

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**12/16/2024**  
Clerk of the Court

BY: SAHAR ENAYATI  
Deputy Clerk

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Pro Se

4 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
5  
6 SAN FRANCISCO COUNTY

7 MARK BAKER,

8 Petitioner,

9 vs.

10 BAY AREA TOLL AUTHORITY,  
11 METROPOLITAN TRANSPORTATION  
12 COMMISSION, CALIFORNIA  
13 DEPARTMENT OF TRANSPORTATION,  
14 FEDERAL HIGHWAY ADMINISTRATION,  
15 AND DOES 1-20

16 Respondents.

17 ILLUMINATE, AND DOES 21-40

18 Real Parties in Interest.

Case No.: \_\_\_\_\_

PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
INJUNCTIVE RELIEF

**CPF-24-518814**

Code Civ. Proc., §§ 1085, 1094.5;  
Pub. Resources Code, § 21000 et seq.;  
National Environmental Policy Act § 4321 et  
seq.; Americans with Disabilities Act §1201 et  
seq.; Rehabilitation Act, § 504; 14th  
Amendment Equal Protection Clause.

19  
20  
21 **I. INTRODUCTION**

22 1. This Petition for Writ of Mandate and Complaint for Injunctive Relief (“Petition”)  
23 challenges the decision by the Bay Area Toll Authority, Metropolitan Transportation  
Commission, California Department of Transportation, and Federal Highway

DEFENDANT'S NAME - 1

1 Administration (“Respondents”) to start work on the Bay Lights 360 Project (“Project”)  
2 without performing the required California Environmental Quality Act (“CEQA”) analysis,  
3 National Environmental Policy Act (“NEPA”) analysis, and Americans with Disabilities  
4 Act (“ADA”) analysis.

5 2. As explained below, the Project consists of installing 50,000 Light Emitting Diode  
6 (“LED”) lights on the San Francisco Bay Bridge (“Bay Bridge”) for the sole purpose of  
7 providing eye candy for a few private individuals who wish to use the public San Francisco  
8 Bay Bridge as their own personal playground. The Project is funded by the non-profit  
9 corporation Illuminate, which is the driving force behind the project, using public agencies  
10 to implement Illuminate’s vision of how the night should look. Illuminate is also the  
11 operator of the LED light display.

12 3. The project will cause significant environmental harm to the natural night resource  
13 and will discriminate against individuals with disabilities who cannot neurologically  
14 tolerate the intensity and other special characteristics of LED light. LED light travels great  
15 distances while still maintaining much of its intensity. Thus, this project will cause  
16 environmental harm and create discriminatory barriers over a large geographical area.

17 4. Respondents started work on the Project on December 9, 2024, despite not having  
18 yet approved the project. Respondents did not perform a full CEQA analysis, choosing  
19 instead to issue an unjustified Notice of Exemption. Respondents also failed to to perform  
20 a full NEPA analysis. Respondents also failed to ensure that the altered area complies with  
21 ADA requirements that the altered area be readily accessible and usable by individuals with  
22 disabilities and failed to comply with Section 504 Rehabilitation Act requirements and 14<sup>th</sup>  
23 Amendment Equal Protection requirements.

1 **II. PARTIES**

2 5. Petitioner MARK BAKER is the Founder and President of the Soft Lights  
3 Foundation, a registered 501(c)(3) non-profit corporation dedicated to the protection of  
4 individuals and the environment from the harms of LED lights, and is a resident of  
5 California. Petitioner files this complaint In Pro Per.

6 6. Over the past year and a half, Petitioner, on behalf of the Soft Lights Foundation,  
7 had contacted numerous officials associated with Respondents and Illuminate about the  
8 environmental impacts and discriminatory nature of LEDs and the need to perform CEQA,  
9 NEPA, and ADA analyses for the Project, but all responses consisted of some type of  
10 redirection, obfuscation, or simply ignoring the issues raised.

11 7. Respondent BAY AREA TOLL AUTHORITY (“BATA”) is the lead agency for the  
12 Project. BATA manages the tolls for the Bay Bridge. BATA operates under the authority  
13 of the Metropolitan Transportation Commission.

14 8. Respondent METROPOLITAN TRANSPORTATION COMMISSION (“MTC”) is  
15 responsible for regional transportation planning in the San Francisco Bay Area.

