

1 ALESHIRE & WYNDER, LLP  
WILLIAM W. WYNDER, State Bar No. 84753  
2 *WWynder@awattorneys.com*  
JOHN FOX, State Bar No. 171426  
3 *JFox@awattorneys.com*  
WILLIAM C. MAZZOTA, State Bar No. 354761  
4 *WMazzota@awattorneys.com*  
3701 Wilshire Blvd., Suite 725  
5 Los Angeles, California 90010  
Telephone: (310) 527-6660  
6 Facsimile: (949) 223-1180

7 Attorneys for Defendants and Respondents,  
CITY OF RANCHO PALOS VERDES and  
8 CITY COUNCIL OF RANCHO PALOS  
VERDES

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, TORRANCE COURTHOUSE**

12 Community of Abalone Cove, *a California*  
13 *nonprofit mutual benefit company for common*  
14 *interest development,*

15 Plaintiff and Petitioner,

16 v.

17 City of Rancho Palos Verdes, City Council of  
Rancho Palos Verdes, and DOES 1 through 10,  
18 inclusive,

19 Defendants and Respondents.

20 DOES 11 through 25, inclusive,

21 Real Parties in Interest.

Case No. 24TRCP00352

Assigned for All Purposes to:  
Hon. Douglas W. Stern, Dept. B

**CITY OF RANCHO PALOS VERDES AND  
CITY COUNCIL OF RANCHO PALOS  
VERDES' NOTICE OF DEMURRER AND  
DEMURRER TO COMMUNITY OF  
ABALONE COVE'S VERIFIED  
PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF WILLIAM C.  
MAZZOTA IN SUPPORT THEREOF**

*[Filed Concurrently with Request for Judicial  
Notice; Declaration of Enyssa Sisson; and  
[PROPOSED] Order.]*

Date: January 3, 2025  
Time: 8:30 a.m.  
Dept.: B

**RESERVATION NO.: 392739377896**

Action Filed: September 11, 2024  
Trial Date: Not Scheduled

1 **TO PLAINTIFF AND PETITIONER AND ITS ATTORNEY OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 8:30 A.M. on January 3, 2025, or as soon thereafter as  
3 the matter can be heard, in Department B of the above-entitled court located at 825 Maple Ave,  
4 Torrance, CA 90503, Defendants and Respondents City of Rancho Palos Verdes (the “City”) and  
5 City Council of the City of Rancho Palos Verdes (the “City Council”) (collectively “Respondents”)  
6 hereby does generally and specially demur to the Petitioner, Community of Abalone Cove’s  
7 (“Petitioner”) Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive  
8 Relief (the “Petition”).

9 Respondents demurrer to the Petition, pursuant to Code of Civil Procedure section 430.10(a)  
10 and 4310.10€ and related case law, on the basis that: (1) the First, Second Third, and Fourth Causes  
11 of Action are moot because the alleged harm cannot be redressed by setting aside Ordinance No.  
12 681 (the “Rezoning”). Further, the Second Cause of Action fails to state a claim, because (1) a  
13 legislative rezoning of a property does not constitute “development” as defined by the California  
14 Coastal Act of 1976 (the “Coastal Act”), and (2) the Coastal Commission is still in the process of  
15 approving Respondents’ changes to the zoning classification of the subject property, and, thus, the  
16 subject property’s zoning classification remains the same as it was prior to the passage of the  
17 Rezoning, Urgency Ordinance No. 678U, and Urgency Ordinance No. 680U.

18 This Demurrer is based on this Notice, the attached Demurrer, the attached Memorandum of  
19 Points and Authorities, the Request for Judicial Notice, the Declaration of William C. Mazzota  
20 (“Mazzota Decl.”), all documents and pleadings on file herein, and upon other oral and documentary  
21 evidence as may be presented at or before the time of the hearing on this matter.

22 As set forth in the accompanying Declaration of William C. Mazzota (“Mazzota Decl.”), on  
23 October 16, 2024, undersigned counsel sent Petitioner’s counsel a letter attempting to meet and  
24 confer regarding the grounds for the demurrer and explaining the arguments and legal authority that  
25 support Respondents’ demurrer. (Mazzota Decl., ¶ 6.) Thereafter, on October 25, 2024, undersigned  
26 counsel and Petitioner’s counsel met via Zoom video conference to discuss the Respondent’s  
27 arguments and authority and Petitioner’s response. (Mazzota Decl. ¶ 13.) This constituted a good  
28 faith effort to meet and confer, as required by Code of Civil Procedure section 430.41(a)(3). During

1 this meet and confer conference, Petitioner’s counsel stated that they would consider whether to  
2 dismiss Petitioner’s Second Cause of Action and requested a week to evaluate Respondents’  
3 arguments. Ultimately, however, undersigned counsel and Petitioner’s counsel were unable to reach  
4 an agreement resolving the objections to be raised in this Demurrer, including as it relates to the  
5 Second Cause of Action. (Mazzota Decl., ¶ 14.)

6 DATED: November 27, 2024

ALESHIRE & WYNDER, LLP  
WILLIAM W. WYNDER  
JOHN FOX  
WILLIAM C. MAZZOTA

9 By: 

10 JOHN FOX  
11 Attorneys for Respondents, CITY OF RANCHO  
12 PALOS VERDES and CITY COUNCIL OF  
13 RANCHO PALOS VERDES  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b><u>Page</u></b>
DEMURRER.....	7
I. INTRODUCTION.....	9
II. STATEMENT OF FACTS.....	11
A. City Council’s Actions at the April 16, 2024, City Council Meeting.....	12
B. City Council’s Actions at the June 4, 2024, City Council Meeting.....	12
C. City Council’s Actions at its June 18, 2024, City Council Meeting.....	12
D. Petitioner Initiates Litigation to Challenge the City Council’s June 18, 2024, Actions.....	13
III. STANDARD OF REVIEW.....	13
IV. REGULATORY BACKGROUND FOR THE ADOPTION OF A HOUSING ELEMENT.....	14
V. REGULATORY REQUIREMENTS FOR REZONING PROPERTY LOCATED WITHIN A COASTAL ZONE.....	15
VI. ARGUMENT.....	15
A. Petitioner’s Request to Set Aside the Rezoning is Moot.....	15
B. The Second Cause of Action Also Fails as a Matter of Law because the City Council’s Passage of the Rezoning is Not “Development” as Defined by the Coastal Act.....	17
VII. LEAVE TO AMEND SHOULD BE DENIED.....	20
A. Any Attempt to Amend the First Cause of Action to Challenge the Enactment of Ordinance Nos. 678U and 680U is Time Barred.....	20
B. The Second, Third, and Fourth Causes of Action, Alleging Violations of the Coastal Act, the Political Reform Act, and the Common Law Prohibition on Conflicts of Interest Respectively, are Time Barred because the Gravamen of Each Cause of Action is a Challenge to the City Council’s Decision to Rezone the Clipper Lot to RM-22.....	21
VIII. CONCLUSION.....	23

TABLE OF AUTHORITIES

Page(s)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Cases

*AIDS Healthcare Foundation v. City of Los Angeles*,  
 (“AIDS Healthcare”) (2022) 86 Cal.App.5th 322 ..... 22

