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**ENDORSED
FILED**

AUG - 9 2016

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SONOMA

11 CALIFORNIA RIVER WATCH, an IRC
12 Section 501(c)(3), non-profit, public
13 benefit corporation,

14 Petitioner,

15 v.

16 COUNTY OF SONOMA, SONOMA
17 COUNTY REGIONAL CLIMATE
18 PROTECTION AUTHORITY and DOES I
19 through X,

20 Respondents.

Case No.

SCV-259242

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

(Cal. Code. Civ. Proc. § 1094.5)
California Environmental Quality Act (Cal.
Pub. Res. Code § 21000 et seq.)

21 Petitioner, CALIFORNIA RIVER WATCH ("Petitioner") alleges as follows in this
22 Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate under
23 the California Environmental Quality Act ("CEQA") Cal. Pub. Res. Code § 21000 et seq..

24 **I. BACKGROUND**

25 1. On July 11, 2016, Respondent COUNTY OF SONOMA ("Respondents") through its
26 designated agency for addressing climate change, SONOMA COUNTY REGIONAL CLIMATE
27 PROTECTION AUTHORITY ("RCPA"), certified the Final Programmatic Environmental
28 Impact Report ("FEIR") for its Climate Action Plan ("CAP"). The CAP is a planning level,
guidance document for the future analysis of the cumulative greenhouse gas impacts of
proposed projects. On July 12, 2016, Respondents filed a Notice of Determination for the
certification of the FEIR in the Office of the County Clerk for the County of Sonoma.

2. While recognizing that climate change is one of the most urgent global issues with effects

1 including loss of species, human hunger and death, and social and political disruption due to
2 diminished food supply and loss of habitable terrain, Respondents adopted a CAP that fails to
3 accurately assess the greenhouse gas (“GHG”) emissions associated with land use activities
4 within County boundaries and which the County and its communities, cities within Sonoma
5 County, can influence and control. The CAP also fails to identify sufficient enforceable
6 mitigation measures or mitigation measures with a reasonable certainty of implementation
7 necessary to achieve the reduction in GHG emissions projected to occur as a result of
8 compliance with the terms of the CAP.

9 3. The County claims that the CAP, which is fully incorporated into the FEIR, “In addition
10 to a near-term target of 25% below 1990 levels by 2020, CA2020 (*the CAP*) puts the county on
11 a solid trajectory toward meeting the long-term goals of 40% below 1990 levels by 2030 and
12 80% below by 2050.” (CAP p. 3-3, clarification added.) However, the claim that the CAP puts
13 the County on a trajectory to meet these goals for GHG emissions reductions is not supported
14 by substantial evidence in light of the entire record.

15 II. INTRODUCTION

16 A. Tiering and Streamlining of Cumulative Effects Analysis of GHG Emissions

17 4. CEQA Guidelines § 15183.5 provides for Tiering and Streamlining the Analysis of
18 Greenhouse Gas Emissions. Section 15183.5(b) provides that public agencies may choose to
19 analyze and mitigate significant GHG emissions in a programmatic level plan for the reduction
20 of GHG emissions or a similar document. A plan to reduce GHG emissions may be used in a
21 cumulative impacts analysis. Pursuant to CEQA Guidelines §§ 15064(h)(3) and 15130(d), a
22 lead agency may determine that a project’s incremental contribution to a cumulative effect is not
23 cumulatively considerable if the project complies with the requirements in such a previously
24 adopted plan or mitigation program. Under CEQA Guidelines § 15183.5 (b)(1)(A), a
25 programmatic plan for the reduction of GHG emissions should “Quantify greenhouse gas
26 emissions, both existing (a baseline) and projected over a specified time period, resulting from
27 activities within a defined geographic area; Under § 15183.5(b)(1)(B), the plan should,
28 “Establish a level, based on substantial evidence, below which the contribution to greenhouse

1 gas emissions from activities covered by the plan would not be cumulatively considerable”. 5.

2 Section 15183.5(b)(1)(C) provides that a programmatic plan should “Identify and analyze
3 the greenhouse gas emissions resulting from specific actions or categories of actions anticipated
4 within the geographic area”. The County’s CAP identifies the range of activities covered by the
5 Plan as follows: “*The GHG Inventory includes GHG emissions associated with community
6 activities occurring within the geographic or jurisdictional boundaries of the county and
7 generally consists of sources of emissions that the County and its communities can influence or
8 control.*” (FEIR p. 3-8.)

9 **B. Inadequate Description of Existing Conditions**

10 6. While defining the subject of the CAP as GHG emissions from the range of activities
11 defined as land uses within Sonoma County and cities within Sonoma County, that a community
12 can influence or control, the assessment of GHG emissions in the CAP GHG Inventory of
13 current emission levels, i.e. the description of existing conditions as of 2010, which is used as
14 the basis for projecting future emissions levels, arbitrarily underestimates GHG emissions from
15 on-road transportation. The FEIR justifies these omissions as being consistent with standard
16 protocols followed by other jurisdictions. The omitted emissions Petitioner identifies are all
17 associated with activities officially permitted by the County or cities within the County’s
18 boundaries. They clearly involve sources of GHG emissions that the County and its
19 communities can influence or control in that they would not occur but for being permitted by the
20 governing jurisdiction.

21 7. The County’s Response to Petitioner’s concern, in submitted comments, regarding the
22 County’s failure to account for millions of metric tons of actual emissions as part of the
23 description of existing conditions for estimating future emissions attributable to the County, is -
24 1) these are not emissions the County can reasonably address, (despite being associated with land
25 use activities permitted by and within the County), 2) their estimation, while possible, requires
26 information “that can be difficult to come by”, and 3) not being the common approach it would
27 be difficult to compare regional inventories. This is unresponsive to the basic concern in
28 Petitioner’s comment, that the systematic omission of these many millions of metric tons of

1 GHG emissions, which no one disputes are actually occurring, is an analytical gap which shows
2 that the FEIR's conclusions regarding the current levels of GHG emissions and projected levels
3 of GHG emissions resulting from compliance with the terms of the CAP are not supported by
4 substantial evidence in the record.

5 8. The FEIR Response, in an attempt to avoid a direct response to Petitioner's comments and
6 to obfuscate the issue, states, "The project analyzed in the EIR is not the approval of all land use
7 decisions and all future land use development. The project analyzed in the EIR is the CAP itself,
8 which is a series of proposed regional measures that will reduce GHG emissions, as calculated
9 based on the emissions inventory" ... "In sum the cumulative environmental setting is not simply
10 Sonoma County's land use emissions and the CAP is not a comprehensive "land use" approval
11 for jurisdictions within Sonoma County. The CAP will not result in the approval of all new land
12 use development. Instead, local governments will continue to approve discretionary new
13 development per their existing land use authority and will be required to comply with CEQA as
14 necessary in relation to those approvals". (Response p. 3-5).

