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ENDORSED FILED SAN MATEO COUNTY

MAY 1 3 2009

Clerk of the Superior Gourt

Attorneys for Petitioner and Plaintiff: SAVE SAN CARLOS PARKS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN MATEO

SAVE SAN CARLOS PARKS

Petitioner and Plaintiff,

CITY OF SAN CARLOS, SAN CARLOS CITY COUNCIL, and DOES 1 through 20,

Respondents and Defendants.

CASE NO CIV 4 8 4 0 6 5

CEQA ACTION

PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF. (Code Civ. Proc., §§ 526, 527, 1088.5, 1085, 1094, 1094.5; Pub. Resources Code, §§ 21167, 21168, 21168.5.)

BY THIS PETITION AND COMPLAINT, Petitioner and Plaintiff allege:

INTRODUCTION

- 1. Petitioner and Plaintiff, SAVE SAN CARLOS PARKS ("SSCP" or "Petitioner"), hereby challenges Respondent and Defendant SAN CARLOS CITY COUNCIL, on behalf of Respondent and Defendant CITY OF SAN CARLOS (collectively "CITY"), for violations of the California Environmental Quality Act ("CEQA") (commencing with section 21000 of the Public Resources Code) when evaluating the environmental consequences of approving the Highlands Park Lower Athletic Field Conversion to Synthetic Surface Project ("Project"). The Project will convert the existing natural turf surface of the 3.44 acre Lower Athletic Field in Highlands Park within the City to synthetic turf.
- 2. The City prepared and adopted an Initial Study/Mitigated Negative Declaration ("IS/MND") that fails to satisfy the procedural and substantive mandates of CEQA. The IS/MND prepared for the Project violates CEQA because there is substantial evidence in the City's administrative record that supports a "fair argument" that the Project may have significant, adverse environmental effects, thus requiring the preparation and certification of an environmental impact report ("EIR") prior to approving the Project.
- 3. The IS/MND fails to adequately investigate the Project's potentially significant adverse environmental effects.
- 4. The IS/MND fails to incorporate changes to the Project, or to identify legally adequate mitigation measures with enforceable performance standards, that will clearly mitigate all of the Project's potentially significant, adverse environmental effects to less-than-significant levels.
- 5. The City Council prejudicially abused its discretion by adopting the IS/MND and failing to incorporate changes to the Project, or adopting legally enforceable mitigation measures that reduce or avoid the Project's potentially significant effects to less than significant levels, prior to approving the Project.
- 6. The City Council prejudicially abused its discretion by invalidly deferring the adoption of mitigation measures until after the adoption of the IS/MND and approval of the Project.
- 7. Petitioner objected to the Project because the IS/MND and the City's responses to public comments do not adequately respond to the issues and concerns raised by the public and ignored the substantial evidence in the record that notified and informed the City of the Project's potentially significant adverse effects on the environment, either directly or indirectly.
- 8. Substantial evidence in the record identify the following potentially significant adverse effects: the potentially significant adverse impacts associated with "crumb rubber" in synthetic turf,

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made from ground up car and truck tires, causing inhalation and ingestion of toxic and carcinogenic chemicals; potentially significant impacts associated with increased risks of bacterial infections; potentially significant increased risk of heat exhaustion due to elevated temperatures on synthetic turf fields; potentially significant adverse impacts on water quality caused by pollutants released from synthetic turf; potentially significant adverse impacts associated with the flammability of synthetic turf; potentially significant adverse impacts associated with an increase in automobile traffic and parking on narrow park access roads; potentially significant adverse impacts of replacement and disposal of the artificial turf approximately every 6-8 years, including potentially significant impacts of leaving the degraded turf in place if the City does not have the financial resources for replacement; and potentially significant impacts associated with the loss of the park's open space for multiple public uses.

