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MAY 12 2000

LOS ANGELES SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Type bar number, and address):
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SEAN RILEY, Esq.
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 ATTORNEY FOR (Name): **Petitioners, La Costa Homeowners'**

INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY:
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT, WRITS AND RECEIVERS

CASE NAME: **LA COSTA BEACH HOMEOWNERS' ASSOCIATION, et al. v. CALIFORNIA COASTAL CONSERVANCY**

CIVIL CASE COVER SHEET

Limited Unlimited

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)

CASE NUMBER: **RS063275**

ASSIGNED JUDGE:

Please complete all five (5) items below.

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|--|
| <input type="checkbox"/> Auto Tort
<input type="checkbox"/> Auto (22) | <input type="checkbox"/> Other employment (15) | <input checked="" type="checkbox"/> Writ of mandate (02) |
| Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | Contract | <input type="checkbox"/> Other judicial review (39) |
| <input type="checkbox"/> Asbestos (04) | <input type="checkbox"/> Breach of contract/warranty (06) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) |
| <input type="checkbox"/> Product liability (24) | <input type="checkbox"/> Collections (e.g., money owed, open book accounts) (09) | <input type="checkbox"/> Antitrust/Trade regulation (03) |
| <input type="checkbox"/> Medical malpractice (45) | <input type="checkbox"/> Insurance coverage (18) | <input type="checkbox"/> Construction defect (10) |
| <input type="checkbox"/> Other PII/PD/WD (23) | <input type="checkbox"/> Other contract (37) | <input type="checkbox"/> Claims involving mass tort (40) |
| Non-PII/PD/WD (Other) Tort | Real Property | <input type="checkbox"/> Securities litigation (28) |
| <input type="checkbox"/> Business tort/unfair business practice (07) | <input type="checkbox"/> Eminent domain/Inverse condemnation (14) | <input type="checkbox"/> Toxic tort/Environmental (30) |
| <input type="checkbox"/> Civil rights (e.g., discrimination, false arrest) (08) | <input type="checkbox"/> Wrongful eviction (33) | <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| <input type="checkbox"/> Defamation (e.g., slander, libel) (13) | <input type="checkbox"/> Other real property (e.g., quiet title) (26) | Enforcement of Judgment |
| <input type="checkbox"/> Fraud (15) | Unlawful Detainer | <input type="checkbox"/> Enforcement of judgment (e.g., sister state, foreign, out-of-county abstracts) (20) |
| <input type="checkbox"/> Intellectual property (19) | <input type="checkbox"/> Commercial (31) | Miscellaneous Civil Complaint |
| <input type="checkbox"/> Professional negligence (e.g., legal malpractice) (25) | <input type="checkbox"/> Residential (32) | <input type="checkbox"/> RICO (27) |
| <input type="checkbox"/> Other non-PII/PD/WD tort (35) | <input type="checkbox"/> Drugs (38) | <input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment | Judicial Review | Miscellaneous Civil Petition |
| <input type="checkbox"/> Wrongful termination (36) | <input type="checkbox"/> Asset forfeiture (05) | <input type="checkbox"/> Partnership and corporate governance (21) |
| | <input type="checkbox"/> Petition re: arbitration award (11) | <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial post-disposition judicial disposition |
3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Three (3): Two (2) Writs of Mandate; One (1) Injunction**
5. This case is is not a class action suit.
- Date: May 12, 2000

... **SEAN RILEY, Esq.** ...
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

COPY

SHORT TITLE LA COSTA HOMEOWNERS' ASSOCIATION, ET AL.
V. CALIFORNIA STATE COASTAL CONSERVANCY

CASE NUMBER

RS063275

**CIVIL CASE COVER SHEET ADDENDUM
CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO DISTRICT**

This form is required in all new civil case filings in the Los Angeles Superior Court

I. Check the types of hearing and fill in the estimated length of hearing expected for this case:
 JURY OR NON-JURY AND CLASS ACTION? YES NO TIME ESTIMATED FOR TRIAL HOURS/ DAYS

II. Select the correct district (4 steps):

- 1 After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column 1, the Civil Case Cover Sheet case type you selected.
- 2 Check one Superior Court type of action in Column 2 which best describes the nature of this case.
- 3 In Column 3 below, circle the reason for your choice of district that applies to the type of action you have checked.

Applicable Reasons for Choosing District (See Column 3 below)

1. Class Actions must be filed in Central District.
2. May be filed in Central (Non-PI/PD/Out-of-county PI/PD)
3. District where cause of action arose.
4. District where injury, death or damage occurred.
5. District where performance is expressly required.
6. District where property is located.
7. District where petitioner resides.
8. District where defendant/respondent functions wholly therein.
9. District where one or more of the parties reside.
10. District where Labor Commissioner Office located.

4. Fill in the information requested on page 4 in item III: complete item IV. Sign the certificate.

Auto Tort	-1- Civil Case Cover Sheet Category No.	-2- Type of Action (Check only one)	-3- Applicable Reasons - See Above
	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Dam./Wrongful Death Is this an uninsured motorist case? <input type="checkbox"/> Yes <input type="checkbox"/> No	1., 2., 4.
	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestosis - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	2.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 3., 4., 8.
	Other PI/PD/W/D (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional PI/PD/W/D (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7220 Other Personal Injury/Property Dam./Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 4.
	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3., 5.
	Intellectual Property (19)	<input type="checkbox"/> A6016 Intellectual Property	2., 3.
	Prof. Negligence (25)	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice <input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3. 1., 2., 3.

Other PI/PD/W/D Tort

Non-PI/PD/W/D (Other)

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**LOS ANGELES
SUPERIOR COURT**

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11 FOR THE COUNTY OF LOS ANGELES

12 LA COSTA BEACH HOMEOWNERS'
13 ASSOCIATION, a California Corporation,
14 RICHARD ZIMAN, an individual, DAPHNA
15 ZIMAN, an individual, ART ZOLOTH, an
16 individual, HELEN ZOLOTH, an individual,
17 FREDDIE FIELDS, an individual, CORINNA
18 FIELDS, an individual, PEG YORKIN, an
19 individual, BUDGE OFFER, an individual,
20 JERRY MONKARSH, an individual,
21 VIRGINIA MANCINI, an individual, RYAN
22 O'NEAL, an individual, AARON SPELLING,
23 an individual, CANDY SPELLING, an
24 individual, NANCY HAYES, an individual,
25 and LOU ADLER, an individual,

26 Petitioners,

27 v.

28 CALIFORNIA STATE COASTAL
CONSERVANCY, a California state agency,
and DOES 1 through 50, inclusive,

Respondents.

GAMMA FAMILY TRUST, BROAD
REVOCABLE TRUST and NANCY M.
DALY LIVING TRUST,

Real Parties-in-Interest.

Case No. BS063275

REQUEST FOR PREPARATION OF
ADMINISTRATIVE RECORD OF
PROCEEDINGS

[Cal. Pub. Res. Code §§ 21167.6]

[Filed concurrently with Verified Petition for
Writ of Mandate]

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 20 O'NEAL, an individual, AARON SPELLING,
 21 an individual, CANDY SPELLING, an
 22 individual, NANCY HAYES, an individual,
 23 and LOU ADLER, an individual,

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24 CALIFORNIA STATE COASTAL
 25 CONSERVANCY, a California state agency,
 26 and DOES 1 through 50, inclusive,

Respondents.

27 **GAMMA FAMILY TRUST, BROAD
 28 REVOCABLE TRUST and NANCY M.
 DALY LIVING TRUST,**

Real Parties-in-Interest.

Case No. **BS063275**

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

[Cal. Civ. Pro. Code §1094.5; Cal. Pub. Res.
Code §§ 21167, 30801]

[Filed concurrently with Request for
Preparation of Administrative Record of
Proceedings]

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1 Broad, Nancy M. Daly, respectively.

2 5. The true names and capacities of those respondents named herein as DOES 1 through
3 50, inclusive, are presently unknown to Petitioners, and each of such Respondents is sued herein by
4 such fictitious names. Petitioners believe that each DOE is responsible for the acts complained of
5 herein to the same extent as the named Respondents. Petitioners will seek leave of court to amend
6 this writ to allege the true names and capacities of the DOE Respondents when those names have
7 been ascertained.

8 COASTAL DEVELOPMENT PERMIT APPLICATION PROCEEDINGS AND FINDINGS

9 6. This action originates from the Coastal Commission's approval of three applications
10 (the "Applications") to build seaside mega-mansions on Carbon Beach in Malibu submitted by the
11 Real Parties without adequately taking into account the unmitigated impacts of the proposed projects
12 or the damaging effect of the proposed projects on public safety. Specifically, with virtually no
13 notice, the Commission amended the Special Conditions imposed on the Applicants to mitigate the
14 public view and public access impacts of the Applications on Carbon Beach, by allowing the
15 applicants to buy and dedicate for public view and access an off-site lot on La Costa Beach in an
16 extremely dangerous stretch of Pacific Coast Highway located at 21704 Pacific Coast Highway,
17 Malibu (the "Lot"). The Commission allowed the last-minute change in the Special Conditions
18 without taking into account, studying or addressing extensive evidence that providing public access
19 to the Lot created significant safety hazard issues along a stretch of Pacific Coast Highway known to
20 have highly dangerous conditions for both vehicular traffic and pedestrians. By way of example and
21 without limitation, the Commission ignored evidence that this portion of Pacific Coast Highway is
22 responsible for 20% of all vehicular accidents occurring between Topanga Canyon Boulevard to the
23 western boundary Malibu. In addition, the Commission failed to take into account, study or address
24 evidence that the strip of La Costa Beach at issue has (i) strong riptides, dangerous currents and is
25 strewn with rocks, which causes it to be hazardous and unsuitable for swimming and other
26 recreation and (ii) is unsafe to provide access due to its small size, location and tidal conditions. The
27 Commission approved the Applications pursuant to its status as a certified regulatory program under
28 the California Environmental Quality Act ("CEQA"), which exempts Commission application

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1 approvals from certain documentary, but not substantive requirements, of CEQA.

2 7. Real Party Broad submitted an application to build a single family residence,
3 Application No. 4-99-185, (the "Broad Project"). Real Party Gamma submitted Application No.
4 4-99-146 to build a single family residence, (the "Gamma Project"). On or about February 24, 2000,
5 Real Party Daly submitted Application No. 4-99-266 to demolish three (3) existing single family
6 residences and to build one new 14,200 sq. ft. mega-mansion in their stead (the "Daly Project")
7 (collectively, the "Projects"). On or about February 24, 2000, the Commission Staff filed a report
8 recommending that the Commission approve the Daly Project if the Applicant abided by certain
9 "Special Conditions." Specifically, the report found that Sections 30210, 30211, 30212(a), 30220
10 and 30251 of the Coastal Act required the imposition of Special Conditions 6 (Six), 8 (Eight),
11 9 (Nine) and 10 (Ten), requiring Applicant to construct an 8-foot wide sidewalk between the
12 proposed development and Pacific Coast Highway, remove any signs which may deter the public
13 from use of Carbon Beach, record a deed restriction that no less than 20% of the lineal frontage of
14 the Project be reserved as a public view corridor, and dedicate lateral public access to Carbon Beach.
15 Similar conditions were approved for the Broad Project and the Gamma Project. The Commission
16 Staff found that the Coastal Act required such Special Conditions in order to preserve the public's
17 right to the visual and recreational resources of Carbon Beach.

