

1 Celeste Langille (SBN 185302)
2 Attorney at Law
3 446 Old County Road, Suite 100-341
4 Pacifica, California 94044
5 LangilleLaw@gmail.com
6 Telephone (510)290-8000

RECEIVED
SAN MATEO COUNTY

APR 23 2014

5 Brian Gaffney (SBN 168778)
6 Law Offices of Brian Gaffney APC
7 446 Old County Road, Suite 100-310
8 Pacifica, CA 94044
9 Telephone 650 219 3187
10 Fax 650 733 7793
11 brian@gaffneylegal.com

Clerk of the Superior Court

FILED
SAN MATEO COUNTY

APR 23 2014

Clerk of the Superior Court

By  DEPUTY CLERK

12 Attorneys for Petitioner and Plaintiff
13 PACIFICANS FOR A SCENIC COAST

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF SAN MATEO

FILE BY FAX

16 PACIFICANS FOR A SCENIC COAST, an
17 unincorporated association

Case No.: CIV 523973

18 Petitioner and Plaintiff,

**SECOND AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE**

19 v.

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

20 CALIFORNIA DEPARTMENT OF
21 TRANSPORTATION; and DOES 1
22 through 10,

CEQA

23 Respondents and Defendants

24 SAN MATEO COUNTY
25 TRANSPORTATION AUTHORITY; CITY
26 OF PACIFICA, and DOES 11 through 50,

Real Parties in Interest and Defendants

1 BY THIS PETITION AND COMPLAINT ("Petition"), Petitioner and Plaintiff alleges:

2 **INTRODUCTION**

3 1. Petitioner and Plaintiff PACIFICANS FOR A SCENIC COAST ("Petitioner"
4 or "PACIFICANS) bring this action to challenge Caltrans' certification of an EIR
5 ("Environmental Impact Report") to widen Highway 1 through portions of the City of
6 Pacifica, as well as Caltrans' approval of the State Route 1/Calera Parkway/Highway 1
7 Widening Project ("Project") in reliance thereon.
8

9 2. Highway 1 (also known as State Route 1, Pacific Coast Highway and
10 Calera Parkway) through Pacifica offers scenic vistas of the Pacific Ocean and its
11 coastline, as well as Pacifica's verdant hills and abundant vegetation. The entire
12 Highway 1 corridor is an important public viewshed and the tree corridor along sections
13 of Highway 1 is a dominant feature of Pacifica's scenic beauty. This section of
14 Highway 1 crosses Calera Creek and is adjacent to wildlife habitat, including that of the
15 endangered San Francisco Garter snake and the threatened California red-legged frog,
16 which exist on both sides of Highway 1 in multiple locations. The southern portion of
17 the Project area is directly adjacent to the California Coastal Trail. Pacificans enjoy life
18 in their small, beautiful surfing town and have designated in their Local Coastal Plan
19 that any highway improvements must not increase highway capacity.
20
21
22

23 3. All of this would be in jeopardy if the Project proceeds without proper
24 environmental review. Caltrans has approved a Project that will more than double the
25 width of the existing roadway, and encase the highway in 9-foot to 22-foot high retaining
26 walls. The EIR failed to adequately analyze the impacts to the public safety of
27 pedestrians (including school children) and bicyclists crossing the increased width of
28

1 Highway 1 as proposed. There were only two alternatives considered by Caltrans - Big
2 and Bigger. Bigger was Caltrans' identified preferred alternative.

3 4. Remarkably, Caltrans' EIR concluded there would be not a single adverse
4 significant impact from the Project. To reach this conclusion, the EIR relied on
5 contradictory information and, more importantly, analysis which ignored its own stated
6 thresholds of significance and the standards established by decades of CEQA law. For
7 example, while the construction phase of the Project is expected to last for at least two
8 years, Caltrans avoided proper analysis of these impacts by labeling them as simply
9 "temporary" or construction related. Likewise, Caltrans ignored its own visual thresholds
10 for significance by not considering the public's overwhelming objections to the
11 numerous aesthetic impacts of the proposed Project. Proper environmental review
12 would have included disclosure of potentially significant Project impacts; formulation
13 and implementation of adequate mitigation measures, and a thorough vetting of
14 reasonable alternatives.
15

16 5. Caltrans' actions are illegal. They have violated CEQA (California
17 Environmental Quality Act codified at Public Resources Code section 21000 et seq.)
18 and the CEQA Guidelines (California Code of Regulations, Title 14, section 15000 et
19 seq.)
20

21 6. Unless Caltrans' approvals are enjoined, certification of this inadequate
22 EIR will harm the public, Petitioner and its members as environmental values will be
23 degraded and the Project area will be adversely impacted – without the required level of
24 CEQA environmental review.
25

26 //

PARTIES

1
2 7. Petitioner PACIFICANS FOR A SCENIC COAST is an unincorporated
3 association whose mission is to protect, preserve and restore the scenic coastal
4 environs within the City of Pacifica and beyond. Petitioner's members live in the City of
5 Pacifica, and are concerned about the potentially significant, adverse effects that the
6 Project may have on the local and regional environment, about Caltrans' failure to
7 prepare an adequate Project EIR, and about Caltrans' failure to adopt 21081 Findings
8 or a Mitigation Monitoring Program at the time of Project approval. Petitioner and its
9 members are concerned about the Project's potentially significant adverse impacts to,
10 *inter alia*, visual/aesthetics, wetlands, biological resources, cultural resources, air
11 quality, traffic and circulation, pedestrian and bicycle facilities, noise, land use,
12 hydrology, greenhouse gas emissions, climate change, and cumulative impacts.
13 Petitioner is concerned about Caltrans' failure to properly investigate, disclose, analyze
14 and mitigate such impacts, and Caltrans' failure to properly analyze Project alternatives.