PARTIES

- 9. Petitioner incorporates all paragraphs of this Petition and Complaint.
- 10. Save San Carlos Parks ("SSCP"), which is the Petitioner and Plaintiff in this action, is an unincorporated association of individuals whose membership includes local residents of the City and other members of the public who are concerned about the potentially significant, adverse environmental impacts of the synthetic turf replacement at the lower athletic field at Highlands Park. SSCP's mission includes, but is not limited to, the protection of the health, safety, and general welfare of the citizens of the City of San Carlos by sustaining, enhancing, and protecting the quality of public parks in the City. SSCP participated throughout the City's consideration of the Project and objected to the Project on various grounds prior to the City's approval of the Project. SSCP's mailing address is P.O. Box 835 San Carlos, CA 94070.
- 11. Respondent and Defendant SAN CARLOS CITY COUNCIL is the legislative body entrusted with the duty and authority to manage the affairs of, and act on behalf of, Respondent and Defendant CITY OF SAN CARLOS. The SAN CARLOS CITY COUNCIL is also the elected decision making body that adopted the IS/MND and directed the City to issue the CEQA Notice of Determination ("NOD") for the Highlands Park Lower Athletic Field Conversion to Synthetic Surface Project. For purposes of this Petition and Complaint, these entities are collectively referred to as the "City." The City's address is 600 Elm Street, San Carlos, CA 94070. The City is named as a Respondent in this action because it is the legislative body that issued the challenged approvals. The City is named as a Defendant in this action because Petitioner may seek injunctive relief if the City proceeds with the Project prior to a final decision on the merits of the petition for writ of mandate.

	12.	Petitioner does not know the true names and capacities of Respondents and Defendants	
fictitiou	sly nam	ed herein as DOES 1 through 20 inclusive. Petitioner is informed and believes, and	
thereon alleges, that such fictitiously named Respondents and Defendants are responsible in some			
manner	for the a	acts or omissions complained of or pending herein. Petitioner will amend this Petition to	
allege the fictitiously named Respondents and Defendants' true names and capacities when ascertained			
by Petit	ioner.		

STATEMENT OF FACTS

- 13. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 14. The project site is the lower athletic field that is located within the existing 11.25-acre Highlands Park at 206 Aberdeen Drive or 2600 Melendy Drive. Highlands Park is located in the hills between El Camino Real (Highway 82) and I-280 off of Alameda de Las Pulgas.
- 15. In August of 2002 the City announced that it would explore converting Highlands Park from natural grass to synthetic turf.
- 16. In July of 2003, the Parks and Recreation Commission failed to endorse synthetic turf installation at Highlands Park.
- 17. From April 2005 to September 2005, a Fields Committee, formed by the City, studied the fields issue and published two opinions. A majority opinion recommended synthetic turf at Highlands Park and a minority opinion recommended synthetic turf at Tierra Linda Middle School.
- 18. In February 2006, the Parks and Recreation Commission voted in favor of the minority opinion to place synthetic turf at the middle school.
- 19. In May of 2006, the City Council voted unanimously to renovate Highlands Park lower athletic field with natural grass and also voted to prioritize the renovation of the Park over placing synthetic turf at a school campus.
- 20. Between 2006 to 2008, the Highlands Park field was not renovated, nor was synthetic turf installed at a San Carlos school.
- 21. In April of 2008, the City Council voted to proceed with an initial study under CEQA of the potentially significant environmental effects of synthetic turf at Highlands Park.
- 22. In March of 2009, the San Carlos Youth Advisory Council voted to recommend to the City to not put synthetic turf at Highlands Park.
- 23. On January 12, 2009, the City considered the initial study and directed the preparation of a mitigated negative declaration for the proposed Project.

- 24. The IS/MND was circulated for public review and comment from February 9, 2009 to March 10, 2009, including submission to the California State Clearinghouse (No. SCH 2009022026).
- 25. Numerous letters were submitted by members of the public, including Petitioner and its individual members, commenting on the potentially significant impacts on the environment posed by the project, including the known controversy surrounding the potentially harmful impacts to human health caused by toxic substances in turf materials.
- 26. On April 13, 2009, the City held a public meeting, hearing several hours of public testimony in opposition to the project.
- 27. Following public comment at the April 13, 2009 meeting, the City approved the Project by adopting RESOLUTION NO. 2009-025, which included the adoption of the IS/MND for the Project and the Mitigation Monitoring and Reporting Program included as Exhibit "A" to the Resolution.
- 28. On April 15, 2009, the City filed the NOD with the San Mateo County Clerk. The County Clerk posted the NOD on the same day.
- 29. Petitioner timely filed this action challenging the City's adoption of the IS/MND and approval of the Project.

JURISDICTION AND VENUE

- 30. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 31. Petitioner brings this action as a Petition for Writ of Mandate pursuant to Article IV, section 10 of the California Constitution and sections 1085, 1088.5 of the Code of Civil Procedure, and sections 21167, 21168 and 21168.5 of the Public Resources Code.
- 32. Petitioner brings this action as a Complaint for Injunctive Relief pursuant to Code of Civil Procedure section 526.
- 33. Venue is proper in this Court under section 393 of the Code of Civil Procedure because the causes of action alleged in this Petition and Complaint arose in San Mateo County where the site of the Project is located.

