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[GOVERNMENT CODE § 6103]**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF MONTEREY**

11 CITY OF MONTEREY,

12 Petitioner,

13 v.

14 MONTEREY PENINSULA AIRPORT  
15 DISTRICT and MONTEREY PENINSULA  
16 AIRPORT DISTRICT BOARD OF DIRECTORS;  
and DOES 1-10,

17 Respondents,  
18 \_\_\_\_\_

19 DOES 11-20,

20 Real Parties in Interest.  
21 \_\_\_\_\_  
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Case No 20CV002445

California Environmental Quality Act (CEQA)

**PETITION FOR WRIT OF MANDATE**

**(Code Civ. Proc., §§ 1085, 1094.5; Pub.  
Resources Code, §§ 21000 et seq.  
(CEQA))**

FOR ASSIGNMENT TO CEQA  
DEPARTMENT

(Pub. Resources Code § 21167.1)

1 **INTRODUCTION**

2 1. Petitioner CITY OF MONTEREY (“City” or “Petitioner”) petitions this Court for a Writ of  
3 Mandate (“Petition”), directed to Respondents MONTEREY PENINSULA AIRPORT DISTRICT and  
4 MONTEREY PENINSULA AIRPORT DISTRICT BOARD OF DIRECTORS (“District” or  
5 “Respondents”). This action challenges Respondents’ August 12, 2020, decisions to: (1) approve the  
6 Modified November 26, 2018, Final Airport Master Plan (“Modified Plan” or “Modified Project”); and  
7 (2) adopt the August 2020 Addendum to the Final Airport Master Plan Environmental Impact Report  
8 (“EIR”) (State Clearinghouse House No. 2015121105) (“Addendum”) without first preparing and  
9 certifying a supplemental or subsequent EIR as required.

10 2. The District’s actions violate the provisions governing subsequent environmental review in the  
11 California Environmental Quality Act (“CEQA”). (See Pub. Resources Code, § 21166, subd. (a); see  
12 also Cal. Code Regs., tit. 14, div. 6, ch. 3 [“CEQA Guidelines”], §§ 15162, subd. (a)(1), 15164, subd.  
13 (a).) The District’s actions will result in environmental impacts that have not been adequately  
14 considered, analyzed, and mitigated. Therefore, any project approvals and other entitlements that rely  
15 on the Addendum must be overturned. Petitioner seeks a writ directing Respondents to set aside their  
16 adoption of the Addendum and approval of the Modified Project until such time that Respondents  
17 demonstrate full compliance with CEQA.

18 **PARTIES**

19 3. Petitioner City of Monterey is a municipal corporation located within the County of Monterey.  
20 The City is contiguous with the Monterey Regional Airport and surrounds it to the east, south, and  
21 west. As a result, the City has a vested interest in ensuring that all environmental impacts of the  
22 Modified Project are fully disclosed, analyzed, and mitigated to the extent feasible to protect the City’s  
23 residents.

24 4. Respondent the District is the CEQA “lead agency” for the Modified Project for purposes of  
25 Public Resources Code section 21067, and has principal responsibility for conducting environmental  
26 review prior to considering and approving any discretionary modifications to its November 26, 2018  
27 Final Airport Master Plan and taking other actions necessary to comply with CEQA. The District is a  
28 California special district responsible for all operation, maintenance, and planning for the Monterey

1 Regional Airport, which provides both commercial and general aviation services.

2 5. Respondents' Board governs the District and is comprised of locally elected Board members  
3 who vote on project approvals and adoption/certification of CEQA documents.

4 6. The City currently does not know the true names of Respondents DOES 1 through 10 and Real  
5 Parties DOES 11 through 20, inclusive, and therefore names them by such fictitious names. The City  
6 will seek leave from the court to amend this petition to reflect the true names and capacities of DOES 1  
7 through 20 inclusive if and when ascertained.

8 **JURISDICTION AND VENUE**

9 7. The Monterey County Superior Court has jurisdiction over matters alleged in this Petition  
10 pursuant to Code of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections  
11 21168 and 21168.5.

12 8. Venue is proper in the Monterey County Superior Court in accordance with Code of Civil  
13 Procedure section 395 because the Modified Project at issue is located in the County of Monterey.