*Aryeh v. Canon Business Solutions, Inc.*,  
 (2013) 55 Cal.4th 1185..... 20

*Buford v. State of Cal.*,  
 (1980) 104 Cal.App.3d 811 ..... 20

*City of Chula Vista v. Superior Court*,  
 (1982) 133 Cal.App.3d 472..... 15

*City of Dana Point v. California Coastal Com.*,  
 (2013) 217 Cal.App.4th 170..... 15, 18

*Consolidated Vultee Air. Corp. v. United Automobile Workers*,  
 (“Consolidated”) (1946) 27 Cal.2d 859 ..... 16

*Crosstalk Productions, Inc. v. Jacobsen*,  
 (1998) 65 Cal.App.4th 631..... 14

*Doe v. City of Los Angeles*,  
 (2007) 42 Cal. 4th 531..... 13

*Hensler v. City of Glendale*,  
 (1994) 8 Cal.4th 1, fn. 3 ..... 14, 22

*In re D.P.*,  
*supra*, 14 Cal.5th at p. .... 10, 16

*Keen v. City of Manhattan Beach*,  
 (*Keen*) (2022) 77 Cal.App.5th 142..... 15, 19

*Pacific Palisades*,  
*supra*, (2012) 55 Cal.4th 783 ..... 18, 19

*Serrano v. Priest*,  
 (1987) 5 Cal.3d 584..... 14

*Taxpayers for Improving Pub. Safety v. Schwarzenegger*,  
 (2009) 172 Cal.App.4th 749..... 20

*Wozniak v. Lucutz*,  
 (2002) 102 Cal.App.4th 1031..... 10

1	Statutes	
2	Code. Civ. Proc., § 430.70 .....	14
3	Code Civ. Proc. § 425.10 .....	13
4	Code of Civ. Proc. § 430.10 .....	13
5	Code of Civ. Proc. § 430.50(a).....	13
6	Code of Civ. Proc. § 1089 .....	13
7	Code of Civ. Proc. § 430.30 and § 430.50 .....	13
8	Evid. Code, § 452(b) .....	14
9	Gov. Code § 36937(b).....	9
10	Gov. Code § 65009(c)(1) .....	21, 22, 23
11	Gov. Code § 65009(c)(1)(B) .....	10, 21
12	Govt. Code § 65009(c)(1), 65009(c)(1)(B) .....	21
13	Gov. Code § 65580.....	14
14	Gov. Code § 65588(e)(3) .....	14
15	Gov. Code § 65588(e)(4)(C)(3) .....	14
16	Gov. Code § 65589.5(d)(5) .....	14
17	Gov. Code § 65860(b).....	21
18	Gov. Code § 65860.....	15, 20, 21
19	Govt. Code § 65860(b)(2) .....	20
20	Gov. Code § 66427.5.....	18
21	Gov. Code § 87100.....	15
22	Pub. Res. Code § 30160 .....	11
23	Pub. Res. Code § 30820(b).....	18
24		
25	Regulations	
26	California Code of Regulations, Title 14, Section 13551(b).....	19
27	Other Authorities	
28	Senate Bill, No. 197 .....	14

**DEMURRER**

Respondents generally demur to the Petitioner’s Petition on the following grounds:

1. The Court lacks jurisdiction over the First Cause of Action alleging violation of the City’s Municipal Code and General Plan, because such cause of action is moot. (Code Civ. Proc., § 430.10(a).) The relief that Petitioner seeks cannot be redressed by setting aside the Rezoning, because Urgency Ordinance Nos. 678U and 680U, which are still in effect, impose the same rezoning of the subject property located at 0 Clipper Road (the “Clipper Lot”) as the Rezoning. When no effective relief can be granted, the cause of action shall be dismissed as moot. (*In re D.P.* (2023) 14 Cal.5<sup>th</sup> 266, 276.)

2. The Court has no jurisdiction over the Second Cause of Action alleging violation of the Coastal Act. (Code Civ. Proc., § 430.10(a).) The relief that Petitioner seeks cannot be redressed by barring enforcement or implementation of the Rezoning, because Urgency Ordinance Nos. 678U and 680U, which are still in effect, impose the same rezoning of the Clipper Lot as the Rezoning. When no effective relief can be granted the case shall be dismissed. (*In re D.P., supra*, 14 Cal.5<sup>th</sup> at p. 276.)

3. The Court has no jurisdiction over the Third Cause of Action alleging violation of the Political Reform Act. (Code Civ. Proc., § 430.10(a).) The relief that Petitioner seeks cannot be redressed by setting aside the Rezoning, because Urgency Ordinance Nos. 678U and 680U, which are still in effect, impose the same rezoning of the Clipper Lot as the Rezoning. When no effective relief can be granted the case shall be dismissed. (*In re D.P., supra*, 14 Cal.5<sup>th</sup> at p. 276.)

3. The Court has no jurisdiction over the Fourth Cause of Action alleging violation of the common law prohibition on conflicts of interest. (Code Civ. Proc., § 430.10(a).) The relief that Petitioner seeks cannot be redressed by setting aside the Rezoning, because Urgency Ordinance Nos. 678U and 680U, which are still in effect, impose the same rezoning of the Clipper Lot as the Rezoning. When no effective relief can be granted the case shall be dismissed. (*In re D.P., supra*, 14 Cal.5<sup>th</sup> at p. 276).

///

///


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respondents specially demur to the Petitioner’s Petition on the following grounds:

4. The Second Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).) Petitioner’s allege that Respondents violated the Coastal Act, because Respondents’ enactment of the Rezoning constitutes “development” under the Coastal Act. (Petition, ¶ 145.) The definition of “development” under the Coastal Act, however, does not include a legislative rezoning of a property. Even if a rezoning, *arguendo*, is considered “development” under the Coastal Act, Respondents have not implemented any increased intensity of use to the Clipper Lot and, thus, have not “developed” the Clipper Lot since the Coastal Commission has not yet approved the zoning changes to the Clipper Lot.

DATED: November 27, 2024

ALESHIRE & WYNDER, LLP  
WILLIAM W. WYNDER  
JOHN FOX  
WILLIAM C. MAZZOTA

By:   
\_\_\_\_\_  
JOHN FOX  
Attorneys for Respondents, CITY OF RANCHO  
PALOS VERDES and CITY COUNCIL OF  
RANCHO PALOS VERDES

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In its Petition, Petitioner challenges the City’s June 18, 2024 approval of Ordinance No. 681  
4 (the “Rezoning”), which among other things rezoned the Clipper Lot from the RS-4 zone to the RM-  
5 22 zone. (Petition, ¶ 52.) Petitioner alleges that (1) the Rezoning is inconsistent with various City  
6 adopted land use plans, including the City’s General Plan (Petition, ¶ 1, 126-134); (2) the City  
7 violated the Coastal Act and the certified Land Use Plan of its Local Coastal Specific Plan (the  
8 “LCP) by approving the Rezoning (Petition ¶¶ 135-152); (3) the Rezoning is void because then  
9 Mayor Cruikshank had a financial conflict of interest, pursuant to the Political Reform Act, that a  
10 allegedly prohibited him from participating in the decision to approve the Rezoning (Petition, ¶¶ 9,  
11 102-125, 153-163); and (4) then Mayor Cruikshank had a common law conflict of interest that  
12 precluded his participation in the City Council’s decision to approve the Rezoning (Petition, ¶¶ 164-  
13 172).