15 9. Here, the County tries to conflate the analysis of the effects of a programmatic plan with
16 the analysis of the effects of an individual project. By understating the GHG inventory, the CAP
17 is enabling future development of individual projects based on an inaccurate, understated
18 assessment of current and future GHG emissions levels.

19 10. Thus, Respondents prejudicially abused its discretion, as a matter of law, by not
20 proceeding as required by law in certifying a FEIR which did not provide an accurate description
21 of existing environmental conditions.

22 11. The findings by the County in the DEIR, incorporated without revision into the FEIR,
23 regarding the benefits of implementing the CAP, are as follows:

24 "The CAP would be consistent with AB 32, as the GHG emissions for Sonoma County would
25 experience approximately a 25% reduction below 1990 emissions by 2020, whereas the AB 32
26 target is to reach 1990 emissions levels by 2020." The implementation of the CAP would meet
27 and exceed state goals to reduce GHG emissions through 2020 and would place the County
28 approximately 80% of the way to meeting 2030 goals. Thus, the CAP would have a beneficial

1 impact on GHG emissions.” (EIR p. 3.8-17.)

2 12. In light of the inaccurate description of existing environmental conditions, the above
3 conclusions regarding the benefits of the CAP are not supported by substantial evidence in the
4 record.

5 **C. Inadequate Mitigation Analysis**

6 13. The CAP and FEIR lack substantial evidence to support projected GHG emission
7 reductions because most of the reduction measures relied on in the CAP and FEIR as a basis for
8 estimates of reductions of GHG emissions attributable to activities within the borders of Sonoma
9 County, are not supported by enforceable regulations or by identified sources of committed
10 funding. Many of the measures are defined in vague terms open to differing interpretations,
11 which makes them vulnerable to political pressure.

12 14. While CEQA Guidelines §15183.5 (E) provides that a programmatic GHG emissions
13 reduction plan should “Establish a mechanism to monitor the plan’s progress toward achieving
14 the level and to require amendment if the plan is not achieving specified levels.”, it does not
15 follow that a lead agency is not required to identify mitigation measures in a programmatic CAP
16 with a reasonable degree of likelihood of achieving the projected GHG reduction levels.
17 Respondents are required to define mitigation measures which substantial evidence supports will
18 be effectively implemented.

19 15. By failing to specify mitigation measures that substantial evidence demonstrates would
20 achieve the specified emissions level the County failed to proceed in the manner required by law
21 in approving the CAP and certifying the FEIR.

22 **D. Inadequate Alternatives Analysis**

23 16. In its final comment, Petitioner stated; “In light of the deficiencies in the CAP GHG
24 inventory for emissions associated with wine production and tourism noted above, and questions
25 regarding the reliability of a number of the CAP’s reduction measures to actually achieve the
26 projected emissions reductions, some consideration of a moratorium or significant limitation on
27 new wineries/vineyard expansions and/or tourist destinations seems reasonably required to
28 provide the public with an adequate assessment of feasible measures to reduce Sonoma County’s

1 GHG emissions to actually meet the reduction targets of the CAP” (Comment 2-6).

2 17. In its Response, Respondents discussed its rejection of the “*Growth Moratorium*
3 *Alternative*” in the EIR, described in Section 5.4.1 as including “a moratorium on new
4 wineries/vineyard expansions and new housing until the jobs-housing balance is more equitable.”
5 The Response went on to say “... a moratorium on new housing and on vineyard/wineries would
6 not be consistent with the land use policy direction and growth anticipated in local general plans
7 and would not allow for continued economic growth to provide opportunities for business and
8 residents, both of which are fundamental project objectives of the CAP.” (Response p.3-17.)

9 18. Respondents adopted the Zero Net Energy Buildings Alternative as the environmentally
10 superior alternative. Under this alternative Respondents will adopt a Zero Net Energy Green
11 Building Ordinance requiring Zero Net Energy for all new commercial and residential buildings
12 in the County beginning in 2017. Respondents adopted this alternative without adequate
13 discussion of the uncounted GHG emissions from on-road transportation associated with new
14 wineries, hotels and other tourist destinations, regardless whether the buildings are constructed
15 with new energy saving technologies. Further consideration of a moratorium or other limitation
16 on growth was rejected as inconsistent with the defined project objectives of consistency with
17 current land use policies and support for economic growth. There is no reasoned analysis in the
18 CAP or FEIR justifying the designation of these project objectives in light of the increasing
19 threat of catastrophic global warming posed by an economy based on perpetual growth and
20 excessive consumption of non essential goods and services.

21 19. Given the ongoing, ever increasing pressure for new development and expansion of
22 tourist venues and wine production in Sonoma County, it is an abuse of discretion for the
23 County, at the inception of the analytical process, to exclude any consideration of a moratorium
24 or significant reduction in growth of commercial projects with substantial GHG emissions, by
25 defining as a major objective of the CAP consistency with current land use policy and projected
26 growth.

27 20. By not giving any consideration to a moratorium or significant reduction in future
28 commercial development, the County failed to identify and evaluate ways to mitigate or avoid

1 the significant effects of the CAP pursuant to CEQA Guidelines §15126.6(b), thereby failing to
2 proceed in the manner required by law.

3 **E. Inadequate Response to Comments**

4 21. Under CEQA Guidelines § 15088. Evaluation of and Response to Comments, subdivision
5 (c): “In particular, the major environmental issues raised when the lead agency’s position is at
6 variance with recommendations and objections raised in the comments must be addressed in
7 detail giving reasons why specific comments and suggestions were not accepted. There must be
8 good faith reasoned analysis in response. Conclusory statements unsupported by factual
9 information will not suffice”.

10 22. Respondents failed to respond with good faith, reasoned analysis to Petitioner’s
11 comments. Instead, responses to Petitioner’s comments were evasive and/or conclusory, and
12 based on self contradictory analysis, as will be demonstrated below.

13 **III. GENERAL ALLEGATIONS**

14 **A. Parties**

15 23. Petitioner California River Watch is an Internal Revenue Code § 501(c)(3) non-profit,
16 public benefit corporation organized under the laws of the State of California, with headquarters
17 located in Sebastopol, California, and a mailing address of northern 290 S. Main Street, #817,
18 Sebastopol, CA 95472. California River Watch is dedicated to protecting, enhancing, and
19 helping to restore surface and ground waters of California including rivers, creeks, streams,
20 wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating
21 the public concerning environmental issues associated with these environs.

22 24. Respondents, County of Sonoma and Sonoma County Regional Climate Protection
23 Authority are government agencies formed under the laws of the State of California with offices
24 located at 490 Mendocino Avenue, Suite 206, Santa Rosa, CA 95401.