14 9. Venue is proper in the Monterey County Superior Court under Code of Civil Procedure sections  
15 394 and 395 because Respondents include a local agency based in the County of Monterey and because  
16 the cause of action alleged in this Petition arose in the County of Monterey and the Modified Project  
17 will occur within the County of Monterey.

18 **STANDING**

19 10. Petitioner has standing to assert the claims alleged in this Petition because it is "beneficially  
20 interested" in this matter pursuant to Code of Civil Procedure section 1086. Petitioner has a direct and  
21 beneficial interest in Respondents' compliance with laws bearing upon approval of the Modified  
22 Project, an action which violates the law as set forth in this Petition, because such approval will result  
23 in substantial harm to quality of life in the surrounding community over which the City has jurisdiction.  
24 In addition, unless the relief requested herein is granted, the natural environment will be adversely  
25 affected and injured by Respondents' failure to comply with CEQA when adopting the Addendum and  
26 approving the Modified Project.

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1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 11. Petitioner has performed all conditions precedent to the filing of this Petition. Petitioner has  
3 actively participated in the administrative and environmental review process associated with the  
4 Modified Project and Addendum before the issuance of the notice of determination (“NOD”). This  
5 participation includes, but is not limited to, all correspondence asserted in paragraphs 27 to 29 of this  
6 Petition. Petitioner has fully exhausted administrative remedies to the extent required by law. (Pub.  
7 Resources Code, § 21177, subd. (a).)

8 12. Respondents have taken final agency actions adopting the Addendum and approving the  
9 Modified Project. Respondents had a mandatory duty to comply with all applicable laws, including, but  
10 not limited to CEQA prior to undertaking the discretionary approvals at issue in this lawsuit. Petitioner  
11 possesses no effective remedy to challenge the Adoption and Approval at issue in this action other than  
12 by means of this lawsuit.

13 **STATUTE OF LIMITATIONS**

14 13. On August 12, 2020, the Board adopted the Addendum, approved the Modified Project, and  
15 filed and posted an NOD for those actions.

16 14. The statute of limitations under CEQA to bring a challenge to Respondents’ decision to adopt  
17 the Addendum expires 30 days from the filing and posting of the NOD. (CEQA Guidelines, §§ 15094,  
18 subd. (g), 15112, subd. (c)(1).) The 30th day after the August 12, 2020 NOD falls on Friday, September  
19 11, 2020. This petition is timely filed on or before that date.

20 **NOTICE OF CEQA SUIT**

21 15. On September 9, 2020, Petitioner served a notice of their intent to file this lawsuit to  
22 Respondents, in accordance with Public Resources Code section 21167.5. (See Exhibit 1: Notice of  
23 Intent to File Petition Pursuant to the California Environmental Quality Act.)

24 16. Petitioner will furnish a copy of this Petition on the California Department of Justice, Office of  
25 the Attorney General, in accordance with Public Resources Code section 21167.7 and Code of Civil  
26 Procedures section 388, and file an appropriate notice with this Court.

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1 of the Modified Project and provide meaningful comments.

2 20. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless this  
3 Court grants the requested writ of mandate to require Respondents to set aside their approval of the  
4 Modified Project. In the absence of such remedies, Respondents' decisions will remain in effect in  
5 violation of State law and Petitioner will be irreparably harmed. No monetary damages or legal remedy  
6 could fully and adequately compensate Petitioner for that harm. The District has the capacity to correct  
7 its violations of law but refused to do so before taking the actions challenged in this petition.

### 8 **FACTUAL BACKGROUND**

9 21. The paragraphs below refer to and rely on information in documents relating to this action, all  
10 of which will be filed with this Court as part of the record of proceedings and are here incorporated by  
11 reference.

12 22. The originally proposed Airport Master Plan ("Project") was evaluated in the November 2018  
13 Airport Master Plan EIR (State Clearinghouse No. 2015121105) ("2018 EIR") and intended to provide  
14 "a development framework to implement improvements that would enable the Monterey Regional  
15 Airport (Airport) to accommodate future demand for forecasted air travel." (2018 EIR, p. ES-1.) The  
16 2018 EIR analyzed the proposed Project and several project alternatives. Ultimately, Respondents, as  
17 the lead agency for CEQA review, approved Alternative 1 as the Monterey Regional Airport Master  
18 Plan ("AMP") and certified the 2018 EIR on November 26, 2018.

