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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO

NORTH COUNTY WATCH, a California Non-  
Profit Corporation, ENDANGERED HABITATS  
LEAGUE, a California Non-Profit Corporation,

Petitioners,

v.

COUNTY OF SAN LUIS OBISPO, BOARD OF  
SUPERVISORS OF THE COUNTY OF SAN  
LUIS OBISPO,

Respondents.

SANTA MARGARITA RANCH, LLC, DOES  
1-20,

Real Parties in Interest.

Case No.

**VERIFIED PETITION FOR WRIT  
OF MANDATE**

[CCP § 1094.5 (§ 1085); California  
Environmental Quality Act; State  
Planning and Zoning Law; Subdivision  
Map Act]

Date: None Set

Time:

Dept.:

Action Filed:

## INTRODUCTION

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2           1.       This action challenges the December 23, 2008 decision of Respondents the  
3 County of San Luis Obispo and its Board of Supervisors to approve a sprawling residential  
4 development proposed by Real Party in Interest Santa Margarita Ranch LLC (“SMR”).  
5 Respondents certified an Environmental Impact Report (“EIR”) and approved a vesting  
6 tentative tract map and conditional use permit for an “agricultural cluster subdivision” that  
7 would carve existing undeveloped, agricultural parcels into more than 100 residential lots  
8 (the “Project”). All of these actions were taken in violation of the California  
9 Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq., the CEQA  
10 Guidelines, title 14, California Code of Regulations, § 15000 et seq., the state Planning and  
11 Zoning Law, Government Code § 65300 et seq., the Subdivision Map Act, Government  
12 Code § 66410 et seq., the San Luis Obispo County General Plan, and the County’s Land  
13 Use Ordinance, title 22 of the San Luis Obispo County Code.

14           2.       Respondents approved the Project despite its significant adverse impacts—  
15 impacts that state and federal agency officials, as well as the County’s own planning staff,  
16 Agriculture Commissioner, Air Pollution Control District, Water Resources Advisory  
17 Committee, and Planning Commission, found wholly unacceptable. According to these  
18 officials, the Project would destroy and degrade oak woodland and native grassland  
19 habitats of concentrated biological value and further imperil several rare and protected  
20 wildlife species. The design of the Project also would permanently remove nearly 20 acres  
21 of prime soils from agricultural productivity and interfere with continued use of a 676-acre  
22 historic grazing unit. The Project’s remote, rural location, far from employment centers,  
23 would generate thousands of additional car trips, exacerbating unsafe conditions on local  
24 roads, violating the County’s Clean Air Plan, conflicting with the County’s purported  
25 commitment to “smart growth,” and contributing to global climate change. Finally, the  
26 Project would forever compromise the cultural integrity of the historic core of the Santa  
27 Margarita Ranch, a landscape with a rich and concentrated historic and prehistoric legacy.  
28 These impacts rendered the Project incompatible with nearly three dozen separate goals,

1 policies, standards, and regulations embodied in the County's General Plan and Land Use  
2 Ordinance.

3 3. After the County's Planning Commission voted to deny the Project, citing  
4 exhaustive evidence of the Project's excessive environmental impacts and inconsistency  
5 with County planning criteria, SMR pressed an appeal to the Board of Supervisors. By a  
6 bare one-vote majority, the Board brushed aside the considered recommendations of  
7 government officials at every level, overruled the careful findings of the Planning  
8 Commission, and approved the Project. The Board even did so in reliance on findings  
9 proposed by the Project applicant, at the last moment, with hardly any time for public or  
10 staff review. In approving the Project, Respondents did not merely give the green light to a  
11 careless and destructive plan to replace sensitive habitat and precious agricultural land with  
12 a sprawling residential subdivision. Nor did Respondents merely betray the public trust by  
13 rejecting the considered opinions of professional planners and experts at all levels of  
14 government. Respondents also prejudicially abused their discretion in certifying an EIR  
15 that fails to comply with CEQA and adopting findings of approval for the Project that are  
16 unsupported by substantial evidence and unsupportable as a matter of law. Accordingly,  
17 Respondents' certification of the EIR, approval of the vesting tentative tract map, and  
18 approval of the conditional use permit for the Project must be set aside.

