

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  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Defendants.

## I. INTRODUCTION

1. This case is about a state agency—Defendant California Coastal Commission (the Commission)—egregiously and unlawfully overreaching its authority. First, the Commission has engaged in naked political discrimination against Plaintiff Space Exploration Technologies Corp. (SpaceX) in violation of the rights of free speech and due process enshrined in the First and Fourteenth Amendments of the United States Constitution. Rarely has a government agency made so clear that it was exceeding its authorized mandate to punish a company for the political views and statements of its largest shareholder and CEO. Second, the 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.<sup>1</sup>

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 <sup>1</sup> 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-sector/>), and that SpaceX has not only been “cooperative with USG and Ukraine  
24 government, they’ve been forward leaning” (<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  
25 indeed the blood of our entire communications infrastructure now,” noting that the  
26 network has saved “thousands of lives,” and that “[d]efinitely Elon Musk is among  
27 the world’s top private donors supporting Ukraine. Starlink is an essential element  
28 of our critical infrastructure.” <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>.

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.



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

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

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

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

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

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

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

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

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

24 **III. JURISDICTION AND VENUE**

25 34. This Court has subject matter jurisdiction over this action pursuant to  
26 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343(a)(3) (federal civil rights  
27 jurisdiction). This action asserts claims arising under the Supremacy Clause, U.S.  
28 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 hightide line. *Id.* § 30103. The Coastal  
28 Act recognizes that federal land is “excluded from the coastal zone pursuant to [the

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

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

5 52. The Coastal Act requires a coastal development permit (CDP) for  
6 development within the coastal zone. *Id.* § 30600(a). The Commission or a local  
7 jurisdiction with permitting authority must issue a CDP if a proposed development  
8 will be consistent with the enforceable policies of the Coastal Act. *Id.* §§ 30604(a),  
9 30200(a).

10 53. Development outside the coastal zone is not subject to the Coastal Act’s  
11 CDP requirement, even if it causes impacts inside the coastal zone. *Id.* § 30604(d);  
12 14 Cal. Code. Regs. § 13050.5(b); *Sierra Club v. Cal. Coastal Comm’n*, 35 Cal. 4th  
13 839, 848, 855 (2005).

## 14 V. FACTUAL BACKGROUND

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

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

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

26 56. SpaceX is one of only two launch services providers certified to  
27 perform the most critical launches for the United States’ national security and  
28 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.<sup>2</sup> 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 <sup>2</sup> 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/>.



1 commercial space launch operators like SpaceX to the nation’s space program. In  
2 the Commercial Space Launch Act of 1994, as amended, Congress found that “the  
3 private sector in the United States has the capability of developing and providing  
4 private launching, reentry, and associated services that would complement the  
5 launching, reentry, and associated capabilities of the United States Government.” 51  
6 U.S.C. § 50901(a)(4). Congress also found “space transportation . . . is an important  
7 element of the transportation system of the United States, and in connection with the  
8 commerce of the United States there is a need to develop a strong space  
9 transportation infrastructure with significant private sector involvement.” *Id.*  
10 § 50901(a)(8).

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

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

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

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

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

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

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

1           60. In the National Defense Authorization Act of 2013, Congress directed  
2 the Department of Defense to “maximize the use of the capacity of the space  
3 transportation infrastructure of the [Department of Defense] by the private sector of  
4 the United States” and to “encourage commercial space activities by enabling  
5 investment . . . in the space infrastructure of the [Department of Defense].” *Id.*  
6 § 2276(a). In the National Defense Authorization Act of 2024, Congress again  
7 emphasized the central role of the private sector in space-related defense activities.  
8 For example, Congress enabled the “Secretary of a military department” authority  
9 to “provide to [] commercial entit[ies] supplies, services, [and] equipment” as  
10 needed to increase commercial space launch capacity. Pub. Law 118-31 § 1603(b).

