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6 SAVE LAFAYETTE TREES, MICHAEL DAWSON  
and DAVID KOSTERS

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF CONTRA COSTA

10 SAVE LAFAYETTE TREES, MICHAEL DAWSON )  
and DAVID KOSTERS, )

11 Petitioners and Plaintiffs, )

12 v. )

13 EAST BAY REGIONAL PARK DISTRICT, and )  
14 DOES 1 through 100, )

15 Respondents and Defendants, )

16 PACIFIC GAS AND ELECTRIC COMPANY, CITY )  
17 OF LAFAYETTE, and DOES 101 through 200, )

18 Real Parties in Interest. )  
19

Civ. No.

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

**CEQA CASE**

20 Petitioners and Plaintiffs SAVE LAFAYETTE TREES, MICHAEL DAWSON  
21 and DAVID KOSTERS (collectively, "Save Lafayette Trees") hereby petition the Court for a writ of  
22 mandate and declaratory and injunctive relief ordering defendant and respondent East Bay Regional Park  
23 District ("Park District") to rescind its approval on March 21, 2017 and entry on March 22, 2017 into a  
24 Memorandum of Understanding ("Tree Removal MOU"). The Tree Removal MOU allows real party in  
25 interest Pacific Gas and Electric Company ("PG&E") to remove 245 healthy, mature and in many cases,  
26 iconic old growth oak, redwood and other native trees – including at least 31 trees protected by the City  
27 of Lafayette's ("City's") Tree Protection Ordinance, Lafayette Municipal Code Sections 6-1701 to 6-  
28 1713 – without compliance with state and municipal laws protecting the environment and in violation of

1 the Due Process rights of petitioners. By this Verified Petition for Writ of Mandate and Complaint for  
2 Declaratory and Injunctive Relief and for Attorneys' Fees ("Verified Petition"), Save Lafayette Trees  
3 alleges as follows:

#### 4 INTRODUCTION

5 1. This is a public interest citizen suit to enforce the California Environmental Quality Act,  
6 Public Resources Code section 21000 et seq. ("CEQA"), the Planning and Zoning Law, Government  
7 Code section 65000 et seq. ("PZL"), the California Constitution's Due Process Section, and the City of  
8 Lafayette's General Plan and Tree Protection Ordinance. CEQA is California's preeminent  
9 environmental law. It requires all public agencies to examine the potential adverse impacts of their  
10 actions before taking them. It is designed to protect California's extraordinary environmental resources  
11 from uninformed and needlessly destructive agency actions. The PZL is California's comprehensive  
12 land use planning law that assures that local land use and resource development decisions are consistent  
13 with the governing general and specific plans and applicable zoning and environmental protection  
14 ordinances such as the City's Tree Protection Ordinance. Compliance with the PZL assures that the  
15 publicly reviewed and adopted land use goals, policies and programs for each community are honored  
16 and implemented rather than ignored and violated. California's Due Process Section – Article I, section  
17 7 – guarantees that each Californian "may not be deprived of life, liberty or property without due process  
18 of law" including a duly noticed, fair hearing in which each person has an opportunity to present  
19 evidence and arguments before a public agency may take administrative action, such as the Park  
20 District's entry into its MOU with PG&E, without public notice and review under CEQA and other  
21 applicable laws, that harms that person's protected property rights.

22 2. Contrary to these statutory and constitutional protections of petitioners' – and the public's –  
23 rights, on March 21, 2017 the Park District Board of Directors purported to approve as a consent  
24 calendar item the Tree Removal MOU allowing PG&E to remove 245 healthy, mature and in many  
25 cases, iconic native trees that define, protect and enrich public and private open space of inestimable  
26 value to the thousands of people who use and enjoy Park District lands. Trees to be removed include  
27 scores of massive and venerable coastal live oaks, valley oaks, coast redwoods, California buckeyes, and  
28 other protected native tree species located within the popular Briones Regional Park, along the popular

1 Lafayette-Moraga Regional Trail, and in other public open space owned by the Park District and highly  
2 valued for its scenery and wildlife habitat. The Park District failed to provide petitioners and the public  
3 with required public notice before it entered into the Tree Removal MOU with PG&E. The Park  
4 District's approval of the Tree Removal MOU without any notice to petitioners and without any review  
5 under CEQA evaded the detailed environmental analysis required by CEQA, the comprehensive  
6 planning review mandated by the PZL, the City of Lafayette Municipal Code provisions governing  
7 planning and land use including Title Six, Sections 6-205, 6-211, 6-215 and 6-225, and the Park  
8 District's Ordinance 38, and violated the public notice and fair hearing commands of the California  
9 Constitution.

10 3. The sole basis for the Park District's entry into the Tree Removal MOU was a false and  
11 misleading propaganda campaign rolled out by PG&E touting the supposed benefits of implementing its  
12 "Community Pipeline Safety Initiative" ("CPSI"). According to PG&E's marketing campaign, the CPSI  
13 reflects PG&E's commitment "to the safety of its customers and the communities it serves" and is  
14 intended to "clear areas around pipelines of trees so that first responders and crews have immediate  
15 access, the pipe can be properly inspected, and tree roots do not damage the pipe."

16 4. In fact, none of the three ostensible purposes of the CPSI is true. As attested by a Fire  
17 Captain with the San Ramon Fire Protection District and other qualified fire suppression professionals,  
18 first responders would not remove trees or their roots in responding to a threatened or actual natural gas  
19 explosion or fire. Instead, they would "isolate and deny entry" to the affected area and wait until the  
20 pipeline's automatic shut-off valve (or PG&E itself) shut off the gas, and PG&E conducted the repairs.  
21 Second, the gas lines in question are already accessible to vehicles along the Lafayette-Moraga Regional  
22 Trail, the Briones Regional Park Rim Trail, and other pipeline locations on Park District land where  
23 PG&E proposes to remove healthy and mature trees. Third, PG&E had never presented to the Park  
24 District adequate documentation of a single instance where tree roots created a hazard for gas pipelines.  
25 To the contrary, a study PG&E conducted of this issue in 2014 concludes that "[a]vailable data provides  
26 no direct evidence that the presence of live tree roots in contact with the [gas] pipe increased the  
27 susceptibility to the initiation of stress corrosion cracking," "[a]bove ground [pipeline] surveys are not  
28 significantly affected by the presence of tree roots," and "the effectiveness of External Corrosion Direct

1 Assessment (ECDA) does not appear to be adversely affected by the presence of tree roots.”

2 5. PG&E’s motivation for its CPSI appears instead to be a desire to reduce the cost of  
3 monitoring the condition of its gas pipelines by facilitating examination from the air rather than from the  
4 ground. Monitoring by air, however, is neither as accurate nor as complete as monitoring by ground,  
5 resulting in less rather than greater public safety.