### 19 **PARTIES**

20 4. Petitioner North County Watch is a non-profit, 501(c)(3) public benefit  
21 corporation under California law headquartered in Templeton, California. North County  
22 Watch is committed to balanced and responsible development in and around the northern  
23 portion of San Luis Obispo County. The organization's purpose is to promote economic  
24 and environmental policies that maintain and enhance the uniqueness of the North County  
25 community. North County Watch's goals and objectives include: ensuring compliance  
26 with city and county General Plans and CEQA; preserving agricultural lands; encouraging  
27 development within infrastructure constraints; protecting natural resources (such as air,  
28 water, trees and wildlife); advocating for smart growth; protecting and promoting parks

1 and open space; and preserving community character. Members of North County Watch  
2 include residents and taxpayers of San Luis Obispo County who will be negatively affected  
3 by the Project’s adverse environmental impacts and improper approval. Members of North  
4 County Watch will be directly affected by increased traffic, air pollution, loss of scenic  
5 views, and other environmental impacts of the Project. The interests that North County  
6 Watch seeks to further in this action are within the goals and purposes of the organization.  
7 North County Watch and its members have a direct and beneficial interest in Respondents’  
8 compliance with laws bearing upon approval of the Project. These interests will be directly  
9 and adversely affected by the Project, which violates provisions of law as set forth in this  
10 Petition, and which would cause substantial harm to the natural environment and the  
11 quality of life in the surrounding community. The maintenance and prosecution of this  
12 action will confer a substantial benefit on the public by protecting the public from  
13 environmental and other harms alleged herein. North County Watch submitted extensive  
14 comments to Respondents objecting to approval of the Project and certification of the EIR.

15         5.       Petitioner Endangered Habitats League, Inc. (“EHL”) is a tax-exempt, not-  
16 for-profit corporation under California law devoted to sustainable land use planning in  
17 California and to the preservation of its native species and the ecosystems upon which  
18 these species depend for their survival. EHL submitted comments to Respondents  
19 regarding the Project and the inadequacies of the EIR. EHL’s core organizational purposes  
20 and the interests of its members will be directly, adversely and irreparably affected by  
21 Respondents’ approval of the Project unless this Court provides the relief prayed for in this  
22 petition.

23         6.       Respondent County of San Luis Obispo (“County”) is the “lead agency” for  
24 the Project for purposes of Public Resources Code section 21067, and has principal  
25 responsibility for conducting environmental review for the Project and taking other actions  
26 necessary to comply with CEQA. The County also has principal responsibility for  
27 determining whether projects within the County’s jurisdiction are consistent with the  
28 County’s General Plan, Land Use Ordinance, and other applicable law.



1 section 21167.5 by serving a written notice of Petitioner's intention to commence this  
2 action on the County on January 20, 2009. A copy of the written notice and proof of  
3 service is attached hereto as Exhibit A.

4 13. Petitioner will comply with the requirements of Public Resources Code  
5 section 21167.6 by concurrently filing a notice of its election to prepare the record of  
6 administrative proceedings relating to this action.

7 14. Petitioner has complied with the requirements of Public Resources Code  
8 section 21167.7 by sending a copy of this Petition to the California Attorney General on  
9 January 26, 2009. A copy of the letter transmitting this Petition is attached hereto as  
10 Exhibit B.

11 15. Petitioner has performed any and all conditions precedent to filing this  
12 instant action and has exhausted any and all available administrative remedies to the extent  
13 required by law.

14 16. Petitioner has no plain, speedy or adequate remedy in the course of ordinary  
15 law unless this Court grants the requested writ of mandate to require Respondents to set  
16 aside their certification of the EIR and approval of the Project. In the absence of such  
17 remedies, Respondents' decisions will remain in effect in violation of state law.

### 18 **STATEMENT OF FACTS**

19 17. The Santa Margarita Ranch covers approximately 14,000 acres surrounding  
20 the community of Santa Margarita, east of Highway 101. The area of the Ranch proposed  
21 for residential development under the Project is located approximately eight miles from  
22 Atascadero and approximately ten miles from the City of San Luis Obispo.

23 18. The Santa Margarita Ranch has been used for grazing and crop production  
24 since the late 1700s, and has been in continuous agricultural production since the Spanish  
25 Period. Currently, the predominant agricultural activities on the Santa Margarita Ranch are  
26 cattle grazing and grape growing, and prime agricultural soils are found throughout the  
27 Ranch. As a result of its long history, the Ranch also contains a unique and unusual  
28 concentration of cultural sites and artifacts, and qualifies as a historic district eligible for

1 the California Register of Historic Resources.

2 19. The Santa Margarita Ranch contains a number of natural habitat types,  
3 including native perennial grassland and native oak woodland habitats. The Ranch also  
4 contains riparian habitats, wetland areas, vernal pools, and natural drainages including  
5 Trout Creek, Tostada Creek, and Rinconada Creek. These areas, along with other areas on  
6 the site, provide habitat for numerous plant and wildlife species, including special-status  
7 species such as San Luis Obispo mariposa lily, South/Central California Coast steelhead,  
8 vernal pool fairy shrimp, California red-legged frog, white-tailed kite, bald eagle, and  
9 golden eagle. Endangered California condors also have been sighted in the area.

