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11 SAFE EMBARCADERO FOR ALL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

SAFE EMBARCADERO FOR ALL, a California
non-profit corporation,

Petitioner,

v.

STATE OF CALIFORNIA acting by and through
its STATE LANDS COMMISSION; CITY AND
COUNTY OF SAN FRANCISCO; and DOES 1
through 20;

Respondents,

SAN FRANCISCO PLANNING
DEPARTMENT; and SAN FRANCISCO
DEPARTMENT OF HOMELESSNESS AND
SUPPORTIVE HOUSING;

Real Parties In Interest.

No.

VERIFIED PETITION FOR
WRIT OF MANDAMUS

INTRODUCTION

1. San Francisco unilaterally approved a mega-housing project on San Francisco Bay-front land burdened by the public trust, which prohibits housing without prior State Lands Commission approval, among other requirements, and without any environmental or design review. San Francisco violated direct statutory requirements the Legislature made specifically applicable to this special property, and Petitioner brings this action under CCP §§ 1085 & 1094.5 for appropriate

1 relief.

2 **PARTIES**

3 2. Petitioner SAFE EMBARCADERO FOR ALL is an active California non-profit
4 corporation. SAFE EMBARCADERO FOR ALL is the successor to the unincorporated association
5 Safe Embarcadero For All. Petitioner and its predecessor timely and repeatedly objected to the
6 Project (defined below) prior to approval. Petitioner incorporated the objections of its predecessor
7 and all other objectors into Petitioner's objections. Petitioner brings this action in the public interest.

8 3. Respondent STATE OF CALIFORNIA is a state of the United States, admitted to the
9 union on September 9, 1850 by an Act of Congress. The STATE LANDS COMMISSION is an
10 agency of the STATE OF CALIFORNIA, created by the Legislature in the State Lands Act of 1938.
11 The STATE OF CALIFORNIA acting by and through its STATE LANDS COMMISSION has
12 continuing oversight authority, upon admission to the United States and as incident to its
13 sovereignty, over tidelands, submerged lands, and the beds of navigable lakes and rivers within its
14 borders which are held subject to the public trust for statewide public purposes, including commerce,
15 navigation, fisheries, and other recognized uses, as specified in Public Resources Code §§ 6009,
16 6009.1, and other authorities. This oversight authority continues to apply after the grant of such
17 lands, as specified in those authorities, including the land on which the Project is proposed. The
18 STATE LANDS COMMISSION is headquartered in Sacramento.

19 4. Respondent CITY AND COUNTY OF SAN FRANCISCO is a municipal
20 corporation. According to its Administrative Code, § 31.04(a), the CITY AND COUNTY OF SAN
21 FRANCISCO and all its officials, boards, commissions, departments, bureaus and offices (which
22 include the Port of San Francisco) constitute a single "local agency," "public agency" or "lead
23 agency" as those terms are used in CEQA. The CITY AND COUNTY OF SAN FRANCISCO
24 approved the Project over Petitioner's objections.

25 5. The SAN FRANCISCO PLANNING DEPARTMENT is named as a Real Party In
26 Interest because it is identified in the notice of exemption filed by the CITY AND COUNTY OF
27 SAN FRANCISCO, and Public Resources Code § 21167.6.5 requires such parties to be named as
28

1 real parties in interest.

2 6. The SAN FRANCISCO DEPARTMENT OF HOMELESSNESS AND
3 SUPPORTIVE HOUSING is named as a Real Party In Interest because it is identified in the notice
4 of exemption filed by the CITY AND COUNTY OF SAN FRANCISCO, and Public Resources
5 Code § 21167.6.5 requires such parties to be named as real parties in interest.

6 7. The true names of Does 1 through 20 are unknown to Petitioner, who therefore sues
7 them under these fictitious names. Petitioner is informed and believes that each of the Does are
8 responsible in some manner for the events that give rise to this suit, and are liable in some manner
9 for those events.

