

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

OCT 04 2023

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

COUNTY OF HUMBOLDT

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CITIZENS FOR A BETTER EUREKA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Humboldt County Superior Court
825 5th St, Eureka, CA 95501

CASE NUMBER:
(Número del Caso):

CV 2301563

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Bradley Johnson, 9655 Granite Ridge Drive, San Diego CA 92123, (916) 704-6393

DATE: **OCT 04 2023** Clerk, by **MEARA HATTAN**, Deputy
(Fecha) (Secretario) *[Signature]* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

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COPY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Bradley B. Johnson (SBN 257220)
 9655 Granite Ridge Drive, San Diego CA 92123

TELEPHONE NO.: (916) 704-6393 FAX NO. (Optional): (916) 250-0103
 E-MAIL ADDRESS: bjohnson@everviewlaw.com
 ATTORNEY FOR (Name): CITIZENS FOR A BETTER EUREKA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT
 STREET ADDRESS: 825 5th St
 MAILING ADDRESS:
 CITY AND ZIP CODE: Eureka, CA 95501
 BRANCH NAME:

CASE NAME:
 CITIZENS FOR A BETTER EUREKA v. CITY OF EUREKA ET AL.

FOR COURT USE ONLY

FILED

OCT 04 2023

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF HUMBOLDT

CIVIL CASE COVER SHEET	Complex Case Designation	CASE NUMBER:
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	CV 2301563
	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 2

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 3, 2023

Bradley B. Johnson _____

(TYPE OR PRINT NAME)



 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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10 *Attorneys for Petitioner and Plaintiff*
11 *CITIZENS FOR A BETTER EUREKA*

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF HUMBOLDT**

14 CITIZENS FOR A BETTER EUREKA,

15 Petitioner and Plaintiff,

16 vs.

17 CITY OF EUREKA, CITY OF EUREKA
18 CITY COUNCIL, and DOES 1 to 10,
19 inclusive,

20 Respondents and Defendants.

Case No.: CV 2301563

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND ATTORNEYS' FEES**

CEQA Action

[Public Resources Code, §§ 21000, et seq.; Cal.
Code of Civil Procedure, §§ 525, 1060, 1085
and/or 1094.5]

FILED

OCT 04 2023

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

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1 Petitioner and Plaintiff CITIZENS FOR A BETTER EUREKA (“Petitioner”) hereby
2 petitions the Court for a writ of mandate against respondents and defendants CITY OF EUREKA
3 (“City”) and the CITY OF EUREKA CITY COUNCIL (“City Council”) (collectively,
4 “Respondent”), and by this Verified Petition for Writ of Mandate and Complaint for Declaratory
5 and Injunctive Relief and for Attorneys’ Fees (“Verified Petition”) alleges as follows:

6 **INTRODUCTION AND SUMMARY**

7 1. This is a public interest citizen suit to enforce the California Environmental Quality
8 Act, Public Resources Code (“PRC”) Section 21000 *et seq.* (“CEQA”).

9 2. CEQA is California’s preeminent environmental law. It requires all public agencies
10 to examine the potential adverse impacts of their actions before taking them. It is designed to
11 protect California’s environmental resources from uninformed and agency actions.

12 3. CEQA requires Respondent to fully examine the impacts of its actions and to
13 carefully consider alternatives and mitigation measures that would reduce those impacts. CEQA
14 prohibits public agencies from approving a project as proposed “if there are feasible alternatives
15 or feasible mitigation measures available which would substantially lessen the significant
16 environmental effects” of the project. (PRC § 21002.)

