Eric W. Danly (SBN: 201621)
edanly@meyersnave.com
Edward Grutzmacher (SBN: 228649)
egrutzmacher@meyersnave.com
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000
Facsimile: (510) 444-1108

Attorneys for City of Petaluma

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

CITY OF PETALUMA, et al., Petitioners and Plaintiffs, v. COUNTY OF SONOMA, et al., Respondents and Defendants.	CASE NO. SCV 248948 **PETITIONER CITY OF PETALUMA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE (NON-CEQA CAUSES OF ACTION** Date: December 9, 2011 Time: 2:30 PM Dept.: 17
THE DUTRA GROUP, et al., Real Parties in Interest and Defendants.	Assigned for all purposes to Hon. René Chouteau:, Dept. 17 Action Filed: January 14, 2011 Trial Date: December 9, 2011

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I. INTRODUCTION

Petitioner City of Petaluma ("City") challenges the decision of Respondent County of Sonoma ("County") to approve an asphalt plant proposed by Real Party in Interest the Dutra Group, *et al.* on the banks of the Petaluma River, immediately outside the City ("Project"). The City joins in its fellow Petitioners' brief, filed concurrently, except for issues and argument pertaining to Petitioners' Ninth Cause of Action under the Ralph M. Brown Act. The City's brief focuses on the Project's inconsistency with the County's General Plan.

Consistency between a project and the local agency's general plan is a hallmark of the Planning and Zoning Law. It is axiomatic that a local agency cannot approve a project that is inconsistent with the general plan. Here, the Project conflicts with the County's General Plan by creating a limited industrial zone in a mapped flood plain, approving a non-river dependent use along the Petaluma River, failing to obtain the necessary voter approval before changing the land use designation for the site within a "Community Separator," and failing to meet all of the General Plan's required criteria for re-designating the site for limited industrial use. In addition to these substantive failings, the County violated basic requirements for adopting legislation by failing to have a first reading of the ordinance making changes to the General Plan and failed to even properly vote on the ordinance. Finally, in addition to the CEQA violations set forth in the other Petitioners' opening brief, the County violated CEQA by failing to provide the City the documents constituting the final EIR 10-days before any decision was made on the project, instead, releasing these documents just hours before the County's approval of the project. For all of these reasons, the County's approval of the Project should be set aside.

II. STATEMENT OF FACTS

During the public comment period, the City submitted comment letters urging the County to disapprove the Project due to inconsistencies with the County's General Plan, inadequacy of the CEQA document, and other issues. (AR9372, 10421-2, 12131-3, 16084-9, 20526-7, 20682-826, 22777-83, 25853-86, 29248.) This brief addresses only the discreet issues set forth above. The factual background for all claims is set forth in the Non-Profit Petitioners' Brief, which is incorporated herein by reference, and in the First Amended Petition.

The Project requires an amendment to the Sonoma County General Plan 2020 ("GP") to change the land use designation on the primary portion of the Project site (APN 019-320-022 and 019-320-023, also known as Areas B, C, and D) from Limited Commercial to Limited Industrial; a Specific Plan Amendment (Petaluma Dairy Belt Plan) to change the land use designation from Limited Commercial to

Limited Industrial; and a Zone Change from LC (Limited Commercial) to M3 (Limited Rural Industrial), as well as a Use Permit and Design Review. (AR141-2.) Additionally the project includes an amendment to General Plan Policy LU-17e as follows: "Apply the 'General Commercial' and 'General Industrial' categories only to appropriate uses existing as of 1986 inside the urban service boundary. Apply the 'Limited Commercial' and 'Limited Industrial' categories only to appropriate uses existing as of 1986, except that areas designated 'Limited Commercial' may be redesignated to 'Limited Industrial' within the Haystack Landing Site along Petaluma Boulevard South (APNs 019-320-022 and 019-320-023) as necessary to accommodate the relocation of an asphalt and recycling plant." (*Id.*)

At approximately 9:00 a.m. on December 14, 2010, the County released over 100 pages of new documents related to the Project, including new conditions of approval (AR5413-5560), and for the first time identified an entirely different set of documents as the "final EIR," including expert reports prepared by Dutra's private consultants. (AR12.) The document previously published by the County entitled "final EIR" did not include these documents. (AR1543-1942.) The City objected to the late disclosure of the final EIR and the lack of notice to the City required by CEQA. (AR29248.)

