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San Francisco County Superior Court

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

WILD EQUITY INSTITUTE, a non-profit
corporation; SAVE THE FROGS, a non-profit
corporation; SEQUOIA AUDUBON SOCIETY,
a non-profit corporation,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation; BOARD OF
SUPERVISORS OF THE CITY AND
COUNTY OF SAN FRANCISCO, a public
entity; PLANNING COMMISSION OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public entity; SAN FRANCISCO PLANNING
DEPARTMENT, a public entity; MAYOR
EDWIN M. LEE, in his official capacity as
Mayor of San Francisco,

Respondents and Defendants;

SAN FRANCISCO RECREATION AND
PARKS DEPARTMENT, a public entity; SAN
FRANCISCO RECREATION AND PARK
COMMISSION, a public entity,

Real Parties in Interest and Defendants.

Case No.: **CPF-14-513613**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(California Environmental Quality Act
("CEQA"), Pub. Res. Code § 21000, et
seq.; Code of Civil Procedure §§ 1094.5,
1085)

Dept: CEQA Case

Petitioners and Plaintiffs WILD EQUITY INSTITUTE, SAVE THE FROGS, and
SEQUOIA AUDUBON SOCIETY (collectively, "Petitioners") petition this Court on their own
behalf, on behalf of their members, on behalf of the general public and in the public interest
pursuant to Code of Civil Procedure ("CCP") § 1094.5 and Public Resources Code ("PRC") §
21168, or, in the alternative, pursuant to CCP § 1085 and PRC § 21168.5, for a writ of mandate

1 and for declaratory and injunctive relief directed to Respondents and Defendants CITY AND
2 COUNTY OF SAN FRANCISCO, a municipal corporation; BOARD OF SUPERVISORS OF
3 THE CITY AND COUNTY OF SAN FRANCISCO, a public entity; PLANNING
4 COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, a public entity; SAN
5 FRANCISCO PLANNING DEPARTMENT, a public entity; MAYOR EDWIN M. LEE, in his
6 official capacity as mayor of San Francisco (collectively, “Respondents” or “City”) and Real
7 Parties in Interest and Defendants SAN FRANCISCO RECREATION AND PARKS
8 DEPARTMENT, a public entity; SAN FRANCISCO RECREATION AND PARK
9 COMMISSION, a public entity (collectively “Rec & Park”). By this verified petition and
10 complaint (“Petition”), Petitioners allege as follows:

11 INTRODUCTION

12 1. Petitioners bring this action to challenge Respondents’ March 25, 2014 decision to
13 approve the Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project
14 (“Pumphouse Project”) and adopt a Mitigated Negative Declaration (“MND”) under the
15 California Environmental Quality Act, PRC section 21000 et seq. (“CEQA”) finding that there
16 is no substantial evidence that the Project may have a significant effect on the environment.

17 2. Sharp Park is located on the coast in Pacifica, California, but it is owned and operated by
18 the City and County of San Francisco. Sharp Park contains one of the last backbarrier lagoon
19 wetland complexes in Northern California. The wetland complex contains several water
20 features, including Sanchez Creek; Laguna Salada, Horse Stable Pond and a connecting channel
21 between these two water bodies; and wetlands that surround these water features. Collectively,
22 these features are called the Laguna Salada wetland complex.

23 3. The Laguna Salada wetland complex is home to the threatened California Red-Legged
24 Frog, *Rana draytonii* (Frog), and the endangered San Francisco Garter Snake, *Thamnophis*
25 *sirtalis tetrataenia* (Snake).

26 4. Sharp Park also contains an 18-hole golf course, which surrounds much of the Laguna
27 Salada wetland complex. Winter rains that fall in Sharp Park’s watershed naturally flow into the
28 Laguna Salada wetland complex, but the golf course’s construction, combined with the

subsequent construction of an earthen berm along Sharp Park's coastline, prevent this water from flowing to the ocean.

5. Due to the poor design and placement of Sharp Park Golf Course and the earthen berm, winter rains flood Sharp Park annually. Respondents have installed and operate two pumps at the Laguna Salada wetland complex to drain the wetlands during winter rains. The pumps have a maximum theoretical pumping capacity of 10,000 gallon per minute, but in practice operate closer to 6,000 gallons per minute.

6. Draining the wetland complex causes several significant environmental affects, including killing rare and endangered species; altering the hydrology of the wetland system; changing the composition of aquatic vegetation on the site from species that require deep water to those that grow best in shallow water; and conversion of open water habitats to dry land and/or shallow wetlands.

7. As approved under CEQA, the Pumphouse Project will result in "removal of sediment and emergent vegetation within [Horse Stable Pond] and the connecting channel that links HSP with [Laguna Salada]."

8. The Pumphouse Project's primary purpose is to remove impediments to water flow within the Laguna Salada wetland complex.

9. This will cause winter rains to reach the pumphouse more rapidly, allowing Respondents to drain the wetland complex even faster, i.e., closer to the pumps' theoretical maximum pumping capacity.

10. The Pumphouse Project has been, or is currently being, reviewed by federal, state and local agencies. For example, and as a result of a March 2011 federal lawsuit brought by some of the Petitioners against the City for illegally killing the Frog and Snake at Sharp Park, the U.S. Fish and Wildlife Service has required the City to implement conservation measures in exchange for an incidental take permit authorizing the killing of listed species at Sharp Park.

11. The MND failed to analyze several significant environmental impacts including the impacts of the increased rate of water flow on the Frog and on the ecology, hydrology and water quality of the wetland complex. The MND also failed to analyze cumulative impacts of past,

1 present, and future projects on the Frog, Snake, and hydrology and water quality of the wetland
2 complex. In addition, the MND improperly piecemealed the project, presented infeasible and
3 deferred mitigation measures, and is inconsistent with other laws and plans.

4 12. Petitioners brought these deficiencies to Respondents' attention during the
5 administrative proceedings for the Pumphouse Project. Petitioners submitted extensive written
6 comments on January 29, 2013. Expert analysis of the Pumphouse Project was by Dr. Peter
7 Baye, an expert in coastal wetland ecology and biology; Dr. Vance Vredenburg, an expert in
8 amphibian ecology; Dr. Marc Hayes, an expert herpetologist; Wendy Dexter, an expert
9 herpetologist; and Greg Kamman, an expert hydrologist. Petitioners also submitted extensive
10 written comments and oral comments in an appeal of the MND dated October 18, 2013; at the
11 Planning Commission's January 16, 2014 public hearing; at the Recreation & Park
12 Commission's January 23, 2014 public hearing; and at the Board of Supervisors' March 25,
13 2014 appeal hearing. These comments and expert testimony explained why the Pumphouse
14 Project will have significant effects on the environment, and thus an EIR must be prepared.

15 13. Respondents failed to prepare an EIR for the Pumphouse Project. Instead, Respondents
16 have approved the Pumphouse Project after the MND and its findings were adopted, despite the
17 deficiencies noted in the record by Petitioners and experts who have reviewed the Project.

18 14. Respondents' decision to nonetheless approve the Pumphouse Project without preparing
19 an EIR violates CEQA. CEQA requires an EIR whenever there is a "fair argument" that a
20 proposed project "may have significant adverse environmental impacts." In denying the
21 Petitioners' requests to prepare an EIR, Respondents ignored the fair arguments Petitioners
22 presented and failed to proceed in a manner required by law.

23 15. Accordingly, Respondents' approval of the Pumphouse Project, associated approval of
24 the MMD and adoption of any CEQA findings must be set aside.

