

1 ALEXANDER T. HENSON, SB#53741
13766 CENTER STREET, SUITE 27
2 CARMELVALLEY, CALIFORNIA 93924
(831) 659-4100
3 (831) 659-4101 Fax

4 Attorney for Petitioner

5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF MONTEREY
8

9) Case No.:
10)
11) VERIFIED PETITION FOR WRIT OF
HELPING OUR PENINSULA'S) MANDATE
12)
ENVIRONMENT,)
13)
Petitioner,)
14)
and)
15)
CALIFORNIA DEPARTMENT OF FOOD)
16)
AND AGRICULTURE, A.G. KAWAMURA)

17 Respondents

18 Comes Now Petitioner to allege as follows:

19 FIRST CAUSE OF ACTION

20 I

21 Petitioner Helping Our Peninsula's Environment
22 (H.O.P.E.) is an incorporated association made up of residents
23 of Monterey County who use the amenities of the Monterey
24 Peninsula and environs and who appreciate its aesthetics without
25 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

1 VII

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

5 VIII

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

20 Wherefore Petitioner prays for relief as follows:

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

VERIFICATION

1 I, David Dilworth, do declare that I am the Executive
2 Director of Helping Our Peninsula's Environment, and I am
3 authorized to make this verification on its behalf. I have read
4 the foregoing Petition for Writ of Mandate and am familiar with
5 the contents thereof which are true.
6

7 I declare under penalty of perjury under the laws of the
8 State of California the foregoing is true and correct. Executed
9 this 24th day of September, 2007, at Monterey, California.
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11 _____
12 David Dilworth for H.O.P.E.
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