19 23. The approved Alternative 1 "retains all the major projects of the Proposed Project" and, in  
20 relevant part here, included the near-term construction and operation of a new, publicly accessible,  
21 North Side Road "to remove the need for additional traffic to use Airport Road, even in the short term"  
22 and the relocation of the existing aircraft rescue and firefighting ("ARFF") facility to the north side of  
23 the Airport to continue to be jointly used by the City. (2018 EIR, pp. 3-22, 3-25, 4.14-10.) Alternative  
24 2, conversely, omitted the North Side Road, but otherwise "would construct the Proposed Project." (*Id.*,  
25 p. 3-36.) Because it did not include the North Side Road, Alternative 2 was found to have "Significant  
26 and Unavoidable" land use and planning impacts that Alternative 1 did not have, as well as increased  
27 operational traffic on Airport Road that would require "in-depth traffic analysis" should the alternative  
28 be chosen. (*Id.*, pp. 3-44 to 3-45.) But, at that time, Alternative 2 was not selected.

1 24. Petitioner, as a neighboring municipality whose residents would be negatively impacted by  
2 increased traffic on and near Airport Road, publicly supported Alternative 1 and requested in an  
3 October 16, 2018, comment letter that the North Side Road be “the first project constructed” to  
4 eliminate the immediate “construction traffic through a single family [] residential neighborhood,”  
5 Casanova Oak Knoll (“CONA”), within its jurisdiction. (2018 EIR, Final, pp. 3A-18 to 3A-19.)

6 25. At some point after Respondents’ approval and certification actions on November 26, 2018, it  
7 was determined that “minor changes and project modification to the approved AMP [i.e., Alternative 1]  
8 are beneficial” and a public notice for the Addendum was posted on the District’s website on August 7,  
9 2020. (District, *Environmental Impact Report (EIR) on the Approved Airport Master Plan* (Aug. 7,  
10 2020) < <http://montereyeir.airportstudy.com/> > [as accessed Sept. 9, 2020].)

11 26. However, as demonstrated in this Petition, the changes approved by Respondents are not minor,  
12 as they claim. In relevant part, the Modified Project will ostensibly eliminate the publicly accessible  
13 North Side Road by postponing its construction and use as such to some unknown and unarticulated  
14 future date, similarly or the same to the original Alternative 2. (Addendum, p. 1; see ¶ 23.) It also will  
15 postpone the relocation of the ARFF facility and remove it from future “joint-use [] with the City of  
16 Monterey” in contrast to analytical assumptions made in 2018 EIR (*Ibid*; see 2018 EIR, p. 4.14-10.)  
17 The consequences of these major changes are the source of Respondents’ CEQA violations and  
18 discussed accordingly below.

19 27. A public Board meeting was held on August 12, 2020, at 9 a.m. where the matter was  
20 considered. City representatives were in attendance and submitted oral comments of the same substance  
21 as their written comments that followed. That same day, the Modified Project was approved, the  
22 Addendum adopted, and the NOD posted. (See ¶¶ 1, 11.) With such a short time between the release of  
23 the Addendum and its adoption (five days total), Petitioner was not able to provide written comments  
24 until August 11, 2020, wherein each CEQA violation discussed below was raised in a comment letter  
25 submitted on behalf of Petitioner to Respondents.

26 28. Mayor Clyde Roberson wrote again to Respondents on August 21, 2020, urging them to  
27 reconsider their August 12th actions and reiterating Petitioner’s concerns set forth in this Petition.  
28 Respondents rejected that request.

1 29. The Project and Modified Project are subject to the National Environmental Policy Act  
2 (“NEPA”) because of Federal Aviation Administration (“FAA”) oversight and approval. (2018 EIR, p.  
3 1-1.) The FAA did not prepare a federal environmental document for the original Project, or  
4 presumably the Modified Project, because, as stated, “[e]nvironmental analysis under federal  
5 regulations will occur when FAA considers a development project for federal funding and/or project  
6 approval. (*Ibid.*) The FAA did, however, prepare an environmental assessment (“EA”) for a specific  
7 Airport safety enhancement project in March 2020. Petitioners dutifully commented on the EA with the  
8 same concerns raised in their comments on the Addendum, and formally submitted those written  
9 comments to Respondents in an April 28, 2020, letter. These comments included responses from the  
10 City’s Traffic Engineering Division, wherein potentially significant traffic impacts to the CONA  
11 neighborhood were preliminarily quantified for the scenario in which North Side Road is not made  
12 publicly accessible (an estimated increase of 6,933 trips per day with more than 950 trips during both  
13 AM and PM peak hours) and potentially significant impacts to nearby intersections were defined along  
14 with the need for mitigation measures.

