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IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**MANCHESTER PACIFC GATEWAY LLC, a
 Delaware limited liability company,**

Plaintiff,

v.

**CALIFORNIA COASTAL COMMISSION, a
 California state agency,**

Defendant.

Case No: 07CV1099 WQH (RBB)

DEFENDANT CALIFORNIA
 COASTAL COMMISSION'S
 NOTICE OF MOTION TO DISMISS
 (FRCP 12)

Hearing: August 13, 2007
 Time: 11 a.m.
 Courtroom: 4
 Judge: Honorable William Q.
 Hayes

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

DEFENDANT'S NOTICE OF MOTION TO DISMISS

TO PLAINTIFF AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT on August 13, 2007 at 11 a.m. in Courtroom 4 of
 the United States District Court for the Southern District of California, the Honorable William Q.
 Hayes presiding, defendant California Coastal Commission will move the Court to dismiss this
 case pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

1 Defendant's motion is based upon this notice and motion, the memorandum of points
2 and authorities in support of this motion to dismiss, the pleadings and records on file in this case,
3 and such argument as may be presented to the Court should the Court decide to hear this matter.

4 **MOTION TO DISMISS (FED. RULES CIV. PROC., RULE 12(b).)**

5 Defendant California Coastal Commission moves this Court for dismissal of this case
6 in its entirety pursuant to Rule 12(b)(1), (2) and (6) of the Federal Rules of Civil Procedure on
7 the grounds that 1) the Court lacks jurisdiction over this case and over the Commission and 2)
8 the complaint fails to state a claim upon which relief may be granted. This case is barred, in its
9 entirety, by the Eleventh Amendment to the United States Constitution because plaintiff, a
10 private party, has sued the Commission, a state agency, in federal court without the consent of
11 the State of California. Under the doctrine of sovereign immunity as enunciated by the United
12 States Supreme Court and the Ninth Circuit Court of Appeals, the Commission cannot be sued in
13 federal district court under the circumstances presented here. While plaintiff references the
14 federal Coastal Zone Management Act (CZMA), plaintiff seeks a declaration that it is not
15 required to obtain a coastal development permit under the California Coastal Act of 1976, a state
16 law. Additionally, even if the Eleventh Amendment did not bar this action, there is no private
17 right of action under the CZMA. Finally, the Commission has taken no final action on any
18 coastal development permit; until it has done so, plaintiff's challenge to the Commission's
19 exercise of jurisdiction is not ripe.

20 Dated: June 29, 2007

21 Respectfully submitted,
22 EDMUND G. BROWN JR.
23 Attorney General of the State of California
24 J. MATTHEW RODRIQUEZ
25 Senior Assistant Attorney General

26 s/Jamee Jordan Patterson
27 JAMEE JORDAN PATTERSON
28 Supervising Deputy Attorney General
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Commission

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CERTIFICATE OF SERVICE

Case Name: **Manchester Pacific v. California Coastal Commission**
United States District Court of California, Southern District
CaseNo.: **07CV1099 WQH (RBB)**

I declare:

On **July 2, 2007**, I electronically filed the following document(s):

**DEFENDANT CALIFORNIA COASTAL COMMISSION'S
NOTICE OF MOTION TO DISMISS (FRCP 12)**

**DEFENDANT'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION TO DISMISS**

Electronic Mail Notice List

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case:

Steven M Strauss sms@cooley.com

Manual Notice List

NONE

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **July 2, 2007**, at San Diego, California.

JAMEE JORDAN PATTERSON

s/Jamee Jordan Patterson

Declarant

Signature

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