

ENDORSED
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Superior Court of California
County of San Francisco

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CLERK OF THE COURT

BY: BOWMAN LIU
Deputy Clerk

Brian Gaffney (CBN 168778)
LAW OFFICES OF BRIAN GAFFNEY APC
446 Old County Road, Suite 100-310
Pacifica, CA 94044
Tel: (650) 219 3187
brian@gaffneylegal.com

Attorneys for Petitioner/Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

MIDCOAST ECO

Petitioner and Plaintiff,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent and Defendant.

SAN MATEO COUNTY, SAN MATEO
COUNTY BOARD OF SUPERVISORS, and
DOES 1 through 20, inclusive,

Real Parties in Interest and Defendants.

Civil Case No.

CPE-21-517430

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

**PUB. RES. CODE §§ 21168, 21168.5,
30801, 30803; CODE CIV. PROC. §§ 1085
AND 1094.5**

CEQA CASE

**(SUBJECT TO SAN FRANCISCO
LOCAL RULE 6.11; PUB. RES. CODE §
21167.1)**

INTRODUCTION

1. This action challenges the certification by the California Coastal Commission (“Commission” or “Respondent”) of an environmental review document for San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1 and approval of San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1 (“LCP Amendment” or “Project”) in reliance thereon—without the proper level of environmental review of potentially significant adverse impacts as required by the California Environmental Quality Act (“CEQA”) (Public Resources Code section 21000 et seq.), the CEQA Guidelines (California Code of Regulations, Title 14, section 15000 et seq.), and the Commission’s CEQA regulatory program adopted pursuant to Public Resources Code section 21080.5.

2. The Commission has violated CEQA by failing to (1) analyze the reasonably foreseeable impacts of the LCP Amendment, (2) analyze the impacts of the LCP Amendment as compared to the existing environmental baseline, (3) evaluate the cumulative impacts of the LCP Amendment, (4) adequately evaluate and respond to public comments, (5) analyze mitigations and alternatives to the LCP Amendment, and because its conclusion of no significant environmental impacts is not supported by substantial evidence.

3. This action also challenges the Commission’s violation of the California Coastal Act of 1976 (“Coastal Act”) (Pub. Resources Code, § 30000 et seq). The LCP Amendment does not conform with the Coastal Act as it will not (1) protect, maintain and enhance the overall quality of the coastal zone environment and its resources, (2) assure orderly, balanced utilization and conservation of coastal zone resources, or (3) maximize public access to and along the coast. (Pub. Resources Code, § 30001.5.) The LCP Amendment is also inconsistent with the San Mateo County Local Coastal Program including, *inter alia*, the policies intended to protect Environmentally Sensitive Habitat Areas, requiring that development minimizes traffic impacts and limits the expansion of roadways, that there are adequate water supplies and sewage treatment facilities, and considers dangers from fires.

4. The Project redesignates an 11-acre parcel in unincorporated Moss Beach, San Mateo County from Planned Unit Development (PUD)-124 to PUD-140 - in furtherance of future

development of a specific residential design and zoning for the site. The LCP Amendment consists of both a San Mateo County Land Use Plan (LUP) Amendment and an Implementation Plan Amendment to allow for the development of 71 residential units pursuant to a specific site plan and specific development standards for the Cypress Point PUD. The Commission approved this redesignation without consideration of any project specific impacts, or appropriate interim mitigation measures for this redesignation.

5. The LCP Amendment, without consideration of mitigations or alternatives, will result in building residences, a laudable goal, on a parcel that has not been properly evaluated yet for lead, asbestos or other hazardous materials. The project site was part of a U.S. Navy Anti-aircraft Training Center from 1943 to 1946, and facilities on the site included an underground fuel tank, a gas pump, and a military incinerator. A November 1989 letter reveals that despite some asbestos abatement, additional asbestos containing materials were detected in areas of the property. The project site has not been tested for asbestos in subsurface soil or groundwater. Further, a Phase II Site Assessment later found 2 locations on the project site where lead concentrations in soil exceeded the Environmental Screening Level (Level) established by the San Francisco Bay Regional Water Board for lead concentrations at the ground surface. An additional investigation found the concentration of lead in soil at a third location at the project site at 290 mg/kg – nine times the Regional Board Level.

6. The Project site is located within a County-recognized Community at Risk fire zone, with only one road in and out of the Project site. There are limited roads serving Moss Beach -- all of which lead to Highway 1 only. Even without a fire emergency, Level F critical traffic delay is expected to be unavoidable at four Highway 1 intersections as a result of the Project, which will add at least 142 vehicles to this traffic constrained site. There has been no evaluation of fire evacuation or fire response impacts from the reasonably foreseeable development resulting from the LCP Amendment.

7. The Montara Creek riparian corridor, an Environmentally Sensitive Habitat Area (ESHA), runs parallel to the site's northern border. Stormwater from the Project site will ultimately discharge to Montara Creek within the James V. Fitzgerald Area of Specific Biological Significance (ASBS) watershed area, leading to potential discharges of sediment and hazardous soils to these

1 sensitive biological areas.

2 8. The Project site has been re-inhabitated with native Monterey Cypress and Monterey
3 Pine trees, as well as a native plant community of coyote brush, strawberry, yerba buena, yarrow,
4 coffeeberry, and iris. The Calflora database includes an observation of a California rare plant, rose
5 leptosiphon, on the site.

6 9. Level F critical traffic delays are expected to be significant and unavoidable at four
7 Highway 1 intersections from the reasonably foreseeable development resulting from the LCP
8 Amendment.

9 10. It is reasonably likely that a new sewage pump station will be needed for reasonably
10 foreseeable development resulting from the LCP Amendment, and if improperly designed could
11 result in spills of sewage to waters of the United States. This in an area where over 100 sewage spills
12 have occurred since 2011 resulting in over 500,00 gallons of raw sewage being spilled into the
13 Pacific Ocean and Half Moon Bay – almost entirely because of structural pipe failures.

14 11. The Commission prejudicially abused its discretion by failing to proceed as required
15 by law, because its findings were not supported by substantial evidence, and because these violations
16 of law precluded informed public participation and informed decision making.

17 12. This is also an action for appropriate injunctive relief in the event that the Commission
18 proceeds with implementation of its approval challenged herein, and/or Real Parties in Interest San
19 Mateo County proceed with processing a Coastal Development Permit prior to the final resolution of
20 this action.

21 13. The Commission's violations of CEQA and the Coastal Act, as well as approval of the
22 Project based thereon, will harm Petitioner, the community and the public - as environmental values
23 will be degraded without the required level of environmental review and compliance with the Coastal
24 Act and the San Mateo County LCP.

