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8 FRIENDS OF MUIR WOODS PARK,  
9 WATERSHED ALLIANCE OF MARIN

**FILED**

SEP 27 2022

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

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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.:

CV 2203094 -

UNLIMITED CIVIL CASE

**VERIFIED PETITION FOR  
PEREMPTORY WRIT OF MANDATE:  
VIOLATIONS OF THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT;  
CALIFORNIA CONSTITUTION; MARIN  
COUNTY MUNICIPAL CODE; DUE  
PROCESS REQUIREMENTS**

**[CALIFORNIA ENVIRONMENTAL  
QUALITY ACT, Pub. Res. Code Section  
2100 et seq.;  
Code of Civ. Pro. Sections 1084 et seq.  
1094.5; CALIFORNIA CONSTITUTION,  
Article I § 7; MARIN COUNTY  
MUNICIPAL CODE]**

Petition Filed:

Judge:

Trial Date: None

PETITION FOR WRIT OF MANDATE (CEQA, MCMC)

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”) September  
8 22, 2022 approval of the Dipsea Ranch (Weissman) land division and Mitigated Negative  
9 Declaration (“MND and its Amendment”). If allowed to proceed, the Project – a development of  
10 3 to 21 luxury homes – impacts due to grading, housing and road construction and other  
11 operations will cause irreversible harm to Redwood Creek and its ecosystems, endangered  
12 species, including Northern Spotted Owl, Coho Salmon, Steelhead and to other wildlife, which  
13 use the property as a corridor. The Project also presents other substantial risks including impacts  
14 to surface water quality, increased fire hazard risk, and traffic safety on Panoramic Highway,  
15 including vehicular accidents due to access by a narrow, winding, shoulderless road, with blind  
16 curves, poor visibility and heavy bike and car traffic.

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

1 would be made to water quality, wetlands or endangered species, including Coho Salmon and  
2 Steelhead.

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

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

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

23 6. On October 6, 2020, after extensive public controversy over the County’s repeated failure  
24 to provide public notice to the neighbors and post local site notice as required by the Government  
25 Code, the Board of Supervisors held a hearing on the Project and accompanying MND and its  
26 Amendment. The County received dozens of letters identifying issues with the MND and its  
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1 Amendment regarding the lack of data, conflicting data and unsupported conclusions regarding  
2 the project description and existing conditions regarding the fire road illegally built by  
3 Weissman, the grading, cut and fill for the Project, and the new and altered drainages. These  
4 letters also addressed the environmental impacts related to those issues.

5 7. Residents within the Redwood Creek watershed, members of the public, scientists and  
6 technical experts, the California Department of Fish and Wildlife and the National Park Service,  
7 commented that the Project will cause significant unmitigated environmental impacts to geology  
8 and soils, wildfire hazards, hydrology and water quality, land use and planning, traffic safety,  
9 and biological resources, including salmonid species listed by the Federal government as  
10 endangered, including Steelhead (*Oncorhynchus mykiss*) and Coho Salmon (*Oncorhynchus*  
11 *kisutch*). Redwood Creek has been declared critical habitat for both Steelhead and Coho  
12 Salmon. Despite the evidence of potential significant impacts, the County chose to only prepare  
13 an Initial Study/Mitigated Negative Declaration ("MND and its Amendment") for the Project  
14 instead of a more comprehensive Environmental Impact Report ("EIR"), thereby leaving the  
15 County and the public without the scientific data and analysis necessary for a project with such  
16 impacts. The evidence also showed that the Project is inconsistent would adversely affect  
17 ecosystems in Mount Tamalpais State Park and the Muir Woods National Monument.

18 9. Despite the public's effort and despite the evidence of potential significant impacts, the  
19 County chose to only prepare an Initial Study/Mitigated Negative Declaration ("MND") and a  
20 document titled "MND Amendment" for the Project both of which lack the data and analysis  
21 required by CEQA thereby leaving the County and the public without the scientific data and  
22 analysis necessary to review project impacts.

23 10. On October 6, 2020, the County ignored the community, including the County's Tam  
24 Design Review Board and environmental groups approved the subdivision map and the MND  
25 and its Amendment.

1 11. On November 4, 2020, Petitioners filed a first suit against the County of Marin for  
2 violations of CEQA and the Subdivision Map Act (“SMA”).

3 12. Petitioners asked the Marin County Superior Court to find that the County failed to  
4 comply with the California Environmental Quality Act (Pub. Res. Code, §§ 21000 et seq.  
5 “CEQA”), and Government Code requirements in the Subdivision Map Act (Gov’t Code §  
6 64110 *et seq.* “SMA”) and the County Municipal Code (*e.g.* § 22.82.050) requiring all tentative  
7 maps to be compliant and consistent with the general plans and community plans.

8 13. In a January 10, 2022 ruling, the Court found that the MND and its Amendment approved by  
9 the County violated CEQA on numerous grounds, including project description and existing  
10 conditions for the fire road, grading, cut and fill, and drainage. The Court found that the County  
11 had not violated the Subdivision Map Act.

12 14. On January 10, 2022, the Court issued a Judgment and Writ of Mandate, setting aside all the  
13 County approvals for the Project including the voiding of both the subdivision approval and the  
14 MND. Petitioners had not requested and the Court did not require the County to prepare an  
15 Environmental Impact Report. The Court did not require the County to Return to Writ. As of the  
16 date of filing this Petition for Writ of Mandate, the County still has not returned to Writ.

17 15. On January 27, 2022, County staff originally and appropriately determined that the  
18 Planning Department and Planning Commission should consider and review the MND and its  
19 Amendment “Amendment.” County staff communicated this decision to the public. However,  
20 that decision was reversed and the County skipped Marin County Municipal Code required steps  
21 to provide required circulation, reasonable time to review the MND and its Amendment,  
22 opportunity to appeal the MND and its Amendment, thereby violating the Petitioners due process  
23 rights.

24 16. Despite losing the lawsuit, the County issued a barebones improper “Amendment” to the  
25 MND and its Amendment on June 24, 2022 despite County staff having knowledge that key  
26 members of Petitioners were out of town in July.