11           61. Consistent with these statutory directives, the Department of Defense  
12 has for many years contracted with commercial operators like SpaceX to carry out  
13 national space program activities, and now relies exclusively on commercial launch  
14 services. The Department of Defense has made clear that advancing the country’s  
15 national defense and security goals requires “increase[d] collaboration with the  
16 private sector in priority areas, especially with the commercial space industry,  
17 leveraging its technological advancements and entrepreneurial spirit to enable new  
18 capabilities.” Department of Defense, *2022 National Defense Strategy* at 19-20.<sup>3</sup> The  
19 Department of Defense has also said it “will benefit by making commercial solutions  
20 integral—and not just supplementary—to national security space objectives.”  
21 Department of Defense, *Commercial Space Integration Strategy* (2024) at 1.<sup>4</sup>

### 22 **C. Commercial space launch operations at Vandenberg Space Force Base**

23           62. The military has owned and operated the Base for almost 85 years. In  
24 ceding the land on which the Base is located to the U.S. Government, California  
25

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

28 <sup>4</sup> Available at [https://media.defense.gov/2024/Apr/02/2003427610/-1/-1/1/2024-D](https://media.defense.gov/2024/Apr/02/2003427610/-1/-1/1/2024-DO-COMMERCIAL-SPACE-INTEGRATION-STRATEGY.PDF)  
[OD-COMMERCIAL-SPACE-INTEGRATION-STRATEGY.PDF](https://media.defense.gov/2024/Apr/02/2003427610/-1/-1/1/2024-DO-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.<sup>5</sup> 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 <sup>5</sup> Available at [https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2023-05-1\\_SEA\\_SpaceX\\_Falcon9CadenceIncrease.pdf](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

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

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

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

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

25  
26 <sup>6</sup> Available at <https://documents.coastal.ca.gov/reports/2020/11/F14/F14-11-2020.pdf> at 2-4.

27 <sup>7</sup> Available at <https://documents.coastal.ca.gov/reports/2021/10/F10/F10-10-2021.pdf>  
28 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

1 activities would not significantly impact coastal resources.<sup>8</sup>

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

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

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

22 76. After thorough review, the Air Force also made a negative  
23 determination (ND-0009-23) under the CZMA. The Commission concurred on May  
24 5, 2023, stating: "With these commitments [to minimize coastal impacts],  
25

26 <sup>8</sup> 2011 EA, available at <https://apps.dtic.mil/sti/pdfs/ADA612280.pdf>; 2016 EA,  
27 available at [https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2016-04-1\\_EA\\_Falcon9\\_Boost-back.pdf](https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2016-04-1_EA_Falcon9_Boost-back.pdf); 2018 Supplemental EA,  
28 available at [https://www.vandenberg.spaceforce.mil/Portals/18/documents/Environmental/EIAP-2018-01-31\\_SEA\\_Falcon9\\_Launch-Boost-back.pdf](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.<sup>9</sup> 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 <sup>9</sup> 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,<sup>10</sup> 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 <sup>10</sup> Available at <https://documents.coastal.ca.gov/reports/2024/6/w10a/w10a-6-2024-report.pdf>.

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

11 87. The Air Force worked with the Commission and agreed to conditions  
12 4-7 but not the other conditions, as explained in an August 6, 2024 letter to the  
13 Commission. Ex. L.

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

18 And we see, you know, actors in that space both engaging  
19 in foreign military activities, engaging in misinformation,  
20 dabbling in misinformation within the social media  
21 spheres in which they're in and those sorts of things, which  
22 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.

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

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

27  
28 <sup>11</sup> 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.

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

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

17 94. At its October 10, 2024 meeting,<sup>13</sup> the Commission discussed SpaceX’s  
18 proposed cadence increase to 50 launches and voted to object to its staff’s  
19 recommendation to concur with the Air Force’s consistency determination. The  
20 Commission continued to claim that Falcon 9 launches are federally permitted  
21 activity requiring a CDP. Instead of explaining the basis of the staff report’s  
22 recommendation that the Commission concur in the Air Force’s consistency  
23 determination, Commission staff stated that the Base’s Falcon 9 launch program is  
24

25 \_\_\_\_\_  
26 <sup>12</sup> 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.