17 4. Petitioner challenges Respondent’s unlawful actions taken on or about June 20,
18 2023, including Respondent’s adoption of a “Resolution of the City Council of the City of Eureka
19 Finding the LINC Housing Project Sites Are Exempt Surplus Land Pursuant to California
20 Government Code Section 54221(f)(1)(A) Because the Properties Are to Be Disposed of For
21 Housing Development Pursuant to California Government Code Section 37364” (the “Project”).
22 According to the staff report prepared in connection with the Project, the City Council’s action
23 would declare the Project site, located at 8th and G Streets in the City of Eureka, as surplus land
24 so that the City can dispose of the Project site for the construction of deed-restricted affordable
25 housing. The Project would include 28 units total, comprised of 15 units for very-low income
26 residents, 12 for low-income residents, and one manager’s unit.

27 ///

28 ///

1 5. Respondent originally approved development of the Project site in July 2020. In
2 October 2020 Respondent awarded Linc Housing the right to develop the Project site, and in
3 February 2021 the City Design Review Committee (“DRC”) approved construction of a
4 multifamily residential structure on the Project site (the “Structure”).

5 6. On June 14, 2022, the City DRC approved by resolution a modification to the
6 original Structure design (“2022 Resolution”), and determined that the Structure was exempt from
7 CEQA review pursuant to Section 15332 of the CEQA Guidelines, pertaining to infill
8 developments.

9 7. On or about June 16, 2022 Respondent filed a Notice of Exemption (“2022 NOE”)
10 (SCH No. 2022060361) for the Structure.

11 8. On June 20, 2023, after learning that it had failed to comply with the Surplus Lands
12 Act when it approved the Structure, Respondent took corrective action to declare the Project site
13 as exempt surplus land. Declaring the Project site as surplus land in compliance with the Surplus
14 Lands Act is a necessary condition precedent to development of the Structure on the Project site.

15 9. In taking this action, however, Respondent did not comply with CEQA, even
16 though Respondent acknowledged in its approval resolution that “the decision to declare property
17 surplus, and the subsequent lease and development of the Propert[y] for affordable housing . . . is
18 a ‘project’ pursuant to the California Environmental Quality Act”. Rather, Respondent referred to
19 the 2022 NOE and 2022 Resolution adopted in connection with approval of the Structure. Neither
20 the 2022 NOE nor the 2022 Resolution, however, referred to the City’s required declaration that
21 the Project site was surplus land, and Respondent did not amend the 2022 NOE or 2022 Resolution
22 to apply to that action.

23 10. Petitioner and other commenters presented substantial evidence that the Project
24 may cause a number of significant environmental impacts at the June 20, 2023 hearing. Potentially
25 significant impacts relate to traffic, air quality, and public safety.

26 11. At the June 20, 2023 hearing, Petitioner also informed the City that the City’s action
27 is not exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines, as asserted in the
28 staff report. CEQA Guidelines Section 15332 exemption applies to infill development projects that

1 meet specified criteria. The Project, however, does not entail approval of an infill development
2 project; it proposes to declare City-owned property surplus. The CEQA Guidelines include an
3 exemption specifically for the sale of surplus property under certain conditions – Section 15312.

4 12. By not declaring the Project exempt pursuant to CEQA Guidelines Section 15312
5 and making supporting findings therefor, and by referring to but not readopting and amending the
6 CEQA Guidelines Section 15332 exemption adopted in connection with the Structure approval,
7 Respondent City in fact took no action to comply with CEQA in connection with its June 20, 2023
8 approval of the Project (declaration of the Project site as exempt surplus land).

9 13. Through this Verified Petition Petitioner seeks to compel Respondent to properly
10 analyze, disclose, and mitigate the potential significant adverse environmental impacts associated
11 with the Project.

12 **PARTIES**

13 14. Petitioner CITIZENS FOR A BETTER EUREKA (“CBE”) is an unincorporated,
14 volunteer community organization that works to protect and enhance the quality of life in and
15 economic vitality of the City of Eureka. CBE members offer input into local land use and planning
16 decisions and economic decisions affecting the City, and have participated in the City’s various
17 actions regarding parking, affordable housing, and downtown revitalization. CBE members
18 include local business owners, financial professionals, lawyers, medical professionals, former
19 members of the City Council, and former City Mayors. CBE was duly authorized to and does bring
20 this action in a representative capacity on behalf of its members and in the public interest.

