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15 Attorneys for Plaintiff NORTHERN CALIFORNIA
16 RIVER WATCH, a California non-profit corporation

17 IN THE SUPERIOR COURT OF CALIFORNIA
18 IN AND FOR THE COUNTY OF HUMBOLDT

19 NORTHERN CALIFORNIA RIVER
20 WATCH, a California non-profit
21 corporation,

22 Plaintiff,

23 vs.

24 GENERAL GROWTH PROPERTIES,
25 INC.; BAY SHORE MALL, LP; and
26 DOES 1 through 10, inclusive,

27 Defendants.

Case No. DR 120 060

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND CIVIL FINES
[CALIFORNIA COASTAL ACT – PUB.
RES. CODE § 30000 ET SEQ].**

1 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH ("PLAINTIFF"), by
2 and through its counsel of record, and for its complaint against Defendants GGP, INC., ROUSE
3 PROPERTIES, INC., BAY SHORE MALL, LP, and DOES 1-10, Inclusive ("DEFENDANTS"), states
4 as follows:

5 **INTRODUCTION**

6 1. This is a civil suit brought against DEFENDANTS under the citizen suit enforcement
7 provisions of the California Coastal Act of 1976, California Pub. Res. Code § 30000 et seq. ("California
8 Coastal Act"). This Complaint seeks relief from DEFENDANTS for illegally failing to comply with
9 the requirements in Coastal Development Permit No. 1-85-83. The Coastal Development Permit, as a
10 condition of issuance and the right to develop the "Bay Shore Mall" in Eureka, California, imposed
11 terms and conditions requiring DEFENDANTS to restore 5.17 acres of wetlands located on the project
12 site.

13 **PARTIES**

14 2. Plaintiff NORTHERN CALIFORNIA RIVER WATCH is a 501 (c)(3) non-profit public
15 benefit corporation duly organized under the laws of the State of California, with headquarters and main
16 office located in the City of Sebastopol, California. PLAINTIFF is dedicated to protecting, enhancing
17 and helping to restore the surface and subsurface waters of Northern California. PLAINTIFF'S
18 members live in Northern California including Humboldt County where the property commonly
19 referred to as the "Bay Shore Mall" located at 3300 Broadway between Truesdale Street and the
20 extension of Mill Street in the City of Eureka, Humboldt County (the "Property,") under
21 DEFENDANTS' operation and/or control which is the subject of this Complaint is located.

22 3. PLAINTIFF is informed and believes and thereupon alleges that Defendant GGP, Inc. is
23 a Delaware corporation, registered with the California Secretary of State's Office to do business in the
24 State of California, which as of November 2010, became is the successor in interest to General Growth
25 Partners, Inc. Plaintiff is further informed and believes and thereon alleges that GGP, Inc. succeeded to
26 General Growth Partners, Inc.'s obligations as owner and/or operator of the Property.

1 4. PLAINTIFF is informed and believes and thereupon alleges that Defendant GGP, Inc. is
2 a Delaware corporation, registered with the California Secretary of State's Office to do business in the
3 State of California. PLAINTIFF is informed and believes and thereupon alleges, that, as of November
4 2010, GGP, Inc. became the successor in interest to General Growth Partners, Inc. Plaintiff is further
5 informed and believes and thereon alleges that GGP, Inc. succeeded to General Growth Partners, Inc.'s
6 obligations as owner and/or operator of the Property.

7 5. PLAINTIFF is informed and believes and thereupon alleges that Defendant Rouse
8 Properties, Inc. ("Rouse") is a Delaware corporation, registered with the California Secretary of State's
9 Office to do business in the State of California. Plaintiff is further informed and believes and thereon
10 alleges that, as of January 2012, Rouse succeeded to General Growth Partners, Inc. and GGP, Inc.'s
11 obligations as owner and/or operator of the Property.

12 6. PLAINTIFF is informed and believes and thereupon alleges that Defendant Bay Shore
13 Mall, LP is a Delaware corporation, registered with the California Secretary of State's Office to do
14 business in the State of California. Plaintiff is further informed and believes and thereon alleges that
15 Defendant Bay Shore Mall, LP is the owner and/or operator of the Property.

16 7. The true names and capacities of DEFENDANTS DOES 1-10, Inclusive, whether
17 individual, corporate, or otherwise, are presently unknown to PLAINTIFF, who therefore sues
18 DEFENDANTS by said fictitious name. PLAINTIFF is informed and believes that each of said
19 fictitiously-named DEFENDANTS is responsible in whole or in part for the acts alleged herein.
20 PLAINTIFF will seek leave of the Court to substitute the true names of said fictitiously-named
21 DEFENDANTS when the same have been ascertained.

22 8. PLAINTIFF alleges that at all relevant times herein, each defendant was the agent,
23 representative, employee, surrogate, partner, or joint venturer of each other defendant and in doing the
24 actions alleged herein, acted within the scope of his/her/its authority as such agent, representative,
25 employee, surrogate, partner, or joint venturer and acted with the permission and consent of
26 DEFENDANTS.