1 17. Despite the County intentionally planning the circulation period for a time when  
2 Petitioners were out of town, Petitioners managed to retain an expert Geomorphologist, Laurel  
3 Collins, who wrote a 56 page letter carefully and technically scrutinizing the Project, the  
4 County's geological and hydrological reports and the MND and its Amendment "Amendment."  
5 Ms. Collins' extensive analysis clearly demonstrated that the County did not provide adequate  
6 discussion of the Project Description and the Existing Conditions and that the Amendment was  
7 based on unsupported, skeletal, and arbitrary conclusions regarding the impacts related to the fire  
8 road, grading, cut and fill, and drainage. Petitioners also submitted a CV for an additional  
9 expert, Lotic Environmental. On or about July 4, 2022, Geologist Preston Brown and Watershed  
10 and Coho Salmon expert, Joe Brunner submitted expert comments critiquing the MND and  
11 "Amendment."

12 18. On or about the evening of August 20, 2022 or morning of August 21, 2022, the County  
13 released its "Response to Comments." However, these responses were again barebones, not  
14 supported by expert or other technical analysis and barely bothered to address Ms. Collins, Mr.  
15 Brown or Mr. Brunner's comments, except to attempt to denigrate all three experts.

16 19. On August 23, 2022, the County again approved the MND and its Amendment, again,  
17 violating CEQA because there are no actual scientific studies or surveys to support the County's  
18 conclusions regarding the fire road, grading and cut and fill and drainage and that the related  
19 impacts are less than significant. The MND and its Amendment provides little data, modeling  
20 or explanation of the future impacts of the supposed mitigation and provides no required  
21 performance standards for the deferred mitigation.

22 20. Under CEQA, a plan must consider the impacts of past, present, and foreseeable future  
23 projects combined with the incremental impacts of those potentially caused by the project. The  
24 MND and its Amendment violated this requirement because it dismissed the impacts of the  
25 Developer's previous illegal grading on property. Therefore, the County failed to consider the  
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1 contributions of that grading, Project grading and construction and increased runoff due to new  
2 impermeable surfaces into the Redwood Creek watershed.

3 21. As such, the County failed to provide support to its required findings that (a) that the  
4 design of the subdivision or the proposed improvements are likely to cause substantial  
5 environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The  
6 County did not and could not make required Project findings because among other reasons: the  
7 Project's property's steep slopes, and geological and hydrology restraints, the Project's sediment  
8 and polluted runoff into Redwood Creek, existing conditions of the property as potential habitat  
9 for wildlife species, including listed endangered species and the slope stability and extreme fire  
10 hazard risks to human health.

11 22. Petitioners ask this Court to find that the County failed to comply with the California  
12 Environmental Quality Act, Pub. Res. Code, §§ 21000 *et seq.* ("CEQA") and the CEQA  
13 Guidelines, Title 14, California Code of Regulations, §§ 15000 *et seq.* ("CEQA Guidelines"),  
14 and Code of Civ. Proc. § 1094.5 regarding approval of the Project and the Subdivision.  
15 Through this Petition, Petitioners further request that this Court *again* issue a writ of mandate  
16 setting aside and voiding the County's approval of the Subdivision and accompanying MND and  
17 its Amendment.

## 18 II. GENERAL ALLEGATIONS

### 19 A. Parties

20 23. Petitioner Watershed Alliance of Marin is an association of concerned citizens comprised  
21 of residents, business owners, and others who are committed to preserving the natural resources,  
22 water quality, water supply and historic landscape of Marin County by protecting the watershed  
23 and its streams, hills, woodlands, and wildlife. Watershed Alliance of Marin is beneficially  
24 interested in the aesthetic and recreational enjoyment and environmental quality of the water and  
25 land, and in maintaining all beneficial uses including protecting the sensitive habitat and public  
26

1 safety in and around Marin County, Muir Woods, and Mt. Tamalpais State Park. Many of  
2 WAM's members live adjacent to or near the Property.

3 24. Petitioner Friends of Muir Woods Park includes residents dwelling directly adjacent to,  
4 downstream from or nearby the Project who are beneficially interested in the aesthetic and  
5 recreational enjoyment and continued productivity and environmental quality of the land, in  
6 maintaining all beneficial uses including local fire prevention, and in protecting the sensitive  
7 habitat and public safety in and around Muir Woods National Monument, Mt. Tamalpais State  
8 Park.

9 25. Respondent County of Marin is an agency of the State of California located in the County  
10 of Marin, California.

11 26. Respondent Board of Supervisors of the County of Marin ("Board") is the governing  
12 body of the County of Marin and decision-maker over this Subdivision and certification of the  
13 MND and its Amendment and is located in the County of Marin, California.

14 27. Plaintiffs do not know the true names and capacities of Respondents fictitiously named  
15 herein as DOES 1 through 10, inclusive. Plaintiffs are informed and believe, and thereon allege,  
16 that such fictitiously named Respondents are responsible in some manner for the acts or  
17 omissions complained of herein. Plaintiffs will amend this Petition to allege the fictitiously  
18 named Respondents' true names and capacities when ascertained.

19 28. Real Party in interest Daniel Weissman, is an individual whose address is identified in the  
20 Subdivision application as 455 Panoramic Highway, Mill Valley, CA 94941.

21 29. Plaintiff does not know the true names and capacities of Real Parties in Interest  
22 fictitiously named herein as DOES 11 through 20, inclusive. Plaintiffs are informed and believe,  
23 and thereon allege, that such fictitiously named Real Parties in Interest are responsible in some  
24 manner for the acts or omissions complained of herein. Plaintiffs will amend this Petition to  
25 allege the fictitiously named Real Parties in Interest's true names and capacities when  
26 ascertained.



