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FILED
SAN MATEO COUNTY

JUL 10 2013

Clerk of the Superior Court
By  DEPUTY CLERK

8 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN MATEO

10 PETER LOEB, an individual,)

11 Plaintiff,)

12 v.)

13)
14 CITY OF PACIFICA, CALIFORNIA, and)
15 DOES I through X, inclusive,)

16 Defendants.)
17)
18)

Case No.: **CIV 522741**

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Cal. Code of Civil Procedure §§1060
and 526a)

19
20
21 INTRODUCTION

22 1. Plaintiff PETER LOEB brings this suit to prevent an ill-conceived, inadequately
23 studied, and environmentally-damaging highway construction project from being built in the
24 City of Pacifica.
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1 2. Highway 1 extends the length of the Pacific coast of the United States and is
2 iconic for its beautiful views and its relationship to the coast. The proposed construction project
3 would widen Highway 1 and would extend for about 1.3 miles while more than doubling the
4 width of the existing highway.

5 3. The project would be partially located in the California Coastal Zone which is
6 famed for its scenic beauty.

7 4. The project has been designed without regard for the General Plan of the City of
8 Pacifica or the Local Coastal Plan of the City which were prepared based on considerable public
9 input and discussion. The Local Coastal Plan of the City has for the most part been certified by
10 the California Coastal Commission as consistent with the Coastal Act.
11

12 **General Plans**

13 5. California cities are required by state law to create general plans which are
14 “comprehensive, longterm general plan[s] for the physical development of the county or city . .
15 .” Government Code §65300. All decisions involving land use must be consistent with the
16 applicable general plan. “The general plan has been aptly described as the 'constitution for all
17 future developments' within the city or county. . . . [T]he propriety of virtually any local
18 decision affecting land use and development depends upon consistency with the applicable
19 general plan and its elements.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.
20 3d 553, 570 [citations omitted].
21

22 **Local Coastal Plans**

23 6. The court in *Yost v Thomas* (1984) 36 Cal. 3d 561, 565-567 summarized the
24 significance of the California Coastal Act as follows: “The Coastal Act of 1976 (Pub. Resources
25 Code, § 30000 et seq.) was enacted by the Legislature as a comprehensive scheme to govern

1 land use planning for the entire coastal zone of California. The Legislature found that 'the
2 California coastal zone is a distinct and valuable natural resource of vital and enduring interest to
3 all the people'; that 'the permanent protection of the state's natural and scenic resources is a
4 paramount concern'; that 'it is necessary to protect the ecological balance of the coastal zone' and
5 that 'existing developed uses, and future developments that are carefully planned and developed
6 consistent with the policies of this division, are essential to the economic and social well-being
7 of the people of this state' (§ 30001, subds. (a) and (d)).”

8
9 7. The *Yost v Thomas* court also explained the roles of the state Coastal Commission
10 and local government in implementing the Coastal Act. “A combination of local land use
11 planning procedures and enforcement to achieve maximum responsiveness to local conditions,
12 accountability, and public accessibility, as well as continued state coastal planning and
13 management through a state coastal commission are relied upon to insure conformity with the
14 provisions of the act (§ 30004, subds. (a) and (b)). Therefore, all local governments lying in
15 whole or in part within the coastal zone had to prepare and submit to the Commission a local
16 coastal plan (LCP) (§ 30500, subd. (a)). The LCP consists of a local government's '(a) land use
17 plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources
18 areas, other implementing actions, . . .' (§30108.6.) The precise content of each LCP is
19 determined by the local government in full consultation with the Commission (§ 30500, subd.
20 (c)) and must meet the requirements of, and implement the provisions and policies of [the act] at
21 the local level (§ 30108.6).”

22
23 8. A Local Coastal Plan is part of a General Plan and is vested with the same
24 “constitutional” authority as the General Plan. *Citizens of Goleta Valley v. Board of Supervisors*
25 (1990) 52 Cal.3d 553.

1 9. To determine whether a proposed project is consistent with the Coastal Act,
2 special consideration must be given to protection of significant coastal resources. The Coastal
3 Act states, "The Legislature further finds and recognizes that conflicts may occur between one or
4 more policies of the division. The Legislature therefore declares that in carrying out the
5 provisions of this division such conflicts be resolved in a manner which on balance is the most
6 protective of significant coastal resources. In this context, the Legislature declares that broader
7 policies which, for example, serve to concentrate development in close proximity to urban and
8 employment centers may be more protective, overall, than specific wildlife habitat and other
9 similar resource policies." Public Resources Code §30007.5.

