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SIERRA CLUB and SPRAWLDEF

23 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **IN AND FOR THE COUNTY OF CONTRA COSTA**

25
26 POINT MOLATE ALLIANCE, an unincorporated
association; THE SIERRA CLUB, a California
27 nonprofit corporation; SPRAWLDEF, a California
nonprofit corporation; CITIZENS FOR EAST
28 SHORE PARKS, a California nonprofit
corporation; GOLDEN GATE AUDUBON
29 SOCIETY, a California nonprofit corporation;
30 CALIFORNIA NATIVE PLANT SOCIETY, a
California nonprofit corporation, OCEAN
31
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No.

PETITION FOR PEREMPTORY WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF

[Public Resources Code §§ 21168,
21168.5; C.C.P. §§ 1060 1085, 1094.5]

1 AWARENESS PROJECT, INC., a Washington
2 D.C. nonprofit corporation; ANDRES SOTO;
3 NORMA WALLACE; SARA L. TOBIN;
4 ANTHONY J. SUSTAK; PAMELA STELLO;
5 MARGARET BROWNE; DAVID HELVARG;
6 and ISABELLA ZIZI

7 Petitioners and Plaintiffs,

8 vs.

9 CITY OF RICHMOND, a municipal corporation;
10 RICHMOND CITY COUNCIL; and DOES 1-20
11 inclusive,

12 Respondents and Defendants

13 WINEHAVEN LEGACY, LLC, a Delaware limited
14 liability company; and DOES 21-40 inclusive,
15 Real Parties In Interest

(Action under the California Environmental
Quality Act)

16 Petitioners and Plaintiffs POINT MOLATE ALLIANCE, THE SIERRA CLUB,
17 SPRAWLDEF, CITIZENS FOR EAST SHORE PARKS, GOLDEN GATE AUDUBON
18 SOCIETY, CALIFORNIA NATIVE PLANT SOCIETY, OCEAN AWARENESS PROJECT,
19 INC., ANDRES SOTO, NORMA WALLACE, SARA L. TOBIN, ANTHONY J. SUSTAK,
20 PAMELA STELLO, MARGARET BROWNE, DAVID HELVARG and ISABELLA ZIZI
21 (hereinafter “PETITIONERS”) allege as follows:

22 1. This action challenges the approvals granted by respondents and defendants CITY OF
23 RICHMOND (“RICHMOND”) and RICHMOND CITY COUNCIL (“COUNCIL” and the
24 foregoing hereinafter referred to collectively as RESPONDENTS) for the Point Molate Mixed
25 Use Project (hereinafter, “Project”) and their certification of the Final Subsequent Environmental
26 Impact Report (“FSEIR”) for the Project. These approvals were granted at the behest of and for
27 the benefit of Real Party in Interest WINEHAVEN LEGACY, LLC (hereinafter, “REAL
28 PARTY”). PETITIONERS allege that the approvals for the Project violated provisions of the
29 California Environmental Quality Act (“CEQA”) and of California Planning and Zoning law.

30 2. RESPONDENTS actions violated CEQA in that the EIR’s description of the project site
31 was inadequate, the EIR failed to adequately address the Project’s significant environmental
impacts, the EIR inadequately mitigated significant impacts, the EIR failed to adequately
evaluate feasible project alternatives, and the EIR failed to adequately respond to comments from
the public and responsible agencies. In addition, RESPONDENTS’ findings in support of the

1 approvals were inadequate and RESPONDENTS' Statement of Overriding Consideration was
2 not supported by the evidence in the record.

3 3. RESPONDENTS' approval of the Project also violated California Planning and Zoning
4 law in that the Project is inconsistent with policies contained in the Richmond General Plan and
5 the general plan amendment adopted for the Project makes the Richmond General Plan internally
6 inconsistent. Therefore, the approvals for both the general plan amendment related to the Project
7 and the Project are invalid.

8 4. PETITIONERS seek this Court's writ of mandate ordering RESPONDENTS to rescind
9 their improper and illegal approvals for or related to the Project, including specifically the
10 certification of the EIR. Petitioners further seek the Court's declaration that the adoption of the
11 general plan amendment, the rezoning for the Project, and the Project approval itself are invalid.

12 5. PETITIONERS also ask that they be granted their reasonable attorneys' fees as a private
13 attorney general litigating to protect the rights and benefits of Richmond citizens and the general
14 public and under any other applicable provisions.

15
16 **PARTIES**

17 6. Petitioner and Plaintiff POINT MOLATE ALLIANCE ("ALLIANCE") is an
18 unincorporated association made up of Richmond residents who wish to protect the right of
19 Richmond residents to recreate and enjoy the scenic and environmental resources of Point
20 Molate by keeping that property in public ownership and protecting its scenic, environmental,
21 and recreational values.

22 7. Petitioner and Plaintiff SIERRA CLUB is a California non-profit membership
23 organization incorporated under the laws of California in 1892. The purposes of the Sierra Club
24 are to educate and enlist humanity to protect and restore the quality of the natural and human
25 environment, to practice and promote the responsible use of the earth's ecosystems and
26 resources, to explore, enjoy and protect the wild places of the earth, and to use all lawful means
27 to achieve these ends. The SIERRA CLUB currently has approximately 500,000 members
28 throughout the world, approximately 60,000 of whom live in the San Francisco Bay Area.
29 Approximately 7,000 Sierra Club members reside in Contra Costa County, including the City of
30 Richmond, and belong to the San Francisco Bay Chapter of the SIERRA CLUB. Members of
31 the SIERRA CLUB, and specifically of the San Francisco Bay Chapter, live and work in, travel
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1 through, and enjoy recreational, educational, and conservation activities in and around the City
2 of Richmond, including Point Molate. These members have a particular interest in the protection
3 and preservation of the City’s hillsides, ridges, creeks, and other natural resources through proper
4 environmental and land use planning. SIERRA CLUB’s national executive committee has
5 authorized the filing of this action on behalf of its San Francisco Bay Chapter.

6 8. Petitioner and Plaintiff SPRAWLDEF (Sustainability, Parks, Recycling, and Wildlife
7 Defense and Education Fund) is a 501(c)(3) California nonprofit corporation. SPRAWLDEF
8 seeks to protect the natural environment and to take on environmental issues that others cannot
9 or would not pursue.

10 9. Petitioner and Plaintiff CITIZENS FOR EAST SHORE PARKS (“CESP”) is a 501(c)(3)
11 California nonprofit corporation whose mission is to create a series of public parks in the East
12 Bay area of the San Francisco Bay extending from the Oakland Estuary to the Carquinez Strait.
13 CESP has long had an interest in protecting the natural, recreation, and scenic resources of Point
14 Molate and seeing it developed into a public park.

15 10. Petitioner and Plaintiff GOLDEN GATE AUDUBON SOCIETY (“AUDUBON”) is a
16 501(c)(3) California nonprofit corporation whose mission is to engage people in the Bay Area to
17 experience the wonder of birds and to translate that wonder into actions that protect native bird
18 populations and their habitats. AUDUBON has an interest in protecting the important and unique
19 diversity of bird species inhabiting Point Molate and preserving and restoring their natural
20 habitat.

