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15  
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF ALAMEDA**

18 SAN FRANCISCO BAYKEEPER, CITIZENS  
COMMITTEE TO COMPLETE THE REFUGE,

19  
20 Petitioners,

21 vs.

22 CITY OF NEWARK, DOES 1-10,

23 Respondent;

24 MOWRY PROJECT OWNER, LLC, and PICK-  
25 N-PULL AUTO DISMANTLERS, DOES 11-20,

26 Real Parties in Interest.  
27  
28

Case No.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

**(California Environmental Quality Act,  
Pub. Resources Code § 21100 et seq.; Code  
of Civil Procedure §§ 1094.5 and 1085)**

**CEQA CASE**

1           Petitioners San Francisco Baykeeper and Citizens Committee to Complete the Refuge hereby  
2 bring this action for writ of mandate under the California Environmental Quality Act (hereinafter  
3 “CEQA”) and Code of Civil Procedure section 1094.5, or in the alternative Code of Civil Procedure  
4 section 1085, on behalf of Petitioners’ interested members, residents, and the public interest, and  
5 alleges as follows.

6       **I.       INTRODUCTION**

7           1.       Petitioners bring this civil suit pursuant to CEQA, Public Resources Code §§ 21000 *et*  
8 *seq.*, seeking to set aside the City of Newark’s (hereinafter “City” or “Respondent”) approval and  
9 certification of the Final Environmental Impact Report for the Mowry Village Project (hereinafter the  
10 “Project”).

11          2.       On October 3, 2025, the City released the Final Environmental Impact Report  
12 (hereinafter “Final EIR”).

13          3.       On December 11, 2025, the City approved the Final EIR for the Mowry Village Project  
14 after the close of the final public hearing.

15          4.       On December 12, 2025, the City filed the Notice of Determination for the Mowry  
16 Village Project with the Alameda County Clerk.

17          5.       The Final EIR violated CEQA by failing to accurately describe the extent of  
18 potentially impacted wetlands adjacent to and on the Project site, by failing to accurately describe the  
19 extent of Salt Marsh Harvest Mouse habitat, by failing to legally mitigate many of the Project’s  
20 potentially significant adverse effects including potential risks to human health and wildlife of  
21 existing pollutants and hazardous materials at the site, by failing to adequately analyze coastal  
22 squeeze, and by improperly deferring analysis of future flood control infrastructure and site clean-up  
23 of hazardous materials.

24          6.       Petitioners seek a writ of mandate directing the City to set aside certification of the  
25 Project’s Final EIR and its approval of the Project, as well as all approvals rendered pursuant to and/or  
26 in furtherance of the implementation of said Project, unless and until brought into full compliance  
27 with CEQA.

1     **II.     JURISDICTION AND VENUE**

2           7.       This Court has jurisdiction to issue a writ of mandate to set aside Respondent’s  
3 decision to approve the Project under California Code of Civil Procedure section 1094.5 (or  
4 alternatively, section 1085) and Public Resources Code section 21168.5 (or alternatively, section  
5 21168).

6           8.       Venue is proper in the County of Alameda because the Project, which is at issue in  
7 this case, is located within the County of Alameda.

8           9.       This petition is timely filed within any and all applicable statutes of limitations.

9     **III.    THE PARTIES**

10          10.      Petitioner Citizens Committee to Complete the Refuge (hereinafter “the Committee”)  
11 is a non-profit corporation whose members strive to protect the San Francisco Bay and its remaining  
12 wetlands and crucial habitats, foster education regarding the value of all wetlands, and advocate for  
13 regional, state, and federal policies and regulations that promote biodiversity and climate resilience.

14          11.      Petitioner Baykeeper, d/b/a San Francisco Baykeeper, is a non-profit public benefit  
15 corporation organized under the laws of the State of California with its main office at 1736 Franklin  
16 Street, Suite 800, Oakland, California 94612. Baykeeper’s approximately 3,500 members live and/or  
17 recreate in and around the San Francisco Bay area. Baykeeper’s mission is to defend San Francisco  
18 Bay from the biggest threats and hold polluters and government agencies accountable to create  
19 healthier communities and help wildlife thrive. Its team of scientists and lawyers investigate pollution  
20 via aerial and on-the-water patrols, strengthen regulations through science and policy advocacy, and  
21 enforce environmental laws on behalf of itself, its members, and the public.

22          12.      Respondent City of Newark is an incorporated city in the County of Alameda in the  
23 State of California, founded in 1955.

24          13.      The City is the lead agency for CEQA purposes, and the agency that approved the  
25 Project.

26          14.      Real Party in interest Mowry Project Owner LLC is the Project applicant and the  
27 recipient of the City’s approval to construct and implement the Project. Mowry Project Owner LLC  
28

1 is a Delaware Corporation with its principal place of business at 888 San Clemente Dr., Suite 100,  
2 Newport Beach, CA 92660.

3 15. Real Party in interest Pick-N-Pull Auto Dismantlers LLC is the property owner of a  
4 portion of the Project property and a recipient of the City's approval of the Project. Pick-N-Pull Auto  
5 Dismantlers LLC is a California corporation with its principal place of business at 222 SW Columbia  
6 Suite 1150, Portland, OR, 97201.

7 16. The true names and capacities, whether individual, corporate, associate, coconspirator,  
8 partner, or alter-ego of those Respondents sued herein under the fictitious names of DOES 1 through  
9 10, inclusive, are not known to Petitioners, who therefore sues those Respondents by such fictitious  
10 names. Petitioners will ask leave of court to amend this Petition and insert the true names and  
11 capacities of these defendants and respondents when the same have been ascertained. Petitioners are  
12 informed and believe, and on that basis allege, that each of the Respondents designated herein as a  
13 DOE Respondent is legally responsible in some manner for the events and happenings alleged in this  
14 Petition, and that Petitioners' alleged injuries were proximately caused by the Respondent's conduct.