STANDING

- 34. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 35. Petitioner has a direct and beneficial interest in the City's full and complete compliance with CEQA, and all other applicable laws, in approving the Project.
- 36. The City owed a mandatory duty to act within the boundaries of its legal authorities under CEQA before exercising its discretion to approve the project.
 - 37. Petitioner has the right to enforce the duties CEQA imposes on the City.

38. Petitioner has no other plain, speedy and adequate remedy in the ordinary course of law, and will suffer irreparable injury unless this Court issues the relief requested in this Petition.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

- 25. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 26. Members of Petitioner, and Petitioner on behalf of its members, objected to approval of the Project prior to the close of the public hearing on the Project before the City issued its NOD for the Project.
- 27. The grounds for noncompliance with CEQA alleged in this Petition and Complaint are consistent with the objections to the Project raised by Petitioner, its members, or by other members of the public and interested public agencies prior to the close of the public hearing on the Project before the City issued its NOD for the Project.
- 28. If any grounds for noncompliance with CEQA alleged in this Petition were, for some reason, not raised prior to the close of the public hearing on the Project before the City issued its NOD for the Project, it was because there was no meaningful opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or because the City failed to give the notice required by law.
 - 29. Petitioner and its members have exhausted their administrative remedies.

FIRST CAUSE OF ACTION

(CEQA: SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS A "FAIR ARGUMENT" THAT THE PROJECT MAY HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS)

- 30. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 31. Substantial evidence in the City's record of proceedings for the Project, including, but not limited to, studies and reports, which relate facts and reasonable inferences based on fact, and expert opinion based on fact, and the personal experiences and observations of local residents, support a "fair argument" that the proposed project may have significant adverse impacts on the environment.
- 32. The IS/MND acknowledges controversy and conflict among various studies and reports regarding the toxicity and health hazards associated with synthetic turf. These conflicting studies and reports, which relate facts and reasonable inferences based on fact, and expert opinion based on fact, support a fair argument that the Project may have significant, adverse environmental effects and requires the preparation of an EIR.
- 33. There is also a fair argument, supported by facts that have been provided to the City, that the Project may have significant environmental impacts, triggering the requirement under CEQA to prepare an EIR. These facts include studies and reports submitted to the City during the public comment

period by Petitioner and other members of the public that support a fair argument that the Project may have significant, adverse environmental effects, requiring the preparation of an EIR.

- 34. The City further failed to comply with its affirmative duty to investigate and disclose the Project's potentially significant adverse impacts to the existing environment, thus warranting a wider range of inferences regarding the potentially significant adverse impacts of the Project, including, but not limited to: health hazards associated with toxic substances found in synthetic turf causing inhalation and ingestion of toxic and carcinogenic chemicals; risks of bacterial infections; risk of heat exhaustion due to elevated temperatures on synthetic turf fields; degradation of water quality due to pollutants released from synthetic turf; risks associated with the flammability of synthetic turf; impacts of increased traffic and parking on the narrow park access roads; impacts associated with maintenance requirements of turf; impacts of replacement and disposal of the synthetic turf approximately every 6-8 years, including potentially significant impacts of leaving degraded turf in place if the City does not have the financial resources to replace or dispose of worn out turf; and impacts associated with the loss of use of the field for multiple purposes, including dog walking and family recreation.
- 35. The City prejudicially abused its discretion by approving a mitigated negative declaration for the Project where substantial evidence in the City's record of proceeding supports a fair argument that the Project may have significant, adverse environmental effects, requiring the preparation of an EIR.

SECOND CAUSE OF ACTION

(CEQA: THE CITY'S FINDING THAT THE PROJECT'S IMPACTS HAVE CLEARLY BEEN MITIGATED TO LESS THAN SIGNIFICANT LEVELS IS NOT SUPPORTED BY THE EVIDENCE IN THE RECORD)

- 36. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 37. In approving the Project, the City made a finding that no substantial evidence exists in the record to support a fair argument that the Project may have significant adverse effects on any environmental resource.
- 38. Fact, reasonable inferences based on fact, and expert opinion supported by fact in the City's record of proceedings for this Project, including, but not limited to, studies and reports, which relate facts and reasonable inferences based on fact, and expert opinion based on fact, and the personal experiences and observations of local residents on these subjects, support a fair argument that the Project may have significant adverse environmental effects on the existing environment including, but not limited to, adverse impacts to human health, hydrology and water quality, biological resources, fire services, traffic, aesthetics, and recreational and open space resources.