16 9. Respondent CALIFORNIA DEPARTMENT OF TRANSPORTATION (“CalTrans”) is  
17 part of the cabinet-level California State Transportation Agency. CalTrans manages the  
18 California highway system, including the Bay Bridge.

19 10. Respondent FEDERAL HIGHWAY ADMINISTRATION (“FHWA”) is a  
20 division of the federal Department of Transportation and is responsible for federal highway  
21 projects, including the Bay Bridge.

22 11. Petitioner does not know the true names and capacities, whether individual,  
23 corporate, associate, or otherwise, of Respondents DOE 1 through DOE 20, inclusive, and

1 therefore sue said Respondents under fictitious names. Petitioners will amend this Petition  
2 to show their true names and capacities when they are known.

3 12. Real Party of Interest ILLUMINATE is a 501(c)(3) non-profit corporation that  
4 initiated, advocated for, and funded the Project.

5 13. Petitioner does not know the true names and capacities, whether individual,  
6 corporate, associate or otherwise, of Real Parties in Interest DOE 21 through DOE 40,  
7 inclusive, and therefore sue said Real Parties under fictitious names. Petitioners will amend  
8 this Petition to show their true names and capacities when they are known.

9  
10  
**III. JURISDICTION AND VENUE**

11 14. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code  
12 of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168,  
13 21168.5, and 21168.9.

14 15. Because this is an action or proceeding against agencies that operate in San  
15 Francisco County, venue is proper in this Court. Moreover, the Project is located in San  
16 Francisco County and the environmental harm caused by the Project will be felt in San  
17 Francisco County. As such, venue is proper in this Court because the causes of action  
18 alleged in this Petition arose in San Francisco County.

19 16. In accordance with Public Resources Code section 21167, subdivision (a), this  
20 Petition has been filed within 180 days of the commencement of the Project, which  
21 commenced without formal approval. The commencement date was December 9, 2024.  
22

23 17. Petitioner has complied with Public Resources Code section 21167.5 by serving a  
written notice on December 14, 2024 of Petitioner's intention to commence this action

1 against Respondents. A copy of this written notice and proof of service is attached as  
2 Exhibit A to this Petition.

3 18. Petitioner is complying with the requirements of Public Resources Code section  
4 21167.6 by concurrently filing a request that Respondents prepare the administrative record  
5 for this action.

6 19. Petitioner will promptly send a copy of the Petition to the California Attorney  
7 General, thereby complying with the requirements of Public Resources Code section  
8 21167.7.

9 20. Petitioner has performed any and all conditions precedent to filing this instant  
10 action and have exhausted any and all available administrative remedies to the extent  
11 required by law.

12 21. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law  
13 unless this Court grants the requested writ of mandate to require Respondents to prepare a  
14 full EIR, CEQA analysis, NEPA analysis, and ADA analysis. In the absence of such  
15 remedies, the environment and individuals with disabilities will suffer irreparable harm.

16 22. The maintenance of this action is for the purpose of enforcing important public  
17 policies of the State of California with respect to the protection of the environment under  
18 CEQA and NEPA and the protection of individuals with disabilities under the ADA,  
19 Section 504 of the Rehabilitation Act, and 14<sup>th</sup> Amendment Equal Protection Clause. The  
20 maintenance and prosecution of this action will confer a substantial benefit upon Plaintiff  
21 and the public by protecting the public from environmental and public health harms,  
22 discrimination, and the violation of 14<sup>th</sup> Amendment Equal Protection requirements alleged  
23

1 in this Petition. Petitioner is acting as a private attorney general to enforce these public  
2 policies and prevent such harm.

#### 3 4 **IV. STATEMENT OF FACTS**

##### 5 **A. Light Emitting Diodes**

6  
7 23. A Light Emitting Diode (“LED”) is a device that emits Visible Light radiation from a  
8 flat surface instead of from the curved surface of traditional light sources. The US  
9 Department of Energy states that LEDs are a “radically new technology” that emit a  
10 “directional” light with “unique characteristics.” It is the directional, focused, and digital  
11 nature of LEDs and other unique characteristics that make LED devices harmful for the  
12 environment and unsafe for certain individuals with disabilities.

