

1 VENABLE LLP
Tyler G. Welti (SBN 257993)
2 101 California Street, Suite 3800
San Francisco, CA 94111
3 Telephone: (415) 653-3750
Facsimile: (415) 653-3755
4 tgwelti@venable.com

5 Colin B. Vandell (SBN 240653)
2049 Century Park East, Suite 2300
6 Los Angeles, California 90067
Telephone: (310) 229-9900
7 Facsimile: (310) 229-9901
cvandell@venable.com

8 Mitchell Y. Mirviss (*pro hac vice* to be filed)
9 750 East Pratt Street, 9th Floor
Baltimore, MD 21202
10 Telephone: (410) 244-7412
Telephone: (410) 244-7742
11 mymirviss@venable.com

12 Attorneys for Plaintiff, SPACE EXPLORATION
TECHNOLOGIES CORP.
13

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17 SPACE EXPLORATION
TECHNOLOGIES CORP.,

18 Plaintiff,

19 v.

20 CALIFORNIA COASTAL
21 COMMISSION, a California state
agency; KATE HUCKELBRIDGE, in
22 her capacity as the Executive Director
of the Commission; EFFIE
23 TURNBULL-SANDERS, in her
capacity as a Commissioner of the
24 Commission; DAYNA BOCHCO, in
her capacity as a Commissioner of the
25 Commission; CARYL HART, in her
capacity as a Commissioner of the
26 Commission; SUSAN LOWENBERG,
in her capacity as a Commissioner of
27 the Commission; ANN NOTTHOFF, in
her capacity as a Commissioner of the
28 Commission; LINDA ESCALANTE, in

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 her capacity as a Commissioner of the
2 Commission; MIKE WILSON, in his
3 capacity as a Commissioner of the
4 Commission; CATHERINE RICE, in
5 her capacity as a Commissioner of the
6 Commission; PALOMA AGUIRRE, in
7 her capacity as a Commissioner of the
8 Commission; MEAGAN HARMON, in
9 her capacity as a Commissioner of the
10 Commission; ROBERTO URANGA, in
11 his capacity as a Commissioner of the
12 Commission; JUSTIN CUMMINGS, in
13 his capacity as a Commissioner of the
14 Commission; and GRETCHEN
15 NEWSOM, in her capacity as Alternate
16 Commissioner of the Commission,

17
18 Defendants.

19 I. INTRODUCTION

20 1. This case is about a state agency—Defendant California Coastal
21 Commission (the Commission)—egregiously and unlawfully overreaching its
22 authority. First, the Commission has engaged in naked political discrimination
23 against Plaintiff Space Exploration Technologies Corp. (SpaceX) in violation of the
24 rights of free speech and due process enshrined in the First and Fourteenth
25 Amendments of the United States Constitution. Rarely has a government agency
26 made so clear that it was exceeding its authorized mandate to punish a company for
27 the political views and statements of its largest shareholder and CEO. Second, the
28 Commission is trying to unlawfully regulate space launch programs—which are
critical to national security and other national policy objectives—at Vandenberg
Space Force Base (the Base), a federal enclave and the world’s second busiest
spaceport.

2. The Commission, an agency of the State of California, is charged with
regulating the use of land and water within the state’s coastal zone. For decades, the
Commission has, without fail, agreed with the longstanding position of the U.S.
Department of the Air Force (Air Force) that the Base’s commercial space launch
programs are federal agency activities that are not subject to Commission’s

1 permitting authority or control. Indeed, until now, the Commission never once
2 disputed this position since it was formed in 1972. And for decades, the Commission
3 has repeatedly concurred in determinations by the Air Force pursuant to the Coastal
4 Zone Management Act (CZMA) that the Base's launch programs are consistent with
5 policies protecting California's coastal resources. Even now, the Commission has
6 continued to agree that every other commercial launch operator's launch programs
7 at the Base are federal agency activities, as demonstrated by recent concurrences
8 relating to other commercial launch providers.

9 3. Now, however, years after the Base's Falcon 9 program was first
10 approved by the Air Force and other federal agencies—and after the Commission
11 itself recently found Falcon 9 launches are consistent with coastal resource
12 protections—the Commission has decided to ignore longstanding federal policy and
13 law, its own established practices and findings, and the limitations on its authority
14 under the law to impose a different standard on SpaceX. Specifically, the
15 Commission refused to concur with a proposal by the United States Department of
16 the Air Force to increase from 36 to 50 the number of launches that SpaceX can
17 perform at the Base. And the Commission now posits that SpaceX's launch program
18 at the Base is federally permitted or licensed activity, as so SpaceX must obtain a
19 coastal development permit from the Commission to conduct launches from the
20 Base.

21 4. Before the Commission voted, the Air Force completed a
22 comprehensive environmental review involving numerous federal agency partners,
23 and it worked with the Commission to identify and implement a host of measures—
24 far beyond what is legally required—to mitigate any impact that the increased launch
25 cadence might have on coastal resources. The Commission's own staff
26 recommended concurrence in detailed staff reports. But at its October 10, 2024
27 hearing on the Air Force's proposal, the Commission voted 6-4 not to concur. The
28 Commissioners expressly stated that this decision was not based on concerns about

1 impacts to coastal resources, but instead on the political views held by SpaceX's
2 largest shareholder and CEO, Elon Musk.

3 5. The Commission's public hearing record indisputably shows overt, and
4 shocking, political bias. There is no pretext—the political basis of the Commission's
5 action is plain for all to see.

6 6. As Commissioner Caryl Hart said: the basis for the decision was not
7 that a commercial operator with a space launch program at the Base was increasing
8 its annual launch cadence, but rather that *SpaceX* was doing so: “The concern is with
9 *SpaceX* increasing its launches, not with the other companies increasing their
10 launches . . . we're dealing with a company . . . the head of which has aggressively
11 injected himself into the Presidential race and made it clear what his point of view
12 is.” Other Commissioners weighed in with similarly irrelevant, biased concerns
13 about Mr. Musk's politics:

14 a. Commissioner Gretchen Newsom read a prepared statement to
15 express her displeasure with “Elon Musk [] hopping about the
16 country, spewing and tweeting political falsehoods and attacking
17 FEMA while claiming his desire to help the hurricane victims with
18 free Starlink access to the internet.”

19 b. Commissioner Mike Wilson shared his concerns that Mr. Musk
20 controls “one of the most extensive communications networks on
21 the planet,” and that “just last week” Mr. Musk was “speaking about
22 political retribution on a national stage.”

23 c. Commissioner Dr. Justin Cummings “share[d] some concerns . . .
24 Commissioner Wilson brought up” regarding use of Starlink and
25 Mr. Musk's political beliefs: “And so while . . . we are all trying to
26 operate in this apolitical space, we do know that the person who
27 controls these companies has enough power to not work in the best
28 interest, when they feel like it, of our allies.”

1
2 7. Even leaving aside their irrelevance to the decision, these purported
3 “concerns” are based on a gross misunderstanding of the actual facts.¹

4 8. To make it even clearer that the Commission’s decision was based on
5 its political biases and other irrelevant, misplaced concerns, the Commission
6 recently approved another commercial space launch operator launching up to 60
7 launches a year from the same Base, accepting that this operator’s launch program,
8 including commercial launches, are federal agency activities.

9 9. Thankfully, the fundamental rights of free speech and due process
10 enshrined in our Constitution prohibit precisely this kind of political witch hunting
11 and abuse of power by rogue state agency officials.

12 10. But the Commission’s unconstitutional overreach does not stop at
13 punishing SpaceX for constitutionally protected speech, beliefs, and practices that
14 has no relevance to the proposed launches’ effects on coastal resources—the actual
15 issue pending before the Commission. Its actions to regulate the Falcon 9 launch
16 program are further prohibited by three separate legal principles:

17 a. The Commission’s decision interferes with the operations of the
18

19
20 ¹ Regarding Dr. Cummings’s purported concerns about Ukraine, the Department of
21 Defense has repeatedly and publicly stated how, relating to Ukraine, SpaceX “has
22 been a great partner on this, and they have done everything we have asked—
23 everything” ([https://warontherocks.com/2024/04/spacepower-and-the-private-secto-
24 r/](https://warontherocks.com/2024/04/spacepower-and-the-private-secto-r/)), and that SpaceX has not only been “cooperative with USG and Ukraine
25 government, they’ve been forward leaning” ([https://www.armed-services.senate.gov/
26 v/hearings/to-receive-testimony-on-the-department-of-defense-space-activities-in-
27 review-of-the-defense-authorization-request-for-fiscal-year-2025-and-the-future-
28 years-defense-program](https://www.armed-services.senate.gov/hearings/to-receive-testimony-on-the-department-of-defense-space-activities-in-review-of-the-defense-authorization-request-for-fiscal-year-2025-and-the-future-years-defense-program)). The Vice Prime Minister of Ukraine has said, “Starlink is
indeed the blood of our entire communications infrastructure now,” noting that the
network has saved “thousands of lives,” and that “[d]efinitely Elon Musk is among
the world’s top private donors supporting Ukraine. Starlink is an essential element
of our critical infrastructure.” [https://twitter.com/FedorovMykhailo/status/1589342
03385860097](https://twitter.com/FedorovMykhailo/status/158934203385860097). Secretary of State Anthony Blinken has said that “Starlink has been
a vital tool for Ukrainians to be able to communicate with each other and particularly
for the military to communicate in their efforts to defend all of Ukraine’s territory.”
[https://www.bloomberg.com/news/articles/2023-09-10/blinken-says-musk-s-
starlink-should-keep-giving-ukraine-full-use](https://www.bloomberg.com/news/articles/2023-09-10/blinken-says-musk-s-starlink-should-keep-giving-ukraine-full-use).

