

FILED
SAN MATEO COUNTY

DEC 18 2019

Clerk of the Superior Court

By 
DEPUTY CLERK

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4 Attorney for Petitioners and Plaintiffs
5 CASA MIRA HOMEOWNERS' ASSOCIATION AND ITS MEMBERS,
AS SPECIFIED HEREIN

7 SUPERIOR COURT OF CALIFORNIA

8 IN AND FOR THE COUNTY OF SAN MATEO

9
10 CASA MIRA HOMEOWNERS
ASSOCIATION, a California non-profit
11 mutual benefit corporation, on its behalf
and on behalf of the Association members,
12 Petitioners and Plaintiffs,

13 ROBERT D. GLYNN, JR., and KATHLEEN
O. GLYNN, as TRUSTEES of the GLYNN
14 1994 REVOCABLE TRUST AGREEMENT,
dated March 15, 1994, and GLYNN 1994
15 REVOCABLE TRUST AGREEMENT, dated
March 15, 1994, each as a member of the
16 Casa Mira Homeowners' Association and
individually,

17 Petitioners and Plaintiffs,

18 PAULA SKINNER, KAREN PEARLMAN,
and CHRISTEN AGNELLO, each as a
19 member of Casa Mira Homeowners'
Association and individually

20 Petitioners and Plaintiffs,

21 WILLIAM V. REGAN III and ANN
22 WILLIAMS REGAN, as TRUSTEES of the
REGAN REVOCABLE TRUST dated
23 December 29, 1992, and the REGAN
REVOCABLE TRUST dated December 29,
24 1992, each as a member of the Casa Mira
Homeowners' Association and
25 individually,

26 Petitioners and Plaintiffs,
27
28

Case No.: 19-CIV-04677

VERIFIED SECOND AMENDED
PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
(C.C.P. § 1094.5) AND/OR
TRADITIONAL MANDAMUS (C.C.P. §
1085);

COMPLAINT FOR INVERSE
CONDEMNATION, DECLARATORY
AND INJUNCTIVE RELIEF; and

DEMAND FOR JURY TRIAL

19 - CIV - 04677
ACM2
Second Amended Complaint
2168876



1 STUART M. SCHLISSERMAN, as
2 TRUSTEE of the STUART MARK
3 SCHLISSERMAN REVOCABLE TRUST
4 dated April 14, 2004, and the STUART
5 MARK SCHLISSERMAN REVOCABLE
6 TRUST dated April 14, 2004, each as a
7 member of the Casa Mira Homeowners'
8 Association and individually,
9 Petitioners and Plaintiffs,

10 TARANEH RAZAVI, as TRUSTEE of the
11 TARANEH RAZAVI LIVING TRUST dated
12 September 29, 2009, and the TARANEH
13 RAZAVI LIVING TRUST dated September
14 29, 2009, each as a member of the Casa Mira
15 Homeowners' Association and
16 individually,
17 Petitioners and Plaintiffs,

18 KELLY ANN KRAMER, as TRUSTEE of the
19 KELLY ANN KRAMER 2017 TRUST under
20 Declaration of Trust dated July 18, 2017,
21 and the KELLY ANN KRAMER 2017
22 TRUST under Declaration of Trust dated
23 July 18, 2017, each as a member of the Casa
24 Mira Homeowners' Association and
25 individually,
26 Petitioners and Plaintiffs,

27 GREGG E. MILLER, as TRUSTEE of the
28 MILLER SURVIVOR'S TRUST dated April
5, 1993, and the MILLER SURVIVOR'S
TRUST dated April 5, 1993, each as a
member of the Casa Mira Homeowners'
Association and individually,
Petitioners and Plaintiffs,

GIAN D. POLASTRI and ROBIN M.
POLASTRI, as TRUSTEES of the TRUST OF
GIAN AND ROBIN POLASTRI, dated
April 7, 2001, and the TRUST OF GIAN
AND ROBIN POLASTRI, dated April 7,
2001, each as a member of the Casa Mira

1 Homeowners' Association and
2 individually,

3 Petitioners and Plaintiffs,

4 RODERICK A. YOUNG and CHARLOTTE
5 D. JACOBS, as TRUSTEES of the
6 YOUNG/JACOB 1998 TRUST, and the
7 YOUNG/JACOB 1998 TRUST, each as a
8 member of the Casa Mira Homeowners'
9 Association and individually,

10 Petitioner and Plaintiff,

11 GUSTAVINO HOLDINGS, LLC, a
12 California limited liability company, solely
13 as a member of the Casa Mira
14 Homeowners' Association and not
15 individually,

16 Petitioner and Plaintiff,

17 MICHAEL PATRICK SULLIVAN, JR., as
18 Successor Trustee of the MAVIS R.
19 SULLIVAN DECLARATION OF TRUST
20 dated October 21, 2015, the MAVIS R.
21 SULLIVAN DECLARATION OF TRUST
22 dated October 21, 2015, KIM M. THOMAS,
23 MICHAEL PATRICK SULLIVAN, JR.,
24 KERRY SULLIVAN, JAMIE SULLIVAN,
25 ASHLEY SULLIVAN, and MAGGIE SUE
26 SULLIVAN, each named solely as a
27 member of the Casa Mira Homeowners'
28 Association and not individually,

 Petitioners and Plaintiffs,

 vs.

23 CALIFORNIA COASTAL COMMISSION,
24 an agency of the State of California, and
25 DOES 1-50, inclusive,

26 Respondent and Defendant,

27 JOHN (JACK) AINSWORTH, in his official
28 capacity as Executive Director of the
California Coastal Commission, and DOES

1 1-50, inclusive,

2 Respondent and Defendant,

3 CALIFORNIA DEPARTMENT OF PARKS
4 AND RECREATION, a department of the
5 State of California, and DOES 1-50,
6 inclusive,

7 Real Party-in-Interest,

8 CITY OF HALF MOON BAY, a charter city,
9 and DOES 1-50, inclusive,

10 Real Party-in-Interest,

11 GRANADA COMMUNITY SERVICES
12 DISTRICT, a special district formed under
13 California Government Code § 61000, and
14 DOES 1-50, inclusive,

15 Real Party-in-Interest,

16 TOP OF MIRADA, LLC, a California
17 limited liability company, and JENNIFER
18 THOMAS, an individual, and DOES 1-50,
19 inclusive,

20 Real Parties-in-Interest,

21 IRINA VLASSOVA PLACE, an individual,
22 and DOES 1-50, inclusive,

23 Real Party-in-Interest,

24 WILLIAM S. EASTERLING, and
25 DARLENE INEZ CASTRO-EASTERLING,
26 as TRUSTEES of THE EASTERLING
27 REVOCABLE TRUST UTA dated July 11,
28 2000, and THE EASTERLING
REVOCABLE TRUST UTA dated July 11,
2000, and DOES 1-50, inclusive,

Real Parties-in-Interest, and

1 VALLI ANANDA a/k/a GAIL LAMAR,
2 individually and as Trustee of THE GAIL
3 M. LAMAR LIVING TRUST u/t/a January
4 24, 1999, and THE GAIL M. LAMAR
5 LIVING TRUST u/t/a January 24, 1999, and
6 DOES 1-50, inclusive,

Real Parties-in-Interest

7 COMES NOW Petitioners and Plaintiffs, CASA MIRA HOMEOWNERS'
8 ASSOCIATION, on its behalf and on behalf of its members, ROBERT D. GLYNN, JR.,
9 and KATHLEEN O. GLYNN, as TRUSTEES of the GLYNN 1994 REVOCABLE TRUST
10 AGREEMENT, dated March 15, 1994; GLYNN 1994 REVOCABLE TRUST AGREEMENT,
11 dated March 15, 1994; PAULA SKINNER; KAREN PEARLMAN; CHRISTEN AGNELLO;
12 WILLIAM V. REGAN and ANN WILLIAMS REGAN, as TRUSTEES of the REGAN
13 REVOCABLE TRUST dated December 29, 1992; the REGAN REVOCABLE TRUST dated
14 December 29, 1992; STUART M. SCHLISSERMAN, as TRUSTEE of the STUART MARK
15 SCHLISSERMAN REVOCABLE TRUST dated April 14, 2004; the STUART MARK
16 SCHLISSERMAN REVOCABLE TRUST dated April 14, 2004; TARANEH RAZAVI, as
17 TRUSTEE of the TARANEH RAZAVI LIVING TRUST dated September 29, 2009; the
18 TARANEH RAZAVI LIVING TRUST dated September 29, 2009; KELLY ANN KRAMER,
19 as TRUSTEE of the KELLY ANN KRAMER 2017 TRUST under Declaration of Trust
20 dated July 18, 2017, and the KELLY ANN KRAMER 2017 TRUST under Declaration of
21 Trust dated July 18, 2017; GREGG E. MILLER, as TRUSTEE of the MILLER SURVIVOR'S
22 TRUST dated April 5, 1993; the MILLER SURVIVOR'S TRUST dated April 5, 1993; GIAN
23 D. POLASTRI and ROBIN M. POLASTRI, as TRUSTEES of the TRUST OF GIAN AND
24 ROBIN POLASTRI, dated April 7, 2001; the TRUST OF GIAN AND ROBIN POLASTRI,
25 dated April 7, 2001; and RODERICK A. YOUNG and CHARLOTTE D. JACOBS, as
26 TRUSTEES of the YOUNG/JACOB 1998 TRUST, the YOUNG/JACOB 1998 TRUST;
27 GUSTAVINO HOLDINGS, LLC, solely as a member of the Casa Mira Homeowners'
28 Association and not individually; MICHAEL PATRICK SULLIVAN, JR., as Successor

1 Trustee of the MAVIS R. SULLIVAN DECLARATION OF TRUST dated October 21, 2015,
2 solely as a member of the Casa Mira Homeowners' Association and not individually; the
3 MAVIS R. SULLIVAN DECLARATION OF TRUST dated October 21, 2015, solely as a
4 member of the Casa Mira Homeowners' Association and not individually; KIM M.
5 THOMAS, solely as a member of the Casa Mira Homeowners' Association and not
6 individually; MICHAEL PATRICK SULLIVAN, JR., solely as a member of the Casa Mira
7 Homeowners' Association and not individually; KERRY SULLIVAN, solely as a member
8 of the Casa Mira Homeowners' Association and not individually; JAMIE SULLIVAN,
9 solely as a member of the Casa Mira Homeowners' Association and not individually;
10 ASHLEY SULLIVAN, solely as a member of the Casa Mira Homeowners' Association
11 and not individually; and MAGGIE SUE SULLIVAN, solely as a member of the Casa
12 Mira Homeowners' Association and not individually (collectively, "Casa Mira"),
13 requesting that this Court issue a writ of administrative mandamus (C.C.P. § 1094.5)
14 and/or a writ of traditional mandamus (C.C.P. § 1085), directed to Respondent and
15 Defendant California Coastal Commission (the "CCC") pursuant to this Verified Second
16 Amended Petition for Writ and Complaint ("Petition"), ordering it to set aside and vacate
17 the CCC's July 11, 2019 decision effectively denying Casa Mira's application for a coastal
18 development permit to construct a seawall in Half Moon Bay, California, and directed to
19 Respondent and Defendant John (Jack) Ainsworth, in his official capacity as Executive
20 Director of the CCC, ordering him to set aside his August 9, 2019 denial of Casa Mira's
21 request to extend the term of existing emergency rip rap during this lawsuit, and for
22 other relief, as set forth herein:

23

24 **Introduction and Nature of Action**

25 Petitioner Casa Mira challenges the California Coastal Commission's effective
26 denial of an application for a permit to build a seawall along a coastal bluff in Half Moon
27 Bay. Officially, the California Coastal Commission (sometimes referred to as the "CCC")
28 describes its action as an "approval, with conditions." But that is disingenuous. Casa

1 Mira, as a co-applicant, applied for a 257-foot long seawall to more permanently protect
2 structures landward of a coastal bluff that partially collapsed in 2016. The proposed
3 seawall would have protected (1) a segment of the existing California Coastal Trail
4 (managed by Real Party-in-Interest California Department of Parks and partially on an
5 easement held since 1999 by Real Party-in-Interest City of Half Moon Bay), (2) a sewer
6 line owned and maintained by Real Party-in-Interest Granada Community Services
7 District, (3) 10 townhomes owned by members of the Casa Mira Homeowners'
8 Association, and, to a lesser extent, (4) three apartments known as 2 Mirada Road, whose
9 owners were co-applicants in the seawall application. The CCC staff wrote a 55-page
10 report supporting the application and recommending that the 12-member Coastal
11 Commission approve the full seawall.

12 Then, in a 25-minute public hearing, the full Commission **rejected its own staff's**
13 **recommendation** and issued the nonsensical indict to approve *only* that portion of the
14 seawall that protects the 2 Mirada apartments, and to expressly reject any portion of the
15 seawall that protects the Coastal Trail, the 10 townhomes and the sewer line. Of the
16 proposed 257-foot seawall, therefore, the full Commission approved what Casa Mira's
17 expert estimates is about 20 linear feet, or less than ten percent of the length of the
18 seawall requested by Casa Mira.

19 The homeowners (who had traveled 4 hours and waited another 10 hours for their
20 turn to speak) weren't even allowed to speak at the July 11, 2019 hearing. Yet, the full
21 Commission nullified three years of exhausting, detailed and expensive discussions
22 between Casa Mira and the CCC technical staff who had agreed upon a workable
23 solution to address a collapsing bluff in a way that fully complied with the Coastal Act.
24 It was clear from the discussion at the dais that the Commissioners hadn't bothered to
25 read their own staff's detailed report, or for that matter, the relevant and binding
26 provisions of the Coastal Act.

27 At a November 13, 2019 CCC hearing (more than 4 months **after** the July 2019
28 effective denial), the Commission adopted Revised Findings that for the first time

1 described the approved portion of the seawall as 50 linear feet that sits mostly
2 perpendicular to the land. That can hardly be called an “approval,” especially since a 20
3 to 50 linear foot seawall resting perpendicular to the shore simply won’t provide any
4 meaningful protection even to the 2 Mirada apartments.

5 The 257-foot seawall was engineered and designed as an integrated unit. The
6 Commission can’t eliminate between 81 and 93 percent of the seawall and expect it to
7 serve any useful purpose. Even more bizarrely, the Commission still imposed all of the
8 mandatory mitigation, including the construction of a \$500,000 stairway, and the
9 donation of land and improvements to the Coastal Trail, even though that mitigation
10 package was designed for a 257-foot wall, and all of that mitigation would be
11 immediately threatened or eliminated by coastal erosion and bluff collapse as soon as it
12 was constructed or implemented. As an example of the full Commission’s ill-conceived
13 decision, the Commission approved only 20 to 50 feet of the proposed seawall, yet
14 insisted as partial mitigation the construction of a public access stairway that staff
15 concluded would need “approximately 70 linear bluff feet.” In other words, it would be
16 impossible to construct the mandated public access stairs (required mitigation) on the
17 fragment of the seawall that the Commission actually approved. Yet that’s the decision
18 that the Commission made. At the November 13, 2019 CCC hearing (more than 4
19 months after the July 2019 effective denial), the Commission adopted Revised Findings
20 that for the first time purported to revise the mandatory mitigation and exactions in light
21 of the massively shortened wall. However, the Commission lacked the authority to
22 modify the mitigation and exaction package in a Revised Finding hearing because the
23 Commission failed to revise the mitigation on the record at the July 2019 denial hearing,
24 and state law limits the scope of a Revised Finding hearing to actions taken by the
25 Commission on the record at the initial hearing.

26 The CCC has repeatedly violated the Coastal Act and its own regulations, and its
27 hasty rejection is contrary to law, lacks substantial evidence, is arbitrary, lacks common
28 sense and is a prejudicial abuse of discretion. While the CCC is the sole Respondent and

1 Defendant, numerous other parties are named as real parties-in-interest because they
2 have or may have legal and/or equitable interests that may be affected by the Court's
3 ruling in this case.

4 Casa Mira intends no ill will by this action and remains open to a reasonable and
5 workable solution to the situation now created by the full Commission's rejection of the
6 proposed seawall. However, without a seawall or other protective device, the Coastal
7 Trail, sewer line, ten homes and an apartment complex will be quickly and forever
8 destroyed by ocean wave action, erosion and bluff collapse.

9

10 **The Parties and Venue**

11 1. Petitioner and Plaintiff Casa Mira Homeowners' Association is, and at all times
12 relevant in this Petition and Complaint, has been, a California not-for-profit corporation
13 in good standing, and the owner in fee simple of the common areas of the Association.
14 Civil Code § 5980 provides the Casa Mira Homeowners' Association with standing to sue
15 for property damage to common areas and certain separate interests and in a
16 representative capacity to the owners. Casa Mira used herein refers to Casa Mira as the
17 not-for-profit corporation, **and** each member of the Association (i.e., the owners of each
18 of the 10 townhomes), located in the City of Half Moon Bay in San Mateo County. The
19 location of Casa Mira's 10 townhomes is highlighted in yellow on **Exhibit 1** attached
20 hereto. Unless otherwise specified, each member of the Association is also named
21 individually as a separate Petitioner and Plaintiff in this lawsuit, as detailed below. Casa
22 Mira is a co-applicant for a coastal development permit (for a seawall) from Respondent
23 CCC, which was effectively denied by the CCC on July 11, 2019.

24 2. Petitioners and Plaintiffs Robert D. Glynn, Jr., and Kathleen O. Glynn, as
25 Trustees of the Glynn 1994 Revocable Trust Agreement, dated March 15, 1994, and the
26 Glynn 1994 Revocable Trust Agreement, dated March 15, 1994, own in fee simple the
27 townhome at 12 Mirada Road, Half Moon Bay, California. They are members of the Casa
28 Mira Homeowners' Association.

1 3. Petitioners and Plaintiffs Paula Skinner, Karen Pearlman and Christen Agnello
2 own as joint tenants in fee simple the townhome at 16 Mirada Road, Half Moon Bay,
3 California. They are members of the Casa Mira Homeowners' Association.

4 4. Petitioners and Plaintiffs William V. Regan III and Ann Williams Regan, as
5 Trustees of the Regan Revocable Trust dated December 29, 1992, and the Regan
6 Revocable Trust dated December 29, 1992, own in fee simple the townhome at 18 Mirada
7 Road, Half Moon Bay, California. They are members of the Casa Mira Homeowners'
8 Association.

9 5. Petitioners and Plaintiffs Stuart M. Schlisserman, as Trustee of the Stuart Mark
10 Schlisserman Revocable Trust dated April 14, 2004, the Stuart Mark Schlisserman
11 Revocable Trust dated April 14, 2004, Taraneh Razavi, as Trustee of the Taraneh Razavi
12 Living Trust dated September 29, 2009, and the Taraneh Razavi Living Trust dated
13 September 29, 2009, own in fee simple the townhome at 20 Mirada Road, Half Moon Bay,
14 California. They are members of the Casa Mira Homeowners' Association.

15 6. Petitioners and Plaintiffs Kelly Ann Kramer, as Trustee of the Kelly Ann
16 Kramer 2017 Trust under Declaration of Trust dated July 18, 2017, and the Kelly Ann
17 Kramer 2017 Trust under Declaration of Trust dated July 18, 2017, own in fee simple the
18 townhome at 22 Mirada Road, Half Moon Bay, California. They are members of the Casa
19 Mira Homeowners' Association.

20 7. Petitioners and Plaintiffs Gregg E. Miller, as Trustee of the Miller Survivor's
21 Trust dated April 5, 1993, and the Miller Survivor's Trust dated April 5, 1993, own in fee
22 simple the townhome at 24 Mirada Road, Half Moon Bay, California. They are members
23 of the Casa Mira Homeowners' Association.

24 8. Petitioners and Plaintiffs Gian D. Polastri and Robin M. Polastri, as Trustees of
25 the Trust of Gian and Robin Polastri, dated April 7, 2001, and the Trust of Gian and
26 Robin Polastri, dated April 7, 2001, own in fee simple the townhome at 26 Mirada Road,
27 Half Moon Bay, California. They are members of the Casa Mira Homeowners'
28 Association.

1 9. Petitioners and Plaintiffs Roderick A. Young and Charlotte D. Jacobs, as
2 Trustees of the Young/Jacob 1998 Trust, own in fee simple the townhome at 28 Mirada
3 Road, Half Moon Bay, California. They are members of the Casa Mira Homeowners'
4 Association.

5 10. Petitioner and Plaintiff Gustavino Holdings, LLC owns in fee simple the
6 townhome at 14 Mirada Road, Half Moon Bay, California. It brings this action solely as a
7 member of the Casa Mira Homeowners' Association and not individually.

8 11. Petitioners and Plaintiffs Michael Patrick Sullivan, Jr., as Successor Trustee of
9 the Mavis R. Sullivan Declaration of Trust dated October 21, 2015, the Mavis R. Sullivan
10 Declaration of Trust dated October 21, 2015, as to an undivided $\frac{1}{2}$ interest; Kim M.
11 Thomas, a $\frac{1}{4}$ th interest in and to an undivided $\frac{1}{2}$ interest; Michael Patrick Sullivan, Jr.,
12 a $\frac{1}{4}$ th interest in and to an undivided $\frac{1}{2}$ interest; Kerry Sullivan, a $\frac{1}{4}$ th interest in and
13 to an undivided $\frac{1}{2}$ interest; Jamie Sullivan, a $\frac{1}{12}$ th interest in and to an undivided $\frac{1}{2}$
14 interest; Ashley Sullivan, a $\frac{1}{12}$ th interest in and to an undivided $\frac{1}{2}$ interest; and Maggie
15 Sue Sullivan, a $\frac{1}{12}$ th interest in and to an undivided $\frac{1}{2}$ interest, own in fee simple the
16 townhome at 10 Mirada Road, Half Moon Bay, California. They each bring this action
17 solely as a member of the Casa Mira Homeowners' Association and not individually.