21 15. Respondent CITY OF EUREKA (“City”) is, and at all times herein mentioned was,
22 a political and geographic subdivision of the State of California. The City is, and at all relevant
23 times was, responsible for administering and carrying out its laws and all applicable federal and
24 state laws. The City is the “lead agency” for purposes of Public Resources Code Section 21067,
25 with principal responsibility for conducting environmental review of the Project.

26 16. Respondent CITY OF EUREKA CITY COUNCIL (“City Council”) is, and at all
27 times herein mentioned was, the duly elected legislative body of Respondent City. As the decision-
28 making body for the Project, the City was charged with ensuring compliance with CEQA in

1 connection with reviewing and approving the Project. On or about October 18, 2022, the City
2 Council adopted Resolution No. 2022-58 approving the Project and adopting the Addendum.
3 Respondent did not thereafter file a notice of determination.

4 17. Petitioner is unaware of the true names and capacities of Respondents DOES 1
5 through 10, and sues such respondents by fictitious names. On information and belief, the
6 fictitiously named respondents are also responsible for the actions described in this Verified
7 Petition. When the true identities and capacities of these respondents have been determined,
8 Petitioner will amend this Petition to insert such identities and capacities. Each of the unnamed
9 respondents is the agent and/or employee of Respondent, and each performed acts on which this
10 action is based within the course and scope of such respondent's agency and/or employment.

11 18. Hereafter, Respondents City, City Council, and DOES 1 through 10, inclusive, are
12 referred to collectively as "Respondent".

13 **JURISDICTION AND VENUE**

14 19. Respondent has taken final agency actions by approving the Project. Respondent
15 had a duty to comply with CEQA prior to exercising its discretion to approve the Project.

16 20. This Court has jurisdiction over the matters alleged in this Verified Petition
17 pursuant to Code of Civil Procedure ("CCP") Sections 526 (injunctive relief), 527 (injunctive
18 relief), 1060 (declaratory relief), 1085 (traditional mandate), and 1094.5 (administrative mandate),
19 and PRC Sections 21168 and/or 21168.5 (judicial review under CEQA).

20 21. The Court has jurisdiction to issue declaratory and injunctive relief pursuant to CCP
21 Sections 1060 and 525 *et seq.*, respectively.

22 22. Venue for this action properly lies in the Superior Court for the State of California
23 in and for the County of Humboldt pursuant to CCP Sections 393(b), 394, and 395. Respondent
24 and the Project are located within the County of Humboldt. The environmental impacts from the
25 Project that are the subject of this lawsuit would occur in Humboldt County, and the Project would
26 affect the interests of County residents and City residents, including Petitioner, and its members,
27 their employees, and their customers.

28 ///

1 PRIVATE ATTORNEY GENERAL DOCTRINE

2 37. Petitioner brings this action as private attorneys general pursuant to CCP Section
3 1021.5, and any other applicable legal theory, to enforce important rights affecting the public
4 interest.

5 38. Issuance of the relief requested in this Verified Petition will (1) confer a significant
6 benefit on the general public by requiring Respondent to carry out its duties under CEQA before
7 approving the Project, and will (2) result in the enforcement of important rights affecting the public
8 interest by ensuring the Project is subject to adequate review under CEQA and its significant
9 impacts mitigated to the extent possible.

10 39. The necessary and financial burden of enforcement are such as to make an award
11 of attorneys' fees appropriate in this case.

12 40. Pursuant to CCP Section 388, Petitioner will serve a copy of this Verified Petition
13 on the California Attorney General to give notice that Petitioner brought this lawsuit as a private
14 attorney general under CCP Section 1021.5.

15 RELIEF REQUESTED

16 41. Petitioner seeks an alternative writ of mandamus, a peremptory writ of mandamus,
17 temporary and permanent injunctive relief, costs, and attorneys' fees.

