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FILED
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JAN 26 2012

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

9 Attorneys for Plaintiff:
NORTHERN CALIFORNIA RIVER WATCH

11 SUPERIOR COURT OF CALIFORNIA

12 IN AND FOR THE COUNTY OF HUMBOLDT

DR120060

13 NORTHERN CALIFORNIA RIVER
WATCH, a California non-profit
14 corporation,

CASE NO:

COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF AND
CIVIL FINES
[California Coastal Act - Pub. Res. Code
§ 30000 *et seq.*]

15 Plaintiff,
16 v.

17 GENERAL GROWTH PROPERTIES,
INC.; BAY SHORE MALL, LP; and
DOES 1-10, Inclusive,

18 Defendants.
19

20 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH ("PLAINTIFF"),
21 by and through its counsel of record, and for its complaint against Defendants GENERAL
22 GROWTH PROPERTIES, INC., BAY SHORE MALL, LP, and DOES 1-10, Inclusive
23 ("DEFENDANTS"), states as follows:

24 I. INTRODUCTION

25 1. This is a civil suit brought against DEFENDANTS under the citizen suit enforcement
26 provisions of the California Coastal Act of 1976, California Pub. Res. Code § 30000 *et seq*
27 ("California Coastal Act"). This Complaint seeks relief from DEFENDANTS for illegally
28 failing to comply with the requirements in Coastal Development Permit No. 1-85-83. The

1 Coastal Development Permit, as a condition of issuance and the right to develop the “Bay Shore
2 Mall” in Eureka, California, imposed terms and conditions requiring DEFENDANTS to restore
3 5.17 acres of wetlands located on the project site. DEFENDANTS’ constructed the Bay Shore
4 Mall, but failed to comply with this Coastal Development condition, violating the California
5 Coastal Act.

6 II. PARTIES

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

16 3. PLAINTIFF is informed and believes and thereupon alleges that Defendant General
17 Growth Properties, Inc., is a Delaware corporation, registered with the California Secretary of
18 State’s Office to do business in the State of California. Plaintiff is further informed and believes
19 and thereon alleges that Defendant General Growth Properties, Inc. is the owner of the Property.

20 4. PLAINTIFF is informed and believes and thereupon alleges that Defendant Bay Shore
21 Mall, LP is a Delaware corporation, registered with the California Secretary of State’s Office
22 to do business in the State of California. Plaintiff is further informed and believes and thereon
23 alleges that Defendant Bay Shore Mall, LP is the owner of the Property.

24 5. The true names and capacities of DEFENDANTS DOES 1-10, Inclusive, whether
25 individual, corporate, or otherwise, are presently unknown to PLAINTIFF, who therefore sues
26 DEFENDANTS by said fictitious name. PLAINTIFF is informed and believes that each of said
27 fictitiously-named DEFENDANTS is responsible in whole or in part for the acts alleged herein.

28

1 PLAINTIFF will seek leave of the Court to substitute the true names of said fictitiously-named
2 DEFENDANTS when the same have been ascertained.

3 6. PLAINTIFF alleges that at all relevant times herein, each defendant was the agent,
4 representative, employee, surrogate, partner, or joint venturer of each other defendant and in
5 doing the actions alleged herein, acted within the scope of his/her/its authority as such agent,
6 representative, employee, surrogate, partner, or joint venturer and acted with the permission and
7 consent of DEFENDANTS.

8 **III. JURISDICTION**

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

12 8. Venue is proper in Humboldt County because the violations of DEFENDANTS as alleged
13 herein have occurred in Humboldt County, because the Property is located in Humboldt County
14 and because the individual(s) affected by DEFENDANTS’ actions as alleged in this Complaint
15 suffered injury in fact in Humboldt County.

16 **IV. STATEMENT OF FACTS**

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

20 10. On or about September 26, 1985, the Commission held a public hearing on
21 DEFENDANTS’ application, approving Coastal Development Permit No. 1-85-83 (“CDP”)
22 subject to stated conditions regarding the restoration of 5.17 acres of wetlands on the Property.

23 11. PLAINTIFF is informed and believes that DEFENDANTS have failed to comply with
24 the CDP wetland restoration conditions.

