

# **ATTACHMENT H**

## SETTLEMENT AGREEMENT

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

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

### RECITALS

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

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

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

### SETTLEMENT PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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### 4. Release of Claims.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**7. General Provisions**

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

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

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

To County:

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

To Petitioners:

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

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

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

**COUNTY OF MONTEREY**

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

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

Dave Potter  
Chair, Monterey County Board of Supervisors

**APPROVED AS TO FORM**

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

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

Leslie J. Girard  
Chief Assistant County Counsel

**SALINAS VALLEY WATER COALITION**

Date: August 8, 2012

By: Nancy Isakson

Nancy Isakson  
President

**MONTEREY COUNTY FARM BUREAU**

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

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

Norman C. Groot  
Executive Director

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

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

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

John Papa  
President

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

**COUNTY OF MONTEREY**

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

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

Dave Potter  
Chair, Monterey County Board of Supervisors

**APPROVED AS TO FORM**

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

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

Leslie J. Girard  
Chief Assistant County Counsel

**SALINAS VALLEY WATER COALITION**

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

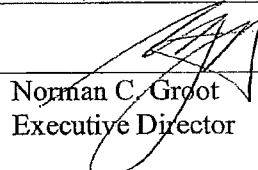
By: \_\_\_\_\_

Nancy Isakson  
President

**MONTEREY COUNTY FARM BUREAU**

Date: 8/8/2012

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

  
Norman C. Groot  
Executive Director

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

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

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

John Papa  
President

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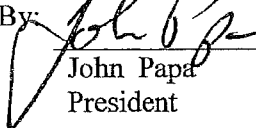
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BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

Date: 8-9-12

By:   
John Papa  
President

**MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION**

Date:

By:

Ron Pasquinelli  
President

**HOWARD JARVIS TAXPAYERS  
ASSOCIATION**

Date:

By:

Tim Biddle  
Director of Legal Affairs

CONFIDENTIAL



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**MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION**

Date: 8/3/12

By: Ron Pasquinelli  
Ron Pasquinelli  
President

**HOWARD JARVIS TAXPAYERS ASSOCIATION**

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

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

**SETTLEMENT AGREEMENT**

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

(Monterey County Case No. M109451)

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**MONTEREY PENINSULA TAXPAYERS  
ASSOCIATION**

Date:

\_\_\_\_\_

By:

\_\_\_\_\_  
Ron Pasquinelli  
President

**HOWARD JARVIS TAXPAYERS ASSOCIATION**

Date:

8-6-2012  
\_\_\_\_\_

By:

*Tim Bittle*  
\_\_\_\_\_  
Tim Bittle  
Director of Legal Affairs

**SETTLEMENT AGREEMENT**

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

(Monterey County Case No. M109451)

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

**COUNTY OF MONTEREY**

Date: Dave Potter

By: 8/3/12  
Dave Potter  
Chair, Monterey County Board of Supervisors

**APPROVED AS TO FORM**

Date: 8/2/12

By: [Signature]  
Leslie J. Girard  
Chief Assistant County Counsel

**SALINAS VALLEY WATER COALITION**

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

By: \_\_\_\_\_  
Nancy Isakson  
President

**MONTEREY COUNTY FARM BUREAU**

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

By: \_\_\_\_\_  
Norman C. Groot  
Executive Director

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

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

By: \_\_\_\_\_  
John Papa  
President

# **EXHIBIT A**

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

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

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

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

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

This requirement shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

This policy is not intended to apply to replacement wells.

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

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

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

This policy is not intended to apply to replacement wells.

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

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

**1. PS-3.1**

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

This requirement shall not apply to:

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



**Exhibit "A"**

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

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

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

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

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

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

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2. PS-3.3

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

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

This policy is not intended to apply to replacement wells

3. PS-3.4

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

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

This policy is not intended to apply to replacement wells.