10 20. In 2004, SMR submitted an application for the Project, seeking a vesting  
11 tentative tract map (Tract 2586) and a conditional use permit (S030115U) for a major  
12 agricultural cluster subdivision to be located near the historical center of the Ranch, just  
13 south of the community of Santa Margarita.

14 21. The Project application sought the entitlements necessary to subdivide a  
15 6,195 acre area, consisting of three existing parcels, into 111 detached residential lots  
16 (ranging from 1.0 to 2.5 acres in size), five open space lots (ranging from 190.2 acres to  
17 1,024 acres in size), an extensive network of roads and driveways, and a 2,417-acre  
18 “remainder lot” not slated for immediate development.

19 22. Pursuant to a settlement agreement arising from a challenge to a prior  
20 development proposal, SMR also outlined a “Future Development Program” consisting of  
21 more than 400 additional residential units; a golf course, clubhouse, and pro shop; a guest  
22 ranch, lodge, and restaurant; a bed and breakfast inn; a café; an amphitheater; crafts  
23 studios, galleries, and shops; an interpretive center and gift shops; nine wineries with  
24 tasting rooms and permitted special events; a neighborhood park and swimming pool; three  
25 ranch/farm headquarters; a livestock sales yard and café; three places of worship; and a  
26 retreat center. Components of the Future Development Program were proposed to be  
27 located on the “remainder lot” and other portions of the property affected by the Project.  
28 However, SMR did not propose to construct any of the Future Development Program

1 developments, and did not seek entitlements or approvals for any of these developments, as  
2 part of its application for the Project.

3 23. The County accepted the Project application as complete on June 9, 2004.

4 24. The County prepared a Draft EIR for the Project that identified dozens of  
5 significant environmental impacts that would be caused by the Project, including several  
6 impacts that the Draft EIR concluded could not feasibly be mitigated to a less-than-  
7 significant level (“Class 1 impacts”). The Draft EIR also analyzed 11 Project alternatives,  
8 including two “no project” alternatives, a “Revised Cluster Design” alternative, three  
9 “Revised Cluster Location” alternatives, a “Tighter Cluster Alternative,” three alternative  
10 Future Development Programs, and an alternative location for livestock sales.

11 25. Federal, state, and local agency officials including the United States Fish and  
12 Wildlife Service, the Central Coast Regional Water Quality Control Board, the County Air  
13 Pollution Control District (“APCD”), the County Agriculture Department, and members of  
14 the County Water Resources Advisory Committee, along with numerous members of the  
15 public, submitted comments on the Draft EIR identifying both the document’s numerous  
16 legal inadequacies under CEQA and the Project’s inconsistencies with governing legal  
17 standards set forth in the County General Plan and Land Use Ordinance.

18 26. Petitioner North County Watch submitted two letters concerning, among  
19 other things, the Draft EIR’s inadequate analysis of environmental impacts and mitigation  
20 measures related to agricultural resources, water supply, groundwater resources,  
21 wastewater disposal, air quality, oak woodlands, climate change, cumulative impacts, and  
22 mitigation monitoring.

23 27. The County prepared and circulated a Revised Draft EIR for additional  
24 agency review and public comment. The Revised Draft EIR analyzed three additional  
25 alternatives to the Project. The Project applicant’s “Alternative 12” proposed an  
26 agricultural cluster subdivision with the same number of residential units in the same  
27 general location as the Cluster Subdivision, but with minor modifications to the  
28 configuration of the residential lots and access roads. “Alternative 13” proposed an



1 expansion of the Town of Santa Margarita. “Alternative 14” proposed an alternative  
2 cluster subdivision with fewer residential units.

3 28. Once again, federal, state, and local agency officials, along with numerous  
4 members of the public, submitted comments on the Revised Draft EIR, identifying the  
5 document’s legal inadequacies and the Project’s inconsistencies with governing law. For  
6 example, the United States Fish and Wildlife Service and National Marine Fisheries  
7 Service submitted comments detailing the Revised Draft EIR’s inadequate analysis of  
8 impacts to and mitigation measures for special-status fish and wildlife species, including  
9 the California red-legged frog, California tiger salamander, vernal pool fairy shrimp, and  
10 South-Central California Coast steelhead. The California Department of Fish and Game  
11 also submitted comments discussing the Revised Draft EIR’s lack of proper biological  
12 survey information, its inadequate analysis of impacts and mitigation measures related to  
13 biological and water resources, and the Project’s numerous inconsistencies with the  
14 County’s General Plan and Land Use Ordinance. The County’s Water Resources Advisory  
15 Committee submitted comments detailing, among other things, the Project’s inconsistency  
16 with General Plan policies and the Revised Draft EIR’s inadequate analysis of baseline  
17 water usage, water supply, growth-inducing impacts, climate change impacts, biological  
18 impacts, and alternatives. The APCD and County Agriculture Department also submitted  
19 comments criticizing the Revised Draft EIR and detailing the Project’s conflicts with  
20 County planning standards.