18 12. Petitioner and Plaintiff Casa Mira is adversely affected by Respondent Coastal
19 Commission's effective denial of the seawall application for several reasons. First, Casa
20 Mira's members have used for years, and plan to use in the future, the public access
21 Coastal Trail, with its iconic and unobstructed views, near their homes. The Coastal Trail
22 would have received protection but for the Respondent CCC's effective denial of a
23 seawall. Casa Mira owners, residents and guests have used, presently use and plan to
24 use in the coming week and months, the Coastal Trail for recreation, biking, hiking,
25 walking, and scenic viewing, as protected by the Coastal Act. The sought-after coastal
26 development permit also would have secured long-term public access along the Coastal
27 Trail and to the beach below the coastal bluff, in accordance with Coastal Act provisions
28 and policies. As the Coastal Commission staff articulated in their staff report on this

1 application, this segment of the Coastal Trail is “in danger of erosion” and without the
2 proposed seawall “would be immediately threatened” by coastal erosion and bluff
3 collapse. Second, since the Casa Mira homes are immediately inland of the relevant
4 section of the Coastal Trail, Respondent Coastal Commission’s denial of that portion of
5 the seawall protecting the Coastal Trail necessarily also threatens the 10 townhomes by
6 exposing them to bluff collapse and erosion, and ultimate collapse into the ocean.

7 13. Respondent and Defendant California Coastal Commission is a commission of
8 the State of California housed in the California Natural Resources Agency, established
9 pursuant to the California Coastal Act (Pub. Res. Code §§ 30000 *et seq.*). The CCC is
10 responsible, with local governments, for implementing the Coastal Act. A coastal
11 development permit is required for “development” within the coastal zone, and, with
12 respect to this project, which is “development,” the CCC has retained jurisdiction to
13 process applications and issue coastal development permits. On July 11, 2019, the CCC
14 effectively denied Petitioner Casa Mira’s co-application for a coastal development permit
15 for a seawall.

16 14. Respondent and Defendant John (Jack) Ainsworth is the Executive Director of
17 the California Coastal Commission, and is being named in his official capacity. Mr.
18 Ainsworth had the authority to grant Petitioner Casa Mira’s request to extend existing
19 emergency rip rap while this lawsuit is pending, but on August 9, 2019, Mr. Ainsworth,
20 through his staff, denied the request or otherwise failed to exercise his authority in
21 accordance with law.

22 15. Real Party-in-Interest California Department of Parks and Recreation (“State
23 Parks”) is a department of the State of California. State Parks owns, has a legal interest
24 in, and/or manages that portion of the Coastal Trail at issue in this lawsuit. State Parks’
25 land also extends directly south of the project site, and is preserved as public open space.
26 State Parks filed a 2019 letter with Respondent Coastal Commission that supported
27 extending the life of the Coastal Trail “for future generations to enjoy.” As such, State
28 Parks is named as a real party-in-interest because its legal interest with respect to the

1 Coastal Trail and nearby or surrounding real property may be affected by this lawsuit.

2 16. Real Party-in-Interest the City of Half Moon Bay (the "City") is an
3 incorporated city located in San Mateo County, California. The City holds a public
4 easement underlying all or part of that portion of the Coastal Trail at issue in this
5 litigation. The City filed a letter with Respondent Coastal Commission that supported
6 the seawall application in order to protect the Coastal Trail. The CCC's effective denial
7 of the seawall threatens City infrastructure including the Coastal Trail and the sewer line.
8 The denial also will adversely impact the City's tax base by eliminating nearly \$125,000
9 in annual real property taxes. As such, the City is named as a real party-in-interest
10 because its legal interest with respect to the Coastal Trail and real property interests that
11 underlie or are adjacent to or nearby may be affected by this lawsuit.

12 17. Real Party-in-Interest the Granada Community Services District (the
13 "District"), formerly known as the Granada Sanitary District, is a special district created
14 pursuant to Gov't Code § 61000. The District maintains the sewage collection system and
15 disposal for approximately 2,500 residences and businesses in the northern portion of the
16 City of Half Moon Bay, including the area at issue in this lawsuit. The District maintains
17 a sewer line under or within a few feet of the segment of the Coastal Trail at issue in this
18 lawsuit. The sewer line serves several residential structures in the neighborhood,
19 including the apartments at 2 Mirada Road as well as the 10 Casa Mira townhomes, and
20 crosses the Arroyo de en Medio Creek on the far side of the end of Mirada Road. As
21 such, the District is named as a real party-in-interest because its legal interest with
22 respect to the sewer line may be affected by this lawsuit.

23 18. In addition to Casa Mira, there were three co-applicants on the application to
24 build a seawall. Those three co-applicants own as tenants in common the residential
25 apartment structure known as 2 Mirada Road. One of the tenants-in-common sold
26 its/her property interest to a new owner immediately prior to the July 11, 2019 Coastal
27 Commission hearing and therefore both parties are named because each of their
28 respective interests may be affected by this lawsuit.

1 19. Real Party-in-Interest Irina Vlassova Place is an individual and resident of the
2 State of Hawaii who owns, as a tenant-in-common, the apartment residential structure at
3 2 Mirada Road, and is a co-applicant with Casa Mira for the coastal development permit
4 for a seawall. As such, Ms. Place is named as a real party-in-interest because her legal
5 interest with respect to the property and this application may be affected by this lawsuit.

6 20. Real Party-in-Interest, Top of Mirada, LLC is a California limited liability
7 company that owns, as a tenant-in-common, the apartment residential structure at 2
8 Mirada Road, and is a co-applicant with Casa Mira for the coastal development permit
9 for a seawall. As such, Top of Mirada, LLC is named as a real party-in-interest because
10 its legal interest with respect to the property and this application may be affected by this
11 lawsuit.

12 21. Real Party-in-Interest, Jennifer Thomas, is an individual and California
13 resident, who owned, as a tenant-in-common, the apartment residential structure at 2
14 Mirada Road, and was a co-applicant with Casa Mira for the coastal development permit
15 for a seawall. Ms. Thomas formed a single owner LLC called Top of Mirada, LLC and
16 transferred her interest in the property to that entity in mid-2018. Because the CCC was
17 unclear whether it considers Ms. Thomas or Top of Mirada, LLC to be the recipient of the
18 partial approval granted on July 11, 2019, Petitioner Casa Mira names Ms. Thomas as a
19 real party-in-interest because her legal rights may be affected by this lawsuit.

20 22. Real Parties-in-Interest William S. Easterling and Darlene Inez Castro-
21 Easterling, as Trustees of the Easterling Revocable Trust UTA, dated July 11, 2000, own,
22 as a tenant-in-common, the apartment residential structure at 2 Mirada Road, and are de
23 facto co-applicants with Casa Mira for the coastal development permit for a seawall, and
24 responsible parties under the application/conditional approval. As such, the Easterlings
25 as Trustees are named as a real party-in-interest because their legal interest with respect
26 to the property and this application may be affected by this lawsuit.

27 23. Real Party-in-Interest Valli Ananda a/k/a Gail LaMar is also named
28 individually and as a trustee because Gail LaMar is a co-applicant for the seawall coastal

1 development permit, and she was the trustee for The Gail M. LaMar Living Trust u/t/a
2 January 24, 1999. She changed her name from Gail LaMar to Valli Ananda. The Gail M.
3 LaMar Living Trust u/t/a January 24, 1999 and/or Ms. Ananda/ LaMar, sold its/her
4 tenancy-in-common interest to Real Parties-in-Interest William and Darlene Easterling, as
5 Trustees of the Easterling Revocable Trust UTA, dated July 11, 2000, in June 2019.
6 However, she did not withdraw her name from the pending seawall application.
7 Accordingly, Ms. Ananda/LaMar, individually and as Trustee for The Gail M. LaMar
8 Living Trust u/t/a January 24, 1999, is named as a real party-in-interest because her/their
9 respective legal interests with respect to the co-application, conditional approval, and
10 underlying real property may be affected by this lawsuit.

11 24. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of DOES 1 through 50 are unknown to the Petitioners, who therefore sues
13 these defendants/respondents/real-parties-in-interest by fictitious names. The Petitioners
14 will amend this Petition/Complaint to show the DOE defendants/respondents/real-
15 parties-in-interests' true names and capacities when ascertained. Petitioners are further
16 informed and believe that each of the respondents/defendants named herein, including
17 DOES 1 through 10, was the agent, servant, employee, and/or alter ego of the other
18 respondents/defendants and, that in doing the things alleged herein, was acting within
19 the scope to his/her/its actual or apparent authority.

20 25. Pursuant to C.C.P. §§ 393(b) and Gov't Code § 955, venue is proper because
21 the cause of actions arose, and the subject property is located, in San Mateo County.

22 26. This Court has jurisdiction pursuant to C.C.P. §§ 1085, 1094.5, 1095.5, 1060,
23 and 527(a), and Pub. Res. Code § 30801 [actions against the CCC].

24 **Background on the Coastal Bluff Collapse, the CCC's Issuance of Two**
25 **Emergency Permits, the Coastal Development Permit Application, and the**
26 **CCC's Staff's Findings and Recommendations for Approval of the Seawall**
26 **Project**

27 27. The project site is located in the City of Half Moon Bay along a bluff and beach
28 (Half Moon Bay State Beach) seaward of a segment of the California Coastal Trail and 10

1 townhouses (in four buildings) in the Casa Mira condominium complex (just inland of
2 the Coastal Trail). Just to the north is a multi-family apartment building at 2 Mirada
3 Road. The CCC staff acknowledges that this segment of the Coastal Trail is “extremely
4 popular.” The Coastal Trail is next to a coastal bluff.

5 28. From roughly 2003 to 2014, this bluff slowly retreated an average of about 0.3
6 feet per year, and then in the space of one winter (2016) approximately 20 feet of bluff
7 collapsed and eroded away, threatening the Coastal Trail, the 10 Casa Mira townhomes
8 on the landward side of the Coastal Trail, the sewer line under the Coastal Trail, and
9 indirectly, the apartment complex located at 2 Mirada immediately to the north.

10 29. Petitioner Casa Mira and Real Parties-in-Interest Place, Top of Mirada and
11 LaMar applied to Respondent CCC for an emergency permit to place a rip rap revetment
12 in the area in order to forestall additional bluff collapse and erosion. On May 13, 2016,
13 and September 22, 2017, respectively, Respondent CCC granted Petitioner Casa Mira and
14 the owners of 2 Mirada two emergency permits (G-2-16-0045 and G-2-17-0046),
15 authorizing Petitioner Casa Mira to place 4,000 tons of riprap to bolster the bluff
16 immediately seaward of the existing Coastal Trail. Casa Mira completed this project and
17 the rip rap remains in place at the time of this filing. The rip rap has protected the
18 Coastal Trail, as well as the 10 Casa Mira townhomes and sewer line inland of the trail.
19 No material bluff collapse or erosion has occurred in the area of the emergency rip rap.

20 30. In July 2016, Petitioner Casa Mira and the owners of 2 Mirada submitted an
21 application for a regular coastal development permit. After long discussions with the
22 Coastal Commission staff lasting more than a year, Petitioner Casa Mira was pressured
23 by the Coastal Commission staff to revise the application to build a seawall rather than to
24 install a less expensive, permanent rip rap revetment to protect the coastal bluff. This
25 shift increased in the estimated design and construction costs by millions of dollars,
26 catapulting the cost of the proposed structure to nearly \$5 million in 2018 dollars. Delays
27 caused by the Respondent Coastal Commission’s July 2019 effective denial will further
28 increase design and construction costs moving forward.

1 31. As re-designed, the proposed project included (1) removing the temporary
2 riprap placed in accordance with the two emergency permits, and (2) constructing a tied-
3 back “shotcrete” seawall in the same location. The proposed seawall would have
4 protected the coastal bluff that partially collapsed in 2016, immediately in front of the
5 Coastal Trail, and extending approximately 257 lateral feet along the bluff to the south.
6 Casa Mira’s proposed seawall is depicted in blue on **Exhibit 2**, attached hereto (a graphic
7 representation).

8 32. The CCC staff determined that the proposed seawall is the preferable
9 alternative under the Coastal Act to minimize significant adverse impacts to coastal
10 resources while also protecting the coastal-dependent Coastal Trail. Staff concluded that
11 the 2.5-foot wide seawall would “occupy much less public beach space than a riprap
12 revetment would . . . and [could] . . . be designed to blend, as much as feasible, into the
13 natural bluff environment through colorizing and contouring its surface to match natural
14 bluff landforms.”

15 33. To mitigate the alleged impacts of the seawall, including alleged impacts to
16 local shoreline sand supply and other impacts, the CCC staff worked with Casa Mira to
17 develop a “mitigation package,” including certain exactions, to offset alleged coastal
18 resource and sand supply impacts. Casa Mira and staff then negotiated the following
19 measures as special conditions on any approval by the CCC – Casa Mira would (1)
20 construct a new beach access stairway, incorporated into the seawall design (at a cost
21 exceeding \$500,000); (2) obtain and dedicate private blufftop land for public access to
22 facilitate the connection between the Coastal Trail and the new beach stairway; (3)
23 construct a portion of the realigned blufftop Coastal Trail segment (8 feet wide, and
24 approximately 300 feet long) inland from the proposed seawall and connecting to and
25 running through State Parks’ property directly south of the project site to minimize
26 future erosion risk; (4) install landscape improvements and public benches, bicycle racks,
27 and signage, to facilitate public access; (5) remove all old, abandoned timber piles that
28 exist on the beach seaward of the seawall to open up additional sandy beach area for

1 public recreation; (6) donate \$10,000 to help provide for a *second* public access stairway to
2 the beach to the north of the project site; and (7) agree to maintain these public access
3 areas, improvements, and amenities at Casa Mira's expense.

4 34. The CCC staff concluded that by transitioning to a seawall (at a cost of nearly
5 \$5 million), Casa Mira's proposed project vastly reduced the alleged impacts to the local
6 shoreline sand supply, and vastly improved public access along the coastal blufftop and
7 public access to the beach. Also, by removing historical debris such as the embedded
8 timber piles, the proposal would make the beach much more accessible and useful for
9 public recreation.

10 35. The CCC staff recommended to the full Commission that it approve the
11 project. The CCC staff determined that the Coastal Trail is a coastal dependent use under
12 Pub. Res. Code § 30235, and thus entitled to protection. Staff concluded that the
13 proposed seawall was the "**minimum necessary** to protect the endangered existing
14 structure and the [Coastal Trail]." The CCC staff found that the Coastal Trail and 2
15 Mirada apartments are in danger from erosion based on the CCC's previous findings of
16 danger when a structure "would be unsafe to use or otherwise occupy **within the next**
17 **two or three storm season cycles**" if no action were taken, i.e., if no "armoring" or
18 seawall was allowed. The CCC staff found that erosion and bluff collapse at this site was
19 occurring through dramatic, episodic events often during winter storms. The CCC staff
20 concluded that ". . . **without protection, it is fair to conclude that anything within about**
21 **20 feet of the present blufftop edge location is in danger of being undermined in such**
22 **an event, and annual and ongoing erosion will continue to exacerbate this threat.**"
23 Staff also found that "the 8-foot wide paved Coastal Trail is located about 3 to 4 feet
24 inland from the blufftop edge in this location, and in one section is being actively
25 undermined. The property line for the Casa Mira condominiums is located another 2 feet
26 inland of the trail, with the Granada Sanitary District's sewer line located along the
27 property line." Casa Mira's geotechnical expert submitted an analysis to the CCC that
28 concluded "the bluff retreat and recession will continue if left *partially or fully*

1 unprotected.” Without the seawall or a revetment, all of these structures would be
2 threatened, if not destroyed, by erosion in a very short period of time. The CCC staff
3 found that the **entire** 257-foot seawall **is needed to protect these structures**, and that the
4 proposed seawall was designed in a way that is fully **consistent with the Coastal Act**.

5 36. The CCC staff also determined that the alternative of relocating the existing
6 structures was **not feasible**. First, the CCC staff found that “the apartment site is already
7 fully developed with an apartment building, parking, and related infrastructure such as
8 drainage, sewer and water lines, and the entirety of the parcel is subject to coastal
9 hazards and fronted by shoreline armoring.” The CCC staff concluded that attempting
10 to move the apartments inland “would be extremely difficult and costly, and it would
11 still be in a hazardous location, and that there are “no undeveloped areas on the
12 property, outside of the coastal hazards zone, able to accommodate the existing
13 apartment structure and allow for removal of the riprap.” Casa Mira’s geotechnical
14 expert determined that “relocation of this multi-unit structure is infeasible, as moving the
15 structure would not be possible given that areas that must be stable for lifting and rolling
16 the structure’s foundation are occupied with large riprap, and removal of such riprap
17 would further destabilize the areas needed for lifting or rolling.” The CCC did not
18 contest these findings, but rather accepted them. Second, the CCC staff concluded that
19 relocation of the sewer line and the Casa Mira 10 townhomes would be difficult as well.
20 For the sewer line, there would be significant capital outlay by the Granada Community
21 Services District for new sewer pipelines and connections (and pumps, etc., as needed).
22 The townhomes could only shift approximately 10 feet inland while remaining within
23 their property. “Given that limitation, relocation would likely also need to include some
24 demolition.” Further, relocation of the townhomes even 10 feet inland would exceed \$2.6
25 million, including moving the structures, constructing new foundations and
26 infrastructure, constructing new buildings, and removing the emergency riprap. The
27 townhomes would remain uninhabitable for at least 18 months and probably longer
28 given the usual permitting and engineering delays and obstacles. Third, the CCC staff

1 concluded that relocating this segment of the Coastal Trail “would require significant
2 additional costs and permitting time, which would be problematic given this
3 infrastructure would be immediately threatened with no armoring present.” **“Further,**
4 **there is no viable location for the Coastal Trail to be rerouted in this location while**
5 **maintaining its aesthetic and recreational value adjacent to the ocean and beach** (i.e., it
6 would need to loop inland of existing residential structures, such as the Casa Mira
7 condominiums, if relocated). Due to the narrow pinch-point between the bluff and
8 condominiums, any further erosion will force realignment of the trail far inland, east of
9 the Casa Mira complex, **thereby sacrificing coastal views and a consistent path along**
10 **the shoreline for pedestrians**. For all of these reasons, the relocation alternative was
11 determined not to be feasible in this case.” Casa Mira also presented evidence at the
12 CCC hearing that moving the Coastal Trail inland would violate the Coastal Act’s
13 provisions protecting scenic views and coastal visual resources. Indeed, moving the
14 Coastal Trail inland at this location would eliminate all views of the ocean, meaning that
15 the trail would no longer be a “Coastal Trail,” but rather just a trail very far from the
16 coast and the beach.