13 24. The US Food and Drug Administration is the responsible agency for regulating LED  
14 products as per 21 U.S.C. Part C. However, the FDA has failed to comply with the  
15 requirements of 21 U.S.C. Part C and thus there are no performance standards for LED  
16 products. The FDA has not tested or evaluated LED products, and the FDA has not  
17 published any limits on intensity, spectral power distribution, spatial distribution, square  
18 wave flicker, or flashing characteristics to ensure that LED light is safe for humans or the  
19 environment.

##### 20 **B. Light Pollution**

21  
22 25. Prior to the introduction of high-power LED technology, light pollution was  
23 increasing at the rate of 2% per year. Since the wide-spread conversion to LED lighting,  
light pollution is now increasing at a rate of 10% per year. This increase in the rate of light

1 pollution is due to the special characteristics of LED light, and the runaway installation of  
2 new LED lighting installations such as proposed for this Project.

3 26. Light pollution is the common term for unnecessary electromagnetic radiation in the  
4 visible light part of the electromagnetic spectrum that is generated by electronic products.  
5 The natural night is a fundamental resource for the environment and humans, just as air and  
6 water are also fundamental resources. Just as air and water can be polluted by human  
7 activity, so can the natural night resource be polluted by artificial light. LED light is an  
8 especially strong pollutant.

9 27. There are now thousands of peer-reviewed research studies showing that artificial  
10 light is a pollutant and that the negative impacts of artificial light at night are profound.

11 28. For the environment, light pollution negatively impacts fish behavior, insect behavior,  
12 bird behavior, transmission of viruses, periphyton, microalgae, cyanobacteria, and plants.  
13 For humans, exposure to artificial light at night increases the risk of breast cancer, thyroid  
14 cancer, prostate cancer, mood disorders, heart disease, diabetes, obesity, allergies, autism,  
15 lower fertility rates, premature birth, Alzheimer's, and early mortality.

### 17 **C. Individuals with Disabilities**

18 29. LEDs have special characteristics that make the emitted light different from the light  
19 emitted by traditional light sources such as the sun, starlight, candle, tungsten filament, and  
20 High-Pressure Sodium. The flat surface geometry of the chip causes the LED light to be  
21 emitted in a directional beam. The beam is similar to a laser beam, but more spread out and  
22 with spatially non-uniform energy within the beam. The spectral properties of LED light  
23 do not match the spectral properties of natural light sources. LEDs have square wave

1 flicker, as compared to the sine wave flicker or steady state of traditional light sources.  
2 LEDs can be turned on and off nearly instantly, creating a digital pulse of light.

3 30. The combination of intense beam, directionality, non-uniform spatial distribution,  
4 spectral power distribution characteristics, square wave flicker, and digital pulsing is  
5 neurologically intolerable for a class of individuals with disabilities such as epilepsy,  
6 autism, PTSD, photophobia, Traumatic Brain Injury, migraines, electromagnetic  
7 sensitivity, Sjogren's Syndrome, and others. Adverse impacts from exposure to even tiny  
8 amounts of LED light include non-epileptic and epileptic seizures, migraines, thoughts of  
9 suicide, nausea, vomiting, and loss of balance. Many individuals with disabilities are now  
10 confined to their homes and unable to travel because of their severe reactions to LED  
11 lights.

12 These reports of harm from exposure to LED lights have been reported to the US  
13 Food and Drug Administration, but the FDA has taken no action to set performance  
14 standards for LED products.

#### 15 16 **D. Previous Incarnations of the Project**

17 31. The first version of this Project was conceived by Ben Davis and was called Bay  
18 Lights. The project was designed as a temporary display to commemorate the 75<sup>th</sup> opening  
19 of the Bay Bridge. The Bay Lights project used 25,000 white LED lights and was launched  
20 on March 5, 2013. The temporary display ended on March 5, 2015, when the permit  
21 expired.

22 32. After the initial temporary project, Mr. Davis and the non-profit that he founded,  
23 Illuminate, convinced the Respondents to install a brighter and more visible version of the



1 Bay Lights project. The second version of the project lasted from October 2015 through  
2 March 5, 2023, upon which the LED lights were turned off because many of the LED lights  
3 had stopped functioning. Mr. Davis has stated that he wants the Bay Bridge lights to be  
4 operated forever.