## 15 CEQA CAUSES OF ACTION

### 16 (Violations of CEQA: Failure to Prepare a Subsequent EIR)

#### 17 *Substantial evidence shows that a subsequent EIR must be prepared for the Modified Project.*

18 30. Section 15164, subdivision (a), of the CEQA Guidelines orders the preparation of an addendum  
19 *only when* “some changes or additions are necessary but none of the conditions described in Section  
20 15162 calling for the preparation of a subsequent EIR have occurred.” (See *Friends of College of San*  
21 *Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 945–946  
22 (“*Friends of College of San Mateo Gardens*”).) Section 15162 calls for the preparation of a subsequent  
23 EIR when, as it pertains here: “Substantial changes are proposed in the project which will require major  
24 revisions of the previous EIR or negative declaration due to the involvement of new significant  
25 environmental effects or a substantial increase in the severity of previously identified significant  
26 effects.” (CEQA Guidelines, § 15162, subd. (a)(1); Pub. Resources Code, § 21166; see *Friends of*  
27 *College of San Mateo Gardens, supra*, (2016) 1 Cal.5th at pp. 949–950.) As explained below,  
28 conditions described in subdivision (a)(1) of section 15162 of the CEQA Guidelines apply here and,



1 therefore, a subsequent EIR is required, contrary to Respondents’ assertions. (See Addendum, pp.  
2 39–40.) As a result, provisions in section 15164 that allow preparation of an addendum are inapposite.

3 The Modified Project will result in new and/or severely increased significant impacts to land  
4 use/planning and transportation/traffic as shown in the 2018 EIR and therefore a subsequent  
5 EIR must be prepared.

6 31. With the Modified Plan, Respondents purport to eliminate the public access portion of the North  
7 Side Road from Phase 1, which will have dramatic traffic impacts on the City and on the residents in  
8 the CONA neighborhood. (See ¶¶ 23, 26, 29.) CONA residents will be forced to endure up to two  
9 decades of substantially increasing Airport-related traffic until such time that the North Side Road is  
10 fully constructed, if it ever is constructed.<sup>1</sup> (See Addendum, pp. 1, 4; see also ¶¶ 24, 29.) This traffic,  
11 which would otherwise be routed through the new North Side Road under Alternative 1 (i.e., the  
12 originally adopted Project alternative) will continue to “go west through CONA.” (2018 EIR, p. 3-44;  
13 see ¶ 23, 29 [estimated increase of 6,933 trips per day with more than 950 trips during AM and PM  
14 peak hours].) This long-term traffic increase presents at least two new potentially significant impacts  
15 that are recognized in the 2018 EIR and which trigger the CEQA requirement to prepare a subsequent  
16 EIR. (CEQA Guidelines, § 15162, subd. (a)(1).)

17 32. Potentially significant impacts are first discussed in the “Land Use and Planning” analysis for  
18 Alternative 2 (i.e., the Project alternative that omits construction of the new North Side Road) in the  
19 2018 EIR. (See ¶¶ 23, 26.) There, the 2018 EIR states that the decision of “eliminating the new ‘north  
20 side’ road” would have “Potentially Significant and Unavoidable impacts” because there would be  
21 “significant policy inconsistencies with the applicable City of Monterey [G]eneral Plan and CONA  
22 Neighborhood Plan goals and policies related to vehicular traffic from the Airport via the CONA  
23 neighborhood,” including GP Circulation Element Policy b-5, Policy c.8, Policy i.7, and Goal j; GP  
24 Noise Element Goal a; and CONA Neighborhood Plan Policies 15, 16, 29, and 34. (2018 EIR, pp. 3-43  
25 to 3-44.) The Modified Project de facto eliminates the North Side Road by postponing its construction

26 \_\_\_\_\_  
27 <sup>1</sup> In a letter dated August 21, 2020, sent from the City to the Board, City Mayor Clyde Roberson  
28 expressed concern about comments made by Board Chair Mary Ann Leffel during a March 25, 2020,  
City Council meeting for the City of Del Rey Oaks, wherein the Chair publicly stated that there was no  
plan for construction of the North Side Road.