10 JURISDICTION AND VENUE

11 8. The Superior Court has jurisdiction over this action, which is brought under CCP §§
12 1085 and 1094.5.

13 9. Venue is proper in Sacramento County under CCP § 395(a) because respondents, or
14 some of them, reside in Sacramento County. Specifically, respondent STATE LANDS
15 COMMISSION resides in Sacramento County.

16 10. Venue is proper in Sacramento County under CCP § 401(1) because, in a case against
17 a state agency, venue is proper in a county where the Attorney General has an office. The Attorney
18 General has an office in Sacramento County.

19 11. Venue is proper in Sacramento County under *County of Siskiyou v. Superior Court*
20 (2013) 217 Cal.App.4th 83, which held that Sacramento County is a proper venue in actions like this
21 in which a State agency is named as a party in an action alleging that public trust responsibilities
22 have not been fulfilled.

23 12. Venue is proper in Sacramento County under CCP § 393(b) because venue in actions
24 against public agencies is proper wherever the effects of the agency's action are felt, and the effects
25 of the Project will be felt in Sacramento County. The purposes and uses of public trust lands are
26 matters of statewide rather than purely local concern, per Public Resources Code §§ 6009 & 6009.1;
27 because respondents are misusing public trust lands, the effects of their decision are felt statewide,
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1 including in Sacramento County.

2 13. Sacramento County is a neutral venue for this action, and it is reasonably convenient
3 for the parties, including those who will be well represented by the ample resources of the offices of
4 the California Attorney General and the San Francisco City Attorney. San Francisco County would
5 not be a neutral venue for this action.

6 **FACTS**

7 14. At the time of California's statehood, the property that is now known as Seawall Lot
8 330 was part of the tidelands or submerged lands of San Francisco Bay.

9 15. The STATE OF CALIFORNIA acquired title to Seawall Lot 330 upon admission to
10 the United States and as incident to its sovereignty.

11 16. Seawall Lot 330 is subject to the public trust for commerce, navigation, fisheries, and
12 other recognized uses.

13 17. Seawall Lot 330 is in an area of the CITY AND COUNTY OF SAN FRANCISCO
14 that hosts a disproportionate amount of homeless centers.

15 18. Homelessness centers in the CITY AND COUNTY OF SAN FRANCISCO have
16 become magnets for additional homeless persons, open drug and alcohol use, crime, daily
17 emergency calls, public urination and defecation, and other nuisances.

18 19. The fair market value of Seawall Lot 330 is many tens of millions—perhaps \$100
19 million—dollars. The fair lease value of Seawall Lot 330 is at least \$6.65 million per year.

20 20. Seawall Lot 330 is contaminated with dangerous and volatile chemicals.

21 21. The STATE LANDS COMMISSION has determined that housing is not a use
22 consistent with the public trust.

23 22. In 1968, the STATE OF CALIFORNIA passed an act, known as the "Burton Act", to
24 grant Seawall Lot 330 in trust to the CITY AND COUNTY OF SAN FRANCISCO, subject to
25 certain conditions. (Stats. 1968, ch. 1333.)

26 23. Seawall Lot 330 was subsequently granted to the CITY AND COUNTY OF SAN
27 FRANCISCO in trust, subject to certain conditions.
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1 24. Seawall Lot 330 remains subject to the oversight of the STATE LANDS
2 COMMISSION, pursuant to Public Resources Code §§ 6009 & 6009.1 and other authorities.

3 25. Before the Project at issue in this action, Seawall Lot 330 had been used for uses
4 deemed necessary for public trust or Burton Act trust purposes. (Stats. 2007, ch. 660, § 2(l).)

5 26. The Burton Act, as amended, defines “lease” to mean “a ground lease or space lease
6 of real property, license agreement for use of real property, temporary easement, right-of-way
7 agreement, development agreement, or any other agreement granting to any person any right to use,
8 occupy, or improve real property” of the Port of San Francisco (Stats. 2007, ch. 660, § 1(n)), which
9 is an arm of the CITY AND COUNTY OF SAN FRANCISCO.