15
16 8. Petitioner is an organization formed after Project approval whose
17 members include individuals who objected to the approval of the Project orally and in
18 writing during the public comment period and during public hearings on the Project
19 before the issuance of the Project Notice of Determination. Petitioner's members
20 include, but are not limited to, Bill Collins and Mitch Reid who objected to Project
21 approval and commented on the inadequacies of the Environmental Impact Report
22 during the EIR comment period. Petitioner brings this action both on behalf of itself, its
23 adversely affected members and the public at large.

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1 9. Petitioner has a direct and beneficial interest in Caltrans' compliance with
2 CEQA and the CEQA Guidelines. That interest has been and will continue to be directly
3 and adversely affected by Caltrans' actions challenged herein, which violates CEQA
4 and would cause substantial harm to the environment. Petitioner will suffer concrete,
5 actual and imminent injury from Caltrans' prejudicial abuse of discretion as well as from
6 continued implementation of the proposed Project without proper CEQA compliance.
7

8 10. Respondent and Defendant the California Department of Transportation
9 ("Caltrans") is, and at all times herein mentioned was, a duly organized governmental
10 entity organized under the Constitution and Laws of the State of California. It is
11 responsible, *inter alia*, for complying with the Constitution of the State of California and
12 for implementing the laws of the State of California. Caltrans is the public agency that
13 served as the CEQA lead agency for the Project, that prepared and certified the EIR,
14 and that approved the Project over Petitioner's and other's objections. Caltrans is
15 named as a Defendant in this action because Petitioner seeks permanent and
16 preliminary injunctive relief against Caltrans upon a finding that Petitioner is entitled to
17 the relief requested in this Petition.
18

19 11. Petitioner is unaware of the true names and capacities of Respondents
20 and Defendants DOES 1 through 10, inclusive, and therefore sues said Respondents
21 and Defendants under fictitious names. Petitioner will amend its Petition and Complaint
22 to show their true names and capacities when the same have been ascertained.
23 Petitioner is informed and believes, and thereon alleges that each of the Respondents
24 and Defendants is the agent and/or employee of each other Respondent and
25 Defendant, and each performed acts on which this action is based within the course and
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1 scope of such Respondent and Defendant's agency and/or employment. Petitioner is
2 informed and believes and therefore alleges that each Respondent and Defendant is
3 legally responsible in some manner for the events and happenings referred to herein.
4

5 12. Real Party in Interest and Defendant San Mateo County Transportation
6 Authority ("SMCTA") is a local agency governed by an appointed board of seven
7 directors, who are elected officials representing San Mateo County, cities within San
8 Mateo County, and the San Mateo County Transit District. SMCTA is a Project
9 applicant, proponent and sponsor. SMCTA is named as a Defendant in this action
10 because Petitioner seeks permanent and preliminary injunctive relief against SMCTA
11 upon a finding that Petitioner is entitled to the relief requested in this Petition.
12

13 13. Real Party in Interest and Defendant City of Pacifica is a local government
14 agency. The City of Pacifica is a Project applicant, proponent and sponsor. The EIR
15 identifies the City as a partner on the Project as well as a Responsible Agency. The
16 proposed Project is entirely within the limits of the City of Pacifica. City of Pacifica is
17 named as a Defendant in this action because Petitioner seeks permanent and
18 preliminary injunctive relief against City of Pacifica upon a finding that Petitioner is
19 entitled to the relief requested in this Petition.
20

21 14. Petitioner is unaware of the true names and capacities of Real Parties in
22 Interest and Defendants DOES 11 through 50, inclusive, and therefore sues said Real
23 Parties in Interest and Defendants under fictitious names. Petitioner will amend its
24 Petition and Complaint to show their true names and capacities when the same have
25 been ascertained. Each of the Real Parties in Interest and Defendants is the agent
26 and/or employee of each other Real Party in Interest and Defendant, and each
27
28

1 performed acts on which this action is based within the course and scope of such Real
2 Party in Interest's and Defendant's agency and/or employment. Petitioner is informed
3 and believes and thereon alleges that each of said DOE parties 11 through 50 claim an
4 interest in the Project or the actions of the Real Parties/Defendants challenged herein.
5

6 **STATEMENT OF FACTS**

7 15. A CEQA Notice of Preparation was circulated to local, regional, state and
8 federal agencies from February 12, 2010 through March 17, 2010.
9

10 16. An Environmental Scoping Meeting was held at the Pacifica Community
11 Center on March 3, 2010 and was attended by approximately 100 people, many of
12 whom were in opposition to the Project.