1 **B. Jurisdiction**

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

5 31. Actions following an agency's subsequent approval of an approval previously set aside  
6 by a Writ of Mandate, are the proper subject of a second Petition for Writ of Mandate. *Carey v.*  
7 *Board of Med. Examiners (1977) 66 CA3rd 538, 540. Ballona Wetlands Land Trust v. City of*  
8 *Los Angeles (2011) 201 Cal.App.4th 455, 480,*

9  
10 **C. Standing**

11 32. Petitioners and their members are beneficially interested in the County's full compliance  
12 with the law regarding the County's approval of the Subdivision and MND and its Amendment.  
13 The Petitioners are residents of the County of Marin and Mill Valley, whose personal, health,  
14 professional and aesthetic interests of Petitioners and the persons associated with them will be  
15 injured if the Project, pursuant to the Subdivision, as approved by the County, is allowed to  
16 proceed as planned. Petitioners are within the class of persons beneficially interested in and  
17 aggrieved by the County's approval as alleged below. Petitioners include individuals who  
18 expressed their concerns and objections to the approval of the Subdivision directly to County  
19 staff and at County meetings and in correspondence to the County. Respondents owed a  
20 mandatory duty to comply with the legal duties that Petitioners allege were violated before  
21 approving the Subdivision. Petitioners have the right to enforce the mandatory duties that CEQA  
22 imposes on Respondents.

23 **D. Factual and Procedural Background**

24 33. The applicant and property owner, Daniel Weissman ("Weissman" or "Developer") owns  
25 the property, which is located in and around 455 Panoramic Highway, Mill Valley, further  
26 identified as Assessor's Parcel 046-161-11 ("Property").

1 34. In 2016, Developer applied for and was given approval for separate sewer hookups to the  
2 Property by the Local Area Formation Commission ("LAFCO") and the Homestead Valley  
3 Community Service District. Three Members of the County Board of Supervisors are members  
4 or alternates on the LAFCO.

5 35. In or about 2015, 2017 and 2018, the applicant and property owner, Daniel Weissman  
6 ("Weissman" or "Developer"), submitted proposals to subdivide parcels on steeply sloped acres  
7 (including parcels of 8.29 acres and 1.8 acres) of property adjacent to Mt. Tamalpais State Park  
8 in the County of Marin, California and develop from 14 homes with associated accessory  
9 dwelling units and junior dwelling units.

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

15 37. The County's Tamalpais Design Review Board and the Petitioners, however, informed  
16 the County that the Developer was arguably entitled to build not just three but twelve (12) units  
17 on that property. Before and during the Marin County Planning Commission hearing on the  
18 Project, the TDRB and Petitioners objected, stating that additional units, including 12 possible  
19 units due to state housing law ministerial approval requirements in such an environmentally  
20 sensitive area was inappropriate and would cause significant environmental impacts.

21 38. On April 2, 2020, the Marin County Planning Commission approved the Dipsea Ranch  
22 Land Division, AKA Dipsea Ranch Tentative Map ("Dipsea Ranch Subdivision" or  
23 "Subdivision" or "Project") and accompanying Mitigated Negative Declaration ("MND").

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

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

9 c. Sierra Club Marin County Group to Tammy Taylor Marin County Environmental  
10 Planning, 1/27/20 regarding deficient Initial Study and MND.

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

15 i. Watershed Alliance of Marin 501c3 (WAM) to Marin County Board of Supervisors,

16 k. Stephan C. Volker, Attorney on behalf of Watershed Alliance of Marin to Marin County  
17 Planning Department Planner Sabrina Sihakom [Cardoza], 1/28/20 regarding reasons for  
18 challenge to inadequate MND and attempt to adopt a Mitigated Negative Declaration,

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

25 40. On October 6, 2020, the Marin County Board of Supervisors conducted a hearing on  
26 Petitioners appeal. At the public hearing, the Board heard oral and written testimony and  
27 evidence presented or filed regarding the MND and its Amendment and the Project. Petitioners'

1 members attended the public hearing. Issues raised in the Board hearing by WAM and others  
2 included: the need for an environmental impact report based on expert testimony and publicly  
3 disclosed potential impacts of Project impacts to wetlands, habitat, and species in Redwood  
4 Creek; fire hazards due to increase structures in a urban wildland interface, surface water quality;  
5 geologic feasibility and landslide hazards; traffic and safety on Panoramic Highway; cultural  
6 resources; lack of consistency with the CWP and TACP and alleged segmentation of CEQA  
7 review.

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

17 42. On November 3, 2020, Petitioners filed suit against Marin County for violating CEQA  
18 and the SMA due to the reasons identified supra Paras 39-41.

19 43. On January 10, 2022, the Hon. Andrew E. Sweet of the Marin County Superior Court  
20 found that the County had violated CEQA by failing to properly prepare the Project Description  
21 and Existing Conditions portions of the MND and its Amendment. The Court's Ruling and  
22 February 7, 2022 Judgment declared the MND legally inadequate, which ruling included the  
23 following holdings: given these important characteristics of the Project site, the description of  
24 the Project is lacking in that the specific plans for excess fill from the Project's grading  
25 activities are not addressed; an environmental review should address this issue in more detail  
26 given the County's recognition that the streams downslope are tributaries to Redwood Creek;

1 the IS/MND does not describe the more recent investigation or studies that were conducted to  
2 reach these conclusions or support the description of the current state of the property in the  
3 IS/MND. Any supporting study or investigation is insufficient particularly given the earlier study  
4 which is potentially inconsistent with this description; further development of the fire road is not  
5 itself part of the Project, but the fire road extends across the lots (e.g. AR 95) and its continued  
6 use is a reasonably foreseeable use of the Project; as a result, the ISIMND does not satisfy  
7 Section 15063 with respect to its description of soil stability around the fire road; the Court  
8 agrees with Petitioners that there is some conflicting information in the record regarding the  
9 location of the drainages on the property and, specifically, whether they run through any WCA  
10 or SCA; The IS/MND should clarify the information regarding the location of drainages at the  
11 property in relation to any SCA or WCA and discuss, if applicable, any mechanisms to divert  
12 water away from these areas and related environmental impacts. The Court issued Writ of  
13 Mandate on February 8, 2022 setting aside all County approvals for the Dipsea Ranch Project.

14 44. On January 27, 2022, the County stated on its website that it would revise and recirculate  
15 the MND and its Amendment and submit it to the Marin County Planning Department/Planning  
16 Commission.

