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9 CARMEL VALLEY ASSOCIATION, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MONTEREY

12 **CARMEL VALLEY ASSOCIATION,
13 INC.**

14 a non-profit California corporation,

15 Petitioner,

16 vs.

17 **BOARD OF SUPERVISORS OF THE
18 COUNTY OF MONTEREY,
19 COUNTY OF MONTEREY, and
20 DOES 1 - 50, inclusive,**

21 Respondents

Case No.: **M109442**

**PETITION FOR WRIT OF
MANDATE AND TO ENFORCE
THE CALIFORNIA
ENVIRONMENTAL QUALITY
ACT**

22 Petitioner **CARMEL VALLEY ASSOCIATION, INC.** alleges:

23 **GENERAL ALLEGATIONS**

24 1. Petitioner Carmel Valley Association is, and at all times mentioned herein has been, a
25 non-profit California corporation whose headquarters are located in Carmel Valley, CA.
26 Established in 1949 and with over 600 members, the Carmel Valley Association is the oldest and
27 largest residents and homeowners association in Carmel Valley. The Carmel Valley Association
28 operates to promote the social welfare of Carmel Valley, to protect the Valley's rural character,
and to advocate for growth that carefully considers impacts to traffic, water, and code compliance,
and to read reviews and submit informed comments on Environmental Impact Reports

1 concerning development projects in Carmel Valley. The Carmel Valley Association has a clear,
2 present, and beneficial interest in the continued rural character of Carmel Valley and in the
3 enforcement of environmental quality laws affecting the traffic and land development within
4 Carmel Valley. The Carmel Valley Association was fully involved in the proceedings described
5 herein. The Carmel Valley Association has participated and submitted written and oral
6 comments in the public debates about the 2010 Monterey County General Plan (hereinafter,
7 "2010 General Plan") in regard to road capacity, traffic improvement, modeling, monitoring,
8 mitigation, and the effect of land development and traffic volume increases on Carmel Valley
9 Road, Carmel Valley, and other issues affected by the 2010 General Plan and its included
10 Carmel Valley Master Plan. The Carmel Valley Association has standing in this action.

11 2. Respondent Board of Supervisors of the County of Monterey ("Board") is the legislative
12 body of the County of Monterey and has taken action to certify an environmental impact report
13 ("EIR") and approve the 2010 General Plan.

14 3. Respondent County of Monterey ("County" or "Monterey County") is a public entity and
15 political subdivision of the State of California. It is responsible for authoring, enforcing and
16 implementing the County's General Plan, master plans including the Carmel Valley Master Plan,
17 its ordinances, and the California Environmental Quality Act (CEQA) in regard to land use and
18 planning decisions within its jurisdiction.

19 4. The project at issue in this litigation is the 2010 General Plan. The County is the lead
20 agency responsible under the California Environmental Quality Act (CEQA) for evaluating the
21 environmental impacts of the project. The General Plan is atop the hierarchy of local
22 government law regulating land use. It has been analogized to "a constitution" for all future
23 development.

24 5. Petitioner does not know the true names and capacities of the respondents named herein
25 as DOES 1 through 50, and therefore sues said parties under fictitious names. Petitioner will
26 amend this Petition to allege their true names and capacities when ascertained. Petitioner is
27 informed and believes and thereon alleges that the fictitiously named respondents are in some
28 manner responsible for the events alleged herein.

1 6. The 2010 General Plan affects Monterey County. Respondents are responsible for,
2 among other things, managing resources and development in Monterey County.

3 7. On or about October 26, 2010, the Board voted to certify an EIR for the 2010 General
4 Plan and approve the project. Respondents filed a Notice of Determination on October 27, 2010.

5 8. Petitioner has provided notice to respondents of petitioner's intention to file suit in this
6 matter through a letter served on the respondents on November 23, 2010, a true and correct copy
7 of which is attached as Exhibit A and incorporated herein by reference.

8 BACKGROUND OF RESPONDENTS' ACTIONS

9 9. Pursuant to Government Code section 65300, each city and county must adopt "a
10 comprehensive, long term general plan for the physical development of the county and city."
11 The County last comprehensively updated its general plan when it adopted the 1982 General
12 Plan on September 30, 1982 (the "1982 General Plan").

