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16 REDWOOD REGION AUDUBON SOCIETY,
17 CITIZENS FOR A SUSTAINABLE HUMBOLDT,
18 and MARY GATERUD

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF HUMBOLDT**

21 NORTHCOAST ENVIRONMENTAL
22 CENTER, a non-profit organization;
23 REDWOOD REGION AUDUBON SOCIETY,
24 a non-profit organization; CITIZENS FOR A
25 SUSTAINABLE HUMBOLDT, a public
26 benefit corporation; and MARY GATERUD,

27 Petitioners and Plaintiffs,

28 v.

29 COUNTY OF HUMBOLDT, a political
30 subdivision of the State of California;
31 HUMBOLDT COUNTY BOARD OF
32 SUPERVISORS, and DOES 1 to 10, inclusive,

33 Respondents and Defendants.

34

35 ROLLING MEADOW RANCH, LLC, a
36 Florida limited liability company; ROLLING
37 MEADOW RANCH, INC., a Florida
38 corporation, and DOES 11 to 20,

39

40 Real Parties in Interest and Defendants.

FILED

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

CASE NO.: **CV2101703**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY, INJUNCTIVE AND
EQUITABLE RELIEF**

CEQA Action

[Public Resources Code, §§ 21000, *et seq.*;
Gov. Code, §§ 65000, *et seq.*; Bus. & Prof.
Code, § 17200; Cal. Code of Civil Procedure,
§§ 525, 1060, 1085 and/or 1094.5]

Table of Contents

1

2 INTRODUCTION AND SUMMARY 4

3 PARTIES 5

4 BACKGROUND FACTS 9

5 A. The Proposed Project and Project Site 9

6 B. Original Application for Conditional Use Permits, Initial Drafts of the

7 IS/MND, and Site Improvements in Furtherance of Project 10

8 C. Release of Original IS/MND, Public and Agency Comments Received,

9 and Postponement of Planning Commission Consideration of the

10 Project 11

11 D. Release of Revised IS/MND, Public and Agency Comments Received,

 and Planning Commission Consideration of the Project 11

12 E. Respondents’ Approval of the Project and Adoption of the IS/MND 12

13 F. Respondents’ Approval of Substantial Project Changes 12

14 LEGAL BACKGROUND 13

15 A. CEQA 13

16 B. Planning and Zoning Law 16

17 C. County Grading Ordinance. 17

18 D. Business and Professions Code, section 17200 – Unlawful Business

19 Practices. 18

20 JURISDICTION AND VENUE 18

21 STANDING AND EXHAUSTION OF ADMINISTRATIVE REMEDIES 19

22 STATUTES OF LIMITATIONS 20

23 NOTICE OF CEQA SUIT 21

24 PREPARATION OF THE RECORD 21

25 ARBITRARY AND CAPRICIOUS ACTIONS 21

26 PRIVATE ATTORNEY GENERAL DOCTRINE 22

27 IRREPARABLE HARM 22

28

| | | |
|----|--|----|
| 1 | RELIEF REQUESTED..... | 23 |
| 2 | A. Alternative and Peremptory Writs of Mandamus | 23 |
| 3 | B. Temporary and Permanent Injunctive Relief | 23 |
| 4 | C. Attorneys' Fees and Costs..... | 24 |
| 5 | FIRST CAUSE OF ACTION | 24 |
| 6 | SECOND CAUSE OF ACTION | 28 |
| 7 | THIRD CAUSE OF ACTION | 30 |
| 8 | PRAYER FOR RELIEF..... | 31 |
| 9 | VERIFICATION..... | 33 |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
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1 Petitioners and Plaintiffs NORTHCOAST ENVIRONMENTAL CENTER, REDWOOD
2 REGION AUDUBON SOCIETY, CITIZENS FOR A SUSTAINABLE HUMBOLDT, and
3 MARY GATERUD (“Petitioners”) allege as follows:

4 **INTRODUCTION AND SUMMARY**

5 1. By this action, Petitioners acting in the public interest seek a Writ of Mandate
6 directed to Respondents COUNTY OF HUMBOLDT (“County”), including the County
7 Planning and Building Department (collectively “Respondents”) and other requested relief.
8 Petitioners challenge Respondents’ unlawful actions taken on or about June 1, 2021, including
9 but not limited to Respondents’ approval of a grading plan and an operations plan for a
10 substantially modified version of commercial cannabis project known as the “Rolling Meadow
11 Ranch, LLC Project” (the “Project”). Through this Verified Petition for Writ of Mandate and
12 Complaint for Declaratory and Injunctive Relief (“Verified Petition”), Petitioners seek an order
13 compelling the County to rescind the grading plan, any approved operations plan for 2022, and
14 any other approvals that are inconsistent with the underlying adopted Initial Study / Mitigated
15 Negative Declaration (“IS/MND”) currently being challenged in a related action. Before the
16 Project applicant can proceed, Respondents must properly analyze, disclose, and mitigate the
17 significant adverse environmental impacts associated with the Project, as substantially revised.

18 2. According to the IS/MND and the adopted approval resolution, the Project will
19 involve the development of approximately 249,739 square feet (5.73 acres) of mixed-light
20 commercial cannabis cultivation space, located in sixteen (16) hard-sided greenhouses, and
21 five processing buildings, concentrated in four clusters spread along approximately five miles
22 of narrow unpaved ranch roads. The Project site is an approximately 7,110-acre set of
23 undeveloped parcels referred to as the “Rolling Meadow Ranch” (APNs 217-201-001, 217-
24 181-027, 217-181-028, 217-182-001, 217-024-011, 217-024-006, 217-024-010, 217-024-003,
25 217-025-001).

26 3. The grading plan and other approvals granted by Respondents after the initial
27 Project approval (the “Project Changes”) are inconsistent with the Project described and
28

1 analyzed in the IS/MND and conflict with mandatory conditions included in the six
2 Conditional Use Permits (“CUPs”) issued for the Project.

3 4. By approving substantial changes to the Project without conducting any
4 subsequent environmental review, Respondents violated the California Environmental Quality
5 Act (Public Resources Code (“PRC”), §§ 21000 et seq. (“CEQA”) and the CEQA Guidelines
6 (Title 14, California Code of Regulations, §§ 15000 et seq. (“CEQA Guidelines”)).

7 5. By approving a Project that violates adopted Conditions of Approval,
8 Respondents also prejudicially abused their discretion and failed to proceed in the manner
9 required by law, in violation of the State Planning and Zoning Law (Gov. Code, §§ 65000 et
10 seq.). More specifically, since approving the Project in March 2021, Respondents approved
11 substantial changes to the Project that were not analyzed in the IS/MND and violate adopted
12 mandatory conditions. These characteristics make the modified Project inconsistent with
13 mandatory policies set forth in the County’s General Plan, zoning ordinance, and other land
14 use regulations.

15 6. As described further below, by not complying with mandatory Conditions of
16 Approval set forth in its Conditional Use Permits (“CUPs”), Real Parties in Interest have
17 violated California’s Unfair Competition Law (Business and Professions Code section 17200 et
18 seq.) by engaging in unlawful activities.

19 7. Real Parties in Interest have insisted upon utilizing a private road on a
20 neighboring parcel – over the landowner’s strenuous objections and in spite of blatant
21 inconsistencies with the Project as described in the IS/MND and conditioned in the CUPs.

22 8. For these reasons, and as described further below, the County’s approval of the
23 grading plan and an operations plan for the Project that conflict with the Project as described in
24 the IS/MND and conditioned in the Project permits constitute a prejudicial abuse of discretion
25 and must be set aside.