13 17. At the request of many members of the public at the March 3rd meeting
14 and due to the controversy over the Project, an additional informational meeting was
15 held at the Pacifica City Council Chambers on June 22, 2010 with approximately 100
16 people attending.
17

18 18. The public scoping comment period was extended until July 22, 2010 to
19 allow additional time for the public to submit comments after the June 22, 2010 meeting.
20

21 19. The public expressed extensive interest in information regarding other
22 alternatives to the Project as proposed.

23 20. The Draft EIR was made available for public review and comment on
24 August 8, 2011. Due to public opposition and controversy, the comment period on the
25 Draft EIR was extended to October 22, 2011.
26

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1 21. A single public hearing on the Draft EIR was held at the Pacifica
2 Community Center on September 22, 2011 with approximately 100 members of the
3 public in attendance.

4 22. Members of the public, including members of Petitioner objected to the
5 Project and to the adequacy of the EIR at the public hearings
6

7 23. Approximately 180 members of the public, including members of
8 Petitioner, timely submitted written comments before the Draft EIR comment deadline.
9 The majority of comments were in opposition to the Project.
10

11 24. On June 25, 2012, the Pacifica City Council passed the following: "Motion
12 to give direction to staff to participate in the Project Development Team (PDT) to
13 encourage the selection of the landscape median alternative, but reserve the final
14 decision on the Calera Parkway Project until after the FEIR is issued".
15

16 25. Despite numerous requests from Pacifica residents to the City of Pacifica
17 to hold hearings regarding specific Project impacts to the community, including local
18 businesses, and requests for more information regarding alternatives to the Project as
19 proposed, the City of Pacifica refused to hold such requested meetings. In addition, the
20 City of Pacifica failed to submit any formal written comments regarding Project impacts,
21 including scoping comments or comments on the Draft EIR.
22

23 26. On July 18, 2012, the Project Development Team (PDT) formally identified
24 the Landscape Median Build Alternative as the preferred alternative.

25 27. On June 24, 2013, the City Manager of Pacifica, in response to a request
26 from Caltrans, agreed to a formal commitment to maintain the landscaping in the
27 median of the proposed Landscape Median Built Alternative.
28

1 28. On August 8, 2013, Caltrans released the Final EIR, but did not provide
2 any opportunity for public comment on the new information presented in the Final EIR or
3 on the adequacy of the Final EIR. The Final EIR on its face states that the EIR was
4 approved on August 1, 2013. No Findings were disclosed to the public.
5

6 29. The Notice of Determination of project approval was received by the State
7 Office of Planning and Research on August 8, 2013.
8

9 **PROCEDURAL ALLEGATIONS**

10 30. Petitioner, through its representative and members, has performed any
11 and all conditions precedent to filing the instant action and has exhausted any and all
12 available administrative remedies to the extent required by law, inter alia, its members
13 submitting written and oral comments on the Project and its environmental review
14 during the administrative process.
15

16 31. Petitioner's members timely raised each and every significant substantive
17 and procedural issue known to them in compliance with Public Resources Code section
18 21177 during the review process for this Project. Caltrans did not permit comments on
19 the Final EIR prior to EIR certification. Petitioner's members have requested that
20 Respondent not approve the EIR and that Respondent not approve this Project. Any
21 further exhaustion would be futile.
22

23 32. Petitioner has complied with the requirements of Public Resources Code
24 section 21167.7 and Code of Civil Procedure section 388 by mailing a copy of the First
25 Amended Petition and Complaint to the state Attorney General. A copy of the notice to
26 the Attorney General is attached hereto as Exhibit "1".
27
28

1 33. Petitioner has complied with Public Resources Code section 21167.6 by
2 filing a Request for Preparation of the Administrative Record at the time of filing the
3 original Petition and Complaint. The request notified Respondent that Petitioner elected
4 to prepare the record or that the parties would agree to an alternative method of
5 preparation.
6

7 34. This Court has jurisdiction over this action pursuant to Code of Civil
8 Procedure ("CCP") sections 526 (injunctive relief), 1085 (traditional mandate), and
9 1094.5 (administrative mandate); Public Resource Code section 21168.5 (California
10 Environmental Quality Act); and Article VI, section 10, of the California Constitution.
11

12 35. Venue is proper in San Mateo County pursuant to Code of Civil Procedure
13 section 395 because the Project site is located in San Mateo County and because the
14 violations of law complained of herein occurred within San Mateo County.
15

16 36. Petitioner has no plain, speedy or adequate remedy in the ordinary course
17 of law unless this Court enjoins and mandates that Respondent complies with its duties
18 and sets aside the approval of the Project. In the absence of such remedies,
19 Respondent's approvals will remain in effect in violation of CEQA.
20

