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5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 IN AND FOR THE COUNTY OF MARIN

7 COMMUNITY VENTURE PARTNERS, a non-)
8 profit corporation;)

9 Petitioner)

10 vs.)

11 MARIN COUNTY OPEN SPACE DISTRICT, a)
12 division of Marin County Parks, and DOES 1)
through 10, inclusive)

13 Respondent)
14 _____)

Case No. CIV-1701913

**FIRST AMENDED VERIFIED
PETITION FOR WRIT OF
MANDATE**

**[Action Contains Claims under the
California Environmental Quality Act,
Pub. Res. Code § 21001 *et seq.*]**

I. INTRODUCTION

1. Petitioner Community Venture Partners (“Petitioner”) challenges Respondent Marin County Open Space District’s (“District”) approval of the Bob Middagh Trail and Gasline Trail project (“Project”), which includes a major use change of adding bike riding on the Bob Middagh Trail, despite the historical usage of the trail as limited to hiking and equestrian use.

2. Petitioner challenges the District’s decision on November 29, 2016 to approve the Project without completing environmental review of the Project as required by the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000 *et seq.* The District’s decision constitutes a CEQA project because it committed the District to the Project, despite the lack of any CEQA review of environmental and safety impacts caused by adding bike riders to the area.

3. Petitioner further challenges the District’s refusal to provide documents relating to its November 29, 2016 decision to approve the Project, despite Petitioner’s attempts to obtain these documents through the California Public Records Act (“CPRA”), Govt. Code §§ 6253-6259.

4. Petitioner also challenges the District’s decision on May 12, 2017 to approve the Project a second time by tiering the Project to the Road and Trail Management Plan (“Trail Plan”) and the Tiered Programmatic Environmental Impact Report prepared for the Trail Plan. (“Trail Plan EIR”) The District’s tiering process utilizing CEQA Guidelines § 15162 is contrary to CEQA because the Project is not the same CEQA project as the programmatic Trail Plan but rather a second-tier site-specific construction project and in addition does not fall within the scope of the Trail Plan’s EIR general programmatic analysis.

5. Petitioner also challenges the District’s process in selecting proposed projects for consideration in the 2016-2017 budget cycle as contrary to the criteria set forth in the Trail Plan, which state that projects involving construction with environmental benefits shall be ‘scored’ and evaluated along with other proposed projects. The District’s decision to consider only projects proposing to change use on the Bob Middagh Trail while rejecting for consideration other proposals to improve the trail without adding bikes is contrary to the Trail Plan.

6. The District’s failure to conduct the required environmental review, disclose public documents relevant to the District’s decision-making process in approving the Project and to only

1 consider projects to add biking to the Bob Middagh Trail have frustrated the legislative intent
2 behind both CEQA and the CPRA to ensure that public decisions with potentially significant
3 impacts on the environment and the lives of citizens are made in a transparent matter with full
4 public participation and consideration of project alternatives.

5 7. Petitioner seeks a writ of mandate pursuant to Code of Civil Procedure § 1085 directing
6 the District to set aside its Project approval until the District has complied with CEQA and the
7 Trail Plan and to disclose the documents sought under the CPRA.

8 **II. PARTIES**

9 8. Petitioner Community Venture Partners is a 501(c)(3) nonprofit organization that supports
10 community-based projects, programs and initiatives that demonstrate the highest principles of
11 economic, social and environmental sustainability. Petitioner accomplishes its objectives by offering
12 technical and financial assistance, and educational programs for community organizations, nonprofit
13 organizations, educational institutions, and local municipalities. Petitioner is committed to the need
14 for a transparent public process that incorporates under-served community voices into planning and
15 government decision-making. Petitioner is headquartered in Mill Valley and its officers, board
16 members, collaborators and advisors use and enjoy the hiking trails in Southern Marin, regularly,
17 including the Bob Middagh Trail.

18 9. Respondent Marin County Open Space District ("District") is a division of Marin County
19 Parks, and was at all times relevant to this action the governmental entity responsible for reviewing
20 and approving the Project challenged in this action. The District is a separate legal entity from the
21 County of Marin and an independent special district operating pursuant to the California Public
22 Resources Code.

23 10. The true names and capacities of Respondent Does 1-10 are not presently known to Petitioner.
24 Petitioner may amend this Petition to add the true names and capacities of said Does at such time as
25 they are discovered.

26 **III. JURISDICTION AND EXHAUSTION OF REMEDIES**

27 11. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure § 1085, Public
28 Resources Code § 21168.5 and Government Code §§ 6258-6259.

1 12. Petitioner has performed all conditions precedent to filing this instant action and has
2 exhausted any and all available administrative remedies to the extent required by law. Petitioner
3 provided written and oral comments to the County during the administrative process of this Project
4 related to each the claims raised in this Petition. Petitioner also submitted several requests under the
5 Public Records Act to the District, which form the basis of Petitioner's CPRA claims.

6 13. On May 26, 2017, Petitioner's attorney emailed and mailed a Notice of Commencement of
7 Action letter pursuant to Public Resources Code § 21167.5 to the District and the Marin County
8 Counsel's office informing the District of its intent to file a legal action in this case challenging the
9 County's approval of the Project. (See Exhibit 1, attached hereto.)