18 8. On March 28, 2000, the Commission Staff filed a single report recommending permit
19 amendments to all three Applications (the "Amendments") to be heard at an April 12, 2000
20 Commission hearing. The Staff Report advocated approval of certain Amendments to the
21 Applications which would allow "off-site" mitigation of the required public view and access
22 corridors at the Lot, located at 21704 Pacific Coast Highway in the La Costa Beach neighborhood of
23 Malibu. Specifically, the Amendment of the Special Conditions would free the Applicants from
24 having to devote 20% of the frontal lineage of their Carbon Beach Projects for public view corridors,
25 and instead allow Applicants to develop within the previously designated public view corridors, if
26 the Applicants bought the Lot at La Costa Beach and dedicated it to the California Coastal
27 Conservancy (the "Conservancy") for public view and beach access. Neither the Staff Report nor
28 the findings and declarations section therein mention any public safety issues or environmental

1 analysis in connection with using the Lot as a public view and beach access resource pursuant to the
 2 Amendments.

3 9. So poorly noticed was the April 12, 2000 hearing that most written comments on the
 4 Amendments, including the comments of the City of Malibu, were not transmitted to the
 5 Commission until April 10, 2000. Local residents, including Petitioners, certain of whom live
 6 within 100 feet of the Lot -- who were and should have been known to be interested in the
 7 Amendments and related proceedings -- were not sent copies of the Commission Staff Reports nor
 8 given adequate notice of the April 12, 2000 hearing, as required by California Code of Regulations,
 9 Title 14, Division 5.5. The notice posted on the site was extremely difficult to see and not
 10 conspicuously displayed.

11 10. Despite this lack of adequate notice, the Commission had before it at its hearing on
 12 April 12, 2000, at least twelve letters, including one from the City of Malibu and one from Petitioner
 13 Ryan O'Neal, presenting extensive evidence that the Lot was unsuited for the proposed use due to
 14 extreme public safety issues including without limitation, the fact that access to the site could only
 15 be had from a uniquely dangerous stretch of Pacific Coast Highway in Malibu. Specifically, the
 16 Commission had before it evidence that the portion of Pacific Coast Highway immediately adjacent
 17 to the Lot was extremely dangerous because sight distance from the location of the Lot is limited,
 18 traffic moves at high speed along that stretch of Pacific Coast Highway, and the characteristics of the
 19 highway in that area cause 20% of all vehicle collisions which occur on Pacific Coast Highway. In
 20 addition, the Commission had evidence presented to it at the hearing that this specific portion of
 21 Pacific Coast Highway had been the location of a high number of traffic accidents, and such
 22 accidents would dramatically increase if pedestrian beach access was opened at the proposed
 23 location, particularly given the complete lack of any parking at this location.

24 11. Moreover, at the hearing, numerous long time residents of Malibu, including
 25 petitioners Freddie Fields, Budge Offer, Art Zoloth, Helen Zoloth, Peg Yorkin, and Virginia Mancini
 26 all gave first hand accounts to the Commission of the danger of the Pacific Coast Highway access to
 27 the Lot, accidents they had observed as well as the strong rip tide, dangerous conditions, and rocky
 28 nature of the La Costa beach swimming area adjacent to the Lot. Despite this evidence, various

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1 members of the Commission off-handedly dismissed without analysis or study the threat to public
 2 safety presented by the Applicants' off-site mitigation amendments presented without any analysis
 3 or study, and the Commission voted to approve the amended Applications, and specifically condition
 4 the Applications on the acceptance by the Conservancy of the Applicants' dedication of the Lot for
 5 public view and access.

6 **CONSERVANCY DEDICATION ACCEPTANCE PROCEEDINGS AND RESOLUTION**

7 12. At a public hearing on April 27, 2000, the Conservancy's Project Manager, Marc
 8 Beyeler, presented a report recommending that the Conservancy accept the dedication of the Lot in
 9 satisfaction of the Commission's requirement to provide public view and pedestrian access (the
 10 "Staff Report"). Mr. Beyeler also submitted a resolution and findings to be adopted by the
 11 Conservancy (the "Resolution").

12 13. Counsel for Petitioners addressed the Conservancy at the April 27 hearing and urged
 13 the Conservancy to delay accepting the dedication of the Lot until public safety and liability issues
 14 could be fully addressed and studied or, in the alternative, not to accept the dedication of the Lot.
 15 Counsel for Petitioners informed the Conservancy that public records from the City of Malibu and
 16 the Los Angeles County Sheriffs Department indicate that the Lot is located at the end of one of the
 17 most treacherous blind curves on the Pacific Coast Highway. The Conservancy was informed by
 18 Petitioners' counsel that the Lot consists primarily of rocky slopes along a stretch of the Pacific
 19 Ocean where dangerous tides and riptides are common, making the Lot unsuitable for public beach
 20 recreational purposes. The Conservancy also received specific notice and heard testimony on April
 21 27, 2000 that forthcoming legal challenges to the Commission's approval of the Lot as off-site
 22 mitigation of the above-referenced Applications required the Conservancy to delay acceptance until
 23 the legality of the Commission's act is determined. In addition, counsel for Petitioners informed the
 24 Conservancy that acceptance of the dedication was (i) inconsistent with the City of Malibu Draft
 25 Local Coastal Plan which does not designate the Lot as a proposed beach access point due to its
 26 unsafe location, and (ii) was in violation of the California Environmental Quality Act ("CEQA") due
 27 to the dramatically adverse impact upon public safety from locating beach access at this Lot.

28 ///

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1 14. After hearing the aforementioned testimony, the Conservancy adopted the Resolution
 2 to accept the dedication of the Lot.

3 **THE CONSERVANCY'S ACTIONS ARE WHOLLY WITHOUT BASIS IN LAW OR FACT**

4 15. During the Conservancy's hearing on April 27, 2000, as more particularly described
 5 in paragraphs 12 through 14 hereinabove, the Conservancy and each and every member thereof
 6 improperly and mistakenly and without any basis in law or fact, assumed and determined that the
 7 Commission's approval of the off-site mitigation was proper and in accordance with the Coastal Act
 8 and CEQA, which it was not. Dedication of the Lot to the Conservancy is not an adequate or
 9 appropriate mitigation for the Projects' detrimental impact upon visual and access resources on
 10 Carbon Beach because the proposed off-site mitigation Lot is located at a point on La Costa Beach,
 11 which is highly dangerous to pedestrians and public access. Moreover, the Conservancy acted
 12 without any valid evidence to support the Commission's determination that the off-site mitigation
 13 mitigates the loss of required public view and access on Carbon Beach. To the contrary, the off-site
 14 mitigation approved by the Commission only creates additional and significant unmitigated impacts
 15 on La Costa Beach, being, most notably, public safety.

16 16. During the April 27, 2000 hearing, referred to in Paragraphs 12 through 14 above, the
 17 Conservancy and each and every member thereof improperly and mistakenly and without any basis
 18 in law or fact, assumed and determined that dedication of the Lot to the Conservancy was an
 19 adequate and safe exchange for public access to the visual and recreational resources of Carbon
 20 Beach. The overwhelming and undisputed evidence before the Conservancy demonstrated that
 21 providing the public with a visual corridor and public beach access through the Lot presented a very
 22 significant and demonstrated danger to public safety. In order to gain access to the beach through
 23 the Lot, the public will have to cross a stretch of Pacific Coast Highway that was shown to be highly
 24 dangerous to motor and pedestrian traffic. Moreover, the beach itself and the swimming area was
 25 reported to be hazardous and unfit for recreation due to strong riptides, dangerous currents, and the
 26 presence of numerous rocks. For these reasons, use of the Lot cannot mitigate the Projects' impacts
 27 to public beach access because the Lot does not provide access to a suitable beach and, therefore, is
 28 not consistent with purposes and objectives and express provisions of the Coastal Act.

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1 17. During the April 27, 2000 proceedings described in paragraphs 12 through 14
2 hereinabove, the Conservancy and each and every member thereof improperly and mistakenly and
3 without any basis in law or fact, assumed that the dedication of the Lot was consistent with the
4 Conservancy's guidelines requiring that such dedications be consistent with Coastal Act, be
5 supported by the public, and be located to facilitate creation of public beach access. As stated in
6 paragraphs 15 and 16 hereinabove, the dedication is not consistent with, and is in fact in violation of
7 the Coastal Act. Furthermore, the dedication of the Lot is overwhelmingly opposed by the public
8 and the City of Malibu. Finally, the Lot is not located where suitable and safe public access can be
9 provided.

10 18. During the April 27, 2000 proceedings described in paragraphs 12 through 14
11 hereinabove, the Conservancy and each and every member thereof improperly and mistakenly and
12 without any basis in law or fact whatsoever, assumed that the acceptance of the dedication of the Lot
13 was consistent with the City of Malibu Local Coastal Program ("LCP"). In fact, the Conservancy's
14 finding in this regard is not consistent with the Malibu Draft LCP. The Lot is at the extreme western
15 end of La Costa Beach; whereas the draft LCP identifies two potential public access areas at the
16 eastern end of the beach (close to signalized crossing and visitor serving facilities at Rambla Pacifico
17 Road) and in the center of the La Costa Beach area (where visitors can access the beach in both
18 directions). Contrary to the objectives of the Malibu Draft LCP, the proposed dedication property at
19 the far western end of La Costa Beach is very unsafe, not visitor friendly, and accesses only the area
20 to the east due to the often impassable rocky shoreline area directly to the west. The City of Malibu
21 has stated to the Commission and the Conservancy, for these reasons, that it chose not to identify the
22 location of the proposed dedication as a potential site for public access.

23 19. During the April 27, 2000 proceedings described in paragraphs 12 through 14
24 hereinabove, the Conservancy and each and every member thereof improperly and mistakenly and
25 without any basis in law or fact, assumed that the acceptance of the dedication of the Lot was exempt
26 from CEQA. Use of the Lot for public access will cause significant unmitigated public safety
27 impacts, which have not been taken into account, evaluated or addressed by either the Commission
28 or the Conservancy. The existence of such safety impacts prohibits any exemption from CEQA and

1 in any event, the exemptions relied upon by the Conservancy are inapplicable.

2 20. During the April 27, 2000 proceedings described in paragraphs 12 through 14
3 hereinabove, the Conservancy and each and every member thereof improperly and mistakenly and
4 without any basis in law or fact whatsoever, assumed that the acceptance of the dedication of the Lot
5 (and proceeding with transfer of title to the Lot) was proper despite imminent litigation to overturn
6 the Commission's action and a separate Lis Pendens action brought by a party who was in escrow to
7 purchase the Lot prior to the Real Parties' acquisition of the Lot. For the Conservancy to proceed
8 with transfer of title and the planning and construction of improvements on the Lot while litigation is
9 pending on the predicate approval by the Commission would substantially harm Petitioners and
10 others seeking to establish and resolve important public rights regarding the Lot and the Projects. In
11 addition, this action by the Conservancy violated the condition imposed by the Commission that the
12 Lot be free and clear of liens and encumbrances prior to dedicating the Lot to the Conservancy.

13 21. The Conservancy had no evidentiary support for the April 27, 2000 acceptance of
14 dedication of the Lot. The Conservancy's action was in excess of its jurisdiction and without basis
15 in law or fact in that the Conservancy's Resolution was not supported by substantial evidence.

16 22. For the reasons enumerated in paragraphs 15 through 21 hereinabove, the
17 Conservancy and each and every member thereof, acted in excess of their jurisdiction and without
18 any basis in law or fact, and thus violated the Coastal Act, its own guidelines, and CEQA.

