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ENDORSED FILED
SAN MATEO COUNTY

MAY 13 2009

Clerk of the Superior Court
 By R. Lopez
 DEPUTY CLERK

7 Attorneys for Petitioner and Plaintiff:
 8 SAVE SAN CARLOS PARKS

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

11
 12 SAVE SAN CARLOS PARKS

13 Petitioner and Plaintiff,

14 vs.

15
 16 CITY OF SAN CARLOS, SAN CARLOS CITY
 17 COUNCIL, and DOES 1 through 20,

18 Respondents and Defendants.

CASE NO. **CIV 484065**

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.)

1 BY THIS PETITION AND COMPLAINT, Petitioner and Plaintiff allege:

2 **INTRODUCTION**

3 1. Petitioner and Plaintiff, SAVE SAN CARLOS PARKS (“SSCP” or “Petitioner”), hereby
4 challenges Respondent and Defendant SAN CARLOS CITY COUNCIL, on behalf of Respondent and
5 Defendant CITY OF SAN CARLOS (collectively “CITY”), for violations of the California
6 Environmental Quality Act (“CEQA”) (commencing with section 21000 of the Public Resources Code)
7 when evaluating the environmental consequences of approving the Highlands Park Lower Athletic Field
8 Conversion to Synthetic Surface Project (“Project”). The Project will convert the existing natural turf
9 surface of the 3.44 acre Lower Athletic Field in Highlands Park within the City to synthetic turf.

10 2. The City prepared and adopted an Initial Study/Mitigated Negative Declaration (“IS/MND”)
11 that fails to satisfy the procedural and substantive mandates of CEQA. The IS/MND prepared for the
12 Project violates CEQA because there is substantial evidence in the City’s administrative record that
13 supports a “fair argument” that the Project may have significant, adverse environmental effects, thus
14 requiring the preparation and certification of an environmental impact report (“EIR”) prior to approving
15 the Project.

16 3. The IS/MND fails to adequately investigate the Project’s potentially significant adverse
17 environmental effects.

18 4. The IS/MND fails to incorporate changes to the Project, or to identify legally adequate
19 mitigation measures with enforceable performance standards, that will clearly mitigate all of the
20 Project’s potentially significant, adverse environmental effects to less-than-significant levels.

21 5. The City Council prejudicially abused its discretion by adopting the IS/MND and failing to
22 incorporate changes to the Project, or adopting legally enforceable mitigation measures that reduce or
23 avoid the Project’s potentially significant effects to less than significant levels, prior to approving the
24 Project.

25 6. The City Council prejudicially abused its discretion by invalidly deferring the adoption of
26 mitigation measures until after the adoption of the IS/MND and approval of the Project.

27 7. Petitioner objected to the Project because the IS/MND and the City’s responses to public
28 comments do not adequately respond to the issues and concerns raised by the public and ignored the
29 substantial evidence in the record that notified and informed the City of the Project’s potentially
30 significant adverse effects on the environment, either directly or indirectly.

31 8. Substantial evidence in the record identify the following potentially significant adverse
32 effects: the potentially significant adverse impacts associated with “crumb rubber” in synthetic turf,

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

11 **PARTIES**

12 9. Petitioner incorporates all paragraphs of this Petition and Complaint.

13 10. Save San Carlos Parks ("SSCP"), which is the Petitioner and Plaintiff in this action, is an
14 unincorporated association of individuals whose membership includes local residents of the City and
15 other members of the public who are concerned about the potentially significant, adverse environmental
16 impacts of the synthetic turf replacement at the lower athletic field at Highlands Park. SSCP's mission
17 includes, but is not limited to, the protection of the health, safety, and general welfare of the citizens of
18 the City of San Carlos by sustaining, enhancing, and protecting the quality of public parks in the City.
19 SSCP participated throughout the City's consideration of the Project and objected to the Project on
20 various grounds prior to the City's approval of the Project. SSCP's mailing address is P.O. Box 835
21 San Carlos, CA 94070.