10 14. On June 1, 2017, Petitioner's attorney served a copy of its First Amended Verified Petition
11 on the Attorney General to give notice of Petitioner's intent to bring this proceeding as a private
12 attorney general under Code of Civil Procedure section 1021.5. (See Exhibit 2, attached hereto.)

13 15. Petitioner has no other adequate remedy in the course of law unless this Court grants the
14 requested writ of mandate. In the absence of such remedy, the District's Project approval will remain
15 in effect in violation of law.

16 IV. FACTUAL BACKGROUND

17 A. DISTRICT'S APPROVAL OF ROAD AND TRAIL MANAGEMENT PLAN IN 2014.

18 16. On December 16, 2014, the Marin County Open Space District ("District") approved the Road
19 and Trail Management Plan ("Trail Plan") as well as a Tiered Programmatic Environmental Impact
20 Report ("Trail Plan EIR") pursuant to CEQA. The Trail Plan does not prescribe future road and trail
21 modification projects in specific locations, but instead presents a general framework and process for
22 making decisions on such projects and a set of policies to which proposed projects must adhere

23 17. The Trail Plan divides the Marin parks' system of 34 preserves into six regions that are to be
24 used to organize public outreach efforts and which will serve as planning units for designating the
25 road and trail system and establishing a baseline of its impacts. The Trail Plan states that following
26 the adoption of the Plan, the District will launch a public outreach and engagement process to
27 designate the formal system of roads and trails that will be managed and maintained within each
28 region going forward, and to solicit input on the specific road and trail projects that will improve and

1 make incremental adjustments to this designated system over time.

2 18. The Trail Plan's decision-making processes is intended to establish a future designated road
3 and trail system through the annual evaluation of project proposals involving construction, major
4 modification, decommissioning, restoration projects, and changes in use. The Trail Plan organizes
5 the process to evaluate project proposals into six successive steps, beginning with the solicitation of
6 proposals and culminating with the inclusion of 'successful' project proposals into proposed annual
7 budgets submitted by the MCOSD staff to the Board of Directors for approval. The Trail Plan states
8 that "a key element of this evaluation is the requirement that annually budgeted projects show a
9 projected reduction in the previous year's baseline score of environmental impacts within each of the
10 six planning regions, and within all regions combined."

11 19. The Trail Plan's approval generated controversy among user groups and trail users in the
12 County, who commented 1) there was inadequate public noticing for the Plan; 2) there was
13 insufficient community input; and 3) all users were not notified of the process. In response, the Trail
14 Plan states that "[p]ublic and constituent engagement will be central to decision making processes,
15 and implementation of selected projects." Comments gathered during public meetings in 2010 and
16 2011 indicated visitors were interested in access to a greater variety of experiences, the ability to
17 travel to scenic vistas/viewing good scenery, learning about and appreciating nature, testing outdoor
18 skills, getting exercise and being free from user conflicts.

19 20. The Trail Plan contains 'Guiding Principles' for making determinations regarding which trails
20 will be included in the District's trail system, based on general policies that 1) system will provide
21 a fair, desirable, and appropriate range of recreation opportunities for visitors; 2) impacts to the
22 natural environment will be avoided or mitigated to acceptable conditions under CEQA and other
23 applicable laws; 3) safety will be maintained and conflicts among visitors will be minimized; 4)
24 construction, maintenance, and enforcement responsibilities will be financially feasible' 5)
25 designation of the trail system and subsequent management actions will occur through transparent and
26 collaborative decision-making processes; and 6) management actions will encourage respect for
27 private property and adjacent property owners and land uses.

28 21. To address user conflicts, the Trail Plan includes Implementing Program TRL-2.g, 'Promote

1 Harmony Among Trail Users,' which is to "[p]rovide educational information, and consider special
2 programs and events to promote trail etiquette and cooperation among trail user groups," and to
3 "[e]ncourage interagency collaboration on countywide standards for trail etiquette to promote
4 harmony among trail user groups." However, the District also "may prohibit certain trail uses or
5 apply increased trail use restrictions within certain areas to enhance safety, minimize conflicts
6 between trail users, and protect natural resources. Examples of areas where this policy may apply
7 include, but are not limited to, those proximate to stables and those traditionally heavily traveled by
8 equestrians, and in Sensitive Resource Areas." *See* Policy SW.16. Further, the District must "strive
9 to prevent displacement of equestrians and pedestrians when accommodating trail access and trail
10 connections for mountain bikers" and "[w]hen considering the designation of existing trails as
11 single-use or priority-use, the MCOSD will take care to maintain connectivity between destinations
12 for user groups historically using those trails." *See* Policy SW.17.

13 22. To comply with CEQA, the District prepared the Trail Plan EIR, which found that the Trail
14 Plan would have no significant impacts and thus no mitigation was required. In response to
15 comments, the District stated that for all future 'projects' initiated under the Trail Plan the District
16 would "prepare an initial study for all projects that are not exempt from CEQA that [would] reach one
17 of the following conclusions: (1) the project is within the scope of the Trail Plan EIR and does not
18 raise any new or more significant impacts on the environment; (2) the project results in significant
19 impacts on the environment beyond those addressed in the Trail Plan EIR, but those impacts can be
20 mitigated to level that is less than significant, resulting in a mitigated negative declaration; (3) the
21 project results in significant impacts on the environment beyond those addressed in the Trail Plan EIR
22 and the project requires a new environmental impact report."