A proposed zoning Ordinance was included in the County's October 12, 2010 Board packet, but no reading of the Ordinance or vote on the Ordinance was taken at the October 12 hearing. (AR4695-6, 5951-6100, 6127-9.) The proposed Ordinance was again included in the Board packet for the December 14, 2010 Board meeting. (AR5444-5.) Again, at the December 14 hearing, there was no reading of the Ordinance, and no motion was made, or vote taken by the Board to adopt the Ordinance or to waive the reading requirement. (AR6130-42.) Despite the County's failure to read or vote on the Ordinance at the December 14 hearing, the County nevertheless recorded in both its minutes and on the Ordinance, that a 3-2 vote was taken. (AR3-4, 6181-2.)

III. LEGAL STANDARD

Code of Civil Procedure ("CCP") section 1094.5 governs the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. The issuance of a use permit is a quasi-judicial administrative action, which the trial court reviews under CCP section 1094.5. (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1005) The trial court must determine whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the agency abused its discretion. (CCP § 1094.5(b); *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (CCP § 1094.5(b); *Napa Citizens for Honest Gov't v.*

Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 356-57.)

Similarly, the City's claim that the County violated CEQA is also governed by CCP section 1094.5. Under CEQA, the reviewing Court must determine whether the City prejudicially abused its discretion either by: (1) failing to proceed in the manner required by law, or (2) reaching a decision that is not supported by substantial evidence. (Pub.Res.Code § 21168.5; *Vineyard Area Citizens v. Rancho Cordova* (2007) 40 Cal.4th 412, 426.) Here, the failure to provide the City 10-day notice of the "final EIR" was a failure to proceed in a manner required by law.

Finally, the County's failure to follow the required procedure for adopting the ordinance necessary to amend the plan is governed by CCP section 1085. A zoning ordinance adopted without the required notice and hearing requirements is void. (*Sounhein v. City San Dimas* (1992) 11 Cal.App.4th 1255, 1260-61.)

IV. ARGUMENT

A. The County Abused Its Discretion in Approving a Project that Conflicts with the Sonoma County General Plan and Violates General Plan Policies and the Sonoma County Municipal Code (6th Cause of Action).[1]

The Project approved by the County conflicts with the County's General Plan in numerous ways: by creating a limited industrial zone in a mapped flood plain; by approving a non-river dependent use along the Petaluma River; by failing to obtain the necessary voter approval before changing the land use designation for the site within a "Community Separator;" and by failing to meet all of the General Plan's required criteria for re-designating the site for limited industrial use.

State law requires each county to adopt a comprehensive, long-term general plan governing development in all unincorporated areas. (Gov. Code §65300; *Napa Citizens for Honest Gov't,* 91 Cal. App. 4th at 352.) The general plan sits at the top of the land use planning hierarchy (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773), and serves as a "constitution" or "charter" for all future development. (*Lesher Commc'ns v. Walnut Creek* (1990) 52 Cal.3d 531, 540.) General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." (*deBottari v. Norco City Council* (1985) 171 Cal. App. 3d 1204, 1213.)

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[1] Each of the General Plan inconsistencies discussed herein is also a potentially significant impact under CEQA. (*See Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 930, 934 (requiring project's conflicts with land use policies adopted to avoid environmental effects to be discussed in an EIR)) This issue is addressed further in the Non-Profit Petitioners' Opening Brief.

State law mandates two levels of consistency. First, a general plan must be internally or "horizontally" consistent: its elements must "comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (Gov. Code § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal. App. 3d 698, 704.) A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. (*DeVita*, 9 Cal. 4th at 796, n. 12.) Second, state law requires "vertical" consistency, meaning that zoning ordinances must be consistent with the general plan. (See Gov. Code § 65860(a)(2); *Neighborhood Action Group v. Calaveras* (1984) 156 Cal. App. 3d 1176, 1184; Sonoma County Code §26-02-040 ("No ministerial or discretionary permit, such as, but not limited to, rezonings, use permits, variances, building or zoning permits for any use in any district, shall be issued if such rezoning or permit is inconsistent with the Sonoma County general plan or any duly adopted specific or area plans.").) Consistency is found when "[t]he various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the [general] plan." (*Id.* at (a)(2).)

A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is "fundamental, mandatory, and clear," regardless of whether it is consistent with other general plan policies. (*Endangered Habitats League v. County of Orange* (2005) 131 Cal. App. 4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App. 4th 1332, 1341-42.) Any subordinate land use action that is not consistent with a city's current general plan is "invalid at the time it is passed." (*Lesher*, 52 Cal. 3d at 544) Findings that a zoning ordinance is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion. (*A Local & Reg'l Monitor v. Los Angeles* (1993) 16 Cal. App. 4th 630, 648.)