17 37. The CCC staff next concluded that “planned or managed retreat,” meaning the
18 intentional abandonment and demolition of the threatened structures, was **“not currently**
19 **feasible** at this location, given the inability to relocate the threatened structures, and the
20 lack of a formalized managed retreat program that otherwise provides regulatory
21 guidance and requirements.” **In other words, neither the CCC nor the City of Half**
22 **Moon Bay has any formal program, policy or guidance for “managed retreat.” So, in**
23 **staff’s view, that was not an option.**

24 38. After rejecting other alternatives, the CCC staff concluded “. . . there do not
25 appear to be feasible non-armoring (or “soft”) alternatives that could be applied in this
26 case to protect the existing structures currently in danger from erosion, and therefore,
27 **hard armoring alternatives must be considered.**”

28 39. The CCC staff rejected Casa Mira’s request to install permanent rip rap, which

1 staff admitted "has been successfully used to protect endangered structures for many
2 decades." In staff's view, the rip rap "occupie[s] . . . a large area of sandy beach, and it
3 presents ongoing issues with beach coverage, displacement, and maintenance." Staff
4 therefore pushed Petitioner Casa Mira to propose a 2.5 foot wide **tied-back concrete**
5 **seawall** extending 257 feet across the bluff. The CCC staff determined that this **seawall**
6 **"is the preferred alternative** for this area because it achieves the desired project goals
7 (e.g., prevents loss of the apartments and the public access pathway) and minimizes
8 adverse impacts to coastal resources, including public access and recreation, as much as
9 feasible . . ." The CCC staff concurred that ". . . the seawall has been **designed to limit**
10 **its impacts on coastal resources** by limiting the beach footprint and by contouring and
11 surfacing the seawall to mimic the natural bluffs in appearance and shape, and as such it
12 helps to reduce adverse impacts to coastal resources as much as feasible with a project
13 like this and in this environment." In fact, Petitioner Casa Mira spent years working with
14 CCC staff to ensure that all of staff's concerns were addressed. **Casa Mira spent more**
15 **than \$210,000 on seawall design and engineering work to accommodate staff's every**
16 **whim.**

17 40. Petitioner Casa Mira and the CCC staff also worked together for **three years** to
18 develop a **comprehensive package to mitigate all alleged impacts**, including, *inter alia*,
19 passive erosion; the long-term loss of beach, if any; impacts to recreational opportunities;
20 the loss of sand and sand generating materials. The mitigation measures imposed by the
21 CCC included (1) constructing a new vertical beach access stairway, incorporated into
22 the seawall design at a cost exceeding \$500,000; (2) obtaining and dedicating 7,430 square
23 feet of bluff area for public use and enjoyment, including the area where the beach public
24 access stairway would connect to the Coastal Trail; (3) constructing a newly realigned
25 blufftop Coastal Trail (8 feet wide, approximately 300 linear feet) above the proposed
26 seawall, within the dedicated blufftop area and on State Parks' property directly south of
27 the project site; (4) removing old bike trail components and fully restoring the bluff and
28 habitat; (5) donating \$10,000 to be used for an additional, second public access beach

1 stairway north of the apartments at 2 Mirada Road; (6) installing new landscaping and
2 access amenities (e.g., public benches, picnic tables, bicycle racks, signage, etc.); (7)
3 removing all existing, abandoned timber piles on the beach in the project area to provide
4 additional sandy beach area for public recreation; (8) designing and installing
5 landscaping, drainage, and fencing to improve public access utility and public views; and
6 (9) agreeing to assume long-term maintenance of public access areas, improvements, and
7 amenities, at no cost to the public. Petitioner Casa Mira also had commenced discussions
8 with State Parks about assuming additional Coastal Trail maintenance obligations to
9 reduce State Parks' public funds outlay for those obligations. Based on this extensive and
10 expensive mitigation package, the CCC staff concluded the mitigation would "enhance
11 public recreational access amenities and utility in the project area, appropriately
12 offsetting the beach/shoreline area impacts" Staff found the mitigation would "allow
13 public access improvements to be realized in the very near term, providing fairly
14 immediate and tangible public benefits" "In addition, the . . . recreational use and
15 access improvement projects will likely be worth much more to users than the cost to
16 develop these improvement projects, as they have an intrinsic value to the shoreline-
17 visiting public, particularly given the significant popularity of the [Coastal Trail] . . . and
18 related public access features on this stretch of coast" "In short, the . . . access
19 improvement project constitutes an appropriate and adequate compensatory mitigation
20 package to offset the impacts" Staff then **found that the seawall project is**
21 **consistent with the Coastal Act, Pub. Res. Code § 30235.** Staff continued: "With regard
22 to this specific site and facts, the Commission finds that the proposed project, as
23 conditioned, can be found consistent with Coastal Act Sections 30235 and 30253 because
24 it is the least environmentally damaging feasible alternative required to protect an
25 existing structure and a coastal-dependent use in relation to the . . . [Coastal Trail], and
26 conditions are included to ensure that the project will appropriately mitigate for its sand
27 supply and beach/shoreline recreational use area impact, and to ensure long term
28 stability. **Therefore, as conditioned, the proposed project is consistent with Coastal Act**

1 Sections 30235 and 30253."

2 41. The CCC staff also found the project consistent with Coastal Act access and
3 recreation policies, including Pub. Res. Code §§ 30210, 30211, 30212(a), 30213, 30221,
4 30222, 30223, and 30240(b).

5 42. The CCC staff found the project consistent with Coastal Act view policies,
6 including Pub. Res. Code §§ 30251 and 30240(b).

7 43. The CCC found the project consistent with marine resources and offshore
8 habitat protections, including Pub. Res. Code §§ 30230 and 30231.

9 44. Based on these findings, the CCC staff recommended that the full Commission
10 approve the project based on the following proposed motion: "The Commission hereby
11 approves Coastal Development Permit Number 2-16-0784 for the proposed development
12 and adopts the findings set forth below on grounds that the development as conditioned
13 will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the
14 Permit complies with the California Environmental Quality Act because either 1) feasible
15 mitigation measures and/or alternatives have been incorporated to substantially lessen
16 any significant adverse effects of the development on the environment, or 2) there are no
17 further feasible mitigation measures or alternatives that would substantially lessen any
18 significant adverse impacts of the development on the environment."

19 45. Casa Mira didn't agree with *every* aspect of the staff's analysis. Petitioner Casa
20 Mira disagreed with the CCC's staff contention that Pub. Res. Code § 30235 protects only
21 those structures that existed at the time that the Coastal Act was adopted in 1977. Section
22 30235 provides, in relevant part, "...seawalls... shall be permitted when required to
23 ...protect existing structures ... in danger from erosion and when designed to eliminate
24 or mitigate adverse impacts on local shoreline sand supply." The statute does **not** state
25 that existing structures are limited to structures that pre-date the Coastal Act. Indeed,
26 the CCC has over the years interpreted those very same words in that statute to mean
27 structures that existed *at the time of an application for a seawall*. The CCC has used that
28 broader definition as a basis to grant seawall permits to other persons and citizens in

1 California. The CCC should have concluded that Pub. Res. Code § 30235 mandates that
2 the agency grant a seawall permit to Casa Mira in order to protect the 10 existing
3 townhomes just inland of the Coastal Trail. That provision provided an independent
4 basis for protecting the 10 townhomes, separate and apart from the protection provided
5 indirectly by the Coastal Act's requirement that "coastal dependent" uses like the Coastal
6 Trail be protected. Even with this disagreement, however, the CCC staff's
7 recommendation to the full Commission was that the Coastal Act warranted, if not
8 required, protection of the Coastal Trail. Ninety three percent or more of the seawall was
9 designed to protect the Coastal Trail, not the 2 Mirada apartments. The 2 Mirada
10 apartments cannot be protected without also protecting some portion of the existing
11 Coastal Trail.

12
13 **The July 11, 2019 Full Commission Hearing and Rejection of Staff's**
14 **Recommendation to Approve the Project, Nullifying 93 Percent of the Seawall**
15 **and Effectively Denying the Project**

16 46. On July 11, 2019, the CCC held a hearing on the seawall application at its
17 meeting held in San Luis Obispo.

18 47. Numerous residents of Casa Mira traveled 4 hours from the Bay Area, and as
19 far away as Canada, to attend the hearing and to speak directly to the full Commission
20 about their support for maintaining the Coastal Trail. As explained below, the Chair of
21 the full Commission denied them that right.

22 48. To say that the Commission hearing process was poorly executed is an
23 understatement. The CCC originally scheduled the Casa Mira hearing as Item 8A,
24 scheduled for the morning session beginning at 9 am. When Casa Mira representatives
25 arrived that morning, however, the CCC staff advised them of a last minute schedule
26 change – that the Casa Mira hearing was being delayed until later in the day so that the
27 CCC could hear a more controversial agenda item first. The CCC then heard the more
28 controversial agenda item for the entire day, meaning that the Casa Mira hearing did not
commence until after about 6 pm, **some 9 hours later**. Casa Mira representatives had

1 arrived at about 8 am, meaning they **waited 10 hours** for the full Commission to hear
2 their application. During the previous month, Casa Mira repeatedly had asked the CCC
3 staff to schedule the hearing for August, but staff insisted that the hearing *must* happen
4 in July. As it turns out, the Commission could barely fit the hearing in the July meeting,
5 and it would have been much more reasonable to schedule the Casa Mira hearing in
6 August 2019, as requested.

7 49. It was clear from the commencement of the Casa Mira hearing that the 12
8 Commissioners were spent and exhausted from the previous 9 hour hearing. The CCC
9 staff gave an overview of the application, and a single Casa Mira representative was
10 allowed to speak for 5 minutes or less. During the public comment period, the CCC
11 Chairwoman failed or refused to hear any of the other residents of Casa Mira or
12 information they wished to present on the Coastal Trail – **despite the fact they had**
13 **driven 4 hours and waited another 10 hours.** Instead, she recognized only an *opponent* of
14 the project who was allowed to speak for 3 minutes.

15 50. When the hearing shifted to debate by the Commissioners, it became clear
16 they had failed to read the staff report. A few Commissioners proposed rejecting the
17 portion of the seawall that protected the Coastal Trail, even though that comprised 93
18 percent of the seawall. The Commissioners' discussion on the record shows that they
19 were entirely unaware of the legal standards in the Coastal Act that compelled protecting
20 "coastal dependent uses" like the Coastal Trail. They ignored the detailed findings of
21 their own staff. Their reasoning was limited to not wanting to be "hypocritical" by
22 encouraging "managed retreat" to private applicants, while protecting the public Coastal
23 Trail. They were oblivious that such a consideration was not allowed under the relevant
24 Coastal Act provision, and, worse, they seemed unconcerned that the CCC hasn't
25 adopted any official policy on "managed retreat" to date. In other words, the
26 Commission based its decision on a CCC policy that doesn't exist, and that staff had
27 advised was nonexistent. **They merely "approved, with conditions" the seawall, which**
28 **was a euphemism for denying 93 percent of the seawall.** The Commissioners directed

1 their staff to require the co-applicants “to submit revised final plans that would show the
2 seawall protecting only the area needed to protect the apartment building and not to
3 protect the Coastal Trail because they're a viable alternative to the – to the Coastal Trail.”
4 The Commissioners failed to instruct its staff to change the mitigation and exaction
5 package that had been negotiated over a 3-year period between Casa Mira and the CCC
6 staff.

7 **The CCC Executive Director’s August 9, 2019 Refusal to Extend the Emergency**
8 **Rip Rap Protecting the Coastal Trail, the Sewer Line and the Casa Mira**
9 **Townhomes**

10 51. In light of the full Commission’s July 11, 2019 effective denial of the seawall,
11 Petitioner Casa Mira on August 6, 2019 submitted a request in writing to the CCC
12 Executive Director and CCC staff, asking the CCC to continue to allow (during the
13 pendency of litigation) an existing rip rap revetment placed in 2016 and 2017 pursuant to
14 emergency permits granted by the CCC Executive Director. The existing rip rap
15 revetment currently protects the Coastal Trail, the sewer line, and the Casa Mira
16 townhomes by preventing further erosion of the bluff and shoreline.

17 52. Less than 72 hours later, on August 9, 2019, the CCC staff, on behalf of the
18 CCC Executive Director, flatly rejected the request, asserting that he/it had no authority
19 to do so, despite clear terms in the permits and the CCC regulations authorizing the CCC
20 Executive Director to extend an emergency permit “for good cause.”

21 **The CCC’s Tardy Adoption of Revised Findings**

22 53. On November 13, 2019 (more than four months after the July 2019 effective
23 denial), the Commission held a hearing to adopt “Revised Findings,” purporting to
24 support its July 2019 denial. The Commission did this because it had rejected its own
25 staff’s recommendation to protect the Coastal Trail (and the detailed reasoning and
26 analysis of its staff), and the actual record at the July 2019 did not support the
27 Commission’s effective denial. However, as detailed herein, the Commission exceeded
28

1 its authority under the Coastal Act and its own regulations by including "revised
2 findings" beyond the action taken by the Commission at the July 2019 hearing. In
3 addition, the Commission's Revised Findings still fail to provide substantial evidence in
4 support of its effective denial of the seawall, and are contrary to law.

5
6 **FIRST CAUSE OF ACTION**
7 **(Petition for Writ of Administrative Mandamus, C.C.P. § 1094.5)**

8 54. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by
9 reference, the allegations contained in paragraphs 1-53, inclusive, as though fully set
10 forth.

11 55. Petitioner Casa Mira and its members are beneficially interested in the
12 issuance of the subject writ mandating that the CCC set aside its July 11, 2019 effective
13 denial of the seawall coastal development permit, and in the issuance of a writ
14 mandating that the CCC Executive Director set aside his August 9, 2019 refusal to extend
15 the existing emergency rip rap. First, Petitioner Casa Mira and its members are
16 beneficially interested in the issuance of the writs because, according to the CCC's own
17 staff, the denial of the seawall for the Coastal Trail will result in the trail being
18 "immediately threatened" by episodic erosion events. Casa Mira's owners, members,
19 residents and guests have used, presently use, and plan to use in the coming weeks and
20 months, the Coastal Trail for recreation, biking, hiking, walking, and scenic viewing,
21 which are all interests strongly protected by the Coastal Act's provisions and policies.
22 Second, Casa Mira and its members are beneficially interested in the issuance of the writs
23 because the CCC's denial of the majority of the seawall will result in the 10 Casa Mira
24 townhomes being "immediately threatened" by episodic erosion events. Third, Casa
25 Mira and its members are beneficially interested in the issuance of the writs because the
26 CCC's denial of the majority of the seawall will result in the sewer line servicing the 10
27 townhomes being "immediately threatened" by episodic erosion events.

28 56. Casa Mira's members pay substantial real estate taxes as property owners in

1 California and San Mateo County and they have an interest in ensuring that public
2 officials and agencies (1) do not unlawfully exceed their jurisdiction by misinterpreting
3 and/or misapplying the Coastal Act and denying lawful permits to build structures
4 needed to protect the Coastal Trail (and their long-standing homes) from erosion and
5 bluff collapse; (2) duly execute, and fairly and uniformly apply the Coastal Act, as
6 written; (3) do not abuse their discretion or exceed their jurisdiction in reviewing
7 applications for such permits; and (4) do not act in an arbitrary and capricious manner,
8 without proper and substantial evidentiary support, contrary to law, or in the absence of
9 proper procedures or a fair hearing. Alternatively, Petitioner Casa Mira and its members
10 are citizens seeking to enforce public rights and the object of this mandamus is to enforce
11 a public duty, including protecting the long-standing Coastal Trail and/or sewer line
12 from collapse and ruin.

13 57. Petitioner Casa Mira and its members have performed all conditions
14 precedent to the filing of this Petition and Complaint and otherwise have exhausted all
15 required and applicable administrative remedies, or are otherwise excused given that
16 this is a challenge to the authority of the CCC and/or its Executive Director, or is exempt
17 under the doctrine of futility.

18 58. Petitioner Casa Mira and its members have no plain, speedy, and adequate
19 remedy in the ordinary course of law, other than the relief sought in this Petition and
20 Complaint. Absent intervention by this Court, the CCC's denial of 93 percent of Casa
21 Mira's application for a seawall (and the Executive Director's refusal to extend the term
22 of the existing emergency rip rap) will aver to the detriment of Petitioner and its
23 members as described herein. No additional administrative appeal or other form of relief
24 is available to prevent such an occurrence. Petitioner Casa Mira and its members have a
25 clear, present and beneficial right to performance of the public business in accordance
26 with the law and legal standards set forth herein.

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COUNT 1

(The CCC's Effective Denial of the Seawall Exceeds the CCC's Authority and Violates the Coastal Act, Pub. Res. Code § 30235, Because It Fails to Protect the Coastal Trail as a "Coastal Dependent Use" Threatened by Erosion, Violates the Coastal Act's Scenic Resources Protections in Pub. Res. Code §§ 30001(b) and 30251, and Erroneously Concludes, Without Substantial Evidence, That Moving the Coastal Trail Inland Is a "Feasible" Alternative Under the California Environmental Quality Act ("CEQA")) and the Coastal Act

59. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-58, inclusive, as though fully set forth.

60. Administrative agencies like the CCC have only the power conferred upon them by statute, and an act in excess of those powers is void.

61. Pub. Res. Code § 30235, in relevant part, provides that "... seawalls that alter[] natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

62. The CCC staff determined that the segment of the Coastal Trail identified in Petitioner Casa Mira's application for a coastal development permit to construct a seawall is a coastal dependent use under Pub. Res. Code § 30235.

63. The CCC staff also determined that this segment of the Coastal Trail is "in danger of erosion" and without the proposed seawall "would be immediately threatened" by coastal erosion and bluff collapse.

64. The CCC staff concluded that relocating this segment of the Coastal Trail "would require significant additional costs and permitting time, which would be problematic given this infrastructure would be immediately threatened with no armoring present." "Further, there is no viable location for the Coastal Trail to be rerouted in this location while maintaining its aesthetic and recreational value adjacent to the ocean and beach (i.e., it would need to loop inland of existing residential structures, such

1 as the Casa Mira condominiums, if relocated). Due to the narrow pinch-point between
2 the bluff and condominiums, any further erosion will force realignment of the trail far
3 inland, east of the Casa Mira complex, **thereby sacrificing coastal views and a consistent**
4 **path along the shoreline for pedestrians**. For all of these reasons, the relocation
5 alternative was determined not to be feasible in this case.”

6 65. Casa Mira also presented evidence at the CCC hearing that moving the
7 Coastal Trail inland would violate the Coastal Act’s provisions protecting scenic views
8 and coastal visual resources. Indeed, moving the Coastal Trail inland at this location
9 would eliminate all views of the ocean, meaning that the trail would no longer be a
10 “Coastal Trail,” but rather just a trail very far from the coast and the beach.

11 66. Finally, the CCC staff found that the proposed seawall is “designed to
12 eliminate or mitigate adverse impacts on local shoreline sand supply,” as well as other
13 impacts to coastal resources.

14 67. The CCC staff mandated a mitigation package as a condition of approval for
15 the seawall that required Casa Mira to fund and implement numerous improvements to
16 the Coastal Trail, including, but not limited to, constructing a new beach access stairway
17 that connected to the Coastal Trail; dedicating private blufftop land for public access to
18 facilitate further the connection between the Coastal Trail and the new beach stairway;
19 constructing a portion of the realigned blufftop Coastal Trail segment (8 feet wide, and
20 approximately 300 feet long) above the seawall and connecting to and running through
21 State Parks’ property directly south of the project site; installing landscape improvements
22 and public benches, bicycle racks, and signage, to facilitate public access on and along the
23 Coastal Trail; donating \$10,000 to help provide for a *second* public access stairway to the
24 beach from a different segment of the Coastal Trail; and agreeing to maintain these
25 public access areas on and along the Coastal Trail at Casa Mira’s expense. In addition to
26 Casa Mira’s role as a citizen seeking to enforce a public right and duty, i.e., the protection
27 of the Coastal Trail from collapse and ruin, Casa Mira and its members also have a
28 beneficial interest in this petition to protect the Coastal Trail by virtue of the CCC’s

1 mandatory mitigation requiring Casa Mira to expend hundreds of thousands of dollars
2 to improve the Coastal Trail and public access to the beach from the trail. The full CCC
3 retained those requirements even though it denied 93 percent of the seawall.

4 68. On July 11, 2019, the full Commission “approved, with conditions,” Casa
5 Mira’s seawall application – but in reality denied 93 percent of the seawall, including all
6 of the seawall designed to protect the coastal dependent Coastal Trail.

7 69. The full Commission’s July 11, 2019 action effectively denying all of the
8 seawall designed to protect the Coastal Trail violated Pub. Res. Code § 30235 which
9 states that seawalls “**shall be permitted**” so long as the statute’s conditions are fulfilled.
10 All statutory requirements were fulfilled, and indeed, the CCC’s staff found that they
11 were fulfilled. The CCC staff determined that the Coastal Trail is a coastal dependent use
12 and that it needed protection from erosion and bluff collapse. Staff found that CCC the
13 proposed seawall would address local shoreline sand supply issues, and thus complied
14 with the statute’s requirement. Finally, staff found that moving the trail inland would not
15 maintain the trail’s aesthetic and recreational value, and therefore would be inconsistent
16 with the Coastal Act. Casa Mira also presented visual evidence at the hearing showing
17 that moving the trail would eliminate almost all ocean and coast views and therefore
18 would violate the Coastal Act. Pub. Res. Code, § 30001(b) provides that “That the
19 permanent protection of the state’s natural and **scenic resources is a paramount concern**
20 to present and future residents of the state and nation.” In addition, Pub. Res. Code, §
21 30251 states, in relevant part, that “the **scenic and visual qualities of coastal areas shall**
22 **be considered and protected as a resource of public importance.** Permitted
23 development shall be sited and designed to protect views to and along the ocean and
24 scenic coastal areas” Thus, the Coastal Act policies mandate that the Commission
25 protect scenic resources and views. The current location of the Coastal Trail in this area
26 provides iconic views of the ocean that are not found anywhere else on the California
27 coast. The alternative location for the Coastal Trail in this area would be far inland and
28 views of the coast and the ocean from the relocated trail would be blocked and impeded

1 by trees, shrubs and homes. It simply would not be the same experience.

2 70. The full Commission's July 11, 2019 rejection of its own staff's
3 recommendations (and detailed 55-page report and findings) by denying any part of the
4 proposed seawall that would have protected the Coastal Trail, exceeded the
5 Commission's authority under the Coastal Act, violated Pub. Res. Code §§ 30235,
6 30001(b), and 30251, was contrary to law, was a prejudicial abuse of discretion, and
7 lacked substantial evidence.

8 71. On November 13, 2019, the Commission adopted Revised Findings prepared
9 by staff that contradicted staff's analysis at the July 2019 denial hearing.

10 72. Contradicting staff's June 2019 staff report, the Commission adopted a revised
11 staff report that concluded that there is a viable alternative to the proposed seawall
12 because the Coastal Trail could be re-routed inland. Previously, the CCC staff had
13 concluded exactly the opposite because (1) re-routing the Coastal Trail inland could not
14 occur for a significant period of time given permitting requirements; (2) lack of armoring
15 would result in immediate threats to, and likely destruction of, the existing Coastal Trail;
16 (3) the re-routed Coastal Trail would not have the requisite coastal views required to be
17 protected by the Coastal Act; and (4) the re-routed Coastal Trail would fail to provide "a
18 consistent path along the shoreline for pedestrians. The November 2019 revised staff
19 report provided no new analysis or evidence supporting the revised findings or
20 contradicting the June 2019 staff report. The November 2019 staff report simply changed
21 the wording without citing any evidence supporting the changes.

22 73. The November 2019 post-hearing staff report also found that relocation of the
23 Coastal Trail "is a feasible, less environmentally damaging alternative than armoring . . .
24 ." Again, no evidence was provided to support this new finding.

