

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

CITY OF FULLERTON, CITY COUNCIL OF THE CITY OF  
FULLERTON, AND DOES 1 through 10

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PACIFIC COAST HOMES, a California corporation

RECEIVED

AUG 23 2010

HUMAN RESOURCES

CITY CLERK AUG23 10 PM 3 SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

AUG 23 2010

ALAN CARLSON, Clerk of the Court

BY B. LEA, DEPUTY

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Orange County Superior Court

Central Justice Center

700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER: **30-2010**  
(Número del Caso):

**JUDGE KAZUHARU MAKINO**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

RONALD E. VAN BUSKIRK, 50 Fremont St., 5th Floor, San Francisco, CA 94105 (415) 983-1000

DATE: **AUG 23 2010**  
(Fecha)

**ALAN CARLSON**  
Clerk, by  
(Secretario)

**BRITTNEY LEA**

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): City of Fullerton  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☒ other (specify): CCP 416.50 (Public Entity)
4. ☒ by personal delivery on (date): August 23, 2010



FILE COMPLETED FORM BY MAIL OR IN PERSON AT:

CITY OF FULLERTON  
City Clerk's Office  
303 W. Commonwealth Avenue  
Fullerton, CA 92832

OFFICE USE ONLY  
RESERVE FOR FILING STAMP

## CLAIM FOR DAMAGES TO PERSON OR PROPERTY

CLAIM NO. \_\_\_\_\_

### INSTRUCTIONS

1. Claim for death, injury to person or to personal property must be filed no later than six months after the occurrence (Gov. Code Sec. 911.2).
2. Claims for damages to real property must be filed no later than 1 year after the occurrence (Gov. Code Sec. 911.2).
3. Read entire claim form before filing.
4. See page 2 for diagram upon which to depict location of accident.
5. **THIS CLAIM FORM MUST BE SIGNED AND DATED ON PAGE 2 AT BOTTOM.**
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.

TO: CITY OF FULLERTON	Date of Birth of Claimant
Name of Claimant Pacific Coast Homes, a California corporation	Occupation of Claimant Real Estate
Home Address of Claimant City, State & Zip	Home Telephone Number ( )
Business Address of Claimant City, State & Zip 6001 Bollinger Canyon Rd. V2322/A, San Ramon, CA 94583	Business Telephone Number ( )
If different from above state name, address and telephone number to which you desire notices or communications to be sent regarding this claim: Pillsbury Winthrop Shaw Pittman LLP 50 Fremont Street, 6th Floor, San Francisco, CA 94105 Attention: Ronald E. Van Buskirk, Esq. Ph: 415.983.1000 Fx: 415.983.1200	Cellular Telephone Number ( )

When did DAMAGE or INJURY occur? Date <u>June 15, 2010</u> Time _____ A.M. or P.M.	Names of any city employees involved in INJURY or DAMAGE City of Fullerton & City Council of the City Council of the City of Fullerton
If claim is for Equitable Indemnity, give date claimant served with the complaint: Date _____	

Where did DAMAGE or INJURY occur? Describe fully, and depict on diagram on reverse side of this sheet. Where appropriate, give street names and address and distances from landmarks:

City of Fullerton

Describe in detail how the DAMAGE or INJURY occurred:

See attached description.

Why do you claim the City is responsible?

BREACH OF CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, EQUITABLE ESTOPPEL

UNCONSTITUTIONAL IMPAIRMENT OF CONTRACT, AND VIOLATION OF THE CIVIL RIGHTS ACT

Describe in detail each INJURY or DAMAGE:

See attached description.

**THIS CLAIM MUST BE SIGNED ON REVERSE SIDE**

CC to Claimant \_\_\_\_\_

The amount claimed, as of the date of presentation of this claim, is computed as follows:

Damages incurred to date (exact):

Damage to property .....\$  
Expenses for medical/hospital care.....\$  
Loss of earnings .....\$

Estimated prospective damages as far as known:

Future expenses for medical/hospital care...\$  
Future loss of earnings .....\$  
Other prospective damages (detail) .....\$

Total damages incurred to date.....\$

Total estimated prospective damages.....\$

**TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF THIS CLAIM ...\$ 1,000,000 plus**

Was damage and/or injury investigated by police? N/A If so, what city? \_\_\_\_\_ Case No. \_\_\_\_\_

Were paramedics or an ambulance called? No If so, name city or ambulance \_\_\_\_\_