25 25. The true names and capacities, whether individual, corporate, or otherwise, of
26 Respondents DOES I through X are unknown to Petitioner who therefore sues said Respondents
27 by such fictitious names. Petitioner will seek leave to amend this Petition when such names and
28 capacities have been ascertained.

1 **B. Jurisdiction**

2 26. Petitioner seeks review by and relief from this Court under Pub. Res. Code §§ 21168 or
3 21168.5, as applicable; and Code of Civ. Proc. §§ 1060 et seq. and 1084 et seq., among other
4 provisions of law.

5 **C. Standing**

6 27. Petitioner and its members are beneficially interested in the County's full compliance
7 with the law regarding the County's approval of the CAP and certification of the FEIR. The
8 personal, recreational and aesthetic interests of Petitioner and the persons associated with
9 Petitioner will be severely injured if project approvals, pursuant to streamlining from the CAP
10 regarding cumulative effects of GHG emissions, are allowed to proceed as planned. Petitioner
11 is within the class of persons beneficially interested in and aggrieved by the County's
12 certification of the FEIR and approval of the CAP. Petitioner includes individuals who
13 expressed their concerns and objections to the approval of the CAP at meetings and in
14 correspondence to the RCPA. The County owed a mandatory duty to comply with the legal
15 duties that Petitioner alleges were violated before certifying the FEIR and approving the CAP.
16 Petitioner has the right to enforce the mandatory duties that CEQA imposes on the County.

17 **D. Exhaustion of Administrative Remedies**

18 28. Petitioner has exhausted all available administrative remedies in that the County's
19 approval of the CAP is final and not subject to further administrative appeal procedures.

20 29. In accordance with Pub. Res. Code § 21177, subdivisions (b) and (c), Petitioner and its
21 members objected to the approval of the CAP orally or in writing during the public comment
22 period or prior to the close of the public hearing on the project before the filing of notice of
23 determination.

24 30. In accordance with Pub. Res. Code § 21177, subdivision (a), all alleged grounds for
25 non-compliance with CEQA, were presented to the RCPA during the public-comment period
26 prior to the close of the public hearing on the FEIR.

27 **E. Notice Requirements**

28 31. A Notice of Determination for the Project was filed in the Office of the County Clerk for

1 the County of Sonoma at or around July 12, 2016. This proceeding is being commenced not
2 more than 30 days after the Notice of Determination's filing, as required by Pub. Res. Code §
3 21167(c).

4 32. Petitioner has caused a Notice of Commencement of Action to be served on the County
5 as required by Pub. Res. Code § 21167.5. A true and correct copy of the Notice of
6 Commencement of Action is attached to this pleading as **Exhibit A**.

7 33. Petitioner will have caused a copy of this pleading to be served on the Attorney General
8 not more than ten days after the commencement of this proceeding, as required by Pub. Res.
9 Code § 21167.7 and Code of Civ. Proc. § 388.

10 **F. Private Attorney General Doctrine**

11 34. Petitioner brings this action as a private attorney general pursuant to Code of Civ. Proc.
12 § 1021.5 to enforce important rights affecting the public interest. Issuance of the relief
13 requested in this Petition will confer a significant benefit on a large class of persons by ensuring
14 that the County does not approve the current CAP without complying with CEQA. The
15 necessity and financial burden of enforcement are such as to make an award of attorney's fees
16 appropriate in this proceeding. Absent this timely enforcement action by Petitioner, the CAP
17 might otherwise be deemed lawfully approved, despite the County's failure to comply with
18 CEQA.

19 35 At all times mentioned herein, the County has been able to deny the approval and
20 operation of the CAP at issue. Despite such ability, and despite Petitioner's demand for denial,
21 the County has failed and continues to fail to perform its duty to deny the approval and
22 operation of the CAP.

23 36. If the County is not ordered to withdraw its approval of the CAP it will become a
24 program level document and provide a basis for the streamlining of the cumulative GHG
25 emissions analysis of future projects, based on inadequate assessment of cumulatively
26 significant GHG emissions, causing irreversible damage to environmental values.

27 **IV. CAUSES OF ACTION**

28 **A. First Cause of Action (CEQA - Inadequate Description of Existing Conditions)**

1 37. Petitioner incorporates by reference all of the allegations made in the previous paragraphs
2 as if separately set forth herein.

3 38. The CEQA Guidelines provide that the environmental setting as it exists when the EIR
4 is being prepared should ordinarily be treated as the baseline for gauging the changes that will
5 be caused by the project. 14 Cal Code Regs §§ 15125(a), 15126.2(a).

6 39. CEQA Guidelines § 15183.5, for Tiering and Streamlining the Analysis of Greenhouse
7 Gas Emissions, provide more specifically in subdivision (b)(1)(A), that a programmatic plan
8 such as the Respondents' CAP should "Quantify greenhouse gas emissions, both existing and
9 projected over a specified time period, resulting from activities within a defined geographic
10 area".

11 40. The GHG Inventory of current emission levels, as of 2010, within Sonoma County and
12 associated with land use activities within Sonoma County, constitutes the description of existing
13 GHG emissions which the CAP relies on to project future GHG emission levels. The CAP GHG
14 inventory arbitrarily understates GHG emissions from commercial land use activities within
15 Sonoma County, over which the County has control or a reasonable ability to influence through
16 the permitting process. The CAP fails to account for emissions from vehicle miles traveled
17 ("VMT") in the transport of Sonoma County produce, including vast wine distribution, and VMT
18 to and from tourist destinations within the County, by limiting the origin and destination points
19 included in its calculations to trips within County boundaries and trips to and from 18 nearby
20 regional destinations outside the County.

21 41. By limiting commercial VMT in its calculations to trips within Sonoma County and to
22 18 nearby regional communities, the CAP arbitrarily limits GHG emissions in a manner not
23 based on any rational explanation consistent with its own criterion of emissions over which the
24 County has a reasonable ability to control or influence. These omitted emissions are associated
25 with land use activities permitted by jurisdictions with Sonoma County. But for the issuing of
26 the permits authorizing these activities, these GHG emissions would not occur.

27 42. By making no attempt to account for emissions from air travel or shipping associated
28 with land uses within Sonoma County, the CAP is improperly segmenting these emissions in

1 its description of the environmental baseline for purposes of a programmatic CAP under CEQA
2 Guidelines §15183.5.

3 43. For the FEIR to satisfy the informational function of CEQA, the FEIR must present facts
4 and analysis which provide a clear analytical route taken by Respondents to reach the conclusion
5 that the CAP contains a program which will enable Sonoma County to achieve the GHG
6 emission levels specified in the CAP. The systematic underestimation of GHG emissions
7 attributable to activities permitted within the County represents an analytical gap in the
8 calculation of the GHG inventory for which there is no reasonable explanation in the FEIR.
9 CEQA requires a clear discussion of existing conditions. The FEIR failed by excluding data and
10 sources which should have been included in the discussion of current emissions.