25 **PARTIES**

26 **Plaintiff/Petitioner**

27 14. Petitioner Midcoast ECO is a 501(c)(3) non-profit organization, formed to protect
28 environmental resources and promote social welfare. MIDCOAST ECO regularly informs, educates

1 and counsels the public regarding development projects and their environmental impacts on San
2 Mateo coastal communities. Midcoast ECO brings this action to ensure thorough and transparent
3 environmental review, ensure compliance with the Coastal Act, and not for the purpose of delay, nor
4 for the purpose of thwarting the low- or moderate-income nature of the foreseeable housing
5 development.

6 15. MIDCOAST ECO participated in the administrative proceedings by *inter alia*
7 submitting written and verbal comments on the Project, including *inter alia* the Commission's
8 violations of CEQA and the Coastal Act. MIDCOAST ECO brings this action on behalf of itself, the
9 adversely affected community and the public at large.

10 16. Petitioner has a direct and beneficial interest in the Commission's compliance with
11 CEQA, the CEQA Guidelines, and the Coastal Act. That interest has been and will continue to be
12 directly and adversely affected by the Commission's actions challenged herein, which actions violate
13 provisions of law set forth in this action, precluded informed public participation, and would cause
14 substantial harm to the environment. Petitioner will suffer concrete, actual and imminent injury from
15 the Commission's prejudicial abuse of discretion as well as from implementation of the Project
16 without full compliance with CEQA and the Coastal Act.

17 Defendants/Respondent & Real Parties

18 17. Respondent and Defendant the California Coastal Commission ("Commission") is,
19 and at all times herein mentioned was, a duly organized governmental entity organized under the
20 Constitution and laws of the State of California. The Commission is an agency of the State of
21 California, established and organized pursuant to Chapter 4 of the Coastal Act, with its main office in
22 the City and County of San Francisco. The Commission is a certified regulatory agency under CEQA.
23 (Pub. Resources Code, § 21080.5.) The Commission operates under regulations set forth in title 14,
24 California Code of Regulations section 13001 et seq. The Commission is responsible for, *inter alia*,
25 complying with the Constitution of the State of California and for implementing the laws of the State
26 of California, including CEQA, the CEQA Guidelines, and the Coastal Act. The Commission has
27 primary responsibility for implementation of the Coastal Act's provisions and ultimate authority to
28 ensure that coastal development conforms to the policies embodied in the Coastal Act.

1 18. The Commission issued the environmental review document for San Mateo County
2 LCP Amendment Number LCP-2-SMC-20-0054-1 in the form of a Commission Staff Report, held a
3 hearing on the environmental review document and San Mateo County LCP Amendment Number
4 LCP-2-SMC-20-0054-1, certified the environmental review document for San Mateo County LCP
5 Amendment Number LCP-2-SMC-20-0054-1, approved San Mateo County LCP Amendment
6 Number LCP-2-SMC-20-0054-1 in reliance thereon, and issued the Notice of Determination for the
7 Project.

8 19. The Notice of Determination filed by the Commission identifies LCP Amendment No.
9 LCP-2-SMC-20-0054-1 as submitted by San Mateo County, and the Commission's action of
10 approval as at the request of San Mateo County. Public Resources Code section 21167.6.5(a) requires
11 that a petitioner "shall name, as a real party in interest, the person or persons identified by the public
12 agency in its notice... ." For this reason, Petitioner names San Mateo County as a Real Party in
13 Interest and Defendant.

14 20. Real Party in Interest and Defendant San Mateo County is, and at all times herein
15 mentioned was, a duly organized governmental entity organized under the Constitution and laws of
16 the State of California. It is responsible through the San Mateo County Board of Supervisors for,
17 *inter alia*, complying with the Constitution of the State of California and for implementing the laws
18 of the State of California, including CEQA, the CEQA Guidelines and the San Mateo County LCP.

19 21. Real Party in Interest and Defendant San Mateo County Board of Supervisors is the
20 decision-making body for San Mateo County. The San Mateo County Board of Supervisors, after
21 conducting a hearing, adopted a resolution directing San Mateo Planning staff to submit the LCP
22 Amendment for California Coastal Commission certification.

23 22. Petitioner is unaware of the true names and capacities of Real Parties and Defendants
24 DOES 1 through 20, inclusive, and therefore sues said Real Parties and Defendants under fictitious
25 names. Petitioner will amend its Petition and Complaint to show the true names and capacities of
26 Does 1 through 20 when the same have been ascertained. Each of the Real Parties and Defendants is
27 the agent and/or employee of each other Real Parties and Defendants, and each performed acts on
28 which this action is based within the course and scope of such Real Parties' and Defendants' agency

1 and/or employment. Petitioner is informed and believes and therefore alleges that each of the Real
2 Parties and Defendants are legally responsible in some manner for the events and happenings referred
3 to herein.

4 **STATEMENT OF FACTS**

5 *The Project and its Environmental Setting*

6 23. The LCP Amendment is a fundamental land use decision that will guide the future
7 growth and development of the Project site and will result in reasonably foreseeable physical changes
8 to the environment. The stated purpose of the LCP Amendment is “in preparation for the future
9 submittal of a coastal development permit application.” The Commission’s Staff Report
10 acknowledged that the LCP Amendment includes specific development plan requirements, permitted
11 uses, density, heights, setbacks, lot coverage, floor areas, landscaping, and parking, and includes a
12 site plan with 18 two-story residential apartment buildings which future development must conform
13 to. The LCP Amendment directly serves to facilitate the foreseeable development, and will result in
14 direct and indirect significant adverse environmental impacts.

15 *Lead, Asbestos, and Inadequate Sampling at Site Intended for Future Residential Development*

16 24. The Project site is a former World War II-era facility used for gunnery training. A
17 November 10, 2015 Phase I Environmental Site Assessment described the Project site as including an
18 incinerator.

19 25. A November 1989 letter reveals that despite some asbestos abatement, additional
20 asbestos containing materials were detected in areas of the property.

21 26. The project site has not been tested for asbestos in subsurface soil or groundwater.

22 27. A Phase II Site Assessment later found 2 locations on the project site where lead
23 concentrations in soil exceeded the Environmental Screening Level (Level) established by the San
24 Francisco Bay Regional Water Board. Lead concentrations at the ground surface were 230 mg/kg and
25 88 mg/kg, while the Regional Board Level for lead in residential shallow soil is 32 mg/kg for
26 terrestrial habitat exposure. An additional investigation found the concentration of lead in soil at a
27 third location at the project site at 290 mg/kg – nine times the Level.

28 //

1 *Fire and Evacuation*

2 28. The project site is located within a Community at Risk zone according to the San
3 Mateo County's Wildland Urban Interface Fire Threatened Communities Map

4 29. There is only one road in and out of the Project site. The reasonably foreseeable
5 development resulting from the LCP Amendment will include parking for at least 142 vehicles.

6 30. There are limited roads serving Moss Beach - all of which lead to Highway 1 only.
7 Even without a fire emergency, Level F critical traffic delay is expected to be unavoidable at four
8 Highway 1 intersections as a result of the LCP Amendment.

