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7 *Committee for Sound Water and Land Development of Fort Ord*

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF MONTEREY**

10	COMMITTEE FOR SOUND WATER AND)	Case No.:
11	LAND DEVELOPMENT OF FORT ORD)	
12	Petitioner,)	PETITION FOR WRIT OF MANDATE
13	vs.)	(Code of Civ.Proc. Sections 1085 and
14)	1094.5; California Environmental Quality
15	CITY OF SEASIDE, BY AND THROUGH)	Act)
16	THE CITY COUNCIL; FORT ORD REUSE)	
17	AUTHORITY; and DOES I THROUGH XXX))	
18	Respondents.)	
19	KB BAKEWELL SEASIDE VENTURE II, a)	
20	Delaware limited liability company; and)	
21	DOES XXXI-XXXXX, inclusive.)	
22	Real Parties in Interest.)	
23)	
24)	

25 Petitioner, Committee for Sound Water and Land Development of Fort Ord
26 (“Petitioner”) respectfully petitions this Court for a Writ of Mandate pursuant to Code of Civil
27 Procedure sections 1085 and 1094.5, and for a declaration of rights directed at the City of
28 Seaside (“City” or “Seaside”), by and through the City Council, to set aside the Environmental



1 Impact Report (“EIR”) (State Clearinghouse No. 2018021079), prepared for the Campus Town
2 Specific Plan, and to revoke the approval of constructing and operating of up to 1,485 housing
3 units, 250 hotel rooms, 75 youth hostel beds, 150,000 sf of retail, dining, and entertainment uses,
4 and 50,000 sf of office, flex, makerspace, and light industrial space, as well as park/recreational
5 areas (including approximately nine acres of public open space and 3.3 acres of private open
6 space), and supporting infrastructure, on approximately 122.23 acres, through the adoption of the
7 Campus Town Specific Plan and associated entitlements, including Campus Town Specific
8 Plan, Zoning Map and Text Amendments, Use Permit pursuant to Specific Plan Section 4.5,
9 Project Entitlements pursuant to Specific Plan Section 6.2, Vesting Tentative Map(s) and Final
10 Map(s), Development Agreement, Affordable Housing Plan, Improvement Plans, Building
11 Permit, Grading Permit, Tree Removal Permit, and Encroachment Permits (collectively, the
12 “Land Use Approvals” or “Project”). The City’s actions violate State and local land use and
13 environmental laws and amount to a prejudicial abuse of discretion. A writ of mandate and
14 preliminary and permanent injunctions are necessary to remedy the City’s failure to adequately
15 address the Project’s environmental impacts; to ensure that the City complies with all applicable
16 Federal, State, and local laws, and to ensure proper review and disclosure, and mitigation of the
17 potential environmental impacts resulting from the approval and development of the Project
18 pursuant to the California Environmental Quality Act (“CEQA”). By this verified Petition,
19 Petitioner presents:

20 **PARTIES**

21 1. Petitioner is, and at all times mentioned herein was, a California non-profit
22 unincorporated association. Petitioner’s members include residents, voters, property owners, and
23 taxpayers within the City of Seaside. Petitioner’s members are vitally and beneficially interested
24 in the land use decisions made by the City. Petitioner’s representatives, together with other
25 members of the public and various public agencies, participated in the public hearing process and
26 public comment process regarding the Land Use Approvals and the associated Environmental
27 Impact report by submitting written comments on the EIR concerning the Project and also
28 presenting oral and written comments at the City Council meeting on March 5, 2020.

1 Compliance with Title 14, Section 15082(a) of the California Code of Regulations, and
2 concluded that the Project could result in potentially significant environmental impacts and that
3 an EIR would be required.

4 10. The City prepared an EIR for the Project. On or about August 21, 2019 Petitioner
5 submitted a thirty-five page comment letter concerning the draft EIR. The Petitioner's comment
6 letter focused on deficiencies in the EIR and the omission of information and data critical to
7 understand, analyzed, evaluate and mitigation significant environmental impacts. Environmental
8 effects identified by Petitioner as being defective or not complying with the minimum standards
9 required by CEQA included:

10 10.A. The draft EIR did not correlate the Project's adverse air quality impacts to
11 resultant adverse health affects;

12 10.B. The draft EIR did not satisfy Appendix F's requirements regarding the
13 minimum information concerning energy issues that must be included in a legally adequate EIR.

14 10.C. The draft EIR included a defective threshold of significance rendering the
15 draft EIR's evaluation of the Project's GHG effects legally deficient.