If injured, state date, time, name and address of doctor for your first visit:

**WITNESSES to DAMAGE or INJURY.** List all persons and addresses of persons known to have information.

Name <u>Fullerton City Council</u>	Address <u>303 W. Commonwealth, Fullerton, CA 92832</u>	Phone ( <u>714</u> ) <u>738-6350</u>
Name _____	Address _____	Phone (    ) _____
Name _____	Address _____	Phone (    ) _____

**DOCTORS and HOSPITAL:**

Hospital _____	Address _____	Date Hospitalized _____
Doctor _____	Address _____	Date of Treatment _____
Doctor _____	Address _____	Date of Treatment _____

**READ CAREFULLY**

For all accident claims place on the following diagram names of streets, including North, South, East and West. Indicate place of accident by "X" and by showing house numbers or distances to street corners. If city vehicle was involved, designate by letter "A" location of City vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw City vehicle. Indicate place of City vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X". NOTE - if the diagram below does not fit the situation, attach a proper diagram signed by claimant.

Signature of Claimant or person filing on behalf of  
Claimant (give relationship to Claimant):

Type or Print Name:

Pacific Coast Homes, a California corporation  
by Don Means, its Vice President

Date:

August 18, 2010

**NOTE: CLAIMS MUST BE FILED IN THE CITY CLERK'S OFFICE (Gov. Code Sec. 915.A) PRESENTATION OF A FALSE CLAIM IS A FELONY (Pen. Code Sec. 72).**

CC to Claimant \_\_\_\_\_


## City of Fullerton Claim for Damages

As a result of the City's decision and actions denying the West Coyote Hills Specific Plan and Robert E. Ward Nature Preserve: Amendment No. 8 to Coyote Hills West Master Specific Plan 2-A, Pacific Coast Homes, a California corporation ("PCH") has sustained substantial injury, including the substantial expenditure of funds and resources in participating in good faith and engaging in a planning process for development of the former West Coyote Hills oil and gas field (the "Property") for more than three decades and in preparing the project applications for over ten years. PCH has further sustained injury because it conveyed real property to the City (in whole or in part at below fair market value) in reliance on the City's agreement to allow development of the Property.

August 18, 2010

Pacific Coast Homes, a California  
corporation

By:

  
Don Means  
Its Vice President

1 PILLSBURY WINTHROP SHAW PITTMAN LLP  
2 RONALD E. VAN BUSKIRK (SBN 64683)  
3 TODD W. SMITH (SBN 235566)  
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10 Email: todd.smith@pillsburylaw.com

11 Attorneys for Petitioner and Plaintiff,  
12 PACIFIC COAST HOMES

**FILED**  
SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

**AUG 23 2010**

ALAN CARLSON, Clerk of the Court

BY B. LEA, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ORANGE

11 UNLIMITED JURISDICTION

**30-2010**

**00401519**

12 \_\_\_\_\_  
13 PACIFIC COAST HOMES, a California  
14 corporation

15 Petitioner and Plaintiff,

16 vs.

17 CITY OF FULLERTON, CITY COUNCIL  
18 OF THE CITY OF FULLERTON, AND  
19 DOES 1 through 10,

20 Respondents and Defendants.  
21  
22  
23 \_\_\_\_\_

No.

VERIFIED PETITION FOR WRIT  
OF MANDATE (C.C.P. § 1085  
AND/OR § 1094.5); AND  
COMPLAINT FOR BREACH OF  
CONTRACT, BREACH OF THE  
IMPLIED COVENANT OF GOOD  
FAITH AND FAIR DEALING,  
EQUITABLE ESTOPPEL,  
UNCONSTITUTIONAL  
IMPAIRMENT OF CONTRACT,  
AND VIOLATION OF THE CIVIL  
RIGHTS ACT (CIVIL CODE § 3300;  
U.S. CONST., ART. I, § 10; CAL.  
CONST., ART. I, § 9; 42 U.S.C.  
§ 1983)

**JUDGE KAZUHARU MAKINO**

**C 27**

24 Petitioner and Plaintiff, PACIFIC COAST HOMES, submits this verified petition for  
25 writ of mandate and complaint for damages and equitable relief against Respondents and  
26 Defendants, the CITY OF FULLERTON, the CITY COUNCIL OF THE CITY OF  
27 FULLERTON, and DOES 1 through 10, and alleges as follows:  
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1 concert with the City that are the subject of this petition and complaint. When the true  
2 identities and capacities of these Respondents and Defendants have been determined, PCH  
3 will, with leave of Court as necessary, amend this petition and complaint to name said  
4 Respondents and Defendants.