25 74. Although the CCC has a certified regulatory program, state law requires the
26 CCC to comply with CEQA's substantive requirements and broad policy goals. Under
27 CEQA, as well as the Coastal Act, project alternatives must be "feasible."

28 75. The term "feasible" is defined in Pub. Res. Code § 21061.1 as "capable of

1 being accomplished in a successful manner within a reasonable period of time, taking
2 into account economic, environmental, social, and technological factors." The CEQA
3 Guidelines add "legal" to the list of factors that must be considered. 14 CCR § 15364.

4 76. Alternatives must meet and implement key, fundamental project objectives.
5 The Coastal Act sets a key objective of protecting coastal dependent resources by
6 mandating ("shall") that the Commission issue a permit for a seawall that protects such
7 structures (like the Coastal Trail). Pub. Res. Code § 30235. As previously recognized by
8 staff, protecting the Coastal Trail by permitting a seawall required to protect this coastal-
9 dependent use is one of the project's fundamental objectives. Moving the Coastal Trail
10 inland fails to meet that objective and thus is not a "feasible" alternative. It changes the
11 basic nature of the project. Staff asserts that "the Commission found that there was a less
12 environmentally damaging feasible alternative to protect the CCT that involved
13 relocating the trail to an inland location."

14 77. Moving the Coastal Trail inland as proposed is not "feasible" because it fails
15 to consider the mandate of Pub. Res. Code § 30235. The Coastal Act provides special
16 protection for coastal dependent structures. The Coastal Trail is unambiguously a
17 "coastal dependent use." Staff already concluded that the seawall design eliminates or
18 mitigates adverse impacts on local shoreline sand supply. The Commission's revised
19 finding ignores the Coastal Act's mandate to protect the Coastal Trail. The conflict
20 between the Coastal Act's mandate and other environmental considerations means that
21 the alternative of moving the Coastal Trail inland is infeasible.

22 78. Moving the Coastal Trail is not "feasible" because it fails to consider the
23 permanent economic loss of \$12.2 to \$15 million in real estate that will be destroyed as a
24 result of not approving the full 257-foot seawall, and requiring the removal of the
25 existing rip rap. It also fails to consider the loss in more than \$125,000 in annual real
26 estate tax revenue to the State, San Mateo County and City of Half Moon Bay. The
27 Commission also fails to consider the cost of moving the sewer line and the Coastal Trail,
28 or who would pay for that. These additional costs are severe, prohibitive and imprudent.

1 They far exceed the cost of constructing the seawall. They render the trail movement
2 alternative impractical. The Commission failed to consider this cost.

3 79. Moving the Coastal Trail is not "feasible" because it fails to consider the
4 Coastal Act's mandate to preserve scenic views, including the mandates in Pub. Res.
5 Code § 30251. In addition, it is not feasible because the new location is inconsistent with
6 the Statewide Interpretive Guidelines adopted by the California Coastal Commission and
7 the Half Moon Bay certified LCP which protects "ocean and coastal views from public
8 areas" The present location of the Coastal Trail is "highly popular" because of its
9 unique views on the California coast. Moving the Trail inland will not provide any
10 meaningful views of the coast in this area and thus the purpose of the Coastal Trail in
11 this area will be lost.

12 80. Moving the Coastal Trail is not "feasible" because it is not reasonable and is
13 unlikely to ever be implemented. It is not reasonable to conclude that moving a trail is a
14 feasible alternative when that necessarily would result in the destruction of ten homes. It
15 also is not reasonable because the Commission fails to consider how the trail would be
16 moved. The Commission has no authority to move the trail itself. The Commission has
17 received no commitment from State Parks that it will seek to move the trail. The current
18 trail exists in an easement held by the City of Half Moon Bay which would be rendered
19 useless as a result of the Commission's proposed alternative. The City would not seek to
20 permit a new trail on State Parks' land or on other land that the City did not own, or
21 where the City held no easement. The result is that the trail is unlikely to ever be moved.
22 It is an alternative that is unlikely to ever be implemented.

23 81. The Commission erroneously concluded that rerouting the Coastal Trail
24 inland would be feasible without any study or evidence as to whether sensitive species at
25 the inland location would prohibit the trail at the inland location.

26 82. The Commission has been wildly inconsistent on deciding whether moving
27 the Coastal Trail inland is a feasible alternative. In the staff report for the July 2019
28 hearing, staff determined it was not a feasible alternative for a number of reasons. First,

1 in July 2019, staff determined moving the trail would be logically problematic because if
2 the revetment was removed the Coastal Trail would be destroyed in a very short time
3 and long before any new trail could be permitted and built. That would result in a long
4 period of time where public access would be significantly diminished, which would be
5 inconsistent with the Coastal Act. In its Revised Findings and staff report, staff just
6 simply ignores this problem by striking out its analysis. It provides no explanation why
7 its previous analysis was incorrect. Of course, its previous analysis was correct. Staff has
8 just been ordered to change it by the Commissioners. Second, in July 2019, staff
9 determined "there is no viable location for the Coastal Trail to be rerouted in this location
10 while maintaining its aesthetic and recreational value adjacent to the ocean and beach
11 (i.e., it would need to loop inland of existing residential structures, such as the Casa Mira
12 condominiums, if relocated)." In its Revised Findings and staff report, staff just strikeout
13 this analysis, again pretending it's not an issue. But it remains an issue because moving
14 the Coastal Trail inland means it will no longer be a Coastal Trail. Moving the trail
15 would not be consistent with the Coastal Act. Pub. Res. Code, § 30001(b) provides that
16 "That the permanent protection of the state's natural and scenic resources is a paramount
17 concern to present and future residents of the state and nation." Pub. Res. Code, § 30251
18 states, in relevant part, that "the scenic and visual qualities of coastal areas shall be
19 considered and protected as a resource of public importance. Permitted development
20 shall be sited and designed to protect views to and along the ocean and scenic coastal
21 areas" Thus, the Coastal Act policies mandate that the Commission protect scenic
22 resources and views. The current location of the Coastal Trail in this area provides iconic
23 views of the ocean that are not found anywhere else on the California coast. The
24 alternative location for the Coastal Trail in this area would be far inland and views of the
25 coast and the ocean would be blocked and impeded by trees, shrubs and homes. It
26 simply would not be the same experience. Moving the trail would significantly degrade,
27 and likely eliminate, the "visual quality" of this "coastal area," that staff agrees is very
28 frequently used by the public. It would violate the Coastal Act. Staff's simple deletion of

1 previous findings to this effect and new claim that the new trail would be “close enough”
2 is unconvincing and is not grounded in Coastal Act policies. It fails to address the
3 evidence presented by Casa Mira (including photos) showing that virtually all views
4 would be eliminated. Staff has failed to present any counter evidence on this point.
5 Simply making claims without evidence is not substantial evidence.

6 83. The Commission’s Revised Findings violate CEQA not only because moving
7 the Coastal Trail is not feasible but also because the Commission’s revised post-hearing
8 alternatives analysis is conclusory, is contrary to law, is not supported by substantial
9 evidence, and is not detailed enough to allow informed and meaningful decision-making.
10 CEQA mandates that an alternatives analysis include a meaningful discussion of the
11 comparative merits of alternatives. The Commission’s Revised Findings fail to meet that
12 standard.

13 84. The CCC staff’s explanation in the Revised Findings that “the Commission
14 found trail relocation is a feasible, less environmentally damaging alternative than
15 armoring the entire stretch of coast for 257 linear feet to protect the trail in its current
16 location,” lacks substantial evidence, and is contradicted by the evidence that the trail
17 relocation is not feasible and not environmentally less damaging. Given that more than
18 60 percent of Half Moon Bay is protected by revetments that the Commission already has
19 approved as permanent, the argument that adding a 257 foot seawall is somehow too
20 environmentally damaging is not credible. A 257-foot seawall on a bay where there are
21 literally miles of revetment in place does not have a meaningful environmental impact.
22 In addition, staff already had recommended conditions of approval that staff concluded
23 would fully address all environmental, public access and sand supply impacts.

24 85. The Commission’s effective denial of the proposed seawall exceeds the
25 Commission’s authority and violates the Coastal Act, Pub. Res. Code § 30235, because it
26 fails to protect the Coastal Trail as a “coastal dependent use” threatened by erosion,
27 violates the Coastal Act’s scenic resources protections in Pub. Res. Code §§ 30001(b) and
28 30251, and violates CEQA by relying on an alternative that is not feasible and that fails to

1 comport with Pub. Res. Code § 30235's mandate.

2
3
4 **COUNT 2**

5 **(The CCC's Effective Denial of the Seawall Exceeds the CCC's Authority and**
6 **Violates the Coastal Act, Pub. Res. Code § 30235, Because It Fails to Protect the**
7 **Casa Mira Homes as "Existing Structures")**

8 86. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by
9 reference, the allegations contained in paragraphs 1-85, inclusive, as though fully set
10 forth.

11 87. Administrative agencies like the CCC have only the power conferred upon
12 them by statute, and an act in excess of those powers is void.

13 88. Pub. Res. Code § 30235, in relevant part, provides that "... seawalls that alter[]
14 natural shoreline processes **shall be permitted when required** to serve coastal-
15 dependent uses or **to protect existing structures** or public beaches **in danger from**
16 **erosion and when designed to eliminate or mitigate adverse impacts on local shoreline**
17 **sand supply.**"

18 89. The 10 Casa Mira townhomes are "existing structures" under Pub. Res. Code §
19 30235, because they were existing at the time of the seawall application.

20 90. The 10 Casa Mira townhomes are threatened and in danger from erosion and
21 bluff collapse.

22 91. The CCC staff issued a lengthy report finding that Petitioner Casa Mira's
23 proposed seawall is designed to "eliminate or mitigate adverse impacts on local shoreline
24 sand supply," thus concluding that the seawall design complies with that requirement in
25 Pub. Res. Code § 30235.

26 92. Petitioner Casa Mira has a right to a seawall because it met all requirements of
27 Pub. Res. Code § 30235, and otherwise complied with the Coastal Act.

28 93. The full Commission's July 11, 2019 decision denying that portion of the
proposed seawall that would have protected the 10 Casa Mira townhomes (the majority

1 of the 257-foot seawall), exceeded the Commission's authority under the Coastal Act,
2 violated Pub. Res. Code § 30235, was contrary to law, was a prejudicial abuse of
3 discretion, and lacked substantial evidence.

4
5 **COUNT 3**

6 **(The CCC's Effective Denial of the Seawall Violates Casa Mira's
7 Equal Protection Rights Under the California and U.S. Constitutions)**

8 94. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by
9 reference, the allegations contained in paragraphs 1-93, inclusive, as though fully set
10 forth.

11 95. The 14th Amendment of the U.S. Constitution provides that no state shall
12 "deny to any person . . . the equal protection of the laws." Likewise, Article I, § 7 of the
13 California Constitution also guarantees equal protection rights.

14 96. The CCC's July 11, 2019 "approval, with conditions," which was in reality a
15 denial of 93 percent of the proposed seawall, was a final decision and/or action by the
16 CCC.

17 97. In making its application for authorization to construct a seawall to protect
18 "an existing structure" as that phrase is used in Pub. Res. Code § 30235, Petitioner Casa
19 Mira is similarly situated to other seawall or coast armoring applicants, and, yet, the CCC
20 treated Casa Mira differently under the law.

21 98. Since 1977 when the Coastal Act was adopted, the CCC has interpreted Pub.
22 Res. Code § 30235 differently for similarly situated seawall applicants.

23 99. When processing some applications, the CCC has at times interpreted the term
24 "existing structures" in § 30235 to mean those structures **in existence when an**
25 **application for a protective structure is made to the Commission**, as is the case with
26 Casa Mira here. The CCC has previously stated expressly the following: "One class of
27 'existing structures' refers to those structures in place prior to the effective date of the
28 Coastal Act. Coastal zone development approved and constructed prior to the time the
Coastal Act went into effect was not subject to Coastal Act and/or LCP requirements... **A**

1 second class of existing structures refers to those structures that have been permitted
2 since the effective date of the Coastal Act."

3 100. Yet, when Respondent CCC processed and considered Petitioner Casa Mira's
4 seawall application, it interpreted Pub. Res. Code § 30235 differently. In evaluating Casa
5 Mira's application, the CCC interpreted the phrase "existing structures" in § 30235 to
6 mean only structures that pre-dated the Coastal Act. The effect of this different
7 interpretation was to cause the CCC to effectively deny Casa Mira's application.

8 101. There is no rational basis for interpreting the same words in § 30235 *one way*
9 for one seawall permit applicant – thus allowing that applicant to build a seawall – but
10 then interpreting those very same words "existing structure" *differently* when applied to
11 Petitioner Casa Mira – thus prohibiting Casa Mira from building a seawall to protect its
12 homes. That is the very definition of unequal application of the law, and is a clear
13 violation of Casa Mira's equal protection rights.

14 102. To the extent that Respondent CCC contends that in its 2015 Sea Level Rise
15 Policy Guidance interprets the term "existing structures" in § 30235 to mean only
16 structures that were in existence on January 1, 1977, the effective date of the Coastal Act,
17 Petitioner Casa Mira brings an as applied challenge to the application of that guidance
18 here as an exceedance of the CCC's authority. The guidance cannot excuse treating
19 Petitioner Casa Mira differently than similarly situated seawall applicants when the only
20 thing that has changed is the CCC's gloss or interpretation of the statute. The statute has
21 not been amended, nor has the CCC adopted a formal regulation on this issue. The
22 guidance is simply an agency legal opinion that is not binding on the CCC or a court.
23 The CCC's vacillation on its interpretation of the statute means it is entitled to no
24 deference. The CCC's guidance does not fill in "gaps" in the statutory language, but
25 simply imposes a new "gloss" on what the phrase "existing structures" in § 30235 means.

26 103. To the extent that the Commission relied on a "managed retreat" policy that
27 it never adopted, such reliance violates Casa Mira's due process rights because Casa Mira
28 had no notice that the Commission would rely on a policy that it never adopted. It also

1 violates Casa Mira's equal protection rights because it applies a non-policy "policy" to
2 Casa Mira that has not applied to other seawall applicants.

3 104. The full Commission's July 11, 2019 decision denying that portion of the
4 proposed seawall that would have protected the 10 Casa Mira townhomes, exceeded the
5 Commission's authority under the Coastal Act, violated Casa Mira's equal protection
6 rights, was contrary to law, was a prejudicial abuse of discretion, and lacked substantial
7 evidence.

8 **COUNT 4**

9 **(The CCC Violated Casa Mira's Due Process Rights and Failed to Provide**
10 **Casa Mira with a Fair Hearing)**

11 105. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
12 by reference, the allegations contained in paragraphs 1-104, inclusive, as though fully set
13 forth.

14 106. Respondent's July 11, 2019 hearing on Petitioner Casa Mira's coastal
15 development permit application was a hearing "required by law," where the CCC was
16 required to accept and consider evidence at the hearing.

17 107. State law required the CCC to provide a "fair" hearing. (Code Civ. Proc., §
18 1094.5(b).) Article I, § 7 of the California Constitution provides that "a person may not be
19 deprived of life, liberty, or property without due process of law." The 14th Amendment
20 to the U.S. Constitution provides that a State shall not "deprive any person of life, liberty,
21 or property, without due process of law." An essential principle of due process is that a
22 deprivation of life, liberty, or property be preceded by notice, an opportunity to be heard,
23 and an opportunity to respond. The opportunity to present reasons why a proposed
24 agency action should not be taken is a fundamental due process requirement. The right
25 to due process is conferred, not by legislative grace, but by constitutional guarantee.

26 108. An agency that holds a hearing required by law but holds it in an unfair
27 manner has prejudicially abused its discretion and has failed to proceed in the "manner
28 required by law" as required by Code Civ. Proc., § 1094.5(b), as well as the 14th

1 Amendment to the U.S. Constitution.

2 109. A fair hearing means a hearing that respects procedural due process. And
3 procedural due process means a fair and reasonable opportunity to be heard and to
4 respond. This means the right to present *and rebut* evidence.

5 110. Supporters of Casa Mira, including residents of the Casa Mira townhomes
6 traveled 4 hours or longer from the Bay Area, and, in one case, as far away as Canada, to
7 the CCC July 11, 2019 public hearing in San Luis Obispo, California. Although the CCC
8 had given notice that the hearing on the Casa Mira application would commence as Item
9 8a on the morning agenda, when Casa Mira representatives and supporters arrived at the
10 hearing location on the morning of July 11, 2019, CCC staff advised them that the
11 application hearing was being postponed until later on the agenda. The full Commission
12 did not call Item 8a until approximately 6 pm, meaning that the Casa Mira
13 representatives and supporters waited 10 hours for their hearing. Casa Mira
14 representatives had during June 2019 requested that the CCC postpone the hearing until
15 early August (the next scheduled CCC hearing), but the CCC staff refused. Yet, as it
16 turned out, the full Commission barely had room on its July 11, 2019 calendar to hear the
17 matter.

18 111. Once the hearing commenced, the Commission Chair allotted 5 minutes for
19 Casa Mira's representative to speak. Five or six additional supporters and residents
20 complied with CCC procedures and submitted speaker forms at 9 am. Yet, being tired
21 from the previous 9 hour hearing, the Commission Chair decided not to allow those
22 supporters to speak *at all*. The supporters, who had driven 4 hours and waited another
23 10, were shocked at the Chair's failure to recognize them.

24 112. At that juncture of the hearing **none** of the Commissioners had spoken, and
25 **no one from the CCC even hinted that the CCC objected to the project.** The CCC staff
26 had made a presentation recommending that the full Commission **approve the seawall**
27 **in full.** The Casa Mira representative explained that moving the Coastal Trail would
28 eliminate views of the ocean, which is one of the defining characteristics of a "coastal"

1 trail. A representative from the Surfrider Foundation spoke in opposition to that portion
2 of the seawall that protected the Coastal Trail. At that point, the Commission Chair
3 **closed the public hearing and began “deliberation” by the Commissioners.** Thus, at
4 up until that moment, **there was no indication whatsoever that the Commission would**
5 **reject any part of the project, much less 93 percent of it.** The CCC’s procedures did **not**
6 allow any opportunity for Casa Mira’s representatives to respond to statements made by
7 the individual Commissioners during deliberation or to correct their misunderstanding
8 of the relevant Coastal Act provisions, and/or the factual underpinnings of the seawall
9 application. The hearing procedures did not provide any opportunity for Casa Mira’s
10 counsel to object after the Commissioners began to deliberate. Neither the Casa Mira
11 representative nor its counsel was allowed to speak outside of the specific 5 minute
12 period allotted by the Chair, which occurred before any Commissioner announced their
13 objections to the project. In essence, Casa Mira was swindled out of a fair hearing,
14 because while all indicia caused them to think they were winning, they were in fact
15 losing – no Commissioner shared his or her objections until all applicant and third party
16 comments were *closed*. Yet, before the Commissioners spoke, the **only** statement by the
17 CCC was a 55-page staff report *recommending approval*. Only after Casa Mira’s
18 opportunity to speak came and went, did the Commissioners reveal their true intention
19 to kill 93 percent of the project. **The CCC hearing process sandbagged Casa Mira by**
20 **concealing the proposed 93 percent denial until a point in the hearing where Casa**
21 **Mira was no longer allowed to speak.**

22 113. Casa Mira was not given a fair opportunity to be heard, or to rebut the
23 Commissioners’ erroneous statements and views at the July 11, 2019 hearing on the
24 seawall application. The CCC denied Casa Mira a fair hearing, denied its due process
25 rights under the California and U.S. Constitutions, was contrary to law, and constituted a
26 prejudicial abuse of discretion.

27
28

COUNT 5

(The CCC Executive Director Prejudicially Abused His Discretion, Violated the CCC's Own Regulations, and Failed to Proceed in a Manner Required by Law By Rejecting Petitioner Casa Mira's Request to Allow the Emergency Rip Rap to Remain in Place During the Challenge to the Commission Denial of the Seawall)

114. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-113, inclusive, as though fully set forth.

115. The Coastal Act authorizes the CCC Executive Director to issue emergency permits. Pub. Res. Code §§ 30611 and 30624. That authority is clarified by CCC regulations, 14 CCR §§ 13136-13144. Those regulations state "the decision to issue an emergency permit is solely at the discretion of the executive director" 14 CCR § 13143(b).

116. In 2016 and 2017, CCC Executive Director Jack Ainsworth issued two emergency permits authorizing the placement of a rip rap revetment to protect a collapsing bluff immediately in front of the Coastal Trail, a sewer line, and the Casa Mira townhomes. Casa Mira placed the rip rap revetment at that location and it has functioned to protect the bluff, the trail, the sewer line and the townhomes since then.

117. The 2017 emergency permit allows the term of the permit to be extended "through correspondence, for good cause."

118. The CCC staff determined that this segment of the Coastal Trail is "in danger of erosion" and without armoring of some kind "would be immediately threatened" by coastal erosion and bluff collapse. Because the sewer line and Casa Mira townhomes are immediately adjacent to the Coastal Trail, removal of present armoring will immediately threaten those long-standing structures as well.

119. On August 6, 2019, Petitioner Casa Mira submitted a written request to the Executive Director and his staff to allow the emergency rip rap to remain in place during the pendency of a judicial challenge to the full Commission's July 11, 2019 effective denial of the seawall. Casa Mira showed, based on the CCC staff's own analysis, that

1 good cause exists to extend the term of the emergency permit.

