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6 Attorney for Plaintiff:
7 LIVING RIVERS COUNCIL
8
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF NAPA**

12 LIVING RIVERS COUNCIL,

13 Plaintiff,

14 vs.

15 COUNTY OF NAPA, NAPA COUNTY BOARD
16 OF SUPERVISORS, and DOES 1 through 20,

17 Respondents,

18 HALL BRAMBLETREE ASSOCIATES, LP, and
19 DOES 21 through 40,

20 Real Parties In Interest.
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ENDORSED

JAN 18 2017

CLERK OF THE NAPA SUPERIOR COURT
BY C. FRANKIE
DEPUTY

Case No. 17CV000055

**PETITION FOR WRIT OF
MANDATE**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 Plaintiff Living Rivers Council alleges:

2 1. Plaintiff challenges Respondent County of Napa's approval of Agricultural Erosion Control Plan No.
3 P11-00205-ECPA for the Walt Ranch Vineyard Conversion Project (Project) on grounds the approval
4 violates the California Environmental Quality Act (Pub. Resources Code, § 21000 *et seq*).

5 **Parties**

6 2. Plaintiff LIVING RIVERS COUNCIL is an unincorporated association of individuals dedicated to
7 environmental protection and protecting the Napa River in its natural and "living" condition. Plaintiff brings
8 this action both on behalf of itself and its adversely affected members. Plaintiff's members regularly use,
9 and will continue to use, lands and waters in Napa County which contain environmental values affected by
10 the Project, including endangered species habitat, water quality, stream channel integrity and wildlife habitat
11 for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities.
12 Plaintiff's members have researched, studied and observed many federally-listed threatened and endangered
13 species that live on or use the land and waterways affected by the Project. Plaintiff's members and staff
14 derive scientific, recreational, health, conservation, spiritual, and aesthetic benefits from these rare species'
15 existence in the wild.

16 3. Plaintiff's members and staff rely on Respondent County to comply fully with the California
17 Environmental Quality Act, which assures that policies and projects carried out by Respondent will be
18 subject to the environmental protection and public participation provisions of the Act. Plaintiff's members
19 and staff derive scientific, recreational, health, conservation, spiritual, and aesthetic benefits from the
20 preservation and protection of environmental values under CEQA. Plaintiff's members and staff spend time
21 in areas adversely affected by Respondent County's certification of incomplete and inadequate
22 environmental review and mitigation of the Project and approval of the Project in reliance thereon.
23 Respondent County's actions directly and immediately affect the environmental values with which Plaintiff
24 is concerned. Plaintiff's members and staff have been, are being, and unless the relief requested is granted,
25 will continue to be directly adversely affected and injured by Respondent County's actions.

26 4. Respondent COUNTY OF NAPA is a public entity, a political subdivision of the State of California
27 and a local public agency as defined in the California Environmental Quality Act. Respondent NAPA
28 COUNTY BOARD OF SUPERVISORS is the public entity charged with oversight of all operations of
29 Respondent NAPA COUNTY. Respondents COUNTY OF NAPA and NAPA COUNTY BOARD OF
30 SUPERVISORS are collectively referred to herein as "Respondent County."

1 5. Plaintiff does not know the true names and capacities of Respondents fictitiously named herein as
2 DOES 1 through 20, inclusive. Plaintiff is informed and believe, and thereon allege, that such fictitiously
3 named Respondents are responsible in some manner for the acts or omissions complained of or pending
4 herein. Plaintiff will amend this Petition to allege the fictitiously named Respondents' true names and
5 capacities when ascertained.

6 6. Plaintiff is informed and believe and on that basis allege that Real Party in Interest HALL
7 BRAMBLETREE ASSOCIATES, LP, is a Texas limited partnership with offices located at 401 St. Helena
8 Hwy. So, St. Helena, CA 94574 and is the Project Sponsor and recipient of the approval challenged in this
9 action. Real Party in Interest HALL BRAMBLETREE ASSOCIATES, LP is referred to herein as "Real
10 Party."

