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April 9, 2021

Via U.S. Mail

Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Re: Notice of Filing CEQA Litigation,
King and Gardiner Farms, LLC v. County of Kern, et al.
Kern County Superior Court Case No. BCV-21-100533

Dear Sir/Madam:

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") in the above-referenced action. Your agency has been identified by Respondents County of Kern, Kern County Planning and Natural Resources Department, and Kern County Board of Supervisors as a responsible agency and/or an agency having jurisdiction over a natural resource affected by the challenged project. Accordingly, the Petition is provided to you in compliance with Public Resources Code section 21167.6.5(c). Petitioner in the above-referenced action makes no representation as to the completeness or accuracy of the list of agencies provided by Respondents.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Rachel B. Hooper

RBH:mmb
Enclosure

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By Sophia Munoz Alvarez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

KING AND GARDINER FARMS, LLC,

Petitioner,

v.

COUNTY OF KERN; KERN COUNTY PLANNING AND NATURAL RESOURCES DEPARTMENT; BOARD OF SUPERVISORS OF COUNTY OF KERN; and DOES 1-20,

Respondents.

WESTERN STATES PETROLEUM ASSOCIATION; CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION; and DOES 21-40,

Real Parties in Interest.

Case No. BCV-21-100533

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF

CCP §§ 1085, 1094.5; Public Resources Code § 21000 et seq. (CEQA)

INTRODUCTION

1. This Verified Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") challenges the March 8, 2021 decision of the Board of Supervisors ("Board") of the County of Kern ("County")[1] to approve a project entitled "Revisions to the Kern County Zoning Ordinance – 2020 (A) Focused on Oil and Gas Local Permitting" ("2021 Ordinance" or "Project"). As explained below, the County's actions in approving the Project, certifying an inadequate Supplemental Recirculated Environmental Impact Report ("SREIR"), and adopting related findings and a statement of overriding considerations violated the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq.; and the CEQA Guidelines, 14 California Code of Regulations section 15000 et seq.

2. The challenged Project amends the existing Kern County zoning ordinance to implement a new land use approval process for oil and gas exploration, extraction, operation, and production activities, which will occur over a land area of approximately 3,700 square miles ("Project Area"). Valuable farmland comprises large segments of the Project Area, and intensive oil development will be interspersed with agricultural operations. The 2021 Ordinance and SREIR authorize the drilling of 2,697 new producing wells each year in the Project Area.

3. The 2021 Ordinance purports to institute a ministerial permit system that will allow future oil and gas development to occur as a matter of right on nearly all of the County's unincorporated land within the Project Area. Under this ministerial permit system, there will be no opportunity for further environmental review or additional mitigation for as long as the 2021 Ordinance remains in place. The 2021 Ordinance has no expiration date. The County intends the SREIR to fully satisfy CEQA requirements of state and regional agencies issuing permits for future oil and gas projects in the County.

4. The 2021 Ordinance is a new version of the oil and gas ordinance enacted by the County in November 2015 ("2015 Ordinance").[2] Petitioner King and Gardiner Farms, LLC ("KGF") filed a

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[1] The County, the Board, and the Kern County Planning and Natural Resources Department are referred to collectively as either "the County" or "Respondents."

[2] The 2015 Ordinance was entitled "Revisions to the Kern County Zoning Ordinance – 2015 (C) Focused on Oil and Gas Local Permitting."

timely challenge to the 2015 Ordinance, alleging that the Environmental Impact Report ("EIR") for that project failed to comply with CEQA.[3] In February 2020, the Fifth District Court of Appeal issued a lengthy decision holding that the EIR violated CEQA in multiple ways. The Superior Court thereafter issued a peremptory writ of mandate directing the Board to set aside its approval of the 2015 Ordinance, its certification of the EIR, and its approval of related findings and statement of overriding considerations. The writ specified, inter alia, that in the event the County decides to present the 2015 Ordinance (in its original or a modified form) to the Board for reapproval, the County must prepare a revised EIR correcting the CEQA violations identified in the appellate opinion.

5. The County prepared the SREIR in a purported effort to correct the numerous errors in the EIR so that it could approve the 2021 Ordinance and resume issuing oil drilling permits. However, it largely failed to rectify the CEQA violations the Court of Appeal identified. Not only do several of the most serious analytic errors persist in the SREIR, but key mitigation for significant environmental impacts of the 2021 Ordinance remains wholly ineffective. Furthermore, in some areas the County has created new problems, compounding its original CEQA violations.

6. The SREIR's failure to identify effective mitigation for the 2021 Ordinance's impacts to agricultural resources is especially troubling. Kern County's vast agricultural lands contribute significantly to the economy of the region and the state as a whole. The County has adopted numerous general plan policies to protect and conserve these valuable agricultural resources. Farming is under considerable pressure, however, and the region is increasingly losing farmland due to new oil and gas development. Nevertheless, despite the Court of Appeal's explicit direction, the SREIR fails to identify measures to ensure that farmland losses caused by the 2021 Ordinance will be fully offset by farmland restoration/protection. At the same time, the County erred in rejecting specific, feasible mitigation proposed by KGF and others that could have effectively reduced the Project's agricultural impacts to a level of insignificance.

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[3] KGF's lawsuit was consolidated with two other actions challenging the 2015 Ordinance. The consolidated case, entitled *Vaquero Energy Inc. et al. v. County of Kern,* is currently pending in Kern County Superior Court under Case No. BCV-15-101645-EB. This Petition refers to this consolidated case as the "Ongoing Action."

7. The County also failed to bring the EIR's analysis and mitigation of the 2021 Ordinance's noise impacts into compliance with CEQA. In attempting to correct some of the errors the Court of Appeal identified, the County introduced significant new errors. For example, the County used two different, incompatible noise measurement methods to assess whether additional mitigation is necessary to prevent significant increases in oilfield noise. Because of these errors, sensitive sites like homes and schools could suffer substantial, unmitigated increases in noise levels, particularly in quiet parts of the County.

8. The County's analysis and mitigation of the 2021 Ordinance's risk to public health also fail to comply with CEQA. The Court of Appeal ordered the County to recirculate a "multi-well" or cumulative health risk assessment that the County had failed to make available for public review in 2015. Rather than update its assessment, however, the County simply recirculated the 2015 document, and concluded the 2021 Ordinance would not harm public health. Yet both the assessment and the County's conclusions are deeply flawed. For example, the assessment fails to evaluate health risks based on actual well density in Kern County, fails to consider emissions from well operations, and fails to evaluate non-cancer health risks. The County's mitigation for health risks is also inadequate because it relies on this same flawed assessment.

9. Finally, the County's findings of fact and statement of overriding considerations, adopted in connection with the 2021 Ordinance, are invalid not only because they are based on a flawed analysis of Project impacts and mitigation, but also because they are misleading, unsupported by substantial evidence, and fail to present a true and accurate accounting of the economic and environmental costs and benefits of approving the Project.

10. For all these reasons, this court should (a) direct the Board to set aside its approval of the 2021 Ordinance, certification of the SREIR, and adoption of related findings of fact and statement of overriding considerations, and (b) decline to discharge the writ of mandate in the Ongoing Action until such time as the County fully complies with CEQA.

