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7 Attorney for Petitioners and Plaintiffs Sierra Club *et al.*

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**Filed via fax**

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED DIVISION**

SIERRA CLUB, a California Nonprofit Corporation and GOLDEN GATE AUDUBON SOCIETY, a California nonprofit corporation,

Petitioners and Plaintiffs

v.

CITY AND COUNTY OF SAN FRANCISCO, a subdivision of the State of California; BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public entity; and DOES 1-20 inclusive,

Respondents and Defendants

CP DEVELOPMENT COMPANY, LP, a California limited liability partnership and DOES 21-40 inclusive,

Real Parties in Interest

No.

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

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[Public Resource Code §21168]  
Action filed under the California Environmental Quality Act

As causes of action against Respondents and Defendants CITY AND COUNTY OF SAN FRANCISCO (hereinafter, "CITY") and BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO (hereinafter, "BOS" and the foregoing, collectively

1 “RESPONDENTS” Petitioners and Plaintiffs SIERRA CLUB (hereinafter, “CLUB”) and  
2 GOLDEN GATE AUDUBON SOCIETY (hereinafter, “AUDUBON” and the foregoing,  
3 collectively, “PETITIONERS”) allege as follows:

4 **INTRODUCTION**

5 1. This lawsuit challenges RESPONDENTS’ approval of the Candlestick Point Hunters  
6 Point Shipyard Phase II Project (hereinafter, “Project”), their certification of the Final  
7 Environmental Impact Report (“FEIR”) for the Project, and their adoption of findings in support  
8 of said approvals. PETITIONERS allege that these approvals were made in violation of  
9 provisions of the California Environmental Quality Act (hereinafter, “CEQA”) and were abuses  
10 of RESPONDENTS’ discretion.

11 2. More specifically, PETITIONERS allege that the FEIR for the Project was defective and  
12 failed to satisfy the requirements of CEQA in that:

13 a. The FEIR failed to identify or underestimated the significance of environmental  
14 impacts associated with the project, and specifically impacts on wildlife and wildlife  
15 habitat, noise impacts, air quality impacts, visual and aesthetic impacts, impacts on public  
16 parklands, impacts on public transit, secondary impacts related to necessary project  
17 components not analyzed in the FEIR, and toxics impacts related to the clean-up of  
18 pollutants at the project site.

19 b. The FEIR failed to address the alternative proposed by ARC Ecology which provides  
20 from a bus rapid transit route around Yosemite Slough, eliminates the proposed bridge  
21 over the slough, and has superior characteristics compared to the no-bridge alternative  
22 analyzed in the FEIR.

23 c. The FEIR failed to provide adequate responses to comments on the Draft  
24 Environmental Impact Report (“DEIR”) by PETITIONERS and others.

25 3. In addition, RESPONDENTS violated CEQA in that the findings adopted by  
26 RESPONDENTS in support of approval of the Project were not supported by substantial  
27 evidence in the record.

1 4. Petitioners seek this court’s peremptory writ of mandate ordering Respondents to rescind  
2 their approvals for the Project and their certification of the FEIR for the Project. Petitioners  
3 further seek this court’s declaration that Respondents’ actions in approving the Project and  
4 certifying its FEIR were violations of CEQA and injunctive relief directed against Respondents,  
5 Real Parties in Interest, and all those acting in concert with them to prohibit them from  
6 proceeding forward with the Project. Finally, PETITIONERS, acting in the public interest, seek  
7 an award of costs and of attorneys’ fees under Code of Civil Procedure §1021.5 or other  
8 applicable authority.

9 **PARTIES**

10 4. Petitioner and Plaintiff SIERRA CLUB is a California non-profit membership  
11 organization incorporated under the laws of California in 1892. The purposes of the Sierra Club  
12 are to educate and enlist humanity to protect and restore the quality of the natural and human  
13 environment, to practice and promote the responsible use of the earth’s ecosystems and  
14 resources, to explore, enjoy and protect the wild places of the earth, and to use all lawful means  
15 to achieve these ends. The CLUB currently has approximately 500,000 members throughout the  
16 world, 60,000 of whom live in the San Francisco Bay Area. Members of the CLUB, and  
17 specifically of the San Francisco Bay Chapter, live and work in, travel through, and enjoy  
18 recreational, educational, and conservation activities in and around the City and County of San  
19 Francisco, including the Hunters Point and Candlestick Point areas. These members have a  
20 particular interest in the protection and preservation of the environmental values of these areas,  
21 including wildlife habitat, air quality, visual, scenic, and parklands values, and in the well-being  
22 of those living, working, and recreating in and near these areas. The Club and its members have  
23 a direct and beneficial interest in ensuring that RESPONDENTS comply with CEQA and will be  
24 adversely affected by the environmental damage that will result from RESPONDENTS’ failure  
25 to comply with CEQA. The CLUB’s national executive committee has authorized the filing of  
26 this action on behalf of its San Francisco Bay Chapter and its members.

1 5. Petitioner and Plaintiff GOLDEN GATE AUDUBON SOCIETY is a California nonprofit  
2 corporation with a membership residing in and around the San Francisco Bay Area, including  
3 specifically the City and County of San Francisco. AUDUBON's members live and work in,  
4 travel through, and enjoy recreational, educational, and conservation activities in and around the  
5 City and County of San Francisco, including the Hunters Point and Candlestick Point areas.  
6 These members have a particular interest in the protection and preservation of the environmental  
7 values of these areas, including wildlife habitat, air quality, visual, scenic, and parklands values,  
8 and in the well-being of those living, working, and recreating in and near these areas. Audubon  
9 and its members have a direct and beneficial interest in ensuring that RESPONDENTS comply  
10 with CEQA and will be adversely affected by the environmental damage that will result from  
11 RESPONDENTS' failure to comply with CEQA. AUDUBON's Board of directors has  
12 authorized the filing of this action on its behalf and that of its members.