9 31. The mega-fires of 2020 have confirmed that catastrophic wildland fires are the new
10 normal in California, including along the central California coast, as climate change increases fire
11 intensity, creates drier conditions, increases the length of the fire season, and subjects public water
12 systems to increased risk of public safety power shutoffs.

13 *Discharges to Environmentally Sensitive Montara Creek and the James V. Fitzgerald Area*

14 32. Montara Creek, a perennial stream runs parallel to the site's northern border before
15 quickly reaching the Pacific Ocean. A 1985 EIR for a different project at the same site described
16 Montara Creek as 50 feet away.

17 33. The Montara Creek riparian corridor is deemed an Environmentally Sensitive Habitat
18 Area (ESHA) by the San Mateo County LCP.

19 34. The slopes at the site range from 10 percent to 50 percent, dropping from 189 feet in
20 the east to 77 feet at the northwest corner of the site.

21 35. There is no existing storm drain infrastructure on the property.

22 36. There are wetlands where Montara Creek meets the Pacific Ocean within the James V.
23 Fitzgerald Area of Specific Biological Significance.

24 37. Stormwater which will run off the Project site will ultimately discharge to Montara
25 Creek within the James V. Fitzgerald Area of Specific Biological Significance (ASBS) watershed
26 area.

27 38. Based on the increase in impervious surfaces from the reasonably foreseeable
28 development, the increased flows off-site of storm water runoff, projected grading and demolition of

existing buildings, and likelihood of more intense storm events from climate change, it is reasonably likely the Project will result in increased storm water discharges of sediment and hazardous soils to Montara Creek and to the James V. Fitzgerald Area of Specific Biological Significance.

Traffic

39. Caltrans and the San Mateo County Department of Public Works raised serious points about how the reasonably foreseeable development will overburden Highway 1 traffic, and not be adequately served by transit services.

40. The reasonable foreseeable development will cause significant “and unavoidable” critical traffic delays at a minimum of four Highway 1 intersections.

41. Roundabouts or additional lanes are expected to be needed to handle traffic from the reasonably foreseeable development.

42. The reasonably foreseeable development from the LCP Amendment will likely preclude basic traffic, sewage, and water services to other developments.

43. A draft, unadopted “Transportation Demand Management Plan” was not formulated for public review or the Commission’s consideration at the time the LCP Amendment was approved. The County concedes that the effectiveness of this Transportation Demand Management Plan can not be guaranteed.

44. The Commission improperly relied on a draft, unadopted “Comprehensive Transportation Management Plan” called “Connect the Coastside” to mitigate any possible traffic impacts, which plan was still a draft at the time the LCP Amendment was approved.

Commission Review & Project Approval

45. On January 22, 2020 and June 10, 2020, the San Mateo County Planning Commission held hearings to consider the San Mateo County Local Coastal Plan Map and Text Amendment to rezone the project site and revise the site plan and project design.

46. On July 21, 2020, the San Mateo County Board of Supervisors, after conducting a hearing, adopted a resolution directing San Mateo Planning staff to submit the LCP Amendment for California Coastal Commission certification. In doing so, San Mateo County likewise put off CEQA review of the reasonably foreseeable development until after the Commission approves the LCP

1 Amendment for the Cypress Point PUD. In doing so, San Mateo County ignored its own Zoning
2 Regulation 6191 which requires that no PUD District be adopted unless the Planning Commission
3 first reviews a Precise Plan and made findings of “harmony” with said plan, and no conflict with the
4 Montara-Moss Beach-El Granada Community Plan.

5 47. Midcoast ECO submitted written comments urging first San Mateo County, and then
6 the Commission, to refrain from approving the Project based on violations of CEQA and the Coastal
7 Act. Midcoast ECO commented in writing to San Mateo County regarding the LCP Amendment on
8 January 22, 2020, June 8, 2020 and July 21, 2020. Midcoast ECO commented in writing to the
9 Commission on October 16, 2020, January 21, 2021, February 8, 2021 and March 5, 2021. Midcoast
10 ECO provided verbal comments at the hearings conducted by the San Mateo County Planning
11 Commission, the San Mateo County Board of Supervisors, and the Commission.

12 48. On March 12, 2021 the Commission certified the environmental review document for
13 San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1 and approved San Mateo
14 County LCP Amendment Number LCP-2-SMC-20-0054-1 in reliance thereon.

15 49. On March 22, 2021, the Commission filed its Notice of Determination for the Project.

16 **PROCEDURAL ALLEGATIONS**

17 50. Petitioner has performed any and all conditions precedent to filing the instant action
18 and has exhausted any and all available administrative remedies to the extent required by law, *inter*
19 *alia*, submitting written and oral comments on the Project and its environmental review during the
20 administrative process.

21 51. Petitioner timely raised each and every significant substantive and procedural issue
22 known to it in compliance with Public Resources Code section 21177 during the review process for
23 this Project. Petitioner commented in writing to the Commission on October 16, 2020, February 8,
24 2021, and March 5, 2021. The February 8, 2021 submittal attached copies of comments previously
25 submitted to San Mateo County on January 22, 2020, June 8, 2020 and July 21, 2020, and the Coastal
26 Commission’s own two prior comment letters on the Project. In addition, on January 21, 2021,
27 Petitioner submitted significant expert comments to the Commission.

28 52. Petitioner requested that Respondent not certify its environmental review document

1 for San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1, and not approve San
2 Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1 in reliance thereon, until
3 Respondent fully complies with CEQA and the Coastal Act. Any further exhaustion would be futile.

4 53. Petitioner has complied with the requirements of Public Resources Code section
5 21167.5 by mailing a written notice of the commencement of this action to Respondent prior to filing
6 this Petition and Complaint. A copy of the prior written notice provided to Respondent, with proof of
7 service thereof, is attached hereto as Exhibit “1”.

8 54. Petitioner has complied with the requirements of Public Resources Code section
9 21167.7 and Code of Civil Procedure section 388 by mailing a copy of the Petition and Complaint to
10 the state Attorney General. A copy of the notice to the Attorney General is attached hereto as Exhibit
11 “2”.

12 55. Petitioner has complied with Public Resources Code section 21167.6 by filing a
13 Request for Preparation of the Administrative Record at the time of filing this Petition and
14 Complaint. The request notified Respondent that Petitioner would elect to prepare the record or that
15 the parties would agree to an alternative method of preparation.

16 56. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
17 sections 1085 (traditional mandate), and 1094.5 (administrative mandate); Public Resource Code
18 sections 21168 and 21168.5 (California Environmental Quality Act); Public Resource Code sections
19 30801 and 30803 (Coastal Act); and Article VI, section 10, of the California Constitution.

20 57. Venue is proper in San Francisco County pursuant to Code of Civil Procedure section
21 395 because the Commission is located within San Francisco County.