1 for up to two decades, or maybe indefinitely, thereby in essence implementing Alternative 2, instead of  
2 the approved Alternative 1. (See fn. 1; ¶ 23.) This action creates new potentially significant and  
3 unavoidable land use and planning impacts that must be analyzed in a subsequent EIR. (CEQA  
4 Guidelines, § 15162, subd. (a)(1).) Further, if there is no plan to construct North Side Road, as has been  
5 indicated by Respondents (see fn. 1), that fact would constitute “new information of substantial  
6 importance” that was unknown at the time of the 2018 EIR and would create a significant effect not  
7 discussed in the previous EIR, which must then be analyzed in a subsequent EIR. (*Id.*, subd. (a)(3)(A);  
8 see *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1058.)

9 33. Potentially significant impacts are then discussed in the “Transportation/Traffic” analysis for  
10 the omission of the North Side Road, where the 2018 EIR states that an “in-depth traffic analysis with  
11 the distribution of long-term traffic from the north side through the CONA neighborhood would be  
12 required to fully determine the extent and significance of this impact,” which “would be greater” than  
13 under the originally proposed Project and Alternative 1. (2018 EIR, p. 3-45.) The 2018 EIR goes on to  
14 state that there also would be an increase in construction traffic through the CONA neighborhood  
15 beyond that analyzed under the Alternative 1 scenario, and, as a result of all of these traffic increases,  
16 “[m]itigation...would be necessary.” (*Ibid.*) Because full construction of the North Side Road is  
17 considered now to be a “long-term project,” if it ever is constructed (see fn. 1), any future traffic  
18 generated by its omission—by definition—is “long-term traffic” of the exact type determined in 2018  
19 EIR to require “in-depth traffic analysis.” (Addendum, p. 4 [Exhibit 2].) Moreover, by requiring  
20 additional traffic studies and mitigation, it is made clear that the traffic increase resulting from  
21 implementation of the Modified Project will create a potentially significant impact, otherwise such  
22 measures would not be necessary. (See *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist.*  
23 *Agricultural Assn.* (1986) 42 Cal.3d 929, 937 (“*Concerned Citizens of Costa Mesa*”) [increases in  
24 “acoustic effects” and “seating capacity” of a fairground amphitheater “were sufficiently important to  
25 require consideration of their effects in a later EIR”]; see also ¶ 29 [presenting preliminary data on  
26 traffic increase through CONA].)

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1 34. Further evidence of substantial increases in traffic can be found in Table 16 of the Addendum,  
2 which shows an increase of 92 weekday average daily trips resulting from the Modified Project.<sup>2</sup> These  
3 trips, however, are not at all analyzed in the long-term scenario, which is a glaring omission  
4 considering that: (a) they would occur in the long-term—for up to 20 years until the North Side Road is  
5 completed for public access (if it ever is); and (b) several intersections and roadways surrounding the  
6 Project site already operate at unacceptable levels during peak hours. (Addendum, pp. 37–38; 2018  
7 EIR, pp. 4.16-20 to 4.16-21; see *American Canyon Community United for Responsible Growth v. City*  
8 *of American Canyon* (2006) 145 Cal. App.4th 1062, 1080–1081 (“*American Canyon Community*”) [“a  
9 30-trip increase could have a significant effect” on intersections already operating at subpar levels  
10 thereby the lead agency’s “determination that that the [project] would not have significant traffic  
11 effect...is not supported by substantial evidence”].) These new potentially significant traffic impacts  
12 must be analyzed in a subsequent EIR or the public will be deprived “of any meaningful assessment of  
13 the actual project chosen by the agency.” (*Concerned Citizens of Costa Mesa, supra*, 42 Cal.3d at p.  
14 938; CEQA Guidelines, § 15162, subd. (a)(1).)