13 6. PETITIONERS, acting either directly or through their authorized representatives,  
14 submitted written and oral comments to RESPONDENTS objecting to the Project, and  
15 specifically to its violations of CEQA as set forth herein.

16 7. This action is for the purpose of enforcing important public rights and policies of the  
17 State of California. It is brought to ensure that approvals made by RESPONDENTS are made  
18 consonant with CEQA and the important public policies of information disclosure and  
19 environmental protection that it promotes. The prosecution of this action will confer a  
20 substantial benefit on members of the public, and specifically on the citizens of the City and  
21 County of San Francisco and of surrounding areas by enforcing CEQA and preventing  
22 environmental harm. PETITIONERS will receive no special financial benefit from the  
23 successful prosecution of this action. In this action, PETITIONERS are acting as private  
24 attorneys general to protect these public rights and policies. As such, PETITIONERS are  
25 entitled to recover their reasonable attorneys' fees under C.C.P. §1021.5

26 8. Respondent and Defendant CITY AND COUNTY OF SAN FRANCISCO is a legal  
27 subdivision of the State of California, established and operating under the laws of the State of  
28 California. CITY was the lead agency under CEQA for the Project and is responsible for

1 ensuring compliance with the mandates of CEQA. CITY directed the preparation of the FEIR  
2 for the Project.

3 9. Respondent and Defendant SAN FRANCISCO BOARD OF SUPERVISORS is the duly  
4 elected legislative and governing body for the CITY. BOS was ultimately responsible for  
5 approving the Project and certifying that its FEIR was adequate under CEQA.

6 10. The true names and capacities of DOES 1-20 are unknown to PETITIONERS at this  
7 time; however PETITIONERS allege on information and belief that each party named as DOE is  
8 responsible for the acts and omissions of each of the other respondents. Therefore  
9 PETITIONERS sue such Parties by such fictitious names, and will ask leave of the Court to  
10 amend this Petition by inserting the true names and capacities of said Does when ascertained.

11 11. Respondent and Defendant REDEVELOPMENT AGENCY OF THE CITY AND  
12 COUNTY OF SAN FRANCISCO (hereinafter, "AGENCY") is a community redevelopment  
13 agency organized and existing under the California Community Redevelopment Law. The land  
14 involved in the Project lies within the jurisdiction of the AGENCY. CITY and AGENCY agreed  
15 that AGENCY would be co-lead agency for environmental review of the Project. The AGENCY  
16 also sought and is a party to the approvals being challenged in this action.

17 12. Petitioner is informed and believes, and on that basis alleges, that real party in interest CP  
18 DEVELOPMENT COMPANY, LP (hereinafter, "CP" and, together with DOES 21-40,  
19 collectively "REAL PARTIES") is a Delaware Limited Partnership. CP, along with AGENCY,  
20 sought and received the approvals from RESPONDENTS that are the subject of this action.

21 13. The true names and capacities of DOES 21-40 are unknown to PETITIONERS at this  
22 time; however PETITIONERS allege on information and belief that each such party named as  
23 DOE has some interest in the subject matter of this action. Therefore PETITIONERS sue such  
24 Parties by such fictitious names, and will ask leave of the Court to amend this Petition by  
25 inserting the true names and capacities of said Does when ascertained.

## 26 **THE PROJECT**

27 14. The Project is a proposal to assemble and develop or redevelop approximately 702 acres  
28 of property in the southeastern portion of San Francisco. The Project would include 10,500

1 residential housing units, approximately 327 to 336 acres of new and improved public park and  
2 open space area, 885,000 square feet of regional and neighborhood-serving retail space,  
3 approximately 2.65 million square feet of commercial, light-industrial, research and  
4 development, and office space, a hotel, a 10,000 seat arena on Candlestick Point, a 300 slip  
5 marina, 255,000 square feet of new and renovated artist studio space, and 100,000 square feet of  
6 space for community uses, and new public and community facilities, as well as improved land  
7 and supporting infrastructure for a new professional football stadium or, in the alternative, an  
8 additional 500,000 to 2.5 million square feet of commercial development if the stadium is not  
9 constructed. The Project also includes a new 40-foot wide bridge over a wetlands restoration  
10 area of Yosemite Slough that will be used for a high-frequency bus rapid transit route to/from the  
11 Project, with provisions for the bridge's eventual widening to 80 feet wide if the stadium is  
12 constructed.

13 15. Areas included in the Project include parts of the former Hunters Point Navy Shipyard  
14 that contain extensive deposits of toxic materials including known carcinogens and heavy  
15 metals. Plans for the eventual clean-up of these areas and disposal of their large deposits of toxic  
16 materials remain as yet less than fully defined.

17 16. The Project also includes other areas that are currently part of Candlestick Point State  
18 Park, but which are proposed to be transferred into private ownership, thereby reducing the  
19 physical extent of the park.

20 17. While the Project includes plans for adding a bus rapid transit line, the Project will still  
21 be accessed primarily by private automobiles, increasing congestion in the area as well as  
22 increasing the production of local and regional air pollutants as well as greenhouse gases.

23 18. Despite the enormous magnitude of the Project and its potential impacts,  
24 RESPONDENTS proceeded directly to project-level environmental review for the Project,  
25 meaning that, unless the Project is substantially changed, there will be no further environmental  
26 review for the Project or any of its components before they are constructed.

## PROJECT HISTORY

19. On or about August 27, 2007, CP applied to the CITY for environmental review of the Project.

20. On or about September 1, 2007, CITY published notice that it had determined that an EIR was required for the Project.

21. On or about September 17 and September 25, 2007, CITY and AGENCY held a joint public scoping session for the environmental review of the Project. PETITIONERS and others submitted written and oral comments on the scope of the EIR.

22. On or about November 10, 2009, CITY first published a Notice of Availability for the DEIR for the Project. On or about November 12, 2009, CITY filed a Notice of Completion for the DEIR with the State Office of Planning and Research.