11 44. Petitioner is informed and believes and thereon alleges, that in approving the CAP and
12 certifying the FEIR when the CAP is based on an understated description of existing GHG
13 emissions, i.e. an inaccurate environmental setting, at the time of EIR preparation, Respondents
14 failed to proceed in the manner required by law. The GHG inventory in the CAP is not supported
15 by substantial evidence.

16 **B. Second Cause of Action (CEQA - Inadequate Mitigations)**

17 45. Petitioner incorporates by reference all of the allegations made in the previous paragraphs
18 as if separately set forth herein

19 46. Mitigation measures are required by law to be “fully enforceable.” Pub. Res. Code §
20 2181.6(b); CEQA Guidelines § 15126.4(a)(2). Mitigation measures must be definite and defined
21 so that their effectiveness is ascertainable. *See, e.g., San Franciscans for Reasonable Growth and*
22 *City v. County of San Francisco* (1984) 151 Cal. App. 3d 61.

23 CEQA Guidelines § 15183.5(B)(1)(D) provides that a programmatic CAP for tiering
24 GHG emissions should “Specify measures or a group of measures, including performance
25 standards, that **substantial evidence demonstrates**, (emphasis added) if implemented on a
26 project-by-project basis, would collectively achieve the specified emissions level.”

27 47. The CAP and FEIR lack substantial evidence to support GHG emission reductions
28 projected to be achieved by mitigation measures in the CAP. Most of the mitigation measures

1 relied on in the CAP and FEIR as a basis for estimates of reductions of GHG emissions are not
2 supported by enforceable regulations or by identified sources of committed funding.
3 Respondents argue in its Response to Petitioner's comments regarding mitigation measures that
4 CEQA Guidelines § 15183.5 does not restrict planning estimates of GHG emissions reductions
5 to those that are regulatory in nature. Whether the adequacy of the mitigation measures in the
6 County's CAP and FEIR is evaluated based on enforceability, identified funding sources, or
7 clarity of terms ensuring implementation, an examination of the record reveals that the language
8 describing the programs identified as mitigation measures does not provide substantial evidence
9 to ensure compliance during implementation of the CAP.

10 48. The CAP misleadingly labels as mandatory measures which are conditional on local
11 jurisdictions identifying qualifying criteria for requiring rooftop solar installation (measure 2-
12 L1), conditional on whether participating jurisdiction decides remodels/renovations are required
13 to meet community-defined target for solar installations (measure 2-L2) Measures are identified
14 as "mandatory" which are defined in vague terms subject to political pressure in their
15 implementation, e.g. Measure 4-L1. *"Mixed-Use Development in City Centers and Along Transit*
16 *Corridors [All jurisdictions] The jurisdictions will identify and support mixed use development*
17 *in city-centers and transit-oriented development locations through their General Plans, Area*
18 *Plans, and Specific Plans and zoning codes."*

19 49. There are no funding sources identified for mitigation measures in the CAP or FEIR.
20 Funding is addressed in the CAP as follows: "CA2020 commits local governments to
21 implementing a suite of measures appropriate for each community based on their prior efforts,
22 development and economic trends, and community priorities." ... "RCPA led development of
23 this plan and is committed to its implementation by securing funding, managing pilots and
24 programs, developing research and best practices, and supporting members and regional partners
25 in coordinated implementation." (CAP p.4-3.)

26 50. Presenting a set of aspirational mitigation measures, with no identified funding sources,
27 some defined in vague terms such as *"support mixed use development in city-centers"*,
28 terminology which some developers have exploited to promote new large hotel projects with

1 substantial GHG impacts, does not provide substantial evidence of a group of measures,
2 including performance standards, that substantial evidence demonstrates would collectively
3 achieve the specified emissions level in Respondents' CAP.

4 51. Petitioner is informed and believes and thereon alleges, that by approving the CAP and
5 certifying the FEIR when the FEIR and CAP incorporated therein fails to provide a set of
6 mitigations which substantial evidence demonstrates would achieve the specified emissions
7 level, Respondents failed to proceed in a manner required by law.

8 **C. Third Cause of Action (CEQA - Inadequate Alternatives Analysis)**

9 52. Petitioner incorporates by reference all of the allegations made in the previous paragraphs
10 as if separately set forth herein.

11 53. The County declined to evaluate as an alternative any moratorium or significant reduction
12 in new or expanded vineyards/wineries or tourist destinations, as suggested in Petitioner's
13 comments and other public comments. The County so declined because any such alternative
14 would not meet the project objectives of consistency with existing land use policies and
15 supporting economic growth.

16 54. In Section 5.4.1 of the EIR, Respondents identified as an alternative considered but
17 rejected for further evaluation, a Growth Moratorium Alternative, defined as "a moratorium on
18 new wineries/vineyard expansions and new housing until the jobs-housing balance is more
19 equitable." The EIR rejected this alternative for further consideration because "it would not be
20 consistent with the land use policy direction and growth anticipated in local general plans and
21 would not allow for continued economic growth to provide opportunities for business and
22 residents, both of which are fundamental project objectives of the CAP." Under CEQA
23 Guidelines § 15126.6(b), "the discussion of alternatives shall focus on alternatives to the project
24 or its location which are capable of avoiding or substantially lessening any significant effects of
25 the project, even if these alternatives would impede to some degree the attainment of the project
26 objectives, or would be more costly."

27 55. Petitioner in its comments advocated a moratorium or reduction in growth of
28 vineyard/wineries and tourist destinations, i.e. a reduction in commercial growth which generates

1 higher levels of GHG emissions than new housing. New housing , if affordably priced, could
2 reduce GHG emissions by providing workforce housing closer to jobs. Respondents, in its
3 Response, justified its rejection of the Growth Moratorium Alternative which included new
4 housing, based on its inconsistency with current land use policy and economic growth. While
5 the obvious alternative capable of avoiding or substantially lessening GHG emissions is a
6 limitation on commercial growth, including new tourist venues, the EIR arbitrarily defined a
7 Growth Moratorium Alternative to include housing and then rejected and adopted the Zero Net
8 Energy Buildings Alternative as the environmentally superior alternative.

9 56. Under this alternative Respondents will adopt a Zero Net Energy Green Building
10 Ordinance requiring Zero Net Energy for all new commercial and residential buildings in the
11 County beginning in 2017. This alternative fails to address the significant additional GHG
12 emissions from on-road transportation associated with new commercial buildings, including
13 wineries and hotels, regardless whether they are constructed with energy saving technology. The
14 EIR fails to provide any reasoned analysis which supports treating a reduction in commercial
15 growth and adopting a Green Building Ordinance as mutually exclusive alternatives. An
16 alternative which included both reduction in commercial growth and adopting a Green Building
17 Ordinance would be clearly environmentally superior to any of the considered alternatives , but
18 it would be inconsistent with Respondents decision to define as project objectives consistency
19 with current land use policies and supporting economic growth.