The County adopted GP 2020 in September 2008, and amended the GP Land Use Element in December 2009. (AR4622; Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate ("RJN") at Exh. B.) The 2020 version of the GP was used to evaluate the final Dutra Project (Revised Project II ("RPII")). (AR4622.) As described below, the Project violates several GP policies, rendering the Project approvals inconsistent with the GP and in violation of Sonoma County Code section 26-02-040.

1. The County Violated General Plan Section 2.4 and Policy LU-7a by Creating a Limited Industrial Zoning Designation in a Flood Plain.

First, the Project violated General Plan Section 2.4 and Policy LU-7 by creating a limited industrial zoning designation in a flood plain. State law requires general plans to identify all flood

hazard zones, including any existing and planned development in flood hazard zones. (Gov. Code § 65302(g)(2)(x).) The GP amendments adopted for the Project create horizontal inconsistencies with the GP in that the majority of the Project site is located in a mapped flood hazard zone, has significant geotechnical hazards due to soil instability, and violate GP provisions allowing such re-designation only to recognize an existing, permitted use.

GP Section 2.4, Criteria #5 provides that "Amendments to add this designation [Limited Industrial] ***must meet*** all of the following:" "Lands ***shall not*** be in areas subject to flood, fire, and geologic hazards or in areas constrained by groundwater availability or septic suitability." (AR31, 4622, 20280, 20691 (emph. added); RJN, Exh. B, p. LU-42.) Policy LU-7a requires that the County "avoid" General Plan amendments that would allow additional development in floodplains. (AR20281, 20693; RJN, Exh. B, p. LU-26.)

The final EIR for the Project admits that "the majority of the developed project site and the parcel adjacent to the barge offloading facility are located within the FEMA 100-year flood hazard zone and the County F2 (floodplain) zoning district." (AR1966, 2007, see AR458.) Dutra proposes to remedy the flood plain inconsistency issue by filling and grading Areas A and C of the Project site, as well as filling the Area D Shamrock wetland area proposed for the conveyor belt. (AR39, 52, 1961, 1966, 1983, 2007.) However, these proposals do not change the fact that the Project site is located in a floodplain. (AR20281, 20691, 20693.) Nor does GP Section 2.4 provide any exception to this rule for projects which include the addition of fill to the site. (AR25876; RJN, Exh. B, pp. LU40-43.) The County clearly considered in adopting the General Plan the great potential for both environmental and property damage should a flood of the river inundate an industrial site. The County is not free to ignore these concerns now.

2. The County Violated General Plan Policy LU-19c by Approving the Project Because the Project is not River-Dependent.

The County's own rules only allow the conversion of a site to Limited Industrial in certain, very limited circumstances. Policy LU-19c of the GP states that the "Limited Industrial" category may be applied only to "appropriate uses existing as of 1986." (AR141-2, 2009, 4622, 20281, 20693, 29038-9, RJN, Exh. B, p. LU-79) The Dutra site was not designated Limited Industrial in 1986. (AR141) Thus, the County relies on an exception to its rule that would allow the County to "consider additional ***river dependent commercial and industrial uses*** along the Petaluma River, where necessary to maintain the river as a navigable waterway connecting the Bay to downtown Petaluma." (AR4622, 25858, 29038; RJN, Exh. B, p. LU-79 (emphasis added)) The Project is neither a "river-dependent use," nor is it

necessary to maintain the river as a navigable waterway.

RPII eliminated all barge docking, barge loading or unloading at the Dutra site, and is thus no longer river-dependent. (AR4606) County staff admitted that "[w]ith the elimination of the barge unloading facilities...*the proposed facility no longer has its own direct connection to the river.*" (AR4622 (emph. added)) Instead, RPII proposed to transport aggregate from Shamrock to Dutra first by truck for 3-years and then by a conveyor belt constructed through Shamrock's wetland mitigation area. (AR113-4, 4606-8, 1984, 1995, 23943-61) The October 12, 2010 Staff Report admits that the trucking option for the RPII proposal was ***not*** river-dependent, and hence, was incompatible with the GP. "***[S]taff believes that the trucking option is not consistent with the General Plan because it would not result in a river-dependent use, as required by General Plan Policy LU-19c.***" (AR4631 (emph. added).)