PARTIES

11. Petitioner King and Gardiner Farms, LLC is a Limited Liability Corporation duly

registered with the California Secretary of State, and whose principal place of business is Kern County. KGF owns a farm with almond and pistachio orchards in Kern County that could be affected by the 2021 Ordinance's environmental impacts, including farmland conversion, noise, public health, air quality, and hydrological impacts, among others. KGF has a direct and beneficial interest in the County's compliance with CEQA and the CEQA Guidelines. These interests will be directly and adversely affected by the Project approval, which violates provisions of law as set forth in this Petition and which could interfere with KGF's agricultural operations and cause substantial and irreversible harm to the health of its crops. Furthermore, the maintenance and prosecution of this action will confer a substantial benefit on the public by protecting it from the environmental and other harms alleged herein, such as significant farmland conversions, noise impacts, and increased risks to public health. KGF participated in the administrative process that led to the approval of the Project by submitting written and oral comments objecting to and commenting on the 2021 Ordinance and the SREIR.

12. Respondent County of Kern, a political subdivision of the State of California, is responsible for regulating and controlling land use in the unincorporated territory of Kern County, including, but not limited to, implementing and complying with the provisions of CEQA and the CEQA Guidelines. Respondent County is the "lead agency" for purposes of Public Resources Code section 21067, with principal responsibility for conducting environmental review and approving the 2021 Ordinance.

13. Respondent Kern County Planning and Natural Resources Department ("Planning Department") is an agency that provides land use planning and community development services for the County, including preparation of environmental documents under CEQA. The Planning Department is an integral part of County government. It processed the 2021 Ordinance for the County, and managed preparation of the SREIR and CEQA findings and statement of overriding considerations. The County's March 9, 2021 Notice of Determination for the Project lists the Planning Department as an "Applicant, or sponsoring agency or department."

14. Respondent Board of Supervisors of County of Kern is the duly elected legislative body for Kern County responsible for compliance with CEQA and the CEQA Guidelines, and for adopting

any amendments or revisions to the Kern County Code of Ordinances.

15. As referred to herein, "the County" consists of all boards, commissions, and departments, including the Board of Supervisors, the Planning and Natural Resources Department, and the Planning Commission.

16. KGF does not know the true names and capacities, whether individual, corporate, associate or otherwise, of Respondents DOE 1 through DOE 20, inclusive, and therefore sues said Respondents under fictitious names. KGF will amend this Petition to show their true names and capacities when they are known.

17. Real Party in Interest Western States Petroleum Association ("WSPA") is a trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in the five western states, including California. The County's March 9, 2021 Notice of Determination for the 2021 Ordinance lists WSPA as "Applicant, or sponsoring agency or department."

18. Real Party in Interest California Independent Petroleum Association ("CIPA") is a trade association representing approximately 500 independent crude oil and natural gas producers, royalty owners, and service and supply companies operating in California. The County's March 9, 2021 Notice of Determination for the 2021 Ordinance lists CIPA as "Applicant, or sponsoring agency or department."

19. KGF does not know the true names and capacities, whether individual, corporate, associate or otherwise, of Real Parties in Interest DOE 21 through DOE 40, inclusive, and therefore sues said Real Parties under fictitious names. KGF will amend this Petition to show their true names and capacities when they are known.

JURISDICTION AND VENUE

20. This court has jurisdiction over the matters alleged in this Petition pursuant to Code of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168, 21168.5, and 21168.9.

21. Because this is an action or proceeding against a county, venue is proper in this court

pursuant to Code of Civil Procedure section 394(a). Moreover, the 2021 Ordinance is proposed for implementation in Kern County, Respondents approved the 2021 Ordinance in Kern County, and the environmental harm caused by the 2021 Ordinance will be felt in Kern County. As such, venue is proper in this court because the cause of action alleged in this Petition arose in Kern County.

22. KGF has complied with the requirements of Public Resources Code section 21167.5 by serving written notice on March 9, 2021 of KGF's intention to commence this action against Respondents. A copy of this written notice and proof of service is attached as Exhibit A to this Petition.

23. KGF is complying with the requirements of Public Resources Code section 21167.6 by concurrently filing a notice of its election to prepare the administrative record for this action.

24. KGF will promptly send a copy of the Petition to the California Attorney General, thereby complying with the requirements of Public Resources Code section 21167.7.

25. KGF has performed any and all conditions precedent to filing this instant action and has exhausted any and all available administrative remedies to the extent required by law.

26. KGF has no plain, speedy, or adequate remedy in the course of ordinary law unless this court grants the requested writ of mandate to require Respondents to set aside their approval of the 2021 Ordinance. In the absence of such remedies, Respondents' approval will remain in effect in violation of State law.

STATEMENT OF FACTS

I. History of the 2015 Ordinance

A. Administrative Proceedings

27. The County initiated the 2015 Ordinance at the request of project applicants that included oil and gas industry organizations WSPA and CIPA. The 2015 Ordinance consisted of revisions to Title 19 of the Kern County Zoning Ordinance, with emphasis on Chapter 19.98 (Oil and Gas Production), and related sections of the zoning ordinance. These revisions provided new procedures, implementation standards, and conditions for future oil and gas exploration, development, and production activities in the unincorporated areas of Kern County. The project area encompassed 3,700 square miles (2.3 million acres), including most of the San Joaquin Valley Floor portion of Kern County. Along with the specific

zoning ordinance revisions, the project included all oil and gas development permitted by these revisions. Because there was no expiration date or mandate to update the County's zoning at any time, the 2015 Ordinance could remain in effect indefinitely.

28. The 2015 Ordinance revised the County's zoning ordinance with the goal of establishing ministerial permit procedures for oil and gas activities in nearly all of the unincorporated land in the project area. These procedures included an "Oil and Gas Conformity Review" permitting process for drilling and completion activities and a "Minor Activity Review" for so-called "minor" activities that did not directly involve drilling. The County would issue these permits "over the counter" if an application indicated that the applicant would comply with the mitigation measures identified in the 2015 EIR. Oil and gas activities proposed in the County's limited residential and commercial zones required a discretionary conditional use permit issued after a public hearing.

29. The oil and gas industry project applicants entirely funded the environmental review for the 2015 Ordinance. KGF and other members of the public submitted extensive comments warning that the EIR for the 2015 Ordinance failed to comply with CEQA. The County refused to correct the errors and, on or about November 9, 2015, the Board approved the 2015 Ordinance.

B. KGF's Lawsuit Challenging the 2015 Ordinance

30. On or about December 9, 2015, KGF filed a petition for writ of mandate and complaint for injunctive and declaratory relief, challenging the County's approval of the 2015 Ordinance, alleging that the EIR was inadequate under CEQA. On or about December 10, 2015, petitioners Committee For A Better Arvin, Committee For A Better Shafter, Greenfield Walking Group, Natural Resources Defense Council, Sierra Club, and Center for Biological Diversity (collectively, "Original Arvin Petitioners") filed a separate writ petition for writ of mandate and complaint for injunctive and declaratory relief, challenging the EIR's adequacy. These two actions were consolidated with a third challenge to the 2015 Ordinance, filed by petitioners Vaquero Energy Inc. et al. (collectively, "Vaquero"). This Ongoing Action is currently pending in Kern County Superior Court.