25 **PARTIES**

26 **Petitioners and Plaintiffs**

27 16. Petitioner and Plaintiff WILD EQUITY INSTITUTE is a California non-profit
28 corporation based in San Francisco. Wild Equity unites the grassroots conservation movement

1 and the environmental justice movement in campaigns that redress inequity, both across our
2 human communities and towards the lands in which we live. Wild Equity, its members, its staff,
3 and its board of directors have long-standing interests in the Frog, Snake, and the Laguna
4 Salada wetland complex. Specifically, Wild Equity, its members, staff, and Board of Directors
5 have specific interests in protecting habitat for those species and preserving water quality and
6 the ecological function of the Laguna Salada wetland complex. Wild Equity's members, staff,
7 and Board of Directors regularly observe, study and recreate at the Laguna Salada wetland
8 complex, and will continue to do so regularly. The Wild Equity Institute's members, staff, and
9 Board of Directors also recreate and live in Pacifica, CA. Wild Equity is concerned with, and
10 will be affected by, the Project's impacts on species, hydrology, and water quality. Wild Equity
11 believes that the MND is inadequate and the County should have prepared an EIR to fully
12 analyze and mitigate the potentially significant environmental impacts of the Project. Wild
13 Equity presented written and oral comments during the administrative process on the matters
14 being challenged in this petition.

15 17. SAVE THE FROGS is a non-profit organization dedicated to amphibian conservation.
16 Save the Frogs brings this action on its own institutional behalf and on behalf of its members,
17 board, and staff, some of whom regularly enjoy and will continue to enjoy observing and
18 studying, and attempting to observe and study, the Frog and the Snake at Sharp Park. The
19 interests of Save the Frogs and its members, board, and staff in observing, studying, and
20 otherwise enjoying Frog and Snake at Sharp Park have been, and will continue to be, harmed by
21 the operation of the pumphouse and will be further harmed by the Pumphouse Project. Save the
22 Frogs, its members, board, and staff have worked to protect the Frog and its habitat at Laguna
23 Salada wetland complex for several years, and it has expended significant organizational
24 resources on advocacy and public education efforts aimed at protecting the Frog. Save the Frogs
25 is concerned with, and will be affected by, the Project's impacts on species, hydrology, ecology,
26 and water quality, including impacts on the Frog and the Snake. Save the Frogs believes that
27 the MND is inadequate and the County should have prepared an EIR to fully analyze and
28 mitigate the potentially significant environmental impacts of the Project. Save the Frogs

presented written and oral comments during the administrative process on the matters being challenged in this petition.

18. Plaintiff SEQUOIA AUDUBON SOCIETY protects native birds and other wildlife and their ecosystems in San Mateo County by engaging people of all ages in conservation, education, advocacy and enjoyment. Sequoia Audubon brings this action on its own institutional behalf and on behalf of its members, board, and staff, some of whom regularly enjoy and will continue to enjoy observing and studying, and attempting to observe and study, the Frog and Snake at Sharp Park. The interests of Sequoia Audubon and its members, board, and staff in observing, studying, and otherwise enjoying Frog and Snake at Sharp Park have been, and will continue to be, harmed by the operation of the pumphouse and will be further harmed by the Pumphouse Project. Sequoia Audubon, its members, board, and staff have worked to protect the Frog and Snake at Sharp Park for several years, and has expended significant organizational resources on advocacy and public education efforts aimed at protecting the Frog and Snake as well as the water quality, biology and ecology of the Laguna Salada wetland complex. Sequoia Audubon is concerned with, and will be affected by, the Project's impacts on species, hydrology, and water quality, including impacts on the Frog and the Snake. Sequoia Audubon believes that the MND is inadequate and the County should have prepared an EIR to fully analyze and mitigate the potentially significant environmental impacts of the Project. Sequoia Audubon presented oral comments during the administrative process on the matters being challenged in this petition.

Respondents and Defendants

19. Respondent and Defendant CITY AND COUNTY OF SAN FRANCISCO is a municipal corporation in whose jurisdiction the proposed project will be located, with its headquarters in San Francisco, California. The City and County is the entity that prepared and certified the Final MND for the Pumphouse Project. The City and County has principal responsibility for determining whether projects within its jurisdiction are consistent with the City and County's General Plan, Land Use Ordinances, and other applicable laws.

20. Respondent and Defendant BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO (“Board of Supervisors”) is the legislative branch, and decision-making body of the City and County of San Francisco. As the elected representatives of the people of the City and County, the Board of Supervisors establishes overall city and county priorities and sets policy. The Board of Supervisors is the governing body of the City and County and is ultimately responsible for reviewing and approving or denying the Project. The Board of Supervisors and its members are sued in official capacities.

21. Respondent and Defendant PLANNING COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO (“Planning Commission”) is a commission of the City and County of San Francisco, and was required by law and did hold public hearings concerning the Pumphouse Project and its CEQA documents, and made recommendations to the Board of Supervisors concerning the Project and its CEQA document. Planning Commission members are appointed by the Mayor and the President of the Board of Supervisors to help plan for growth and development in San Francisco, and advise the Mayor, City Council and City departments on San Francisco's long-range goals, policies and programs on a broad array of issues related to land use, transportation, and neighborhood planning. Additionally, the Planning Commission has specific responsibility for the stewardship and maintenance of the San Francisco's General Plan. The Planning Commission and its members are sued here in their official capacities.

22. Respondent and Defendant SAN FRANCISCO PLANNING DEPARTMENT (“Planning Department”) is identified as lead agency (“the public agency which has the principal responsibility for carrying out or approving a project”) for CEQA purposes on the March 31, 2014 Notice of Determination (“NOD”) for the Pumphouse Project. The Planning Department is the entity that prepared and certified the Final MND for the Pumphouse Project. Among the Planning Department’s duties are to evaluate regional growth management policy, monitor and update the City's General Plan, ensure compliance of the Planning and Zoning codes, draft land use policy, and develop sub-area and urban design plans. The Planning Department and its members are sued here in official capacities.

23. Respondent and Defendant MAYOR EDWIN M. LEE (“Mayor Lee”) is the chief executive officer and the official representative of the City and County. The Mayor has responsibility for general administration and oversight of all departments and governmental units in the executive branch of the City and County, as well as coordination of all intergovernmental activities of the City and County. The Mayor has oversight over the City and County’s determination of whether projects within its jurisdiction are consistent with the City and County’s General Plan, Land Use Ordinances, and other applicable laws, including the Pumphouse Project. Mayor Lee is sued in his official capacity.

Real Parties in Interest and Other Defendants

24. Real Party in Interest and Defendant SAN FRANCISCO RECREATION AND PARKS DEPARTMENT (“Rec & Park”) is the City and County department, overseen by the Recreation and Park Commission, that administers parks, playgrounds, and open spaces within City and County jurisdiction including Sharp Park, which is located in Pacifica. Rec & Park Department is the proponent for the Pumphouse Project, and is identified on the March 31, 2014 NOD as the project sponsor. Rec & Park Department and its members are sued here in their official capacities.

25. Real Party in Interest and Defendant SAN FRANCISCO RECREATION AND PARK COMMISSION (“Rec & Park Commission”) is the decision-making body of the Rec & Park Department. On January 23, 2014, the San Francisco Recreation and Park Commission adopted the CEQA findings of the Planning Department for the Project and approved the Project.