20 57. In light of the above analysis regarding the inadequacies of the GHG inventory, the
21 conclusion of the FEIR that the Zero Net Energy Buildings Alternative will achieve the specified
22 GHG emissions levels is not supported by substantial evidence. The intended, clearly stated
23 effect of the CAP is to tier the cumulative effects analysis of GHG emissions resulting from
24 future individual projects by showing compliance with the terms of the CAP, as a way of
25 determining whether the GHG emissions from an individual project will be cumulatively
26 significant, thereby “streamlining” the GHG cumulative effects analysis of individual projects.
27 By understating the GHG inventory, the CAP is enabling future development based on an
28 inaccurate assessment of current and future GHG emissions levels. The predictable effect will

1 be to facilitate a greater level of additional development than would be approved if cumulative
2 impacts analysis for GHG emissions was performed on an individual project basis. Given the
3 underestimation of current and projected GHG emissions and the questionable effectiveness of
4 many of the mitigation measures defined in the CAP, the benefits claimed in the CAP and FEIR
5 for the adopted alternative are not supported by substantial evidence in the record.

6 58. Here, Respondents transparently violated the principle that CEQA should be interpreted
7 in a manner most protective of the environment by positing at the outset that the CAP must be
8 consistent with current land use policies and plans for economic growth, and then reverse
9 engineering the analysis with understated GHG emissions and inadequate mitigations to reach
10 the conclusion, clearly not supported by substantial evidence, that the specified levels could be
11 achieved while continuing to approve projects with substantial, unaccounted for, GHG
12 emissions.

13 59. Petitioner is informed and believes and thereon alleges, that by approving the CAP and
14 certifying the FEIR, when the FEIR, in its alternatives analysis, failed to evaluate alternatives
15 which are most likely capable of avoiding or substantially lessening any significant effects of
16 the project, Respondents failed to proceed in the manner required by law.

17 **D. Fourth Cause of Action (CEQA - Inadequate Response to Public Comments)**

18 60. Petitioner incorporates by reference all of the allegations made in the previous paragraphs
19 as if separately set forth herein.

20 61. The County's responses addressed Petitioner's comments not with good faith reasoned
21 analysis, but with evasion and/or conclusory statements, not supported by factual information,
22 in the following instances:

23 62. 1) Responding to Petitioner's concern regarding the County's failure to account for
24 millions of metric tons of acknowledged GHG emissions from vehicle miles traveled outside the
25 limited range of the County's transportation model by claiming these are not emissions the
26 County can reasonably address, despite being emissions which would not occur but for County
27 permits authorizing the causal land use activities.

28 Respondents also responded that estimation of the excluded GHG emissions, while

possible, requires information “that can be difficult to come by”, and that a protocol which would account for them is not the common approach, which would make it difficult to compare regional inventories. Neither of these responses is supported by information and they are also conclusory in that they address convenience and are not supported by a reasoned analysis justifying the excluded emissions and resultant understated GHG inventory.

63. 2) Responding to Petitioner’s concern regarding inadequate mitigation measures with a misleading characterization of “mandatory” measures and measures “certain to be implemented”, discussed above in section III. B Inadequate Mitigations.

64. 3) Responding to Petitioner’s comment recommending moratorium or significant limitation on new wineries/vineyard expansions and/or tourist destinations by responding with a discussion regarding Respondents’ decision not to further evaluate what the EIR defined as the no-growth alternative, which differed significantly from Petitioner’s proposed alternative, in that the EIR No Growth Alternative included a new housing moratorium and no reduction in new tourist destinations while Petitioner’s proposed alternative included reduction in new tourist destination and no moratorium on new housing, so that the response was substantially unresponsive and went on at length with remarks unresponsive to Petitioner’s comment.

65. Respondents’ response, that since any moratorium or reduction in growth would not meet the project objectives of consistency with existing land use policies and supporting economic growth, it is not required to be given further evaluation in the EIR, is the most notable example, of a conclusory response not supported by information or reasoned analysis.

66. The CEQA Guidelines require both that an EIR describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project (§ 15126.6(a)) and that an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment even if these alternatives would impede to some degree the attainment of the project objectives (§ 15126.6 (b)). The Response cited only subdivision (a). Arbitrarily declining to consider a moratorium or reduction in commercial growth with significant GHG emissions is not in compliance with the intent of the regulations. By conveniently citing subdivision (a) and ignoring subdivision(b), the

1 County failed to make a good faith, reasoned response to Petitioner's comment.

2 67. Responding to Petitioner's comment raising the question whether the region can have
3 continued economic growth while also reducing GHG emissions, Respondents answered yes
4 citing as proof the GHG inventory for 2010, which allegedly represents a 9% reduction level in
5 GHG emissions below 1990 levels despite a 25% increase in population and a 17% increase in
6 employment. However, the 2010 GHG inventory is exactly the set of calculations which
7 Petitioner has been criticizing, based on the above detailed analysis, included in its comments,
8 as constituting the inadequate description of existing conditions.

9 68. Petitioner is informed and believes and thereon alleges, that by failing to make a good
10 faith, reasoned response supported by information to Petitioner's comments, Respondents abused
11 its discretion by failing to proceed in the manner required by law under CEQA.

12 VI. PRAYER FOR JUDGMENT

13 WHEREFORE, Petitioner prays for judgment as follows as to all Causes of Action:

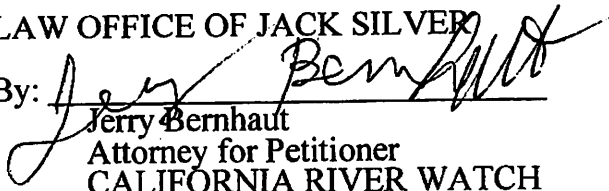
- 14 1. For a Writ of Mandate ordering the County to set aside approval of the CAP and
15 certification of the EIR, based on its violations of CEQA and regulations set forth therein.
- 16 2. For an Order directing the County to amend the CAP consistent with the Court's rulings,
17 and to re-circulate the amended CAP and EIR for public comment.
- 18 3. For reasonable attorney's fees pursuant to Code of Civ. Proc. §1021.5.
- 19 4. For costs of suit.
- 20 5. For such other and further relief as this Court deems proper.

21
22 DATED: August 9, 2016

Respectfully submitted,

23 LAW OFFICE OF JACK SILVER

24 By:


Jerry Bernhaut

Attorney for Petitioner
25 CALIFORNIA RIVER WATCH
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VERIFICATION

I, Lisa H. Mador, declare as follows:

I am a member of California River Watch, a party to this action. I am informed and believe, and on that ground allege, that the matters stated in the foregoing Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate are true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 9th day of August, 2016, at Santa Rosa, California.


