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11
12 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MONTEREY

14 PAJARO VALLEY FEDERATION OF)
15 TEACHERS;)
16 SAFE AG SAFE SCHOOLS;)
17 CENTER FOR FARMWORKER FAMILIES;)
18 MONTEREY BAY CENTRAL LABOR)
19 COUNCIL; and)
20 CALIFORNIANS FOR PESTICIDE REFORM,)

21 Petitioners and Plaintiffs,)

22 v.)

23 CALIFORNIA DEPARTMENT OF PESTICIDE)
24 REGULATION, a state agency;)
25 JULIE HENDERSON, in her official capacity as)
26 Director, Department of Pesticide Regulation;)
27 MONTEREY COUNTY DEPARTMENT OF)
28 AGRICULTURE, a local agency;)
JUAN HIDALGO, in his official capacity as)
Monterey County Agricultural Commissioner; and)
DOES 1 through 10,)

Respondents and Defendants.)

and)

BAY VIEW FARMS, LLC;)
JUAN CARLOS FERNANDEZ, doing business as)
C & J Farms;)
COASTAL VISTA FARMS, LLC;)
JAL BERRY FARMS, LLC;)
LA SELVA FARMS, LLC;)
ROYAL OAKS FARMS, LLC; and)
DOES 11 through 20,)

Real Parties in Interest.)

Case No.:

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

1 **INTRODUCTION**

2 1. Pajaro Valley Federation of Teachers, Safe Ag Safe Schools, Center for Farmworker
3 Families, Monterey Bay Central Labor Council, and Californians for Pesticide Reform (collectively,
4 Community Groups) petition for judicial review of six permits allowing the use of highly toxic,
5 restricted pesticides near three schools in the Pajaro Valley area of Monterey County. The Monterey
6 County Agricultural Commissioner (Commissioner) and the California Department of Pesticide
7 Regulation (DPR) (collectively, the Agencies) issued and affirmed the challenged permits in the
8 absence of proper environmental review under the California Environmental Quality Act (CEQA),
9 Pub. Resources Code, § 21000, *et seq.*, and interrelated provisions of the California Food and
10 Agricultural Code. The Commissioner’s failure to meaningfully evaluate the cumulative impact of
11 his permitting decisions on schoolchildren, teachers, farmworkers, and communities, and his
12 additional failure to undertake a meaningful analysis of alternatives, amount to a prejudicial abuse of
13 discretion and confirm the Commissioner’s illegal pattern and practice of violating CEQA. The
14 Commissioner further abused his discretion by unlawfully disclaiming his authority to stay permits
15 pending review.

16 2. Schoolchildren, teachers, farmworkers, and other community members in Monterey’s
17 Pajaro Valley have long suffered dangerous and disproportionate exposure to pesticides due to the
18 Commissioner’s many past, present, and foreseeable future pesticide permitting decisions. Without
19 meaningful and legally sufficient environmental review and mitigation, the Agencies have allowed
20 farms in Monterey County to apply nine million pounds of pesticides in a single year, including
21 close to three million pounds of the restricted fumigants chloropicrin and 1,3-dichloropropene (1,3-
22 D). Unsurprisingly, DPR’s pesticide monitoring stations consistently record unhealthy fumigant
23 levels in the air near Pajaro Valley schools. Exposure to chloropicrin and 1,3-D can cause serious
24 harm, including respiratory distress, cancer, fetal death, and developmental delays. Without
25 addressing the cumulative risk to human health and the availability of reasonable alternatives, the six
26 permits at issue here allow fumigations with chloropicrin and 1,3-D on many fields within one mile
27 of three Pajaro Valley schools with almost entirely Hispanic populations—Ohlone Elementary
28 School, Pajaro Valley Middle School, and Hall District Elementary School.

1 3. To remedy this environmental injustice, Community Groups ask the court to overturn
2 DPR’s March 6, 2024, decision affirming the Commissioner’s issuance of the six challenged
3 permits, declare unlawful the Agencies’ environmental review of restricted pesticides, and enjoin
4 further restricted pesticide permitting pending compliance with all applicable laws.

5 **JURISDICTION AND VENUE**

6 4. This Court has jurisdiction to review DPR’s March 6, 2024, decision affirming the
7 Commissioner’s issuance of six restricted material permits under section 1094.5 of the Code of Civil
8 Procedure; section 21080.5, subdivision (g) of the Public Resources Code; and/or section 14009,
9 subdivision (g) of the Food and Agricultural Code. The Court has jurisdiction to issue declaratory
10 relief under Code of Civil Procedure section 1060 and injunctive relief under Code of Civil
11 Procedure section 525, *et seq.*

12 5. Venue is proper in this Court under Code of Civil Procedure section 393, subdivision
13 (b), as Respondents are “public officers” and all or part of the causes of action arose in Monterey
14 County.

15 6. Pursuant to Public Resources Code section 21080.5, subdivision (g), Community
16 Groups filed this action within 30 days after DPR’s March 6, 2024, Notice of Final Decision.

17 7. Community Groups have provided the Agencies with written notice of their intention
18 to file this petition and complaint. (See Exhibit A hereto.) Community Groups have served the
19 Attorney General with a copy of this petition and complaint, together with a notice of its filing. (See
20 Exhibit B hereto.)

21 8. Community Groups are filing concurrently with this petition and complaint a notice of
22 their election to prepare the record of administrative proceedings relating to the agency actions at
23 issue.

24 9. Community Groups participated in the administrative processes surrounding their
25 request for review of the six restricted material permits at issue. Community Groups are “interested
26 persons” and “directly affected persons” entitled to seek administrative and judicial review of the
27 permits discussed herein. Community Groups exhausted all their administrative remedies prior to
28 filing this action.

1 13. Petitioner Center for Farmworker Families (CFF) is a 501(c)(3) non-profit
2 organization based in Monterey County’s Pajaro Valley, whose mission is to promote awareness
3 about the difficult life circumstances of farmworker families while proactively inspiring
4 improvement in binational family life both in the United States and in Mexico. CFF partners with the
5 Campaign for Organic and Regenerative Agriculture, a grassroots effort involving concerned
6 residents from the Pajaro Valley and the Monterey Bay region seeking to achieve an
7 environmentally and socially just agricultural system, including by educating the public about the
8 use and real impacts of toxic pesticides on our community, farmworkers, and environment, and
9 exploring ways to phase out pesticides and to convert more Pajaro Valley farmland to organic and
10 regenerative farming. Members and supporters of CFF reside and work near the ranches subject to
11 the permits at issue and are therefore directly affected. Members and supporters of CFF also work at
12 and send their children to schools in Monterey’s Pajaro Valley, including Ohlone Elementary
13 School, Pajaro Middle School, Hall District Elementary School, and co-located Head Start programs.