10 27. Before entering into any lease, as defined, free from the use requirements of the
11 public trust, including its prohibition on housing, the CITY AND COUNTY OF SAN FRANCISCO
12 is required to comply with the requirements of Section 4 of Chapter 660 of the Statutes of 2007, as
13 amended by Section 7 of Chapter 529 of the Statutes of 2016, which requires, among other things,
14 that the lease be for fair market value and be subject to the approval of the STATE LANDS
15 COMMISSION, which must first find, among other things, that the lease is for fair market value and
16 otherwise is in the best interest of California.

17 28. Recently, the CITY AND COUNTY OF SAN FRANCISCO leased Seawall Lot 330
18 for a large project (“Project”), which includes hundreds of units of homelessness housing, plus
19 parking, office space, personal storage, and other purposes. The CITY AND COUNTY OF SAN
20 FRANCISCO approved the leasing of Seawall Lot 330 for this Project at a hearing of its Port
21 Commission on April 23, 2019. The CITY AND COUNTY OF SAN FRANCISCO thereafter
22 rejected appeals, including Petitioner’s, of the approval of the lease.

23 29. This lease is for a term of at least two years, plus a construction period of
24 approximately 150 days and a demolition period of up to 90 days, with an option to extend for an
25 additional two years. The effective rent to be charged is approximately \$240,000 to \$360,000 per
26 year, accounting for rent offsets.

27 30. The Project is likely to decrease the fair market value of Seawall Lot 330 for any
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1 future project.

2 31. The CITY AND COUNTY OF SAN FRANCISCO invoked an exemption from
3 CEQA: class 32 for urban infill projects. No environmental review of the Project was done.

4 32. The Project will dig up and disturb the contamination at the site. The Project
5 proposes no cleanup of the contamination at the site. The Project contemplates having two hundred
6 or more people living and sleeping atop this contaminated site.

7 33. The STATE LANDS COMMISSION did not approve the non-public-trust
8 components of the Project, or make any findings in relation to this Project.

9 34. The Project is in a San Francisco Waterfront Special Use District, regulated by
10 Article 2 section 240 *et seq.* of the San Francisco Planning Code.

11 35. The Project contemplates development on more than 1/2 acre.

12 36. The Project requires a building permit.

13 37. The Design Review Committee of the Port of the CITY AND COUNTY OF SAN
14 FRANCISCO did not review or approve the Project at any public hearing.

15 38. The CITY AND COUNTY OF SAN FRANCISCO is not receiving fair-market-value
16 for its lease of Seawall Lot 330.

17 39. The approval of the Project delays other more valuable uses of Seawall Lot 330.

18 40. The approval of the Project delays the cleanup of Seawall Lot 330.

19 41. The CITY AND COUNTY OF SAN FRANCISCO has not demonstrated that it is
20 able to provide adequate utilities and public services to the homelessness facilities it currently
21 manages. It has not created or managed a homelessness facility this big, on this short of a
22 timeframe, before. Its other homelessness facilities together experience daily emergencies. No
23 water, electric, or gas service exists at the site, and the Port has disclaimed responsibility for
24 providing any utilities.

25 42. Petitioner and its predecessor exhausted all available non-futile administrative
26 remedies both with the STATE LANDS COMMISSION and the CITY AND COUNTY OF SAN
27 FRANCISCO.

43. Concurrently with the filing of this petition, Petitioner is requesting preparation of the administrative record.

FIRST COUNT

(Mandamus—Failure To Seek STATE LANDS COMMISSION Approval)

44. Petitioner incorporates by reference paragraphs 1 through 43 above.

45. Code of Civil Procedure section 1085(a) allows issuance of a writ of mandate to a public agency to compel the performance of an act the law specially enjoins.