15 17. The true names and capacities, whether individual, corporate, associate, coconspirator,  
16 partner, or alter-ego of those Real Parties in Interest sued herein under the fictitious names of DOES  
17 11 through 20, inclusive, are not known to Petitioners, who therefore sues those Real Parties in  
18 Interest by such fictitious names. Petitioners will ask leave of court to amend this Petition and insert  
19 the true names and capacities of these Real Parties in Interest when the same have been ascertained.  
20 Petitioners are informed and believes, and on that basis allege, that each of the Real Party in Interest  
21 designated herein as a DOE Real Party in Interest is legally responsible in some manner for the events  
22 and happenings alleged in this Petition, and that Petitioners' alleged injuries were proximately caused  
23 by the Real Parties in Interest's conduct.

#### 24 **IV. STANDING**

25 18. The Committee's members live and/or work in the direct vicinity of the Project. The  
26 Committee advocates for the protection and restoration of Baylands of which its members recreate,  
27 educate, and otherwise benefit.

1           19.     The Committee, as well as its individual members, have been actively involved in  
2 monitoring the Project, including but not limited to submitting comments on the Draft EIR about their  
3 concerns over the Project and pursuing administrative and legal remedies to address the actual and/or  
4 potential harms caused by the Project. The interests of the Committee's members have been, are  
5 being, and will continue to be adversely affected by Respondent's failure to comply with CEQA in  
6 connection with the proposed Project.

7           20.     Members of Baykeeper reside in Alameda County and in Newark, California, as well  
8 as in many of the surrounding communities. Members of Baykeeper, including citizens, taxpayers,  
9 property owners, and residents, live, work, and travel near, and recreate in, San Francisco Bay,  
10 including in areas in and around the proposed Project. The interests of Baykeeper's members have  
11 been, are being, and will continue to be adversely affected by Respondent's failure to comply with  
12 CEQA in connection with the proposed Project.

13           21.     Baykeeper has been actively involved in monitoring the Project, including but not  
14 limited to submitting comments on the Draft EIR about concerns over the Project, and commenting  
15 before Respondent's City Council prior to Respondent's certification of the Final EIR and the  
16 Project's approval.

17           22.     Failure by Respondent to properly evaluate and ascribe appropriate mitigation for the  
18 potential harm from the Project harms Petitioners' members' interests and uses of their residences,  
19 workplaces, and community. Unless the requested relief is granted, Petitioners' members' interests,  
20 and those of the public, will continue to be injured. The injuries described herein are actual, concrete  
21 injuries that will occur unless relief is granted by this Court. The relief sought herein, Respondent's  
22 compliance with CEQA, would redress Petitioners' injuries. Petitioners have no other adequate  
23 remedy at law, and they bring this action on behalf of their adversely affected members as well as on  
24 behalf of the public interest.

25           23.     Respondent's failures, set forth in this Petition, constitute a prejudicial abuse of  
26 discretion within the meaning of the Code of Civil Procedure and CEQA. (*See* Code Civ. Proc., §§  
27 1085, 1094.5; Pub. Res. Code, §§ 21168, 21168.5.)  
28

1     **V.     EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2           24.     Petitioners have performed all conditions precedent to this filing and participated in  
3 the administrative process.

4           25.     Petitioners submitted public comments objecting to the Project and to the adequacy  
5 of the EIR and engaged in all public processes available to them for the Project.

6           26.     As such, Petitioners have fully exhausted their administrative remedies, to the extent  
7 such remedies exist and to the extent that exhaustion of administrative remedies is legally  
8 necessary.

9           27.     All of the defects set forth in this Petition were presented to Respondent by Petitioners  
10 or other members of the public, including other government agencies, prior to the close of the final  
11 public hearing before Respondent's certification of the Final EIR and approval of the Project.

12     **VI.    NOTICE OF CEQA SUIT**

13           28.     Petitioners have complied with California Public Resources Code section 21167.5 by  
14 providing written notice of commencement of this action to Respondent prior to filing this Petition.  
15 A true and correct copy of the notice provided pursuant thereto, with proof of service thereof, is  
16 attached hereto as **Exhibit A**.

17           29.     Petitioners will promptly provide notice to the California Attorney General, pursuant  
18 to Public Resources Code section 21167.7, once the lawsuit has been filed.

19     **VII.   ELECTION TO PREPARE RECORD**

20           30.     Petitioners elect to prepare the CEQA administrative record in this proceeding  
21 pursuant to Public Resources Code section 21167.6(b)(2).

22     **VIII.   PRIVATE ATTORNEY GENERAL DOCTRINE**

23           31.     Petitioners bring this action as a private attorneys general pursuant to California Code  
24 of Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important rights  
25 affecting the public interest.

26           32.     Issuance of the relief requested in this Petition will confer significant benefits on the  
27 general public by, among other benefits, requiring Respondent to properly identify, disclose, analyze,  
28 and mitigate the direct, indirect, and cumulative impacts of the Project.

1           33.     The necessity and financial burden of enforcement are such as to make an award of  
2 attorneys’ fees appropriate in this proceeding. Absent enforcement by Petitioners, the Project might  
3 otherwise be deemed valid despite its legal and factual inadequacies, and, as a result, cause significant,  
4 adverse environmental effects that might otherwise have been prevented.

