

ENDORSED
FILED

JAN 13 2011

SUPERIOR COURT
OF CALIFORNIA
COUNTY OF SONOMA

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11 CITIZENS ADVOCATING FOR ROBLAR
12 RURAL QUALITY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SONOMA

15 CITIZENS ADVOCATING FOR
16 ROBLAR RURAL QUALITY,

17 Petitioner,

18 vs.

19 COUNTY OF SONOMA,
20 COUNTY OF SONOMA BOARD OF
21 SUPERVISORS, and COUNTY OF
22 SONOMA PERMIT RESOURCES AND
23 MANAGEMENT DEPARTMENT,

24 Respondents.

25 JOHN BARELLA and JOHN E.
26 BARELLA AND ANDREA M.
27 BARELLA TRUST, and DOES 1 through
28 25, inclusive,

Real Parties in Interest

Case No. SON 248943

PETITION FOR WRIT OF MANDATE

(Code Civ. Proc. §1094.5; California
Environmental Quality Act, Public Res. Code
§21000 *et seq.*)

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INTRODUCTION

1. Petitioner CITIZENS ADVOCATING FOR ROBLAR RURAL QUALITY (“CARRQ”) hereby challenges Respondents COUNTY OF SONOMA’s, COUNTY OF SONOMA BOARD OF SUPERVISORS’, and COUNTY OF SONOMA PERMIT RESOURCES AND MANAGEMENT DEPARTMENT’s actions made on or about December 14, 2010, certifying an Environmental Impact Report (the "EIR"), adopting a Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations, and approving (1) a Zone Change to add a MR (Mineral Resources) overlay zone to an approximately 198 acre site located at 7601 and 7175 Roblar Road, County of Sonoma, Assessor’s Parcel Numbers 027-080-009 and -010 (the “Project Site”); (2) a Use Permit with a term of 20 years to allow mining and the recycling of asphalt, concrete and other materials with an annual production limit not to exceed 570,000 cubic yards per year; and (3) a Reclamation Plan for an approximately 70 acre portion of the Project Site, for the "Roblar Road Quarry Project" (collectively, the “Project”) proposed by Real Parties in Interest JOHN BARELLA and JOHN E. BARELLA AND ANDREA M. BARELLA TRUST. As set forth herein, the County’s actions with respect to the Project violated the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*, by (i) with respect to the EIR: (A) the inadequacy of the Project description; (B) the failure to adequately characterize the environmental setting; (C) the inadequacy of the analysis of, and failure to identify significant impacts to, air quality, noise, transportation and traffic, water quality, hazardous materials and health and safety and land use; (D) the failure to identify and/or adequately analyze feasible mitigation measures; and (E) the failure to respond adequately to comments on the Draft EIR; (ii) the failure to adopt legally adequate findings in connection with the Mitigation, Monitoring and Reporting Program; and (iii) the failure to adopt legally adequate findings in connection with the Statement of Overriding Considerations.

PARTIES

2. CARRQ is a California public benefit non-profit corporation duly organized under DB2/22149168.4

1 the laws of the State of California. CARRQ is dedicated to the education of the West Sonoma
2 community about and to the promotion of environmentally sustainable development and the
3 continued health and safety of residents and travelers along the Roblar Road area, in the Roblar
4 Road area and in West Sonoma County, and the preservation of the roadways, air and water
5 quality, noise and traffic circulation, quality of life and rural character of West Sonoma County,
6 including the area which includes the Project Site.

7 3. CARRQ's organizational purpose is to educate the West Sonoma community
8 about and to promote environmentally sustainable development and the continued health and
9 safety of residents and travelers along the Roblar Road area, in the Roblar Road area and in West
10 Sonoma County, and to preserve the roadways, air and water quality, noise and traffic circulation,
11 quality of life and rural character of West Sonoma County, including the area which includes the
12 Project Site.

13 4. CARRQ, through its officers including but not limited to Susan Buxton (President)
14 and David Spillman (Treasurer), presented oral and written comments on the EIR and in
15 opposition to the Project prior to and at the public hearings held by the County and culminating in
16 the County's certification of the EIR and approval of the Project.

17 5. CARRQ's officers reside in and pay taxes to the County and will suffer direct
18 harm as a result of any adverse environmental and public health impacts caused by the Project.
19 They have therefore a clear and present right to, and beneficial interest in, the County's
20 performance of its duties under CEQA and are within the class of persons to whom the County
21 owes such duties.

