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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: G. Roary, Deputy

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WATERSHED ALLIANCE OF MARIN

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

FRIENDS OF MUIR WOODS PARK;
WATERSHED ALLIANCE OF MARIN,

Petitioners/Plaintiffs,

V.

COUNTY OF MARIN, BOARD OF
SUPERVISORS OF THE COUNTY OF
MARIN and DOES I through X,

Respondents/Defendants.

DANIEL WEISSMAN, an individual,
and DOES, XI through XX,

Real Parties in Interest.

Case No.: Civ/ 2003248

UNLIMITED CIVIL CASE

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE:
(1) VIOLATIONS OF THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT;
(2) VIOLATIONS OF SUBDIVISION
MAP ACT**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT, Pub. Res. Code Section 210
et seq.; PLANNING
AND ZONING CODE, Gov't Code Section
65000 et seq.; Code of Civ.
Pro. Sections 1084 et seq. 1094.5]**

Petition Filed: NOV 04 2020
Judge: **ANDREW E. SWEET**
Trial Date: None

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1 **Petitioners, Friends of Muir Woods Park and Watershed Alliance of Marin**
2 **Allege:**

3
4 **I. INTRODUCTION**

5 1. Through this Complaint and Verified Petition for Writ of Administrative Mandate
6 (“Petition”), Petitioners acting in the interest of protecting the environment and health and safety,
7 seek to compel the setting aside of Marin County Board Of Supervisors (“County”) approval of
8 the Dipsea Ranch (Weissman) land division and Mitigated Negative Declaration (“MND”). If
9 allowed to proceed, the Project and future foreseeable related projects’ grading, housing and road
10 construction and other operations will cause irreversible harm to Redwood Creek and its
11 ecosystems, endangered species, including Northern Spotted Owl, Coho Salmon, Steelhead and
12 to other wildlife, which use the property as a corridor. The Project also presents other substantial
13 risks including impacts to surface water quality, increased fire hazard risk, and traffic safety on
14 Panoramic Highway, including vehicular accidents due to access by a narrow, winding,
15 shoulderless, road with poor visibility and heavy bike and car traffic.

16 2. In essence, this case is about whether a government agency, Marin County, must fulfill
17 its duty to oversee and ascertain the facts about the Project’s environmental impacts or whether
18 the County can abdicate its role as regulatory and permitting authority and rely solely on
19 consultant assessments conducted on behalf of the applicant. From its inception the Project
20 generated enormous public and expert opposition as a result of the numerous errors, omissions,
21 and lack of quantification of impacts and unscientific claims in the hydrological, geological, and
22 biological assessments of the Project. A state public trust agency, the California Department of
23 Fish and Wildlife (“CDFW”), other expert scientists and even the County’s own consultants
24 criticized the reports’ remarkable assertions that, despite the project affecting a Federal
25 jurisdictional wetland and depositing sediment in a tributary of Redwood Creek that no impacts
26 would be made to water quality, wetlands or to protected and endangered species.

1 3. In 2017 and 2018, the applicant and property owner, Daniel Weissman (“Weissman” or
2 “Developer”), submitted various proposals to subdivide steeply sloped parcels in or near 455
3 Panoramic Highway, Mill Valley and adjacent to Mt. Tamalpais State Park and develop from 13
4 to 14 homes. Those applications were withdrawn or lapsed.

5 4. In 2018, the Developer applied to subdivide a central portion of his property, currently
6 developed with one single-family residence, into three single-family residential lots with
7 proposed building envelopes on each lot. The County’s Tamalpais Design Review Board
8 (“TDRB”) and the Petitioners, however, communicated to the County that the Developer was
9 arguably entitled to build not just three but *twelve* (12) units on that property. Therefore, while
10 the Project proposal allows development of a total of three luxury single-family homes, yet the
11 Developer can also arguably develop a total of twelve units on the property without further
12 permitting due to State law allowing for “by-right” development of second and third units. The
13 TDRB and Petitioners objected to the Project, stating that 12 units built in such an
14 environmentally sensitive area was inappropriate and would cause significant environmental
15 impacts. On April 2, 2020, the Marin County Planning Commission approved the Dipsea Ranch
16 Land Division, AKA Dipsea Ranch Tentative Map (“Dipsea Ranch Subdivision” or
17 “Subdivision” or “Project”) and accompanying Mitigated Negative Declaration (“MND”).

18 5. On August 5, 2020, Petitioners appealed the Marin County Planning Commission’s
19 approval of the Project to the Board of Supervisors.

20 6. On October 6, 2020, after extensive public controversy over the County’s repeated failure
21 to provide public notice to the neighbors and post local site notice as required by the Government
22 Code, the Board of Supervisors held a hearing on the Project and accompanying MND.

23 7. Residents within the Redwood Creek watershed, members of the public, scientists and
24 technical experts, the California Department of Fish and Wildlife and the National Park Service,
25 commented that the Project will cause significant unmitigated environmental impacts to geology
26 and soils, wildfire hazards, hydrology and water quality, land use and planning, traffic safety,
27

1 and biological resources, including salmonid species listed by the Federal government as
2 endangered, including Steelhead (*Oncorhynchus mykiss*) and Coho Salmon (*Oncorhynchus*
3 *kisutch*). Redwood Creek has been declared critical habitat for both Steelhead and Coho
4 Salmon. Despite the evidence of potential significant impacts, the County has improperly
5 chosen to only prepare an Initial Study/Mitigated Negative Declaration (“MND”) for the Project
6 instead of a more comprehensive Environmental Impact Report (“EIR”), thereby leaving the
7 County and the public without the scientific data and analysis necessary for a project with such
8 impacts. The evidence also showed that the Project is inconsistent with local plans and policies
9 and will adversely affect ecosystems in Mount Tamalpais State Park and the Golden Gate
10 National Recreation Area open space lands.

11 8. Petitioners also submitted substantial evidence demonstrating that reasonably foreseeable
12 future development was not considered and that the Project could have potential and cumulative
13 adverse impacts on the environment. Thus, the County’s decision to not prepare an
14 Environmental Impact Report (EIR), as required by the California Environmental Quality Act
15 (Pub. Res. Code, §§ 21000 et seq. “CEQA”), is invalid.

16 9. Despite the public’s effort, the final iteration of the MND violates CEQA on numerous
17 grounds. This includes the MND’s lack of discussion of reasonably foreseeable future projects,
18 existing conditions, including wildlife corridors protected by County policies, onsite wetlands
19 and the riparian habitat conditions for endangered salmonids and other aquatic organisms. The
20 County also violated CEQA because there are no actual scientific studies or surveys to support
21 the County’s conclusions that the impacts are less than significant. The MND provides little
22 data, modeling or explanation of the future impacts of the supposed mitigation and provides no
23 required performance standards for the deferred mitigation.

24 10. The MND’s treatment of the CEQA requirements for analysis of cumulative impacts are
25 no better. Under CEQA, a plan must consider the impacts of past, present, and foreseeable
26 future projects combined with the incremental impacts of those potentially caused by the project.

1 The MND violated this requirement because it dismissed the impacts of the Developer’s
2 previous illegal grading on property. Therefore, the County failed to consider the contributions
3 of that grading, Project grading and construction and increased runoff due to new impermeable
4 surfaces into the Redwood Creek watershed. The MND also fails to consider all reasonable
5 alternatives and fails to provide even a cursory dismissal of reasonable alternatives to the Project
6 including a mitigation measure limiting future second and junior unit construction.

7 11. Gov’t Code §§ 66473.5 and 66474 and Marin County Municipal Code (“Muni
8 Code”) §§ 22.82.050; 22.84.060 require that a tentative subdivision map be consistent
9 with the agency’s general plan and related plans. Petitioners allege that the Subdivision is
10 not consistent with the Countywide Plan (“CWP”) or Tamalpais Area Community Plan
11 (“TACP”) because: the County baselessly rejected findings and recommendations of the
12 Tamalpais Design Review Board; the Project is not consistent with County minimum lot area
13 requirements; and the County refused to consider whether the Project conflicts with specific
14 provisions limiting development on the parcel.