14 14. Petitioner Monterey Bay Central Labor Council (MBCLC) serves as a coalition of the
15 Labor Community in Monterey and Santa Cruz Counties. Over 80 unions are affiliated with the
16 MBCLC, representing more than 37,000 union members and their families. MBCLC is dedicated to
17 representing the interests of working people and mobilizes its members and community partners to
18 advocate for social and economic justice. MBCLC works to restrict the use of 1,3-D, chloropicrin,
19 and other pesticides linked to childhood cancers; stop pesticide secrecy and immediately post
20 advanced notification of pesticide applications online to enable community members to take safety
21 precautions to avoid harmful pesticide drift; enact larger buffer zones between pesticide applications
22 and residences, schools, hospitals, and other sensitive sites; and overhaul our pesticide and
23 agricultural regulatory systems to put public health first. Members and supporters of MBCLC reside
24 and work near the ranches subject to the permits at issue and are therefore directly affected.
25 Members and supporters of MBCLC also work at and send their children to schools in the Pajaro
26 Valley, including Ohlone Elementary School, Pajaro Middle School, Hall District Elementary
27 School, and co-located Head Start programs.

1 15. Petitioner Californians for Pesticide Reform (CPR) is a statewide coalition of 218
2 public interest groups dedicated to protecting public health and the environment from the dangers of
3 pesticide use. Through its Steering Committee, CPR engages in community organizing, litigation,
4 community-based bio-monitoring and air monitoring, legislation, and media and policy work to
5 achieve coalition goals. Members and supporters of CPR reside and work near the ranches subject to
6 the permits at issue and are therefore directly affected. Members and supporters of CPR also work at
7 and send their children to schools in the Pajaro Valley, including Ohlone Elementary School, Pajaro
8 Middle School, Hall District Elementary School, and co-located Head Start programs.

9 16. Community Groups bring this action on their own behalf and on behalf of their
10 members, employees, and supporters who are residents and taxpayers of the state of California, and
11 who are directly and adversely affected by the actions of Respondents as described herein. As a
12 result of Respondents' failures to comply with their legal obligations, Community Groups, their
13 members, and the public at large have suffered injury and will continue to be injured by
14 Respondents' unlawful actions, unless and until this Court provides the relief requested. Community
15 Groups' interests in the Pajaro Valley, in general, and the three schools identified above, in
16 particular, reflect their direct connection to the geographic vicinity of the permitted ranches, along
17 with their direct connection to known area that will be adversely impacted by the use of the
18 permitted pesticides. Respondents' pattern and practice of issuing restricted material permits in the
19 absence of appropriate environmental review causes permanent or long-lasting impacts to
20 Community Groups' and their members' health, as well as their financial, environmental,
21 recreational, and agricultural interests.

22 17. By this action, Community Groups seek to protect the above-described interests of
23 their members, employees, and supporters and the general public and to enforce a public duty owed
24 to them by Respondents. Community Groups and their staff and members have a right to, and a
25 beneficial interest in, Respondents' performance of their duties under CEQA and the Food and
26 Agricultural Code. These interests have been threatened by Respondents' actions with respect to the
27 issuance of restricted material permits without proper environmental review, and unless the relief
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1 requested in this case is granted, will continue to be adversely affected and irreparably injured by
2 Respondents' failure to comply with the law.

3 18. Respondent and defendant DEPARTMENT OF PESTICIDE REGULATION (DPR)
4 is a department within the California Environmental Protection Agency. DPR is charged with
5 enforcing state and federal laws regulating pesticide use in California. DPR is responsible for
6 overseeing the use of restricted pesticides in California and ensuring the protection of human health
7 and the environment against the impacts of such pesticides. DPR's responsibilities include providing
8 oversight over the Commissioner.

9 19. Respondent and defendant JULIE HENDERSON is the Director of Pesticide
10 Regulation at DPR and is being sued in her official capacity. Henderson was the Director during all
11 of the events discussed in this complaint. All of the references in this complaint to actions taken by
12 DPR encompass actions under Henderson's supervision, authority, and control.

13 20. Respondent and defendant MONTEREY COUNTY DEPARTMENT OF
14 AGRICULTURE is the primary local enforcement agency for the State's agricultural laws and
15 regulations concerning restricted materials. The Monterey County Agricultural Commissioner is in
16 charge of the Monterey County Department of Agriculture and operates a restricted material
17 permitting program under DPR's oversight and guidance. All of the references in this complaint to
18 actions taken by the Commissioner amount to actions taken by the Monterey County Department of
19 Agriculture.

20 21. Respondent and defendant JUAN HIDALGO is the Monterey County Agricultural
21 Commissioner and is being sued in his official capacity. All of the references in this complaint to
22 actions taken by the Commissioner, encompass actions under the supervision, authority, and control
23 of Hidalgo or his predecessor in interest.

24 22. The true names and capacities of respondent and defendant DOES 1 through 10 are
25 not presently known to Community Groups. Community Groups may amend this petition and
26 complaint to add the true names and capacities of respondent and defendant Does at such time as
27 they are discovered.

1 23. Real party in interest BAY VIEW FARMS, LLC is a for-profit limited liability
2 company whose principal place of business is in Salinas, California. Bay View Farms is the holder
3 of restricted material permit number 27-23-2700046, which the Commissioner issued and
4 supplemented on August 10, 2023. Bay View Farms operates Hilltop Ranch, located within one mile
5 of Ohlone Elementary School in the Pajaro Valley area of Monterey County. The restricted material
6 permit for Bay View Farms authorized the use of 1,3-D and chloropicrin at Hilltop Ranch.

