

FILED BY FAX

ALAMEDA COUNTY

January 17, 2013

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG13663903

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ALAMEDA**
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11 SUSTAINABILITY, PARKS, RECYCLING AND
12 WILDLIFE DEFENSE FUND (SPRAWLDEF),

13 Petitioner,

14 vs.

15 EAST BAY REGIONAL PARKS DISTRICT,

16 Respondent.
17

Case No.

**PETITION FOR WRIT OF
MANDATE (CEQA)**

[Public Resources Code §21168.5; Code
of Civil Procedure §§ 1085 and 1094.5]

18 **I. INTRODUCTION**

19 1. Leaving dogs to run wild, damaging the San Francisco Bay wildlife, and leaving
20 unanalyzed the impacts of windsurfers upon endangered eelgrass are among the failures of the East Bay
21 Regional Park District (the "District" or EBRPD) when it certified an environmental impact report (EIR)
22 for the expansion of access to the Albany coast park (the "Project").

23 2. Based upon these failures and the District's improper ignoring of the San Francisco Bay
24 Plan and Eastshore Park General Plan, petitioner SPRAWLDEF brings this action against the District
25 under the California Environmental Quality Act (CEQA).

26 3. The Court's writ and relief are urgently required to protect the physical environment from
27 unnecessary environmental impacts and any further commitment to the Project before proper
28 environmental analysis, mitigation and alternatives.

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II. PARTIES

4. Petitioner Sustainability, Parks, Recycling and Wildlife Legal Defense Fund (SPRAWLDEF) is a Bay Area public benefit corporation. The organization’s mission is the legal defense and promotion of socio-economic sustainability, parks, recycling, wildlife and natural features of Northern California.

5. Petitioner SPRAWLDEF participated fully in the public comment and public hearing process leading to the District’s adoption of the Project and certification of the Project EIR.

6. Petitioner has exhausted all administrative remedies, including objecting consistently throughout the Project review process, raising the factual and legal objections asserted in this petition.

7. Respondent East Bay Regional Park District (EBRPD) owns the Eastshore State Park with the State of California Department of Parks and Recreation (CDPR). EBRPD manages and operates the park through an agreement with CDPR.

III. JURISDICTION AND VENUE

8. This court has jurisdiction under Public Resources Code (PRC) §21168.5 and California Code of Civil Procedure (CCP) §§ 1085, 1094.5. Respondent’s general offices are located in Alameda County, the Project site is in Alameda County and the Project approval which is the subject of this action was undertaken by the District’s board of directors in Alameda County.

IV. GENERAL ALLEGATIONS

9. Petitioner makes the following allegations based upon its information and belief. The paragraphs below will refer to information in numerous documents relating to this lawsuit, all of which will be duly filed with this court as part of the record of proceedings, here incorporated by reference.

10. On November 20, 2012, the District directors adopted a resolution approving the following agenda item: “Certification of the Environmental Impact Report (SCH#2012032072) and Adoption of California Environmental Quality Act (CEQA) Findings and Mitigation Monitoring and Reporting Program for the Albany Beach Restoration and Public Access Project: Eastshore State Park.”

1 11. The Project EIR is “tiered” from the EIR certified for the Eastshore Park General Plan (the
2 “Plan” or “General Plan”). The Project is referenced in that General Plan.

3 12. The Project is required to conform to the General Plan.

4 13. The 63-acre Albany Beach project area (of which 20 acres is proposed for improvements)
5 is the subject of the proposed restoration and public access Project. It is located on the Albany shoreline
6 in northwestern Alameda County, including lands in the city limits of Albany and Berkeley.

7 14. The Project site is bounded by the Albany Peninsula to the north, Golden Gate Fields race-
8 track and Buchanan Street to the east, Gilman Street to the south, and San Francisco Bay and City of
9 Albany lands to the west.

10 15. The Project site consists of three areas: 1) the southern portion of “Albany Neck,”
11 extending out to “Albany Bulb;” 2) Albany Beach, to the south of the “Neck” and “Bulb,” and; 3) the
12 proposed Bay Trail along and above the shoreline south of Albany Beach.

13 16. No formal trail currently exists along the Albany Beach and access to the Project site is
14 currently limited by foot to unimproved footpaths.

15 17. The current use of the location is indicated by the “No Project Alternative” discussion of
16 the Project EIR. It states “...informal use by the public, including hikers and bicyclists,” but “no
17 formalized, approved access,” and notes “public access could be terminated at any time. There is “no
18 Bay Trail providing a separate through-route for pedestrians and bicycles on the Bay Trail from
19 Richmond south to Emeryville and Oakland.”

20 18. The physical work of the Projects consists of the following: 1) Albany Neck shoreline and
21 trail restoration, 2) Albany Beach enhancement and recreation improvements, and 3) construction of a
22 segment of the San Francisco Bay Trail between Albany Beach and Gilman Street. Project components
23 include shoreline stabilization/reconstruction, accessibility improvements, vegetation management,
24 beach enhancement, seasonal wetlands enhancements, stormwater management, subtidal habitat
25 enhancement, parking and water trail access, restroom and site furnishings, and trails.