13 10. The 1982 General Plan contains countywide policies to address all aspects of future
14 growth, development, and conservation within the County. Subsequent amendments to the 1982
15 General Plan enacted "Area Plans" for specific geographic areas of the County within the
16 unincorporated inland area of the County, including the Carmel Valley Master Plan (December
17 16, 1986 and amended November 5, 1996) (hereinafter "current CVMP"). The current CVMP
18 was designed to "be substantially influenced by the current residents and property owners of the
19 valley. . . and to reflect a comprehensive cross-section of local attitudes toward the future of the
20 valley as a living environment." It provided "clear-cut criteria to those responsible for its
21 implementation, so that they may relate individual development proposals to [its] goals and
22 policies."

23 11. By the late 1990's, the 1982 General Plan was not being followed by the County and had
24 become woefully inadequate for policy implementation because of the evolution of the County's
25 demographics and land use. Pursuant to Government Code section 65358, the Board may amend
26 all or part of the adopted general plan if deemed to be in the public interest. The Board then set
27 out to create a comprehensive update of the 1982 General Plan and Area Plans.

28 12. The 2010 General Plan is the culmination of more than a decade of effort to prepare a

1 complete update of the 1982 General Plan. Beginning in November 1999 through the middle of
2 2007, the Board and various agencies of Monterey County held public hearings, prepared draft
3 plans and environmental impact reports, made a variety of directions, and adopted various
4 resolutions of approval. Petitioner appeared, gave testimony, and made objections at many of
5 these public hearings.

6 13. Beginning in 2001, traffic on Carmel Valley Road began exceeding its trigger thresholds
7 as specified in the current CVMP. In 2005, the County commissioned a new traffic study of the
8 current roadway and intersection conditions to identify potential improvements to the roadway to
9 cure unacceptable traffic conditions. The Carmel Valley Traffic Improvement Program
10 ("CVTIP") traffic study and the accompanying Draft Subsequent EIR ("CVTIP DSEIR") were
11 completed and released for public comment in August 2007. The DSEIR has not been certified
12 by the Board. Among others, the DSEIR recommended changes to the way the level of service
13 was defined, calculated, and measured. (Level of service (hereinafter, "LOS") is a method of
14 reporting one or more selected numerical performance measures ("metrics") using a system of
15 easily understandable letter grades ["A" - "F"]. LOS "A" represents free flow conditions and
16 LOS "F" represents severe traffic congestion.) Petitioner gave testimony and made objections
17 during the comment period.

18 14. On June 5, 2007, the County electorate participated in a public referendum. In that
19 referendum, the electorate did not support any of the County's proposed plans or approvals. As a
20 result of the uncertainty created by the outcome of the June 5, 2007 electoral referendum on two
21 competing versions of a draft General Plan, the Board prepared a new draft general plan that was
22 released to the public on about December 21, 2007, entitled the "draft 2007 Monterey County
23 General Plan," which was also known as "GPU5."

24 15. The County held an EIR scoping meeting on December 12, 2007 to provide information
25 about the GPU5, the potential environmental impacts and the CEQA review process. Petitioner
26 participated in the hearings and provided input as to the scope and content of the environmental
27 information to be addressed in the EIR.

28 16. The County published the Draft EIR for GPU5 (hereinafter, "DEIR") for a public review

1 period beginning on September 5, 2008. Because DEIR Appendix C (traffic data) had been
2 inadvertently omitted from the first publication of the DEIR, the public comment period was
3 extended to October 28, 2008. As a result additional concerns over the availability of reference
4 documents, including petitioner's concerns, the County again extended the review period to
5 February 2, 2009. Petitioner submitted its comments and objections during this period.