15 35. The Addendum omits mention of the above 2018 EIR conclusions entirely. The required in-  
16 depth traffic analysis did not occur nor did any discussion of inconsistency with applicable land use and  
17 planning policies and plans; there was no additional traffic mitigation presented. (See Addendum, pp.  
18 37–38.) In fact, the Addendum does nothing at all to address the long-term impacts of the Modified  
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20 <sup>2</sup> The Addendum attempts to offset these 92 new traffic trips with a reduction in trips resulting from the  
21 elimination of month-to-month landscaping storage operations at the ARFF, but this is problematic for  
22 several reasons. (Addendum, p. 37 [Table 16].) For one, the 122 weekday vehicle trips attributed to the  
23 elimination of this landscaping storage are not categorized as such in the traffic memo prepared for the  
24 Addendum. (See *Id.*, Appendix D.) In fact, the trips appear to be associated largely with the onsite  
25 towing company, *not* landscaping storage. (See *Id.*, p. D-6.) Also, this storage elimination is not listed  
26 in the project description, although it is treated as part of the Modified Project. (See *Id.*, pp. 5–6.) It is  
27 discussed and utilized throughout the analysis in an effort to demonstrate a reduction in impacts below  
28 those established in the 2018 EIR, yet there is no guarantee that it actually will occur nor is a timeline  
for implementation provided. (See Addendum, pp. 13, 24, 26–31, 36–37.) It is never properly  
described, and it is not included in the original or modified Mitigation, Monitoring, and Reporting Plan  
 (“MMRP”). This calls into question the accuracy of the Addendum’s project description and any  
analysis and impact conclusions associated with this eliminated storage.  
(*Stophemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17 [“an  
accurate...and finite project description as the *sine qua non* of an informative and legally sufficient  
[CEQA document]”].)

1 Project and makes the claims that “[i]n the long-term, [] programmatic traffic analysis contained in the  
2 [2018 EIR] is not changed by the proposed Project modifications” and that consistency with the  
3 “Monterey GP Circulation Element” and CONA policies “are the same as the Approved Project.”  
4 (Addendum, p. 38.) (See *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153  
5 Cal.App.4th 1385, 1402 [“a]s with all substantial evidence issues, [a challenger] must...show why it is  
6 lacking”). This claim is not just conclusory, it is wrong and directly contradicts Respondents’ claims in  
7 2018.

8 36. It is anomalous that a lead agency could believe both that these exact changes would result in  
9 potentially significant impacts such that additional analysis and mitigation is required *and also* that  
10 prior analysis is adequate and the impacts are the same as before. Respondents have not accounted for  
11 this incongruity, although Petitioner raised it on several occasions during the preparation of the  
12 Addendum and after its publication. (See ¶¶ 27–29, *infra*.) In fact, this is a longstanding concern that  
13 Respondents have been informed of for years. Petitioner has long been vocal about the potentially  
14 significant impacts of increased traffic in the CONA neighborhood that would occur without buildout  
15 of the North Side Road. (See 2018 EIR, p. 3-20 [“[t]he City of Monterey and the CONA neighborhood  
16 are strongly opposed to more Airport-related traffic being introduced into [their neighborhood]”]; see  
17 also ¶ 24, *infra*.)

18 37. Thus, Respondents were well aware of these potentially significant impacts, but, instead of  
19 properly addressing them in a subsequent EIR as required under CEQA, they opted for truncated  
20 analysis in the Addendum that lacks substantial evidence to support its conclusory findings. A CEQA  
21 lead agency is supposed to look at “substantial evidence in light of the whole record” to determine  
22 whether or not to prepare a subsequent EIR.” (CEQA Guidelines, § 15162, subd. (a); see *American*  
23 *Canyon Community, supra*, 145 Cal. App.4th at p. 1072.) And yet, Respondents failed to look even to  
24 their own EIR to properly inform their Addendum analysis and conclusions. Put broadly, identifying  
25 these changes as a mere modification of the approved Project, instead of a near complete shift to an  
26 alternative project, “is more misleading than if the agency has prepared no EIR, since the public might  
27 justifiably but erroneously assume that the project being built is the one discussed in the EIR.”  
28 (*Concerned Citizens of Costa Mesa, supra*, 42 Cal.3d at p. 938.) To put it in exacting CEQA terms, the

1 Modified Project is a substantial change from the original, approved Project which results in new  
2 impacts and/or a substantial increase in severity of previously identified impacts, which then triggers  
3 the mandatory preparation of a subsequent EIR. (*Id.*, § 15162, subd. (a)(1).)

4 The Modified Project will create a new potentially significant impact on public services and  
5 therefore a subsequent EIR must be prepared.

