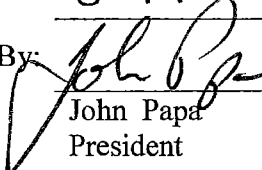
*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

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**MONTEREY/SANTA CRUZ COUNTIES  
BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

Date: 8-9-12

By:   
John Papa  
President

**MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION**

Date:

By: \_\_\_\_\_  
Ron Pasquinelli  
President

**HOWARD JARVIS TAXPAYERS  
ASSOCIATION**

Date:

By: \_\_\_\_\_  
Tim Biddle  
Director of Legal Affairs

CONFIDENTIAL

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*  
(Monterey County Case No. M109451)

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**MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION**

Date: 8/3/12

By: Ron Pasquinelli  
Ron Pasquinelli  
President

**HOWARD JARVIS TAXPAYERS ASSOCIATION**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Tim Biddle  
Director of Legal Affairs

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*  
(Monterey County Case No. M109451)

Page 14 of 14

**MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION**

Date:

\_\_\_\_\_

By:

\_\_\_\_\_

Ron Pasquinelli  
President

**HOWARD JARVIS TAXPAYERS ASSOCIATION**

Date:

8-6-2012

By:

Tim Bittle

Tim Bittle  
Director of Legal Affairs

**SETTLEMENT AGREEMENT**

*Salinas Valley Water Coalition et al. v. County of Monterey*

(Monterey County Case No. M109451)

Page 13 of 14

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date set forth above.

**COUNTY OF MONTEREY**

Date:     Dave Potter    

By:     8/3/12    

Dave Potter  
Chair, Monterey County Board of Supervisors

**APPROVED AS TO FORM**

Date:     8/2/12    

By:     [Signature]    

Leslie J. Girard  
Chief Assistant County Counsel

**SALINAS VALLEY WATER COALITION**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Nancy Isakson  
President

**MONTEREY COUNTY FARM BUREAU**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Norman C. Groot  
Executive Director

**MONTEREY/SANTA CRUZ COUNTIES  
BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

Date: \_\_\_\_\_

By: \_\_\_\_\_

John Papa  
President



# **EXHIBIT A**



**Exhibit "A"**  
**Settlement Agreement**  
**Proposed Amendments to 2010 Monterey County General Plan**

Salinas Valley Water Coalition, Monterey County Farm Bureau, Monterey/Santa Cruz  
Counties Building and Construction Trades Council, Monterey Peninsula Taxpayers  
Association, and Howard Jarvis Taxpayers Association v. County of Monterey  
(M109451)

**Text of Proposed Amendments to Monterey County 2010 General Plan**

**1. PS-3.1 to be modified to the following:**

Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. Development within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following:
  - 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
  - 2) evaluates the total water demand for all existing uses and future uses designated in the General Plan for the year 2030;
  - 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
  - 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary;
  - 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
  - 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to advance

## Exhibit "A"

### Settlement Agreement (Case No. M109451) Proposed Amendments to 2010 Monterey County General Plan

inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and

- 7) addresses such other matters as the Board of Supervisors determines are appropriate.

Within two months following completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions.

This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which a) the total water demand for all uses predicted in the General Plan EIR for the year 2030 will be reached; b) groundwater elevations and the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.

#### 2. PS-3.3 to be modified to the following:

Specific criteria shall be developed by ordinance for use in the evaluation and approval of adequacy of all domestic wells. The following factors shall be used in developing criteria for both water quality and quantity including, but not limited to:

- a. Water quality.
- b. Production capability.
- c. Recovery rates.
- d. Effect on wells in the immediate vicinity as required by the Monterey County Water Resources Agency or Environmental Health Bureau.
- e. Existing groundwater conditions.
- f. Technical, managerial, and financial capability of the water purveyor of a water system.
- g. Effects of additional extractions or diversion of water on in-stream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead, for the purpose of minimizing impacts to those resources and species.

**Exhibit "A"**  
Settlement Agreement (Case No. M109451)  
Proposed Amendments to 2010 Monterey County General Plan

This policy is not intended to apply to replacement wells.

**3. PS-3.4 to be modified to the following:**

The County shall request an assessment of impacts on adjacent wells and instream flows for new high-capacity wells, including high-capacity urban and agricultural production wells, where there may be a potential to affect existing adjacent domestic or water system wells adversely or in-stream flows, as determined by the Monterey County Water Resources Agency. In the case of new high-capacity wells for which an assessment shows the potential for significant adverse well interference, the County shall require that the proposed well site be relocated or otherwise mitigated to avoid significant interference. The following factors shall be used in developing criteria by ordinance for use in the evaluation and approval of adequacy of all such high-capacity wells, including but not limited to:

- a. Effect on wells in the immediate vicinity as required by the Monterey County Water Resources Agency or Environmental Health Bureau.
- b. Effects of additional extractions or diversion of water on in-stream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead, for the purpose of minimizing impacts to those resources and species.

This policy is not intended to apply to replacement wells.

