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**FILED**  
MAR 2 2016  
ALEX CALVO, CLERK  
BY AMANDA LUCAS  
DEPUTY, SANTA CRUZ COUNTY

Attorneys for Petitioner,  
WE ARE APTOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CRUZ**

We Are Aptos, an unincorporated  
association

Case No. **16CV00502**

Petitioner,

**PETITION FOR WRIT OF  
MANDAMUS**

vs.

County of Santa Cruz and Board of  
Supervisors for the County of Santa Cruz  
and Does 1 through 15,

[CEQA CASE]

Respondents,

Green Valley Corporation, Aptos Village  
LLC, Aptos Ventures LLC, and Does 16  
through 30,

Real Parties in  
Interest.

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**I.**  
**INTRODUCTION**

1. This Petition asks this Court to overturn a decision taken by the Santa Cruz County Board of Supervisors on December 8, 2015, to approve the Final Map for the Aptos Village. The Aptos Village Subdivision is intended to implement the Aptos Village Project ("Project"), located within the unincorporated area of Santa Cruz County. The Project was initially approved by the Board of Supervisors as a "mixed-use commercial and residential development including 63 residential units and up to 75,000 square feet of commercial space." (Board of Supervisors, Staff Report, September 25, 2012). The Project approval included the approval of a Tentative Map pursuant to the Subdivision Map Act. However, the Final Map for the Aptos Village Subdivision ("Final Map") fails to substantially comply with the Tentative Map approved by the Board of Supervisors. Thus, the Board of Supervisors approval of the Final Map fails to comply with Subdivision Map Act.

2. The Final Map newly designates two remainder parcels which were formally a combination of mixed-use commercial and residential lots and common area parcels under the Tentative Map. Moreover, many of the common areas appearing on the Tentative Map are not within the area covered by the Final Map.

3. Finally, the promised future County park parcel is not even included within the Final Map, and a bond was not posted in lieu of a dedication of the park parcel.

4. Petitioner "We Are Aptos" has filed this lawsuit because it is concerned about land use decisions which affect the community and run afoul of the local subdivision law as well as the state Subdivision Map Act. This lawsuit is not intended to stop the development of the Aptos Village Project, but is instead intended to ensure that all amenities and other Project components are implemented as promised.

**II.**  
**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

5. Petitioners hereby incorporate by reference paragraph 1 through 4 of this petition as if they are fully set forth herein.



1 11. Respondents Santa Cruz County, by and through its Board of Supervisors, approved  
2 the Final Map for the Project, contrary to state and local laws. Thus, Respondents have failed to  
3 proceed in a manner required by law. Petitioner is informed and believes that at all times  
4 alleged, Respondents and each of them were the agents and employees of each of the remaining  
5 Respondents and while doing the things herein alleged, were acting within the course and scope  
6 of such agency and employment.

7 12. The true names and capacities, whether individual, corporate or otherwise, of Does 1  
8 through 15, are unknown to Petitioner, who therefore sue said Respondents by such fictitious  
9 names and will seek leave to amend this Petition for Writ of Mandate when they have been  
10 ascertained.

11 13. Real Parties in Interest, Green Valley Corporation, Aptos Village LLC, and Aptos  
12 Ventures, LLC, are either applicants for the Project, or according to the Final Map submitted for  
13 the Project, owners of the property on which the Project is proposed to be located. Hereinafter,  
14 all these individuals are collectively referred to as the "Real Parties." Petitioner is informed and  
15 believes that at all times herein alleged, Real Parties and each of them were the agents and  
16 employees of the remaining Real Parties and while doing the things herein alleged, were acting  
17 within the course and scope of such agency and employment.

18 14. The true names and capacities, whether individual, corporate or otherwise, of Does  
19 16 through 30, are unknown to Petitioners who therefore sue said Real Parties by such fictitious  
20 names and will seek leave to amend this Petition for Writ of Mandate when they have been  
21 ascertained.

#### 22 IV. 23 STANDING

24 15. Petitioner hereby incorporates by reference paragraphs 1 through 14 of this petition,  
25 as if they were fully set forth herein.

