

1 Susan M. Goldbeck SB 92655
2 Attorney at Law
3 117 Ninth Street
4 Pacific Grove, California 93950
5 Telephone: (831) 372-2615
6 Attorney for Petitioner

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MONTEREY

10
11 HELPING OUR PENINSULA’S
12 ENVIRONMENT
13 Plaintiff
14 V.
15 COUNTY OF MONTEREY DOES 1
16 through 10, inclusive
17 Respondent

CASE NO.
VERIFIED PETITION FOR WRIT
OF MANDATE AND
DECLARATORY RELIEF FOR
VIOLATIONS OF THE
CALIFORNIA PUBLIC RECORDS
ACT

18 This action seeks relief from the failure of Respondent MONTEREY COUNTY
19 to perform as required by the California Public Records Act¹ “CPRA.” This failure
20 denied the public’s right to the protections afforded by the laws of this state.
21

22 Specifically Petitioner, Helping Our Peninsula’s Environment, hereinafter referred
23 to as “HOPE” seeks a writ of mandate and declaratory relief under California Code of
24 Civil Procedure sections 1085 and 1060 and Government Code section 6258 and 6259.
25

26 Petitioner HOPE by this verified petition alleges as follows:
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28 ¹ Government Code, § 6250 et seq.

1. Petitioner HOPE, is now, and at all times mentioned in this petition has been, a 501(c)(3) non-profit corporation organized under the laws of the state of California. Its offices are located at 166 17 Mile Drive, Pacific Grove, Ca 93950.
2. The two-part mission of HOPE is protection of our environment as well as our democracy in the greater Monterey Peninsula area. HOPE activities include but are not limited to monitoring the affairs of government entities in the region including Respondent County of Monterey, with the goal of providing transparency in government and to advocate for First Amendment access issues.
3. HOPE members are public service –minded citizens who support the promotion and defense of the principles of open government. As such, HOPE has a beneficial interest in Respondent’s performance of its legal duties under the CPRA California Constitution, Article 1, § 3
4. Respondent County of Monterey is defined as a “local agency” Government Code §6252(a), and is therefore subject to the CPRA. The County’s main offices are located in at 168 West Alisal St. Salinas, California 93901.
5. This Court has jurisdiction over this matter pursuant to Code of Civil Procedure sections 1085 and 1060 and Government Code sections 6258 and 6259.
6. Venue is proper under Government Code section 6259, as the records are located within the County of Monterey.
7. Monterey Downs is a private corporation who proposes a racetrack, horse park and equestrian-themed residential and business development in an unincorporated Monterey County section of the portion of the former Ft. Ord.

- 1 8. Monterey Downs is a very controversial project for a variety of reasons not the least of
2 which is the lack of a sustainable water supply to serve even existing demands for water
3 in this area. In other words, Monterey Downs does not have enough water to support its
4 development.
- 5 9. The Monterey Downs project is under the jurisdiction of Respondent Monterey County
6 in terms of permitting and land use issues. Monterey County has jurisdiction over 80%
7 of the the Monterey Downs development with City of Seaside having the remainder of
8 the project. Monterey Downs is under the jurisdiction of the Mariana Coast Water
9 District, hereinafter “Marina Coast”: in terms of water management issues. This
10 includes the review of water sales and water transfers in terms of developments in its
11 jurisdiction. There has been no application for approval of any water sales or transfers
12 brought to Marina Coast Water District in connection with this project.
- 13 10. Respondent Monterey County has no jurisdiction over water issues pertaining to the
14 Monterey Downs project except as to the issue of whether Monterey Downs can
15 proceed through the approval process related to the project without sufficient water to
16 sustain it.
- 17 11. Marina Coast, is one of the reviewing agencies of the California Environmental Quality
18 Act related to of the Monterrey Downs Development.
- 19 12. Marina Coast, through its representatives, in its comments related to the Monterey
20 Downs Environmental Impact Report filed in March 31 **2015** stated that the Monterey
21 Downs project could not go forward without water to sustain it.
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1 13. Marina Coast representatives specifically commented on this issue in the draft
2 Environmental Impact Report submitted in connection with Mitigation Measure W-1 as
3 follows:

4 “Mitigation Measure W-1 of the draft EIR requires proof of an adequate water supply
5 prior to any discretionary approval.”