1 **JURISDICTION**

2 7. The Humboldt County Superior Court has jurisdiction over this action pursuant to
3 California Constitution, Article VI, Section 10, which grants the Superior Courts “original jurisdiction
4 in all causes except those given by statute to other trial courts.”

5 8. Venue is proper in Humboldt County because the violations of DEFENDANTS as
6 alleged herein have occurred in Humboldt County, because the Property is located in Humboldt County
7 and because the individual(s) affected by DEFENDANTS' actions as alleged in this Complaint suffered
8 injury in fact in Humboldt County.

9 **STATEMENT OF FACTS**

10 9. DEFENDANTS applied to the California Coastal Commission (“Commission”) for a
11 coastal development permit as required by the California Coastal Act to construct a new “major
12 regional shopping center” on the Property.

13 10. On or about September 26, 1985, the Commission held a public hearing on
14 DEFENDANTS' application, approving Coastal Development Permit No. 1-85-83 (“CDP”) subject to
15 stated conditions regarding the restoration of wetlands on the Property.

16 11. PLAINTIFF is informed and believes that DEFENDANTS have failed to comply with
17 the CDP wetland restoration conditions, by, inter alia, failing to maintain the wetland.

18 12. On or about November 29, 2011, PLAINTIFF served Defendants General Growth
19 Properties, Inc. And Bay Shore Mall, LP with a Notice of Violations and Intent to File Suit,
20 identifying DEFENDANTS’ alleged failure to comply with the CDP wetland restoration conditions
21 and requesting DEFENDANTS contact PLAINTIFF within 30 days to discuss the Complaint For
22 Declaratory Relief, Injunctive Relief and Civil Fines alleged California Coastal Act violations.

23 13. As of the date of the filing of this Complaint, DEFENDANTS have failed to comply
24 with the CDP wetland restoration conditions.
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1 **FIRST CAUSE OF ACTION**

2 **(DECLARATORY RELIEF FOR VIOLATIONS OF THE CALIFORNIA COASTAL ACT)**

3 14. PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
4 13 inclusive, of this Complaint as though set forth in full.

5 15. Pursuant to Pub. Res. Code § 30803, subdivision (a), the California Coastal Act provides
6 in relevant part that “[a]ny person may maintain an action for declaratory and equitable relief to restrain
7 any violation of this division ...”

8 16. An actual controversy exists between PLAINTIFF and DEFENDANTS in that
9 DEFENDANTS have violated and are violating the California Coastal Act but refuse to admit the
10 illegal nature of their activities.

11 17. Because of the controversy that exists among the parties, a declaration of the rights and
12 responsibilities of the parties with respect to the California Coastal Act is necessary. Specifically,
13 PLAINTIFF seeks a declaration from the Court that DEFENDANTS’ have failed to comply with the
14 CDP wetland restoration conditions, that DEFENDANTS’ failure to comply with the CDP wetland
15 restoration conditions constitutes a violation of the California Coastal Act; and, that DEFENDANTS’
16 acts as alleged herein are separate and continuing violations of the California Coastal Act.

17 **SECOND CAUSE OF ACTION**

18 **(INJUNCTIVE RELIEF FOR VIOLATIONS OF THE CALIFORNIA COASTAL ACT)**

19 18. PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
20 17 inclusive, of this Complaint as though set forth in full.

21 19. PLAINTIFF has no adequate remedy at law to require DEFENDANTS to reverse the
22 consequences of their unlawful activities and, therefore, civil fines alone will not remedy the wrongs
23 about which PLAINTIFF complains.

24 20. Unless this Court grants the equitable relief requested, PLAINTIFF will be irreparably
25 harmed in that PLAINTIFF and its members will be deprived of both the aesthetic enjoyment and
26 environmental protection of the natural resources in this part of the California Coastal Zone.
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1 21. Pursuant to Pub. Res. Code § 30803, subdivision (a), the California Coastal Act provides
2 in relevant part:

3 “... On a prima facie showing of a violation of this division, preliminary equitable
4 relief shall be issued to restrain any further violation of the division. No bond shall be
5 required for an action under this section.”

6 **THIRD CAUSE OF ACTION**

7 **(CIVIL FINES FOR VIOLATIONS OF THE CALIFORNIA COASTAL ACT)**

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9 22. PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
10 21 inclusive, of this Complaint as though set forth in full.

11 23. Pursuant to Pub. Res. Code § 30820, subdivision (a), the California Coastal Act provides
12 in relevant part for civil fines as follows:

13 “(a) Any person who violates any provision of this division may be civilly liable in
14 accordance with this subdivision as follows:

15 Civil liability may be imposed by the superior court in accordance with this
16 article on any person who performs or undertakes development that is in
17 violation of this division... in an amount that shall not exceed thirty thousand
18 dollars (\$30,000) and shall not be less than five hundred dollars (\$500).

19 Civil liability may be imposed for any violation of this division other than that
20 specified in paragraph (1) in an amount that shall not exceed thirty thousand
21 dollars (\$30,000).”

22 25. DEFENDANTS are liable for civil fines by virtue of the fact that they illegally failed to
23 comply with the CDP wetland restoration conditions for the Property at issue in this Complaint as
24 alleged herein.

1 **FOURTH CAUSE OF ACTION**

2 **(DAILY FINES FOR VIOLATIONS OF THE CALIFORNIA COASTAL ACT)**

3 26. PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
4 25 inclusive, of this Complaint as though set forth in full.

5 27. Pursuant to Pub. Res. Code § 30820, subdivision (b), the California Coastal Act provides
6 in relevant part for additional civil fines as follows:

7 “(b) Any person who performs or undertakes development that is in violation of this
8 division ... when that person intentionally or knowingly performs or undertakes the
9 development in violation of this division ... may, in addition to any other penalties, be
10 civilly liable in accordance with this subdivision. Civil liability may be imposed by the
11 superior court in an amount which shall not be less than one thousand dollars (\$1,000),
12 nor more than fifteen thousand dollars (\$15,000), per day for each day in which the
13 violation occurs.”

14 28. DEFENDANTS, by virtue of their knowing, intentional and continuing violation(s) of
15 the California Coastal Act, are liable for daily fines of up to fifteen thousand dollars (\$15,000) for each
16 day in which the alleged violation(s) with respect to the Property have occurred and continue without
17 abatement.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, as follows:

20 1. As to the First Cause of Action, for a declaration of the rights and responsibilities of the
21 parties with respect to the California Coastal Act. Specifically, PLAINTIFF seeks a declaration from
22 the Court that DEFENDANTS have failed to comply with the CDP wetland restoration conditions as
23 regards the Property, that DEFENDANTS' failure to comply with the CDP wetland restoration
24 conditions constitutes a violation of the California Coastal Act, and that DEFENDANTS' actions are
25 separate and continuing violations of the California Coastal Act.
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1 2. As to the Second Cause of Action, for preliminary and permanent injunctive relief
2 mandating DEFENDANTS to comply with the CDP wetland restoration conditions at issue in this
3 Complaint.

4 3. As to the Third Cause of Action, for a civil fine of up to \$30,000 against
5 DEFENDANTS for each act authorizing or engaging in or permitting activities in violation of the
6 California Coastal Act.

7 4. As to the Fourth Cause of Action, for a civil fine of up to \$15,000 per day against
8 DEFENDANTS for each day from the commencement of the violation(s) of the California Coastal Act
9 to the date upon which DEFENDANTS comply with the requirements of the California Coastal Act.

10 5. As to all Causes of Action, for costs of suit herein.


11 6. As to all Causes of Action, for attorney's fees incurred by PLAINTIFF in prosecuting the
12 instant action as allowed by Calif. Code of Civ. Proc. § 1021.5 and/or any other applicable provision(s)
13 of law.

14 7. For such other and further relief as the Court deems just and proper.

15 Dated: August 24, 2012

NARDELL CHITSAZ & ASSOCIATES LLP

16
17
18 By:


TIMOTHY NARDELL
Attorneys for Plaintiff NORTHERN
CALIFORNIA RIVER WATCH

1 **PROOF OF SERVICE**

2 I, Terry Odetto, state:

3 My business address is 790 Mission Avenue, San Rafael, California, 94901. I am over the age
4 of eighteen years and not a party to this action.

5 On August 22, 2012, I served the foregoing document(s) described as:

- 6 • **FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE
7 RELIEF AND CIVIL FINES [CALIFORNIA COASTAL ACT – PUB. RES. CODE §
8 30000 ET SEQ].**

9 on the following person(s) in this action:

10 Robert G. Wilson, Esq.
11 Kevin M. Kemper, Esq.
12 GORDON KEMPER LLP
13 300 South Grand Avenue, 24th Floor
14 Los Angeles, CA 90071
15 Facsimile No.: (213) 452-8296
16 ATTORNEYS FOR Defendants General
17 Growth Properties, Inc., Bay Shore Mall, LP,
18 GGP, Inc, and Rouse Properties, Inc.

19 **BY MAIL.** I placed each such sealed envelope, with postage thereon fully paid
20 for first-class mail, for collection and mailing at San Rafael, California, following
21 ordinary business practices. I am readily familiar with this firm’s practice of collection and
22 processing of correspondence for mailing. Under that practice, it would be deposited with the
23 United States Postal Service on that same day.

24 **BY OVERNIGHT MAIL.** I deposited a true copy thereof in a sealed packet for overnight
25 delivery, with charges thereon fully prepared, for pickup by Federal Express.

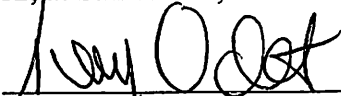
26 **BY PERSONAL SERVICE.** I caused such envelope to be delivered by hand to the
27 addressee(s) noted above.

28 **BY FACSIMILE.** I caused said document to be transmitted by facsimile machine to the
number indicated after the address(es) noted above.

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BY ELECTRONIC DELIVERY. I transmitted the enclosed document(s) identified above by electronic delivery to the following email addresses: robert.wilson@gordonkemper.com; kevin.kemper@gordonkemper.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 22, 2012, at San Rafael, California.



TERRY ODETTO