19 **FIRST CAUSE OF ACTION**

20 ***(Request For Issuance Of A Writ Of Mandamus To***

21 ***The Conservancy For Violations of the Coastal Act)***

22 23. Petitioners incorporate by this reference the allegations set forth in paragraphs 1
23 through 22 of this Petition.

24 24. At all times mentioned herein, the Conservancy has been and now is the agency
25 charged with conducting, by and through its district offices and commissioners, noticed, evidentiary
26 hearings to "serve as the repository for lands whose reservation is required to meet the policies and
27 objectives of the California Coastal Act of 1976." PRC § 31104.1. Among the powers of
28 Conservancy is the power to accept dedication of fee title of land required to provide public access to

1 recreation and resources in the coastal zone. Id.

2 25. With respect to the dedication of the Lot herein, the Conservancy accepted the Lot to
 3 provide public access to visual and recreational resources, despite overwhelming and uncontested
 4 evidence that the Lot was unsuitable for public access and recreational uses due to grave public
 5 safety impacts.

6 26. The Conservancy's rushed acceptance of the dedication of the Lot is invalid under
 7 PRC Sections 30000 et seq and Section 1094.5 of the Code of Civil Procedure, for the following
 8 reasons among others:

9 (a) The Conservancy committed a prejudicial abuse of discretion and acted in
 10 excess of its jurisdiction because the Conservancy made findings of consistency pursuant to Section
 11 30210 of the Coastal Act which were unsupported by substantial evidence and contradicted by
 12 overwhelming evidence. Section 30210 of the Coastal Act requires that recreational opportunity be
 13 provided in a manner "consistent with public safety." PRC § 30210. No evidence whatsoever
 14 supported such a finding, and Petitioners presented overwhelming evidence from public safety
 15 agencies and otherwise that the Lot was not safe or suitable for public use. Acceptance of the
 16 dedication was not, therefore, in accord with the requirements of Section 30210 of the Coastal Act,
 17 as well as other laws, statutes and regulations;

18 (b) The Conservancy committed a prejudicial abuse of discretion and acted in
 19 excess of its jurisdiction because the Conservancy made findings of consistency with Section
 20 30214(4) of the Coastal Act which were unsupported by substantial evidence and contradicted by
 21 overwhelming evidence. The Conservancy ignored the primary portions of the section which require
 22 that implementation of public access policies take into account the unique "facts and circumstances
 23 in each case" including the "topographic and geologic site characteristics" and "the capacity of the
 24 site to sustain use and at what level of intensity." PRC § 30214(a)(1), (2). No evidence supported
 25 any of these required findings, and Petitioners presented overwhelming evidence from public safety
 26 agencies and otherwise that the Lot was not safe or suitable for public use, and that the Lot's
 27 topographic and geologic characteristics were neither suitable for public recreation nor an equitable
 28 replacement for the Carbon Beach area directly impacted and closed off from the public by the

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1 Projects. No evidence whatsoever was presented regarding the anticipated level of intensity of use
 2 of the proposed public access at the Lot. Acceptance of the dedication was not, therefore, in accord
 3 with the requirements of Section 30214 of the Coastal Act, as well as other laws, statutes and
 4 regulations;

5 (c) The Conservancy committed a prejudicial abuse of discretion and acted in
 6 excess of its jurisdiction because the Conservancy ignored provisions of the Malibu Draft LCP
 7 which were in direct contradiction to the Conservancy's findings. Although the Malibu Draft LCP is
 8 not certified pursuant to Section 30514 of the Coastal Act, the Malibu Draft LCP still reflects the
 9 best evidence available to the Conservancy as to the proper locations for meeting the "maximum
 10 public access" requirements of the Coastal Act. PRC § 30500(a). To ignore express terms of the
 11 Malibu Draft LCP directly contradicting the Conservancy's findings that the Lot would be suitable
 12 for public access, demonstrates an appalling and unreasonable failure to discharge its duties under
 13 the Coastal Act. Acceptance of the dedication was not, therefore, in accord with the requirements of
 14 the Coastal Act, as well as other laws, statutes and regulations.

15 27. The scope of review for this cause of action is the substantial evidence test.

16 28. Petitioners have exhausted all available administrative remedies as the dedication of
 17 the Lot to the Conservancy has been approved and accepted by the Conservancy, which is currently
 18 taking action to acquire the property for the purpose of opening beach access to La Costa Beach
 19 through the Lot.

20 29. Petitioners have no plain speedy or adequate remedy at law, in that, unless the court
 21 issues the requested writ invalidating the Conservancy's acceptance of the dedication, the
 22 Conservancy will proceed to open public access to La Costa Beach through the Lot in the immediate
 23 future.

24 30. Petitioners are aggrieved persons, pursuant to Section 30801 of Public Resources
 25 Code. The Conservancy's actions with respect to the dedication were arbitrary and capricious, and
 26 thus entitled Petitioners to attorneys' fees and costs pursuant to Section 800 of the Government Code
 27 and Section 1021.5 of the Code of Civil Procedure.

28 ///

SECOND CAUSE OF ACTION

(Request For Issuance Of A Writ Of Mandamus To The Conservancy

For Violations of the Conservancy's Enabling Legislation and Guidelines)

31. Petitioners incorporate by this reference the allegations set forth in paragraphs 1 through 30 of this Petition.

32. At all times mentioned herein, the Conservancy has been and now is the agency charged with implementing the Conservancy's Interim Project Selection Criteria and Guidelines (the "Guidelines") pursuant to Division 21 of the Public Resources Code, by and through its district offices and commissioners.

33. With respect to the dedication of the Lot herein, the Conservancy accepted the Lot to provide public access to visual and recreational resources, despite overwhelming and uncontested evidence that acceptance of the Lot was inconsistent with the Conservancy's Guidelines.

34. The Conservancy's rushed acceptance of the dedication of the Lot is invalid under PRC Sections 31000, the Guidelines, and Section 1094.5 of the Code of Civil Procedure, for the following reasons, among others:

(a) The Conservancy committed a prejudicial abuse of discretion and acted in excess of its jurisdiction because the Conservancy made findings of consistency with the Guidelines' requirement that acceptance of the Lot met the objectives of the Coastal Act, which findings were unsupported by substantial evidence and contradicted by overwhelming evidence. As stated in paragraphs 23 through 30 and throughout hereinabove, acceptance of the dedication of the Lot was in violation of the Coastal Act. Acceptance of the dedication was not, therefore, in accord with the requirements of the Guidelines.

(b) The Conservancy committed a prejudicial abuse of discretion and acted in excess of its jurisdiction because the Conservancy made findings of consistency with the Guidelines' requirement that acceptance of the Lot be supported by the public, which findings were unsupported by substantial evidence and contradicted by overwhelming evidence. The dedication of the Lot is overwhelmingly opposed by the public and the City of Malibu. The Los Angeles County Sheriffs Department records demonstrate great concerns of a primary public safety agency in the area. The

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1 only support was voiced by the Real Parties and the Commission. The Conservancy's finding that
 2 "once opened, these sites are enjoyed by other Malibu residents" is the worst form of speculation
 3 unsupported by even the most threadbare scintilla of evidence in the record. Acceptance of the
 4 dedication of the Lot was not, therefore, in accord with the requirements of the Guidelines.

5 (c) The Conservancy committed a prejudicial abuse of discretion and acted in
 6 excess of its jurisdiction because the Conservancy made findings of consistency with the Guidelines'
 7 requirement that the location of the Lot facilitate the creation of public beach access, which findings
 8 were unsupported by substantial evidence and contradicted by overwhelming evidence.

9 Overwhelming and uncontradicted evidence in the record establishes that the Lot is unsuitable and
 10 unsafe for public beach access. Acceptance of the dedication was not, therefore, in accord with the
 11 requirements of the Guidelines.

12 35. The scope of review for this cause of action is the substantial evidence test.

13 36. Petitioners have exhausted all available administrative remedies as the dedication of
 14 the Lot to the Conservancy has been approved and accepted by the Conservancy, which is currently
 15 taking action to open beach access to La Costa Beach through the Lot.

16 37. Petitioners have no plain speedy or adequate remedy at law, in that, unless the court
 17 issues the requested writ invalidating the Conservancy's acceptance of the dedication, the
 18 Conservancy will proceed to open public access to La Costa Beach through the Lot in the immediate
 19 future.

20 38. Petitioners are aggrieved persons, pursuant to Section 30801 of Public Resources
 21 Code. The Conservancy's actions with respect to the dedication were arbitrary and capricious, and
 22 thus entitled Petitioners to attorneys' fees and costs pursuant to Section 800 of the Government Code
 23 and Section 1021.5 of the Code of Civil Procedure.

24 **THIRD CAUSE OF ACTION**

25 *(Request For Issuance Of A Writ Of Mandamus To*
 26 *The Conservancy For Violations of the CEQA)*

27 39. Petitioners incorporate by this reference the allegations set forth in paragraphs 1
 28 through 38 of this Petition.

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1 40. At all times mentioned herein, the Conservancy has been and now is the agency
 2 charged with conducting, by and through its district offices and commissioners, noticed, evidentiary
 3 hearings to "serve as the repository for lands whose reservation is required to meet the policies and
 4 objectives of the California Coastal Act of 1976." PRC § 31104.1. Among the responsibilities of
 5 Conservancy is to comply with CEQA. PRC §§ 21000 et seq.

6 41. With respect to the dedication of the Lot herein, the Conservancy accepted the Lot to
 7 provide public access to visual and recreational resources, despite overwhelming and uncontested
 8 evidence supporting a fair argument that use of the Lot for public access and recreational uses would
 9 result in significant and unmitigated public safety impacts.

10 42. The Conservancy's rushed acceptance of the dedication of the Lot is invalid under
 11 PRC Sections 21000 et seq. and Section 1094.5 of the Code of Civil Procedure, for the following
 12 reasons, among others:

13 (a) The Conservancy's finding that acceptance of the Lot was categorically
 14 exempt from CEQA pursuant to 14 California Code of Regulations ("CCR") Sections 15317 and
 15 15325 was, and is, incorrect. CCR Sections 15317 and 15325 exempt from CEQA the acceptance of
 16 fee interests or transfers of title in land for the preservation of open space. In direct contradiction to
 17 the terms of the exemption, the purpose of dedicating the Lot is not preservation of open space, but
 18 for public access upon which the Conservancy intends to construct a public infrastructure. Even if
 19 the exemption were to apply, CEQA expressly forbids the use of any exemption where "there is a
 20 reasonable possibility that the activity will have a significant effect on the environment due to
 21 unusual circumstances." 14 CCR § 15300.2(c). Overwhelming and uncontradicted evidence in the
 22 record demonstrates that -- due to the unusual location of the Lot on a uniquely treacherous blind
 23 curve of Pacific Coast Highway and the dangerous rocky terrain and tides at the Lot -- use of the Lot
 24 for public access and recreational purposes will have a significant adverse impact on public safety.
 25 Therefore, the exemption relied upon by the Conservancy does not apply and acceptance of the Lot
 26 without environmental review of the potentially significant environmental impacts violates CEQA.