#### 5 JURISDICTION AND VENUE

6 6. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
7 §§ 1085 and 1094.5, and Article VI, § 10 of the California Constitution.

8 7. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 393 and  
9 395.

#### 10 GENERAL ALLEGATIONS

11 8. The Property is the site of the former West Coyote Hills oil and gas field, which  
12 was in active oil and natural gas production beginning in the early 1900s until approximately  
13 1996. The Property is the remaining, undeveloped portion of a larger, approximately 1,000-  
14 acre site that has been the subject of land use planning and development in the City for more  
15 than 30 years.

16 9. Following an extensive, planning process in the 1970's, including the  
17 preparation of an environmental impact report, the City Council on February 8, 1977, by  
18 Resolution No. 6155, adopted West Coyote Hills Master Plan 2A ("MP-2A") controlling  
19 future development of the entire, then-undeveloped 1,000 acre site. MP-2A identifies the  
20 densities, location of housing, recreation amenities, educational facilities, public uses and open  
21 space to be developed on the site. MP-2A divided the 1,000 acres into 23 planning areas and  
22 various categories of open space, and permitted development of 2,694 housing units. As of  
23 this date, 1,525 of the planned units have been built, with 1,169 units remaining for  
24 construction. MP-2A has been the subject of eight (8) amendments since 1977, none of which  
25 altered the basics development provisions or densities. With respect to the remaining  
26 undeveloped 510 acres constituting the Property, MP-2A allows development of single-family  
27 and multi-family residential uses.

1           10.     Shortly after adopting MP-2A, on June 15, 1977, the City and PCH's  
2 predecessor-in-interest, Chevron U.S.A. Inc. ("Chevron"), entered into a certain agreement  
3 (the "1977 Agreement") setting forth the City's and Chevron's respective rights and  
4 obligations in respect to developing the 510-acre site consistent with MP-2A. A copy of the  
5 1977 Agreement is attached as Exhibit A and made a part hereof. In consideration of valuable  
6 property dedications to be made to the City under the Agreement by Chevron and its  
7 successors, all of which have occurred, the City agreed to conform its consideration of future  
8 development applications to the development plan and densities set forth in MP-2A. PCH is  
9 the current assignee and successor-in-interest to all of Chevron's rights, title and interest in  
10 respect to MP-2A and the 1977 Agreement.

11           11.     The 1977 Agreement contains numerous provisions respecting Chevron's  
12 reliance on the development density and other terms provided for in MP-2A in return for  
13 granting property to the City for open space, parks, roadway and other municipal purposes,  
14 including that:

15                                 "RECITALS

16                                 ... WHEREAS, Chevron concurs with Master (Specific) Plan MP-2A  
17 and is *relying on said plan to control and guide future uses* in said 550  
18 acre parcel.... (Emphasis added.)

19                                 ...

20                                 10. EFFECT OF UNILATERAL ACTION

21                                 Any action taken by the parties to rescind or change any of the  
22 provisions of this agreement, in whole or in part, shall constitute a  
failure of a material condition of this agreement. ...."

23           12.     When the City adopted MP-2A and entered into the 1977 Agreement, it  
24 understood that only approximately one-third of the 1,000 acre planning area was available for  
25 initial development. The City also understood that the rest of the site would remain in oil and  
26 gas production for an additional 25-35 years. Thus, MP-2A assured that improvements  
27 provided pursuant to the 1977 Agreement and subsequent development applications, including  
28 utility, street, trail, and greenbelt systems, would be functional within the initial development,



1 as well as be developed in a manner that would link to the remaining undeveloped acreage (the  
2 Property at issue here) in the future. Subsequent development in the MP-2A planning area has  
3 been carried out by the parties consistent with this intent, and subsequent dedications to the  
4 City resulted in the developable acreage being reduced from 550 acres to 510 acres.