16 10.D. The draft EIR's evaluation of the project's direct and indirect impact to
17 global warming was legally deficient.

18 10.E. A conflict with existing plans constituted a significant impact without
19 imposing mitigation measures on the Project.

20 10.F. The draft EIR did not adequately address and mitigation a significant
21 effect of the adequacy of fire protection.

22 10.G. The draft EIR's analysis of the environmental superior alternative was
23 legally deficient.

24 10.H. The draft EIR wrongly omitted studying the indirect physical impact of
25 altering patterns of urban development.

26 10.I. The draft EIR did not adequately document and evaluate project water
27 rights.

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1 10.J. The draft EIR wrongly concluded that water sources other than
2 groundwater are available to MCWD and therefore underprojected potential groundwater
3 impacts.

4 10.K. The draft EIR did not take into account that continued groundwater
5 pumping is unsustainable.

6 10.L. The draft EIR did not take into account that the available water is
7 insufficient to meet the proposed Project's potable water demand or that the proposed water
8 offset program was flawed and unavailable.

9 10.M. The water supply assessment was fatally flawed and the draft EIR relied
10 on paper water rather than a real supply of water.

11 10.N. The draft EIR mitigation measure UTIL-1 was not effective mitigation,
12 the overdraft of the aquifer condition was not sufficiently addressed, and pumping was not
13 sufficiently addressed or evaluated.

14 11. On or about February 12, 2020, the City Planning Commission held a public
15 hearing on the Project.

16 12. Numerous members of the public objected to approving the Project and requested
17 the City undertake additional environmental review including, but not limited to, urban decay,
18 traffic, and water. The Planning Commission recommended approval of the Project and
19 forwarded the Project to the City Council for approval.

20 13. On or about March 5, 2020, the City Council opened a public hearing to consider
21 the EIR and its consideration of the Land Use Approvals.

22 14. Petitioner and others objected to approving the Project and presented substantial
23 evidence showing the Project would have significant environmental impacts not adequately
24 evaluated and/or mitigated in the EIR, including, but not limited to, impacts from or on: (1)
25 energy consumption; (2) air quality related health effects; (3) urban decay; (4) traffic; (5)
26 inadequate water supplies; and (6) the failure to recirculate the EIR.

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1 15. At the close of the public hearing, the City Council voted to certify the EIR and
2 adopt a Resolution approving the Project (including the adoption of the Land Use Applications to
3 allow the construction of the proposed Project).

4 16. The Land Use Approvals were discretionary in nature, requiring mandatory
5 substantive findings. The decision-makers were required to exercise judgment and deliberation
6 in determining whether and how to approve the Project.

7 17. The City Council was presented with substantial evidence that the Project would
8 result in significant environmental effects that had not been adequately studied or mitigated in
9 the EIR.

10 18. Petitioner has exhausted all administrative remedies concerning the Project.
11 Petitioner's representatives and other members of the public objected orally and in writing at the
12 March 5, 2020 City Council hearing, and presented evidence that the Project has the potential to
13 cause significant environmental impacts, and that the environmental review considered for the
14 Project does not satisfy the minimum requirements of CEQA.

15 19. Petitioner and its members have a direct and beneficial interest in the City's full
16 compliance with CEQA, State Planning and Zoning law and all other applicable laws when
17 approving the Project.

18 20. The City has a mandatory and public duty to comply with CEQA, State Planning
19 and Zoning Law, and all other applicable laws when approving the Project.

20 21. Petitioner's claim is ripe for review.

21 22. Petitioner and its members will be directly and substantially affected by the
22 adverse environmental impacts that may result from the Project.

23 23. Petitioner has standing to bring this action as its members include residents,
24 property owners, voters, and taxpayers of the City of Seaside who seek to compel a public duty
25 in the form of Respondent complying with State and local land use and environmental laws.

26 24. Petitioner has complied with the requirements of Pub. Res. Code §21167.5 by
27 mailing written notice of this action to the City. By virtue of the Judicial Council order, binding
28

1 on the parties to this litigation, the statute of limitations to challenge the City actions described in
2 this Petition lapses on September 3, 2020.

3 25. Petitioner has complied with Pub. Res. Code §21167.7 and Code of Civ. Proc.
4 §388 by notifying the Attorney General of California of the commencement of this action.

5 26. Petitioner has a right to enforce the City's mandatory duties under State and local
6 law related to the Land Use Approvals.

7 27. Petitioner does not have a plain, speedy, or adequate remedy in the ordinary
8 course of law.