27 (b) The Conservancy failed to comply with the information disclosure provisions
 28 and procedural requirements of CEQA. PRC §§ 21001.1, 21005; 14 CCR §§ 15000, 15002, 15020,

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1 15021. Unless otherwise exempt, a public agency must comply with CEQA for each discretionary
 2 approval. The Conservancy's acceptance of the Lot for the purpose of providing public access is a
 3 discretionary act not otherwise exempt from CEQA. As such, the Conservancy has failed to act in
 4 accordance with its duties under the law to prepare a preliminary review of the potential
 5 environmental impacts of the dedication of the Lot; to prepare and circulate the environmental
 6 documentation required by CEQA; and to adopt legally adequate findings required by CEQA prior
 7 to accepting the dedication of the Lot and committing itself to a course of action with regard to the
 8 Lot.

9 (c) The Conservancy failed to consider the whole of its action to accept the
 10 dedication of the Lot and establish public use of the Lot as required by CEQA. PRC §§ 21083,
 11 21087; 14 CCR § 15378(a). The Conservancy's willful blindness to the very significant public
 12 safety impacts of using the Lot for public access and recreation (and postponing the evaluation of
 13 such impacts until after acceptance of the property) violates CEQA because CEQA requires that
 14 agencies consider the whole of the action and not fragment its analysis of a project in order to avoid
 15 considering the true, overall environmental impacts of the project. PRC §§ 21083, 21087; 14 CCR §
 16 15378(a). A member of the Conservancy acknowledged during the April 27 hearing that, upon
 17 acceptance of the Lot, the Conservancy had a "moral" obligation to open the Lot to public access.
 18 Thus, the full public safety implications of the dedication and public access must be considered.

19 (d) The Conservancy failed to independently evaluate the dedication of the Lot
 20 prior to accepting the dedication. Instead, the Conservancy accepted the dedication without any
 21 independent review. The Conservancy deferred to the Commission's selection of the Lot as an
 22 appropriate location for public access. The Conservancy failed to consider that its power included
 23 the responsibility to independently evaluate whether the Lot was suitable for public access purposes
 24 and to reject the offer (or delay acceptance) until all issues (including adverse safety impacts) could
 25 be reviewed. In addition, the acceptance by the Conservancy of the above-referenced public access
 26 improvements is similarly improper since these improvements should have been independently
 27 reviewed and considered prior to accepting the dedication.

28 ///

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1 51. Petitioners are entitled to an injunction because as set forth in paragraphs 1 through
 2 47 herein and incorporated by reference, the Conservancy's actions constitute a prejudicial abuse of
 3 discretion and were not supported by substantial evidence and are not otherwise in accordance with
 4 the law, and the Petitioners are entitled to a Court Order invalidating the Conservancy's acceptance
 5 of the dedication of the Lot for public view and beach access.

6 52. Moreover, if this Court does not enjoin the Conservancy from accepting the
 7 dedication, transferring title to the Lot to the Conservancy and opening the Lot for public access, the
 8 public and Petitioners will be greatly or irreparably injured in that (i) public safety will be severely
 9 compromised; and (ii) Applicants will develop their Projects with massive homes (on a public
 10 beach) not properly mitigated according to the mandates of the Coastal Act and CEQA.

11 WHEREFORE, Petitioners pray for judgment as follows:

12 1. On the first cause of action, for a preemptory Writ of Mandamus from this Court
 13 directing the Conservancy to set aside its decision to accept the dedication of the Lot for failure to
 14 comply with the Coastal Act and for attorneys' fees and costs pursuant to Section 800 of the
 15 Government Code and Section 1021.5 of the Code of Civil Procedure;

16 2. On the second cause of action, for a preemptory Writ of Mandamus from this Court
 17 directing the Conservancy to set aside its decision to accept the dedication of the Lot for failure to
 18 comply with the Conservancy's enabling legislation and Guidelines and for attorneys' fees and costs
 19 pursuant to Section 800 of the Government Code and Section 1021.5 of the Code of Civil Procedure;

20 3. On the third cause of action, for a preemptory Writ of Mandamus from this Court
 21 directing the Conservancy to set aside its decision to accept the dedication of the Lot for failure
 22 to comply with the CEQA and for attorneys' fees and costs pursuant to Section 800 of the
 23 Government Code and Section 1021.5 of the Code of Civil Procedure;

24 4. On the fourth cause of action, for an injunction from this Court enjoining the
 25 Conservancy from (i) accepting the dedication, (ii) transferring title of the Lot to the Conservancy
 26 and (iii) opening the Lot for public access; and

27 ///

28 ///

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1 5. For attorneys' fees and costs of suit herein and for such other and further relief as the
2 Court deems just and proper.

3
4 Dated: May 12, 2000

Patricia L. Glaser
Sean Riley
CHRISTENSEN, MILLER, FINK, JACOBS,
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7
8 By: Patricia L. Glaser
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La Costa Beach Homeowners' Ass

v

Coastal Commission

ORIGINAL

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FILED
LOS ANGELES SUPERIOR COURT

MAY 12 2000

JOHN A. CLARKE, CLERK

E. Dill
BY E. DILL, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Y:5063276

11 LA COSTA BEACH HOMEOWNERS')
12 ASSOCIATION, a California Corporation,)
13 RICHARD ZIMAN, an individual, DAPHNA)
14 ZIMAN, an individual, ART ZOLOTH, an)
15 individual, HELEN ZOLOTH, an individual,)
16 FREDDIE FIELDS, an individual, CORINNA)
17 FIELDS, an individual, PEG YORKIN, an)
18 individual, BUDGE OFFER, an individual,)
19 JERRY MONKARSH, an individual,)
20 VIRGINIA MANCINI, an individual, RYAN)
21 O'NEAL, an individual, AARON SPELLING,)
22 an individual, CANDY SPELLING, an)
23 individual, NANCY HAYES, an individual,)
24 and LOU ADLER, an individual,)

25 Petitioners,

26 v.

27 CALIFORNIA COASTAL COMMISSION, a)
28 California state agency, and DOES 1 through)
29 50, inclusive,)

30 Respondents.

31 _____)
32 GAMMA FAMILY TRUST, BROAD)
33 REVOCABLE TRUST and NANCY M.)
34 DALY LIVING TRUST,)

35 Real Parties-in-Interest.)
36 _____)
37)
38)

Case No.

VERIFIED PETITION FOR WRIT OF MANDATE

[Cal. Civ. Pro. Code § 1094.5; Cal. Pub. Res. Code §§ 21167, 30801]

[Filed concurrently with Request for Preparation of Administrative Record of Proceedings]

VERIFIED PETITION FOR WRIT OF MANDATE (COMMISSION)

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1 Petitioners (hereinafter collectively referred to as "Petitioners" or "La Costa") hereby petition
 2 this Court for a Writ of Mandate to set aside and vacate the decision of Respondents, the California
 3 State Coastal Commission (hereinafter referred to as the "Commission") to approve the construction
 4 of three seaside mansions conditioned upon the dedication of certain beachfront property as off-site
 5 mitigation of certain impacts caused by the Commission's approval of the mansions. The off-site
 6 mitigation site was offered for dedication by Real Parties-In-Interest Gamma Family Trust, Broad
 7 Revocable Trust and Nancy M. Daly Living Trust (hereinafter collectively referred to as the "Real
 8 Parties" or "Applicants") to provide public beach pedestrian access and public view access on La
 9 Costa Beach in purported satisfaction of a requirement by the Commission pursuant to a Coastal
 10 Development Permit approved by the Commission to construct three seaside mansions on Carbon
 11 Beach in the City of Malibu. Petitioners seeks this relief on the grounds that the Commission's
 12 approval of the mansions and the off-site mitigation scheme constitutes prejudicial abuse of
 13 discretion in that the Commission has not proceeded in the manner required by law.

14 By this verified petition Petitioners hereby allege:

15 **THE PARTIES**

16 1. La Costa Beach Homeowners' Association (the "HOA") is a not for profit
 17 corporation incorporated in California, and at all times relevant hereto existing and doing business in
 18 the City of Malibu, California. The HOA was incorporated to protect and promote the collective
 19 welfare, property rights and enjoyment of the environmental resources of the homeowners on that
 20 real property commonly known as La Costa Beach in Malibu, California.

21 2. Richard Ziman, Daphna Ziman, Ari Zoloth, Helen Zoloth, Freddie Fields, Corinna
 22 Fields, Peg Yorkin, Budge Offer, Jerry Monkarsh, Virginia Mancini, Ryan O'Neal, Aaron Spelling,
 23 Candy Spelling, Nancy Hayes, and Lou Adler (collectively, "Residents") are owner-residents of
 24 property in or near the La Costa or Carbon Beach areas, City of Malibu, Los Angeles County,
 25 California. The HOA and Residents are, collectively, Petitioners.

26 3. Respondent California Coastal Commission (the "Commission") is an agency of the
 27 State of California created by the Coastal Act of 1976 (the "Coastal Act") as amended. Cal. Pub.
 28 Res. Code ("PRC") § 30300.

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1 4. Real Parties, Gamma Family Trust, Broad Revocable Trust, and the Nancy M Daly
2 Living Trust are legal entities representing the interests of Haim Saban, Eli Broad and Nancy M.
3 Daly, respectively.

4 5. The true names and capacities of those respondents named herein as DOES 1 through
5 50, inclusive, are presently unknown to Petitioners, and each of such Respondents is sued herein by
6 such fictitious names. Petitioners believe that each DOE is responsible for the acts complained of
7 herein to the same extent as the named Respondents. Petitioners will seek leave of court to amend
8 this writ to allege the true names and capacities of the DOE Respondents when those names have
9 been ascertained.

10 PERMIT APPLICATION PROCEEDINGS AND FINDINGS

11 6. This action arises out of the Commission's approval of three applications (the
12 "Applications") to build seaside mega-mansions on Carbon Beach in Malibu submitted by insurance
13 billionaire Eli Broad, television mogul Haim Saban and Nancy M. Daly, the wife of the Mayor of the
14 City of Los Angeles, respectively, without adequately taking into account the unmitigated impacts of
15 the proposed projects or the damaging effect of the proposed projects on public safety. Specifically,
16 with virtually no notice, the Commission amended the Special Conditions imposed on the
17 Applicants to mitigate the public view and access impacts of the Applications on Carbon Beach, by
18 allowing the applicants to buy and dedicate for public view and access an off-site lot on an extremely
19 dangerous stretch of Pacific Coast Highway on La Costa Beach (the "Lot"). The Commission
20 allowed the last-minute change in the special conditions without taking into account, studying or
21 addressing extensive evidence presented to it that providing public access to the Lot created
22 significant safety hazard issues along a stretch of Pacific Coast Highway known to have dangerous
23 traffic conditions. In addition, the Commission failed to take into account, study or address further
24 evidence presented to it that the strip of La Costa Beach at issue has strong riptides, dangerous
25 currents, and is strewn with rocks, which causes it to be (i) hazardous for swimming or other
26 recreation and (ii) unsafe to provide access due to its size, location and tidal conditions. The
27 Commission approved the Applications pursuant to its status as a certified regulatory program under
28 the California Environmental Quality Act ("CEQA"), which exempts Commission application

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1 the Applicants bought the Lot at La Costa Beach and dedicated it to the California Coastal
 2 Conservancy (the "Conservancy") for public view and beach access. Neither the Staff Report nor
 3 the findings and declaranons section therein mention any public safety issues or environmental
 4 impact analysis in connection with using the Lot as a public view and beach access resource
 5 pursuant to the Amendments.