18 **A. Alternative and Peremptory Writs of Mandamus**
19 **(CCP §§ 1085, 1087; PRC §§ 21168.5, 21168.9)**

20 42. Petitioner seeks alternative and peremptory writs of mandate pursuant to CCP
21 Section 1085, which provides that a writ of mandate "may be issued by any court . . . to any inferior
22 tribunal, corporation, board or person, to compel the performance of an act which the law specially
23 enjoins, as a duty resulting from an office, trust, or station," and CCP Section 1087, which provides
24 that "[t]he writ may be either alternative or peremptory."

25 43. Petitioner also seeks alternative and peremptory writs of mandate pursuant to PRC
26 Sections 21168.5 and 21168.9. The former statute, applicable in traditional mandamus actions
27 involving alleged violations of CEQA, provides as follows:

28 ///

1 In any action or proceeding, other than an action or proceeding under section 21168,
2 to attack, review, set aside, void or annul a determination, finding, or decision of a
3 public agency on the grounds of noncompliance with [CEQA], the inquiry shall
4 extend only to whether there has been a prejudicial abuse of discretion. Abuse of
discretion is established if the agency has not proceeded in a manner required by
law or if the determination or decision is not supported by substantial evidence.

5 44. PRC Section 21168.9 authorizes a court, after determining that a respondent agency
6 has violated CEQA, to issue a peremptory writ of mandate requiring the agency to void or suspend
7 decisions for which CEQA compliance was necessary, or to take other steps necessary to bring its
8 decisions into compliance with CEQA. Petitioner requests that, pursuant to subdivision (a)(1) of
9 Section 21168.9, the court issue a peremptory writ requiring the City to void its approval of the
10 Project.

11 45. Section 21168.9, subdivision (b), provides that “[It]he trial court shall retain
12 jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until
13 the court has determined that the public agency has complied with [CEQA].”

14 46. Petitioner seeks alternative and peremptory writs of mandate on the grounds that,
15 by approving the Project without first properly complying with CEQA, Respondent prejudicially
16 abused its discretion within the meaning of Public Resources Code Section 21168.5.

17 **B. Temporary and Permanent Injunctive Relief**

18 47. Petitioner requests injunctive relief pursuant to CCP Sections 526, 527, and 3422,
19 which provide that the Court may issue temporary and/or permanent injunctive relief, including a
20 preliminary injunction, if the plaintiff or petitioner meets specified criteria.

21 48. Respondent’s actions will result in irreparable harm to Petitioner and the public at
22 large in that the Project as approved may cause significant environmental impacts that have not
23 been evaluated and for which no mitigations have been adopted. As was described earlier and will
24 be discussed more fully, infra, such impacts include, but are not limited to, those involving traffic,
25 air quality, and public safety.

26 49. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law.
27 No money damages or other legal remedy could adequately compensate Petitioner for the harms
28 described in the preceding paragraphs.

1 55. California “public agencies” must comply with CEQA when they approve
2 discretionary projects. (PRC § 21080(a).)

3 56. Respondent is a “public agency” as defined in CEQA. (PRC § 21063.)

4 57. Under CEQA, the term “project” applies to activities that may cause “either a direct
5 physical change in the environment, or a reasonably foreseeable indirect physical change in the
6 environment.” (PRC § 21065.) Under the CEQA Guidelines, the term “project” is defined as “the
7 whole of an action” that has “a potential for resulting” in a direct or reasonably foreseeable indirect
8 physical change to the environment. (CEQA Guidelines § 15378(a).) The broad reach of the term
9 “project” means three things: (1) when examining an activity to determine whether it could affect
10 the physical environment, an agency must consider the entire activity that is the subject of its
11 approval (CEQA Guidelines § 15378(a)); (2) the project is the activity that is approved by a public
12 agency, not the approval itself (CEQA Guidelines § 15378(c)); and (3) a public agency action that
13 will not have an immediate effect on the environment but that has the potential to result in a
14 reasonably foreseeable physical change in the environment indirectly is a project under CEQA
15 (PRC § 21065; CEQA Guidelines § 15378(a)).