6 6. Although PG&E has implied that the CSPI is intended to assure the public that PG&E has  
7 “learned its lesson” from the catastrophic September 2010 San Bruno gas pipeline explosion caused by  
8 its criminal negligence, the facts do not support this claim. According to the National Transportation  
9 Safety Board investigation of that explosion, its probable cause was a substandard and poorly welded  
10 section of pipeline installed in 1956, coupled with PG&E’s 96-minute delay in shutting off the gas  
11 supply after the explosion had occurred. Cutting down the Park District’s heritage trees does nothing to  
12 address the actual hazards posed by PG&E’s gas pipelines, many of which were installed decades ago.  
13 Thus, rather than improving public safety, PG&E’s CPSI is intended to reduce PG&E’s costs of pipeline  
14 maintenance and may expose the public to greater safety hazards due to less effective aerial (rather than  
15 ground) monitoring and reduced lateral and subjacent soil support for pipelines in areas where live tree  
16 roots help stabilize steep slopes and protect soils otherwise exposed to erosion along creeks such as Las  
17 Trampas Creek.

18 7. Save Lafayette Trees brings this action in order to vindicate the public’s statutory and  
19 constitutional right to public notice and the Park District’s compliance with CEQA’s command that  
20 agencies carefully examine the environmental impacts of their projects before approving them, the PZL’s  
21 requirements that the use of lands within the City of Lafayette comply with its General Plan and  
22 implementing land use ordinances including its Tree Protection Ordinance, and the tree protections set  
23 forth in the Park District’s Ordinance 38. Contrary to these mandates, the Park District approved the  
24 Tree Removal MOU without first providing public notice, conducting CEQA review, and complying  
25 with applicable land use laws.

26 8. Save Lafayette Trees asks this Court to order the Park District to rescind its unlawful  
27 decision to approve the Tree Removal MOU, and to direct the Park District to provide the public notice,  
28 and compliance with CEQA and the Park District’s and the City’s land use procedures and standards,

1 that are required by law before taking any further action on PG&E's Tree Removal MOU.

2 **JURISDICTION**

3 9. This Verified Petition is authorized by Code of Civil Procedure sections 1085 et seq. and  
4 Public Resources Code sections 21168 and 21168.5.

5 10. Pursuant to Code of Civil Procedure section 388 and Public Resources Code section  
6 21167.7, petitioners are serving the California Attorney General with a copy of this Verified Petition  
7 concurrently with the filing of this action, and consistent with Public Resources Code section 21167.5,  
8 petitioners are serving the Park District, the City and PG&E with notice of this suit.

9 **PARTIES**

10 11. Petitioner Save Lafayette Trees is a non-profit unincorporated association whose members  
11 reside, work, or recreate in the City of Lafayette and use and enjoy the healthy, mature native trees on  
12 Park District lands that PG&E proposes to remove pursuant to its Tree Removal MOU with the Park  
13 District. Save Lafayette Trees has collected more than 2,000 digital signatures supporting its opposition  
14 to PG&E's proposed removal of trees in the City and on Park District lands. Save Lafayette Trees and  
15 its members are therefore beneficially interested in the Park District's compliance with CEQA, the PZL,  
16 the City's General Plan and Municipal Code, the Park District's Ordinance 38, and the California  
17 Constitution in connection with its approval of the Tree Removal MOU, and accordingly seek this  
18 Court's writ of mandate, and injunctive and declaratory relief, enforcing these laws and overturning the  
19 Park District's unlawful approval of the Tree Removal MOU.

20 12. Petitioner Michael Dawson is a City resident and homeowner and the President of Save  
21 Lafayette Trees. He and his family regularly use and enjoy the healthy, mature trees that PG&E proposes  
22 to remove pursuant to the Tree Removal MOU and therefore have a vital and direct interest in the City's  
23 compliance with the laws governing that agreement, and accordingly seek this Court's writ of mandate,  
24 and injunctive and declaratory relief, enforcing CEQA, the PZL, the City's General Plan and Municipal  
25 Code, the Park District's Ordinance 38, and the California Constitution, and overturning the Park  
26 District's unlawful approval of the Tree Removal MOU.

27 13. Petitioner David Kosters resides in the City with his family and is the Secretary of Save  
28 Lafayette Trees. He and his family regularly use and enjoy the healthy, mature trees that PG&E proposes

1 to remove pursuant to the Tree Removal MOU, and therefore have a vital and direct interest in the Park  
2 District's compliance with the laws governing that agreement, and accordingly seek this Court's writ of  
3 mandate, and injunctive and declaratory relief, enforcing CEQA, the PZL, the City's General Plan and  
4 Municipal Code, the Park District's Ordinance 38, and the California Constitution, and overturning the  
5 Park District's unlawful approval of the Tree Removal MOU.

6 14. Respondent East Bay Regional Park District is a public agency authorized by the California  
7 Legislature in 1933 and approved by the voters residing within the Park District in 1934. It encompasses  
8 65 regional parks, recreation and wilderness areas, shorelines, preserves and land bank areas totaling  
9 approximately 121,000 acres in Contra Costa and Alameda Counties. Its "Core Mission" is to "acquire,  
10 develop, and maintain a high quality diverse system of interconnected parklands which balances public  
11 usage and education programs with protection and preservation of our natural and cultural resources."  
12 <http://www.ebparks.org/about#profile>. It is subject to the requirements of the California Constitution,  
13 CEQA, the PZL, the City's General Plan and Municipal Code and the Park District's Ordinance 38 in  
14 connection with its approval of the Tree Removal MOU with PG&E.