2 120. On August 9, 2019, the CCC staff, on behalf of Executive Director Ainsworth,
3 rejected Casa Mira's request on the sole basis that "the Commission's directions during
4 the hearing of July 11, 2019 were clear and unequivocal that no permanent shoreline
5 protection is authorized to protect the coastal trail, due to the available alternative of
6 routing the trail landward. As such, staff has no discretion to vary from that direction ..."

7 121. The Executive Director and staff's rejection failed to proceed in a manner
8 required by law and prejudicially abused their discretion. First, staff's August 9, 2019
9 description of the full Commission's July 11, 2019 direction to staff states that the
10 Commission denied a "permanent" shoreline protection device. Petitioner Casa Mira, in
11 its August 6, 2019, did not request a "*permanent*" device, but asked the Executive Director
12 to allow the existing *temporary*, emergency rip rap to remain in place during the judicial
13 challenge. That is not a permanent shoreline protection device. Second, the full
14 Commission, at the July 11, 2019 hearing, did not consider, and did not have before them,
15 the question of whether to extend the temporary rip rap during any challenge to the
16 Commission's July 11, 2019 effective denial. Third, CCC regulations expressly provide
17 that the Executive Director has sole authority to issue emergency permits and that he
18 simply reports his decision to the full Commission. So, the Executive Director and staff
19 failed to follow their own regulations and erred in deciding that they have "no
20 discretion." The CCC regulations expressly grant the Executive Director that discretion,
21 no action of the Commission or staff can limit that discretion, and, in any event, the
22 question was never presented, nor ruled upon by the full Commission, and therefore,
23 cannot serve as the lawful basis for rejection of Casa Mira's request.

24

25

COUNT 6

26

**(The CCC's November 2019 Revised Findings Exceed the Agency's Scope of
Authority, Violate the Coastal Act and the CCC Regulations)**

27

28

122. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein

1 by reference, the allegations contained in paragraphs 1-121, inclusive, as though fully set
2 forth.

3 123. Under the Coastal Act and CCC regulations, the Commission may adopt
4 "revised findings" after the original hearing. However, that authority is not unlimited.

5 124. 14 CCR § 13096(b) provides, in relevant part, "If the commission action is
6 substantially different than that recommended in the staff report, the prevailing
7 commissioners shall state the basis for their action in sufficient detail to allow staff to
8 prepare a revised staff report with proposed revised findings that reflect the action of the
9 commission. Such report shall contain the names of commissioners entitled to vote
10 pursuant to Public Resources Code section 30315.1."

11 125. 14 CCR § 13096(c) provides, in relevant part, "The commission vote taken on
12 proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur
13 after a public hearing. Notice of such hearing shall be distributed to the persons and in
14 the manner provided for in section 13063. The public hearing shall solely address
15 whether the proposed revised findings reflect the action of the commission."

16 126. On November 13, 2019 CCC hearing (more than 4 months after the July 2019
17 effective denial), the Commission adopted Revised Findings. Those Revised Findings
18 exceeded the Commission's authority under the Coastal Act and 14 CCR § 13096.

19 127. The Commission has no authority to add Revised Findings that address
20 issues and previous findings that the Commission left untouched at the original hearing.
21 Staff may not guess what the Commissioners wanted to change. The Commissioners
22 must state, at the original hearing, exactly what findings it is changing from the original
23 findings and staff report. 14 CCR § 13096(b) states that the prevailing commissioners
24 "shall state the basis for their action in sufficient detail to allow staff to prepare a revised
25 staff report." If the prevailing Commissioners fail to give staff instructions on the record
26 to change a finding, staff has no authority to change that previous finding. 14 CCR §
27 13096(c) expressly limits the Revised Finding public hearing to the action of the
28 Commission taken at the original denial hearing.

1 128. At the July 11, 2019 CCC hearing where the CCC effectively denied the Casa
2 Mira seawall application, the prevailing Commissioners rejected staff's recommendation
3 and denied that portion of the proposed 257-foot long seawall that protected the Coastal
4 Trail. The Commissioners instructed staff to require the applicant to "submit revised
5 final plans that would show the seawall protecting only the area needed to protect the
6 apartment building and not to protect the Coastal Trail because they're a viable
7 alternative to the -- to the Coastal Trail." That was the sole instruction of the
8 Commissioners. The Commissioners consulted legal counsel when issuing the
9 instruction to CCC staff. The Commissioners gave no instruction to staff that they were
10 modifying or changing in any way the mitigation and exaction package that had been
11 previously negotiated between staff and Casa Mira. Nothing in the record shows that the
12 Commission was taking any action on the mitigation requirements. Accordingly, 14 CCR
13 § 13096 limits any Revised Findings to revised plans for a seawall that does not protect
14 the Coastal Trail.

15 129. At the November 13, 2019 CCC hearing on the Revised Findings, the
16 Commission failed to respect the limited nature of the hearing and expanded the scope of
17 the Revised Findings beyond the scope of the Commissioners' action at the July 11, 2019
18 hearing. The Revised Findings purported to include a modified mitigation and exaction
19 package even though not a single Commissioner even stated the words "mitigation" or
20 "exaction" at the July 11, 2019 hearing. CCC staff explained the mitigation and exaction
21 package in great detail at the July 11, 2019 hearing. The Commissioners did not instruct
22 staff to modify that package in any way. Accordingly, the Revised Findings on the
23 mitigation and exactions required as part of the limited approval are unlawful and
24 exceed the CCC's authority. Because the Commissioners at the July 11, 2019 hearing
25 failed to take any action on the mitigation and exaction package, the Commission may
26 not modify the mitigation and exaction requirements through Revised Findings, but
27 instead must hold a new, properly noticed hearing, on the original seawall application.

28 130. At the July 2019 hearing the Commission never decided or directed staff to

1 substitute an in lieu fee for the mitigation package that had been negotiated between
2 Casa Mira and staff. The Commission's post hoc conversion of the mitigation package to
3 an in lieu fee of more than \$1 million thus exceeds its authority for a revised finding
4 under the Coastal Act and 14 CCR § 13096. It also violates Casa Mira's due process
5 rights. Staff also violated the Coastal Act and 14 CCR § 13096 by changing and adding
6 the following mitigation measures -- "record an offer to dedicate the relocated stairway
7 for public use the public access areas . . . [and] require removal of all existing timber
8 piles on the beach seaward of the proposed armoring to open up additional sandy beach
9 and improve the visual character of the beach."

10 131. In the Revised Findings, the Commission has deleted and reworked the
11 mitigation and exaction package without consulting Casa Mira, and in excess of its
12 authority since the Commission did not consider, debate, discuss, evaluate or authorize
13 any change to the mitigation package previously negotiated between staff and Casa Mira.
14 Under the limitations of "revised findings," staff has no authority to take such action.

15 132. The Commission revised the mitigation and exaction conditions more than
16 four months after the July 11, 2019 hearing in an effort to defeat Casa Mira's
17 unconstitutional conditions claim, filed in August 2019.

18 133. Alternatively, even if the Commission is allowed to substitute a new
19 mitigation and exaction condition as a "revised finding," the new mitigation and
20 exaction condition also is an unconstitutional condition in violation of the U.S. and
21 California Constitutions. That alternative claim is detailed as a separate Cause of Action
22 in this Petition and Complaint.

23 134. The Commission delayed its adoption of Revised Findings more than four
24 months, which is twice as long as any delay a court has ever, in the history of California,
25 allowed for revised findings. Long delays are evidence of post hoc rationalization, which
26 is what is happening here since the Commission targeted its Revised Findings to defeat
27 certain legal challenges that Casa Mira filed and served on the CCC in August 2019. The
28 Revised Findings are also barred by laches, estoppel and waiver in light of the

1 unreasonable delay and the prejudice to Casa Mira since it had already served its legal
2 challenges months before the Revised Findings.

3 135. For these reasons, the Commission's attempted substitution of a new
4 mitigation and exaction condition after-the-fact exceeded its authority and must be set
5 aside.

6
7 **COUNT 7**

8 **(The CCC's New Conditions of Approval Adopted As Part of the CCC's Revised**
9 **Findings on November 13, 2019 Violate the Coastal Act)**

10 136. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
11 by reference, the allegations contained in paragraphs 1-135, inclusive, as though fully set
12 forth.

13 137. While the Commission may add conditions of approval, Pub. Res. Code §
14 30607 limits such terms and conditions are limited to those that are "reasonable" "in
15 order to ensure that such development or action" is consistent with the Coastal Act.

16 138. As part of its Revised Findings adopted on November 13, 2019, the
17 Commission purported to add the following mitigation measure: "Beach Stairway. A
18 new public access stairway from the blufftop to the sandy beach that is substantially
19 consistent with the stairway described and shown on the proposed plans (see Exhibit 3)
20 shall be provided. The stairway treads shall be at least 4 feet, 6 inches wide (as measured
21 between any required railings, or as measured between the sculpted concrete where no
22 such railings are present) and at least 12 inches deep, with a roughly 7 inch rise; any
23 landings shall also be at least 4 feet, 6 inches in all directions; and the stairway shall
24 extend to the base of the seawall, to which it shall be structurally connected, with a
25 concrete base." That special condition of approval is not reasonable and is inconsistent
26 with Pub. Res. Code § 30607 because the design specified cannot be implemented on the
27 shortened 20 to 50 foot seawall that the Commission approved. It also cannot be
28 implemented because the Commission's Revised Findings direct the shortened seawall to

1 be placed perpendicular to the shoreline, and constructing the stairs in that manner (even
2 if you could) would create public safety hazard at that location (due to the frontal wave
3 action) in violation of the Coastal Act. Pub. Res. Code § 30212(a) requires that public
4 access, if provided, must be consistent with public safety. The Commission also has
5 demanded a stairway design on a shortened seawall that would violate the Americans
6 with Disabilities Act because those standards cannot be met on a shortened stairway.
7 That is an unreasonable term and condition that violates Pub. Res. Code § 30607.

8 139. As part of its Revised Findings adopted on November 13, 2019, the
9 Commission requires the shortened 20 to 50 foot seawall to be essentially perpendicular
10 to the shoreline, which would accelerate erosion of the bluff in front of the Casa Mira
11 homes, the Coastal Trail and the sewer line, causing enormous damage, and resulting in
12 a “take” of the Casa Mira homes in violation of the U.S. and California Constitutions.
13 Such a requirement of term is not reasonable and violates Pub. Res. Code § 30607.

14 140. As part of its Revised Findings adopted on November 13, 2019, the
15 Commission authorizes only a 20 to 50 foot wall, placed at a perpendicular angle to the
16 shoreline. The Commission added a term that the seawall could be constructed only to
17 protect the 2 Mirada apartments and the seawall is forbidden from protecting the existing
18 Coastal Trail. Because of the proximity between the 2 Mirada apartments and the
19 Coastal Trail, it is technologically impossible to design a seawall that both protects the 2
20 Mirada apartments and *does not* protect in some fashion the existing Coastal Trail, as the
21 Commission instructed. Demanding approval terms and conditions that create a
22 technologically or engineering impossibility is not a reasonable permit or approval
23 condition and violates Pub. Res. Code § 30607.

24 141. As part of its Revised Findings adopted on November 13, 2019, the
25 Commission authorizes only a 20 to 50 foot wall, placed at a perpendicular angle to the
26 shoreline. Such a seawall would not protect the 2 Mirada apartments because the ocean
27 waves will simply go around the very short seawall. Imposing terms and conditions of
28 approval that allow only a 20 (or 50) foot seawall that does not protect either the 2

1 Mirada apartments, the Casa Mira homes, the Coastal Trail or the sewer line is a sham
2 approval and exceeds the Commission's authority under PRC § 30607, which allows only
3 reasonable terms, conditions and requirements.

4 142. As part of its Revised Findings adopted on November 13, 2019, the
5 Commission purported to adopt Revised Special Condition No. 3, which provides:
6 "PUBLIC ACCESS EASEMENT- OFFER TO DEDICATE THREE AREAS. WITHIN 180
7 DAYS OF APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT, and in order to
8 implement the applicant's proposal, the Permittees shall execute and record a document,
9 in a form and content acceptable to the Executive Director, irrevocably offering to
10 dedicate to a public agency or private entity, approved by the Executive Director, a
11 public access easement for public access and recreational uses in perpetuity. The
12 easement shall consist of the proposed stairway and an 8-foot wide path from the Coastal
13 Trail to the stairway as depicted in Revised Exhibit 8." This revised condition is
14 unreasonable and unlawful in numerous ways. The condition requires dedication of an
15 easement "from the Coastal Trail to the stairway." Yet, if this shortened wall is built (and
16 the revetment is removed, as required by the approval), the coastal bluff where the
17 Coastal Trail is located will quickly collapse into the ocean. There will be no Coastal
18 Trail at this location because it will be destroyed by the ocean. Therefore, requiring an
19 easement from a nonexistent Coastal Trail to a newly required stairway is unreasonable,
20 violates the Takings Clause of the U.S. and California Constitutions by requiring a
21 dedication where there is no public necessity, constitutes a waste of public funds under
22 California law, exceeds the Commission's authority which is limited to imposing
23 "reasonable" conditions of approval [Pub. Res. Code § 30607], and creates a public safety
24 hazard in violation of Pub. Res. Code § 30212(a)(1) [requiring public access shall to the
25 shore and coast unless "it is inconsistent with public safety"]

26 143. As part of its Revised Findings adopted on November 13, 2019, the
27 Commission misinterprets the original condition of approval for the construction of the
28 townhomes in 1984 to require public access stairs be rebuilt if the ocean washed them

1 out, which is what happened. The Commission fails to properly credit Casa Mira for
2 new stairways, but rather penalizes Casa Mira for stairs that were previously washed
3 away by the ocean. That term, or condition is not a reasonable and violates Pub. Res.
4 Code § 30607.

5 144. For these reasons, the Commission's revised terms and conditions adopted as
6 part of the agency's Revised Findings on November 13, 2019 violate the Coastal Act.

7
8 **SECOND CAUSE OF ACTION**

9 **(Petition for Writ of Traditional Mandate, C.C.P. § 1085)**

10 145. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
11 by reference, the allegations contained in paragraphs 1-144, inclusive, as though fully set
12 forth.

13 146. Petitioner Casa Mira and its members are beneficially interested in the
14 issuance of the subject writ mandating that the CCC set aside its July 11, 2019 effective
15 denial of the seawall coastal development permit, and in the issuance of a writ
16 mandating that the CCC Executive Director set aside his August 9, 2019 refusal to extend
17 the existing emergency rip rap. First, Petitioner Casa Mira and its members are
18 beneficially interested in the issuance of the writs because, according to the CCC's own
19 staff, the denial of the seawall for the Coastal Trail will result in the trail being
20 "immediately threatened" by episodic erosion events. Casa Mira's owners, members,
21 residents and guests have used, presently use, and plan to use in the coming weeks and
22 months, the Coastal Trail for recreation, biking, hiking, walking, and scenic viewing,
23 which are all interests strongly protected by the Coastal Act's provisions and policies.
24 Second, Casa Mira and its members are beneficially interested in the issuance of the writs
25 because the CCC's denial of the majority of the seawall will result in the 10 Casa Mira
26 townhomes being "immediately threatened" by episodic erosion events. Third, Casa
27 Mira and its members are beneficially interested in the issuance of the writs because the
28

1 CCC's denial of the majority of the seawall will result in the sewer line servicing the 10
2 townhomes being "immediately threatened" by episodic erosion events.

3 107. Casa Mira's members pay substantial real estate taxes as property owners in
4 California and San Mateo County and they have an interest in ensuring that public
5 officials and agencies (1) do not unlawfully exceed their jurisdiction by misinterpreting
6 and/or misapplying the Coastal Act and denying lawful permits to build structures
7 needed to protect the Coastal Trail (and their long-standing homes) from erosion and
8 bluff collapse; (2) duly execute, and fairly and uniformly apply the Coastal Act, as
9 written; (3) do not abuse their discretion or exceed their jurisdiction in reviewing
10 applications for such permits; and (4) do not act in an arbitrary and capricious manner,
11 without proper and substantial evidentiary support, contrary to law, or in the absence of
12 proper procedures or a fair hearing. Alternatively, Petitioner Casa Mira and its members
13 are citizens seeking to enforce public rights and the object of this mandamus is to enforce
14 a public duty, including protecting the long-standing Coastal Trail and/or sewer line
15 from collapse and ruin.

16 147. Petitioner Casa Mira and its members have performed all conditions
17 precedent to the filing of this Petition and Complaint and otherwise have exhausted all
18 required and applicable administrative remedies, or are otherwise excused given that
19 this is a challenge to the authority of the CCC and/or its Executive Director, or is exempt
20 under the doctrine of futility.

21 148. Petitioner Casa Mira and its members have no plain, speedy, and adequate
22 remedy in the ordinary course of law, other than the relief sought in this Petition. Absent
23 intervention by this Court, the CCC's denial of 93 percent of Casa Mira's application for a
24 seawall (and the Executive Director's refusal to extend the term of the existing emergency
25 rip rap) will aver to the detriment of Petitioner and its members as described herein. No
26 additional administrative appeal or other form of relief is available to prevent such an
27 occurrence. Petitioner Casa Mira and its members have a clear, present and beneficial
28 right to performance of the public business in accordance with the standards set forth

1 herein.

2
3 COUNT 1

4 (The CCC's Effective Denial of the Seawall Exceeds the CCC's Authority and
5 Violates the Coastal Act, Pub. Res. Code § 30235, Because It Fails to Protect the Coastal
6 Trail as a "Coastal Dependent Use" Threatened by Erosion, and Violates the Coastal
7 Act's Scenic Resources Protections in Pub. Res. Code §§ 30001(b) and 30251, and
8 Erroneously Concludes, Without Substantial Evidence, That Moving the Coastal Trail
9 Inland Is a "Feasible" Alternative Under the California Environmental Quality Act
10 ("CEQA"))

11 149. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
12 by reference, the allegations contained in paragraphs 1-109, inclusive, as though fully set
13 forth.

14 150. Administrative agencies like the CCC have only the power conferred upon
15 them by statute, and an act in excess of those powers is void.

16 151. Pub. Res. Code § 30235, in relevant part, provides that "... seawalls that
17 alter[] natural shoreline processes shall be permitted when required to serve coastal-
18 dependent uses or to protect existing structures or public beaches in danger from
19 erosion and when designed to eliminate or mitigate adverse impacts on local shoreline
20 sand supply."

21 152. The CCC staff determined that the segment of the Coastal Trail identified in
22 Petitioner Casa Mira's application for a coastal development permit to construct a
23 seawall is a coastal dependent use under Pub. Res. Code § 30235.

24 153. The CCC staff also determined that this segment of the Coastal Trail is "in
25 danger of erosion" and without the proposed seawall "would be immediately
26 threatened" by coastal erosion and bluff collapse.

27 154. The CCC staff concluded that relocating this segment of the Coastal Trail
28 "would require significant additional costs and permitting time, which would be
problematic given this infrastructure would be immediately threatened with no armoring
present." "Further, there is no viable location for the Coastal Trail to be rerouted in

1 this location while maintaining its aesthetic and recreational value adjacent to the
2 ocean and beach (i.e., it would need to loop inland of existing residential structures, such
3 as the Casa Mira condominiums, if relocated). Due to the narrow pinch-point between
4 the bluff and condominiums, any further erosion will force realignment of the trail far
5 inland, east of the Casa Mira complex, thereby sacrificing coastal views and a consistent
6 path along the shoreline for pedestrians. For all of these reasons, the relocation
7 alternative was determined not to be feasible in this case.”

8 155. Casa Mira also presented evidence at the CCC hearing that moving the
9 Coastal Trail inland would violate the Coastal Act’s provisions protecting scenic views
10 and coastal visual resources. Indeed, moving the Coastal Trail inland at this location
11 would eliminate all views of the ocean, meaning that the trail would no longer be a
12 “Coastal Trail,” but rather just a trail very far from the coast and the beach.

13 156. Finally, the CCC staff found that the proposed seawall is “designed to
14 eliminate or mitigate adverse impacts on local shoreline sand supply,” as well as other
15 impacts to coastal resources.

16 157. The CCC staff mandated a mitigation package as a condition of approval for
17 the seawall that required Casa Mira to fund and implement numerous improvements to
18 the Coastal Trail, including, but not limited to, constructing a new beach access stairway
19 that connected to the Coastal Trail; dedicating private blufftop land for public access to
20 facilitate further the connection between the Coastal Trail and the new beach stairway;
21 constructing a portion of the realigned blufftop Coastal Trail segment (8 feet wide, and
22 approximately 300 feet long) above the seawall and connecting to and running through
23 State Parks’ property directly south of the project site; installing landscape improvements
24 and public benches, bicycle racks, and signage, to facilitate public access on and along the
25 Coastal Trail; donating \$10,000 to help provide for a *second* public access stairway to the
26 beach from a different segment of the Coastal Trail; and agreeing to maintain these
27 public access areas on and along the Coastal Trail at Casa Mira’s expense. In addition to
28 Casa Mira’s role as a citizen seeking to enforce a public right and duty, i.e., the protection

1 of the Coastal Trail from collapse and ruin, Casa Mira and its members also have a
2 beneficial interest in this petition to protect the Coastal Trail by virtue of the CCC's
3 mandatory mitigation requiring Casa Mira to expend hundreds of thousands of dollars
4 to improve the Coastal Trail and public access to the beach from the trail. The full CCC
5 retained those requirements even though it denied 93 percent of the seawall.