1 *national* space launch program conducted at a U.S. Air Force base.
2 The CZMA gives the federal government, not state governments,
3 power to control federal agency activities on federal land. This
4 exclusive authority and broad area of federal control preempts any
5 application of state law, especially state law that the Commission
6 would wield to interfere with control of operations on a U.S. military
7 base.

- 8 b. The launch facilities at the Base are situated on a “federal enclave”
9 protected by the Constitution from intrusive state regulation.
10 Military bases are paradigmatic examples of federal enclaves that
11 the Constitution expressly places under exclusive federal
12 jurisdiction. The Commission’s intrusion upon national defense and
13 intelligence interests and the operations of the U.S. military on a
14 federal enclave is extraordinary and clearly prohibited.
- 15 c. The Commission’s own governing statute, the California Coastal
16 Act of 1976 (Coastal Act), expressly states that it does not apply to
17 federal land—going so far as to define “coastal land” subject to the
18 law to exclude all federal territory. The Commission’s decision
19 therefore violates the very foundation of the Commission’s
20 purported authority.

21 11. Finally, the justification the Commission relied on to unlawfully intrude
22 into the national security and the other federal interests implicated by SpaceX’s
23 launch program—that some of SpaceX’s launches at the Base are commercial—
24 misses the mark.

25 12. First, SpaceX, as one of only two certified National Security Space
26 Launch (NSSL) program providers to the U.S. Government, is contractually required
27 to share data with the U.S. Government for *every single one of its launches*, whether
28 carrying a U.S. Government payload or not. This mandatory federal government data

1 collection is conducted pursuant to U.S. Government mission assurance activities—
2 for which the U.S. Government pays SpaceX. It demonstrates that SpaceX’s
3 commercial launches contribute to the overall national security space launch
4 enterprise.

5 13. Second, the U.S. Government has long established that commercial
6 launch services are critical to America’s assured access to space. Commercial space
7 launches, with a diverse set of non-U.S. Government customers, enable affordable,
8 routine, and regular access to space that does not depend solely on the U.S.
9 Government as a customer. Federal law, National Space Policy, and National Space
10 Transportation Policy going back decades have recognized that for U.S. Government
11 payload launches to be reliable and affordable, commercial space launch providers
12 who perform U.S. Government launches must be commercially successful by
13 launching both government and commercial missions.

14 14. More recently, the National Defense Strategy, the U.S. Defense
15 Department Commercial Space Strategy, and the U.S. Space Force Commercial
16 Space Integration Strategy, uniformly concluded that commercial space
17 capabilities—including launch—are critical to the national security interests of the
18 United States. The Commission’s efforts to falsely divide these activities into
19 separate categories is inconsistent with national policy, law, and national defense
20 strategy.

21 15. For these reasons, the Commission’s punitive decision, violating core
22 Constitutional protections of free speech and due process, undermines U.S. national
23 security and is blatantly illegal, trampling over (i) federal law; (ii) exclusive federal
24 jurisdiction over military bases and other federal enclaves; and (iii) the
25 Commission’s own governing statutory boundaries.

26 16. Through this lawsuit, SpaceX seeks to protect these fundamental rights
27 by (i) obtaining a declaration that the Commission’s actions unconstitutionally
28 punish SpaceX, impermissibly usurp federal law governing federal land and federal

1 programs, and even vault past the statutory boundaries limiting the Commission's
2 authority; and (ii) enjoining the Commission from rejecting the Air Force's action
3 and enforcing the Coastal Act's permit requirements against SpaceX.

4 II. PARTIES

5 17. Plaintiff SpaceX is a privately held American space technology and
6 transportation company that is incorporated and headquartered in Texas. SpaceX
7 maintains facilities at and launches Falcon 9 rockets from Space Launch Complex 4
8 (SLC-4) at the Base in Santa Barbara County, California. Elon Musk owns over 40%
9 of SpaceX, making him its principal owner. He serves as its CEO and chairs its board
10 of directors.

11 18. Defendant the California Coastal Commission is a quasi-judicial state
12 agency created by the California Coastal Act of 1976, California Public Resources
13 Code §§ 30000 *et seq.*, with the express power to sue and be sued in federal court.
14 *See* Pub. Res. Code §§ 30334(b), 30803(a).

15 19. Individual Defendant Kate Huckelbridge is sued in her official capacity
16 as the Executive Director of the Commission. Defendant Huckelbridge is
17 responsible for the direction and supervision of activities undertaken by the
18 Commission.

19 20. Individual Defendant Effie Turnbull-Sanders is sued in her official
20 capacity as a voting Commissioner of the Commission.

21 21. Individual Defendant Dayna Bochco is sued in her official capacity as
22 a voting Commissioner of the Commission.

23 22. Individual Defendant Caryl Hart is sued in her official capacity as a
24 voting Commissioner and Chair of the Commission.

25 23. Individual Defendant Susan Lowenberg is sued in her official capacity
26 as a voting Commissioner of the Commission.

27 24. Individual Defendant Ann Notthoff is sued in her official capacity as a
28 voting Commissioner of the Commission.

25. Individual Defendant Linda Escalante is sued in her official capacity as a voting Commissioner of the Commission.

26. Individual Defendant Mike Wilson is sued in his official capacity as a voting Commissioner of the Commission.

27. Individual Defendant Katherine Rice is sued in her official capacity as a voting Commissioner of the Commission.

28. Individual Defendant Paloma Aguirre is sued in her official capacity as a voting Commissioner of the Commission.

29. Individual Defendant Meagan Harmon is sued in her official capacity as a voting Commissioner of the Commission.

30. Individual Defendant Roberto Uranga is sued in his official capacity as a voting Commissioner of the Commission.

31. Individual Defendant Gretchen Newsom is sued in her official capacity as Alternate for Commissioner Ann Notthoff. Ms. Newsom served as a voting Commissioner on matters relating to the Falcon 9 launch program at the Base.

32. Individual Defendant Cassidy Teufel is sued in his official capacity as Deputy Director of the Commission's Energy, Ocean Resources, and Federal Consistency Division.

33. The individual Defendants are officers or agents of the Commission and are being sued in their official capacities as officers or agents of the Commission. In these capacities, the individual Defendants and their employees, officers, agents, and assigns are charged with following and implementing the federal and state laws and regulations governing the management of California's coastal resources.

III. JURISDICTION AND VENUE

34. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343(a)(3) (federal civil rights jurisdiction). This action asserts claims arising under the Supremacy Clause, U.S. Const. Art VI, cl. 2; the doctrine of federal preemption; the Coastal Zone

1 Management Act (CZMA), 16 U.S.C. §§ 1451, *et seq.*; the First and Fourteenth
2 Amendments to the U.S. Constitution; 42 U.S.C. § 1983; and other federal laws.

3 35. This Court also has subject matter jurisdiction under 28 U.S.C. § 1331
4 based on U.S. Const. Art. I, § 8, cl. 17 and the federal enclave doctrine, which
5 provide that conduct on a federal enclave is governed by federal law. This case
6 concerns a space launch program on Vandenberg Space Force Base, and “[i]t is well-
7 settled . . . that Vandenberg is a federal enclave under the federal government’s
8 exclusive legislative jurisdiction—and has been since 1943.” *Haining v. Boeing Co.*,
9 No. 2:12-CV-10704-ODW, 2013 WL 4874975, at *2 (C.D. Cal. Sep. 11, 2013)
10 (citing *Taylor v. Lockheed Martin Corp.*, 78 Cal. App. 4th 472, 480-81 (2000)). As
11 such, the Commission’s state law permitting jurisdiction does not apply on the Base.
12 The State did not reserve jurisdiction to regulate activity on the Base when it ceded
13 the land to the federal government. And Congress has not expressly provided that
14 the Base is subject to the Coastal Act, a state law enacted long after the federal
15 government assumed jurisdiction.

16 36. In addition to having original jurisdiction under the federal enclave
17 doctrine, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over
18 SpaceX’s claim under the Coastal Act. That claim is so related to the federal causes
19 of action that they together form part of the same case or controversy.

20 37. This Court is empowered to provide declaratory and injunctive relief in
21 this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202,
22 and Federal Rules of Civil Procedure 57 and 65. This Court has jurisdiction to order
23 prospective relief in the form of a declaratory judgment and an injunction against
24 Defendants to end continuing violations of federal law by the Commission’s officers
25 and employees acting in their official capacities as officers of an agency of the State
26 of California.

27 38. Venue is proper in this judicial district pursuant to 28 U.S.C.
28 § 1391(b)(1) and (b)(2) because a substantial part of the events giving rise to this

1 action occurred in this District, including the launch operations at the Base that
2 Defendants seek to regulate in violation of federal law. Additionally, the
3 Commission and individual Defendants maintain an office in Ventura, California,
4 which is in this District.

5 39. SpaceX has satisfied all exhaustion requirements, or no such
6 requirements may be applied to SpaceX on the claims and facts alleged in this
7 Complaint.

8 IV. LEGAL BACKGROUND

9 A. Coastal Zone Management Act

10 40. Congress enacted the CZMA in 1972 “to preserve, protect, develop,
11 and where possible, to restore or enhance, the resources of the Nation’s coastal
12 zone.” 16 U.S.C. § 1452.

13 41. The “coastal zone” includes “coastal waters,” “adjacent shorelands,”
14 “islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.” It
15 does not include “lands the use of which is by law subject solely to the discretion
16 of . . . the Federal Government.” *Id.* § 1453(1).

17 42. Coastal states implement the CZMA’s policies through federally
18 approved coastal management programs. *Id.* § 1455(d). A coastal management
19 program must identify, among other things, the state’s coastal zone boundaries,
20 permissible coastal uses, and “enforceable policies” governing coastal zone use. *Id.*;
21 *see id.* § 1453(6a) (defining enforceable policy). States must exclude from their
22 coastal zones “lands owned, leased, held in trust or whose use is otherwise by law
23 subject solely to the discretion of the Federal Government, its officers or agents.” 15
24 C.F.R. § 923.33(a).