26 **PARTIES**

27 9. Petitioner NORTHCOAST ENVIRONMENTAL CENTER (“NEC” or
28 “Petitioner”) is, and at all times herein mentioned was, a 501(c)(3) nonprofit conservation

1 organization founded in 1971 that is dedicated to the promotion and understanding of the
2 relations between people and the biosphere, and to conserve, protect, and celebrate the
3 terrestrial, aquatic, and marine ecosystems of Northern California and Southern Oregon. NEC
4 has approximately 1,400 members, including members who reside within communities in the
5 Project's vicinity. NEC has worked for many years to protect ecosystems and the quality of life
6 for people in unincorporated Humboldt County. Members of NEC objected to Project approval
7 during the underlying administrative process on the basis of direct, adverse, and unmitigated
8 effects to the environment and community in the McCann area. NEC members generally enjoy
9 Humboldt County's rural character, which is threatened by certain industrial-scale marijuana
10 sites like this Project. NEC members will be harmed by the Project in their enjoyment of their
11 personal properties, in their financial interests in their properties, and in their use and enjoyment
12 of the various forested landscapes and waterways in Humboldt County from which they draw
13 aesthetic, spiritual, and recreational value. These harms are a direct result of Respondents'
14 unlawful decision to avoid the environmental review required for the Project Changes. NEC
15 and its members have submitted letters and comments in opposition to the Project. Petitioner
16 NEC and its members have a clear and present right to, and beneficial interest in, the
17 performance by the Board of its public duty to comply with the provisions of CEQA, the State
18 Planning and Zoning Law, and the Code of Civil Procedure. NEC was duly authorized to and
19 does bring this action in a representative capacity on behalf of its members and in the public
20 interest.

21 10. Petitioner REDWOOD REGION AUDUBON SOCIETY ("RRAS"), is a
22 501(c)(3) nonprofit public benefit corporation founded in 1969 whose mission is to a) act to
23 promote a wise, balanced, responsible, and ethical use of natural systems on a local, national,
24 and global scale; and b) protect the biotic and abiotic components of local, national, and global
25 natural systems. RRAS advocates for the protection of birds and other wildlife by supporting
26 local conservation efforts. RRAS represents approximately 500 members in Humboldt, Del
27 Norte, Trinity, and Siskiyou Counties. RRAS and its members submitted letters and comments
28 in opposition to the Project. Petitioner RRAS and its members have a clear and present right to,

1 and beneficial interest in, the performance by Respondents of their public duty to comply with
2 the provisions of CEQA, the State Planning and Zoning Law, and the Code of Civil Procedure.
3 RRAS was duly authorized to and does bring this action in a representative capacity on behalf
4 of its members and in the public interest.

5 11. Upon information and belief, Real Parties in Interest and Defendants sued as
6 Does 11 through 20, inclusive, have or may soon have an ownership interest in the Project and /
7 or in the Rolling Meadow Ranch property, or portion thereof. Plaintiff does not currently know
8 the true names and capacities of those who may claim such an ownership interest, but Plaintiff
9 will amend his Verified Petition to add the true names and capacities of these defendants when
10 they are ascertained.

11 12. Petitioner Mary Gaterud is a member of CSH and a member of RRAS.
12 Petitioner Gaterud is, and at all times mentioned herein was, a landowner and County resident
13 whose property is located in close proximity to the Project site. Petitioner Gaterud will be
14 directly and substantially impacted by Project construction and operation.

15 13. Respondent COUNTY OF HUMBOLDT (“County”) is, and at all times herein
16 mentioned was, a political and geographic subdivision of the State of California. The County,
17 including all departments, staff, and agents, is, and at all relevant times was, responsible for
18 administering and carrying out its laws and all applicable federal and State laws. The County is
19 the “lead agency” for the purposes of Public Resources Code Section 21067, with principal
20 responsibility for conducting environmental review of the Project. Respondent County has the
21 authority and duty to enforce its regulations and permit conditions within its jurisdiction in
22 order to protect the health, welfare and safety of the residents of the County.

23 14. Petitioners are unaware of the true names and capacities of Respondents DOES 1
24 through 10, and sue such respondents by fictitious names. On information and belief, the
25 fictitiously named respondents are also responsible for the actions described in this Petition.
26 When the true identities and capacities of these respondents have been determined, Petitioners
27 will amend this Petition to insert such identities and capacities. Each of the respondents is the
28

1 agent and/or employee of Respondents, and each performed acts on which this action is based
2 within the course and scope of such respondent's agency and/or employment.

3 15. Hereafter, Respondents County and DOES 1 through 10, inclusive are referred to
4 as "Respondents."

5 16. On information and belief, Real Party in Interest and Defendant ROLLING
6 MEADOW RANCH, LLC ("Real Party in Interest" or "RMR LLC") is a Project applicant
7 and/or landowner and is the only entity listed as the applicant on the County's Notice of
8 Determination ("NOD") filed for the Project on or about March 10, 2021. Real Party in Interest
9 does business in the State of California, and is a recipient of the Project approvals that are the
10 subject of this Petition and therefore is a real party in interest within the meaning of Public
11 Resources Code, section 21167.6.5(a).

12 17. On information and belief, Real Party in Interest and Defendant ROLLING
13 MEADOW RANCH, INC. ("Real Party in Interest" or "RMR Inc.") is a Project applicant
14 and/or landowner, as referenced in Project documents. Real Party in Interest RMR Inc. does
15 business in the State of California and was identified in both the original application for Project
16 approvals and the application for the grading plan challenged in this litigation and therefore is a
17 real party in interest within the meaning of Public Resources Code, section 21167.6.5(a).

18 18. Petitioners are unaware of the true capacities of real parties in interest DOES 11
19 through 20, and sue such real parties in interest by fictitious names. On information and belief,
20 the fictitiously named real parties in interest are directly and materially affected by the actions
21 described in this Verified Petition. Petitioners do not currently know the true names and
22 capacities of those who may claim an ownership interest in the Property. When the true
23 identities and capacities of these real parties in interest have been determined, Petitioners will
24 amend this Petition to insert such identities and capacities.

25 19. Hereafter, Real Party in Interest RMR LLC, Real Party in Interest RMR Inc. and
26 DOES 11 through 20, inclusive are collectively referred to as "Real Parties in Interest."

27
28

1 **BACKGROUND FACTS**

2 20. Petitioners incorporate by reference each and every allegation set forth above.
3 On information and belief, Petitioners allege the following facts:

4 **A. The Proposed Project and Project Site**

5 21. The proposed Project site is an expansive undeveloped group of remote forested
6 ranch and timberland parcels in southern Humboldt County, near the small community of
7 McCann, on the “far side” of the middle main stem of the Eel River. McCann Road, the
8 Project’s primary access route, is impassable each winter and into the spring because the single-
9 lane McCann Bridge is submerged for several months every year when the Eel River swells
10 with rain runoff.

11 22. The remote and difficult to access site is located in the Eel River canyon, an area
12 characterized by steep forested mountains interspersed with open grassland areas. The Project
13 site supports numerous sensitive natural vegetation communities including native grassland
14 prairie, riparian and vernal pools, oak woodland, and Douglas fir and redwood forests.

15 23. The proposed Project site is far from existing housing centers and other services.
16 By the County’s own estimate, the average daily 22 on-site Project employees will together
17 drive over 481,800 miles per year to access the remote site.

18 24. The Project, as described in the adopted IS/MND, includes the construction of
19 sixteen (16) greenhouses, ranging in size from between approximately 17,000 and 20,000
20 square feet each, and several cannabis processing buildings, located in four large clusters along
21 an unpaved, narrow, ranch road with multiple blind curves, steep grades, and precipitous drop
22 offs. Up to 30 employees will access the site, with an estimated daily average of 22 on-site
23 employees. Cultivation and processing operations will occur year-round, producing three to
24 four plant cycles annually.

25 25. In spite of the specific description of the Project in the adopted IS/MND, and the
26 mandatory Conditions of Approval requiring adherence to that description and to the approved
27 site plan, the applicant has declared under oath his intention to cultivate cannabis during the
28 2022 growing season in “hoop houses.”

1 **B. Original Application for Conditional Use Permits, Initial Drafts of the**
2 **IS/MND, and Site Improvements in Furtherance of Project**

3 26. In late December, 2016, Real Party in Interest RMR Inc. submitted its original
4 application for conditional use permits under the County's CMMLUO. The original application
5 described the proposed Project as replacing pre-existing illegal cannabis grow operations and
6 proposing new, expanded, mixed light grow operations with a total of eighteen (18)
7 greenhouses.