6 9. So poorly noticed was the April 12, 2000 hearing that most written comments on the
 7 Amendments, including the comments of the City of Malibu, were not transmitted to the
 8 Commission until April 10, 2000. Local residents, including Petitioners, certain of whom live
 9 within 100 feet of the Lot -- who were and should have been known to be interested in the
 10 Amendments and related proceedings -- were not sent copies of the Commission Staff Reports nor
 11 given adequate notice of the April 12, 2000 hearing, as required by California Code of Regulations,
 12 Title 14, Division 5.5. The notice posted on the site was extremely difficult to see and not
 13 conspicuously displayed.

14 10. Despite this lack of adequate notice, the Commission had before it at its hearing on
 15 April 12, 2000, at least twelve letters, including one from the City of Malibu and one from Petitioner
 16 Ryan O'Neal, presenting extensive evidence that the Lot was unsuited for the proposed use due to
 17 extreme public safety issues including, without limitation, the fact that access to the site could only
 18 be had from a uniquely dangerous stretch of Pacific Coast Highway. Specifically, the Commission
 19 had before it evidence that the portion of Pacific Coast Highway immediately adjacent to the Lot
 20 was extremely dangerous because sight distance from the location of the Lot is limited, traffic moves
 21 at high speed along that stretch of Pacific Coast Highway, and the characteristics of the highway in
 22 that area cause 20% of all vehicle collisions which occur on Pacific Coast Highway between
 23 Topanga Canyon Boulevard and the western boundary of Malibu. In addition, the Commission had
 24 evidence presented to it at the hearing that this specific portion of Pacific Coast Highway had been
 25 the location of a high number of traffic accidents, and such accidents would dramatically increase if
 26 pedestrian beach access was opened at the proposed location, particularly given the complete lack of
 27 any parking at this location.

28 ///

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11. Moreover, at the hearing, numerous long time residents of Malibu, including Petitioners Freddie Fields, Budge Offer, Art Zoloth, Helen Zoloth, Peg Yorkin, and Virginia Mancini all gave first hand accounts to the Commission of the danger of the Pacific Coast Highway access to the Lot, accidents they had observed as well as the strong ripide, precipitous deep water shelf and rocky nature of the La Costa beach swimming area adjacent to the Lot. Despite this evidence, various members of the Commission off-handedly dismissed without analysis or study the threat to public safety presented by the Applicants' off-site mingation amendrnents, and the Commission voted to approve the amended Applications, and specifically conditon the Applications on the acceptance by the Conservancy of the Applicants' dedication of the Lot for public view and access.

12. On April 27, 2000, the Conservancy voted to accept the dedication of the Lot for public view and beach access and has indicated its intent to open public access to La Costa Beach through the Lot.

THE COMMISSION'S ACTIONS ARE WHOLLY WITHOUT BASIS IN LAW OR FACT

13. The Commission did not adequately notice the hearing on the proposed Amendments to the Applications. Parties known to be interested in the Amendments were not given the requisite 10 days prior notice by U.S. mail. 14 Cal. Code Regs ("CCR") Div. 5.5 §§ 13015, 13016 Parties within 100 feet of the Lot, which the Applicants proposed for development as part of the Projects, were not notified by U.S. Mail. 14 CCR, Div. 5.6 § 13054(a). In addition, notice of the hearing was not conspicuously posted on the Lot as required. 14 CCR Div. 5.5 §§ 13054(d) Instead, a small sign was placed at ground level. Not only was the Commission Staff Report regarding the proposed Amendments filed on March 28, 2000 for an April 12, 2000 hearing, but the Commission failed to even attempt to properly notify interested parties pursuant to the Coastal Act requirements. Having failed to give proper notice, the Commission exceeded its jurisdiction by voting upon the Amendments in direct violation of the law prohibiting the Commission from voting on any matter when proper notice has not been given. 14 CCR Div. 5.5 § 13025.

14. During the Commission's April 12, 2000 hearing, as more particularly described in paragraphs 6 through 12 herein above, the Commission and each and every member thereof

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1 improperly, mistakenly and without any basis in law or fact whatsoever, assumed and determined
 2 that dedication of the Lot to the Conservancy was an adequate mitigation for deprivation of visual
 3 and access resources on Carbon Beach, notwithstanding the fact that (i) the proposed off-site
 4 mitigation is located on La Costa Beach, an area geographically distinct from Carbon Beach, and
 5 (ii) La Costa Beach is also an inferior beach facility in that it is rockier and has stronger ripides than
 6 Carbon Beach. The Commission also acted without any valid evidence supporting the determination
 7 that the off-site mitigation in any way mitigates the loss of required public view and access on
 8 Carbon Beach. To the contrary, the off-site mitigation approved by the Commission only creates
 9 additional and significant unmitigated impacts on La Costa Beach being, most notably, public safety.
 10 Based upon the above-referenced public safety and other issues, the Lot is not located at a point on
 11 La Costa Beach which the City of Malibu Draft Local Coastal Plan has identified for public use.

12 15. During the April 12, 2000 hearing, the Commission and each and every member
 13 thereof improperly and mistakenly and without any basis in law or fact, assumed and determined that
 14 dedication of the Lot to the Conservancy was an adequate and safe exchange for public access to the
 15 visual and recreational resources of Carbon Beach. The overwhelming and undisputed evidence
 16 before the Commission demonstrated that providing the public with a visual corridor and public
 17 beach access through the Lot presented a very significant and demonstrated danger to public safety.
 18 In order to gain access to La Costa Beach through the Lot as determined, the public will have to
 19 cross a stretch of Pacific Coast Highway that was shown to be highly dangerous to motor and
 20 pedestrian traffic. Moreover, the beach itself and the swimming area was reported to be hazardous
 21 and unfit for recreation due to strong ripides, dangerous currents, and the presence of numerous
 22 rocks. For these reasons, use of the Lot cannot mitigate the Project's impacts to public beach access
 23 because the Lot does not provide access to a suitable beach, and therefore is not consistent with the
 24 purposes, objectives and express provisions of the Coastal Act.

25 16. The Commission had no evidentiary support for the April 12, 2000 approval of the
 26 Amendments allowing off-site mitigation at the Lot. The Commission's action was in excess of its
 27 jurisdiction and without basis in law or fact in that the Commission failed to make appropriate study
 28 or findings concerning the environmental impact (specifically the public safety impact) of allowing

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1 the off-site mitigation approved at the April 12, 2000 hearing.

2 17. For all the reasons set forth herein above, the Commission and each and every
3 member thereof, acted in excess of their jurisdiction and without any basis in law or fact, and thus
4 violated the Coastal Act and CEQA.

5 **FIRST CAUSE OF ACTION**

6 *(Request For Issuance Of A Writ Of Mandamus To*
7 *The Commission For Violations of the Coastal Act)*

8 18. Petitioners incorporate by this reference the allegations set forth in paragraphs 1
9 through 17 of this Petition.

10 19. At all times mentioned herein, the Commission has been and now is the agency
11 charged with conducting, by and through its district offices and commissioners, noticed, evidentiary
12 hearings for the purpose of granting, granting with conditions or denying approval of the proposed
13 development projects for all properties within the Coastal Zone, as such is defined in the Coastal
14 Act. With respect to the Applications herein, the Commission held sham hearings and approved the
15 Amendments allowing off-site mitigation of the visual and beach access impacts of the Projects.
16 Special Conditions restricting Applicants from developing on 20% or more of the frontal lineage of
17 their proposed Projects were deleted and the Commission instead accepted the Lot as a mitigation
18 measure to allow public access to visual and recreational resources at a separate geographic location,
19 despite overwhelming and uncontested evidence that such a modification of Special Conditions
20 would have grave public safety impacts.

21 20. The Commission's rushed approval of the Amendments is invalid under Public
22 Resources Code Sections 30000 et seq. and Section 1094.5 of the Code of Civil Procedure, for the
23 following reasons among others:

24 (a) The Commission committed a prejudicial abuse of discretion and acted in
25 excess of its jurisdiction because it approved the Amendments without properly noticing interested
26 parties, including Petitioners herein, pursuant to, among others, Title 14, Division 5.5, Chapter 2, 5
27 and 6, of the California Code of Regulations, thus denying the public, and Petitioners, a fair and
28 adequate chance to be heard in violation of, among other things, Section 30006 of the Coastal Act;

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1 (b) The Commission committed a prejudicial abuse of discretion and acted in
 2 excess of its jurisdiction because the Commission made findings in support of approval and
 3 approved off-site mitigation of the Projects' impacts on visual and beach access resources at a
 4 location which is geographically distinct and qualitatively inferior from area of the impacts and
 5 therefore not in accord with the requirements of Sections 30210, 30212(a), 30214(a), 30251, 30252
 6 and 30253 of the Coastal Act, as well as other laws, statutes and regulations;

7 (c) The Commission committed a prejudicial abuse of discretion and acted in
 8 excess of its jurisdiction because the Commission approved off-site mitigation of the Projects'
 9 impacts on visual and beach access resources, in violation of Sections 30210, 30212(a), 30214(a),
 10 30251, 30252 and 30253 of the Coastal Act, as well as other laws, statutes and regulations.

11 (d) The Commission committed a prejudicial abuse of discretion and acted in
 12 excess of its jurisdiction because it approved Amendments to the Applications without studying,
 13 addressing or making findings regarding the public safety impacts of the proposed off-site mitigation
 14 in violation of Sections 30210, 30212(a), 30214(a), 30251, 30252 and 30253 of the Coastal Act, as
 15 well as other laws, statutes and regulations;

16 (e) The Commission committed a prejudicial abuse of discretion and acted in
 17 excess of its jurisdiction because, to the degree that the Commission made findings regarding the
 18 public safety impact of the proposed off-site mitigation, such findings were without evidentiary
 19 support in violation of Sections 30210, 30212(a), 30214(a), 30251, 30252 and 30253 of the Coastal
 20 Act, as well as other laws, statutes and regulations;

21 (f) The Commission committed a prejudicial abuse of discretion and acted in
 22 excess of its jurisdiction because, to the degree that the Commission made findings regarding the
 23 public safety impacts of the proposed off-site mitigation, such findings were in direct contravention
 24 of the overwhelming and uncontested evidence before the Commission in violation of Sections
 25 30210, 30212(a), 30214(a), 30251, 30252 and 30253 of the Coastal Act, as well as other laws,
 26 statutes and regulations; and

27 (g) The Commission committed a prejudicial abuse of discretion and acted in
 28 excess of its jurisdiction because the Commission approval of the proposed off-site mitigation puts

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1 the public safety in danger in violation of Sections 30210, 30212(a), 30214(a), 30251, 30252 and
2 30253 of the Coastal Act, as well as other laws, statutes and regulations.

3 21. The scope of review for this petition is the substantial evidence test.

4 22. Petitioners have exhausted all available administrative remedies.

5 23. Petitioners have no plain speedy or adequate remedy at law, in that, unless the court
6 issues the requested writ invalidating the Commission's approval of the Amendments allowing for
7 off-site mitigation, Real Parties will transfer the Lot to the Conservancy which will then proceed to
8 open public access to La Costa Beach through the Lot in the immediate future.

9 24. Petitioners are aggrieved persons, pursuant to Section 30801 of the Coastal Act.

10 25. The Commission's actions with respect to the Amendments were arbitrary and
11 capricious, and thus entitle Petitioners to attorneys' fees and costs pursuant to Section 10215 of the
12 Code of Civil Procedure.

13 **SECOND CAUSE OF ACTION**

14 *(Request For Issuance Of A Writ Of Mandamus To*
15 *The Commission For Violations of the CEQA)*

16 26. Petitioners incorporate by this reference the allegations set forth in paragraphs 1
17 through 25 of this Petition.