Lisa H. Mador

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On August 9, 2016, I served the attached **Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate** on the following party(ies):

[X] (BY FIRST CLASS MAIL) I placed a true copy in a sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of the Law Office of Jerry Bernhaut for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on August 9, 2016 at Santa Rosa, California.

Jerry Bernhaut

EXHIBIT A

Law Office of Jack Silver

708 Gravenstein Highway # 407, Sebastopol, California 95472
Phone 707-528-8175



Via Personal Delivery
and Electronic mail to lauren.casey@rcpa.ca.gov

August 8, 2016

Lauren Casey
Director Of Climate Programs
Regional Climate Protection Authority
490 Mendocino Avenue, Suite 206
Santa Rosa, CA 95401

**Re: Notice of Intent to Sue - Sonoma County Climate Action Plan, Final
Environmental Impact Report, Legal Compliance Under CEQA, Petition for
Writ of Mandate**

Dear Ms. Casey:

This letter provides written notice that California River Watch ("CRW") intends to file a lawsuit against the Regional Climate Protection Authority and the County of Sonoma (collectively, the "County") due to the County's July 11, 2015 decision to approve the Sonoma County Climate Action Plan. The County's approval of the Plan and certification of the Final Environmental Impact Report ("FEIR") are in violation of the California Environmental Quality Act ("CEQA") Pub. Res. Code § 21000 et seq. and regulations pursuant thereto regarding CEQA Guidelines, Title 14, Calif. Code of Regs. ("CCR") §15000, et seq.

INTRODUCTION

Climate change is one of the most urgent global issues with effects including loss of species, human hunger and death, and social and political disruption due to diminished food supply and loss of habitable terrain. In light of the conceptual challenges presented in assessing whether the greenhouse gas ("GHG") emissions from an individual project are a cumulatively significant contribution to the global level of GHG in the atmosphere causing

global warming, the County and other jurisdictions have chosen to prepare a program level Climate Action Plan ("CAP") for Tiering and Streamlining the Analysis of GHG emissions from individual projects. CEQA Guidelines § 15183.5 (b) provides that public agencies may choose to analyze and mitigate significant GHG emissions in a plan for the reduction of GHG emissions or a similar document.

Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in such a previously adopted plan or mitigation program. Thus, a lead agency may determine that future discretionary projects in Sonoma County with potentially significant incremental contributions to the level of GHG emissions in the earth's atmosphere will not make a cumulatively significant contribution to GHG emissions levels, for CEQA purposes, if the project complies with the requirements, including mitigation measures, in the County's CAP.

While CRW recognizes the efficacy of adopting a program level CAP for the analysis of GHG contributions of individual projects, representatives of CRW have made extensive efforts in identifying the technical and legal errors in the adoption of the County's CAP.

CRW has reviewed the County's Responses To Comments Received on the Draft EIR, published in the FEIR. In our opinion, the County's responses do not fully address the problems that CRW and others identified. My client, however, is prepared to discuss these violations with you in the hope of coming to a solution to remedy the legal defects, and to avoid litigation.

Both in our written comments and in numerous earlier discussions and oral testimony before the RCPA Board, we have clearly delineated numerous substantial errors in the process of developing the CAP, in terms of assessing GHG emissions attributable to the County and jurisdictions within the County, projecting future emissions based on these inaccurate assessments, and assumptions regarding the likely effectiveness of mitigation measures. Because of these errors, the CAP is legally inadequate and we have a strong expectation that our client will prevail in litigation. Given the importance of the significant biological resources and human health and well being that would be adversely affected by the CAP, and the public interest nature of this case, we would pursue a judgment that sets

aside the approval of the CAP, and requests attorney's fees under the private attorney general provisions in Code of Civ. Proc. §1021.5.

The County approved the Project on July 11, 2016. On July 12, 2016, the County filed a Notice of Determination for the certification of the FEIR in the Office of the County Clerk for the County of Sonoma. As you undoubtedly know, the posting of a Notice of Decision for this approval requires my client to act within 30 days to proceed with any challenge pursuant to CEQA. This letter serves as notice pursuant to Publ. Res. Code § 21167.5 that my client has authorized me to file suit on its behalf in state court within the 30 days. This action shall include CEQA claims.

We intend to pursue this action vigorously and without delay. We write this letter in a final effort to request that RCPA enter into discussions with my client to determine a negotiated solution.

CEQA LEGAL DEFICIENCIES

The grounds for my client's lawsuit include, inter alia, that the CAP is deficient with respect to the collective contributions to global GHG emissions from activities within the County's jurisdiction and the jurisdiction of cities within the County. The CAP does not comply with the requirements of CEQA. CRW alleges that the CAP is illegal for the following reasons:

Failure to Provide An Accurate Description of Existing Conditions:

The CEQA Guidelines provide that the environmental setting as it exists when the EIR is being prepared should ordinarily be treated as the baseline for gauging the changes that will be caused by the project. 14 Cal Code Regs §§ 15125(a), 15126.2(a).

CEQA Guidelines § 15183.5, for Tiering and Streamlining the Analysis of Greenhouse Gas Emissions, provide more specifically in subdivision (b)(1)(A), that a programmatic plan such as the County's CAP should "Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area".

The GHG Inventory of current emission levels, as of 2010, within Sonoma County and associated with land use activities within Sonoma County constitutes the description of existing GHG emissions which the CAP relies on to project future GHG emission levels. The CAP GHG inventory arbitrarily understates GHG emissions from commercial land use activities within Sonoma County, over which the County has control or a reasonable ability to influence through the permitting process. The CAP fails to account for emissions from vehicle miles traveled ("VMT") in the transport of Sonoma County produce, including vast wine distribution, and VMT to and from tourist destinations within the County, by limiting the origin and destination points included in its calculations to trips within County boundaries and trips to and from 18 nearby regional destinations outside the County.

By limiting commercial VMT in its calculations to trips within Sonoma County and to 18 nearby regional communities, the CAP arbitrarily limits GHG emissions in a manner not based on any rational explanation consistent with its own criterion of emissions over which the County has a reasonable ability to control or influence. These omitted emissions are associated with land use activities permitted by jurisdictions with Sonoma County. But for the issuing of the permits authorizing these activities, these GHG emissions would not occur.

By making no attempt to account for emissions from air travel or shipping associated with land uses within Sonoma County, the CAP is improperly segmenting these emissions in its description of the environmental baseline for purposes of a programmatic CAP under CEQA Guidelines § 15183.5.

For the FEIR to satisfy the informational function of CEQA, the FEIR must present facts and analysis which provide a clear analytical route taken by Respondent to reach the conclusion that the CAP contains a program which will enable Sonoma County to achieve the GHG emission levels specified in the CAP. The systematic underestimation of GHG emissions attributable to activities permitted within the County represent an analytical gap in the calculation of the GHG inventory for which there is no reasonable explanation in the FEIR. CEQA requires a clear discussion of existing conditions. The FEIR failed by excluding data and sources which should have been included in the discussion of current emissions.