JURISDICTION AND VENUE

26. This Court has jurisdiction over this action pursuant to CCP §§ 526 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), and 1094.5 (administrative mandate); PRC §§ 21168 and 21168.5 (judicial review under CEQA). The Court has jurisdiction to issue declaratory relief pursuant to CCP § 1060 and injunctive relief pursuant to CCP § 525 et seq.

27. Venue is proper pursuant to CCP §§ 393 (actions against public officers), 394 (actions against a city, county or local agency), and 395 (actions generally) because the Respondents include a local agency of the State of California, and public officers of a local agency of the

1 State of California. Venue is proper in this Court because the causes of action alleged in this
2 Petition arose in the City and County of San Francisco and the Project will occur within lands
3 owned by the City and County of San Francisco and the environmental impacts of the Project
4 will be acutely felt within the City and County-owned land. (CCP §§ 393, 394, 395; *Cal. State*
5 *Parks Foundation v. Super. Ct.* (2007) 150 Cal.App.4th 826.)

6 28. This petition is timely filed within all applicable statutes of limitations. This action is
7 timely under CEQA because it is filed within 30 days of the City's March 31, 2014 Notice of
8 Determination. (PRC § 21167(b), (c), (e); CEQA Guidelines § 15112(c)(1).)

9 29. Petitioners performed all conditions precedent to filing this action by complying with the
10 requirements of PRC § 21167.5 by serving prior notice of the complaint in this action. A copy
11 of the written notice and proof of service is attached as Exhibit A to the Petition in this action.

12 30. Pursuant to PRC § 21167.6(b), Petitioners have elected to prepare the record of
13 proceedings in this matter, and are simultaneously filing their notice of intent to prepare said
14 record of proceedings with this complaint. A true and correct copy of Petitioners' Notice of
15 Intent to Prepare Record is attached to this complaint as Exhibit B.

16 31. Petitioners will provide notice of this action to the Attorney General of the State of
17 California, by serving a copy of this Petition, along with a notice of its filing, as required by
18 PRC § 21167.7 and CCP § 388.

19 32. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law
20 unless this Court grants the requested writ of mandate to require Respondents to set aside their
21 exemption determination and approval of the Project. In the absence of such remedies,
22 Respondents' decision will remain in effect in violation of state law.

23 **STATEMENT OF FACTS**

24 **Project Background**

25 33. Sharp Park is located on the coast in Pacifica, California, but it is owned and operated by
26 the City and County of San Francisco. Sharp Park is adjacent to Mori Point, part of the Golden
27 Gate National Recreation Area, to the South, and Sweeney Ridge, also part of the Golden Gate
28 National Recreation Area, to the East. Protected San Francisco Public Utility Commission

1 watershed lands are Southeast of Sharp Park.

2 34. Sharp Park is home to threatened and endangered species including the California Red-
3 Legged Frog, *Rana draytonii*, and the San Francisco Garter Snake, *Thamnophis sirtalis*
4 *tetrataenia*. The Frog is the largest frog native to the western United States. It has been lost
5 from over 70% of its historic range, and has suffered a 90% population decline. It is currently
6 only found in select coastal drainages from Marin County south to Baja California, with a few
7 isolated populations in the Sierra Nevada and the Transverse ranges. The Frogs breed in aquatic
8 habitats throughout the fall, winter, and spring. A female will lay eggs while they are being
9 fertilized by a male, and attach them to emergent vegetation near the water surface. Each egg
10 mass contains hundreds to thousands of eggs. If water levels recede below the level of the egg
11 mass, the eggs will desiccate – i.e., dry out – and die.

12 35. The highly endangered Snake is a brightly colored species identified by its reddish-
13 orange head with red, black, and blue racing stripes on its sides and back. Although historically
14 found in many locations along the San Francisco peninsula, the species is now restricted
15 primarily to a few specific locations primarily in San Mateo County. The Snake's preferred
16 habitats – wetlands and marshes with access to upland basking areas – have been greatly
17 impacted by agricultural, residential, commercial, and recreational development. Today the wild
18 population is so low that it is difficult to collect enough data to obtain reliable population
19 estimates. In 1985, the U.S. Fish and Wildlife Service determined that the Snake population at
20 Sharp Park and the adjacent Mori Point was one of six populations critical to the survival of the
21 species, and that protecting and maintaining this population was essential step in the recovery of
22 the species as a whole.

23 36. Sharp Park contains several water features that provide habitat for the Frog and the
24 Snake, including Laguna Salada, Horse Stable Pond, and Sanchez Creek. Laguna Salada has
25 been partially filled over time to create land for a golf course. The landfill nearly separated the
26 southernmost portion of Laguna Salada, but today the southernmost portion, referred to today as
27 Horse Stable Pond, remains connected to Laguna Salada via a channel, which cuts through the
28 landfilled area. Sanchez Creek is a natural creek that has been modified in some sections,

1 running from the east to Horse Stable Pond, near the Pacific Ocean.

2 37. Sharp Park also contains an 18-hole golf course, which surrounds much of the Laguna
3 Salada wetland complex. Winter rains that fall in Sharp Park's watershed naturally flow into the
4 Laguna Salada wetland complex, but the golf course's construction, combined with the
5 subsequent construction of an earthen berm along Sharp Park's coastline, prevent this water
6 from flowing to the ocean.

7 38. Due to the poor design and placement of Sharp Park Golf Course and the earthen berm,
8 winter rains flood the Laguna Salada wetland complex annually. Respondents have installed
9 and operate two pumps at the Laguna Salada wetland complex to drain the wetlands during
10 winter rains. The pumps have a maximum theoretical pumping capacity of 10,000 gallon per
11 minute, but in practice operate closer to 6,000 gallons per minute.

12 39. Draining the wetland complex causes several significant environmental affects,
13 including killing rare and endangered species; altering the hydrology of the wetland system;
14 changing the composition of aquatic vegetation on the site from species that require deep water
15 to those that grow best in shallow water; and conversion of open water habitats to dry land
16 and/or shallow wetlands.

17 40. The Pumphouse Project will result in "removal of sediment and emergent vegetation
18 within [Horse Stable Pond] and the connecting channel that links HSP with [Laguna Salada]."

19 41. Removing sediment and emergent vegetation from the Laguna Salada wetland complex
20 will have several significant environmental effects, including the creation of acids in the water
21 column that are hazardous to all life. Experts have explained that the wetland complex's bottom
22 sediments contain sulfur-based compounds that, when disturbed during sediment removal, will
23 react and form acidic sulfur compounds while depleting the water column of oxygen.

24 42. The Project is nonetheless proposed because in Respondents' view the sediment and
25 aquatic vegetation impede water flow to the Pumphouse, preventing the Respondents from
26 draining the Laguna Salada wetland complex at rates closer to the pumps' theoretical maximum
27 pumping rate of 10,000 gallons per minute.

28 43. Respondents believe that once it removes this sediment and vegetation winter rains will

1 reach the pumphouse more rapidly, allowing Respondents to drain the wetland complex even
2 faster, i.e., closer to the theoretical maximum pumping capacity.

3 44. The Pumphouse Project has been, or is currently being, reviewed by federal, state and
4 local agencies. For example, and as a result of a March 2011 federal lawsuit brought by some of
5 the Petitioners against the City for illegally killing the Frog and Snake at Sharp Park, the U.S.
6 Fish and Wildlife Service has required the City to implement conservation measures in
7 exchange for an incidental take permit authorizing the killing of listed species at Sharp Park.
8 These conservation measures covered both (1) the construction phase of the Pumphouse Project,
9 and (2) the ongoing operations and management of the Pumphouse Project and other golf course
10 actions.