18 27. At all times mentioned herein, the Commission has been and now is the agency
19 charged with conducting, by and through its district offices and commissioners, noticed, evidentiary
20 hearings for the purpose of granting, granting with conditions or denying approval of the proposed
21 development projects for all properties within the Coastal Zone, as such is defined in the Coastal
22 Act. At all times mentioned herein, the Commission has been and is now the agency charged with
23 complying with CEQA pursuant to its status as a certified regulatory program under CEQA. With
24 respect to the Applications herein, the Commission held sham hearings and approved the amendment
25 of the Applications allowing off-site mitigation of the visual and beach access impacts of the
26 Applicants' proposed Projects. Special Conditions restricting Applicants from developing on 20%
27 or more of the frontal lineage of their proposed Projects on Carbon Beach were deleted and the
28 Commission instead accepted the Lot as a mitigation measure to allow public access to visual and

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1 recreational resources at a separate location, despite overwhelming and uncontested evidence that
2 such a modification of Special Conditions would have grave public safety impacts.

3 28. The Commission's rushed approval of the Amendments is invalid under Public
4 Resources Code Sections 21000 et seq. and Section 1094.5 of the Code of Civil Procedure, for the
5 following reasons among others:

6 (a) The Commission committed a prejudicial abuse of discretion and acted in
7 excess of its jurisdiction because the Commission held hearings and approved Amendments to the
8 Applications without properly noticing interested parties, including Petitioners herein, or allowing
9 them meaningful time to review, comment and be heard pursuant to, among others, Public Resources
10 Code Section 21092 and Sections 15105, 15200, 15203 of the CEQA Guidelines;

11 (b) The Commission committed a prejudicial abuse of discretion and acted in
12 excess of its jurisdiction because the Commission's findings that the proposed off-site mitigation
13 actually mitigated the Projects' impacts on visual and beach access resources at Carbon Beach were
14 unsupported by evidence in the record, and, indeed, evidence in the record demonstrated that the off-
15 site mitigation location is geographically distinct, qualitatively inferior and remote from area of the
16 impacts and therefore does not adequately mitigate the Projects' impacts;

17 (c) The Commission committed a prejudicial abuse of discretion and acted in
18 excess of its jurisdiction because the Commission approved off-site mitigation of the Projects'
19 impacts on visual and beach access resources, although such action was not consistent with the
20 Commission's findings that the off-site mitigation location is geographically distinct, qualitatively
21 inferior and remote from the area of the impacts and therefore does not adequately mitigate the
22 Projects' impacts;

23 (d) The Commission committed a prejudicial abuse of discretion and acted in
24 excess of its jurisdiction because it did not consider, analyze, study, make findings regarding or
25 otherwise take into account the significant unmitigated impacts of using the Lot as a public view
26 corridor and beach access, including most particularly highly detrimental public safety impact of
27 using the Lot to provide a visual corridor and beach access;

28 ///

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1 (e) The Commission committed a prejudicial abuse of discretion and acted in
 2 excess of its jurisdiction because, to the degree that the Commission made findings regarding the
 3 public safety impact of the proposed off-site mitigation, such findings were without evidentiary
 4 support; and

5 (f) The Commission committed a prejudicial abuse of discretion and acted in
 6 excess of its jurisdiction because, to the degree that the Commission made findings regarding the
 7 public safety impact of the proposed off-site mitigation, such findings were in direct contravention of
 8 the overwhelming and uncontested evidence before the Commission; and

9 29. The scope of review for this petition is the "Fair Argument" test. PRC §§ 21100,
 10 21151; CEQA Guidelines § 15064(a)(1)(f)(1).

11 30. Petitioners have exhausted all available administrative remedies.

12 31. Petitioners have no plain speedy or adequate remedy at law, in that, unless the court
 13 issues the requested writ invalidating the Commission's approval of the Amendments allowing for
 14 off-site mitigation, Real Parties will transfer the Lot to the Conservancy which will then proceed to
 15 open public access to La Costa Beach through the Lot in the immediate future.

16 32. Petitioners are within the class of persons beneficially interested in the project. The
 17 Petitioners are all owner-residents, or represent owner-residents, of La Costa Beach and Carbon
 18 Beach, and reside in close proximity to the Lot and the Projects. Petitioners are also members of the
 19 public seeking to compel the Commission to carefully exercise its powers in order to protect the
 20 environment and public safety.

21 WHEREFORE, Petitioners pray for judgment as follows:

22 1. On the first cause of action, for a preemptory Writ of Mandamus from this Court
 23 directing the Commission to set aside its approval of the Amendments and otherwise directing the
 24 Commission to comply with the Coastal Act and for attorneys' fees and costs pursuant to Section
 25 1021.5 of the Code of Civil Procedure and Section 800 of the Government Code;

26 2. On the second cause of action, for a preemptory Writ of Mandamus from this Court
 27 directing the Commission to set aside its approval of the Amendments and otherwise directing the
 28 Commission to comply with CEQA and for attorneys' fees and costs pursuant to Section 1021.5 of

LA COSTA BEACH
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1 the Code of Civil Procedure and Section 800 of the Government Code;

2 3. For attorneys' fees and costs of suit herein and for such other and further relief as the
3 court deems just and proper.
4

5 Dated: May 12, 2000

Patricia L. Glaser
Sean Riley
CHRISTENSEN, MILLER, FINK, JACOBS,
GLASER, WEIL & SHAPIRO, LLP

6
7
8 By: Patricia L. Glaser
9 PATRICIA L. GLASER
10 Attorneys for Petitioners
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Jett Greene

v

Trusts

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5 (818) 788-1600

6 Attorneys for Plaintiff,
7 **JEFF GREENE**

ORIGINAL FILED
APR 28 2000
LOS ANGELES
SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 **JEFF GREENE**, an individual,

12 Plaintiff,

13 vs.

14 **RICHARD J. RIORDAN**, an individual,
15 **ELI BROAD**, individually and as trustee of
16 the Eli Broad Revocable Trust dated
17 8/21/98, **NANCY M. DALY**, individually
18 and as trustee of the Nancy M. Daly Living
19 Trust dated 5/23/97, **MATTHEW G.**
20 **KRANE**, individually and as Trustee of the
21 Gamma Family Trust Dated 10/30/97,
22 **SAMUEL N. FLETCHER**, individually
23 and as Trustee of the Gamma Family Trust
24 Dated 10/30/97, and DOES 1 through 50,
25 inclusive,

26 Defendants.

CASE NO. **BC229033**

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF:**

1. INTERFERENCE WITH CONTRACT
AND CONSPIRACY TO INDUCE BREACH
OF CONTRACT
2. INTERFERENCE WITH ECONOMIC
ADVANTAGE AND CONSPIRACY TO
INTERFERE WITH ECONOMIC
ADVANTAGE
3. CONSTRUCTIVE TRUST/ACCOUNTING
4. DECLARATORY RELIEF
5. INJUNCTIVE RELIEF

27 Plaintiff **JEFF GREENE** alleges as follows:

28 **SUMMARY OF ACTION**

1. From the infamous Teapot Dome scandal of the 1920's to the Whitewater scandal that has tarnished the Clinton administration, history is replete with incidents of politicians abusing their position for personal gain, especially in the arena of real estate transactions. Albeit on a smaller scale, this action follows the precedent set in these historic scandals with respect to a beach property in Malibu, California.

1 The Assessor's Parcel Number for the Property is 4451-003-033.

2 9. Pepperdine marketed and contracted to sell the Property to Plaintiff together with
3 plans for the construction of a single-family house on the Property. Pepperdine had already
4 obtained concept approval from the City of Malibu for the plans. Among other things, the
5 Contract confirmed that Pepperdine would be providing Plaintiff with plans that had concept
6 approval as part of its contractual obligations.

7 10. Although the plans that Plaintiff was purchasing with the Property already had
8 concept approval from the City of Malibu, Plaintiff also needed a development permit from the
9 California Coastal Commission before building permits could be issued. As agreed in the
10 Contract, Pepperdine cooperated with Plaintiff in seeking a development permit for the Property
11 based upon the plans from the Coastal Commission. In December 1998, the California Coastal
12 Commission postponed its decision on the application for a development permit, stating that
13 Pepperdine would need to obtain a survey by the California State Lands Commission to
14 determine the Mean High Tide line for the Property before the permit would be issued. The
15 outcome of this survey would dictate the parameters for the development of the Property and the
16 viability of Pepperdine's plans. Inasmuch as Plaintiff's purpose in purchasing the Property and
17 accompanying plans was to construct a house thereon, the Property was only valuable to Plaintiff
18 as a lot that could be developed. Pepperdine and Plaintiff therefore agreed that the sale would be
19 completed after the completion of the State Lands survey.

20 11. In February 1999, Pepperdine entered into an agreement with State Lands to
21 perform the survey required by the Coastal Commission. Pepperdine's agreement with State
22 Lands set May 2000 as the completion date for the survey.

23 12. In April 1999, Plaintiff and Pepperdine entered into an amendment of the Contract
24 (the "Amendment") to extend the escrow to allow time for the completion of the State Lands'
25 survey. Despite the fact that Pepperdine's agreement with State Lands provided until May 2000
26 to complete the survey, the Amendment stated that the completion of the survey was expected
27 within six months (i.e. October 1999). Plaintiff was unaware of the terms of Pepperdine's
28 agreement with State Lands and had no reason to distrust Pepperdine's representation that six

1 months would be sufficient time for the completion of the survey. In addition, the Amendment
2 set March 1, 2000 as an outside date for the close of escrow regardless of the completion of
3 survey by State Lands. If Plaintiff had known that Pepperdine's agreement with State Lands set
4 a completion date of May 2000, Plaintiff would not have agreed to the Amendment and to setting
5 March 1, 2000 as the outside date for the close of escrow.

6 13. In 1999, there was a change in the policies of the California Coastal Commission
7 regarding the requirements for the development of beach-front property. Among other things,
8 the Coastal Commission mandated that a minimum view corridor to the ocean be provided in
9 connection with new construction. This change in policy invalidated the concept approval for
10 the plans being sold with the Property. Consequently, Pepperdine modified the plans to conform
11 to the policy changes, creating the mandated view corridor and relocating the septic system,
12 among other things. Pepperdine submitted the modified plans to the City of Malibu for concept
13 approval. The City of Malibu rejected the modified plans, noting a number of deficiencies in the
14 application and stating that a variance would be required. Pepperdine failed to inform Plaintiff
15 that it had modified the plans, submitted the modified plans to the City of Malibu, and obtained a
16 notice of rejection.

17 14. Plaintiff is informed and believes and thereon alleges that in late 1999/early 2000,
18 Mr. Riordan and Mr. Broad became interested in the Property and, through their agents and
19 representatives, approached Pepperdine concerning the purchase of the Property. Mr. Riordan
20 and Mr. Broad were in the process of obtaining Coastal Commission approval for mansions they
21 planned to build in the vicinity of the Property in Malibu and did not want to comply with coastal
22 access and view corridor requirements for their houses. Consequently, their interest in the
23 Property was related to trying to obtain concessions from the Coastal Commission to relieve
24 them of the obligation of complying with the requirements that would apply to any other new
25 construction by offering to give the Property to the State as a public beach. Pepperdine told Mr.
26 Riordan's and Mr. Broad's agents and representatives of Plaintiff's escrow to purchase the
27 Property. Mr. Riordan's and Mr. Broad's agents and representatives therefore contacted Plaintiff
28 to see if they could obtain Plaintiff's cooperation in their acquisition of the Property. Although

1 they offered to purchase the Property from Plaintiff for \$100,000 more than the price Plaintiff
2 had contracted to pay, Plaintiff refused explaining his plans to develop the Property and resell
3 sell same for at least \$1,000,000 profit. Unwilling to accept defeat, Plaintiff is informed and
4 believes and thereon alleges that Mr. Riordan and Mr. Broad used their political and financial
5 influence to pressure Pepperdine into frustrating Plaintiff's purchase of the Property and sell it to
6 them instead.