5 33. Mr. Davis and Illuminate have now raised \$11,000,000 in private funding to install  
6 new LED lights. The project is called Bay Lights 360 and will double the number of lights  
7 from the previous projects to 50,000. This project commenced on December 9, 2024, but  
8 without formal approval by the Respondents.

9 34. The history of the Bay Bridge LED lights projects shows that the display has gone  
10 from 25,000 LEDs being used temporarily to celebrate the 75<sup>th</sup> anniversary of the Bay  
11 Bridge, to then increasing the brightness and directions of the lights, to then doubling the  
12 number of LED lights to 50,000 and becoming a permanent fixture of the Bay Bridge,  
13 drastically increasing light pollution at every step, all without adequate or proper  
14 environmental and disability rights review.

15  
16 **E. Administrative Actions**

17 35. On March 4, 2023, Plaintiff notified Illuminate Founder Ben Davis that LED lights  
18 are harmful for the environment, are hazardous for human health, and have not been  
19 regulated or approved by the FDA. Mr. Davis was dismissive of Plaintiff's concerns.

20 36. On August 15, 2023, the Bay Area Toll Authority ("BATA") filed a Notice of  
21 Exemption with the San Francisco County Clerk-Recorder, thus exempting the Bay Lights  
22 360 project from the environmental review process. BATA is the lead agency for the  
23

1 Project. This filing was only with the County Clerk-Recorder, and thus the filing did not  
2 initiate the CEQA timeline.

3 37. BATA's stated reasoning for exempting the Bay Lights 360 project is that the  
4 expansion from 25,000 to 50,000 is negligible, that the hours of operation would remain the  
5 same as the previous projects, that the impact on the environment would be insignificant,  
6 and that there would be no cumulative impacts.

7 38. In response to a request by Petitioner for ADA accommodation, the CalTrans ADA  
8 Coordinator wrote on September 24, 2024, "The proposed project you mentioned is  
9 currently going through the review and approval process and therefore no accessibility  
10 barriers exist at present."

11 39. In a letter to Petitioner dated December 11, 2024, CalTrans wrote, "In response to  
12 your email and following up on the letter sent to you from our District Director on April 9,  
13 2024, the Bay Lights is still going through the review process mentioned in that  
14 correspondence and has not yet been approved by Caltrans."

15 40. In a letter to Petitioner dated December 12, BATA wrote, "Caltrans is the authority  
16 for approving the Bay Lights 360 project through their Transportation Art Permit process."  
17 and that CalTrans approved an encroachment permit on October 29, 2024. [Note: Plaintiff  
18 is confused about the BATA statement that CalTrans is the lead agency, since BATA is the  
19 agency that filed the CEQA Notice of Exemption}.

20 41. On December 12, Plaintiff wrote to the FHWA, requesting information on the NEPA  
21 analysis for the Project, but the FHWA did not immediately respond.

22 42. Respondents provided no information to Plaintiff regarding compliance with the  
23 ADA and 28 C.F.R. 35.151.

1 43. Despite these letters from Respondents that the Project has not yet been approved by  
2 CalTrans, work commenced on the Project on December 9, 2024.

3 44. Petitioner made repeated requests to Respondents for CEQA, NEPA, and ADA  
4 analysis documents, but rather than address Plaintiff's concerns, Respondents continuously  
5 redirected Plaintiff by stating that Project had not yet started. The only document that was  
6 provided by Respondents was on December 12, 2024, which was the previously filed  
7 Notice of Exemption. No documents were provided showing any effort by the  
8 Respondents to create an EIR, create a CEQA analysis, create a NEPA analysis, or ensure  
9 that the LED lights would not create an unlawful path-of-travel discriminatory barrier for  
10 individuals with disabilities.

11 45. Despite Respondents repeated replies that the Project has not yet been approved by  
12 CalTrans, work commenced on the Project on December 9, 2024.

## 14 **V. FIRST CAUSE OF ACTION**

### 15 **Violations of CEQA**

16 46. Construction of the Bay Bridge started in 1933. Prior to the bridge construction  
17 project, there was almost no light pollution over the bay waters. Since that time, there has  
18 been a steady increase in light pollution emanating from the Bay Bridge, including  
19 streetlights and vehicle headlights. With the invention of LED lights and the efforts by Mr.  
20 Davis of Illuminate, intense LED lights were added to the bridge in 2013, then brighter  
21 LED lights were added in 2015, and now this Project is slated to double the number of  
22 LED emitters to 50,000. The ever-increasing and cumulative impacts of this light pollution  
23 on the bay are significant and severe.