**Exhibit "A"**  
Settlement Agreement (Case No. M109451)  
Proposed Amendments to 2010 Monterey County General Plan

**Proposed Amendments to Monterey County 2010 General Plan shown as changes from 2010  
General Plan policies as adopted October 26, 2010**

**1. PS-3.1**

PS-3.1 Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

This requirement shall not apply to:

- a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or
- b. specified development (a list to be developed by ordinance) designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or
- c. development ~~related to agricultural land uses within Zone 2C of the Salinas Valley groundwater basin, provided the County prepares or causes to be prepared a study report to for the Board of Supervisors regarding Zone 2C, to be completed no earlier than October 31, 2017 and no later than March 31, 2018 that does the following every five (5) years for Zone 2C examining the degree to which:~~
  - 1) evaluates existing data for seawater intrusion and groundwater levels collected by Monterey County Water Resources Agency as of the date the study is commenced;
  - 2) evaluates the total water demand for all existing uses and future uses predicted-designated in the General Plan EIR for the year 2030-will be reached;
  - 3) assesses and provides conclusions regarding the degree to which the total water demand for all uses designated in the General Plan for the year 2030 are likely to be reached or exceeded;
  - 2) 4) evaluates on an annual basis during the study period groundwater elevations and the seawater intrusion boundary-have changed since the prior reporting period; and-
  - 5) based on historical data and the data produced by the study, evaluates and provides conclusions regarding future trends and any expected movement of groundwater elevations and the seawater intrusion boundary;
  - 6) should the study conclude that i) total water demand for all uses designated in the General Plan for the year 2030 is likely to be exceeded; or ii) groundwater elevations are likely to decline by the year 2030 and iii) the seawater intrusion boundary is likely to

## Exhibit "A"

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- advance inland by the year 2030, the study shall make recommendations on measures the County could take to address any or all of those conditions; and
- 7) addresses such other matters and the Board of Supervisors determines are appropriate.
- ~~2) other sources of water supply are available.~~

~~If, following the periodic report, the Board finds, based upon substantial evidence in the record, that:~~

Within two months following the completion of the study, the Board of Supervisors shall hold an open and noticed public hearing on the results of the study. If the study reaches the conclusions for Zone 2C identified in subsection 6) i or 6) ii and 6) iii, the Board of Supervisors shall adopt one or more measures identified in the study, or other appropriate measures, to address the identified conditions. This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water supply exists within Zone 2C, and the presumption shall remain in effect until and unless the study reaches the conclusion for Zone 2C identified in subsection 6) i or 6) ii and 6) iii. Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan.

Following completion of the study described herein, and the adoption of measures as may be recommended in the study, if any, the County shall prepare a report to the Board of Supervisors every five (5) years for Zone 2C that examines the degree to which ~~Thea~~ total water demand for all uses in Zone 2C in 2030 as predicted in the General Plan EIR for year 2030 will be reached; is likely to be exceeded; or it is reasonably foreseeable that the total water demand for all uses in Zone 2C in 2030 would result in one or more of the following in Zone 2C in 2030: b) declining groundwater elevations, further the seawater intrusion boundary have changed since the prior reporting period; and c) other sources of water supply are available.; increased substantial adverse impacts on aquatic species, or interference with existing wells, then the County shall initiate a General Plan amendment process to consider removing this agricultural exception in Zone 2C. Development under this agricultural exception shall be subject to all other policies of the General Plan and applicable Area Plan; or

- ~~d. development in Zone 2C for which the decision maker makes a finding, supported by substantial evidence in the record, that the:~~
- ~~1) development is in a Community Area or Rural Center and is otherwise consistent with the policies applicable thereto;~~
  - ~~2) relevant groundwater basin has sufficient fresh water in storage to meet all projected demand in the basin for a period of 75 years; and;~~
  - ~~3) benefits of the proposed development clearly outweigh any adverse impact to the groundwater basin.~~

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**2. PS-3.3**

PS-3.3 Specific criteria shall be developed by ordinance for use in the evaluation and approval of adequacy of all domestic wells. The following factors shall be used in developing ~~Criteria shall assess both for both~~ water quality and quantity including, but not limited to:

- a. Water quality.
- b. Production capability.
- c. Recovery rates.
- d. Effect on wells in the immediate vicinity as required by the Monterey County Water Resources Agency or Environmental Health Bureau.
- e. Existing groundwater conditions.
- f. Technical, managerial, and financial capability of the water purveyor of a water system.
- g. Effects of additional extractions or diversion of water on in-stream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead, for the purpose of minimizing impacts to those resources and species.

This policy is not intended to apply to replacement wells

**3. PS-3.4**

PS-3.4 The County shall request an assessment of impacts on adjacent wells and instream flows for new high-capacity wells, including high-capacity urban and agricultural production wells, where there may be a potential to affect existing adjacent domestic or water system wells adversely or in-stream flows, as determined by the Monterey County Water Resources Agency. In the case of new high-capacity wells for which an assessment shows the potential for significant adverse well interference, the County shall require that the proposed well site be relocated or otherwise mitigated to avoid significant interference. ~~Specific criteria shall be developed~~ The following factors shall be used in developing by ordinance for use in the evaluation and approval of adequacy of all such high-capacity wells, including not limited to:

- a. Effect on wells in the immediate vicinity as required by the Monterey County Water Resources Agency or Environmental Health Bureau.
- b. Effects of additional extractions or diversion of water on in-stream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead, for the purpose of minimizing impacts to those resources and species.

This policy is not intended to apply to replacement wells.