21 11. Petitioner and Plaintiff CALIFORNIA NATIVE PLANT SOCIETY (“CNPS”) is a
22 501(c)(3) California nonprofit corporation. CNPS is a statewide organization whose mission is
23 to conserve California native plants and their natural habitats, and increase understanding,
24 appreciation, and horticultural use of native plants. The East Bay chapter has been working for
25 over a decade for a plan for Point Molate that conserves the rich and diverse native flora of Point
26 Molate for the enjoyment and benefit of Richmond families and youth.

27 12. Petitioner and Plaintiff OCEAN AWARENESS PROJECT, INC. is a 501(c)(3) nonprofit
28 public benefit corporation incorporated in Washington, D.C. and doing business as Blue Frontier
29 Campaign. In addition to its Washington D.C. office, it also has an office in Richmond,
30 California. Its mission is to build the solution-oriented citizen engagement needed to protect our
31 ocean, coasts and the communities, both human and wild that depend on them. OCEAN
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1 AWARENESS PROJECT, INC. has an interest in protecting the maritime and coastal resources
2 of Point Molate.

3 13. Petitioners and Plaintiffs ANDRES SOTO, NORMA WALLACE, SARA L. TOBIN,
4 ANTHONY J. SUSTAK, PAMELA STELLO, MARGARET BROWNE, DAVID HELVARG
5 and ISABELLA ZIZI all reside and/or work within the City of Richmond. Each of them has
6 maintained a long-standing interest in Point Molate and more specifically in enjoying and
7 protecting its environmental and scenic resources through maintaining it in public ownership and
8 establishing it as public parklands. They also share an interest in preserving and protecting the
9 Native American shellmound, cultural objects, and sacred spaces located at Point Molate, which
10 would be put at risk by the Project.

11 14. PETITIONERS have a direct and beneficial interest in the enforcement of CEQA and
12 protection of the environment, of California Planning and Zoning law – and specifically
13 maintaining consistency between RICHMOND’s project approvals and its General Plan, as well
14 as the internal consistency of that general plan, including those policies promoting the city’s
15 sustainability. These interests will be directly and adversely affected by the approvals at issue in
16 this action and the actions taken to consummate those approvals in that RESPONDENTS’
17 approvals for the Project violate provisions of law as set forth in this Petition and would cause
18 significant and avoidable environmental damage and would constitute a damaging precedent in
19 the conduct of RICHMOND’s public process. PETITIONERS’ interests, as described above, are
20 adversely affected by RESPONDENTS’ approval of the project.

21 15. PETITIONERS bring this action on their own behalf and on behalf of the citizens,
22 residents, and supporters who are citizens and taxpayers of the City of Richmond and the State of
23 California. These supporters live, work, travel and/or enjoy recreational opportunities in the
24 vicinity of the Project and in areas that will be affected by the Project, and will suffer the adverse
25 effects from RESPONDENTS’ improper actions in approving the Project.

26 16. PETITIONERS, acting either directly or through their authorized representatives,
27 submitted written and/or oral comments to RESPONDENTS objecting to the Project as set forth
28 herein.

29 17. PETITIONERS, acting either directly or through their authorized representatives, public
30 agencies, other organizations, and members of the public submitted written and oral comments
31 objecting to the Project and raising the violations of CEQA and of California Planning and
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1 Zoning Law set forth in this complaint, including during the scoping process for the EIR, at the
2 Draft EIR stage, or after publication of the Final EIR, but in any case prior to the close of the
3 public hearing before CEQA RESPONDENTS' certification of the EIR and approval of the
4 Project.

5 18. This action is for the purpose of enforcing important public rights and policies of the
6 State of California. It is brought to ensure that approvals made by RESPONDENTS are made
7 consonant with CEQA and state planning and zoning law. The prosecution of this action will
8 confer a substantial benefit on members of the public, and specifically on the citizens of the City
9 of Richmond and surrounding areas by enforcing CEQA and California Planning and Zoning
10 Law. PETITIONERS will receive no special financial benefit from the successful prosecution of
11 this action. In this action, PETITIONERS are acting as private attorneys general to protect these
12 public rights and policies and prevent such harms. As such, PETITIONERS are entitled to
13 recover its reasonable attorneys' fees under C.C.P. §1021.5 and other applicable laws.

14 19. Respondent and Defendant CITY OF RICHMOND is a municipal corporation and
15 charter city established and operating under the laws of the State of California. RICHMOND
16 was the lead agency under CEQA for the environmental review of the Project. RICHMOND
17 directed the preparation of the EIR and directed the conduct of the public hearings conducted
18 during the Project's approval process.

19 20. Respondent and Defendant RICHMOND CITY COUNCIL is the duly elected legislative
20 and governing body for RICHMOND. COUNCIL is responsible for ensuring that all projects
21 approved by RICHMOND are consistent with the RICHMOND general plan, as required by state
22 law. COUNCIL was also responsible for considering and certifying the EIR for the Project.

23 21. The true names and capacities of DOES 1-20 are unknown to PETITIONERS at this
24 time; however PETITIONERS allege on information and belief that each party named as DOE is
25 responsible for the acts and omissions of each of the other respondents and defendants.
26 Therefore PETITIONERS sue such Parties by such fictitious names, and will ask leave of the
27 Court to amend this Petition by inserting the true names and capacities of said DOES when
28 ascertained.

29 22. PETITIONERS are informed and believe, and on that basis allege, that Real Party in
30 Interest WINEHAVEN LEGACY, LLC, (hereinafter, "REAL PARTY") is a California Limited
31 Liability Company, established and operating under the laws of State of California. Petitioners
32

1 are further informed and believe, and on that basis allege that REAL PARTY was the applicant
2 for and sought the Project approvals at issue in this action.

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

8 STATEMENT OF FACTS

9 Project Location and history

10
11 24. The site of the Point Molate Mixed Use Project (“Project site”) is located along the
12 southern shoreline of the San Pablo Peninsula, north of the eastern terminus of the Richmond
13 San Rafael Bridge. It includes a southwest-facing sub-peninsula, Point Molate, with shoreline
14 areas extending to its northeast and southeast. Beyond the shoreline areas, the site rises sharply
15 to a ridge running roughly southeast to northwest. Portions of Chevron’s petrochemical refinery
16 complex lie on the other side of that ridge, including a number of major storage tanks for
17 petrochemicals and other chemicals used in Chevron’s processes.

18 25. The Project site includes a variety of different ecotypes, including coastal terrace prairie,
19 groves of blue gum eucalyptus and Monterey pine, and important offshore beds of aquatic
20 eelgrass. While there is not much mammalian wildlife, other than ground squirrels and other
21 small rodents, many avian species are found there, particularly raptors, including ospreys, white-
22 tailed kite, and peregrine falcons. In addition, there are several species of bats, including species
23 of special concern.

24 26. Access to the site is currently from a two-lane road, Stenmark Drive. That road runs
25 directly off of the last exit from westbound I-580 West before it enters the Richmond-San Rafael
26 Bridge. It continues past the Project site along the San Pablo Peninsula shoreline until it dead
27 ends at a private road. However, the area beyond the current City of Richmond Point Molate
28 Beach Park is fenced off with no public access.