39. The City prejudicially abused its discretion by approving a mitigated negative declaration for the Project where substantial evidence in the City's record of proceedings supports a fair argument that the Project may have significant, adverse environmental effects.

THIRD CAUSE OF ACTION

(CEQA: Improper Deferral of Analysis and mitigation of Potentially Significant Environmental Effects)

- 40. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 41. The City improperly deferred the analysis and mitigation of potentially significant impacts of the Project by failing to incorporate changes or mitigation measures into the Project, before it was approved, that will clearly mitigate the Project's impacts to less-than-significant levels.
- 42. The City failed to identify enforceable performance standards to implement safety guidelines and precautions to mitigate potentially significant identified hazards to human health associated with synthetic turf.
- 43. The City also improperly deferred analysis and mitigation of potentially significant impacts of the Project, and failed to establish measurable performance standards that commit the City to clearly reducing all of the identified direct and indirect potentially significant impacts to less-than-significant levels, including, but not limited to: the risk of heat exhaustion for users of the field on hot days; risks of bacterial infections; the increased fire risks caused by the flammability of synthetic turf; impacts on traffic, air quality and noise during the construction phase of the project; increased traffic on the narrow park access road; curbside parking blocking two-way traffic; and maintenance, replacement and disposal of the synthetic turf in approximately 6-8 years.
- 44. The City prejudicially abused its discretion by adopting the mitigated negative declaration and approving the Project, where changes to the Project have not been incorporated into the Project, or mitigation measures to reduce the Project's potentially significant adverse effects to less than significant levels have not been adopted by the City prior to Project approval.

STATUTE OF LIMITATIONS

- 45. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 46. The City filed the NOD on April 15, 2009 with the San Mateo County Clerk. The County Clerk posted the NOD on the same day triggering CEQA's 30-day statute of limitations.
- 47. This Petition and Complaint has been filed within 30 days of the filing and posting of the NOD.
 - 48. Petitioner has filed this Action prior to expiration of any applicable statute of limitations.

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NOTICE OF CEQA SUIT

- 49. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 50. On May 6, 2009, Petitioner's attorney delivered a letter to the Clerk of the City of San Carlos giving Respondents notice of Petitioner's intent to file this lawsuit. (Exhibit 1: May 6, 2009 Letter to City.)

ELECTION TO PREPARE RECORD

- 51. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 52. Petitioner elects to prepare the administrative record in this action. (Pub. Resources Code, § 21167.6, subd. (b)(2).)

PRIVATE ATTORNEY GENERAL DOCTRINE

- 53. Petitioner incorporates all Paragraphs of this Petition and Complaint.
- 54. Petitioner brings this action as a private attorney general pursuant to Code of Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public interest.
- 55. Issuance of the relief requested in this Petition will confer a significant benefit on the general public by ensuring that the City complies with CEQA's mandatory procedural and substantive requirements before approving the Project. Compliance with CEQA will ensure, *inter alia*, that the Project's potentially significant effects on the environment are analyzed in an EIR where substantial evidence in the record supports a "fair argument" that the Project may have a significant adverse impact on the environment. Compliance with CEQA will also ensure that the City meets its affirmative duty to investigate and disclose the Project's impacts and incorporate changes to the Project or adopt mitigation measures that reduced the Project's potentially significant adverse impacts to less than significant levels before the Project is approved.
- 56. Issuance of the relief requested in this Petition will result in the enforcement of important rights affecting the public interest, including the public's right to disclosure of a project's potentially significant adverse effects, and the public's right to demand that the City comply with the procedural and substantive mandates of CEQA.
- 57. The necessity and financial burden of enforcement are such as to make an award of attorney's fees appropriate in this proceeding. Absent enforcement by Petitioner, the Project otherwise might proceed despite its inconsistencies with CEQA.

58. Petitioner's attorney has furnished a copy of this Petition to the California Attorney
General to give notice of Petitioner's intent to bring this lawsuit as a private attorney general under Code
of Civil Procedure, section 1021.5. (See Exhibit 2: cover letter to Attorney General.)