25 43. Section 307 of the CZMA requires federal agencies to coordinate with
26 coastal states to ensure that federal action “within or outside the coastal zone that
27 affects” coastal resources is consistent with the enforceable policies of approved
28 coastal management programs. 16 U.S.C. § 1456(c). This is known as “federal

1 consistency review.”

2 44. The CZMA and its implementing regulations identify different types of
3 federal agency actions requiring federal consistency review and establish distinct
4 review procedures for each type. Two types of actions reviewable under the CZMA
5 are relevant here: “federal agency activity” and “federally licensed or permitted
6 activity.” *See* 15 C.F.R. Pt. 930 Subpts. C & D.

7 45. Federal agency activity is “any functions performed by or on behalf of
8 a federal agency in the exercise of its statutory responsibilities.” 16 U.S.C.
9 § 1456(c)(1)(A); 15 C.F.R. § 930.31(a). Federal agency activity need only be
10 “consistent to the maximum extent practicable” with a federally approved coastal
11 management program. 16 U.S.C. § 1456(c)(1)(A); 15 C.F.R. § 930.32(a)(1). At least
12 90 days before approving federal agency activity, federal agencies must notify the
13 state either that the activity will not have coastal effects (by submitting a “negative
14 determination”) or that the activity having coastal effects will be consistent to the
15 maximum extent practicable with the enforceable policies of the state’s approved
16 coastal management program (by submitting a “consistency determination”). 16
17 U.S.C. § 1456(c)(1)(C); 15 C.F.R. §§ 930.35, 930.36. The state may either concur
18 or object. 15 C.F.R. § 930.41. The state may also issue a “conditional concurrence”
19 subject to specific conditions, which is treated as an objection if the federal and state
20 agencies cannot come to an agreement on the state’s conditions. *Id.* § 930.4.
21 Ultimately, federal agency activity can proceed over the state’s objection if the
22 agency concludes it is consistent to the maximum extent practicable. *Id.*

23 46. Another type of federal action subject to consistency review is
24 “[f]ederally licensed or permitted activity” (hereinafter, “federally permitted
25 activity”). 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.51. Federally permitted
26 activity must be fully consistent with the enforceable policies of a coastal
27 management program. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.57. A state may
28 review only those federally permitted activities affecting the coastal zone that are

1 listed in its coastal management program. The state can request permission from the
2 National Oceanic and Atmospheric Administration (NOAA) to review unlisted
3 activities, but unlisted activities are otherwise not subject to state review. 15 C.F.R.
4 § 930.54. To demonstrate consistency, the federal permit applicant must submit a
5 consistency certification to the state. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.57.
6 The state has six months to review a certification. 15 C.F.R. §§ 930.60(a), 930.62(a).
7 If the state objects to the certification, the federal agency is prohibited from issuing
8 the permit, and the activity cannot proceed, unless the Secretary of Commerce finds
9 the activity “is consistent with the objectives” of the CZMA “or is otherwise
10 necessary in the interest of national security,” overriding the state’s objection. 16
11 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.64; *see* 15 C.F.R. Pt. 930 Subpt. H (appeal
12 process).

13 **B. California Coastal Act**

14 47. The Coastal Act serves as California’s implementation of the CZMA
15 and constitutes “California’s coastal zone management program within the coastal
16 zone for purposes of the [CZMA].” Cal. Pub. Res. Code § 30008.

17 48. The Coastal Act established the Commission as the California state
18 agency responsible for reviewing federal agency actions affecting the coastal zone
19 for consistency with the federally approved California coastal management program.
20 *Id.* § 30330.

21 49. The Commission includes twelve voting members who are selected by
22 the Governor, the Senate Committee on Rules, and the Speaker of the Assembly, six
23 of whom are elected officials of local governments and six of whom are appointed
24 from the public at large. *Id.* § 30301.

25 50. California’s coastal zone includes the land and water area of “the State
26 of California” extending seaward to the outer limit of the State’s jurisdiction and
27 inland generally 1,000 yards from the mean high tide line. *Id.* § 30103. The Coastal
28 Act recognizes that federal land is “excluded from the coastal zone pursuant to [the

CZMA].” *Id.* § 30008; *see* 15 U.S.C. § 1453(1); NOAA & California Coastal Commission, *Combined State of California Coastal Management Program and Final Environmental Impact Statement* at 40 (Aug. 1977).

51. The Base is federal land that is excluded from the coastal zone.

52. The Coastal Act requires a coastal development permit (CDP) for development within the coastal zone. *Id.* § 30600(a). The Commission or a local jurisdiction with permitting authority must issue a CDP if a proposed development will be consistent with the enforceable policies of the Coastal Act. *Id.* §§ 30604(a), 30200(a).

53. Development outside the coastal zone is not subject to the Coastal Act’s CDP requirement, even if it causes impacts inside the coastal zone. *Id.* § 30604(d); 14 Cal. Code. Regs. § 13050.5(b); *Sierra Club v. Cal. Coastal Comm’n*, 35 Cal. 4th 839, 848, 855 (2005).

V. FACTUAL BACKGROUND

A. SpaceX and its service to the U.S. Space Program

54. SpaceX was founded in 2002 with the audacious goal of making life multiplanetary. Since then, SpaceX has become the world’s leading launch services provider.

55. SpaceX’s Falcon 9 rocket is the most reliable rocket ever flown. Falcon rockets have performed more than 385 successful missions with an over-99% success rate. Falcon first stages are the only orbital-class rocket stages capable of landing, recovery, and reuse, and SpaceX has successfully landed and reused them well over 300 times to date. This substantially reduces marine debris associated with rocket launches. SpaceX first launched Falcon 9 from the Base in 2013 and conducted 28 Falcon 9 launches from the Base in 2023 alone.

56. SpaceX is one of only two launch services providers certified to perform the most critical launches for the United States’ national security and intelligence communities. In 2020, the Space Force (an agency within the Air Force)

1 selected SpaceX to launch not less than 40% of all National Security Space Launch
2 (NSSL) payloads for the U.S. Government through at least 2027. Since that initial
3 award, due to challenges with the other awardee's launch vehicle readiness, SpaceX
4 has actually been assigned greater than 50% of NSSL missions during this contract
5 period. SpaceX's Falcon rockets are critical to fulfilling the U.S. government's
6 NSSL mission, as it is the *only* operational launch system currently certified to
7 launch such missions. Indeed, the other certified NSSL launch provider's new
8 launch vehicle is years behind being certified for NSSL missions, meaning SpaceX's
9 Falcon 9 launch vehicles have launched far more than 40% of the country's NSSL
10 missions within the current NSSL contract. Falcon 9 is the only American launch
11 vehicle currently routinely delivering astronauts, supplies, and science to the
12 International Space Station for NASA.

13 57. Falcon 9 also delivers Starlink and Starshield satellites into orbit.
14 Starshield, leveraging the Starlink satellite constellation and ground infrastructure,
15 provides secure satellite communications to multiple agencies within the
16 Department of Defense. In 2023, the Space Force awarded SpaceX an initial \$70-
17 million contract to bolster Starshield's capabilities, using Starlink infrastructure for
18 critical national security, defense, and emergency response operations for the
19 Department of Defense and other U.S. federal agencies.² Separately, SpaceX has
20 other, very substantial, national security space contracts with the U.S. Government
21 relating to Starshield. SpaceX's operations at the Base are needed to fulfill critical
22 contractual obligations to other U.S. Government agencies related to the
23 implementation of the Starshield program.

24 **B. The federal government's reliance on commercial space operators**

25 58. For decades, Congress has recognized the critical importance of
26

27 ² See Unshin Lee Harpley, *Space Force Awards Contract to SpaceX for Starshield,*
28 *Its New Satellite Network*, AIR & SPACE FORCES MAGAZINE (Oct. 4, 2023),
<https://www.airandspaceforces.com/space-force-contract-spacex-starshield/>.

commercial space launch operators like SpaceX to the nation's space program. In the Commercial Space Launch Act of 1994, as amended, Congress found that "the private sector in the United States has the capability of developing and providing private launching, reentry, and associated services that would complement the launching, reentry, and associated capabilities of the United States Government." 51 U.S.C. § 50901(a)(4). Congress also found "space transportation . . . is an important element of the transportation system of the United States, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement." *Id.* § 50901(a)(8).

59. In the National Defense Authorization Act of 2004, Congress declared it "the policy of the United States for the President to undertake actions appropriate to ensure, to the maximum extent practicable, that the United States has the capabilities necessary to launch and insert United States national security payloads into space whenever such payloads are needed in space." 10 U.S.C. § 2273(a). Such actions include "at a minimum, providing resources and policy guidance to sustain" (*id.* § 2273(b)):

(1) the availability of at least two space launch vehicles (or families of space launch vehicles) capable of delivering into space any payload designated by the Secretary of Defense or the Director of National Intelligence as a national security payload;

(2) a robust space launch infrastructure and industrial base; and

(3) the availability of rapid, responsive, and reliable space launches for national security space programs to--

(A) improve the responsiveness and flexibility of a national security space system;

(B) lower the costs of launching a national security space system; and

(C) maintain risks of mission success at acceptable levels.

60. In the National Defense Authorization Act of 2013, Congress directed the Department of Defense to “maximize the use of the capacity of the space transportation infrastructure of the [Department of Defense] by the private sector of the United States” and to “encourage commercial space activities by enabling investment . . . in the space infrastructure of the [Department of Defense].” *Id.* § 2276(a). In the National Defense Authorization Act of 2024, Congress again emphasized the central role of the private sector in space-related defense activities. For example, Congress enabled the “Secretary of a military department” authority to “provide to [] commercial entit[ies] supplies, services, [and] equipment” as needed to increase commercial space launch capacity. Pub. Law 118-31 § 1603(b).