## 5     **IX.   LEGAL FRAMEWORK**

### 6           **A.     CALIFORNIA ENVIRONMENTAL QUALITY ACT**

7           34.     CEQA has two (2) purposes: environmental protection and informed self-government.  
8 (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 690-91,  
9 706.) CEQA is “to be interpreted to afford the fullest possible protection to the environment within  
10 the reasonable scope of the statutory language.” (*Mountain Lion Foundation v. Fish & Game Com.*  
11 (1997) 16 Cal.4th 105, 134 [citations omitted].) CEQA requires agencies to “take all action necessary  
12 to protect, rehabilitate, and enhance the environmental quality of the state.” (Pub. Res. Code, §  
13 21001(a).)

14           35.     Pursuant to CEQA, a “project” is “an activity which may cause either direct physical  
15 change in the environment, or reasonably foreseeable indirect physical change in the environment.”  
16 (Pub. Res. Code § 21065(a).) A “discretionary” project is one that is subject to judgmental controls,  
17 “where the agency can use its judgment to decide whether and how to carry out a project.” (Cal. Code  
18 Regs., tit. 14, ch. 3 (“CEQA Guidelines”), § 15002(i).<sup>1</sup>)

19           36.     Prior to approving any discretionary project, an agency must “analyze the significant  
20 environmental effects of a proposed project,[] identify alternatives, and [] disclose possible ways to  
21 reduce or avoid the possible environmental damage. (*See, e.g.*, CEQA Guidelines §§ 15002(f),  
22 15021(a)). Pursuant to this duty, “no public agency shall approve or carry out a project” where one  
23 or more significant effects on the environment may occur if the project is approved, unless certain  
24 narrow findings are made. (CEQA Guidelines §§ 15091, 15093.)

25  
26  
27  
28     <sup>1</sup> The CEQA Guidelines are found at California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000–15387.

1           37.     All EIRs prepared pursuant to CEQA must include a detailed statement setting forth  
2 “[a]ll significant effects on the environment of the proposed project.” (Pub. Res. Code § 21100 (b)(1)  
3 [modifications added].)

4           38.     An EIR must also include a detailed statement of:

5               (A) Any significant effect on the environment that cannot be avoided if the project  
6               is implemented. (B) Any significant effect on the environment that would be  
7               irreversible if the project is implemented. (3) Mitigation measures proposed  
8               to minimize significant effects on the environment, including, but not limited  
              to, measures to reduce the wasteful, inefficient, and unnecessary consumption  
              of energy.

9 (Pub. Res. Code § 21100(b)(2)-(3).)

10          39.     An EIR must also, “contain a statement briefly indicating the reasons for determining  
11 that various effects on the environment of a project are not significant and consequently have not  
12 been discussed in detail in the environmental impact report.” (Cal. Pub. Res. Code § 21100(c).)

13          40.     An EIR’s analysis of significant environmental impacts must identify and describe the  
14 significant direct environmental impacts that will result from the project in both the short term and  
15 the long term. (CEQA Guidelines §§ 15126.2(a), 15143.) It must also identify, describe and analyze  
16 all significant indirect impacts from the Project, as well as any significant cumulative impacts to  
17 which the Project will contribute. (CEQA Guidelines § 15126.2(a).)

18          41.     A fundamental purpose of an EIR is to identify ways in which a proposed project’s  
19 significant environmental impacts can be mitigated or avoided. (*See* Pub. Res. Code §§ 21002.1(a),  
20 21081(a)(1).) To implement this statutory purpose, an EIR must describe feasible mitigation  
21 measures that can minimize the project’s significant environmental effects. (Pub. Res. Code §§  
22 21002.1(b), 21061, 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4; *Environmental Council of*  
23 *Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.) When it approves a project,  
24 the agency must adopt any feasible mitigation measures identified in the EIR that would mitigate or  
25 avoid the project’s significant environmental impacts. (Pub. Res. Code §§ 21002.1(b); 21081(a)(1);  
26 CEQA Guidelines §§ 15021(a)(2), 15091(a)(1); *see King & Gardiner Farms, LLC v. County of Kern*  
27 (2020) 45 Cal.App.5th 814, 852.)



1           42.     Any action that is designed to minimize, reduce, or avoid a significant environmental  
2 impact qualifies as a mitigation measure. (CEQA Guidelines § 15370.)

3           43.     An EIR should indicate whether the project’s environmental impacts would be  
4 potentially significant if mitigation measures were not adopted and separately determine whether the  
5 mitigation measures described in the EIR would substantially reduce or avoid the identified  
6 significant impacts. (*Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656.)

7           44.     ““Impermissible deferral of mitigation measures occurs when an EIR puts off analysis  
8 or orders a report without either setting standards or demonstrating how the impact can be mitigated  
9 in the manner described in the EIR.”” (*Cleveland National Forest Foundation v. San Diego Assn. of*  
10 *Governments* (2017) 17 Cal.App.5th 413, 432 [citing *Preserve Wild Santee v. City of Santee* (2012)  
11 210 Cal.App.4th 260, 280–281].)

12           45.     An agency’s findings must be “accompanied by a brief explanation of the rationale  
13 for each finding.” (CEQA Guidelines §15091(a).) This requirement applies to the findings relating to  
14 mitigation of significant impacts, mitigation measures under the jurisdiction of another agency, and  
15 infeasibility of mitigation measures and alternatives required under Public Resources Code section  
16 21081(a) and CEQA Guidelines section 15091(a). Findings cannot contain simply bare conclusions;  
17 the findings must set forth the basis for the agency’s conclusions. (*Rio Vista Farm Bureau Ctr. v*  
18 *County of Solano* (1992) 5 Cal.App.4th 351, 373[citations omitted]; *Sacramento Old City Ass’n v City*  
19 *Council* (1991) 229 CA3d 1011, 1034.) Only if agencies make such findings can members of the  
20 public, other agencies, and reviewing courts analyze the logic of the agency’s decision. (*See Citizens*  
21 *for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 441; *Village Laguna of Laguna*  
22 *Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035.)