5 13. Consistent with MP-2A and the terms of the 1977 Agreement, oil and gas  
6 production ceased on the Property in the early 1990s and PCH approached the City with its  
7 initial development plans for the remaining acreage. Project planning commenced in earnest  
8 in 1997 when the City first initiated environmental review. During this period, Petitioners and  
9 the City worked together to design a project that would be consistent with MP-2A and the  
10 1977 Agreement. The result was a proposed residential development project which  
11 significantly reduced the density from the 1,169 units permitted under MP-2A to 760 homes  
12 concentrated on 180 of the remaining approximately 510 acres of developable land. The  
13 proposed project also would dedicate approximately 283 acres of open space and public trails,  
14 a 17 acre "multi-use" recreation site, and numerous other infrastructure improvements,  
15 including roads and utilities. The project was identified as the "West Coyote Hills Specific  
16 Plan and Robert E. Ward Nature Preserve: Amendment No. 8 to Coyote Hills West Master  
17 Specific Plan 2-A" ("the Project").

18 14. In order to implement the Project, PCH applied for a general plan amendment  
19 to revise the circulation, resource management and community services elements; a specific  
20 plan amendment to revise MP-2A's land use and development standards; a zoning ordinance  
21 amendment to rezone the property from "O-G" (Oil and Gas) to "SPD" (Specific Plan  
22 District); a development agreement pursuant to Government Code § 65866; and three tentative  
23 tract maps to subdivide the Property (collectively, the "Project Applications").

24 15. After nearly a decade of comprehensive environmental review, the Project  
25 Applications came before the City's Planning Commission on March 10 and March 18, 2010.  
26 By a 5-1 vote, the Planning Commission voted to recommend approval of the Project to the  
27 City Council.

1           16.     The City Council held public hearings on the Project on May 11 and 25, 2010.  
2     At the end of the May 25 hearing, the City Council voted 3-2 to deny the Project. No findings  
3     were made and no consideration was given to whether the Project was controlled by or  
4     consistent with MP-2A or the terms of 1977 Agreement. Following the vote, the City Council  
5     directed the City Attorney and City staff to prepare a resolution setting forth the purported  
6     reasons for denial of the Project.

7           17.     On June 15, 2010, the City Council adopted Resolution No. 10-56 denying "all  
8     of the Project Development Applications" based on the following "facts and reasons:"

9                   "1) The proposed Project and requested General Plan Revision, Zoning  
10                  Amendment, Development Agreement, and Specific Plan amendment for the  
11                  Project do not promote the public health, safety and welfare; and

12                  2) The proposed subdivision, together with the provision for its design and  
13                  improvement, is not consistent with the existing O-G (Oil-Gas) zone  
14                  classification for the property."

#### 14                                   **FIRST CAUSE OF ACTION**

15                   (Traditional and/or Administrative Mandamus – C.C.P. §§ 1085, 1094.5)

16           18.     PCH incorporates by reference the allegations in paragraphs 1 through 17 above  
17     as though fully set forth herein.

18           19.     PCH brings this cause of action pursuant to C.C.P. § 1085 and/or § 1094.5 to  
19     annul and set aside the City Council's decision to deny the Project Applications, as totally  
20     lacking in evidentiary support or a rational basis; as being arbitrary and capricious; as not  
21     being supported by sufficient findings; and adopting purported findings unsupported by  
22     substantial evidence in the record.

23           20.     Among other things, the City Council's asserted grounds for denying the  
24     Project Applications were a pretext. As to the first ground, there is no basis in the record, nor  
25     did the City Council explain or make findings, concerning how the Project would fail to  
26     promote the public health, safety and welfare. As to the second ground, the denial based on  
27     the existing Oil-Gas zone classification is irrational and made in bad faith. As understood by  
28     the Parties from the outset, PCH had submitted an application to change the zoning of the

1 Property as part of the application submittals. At all relevant times, the City understood that  
2 oil and gas development would continue on the Property for some time after the 1977  
3 Agreement and that development of the balance of the Property under MP-2A would occur  
4 thereafter. Among other things, the 1977 Agreement recognized that the then-available 550  
5 acres were “devoted to oil and gas development” and that the MP-2A “does not restrict oil and  
6 gas operations.” Exhibit A, p. 1. The 1977 Agreement provided that the MP-2A controls  
7 future land use of the Property and the parties to the Agreement understood and contemplated  
8 that zoning would be changed to accommodate that development.

9         21. As a result of the City’s actions, PCH has sustained significant injury, including  
10 the substantial expenditure of funds and resources in participating in good faith and engaging  
11 in a planning process for development of the Property for more than three decades, and in  
12 preparing and processing the Project Applications for over ten years. PCH has further  
13 sustained injury because it conveyed real property to the City (at below fair market value or at  
14 no cost) in reliance on the City’s agreement that MP-2A would control development of the  
15 Property as alleged more fully herein.