61. Consistent with these statutory directives, the Department of Defense has for many years contracted with commercial operators like SpaceX to carry out national space program activities, and now relies exclusively on commercial launch services. The Department of Defense has made clear that advancing the country’s national defense and security goals requires “increase[d] collaboration with the private sector in priority areas, especially with the commercial space industry, leveraging its technological advancements and entrepreneurial spirit to enable new capabilities.” Department of Defense, *2022 National Defense Strategy* at 19-20.³ The Department of Defense has also said it “will benefit by making commercial solutions integral—and not just supplementary—to national security space objectives.” Department of Defense, *Commercial Space Integration Strategy* (2024) at 1.⁴

C. Commercial space launch operations at Vandenberg Space Force Base

62. The military has owned and operated the Base for almost 85 years. In ceding the land on which the Base is located to the U.S. Government, California

³ Available at <https://media.defense.gov/2022/Oct/27/2003103845/-1/-1/1/2022-NATIONAL-DEFENSE-STRATEGY-NPR-MDR.PDF>.

⁴ Available at <https://media.defense.gov/2024/Apr/02/2003427610/-1/-1/1/2024-OD-COMMERCIAL-SPACE-INTEGRATION-STRATEGY.PDF>.

1 never reserved authority to apply its state laws to the land. The Army established the
2 Camp Cooke garrison on the property in 1941 and transferred the site to the Air
3 Force in 1957. Soon after, the Air Force established the Base as a missile and space
4 launch facility and launched the first missile from there in 1958.

5 63. In 1996, the Base became the site of the world's first spaceport
6 supporting space launches by commercial operators. Today, this Base is the world's
7 second busiest launch facility. The Base is also the West Coast's only federal launch
8 facility, providing critical capacity for the nation's space program.

9 64. Space launches have occurred at the Base for many years with no
10 significant effects on coastal resources either on or around the Base. For example,
11 wildlife monitoring has shown no significant effects to coastal wildlife, including
12 sea birds and pinnipeds. In its 2023 Supplemental Environmental Assessment
13 (Supplemental EA) for Falcon 9 launch activities at the Base, the Air Force
14 explained that "[Western Snowy Plover] monitoring . . . over the past two
15 decades . . . has routinely demonstrated that [] behavior is not adversely affected by
16 launch noise or vibrations." Supplemental EA at 4-25.⁵ The Air Force has also
17 "determined there are generally no substantial behavioral disruptions or anything
18 more than temporary [e]ffects" from past launches on pinnipeds and other species.
19 *Id.* at 4-38.

20 65. Since 1979, public access to beaches in the vicinity of the Base have
21 been subject to an access restriction agreement between the Air Force, the State of
22 California, and Santa Barbara County. The agreement provides that the Air Force
23 will notify the County prior to a launch that an evacuation is necessary and empower
24 Santa Barbara County to evacuate members of the public and enforce temporary
25 access restrictions. The State and County have extended this agreement on multiple
26

27
28 ⁵ Available at https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2023-05-1_SEA_SpaceX_Falcon9CadenceIncrease.pdf.

1 occasions.

2 66. For decades, the Air Force has treated commercial space operations by
3 SpaceX and other commercial operators at the Base as “federal agency activity”
4 under the CZMA and determined that launches are consistent to the maximum extent
5 practicable with the California coastal management program. For example, in 1998,
6 the Air Force made a consistency determination for the Evolved Expendable Launch
7 Vehicle commercial launch program at the Base (CD-049-98). In 2003 and 2005,
8 the Air Force made negative determinations regarding SpaceX’s Falcon program
9 (ND-103-03 and ND-088-05). *See* Exs. A & B. In 2020, the Air Force made a
10 negative determination for the United Launch Alliance’s Vulcan Centaur launch
11 program (ND-0027-20). In 2021, the Air Force made a negative determination for
12 ABL Space Systems’ RS1 launch program (ND-0020-21) and a consistency
13 determination for Blue Origin’s Orbital Launch Site (CD-0010-21). And in 2023,
14 the Air Force made a consistency determination for a Phantom Space Corporation
15 launch facility with a launch cadence of 60 flights, higher than the cadence the Air
16 Force is seeking for SpaceX (CD-0010-22). The Commission has never required any
17 other commercial space launch operator to obtain a CDP.

18 67. The Department of Defense has repeatedly made clear to the
19 Commission that activities on military installations in California, including the Base,
20 are federal agency activities, not federally permitted activity subject to state permit
21 requirements. For example, on October 25, 2022, “on behalf of the military Services
22 in California, and consistent with previous communications on this uniquely federal
23 issue,” the Navy rejected the Commission’s “request[] that the Coastal Development
24 Permit (CDP) process be utilized where a private entity is involved in the military’s
25 federal activity.” The Navy explained:

26 Any federal activity, lease or project undertaken on a
27 military installation, is by definition not in the coastal
28 zone. All activities taking place on federally owned
 [Department of Defense] land, including those that utilize

private entities, are done so in a manner exercising our statutory authorities. Federal activities include a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities.

Ex. A. In a November 2, 2022 letter (Ex. B), the Air Force similarly found that another commercial space operator's proposed launch program at the Base "is a federal activity being conducted outside the coastal zone." The Air Force rejected the Commission's request that it withdraw a previously submitted consistency determination for this activity and apply for a CDP. The Air Force emphasized it "had fulfilled its statutory commercial space launch responsibilities on [the Base] for decades, during which the Coastal Commission has never asserted that any commercial space project was a private commercial development requiring a CDP."

68. The Commission, in turn, has reviewed the Air Force's negative determinations and consistency determinations for commercial space operations at the Base as federal agency activity and concurred. *See, e.g.*, ND-103-03 Concurrence (addressing the Base's Falcon launch program) (Ex. C); ND-088-05 Concurrence (addressing modifications to the Falcon program) (Ex. D); ND-0027-20 Concurrence (addressing the Base's Vulcan Centaur Program);⁶ ND-0020-21 Concurrence (addressing the Base's ABL Space Systems Company's RS1 vehicle launches).⁷

69. Consistent with the Air Force's longstanding positions that launches from the Base are federal agency activities subject to state consistency review under Section 307(c)(1) of the CZMA, launches are not listed as federally permitted activities in the California coastal management program.

⁶ Available at <https://documents.coastal.ca.gov/reports/2020/11/F14/F14-11-2020.pdf> at 2-4.

⁷ Available at <https://documents.coastal.ca.gov/reports/2021/10/F10/F10-10-2021.pdf> at 11-12.

1 70. No space launch operator has ever applied for or obtained a CDP.

2 **D. The Falcon 9 launch program**

3 71. SpaceX currently leases land from the Air Force at the Base that is used
4 to support the Falcon 9 launch program at the Base. Under the lease, the Air Force
5 retains ultimate authority over the use of the land and launch facilities. For example,
6 the Air Force “reserves the right to use or share” the leased facilities “as necessary
7 to support its own programs” and “to grant shared use . . . to other services within
8 the Department of Defense, federal agencies, state agencies, and commercial space
9 launch operators in the furtherance of the purposes of” the Commercial Space
10 Launch Act. The federal government also retains authority to enter the leased
11 facilities “without escort, at all times for any purposes not inconsistent with
12 Licensee’s quiet use and enjoyment of them.”

13 72. Consistent with its longstanding treatment of commercial space
14 operations at the Base as federal agency activity, the Air Force made negative
15 determinations regarding the Base’s Falcon 9 launch program in 2010 (ND-055-10),
16 2014 (ND-0035-14), 2015 (ND-0027-15), and, as further explained below, 2023
17 (ND-0009-23). The Commission concurred with each determination. *See* ND-055-
18 10 Concurrence, Ex. E at 2; ND-0035-14 Concurrence, Ex. F at 3; ND-0027-15
19 Concurrence, Ex. G at 3; ND-0009-23 Concurrence, Ex. H at 5.

20 73. These determinations were supported by robust National
21 Environmental Policy Act review by the Air Force, interagency consultation under
22 Section 7 of the Endangered Species Act with the U.S. Fish and Wildlife Service
23 and National Marine Fisheries Service, and Commercial Space Launch Act review
24 by the Federal Aviation Administration. The Air Force prepared environmental
25 assessments (EAs) in 2011, 2016, and 2018, concluding that Falcon 9 program
26
27
28

activities would not significantly impact coastal resources.⁸

74. The Air Force also monitors and mitigates environmental effects of the Base's launch programs. In collaboration with Space Launch Delta 30 of the Space Force, SpaceX monitors protected species, including the western snowy plover, California least tern, California red-legged frog, southern sea otter, and pinnipeds. SpaceX also assists in sonic boom monitoring at multiple sites even though sonic booms from Falcon 9 launches do not occur at levels that are harmful to humans or wildlife. The Space Force has also collaborated with Santa Barbara County on a highly successful strategy to minimize beach access restrictions that the Space Force sometimes implements to reduce risk to the public.

E. The Commission's review of Falcon 9 launch cadence increases

75. In 2023, the Air Force evaluated increasing the launch cadence of Falcon 9 rockets at the Base to up to 36 launches annually. As with prior Falcon 9 program activities, the proposed cadence increase underwent environmental and safety review by multiple federal agencies. The Air Force prepared a Supplemental EA in accordance with the National Environmental Policy Act and concluded the cadence increase would not significantly affect coastal resources. Supplemental EA at 4-50. The Air Force and SpaceX also committed to measures to mitigate coastal effects, including minimizing the need for temporary access restrictions, compensation for any unrecovered marine debris, and ongoing biological monitoring. Supplemental EA at 4-49 to 4-50.