16 58. A lead agency may not split a single project into smaller actions; doing so results
17 in piecemeal environmental review that fails to consider the environmental consequences of the
18 entire project.

19 59. The Surplus Lands Act (Gov. Code § 54200 *et seq.*) requires local agencies to
20 complete certain procedures before disposing of surplus land. The act of declaring land to be
21 surplus is a “project” subject to CEQA. Some surplus land declarations may fall within the
22 categorical exemption described in CEQA Guidelines Section 15312. However, pursuant to CEQA
23 Guidelines Section 15300.2(c), if there is a “reasonable possibility” that an activity will have a
24 significant effect on the environment due to “unusual circumstances,” an agency may not find the
25 activity to be categorically exempt from CEQA.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of CEQA**
3 **(CCP § 1094.5, PRC § 21000 *et seq.*, CEQA Guidelines, 14 CCR § 15000 *et seq.*)**

4 60. Petitioner incorporates by reference each and every allegation set forth above.

5 61. Petitioner brings this First Cause of Action for violations of CEQA pursuant to PRC
6 Sections 21168 and 21168.5 on the grounds that Respondent committed a prejudicial abuse of
7 discretion by failing to proceed in the manner required by law in approving the Project without
8 determining the Project to be exempt or preparing an appropriate environmental review document.
9 In fact, Respondent made no exemption findings and performed no CEQA review in connection
10 with the Project.

11 62. Respondent, when approving the Project, improperly referred to, but did not
12 readopt, its prior determination that construction of the Structure on the Project site was exempt
13 pursuant to CEQA Guidelines Section 15332, which applies to infill development projects.

14 63. Respondent, when approving the Project, failed to determine that the Project was
15 exempt pursuant to CEQA Guidelines Section 15312, which applies to “sales of surplus
16 government property”. (CEQA Guidelines § 15312.) This exemption, like all CEQA exemptions,
17 is narrowly construed; agency action approving or opening the way for a future development can
18 be part of a project and can trigger CEQA even if the action takes place prior to planning or
19 approval of all the specific features of the planned development.

20 64. Respondent improperly approved the use of the Project site (development of the
21 Structure) separately from determining the Project site to be surplus land. Respondent in this way
22 “piecemealed” the whole of the action.

23 65. Substantial evidence in the record shows that the “whole of the action” constitutes
24 redevelopment of the Project site into a minimum of 28 high-density residential units.

25 66. Substantial evidence in the record shows that the Project will result in significant
26 traffic impacts. For example, the Project, by eliminating public parking spaces, will contribute to
27 traffic congestion during peak traffic periods on roadway segments within downtown Eureka that
28 will decrease the Level of Service (“LOS”) from LOS C to LOS D on those roadway segments.

1 before Respondent.

2 72. Respondent failed to proceed in the manner required by law by violating CEQA as
3 alleged hereinabove.

4 73. Respondent's actions in approving the Project without complying with the
5 procedures required by CCP Sections 1085 and 1094.5 exceeded Respondent's jurisdiction and
6 constitutes a prejudicial abuse of discretion, and therefore are invalid and must be set aside.

7 WHEREFORE, Petitioner prays for judgment as follows:

8 **PRAYER FOR RELIEF**

9 1. For alternative and peremptory writs of mandate directing Respondent to vacate
10 and set aside the Project on the ground that its approval violated CEQA;

11 2. For alternative and peremptory writs of mandate directing Respondent to comply
12 with CEQA and the CEQA Guidelines with respect to the Project and any other action as required
13 by PRC Section 21168.9;

14 3. For a temporary stay, temporary restraining order, and preliminary and permanent
15 injunctions restraining Respondent and their agents and employees, and all others acting in concert
16 with them or on their behalf, from taking any action to implement, fund, or construct any portion
17 or aspect of the Project, pending full compliance with the requirements of CEQA;