22 58. By exhausting any and all available administrative remedies, including timely raising
23 each and every significant substantive and procedural issue, as alleged herein and demonstrated by
24 the administrative record before Respondent, Petitioner has no plain, speedy or adequate remedy in
25 the ordinary course of law unless this Court enjoins and mandates that Respondent comply with its
26 CEQA duties, set aside the approval of the Project, and comply with the Coastal Act. In the absence
27 of relief by the Court as set forth in the Prayer hereunder, Respondent’s approval will remain in effect
28 in violation of CEQA and in violation of the Coastal Act.

1 59. If Respondent and Real Parties and their agents are not enjoined from implementing
2 the Project, and from undertaking acts in furtherance thereof, Petitioner will suffer irreparable harm
3 from which there is no adequate remedy at law in that a fundamental land use approval that will
4 guide the future growth and development of the Project site will have been adopted, the Project site
5 and surrounding areas would be irrevocably altered, and significant unmitigated adverse
6 environmental impacts would occur.

7 60. Petitioner will also suffer irreparable harm for which there is no plain, speedy or
8 adequate remedy in the course of ordinary law unless this Court grants the requested relief to require
9 Respondent to undertake adequate environmental review for San Mateo County LCP Amendment
10 Number LCP-2-SMC-20-0054-1 in compliance with CEQA, to require Respondent to comply with
11 the Coastal Act in evaluating San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1,
12 declares that the Commission's environmental review document for San Mateo County LCP
13 Amendment Number LCP-2-SMC-20-0054-1 fails to comply with CEQA and the Coastal Act, and
14 enjoins the Commission from approving San Mateo County LCP Amendment Number LCP-2-SMC-
15 20-0054-1 pending full compliance with CEQA and the Coastal Act. In absence of such remedies,
16 Respondent's decision will remain in violation of state law.

17 61. In pursuing this action, which involves enforcement of important rights affecting the
18 public interest, Petitioner will confer a substantial benefit on the general public and citizens of San
19 Francisco and San Mateo counties, the San Francisco Bay Area and the State of California, and
20 therefore will be entitled to attorney's fees and costs pursuant to, inter alia, Code of Civil Procedure
21 section 1021.5.

22 62. This Petition / Complaint is timely filed within all applicable statutes of limitations.

23 63. Petitioner brings this action pursuant to Public Resources Code sections 21168 and
24 21168.5, 30801 and 30803, and Code of Civil Procedure sections 1085 and 1094.5 which require that
25 an agency's approval of a Project be set aside if the agency has prejudicially abused its discretion.
26 Respondent has prejudicially abused its discretion because Respondent has failed to proceed
27 according to the law, its decision is not supported by substantial evidence, and Respondent has failed
28 to make proper and adequate findings.

STATEMENT OF LAW

California Environmental Quality Act

64. CEQA is an integral part of every public agency's decision making process. (Pub. Res. Code § 21006.) CEQA was enacted to protect the environment by the establishment of administrative procedures to ensure that long-term protection of the environment shall be the guiding criterion in public decisions.

65. Approval of any LCP Amendment by the Commission must comply with all of CEQA's substantive requirements. (Pub. Res. Code, §§ 21080.5, 21080.9.) The Commission's staff reports "serve as a functional equivalent of an EIR." The Commission's CEQA obligations include fully identifying and evaluating in its staff reports a project's adverse environmental effects, and to mitigate those effects through adoption of feasible alternatives or mitigation measures. (§ 21080.5, subd. (d).)

66. It is a fundamental principle of CEQA that potentially significant project environmental impacts must be analyzed before project approval.

67. In evaluating the significance of environmental effects, an agency must consider not only direct physical changes, but also reasonably foreseeable indirect physical changes. (CEQA Guideline 15064, subd. (d).) Environmental effects include "indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems." (CEQA Guideline 15358, subd. (a)(2).)

68. CEQA requires analysis of cumulative impacts, i.e., the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. (CEQA Guideline 15355 & 15358.)

69. CEQA's informational purposes are not satisfied by analysis "that simply ignores or assumes a solution to the problem of supplying water to a land use project. Decision makers must, under the law, be presented with sufficient facts to "evaluate the pros and cons of supplying the

1 amount of water that the [project] will need.” (*Vineyard Area Citizens for Responsible Growth, Inc. v.*
2 *City of Rancho Cordova* (2007) 40 Cal. 4th 412, 430–31.)

3 70. To determine environmental effects, a public agency must compare baseline physical
4 conditions to the anticipated physical conditions were the project to be completed.

5 71. The existing environment is not the existing LCP PUD designation. The comparison
6 must be “between existing physical conditions without the project and the conditions expected to be
7 produced by the project.” Without such a comparison, the Commission’s environmental review will
8 not inform decision makers and the public of the project’s significant environmental impacts.

9 72. The Commission’s environmental review document must provide written responses to
10 significant environmental points raised during the public evaluation process for the project. (CEQA
11 Guideline 15088.)

12 ***California Coastal Act***

13 73. The Coastal Act is a comprehensive scheme to govern land use planning for the entire
14 coastal zone of California.

15 74. The basic goals of the state for the coastal zone are to (1) protect, maintain and
16 enhance the overall quality of the coastal zone environment and its resources, (2) assure orderly,
17 balanced utilization and conservation of coastal zone resources, and (3) maximize public access to
18 and along the coast. (Pub. Resources Code, § 30001.5.)

19 75. Chapter 3 of the Coastal Act sets out coastal resources planning and management
20 policies which constitute standards for proposed development subject to the Coastal Act.

21 76. The standard of review for LUP amendments is that they must be consistent with and
22 adequate to carry out the Coastal Act Chapter 3 provisions. The standard of review for
23 Implementation Plan amendments is that they must be consistent with and adequate to carry out the
24 policies of the certified LUP.

25 77. Coastal Act section 30107.3 defines “Environmental justice” as including (1) the
26 availability of a healthy environment for all people and (2) the deterrence, reduction, and elimination
27 of pollution burdens for populations and communities experiencing the adverse effects of that
28 pollution, so that the effects of the pollution are not disproportionately borne by those populations

1 and communities.

2 78. Coastal Act section 30200 requires that (a) consistent with the coastal zone values
3 cited in Section 30001 and the basic goals set forth in Section 30001.5, and except as may be
4 otherwise specifically provided in this division, the policies of Coastal Act Chapter 3 shall constitute
5 the standards by which the adequacy of LCPs, and, the permissibility of proposed developments, are
6 determined, and (b) all public agencies carrying out or supporting activities outside the coastal zone
7 that could have a direct impact on resources within the coastal zone shall consider the effect of such
8 actions on coastal zone resources in order to assure that these policies are achieved.

9 79. Coastal Act section 30230 requires that marine resources be maintained, enhanced,
10 and where feasible, restored. Special protection must be given to areas and species of special
11 biological significance. Uses of the marine environment shall be carried out in a manner that will
12 sustain the biological productivity of coastal waters and that will maintain healthy populations of all
13 species of marine organisms adequate for long-term commercial, recreational, scientific, and
14 educational purposes.