29 27. The Point Molate area has a long history. Prior to the arrival of Europeans to California,
30 it was the homeland of a village of Native Americans. The descendants of that village are now a
31 part of the Confederate Villages of Lisjan, more commonly referred to as the Ohlone. With the
32

1 arrival of the Spanish missionaries, the villagers were led away into captivity at the Spanish
2 missions. While some of the village's cultural objects and sacred spaces, including part of its
3 shellmound, may have been subsequently destroyed or buried, significant cultural objects and
4 sacred spaces, including one or more locations where the remains of some of the village's former
5 inhabitants were buried, are still present on the Project site. While there is some information on
6 the location of these objects and sites, exact locations have not been identified and confirmed.

7 28. From approximately 1890 to 1912, a camp was established at Point Molate where
8 Chinese-Americans lived and worked catching and processing shrimp.

9 29. From 1907 to 1919, a winery and town was established at Point Molate. Known as
10 Winehaven, the enterprise began with the California Wine Association moving, after the 1906
11 earthquake, from San Francisco to Point Molate. Winehaven operated at Point Molate until it
12 was shut down by prohibition in 1919. However, its buildings and the site of its pier remain at
13 the site. Winehaven is designated as a historic district on the National Register of Historic
14 Places, and is composed of some 35 structures.

15 30. In 1941, the United States Navy purchased the site for use as a fuel depot. The Navy
16 established large fuel tanks and replaced the Winehaven pier with a larger one at a different
17 location. Many of the Winehaven buildings were used by the Navy as offices, facilities, and
18 residences for the base's naval personnel. The base was decommissioned in 1995.

19 **The Point Molate Reuse Plan**

20 31. With the decommissioning of the naval fuel depot, the U.S. Navy and the City of
21 Richmond began a process to develop a plan for Point Molate's reuse.

22 32. During the period between 1995 and 1997, Richmond officials and staff members, and
23 other interested parties, including the Navy, engaged in a process to develop a plan for the reuse
24 of the Navy's lands at Point Molate. The result was the March 1997 Point Molate Reuse Plan
25 ("Reuse Plan"), which was approved by Richmond later that year.

26 33. The Reuse Plan provides a conceptual land use plan for the Point Molate area. It laid out
27 a vision for the reuse of Point Molate that includes the following four goals:

- 28 • Retain and promote the historical significance of Winehaven and the other historic
29 buildings on the property;
- 30 • Create and attract job and business opportunities;
- 31 • Preserve and promote the enjoyment of the natural resources of the area; and
32

1 • Improve the overall quality of life for Richmond residents.
2 34. The Reuse Plan identified and incorporated seven themes into the conceptual plan. Those
3 themes were:

- 4 • Natural and recreational uses
- 5 • Education and Research
- 6 • a Conference Center
- 7 • the site as a Tourism/Visitor Attraction
- 8 • Arts and Cultural Uses
- 9 • Business Opportunities
- 10 • Reuse of Existing Structures.

11 35. Based on the Reuse Plan, the Navy, determined to grant ownership of 85% of the land to
12 Richmond. That action was consummated in 2003. Later, after remediation of some of the toxic
13 contamination left on the site by the Navy’s use, the Navy transferred the remainder of the land
14 to RICHMOND in 2010, including an agreement that RICHMOND would complete cleanup of
15 the remaining contamination to standards set by the Bay Area Regional Water Quality Control
16 Board (“RWQCB”).¹ In the meantime, portions of the site that remained contaminated would be
17 subject to use and development restrictions and prohibitions.

18 **The Casino/Resort Mixed-Use Project**

19 36. At the end of 2003, Richmond, in its role as the Local Reuse Authority for Point Molate,
20 chose Upstream Investments, LLC (“Upstream”) to develop the site in accordance with the
21 Reuse Plan. In 2004, Richmond and Upstream entered into a Development and Disposition
22 Agreement (“DDA”), authorizing Richmond to sell its portion of Point Molate to Upstream for
23 later development as an Indian casino. The City and Upstream also entered into a Land
24 Disposition Agreement (“LDA”) for the casino project.² Six subsequent amendments to the
25 DDA were approved by Richmond and Upstream, extending the closing date for the sale to 2011
26 and requiring Upstream to host at least three public workshops on proposed plans for Point
27 Molate prior to the end of 2010.

28 _____
29 ¹ The Navy may have set aside some funds for City use in that clean-up.

30 ² Petitioner and Plaintiff CESP filed a CEQA challenge to RICHMOND’s approval of the LDA
31 with Upstream on the casino project. The lawsuit’s settlement provided that the LDA included
no binding final determination by RICHMOND on approval of the casino project.

1 37. Richmond prepared an Environmental Impact Report (“EIR”) for the proposed
2 Casino/Resort project at Point Molate. The Final EIR for that project was certified by Richmond
3 in 2011. The Final EIR identified significant and unavoidable adverse traffic and historic
4 resources impacts from the casino project. Under CEQA, approval of a project with significant
5 unavoidable impacts requires the adoption of a statement of overriding considerations, based on
6 evidence in the record, justifying approval of the project in spite of its impacts. However,
7 following a change in the COUNCIL’s composition and the placement of an advisory measure
8 on the ballot, on which Richmond voters recommended against approving the project, the
9 COUNCIL voted to reject the project, finding that its purported economic benefits to
10 RICHMOND could not support approving a statement of overriding considerations.

11 38. Because the COUNCIL rejected the casino project and no CEQA challenge to that
12 decision was made, the question of the adequacy of the 2011 casino project Final EIR never
13 ripened to the point where, under Public Resources Code Section 21167.2, it would have been
14 conclusively presumed valid and compliant.

15 39. A subsequent lawsuit by the Casino developers against RICHMOND resulted in a 2018
16 settlement agreement. That agreement bound RICHMOND to approving a project including at
17 least a certain minimum amount of residential development, as well as other requirements. If
18 RICHMOND did not grant a qualifying project, the agreement forced RICHMOND to sell the
19 entire Point Molate site to the developers for a nominal sum. The developers would then seek to
20 develop the site, with the monetary proceeds of such development to be split between the
21 developers and RICHMOND.

22 40. In accordance with that agreement, RICHMOND entered into a new DDA, this time with
23 REAL PARTY, for development of the Project.

24 **The Project**

25 41. The Project, which replaced the Casino Resort Project rejected by RICHMOND, consists
26 of up to 2040 residential units, including 67 on-site affordable units (approximately 3.2%), up to
27 624,572 square feet of commercial space, and up to 10,000 square feet of new cultural/civic use
28 buildings. Respondents assert that approximately 70% of the site (193 acres) would remain as
29 parks and natural open space, although if standard criteria for designating natural open space
30 land are used, the Project does not comport with the stated proportion of parks and open space.

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1 42. The Project would include a number of infrastructure improvements, including roadway
2 and utility improvements and upgrades to the existing pier to allow accommodation of water taxi
3 and ferry service. It would also include construction of portions of the San Francisco Bay Trail
4 and extension and improvement of the City's current Point Molate Shoreline Park. The Project
5 would also include the removal and remediation of the existing underground storage tanks on the
6 site , as well as sites of surface and groundwater contamination, to the satisfaction of the
7 RWQCB.