26 19. However, it is not these physical changes, but the increased use that will arise which give
27 rise to this action. The project will significantly enhance access and recreational use to the Project site,
28 with new facilities, parking and access for windsurfers and dog owners.

1 **Unleashed dogs in the park.**

2 20. The greatest users of the Project site have been dog owners, many of whom let their dogs
3 run at the site without leashes, allowing the dogs to relieve themselves without restraint.

4 21. State park regulations require that all dogs at the Project site be leashed.

5 22. The Eastshore Park General Plan identified specific issues of dog use at the Albany Beach
6 related to the potential to cause significant environmental impact, including: "Protecting habitat values
7 by restricting dog access into sensitive upland and aquatic areas;" "Ensuring appropriate clean-up of
8 waste products in order to avoid impacts to water quality and public health;" and "Establishing and
9 enforcing new patterns of public dog use within the park."

10 23. According to the Eastshore Park General Plan: "Dog use and activity in the park project
11 will be managed according to State Parks' guidelines in order to protect habitat values and enhance
12 public safety. As such, dogs will not under any circumstances be permitted in management sub-zones
13 designated as preservation areas or on any beach."

14 24. The Project as approved with the supporting EIR would lack facilities, maintenance or
15 other protections to support dog use at the site. The Project EIR did not consider or adopt adequate
16 enforcement of leashing restrictions, reporting response, dog waste cleanup maintenance or shoreline
17 restrictions of dogs.

18 25. The Project EIR failed completely to describe increased unleashed dog access to the
19 shoreline with the Project or mitigation or alternatives to the environmental and land use impacts
20 associated with more dogs.

21 **Windsurfers and the Eelgrass.**

22 26. "Non-motorized small watercraft" indicated in the Project EIR includes kite surfers,
23 kayakers and windsurfers.

24 27. Currently only a small number of such users launch from the Project site, only 10 of the
25 735 daily users identified in the EIR.

26 28. The Project is intended to increase the use of the Project site by these "non-motorized"
27 craft by providing new parking, restrooms and trail access for them.

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1 29. While stating the goal of increased “non-motorized” craft use of the site, the Project EIR
2 states that environmental impacts of their use will not increase.

3 30. The EIR conditions the protections which are claimed to reduce the environmental impacts
4 of the “non-motorized” craft users to “less than significant” on future funding.

5 31. The EIR fails to provide monitoring and adaptive management of potential future signifi-
6 cant, or cumulatively significant environmental impacts of increased “non-motorized” craft.

7 32. Eelgrass is a protected species of the marine environment, found at the Project site.

8 33. “Non-motorized” craft use in eelgrass beds can damage the eelgrass.

9 34. The Project EIR fails to discuss impacts to eelgrass and bird nesting which would ensue
10 from increased use of the site by “non-motorized” craft.

11 35. The EIR also fails to discuss the cumulative impacts of future “non-motorized” craft use
12 with the other impacts associated with other uses.

13 **The shoreline policies of BCDC.**

14 36. The Bay Conservation and Development Commission must approve any development
15 occurring in the areas of its jurisdiction, which generally includes the San Francisco Bay shoreline.

16 37. The Project is within the jurisdictional area of BCDC.

17 38. The Project EIR recognizes that coordination of the Project with BCDC would have the
18 potential to reduce significant cumulative environmental impacts of the Project.

19 39. The Bay Plan administered by BCDC requires that “to the greatest extent possible, the
20 Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.”

21 40. The Bay Plan’s public access component contains extensive prescriptions to identify and
22 reduce the impacts of public access and harm to the Bay environment, including the requirement that the
23 access be thoroughly analyzed and scientifically understood in anticipation and mitigation of impacts.

24 41. The Project EIR fails to provide ongoing analysis and response to the impacts identified by
25 BCDC and the Bay Plan, including reducing of cumulative impacts upon the Bay’s ecosystem.

26 42. Lacking that analysis of cumulative impacts, the EIR fails to comply with CEQA, ignores
27 or puts off consideration of mitigation of the potentially significant impacts identified in the Bay Plan
28 and by BCDC in the record.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

3 43. Petitioner incorporates all previous allegations as if fully set forth, and for a first cause of
4 action, alleges as follows:

5 44. The directors of the East Bay Regional Park District ("Respondent") abused their dis-
6 cretion and failed to act in the manner required by law or were arbitrary and capricious in that they
7 failed to properly describe, analyze, mitigate and find alternatives for significant and potentially
8 significant impacts to the environment in an Environmental Impact Report (EIR), in violation of the
9 California Environmental Quality Act (CEQA).