23. One or about December 15, 2009 and January 5, 2010, the AGENCY held a noticed public hearing on the DEIR to receive public comments. On or about December 17, 2009, CITY held a noticed public hearing for the same purpose. Written comments were also received by both CITY and AGENCY until on or about January 12, 2010. PETITIONERS and others submitted extensive comments, both written and oral, on the DEIR, identifying deficiencies in that document and in the environmental review process.

24. On or about May 13, 2010 CITY and AGENCY jointly released the FEIR for the Project, including a comments and responses document purporting to respond to all comments received on the DEIR.

25. On or about June 3, 2010 the CITY's Planning Commission and the AGENCY Commission held a joint public hearing to consider the Project and its FEIR. At that hearing Petitioners and others raised their concerns and objections about the adequacy of the FEIR and of the environmental review process as well as their opposition to the Project as proposed. Despite these concerns and objections, the CITY Planning Commission and AGENCY Commission narrowly voted to certify the FEIR and granted various approvals for the Project.

26. On or about June 21, 2010, PETITIONERS and others filed appeals of the approvals with the Clerk of the BOS.

1 27. On or about July 23, 2010, the BOS held a public hearing on the appeals of  
2 PETITIONERS and other. PETITIONERS and others presented oral testimony and written  
3 evidence in support of their appeals. Prior to the close of the public hearing, PETITIONERS and  
4 others raised each of the allegations of CEQA violations that are set forth in this Petition and  
5 Complaint. At the conclusion of the public hearing, The BOS voted to deny the appeals, certify  
6 the FEIR and affirm the previously-granted Project approvals.

7 28. On or about August 4, 2010, CITY and AGENCY filed a notice of determination for the  
8 Project with the clerk of the City and County of San Francisco.

### 9 **PRELIMINARY ALLEGATIONS**

10 29. PETITIONERS have performed any and all conditions precedent to the filing of this  
11 petition and complaint and have fully exhausted their administrative remedies to the extent  
12 required by law. Petitioners, other interested groups, public agencies and members of the public  
13 raised each of the deficiencies set forth in this petition and complaint to RESPONDENTS prior  
14 to the close of the public hearing on the Project. PETITIONERS satisfied the requirements of  
15 Public Resources Code §21177 by presenting their objections to the Project to RESPONDENTS  
16 prior to the close of the public hearing on the Project.

17 30. On August 28, 2010, PETITIONERS, through their legal counsel, sent to  
18 RESPONDENTS, via e-mail and U.S. mail, notice of their intent to pursue legal action against  
19 RESPONDENTS under the California Environmental Quality Act pursuant to Public Resources  
20 Code §21167.5. A copy of that notice, with proof of service, is attached hereto as Exhibit A.

21 31. PETITIONERS, through their legal counsel, have provided notice of this action to the  
22 California Attorney General pursuant to Public Resources Code §21167.7 and Code of Civil  
23 Procedure §388. A copy of that notice, with proof of service, is attached hereto as Exhibit B.

24 32. PETITIONERS have complied with Public Resources Code §21167.6(a) by filing  
25 herewith a request to RESPONDENTS for preparation of the administrative record.

26 33. PETITIONERS have complied with the applicable statute of limitations under Public  
27 Resources Code §21167 by filing this action within thirty days of the filing by RESPONDENTS  
28 of a notice of determination.

1 34. PETITIONERS have no plain speedy or adequate remedy in the ordinary course of the  
2 law, in that if RESPONDENTS' determination to approve the Project involved herein is not  
3 reversed and RESPONDENTS and REAL PARTIES are not enjoined from moving forward  
4 towards implementing that Project, PETITIONERS and the public will be irreparably harmed  
5 through the construction of the Project without proper consideration and mitigation or avoidance  
6 of the environmental impacts that would result. As a result, significant environmental damage  
7 will occur, for which money damages or other legal remedy could not provide adequate  
8 compensation.

9 **CHARGING ALLEGATIONS**

10 **FIRST CAUSE OF ACTION – INADEQUATE EIR (VIOLATION OF CEQA)**

11 35. PETITIONERS hereby reallege Paragraphs 1-22 inclusive and incorporate them herein  
12 by this reference.

13 36. RESPONDENTS CITY and AGENCY are, jointly, the lead agency for the Project under  
14 CEQA.

15 37. As lead agencies, CITY and AGENCY had a duty to prepare an EIR that analyzed the  
16 Project's potential environmental impacts, identified the Project's potentially significant impacts  
17 and, for each significant impact, identified, to the extent possible, feasible mitigation measures  
18 that would reduce that impact to a level of insignificance.

19 38. CITY and AGENCY also had a duty under CEQ to ensure that the FEIR considered a  
20 reasonable range of feasible alternatives that could avoid or significantly reduce one or more of  
21 the Project's significant impacts, and that the FEIR provided adequate responses to all comments  
22 received on the DEIR during the comment period.

23 39. During the comment period, PETITIONERS and others submitted written and oral  
24 comments on the DEIR identifying numerous deficiencies in the DEIR. RESPONDENTS failed  
25 to adequately address these issues, as set forth in comment letters on the Final EIR, copies of  
26 which are attached hereto as Exhibit C and incorporated herein by this reference. The defects in  
27 the FEIR and in other approval documents are set forth in greater detail below.

1 COUNT NUMBER ONE – Failure to identify significant impacts:

2 40. RESPONDENTS violated CEQA by preparing and certifying a FEIR for the Project that  
3 failed to properly identify significant impacts of the Project.

4 41. Specifically, the FEIR was inadequate and improperly certified under CEQA for failing  
5 to identify as significant or understating the significance of the Project’s wildlife and wildlife  
6 habitat, special aquatic site, visual and aesthetic, parks and recreation, wetlands, public transit,  
7 toxic materials, noise, light and glare, and land use impacts.