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for the following relief:

- 1. Upon duly presented application, that the Court issue a restraining order, preliminary injunction, stay, or other form of interim relief to preserve the environmental status quo ante at the project site until the matters in this litigation can be brought to full resolution through entry of a final judgment upon the completion of any available appeals;
- 2. That, as part of its final judgment in this matter, the Court issues a permanent injunction prohibiting Respondents and Defendants from moving forward with any aspect of the Project based on the Project Approvals challenged in this litigation;
- 3. For violations of CEQA, that the Court find that the City's approval of the Project is void ab initio, and otherwise direct the Clerk of the Court to issue a Peremptory Writ of Mandate compelling the City to set aside its approvals in furtherance of the Project, including RESOLUTION NO. 2009-025 adopting the Mitigated Negative Declaration for the Highlands Park Lower Athletic Field Conversion to Synthetic Surface Project and the Mitigation Monitoring and Reporting Program included as Exhibit "A" to the Resolution. Petitioner also requests that the Peremptory Writ order the City to set aside its NOD, in light of the fact that no project was lawfully approved; that the Writ also order the City to set aside any subsequent approvals it may have issued in reliance on the above, invalid actions and approvals; and that the Writ direct the City to comply with CEQA, if the City chooses to reconsider its approval of the Project.
- 4. The Court retain jurisdiction of the matters embraced by this action to ensure that the City fully complies with the terms of its Final Judgment and Writ;
 - 5. The Court order Respondents and Defendants to pay Petitioner's costs of suit;
- 6. The Court order Respondents and Defendants to pay Petitioner's reasonable attorneys fees related to these proceedings upon the filing of a proper motion; and,
 - 7. For such other and further relief as the Court may deem proper.

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Respectfully submitted, KENYON YEATES LLP

Christina Morkner Brown Attorneys for Petitioner

VERIFICATION (CCP § 446)

I, Jeff Cleland, am a member of Save San Carlos Parks, the Petitioner in this action. All facts that have been alleged in this Petition and Complaint are true of my own personal knowledge. I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

In the County of San Mateo, California this 11th day of May, 2009

Jeff Cleland for Petitioner SAVE SAN CARLOS PARKS CHARITY KENYON

kenyon yeates

JASON FLANDERS
CHRISTINA MORKNER BROWN

2001 N STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95811 916.609.5000 FAX 916.609.5001

May 6, 2009

Via Electronic mail & FedEx

Christine Boland City Clerk 600 Elm Street San Carlos, CA 94070 Fax: (650) 595-6719

Re:

Notice of Commencement of CEQA Action - Highlands Park Lower Athletic Field

Conversion to Synthetic Surface Project (Pub. Resources Code, § 21167.5).

Dear Ms. Boland:

Pursuant to section 21167.5 of the Public Resources Code, this letter provides written notice to the San Carlos City Council and the City of San Carlos that our client, Save San Carlos Parks, intends to file a CEQA action, on or before May 14, 2009, challenging the approvals for the Highlands Park Lower Athletic Field Conversion to Synthetic Surface Project ("Synthetic Surface Project") that the San Carlos City Council made on April 13, 2009.

The members of our client organization are willing to forego filing this lawsuit if the City and City Council will promptly contact us by 12 pm (noon) on Tuesday May 12, 2009, to set forth its plan for rescinding the Project approvals, or to propose alternative, potential terms of settlement that are acceptable to our clients. Our client's membership would also be willing to enter an agreement with the City on or before noon on Tuesday May 12, 2009, to toll the statute of limitations for the filing of any legal challenge in order allow a reasonable opportunity for the Parties to resolve their disagreement over the Synthetic Surface Project without resorting to litigation.

This letter, and our clients' prior participation in the City's administrative processes leading up to its approval of the project, satisfy our clients' obligations under section 1021.5 of California's Code of Civil Procedure, as amplified by the California Supreme Court in *Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553, 578. Please note that Petitioner is bringing this action as a private attorney general pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable laws.

Sincerely,

Christina Morkner Brown

CHARITY KENYON
BILL YEATES

kenyon yeates

JASON FLANDERS
CHRISTINA MORKNER BROWN

2001 N STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95811 916.609.5000 FAX 916.609.5001

May 13, 2009

Via U.S. Mail

Hon. Edmund G. Brown, Jr. Attorney General State of California Office of the Attorney General 1300 I Street, 11th Floor Sacramento, CA 95814

Re: Notice of Intent to Bring Action as Private Attorney General: Save San Carlos Parks v.

City of San Carlos, et al.

Dear Attorney General Brown:

Pursuant to section 21167.7 of the Public Resources Code, I am furnishing your office with a copy of the pleadings in the above referenced case. If necessary, any subsequent supplemental or amended pleadings will be forwarded.

Please note that Petitioner is bringing this action as a private attorney general pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable laws.

Sincerely,

Christina Morkner Brown

Attachment: Petition - Save San Carlos Parks v. City of San Carlos, et al.