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Attorney for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

Friends of the Plaza,
a California unincorporated
association;

Petitioner;

v.

City and County of San Francisco;

Respondent;

Does 1 to 10;

Real Parties in Interest.

Case No.

Petition for Writ of Mandamus

California Environmental Quality Act
[CEQA]

Petitioner alleges:

Introduction

1. The petitioner Friends of the Plaza is devoted to the protection of the historic Vaillancourt Fountain and Embarcadero Plaza in San Francisco. Friends allege that San Francisco has unlawfully approved a \$4 million disassembly and removal of the historic fountain from its 50+ year home in the plaza to offsite storage. The City contends, contrary to fact and law, that circumstances support findings for an “emergency” statutory exemption from the California Environmental Quality Act (CEQA). However, its claim is a hypothetical, unsupported by substantial evidence of likelihood, imminent timeline, or significant adverse impact.

Friends come to this court in the public interest to enforce CEQA and prevent the *actual emergency*: irreparable harm to the fountain itself and thus to Embarcadero Plaza via an unlawfully approved disassembly and removal.



Vaillancourt Fountain, Embarcadero Plaza, c. 2022

1 Since its adoption in 1970, CEQA has protected the historic and aesthetic
2 resources of California's built environment to the same degree as natural resources
3 such as air, trees, water, and wildlife. Its reach encompasses direct [construction] and
4 indirect [planning documents, ordinances, zoning, and general plan] projects.
5

6 As a practical matter, CEQA allows lead agencies to approve emergency
7 exemptions from CEQA for sudden, unexpected occurrences, excusing environmental
8 review when *necessary to prevent* harm. Here, the voluminous administrative record
9 demonstrates that the City's Recreation and Park Department (SFRPD) staff claimed
10 *non-existent emergency* as pretext to avoid CEQA review based on the current state of
11 the fountain. There are in fact no circumstances relating to the fountain's condition
12 that qualify as emergencies. Regardless, the City cannot rely on an emergency
13 exemption not as it has refused to consider ways to adequately and economically
14 secure and monitor the fountain and visitors to Embarcadero Plaza while the plaza
15 project is pending, via adequate monitored fencing and site patrolling.
16

17 Relevant context includes the fact that at the outset of planning for a redesigned
18 plaza, the City had not yet evaluated the historic qualifications of the world-famous
19 fountain, although the plaza and many of its features were recognized as contributors
20 to the City's Market Street Cultural Landscape District in 2016. The City conclusively
21 affirmed the fountain's now-undisputed *individual* historic status in October 2025.
22

23 The City had ceased maintenance of the fountain the year before. In 2024,
24 SFRPD staff and officials proposed rehabilitating the plaza in a new design that would
25 *no longer include* the fountain. The Embarcadero Plaza Project planning process
26 thereafter proceeded apace, clocking hundreds of thousands of dollars, thousands of
27
28

1 staff hours, and dozens of rounds of design work. The extensive efforts and
2 expenditures now far exceed the bounds of proper planning prior to completion of the
3 public environmental review processes mandated by CEQA. The City's bureaucratic
4 and financial momentum has reached the point of unlawful precommitment to the
5 plaza project as proposed. Disassembly and removal of the fountain would further
6 reduce mandatory environmental review to meaningless post-hoc rationalization.
7

8
9 It is still not too late for an environmental impact report (EIR) process to inform
10 the public and assist City decisionmakers, which must occur while the historic fountain
11 remains securely in place. Friends seek this court's judgment and peremptory writ of
12 mandamus to order the City to set aside the emergency statutory exemption and
13 comply with CEQA in considering the plaza project without disassembling the
14 fountain. An EIR process must analyze potential significant impacts of removing the
15 fountain from the plaza and identify feasible mitigation measures and alternatives for
16 the plaza project as a whole, including the future of the fountain.
17
18

19 20 **Jurisdiction**

21 2. This Court has jurisdiction under Public Resources Code section 21168.5
22 and Code of Civil Procedure section 1085. The parties are located in the City and
23 County of San Francisco.
24

25 26 **Parties**

27 3. Petitioner Friends of the Plaza is a non-profit unincorporated association
28 formed after January 13, 2026, after the City's approval of an emergency statutory
exemption for what it calls the "San Francisco Recreation and Park Department