21 29. Petitioner North County Watch submitted additional comments on the  
22 Revised Draft EIR’s inadequate analysis of impacts, mitigation measures, and alternatives,  
23 particularly as related to air quality, traffic and transportation, and water and wastewater, as  
24 well as the Project’s inconsistencies with the County’s Land Use Ordinance.

25 30. The County released a Final EIR reflecting changes to the Draft and Revised  
26 Draft EIRs, and containing responses to comments received on both documents, on June 7,  
27 2008. The Final EIR concluded that the Project as originally proposed would result in 11  
28 “Class 1” environmental impacts—impacts that could not be avoided or mitigated to a less-

1 than-significant level—on agricultural resources, air quality, biological resources, cultural  
2 resources, noise, transportation and circulation, visual resources, and water and  
3 wastewater.

4 31. The Final EIR also concluded that SMR’s minor Project variation,  
5 Alternative 12, would result in similar significant environmental impacts, including but not  
6 limited to the following:

7 a. The scattered configuration of residential lots under Alternative 12  
8 would fragment potential agricultural use of remaining open space, compromising  
9 the sustainability of grazing operations on about 676 acres and resulting in  
10 permanent loss of nearly 20 acres of prime soils to productive agriculture.

11 b. The proximity of residential development to ongoing agricultural  
12 operations under Alternative 12 would cause conflicts between urban and  
13 agricultural uses.

14 c. Alternative 12 would cause air pollutant emissions in excess of APCD  
15 thresholds and would conflict with standards and assumptions in the County’s Clean  
16 Air Plan regarding population growth and vehicle miles traveled.

17 d. Alternative 12 would remove or impact between 250 and 350 oak  
18 trees, convert native oak woodland habitat and native perennial grassland, and affect  
19 habitat for the rare San Luis Obispo mariposa lily.

20 e. Alternative 12 would impact wetland habitat, riparian habitat, and  
21 Waters of the United States.

22 f. Alternative 12 would impact several special-status wildlife species,  
23 including the southwestern pond turtle, California red-legged frog, South-Central  
24 California Coast steelhead, white-tailed kite, golden eagle, and American badger.

25 g. Alternative 12 would diminish the integrity of the character-defining  
26 historical center of the Santa Margarita Ranch, a rural historic district eligible for  
27 listing on the California Register of Historic Resources. Alternative 12 also would  
28 disrupt the associations and integrity of dozens of known prehistoric and historic

1 sites.

2 h. Although Alternative 12 would obtain water from the Nacimiento  
3 Water Project, the development's water and wastewater impacts would remain  
4 significant.

5 32. Appendix C to the Final EIR contained a "preliminary analysis" of the  
6 Cluster Subdivision's consistency with the County's General Plan and Land Use  
7 Ordinance. Based on the Project's significant impacts on prime soils, ongoing grazing  
8 operations, biological and cultural resources, and air quality, and its tendency to promote  
9 long-distance commuting and urban sprawl, this analysis concluded that the Cluster  
10 Subdivision was "potentially inconsistent" with numerous General Plan provisions,  
11 including but not limited to: the purposes of the General Plan's "Agriculture" land use  
12 designation; several countywide General Plan goals (Environment Goals 1 and 2, Air  
13 Quality Goals 3, 4, and 5, Population Growth Goal 6, Distribution of Land Uses Goals 8  
14 and 10, Phasing of Urban Development Goal 11, and Public Services and Facilities Goal  
15 15); Noise Element Policy 3.3.3; Energy Element Policies 1 and 2; Safety Element Policy  
16 S-13; Circulation Element Goal 1; Agriculture Element Policies 11, 17, 18, 22, 25, 33, and  
17 34; and Open Space Element Policies 10, 17, 33, and 34. This analysis further concluded  
18 that the Cluster Subdivision was "potentially inconsistent" with Salinas River Area Plan  
19 Goals 6 and 12, as well as with the Salinas River Area Plan's overall vision for rural area  
20 land use on the Santa Margarita Ranch. This analysis further concluded that the Cluster  
21 Subdivision was "potentially inconsistent" with the County's agricultural cluster  
22 subdivision regulations, codified at section 22.22.150 of the Land Use Ordinance.