31. Over three days in and around June and August 2017, the Superior Court conducted a writ hearing in the consolidated cases. On or about March 12, 2018, the court issued its ruling, granting

the petitions of KGF and Original Arvin Petitioners in part. Regarding KGF's claims, it held that the EIR's failure to analyze the 2015 Ordinance's impacts on rangeland/grazing lands violated CEQA. Regarding the claims of Original Arvin Petitioners, the court held that the EIR failed to analyze the environmental impacts resulting from road paving, a purported mitigation measure for the 2015 Ordinance's air emissions. The court denied all the other CEQA claims asserted by KGF and Original Arvin Petitioners.

32. On or about April 20, 2018, the Superior Court issued a single judgment in the KGF and Arvin cases. It ordered the issuance of a peremptory writ of mandate that directed the County to correct the deficiencies in the EIR and reconsider its approval of the 2015 Ordinance in light of any new information in the revised analysis. KGF and Original Arvin Petitioners each appealed from the judgment; neither the County nor the real parties in interest cross-appealed.[4]

33. On or about February 25, 2020, the Court of Appeal issued a 150-page decision, reversing the Superior Court's judgment in part and affirming in part. The appellate court ruled for KGF in three areas:

a. The 2015 EIR failed to identify effective mitigation for the 2015 Ordinance's significant impacts on agricultural land conversions. The 2015 EIR had included Mitigation Measure (MM) 4.2-1, which contained four measures that purportedly were intended, individually or in combination, to achieve a 1:1 mitigation ratio for compensating for lost farmland:

(i) Funding and/or purchasing agricultural conservation easements.

(ii) Purchasing credits for conservation of agricultural lands from an established agricultural farmland mitigation bank.

(iii) Restoring agricultural lands to productive use through the removal of legacy oil and gas production equipment, including well abandonment and removal of surface equipment.

[4] By separate judgment, the Superior Court denied all claims asserted in Vaquero's petition/complaint. Vaquero thereafter appealed. In August 2019, the Court of Appeal bifurcated the Vaquero appeal from the other consolidated appeals. Later, in December 2019, the Court of Appeal issued a decision rejecting Vaquero's claims in their entirety. *Vaquero Energy, Inc. v. County of Kern* (2019) 42 Cal.App.5th 312.

(iv) Participating in any agricultural land mitigation program adopted by Kern County that provides equal or more effective mitigation.

The Court of Appeal held that the County erred in relying on this mitigation to conclude that the 2015 Ordinance's agricultural impacts had been reduced to a level of insignificance. Specifically, it found that options (i), (ii), and (iv) were not alone sufficient to reduce the 2015 Ordinance's impacts to a level of insignificance. The court found that restoration of lost farmland at a 1:1 ratio as set forth in the original option (iii) could provide "effective mitigation for the conversion of agricultural land." However, because MM 4.2-1 did not commit applicants to mitigation that ensured "no net loss of agricultural land," the County's finding that the measure would fully mitigate impacts on agriculture was invalid. In addition, the court held that the County failed to provide a detailed, reasoned analysis for rejecting a mitigation measure, proposed by KGF and other farmers, that would have required, when feasible, the "clustering" of oil infrastructure that is sited on farmland.

b. The EIR failed to provide an adequate analysis of the 2015 Ordinance's noise impacts. Specifically, it failed to analyze whether the 2015 Ordinance's permanent or temporary increases in ambient noise levels in the project vicinity would result in a significant environmental impact. Instead, it analyzed only whether noise related to the 2015 Ordinance would exceed a "maximum" standard of 65 decibels (dB) set forth in the County's general plan.

c. The County erred in failing to recirculate the Cumulative Health Risk Assessment ("CHRA") for the 2015 Ordinance.[5] The County's draft EIR had included no analysis of the cumulative health risks posed to sensitive receptors located near the project's multiple wells, and the County released the CHRA only five business days before the Board approved the project. Members of the public and other government agencies thus had no meaningful opportunity to review the CHRA and evaluate its adequacy.

34. Regarding Original Arvin Petitioners' claims, the Court of Appeal held that the County violated CEQA in two areas:

a. The EIR failed to identify effective mitigation for the 2015 Ordinance's impacts

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[5] The CHRA is also known as the "Multi-Well Health Risk Assessment."

to water supply. Specifically, the County unlawfully deferred mitigation for these impacts by adopting measures that lacked specific, mandatory performance criteria. Further, it delayed implementation of the mitigation until after activities under the 2015 Ordinance commenced.

b. The EIR failed to identify effective mitigation for the 2015 Ordinance's impacts to air quality. Specifically, the EIR failed to discuss the impact of MM 4.3-8 on $PM_{2.5}$ emissions or, alternatively, to provide an explanation for why there was no separate discussion of the measure's impacts on $PM_{2.5}$ emissions. MM 4.3-8 also did not provide for enforceable mitigation of $PM_{2.5}$ emissions, and there was no finding that mitigation for this specific pollutant was not feasible.[6]

35. The Court of Appeal provided specific direction on the appropriate remedy. The court held that the County must (a) set aside its approval of the 2015 Ordinance as of the date the court's decision became final; and (b) set aside its certification of the EIR and related findings and statement of overriding considerations. In the event the County decided to present the 2015 Ordinance (in its original or a modified form) to the Board for reapproval, the court held that the County was required to (c) prepare a revised EIR correcting the CEQA violations identified in the Appellate Opinion, and (d) recirculate the CHRA for public review and comment. Finally, the court held that any permits issued pursuant to the 2015 Ordinance on or after the date the court's decision became final were invalid.

36. The court further noted that as a result of the ongoing implementation of the Sustainable Groundwater Management Act, Water Code section 10720 et seq., "the information about groundwater supply and use has increased since the preparation of the draft EIR." The court thus required the County to revisit its discussions of water supply impacts and the baseline environment with regard to water supply in any subsequent EIR.

37. On or about March 11, 2020, the County and real parties in interest filed petitions for rehearing with the Court of Appeal, arguing that the court had erred in directing a particular remedy. On or about March 20, 2020, the court denied the petitions for rehearing and modified the opinion in minor

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[6] The appellate court denied other CEQA claims asserted by KGF and Original Arvin Petitioners and declined, on ripeness grounds, to decide Arvin's claim that approval of permits under the 2015 Ordinance was discretionary rather than ministerial.

respects that did not affect its CEQA rulings or alter its directions regarding remedy.[7] The Appellate Opinion became final on or about March 26, 2020, and the remittitur issued on or about May 27, 2020.

38. On or about May 12, 2020, the Superior Court issued a minute order directing KGF to prepare a proposed modified judgment ("Modified Judgment"), a proposed second peremptory writ of mandate ("Second Writ"), and a proposed order ("Order") consistent with the Appellate Opinion. On or about June 12, 2020, the court signed the Modified Judgment and Order. On or about June 17, 2020, KGF filed a notice of entry of the Modified Judgment and Order. On or about the same day, the court issued the Second Writ.