8 **The Community Plan Alternative and the Initiative**

9 43. During the community process leading up to issuance of RESPONDENTS' request for
10 proposals ("RFP") for development of the Project site in accordance with the settlement
11 agreement, a group of Richmond citizens created an alternative plan for development of the
12 Project site consistent with the Reuse Plan and the policies in the Richmond General Plan. This
13 plan was designated as the "Community Plan." The Community Plan was presented to the
14 COUNCIL during its preparation of the RFP.

15 44. The Community Plan includes educational and research uses, a hotel/conference center,
16 and park and recreational uses and facilities. It also proposed that the major new residential use
17 areas tentatively included in the Reuse Plan be located, instead, in the Downtown Richmond
18 area, consistent with Richmond General Plan policies encouraging focusing future residential
19 development in areas with well-developed transit and infrastructure.

20 45. In parallel with the Project's approval process, Richmond citizens involved in preparing
21 the Community Plan and opposed to the Project, including specifically Petitioners ANTHONY J.
22 SUSTAK and MARGARET BROWNE, worked with attorneys to prepare an initiative
23 incorporating the Community Plan to present to Richmond voters as an alternative to the Project.

24 46. On or about February 21, 2020, three proponents of the initiative, including Petitioners
25 ANTHONY J. SUSTAK and MARGARET BROWNE, filed with the Richmond City Clerk a
26 Notice of Intent to Circulate a Petition pursuant to Elections Code Section 9202, along with the
27 text of the proposed initiative and a request for a title and summary pursuant to Elections Code
28 Section 9203.

29 47. On or about March 6, 2020, the Richmond City Clerk provided to the initiative
30 proponents a title and summary for the initiative, as prepared by the Richmond City Attorney. A
31 true and correct copy of the notice of intent to circulate petition, along with the City Attorney's
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1 title and summary, as published on March 11, 2020 in the West County Times, are attached
2 hereto as Exhibit A and incorporated herein by this reference.

3 48. Supporters of the initiative thereafter prepared copies of the initiative for circulation, and
4 began circulating copies during the weekend of March 14-15, 2020. However, on Monday,
5 March 16, 2020, in response to the rapid spread of the COVID-19 pandemic, a shelter in place
6 order was issued for the Bay Area, including the City of Richmond, prohibiting almost all public
7 activities, including the circulation of initiative petitions for signatures. Consequently, the
8 attempt to qualify the initiative had to be abandoned.

9 **The Project Approval Process**

10 49. On or about May 2, 2019, RICHMOND entered into an exclusive right to negotiate
11 agreement with REAL PARTY for the development of Point Molate. RICHMOND and REAL
12 PARTY subsequently entered into three amendments to the agreement; the most recent on or
13 about May 31, 2020.

14 50. On or about July 12, 2019, RICHMOND issued a Notice of Preparation (“NOP”) for a
15 Subsequent EIR for the Project. RICHMOND opened a thirty-day comment period on the NOP.
16 On or about July 29, 2019, the Richmond Planning Department held a public hearing on the
17 NOP.

18 51. On or about February 21, 2020, RICHMOND issued a Notice of Availability (“NOA”)
19 for the Draft Subsequent EIR (“DSEIR”) for the Project. The NOA stated that the DSEIR would
20 be circulated for public comments for forty-five days, until April 6, 2020. RICHMOND also
21 scheduled a public hearing to receive comments on the DSEIR for March 19, 2020. On or about
22 March 17, 2020, RICHMOND issued an updated NOA extending the public comment period
23 until April 16, 2020. It also cancelled the public hearing on the DSEIR.³ Instead, RICHMOND
24 set up a telephone “hotline” where oral comments of up to three minutes could be recorded. On
25 or about April 15, 2020, Richmond issued a further updated NOA, which further extended the
26 comment period on the DSEIR until on or about April 30, 2020.

27
28
29 ³ These and subsequent actions were taken in response to the COVID-19 pandemic. That
30 pandemic also caused RICHMOND to abandon all in-person public meetings and hearings.
31 They were replaced by meeting and hearing held by teleconference, with hastily adopted rules
for public attendance and speaking. As detailed below, those rules often resulted in inequitable
proceedings.

1 52. On or about April 14, 2020, the Historic Preservation Commission (“HPC”) held a study
2 session via teleconference to receive and provide input on the Project. On or about June 25,
3 2020, the HPC held a public hearing via teleconference on the Project. On or about July 14,
4 2020, the HPC held a further public hearing via teleconference on the Project, and voted on
5 recommendations to the COUNCIL.

6 53. On or about April 22, 2020, the Design Review Board (“DRB”) held a study session via
7 teleconference on the Project. A second study session was scheduled of May 27, 2020, but was
8 canceled. Instead a second DRB study session was held by teleconference on or about June 10,
9 2020. On or about July 8, 2020, the DRB held a public hearing via teleconference to consider
10 recommendations on the Project. On or about July 22, 2020, the DRB held a second public
11 hearing via teleconference and voted on recommendations to the COUNCIL.

12 54. On or about July 23, 2020, RICHMOND released the Response to Comments Document,
13 which included refinements of the Project and revisions to the DSEIR.^{4 5}

14 55. On or about August 6, 2020, the Planning Commission held a meeting where the Final
15 SEIR, consisting of the DSEIR and the Responses to Comments Document, was presented.
16 Although the meeting was posted as a public hearing, the staff report for the meeting stated that
17 the meeting was explicitly not a public hearing, and no action was taken at the meeting.
18 Nevertheless, members of the public submitted email comments prior to the meeting in
19 opposition to the Project.

20 56. On or about August 17, 2020, the Planning Commission held a public hearing on the
21 Project. While REAL PARTY’s representatives were allowed to make an organized multi-
22 person twenty-minute presentation in support of the Project, opponents were given no advance
23 notice or opportunity to choose one or more representatives to present opposition to the Project.
24 Instead, the Planning Director announced at the meeting that the first person recognized to speak
25 opposing the Project would be allowed up to twenty minutes, while all other project opponents,
26 and all project supporters, would be allowed three minutes per person. Needless to say, the first
27 opposing speaker was taken entirely by surprise at being told she had twenty minutes to present

28 _____
29 ⁴ The DSEIR, together with the Response to Comments Document, constituted the Final
Subsequent EIR (“FSEIR”).

30 ⁵ Despite the imminent release of the Response to Comment Document, RICHMOND refused to
31 delay the HPC and DRB meetings so that those bodies could receive and study the Response to
Comment Document before evaluating the Project.

1 opposition and had not prepared an organized presentation beyond the remarks she had intended
2 to present in three minutes. Not surprisingly, her entire presentation lasted less than ten minutes.
3 At the end of the meeting, the public hearing was continued to a special meeting on or about
4 August 20, 2020

5 57. On or about August 18, 2020, an attorney representing the project opponents sent an
6 email to the Richmond Planning Director objecting to the unfair and improper conduct of the
7 Planning Commission public hearing. In response, the Planning Director offered to allow, at the
8 continued public hearing, for a representative of project opponents and of REAL PARTY to each
9 give a ten minute rebuttal to the speakers at the public hearing. The public hearing was then
10 closed, and, after discussion, the Planning Commission voted to recommend certification of the
11 FSEIR and approval of the Project, with some minor modifications.