6
7 14. There had been some speculation offered by the consultant who prepared the EIR for
8 the Monterey Downs development that with the coming of a desalinization plant to be
9 built by Cal Am in the future that water would not be a problem or words to that effect.

10 15. California American Water, hereinafter “Cal Am” is a private, for-profit foreign
11 corporation who is a leading water purveyor to the Monterey Peninsula and to other
12 areas of the Monterey County. Cal Am would be the designated water purveyor to the
13 location where the Monterey Downs project is proposed.

14
15 16. Prior to making a public records request to Respondent County of Monterey,
16 Petitioner HOPE, learned that representatives of Respondent County of Monterey had
17 entered into secret negotiations giving rise to the purchase of water by Monterey
18 Downs from California American Water Company referred to hereinafter as “Cal Am.”
19 These meetings were attended at various times by Monterey County Supervisor David
20 Potter and Monterey County Counsel Charles McKee along with representatives of
21 Cal Am and Monterey Downs.
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24 17. These negotiations culminated in a fully executed Memorandum of Understanding,
25 hereinafter “M.O U” to which Monterey Downs, Cal Am and Monterey County were
26 signatories.
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1 18. This secret water deal was never the subject of any public meetings nor was it disclosed
2 to the public including the local press. This water transaction was done with the intent
3 of the parties to facilitate overcoming the major hurdle to the development of the
4 controversial Monterey Downs Development: the lack of an adequate water supply.

5 19. Respondent Monterey County has a sordid history in attempting to keep its
6 machinations from the public view in connection with water issues and apparently
7 intend to continue in that vein in connection with Monterey Downs development.
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9 20. Petitioner is informed and believes and thereupon alleges that Respondent County of
10 Monterey representatives have for an extended period of time in secret attempted to
11 wrestle jurisdiction of water issues for the Fort Ord unincorporated Monterey County
12 area including the proposed development site of Monterey Downs from Marina Coast
13 the jurisdiction of Monterey County Water Resources Department. This would mean
14 that Monterey County Water Resources department would be the agency to approve or
15 disapprove of the aforesaid sale of water to Monterey Downs.
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18 21. If that were to happen the secret deal for the purchase of water for the use on the
19 Monterey Downs would have smooth sailing for approval which may not be the case
20 if it underwent scrutiny by the Marina Coast Water District which was not a participant
21 in this water purchase scheme.
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1 22. After learning of the secret water deal and in particular the participation of
2 representatives of Monterey County in the transaction and in the execution of the
3 M.O.U. for sale of the water from Cal Am to Monterey Downs, on December 10, 2015
4 petitioner HOPE made a public records request asking specifically for the M.O.U. and
5 for any public records related to any transactions involving Monterey Downs and any
6 water issues.

7
8 23. HOPE granted a brief extension to respond, Respondent Monterey County of Monterey
9 determined that there no records responsive to this request that could be located
10 including the M.O.U. itself. Few if any documents were offered by the County of
11 Monterey and none were related to the water deal transaction discussed above.

12
13 24. After discussion via emails back and forth between Petitioners counsel with the
14 employee of Monterey County Resources Agency who routinely handles public records
15 requests, the matter was turned over Monterey County Counsel who after a number of
16 weeks had passed, and as of this writing, has not responded.

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19 FIRST CAUSE OF ACTION
20 FOR VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT
21 PURSUANT TO GOV. CODE §§ 6258, 6259; CODE CIV. PROC. §1060, 1085

22 25. Petitioner hereby alleges and incorporates herein by this reference Paragraphs 1
23 thorough 24 of this Petition as though set forth fully herein.

