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**FILED**

**12/27/2018 12:30 PM**

**SAN LUIS OBISPO SUPERIOR COURT**  
BY Carol L. McGuirk  
Carol L. McGuirk, Deputy Clerk

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10 SIERRA CLUB

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN LUIS OBISPO**

13 SIERRA CLUB, a California  
14 Corporation,

15 Plaintiff/Petitioner,

16 vs.

17 COUNTY OF SAN LUIS OBISPO and  
18 SAN LUIS OBISPO COUNTY BOARD  
19 OF SUPERVISORS and DOES 1-50,  
20 Inclusive

21 Defendants/Respondents

22 DENNIS FESLER FAMILY TRUST,  
23 and DOES 51-100, Inclusive

24 Real Party in Interest

Case No: 18CV-0785

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

25 Plaintiff/Petitioner, SIERRA CLUB, alleges upon information and belief as follows:

26 **I. INTRODUCTION**

1. Through this action, SIERRA CLUB challenges the County of San Luis Obispo and San Luis Obispo Board of Supervisor's (collectively, "County") adoption of Resolution 2018-241, thereby granting the application of Dennis Fesler Family Trust for Certificates of Compliance C17-0109, SUB2017-00029. Petitioner contends the County's

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

1 decision to approve the certificates of compliance is not supported by substantial evidence  
2 and contrary to well-established legal precedent.

3 **II. THE PARTIES**

4 2. Sierra Club is a California non-profit membership organization that is  
5 dedicated to the protection of the environment. Some members of the Sierra Club reside in  
6 San Luis Obispo, in the vicinity of the land at issue.

7 3. Respondent and Defendant County of San Luis Obispo (“the County”) is a  
8 local governmental agency and subdivision of the State of California with the authority to  
9 regulate and administer land use and development within its territory, but only in compliance  
10 with the duly adopted provisions of its zoning ordinances, General Plan and all applicable  
11 provisions of state law, including the Subdivision Map Act.

12 4. Respondent and Defendant San Luis Obispo Board of Supervisors (the  
13 “Board”) is the legislative body and highest administrative body of the County. The BOS has  
14 the ultimate authority to approve or disapprove subdivision maps, certificates of compliance  
15 and other land use entitlements. The County Planning Commission is the lead agency within  
16 the meaning of CEQA, but the BOS bears the ultimate responsibility for County’s  
17 compliance with the Subdivision Map Act.

18 5. Petitioner is informed and believes and on that basis alleges that the Fesler  
19 Family Trust is the Real Party in Interest by virtue of its ownership of the real property that is  
20 the subject of this lawsuit.

21 6. Does 51-100, inclusive, are persons, firms and/or entities that are presently  
22 unknown to Petitioner who claim an interest in the subject matter of this action sufficient to  
23 render their participation necessary for adjudication of issues raised in this lawsuit. Petitioner  
24

1 is currently informed and believes that there are no such parties, but will amend the  
2 Petition/Complaint as required to show their true name and capacity if any become known.

3 **III JURISDICTION AND VENUE**

4 7. The Superior Court has unlimited jurisdiction because Petitioner seeks  
5 equitable and declaratory relief.

6 8. Venue is proper in San Luis Obispo County because the real property at issue  
7 is located in San Luis Obispo County.

8 9. In pursuing this action, which involves enforcement of important rights  
9 affecting the public interest and a large subsection of the population, Petitioner will confer a  
10 substantial benefit on the general public and residents of San Luis Obispo County and  
11 therefore will be entitled to attorneys' fees and costs pursuant to, *inter alia*, C.C.P. §1021.5.

12 **IV GENERAL ALLEGATIONS**

13 10. Dennis Fesler Family Trust is the owner of certain real property located at  
14 2025 Lopez Drive in San Luis Bay Subarea in the South County Planning Area, known as  
15 San Luis Obispo County Assessor's Parcel No. 047-241-037 ("the property" or Cox Tract).

16 11. In 2011, the County Planning Department issued two unconditional  
17 certificates of compliance ("COC") for Lots 2 and 7 of the Cox Tract based on building  
18 permit history.

19 12. Invoking Government Code §66499.35, the property owner (i.e. Real Party)  
20 requested that San Luis Obispo County determine and declare that Lots 3, 4, 5, 8, 9, 10, 11,  
21 13, 14, 15, 16 and 17 of the Cox Tract had been created in compliance in compliance with the  
22 Subdivision Map Act ("SMA") and was not subsequently extinguished by merger,  
23 resubdivision, partial conveyance, operation of law or otherwise. Real Party further requested  
24

1 that the County issue certificate of compliance to be recorded in the office of the County  
2 Recorder.