76. After thorough review, the Air Force also made a negative determination (ND-0009-23) under the CZMA. The Commission concurred on May 5, 2023, stating: "With these commitments [to minimize coastal impacts],

⁸ 2011 EA, available at <https://apps.dtic.mil/sti/pdfs/ADA612280.pdf>; 2016 EA, available at https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2016-04-1_EA_Falcon9_Boost-back.pdf; 2018 Supplemental EA, available at https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2018-01-31_SEA_Falcon9_Launch-Boost-back.pdf.

1 Commission staff agrees that the proposed increase to 36 Falcon 9 launches per year
2 at [the Base] and designation of a new offshore landing area will not adversely affect
3 coastal zone resources. The proposed launch activities are similar to those concurred
4 with by the Commission in CD-049-98 and by the Executive Director in ND-0027-
5 15. We therefore concur with your negative determination made pursuant to 15 CFR
6 930.35 of the NOAA implementing regulations.” ND-0009-23 Concurrence, Ex. H
7 at 5.

8 77. Just a few months later, however, the Commission reversed course,
9 voting on December 15, 2023, to renege on its concurrence with the Air Force’s
10 2023 negative determination. The Commission also asked the Air Force to provide
11 more information about the 36-launch cadence increase and potential coastal effects.

12 78. The Commission sent the Space Force a “remedial action letter” on
13 February 16, 2024, asking the Space Force to submit a consistency determination
14 for the 36-launch cadence increase and “limit SpaceX launch azimuths and
15 scheduling in order to avoid further adverse impacts to public coastal access and
16 recreation” Ex. I at 3.

17 79. Notwithstanding that the Commission had already previously
18 concurred in the negative determination, the Air Force provided the Commission the
19 requested information and agreed to submit a consistency determination (CD-0003-
20 24) for the 36-launch cadence increase. On March 7, 2024, the Air Force provided
21 another consistency determination, which included additional mitigation measures
22 addressing the Commission’s concerns and again found the 36-launch cadence
23 increase to be consistent with the California coastal management program. Ex. J.

24 80. On March 28, 2024, Commission staff released a detailed staff report
25 recommending the Commission concur with the Air Force’s March 2024
26
27
28

1 consistency determination.⁹ The report discussed the Air Force’s commitment to
2 implement measures to further address the Commission’s concerns with biological
3 resources, marine debris, and fisheries impacts. While the report recommended
4 concurrence, it disputed the Air Force’s longstanding policy and the Commission’s
5 longstanding practice of recognizing and reviewing commercial launch operations
6 at the Base as federal agency activity. Instead, the report said, “SpaceX’s space
7 launch activities are not a government program and are carried out solely by a private
8 entity” and that the program “would be operated by a private company to serve its
9 business objectives and would only occasionally launch materials at the behest of”
10 the Air Force. March 2024 Report at 7. While Commission staff “agreed to bring
11 forward the proposed project for the Commission’s consideration as a consistency
12 determination,” they warned that “future projects will continue to be considered on
13 a case-by-case basis and different review approaches will be used when
14 appropriate.” *Id.*

15 81. At its April 10, 2024 meeting, the Commission rejected its staff’s
16 recommendation and voted not to concur at that time. The Commission again
17 questioned the Air Force’s longstanding policy of treating private launches at the
18 Base as federal agency activity. Kristina Kunkel, speaking on behalf of the State
19 Lands Commission, said: “I just don’t think that SpaceX should be able to skirt the
20 requirements for a CDP when there’s clear intent to conduct primarily for-profit
21 business activity and not federal activity.” Commissioner Notthoff suggested
22 “[m]aybe there’s some other launch sites that SpaceX could use to spread [the
23 impact] out over the globe.” The Commission decided to again revisit review of the
24 Air Force’s consistency determination for the 36-launch cadence increase at a
25 subsequent hearing.

26
27
28 ⁹ Available at <https://documents.coastal.ca.gov/reports/2024/4/w13a/w13a-4-2024-report.pdf>.

1 82. On May 10, 2024, to address the additional concerns raised at the April
2 10 meeting, the Air Force provided a briefing on operations at the Base; it then
3 submitted additional information about the Falcon 9 launch operations at the Base.

4 83. In a May 30, 2024, report,¹⁰ Commission staff reversed its prior
5 recommendation that the Commission concur with the Air Force's consistency
6 determination, instead recommending that the Commission object. The report again
7 disputed the Air Force's position that the Falcon 9 program at the Base is federal
8 agency activity. The report stated that "Space Force must demonstrate that SpaceX
9 is performing all its launch activities on behalf of the Space Force and that Space
10 Force is responsible and accepts liability for all of SpaceX's launch activities" to
11 show that the Falcon 9 program is federal agency activity. May 2024 Report at 7.

12 84. On June 7, 2024, the Air Force sent a letter responding to the
13 Commission's report. Ex. K. The Air Force explained that the Falcon 9 program
14 would be carried out "consistent to the maximum extent practicable with the
15 enforceable policies" of the California coastal management program and that
16 "federal activities, including commercial space activities on [the Base], are not
17 subject to the California Coastal Zone Management Program's (CZMP) Coastal
18 Development Permit (CDP)." The Air Force reiterated that "[l]aunches on [the Base]
19 constitute 'federal agency actions' and fall within the federal [consistency
20 determination] process," and that "[t]his position has been articulated to the
21 [Commission] throughout this [consistency review] process" and in prior
22 correspondences.

23 85. The Commission postponed a vote on the consistency determination at
24 its June 2024 meeting. The Air Force then continued to meet and work with the
25 Commission to address the Commission's concerns.

26
27
28 ¹⁰ Available at <https://documents.coastal.ca.gov/reports/2024/6/w10a/w10a-6-2024-report.pdf>.

86. On July 25, 2024, Commission staff issued a third report on the Air Force's consistency determination for the 36-launch cadence increase, this time recommending conditional concurrence.¹¹ Specifically, the Report recommended imposing the following conditions of concurrence, which include measures related to effects outside of the coastal zone: (1) an enhanced on-Base biological monitoring program, (2) off-Base sonic boom minimization measures, (3) off-Base acoustic and biological monitoring, (4) a lighting management plan, (5) enhanced coastal access and recreation, (6) marine debris payments, and (7) a commercial and recreational fishing coordination plan. This new report again took the position that Falcon 9 launches are not federal agency activity and require a CDP. July 2024 Report at 12.

87. The Air Force worked with the Commission and agreed to conditions 4-7 but not the other conditions, as explained in an August 6, 2024 letter to the Commission. Ex. L.

88. At its August 8, 2024, meeting, the Commission adopted the Report in full and conditionally concurred in the Air Force's consistency determination. During the hearing, the Commission raised numerous concerns unrelated to potential effects on coastal resources. For example, Commissioner Wilson said:

And we see, you know, actors in that space both engaging in foreign military activities, engaging in misinformation, dabbling in misinformation within the social media spheres in which they're in and those sorts of things, which makes me question our ability to manage the benevolency of this private industry under this umbrella of the public good, which our military is supposed to be part of our public good and national security as well.

Commissioner Cummings also asked national security questions unrelated to potential effects on coastal resources based on false, debunked conspiracy theories:

[W]hat we saw about a year ago was that Starlink was shut down when one of our allies was trying to utilize that

¹¹ Available at <https://documents.coastal.ca.gov/reports/2024/8/Th9c/Th9c-8-2024-report.pdf>.

1 technology to attack one of our adversaries. When the
2 Ukraine was trying to conduct a drone attack on Russia,
3 Starlink shut down that technology and prevented them
4 from utilizing that technology for an attack that they were
5 trying to do to defend their nation against a foreign
6 invader, who we've identified as being one of our enemies.
7 So the notion that what we're doing and the approval of
8 these rocket launches is for national defense, you know,
9 it's concerning to me when some of our allies are not being
10 allowed to utilize the technology that's being deployed in
11 these launches when they need it most.

12 89. After the hearing, the Air Force continued to work with the
13 Commission to resolve its concerns. On September 13, 2024, the Air Force
14 responded to the Commission with proposed measures responsive to the
15 Commission's first three conditions of its concurrence. Ex. M. On September 16,
16 2024, the Commission responded that these measures were inadequate. Ex. N. The
17 Air Force ultimately capitulated to the Commission's conditions, including
18 additional monitoring that the Air Force and federal wildlife agencies found not to
19 be needed and which will cost commercial space operators, including SpaceX, and
20 the Air Force millions of dollars a year to implement.

21 **F. The Commission's continued demands that SpaceX obtain a CDP**

22 90. Since reopening its consistency determination on the 36-launch
23 increase in December 2023, the Commission has repeatedly asserted that the Base's
24 Falcon 9 launch program is not federal agency activity and demanded that SpaceX
25 obtain a CDP to conduct Falcon launches.

26 91. On a September 13, 2024 call with SpaceX and in several emails,
27 Defendant Cassidy Teufel demanded on behalf of the Commission that SpaceX
28 obtain a CDP to conduct future launches. He threatened enforcement against the
Falcon 9 launch program and further stated that the Commission will not agree to
cadence increases if SpaceX does not obtain a CDP. SpaceX responded, reiterating
its position, shared by the Air Force, that the Base's commercial space launch
programs are not subject to the Coastal Act's CDP requirement.

92. On September 27, 2024, the Commission again stated its position in a staff report evaluating a consistency determination that the Air Force prepared for a proposed cadence increase to 50 launches annually (CD-0007-24).¹² The report states the Commission's position that Falcon 9 launches are federally permitted activities requiring a CDP, and says the Commission's "expectation [is] that SpaceX will be required to seek the Commission's authorization through submittal of a consistency certification and/or coastal development permit application." Sept. 2024 Report at 8. The report claims that "the primary purpose of the proposed SpaceX launch activities is to further expand and support SpaceX's commercial satellite internet and telecommunications network" and that SpaceX only "periodically launches satellites and payloads under contract for a variety of federal government agencies." *Id.* at 2.