39. On or about May 19, 2020, the Board adopted Resolution No. 2020-116, which (a) set aside the Board's approval of the 2015 Ordinance effective as of March 26, 2020; (b) set aside the Board's certification of the EIR; and (c) set aside the findings of fact and statement of overriding considerations adopted in connection with the Board's approval of the 2015 Ordinance. On or about August 31, 2020, the County filed an initial return to the Second Writ. The return, inter alia, described the County's adoption of Resolution No. 2020-116 and stated that the County had ceased issuing permits pursuant to the 2015 Ordinance effective at close of business on March 25, 2020.

40. The Modified Judgment provided that this court would retain jurisdiction over (a) the Ongoing Action (including consolidated case nos. BCV-15-101666-EB and BCV-15-101679-EB) to ensure compliance with the Modified Judgment and Second Writ; and (b) "any new CEQA challenge that may be filed by KGF or Arvin with respect to any action the County may take to approve or reapprove the [Original] Ordinance (in its present or a modified form)." Accordingly, KGF will promptly seek to consolidate the instant Petition with the Ongoing Action and with any new CEQA action the Arvin Petitioners may file to challenge the 2021 Ordinance.[8]

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[7] This Petition uses the term "Appellate Opinion" to refer to the Court of Appeal's slip opinion dated February 25, 2010, as supplemented by the court's order dated March 20, 2020 modifying its opinion and denying the County's and real parties' petitions for rehearing. Large portions of the Appellate Opinion are published at *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 ("*King and Gardiner Farms*").

[8] Under state law, KGF may elect to file a new action to challenge the County's failure to comply with the Second Writ and its violations of CEQA in connection with adoption of the 2021 Ordinance.

(footnote continued on next page)

II. County's Approval of the 2021 Ordinance and SREIR

41. Following the Court of Appeal's issuance of its February 25, 2020 decision in the Ongoing Action, the County decided to consider approval of the 2021 Ordinance and to prepare a supplemental EIR for the Project. According to the County, the zoning revisions comprising the 2021 Ordinance are the same as the 2015 Ordinance with the exception of the following changes: it updates the names of County departments and State agencies that have changed since 2015, references to CEQA documents, and implementation details; it reduces the number of new wells permitted in each calendar year; it clarifies the process for monitoring a permitting process related to split estates; and it adjusts some maps for technical geographic information system errors identified from 2015.

A. The August 2020 Draft SREIR

42. On or about April 29, 2020, the County issued a Notice of Preparation ("NOP") of a draft Supplemental Recirculated Environmental Impact Report for the 2021 Ordinance. On or about May 29, 2020, KGF submitted comments on the NOD, urging the County to closely follow the court's detailed directives regarding the revised analysis necessary to comply with CEQA.

43. On or about August 3, 2020, the County released the draft SREIR ("August DSREIR") and circulated the document for public comment. Numerous organizations and individuals submitted comments criticizing the August DSREIR, including but not limited to the Original Arvin Petitioners together with Comité Progreso de Lamont (collectively, "Arvin Petitioners").

44. In a letter to the County dated September 16, 2020, KGF commented that the August DSREIR failed to correct the errors identified in the Appellate Opinion, comply with the Second Writ, or otherwise comply with CEQA, in the following respects:

a. Rather than revising the County's defective mitigation for agricultural impacts as the courts directed, the August DSREIR abandoned any attempt to reduce or avoid the 2021 Ordinance's significant damage to farmland. Specifically, the County revoked all four options under MM 4.2-1 and then drew the unsupported conclusion that there was no feasible mitigation that could reduce impacts to agricultural land. It wrongly asserted that the Appellate Opinion prohibited the use of agricultural

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Planning & Conservation League v. Castaic Lake Water Agency (2009) 180 Cal.App.4th 210, 228; *City of Carmel-By-The-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 971.

conservation easements as CEQA mitigation, and falsely claimed that the County lacked legal authority to require an applicant to remove legacy oil and gas equipment as a condition of permit approval. The County also rejected, without justification, proposed mitigation that would have required the clustering of wells sited on farmland.

b. The August DSREIR failed to provide adequate mitigation for the 2021 Ordinance's significant noise impacts. As discussed in a report by noise experts Salter and Associates, the August DSREIR failed to require ambient noise measurements at project sites or noise-sensitive receptors and failed to use ambient noise measurements in developing mitigation. The August DSREIR also failed to provide adequate mitigation for operational noise impacts.

c. The County recirculated the Cumulative Health Risk Assessment, but it failed to correct gross inadequacies in the CHRA that air quality expert Dr. Phyllis Fox identified. For example, the recirculated CHRA failed to evaluate health risks based on realistic assumptions about actual well density in Kern County. Further, according to a second air quality expert, Dr. H. Andy Gray, the CHRA suffered from the following additional inadequacies: (i) emissions rate data used to scale model results were not properly documented; (ii) modelers failed to use readily available correction mechanisms to more accurately account for calm winds, resulting in an underestimation of impacts; (iii) modelers used extremely high temperatures and exit velocities for diesel equipment exhaust, leading the model to anticipate very high plume rise and potentially underestimate pollutant concentrations; (iv) wells were actually modeled at distances from the receptor that differ from those stated in the CHRA, leading to a lower estimation of pollutant concentrations; and (v) lower emissions rates were used for the ring of modeled sources closest to the receptor as compared to the other, more distant modeled sources, again reducing estimated pollutant concentrations.

45. Other commenters also expressed concern about the County's nonexistent mitigation for the 2021 Ordinance's impacts to agricultural resources. In a letter to the County dated September 16, 2020, the California Department of Conservation ("DOC") criticized the August DSREIR's removal of MM 4.2-1, noting that "CEQA requires feasible mitigation that lessens a project's impacts, even if reduction to a level below significance is not feasible." DOC explained that CEQA Guidelines section

15370 specifically contemplates use of conservation easements that "replac[e] or provid[e] substitute resources" for those lost or damaged due to project activities. DOC observed conservation easements are a widely used mitigation tool, considered "standard practice in many areas of the State." Finally, DOC recommended that the County require the removal of legacy oil and gas equipment from productive farmland where feasible and include soil restoration as additional mitigation.

46. In a letter to the County dated September 1, 2020, the Sequoia Riverlands Trust ("SRT") protested the August SREIR's removal of agricultural conservation easements as mitigation for the 2021 Ordinance's impacts. According to SRT, such easements have long been used to reduce the impacts of farmland conversion, and SRT already holds conservation easements on 15 properties in Kern County, totaling over 4,200 acres. As SRT explained, a conservation easement requirement can partially counterbalance impacts to farmland in several important ways:

> It slows the overall rate of farmland conversion, both by disincentivizing projects that unnecessarily consume farmland, and by providing resources for farmland conservation. Moreover, the capital that a willing landowner receives for selling an easement on his or her property is sometimes what enables that landowner to keep farming.

SRT concluded that while conservation easements do not create new farmland, they "make a meaningful, cumulative contribution to protecting agricultural resources."