9 28. A clear and significant benefit will be conferred upon the general public and
10 Petitioner by Respondent fully satisfying the requirements of State and local law prior to
11 certifying the EIR and approving the Land Use Approvals. A clear and significant benefit will
12 be independently conferred upon the general public by the Respondent fully satisfying the
13 requirements of CEQA, State Planning and Zoning Law, and applicable City zoning ordinances
14 and planning documents. In instituting this action, Petitioner seeks to procure enforcement of a
15 mandatory duty. The public of which Petitioner's members are members is vitally and
16 beneficially interested in assuring that the mandate of law is fully satisfied and fulfilled.
17 Granting the relief requested by Petitioner would confer a significant benefit on a large class of
18 persons, in that fundamental rules of law would be affected.

19 29. By the authority of Code of Civil Procedure sections 1085 and 1094.5, and Public
20 Resources Code sections 21168, 21168.5, and 21168.9, this Court has jurisdiction to issue a Writ
21 of Mandate and other appropriate equitable and injunctive relief to set aside the City's approval
22 of the Project and certification of the EIR.

23 30. Venue is proper in this Court because the causes of action alleged in this Petition
24 arose in Monterey County where both the Project Site and the City that approved the Project are
25 located.

26 31. On or about April 15, 2020 Petitioner timely filed written requests with Fort Ord
27 Reuse Authority, a) to receive prior written notice of the City of Seaside submitting a request to
28 the Ford Ord Reuse Authority to consider the consistency with the Project with the Fort Ord

1 Reuse Plan and b) receive prior written notice the Fort Ord Reuse Authority holding a public
2 hearing to consider the request to determine the consistency of the Project with the Fort Ord
3 Reuse Plan. The City of Seaside filed the request identified in the April 15, 2020 with the Fort
4 Ord Reuse Authority on or about April 30, 2020.

5 32. The Fort Ord Reuse Authority did not notify Petitioner when the City of Seaside
6 filed the identified request nor did it notify Petitioner of the public hearing thereby depriving
7 Petitioner of an opportunity to instruct its government leaders and to be heard at the public hearing. By
8 virtue of the Judicial Council order, binding on the parties to this litigation, the statute of
9 limitations to challenge the action of the City described in this Petition lapses on September 3,
10 2020.

11 **FIRST CAUSE OF ACTION**

12 **(The City Committed a Prejudicial Abuse of Discretion by Failing to Recirculate the EIR.)**

13 33. Petitioner realleges and incorporates herein by reference the allegations contained
14 in Paragraphs 1 through 32, above.

15 34. CEQA Guideline section 15088.5 requires a public agency to recirculate an EIR
16 under certain circumstances. Also, CEQA Guideline section 15140 explains that a draft EIR
17 should not exceed one hundred and fifty pages, except for exceptional situations.

18 35. The final EIR, including direct new textual material and new studies, analysis,
19 plans and memorandums to support the direct new textual material, exceeds two thousand three
20 hundred pages. According to CEQA Guideline section 15140 the size of the final EIR is the
21 equivalent of one hundred and fifty-three draft EIRs.

22 36. The final EIR includes new textual material and new documents presenting
23 entirely new theories and analysis regarding the significance of environmental effects. Much of
24 the entirely new theories and analysis are illogical or unsound. This includes but is not limited
25 to, for instance:

26 36.A. The new urban decay report assumes that no new retailers will enter the
27 marketplace but the marketplace will experience substantial population increases and the existing
28

1 population will enjoy increase disposal income that will be spent on static pool of existing local
2 retailers.

3 36.B. The new urban decay report assumes that no retails dollars will be spent
4 on ecommerce transactions even though more than eleven percent of all retails transactions are
5 conducted through ecommerce.

6 36.C. The anticipated vehicular travel by customers making retail purchases
7 conflicts with the assumptions relied upon in the traffic analysis.

8 36.D. The Seven Hundred and Sixteen page revised traffic study did not take
9 into account different patterns of traffic assumed by the new urban decay report. The city further
10 failed to impose a condition the property as identified in the Fehr & Peers traffic report appendix
11 requiring the Project to fund a traffic circle at Lightfighter and 1st Avenue and another at
12 Lightfighter and 2nd at an estimated cost of \$10 million. Members of the public specifically
13 asked why the obligation to totally or partially fund traffic circles at Lightfighter and 1st Avenue
14 and Lightfighter and 2nd Avenue were not imposed by the City; however, the City did disclose
15 the reason or otherwise offer a good faith response to the question.