23 **B. ENVIRONMENTAL SETTING AND IMPACTS OF BIKING.**

24 23. The Bob Middagh Trail is located within the Alto Bowl Preserve, a watershed encompassing
25 37.1 acres, consisting of 0.77 miles of narrow trails and 0.37 miles of wide trails. The Trail Plan
26 identifies the Alto Bowl Preserve as part of 'Region One,' and states that all but .05 miles of this trail
27 system has 'unknown' usage. The Trail Plan makes no mention of the Bob Middagh Trail.

28 24. The Alto Bowl Preserve was formerly comprised of dairy ranches. As the town of Mill Valley

1 grew in the late 1960's, citizens successfully challenged the plans of several developers to build on
2 the surrounding ridges of Alto Bowl, thereby eventually allowing the County to acquire the area
3 through separate purchases in 1974, 1985, and 1990. In recent years, dedicated local volunteers have
4 restored many acres of this preserve's native habitats by waging an ongoing battle against French
5 broom and other invasive, exotic plants.

6 25. Since the Alto Bowl Preserve became part of the District's open space lands, the Bob Middagh
7 Trail has been used on a regular basis by hikers and equestrians, but not by mountain bikes, which
8 are not permitted, although illegal riding does occur, leading to trail damage and conflicts with hiking
9 and equestrian users. Such damage and conflict is consistent with considerable evidence from other
10 localities showing that bike riding has the potential for significant environmental and safety impacts
11 vis a vis sensitive natural resources and other non-bike users of the trail system, and with the County's
12 own documentation through incident reports of illegal riding, user conflicts, safety impacts and
13 damage to natural resources caused by biking on trails in Marin County.

14 **C. DISTRICT'S DECISION TO ALLOW BIKES ON THE BOB MIDDAGH TRAIL.**

15 26. Following adoption of the Trail Plan, in 2015 the District considered project proposals from
16 the public regarding the creation of new trails, decommissioning of trails or changes or expansions
17 of use on existing trails. Among these was a proposal by the Marin County Bike Coalition ("MCBC")
18 to open the Bob Middagh Trail to bicycle use, along with improving stream crossings and sight lines
19 and installing speed control features. At the same time, countervailing proposals were submitted by
20 several local groups, including the Scott Valley Homeowners' Association and the Alto Bowl
21 Horseowners Association to keep the Bob Middagh Trail closed to bicycle use while making
22 environmental improvements.

23 27. On September 22, 2015, the Friends of Marin Open Space submitted a Petition containing
24 1,088 signatures and comments opposing the proposed change of use from hiking and equestrian on
25 the Bob Middagh Trail to allow bikes.

26 28. On November 10, 2015, the District released its assessment of the various proposals. The
27 MCBC proposal to allow bikes on the Bob Middagh Trail was adopted as an official 'proposed'
28 project, based on the District's calculation that it would reduce overall physical environmental

1 impacts by a score of -8. At the same time, the competing proposals not to allow bikes on the trail
2 but instead to improve trail and watershed conditions were rejected, based on the District's conclusion
3 that these proposals were not 'scoreable.' According to the District, project proposals shown as not
4 scoreable "simply could not be evaluated in their current format using the [Trail Plan] criteria and
5 process" because "none of the activities proposed are such that they would ever produce measurable
6 changes to the evaluation criteria."

7 29. Following this decision, the District hired a consultant to conduct a feasibility analysis of
8 allowing bikes on the Bob Middagh Trail, which was presented to the public at a August 25, 2016
9 'community workshop' in Mill Valley along with proposed changes to the adjacent Gasline Trail.
10 The District then provided a 30 day comment period ending on September 24, 2016 to provide input
11 on the proposed project. During this time, the District did not prepare an initial study nor conduct any
12 review under CEQA.

13 30. On September 9, 2016, the District posted the following on its website:

14 A proposed project to improve drainage and change the designated use of the Bob Middagh
15 Trail to allow bicycles. The related feasibility study presented a range of physical measures
16 that could be taken to address concerns about comfort and safety, including speed control
17 devices, minor realignments of the steepest sections, and brush removal to improve sight
18 lines. These measures would not be mutually exclusive and the public was invited to weigh
in on what specific combination of measures would be most appropriate in conjunction with
a change in the designated use to allow bicycles. Staff made a specific recommendation to
proceed with implementation, but held off on making a specific recommendation of how the
trail could be appropriately improved until public comment is collected and synthesized.

19 31. On September 24, 2016, Petitioner along with numerous other local citizens provided detailed
20 comments on the District's proposal to open the Bob Middagh Trail to bikes, including scientific
21 studies showing the potential for mountain bikes to cause significant environmental impacts due to
22 erosion, expansion of riding on unmarked trails, disturbance of wildlife, noise and physical harm to
23 non-bikers such as hikers and equestrians. Petitioner's comments in particular noted that "the public
24 appears to have no information from the District on how it will make a decision on either allowing
25 or not allowing biking on these trails" and that "the fact that the public has not been informed of the
26 District's procedure in this regard undermines transparent decision-making and public process."