10
11 **Environmental Impact Report**

12 10. A Draft Environmental Impact Report and Environmental Assessment
13 (hereinafter DEIR or DEIR/EA) has been prepared for the project. The title is "State Route
14 1/Calera Parkway/Highway 1 Widening Project (from South of Fassler Avenue to North of
15 Reina Del Mar Avenue in the City of Pacifica) San Mateo County, California 04-SM-1 PM
16 41.7/43.0 EA 04-254600 Project ID: 040000071. DRAFT ENVIRONMENTAL IMPACT
17 REPORT/ENVIRONMENTAL ASSESSMENT/State Clearinghouse Number 2010022042."
18 The DEIR/EA is dated August 2011 and includes a description of the project.

19 11. The DEIR/EA describes the project as follows: "The California Department of
20 Transportation ("Department" or "Caltrans"), in conjunction with the San Mateo County
21 Transportation Authority (SMCTA) and the City of Pacifica, proposes to widen Highway 1/State
22 Route 1/Calera Parkway (hereinafter referred to as "SR 1") in the city of Pacifica from four lanes
23 to six lanes through the project limits."

24
25 **JURISDICTION AND VENUE**

1 12. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
2 §1060 and Code of Civil Procedure §526a.

3 13. Venue is proper in this Court pursuant to Code of Civil Procedure §394.
4

5 **PARTIES**

6 14. Plaintiff PETER LOEB is a resident of Pacifica and lives near where the project
7 would be built. He travels on Highway 1 where the project would be built practically every day.

8 15. Defendant CITY OF PACIFICA is a general law city located in San Mateo
9 County on the coast south of San Francisco.

10 16. The true names and capacities, whether individual, corporate, or otherwise, of
11 fictitiously named Defendants DOES I through X sued herein are unknown to Plaintiff. Plaintiff
12 will amend this Complaint for Declaratory and Injunctive Relief to set forth the true names and
13 capacities of said Doe parties when they have been ascertained. Plaintiff alleges that Doe parties
14 I through X are at fault for the violations alleged herein.

15 **STATEMENT OF FACTS**

16 **The Pacifica General Plan**

17 17. The majority of the General Plan of Pacifica is dated 1980. Pacifica has been
18 discussing amending the 1980 General Plan and has amended parts of it, but much of the 1980
19 General Plan remains unchanged.

20 18. According to the General Plan, "Citizen participation was an integral part of the
21 development of the 1980 Pacifica General Plan. Three public workshops, a series of public
22 forums and joint Planning Commission-City Council study sessions were held. In addition, at
23 least two meetings were held with each of eleven neighborhood groups. From this widespread
24 participation evolved the first draft of the Plan which was reviewed by the Planning Commission
25

1 and City Council." General Plan p. 2.

2 **The Pacifica Local Coastal Land Use Plan**

3 19. The original Pacifica Local Coastal Land Use Plan (hereinafter LCLUP or LUP)
4 is dated March 24, 1980 and has been amended since that time.

5 20. The LCLUP document describes its development as follows: "Through the Local
6 Coastal Land Use Plan, the City of Pacifica brings its land use planning into conformance with
7 the California Coastal Act of 1976. The Local Coastal Land Use Plan will serve as a land use
8 plan for the City of Pacifica's coastal zone and will be the basis for the Local Coastal
9 Implementation Program. An Implementation Plan, including a permit issuing procedure, zoning
10 ordinance revisions and other implementation programs, will be prepared and submitted to the
11 Regional and State Coastal Commissions." LCLUP p. C-1.

12 21. The document also explains the extent of public involvement with its preparation.
13 "Broad-based citizen participation was an integral part of the development of Pacifica's local
14 Coastal land Use Plan. A public workshop, a series of public forums and joint Planning
15 Commission-City Council study sessions were held. In addition, at least two meetings were held
16 with each of eleven neighborhood groups. From this widespread participation evolved the first
17 draft of the Local Coastal land Use Plan which was reviewed by the Planning Commission and
18 City Council." LCLUP p. C-3.

19 22. There have been amendments to the LCLUP since 1980; however, much of the
20 document has not been changed to date. The California Coastal Commission has certified the
21 1980 LCLUP and certain amendments to it.