15 15. Real Party in Interest City of Lafayette is a municipality and public agency subject to the  
16 requirements of the California Constitution, CEQA, the PZL, the City's General Plan and Municipal  
17 Code in connection with its approval of the Tree Removal Agreement with PG&E on March 27, 2017.  
18 Contrary to and without compliance with those laws, on March 27, 2017 the City purported to approve  
19 its Tree Removal Agreement with PG&E.

20 16. Real Party in Interest Pacific Gas and Electric Company ("PG&E") is a corporation  
21 organized under the laws of California in 1905. It purported to enter into the Tree Removal MOU with  
22 the Park District on March 21, 2017, and the Tree Removal Agreement with the City of Lafayette on  
23 April 26, 2017.

24 17. The true names and capacities of respondents DOES 1-100, inclusive, are unknown to  
25 petitioners who therefore sue such respondents by such fictitious names pursuant to Code of Civil  
26 Procedure section 474. Petitioners will, with leave of court if necessary, further amend this Verified  
27 Petition when the true names and capacities of said DOE respondents have been ascertained.

28 18. Petitioners are unaware of the true names and capacities of real parties in interest sued

1 herein as DOES 101- 200, and sue such real parties in interest herein by fictitious names. Petitioners are  
2 informed and believe, and based on such information and belief allege, that the fictitiously named real  
3 parties in interest have a financial or other beneficial interest in the Park District’s approval of the Tree  
4 Removal MOU. When the true identities and capacities of these real parties in interest have been  
5 determined, petitioners will, with leave of the Court if necessary, amend this Verified Petition to insert  
6 such identities and capacities.

7 **LEGAL BACKGROUND**

8 **CEQA**

9 19. CEQA is California’s primary statutory mandate for environmental protection. It applies to  
10 all state and local agencies, and requires them to “first identify the [significant] environmental effects of  
11 projects, and then to mitigate those adverse effects through the imposition of feasible mitigation  
12 measures or through the selection of feasible alternatives.” (*Sierra Club v. State Board of Forestry*  
13 (1994) 7 Cal.4th 1215, 1233.) Its most important substantive imperative requires “public agencies to  
14 deny approval of a project with significant adverse effects when feasible alternatives or feasible  
15 mitigation measures can substantially lessen such effects.” (*Sierra Club v. Gilroy City Council* (1990)  
16 222 Cal.App.3d 30, 41.)

17 20. CEQA’s mandate for detailed environmental review “ensures that members of the  
18 [governmental decision-making body] will fully consider the information necessary to render decisions  
19 that intelligently take into account the environmental consequences” of their proposed action. (*Mountain*  
20 *Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133; Public Resources Code  
21 §§ 21080.5(d)(2)(D), 21091(d)(2); 14 C.C.R. [CEQA Guidelines] (“Guidelines”) § 15088.) The CEQA  
22 process thus “protects not only the environment but also informed self-government.” (*Citizens of Goleta*  
23 *Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

24 21. All California “public agencies” must comply with CEQA when they approve discretionary  
25 projects. (Public Resources Code § 21080(a).) The Park District is both a “public agency” and a “local  
26 agency” as those terms are defined in CEQA. (Public Resources Code §§ 21062, 21063.) Therefore the  
27 Park District is subject to CEQA. (*Id.*)

28 22. A proposed governmental action requires environmental review under CEQA if (1) the

1 agency is contemplating an “approval” of an action as defined by Guidelines section 15352, (2) the  
2 subject matter of the contemplated approval constitutes a “project” under Public Resources Code section  
3 21065 and Guidelines section 15378(a), and (3) the project to be approved does not fall within a  
4 statutory exemption created by the Legislature under Public Resources Code section 21080(b) and  
5 recognized under Guidelines sections 15260-15285, or a categorical exemption in the Guidelines as  
6 promulgated by the California Resources Agency pursuant to Public Resources Code section 21084(a)  
7 and Guidelines sections 15061(b)(2), 15300-15333 and 15354.

8 23. Even if a project is subject to a categorical exemption, it is subject to CEQA if it falls within  
9 an exception to the categorical exemptions as provided under Public Resources Code section 21084 and  
10 Guidelines section 15300.2. If a project is not exempted by statute or regulation, then it may nonetheless  
11 be exempt from CEQA only if “it can be seen with certainty that there is no possibility that the activity in  
12 question may have a significant effect on the environment.” (Guidelines § 15061(b)(3) (the “common  
13 sense” exemption).)

14 24. If a local agency such as the Park District is considering approval of a project that is subject  
15 to CEQA, then it must prepare an Environmental Impact Report (“EIR”) if the project “may have a  
16 significant effect on the environment.” (Public Resources Code § 21151(a).) In determining whether a  
17 project may have such an effect, the agency must engage in a “three-step” process for determining how  
18 to proceed. (Guidelines §§ 15002(k), 15061, 15063-15065, 15070, 15081.)

19 25. First, assuming that the agency has determined that a proposal it may approve does in fact  
20 constitute a “project,” then the agency must determine whether the project is subject to a statutory  
21 exemption, a categorical exemption, or the “common-sense” exemption. (Guidelines § 15062.)

22 26. Second, if the project is not exempt from environmental review, then the agency must  
23 prepare an “initial study” to determine the level of environmental review that is required for CEQA  
24 compliance. (Guidelines § 15063.) In doing so, the lead agency (such as the Park District here) must  
25 consult “informally” with responsible and trustee agencies, who may offer recommendations as to  
26 whether an EIR or negative declarations should be prepared. (Guidelines § 15063(g); Public Resources  
27 Code § 21080.3(a).) If the agency concludes that a negative declaration or a mitigated negative  
28 declaration, rather than an EIR, is the appropriate environmental document, then the initial study must

1 set forth the agency's reasoning in reaching that conclusion. (Guidelines § 15063(c)(5).)