1 47. Unfortunately, there is no state or federal agency tasked with protecting the  
2 environment from light pollution. While EPA and CalEPA act to protect the environment  
3 from air and water pollution, light pollution has escaped regulatory oversight by a specific  
4 agency dedicated to electromagnetic or light pollution.

5 48. The CEQA Public Resources Code sections 21000–21177 , is a comprehensive  
6 statute designed “to prevent[ ] environmental damage, while providing a decent home and  
7 satisfying living environment for every Californian.” (Pub. Resources Code, § 21000, subd.  
8 (g).) Given its broad goals, the California Supreme Court has held that CEQA must be  
9 interpreted “to afford the fullest possible protection to the environment within the  
10 reasonable scope of the statutory language.” (Friends of Mammoth v. Board of Supervisors  
11 (1972) 8 Cal.3d 247, 259.).

12 49. Under CEQA, agencies must ensure that the environmental consequences of proposed  
13 projects are disclosed, considered, and feasibly avoided at the earliest opportunity. CEQA  
14 requires the lead agency for a project with the potential to cause significant environmental  
15 impacts to prepare an EIR that complies with the requirements of the statute, including, but  
16 not limited to, the requirement to analyze the project’s potentially significant  
17 environmental impacts. (Pub. Resources Code, §§ 21002.1, subd. (a), 21080, subd. (d).)  
18 The EIR must provide sufficient environmental analysis to ensure that the decision-makers  
19 and the public can intelligently consider environmental consequences of the proposed  
20 project. (Laurel Heights Improvement Assn. v. Regents of Univ. of Cal. (1988) 47 Cal.3d  
21 376, 405.)

22 50. An EIR “must delineate environmental conditions prevailing absent the project,  
23 defining a ‘baseline’ against which predicted effects can be described and quantified.”

1 (Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57  
2 Cal.4th 439, 447.) An EIR’s description of this environmental setting should be  
3 sufficiently comprehensive to allow the project’s significant impacts “to be considered in  
4 the full environmental context.” (CEQA Guidelines, § 15125, subd. (c).) For this Project,  
5 the baseline is 1933, when the Bay Bridge was first constructed not emitting light pollution.

6 51. An EIR must disclose and analyze the direct and the reasonably foreseeable indirect  
7 environmental impacts of a proposed project if they are significant. (CEQA Guidelines, §§  
8 15126.2, 15064, subd. (d)(3).) “[A] sufficient discussion of significant impacts requires not  
9 merely a determination of whether an impact is significant, but some effort to explain the  
10 nature and magnitude of the impact.” (Sierra Club v. County of Fresno (2018) 6 Cal.5th  
11 502, 519.)

12 52. Under CEQA, a proper analysis of alternatives is essential to comply with the Act’s  
13 mandate that significant environmental impacts be avoided or substantially lessened where  
14 feasible. A public agency should not approve a project as proposed if there are feasible  
15 alternatives available that would substantially lessen any significant effects that the project  
16 would have on the environment. (Pub. Resources Code, § 21002; CEQA Guidelines, §§  
17 15002, subd. (a)(3), 15021, subd. (a)(2), 15126, subd. (f); Citizens for Quality Growth v.  
18 City of Mount Shasta (1988) 198 Cal.App.3d 433, 443–45.) For this Project, the LEDs are  
19 a significant source of light pollution and the public agencies must consider denying the  
20 project in its entirety.

21 53. An EIR must discuss a cumulative impact if a project’s incremental effect combined  
22 with the effects of other projects is “cumulatively considerable.” CEQA Guidelines, §  
23 15130, subd. (a).) The discussion of cumulative impacts must be more than “a conclusion

1 utterly devoid of any reasoned analysis.” (Whitman v. Bd. of Supervisors (1979) 88  
2 Cal.App.3d 397, 411.) The cumulative impacts of light pollution emanating from the Bay  
3 Bridge and other infrastructure is considerable. Starting from zero light pollution prior to  
4 1933 and steadily increasing ever since.