47. Numerous other public commenters criticized the August DSREIR's inadequate analysis and mitigation of the 2021 Ordinance's impacts on noise levels, public health, water supply, groundwater and air quality, among other deficiencies.

B. The October 2020 Draft SREIR

48. On or about October 30, 2020, the County released a revised version of the draft SREIR ("October DSREIR") for the 2021 Ordinance. Numerous organizations and individuals submitted comments criticizing the October DSREIR.

49. In a letter to the County dated December 14, 2020, KGF commented that the October DSREIR remained legally inadequate. It failed to correct the errors identified in the Appellate Opinion, comply with the Second Writ, or otherwise comply with CEQA, in the following respects:

a. In response to KGF's and others' complaints that the August DSREIR eliminated all mitigation for agricultural impacts, the October DSREIR offered a new mitigation measure, "MM

4.2-1 New."[9] MM 4.2-1(B) purported to protect farmland by prohibiting the permitting of new wells on a farmland parcel where the applicant already had legacy oil and gas equipment, unless the applicant removed that equipment. The mitigation, however, was patently inadequate because it suffered from three major defects:

(i) MM 4.2-1(B) lacked any quantifiable standard, such as the 1:1 mitigation ratio included in the County's original agricultural mitigation measure, to ensure that any significant amount of farmland would be restored through the removal of legacy equipment;

(ii) MM 4.2-1(B) required the removal of legacy equipment only if the permit applicant had unused oil and gas equipment *on the same legal parcel* as the new oil well. This "same parcel" condition presented a large loophole: an applicant would be able to evade the requirement by simply moving its proposed project to a previously untouched neighboring parcel. Given that the minimum parcel size for farmland in Kern County is only 20 acres, an applicant could easily "move over" a parcel and carry out its activities on an area without existing legacy equipment.

(iii) MM 4.2-1(B) applied only where the applicant "has," or owns, legacy equipment on the parcel. By making the mitigation contingent on whether the applicant itself owned the legacy equipment, the County allowed applicant companies to avoid mitigation by changing the legal ownership of the equipment.

b. KGF explained that the flaws in MM 4.2-1(B) could be addressed through revisions to the measure. First, the County could include a specific mitigation standard requiring that, for every acre of farmland lost as a result of a Project permit issued, the same number of acres must be restored to agricultural use through legacy equipment removal. Second, the County could eliminate the "same parcel" loophole by expanding the scope of the mitigation according to the following tiered system:

(i) If the applicant owned legacy equipment on the same parcel, or on the same farm, as the new oil well, the applicant would be required to remove the legacy equipment,

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[9] This Petition refers hereinafter to this new measure simply as "MM 4.2-1."

on a 1:1 basis.

(ii) If the applicant did not own legacy equipment on the same parcel or farm, it would be required to remove legacy equipment that it owned from other farmland in the Project Area, on a 1:1 basis.

(iii) If the applicant did not own any legacy equipment on farmland in the Project Area, then it would be required to contribute to a County fund, or mitigation bank, dedicated to the removal of legacy equipment from farmland in the Project Area. Its contribution would be proportional, on a 1:1 basis, to the conversion of farmland resulting from the oil and gas activities authorized by the applicant's permit.

Third, the County could close the "ownership loophole" by clarifying that the requirement for removing legacy equipment applied to entities controlled by or affiliated with the applicant. KGF's comment letter included specific, feasible revisions to MM 4.2-1(B) designed to correct each of the three flaws.[10]

c. The October DSREIR acknowledged that, even with new MM 4.2-1, the 2021 Ordinance's impacts on agriculture would be significant. CEQA thus required the County to consider and adopt feasible mitigation to reduce this impact. Nevertheless, the October DSREIR failed to identify any further mitigation that could reduce farmland impacts. In particular, it categorically refused to consider the use of agricultural conservation easements, claiming that the Appellate Opinion prohibited use of this common mitigation tool. Yet, as KGF explained, the County's interpretation of the Appellate Opinion did not hold up—legally or factually. California law specifically recognizes conservation easements as a vital mechanism in combatting development pressures that will result in farmland conversion. Pub. Resources Code § 10200 et seq.; Civ. Code § 815. The October DSREIR itself expressly conceded that many other California jurisdictions, such as San Joaquin County, Stanislaus County, and Yolo County, and the Cities of Davis, Livermore, and Stockton, require agricultural conservation easements as a condition of development approvals. Tellingly, the DSREIR provided no evidence showing that the use of such easements would be infeasible in Kern County and the 2015 EIR had concluded that they were feasible. Moreover, the Court of Appeal was concerned that the

[10] KGF's proposed revisions to MM 4.2-1(B) are attached hereto as Exhibit B.

agricultural mitigation did not go far *enough* to support the County's conclusion that farmland mitigation was fully mitigated. The Appellate Opinion in no way supports the County's claim that it is entitled, much less required, to eliminate this established and feasible mitigation entirely. The October DSREIR also rejected, without support, the proposed mitigation requiring that applicants cluster oil infrastructure that is sited on farmland.

d. While the County addressed some of the flaws in the August DSREIR's discussion of noise impacts, the October DSREIR contained new errors. As noise expert Salter explained, the DSREIR inexplicably used two different methods for measuring noise. It established a general noise standard that was expressed as dB DNL, which adjusts upward to "penalize" for nighttime noise. However, the "trigger" distances used by the DSREIR for certain operations (e.g., diesel well-drilling) to determine whether additional mitigation would be required employed the Leq metric, which does not adjust for nighttime noise. As a result, noise levels will appear approximately 10 dB lower in Leq than in DNL. This would mean that, in certain locations within the Project Area, a substantial noise increase could exceed the DNL standard but not fall within the mitigation "trigger" distances calculated using Leq. As a result, no mitigation would be imposed even where noise levels clearly exceeded established significance thresholds. A technical report appended to the October DSREIR opined that the Leq-based project noise measurements were "conservative" and might "overpredict" noise by "up to" 6 dB, but neither the report nor the October DSREIR established that this "conservative" approach was sufficient to ensure that all significant noise increases are subject to additional mitigation.

e. The October DSREIR failed to revise the CHRA to correct the erroneous assumptions about well density identified by Dr. Phyllis Fox. Instead, the October DSREIR relied on a technical memorandum that claimed the CHRA's assumptions were "conservative." That memorandum, however, was flawed because it (i) failed to account for a foreseeable increase in oil and gas drilling under the 2021 Ordinance, and (ii) focused solely on short-term (acute) health risks from temporary drilling operations, while ignoring longer-term (chronic) health risks associated with operation and maintenance of wells and production facilities. Dr. Fox thus proposed new mitigation to ensure that actual well densities under the 2021 Ordinance will not exceed densities assumed in the CHRA. The

October DSREIR also failed to address the inadequacies in the CHRA identified by Dr. H. Andy Gray.

C. The Responses to Comments and Final SREIR

50. On or about January 29, 2021, the County released its responses to comments on, and further revisions and "errata" to, the August 2020 DSREIR and October 2020 DSREIR. These responses to comments, together with the other revised sections of the SREIR, are described herein as the "Final SREIR" or "FSREIR." The FSREIR indicates that the County made only minimal changes to the SREIR, failing to remedy the vast majority of errors identified by KGF and others.