2 27. The third and final step for the agency in applying CEQA depends on the conclusions of the  
3 initial study. If the initial study and public comment thereon show that there is no substantial evidence  
4 (or reasonable inferences therefrom) that the project may cause significant adverse environmental  
5 impacts, then the agency must adopt a "negative declaration." If the initial study reveals substantial  
6 evidence that significant impacts might occur, but that the project applicant is able and willing to modify  
7 the project to eliminate all such potential or significant impacts, then the lead agency should adopt a  
8 "mitigated negative declaration" confirming that, as mitigated, the project clearly has no potential for  
9 causing a significant effect on the environment. (Public Resources Code §§ 21064.5, 21080(c)(2);  
10 Guidelines §§ 15006(h), 15064(f)(2).) If the initial study and public comment thereon indicate that there  
11 is substantial evidence that one or more significant environmental impacts may occur, and the project  
12 proponent is either unwilling or unable to mitigate them to insignificance, then the lead agency must  
13 prepare an EIR analyzing those effects and suggesting feasible means, if any, of mitigating or avoiding  
14 them including alternatives that would achieve most of the basic objectives of the project without  
15 causing significant environmental effects. (Public Resources Code §§ 21002, 21002.1, 21061;  
16 Guidelines §§ 15080-15096, 15120-15132, 15160-15170.)

17 28. In applying these CEQA procedures, an agency may not segment a project to avoid  
18 preparing an EIR on the entirety, or whole, of the project. (Guidelines § 15378(a), (c), (d).) CEQA's  
19 "requirements cannot be avoided by chopping up proposed projects into bite-size pieces which,  
20 individually considered, might be found to have no significant effect on the environment or to be only  
21 ministerial." (*Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726.)

22 29. The final step in the CEQA process is public notice of any CEQA approval. A public  
23 agency must provide adequate notice when it "approves or determines to carry out a project that is  
24 subject to [CEQA]." (Public Resources Code § 21108; Guidelines § 15062(c)(1); *County of Amador v.*  
25 *El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 962-965.) When a local agency files a  
26 notice of exemption ("NOE") confirming approval of a project that is allegedly exempt from CEQA, that  
27 notice "shall be filed with the county clerk of each county in which the project will be located."  
28 (Guidelines § 15062(c)(2) (emphasis added).) A similar notice must be given when a local agency files a

1 notice of determination (“NOD”) confirming approval of a project that is subject to CEQA. (Guidelines  
2 § 15075(d).)

### 3 PLANNING AND ZONING LAW

4 30. California’s Planning and Zoning Law (“PZL”) is set forth in Government Code sections  
5 65000 et seq. It governs land use planning, zoning and related development permit processes in counties  
6 and general law cities such as the City of Lafayette. It requires local governments to adopt  
7 comprehensive general plans, and requires that land use planning decisions be consistent with them.  
8 (Government Code section 65300 et seq.) It also governs the procedures for adoption of general and  
9 specific plans and other land use controls, and prescribes the public notice required for their approval.  
10 (Government Code section 65090 et seq.) The PZL directs that each general plan shall include a land  
11 use element, circulation element, housing element, conservation element, open space element, noise  
12 element, safety element, and environmental justice element. Each plan must be internally consistent, and  
13 zoning and subordinate land use decisions and permits must be consistent with the general plan.  
14 (Government Code sections 65300.5 and 65860.)

15 31. Because the “general plan is atop the hierarchy of local government law regulating land  
16 use,” local governments such as the City must “proceed [in the manner required by] their general plan.”  
17 (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183 (first quote);  
18 C.C.P. § 1094.5(b) (second quote).) And, before allowing removal of trees on the Park District’s lands  
19 located within the City of Lafayette and subject to the City’s Tree Removal Ordinance, the Park District  
20 as a land owner subject to the City’s land use regulation, must comply with that ordinance, as its Tree  
21 Removal MOU acknowledges. The requirement that all permits allowing land uses – including  
22 decisions allowing the removal of trees such as the Park District’s and the City’s approvals of the Tree  
23 Removal MOU and the Tree Removal Agreement, respectively – must be consistent with the applicable  
24 general plan

25 “is necessarily to be implied from the hierarchical relationship of the land use laws. To  
26 view them in order: a use permit is struck from the mold of the zoning law ([Government  
27 Code section] 65901); the zoning law must comply with the adopted general plan (§  
28 65860); the adopted general plan must conform with state law (§§ 65300, 65302). The  
validity of the permit process derives from compliance with this hierarchy of planning  
laws. *These laws delimit the authority of the permit issuing agency to act and establish  
the measure of a valid permit . . . .* A permit action taken without compliance with the

1 land use laws is *ultravires* as to any defect implicated by the uses sought by the permit.”  
2 (*Neighborhood Action Group, supra*, 156 Cal.App.3d at 1184 (emphasis added).)

3 32. In accordance with the PZL, the City has adopted a General Plan that contains several  
4 elements that establish goals, policies and programs to protect public health and safety and  
5 environmental resources. As summarized in its Introduction, the General Plan is premised on and  
6 implements four Guiding Principles, the first and third of which are particularly pertinent here and direct  
7 as follows:

8 1. “*Preserve and enhance* the character of Lafayette as a *semi-rural* community.”

9 \* \* \*

10 3. “*Protect the natural and scenic quality* of our surrounding hillsides and ridgelines, creek  
11 areas, *trees* and other vegetation.”

12 (City of Lafayette General Plan, as adopted by Resolution 2002-56 on October 28, 2002, Introduction,  
13 page 1.) Consistent with the foregoing “Guiding Principles,” the General Plan repeatedly emphasizes the  
14 importance of the City’s “[u]nique . . . magnificent natural setting,” and “stresses the protection of  
15 Lafayette’s natural beauty” including “preservation of the scenic quality of the surrounding hills.” (*Id.*)  
16 The General Plan calls out for specific recognition and protection

17 “[t]he City’s natural terrain – undeveloped hillsides, generous spans of open space, *mature*  
18 *oaks*, natural creeks and numerous tributaries, and spectacular scenic viewsheds . . . .  
19 Complementing this foothill environment are the Lafayette Reservoir and the area’s trail  
system, including the nation[’s] first rail-to-trail project – the Lafayette-Moraga Trail.”