27 32. Following the close of public comment on the project, local citizens inquired about the timing
28 and process for project approval. On October 11, 2016, County Parks Director Max Korten

1 responded as follows:

2 I don't have an exact timeline for you, but within the next month I expect our staff to finish
3 going through comments and release a public memo responding to comments, describing the
4 projects the District intends to move forward with and the next steps for projects within the
5 Alto Bowl Preserve. This is an activity performed by staff and does not require a board
action. As I mentioned in our meeting, the District's projects, including these would then
become a part of our proposed work plan which would go to the Board of Directors for
approval in our annual budget hearings.

6 33. On November 29, 2016, the District issued a memo, which explained that the District staff
7 had decided to approve the proposal to allow bikes on the Bob Middagh Trail:

8 The proposal to improve and open the Bob Middagh Trail to bicycle use was approved with
9 design modifications as described in this summary. The change in use evaluation process
10 determined that the addition of bicycle use on the Bob Middagh Trail could be accommodated
11 in a safe and sustainable manner and would not have significant effects to natural or cultural
resources if recommended design and management modifications are implemented. The
addition of bicycles to the trail would also provide an important non paved bicycle route
connection for the surrounding community.

12 34. The November 29, 2016 memo also announced that the District had approved a
13 decommissioning and rerouting of the Gasline Trail into a new area. The memo states that the new
14 trail would not affect circulation patterns in the area and that environmental impacts of the new trail
15 would be addressed prior to the project construction phase.

16 35. The District's memo states that the District "collected comments from over 400 individuals"
17 and that the "vast majority of these communications focused on the proposed change in use to the Bob
18 Middagh Trail and approximately 82 % of the commenters had a favorable opinion of the proposed
19 change" while "[a]pproximately 75 people, or 18% of those who submitted a comment about the Bob
20 Middagh Trail, expressed unfavorable opinions about the proposed change." The memo fails to
21 mention that 1) the vast majority of persons expressing favorable opinions of the proposed change
22 are expressed in form-like letters, many of which are from individuals without any address or proof
23 that the opinions are from Marin County residents; 2) the District received as part of its comments
24 a petition containing *over 1,000 signatures* from local Marin citizens opposing the change; and 3)
25 the opposition letters are detailed and raised numerous concerns backed with evidence and first-hand
26 accounts relating to bike impacts.

27 36. In response to the District's announcement that it had approved the Project, concerned citizens
28 raised questions regarding further process:

1 It looks like the project itself has now been approved by the MCOSD and has a timeline and
2 some technical things left to do, but what you're now seeking is budget approval from the
3 Board, to move forward. Am I understanding this correctly? So, if we have comments in the
4 future, we should address them to the Board?

5 37. On December 1, 2016, Carl Somers, chief of planning and acquisition for the District,
6 responded by stating: "This is essentially correct. Funds to make the planned improvements to the
7 Bob Middagh Trail will be included in the draft budget presented to the board in June."

8 38. On December 5, 2016, the Marin Independent Journal published an article restating the
9 District's announcement that "it was moving forward" with a proposal by the Marin County Bicycle
10 Coalition to open up the Bob Middagh Trail to cyclists.

11 39. On December 9, 2016 Petitioner's Executive Director wrote to Max Korten asking for
12 information about the District's 'decision' to open up the Bob Middagh Trail to bikes:

13 My understanding is that the project itself has now finally been approved by the staff of
14 MCOSD and the public comment period about that decision is now over. Is this all correct?
15 If not, can you please clarify? If I am correct... can you please clarify who approved it and on
16 what date was it approved? If possible, can you also please send me a copy of the
17 memorandum, minutes or whatever other document exists that memorialized this project's
18 approval.

19 40. On December 10, 2016, Director Korten responded to Petitioner's inquiry with:

20 The short answer is that *we have made an administrative decision to move forward on the*
21 *project* and while this will be part of the budget that we will be looking for approval from the
22 board, that budget will also include the rest of our work plan for the upcoming fiscal year.
23 I hope that provides some clarity. (emphasis added.)

24 41. On December 10, 2016, Petitioner responded that Mr. Korten had not answered the questions:

25 Thanks for this but you haven't answered any of my questions. What does "an administrative
26 decision" mean? What does "move forward" mean? The IJ article states that MCOSD
27 "approved" the project. Approved means approved, that an official decision has been made
28 and that's that. Has it been approved or not? If so, by whom and how? Again, please provide
some document that I can share with those contacting my organization and the Marin Post,
which we publish. Is this decision final, so I can tell people to stop worrying about sending
comments? I really would appreciate a quick and thorough answer. This should not be that
complicated to respond to and people on both sides of this issue need to know what to do,
going forward.

42. On December 12, 2016, Mr. Korten responded in more detail (original questions in italics.)

Sorry that my previous email was not clear. Here are my answers to your questions:

What does "an administrative decision" mean?

This means that staff has made the decision to improve and open the Bob Middagh Trail to
bicycle use.

1 What does "move forward" mean?

2 Move forward means continue with the next steps including design, budgeting, environmental
3 compliance and permitting and implementation.