6 38. With the Modified Plan, Respondents purport to postpone the relocation of the ARFF facility  
7 and preclude it from being a joint-use facility with the City, thusly necessitating the construction of a  
8 new City fire station in order to maintain acceptable response times to the areas currently serviced, and  
9 planned to be serviced, by a joint-use facility. (See ¶¶ 23, 26.) Construction of a new facility could  
10 result in a potentially significant impact(s) that must be analyzed in a subsequent EIR. (CEQA  
11 Guidelines, § 15162, subd. (a)(1).) The 2018 EIR includes the ARFF facility as one that provides  
12 structural response units for off-airport emergencies to the east of the Airport” through a “mutual aid  
13 agreement with the City of Monterey.” (2018 EIR, pp. 4.14-6 to 4.14-7.) The 2018 EIR explicitly  
14 considered “off-airport response times” in relation to whether the originally approved Project would  
15 have “substantial adverse physical impacts associated with the provision of new or physically altered  
16 government facilities, construction of which could cause significant environmental impacts, in order to  
17 maintain acceptable...response times, or other performance objectives for...fire protection.” (*Id.*, pp.  
18 4.14-8 to 4.14-10, quoting in part CEQA Guidelines, appen. G, § XV(a).) In a turn of course, the  
19 Addendum only addresses impacts to “on-airport fire protection” in direct contrast to assumptions  
20 made in the 2018 EIR (Addendum, pp. 33, 37.) This dramatic Project change is not properly addressed  
21 in the Addendum—a meaningful oversight in its own right—but, even if it were addressed, that would  
22 fall short of what CEQA requires, as explained below.

23 39. The removal of the ARFF facility as a joint-use facility under the Modified Plan would result in  
24 “off-airport response times” of up to nine minutes<sup>3</sup> to certain areas of the City.<sup>4</sup> (2018 EIR, p. 4.14-10.)

25  
26  
27 <sup>3</sup> This nine-minute response time was determined by the City of Monterey Fire Chief Gaudenz  
28 Panholzer and conveyed to Respondents in the City’s August 11, 2020, letter commenting on the  
Addendum. A response letter submitted the next day to the City from the firm of Gatzke Dillon &  
Balance LLP on behalf of Respondents does not refute Chief Panholzer’s assessment.

1 This extended response time was deemed a significant and unavoidable impact in the 2018 EIR, and it  
2 remains the same now. (2018 EIR, p. 4.14-9 [“the suggested response time is five minutes or less” thus  
3 “longer response times...would be a Significant and Unavoidable impact”].) Moreover, it is  
4 unacceptable to the City and would directly result in the City constructing a new fire station to ensure  
5 appropriate and equitable service to those negatively impacted communities.

6 40. By Respondents’ own methodology and thresholds of significance, the construction of this new  
7 City fire station would upgrade one impact to potentially significant because construction of a new  
8 facility would cause, at least, some significant environmental impacts, and would ensure another impact  
9 remain significant and unavoidable, as it was classified in the 2018 EIR, because of the increase in  
10 response times until the construction of a new facility could occur.<sup>5</sup> (See 2018 EIR, pp. 4.14-5, 4.14-8,  
11 4.14-9; see also CEQA Guidelines, § 15064, subd. (d) [“the lead agency shall consider direct physical  
12 changes in the environment which may be caused by the project”].) This new potentially significant  
13 impact was not accurately identified in either the 2018 EIR or the Addendum, and it changes the nature  
14 of the development such that the Modified Project must be analyzed in a subsequent EIR. (CEQA  
15 Guidelines, § 15162, subd. (a)(1); see *American Canyon Community*, *supra*, 145 Cal. App.4th at p.  
16 1078; see also CEQA Guidelines, appen. G, § XV(a).)

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20 <sup>4</sup> The new ARFF facility that was proposed and approved in the original Project would have been  
21 “located only 1,250 feet west” of the existing facility and would maintain a “nearly identical response  
22 time” as under existing conditions, which would, therefore, result in no “adverse physical  
23 impacts...associated with the provision of new government facilities” that must be constructed “in order  
24 to maintain acceptable...response times.” (2018 EIR, pp. 14.4-8 to 14.4-10.) The Modified Project will  
25 result in the exact opposite effects.