17 45. On May 23, 2022, Petitioners contacted County Planning Department staff, Sabrina  
18 Cardoza and Jeremy Terjerian, announcing that they would be out of the County and not  
19 available during July 2022.

20 46. On or around June 15, 2022, the County took down the announcement made on January  
21 27, 2022 regarding Planning Commission approval, and instead announced that they would  
22 circulate an "amendment" to the MND and its Amendment during June and July 2022 for 20  
23 days and then have the Board of Supervisors consider and approve the Project Approvals.

24 47. Petitioners hired an expert geomorphologist, Laurel Collins, who has over 30 years of  
25 expert field work experience in the San Francisco Bay Area, including the greater Mount  
26 Tamalpais watershed for clients including the County of Marin, an attorney to submit comments  
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1 to the County on their behalf. Ms. Collins' July 14, 2022 letter to the County regarding the  
2 Dipsea Ranch Project, included 47 pages of technical comments in the areas of geology,  
3 hydrology, geomorphology, soil stability, and polluted runoff. These comments found that the  
4 MND and its Amendment and the "Amendment" relied on inaccurate or incomplete information  
5 and were scientifically baseless.

6 48. Ms. Collins' commented that the hydrological and geological reports had inaccurate and  
7 incomplete, out of date, and inaccurate information and conclusions regarding rainfall, geology,  
8 soil stability, landslides, and other earth movement, hydrology, drainages. Ms. Collins also  
9 commented that because the MND and Amendment relied on the faulty hydrology and geology  
10 reports and provided no new technical data or analysis, thereby failing to address the incomplete  
11 report regarding land stability, historical landslides, weather patterns and scientific likelihood of  
12 potential soil movement into streambeds in the project areas. Ms. Collins also commented on the  
13 MND and Amendment's lack of specificity regarding soil movement impacts and mitigation and  
14 failed to demonstrate the effectiveness of BMPs or other measures to mitigate project sediment  
15 impacts. Ms. Collins also stated that the photographs and imagery depicted in the record of  
16 landslide instability substantiate concerns that slope instability/Fire trail issues have not been  
17 adequately addressed to claim that the proposed project will not have negative impacts.

18 49. Petitioners' members, including Laura Chariton, and other community group members,  
19 including Judy Schreiber and other experts and community members also submitted letters  
20 objecting to the discussion and conclusions in the "Amendment."

21 50. Letters submitted to the County include a July 15, 2022 letter by expert Preston Brown,  
22 who has 13 years of field experience in Coho Salmon watershed management, who discussed the  
23 failure of the MND and Amendment to adequately discuss modification of to the Redwood  
24 Creek watershed and impacts to Coho Salmon. Mr. Brown stated that the proposed  
25 development's Stormwater Control Plan and routing patterns into the existing wetland and  
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1 ephemeral creek setbacks will likely adversely impact downstream salmon habitat and critical  
2 base flows due to likely erosion and suspended sediment loads from steep slopes.

3 51. Letters submitted to the County included a July 15, 2022 letter by Joe Brunner P.E., who  
4 has 40 years of experience in Geotechnical and Environmental Engineering, who commented on  
5 the MND and Amendment's failure to adequately discuss soil stability, land movement, and  
6 drainage factors and impacts. Mr. Brunner stated that: 1250 cubic yards of undocumented fill  
7 was illegally (without a grading permit) dumped and rolled by the Developer fill was placed  
8 directly on a "wetlands" and ephemeral creek headwater area; the protections designated by the  
9 Marin 2007 Countywide Plan require 100-foot setbacks for construction which the road fill  
10 violates; this amounts to approximately 120 dump truckloads of fill placed during the rainy  
11 season, the worst conditions for fill placement; this fill was placed over a defunct "fire access  
12 road;" there are no records of the source of this fill, any geotechnical classification, or whether it  
13 is environmentally certified as "clean fill".

14 52. Letters submitted to the County commenting on the MND and Amendment included a  
15 July 15, 2022 letter by Petitioners' attorney Edward E. Yates, who discussed the County failures  
16 to abide by its Municipal Code and deny the Petitioners the right to adequate due process,  
17 including but not limited to notice, opportunity to comment, sufficient circulation, right to appeal  
18 and opportunity to be heard. Mr. Yates also stated that Petitioners would return to court if the  
19 County did not address its failures to provide due process and comply with CEQA.

20 53. Late on Friday, August 20 or on the morning of Saturday August 21, the County  
21 published a Response to Comments. Those comments were drafted by County contract staff.  
22 The Responses included limited, new analysis that was missing from the circulated MND and  
23 Amendment. However, the Responses included no new technical data or analysis or response  
24 and Respondents instead, included only nontechnical, one paragraph replies regarding the letters,  
25 data and analysis in the letters by Ms. Collins, Mr. Brown Mr. Brunner, and Mr. Yates.

1 54. One working day later, on August 23, 2022, the County Board of Supervisors held a  
2 hearing on the adequacy of the MND and its Amendment and regarding the subdivision  
3 approval. As such, the Board, the public and the Petitioners had only one working day to review  
4 substantially new discussion and responses before the Board. Petitioners and their attorney  
5 attended the meeting and made comments objecting to the approvals proposed by Staff but had  
6 no time to submit comments regarding the substance of the Responses, which Responses  
7 included the vast bulk of the Amendment. The County, however, voted that same day to  
8 approve the MND and its Amendment and the subdivision approval with no additional study,  
9 pollution prevention or other mitigation measures.

10 55. Petitioners

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

12 **E. Exhaustion of Administrative Remedies**

13 57. In accordance with Public Resources Code section 21177, subdivisions (b) and (c),  
14 Petitioners and their members objected to the approval of the project orally or in writing during  
15 the public comment periods prior to the close of the public hearings on the project before  
16 Planning Commission and the Board of Supervisors before the County approvals of the  
17 Subdivision and MND and its Amendment and the filing of the notice of determination.  
18 Petitioners have performed any and all conditions precedent to the filing of this Petition and, to  
19 the extent required, have exhausted all available administrative remedies in that the  
20 determination by the County is final and no further administrative appeal procedures are  
21 provided by state or local law. Alternatively, Petitioners were not provided opportunity to raise  
22 the grounds of noncompliance alleged in this Petition prior to the County's decision to approve  
23 the Subdivision. Further, Petitioners do not believe they are required to exhaust their  
24 administrative remedies, because to attempt to do so would be futile and Petitioners do not have  
25 adequate administrative remedies.

