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Attorney for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

	) Case No.:
	)
HELPING OUR PENINSULA'S	) VERIFIED PETITION FOR WRIT OF
	) MANDATE
ENVIRONMENT,	)
	)
Petitioner,	)
	)
and	)
	)
CALIFORNIA DEPARTMENT OF FOOD	)
AND AGRICULTURE, A.G. KAWAMURA	)

Respondents

Comes Now Petitioner to allege as follows:

FIRST CAUSE OF ACTION

I

Petitioner Helping Our Peninsula's Environment  
(H.O.P.E.) is an incorporated association made up of residents  
of Monterey County who use the amenities of the Monterey  
Peninsula and environs and who appreciate its aesthetics without  
chemical pollution; and who will be adversely impacted by the

1 aerial spraying of pheromones in a fashion that will permit the  
2 chemicals to migrate to the Monterey Bay National Marine  
3 Sanctuary to kill and injure the invertebrates living therein,  
4 causing a loss of ecological health and diversity. The mission  
5 and purpose of Petitioner H.O.P.E is to represent the interests  
6 of its members in maintaining the bucolic nature and quality of  
7 life in this area of Monterey County from those persons and  
8 entities who would cover it in a chemical spray, the effects of  
9 which on non-mammals are either unknown or are deleterious.  
10 Members of H.O.P.E. use and enjoy the environment of the  
11 Monterey Peninsula free from having their property and  
12 environment sprayed with chemicals. Members of Helping Our  
13 Peninsula's Environment (H.O.P.E.) use and enjoy the benefits of  
14 living on the Monterey Peninsula adjacent to the federally  
15 protected Monterey Bay Marine Sanctuary. Said sanctuary is home  
16 to various invertebrates which will be killed or injured due to  
17 encountering the pheromone spray mixture which will wash into  
18 the Monterey Bay with the winter rains which have already  
19 commenced. Members of the public already subject to the aerial  
20 spraying have complained of respiratory problems. Petitioner is  
21 adversely affected and aggrieved by the decision described below  
22 of Respondent due to the indiscriminate spraying of the  
23 pheromone and the likelihood of it contaminating the Monterey  
24 Bay Marine Sanctuary and harming the wildlife found therein.  
25 These adverse impacts will cause irreparable injury to the

1 interests of Petitioner and the members thereof. Petitioner has  
2 exhausted all administrative remedies and has no adequate remedy  
3 at law.

## 4 II

5 Respondents California Department of Food and Agriculture  
6 and A.G. Kawamura, the Secretary in charge of the agency, did on  
7 or about August 20, 2007, without benefit of public hearing or  
8 other notice to the affected public, including Petitioner,  
9 decide on the aerial application of the pesticide pheromone to  
10 the Monterey Peninsula. The approval of this project was  
11 accompanied by a finding on the part of Respondents that this  
12 project was exempt from the California Environmental Quality Act  
13 (CEQA), Public Resources Code §21000 et seq. inasmuch as the  
14 project was in response to an emergency and was therefore exempt  
15 pursuant to Public Resources Code §21080(b).

## 16 III

17 Respondents did cause to be prepared a Notice of Exemption  
18 indicating the nature of the project and the finding of  
19 exemption due to the claimed emergency nature of the project.  
20 However, said notice which makes reference to the area covered  
21 by the project, does not include any specification of just what  
22 lands are included within the project area other than the  
23 "Cities of Seaside and Monterey." The designation of the lands  
24 to be included was not made a part of the Notice of  
25 Determination and it is not possible to know what area was

1 intended to be covered by the decision and the Notice of  
2 Exemption.

3 IV

4 The Notice of Exemption is void and unlawful inasmuch as  
5 there is no way to determine from the Notice what lands it  
6 applies to. Inasmuch as the project description is deficient,  
7 the Notice is incomplete and void.

8 Wherefore Petitioner prays for relief as set forth below.

9 SECOND CAUSE OF ACTION

10 V

11 Petitioner hereby incorporates by reference the allegations  
12 contained in Paragraphs I through IV of the First Cause of  
13 Action.

14 VI

15 Subsequent to the preparation and filing of the Notice of  
16 Exemption for the aerial spraying program, Respondents  
17 determined to expand the geographic scope of the area being  
18 sprayed beyond Seaside and Monterey to include the City of  
19 Pacific Grove and parts of Monterey County, including Pebble  
20 Beach and Carmel Woods. There has been no determination that the  
21 expanded area spraying is being done due to an emergency. In  
22 fact no environmental determination of any kind under CEQA has  
23 been made as to the larger area currently approved for spraying.  
24 Wherefore Petitioner prays for relief as set forth below.

25 THIRD CAUSE OF ACTION

VII

Petitioner hereby incorporates by reference the allegations contained in Paragraphs I through IV of the First Cause of Action.

VIII

The project as approved may have significant adverse effects on the environment due to the comprehensive spraying of the environment with pheromone spray, an untested chemical whose near chemical relatives are known to be harmful to aquatic invertebrates in tiny doses. Given the comprehensive spraying of the entire environment of the Monterey Peninsula the chemical spray will migrate with storm-water into the Monterey Bay National Marine Sanctuary thereby injuring or killing wildlife otherwise protected therein. The project approval therefore required the prior preparation and consideration of an environmental impact report (EIR). The failure to have prepared and considered an EIR prior to approving the chemical spraying of the Community of the Monterey Peninsula was arbitrary, capricious and contrary to law.

Wherefore Petitioner prays for relief as follows:

1. For alternative and peremptory writs of mandate to compel Respondents to set aside their approval of the aerial spraying of the Monterey Peninsula with pheromone spray unless and until Respondents have prepared a clear and finite description of the project area;

2. For alternative and peremptory writs of mandate compelling Respondents to set aside their approval of the aerial spraying of the Monterey Peninsula with pheromone spray unless and until the map of the area to be sprayed has been the subject of environmental review as set forth in a Notice of Determination;

3. For alternative and peremptory writs of mandate compelling Respondents to set aside their approval of the aerial spraying of pheromone on the Monterey Peninsula unless and until an EIR has been prepared and considered by Respondents pursuant to the requirements of CEQA;

4. For temporary, preliminary and permanent injunctive relief to prohibit the aerial spraying of pheromone on the Monterey Peninsula without having first analyzed the environmental repercussions from such spraying in an appropriate environmental document;

5. For costs of suit including reasonable attorneys' fees pursuant to Code of Civil Procedure §1021.5; and

6. For such other and further relief as the Court deems just and reasonable.

Dated this 24<sup>th</sup> day of September,  
2007

ALEXANDER T.  
HENSON, SB#53741

VERIFICATION

I, David Dilworth, do declare that I am the Chief Executive Officer of Helping Our Peninsula's Environment, and I am authorized to make this verification on its behalf. I have read the foregoing Petition for Writ of Mandate and am familiar with the contents thereof which are true.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. Executed this 24<sup>th</sup> day of September, 2007, at Monterey, California.

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David Dilworth for H.O.P.E.