21 37. If Respondent, Real Parties and their agents are not enjoined from
22 implementing the Project, and from undertaking acts in furtherance thereof, Petitioner
23 will suffer irreparable harm from which there is no adequate remedy at law in that the
24 Project area and surrounding areas would be irrevocably altered and significant adverse
25 impacts on the environment would occur. Petitioner and the general public have also
26 been harmed by Respondent's failure to prepare an adequate EIR for this Project.
27
28

1 38. In pursuing this action, which involves enforcement of important rights
2 affecting the public interest, Petitioner will confer a substantial benefit on the general
3 public and citizens of San Mateo County, the San Francisco Bay Area and the State of
4 California, and therefore will be entitled to attorney's fees and costs pursuant to, inter
5 alia, Code of Civil Procedure section 1021.5.
6

7 39. This petition is timely filed within all applicable statutes of limitations.
8

9 40. Petitioner brings this action pursuant to Public Resources Code section
10 21168.5 and Code of Civil Procedure sections 526, 1085 and 1094.5 which require that
11 an agency's approval of a Project be set aside if the agency has prejudicially abused its
12 discretion. Prejudicial abuse of discretion occurs either where an agency has failed to
13 proceed in a manner required by law or where its determination or decision is not
14 supported by substantial evidence or where the approvals are not supported by
15 adequate findings. Caltrans has prejudicially abused its discretion because it has failed
16 to proceed according to the law, its decisions are not supported by substantial evidence,
17 and because it failed to make proper and adequate findings.
18

19 **STATEMENT OF LAW**
20

21 41. CEQA is an integral part of every public agency's decision making
22 process. (Pub. Res. Code § 21006.) CEQA was enacted to protect the environment by
23 the establishment of administrative procedures drafted to ensure that the long-term
24 protection of the environment shall be the guiding criterion in public decisions.
25

26 42. The purpose of an EIR is to identify the significant effects on the
27 environment of a Project, to identify alternatives to the Project, and to indicate the
28

1 manner in which those significant effects can be mitigated or avoided. (Pub. Res. Code
2 § 21002.1(a).) An EIR must be certified prior to an agency taking discretionary action.

3 43. An EIR serves not only to protect the environment but also to demonstrate
4 to an apprehensive public that it is being protected. (14 C.C.R. § 15003, subd. (b).)

5 44. Where the lead agency is a state agency, it must file a Notice of
6 Determination only after Project approval. (14 C.C.R. § 15075, subd. (c).)

7
8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF CEQA (Pub. Res. Code, § 21000 et seq.)**

10 45. Petitioner incorporates by reference herein the preceding paragraphs, as if
11 fully set forth.

12 ***Count One - Failure to Include an Accurate, Finite and Stable Project Description***

13 46. An EIR must include an "accurate" project description of the project's
14 technical and environmental characteristics. (County of Inyo v. City of Los Angeles
15 (1977) 71 Cal.App.3d 185, 193; CEQA Guideline 15124.) At a minimum the EIR must
16 include a detailed map with the "precise" location and boundaries of the proposed
17 project to allow evaluation of the Project's environmental impacts. (CEQA Guideline
18 15124.) Even where an EIR is deemed adequate in all other respects, the use of a
19 "truncated project concept" is a violation of established CEQA law. (*San Joaquin*
20 *Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus* (1994) 27 Cal. App. 4th 713, 730.)

21 47. The EIR fails to provide the Project's technical characteristics or precise
22 boundaries by failing to provide a finite and stable project description. Instead, the EIR
23 vaguely describes the Project as widening "primarily on the west side of the roadway,"
24 varying somewhere from "20 feet to 50 feet wide," and referencing figures which are
25 purely "conceptual" and "not to be used as official records." In conjunction, the width of
26
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28

1 the Highway at the pedestrian and bicyclist crossing points was not adequately
2 described, so that the public could understand and comment on the impacts to public
3 safety and community cohesion. The FEIR's project description fails to disclose the
4 numerical increases in the highway width at the two Project intersections.
5

6 48. The EIR does not contain an accurate project description, by
7 inconsistently stating that south of Fassler Avenue the Project will consist of three lanes
8 in each direction, but also stating that only two lanes will extend south of Fassler
9 Avenue.
10

11 49. The EIR includes photos of the highway after Project construction that
12 omit the required Project retaining walls. The list of the numerous retaining walls
13 involved in the Project, which number in thousands of feet of length, was not provided
14 until the Final EIR. The scale of the EIR's sole graphic depiction of the numerous
15 retaining walls and concrete barriers hides the project boundaries, and therefore the
16 Project's impacts. Furthermore, Figures 1.4 and 1.5 state that they are "conceptual."
17

18 50. The EIR fails to provide an accurate and stable description of the use of
19 soundwalls in the Project. The FEIR states that the Project will not incorporate
20 soundwalls due to costs and visual impacts, but later on the same page, states that this
21 decision is subject to change.
22

23 51. By failing to accurately describe the Project as detailed above, the EIR
24 prevented adequate analysis of Project impacts and mitigations, thus preventing
25 informed decision-making. Respondent's certification of an EIR which failed to properly
26 describe the Project was a failure to proceed as required by law. Caltrans prejudicially
27 abused its discretion in certifying the EIR which failed to include this description.
28

1 **Count Two - Failure to Include a Complete and Accurate Description of the**
2 **Environmental Baseline**

3 52. An EIR must present an accurate and complete description of the
4 environmental setting in the vicinity of the project as it existed before project
5 commencement. (*San Joaquin Raptor I*, 27 Cal.App.4th at 722.) The environment
6 consists of the "physical conditions which exist within an area which will be affected" by
7 a project. (Pub. Res. Code § 21060.5.) This description of the "pre-existing
8 environment" is critical for analyzing whether the Project's impacts are significant.
9
10 (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952;
11 CEQA Guidelines 15125 & 15126.2(a).)