26 58. The Petitioners have complied with Public Resources Code section 21167.5



1 by prior service of a notice upon the County indicating their intent to file this Petition. Proof of  
2 Service of this notification, with the notification, is attached as Exhibit A.

3 59. The Petitioners have elected to have the County prepare the record of proceedings  
4 pending an estimate by the County in the above-captioned proceeding or to pursue an alternative  
5 method of record preparation pursuant to Public Resources Code Section 21167.6(b)(2).

6 Notification of the Election to Prepare the Administrative Record is attached as Exhibit B.

7 **F. Notice Requirements**

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

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

16 **G. No Adequate Remedy**

17 62. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law,  
18 within the meaning of Code of Civ. Proc. § 1086 because Petitioners, their members, and the  
19 public will be irreparably harmed by the ensuing environmental damage and by Respondent's  
20 violations of CEQA. The County has prejudicially abused its discretion in approving the  
21 Subdivision and the MND and its Amendment. At all times mentioned herein, the County has  
22 been able to deny the approval of the MND and its Amendment and approval and operation of  
23 the Subdivision at issue. Despite such ability, and despite Petitioners' demand for denial, the  
24 County has failed and continues to fail to perform its duty to deny the approval and operation of  
25 the Subdivision and the MND and its Amendment.

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

6 64. Petitioners bring this action as a private attorney general pursuant to Code of Civ. Proc. §  
7 1021.5 to enforce important rights affecting the public interest. Issuance of the relief requested in  
8 this Petition will confer a significant benefit on a large class of persons by ensuring that the  
9 County does not approve the Subdivision and MND and its Amendment without complying with  
10 CEQA. The necessity and financial burden of enforcement are such as to make an award of  
11 attorney's fees appropriate in this proceeding. Absent this timely enforcement action by  
12 Petitioners, the Subdivision and MND and its Amendment might otherwise be deemed lawfully  
13 approved, despite the County's failure to comply with CEQA.

14 **II. FIRST CAUSE OF ACTION – VIOLATIONS OF THE MARIN COUNTY**  
15 **MUNICIPAL CODE AND PETITIONERS' DUE PROCESS RIGHTS**

16 65. California citizens have rights to a fair hearing and due process before an impartial  
17 decision maker. California Constitution, Article I § 7; Code of Civil Procedure § 1094.5. The  
18 elements of a fair hearing can be derived from applicable case law: [A]n individual has the right  
19 to a tribunal 'which meets . . . standards of impartiality.' . . . Biased decision makers are . . .  
20 impermissible and even the probability of unfairness is to be avoided." *Clark v. City of Hermosa*  
21 *Beach*, 48 Cal.App. 4th 1152 1170 (1996).

22 66. Neighbors objecting to a decision to grant a development permission have due process  
23 rights to a reasonable notice, fair hearing and a right to be heard, including in SMA and CEQA  
24 approvals. Gov't Code §§ 65090-65095; *Horn v. County of Ventura* (1979) 24 Cal. 3d 605, 615.  
25 *Scott v. City of Indian Wells* (1979) 6 Cal #d 541, 549.

1 67. The Superior Court's Writ of Mandate in *Friends of Muir Woods v. County of Marin*  
2 (CIV 2003248) voided the County's approvals. As such, the County must comply with all  
3 CEQA, SMA and County Muni Code procedural requirements for approval of maps and CEQA  
4 documents. See e.g. Pub. Res. Code §§ 21091(b); 21092; 14 CCR §§15072; 15073, including  
5 noticing relevant Federal and state agencies due to the regional impacts. Given the regional  
6 nature of potential Project impacts, the IS/MND and its Amendment must be submitted to the  
7 State Clearinghouse and circulated for a minimum of 30 days. Ibid.; Pub. Res. Code §  
8 21082.1(c)(4). The County however failed to provide such noticing to the public and Federal  
9 and state agencies and failed to circulate the MND and its Amendment to the public for the  
10 stated 30 days.

11 68. The Marin County Municipal Code requires that CEQA documents be approved by the  
12 Community Development Director. (Muni Code §§ 22.40.020 - Review Authority for County  
13 Land Use and Zoning Decisions. Table 4-1; 22.40.060, 22.110.030.) Then, if the applicant or  
14 interested members of the public choose to appeal, that appeal shall be considered by the  
15 Planning Commission unless the Director makes certain findings. Muni Code §§ 22.110.030,  
16 22.114.020. The finding in 22.114.020(a)(3) is that the appeal "Would not raise substantial  
17 policy issues or result in community-wide impacts, including community character and traffic  
18 congestion."

19 69. The County notified the public on the County website in January 27, 2022 that it was  
20 going to submit the approvals to the County Planning Commission for review. The County,  
21 however, with essentially no notice, violated its own Municipal code and Petitioners due process  
22 rights by changing the approval process so that the new proposal and IS/MND and its  
23 Amendment will be submitted directly to the Board of Supervisors for approval of the SMA map  
24 and the IS.

25 70. The County made this decision before any findings were made despite there being no  
26 completed or approved IS/MND and its Amendment to base such a finding. Thus, the County  
27

1 has improperly and baselessly predetermined the outcome of its duty to make regulatory findings  
2 without the required underlying evidence and therefore, has additionally demonstrated its bias.  
3 Second, the Director did not have the authority to refer any possible appeal directly to the Board  
4 because no required findings were made. As set out in the July 15, 2022 letter by Petitioner's  
5 attorney Edward E. Yates, this proposal, therefore, violates the County's own Muni Code  
6 procedural requirements by skipping Planning Department review and by denying Petitioners the  
7 due process right to appeal the Planning Director and/or Planning Commissions determinations  
8 regarding SMA and CEQA approval. Mr. Yates letter also describes County failures to abide by  
9 its Municipal Code and deny the Petitioners the right to adequate due process, including but not  
10 limited to notice, opportunity to comment, sufficient circulation, and opportunity to be heard.