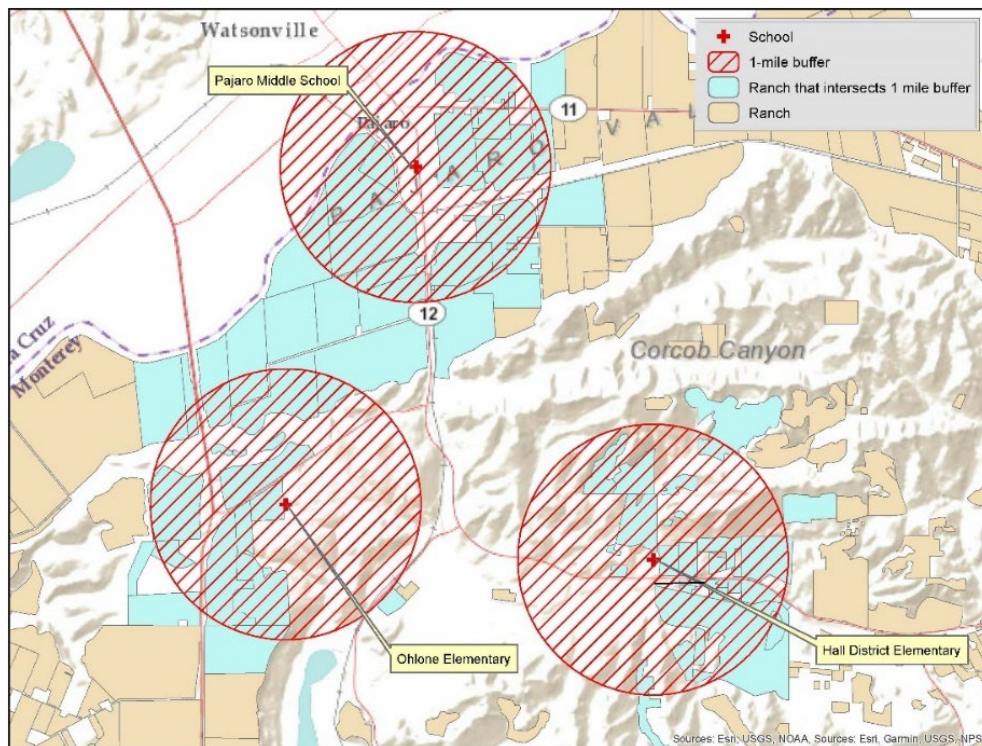
7 24. Upon information and belief, real party in interest JUAN CARLOS FERNANDEZ,
8 doing business as C & J Farms, is an individual residing in Monterey County and doing business
9 under a fictitious name as a sole proprietorship, with a principal place of business in Watsonville,
10 California. Fernandez, doing business as C & J Farms, is the holder of restricted material permit
11 number 27-23-2700005, which the Commissioner issued and supplemented on August 9, 2023.
12 Fernandez, doing business as C & J Farms, operates Pini Road Ranch, located within one mile of
13 Hall District Elementary School in the Pajaro Valley area of Monterey County. The restricted
14 material permit for C & J Farms authorized the use of 1,3-D and chloropicrin at Pini Road Ranch.

15 25. Real party in interest COASTAL VISTA FARMS, LLC is a for-profit limited liability
16 company whose principal place of business is in Castroville, California. Coastal Vista Farms is the
17 holder of restricted material permit number 27-23-2701314, which the Commissioner issued on
18 July 20, 2023. Coastal Visa Farms operates the Skillicorn Ranch located within one mile of Ohlone
19 Elementary School, in the Pajaro Valley area of Monterey County. The restricted material permit for
20 Coastal Vista Farms, as supplemented on August 25, 2023, authorized the use of 1,3-D and
21 chloropicrin at Skillicorn Ranch.

22 26. Real party in interest JAL BERRY FARMS, LLC is a for-profit limited liability
23 company whose principal place of business is in Aromas, California. Jal Berry Farms is the holder of
24 restricted material permit number 27-23-2700253, which the Commissioner issued and
25 supplemented on August 3, 2024. Jal Berry Farms operates the Porter Ranch, located within one
26 mile of Pajaro Middle School in the Pajaro Valley area of Monterey County. The restricted material
27 permit for Jal Berry Farms authorized the use of 1,3-D and chloropicrin at Porter Ranch.

1 the highest percentage of schools and students in the top quartile for use of highly toxic pesticides
2 that are known carcinogens, reproductive and developmental toxicants, and cholinesterase inhibitors.
3 Compared to other counties, Monterey had the largest proportion of students attending schools
4 within ¼ mile of the highest pesticide use.

5 32. Within Monterey County, cumulative exposure to pesticides falls disproportionately
6 on students of color. In general, Latino schoolchildren are 3.2 times more likely than white students
7 to attend schools with the highest use of the most hazardous pesticides. This disparity is particularly
8 evident in the northernmost portion of the County known as the Pajaro Valley, especially with regard
9 to fumigant use. The Pajaro Valley includes several predominantly farmworker communities and
10 three schools located within a few miles of each other, with Head Start daycare and/or preschool
11 facilities co-located onsite—Ohlone Elementary School (located at 21 Bay Farms Road, Royal
12 Oaks); Pajaro Middle School (located at 250 Salinas Road, Pajaro); and Hall District Elementary
13 School (located at 300 Sill Road, Watsonville), as depicted in Figure 1 below. Figure 1:



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26 33. Measured by total pounds applied annually, the top two pesticides used near
27 Monterey County schools are 1,3-D and chloropicrin. These fumigants are highly volatile liquids
28 that, when applied to the soil, quickly form a gas that kills most life, including fungi, bacteria,

1 insects, weeds, and nematodes. Because they are so volatile, fumigants are prone to move from the
2 soil to the air, and can drift offsite to fields, homes, schools, and communities. Studies confirm
3 significant adverse impacts from 1,3-D and chloropicrin within, and beyond, one mile from
4 fumigated fields, and these fumigants have common modes of action and similar exposure pathways.
5 The most recent pesticide use reporting shows that Monterey County applied over two million
6 pounds of chloropicrin and over 700,000 pounds of 1,3-D in 2021.

7 34. Data compiled by the National Center for Education Statistics for the 2020-2021
8 school year reflects that Ohlone Elementary School is 98.6% Hispanic, Hall District Elementary
9 School is 98.1% Hispanic, and Pajaro Middle School is 98.7% Hispanic. The Agencies have
10 repeatedly permitted fumigations at numerous ranches within one mile of the three Pajaro Valley
11 schools.