12
13 53. This EIR is fundamentally flawed as it describes the setting as the area
14 impacted, but doesn't describe the area before it was impacted.

15
16 54. The EIR describes two recorded archaeological sites (CASMa- 162 and
17 CA-SMa-238), but fails to provide any description of Site 238.

18 55. The EIR fails to describe the trees and vegetation impacted by the Project,
19 including the scenic aesthetic value that the current trees and vegetation add to the
20 numerous viewsheds in the area, as well as the numbers and locations of trees that will
21 be directly impacted by the Project.

22
23 56. The EIR's environmental setting is internally contradictory regarding
24 California red-legged frogs on the east side of the highway, stating both that they are
25 not known east of Highway 1, yet that the frogs cross to the east of Highway 1 and that
26 Calera Creek provides habitat east of Highway 1 which may support dispersing
27 California red-legged frogs.
28

1 57. In addition, the EIR fails to disclose or describe the impacts of the Project
2 on the cross culvert system which carries storm water from the east side of the highway
3 to wetlands and wetlands buffer zones on the west side. This cross culvert system
4 provides a path for migration of San Francisco garter snakes and California red-legged
5 frogs.
6

7 58. West of Highway 1, the EIR states that California red-legged frogs use
8 areas for breeding, foraging and dispersal, but the EIR avoids discussing the foraging
9 and dispersal habitat.
10

11 59. By certifying an EIR which failed to accurately describe the environmental
12 setting, Caltrans failed to proceed as required by CEQA, and prejudicially abused its
13 discretion.
14

15 ***Count Three - Inadequate Analysis of the Project's Significant Environmental***
16 ***Impacts***

17 60. An EIR must evaluate all significant environmental effects of a proposed
18 project. (Pub. Res. Code §§ 21100(b)(1), 21061; CEQA Guidelines §§ 15126(a),
19 15143.) The significant effects should be discussed with emphasis in proportion to their
20 severity and probability of occurrence." (CEQA Guideline § 15143.) EIR's should be
21 "prepared with a sufficient degree of analysis to provide decision-makers with
22 information which intelligently takes account of environmental consequences." (CEQA
23 Guidelines § 15151.) The analysis must include both direct and indirect impacts, as
24 they occur in both the short term and the long term. Identification of a project's
25 significant environmental impacts is a central purpose of an EIR and is necessary to
26 implement CEQA's policy. (Pub. Res. Code §§ 21002.1(a), 21003.1(b).) Under CEQA,
27
28

1 the EIR cannot defer analysis of impacts until a later date. This EIR's analysis of
2 significant impacts fails to meet these standards.

3 61. Defendants pre-committed themselves to the Project prior to certification
4 of the EIR. For example, the City of Pacifica committed itself to maintain a Project
5 median. By proceeding in this manner, Defendants violated CEQA.

7 62. The EIR fails to properly analyze impacts that it describes as "temporary."
8 For example, the EIR states that "[t]emporary impacts would occur in the area between
9 the proposed future edge of pavement and the outer limits of cut and/or fill plus
10 construction staging and access areas, but does not disclose where this "area between"
11 is located or whether the impacts will be significant.

13 63. The EIR fails to utilize its own stated thresholds of significance in
14 evaluating Project impacts. For example, in discussing visual impacts the EIR states
15 that the quality of the visual environment is determined using three criteria: vividness,
16 intactness, and unity. However, the EIR does not discuss Project impacts to vividness.
17 In addition, the EIR states that the level of visual impact is "determined by combining
18 the severity of resource change with the degree to which people are likely to oppose the
19 change," yet the EIR never discusses "the degree to which people are likely to oppose
20 the change."

23 64. The EIR fails to disclose if Project impacts will be adverse and significant.
24 For example, the EIR states that the Project will degrade water quality from
25 sedimentation, erosion, and equipment fuels and lubricants, and that these water quality
26 impacts will drain to local creeks which support numerous wildlife and plant species.