16         22. PCH has performed all conditions precedent to the filing of this petition.

17         23. PCH is a party beneficially interested in the issuance of the writ sought herein  
18 as owner of the Property, the successor-in-interest to the rights provided under the 1977  
19 Agreement, and the applicant for the development approvals at issue. PCH’s rights have been  
20 and will be adversely affected, and the full use and enjoyment of its property will be denied,  
21 unless the City Council decision is set aside and the Council is ordered to reconsider and  
22 approve said Applications in a manner consistent with the 1977 Agreement and MP-2A.

23         24. PCH has exhausted all available administrative remedies, and has no plain,  
24 speedy or adequate remedy in the ordinary course of law to compel the City to set aside its  
25 denial of the Project Applications and to reconsider the Applications, other than the relief  
26 sought herein. Unless the requested writ sought herein is granted, PCH will be irreparably  
27 harmed, for which harm money or other legal remedies cannot adequately compensate it.

28

1           25.     Accordingly, the Court should issue a writ of mandamus requiring the City to  
2     set aside its denial of the Project Applications and to reconsider the Applications forthwith.

3                                   **SECOND CAUSE OF ACTION**

4                                   (Breach of Contract - Civ. Code § 3300 - Damages)

5           26.     PCH incorporates by reference the allegations in paragraphs 1 through 25 above  
6     as though fully set forth herein.

7           27.     PCH has performed all conditions, covenants, and promises required on its part  
8     to be performed in accordance with the terms and conditions of the 1977 Agreement.

9           28.     The City committed a material breach of the 1977 Agreement by denying the  
10    Project based on the purported “facts and reasons” that the Project and associated applications  
11    “do not promote the public health, safety and welfare” and the Project “is not consistent with  
12    the existing O-G (Oil-Gas) zone classification for the property.”

13          29.     Chevron and the City entered into the 1977 Agreement with the understanding,  
14    and the 1977 Agreement so provides, that the MP-2A would control future uses of the  
15    Property. Under the 1977 Agreement, the City agreed and undertook to conform its review of  
16    future development applications, including the Project at issue, to the development plan and  
17    densities approved in MP-2A, but has failed to do so. In fact, MP-2A provides for  
18    development of the Property to a substantially higher level of density than that included in the  
19    Project as proposed. Accordingly, the City has breached the 1977 Agreement under which the  
20    City has already acquired significant portions of the Property now dedicated for public use.

21          30.     As a result of the City’s actions, PCH has sustained significant injury and  
22    damages, including the substantial expenditure of funds and resources in participating in good  
23    faith and engaging in a meaningful planning process for development of the Property for more  
24    than three decades, and in preparing and processing the Project Applications for over ten years.  
25    PCH has further sustained injury and damages because it has conveyed portions of the  
26    Property to the City (at below fair market value or at no cost) in reliance on the City’s  
27    agreement that MP-2A would control development of the Property as alleged more fully  
28

1 herein, and has suffered lost profits for its development, all in a sum substantially exceeding  
2 \$1,000,000, according to proof at trial.

3 31. PCH has complied with the Government Claims Act and all conditions  
4 precedent to the filing of this Complaint.

5 **THIRD CAUSE OF ACTION**

6 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

7 32. PCH incorporates by reference the allegations in paragraphs 1 through 31 above  
8 as though fully set forth herein.

9 33. In California, there is implied in every contract the covenant of good faith and  
10 fair dealing imposing a duty upon "each party not to do anything that will deprive the other  
11 parties thereto of the benefits of the contract..... [T]his covenant not only imposes upon each  
12 contracting party the duty to refrain from doing anything which would render performance of  
13 the contract impossible by any act of his own, but also the duty to do everything that the  
14 contract presupposes he will do to accomplish its purpose." Harm v. Thrasher (1960) 181 Cal.  
15 App. 2nd 405, 417.

16 34. The City has committed a material breach of the implied covenant of good faith  
17 and fair dealing by ignoring and acting contrary to the 1977 Agreement and MP-2A in denying  
18 the Project Applications in the manner heretofore alleged, thereby depriving WCH of its  
19 benefit of the bargain, while the City already received and accepted the benefits thereof.

20 35. PCH has performed all conditions, covenants, and promises required on its part  
21 to be performed in accordance with the terms and conditions of the 1977 Agreement.

