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ALAMEDA COUNTY
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CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy
CASE NUMBER:
RG19046938

21 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **IN AND FOR THE COUNTY OF ALAMEDA**

23 CITIZENS COMMITTEE TO COMPLETE
24 THE REFUGE, a California nonprofit
25 corporation, and CENTER FOR
26 BIOLOGICAL DIVERSITY, a California
27 nonprofit corporation,

28 Petitioners and Plaintiffs,

29 vs.

30 CITY OF NEWARK, a municipal corporation;
31 NEWARK CITY COUNCIL; and DOES 1-20
32 inclusive,

33 Respondents and Defendants

34 SOBRATO ORGANIZATION, LLC, a
35 California limited liability company;
36 NEWARK PARTNERS, LLC, a California
37 limited liability company; and DOES 21-40
38 inclusive,

39 Real Parties In Interest

No.

PETITION FOR PEREMPTORY WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE RELIEF

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

(ACTION FILED UNDER CALIFORNIA
ENVIRONMENTAL QUALITY ACT)

40 Petitioners and Plaintiffs CITIZENS COMMITTEE TO COMPLETE THE REFUGE
41 (hereinafter "CCCR") and CENTER FOR BIOLOGICAL DIVERSITY (hereinafter, the
42 "CENTER" and the foregoing, collectively, "PETITIONERS") allege as follows:

INTRODUCTION

1
2 1. This action challenges the approvals granted by respondents and defendants CITY OF
3 NEWARK ("CITY") and NEWARK CITY COUNCIL ("COUNCIL" and the aforementioned
4 hereinafter referred to collectively as "RESPONDENTS") for the Sanctuary West Residential
5 Project (hereinafter, "Project") and the approval of the Environmental Impact Report
6 Addendum/Compliance Checklist ("Checklist") for the Project. These approvals were granted at
7 the behest of and for the benefit of Real Parties in Interest SOBRATO ORGANIZATION, LLC
8 (hereinafter, "SOBRATO") and NEWARK PARTNERS, LLC (hereinafter "PARTNERS" and,
9 together with SOBRATO, collectively, "REAL PARTIES"). PETITIONERS allege that
10 RESPONDENTS' approvals for the Project and for the Checklist violated provisions of the
11 California Environmental Quality Act ("CEQA").

12 2. RESPONDENTS' actions violated CEQA in that the Checklist for the project incorrectly
13 asserted that there was no substantial evidence in the record that the Project would have a
14 significant effect on the environment not already studied and addressed in the certified 2015
15 Recirculated Environmental Impact Report ("REIR") for the Area 3 and 4 Specific Plan when, in
16 fact, substantial evidence in the record, submitted by PETITIONERS and others, showed that
17 there were site-specific significant impacts from the Project, as well as changes to the Project,
18 changes to the circumstances surrounding the Project and its proposed implementation, and new,
19 previously unavailable information, all of which indicated that the Project would have new
20 and/or significantly increased environmental impacts compared to those considered and
21 identified in the REIR for the Area 3 and 4 Specific Plan, requiring the preparation of a
22 supplemental or subsequent EIR.

23 3. PETITIONERS further allege that RESPONDENTS violated CEQA by improperly
24 deferring the determination of mitigation measures to address potentially significant impacts of
25 the Project until after the Project's final approval by the Council.

26 4. PETITIONERS further challenge the fairness of the CITY's administrative process, as
27 the CITY withheld important evidence relating to the Project and its environmental impacts from
28 PETITIONERS, other agencies, and the public until the very day of the final hearing before the
29 COUNCIL, thereby preventing PETITIONERS, other public agencies, and members of the
30 public, from being able to review and respond to this evidence prior to the COUNCIL's final
31 hearing and approval of the Project and the Checklist.

1 5. PETITIONERS seek this Court’s writ of mandate ordering RESPONDENTS to rescind
2 their improper and illegal approvals for the Project, including specifically the approval of the
3 Checklist.

4 6. PETITIONERS also seeks this Court’s temporary restraining order, preliminary
5 injunction, and permanent injunction to prevent RESPONDENTS, REAL PARTIES, and any
6 persons acting on behalf of these parties from moving forward in granting any further approvals
7 to the Project, or taking any steps towards implementation or construction of the Project until it
8 has undergone proper environmental review.

9 7. PETITIONERS also ask that they be granted their reasonable attorneys’ fees as a private
10 attorney general under Code of Civil Procedure § 1021.5 or other applicable statute litigating to
11 protect the rights and benefits of Newark citizens and the general public.