1 (SFRPD) Emergency Project—Embarcadero Fountain by Armand Vaillancourt
2 (Vaillancourt Fountain).” Friends’ purpose in pursuing this litigation is to achieve the
3 City’s set-aside of the emergency exemption and compliance with CEQA in an EIR
4 process addressing the future of the fountain as part of the Embarcadero Plaza project
5 or any other project. Friends intend to participate in that plaza project EIR process.
6

7
8 4. The members of Friends enjoy and appreciate historic resources
9 throughout San Francisco, including the Vaillancourt Fountain and Embarcadero Plaza.
10 Friends bring this petition on behalf of others similarly situated that are too numerous
11 to be named and brought before this court. Among the members of Friends are City
12 residents and Docomomo US/NOCA (Northern California Chapter), a non-profit
13 organization; The Cultural Landscape Foundation (TCLF), a non-profit organization;
14 Docomomo US, a non-profit organization; and the Vaillancourt family. Members of
15 Friends, including the listed organizations, objected to the City’s emergency statutory
16 exemption and exhausted administrative remedies.
17

18
19 5. Respondent San Francisco is the governmental body that approved the
20 fountain disassembly and removal based on a CEQA emergency statutory exemption.
21 The City is the lead agency responsible for CEQA compliance.
22

23
24 6. Does 1 to 10 are fictitiously-named real parties in interest whose names
25 and capacities are currently unknown to Friends. No non-City project applicant is
26 listed in the filed Notice of Exemption. If and when any true names and capacities
27 become known, Friends may amend this petition to assert them.
28

7. A copy of this petition was emailed to the California Attorney General.

General Allegations

8. The paragraphs below refer to and rely on information in documents that will be lodged with this court as part of the administrative record of proceedings.

Environmental Setting

9. The Vaillancourt Fountain, designed by Canadian sculptor Armand Vaillancourt and completed in 1971, is the centerpiece of Embarcadero Plaza, designed by renowned landscape architect Lawrence Halprin and completed in 1972. Together, the fountain and plaza demonstrate the City's laudatory commitment to participatory public spaces. The fountain's historic significance derives from its famed brutalist and abstract expressionist design and its role in San Francisco's nationally renowned public art program. The City recognizes the fountain an individual historic resource in addition to its status as a contributing element to the Market Street Cultural Landscape Historic District.

Project Description

10. The SFRPD website describes the "Embarcadero Plaza and Sue Bierman Park Renovation Project":

This project will transform Embarcadero Plaza and Sue Bierman Park into a vibrant, 5-acre waterfront park in the heart of San Francisco.

The project includes revitalizing a multi-purpose space for large gatherings and pathways with landscaping and stormwater features.

Streetscape improvements along Embarcadero, Drumm, and Washington streets will enhance accessibility and connectivity while new seating,

picnic areas, and shaded spaces will create a welcoming community hub. Through a collaborative public-private partnership and extensive community engagement, the design will reflect the needs of residents, businesses, and visitors while supporting downtown's economic recovery.



<https://sfrecpark.org/1819/Embarcadero-Plaza-and-Sue-Bierman-Park-R>

11. The City contends that as a *separate project* from the Embarcadero Plaza Project, the SFRPD proposes to disassemble and remove the Vaillancourt Fountain over a two-month period “for storage and further analysis, in order to both eliminate an immediate public safety risk and facilitate further investigation into the Fountain's

deteriorating structural integrity and hazardous materials used in its construction.” It proposes to investigate the disassembled fountain “components” for up to three years to consider “possible restoration, repair, relocation, or repurposing.”

12. The SFRPD website contains “project updates,” including its “motion concerning removal and storage of the Vaillancourt Fountain (located within Embarcadero Plaza) [to] be heard by the San Francisco Arts Commission’s Full Commission on Monday, November 3 at 2:00 p.m. at City Hall Room 416.” The URL also references an Arts Commission meeting on October 6 regarding the fountain condition and provides links to surveys.

13. SFRPD estimates that disassembly and removal of the fountain to storage would cost \$4 million, with funding provided by the plaza project budget.



Mayor Gavin Newsom and City officials celebrated a rejuvenation and reopening of the Vaillancourt Fountain in 2004.