12 58. On or about September 8, 2020, the COUNCIL held a public hearing on the Project. At
13 the beginning of the public hearing, the City Clerk allowed both REAL PARTY and project
14 opponents up to ten minutes to present their position to the COUNCIL. However, unlike at the
15 Planning Commission, no timing clock was provided so that speakers could know how much of
16 their speaking time remained. Consequently, opponents were only able to present two of their
17 three planned speakers, and under the rigid rules the City Clerk had established for the conduct
18 of the hearing, the opponents' third representative was not allowed to speak at all.

19 59. In addition, several project opponents who had specifically and fully followed the rules
20 the City Clerk had established in order to speak at the public hearing were nevertheless not
21 allowed to speak at all.

22 60. At the close of the public hearing, the COUNCIL, by majority vote, certified the FSEIR
23 and approved the resolutions, including a general plan amendment, required for the Project, as
24 well as approving the zoning amendment ordinance and development agreement ordinance on
25 first reading.

26 61. On or about September 9, 2020, Richmond filed a Notice of Determination of its actions
27 certifying the FSEIR and approving the Project with Contra Costa County.

28 62. On or about September 15, 2020, and based on the certified FSEIR for the Project, the
29 COUNCIL approved final passage of the zoning ordinance amendment and development
30 agreement ordinance.

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1 63. On or about September 16, 2020, RICHMOND filed notices of determinations for its
2 approval of the zoning ordinance amendment and the development agreement ordinance.

3 64. PETITIONERS have exhausted their available administrative remedies to the extent
4 required by law. PETITIONERS and others have raised the concerns and objections contained
5 in this petition through oral and/or written testimony during the project approval process.

6 65. PETITIONERS have no plain, speedy or adequate remedy in the ordinary course of law
7 unless the Court grants the requested relief requiring RESPONDENTS to rescind their improper
8 and illegal approvals for the project. In the absence of such relief, PETITIONERS will suffer
9 irreparable harm from the implementation of the project, and from acts undertaken in furtherance
10 thereof. The harm includes significant and unnecessarily damaging direct and cumulative traffic,
11 air quality, public safety and wildfire impacts.

12 66. PETITIONERS have complied with Public Resources Code §21167.5 by mailing to
13 RESPONDENTS written notice of the commencement of this action. A true and correct copy of
14 said notice, with proof of service, is attached hereto as Exhibit B and incorporated by reference.

15 67. PETITIONERS have complied with C.C.P. §388 by providing notice and a copy of this
16 petition to the California Attorney General. A true and correct copy of said notice, with proof of
17 service, is attached hereto as Exhibit C and incorporated herein by this reference.

18 CHARGING ALLEGATIONS

19 FIRST CAUSE OF ACTION

20 (Violation of CEQA – inadequate EIR)

21 68. PETITIONERS hereby reallege and incorporate by reference the allegations contained in
22 paragraphs 1 through 67, inclusive.

23 69. With certain exceptions not relevant here, CEQA requires that the lead agency prepare
24 and certify an EIR for a discretionary project whenever that project may result in a significant
25 impact on the environment. The EIR must identify all of the project's significant environmental
26 impacts. It must also identify feasible mitigation measures that would reduce project impacts to
27 a level of insignificance and a reasonable range of feasible project alternatives that would reduce
28 or avoid the project's significant impacts.

29 70. The Draft EIR must be circulated to other public agencies and the general public to allow
30 an opportunity for submittal of comments on the EIR. The Final EIR must include written
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1 responses to all comments received during the formal comment period. The responses to
2 comments must fully address the issues raised by the comments.

3 71. If revisions to the EIR in response to comments received identify a new significant
4 impact, or an increase in the severity of an impact not previously disclosed in the Draft EIR, the
5 revised EIR must be recirculated for a new round of comments.

6 72. RESPONDENTS' action in certifying the FSEIR for the Project was an abuse of
7 discretion in that it violated CEQA as set forth in detail below.

8 **Count One – Failure to discuss effects of climate change on the site, the Project, and**
9 **the future occupants of the Project area.**

10 73. An EIR must accurately describe the conditions at the project site, both current and
11 future. The EIR must also address future conditions under the no project alternative, as well as
12 under the Project. The FSEIR failed to discuss the Project area in terms of the effects climate
13 change would have on the future conditions within the Project site. In particular, the FSEIR
14 failed to address the effect of the combination of future warmer and drier weather conditions
15 during the late spring, summer, and fall seasons, along with other weather changes such as severe
16 thunderstorms, in exacerbating the risk of wildfire at the site, and the extent to which the Project
17 would further and significantly increase that risk.

18 **Count Two – Failure to identify significant impacts**

19 74. The FSEIR for the Project failed to identify the Project's significant wildfire impacts.
20 Those impacts result from RICHMOND approving the Project, which would construct numerous
21 new residences in an area of very high fire risk without first fully mitigating that fire risk. In
22 doing so, the Project would increase that fire risk by making infeasible the conducting of
23 controlled burn operations to eliminate high fire risk vegetation as well as increasing the site area
24 that would be a wildland/urban interface (as pointed out in a comment letter from the East Bay
25 Regional Park District). By preventing periodic controlled burns to remove high fire risk
26 vegetation and placing homes in a very high fire risk area, the Project actually increases the risk
27 of wildfire beyond that of the no project alternative.

28 75. The FSEIR for the Project also failed to identify the Project's significant impact on
29 emergency evacuation. The Project is placed in an area of very high fire risk. In addition, the
30 Project is placed in close proximity to the Chevron refinery facilities, which include storage of
31 large volumes of highly toxic materials and highly flammable materials. A wildfire, or an
^^

1 unplanned release of toxic or highly flammable material would require the immediate evacuation
2 of the Project site. However, the Project involves constructing over 2,000 new residences, plus
3 hundreds of thousands of square feet of commercial buildings. Together, these will bring many
4 thousands of people to the site. However, the site is only served by one single exit route. While
5 the Project proposes to widen a portion of that road, it will still leave the exit road subject to
6 blockage, with no alternative emergency exit route. While the Project also proposes to upgrade
7 the existing pier to allow water taxi and ferry service to the site⁶, there is no assurance that
8 during an unexpected emergency any significant number of Project occupants would be able to
9 escape by water. The overall result is an undisclosed significant impact on humans exacerbated
10 by the Project.

11 76. The FSEIR also failed to identify the potentially significant impact to raptor nesting sites
12 in the Project area. The FSEIR asserted that no raptor nesting sites or potential raptor nesting
13 sites exist in the Project area. However, no evidence showing a careful survey of the Project site
14 to confirm that conclusion was provided. To the contrary, despite the inability for the public to
15 access and survey the Project site, evidence was presented showing 1) raptor nests existed in the
16 vicinity of the Project site, 2) there were numerous potential raptor nesting sites within the
17 Project area, and those nesting sites would be impacted by the Project, and 3) there were
18 excellent areas within the Project area for raptors to forage for prey; making the Project site an
19 attractive nesting area. Consequently, the loss of actual or potential nesting sites should have
20 been considered a significant impact.