11 7. Plaintiff does not know the true names and capacities of real parties in interest fictitiously named
12 herein as DOES 21 through 40, inclusive. Plaintiff is informed and believe, and thereon allege, that such
13 fictitiously named real parties in interest are responsible in some manner for the acts or omissions
14 complained of or pending herein. Plaintiffs will amend this Petition to allege the fictitiously named real
15 parties in interests' true names and capacities when ascertained.

16 **Procedural Background**

17 8. On or about July, 2014, Respondent County issued a Draft Environmental Impact Report (Draft EIR)
18 for the Project. On or about November 21, 2014, Plaintiff submitted extensive comments on the Draft EIR.
19 On or about March, 2016, Respondent County issued a Final Environmental Impact Report (Final EIR) for
20 the Project. On or about April 4, 2016, Plaintiff submitted extensive comments on the Final EIR.

21 9. On or about August 1, 2016, the Director of Respondent County's Department of Planning, Building
22 and Environmental Services approved the Project, certified the Final EIR and adopted CEQA Findings.

23 10. Plaintiff timely appealed these decisions to Respondent County's Board of Supervisors ("Board")
24 pursuant to County Code Chapter 2.88 and Public Resources Code section 21151(c). Several other
25 organizations, including the Sierra Club, the Center for Biological Diversity, the Circle Oaks Water District
26 and the Circle Oak Homeowners' Association also timely appealed these decisions to the Board. The Board
27 heard these appeals on November 18, November 22, and December 6 of 2016. On December 20, 2016, the
28 Board denied all of these appeals, re-certified the Final EIR and adopted CEQA Findings.

29 11. On December 20, 2016, Respondent County filed a Notice of Determination pursuant to Public
30 Resources Code section 21152(a).

12. Pursuant to Public Resources Code § 21167.5, on January 13, 2017, Plaintiff served Respondent County and Real Party with written notice of their intent to commence this action. A copy of this notice (with its included settlement demand redacted) and of proof of service of this notice is attached hereto as Exhibit 1.

13. Pursuant to Public Resources Code § 21167.7 and Code of Civil Procedure section 388, Plaintiff served notice of the filing of this action and a copy of this pleading to the Attorney General's office. A copy of said notice and a copy of the proof of service of the notice and pleading is attached hereto as Exhibit 2.

Jurisdiction

14. Plaintiff brings this Petition for Writ of Mandate pursuant to Code of Civil Procedure section 1084 et seq. and Public Resources Code sections 21167 and 21168.

15. The Court has jurisdiction over the claims and cause of action alleged in this action.

Standing

16. Plaintiff and its members are beneficially interested in Respondent County's full compliance with CEQA. Respondent County owed a mandatory duty to comply with CEQA before approving the Project. Plaintiff has the right to enforce the mandatory duties that CEQA imposes on Respondent County.

Exhaustion of Administrative Remedies

17. Plaintiff has exhausted all available administrative remedies in that Respondent County's approval of the Project is final and not subject to further administrative appeal procedures.

18. In accord with Public Resources Code section 21177, subdivision (b), Plaintiff objected to the approval of the Project orally or in writing during the public comment period or prior to the close of the public hearing on the Project before the filing of any related notices of determination.

19. In accordance with Public Resources Code section 21177, subdivision (a), all alleged grounds for non-compliance with CEQA that are alleged herein were presented to Respondent County during the public comment period for, or prior to the close of the public hearing on, the Project.

20. In the alternative, there was no opportunity for members of the public to raise the grounds of noncompliance alleged in this Petition prior to Respondent County's adoption of the Project.

Private Attorney General Doctrine

21. Plaintiff brings this action as private attorneys general pursuant to Code of Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public interest. Issuance of the relief requested in this Petition will confer a significant benefit on a large class of persons

1 by ensuring that Respondent County does not approve the Project in the absence of lawful environmental
2 review and compliance with applicable local and state zoning law.

3 **Cause of Action**
4 **(Violations of CEQA)**

5 22. Plaintiff hereby reallege and incorporate the preceding paragraphs of this Petition as though set forth
6 herein in full.