5 54. CEQA also mandates that the lead agency identify feasible mitigation measures that  
6 will reduce or avoid a project’s significant environmental impacts. (Pub. Resources Code,  
7 §§ 21002, 21002.1, subd. (b).) Even where a public agency cannot completely eliminate a  
8 project’s significant impacts, CEQA requires that it nonetheless reduce those impacts to the  
9 extent feasible. (Sierra Club, supra, 6 Cal.5th at pp. 524–25.). For this Project, which is  
10 designed to purposefully emit light pollution, the public agencies must consider denying  
11 the Project.

12 55. CEQA instructs that “[a] public agency shall provide that measures to mitigate or  
13 avoid significant effects on the environment are fully enforceable through permit  
14 conditions, agreements, or other measures.” (Pub. Resources Code, § 21081.6, subd. (b).)  
15 The agency must assure that its mitigation is “effective” and will “present a viable  
16 solution” to mitigating the adverse effect. (Gray v. County of Madera (2008) 167  
17 Cal.App.4th 1099, 1116.) The EIR must include facts and analysis to support its  
18 conclusions regarding the effect of its mitigation measures. (Sierra Club, supra, 6 Cal.5th at  
19 p. 522 [“The EIR must accurately reflect the net health effect of proposed air quality  
20 mitigation measures”], citing Cleveland Nat. Forest Foundation v. San Diego Assn. of  
21 Governments (2017) 3 Cal.5th 497, 514.)

22 56. CEQA prohibits a lead agency from approving a project with significant  
23 environmental effects unless it has made written findings for each of those effects,

1 accompanied by an explanation of the rationale for each finding. (Pub. Resources Code, §  
2 21081, subd. (a).) These findings must support the ultimate decision, be based on  
3 substantial evidence in the record, and trace the analytical route between the evidence in  
4 the record and the agency's conclusions.

5 57. CEQA provides that where a project's significant environmental effects cannot  
6 feasibly be mitigated, the lead agency may still approve the project if it finds that "specific  
7 overriding economic, legal, social, technological or other benefits of the project outweigh  
8 the significant effects on the environment." (Pub. Resources Code, § 21081, subd. (b).)  
9 However, an agency's statement of overriding considerations constitutes an abuse of  
10 discretion where it is not supported by substantial evidence. (Id. §21168.5; CEQA  
11 Guidelines, § 15093, subd. (b).) The statement's core "purposes are undermined if its  
12 conclusions are based on misrepresentations of the contents of the EIR or it misleads the  
13 reader about the relative magnitude of the impacts and benefits the agency has considered."  
14 (Woodward Park Homeowners Assn., Inc. v. City of Fresno (2007) 150 Cal.App.4th 683,  
15 718.).

16 58. An agency's statement of overriding considerations provides "a proper basis for  
17 approving a project despite the existence of unmitigated environmental effects, only when  
18 the measures necessary to mitigate or avoid those effects have properly been found to be  
19 infeasible." (City of Marina v. Bd. of Trustees of Cal. State Univ. (2006) 39 Cal.4th 341,  
20 368.) Where an agency improperly determines that significant impacts cannot feasibly be  
21 mitigated, it "necessarily follows" that the statement of overriding consideration is invalid.  
22 (Ibid.)  
23

1 59. Among CEQA’s basic purposes are to “[i]nform . . . the public about the potential,  
2 significant environmental effects of proposed activities” and to “[d]isclose to the public the  
3 reasons why a governmental agency approved the project in the manner the agency chose if  
4 significant environmental effects are involved.” (CEQA Guidelines, § 15002, subds. (a)(1),  
5 (a)(4).) “Public participation is an essential part of the CEQA process.” (Id., § 15201.)

6 60. Respondents failed to perform even a basic environmental analysis and failed to  
7 produce an EIR. As a result, Respondents prejudicially abused their discretion by failing to  
8 proceed in the manner required by law and by failing to act on the basis of substantial  
9 evidence. Accordingly, Respondents’ work on the Project must be halted until a full EIR  
10 and CEQA analysis have been performed.

## 11 **VI. SECOND CAUSE OF ACTION**

### 12 **Violations of NEPA**

13  
14 61. The Federal Highway Administration (“FHWA”) constructed the eastern span of the  
15 Bay Bridge and continues to be involved with ensuring that the Bay Bridge is safe. As part  
16 of the construction of the eastern span, the FHWA performed an extensive environmental  
17 assessment and EIR. The bay waters are under federal jurisdiction.