15 12. The County also failed to make the required findings that (a) the site is not physically
16 suitable for the proposed density of development; (b) that the design of the subdivision or the
17 proposed improvements are likely to cause substantial environmental damage or substantially
18 and avoidably injure fish or wildlife or their habitat; and (c) that the design of the subdivision or
19 type of improvements is likely to cause serious public health problems. The County did not
20 and could not make required Project findings because among other reasons: the Project’s
21 property’s steep slopes, and geological and hydrology restraints, the Project’s sediment
22 and polluted runoff into Redwood Creek, existing conditions of the property as potential
23 habitat for wildlife species, including listed endangered species and the slope stability
24 and extreme fire hazard risks to human health.

25 13. Petitioners ask this Court to find that the County failed to comply with the
26 Government Code requirements in the Subdivision Map Act (Gov’t Code § 64110 *et seq.*

1 “SMA”) and the County Municipal Code (*e.g.* § 22.82.050) requiring all tentative maps
2 to be compliant and consistent with the general plans and community plans. Here the
3 County failed to adequately address or determine consistency with the CWP and TACP
4 and thus, the County’s approval of the Subdivision decision violates the both the SMA
5 and the County Subdivision Ordinance.

6 14. Petitioners ask this Court to find that the County failed to comply with the California
7 Environmental Quality Act, Pub. Res. Code, §§ 21000 *et seq.* (“CEQA”) and the CEQA
8 Guidelines, Title 14, California Code of Regulations, §§ 15000 *et seq.* (“CEQA Guidelines”),
9 Gov’t Code §§ 66410 *et seq.*; Marin County Municipal Code (“Muni Code”) §§
10 22.82.050; 22.84.060 and Code of Civ. Proc. § 1094.5 regarding approval of the Project and
11 the Subdivision. Through this Petition, Petitioners further request that this Court issue a writ of
12 mandate setting aside and voiding the County’s approval of the Subdivision accompanying
13 MND.

14 II. GENERAL ALLEGATIONS

15 A. Parties

16 15. Petitioner Watershed Alliance of Marin is an association of concerned citizens comprised
17 of residents, business owners, and others who are committed to preserving the natural resources,
18 water quality, water supply and historic landscape of Marin County by protecting the watershed
19 and its streams, hills, woodlands, and wildlife. Watershed Alliance of Marin is beneficially
20 interested in the aesthetic and recreational enjoyment and environmental quality of the water and
21 land, and in maintaining all beneficial uses including protecting the sensitive habitat and public
22 safety in and around Mt. Tamalpais State Park. Many of WAM’s members live adjacent to or
23 near the Property.

24 16. Petitioner Friends of Muir Woods Park includes residents dwelling directly adjacent to,
25 downstream from or nearby the Project who are beneficially interested in the aesthetic and
26 recreational enjoyment and continued productivity and environmental quality of the land, in
27

1 maintaining all beneficial uses including local fire prevention, and in protecting the sensitive
2 habitat and public safety in and around Mt. Tamalpais State Park.

3 17. Respondent County of Marin is an agency of the State of California located in the County
4 of Marin, California.

5 18. Respondent Board of Supervisors of the County of Marin (“Board”) is the governing
6 body of the County of Marin and decision-maker over this Subdivision and certification of the
7 MND and is located in the County of Marin, California.

8 19. Plaintiffs do not know the true names and capacities of Respondents fictitiously named
9 herein as DOES 1 through 10, inclusive. Plaintiffs are informed and believe, and thereon allege,
10 that such fictitiously named Respondents are responsible in some manner for the acts or
11 omissions complained of herein. Plaintiffs will amend this Petition to allege the fictitiously
12 named Respondents’ true names and capacities when ascertained.

13 20. Real Party in interest Daniel Weissman, is an individual whose address is identified in the
14 Subdivision application as 456 Panoramic Highway, Mill Valley, CA 94941.

15 21. Plaintiff does not know the true names and capacities of Real Parties in Interest
16 fictitiously named herein as DOES 11 through 20, inclusive. Plaintiffs are informed and believe,
17 and thereon allege, that such fictitiously named Real Parties in Interest are responsible in some
18 manner for the acts or omissions complained of herein. Plaintiffs will amend this Petition to
19 allege the fictitiously named Real Parties in Interest’s true names and capacities when
20 ascertained.

21 **B. Jurisdiction**

22 22. Petitioners bring this action as Petition for Writ of Mandate and the Court has jurisdiction
23 over the claims alleged herein pursuant to Calif. Code of Civ. Proc. § 1084 *et seq.*, and Pub. Res.
24 Code §§ 21080.5(g), 21168, and 21168.5.

1 **C. Standing**

2 23. Petitioners and their members are beneficially interested in the County’s full compliance
3 with the law regarding the County’s approval of the Subdivision and MND. The Petitioners are
4 residents of the County of Marin and Mill Valley, whose personal, health, and aesthetic interests
5 of Petitioners and the persons associated with them will be injured if the Project, pursuant to the
6 Subdivision, as approved by the County, is allowed to proceed as planned. Petitioners are within
7 the class of persons beneficially interested in and aggrieved by the County’s approval as alleged
8 below. Petitioners include individuals who expressed their concerns and objections to the
9 approval of the Subdivision directly to County staff and at County meetings and in
10 correspondence to the County. Respondents owed a mandatory duty to comply with the legal
11 duties that Petitioners allege were violated before approving the Subdivision. Petitioners have
12 the right to enforce the mandatory duties that CEQA imposes on Respondents.

13 **D. Factual and Procedural Background**

14 24. The applicant and property owner, Daniel Weissman (“Weissman” or “Developer”) owns
15 the property, which is located in and around 455 Panoramic Highway, Mill Valley, further
16 identified as Assessor’s Parcel 046-161-11 (“Property”).

17 25. In 2016, Developer applied for and was given approval for separate sewer hookups to the
18 Property by the Local Area Formation Commission (“LAFCO”) and the Homestead Valley
19 Community Service District. Three Members of the County Board of Supervisors are members
20 or alternates on the LAFCO.

21 26. In or about 2015, 2017 and 2018, the applicant and property owner, Daniel Weissman
22 (“Weissman” or “Developer”), submitted proposals to subdivide parcels on steeply sloped acres
23 (including parcels of 8.29 acres and 1.8 acres) of property adjacent to Mt. Tamalpais State Park
24 in the County of Marin, California and develop from 14 homes with associated accessory
25 dwelling units and junior dwelling units.

1 27. In 2018, the Developer applied to subdivide a central portion of his property, currently
2 developed with one single-family residence, into three single-family residential lots with
3 proposed building envelopes on each lot. The Developer submitted technical studies, requesting
4 a Subdivision for the Project. Marin County staff later conducted an initial study and prepared
5 the MND for the Project. The County identifies this Subdivision and Project as ID P1589.

6 28. The County's Tamalpais Design Review Board and the Petitioners, however, informed
7 the County that the Developer was arguably entitled to build not just three but twelve (12) units
8 on that property. Before and during the Marin County Planning Commission hearing on the
9 Project, the TDRB and Petitioners objected, stating that 12 units in a such an environmentally
10 sensitive area was inappropriate and would cause significant environmental impacts.

11 29. On April 2, 2020, the Marin County Planning Commission approved the Dipsea Ranch
12 Land Division, AKA Dipsea Ranch Tentative Map ("Dipsea Ranch Subdivision" or
13 "Subdivision" or "Project") and accompanying Mitigated Negative Declaration ("MND").