4 Has it been approved or not?

5 Staff has made the decision to improve and open the Bob Middagh Trail to bicycle use.

6 If so, by whom and how?

7 Myself and staff have made the decision regarding this project.

8 43. On February 14, 2017, citizens requested whether "this particular project, namely the change
9 in use designation of the Middagh to multi-use, been approved at the OSD level? If so, is that the final
10 approval required or will it go to the Board for final approval? If not already approved, then when
11 is it scheduled to be heard again?" In response, Max Korten stated on February 14, 2017 that:

12 In terms of our planning process for the Middagh project, the next steps are the following: Our
13 17/18 road and trail work plan has been posted on our website including this project. We are
14 setting up time with our staff to meet with interested members of the public to discuss the
15 work plan. On March 16th we present the work plan to our Parks and Open Space
16 Commission. In June the Board adopts the Open Space budget. In late spring to early
17 summer CEQA is completed. Implementation is will likely take place in the summer of 2017.

18 44. Mr. Korten then goes on to explain in a separate communication that "[t]he agenda for the
19 budget hearings will not ...address the Bob Middagh project on a standalone basis. Rather, the Board
20 will be reviewing and voting to approve the Measure A budget and the Open Space budget as a whole.
21 The Bob Middagh project is a line item in the draft Measure A budget." (emphasis added.)

22 **D. PETITIONER'S ATTEMPTS TO GAIN ACCESS TO THE DISTRICT'S PROCESS
23 AND DECISION THROUGH PUBLIC RECORDS ACT REQUEST.**

24 45. Following Director Korten's responses, Petitioner submitted a Public Records Act request on
25 December 19, 2016 requesting "[a]ll documents that refer or relate to the decision made by staff of
26 the Marin County Open Space District to Open the Bob Middagh Trail to Mountain Biking, as
27 discussed in your memo dated November 29, 2016 entitled "Update Regarding Pending Proposed
28 Projects In The Alto Bowl Open Space Preserve."

46. On December 29, 2016, the Marin County Counsel's office responded to the request by stating
that the requested documents should be available by January 16, 2017, but that the District would
intend to withhold from disclosure any documents 1) containing confidential information protected
by the attorney-client privilege or attorney work product doctrine; 2) exempt from disclosure pursuant

1 to the deliberative process privilege; 3) constituting preliminary drafts; 4) personnel, medical or
2 similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
3 and 5) records exempt under other provisions of federal or state law.

4 47. On January 13, 2017, the County Counsel's office again responded, stating that the District
5 would need more time, until February 9, 2017, to provide the requested documents.

6 48. On January 18, 2017, Petitioner responded that the continued delay was unacceptable:

7 It is clear that this decision was made relatively quickly and a search of the documentation
8 I've requested should not be hard to produce. It is frankly inconceivable that it would take you
9 almost two months to produce that information. I am concerned that this delay is counter to
10 the public's right to understand how decisions regarding their resources are being made. In
11 sum, I do not accept your continuing to stall on a very simple request. I will, therefore,
12 consider your tactics to be a denial unless you immediately produce the documentation that
13 I am requesting.

14 49. On January 18, 2017, the Deputy County Counsel Steven Perl responded by noting:

15 The Public Records Act does not include any deadline, which could be the subject of an
16 "extension," for when requested records must be made available. The Act, in California
17 Government Code section 6253, simply provides that within 10 days of receipt of the request,
18 the public entity must advise the requester of the estimated date on which the records will be
19 available....The District has not denied your Public Records Act request for access to records,
20 and the District's response cannot be considered a "denial," regardless of your attached
21 correspondence.

22 50. On February 9, 2017, Deputy County Counsel Perl wrote a letter received by Petitioner on
23 February 11, 2017, informing Petitioner that the District's documents were available for copying but
24 that attorney-client privileged documents, exempt under California Government Code section 6254(k)
25 and California Evidence Code Section 950 *et seq.*, would not be included in the response.

26 51. On February 14, 2017, Petitioner reviewed the documents produced by the District in response
27 to Petitioner's Public Records Act request, which, however, did not include *any* documents
28 demonstrating how the District made its decision to open the Bob Middagh Trail to bikes other than
the announcement of the decision posted on their web site.

52. In response, Petitioner sent a letter to the County questioning the lack of any relevant
documents as to how the District's decision to open the Bob Middagh Trail to bikes was made:

Given that this decision was made sometime between September 24, 2016 (the close of public
comment on the project) and November 29, 2016 (the date of the memo and the subsequent
announcement on the web site), I am wondering why the District has not produced any
documentation of that decision (notes, minutes, emails, etc.) of the decision making process
in response to my PRA request. Instead, the only documents produced covering that time
period are two random emails to members of the public who themselves appear confused by

1 the District's opaque "decision" process and its outcome. The purpose of this letter is to
2 request once again documents relating to and leading up to the District's November 29, 2016
3 decision to change the use for the Bob Middagh Trail, including documentation of how the
4 District determined that the "addition of bicycle use on the Bob Middagh Trail could be
5 accommodated in a safe and sustainable manner and would not have significant effects to
6 natural or cultural resources" in the area. The proposition that there is no existing
7 documentation for this important decision and conclusion regarding impacts strains all
8 credulity, and, in my view, suggests that the District is wrongfully hiding its decision making
9 process from concerned Marin citizens, who care deeply about their local environment and
10 trails. I note also in closing, that in your earlier response to my PRA request, you stated that
11 certain documents might be withheld from production based on various privileges set forth
12 in Government Code § 6254, including the attorney-client privilege, attorney work product
13 doctrine, deliberative process privilege and exemption for preliminary drafts. Please advise
14 immediately if responsive documents are being in fact withheld under any of these categories
15 and if so, which ones, specifically. As you are aware, the extent to which these privileges may
16 or may not apply are fact dependent and, at this point, I see no grounds for why any such
17 privileges would apply concerning such an important decision concerning the use of public
18 lands and the public interest.