12 35. The Agencies' collective failure to protect children in Monterey County's Pajaro
13 Valley from exposure to toxic fumigants has been ongoing for over two decades. A 1999 complaint
14 under Title VI of the Civil Rights Act of 1964 identified racial discrimination by DPR in Monterey
15 County in connection with allowing disproportionate use of the fumigant methyl bromide to be
16 applied within 1.5 miles of six schools—including Pajaro Middle and Ohlone Elementary—without
17 addressing the cumulative impact of such exposure. The U.S. Environmental Protection Agency
18 (EPA) issued preliminary findings in 2011, upholding the complaint.

19 36. EPA and DPR reached a settlement that required the installation of an air monitoring
20 station at Ohlone Elementary School, among other things. This monitoring station has documented
21 significant quantities of numerous pesticides in the air ever since it became operational in 2012,
22 including 1,3-D and chloropicrin.

23 37. Based on a lifetime cancer risk, DPR's sister agency, the California Office of
24 Environmental Health Hazard Assessment (OEHHA), has established a daily exposure limit for
25 1,3-D that is equivalent to an annual average air concentration of 0.04 parts per billion (ppb).

26 38. Recorded levels of 1,3-D at Ohlone Elementary have exceeded OEHHA's current
27 "safe harbor" level of 0.04 ppb for almost every year that the monitoring station has been
28

1 operational. The lifetime cancer risk at Ohlone Elementary continues to be more than twice
2 OEHHA’s threshold when averaged over the eleven years of available monitoring data (2012-2022).

3 **II. Exposure to Restricted Pesticides, Including the Toxic Fumigants 1,3-D and**
4 **Chloropicrin, Is Having a Significant and Disproportionate Adverse Impact on Pajaro**
5 **Valley Children.**

6 39. Exposure to restricted pesticides is having a significant adverse impact on children,
7 farmworkers, teachers, and communities in Monterey’s Pajaro Valley. Exposure to even small
8 amounts of 1,3-D and chloropicrin causes many acute (*i.e.*, immediate) adverse health effects,
9 including dizziness, vomiting, difficulty breathing, and death. Chronic effects from exposure to 1,3-
10 D and chloropicrin are no less severe, and they include cancer. According to the California
11 Environmental Protection Agency (CalEPA), “[n]umerous authoritative bodies have determined that
12 1,3-D causes cancer in a variety of tissues and species.” Similarly, a panel of experts assembled by
13 DPR concluded that “chloropicrin is a compound that is genotoxic and the evidence of
14 carcinogenicity suggests the compound is a potent carcinogen.” DPR has designated both 1,3-D and
15 chloropicrin as restricted materials due to their extreme toxicity. (Cal. Code Regs., tit. 3, § 6400,
16 subd. (e).) DPR has also identified 1,3-D and chloropicrin as “toxic air contaminants,” meaning that
17 they “may cause or contribute to an increase in mortality or an increase in serious illness.” (Food &
18 Agr. Code, § 14201, subd. (b); Cal. Code Regs., tit. 3, § 6860.)

19 40. Scientific evidence links prenatal pesticide exposure to an elevated risk of fetal death
20 due to congenital anomalies. For parents whose children survive, studies show an increased risk of
21 neuropsychological and motor development disorders, asthma-like respiratory symptoms, lower
22 intelligence quotient, lower cognitive functioning, childhood central nervous system tumors, and
23 leukemia as a result of proximity to pesticides in pregnancy and early childhood. Additionally,
24 chronic pesticide exposure fundamentally alters several vital biological mechanisms in the human
25 body implicated in cancer, nervous disorders, and cardiovascular diseases (DNA methylation,
26 metabolic pathways, mitochondrial energy metabolism, and neurotransmitter precursors).

27 41. A 2016 study by experts at the University of California Los Angeles confirmed that
28 “research shows that cumulative exposures can have larger than anticipated impacts on public
health.” The study detailed “how interactive effects could occur between the pesticides and increase

1 the risk of cancer or other human health harms resulting in greater than additive risk associated with
2 exposure to multiple pesticides.” The study also demonstrated that, when chloropicrin and 1,3-D
3 “are applied together or in close geographic or temporal proximity, the active ingredients may react
4 with each other and form products that have more toxic health effects.”

5 42. When fumigants volatilize into the air, they can travel substantial distances, well in
6 excess of 1 mile from application sites. For example, DPR recorded concentrations of 1,3-D at 20
7 ppb (compared to the OEHHA safe harbor level of 0.04 ppb) 7.5 miles away from where it had been
8 applied on January 12, 2020.

9 43. Air movement, particularly from temperature inversions (when lighter, warm air rises
10 into the atmosphere and heavier, cool air settles close to the ground) can lead to damaging, long-
11 distance pesticide drift. Temperature inversions can occur during low wind conditions and can lead
12 to more extensive drift compared to pesticide applications during high wind conditions.

13 44. Ohlone Elementary School, Pajaro Middle School, and Hall District Elementary
14 School are sensitive sites located in the vicinity of at least one ranch permitted for fumigant use in
15 each of the six challenged restricted material permits, as supplemented. These schools could be
16 adversely impacted by the use of the permitted restricted materials, along with the students and
17 teachers who attend these schools and the farmworkers and other community members in the
18 surrounding vicinity.

19 45. Numerous other sensitive areas that could be adversely impacted by the use of
20 pesticides are located within one mile of sites where the Agencies have allowed and continue to
21 allow fumigations. Upon information and belief, such sites include parks, playgrounds, dwellings,
22 labor camps, hospitals, recreational areas, livestock enclosures, crops, lakes, waterways, and/or
23 habitats of rare, endangered or threatened species.

24 **LEGAL BACKGROUND**

25 46. County agricultural commissioners operate a restricted material permitting program
26 under DPR’s oversight. The Agencies’ duty is to “protect the environment from environmentally
27 harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides.”
28 (Food & Agr. Code, § 11501, subd. (b).)