22 6. COUNTY is a political subdivision of the State of California and body corporate
23 and politic created and existing under and by virtue of the laws of the State of California. The
24 County is the lead agency responsible under CEQA for evaluating the environmental impacts of
25 the Project. On or about December 14, 2010, the County, acting through its Board of
26 Supervisors, certified the EIR for the Project, adopted a Mitigation Monitoring and Reporting
27 Program and Statement of Overriding Considerations and findings in support of the same, and
28 approved (1) a Zone Change to add a MR (Mineral Resources) overlay zone to the Project Site,
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1 (2) a Use Permit with a term of 20 years to allow mining and the recycling of asphalt, concrete
2 and other materials with an annual production limit not to exceed 570,000 cubic yards per year at
3 the Project Site, and (3) a Reclamation Plan for an approximately 70 acre portion of the Project
4 Site, for the Project.

5 7. COUNTY OF SONOMA BOARD OF SUPERVISORS (the “Board of
6 Supervisors”) is the governing body of the County of Sonoma, a political subdivision of the State
7 of California and body corporate and politic created and existing under and by virtue of the laws
8 of the State of California. The County is the lead agency responsible under CEQA for evaluating
9 the environmental impacts o the Project. On or about December 14, 2010, the Board of
10 Supervisors certified the EIR for the Project, adopted a Mitigation Monitoring and Reporting
11 Program and Statement of Overriding Considerations and findings in support of the same, and
12 approved (1) a Zone Change to add a MR (Mineral Resources) overlay zone to the Project Site,
13 (2) a Use Permit with a term of 20 years to allow mining and the recycling of asphalt, concrete
14 and other materials with an annual production limit not to exceed 570,000 cubic yards per year at
15 the Project Site, and (3) a Reclamation Plan for an approximately 70 acre portion of the Project
16 Site, for the Project.

17 8. COUNTY OF SONOMA PERMIT RESOURCE AND MANAGEMENT
18 AGENCY (the “PRMD”) is a department of the County, a political subdivision of the State of
19 California and body corporate and politic created and existing under and by virtue of the laws of
20 the State of California. The County is the lead agency responsible under CEQA for evaluating
21 the environmental impacts of the Project. On or about December 14, 2010, the County, acting
22 through its Board of Supervisors, certified the EIR for the Project, adopted a Mitigation
23 Monitoring and Reporting Program and Statement of Overriding Considerations and findings in
24 support of the same, and approved (1) a Zone Change to add a MR (Mineral Resources) overlay
25 zone to the Project Site, (2) a Use Permit with a term of 20 years to allow mining and the
26 recycling of asphalt, concrete and other materials with an annual production limit not to exceed
27 570,000 cubic yards per year at the Project Site, and (3) a Reclamation Plan for an approximately
28 70 acre portion of the Project Site, for the Project.

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1 Respondents to use the Project Site as a hard rock quarry, including the use of blasting. PRMD
2 found this application to be incomplete. Five years later, PRMD determined that Real Party in
3 Interests' application was complete.

4 16. The County caused a Draft EIR for the Project to be prepared and circulated from
5 May 20, 2008, to July 5, 2008. The Draft EIR included an option for access to the Project Site
6 that differed from that proposed in the 2008 application, the "Alternative Haul Route". The Draft
7 EIR purportedly analyzed the Alternative Haul Route as an alternative to the Project (along with a
8 condition of approval requiring "contracted sales only", collectively ("Alternative 2"), despite the
9 fact that the Draft EIR itself stated that the optional access to the Project Site had been proposed
10 by the Real Parties in Interest.

11 17. A proposed Final EIR was released for the Project on October 15, 2009 (the "2009
12 FEIR"). On November 16, 2009, the County's own Department of Transportation and Public
13 Works ("Public Works") submitted a letter to PRMD expressing serious concerns regarding
14 inadequacies in the Project's conditions of approval and the analysis in the EIR, particularly with
15 regard to risks associated with permitting operation of a hard-rock quarry (including blasting)
16 adjacent to an unlined landfill (the "Roblar Landfill"). On December 15, 2009, the North Coast
17 Regional Water Quality Control Board (the "RWQCB") also submitted a letter to the County
18 expressing concerns regarding the Project's impacts on water quality, including in connection
19 with its proximity to the Roblar Landfill. The County's Planning Commission held a public
20 hearing on the 2009 FEIR and the Project on December 17, 2009, including additional conditions
21 of approval proposed to address the concerns expressed by Public Works and the RWQCB
22 subsequent to release of the 2009 FEIR. The Planning Commission voted 5-0 to continue its
23 consideration of the 2009 FEIR and the Project to February 4, 2010, subsequently noticed for
24 April 1, 2010, in order to further address the concerns of the RWQCB.

25 18. In March 2010, Barella submitted to the County a revised Water Management
26 Plan. Prior to the April 1, 2010 Planning Commission hearing, the County revised the EIR and
27 the proposed Mitigation Monitoring and Reporting Program in light of the revised Water
28 Management Plan, which additional submission and changes to the 2009 FEIR purported to
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1 address the concerns addressed by the RWQCB. PRMD staff determined that the revisions to the
2 2009 FEIR did not constitute significant new information and therefore recirculation of the 2009
3 FEIR was not required.

4 19. At the April 1, 2010 hearing, the Planning Commission voted 5-0 to recommend
5 that the Board of Supervisors certify the 2009 FEIR, adopt a Statement of Overriding
6 Considerations and approve Alternative 2 as the environmentally superior alternative.

7 20. Subsequent to the April 1, 2010 Planning Commission hearing, California tiger
8 salamander ("CTS") larvae were reported by Barella's biologist to have been found at the Project
9 Site. The County revised and recirculated the EIR's analysis regarding impacts to CTS, as well
10 as revising and recirculating portions of the EIR analyzing the Project's greenhouse gas emissions
11 related impacts. The revised portions of the EIR were released for public comment from June 15,
12 2010, through July 30, 2010. The Planning Commission held a notice public hearing on the
13 revised portions of the EIR on July 15, 2010.

14 21. A second proposed FEIR was released on September 1, 2010, and the Planning
15 Commission held a noticed public hearing on the revised FEIR on September 16, 2010. The
16 Planning Commission voted 5-0 to recommend that the Board of Supervisors certify the EIR,
17 adopt a Statement of Overriding Considerations and approve Alternative 2 as the environmentally
18 superior alternative.

19 22. The Board of Supervisors held a noticed public hearing on the EIR and the Project
20 on October 19, 2010, and voted 3-2 to certify the FEIR, adopt a Mitigation Monitoring and
21 Reporting Program and Statement of Overriding Considerations and findings in support of the
22 same, and approve Alternative 2 as the environmentally superior alternative, as revised by the
23 Board of Supervisors, by approving the Project.

24 23. Respondents filed a Notice of Determination with the County of Sonoma County
25 Clerk on December 14, 2010.

26 EXHAUSTION OF ADMINISTRATIVE REMEDIES

27 24. This action is brought consistent with the requirements of Public Resources Code
28 Section 21177 and Code of Civil Procedure Section 1094.5.
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1 describe the actual route of the Project's access across non-County roads; and (iii) the EIR fails to
2 adequately describe the recycling of asphalt, concrete and other materials component of the
3 Project.

4 b. The EIR fails to adequately describe the environmental setting in that,
5 among other deficiencies, Respondents failed to carry out even minimally adequate testing of the
6 Roblar Landfill, and Respondents used inappropriate meteorological data to characterize air
7 quality.

8 c. The EIR fails to evaluate the Project's significant impacts, including
9 cumulative impacts, on:

10 i. Ground and surface water quality, including with respect to the
11 failure to adequately analyze impacts related to mining, including blasting, adjacent to the Roblar
12 Landfill and the recycling of asphalt, concrete and other materials component of the Project;

13 ii. Transportation and traffic, including with respect to the failure to
14 adequately analyze impacts to pedestrians and bicyclists and cumulative impacts from reasonably
15 foreseeable projects using the same roads as the Project;

16 iii. Air Quality, including with respect to the failure to adequately
17 analyze impacts resulting from greenhouse gas emissions, criteria air pollutants including ozone,
18 particulate matter and the recycling of asphalt, concrete and other materials component of the
19 Project;

20 iv. Hazardous materials and health and safety risks, including with
21 respect to the use of dynamite for blasting and the recycling of asphalt, concrete and other
22 materials component of the Project;

23 v. Biological impacts, including with respect to impacts to CTS,
24 American badger and the California red-legged frog; and

25 vi. Land Use, including with respect to the impacts to land subject to
26 Open Space District agricultural preservation easements being used for Project access and
27 biological impacts species mitigation.

28 d. The EIR fails to describe and evaluate, and Respondents failed to impose,

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1 reasonable and feasible mitigation measures that could eliminate or substantially lessen
2 significant environmental impacts of the Project, including:

3 i. Requiring installation of noise mitigation upgrades prior to the
4 issuance of any construction, including grading, permits;

5 ii. Requiring an adequate alert, reporting or compliance mechanism in
6 the event that the Roblar Landfill is destabilized;

7 iii. Requiring the Real Parties in Interest to pay a contribution to the
8 County sufficient to mitigate impacts to the County's roads;

9 iv. Requiring approval of plans to mitigate impacts to surface and
10 groundwater quality and air quality prior to the issuance of construction, including grading,
11 permits;

12 v. Requiring adequate ongoing security for the Real Parties in
13 Interest's, and any successor in interest to the Real Parties in Interest's, performance of their
14 obligations to Respondents under the Mitigation Monitoring and Reporting Program, Use Permit
15 and Reclamation Plan; and

16 vi. Eliminating the reliance on subjective judgments of Real Parties in
17 Interest, or their employees, in implementing mitigation measures.