11 45. Yet Respondents have considered only the construction phase of the project under
12 CEQA: no CEQA evaluation or environmental review has ever been prepared for the previous,
13 current and/or proposed operations of the pumphouse.

14 **Procedural Background**

15 46. Petitioners, other agencies, and other interested groups and individuals participated in
16 the administrative proceedings leading up to Respondents' approval of the Project and adoption
17 of the MND, either by participating in hearings thereon or by submitting letters commenting on
18 the MND. Petitioners attempted to persuade Respondents that the environmental review and
19 approvals for the Pumphouse Project did not comply with the requirements of CEQA, to no
20 avail. Respondents' approval of the Pumphouse Project, approval of the certification of the
21 MND, and failure to prepare an EIR for the Project's "whole of an action," is not subject to
22 further administrative review by Respondents. Petitioners have availed themselves of all
23 available administrative remedies for Respondents' violations CEQA.

24 47. Petitioners submitted comments on the Preliminary MND on January 29, 2013. The
25 MND was approved and Petitioners appealed the MND to the Planning Commission on October
26 18, 2013. The Planning Commission approved the MND on January 16, 2014 and the Rec &
27 Park Commission then adopted the CEQA findings and MND approved the Project on January
28 23, 2014. Petitioners initiated its final administrative appeal on February 21, 2014 to the San

1 Francisco Board of Supervisors, which rejected the administrative appeal following a public
2 hearing on March 25, 2014 by a vote of 4-7.

3 48. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law
4 within the meaning of CCP § 1086, in that Respondents' approval of the Pumphouse Project
5 and the associated MND, and failure to prepare an EIR for the whole of the Project, are not
6 otherwise reviewable in a manner that provides an adequate remedy. Accordingly, Petitioners
7 seek this Court's review of Respondents' approval of the Project and certification of the EIR, to
8 rectify the violations of CEQA.

9 49. Unless enjoined, Respondents and Real Parties in Interest will implement the
10 Pumphouse Project despite their lack of compliance with CEQA. Petitioners will suffer
11 irreparable harm by Respondents' failure to take the required steps to protect the environment.
12 Declaratory relief is appropriate under CCP § 1060, injunctive relief is appropriate under CCP §
13 525 et seq. and a writ of mandate is appropriate under CCP § 1085 et seq. and 1094.5 et seq.
14 and under PRC § 21168.9, to prevent irreparable harm to the environment.

15 **LEGAL BACKGROUND**

16 **CEQA: Standard of Review**

17 50. Under CEQA, abuse of discretion is established if the agency has not proceeded in a
18 manner required by law or if the determination or decision is not supported by substantial
19 evidence. (PRC §§ 21168.5.) Substantial evidence is defined as "enough relevant information
20 and reasonable inferences from this information that a fair argument can be made to support a
21 conclusion, even though other conclusions might also be reached." (14 Cal. Code Regs.
22 ["CEQA Guidelines"] § 15384(a).) Substantial evidence includes facts, reasonable
23 assumptions predicated on facts, and expert opinion supported by facts; however, it does not
24 include argument, speculation, or unsubstantiated opinion or narrative. (PRC §§ 21080(e),
25 21082.2(c).)

26 **CEQA: General Provisions**

27 51. CEQA is intended to provide the fullest possible protection to the environment.
28 (*Comtys. for a Better Env't v. South Coast Air Quality Management Dist. (ConocoPhillips)*)

(2010) 48 Cal.4th 310, 319-320 [*CBE v. SCAQMD*].) CEQA requires that a lead agency prepare and analyze potential environmental impacts of the proposed action (i.e., the Project) in an EIR (except in certain limited circumstances). (PRC §§ 21002.1(a), 21100(a), 21151(a); CEQA Guidelines §§ 15064(a)(1), (f)(1), 15367 [“lead agency” is the “public agency which has the principal responsibility for carrying out or approving a project”].)

52. CEQA requires analysis of the “whole of an action,” including the “direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (PRC §21065; CEQA Guidelines §15378(a).)

53. The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 927.)

54. “[CEQA] requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *see Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; PRC § 21080(c)-(d).) The “fair argument” standard establishes a low threshold for requiring the preparation of an EIR. (*No Oil, Inc., supra*, 13 Cal.3d at p. 75; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310.)

55. “The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (PRC § 21061; *see also* § 21002.1.)

56. An EIR “serves not only to protect the environment but also to demonstrate to the public that it is being protected.” (CEQA Guidelines § 15003(b).) “An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653, citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.)

CEQA: Negative Declarations

57. As the California Supreme Court held, “If no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*CBE v. SCAQMD*, 48 Cal.4th at 319-320, citing, *No Oil, Inc.*, *supra*, 13 Cal.3d at pp. 75, 88.)

58. A negative declaration is improper, and an EIR is required, whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur. Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (CEQA Guidelines § 15064(f)(1); *Arviv Enterprises, Inc. v. South Valley Area Planning Comm’n.* (2002) 101 Cal.App.4th 1333, 1345; *Pocket Protectors*, *supra*, 124 Cal.App.4th at p. 931; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1181.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at p. 928.)

59. The fair argument standard creates a “low threshold” for further environmental review and “reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” (*Sierra Club v. Sonoma* (1992) 6 Cal.App.4th 1307, 1316-17.)

60. As a matter of law, “substantial evidence includes . . . expert opinion.” (PRC § 21080(e)(1); CEQA Guidelines § 15064(f)(5).) CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the

1 agency must consider the environmental effects to be significant and prepare an EIR. (CEQA
2 Guidelines § 15064(f)(5); PRC § 21080(e)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th at p.
3 935; *Sierra Club v. County of Sonoma*, 6 Cal. App. 4th, 1307, 1316.)

4 61. “Significant environmental effect” is defined very broadly as “a substantial or
5 potentially substantial adverse change in the environment.” (PRC § 21068; *see also* CEQA
6 Guidelines § 15382.) An effect on the environment need not be “momentous” to meet the
7 CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc.*, *supra*,
8 13 Cal.3d at p. 83.) In the *Pocket Protectors* case, the court explained how expert opinion is
9 considered. The Court limited agencies and courts to weighing the admissibility of the
10 evidence. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at p. 935.) In the context of reviewing a
11 Negative Declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial
12 evidence to determine whether an EIR must be prepared in the first instance.” (*Id.*) Where a
13 disagreement arises regarding the validity of a negative declaration, the courts require an EIR.
14 As the *Pocket Protectors* court explained, “[i]t is the function of an EIR, not a negative
15 declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental
16 effects of a project.” (*Id.*)

17 **CEQA: Mitigation Measures**

18 62. Under CEQA, feasible mitigation measures for significant environmental effects must
19 be set forth in the environmental document for consideration by the lead agency's decision
20 makers and the public before approval of a project. In addition, a project proponent must ensure
21 that “measures to mitigate or avoid significant effects on the environment are fully enforceable
22 through permit conditions, agreements, or other measures.” CEQA Guidelines § 21081.67(b).
23 The formulation of mitigation measures generally cannot be deferred until after approval of a
24 project. CEQA Guidelines, section 15126.4(a)(1)(B) states: “Formulation of mitigation
25 measures should not be deferred until some future time. However, measures may specify
26 performance standards which would mitigate the significant effect of the project and which may
27 be accomplished in more than one specified way.” “[R]eliance on tentative plans for future
28 mitigation after completion of the CEQA process significantly undermines CEQA's goals of full

disclosure and informed decision making; and consequently, mitigation plans may be overturned on judicial review as constituting improper deferral of environmental assessment." (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

CEQA: Project Description and Piecemealing

63. A negative declaration must accurately describe the proposed project. (*Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180; CEQA Guidelines § 15071(a).) The initial study must "provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment." (CEQA Guidelines § 15063(c)(5).) Failure to include a component of the project in a project description renders the description inaccurate and inadequate under CEQA. (See *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143–1147; CEQA Guidelines § 15062(a).)