County staff then concluded that the addition of the conveyor belt from Shamrock to Dutra may somehow rectify this inconsistency. (AR4622-3.) However, at the very least, Dutra will truck aggregate from Shamrock for three years, during which time the Project will not be river dependent. (AR113-4.) Further, after that time, there is no assurance that Shamrock will allow Dutra to use its barge dock. To the contrary, in a March 2010 letter, Shamrock stated, "We cannot allow our property to be associated with the Dutra proposal to allow their project barges to unload at our facility." (AR29071, 25778.) Shamrock's Answer states at paragraph 60, "there is no agreement between Shamrock and Dutra to sell 500,000 tons of sand and aggregate to Dutra." Absent Shamrock's participation, the Project approved by the County involves only the trucking option, and is therefore not river-dependent by the County's own admission. (AR4631.) The County's finding that "the delivery of aggregates and sand from an existing adjacent barge off-loading facility at Landing Way...would maintain a link between the new facility and the Petaluma River" (AR32, 4622) is not supported by any substantial evidence in the record and must therefore be reversed. (*See A Local & Reg'l Monitor,* 16 Cal. App. 4th at 648.) Under the plain language reading of LU-19c, the Dutra Project is not "river dependent." (*Green v. State of California* (2007) 42 Cal.4th 254, 260 (plain language controls the court's interpretation))

Furthermore, even if Shamrock were to agree to sell aggregate to Dutra – which it has not – that alone would not salvage the County's determination that the Dutra facility is "river-dependent." The County itself has stated that "[t]he question of whether the proposed new industrial use is necessary to maintain the river as a navigable waterway probably does not have a definitive answer...*the Landing Way depot will likely continue to operate and import aggregates regardless of whether the Dutra project goes forward.*" (AR4623 (emph. added).) By so stating, the County has implicitly acknowledged that

the purchase of materials by Dutra is *not* a use that is "*necessary*" to maintaining the Petaluma River as a navigable waterway, which finding is required to meet the river dependency standard of the GP. (AR20281, 20693, 25858, 29038-9.)

Finally, the idea that the mere purchase of materials renders a buyer "river-dependent" is far-fetched at best. If true, it would mean that every business that purchases products delivered to a vendor by waterway transforms the purchaser into a "river-dependent" use. This reading defies any plain language meaning of "river-dependent" and must be rejected. (*Green,* 42 Cal.4th at 260.)

3. The County Violated General Plan Policy OSRC-1k (Measure D) by Failing to Obtain Voter Approval Before Changing the Land Use Designation for the Project Site.

GP Policy OSRC-1k ("Measure D") was approved by County voters in 1998. (AR2468.) It amended the General Plan by enlarging the Petaluma/Novato Community Separator and by prohibiting changes in land use that would increase the allowed intensity or density of development in that separator without voter approval. (*Id.*; AR6275-7)

Under the plain text of the GP, a majority of the Project area is within the Petaluma/Novato Community Separator. The GP defines this area as "bounded on the north by the Petaluma Urban Service Boundary, on the east by NWPRR rail right-of-way, on the south by the Sonoma/Marin County line, and on the west by the hills south of Petaluma." (AR20282; RJN, Exh. C, p. OS-4) These boundaries indisputably include Areas C and D of the Project site, which lie south of the Urban Service Boundary and west of the railroad right-of-way. (*Id.*; AR236-40.)

The County's December 9, 2008 and February 2, 2009 Staff Reports erroneously concluded that *none* of the Project area is within the Community Separator. According to County Staff, Measure D (which expanded the Community Separator and required that any intensification of use within the area be subject to voter approval) excluded properties "that were zoned commercial or industrial in 1988" from the Community Separator. (AR2468-9, 3254.) In approving the final RPII Project, the County relied on these conclusions as a basis for its findings that "Measure D does not apply to the Project." (AR33.)

The County was incorrect. As discussed in Petitioners' April 15, 2009 comment letter, Measure D makes no reference to "commercial or industrial" zoning, but rather excluded lands "currently" designated as Commercial on General Plan Figure LU-5h. (AR6276, 20282.) The County never responded to this issue. Its conclusion is contrary to the plain text of the GP. In amending the 1989 General Plan, Measure D expressly authorized the Board of Supervisors to adopt a "successor general plan" that "[a]dds additional area to the Petaluma/Novato Community Separator" without prior voter

approval. (AR6277, 20282-3) The Board of Supervisors, when it adopted GP 2020 (the "successor" to the 1989 General Plan), deleted Measure D's exception for lands previously designated Commercial. (*Id.*) In so doing, the Board added additional area—including a majority of the Project area—to the Community Separator. Under Measure D, the Project requires voter approval. Project Area C—the area where the "major operational portion" of the Project will be located, including the asphalt batch plant and the recycling plant (AR236-40) is within the Community Separator. General Plan Policy OSRC-1k, part of Measure D, requires voter approval before any land use designation can be changed in order to increase the intensity of development in the Community Separator. (AR6277, RJN, Exh. C, p. OS-9.) It is indisputable that converting this area from open space to an asphalt plant represents an increase in the intensity of development. Voter approval is therefore required.