16 36.E. The One Hundred and Eighty-Three page Green House Gas Reduction
17 Plan and the Ninety-four page Green House Gas Emissions memorandum did not acknowledge
18 the different traffic patterns presented in the new urban decay report.

19 37. The volume of material included in the final EIR evidences the fact the draft EIR
20 was legally deficient.

21 38. It is an abuse of discretion as a matter of law to dispense with recirculating the
22 EIR under these circumstances.

23 **SECOND CAUSE OF ACTION**

24 **(Violation of CEQA: Failure to Adequately Evaluate and Mitigate Energy Impacts)**

25 39. Petitioner realleges and incorporates herein by reference the allegations contained
26 in Paragraphs 1 through 38, above.

27 40. CEQA Guidelines Appendix F states that CEQA “requires that EIRs include a
28 discussion of the potential energy impacts of proposed projects.”

1 41. The City received substantial evidence in the form of written comments and
2 testimony that the EIR failed to perform the requisite analysis of the Project's potential energy
3 impacts.

4 42. The EIR does not disclose the extent to which the Project will create energy
5 impacts.

6 43. The EIR inconsistently states the Project would result in the consumption of large
7 quantities of energy, but also concludes energy consumption impacts are not significant.

8 44. The EIR does not discuss any means or methods of avoiding or reducing
9 inefficient, wasteful and unnecessary consumption of energy from this Project as required by
10 Appendix F.

11 45. The EIR fails to satisfy the minimum requirements of CEQA Guidelines
12 Appendix F, CEQA Guidelines §15126.4(a)(1), and Pub.Res.C. §21100(b)(3).

13 46. The City prejudicially abused its discretion and acted in excess of its jurisdiction
14 by certifying the EIR without first analyzing and/or mitigating the energy impacts of the Project
15 as required by CEQA.

16 **THIRD CAUSE OF ACTION**

17 **(Violation of CEQA: Failure to Adequately Evaluate and Mitigate Public Health Effects** 18 **Caused by Air Quality Impacts and Failed to Make Good Faith Responses to Comments)**

19 47. Petitioner realleges and incorporates herein by reference the allegations contained
20 in Paragraphs 1 through 46, above.

21 48. Health problems caused by a project are recognized environmental effects to be
22 considered in an EIR, including health effects caused by increases in air pollution.

23 49. *Bakersfield Citizens for Local Control v. City of Bakersfield*, (2004) 124 Cal.
24 App. 4th 1184, 1219, states that in discussing and analyzing health problems caused by the
25 physical changes a proposed project will precipitate, an EIR must "correlate the identified
26 adverse air quality impacts to resultant adverse health effects."
27
28

1 50. Seaside failed to correlate the Project's adverse air quality impacts to resulting
2 adverse health effects. The EIR provides no analysis (including correlation or quantification) of
3 the potential increase in respiratory ailments caused by these impacts.

4 51. Seaside received substantial evidence the Project potentially creates significant air
5 quality impacts not adequately addressed or mitigated in the EIR.

6 52. Seaside received substantial evidence in the form of numerous scientific studies
7 demonstrating that adverse health effects can in fact be correlated to increases in air pollution,
8 including, but not limited to the following: (1) C. Arden Pope II, PhD; Richard T. Burnett, PhD;
9 Michael J. Thun, MD; Eugenia E. Calle, PhD; Daniel Kreski, PhD; Kazuhiko Ito, PhD; and
10 George D. Thurston, ScD, entitled Lung Cancer, Cardiopulmonary Mortality, and Long-term
11 Exposure to Fine Particulate Air Pollution, The Journal of the American Medical Association,
12 Vol. 287 No. 9 (March 6, 2002); (2) Janneane F. Gent, PhD; Elizabeth W. Triche, PhD;
13 Theodore R. Holford, PhD; Kathleen Belanger, PhD; Michael Bracken, PhD; William S.
14 Beckett, MD; Brian P. Leaderer, PhD, Association of Low-Level Ozone and Fine Particles with
15 Respiratory Symptoms in Children with Asthma, The Journal of the American Medical
16 Association, Vol. 290 No. 14 (October 8, 2003); and (3) Nino Kunzli, Michael Jerret, Wendy J.
17 Mack, Bernardo Beckerman, Laurie LaBree, Frank Gilliland, Duncan Thomas, John Peters, and
18 Howard N. Hodis, Ambient Air Pollution and Atherosclerosis in Los Angeles, Environmental
19 Health Perspectives, Vol. 113 No. 2 (February 2005).