26 <sup>5</sup> In Respondents’ August 11, 2020, response letter submitted to the City (see fn. 3), Respondents fail to  
27 address their own threshold of significance for this impact as contained in Section 4.14.5.1 of the 2018  
28 EIR, which clearly states that the provision of new government facilities required to maintain fire  
protection response times are potentially significant if they “could cause significant environmental  
impacts.” Instead, Respondents merely speculate that any fire station constructed within City limits  
would not result in a significant impact and assert that, in any event, they are not obliged to provide  
mitigation for the City’s need for additional fire services. However, Respondents base their former  
assertion on unevicenced assumptions, and their latter assertion does not address the most relevant  
issue here—whether the Modified Project would create a new potentially significant impact, which it  
would as established herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner respectfully requests the following relief and entry of judgment:

- 3 1. For a peremptory writ of mandate directing Respondents to:
- 4 a. Vacate and set aside its adoption of the Addendum and approval of the Modified Project
- 5 on the grounds that adequate CEQA compliance did not precede those actions;
- 6 b. Comply with CEQA and the State CEQA Guidelines in any subsequent action taken to
- 7 consider approval of the Modified Project;
- 8 2. For a temporary stay, temporary restraining order, and preliminary or permanent injunction or
- 9 other order enjoining Respondents from taking further actions to implement or proceed with the
- 10 Modified Project during the pendency of this litigation and subsequent to the Court's issuance
- 11 of a peremptory writ;
- 12 3. For Petitioner's costs of suit;
- 13 4. For an award of reasonable attorneys' fees to Petitioner authorized under Code of Civil
- 14 Procedure sections 1021.5 and 1032; and
- 15 5. For such other and further relief as the court deems just and proper.
- 16

17 DATED: September 10, 2020

Respectfully submitted,

18 REMY MOOSE MANLEY, LLP

19

20

21 By: Sabrina Teller

22 SABRINA V. TELLER

23 CASEY A. SHORROCK

24 Attorneys for Petitioner,

25 City of Monterey

26

27

28

# **EXHIBIT 1**





REMY | MOOSE | MANLEY  
LLP

Sabrina V. Teller  
steller@rmmenvirolaw.com

September 9, 2020

Via Electronic Mail & U.S. Mail

Mr. Michael La Pier, AAE  
Executive Director  
Monterey Peninsula Airport District  
200 Fred Kane Drive, Suite 200  
Monterey, CA 93940  
mike@montereyairport.com

Re: Notice of Intent to File CEQA Petition

Dear Mr. La Pier:

Please take notice that, under Public Resources Code section 21167.5, Petitioner City of Monterey intends to file a Petition for Writ of Mandate in the County of Monterey Superior Court under the provisions of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq*, against the Monterey Peninsula Airport District and Monterey Peninsula Airport District Board of Directors (collectively, “Respondents”).

The Petition for Writ of Mandate will challenge Respondents’ approval of the Modified November 26, 2018, Final Airport Master Plan (“Modified Project”) and adoption of the August 2020 Addendum to the Final Airport Master Plan Environmental Impact Report (“Addendum”). The Petition for Writ of Mandate will request that the court direct Respondents to vacate and rescind adoption of the Addendum along with the approval of the Modified Project. Additionally, the Petition will seek Petitioner’s costs and attorney’s fees associated with this action pursuant to Code of Civil Procedure sections 1021.5 and 1032.

Sincerely,

Sabrina Teller

**PROOF OF SERVICE**

I, Kaitlyn E. Conover, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, California 95814, and email address is kconover@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice for collection and processing mail whereby mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day mail is collected and deposited in a USPS mailbox after the close of each business day.

On September 9, 2020, I served the following:

**NOTICE OF INTENT TO FILE CEQA PETITION**

- BY FIRST CLASS MAIL** by causing a true copy thereof to be placed in a sealed envelope, with postage fully prepaid, addressed to the following person(s) or representative(s) as listed below, and placed for collection and mailing following ordinary business practices.
  
- BY ELECTRONIC TRANSMISSION OR EMAIL** by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below. I did not receive any electronic message or other indication that the transmission was unsuccessful.

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of September 2020, at Sacramento, California.



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Kaitlyn E. Conover

**SERVICE LIST**

<p>Mr. Michael La Pier, AAE Executive Director Monterey Peninsula Airport District 200 Fred Kane Drive, Suite 200 Monterey, CA 93940 mike@montereyairport.com</p>	<p><i>Via Email and First Class Mail</i></p>
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