64. The courts have repeatedly held that "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient [CEQA document]." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)

65. CEQA prohibits a project proponent from seeking approval a large project in a piecemeal fashion in order to take advantage of environmental exemptions or lesser CEQA for smaller projects. (*Arviv Enterprises, Inc.*, supra, 101 Cal.App.4th at p. 1340.) Thus, CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283- 84; *San Joaquin Raptor Rescue Center*, supra, 149 Cal.App.4th at p. 654 citing *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.)

66. Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated: "...[t]he CEQA process is intended to be a careful examination,

1 fully open to the public, of the environmental consequences of a given project, covering the
2 entire project, from start to finish.” (*Natural Resources Defense Council v. City of Los Angeles*
3 (2002) 103 Cal.App.4th 268, 271 [emphasis added].) “An accurate project description is
4 necessary for an intelligent evaluation of the potential environmental effects of a proposed
5 activity, (*McQueen*, supra, 202 Cal.App.3d at p. 1143), and is “the sine qua non of an
6 informative and legally adequate EIR.” (*County of Inyo v. City of Los Angeles*, supra, 71
7 Cal.App.3d at p. 192; *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Cmmrs.* (2001)
8 91 Cal.App.4th 1344, 1354; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d
9 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th
10 182, 201.)

11 67. “[A] curtailed or distorted project description,” on the other hand, “may stultify the
12 objectives of the reporting process. Only through an accurate view of the project may affected
13 outsiders and public decision-makers balance the proposal’s benefit against its environmental
14 costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the
15 “no project” alternative) and weigh other alternatives in the balance.” (*County of Inyo v. City of*
16 *Los Angeles*, supra, 71 Cal.App.3d at pp. 192-193; *See also*, CEQA Guidelines § 15124; *City of*
17 *Santee v. County of San Diego*, supra, 214 Cal.App.3d at p. 1454.)

18 **CEQA: Cumulative Impacts Analysis**

19 68. Similarly, an initial study must consider the “whole of an action.” (CEQA Guidelines §
20 15378(a).) That means:

21 “[T]he environmental review accompanying the first discretionary approval must
22 evaluate the impacts of the ultimate development authorized by that approval. ...
23 Even though further discretionary approvals may be required before
24 development can occur, the agency’s environmental review must extend to the
25 development envisioned by the initial approvals. It is irrelevant that the
26 development may not receive all necessary entitlements or may not be built.
27 Piecemeal environmental review that ignores the environmental impacts of the
28 end result will not be permitted.” (See Kostka, et al., Practice Under the
California Environmental Quality Act, § 6.52, p. 298.)

69. A lead agency must find that a project may have a significant effect on the environment
and must therefore require an EIR if the project’s potential environmental impacts, although

individually limited, are cumulatively considerable. (PRC § 21083(b); CEQA Guidelines §§ 15064(h)(1), 15065(a)(3).) The term “‘cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (PRC § 21083(b)(2).) An EIR is required when an Initial Study fails to adequately explain why cumulative effects would not occur. (*See San Bernardino Valley Audubon Soc’y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 398-400; *see also Lighthouse Field Beach Rescue*, supra, 131 Cal.App.4th at p. 1181.)

RESPONDENTS’ CEQA VIOLATIONS

Increasing the Rate of Water Pumping Will Cause Significant Environmental Effects But Respondents Illegally Hid These Effects in the Environmental Baseline of the Project

70. The Pumphouse Project’s record reveals that the Project will significantly increase the rate that Respondents drain the Laguna Salada wetland complex. For example, the project description explains “operation of the flood control pump system is necessary to manage floodwaters both on Sharp Park and adjacent properties.” MND, p. 4. It then explains, “[t]wo factors adversely affect the operation of the pumps. First, pump operation is impaired by sediment buildup and vegetation growth around the pump intake structure and along the connecting channel between [Horse Stable Pond and Laguna Salada]. Second, pump operation is impaired by the buildup of vegetation on the pump intake screens.” *Id.*

71. The MND then describes what the Pumphouse Project will do to expand pump operations: “[s]ediment and emergent vegetation, including cattails (*Typha angustifolia*) and bulrush (*Scirpus americanus*), near the existing pumphouse would be removed *in order to reduce obstructions to water flow into the pump intake structure. . . .*” (MND, p. 6 emphasis added; *see also id.* [“A primary purpose of the Pumphouse Project is to “remove impediments to water flow within the wetland complex.”])

72. A logical consequence of accelerating water flow to the pumphouse is that the Laguna Salada wetland complex will be drained more extensively and rapidly than ever before. Although rated at 10,000 gallons per minute, Respondents’ pumps can only operate at roughly 6,000 gallons per minute because the wetlands sediment and aquatic vegetation naturally slows

the flow of water to the pumphouse. Eliminating this sediment and aquatic vegetation will thus allow the pumps to operate closer to their theoretical maximum capacity.

73. The MND does not consider the effects of increasing the extent and rate of draining the wetland complex, because Respondents claim the operations are part of the environmental baseline of the project—even though these operations were a central component of the project description in environmental review processes before other agencies, such as the U.S. Fish and Wildlife Service.

74. Here Respondents assert that because “no changes to the pump infrastructure” are proposed and because “none of [the] operation protocols will be changed by this project,” this project will not change the amount of water pumped out of the Laguna Salada wetland complex.

75. These assertions are flatly contradicted by the Project description, the administrative record, sworn testimony of the engineer who operates the pumphouse, and expert opinions submitted during the comment periods on this project. This evidence makes clear that the pumps are currently not able to operate at the theoretical maximum pumping rate, and that the Pumphouse Project’s purpose is to eliminate obstructions that prevent higher pumping rates from being achieved under existing protocols.

76. The record is replete with references explaining that the project’s primary purpose is to increase water flow to the pumphouse so the new pump may operate closer to its rated capacity. (*See, e.g., MND, p. 6* [“The primary purposes of the proposed construction of a pond, golf cart path realignment, and sediment and vegetation removal are to . . . remove impediments to water flow within the wetland complex. . . . Sediment and emergent vegetation, including cattails (*Typha angustifolia*) and bulrush (*Scirpus ainericanus*), near the existing pumphouse would be removed in order to reduce obstructions to water flow into the pump intake structure. . . .”].)

77. These changes necessarily mean that the pumps will drain the Laguna Salada wetland complex at a faster rate, either because (a) the pumps will be able to drain the complex faster than the current estimated pumping rate of 6,000 gallons per minute, and closer to the 10,000 gallons per minute theoretical maximum pumping capacity, and/or (b) the pumps are able to drain the wetland more consistently than present because the pumphouse intake structure

remains free of debris for longer periods of time. In either case, more water will be removed from the wetland complex at a faster rate than occurs presently.

78. Respondents' pumphouse operating protocols do not and cannot prevent this increased rate from being achieved. First, the protocols do not constrain pumping unless Frog egg masses are observed in the Laguna Salada wetland complex, and it is determined that further pumping may expose the egg mass to the air. Thus, within the Frog breeding season, wetland drainage rates and amounts will increase, even under existing protocols, whenever Frog egg masses are not in this a precarious condition.