7 23. In approving the Project as described herein, Respondent County prejudicially abused its discretion
8 in violation of CEQA pursuant to Public Resources Code section 21168 and Code of Civil Procedure section
9 1094.5, because Respondent County certified an Environmental Impact Report that fails to include
10 information necessary for informed decision making and informed public participation, including
11 information necessary to reach informed conclusions regarding the significance of the Project's
12 environmental impacts, the effectiveness of mitigation measures to avoid the Project's significant
13 environmental impacts, or the feasibility of mitigation measures to reduce the Project's significant
14 environmental impacts; because the EIR fails to lawfully assess the Project's cumulative effects, because
15 the EIR fails to use best available information; because the Final EIR fails provide good faith responses to
16 comments on the Draft EIR; because Respondent County failed and refused to recirculate a revised draft
17 Environmental Impact Report including said necessary information; because, with respect to the findings
18 required by CEQA at Public Resource Code section 21081, Respondent County failed to make required
19 findings, failed to support the findings made with substantial evidence, and failed to disclose the analytic
20 route showing how the evidence supports said findings.

21 24. Plaintiff alleges that Respondent County's violated CEQA as detailed in a number of comment and
22 administrative appeal letters submitted to Respondent County during the administrative process, including,
23 without limitation, Plaintiff's letters submitted to Respondent County by the undersigned counsel dated
24 November 21, 2014, April 4, 2016, August 29, 2016, and November 18, 2016. Plaintiff alleges that
25 Respondent County's violated CEQA in manner summarized in a document prepared by Respondent County
26 entitled "Appeal Grounds and Staff Responses" which is "Attachment E" to the November 18, 2016, "Board
27 Agenda Letter" for Agenda Item 9A on the Board's November 22, 2016, meeting agenda. Plaintiff hereby
28 notifies Respondent County and Real Party of its intent to prosecute all of the alleged violations of CEQA
29 described in the documents described in this paragraph. By way of illustration, and without limitation,
30 Plaintiff alleges the following violations of CEQA by Respondent County.

- 1 a. The EIR fails as an informational document with respect to Project impacts on increased
2 stream sedimentation in the Napa River drainage and associated impacts on the aquatic
3 ecosystem, including without limitation, impacts on special status fish species below
4 Milliken Reservoir and aquatic ecosystems and fish above Milliken Reservoir. These
5 informational deficiencies include without limitation: the failure to adequately describe the
6 environmental setting, including without limitation, the effect of deep ripping of soils on
7 precipitation infiltration rates; the failure to lawfully assess the significance of impacts of all
8 aspects of the Project and all mechanisms of impact, including without limitation, the failure
9 to lawfully analyze the significance of increased channel erosion and sediment production
10 caused by increases in peak runoff caused by installing engineered drainage structures.
- 11 b. The EIR fails as an informational document with respect to Project impacts on groundwater
12 resources. These informational deficiencies include without limitation: the failure to
13 adequately describe the environmental setting, including without limitation, the failure to
14 lawfully characterize the rate of groundwater recharge on the Project site, the failure to
15 lawfully characterize the hydraulic connection between groundwater to be pumped for the
16 Project and groundwater in the Milliken Sarco Tulocay (“MST”) Groundwater Deficient
17 Area, the failure to lawfully characterize the direction of groundwater flow between the
18 Project site and the MST Groundwater Deficient Area; the failure to lawfully assess the
19 significance of impacts of all aspects of the Project and all mechanisms of impact, including
20 without limitation, the failure to lawfully analyze the significance of pumping more
21 groundwater than is recharged on-site on local groundwater supplies; unlawfully deferring
22 until after project approval the analysis of the significance of groundwater drawdown impact
23 and the development of specific mitigation measures to reduce such impacts.
- 24 c. The EIR fails as an informational document with respect to Project groundwater pumping
25 impacts on reducing stream flow in Milliken Creek.
- 26 d. The EIR fails as an informational document with respect to Project impacts of adding
27 nutrients to Milliken Creek and Milliken Reservoir, including causing growth of
28 cyanobacteria.
- 29 e. The EIR fails as an informational document with respect to Project impacts on oak
30 woodlands.