51. On or about February 5, 2021, the County released a staff report for the Kern County Planning Commission ("Planning Commission Staff Report") containing its proposed findings of fact and statement of overriding considerations ("SOC") to be adopted with the approval of the 2021 Ordinance.

52. On or about February 11 and 12, 2021, the Kern County Planning Commission held a hearing at which it recommended that the Board of Supervisors certify the SREIR and approve the 2021 Ordinance. KGF's counsel submitted a written comment to the Commission protesting the County's failure to adopt effective mitigation for the Project's significant impacts on agriculture.

53. In a letter to the Board and County dated February 22, 2021, the Arvin Petitioners noted that while the Planning Commission Staff Report and statements made by a County official at the Planning Commission meeting described the 2021 Ordinance as having a lifespan of 15 years, with a cumulative cap of 40,445 wells, the FSREIR and 2021 Ordinance stated that the 2021 Ordinance has no expiration date, contained no requirement that the County ever perform additional environmental review, and inconsistently considered environmental impacts over either a 20- or 25-year window.

54. On or about March 1, 2021, the County issued an additional staff report for the Board containing revisions to the FSREIR and the County's proposed findings of fact and statement of overriding considerations to be adopted with the approval of the 2021 Ordinance.

55. In a letter to the Board dated March 5, 2021, KGF commented that the FSREIR failed to resolve the numerous legal inadequacies in the DSREIR raised by KGF and others. The FSREIR failed to correct the errors identified in the Appellate Opinion, comply with the Second Writ, or otherwise

comply with CEQA in the following respects:

a. The FSREIR failed to adequately respond to KGF's comments on the August DSREIR and October DSREIR. Instead, the County dismissed in a cursory fashion KGF's requests for additional information and rejected, without justification, its suggestions for feasible mitigation measures.

b. While the FSREIR fixed the "ownership loophole" in MM 4.2-1(B), the mitigation requiring removal of legacy equipment from farmland, the County refused to make other changes necessary to ensure the efficacy of the measure – or even to provide information about the number of legacy wells in the Project Area. The County rejected, without justification, KGF's proposals to shore up MM 4.2-1(B) by (i) requiring a 1:1 mitigation ratio, and (ii) eliminating the requirement that the legacy equipment to be removed must be located on the "same legal parcel" as the new oil drilling. The County also refused to consider KGF's proposal to create a legacy equipment mitigation bank, wrongly claiming that such a fund would be "outside the scope of this SEIR"; the County instead asserted that "[i]f at some future time the County establishes a legacy equipment mitigation bank, the Ordinance could be amended to add a mitigation measure requiring contributions to the bank as mitigation for agricultural land conversion impacts." This statement, however, did not commit the County to ever establishing a mitigation bank.

c. The FSREIR reiterated the County's earlier, unjustified refusal to consider other feasible mitigation for the 2021 Ordinance's agricultural impacts, specifically rejecting proposals to require use of agricultural conservation easements and the clustering of oil infrastructure. It also rejected DOC's proposal that the County include mitigation requiring soil restoration.

d. The FSREIR made no changes to the October DSREIR's analysis and mitigation of noise impacts. The County thus refused KGF's request to correct the problems associated with the document's erroneous use of two different methods for measuring noise and determining whether to require additional mitigation for noise increases.

56. KGF's March 5, 2021 letter also warned the County that its proposed findings of fact and proposed statement of overriding considerations were legally inadequate because they are based on a

flawed analysis of Project impacts and mitigation. The County cannot simply "override" impacts where it (a) failed to assess the efficacy of its adopted mitigation and therefore never determined the "net" impact of the Project, and (b) failed to consider and adopt feasible mitigation proposed to reduce the Project's significant impacts. Moreover, the proposed findings and SOC were unsupported by substantial evidence and based on a one-sided and misleading analysis of the Project's purported costs and benefits.

57. On or about March 8, 2021, the Board conducted a public hearing on the Project. That morning, the County issued an addendum to its March 1, 2021 staff report. KGF appeared at the hearing to object to the Project as violating CEQA and the Appellate Opinion. KGF also submitted written comments contesting statements in the County's addendum regarding mitigation for the Project's agricultural impacts. At the conclusion of the public hearing, the Board certified the SREIR, approved the 2021 Ordinance and adopted related findings of fact and statement of overriding considerations.

58. On or about March 9, 2021, the County filed a Notice of Determination for the 2021 Ordinance.

FIRST CAUSE OF ACTION

(Violations of CEQA: Inadequate SREIR, Findings of Fact, and Statement of Overriding Considerations; Failure to Comply with Appellate Opinion and Second Writ.)

59. KGF hereby realleges and incorporates the allegations contained in paragraphs 1 through 58, inclusive.

I. Applicable CEQA Requirements

60. CEQA is designed to ensure that the long-term protection of the environment be the guiding criterion in public decisions. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute, including, but not limited to, the requirement to analyze the project's potentially significant environment impacts. Pub. Resources Code §§ 21002.1(a), 21080(d). The EIR must provide sufficient environmental analysis to ensure that the decision-makers can intelligently consider environmental consequences when acting on the proposed project. *Laurel Heights Improvement Assn. v. Regents of*

Univ. of Cal. (1988) 47 Cal.3d 376, 405.

61. CEQA also mandates that the lead agency identify feasible mitigation measures that will reduce or avoid a project's significant environmental impacts. Pub. Resources Code §§ 21002, 21002.1(b). Even where a public agency cannot completely eliminate a project's significant impacts, CEQA requires that it nonetheless reduce those impacts to the extent feasible. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524-25 ("*Friant Ranch*"). An EIR must respond to comments making specific suggestions for mitigating a significant impact unless the suggested mitigation is "facially infeasible." *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029. If an agency rejects a suggested measure as infeasible, the rejection must be supported by substantial evidence and free of legal error. Pub. Resources Code § 21168.5.

62. The agency must assure that its mitigation is "effective" and will "present a viable solution" to mitigating the adverse effect. *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116. The EIR must include facts and analysis to support its conclusions regarding the effect of its mitigation measures. *Friant Ranch,* 6 Cal.5th at 522 ("The EIR must accurately reflect the net health effect of proposed air quality mitigation measures."), citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514 ("an EIR's designation of a particular adverse environmental impact as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect").

63. CEQA prohibits a lead agency from approving a project with significant environmental effects unless it has made written findings for each of those effects, accompanied by an explanation of the rationale for each finding. Pub. Resources Code 21081(a). These findings must support the ultimate decision, be based on substantial evidence in the record, and trace the analytical route between the evidence in the record and the agency's conclusions.

64. CEQA provides that where a project's significant environmental effects cannot feasibly be mitigated, the lead agency may still approve the project if it finds that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." Pub. Resources Code § 21081(b). However, an agency's statement of overriding

considerations constitutes an abuse of discretion where it is not supported by substantial evidence. *Id.* at § 21168.5; CEQA Guidelines, § 15093(b). The statement's core purposes are undermined if "its conclusions are based on misrepresentations of the contents of the EIR or it misleads the reader about the relative magnitude of the impacts and benefits the agency has considered." *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 718.