79. Second, outside of the Frog breeding season—roughly April through October each year—no egg masses are present and there are no protocols that limit the amount and rate of wetland drainage at all. The record shows that the golf course can, and does, drain the wetland during this period as low as possible, generally the level of the groundwater interface. Indeed, even in this year's drought conditions, pumping has been occurring regularly, draining the Laguna Salada wetland complex's water levels to extremely low levels.

80. Increasing the rate and extent that Respondents drain the Laguna Salada wetland system will cause significant environmental effects, none of which are addressed by the MND. These include reducing the location, amount, and stability of Frog breeding locations; the location, amount, and stability of Snake feeding areas; changing the extent of cover habitat provided for both species; changing the composition of aquatic plants in the wetland complex; changing the extent of Laguna Salada drained by the pumping; changing the salinity levels of the wetland complex; and exposing acidic soils to the air, transforming these soils into toxic environments.

81. The City failed to analyze these effects and is therefore in violation of CEQA.

Proposed Mitigation Measures Are Infeasible and Unenforceable Because They Fail to Establish Meaningful Standards and Because They Require Affirmative Acts by Third Parties Who Have Stated They Do Not Have the Resources To Implement Them.

82. Respondents propose to mitigate the acidic conditions caused by the Project primarily with Mitigation Measure M-BIO-2B. This mitigation measure places several mandatory responsibilities on the U.S. Fish and Wildlife Service: none of which were included in the Service's terms and conditions and mitigation measures for the Project.

83. The record shows that the Service was not consulted nor had any knowledge of those new responsibilities, and in fact does not have the resources to fulfill those responsibilities.

84. The logical result of the Service's inability to implement the measure results in an infeasible mitigation measure, or an improper deferral of the mitigation measure until such time when the Service would be able to implement it.

85. Even if the Service had agreed to implement these measures and retained the resources to do so, the mitigation measure violates CEQA because it does not articulate specific performance criteria or standards that must be met for the project to proceed. There are no thresholds of significance identified, and no other specific measure that would alert the agency or any member of the public that a performance criterion has or has not been met. Instead, the mitigation measure orders study after study to occur, but leaves the actual triggers for remediation and the remediation objectives completely undefined. Moreover, the mitigation measure would be developed entirely outside the CEQA process—violating CEQA's requirement to formulate and analyze such mitigation measures within the CEQA document.

86. Moreover, experts have explained in the record that at least one of the remediation measures—utilizing suction dredging in stead of traditional dredging techniques—will likely cause new and significant environmental effects if it is implemented. Suction dredging will remove large amounts of both sediment and water from the wetland complex—much more than the clam shell or bucket type dredging equipment identified in the original project description, which typically contain 80-90% solids. Suction dredging will require distinct technologies to dispose of watery dredged materials: it would not be permissible to allow these waters to drain back into the wetland complex given that they are likely acidic or hypoxic to begin with. Yet the MND does not discuss any proposed mitigation measure for suction dredging.

87. Mitigation measure M-BIO-2B and its related mitigation measures are thus inadequate, infeasible and/or improperly deferred, and may actually result in new significant effects that were not analyzed in the MND, violating CEQA.

The MND Piecemeals the Effects of the Project.

88. The project description for the Pumphouse Project “includes elements that are required

1 under a Biological Opinion issued by the U.S. Fish and Wildlife service.” But the project
2 description also segments several of the Biological Opinion’s required elements from the
3 Pumphouse Project. Respondents, however, declared that these segmented elements of the
4 Pumphouse Project are either categorically exempt from environmental review, or included the
5 element’s effects in the environmental baseline. In either case, Respondents are improperly
6 piecemealing the Project.

7 89. Specifically, the action subject to the Biological Opinion has now been segmented into
8 at least three projects for purposes of CEQA: (1) a .5 acre upland habitat restoration project that
9 the Department declared categorically exempt from CEQA on August 5, 2013, thus evading
10 environmental review; (2) pumping operations that the City deems to be a component of the
11 environmental baseline, thus evading environmental review; and (3) the remainder of the
12 Pumphouse Project: which the City has refused to review through a complete EIR. CEQA
13 forbids such “piecemeal” review of the significant environmental impacts of a project.

14 90. In addition, the Respondents failed to include an analysis of the City’s plan to redevelop
15 Sharp Park golf course, which is reasonably certain to occur, will adversely affect Sharp Park,
16 and is interrelated with the Project.

17 91. The Respondents suggest that the project level review of the golf course redevelopment
18 will merely “guide” management at Sharp Park in the future. This is a significant error: project
19 level review is fit for implementation, where as programmatic review is deemed more akin to
20 guidance under CEQA. Respondents must therefore reassess the interrelatedness of these
21 projects and consider them as one project.

22 92. In addition, Respondents have failed to analyze foreseeable future dredging projects at
23 Sharp Park that will be necessary to meet the needs expressed in the Project description.
24 Experts have explained that the vegetation, which Respondents plan to remove, is entirely
25 dependent on shallow water. If waters are maintained at higher levels—particularly in the
26 Spring and Summer months, when the aquatic vegetation is growing and there is no threat of
27 flooding at Sharp Park—these species will die off and never grow back: eliminating the
28 vegetation without need of the invasive dredging proposed by Respondents.

93. However, if the Pumphouse Project is implemented and the Laguna Salada wetland complex is as a consequence drained more completely than it is presently, water levels will remain very low: and the aquatic vegetation will grow back. In short order, the obstructions to water flow would therefore return, and the dredging project will need to be implemented again and again.

94. Respondents have failed to consider the element of ongoing dredging impacts in the MND, and therefore it has improperly piecemealed several elements of this Project, in violation of CEQA.

The MND Fails to Consider the Project's Cumulative Impacts.

95. Respondents failed to properly analyze the cumulative impacts of the Pumphouse Project in conjunction with other related past, present, and foreseeable future projects in the Project's vicinity.

96. The MND's conclusion that the Pumphouse Project will not have cumulatively considerable impacts is not supported by any analysis or evidence.

97. The Respondents failed to analyze an upland habitat restoration project that was declared categorically exempt from CEQA on August 5, 2013, as well as golf course operations, which have a significant impact on the Frog and Snake, and the foreseeable golf course redevelopment project, all of which are connected to the Pumphouse Project.

98. The City also failed to analyze reasonably foreseeable future dredging projects at Sharp Park.

99. In addition, the City failed to adequately analyze the cumulative impacts of the Project on the Snake, which has been greatly impacted by the golf course for many decades, particularly through the cumulative impacts imposed on the Frog, one of the Snake's main prey species.

100. Because the City failed to analyze several related past, present, and future projects, the cumulative impacts analysis is per se deficient.

The MND Violates CEQA in Numerous Other Ways.

101. The Pumphouse Project does not adequately describe the biological screens to prevent

1 listed species from being entrained. The record shows that biological monitors at Sharp Park
2 have observed crayfish entrained by Sharp Park's pumping operations, and have stated the
3 possibility of the threatened Frogs being entrained as well.

4 102. The Pumphouse Project is inconsistent with several plans in ways that either cause
5 significant physical environmental effects or frustrate mitigation measures designed by the
6 Department to ameliorate significant environmental effects. Because of this, the Department
7 must prepare an EIR for the Pumphouse Project.