25 12. On or about November 29, 2011, PLAINTIFF served Defendants General Growth
26 Properties, Inc. And Bay Shore Mall, LP with a Notice of Violations and Intent to File Suit,
27 identifying DEFENDANTS’ alleged failure to comply with the CDP wetland restoration
28 conditions and requesting DEFENDANTS contact PLAINTIFF within 30 days to discuss the

1 alleged California Coastal Act violations. A true copy of said Notice of Violations is attached
2 hereto as Exhibit A.

3 13. As of the date of the filing of this Complaint, DEFENDANTS have failed to comply with
4 the CDP wetland restoration conditions and have failed to respond to the Notice of Violations
5 in any manner.

6 **V. FIRST CAUSE OF ACTION**

7 **(Declaratory Relief for Violations of the California Coastal Act)**

8 PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
9 13 inclusive, of this Complaint as though set forth in full.

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

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

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

23 **VI. SECOND CAUSE OF ACTION**

24 **(Injunctive Relief for Violations of the California Coastal Act)**

25 PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
26 16 inclusive, of this Complaint as though set forth in full.

27 //

28 //

1 17. PLAINTIFF has no adequate remedy at law to require DEFENDANTS to reverse the
2 consequences of their unlawful activities and, therefore, civil fines alone will not remedy the
3 wrongs about which PLAINTIFF complains.

4 18. Unless this Court grants the equitable relief requested, PLAINTIFF will be irreparably
5 harmed in that PLAINTIFF and its members will be deprived of both the aesthetic enjoyment
6 and environmental protection of the natural resources in this part of the California Coastal Zone.

7 19. Pursuant to Pub. Res. Code § 30803, subdivision (a), the California Coastal Act provides
8 in relevant part:

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

12 **VII. THIRD CAUSE OF ACTION**

13 **(Civil Fines for Violations of the California Coastal Act)**

14 PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
15 19 inclusive, of this Complaint as though set forth in full.

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

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

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

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

27 //

28 //

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

4 **VIII. FOURTH CAUSE OF ACTION**

5 **(Daily Fines for Violations of the California Coastal Act)**

6 PLAINTIFF incorporates by reference the allegations contained in paragraphs 1 through
7 21 inclusive, of this Complaint as though set forth in full.

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

10 “(b) Any person who performs or undertakes development that is in violation of
11 this division ... when that person intentionally or knowingly performs or
12 undertakes the development in violation of this division ... may, in addition to
13 any other penalties, be civilly liable in accordance with this subdivision. Civil
14 liability may be imposed by the superior court in an amount which shall not be
15 less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars
16 (\$15,000), per day for each day in which the violation occurs.”

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

21 **IX. PRAYER FOR RELIEF**

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

23 1. As to the First Cause of Action, for a declaration of the rights and responsibilities of the
24 parties with respect to the California Coastal Act. Specifically, PLAINITFF seeks a declaration
25 from the Court that DEFENDANTS have failed to comply with the CDP wetland restoration
26 conditions as regards the Property, that DEFENDANTS’ failure to comply with the CDP
27 wetland restoration conditions constitutes a violation of the California Coastal Act, and that
28 DEFENDANTS’ actions are separate and continuing violations of the California Coastal Act.

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
3 this Complaint.

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

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

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

15 7. For such other and further relief as the Court deems just and proper.
16

17 DATED: January 25, 2012

LAW OFFICE OF DAVID WEINSOFF

18

19

By: David Weinsoff
DAVID WEINSOFF
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

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EXHIBIT A

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760 fax. 415-460-9762
weinsoff@tx.netcom.com

VIA CERTIFIED U.S. MAIL

November 29, 2011

President
General Growth Properties, Inc.
110 North Wacker Drive
Chicago, IL 60606

President
Bay Shore Mall, LP
110 North Wacker Drive
Chicago, IL 60606

Ms. Sue Swanson
General Manager
Bayshore Mall, Box 1
Eureka, CA 95501

Re: Notice of Violations and Intent to File Suit

Dear Sir/Madam:

This Notice is provided on behalf of Northern California River Watch ("River Watch," a California non-profit Corporation. River Watch believes that General Growth Properties, Inc. and Bay Shore Mall, LP, have failed and are failing to comply with the specific condition of the 1985 Coastal Development Permit (CDP Application 1-85-83) requiring the restoration of certain on-site wetlands. The permit was issued to General Growth California, Inc. under the California Coastal Act (Public Resources Code § 30000 *et seq.*) for development at a site commonly referred to as "Bay Shore Mall," subsequently constructed and now located at 3300 Broadway between Truesdale Street and the extension of Mill Street in the City of Eureka, Humboldt County.