6 17. During the preparation of the DEIR's analysis of transportation and circulation impacts,
7 the County decided to treat Carmel Valley differently from the rest of the County's geographic
8 areas. The County had previously developed new definitions and methodologies for level of
9 service calculations for the CVTIP and CVTIP DSEIR. The County adopted these changed
10 metrics to the DEIR for GPU5 but only as to the Carmel Valley traffic analysis. The remainder
11 of the County was evaluated using the original metrics established in the 1982 General Plan.
12 Using the changed definitions, methodology, and triggers, the DEIR evaluated the proposed
13 CVMP to conclude that, with one exception, the impact of the proposed policies would be less
14 than significant.

15 18. On September 10, 2008, during the comment period on the DEIR, petitioner attended a
16 workshop to receive a presentation from the County on GPU5, errata to the draft Plan, and
17 mitigation measures proposed by the DEIR. Petitioner participated in public hearings and gave
18 testimony on February 11 and 25, 2009. Petitioner participated in public hearings on the DEIR,
19 on May 27, June 10, July 8, and July 29, 2009 to consider draft General Plan policies and
20 mitigation measures proposed by the DEIR and possible revisions to policies and mitigation
21 measures.

22 19. On or about March 8, 2010, the final EIR for GPU5 and a slightly revised GPU5 was
23 released to the public. At this time, the GPU5 document was retitled as the "2010 draft
24 Monterey County General Plan" (hereinafter, "2010 draft Plan") and the Final EIR for GPU 5
25 was retitled "Monterey County General Plan Final Environmental Impact Report, dated March
26 2010" (hereinafter, "FEIR").

27 20. Petitioner participated in a workshop on the 2010 draft Plan and FEIR on March 31,
28 2010, gave testimony and made objections. Subsequently, petitioner participated, gave testimony

1 and made objections in a Planning Commission hearing beginning on April 14, 2010 and
2 continuing on April 28, 2010, May 12, 2010, May 26, 2010, June 9, 2010, June 30, 2010, July
3 14, 2010, July 21, 2010, July 28, 2010, and August 11, 2010.

4 21. On August 11, 2010, the Planning Commission recommended that the Board certify the
5 FEIR and approve the 2010 draft Plan with the exception of the "Long Term Sustainable Water
6 Supply" definition.

7 22. Pursuant to Government Code section 65355, the Board commenced a public hearing on
8 the FEIR and 2010 draft Plan on August 31, 2010, and continued the public hearing to
9 September 14, 21, and 28, and October 12 and 26, 2010. At a number of these hearings, new
10 policies, plan provisions, and supporting data were presented with little or no time for public
11 review and comment. During these hearings, the petitioner gave testimony and made objections
12 concerning the lack of sufficient analysis and time to review the newly proposed information.

13 23. On October 26, 2010, the Board resolved to certify the adequacy of the FEIR under
14 CEQA (Public Resources Code §§21000-21177). On October 26, 2010, respondents approved
15 the 2010 draft Plan as amended ("2010 General Plan"). A notice of determination to carry out
16 the project was filed by respondents on October 27, 2010.

17 24. Petitioner, other agencies, interested groups, and individuals made oral and written
18 comments on the various drafts of the EIR and associated findings and raised each of the legal
19 deficiencies asserted in this petition.

20 25. Petitioner performed all conditions precedent to filing this action by complying with the
21 requirements of Public Resources Code §21167.5 in filing notice of this action on November 23,
22 2010, a true and correct copy of which is attached as Exhibit A and incorporated herein by
23 reference, and filing this lawsuit within 30 days of the filing of the Board's Notice of
24 Determination.

25 26. Respondents' actions in certifying the FEIR and adopting findings constitute a prejudicial
26 abuse of discretion in that respondents failed to proceed in the manner required by law, did not
27 satisfy the procedural and substantive requirements of CEQA, did not engage in a legally
28 sufficient fact-finding, did not adequately identify and mitigate impacts, and its decision is not

1 supported by substantial evidence.