21 77. The FSEIR also failed to identify the potentially significant impact of the Project's
22 inconsistency with policies contained in the Richmond General Plan, which policies were
23 adopted for the purpose of avoiding or mitigating an environmental effect.

24 **Count Three – Failure to Adequately Mitigate Significant Project Impacts;**

25 78. The FSEIR failed to adequately mitigate the potentially significant impact from
26 disturbing and/or destroying Native American cultural objects and sacred spaces present on the
27 Project site. These objects and spaces have important archaeological, cultural, and religious
28 value that would be damaged or destroyed by Project excavation and potential removal. The
29 proposed mitigation, consisting of monitoring, documenting, and potentially disturbing or
30

31 ⁶ As of now, the Water Emergency Transport Authority has declined to provide ferry service,
^^ citing insufficient ridership.

1 removing objects or locations would not adequately mitigate the impact of damaging, destroying,
2 or displacing these objects and locations.

3 79. Further, RESPONDENTS refused to delay approving the Project to allow more detailed
4 study of the location of the Native American objects and locations, thereby eliminating the
5 potential of redesigning the Project or associated grading and excavation areas to avoid
6 impacting the Native American objects and spaces. RICHMOND's belated refusal, after the
7 time for circulation of the DSEIR had ended, to allow time for a more detailed determination of
8 the location of Native American cultural and religious objects and locations eliminated the
9 ability to provide effective mitigation of impacts, unnecessarily making the impact significant
10 and unavoidable. RICHMOND also failed to recirculate the DSEIR after refusing to agree to the
11 newly proposed mitigation measure.

12 80. The FSEIR failed to adequately mitigate the impact of excavating and thereby destroying
13 the identified areas of coastal terrace prairie ecosystem, a rare ecosystem not present anywhere
14 else in the San Francisco Bay Area. As mitigation, the FSEIR proposed to attempt to recreate
15 the ecosystem elsewhere on the Project site. However, given the rarity and fragility of this
16 ecosystem, there is no substantial evidence to support that such an attempt would prove
17 successful. In the absence of such evidence, it cannot be presumed the effort would be
18 successful, and therefore a significant and unavoidable impact should have been acknowledged.

19 81. The FSEIR failed to adequately mitigate the potential impact of irreparably damaging the
20 valuable and sensitive eelgrass beds just offshore of the Project site. Despite the fact that the
21 Project would include doing extensive work on the existing pier, which is directly adjacent to the
22 eelgrass beds, and despite the fact that the Project contemplates establishing water taxi and
23 scheduled public ferry service to that same pier, and despite the fact that fresh water storm run-
24 off from the Project would drain into the Bay – with that run-off potentially concentrated in close
25 proximity to those eelgrass beds, where it would cause significant damage, the FSEIR asserts
26 that no damage would result. It then goes on to assert that, in the event damage did result, that
27 damage would be mitigated by creating new eelgrass beds either on-site or off-site. However,
28 the FSEIR presents no substantial evidence to show that such potential eelgrass replacement
29 projects could be depended upon to be successful. In the absence of such evidence, the efficacy
30 of that mitigation is unproven and cannot be presumed. Consequently, the FSEIR should have
31 found the Projects impacts to eelgrass to be significant and unavoidable.

1 **Count Four – Failure to Adequately Address a Reasonable Range of Alternatives,**
2 **and Specifically Feasible Alternatives that Could Reduce Project Impacts to Less than**
3 **Significant.**

4 82. The EIR failed to adequately address a reasonable range of feasible alternatives that
5 would avoid or lessen the Project’s significant impacts. In particular, the EIR failed to
6 adequately address the Community Plan alternative as submitted by its proponents. In particular,
7 the FSEIR failed to discuss whether the Community Plan alternative could either avoid or
8 adequately mitigate any of the Project’s significant impacts that could not be mitigated to a level
9 of insignificance. This deprived decision makers and the public of information necessary to
10 make a fully informed decision whether the Community Plan alternative was preferable to the
11 Project.

12 **Count Five – Failure to adequately respond to comments**

13 83. The FSEIR was also defective for failing to adequately respond to comments received on
14 the DSEIR during the comment period, as shown by the responses contained in the Response to
15 Comments Document.

16 84. RESPONDENTS’ certification of the FSEIR, which was defective for the above-
17 mentioned reasons, was an abuse of discretion in violation of CEQA. For that reason, the
18 certification of the SEIR for the Project, and the associated Project approvals, including the
19 approvals for the development agreement amendments, must be set aside.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of CEQA – CEQA Findings not supported by substantial evidence)**

22 85. PETITIONERS hereby reallege and incorporate by reference the allegations contained in
23 paragraphs 1 through 83, inclusive.

24 86. CEQA requires that, prior to taking an action to approve or carry out a project for which
25 an EIR has been prepared, the lead agency must make specific findings, supported by evidence
26 in the record, on each impact that the EIR identified as significant, as well as on the rejection of
27 alternatives or mitigation measures as infeasible. (Public Resources Code § 21081.)

28 87. RESPONDENTS violated CEQA in that the findings that the COUNCIL made
29 purporting to address the significant impacts identified in the FSEIR were not supported by the
30 evidence in the record before it.

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1 88. RESPONDENTS further violated CEQA in that the findings rejecting the Community
2 Plan Alternative were not supported by the evidence in the record.

3 89. RESPONDENTS further violated CEQA in that the statement of overriding
4 considerations adopted by RESPONDENTS in approving the Project was not supported by the
5 evidence in the record.

6 **THIRD CAUSE OF ACTION**

7 **(Violation of California Planning and Zoning Law – general plan amendment invalid based**
8 **on creating internal inconsistency in general plan.)**

9 90. PETITIONERS hereby reallege and incorporate by reference the allegations contained in
10 paragraphs 1 through 87 inclusive.

11 91. Under California Planning and Zoning law, the Richmond General Plan must be
12 internally consistent.

13 92. In approving the general plan amendment associated with the Project, the COUNCIL
14 created an inconsistency in the General Plan in that provisions in the general plan amendment
15 were inconsistent with Goals and/or Policies contained in the existing Richmond General Plan
16 2030.

17 93. As a consequence, the general plan amendment created one or more inconsistencies in the
18 general plan and was therefore invalid when adopted.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of California Planning and Zoning Law – Project approvals invalid based on**
21 **inconsistency with general plan.)**

22 94. PETITIONERS hereby reallege and incorporate by reference the allegations contained in
23 paragraphs 1 through 91 inclusive.

24 95. Under California Planning and Zoning law, all approvals made by a city or county must
25 be consistent with the goals and policies contained in the applicable general plan.

26 96. In determining consistency, the city or county must determine that the approval would be
27 compatible with, and would not conflict or interfere with attaining the goal or complying with
28 the policy contained in the general plan.

29 97. The Project, and the approvals made by RICHMOND in approving the Project, including
30 but not limited to the rezoning, subdivision map, and development agreement and disposition
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1 and development agreement associated with the project, were inconsistent with goals and/or
2 policies contained in the Richmond General Plan 2030.