8 COUNT NUMBER TWO – Failure to consider an adequate range of alternatives:

9 42. RESPONDENTS violated CEQA by preparing and certifying a FEIR for the Project that  
10 failed to consider and analyze an adequate range of alternatives to the Project that could have  
11 feasibly avoided or reduced one or more of the Project’s significant environmental impacts.

12 43. In particular, the FEIR failed to provide an adequate analysis of an alternative that  
13 avoided constructing a bridge over Yosemite Slough by instead routing the bus rapid transit  
14 route around the slough over existing roadway. The analysis provided in the FEIR erroneously  
15 and significantly overestimated the detrimental effect on ridership of going around the slough,  
16 and, based on that erroneous analysis, erroneously rejected the alternative as infeasible.

17 44. The FEIR failed to provide any analysis or consideration of another alternative proposal,  
18 submitted by ARC Ecology, that would have used a more efficient routing around the slough,  
19 thereby further decreasing the loss of time and ridership and making it even less defensible to  
20 reject the alternative as infeasible.

21 COUNT NUMBER THREE – Failure to adequately respond to comments:

22 45. The FEIR was deficient and in violation of CEQA for failing to provide good-faith  
23 reasoned responses, supported by substantial evidence in the record, to all comments received on  
24 the DEIR. In particular, the FEIR failed to provide adequate responses to the comment letters  
25 submitted by PETITIONERS and failed to provide any response to the comment submitted by  
26 ARC Ecology proposing an improved alternative routing for the bus rapid transit around  
27 Yosemite Slough.

1 46. RESPONDENTS abused their discretion and failed to proceed in the manner prescribed  
2 by law by certifying the FEIR and approving the Project when the FEIR failed to satisfy the  
3 requirements of CEQA as set forth above.

4 **SECOND CAUSE OF ACTION**  
5 **VIOLATION OF CEQA – FINDINGS NOT SUPPORTED BY THE EVIDENCE.**

6 47. PETITIONERS hereby reallege Paragraphs 1-46 inclusive and incorporate them herein  
7 by this reference.

8 48. Pursuant to Public Resources Code §21081, a public agency approving a project for  
9 which an EIR was prepared is required to make findings, supported by substantial evidence in  
10 the record before it, prior to approving the project for which the EIR was prepared.

11 49. RESPONDENTS violated CEQA by asserting, in the findings made in support of the  
12 approval of the Project, that changes or alterations had been required in, or incorporated in the  
13 Project which mitigated or avoided the Project's significant impacts upon the environment, when  
14 the evidence before RESPONDENTS showed that the Project's significant impacts had neither  
15 been avoided nor adequately mitigated.

16 50. RESPONDENTS also violated CEQA by asserting, in the findings made in support of the  
17 approval of the Project, that specific economic, legal, social, technological, or other  
18 considerations made infeasible the mitigation or alternatives identified in the EIR that might  
19 otherwise have mitigated or avoided the Projects' significant impacts, when the evidence before  
20 RESPONDENTS showed that there were feasible mitigation measures or alternatives before  
21 RESPONDENTS that RESPONDENTS improperly refused to consider or adopt.

22 51. Along with the CEQA findings for the approvals, RESPONDENTS adopted a statement  
23 of overriding considerations that purported to justify approval of the Project in spite of identified  
24 significant and unavoidable impacts. The statement of overriding considerations was, however,  
25 defective in that it asserted that there were significant impacts from the Projects that could not be  
26 avoided or adequately mitigated. This assertion was false in that feasible alternatives and/or

1 mitigation measures were available that could have either avoided or reduced to a level of  
2 insignificance significant environmental impacts from the Projects.

3 52. RESPONDENTS' actions is approving CEQA findings and statement of overriding  
4 considerations that were not supported by substantial evidence in the record before  
5 RESPONDENTS were abuses of discretion that must be set aside.

6 **THIRD CAUSE OF ACTION**  
7 **INJUNCTIVE RELIEF (C.C.P. §526a)**

8 53. PETITIONERS hereby reallege Paragraphs 1-36 inclusive and incorporate them herein  
9 by this reference.

10 54. In the absence of injunctive relief, RESPONDENTS will move forward with the  
11 implementation of the Project, including construction and other work in support thereof. This  
12 work will result in harm to the physical environment. In addition, this harm will result in  
13 prejudice to RESPONDENTS' consideration of alternatives and mitigation measures that might  
14 otherwise mitigate or avoid the Project's significant impacts to the environment. In particular,  
15 initiation of construction of the bridge over Yosemite Slough will cause unnecessary harm to the  
16 environment due to construction-related impacts. In addition, initiation of construction of the  
17 bridge will prejudice RESPONDENTS' consideration of project alternatives, including  
18 specifically an alternative providing an alternative routing for the bus rapid transit around the  
19 sought, making construction of the bridge, and its associated environmental impacts,  
20 unnecessary. The investment of time, money, energy, and materials in initiating construction of  
21 the bridge will build momentum towards continuing that project in spite of its associated  
22 environmental impacts.

23 55. For these reasons, injunctive relief should be granted as prayed for below.

24 **FOURTH CAUSE OF ACTION**  
25 **DECLARATORY RELIEF (C.C.P. §1060)**

26 56. PETITIONERS hereby reallege Paragraphs 1-39 inclusive and incorporate them herein by  
27 this reference.

1 57. An actual controversy and dispute exists between PETITIONERS and RESPONDENTS  
2 regarding the Project approval's compliance with CEQA and the CEQA Guidelines.

3 PETITIONERS allege that the Project approvals failed to comply with CEQA and/or the CEQA  
4 Guidelines, while PETITIONERS are informed and believe, and on that basis allege, that  
5 RESPONDENTS believe that the Project approvals did fully comply with both CEQA and the  
6 CEQA Guidelines.

7 58. PETITIONERS seek a judicial declaration that the Project approvals failed to comply  
8 with the requirements of CEQA and/or the CEQA Guidelines.