6 158. On July 11, 2019, the full Commission "approved, with conditions," Casa
7 Mira's seawall application – but in reality denied 93 percent of the seawall, including all
8 of the seawall designed to protect the coastal dependent Coastal Trail.

9 159. The full Commission's July 11, 2019 action effectively denying all of the
10 seawall designed to protect the Coastal Trail violated Pub. Res. Code § 30235 which
11 states that seawalls "**shall be permitted**" so long as the statute's conditions are fulfilled.
12 All statutory requirements were fulfilled, and indeed, the CCC's staff found that they
13 were fulfilled. The CCC staff determined that the Coastal Trail is a coastal dependent use
14 and that it needed protection from erosion and bluff collapse. Staff found that CCC the
15 proposed seawall would address local shoreline sand supply issues, and thus complied
16 with the statute's requirement. Finally, staff found that moving the trail inland would not
17 maintain the trail's aesthetic and recreational value, and therefore would be inconsistent
18 with the Coastal Act. Casa Mira also presented visual evidence at the hearing showing
19 that moving the trail would eliminate almost all ocean and coast views and therefore
20 would violate the Coastal Act. Pub. Res. Code, § 30001(b) provides that "That the
21 permanent protection of the state's natural and **scenic resources is a paramount concern**
22 to present and future residents of the state and nation." In addition, Pub. Res. Code, §
23 30251 states, in relevant part, that "the **scenic and visual qualities of coastal areas shall**
24 **be considered and protected as a resource of public importance.** Permitted
25 development shall be sited and designed to protect views to and along the ocean and
26 scenic coastal areas" Thus, the Coastal Act policies mandate that the Commission
27 protect scenic resources and views. The current location of the Coastal Trail in this area
28 provides iconic views of the ocean that are not found anywhere else on the California

1 coast. The alternative location for the Coastal Trail in this area would be far inland and
2 views of the coast and the ocean from the relocated trail would be blocked and impeded
3 by trees, shrubs and homes. It simply would not be the same experience.

4 160. The full Commission's July 11, 2019 rejection of its own staff's
5 recommendations (and detailed 55-page report and findings) by denying any part of the
6 proposed seawall that would have protected the Coastal Trail, exceeded the
7 Commission's authority under the Coastal Act, violated Pub. Res. Code §§ 30235,
8 30001(b), and 30251, was contrary to law, was a prejudicial abuse of discretion, and
9 lacked substantial evidence.

10 161. On November 13, 2019, the Commission adopted Revised Findings prepared
11 by staff that contradicted staff's analysis at the July 2019 denial hearing.

12 162. Contradicting staff's June 2019 staff report, the Commission adopted a
13 revised staff report that concluded that there is a viable alternative to the proposed
14 seawall because the Coastal Trail could be re-routed inland. Previously, the CCC staff
15 had concluded exactly the opposite because (1) re-routing the Coastal Trail inland could
16 not occur for a significant period of time given permitting requirements; (2) lack of
17 armoring would result in immediate threats to, and likely destruction of, the existing
18 Coastal Trail; (3) the re-routed Coastal Trail would not have the requisite coastal views
19 required to be protected by the Coastal Act; and (4) the re-routed Coastal Trail would fail
20 to provide "a consistent path along the shoreline for pedestrians. The November 2019
21 revised staff report provided no new analysis or evidence supporting the revised
22 findings or contradicting the June 2019 staff report. The November 2019 staff report
23 simply changed the wording without citing any evidence supporting the changes.

24 163. The November 2019 post-hearing staff report also found that relocation of
25 the Coastal Trail "is a feasible, less environmentally damaging alternative than armoring
26" Again, no evidence was provided to support this new finding.

27 164. Under CEQA, project alternatives must be "feasible."

28 165. The term "feasible" is defined in Pub. Res. Code § 21061.1 as "capable of

1 being accomplished in a successful manner within a reasonable period of time, taking
2 into account economic, environmental, social, and technological factors." The CEQA
3 Guidelines add "legal" to the list of factors that must be considered. 14 CCR § 15364.

4 166. Alternatives must meet and implement key, fundamental project objectives.
5 The Coastal Act sets a key objective of protecting coastal dependent resources by
6 mandating ("shall") that the Commission issue a permit for a seawall that protects such
7 structures (like the Coastal Trail). Pub. Res. Code § 30235. As previously recognized by
8 staff, protecting the Coastal Trail by permitting a seawall required to protect this coastal-
9 dependent use is one of the project's fundamental objectives. Moving the Coastal Trail
10 inland fails to meet that objective and thus is not a "feasible" alternative. It changes the
11 basic nature of the project. Staff asserts that "the Commission found that there was a less
12 environmentally damaging feasible alternative to protect the CCT that involved
13 relocating the trail to an inland location."

14 167. Moving the Coastal Trail inland as proposed is not "feasible" because it fails
15 to consider the mandate of Pub. Res. Code § 30235. The Coastal Act provides special
16 protection for coastal dependent structures. The Coastal Trail is unambiguously a
17 "coastal dependent use." Staff already concluded that the seawall design eliminates or
18 mitigates adverse impacts on local shoreline sand supply. The Commission's revised
19 finding ignores the Coastal Act's mandate to protect the Coastal Trail. The conflict
20 between the Coastal Act's mandate and other environmental considerations means that
21 the alternative of moving the Coastal Trail inland is infeasible.

22 168. Moving the Coastal Trail is not "feasible" because it fails to consider the
23 permanent economic loss of \$12.2 to \$15 million in real estate that will be destroyed as a
24 result of not approving the full 257-foot seawall, and requiring the removal of the
25 existing rip rap. It also fails to consider the loss in more than \$125,000 in annual real
26 estate tax revenue to the State, San Mateo County and City of Half Moon Bay. The
27 Commission also fails to consider the cost of moving the sewer line and the Coastal Trail,
28 or who would pay for that. These additional costs are severe, prohibitive and imprudent.

1 They far exceed the cost of constructing the seawall. They render the trail movement
2 alternative impractical. The Commission failed to consider this cost.

3 169. Moving the Coastal Trail is not “feasible” because it fails to consider the
4 Coastal Act’s mandate to preserve scenic views, including the mandates in Pub. Res.
5 Code § 30251. In addition, it is not feasible because the new location is inconsistent with
6 the Statewide Interpretive Guidelines adopted by the California Coastal Commission and
7 the Half Moon Bay certified LCP which protects “ocean and coastal views from public
8 areas” The present location of the Coastal Trail is “highly popular” because of its
9 unique views on the California coast. Moving the Trail inland will not provide any
10 meaningful views of the coast in this area and thus the purpose of the Coastal Trail in
11 this area will be lost.

12 170. Moving the Coastal Trail is not “feasible” because it is not reasonable and is
13 unlikely to ever be implemented. It is not reasonable to conclude that moving a trail is a
14 feasible alternative when that necessarily would result in the destruction of ten homes. It
15 also is not reasonable because the Commission fails to consider how the trail would be
16 moved. The Commission has no authority to move the trail itself. The Commission has
17 received no commitment from State Parks that it will seek to move the trail. The current
18 trail exists in an easement held by the City of Half Moon Bay which would be rendered
19 useless as a result of the Commission’s proposed alternative. The City would not seek to
20 permit a new trail on State Parks’ land or on other land that the City did not own, or
21 where the City held no easement. The result is that the trail is unlikely to ever be moved.
22 It is an alternative that is unlikely to ever be implemented.

23 171. The Commission erroneously concluded that rerouting the Coastal Trail
24 inland would be feasible without any study or evidence as to whether sensitive species at
25 the inland location would prohibit the trail at the inland location.

26 172. The Commission has been wildly inconsistent on deciding whether moving
27 the Coastal Trail inland is a feasible alternative. In the staff report for the July 2019
28 hearing, staff determined it was not a feasible alternative for a number of reasons. First,

1 in July 2019, staff determined moving the trail would be logically problematic because if
2 the revetment was removed the Coastal Trail would be destroyed in a very short time
3 and long before any new trail could be permitted and built. That would result in a long
4 period of time where public access would be significantly diminished, which would be
5 inconsistent with the Coastal Act. In its Revised Findings and staff report, staff just
6 simply ignores this problem by striking out its analysis. It provides no explanation why
7 its previous analysis was incorrect. Of course, its previous analysis was correct. Staff has
8 just been ordered to change it by the Commissioners. Second, in July 2019, staff
9 determined "there is no viable location for the Coastal Trail to be rerouted in this location
10 while maintaining its aesthetic and recreational value adjacent to the ocean and beach
11 (i.e., it would need to loop inland of existing residential structures, such as the Casa Mira
12 condominiums, if relocated)." In its Revised Findings and staff report, staff just strikeout
13 this analysis, again pretending it's not an issue. But it remains an issue because moving
14 the Coastal Trail inland means it will no longer be a Coastal Trail. Moving the trail
15 would not be consistent with the Coastal Act. Pub. Res. Code, § 30001(b) provides that
16 "That the permanent protection of the state's natural and scenic resources is a paramount
17 concern to present and future residents of the state and nation." Pub. Res. Code, § 30251
18 states, in relevant part, that "the scenic and visual qualities of coastal areas shall be
19 considered and protected as a resource of public importance. Permitted development
20 shall be sited and designed to protect views to and along the ocean and scenic coastal
21 areas" Thus, the Coastal Act policies mandate that the Commission protect scenic
22 resources and views. The current location of the Coastal Trail in this area provides iconic
23 views of the ocean that are not found anywhere else on the California coast. The
24 alternative location for the Coastal Trail in this area would be far inland and views of the
25 coast and the ocean would be blocked and impeded by trees, shrubs and homes. It
26 simply would not be the same experience. Moving the trail would significantly degrade,
27 and likely eliminate, the "visual quality" of this "coastal area," that staff agrees is very
28 frequently used by the public. It would violate the Coastal Act. Staff's simple deletion of

1 previous findings to this effect and new claim that the new trail would be “close enough”
2 is unconvincing and is not grounded in Coastal Act policies. It fails to address the
3 evidence presented by Casa Mira (including photos) showing that virtually all views
4 would be eliminated. Staff has failed to present any counter evidence on this point.
5 Simply making claims without evidence is not substantial evidence.

6 173. The Commission’s Revised Findings violate CEQA not only because moving
7 the Coastal Trail is not feasible but also because the Commission’s revised post-hearing
8 alternatives analysis is conclusory, is contrary to law, is not supported by substantial
9 evidence, and is not detailed enough to allow informed and meaningful decision-making.
10 CEQA mandates that an alternatives analysis include a meaningful discussion of the
11 comparative merits of alternatives. The Commission’s Revised Findings fail to meet that
12 standard.

13 174. The CCC staff’s explanation in the Revised Findings that “the Commission
14 found trail relocation is a feasible, less environmentally damaging alternative than
15 armoring the entire stretch of coast for 257 linear feet to protect the trail in its current
16 location,” lacks substantial evidence, and is contradicted by the evidence that the trail
17 relocation is not feasible and not environmentally less damaging. Given that more than
18 60 percent of Half Moon Bay is protected by revetments that the Commission already has
19 approved as permanent, the argument that adding a 257 foot seawall is somehow too
20 environmentally damaging is not credible. A 257-foot seawall on a bay where there are
21 literally miles of revetment in place does not have a meaningful environmental impact.
22 In addition, staff already had recommended conditions of approval that staff concluded
23 would fully address all environmental, public access and sand supply impacts.

24 175. The Commission’s effective denial of the proposed seawall exceeds the
25 Commission’s authority and violates the Coastal Act, Pub. Res. Code § 30235, because it
26 fails to protect the Coastal Trail as a “coastal dependent use” threatened by erosion,
27 violates the Coastal Act’s scenic resources protections in Pub. Res. Code §§ 30001(b) and
28 30251, and violates CEQA by relying on an alternative that is not feasible and that fails to

1 comport with Pub. Res. Code § 30235's mandate.

2

3

COUNT 2

4

(The CCC's Effective Denial of the Seawall Exceeds the CCC's Authority and
Violates the Coastal Act, Pub. Res. Code § 30235 Because It Fails to Protect the
Casa Mira Homes as "Existing Structures")

5

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176. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-175, inclusive, as though fully set forth.

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177. Administrative agencies like the CCC have only the power conferred upon them by statute, and an act in excess of those powers is void.

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178. Pub. Res. Code § 30235, in relevant part, provides that "... seawalls that alter[] natural shoreline processes **shall be permitted when required** to serve coastal-dependent uses or **to protect existing structures** or public beaches **in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.**"

16

17

179. The 10 Casa Mira townhomes are "existing structures" under Pub. Res. Code § 30235, because they were existing at the time of the seawall application.

18

19

180. The 10 Casa Mira townhomes are threatened and in danger from erosion and bluff collapse.

20

21

22

23

181. The CCC staff issued a lengthy report finding that Petitioner Casa Mira's proposed seawall is designed to "eliminate or mitigate adverse impacts on local shoreline sand supply," thus concluding that the seawall design complies with that requirement in Pub. Res. Code § 30235.

24

25

182. Petitioner Casa Mira has a right to a seawall because it met all requirements of Pub. Res. Code § 30235, and otherwise complied with the Coastal Act.

26

27

28

183. The full Commission's July 11, 2019 decision denying that portion of the proposed seawall that would have protected the 10 Casa Mira townhomes (the majority of the 257-foot seawall), exceeded the Commission's authority under the Coastal Act,

1 violated Pub. Res. Code §§ 30235, was contrary to law, was a prejudicial abuse of
2 discretion, and lacked substantial evidence.

3
4 **COUNT 3**

5 **(The CCC's Effective Denial of the Seawall Violates Casa Mira's**
6 **Equal Protection Rights Under the California and U.S. Constitutions)**

7 184. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
8 by reference, the allegations contained in paragraphs 1-183, inclusive, as though fully set
9 forth.

10 185. The 14th Amendment of the U.S. Constitution provides that no state shall
11 "deny to any person . . . the equal protection of the laws." Likewise, Article I, § 7 of the
12 California Constitution guarantees equal protection rights.

13 186. The CCC's July 11, 2019 "approval, with conditions," which was in reality a
14 denial of 93 percent of the proposed seawall, was a final decision and/or action by the
15 CCC.

16 187. In making its application for authorization to construct a seawall to protect
17 "an existing structure" as that phrase is used in Pub. Res. Code § 30235, Petitioner Casa
18 Mira is similarly situated to other seawall or coast armoring applicants, and, yet, the CCC
19 treated Casa Mira differently under the law.

20 188. Since 1977 when the Coastal Act was adopted, the CCC has interpreted Pub.
21 Res. Code § 30235 differently for similarly situated seawall applicants.

22 189. When processing some applications, the CCC has at times interpreted the
23 term "existing structures" in § 30235 to mean those structures **in existence when an**
24 **application for a protective structure is made to the Commission**, as is the case with
25 Casa Mira here. The CCC has previously stated expressly the following: "One class of
26 'existing structures' refers to those structures in place prior to the effective date of the
27 Coastal Act. Coastal zone development approved and constructed prior to the time the
28 Coastal Act went into effect was not subject to Coastal Act and/or LCP requirements... **A**

1 second class of existing structures refers to those structures that have been permitted
2 since the effective date of the Coastal Act.”).

3 190. Yet, when Respondent CCC processed and considered Petitioner Casa Mira’s
4 seawall application, it interpreted Pub. Res. Code § 30235 differently. In evaluating Casa
5 Mira’s application, the CCC interpreted the phrase “existing structures” in § 30235 to
6 mean only structures that pre-dated the Coastal Act. The effect of this different
7 interpretation was to cause the CCC to effectively deny Casa Mira’s application.

8 191. There is no rational basis for interpreting the same words in § 30235 *one way*
9 for one seawall permit applicant – thus allowing that applicant to build a seawall – but
10 then interpreting those very same words “existing structure” *differently* when applied to
11 Petitioner Casa Mira – thus prohibiting Casa Mira from building a seawall to protect its
12 homes. That is the very definition of unequal application of the law, and is a clear
13 violation of Casa Mira’s equal protection rights.

14 192. To the extent that Respondent CCC contends that in its 2015 Sea Level Rise
15 Policy Guidance interprets the term “existing structures” in § 30235 to mean only
16 structures that were in existence on January 1, 1977, the effective date of the Coastal Act,
17 Petitioner Casa Mira brings an as applied challenge to the application of that guidance
18 here as an exceedance of the CCC’s authority. The guidance cannot excuse treating
19 Petitioner Casa Mira differently than similarly situated seawall applicants when the only
20 thing that has changed is the CCC’s gloss or interpretation of the statute. The statute has
21 not been amended, nor has the CCC adopted a formal regulation on this issue. The
22 guidance is simply an agency legal opinion that is not binding on the CCC or a court.
23 The CCC’s vacillation on its interpretation of the statute means it is entitled to no
24 deference. The CCC’s guidance does not fill in “gaps” in the statutory language, but
25 simply imposes a new “gloss” on what the phrase “existing structures” mean.

26 193. To the extent that the Commission relied on a “managed retreat” policy that
27 it never adopted, such reliance violates Casa Mira’s due process rights because Casa Mira
28 had no notice that the Commission would rely on a policy that it never adopted. It also

1 violates Casa Mira's equal protection rights because it applies a non-policy "policy" to
2 Casa Mira that has not applied to other seawall applicants.

3
4 194. The full Commission's July 11, 2019 decision denying that portion of the
5 proposed seawall that would have protected the 10 Casa Mira townhomes, exceeded the
6 Commission's authority under the Coastal Act, violated Casa Mira's equal protection
7 rights, was contrary to law, was a prejudicial abuse of discretion, and lacked substantial
8 evidence.

9
10 **COUNT 4**

11 **(The CCC Violated Casa Mira's Due Process Rights and Failed to Provide**
12 **Casa Mira with a Fair Hearing)**

13 195. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
14 by reference, the allegations contained in paragraphs 1-194, inclusive, as though fully set
15 forth.

16 196. Respondent's July 11, 2019 hearing on Petitioner Casa Mira's coastal
17 development permit application was a hearing "required by law," where the CCC was
18 required to accept and consider evidence at the hearing.

19 197. State law required the CCC to provide a "fair" hearing. (Code Civ. Proc., §
20 1094.5(b).) Article I, § 7 of the California Constitution provides that "a person may not be
21 deprived of life, liberty, or property without due process of law." The 14th Amendment
22 to the U.S. Constitution provides that a State shall not "deprive any person of life, liberty,
23 or property, without due process of law." An essential principle of due process is that a
24 deprivation of life, liberty, or property be preceded by notice, an opportunity to be heard,
25 and an opportunity to respond. The opportunity to present reasons why a proposed
26 agency action should not be taken is a fundamental due process requirement. The right
27 to due process is conferred, not by legislative grace, but by constitutional guarantee.

28 198. An agency that holds a hearing required by law but holds it in an unfair

1 manner has prejudicially abused its discretion and has failed to proceed in the “manner
2 required by law” as required by C.C.P. § 1094.5(b), as well as the 14th Amendment to the
3 U.S. Constitution.

4 199. A fair hearing means a hearing that respects procedural due process. And
5 procedural due process means a fair and reasonable opportunity to be heard and to
6 respond. This means the right to present *and rebut* evidence.

7 200. Supporters of Casa Mira, including residents of the Casa Mira townhomes
8 traveled 4 hours or longer from the Bay Area, and, in one case, as far away as Canada, to
9 the CCC July 11, 2019 public hearing in San Luis Obispo, California. Although the CCC
10 had given notice that the hearing on the Casa Mira application would commence as Item
11 8a on the morning agenda, when Casa Mira representatives and supporters arrived at the
12 hearing location on the morning of July 11, 2019, CCC staff advised them that the
13 application hearing was being postponed until later on the agenda. The full Commission
14 did not call Item 8a until approximately 6 pm, meaning that the Casa Mira
15 representatives and supporters waited 10 hours for their hearing. Casa Mira
16 representatives had during June 2019 requested that the CCC postpone the hearing until
17 early August (the next scheduled CCC hearing), but the CCC staff refused. Yet, as it
18 turned out, the full Commission barely had room on its July 11, 2019 calendar to hear the
19 matter.

20 201. Once the hearing commenced, the Commission Chair allotted 5 minutes for
21 Casa Mira’s representative to speak. Five or six additional supporters and residents
22 complied with CCC procedures and submitted speaker forms at 9 am. Yet, being tired
23 from the previous 9 hour hearing, the Commission Chair decided not to allow those
24 supporters to speak *at all*. The supporters, who had driven 4 hours and waited another
25 10, were shocked at the Chair’s failure to recognize them.