1 f. The EIR fails as an informational document with respect Project impacts on wetlands,
2 amphibians and reptiles, including the California Red-Legged Frog, Foothill Yellow-Legged
3 Frog, and Western Pond Turtle. These informational deficiencies include without limitation:
4 the failure to adequately describe the environmental setting, including without limitation, the
5 failure to include reliable surveys to determine the presence, absence, and location of these
6 species; the failure to lawfully assess the significance of impacts of all aspects of the Project
7 and all mechanisms of impact, including without limitation, the failure to lawfully analyze
8 the significance of herbicide/pesticide drift on these species and their habitat; unlawfully
9 deferring the development of mitigation measures until after Project approval, including
10 without limitation, reliance on the so-called Integrated Pest Management Strategy.

11 25. Plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law and will suffer
12 irreparable injury unless this Court issues the relief requested in this action.

13 **Prayer for Relief**

14 WHEREFORE, Plaintiff prays for the following relief:

- 15 1. For a peremptory writ of mandate pursuant to Public Resources Code section 21168.9 ordering:
- 16 a. Respondent County to void its approval of the Project, its certification of the EIR and its
17 CEQA Findings;
- 18 b. Real Party to suspend all project activities until Respondent County has complied with
19 CEQA;
- 20 c. Respondent County to take any other actions the Court finds necessary to bring its
21 determinations, findings, or decisions on the Project into compliance with CEQA.
- 22 2. For an order retaining the Court's jurisdiction over this matter until Respondent County and Real
23 Party comply with the peremptory writ of mandate;
- 24 3. For an order compelling Respondent County or Real Party to pay Plaintiff's costs of suit;
- 25 4. For an order compelling Respondent County or Real Party to pay Plaintiff's reasonable attorneys fees
26 pursuant to Code of Civil Procedure § 1021.5; and
- 27 5. For such other relief as the Court may deem proper.

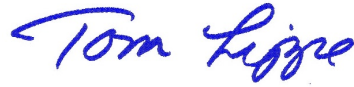
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1 DATED: January 18, 2017

LAW OFFICES OF THOMAS N. LIPPE, APC

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4 Thomas N. Lippe
Attorney for Plaintiff Living Rivers Council

1 **Verification**

2 I, Thomas N. Lippe, declare that:

3 1. I am an attorney licensed to practice before all courts of this State. I am the attorney of record for
4 Plaintiff Living Rivers Council.

5 2. I wrote and have read the foregoing Petition for Writ of Mandate and know the contents thereof. The
6 statements of fact contained therein relate to the permit process for the Project challenged in this action and
7 the content of the record of proceedings of the permit process for the Project challenged in this action.
8 Because of my greater familiarity with and direct percipient knowledge of these facts, and because Plaintiff
9 Living Rivers Council is located outside the County where my office is located, I verify this Petition.

10 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true
11 and correct. Executed on January 18, 2017, at San Francisco, California.

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13 _____
14 Thomas N. Lippe
15 Attorney for Plaintiff Living Rivers Council

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EXHIBIT 1

Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

January 13, 2017

<u>By U.S. Priority Mail and Email</u> Gladys I. Coil Clerk of the Board of Supervisors Board of Supervisors County of Napa 1195 3rd Street Napa, CA 94559 E-mail: Gladys.Coil@countyofnapa.org	<u>By U.S. Priority Mail and Email</u> Whitman Manley Remy Moose Manley LLP 555 Capitol Mall Ste 800 Sacramento, CA 95814 E-mail: Wmanley@rmmenvirolaw.com
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Re: Notice of Intent to File CEQA Action Challenging Agricultural Erosion Control Plan No. P11-00205-ECPA and Environmental Impact Report for the Walt Ranch Vineyard Conversion Project.

Dear Ms Coil and Mr. Manley:

This office represents Living Rivers Council (LRC) with respect to the Walt Ranch Vineyard Conversion Project (Project). This letter provides written notice pursuant to Public Resources Code section 21167.5 that Living Rivers Council will seek judicial review of the County's approval of the Project on grounds the approval does not comply with the California Environmental Quality Act (CEQA).