8 103. The Pumphouse Project is inconsistent with the 1995 and 2006 Significant Natural
9 Resource Area Management Plans (SNRAMP) because the Pumphouse Project will enhance
10 pumping operations at Sharp Park and dredge Sharp Park's Natural Areas to ease the
11 conveyance of water out of the Laguna Salada wetland complex, into the pumphouse, and
12 ultimately out to sea, which is not proposed in SNRAMP.

13 104. The MND implicitly recognizes that the Pumphouse Project is inconsistent with
14 SNRAMP, because the Respondents did not make a consistency finding in the MND. The City
15 must therefore be aware that there are significant, unmitigated environmental effects from this
16 inconsistency, and the Department must therefore conduct further environmental review.

17 105. The Pumphouse Project is inconsistent with the San Francisco Bay Basin Water Control
18 Plan because the Project will disturb oligohaline sediments in the Laguna Salada wetland
19 complex, which in turn results in the oxidative formation of acid sulfates. This impact is
20 substantially certain to occur, because experts have directly observed these sediments in the area
21 proposed for dredging: these soils are ubiquitous and conspicuous throughout the wetland
22 complex.

23 106. The Pumphouse Project is inconsistent with the California Coastal Act, which prohibits
24 disturbance of "Environmentally Sensitive Habitat Areas" ("ESHA"). (Coastal Act §30107.5.)
25 Sharp Park constitutes an ESHA under this definition because both the Frog and Snake are rare,
26 and their presence is regularly documented at Sharp Park; because Sharp Park's habitats are
27 both rare and especially valuable to these species, because they constitute a rare coastal lagoon
28 ecosystem that is the northern-most known habitat for the Snake; and because the species and

1 their habitats are disturbed and degraded under existing conditions, and the Project will cause
2 additional degradation and disturbance. However, the MND does not recognize ESHA at Sharp
3 Park, nor any of the implications this status would have on the Pumphouse Project. Therefore it
4 fails to ensure that the Pumphouse Project is consistent with the Coastal Act.

5 107. The Pumphouse Project is inconsistent with the Frog recovery plan. The Sanchez Creek
6 Watershed is a Priority 2 watershed for Frog recovery, which provide the necessary habitat
7 connectivity between core areas and is an important contribution to the recovery of Frog
8 throughout its range. These watersheds have Watershed Management and Protection Plans that
9 address, among other things, restoration, controlling water flow, assess suction dredging
10 impacts on water quality and thus the frog (sedimentation increases are cited as a possibility),
11 flood control activities, and recreation activities. (U.S. Fish and Wildlife Service, Recovery Plan
12 for the California Red-Legged Frog, 2002, p.53).) The MND makes no mention of this planning
13 process at all.

14 CLAIMS FOR RELIEF

15 FIRST CAUSE OF ACTION

16 **(CCP 1094.5,¹ PRC §§ 21168, 21168.5. Violations of CEQA; Respondents Prejudicially** 17 **Abused Their Discretion By Failing to Prepare an EIR. By All Petitioners Against All** 18 **Respondents and All Real Parties)**

19 1. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set
20 forth herein.

21 2. CEQA reflects a strong preference in favor of preparing an EIR for a proposed project
22 rather than a negative declaration.

23 3. Respondents abused their discretion and failed to act in the manner required by law by
24 failing to prepare an EIR for the Project.

25 4. A negative declaration is improper, and an EIR is required, whenever substantial
26 evidence in the record supports a “fair argument” that a project “may have” significant
27 environmental effects. Even if other substantial evidence supports the opposite conclusion, the
28 agency nevertheless must prepare an EIR once a fair argument has been presented. (PRC §
21080(c).)

¹ Or in the alternative CCP §1085.

² Or in the alternative CCP §1085. 26 VERIFIED PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

5. Respondents violated CEQA by adopting a negative declaration for the Pumphouse Project and failing to prepare an EIR for the “whole of an action,” which includes the reasonably foreseeable increase in water flow to the pumphouse and the associated effects on wetland ecology, the removal of cover habitat, the entrainment of species, and the cumulative effects of the project proposal.

6. Consequently, Respondents failed to properly analyze and mitigate such potentially significant impacts, both individually and cumulatively, to wetland ecology, species, hydrology, and water quality. These impacts are associated with dredging vegetation from Horse Stable Pond and increasing the water flow to the pumphouse.

7. Respondents also presented infeasible and improperly deferred mitigation measures.

8. Respondents also violated CEQA by piecemealing an upland habitat restoration project, golf course operations which have a significant impact on the Frog and Snake, the foreseeable golf course redevelopment project, and foreseeable future dredging projects at Sharp Park, and failing to analyze the potentially significant impacts of those actions individually and cumulatively in an EIR.

9. As a result of the foregoing defects, Respondents prejudicially abused their discretion by adopting the MND that does not comply with CEQA and by approving the Pumphouse Project in reliance thereon. Respondents’ adoption of the MND and approval of the Pumphouse Project must be set aside.

SECOND CAUSE OF ACTION

(CCP 1094.5², PRC §§ 21168, 21168.5. Violations of CEQA; Inadequate Findings. By All Petitioners Against All Respondents and All Real Parties)

1. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set forth herein.

2. CEQA requires that a lead agency’s findings for the approval of a project be supported by substantial evidence in the administrative record. CEQA further requires that a lead agency provide an explanation of how evidence in the record supports the conclusions it has reached.

3. Respondents violated CEQA by adopting findings that are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to,

² Or in the alternative CCP §1085.

1 the finding that the MND shows that there is no substantial evidence that the Pumphouse
2 Project may have a significant effect on the environment.

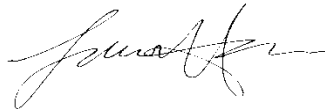
3 4. As a result of the foregoing defects, Respondents prejudicially abused their discretion by
4 making determinations or adopting findings that do not comply with the requirements of CEQA
5 and approving the Project in reliance thereon. Accordingly, Respondents' approval of the
6 Pumphouse Project and the associated MND must be set aside.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioners pray for the following relief:

- 9 1. For a peremptory writ of mandate, injunction, and declaratory relief directing:
- 10 a. Respondents to vacate and set aside its approvals and resolutions adopting the
11 MND for the Pumphouse Project and approving the Project.
- 12 b. Respondents and Real Parties to suspend all activity under the adoption of the
13 MND and approval of the Pumphouse Project that could result in any change or
14 alteration to the physical environment until Respondents have taken actions that are
15 necessary to bring the certification and project approvals into compliance with CEQA.
- 16 c. Respondent to prepare a legally adequate EIR for the Pumphouse Project.
- 17 2. For the costs of suit.
- 18 3. For an award of attorney fees pursuant to Code of Civil Procedure § 1021.5 and any
19 other applicable provisions of law or equity.
- 20 4. For any other equitable or legal relief that the Court considers just and proper.

21 Respectfully submitted April 22, 2014,

22 

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

Small

Laura Horton

EXHIBIT A

WILD Equity

INSTITUTE

*Building a healthy and sustainable global community for people
and the plants and animals that accompany us on Earth*

April 18, 2014

By U.S. Mail Only

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**RE: Notice of Intent to File Suit Under the California Environmental Quality Act
Regarding Approval of Sharp Park Safety, Infrastructure Improvement, and
Habitat Enhancement Project; and Mitigated Negative Declaration**

Dear County Clerk, Mayor Lee, Planning Commission, Planning Department, Rec & Park
Commission, and Rec & Park Department:

I am writing on behalf of Wild Equity Institute, Save The Frogs, and Sequoia Audubon Society
(collectively, "Petitioners") regarding the Sharp Park Safety, Infrastructure Improvement, and
Habitat Enhancement Project ("Pumphouse Project" or "Project"). The City and County of San
Francisco adopted a Mitigated Negative Declaration ("MND") for the Pumphouse Project on the
basis that the Project will have no significant environmental impact.