26 202. At that juncture of the hearing **none** of the Commissioners had spoken, and
27 **no one from the CCC even hinted that the CCC objected to the project.** The CCC staff
28 had made a presentation recommending that the full Commission **approve the seawall**

1 **in full.** The Casa Mira representative explained that moving the Coastal Trail would
2 eliminate views of the ocean, which is one of the defining characteristics of a “coastal”
3 trail. A representative from the Surfrider Foundation spoke in opposition to that portion
4 of the seawall that protected the Coastal Trail. At that point, the Commission Chair
5 **closed the public hearing and began “deliberation” by the Commissioners.** Thus, at
6 up until that moment, **there was no indication whatsoever that the Commission would**
7 **reject any part of the project, much less 93 percent of it.** The CCC’s procedures did **not**
8 allow any opportunity for Casa Mira’s representatives to respond to statements made by
9 the individual Commissioners during deliberation or to correct their misunderstanding
10 of the relevant Coastal Act provisions, and/or the factual underpinnings of the seawall
11 application. The hearing procedures did not provide any opportunity for Casa Mira’s
12 counsel to object after the Commissioners began to deliberate. Neither the Casa Mira
13 representative nor its counsel was allowed to speak outside of the specific 5 minute
14 period allotted by the Chair, which occurred before any Commissioner announced their
15 objections to the project. In essence, Casa Mira was swindled out of a fair hearing,
16 because while all indicia caused them to think they were winning, they were in fact
17 losing – no Commissioner shared his or her objections until all applicant and third party
18 comments were *closed*. Yet, before the Commissioners spoke, the **only** statement by the
19 CCC was a 55-page staff report *recommending approval*. Only after Casa Mira’s
20 opportunity to speak came and went, did the Commissioners reveal their true intention
21 to kill 93 percent of the project. **The CCC hearing process sandbagged Casa Mira by**
22 **concealing the proposed 93 percent denial until a point in the hearing where Casa**
23 **Mira was no longer allowed to speak.**

24 203. Casa Mira was not given a fair opportunity to be heard, or to rebut the
25 Commissioners’ erroneous statements and views at the July 11, 2019 hearing on the
26 seawall application. The CCC denied Casa Mira a fair hearing, denied its due process
27 rights under the California and U.S. Constitutions, was contrary to law, and constituted a
28 prejudicial abuse of discretion.

COUNT 5

(The CCC Executive Director Prejudicially Abused His Discretion, Violated the CCC's Own Regulations, and Failed to Proceed in a Manner Required by Law By Rejecting Petitioner Casa Mira's Request to Allow the Emergency Rip Rap to Remain in Place During the Challenge to the Commission Denial of the Seawall)

204. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein by reference, the allegations contained in paragraphs 1-203, inclusive, as though fully set forth.

205. The Coastal Act authorizes the CCC Executive Director to issue emergency permits. Pub. Res. Code §§ 30611 and 30624. That authority is clarified by CCC regulations, 14 CCR §§ 13136-13144. Those regulations state "the decision to issue an emergency permit is solely at the discretion of the executive director" 14 CCR § 13143(b).

206. In 2016 and 2017, CCC Executive Director Jack Ainsworth issued two emergency permits authorizing the placement of a rip rap revetment to protect a collapsing bluff immediately in front of the Coastal Trail, a sewer line, and the Casa Mira townhomes. Casa Mira placed the rip rap revetment at that location and it has functioned to protect the bluff, the trail, the sewer line and the townhomes since then.

207. The 2017 emergency permit allows the term of the permit to be extended "through correspondence, for good cause."

208. The CCC staff determined that this segment of the Coastal Trail is "in danger of erosion" and without armoring of some kind "would be immediately threatened" by coastal erosion and bluff collapse. Because the sewer line and Casa Mira townhomes are immediately adjacent to the Coastal Trail, removal of present armoring will immediately threaten those long-standing structures as well.

209. On August 6, 2019, Petitioner Casa Mira submitted a written request to the Executive Director and his staff to allow the emergency rip rap to remain in place during the pendency of a judicial challenge to the full Commission's July 11, 2019 effective denial of the seawall. Casa Mira showed, based on the CCC staff's own analysis, that

1 by reference, the allegations contained in paragraphs 1-211, inclusive, as though fully set
2 forth.

3 213. Under the Coastal Act and CCC regulations, the Commission may adopt
4 "revised findings" after the original hearing. However, that authority is not unlimited.

5 214. 14 CCR § 13096(b) provides, in relevant part, "If the commission action is
6 substantially different than that recommended in the staff report, the prevailing
7 commissioners shall state the basis for their action in sufficient detail to allow staff to
8 prepare a revised staff report with proposed revised findings that reflect the action of the
9 commission. Such report shall contain the names of commissioners entitled to vote
10 pursuant to Public Resources Code section 30315.1."

11 215. 14 CCR § 13096(c) provides, in relevant part, "The commission vote taken on
12 proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur
13 after a public hearing. Notice of such hearing shall be distributed to the persons and in
14 the manner provided for in section 13063. The public hearing shall solely address
15 whether the proposed revised findings reflect the action of the commission."

16 216. On November 13, 2019 CCC hearing (more than 4 months after the July 2019
17 effective denial), the Commission adopted Revised Findings. Those Revised Findings
18 exceeded the Commission's authority under the Coastal Act and 14 CCR § 13096.

19 217. The Commission has no authority to add Revised Findings that address
20 issues and previous findings that the Commission left untouched at the original hearing.
21 Staff may not guess what the Commissioners wanted to change. The Commissioners
22 must state, at the original hearing, exactly what findings it is changing from the original
23 findings and staff report. 14 CCR § 13096(b) states that the prevailing commissioners
24 "shall state the basis for their action in sufficient detail to allow staff to prepare a revised
25 staff report." If the prevailing Commissioners fail to give staff instructions on the record
26 to change a finding, staff has no authority to change that previous finding. 14 CCR §
27 13096(c) expressly limits the Revised Finding public hearing to the action of the
28 Commission taken at the original denial hearing.

1 218. At the July 11, 2019 CCC hearing where the CCC effectively denied the Casa
2 Mira seawall application, the prevailing Commissioners rejected staff's recommendation
3 and denied that portion of the proposed 257-foot long seawall that protected the Coastal
4 Trail. The Commissioners instructed staff to require the applicant to "submit revised
5 final plans that would show the seawall protecting only the area needed to protect the
6 apartment building and not to protect the Coastal Trail because they're a viable
7 alternative to the -- to the Coastal Trail." That was the sole instruction of the
8 Commissioners. The Commissioners consulted legal counsel when issuing the
9 instruction to CCC staff. The Commissioners gave no instruction to staff that they were
10 modifying or changing in any way the mitigation and exaction package that had been
11 previously negotiated between staff and Casa Mira. Nothing in the record shows that the
12 Commission was taking any action on the mitigation requirements. Accordingly, 14 CCR
13 § 13096 limits any Revised Findings to revised plans for a seawall that does not protect
14 the Coastal Trail.

15 219. At the November 13, 2019 CCC hearing on the Revised Findings, the
16 Commission failed to respect the limited nature of the hearing and expanded the scope of
17 the Revised Findings beyond the scope of the Commissioners' action at the July 11, 2019
18 hearing. The Revised Findings included a modified mitigation and exaction package
19 even though not a single Commissioner even stated the words "mitigation" or "exaction"
20 at the July 11, 2019 hearing. CCC staff explained the mitigation and exaction package in
21 great detail at the July 11, 2019 hearing. The Commissioners did not instruct staff to
22 modify that package in any way. Accordingly, the Revised Findings on the mitigation
23 and exactions required as part of the limited approval are unlawful and exceed the
24 CCC's authority. Because the Commissioners at the July 11, 2019 hearing failed to take
25 any action on the mitigation and exaction package, the Commission may not modify the
26 mitigation and exaction requirements through Revised Findings, but instead must hold a
27 new, properly noticed hearing, on the original seawall application.

28 230. At the July 2019 hearing the Commission never decided or directed staff to

1 substitute an in lieu fee for the mitigation package that had been negotiated between
2 Casa Mira and staff. The Commission's post hoc conversion of the mitigation package to
3 an in lieu fee of more than \$1 million thus exceeds its authority for a revised finding
4 under the Coastal Act and 14 CCR § 13096. It also violates Casa Mira's due process
5 rights. Staff also violated the Coastal Act and 14 CCR § 13096 by changing and adding
6 the following mitigation measures -- "record an offer to dedicate the relocated stairway
7 for public use the public access areas . . . [and] require removal of all existing timber
8 piles on the beach seaward of the proposed armoring to open up additional sandy beach
9 and improve the visual character of the beach."

10 231. In the Revised Findings, the Commission has deleted and reworked the
11 mitigation and exaction package without consulting Casa Mira, and in excess of its
12 authority since the Commission did not consider, debate, discuss, evaluate or authorize
13 any change to the mitigation package previously negotiated between staff and Casa Mira.
14 Under the limitations of "revised findings," staff has no authority to take such action.

15 232. The Commission revised the mitigation and exaction conditions more than
16 four months after the July 11, 2019 hearing in an effort to defeat Casa Mira's
17 unconstitutional conditions claim, filed in August 2019.

18 233. Alternatively, even if the Commission is allowed to substitute a new
19 mitigation and exaction condition as a "revised finding," the new mitigation and
20 exaction condition also is an unconstitutional condition in violation of the U.S. and
21 California Constitutions. That alternative claim is detailed as a separate Cause of Action
22 in this Petition and Complaint.

23 234. The Commission delayed its adoption of Revised Findings more than four
24 months, which is twice as long as any delay a court has ever, in the history of California,
25 allowed for revised findings. Long delays are evidence of post hoc rationalization, which
26 is what is happening here since the Commission targeted its Revised Findings to defeat
27 certain legal challenges that Casa Mira filed and served on the CCC in August 2019. The
28 Revised Findings are also barred by laches, estoppel and waiver in light of the

1 unreasonable delay and the prejudice to Casa Mira since it had already served its legal
2 challenges months before the Revised Findings.

3 235. For these reasons, the Commission's attempted substitution of a new
4 mitigation and exaction condition after-the-fact exceeded its authority and must be set
5 aside.

6

7

COUNT 7

8

(The CCC's New Conditions of Approval Adopted As Part of the CCC's Revised Findings on November 13, 2019 Violate the Coastal Act)

9

10 236. Petitioner and Plaintiff Casa Mira repeats, realleges and incorporates herein
11 by reference, the allegations contained in paragraphs 1-235, inclusive, as though fully set
12 forth.

13

14 237. While the Commission may add conditions of approval, Pub. Res. Code §
15 30607 limits such terms and conditions are limited to those that are "reasonable" "in
16 order to ensure that such development or action" is consistent with the Coastal Act.

17

18 238. As part of its Revised Findings adopted on November 13, 2019, the
19 Commission purported to add the following mitigation measure: "Beach Stairway. A
20 new public access stairway from the blufftop to the sandy beach that is substantially
21 consistent with the stairway described and shown on the proposed plans (see Exhibit 3)
22 shall be provided. The stairway treads shall be at least 4 feet, 6 inches wide (as measured
23 between any required railings, or as measured between the sculpted concrete where no
24 such railings are present) and at least 12 inches deep, with a roughly 7 inch rise; any
25 landings shall also be at least 4 feet, 6 inches in all directions; and the stairway shall
26 extend to the base of the seawall, to which it shall be structurally connected, with a
27 concrete base." That special condition of approval is not reasonable and is inconsistent
28 with Pub. Res. Code § 30607 because the design specified cannot be implemented on the
shortened 20 to 50 foot seawall that the Commission approved. It also cannot be
implemented because the Commission's Revised Findings direct the shortened seawall to

1 be placed perpendicular to the shoreline, and constructing the stairs in that manner (even
2 if you could) would create public safety hazard at that location (due to the frontal wave
3 action) in violation of the Coastal Act. Pub. Res. Code § 30212(a) requires that public
4 access, if provided, must be consistent with public safety. The Commission also has
5 demanded a stairway design on a shortened seawall that would violate the Americans
6 with Disabilities Act because those standards cannot be met on a shortened stairway.
7 That is an unreasonable term and condition that violates Pub. Res. Code § 30607.

8 239. As part of its Revised Findings adopted on November 13, 2019, the
9 Commission requires the shortened 20 to 50 foot seawall to essentially perpendicular to
10 the shoreline, which would accelerate erosion of the bluff in front of the Casa Mira
11 homes, the Coastal Trail and the sewer line, causing enormous damage, and resulting in
12 a "take" of the Casa Mira homes in violation of the U.S. and California Constitutions.
13 Such a requirement of term is not reasonable and violates Pub. Res. Code § 30607.

14 240. As part of its Revised Findings adopted on November 13, 2019, the
15 Commission authorizes only a 20 to 50 foot wall, placed at a perpendicular angle to the
16 shoreline. The Commission added a term that the seawall could be constructed only to
17 protect the 2 Mirada apartments and the seawall is forbidden from protecting the existing
18 Coastal Trail. Because of the proximity between the 2 Mirada apartments and the
19 Coastal Trail, it is technologically impossible to design a seawall that both protects the 2
20 Mirada apartments and *does not* protect in some fashion the existing Coastal Trail, as the
21 Commission instructed. Demanding approval terms and conditions that create a
22 technologically or engineering impossibility is not a reasonable permit or approval
23 condition and violates Pub. Res. Code § 30607.

24 241. As part of its Revised Findings adopted on November 13, 2019, the
25 Commission authorizes only a 20 to 50 foot wall, placed at a perpendicular angle to the
26 shoreline. Such a seawall would not protect the 2 Mirada apartments because the ocean
27 waves will simply go around the very short seawall. Imposing terms and conditions of
28 approval that allow only a 20 (or 50) foot seawall that does not protect either the 2

1 Mirada apartments, the Casa Mira homes, the Coastal Trail or the sewer line is a sham
2 approval and exceeds the Commission's authority under PRC § 30607, which allows only
3 reasonable terms, conditions and requirements.

4 242. As part of its Revised Findings adopted on November 13, 2019, the
5 Commission purported to adopt Revised Special Condition No. 3, which provides:
6 "PUBLIC ACCESS EASEMENT- OFFER TO DEDICATE THREE AREAS. WITHIN 180
7 DAYS OF APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT, and in order to
8 implement the applicant's proposal, the Permittees shall execute and record a document,
9 in a form and content acceptable to the Executive Director, irrevocably offering to
10 dedicate to a public agency or private entity, approved by the Executive Director, a
11 public access easement for public access and recreational uses in perpetuity. The
12 easement shall consist of the proposed stairway and an 8-foot wide path from the Coastal
13 Trail to the stairway as depicted in Revised Exhibit 8." This revised condition is
14 unreasonable and unlawful in numerous ways. The condition requires dedication of an
15 easement "from the Coastal Trail to the stairway." Yet, if this shortened wall is built (and
16 the revetment is removed, as required by the approval), the coastal bluff where the
17 Coastal Trail is located will quickly collapse into the ocean. There will be no Coastal
18 Trail at this location because it will be destroyed by the ocean. Therefore, requiring an
19 easement from a nonexistent Coastal Trail to a newly required stairway is unreasonable,
20 violates the Takings Clause of the U.S. and California Constitutions by requiring a
21 dedication where there is no public necessity, constitutes a waste of public funds under
22 California law, exceeds the Commission's authority which is limited to imposing
23 "reasonable" conditions of approval [Pub. Res. Code § 30607], and creates a public safety
24 hazard in violation of Pub. Res. Code § 30212(a)(1) [requiring public access shall to the
25 shore and coast unless "it is inconsistent with public safety . . ."]

26 243. As part of its Revised Findings adopted on November 13, 2019, the
27 Commission misinterprets the original condition of approval for the construction of the
28 townhomes in 1984 to require public access stairs be rebuilt if the ocean washed them

1 out, which is what happened. The Commission fails to properly credit Casa Mira for
2 new stairways, but rather penalizes Casa Mira for stairs that were previously washed
3 away by the ocean. That term, or condition is not a reasonable and violates Pub. Res.
4 Code § 30607.

5 244. For these reasons, the Commission's revised terms and conditions adopted as
6 part of the agency's Revised Findings on November 13, 2019 violate the Coastal Act.

7
8
9 **THIRD CAUSE OF ACTION**
10 **(Inverse Condemnation Without Payment of Just Compensation As Required**
11 **by the U.S. and California Constitutions)**

12 245. Petitioner and Plaintiff Casa Mira, and its individual members, repeat,
13 reallege and incorporate herein by reference, the allegations contained in paragraphs 1-
14 244, inclusive, as though fully set forth.

15 246. The California and United States Constitutions prohibit the government from
16 taking private property for public use without just compensation. (Cal. Const., art. I, § 19,
17 subd. (a); U.S. Const., 5th & 14th Amends.)

18 247. Even assuming that the Respondent CCC prevails on the writ claims, and
19 even assuming that the Court finds the CCC's denial was legally permissible,
20 Respondent CCC in that event has caused a taking of Casa Mira's real and personal
21 property, and its members' real and personal property, because the CCC's July 11, 2019
22 final action denying the seawall, combined with the CCC's requirement to remove the
23 existing rip rap revetment placed in accordance with two emergency permits to secure
24 the collapsing and eroding bluff seaward of the Casa Mira townhomes, will cause the
25 bluff to be exposed to immediate and continuing erosion and collapse – which will result
26 in the collapse of Casa Mira property and the 10 townhomes. Casa Mira is the owner of
27 the common space of the Association, and each Association member listed herein owns
28 his, her, their or its respective separate interest townhome unit.

29 248. Geotechnical analysis in this case, and the CCC's *own* analysis concludes that

1 "the bluff retreat and recession will continue if left partially or fully unprotected," and
2 the bluff in question will collapse or erode very quickly if no seawall is built and the
3 emergency rip rap is removed. The CCC has stated that it requires the emergency riprap
4 to be removed if no seawall is built. The CCC's July 11, 2019 so-called "approval" only
5 authorizes a 20 or 50-foot seawall (roughly perpendicular to the shoreline), which is less
6 than 10 percent of the original proposal. A 20 or 50-foot seawall at this location will be
7 wholly ineffective at preventing bluff erosion and collapse, and will worsen erosion at
8 this location, and the Casa Mira townhomes will be subject to immediate and continuous
9 erosion and quickly destroyed by ocean wave action. A graphic drawing of Casa Mira's
10 proposed 257-foot seawall (in blue) is attached as **Exhibit 2**, and can be compared with
11 an approximation of what the CCC approved as shown on **Exhibit 3** (in pink).

12 Accordingly, the CCC's July 11, 2019 denial of a permit to build a seawall is the final
13 agency action that will result in, or be a substantial cause of, the bluff collapse and
14 destruction, damage and take of Casa Mira's and its members' property. Even if Casa
15 Mira were to build the 20 to 50 foot seawall approved by the CCC, the CCC's proposed
16 placement, design, and construction of the seawall would worsen erosion and would be a
17 substantial factor and cause of additional bluff collapse and erosion and destruction,
18 damage and take of Casa Mira's and its members' property. Respondents CCC and its
19 Executive Director further exacerbated the agency's action on August 9, 2019 by rejecting
20 out of hand Petitioner and Plaintiff Casa Mira's request that the CCC Executive Director
21 extend the existing emergency rip rap revetment that protects the private townhomes.

22 249. The CCC's denial (and its Executive Director's subsequent denial) result in a
23 take of the Casa Mira property and each individual Association member's property
24 without compensation, in violation of Cal. Const., art. I, § 19, subd. (a), and the U.S.
25 Constitution, 5th & 14th Amends. The CCC has taken the property in each of three
26 different, alternative ways, by: (1) blocking Casa Mira's effort to prevent the physical
27 invasion of the property by coastal erosion and bluff and land collapse; (2) interfering
28 with distinct, investment-backed expectations; and/or (3) preventing all economically

1 beneficial or productive use. Any one of these alternatives is sufficient to sustain a cause
2 of action for inverse condemnation either by a physical invasion or a regulatory taking.
3 Respondent CCC's action of denying the seawall application were purportedly for a
4 public use or benefit.

5 250. There is no variance procedure or administrative appeal from the CCC's
6 denial, or if any exists, Casa Mira and its members have availed themselves of that
7 procedure, or it otherwise would be futile to do so. The CCC's decision is final.

8 251. The submission of another application for a seawall would be an idle and
9 futile act because of the way that the CCC interprets Pub. Res. Code § 30235, i.e., that
10 structures built after 1977 are not "existing" structures entitled to a seawall, and that it
11 doesn't protect the Coastal Trail here.

12 252. The CCC has effected a physical or regulatory taking of Casa Mira's and the
13 individual Association members' property. The agency's action denies Casa Mira's and
14 the individual Association members' constitutional right to just compensation as
15 guaranteed by Article I, § 19 of the California Constitution and the 5th and 14th
16 Amendments to the United States Constitution.

17 253. As a direct and proximate result of the CCC's action, Casa Mira's and the
18 individual Association members' property has been damaged in an amount that will be
19 proven at trial, but estimated to be \$20 million in aggregate.

20 254. Casa Mira and the individual Association members have not received any
21 compensation from the CCC or the State of California as "just compensation."

22 255. As a direct and proximate result of the CCC's action, Casa Mira and the
23 individual Association members have been compelled to employ counsel, and other
24 experts, to protect their rights.

25 256. Casa Mira and the individual Association members are entitled to recover
26 their attorneys' fees and litigation costs under Code Civ. Proc. § 1036.

27
28

1 **FOURTH CAUSE OF ACTION**
2 **(Inverse Condemnation Without Payment of Just Compensation As a Result of**
3 **Unconstitutional Conditions)**

4 257. Petitioner and Plaintiff Casa Mira, and its individual members, repeat,
5 reallege and incorporate herein by reference, the allegations contained in paragraphs 1-
6 256, inclusive, as though fully set forth.

7 258. The California and United States Constitutions prohibit the government from
8 taking private property for public use without just compensation. (Cal. Const., art. I, § 19,
9 subd. (a); U.S. Const., 5th & 14th Amends.)

10 259. A subset of this Constitutional requirement is that the CCC may not
11 condition the approval of a land-use permit on the owner's relinquishment of a portion
12 of his property unless there is a "nexus" and "rough proportionality" between the
13 government's demand and the effects of the proposed land use. Known as the
14 "unconstitutional conditions" doctrine, this standard vindicates the Constitution's
15 enumerated rights by preventing the government from coercing people into giving them
16 up. The principles that undergird the unconstitutional conditions doctrine do not change
17 depending on whether the government "approves" a permit on the condition that the
18 applicant turn over property or "denies" a permit because the applicant refuses to do so.