20 53. In addition the final EIR failed to make good faith responses to this comment.
21 The comment stated the draft EIR did not present an adequate correlation between air pollution
22 and health ailments, thereby omitting relevant information and data. The response to comment
23 stated the draft EIR did not find air pollution to be a significant environmental effect. Yet the
24 draft EIR omitted studying whether the pollution produced by the Project would nevertheless
25 cause significant health problems in the form of cardiovascular and respiratory ailments.

26 54. The City prejudicially abused its discretion and acted in excess of its jurisdiction
27 by approving the Project without first correlating the significant adverse air quality impacts to
28 resulting adverse health effects in approve the Project.

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of CEQA: Urban Decay)**

3 55. Petitioner realleges and incorporates herein by reference the allegations contained
4 in Paragraphs 1 through 54, above.

5 56. Urban decay is a physical change caused by an economic effect and is a
6 recognized environmental effect to be considered in an EIR.

7 57. Seaside did not adequately evaluate or mitigate the Project's potential to cause
8 urban decay in Seaside and surrounding communities.

9 58. The Final EIR identified an Urban Decay Report to support a conclusion that the
10 urban decay environmental impact is less than significant. Yet this Urban Decay Report fails to
11 provide sufficient information and data to support this conclusion and, indeed, omits relevant
12 information and data.

13 59. As a result, the Urban Decay Report fails to analyze the potential urban decay
14 impact in a manner required by law resulting in the omission of relevant data and information.
15 For instance:

16 59.A. The Urban Decay Report assumes that no new retailers will enter the
17 relevant marketplace and overtime this will cause the demand for retail goods and services to
18 equal the availability of these goods and services within the market area. The Urban Decay
19 Report supplies no evidence to support an assumption that retailers will decline to locate or
20 expand within the relevant market area or that an enforceable legal structure exists to prohibit
21 retail business location or expansion issues. This argument was expressly raised at the City
22 Council hearing; however, neither the City nor the developer responded to this argument.

23 59.B. The Urban Decay Report's assumption that disposal income will increase is
24 contradicted by the facts. According to government surveys the amount of disposal income
25 available to middle class families is declining and not growing. This argument and facts were
26 expressly raised at the City Council hearing; however, neither the City nor the developer
27 responded to the argument and facts presented by Petitioner.
28

1 provide a threshold of significance for purpose of evaluating the potential significance of
2 environmental impacts.

3 64. Greenhouse Gas emissions (GHG) are a potential environmental impact that must
4 be evaluated and addressed in order for a public agency to comply with CEQA.

5 65. The threshold of significance presented by the draft EIR was incoherent and
6 legally deficient. The draft EIR, at page 4.7-13 essentially states that the GHG impact is regarded
7 as significant when it is significant. A tautological threshold of significance does not comply
8 with the minimum standards required for a legally adequate threshold of significance under
9 CEQA.

10 66. The City prejudicially abused its discretion and acted in excess of its jurisdiction
11 by certifying the EIR without first adequately analyzing and/or mitigating individual and
12 cumulative traffic impacts from the Project.

13 **SIXTH CAUSE OF ACTION**

14 **(The Evaluation of Direct and Indirect Impacts to Global Warming was Legally Deficient)**

15 67. Petitioner realleges and incorporates herein by reference the allegations contained
16 in Paragraphs 1 through 66, above.

17 68. The EIR failed to discuss multiple mitigation measures identified by Petitioner
18 that could individually and cumulatively lessen the significance of global warming caused by the
19 Project.

20 69. Failing to perform this tasks amounts to an omission of relevant information in an
21 EIR is prejudicial if the failure to include relevant information precludes informed decision-
22 making and informed public participation.

23 70. The EIR's failure to consider these mitigation measures precluded informed
24 decision-making and informed public participation.

25 71. The City prejudicially abused its discretion and acted in excess of its jurisdiction
26 by certifying the EIR without first adequately analyzing and mitigating the impact of global
27 warming from of the Project.

28

1 **SEVENTH CAUSE OF ACTION**

2 **(A Conflict with an Existing Plan is a Significant Impact without Imposing Mitigation)**

3 72. Petitioner realleges and incorporates herein by reference the allegations contained
4 in Paragraphs 1 through 71, above.

5 73. Future development is required to be consistent with and further the objectives of
6 the CSUMB Mater Plan, The Fort Ord Reuse Authority Act and the Seaside General Plan (Other
7 Plans). These plans require future development to provide mix uses as a key element of
8 complying with plan objectives and environmental protection.