22 **The Calera Parkway Project**

23 23. There are presently two alternative versions of the project under consideration by
24
25

1 Caltrans and the City of Pacifica. They are called "Build Alternatives" and both are quite similar
2 to each other. They both meet the following general description:

3 "The California Department of Transportation ("Department" or "Caltrans"), in conjunction with
4 the San Mateo County Transportation Authority (SMCTA) and the City of Pacifica, proposes to
5 widen Highway 1/State Route 1/Calera Parkway (hereinafter referred to as "SR 1") in the city of
6 Pacifica from four lanes to six lanes through the project limits. The portion of SR 1 proposed for
7 widening is located between 400 feet and 3,200 feet east of the Pacific Ocean within the city of
8 Pacifica and extends from approximately 1,500 feet south of Fassler Avenue to approximately
9 2,300 feet north of Reina Del Mar Avenue, a distance of approximately 1.3 miles." DEIR/EA p.

10
11 i.

12 24. The two "Build Alternatives" are a "Narrow Median Build Alternative," and a
13 "Landscaped Median Build Alternative." DEIR/EA p. 8. The City and Caltrans have not decided
14 which of the two alternatives to pursue. The two Build Alternatives are known as the Calera
15 Parkway project or the project.

16 25. The City has not acknowledged that the Calera Parkway project is inconsistent
17 with the Pacifica General Plan or the Pacifica Local Coastal Land Use Plan nor has the City
18 attempted to remedy such inconsistencies.

19 26. The DEIR/EA states that the project is consistent with the Pacifica General Plan.
20 DEIR/EA p. 46. However this is not correct, and this failure to correctly recognize the
21 relationship between the project on the one hand and the Pacifica General Plan and Local Coastal
22 Land Use Plan on the other is a fundamental flaw in the project.

23
24 27. The LCLUP explains that Highway 1 is the only north-south arterial roadway in
25 Pacifica. In the northern part of Pacifica, Highway 1 is a freeway while in the southern part of

1 Pacifica it is not a freeway, it is an arterial roadway. The LCLUP further explains that in 1980
2 when the LCLUP was originally written, improvements to the arterial section were under
3 consideration. LCLUP p. C-112. "The southern portion of the roadway is a substandard four-
4 lane arterial with unlimited access. In their coastal corridor study, ABAG and MTC proposed
5 that safety and operational improvements be made to the arterial portion of Highway 1 in
6 Pacifica. These improvements would include such things as safety improvements to
7 intersections, widening the shoulders and moving lanes, providing a median strip , signalization
8 and turning lanes. The intention of these improvements is not to increase the capacity of the
9 roadway." LCLUP p. C-112, emphasis added. This statement is from the 1980 LCLUP and
10 remains in the LCLUP today. However, now, over 30 years later, these improvements have not
11 been made. Instead the City and Caltrans are proposing the Calera Parkway project which is
12 dramatically different from the improvements contemplated by the General Plan and the LCLUP.

13
14 28. The project is inconsistent with the General Plan and the LCLUP in a variety of
15 ways. Some of the inconsistencies involve the whole project while some are specific to
16 particular Pacifica neighborhoods. Those inconsistencies affecting the whole project will be
17 discussed first.

18 **Inconsistencies - Whole Project**

19 29. The project would widen Highway 1 as it passes through two neighborhoods
20 which are identified in the General Plan and the LCLUP as 1) the Sharp Park Municipal Golf
21 Course-West Fairway Park-Mori Point- Rockaway Beach neighborhood and 2) the East Fairway
22 Park- Vallemar-Rockaway neighborhood.

23
24 30. The General Plan and the Local Coastal Land Use Plan both state that
25 improvements to Highway 1 in the vicinity of the Sharp Park Municipal Golf Course-West

1 Fairway Park-Mori Point- Rockaway Beach neighborhood and the East Fairway Park- Vallemar-
2 Rockaway neighborhood will not increase the capacity of the highway. However, the Calera
3 Parkway project is specifically designed and intended to increase the capacity of the highway.

4 31. As another example of the dramatic difference between the highway
5 improvements contemplated by the General Plan and the LCLUP on the one hand and the Calera
6 Parkway project on the other, the General Plan and the LCLUP provide for a frontage road to be
7 built to the west of Highway 1 connecting Francisco-Bradford Way in Fairway Park to Old
8 County Road in West Rockaway. This proposed frontage road would run through the Sharp Park
9 Municipal Golf Course-West Fairway Park-Mori Point- Rockaway Beach neighborhood.
10 However, the Calera Parkway project does not include a frontage road, and the project is clearly
11 intended to be built instead of such a frontage road.
12

13 32. As yet another example of inconsistencies the General Plan and LCLUP discuss
14 Pacifica's north-south pedestrian-bicycle pathway and state that the pathway should be placed on
15 the frontage road. However, the Calera Parkway project includes locating the pathway on Calera
16 Parkway.