23 33. The County's Planning Commission first considered the Final EIR and the  
24 Project at a public hearing on July 7, 2008.

25 34. County Department of Planning and Building staff prepared a report on the  
26 Project for the July 7, 2008 Planning Commission hearing (the "July 7 Staff Report"). This  
27 report concluded that both the Project as originally proposed and SMR's slightly modified  
28 Alternative 12 were inconsistent with the provisions of the applicable agricultural cluster

1 subdivision ordinance due to their remote rural location, impacts to prime soils and grazing  
2 operations, impacts to agricultural production, conflicts between agricultural and  
3 residential uses, impacts to environmentally sensitive areas, and degradation of cultural and  
4 historic resources. In light of these and other impacts, the July 7 Staff Report concluded  
5 that the Cluster Subdivision and Alternative 12 also were inconsistent with Salinas River  
6 Area Plan Goals 5, 6, 9, and 12 as well as several countywide General Plan goals  
7 (Environment Goals 1 and 2, Air Quality Goals 3, 4, and 5, Population Growth Goal 6,  
8 Distribution of Land Uses Goals 8 and 10, Phasing of Urban Development Goal 11, and  
9 Public Services and Facilities Goals 15, 16, and 17), Noise Element Policy 3.3.3, Energy  
10 Element Policies 1 and 2, Circulation Element Goals 1 and 3, Agriculture Element Policies  
11 11, 17, 18, 20, 21, 22, 25, 33, and 34, Open Space Element Policies 10, 17, and 33, and the  
12 County Clean Air Plan. Staff proposed that the Planning Commission consider an  
13 alternative subdivision design featuring fewer residential lots in a more tightly clustered  
14 configuration.

15 35. At its July 7, 2008 meeting, after hearing from the applicant's representatives  
16 and taking public comment, the Planning Commission continued its hearing on the Project  
17 to July 24, 2008.

18 36. Petitioner North County Watch submitted additional comments on the Project  
19 to the Planning Commission in a letter dated July 22, 2008, concerning among other things  
20 the Project's inconsistencies with the County's General Plan, the Final EIR's inadequate  
21 analysis of impacts related to water use and supply, water treatment, wastewater, and  
22 growth-inducing impacts, and the unenforceability of mitigation measures proposed in the  
23 Final EIR.

24 37. At its July 24, 2008 meeting, the Planning Commission again discussed the  
25 Project, heard from the applicant's representatives, and took public comment. The  
26 Planning Commission then continued its hearing on the Project to August 28, 2008.

27 38. Government agencies, non-governmental organizations, and individual  
28 members of the public continued to submit additional written comments to the Planning

1 Commission concerning the Project. In particular, the California Department of Fish and  
2 Game submitted a letter dated August 8, 2008, concerning the Project's potential adverse  
3 impacts on groundwater usage, surface water flows, and special-status aquatic species  
4 dependent upon surface flows. The National Marine Fisheries Service also submitted a  
5 letter dated August 28, 2008, concerning the EIR's inadequate analysis of impacts to  
6 endangered steelhead trout.

7 39. At its August 28, 2008 meeting, the Planning Commission discussed  
8 proceeding with Alternative 13, a proposed expansion of the Town of Santa Margarita, as a  
9 recommended alternative to the applicant's Alternative 12. Representatives of SMR  
10 objected, asking that the Planning Commission instead vote immediately on whether to  
11 approve or deny Alternative 12. After further discussion, the Planning Commission  
12 continued its hearing on the Project to September 25, 2008.

13 40. County Department of Planning and Building staff prepared a report on the  
14 Project for the September 25, 2008 Planning Commission hearing (the "September 25 Staff  
15 Report"). This report reiterated that given the Project's numerous significant impacts, the  
16 applicant's Alternative 12 could be found consistent with only five of the 39 applicable  
17 County policies and regulations reviewed by staff.

18 41. Petitioner North County Watch submitted additional comments on the Project  
19 to the Planning Commission in two letters dated September 23, 2008, concerning  
20 deficiencies in the Final EIR's analysis of the Project's groundwater and surface water  
21 impacts and its inadequate mitigation of the Project's transportation and public safety  
22 impacts.

23 42. At its September 25, 2008 meeting, the Planning Commission again  
24 discussed the Project, heard from the applicant's representatives, and took public comment.  
25 The County's Agriculture Commissioner stated that Alternative 12 was inconsistent with  
26 General Plan policies governing agricultural cluster subdivisions. Planning Department  
27 staff stated that Alternative 12 could not be found consistent with the General Plan.  
28 Nonetheless, SMR's representatives again requested that the Planning Commission make

1 an immediate decision on Alternative 12.