9 74. The Project is designed in two phases. Phase One emphasizes non-residential
10 uses and phase two emphasizes residential uses. But the Land Use approvals do not require that
11 the Project builds out in a mix of residential and non-residential as presented in the Other Plans.
12 Instead according to the draft EIR at E-3, the project will not build out according to mixed use
13 objectives but based on “market conditions, birthrates, death rates, immigration rates, availability
14 of resources and regulatory processes”.

15 75. Yet, according to the draft EIR at ES-3, developing mixed land uses reduces
16 environmental impacts caused by excessive “mobility, urban sprawl, excessive commuting and
17 air quality deterioration”.

18 76. The Land Use Approvals do not require the development of the Project with a
19 mixture of residential and non-residential land uses. Instead no legal impediment prevents the
20 Project from building out as exclusively a residential or exclusively as a non-residential project,
21 leaving the other type of land use undeveloped. Without a condition of approval or mitigation
22 measure to assure a mixture of uses will be developed contemporaneously there is no assurance
23 that the Other Plans will not be violated and intention to mitigate environmental impact by
24 implementing the objectives of these Other Plans is satisfied.

25 77. Furthermore, General Plan and Master Infrastructure Plans have been partially
26 implemented and future implementation actions could be impeded or barred by the irrevocable
27 decision to develop this real property and force other real property within the general plan to
28 remain vacant for a longer period of time than assumed in the General Plan or infrastructure

1 assumptions. This would force the City to significantly change growth and infrastructure patterns
2 of development and these changes would produce reasonably foreseeable new or more intense
3 environmental impacts.

4 78. The City abused its discretion and acted in excess of its jurisdiction by certifying
5 the EIR without first adequately analyzing the failure to condition the Project to be consistent
6 with the planning and environmental goals of the Other Plans.

7 **EIGHTH CAUSE OF ACTION**

8 **(Violation of CEQA: Failure to Consider Adequacy of Fire Protection)**

9 79. Petitioner realleges and incorporates herein by reference the allegations contained
10 in Paragraphs 1 through 78, above.

11 80. The Seaside Fire Department has set an EMS and fire response time of five
12 minutes or less for all incidents. Draft EIR at page 4.13.3. The EIR cannot determine whether
13 this standard has been complied with. However, the Project intends to demolish an existing fire
14 station and construct a new fire station of an unidentified size at an undisclosed location at an
15 unknown time. Accordingly the EIR cannot determine whether the response time standard has
16 been achieved.

17 **NINTH CAUSE OF ACTION**

18 **(Failure to Prepare Good Faith Responses to Comments)**

19 81. Petitioner realleges and incorporates herein by reference the allegations contained
20 in Paragraphs 1 through 80, above.

21 82. CEQA requires a lead agency to evaluate comments on the draft EIR and prepare
22 a written response to any significant environmental issues. Written responses must be detailed
23 and provide a good faith, reasoned analysis. The City failed to provide adequate written
24 responses to several of the comments submitted in response to the Project's EIR.

25 83. For purposes of providing one example of the final EIR not providing a good faith
26 reasoned response to comments, Petitioner commented that the draft EIR failed to correlate the
27 relationship between increased air pollution and increased incidents of cardiovascular and
28 respiratory ailments. The response to comments was not responsive. It merely stated that the

1 draft EIR concluded that air pollution was not a significant effect. Yet the threshold for air
2 pollution could conclude that air pollution was not significant while still determining that the
3 amount of air pollution emitted could be responsible for a significant number of health ailments.
4 This is both a failure to comment in good faith and a material omission of relevant data and
5 information.

6 84. As the example provided in the previous paragraph illustrates, the City did not
7 make good faith response to comments submitted by Petitioner, other members of the public and
8 public agencies.

9 85. The City abused its discretion and acted in excess of its jurisdiction by certifying
10 the Amended EIR without first providing detailed and reasoned responses to comments on the
11 Initial EIR.

12 **TENTH CAUSE OF ACTION**

13 **(The EIR Did Not Comply with the Requirements of CEQA When Evaluating the Project's**
14 **Impact to Water)**

15 86. Petitioner realleges and incorporates herein by reference the allegations contained
16 in Paragraphs 1 through 85, above.

17 87. The Marina Coast Water District (MCWD) serves the proposed area. The
18 MCWD's exclusive source of water is groundwater from the Salinas Valley Groundwater Basin,
19 a basin that has experienced overdraft for many years.

20 88. MCWD is considered a junior to correlative right holders because it does not own
21 land within the basin. Indeed, MCWD acknowledges it can only make a general determination of
22 its priority to groundwater. Thus, MCWD has no documented groundwater right to serve the
23 proposed project. Furthermore, any prescriptive rights held by MCWD or assigned to MCWD by
24 Fort Ord have not been adjudicated and secured.