The County may argue that its Measure D findings were appropriate, based on a single figure attached to General Plan 2020, Figure OSRC-5h, that does not appear to show any of the Project area as included within the Community Separator. (AR33, 20283; RJN, Exh. C, Figure OSRC-5h) However, the boundaries of the Community Separator as shown on Figure OSRC-5h are inconsistent with those described in the text of the General Plan. (AR20283; RJN, Exh. C, p. OS-4) If anything, this figure may indicate that the GP is internally inconsistent. If so, the GP gives conflicting direction to decision-makers and the public—a hallmark of internal inconsistency. (*See Concerned Citizens of Calaveras County v. Bd. of Supervisors* (1985) 166 Cal. App. 3d 90, 97.) Because this inconsistency goes to the heart of this Project's compliance with the General Plan, the Project cannot be approved at all. (*See Garat v. City of Riverside* (1991) 2 Cal. App. 4th 259, 289-90.) If, however, the textual description of the area of the Community Separator controls, voter approval is required.

4. The Project Fails to Meet the Seven Criteria Required under General Plan Element LU-43 Before a Project Parcel Can Be Re-Designated for Limited Industrial Use.

The GP, at LU-43, sets forth seven specific criteria, all of which must be met before a parcel may be re-designated for Limited Industrial use. (AR4621-2, 20278-81; RJN, Exh. B, p. LU-43.) Failure of a project parcel to fulfill just one of these requirements disallows re-designation of the project parcel. The Dutra Project fails to fulfill at least the following three criteria:

> **Criterion 5**: "Lands shall not be in areas subject to flood, fire, and geologic hazards…" As discussed above, the Dutra site is in an area "subject to flood." There is no exception in LU-43 for areas that are subject to flood, but are filled. Therefore, under the plain language of the provision, the parcel may not be redesignated for Limited Industrial use.
>
> **Criterion 6**: "[L]ands shall not be located in a scenic corridor." (AR20280-1; RJN, Exh. B, p. LU-43.) The Project site includes land (the frontage of Areas B, C and D) designated as Scenic Corridor and zoned Scenic Resources Combining District. (AR505.) Although the Project site

and landscape plan are to be located outside of the setback required under Scenic Resources Combining District zoning, the redesigated area still includes lands located in the Scenic Corridor. Therefore, the Project does not meet Criterion 6.

Criterion 7: "Any applicable Land Use Policies for the Planning Area." As discussed above, the Project violated GP Policy LU-19c since it is not "river dependent." The Project also violates GP Policy LU-7a, which directs the County to "avoid" general plan amendments that would allow additional development in floodplains. (AR20281, 20693, 25858; RJN, Exh. B, p. LU-26.) GP Policy LU-7c requires the County to "prohibit new permanent structure within any floodway." (*Id.*) Therefore, the Project may not be redesignated for Limited Industrial use.

B. The County Failed to Adopt an Ordinance Amending the General Plan and Zoning Requirements for the Project (5th Cause of Action).

The adoption and amendment of zoning designations, including the rezoning of an individual parcel, are legislative acts and must be accomplished by ordinance, not by simple resolution. (Gov. Code §65850; *City of Sausalito v. County of Marin* (1970) 12 Cal. App. 3d 550, 562 (approval of PUD master plan invalid if by resolution rather than by ordinance).) A zoning ordinance adopted without the required notice and hearing requirements is void. (*Sounhein v. City of San Dimas* (1992) 11 Cal.App.4th 1255, 1260-61.)

County boards of supervisors are authorized to adopt a rezoning ordinance only after a reading of the ordinance at a noticed public hearing. The reading may only be waived by majority vote. (Gov. Code §25131) "Except when, after reading the title, further reading is waived by regular motion adopted by majority vote, *all ordinances shall be read in full either at the time of* introduction *or passage*." (Gov. Code §25131 (emph. added).) Upon passage of an ordinance, the votes of the several members of the board must be entered in the minutes of the meeting in which it was passed. (Gov. Code §25122.)