93. The Commission also sent SpaceX a letter on September 27, 2024, stating that SpaceX must obtain a CDP, including an "after-the-fact" CDP for past launches, indicating that the Commission believes past launches violated the Coastal Act's CDP requirement. Ex. O.

94. At its October 10, 2024 meeting,¹³ the Commission discussed SpaceX's proposed cadence increase to 50 launches and voted to object to its staff's recommendation to concur with the Air Force's consistency determination. The Commission continued to claim that Falcon 9 launches are federally permitted activity requiring a CDP. Instead of explaining the basis of the staff report's recommendation that the Commission concur in the Air Force's consistency determination, Commission staff stated that the Base's Falcon 9 launch program is

¹² The Staff Report is available at <https://documents.coastal.ca.gov/reports/2024/10/th9a/th9a-10-2024-report.pdf>. The July 2024 CD for the cadence increase is attached as Exhibit O.

¹³ A recording of the Commission's October 10, 2024 meeting is available at https://cal-span.org/meeting/ccc_20241010/.

1 federally permitted activity and not federal agency activity. The Commission made
2 clear that it was determined to force SpaceX to apply for a CDP regardless of
3 whether it concurred in the Air Force's consistency determination. For example,
4 Commission Chair Hart stated: "It is essential from my perspective that SpaceX
5 submit a CDP," adding, "[t]here is no other way forward in my opinion." She said
6 she disagreed with the Air Force that commercial space launches are federal agency
7 activity outside the Commission's permitting jurisdiction, noting that "we're going
8 to hit a wall here." Other Commissioners further inquired into enforcing the coastal
9 development permit requirement against SpaceX.

10 95. The Commission also made clear that its objection was rooted in
11 animosity toward SpaceX and the political beliefs of its owner Elon Musk, not
12 concern for the coastal zone. After talking at length about concerns with changes in
13 Department of Defense leadership following the November 2024 election,
14 Commission Chair Hart said explicitly: "The concern is with SpaceX increasing its
15 launches, not with the other companies increasing their launches." She explained,
16 "we're dealing with a company . . . the head of which has aggressively injected
17 himself into the Presidential race and made it clear what his point of view is." Other
18 Commissioners similarly made clear their decision was based on political
19 disagreements with Mr. Musk. Commissioner Newsom, for instance, said that "Elon
20 Musk is hopping about the country, spewing and tweeting political falsehoods and
21 attacking FEMA while claiming his desire to help the hurricane victims with free
22 Starlink access to the internet." Commissioners Aguirre and Escalante voiced similar
23 concerns regarding the political uses of Starlink. As these statements show, the
24 impact of the proposed launch cadence increase on the coastal region was the last
25 topic on the Commissioners' minds at the October 2024 meeting.

26 96. The Commissioners also raised other concerns wholly unrelated to
27 coastal effects. Commissioner Newsom, for example, spoke at length about
28 SpaceX's employment practices, citing reports of unlawful retaliation and unsafe

1 working conditions. These same “concerns” regarding SpaceX’s employment
2 practices were later echoed by Commissioners Cummings and Aguirre. Cummings
3 even admitted SpaceX’s labor practices fall outside the Commission’s purview,
4 stating that “[t]here’s certain things that we would love to see *that are outside of our*
5 *purview*” before continuing to discuss unnamed reports regarding SpaceX’s
6 supposed labor practices.

7 97. The Commissioners also repeatedly cited debunked conspiracy theories
8 regarding the use of SpaceX technologies by foreign governments and concerns
9 about Mr. Musk’s motivations for seeking federal contracts. Commissioner Wilson
10 wanted to “acknowledge” that the outcome of the Starlink program will be Mr. Musk
11 having control over “one of the most extensive communications networks on the
12 planet,” and further stated that “just last week” Mr. Musk was “speaking about
13 political retribution on a national stage.” Commissioner Cummings later raised
14 similar concerns about Mr. Musk’s perceived unilateral control over the Starlink
15 system. Cummings stated, “I do share some concerns . . . Commissioner Wilson
16 brought up [L]ast year we did see the owner of Starlink shut down Starlink
17 when one of our allies was going to attack one of our adversaries. And so while . . .
18 we are all trying to operate in this apolitical space, we do know that the person who
19 controls these companies has enough power to not work in the best interest, when
20 they feel like it, of our allies.” Comments from other Commissioners similarly show
21 that their decision would be based on flawed and inexperienced national security concerns
22 rather than concerns within the scope of their state mandate regarding preservation
23 of the coastal zone.

24 98. No Commissioner, nor any Commission staff, objected to any of these
25 statements. No one pointed out their immateriality to the issues before the
26 Commission. No one stated or argued that animus toward Mr. Musk and/or SpaceX
27 had no place in the Commission’s deliberation, should not affect the Commission’s
28 decision in any way, and/or should be disregarded completely.

1 to submit a consistency certification. Contrary to the Commission’s position, the
2 Base’s Falcon 9 launch program is federal agency activity. Falcon 9 is the most
3 reliable, reusable, economical rocket ever created, and it is the workhorse of the
4 national space program. A robust Falcon 9 launch program at the Base is integral to
5 ensuring “the availability of rapid, responsive, and reliable space launches for
6 national security space programs,” as required by Congress. 10 U.S.C. § 2273. As a
7 bipartisan group of fourteen California Members of Congress explained in a
8 comment letter supporting the cadence increase for the Base’s Falcon 9 launch
9 program, “[s]pace launches from [the Base] provide a critical national security
10 capability for the U.S. Department of Defense [] and intelligence community.”
11 Quoting the 2024 Department of Defense’s Commercial Space Integration Strategy,
12 they explained that “integrating commercial launch services into the national
13 security space architecture is ‘critical to enhancing U.S. resilience and strengthening
14 deterrence in the 21st century.’ Federal law and national policy also provide clear
15 direction on this subject, including in the Commercial Space Launch Act and the
16 National Space Policy.” The Air Force similarly explained in its July 2024
17 consistency determination for the 50-launch cadence increase that a robust
18 commercial space launch program at the Base serves the Air Force and fulfills its
19 statutory responsibilities:

20 The Proposed Action [*i.e.*, increased launch capacity at the
21 Base] is needed to meet current and anticipated near-term
22 future U.S. Government launch requirements for national
23 security, space exploration, science, and the Assured
24 Access to Space process of the NSSL program. It is the
25 policy of the U.S. to ensure that the U.S. has the
26 capabilities necessary to launch and insert national
27 security payloads into space whenever needed, as
28 described in 10 U.S.C. § 2773. The Proposed Action is
29 also needed so that SpaceX can continue to implement
30 U.S. Government missions while simultaneously meeting
31 its increasing commercial launch demands.

32 Ex. P at 2 (CD-0007-24).

105. The Commission also claims that the Base’s land on which the Falcon

1 9 launch program operates is part of the coastal zone. *See* Sept. 2024 Report at 12-
2 13; July 2024 Report at 14-15. This is wrong because the Base is federal land, which
3 the CZMA expressly excludes from constituting part of the coastal zone subject to
4 the CZMA. 16 U.S.C. § 1453(1); 15 C.F.R. § 923.33(a).

5 106. The Commission's demand that SpaceX submit a consistency
6 certification for the Base's Falcon 9 launch program is also unlawful under the
7 CZMA because the federally approved coastal management program does not list
8 space launches as federally permitted activities that could affect the coastal zone.
9 Nor has NOAA authorized the Commission to review commercial space launches as
10 "unlisted federal license or permit activities." *See* 15 C.F.R. § 930.54. Nor could
11 NOAA because, as explained above, the Base's launch program is federal agency
12 activity under the CZMA.

13 107. The Commission's attempt to regulate the Base's commercial space
14 launches as federally permitted activity occurring within the coastal zone, and its
15 demand that SpaceX submit a consistency certification, harms SpaceX. The
16 Commission's demand for a consistency certification would trigger a review period
17 by the Commission of six months or more, as opposed to a 90-day period for
18 consistency determinations. The demand would also require SpaceX to incur
19 substantial expense to prepare consistency certifications that are redundant of the
20 Air Force's consistency determinations. The demand would further require the
21 Falcon 9 launch program to be fully consistent with the California coastal
22 management program's enforceable policies instead of consistent to the maximum
23 extent practicable, which is the less demanding consistency standard applicable to
24 federal agency activities. And if the Commission objected, the launch program could
25 proceed only after a successful, formal administrative appeal to NOAA. By contrast,
26 if reviewed as federal agency activity, the launch program can proceed over the
27 Commission's objection given the Air Force's repeated findings that the activity is
28 consistent to the maximum extent practicable with the California coastal

1 management program's enforceable policies.

2 108. The Commission's unlawful position that parts of the Base where
3 SpaceX operates are part of the coastal zone also harms SpaceX. Contrary to the
4 Commission's position, the Base is federal land that is not part of the coastal zone,
5 and thus impacts on the Base are not subject to consistency review under the CZMA.

6 109. Accordingly, the Commission's demand that SpaceX submit a
7 consistency certification for the Base's Falcon 9 launch program should be declared
8 unlawful under the CZMA in the circumstances presented, declared unenforceable
9 against SpaceX, and enjoined. If not declared unlawful and enjoined, the
10 Commission's demands will irreparably harm not only SpaceX but also the
11 important federal interests served by the Base's Falcon 9 launch program.

12 **COUNT II: For Declaratory and Injunctive Relief**
13 **(Preemption)**

14 110. Plaintiff incorporates by reference all preceding allegations.