14 Respondents strongly dispute each of the material allegations in the Petition and contend the  
15 Petition substantively lacks any legal merit. However, for purposes of this Demurrer, Respondents  
16 contend that Petitioner’s challenge to the Rezoning is moot because prior to the City’s approval of  
17 the Rezoning on June 18, 2024, the City Council approved two urgency ordinances that rezoned the  
18 Clipper Lot from the RS-4 Zone to the RM-22 Zone. (See Urgency Ordinance Nos. 678U and 680U,  
19 Respondents’ Request for Judicial Notice (“RRJN”), Exhibits “1” and “2.”) The Petition does not  
20 challenge the City Council’s adoption of these urgency ordinances and the time to challenge them  
21 has long since expired. Even if this Court were to ultimately determine the City’s approval of the  
22 Rezoning was invalid for any of the reasons set forth in the Petition and ordered the City to rescind  
23 its approval of the Rezoning, the Clipper Lot would remain zoned RM-22 based upon the City’s  
24 previous adoption of Urgency Ordinance Nos. 678U and 680U (separately “Ordinance No. 678U”  
25 and “Ordinance No. 680U”).<sup>1</sup> The City adopted Ordinance Nos. 678U and 680U in order to comply  
26

27 <sup>1</sup> Government Code section 36937(b) establishes that an ordinance takes immediate effect if it is  
28 “[f]or the immediate preservation of the public peace, health, or safety, containing a declaration of  
the facts constituting the urgency, and is passed by a four-fifths vote of the city council.” Here, the

1 with the strict requirements for establishing the City’s Housing Element, adopted on April 16, 2024,  
2 was in substantial compliance with relevant state housing laws as soon as possible.

3 Accordingly, Respondents generally demur to the Petition for lack of jurisdiction based on  
4 mootness for the First, Second, Third, and Fourth Causes of Action. In addition, Respondents  
5 specially demur to the Petition for failure to state a claim on the Second Cause of Action. First, the  
6 Court lacks jurisdiction when, as here, the Court has no power to provide effective relief. (*Wozniak*  
7 *v. Lucutz* (2002) 102 Cal.App.4th 1031, 1040, disapproved on another grounds.) When no effective  
8 relief can be granted, the case will be dismissed as moot. (*In re D.P., supra*, 14 Cal.5th at p. 276.)  
9 Petitioner’s attempt to set aside the Rezoning is moot, because the Rezoning contains the same  
10 language as Ordinance Nos. 678U and 680U to rezone the Clipper Lot from RS-4 to RM-22, and  
11 the Rezoning supersedes—but did not repeal—Ordinance Nos. 678U and 680U. Therefore, setting  
12 aside the Rezoning would result in the Clipper Lot reverting to the zoning approved in Ordinance  
13 Nos. 678U and 680U, RM-22, and thus would not effectively change the zoning designation of the  
14 Clipper Lot. (Rancho Palos Verdes Municipal Code, § 1.01.080, [“if for any reason this Code should  
15 be declared invalid or unconstitutional, then the original ordinance shall be in full force and  
16 effect.”].) Accordingly, Petitioner’s First, Second, Third, and Fourth Causes of Action, which all  
17 seek to invalidate the Rezoning, are all moot, because the Court cannot provide effective relief by  
18 only setting aside the Rezoning and not setting aside Ordinance Nos. 678U and 680U.

19 Additionally, any attempt to amend the Petition to challenge Respondents’ passage of  
20 Ordinance Nos. 678U and 680U would be futile, because the statute of limitations for bringing such  
21 a challenge has passed. An action to attack an amendment to a zoning ordinance must be commenced  
22 within 90 days of the legislative body’s decision. (Gov. Code, § 65009(c)(1)(B).) Here, the City  
23 Council passed Ordinance No. 678U on April 16, 2024, and passed Ordinance No. 680U on June 4,  
24 2024, both with immediate effect. Thus, the statute of limitations passed for Ordinance No. 678U  
25 on July 15, 2024, and for Ordinance No. 680U on September 3, 2024. Petitioner filed the instant  
26

27 \_\_\_\_\_  
28 Ordinance Nos. 678U and 680U each a declaration of the facts constituting the urgency and passed  
unanimously. (*See* Ordinance Nos. 678U and 680U, RRJN, Ex. “1” and “2.”)

1 Petition challenging the Rezoning, however, on September 11, 2024, and did not serve the Petition  
2 until September 12, 2024. (Petition, p. 1.) Accordingly, a challenge to Ordinance Nos. 678U and  
3 680U would be untimely.

4 In addition, the Second Cause of Action seeking civil penalties for violation of the Coastal  
5 Act fails to allege that Respondents performed or undertook “development” as defined by the  
6 Coastal Act. (*See* Pub. Res. Code (“PRC”), § 30160.) An action for civil penalties under the Coastal  
7 Act applies to persons who take affirmative steps to engage in construction or who modify natural  
8 resources in some manner. (*See id.*, § 30820(b).) Here, the City Council passed an amendment to  
9 its zoning ordinance. By passing the Rezoning, the City Council did not engage in construction or  
10 modify natural resources in any manner. Petitioner cannot demonstrate that the Coastal Act defines  
11 “development” to include a rezoning or an amendment of a zoning ordinance.

12 Further, Respondents have not “developed” the Clipper Lot as defined by the Coastal Act,  
13 because the rezoning from the RS-4 zone to the RM-22 zone is not yet effective. (*See* PRC, §  
14 30514(a) [“A certified local coastal program and all local implementing ordinances, regulations,  
15 and other actions may be amended by the appropriate local government, but no such amendment  
16 shall take effect until it has been certified by the commission.”].) By adopting Resolution No. 2024-  
17 17, Respondents specifically acknowledged that the rezoning of the Clipper Lot would not be  
18 effective until *after* the Coastal Commission certifies that the rezoning of the Clipper Lot is  
19 consistent with the LCP. (Resolution No. 2024-17, Sections 2 and 4, RRJN, Exhibit “5.”) Indeed,  
20 Petitioner does not allege that the Coastal Commission has approved rezoning the Clipper Lot from  
21 RS-4 to RM-22. Accordingly, the Second Cause of Action must be dismissed as a matter of law.

22 As more thoroughly explained below, the Demurrer to the Petition should be sustained, and  
23 Petitioner should not be granted leave to amend.

24 **II. STATEMENT OF FACTS**

25 The following facts provide the relevant factual and procedural history of the City’s actions  
26 to adopt its Housing Element and to adopt the various ordinances required by the California  
27 Department of Housing and Community Development to implement certain programs set forth in  
28 the City’s adopted Housing Element.

1           **A. City Council’s Actions at the April 16, 2024, City Council Meeting**

2           On April 16, 2024 the City Council took three actions related to the approval of the City’s  
3 Housing Element. First, it adopted Resolution No. 2024-16 that adopted the City’s Housing Element  
4 and amended the City’s General Plan and Local Coastal Plan to ensure consistency with the Housing  
5 Element. (See Resolution No. 2024-16, RRJN, Exhibit “4.”) Second, it adopted Ordinance No.  
6 678U, which amended the City’s Zoning Code as necessary to implement the programs set forth in  
7 the Housing Element including changing the Clipper Lot’s zoning from RS-4 to RM-22 (See  
8 Ordinance No. 678U, RRJN Ex. “1.”) Third, it adopted Resolution No. 2024-17 that directed City  
9 staff to submit the amendments to the Local Coastal Plan and corresponding zoning, including the  
10 rezone of the Clipper Lot, to the Coastal Commission for certification as required by PRC, sections  
11 30511 and 30514(a). (See Resolution No. 2024-17, RRJN Ex. “5.”)