22 36. As a result of the City's actions, PCH has sustained significant injury and  
23 damages, including the substantial expenditure of funds and resources in participating in good  
24 faith and engaging in a planning process for development of the Property for more than three  
25 decades, and in preparing and processing the Project Applications for over ten years. PCH has  
26 further sustained injury and damages because it has conveyed portions of the Property to the  
27 City (at below fair market value or at no cost) in reliance on the City's agreement that MP-2A  
28

1 would control development of the Property as alleged more fully herein, and has also suffered  
2 lost profits for its development, all in a sum exceeding \$1,000,000, according to proof at trial.

3 37. PCH has complied with the Government Claims Act and all conditions  
4 precedent to the filing of this Complaint.

5 **FOURTH CAUSE OF ACTION**

6 (Equitable Estoppel)

7 38. PCH incorporates by reference the allegations in paragraphs 1 through 37 above  
8 as though fully set forth herein.

9 39. In entering into the 1977 Agreement, the City represented that applications for  
10 development of the Property would be controlled by the Agreement and MP-2A. The City  
11 knew and understood, in entering into the 1977 Agreement, that PCH and its predecessors  
12 intended to rely upon, and would reasonably be induced rely to rely upon, the City's  
13 representations that the MP-2A would control future uses on the Property once oil and gas  
14 development had ceased. Among other things, the 1977 Agreement recited that "Chevron...is  
15 relying on [MP-2A] to control and guide future uses in said 550 acre parcel; and ... is  
16 expressly entering into this agreement on consideration of these Recitals...."

17 40. In fact, PCH and its predecessors have reasonably relied on the City's  
18 representation and agreement that MP-2A would control future uses on the Property. Based  
19 thereon, they were induced to change position and dedicate substantial portions of the Property  
20 to the City as open space and for other municipal uses, some or all of which were transferred at  
21 below fair market value or at no cost. Further, PCH was induced to expend substantial  
22 resources in participating in the planning for future uses of the MP-2A area and in preparing  
23 the Project Applications and other extensive submittals to the City for development of the  
24 Property.

25 41. The reliance by PCH and its predecessors on the 1977 Agreement and MP-2A  
26 was reasonable, and was foreseeable to and intended by the City. As a result of the reliance by  
27 PCH and its predecessors on the 1977 Agreement and MP-2A, and their performance  
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1 thereunder, the City is equitably estopped to deny development of the Property that is  
2 consistent with the 1977 Agreement and MP-2A.

3 42. Accordingly, the Court should determine that the City is equitably estopped  
4 from denying the Project Applications and enter judgment commanding the City to reverse its  
5 decision and approve said Applications in a manner consistent with the 1977 Agreement and  
6 MP-2A.

#### 7 FIFTH CAUSE OF ACTION

8 (Unconstitutional Impairment of Contract Obligations)

9 43. PCH incorporates by reference the allegations in paragraphs 1 through 42 above  
10 as though fully set forth herein.

11 44. The right of a party not to have a state or a political subdivision of a state  
12 impair its obligations of contract is protected by the United States Constitution, Article I, § 10,  
13 clause 1. ("No State shall...pass any...Law impairing the Obligation of Contracts"), and the  
14 California Constitution, Article I, § 9 ("[A] law impairing the obligation of contracts may not  
15 be passed"). The California Constitution, Article I, § 9, further limits the power of public  
16 entities to modify their own contracts with other parties.

17 45. The City in denying the Project has deprived PCH of valuable and important  
18 vested rights secured under the 1977 Agreement, impairing the value of the 1977 Agreement  
19 and the obligations thereunder. The 1977 Agreement is a binding contract based on adequate  
20 consideration providing for development of the Property consistent with the agreement and  
21 MP-2A, which contractual right may not be denied or impaired by subsequent actions of the  
22 City. The City, in denying the Project, acted inconsistently with and in derogation of the 1977  
23 Agreement and MP-2A, thereby violating the federal and state prohibitions against impairment  
24 of contracts.

25 46. As a direct and proximate result of the City's actions, PCH has sustained  
26 significant injury and damages in the nature and amounts heretofore alleged.

#### 27 SIXTH CAUSE OF ACTION

28 (Violation of Civil Rights Act – 42 U.S.C. § 1983)

1           47.     PCH incorporates by reference the allegations in paragraphs 1 through 46 above  
2 as though fully set forth herein.