8 27. On or about August 9, 2017, the County Department of Public Works issued an
9 interoffice memorandum stating that the application for the Project was incomplete and that a
10 Road Evaluation Report would be required for the McCann Road access route.

11 28. On or about July 23, 2018, Transcon Environmental, a "peer review" consultant
12 retained by the County, submitted two memoranda to the County recommending revisions to
13 the draft Initial Study. One of these memoranda included a thirteen-page table describing
14 specific, substantive deficiencies in the analysis. Many of these deficiencies were never
15 adequately addressed in later drafts of the IS/MND.

16 29. On or about December 21, 2018, the applicant submitted to the County a revised
17 draft Initial Study (IS) for the Project. Staff provided feedback on this draft in February 2019,
18 and the applicant responded to staff's feedback almost a year later, in January 2020.

19 30. County staff's February 2019 letter summarized the feedback as follows:

20 The bar for requiring an [EIR] is whether a fair argument of a potentially significant
21 impact exists. This document does nothing to present evidence on the record that
22 there is not the potential of a significant impact or that a potentially significant
23 impact has been identified and can be mitigated to a less than significant level. This
24 document will require substantial revision in order to adequately assess whether or
25 not there are potentially significant impacts associated with the construction and
26 operation of the project. Alternatively, you may choose to prepare an EIR if the
27 impacts of the proposed project cannot be mitigated to a less than significant level.
28 (Letter from County planner to applicant, dated February 21, 2019, p. 4.)

25 31. In its comments on the draft IS/MND, County planning staff directed the
26 applicant to make substantial revisions to the analysis, including requests to provide *inter alia*, a
27 substantiated analysis concerning the potential hydrological connectivity of Project wells to
28 surface waters, an analysis of the impacts of applying lignin sulfonate on access roads to control

1 dust, a description of all improvements to access roads necessary to satisfy fire safe standards,
2 and a number of specific revisions to Project site plans.

3 **C. Release of Original IS/MND, Public and Agency Comments Received, and**
4 **Postponement of Planning Commission Consideration of the Project**

5 32. On or about July 17, 2020, the County released the original IS/MND for a 30-
6 day public review period that ended on August 17, 2020.

7 33. The IS/MND failed to address several of the critical deficiencies identified by
8 County staff, the County's peer review consultant, and CDFW early in the environmental
9 review process. These deficiencies concerned issues central to the Project's environmental
10 impacts, such as the adequacy of access roads under the County's standards, the potential
11 connection of wells to surface water, and complete baseline surveys for biological resources.

12 34. The first Planning Commission meeting where this Project was considered for
13 approval was scheduled for August 20, 2020.

14 35. At its meeting on September 10, 2020, the Planning Commission decided to
15 again continue its consideration of the Project and the IS/MND to its meeting on November 19,
16 2020. At its meeting on November 19, 2020, the Planning Commission again continued its
17 consideration of the Project and the IS/MND.

18 **D. Release of Revised IS/MND, Public and Agency Comments Received,**
19 **and Planning Commission Consideration of the Project**

20 36. On or about December 1, 2020, the County released, for a 30-day public review
21 and comment period, a revised IS/MND. Planning Commission Approval and Appeal to Board
22 of Supervisors

23 37. A Planning Commission meeting was scheduled to consider the Project for
24 approval on January 7, 2021.

25 38. On or about January 21, 2021, the Planning Commission voted to approve the
26 Project and adopt the IS/MND.

27 39. On or about February 2, 2021, and pursuant to HCC section 312-13.2, three
28 neighboring property owners, Francis Greenleaf, John Richards, and Patty Richards, filed a

1 Notice of Appeal and paid the required appeal fees. These parties appealed the Planning
2 Commission's decision to the Board on the grounds that the approval (1) violated CEQA
3 because the IS/MND was deficient and an EIR is required for the Project and (2) was
4 inconsistent with the County's General Plan and applicable land use regulations.

5 **E. Respondents' Approval of the Project and Adoption of the IS/MND**

6 40. On or about March 9, 2021, the Board heard the appeal from the Planning
7 Commission's decision to approve the Project and adopt the IS/MND. The Board narrowly
8 denied the appeal and approved the Project by a vote of 3 to 2.

9 41. The Board adopted an approval resolution that includes Findings of Fact,
10 Conditions of Approval, and a Mitigation Monitoring and Reporting Program.

11 42. On or about March 10, 2021, the County filed a CEQA NOD concerning the
12 adopted revised IS/MND and Project approval.

13 43. On or about April 8, 2021, Petitioners filed a lawsuit challenging the adopted
14 IS/MND (Humboldt County Superior Court, Case No. CV2100518).

15 **F. Respondents' Approval of Substantial Project Changes.**

16 44. On or about April 8, 2021, the Real Parties in Interest applied for a grading plan
17 for "Site 3" within the Project area.

18 45. On or about April 16, 2021, County staff prepared a plan check document
19 identifying a number of requirements that applied to the proposed grading plan. On or about
20 April 19, 2021, County staff sent this plan check document to the applicant and his grading
21 consultant.

22 46. On or about April 19, 2021, the applicant's grading consultant wrote to the
23 County's Planning Director, requesting a waiver of the "soils report" requirement that
24 ordinarily would apply.

25 47. On or about April 23, 2021, County staff responded to the application for a
26 grading plan in an email. The email reported that the grading permit was not approved and
27 described multiple apparent inconsistencies with the Project as approved and as described and
28 analyzed in the Revised IS/MND. For example, the email stated "It appears that some of the

1 slopes proposed for grading exceed 15%. These areas cannot be authorized for cultivation
2 under the CMMLUO.” In addition, the email stated:

3 The proposed site configuration (04.21.21 site plan) differs from the Staff Report
4 for the Conditional Use Permit. Proposed changes to the site configuration or
5 operation require planning review. In addition to the revised site plan for COA
6 31, please provide an addendum to the operations plan describing any proposed
7 changes to the operation.” (*Ibid.*)

8 48. On or about April 27, 2021, an unknown applicant representative submitted an
9 unsigned letter purporting to address the grading plan’s consistency with adopted Conditions of
10 Approval, numbers 10, 15, 41, and 42. The letter conspicuously omitted any mention of
11 Condition of Approval #31 and other conditions requiring adherence to the project description
12 in the adopted IS/MND and the approved site plan.

13 49. In an email sent on or about April 29, 2021, the County’s Chief Building official
14 indicated, without explanation, that he waived the soils report requirement for the grading plan.

15 50. On or about May 27, 2021, the applicant submitted a revised grading plan to the
16 County for approval. The revised grading plan includes a site plan depicting an access route
17 that is inconsistent with the Main Access Road described in the adopted IS/MND.

18 51. On or about June 1, 2021, Respondents issued the grading plan at issue in this
19 lawsuit.

20 52. Despite the prior objections of the neighboring landowner, and the specific
21 change to the adopted IS/MND to avoid use of the private road on a neighboring parcel, the
22 approved grading plan identifies this “shortcut road” as part of the access route for Project
23 grading activities. The grading plan is silent with respect to improvements to the Main Access
24 Road adjacent to Project Facilities #1 and #2 called for in the revised IS/MND and required in
25 the corresponding adopted Conditions of Approval.

26 **LEGAL BACKGROUND**

27 53. Petitioners incorporate by reference each and every allegation set forth above.