14 30. On August 5, 2020, Petitioners, including Friends of Muir Woods Park's 150 community
15 members and the Watershed Alliance of Marin, signed a Petition and appealed the County
16 Planning Commission's approval of the Mitigated Negative Declaration and Tentative Map
17 Subdivision (dated July 27, 2020) to the County Board of Supervisors. This approval was based,
18 in part, on unexplainable, glaring errors by the developer in his favor, and the County without
19 adequate consideration of the significant, unmitigated environmental impacts and the County's
20 decision to not prepare an Environmental Impact Report (EIR), as required by the California
21 Environmental Quality Act (CEQA). Federal and State Agency and Petitioner's comment letters
22 to the County regarding the Project including but not limited to the following:

23 a. CDFW Letter to Sabrina Sihakom [Cardoza] regarding Mitigated Negative Declaration
24 (MND), concerns not addressed by the Initial Study, requirements for project, high level training
25 and surveying of Bats, nesting birds and Northern Spotted Owls, etc. prior to any demolition,
26 grading or construction.

27 b. Dept. of the Interior, National Park Service, Acting Superintendent Craig Kenkel, 3/6/17
28 regarding concerns for aesthetics, hydrology and biological impacts on park resources, wildlife,

1 water quality impacts.

2 c. Sierra Club Marin County Group to Tammy Taylor Marin County Environmental
3 Planning, 1/27/20 regarding deficient Initial Study and MND, geologic stability, 1992 Tamalpais
4 Area Community Plan, EIR, the Countywide Plan, and addresses unresolved issues of the MND
5 with reference materials.

6 d. Watershed Alliance of Marin to Marin County Community Development Tammy Taylor,
7 Environmental Planning 1/28/20, regarding inadequacy MND, CEQA Initial study and
8 Tamalpais Community Plan, County wide plan, immitigable impacts including but not limited to
9 biology, wildlife corridors, hydrology etc.

10 e. Ty Cashman letter to Marin County Community Development Tammy Taylor,
11 Environmental Planner 1/28/20 regarding biological, aesthetic impacts and natural resources and
12 protection and restoration of wildlife habitat in the Redwood Creek Watershed.

13 f. Andrea Montalbano, Architect and Tam Design Review Board Member Letter to
14 Planners Tom Lai and Brian Crawford 7/23/20 Marin County Board of Supervisors, Kathrin
15 Sears and Dennis Rodoni, Design Review Board Chair, Logan Link and Marin County Staff
16 Planners regarding multiple failures of County acknowledgement of Review Board and
17 Community determination of approval and failure of public notice.

18 g. Erik Halterman to Marin County Planner, 1/15/20, Letter regarding illegal road installed,
19 illegal rerouting of watercourse, erosion and subdivision.

20 h. Bernard Ayling to Marin County Community Development Agency, Tammy Taylor
21 Environmental Planner, 1/13/20 regarding subdivision, watercourse diversion, road
22 construction and deficient MND.

23 i. Watershed Alliance of Marin (WAM) to Marin County Board of Supervisors,
24 Environmental Planners Tammy Taylor, Rachel Reid, CDA Planner Sabrina Cardoza 10/5/20
25 regarding Appeal of IS/MND and Reference Appendices Appeal document (23 pages).

26 j. Carl Duisberg and Laura Lindskog to Marin County Community Development
27

1 Environmental Planner, Tammy Taylor, 10/4/20 regarding project and deficiency of the
2 environmental review and impacts to the endangered salmon, restoration efforts, septic system
3 function, aesthetics and greater watershed impacts.

4 Petitioners requested that technical and legal experts provide letters to the County
5 regarding the Project which comments include but were not limited to, comments on the MND
6 analysis regarding water resources, water quality, biological resources, endangered species.

7 k. Stephan C. Volker, Attorney on behalf of Watershed Alliance of Marin to Marin County
8 Planning Department Planner Sabrina Sihakom [Cardoza], 1/28/20 regarding reasons for
9 challenge to inadequate MND and attempt to adopt a Mitigated Negative Declaration,
10 inadequate CEQA Initial study and MND, and need for EIR.

11 l. Laura Chariton, For Water Consulting M.A. Riparian Policy and Environmental
12 Restoration to Sierra Club Marin Group Chair, Judy Schriebman, 9/27/20 regarding technical
13 expertise on riparian areas, local riparian biology, stream morphology and classification.

14 m. Lotic-Environmental to Watershed Alliance of Marin 9/25/20, Preliminary- Hydrology
15 Assessment regarding accuracy of precipitation and hydrology report of applicant.

16 n. Edward E. Yates Attorney, on behalf of WAM, Sierra Club Marin Group, Friends of Muir
17 Woods Park, Appeal to Board of Supervisors 10/1/20 pointing out for instance, the Hydrology
18 Report admits that it did not assess the runoff from impervious surfaces. Section 3.4 of the
19 Hydrology Report admits that the Report did not determine the location and grading in each
20 building envelope, the actual grading or impervious surfaces allowed, nor specific hydrologic
21 performance criteria nor the exact development scenario, nor any additional ADUs or Jr. ADUs.

22 31. Petitioner's attorney commented extensively on the Project, including, but not limited to,
23 comments that the MND failed disclose future reasonably foreseeable future projects, failed to
24 consider direct, indirect, and cumulative impact analysis for the project's impacts, failed to
25 specifically disclose and analyze mitigation actions to be undertaken to reduce project impacts
26 and improperly deferred impact assessment and description of mitigation measures. Petitioner's
27

1 attorney also commented that the MND did not comply with CEQA and the Subdivision did not
2 comply with the Subdivision Map Act due to failure to determine consistency with the CWP and
3 TACP.

4 32. On October 6, 2020, the Marin County Board of Supervisors conducted a hearing on
5 Petitioners appeal. At the public hearing, the Board heard oral and written testimony and
6 evidence presented or filed regarding the MND and the Project. Petitioners' members attended
7 the public hearing. Issues raised in the Board hearing by WAM and others included: the need
8 for an environmental impact report based on expert testimony and publicly disclosed potential
9 impacts of Project impacts to wetlands, habitat, and species in Redwood Creek; fire hazards due
10 to increase structures in a urban wildland interface, surface water quality; geologic feasibility and
11 landslide hazards; traffic and safety on Panoramic Highway; cultural resources; lack of
12 consistency with the CWP and TACP and alleged segmentation of CEQA review.

13 33. At the end of the public hearing on October 6, 2020, the County approved the
14 Subdivision and accompanying Mitigated Negative Declaration ("MND") in a 4 to 1 vote. The
15 Project proposal allows development of a total of four luxury single-family homes, yet the
16 Developer can also develop four Accessory Dwelling Units ("ADU") and four Junior units on
17 the property without further permitting due to State law allowing for of right development of
18 second and third units. (Government Code Section 65852.2 et seq.) The Project approvals also
19 include construction of two new septic systems and the extension of an existing driveway which
20 serves the current residence as well as addition of a stop sign and new acceleration lane within
21 double blind curves on Panoramic Hwy.

22 34. This action is timely filed within 30 days as required by Pub. Res. Code § 21167.5.

23 **E. Exhaustion of Administrative Remedies**

24 35. In accordance with Public Resources Code section 21177, subdivisions (b) and (c),
25 Petitioners and their members objected to the approval of the project orally or in writing during
26 the public comment periods prior to the close of the public hearings on the project before
27

1 Planning Commission and the Board of Supervisors before the County approvals of the
2 Subdivision and MND and the filing of the notice of determination. Petitioners have performed
3 any and all conditions precedent to the filing of this Petition and, to the extent required, have
4 exhausted all available administrative remedies in that the determination by the County is final
5 and no further administrative appeal procedures are provided by state or local law. Alternatively,
6 Petitioners were not provided opportunity to raise the grounds of noncompliance alleged in this
7 Petition prior to the County's decision to approve the Subdivision. Further, Petitioners do not
8 believe they are required to exhaust their administrative remedies, because to attempt to do so
9 would be futile and Petitioners do not have adequate administrative remedies.