17 33. As another example of the dramatic difference between the improvements
18 contemplated by the General Plan and the LCLUP on the one hand and the Calera Parkway
19 project on the other, the General Plan and the Local Coastal Land Use Plan provide for a
20 frontage road to be built to the east of Highway 1. However, the Calera Parkway project does not
21 include such a frontage road, and the project is clearly intended to be built instead of such a
22 frontage road.
23

24 **Inconsistencies by Neighborhood Areas**

25 34. Within certain areas of the two affected neighborhoods the Calera Parkway

1 project is inconsistent with the General Plan and LCLUP in different ways depending on the area
2 of the neighborhood.

3 **West Fairway Park and the North Slopes of Mori Point**

4 35. The General Plan and the LCLUP identify an area as the West Fairway Park and
5 the North Slopes of Mori Point (hereinafter "WFPNSMP") area which is part of the Sharp Park
6 Municipal Golf Course-West Fairway Park-Mori Point- Rockaway Beach neighborhood.

7 36. The WFPNSMP area is designated in the General Plan and the LCLUP as a
8 Special Area.

9 37. Because of its designation as a Special Area the WFPNSMP area must be planned
10 and developed as a unit. Before there can be any development in a Special Area a comprehensive
11 plan for developing the site must be approved.

12 38. The Calera Parkway project would include development of parts of the
13 WFPNSMP area. However, the Calera Parkway project is not planned for development with the
14 rest of the Special Area as a unit. There is no comprehensive plan for developing the site.

15 39. Because of its designation as a Special Area, before there is any development in
16 the WFPNSMP area there must be an Environmental Impact Report for the entire site.

17 40. Caltrans and the City of Pacifica have not prepared and are not preparing an
18 Environmental Impact Report for the entire WFPNSMP site.

19 **Mori Point**

20 41. The General Plan and the LCLUP identify an area as Mori Point which is a part of
21 the Sharp Park Municipal Golf Course-West Fairway Park-Mori Point- Rockaway Beach
22 neighborhood.

23 42. The Mori Point area is designated in the General Plan and the LCLUP as a
24
25

1 Special Area.

2 43. Because of its designation as a Special Area the Mori Point area must be planned
3 and developed as a unit. Before there can be any development in a Special Area a comprehensive
4 plan for developing the site must be approved.

5 44. The Calera Parkway project would include development of parts of the Mori Point
6 area. However, the Calera Parkway project is not planned for development with the rest of the
7 Special Area as a unit. There is no comprehensive plan for developing the site.

8 45. Because of its designation as a Special Area, before there is any development in
9 the Mori Point area there must be an Environmental Impact Report for the entire site.

10 46. Caltrans and the City of Pacifica have not prepared and are not preparing an
11 Environmental Impact Report for the entire Mori Point site.

12
13 **Rockaway Beach**

14 47. The Rockaway Beach area is part of the Sharp Park Municipal Golf Course-West
15 Fairway Park-Mori Point- Rockaway Beach neighborhood. The Calera Parkway project would
16 develop part of the Rockaway Beach area. The LCLUP calls for development of the Rockaway
17 Beach area to be as described in a Specific Plan for the area, and the Specific Plan identifies part
18 of the area as Open Space/Recreation. However, the Calera Parkway project would locate the
19 roadway in an area designated as Open Space/Recreation.

20 48. Furthermore, the Specific Plan calls for part of San Marlo Way adjacent to
21 Highway 1 to be abandoned. However, the Calera Parkway Project includes constructing an
22 interconnection between Highway 1 and San Marlo Way where the Specific Plan calls for
23 abandonment of San Marlo Way.

24
25 **East Fairway Park-Valleamar-Rockaway neighborhood**

1 49. The East Fairway Park-Valleamar-Rockaway neighborhood is immediately to the
2 east of the Calera Parkway project. Part of this neighborhood is not in the coastal zone.