22 11. Respondent and Defendant SAN CARLOS CITY COUNCIL is the legislative body
23 entrusted with the duty and authority to manage the affairs of, and act on behalf of, Respondent and
24 Defendant CITY OF SAN CARLOS. The SAN CARLOS CITY COUNCIL is also the elected decision
25 making body that adopted the IS/MND and directed the City to issue the CEQA Notice of Determination
26 ("NOD") for the Highlands Park Lower Athletic Field Conversion to Synthetic Surface Project. For
27 purposes of this Petition and Complaint, these entities are collectively referred to as the "City." The
28 City's address is 600 Elm Street, San Carlos, CA 94070. The City is named as a Respondent in this
29 action because it is the legislative body that issued the challenged approvals. The City is named as a
30 Defendant in this action because Petitioner may seek injunctive relief if the City proceeds with the
31 Project prior to a final decision on the merits of the petition for writ of mandate.

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

3 34. The City further failed to comply with its affirmative duty to investigate and disclose the
4 Project's potentially significant adverse impacts to the existing environment, thus warranting a wider
5 range of inferences regarding the potentially significant adverse impacts of the Project, including, but
6 not limited to: health hazards associated with toxic substances found in synthetic turf causing inhalation
7 and ingestion of toxic and carcinogenic chemicals; risks of bacterial infections; risk of heat exhaustion
8 due to elevated temperatures on synthetic turf fields; degradation of water quality due to pollutants
9 released from synthetic turf; risks associated with the flammability of synthetic turf; impacts of
10 increased traffic and parking on the narrow park access roads; impacts associated with maintenance
11 requirements of turf; impacts of replacement and disposal of the synthetic turf approximately every 6-8
12 years, including potentially significant impacts of leaving degraded turf in place if the City does not
13 have the financial resources to replace or dispose of worn out turf; and impacts associated with the loss
14 of use of the field for multiple purposes, including dog walking and family recreation.

15 35. The City prejudicially abused its discretion by approving a mitigated negative declaration
16 for the Project where substantial evidence in the City's record of proceeding supports a fair argument
17 that the Project may have significant, adverse environmental effects, requiring the preparation of an EIR.

18 SECOND CAUSE OF ACTION

19 **(CEQA: THE CITY'S FINDING THAT THE PROJECT'S IMPACTS HAVE CLEARLY BEEN MITIGATED TO** 20 **LESS THAN SIGNIFICANT LEVELS IS NOT SUPPORTED BY THE EVIDENCE IN THE RECORD)**

21 36. Petitioner incorporates all Paragraphs of this Petition and Complaint.

22 37. In approving the Project, the City made a finding that no substantial evidence exists in the
23 record to support a fair argument that the Project may have significant adverse effects on any
24 environmental resource.

25 38. Fact, reasonable inferences based on fact, and expert opinion supported by fact in the
26 City's record of proceedings for this Project, including, but not limited to, studies and reports, which
27 relate facts and reasonable inferences based on fact, and expert opinion based on fact, and the personal
28 experiences and observations of local residents on these subjects, support a fair argument that the Project
29 may have significant adverse environmental effects on the existing environment including, but not
30 limited to, adverse impacts to human health, hydrology and water quality, biological resources, fire
31 services, traffic, aesthetics, and recreational and open space resources.
32

1 **NOTICE OF CEQA SUIT**

2 49. Petitioner incorporates all Paragraphs of this Petition and Complaint.

3 50. On May 6, 2009, Petitioner's attorney delivered a letter to the Clerk of the City of San
4 Carlos giving Respondents notice of Petitioner's intent to file this lawsuit. (Exhibit 1: May 6, 2009
5 Letter to City.)

6 **ELECTION TO PREPARE RECORD**

7 51. Petitioner incorporates all Paragraphs of this Petition and Complaint.

8 52. Petitioner elects to prepare the administrative record in this action. (Pub. Resources
9 Code, § 21167.6, subd. (b)(2).)