2 43. At the conclusion of the September 25, 2008 hearing, the Planning  
3 Commission voted tentatively to deny the vesting tentative tract map and conditional use  
4 permit. The Planning Commission directed staff to return at the October 9, 2008 Planning  
5 Commission meeting with findings of denial based on the Project's excessive Class 1  
6 impacts and inconsistencies with Salinas River Area Plan Goals 6 and 9, countywide  
7 General Plan Goals 2, 6, 8, and 15, Energy Element Policies 1 and 2, and Circulation  
8 Element Policies 1 and 3. The Planning Commission also directed staff to return with a  
9 finding of denial based on the Project's inconsistency with Land Use Ordinance section  
10 22.104.040, Rural Area Standard A.1, which required agricultural cluster subdivisions in  
11 the Salinas River Planning Area to "reconfigure and/or relocate existing parcels."

12 44. Petitioner North County Watch submitted additional comments on the Project  
13 to the Planning Commission in a letter dated October 8, 2008, addressing the Project's  
14 inconsistencies with the County's General Plan and Land Use Ordinance and the Final  
15 EIR's inadequate analysis of impacts, mitigation measures, and alternatives related to  
16 agricultural resources, land use conflicts, air quality, climate change, public safety, solid  
17 waste, transportation, water use and supply, water treatment, and wastewater.

18 45. County Department of Planning and Building staff prepared a report on the  
19 Project for the October 9, 2008 Planning Commission meeting containing findings of  
20 denial as directed by the Planning Commission at its September 25, 2008 meeting.

21 46. At its October 9, 2008 meeting, the Planning Commission reviewed and  
22 adopted the findings of denial prepared by staff. The Planning Commission also adopted  
23 additional findings of denial based on the Project's inconsistencies with the agricultural  
24 cluster subdivision provisions of the Land Use Ordinance (Land Use Ordinance section  
25 22.22.150(g)), Salinas River Area Plan Goal 12, countywide General Plan Goals 5 and 11,  
26 Agriculture Element Policies 25, 33, and 34, and Open Space Element Policies 10, 17, and  
27 33. The Planning Commission further found that it was unable to make the findings  
28 necessary for a statement of overriding considerations pursuant to CEQA because the

1 benefits of the project did not outweigh its numerous Class 1 environmental impacts.

2 47. At the conclusion of its October 9, 2008 hearing, the Planning Commission  
3 voted not to certify the Final EIR, to deny the vesting tentative tract map, and to deny the  
4 conditional use permit for the Project.

5 48. On October 15, 2008, SMR appealed the Planning Commission's decision to  
6 the Board of Supervisors.

7 49. County Department of Planning and Building staff prepared a report on the  
8 project for the November 4, 2008 meeting of the Board of Supervisors (the "November 4  
9 Staff Report"). The November 4 Staff Report recommended denial of the appeal, citing  
10 the Planning Commission's findings of denial for the Project.

11 50. Government agencies, non-governmental organizations, and individual  
12 members of the public continued to submit additional written comments to the Board of  
13 Supervisors concerning the Project. For example, the California Department of Fish and  
14 Game, in a letter dated October 31, 2008, recommended denial of the appeal due to, among  
15 other things, the Project's excessive Class 1 impacts and the Final EIR's inadequate  
16 analysis of biological impacts.

17 51. Petitioner North County Watch submitted additional comments on the Project  
18 to the Board of Supervisors in a letter dated November 3, 2008. This letter addressed,  
19 among other things, the Final EIR's failure to disclose, analyze and mitigate the Project's  
20 climate change impacts, impacts to biological resources, and impacts associated with  
21 construction of transportation mitigation measures. This letter also addressed the Project's  
22 numerous inconsistencies with the County's General Plan and Land Use Ordinance, as well  
23 as the Final EIR's failure to assess the significance of these inconsistencies under CEQA.

24 52. Petitioner Endangered Habitats League submitted comments on the Project to  
25 the Board of Supervisors in a letter dated November 3, 2008. Among other things, this  
26 letter addressed the Final EIR's failure to adequately assess the Project's water supply and  
27 reliability impacts, including growth-inducing and cumulative impacts, pointed out that any  
28 action regarding the Final EIR for the Future Development Program would be a "legal

1 nullity,” and urged the Board of Supervisors to deny the appeal and the Project.

2 53. At its November 4, 2008 Meeting, the Board of Supervisors heard a  
3 presentation from County staff regarding the Project applicant’s appeal of the Planning  
4 Commission’s decision to deny the Project. At this same hearing, the applicant’s attorney  
5 submitted two banker’s boxes of additional material. Members of the Board of Supervisors  
6 stated that neither they nor County staff had the opportunity to review this material. At the  
7 applicant’s request, the hearing on the appeal was continued to November 18, 2008.