12           **B. City Council’s Actions at the June 4, 2024, City Council Meeting**

13           On June 4, 2024 the City Council took two actions to ensure compliance with the laws  
14 applicable to the Housing Element. First, it adopted Ordinance No. 680U which, mirrored the  
15 content of Ordinance No. 678U, including rezoning the Clipper Lot from RS-4 zone to the RM-22  
16 zone. (See Ordinance No. 680U, RRJN, Ex. “2”) Second, the City Council voted to introduce  
17 Ordinance No. 681—the Rezoning—that mirrored the content of Ordinance Nos. 678U and 680U,  
18 including language to rezone the Clipper Lot from the RS-4 zone to the RM-22 zone. (See Minutes  
19 for June 4, 2024, City Council Meeting, p. 7, RRJN Ex. “6”; Ordinance No. 681, RRJN Ex. “3.”)

20           On June 4, 2024, the City Council passed Ordinance No. 680U with immediate effect.  
21 (Ordinance No. 680U, RRJN Ex. “2.”) Specifically, Ordinance No. 680U revised the zoning  
22 designation for certain parcels, including the Clipper Lot, from RS-4, a single-family residential  
23 classification, to RM-22, which is a denser, multi-family residential classification. (Ordinance No.  
24 680U, RRJN Ex. “2,” Section 6; Petition, ¶¶ 23, 34-36.)

25           **C. City Council’s Actions at its June 18, 2024, City Council Meeting**

26           On June 18, 2024, the City Council adopted the Rezoning. (Ordinance No. 681, RRJN, Ex.  
27 “3”.) As stated above, this Ordinance contained the same amendments to the City’s Zoning  
28 Ordinance and Map that Ordinance Nos. 678U and 680U contained, including rezoning the Clipper

1 Lot from RS-4 to RM-22. (*Id.*) Although the Rezoning superseded Ordinance Nos. 678U and 680U,  
2 it did not repeal Ordinance Nos. 678U and 680U. (*See* RRJN, Ex. “3,” p. 5).

3 **D. Petitioner Initiates Litigation to Challenge the City Council’s June 18, 2024,**

4 **Actions**

5 On September 11, 2024, Petitioner filed a Verified Petition for Writ of Mandate and  
6 Complaint for Damages, Injunctive relief, and Declaratory Relief, challenging the Rezoning but not  
7 Ordinance Nos. 678U and 680U. (*See* Petition, p. 1.) The last day to challenge Ordinance No. 678U  
8 was on April 16, 2024. The last day to challenge Ordinance No. 680U was on September 3, 2024.

9 **III. STANDARD OF REVIEW**

10 A complaint must contain “a statement of the facts constituting the cause of action, in  
11 ordinary and concise language.” (Code Civ. Proc. § 425.10.) A plaintiff must plead such facts as are  
12 necessary “to acquaint a defendant with the nature, source and extent of his claims.” (*Doe v. City of*  
13 *Los Angeles* (2007) 42 Cal. 4th 531, 550.)

14 Pursuant to Code of Civil Procedure sections 430.30 and 430.50, a party objecting to a  
15 complaint may demur to the entire complaint, or any count alleged within, where defects appear on  
16 the face of the complaint. Further, Code of Civil Procedure section 1089 allows for the filing of a  
17 demurrer, verified answer, or both in response to a petition for writ of mandate. The grounds upon  
18 which a defendant may demur are found in Code of Civil Procedure section 430.10, which provides  
19 in pertinent part:

20 The party against whom a complaint or cross-complaint has been filed may object,  
21 by demurrer or answer as provided in section 430.30, to the pleading on any one or  
more of the following grounds:

22 (a) The court has no jurisdiction of the subject of the cause of action alleged in the  
23 pleading.

24 (e) The pleading does not state facts sufficient to constitute a cause of action.

25 Code of Civil Procedure section 430.50(a) provides that a demurrer to a complaint may be  
26 taken to the whole pleading or to any causes of action stated therein. In determining the sufficiency  
27 of a complaint against a demurrer, a court must “accept as true all material allegations of the  
28

1 complaint and do not go beyond the fact of the complaint and matter of which . . . judicial notice”  
2 may be taken.<sup>2</sup> (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3; Code. Civ. Proc., § 430.70)

3 For testing the sufficiency of the cause of action, the demurrer admits the truth of all material  
4 facts properly pleaded (i.e., all ultimate facts alleged, but not contentions, deductions, or conclusions  
5 of fact or law). (*Serrano v. Priest* (1987) 5 Cal.3d 584, 591.) A demurrer may lie because the  
6 complaint alleges either too little, or too much, or it can be used where the complaint is incomplete  
7 (i.e., plaintiffs have failed to allege some “ultimate fact” required to state a cause of action), or it  
8 can be used where the plaintiff has included allegations that clearly disclose some defense or bar to  
9 recovery. (*Crosstalk Productions, Inc. v. Jacobsen* (1998) 65 Cal.App.4th 631, 635.)

10 **IV. REGULATORY BACKGROUND FOR THE ADOPTION OF A HOUSING**  
11 **ELEMENT**

12 Every City and County in the state must adopt a Housing Element that complies with Article  
13 10.6 “Housing Elements” of the Government Code, commencing at Government Code, section  
14 65580. Housing Elements are adopted every eight (8) years, with each eight year period referred as  
15 a cycle. (Gov. Code, § 65588(e)(3)A.) The most recent cycle for the City was the Sixth Cycle. The  
16 City’s statutory deadline for adopting the Sixth Revision to its Housing Element was October 15,  
17 2022. (*See* Senate Bill, No. 197, approved June 30, 2022.)

18 Because the City had not adopted its Sixth Revision of the Housing Element within one year  
19 of that deadline, its Housing Element could not be found in substantial compliance with Government  
20 Code, Article 10.6 until it also rezoned the property identified in the Housing Element that could  
21 accommodate the City’s allocation of the regional housing allocation. (Gov. Code, §  
22 65588(e)(4)(C)(3).) Until the City adopted its Housing Element and rezoned the necessary identified  
23 housing sites, the City was subject to various penalties, including what is referred to as the “builders  
24 remedy” which prohibited the City from denying a housing development project on the basis of it  
25 being inconsistent with the City’s General Plan or zoning. (Government Code, section  
26 65589.5(d)(5).

27 \_\_\_\_\_  
28 <sup>2</sup> Judicial notice may be taken of legislative enactments of a municipality. (Evid. Code, § 452(b).)

1 **V. REGULATORY REQUIREMENTS FOR REZONING PROPERTY LOCATED**  
2 **WITHIN A COASTAL ZONE**

3 The Coastal Act “defined the Coastal Commission’s mission to protect the coast and to  
4 maximize public access to it.” (*Keen v. City of Manhattan Beach (Keen)* (2022) 77 Cal.App.5th 142,  
5 145, review denied (June 29, 2022) [citing PRC, §§ 30001.5, 30330].) “The [Coastal] Commission  
6 works with local governments to ensure they take adequate account of state interests.” (*Id.* [citing  
7 PRC, § 30004, subs. (a) & (b); *City of Dana Point v. California Coastal Com.* (2013) 217  
8 Cal.App.4th 170, 186].) The Coastal Act’s primary means accomplishing its mission is the local  
9 coastal program (“LCP”) that must be adopted by each local government on the coast, such as the  
10 City of Rancho Palos Verdes. (*Id.* [citing PRC, § 30500, subd. (a); *City of Chula Vista v. Superior*  
11 *Court* (1982) 133 Cal.App.3d 472, 489].) LCPs consist of two parts: (1) “the land use plan and the  
12 local implementing program” and (2) “zoning ordinances, zoning maps, and other possible actions.”  
13 (*Id.* [citing PRC, §§ 30512, subd. (a), 30513, subd. (a)].) The Coastal Commission is tasked with  
14 reviewing a local government’s LCP and certifying such LCP if it complies with the Coastal Act.  
15 (PRC, § 30514.)