1 47. As part of that duty, DPR is responsible for registering pesticides for use in the State.
2 (Food & Agr. Code, § 12811.) DPR must also designate certain pesticides as “restricted materials”
3 based on their particularly “injurious” nature, such as extraordinary “[d]anger of impairment of
4 public health” or “[h]azards to applicators and farmworkers,” compared to other pesticides. (*Id.*,
5 §§ 14004.5, subds. (a)-(b), 14005.) During the registration process, DPR evaluates pesticides
6 individually and does not evaluate cumulative impacts, including the interactive effects of multiple
7 pesticides. “Registration of a restricted material is not in itself a right to use the pesticide, but rather
8 a [DPR] determination that under appropriate local conditions the commissioner can grant a use
9 permit for the material.” (*Vasquez v. Dept. of Pesticide Reg.* (2021) 68 Cal.App.5th 672, 678
10 [quoting Cal. Code Regs., tit. 3, § 6442, subd. (a)].)

11 48. Commissioners determine whether to issue permits allowing the use of restricted
12 materials in their jurisdictions. Restricted material permits are annual in nature. (Food & Agr. Code,
13 § 14007, subd. (b).) Permits in Monterey County run from February 1 through January 31 each year.
14 With limited exceptions, “no person shall use or possess any pesticide designated as a restricted
15 material for any agricultural use except under a written permit of the [county agricultural]
16 commissioner.” (*Id.*, § 14006.5; see also Cal. Code Regs., tit. 3, § 6412, subd. (a).)

17 49. The commissioners’ permitting of restricted pesticides operates as a “certified
18 regulatory program” under CEQA. (Cal. Code Regs., tit. 14, § 15251, subd. (i)(4).) CEQA is a
19 comprehensive statute designed to provide for long-term protection of the environment. (Pub.
20 Resources Code, §§ 21000-21177.) While status as a certified regulatory program excuses
21 commissioners from preparing an environmental impact report—which CEQA would otherwise
22 require—they nevertheless must conduct their own environmental review. (*Pesticide Action Network*
23 *N. Am. v. Dept. of Pesticide Reg.* (2017) 16 Cal.App.5th 224, 239, 242 (hereafter *PANNA*); Pub.
24 Resources Code, § 21080.5.) Commissioners must comply with CEQA’s “broad policy goals and
25 substantive standards” prior to approving restricted material permits. (*PANNA*, 16 Cal.App.5th at p.
26 242.)

27 50. Agency decisionmakers in certified regulatory programs must evaluate potentially
28 significant adverse effects that an activity may have on the environment, including effects that are

1 cumulatively considerable. (*Laupheimer v. State of California*, 200 Cal.App.3d 440, 460–463
2 (1988).) Cumulative impacts are “an integral part” of the impacts analysis under CEQA, including
3 for certified programs. (*PANNA, supra*, 16 Cal.App.5th at p. 248.) “[S]ignificant cumulative
4 impacts must be considered in the course of *any* environmental inquiry subject to CEQA’s broad
5 policy goals, whether or not also subject to CEQA’s EIR requirements.” (*Id.* at p. 249 [quoting
6 *Laupheimer, supra*, 200 Cal.App.3d at pp. 462–463].) Such consideration must include ““at least a
7 preliminary search for potential cumulative environmental effects, and if any such effect [is]
8 perceived, at least a preliminary assessment of its significance.” (*Ibid.*) “A cumulative impact
9 analysis which understates information concerning the severity and significance of cumulative
10 impacts . . . skews the decisionmaker’s perspective concerning the environmental consequences of
11 the project, the necessity for mitigation measures, and the appropriateness of project approval.”
12 (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431.)

13 51. DPR’s *Pesticide Use Enforcement Program Standards Compendium* instructs the
14 Commissioner to presume “a likelihood, or at least the potential, of substantial adverse
15 environmental impacts” where sensitive sites are located near restricted material application sites.

16 52. Agencies may not approve or adopt activities “as proposed if there are feasible
17 alternatives or feasible mitigation measures available that would substantially lessen” the activity’s
18 potentially significant effects. (Pub. Resources Code, § 21080.5, subd. (d)(2)(A).) Decisionmakers in
19 certified regulatory programs, have ““the burden of affirmatively demonstrating”” their consideration
20 of alternatives—including a “no project” alternative—regardless of whether mitigation measures
21 could reduce the permits’ environmental impacts to less than significant. (*PANNA*, 16 Cal.App.5th at
22 p. 245–246 [quoting *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134].)

23 53. The Food and Agricultural Code codifies CEQA’s mandate when it comes to
24 enforcement of the state’s pesticide laws and regulations, specifying “the protection of the public
25 health, safety, and welfare” as a primary purpose of the program and requiring liberal construction of
26 the Code’s provisions to accomplish that purpose. (Food & Agr. Code, § 3.)

27 54. The restricted material permitting process in the Food and Agricultural Code
28 implements CEQA by ensuring county agricultural commissioners and DPR evaluate the effects an

1 application might have on people and the environment before the pesticide is used. It is the
2 commissioners' responsibility to "consider local conditions," including "[u]se in vicinity of
3 schools," and evaluate whether such conditions warrant issuance of a permit or mandate the permit's
4 denial. (Food & Agr. Code, § 14006.5.) Commissioners may not issue a permit to use a restricted
5 material "for which there is a reasonable, effective, and practicable alternate material or procedure
6 that is demonstrably less destructive to the environment." (*Id.*, §§ 14006.5, 12825.)

7 55. In an appeal of a commissioner's permitting decision to DPR, DPR must evaluate
8 (a) the consistency of the proposed permit use in light of applicable pesticide label restrictions and
9 regulations; (b) the commissioner's consideration of the factors in section 14006.5 of the Food and
10 Agricultural Code; and (c) whether the commissioner abused his discretion in issuing the permit.
11 (Food & Agr. Code, § 14009, subd. (d).)

12 56. Judicial review of administrative decisions requires sufficient underlying analysis for
13 the courts to "fulfill their proper role[] in the CEQA process," (*Laurel Heights Improvement Assn. v.*
14 *Regents of U. of California* (1988) 47 Cal.3d 376, 404.) Blanket conclusions and unsupported
15 assertions cannot qualify as substantial evidence of agency decision-making. (*City of Livermore v.*
16 *Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 542, *as modified on denial of reh'g*
17 (Aug. 21, 1986).) Instead, "the orderly functioning of the process of [judicial] review requires that
18 the grounds upon which the administrative agency acted be clearly disclosed and adequately
19 sustained.' [Citation.]" (*Topanga Assn. for a Scenic Community. v. County of Los Angeles* (1974) 11
20 Cal.3d 506, 516.) Action agencies "must set forth findings to bridge the analytic gap between the
21 raw evidence and ultimate decision or order." (*Id.* at p. 515.) It is the courts' job to trace "the
22 analytic route the administrative agency traveled from evidence to action." (*Ibid.*)

23 ADMINISTRATIVE BACKGROUND

24 57. The Commissioner has issued numerous permits to apply restricted pesticides,
25 including 1,3-D and chloropicrin, within one mile of schools in the Pajaro Valley.