2 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

3 27. The respondents' violations of the California Environmental Quality Act include a
4 materially incomplete and inadequate presentation of the County-wide project description,
5 project environmental setting and regulatory baseline in the project documents. Respondents
6 failed to perform a complete and integrated environmental review by inadequately investigating
7 and disclosing the project's inconsistency with previously adopted plans. They failed to
8 adequately investigate and disclose the horizontal and vertical inconsistencies of the 2010
9 General Plan and its elements. The environmental review was improperly piecemealed,
10 separately conducted, and deferred to the last minute to prevent a complete and adequate review.
11 Respondents ignored or failed to adopt reasonable mitigation measures that would substantially
12 reduce the environmental impacts of the project. The FEIR failed to propose effective
13 mitigations. Adopted mitigations do not have adequate metrics or performance standards or are
14 measured from fuzzy or inaccurate baselines. The environmental impact analysis is based on
15 flawed or inadequately disclosed assumptions, assumptions that are inadequately explained, or
16 have influence or effects that are inadequately investigated. The FEIR failed to adequately
17 address alternatives within the range of activities included in the project.

18 28. The FEIR did not adequately respond to comments under CEQA. Respondents failed to
19 adopt legally adequate findings as required by law. Respondents failed to adopt a legally
20 adequate statement of overriding considerations. Respondents and the FEIR failed to comply
21 with CEQA requirements for consideration and evaluation of information. The County failed to
22 comply with the mandatory requirement to re-circulate the DEIR after introduction of substantial
23 and material new information after the close of the public comment period. The FEIR fails as an
24 informational document as required by CEQA. There are unanalyzed potentially significant
25 impacts. Respondents failed to proceed as required by law.

26 29. Respondents adopted mitigations that are unlikely to be implemented because of the lack
27 of present or future funding. Respondents deferred critical general plan policies, standards,
28 criteria, and interpretations to the ordinance stage. The impact of these policies, standards,

1 criteria and interpretations could be significant, but cannot and were not adequately evaluated in
2 the FEIR because of the lack of detail in the project documentation. Respondents' actions
3 constitute impermissible deferral and piecemealing. For example, the FEIR and the 2010
4 General Plan include the term "long term sustainable water supply" without a complete or
5 adequate definition. Without definition, the involved agencies and public cannot appreciate,
6 analyze, plan, or make an informed decision regarding this part of the 2010 General Plan.

7 30. The FEIR fails to adequately analyze the 2010 General Plan's significant impact on traffic
8 in Carmel Valley. The current and proposed CVMP have specific standards for traffic policy
9 triggers based upon the level of service ("LOS") letter grade. In the current CVMP, the LOS
10 letter grade is calculated using the Average Daily Traffic ("ADT") volume. An ADT-based LOS
11 letter grade is also used for general planning and EIR preparation in all other areas of the County
12 and in many other counties. The proposed CVMP abandons the ADT-based LOS letter grade. It
13 proposes a different method of calculating the LOS letter grade adopted solely for use in Carmel
14 Valley. The proposed LOS letter grade calculation is based upon an alternate measure of traffic,
15 Percent Time Spent Following ("PTSF") during peak hours. Using PTSF rather than ADT to
16 calculate an LOS letter grade allows substantially increased traffic volumes at each LOS grade
17 level. For example, on several of the Carmel Valley Road segments, a LOS letter grade of E is
18 obtained when daily trips exceed 10,800 under the ADT-based LOS calculation. However, more
19 than 19,000 daily trips are required for a LOS letter grade of E under the FEIR's PTSF-based
20 calculation method. Thus, almost twice as much traffic (around 80% more) is allowed in the
21 proposed CVMP without degrading the LOS letter grade. Because the policy triggers for
22 mitigation are based solely on the LOS letter grade, 80% more traffic is allowed by the proposed
23 CVMP before the policy triggers are activated. The FEIR did not adequately analyze the impact
24 of the increased traffic allowed by the change in the calculation method and did not adequately
25 disclose the impact of the use of the different metric for Carmel Valley. As a result, the FEIR
26 violates CEQA's goals of informed decision making.