16 Here, the City Council first passed the amendments to the LCP, including rezoning of the  
17 Clipper Lot, from RS-4 to RM-22 through Ordinance No. 678U on April 16, 2024. That same day,  
18 the City Council passed a Resolution No. 2024-17, directing City staff to forward the amendments  
19 to the LCP, including the rezoning of the Clipper Lot, to the Coastal Commission for review and  
20 certification. (*See* Resolution No. 2024-17, RRJN, Ex. “5.”)

21 **VI. ARGUMENT**

22 **A. Petitioner’s Request to Set Aside the Rezoning is Moot**

23 Petitioner brings its First Cause of Action pursuant to Government Code section 65860,  
24 challenging Respondents’ implementation of the Rezoning as violative of the City’s General Plan  
25 and Municipal Code. In the Second Cause of Action, Petitioner alleges that the Respondents have  
26 violated the Coastal Act, PRC section 30000, et seq., and seek to bar enforcement or implementation  
27 of the Rezoning. In the Third Cause of Action, Petitioner also challenges the passage of the  
28 Rezoning, but complains that Respondents violated the Political Reform Act, Government Code

1 section 87100, et seq. As for the Fourth Cause of Action, Petitioner likewise challenges the  
2 Rezoning as violative of common law prohibitions on conflicts of interest. In sum, Petitioner’s First,  
3 Second, Third, and Fourth Causes of Action all challenge the City Council’s enactment of the  
4 Rezoning and are, thus, moot, because the City previously enacted Ordinance Nos. 678U and 680U,  
5 which contain the same rezoning provisions as the Rezoning.

6 “A court is tasked with the duty ‘to decide actual controversies by a judgment which can be  
7 carried into effect, and not to give opinions upon moot questions or abstract propositions, or to  
8 declare principles or rules of law which cannot affect the matter in issue in the case before it.’” (*In*  
9 *re D.P.* (2023) 14 Cal.5th 266, 276 [quoting *Consolidated Vultee Air. Corp. v. United Automobile*  
10 *Workers* (“*Consolidated*”) (1946) 27 Cal.2d 859, 863].) A case is moot when even if a court decides  
11 the case in favor of the plaintiff, such court is unable to provide the plaintiff with any effective relief.  
12 (*Id.*) “For relief to be ‘effective,’ two requirements must be met. First, the plaintiff must complain  
13 of an ongoing harm. Second, the harm must be redressable or capable of being rectified by the  
14 outcome the plaintiff seeks. (*Id.* [citing *Consolidated, supra*, 27 Cal.2d at p. 865].)

15 Here, on April 16, 2024, the City Council adopted Ordinance No. 678U, which is an urgency  
16 ordinance that went into effect immediately upon passage. Ordinance No. 678U revised the zoning  
17 designation for certain parcels, including the Clipper Lot, from RS-4, a single-family residential  
18 classification, to RM-22, which is a denser, multi-family residential classification. (Ordinance No.  
19 678U, RRJN Ex. “1,” Section 5.) Then, on June 4, 2024, the City Council adopted Ordinance No.  
20 680U, which also went into effect immediately upon passage. Ordinance No. 680U similarly revised  
21 the zoning designation for certain parcels, including the Clipper Lot, from RS-4 to RM-22.  
22 (Ordinance No. 680U, RRJN Ex. “2,” Section 6; Petition, ¶¶ 23, 34-36.)

23 Thereafter, on June 18, 2024, the City Council voted to adopt the Rezoning, which went into  
24 effect on July 19, 2024, superseding but not repealing Ordinance Nos. 678U and 680U. (Ordinance  
25 No. 681, RRJN Ex. “3.”) The Rezoning provides for the same amendments to the City’s Zoning  
26 Ordinance and Map that Ordinance No. 678U and 680U instituted, including that the Clipper Lot  
27 should be re-zoned from RS-4 to RM-22. As such, both the Rezoning and Ordinance Nos. 678U and  
28 680U *carry the same legal effect.*

1 Petitioner’s requested relief under its First, Second, Third, and Fourth Causes of Action is  
2 to set aside, prevent the implementation, and prohibit the enforcement of the Rezoning. (Petition,  
3 Relief Requested ¶¶ 1-4.) Petitioner does not, however, challenge in any way the validity or  
4 implementation of Ordinance Nos. 678U and 680U, despite the Rezoning and Ordinance Nos. 678U  
5 and 680U containing the same legal mandates and rezoning for the Clipper Lot. Even if the Court  
6 were to set aside or prevent implementation or enforcement of the Rezoning as requested in the  
7 Petition, there would be no effective relief granted by the Court. Upon setting aside of the Rezoning,  
8 Ordinance Nos. 678U and 680U would remain in effect with exactly the same amendments to the  
9 City’s Zoning Ordinance and Map, including the designation of the Clipper Lot as RM-22.

10 Based on the foregoing, because a claim becomes moot if the alleged harm cannot be  
11 redressed or rectified by the setting aside of the Rezoning, Petitioner’s First, Second, Third, and  
12 Fourth Causes of Actions are accordingly moot.

13 **B. The Second Cause of Action Also Fails as a Matter of Law because the City**  
14 **Council’s Passage of the Rezoning is Not “Development” as Defined by the**  
15 **Coastal Act**

16 Petitioner insufficiently asserts the Second Cause of Action for violation of the Coastal Act  
17 (PRC, § 30820), because a rezoning by local government does not fall within the definition of  
18 “development” as defined by the Coastal Act and, thus, Respondents cannot be liable for civil  
19 penalties associated with development in violation of the Coastal Act. (See PRC, § 30160.) Even if  
20 a rezoning, *arguendo*, falls within the definition of “development,” Respondents have still not  
21 engaged in “development,” because Respondents have complied with the mandates of the Coastal  
22 Act, and the rezoning of the Clipper Lot—which is the alleged “development” by Respondents—is  
23 not yet effective since it is pending certification by the Coastal Commission. (PRC, § 30514(a) [“A  
24 certified local coastal program and all local implementing ordinances, regulations, and other actions  
25 may be amended by the appropriate local government, but no such amendment shall take effect until  
26 it has been certified by the commission.”].)

27 PRC section 30820(a) states that “[c]ivil liability may be imposed . . . on any person[,  
28 including a local government] who performs or undertakes development that is in violation of this

1 division or that is inconsistent with any coastal development permit previously issued by the  
2 commission, a local government that is implementing a certified local coastal program, or a port  
3 governing body that is implementing a certified port master plan.” Additionally, Public Resources  
4 code section 30820(b) states that “[a]ny person who performs or undertakes development that is in  
5 violation of this division or that is inconsistent with any coastal development permit..., when the  
6 person intentionally and knowingly performs or undertakes the development in violation of this  
7 division or inconsistent with any previously issued coastal development permit, may, in addition to  
8 any other penalties, be civilly liable in accordance with this subdivision.”