26 58. On October 12, 2022, Community Groups requested that the Commissioner review
27 his decision to issue 13 permits for the 2022 permit cycle that authorized the use of restricted
28 materials, including 1,3-D and chloropicrin, within one mile of the Pajaro Valley schools. Among

1 other things, Community Groups advised the Commissioner that he issued the 2022 permits without
2 meaningful environmental review of cumulative impacts—including impacts from similar permits
3 issued for the 2021 permit cycle—and feasible alternatives.

4 59. Community Groups sought a stay of the 2022 permits pending the Commissioner’s
5 decision. The Commissioner advised Community Groups on December 8, 2022, that he lacked
6 authority to grant a stay.

7 60. The Commissioner denied Community Group’s request for review of the 2022
8 permits on March 9, 2023. The Commissioner did not address the merits, but rather asserted
9 Community Group’s request for review was untimely and moot.

10 61. Community Groups appealed the Commissioner’s March 2023 decision to DPR in
11 April 2023. DPR issued a decision in response to Community Group’s appeal in October 2023. DPR
12 reversed the Commissioner, finding that the Commissioner should have considered Community
13 Groups’ claims on the merits as to several of the 2022 permits. The Commissioner has not taken
14 further action with respect to Community Groups’ 2022 request for review.

15 62. Community Groups requested that the Commissioner review his decision to issue the
16 six 2023 permits at issue in this case on August 11, 2023. Community Groups’ request for review, as
17 amended on August 14, 2023, demonstrated that, like the 2022 permits, none of the 2023 permits
18 reference, analyze, or otherwise address the cumulative impact of past, present, and reasonably
19 foreseeable future pesticide applications on children, teachers, farmworkers, and communities,
20 especially when viewed in light of local conditions of disproportionate pesticide exposure. The 2023
21 permits are also devoid of any indication that the Commissioner meaningfully evaluated feasible or
22 practicable alternatives, including the “no project” alternative of declining to issue the permits. The
23 permit applications included incomplete “alternatives and mitigation measures considered form[s]”
24 submitted by growers that recognized the existence of alternatives to 1,3-D and chloropicrin and
25 contained no analysis as to the growers’ basis for rejecting those alternatives and no explanation as
26 to infeasibility or impracticability in light of the individualized, local circumstances of each crop and
27 ranch involved. As part of their request for review, Community Groups requested that the
28 Commissioner stay the challenged permits while their request remained pending.

1 63. The Commissioner denied Community Groups’ request for a stay of the 2023 permits
2 on August 30, 2023, claiming again that he lacked authority to grant a stay.

3 64. The Commissioner issued separate, but substantively similar, written decisions
4 affirming each of the challenged permits on August 30, 2023. Community Groups submitted a
5 timely, consolidated notice of appeal to DPR in September 2023.

6 65. DPR issued a decision on March 6, 2024, affirming the issuance of all six permits.

7 66. DPR’s appeal decision confirms that certified regulatory programs, like the restricted
8 material permitting program, “must still comply with CEQA’s policies and standards,” including that
9 restricted material permits “remain[] subject to the basic duty that an activity is not to be approved or
10 adopted as proposed if the permit will have a significant adverse environmental impact and there are
11 feasible alternatives or mitigation measures that would substantially lessen the impact.” DPR’s
12 appeal decision also confirms that CEQA requires consideration of “potential environmental
13 impacts,” including the assessment of cumulative impacts “that result from the incremental impacts”
14 of each proposed permit based on relevant local conditions, including “proximity of a school.”

15 67. In rejecting Community Groups’ appeal, DPR made no findings and conducted no
16 individualized, permit-by-permit and/or ranch-by-ranch analysis as to whether use of 1,3-D and/or
17 chloropicrin in each of the six challenged restricted material permits “may” have potentially
18 significant effects on the environment. DPR focused instead on program-level mitigation built into
19 the pesticide registration process, such as the “initial registration for statewide use” for 1,3-D and
20 chloropicrin; the product labels and safety data sheets for these restricted materials; an alleged
21 “program of continuous evaluation by DPR”; and DPR’s standard Recommended Permit Conditions.
22 DPR also considered “typical[]” and “general” fumigation practices, and relied on the
23 Commissioner’s assertion in his underlying decisions that he reviewed the six restricted material
24 permit applications for cumulative impacts.

25 68. DPR’s decision does not address the Ohlone Elementary air quality monitoring data
26 provided by Community Groups and does not dispute Community Groups’ claims that the
27

1 monitoring results have consistently exceeded the health safety levels of DPR’s sister agency,
2 OEHHA, for 20 years.

3 69. As to alternatives, DPR found that “consideration of alternatives was not required,
4 due to the fact that there were no substantial adverse environmental impacts found to result from
5 approval of the six permits at issue.” DPR concluded that the Commissioner adequately considered
6 alternatives in light of the forms submitted by the applicants and the Commissioner’s blanket
7 conclusion that chloropicrin and 1,3-D are “the only feasible and viable methods of pre-plant
8 strawberry pest control on the Central Coast of California” in most cases. DPR determined that
9 consideration of the “no action” alternative was inherent in the Commissioner’s decisions, “built into
10 the evaluation of every permit application since the CAC necessarily has to consider whether to
11 grant or deny the permit during evaluation of the permit application.”

12 70. DPR’s decision does not identify any of the grower-provided alternatives to fumigant
13 use and contains no individualized, permit-by-permit and/or ranch-by-ranch analysis regarding the
14 feasibility or practicability of known alternatives to restricted materials in light of site-specific
15 conditions, or the feasibility or practicability of a “no project” alternative in light of site-specific
16 conditions.

17 71. Community Groups timely filed the instant petition and complaint, less than 30 days
18 after DPR’s decision on their Current Request.