15 111. Space operations at the Base are federal agency activity overseen by
16 multiple agencies within the Department of Defense. The Commission has always
17 agreed with this position. But now, as explained above, the Commission has done
18 an about-face: starting this year, it has repeatedly sought to regulate the Base's
19 Falcon 9 launch program under the Coastal Act and demanded that SpaceX obtain a
20 CDP under that state law. Both the Air Force and SpaceX have steadfastly disagreed.
21 As the Air Force has repeatedly found, the Base's Falcon 9 launch program is federal
22 agency activity that is fully consistent with the California coastal management
23 program and not subject to the Coastal Act's CDP requirement.

24 112. SpaceX seeks a declaration pursuant to 28 U.S.C. §§ 2201 and 2202
25 that the Commission's demand that SpaceX obtain a CDP to conduct Falcon 9
26 launches at the Base is preempted.

27 113. The Commission's application of its claimed state law permitting
28 authority to SpaceX and the Falcon 9 launch program at the Base is preempted

1 because it conflicts with the CZMA and other federal laws in numerous ways.

2 114. First, the Commission's attempt to regulate effects on the Base's coastal
3 resources is preempted. The CZMA excludes federal land from the coastal zone
4 subject to the Commission's review for consistency with the coastal management
5 program's enforceable policies. The Base is federal land that is excluded from the
6 coastal zone. Contrary to the CZMA, the Commission seeks to apply the coastal
7 management program's policies and CDP requirement to Falcon 9 launch operations
8 and related effects on the Base.

9 115. Second, the Commission's attempt to regulate and demand a permit for
10 federal agency activity is preempted. The CZMA establishes separate and distinct
11 frameworks for state consistency review of federal agency activities and federally
12 permitted activities. A federal agency can override a state agency's finding that a
13 federal agency activity is inconsistent with the state's coastal management program
14 and proceed with the federal agency activity simply by finding that the activity is
15 consistent to the maximum extent practicable. As explained above, the Base's
16 Falcon 9 launch program is federal agency activity, and the Air Force has issued
17 consistency determinations finding that the launch program is consistent with the
18 state's coastal management program. In conflict with the limited authority the
19 CZMA provides states to review federal agency activity, the Commission unlawfully
20 seeks to require SpaceX to obtain a CDP, prepare a consistency certification, and
21 obtain the Commission's concurrence to conduct launch operations at the Base,
22 irrespective of the Air Force's finding of consistency.

23 116. Third, the Commission's demands that SpaceX obtain a CDP for the
24 Falcon 9 program and implement additional mitigations to comply with the coastal
25 management program also conflict with the Air Force's specific consistency findings
26 in this case and its authority to proceed over the Commission's objection.

27 117. Fourth, the Commission's actions are also preempted because they
28 intrude upon national defense and security and because they seek to regulate activity

1 occurring on a federal enclave, which are fields reserved by Congress for federal
 2 regulation. Allowing the Commission to demand a CDP and conduct lengthy review
 3 of commercial space launches at a federal military base would hamstring both the
 4 national space program and the U.S. commercial space launch operators on which
 5 the program relies. Congress clearly never intended such an outcome in passing the
 6 Commercial Space Launch Act or directing the Department of Defense, NASA, and
 7 other federal agencies to rely on commercial space launch programs at federal launch
 8 sites. Rather, Congress made clear that “providing launch services and reentry
 9 services by the private sector is consistent with the national security and foreign
 10 policy interests of the United States and would be facilitated by stable, minimal, and
 11 appropriate regulatory guidelines that are fairly and expeditiously applied.” 51
 12 U.S.C. § 50901(a)(6).

13 118. Accordingly, the Commission’s demands that SpaceX obtain a CDP
 14 should be declared preempted and unlawful under the circumstances presented,
 15 declared unenforceable against SpaceX, and enjoined. If not declared unlawful and
 16 enjoined, the Commission’s demands will irreparably harm not only SpaceX but also
 17 the important federal interests served by the Base’s Falcon 9 launch program.

18 **COUNT III: For Declaratory and Injunctive Relief**
 19 **(Preemption—Federal Enclave Jurisdiction)**

20 119. Plaintiff incorporates by reference all preceding allegations.

21 120. The Commission’s demand that SpaceX obtain a CDP is also unlawful
 22 and preempted or displaced under the federal enclave doctrine, under which the Base
 23 is governed exclusively by federal law.

24 121. The Federal Enclave Clause provides that Congress “shall have
 25 power . . . to exercise exclusive Legislation in all Cases whatsoever over such”
 26 federal enclave districts “and to exercise like authority over all Places purchased by
 27 the Consent of the Legislature of the State in which the Same shall be, for the
 28 Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings.”

1 U.S. Constitution, art. 1, § 8, cl. 17

2 122. The Base is a federal enclave. The U.S. Army acquired the pertinent
3 land on the Base in 1941 by cession. In ceding the land, the State did not reserve
4 authority to apply any state laws to the land. *See Taylor*, 78 Cal. App. 4th at 480
5 (explaining that state law “in effect when the United States Government accepted
6 jurisdiction over [the Base] . . . [provided] blanket consent to federal jurisdiction
7 [and] rendered Vandenberg a federal enclave”). Nor did the federal government
8 provide for application of existing or subsequently enacted state laws to the Base’s
9 land at issue, nor has it since.

10 123. The U.S. military has used the base continuously for military purposes
11 since its acquisition in 1941. It has never abandoned the Base for exclusively civilian
12 or non-federal purposes.

13 124. The Coastal Act was enacted by the State of California after the state
14 ceded the land on which the Base was built and, therefore, the Coastal Act is not
15 incorporated into the federal law governing the Base.

16 125. The California state legislative approval of cession of the land lacked
17 any reservation subjecting the land to state regulation of coastal conditions under the
18 Coastal Act.

19 126. No federal statute gives California the power to impose its state law
20 permitting requirements upon launch activity at the Base or any other activity
21 affecting Falcon 9 launches from the Base.

22 127. To the contrary, the CZMA and its operative regulations provide that
23 states must exclude from the coastal zone “lands the use of which is by law subject
24 solely to the discretion of . . . the Federal Government,” including “lands owned,
25 leased, held in trust or whose use is otherwise by law subject solely to the discretion
26 of the Federal Government, its officers or agents.” 16 U.S.C. § 1453(1); 15 C.F.R.
27 § 923.33(a). Even if a federal enclave such as the Base were theoretically subject to
28 federal consistency review by states under the CZMA, at the very most, the CZMA

1 requires the federal government to consult with pertinent state officials and find that
2 actions are consistent to the maximum extent practicable. Nothing in the CZMA
3 requires the federal government to surrender or limit its exclusive jurisdiction under
4 the Federal Enclave Clause over the Base to state permitting conditions.

5 128. The Commission's asserted authority under the Coastal Act to demand
6 a CDP for commercial space launches from the Base therefore constitutes an
7 impermissible state regulation of activity on a federal enclave and is prohibited by
8 the federal enclave doctrine.

9 129. Accordingly, the Commission's demands that SpaceX obtain a CDP
10 should be declared unlawful under the Federal Enclave Clause, declared
11 unenforceable against SpaceX, and enjoined. If not declared unlawful and enjoined,
12 the Commission's demands will irreparably harm not only SpaceX but also the
13 important federal interests served by the Base's Falcon 9 launch program.

14 **COUNT IV: For Declaratory and Injunctive Relief**

15 **(California Coastal Act applied on a federal enclave)**

16 130. Plaintiff incorporates by reference all preceding allegations.

17 131. Even assuming the Commission's asserted authority under the Coastal
18 Act to require SpaceX obtain a CDP is not preempted by federal law and prohibited
19 by the Federal Enclave Clause, because the Base is a federal enclave, the Coastal
20 Act could apply to launches on the Base only if it were deemed to constitute federal
21 law. As such, the Coastal Act would be subject to this Court's federal question
22 jurisdiction under 28 U.S.C. § 1331. And this Court therefore would have authority
23 to determine that the Commission and its officers are violating the Coastal Act.

24 132. The Commission has asserted that the Coastal Act authorizes it to
25 demand a CDP for commercial space launches occurring on the Base because the
26 Base is part of the coastal zone within the meaning of the Coastal Act. But the Base
27 is located outside the "coastal zone" as defined by the Coastal Act, and thus the
28 Falcon 9 launch program is not subject to the Commission's regulatory authority

even under that law. Cal. Pub. Res. Code § 30008; 15 U.S.C. § 1453(1). The Coastal Act therefore plainly prohibits the Commission from requiring SpaceX to obtain a CDP for the Base's Falcon 9 launch program because the Base is federal land that is outside of the coastal zone and beyond the Commission's coastal development permitting jurisdiction. Cal. Pub. Res. Code § 30604(d); 14 Cal. Code Regs. § 13050.5(b).

133. SpaceX seeks a declaration pursuant to 28 U.S.C. § 2201 that the Commission's demand that SpaceX obtain a CDP for its launch operations at the Base exceeds the Commission's authority and is unlawful under the Coastal Act.

134. Accordingly, the Commission's demands that SpaceX obtain a CDP should be declared unlawful and in excess of its authority under the Coastal Act, declared unenforceable against SpaceX, and enjoined. If not declared unlawful and enjoined, the Commission's demands will irreparably harm not only SpaceX but also the important federal interests served by the Base's Falcon 9 launch program.

COUNT V: For Declaratory and Injunctive Relief

(Retaliation in Violation of U.S. Const. amend. I; 42 U.S.C. § 1983)

135. Plaintiff incorporates by reference all preceding allegations.

136. The Commission's 6-4 vote against SpaceX's plan to increase Falcon 9 launches was substantially based upon the Commissioners' bias and animus against Elon Musk and SpaceX. It therefore constitutes prohibited retaliation in violation of the First Amendment to the U.S. Constitution, applicable against Defendants pursuant to the Fourteenth Amendment and 42 U.S.C. § 1983.