9         The definition of “development” under the Coastal Act is “on land, in or under water, the  
10 placement or erection of any solid material or structure; discharge or disposal ...; grading, removing,  
11 dredging, mining, or extraction of any materials; change in the density or intensity of use of land...;  
12 change in the intensity of use of water...; construction, reconstruction, demolition, or alteration of  
13 the size of any structure...; and the removal or harvesting of major vegetation....” (PRC, § 30106.)

14         Here, Petitioner alleges that the Rezoning, which increases the zoning density classification  
15 for the Clipper Lot, constitutes “development” under the Coastal Act. (Petition, ¶ 145.) Petitioner  
16 also alleges that by approving the Rezoning without changes to the Coastal Specific Plan or  
17 obtaining the California Coastal Commission’s certification, Respondents violated the Coastal Act.  
18 (*Id.*, ¶ 146.) These allegations alone are insufficient to establish that Respondents engaged in  
19 “development” under the Coastal Act. Indeed, there is no known case law construing the definition  
20 of “development” under the Coastal Act to include a local government’s legislative decision to  
21 rezone a property.

22         Petitioner argues that the Coastal Act should be “liberally construed” to include a legislative  
23 rezone as a “change in density or intensity of use” (Petition, ¶ 136.) During the Parties’ meet and  
24 confer efforts, Petitioner’s counsel offered that *Pacific Palisades, supra*, (2012) 55 Cal.4th 783  
25 supported such proposition. In *Pacific Palisades*, the California Supreme Court considered whether  
26 Government Code Section 66427.5, a uniform, statewide procedure for protecting non-purchasing  
27 residents from economic displacement, exempted conversions of mobile home parks to resident  
28 ownership from the express requirements of the Coastal Act. (*Pacific Palisades, supra*, 55 Cal.4th

1 at p. 810.) The Court concluded the mobile home conversion was a type of subdivision and the  
2 express language of the Coastal Act included the conduct at issue—subdivisions—as defined by the  
3 Subdivision Map Act. (*Id.* at p. 794-95; PRC, § 30106.) A subdivision is distinct the conduct at issue  
4 here, a legislative act to rezone a parcel to comply with a local housing element. Indeed, there is no  
5 known case law construing the definition of “development” or “change in density or intensity of  
6 use” under the Coastal Act to include a local government’s legislative decision to rezone a property.

7 Even if—and without conceding any of the arguments herein—the implementation of a  
8 rezoning constitutes “development” under PRC section 3016, Petitioner still cannot validly assert a  
9 claim that Respondents have violated the Coastal Act. Respondents have complied with the  
10 mandates of the Coastal Act, and the rezoning of the Clipper Lot—which is the alleged  
11 “development” by Respondents—is not yet effective since it is pending certification by the Coastal  
12 Commission.

13 PRC section 30514, subdivision (a), clearly states that “[a] certified local coastal program  
14 and all local implementing ordinances, regulations, and other actions may be amended by the  
15 appropriate local government, but no such amendment shall take effect until it has been certified by  
16 the commission.” In other words, “[o]nce [a local government’s LCP] is approved, it can be  
17 amended, but the local government must submit amendments to the [Coastal] Commission for  
18 approval. *Absent approval, amendments have no force.*” (*Keen, supra*, 77 Cal.App.5th 142, 146  
19 [citing PRC, § 30514, subd. (a)] [emphasis added].)

20 Here, Petitioner asserts that Respondents have increased the intensity of use of the Clipper  
21 Lot, constituting “development” under the Coastal Act and requiring Coastal Commission  
22 certification. (Petition, ¶ 145.) Petitioner also asserts that, in violation of the Coastal Act,  
23 Respondents increased the intensity of use of the Clipper Lot without first obtaining Coastal  
24 Commission certification. (*Id.*, ¶ 146.) The plain language contained in Resolution No. 2024-17  
25 belies Petitioner’s assertions.

26 In passing Resolution No. 2024-17, the City Council expressly complied with the Coastal  
27 Act by submitting the rezoning of the Clipper Lot “to the Coastal Commission for certification  
28 pursuant to [PRC] section 30514 and California Code of Regulations, Title 14, Section 13551(b) as

1 an amendment which will *take effect automatically once certified by the Coastal Commission.*”  
2 (Resolution No. 2024-17, RRJN, Ex. “5,” Section 5.) Based on Resolution No. 2024-17,  
3 Respondents have not increased and have not attempted to increase the intensity of use of the Clipper  
4 Lot without first obtaining the certification of the Coastal Commission. Further, the RS-4 zoning  
5 classification for the Clipper Lot remains in full effect to date, because the Coastal Commission has  
6 not yet certified Respondents’ amendments to the LCP and Petitioner does not allege differently. As  
7 such, Respondents cannot be held to have “developed” the Clipper Lot at this time, and Petitioner’s  
8 claim that Respondents have violated the Coastal Act, despite Respondents complying with the  
9 process dictated by the Coastal Act and submitting its amendments for certification, cannot stand.

10 Accordingly, because Respondents have not engaged in development of the Clipper Lot in  
11 violation of the Coastal Act, the Second Cause of Action fails a matter of law.

12 **VII. LEAVE TO AMEND SHOULD BE DENIED**

13 When a demurrer is sustained, leave to amend should be denied where Petitioner cannot  
14 meet its burden of proof of establishing how the Petition may be amended to state a cause of action.  
15 (*Taxpayers for Improving Pub. Safety v. Schwarzenegger* (2009) 172 Cal.App.4th 749, 781.)  
16 Sustaining a general demurrer without leave to amend is not an abuse of discretion when it appears  
17 from the Petition that under applicable substantive law there is no reasonable possibility that the  
18 defect can be cured by amendment. (*Buford v. State of Cal.* (1980) 104 Cal.App.3d 811, 818.)

19 “The application of the statute of limitations on undisputed facts is a purely legal question.”  
20 (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) “An action or proceeding  
21 shall not be maintained pursuant to [Government Code section 65860] by a person unless . . . service  
22 is made on the legislative body within 90 days of . . . [t]he amendment of an existing ordinance.”  
23 (Govt. Code § 65860(b)(2)).

24 **A. Any Attempt to Amend the First Cause of Action to Challenge the Enactment**  
25 **of Ordinance Nos. 678U and 680U is Time Barred.**

26 As discussed above, Petitioner has not challenged the validity of Ordinance Nos. 678U and  
27 680U in the Petition pursuant to Government Code section 65860. Even if Petitioner sought to  
28 amend its Petition to state a cause of action challenging Ordinance Nos. 678U and 680U, any such

1 attempt would be futile because the statute of limitations has expired. Petitioner had 90 days, or until  
2 July 15, 2024, to challenge Ordinance No. 678U after its passage on April 16, 2024. Petitioner also  
3 had 90 days, or until September 3, 2024, to challenge Ordinance No. 680U after its passage on June  
4 4, 2024. Petitioner, however, did not file the Petition until September 11, 2024, and did not serve  
5 the Petition until September 12, 2024. (*See* Gov. Code § 65860(b); Gov. Code § 65009(c)(1).)  
6 Accordingly, the statute of limitations has passed on any challenge to Ordinance Nos. 678U and  
7 680U, and Petitioner is barred by operation of law from amending the Petition to challenge  
8 Ordinance Nos. 678U and 680U. There is, thus, no reasonable possibility that Petitioner can cure  
9 the deficiencies contained in the First Cause of Action.