19 53. Two weeks later, on March 14, 2017, Deputy County Counsel Perl responded by email stating
20 that "I have confirmed that the Marin County Open Space District did provide you with copies of all
21 its records responsive to your Public Records Act request. No responsive documents were withheld,
22 under attorney-client privilege or otherwise."

23 **E. DISTRICT'S SUBSEQUENT ANNOUNCEMENT OF APPROVAL AND ISSUANCE**
24 **OF CEQA 'CONSISTENCY ANALYSIS.'**

25 54. On February 13, 2017, the District announced its draft 2017 Road and Trail Work Plan, which
26 included the 'Bob Middagh Trail Recreation, Safety, and Restoration Project,' allowing bikes on the
27 Bob Middagh Trail. The announcement states that 2017 Work Plan would be presented at the Parks
28 & Open Space Commission meeting on March 16, 2017 and that the Board of Supervisors would
consider these projects during their June fiscal year 2017-18 budget hearings.

55. At the March 16, 2017, the Parks & Open Space Commission held their meeting, but did not
discuss or address the Project beyond hearing from District staff about the Project work plan.

56. On May 12, 2017, the District put out a new announcement stating that it had 'approved' the
Bob Middagh Trail as well as the Gasline Trail projects as follows:

The Marin County Open Space District (MCOSD) has approved the proposed improvements
to the Bob Middagh and Gasline Trails in the Alto Bowl Open Space Preserve. These projects
are moving forward, including realigning both trails to reduce their running slopes, improving
erosion control measures, replacing failed culverts, improving accessibility, and reducing
safety hazards. As part of this project, the MCOSD is designating Bob Middagh Trail for
hiking, biking, and equestrian multiuse.

57. The final announcement states that the Project is consistent with Trail Plan as follows:

1 A. The project would improve access and provide a range of desired user experiences within
2 the Alto Bowl Preserve by improving the trail conditions, reducing slopes, and improving
drainage for year-round access (Policy 1).

3 B. The project would improve sustainability and address visitor conflicts by realigning the
4 trail to have a slope of less than 10 percent, install drainage improvements, improving sight
lines, and establishing clear signage (Policy 2, 4, 7, and 9).

5 C. The project would minimize impacts to sensitive resources by designing the alignment to
6 avoid sensitive species, improving drainage, reduce sedimentation to the local waterways, and
maintain habitat for wildlife (Policy 3).

7 D. The project would enhance road and trail connectivity by providing a link between the
communities of Corte Madera and Mill Valley (Policy 5).

8
9 58. Based on these findings, the District approved the Project, which decision “certifies the
10 proposed project's conformance with the Marin CWP, the MCOSD Strategic Plan, and the Marin
County Parks Road and Trail Management Plan.”

11 59. To support its purported ‘approval’ of the Project, the District presented a “Consistency
12 Analysis,” which states that the Project was ‘consistent with’ policies adopted as part of the CWP and
13 Trail Plan, including policies such as “expand[ing] the network of trails in a manner that protects,
14 restores, and preserves the natural systems of the preserve and implement land management best
15 management practices” or “improv[ing] sustainability and address visitor conflicts by realigning the
16 trail to have a slope of less than 10 percent, install drainage improvements, improving sight lines, and
17 establishing clear signage (Policy 2, 4, 7, and 9).”

18 60. To address CEQA, the District conducted a “Consistency Assessment” which purported to
19 assess whether the Trail Project would require a negative determination or EIR. The District’s
20 Consistency Assessment concludes that the Project was “consistent with the Trail Plan EIR, because
21 they do not result in new or more significant impacts from project changes, changed circumstances,
22 or new information.” Based on the Consistency Assessment, the District “determined that it is not
23 necessary to prepare a new EIR or negative determination” for the Project.

24 61. The District’s Consistency Assessment is a 196 page document completed on May 11, 2017,
25 one day before the District’s announcement it had ‘approved’ the Project. The Consistency
26 Assessment was never circulated for public review, nor was the public ever apprised that such a
27 document was even being prepared until after completion and Project approval.

28 62. The Consistency Assessment impact analysis asks whether the Project would have impacts

1 that were “consistent with those anticipated under the RTMP EIR.” The Consistency Assessment
2 explains its evaluation process is controlled by the CEQA Guidelines applicable to changed projects,
3 CEQA Guideline 15162:

4 This evaluation compares environmental impacts associated with the proposed project to
5 those identified in the 2014 RTMP EIR in order to determine if there is new information,
6 changed circumstances, or new environmental effects requiring revisions to the mitigation
7 measures, as described in CEQA Guidelines Section 15162....The environmental checklist is
8 organized by the resource areas required by CEQA and as analyzed by the RTMP EIR (e.g.,
9 aesthetics, agriculture and forestry resources, air quality, etc.)....The subsequent columns are
10 titled “EIR Section and Page”, “Do Proposed Changes Involve New or Substantially More
11 Severe Significant Impacts?”, “Do Any New Circumstances Involve New or Substantially
12 More Severe Impacts?”, “Any New Information of Substantial Importance Requiring New
13 Analysis or Verification?”, and finally “Do Existing FEIR Do Previously Adopted FEIR
14 RTMP Policies and BMPs Address/Resolve Impacts? The purpose of each column is
15 described below, as specified in CEQA Guidelines Section 15162.