10 36. The Petitioners have complied with Public Resources Code section 21167.5
11 by prior service of a notice upon the County indicating their intent to file this Petition. Proof of
12 Service of this notification, with the notification, is attached as Exhibit A.

13 37. The Petitioners have elected to have the County prepare the record of proceedings
14 pending an estimate by the County in the above-captioned proceeding or to pursue an alternative
15 method of record preparation pursuant to Public Resources Code Section 21167.6(b)(2).
16 Notification of the Election to Prepare the Administrative Record is attached as Exhibit B.

17 **F. Notice Requirements**

18 38. In accordance with Pub. Res. Code § 21167.5 and Code of Civ. Proc. § 1021.5, on
19 October 28, 2020, Petitioners served Respondent the County with a Notice of Intent to Sue in an
20 effort to resolve disputes set forth in this Petition, and to provide notice to the County that if the
21 matter could not be resolved, Petitioners would file this action. The County did not respond to
22 this Notice. A true and correct copy of the Notice of Intent to Sue is attached hereto as Exhibit
23 A.

24 39. In accordance with Pub. Res. Code § 21167.7 and Code of Civ. Proc. § 388, Petitioners
25 will serve a copy of this pleading on the Attorney General's office, within ten business days.

26 **G. No Adequate Remedy**

1 40. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law,
2 within the meaning of Code of Civ. Proc. § 1086 because Petitioners, their members, and the
3 public will be irreparably harmed by the ensuing environmental damage and by Respondent's
4 violations of CEQA. The County has prejudicially abused its discretion in approving the
5 Subdivision and the MND. At all times mentioned herein, the County has been able to deny the
6 approval of the MND and approval and operation of the Subdivision at issue. Despite such
7 ability, and despite Petitioners' demand for denial, the County has failed and continues to fail to
8 perform its duty to deny the approval and operation of the Subdivision and the MND.

9 41. If the County is not ordered to withdraw its approval of the Subdivision, or if its decision
10 is not stayed pursuant to Code of Civ. Proc. § 1094.5(g), and the Real Party In Interest is not
11 enjoined from engaging in cutting trees, clearing land, grading, excavating and constructing
12 facilities on this Subdivision site, the land, wildlife habitat, and environmental values subject to
13 and affected by the Subdivision will suffer irreparable and permanent damage.

14 42. Petitioners bring this action as a private attorney general pursuant to Code of Civ. Proc. §
15 1021.5 to enforce important rights affecting the public interest. Issuance of the relief requested in
16 this Petition will confer a significant benefit on a large class of persons by ensuring that the
17 County does not approve the Subdivision and MND without complying with CEQA. The
18 necessity and financial burden of enforcement are such as to make an award of attorney's fees
19 appropriate in this proceeding. Absent this timely enforcement action by Petitioners, the
20 Subdivision and MND might otherwise be deemed lawfully approved, despite the County's
21 failure to comply with CEQA.

22 **III. FIRST CAUSE OF ACTION – VIOLATIONS OF THE CALIFORNIA**
23 **ENVIRONMENTAL QUALITY ACT**

24 **Against all Respondents and Does**

25 Petitioners re-allege and incorporate by reference the preceding paragraphs in their entirety, as
26 though fully set forth herein.

1 43. CEQA requires the County to conduct adequate environmental review prior to
2 making any formal decision regarding projects subject to the Act. CEQA requires that an MND
3 identify, evaluate and mitigate the possible significant environmental impacts of the proposed
4 project. Pub. Res. Code §§ 21002, 21080.

5 44. CEQA imposes upon the County a clear, present and mandatory duty to approve an MND
6 only if the MND fully discloses to the public the significant environmental effects that may
7 occur due to implementation of a project and only if all feasible alternatives and mitigation
8 measures have been incorporated to avoid or reduce these impacts.

9 45. If there is substantial evidence in the record that the project will have significant impacts,
10 the lead agency must prepare an Environmental Impact Report ("EIR".) Pub. Res. Code
11 §21080(d), §21080.3, §§21082.1, 21100, 21151; CEQA Guidelines §§ 15063-15064(f).

12 46. The MND must also provide substantial evidence that all impacts have been mitigated
13 below the level of significance. Pub. Res. Code §§ 21002, 21080, CEQA Guidelines §§ 15063,
14 15064, 15070-15075.

15 47. The County prejudicially abused its discretion in permitting the discretionary project
16 (Subdivision) without adequate evidence and justification which might authorize the use of an
17 MND instead of an EIR as is required by CEQA.

18 48. The County's failures to comply with CEQA include, but are not limited to, the
19 following:

20 **A. Inadequate Project Description**

21 49. Every MND must contain a project description of a project's technical, economic, and
22 environmental characteristics." CEQA Guidelines §§ 15070, 15071. An EIR "is an
23 informational document" that must be "prepared with a sufficient degree of analysis to provide
24 decisionmakers with information which enables them to make a decision which intelligently
25 takes account of environmental consequences." CEQA requires the analysis of potential impacts
26 to be "reasonably thorough" and specific at the project level. Accordingly, a project description
27

1 must be sufficiently detailed for environmental impact analysis to determine technical
2 compliance with CEQA. CEQA Guidelines, §§ 15063, 15071.

3 50. An MND's project description must also be stable and finite.

4 51. The MND does not fully describe Project required excavation and earthmoving and
5 supporting studies improperly exclude detailed description of proposed grading and placement of
6 impermeable surfaces, and does not include necessary detail regarding quantity of soil excavated,
7 moved and placed in other locations.

8 52. The MND does not consider all project components such as impermeable surfaces, which
9 could cause direct and indirect impacts (e.g. erosion/sedimentation, stream setbacks,) from the
10 Project caused by activities or project components.

11 **B. Existing Conditions**

12 53. CEQA requires that an environmental review document include a description of the
13 physical environmental conditions in the vicinity of the project in order to assist in the
14 determination as to whether an impact is significant. CEQA Guidelines §§ 15063, 15071(b).
15 This description must be sufficiently comprehensive to allow the project's impacts to be
16 considered. Courts have held that generalized references are not sufficient and that the
17 description must be of specific location and extent of riparian habitat on or near the project
18 property. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.
19 App. 4th 713. CEQA also requires that an agency correctly identify the existing conditions as
20 the baseline for the project against which the project's environmental impacts are measured.

21 54. The County prejudicially abused its discretion, did not support its MND approval with
22 substantial evidence, and failed to proceed according to the law in its failure to, among other
23 things, approve the MND, which was incomplete and incorrect and insufficient to evaluate
24 significant environmental effects, without sufficient information regarding sensitive plant
25 species, wetland soils, wetlands vegetation and riparian habitat that exist in the project area;
26 neglected to require surveys for or data on these species/habitats, such as for the Northern
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1 spotted owl, Marbled Murrelet, Steelhead trout and Coho salmon which are documented to
2 historically occur in Redwood Creek and for which the U.S. National Marine Fisheries Service
3 has established protections. The MND fails to provide a clear or accurate baseline for
4 groundwater, surface stream, wildlife, wildfire corridors or other resources and fails to provide
5 any impact analysis, quantification, industry accepted wildlife or plant surveys or even a detailed
6 description of Redwood Creek, riparian habitat in the Project, and fails to delineate wetlands on
7 the Property or discuss Project runoff impacts to seasonal wetlands on the property.

8 55. The MND has not adequately identified existing conditions, including not conducting
9 protocol or industry standard field surveys on wetlands, endangered species, bird nesting or
10 wildlife corridors.

11 56. The MND failed to adequately consider existing hazards including the potential for soil
12 instability at on the steep mountainside slopes on the Property. The MND failed to consider the
13 hazards of travel on Panoramic Highway and related vehicular accidents with the operation of
14 addition of up to 12 residences on the narrow, winding, shoulderless, and substandard road. The
15 MND also failed to describe and consider the historically hazardous dry season conditions of the
16 project area that the County itself has recognized as a very high wildland fire risk severity area.