CRW is informed and believes and thereon alleges that in approving the CAP and certifying the FEIR when the CAP is based on an understated description of existing GHG

emissions, i.e. an inaccurate environmental setting, at the time of EIR preparation, the County failed to proceed in the manner required by law. The GHG inventory in the CAP is not supported by substantial evidence.

Inadequate Mitigations:

Mitigation measures are required by law to be “Fully enforceable.” Pub. Res. Code § 2181.6(b); CEQA Guidelines § 15126.4(a)(2). Mitigation measures must be definite and defined so that their effectiveness is ascertainable. *See, e.g., San Franciscans for Reasonable Growth and City v. County of San Francisco* (1984) 151 Cal. App. 3d 61.

CEQA Guidelines § 15183.5(B)(1)(D) provides that a programmatic CAP for tiering GHG emissions should “Specify measures or a group of measures, including performance standards, that **substantial evidence demonstrates**, (emphasis added) if implemented on a project-by-project basis, would collectively achieve the specified emissions level.”

The CAP and FEIR lack substantial evidence to support GHG emission reductions projected to be achieved by mitigation measures in the CAP. Most of the mitigation measures relied on in the CAP and FEIR as a basis for estimates of reductions of GHG emissions are not supported by enforceable regulations or by identified sources of committed funding. Respondent argues in its Response to CRW’s comments regarding mitigation measures that CEQA Guidelines § 15183.5 does not restrict planning estimates of GHG emissions reductions to those that are regulatory in nature. Whether the adequacy of the mitigation measures in the County’s CAP and FEIR is evaluated based on enforceability, identified funding sources, or clarity of terms ensuring implementation, an examination of the record reveals that the language describing the programs identified as mitigation measures does not provide substantial evidence to ensure compliance during implementation of the CAP.

The CAP misleadingly labels as mandatory measures which are conditional on local jurisdictions identifying qualifying criteria for requiring rooftop solar installation (measure 2-L1), conditional on whether participating jurisdiction decides remodels/renovations are required to meet community-defined target for solar installations (measure 2-L2) Measures are identified as “mandatory” which are defined in vague terms subject to political pressure in their implementation, e.g. Measure 4-L1. “*Mixed-Use Development in City Centers and Along Transit Corridors [All jurisdictions] The jurisdictions will identify and support mixed*

use development in city-centers and transit-oriented development locations through their General Plans, Area Plans, and Specific Plans and zoning codes.”

There are no funding sources identified for mitigation measures in the CAP or FEIR. Funding is addressed in the CAP as follows: “CA2020 commits local governments to implementing a suite of measures appropriate for each community based on their prior efforts, development and economic trends, and community priorities.” ...“RCPA led development of this plan and is committed to its implementation by securing funding, managing pilots and programs, developing research and best practices, and supporting members and regional partners in coordinated implementation.” (CAP p.4-3.)

Presenting a set of aspirational mitigation measures, with no identified funding sources, some defined in vague terms such as “*support mixed use development in city-centers*”, terminology which some developers have exploited to promote new large hotel projects with substantial GHG impacts, does not provide substantial evidence of a group of measures, including performance standards, that substantial evidence demonstrates would collectively achieve the specified emissions level in the CAP.

CRW is informed and believes and thereon alleges that by approving the CAP and certifying the FEIR when the FEIR and CAP incorporated therein fails to provide a set of mitigations which substantial evidence demonstrates would achieve the specified emissions level, the County failed to proceed in a manner required by law .

Inadequate Alternatives Analysis:

The County declined to evaluate as an alternative any moratorium or significant reduction in new or expanded vineyards/wineries or tourist destinations, as suggested in CRW’s comments and other public comments. The County so declined because any such alternative would not meet the project objectives of consistency with existing land use policies and support economic growth.

In Section 5.4.1 of the EIR, the County identified as an alternative considered but rejected for further evaluation, a Growth Moratorium Alternative, defined as “a moratorium on new wineries/vineyard expansions and new housing until the jobs-housing balance is more equitable.” The EIR rejected this alternative for further consideration because “it would not

be consistent with the land use policy direction and growth anticipated in local general plans and would not allow for continued economic growth to provide opportunities for business and residents, both of which are fundamental project objectives of the CAP.” Under CEQA Guidelines § 15126.6(b), “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.”

CRW in its comments advocated a moratorium or reduction in growth of vineyard/wineries and tourist destinations, i.e. a reduction in commercial growth which generates higher levels of GHG emissions than new housing. New housing, if affordably priced, could reduce GHG emissions by providing workforce housing closer to jobs. The County, in its Response, justified its rejection of the Growth Moratorium Alternative which included new housing, based on its inconsistency with current land use policy and economic growth. While the obvious alternative capable of avoiding or substantially lessening GHG emissions is a limitation on commercial growth, including new tourist venues, the EIR arbitrarily defined a Growth Moratorium Alternative to include housing and then rejected and adopted the Zero Net Energy Buildings Alternative as the environmentally superior alternative.

Under this alternative the County will adopt a Zero Net Energy Green Building Ordinance requiring Zero Net Energy for all new commercial and residential buildings in the County beginning in 2017. This alternative fails to address the significant additional GHG emissions from on-road transportation associated with new commercial buildings, including wineries and hotels, regardless whether they are constructed with energy saving technology. The EIR fails to provide any reasoned analysis which supports treating a reduction in commercial growth and adopting a Green Building Ordinance as mutually exclusive alternatives. An alternative which included both reduction in commercial growth and adopting a Green Building Ordinance would be clearly environmentally superior to any of the considered alternatives, but it would be inconsistent with the County’s decision to define as project objectives consistency with current land use policies and supporting economic growth.

In light of the above analysis regarding the inadequacies of the GHG inventory, the conclusion of the FEIR that the Zero Net Energy Buildings Alternative will achieve the

specified GHG levels is not supported by substantial evidence. The intended, clearly stated effect of the CAP is to tier the cumulative effects analysis of GHG emissions resulting from future individual projects by showing compliance with the terms of the CAP, as a way of determining whether the GHG emissions from an individual project will be cumulatively significant, thereby "streamlining" the GHG cumulative effects analysis of individual projects. By understating the GHG inventory, the CAP is enabling future development based on an inaccurate assessment of current and future GHG emissions levels. The predictable effect will be to facilitate a greater level of additional development than would be approved if cumulative impacts analysis for GHG emissions was performed on an individual project basis. Given the underestimation of current and projected GHG emissions and the questionable effectiveness of many of the mitigation measures defined in the CAP, the benefits claimed in the CAP and FEIR for the adopted alternative are not supported by substantial evidence in the record.