3 50. The General Plan for this neighborhood includes the following statement: "On the
4 east side of Highway 1, between the Valleamar and Rockaway Valleys, there is a flat parcel
5 backed by a steeper slope with highway frontage. The future widening of Highway 1 in this area
6 may have some impact on the amount of land available for development. A frontage road
7 between Rockaway and Valleamar is planned, however, the timing for the anticipated
8 improvements is not certain." General Plan p. 43. However, the Calera Parkway project does not
9 include this frontage road, and the Calera Parkway project is clearly intended to be built instead
10 of such a frontage road.
11

12 51. Included in the East Fairway Park-Valleamar-Rockaway neighborhood is an 11-
13 acre area called Shell Dance in the LCLUP, and the area is in the Coastal Zone. It is described in
14 the General Plan as follows: "The roadway on the ridge between East Fairway Park and
15 Valleamar presents a particular access problem at Highway 1. Because of high traffic volumes,
16 limited capacity, and the characters [sic] of the existing four-lane road, CalTrans is reluctant to
17 permit additional access to Highway 1. Several possible alternatives should receive detailed
18 study before an intersection decision is made." General Plan p. 45. However, contrary to this
19 requirement in the General Plan the planning for the Calera Parkway project has not included
20 study of possible alternatives for this intersection, and in some designs for the Calera Parkway
21 project no access is indicated.
22

23 52. There is presently no local coastal land use plan for the Shell Dance area. It is a
24 logical impossibility for the Calera Parkway project to be consistent with a nonexistent local
25 coastal land use plan. In other words, the project is inconsistent.

1 **City Actions Supporting and Advancing the Project**

2 53. The City has taken a number of actions in support of and as part of the project,
3 and it is apparent that the City is planning to take further such actions. Examples of such actions
4 are the following. The City is a sponsor of the project and the City Engineer, representing the
5 City, is a member of the Project Development Team for the project. Moreover, the City proposes
6 to build the project, along with other government agencies. Furthermore, on June 25, 2012 the
7 City Council adopted two resolutions intended to support and advance the project, one
8 authorizing City staff to nominate the project to the San Mateo County Transportation Authority
9 and the other identifying the City's preferred alternative.
10

11 54. Plaintiff is informed and believes and on that basis alleges that unless restrained
12 the City is intending to take further actions in support of and advancing the Calera Parkway
13 project.

14 55. Plaintiff sent a letter dated June 4, 2013 to the Pacifica City Council discussing
15 inconsistencies between the Calera Parkway project and the Pacifica General Plan and LCLUP
16 and asking them to provide Plaintiff their assurance that they would immediately cease all
17 actions concerning the project. However, the City Council has not responded to Plaintiff's letter.
18

19 56. Plaintiff is informed and believes and based thereon makes the following
20 allegations in this paragraph. Caltrans is the lead agency for the project under the California
21 Environmental Quality Act and as such will decide whether to certify the Draft Environmental
22 Impact Report so that it becomes a Final Environmental Impact Report for the project. After the
23 Final Environmental Impact Report has been certified the City will decide whether to request
24 funding from the San Mateo County Transportation Authority to enable Caltrans and the City to
25 complete the final design of the project. Caltrans and the City plan for construction of the

1 project to begin as early as 2014.

2 **FIRST CAUSE OF ACTION**
3 **(Declaratory and Injunctive Relief - Inconsistency with**
4 **the Pacifica General Plan)**

5 57. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained
6 in the preceding paragraphs.

7 58. The Calera Parkway Project is inconsistent with the Pacifica General Plan.

8 59. Due to inconsistency between the Calera Parkway Project and the Pacifica
9 General Plan all actions which the City of Pacifica has taken as part of or in support of the
10 project are void.

11 60. Due to inconsistency between the Calera Parkway Project and the Pacifica
12 General Plan the City of Pacifica must be prohibited from taking any further actions concerning
13 or related to the Calera Parkway project.

14 61. There is a present and actual controversy between Plaintiff and Defendant as to
15 the inconsistency of the Calera Parkway project with the Pacifica General Plan.

16 62. Plaintiff desires a judicial determination of the rights and obligations of the
17 respective parties concerning the allegations in this Complaint.
18

19 **SECOND CAUSE OF ACTION**
20 **(Declaratory and Injunctive Relief - Inconsistency with**
21 **the Pacifica Local Coastal Land Use Plan)**

22 63. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained
23 in the preceding paragraphs.

24 64. The Calera Parkway Project is inconsistent with the Pacifica Local Coastal Land
25 Use Plan.

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DATED: July 7, 2013

Respectfully Submitted,



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VERIFICATION

I, PETER LOEB, am the Plaintiff in this action and I hereby declare:

The facts alleged in the above Complaint for Declaratory and Injunctive Relief are true to my personal knowledge and belief, with the exception of allegations made on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on this 9th day of July, 2013 at Pacifica, California.


Peter Loeb