11 71. The County failed to make the findings in 22.14.020(a)(3) and could not have made  
12 such findings because any such findings could not meet the Muni Code requirements for projects  
13 with wide community interest and impacts. The County Violated CEQA, Municipal Code and  
14 SMA Procedures Denying Petitioners the Right to Appeal.

15 72. '[W]hen functioning in such an adjudicatory capacity, the city council must be "neutral  
16 and unbiased."' (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012,  
17 1021 see also Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2019)  
18 ¶ 3:426, p. 3-70 ['A decisionmaker must be unbiased (meaning that the decisionmaker has no  
19 conflict of interest, has not prejudged the specific facts of the case, and is free of prejudice  
20 [\*\*\*37] against or in favor of any party)'.])" *Petrovich Development Co., LLC v. City of*  
21 *Sacramento* (2020) 48 Cal.App.5th 963, 973

22 73. Not complying with procedural requirements potentially violates due process. *Breakzone*  
23 *Billiards v. City of Torrance* (2000) 81 Cal.Ap.4th 1205, 1235-6. Thus, the County  
24 Demonstrated Bias In Making the Approvals.

25 74. County staff demonstrated bias by not providing for an appeal as required by the County  
26 Municipal Code by truncating the County's CEQA review, evidenced by County Staff's  
27

1 admission that the County intentionally circulated the "Amendment" when it knew key members  
2 of Petitioners would be out of town.

3 75. These substantial failures to comply with the County Municipal Code and due process  
4 requirements for circulation, notice, Director review, and an appeal right were prejudicial and  
5 caused substantial injuries to Petitioners due to Petitioners lack of opportunity for an appeal, and  
6 lack of opportunity to address the Responses, resulting in a lack of meaningful fair hearing.  
7 Gov't Code § 65010.

8 **III. SECOND CAUSE OF ACTION – VIOLATIONS OF THE CALIFORNIA**  
9 **ENVIRONMENTAL QUALITY ACT**

10 **Against all Respondents and Does**

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

13 76. CEQA requires the County to conduct adequate environmental review prior to  
14 making any formal decision regarding projects subject to the Act. CEQA requires that an MND  
15 and its Amendment identify, evaluate and mitigate the possible significant environmental  
16 impacts of the proposed project. Pub. Res. Code §§ 21002, 21080.

17 77. CEQA imposes upon the County a clear, present and mandatory duty to approve an MND  
18 and its Amendment only if the MND and its Amendment fully discloses to the public the project  
19 description, existing conditions and significant environmental effects that may occur due to  
20 implementation of a project and only if all feasible alternatives and mitigation measures have  
21 been incorporated to avoid or reduce these impacts.

22 78. If there is substantial evidence in the record that the project will have significant impacts,  
23 the lead agency must prepare an Environmental Impact Report ("EIR".) Pub. Res. Code  
24 §21080(d), §21080.3, §§21082.1, 21100, 21151; CEQA Guidelines §§ 15063-15064(f).

1 79. The MND and its Amendment must also provide substantial evidence that all impacts  
2 have been mitigated below the level of significance. Pub. Res. Code §§ 21002, 21080, CEQA  
3 Guidelines §§ 15063, 15064, 15070-15075.

4 80. The County prejudicially abused its discretion in permitting the discretionary project  
5 (Subdivision) without adequate evidence and justification which might authorize the use of an  
6 MND and its Amendment instead of an EIR as is required by CEQA.

7 81. The County's failures to comply with CEQA include, but are not limited to, the  
8 following:

9 **A. Inadequate Project Description**

10 82. Every MND and its Amendment must contain a project description of a project's  
11 technical, economic, and environmental characteristics." CEQA Guidelines §§ 15070, 15071.  
12 An EIR "is an informational document" that must be "prepared with a sufficient degree of  
13 analysis to provide decisionmakers with information which enables them to make a decision  
14 which intelligently takes account of environmental consequences." CEQA requires the analysis  
15 of potential impacts to be "reasonably thorough" and specific at the project level. Accordingly, a  
16 project description must be sufficiently detailed for environmental impact analysis to determine  
17 technical compliance with CEQA. CEQA Guidelines, §§ 15063, 15071.

18 83. An MND and its Amendment's project description must also be stable and finite.

19 84. The MND and its Amendment does not fully describe Project required excavation and  
20 earthmoving and supporting studies improperly exclude detailed description of proposed grading  
21 and placement of impermeable surfaces, and does not include necessary detail regarding quantity  
22 of soil excavated, moved and placed in other locations. , excavations for septic tanks and tree  
23 removals resulting in less soil retention.

24 85. The MND and its Amendment does not consider all project components such as  
25 impermeable surfaces and change to drainage, which could cause direct and indirect impacts  
26 (e.g. erosion/sedimentation, stream setbacks,) from the Project caused by activities or project  
27

1 components. This includes the County failure to adequately discuss project drainage, grading,  
2 cut and fill and resulting myriad changes in water course patterns as set out in letters submitted  
3 to the County by geologist, Joe Brunner, biologist and restoration expert Preston Brown, and  
4 geomorphologist Laurel Collins. This inadequate project description includes lack of discussion  
5 of a key project element, construction of a driveway and turn around serving the existing house.  
6 The County itself has stated that the driveway must be upgraded to accommodate the fire trucks  
7 and equipment. The County has also stated that there must be an upgrade for this road to  
8 accommodate a 30-ton fire apparatus in all weather conditions and there are limitations on the  
9 grade of the driveway, and that the surface will support the aforementioned weight in all weather  
10 conditions.