3           13. Real Party's application of the COCs claims "the Cox Tract has been  
4 historically identified on the Official Map of San Luis Obispo County since 1913." The  
5 application also claims "there are unique characteristics of the Cox Tract, main roadways  
6 accepted by the County Board of Supervisors, drainage improvements and a wide variety of  
7 lot sizes and shapes that clearly distinguish it from cookie cutter, paper tracts underlying the  
8 Witt Home Ranch and other decisions." The application claims the Cox map has sufficient  
9 physical characteristics to satisfy the "design and improvement" requirement of the SMA  
10 "grandfather" clause.  
11

12           14. The County Planning director reviewed the Fesler application, including the  
13 history of the Property, evaluated the map information submitted with the application, and  
14 upon consideration of the relevant case law, determined that the twelve (12) lots shown on  
15 the Cox Tract map were not entitled to certificates of compliance. On January 19, 2018, the  
16 Planning Director informed Real Party in writing that that the request for the issuance of  
17 twelve (12) unconditional certificates of compliance ("COC") would be denied because the  
18 1905 recordation of the Subdivisions of the Cox Tract did not create 12 legal parcels under  
19 the SMA.  
20

21           15. In a detailed letter to Real Party, the Planning Director carefully explained the  
22 basis for the denial of the COCs. The Planning Director's letter explained that "maps created  
23 in 1905 cannot meet the requirements of the grandfather clause because there were no laws in  
24 effect at that time that regulated design and improvement." The letter further explained that  
25 "current caselaw holds that maps recorded in the unincorporated areas between 1893 and  
26

1 1919 are not deemed to create parcels recognizable by certificate of compliance because the  
2 laws in effect at that time did not regulate “design and improvement” and therefore section  
3 66499.30(d) (the “grandfather clause”) would not be applicable. No amount of design and  
4 improvement features can overcome this holding.”

5 16. Real Party timely appealed the Planning Director’s denial of the COCs to the  
6 Board.

7 17. The Board conducted public hearings on June 19, 2018, July 17, 2108, and  
8 October 2, 2018, and after receiving oral and written comments and objections, on a vote of  
9 3-2, decided to uphold the appeal, thereby reversing the Planning Director’s denial of the  
10 COCs.  
11

12 18. Despite the County Counsel’s objection, the Board held “the filing for  
13 recordation of the Subdivisions of the Cox Tract on April 5, 1905, did create separate legal  
14 lots shown on the map that are recognized under today’s Subdivision Map Act.” Exhibit A,  
15 Findings in Support of Approval of Certificates of Compliance C 17-0109, Sub 2017-00029.  
16 The Board made the following findings.

17 19. The Board found “although the Cox Tract Map was recorded in the Book of  
18 Surveys, Stats. 1917 Ch. 790 cured any informalities or deficiencies such recordation may  
19 have caused.” The Board also determined that the 1901 SMA regulated the design and  
20 improvement of subdivisions because it requires maps to show certain specific items,  
21 including dedications to the public and rights of way. While the words “design” and  
22 “improvement” may not have been used until the 1929 Map Act, the concepts have existed  
23 since the enactment of the 1893 Map Act and, as such, we find that the Cox Tract Map falls  
24 squarely within the corners of grandfather provisions.”  
25

1           20.    The Board also found that

2                   We also find that because the County has recognized the Cox Tract Map as a  
3                   valid map over thirty (30) times since its recordation, including but not limited  
4                   to issuance of building permits, acceptance of roads, lot line adjustments and  
5                   subdividing lots, it has effectively set a precedent that it is a legal map with  
6                   legal lots, and therefore the remaining twelve (12) lots are entitled to the same  
7                   treatment.

8                   We find that Government Code section 66499.35(d), along with the California  
9                   Supreme Court in *Gardner v. County of Sonoma*, 29 Cal. 4th 990 (2003),  
10                  provides that an “official map. . . shall constitute a certificate of compliance  
11                  with respect to the parcels of real property described therein,” and that an  
12                  “official map” includes one that was prepared by a county surveyor with the  
13                  approval of the board of supervisors. Because the Cox Tract is present on the  
14                  1913 Official Map of San Luis Obispo County, we find that the lots therein are  
15                  entitled to certificates of compliance.

16                 We find that the California appellate court decisions in *Witt Home Ranch, Inc.*  
17                 *v. County of Sonoma* and *Abernathy Valley, Inc. v. County of Solano* are not  
18                 controlling because the holdings are narrowly applied to the specific maps at  
19                 issue in those cases. In each decision, the court makes it clear the features of  
20                 the map are such that the lots therein do not meet the requirements of the  
21                 statute, and the courts make no broad statements regarding antiquated maps in  
22                 general. Therefore, we find that there is no case law that prohibits us from  
23                 granting the certificates of compliance in this instance.