27 31. The FEIR failed to describe and adequately evaluate potential cumulative impacts of the
28 2010 General Plan, including the use of PTSF-based LOS calculations on circulation within

1 Carmel Valley and throughout the County. The 2010 General Plan policy C-1.1 sets the
2 acceptable level of service for all county roads and intersections at LOS letter grade D, without
3 guidance as to the method of calculation. The County's use of a PTSF-based calculation method
4 for LOS letter grades in Carmel Valley sets a precedent for their adoption for use throughout the
5 County. This changed methodology would significantly and materially increase the traffic
6 volume allowed before policy triggers were reached - as discussed above. The FEIR provides
7 inadequate investigation, disclosure and analysis of the potential cumulative impacts of PTSF-
8 based LOS calculations used as the basis of policy triggers. The use of PTSF-based calculation
9 for area or general plans is new to the County and would be a significant and material change
10 from the former and existing County policies. The County did not disclose this new approach
11 toward measuring traffic in the FEIR's project description.

12 32. The level of service letter grades for traffic are used for planning and monitoring
13 purposes and for comparison with earlier policies, impact analyses, and studies. The FEIR must
14 analyze impacts compared to the setting and regulatory baselines established by the 1982
15 General Plan and the current CVMP. Because the County's original and proposed LOS
16 calculation methods are substantially and materially different, any comparison between original
17 and proposed CVMP policies, based simply upon the LOS letter grade, is flawed and misleading.
18 Through the use of an apples-to-oranges comparison of the LOS letter grades calculated by
19 different methods, the FEIR attempted to falsely justify its impact findings for the proposed
20 CVMP traffic plan. The FEIR does not include an adequate analysis of the proposed CVMP
21 changes using the original ADT-based calculation method, and failed to inform the public and
22 decision makers of the significance of the changed metrics. Therefore, the FEIR's analysis of the
23 2010 General Plan is fatally flawed.

24 33. The FEIR failed to describe and adequately investigate or consider reasonable mitigation
25 measures that could eliminate or substantially lessen significant environmental impacts of the
26 project, including development restrictions triggered by excessive traffic volume. Currently, if
27 traffic volume increases so that the level of service using the ADT-base calculation falls below
28 the baseline LOS letter grade, there is a significant impact. If these impacts are caused by a

1 project and cannot be mitigated, the County must defer project approval or make statements of
2 overriding considerations. In the proposed CVMP, there would be no triggers that prevent the
3 unacceptable reduction in the LOS caused by development. The proposed CVMP also conflicts
4 with the Board's January 22, 2002 resolution (Resolution 02-024) that limited further subdivision
5 in Carmel Valley until specified road improvements are constructed. That resolution is part of
6 the existing regulatory baseline, which the FEIR did not adequately disclose. The FEIR did not
7 adequately disclose the elimination of Resolution 02-024. The FEIR did not adequately evaluate
8 the mitigation alternative of keeping Resolution 02-024 in place under the existing ADT-based
9 traffic triggers. The FEIR also fails to adequately investigate or analyze the effects of the
10 additional development allowed under these policy changes.

11 34. The FEIR failed to respond adequately to comments on the DEIR. As one example, the
12 FEIR did not respond as required under CEQA to petitioner's comments regarding the County's
13 unreasonable substitution of the traffic volume calculation methodology and the failure to
14 properly analyze the impact of the County's measurement alterations. During the history of the
15 general plan update, petitioner has continually criticized the proposal to change longstanding
16 traffic triggers for Carmel Valley. The FEIR and responses to comments on the DEIR failed to
17 adequately address these concerns and even went as far as to ignore the significance and
18 materiality of the changes. The County FEIR response to comments calls the changes
19 "inconsequential." The FEIR even attempted to portray the changes as standard practice and not
20 a change in the actual methodology. All of these arguments are false. They were constructed to
21 mask the intent by the respondents to minimize the impact of the policy changes in the 2010
22 General Plan.

23 35. The FEIR failed to properly analyze the significant impact of the wholesale elimination
24 and alteration of policies specified in the current CVMP. The 2010 General Plan eliminates
25 specific and identifiable numerical standards that exist in the current CVMP. The 2010 General
26 Plan defers these critical issues to a future unspecified date, when ordinances will be developed.
27 The current CVMP Policy 11.1.1.1 (CV), protects rare and endangered plant species. Policy
28 11.1.1.2 (CV) calls for the County to maintain records of locations of these plants. These

1 policies are completely eliminated from the current CVMP. Whether the overarching 2010
2 General Plan adequately replaces these and other policies specific to Carmel Valley is not
3 adequately analyzed in the FEIR. The public and the decision makers were not adequately
4 informed of the potential impacts of the 2010 General Plan on Carmel Valley, specifically with
5 regard to the elimination of existing CVMP policies.