26 16. Approval of the Project will adversely affect the interests of Petitioner and its  
27 members. Petitioner is dedicated to organized, thoughtful, and lawful development of the  
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1 environment of the County of Santa Cruz, as set forth in paragraph 10 hereof, and is concerned  
2 about development which fails to fully comply with all applicable local and state law. Approval  
3 of the Project will adversely affect the interests of Petitioner. Members or representatives of  
4 Petitioner, on behalf thereof, have submitted comments on and objections to the lack of  
5 compliance with the Subdivision Map Act, the local subdivision ordinance that implements the  
6 Subdivision Map Act, and CEQA. Accordingly, Petitioner is an "aggrieved person" within the  
7 meaning of Public Resources Code § 21177.

8 17. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure  
9 §§ 1085 and 1094.5; California Public Resources Code § 21167; 14 Cal. Code Regs. § 15112;  
10 California Government Code § 54960; the Constitution of the State of California; the  
11 Constitution of the United States; and other applicable laws and regulations.

12  
13 **V.**  
**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 18. Petitioner hereby incorporates by reference paragraphs 1 through 17 of this petition,  
15 as if they were fully set forth herein.

16 19. Petitioner has performed all conditions precedent to the filing of this petition by  
17 raising each and every issue known to it before the Board, in compliance with Public Resources  
18 Code § 21177, and Code of Civil Procedure §§ 1085 and 1094.5.

19 20. Notice of the filing of this action, as required by Public Resources Code § 21167.5  
20 was mailed to the Respondents on March 2, 2016 (See attached Letters and Proof of Service  
21 attached hereto as Exhibit "A").

22  
23 **VI.**  
**FIRST CAUSE OF ACTION**  
24 (Violation of Santa Cruz County Subdivision Ordinance and  
the Subdivision Map Act)

25 21. Petitioner hereby incorporates by reference paragraphs 1 through 20 of the petition,  
26 as if they were fully set forth herein.

27 22. The approval of the Final Map violates the Subdivision Map Act and the Santa Cruz  
28

1 County Subdivision Ordinance because the Final Map is not substantially the same as the  
2 Tentative Map.

3 23. Santa Cruz County Code § 14.01.209(D)(2), which implements the State Subdivision  
4 Map Act, at Government Code § 66442(a)(2), requires the County Surveyor to submit a  
5 certificate for Final Maps stating: "The subdivision as shown is substantially the same as it  
6 appeared on the tentative map and any approved alterations thereof." Even though the County  
7 Surveyor did submit such a certificate for the Aptos Village Project Final Map, the facts  
8 demonstrate that the Final Map is not substantially the same as the Tentative Map.

9 24. The approved Final Map for the Project lacks several common areas which were  
10 designated as such in the Tentative Map. In addition, two parcels which were designated for  
11 commercial development, common areas, and public utilities easement sites, are now designated  
12 as remainder parcels under the Final Map and are inconsistent with the Tentative Map. By doing  
13 away with the parcels and lots and replacing them as two remainder parcels, the Final Map alters  
14 the character of the approved parcels in such a way that the Final Map no longer substantially  
15 conforms to the Tentative Map and allows a substantial portion of the Project to be set aside for  
16 an unknown future use.

17 25. The "Future County Park" site that is on the Tentative Map, is wholly excluded from  
18 the Final Map, and is outside the boundaries of the Final Map. This Future County Park was  
19 billed as a community benefit. The Aptos Village Project approval requires that "[t]he applicant  
20 shall offer the .74 acre park parcel for dedication) to the County of Santa Cruz at the time of  
21 Final Map Recordation as indicated on the approved Tentative Map for this subdivision." "If the  
22 park parcel cannot be offered for dedication with recordation of the Final Map, a performance  
23 bond for the appraised value of the park parcel shall be provided to the County for a period of up  
24 to 5 years. The park parcel shall be provided to the County at the end of the 5 year period." It  
25 should be noted that the dedication of the park parcel is considered to be in-lieu of normally  
26 required fees for the sixty-three (63) multi-family dwelling units (at \$750 per bedroom). The  
27 Real Parties did not dedicate the park parcel with approval of the Final Map, and there is no  
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1 record of the Real Parties paying the required bond if dedication could not be offered with  
2 recordation of the Final Map. There is no evidence in the record that the park parcel could not be  
3 offered at the time of the Final Map.