11 **B. Existing Conditions**

12 86. 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 87. The County prejudicially abused its discretion, did not support its MND and its  
22 Amendment approval with substantial evidence, and failed to proceed according to the law in its  
23 failure to, among other things, approve the MND and its Amendment, which was incomplete and  
24 incorrect and insufficient to evaluate significant environmental effects, without sufficient  
25 information regarding sensitive plant species, wetland soils, wetlands vegetation and riparian  
26 habitat that exist in the project area; neglected to require surveys for or data on these  
27

1 species/habitats, such as Steelhead trout and Coho salmon which are documented to historically  
2 occur in Redwood Creek and for which the U.S. National Marine Fisheries Service has  
3 established protections. The MND and its Amendment fails to provide a clear or accurate  
4 baseline for groundwater, surface stream, wildlife, or other resources and fails to provide any  
5 impact analysis, quantification, industry accepted wildlife or wetland plant surveys or even a  
6 detailed description of Redwood Creek, riparian habitat in the Project, and fails to delineate  
7 wetlands on the Property or discuss Project runoff impacts to seasonal wetlands on the property.

8 88. The MND and its Amendment has not adequately identified existing conditions,  
9 including not conducting protocol or industry standard field surveys on wetlands, endangered  
10 species and riparian habitat..

11 89. The MND and its Amendment has not adequately identified existing conditions,  
12 including but not limited to failures of the hydrology and geology reports and MND and the  
13 Amendment that fail to adequately consider geological geomorphological existing conditions as  
14 set out in the July, 2022 letters by expert field geomorphologist Laurel Collins and watershed  
15 and salmonids expert Preston Brown and geologist Joe Brunner.

16 90. The MND and its Amendment failed to adequately consider existing hazards including  
17 the potential for soil instability as on the steep mountainside slopes on the Property. The MND  
18 and its Amendment failed to consider the hazards of travel on Panoramic Highway and related  
19 vehicular accidents with the operation of addition of up to 12 residences on the narrow, winding,  
20 shoulder less, and substandard road. The MND and its Amendment also failed to describe and  
21 consider the historically hazardous dry season conditions of the project area that the County itself  
22 has recognized as a wildland urban interface fire risk area.

### 23 **Environmental Impacts and Mitigation**

24 91. CEQA requires that an MND and its Amendment identify, evaluate and mitigate the  
25 possible significant environmental impacts of the proposed project. Pub. Res. Code §§ 21002,  
26 21080, CEQA Guidelines §§ 15063-15064, 15071. The lead agency is required to conduct a  
27



1 "thorough investigation" with respect to significant impacts, and its conclusion must be based on  
2 substantial evidence. See Pub. Res. Code §§ 21168, 21168.5, 21082.2; CEQA Guidelines §  
3 15064(a).

4 92. Under CEQA, a project's significant effects must be evaluated and mitigated regardless  
5 whether the effects will arise elsewhere if the project does not go forward. See CEQA Guidelines  
6 § 15026.6(e)(3)(B). CEQA requires that direct and indirect impacts of the project be considered.  
7 CEQA Guidelines §§ 15064(d)(1), 15358(a).

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

15 94. The County prejudicially abused its discretion, did not support its MND and its  
16 Amendment approval with substantial evidence, and failed to proceed according to the law in its  
17 failure to, among other things, assess the Project's potentially significant impacts, such as to  
18 biological resources, water resources, and failure to identify and adopt all feasible mitigation  
19 measures for those resources. These failures include, but are not limited to, impacts to  
20 anadromous salmonid protection; wetlands, watercourse areas; water quality, including from  
21 erosion and sedimentation; fish and amphibians, including salmonids and other special-status  
22 wildlife species, as more fully described in Petitioners' and other members of the public's  
23 comment letters to the County regarding the MND and its Amendment. For instance, the MND  
24 and its Amendment provided no actual study or analysis of the potential impacts on biological  
25 species or their habitat from: 1) storm water's movement of through natural or man-made  
26 channels to Redwood Creek, nor 2) the increased and on-going erosion and runoff from grading.

1 surface water diversions, road and home construction and impermeable surfaces, which could  
2 adversely affect the riparian zones and water quality of Redwood Creek; and 3) tree removal and  
3 grading that could affect wetlands, wildlife corridors and endangered species such as the  
4 Northern Spotted Owl (“NSO”.)

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

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

1 97. The MND and its Amendment also failed to adequately describe and discuss the  
2 hazardous conditions that the County itself has recognized area of high wildland fire risk. The  
3 sufficiency of local water supply for residents, increased fire hazard, and increased congestion  
4 for fire hazard escape routes on Panoramic Highway were not established to assess this risk  
5 exposure with the project.

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

12 **E. Cumulative Impacts**

13 99. CEQA requires that a MND and its Amendment analyze the project's cumulative  
14 impacts. Pub. Res. Code §§ 21080.5(d)(3)(A), 21083(b)(2); see CEQA Guidelines §§  
15 15065(a)(1), 15063(a)(1); *Environmental Protection Information Center, Inc. v. Johnson* (EPIC)  
16 (1985) 170 Cal. App. 3d 604, *Laurel Heights Improvement Assn. v. Regents of University of*  
17 *California* (1988) 47 Cal.3d 376; *Bakersfield Citizens for Local Control v. City of Bakersfield*  
18 (2004) 124 CA 4th 1184.

19 100. Cumulative impacts are the incremental effects from multiple projects that combine to  
20 affect the environment. "The cumulative impacts from several projects is the change in the  
21 environment which results from the incremental impact of the project when added to other  
22 closely related past, present, and reasonably foreseeable probable future projects." CEQA  
23 Guidelines § 15355(b). Cumulative impacts are "two or more individual effects which, when  
24 considered together, are considerable or which compound or increase other environmental  
25 impacts ...[they] can result from individually minor but collectively significant projects taking  
26 place over a period of time." CEQA Guidelines § 15355(b); accord EPIC, supra, 170 Cal. App.

1 3d at p. 625. Such incremental effects must be analyzed whether they fall on-site or off-site.  
2 E.g., *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal. App.  
3 4th 1383, 1396.