65. An agency's statement of overriding considerations provides "a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible." *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 368. Where an agency improperly determines that significant impacts cannot feasibly be mitigated, it "necessarily follows" that the statement of overriding consideration is invalid. *Id.*

II. Failure of SREIR to Comply with CEQA, the Appellate Opinion, and the Second Writ

66. Respondents violated state law by certifying a SREIR in connection with the 2021 Ordinance that fails to comply with the requirements of CEQA and the CEQA Guidelines. The SREIR also fails to follow the directives of the Appellate Opinion and the Second Writ. The SREIR's legal inadequacies include, but are not limited to:

a. The SREIR fails to identify effective mitigation for the 2021 Ordinance's impacts on farmland conversion. As a result, as the County concedes, these environmental impacts remain significant even with the SREIR's one agricultural mitigation measure, MM 4.2-1. In particular:

(i) MM 4.2-1, which purports to partially mitigate the 2021 Ordinance's farmland impacts through the removal of legacy oil and gas equipment, fails to include feasible measures that would ensure the reduction of farmland impacts. First, MM 4.2-1 fails to include any quantifiable standard for legacy equipment removal, such as the 1:1 mitigation ratio used in the County's original mitigation, and thus it is impossible to determine the extent to which the measure will actually protect or restore farmland. Tellingly, when KGF requested information about the amount of legacy equipment currently occupying farmland in the Project Area, the County responded that it had no such information. Second, MM 4.2-1 requires removal of legacy

equipment only if the permit applicant owns equipment on the exact same parcel where the new drilling will occur. Thus, applicants can entirely avoid mitigating the farmland conversions due to their new oil and gas wells by simply moving their operations to an untouched parcel. KGF proposed feasible modifications to correct the flaws in MM 4.2-1 by reestablishing the 1:1 mitigation standard and by closing the "same parcel" loophole, but the County dismissed them. Third, the County refused to consider KGF's proposal to create a legacy equipment mitigation bank, wrongly claiming that such a fund would be outside the scope of the SREIR. Finally, MM 4.2-1 fails to include soil restoration as mitigation, as requested by DOC.

(ii) The County rejected, without justification, proposals from KGF, DOC and SRT that its mitigation should include the use of agricultural conservation easements. The County based its action on a misreading of the Appellate Opinion, which it wrongly construed as banning the use of such easements for mitigation under CEQA under all circumstances. The County did not properly consider or meaningfully respond to public comments describing the extensive use of agricultural conservation easements throughout the State. Nor did the County adequately address evidence that easements could reduce long-term impacts on farmland or explain why these instruments would not partially compensate for agricultural impacts by protecting productive farmland in Kern County. The County also erred in its rejection of KGF's proposal to require clustering of oil and gas infrastructure that is sited on productive farmland, and of DOC's proposal to require applicants to restore damaged soil.

b. The SREIR fails to adequately analyze or mitigate the 2021 Ordinance's significant noise impacts. In particular, the SREIR erred by using two different methods of measuring noise, one for establishing background conditions and relevant noise standards (dB DNL), and the other for measuring actual noise from drilling and production equipment (Leq). This approach created a mismatch that could allow noise to increase well beyond the significance thresholds used in the SREIR without triggering the imposition of noise mitigation. As a result, in certain locations in the Project Area, substantial, unmitigated noise increases due to the 2021 Ordinance could occur, despite the availability of feasible mitigation.

c. Due to its reliance on the flawed CHRA, the SREIR fails to adequately analyze or mitigate the 2021 Ordinance's significant public health risks due to air pollution. Despite comments from CARB and other scientists, the CHRA remains inadequate. For example, the CHRA fails to evaluate health risks based on actual well density in Kern County, fails to consider emissions from well operations, and fails to evaluate non-cancer health risks. It likewise ignores that the 2021 Ordinance allows drilling to occur much closer to homes than the assessment considered. The SREIR and CHRA also continue to misstate the distances at which the assessment's modeling was performed. These flaws undercut Mitigation Measure 4.3-5, which prescribes inadequate drilling setback distances based on the flawed CHRA. In addition, the County rejected, without justification, KGF's and Arvin Petitioners' proposals for feasible mitigation to address these impacts.

d. The County failed to adequately respond to comments on the August DSREIR and October DSREIR, including, but not limited to, by dismissing expert comments, requests for additional information, and suggestions of feasible mitigation measures.

67. As a result of these actions, Respondents prejudicially abused their discretion by failing to proceed in the manner required by law and by failing to act on the basis of substantial evidence.

III. Failure of County's Findings of Fact and Statement of Overriding Considerations to Comply with CEQA

68. Respondents also violated CEQA and the CEQA Guidelines by adopting findings of fact and an SOC in connection with the 2021 Ordinance that are invalid. The findings and SOC are legally inadequate because they are based on a flawed analysis of Project impacts and mitigation. The County cannot simply "override" environmental impacts where (a) it failed to assess the efficacy of its adopted mitigation and therefore never determined the "net" impact of the Project, and (b) it failed to consider or adopt feasible mitigation proposed to reduce the Project's significant impacts. Moreover, the findings and SOC are misleading, unsupported by substantial evidence, fail to trace the analytical route between the evidence in the record and the County's conclusions, and fail to present a true and accurate accounting of the costs and benefits of approving the Project. The SOC is legally inadequate for numerous reasons, including, but not limited to the inadequacies set forth below. The SOC and its

findings:

a. Erroneously claim that the Project benefits the environment, ignoring the documented harm the Project will cause and its goal of eliminating all future CEQA review and mitigation of oil and gas drilling in the County;

b. Fail to consider the actual impact of adopting the 2021 Ordinance, instead attributing to the Project the purported economic benefits of the entire oil and gas industry;

c. Fail to recognize the importance of agriculture to the County's economy or address the Project's adverse impacts, including economic impacts, on agriculture, local environmental resources, health, and property values;

d. Inappropriately focus on the oil industry's gross domestic product, which largely reflects the income that oil and gas production provides to out-of-County investors and corporate management rather than the industry's economic contribution to Kern County and its residents;

e. Ignore the economic stimulus and benefits that would result from fully mitigating the Project's impacts on County water, air quality, and farmland; in particular, the findings ignore the job and economic benefits of requiring legacy equipment removal and soil restoration for impacted farmland at a 1:1 ratio and of establishing an effective agricultural conservation easement program;

f. Make unfounded claims about energy independence which conflict with California policy to dramatically reduce its petroleum demand and transition to a carbon-neutral economy over the next 15-20 years; and

g. Spuriously claim that the Project's purported consistency with the General Plan is a benefit, when it is simply a basic legal requirement for all zoning, while ignoring the Project's conflict with General Plan policies calling for protection of agriculture, water, and other environmental resources; and

h. Make numerous other claims and assertions that are unfounded, irrelevant, and/or lack any support based on verifiable data.