9 59. An actual controversy and dispute exists between PETITIONERS and RESPONDENTS  
10 regarding the FEIR's compliance with CEQA and the CEQA Guidelines. PETITIONERS allege  
11 that the FEIR failed to comply with CEQA and/or the CEQA Guidelines, while PETITIONERS  
12 are informed and believe, and on that basis allege, that RESPONDENTS believe that the FEIR  
13 did fully comply with both CEQA and the CEQA Guidelines

14 60. PETITIONERS seek a judicial declaration that FEIR failed to comply with CEQA and/or  
15 the CEQA Guidelines.

16 61. An actual controversy and dispute exists between PETITIONERS and RESPONDENTS  
17 regarding the adequacy of the CEQA findings made by RESPONDENTS in support of the  
18 Project approvals. PETITIONERS allege that said findings were invalid because they were not  
19 supported by substantial evidence in the record, while PETITIONERS are informed and believe,  
20 and on that basis allege, that RESPONDENTS believe that said findings were fully adequate and  
21 valid.

22 62. PETITIONERS seek a judicial declaration that the CEQA findings made by  
23 RESPONDENTS in support of its approvals for the Project were invalid because they were not  
24 supported by substantial evidence in the record.

25 **WHEREFORE**, PETITIONERS pray for relief as follows:

26 1. For this Court's peremptory writ of mandate directing RESPONDENTS to vacate and set  
27 aside their determinations approving the Project and the findings adopted in support thereof and

1 remanding the Project to RESPONDENTS for reconsideration after they have completed  
2 compliance with CEQA;

3 2. For this Court's peremptory writ of mandate directing RESPONDENTS to vacate and set  
4 their certification of the FEIR for the Project and remanding the EIR to RESPONDENTS for  
5 revision and reconsideration in accordance with CEQA;

6 3. For this Court's stay, temporary restraining order, preliminary injunction, and permanent  
7 injunction directed to RESPONDENTS and REAL PARTIES IN INTEREST and enjoining  
8 them, their agents, servants, officers, employees and all those acting in concert with them from  
9 taking any action in furtherance of the implementation of the Project pending completion of  
10 CEQA compliance and reconsideration of the Project;

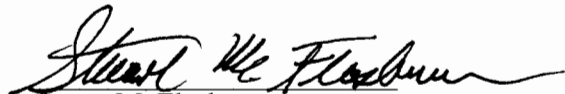
11 4. For this Court's declaration that RESPONDENTS' actions, as set forth herein,  
12 constituted violations of CEQA, and setting forth PETITIONERS' and RESPONDENTS'  
13 respective rights and duties.

14 5. For an award of reasonable attorney's fees under Code of Civil Procedure section 1021.5  
15 or as otherwise authorized by law;

16 6. For costs of suit incurred herein; and

17 7. For such other and further equitable or legal relief as the Court deems just and proper.

18 Dated: September 1, 2010

19   
20 Stuart M. Flashman  
21 Attorney for Petitioners and Plaintiffs  
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# **Exhibit A**

Law Offices of  
**Stuart M. Flashman**  
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(510) 652-5373 (voice & FAX)  
e-mail: stu@stufash.com

September 1, 2010

Clerk, Board of Supervisors  
City and County of San Francisco  
San Francisco City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

San Francisco Redevelopment Agency  
One South Van Ness Avenue 5th Floor  
San Francisco, CA 94103

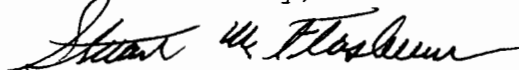
RE: Notice of Intent to Initiate Legal Action.

To Whom It May Concern,

Please take notice that the Sierra Club and Golden Gate Audubon Society intend to initiate legal action against the City and County of San Francisco, the Redevelopment Agency of the City and County of San Francisco, and the Board of Supervisors of the City and County of San Francisco under the California Environmental Quality Act for their approval of the Candlestick Point Hunters Point Shipyard Phase II Project and their certification of the Final Environmental Impact Report for said project.

This notice is being sent pursuant to Public Resources Code §21167.5. Please contact me immediately if you need clarification or wish to discuss this notice further.

Most sincerely,

  
Stuart M. Flashman

cc: San Francisco City Attorney  
Mr. Kofi Bonner, Lennar Urban

## PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

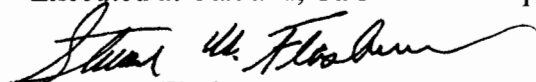
On September 1, 2010, I served the within NOTICE OF INTENT TO INITIATE LITIGATION on the parties listed below by placing true copies thereof enclosed in sealed envelopes with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Clerk, Board of Supervisors  
City and County of San Francisco  
San Francisco City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

San Francisco Redevelopment Agency  
One South Van Ness Avenue 5th Floor  
San Francisco, CA 94103

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on September 1, 2010.

  
Stuart M. Flashman

## **Exhibit B**

1 LAW OFFICES OF STUART M. FLASHMAN  
2 STUART M. FLASHMAN (SBN 148396)  
3 5626 Ocean View Drive  
4 Oakland, CA 94618-1533  
5 TEL/FAX (510) 652-5373  
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7  
8 Attorney for Petitioners and Plaintiffs Sierra Club *et al.*

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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **CITY AND COUNTY OF SAN FRANCISCO**  
13 **UNLIMITED DIVISION**

14 SIERRA CLUB, a California Nonprofit  
15 Corporation and GOLDEN GATE AUDUBON  
16 SOCIETY, a California nonprofit corporation,

17  
18 Petitioners and Plaintiffs

19 v.