15 80. Coastal Act section 30231 requires that the biological productivity and the quality of
16 coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations
17 of marine organisms and for the protection of human health shall be maintained and, where feasible,
18 restored through, among other means, minimizing adverse effects of waste water discharges and
19 entrainment, controlling runoff, preventing substantial interference with surface waterflow,
20 encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian
21 habitats, and minimizing alteration of natural streams.

22 81. Coastal Act section 30232 requires protection against the spillage of hazardous
23 substances shall be provided in relation to any development. Effective containment and cleanup
24 facilities and procedures shall be provided for accidental spills that do occur.

25 82. Coastal Act section 30240 requires that Environmentally Sensitive Habitat Areas
26 (ESHA) shall be protected against any significant disruption of habitat values, and that development
27 in areas adjacent to ESHAs shall be designed to prevent impacts which would significantly degrade
28 those areas, and be compatible with the continuance of those habitat areas.

1 83. Coastal Act section 30250 requires that new residential development must be located
2 within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or,
3 where such areas are not able to accommodate it, in other areas with adequate public services and
4 where it will not have significant individual or cumulative adverse effects on coastal resources.

5 84. Coastal Act section 30252 requires that the location and amount of new development
6 should maintain and enhance public access to the coast by providing or extending transit service, and
7 by providing commercial facilities within or adjoining residential development that will minimize the
8 use of coastal access roads.

9 85. Coastal Act section 30253 requires that new development shall minimize risks to life
10 and property in areas of high fire hazard and minimize energy consumption and vehicle miles
11 traveled.

12 86. Coastal Act section 30254 requires that expanded public works facilities shall be
13 designed and limited to accommodate needs generated by development consistent with the provisions
14 of this division, and that State Highway Route 1 in rural areas of the coastal zone remain a scenic
15 two-lane road.

16 87. The Coastal Act specifically defines cumulative effects and requires their review by
17 the Commission where it is reasonably foreseeable that an LCP amendment or other project before
18 the Commission will result in new residential development. “‘Cumulatively’ or ‘cumulative effect’
19 means the incremental effects of an individual project shall be reviewed in connection with the
20 effects of past projects, the effects of other current projects, and the effects of probable future
21 projects.” (Pub. Resources Code §§ 30105.5, 30250.)

22 88. The Commission’s environmental review documentation must support its conclusions
23 of Coastal Act conformity with references to specific scientific and empirical evidence. The
24 Commission’s staff report is the purveyor of the Coastal Commission’s findings explaining its
25 decisions and tracing the findings to substantial supporting evidence. (14 Cal. Code Regs. §§ 13057,
26 subd. (c)(1), (2), 13096, subd. (a).)

27 89. The Commission must determine whether the land use plan (LUP) of a Local Coastal
28 Program raises a substantial issue as to conformity with the policies of Chapter 3 of the Coastal Act

1 and must adopt findings to support its action. Coastal Act section 30512.

2 90. The Commission's environmental review document must provide written responses to
3 significant environmental points raised during the public evaluation process for the project. (Pub.
4 Res. Code § 21080.5, subd. (d)(2)(D); 14 Cal. Code Regs. § 13057, subd. (c)(3).)

5 **FIRST CAUSE OF ACTION FOR VIOLATION OF CEQA**
6 **(Pub. Res. Code, § 21000 *et seq.*)**

7 91. Petitioner incorporates by reference herein the preceding paragraphs, as if fully set
8 forth.

9 **Claim One – Failure to Analyze the Reasonably Foreseeable Impacts of the LCP Amendment.**

10 92. The scope of the Commission's CEQA review of the LCP Amendment was required
11 to be the reasonably foreseeable effect of these changes (the site-specific development) on the
12 environment. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 793–794; *Black Prop. Owners Assn.*
13 *v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985.)

14 93. The Commission failed to analyze the reasonably foreseeable impacts of the
15 residential development allowed by the LCP Amendment. Rather than engage in the analysis needed
16 for informed decision making and public participation, the Commission impermissibly forestalled
17 that analysis to a “subsequent process” in regards to *inter alia* reasonably foreseeable traffic, biology,
18 hazardous soils, water supplies, wastewater, and fire risk impacts.

19 94. By failing to analyze the reasonably foreseeable impacts of the LCP Amendment, the
20 Commission failed to comply with CEQA and prejudicially abused its discretion.

21 **Claim Two – Failure to Analyze the Impacts of the LCP Amendment to the Existing**
22 **Environment**

23 95. The Commission improperly skirted adequate evaluation of the potential
24 environmental impacts of the LCP Amendment by comparing the amendment to the hypothetical
25 development allowable under the existing LCP (the current but never implemented site designation of
26 PUD-124), rather than to the existing physical conditions on the ground.

27 96. This improper procedure was utilized by the Commission in regards to traffic impacts
28 (VMT, circulation, energy consumption, capacity), water availability, sewer impacts, fire risk and
evacuation impacts, visual/aesthetic impacts, cultural/archeological impacts, public access, and

1 biological and sensitive habitat impacts.

2 97. The Commission's approach - using hypothetical allowable conditions under PUD-
3 124 as the baseline - resulted in an "illusory" comparison that could only mislead the public as to the
4 reality of the impacts and subvert full consideration of the actual environmental impacts, a result
5 directly at odds with CEQA.

6 98. By failing to analyze the impacts of the LCP Amendment to the existing environment,
7 the Commission failed to comply with CEQA and prejudicially abused its discretion.

8 **Claim Three – The Commission Improperly Deferred Analysis of Project Impacts Until After**
9 **Approval of the LCP Amendment**

10 99. The Commission improperly deferred the required analysis of the impacts of the LCP
11 Amendment to a subsequent process in regards to traffic, environmental justice, coastal resources
12 (water, sewer, and traffic circulation), sensitive habitats, public access, fire risk, aesthetics, and water
13 availability impacts.

14 100. By improperly deferring analysis of the impacts of the LCP Amendment until after
15 approval of the LCP Amendment, the Commission failed to comply with CEQA and prejudicially
16 abused its discretion.

17 **Claim Four - The Commission Failed to Evaluate the Cumulative Impacts of the LCP**
18 **Amendment.**

19 101. The Commission failed to undertake analysis of the cumulative impacts of the LCP
20 Amendment. The Commission's environmental review document for the LCP Amendment reached
21 the conclusion of no potential cumulative impacts - without discussing the cumulative traffic impacts
22 from projects, such as the Big Wave project, Best Western Hotel Half Moon Bay, Pacific Ridge,
23 Mavericks Multiplex and other approved and reasonably foreseeable projects in the San Mateo
24 County coastal zone – on *inter alia* traffic, water, wastewater, and public access to the coast.

25 102. The Commission also failed to evaluate whether the expanded sewage line and
26 potential pump station for the reasonably foreseeable residential development will increase
27 development intensity or facilitate other off-site development by facilitating second units or ADUs
28 (Accessory Dwelling Units) in the project vicinity.