19 260. In this case, the CCC staff developed and negotiated with Casa Mira an
20 extensive mitigation and exaction package that included (1) constructing a new beach
21 access stairway, incorporated into the seawall design (at a cost exceeding \$500,000); (2)
22 dedicating private blufftop land for public access to facilitate the connection between the
23 Coastal Trail and the new beach stairway; (3) constructing a portion of the realigned
24 blufftop Coastal Trail segment (8 feet wide, and approximately 300 feet long) above the
25 seawall and connecting to and running through State Parks' property directly south of
26 the project site to minimize erosion risk; (4) installing landscape improvements and
27 public benches, bicycle racks, and signage, to facilitate public access; (5) removing all old,
28 abandoned timber piles that exist on the beach seaward of the seawall to open up

1 additional sandy beach area for public recreation; (6) donating \$10,000 to help provide
2 for a *second* public access stairway to the beach to the north of the project site; and (7)
3 agreeing to maintain these public access areas, improvements, and amenities at Casa
4 Mira's expense.

5 261. The CCC staff specifically and expressly created this mitigation and exaction
6 package to address alleged impacts created by a 257-foot seawall, and included the
7 requirement that Casa Mira donate and dedicate private land as a condition for receiving
8 the coastal development permit to build the seawall, and donate money. However, on
9 July 11, 2019, the full Commission in a final action denied 93 percent of the proposed
10 seawall, *without adjusting in any way* the mitigation package created for the 257-foot wall.
11 Thus, the CCC conditioned approval of a 20 (or 50)-foot wall on the implementation of
12 mitigation and exactions designed for a 257-foot wall. Accordingly, the full Commission
13 imposed exactions, including the donation of private land and money, that are not
14 "roughly proportional" to the effects of the much shorter seawall.

15 262. As a result, the mitigation package and property and monetary exactions
16 demanded as a condition of approval for the 20 (or 50)-foot seawall violates the
17 unconstitutional condition doctrine and Article I, § 19 of the California Constitution and
18 the 5th and 14th Amendments to the United States Constitution, and are invalid.

19 263. As a direct and proximate result of the CCC's action, Casa Mira and the
20 individual Association members have been compelled to employ counsel, and other
21 experts, to protect their rights.

22 264. Casa Mira and the individual Association members are entitled to recover
23 their attorneys' fees and litigation costs under Code Civ. Proc. § 1036.

24 265. At the November 13, 2019 CCC hearing (more than 4 months after the July
25 2019 effective denial), the Commission adopted Revised Findings that for the first time
26 purported to revise the mandatory mitigation and exactions in light of the massively
27 shortened wall. However, the Commission lacked the authority to modify the mitigation
28 package in a Revised Finding hearing because the Commission failed to revise the

1 mitigation on the record at the July 2019 denial hearing, and state law limits the scope of
2 a Revised Finding hearing to actions taken by the Commission on the record at the initial
3 hearing.

4 266. Even if a court found that the CCC had authority to amend the mitigation
5 and exaction package, post hearing, the revised mitigation and exaction package still
6 constitutes an unconstitutional condition because it imposes mitigation that is not
7 roughly proportional to the impacts created by the shorter seawall. The CCC's Revised
8 conditions seek to convert the previously required exactions to an "in lieu" fee. When
9 the government demands monetary payments that are a substitute for the property
10 owner's dedication of property to the public and that fee is intended to mitigate the
11 impact of the proposed project, the unconstitutional conditions doctrine applies.
12 Previously, CCC staffperson Patrick Foster, in a 10/15/18 email and attached calculation,
13 concluded that the total required mitigation obligation was \$1,416,733 for the then-
14 estimated wall length of 240 feet, which calculates to \$5,903.05/ft. Using that value, the
15 total required mitigation obligation for a 50-foot seawall would be \$295,152.50. Yet, the
16 Revised Findings call for a required mitigation fee of \$1,034,318 for a 50-foot seawall,
17 which calculates to \$20,686.36/ft. Thus, the new requirement is 350 percent of the
18 previous requirement per foot, without any justification for such an increase. The CCC
19 provided no evidence that the shorter wall would create impacts that justified a 350
20 percent increase in mitigation or exactions. That is not "roughly proportional," to the
21 projected impacts, lacks substantial evidence, is arbitrary, is contrary to law, and is
22 inconsistent.

23 267. For these reasons, the CCC has violated the unconstitutional conditions
24 doctrine under the U.S. and California Constitutions.

25
26 **PRAYER FOR RELIEF**

27 WHEREFORE, the Petitioners and Plaintiffs respectfully pray for relief as follows:

28 1. That the Court issue a writ of mandate (administrative or traditional) ordering

1 Respondent CCC to vacate and set aside its July 11, 2019 effective denial of the seawall
2 permit application.

3 2. That the Court issue a writ of mandate (administrative or traditional) ordering
4 Respondent CCC Executive Director to vacate and set aside his August 9, 2019 denial to
5 extend the term of the existing emergency rip rap.

6 3. That the Court find and declare that the CCC exceeded its authority under the
7 Coastal Act, violated Pub. Res. Code §§ 30235, 30001(b), 30251, 30210, 30211, 30212(a),
8 30213, 30221, 30222, 30223, 30240(b), 30230 and 30231, as well as CEQA, and prejudicially
9 abused its discretion when it effectively denied Petitioner's seawall application.

10 4. That the Court find and declare that the CCC violated Petitioners' equal
11 protection rights under the California and U.S. Constitutions.

12 5. That the Court find and declare that the CCC violated Petitioners' fair hearing
13 and due process rights.

14 6. That the Court find and declare that the CCC Executive Director exceeded his
15 authority and failed to proceed in a manner required by law in denying Casa Mira's
16 request to extend the term of the existing emergency rip rap.

17 7. That even if the CCC's effective denial of the majority of the seawall was
18 authorized, the CCC's action nonetheless constitutes a taking of private property without
19 just compensation under the California and U.S. Constitutions with damages in the
20 amount of approximately \$20 million.

21 8. That the CCC's mitigation package and exactions demanded as conditions of
22 approval for the greatly reduced seawall violate the unconstitutional condition doctrine
23 and Article I, § 19 of the California Constitution and the 5th and 14th Amendments to the
24 United States Constitution, and are invalid.

25 9. That the Court grant temporary, preliminary, and permanent injunctive relief
26 against the CCC.

27 10. That the Court grant a stay of the Respondents' decision to require removal of
28 the emergency rip rap (or Respondents' denial of Petitioners' request to keep the rip rap

1 in place during the litigation).

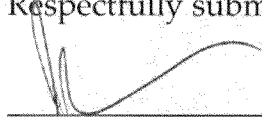
2 11. That the Court award costs of suit to Petitioners and Plaintiffs.

3 12. That the Court award attorneys' fees to Petitioners and Plaintiffs, pursuant to
4 C.C.P. § 1021.5, C.C.P. § 1036, the equitable private attorney general doctrine, Gov't Code
5 § 800, state law, for the litigation and the prerequisite administrative proceedings. On
6 August 6, 2019 at 4:25 pm, counsel for Petitioners sent by email to the CCC a settlement
7 demand letter in a good faith effort to resolve their objections to the CCC's denial of 93
8 percent of the seawall without resorting to litigation. A copy of the letter is attached as
9 **Exhibit 4**. On August 9, 2019, less than 72 hours later, the CCC staff responded by
10 foreclosing any settlement discussions. Staff stated "North Central staff has received
11 your letters of August 6, 2019. The Commission's directions during the hearing of July
12 11, 2019 were clear and unequivocal that no permanent shoreline protection is authorized
13 to protect the coastal trail As such, staff has no discretion to vary from that direction,
14 and **cannot meet your requests to . . . settle ahead of litigation** Thank you for
15 contacting us with your concerns." Thus, the CCC staff unequivocally and rapidly
16 rejected any efforts by Casa Mira to settle these disputes before litigation. Further efforts
17 by Casa Mira and its members would have been futile in light of the CCC's response.

18 13. For any other equitable or legal relief that the Court deems just and proper.

19
20 Dated: December 11, 2019

21 Respectfully submitted,

22
23 
24 _____
25 Thomas D. Roth
26 Law Offices of Thomas D. Roth
27 One Market, Spear Tower, Suite 3600
28 San Francisco, California 94105
(415) 293-7684

Attorneys for
Petitioner/ Plaintiff
Casa Mira Homeowners' Association and its
members, as specified herein

VERIFICATION

State of California

City and County of San Francisco

I am the attorney for CASA MIRA HOMEOWNERS' ASSOCIATION and its members, and I am authorized to make this verification, and I make this verification for that reason.

C.C.P. § 446 authorizes me to verify the Petition when a party is absent from the county where I have my office, or for other cause is unable to verify it, or when the verification is made on behalf of a corporate entity.

I provide this verification on behalf of CASA MIRA HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, on its behalf and on behalf of the Association members; ROBERT D. GLYNN, JR., and KATHLEEN O. GLYNN, as TRUSTEES of the GLYNN 1994 REVOCABLE TRUST AGREEMENT, dated March 15, 1994, and GLYNN 1994 REVOCABLE TRUST AGREEMENT, dated March 15, 1994, each as a member of the Casa Mira Homeowners' Association and individually; PAULA SKINNER, KAREN PEARLMAN, and CHRISTEN AGNELLO, each as a member of Casa Mira Homeowners' Association and individually; WILLIAM V. REGAN III and ANN WILLIAMS REGAN, as TRUSTEES of the REGAN REVOCABLE TRUST dated December 29, 1992, and the REGAN REVOCABLE TRUST dated December 29, 1992, each as a member of the Casa Mira Homeowners' Association and individually; STUART M. SCHLISSERMAN, as TRUSTEE of the STUART MARK SCHLISSERMAN REVOCABLE TRUST dated April 14, 2004, and the STUART MARK SCHLISSERMAN REVOCABLE TRUST dated April 14, 2004, each as a member of the Casa Mira Homeowners' Association and individually; TARANEH RAZAVI, as TRUSTEE of the TARANEH RAZAVI LIVING TRUST dated September 29, 2009, and the TARANEH RAZAVI LIVING TRUST dated September 29, 2009, each as a member of the Casa Mira Homeowners' Association and individually; KELLY ANN KRAMER, as TRUSTEE of the KELLY ANN KRAMER 2017 TRUST under Declaration of Trust dated July 18, 2017, and the KELLY ANN KRAMER 2017 TRUST under Declaration of Trust dated July 18, 2017, each as a member of the Casa Mira Homeowners' Association and individually; GREGG E. MILLER, as TRUSTEE of the MILLER SURVIVOR'S TRUST dated April 5, 1993, and the MILLER SURVIVOR'S TRUST dated April 5, 1993, each as a member of the Casa Mira Homeowners' Association and individually; GIAN D. POLASTRI and ROBIN M. POLASTRI, as TRUSTEES of the TRUST OF GIAN AND ROBIN POLASTRI, dated April 7, 2001, and the TRUST OF GIAN AND ROBIN POLASTRI, dated April 7, 2001, each as a member of the Casa Mira Homeowners' Association and individually;

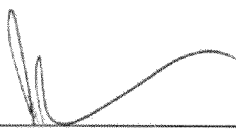
RODERICK A. YOUNG and CHARLOTTE D. JACOBS, as TRUSTEES of the YOUNG/JACOB 1998 TRUST, and the YOUNG/JACOB 1998 TRUST, each as a member of the Casa Mira Homeowners' Association and individually; GUSTAVINO HOLDINGS, LLC, a California limited liability company, solely as a member of the Casa Mira Homeowners' Association and not individually; MICHAEL PATRICK SULLIVAN, JR., as Successor Trustee of the MAVIS R. SULLIVAN DECLARATION OF TRUST dated October 21, 2015, solely as a member of the Casa Mira Homeowners' Association and not individually; the MAVIS R. SULLIVAN DECLARATION OF TRUST dated October 21, 2015, solely as a member of the Casa Mira Homeowners' Association and not individually; KIM M. THOMAS, solely as a member of the Casa Mira Homeowners' Association and not individually; MICHAEL PATRICK SULLIVAN, JR., solely as a member of the Casa Mira Homeowners' Association and not individually; KERRY SULLIVAN, solely as a member of the Casa Mira Homeowners' Association and not individually; JAMIE SULLIVAN, solely as a member of the Casa Mira Homeowners' Association and not individually; ASHLEY SULLIVAN, solely as a member of the Casa Mira Homeowners' Association and not individually; and MAGGIE SUE SULLIVAN, solely as a member of the Casa Mira Homeowners' Association and not individually, and GUSTAVINO HOLDINGS, LLC, solely as a member of the Casa Mira Homeowners' Association and not individually.

These Association members have been unable to provide a verification due to on-going probate proceedings, the absence from San Francisco, vacation schedules, being out of the Country, and residence in numerous locations that made signing the verification logistically difficult, and in some cases the trust or corporate status and related logistical issues.

I have read the foregoing VERIFIED SECOND AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS (C.C.P. § 1094.5) AND/OR TRADITIONAL MANDAMUS (C.C.P. § 1085); COMPLAINT FOR INVERSE CONDEMNATION, DECLARATORY AND INJUNCTIVE RELIEF; and DEMAND FOR JURY TRIAL, and know the contents thereof. I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 10, 2019 at San Francisco, California

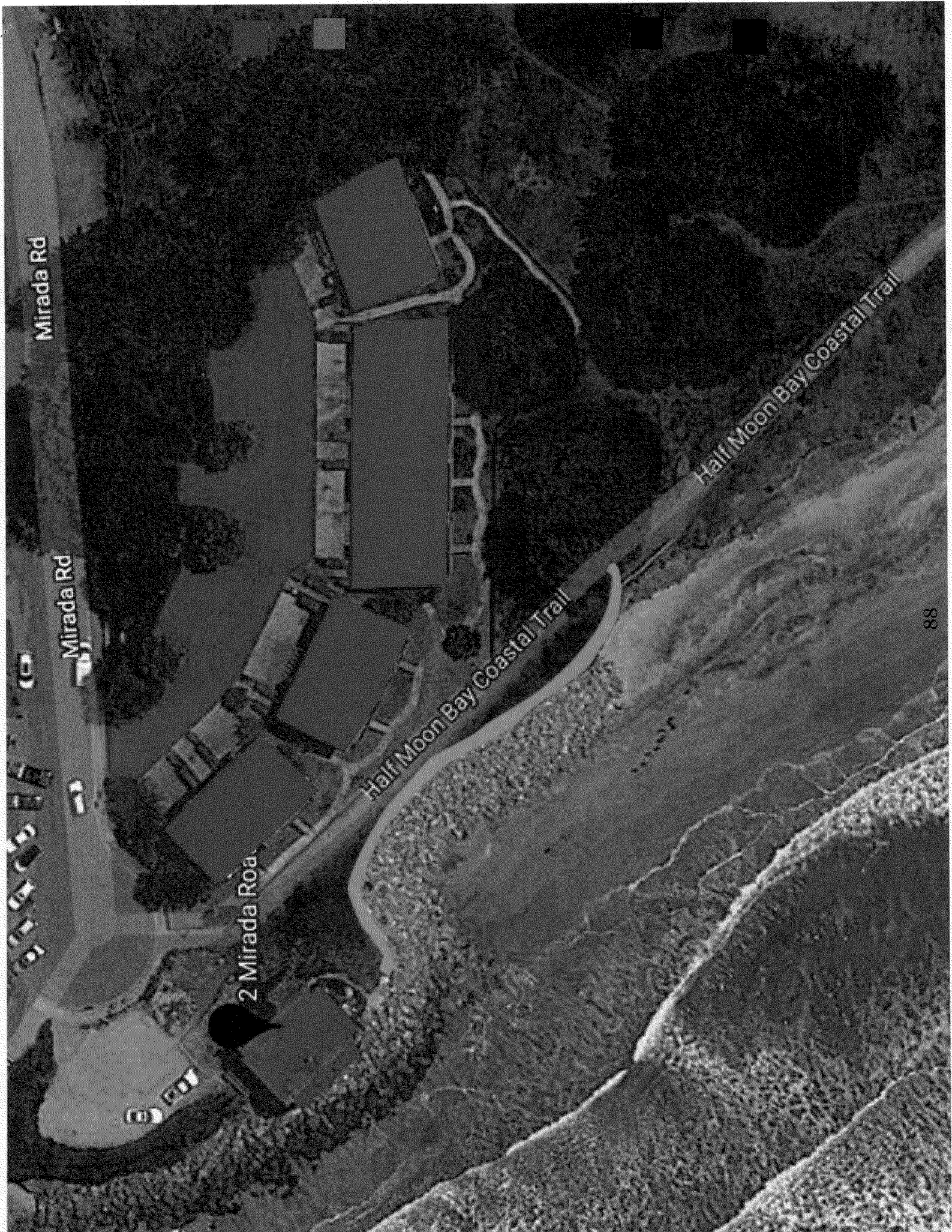


Thomas D. Roth, attorney for Casa Mira

EXHIBIT “1”



EXHIBIT “2”



Mirada Rd

Half Moon Bay Coastal Trail

Mirada Rd

Half Moon Bay Coastal Trail

2 Mirada Road

EXHIBIT “3”



Mirada Rd

Mirada Rd

2 Mirada Roa

Half Moon Bay Coastal Trail

Half Moon Bay Coastal Trail

EXHIBIT “4”

LAW OFFICES OF THOMAS D. ROTH
ONE MARKET, SPEAR TOWER, SUITE 3600
SAN FRANCISCO, CALIFORNIA 94105
(415) 293-7684

By E-Mail

August 6, 2019

Jack Ainsworth, Executive Director
Jeannine Manna
Stephanie Rexing
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Casa Mira's Pre-Litigation Settlement Demand

Dear staff:

On behalf of Casa Mira HOA and its members ("Casa Mira"), we request that the Coastal Commission set aside its July 11, 2019 decision on the seawall application. The Commission calls its action an "approval, with conditions," but the condition denied 93 percent or more of the seawall and rendered the remaining wall useless.

The Commission's action exceeds its authority under the Coastal Act, and violates the California and U.S. Constitutions.

Please advise me in writing (by email or fax) no later than noon on August 13, 2019 if the Commission is willing to set aside its unlawful denial and engage in meaningful discussions to identify ways to fully comply with the Coastal Act and the constitutional standards set by the U.S. Supreme Court.

Casa Mira remains open to discuss ways to resolve the Commission's unlawful denial. However, due to a short statute of limitations set by the State Legislature, the parties have limited time for these discussions before a suit must be filed. We sincerely hope that the Commission is interested in holding such discussions.

Sincerely,

/s/

Tom Roth

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PROOF OF SERVICE

Casa Mira Homeowners' Association et al. v. California Coastal Commission, et al.,
San Mateo County Superior Court, Case No. 19CIV-04677

I am over 18 years old, not a party to this lawsuit and am employed by the Law Offices of Thomas D. Roth, One Market, Spear Tower, Suite 3600, San Francisco, CA 94105.

On December 12, 2019, I served the foregoing **STIPULATION FOR LEAVE TO FILE SECOND AMENDED WRIT PETITION AND COMPLAINT; [PROPOSED] ORDER** on the following persons by email:

a. Attorney for Real Parties-in-Interest, Top of Mirada, LLC and Jennifer Thomas:

b.
Jenny Lentz, FOLGER LEVIN LLP
199 Fremont Street
20th Floor
San Francisco, CA 94105
jlentz@folgerlevin.com, 415 625-1067
(by email)

c. Real Parties-in-Interest William S. Easterling and Darlene Inez Castro-Easterling, as Trustees of the Easterling Revocable Trust UTA, dated July 11, 2000:

2 Mirada Road
Half Moon Bay, CA 94019
billeasterling@hotmail.com

(by email)

d. Attorneys for Real Parties-in-Interest Valli Ananda a/k/a Gail LaMar, individually and as trustee for The Gail M. LaMar Living Trust u/t/a January 24, 1999:

Valli Ananda yogaspirit@gmail.com
360 Ilalo Place
Kapaa, HI 96746

(by email)

e. Real Party-in-Interest Irina Vlassova Place. 59-274 Ala Kahur Drive, Kamuela, HI 96743; Tel: 808/895-6362; placeirina9@gmail.com.
(by email)

f. Attorney for Real Party-in-Interest Granada Community Services District:

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William Parkin
Wittwer Parkin LLP
335 Spreckels Drive, Suite H
Aptos, CA 95003
wparkin@wittwerparkin.com
(by email)

g. Attorney for Real Party-in-Interest the City of Half Moon Bay:

Fran M. Layton
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421
Layton@smwlaw.com
(by email)

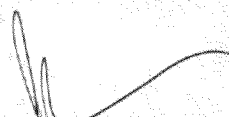
h. Attorney for Real Party-in-Interest California Department of Parks and Recreation:

David Pai
California Attorney General's Office
1515 Clay St Fl 20
Oakland, CA 94612
David.Pai@doj.ca.gov
(by email)

i. Attorney for Respondents California Coastal Commission and Executive Director Jack Ainsworth:

Joel Jacobs
California Attorney General's Office
1515 Clay St Fl 20
Oakland, CA 94612
joel.jacobs@doj.ca.gov
(by email)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2019, at San Francisco, California.



Thomas D. Roth