12 **PARTIES**

13 8. Petitioner CITIZENS COMMITTEE TO COMPLETE THE REFUGE is a California
14 nonprofit corporation established and operating under the laws of the State of California and
15 qualified as a 501(c)(3) public charity under the U.S. Internal Revenue Code. CCCR was
16 established to protect the area along the San Francisco Bay shoreline proposed for inclusion in
17 the Don Edwards San Francisco Bay National Wildlife Refuge (hereinafter, “Refuge,”),
18 including specifically the valuable and irreplaceable plant and animal species and natural habitat
19 included in that area and promote its inclusion in the federally protected area of the Refuge.
20 CCCR therefore has an interest in protecting the environmental values of Area 4 of the City of
21 Newark’s shoreline and specifically the area proposed for the Project, as a majority of the site
22 has been identified as a potential addition to the Refuge. CCCR also has an interest in ensuring
23 more generally that the environment is properly protected by RESPONDENTS’ adherence to the
24 requirements of CEQA. These interests will be directly and adversely affected by the approvals
25 at issue in this action in that RESPONDENTS’ approvals for the Project violate provisions of
26 law as set forth in this Petition and would cause significant and avoidable environmental
27 damage. CCCR’s interests, as described above, are adversely affected by RESPONDENTS’
28 approval of the Project.

29 9. Petitioner CENTER FOR BIOLOGICAL DIVERSITY is a California nonprofit
30 corporation established and operating under the laws of the State of California and qualified as a
31 501(c)(3) public charity under the U.S. Internal Revenue Code. The CENTER was established

1 to protect the existing diversity of biological species both in California and in other parts of the
2 United State and of the entire world. The CENTER works on behalf of its thousands of members
3 throughout the United States and elsewhere to promote the maintenance of biological diversity,
4 and particularly to promote the recovery of currently identified threatened or endangered species
5 and to assist in identifying and protecting species subject to threats that have not yet gained legal
6 protection, as well as protecting the habitat used and needed by such species.

7 10. PETITIONERS brings this action on their own behalves and on behalf of their members,
8 as well as the citizens, residents, and supporters on behalf of whom they advocate and who are
9 citizens and taxpayers of the City of Newark, the State of California, and throughout the United
10 States. These members and supporters include those who live, work, travel and/or enjoy
11 recreational opportunities in the vicinity of the Project and in areas that will be affected by the
12 Project, and will suffer the adverse effects from RESPONDENTS' improper actions in
13 approving the Project.

14 11. PETITIONERS, acting either directly or through their authorized representatives,
15 submitted written and oral comments to RESPONDENTS objecting to the Project, as set forth
16 herein.

17 12. PETITIONERS, acting either directly or through their authorized representatives, public
18 agencies, other organizations, and members of the public submitted written and oral comments
19 raising the violations of CEQA set forth in this complaint prior to the close of the public hearing
20 before RESPONDENTS' approval of the Project and the Checklist for the Project.

21 13. This action is for the purpose of enforcing important public rights and policies of the
22 State of California. It is brought to ensure that approvals made by RESPONDENTS are made
23 consonant with CEQA and that the environmental values threatened by the Project are protected
24 for the public and for the future. The prosecution of this action will confer a substantial benefit
25 on members of the public, and specifically on the citizens of the City of Newark and surrounding
26 areas by enforcing CEQA. PETITIONERS will receive no special financial benefit from the
27 successful prosecution of this action. In this action, PETITIONERS are acting as private
28 attorneys general to protect these public rights and policies and prevent such harms. As such,
29 PETITIONERS are entitled to recover their reasonable attorneys' fees under C.C.P. §1021.5.

30 14. Respondent CITY OF NEWARK is a municipal corporation established and operating
31 under the laws of the State of California. CITY was the lead agency under CEQA for the
32

1 environmental review of the Project. CITY directed the preparation of the Checklist that
2 RESPONDENTS used in determining to approve the Project pursuant to CEQA.

3 15. Respondent NEWARK CITY COUNCIL is the duly elected legislative and governing
4 body for the CITY. COUNCIL was responsible for considering and approving the Checklist for
5 the Project, as well as giving final approvals for the Project.

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

11 17. PETITIONERS are informed and believe, and on that basis allege, that Real Party in
12 Interest SOBRATO ORGANIZATION, LLC is a California limited liability company.

13 18. SOBRATO was the applicant for and sought the Project approvals at issue in this action.

14 19. PETITIONERS are informed and believe, and on that basis alleged that Real Party in
15 Interest NEWARK PARTNERS, LLC ("PARTNERS") is a California limited liability company.

16 20. PETITIONERS are further informed and believe, and on that basis allege that
17 PARTNERS is the owner of the property within Area 4 on which the Project is proposed to be
18 built, and that SOBRATO, in applying for the Project approvals at issue in this action, was acting
19 as the agent or representative of PARTNERS, or was otherwise associated with PARTNERS in
20 seeking those approvals.

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

26 STATEMENT OF FACTS

27 Project Location

28 22. The Project is proposed for an area along the Newark shoreline of San Francisco Bay that
29 is referred to by the CITY as Area 4, and more specifically in three subareas, Sub Area B, C, and
30 E, within Area 4. Area 4 is located north of the mouth of Coyote Creek and directly adjoining
31 Mowry Slough in a diked area that is comprised of ponds, muted tidal marsh, brackish marsh,