20 (*Id.* (emphasis added).)

21 33. Consistent with and to implement the General Plan’s Guiding Principles of protecting the  
22 City’s “unique . . . magnificent natural setting” including its “undeveloped hillsides, general spans of  
23 open space, mature oaks . . . and spectacular scenic viewsheds,” the General Plan’s Open Space and  
24 Conservation Element repeatedly emphasizes “the vital role that open space plays in defining the  
25 character of the community and our quality of life.” Its Policy OS-1.3, for example, requires the City to  
26 “[p]rotect areas of special ecological significance, including . . . woodlands, wildlife corridors [and]  
27 riparian areas . . . .” (City of Lafayette General Plan, Open Space and Conservation Element, adopted by  
28 Resolution 2002-56 on October 28, 2002, at III-3.)

1           34. Similarly, Lafayette General Plan Policy OS-1.5 requires the City to “[p]reserve, protect,  
2 and where necessary, restore open space for wildlife habitat to assure the continued viability and health  
3 of diverse, natural animal and plant communities.” (*Id.*) This Element calls out for particular  
4 recognition and protection Lafayette’s notable “oak woodlands,” and “[a]long creeks and streams, [the  
5 City’s] riparian woodlands, where a variety of larger oaks, walnut, California buckeye, cottonwood and  
6 bay trees thrive.” (*Id.* at III-6.) These irreplaceable open space areas provide habitat for “thirteen  
7 Sensitive Plant Species and ten wildlife species that are classified as sensitive or endangered by either  
8 the state or federal government.” (*Id.*) “Groves of trees” in particular are identified as “a valuable  
9 resource to the community.” (*Id.*)

10           35. The City’s Open Space and Conservation Element contains specific policies intended to  
11 protect the City’s large, healthy and iconic native trees. For example, Policy OS-4.3 requires that the  
12 City “[p]reserve existing woodlands and their associated vegetation.” (*Id.*) Likewise, Policy OS-4.4  
13 directs that the City must “[p]rotect important groves of trees and significant existing vegetation.” (*Id.*)

14           36. To assure proper implementation of the General Plan’s policies requiring protection and  
15 preservation of existing woodlands and their important groves of trees, the General Plan contains  
16 numerous Programs of particular relevance to this lawsuit. Program OS-4.3.1, for example, requires the  
17 City to “[e]xpand the City’s Tree Protection Ordinance to include *protection for significant native trees*  
18 *and woodlands.*” (*Id.* at III-7 (emphasis added).) Similarly, Program OS-4.4.1 “[r]equire[s] that site  
19 planning, construction and maintenance of new development *preserve existing healthy trees and native*  
20 *vegetation to the maximum extent feasible.*” (*Id.* (emphasis added).)

21           37. The General Plan’s Parks, Trails and Recreation Element likewise recognizes the  
22 importance of “large areas of open space” managed by the East Bay Municipal Utilities District and the  
23 Park District that “constitute a major part of the beautiful natural setting of the City.” (City of Lafayette  
24 General Plan, Parks, Trails and Recreation Element, adopted by Resolution 2005-56 on October 28,  
25 2002 and amended in part by Resolution 2008-36 on July 28, 2008, at IV-1.) These regional open space  
26 areas include “Briones Regional Park . . . operated by the East Bay Regional Park District,” which  
27 “provides hiking, equestrian and picnic facilities” for community members. (*Id.*)

28           38. This Element also recognizes the importance of the City’s extensive open space trail

1 system:

2 “Trails offer scenic views, commute alternatives and recreational opportunities. Lafayette  
3 has an extensive system of trails provided by the City, the East Bay Regional Park District  
and the East Bay Municipal Utilities District.”

4 (*Id.* at IV-4.) This General Plan element recognizes in particular the importance of the Lafayette-Moraga  
5 Regional Trail, which includes lands owned by the Park District and was “the first ‘rails to trail’  
6 conversion of its kind (dedicated in 1978) . . . .” (*Id.*) The City’s extensive “trails system as shown on  
7 the Lafayette Master Trails Plan provides access to public places and to scenic vistas that represent a  
8 significant natural amenity to the community.” (*Id.*)

9 39. Against this backdrop of the City’s overarching and abiding interest in identifying and  
10 protecting the City’s open space resources, including its riparian woodlands and other important groves  
11 of native tree species, in 2003 the City adopted its Tree Protection Ordinance, which it strengthened in  
12 2010. (Lafayette Municipal Code chapter 6-17, adopted in Ordinance No. 539 § 1 (2003) and amended  
13 by Ordinance No. 593 § 1 adopted March 22, 2010.) The City’s Tree Protection Ordinance explains its  
14 purpose as follows:

15 “The City of Lafayette consists of oak woodland and savannah covered hills and valleys  
16 that originally contained many large and majestic orchards and creeks lined with giant  
17 valley oak, madrone, buckeye and black walnut trees . . . . It is now recognized that the  
18 preservation of trees enhances the natural scenic beauty, increases property values,  
19 encourages quality development, aids in tempering the effect of extreme temperatures,  
20 helps to reduce air and noise pollution, furnishes habitat for wildlife and gives Lafayette  
an identity and quality that enhances the environment for all residents and the business  
community. As seen in the master and specific plans adopted by the city, *trees are vital to  
the community . . . . The general plan has goals and policies for the preservation of the  
community’s biological resources, including its trees, and it is the purpose of this  
ordinance to implement these goals and policies.*”

21 (Lafayette Municipal Code, Title 6, Section 6-1701(a) (emphasis added).)

22 40. To this end, the City’s Tree Protection Ordinance directs that:

23 “The policies of the city are to *protect existing woodlands* and their associated vegetation,  
24 *protect native trees, preserve riparian habitat*, encourage the planting of native species,  
and *avoid the cutting of mature trees.*”

25 (*Id.* at Section 6-1701(b) (emphasis added).)