8 54. Petitioner North County Watch submitted additional comments on the Project  
9 to the Board of Supervisors in a letter dated November 14, 2008, concerning the Final  
10 EIR’s failure to adequately analyze the Project’s climate change impacts. North County  
11 Watch also delivered a letter dated November 17, 2008 to the Board of Supervisors  
12 enclosing copies of prior comments submitted by or on behalf of North County Watch  
13 regarding the Project and requesting that those comments be incorporated into the record.

14 55. At the close of its November 18, 2008 meeting, the Board of Supervisors  
15 voted tentatively to certify the Final EIR, directed County staff to prepare a statement of  
16 overriding considerations for approval of Alternative 12, and continued the hearing to  
17 December 16, 2008.

18 56. County Department of Planning and Building staff prepared a report on the  
19 Project for the December 16, 2008 meeting of the Board of Supervisors (the “December 16  
20 Staff Report”). This report contained proposed findings for certification of the Final EIR  
21 and adoption of a statement of overriding considerations. This report also sought direction  
22 from the Board of Supervisors concerning additional findings necessary for approval of the  
23 vesting tentative tract map and conditional use permit for the Project, as the Board had  
24 provided no basis for these findings in its previous direction to staff.

25 57. Petitioner North County Watch, in two letters to the Board of Supervisors  
26 dated December 15, 2008, submitted comments detailing the inadequacies of the findings  
27 proposed by County staff in the December 16 Staff Report as well as the Project’s impacts  
28 to steelhead trout.



1           58.     Notwithstanding the Board’s tentative approval of the Project, government  
2 agencies, non-governmental organizations, and members of the public continued to submit  
3 written comments to the Board of Supervisors urging reconsideration. For example, the  
4 California Department of Fish and Game submitted a letter dated December 10, 2008,  
5 which among other things addressed the EIR’s failure to consider alternatives that would  
6 avoid biological impacts, once again detailed the Project’s impacts on sensitive plant  
7 communities, plant species, and wildlife species, and once again pointed out the EIR’s lack  
8 of adequate wildlife survey information.

9           59.     At the conclusion of its December 16, 2008 hearing on the Project, the Board  
10 of Supervisors continued the hearing to December 19, 2008.

11           60.     In response to the December 16 Staff Report, SMR submitted extensive  
12 revisions to County staff’s proposed CEQA findings and conditions of approval for the  
13 Project. Many of these revisions weakened or eliminated mitigation measures proposed in  
14 the Final EIR without any rational justification. For example, these revisions proposed  
15 dramatic reductions in buffer zones around sensitive aquatic habitats, limited the  
16 geographical area where mitigation measures would apply, and deleted several mitigation  
17 measures in their entirety based upon vague, unsupported, and conclusory assertions of  
18 infeasibility.

19           61.     Petitioner North County Watch sent a letter to the Board of Supervisors dated  
20 December 18, 2008, concerning the absence of any factual or legal support for several of  
21 the applicant’s proposed CEQA findings and conditions of approval for the Project.

22           62.     The County APCD also submitted an additional letter to the Board of  
23 Supervisors, dated December 18, 2008, detailing the Project’s significant greenhouse gas  
24 impacts and inconsistencies with the County’s Clean Air Plan, and objecting to the  
25 applicant’s proposed changes to air quality mitigation measures recommended in the Final  
26 EIR.

27           63.     At the conclusion of its December 19, 2008 hearing on the Project, the Board  
28 of Supervisors again continued the hearing to December 23, 2008.





1 supported by substantial evidence in the administrative record. CEQA further requires that  
2 a lead agency provide an explanation of how evidence in the record supports the  
3 conclusions it has reached.

4 73. Respondents violated CEQA by adopting findings that are inadequate as a  
5 matter of law in that they are not supported by substantial evidence in the record, including,  
6 but not limited to, the following:

7 a. The determination that certain impacts would be less than significant  
8 and/or that adopted mitigation measures would avoid or lessen the Project's  
9 significant effects on the environment;

10 b. The determination that alternatives to the Project and proposed  
11 mitigation measures that would have avoided or lessened the significant impacts of  
12 the Project were infeasible; and

13 c. The determination that the overriding economic, legal, social,  
14 technological, or other benefits of the Project outweighed its significant impacts on  
15 the environment.

16 74. As a result of the foregoing defects, Respondents prejudicially abused their  
17 discretion by adopting findings that do not comply with the requirements of CEQA and  
18 approving the Project in reliance thereon. Accordingly, Respondents' certification of the  
19 EIR and approval of the Project must be set aside.