19 **FIRST CAUSE OF ACTION**
20 **(Abuse of Discretion: Agencies’ Failure to Properly Analyze Cumulative Impacts**
21 **under CEQA and the Food & Agricultural Code)**

22 72. Community Groups re-allege, as if fully set forth herein, each and every allegation
23 contained in the preceding paragraphs.

24 73. CEQA and implementing portions of the Food and Agricultural Code require the
25 Agencies to conduct a “substantively meaningful” analysis of cumulative impacts associated with
26 the permits’ proposed uses of 1,3-D and chloropicrin in light of local conditions, before considering
27 mitigation. (*PANNA, supra*, 16 Cal.App.5th at p. 250, quotation omitted; Food & Agr. Code,
28 § 14006.5.) “[C]ompressing the analysis of impacts and mitigation measures into a single issue”
violates CEQA. (*Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 656.) Cumulative

1 impacts include “the incremental effect” of an action such as issuance of a permit, “when viewed in
2 connection with past, current or [probable] future approved projects.” (*PANNA, supra*, 16
3 Cal.App.5th at p. 248; Pub. Resources Code, § 21083, subd. (b)(2).) For example, DPR’s *Guide to*
4 *Pesticide Regulation in California* recognizes that cumulative impacts include “exposure to multiple
5 pesticides with common modes of action.”

6 74. The Agencies issued and affirmed the permits involved in the absence of a
7 substantively meaningful analysis of cumulative impacts.

8 75. First, the Agencies jumped straight into an explanation of mitigation measures
9 without meaningfully and sufficiently addressing the cumulative impact of past, present, and
10 foreseeable future permits to apply restricted pesticides, including 1,3-D and chloropicrin, within
11 one mile of Pajaro Valley schools. There is no evidence that the Commissioner analyzed the
12 cumulative impact of his many permitting decisions, and DPR’s cumulative impact determination is
13 conclusory and unsupported. The Agencies failed to make any findings as to *whether* cumulative
14 impacts exist, *what* those impacts are, and *why* those impacts would or would not be significant in
15 the absence of mitigation. The Agencies’ failure to provide this necessary context prevents the court
16 from fulfilling its proper role in the CEQA process. (*Laurel Heights Improvement Assn., supra*, 47
17 Cal.3d at pp. 404–405; *Topanga Assn. for a Scenic Community, supra*, 11 Cal.3d at p. 516.)

18 76. Second, the Agencies ignored substantial evidence that the permits at issue may have
19 cumulatively considerable, significant adverse environmental impacts, when viewed in connection
20 with past, present, and reasonably foreseeable future permits. For example, 1,3-D and chloropicrin
21 are highly toxic fumigants at both acute and chronic exposure levels, with common modes of action
22 and interactive effects that may increase their toxicity when used together. DPR improperly
23 disclaimed the association between 1,3-D or chloropicrin use and human health risk and the
24 evidence of significant impacts at distances of one mile and beyond, while the Commissioner
25 ignored such evidence entirely. Both Agencies improperly discounted Ohlone Elementary air quality
26 monitoring data and historical Pajaro Valley permitting data without addressing concerns regarding
27 chronic exposure to fumigants within one mile of the three schools.

1 DPR's decision finding that the Commissioner's consideration of a "no project" alternative was
2 inherent in his act of reviewing the permits at issue is unsupported by law or fact.

3 84. The Agencies' failure to undertake an adequate assessment of alternatives constitutes
4 a prejudicial abuse of discretion and violates CEQA and implementing provisions in the Food and
5 Agricultural Code.

6 **THIRD CAUSE OF ACTION**
7 **(Declaratory Judgment: Commissioner's and DPR's Illegal Pattern and Practice of**
8 **Failing to Comply with CEQA and the Food & Agricultural Code)**

9 85. Community Groups re-allege, as if fully set forth herein, each and every allegation
10 contained in the preceding paragraphs.

11 86. Community Groups desire a judicial determination of the rights and obligations of the
12 respective parties concerning the allegations in this Petition and Complaint. There is an actual and
13 present controversy over the overarching policies and practices of the Agencies concerning their
14 obligation to conduct environmental review of restricted material permits, making an action for
15 declaratory relief under Code of Civil Procedure section 1060 an appropriate means for a challenge.
16 (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.)

17 87. The Agencies have misinterpreted, and are continuing to misinterpret, CEQA and the
18 Food and Agricultural Code to exempt them from performing or complying with some or all of their
19 legal duties, and to allow them to fulfill their duties in ways prohibited by law. As a result of their
20 misinterpretation of law, the Agencies have repeatedly ignored or violated the applicable statutes and
21 implementing regulations under CEQA and the Food and Agricultural Code. Among other things,
22 the Agencies have demonstrated an illegal pattern and practice of failing to properly identify and
23 evaluate (a) the cumulative impacts of restricted material permits in light of local conditions in the
24 vicinity of the ranches where the growers seek to use restricted materials; and (b) a range of feasible
25 or practicable alternatives, including the "no project" alternative, as required by law. Such pattern
26 and practice is ongoing and will likely continue for the foreseeable future. A judicial declaration is
27 necessary and appropriate to resolve this actual and present controversy.
28

1 **FOURTH CAUSE OF ACTION**
2 **(Declaratory Judgment: Commissioner’s Authority to Stay Permits**
3 **under the Food and Agricultural Code)**

4 88. Community Groups re-allege, as if fully set forth herein, each and every allegation
5 contained in the preceding paragraphs.

6 89. Community Groups desire a judicial determination of the rights and obligations of the
7 respective parties concerning the allegations in this Petition and Complaint—specifically, that the
8 Commissioner has authority to stay restricted material permits pending the resolution of requests for
9 review under section 14009 of the Food and Agricultural Code and must consider such stay requests
10 on their merits.

11 90. The Commissioner maintains a policy of automatically denying all stay requests
12 without reviewing their merits based on the mistaken belief that he lacks stay authority.

13 91. The Commissioner’s stay authority is inherent in the public protection mandates of
14 the Food and Agricultural Code and the Commissioner’s discretionary authority to modify, cancel,
15 revoke, refuse, and suspend restricted material permits. (Food & Agr. Code, §§ 3, 14004, 14006,
16 14006.5, 14008-09.)