1 Strikingly, however, the EIR does not disclose if these adverse impacts will be
2 significant - as CEQA requires.

3 65. The EIR fails to adequately address direct and indirect impacts to
4 Rockaway Creek, Calera Creek, wetlands and wetlands buffers. For example, the EIR
5 fails to address impacts to Rockaway Creek which passes under the southern end of
6 the Project, and also impacts to the east side of Calera Creek. In addition, the EIR fails
7 to address the impacts of the Project on the cross culverts under Highway 1 which lead
8 to the wetlands on the west side of the Highway.
9

10
11 66. The EIR fails to adequately analyze the direct and indirect visual/aesthetic
12 impacts of the project throughout the Project area. The Project significantly degrades
13 and adversely impacts the coastal viewshed through a doubling of hardscaping of the
14 highway surface, the addition of thousands of feet of retaining walls, and important loss
15 of areas of coastal greenery throughout the Project area. The hardening of this coastal
16 area was a significant focal point for the opposition to the Project by the Pacifica
17 community and the EIR fails to address this controversy and the numerous public
18 comments regarding the importance of the visual impacts to Pacificans.
19

20
21 67. The EIR fails to analyze the potentially significant impacts to the
22 Rockaway Beach district resulting from converting not only Old County Road to one-
23 way-only in the northbound direction, but also converting San Marlo Way to a one-way
24 exit from southbound Highway 1. The EIR failed to analyze the numerous direct and
25 indirect traffic, parking and circulation impacts resulting from these street conversions to
26 the residents, visitors and businesses of Rockaway Beach, including impacts to the
27 seasonal outdoor Farmer's Market held on Old County Road itself.
28

1 68. The EIR fails to adequately analyze climate change and greenhouse gas
2 emissions impacts from highway widening. Highway widening will result in increased
3 greenhouse gas emissions, not only from construction, from inducing land use
4 development along Highway 1, including the Quarry Property, but also inducing drivers
5 to drive more in general – an overall increase in vehicle miles traveled over the life of
6 the Project. Drivers will find it more convenient to drive in and around Pacifica instead
7 of using single occupancy vehicle alternatives such as carpooling, walking, biking, and
8 riding transit.
9

10
11 69. The EIR fails to analyze induced travel and increased greenhouse gas
12 emissions resulting from the Project, yet instead offers the conclusion that the Project
13 will enable drivers to drive several miles an hour through the Project area thereby
14 reducing greenhouse gas emissions. The EIR also fails to analyze the greenhouse gas
15 emission reductions resulting from stricter emissions standards for future vehicle use,
16 including vehicle idling. This reduction is already occurring without Project
17 implementation through the use of hybrid and electric cars.
18

19 70. Under Project impacts to climate change, the EIR impermissibly concludes
20 that “it is too speculative to make a determination regarding the significance of the
21 project’s direct impact and its contribution on the cumulative scale to climate change.”
22

23 71. The EIR fails to adequately analyze noise impacts. The largest source of
24 noise pollution in Pacifica is the traffic noise from Highway 1.
25

26 72. The EIR fails to adequately analyze impacts to pedestrian and bicycle
27 facilities, namely public safety, resulting from the major widening of the two intersections
28 at SR 1/Fassler Avenue/Rockaway Beach Avenue and SR 1/Reina Del Mar Avenue.

1 The EIR fails to both disclose and analyze impacts resulting from the increased crossing
2 time for both pedestrians and bicyclists to safely cross at these intersections. The
3 pedestrians and bicyclists include not only residents traveling to and from the coast,
4 including those accessing north-south trails on the west side of Highway 1, but
5 importantly, also includes residents and schoolchildren from Vallemar school crossing
6 Highway 1 to access transit stops on opposite sides of Highway 1. The EIR mentions
7 this issue only in a summary of project impacts as an "increase of eight seconds of
8 crossing time at these intersections" yet the 2012 Biological Opinion describes an
9 widening increase of 40 feet at the SR 1/Fassler Avenue/Rockaway Beach intersection
10 and an increase in highway width of 50 feet at the SR 1/Reina Del Mar Avenue
11 intersection. The EIR must address safety impacts to Pacifica residents and visitors
12 both, including to schoolchildren crossing Highway 1.
13

14
15
16 73. The EIR not only fails to address the increase in timing for pedestrians of
17 all ages and abilities to safely cross a much wider highway intersection, but also fails to
18 address how the required increase in pedestrian crossing time at both intersections will
19 affect the timing of the light signals and resulting impacts to traffic congestion and
20 intersection circulation. The EIR fails to adequately analyze how a 50 percent increase
21 in highway width at both intersections will impact the signal timing, traffic congestion
22 and human safety.
23

24 74. The EIR fails to adequately address the numerous land use conflicts
25 between the Project and the Pacifica General Plan, the Local Coastal Plan, the
26 California Coastal Act and even Pacifica's Heritage Tree Ordinance. The EIR fails to
27
28

1 describe the different locations where mature trees will be cut down and the number of
2 overall trees to be cut.