27 <sup>13</sup> A recording of the Commission’s October 10, 2024 meeting is available at  
28 [https://cal-span.org/meeting/ccc\\_20241010/](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 inexpert 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 99. Following these many attacks against Mr. Musk and SpaceX for  
2 political views and business practices unrelated to the Commission’s authority, the  
3 Commission voted 6-4 against SpaceX increasing its yearly total of Falcon 9  
4 launches from the Base. The majority votes were cast by Commission Chair Hart  
5 and Commissioners Newsom, Cummings, Wilson, Aquirre, and Escalante.

## 6 VI. CLAIMS

### 7 COUNT I: For Declaratory and Injunctive Relief

#### 8 (Coastal Zone Management Act)

9 100. Plaintiff incorporates by reference all preceding allegations.

10 101. The Commission lacks authority for its actions under the CZMA. First,  
11 the Falcon 9 launch program is federal agency activity, not federally permitted  
12 activity requiring a consistency certification. Second, contrary to the Commission’s  
13 claims, the Base is not within the “coastal zone” as defined by the CZMA.

14 102. The CZMA and its implementing regulations distinguish between  
15 federal agency activities and federally permitted activities. Distinct requirements and  
16 differing degrees of state authority apply to each type of activity under the CZMA.  
17 “Federal agency activity” is any function carried out by or on behalf of a federal  
18 agency to exercise its statutory responsibilities.

19 103. It is the Air Force’s longstanding position that commercial space  
20 launches at the Base, including the Falcon 9 launch program, are federal agency  
21 activities under the CZMA. SpaceX agrees that commercial space launches and  
22 infrastructure at the Base, including Falcon 9 launch operations, are federal agency  
23 activities. For decades, the Commission also agreed and repeatedly concurred in  
24 determinations by the Air Force that commercial space launch programs at the Base  
25 are federal agency activities that are consistent with the enforceable policies of  
26 California’s coastal management program.

27 104. But the Commission is now attempting to regulate the Base’s  
28 commercial space launches as federally permitted activity and has directed SpaceX

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  
security payloads into space whenever needed, as  
described in 10 U.S.C. § 2773. The Proposed Action is  
also needed so that SpaceX can continue to implement  
U.S. Government missions while simultaneously meeting  
its increasing commercial launch demands.

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

28           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

1 even under that law. Cal. Pub. Res. Code § 30008; 15 U.S.C. § 1453(1). The Coastal  
2 Act therefore plainly prohibits the Commission from requiring SpaceX to obtain a  
3 CDP for the Base’s Falcon 9 launch program because the Base is federal land that is  
4 outside of the coastal zone and beyond the Commission’s coastal development  
5 permitting jurisdiction. Cal. Pub. Res. Code § 30604(d); 14 Cal. Code Regs.  
6 § 13050.5(b).

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

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

15 **COUNT V: For Declaratory and Injunctive Relief**

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

17 135. Plaintiff incorporates by reference all preceding allegations.

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

23 137. To prevail on a claim for First Amendment retaliation, a plaintiff must  
24 show that “(1) he was engaged in a constitutionally protected activity, (2) the  
25 defendant’s actions would chill a person of ordinary firmness from continuing to  
26 engage in the protected activity, and (3) the protected activity was a substantial or  
27 motivating factor in the defendant’s conduct.” *Pinard v. Clatskanie Sch. Dist. 6J*,  
28 467 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



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

7 **VII. REQUEST FOR RELIEF**

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

10 A. Declare that SpaceX’s Falcon 9 launch program at the Base is “federal  
11 agency activity” under the CZMA and does not require a consistency certification;

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

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

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

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

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

25 G. Grant such other relief to which Plaintiff is justly entitled.  
26  
27  
28

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.