10 Moreover, Petitioner’s First Cause of Action is governed by the statute of limitations under  
11 Government Code section 65009(c)(1)(B)—not Government Code section 65860 as pled—because  
12 Petitioner seeks to set aside the Rezoning as pled in the “Relief Requested” section of the Petition.  
13 Even assuming that Government Code section 65009(c)(1)(B) applies to the First Cause of Action,  
14 there is an equivalent 90 day statute of limitations that arises from such statute. (Govt. Code §  
15 65009(c)(1), 65009(c)(1)(B) (“No action or proceeding shall be maintained in any of the following  
16 cases by any person unless the action or proceeding is commenced and service is made on the  
17 legislative body within 90 days after the legislative body’s decision: to attack, review, set aside,  
18 void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.”).) As such,  
19 under either statute of limitations, Petitioner failed to timely file and serve the Petition within 90  
20 days of Ordinance Nos. 678U and 680U taking effect.

21 **B. The Second, Third, and Fourth Causes of Action, Alleging Violations of the**  
22 **Coastal Act, the Political Reform Act, and the Common Law Prohibition on**  
23 **Conflicts of Interest Respectively, are Time Barred because the Gravamen of**  
24 **Each Cause of Action is a Challenge to the City Council’s Decision to Rezone**  
25 **the Clipper Lot to RM-22**

26 Petitioner’s Second, Third, and Fourth Causes of Action challenge Respondents’ passage of  
27 the Rezoning and seek to void and prevent the implementation and enforcement of the Rezoning.  
28 (Petition, Requested Relief, ¶¶ 1-4.) Although Petitioner couches the Second, Third, and Fourth

1 Causes of Action as different claims from the First Cause of Action, such causes of action are best  
2 understood as challenges to Ordinance Nos. 678U and 680U brought pursuant to Government Code  
3 section 65009(c)(1) and its applicable 90-day statute of limitations. Accordingly, such causes of  
4 action would be time barred, because they should have been brought by September 3, 2024.

5 “It is a basic rule of statutory construction that specific statutes control general ones.” (*AIDS*  
6 *Healthcare Foundation v. City of Los Angeles* (“*AIDS Healthcare*”) (2022) 86 Cal.App.5th 322,  
7 351.) The language of Section 65009 contains no exceptions and uses unqualified language  
8 manifesting a plain intent on the part of the Legislature to limit the time to seek review of an agency  
9 decision. There is no exception for acts filed under the Political Reform Act (“PRA”). (*Id.*)  
10 “Confirming that ‘no action’ means no action, the statute reiterates that ‘[u]pon the expiration of the  
11 time limits provided in this section, *all* persons are barred from *any* further action or proceeding.”  
12 (*Id.* at p. 334 (emphasis added).) “To determine the statute of limitations which applies to a cause  
13 of action it is necessary to identify the nature of the cause of the action, i.e., the ‘gravamen.’” (*See*  
14 *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22-23.)

15 In *AIDS Healthcare*, the Court of Appeal considered whether the gravamen of an action  
16 bringing a PRA challenge to a local legislative body’s project approval was corruption or the attack  
17 on the legislative body decision. The Court reasoned that, “while [the plaintiff] may challenge  
18 corruption under the PRA, the gravamen of [the plaintiff’s] action is an attack on, or review of, the  
19 [legislative body’s] decisions relating to permitting and real estate project approvals. Section 65009  
20 applies directly to that challenge.” (*AIDS Healthcare, supra*, 86 Cal.App.5th 322, 228.)

21 Here, Petitioner’s Third Cause of Action alleges a violation of the PRA. Ultimately,  
22 however, Petitioner challenges Mayor Cruikshank’s involvement in the passage of the Rezoning  
23 and requests that the Rezoning be enjoined and ultimately, rendered void. (Petition, ¶¶ 161, 163.)  
24 As such, Petitioner cannot escape the statute of limitations contained in Government Code section  
25 65009(c)(1) by simply asserting a claim under the PRA, when the gravamen of the cause of action  
26 is to enjoin or render void the Rezoning. Because the City Council first decided to re-zone the  
27 Clipper Lot on April 16, 2024, through Ordinance No. 678U, any challenge brought against the re-  
28 zoning of Clipper Lot to RM-22 should have been brought and served within 90 days of April 16,

1 2022. Any challenge to Ordinance No. 680U should have been brought within 90 days of June 4,  
2 2024. Accordingly, any attempt to amend Petitioner’s Third Cause of Action to challenge the  
3 passage of Ordinance Nos. 678U and 680U is time barred.


4 Similarly, in the Second and Fourth Causes of Action, Petitioner alleges violations of the  
5 Coastal Act and the common law prohibition on “conflicts of interest,” which challenges the City  
6 Council’s decision to re-zone the Clipper Lot to RM-22. Although the Second and Fourth Causes  
7 of Action are pled as violations of the Coastal Act and the common law respectively, the gravamen  
8 of the Second and Fourth Causes of Action is to render the rezoning of the Clipper Lot first passed  
9 in Ordinance Nos. 678U and 680U void. (Petition, ¶ 151-152, 172.) Therefore, the 90-day statute of  
10 limitations contained within Government Code section 65009(c)(1) applies, and Petitioner is time  
11 barred from challenging Ordinance Nos. 678U and 680U as violative of the Coastal Act and the  
12 common law prohibition on conflicts of interest.

13 **VIII. CONCLUSION**

14 In sum, Petitioner cannot obtain the relief it seeks from the Court in its First, Second, Third,  
15 and Fourth Causes of Action, because setting aside, preventing implementation, or prohibiting  
16 enforcement of the Rezoning would simply result in Ordinance Nos. 678U and 680U maintaining  
17 the status quo. Petitioner cannot now seek leave of court to amend its Petition to assert challenges  
18 to Ordinance Nos. 678U and 680U under the First, Second, Third, or Fourth Causes of Action,  
19 because the applicable 90-day statute of limitations has passed for such challenges. Additionally,  
20 the Second Cause of Action is insufficient as a matter of law, because the adoption of the Rezoning  
21 does not constitute “development” under the Coastal Act. Accordingly, Respondents respectfully  
22 request this Court sustain their demurrer to the Petition without leave to amend.

23 DATED: November 27, 2024

ALESHIRE & WYNDER, LLP  
WILLIAM W. WYNDER  
JOHN FOX  
WILLIAM C. MAZZOTA

26 By:   
27 \_\_\_\_\_  
JOHN FOX  
Attorneys for Defendants and Respondents

1 **DECLARATION OF WILLIAM C. MAZZOTA**

2 I, William C. Mazzota, declare as follows:

3 1. I am an attorney duly admitted to practice before this Court. I am an associate with  
4 Aleshire & Wynder, LLP, attorneys of record for Defendants and Respondents City of Rancho Palos  
5 Verdes (the “City”) and City Council of the City of Rancho Palos Verdes (the “City Council”)  
6 (collectively “Respondents”). I have personal knowledge of the facts set forth herein, except as to  
7 those stated on information and belief and, as to those, I am informed and believe them to be true.  
8 If called as a witness, I could and would competently testify to the matters stated herein. I make this  
9 declaration in support of the Respondents’ Demurrer to Petitioner Abalone Cove’s (“Petitioner”)  
10 Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the  
11 “Petition”).