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19 **C. Improper Piecemealing of Environmental Analysis.**

20 57. CEQA requires that environmental review documents analyze "the whole of an action."
21 CEQA Guidelines, § 15378. California courts have strictly enforced CEQA's prohibition on
22 "piecemealing, " to ensure that the CEQA documents pass muster as a document that provides
23 "adequacy, completeness, and a good faith effort at full disclosure." CEQA Guidelines, §§
24 15003(h), 15378. Courts have mandated such an approach to ensure that environmental
25 considerations not become submerged by chopping a large project into many little ones, each
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1 with a potential impact on the environment, which cumulatively may have disastrous
2 consequences. *Bozung v. LAFCO* (1975) 13 Cal 3d 263, 283.

3 58. The County prejudicially abused its discretion, in violation of CEQA, by failing to
4 consider future reasonably foreseeable development. For instance, by analyzing the impacts of
5 only the three main home units and by not considering future development that is arguably, by
6 right, the County denied the public and decision makers the information concerning the impacts
7 of housing development on the property as a whole.

8 59. CEQA requires the analysis of reasonably foreseeable future expansions or actions as part
9 of the "whole of the project." The County failed to do so in the MND.

10 **D. Failure to Consider Reasonably Foreseeable Future Related Projects**

11 60. CEQA (Public Resources Code § 21000 et seq.) requires assessment of reasonably
12 foreseeable related future impacts from foreseeable future development. *Laurel Heights*
13 *Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 396 concludes
14 that a CEQA document:

15 must include an analysis of the environmental effects of future expansion or other action
16 if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future
17 expansion or action will be significant in that it will likely change the scope or nature of
18 the initial project or its environmental effects.

19 CEQA documents must include some forecasting in evaluating a project's environmental
20 impacts. (CEQA Guidelines § 15144.) The principle that CEQA requires foreseeable forecasts is
21 well established in case law. (CEB, Practice Under the CEQA, § 11.32., citing *San Francisco*
22 *Ecology Center v. City and County of San Francisco* (1975) 48 CA 3d 584, 595.)

23 61. The MND is legally inadequate because it does not take into account reasonably
24 foreseeable future development on the site. The MND only assesses the environmental impacts
25 from the three units in the developer's most recent application. The developer, though, has said
26 he plans to develop more units and arguably, he could build 12 units of right *e.g.* four Accessory
27 Dwelling Units ("ADU") and four junior units without any further discretionary approvals by the
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1 County. The County has been informed that the applicant intends to build more than 3 units and
2 the County has admitted that the lot can be further subdivided.

3 62. The County is aware that the Developer has in the past applied for development of more
4 lots because County Supervisors themselves, acting as LAFCO commissioners, approved four
5 sewer hookups to the Property, “along with accompanying intensity allowances, such as second
6 units.”

7 63. The County is also aware that its own Marin County Development Code, Sections
8 22.10.30, 22.32.120, allow for Residential Accessory Dwelling Units essentially “by right.” That
9 is, the County must approve such ADUs if they meet basic setback requirements. In addition,
10 State law arguably allows the owner to build a *second* additional unit on each lot, meaning there
11 could be twelve total units. (Assembly Bill 68 codified at Government Code Section 65852.2 et
12 seq.) This will expand the amount of square footage and impervious surfaces, and neither the
13 consultant reports nor the MND considered these increases or their impacts. Therefore, the
14 County failed to comply with CEQA by not including “an analysis of the environmental effects
15 of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial
16 project.) (CEQA Guidelines § 15144.)

17 **Environmental Impacts and Mitigation**

18 64. CEQA requires that an MND identify, evaluate and mitigate the possible significant
19 environmental impacts of the proposed project. Pub. Res. Code §§ 21002, 21080, CEQA
20 Guidelines §§ 15063-15064, 15071. The lead agency is required to conduct a “thorough
21 investigation” with respect to significant impacts, and its conclusion must be based on substantial
22 evidence. See Pub. Res. Code §§ 21168, 21168.5, 21082.2; CEQA Guidelines § 15064(a).

23 65. Under CEQA, a project’s significant effects must be evaluated and mitigated regardless
24 whether the effects will arise elsewhere if the project does not go forward. See CEQA Guidelines
25 § 15026.6(e)(3)(B). CEQA requires that direct and indirect impacts of the project be considered.
26 CEQA Guidelines §§ 15064(d)(1), 15358(a).

1 66. CEQA requires that the agency must consider all information in the record in determining
2 whether to prepare an EIR and not just information in the MND. Pub. Res. Code §§ 21080(c),
3 21082.2. This includes all information in the record including evidence submitted by project
4 opponents, government agencies and experts. Further CEQA states that where there is
5 disagreement among experts – whether by agency experts or submitted by citizens, an agency
6 prepare an Environmental Impact Statement and not just an initial study. (*see e.g., Brentwood*
7 *Ass’n for No Drilling v. County of Los Angeles* (1982) 134 C.A.3d 491, 505.)

8 67. The County prejudicially abused its discretion, did not support its MND approval with
9 substantial evidence, and failed to proceed according to the law in its failure to, among other
10 things, assess the Project’s potentially significant impacts, such as to biological resources, water
11 resources, recreation resources, archaeological and cultural resources and air quality, noise and
12 light pollution, hazards and failure to identify and adopt all feasible mitigation measures for
13 those resources. These failures include, but are not limited to, impacts to anadromous salmonid
14 protection; wetlands, watercourse areas; water quality, including from erosion and
15 sedimentation; fish and amphibians, including salmonids and other special-status wildlife
16 species, as more fully described in Petitioners’ and other members of the public’s comment
17 letters to the County regarding the MND. For instance, the MND provided no actual study or
18 analysis of the potential impacts on biological species or their habitat from: 1) storm water’s
19 movement of through natural or man-made channels to Redwood Creek, nor 2) the increased and
20 on-going erosion and runoff from grading, surface water diversions, road and home construction
21 and impermeable surfaces, which could adversely affecting the riparian zones of Redwood
22 Creek; and 3) tree removal and grading that could affect wetlands, wildlife corridors and
23 endangered species such as the Northern Spotted Owl (“NSO”).

24 68. The MND’s basis for impact assessment of geological, land stability and hydrological
25 impacts lacks evidence, because it does not – and cannot - identify adequate mitigation measures
26 which would otherwise enable the County to satisfy CEQA with a mitigated negative
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1 declaration. The MND's basis for impact assessment of impacts to hydrological, geological and
2 biological resources is based on lacking evidence because it does not – and cannot - identify
3 adequate mitigation measures which would otherwise enable the County to satisfy CEQA with a
4 mitigated negative declaration. Pub. Res. Code § 21080(c)(2); CEQA Guidelines §15070(b).
5 For instance, the Geologic reports accompanying the MND lacked essential data necessary to
6 form scientific opinions regarding landslides and subsidence. The MND did not evaluate
7 reasonably foreseeable future plans for housing expansion and did not evaluate potential impacts
8 to Geology and Soils, including exposure to risks to life and property and indirectly to water
9 resources due to soil removal, placement, and surface runoff. The Geology Report also
10 contradicts the Hydrology report, which contradiction means that there is no substantial evidence
11 for the MND's conclusions. (*County of Inyo v. Yorty (1973) 32 C.A.3d 795, 814.*)64.

12 69. The County prejudicially abused its discretion by failing to require and provide evidence
13 to support its conclusions and which adequately assess project impacts, including but not limited
14 to, repeatedly and substantially relying on consultant assessments that do not provide survey or
15 other data for the actual project area and the MND at issue, such as evidence to support
16 conclusions about impacts to Northern Spotted Owl, Bats, Steelhead and Coho Salmon and
17 wildlife corridors, without a scientific analysis of how the erosion from the project will affect
18 those species.