137. To prevail on a claim for First Amendment retaliation, a plaintiff must show that "(1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity, and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *Pinard v. Clatskanie Sch. Dist.* 6J, 467 F.3d 755, 770 (9th Cir. 2006). The Commissioners' public statements and

1 conduct clearly establish each element of this test.

2 138. Mr. Musk is the largest shareholder of SpaceX. Mr. Musk's public
3 political statements and opinions are protected by the First Amendment.

4 139. Political speech "occupies the core of the protection afforded by the
5 First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).
6 SpaceX has a right to be free from retaliation for the political views of its owners.
7 *See, e.g., Pagan v. Calderon*, 448 F.3d 16, 29 (1st Cir. 2006) ("When a government
8 actor discriminates against a corporation based on a protected trait of a
9 [shareholder], . . . the corporation . . . has standing to seek redress.").

10 140. At the October 10, 2024 hearing, and other statements show, the
11 Commission made clear that its actions are motivated by disagreement and concern
12 with Mr. Musk's political expressions.

13 141. For example, Commission Chair Hart stated that a factor motivating her
14 to vote to not concur with the Air Force's consistency determination and to demand
15 that SpaceX obtain a CDP was that "we're dealing with a company . . . the head of
16 which has aggressively injected himself into the Presidential race and made it clear
17 what his point of view is."

18 142. Several other Commissioners made similar statements showing that
19 political bias and disagreement with the protected speech of Mr. Musk motivated the
20 Commission's actions adversely affecting SpaceX. These comments were made in
21 the public hearing as explanations for the Commissioners' ultimate decision to vote
22 against their own staff reports and require SpaceX to submit a coastal development
23 permit.

24 143. SpaceX also has a right under the First Amendment to conduct its
25 business without retaliation by state officials who disagree with or dislike SpaceX's
26 lawful policies and practices. None of the policies and practices unlawfully criticized
27 by the Commission pertain to any matter subject to the Commission's lawful
28 purview. Statements by Commissioners (including those quoted above) also show

1 that the adverse vote against SpaceX was substantially motivated by this animus and
2 bias against the protected speech of SpaceX and its owner Mr. Musk.

3 144. The Commission's actions seeking to regulate SpaceX's Falcon 9
4 launch program at the Base as federally permitted activity and to require SpaceX to
5 obtain a coastal development permit, and its threatened enforcement actions against
6 SpaceX, which are expressly motivated by political disagreement and bias, clearly
7 "would chill or silence a person of ordinary firmness from future First Amendment
8 activities." *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 916 (9th Cir. 2012) (quoting
9 *Crawford-El v. Britton*, 93 F.3d 813, 826 (D.C. Cir. 1996), *vacated on other*
10 *grounds*, 117 S. Ct. 2451 (1997)). Faced with threatened enforcement and the cost
11 and delay of burdensome permitting and approval processes the Commission
12 unlawfully seeks to impose, "a person of ordinary firmness" would feel constrained
13 from future exercises of the protected activity that prompted the Commission's
14 decision.

15 145. The Commission's actions, including demanding that SpaceX obtain a
16 CDP and submit an additional consistency certification, are clearly retaliatory.
17 Commissioners Hart, Cummings, Wilson, Newsom, Aguirre, and Escalante all
18 directly cited Mr. Musk's protected speech about his political beliefs as a basis for
19 their votes.

20 146. It is also clear that, based on this political bias against Mr. Musk, the
21 Commission is treating SpaceX differently than other commercial space launch
22 operators. Commission Chair Hart confirmed that the retaliation was directed at
23 SpaceX. Commission Chair Hart said "[t]he concern is with SpaceX increasing its
24 launches, not with the other companies increasing their launches." Indeed, the
25 Commission recently approved a cadence of 60 launches per year for another
26 operator and did not demand a coastal development permit. This obvious
27 inconsistent treatment demonstrates the Commission's animus and bias against the
28 protected speech of SpaceX and its owner Mr. Musk.

1 147. Accordingly, the Commission's decision to not concur in the Air
 2 Force's consistency determination and demands that SpaceX submit a consistency
 3 certification and obtain a CDP should be declared unlawful under the First
 4 Amendment of the United States Constitution, unenforceable against SpaceX, and
 5 enjoined. If not declared unlawful and enjoined, the Commission's demands will
 6 irreparably harm not only SpaceX but also the important federal interests served by
 7 the Base's Falcon 9 launch program.

8 148. If the Commission's activity delays or prohibits even a single SpaceX
 9 launch, such a delay or cancelation could cost SpaceX for launch delay, launch
 10 replanning, or damages for being unable to timely fulfill commitments to its
 11 customers.

12 **COUNT VI: For Declaratory and Injunctive Relief**
 13 **(Deprivation of Liberty Without Due Process of Law in Violation of U.S.**
 14 **Const. amend. XIV; 42 U.S.C. § 1983)**

15 149. Plaintiff herein incorporates by reference all preceding allegations.

16 150. Under the Due Process Clause of the Fourteenth Amendment, SpaceX
 17 is entitled to have its government permits considered by government officials
 18 without taint of political bias and animus.

19 151. SpaceX has constitutionally protected liberty and property interests to
 20 seek all necessary permit and agency approvals and reviews, without political bias
 21 or reprisal, to conduct its business of launching Falcon 9 rockets at the Base.

22 152. The Due Process Clause prevents a government entity from depriving
 23 a plaintiff of a protected interest without "a fair trial in a fair tribunal." *In re*
 24 *Murchison*, 349 U.S. 133, 136 (1955); *see also Mathews v. Eldridge*, 424 U.S. 319,
 25 333 (1976) ("The fundamental requirement of due process is the opportunity to be
 26 heard 'at a meaningful time and in a meaningful manner.'") (quoting *Armstrong v.*
 27 *Manzo*, 380 U.S. 545, 552 (1965)). This requirement applies not only in courts, but
 28 also in administrative proceedings regarding licenses and permitting. *See Stivers v.*

1 *Pierce*, 71 F.3d 732, 741 (9th Cir. 1995).

2 153. To state a procedural due process claim, a plaintiff must allege facts
3 showing: “(1) a liberty or property interest protected by the Constitution; (2) a
4 deprivation of the interest by the government; [and] (3) lack of [adequate] process.”
5 *Portman v. Cty. of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). A plaintiff may
6 establish it has been denied its constitutional right to a fair hearing before an
7 impartial tribunal by showing either actual bias on the part of the adjudicator, or the
8 “appearance of partiality that violates due process, even without any showing of
9 actual bias.” *Stivers*, 71 F.3d at 741.

10 154. Here, the statements by Commissioners Hart, Cummings, Wilson,
11 Newsom, Aguirre, and Escalante, and the disparate treatment of SpaceX compared
12 to other commercial space launch operators at the Base all provide clear evidence of
13 bias.

14 155. SpaceX has a constitutionally protected interest to petition the
15 government, including proceedings before the Commission, without facing bias or
16 reprisal. For the reasons set forth above, it is clear that the October 10, 2024 hearing
17 and other proceedings addressing SpaceX’s Falcon 9 launch program at the Base
18 were irremediably tainted by the Commissioners’ political bias and animus toward
19 Elon Musk, an owner of SpaceX. The Commission, therefore, interfered with
20 SpaceX’s liberty interests protected under the Fourteenth Amendment.

21 156. SpaceX also has a constitutionally protected property interest in its
22 business of launching Falcon 9 rockets on the Base. Because the Commission has
23 employed a blatantly biased and partisan process for deciding the conditions for
24 SpaceX’s business activities on the Base, retaliating against Mr. Musk and SpaceX
25 for their protected speech about political views and employment practices, the
26 Commission has also interfered with SpaceX’s property interests protected by the
27 Fourteenth Amendment.

28 157. Accordingly, the Commission’s decision to not concur in the Air

Force's consistency determination and demands that SpaceX submit a consistency certification and obtain a CDP should be declared unlawful under the Fourteenth Amendment of the United States Constitution, unenforceable against SpaceX, and enjoined. If not declared unlawful and enjoined, the Commission's demands will irreparably harm not only SpaceX but also the important federal interests served by the Base's Falcon 9 launch program.

VII. REQUEST FOR RELIEF

In light of the foregoing, Plaintiff respectfully requests that the Court grant the following relief:

A. Declare that SpaceX's Falcon 9 launch program at the Base is "federal agency activity" under the CZMA and does not require a consistency certification;

B. Enjoin the Commission from regulating the Falcon 9 launch program at the Base as "federally permitted activity" under the CZMA;

C. Declare that the Commission lacks authority to require a CDP for the Base's Falcon 9 launch program operated by SpaceX;

D. Declare that the Commission's decision to not concur in the Air Force's consistency determination and to demand that SpaceX submit a consistency certification and obtain a CDP violate the First and Fourteenth Amendment of the United States Constitution and are unenforceable against SpaceX;

E. Enjoin the Commission from enforcing the Coastal Act and its CDP requirement against SpaceX in connection with the Falcon 9 launch program at the Base;

F. Award SpaceX its attorney's fees and costs under 28 U.S.C. § 1988 and other applicable law; and

G. Grant such other relief to which Plaintiff is justly entitled.

1 Dated: October 15, 2024

VENABLE LLP

2
3 By: /s/ Tyler Welti
4 Tyler G. Welti
5 Colin B. Vandell
6 Mitchell Y. Mirviss (pro hac vice
7 forthcoming)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Plaintiff, SPACE
EXPLORATION
TECHNOLOGIES CORP.