24 26. The CPRA defines terms relevant this cause of action as follows: "Public records"
25 includes any writing containing information relating to the conduct of the public's
26 business prepared, owned, used, or retained by any state or local agency regardless of
27 physical form or characteristics....
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1 27. "Local agency" includes a county; city, whether general law or chartered; city and
2 county; school district; municipal corporation; district; political subdivision; or any
3 board, commission or agency thereof; other local public agency; or entities that are
4 legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section
5 54952.
6

7 28. "Writing" means any handwriting, typewriting, printing, Photostatting, photographing,
8 photocopying, transmitting by electronic mail or facsimile, and every other means of
9 recording upon any tangible thing any form of communication or representation,
10 including letters, words, pictures, sounds, or symbols, or combinations thereof, and any
11 record thereby created, regardless of the manner in which the record has been stored.
12

13 29. Government Code § 6253(b) provides: Except with respect to public records exempt
14 from disclosure by express provisions of law, each state or local agency, upon a request
15 for a copy of records that reasonably describes an identifiable record or records, shall
16 make the records promptly available to any person upon payment of fees covering direct
17 costs of duplication...
18

19 30. The documents requested by Petitioner are related to the conduct of the public's
20 business and has been used and retained by the County, its officials, and employees.
21 Therefore, the documents that Petitioner requested are public records pursuant to
22 Government Code § 6252(e).
23

24 31. Petitioner has properly requested that Respondent provide them with a copy of the
25 subject documents but Respondent have not provided them claiming not that it does
26 not have them but that it cannot locate them.
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1 32. Petitioner's counsel specifically requested that Monterey County Supervisor David
2 Potter and County Counsel Charles McKee be contacted regarding the documents as
3 they were involved in the meetings giving rise to the M.O.U.. It has never been
4 confirmed by Respondent that in fact this was done.

5 33. Government Code section 6255(a) requires Respondent County of Monterey to justify
6 the withholding of the record as follows:
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8 The agency shall justify withholding any record by demonstrating that the record in
9 question is exempt under express provisions of this chapter or that on the facts of the
10 particular case the public interest served by not disclosing the record clearly outweighs the
11 public interest served by disclosure of the record.

12 Here, the claim is simply being made that the documents cannot be located. After
13 discovery is done on the issue, this petition will be amended to allege additional facts that
14 the documents in question do in fact exist.

15 34. The People of California have elevated the right to open government to one protected
16 by their State Constitution. The California Constitution, Article 1, Section 3,
17 Paragraphs (a) - (b) state:

18 The people have the right to instruct their representatives, petition government for redress
19 of grievances, and assemble freely to consult for the common good. The people have the
20 right of access to information concerning the conduct of the people's business and,
21 therefore, the meetings of public bodies and the writings of public officials and agencies
22 shall be open to public scrutiny. A statute, court rule, or other authority, including those in
23 effect on the effective date of this subdivision, shall be broadly construed if it furthers the
24 people's right of access, and narrowly construed if it limits the right of access.

25 35. Petitioner have exhausted their administrative remedies. Petitioners have requested
26 copies of disclosable public records from Respondent, and Respondent has refused to
27 provide access to those public records. The only plain, speedy, and adequate remedy left
28 to Petitioner is the relief provided by Government Code §§ 6258 and 6259.

1 36. Government Code § 6258 provides: Any person may institute proceedings for
2 injunctive or declarative relief or writ of mandate in any court of competent jurisdiction
3 to enforce his or her right to inspect or to receive a copy of any public record or class of
4 public records under this chapter.”

5 37. Government Code § 6259(a) provides for in camera review of the disputed public
6 records at issue in this case: if that is appropriate here.
7

8 38. Whenever it is made to appear by verified petition to the superior court of the county
9 where the records or some part thereof are situated that certain public records are being
10 improperly withheld from a member of the public, the court shall order the officer or
11 person charged with withholding the records to disclose the public record or show cause
12 why he or she should not do so. The court shall decide the case after examining the
13 record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code,
14 papers filed by the parties and any oral argument and additional evidence as the court
15 may allow.
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17 39. In this case, the conduct of Respondent County of Monterey in denying its ability to
18 locate the requested documents, puts Petitioner HOPE are on the horns of a dilemma:
19 it has no ability to search the records of the County of Monterey itself and yet
20 compelling facts exist that the subject records do exist and are in the possession of the
21 County of Monterey. If production of that evidence as the result of discovery, notably
22 the depositions of the participants, the County of Monterey should be compelled by this
23 court to produce those documents under CPRA.
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1 40. The CPRA requires the governmental entity to assist the public in locating the records it
2 seeks. 6253.1.