10 **PRIVATE ATTORNEY GENERAL DOCTRINE**

11 53. Petitioner incorporates all Paragraphs of this Petition and Complaint.

12 54. Petitioner brings this action as a private attorney general pursuant to Code of Civil
13 Procedure section 1021.5, and any other applicable legal theory, to enforce important rights affecting the
14 public interest.

15 55. Issuance of the relief requested in this Petition will confer a significant benefit on the
16 general public by ensuring that the City complies with CEQA's mandatory procedural and substantive
17 requirements before approving the Project. Compliance with CEQA will ensure, *inter alia*, that the
18 Project's potentially significant effects on the environment are analyzed in an EIR where substantial
19 evidence in the record supports a "fair argument" that the Project may have a significant adverse impact
20 on the environment. Compliance with CEQA will also ensure that the City meets its affirmative duty to
21 investigate and disclose the Project's impacts and incorporate changes to the Project or adopt mitigation
22 measures that reduced the Project's potentially significant adverse impacts to less than significant levels
23 before the Project is approved.

24 56. Issuance of the relief requested in this Petition will result in the enforcement of important
25 rights affecting the public interest, including the public's right to disclosure of a project's potentially
26 significant adverse effects, and the public's right to demand that the City comply with the procedural
27 and substantive mandates of CEQA.

28 57. The necessity and financial burden of enforcement are such as to make an award of
29 attorney's fees appropriate in this proceeding. Absent enforcement by Petitioner, the Project otherwise
30 might proceed despite its inconsistencies with CEQA.

31 //

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

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner prays for the following relief:

6 1. Upon duly presented application, that the Court issue a restraining order, preliminary
7 injunction, stay, or other form of interim relief to preserve the environmental status quo ante at the
8 project site until the matters in this litigation can be brought to full resolution through entry of a final
9 judgment upon the completion of any available appeals;

10 2. That, as part of its final judgment in this matter, the Court issues a permanent injunction
11 prohibiting Respondents and Defendants from moving forward with any aspect of the Project based on
12 the Project Approvals challenged in this litigation;

13 3. For violations of CEQA, that the Court find that the City's approval of the Project is void
14 *ab initio*, and otherwise direct the Clerk of the Court to issue a Peremptory Writ of Mandate compelling
15 the City to set aside its approvals in furtherance of the Project, including RESOLUTION NO. 2009-025
16 adopting the Mitigated Negative Declaration for the Highlands Park Lower Athletic Field Conversion to
17 Synthetic Surface Project and the Mitigation Monitoring and Reporting Program included as Exhibit
18 "A" to the Resolution. Petitioner also requests that the Peremptory Writ order the City to set aside its
19 NOD, in light of the fact that no project was lawfully approved; that the Writ also order the City to set
20 aside any subsequent approvals it may have issued in reliance on the above, invalid actions and
21 approvals; and that the Writ direct the City to comply with CEQA, if the City chooses to reconsider its
22 approval of the Project.

23 4. The Court retain jurisdiction of the matters embraced by this action to ensure that the
24 City fully complies with the terms of its Final Judgment and Writ;


25 5. The Court order Respondents and Defendants to pay Petitioner's costs of suit;

26 6. The Court order Respondents and Defendants to pay Petitioner's reasonable attorneys
27 fees related to these proceedings upon the filing of a proper motion; and,

28 7. For such other and further relief as the Court may deem proper.
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30 //
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32 //

1 DATE: May 12, 2009

2 Respectfully submitted,
3 KENYON YEATES LLP

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5 
6 Christina Morkner Brown
7 Attorneys for Petitioner

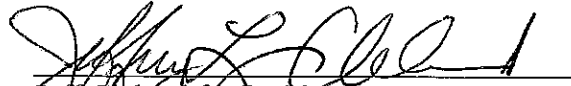
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**VERIFICATION
(CCP § 446)**

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

Exhibit 1

CHARITY KENYON
BILL YEATES

kenyon | yeates^{LLP}

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

Exhibit 2

CHARITY KENYON
BILL YEATES

kenyon | yeates LLP

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.*