23           46.     CEQA requires that an EIR include an accurate project description, and that the nature  
24 and objective of a project be fully disclosed and fairly evaluated in an EIR. (*San Joaquin Raptor*  
25 *Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 646, 655.) An EIR should contain a  
26 “sufficient degree of analysis to provide decision-makers with information which enables them to  
27 make a decision which intelligently takes account of environmental consequences.” (CEQA  
28 Guidelines § 15151.) “An accurate, stable and finite project description is the sine qua non of an

1 informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App.  
2 3d 185, 193.) “Only through an accurate view of the project may affected outsiders and public  
3 decision makers balance the proposal’s benefit against its environmental cost, consider mitigation  
4 measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the  
5 balance.” (*Id.* at 192-93.) A project description may not provide conflicting signals to decision makers  
6 and the public about the nature and scope of the project as such a description is fundamentally  
7 inadequate and misleading. (*San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.  
8 App. 4th at 655-56.)

9       47.     “[A]n EIR must describe the existing environment. It is only against this baseline that  
10 any significant environmental effects can be determined.” (*Save Our Peninsula Committee v.*  
11 *Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119-20 [citing *County of Amador v.*  
12 *El Dorado County Water Agency* (1999) 76 Cal. App. 4th at p. 952; CEQA Guidelines, §§ 15125,  
13 subd. (a), 15126.2, subd. (a).].) Reference to either historic and/or projected conditions to formulate  
14 a baseline is permitted only when “supported by reliable projections based on substantial evidence”  
15 and “where necessary to provide the most accurate picture practically possible....” (CEQA  
16 Guidelines, § 15125.) In all instances, moreover:

17             [t]he public and decision makers are entitled to the most accurate information on  
18             project impacts practically possible..., and the choice of a baseline must reflect  
19             that goal....[A]n agency must not create unwarranted barriers to public  
20             understanding...by unnecessarily substituting a baseline of projected future  
21             conditions for one based on actual existing conditions (citations omitted).

22 (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439,  
23 455-56.) An EIR’s description of the environmental setting should be sufficiently comprehensive to  
24 allow the project’s effects “to be considered in the full environmental context.” (CEQA Guidelines §  
25 15125(c).) The description of the environmental setting should be sufficiently clear to allow informed  
26 comparison of pre-project and post-project conditions. (*County of Amador v. El Dorado County*  
27 *Water Agency, supra*, 76 Cal.App.4th 931, 955-956.)

28       48.     Respondent’s approval of the Project violated these requirements, as described below.

1     **X.     GENERAL ALLEGATIONS**

2             **A.     The Project’s Final EIR Fails to Comply with CEQA.**

3             50.     The Final EIR fails to adequately describe baseline wetland conditions at the Project  
4 site and in areas immediately adjacent to the site that may be subject to direct and indirect impacts  
5 during and after project construction. (*Compare, San Joaquin Raptor /Wildlife Rescue Ctr. v. County*  
6 *of Stanislaus*, (1994) 27 Cal.App.4th 713, 728 [If an investigation specifically considering the  
7 presence and extent of wetland areas adjacent to and within the site was conducted and the results  
8 demonstrated there were no wetlands within the site, this should have been fully explained in the  
9 FEIR”], 729 [“The failure to provide clear and definite analysis of the location, extent and character  
10 of wetlands possibly within and definitely adjacent to the development project . . . precludes this court  
11 from concluding that all the environmental impacts of the development project were identified and  
12 analyzed in the FEIR”]; CEQA Guidelines § 15125(a).)

13             51.     The Army Corps of Engineers jurisdictional delineation shows that only the interior  
14 of the Project boundary was delineated, not the lands abutting the proposed Project. (DEIR 3-59.)  
15 When construction is planned right up to existing wetland boundaries, impacts to wetlands are  
16 reasonably foreseeable, but these were not analyzed in the EIR. Moreover, the Army Corps of  
17 Engineers’ jurisdictional delineation does not identify, analyze, or resolve whether there are areas  
18 within the Project that consist of state wetlands or waters of the state (see Water Code § 13050(e))  
19 and the Draft and Final EIR do not address whether there are any waters of the state or state wetlands  
20 within, adjacent to, or near the Project site.

21             52.     While the Final EIR does include mitigation measures and conclusions indicating that  
22 off-site wetland impacts would be mitigated or avoided, it is unclear how the mitigation and avoidance  
23 measures could be effective without proper identification of where the wetlands are. For example, the  
24 EIR states that:

25                     Construction by-products and pollutants such as petroleum products, chemicals, or  
26                     other deleterious materials shall not be allowed into off-site wetlands or marsh  
27                     habitats. (Draft EIR at p. 3-78.)  
28

1 All construction material and fill shall be stored and contained in a designated area  
2 that is located away from aquatic habitats to prevent transport of materials into  
3 adjacent water bodies. The preferred distance is 100 feet from any wetlands or marsh  
4 habitats. (*Id.* at 3-78.)

5 Pets shall be prohibited from ranging freely (off-leash dogs shall be prohibited in off  
6 site wetland areas and no free-roaming outdoor cats shall be permitted), to prevent  
7 their entry into sensitive species habitat. (*Id.* at 3-84.)