4 101. The County prejudicially abused its discretion, did not support its MND and its  
5 Amendment approval with substantial evidence, and failed to proceed according to the law in its  
6 failure by, among other things, approving the MND and its Amendment which fails to:  
7 adequately designate thresholds for cumulative impacts, identify past, present, and foreseeable  
8 projects and consider cumulative impacts and identify and analyze incremental impacts, such as  
9 past grading combined with Project grading discharges to water bodies including onsite wetlands  
10 and watercourses; provide any analysis, quantitative or otherwise, of the cumulative impacts  
11 related to past illegal grading on the Property, or reasonably foreseeable future home grading,  
12 construction and introduction of increased impervious surfaces; and disclose related cumulative  
13 impacts to fisheries, wildlife, water quality, hydrology and landslides and land stability and  
14 wildfire hazards.

15 102. In approving the MND and its Amendment, the County prejudicially abused its discretion  
16 in violation of CEQA as more fully described by Petitioners and others in comment letters to the  
17 County. In particular, but without limitation, the County prejudicially abused its discretion by  
18 failing to: lawfully assess the MND and its Amendment's cumulative impacts on watershed  
19 resources, including threatened salmonids and their habitat from increased peak flows and  
20 sedimentation; wetlands; and fails to disclose the existence of past projects within the affected  
21 environment that have had environmental effects with which the environmental effects of the  
22 MND and its Amendment will combine; assess or disclose how the environmental effects of the  
23 MND and its Amendment will combine with the environmental effects of past projects located  
24 within the affected environment; and assess or disclose how the environmental effects of the  
25 MND and its Amendment will combine with the environmental effects of reasonably foreseeable  
26 future projects on the land within the affected environment.

1 103. The MND and Amendment also fail to provide a project description and any related  
2 direct, indirect and cumulative impact discussion of a key project element, construction of a  
3 driveway and turn around serving the existing house. This driveway must be upgraded to meet  
4 County standards, graded and as such will have additional sediment and runoff issues that will  
5 combine with other project impacts to increase sediment load in Redwood Creek.

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

7 104. Petitioners incorporate by reference all the allegations contained in the previous  
8 paragraphs as though fully set forth herein.

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

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

25 107. MND and its Amendment Mitigation Measures rely on future plans that have not been  
26 evaluated as to their feasibility as mitigation for the potential impacts to geology and soils,  
27

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

7 **H. Failure to Respond to Comments**

8 108. Petitioners incorporate by reference all the allegations contained in the previous  
9 paragraphs as though fully set forth herein.

10 109. CEQA requires that the County invite and consider comments on MND and its  
11 Amendments. Pub. Res. Code §§ 21091(d); CEQA Guidelines §§ 15200. the though, did not  
12 respond to or erroneously responded to comments by the National Park Service, California  
13 Department of Fish and Wildlife, Lotic Environmental Services, Ms. Collins, Mr. Brown and  
14 Mr. Brunner and many of the public comments regarding failure of the County technical studies,  
15 MND and Amendment to accurately and fully describe the project and existing conditions, and  
16 environmental impacts. Thus, it is clear the County improperly failed to consider expert technical  
17 and agency expert technical opinions and thus, the MND and its Amendment the County has  
18 failed to prepare an adequate MND.

19 110. Any responses must manifest a good faith, reasoned analysis; conclusory statements  
20 unsupported by factual information will not suffice. CEQA Guidelines §15088. Yet the County  
21 Responses relied on legal compliance, yet failed to enforce its own regulations on project  
22 grading and runoff, grading in a wetland, an illegal fire road and development and runoff in  
23 drainage that effected a County determined Streamside Conservation Area.

24 111. The County prejudicially abused its discretion and failed to proceed according to law and  
25 did not support its MND and its Amendment approval with substantial evidence in that the  
26 Official Response for the MND and its Amendment is inadequate in ways which include, but are  
27

1 not limited to, its failure to provide, evaluate and respond in non-conclusory fashion to the issues  
2 and comments raised during the review process. This failure includes, but is not limited to, the  
3 failure to include and adequately respond to public comments regarding lack of notice,  
4 comments about impacts to salmonids, wetlands, and cumulative impacts, impacts regarding  
5 geology and land hazards, and cumulative impacts of adjacent projects.

6 112. In light of the foregoing violations of CEQA, the County prejudicially abused its  
7 discretion.

8 113. WHEREFORE, Petitioners pray for relief as set forth below.

9  
10 **IV. PRAYER FOR JUDGMENT**

11 By reason of the foregoing, Respondents have violated the California Environmental  
12 Quality Act, the Subdivision Map Act and Code of Civ. Proc. §§1085 and 1094.5 by, the Marin  
13 County Municipal Code and Petitioners' due process rights in approving Dipsea Ranch Land  
14 Division and the related Mitigated Negative Declaration, due to fatal defects described above.

15 WHEREFORE, Petitioners pray for judgment as follows:

16 1. For a Writ of Mandate ordering the County to set aside approval of the Subdivision and  
17 Mitigated Negative Declaration based on the County's violations of California Environmental  
18 Quality Act and regulations set forth therein and the Marin County Municipal Code.

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

24 3. For the all the County's approvals Dipsea Ranch Land Division and the MND and its  
25 Amendment to be set aside.

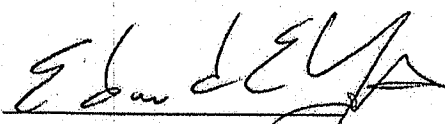
26 4. For reasonable attorneys' fees under Code of Civ. Proc. §1021.5.  
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- 1 5. For costs of suit.
- 2 6. For such other and further relief as this Court deems proper.

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4 DATED: September 26, 2022

5 Respectfully submitted,

6 LAW OFFICES OF EDWARD E. YATES

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10 Edward E. Yates  
11 Attorney for Petitioners

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**VERIFICATION**

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

Marin County Superior Court (Case Number to be assigned)

I, Edward E. Yates, declare as follows:

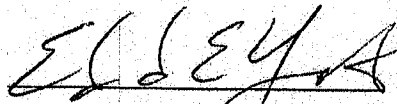
1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. My office is located at 2060 Sutter St., #403, San Francisco, California. I am the attorney of record for the Petitioners in this action.

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

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

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

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed September 26, 2022 at San Francisco, California.



EDWARD E. YATES

Attorney for Petitioners