12 2. On September 11, 2024, Plaintiff/Petitioner Community of Abalone Cove  
13 (“Petitioner”) filed a Verified Petition for Writ of Mandate (Code of Civil Procedure Section 1085)  
14 and Complaint for Damages, Injunctive Relief, and Declaratory Relief (the “Petition”) against the  
15 Respondents.

16 3. The Petition was served on or about September 12, 2024. Respondents’ response was  
17 due on or before October 14, 2024.

18 4. On October 2, 2024, I emailed Petitioner’s counsel, Kendra L. Carney Mehr,  
19 requesting a stipulation for an extension to respond to the Petition on or before October 25, 2024,  
20 pursuant to California Rules of Court, Rule 3.110(d).

21 5. On October 9, 2024, Ms. Carney Mehr granted my request for a stipulation to extend  
22 the response deadline to the Petition on or before October 25, 2024.

23 6. On October 16, 2024, pursuant to Code of Civil Procedure section 430.10, I sent via  
24 email and U.S. Mail a meet and confer letter to Ms. Carney Mehr, regarding several deficiencies in  
25 the Petition giving rise to a potential demurrer and requesting to discuss such issues with her to  
26 complete the meet and confer process by October 18, 2024. Additionally, such letter informed Ms.  
27 Carney Mehr that if she was unable to complete the meet and confer process with counsel for  
28 Respondents by October 18, 2024, at 5:00 p.m., then counsel for Respondents would consider that

1 the 30-day extension provided for in Code of Civil Procedure section 430.41(a)(2) would apply so  
2 as to allow the parties to complete the meet and confer process in good faith. The meet and confer  
3 process did not begin until October 16, 2024, because of the complexity of the four causes of action  
4 contained within the Petition, which required significant time to thoroughly analyze the issues for a  
5 potential demurrer and to complete the eventual 6-page, meet and confer letter detailing such issues.  
6 A true and correct copy of the October 16, 2024, meet and confer letter to Ms. Carney Mehr is  
7 attached as **Exhibit 1** to this Declaration.

8 7. Despite good faith efforts by counsel for the Respondents to meet and confer on or  
9 before October 18, 2024, we were unable to accomplish this effort. Ms. Carney Mehr did not  
10 respond to the October 16, 2024, meet and confer letter until October 21, 2024, indicating that she  
11 was delayed in responding due to an unexpected family issue and that she was willing to meet and  
12 confer on the afternoon of October 22, 2024, or October 23, 2024, between 9:30 a.m. to 1:00 p.m.

13 8. On October 22, 2024, I responded to Ms. Carney Mehr, informing her that counsel  
14 for the Respondents were available anytime between 9:30 a.m. and 1:00 p.m. on October 23, 2024,  
15 and proposing 10:00 a.m. on October 23, 2024, as a potential meeting time. Additionally, as stated  
16 in the October 16, 2024, meet and confer letter and because the meet and confer process was not  
17 completed by October 18, 2024, at 5:00 p.m., I informed Ms. Carney Mehr that pursuant to Code of  
18 Civil Procedure section 430.41(a)(2), counsel for the Respondents would be proceeding according  
19 to the 30-day automatic extension and timely filing the requisite declaration. Ms. Carney Mehr did  
20 not respond.

21 9. On October 23, 2024, at approximately 9:30 a.m. and after not hearing back from  
22 Ms. Carney Mehr, I sent Ms. Carney Mehr an invitation to meet via Microsoft Teams at 10:00 a.m.  
23 on October 23, 2024. Ms. Carney Mehr declined the invitation and did not attend this conference.

24 10. Thereafter, on October 23, 2024, at 10:05 a.m., Ms. Carney Mehr informed me via  
25 email that her schedule had filled up and that she was tight on time for the remainder of the day. Ms.  
26 Carney Mehr proposed new times for meeting and conferring for October 24, 2024, between 12:00  
27 p.m. and 4:00 p.m. and October 25, 2024, between 10:00 a.m. and 12:00 p.m.



1 **PROOF OF SERVICE**

2 **Community of Abalone Cove v. City of Rancho Palos Verdes, et al.**  
3 **Case No. 24TRCP00352**

4 **STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

5 At the time of service, I was over 18 years of age and not a party to this action. I am  
6 employed in the County of Riverside, State of California. My business address is 3880 Lemon  
7 Street, Suite 520, Riverside, CA 92501.

8 On November 27, 2024, I served true copies of the following document(s) described as  
9 **CITY OF RANCHO PALOS VERDES AND CITY COUNCIL OF RANCHO PALOS**  
10 **VERDES' NOTICE OF DEMURRER AND DEMURRER TO COMMUNITY OF**  
11 **ABALONE COVE'S VERIFIED PETITION FOR WRIT OF MANDATE AND**  
12 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; MEMORANDUM OF**  
13 **POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF WILLIAM**  
14 **C. MAZZOTA IN SUPPORT THEREOF** on the interested parties in this action as follows:

15 Kendra L. Carney Mehr  
16 CARNEY MEHR, a Legal Corporation  
17 23 Corporate Plaza Drive, Suite 150  
18 Newport Beach, CA 92660  
19 Tel: (949) 629-4676  
20 E-mail: [klcm@carneymehr.com](mailto:klcm@carneymehr.com)

21 Attorney for Plaintiff and Petitioner,  
22 Community of Abalone Cove

23 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the  
24 persons at the addresses listed in the Service List and placed the envelope for collection and mailing,  
25 following our ordinary business practices. I am readily familiar with the practice of Aleshire &  
26 Wynder, LLP for collecting and processing correspondence for mailing. On the same day that  
27 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business  
28 with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a  
resident or employed in the county where the mailing occurred. The envelope was placed in the  
mail at Riverside, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s)  
to be sent from e-mail address [atilly@awattorneys.com](mailto:atilly@awattorneys.com) to the persons at the e-mail addresses listed  
in the Service List. I did not receive, within a reasonable time after the transmission, any electronic  
message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on November 27, 2024, at Riverside, California.



Angelina Tilly



## Make a Reservation

COMMUNITY OF ABALONE COVE, A CALIFORNIA NONPROFIT MUTUAL BENEFIT COMPANY FOR COMMON INTEREST DEVELOPMENT vs CITY OF RANCHO PALOS VERDES, et al.

Case Number: 24TRCP00352 Case Type: Civil Unlimited Category: Writ - Administrative Mandamus  
Date Filed: 2024-09-11 Location: Torrance Courthouse - Department B

### Reservation

Case Name: COMMUNITY OF ABALONE COVE, A CALIFORNIA NONPROFIT MUTUAL BENEFIT COMPANY FOR COMMON INTEREST DEVELOPMENT vs CITY OF RANCHO PALOS VERDES, et al.		Case Number: 24TRCP00352
Type: Demurrer - without Motion to Strike	Status: RESERVED	
Filing Party: City of Rancho Palos Verdes (Defendant)	Location: Torrance Courthouse - Department B	
Date/Time: 01/03/2025 8:30 AM	Number of Motions: 1	
Reservation ID: 392739377896	Confirmation Code: CR-UESOMENYJM9WXTY5Y	

### Fees

Description	Fee	Qty	Amount
Demurrer - without Motion to Strike *** Fees Exempted by Gov Code 6103.1 ***	0.00	1	0.00
<b>TOTAL</b>			<b>\$0.00</b>

### Payment

Amount: \$0.00	Type: GOVT_EXEMPT
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

 Print Receipt

[+ Reserve Another Hearing](#)

---

Copyright © Journal Technologies, USA. All rights reserved.