Administrative Process and Project Approval

14. Ongoing meetings and reports relative to the plaza project are documented in the extensive administrative record. On October 31, 2025, SFRPD filed an application with the City's Planning Department (the department) to obtain a CEQA determination to "disassemble and remove the Embarcadero Fountain for storage and further analysis, in order to both eliminate an immediate public safety risk and facilitate further investigation into the Fountain's deteriorating structural integrity and hazardous materials used in its construction."

15. The same day, the department determined that SFRPD could disassemble and remove the fountain to off-site storage without any CEQA process, per an emergency exemption under CEQA Guidelines section 15269.

16. The San Francisco Arts Commission held one public hearing on November 3, 2025, to consider the emergency exemption for fountain disassembly, storage, and evaluation. Several Commissioners expressed concerns about the fountain's removal without a plan for the future of the artwork. The Commission approved disassembly and storage and the CEQA exemption by resolution 1103-25-214.

17. In December 2025, Docomomo NOCA appealed the exemption determination. The Board of Supervisors held a well-attended public hearing on the appeal in January 2026. SFRPD did not refute facts raised by Docomomo NOCA: that none of the City's engineering experts recommended disassembly and removal of the fountain from Embarcadero Plaza, and that such action would be hazardous to the fountain. The Board of Supervisors denied the appeal on a mixed vote.

1 18. The City filed a Notice of Exemption based on statutory emergency on
2
3 January 16, 2026. This petition is timely filed on February 12, 2026.

4 19 Friends have no plain, speedy and adequate remedy in the ordinary
5 course of law. Issuance of a peremptory writ is needed to avoid immediate, severe,
6 and irreparable harm to San Francisco residents and the City's environment via the
7 disassembly and removal of the fountain to storage without compliance with state law.
8 The City has the capacity to correct its violations of law but fails and refuses to do so.
9

10 **Violations of the California Environmental Quality Act**

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12 20. Friends incorporate all previous paragraphs as if fully set forth.

13 21. CEQA requires public agencies to conduct a prescribed, public EIR
14 process before taking actions that may have any significant adverse environmental
15 impact. The point of the process is to inform the public and to provide necessary
16 information to allow elected officials to comply with CEQA's *substantive mandate*:
17 to wit, to analyze and adopt feasible mitigations and alternatives that can avoid or
18 reduce significant environmental impacts. An agency that predetermines approval of
19 a project by vote or by bureaucratic and financial momentum with potentially
20 significant environmental impact without first preparing an EIR violates CEQA.
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24 22. **Precommitment.** Before considering whether to spend \$4 million to
25 disassemble and relocate the fountain into storage, the City must set aside its claimed
26 emergency statutory exemption that precommits to removal of the fountain from the
27 plaza as part of its larger plaza project. Its actions create overt bureaucratic and
28 financial momentum prohibited by the California Supreme Court in *Save Tara v. City of*

1 *West Hollywood* (2008) 45 Cal.4th 116, 139:

2 ... [C]ourts should look ... to the surrounding circumstances to determine
3 whether, as a practical matter, the agency has committed itself to the
4 project as a whole or to any particular features, so as to effectively
5 preclude any alternatives or mitigation measures that CEQA would
6 otherwise require to be considered,...

7
8 The record to be filed with the court documents a plethora of admissions by SFRPD
9 that removal of the historic fountain from Embarcadero Plaza via an emergency
10 exemption is intended to further its goal to avoid EIR review for that removal and to
11 provide an already-cleared site for the plaza project.
12

13 23. ***Piece-mealing/Segmentation.*** SFRPD intends to remove the fountain
14 from the plaza as part of the new design of the plaza project. The now-approved
15 imminent removal of the fountain to storage and study is part of the “whole of the
16 action” of the plaza project and is not a separate project. Consistently, upon
17 questioning by the Board of Supervisors, SFPRD staff publicly conceded at the January
18 2026 appeal hearing that the multi-million dollar cost of the fountain removal would
19 be paid as part of the plaza project funding. To avoid timely and complete CEQA
20 review, the City failed to proceed in the manner required by law by segmenting— aka
21 piece-mealing—the fountain disassembly and storage from the plaza project. It is not
22 a separate project.
23
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27 24. ***Emergency Exemption.*** The City abused its discretion and failed to act
28 in the manner required by law in approving the disassembly and removal of the
fountain to storage based on an emergency statutory exemption from CEQA. Removal