103. By failing to analyze the cumulative impacts of the LCP Amendment, the Commission

1 failed to comply with CEQA and prejudicially abused its discretion.

2 **Claim Five – The Commission Failed to Provide Written Responses to Significant Issues Raised**
3 **by the Public.**

4 104. The Commission failed to provide written responses to significant environmental
5 points raised by the public. The Commission failed to respond to significant environmental issues
6 raised by Midcoast ECO and other members of the public. The Commission also failed to respond to
7 expert comments from Pang Engineers related to project traffic and transportation, from Matt
8 Hagemann (SWAPE) related to soil contamination and evaluation, from Steve Powell (BioMaAS
9 Inc.) and Bryan Jessop related to biological impacts and evaluation, or from Robert W. Emerick
10 related to sewage wastewater impacts.

11 105. By failing to provide written responses to significant issues raised by the public, the
12 Commission failed to comply with CEQA and prejudicially abused its discretion.

13 **Claim Six – The Commission’s Finding That The LCP Amendment Will Not Result In Any**
14 **Significant Environmental Effects Is Not Supported By Substantial Evidence.**

15 106. The Commission found that “the proposed LCP amendment is not expected to result
16 in any significant environmental effects.”

17 107. The Commission’s conclusion of no significant adverse impacts from the reasonable
18 foreseeable development is contradicted by substantial evidence of potentially significant impacts
19 before the Commission.

20 108. The Commission failed to support with substantial evidence or analysis its finding that
21 the LCP Amendment includes all feasible measures to ensure that potentially significant
22 environmental impacts of new development are minimized to the maximum extent feasible consistent
23 with the requirements of the Coastal Act and the San Mateo County LCP.

24 109. Because the Commission’s findings were not supported by substantial evidence or
25 analyses, it prejudicially abused its discretion.

26 **Claim Seven – The Commission Failed to Evaluate Mitigation Measures.**

27 110. Based on the Commission’s unsupported finding that there are no potential significant
28 adverse environmental effects from the LCP Amendment, the Commission failed to evaluate

1 mitigation measures.

2 111. The Commission improperly defers - to the time of the County's subsequent
3 consideration of a CDP application – what measures will be taken to address potential impacts,
4 including to traffic, safety, and circulation.

5 112. Traffic mitigations, including *inter alia* a Transportation Demand Management Plan or
6 a Comprehensive Transportation Management Plan, are impermissibly deferred until after Project
7 approval.

8 113. The Commission engaged in and relied on an improper ratio approach to assess
9 mitigations.

10 114. The Commission failed to adopt mitigation measures with specific performance
11 criteria.

12 115. The Commission failed to ensure mitigation enforceability or adopt a Mitigation
13 Monitoring and Reporting Plan (MMRP).

14 116. By failing to properly evaluate mitigation measures, ensure mitigation enforceability,
15 or adopt an MMRP, the Commission failed to comply with CEQA and prejudicially abused its
16 discretion.

17 **Claim Eight – The Commission Failed to Evaluate Alternatives.**

18 117. Based on the Commission's unsupported finding that there are no potential significant
19 adverse environmental effects from the LCP Amendment, the Commission failed to evaluate
20 alternatives, including any consideration of an alternative site, or alternative number of residential
21 units as part of the reasonably foreseeable development.

22 118. By failing to evaluate alternatives, the Commission failed to comply with CEQA and
23 prejudicially abused its discretion.

24 **SECOND CAUSE OF ACTION FOR VIOLATION OF THE COASTAL ACT**
25 **(Pub. Res Code, § 30000 et seq.)**

26 119. Petitioner incorporates by reference herein the preceding paragraphs, as if fully set
27 forth.

28 //

Claim One - LCP Amendment Inconsistency with Coastal Act Sections 30107.3 and 30232.

120. The Commission did not consider pollution burdens. Coastal Act section 30107.3 defines “Environmental justice” as including (1) the availability of a healthy environment for all people, and (2) the elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.

121. The Commission is required to protect against the spillage of hazardous substances in relation to any development. Containment and cleanup must be considered. Coastal Act section 30232.

122. Adequate testing for lead, asbestos and other hazardous materials in soil and groundwater should have been performed before Commission findings of LCP Amendment consistency with Coastal Act sections 30230–30232 were made.

123. The Commission did not consider or evaluate the evidence submitted regarding residual soil contamination at the Project site in making its consistency determinations.

124. The Commission did not make consistency determinations which accounted for the need to make a healthy environment available, and avoid pollution burdens, to the low income residents of the reasonably foreseeable development, to the construction workers at the site or to the existing Moss Beach community.

125. The Commission was required to make these Coastal Act section 30230–30232 consistency determinations, supported by findings and substantial evidence before the LCP Amendment was approved. (See Coastal Act §§ 30200, subd. (a), 30512.)

126. There has been no individual or cumulative analysis of sludge treatment capacity and long-term sludge disposal capacity from the reasonably foreseeable development resulting from the LCP Amendment.

127. By failing to properly evaluate Coastal Act consistency as alleged herein, the Commission violated the Coastal Act and prejudicially abused its discretion.

Claim Two - LCP Amendment Inconsistency with Coastal Act Section 30253.

128. The Commission has avoided adequate analysis of high fire risk and landslide risks at

1 this site in evaluating Chapter 3 consistency.

2 129. The Commission has not undertaken any analysis of fire hazard risks, fire response
3 times, or associated air quality impacts.

4 130. The Commission has not evaluated water availability to fight fires in the Community
5 at Risk zone that includes consideration of the reasonably foreseeable development resulting from the
6 LCP Amendment.

7 131. By failing to properly evaluate Coastal Act consistency as alleged herein, the
8 Commission violated the Coastal Act and prejudicially abused its discretion.

9 **Claim Three - LCP Amendment Inconsistency with Coastal Act Section 30240.**

10 132. During the construction phase and thereafter, increased stormwater flows will likely
11 discharge significant additional sediment levels into Montara Creek, the James V. Fitzgerald Area of
12 Specific Biological Significance (ASBS), and the wetlands at the Pacific Ocean.

13 133. Given the likelihood that lead, asbestos or other hazardous substances are present on
14 this site, the discharges to the Creek, the ASBS and the wetlands may also transport these hazardous
15 substances into the ASBS during storm events.

16 134. The Commission has failed to evaluate, or provide findings supported by substantial
17 evidence, addressing the level of significance of increased runoff, sedimentation and hazardous
18 materials to the Fitzgerald ASBS or the Montara Creek ESHA.

19 135. There is no evidence before the Commission to allow the Commission to find that the
20 ESHA will be protected against any significant disruption of its habitat values, or that the stormwater
21 discharges to Montara Creek and the James V. Fitzgerald ASBS may be considered “uses dependent
22 on” these ESHA resources.