46. The law specially enjoins STATE LANDS COMMISSION approval, upon specified findings, of any lease for non-public-trust purposes of Seawall Lot 330.

47. The law specially enjoins against the leasing of Seawall Lot 330 for non-public-trust purposes without STATE LANDS COMMISSION approval.

48. The STATE LANDS COMMISSION did not approve the lease of Seawall Lot 330 for the non-public-trust lease of Seawall Lot 330 for the Project here.

49. A writ of mandate should issue compelling STATE LANDS COMMISSION approval prior to any lease, or continuing lease, of Seawall Lot 330 for the Project.

SECOND COUNT

(Administrative Mandamus—Failure To Proceed In The Manner Required By Law—Failure To Obtain Prior STATE LANDS COMMISSION Approval)

50. Petitioner incorporates by reference paragraphs 1 through 43 above.

51. Code of Civil Procedure section 1094.5 allows a court to set aside an agency's decision if the agency prejudicially abused its discretion. Abuse of discretion in this context is established by the agency's failure to proceed in the manner required by law.

52. The law required STATE LANDS COMMISSION approval, upon specified findings, prior to any lease for non-public-trust purposes of Seawall Lot 330.

53. The STATE LANDS COMMISSION did not approve the lease of Seawall Lot 330 for the non-public-trust lease of Seawall Lot 330 for the Project here.

54. This failure to proceed in the manner required by law was prejudicial.

55. A writ of mandate should issue.

THIRD COUNT

(Administrative Mandamus—Failure To Proceed In The Manner Required By Law—Failure To Obtain Prior Design Review Committee Approval)

56. Petitioner incorporates by reference paragraphs 1 through 43 above.

57. Code of Civil Procedure section 1094.5 allows a court to set aside an agency's decision if the agency prejudicially abused its discretion. Abuse of discretion in this context is established by the agency's failure to proceed in the manner required by law.

58. Article 2 section 240 *et seq.* of the San Francisco Planning Code, which governs this Waterfront Special Use District area, required prior Design Review Committee approval for any development on more than 1/2 acre.

59. The Project proposes development on more than 1/2 acre.

60. The Project received no Design Review Committee approval.

61. This failure to proceed in the manner required by law was prejudicial.

62. A writ of mandate should issue.

FOURTH COUNT

(Administrative Mandamus—Findings Not Supported By The Evidence—No Fair Market Value Rent)

63. Petitioner incorporates by reference paragraphs 1 through 43 above.

64. Code of Civil Procedure section 1094.5 allows a court to set aside an agency's decision if the agency prejudicially abused its discretion. Abuse of discretion in this context is established if the agency's findings are not supported by substantial evidence in the light of the whole record.

65. The CITY AND COUNTY OF SAN FRANCISCO found that the lease for the Project was for fair market value.

66. No substantial evidence supported this finding.

67. The evidence was that the lease for the Project was for but a fraction of the fair

1 market value of Seawall Lot 330.

2 68. This unsupported finding was prejudicial.

3 69. A writ of mandate should issue.

4 **FIFTH COUNT**

5 **(Administrative Mandamus—Failure To Proceed In The Manner Required By Law—**
6 **Inapplicable CEQA Exemption)**

7 70. Petitioner incorporates by reference paragraphs 1 through 43 above.

8 71. Code of Civil Procedure section 1094.5 allows a court to set aside an agency's
9 decision if the agency prejudicially abused its discretion. Abuse of discretion in this context is
10 established by the agency's failure to proceed in the manner required by law or by making findings
11 not supported by substantial evidence in the light of the whole record.

12 72. The CITY AND COUNTY OF SAN FRANCISCO found that the Class 32 CEQA
13 exemption, 14 CCR § 15332, applied to excuse this Project from environmental review.

14 73. That exemption applies only when: a project is consistent with the applicable general
15 plan designation and all applicable general plan policies as well as with applicable zoning
16 designation and regulations; approval of the project would not result in any significant effects
17 relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all
18 required utilities and public services.