19 70. The MND also failed to adequately describe and discuss the hazardous conditions that the
20 County itself has recognized area of high wildland fire risk. The sufficiency of local water
21 supply for residents, increased fire hazard, and increased congestion for fire hazard escape routes
22 on Panoramic Highway were not established to assess this risk exposure with the project.

23 71. The County prejudicially abused its discretion, did not support its MND approval with
24 substantial evidence, and failed to proceed according to the law in its failure to, and consider the
25 impact of approval of the proposed project on traffic and safety conditions on Panoramic
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1 Highway and related vehicular accidents with the addition of 12 potential units on a narrow,
2 winding, shoulderless, and substandard Highway.

3 72. The County prejudicially abused its discretion, did not support its MND approval with
4 substantial evidence, and failed to proceed according to the law in its failure to provide the
5 necessary analysis and evidence demonstrating that mitigation had reduced the project impacts
6 below the level of significance. Thus, the County has not provided evidence that an EIR is not
7 required.

8 **D. Consistency with Local Plans and Policies**

9 73. A lead agency conducting environmental review of a project must consider whether the
10 project would “conflict with any applicable land use plan, policy, or regulation of an agency with
11 jurisdiction over a project (including, but not limited to the general plan, specific plan, local
12 coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an
13 environmental effect. (California Code of Regulation, Title 14, Chapter 3, (“CEQA Guidelines”)
14 §15125(d); Appendix G, §X, Land Use and Planning.)

15 74. The MND fails to consider the Project’s consistency with CWP Policies, including the
16 following:

- 17 a. Bio-2.4: Protect Wildlife Nursery Areas and Movement Corridors.
- 18 b. CWP) Policy CD 1.3: Reduce potential impacts.
- 19 c. (CWP) Policy CD-2.8: Limit development in resource or hazard areas.
- 20 d. (CWP) Policy EH-4.5: Regulate Land Uses to Protect from Wildland Fires.
- 21 e. (CWP) Policy CD-2.p: Encourage Community-Based planning *for issues of community-*
22 *wide interest to promote cooperation and collaboration.*
- 23 f. (CWP) Policy CD-5.e: Limit density for areas without water or sewer
24 connections. *Calculate density at the lowest end of the Countywide plan density range for new*
25 *development proposed in areas without public water or sewer service. Densities higher than the*
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1 *lowest end of the applicable density range may be considered on a case by case basis for new*
2 *housing units affordable to very low and low income households.*

3
4 75. The MND fails to consider the Project's consistency with TACP Policies, including but
5 not limited to the following:

6 a. Specific Area Issues (page III-69) Muir Woods Park:

7 Issue - Protection and Enhancement of Existing Open Space Areas:

8 b. Objective LU 31: To protect the significant local and regional open space values of the
9 Muir Woods Park area.

10 c. Program LU 31.1a: APN 46-161-10 totals ten acres on the south side of Panoramic with
11 an average slope exceeding 40 percent. Given septic tank regulations a maximum of five
12 units is possible. The community desires this site to remain open in appearance. The most
13 buildable part of the site is on the ridge, which is contrary to community policy for
14 development. The steep slopes and the particular drainage pattern of the area below the
15 ridge will make it difficult to get many dwellings on the site. LU 31.1b: The County will
16 consider programs to acquire the many forested undeveloped parcels in close proximity
17 to Mount Tamalpais State Park, Muir Woods National Monument and the lands of
18 MMWD.... In the event acquisition is not feasible, the County will implement design
19 guidelines to ensure that new development does not harm the park and water district
20 lands.

21 d. Program LU 2.1e: For all parcels subject to further subdivision, design review shall be
22 required as a condition of tentative map approval.

23 e. Program LU 2.2a: Programs LU 2.1a through LU 2.1d also implement Policy LU 2.2.

24 f. Policy LU 2.2: All undeveloped and underdeveloped parcels located in areas of relatively
25 high visibility, environmental hazards, sensitive environmental resources or areas which
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1 are identified as high priority open space lands shall be rezoned a density which
2 maximizes the protection of environmental resources.

3 g. Policy LU 2.3: To rezone properties in the Tamalpais Area to a zoning district which will
4 ensure that proposed development adequately addresses access and visual impacts.

5 h. Policy LU 6.1: Allow for the construction of Residential Second Units on residential-
6 zoned lands in the Planning Area provided that said units do not conflict with the other
7 stated objectives of the Community Plan.

8 i. Policy LU 10.2: Discourage intrusive or damaging access into sensitive wetland habitats.

9 j. Policy LU 10.2a: Developments on lands adjacent to wetlands and bay waters shall be
10 required to provide habitat buffer zones adequate to protect the habitat value of wetlands
11 and bay waters.

12 k. LU 11.1a, 2b Implement existing Countywide Plan policies for stream setbacks to protect stream
13 corridors and banks.

14 l. Objective LU 14: To ensure the long term protection of all or portions of remaining
15 undeveloped lands within the Tamalpais Planning Area that have been identified as
16 having significant open space values.

17 m. LU14.1d Planning staff should work with the State Parks, National Park Service, and
18 representatives from the Muir Woods Park neighborhood to identify parcels in this area
19 which may be appropriate for acquisition as open space.

20 n. Objective LU. 15: To protect wildlife trails (right of way) which provide access for
21 wildlife through private property for access to water and food sources.

22 The MND also fails to consider consistency with environmental management plans for
23 Mt. Tamalpais State Park, Muir Woods National Monument, and Golden Gate National
24 Recreation Area Lands.

24 **E. Cumulative Impacts**

25 76. CEQA requires that a MND analyze the project's cumulative impacts. Pub. Res. Code §§
26 21080.5(d)(3)(A), 21083(b)(2); see CEQA Guidelines §§ 15065(a)(1), 15063(a)(1);

1 *Environmental Protection Information Center, Inc. v. Johnson* (EPIC) (1985) 170 Cal. App. 3d
2 604, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d
3 376; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 CA 4th 1184.

4 77. Cumulative impacts are the incremental effects from multiple projects that combine to
5 affect the environment. “The cumulative impacts from several projects is the change in the
6 environment which results from the incremental impact of the project when added to other
7 closely related past, present, and reasonably foreseeable probable future projects.” CEQA
8 Guidelines § 15355(b). Cumulative impacts are “two or more individual effects which, when
9 considered together, are considerable or which compound or increase other environmental
10 impacts ...[they] can result from individually minor but collectively significant projects taking
11 place over a period of time.” CEQA Guidelines § 15355(b); accord EPIC, supra, 170 Cal. App.
12 3d at p. 625. Such incremental effects must be analyzed whether they fall on-site or off-site.
13 E.g., *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal. App.
14 4th 1383, 1396.

15 78. The County prejudicially abused its discretion, did not support its MND approval with
16 substantial evidence, and failed to proceed according to the law in its failure to, among other
17 things, approving the MND which fails to: adequately designate thresholds for cumulative
18 impacts, identify past, present, and foreseeable projects and consider cumulative impacts and
19 identify and analyze incremental impacts, such as past grading combined with Project grading
20 discharges to water bodies including onsite wetlands and watercourses; provide any analysis,
21 quantitative or otherwise, of the cumulative impacts related to past illegal grading on the
22 Property, or reasonably foreseeable future home grading, construction and introduction of
23 impervious surfaces; and disclose related cumulative impacts to fisheries, wildlife, water quality,
24 hydrology and land stability and wildfire hazards.