23 136. By failing to properly evaluate Coastal Act consistency as alleged herein, the
24 Commission violated the Coastal Act and prejudicially abused its discretion.

25 **Claim Four - LCP Amendment Inconsistency with Coastal Act Section 30253.**

26 137. The reasonably foreseeable development resulting from the LCP Amendment will not
27 minimize energy consumption because it will be located far from any commercial uses or
28 development. There has been no analysis yet of vehicle miles traveled. Coastal Act section 30253

requires energy consumption and vehicle miles traveled to be minimized. The Commission's Staff Report failed to provide any standard or threshold for the Commission to use to find consistency with this Chapter 3 policy, as applied in the impacted coastal zone area.

138. By failing to properly evaluate Coastal Act consistency as alleged herein, the Commission violated the Coastal Act and prejudicially abused its discretion.

Claim Five - LCP Amendment Inconsistency with Coastal Act section 30250.

139. The reasonably foreseeable development resulting from the LCP Amendment will not be served by adequate public services or be located in close proximity to developed areas able to accommodate it.

140. By failing to properly evaluate Coastal Act consistency as alleged herein, the Commission violated the Coastal Act and prejudicially abused its discretion.

Claim Six - LCP Amendment Inconsistency with Coastal Act Section 30254.

141. The Commission has not evaluated what effect the reasonably foreseeable development resulting from the LCP Amendment will have on basic traffic, sewage, and water services to other developments.

142. By failing to properly evaluate Coastal Act consistency as alleged herein, the Commission violated the Coastal Act and prejudicially abused its discretion.

Claim Seven - LCP Amendment Inconsistency with Coastal Act Section 30320 and 30321.

143. Coastal Act section 30230 requires that marine resources be maintained and enhanced, and that special protection shall be given to areas of special biological significance. Coastal Act section 30231 requires that the quality of coastal waters, streams and wetlands be maintained and restored by minimizing adverse effects of waste water discharges and controlling runoff.

144. The Montara Creek riparian corridor is deemed an Environmentally Sensitive Habitat Area by the San Mateo County LCP.

145. There are wetlands where Montara Creek meets the Pacific Ocean within the James V. Fitzgerald Area of Specific Biological Significance.

146. Stormwater which will run off the Project site from the Project's reasonably foreseeable development will ultimately discharge to Montara Creek and then to the James V.

1 Fitzgerald Area of Specific Biological Significance (ASBS) watershed area.

2 147. Based on the increase in impervious surfaces from the reasonably foreseeable
3 development, the increased flows off-site of storm water runoff, projected grading and demolition of
4 existing buildings, and likelihood of more intense storm events from climate change, it is reasonably
5 likely the Project will result in increased storm water discharges of sediment and hazardous soils to
6 Montara Creek and to the James V. Fitzgerald Area of Specific Biological Significance.

7 148. It is reasonably likely that a sewage pump station will be needed for the reasonably
8 foreseeable development, and if improperly designed could result in spills of sewage to waters of the
9 United States.

10 149. The Commission failed to properly evaluate the impacts of the Project on marine
11 resources and areas of special biological significance by minimizing adverse effects of waste water
12 discharges and controlling runoff.

13 150. By failing to properly evaluate Coastal Act consistency as alleged herein, the
14 Commission violated the Coastal Act and prejudicially abused its discretion.

15 **Claim Eight - LCP Amendment Inconsistency with Coastal Act Section 30252.**

16 151. The Commission failed to consider whether the reasonably foreseeable development
17 resulting from the Project will maintain and enhance public access to the coast by providing or
18 extending transit service, and by providing commercial facilities within or adjoining residential
19 development that will minimize the use of coastal access roads.

20 152. By failing to properly evaluate Coastal Act consistency as alleged herein, the
21 Commission violated the Coastal Act and prejudicially abused its discretion.

22 **Claim Nine – The Commission Adopted An Implementation Plan Amendment Inconsistent**
23 **With, and Inadequate To Carry Out, The Policies Of The Certified LUP.**

24 153. The Implementation Plan Amendment adopted by the Commission was inconsistent
25 with, and inadequate to carry out, the policies of certified San_Mateo County LUP policies, including
26 but not limited to, LUP Policies 1.18(c), 1.19, 3.12, 2.8, 2.42, 2.52, 2.53, 7.3 and 9.1.

27 154. By failing to properly evaluate Implementation Plan consistency with, and adequacy
28 to carry out, the LUP Policies as alleged herein, the Commission violated the Coastal Act and

1 prejudicially abused its discretion.

2 155. By adopting an Implementation Plan Amendment inconsistent with, and inadequate to
3 carry out, the policies of certified San Mateo County LUP policies, the Commission violated the
4 Coastal Act and prejudicially abused its discretion.

5 **Claim Ten – The Commission Improperly Found that San Mateo County’s LCP Certification**
6 **Submittal Was Complete**

7 156. San Mateo County’s LCP Amendment certification submittal was incomplete as San
8 Mateo County did not provide the Commission with (1) a discussion of the amendment's relationship
9 to and effect on the other sections of the certified LCP (14 CCR § 13552(c)), (2) an analysis that
10 meets the requirements of Section 13511 or an approved alternative pursuant to Section 13514 and
11 that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act (14 CCR §
12 13552(d)), and (3) copies or summaries of significant comments received by the County, nor of San
13 Mateo County’s response to those comments. 14 CCR § 13552(a).

14 157. By improperly determining that San Mateo County’s certification submittal was
15 complete, the Commission violated the Coastal Act and prejudicially abused its discretion.

16 **Claim Eleven – The Commission Improperly Made its Consistency Act Determinations and**
17 **Findings**

18 158. The Commission improperly avoided considering the reasonably foreseeable impacts
19 of the proposed LCP Amendment in making its Coastal Act consistency determinations and findings.

20 159. The Commission improperly compared the San Mateo County LCP Amendment to the
21 current but never implemented PUD-124 designation - rather than to the existing environment - in
22 making its Coastal Act consistency determinations and findings.

23 160. The Commission improperly failed to evaluate the cumulative impacts of the LCP
24 Amendment in making its Coastal Act consistency determinations and findings.

25 161. The Commission failed to support with substantial evidence or analysis its finding that
26 the LCP Amendment includes all feasible measures to ensure that potentially significant
27 environmental impacts of new development are minimized to the maximum extent feasible consistent
28 with the requirements of the Coastal Act and the San Mateo County LCP.

1 162. By improperly determining that San Mateo County's certification submittal was
2 complete, the Commission violated the Coastal Act and prejudicially abused its discretion.

3 163. By failing to properly evaluate Coastal Act consistency as alleged herein, the
4 Commission violated the Coastal Act and prejudicially abused its discretion.

5 **THIRD CAUSE OF ACTION – FAILURE TO PROVIDE A FAIR HEARING**

6 164. A writ is appropriate where the petitioner has been deprived of a fair hearing. (Code
7 Civ.Proc., § 1094.5, subd. (b).)