3 75. Caltrans' certification of an EIR which failed to properly analyze impacts
4 was a failure to proceed as required by law. Caltrans prejudicially abused its discretion
5 in certifying the EIR which failed to include this analysis.
6

7 ***Count Four - Failure to Adequately Discuss Mitigations***

8 76. CEQA requires an EIR to discuss ways to mitigate identified significant
9 impacts.
10

11 77. An EIR must set forth and analyze mitigation measures to eliminate or
12 minimize each significant impact. (Pub. Res. Code §§ 21002, 21002.1(a) & (b); CEQA
13 Guidelines 15126(e), 15126.4.) Mitigation measures must be designed to minimize,
14 reduce, rectify or compensate for the project's impacts. (CEQA Guideline 15370.) An
15 EIR is required to discuss the feasibility of proposed mitigations.
16

17 78. The EIR impermissibly defers studies and identification of mitigation
18 measures without tying such measures to any performance standards. The EIR
19 inadequately analyzes how it reached the conclusions of less than significant Project
20 impacts with the additions of mitigations. For example, the EIR fails to not only to
21 adequately analyze the visual impacts of retaining walls, soundwalls and loss of the tree
22 corridor along Highway 1, but it fails to adequately discuss a range of feasible mitigation
23 measures to address these impacts.
24

25 79. The EIR's analysis of mitigation measures is inadequate as the mitigation
26 measures proposed do not include specific feasible actions, their effectiveness is not
27
28

1 substantiated, and the EIR does not disclose how, if at all, the mitigation measures are
2 enforceable.

3 80. The EIR fails in several ways to analyze mitigation measures for adverse
4 impacts to wildlife and listed species from permanent habitat loss. The mitigation
5 measures proposed for the San Francisco garter snake and red-legged frog are
6 dependent on two parcels that have already been preserved and no details are provided
7 as to how these mitigation measures are feasible to compensate for the Project's
8 impacts to these species. The first parcel, is located in the Golden Gate National
9 Recreation Area's Mori Point, yet the EIR fails to include any specific information
10 regarding this parcel, even though an Environmental Assessment, completed for Mori
11 Point several years earlier, discusses the Park Service's land use plans, which include
12 this parcel. The second 5.14 acre parcel, located on City of Pacifica property, was
13 already committed as mitigation for a previous project. The EIR fails to address this
14 previous mitigation commitment or include any information upon which this mitigation is
15 based. The EIR contains an "Alternate Contingency Plan for Compensatory Habitat
16 Mitigation" which is completely speculative and infeasible as the basis for this plan does
17 not exist.

18 81. By omitting analysis of the significance of Project impacts, the EIR
19 improperly avoided any analysis or formulation of mitigations for such impacts.

20 82. Caltrans's certification of an EIR which failed to properly analyze
21 mitigations was a failure to proceed as required by law. Caltrans prejudicially abused its
22 discretion in certifying the EIR which failed to include this analysis.

23 ***Count Five - Failure to Adequately Analyze and Consider Alternatives***

1 83. The EIR failed to adequately analyze and consider a reasonable range of
2 potentially feasible alternatives to the Landscaped Median Alternative and Narrow
3 Median Alternative that will foster informed decision making and public participation.
4

5 84. The EIR failed to adequately analyze a range of alternatives that could
6 meet the purpose and need of the Project, including alternatives that would reduce
7 traffic congestion, but would not result in significant adverse impacts on coastal
8 resources. This includes an alternative which combines several different alternatives to
9 respond to the fact that the overall issue of traffic congestion is caused by a relatively
10 low number of vehicles and which congestion is based on a unique set of factors
11 specific to Pacifica. Such an alternative analysis would look at a Pacifica-specific
12 combination of factors such as that peak traffic volumes decrease significantly year
13 round on Fridays, and that school traffic contributes significantly to the a.m. traffic
14 congestion at peak times only when grade schools and high schools are both in
15 session.
16
17

18 85. Caltrans's certification of an EIR which failed to properly analyze
19 alternatives was a failure to proceed as required by law. Caltrans prejudicially abused
20 its discretion in certifying the EIR which failed to include this analysis.
21

22 ***Count Six - The EIR Must Be Recirculated for Further Public Comment***

23 86. A lead agency is required to recirculate an EIR when significant new
24 information is added to the EIR between the time of the Draft EIR and EIR certification.
25 This new "information" includes but is not limited to changes in the project or
26 environmental setting as well as additional data or other information which deprives the
27 public of an opportunity to comment upon a substantial adverse environmental impact, a
28

1 feasible way to mitigate such impacts, or a feasible project alternative that the project's
2 proponents decline to implement.

3 87. The Project EIR must be recirculated for further public comment as
4 between the time of the Draft EIR and EIR certification, there was disclosure of (1) a
5 new significant Project impact, (2) a substantial increase in the severity of an impact, (3)
6 and a feasible project alternative considerably different from others previously analyzed
7 that would clearly lessen the environmental Project, but which project's proponents
8 decline to adopt. In addition, Caltrans' failed to analyze the feasibility of a mitigation
9 measure involving threatened and endangered species habitat after disclosure that one
10 of the mitigation parcels was already committed as mitigation for a previous unrelated
11 project.
12

14 88. The Project EIR must be recirculated for further public comment as the
15 Draft EIR was so fundamentally and basically inadequate and conclusory in nature that
16 meaningful public review and comment were precluded.
17

18 89. Caltrans' failure to recirculate the EIR is a failure to proceed as required
19 by law. Caltrans prejudicially abused their discretion in failing to recirculate the EIR.
20

21 ***Count Seven - Failure to Adopt a Mitigation Monitoring Plan for All Changes to***
22 ***Mitigate Project Impacts***

23 90. With Project approval, the agency must adopt a reporting or monitoring
24 program ("MMRP") for the changes made by the project and for conditions of project
25 approval which are adopted to mitigate or avoid significant impacts. The MMRP must
26 be designed to ensure compliance during project implementation. The agency must
27 provide that measures to mitigate or avoid significant impacts are fully enforceable
28

1 through permit conditions, agreements, or other measures as set forth in referenced
2 documents which address required mitigation measures.