4 26. Subdivisions are required to comply with the Subdivision Map Act and the County  
5 subdivision law. Because the Project does not substantially conform to the Tentative Map, as  
6 discussed *supra*, this Aptos Village Subdivision violates the Subdivision Map Act and the  
7 County subdivision law.

8  
9 **VII.**  
10 **SECOND CAUSE OF ACTION**  
(Violation of the California Environmental Quality Act)

11 27. Petitioner hereby incorporates by reference paragraphs 1 through 26 of the petition, as  
12 if they were fully set forth herein.

13 28. The approval of the Final Map was a deviation from the Aptos Village Project  
14 approvals and the Tentative Map. The failure of the Real Parties to dedicate the park or pay the  
15 park bond, and the failure of the Real Parties to conform the common areas to the common areas  
16 of the Tentative Map, and the approval of the Final Map by the Board of Supervisors despite  
17 these deviations, results in significant environmental impacts that were not addressed.  
18 Specifically, the Real Parties have avoided compliance with the park dedication fees and the  
19 dedication of parkland that may lead to a deficiency of parks. Moreover, the common areas that  
20 were removed from the Final Map affect circulation in the village and parking. These impacts  
21 were not addressed by the County or the Board of Supervisors prior to approval of the Final Map.  
22 By approving the Project without analyzing it under CEQA, the County failed to proceed in a  
23 manner required by law.

24  
25 **VI.**  
**ATTORNEYS' FEES**

26 29. Petitioner hereby incorporates by reference paragraphs 1 through 28 of the petition, as  
27 if they were fully set forth herein.

1 30. In pursuing this action, Petitioner will confer a substantial benefit on the State of  
2 California and are therefore entitled to recover from Respondents reasonable attorneys' fees and  
3 costs pursuant to Section 1021.5 of the Code of Civil Procedure, and Government Code section  
4 54960.5, and other provisions of law.

5 31. Furthermore, the County and the Board have abused their discretion in approving  
6 the Final Map for the Project, and have acted arbitrarily and capriciously under Government  
7 Code section 800.

8 WHEREFORE, Petitioner prays for judgment as follows:

9 1. For Alternative and Peremptory Writs of Mandate ordering Respondents to set  
10 aside all their approvals associated with the Project including but not limited to, all approvals by  
11 the Santa Cruz County Board of Supervisors on December 8, 2015 related to the Final Map for  
12 the Aptos Village Project, and to follow state law and Santa Cruz County ordinances and  
13 regulations in connection with any further consideration of the Project; and


14 2. For reasonable attorneys' fees under California Code of Civil Procedure section  
15 1021.5, Government Code section 800, and any other provisions of law; and

16 3. For costs of suit; and

17 4. For such other costs and further relief as the court deems proper.

18  
19 Dated: March 2, 2016


20 Respectfully submitted,  
21 WITTWER PARKIN LLP

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23 By: Pearl Kan  
24 Attorneys for the Petitioner  
25 WE ARE APTOS  
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**VERIFICATION**

I, Becky Steinbruner, am an authorized member of We Are Aptos, a party to this action. I have read the foregoing Petition for Writ of Mandamus, and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true. This verification was executed on March 2, 2016 in Santa Cruz California.

 \_\_\_\_\_

Becky Steinbruner

**EXHIBIT A**

March 2, 2016

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street, 5<sup>th</sup> Floor  
Santa Cruz, CA 95060

**RE: Notice of Intent to Commence Litigation**

Pursuant to the requirements of Public Resources Code Section 21167.5, this letter will serve as notice that We Are Aptos will commence litigation against the County of Santa Cruz.

The litigation challenges the Final Map for the Aptos Village Project for failure to comply with the Subdivision Map Act, and the County's failure to conduct environmental review for deviations of the Final Map in relation to the Tentative Map.

The litigation has been commenced, *inter alia*, because the actions listed in the preceding paragraph do not comply with the requirements of the California Environmental Quality Act.

Very truly yours,  
WITTWER PARKIN LLP



Pearl Kan