Here, not only did the County fail to follow procedural requirements prior to its purported "adoption" of the Ordinance approving the Dutra zoning changes on December 14, 2010, the Board failed read or to vote on the Ordinance at all. A proposed zoning Ordinance was included in the County's Oct. 12, 2010 Board packet, but no reading of the Ordinance or vote on the Ordinance was taken at the Oct. 12 hearing. (AR4695-6, 5951-6100, 6127-9.) The proposed Ordinance was again included in the Board packet for the December 14, 2010 Board meeting. (AR5444-5.) Again, at the December 14 hearing, there was no reading of the Ordinance, and no motion was made, or vote taken by the Board to adopt the Ordinance or to waive the reading requirement, in violation of Gov. Code §25131. (AR6130-42.) Despite the County's failure to read or vote on the Ordinance at the December 14 hearing, the County nevertheless recorded in both its minutes and on the Ordinance, that a 3-2 vote was taken. (AR3-4, 6181-2.) Because the Board failed to read or vote on the Ordinance, the County's

purported adoption of the Dutra zoning Ordinance must be set aside.

C. The County Failed to Give the City the Required 10-Days Notice of the Final EIR.

In addition to the CEQA issues discussed in the brief filed by Non-Profit Petitioners, the County also violated CEQA by failing to provide the City with the required 10-days notice of the final EIR.

At approximately 9:00 a.m. on December 14, 2010, the County released over 100 pages of new documents related to the Project, including new conditions of approval (AR5413-5560), and for the first time identified an entirely different set of documents as the "final EIR," including expert reports prepared by Dutra's private consultants. (AR12.) The document previously published by the County entitled "final EIR" that did not include these documents. (AR1543-1942.)

The City objected to the last minute document dump pointing out that the County failed to provide it with 10-days notice of the new information as required by CEQA. (Pub.Res.Code §21092.5; 14 Cal. Code Regs. § 15088(b)); AR29248.) Public Resourced Code section 21092.5 provides:

> At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Proposed responses shall conform with the legal standards established for responses to comments on draft environmental impact reports. Copies of responses or the environmental document in which they are contained, prepared in conformance with other requirements of this division and the guidelines adopted pursuant to Section 21083, may be used to meet the requirements imposed by this section.

By identifying an entirely new final EIR only hours before certification of the document, the County violated the City's right to 10-days advance notice set forth in CEQA. The certification must therefore be set aside.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant a writ of mandate.

DATED: September 21, 2011 MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____
Edward Grutzmacher
Attorneys for City of Petaluma

1717386.1

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, California 94607.

On September 21, 2011, I served true copies of the following document(s) described as **PETITIONER CITY OF PETALUMA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) 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 Meyers, Nave, Riback, Silver & Wilson'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: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, at 3:00 p.m., I caused the document(s) to be sent from e-mail address CSauceda@meyersnave.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 September 21, 2011, at Oakland, California.

Cynthia Sauceda

SERVICE LIST
City of Petaluma, et al. v, County of Sonoma, et al.
Case No. SCV 248948

Michael R. Lozeau Richard Drury Christina M. Caro LOZEAU DRURY LLP 410 12th Street, Suite 250 Oakland, CA 94607 richard@lozeaudrury.com	Attorney for Petitioners and Plaintiffs, Petaluma River Council, et al.
Stephen Keating Butler Tina Wallis CLEMENT FITZPATRICK, et al. 3333 Mendocino Avenue Santa Rosa, California 95403 twallis@cfk.com	Attorneys for Real Party in Interest, Shamrock Materials, Inc. and Corto Meno Sand & Gravel, LLC
Jeff Brax, Deputy County Counsel County Administration Center 575 Administration Drive, Room 105A Santa Rosa, CA 95403 JBRAX@sonoma-county.org	Attorney for Respondents and Defendants, County of Sonoma et al.
Derek Cole COTA COLE LLP 2261 Lava Ridge Court Roseville, CA 95661 dcole@cotalawfirm.com	Attorneys For Real Parties In Interest The Dutra Group And Peach Tree Terrace
Leslie R. Perry Perry, Johnson, Anderson, Miller & Moskowitz 438 1st Street, 4th Floor Santa Rosa, CA 95401 perry@perrylaw.net	Attorneys For Real Parties In Interest The Dutra Group And Peach Tree Terrace