18 e. The EIR fails to respond adequately to comments on the Draft EIRs,
19 including comments regarding (i) the inadequacy of the Project description; (ii) the failure to
20 adequately characterize the environmental setting, (iii) inadequacy of the analysis of, and failure
21 to identify significant impacts to, air quality, noise, transportation and traffic, water quality,
22 hazardous materials and health and safety and land use; and (iv) feasible mitigation measures not
23 identified or adequately analyzed in the EIR.

24 i. Respondents failed to adopt legally adequate findings as required
25 by law in that, among other deficiencies, there is not substantial evidence in the record to support
26 that the Real Parties in Interest can and will implement the Mitigation Monitoring and Reporting
27 Program and the conditions of approval.

28 f. Respondents failed to adopt a legally adequate Statement of Overriding
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1 Considerations in that, among other deficiencies, the findings rely on an unsupported assertions
2 that (i) the Project will provide an affordable, local source of high-quality aggregate produced in
3 an environmentally sustainable manner, to be used in construction within the County; and (ii) the
4 Project's proximity to urban areas will indirectly reduce impacts to air quality, noise and roadway
5 wear.

6 30. Respondents therefore violated their duties to certify an EIR and adopt findings
7 conforming to the requirements of CEQA and Title 14, California Code of Regulations Section
8 15000 *et seq.* Accordingly, certification of the EIR and approval of the Project (as revised to
9 incorporate Alternative 2) must be set aside.

10 **SECOND CLAIM FOR RELIEF**
11 **(Injunctive Relief)**

12 31. Respondents and Real Parties in Interest are threatening to proceed with
13 construction and operation of the Project in the near future. Construction and operation of the
14 Project will irreparably harm the environment in the areas of air quality, water quality, noise,
15 transportation and traffic, hazardous materials and health and safety, and land use.

16 32. Respondents' and Real Parties' in Interest wrongful conduct, unless and until
17 enjoined and restrained by order of this Court, will cause great irreparable injury to the
18 environment as set forth above.

19 33. CARRQ has no adequate remedy at law for its harm and no amount of money can
20 compensate the public or CARRQ for the harm that will be visited upon the environment.

21 **PRAYER**

22 WHEREFORE, Petitioners pray for entry of judgment against Respondents and Real Parties in
23 Interest as follows:

24 1. For a peremptory writ of mandate directing:

25 a. Respondents to vacate and set aside their December 14, 2010 certification
26 of the EIR for the Project and adoption of a Mitigation Monitoring and Reporting Program and
27 Statement of Overriding Considerations;

28 b. Respondents to set aside their December 14, 2010 approval of the Zone
Change, the Use Permit and the Reclamation Plan for the Project; and

1 c. Respondents to prepare, circulate and consider a new and legally adequate
2 EIR and otherwise fully comply with CEQA in any subsequent actions taken to approve the
3 Project.

4 2. For an order staying the effect of Respondents' actions in certifying the EIR,
5 adopting a Mitigation Monitoring and Reporting Program and Statement of Overriding
6 Considerations and approving the Project.

7 3. For an order directing Respondents and Real Parties in Interest to suspend all
8 activity under the certification of the EIR, the adoption of the Mitigation Monitoring and
9 Reporting Program and Statement of Overriding Considerations and the approval of the Zone
10 Change, Use Permit and Reclamation Plan, until there has been a complete and proper
11 compliance with the provisions of CEQA.

12 4. For a preliminary and permanent injunction directing Respondents and Real
13 Parties in Interest to suspend and refrain from all activity related to or in connection with the
14 Project that could result in any change or alteration in the physical environment until Respondents
15 have taken necessary actions to comply completely and properly with CEQA in connection with
16 the Project.

17 5. For their costs of suit.

18 6. For an award of Petitioner's attorneys' fees.

19 7. For other legal or equitable relief that the Court considers just and proper.
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21 Dated: January 13, 2011

Respectfully submitted,

22 MORGAN, LEWIS & BOCKIUS LLP

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24 By 

25 Michael E. Molland
26 Attorneys for Petitioner
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VERIFICATION

I am an officer of Petitioner CAARQ, and am authorized to execute this verification on behalf of Petitioners. I have read the foregoing petition and complaint and am familiar with its contents. The facts recited in the petition and complaint are true of my personal knowledge, except as to those matters alleged 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 this 12th day of January in Petaluma, California.

By Susan Buxton
Susan Buxton

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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NOTICE OF COMMENCEMENT OF ACTION
Citizens Advocating for Tubular Rural Quality v. County of Sonoma