8 On-site and off-site construction activities would avoid all nearby jurisdictional  
9 aquatic features and would not result in substantial adverse effects on state or  
10 federally protected wetlands. (*Id.* at 3-85).

11 53. The failure to actually identify where off-site wetlands exist and whether there are  
12 state wetlands or waters of the state either on- or off-site precluded any meaningful analysis of the  
13 extent of impacts to them, and renders the mitigation measures infeasible by failure to identify where  
14 they must occur.

15 54. In sum, the Final EIR fails to accurately describe the extent of potentially impacted  
16 wetlands adjacent to and at the Project site, fails to adequately respond to comments, and fails to  
17 ensure impacts to wetlands would be mitigated to less-than-significant levels.

18 55. The Final EIR is also deficient by failing to accurately describe baseline conditions  
19 regarding the presence of the state- and federally-protected Salt Marsh Harvest Mouse at the Project  
20 site, and areas immediately adjacent, that may be subject to direct and indirect impacts both during  
21 and after Project construction.

22 56. The EIR justifies its conclusions with the rationale that there are no Salt Marsh Harvest  
23 Mouse habitats present in the Project area and a mouse-exclusion fence has been installed so there  
24 are no potential indirect impacts to individuals. The EIR does not describe details of the fence  
25 including but not limited to its design, when and how it was installed (including depth), the materials  
26 it was made from, whether it was approved by the California Department of Fish and Wildlife  
27 (“CDFW”) and the U.S. Fish and Wildlife Service, whether temporary or permanent, and whether it  
28

1 can feasibly be maintained through construction and operation to continue to exclude the Salt Marsh  
2 Harvest Mouse.

3 57. In response to the Draft EIR, various public comments, including submissions from  
4 the Committee and CDFW, alerted the City of Newark to the detection of the Salt Marsh Harvest  
5 Mouse in Mowry Village Project Sub-Area D of Areas 3 and 4.

6 58. The EIR dismissed the community's and Trustee Agency's concerns without  
7 meaningfully considering the evidence provided.

8 59. CEQA requires that mitigation measures are likely to be effective in remedying the  
9 potential problem it is offered against. (*See Sierra Club v. Cty. of San Diego*, (2014) 231 Cal.App.4th  
10 1152, 1169.)

11 60. The provisions of the Newark Municipal Code do not adequately consider, nor  
12 effectively mitigate, the negative biological impacts of Artificial Light at Night (ALAN) that will be  
13 introduced next to natural habitat as a consequence of the proposed Project.

14 61. The EIR contains no information indicating that the Municipal Code standards would  
15 protect light sensitive species.

16 62. The Final EIR's requirements that wetlands be avoided by Project impacts are not  
17 likely to succeed since the EIR fails to adequately assess and disclose where wetlands occur, both on-  
18 and off-site. A mitigation measure must be "feasible or effective in remedying the potentially  
19 significant problem" it is intended to address. (*Gray v. Cty. of Madera* (2008) 167 Cal.App.4th 1099,  
20 1116.)

21 63. The impacts the mitigation measure is designed to avoid must be disclosed and  
22 analyzed within the EIR, not after project approval. (*Sundstrom v. County of Mendocino* (1988) 202  
23 Cal.App.3d 296, 307 ["By deferring environmental assessment to a future date, the conditions run  
24 counter to that policy of CEQA which requires environmental review at the earliest feasible stage in  
25 the planning process."]). Here, the EIR fails to assess impacts to adjacent wetlands rendering the  
26 proposed mitigation measure ineffective.

27 64. The Final EIR's MM-BIO 5 addresses the local burrowing owl population and the  
28 option to evict resident and migratory owls as a mitigation measure. While the EIR goes into what

1 would be required to properly evict the burrowing owls, it fails to address that such an option requires  
2 an incidental take permit from the CDFW.

3 65. By failing to address permit requirements essential to carrying out this mitigation  
4 measure, the EIR's requisite analysis is deficient with respect to CEQA's information requirements  
5 and renders the measure infeasible.

6 66. Further components of MM-BIO 4 and 5 appear to be infeasible such as:  
7 "Mitigation may take the form of off-site habitat preservation and management (in  
8 which case all the monitoring and habitat requirements in the following paragraphs  
9 would apply) or the purchase of credits in an off-site mitigation bank." (Draft EIR  
10 MM-BIO 5 at p. ES-13.)

11 "Such enhancements shall include the provision of two artificial burrow complexes on  
12 the side of the adjacent levees (if allowed by levee managers) and management of at  
13 least portions of levee side slopes around these burrow complexes to provide suitable  
14 conditions for burrowing owls...." (*Id.* at p. ES-14.)

15 "The availability of mitigation banks is ever changing and therefore, the location of  
16 the specific burrowing owl mitigation bank utilized to fulfill this mitigation would be  
17 dependent on availability at the time the mitigation measure is fulfilled. Local  
18 mitigation is preferred but may be fulfilled outside of the County if compensatory  
19 mitigation is not available within the County. Therefore, this mitigation may occur  
20 outside the region." (Final EIR Response to Comment CL-CCCR-10 at p. 2-114.)

21 67. By heavily relying on the conditions at the time the mitigation measure is  
22 implemented, the Project circumvents the informed review process essential to CEQA that is  
23 necessary to mitigate adverse impacts to burrowing owls to less-than-significant levels.

24 68. The EIR fails to adequately analyze the issue of coastal squeeze.

25 69. The EIR defined coastal squeeze as: "[T]he loss of natural habitats or deterioration of  
26 their quality arising from placement of structures along the shoreline, preventing landward  
27 transgression of those habitats that would naturally occur in response to sea level rise." (Final EIR  
28 Topical Response No. 13: Coastal Squeeze at p. 2-20.)