26 41. Accordingly, the City’s Tree Protection Ordinance directs that:

27 “It is a violation of this chapter for any person to remove or destroy a protected tree  
28 without a category I or category II permit under Sections 6-1706 or 6-1707, or without the  
approval of an exception under Section 6-1705.”

1 (*Id.*) Each of these sections prescribes detailed procedures that the City must follow and investigations it  
2 must conduct before deciding whether to issue a permit allowing the removal or destruction of a  
3 protected tree. Category I permits are required for any removal or destruction of a tree on property not  
4 associated with a development application; a category II permit is required to remove or destroy a  
5 protected tree on property that is associated with a development application. (*Id.*)

6 42. The Tree Protection Ordinance allows only limited exceptions to its coverage, and  
7 prescribes a detailed, discretionary process that must be followed before the City may grant any person  
8 an exception to the requirements of this Ordinance. (*Id.*) Section 6-1705, which governs exceptions,  
9 prescribes a discretionary permit process whereby the City evaluates each exception request under five  
10 criteria. (*Id.*)

11 43. Consistent with its “Core Mission” summarized in Paragraph 14 above, the Park District has  
12 adopted a Master Plan governing management of Briones Regional Park, and other Park District lands  
13 within the City of Lafayette. It provides that the Park District’s “role in managing vegetation to preserve  
14 and improve native habitat values is key to the health and biodiversity of these important public natural  
15 reservations.” (Park District Master Plan 2013, at page 40.) To implement this Master Plan, the Park  
16 District has adopted Ordinance 38, which sets forth its land use rules and regulations for Park District  
17 land. Ordinance 38 provides in pertinent part in Section 804 that “[n]o person shall damage . . . or  
18 remove any plant or tree or portion thereof, whether living or dead . . . located on District parklands.”  
19 Ordinance 38 provides further in Section 808 that “[n]o person shall cut . . . any tree . . . in the District.”  
20 (*Id.*) The prohibitions against cutting or removing trees set forth in Sections 804 and 808 are subject to  
21 exception only when “special permission” is granted pursuant to Section 807. Section 807 provides in  
22 turn that “[s]pecial permission [as defined in Section 103] may be granted to remove, treat, disturb, or  
23 otherwise affect plants . . . for *research, interpretive, educational, or park operational purposes.*” (*Id.*  
24 (emphasis added).) The Park District’s approval of the Tree Removal MOU with PG&E advances none  
25 of these specific purposes. No authorized special permission was granted to PG&E for the tree removals  
26 purportedly allowed by the Tree Removal MOU.

27 **DUE PROCESS SECTION OF THE CALIFORNIA CONSTITUTION**

28 44. Article I, section 7 of the California Constitution provides in pertinent part that “[a] person

1 may not be deprived of life, liberty, or property without due process of law . . .” (*Id.*) This provision  
2 has been broadly construed by California courts to encompass a right to a fair hearing in proceedings  
3 before an administrative body. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th  
4 81, 90.) The *sine qua non* of a fair hearing is notice reasonably calculated to apprise those directly  
5 affected by a proposed agency decision of the opportunity to appear and present evidence and argument  
6 with regard to the proposal. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 616-618.) And, persons  
7 whose property interests are potentially harmed are entitled to have the agency make its decision based  
8 on evidence in the public record rather than extra-record evidence obtained *ex parte*. (*English v. City of*  
9 *Long Beach* (1950) 35 Cal.2d 155, 158; *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d  
10 124, 138-140.)

11 45. Both the PZL and the Lafayette Municipal Code prescribe the public notice that is required  
12 before the City may issue a discretionary land use approval such as an exception to the Tree Protection  
13 Ordinance. Government Code sections 65090 and 65091 direct that written “[n]otice of the hearing shall  
14 be mailed or delivered at least 10 days prior to the hearing to all owners of real property . . . within 300  
15 feet of the real property that is the subject of the hearing.” (Government Code section 65091(a)(1).)  
16 Additionally, notice must also either be “[p]ublished pursuant to [Government Code] section 6061 in at  
17 least one newspaper of general circulation within the local agency which is conducting the proceeding at  
18 least ten days prior to the hearing” or “[p]osted at least 10 days prior to the hearing in at least three  
19 public places within the boundaries of the local agency, including one public place in the area directly  
20 affected by the proceeding.” (*Id.* at (a)(5).) Title Six of the Lafayette Municipal Code likewise requires  
21 written 10-day notice by publication, posting and mailing to affected property owners before the City  
22 may make land use decisions affecting them. (Lafayette Municipal Code § 6-211.)

### 23 FACTUAL BACKGROUND

24 46. Petitioners Michael Dawson and David Kusters, and many other members of petitioner Save  
25 Lafayette Trees, reside in proximity to trees that would be removed under the Park District’s Tree  
26 Removal MOU challenged in this action. Additionally, thousands of supporters of petitioner Save  
27 Lafayette Trees regularly use and enjoy regional parks and trail systems in and near the City of Lafayette  
28 that would lose healthy, mature native trees under the Park District’s Tree Removal MOU. Many of

1 petitioner's members, and other members of the public, reside within 300 feet of the trees slated for  
2 removal pursuant to the Park District's Tree Removal MOU.

3 47. The Park District failed to provide any written notice, by mail, posting, or publication,  
4 reasonably calculated to apprise the public, petitioners and their members of PG&E's proposed removal  
5 of trees pursuant to the Tree Removal MOU prior to its approval. Instead, the Consent Calendar portion  
6 of the Park District's online Board Agenda for March 21, 2017 listed the MOU as an "Authorization to  
7 Accept Funding from PG&E's Community Pipeline Safety Initiative for Environmental Protection and  
8 Maintenance at Briones Regional Park and Lafayette-Moraga Regional Trail." *Id.* Neither this Agenda  
9 item nor the accompanying description of the Board Resolution in question mentioned or implied that  
10 any trees would be removed.

11 48. The Park District conducted no environmental review under CEQA before approving the  
12 Tree Removal MOU.

13 49. The Park District made no determination that the Tree Removal MOU is exempt from  
14 CEQA before approving that MOU.