3           48.     Title 42 U.S.C. § 1983 (“§ 1983”) provides in pertinent part:

4           Every person who, under color of any statute, ordinance, regulation, custom, or  
5 usage, of any State or Territory or the District of Columbia, subjects, or causes  
6 to be subjected, any citizen of the United States or other person within the  
7 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
8 secured by the Constitution and laws, shall be liable to the party injured in an  
9 action at law, suit in equity, or other proper proceeding for redress....

10           49.     The City was, at all times mentioned in this Complaint, acting under color of  
11 state law within the meaning of § 1983.

12           50.     The City’s actions violate PCH’s rights, privileges and immunities under the  
13 Due Process Clause and the Contracts Clause of the United States Constitution, as secured by  
14 § 1983. The Fifth Amendment to the United States Constitution, made applicable to the states  
15 by the Fourteenth Amendment, provides in pertinent part: “[n]o person shall ... be deprived of  
16 life, liberty, or property, without due process of law....” The City Council’s denial of the  
17 Project Applications deprived PCH of rights secured by the Due Process Clause, including  
18 valuable rights in real property, as well as PCH’s rights under the 1977 Agreement, in that,  
19 among other things, the Council’s denial was unsupported by any findings or substantial  
20 evidence, was arbitrary and capricious, and was lacking in a rational basis.

21           51.     Prior to the City’s actions, it was aware that it had entered into the 1977  
22 Agreement, and of its obligations contained therein and of PCH’s rights to processing of  
23 development application(s) of the Property in a manner free from unreasonable conduct.  
24 Despite this knowledge, the City denied the Project without proceeding in the manner required  
25 by law, by failing to adopt findings, by taking action unsupported by substantial evidence, in  
26 knowing and direct contravention of PCH’S rights under the 1977 Agreement and due process  
27 of law.

28           52.     As a direct and proximate result of the City’s actions, PCH has sustained  
significant injury and damages in the nature and amounts heretofore alleged.

53. Accordingly, the City's actions should be declared to be in violation of § 1983 and should be set aside by this Court. In addition, PCH is entitled to damages and recovery of attorneys' fees and costs incurred in bringing this action pursuant to 42 U.S.C. § 1988, and as otherwise provided by law.

#### PRAYER FOR RELIEF

WHEREFORE, PCH prays for issuance of a writ of mandate and entry of judgment against Respondents and Defendants as follows:

1. For a peremptory writ of mandate directing the City to set aside its decision to deny the Project Applications, and to reconsider and approve said Applications in a manner consistent with the 1977 Agreement and MP-2A;

2. For a determination that the City is estopped from denying the Project Applications based on the current O-G zoning and that under the 1977 Agreement, the City must process the Project, and all land use applications concerning the Property, in accordance with the Agreement and MP-2A, including densities and uses allowed thereunder;

3. For an award of damages resulting from the City's failure to carry out its duties pursuant to Code of Civil Procedure § 1095;

4. For compensatory damages for breach of contract, including interest thereon, in an amount to be determined according to proof at trial;

5. For compensatory damages for breach of the implied covenant of good faith and fair dealing, including interest thereon, in an amount to be determined according to proof at trial;

6. For compensatory damages for unconstitutional impairment of the obligation of contracts, including interest thereon, in an amount to be determined according to proof at trial;

7. For compensatory damages under 42 USC § 1983, including interest thereon, in an amount to be determined according to proof at trial;

8. For reasonable attorney's fees, pursuant to the 1977 Agreement and/or 42 U.S.C. § 1988;

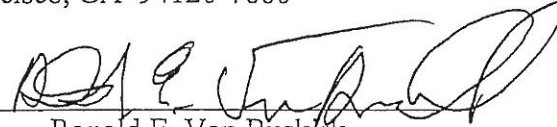
9. For costs of suit incurred herein; and

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

2  
3     Dated: August 20, 2010

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8     By


  
Ronald E. Van Buskirk

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10           Attorneys for Petitioner and Plaintiff  
11           PACIFIC COAST HOMES  
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VERIFICATION

I, Don Means, am Vice President for Petitioner and Plaintiff PACIFIC COAST HOMES. I have read the attached petition for writ of mandamus, and state that the allegations contained therein are true of my own personal knowledge, except as to allegations made on information and belief, and as to those allegations, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this verification on 8/18, 2010 at SAN RAMON, California.

  
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