1 may substantially harm a historic resource and thus cause a significant environmental
2 impact. (Pub. Resources Code, section 21084.1.) *Inter alia*, as documented by the record
3 of proceedings and subject to proof, reliance on an emergency exemption violated
4 CEQA in the absence of any change in the longstanding deteriorating condition of the
5 fountain on the City's watch due to its own failure to adequately maintain. The City
6 holds the historic fountain in trust for its residents and has failed to take feasible steps
7 to avoid potential harm to the public or property over time. It now refuses to consider
8 feasible ways to protect the fountain and the public by adequate site security or to
9 consider reasonable methods to study the fountain condition on site as prerequisite for
10 the environmental review required for the "whole of the action" of the plaza project.
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14 There is no emergency supporting CEQA exemption.
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17 **WHEREFORE**, petitioner Friends of the Plaza prays:

18 1. That the court issue judgment and a peremptory writ ordering the City to
19 set aside *all actions and approvals* relating to the CEQA emergency statutory exemption
20 for disassembly and removal of the Vaillancourt Fountain from the Embarcadero Plaza,
21 and requiring that before further consideration of that action or the full Embarcadero
22 Plaza Project, the City prepare an Initial Study and adequate environmental document
23 for the project of which the future of the historic Vaillancourt Fountain is a part;
24

25 2. That the court forthwith stay the City from approving or proceeding or
26 allowing its agents to proceed with physical actions relying on the statutory exemption,
27 including disassembly or removal of the fountain from Embarcadero Plaza while the
28 petition is pending and after judgment pending compliance with the peremptory writ;

1 3. That the court stay the City from further actions that would piece-meal or
2 precommit to the Embarcadero Plaza project and to rescind any such actions taken;
3

4 4. For Friends' reasonable costs, expenses, and attorney fees pursuant to
5 Code of Civil Procedure section 1021.5; and
6

7 5. For such other relief as the Court finds proper.

8 February 12, 2026

Respectfully submitted,

9 BRANDT-HAWLEY LAW GROUP

10
11 by  _____
12

Susan Brandt-Hawley
Attorney for Petitioners

13
14 **Verification**

15 I, Susan Brandt-Hawley, am an attorney for the petitioner, whose members are
16 located outside of Sonoma County where I have my law office, and so I verify this
17 petition on its behalf. I have read this petition and know its contents. The matters
18 stated in it are true based on my knowledge, except matters that are stated on
19 information and belief, and as to those matters I believe them to be true.
20
21

22 I declare under penalty of perjury that the above is true to the best of my
23 knowledge and that this declaration is executed on February 12, 2026, at Sonoma, CA.
24

25 
26 _____
27 Susan Brandt-Hawley
28

Friends of the Plaza v. City and County of San Francisco et al.
San Francisco County Superior Court

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to this action. My business address is P.O. Box 1659, Glen Ellen, CA 95442.

On February 12, 2026, I served one true copy of:

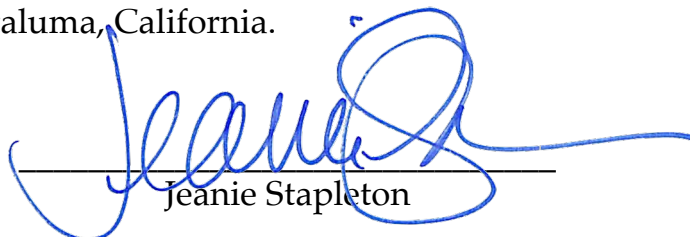
Petition for Writ of Mandamus

- ☐ By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Petaluma, California, to the persons listed below.
- ☐ By electronic service via OneLegal on counsel as listed below.
- ☒ By emailing a copy as listed below.

Environment Section
Office of the Attorney General
1300 I Street
PO Box 944255
Sacramento, CA 94244-2550

ceqa@doj.ca.gov

I declare under penalty of perjury that the foregoing is true and is executed on February 12, 2026, at Petaluma, California.



Jeanie Stapleton