7 15. In February 2000, it became apparent to Plaintiff that the State Lands survey
8 would not be completed before March 1, 2000, the expiration date set by the Amendment for the
9 closing of Plaintiff's purchase of the Property. Plaintiff therefore asked Pepperdine to extend the
10 escrow. Although initially Pepperdine was receptive to Plaintiff's request, Pepperdine
11 ultimately refused to further extend the escrow. Plaintiff is informed and believes and thereon
12 alleges that Pepperdine decision to reject a further extension of the escrow was based upon the
13 political and financial influence exerted by Mr. Riordan and Mr. Broad.

14 16. About this time, Plaintiff learned that Pepperdine had modified the plans for the
15 Property that were part of the Contract and that the plans no longer had concept approval.
16 Plaintiff was ready, willing and able to close the transaction and provided proof of his ability to
17 fund the purchase of the property. However, it appeared that Pepperdine would not be in a
18 position to comply with its contractual obligation to deliver plans with concept approval.
19 Plaintiff therefore demanded that Pepperdine provide assurances that it would delivered plans
20 with concept approval as requirement by the Contract. Pepperdine failed to respond to Plaintiff's
21 request for assurances that it would be in a position to give Plaintiff plans with concept approval
22 and failed to tender any such plans by the March 1, 2000 closing date for the transaction.
23 Plaintiff therefore declared Pepperdine to be in breach of the Contract and demanded immediate
24 arbitration as required thereunder. While the parties discussed the selection of an arbitrator and a
25 hearing date, Pepperdine stealthily sold the Property to parties and entities affiliated with Mr.
26 Riordan and Mr. Broad. Plaintiff is informed and believes and thereon alleges that Pepperdine
27 sought to frustrate Plaintiff's purchase of the Property and that the parties acquiring title to the
28 Property from Pepperdine were aware of and abetted Pepperdine's breach of the Contract.

1 FIRST CAUSE OF ACTION

2 (Interference with Contract and Conspiracy to Induce

3 Breach of Contract Against All Defendants)

4 17. Plaintiff incorporates here by reference all of the allegations set forth in
5 paragraphs 1 through 16, inclusive, of this Complaint.

6 18. As alleged herein, Plaintiff is informed and believes that Defendants were aware
7 of the Contract. Plaintiff is further informed and believes and thereon alleges that Defendants
8 actively sought to cause Pepperdine to breach and frustrate the Contract, and that Defendants
9 conspired with one another in order to conceive and execute a plan to cause Pepperdine to breach
10 and frustrate the Contract. In furtherance of such conspiracy and plan to cause Pepperdine to
11 breach and frustrate the Contract, Plaintiff is informed and believes and thereon alleges that
12 Defendants themselves and through their agents and representatives contacted Pepperdine to
13 induce Pepperdine to breach and frustrate the Contract and used their political and financial
14 influence to cause Pepperdine to breach and frustrate the Contract.

15 19. Plaintiff is informed and believes and thereon alleges that Pepperdine would
16 have acted in good faith and would not have breached the Contract but for Defendants' efforts
17 and exertion of political and financial influence directed at persuading Pepperdine to abrogate the
18 Contract and sell the Property to them. Plaintiff is informed and believes and thereon alleges
19 that, as the result of Defendants' conduct, Pepperdine failed to act in good faith and breached the
20 Contract.

21 20. As the direct and proximate result of Defendants' interference and conspiracy to
22 interfere with the Contract, Plaintiff has been damaged in an amount believed to be in excess of
23 \$1,000,000.00, subject to proof at time of trial. Plaintiff will seek to amend this Complaint with
24 the further amounts of his damages once same have been ascertained by Plaintiff.

25 21. Defendants' conduct in interfering and conspiring to interfere with the Contract
26 was malicious in that Defendants' actions were despicable and undertaken in conscious disregard
27 of Plaintiff's right to the benefits of the Contract. Plaintiff therefore seeks the imposition of
28 punitive damages against Defendants.

1 SECOND CAUSE OF ACTION

2 (Interference with Economic Advantage and Conspiracy to
3 Interfere with Economic Advantage Against All Defendants)

4 22. Plaintiff incorporates here by reference all of the allegations set forth in
5 paragraphs 1 through 16, inclusive, of this Complaint.

6 23. Plaintiff is informed and believes that Defendants were aware that Plaintiff
7 intended to acquire the Property and build a house thereon for the purposes of reselling the
8 developed Property for profit. Based upon Plaintiff's experience in developing real estate,
9 Plaintiff had a reasonable expectation of obtaining a profit from the development of the Property.
10 Plaintiff is further informed and believes and thereon alleges that Defendants knew of Plaintiff's
11 expectation of profit.

12 24. Plaintiff is informed and believes and thereon alleges that Defendants actively
13 sought to frustrate Plaintiff's purchase of the Property, and that Defendants conspired with one
14 another in order to conceive and execute a plan to frustrate Plaintiff's purchase of the Property in
15 order to acquire the Property for their own personal gains and benefits. In furtherance of such
16 conspiracy and plan, Plaintiff is informed and believes and thereon alleges that Defendants
17 themselves and through their agents and representatives contacted Pepperdine to induce
18 Pepperdine to breach and frustrate the Contract and used their political and financial influence to
19 cause Pepperdine to breach and frustrate the Contract.

20 25. Plaintiff is informed and believes and thereon alleges that Pepperdine would
21 have acted in good faith and would not have breached the Contract so that Plaintiff would have
22 acquired the Property, but for Defendants' efforts and exertion of political and financial influence
23 directed at persuading Pepperdine to abrogate the Contract and sell the Property to them.
24 Plaintiff is informed and believes and thereon alleges that, as the result of Defendants' conduct,
25 Pepperdine failed to act in good faith and breached the Contract and Plaintiff was unable to
26 acquire the Property.

27 26. As the direct and proximate result of Defendants' interference and conspiracy to
28 interfere with Plaintiff's economic advantage, Plaintiff has been damaged in an amount believed

1 to be in excess of \$1,000,000.00, subject to proof at time of trial. Plaintiff will seek to amend
2 this Complaint with the further amounts of his damages once same have been ascertained by
3 Plaintiff.

4 27. Defendants' conduct in interfering and conspiring to interfere with Plaintiff's
5 economic advantage was malicious in that Defendants' actions were despicable and undertaken
6 in conscious disregard of Plaintiff's right to the benefits of acquiring the Property. Plaintiff
7 therefore seeks the imposition of punitive damages against Defendants.

8 **THIRD CAUSE OF ACTION**

9 (Constructive Trust/Accounting Against All Defendants)

10 28. Plaintiff incorporates here by reference all of the allegations set forth in
11 paragraphs 1 through 27, inclusive, of this Complaint.

12 29. By virtue of the Contract, Plaintiff is entitled to title to the Property. Defendants
13 only acquired title to the Property through their wrongful conduct as alleged herein.
14 Consequently, Defendants hold the Property in trust for Plaintiff and, upon Plaintiff's tender of
15 the purchase price due pursuant to the Contract, Defendants have an obligation to transfer title to
16 the Property to Plaintiff. The Court should therefore impose a constructive trust upon the
17 Property and any proceeds derived from the exploitation and sale of the Property for the benefit
18 of Plaintiff, who is the rightful owner of the Property. Defendants should be ordered to account
19 for and disgorge all proceeds from any exploitation and sale of the Property and to transfer title
20 to the Property to Plaintiff upon payment of the purchase price due pursuant to the Contract.

21 **FOURTH CAUSE OF ACTION**

22 (Declaratory Relief Against All Defendants)

23 30. Plaintiff incorporates here by reference all of the allegations set forth in
24 paragraphs 1 through 29, inclusive, of this Complaint.

25 31. An actual controversy exists among the parties concerning their respective rights
26 and interests in the Property. Plaintiff and Defendants dispute that:

27 a. Defendants hold the Property in trust for Plaintiff;

28 //

1 2. For exemplary damages.

2 ON THE THIRD CAUSE OF ACTION:

3 3. For an order imposing constructive trust on the Property and the proceeds derived
4 from the exploitation and sale of the Property for the benefit of Plaintiff.

5 4. For an order requiring Defendants to account for and disgorge all proceeds from
6 the exploitation and sale of the Property to Plaintiff.

7 5. For an order requiring Defendants to transfer title to the Property to Plaintiff upon
8 Plaintiff's payment of the purchase price set forth in the Contract.

9 ON THE FOURTH CAUSE OF ACTION:

10 6. For judicial determination of the rights and interest of the parties hereto with
11 respect to the Property.

12 ON THE FIFTH CAUSE OF ACTION:

13 7. For a temporary restraining order and preliminary and permanent injunction
14 enjoining Defendants from transferring title to the Property to anyone other than Plaintiff, and
15 otherwise selling, encumbering, or hypothecating title to the Property.

16 ON ALL CAUSES OF ACTION:

17 8. For prejudgment interest pursuant to Civil Code Sections 3287 and/or 3288.

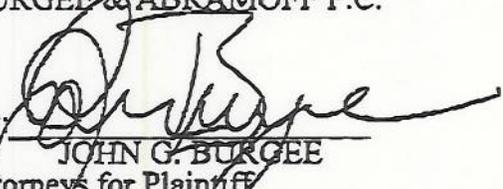
18 9. For costs.

19 10. For such further relief as the Court deems just and proper.

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DATED: April 28, 2000

BURGEE & ABRAMOFF P.C.

By: 
JOHN G. BURGEE
Attorneys for Plaintiff,
JEFF GREENE

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LOS ANGELES COUNTY REGISTRAR - RECORDER/COUNTY CLERK

'APR 28 2000

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6 Attorneys for Plaintiff,
7 **JEFF GREENE**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 **JEFF GREENE**, an individual,
11
12 Plaintiff,

12 vs.

13 **RICHARD J. RIORDAN**, an individual,
14 **ELI BROAD**, individually and as trustee of
15 the Eli Broad Revocable Trust dated
16 8/21/98, **NANCY M. DALY**, individually
17 and as trustee of the Nancy M. Daly Living
18 Trust dated 5/23/97, **MATTHEW G.**
19 **KRANE**, individually and as Trustee of the
20 Gamma Family Trust Dated 10/30/97,
21 **SAMUEL M. FLETCHER**, individually
22 and as Trustee of the Georges Family Trust
23 Dated 10/30/97, and **DOES 1** through 50,
24 inclusive,

24 Defendants.

CASE NO. **EC229033**

NOTICE OF PENDING ACTION

[Assessor's Parcel Number 4451-003-033].