25 89. Moreover, the MCWD claim of reclaimed water and desalinated water is illusory.
26 While a desalination plant may have been permitted, MCWD cannot point to any source of water
27 to operate this plant.

28

1 90. Salt water intrusion is requiring the MCWD to increase the amount of water
2 pumped from the lower aquifer. The EIR does not address the impact to the upper aquifer from
3 MCWD's additional pumping of the upper aquifer and the contribution of this activity to salt
4 water intrusion. At the same time the Monterey County Resource Agency scientists recommend
5 a moratorium on new wells constructed for pumping the lower aquifer. The EIR does not
6 adequately analyze the environmental impacts to aquifer conditions from additional pumping to
7 satisfy water supply demands of the Project. Nor did the EIR consider and evaluate whether the
8 Project's water demand would prevent MCWD from complying with the FORA
9 water/wastewater facilities agreement whereby the right to pump is limited and MCWD must
10 find replacement water for water supplies obtained by pumping. The EIR must summarize and
11 discuss whether continued pumping to supply water to the Project impedes MCWD's ability to
12 substitute other sources of water for water obtained by pumping.

13 91. In 2018 the MCWD adopted a water supply assessment concluding the district
14 had insufficient water supplies to the projected annual demand for existing, previously approved
15 projects and the proposed Project. The Project adds 487.4 acre feet per year of demand to the
16 District's service area. The Seaside existing allocation of water has only 186.3 acre feet per year
17 of allocated but uncommitted water.

18 92. In 2019 the City prepared an updated water assessment. This assessment
19 determined several potential plans could take the form of several in-lieu potable water supplies to
20 reduce the water supply deficit. Yet the potable water supplies were allocated to other entitled
21 projects and provides no legal or engineering basis to support this reallocation of a water right.

22 93. Mitigation measure UTIL-1 identifies three previously approved projects that
23 would be subject to an offset program. However, this proposal is not implemented nor does the
24 mitigation monitoring program require the offset program be imposed on these other previously
25 approved projects. Mitigation Measure UTIL-1 is not an effective mitigation measure. It merely
26 seeks to redistribute a limited amount of previously allocated potable water from existing
27 projects to this Project.

28

1 100. Pursuant to FORA’s Capital Improvement Program (CIP) for Fiscal Year 2019-20
2 through 2028-29, there are 4,665 new residential units entitled, leaving a remaining capacity of
3 1,495 new residential units.

4 101. The Project proposes up to 1485 new residential units, leaving only ten available
5 units under FORA’s New Residential Unit Limit. Consequently, the number of available
6 development permits for housing within the former Fort Ord area would be virtually wiped out if
7 these units are entitled and found consistent with the FORA’s Base Reuse Plan.

8 102. Because the Project would exhaust practically all of the available residential
9 development permits in the former Fort Ord, the amount of growth within the City and the region
10 within the former Fort Ord is thereby limited. As a result, certain other development projects in
11 the City and elsewhere will be unable to proceed.

12 103. As for the general region, by preventing other projects from proceeding, the
13 Project herein has the effect of substantially altering the pattern of urban development in the
14 surrounding region. This effect is inconsistent with and conflicts with the land use and
15 infrastructure plans of these other communities. In Seaside and other cities surrounding the
16 former Fort Ord, General and Master Infrastructure Plans have been partially implemented and
17 future implementation actions could be impeded or barred by the irrevocable decision to develop
18 this real property and force other real property within their respective General Plan areas to
19 remain vacant for a longer period of time than assumed in these General Plans or General Plan
20 EIRs. Seaside and other communities have adopted General Land Use Plans and Master
21 Infrastructure Plans that are partially built out but now will be delayed or never completed
22 because the Project has obtained a right to secure building permit rights that otherwise would be
23 allocated amongst the various cities in conformity with each city’s General Plan and Master
24 Infrastructure Plan.

25 104. As for Seaside, this result effectively amends the City’s General Plan to re-
26 designate the areas that have been designated for development to essentially open space or some
27 other equivalent designation with no development potential, without complying with the legal
28 requirements for amending a General Plan. Stated slightly differently, it prevents Seaside from

1 implementing its General Plan and Master Infrastructure Plan because no uncommitted building
2 permit allocations remain for other undeveloped or vacant real property designated for
3 development during the applicable general plan period.