8 165. The Commission released a Staff Report Addendum on March 12, 2021 - the day of
9 its approval of the environmental review document for the LCP Amendment and approval of the LCP
10 Amendment in reliance thereon.

11 166. That Commission Staff Report Addendum relied upon a Supplemental Environmental
12 Evaluation Report prepared by the potential future CDP applicant - which report was never made
13 available to the public, including Petitioner.

14 167. By reliance upon a Supplemental Environmental Evaluation Report which was never
15 made available to Petitioner, the Commission deprived Petitioner of a fair hearing on March 12,
16 2021.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner and Plaintiff prays for relief as follows:

19 1. For a peremptory writ of mandate directing Respondent to void its environmental
20 review document for San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1.

21 2. For a peremptory writ of mandate directing Respondent to void San Mateo County
22 LCP Amendment Number LCP-2-SMC-20-0054-1 in the absence of compliance with CEQA and the
23 the Coastal Act.

24 3. For a peremptory writ of mandate directing Respondent to fully comply with CEQA
25 and the Coastal Act prior to Project approval, and take any other action required pursuant to Public
26 Resources Code section 21168.9.

27 4. For a peremptory writ of mandate setting aside the Commission's March 12, 2021
28 hearing as the Commission deprived Petitioner of a fair hearing.

5. For a temporary restraining order, preliminary injunction, and a permanent injunction restraining Respondent and Real Parties and their agents, servants and employees, and all others acting in concert with them or in their behalf, from processing or approval of a Coastal Development Permit in reliance on San Mateo County LCP Amendment Number LCP-2-SMC-20-0054-1, from undertaking any grading, construction, development, improvements, issuing any construction, building or development approvals or permits, or taking any other action to implement in any way the Project, pending full compliance with CEQA, the Coastal Act, and all other requirements of law.

6. For a declaration that the Commission's failed to comply with CEQA and the Coastal Act in its consideration of LCP Amendment Number LCP-2-SMC-20-0054-1, and for a declaration that the Commission deprived Petitioner of a fair hearing on March 12, 2021.

7. For costs of the suit incurred herein.

8. For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure, the common law private attorney general doctrine, and any other applicable provision of law; and

9. For such other and further relief as the Court deems just and proper.

DATED: April 21, 2021

LAW OFFICES OF BRIAN GAFFNEY, APC



Brian Gaffney

EXHIBIT 1

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
brian@gaffneylegal.com

April 19, 2021

Via U.S. Mail
Via Email

Steve Padilla
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Stephen.Padilla@coastal.ca.gov

Re: Notice of Intent to File Suit
LCP Amendment Number LCP-2-SMC-20-0054-1

Dear Commissioner Padilla,

This letter provides written notice pursuant to Public Resources Code section 21167.5 that Midcoast ECO (Petitioner) will file suit on or before April 21, 2021 challenging the California Coastal Commission's (Commission) certification of an environmental review document for San Mateo County LCP Amendment LCP-2-SMC-20-0054-1 and approval of San Mateo County LCP Amendment LCP-2-SMC-20-0054-1 (LCP Amendment or Project) in reliance thereon.

The grounds for this lawsuit will include, *inter alia*, that Commission has violated the California Environmental Quality Act (CEQA) by failing to (1) analyze the reasonably foreseeable impacts of the LCP Amendment, (2) analyze the impacts of the LCP Amendment as compared to the existing environmental baseline, (3) evaluate the cumulative impacts of the LCP Amendment, (4) adequately evaluate and respond to public comments, (5) analyze mitigations and alternatives to the LCP Amendment, and because its conclusion of no significant environmental impacts is not supported by substantial evidence.

This litigation will also challenge the Commission's violations of the California Coastal Act of 1976 as the LCP Amendment will not protect, maintain and enhance the overall quality of the coastal zone environment and its resources, assure orderly balanced utilization and conservation of coastal zone resources, maximize public access to and along the coast, and will violate the coastal resources planning and management policies of Chapter 3 of the Coastal Act.

Petitioner is willing to immediately begin discussing terms to settle this dispute that could either obviate the need to file this lawsuit or provide for dismissal of the lawsuit once filed. Petitioner presents the following settlement demand, in the form of principles that would have to be embodied in a formal written settlement agreement:

1. Commission rescinds its certification of the environmental review document for San Mateo County LCP Amendment LCP-2-SMC-20-0054-1 and sets aside the LCP Amendment in reliance thereon;
2. Commission prepares an environmental review document for San Mateo County LCP Amendment LCP-2-SMC-20-0054-1 in compliance with CEQA prior to Project approval,
3. Commission prepares an LCP Amendment that complies with the Coastal Act;
4. Commission agrees to stay Project implementation until and unless it certifies an adequate environmental review document for LCP-2-SMC-20-0054-1, and an LCP Amendment that complies with the Coastal Act, or alternatively that the Commission agrees to issuance of a writ of mandate commanding that it comply with CEQA and the Coastal Act in regards to LCP Amendment LCP-2-SMC-20-0054-1.

This letter and Petitioner's prior participation in Commission's administrative process satisfy Petitioner's obligations under Code of Civil Procedure section 1021.5, as interpreted by the California Supreme Court in *Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553, 577.

Thank you for your attention to this matter.

Very Truly Yours,



Brian Gaffney

cc: Midcoast ECO
Erik Martinez, Coastal Planner

Proof of Service by Mail and Electronic Service

MIDCOAST ECO v. CALIFORNIA COASTAL COMMISSION et al.

I am over the age of 18 years and not a party to the above entitled action. My business address is 446 Old County Road, Suite 100-310, Pacifica, CA 94044.

On April 19, 2021, I served the Notice of Commencement of CEQA Action attached hereto by electronic service (given Covid-19) and by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United State mail at Pacifica, California addressed as follows:

Steve Padilla
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Stephen.Padilla@coastal.ca.gov
cc: erik.martinez@coastal.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 20, 2021, at Pacifica, California.

LAW OFFICES OF BRIAN GAFFNEY, APC



Brian Gaffney

EXHIBIT 2

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
brian@gaffneylegal.com

April 21, 2021

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

RE : *MIDCOAST ECO v. CALIFORNIA COASTAL COMMISSION*

Dear Attorney General:

Enclosed is a copy of a CEQA Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief which will be filed on April 21, 2021 in the above-captioned matter. This copy is being furnished to you pursuant to Code of Civil Procedure section 388 and Public Resources Code section 21167.7.

Please acknowledge receipt of the enclosed petition by return letter.

Sincerely,

A handwritten signature in black ink that reads "Brian Gaffney". The signature is written in a cursive, flowing style.

Brian Gaffney

VERIFICATION

I, Dolores Silva, am a member of. Petitioner and Plaintiff in the above-captioned action.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition"). The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 21, 2021 in Moss Beach, California.


Dolores Silva