28 **A. CEQA**

54. Courts have consistently held that the foremost principle under CEQA is that it
be “interpreted in such a manner as to afford the fullest possible protection to the environment

1 within the reasonable scope of the statutory language.” (*Citizens of Goleta Valley v. Bd. of*
2 *Supervisors* (1990) 52 Cal.3d 553 (1990) 52 Cal.3d at 563-64, quoting *Friends of Mammoth v.*
3 *Bd. of Supervisors* (1972) 8 Cal.3d 247, 259.) Courts have further held that “[i]t is, of course,
4 too late for a grudging, miserly reading of CEQA.” (*Laurel Heights Improvement Assn. v.*
5 *Regents of California* (1988) 47 Cal.3d at 390 (*Laurel Heights I*), citing *Bozung v. Local*
6 *Agency Formation Comm’n.* (1975) 13 Cal.3d 263, 274.) An agency’s action violates CEQA if
7 it “thwarts the statutory goals” of “informed decision making” and “informed public
8 participation.” (*Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

9 55. CEQA applies only to discretionary projects, not ministerial projects. (Pub.
10 Resources Code, § 21080(a), (b)(1).) A discretionary project “means a project which requires
11 the exercise of judgment or deliberation when the public agency or body decides to approve or
12 disapprove a particular activity.” (CEQA Guidelines, § 15357.) In contrast, a ministerial
13 project outside the scope of CEQA occurs “where the public agency or body merely has to
14 determine whether there has been conformity with applicable statutes, ordinances, or
15 regulations.” (*Ibid.*) “Where a project involves an approval that contains elements of both a
16 ministerial action and a discretionary action, the project will be deemed to be discretionary and
17 will be subject to the requirements of CEQA.” (CEQA Guidelines, § 15268(d).)

18 56. CEQA requires public notice and participation in decisions that impact
19 communities and the natural environment. These core requirements are in fact at the heart of
20 CEQA’s dual purposes: (1) to inform decision makers and the public about the potential,
21 significant environmental effects of a project, and (2) to require public agencies to avoid or
22 reduce environmental damage when feasible by requiring environmentally superior alternatives
23 and all feasible mitigation measures. (PRC, §§ 21002.1, 21151; CEQA Guidelines, §§
24 15002(a)(1)-(3); *Citizens of Goleta Valley, supra*, 52 Cal.3d at 564.)

25 57. When an approved project has been substantially changed, CEQA’s subsequent
26 environmental review procedures are implicated.

27 Once [courts] have determined that the subsequent review provisions apply to a project
28 approved through a negative declaration, our application of the standard of review
changes and is less deferential to the agency. It is less deferential because a negative
declaration requires a major revision—i.e., a subsequent EIR or mitigated negative

1 declaration—whenever there is substantial evidence to support a fair argument that
2 proposed changes “might have a significant environmental impact not previously
3 considered in connection with the project as originally approved.” [Citations.]
4 Proposed changes might have a significant environmental impact when there is some
5 competent evidence to suggest such an impact, even if other evidence suggests
6 otherwise. [Citation.] This means that an agency's determination that a major revision
7 to a negative declaration is not required will necessarily lack substantial evidence when
8 a fair argument exists that the project might have a previously unstudied significant
9 environmental impact.

6 (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.*
7 (2017) 11 Cal.App.5th 596, 607-608 [citations omitted], quoting *Friends of College of San*
8 *Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 959,
9 citing *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

10 Accordingly, “judicial review must reflect the exacting standard that an agency must apply
11 when changes are made to a project that has been approved via a negative declaration.”

12 (*Friends of College of San Mateo Gardens, supra*, 1 Cal.5th at p. 953.)

13 58. The initial study must “provide documentation of the factual basis for the finding
14 in a Negative Declaration that a project will not have a significant effect on the environment.”
15 (CEQA Guidelines, § 15063(c)(5).))

16 59. “The decision as to whether a project may have one or more significant effects
17 shall be based on substantial evidence in the record of the lead agency.” (CEQA Guidelines, §
18 15064.) Substantial evidence includes facts, reasonable assumptions predicated on facts, and
19 expert opinion supported by facts; however, it does not include argument, speculation, or
20 unsubstantiated opinion or narrative. (PRC, §§ 21080(e), 21082.2(c); CEQA Guidelines, §
21 15064(f)(5).)

22 60. “Significant environmental effect” is defined broadly as “a substantial or
23 potentially substantial adverse change in the environment.” (Pub. Res. Code, § 21068; *see also*
24 CEQA Guidelines, § 15382.) To satisfy CEQA’s test for significance, an effect on the
25 environment need not be “momentous” — rather, it is enough that the impacts are “not trivial.”
26 (*No Oil, Inc., supra*, 13 Cal.3d at p. 83.)

27 ///

28

1 **B. Planning and Zoning Law**

2 61. The California State Planning and Zoning Law requires the legislative body of
3 each county to adopt a general plan for the physical development of the county. (Gov. Code, §§
4 65300.) The County’s General Plan is a fundamental land use planning document and serves as
5 the constitution for future development within the County. (See Gov. Code, §§ 65009, 65850.)
6 Land use actions, including the approvals associated with the Project, must be consistent with
7 the General Plan. (See *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors*
8 (1998) 62 Cal.App.4th 1332, 1336 (*FUTURE*); see also *California Native Plant Society v. City*
9 *of Rancho Cordova* (2009) 172 Cal.App.4th 603, 636.) To be found consistent with the General
10 Plan, the approved Project must further the objectives and policies of the General Plan and may
11 not prevent their attainment. (*Ibid.*).

12 62. Inconsistency with even one mandatory general plan policy can be “enough to
13 scuttle a project.” (See *FUTURE, supra*, 62 Cal.App.4th at p. 1341, citing *San Bernardino*
14 *Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 753.).

15 63. “Subordinate to the general plan are zoning laws, which regulate the geographic
16 allocation and allowed uses of land.” (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54
17 Cal.App.4th 499, 531.)

18 Zoning laws must conform to the adopted general plan. [Citations.] These
19 enactments provide the authority and the criteria for the regulation of land uses.
20 [Citations.] [¶] Zoning laws regulate land uses in two basic ways. Some uses
21 are permitted as a matter of right if the uses conform to the zoning ordinance.
22 Other sensitive land uses require discretionary administrative approval pursuant
23 to criteria in the zoning ordinance. [Citation.] They require a conditional use
24 permit. [Citation.] The reason for discretionary treatment is that these are uses
25 which ‘cannot be said to be always compatible in some zones while always
26 incompatible in others . . . uses that should not be allowed as of course, but
27 could be allowed subject to conditions’”

28 (*Hewlett, supra*, 54 Cal.App.4th at p. 532, quoting *Neighborhood Action Group v. County of*
Calaveras (1984) 156 Cal.App.3d 1176, 1183.)

 64. Conditional use permits are not only part of local zoning laws, “[t]hey are the
mechanism for enforcing zoning ordinances.” (See *IT Corp. v. Solano County Bd. of*
Supervisors (1991) 1 Cal. 4th 81, 93.) The failure to observe conditions set forth in a permit

1 necessarily involves a violation of zoning laws which allow such activity only if certain
2 conditions are observed. In other words, a violation of a permit's conditions is also a violation
3 of the zoning law, and is therefore unlawful." (*Hewlett, supra*, 54 Cal.App.4th at p. 532.)

4 **C. County Zoning Code and Grading Ordinance.**

5 65. Under the County's code, discretionary permits cannot be issued until after
6 environmental review is completed. (Humboldt County Code ("HCC"), § 381-2.) Further,
7 "The site or location of a proposed discretionary project shall not be physically altered by the
8 owner or his/her agents until the environmental documents for the project have been approved
9 by the lead department and posted in the manner required herein and until all applicable County
10 permits have been issued." (*Id.* at § 381-3.) "The lead department may grant exceptions to the
11 preceding two sections authorizing temporary or minor site alterations which do not as a
12 practical matter commit the owner or the land to completion of the proposed discretionary
13 project." (*Id.* at § 381-4.)

14 66. Humboldt County Code, section 312-10, subdivision 10.1 provides "The
15 issuance of a permit authorizes the property owner to undertake the proposed development
16 immediately upon the effective date of the permit subject to all conditions or restrictions
17 imposed by the Hearing Officer; provided, however, that all other permits, licenses, certificates
18 and other grants of approval to which the proposed development project is subject must be
19 secured before the development may be commenced."