The Coastal Act requires that all non-exempt development in the coastal zone be appropriately permitted. The Bayshore Mall CDP, as a condition of issuance, required compliance with "Final Wetland Restoration Plan Bayshore Mall Eureka, California," prepared for "EDAW, Inc." by "Larry Seeman Associates" and dated September 1985. River Watch's concern is that General Growth Properties, Inc. and/or Bay Shore Mall, LP, which should have created the required wetlands consistent with the terms and conditions of the Coastal

Commission CDP, have failed and are failing to do so. River Watch is also concerned that General Growth Properties, Inc. and Bay Shore Mall, LP, having failed to comply with the terms and conditions of this prior CDP, propose to undertake new or additional "development" as defined in the California Coastal Act at the Bay Shore Mall in Eureka without obtaining required permit approval from the Coastal Commission.

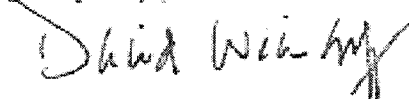
River Watch is providing you with notice that following the expiration of thirty (30) days from the date of receipt of this NOTICE, it intends to file suit in Humboldt County Superior Court against General Growth Properties, Inc. and Bay Shore Mall, LP for failure to comply with the permitting requirements of the Coastal Act. During this 30-day notice period, River Watch is willing to discuss resolution of the violation(s) identified in this NOTICE. However, if you wish to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next ten (10) days.

River Watch has retained this office as well as Nardell, Chitsaz & Associates LLP to represent it in this matter. All communications should be addressed to:

David Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, California 94930
Tel: (415) 460-9760

River Watch looks forward to discussing this matter with you.

Very truly yours,



David Weinsoff

cc: CSC - Lawyers Incorporating Service - Registered Agent
Bay Shore Mall, LP
General Growth Properties, Inc.
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

SENDER: COMPLETE THIS SECTION

1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
1. Print your name and address on the reverse so that we can return the card to you.
1. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

President
General Growth Properties, Inc.
110 North Wacker Drive
Chicago, IL 60606

Article Number
(Transfer from service label)
2009 1410 0000 8938 0659

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
[Signature]
B. Received by (Printed Name)
M. K. [unclear]
C. Date of Delivery
12-21-11
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
1. Print your name and address on the reverse so that we can return the card to you.
1. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

President
Bay Shore Mall, LP
110 North Wacker Drive
Chicago, IL 60606

Article Number
(Transfer from service label)
2009 1410 0000 8938 0659

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

A. Signature
[Signature]
B. Received by (Printed Name)
M. K. [unclear]
C. Date of Delivery
12-21-11
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
1. Print your name and address on the reverse so that we can return the card to you.
1. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

CSC/Lawyers Incorporating Service
Bay Shore Mall, LP
General Growth Properties, Inc.
2730 Gateway Oaks Dr./ Suite 100
Sacramento, CA 95833

Article Number
(Transfer from service label)
2009 1410 0000 8938 0642

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
[Signature]
B. Received by (Printed Name)
KATHY KAESTNER
C. Date of Delivery
11/30
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
1. Print your name and address on the reverse so that we can return the card to you.
1. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Ms. Sue Swanson
General Manager
Bayshore Mall, Box 1
Eureka, CA 95501

Article Number
(Transfer from service label)
2009 1410 0000 8938 0673

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

A. Signature
[Signature]
B. Received by (Printed Name)
S. Swanson
C. Date of Delivery
11/30
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No
3300 Broadway #1 Eureka CA 95501

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes