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CANDLESTICK HEIGHTS COMMUNITY ALLIANCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/29/2021
Clerk of the Court
BY: JACKIE LAPREVOTTE
Deputy Clerk

CPF-21-517632

CANDLESTICK HEIGHTS
COMMUNITY ALLIANCE, an
unincorporated association,

Petitioner and Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO; STATE OF CALIFORNIA,
acting by and through its STATE LANDS
COMMISSION; STATE OF
CALIFORNIA, acting by and through its
DEPARTMENT OF PARKS AND
RECREATION; and DOES 1 THROUGH
20,

Respondents and Defendants.

SAN FRANCISCO PLANNING
DEPARTMENT; SAN FRANCISCO
DEPARTMENT OF HOMELESSNESS
AND SUPPORTIVE HOUSING; BAY
AREA DISTRICT of the CALIFORNIA
DEPARTMENT OF PARKS AND
RECREATION; and DOES 1 THROUGH
20,

Real Parties In Interest.

Case No.

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

CEQA CASE

C.C.P. §§ 1085 and 1094.5; Pub. Res. Code
§§ 21000 et seq.; Gov't Code §§ 65000 et
seq.; the Public Trust Doctrine

INTRODUCTION

1. This action challenges Respondents’ unlawful approval of a major “Vehicle Triage Center” – a large vehicle encampment for unhoused individuals – in the Bayview-Hunters Point District. The project would be located on public trust land in Candlestick Point State Park on a parcel that provides access to the San Francisco Bay shoreline. The project will cost approximately \$13 million and require the addition of offices, sanitation stations, restrooms, showers, laundry facilities, fences, lighting, and electrical infrastructure. It will also require upgrading water and sewage lines and providing services for approximately 155 vehicles for at least two years.

2. Residents of the Candlestick Heights and Bayview Hill neighborhoods who live near the proposed project expressed concerns about, among other things, the project’s potential to cause significant environmental impacts, and the unfairness of siting the project in a community that already hosts most of San Francisco’s services for the unhoused. Nevertheless, Respondents approved the project without conducting any environmental review under the California Environmental Quality Act (CEQA) or complying with the Public Trust Doctrine. Moreover, Respondents approved the project on a site that is zoned for Open Space, which does not allow overnight vehicle encampments such as the project. Respondents’ project approvals should therefore be vacated.

3. The Bayview-Hunters Point district (Bayview) is a community of color that has been adversely impacted by a long history of government-sponsored racially discriminatory practices. Today, as a result of these practices, Bayview is overburdened by pollution, poverty, and a lack of resources such as access to greenspace and grocery stores. The proposed project is yet another example of the City’s practice of targeting Bayview for projects that other San Francisco neighborhoods do not want.

4. Petitioner Candlestick Heights Community Alliance (the Alliance) strongly believes that the City and County of San Francisco (the City) must immediately address the homelessness crisis. Bayview is already home to more than its fair share of resources for the unhoused. Bayview currently hosts the following resources, among others, for the unhoused:

the Bayshore Navigation Center, the Bayview SAFE Navigation Center, the Central Waterfront Navigation Center, a 120-vehicle RV site at Pier 94, the United Council of Human Services' Mother Brown's Dining Room, and the Catholic Charities Bayview Access Point. Other neighborhoods do not bear their fair share of the burden of addressing the City's homelessness crisis. For instance, while Bayview has three navigation centers, there are no navigation centers in the Sunset, Richmond, Marina, or Chinatown districts. The Alliance would like their community to be treated like other neighborhoods in the City.

5. In sum, Respondents' project approvals are unlawful because: (1) Respondents did not conduct environmental review under CEQA; (2) the project is inconsistent with the site's zoning requirements in violation of the Planning and Zoning Law; and (3) the project is incompatible with the state's duties under the Public Trust Doctrine. Thus, the project approvals should be vacated.

PARTIES

6. Petitioner and Plaintiff Candlestick Heights Community Alliance is an all-volunteer unincorporated association committed to making the Candlestick Heights and Bayview Hill neighborhoods safe, clean, and well-maintained places to live. To advance this goal, the Alliance advocates for fair and inclusive land use planning and protections from industrial and other polluting uses for Bayview communities.

7. The Alliance's members live in and around areas directly affected by the project. The group and its members are directly, adversely, and irreparably affected, and will continue to be prejudiced by the project approval, until and unless this Court provides the relief prayed for in this Petition and Complaint. Respondents' intention to construct and operate the project will result in significant impacts to members of the Alliance, including increased traffic, pollution, and noise. The project would also restrict access to public trust lands for members of the Alliance.

8. Members of the Alliance submitted written and oral comments to Respondents during the approval process, which are part of Respondents' record of their decisions to approve the project.

1 9. The maintenance and prosecution of this action will confer a substantial benefit on
2 the public by protecting the public from harms to the environment and public trust lands and
3 other harms alleged herein. This action will also ensure that Respondents abide by procedures
4 required by law.

5 10. Respondent City and County of San Francisco is a municipal corporation. The
6 City and all its officials, boards, commissions, departments, bureaus, and offices constitute a
7 single “local agency,” “public agency” or “lead agency” as those terms are used under the
8 California Environmental Quality Act. *See* San Francisco Admin. Code § 31.04(a). Thus, the
9 City has the principal responsibility for conducting environmental review of its actions. The
10 City has a duty to comply with state law, including CEQA and the Planning and Zoning Law.

11 11. Respondent State of California is a state of the United States. The State Lands
12 Commission is an agency of the State of California, created by the Legislature in the State Lands
13 Act of 1938. The State of California, acting by and through its State Lands Commission, has the
14 principal responsibility for conducting environmental review of its actions affecting public trust
15 land. The State Lands Commission has a duty to comply with state law, including CEQA. The
16 State Lands Commission has continuing oversight authority over tidelands, submerged lands,
17 and the beds of navigable lakes and rivers within its borders which are held subject to the public
18 trust for statewide public purposes, including commerce, navigation, fisheries, and other
19 recognized uses. *See* Pub. Res. Code §§ 6009 & 6009.1. This oversight authority applies to the
20 land on which the project is proposed. The State Lands Commission is headquartered in
21 Sacramento.

22 12. Respondent the State of California, acting by and through its California
23 Department of Parks and Recreation, controls and maintains California’s state park system and
24 has the authority to “administer, protect, develop, and interpret the property under its jurisdiction
25 for the use and enjoyment of the public.” Pub. Res. Code §§ 5001, 5003. This authority applies
26 to the land on which the project is proposed. The California Department of Parks and
27 Recreation has a duty to comply with state law, including CEQA. The California Department of
28 Parks and Recreation is headquartered in Sacramento.

13. The San Francisco Planning Department is named as Real Party in Interest because it is a “person” under Public Resources Code section 21065, subdivisions (b) and (c), as reflected in Respondents’ record of proceedings related to the project. *See* Pub. Res. Code § 21167.6.5.

14. The San Francisco Department of Homelessness and Supportive Housing is named as Real Party in Interest because it is a “person” under Public Resources Code section 21065, subdivisions (b) and (c), as reflected in Respondents’ record of proceedings related to the project. *See* Pub. Res. Code § 21167.6.5.

15. The Bay Area District of the California Department of Parks and Recreation is named as a Real Party in Interest because it is identified in the Notice of Exemption prepared by the California Department of Parks and Recreation. *See* Pub. Res. Code § 21167.6.5.

16. The Alliance is unaware of the true names and capacities of Respondents or Real Parties in Interest fictitiously named Does 1 through 20 and sues such Respondents or Real Parties in Interest by fictitious names. The Alliance is informed and believes, and on that basis alleges, that the fictitiously named Respondents or Real Parties in Interest are also responsible for the actions described in this Petition. When the true identities and capacities of these Respondents or Real Parties in interest have been determined, Petitioner will amend this petition, with leave of the Court if necessary, to insert such identities and capacities.

JURISDICTION AND VENUE

17. The Alliance realleges and incorporates by reference the preceding paragraphs in their entirety.

18. This Court has jurisdiction over the matters alleged herein pursuant to Code of Civil Procedure sections 526, 527, 1085, 1087, and 1094.5, and Public Resources Code sections 21168, 21168.5, and 21168.9.

19. Venue for this action properly lies in the Superior Court for the State of California in and for the County of San Francisco pursuant to Code of Civil Procedure section 394. The activities authorized by Respondents will occur and are occurring in and around the City of San Francisco, which is located in San Francisco County.

1 20. Respondents have taken final agency actions with respect to approving the project.

2 21. Respondents have a duty to comply with applicable state laws, including but not
3 limited to CEQA. The Alliance possesses no effective remedy to challenge the approvals at
4 issue in this action other than by means of this lawsuit.

5 22. On November 29, 2021, the Alliance complied with Public Resources Code
6 section 21167.5 by serving a written notice on Respondents and Real Parties regarding the
7 Alliance’s commencement of this action. Attached hereto as **Exhibit A** is the true and correct
8 copy of this written notice.

9 23. The Alliance is sending a copy of this Petition and Complaint to the California
10 Attorney General concurrently with filing, thereby complying with the requirements of Public
11 Resources Code section 21167.7 and Code of Civil Procedure section 388. Attached hereto as
12 **Exhibit B** is a true and correct copy of the letter transmitting the Petition and Complaint to the
13 Attorney General.

14 24. Pursuant to Public Resources Code section 21167.6(b)(2), the Alliance elects to
15 prepare the record of proceedings in this action. Concurrently with this Petition, the Alliance is
16 filing a notice of election to prepare the administrative record.

17 25. The Alliance has performed any and all conditions precedent to filing the instant
18 action and has exhausted any and all available administrative remedies to the extent possible and
19 required by law. The Alliance and its members submitted and made numerous objections
20 highlighting Respondents’ failure to comply with CEQA, the Planning and Zoning Law, the
21 Public Trust Doctrine, and other laws.

22 26. The Alliance has no plain, speedy, or adequate remedy in the course of ordinary
23 law unless this Court grants the requested writ of mandate to require Respondents to set aside
24 their project approvals. In the absence of such remedies, Respondents’ approvals will remain in
25 effect in violation of state law—and the environment, the Alliance, and residents and property
26 owners in Candlestick Heights, Bayview Hill, and nearby communities will be irreparably
27 harmed. No money damages or legal remedy could adequately compensate for that harm.
28

STATEMENT OF FACTS

The Proposed Project

27. The project is proposed to be located in the Bayview-Hunters Point district (Bayview). Bayview is a low-income community of color that is located in the southeastern part of San Francisco. Bayview consists of neighborhoods and communities including Candlestick Heights and Bayview Hill in which Petitioners live and work.

28. Bayview bears its fair share of social, economic, and environmental burdens—burdens that benefit the rest of San Francisco. Bayview has historically been home to African Americans who sought a better life, away from the Jim Crow South. Yet the discriminatory effects of racist land use planning, such as redlining, have endured in the neighborhood. For instance, Bayview has among the highest pollution burdens in the entire state. The numerous polluting facilities in Bayview—such as the many facilities producing construction materials—support the residents of the rest of the City.

29. The City, through its San Francisco Department of Homelessness and Supportive Housing, proposes to locate the project in Candlestick Point State Park (the State Park) on Parcel No. 4886009, near 500 Hunters Point Expressway.

30. The project is estimated to cost approximately \$13 million. Construction of the project would last about one year. The project would create up to 3,800 square feet of ground disturbance and excavate up to 537 cubic yards of material. The construction equipment would include excavators, compactors, pavers, and trenchers. This construction equipment would create significant noise impacts on the surrounding neighborhoods. The site would initially be opened to 50 vehicles before most of the permanent infrastructure work has been completed.

31. The project would accommodate approximately 155 vehicles, each provided with its own electrical connection. The project would have a total capacity of 232 individuals. The project would also be staffed 24 hours a day, seven days a week, with security and case managers. The project would provide restrooms and showers and offices for staff. The project would include approximately six case managers, two clinical supervisors, a site supervisor, and

1 security and janitorial staff onsite. Additional parking would be provided for staff, visitors, and
2 secondary client vehicles.

3 32. The project would include a meeting trailer, guard shack, porta potties, showers,
4 and laundry service along with temporary above-ground water and sewer services. New railing
5 would be placed on the edges of the driveway into the project. The project would also bring
6 new electrical service to the site, requiring new service boxes, an equipment pad, and
7 approximately 15 power poles. The project would repair or replace the existing water line
8 system.

9 33. The project would fence off public trust land, further diminishing residents' access
10 to public trust resources. Specifically, the project would construct approximately 2,000 linear
11 feet of six-foot chain-link perimeter fence with privacy slats and gates around the parcel. Fence
12 posts and signage would be supported by above-ground concrete footings.

13 34. The project would require construction of a new wastewater pumping station to
14 accommodate the new services that require sewer services, such as the shower trailers, restroom
15 trailers, and laundry trailers. The new wastewater pumping station would pump wastewater
16 through an underground four-inch pipe that connects to the City's sewer system on Gilman
17 Street. The pipe would include approximately 1,200 feet of pipe run. The ground disturbance
18 caused by these activities would be up to eight feet.

19 35. The parcel is within the Bayview-Hunters Point Redevelopment Area. Under the
20 Bayview-Hunters Point Redevelopment Plan, the proposed site is zoned as Open Space. The
21 principal uses for Open Space are parks and related recreational uses and facilities. A Vehicle
22 Triage Center for the unhoused is not compatible with the Open Space zone's principal park and
23 recreational uses.

24 36. As noted above, the project will be located in the State Park. The State Park is
25 sovereign public trust land under the jurisdiction of the State Lands Commission, which is
26 currently leased to the California Department of Parks and Recreation as a public recreation area
27 for the general public use under Lease No. PRC 6414.9 (the Lease). To accommodate the
28 project, the City and State Lands Commission authorized the Department of Homelessness and

1 Supportive Housing to sublet the premises from the California Department of Parks and
2 Recreation. However, the Lease states that the premises cannot be used for facilities or
3 structures that provide overnight accommodations to people. Thus, the approval of the sublease
4 is directly contrary to the Lease.

5 37. The proposed project is yet another example of the City's history of neglecting
6 Bayview's residents. The City has failed to address illegal dumping, burning, wastewater
7 discharges into the San Francisco Bay from encampments, and other significant impacts in and
8 around the State Park. Members of the Alliance have been asking the City to address these
9 problems—and the general dilapidation of the State Park—for many months. Nevertheless, the
10 City now proposes to locate the project in the State Park, further limiting residents' ability to use
11 and enjoy the State Park and the San Francisco Bay shoreline.

12 **The City's Approval of the Project**

13 38. In or around September 23, 2021, the Alliance and its counsel became aware that
14 the San Francisco Planning Department had issued a memorandum dated September 13, 2021,
15 which stated that the project is exempt from CEQA under Government Code sections 65660-
16 65668 (Assembly Bill 101). Counsel for the Alliance contacted the author of the memorandum,
17 Don Lewis, a Senior Environmental Planner for the Planning Department. Counsel asked Mr.
18 Lewis if the City contended that the memorandum is the formal Notice of Exemption for the
19 project, which would trigger a deadline to appeal the Notice of Exemption to the Board of
20 Supervisors. Mr. Lewis informed counsel for Petitioners that: "there is no CEQA exemption to
21 appeal. As stated in the [Assembly Bill] 101 determination memo, the Bayview VTC (Vehicle
22 Triage Center) project is not subject to CEQA. Therefore, the memo that we issued is not
23 appealable to the Board of Supervisors."

24 39. The City's incorrect determination as to the applicability of Government Code
25 sections 65662 had the effect of precluding any CEQA review or Conditional Use Permit
26 Review, thereby restricting opportunities for meaningful public participation and public
27 comments concerning the location and potential impacts of the proposed Vehicle Triage Center.
28

1 The City's error also precluded any public process to evaluate a potential variance or zoning
2 change at the site of the proposed project.

3 40. On October 19, 2021, Alliance members through counsel notified the City Board
4 of Supervisors in writing that the City's zoning determination was incorrect and that the
5 Bayview Hunters Point Redevelopment Plan properly governs the zoning and land uses of the
6 site.

7 41. On October 19, 2021, at the City's Board of Supervisors meeting, the City
8 considered a resolution to authorize the Department of Homelessness and Supportive Housing to
9 sublet the project site from the California Department of Parks and Recreation. Members of the
10 Alliance submitted written comments to the Board of Supervisors prior to the meeting. The
11 comments raised the same concerns set forth in this Petition. The agenda item was placed on the
12 Board of Supervisor's consent calendar, which precluded the opportunity for public comment
13 during the meeting. Although members of the Alliance and other residents were present at the
14 meeting and requested that the City give them an opportunity to voice their objections to the
15 project, the City flatly declined their requests to participate in the meeting.

16 42. The Board of Supervisors voted to approve the project without any discussion.
17 The City ignored the written comments submitted by members of the Alliance and other
18 residents. For example, the City did not address the fact that the project is inconsistent with the
19 parcel's zoning or that the CEQA exemptions are illegal.

20 43. Rather than conducting environmental review of the project and considering the
21 zoning violations, the City contends that the project is statutorily exempt from CEQA under
22 Government Code sections 65660-65668 (Assembly Bill 101). The City did not file a Notice of
23 Exemption for its conclusion that the project is statutorily exempt from CEQA. Assembly Bill
24 101 states that projects are not subject to CEQA when they are in an area zoned for mixed use
25 and "nonresidential zones permitting multifamily uses." Gov't Code § 65662. Here, the project
26 site is public trust land and is zoned for Open Space; multifamily uses are not allowed. Thus,
27 Assembly Bill 101 does not apply.
28

1 44. Shortly after voting to approve the project, the City suddenly withdrew plans to
2 develop a similar project for the unhoused in the whiter, more affluent Haight-Ashbury
3 Neighborhood.¹

4 **The California Department of Parks and Recreation’s Approval of the Project**

5 45. Respondent California Department of Parks and Recreation issued a Right of
6 Entry Permit and subsequent sublease to the City and County of San Francisco for the project.

7 46. The California Department of Parks and Recreation prepared a Notice of
8 Exemption arguing that the project is exempt from CEQA under the “Emergency Projects”
9 exemption. *See* 14 C.C.R. § 15269. The Notice of Exemption (which is posted on the
10 Department’s website and the Office of Planning and Research’s website) is undated.

11 47. The project does not meet the requirement for this exemption because the
12 California Department of Parks and Recreation has failed to show that the agency’s action is in
13 response to a statutorily defined “emergency,” meaning “fire, flood, earthquake, or other soil or
14 geologic movements, as well as such occurrences as riot, accident, or sabotage.” Pub. Res.
15 Code § 21060.3. Moreover, the encampment on Hunter’s Point Expressway is not a “sudden,
16 unexpected occurrence” as the encampment persisted for many months without any response
17 from the government. *See id.*

18 **The State Lands Commission’s Approval of the Project**

19 48. On October 21, 2021, the State Lands Commission considered a proposed action
20 to amend the Lease and support a sublease to the Department of Homelessness and Supportive
21 Housing for the purposes of implementing the project. According to the Commission’s staff
22 report, the Lease was proposed to be amended to “[a]uthorize the temporary use of an existing
23 paved parking lot and installation of public utilities for the development, operation, and
24 maintenance of a Low Barrier Navigation Center.” Members of the Alliance provided written
25 comments prior to the meeting which raised the same objections to the project set forth in this
26

27 ¹ San Francisco Chronicle, October 27, 2021, *S.F. nixes homeless drop-in center plan for vacant*
28 *former McDonald’s site in Haight*, available at <https://www.sfchronicle.com/bayarea/article/S-F-nixes-homeless-drop-in-center-plan-for-16568507.php>.

Petition. Members of the Alliance and counsel for the Alliance also expressed their concerns about the project during the meeting.

49. The State Lands Commission prepared a Notice of Exemption which is posted on the Office of Planning and Research's website. The Notice of Exemption is undated. Although on October 24, 2021, counsel for the Alliance submitted a Public Records Act request to the State Lands Commission seeking all documents related to the project, the Commission failed to provide the Notice of Exemption to counsel until November 23, 2021.

50. Despite Petitioner's comments, the State Lands Commission determined that the project is exempt from CEQA under Assembly Bill 101. As discussed above, this determination is incorrect because Assembly Bill 101 only applies to projects zoned for multifamily housing; it does not apply to projects in public trust lands that are zoned Open Space.

51. The State Lands Commission also found that the project qualifies for categorical exemptions under CEQA. Without explanation, the Commission found that the project is exempt under the "Existing Facilities" and "New Construction or Conversion of Small Structures" exemptions.

52. The project does not meet the requirement for the Existing Facilities exemption because it is a new project; it is not a modification to an existing project. *See* 14 C.C.R. § 15301. The proposed use of the site as a residence for hundreds of unhoused persons living in vehicles is entirely new and distinct from any previously approved use of the site for day parking to provide recreation access to the Bay coastline and a former boat dock.

53. The project does not meet the "Small Structures" exemption because it does not involve the installation of a "small" facility or minor modifications to the "exterior of [a] structure." *See* 14 C.C.R. § 15303. An approximately \$13 million project requiring the addition of offices, fences, electrical hook-ups, and a wastewater pumping station, as well as upgrading water and sewage lines, and providing services for approximately 155 vehicles for at least two years is not a "small structure" under this exemption.

54. The State Lands Commission found that the project would not conflict with the State's duty to preserve public trust land but acknowledged that use of public trust lands for an

1 encampment for unhoused people is unprecedented and would impede public access for
2 recreational use. Despite Petitioner's comments that the project would further impair their use
3 of the State Park, the Commission found that the project would not impair the public's use of
4 public trust land.

5 55. Approval of the project would violate the State's public trust duties because it
6 would restrict the public's use of a portion of the State Park. The proposed site is zoned for
7 Open Space. The State Park provides public access to the San Francisco Bay shoreline for the
8 disadvantaged neighborhoods surrounding the State Park. It is one of the few greenspaces
9 available to residents of the nearby communities. The project includes plans to fence the area to
10 restrict public access and limit access to residents, guests, and staff. In addition, the operation of
11 the project will foreseeably further limit the public's access to the State Park, as residents will be
12 unlikely to use the area surrounding the project due to increased noise, traffic, and pollution,
13 among other impacts. Because the proposed land use is more restrictive than the present use and
14 would impair the public's right to access trust lands, the project contravenes the State's public
15 trust duties.

16 56. Neither the City nor the State Lands Commission examined any alternative
17 locations for the project that would not impair the public right to access trust lands. Nor did the
18 State Lands Commission consider any other feasible measures to protect the public rights at
19 issue.

20 **FIRST CAUSE OF ACTION**

21 **Violations of the California Environmental Quality Act**

22 **(Against Respondents City and County of San Francisco, State Lands Commission, and** 23 **California Department of Parks and Recreation)**

24 57. Candlestick Heights Community Alliance realleges and incorporates by reference
25 the preceding paragraphs in their entirety.

26 58. CEQA is designed to ensure that government agencies incorporate the goal of
27 long-term protection of the environment into their decisions that may affect the environment.
28

CEQA applies to any discretionary action taken by an agency that may cause a reasonably foreseeable change in the environment.

59. In furtherance of its goal of environmental protection, CEQA requires that the lead agency prepare an Environmental Impact Report (EIR) for a project whenever substantial evidence in the record supports a fair argument that the project may have a significant impact on the environment. As the cornerstone of the CEQA process, the EIR must disclose and analyze a project's potentially significant environmental impacts. In addition, the EIR also must inform decision-makers and the public of feasible mitigation measures and alternative project designs or elements that would lessen or avoid the project's significant adverse environmental impacts.

60. CEQA also mandates that the lead agency adopt all feasible mitigation measures that would reduce or avoid any of the project's significant environmental impacts. If any of the project's significant impacts cannot be mitigated to a less-than-significant level, the project can be approved only if the agency finds that the project's benefits would outweigh its unavoidable impacts.

61. Under CEQA, all findings required for any agency's approval of a project must be legally adequate and supported by substantial evidence in the administrative record. CEQA further requires that an agency provide an explanation of how the evidence in the record supports the conclusions that the agency has reached.

62. Respondents City and County of San Francisco and State Lands Commission found that the project is exempt from CEQA under Assembly Bill 101, Government Code sections 65660-65668. However, Assembly Bill 101 only applies to projects when they are located in an area zoned for mixed use and "nonresidential zones permitting multifamily uses." Gov't Code § 65662. The project site is public trust land and is zoned for Open Space as established by the Bayview-Hunters Point Redevelopment Plan—it is not zoned mixed use and does not allow multifamily uses. Thus, Assembly Bill 101 does not exempt the project from CEQA.

63. Respondent State Lands Commission found that the project is exempt from CEQA under the "Existing Facilities" exemption, 14 C.C.R. § 15301. The project does not meet the

1 requirement for the Existing Facilities exemption because it is a new project—not a
2 modification to an existing project. The project requires the addition of new buildings and
3 electrical and sewer infrastructure, among other things. The site will be used to operate 24/7 as
4 a major new Vehicle Triage Center with approximately 155 vehicles and 232 residents, unlike
5 the previously existing daytime parking lot on public trust lands. Thus, the “Existing Facilities”
6 exemption does not apply.

7 64. Respondent State Lands Commission found that the project is exempt from CEQA
8 under the “New Construction or Conversion of Small Structures” exemption, 14 C.C.R.
9 § 15303. The project does not meet the requirement for the “New Construction or Conversion
10 of Small Structures” exemption because it does not involve the installation of a “small” facility
11 or minor modifications to the “exterior of [a] structure.” *See id.* A \$13 million project that
12 requires the construction of new offices, fences, upgrading water and sewage lines, and
13 providing 24/7 services for approximately 155 vehicles for at least two years does not qualify as
14 a “small structure” under this exemption. The proposed use of the structures is also
15 incompatible with the existing zoning for open space and recreational use. Thus, the “New
16 Construction or Conversion of Small Structures” exemption does not apply.

17 65. Respondent California Department of Parks and Recreation found that the product
18 is exempt from CEQA under the “Emergency Projects” exemption from CEQA, 14 C.C.R.
19 § 15269. The project does not meet the requirement for this exemption because the California
20 Department of Parks and Recreation has failed to show that the agency’s action is in response to
21 a statutorily defined “emergency,” meaning “fire, flood, earthquake, or other soil or geologic
22 movements, as well as such occurrences as riot, accident, or sabotage.” Pub. Res. Code
23 § 21060.3. Moreover, the encampment on Hunter’s Point Expressway is not a “sudden,
24 unexpected occurrence” as the encampment persisted for many months without any response
25 from the government—let alone a declaration of emergency. *See id.*

26 66. The findings made by City and County of San Francisco, State Lands
27 Commission, and California Department of Parks and Recreation asserting that the project is
28 exempt from CEQA constitute an abuse of discretion and failure to proceed in a manner

1 required by law. This abuse of discretion and failure to proceed in a manner required by law is
2 prejudicial. Thus, Respondents' decisions to approve the project must be set aside.

3 **SECOND CAUSE OF ACTION**

4 **Violations of the Planning and Zoning Law**

5 **(Against City and County of San Francisco)**

6 67. Candlestick Heights Community Alliance hereby realleges and incorporates by
7 reference the preceding paragraphs in their entirety.

8 68. The City and County of San Francisco's approval of the project violates its duties
9 under California's Planning and Zoning Law, Government Code sections 65000 *et seq.*

10 69. Under the Planning and Zoning Law, a local public agency may approve a
11 proposed land use only if it is consistent with the goals, policies, and objectives contained in a
12 General Plan, and with all applicable local zoning laws. This law also requires public notice and
13 comment to guarantee the right to due process respecting area zoning and land uses changes.

14 70. The project is inconsistent and incompatible with applicable goals, policies and
15 objectives of the San Francisco General Plan and San Francisco's zoning laws. The City and
16 County of San Francisco approved the project in Candlestick State Park on Parcel No. 4886009.
17 The City incorrectly found that the parcel is zoned "Public" under the City's Planning Code.
18 However, the parcel is within the Bayview-Hunters Point Redevelopment Area on public trust
19 land. The land is therefore governed by the Bayview-Hunters Point Redevelopment Plan.
20 Under the Redevelopment Plan, the proposed site is zoned as "Open Space." The principal uses
21 for Open Space public trust land are parks and related recreational uses and facilities. A major
22 Vehicle Triage Center for the unhoused is inconsistent and incompatible with the Open Space
23 zone's principal park and recreational uses. The City also failed to make any consistency
24 determinations as required by the Redevelopment Plan.

25 71. In failing to correctly identify the zoning designations and applicability of the
26 Redevelopment Plan, the City deprived members of the Alliance and other local citizens from
27 public participation and the opportunity to comment on a modification of existing zoning and
28 land use designations in their community.

72. The City therefore abused its discretion and failed to proceed in the manner required by the State Planning and Zoning Law by approving the project when the project is inconsistent and incompatible with the General Plan and local zoning laws. The City's abuse of discretion and failure to proceed in the manner required by law is prejudicial. Thus, the project approval must be set aside.

THIRD CAUSE OF ACTION
Violation of California's Public Trust Doctrine
(Against State Lands Commission)

73. Candlestick Heights Community Alliance hereby realleges and incorporates by reference the preceding paragraphs in their entirety.

74. The State Lands Commission’s approval of the sublease of the project site to the Department of Homelessness and Supportive Housing violates the Commission’s duties under the Public Trust Doctrine. The Commission has an “affirmative duty to take the public trust into account . . . and to protect public trust uses whenever feasible.” *National Audubon Society v. Superior Court*, 33 Cal.3d 419, 446 (1983). While public trust uses “are sufficiently flexible to encompass changing public needs,” not all public interests are compatible with public trust uses. *San Francisco Baykeeper, Inc. v. State Lands Comm’n*, 242 Cal. App. 4th 202, 235 (2015). Any reallocation of trust lands by the Commission requires examination of “whether the [proposed] use would be more restricted than the present use or would elevate the interests of private parties over the public interest.” *Zack’s, Inc. v. City of Sausalito*, 165 Cal. App. 4th 1163, 1182 (2008) (citing *Marks v. Whitney*, 6 Cal.3d 251, 259 (1971)). Moreover, reallocation of public trust lands should be limited to uses that do not conflict with trust purposes. *Id.*

75. Approval of the project would violate the Commission's public trust duties because it would restrict the public's use of a portion of the State Park. The proposed site is currently designated Open Space. The project site and adjacent area surrounding the project site provides access to the San Francisco Bay shoreline for nearby residents. The project would require fencing the site to restrict public access and limit access to project clients (unhoused residents), their guests, and staff, which would eliminate public access and use of the area for

recreational purposes. The project also has the potential to create significant impacts on traffic, noise, and pollution—which would further restrict access to, and enjoyment of, trust resources. Because the proposed use is more restrictive than the present use and would impair the public’s access to trust lands, the Commission’s approval of the project violates its duties under the Public Trust Doctrine.

76. The Commission has similarly violated its duty under the Public Trust Doctrine “to protect public trust uses whenever feasible.” *National Audubon*, 33 Cal.3d at 446. Neither the City nor the Commission examined any alternative locations for the project—locations that would not impair the public right to access trust lands. Nor did the Commission consider any other feasible measures to protect the public rights at issue. That the proposed lease is of limited duration does not diminish the fact that public trust uses will be impaired for the entirety of this duration. The Commission did not explore feasible alternatives, such as locating the project in a neighborhood that does not already have three other Navigation Centers, or locating the project on a parcel that does not impact public trust resources. These glaring omissions contravene the Commission’s duties under the Public Trust Doctrine.

77. The Commission abused its discretion and failed to proceed in the manner required by the Public Trust Doctrine by approving the sublease to the Department of Homelessness and Supportive Housing when the project is inconsistent and incompatible with the Commission's duties under the Public Trust Doctrine. The Commission's abuse of discretion and failure to proceed in the manner required by law is prejudicial. Thus, Respondents' project approvals must be set aside.

PRAYER FOR RELIEF

WHEREFORE, Candlestick Heights Community Alliance prays for judgment as follows:

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside their decisions to authorize the Department of Homelessness and Supportive Housing to sublet the project site from the California Department of Parks and Recreation and all associated project approvals;

2. For alternative and peremptory writs of mandate directing Respondents to comply with the requirements of CEQA and the CEQA Guidelines and take any other action as required by Public Resources Code section 21168.9;

3. For alternative and peremptory writs of mandate directing Respondents to comply with the requirements of the Planning and Zoning Laws and to provide for meaningful public participation concerning any modification of or proposed variance from existing zoning and land use designations;

4. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents and their representative agents, servants, and employees, and all others acting in concert with Respondents on their behalf, from taking any action to construct, operate, or otherwise implement the project pending full compliance with the requirements of CEQA, the CEQA Guidelines, and State law;

5. For costs of the suit;

6. For an order awarding Candlestick Heights Community Alliance its attorneys' fees under Code of Civil Procedure section 1021.5 and other applicable authority; and

7. For such other and further relief as the Court deems just and proper.

DATED: November 29, 2021

ENVIRONMENTAL LAW AND JUSTICE
CLINIC

By: /s/ Lucas Williams

LUCAS WILLIAMS

Attorneys for Petitioner and Plaintiff
CANDLESTICK HEIGHTS COMMUNITY
ALLIANCE

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VERIFICATION

I, Timothy Alan Simon, am a member of the Candlestick Heights Community Alliance, Petitioner and Plaintiff in this action. I am authorized to execute this verification on Candlestick Heights Community Alliance's behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive Relief (the Petition). I am familiar with its contents. All facts alleged in the Petition not otherwise supported by exhibits or other documents are of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California on November 29, 2021.

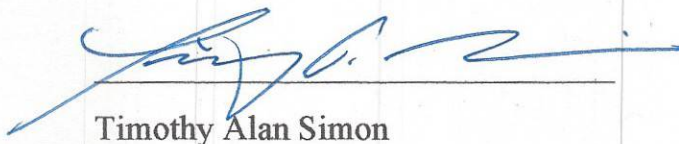

Timothy Alan Simon

EXHIBIT A

GOLDEN GATE UNIVERSITY
— **SCHOOL OF LAW** —
ENVIRONMENTAL LAW AND JUSTICE CLINIC

November 29, 2021

By Email and U.S. Priority Mail

Office of the San Francisco County Clerk
City Hall, Room 168
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4678
county.clerk@sfgov.org

**Re: Notice of Commencement of CEQA Litigation Challenging the City's
Approval of the Bayview Vehicle Triage Center Without Conducting
Environmental Review**

Dear County Clerk:

This letter is to notify you that Candlestick Heights Community Alliance will file suit against the City and County of San Francisco (the City) for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and state law in approving the Bayview Vehicle Triage Center without conducting environmental review and in making associated approvals. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, under Public Resources Code section 21167.6, the record of proceedings for the City's actions includes, among other items, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all e-mails and other internal communications related to the Bayview Vehicle Triage Center and associated approvals are part of the administrative record for the lawsuit to be filed by the Candlestick Heights Community Alliance, the City may not destroy or delete such documents prior to preparation of the record in this case.

Respectfully,

Environmental Law and Justice Clinic



Lucas Williams

GOLDEN GATE UNIVERSITY
—SCHOOL OF LAW—
ENVIRONMENTAL LAW AND JUSTICE CLINIC

November 29, 2021

By Email and U.S. Priority Mail

Jennifer Lucchesi, Executive Officer (Jennifer.Lucchesi@slc.ca.gov)
Seth Blackmon, Chief Counsel (Seth.Blackmon@slc.ca.gov)
State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento CA 95825

Re: Notice of Commencement of CEQA Litigation Challenging the State Lands Commission's Approval of the Bayview Vehicle Triage Center Without Conducting Environmental Review

Dear Ms. Lucchesi and Mr. Blackmon:

This letter is to notify you that Candlestick Heights Community Alliance will file suit against the State Lands Commission (the Commission) for failure to observe the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and state law in approving the Bayview Vehicle Triage Center without conducting environmental review and in making associated approvals. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, under Public Resources Code section 21167.6, the record of proceedings for the Commission's actions includes, among other items, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all e-mails and other internal communications related to the Bayview Vehicle Triage Center and associated approvals are part of the administrative record for the lawsuit to be filed by the Candlestick Heights Community Alliance, the Commission may not destroy or delete such documents prior to preparation of the record in this case.

Respectfully,

Environmental Law and Justice Clinic



Lucas Williams

GOLDEN GATE UNIVERSITY
—**SCHOOL OF LAW**—
ENVIRONMENTAL LAW AND JUSTICE CLINIC

November 29, 2021

By Email and U.S. Priority Mail

Department of Parks and Recreation
715 P Street
Sacramento, CA 95814
info@parks.ca.gov

Department of Parks and Recreation, Bay Area District
845 Casa Grande Road
Petaluma, CA 94954
Cyndy.Shafer@parks.ca.gov

Re: Notice of Commencement of CEQA Litigation Challenging the Department of Parks and Recreation's Approval of the Bayview Vehicle Triage Center Without Conducting Environmental Review

Dear Department of Parks and Recreation:

This letter is to notify you that Candlestick Heights Community Alliance will file suit against the Department of Parks and Recreation (Department) for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and state law in approving the Bayview Vehicle Triage Center without conducting environmental review and in making associated approvals. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, under Public Resources Code section 21167.6, the record of proceedings for the Department's actions includes, among other items, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all e-mails and other internal communications related to the Bayview Vehicle Triage Center and associated approvals are part of the administrative record for the lawsuit to be filed by the Candlestick Heights Community Alliance, the Department may not destroy or delete such documents prior to preparation of the record in this case.

Respectfully,

Environmental Law and Justice Clinic

A handwritten signature in blue ink, appearing to be 'L. Williams', with a long horizontal flourish extending to the right.

Lucas Williams

GOLDEN GATE UNIVERSITY
—SCHOOL OF LAW—
ENVIRONMENTAL LAW AND JUSTICE CLINIC

November 29, 2021

By Email and U.S. Priority Mail

Don Lewis, Senior Environmental Planner (don.lewis@sfgov.org)
San Francisco Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Re: Notice of Commencement of CEQA Litigation Challenging the San Francisco Planning Department's Approval of the Bayview Vehicle Triage Center Without Conducting Environmental Review

Dear Mr. Lewis:

This letter is to notify you that Candlestick Heights Community Alliance will file suit against the San Francisco Planning Department (the Department) for failure to observe the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and state law in approving the Bayview Vehicle Triage Center without conducting environmental review and in making associated approvals. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, under Public Resources Code section 21167.6, the record of proceedings for the Department's actions includes, among other items, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all e-mails and other internal communications related to the Bayview Vehicle Triage Center and associated approvals are part of the administrative record for the lawsuit to be filed by the Candlestick Heights Community Alliance, the Department may not destroy or delete such documents prior to preparation of the record in this case.

Respectfully,

Environmental Law and Justice Clinic



Lucas Williams

GOLDEN GATE UNIVERSITY
—**SCHOOL OF LAW**—
ENVIRONMENTAL LAW AND JUSTICE CLINIC

November 29, 2021

By Email and U.S. Priority Mail

Shireen McSpadden, Executive Director
San Francisco Department of Homelessness and Supportive Housing
440 Turk Street
San Francisco, CA 94102
dhsh@sfgov.org

**Re: Notice of Commencement of CEQA Litigation Challenging the Department's
Approval of the Bayview Vehicle Triage Center Without Conducting
Environmental Review**

Dear Ms. McSpadden:

This letter is to notify you that Candlestick Heights Community Alliance will file suit against the San Francisco Department of Homelessness and Supportive Housing (the Department) for failure to observe the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and state law in approving the Bayview Vehicle Triage Center without conducting environmental review and in making associated approvals. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, under Public Resources Code section 21167.6, the record of proceedings for the Department's actions includes, among other items, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all e-mails and other internal communications related to the Bayview Vehicle Triage Center and associated approvals are part of the administrative record for the lawsuit to be filed by the Candlestick Heights Community Alliance, the Department may not destroy or delete such documents prior to preparation of the record in this case.

Respectfully,

Environmental Law and Justice Clinic



Lucas Williams

PROOF OF SERVICE

Candlestick Heights Community Alliance v. City and County of San Francisco, et al.
San Francisco County Superior Court

At the time of service, I was over 18 years of age and not a party to this action. I am in the County of Alameda, State of California. My address is 356 49th Street, Oakland, CA 94609.

On November 29, 2021, I served a true copy of the following document (addressed to each party individually):

NOTICE OF COMMENCEMENT OF CEQA LITIGATION

on the following parties:

Don Lewis, Senior Environmental Planner
San Francisco Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
don.lewis@sfgov.org

Office of the San Francisco County Clerk
City Hall, Room 168
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4678
county.clerk@sfgov.org

Shireen McSpadden, Executive Director
San Francisco Department of Homelessness and Supportive Housing
440 Turk Street
San Francisco, CA 94102
dhsh@sfgov.org

Jennifer Lucchesi, Executive Officer
Seth Blackmon, Chief Counsel
State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento CA 95825
Jennifer.Lucchesi@slc.ca.gov
Seth.Blackmon@slc.ca.gov

Department of Parks and Recreation
715 P Street
Sacramento, CA 95814
info@parks.ca.gov

Cyndy Shafer
Department of Parks and Recreation, Bay Area District
845 Casa Grande Road
Petaluma, CA 94954
Cyndy.Shafer@parks.ca.gov

BY U.S. PRIORITY MAIL: I caused said documents to be enclosed in a sealed U.S. Priority Mail envelope or package addressed to the person at the address listed above and caused the envelope to be placed for collection and mailing, following our ordinary business practices. I am readily familiar with my firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed Priority Mail envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from the e-mail address luwilliams@ggu.edu to the person at the email address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on November 29, 2021, at San Francisco, California.



Lucas Williams

EXHIBIT B

GOLDEN GATE UNIVERSITY
—SCHOOL OF LAW—
ENVIRONMENTAL LAW AND JUSTICE CLINIC

November 29, 2021

By U.S. Priority Mail

Attorney General Rob Bonta
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Re: Notice of Filing CEQA Litigation: *Candlestick Heights Community Alliance v. City and County of San Francisco, et al.*

Dear Attorney General Bonta:

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive Relief in the above-titled action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388.

Respectfully,

Environmental Law and Justice Clinic



Lucas Williams

Encl.: Verified Petition for Writ of Mandate and Complaint for Injunctive Relief