20 67. Because the grading plan involves earthmoving in excess of 5,000 cubic yards, it
21 is defined as "engineered grading" and must comply with specific requirements under the
22 County's Grading Ordinance. (*See* HCC, § 331-14(e).) An application for an engineered
23 grading permit "shall be accompanied by two (2) sets of plans and specifications, and
24 supporting data consisting of a soils engineering report and engineering geology report." (*Id.* at
25 § 331-14(e)(4).) "A soil engineering report is required when one or more of the following
26 conditions exist or are proposed: (A) the depth (or height) of cut or fill is three (3) feet or
27 greater; (B) the fill is to support structural footings; (C) an engineered cut or fill is required; (D)

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1 the soils are or may be subject to significant shrink-swell; or [E.] material exists that may be
2 subject to settlement or subsidence.” (*Id.* at § 336-5(d)(2).)

3 68. The requirement for a soils engineering report may be waived by the Chief
4 Building Official only when all of the following criteria are met: “(1) An adequate geologic
5 and/or soil assessment at a suitable scale already exists for the site proposed for development;
6 or (2) Reports are found not to be required following an evaluation of the criteria listed in
7 subsection (4) by the Building Official; and (3) The proposed development is not within a
8 Critical Water Supply Area as designated in the General Plan.” (*Id.* at § 336-5(e).)

9 **D. Business and Professions Code, section 17200 – Unlawful Business Practices.**

10 69. California law also prohibits unlawful business practices:

11 The ‘unlawful’ practices prohibited by [Business and Professions Code] section
12 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or
13 municipal, statutory, regulatory, or court-made. [Citation.] It is not necessary
14 that the predicate law provide for private civil enforcement. [Citation.] As our
Supreme Court put it, section 17200 ‘borrows’ violations of other laws and treats
them as unlawful practices independently actionable under section 17200 et seq.

15 (*Hewlett, supra*, 54 Cal.App.4th at p. 531-532, citations omitted;

16 70. “Section 17200 is not confined to anticompetitive business practice but is
17 equally directed toward ‘the right of the public to protection from fraud and deceit.’ [Citation.]
18 Furthermore, the section 17200 proscription of ‘unfair competition’ is not restricted to deceptive
19 or fraudulent conduct but extends to any unlawful business practice.” (*Committee on*
20 *Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 209-210, citing
21 *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 110.)

22 **JURISDICTION AND VENUE**

23 71. Respondents have taken final agency action with respect to the challenged
24 discretionary decision by approving the grading plan for the Project and waiving the
25 requirement for a soils report. Respondents had a duty to comply with applicable state laws,
26 including CEQA and the State Planning and Zoning Law, prior to exercising their discretion to
27 authorize post-approval Project changes.

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1 72. This Court has jurisdiction over the matters alleged in this Petition pursuant to
2 Code of Civil Procedure, sections 526, 527, 1060, 1087, and 1085, and Government Code,
3 section 65860. Petitioner files this Petition for Writ of Mandate and Complaint for Declaratory
4 and Injunctive Relief pursuant to Code of Civil Procedure, sections 526 (injunctive relief), 527
5 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), and Public Resources
6 Code, section 21168.5 (judicial review under CEQA).

7 73. The Court has jurisdiction to issue declaratory and injunctive relief pursuant to
8 Code of Civil Procedure, section 1060 and section 525 *et seq.*, respectively.

9 74. Venue for this action properly lies in the Superior Court for the State of
10 California in and for the County of Humboldt pursuant to sections 393(b), 394, and 395 of the
11 Code of Civil Procedure. The Respondents and the Project are located within the County of
12 Humboldt. Many of the significant environmental impacts from the Project Changes that are
13 the subject of this lawsuit would occur in Humboldt County, and the Project Changes would
14 affect the interests of County residents, including Petitioners' members who reside in the
15 County.

16 **STANDING AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 75. Petitioners have standing to assert the claims alleged in this Petition because
18 each of them is beneficially interested in this matter. Petitioner Gaterud owns property located
19 near the Project site. Petitioner Gaterud resides and works year-round at this property.

20 76. Petitioner Gaterud meets the standing requirements of Section 17204 and
21 Petitioner complies with Section 382 of the Code of Civil Procedure.

22 77. Pursuant to Code of Civil Procedure, section 367, Petitioners NEC, RRAS, and
23 CSH have standing to sue if the organization or someone the respective organization represents
24 has either suffered or is threatened with an injury of sufficient magnitude to reasonably assure
25 the relevant facts and issues will be adequately presented. Here, Petitioners NEC, RRAS, and
26 CSH have standing to sue because each organization has members who are threatened with
27 injuries caused by the County's approval of the Project Changes. Petitioners NEC, RRAS, and
28 CSH have members who reside near or visit the Project area, including the adjacent section of

1 the main stem of the middle fork of the Eel River, for recreation and enjoyment. As non-profit
2 organizations that represent individuals who live, work or recreate in the Project's vicinity who
3 will be directly affected by the significant environmental impacts of the Project and the Project
4 Changes, Petitioners NEC, RRAS, and CSH have direct interests in ensuring that Respondents
5 fulfill their duties under CEQA, the Planning and Zoning Law, and other applicable laws.

6 78. Each of the Petitioners would be impacted by Project construction and operation.
7 All Petitioners have an independent beneficial interest in Respondents performing their public
8 duties and in the faithful execution of the law by public officers.

9 79. Prior to Respondents' decision to approve the grading plan for the Project,
10 Petitioners or, in the case of Petitioners NEC, RRAS, and CSH, their members, actively
11 participated in the administrative process and objected to adoption of the IS/MND and approval
12 of the Project.

13 80. The Project Changes reflected in the grading permit and the 2022 operations plan
14 approved by the County did not involve notice and public hearings. The Project Changes
15 occurred while the Project was and continues to be challenged by these petitioners in the related
16 case *NEC, et al. v. County of Humboldt, et al.*, CV2100518.

17 81. Petitioners have performed any and all conditions precedent to filing the instant
18 action and have exhausted available administrative remedies to the extent possible and required
19 by law. The determinations by Respondents are final and no further administrative appeal
20 procedures are provided by state or local law.

21 STATUTES OF LIMITATIONS

22 82. Petitioners incorporate by reference each and every allegation set forth above.

23 83. On information and belief, on June 1, 2021, Respondents' staff approved the
24 grading plan for the Project challenged herein.

25 84. Respondents did not prepare any subsequent environmental review for the
26 grading plan and did not file any form of notice pursuant to CEQA concerning the grading plan.

27 85. Pursuant to Public Resources Code, section 21167, subdivision (a) and CEQA
28 Guidelines, section 15112(c)(5)(a), the statute of limitations for a CEQA challenge to the

1 Respondents' decision to approve the grading plan for the Project expires 180 days after that
2 approval decision.

3 86. This Verified Petition was filed in Humboldt County Superior Court on or before
4 November 29, 2021 (i.e., within 180 days of the date the grading plan was approved plus one
5 day because the deadline falls on a Sunday).

6 87. Petitioners file this Verified Petition prior to the expiration of any and all
7 applicable statute of limitations.

8 NOTICE OF CEQA SUIT

9 88. On November 24, 2021, Petitioners sent by email and mail a letter to Clerk of
10 the Board of Supervisors, Kathy Hayes, and to County Counsel, Jefferson Billingsley, giving
11 notice to Respondents of Petitioners' intent to file this lawsuit on or before November 29, 2021,
12 seeking to invalidate the County's decisions to approve the grading plan, the 2022 operations
13 plan, and all other approvals that are inconsistent with the Project as described in the IS/MND
14 and conditioned in Resolution 21-26. (See Exhibit A: letter to Clerk of the Board and to County
15 Counsel.) This letter satisfied Petitioners' duties under Public Resources Code section 21167.5.

16 89. Petitioners will provide notice of this action to the Attorney General of the State
17 of California, by serving a true and correct copy of this Verified Petition along with a notice of
18 its filing, as required by Public Resources Code, § 21167.7 and Code of Civil Procedure, § 388.

19 PREPARATION OF THE RECORD

20 90. Pursuant to Public Resources Code, § 21167.6, subdivision (b)(2), Petitioners
21 elect to prepare the administrative record of proceedings in this action. (See Exhibit B: Notice
22 of Petitioners' Election to Prepare the Administrative Record.)

23 ARBITRARY AND CAPRICIOUS ACTIONS

24 91. Petitioners bring this action on the basis, among others, of Government Code
25 section 800, and other applicable laws, which entitles Petitioners to attorneys' fees in actions to
26 overturn agency decisions that are arbitrary and capricious.

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1 **PRIVATE ATTORNEY GENERAL DOCTRINE**

2 92. Petitioners bring this action as private attorneys general pursuant to Code of
3 Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important
4 rights affecting the public interest.

5 93. Issuance of the relief requested in this Verified Petition will (1) confer a
6 significant benefit on the general public by requiring Respondents to carry out their duties under
7 CEQA and other applicable laws before approving the Project and will (2) result in the
8 enforcement of important rights affecting the public interest by requiring that development of a
9 Project that complies with CEQA and is consistent with the County's General Plan and land use
10 regulations.

11 94. The necessity and financial burden of enforcement are such as to make an award
12 of attorneys' fees appropriate in this case.

13 95. Pursuant to California Code of Civil Procedure section 388, Petitioners will
14 serve a copy of this Petition on the California Attorney General's office to give notice that
15 Petitioners brought this lawsuit as a private attorney general under Code of Civil Procedure
16 section 1021.5.

17 **IRREPARABLE HARM**

18 96. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary
19 law unless this Court grants the requested writ of mandate to require Respondents to set aside
20 the Project Approvals.

21 97. Petitioners are entitled to injunctive relief under Code of Civil Procedure section
22 526 because the Project construction and operation threatens irreparable environmental harm.
23 Unless enjoined, Real Parties in Interest will commence construction and operation of the
24 Project despite its inconsistencies with the approved IS/MND and adopted Conditions or
25 approval, and despite related unstudied and unmitigated potentially significant effects on the
26 environment. Petitioners would thereby suffer irreparable harm due to the County's failure to
27 take the steps required by law to adequately protect the environment. Injunctive relief is thus
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1 warranted under Code of Civil Procedure section 525 et seq. and Public Resources Code section
2 21168.9 to prevent irreparable harm to the environment.

3 98. In the absence of such remedies, Respondents' approvals will remain in effect in
4 violation of state and local law and Petitioners will be irreparably harmed. No money damages
5 or legal remedy could adequately compensate Petitioners for that harm.

6 **RELIEF REQUESTED**

7 99. Petitioners incorporate by reference each and every allegation set forth above.

8 100. Petitioners seek a writ of mandate, temporary and permanent injunctive relief,
9 costs, and attorneys' fees.

10 **A. Alternative and Peremptory Writs of Mandamus**

11 (Code Civ. Proc., §§ 1085, 1087; PRC, § 21168.5; Gov. Code, §§ 65860, 65030.1)

12 101. Petitioners seek alternative and peremptory writs of mandate pursuant to Code of
13 Civil Procedure section 1085. Petitioners also seek a writ of mandate pursuant to Code of Civil
14 Procedure section 1087, which provides that "[t]he writ may be either alternative or
15 peremptory."

16 102. Petitioners seek alternative and peremptory writs of mandate requiring the
17 County to void its approval of the grading plan for the Project, and any other approvals that
18 allow changes from the design described in the adopted IS/MND. Petitioners seek to void such
19 actions on the grounds that the County did not substantially comply with CEQA before taking
20 those actions, thereby prejudicially abusing its discretion. (*See* PRC, § 21168.5.)

21 **B. Temporary and Permanent Injunctive Relief**

22 (Code Civ. Proc., §§ 526, 527, 1094.5; Civ. Code, § 3422.)

23 103. Petitioners request injunctive relief pursuant to Code of Civil Procedure sections
24 526 and 527, and Civil Code section 3422.

25 104. Petitioners also request an administrative stay pursuant to Code of Civil
26 Procedure section 1094.5, subdivision (g), which provides that the court "may stay the
27 operation of the administrative order or decision pending the judgment of the court," if the court
28 concludes that such a stay is not "against the public interest."

1 C. Attorneys' Fees and Costs

2 (Code Civ. Proc., §§ 1021.5, 1032; Gov. Code, §§ 800)

3 105. This litigation involves the enforcement of important rights affecting the public
4 interest. Accordingly, if Petitioners are successful in prosecuting this action, Petitioners will
5 confer a substantial benefit on the citizens of the region and state, and therefore will be entitled
6 to an award of reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

7 106. Petitioners also bring this action pursuant to Government Code section 800,
8 which awards a petitioner up to \$7,500.00 in attorneys' fees in actions to overturn agency
9 decisions that are arbitrary and capricious.

10 107. Additionally, Petitioners request reimbursement for costs pursuant to Code of
11 Civil Procedure section 1032.

12 **FIRST CAUSE OF ACTION**

13 **Violation of CEQA – CCP § 1085, PRC § 21168.5. Failure to Proceed in the Manner**
14 **Required by Law and Failure to Act on the Basis of Substantial Evidence**
 By Petitioner Against Respondents

15 108. Petitioners hereby reallege and incorporate by reference into this First Cause of
16 Action all of the preceding and succeeding paragraphs of this Verified Petition as though fully
17 set forth herein.

18 109. CEQA requires the preparation of an EIR whenever there is a "fair argument"
19 that a project "may have a significant effect on the environment." (PRC, § 21151.) Even if
20 other substantial evidence supports the opposite conclusion, the County was nevertheless
21 required to prepare an EIR once a fair argument had been presented. (PRC, § 21080(c).)

22 110. CEQA requires the lead agency for a project to prepare an environmental review
23 document that complies with the requirements of the statute. The lead agency also must
24 provide for public review and comment on the project and associated environmental
25 documentation. An IS/MND must provide an adequate project description and sufficient
26 environmental analysis such that decision-makers can intelligently consider environmental
27 consequences when acting on proposed projects.

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1 111. CEQA applies to the Project Changes approved by Respondents. When
2 approving the Project Changes, Respondents exercised discretionary permitting authority by
3 agreeing to waive the otherwise required soils report and reviewing and approving
4 modifications to the Project in manners that could cause potentially significant physical
5 environmental impacts not analyzed in the IS/MND. Consequently, prior to approving the
6 Project Changes, Respondents were required to comply with CEQA.

7 112. Respondents violated CEQA by failing to adhere to the procedural and
8 substantive requirements triggered by the substantial Project Changes. By approving Project
9 Changes without conducting any subsequent environmental review, Respondents violated
10 CEQA in multiple ways, including but not limited to those described in the following
11 paragraphs.

12 113. Respondents failed to: (1) fully disclose to the public and decision makers the
13 modified Project's significant environmental impacts, (2) implement all feasible mitigation
14 measures and consider alternative designs to reduce those new and more severe significant
15 impacts to the extent feasible, and (3) ensure that the Project was "otherwise permissible under
16 applicable laws and regulations. (See PRC § 21002.1.) Among other things, Respondents, and
17 each of them:

- 18 a.) Failed to provide a finite, stable, accurate and meaningful Project description;
- 19 b.) Failed to determine, based on substantial evidence, whether any of the Project
20 Changes, individually or cumulatively, would cause any new or more severe
21 significant environmental effects that would require revisions to the adopted
22 IS/MND;
- 23 c.) Failed to analyze the potentially significant direct and indirect impacts that would be
24 caused by Project Changes;
- 25 d.) Failed to analyze the potentially significant cumulative environmental impacts that
26 would be caused by Project Changes;

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- 1 e.) Failed to consider whether “new information” as defined under CEQA, including
2 any new or more severe significant impacts in light of Project Changes or changed
3 circumstances, required preparation of a subsequent IS/MND or an EIR;
4 f.) Failed to implement adopted Conditions of Approval that the IS/MND assumed
5 would be in place to reduce impacts to less than significant levels;
6 g.) Failed to notify the public of the decisions to approve the Project Changes before
7 those decisions were made; and
8 h.) Failed to consider and adopt mitigation for impacts that would be caused by Project
9 Changes and changed circumstances.

10 114. Respondents approved Project Changes that are substantial enough to warrant
11 preparation of a subsequent IS/MND or an EIR. (See CEQA Guidelines §§ 15162, 15163.)
12 The County, as Lead Agency, was obligated to consider all of the potentially significant impacts
13 that could result from the Project Changes, as well as changed circumstances, when determining
14 whether to prepare a subsequent IS/MND or EIR.

15 115. Subsequent environmental review concerning the Project Changes would allow
16 the public and Respondents the opportunity to meaningfully understand the impacts from the
17 Project Changes and weigh alternatives to those changes.

18 116. The IS/MND concluded that the potentially significant impacts to public services
19 and wildfire risk would be reduced based in part on the assurances that (a) designated Project
20 access roads would be improved as specified in expert reports and (b) the Project’s greenhouses
21 would collect rainwater that would be available for fire suppression purposes in the dry season.
22 Because these assumptions have turned out to be false, subsequent environmental review is
23 necessary to accurately analyze the true Project’s impacts and formulate mitigation measures.

24 117. Respondents and CDFW also had independent duties to integrate their permitting
25 efforts with respect to the Project. (See *Banning Ranch, supra*, 2 Cal.5th at p. 936-937.) Rather
26 than coordinate their permitting and mitigation efforts concurrently, as required, Respondents
27 performed them consecutively. This led to the CDFW approving an LSAA that allows use of
28 the “shortcut road” and does not address all of the culvert repair and replacement projects

1 identified in the IS/MND. The failure to integrate CEQA with other permitting requirements
2 resulted in substantial changes to the Project that require major revisions to the adopted
3 IS/MND or an EIR.

4 118. Petitioner is informed and believes and thereon alleges that Respondents did not
5 prepare a subsequent IS/MND, a supplement to the IS/MND, or even an Addendum to the
6 IS/MND to address any of the Project Changes.

7 119. Respondents' respective failures to require environmental review prior to
8 approving the Project Changes is not supported by substantial evidence and represents a failure
9 to proceed in the manner required by law.

10 120. Respondents improperly misled the public and other agencies concerning its
11 consideration of Project design changes. For example, even though the "shortcut road" had
12 been specifically eliminated as a Project access road in direct response to public comments in
13 the revised IS/MND, after Project approval the applicant proposed use of this very road and
14 Respondents accepted this change without any objections. In addition, even though the revised
15 IS/MND described the Project greenhouses as rigid structures capable of supporting rooftop
16 rainwater catchment, after Project approval the applicant proposed use of "hoop houses" and
17 Respondents accepted this modification to planned Project operations. By allowing these
18 Project Changes, Respondents failed to make a "good faith effort at full disclosure," as required
19 by CEQA.

20 121. CEQA requires that a lead agency's findings for the approval of a project be
21 supported by substantial evidence in the administrative record. (See CEQA Guidelines §§
22 15091(a)-(b), 15096(h).) Petitioner is informed and believes and thereon alleges that
23 Respondents did not adopt findings prior to adopting the Project Changes. Any implied
24 findings that Respondents may have made are not supported by substantial evidence in the
25 record.

26 122. As a result of the errors identified above, and others, Respondents' implied
27 conclusions concerning the significance of the modified Project's environmental impacts are
28 unsupported, understated, and erroneous.

1 129. All public agencies, including the County, have a mandatory duty to refuse to
2 approve any private development project that is inconsistent with the applicable General Plan,
3 the relevant property's zoning designation, and other applicable land use regulations.

4 130. The Project Changes are inconsistent with mandatory County General Plan
5 policies, including, *inter alia*, policies:

- 6 a. Requiring meaningful opportunities for public participation (Policy G-P10);
- 7 b. Requiring coordination with local, state, and federal agencies with respect to
8 permitting processes and regulatory standards (Policy G-S3); and
- 9 c. Requiring compliance with the County's SRA Fire Safe Regulations (Policy S-P19
10 and Policy S-S9).

11 131. The Project, as approved, is also inconsistent with Implementation Measure S-
12 IM5, which requires the County to process exceptions to mandatory requirements of the SRA
13 Fire Safe Regulations in coordination with CalFire.

14 132. The Project is also inconsistent with several adopted Conditions of Approval for
15 the Project, including, but not limited to:

- 16 a.) Condition Number 1, requiring the Project applicant to "secure permits for all
17 structures (including, but not limited to: greenhouses, proposed processing facility,
18 office and accessory structures) and grading (including road improvements, graded
19 flats and ponds) related to the historic and proposed cannabis cultivation and other
20 commercial cannabis activity. The plans submitted for building permit approval
21 shall be consistent with the project description and approved project site plan."
- 22 b.) Condition Number 3, requiring that the Project applicant "secure permits for all
23 proposed structures (including greenhouses and processing facilities) and grading
24 related to the cannabis cultivation and other commercial cannabis activity." This
25 Condition, continues: "The plans submitted for building permit approval shall be
26 consistent with the project description and approved project site plan."
- 27 c.) Condition Number 8, requiring the Project applicant to "complete all recommended
28 improvements to the Main Access Road and the Winter Access Road as specified in

1 the Access Assessment by Northpoint Consulting Group dated "Revised" October
2 2020."

3 133. The Project Changes are also inconsistent with mandatory requirements of the
4 County's SRA Fire Safe Regulations and the CMMLUO.

5 134. The Project Changes violate Humboldt Zoning Ordinance, section 6.6.1, which
6 only allows development permits to be issued "upon compliance with all general regulations
7 applicable to the permitted development and all conditions that may have been imposed on the
8 project" (emphasis added).

9 135. Petitioners performed all the conditions precedent to filing this action by
10 submitting comments on the original and revised IS/MND and additional comments prior to
11 public hearings, in compliance with Government Code section 65009, subdivision (b). By
12 submitting written comments, Petitioners exhausted all available administrative remedies as
13 required by State and local planning and zoning law.

14 136. By approving Project Changes that are inconsistent with the County's General
15 Plan, zoning regulations, and mandatory Conditions of Approval, Respondents prejudicially
16 abused their discretion and violated provisions of the State Planning and Zoning Law, requiring
17 invalidation of the County's approvals.

18 **THIRD CAUSE OF ACTION**

19 **Unlawful Business Practices**
20 **(Business & Professions Code, §§ 17200, et seq.)**
21 **By Petitioners Against Real Parties in Interest**

22 137. Petitioners incorporate by reference each and every allegation set forth above.

23 138. Business and Professions Code section 17200 et seq. (the "Unfair Competition
24 Law" or "UCL") prohibits any unlawful, unfair or fraudulent business act or practice.

25 139. Real Parties in Interest violated the UCL by engaging in unlawful, unfair, and
26 fraudulent business acts or practices, including but not limited to knowingly and intentionally
27 advancing a grading plan and an operations plan that are inconsistent with the Project as
28 described and analyzed in the IS/MND and as conditioned in the adopted CUPs.

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6. For an award of Petitioners' attorneys' fees under Code of Civil Procedure section 1021.5, Government Code section 800, and other applicable authority;

7. For an award of Petitioners' costs of suit incurred in this proceeding under Code of Civil Procedure section 1032, and other applicable authority; and

8. Such other and further relief as the Court deems just and proper.

Dated: November 29, 2021

HOLDER LAW GROUP

By Jason W. Holder
Jason W. Holder

Dated: November 29, 2021

JANSSEN MALLOY, LLP

By David S. Nims
David S. Nims

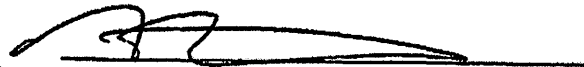
Counsel for Petitioners NORTHCOAST ENVIRONMENTAL CENTER, REDWOOD REGION AUDUBON SOCIETY, CITIZENS FOR A SUSTAINABLE HUMBOLDT, and MARY GATERUD

VERIFICATION

I am a member of the board of directors for Citizens for A Sustainable Humboldt ("CSH"). I am authorized to make this verification for and on behalf of the CSH. and I make this verification for that reason. I have read the foregoing Verified Petition for Peremptory Writ of Mandate; Complaint for Injunctive and Declaratory Relief. I am informed and believe and, based on such information and belief, allege that the matters stated in it are true and correct.