24                 We find that there are other cases, such as *Association of Spreckels Residents*  
25                 *v. County of Monterey*, where courts have ruled that antiquated maps do  
26                 contain legal lots. Courts have been analyzing maps on a case-by-case basis  
                    and granting certificates of compliance based on the specific features of the  
                    map at issue.

                    We find that each map is entitled to an individual analysis based on the facts  
                    and features of that particular map to determine whether it complies with all  
                    laws that were in effect at the time it was recorded.

                    We find that because the Cox Tract Map was in compliance with all laws in  
                    effect at the time of recordation, including laws regulating design and  
                    improvement, the remaining twelve (12) lots are entitled to certificates of  
                    compliance.

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25    \\  
26    \\

1 **FIRST CAUSE OF ACTION**

2 (Approval of Certificates of Compliance in violation of the Subdivision Map Act)

3 21. Petitioner refers to and incorporates herein by this reference all preceding  
4 paragraphs as though fully set forth herein.

5 22. Petitioner contends that the County of San Luis Obispo and San Luis Obispo  
6 Board of Supervisors' approval of the 12 Cox Tract COCs was abuse of discretion and must  
7 be set aside because the Board's findings in support of the approval are not based on  
8 substantial evidence and/or the findings are based on a mistake of law, as set forth below.  
9

10 23. Contrary to the Board's finding, the Cox Tract Lots do not fall within the  
11 "grandfather" provision of the SMA, because contrary to the Board's determination, the 1901  
12 SMA did not regulate the design and improvement of subdivisions.

13 24. The Board's finding that the Cox Tract Map is valid map because the fact that  
14 County previously issued building permits or allowed subdivisions did not set a legal  
15 "precedent" or entitlements with respect to the twelve (12) lots that are the subject of this  
16 action.

17 25. The Board's finding that, because the Cox Tract is present on the "1913  
18 Official Map of San Luis Obispo County," pursuant to Government Code section  
19 66499.35(d) and Gardner v. County of Sonoma (2003) 29 Cal.4th 990, the 12 Lots are  
20 entitled to certificates of compliance was abuse of discretion. The Board's finding is not  
21 compelled by the Gardner decision and the 1913 map of San Luis Obispo County does not  
22 meet the definition of an "official map" as described in Gov. Code § 66499.52.  
23

24 26. The Board's finding that Witt Home Ranch, Inc. v. County of Sonoma (2008)  
25 165 Cal.App.4th 543, and Abernathy Valley, Inc. v. County of Solano (2009) 173  
26

1 Cal.App.4th 42 are not controlling was also an abuse of discretion and based on erroneous  
2 legal reasoning. The holding in these cases are directly on point in that these cases establish  
3 that iteration of the SMA prior to 1919 did not include a “design and improvement”  
4 provision.

5 27. The Board’s contention that Association of Spreckels Residents v. County of  
6 Monterey ruled that antiquated maps do contain legal lots was abuse of discretion and not  
7 supported by any valid and/or applicable case law. Association of Spreckels Residents v.  
8 County of Monterey does not appear to be a valid, published California appellate or Supreme  
9 Court case.

10 28. The Board’s finding that “because the Cox Tract Map was in compliance with  
11 all laws in effect at the time of recordation, including laws regulating design and  
12 improvement, the remaining twelve (12) lots are entitled to certificates of compliance” is  
13 irrelevant and inapposite.

14 WHEREFORE, Sierra Club prays for judgment against Respondents and each of  
15 them as explained below.

16  
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PETITIONER prays:

19 (1) For declaratory judgment, stating that the County’s approval of the 12 Cox  
20 Tract COCs was abuse of discretion, in that it was not supported by substantial  
21 evidence and/or in violation of the provisions of the SMA and the applicable  
22 case law;

23 (2) For Writ of Mandate directing the County to set aside Resolution No. 2018-  
24 241;



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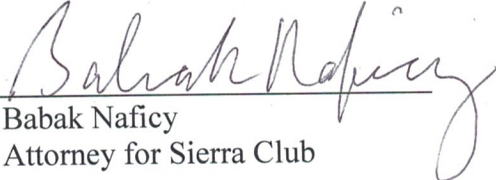
(3) For an award of costs and attorney's fee; and

(4) For an award of such other and further relief as the Court deems just and proper.

Respectfully Submitted:

Dated: December 27, 2018

LAW OFFICE OF BABAK NAFICY

By:   
Babak Naficy  
Attorney for Sierra Club


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VERIFICATION

I, Andrew Christie, say:

I am the Director of the Santa Lucia Chapter of the Sierra Club. I have read the foregoing Proposed Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The facts alleged in the above petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on December 27, 2018, in San Luis Obispo, California.



Andrew Christie