16 The Consistency Assessment conducts this review for a host of resource categories ranging from
17 aesthetics to hazards to water quality and based on this review declares without analysis, study or
18 evidence that the Project will not have any impacts separate from those analyzed in the Trail Plan EIR
19 and thus no further CEQA review need occur.

20 63. The County filed its Notice of Determination (“NOD”) for the Consistency Determination on
21 May 12, 2017. The NOD states as its “CEQA Determination Finding that “Section 15162 of the State
22 CEQA Guidelines applies to the Bob Middagh and Gasline Trails Improvement Project.” The NOD
23 goes on to state that the District which was relying on its Consistency Assessment, which determined:

24 (1) there are no substantial changes to the project that would require major revisions to the
25 EIR; (2) there are no changes in the circumstances under which the project will be undertaken
26 that will require major revisions of the RTMP EIR due to the involvement of new significant,
27 environmental effects or a substantial increase in the severity of previously identified
28 significant effects; and (3) there is no new information of substantial importance that would
result in new significant impacts on the environment that the lead agency has not previously
addressed in the 2014 RTMP TPEIR, no impacts that would be substantially more severe than
those disclosed in the RTMP EIR, and no impacts that require new mitigation measures.

29 The NOD concludes that the project meets the conditions for the application of CEQA Guidelines §
30 15162 and therefore preparation of a new EIR, addendum, or negative declaration is not necessary.

31 **V. FIRST CAUSE OF ACTION** 32 (Violation of California Public Records Act; Govt. Code §§ 6258-6259.)

33 64. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

34 65. Petitioner challenges the District’s failure to produce documents responsive to Petitioner’s
35 Public Record Act request for documents that refer or relate to the decision made by District staff to

1 open the Bob Middagh Trail to biking, as discussed in the District's November 29, 2016 memo
2 entitled "Update Regarding Pending Proposed Projects In The Alto Bowl Open Space Preserve." The
3 November 29 memo refers to an intra-departmental decision-making process, in which District staff
4 and the Director of the Parks Department Max Korten made a joint determination to approve the
5 Project based on an ostensible evaluation of Project impacts and compatibility with Trail Plan
6 policies. However, in response to Petitioner's Public Records Act request, the District produced no
7 documents related to this decision making process, including memos, meeting minutes or emails
8 among the decision-making individuals.

9 66. In response to Petitioner's Public Records Act request, the District first identified five
10 different categories under which it reserved the right to withhold document disclosure. Subsequently,
11 the District narrowed those categories to a single ground, based on attorney client privilege. In its last
12 response, however, the District claimed that no such documents were being withheld because no such
13 documents exist.

14 67. In failing to provide the requested documents, the District has violated Government Code §
15 6253(d), which states that "[n]othing in this chapter shall be construed to permit an agency to delay
16 or obstruct the inspection or copying of public records." Here, the District has obstructed the
17 production of these public records, thereby violating Government Code § 6253(d).

18 68. Petitioner seeks a writ of mandate pursuant to Code of Civil Procedure § 1085 to require the
19 District to produce all documents responsive to Petitioner's Public Records Act request, as required
20 by law. Govt. Code §§ 6253(d), 6258, 6259.

21 **VI. SECOND CAUSE OF ACTION**
22 (Violation of CEQA: Approval of Project without CEQA Review)

23 69. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

24 70. The District's November 29, 2016 approval of the Project violates CEQA in that the District
25 conducted no CEQA review despite committing itself to the Project through an administrative review,
26 ostensible identification of mitigation measures, and final determination that the Project would not
27 cause significant impacts.

28 71. Here, CEQA review was required because the District's approval was a discretionary
determination with the potential for significant environmental and safety impacts. The introduction

1 of biking and accompanying physical alteration of the Bob Middagh Trail has the potential for
2 significant impacts due to erosion, wildlife, noise, aesthetics and public safety. Further, the attendant
3 physical change of introducing biking onto the Bob Middagh Trail will cause displacement of
4 existing users due to the safety issues caused by the introduction of fast moving bikes trail into an area
5 historically used by hikers and equestrians, which magnifies the significance of the physical change
6 being approved. By failing to prepare an initial study to consider the impacts of this significant
7 change to the environment, and failing to consider project alternatives, including the no project
8 alternative, the District has violated CEQA. In addition, the creation of an entirely new Gasline Trail
9 has the potential for significant environmental impacts, including changes in circulation patterns
10 leading to increased illegal bike riding in the area that has not been assessed by the District.

11 72. Petitioner seeks a writ of mandate pursuant to Code of Civil Procedure § 1085 to require the
12 District to set aside its approval of the Project until such time as the District has completed the
13 required CEQA Review.

14 **VII. THIRD CAUSE OF ACTION**
(Violation of CEQA in Tiering Project to Trail Plan EIR)

15 73. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

16 74. The District's second 'approval' of the Project on May 12, 2017 violates CEQA in its 'tiering'
17 to the Trail Plan EIR through the preparation of the 'Consistency Assessment.'