Here, the County transparently violated the principle that CEQA should be interpreted in a manner most protective of the environment by positing at the outset that the CAP must be consistent with current land use policies and plans for economic growth, and then reverse engineering the analysis with understated GHG emissions and inadequate mitigations to reach the conclusion, clearly not supported by substantial evidence, that the specified levels could be achieved while continuing to approve projects with substantial, unaccounted for, GHG emissions.

CRW is informed and believes and thereon alleges that by approving the CAP and certifying the FEIR, when the FEIR, in its alternatives analysis, failed to evaluate alternatives which are most likely capable of avoiding or substantially lessening any significant effects of the project, the County failed to proceed in the manner required by law.

Inadequate Response to Public Comment:

The County's responses addressed CRW's comments not with good faith reasoned analysis, but with evasion and/or conclusory statements, not supported by factual information, in the following instances:

1. Responding to CRW's concern regarding the County's failure to account for millions of metric tons of acknowledged GHG emissions from vehicle miles traveled outside

the limited range of the County's transportation model by claiming these are not emissions the County can reasonably address, despite being emissions which would not occur but for County permits authorizing the causal land use activities.

The County also responded that estimation of the excluded GHG emissions, while possible, requires information "that can be difficult to come by", and that a protocol which would account for them is not the common approach, which would make it difficult to compare regional inventories. Neither of these responses is supported by information and they are also conclusory in that they address convenience and are not supported by a reasoned analysis justifying the excluded emissions and resultant understated GHG inventory.

2. Responding to CRW's concern regarding inadequate mitigation measures with a misleading characterization of "mandatory" measures and measures "certain to be implemented", discussed above regarding Inadequate Mitigations.
3. Responding to CRW's comment recommending moratorium or significant limitation on new wineries/vineyard expansions and/or tourist destinations by responding with a discussion regarding the County's decision not to further evaluate what the EIR defined as the no-growth alternative, which differed significantly from CRW's proposed alternative, in that the EIR No Growth Alternative included a new housing moratorium and no reduction in new tourist destinations while the County's proposed alternative included reduction in new tourist destination and no moratorium on new housing, so that the response was substantially unresponsive and went on at length with remarks unresponsive to CRW's comment.

The County's response, that since any moratorium or reduction in growth would not meet the project objectives of consistency with existing land use policies and supporting economic growth, it is not required to be given further evaluation in the EIR, is the most notable example of a conclusory response not supported by information or reasoned analysis.

The CEQA Guidelines require both that an EIR describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project (§ 15126.6(a)) and that an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment even if these alternatives would impede to some degree the attainment of the project objectives (§

15126.6(b). The Response cited only subdivision (a). Arbitrarily declining to consider a moratorium or reduction in commercial growth with significant GHG emissions is not in compliance with the intent of the regulations. By conveniently citing subdivision (a) and ignoring subdivision (b), the County failed to make a good faith, reasoned response to CRW's comment.

Responding to CRW's comment raising the question whether the region can have continued economic growth while also reducing GHG emissions, the County answered yes, citing as proof the GHG inventory for 2010, which allegedly represents a 9% reduction level in GHG emissions below 1990 levels despite a 25% increase in population and a 17% increase in employment. However, the 2010 GHG inventory is exactly the set of calculations which CRW has been criticizing, based on the above detailed analysis, included in its comments, as constituting the inadequate description of existing conditions.

CRW is informed and believes and thereon alleges that by failing to make a good faith, reasoned response supported by information to CRW's comments, the County abused its discretion by failing to proceed in the manner required by law under CEQA.

CONCLUSION

Based on its review, CRW believes the FEIR is not in compliance with CEQA and that the County has failed to adequately respond to and address comments and concerns raised. CRW has previously provided the County with valid concerns and legal issues. CRW is willing to immediately begin discussing terms to settle this dispute that could obviate the need to proceed with further litigation. As such, we urge the RCPA to respond to this letter to discuss these inadequacies and potential solutions.

In order to avoid further litigation, CRW presents the following settlement proposal, which would be embodied in a formal written settlement agreement:

1. The County agrees to rescind any approvals, resolutions, statements and notices of conformance for the CAP; or alternatively, agrees to allow issuance of a writ of mandate commanding that RCPA void said approval(s);

Page 11

August 8, 2016

Notice of Intent to Sue

2. The County agrees to engage in negotiations with CRW to amend the CAP and EIR and to circulate the re-drafted EIR for public comment.
3. Negotiations may include a citizens' advisory committee consisting of members agreed upon by the County and CRW.

Failure by the County to respond within two weeks of receipt of this Notice will be understood by CRW as rejection of any attempt to resolve this dispute without further litigation.

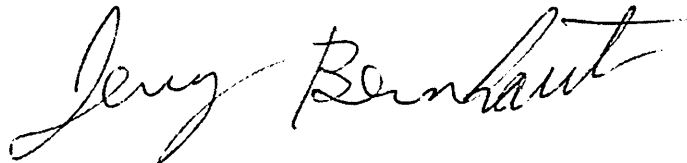
Should the County reject this offer of negotiation and settlement, CRW will proceed with litigation, and should CRW prevail, CRW will seek attorney's fees and costs from the County for having to pursue this action in the public interest.

This notice is sent to you in the interest of avoiding further litigation, and pursuant to Pub. Res. Code § 21167.5 and Code of Civ. Proc. §1021.5.

Thank you for your attention to this matter. Please contact me directly in response to this letter at j3bernhaut@gmail.com or my direct telephone (707) 595-1852. Please also copy Jack Silver, Esquire at warrioreco@yahoo.com on all email.

Sincerely,

Jerry Bernhaut
Attorney for California River Watch

A handwritten signature in black ink that reads "Jerry Bernhaut". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

PROOF OF PERSONAL SERVICE

1. I am over the age of 18 years and not a party to this action.
2. I served the following document:

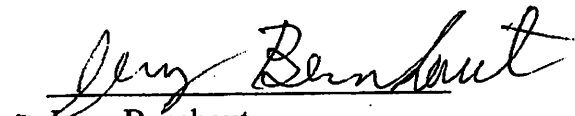
Notice Of Intent to Sue - Sonoma County Climate Action Plan Final Environmental Impact Report, Legal Compliance Under CEQA, Petition for Writ of Mandate

3. I personally served the following persons at the address, date and time stated:
 - a. Name: Regional Climate Protection Authority
 - b. Address: 490 Mendocino Avenue, Suite 206, Santa Rosa, CA 95401
 - c. Date: August 8, 2016
 - d. Time: 1:20 p.m. SB

4. I am not a registered California process server.
5. My name, address, telephone number are as follows:

Jerry Bernhaut
708 Gravenstein Highway North # 407
Sebastopol, CA 95472

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 8th day of August, 2016.


Jerry Bernhaut