LRC is also interested in discussing settlement of this dispute. To settle this dispute short of litigation, LRC demands the following terms, in principle, with details to be provided and negotiated if the County and applicant are interested in pursuing settlement.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Gladys I. Coil, Clerk of the Board of Supervisors

Re: Notice of Intent to File CEQA Action Challenging Walt Ranch Vineyard Conversion Project
January 13, 2017

Page 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

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PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On January 13, 2017, I served the following document on the parties as designated below and on the attached service list:

- **Notice of Intent to File CEQA Action Challenging Agricultural Erosion Control Plan No. P11-00205-ECPA and Environmental Impact Report for the Walt Ranch Vineyard Conversion Project**

MANNER OF SERVICE
(check all that apply)

- ☒ By Priority Mail: In the ordinary course of business, I caused each such envelope to be placed in the custody of the United States Postal Service, with Priority Mail postage thereon fully prepaid in a sealed envelope.
- ☐ By Personal Service: I personally delivered each such envelope to the office of the address on the date last written below.
- ☐ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- ☒ By E-mail: I caused such document to be served via electronic mail equipment transmission (E-mail) on the parties as designated on the attached service list by transmitting a true copy to the following E-mail addresses listed under each addressee below.
- ☐ By Personal Delivery by Courier: I caused each such envelope to be delivered to an authorized courier or driver, in an envelope or package addressed to the addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 13, 2017, in the City and County of San Francisco, California



Kelly Marie Perry

SERVICE LIST

Gladys I. Coil
Clerk of the Board of Supervisors
Board of Supervisors
County of Napa
1195 3rd Street
Napa, CA 94559
E-mail: Gladys.Coil@countyofnapa.org

Whitman Manley
Remy Moose Manley LLP
555 Capitol Mall Ste 800
Sacramento, CA 95814
E-mail: Wmanley@rmmenvirolaw.com

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EXHIBIT 2

1 Thomas N. Lippe, SBN 104640
2 LAW OFFICES OF THOMAS N. LIPPE, APC
3 201 Mission Street, 12th Floor
4 San Francisco, California 94105
5 Tel: (415) 777-5604
6 Fax: (415) 777-5606

7 Attorney for Plaintiff:
8 LIVING RIVERS COUNCIL

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF NAPA**

11 LIVING RIVERS COUNCIL,

12 Plaintiff,

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15 OF SUPERVISORS, and DOES 1 through 20,

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17 HALL BRAMBLETREE ASSOCIATES, LP, and
18 DOES 21 through 40,

19 Real Parties In Interest.
20

Case No.

PROOF OF SERVICE

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, employed in the City and County of San Francisco, California.
3 My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18
4 years and not a party to the above entitled action. On January 18, 2017, I served the following document:

5 • **PETITION FOR WRIT OF MANDATE**

6 on the parties designated on the attached service list; and

7 **MANNER OF SERVICE**

8 **(check all that apply)**

- 9 ☒ By First Class Mail In the ordinary course of business, I caused each such envelope to
10 be placed in the custody of the United States Postal Service, with
11 first-class postage thereon fully prepaid in a sealed envelope.
- 12 ☐ By Personal Service I personally delivered each such envelope to the office of each such
13 addressee on the date written below.
- 14 ☐ By Overnight FedEx I caused such envelope to be placed in a box or other facility
15 regularly maintained by the express service carrier or delivered to
16 an authorized courier or driver authorized by the express service
17 carrier to receive documents, in an envelope or package designated
18 by the express service carrier with delivery fees paid or provided
19 for.
- 20 ☐ By Facsimile I caused such document to be served via facsimile electronic
21 equipment transmission (fax) on the parties in this action by
22 transmitting a true copy to the following fax numbers listed under
23 each addressee below.
- 24 ☐ By Personal Delivery I caused each such envelope to be delivered to an authorized
25 by Courier courier or driver, in an envelope or package addressed to the
26 addressee below.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on January 18, 2017, in the City and County of San Francisco, California.

29 
30 Kelly Marie Perry

SERVICE LIST

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Kathleen Kenealy
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