17 92. There is an actual and present controversy over the Commissioner’s overarching
18 policies and practices concerning his authority to stay permits, making an action for declaratory
19 relief under California Code of Civil Procedure 1060 an appropriate means for a challenge.

20 **REQUEST FOR RELIEF**

21 Wherefore, Community Groups respectfully request relief as follows:

22 1. For a temporary restraining order and preliminary injunction prohibiting the
23 Commissioner from issuing any more restricted material permits within one mile of Ohlone
24 Elementary School, Pajaro Middle School, and Hall District Elementary School pending trial and a
25 decision on the merits;

26 2. For an alternative and/or peremptory writ of mandate, directing the Agencies to
27 (a) vacate and set aside their decisions to issue and affirm each of the six challenged restricted
28 material permits, and (b) refrain from issuing or affirming any restricted material permits to the real

1 parties in interest pending compliance with CEQA, the Food and Agricultural Code, and all other
2 applicable laws and regulations;

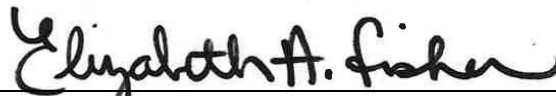
3 3. For a declaratory judgment that (a) the Agencies are engaged in an illegal pattern and
4 practice of issuing restricted material permits in violation of CEQA and the Food and Agricultural
5 Code, and (b) the Commissioner has authority to stay restricted material permits while a request for
6 review is pending; and

7 4. For permanent injunctive relief prohibiting the Agencies from issuing or affirming
8 any restricted material permits, until the Agencies comply with the requirements of CEQA, the Food
9 and Agricultural Code, and all other applicable laws and regulations;

10 5. For costs incurred herein, including attorney fees under Code of Civil Procedure
11 section 1021.5 and any other applicable law; and

12 6. For all such other equitable or legal relief that the Court considers just and proper.

13
14 Respectfully submitted,

15 

16 DATED: April 4, 2024

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18 GREGORY C. LOARIE, State Bar No. 215859
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28

1 **VERIFICATION**

2 I, Jane Sellen, hereby declare:

3 I am the Co-Director of Californians for Pesticide Reform. The facts alleged in the above
4 Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief are true
5 to my personal knowledge and belief, except as to those matters stated on information and belief,
6 which I believe to be true.

7 I declare under penalty of perjury under the laws of the State of California that the above is
8 true and correct and that this verification is executed on this 29th day of March, 2024, in Albany,
9 California.

10 Jane Sellen
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EXHIBIT A



April 4, 2024

VIA EMAIL & U.S. MAIL

Julie Henderson, Director
California Department of Pesticide Regulation
P.O. Box 4015
Sacramento, CA 95812-4015
Julie.Henderson@cdpr.ca.gov

Juan Hidalgo
Monterey County Agricultural Commissioner
Monterey Department of Agriculture
1428 Abbott Street
Salinas, CA 93901
AgComm@co.monterey.ca.us

Re: Notice of Intent to File Suit Under the California Environmental Quality Act

To Whom It May Concern:

PLEASE TAKE NOTICE that Pajaro Valley Federation of Teachers, Safe Ag Safe Schools, Center for Farmworker Families, Monterey Bay Central Labor Council, and Californians for Pesticide Reform will file suit against the California Department of Pesticide Regulation (DPR); Julie Henderson, in her official capacity as Director of DPR; the Monterey Department of Agriculture; and Juan Hidalgo, in his official capacity as the Monterey County Agricultural Commissioner (collectively, the Agencies), challenging the Agencies' failure to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, CEQA Guidelines, California Code of Regulations section 15000 *et seq.*, and implementing portions of the Food and Agricultural Code, in connection with the Agencies' issuance and review of the following permits for the use of restricted materials, via an administrative process culminating in a March 6, 2024 decision by DPR and Director Henderson to affirm each of the permits—

- Permit number 27-23-2700046 for Bay View Farms, LLC, issued on August 10, 2023;
- Permit number 27-23-2700005 for C & J Farms, operated by Juan Carlos Fernandez doing business under a fictitious name, issued on August 9, 2023;
- Permit number 27-23-2701314 for Coastal Vista Farms, LLC, issued on July 20, 2023;
- Permit number 27-23-2700253 for Jal Berry Farms, LLC, issued on August 3, 2024;
- Permit number 27-23-2700365 for La Selva Farms, LLC, issued on August 1, 2023; and
- Permit number 27-23-2700482 for Royal Oaks Farms, LLC, issued on July 13, 2023.

This notice is provided pursuant to Public Resources Code section 21167.5, to the extent applicable.

Sincerely,

Elizabeth A. Fisher, Senior Attorney
Gregory C. Loarie, Senior Attorney

Attorneys for Petitioners

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EXHIBIT B



April 4, 2024

VIA EMAIL & U.S. MAIL

CEQA Coordinator
Office of the Attorney General, Environment Section
1300 "I" Street
Sacramento, CA 95814-2919
CEQA@doj.ca.gov

Re: Notice of Intent to File Suit Under the California Environmental Quality Act

Dear Attorney General Bonta:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.7, to the extent applicable, and Code of Civil Procedure section 388, that on April 4, 2024, Pajaro Valley Federation of Teachers, Safe Ag Safe Schools, Center for Farmworker Families, Monterey Bay Central Labor Council, and Californians for Pesticide Reform filed suit against the California Department of Pesticide Regulation (DPR); Julie Henderson, in her official capacity as Director of DPR; the Monterey Department of Agriculture; and Juan Hidalgo, in his official capacity as the Monterey County Agricultural Commissioner (collectively, the Agencies), challenging the Agencies' failure to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, CEQA Guidelines, California Code of Regulations section 15000 *et seq.*, and implementing portions of the Food and Agricultural Code, in connection with the Agencies' issuance and review of the following permits for the use of restricted materials, via an administrative process culminating in a March 6, 2024 decision by DPR and Director Henderson to affirm each of the permits—

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- Permit number 27-23-2700482 for Royal Oaks Farms, LLC, issued on July 13, 2023.

A copy of the petition and complaint is provided with this notice.

Sincerely,

Elizabeth A. Fisher, Senior Attorney
Gregory C. Loarie, Senior Attorney

Attorneys for Petitioners