1           70.     The Final EIR dismisses public concerns of coastal squeeze, stating:

2           The existing use of the project site does not provide the City with protection against  
3           coastal squeeze, and therefore the development of the project site with a denser  
4           development would not result in changes to these conditions or exacerbate potential  
5           coastal squeeze impacts beyond existing conditions. Furthermore, the proposed fill  
6           would be placed on areas of the project site that are already located above the 100-  
7           year flood water line to increase the elevation of the site and would not result in  
8           changes to the surrounding areas. (*Id.*)

9           71.     CEQA requires agencies to evaluate comments on environmental issues and prepare a  
10          written response with “good faith, reasoned analysis” where “[c]onclusory statements unsupported  
11          by factual information will not suffice....” (CEQA Guidelines § 15088.) Topical Response No. 13  
12          demonstrates the EIR’s misunderstanding of community concerns regarding the environmental issue  
13          by focusing on coastal hardening and infrastructure developments to mitigate the effects of sea level  
14          rise when said actions ultimately contribute to coastal squeeze, despite numerous scientific papers  
15          submitted in public comments on the phenomenon that emphasize coastal squeeze’s threat to natural  
16          habitats from the prevalence of coastal infrastructure such as the Project’s coastal armoring and  
17          associated flood control infrastructure.

18          72.     Under established principles noting “[t]he significance of an activity depends upon the  
19          setting,” *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing  
20          CEQA Guidelines, § 15064, subd. (b)], the EIR was required but failed to assess coastal squeeze in a  
21          cumulative context.

22          73.     Additionally, the Regional Water Quality Control Board provided extensive  
23          comments demonstrating how the Project would exacerbate coastal squeeze and why the EIR’s  
24          analysis failed to adequately consider coastal squeeze as a cumulative impact, the EIR failed to  
25          address these legitimate concerns. (*See City of Irvine v. County of Orange* (2015) 238 Cal.App.4th  
26          526, 553.)

27          74.     As such, the Final EIR fails to adequately address coastal squeeze.

28          75.     The EIR fails to describe and analyze the whole of the project. The FEIR states:

1 Potential additional protection against sea level rise required for the proposed project would  
2 be analyzed during the final design and permitting stage of the proposed project. The  
3 Applicant would provide a final sea level rise hydrology report and designs during the  
4 Construction Document review phase to the satisfaction of ACFC and the City. The Applicant  
5 would install any required infrastructure deemed necessary by ACFC and the City to protect  
6 against potential sea level rise impacts, such as tide/flap gates, bypass pipes, and/or storage  
tanks as part of the proposed project. The Applicant may also submit a sea level rise  
adaptability plan during the Construction Document review phase if such improvements are  
to be implemented in phases. However, in the case of phasing, funding and timing mechanisms  
would also be required to be in place to the satisfaction of ACFC and the City.

7 (Final EIR Response to Comment CL-SFB-5 at p. 2-182.)

8 76. These project features have significant implications for how sea level rise effects could  
9 be managed or exacerbated by the Project, and themselves have potentially significant effects not  
10 analyzed by the EIR.

11 77. The EIR fails to analyze, address, and provide mitigation for the existence of  
12 hazardous materials in the soils and groundwater at the site, as well as for the need for removal of  
13 those materials.

14 78. In January 2019, Haley & Aldrich, Inc. conducted Phase I and Phase II Environmental  
15 Site Assessments to assess the environmental condition of the current Pick-n-Pull site. (Draft EIR at  
16 pp. 2-33 – 2-34.) The Phase II assessment determined contaminated soils are present in shallow  
17 portions of the project site ranging from 0.5 to 1.5 feet below ground surface, and contaminated  
18 groundwater is also present at the site. (Draft EIR at p. 2-34.) Toxics in the soil include but are not  
19 limited to petroleum hydrocarbons (TPH), lead, arsenic, and polycyclic aromatic hydrocarbons  
20 (PAHs), and toxics in groundwater include but are not limited to benzene, toluene, ethylbenzene, and  
21 xylenes (BTEX). (*Id.*)

22 79. Groundwater rise, separate from, though related to sea-level rise, risks mobilization of  
23 these hazardous toxins. This mobilization can occur through utility, sewer, and stormwater  
24 infrastructure, including of the type that will be constructed as part of the Project.

25 80. The EIR fails to analyze these risks and fails to provide adequate mitigation to ensure  
26 that existing hazardous materials and toxic pollutants do not pose a threat to future residents at the  
27 Project site and to wildlife.  
28



1           81.     The EIR’s mitigation of hazardous materials is inadequate, uncertain, and potentially  
2 infeasible as the analysis in the EIR does not include the risks associated of groundwater rise causing  
3 mobilization of hazardous materials and the risks those materials pose to human health and wildlife.

4                                   **FIRST CAUSE OF ACTION**  
5                                   **Violation of CEQA**  
6                                   **(Pub. Resources Code, § 21000 et seq.)**

7           82.     Petitioner incorporates by reference each and every allegation contained in the above  
8 Paragraphs as though fully set forth herein.

9           83.     Respondent prejudicially abused its discretion in certifying the EIR. Respondent did  
10 not proceed in the manner required by law and its decisions in approving the Project and certifying  
11 the EIR are not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *Vineyard Area*  
12 *Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426.) These legal  
13 deficiencies include, without limitation, the following:

14                   The EIR Fails to Adequately Describe the Project:

15           84.     “An accurate, stable and finite project description is the sine qua non of an informative  
16 and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)  
17 Further, “[w]hen an EIR contains unstable or shifting descriptions of the project, meaningful public  
18 participation is stultified.” (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149  
19 Cal.App.4th 645, 656.)