4 105. General Plan land use assumptions and the Master Infrastructure Plan
5 assumptions are also affected, forcing Seaside and other affected cities to significantly change
6 growth and infrastructure patterns and plans. Such changes would produce reasonably
7 foreseeable new or more intensive environmental effects from less efficient development
8 patterns, more GHG emissions, more vehicular miles traveled, more air pollution, and more
9 energy consumption.

10 106. The different environmental effects produced by altering patterns of urban
11 development assumed by the General Plan and General Plan's environmental impact report was
12 not addressed in the EIR. Further, the effect of altering the pattern of urban development in the
13 cities in and around the former Fort Ord also was not analyzed in the EIR. Its failure to do so
14 constitutes a failure to proceed in a manner required by law.

15 **TWELFTH CAUSE OF ACTION**

16 **(Failure to Provide Required Notice/Due Process)**

17 107. Petitioner realleges and incorporates herein by reference the allegations contained
18 in Paragraphs 1 through 106 above.

19 108. Failing to provide Petitioner with the requested notice when the City of Seaside
20 submitting a request for a consistency finding and failing to provide Petitioner with notice of the
21 Fort Ord Reuse Authority public hearing to consider the consistency of the Project to the Fort
22 Ord Reuse Plan deprived Petitioner of its right to instruct its public officials and the opportunity
23 to be heard.

24 109. Statutes illustrating this policy favoring public participation include but are not
25 limited to Government Code Section 11346.1, 11346.4, 11346.8, 23207,25333, 36933, 57025,
26 56157, 56160, 56427,56654, 56661(d0, 56157(3), 56824.14, 57002, 58855, 58857, 58906, 589-
27 7, 65945, 66018, and 66019.

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1 110. Failing to provide the requested notice in a timely manner deprived Petitioner of
2 its Due Process.

3 111. Failing to provide Petitioner with the requested notice deprived Petitioner of the
4 right to petition and instruct its government in violation of Federal and State Constitutional
5 rights.

6 112. Failing to provide Petitioner with the requested notice Fort Ord Reuse Authority
7 deprived Petitioner of the ability to conduct a fair hearing in that vitally interested members of
8 the public were prevented from participating in the public hearing process.

9 113. The Fort Ord Reuse Authority committed a prejudicial abuse of discretion as a
10 matter of law by proceeding with conducting and deciding the Project's consistency with the Fort
11 Ord Reuse Plan in an instance where the Project's Environmental Impact Report was legally
12 deficient.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner prays as follows:

- 15 1. That this Court issue a peremptory writ of mandate:
- 16 a. Commanding the City to immediately set aside its approval of the Land Use
17 Approvals;
- 18 b. Commanding the City to immediately suspend all activities in furtherance of
19 the Land Use Approvals, including but not limited to issuing grading permits, building permits,
20 certificates of occupancy and engaging in any construction in furtherance of the development of
21 the Project;
- 22 c. Commanding the City to set aside the certification of the EIR and to prepare a
23 revised EIR for the Project and otherwise comply with CEQA and State Planning and Zoning
24 Law in any subsequent action taken to approve the Project;
- 25 d. Command the Fort Ord Reuse Authority or its successor in interest to set aside
26 that certain determination that the Campus Town project is consistent with the Fort Ord Reuse
27 Plan.
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2. For a preliminary restraining order and preliminary and permanent injunctive or stay relief restraining the City and Real Parties in Interest from taking any action to carry out the Project pending the outcome of this litigation;


3. For a declaration that the Project was unlawfully approved in violation of CEQA, State Planning and Zoning Law, the Tracy General Plan, the Tracy Zoning Code, and/or any other applicable laws and regulations;

4. That Petitioner be awarded the cost incurred in bringing this action, and reasonable attorney fees pursuant to Code of Civil Procedure 1021.5, the “common benefit” theory, Government Code section 800, or as otherwise provided by law or equity;

5. That the Court grant such other and further relief as may be equitable and just.

DATED: September 1, 2020

HERUM/CRABTREE/SUNTAG
A California Professional Corporation

By: 
Steven A. Herum

Attorneys for Petitioner COMMITTEE FOR
SOUND WATER AND LAND
DEVELOPMENT OF FORT ORD



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VERIFICATION

I, Steven A. Herum, verify:

I am one of the Attorneys of Record on whose behalf the foregoing Petition for Writ of Mandate is verified. I have read it and know the content thereof. I am informed and believe the matters therein to be true and on that ground allege the matters stated therein are true. I make this Verification because the party I represent is absent from the County of San Joaquin where I have my office.

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

Executed at Stockton, California on September 1, 2020.


STEVEN A. HERUM