21 NOTICE IS HEREBY GIVEN that on April 28, 2000, JEFF GREENE commenced a
22 legal action against RICHARD J. RIORDAN, ELI BROAD, individually and as trustee of the Eli
23 Broad Revocable Trust dated 8/21/98, NANCY M. DALY, individually and as trustee of the
24 Nancy M. Daly Living Trust dated 5/23/97, MATTHEW G. KRANE, individually and as
25 Trustee of the Gamma Family Trust Dated 10/30/97, and SAMUEL M. FLETCHER,
26 individually and as Trustee of the Gamma Family Trust Dated 10/30/97, which concerns and
27 affects the title to the real property located in the County of Los Angeles, State of California with
28 Assessor's Parcel Number 4451-003-033 and is described as:

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BEING A PORTION OF THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER, BY PATENT IN BOOK 1 PAGE 407, ET SEQ. OF PATENTS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT ENGINEERS CENTER LINE STATION 1069 PLUS 63.96 FEET OF THAT CERTAIN CENTER LINE COURSE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342 OFFICIAL RECORDS OF SAID COUNTY; SAID 80 FOOT STRIP ALSO BEING SHOWN AS PACIFIC COAST HIGHWAY ON COUNTY SURVEYOR'S MAP NO. 8658 AS FILED IN THE OFFICE OF THE COUNTY ENGINEER OF SAID COUNTY; THENCE NORTH 77° 25' 30" EAST, 50.02 FEET; THENCE AT RIGHT ANGLES, 40.10 FEET MORE OR LESS TO THE SOUTH LINE OF SAID 80 FOOT STRIP; THENCE SOUTH 13° 18' 45" EAST 133.00 FEET MORE OR LESS TO THE MEAN HIGH TIDE LINE; THENCE WESTERLY ALONG SAID MEAN HIGH TIDE LINE TO THE INTERSECTION OF THAT CERTAIN COURSE SHOWN AS SOUTH 12° 24' 34" EAST AS SHOWN ON SAID COUNTY SURVEYOR'S MAP NO. 6658 PASSING THROUGH THE POINT OF BEGINNING; THENCE NORTH 12° 24' 34" WEST IN A DIRECT LINE TO THE POINT OF BEGINNING.

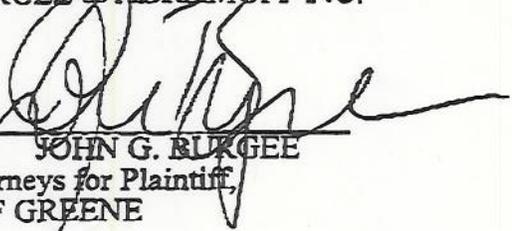
INCLUDING THAT PORTION LYING 30.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM SAID COURSE SHOWN AS SOUTH 12° 24' 34" EAST AS SHOWN ON SAID COUNTY SURVEYOR'S MAP NO. 6658.

EXCEPT THAT PORTION LYING WITHIN SAID PACIFIC COAST HIGHWAY.

The lawsuit seeks to impose a constructive trust on the Property for the benefit of JEFF GREENE and to compel Defendants to convey title to the Property to JEFF GREENE. All persons who hereafter seek to acquire any interest in the real property shall acquire such interest or title subject to this Notice of Pending Action and the Complaint herein.

DATED: April 28, 2000

BURGEE & ABRAMOFF P.C.

By: 
JOHN G. BURGEE
Attorneys for Plaintiff
JEFF GREENE

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite
5 1145, Encino, California 91436.

6 On April 28, 2000, I served the foregoing document described as: NOTICE OF
7 PENDING ACTION [Assessor's Parcel Number 4451-003-033] on the interested parties in this
8 action:

9 by placing the original a true copy thereof enclosed in sealed envelopes addressed
10 as follows:

11 Nancy Daly
12 c/o Helen Wu, CPA
13 J.Arthus Greenfield & Co. LLP
14 924 Westwood Boulevard, Suite 1000
15 Los Angeles, California 90024

Eli Broad
1999 Avenue of the Stars, 37th Floor
Los Angeles, California 90067-6022

16 BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

17 *I deposited such envelope in the mail at Encino, California. The envelope was
18 mailed with postage thereon fully prepaid.

19 As follows: I am "readily familiar" with the firm's practice of collection and
20 processing correspondence for mailing. Under that practice it would be deposited
21 with U.S. postal service on that same day with postage thereon fully prepaid at
22 Encino, California in the ordinary course of business. I am aware that on motion
23 of the party served, service is presumed invalid if postal cancellation date or
24 postage meter date is more than one day after date of deposit for mailing in
25 affidavit.

26 Executed April 28, 2000, at Encino, California.

27 **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the
28 addressee.

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

29 Maureen Woods
30 Type or Print Name


31 Signature

COASTAL CONSERVANCY

(AUTO)

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
007	MEMORY TX		96222270	19/19	OK

ERRORS

- 1) HANG UP OR LINE FAIL
- 2) BUSY
- 3) NO ANSWER
- 4) NO FACSIMILE CONNECTION



Coastal Conservancy

FAX

Fax: 510-286-0470
 CALNET fax: 8-541-0470

DATE: 5/9/00

FAX #: 622-2270

TO: Pat Peterson

FROM: Marc Beyeler

PHONE: (510) 286 4177



Coastal
Conservancy

FAX

Fax: 510-286-0470
CALNET fax: 8-541-0470

DATE: 5/9/00

FAX #: 622-2270

TO: Pat Peterson

FROM: Marc Reyeler

PHONE: (510) 286- 4172

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 19

MESSAGE: Pat- Elena asked that I
fax this to you. Marc R.

REPLY REQUESTED: NO YES

HARD COPY TO FOLLOW: NO YES

1330 Broadway, 11th Floor
Oakland, California 94612-2530
510-286-1015 Fax: 510-286-0470



CONFIDENTIAL ATTORNEY CLIENT MEMORANDUM

To: Gary Hernandez, Bill Ahern, Marc Beyeler
Cc: Pat Peterson, DAG

From: Elena Eger
Staff Counsel

Re: Broad, Gamma, Daly Dedication Approved by Conservancy April 27, 2000

Date: May 9, 2000

We received notice from John G. Burgee, Burgee & Abramoff, representing Jeff Greene, that Mr. Greene has filed a lawsuit against Broad, Gamma and Daly, the current owners of the property which the Conservancy acted to accept dedication of fee title at its April 27th meeting. Mr. Greene alleges that the current owners interfered with his contract to purchase the property and he has recorded a lis pendens against the property. A copy of the letter and lawsuit are attached.

As you heard from Andrew Cushnir, representing Broad, Gamma and Daly, at our April 27th meeting, the property owners hope to transfer title to the Conservancy within the 90 days that the Coastal Commission has imposed upon them. To accommodate their desire, on May 3, 2000, we submitted draft transfer documents to the Department of General Services for its review and approval, which is required before the Conservancy takes title.

Taking title to the property while the lawsuit is pending exposes the Conservancy to two risks: Being named as a defendant to the lawsuit and if the lawsuit is successful, having to relinquish title to the property.

Marc and I discussed this matter and agree that we should take the following steps:

1. Postpone taking title until the lawsuit is resolved;
2. Inform Mr. Cushnir and the Coastal Commission of our action to postpone;
3. Inform the Department of General Services of the title dispute. Request that the Department conclude its review but reserve approval until resolution of the lawsuit; and
4. Continue Conservancy staff's preparation of the public access management plan for the property.

Please let me know if you have any questions at (510) 286-4089.

1330 Broadway, 11th Floor
Oakland, California 94612-2530
510-286-1015 Fax: 510-286-0470



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BURGEE & ABRAMOFF

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

16133 VENTURA BOULEVARD, SUITE 1145

ENCINO, CALIFORNIA 91436

ROBERT W. ABRAMOFF
JOHN G. BURGEE

TELEPHONE
(818) 788-1600

TELECOPIER
(818) 788-2600

TELEFACSIMILE TRANSMISSION

DATE: May 5, 2000
TO: Pat Peterson, Deputy Attorney General
FAX: (510) 286-0470
FROM: John G. Burgee
RE: 21704 Pacific Coast Highway, Malibu (APN 4451-003-033)

YOU SHOULD RECEIVE 3 PAGES, INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (818) 788-1600.

MESSAGE:

*Sent by fax to Pat Peterson
(510) 622-2270 5/9*

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY-CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY TELEPHONE IMMEDIATELY, AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS.



BURGEE & ABRAMOFF
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
16133 VENTURA BOULEVARD, SUITE 1145
ENCINO, CALIFORNIA 91436

JOHN G. BURGEE

TELEPHONE:
(818) 788-1600

TELECOPIER
(818) 788-2600

May 5, 2000

BY TELEFAX — (510) 286-0470
& EXPRESS COURIER

Mr. Gary Hernandez, Chair
California State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, California 94612

Re: 21704 Pacific Coast Highway, Malibu (APN 4451-003-033)

Dear Mr. Hernandez:

This firm is counsel to Mr. Jeff Greene in connection with claims relating to the referenced property. In a recently filed lawsuit, Mr. Greene asserts that the present titleholders of the property have an obligation to convey title in the property to him based upon their tortious interference with his contract to purchase that property. Based upon the claim to title to the property, Mr. Greene has recorded a lis pendens. Copies of the lawsuit (Greene v. Riordan) and the lis pendens are enclosed for your reference.

As alleged in the lawsuit, the present owners of the property made a pre-arranged deal with the California Coastal Commission in order to obtain special accommodations for mansions that they are constructing. That deal involves donating the land to the California State Coastal Conservancy. It is my understanding that on April 27, 2000, the Conservancy voted to accept the present titleholders' offer to dedicate fee title to the property.

I am writing to place the Conservancy on notice that title to the property is in dispute and subject to pending litigation. Based upon notice of the litigation, the Conservancy would not acquire title to the property free of Mr. Greene's claims and would be subject to be dispossessed of title. Moreover, if the Conservancy does take title to the property, it will be necessary to include the Conservancy as a defendant in the present litigation.

BURGEE & ABRAMOFF

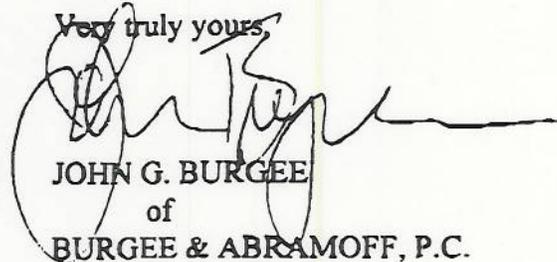
Mr. Gary Hernandez, Chair

May 5, 2000

Page 2

Please let me know if you require any further information. Otherwise, I would hope that you will act prudently while the parties attempt to resolve this dispute.

Very truly yours,

A handwritten signature in black ink, appearing to read "John G. Burgee", is written over the typed name and company information. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JOHN G. BURGEE

of

BURGEE & ABRAMOFF, P.C.

Encl.

cc: Marc Beyeler, Project Manager
Pat Peterson, Deputy Attorney General

BURGEE & ABRAMOFF
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
16133 VENTURA BOULEVARD, SUITE 1145
ENCINO, CALIFORNIA 91436

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JOHN G. BURGEE

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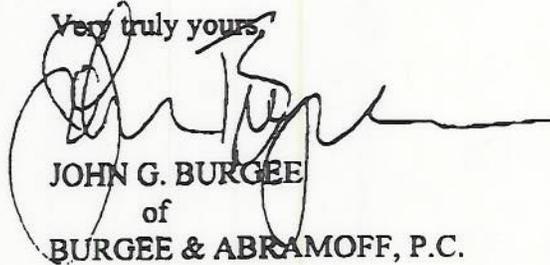
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JOHN G. BURGEE
of
BURGEE & ABRAMOFF, P.C.

Encl.

cc: Marc Beyeler, Project Manager
Pat Peterson, Deputy Attorney General