Please take notice, pursuant to Public Resources Code ("PRC") § 21167.5, that Petitioners intend
to file a Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and
Injunctive Relief ("Petition"), under the provisions of the California Environmental Quality Act
("CEQA"), PRC § 21000 et seq., against Respondents and Defendants City And County of San
Francisco, San Francisco Board of Supervisors, San Francisco Planning Commission, San Francisco

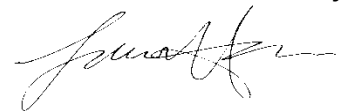
Planning Department, Mayor Edwin M. Lee, (collectively, "Respondents" or "City") and Real Parties in Interest and Defendants San Francisco Recreation and Park Department and San Francisco Recreation And Park Commission (collectively "Rec & Park").

The Petition alleges that Respondents violated CEQA by approving and filing a Notice of Determination for the Pumphouse Project without (1) preparing an environmental impact report ("EIR") for the Project; (2) failing to consider the whole of the action by improperly piecemealing the Project; (3) failing to analyze the cumulative effects of past, present, and future projects and project components; (4) failing to analyze several potential significant environmental effects; and (5) adopting infeasible and deferred mitigation measures.

The petition being filed will seek the following relief:

1. A peremptory writ of mandate, injunction and declaratory relief directing:
 - a. Respondents and Real Parties to vacate and set aside its approvals and resolutions adopting the MND for the Pumphouse Project and approving the Project;
 - b. Respondents and Real Parties to suspend all activity under the adoption of the MND and approval of the Pumphouse Project that could result in any change or alteration to the physical environment until Respondents have taken actions that are necessary to bring the certification and project approvals into compliance with CEQA;
 - c. Respondents and Real Parties to prepare a legally adequate EIR for the whole Pumphouse Project;
2. Costs of suit;
3. An award of attorney fees pursuant to Code of Civil Procedure §1021.5 and any other applicable provisions of law or equity;
4. Any other equitable or legal relief that the Court considers just and proper.

Sincerely,



Laura Horton
474 Valencia St., Suite 295
San Francisco, CA 94103
Telephone: (415) 349-5787
Email: lhorton@wildequity.org

PROOF OF SERVICE

I, Frances Ackerman, declare as follows:

I am a resident of the State of California. I am over the age of 18 years and am not a party to the above-entitled action. My address is 1726 10th Street, Apartment A, Oakland, California 94607.

On April 18, 2013, I served a copy of the foregoing document entitled:

Notice of Intent to File Suit Under the California Environmental Quality Act Regarding Approval of Sharp Park Safety, Infrastructure Improvement, and Habitat Enhancement Project; and Mitigated Negative Declaration

On the following parties:

City and County of San Francisco
1 Dr Carlton B Goodlett Pl #168
San Francisco, CA 94102

Office of Mayor Edwin M. Lee
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

San Francisco Planning Commission
1650 Mission St #400
San Francisco, CA 94103

San Francisco Planning Department
1650 Mission St #400
San Francisco, CA 94103

San Francisco Recreation & Parks
Department
McLaren Lodge-Golden Gate Park
501 Stanyan St.
San Francisco, CA 94117

San Francisco Recreation and Park
Commission
501 Stanyan Street
San Francisco, CA 94117

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place City Hall,
Room 244 San Francisco, Ca. 9410

I served a copy of the notice to all above-listed parties at the Office of Mayor Edwin M. Lee, who is authorized to accept service on all above-listed parties, at **City Hall, Room 200, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.**

☒

BY MAIL. By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid for First Class mail, in the United States mail at San Francisco, California addressed as set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed April 18, 2014 in San Francisco, California.

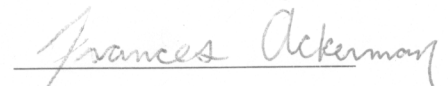

Frances Ackerman

EXHIBIT B

Brent Plater (CA Bar No. 209555)
Laura Horton (CA Bar No. 288725)
WILD EQUITY INSTITUTE
474 Valencia St., Suite 295
San Francisco, CA 94103
Telephone: (415) 349-5787
Facsimile: N/A
Email: bplater@wildequity.org; lhorton@wildequity.org

Attorneys for Petitioner and Plaintiff Wild Equity Institute

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

WILD EQUITY INSTITUTE, a non-profit
corporation; SAVE THE FROGS, a non-profit
corporation, SEQUOIA AUDUBON SOCIETY,
a non-profit corporation,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation; BOARD OF
SUPERVISORS OF THE CITY AND
COUNTY OF SAN FRANCISCO, a public
entity; PLANNING COMMISSION OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public entity; SAN FRANCISCO PLANNING
DEPARTMENT, a public entity; MAYOR
EDWIN M. LEE, in his official capacity
Respondents and Defendants;

SAN FRANCISCO RECREATION AND
PARKS DEPARTMENT, a public entity; SAN
FRANCISCO RECREATION AND PARK
COMMISSION, a public entity

Real Parties in Interest and Defendants.

Case No.:

**PETITIONERS' NOTICE OF INTENT
TO PREPARE ADMINISTRATIVE
RECORD**

(California Environmental Quality Act
("CEQA"), Pub. Res. Code § 21167.6(b))

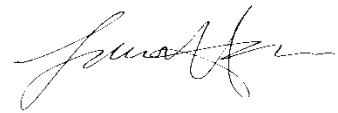
Dept: CEQA Case

Pursuant to Public Resources Code section 21167.6(b), Petitioners and Plaintiffs WILD
EQUITY INSTITUTE, SAVE THE FROGS, and SEQUOIA AUDUBON SOCIETY
(collectively, "Petitioners") hereby notify all parties that Petitioners elect to prepare the
administrative record relating to the above-captioned action relating to Respondents and

1 Defendants CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation; BOARD
2 OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, a public entity;
3 PLANNING COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, a public
4 entity; SAN FRANCISCO PLANNING DEPARTMENT, a public entity; MAYOR EDWIN
5 M. LEE, in his official capacity as Mayor of San Francisco (collectively, "Respondents" or
6 "City") and Real Parties in Interest and Defendants SAN FRANCISCO RECREATION AND
7 PARKS DEPARTMENT, a public entity; SAN FRANCISCO RECREATION AND PARK
8 COMMISSION, a public entity (collectively "Rec & Park"). The action alleges violations of
9 the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq.,
10 in connection with the unlawful approval of the Sharp Park Safety, Infrastructure
11 Improvement, and Habitat Enhancement Project ("Pumphouse Project") and Respondents'
12 failure to prepare an Environmental Impact Report 16. ("EIR") for the Pumphouse Project.

13
14 Respondents, Real Parties in Interest and Defendants are directed not to prepare the
15 administrative record for this action and not to expend any resources to prepare said
16 administrative record.

17
18 Respectfully submitted April 22, 2014.

19
20 

21 Laura Horton (CA Bar No. 288725)
22 Brent Plater (CA Bar No. 209555)
23 WILD EQUITY INSTITUTE
24 474 Valencia St., Suite 295
25 San Francisco, CA 94103
26 Telephone: (415) 349-5787
27 Facsimile: N/A

28 Email: lhorton@wildequity.org; bplater@wildequity.org

Attorneys for Petitioners and Plaintiffs