18 4. For an order requiring Respondent to rescind its approval of the Project and all
19 actions related thereto, as provided by CCP Section 860 *et seq.*;

20 5. For an order from the Court declaring that Respondent's actions in approving the
21 Project violated CEQA, and that its actions are invalid and of no force or effect;

22 6. For an award of Petitioner's attorneys' fees under CCP Section 1021.5,
23 Government Code Section 800, and other applicable authority;

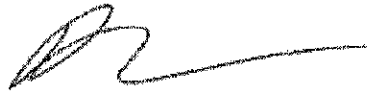
24 7. For an award of Petitioner's costs of suit incurred in this proceeding under CCP
25 Section 1032, and other applicable authority; and

26 8. Such other and further relief as the Court deems just and proper.
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DATED: October 3, 2023

EVERVIEW LTD.



BRADLEY JOHNSON, ESQ.
Attorneys for Petitioner and Plaintiff

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VERIFICATION

I am an employee of Security National Properties Servicing Company, LLC (“SN”), which is a member of Petitioner CITIZENS FOR A BETTER EUREKA (“CBE”). I am authorized by SN to make this verification on its behalf, and I am authorized by the members of CBE to make this verification for and on behalf of CBE. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and for Attorneys’ Fees. I am informed and believe and, based on such information and belief, allege that the matters stated in it are true and correct.

Executed at Eureka, California, on this October 3rd, 2023.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

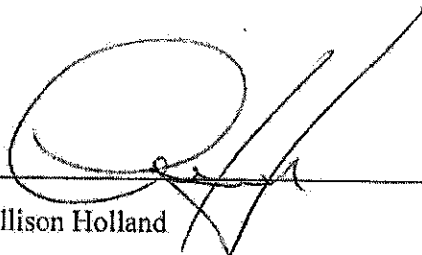

Allison Holland

Exhibit A



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September 28, 2023

VIA EMAIL TO: PPOWELL@EUREKACA.GOV
CITYATTORNEY@EUREKACA.GOV

AND VIA U.S. MAIL

Pam Powell
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City of Eureka
531 K Street
Eureka, CA 95501

Autumn Luna, Esq.
City Attorney
City of Eureka
531 K Street
Eureka, CA 95501

**Re: NOTICE OF INTENT TO FILE CEQA PETITION
8th and G Site**

PLEASE TAKE NOTICE, under Public Resources Code Section 21167.5, that petitioner CITIZENS FOR A BETTER EUREKA intends to file a petition under the provisions of the California Environmental Quality Act against respondent City of Eureka and City of Eureka City Council (collectively, "City"), challenging the City's June 20, 2023 approval of a "Resolution of the City Council of the City of Eureka Finding the LINC Housing Project Sites Are Exempt Surplus Land Pursuant to California Government Code Section 54221(f)(1)(A) Because the Properties Are to Be Disposed of For Housing Development Pursuant to California Government Code Section 37364", which appeared as Item F.6. on the City Council's June 20, 2023 agenda.

The petition to be filed by petitioner will be served on the City after filing.

Sincerely,

Bradley B. Johnson, Esq.
Everview Ltd.
Attorney for Petitioner Citizens for a Better Eureka



Exhibit B

1 **TO RESPONDENTS AND DEFENDANTS:**

2 NOTICE IS HEREBY GIVEN that, pursuant to subdivision (b)(2) of section 21167.6 of
3 the California Public Resources Code, Petitioner and Plaintiff CITIZENS FOR A BETTER
4 EUREKA (“Petitioner”) hereby elects to prepare the administrative record pertinent to this
5 proceeding.

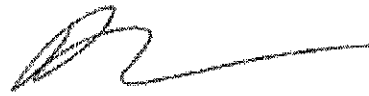
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7 DATED: October 3, 2023

EVERVIEW LTD.

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BRADLEY JOHNSON, ESQ.

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Attorneys for Petitioner and Plaintiff

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