20           85.     An EIR should contain a “sufficient degree of analysis to provide decision-makers  
21 with information which enables them to make a decision which intelligently takes account of  
22 environmental consequences.” (CEQA Guidelines § 15151.)

23           86.     The EIR’s project description is deficient because it lacks the adequate specificity  
24 regarding a future Sea Level Rise Adaptability Plan and associated infrastructure required to analyze  
25 the impacts of the whole of the Project.

26                   The EIR Fails to Accurately Describe the Environmental Baseline:

27           87.     In order to determine whether a project’s impacts will be significant, CEQA requires  
28 lead agencies to compare the impact of a proposed project to the “physical environmental conditions

1 in the vicinity of the project, as they exist at the time the notice of preparation is published.” These  
2 conditions serve as the project’s “baseline.” (CEQA Guidelines § 15125.) The description of the  
3 project’s baseline ensures that the public has “an understanding of the significant effects of the  
4 proposed project and its alternatives.” (CEQA Guidelines § 15125(a).) Accurately determining the  
5 baseline environmental conditions is crucial to accurately evaluating a project’s impact. (*E.g., San*  
6 *Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713.)

7 88. The EIR fails to describe existing environmental conditions by failing to accurately  
8 account for and describe adjacent off-site wetlands, existing on-site and off-site state wetlands or  
9 waters of the state, and affected Salt Marsh Harvest Mouse or burrowing owl habitat.

10 The EIR Fails to Adequately Analyze the Project’s Significant Environmental Impacts:

11 89. CEQA requires that an EIR describe the proposed project’s significant environmental  
12 effects; each impact must be revealed and fully analyzed in the EIR. (Pub. Res. Code, § 21100, subd.  
13 (b); CEQA Guidelines § 15126.2 (a).) “[T]he adequacy of an EIR’s discussion of environmental  
14 impacts is an issue distinct from the extent to which the agency is correct in its determination whether  
15 the impacts are significant.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514 [*Friant*  
16 *Ranch*]; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th  
17 497, 514–15; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th  
18 1344, 1371.) “[W]hether a description of an environmental impact is insufficient because it lacks  
19 analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory  
20 discussion of an environmental impact that an EIR deems significant can be determined by a court to  
21 be inadequate as an informational document without reference to substantial evidence.” (*Friant*  
22 *Ranch, supra*, 6 Cal.5th at 514.) To “comport with its intended function” an EIR must include “detail  
23 sufficient to enable those who did not participate in its preparation to understand and to consider  
24 meaningfully the issues raised by the proposed project.” (*Id.* [internal quotations omitted].) “Whether  
25 or not the alleged inadequacy is the complete omission of a required discussion or a patently  
26 inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the  
27 EIR serves its purpose as an informational document.” (*Id.*)

1           90.     CEQA is intended to ensure that environmental interests are protected to the fullest  
2 extent feasible and to guarantee that, when making major decisions, government officials have all the  
3 relevant information necessary to make informed, well-reasoned decisions. (*Woodward Park*  
4 *Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 690-91.) CEQA is “to be  
5 interpreted to afford the fullest possible protection to the environment within the reasonable scope of  
6 the statutory language.” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal. 4th 105,  
7 134.) Put simply, CEQA requires agencies to “take all action necessary to protect, rehabilitate, and  
8 enhance the environmental quality of the state.” (Pub. Res. Code, § 21001(a).)

9           91.     The EIR lacks the adequate analysis and omits an adequate discussion of the Project’s  
10 impacts to adjacent wetlands and the species that are found there including the Salt Marsh Harvest  
11 Mouse, waters of the state, and groundwater rise risks associated with hazardous materials and new  
12 infrastructure, and therefore fails to provide decision makers with sufficient analysis.

13 Failure to Adequately Analyze Cumulative Impacts:

14           92.     An EIR must evaluate a project’s cumulative impacts if the project’s incremental  
15 effects “are significant when viewed in connection with the effects of past . . . current . . . and . . .  
16 probable future projects.” (CEQA Guidelines § 15065(a)(3); *Banning Ranch Conservancy v. City of*  
17 *Newport Beach* (2012) 211 Cal.App.4th 1209, 1228.) The purpose of cumulative impact analysis is  
18 to ensure a project is not considered in a vacuum. (*Whitman v. Board of Supervisors* (1979) 88  
19 Cal.App.3d 397, 408.)

20           93.     Here, however, the EIR fails to analyze the Project’s significant cumulative effects  
21 related to Coastal Squeeze by failing to consider the cumulative loss of natural space for migrating  
22 wetlands in the vicinity and throughout the region, and by failing to accurately account for such loss  
23 by and through the Project’s direct and indirect effects.

24 Mitigation Measures are Improperly Deferred, Unenforceable, Vague, and Inadequate:

25           94.     An agency may not approve a project that will have significant environmental impacts  
26 if there are feasible mitigation measures that would substantially lessen those effects. (Pub. Res. Code,  
27 § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2).)

1           95.     An agency must provide that mitigation measures are fully enforceable through permit  
2 conditions, agreements, or other measures. (Pub. Res. Code, § 21081.6(b).)