3 98. Because the Project and its approvals were inconsistent with the Richmond General Plan
4 2030, the Project and its approvals were invalid.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PETITIONERS pray for relief as follows:

- 8 1. For this Court's peremptory writ of mandate directing RESPONDENTS to set aside and
9 vacate their certification of the EIR for the Project and their approvals for the Project, including
10 the associated rezoning to PM-PAD zoning;
- 11 2. For this Court's peremptory writ of mandate directing RESPONDENTS to comply with
12 the provisions of CEQA and California Planning and Zoning laws in taking any further actions to
13 consider said Project;
- 14 3. For this Court's declaration that the general plan amendment adopted in conjunction with
15 RICHMOND's approval of the Project made the Richmond General Plan 2030 internally
16 inconsistent, and therefore that general plan amendment was and is invalid and void.
- 17 4. For this Court's declaration that the approvals for the Project were inconsistent with goals
18 and policies of the Richmond General Plan 2030, and therefore those approvals were and are
19 invalid and void.
- 20 5. For this Court's temporary restraining order, preliminary and permanent injunctions
21 restraining all RESPONDENTS and REAL PARTIES IN INTEREST, their agents, employees,
22 servants, officers, assigns any those acting in concert with them from undertaking any
23 construction activities, issuing any construction or development approvals or permits, or taking
24 any other action to implement the Project, pending full compliance with CEQA and California
25 Planning and Zoning Laws.
- 26 6. For an award of reasonable attorney's fees under Code of Civil Procedure section 1021.5
27 or as otherwise authorized by law;
- 28 7. For costs of suit incurred herein; and
- 29 8. For such other and further equitable or legal relief as the Court deems just and proper.

30 Dated: October 8, 2020

31 **Stuart M. Flashman**
32 **LAW OFFICES OF STUART M. FLASHMAN**

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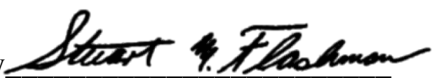
Attorney for Petitioners and Plaintiffs
Point Molate Alliance, Ocean Awareness Project,
Inc., Andres Soto, Sara L. Tobin, Anthony Sustak,
Pamela Stello, Margaret Browne, and David
Helvarg

Robert Cheasty
CHEASTY, CHEASTY & MALEK, LLP

Attorney for Petitioners and Plaintiffs
Citizens For East Shore Parks,
Golden Gate Audubon Society, California Native
Plant Society Norma Wallace, and Isabella Zizi

Norman La Force (SBN 102772)

Attorney for Petitioners and Plaintiffs
Sierra Club and SPRAWLDEF

By 
Stuart M. Flashman

VERIFICATION

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2
3 I, David Helvarg, am a petitioner in this action. I have read the foregoing Petition for
4 Peremptory Writ of Mandate and Complaint for Declaratory Relief (hereinafter, "Petition") and
5 am familiar with the matters alleged therein. The matters alleged in the Petition are true of my
6 own personal knowledge, excepts for those matters alleged on information and belief, and as to
7 those, I am informed and believe they are true. I declare under penalty of perjury under the laws
8 of the State of California that the foregoing is true and correct and that this Verification was
9 executed on October 8, 2020 at Richmond, California.
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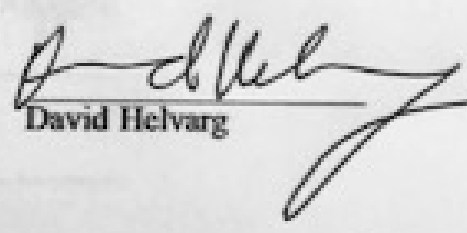
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Exhibit A

West County Times

1050 Marina Way S
Richmond, CA 94804
(510) 262-2740

3824969

STUART FLASHMAN
5626 OCEAN VIEW DR
OAKLAND, CA 94618

PROOF OF PUBLICATION

FILE NO. NOI Circulate Petition/City of Richmond

In the matter of

West County Times

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter.

I am the Principal Legal Clerk of the West County Times, a newspaper of general circulation, printed and published in the City of Walnut Creek, County of Contra Costa, 94598

And which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Contra Costa, State of California, under the date of August 29, 1978. Case Number 188884.

The notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

03/11/2020

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 11th day of March, 2020.



Signature

Legal No.

0006469006

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Richmond for the purpose of protecting the open space and associated environmental, cultural, recreational, and scenic resources. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

The City of Richmond is on the verge of making a huge and long-lasting mistake that could damage the City for many years to come. It would give away valuable resources for the sake of short-term gain. We, the Citizens of Richmond, must insist that the City not once again sell off its future. This initiative will protect our city's valued coastline for future generations to enjoy.

Dated: February 21, 2020

Anthony J. Sustak Margaret Gaynell Browne Paul Joseph Kilkenny
5717 Sierra Ave. 5717 Sierra Ave. 6111 Orchard Ave.
Richmond, CA 94805 Richmond, CA 94805 Richmond, CA 94804

The city attorney has prepared the following title and summary of the chief purposes and points of the proposed measure:

A Proposed Amendment to the City of Richmond General Plan 2030 to Change Land Use Designations in Point Molate From Residential Areas to Open Space Areas and to Include Residential/Mixed Use Designations in the Winehaven Complex of Point Molate

A general plan is a comprehensive, long-term plan for the development of a city. This measure ("Measure") states that it will amend the Land Use and Urban Design Element ("Element") of the Richmond General Plan 2030 (specifically, the San Pablo Peninsula Area). More specifically, according to the Measure, it will (1) change current residential land use designations in Point Molate to open space, thereby eliminating from possible development the areas in Point Molate that are currently designated for development; and (2) limit development to the northern portion of the Point Molate area that had been occupied by a winery and associated buildings ("Winehaven Complex"), as follows:

1. The Measure states that, in the San Pablo Peninsula Area provision, the land use designation would be changed from "Medium-Density Residential, Low Density Residential" to "Residential/Mixed-Use." In the same section, the Measure states that it would change the designation for three portions of the southern part of Point Molate from residential to open space. Residential/Mixed-Use would only be applied to the Winehaven Complex, through the reuse of existing buildings and/or construction of new buildings found compatible within the context of the historic district designation of the Winehaven Complex.

2. The Measure also states that it would:
- Eliminate the three residential areas previously allowed for development in the southern part of Point Molate, which would be designated as open space, and
- Include the Winehaven Complex as part of the "Residential Neighborhoods" area and incorporate a residential/mixed use land use designation in that area. The Measure also provides that the Richmond Zoning Code must be amended to conform to the provisions of the Measure. The Measure may only be amended or repealed by the Richmond voters. The City Council, without voter approval, may make technical, non-substantive modifications to the Measure as well as amendments or modifications "to strengthen the environmental protections" of the Measure.

WCT 6469006 March 11, 2020

Exhibit B

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stuflash.com

October 6, 2020

Ms. Pamela Christian, City Clerk
City of Richmond
City Hall
400 Civic Center Plaza
Richmond, CA 94804

RE: Notice of Intent to initiate litigation - Point Molate Mixed-Use Project
(State Clearinghouse # 2019070447).