25 79. In approving the MND, the County prejudicially abused its discretion in violation of
26 CEQA as more fully described by Petitioners and others in comment letters to the County. In
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1 particular, but without limitation, the County prejudicially abused its discretion by failing to:
2 lawfully assess the MND's cumulative impacts on watershed resources, including threatened
3 salmonids and their habitat from increased peak flows and sedimentation; wetlands; and fails to
4 disclose the existence of past projects within the affected environment that have had
5 environmental effects with which the environmental effects of the MND will combine; assess or
6 disclose how the environmental effects of the MND will combine with the environmental effects
7 of past projects located within the affected environment; and assess or disclose how the
8 environmental effects of the MND will combine with the environmental effects of reasonably
9 foreseeable future projects on the land within the affected environment.

10 **E. Improper Deferral of Impact Assessment and Mitigation**

11 80. Petitioners incorporate by reference all the allegations contained in the previous
12 paragraphs as though fully set forth herein.

13 81. CEQA requires that all foreseeable environmental impacts be assessed and that feasible
14 mitigation measures be considered before the agency makes its decision to approve a project.
15 Pub. Res. Code §§ 21002, 21002.1. Specifically, where mitigation measures are necessary to
16 reduce impacts below the level of significance, members of the public and other agencies must
17 be given an opportunity to review environmental document *before* the document and project are
18 approved. Pub. Res. Code §§ 21080(c)(2). Studies and mitigation measures that are deferred
19 until *after* the environmental document is approved violate CEQA's requirements for public and
20 agency review and scrutiny of the environmental impacts. *Sundstrom v. County of Mendocino*
21 (1988) 202 Cal. App. 3rd 296.

22 82. The County prejudicially abused its discretion, did not support its MND approval with
23 substantial evidence, and failed to proceed according to the law in its failure to, among other
24 things, approve the MND based on sediment runoff and mitigation claims. Those measures have
25 an absence of required specificity, performance standards, protocol requirements, surveys or
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1 thresholds for significance regarding impacts related to the post-approval surveys. CEQA does
2 not allow for such deferral of the study or mitigation of impacts.

3 83. MND Mitigation Measures rely on future plans that have not been evaluated as to their
4 feasibility as mitigation for the potential impacts to geology and soils, including exposure to
5 risks to life and property and indirectly to biological and water resources from debris flow and
6 surface runoff. Specifically, the mitigation measures for landslides and the potential for soil
7 erosion or the loss of topsoil and potentially unstable soils which may result in on or off site
8 landslide or collapse are deferred mitigation, improperly relying on future plans. Those MND
9 mitigation measures improperly rely on future plans that have not been evaluated as to their
10 feasibility as mitigation for the potential impacts identified above.

11 84. The County prejudicially abused its discretion, did not support its MND approval with
12 substantial evidence, and failed to proceed according to the law in its failure to, among other
13 things, approving the MND without requiring an analysis of, and required mitigation for, a
14 number of authorizations that are required from federal and state authorities, under various laws
15 and regulations, including the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and the Clean
16 Water Act (33 U.S.C. §1251 *et seq.*), including but not limited to, permits for discharges into
17 wetlands, water quality certifications, and consultations that must be undertaken with the
18 National Marine Fisheries Service and U.S. Fish and Wildlife Service, such that the decision
19 makers and members of the public have no way to determine or scrutinize whether, for example,
20 the project will adversely impact wetland areas or cause habitat modification that would harm or
21 harass federally protected and listed species.

22 **H. Failure to Respond to Comments**

23 85. Petitioners incorporate by reference all the allegations contained in the previous
24 paragraphs as though fully set forth herein.

25 86. CEQA requires that the County invite and consider comments on MNDs. Pub. Res. Code
26 §§ 21091(d); CEQA Guidelines §§ 15200. As the County did not respond to or erroneously

1 responded to comments by the National Park Service, California Department of Fish and
2 Wildlife, Lotic Environmental Services, and many of the public comments regarding these
3 impacts, it is clear the County did not consider WAM, or technical and agency expert opinions
4 and thus, the MND failed to provide an adequate analysis of impacts.

5 87. Any responses must manifest a good faith, reasoned analysis; conclusory statements
6 unsupported by factual information will not suffice. CEQA Guidelines §15088.

7 88. The County prejudicially abused its discretion and failed to proceed according to law and
8 did not support its MND approval with substantial evidence in that the Official Response for the
9 MND is inadequate in ways which include, but are not limited to, its failure to provide, evaluate
10 and respond in non-conclusory fashion to the issues and comments raised during the review
11 process. This failure includes, but is not limited to, the failure to include and adequately respond
12 to public comments regarding lack of notice, comments about impacts to salmonids, wetlands,
13 and cumulative impacts, impacts regarding geology and land hazards, and cumulative impacts of
14 adjacent projects.

15 89. In light of the foregoing violations of CEQA, the County prejudicially abused its
16 discretion.

17 90. WHEREFORE, Petitioners pray for relief as set forth below.
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20 **SECOND CAUSE OF ACTION**
21 **VIOLATIONS OF SUBDIVISION MAP ACT**
22 **Against All Respondents and Does**

23 91. Petitioners hereby incorporate by reference each and every allegation set forth above.

24 92. Government Code section 65300 requires the legislative body of a city to adopt a general
25 plan for the physical development of the city. The general plan is often called a “constitution” for
26 future development to which all other land use decisions must conform. Government Code
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1 section 65300.5 also requires consistency between all aspects of a city or County’s
2 general plans and related plans.

3 93. Accordingly, any decision of the County affecting land use and development, including
4 issuance of a Subdivision, must be consistent with the general plan. See Gov’t Code §§ 65300 *et*
5 *seq.* and 66410 *et seq.*; *Neighborhood Action Group v. County of Calaveras* (1984) 156
6 Cal.App.3d 1176, 1182; *Orange Citizens for Parks and Recreation v. Superior Court of Orange*
7 *County*, 2 Cal. 5th 141, 153 (2016). The Project is inconsistent with the CWP and TACP
8 because the proposed lots, homes and future reasonably foreseeable homes will conflict with
9 CWP and TACP policies including, but not limited to, programs and policies that address the
10 following: requiring the mitigation of significant impacts to biological resources, especially those
11 related to endangered Coho Salmon and Steelhead trout; preference for minimal development
12 and open space on the Property, controlled low growth and rural setting as a priority.

13 94. State law requires that a tentative map be consistent with the General Plan/Community
14 Plans. (See e.g. Gov’t Code §§ 66411, 66418-66419, 66473.5, 66474.) Case law bolsters this,
15 holding that a subdivision must be consistent with the zoning at the time of the tentative act
16 approval. (*Youngblood v Board of Supervisors* (1978) 22 C3d 644, 654. The County Subdivision
17 Ordinance also requires such consistency. Marin County Muni Code § 22.84.050 requires the
18 County to review and evaluate each Tentative Map with respect to its compliance and
19 consistency with applicable provisions of the Development Code and other applicable County
20 ordinances, the Marin Countywide Plan, any applicable Community Plan or Specific Plan, and
21 the SMA.

22 95. The County Subdivision Ordinance also specifically requires that proposed subdivisions
23 must comply with minimum lot area requirements in the County General Plan and Development
24 Code. Muni Code § 22.82.050(a); 22.84.060. 22.82.050(c) states that: “Proposed subdivisions
25 shall be designed so that each parcel complies with the minimum lot area requirements of this
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1 Chapter, in addition to the minimum lot area requirements of Article II (Zoning Districts and
2 Allowable Land Uses) and Article V established for each zoning district.”

3 96. The County, though, failed to consider and apply density policies in the Marin
4 Community Wide Plan (“CWP”) and the Tam Area Community Plan (“TACP”) when
5 considering Project approvals. These failures include but are not limited to requirements that
6 the County must consider CWP Policy CD-5.e, which limits development in the project area to
7 one unit per 10 acres.

8 97. State law requires that agencies must reconcile all general plan policies because all
9 elements of the general plan, including community plans, have equal legal status. *Sierra Club v.*
10 *Board of Supervisors of Kern County* (1981) 126 Cal.App.3d 698. The County failed to consider
11 the applicability of CWP Policy CD-5.e, wrongly stating it was not required to do so because of
12 the existence and supposed specificity of TACP Policy LU3.1. Thus, the County violated its
13 duty to determine consistency and reconcile its various general plan policies.