20 CITY AND COUNTY OF SAN FRANCISCO,  
21 a subdivision of the State of California;  
22 BOARD OF SUPERVISORS OF THE CITY  
23 AND COUNTY OF SAN FRANCISCO;  
24 REDEVELOPMENT AGENCY OF THE  
25 CITY AND COUNTY OF SAN FRANCISCO,  
26 a public entity; and DOES 1-20 inclusive,

27  
28 Respondents and Defendants

29 CP DEVELOPMENT COMPANY, LP, a  
30 California limited liability partnership and  
DOES 21-40 inclusive,

Real Parties in Interest

No.

NOTICE OF FILING OF LEGAL ACTION

[C.C.P §388, Publ. Resources Code  
§21167.7]

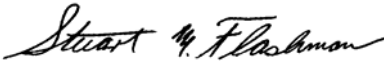
TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

PLEASE TAKE NOTICE under Code of Civil Procedure section 388 that, on September 2, 2010, Petitioners and Plaintiffs SIERRA CLUB and GOLDEN GATE AUDUBON SOCIETY

1 filed a petition for writ of mandate and complaint for injunctive and declaratory relief against  
2 Respondents and Defendants CITY AND COUNTY OF SAN FRANCISCO, BOARD OF  
3 SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, and  
4 REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO  
5 (“Respondents”) in San Francisco County Superior Court. The petition alleges that Respondents  
6 violated provisions of the California Environmental Quality Act (CEQA) in approving the  
7 Candlestick Point Hunters Point Shipyard Phase II Project and its associated Environmental  
8 Impact Report. A copy of the petition is enclosed herewith for your reference.

9  
10 Please provide a letter acknowledging receipt of this notice.

11 DATE: September 1, 2010

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STUART M. FLASHMAN  
Attorneys for Petitioners and Plaintiffs

## **PROOF OF SERVICE BY MAIL**

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On September 2, 2010, I served the within NOTICE OF LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Office of the Attorney General  
1515 Clay Street, 20<sup>th</sup> Floor  
P.O. Box 70550  
Oakland, CA 94612-0550

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on October 2, 2010.

A handwritten signature in cursive script that reads "Stuart M. Flashman".

Stuart M. Flashman

# **Exhibit C**



**San Francisco Bay Chapter**

Serving Alameda, Contra Costa, Marin and San Francisco Counties

May 28, 2010

Mr. Ron Miguel, Commission President and Commissioners  
San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103  
Delivered by email

Re: The Inadequacy of the Candlestick Point-Hunters Point Shipyard  
Phase II Development Plan Project - Comments and  
Responses Document (FEIR)

Dear President Miguel and Commission Members:

The Sierra Club appreciates the opportunity to comment on the above referenced FEIR (Final Environmental Impact Report, Comments and Responses).

We believe that giving the public and the Planning Commission members only three weeks (including the Memorial Day weekend) to read a complex document of over 6000 pages is an abuse of process and can only result in an analysis that cannot fail to be incomplete in that no one can read, analyze and comment on so many issues and so many pages in such a short time. I was at the May 20, 2010 Planning Commission meeting where several of the Planning Commissioners expressed this concern, evidently to no avail since no extension of the comment period was provided despite a request for such an extension by many members of the public and the comments of those Commissioners.

Below you will find our comments explaining why the FEIR is inadequate and in factual error in some cases. While we are very supportive of having a project move forward at Candlestick/Hunters Point it is vitally important that it be a good project that is free from contaminants and from the threat of future releases of contaminants. It should be a project that protects Candlestick Point State Park so that it can continue to provide San Francisco with the nature experiences necessary for an urban population. It should be a project that avoids impacts to the wildlife that inhabit that State Park.

**1. Contaminants on E2 must be removed to meet Measure P:**

The DEIR/FEIR assumes that the Navy will decide that the appropriate solution for remediating the contaminants found in the Navy dump, identified as Parcel E2, will be to leave the contaminants in place and to simply cap that site. In Proposition P, supported by over 80% of the electorate, the City *“...urges the Navy to cleanup the Shipyard in a manner that is fully protective of public health and the environment, and does not rely on future owners to maintain barriers to protect future occupants and the public from exposure to pollution left by the Navy, unless other remedies are technically infeasible.”*

There is no question that Parcel E2, the Navy dump that burned underground for 6-months in 2001-2002, is heavily contaminated by a wide range of toxics. It is in a very contained area of approximately 22 acres that can be cleaned up by full removal of those contaminants. This would be in accordance with Proposition P. The FEIR should have called for the Navy to remove all contaminants from E2 rather than accept the Navy’s proposal to cap the landfill and at a minimum should have had alternative that includes that remediation solution.

The Sierra Club and other environmental organizations have repeatedly asked for study of alternatives involving removal of the toxic landfill rather than a Cap solution, yet the FEIR contains no such alternative. The present FEIR fails to present an alternative that includes the full cleanup and removal of contaminants from Parcel E2 as is required by Proposition P.

## **2. Bridge over South Basin (Yosemite Slough) Will Destroy Park Experience:**

The FEIR states that there will be no constant car traffic over the proposed bridge across South Basin. But the Plan proposes that BRT (Bus Rapid Transit) buses will pass over the bridge every 2.5 minutes (commute time) or every 5 minutes (non-commute time). This is roughly equivalent to constant car traffic. Noise from a BRT bus is approximately 75 decibels, which is the same as being 50 feet away from a freeway.

San Francisco’s General Plan says new parks should not be created in areas with 75 decibels. The State requirement for decibel levels for open space is 60 dba. It is clear that the BRT noise levels exceed what is acceptable for a park, let alone a State Park. The bridge and its traffic will destroy any possibility for visitors to the State Park to have a quiet nature experience in this part of the State Park, and this area is designated as “nature area” in the State Park’s General Plan.

The FEIR does not adequately respond to our charge that the road connecting the BRT to the bridge that goes through the Park will deter recreational use from that area by creating a road barrier, especially with busses every 2.5 minutes. Similarly, on the Hunters Point side the connecting road will pass through the new parklands on Parcel E that are immediately adjacent to the State Park and will provide a barrier to access between the new parkland and the existing State Park. The FEIR should have recognized these impacts and proposed mitigations for the impact on the ability of people to have easy access at this part of the State Park and to adjacent new parklands.