Dear Ms. Christian:

I, along with other attorneys, represent a number of organizations, including specifically but not limited to the Point Molate Alliance, Citizens for East Shore Parks, SPRAWLDEF, the Sierra Club, and individual Richmond residents in reference to the above project, which was approved by the City Council on September 8, 2020, with a Notice of Determination being filed the following day, September 9, 2020.¹

Please take notice, pursuant to Public Resources Code § 21167.5, and on behalf of my clients opposed to this project, that we intend to initiate litigation against the City of Richmond and the Richmond City Council challenging the City's approval of this project under the California Environmental Quality Act (Public Resources Code §21000 et seq.) as well as on other grounds.

Most sincerely


Stuart M. Flashman

¹ Additional final approvals were granted at a subsequent city council meeting.

PROOF OF SERVICE BY MAIL AND ELECTRONIC 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 October 6, 2020, I served the within NOTICE OF INTENT TO INITIATE LITIGATION 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:

Ms. Pamela Christian, City Clerk
City of Richmond
City Hall
400 Civic Center Plaza
Richmond, CA 94804

In addition, on the above-same day, I also served the above-same document, converted into an electronic file in pdf format, on the above-same party by transmitting it via electronic mail, as an email attachment, to the address listed below:

Richmond City Clerk: pamela_christian@ci.richmond.ca.us

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 6, 2020.


Stuart M. Flashman

Exhibit C

1 Stuart M. Flashman (SBN 148396)
2 LAW OFFICES OF STUART M. FLASHMAN
3 5626 Ocean View Dr.
4 Oakland, CA 94618-1533
5 Telephone: (510) 652-5373 (voice & fax)
6 email: stu@stuflash.com

7 Attorney for Petitioners and Plaintiffs POINT
8 MOLATE ALLIANCE, OCEAN AWARENESS
9 PROJECT, INC, ANDRES SOTO, SARA L.
10 TOBIN, ANTHONY SUSTAK, PAMELA
11 STELLO, MARGARET BROWNE, and DAVID
12 HELVARG

13 Robert Cheasty (SBN 85115)
14 CHEASTY, CHEASTY & MALEK, LLP
15 1604 Solano Ave.
16 Albany, CA 94707
17 Telephone (510) 525-1000
18 Fax (510) 526-3672
19 email: rcheasty@cheastylaw.com

20 Attorney for Petitioners and Plaintiffs
21 CITIZENS FOR EAST SHORE PARKS,
22 GOLDEN GATE AUDUBON SOCIETY
23 CALIFORNIA NATIVE PLANT SOCIETY,
24 NORMA WALLACE, and ISABELLA ZIZI

25 Norman La Force (SBN 102772)
26 802 Balra Drive
27 El Cerrito, CA 94530-3002
28 Telephone: (510) 295-7657
29 email: laforcelaw@comcast.net

30 Attorney for Petitioners and Plaintiffs
31 SIERRA CLUB and SPRAWLDEF

32 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
33 **IN AND FOR THE COUNTY OF CONTRA COSTA**

34 POINT MOLATE ALLIANCE, an unincorporated
35 association; THE SIERRA CLUB, a California
36 nonprofit corporation; SPRAWLDEF, a California
37 nonprofit corporation; CITIZENS FOR EAST
38 SHORE PARKS, a California nonprofit
39 corporation; GOLDEN GATE AUDUBON
40 SOCIETY, a California nonprofit corporation;
41 CALIFORNIA NATIVE PLANT SOCIETY, a
42 California nonprofit corporation, OCEAN

No.

**NOTICE OF FILING OF LEGAL
ACTION**

[Public Resources Code § 21167.7;
C.C.P. § 388]

1 AWARENESS PROJECT, INC., a Washington
2 D.C. nonprofit corporation; ANDRES SOTO;
3 NORMA WALLACE; SARA L. TOBIN;
4 ANTHONY J. SUSTAK; PAMELA STELLO;
5 MARGARET BROWNE; DAVID HELVARG;
6 and ISABELLA ZIZI

7 Petitioners and Plaintiffs,

8 vs.

9 CITY OF RICHMOND, a municipal corporation;
10 RICHMOND CITY COUNCIL; and DOES 1-20
11 inclusive,

12 Respondents and Defendants

13 WINEHAVEN LEGACY, LLC, a Delaware limited
14 liability company; and DOES 21-40 inclusive,
15 Real Parties In Interest

16 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

17 PLEASE TAKE NOTICE under Public Resources Code §21167.7 and Code of Civil
18 Procedure section 388 that, on October 9, 2020, Petitioners and Plaintiffs POINT MOLATE
19 ALLIANCE, THE SIERRA CLUB, SPRAWLDEF, CITIZENS FOR EAST SHORE PARKS,
20 GOLDEN GATE AUDUBON SOCIETY, OCEAN AWARENESS PROJECT, INC.,
21 CALIFORNIA NATIVE PLANT SOCIETY, ANDRES SOTO, NORMA WALLACE, SARA L.
22 TOBIN, ANTHONY J. SUSTAK, PAMELA STELLO, MARGARET BROWNE, and DAVID
23 HELVARG (hereinafter “PETITIONERS”) will be filing a petition for peremptory writ of
24 mandate and complaint for declaratory relief against Respondents and Defendants CITY OF
25 RICHMOND and RICHMOND CITY COUNCIL (“Respondents”) in Contra Costa County
26 Superior Court.

27 The petition alleges that Respondents violated provisions of the California Environmental
28 Quality Act (CEQA) in granting approvals related to the Point Molate Mixed Use Project
29 (“Project”) and certification of its associated Final Supplemental EIR.

30 In addition, Petitioners will also be seeking declaratory relief under California Planning
31 and Zoning law on the basis that the general plan amendment adopted along with the Project
made the Richmond General Plan internally inconsistent, and that the Project approvals were
inconsistent with goals and policies contained in the Richmond General Plan.

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A copy of the petition is enclosed herewith for your reference. Please feel free to contact
Petitioners' counsel for further details.

Please provide a letter acknowledging receipt of this notice.

Dated: October 9, 2020

Stuart M. Flashman
LAW OFFICES OF STUART M. FLASHMAN

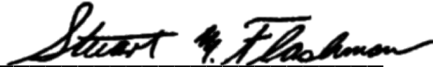
Attorney for Petitioners and Plaintiffs
Point Molate Alliance, Ocean Awareness Project,
Inc, Andres Soto, Sara L. Tobin, Anthony Sustak,
Pamela Stello, Margaret Browne, and David
Helvarg

Robert Cheasty
CHEASTY, CHEASTY & MALEK, LLP

Attorney for Petitioners and Plaintiffs
Citizens For East Shore Parks,
Golden Gate Audubon Society, California Native
Plants Society, Norma Wallace, and Isabella Zizi

Norman La Force (SBN 102772)

Attorney for Petitioners and Plaintiffs
Sierra Club and SPRAWLDEF

By 
Stuart M. Flashman

PROOF OF SERVICE BY MAIL

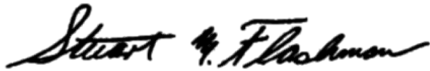
I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On October 9, 2020, I served the within NOTICE OF FILING OF LEGAL ACTION, with an attached copy of the PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF 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
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 9, 2020.



Stuart M. Flashman