6 36. The 2010 General Plan eliminated the rare tree species protection policy containing
7 detailed and quantitative standards. In the current CVMP, Policy 7.2.2.5 (CV) defines protected
8 tree species using a trunk diameter measurement standard that is clearly spelled out. However,
9 the proposed CVMP Policy CV-3.11 eliminates the numeric standard and merely states that an
10 ordinance shall be developed to identify required procedures for removal of these trees. The
11 FEIR must analyze the impact of changing the standard, and must recommend specific
12 mitigations to be incorporated. It did not do so. Without delineation of the new standards and
13 procedures no meaningful analysis of the impact of the change can be made. The proposed
14 policy is fatally flawed because it cannot be analyzed in a meaningful manner.

15 37. The 2010 General Plan eliminated the current steep slope development policy's detailed
16 and quantitative standards for Carmel Valley. Current CVMP Policy 26.1.10.1 (CV) prohibits
17 development on slopes greater than 30%. However, the proposed CVMP Policy CV-3.4 deletes
18 this prohibition. The new policy is vague and undefined and will clearly allow development on
19 slopes in excess of 30%. The FEIR failed to adequately analyze the impact of the proposed
20 changes in relation to the existing regulatory environment and land use policies.

21 Respondents thereby violated its duties to certify an FEIR and adopt findings conforming
22 to the requirements of CEQA and the CEQA Guidelines. Accordingly, the certification of the
23 FEIR and the resolution approving the 2010 General Plan must be set aside.

24 **WHEREFORE**, petitioner demands entry of judgment as follows:

25 1. For a peremptory writ of mandate directing:

26 (a) Respondents to vacate and set aside its certification of the FEIR for the project
27 and the approval of the 2010 General Plan.


28 (b) Respondents to suspend all activity under the 2010 General Plan that could result

1 in any change or alteration in the physical environment until respondents have taken actions that
2 may be necessary to bring the certification of the FEIR into compliance with CEQA.

3 (c) Respondents to prepare, circulate, and consider a new and legally adequate EIR
4 and otherwise to comply with CEQA in any subsequent action taken to approve the project.

- 5 2. For petitioner's costs of suit.
- 6 3. For an award of attorney fees.
- 7 4. For all other equitable or legal relief that the Court considers just and proper.

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9
10
11 Date:

12 
13 _____
14 Ron DeHoff
15 Attorney for the
16 Carmel Valley Association

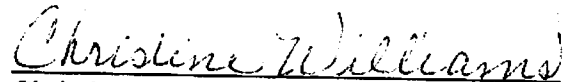
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VERIFICATION

I am President of petitioner, Carmel Valley Association, Inc. and am authorized to execute this verification on behalf of the petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true of my personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:


Christine Williams, President
Carmel Valley Association, Inc.

Ron De Hoff

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November 23, 2010

VIA U. S. MAIL AND FACSIMILE (831) 755-5888

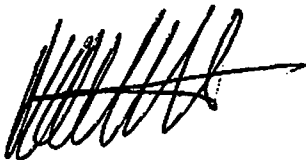
Gail Borkowski
Clerk to the Board
Monterey County
168 West Alisal, 1st Floor
Salinas, CA 93901

Re: 2010 Monterey County General Plan

Dear Ms. Borkowski,

PLEASE TAKE NOTICE that the Carmel Valley Association, Inc. intends to file a petition under the provisions of the California Environmental Quality Act against the County of Monterey and the Board of Supervisors of the County of Monterey challenging its certification of the Final Environmental Impact Report (SCH# 2007121001), the October 26, 2010 approval of the 2010 Monterey County General Plan, and to take other actions relating to that project. Please see Public Resources Code section 21167.5.

Yours truly,



Ron DeHoff
Attorney at Law