3           96.     Further, agencies cannot defer the formulation, review, or finalization of the  
4 performance standards specific to the proposed mitigation measures intended to reduce projects'  
5 potentially significant environmental impacts. (*Preserve Wild Santee v. City of Santee* (2012) 210  
6 Cal.App.4th 260, 272 [holding EIR improperly deferred formulating mitigation measures because it  
7 did not describe specific actions or specify performance standards].) CEQA prohibits deferral of  
8 mitigation measures except in narrow circumstances. (CEQA Guidelines § 15126.4(a)(1)(B)  
9 ["Formulation of mitigation measures shall not be deferred until some future time."].) "The specific  
10 details of a mitigation measure [] may be developed after project approval when it is impractical or  
11 infeasible to include those details during the project's environmental review provided that the agency  
12 (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will  
13 achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance  
14 standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation  
15 measure." (*Id.*)

16           97.     Yet, here, the EIR impermissibly defers identification of enforceable, objective,  
17 adequate mitigation measures, including but not limited to, nighttime light effects, construction  
18 effects to wetlands including Salt Marsh Harvest Mouse habitat and to burrowing owls.

19 Inadequate Responses to Comments:

20           98.     The Final EIR failed to respond in good faith to public comments raising deficiencies  
21 with the Draft EIR. CEQA requires that the Final EIR include a "detailed" written response to all  
22 "significant environmental issues" raised by commenters. (*City of Long Beach v. LAUSD* (2009) 176  
23 Cal.App.4th 889, 904.) Where experts disagree about an EIR's data or methodology, the Final EIR  
24 should summarize main points of disagreement and explain why expert comments have been rejected.  
25 (CEQA Guidelines § 15151; *see also Berkeley Keep Jets Over the Bay Comm.*, 91 Cal.App.4th at  
26 1367-71.) The Final EIR fails to include these critical disclosures.

27           99.     The Final EIR's responses are insufficient to comply with CEQA's public  
28 participation requirements (CEQA Guidelines § 15088(c).)

100. Commenters submitted extensive comments on the Draft EIR. The Final EIR largely ignores these comments, or simply provides inadequate, perfunctory, or false and inaccurate responses to these comments. Examples of this deficiency include, but are not limited to, the Final EIR's responses to public comments regarding wetlands, burrowing owl and Salt Marsh Harvest Mouse habitat, night lighting effects, coastal squeeze, groundwater rise, and hazardous material remediation.

## PRAAYER FOR RELIEF

1. Issue a peremptory writ of mandate requiring the City to vacate and set aside its certification of the Final EIR for the Project and any and all approvals rendered pursuant to and/or in furtherance of all or any part of the Project, unless and until brought into compliance with CEQA;

2. Preliminarily and permanently enjoin Respondent and Real Parties in Interest from any and all activities undertaken pursuant to the Project unless and until brought into compliance with CEQA;

3. Award Petitioners the costs of this action, including their reasonable attorneys' fees;

and,

4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

AQUA TERRA AERIS LAW GROUP

DATED: January 9, 2026

Jason R. Flanders  
Attorney for Petitioners

San Francisco Baykeeper and Citizens  
Committee to Complete the Refuge

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**VERIFICATION**

I, Cain High, am an authorized representative of Citizens Committee to Complete the  
Refuge. I have read the foregoing Petition and know the contents thereof to be true and correct. The  
same is true of my own knowledge, except as to those matters that are alleged on information and  
belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing  
is true and correct. Executed on 1/9/2026, in Fremont, California.

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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on January 9, 2026, in Contra Costa County, California.

# **EXHIBIT A**





8 RIO VISTA AVE.  
OAKLAND, CA 94611

JASON R. FLANDERS  
PARTNER

T: 916-202-3018  
jrf@atalawgroup.com

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January 7, 2026

**Via Overnight Delivery**

City of Newark  
Newark City Council  
Newark City Clerk  
37101 Newark Boulevard  
Newark, CA 94560

**RE: Notice of Commencement of CEQA Action Against the City of Newark**

Dear Mayor Hannon, City Council Members, Mr. Interiano, and to Whom It May Concern:

PLEASE TAKE NOTICE, pursuant to Public Resources Code section 21167.5, Citizens Committee to Complete the Refuge and San Francisco Baykeeper ("Petitioners") intend to file a petition for writ of mandate under the provisions of the California Environmental Quality Act ("CEQA") against the City of Newark challenging the adequacy and lawfulness of the City of Newark's certification of the Environmental Impact Report for the Mowry Village Project ("Project") and approval of the Project.

The lawsuit will be based on violations of CEQA. The exact nature of the allegations and relief sought is described in the Petition for Writ of Mandate that Petitioners plan to file in Alameda County Superior Court on or about January 9, 2026. If you would like to discuss options to address our client's concerns without the need for litigation, please contact our office immediately.

Respectfully,

/s/ Jason R. Flanders  
Attorney for Petitioners  
Citizens to Complete the Refuge

/s/ Eric Buescher  
Managing Attorney  
San Francisco Baykeeper

## PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Alameda. My business address is 8 Rio Vista Ave., CA 94611. I am over the age of 18 years and not a party to the above-entitled action. Document(s) served:

- **NOTICE OF COMMENCEMENT OF CEQA ACTION AGAINST THE CITY OF NEWARK**

On January 7, 2026, I served the foregoing document(s) on the parties in this action, located on the attached service list, as shown below for service as designated below:

- |                                |   |
|--------------------------------|---|
| ( ) <u>By U.S. Mail</u>        | Deposited the sealed envelope with the United States Postal Service, with the postage fully paid.   |
| ( ) <u>By Personal Service</u> | I personally delivered each such envelope to the office of the address on the date last written below.  |
| (xx) <u>By Overnight Mail</u>  | I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for. |
| ( ) <u>By Electronic Mail</u>  | Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.   |

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 7, 2026, in Hayward, California.



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Sabine Salles