14 98. The County also failed to consider and apply density policies and other provisions in the
15 TACP, including but not limited to TACP Policies LU2.1 and LU2.3, LU 3.1, and LU 31.1,
16 which contain policies regarding zoning designations and allowed density and development. A
17 list of such policies that were not adequately considered by the County is found, *supra*,
18 Paragraphs 74, 75.

19 99. The County has also improperly ignored an apparent previous subdivision, which further
20 renders the consistency analysis invalid. County Subdivision Ordinance section 22.82.025,
21 states that “the maximum number of residential lots allowed for proposed subdivisions shall be
22 modified based on a calculation of the net lot area of the original lot....” (Emphasis added.) The
23 current APN is 146-161-11 and the County based its calculations of four total lots on the current
24 acreage of 146-161-11 of 8.50 acres.

1 100. As a result of the foregoing defects, Respondents did not proceed in the manner required
2 by law, and their decision to approve the Subdivision was not supported by substantial evidence.
3 Accordingly, approval of the Project must be set aside.

4 **IV. PRAYER FOR JUDGMENT**

5 By reason of the foregoing, Respondents have violated the California Environmental
6 Quality Act, the Subdivision Map Act and Code of Civ. Proc. §§1085 and 1094.5 by approving
7 Dipsea Ranch Land Division and the related Mitigated Negative Declaration, due to fatal defects
8 described above.

9 WHEREFORE, Petitioners pray for judgment as follows:

10 1. For a Writ of Mandate ordering the County to set aside approval of the Subdivision and
11 Mitigated Negative Declaration based on the County's violations of California Environmental
12 Quality Act, the Subdivision Map Act and regulations set forth therein and the Marin County
13 Municipal Code.

14 2. For a preliminary and permanent injunction enjoining Real Parties in Interest, their
15 agents, employees, representatives, and all persons acting in concert with or participating with
16 Real Parties in Interest, from engaging in any activity including clearing, grading, excavating,
17 building, planting and constructing, pursuant to the Subdivision and MND until the County
18 complies with California Environmental Quality Act, the Subdivision Map Act and the Marin
19 County Municipal Code.

20 3. For a stay of the County's decision approving Dipsea Ranch Land Division and the
21 MND.

22 4. For reasonable attorneys' fees under Code of Civ. Proc. §1021.5.

23 5. For costs of suit.

24 6. For such other and further relief as this Court deems proper.

25
26 DATED: November 3, 2020

Respectfully submitted,

LAW OFFICES OF EDWARD E. YATES



Edward E. Yates
Attorney for Petitioners

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1 **VERIFICATION**

2 Case: Friends of Muir Woods Park, Watershed Alliance of Marin v. County of Marin, Board of
3 Supervisors of the County of Marin.

4 Marin County Superior Court (Case Number to be assigned)

5 I, Edward E. Yates, declare as follows:

6 1. I am an attorney at law duly admitted and licensed to practice before all courts of this
7 State. My office is located at 2060 Sutter St., #403, San Francisco, California. I am the attorney
8 of record for the Petitioners in this action.

9 2. Petitioner, Friends of Muir Woods Park, has its address in Marin County, California, and
10 therefore is absent from the county in which I have my office. For those reasons, I make this
11 verification on its behalf.

12 3. Petitioner, Watershed Alliance of Marin, has its address in Marin County, California, and
13 therefore is absent from the county in which I have my office. For those reasons, I make this
14 verification on its behalf.

15 4. I have read the foregoing Verified Petition for Writ of Administrative Mandate and know
16 the contents thereof; the factual allegations therein are true of my own knowledge, except as to
17 those matters which are therein stated upon my information or belief, and as to those matters I
18 believe them to be true.

19 I declare under penalty of perjury, under the laws of the State of California, that the
20 foregoing is true and correct. Executed November 3, 2020 at San Francisco, California.

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23 _____
24 EDWARD E. YATES

25 Attorney for Petitioners

EXHIBIT A

Law Office of Edward E. Yates

2060 Sutter St., #403
San Francisco, CA 94115
Ph: 415-990-4805
eyates@marinlandlaw.com

October 29, 2020

Joyce Evans
Clerk of the Board of Supervisors
County of Marin
3501 Civic Center Dr. San Rafael CA 94903
By mail and email to:
JEvans@marincounty.org; TLai@marincounty.org; KRice@marincounty.org

RE: Notice of Intent to Sue re: California Environmental Quality Act and Subdivision Map Act law compliance for October 6, 2020 County of Marin approvals for housing development at 455 Panoramic Highway, Mill Valley, CA (Assessor's Parcel 046-161-11), County ID P1589.

Dear Ms. Evans and Members of the Board of Supervisors,

This letter is to advise you that this office has been retained to file an action against the County of Marin on behalf of Friends of Muir Woods Park and Watershed Alliance of Marin for your approval of and actions regarding the above referenced project ("Project"). The action will be filed on or about November 3, 2020. This notice is sent to you pursuant to Public Resources Code 21167.5.

The County has failed to comply with the California Environmental Quality Act ("CEQA") Pub. Res. Code § 21000 et seq. ("CEQA"); and CEQA Guidelines, Title 14, California Code of Regulations ("CCR") § 15000 et seq., for the following reasons: the County did not adequately consider whether the tentative map approval is consistent with the County Wide Plan ("CWP") and Tamalpais Community Area Plan ("TCAP"); and the County did not consider the impacts of future development of easily or reasonably foreseeable related future projects.

The Approval of the Mitigated Negative Declaration ("MND") is also legally inadequate because it fails to provide evidence for its conclusions that there will be no impacts to geological, hydrological and biological resources. The California Department of Fish and Wildlife (CDFW) has strongly criticized the CEQA analysis and the developer and County's own consultants admit that wetlands are on the site yet impacts

to those wetlands were not examined and CDFW's comments were mainly ignored. My client's experts have also demonstrated that the MND relies on faulty hydrological and biological resources methodology, including regarding sediment loading impacts to endangered Coho salmon and Steelhead trout in Redwood Creek.

Also, the Project does not comply with the California Subdivision Map Act (Government Code § 66410 et seq.) and the Marin County Subdivision Ordinance (Marin Muni. Code §§ 22.82; 22.84) because the Subdivision is inconsistent with CWP and TCAP regarding environmental protection, open space requirements and allowable development. Thus, the City improperly granted the tentative map.

I am available to discuss these issues at any time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward E. Yates", with a horizontal line extending to the right.

Edward E. Yates

EXHIBIT B

1 Edward E. Yates, Esquire, SB# 135138
2 LAW OFFICE OF EDWARD E. YATES
3 2060 Sutter St., #403
4 San Francisco, CA 94115
5 Telephone: (415) 990-4805
6 Email: eyates@marinlandlaw.com

7 Attorney for Petitioners
8 FRIENDS OF MUIR WOODS PARK,
9 WATERSHED ALLIANCE OF MARIN

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

FRIENDS OF MUIR WOODS PARK;
WATERSHED ALLIANCE OF MARIN,
Petitioners/Plaintiffs,
V.
COUNTY OF MARIN, BOARD OF
SUPERVISORS OF THE COUNTY OF
MARIN and DOES I through X,
Respondents/Defendants.

DANIEL WEISSMAN, an individual, and
DOES, XI through XX,
Real Parties in Interest.

Case No.:
REQUEST FOR PREPARATION OF THE
ADMINISTRATIVE RECORD
[Cal. Pub. Res. Code 21167.6(a)]

Petition Filed:
Judge:
Trial Date: None

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DATED: November 3, 2020

Respectfully submitted,
LAW OFFICES OF EDWARD E. YATES



Edward E. Yates
Attorney for Petitioners