15 50. Petitioners did not learn of the Park District's approval of the Tree Removal MOU until  
16 many weeks later.

17 51. The Park District's Ordinance 38 provides no procedure whereby affected members of the  
18 public may seek reconsideration of a Park District decision to approve a land use project such as the Tree  
19 Removal MOU.

20 52. After learning of the Park District's approval of the Tree Removal MOU, petitioners  
21 repeatedly asked – both in writing and through telephonic requests – that the Park District reconsider its  
22 approval of that MOU, to no avail.

23 53. To date, the Park District has failed to take any action to reconsider its approval of the Tree  
24 Removal MOU other than agreeing with petitioners to toll all applicable statutes of limitation for 60 days  
25 by written agreement dated July 31, 2017.

26 54. The Park District failed to provide the public and petitioners with any adequate opportunity  
27 to comment upon and object to the Park District's approval of the Tree Removal MOU and thereby  
28 prevented the public and petitioners from objecting to the Park District's approval of the MOU on the

1 grounds it violated CEQA, the PZL, the City’s General Plan, its Tree Protection Ordinance, the Park  
2 District’s Ordinance 38 and the Due Process Section of the California Constitution..

3 55. The Tree Removal MOU will foreseeably result in significant effects on the environment  
4 and on petitioners.

5 56. The Park District is the lead agency for the Tree Removal MOU, as no other state or local  
6 agency exercises authority over its approval. (Public Resources Code § 21067; Guidelines §15367.)

7 57. Prior to approving the Tree Removal MOU, the Park District did not prepare an initial  
8 study, a negative declaration, a mitigated negative declaration, a notice of exemption or an EIR, despite  
9 the fact that the Tree Removal MOU is a discretionary project subject to CEQA that will have a  
10 demonstrably adverse impact on the environment. After receiving notice of petitioners’ similar lawsuit  
11 against the City, the Park District belatedly prepared a post-hoc rationalization for its failure to consider  
12 CEQA prior to its approval of the Tree Removal MOU by filing a Notice of Exemption three months  
13 later on June 29, 2017.

14 **FIRST CAUSE OF ACTION**

15 **(Writ of Mandate, Declaratory and Injunctive Relief**  
16 **to Set Aside Project Approval as Contrary to CEQA)**  
**(Alleged by Petitioners Against All Defendants and Real Parties)**

17 58. The paragraphs set forth above and below are realleged and incorporated herein by  
18 reference.

19 59. Petitioners bring this First Cause of Action pursuant to Public Resources Code sections  
20 21168 and/or 21168.5, on the grounds that the Park District failed to act in accordance with law, and  
21 committed a prejudicial abuse of discretion, in that it considered and approved the Tree Removal MOU  
22 without undertaking an analysis of its potential environmental impacts as required by CEQA.

23 60. The Park District is a “public agency” and a “local agency” within the meaning of CEQA.  
24 (Public Resources Code §§ 21062, 21063; Guidelines §§ 15368, 15379.) CEQA requires public  
25 agencies to conduct environmental review prior to approving any discretionary project that may have a  
26 significant impact on the environment. (Public Resources Code §§ 21080(a), 21151; Guidelines §  
27 15004(a).) The Park District’s approval of the Tree Removal MOU project is a discretionary project.  
28 (Guidelines § 15357.)



1 reference.

2 66. Government Code sections 65000, et seq. prescribe procedures and substantive standards  
3 that general law cities such as the City of Lafayette must follow in adopting a comprehensive, long-term  
4 general plan for the use and physical development of land within the City, and in developing goals,  
5 policies and programs to implement that plan. Government Code section 65400 directs that the general  
6 plan shall serve “as a pattern and guide for the orderly physical growth and development and the  
7 preservation and conservation of open space land of the county or city, and as a basis for the efficient  
8 expenditure of [the city’s or county’s] funds relating to the subjects of the general plan . . . .” (*Id.*) The  
9 general plan is, in short, a “constitution” for all further development with the City. (*O’Loane v.*  
10 *O’Rourke* (1965) 231 Cal.App.2d 774, 782.)

11 67. Government Code section 65302 directs that the general plan “shall consist of a statement  
12 of development policies and shall include a diagram or diagrams and text setting forth objectives,  
13 principles, standards and plan proposals.” (*Id.*) It must include elements for land use, circulation,  
14 housing, conservation, open space, noise and additional elements as needed to regulate land use and  
15 protect and preserve environmental resources.

16 68. Government Code section 65030.1 directs that it is state policy that “decisions involving the  
17 future growth of the state, most of which are made and will continue to be made at the local level, should  
18 be guided by an effective planning process, including the local general plan . . . .” (*Id.*)

19 69. Government Code section 65564 directs that “[e]very local open-space plan shall contain an  
20 action program consisting of specific programs which the legislative body intends to pursue in  
21 implementing its open-space plan.” (*Id.*)

22 70. Government Code section 65566 directs that “[a]ny action by a county or city by which  
23 open-space land or any interest therein is acquired or disposed of or its use restricted or regulated,  
24 whether or not pursuant to this part, must be consistent with the local open-space plan.” (*Id.*)

25 71. Pursuant to the Planning and Zoning Law and in accordance with its General Plan, the City  
26 of Lafayette adopted its Tree Protection Ordinance to provide for the protection and preservation of the  
27 City’s healthy, mature trees. (Lafayette Municipal Code, Chapter 6-17, Section 6-1701 to 6-1713;  
28 Lafayette General Plan, Open Space and Conservation Element, Policy OS-4.3 (“[p]reserve existing

1 woodlands”) and Program OS-4.3.1 (“[e]xpand the City’s *tree-protection ordinance* to include  
2 protection for significant native trees and woodlands”).)

3 72. Contrary to the PZL, the Lafayette General Plan, and the City’s Tree Protection Ordinance,  
4 the City approved the Tree Removal Agreement without complying with the substantive and procedural  
5 requirements of these planning laws and ordinance, and the Park District approved the Tree Removal  
6 MOU despite its conflicts with these requirements and their applicability to the 31 trees on Park District  
7 land located within the City of Lafayette..