18 75. The District's determination that the impacts of the Project need not be evaluated because it
19 will not require substantial changes to the EIR prepared for the Trail Plan EIR pursuant to CEQA
20 Guidelines § 15162 is contrary to CEQA. CEQA Guidelines § 15162 is only applicable in cases
21 where there is a change to an existing project. Here, the Project is not the same project as the Trail
22 Plan, but rather a second-tier project that is more specific than the first-tier programmatic Trail Plan
23 evaluated by the Trail Plan EIR. As a second-tier project, the CEQA evaluation should have
24 proceeded according to the requirements of Public Resources Code § 21094 and CEQA Guidelines
25 § 15152, as opposed to Section 15162.

26 76. The District's determination that the impacts of the Project need not be evaluated pursuant
27 to CEQA Guidelines § 15162 is contrary to CEQA in that the Project is not 'within the scope' of the
28 Trail Plan EIR. *See* CEQA Guidelines 15168(a)(2).

1 77. The District's determination that the impacts of the Project need not be evaluated pursuant
2 to CEQA Guidelines § 15162 is contrary to CEQA in that the Trail Plan EIR never analyzed the
3 specific impacts of changing the use on the Bob Middagh Trail to add bike riding, which has never
4 previously occurred. The Trail Plan's scoring system for evaluating new projects in this case does
5 not consider a 'no project' alternative, as required by CEQA, nor does the system constitute a CEQA
6 analysis of impacts of specific projects that were never analyzed or considered in the Trail Plan EIR.
7 Here, the introduction of biking to, and physical alteration of, the Bob Middagh Trail has the potential
8 for significant impacts due to erosion, wildlife, noise, aesthetics and public safety. Further, the
9 attendant physical change of biking on the Bob Middagh Trail will cause displacement of existing
10 users due to the safety issues caused by the introduction of fast moving bikes trail into an area
11 historically used by hikers and equestrians, which magnifies the significance of the physical change
12 being approved. By failing to prepare an initial study to consider the impacts of this significant
13 change to the environment, and failing to consider project alternatives, including the 'no project
14 alternative,' the District has violated CEQA. In addition, the creation of an entirely new Gasline Trail
15 has the potential for significant environmental impacts, including changes in circulation patterns
16 leading to increased illegal bike riding in the area that has not been assessed by the District nor was
17 considered in the Trail Plan EIR.

18 **VIII. FOURTH CAUSE OF ACTION**
19 **(Violation of Trail Plan)**

20 78. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

21 79. The Trail Plan sets forth a step by step procedure whereby the District assesses and scores
22 proposed projects for consideration for funding and approval in the next funding cycle. The Trail
23 Plan states that projects involving reconstruction or rerouting of trails will be projects that compete
24 in the annual project review selection process. *See* Trail Plan, Table 5.1. The Trail Plan further
25 describes "Inputs to the Road and Trail Evaluation Tool" covering a range of criteria. *See* Table 5.2.

26 80. In approving the Project, the District disqualified six proposals from local citizens groups to
27 rehabilitate and improve the condition of the Bob Middagh Trail despite the fact that each proposal
28 qualified as either a reconstruction or rerouting of the trail. The District rejected each of these
proposals based on an unsubstantiated finding that each proposal offered 'no scoreable options' even

1 though each proposal offered environmental benefits related to reducing erosion, protecting wildlife,
2 improving public safety, enhancing vegetative cover *etc.*

3 81. In the end the only 'proposal' for the Bob Middagh Trail considered 'scoreable' by the District
4 was the proposal from the Marin County Bicycle Coalition to 1) improve stream crossings; 2)
5 improve sites lines and install speed control features; and 3) open the Bob Middagh Trail to bicycle
6 use. As a result, the District never considered any project that would retain the existing use on the
7 Bob Middagh Trail while at the same time reducing those existing trail impacts on the environment.

8 82. The District's failure to consider project proposals meeting the criteria for new projects as set
9 forth in the Trail Plan for consideration violates the Trail Plan and results in the District never
10 considering in a public process the option of *not* adding bikes to the Bob Middagh Trail while at the
11 same time improving the environmental impacts of that trail usage. This result is arbitrary and
12 violates the Trail Plan.

13 IX. PRAYER FOR RELIEF

14 WHEREFORE, Petitioners pray for judgment as follows:

15 1. For a Writ of Mandate ordering the County to: a) produce all documents that refer or
16 relate to the District's decision to approve the Project in accordance with the requirements of the
17 California Public Records Act request, Govt. Code §§ 6253, 6258 & 6259; (b) set aside the District's
18 decision to approve the Bob Middagh Trail until such time as the District had complied with CEQA
19 and the Trail Plan; (c) take whatever additional action is necessary in conformance with the Court's
20 decision; and (d) file a return with the Court showing compliance with the writ.

21 2. For injunctive relief precluding development of the Project.

22 3. For reasonable attorney's fees under Code of Civil Procedure § 1021.5 .

23 4. For costs of suit.

24 5. For such other and further relief as the Court deems proper.

25 DATED: June 1, 2017

26 By: _____

27 Michael W. Graf
28 Attorney for Petitioner

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