PRAYER FOR RELIEF

WHEREFORE, KGF prays for judgment as follows:

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside their approval of the 2021 Ordinance, certification of the EIR, and adoption of findings of fact and a statement of overriding considerations in connection with their approval of the 2021 Ordinance;

2. For alternative and peremptory writs of mandate directing Respondents to comply with CEQA and the CEQA Guidelines, and to take any other action as required by Public Resources Code section 21168.9 or otherwise required by law;

3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents and Real Parties in Interest and their agents, servants, and employees, and all others acting in concert with them or on their behalf, from taking any action (a) to approve any permits, entitlements, licenses, or authorizations pursuant to the 2021 Ordinance, or (b) to implement any portion or aspect of the 2021 Ordinance, pending Respondents' full compliance with the requirements of CEQA and the CEQA Guidelines.

4. For an order denying any request by Respondents or others to discharge the Second Writ, issued on June 17, 2020 in the Ongoing Action, pending Respondents' full compliance with the requirements of CEQA and the CEQA Guidelines with respect to the 2021 Ordinance.

5. For costs of the suit;

6. For attorneys' fees as authorized by Code of Civil Procedure Section 1021.5 and/or other provisions of law; and

7. For such other and further relief as the court deems just and proper.

DATED: March 9, 2021

SHUTE, MIHALY & WEINBERGER LLP

By: Rachel B. Hooper

RACHEL B. HOOPER

Attorneys for King and Gardiner Farms, LLC

1333854.23

VERIFICATION

I, Keith B. Gardiner, am the Manager of King and Gardiner Farms, LLC, the Petitioner in this action, and I am authorized to execute this verification on Petitioner's behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition"). I am familiar with its contents. All facts alleged in the above Petition not otherwise supported by exhibits or other documents are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Bakersfield, California on March 9, 2021.

Signature

1344260.1

Exhibit A

SHUTE, MIHALY
& WEINBERGER LLP

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RACHEL B. HOOPER
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March 9, 2021

Via U.S. Mail and E-Mail

Kathleen Krause
Clerk of the Kern County Board of Supervisors
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
clerkofboard@kerncounty.com

Lorelei H. Oviatt, Director
Kern County Planning and Natural Resources Department
2700 M Street, Suite 100
Bakersfield, CA 93301
loreleio@kerncounty.com

County of Kern
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
caomailbox@kerncounty.com

Re: *King and Gardiner Farms, LLC v. Kern County et al.*:
Notice of Intent to Sue

To Whom It May Concern:

This letter is to notify you that King and Gardiner Farms, LLC will file suit against the County of Kern, Kern County Planning and Natural Resources Department, and the Kern County Board of Supervisors (collectively, "County") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in the County's March 8, 2021 decisions to (1) approve Revisions to the Kern County Zoning Ordinance – 2020 (A), focused on Oil and Gas Local Permitting ("Project"), (2) certify the Supplemental Recirculated Environmental Impact Report for the Project, and (3) adopt Findings

of Fact and a Statement of Overriding Considerations in connection with the Project. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Rachel B. Hooper

1344262.4

PROOF OF SERVICE

King and Gardiner Farms, LLC v. Kern County et al.
Kern County Superior Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On March 9, 2021, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document to be sent from e-mail address burton@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 9, 2021, at Tampa, Florida.

Mike Burton

SERVICE LIST
King and Gardiner Farms, LLC v. Kern County et al.
Kern County Superior Court

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Exhibit B

EXHIBIT DSREIR 4

KGF'S PROPOSED REVISIONS TO KERN COUNTY'S LEGACY EQUIPMENT MITIGATION (proposed changes appear bolded and underlined)

MM 4.2.-1 (NEW)

For Oil and Gas Conformity Reviews that are 1) on land designated Prime, Farmland of Statewide Importance, or Unique Farmland; and 2) that have been actively farmed five years or more out of the last 10 years; and 3) have a water allocation sufficient for farming from any source **("Qualifying Farmland")** shall have the following ~~siting~~ requirements:

A. [Requirement for per-well acreage cap]

B. No permit for a new well shall be issued ~~if the applicant has legacy unused oil and gas equipment on the same legal parcel.~~ **unless: (i) the Applicant removes legacy unused oil and gas equipment ("Legacy Equipment") that it owns on the same legal parcel where the farmland conversion will occur ("New Conversion Parcel"); or (ii) if the Applicant does not own Legacy Equipment on the New Conversion Parcel, the Applicant removes Legacy Equipment that it owns from the farm that includes the New Conversion Parcel; or, (iii) if neither (i) nor (ii) applies, the Applicant removes Legacy Equipment it owns from other Qualifying Farmland in the Project Area; or (iv) if neither (i), (ii) nor (iii) applies, the Applicant contributes sufficient funds to a mitigation fee bank established by Kern County for the purpose of removing Legacy Equipment from Qualifying Farmland in the Project Area ("Mitigation Bank"). All mitigation in this section shall occur at a 1:1 ratio, as described in subsection B(2) below.**

1. ~~The~~ **Any Legacy Equipment removed pursuant to this measure** ~~legacy oil and gas equipment~~ shall be removed inclusive of compliance with applicable legal requirements (e.g., well plugging and abandonment requirements under state or federal regulations), and restoration of the surface grade consistent with surrounding lands on the parcel ~~completed before any new well activity can commence.~~ **This process shall also include removal of soil compaction and contaminants to restore the land to a fallow agricultural condition.** A full plan and details of actions needed to remove the Legacy Equipment shall be submitted with the site plan, be shown on a detail of the site plan, and be a condition of the approved permit. **All Legacy Equipment removal efforts, and/or payments into the Mitigation Bank, shall be completed before any new well activity can commence.**

2. The Applicant's removal of Legacy Equipment and/or contribution to the Mitigation Bank shall achieve mitigation, at a ratio of 1 to 1, for the conversion of Qualifying Farmland resulting from activities authorized by the Applicant's permit. The 1 to 1 ratio is applied to actual ground disturbance area for oil and gas activities (inclusive of temporary construction and permanent operational impact areas), but excludes non-farmed existing areas such as roads, and tank and maintenance areas, and lands for which agricultural mitigation has previously been provided at a 1 to 1 ratio.

3. The County shall establish the Mitigation Bank within a reasonable time after its adoption of the Ordinance. In establishing the mitigation bank, the County shall evaluate and determine the cost of legacy equipment removal and soil remediation per acre. Based on this cost, the County shall establish a set formula for a standard fee sufficient to achieve mitigation, at a ratio of 1 to 1, based on the number of acres converted. The County also shall establish guidelines and procedures to ensure that fees collected are expended in a manner that actually and effectively achieves the mitigation standards set forth in this mitigation measure.

4. An Applicant shall be deemed to "own" Legacy Equipment that is owned by (a) (i) the Applicant, or (ii) an entity controlled by or affiliated with the Applicant on the date the application is filed, or (b) an entity not controlled by or affiliated with the Applicant to which the Applicant transferred title to the Legacy Equipment within one year prior to the date that application is filed. An Applicant shall be deemed to be an "affiliate" of any entity that controls or is controlled by the Applicant or an entity that has hired the Applicant as an independent contractor.

5. For farmland parcels in Tier 1, when both the surface and minerals are owned by the applicant, this measure does not apply.

C. Siting and construction of new disposal ponds are prohibited.