19 74. The Project is not consistent with the applicable general plan designation and all
20 applicable general plan policies as well as with applicable zoning designation and regulations,
21 including because they required, but did not receive, prior Design Review Committee approval.

22 75. The Project would result in significant effects relating to traffic, including from the
23 expected at least daily required emergency services that are likely to snarl traffic on the Bay Bridge
24 and Embarcadero.

25 76. The Project site does not have all required utilities and public services. The CITY
26 AND COUNTY OF SAN FRANCISCO has not shown itself capable of managing a homeless
27 shelter of this size before without creating nuisances for the neighborhood.

77. To the extent findings were made to the contrary, they were not supported by any substantial evidence.

78. The Class 32 CEQA exemption does not apply.

79. This failure to proceed in the manner required by law, or to support any findings to the contrary with substantial evidence, was prejudicial.

80. A writ of mandate should issue.

SIXTH COUNT

(Findings Not Supported By The Evidence;

Reasonable Probability Of Significant Effect On The Environment Due To Unusual Circumstances)

81. Petitioner incorporates by reference paragraphs 1 through 43 above.

82. Code of Civil Procedure section 1094.5 allows a court to set aside an agency's decision if the agency prejudicially abused its discretion. Abuse of discretion in this context is established if the agency's findings are not supported by substantial evidence in the light of the whole record.

83. The CITY AND COUNTY OF SAN FRANCISCO found that the Project was categorically exempt from CEQA under Class 32 (In-Fill Development) because there are “no unusual circumstances that would result in a reasonable possibility of a significant effect”.

84. CEQA categorical exemptions do not apply where “there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances”. (14 Cal. Code Regs. § 15300.2(c).)

85. Supervisorial District 6, in which Seawall Lot 330 is located, is unusual in that it hosts a disproportionate number of homeless shelters already.

86. Further concentrating homeless shelters in District 6 with this Project will have a significant effect on the environment due to these unusual circumstances, including by attracting additional homeless persons, open drug and alcohol use, crime, daily emergency calls, public urination and defecation, and other nuisances.

87. Seawall Lot 330 is also unusual in that it is immediately adjacent to the one-of-a-kind Bay Bridge and the Embarcadero. At least daily emergency services are expected to be required at the Project, which are likely to regularly snarl traffic on the Bay Bridge and Embarcadero, causing a significant effect on the environment due to this unusual circumstance.

88. Seawall Lot 330 is also unusual in that it is contaminated. The Project proposes no cleanup of this contamination and will delay the cleanup of the property. The Project will disturb the contamination. The Project proposes to have people living and sleeping atop disturbed contaminated property. Disturbing, rather than cleaning up, contamination will cause a significant effect on the environment due to these unusual circumstances.

89. No substantial evidence in the light of the record as a whole supports the finding that there are no unusual circumstances here.

90. The finding was an abuse of discretion.

91. The abuse of discretion was prejudicial.

92. A writ of mandate should issue.


PRAYER FOR RELIEF

Petitioner respectfully requests the following relief:

1. Issuance of a writ of mandate requiring the approval of the Project to be set aside;
2. Issuance of a writ of mandate requiring STATE LANDS COMMISSION review and approval prior to further work on the Project;
3. A stay of part of all of the Project pending final judgment;
4. An injunction against the Project;
5. Costs, including attorney fees to the extent authorized by Government Code section 800 or Code of Civil Procedure section 1021.5 or any other authority; and
6. Such other relief as the Court deems just and proper.

1 DATED: July 9, 2019

BRISCOE IVESTER & BAZEL LLP

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4 By: 

5 Peter Prows
6 Attorneys for Petitioner
7 SAFE EMBARCADERO FOR ALL
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VERIFICATION

I, Wallace Lee, am a representative of petitioner in this action. I have read the foregoing petition and verify that, based on the information available to me, the facts alleged are true.

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

July 9, 2019



Wallace Lee