20 **THIRD CAUSE OF ACTION**  
21 **(Violations of the Subdivision Map Act)**

22 75. Petitioners hereby reallege and incorporate paragraphs 1 through 74,  
23 inclusive.

24 76. The Subdivision Map Act, Government Code section 66410 et seq., requires  
25 local agencies to make certain findings before they may approve a vesting tentative tract  
26 map.

27 77. Government Code section 66473.5 provides that a local agency may not  
28 approve a tentative map unless it finds the map consistent with the General Plan.



1           85.    Agricultural cluster subdivisions in the Salinas River planning area must  
2 comply with specific standards set forth in the Land Use Ordinance, including but not  
3 limited to the provisions of sections 22.22.150 and 22.104.040 of the San Luis Obispo  
4 County Code.

5           86.    The Project conflicts with a number of goals and policies of the San Luis  
6 Obispo County General Plan, including but not limited to the following:

- 7           a.    Salinas River Area Plan Goals 5, 6, 9, and 12;
- 8           b.    Countywide General Plan goals including Environment Goals 1 and 2,  
9 Air Quality Goals 3, 4, and 5, Population Growth Goal 6, Distribution of Land Uses  
10 Goals 8 and 10, Phasing of Urban Development Goal 11, and Public Services and  
11 Facilities Goals 15, 16, and 17;
- 12           c.    Noise Element Policy 3.3.3;
- 13           d.    Energy Element Policies 1 and 2;
- 14           e.    Circulation Element Goals 1 and 3;
- 15           f.    Agriculture Element Policies 11, 17, 18, 20, 21, 22, 25, 33, and 34;
- 16           g.    Open Space Element Policies 10, 17, and 33; and
- 17           h.    The purposes of the General Plan’s “Agriculture” land use  
18 designation.

19           87.    The Project conflicts with the County Clean Air Plan.

20           88.    The Project conflicts with the San Luis Obispo County Land Use Ordinance,  
21 including numerous provisions of sections 22.22.150 and 22.104.040 of the San Luis  
22 Obispo County Code.

23           89.    Respondents prejudicially abused their discretion in finding the Project  
24 consistent with the San Luis Obispo County General Plan.

25           90.    Respondents prejudicially abused their discretion in finding the Project  
26 consistent with the San Luis Obispo County Land Use Ordinance.

27           91.    As a result of the foregoing defects, Respondents did not proceed in the  
28 manner required by law, and their decision to approve the Project was not supported by

1 substantial evidence. Accordingly, approval of the conditional use permit and vesting  
2 tentative tract map must be set aside.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioners pray for judgment as follows:

5 1. For alternative and peremptory writs of mandate directing Respondents to  
6 vacate and set aside their certification of the EIR, and approval of the Project, including the  
7 vesting tentative tract map and conditional use permit;

8 2. For alternative and peremptory writs of mandate directing Respondents to  
9 comply with CEQA, the CEQA Guidelines, the Subdivision Map Act, State Planning and  
10 Zoning Law, and the San Luis Obispo County Code, and to take any other action as  
11 required by Public Resources Code section 21168.9;

12 3. For a temporary stay, temporary restraining order, and preliminary and  
13 permanent injunctions restraining Respondents and their agents, servants, and employees,  
14 and all others acting in concert with Respondents on their behalf, from taking any action to  
15 implement, or further approve, or construct the Project, pending full compliance with the  
16 requirements of CEQA, the CEQA Guidelines, the Subdivision Map Act, State Planning  
17 and Zoning Law, and the San Luis Obispo County Code;

18 4. For a temporary stay, temporary restraining order, and preliminary and  
19 permanent injunctions restraining Real Parties in Interest and their agents, servants, and  
20 employees, and all others acting in concert with Real Parties in Interest on their behalf,  
21 from taking any action to implement or construct the Project, pending full compliance with  
22 the requirements of CEQA, the CEQA Guidelines, the Subdivision Map Act, State  
23 Planning and Zoning Law, and the San Luis Obispo County Code;

24 5. For costs of the suit;

25 6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5  
26 and other provisions of law; and

27 7. For such other and future relief as the Court deems just and proper.

28 ///

1 Dated: January 23, 2008

SHUTE, MIHALY & WEINBERGER LLP

2  
3  
4 By: \_\_\_\_\_

5 ELLISON FOLK  
6 KEVIN P. BUNDY  
7 MICHAEL FITTS

8 Attorneys for Petitioners  
9 NORTH COUNTY WATCH  
10 ENDANGERED HABITATS LEAGUE

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