Executed at McCann, California on this 24th day of November 2021.

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



Mary Gaterud, Director
Citizens for A Sustainable Humboldt

EXHIBIT A



Holder Law Group

1980 Mountain Blvd., Ste. 211
Oakland, CA 94611

holderecolaw.com

(510) 338-3759
jason@holderecolaw.com

November 24, 2021

VIA U.S. MAIL AND EMAIL

Kathy Hayes, Clerk of the Board of
Supervisors
County of Humboldt
825 Fifth Street, Room 111
Eureka, Ca 95501
Email: KHayes@co.humboldt.ca.us

Jefferson Billingsley, County Counsel
County of Humboldt
825 5th St.
Room 110
Eureka, CA 95501
Email: Countycounsel@co.humboldt.ca.us

**RE: Notice of Intent to File Suit Under the California Environmental Quality Act:
Rolling Meadow Ranch Project – Post-Approval Project Changes**

Dear Ms. Hayes and Mr. Billingsley:

On behalf of Northcoast Environmental Center, Redwood Region Audubon Society, Citizens for a Sustainable Humboldt, and Mary Gaterud (collectively, "Petitioners"), we submit this notice letter concerning the post-approval project changes, approved by County's Department of Planning and Building, concerning the Rolling Meadow Ranch, LLC Project ("Project"). The Project, which was originally approved by the County Board of Supervisors on March 9, 2021, includes adoption of an Initial Study / Mitigated Negative Declaration ("IS/MND") and approval of six Conditional Use Permits ("CUPs"). Since this approval, the applicant has sought and obtained a grading permit and other approvals that include changes to the Project that are inconsistent with the Project as described in the IS/MND and that violate adopted mandatory Conditions of Approval.

Please take notice, pursuant to Public Resources Code ("PRC"), section 21167.5, that Petitioners intend to file a Verified Petition for Peremptory Writ of Mandate and complaint for declaratory, injunctive, and other relief ("Petition"), under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000, *et seq.*, the State Planning and Zoning Law (Gov. Code, § 65000, *et seq.*), and California's Unfair Competition Law (Business and Professions Code, § 17200, *et seq.*) against Respondents and Defendants County of Humboldt ("County") and the Project applicant (collectively, "Respondents") in the Superior Court for the County of Humboldt. The Petition will challenge the unlawful Project approval actions taken by Respondents (1) on June 1, 2021, in approving the grading plan, an operations plan for 2022, and (2) other possible discretionary approvals at this point unknown to Petitioners (collectively, "Project Changes").

The claims Petitioners intend to raise in the litigation include, but are not limited to, the following:

1. The Project Changes were discretionary permitting decisions subject to CEQA, and subsequent environmental review applies to them because there is a fair argument that they may cause potentially significant impacts to the environment not addressed in the adopted IS/MND.
2. The Project Changes are inconsistent with mandatory provisions of the County General Plan and local and state land use regulations.
3. The Project Changes include reversion to the proposed use of a private road over which the applicant does not have access and the use of which was not analyzed in the adopted IS/MND. During the administrative process for the IS/MND, the owner of this road objected to its use for the Project. As a result, the County and applicant changed the Project to avoid use of this road. However, by issuing the grading permit in June, the County has tacitly approved an ongoing trespass and violated CEQA in the process.

Petitioners alerted respondents to the above issues in a letter dated October 29, 2021. (See Exh. A.) Respondents responded to that letter in a letter sent Friday, November 19. (See Exh. B.) These responses were inadequate. (See Exh. C.)

The Petition will seek the following relief:

1. A stay of Respondents' decisions approving the Project Changes pending trial;
2. A peremptory writ of mandate, temporary and permanent injunctions, and declaratory relief directing Respondents to:
 - a. Vacate and set aside all post-approval Project Changes,
 - b. Suspend all Project activity that could result in any change or alteration to the physical environment until Respondents have taken actions that may be necessary to bring the Project Changes into compliance with CEQA, and
 - c. Prepare, circulate, and consider a new and legally adequate EIR and otherwise to comply with CEQA in any subsequent action taken to approve the Project;
3. For the costs of suit;
4. For an award of attorney fees pursuant to Code of Civil Procedure § 1021.5 and any other applicable provisions of law or equity; and
5. For any other equitable or legal relief that the Court considers just and proper.

Petitioners urge the County to (1) rescind its IS/MND, Resolution 21-26, and the post-approval Project Changes, and (2) prepare an EIR for this Project as required by law.

Petitioners currently intend to file the CEQA lawsuit no later than Monday, November 29, 2021. Please contact me if you have any questions or concerns regarding this.

Very truly yours,



Jason W. Holder
Holder Law Group

Attorneys for Northcoast Environmental Center,
Redwood Region Audubon Society, Citizens for a
Sustainable Humboldt, and Mary Gaterud

Attachment

- Exh. 1 – Petitioners' letter to counsel for County objecting to post-approval Project Changes, dated 10/29/21
- Exh. 2 – Respondents' letter to petitioners, dated 11/19/21
- Exh. 3 – Table summarizing assertions made in the County's response to Petitioners' letter concerning post-approval Project changes

cc: (via email only)
David Nims, Janssen Malloy, LLP, co-counsel
Client contacts
Elizabeth Pollock, Remy Moose Manley, LLP, outside CEQA counsel for County
Bradley Johnson, Everview, LTD, counsel for Real Parties in Interest

EXHIBIT B

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10 Attorneys for Petitioners and Plaintiffs
NORTHCOAST ENVIRONMENTAL CENTER,
11 REDWOOD REGION AUDUBON SOCIETY,
CITIZENS FOR A SUSTAINABLE HUMBOLDT,
12 and MARY GATERUD

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

15 NORTHCOAST ENVIRONMENTAL
CENTER, a non-profit organization;
16 REDWOOD REGION AUDUBON SOCIETY,
a non-profit organization; CITIZENS FOR A
17 SUSTAINABLE HUMBOLDT, a public
benefit corporation; and MARY GATERUD,
18 Petitioners and Plaintiffs,

19 v.

20 COUNTY OF HUMBOLDT, a political
21 subdivision of the State of California;
HUMBOLDT COUNTY BOARD OF
22 SUPERVISORS, and DOES 1 to 10, inclusive,
23 Respondents and Defendants.

24 ROLLING MEADOW RANCH, LLC, a
Florida limited liability company; ROLLING
25 MEADOW RANCH, INC., a Florida
corporation, and DOES 11 to 20,
26 Real Parties in Interest and Defendants.

CASE NO.:
**NOTICE OF PETITIONERS'
ELECTION TO PREPARE THE
ADMINISTRATIVE RECORD OF
PROCEEDINGS**
CEQA Action
[Public Resources Code, § 21167.6(b)(2)]

1 **TO RESPONDENTS, DEFENDANTS AND REAL PARTIES IN INTEREST:**

2 **NOTICE IS HEREBY GIVEN**, pursuant to section 21167.6, subdivision (b)(2), of the
3 California Public Resources Code, Petitioners and Plaintiffs NORTHCOAST
4 ENVIRONMENTAL CENTER, REDWOOD REGION AUDUBON SOCIETY, CITIZENS
5 FOR A SUSTAINABLE HUMBOLDT, and MARY GATERUD (“Petitioners”) hereby
6 provide notice of their election to prepare the administrative record pertinent to this proceeding.

7 Dated: November 29, 2021

HOLDER LAW GROUP

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By Jason W. Holder
Jason W. Holder

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Attorneys for Petitioner and Plaintiff
Petitioners and Plaintiffs NORTHCOAST
ENVIRONMENTAL CENTER, REDWOOD
REGION AUDUBON SOCIETY, CITIZENS FOR A
SUSTAINABLE HUMBOLDT, and MARY
GATERUD

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CALIFORNIA

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SUPERIOR COURT
HUMBOLDT COUNTY