### **3. FEIR misrepresents aesthetic impact of bridge and roads on CPSRA.**

The FEIR continually cites the location of the bridge as Yosemite Slough, the narrowest part of the Park. In fact, the bridge goes across South Basin and not Yosemite Slough (see map) This is one of the widest parts of the State Park and even after CP-HPS development is completed (if as is currently proposed) the bridge will still be a considerable distance from any roads or buildings. Thus there will be significant noise and night-lighting impacts on the aesthetic experience provided by the State Park.

The FEIR further states that any bridge/bus impacts on the ability of the State Park to provide an aesthetic nature experience is negligible because the Slough is in such an urban setting: *"It would be difficult to have an undisturbed nature experience" in an urban area (C&R, pg. 1071).* Such a blanket statement flies in the face of nature experiences one can have in Golden Gate Park, The Presidio and many of the SF Recreation and Park Department Nature Areas.

Yosemite Slough currently provides a very nice nature experience as an existing resource within the park. The FEIR should have recognized that aesthetic impacts will result from the project and should have proposed mitigations for those impacts. The FEIR should not have attempted to avoid this problem by making a factually inaccurate statement that one cannot have a nature experience in an urban area. The FEIR should recognize these impacts and propose mitigations. The elimination of the bridge alternative would also solve this problem.

### **4. The FEIR provides misleading data about a BRT route around Yosemite Slough, and fails to provide an objective analysis of Alternate Routes.**

The DEIR/FEIR incorrectly states that a non-bridge BRT route that goes around Yosemite Slough is not feasible by claiming that the route around

the Slough would require 5 minutes more travel time than the bridge alternative.

Arc Ecology and its consultant LSA Associates submitted an analysis of the BRT route in Arc's DEIR submittal. In that letter the LSA analyst demonstrated that the route around Yosemite Slough would take at most 1 minute 49 seconds more time than the proposed bridge route. A difference of 1.49 minutes would not be a deterrent to any passenger wanting to take the BRT and thus would make a bridge that will cost more than \$100 million (*Bayview Transportation improvements Project (BTIP) uncirculated DEIR*) completely unnecessary.

The difference in travel distance between bridge and a route around Yosemite Slough is only 6/10ths of a mile (.6 miles). To explain the travel time difference of 5 minutes for a distance difference of only .6 miles the FEIR had to struggle to come up with inadequate and inaccurate arguments to defend its conclusion that the BRT buses can only travel at 7.5 miles per hour on the route around Yosemite Slough.

To achieve this conclusion, the FEIR ignores the road alignment Arc Ecology submitted in its DEIR response, an alignment that has fewer intersections than the alternative alignments considered in the FEIR.

Since intersections add time (traffic signals and stop signs slow bus speeds) the FEIR hoped to use this to explain why the route-around is so slow. But the FEIR, in its attempt to demonstrate the inadequacy of a non-bridge alternative ignores the ability of MUNI to have controlled intersections, where lights turn green as busses approach, which would allow the BRT busses to move through intersections without loss of speed.

Furthermore, the route around Yosemite Slough follows an existing railroad right-of-way thus providing a dedicated travel route with no cars on it.

Combining a dedicated right-of-way and controlled intersections it is not credible to say that buses cannot travel faster than 7.5 miles per hour.

This is why the LSA consultants could conclude that the difference in travel time between a bridge and no bridge alternative would be only 1.5 minutes, a negligible amount of time.

Finally, the bridge BRT route turns its back on the Bayview community and serves only the new Project community. A route that goes around Yosemite Slough would provide service to the Bayview warehouse

district. Proposition G required the Project to include the Bayview in its transportation planning; the bridge BRT route fails to do so.

The FEIR should recognize that an around-Yosemite Slough BRT route is feasible and practicable, cheaper, and better serves the goals of the City's Proposition G. The FEIR should identify the no-bridge BRT route as the preferred route in the project design and eliminate the bridge over South Basin from the Project.

**5. FEIR does not adequately address bird-nesting island component of State Park's 34-acre wetland/upland habitat restoration project in South Basin (Yosemite Slough).**

The 34-acre Candlestick Point State Park Yosemite Slough Wetland Restoration Project, which is expected to begin construction this year, includes the creation of two bird-nesting islands. The Western snowy plover is federally listed under the Endangered Species Act of 1973 as threatened. The threatened Western snowy plover will be one of the birds nesting on these islands. The islands are designed specifically to provide these birds with nesting habitat. The proposed South Basin bridge will be built within 100 to 150 feet of these nesting islands.

The FEIR does not adequately discuss potential impacts from the bridge on the birds that will be using these bird-nesting islands. Instead the FEIR simply states these islands won't work and will not attract nesting birds (C&R, pg. 53).

The State Park's Yosemite Slough Wetland Restoration project has already received certification for its own CEQA document and has most, if not all, of its permits approved. It specifically states that it will expect to attract nesting western snowy plovers. Thus the FEIR must address whether the bridge will impact these nesting birds, not whether the birds will or will not be there.

Elsewhere the FEIR admits there may be disturbances to birds from the traffic and night-lighting. (*Birds at reference locations do respond to sudden or excessive stimuli... such as sudden and unusually loud noises by flushing [taking flight], or otherwise altering their behavior (C&R, pg. 50).* When nesting birds are disturbed and leave their nests, predators can consume the eggs or chicks and the egg embryos may die from hypothermia. These impacts are unacceptable to a threatened species. The FEIR should be recirculated to address this issue. Obviously, choosing the no-bridge BRT route would remove this need.

## **6. The roads to the bridge impose a physical and aesthetic impact to park visitors**

Aside from the noise generated by vehicular traffic, the bridge is a visual disturbance if you come to a State Park for a nature experience, which is one of the primary purposes of State Parks. This is especially the case since the Candlestick Point State Recreation Area General Plan designates this part of the Park as a nature area.