8 73. The Park District proceeded in excess of its jurisdiction and abused its discretion when it  
9 approved the Tree Removal MOU, and allowed removal of trees without compliance with the  
10 substantive and procedural requirements of the PZL, Lafayette General Plan, the Tree Protection  
11 Ordinance and Ordinance 38. The Park District’s approval of the Tree Removal MOU is therefore  
12 invalid and must be set aside.

13 **THIRD CAUSE OF ACTION**

14 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**  
15 **Park District’s Approval of Tree Removal MOU in Violation**  
16 **of Petitioners’ Due Process Rights)**  
**(Alleged by Petitioners Against All Defendants and Real Parties)**

17 74. The paragraphs set forth above and below are realleged and incorporated herein by  
18 reference.

19 75. Petitioner and its members are constitutionally entitled to due process including public  
20 notice of proposed Park District land use approvals that would harm their property and related  
21 environmental interests. (California Constitution, Article I, § 7.)

22 76. The right of petitioner and its members to due process encompasses a right to public notice  
23 of the Park District’s proposed adoption of the Tree Removal MOU and the right to a fair hearing or  
24 other equivalent opportunity in which petitioner and its members may present evidence and argument in  
25 opposition to the Tree Removal MOU. (*Horn v. County of Ventura, supra*, 24 Cal.3d at 617-618.)  
26 Required notice must be “calculated to apprise directly affected persons of a pending decision that  
27 effects their property interests.” (*Id.*)

28 77. Denial of adequate public notice of an agency hearing for a decision affecting the property

1 interests of a person is reviewable and remediable under both Code of Civil Procedure section 1085 and  
2 Code of Civil Procedure section 1094.5. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152,  
3 1177-1183 (section 1094.5(b)); *Mednik v. State Dept. of Health Care Services* (2009) 175 Cal.App.4th  
4 631, 639 (section 1085).)

5 78. The Park District violated the rights of petitioner and its members to public notice of the  
6 Tree Removal MOU because it failed to provide the notice required by law and the Due Process Section  
7 of the California Constitution prior to approving that MOU.

8 79. For each of these reasons, petitioners were denied their right to due process in violation of  
9 Article I, section 7 of the California Constitution when the Park District purported to approve the Tree  
10 Removal MOU without providing the public notice of its proposed action to petitioners as required by  
11 law. Accordingly, the Park District's approval of the Tree Removal MOU is invalid and must be set  
12 aside.

#### 13 **FOURTH CAUSE OF ACTION**

#### 14 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside** 15 **Project Approval as Contrary to C.C.P. §§ 1085 and 1094.5)** 16 **(Alleged by Petitioners Against All Defendants and Real Parties)**

17 80. The paragraphs set forth above and below are realleged and incorporated herein by  
18 reference.

19 81. The Park District proceeded in excess of its authority and abused its discretion in approving  
20 the Tree Removal MOU without compliance with CEQA, the PZL, the City's General Plan, its  
21 Municipal Code, the Park District's Ordinance 38 and the Due Process Section of the California  
22 Constitution. Said approval therefore violates Code of Civil Procedure sections 1085 and 1094.5 in the  
23 following respects, among others:

24 a. said approval was not granted in accordance with the procedures required by law  
25 including the procedures set forth in CEQA, the PZL, the Lafayette Municipal Code, the Park District's  
26 Ordinance 38 and the California Constitution;

27 b. said approval was not supported by, or was contrary to, the evidence available to the  
28 Park District; and

c. said approval was not based on the findings required by law.



1 vacating the Park District's approval of the Tree Removal MOU, and requiring the Park District to  
2 comply with CEQA , the PZL, the City's General Plan and Municipal Code, the Park District's  
3 Ordinance 38 and the California Constitution, the Park District's approval challenged herein would  
4 violate applicable law. No monetary damages or other legal remedy could adequately compensate  
5 petitioners for the harm to essential environmental reviews, protected property interests and  
6 environmental quality threatened by the Park District's approval of the Tree Removal MOU.

7 **RELIEF REQUESTED**

8 WHEREFORE, petitioners pray for judgment and further relief as follows:

- 9 1. For a peremptory writ of mandate directing the East Bay Regional Park District ("Park  
10 District") to set aside and vacate its approval of the Tree Removal MOU;
- 11 2. For declaratory relief declaring the Tree Removal MOU to be unlawful;
- 12 3. For injunctive relief preventing the Park District from implementing the Tree Removal  
13 MOU unless and until the Park District has complied with CEQA, the PZL, the City's General Plan and  
14 Municipal Code, the Park District's Ordinance 38 and the California Constitution;
- 15 6. For attorneys' fees under Code of Civil Procedure section 1021.5;
- 16 7. For costs incurred in this action; and
- 17 8. For such other equitable or legal relief as the Court may deem just and proper.

18  
19 Dated: September 28, 2017

LAW OFFICES OF STEPHAN C. VOLKER



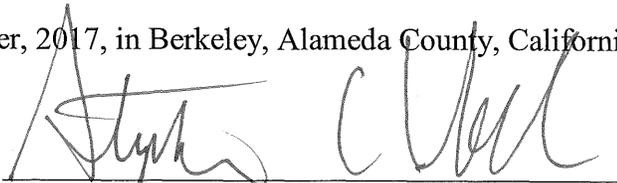
20  
21 STEPHAN C. VOLKER  
22 Attorney for Petitioners and Plaintiffs  
23 SAVE LAFAYETTE TREES, MICHAEL DAWSON  
24 and DAVID KOSTERS  
25  
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VERIFICATION

I am the attorney for petitioners and plaintiffs SAVE LAFAYETTE TREES, MICHAEL DAWSON and DAVID KOSTERS in this action. Petitioners and plaintiffs are absent from the County of Alameda, in which I maintain my office. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorneys' Fees and the documents therein referenced. I am informed and believe, and on that basis attest, that the matters therein are true.

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

Executed this 28th day of September, 2017, in Berkeley, Alameda County, California.



STEPHAN C. VOLKER

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