3 (a) When a member of the public requests to inspect a public record or obtain a copy of
4 a public record, the public agency, in order to assist the member of the public make a
5 focused and effective request that reasonably describes an identifiable record or records,
6 shall do all of the following, to the extent reasonable under the circumstances:
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8 (1) Assist the member of the public to identify records and information that are
9 responsive to the request or to the purpose of the request, if stated.

10 (2) Describe the information technology and physical location in which the records
11 exist.

12 (3) Provide suggestions for overcoming any practical basis for denying access to the
13 records or information sought.
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15 41. Code of Civil Procedure § 1060 provides:

16 Any person interested ... who desires a declaration of his or her rights or duties with
17 respect to another ... may, in cases of actual controversy relating to the legal rights and
18 duties of the respective parties, bring an original action or cross-complaint in the superior
19 court for a declaration of his or her rights and duties in the premises, including a
20 determination of any question of construction or validity arising under the instrument or
21 contract. He or she may ask for a declaration of rights or duties, either alone or with other
22 relief; and the court may make a binding declaration of these rights or duties, whether or
23 not further relief is or could be claimed at the time....”

24 42. Petitioners have demonstrated an actual controversy exists between the parties

25 regarding the existence of the documents requested by Petitioners and whether the
26 documents are disclosable under CPRA.

27 43. Respondent has a ministerial duty to perform according to the laws of State of

28 California, including the CPRA.

1 44. Petitioners, as citizens of the State of California, have an interest in the having the laws
2 executed and public duties enforced and, therefore, have a beneficial interest in the
3 outcome of the proceedings.

4 45. Petitioners have a clear, present, and legal right to Respondent's performance of its
5 ministerial duties, as required by the CPRA. Respondent has a present legal duty and
6 present ability to perform its ministerial duties, as required by the CPRA.
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8 46. Respondent has failed and refused to perform its ministerial duties as required by the
9 CPRA.

10 47. Through this action, Petitioners seek no greater relief than would be afforded to any
11 other member of the public.

12 48. Therefore, this court should hold and declare that the documents requested by
13 Petitioners is a public record and should order Respondent to release the requested
14 documents to Petitioners or to state unequivocally the documents do not exist.
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18 **WHEREFORE, PETITIONER PRAYS AS FOLLOWS:**

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20 1. That after a hearing on of this action, to be held on notice, this court should:
- 21 (a) issue a declaration that the documents sought by Petitioners exist and are
22 a public records not exempt from disclosure,
23
 - 24 (b) issue a declaration that Respondent County of Monterey violated the
25 California Public Records Act by withholding the documents requested
26 by Petitioner HOPE as set forth in this Petition.
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1 (c) issue a writ of mandate ordering Respondent County of Monterey to
2 perform as required by the California Public Records Act and release the
3 requested documents.

- 4 2. That the Petitioners/Plaintiffs recover attorneys' fees incurred in this action pursuant
5 to Government Code Section 6259 and/or Code of Civil Procedure .Section 1021.5;
6
7 3. For an award of costs incurred in this action; and for whatever relief the court finds to
8 be to be just and proper.

9 _____
Date:

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11 _____
SUSAN M. GOLDBECK, Attorney for Petitioner
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF MONTEREY

I, David Dilworth am the executive director of Petitioner Helping Our Peninsula's Environment and I am authorized to sign this verification in its behalf. I have read the contents of the foregoing Petition and am familiar with its contents.

I verify that the facts in the petition are true based upon my own knowledge of those matters except as to those matters which are stated upon information and belief and those matters I believe to be true.

I declare under penalty of perjury under the laws of the State of California, in and for the County of Monterey that the foregoing is true and correct.

Dated; this 25th day of March, in the year 2016, at Pacific Grove, California.

DAVID DILWORTH