After over 200 public meetings the Candlestick Point State Recreation Area General Plan was created in 1987 and it states (General Plan, page 26), “[A] nature area will be created at the north end of the unit... This site was selected because of its extensive mudflat areas with the observed presence of birdlife and shellfish...”

The bridge and roads are also a physical disturbance and barrier since the roads connecting the bridge to the development go right through the widest part of the State Park. An hour-long visit to this part of the Park would subject a visitor to either 12 or 24 noisy buses passing by depending on the time of day. How can the FEIR deny this as an aesthetic impact? Yet it does.

The FEIR should recognize that the bridge/roads alternative will result in significant aesthetic impacts to the State Park. It should also recognize that roads connecting the bridge to the Project will create barriers to public movement in the State Park and between the State Park and adjacent new parks on Parcel E. and should propose mitigations for these impacts. An obvious mitigation would to abandon the bridge and select the route around Yosemite Slough as the transportation route.

## **7. FEIR states that bridge will only be for BRT, bicyclists and pedestrians and not for cars (except for game days).**

The FEIR states that there will be no private car traffic on the bridge and its connecting roads except on game days. It does admit that this can be changed legislatively to allow everyday private car traffic.

Once there are thousands of new residents on Hunters Point there will be intense pressure to open the bridge to private automobile traffic. We fully expect that such pressure will result in legislation that will allow everyday use of the bridge and roads by private automobile traffic. The FEIR should have analysed the impact of such an alternative. CEQA law requires that all likely scenarios be analyzed.

## **8. Removing 23 acres from the State Park for high-end housing will negatively impact wildlife and people**

The DEIR and FEIR admit that wildlife will be impacted by this project: “[L]ocal abundance of these species may decline in some areas...resulting from trails, roads, and increased vehicular traffic...(C&R, pg. 936)”. The FEIR bases its conclusions that taking away 23 acres of parkland will not impact the State Park by considering only regional impacts.

The FEIR ignores:

A) This is a State Park and deserves special recognition as such. This State Park provides habitat to over 180 documented wildlife species. State Parks exist to preserve the State’s biodiversity. The fact that other areas have the same creatures does not remove the importance of the State Park in preserving habitat for these species. The other regional locations may all be developed (or inundated with sea level rise) in the future. The State Park should provide a safe haven for these critters in perpetuity. If allowed to take place, this development says that State Parks can no longer be trusted to perform their basic function.

B) These critters are in San Francisco and San Francisco residents deserve a State Park that can provide them the opportunity to see these wonderful creatures without having to leave the City.

Removing 23 acres of the State Park lands for high-end housing also means that people trying to enjoy the Park will find it much more difficult. The loss of 23 acres brings the development and its housing right onto the border of the Park and narrows the park to occasionally only 100 to 200 feet in width. This is a trail not a park. With up to 25,000 new residents this area will need more nature parkland not less. Furthermore, the high-end housing adjacent to the Park appears to be directly contiguous with the Park and as such, the Park becomes the backyard for this housing and visitors to the Park will feel like intruders in someone’s back yard rather than visitors to a State Park.

The FEIR should identify the impacts on the State Park experience of having housing contiguous to the State Park, recognizing that the loss of 23 acres makes some of the Park quite shallow, in some cases only 200 feet wide.

## **9. The FEIR should identify the impact of the loss of revenue to the SFRPD that results from the loss of fees from the Stadium and parking lot when the stadium is moved to Hunters Point.**

**10. The non-stadium alternatives are not adequately analyzed from a transportation perspective.**

While the FEIR does include a non-stadium alternative, traffic flow calculations for all of the non-bridge alternatives analyzed involve the expectation that the major arteries be “improved” to accommodate game day traffic in and out of the proposed stadium. The consultants then state without justification or data that the non-stadium alternative will involve similar loads. Such assumptions are unwarranted in a planning document, especially as the most likely scenerio is that the NFL stadium will not materialize. In that case, impacts from traffic on surrounding neighborhoods would be greatly reduced as opposed to the stadium alternative. The DEIR/FEIR fail to provide an objective analysis of a no-bridge, no-stadium alternative.

**11. The FEIR fails to address other projects within the EIR study area.**

The FEIR fails to adequately address the Executive Park Phase II developments and, most egregiously from a transportation perspective, fails to account for how the Bayview Transportation Improvements Project (BTIP uncirculated DEIR) analyzed truck routing in the Bayview with a goal of reducing traffic impacts to the 3rd street corridor. That plan envisions a number of options for linking the Shipyard to HWY101, including bridge and non-bridge alternatives. The failure to address that plan and the alternatives envisioned therein at the same time as the specific transportation improvements detailed in the current EIR renders the analysis of potential impacts of the project flawed.

The omission of any discussion of the alternatives outlined in the Bayview Transportation plan renders the current EIR insufficient from a transportation perspective.

Thank you for your consideration of our concerns.

Sincerely yours,

Arthur Feinstein, Chair  
San Francisco Group Conservation Committee  
590 Texas Street  
San Francisco, CA 94107  
415-680-0643

cc. Lisa Gibson, Project Manager, San Francisco Planning Department

**VERIFICATION**

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I, Arthur Feinstein, am a member of the Executive Committee of the San Francisco Bay Chapter of Petitioner and Plaintiff SIERRA CLUB and am authorized to execute this verification on behalf of said ~~P~~<sup>A</sup> ~~etitioner~~ and Plaintiff. I have read the foregoing Petition and Complaint and am familiar with the matters alleged therein. All facts alleged in the petition not otherwise supported by documents included in the administrative record are true of my own personal knowledge except as to those facts alleged based on information and belief, and as to those facts, I am informed and believe that they are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on September 1, 2010 at San Francisco, California.

  
Arthur Feinstein