10 45. Failures of the Respondent to provide proper CEQA review include but are not limited to:

11 a. Misleading Project description. The Project fails to describe the Project's future
12 environmental impacts of dogs and windsurfers. The EIR states that more users will mean more dogs,
13 but states that the bigger park will "dilute" the impacts of the dogs. The EIR sets the goal to increase
14 windsurfers use, but avoids discussing the potential impacts of that future use. Instead the District
15 resorts to a mantra of no net change and no net impacts. Substantial evidence indicates otherwise.

16 b. Failure to mitigate unleashed dogs. The Project EIR states that it is "tiered" from the East-
17 shore Park General Plan EIR. However the Eastshore Park General Plan specifically requires that dogs
18 on the Bulb and Neck be leashed to protect that environment. The Project would facilitate access and use
19 of owners of unleashed dogs. The EIR fails to describe mitigation measures for greater numbers of dogs.

20 c. Failure to analyze and mitigate future windsurfer damage. The Project fails to consider the
21 impacts of the Project due to potential increased use by "non-motorized" watercraft. The Project will
22 facilitate and increase the use of the site by windsurfers and other "nonmotorized" water uses. Substan-
23 tial evidence exists that such use poses a significant threat to wildlife and protected species such as
24 eelgrass. The EIR limits its analysis only to the impacts of the Project construction. It fails to consider
25 mitigation for any future impacts.

26 d. Failure to address cumulative San Francisco Bay impacts. The Project fails to comply with
27 CEQA by failing to discuss and analyze the Project's cumulative impacts upon the San Francisco Bay as
28 as identified under policies and plans of the Bay Conservation and Development Commission.

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SECOND CAUSE OF ACTION

VIOLATIONS OF THE EASTSHORE PARK GENERAL PLAN

46. Petitioner incorporates all previous allegations as if fully set forth, and for a second cause of action, alleges as follows:

47. The directors of the East Bay Regional Park District abused their discretion and failed to act in the manner required by law or were arbitrary and capricious in that they approved the Project which failed to conform with the Eastshore Parks General Plan.

THIRD CAUSE OF ACTION

DECLARATORY RELIEF

48. Petitioner incorporates all previous allegations as if fully set forth, and for a third cause of action, alleges as follows:

49. Petitioner and Respondent have a justiciable and actual controversy regarding the legal rights and duties of the parties.

50. Petitioner objects that the Project as approved fails to conform with the Eastshore Park General Plan, and that the approvals of the Project by the Respondent is required to conform with the General Plan.

51. Respondent approved the Project despite the specific language in the General Plan that dogs must be on leashes at all sites within the scope of the General Plan, including the Project site.

52. Petitioner also contends that the District is required under the General Plan to assure all necessary measures to avert damages to the natural environment by the Project, including reduction of the access to sensitive areas.

53. A dispute therefore has arisen between the parties over the interpretation of the requirements of the General Plan as applied to the Project.

54. Petitioner therefore seeks a declaration pursuant to CCP §860 that Respondent's approval of the Project is invalid.

55. Petitioner seeks a declaration interpreting the application of the General Plan to the Project site and its management now and in the future on the issues raised in this Petition.

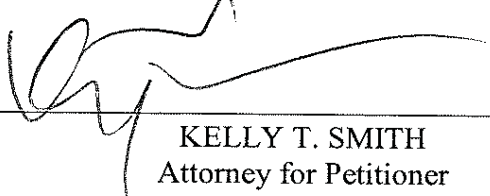
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PRAYER

WHEREFORE, Petitioner prays:

- 1. That the Court issue a Peremptory Writ of Mandamus to set aside and void any approvals, entitlements, findings or resolutions related to the Project and to comply with all provisions of the California Environmental Quality Act, and to order compliance with CEQA and all other applicable laws prior to further consideration of any related approvals;
- 2. That the declare that the Project fails to conform with the Eastshore Park General Plan, and order that it do so, with direction for conforming the General Plan and the Project;
- 3. For costs of the suit and attorney's fees; and
- 4. For other and further relief as the court finds proper.

DATE: December 20, 2012



KELLY T. SMITH
Attorney for Petitioner
SPRAWLDEF

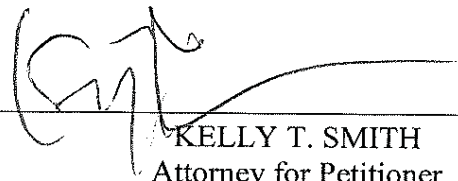
VERIFICATION

I am the attorney for SPRAWLDEF, petitioner in the above entitled action. SPRAWLDEF is unable to verify the above petition because any authorized director or official with SPRAWLDEF is absent from Sacramento County in which I have my office and is therefore unable to verify the Petition.

Pursuant to California Code of Civil Procedure §446, I have read the foregoing Petition and am familiar with its contents. I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I make this declaration and verification in Sacramento, Sacramento County, California.

DATE: December 20, 2012



KELLY T. SMITH
Attorney for Petitioner
SPRAWLDEF