3 91. Caltrans failed to adopt an MMRP, or in the alternative, the MMRP that
4 was adopted for the Project is inadequate under CEQA.

5
6 92. Defendants failed to adopt measures to mitigate significant impacts which
7 are fully enforceable through permit conditions, agreements, or other measures.

8 93. By proceeding in this manner, Caltrans violated CEQA and prejudicially
9 abused its discretion.

10
11 ***Count Eight - Failure to Make Adequate Findings in Violation of CEQA***

12 94. Under CEQA, an agency must not approve or carry out a project for where
13 a certified EIR identifies a significant impact unless the agency adopts specific
14 statutorily defined findings with respect to each significant effect.

15
16 95. The EIR and Findings are inadequate in that they reach conclusions of
17 insignificance which are contradicted by substantial evidence in the record.

18 96. Further, Code of Civil Procedure section 1094.5 requires findings which
19 provide an analytical route between the evidence and the agency's conclusions.

20
21 97. Caltrans failed to make the findings required by CEQA for each of the
22 significant impacts identified in the EIR. (Pub. Res. Code § 21168; CEQA Guideline §
23 15091; Code of Civil Procedure § 1094.5.)

24 98. Caltrans' failure to make adequate findings constitutes a prejudicial abuse
25 of discretion in violation of Code of Civil Procedure section 1094.5, Public Resource
26 Code section 21081 and CEQA Guidelines 15091.

27
28 //

1 **Count Nine - Credible Substantial Evidence Does Not Support Certain EIR**
2 **Conclusions**

3 99. Caltrans' actions in certifying the EIR and in approving the project in
4 reliance thereon constitute prejudicial abuses of discretion in that EIR conclusions are
5 not supported by credible substantial evidence.

6 100. For example, the EIR's conclusion of insignificant visual impacts is
7 contradicted by the EIR's own disclosure that Project "removal of screening vegetation,
8 and buildings/retaining walls, as well as the excavation into the embankment west of SR
9 1 would change the motorist's views and diminish the quality of the visual experience."

10 101. Caltrans' failure to support the EIR conclusions with credible substantial
11 evidence constitutes a prejudicial abuse of discretion.
12

13
14 **SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF (CCP, § 526)**

15 102. Petitioner incorporates by reference herein the preceding paragraphs, as if
16 fully set forth.

17 103. Petitioner is entitled to preliminary and permanent injunctive relief as
18 demanded in this Petition and Complaint.
19

20 104. The relief demanded in this Petition and Complaint consists in whole, or in
21 part, in restraining Defendants, Respondents, and Real Parties from the commission or
22 continuance of activities complained of until such time as Caltrans complies with the
23 substantive and procedural requirements of CEQA before deciding whether the Project
24 should be approved, and until such time as Real Parties have obtained legally adequate
25 approvals under CEQA to implement the Project.
26

27 //

28 //

1 105. Pecuniary compensation will not afford relief adequate to address the
2 violations of CEQA alleged in this Petition and Complaint, which are brought by
3 Petitioner in this action for the purpose of ensuring compliance with California law.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner and Plaintiff pray for relief as follows:

7 1. For a peremptory writ of mandate and injunction directing Respondent to
8 take any action required by Public Resources Code section 21168.9, including but not
9 limited to setting aside and vacating certification of the EIR and all approvals in
10 furtherance of the State Route 1/Calera Parkway/Highway 1 Widening Project;
11

12 2. For a peremptory writ of mandate and injunction directing Respondent not
13 to approve any project without certification of an adequate EIR;
14

15 3. For a preliminary and a permanent injunction restraining all Respondents
16 and their agents, servants and employees, all Real Parties in Interest and all others
17 acting in concert with them or in their behalf, from undertaking any approvals in
18 furtherance of the Project including submitting any funding applications; from issuing
19 any construction, encroachment, or other permits including, but not limited to coastal
20 permits; from any grading, construction, development, street improvements, drainage
21 improvements; or taking any other action to implement in any way in furtherance of the
22 Project, pending full compliance with CEQA;
23

24 4. For costs of the suit incurred herein;

25 5. For attorneys' fees pursuant to section 1021.5 of the Code of Civil
26 Procedure; and
27

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

1 Dated: April 23, 2014
2
3

4 By: Celeste C. Langille

5 Celeste C. Langille
6

7 LAW OFFICES OF BRIAN GAFFNEY APC

8 By: Brian Gaffney
9 Brian Gaffney