18 62. Given the federal government’s interests in protecting the environmental health of the  
19 bay waters, the involvement of the FHWA with the Bay Bridge, and the FHWA’s  
20 previously extensive environmental analysis, the FHWA is the lead federal agency for  
21 creating a National Environmental Policy Act analysis for the Bay Lights 360 project.

22 63. CalTrans has established policies for situations where both a CEQA and NEPA report  
23 overlap. Therefore, CalTrans and the FHWA can collaborate on a single EIR to be used by



1 both agencies for the Project. Respondents have failed to comply with NEPA  
2 requirements.

## 3 4 **VII. THIRD CAUSE OF ACTION**

### 5 **Violations of ADA**

6 64. LED light is a neurological hazard for certain individuals with disabilities. Reports  
7 submitted to the US Food and Drug Administration indicate that individuals with epilepsy,  
8 autism, migraines, photophobia and other qualified disabilities have suffered non-epileptic  
9 and epileptic seizures, migraines, nausea, vomiting and thoughts of suicide when exposed  
10 to LED lights. Most government agencies have not recognized the harmful impacts of  
11 LED lights on individuals with disabilities and have failed to perform an ADA analysis to  
12 ensure that projects involving LED lights comply with ADA requirements.

13 65. 28 C.F.R. § 35.151(b)(1) states:

14 *Each facility or part of a facility altered by, on behalf of, or for the use of a public*  
15 *entity in a manner that affects or could affect the usability of the facility or part of the*  
16 *facility shall, to the maximum extent feasible, be altered in such manner that the*  
17 *altered portion of the facility is readily accessible to and usable by individuals with*  
18 *disabilities, if the alteration was commenced after January 26, 1992. wheelchairs.*

19 66. 28 C.F.R. § 35.151(b)(1) thus requires that any project commenced after 1992,  
20 including the Bay Lights 360 project, must ensure that the altered area is readily accessible  
21 and usable by individuals with disabilities. Given that hundreds of reports of harm from  
22 exposure to LEDs have already been submitted to the FDA by individuals with disabilities,  
23 the alteration of adding LED lights to the Bay Bridge will deter or render impossible travel  
on the Bay Bridge for those individuals with disabilities who cannot neurologically tolerate

1 LED light. The installation of 50,000 LED lights for this Project will thus create an  
2 unlawful discriminatory barrier.

3 67. While there is no specific law that requires an “ADA analysis” for a project, public  
4 agencies must take some type of action to ensure that the Project complies with ADA  
5 requirements, including 28 C.F.R. § 35.151(b)(1). The ADA analysis can be included in  
6 the EIR. The Respondents have failed to comply with ADA requirements.

## 8 **VIII. FOURTH CAUSE OF ACTION**

### 9 **Violations of Rehabilitation Act**

10 68. Section 504 of the Rehabilitation Act prohibits discrimination against individuals  
11 with disabilities for projects that receive federal funding. The Bay Bridge receives large  
12 amounts of federal funding, and the use of LED lights that create a discriminatory barrier  
13 for individuals with disabilities is prohibited. Respondents have failed to comply with  
14 Section 504 of the Rehabilitation Act.

## 16 **IX. SIXTH CAUSE OF ACTION**

### 17 **Violations of 14<sup>th</sup> Amendment Equal Protection Clause**

18 69. The 14<sup>th</sup> Amendment to the U.S. Constitution requires equal protection for all  
19 individuals. The use of LED lights separates the public into two classes: those individuals  
20 without disabilities who can neurologically tolerate LED light, and those individuals with  
21 disabilities who cannot neurologically tolerate LED lights.

22 70. The Respondents have not published any policies that ensure that both classes of  
23 individuals are given equal protection. While individuals without disabilities may enjoy

1 watching the LED lights change colors, the class of individuals who cannot be exposed to  
2 LED light are suffering seizures, migraines, or thoughts of suicide. By failing to  
3 implement a policy to equally protect individuals with disabilities from exposure to LED  
4 light, Respondents have failed to comply with the 14<sup>th</sup> Amendment Equal Protection  
5 Clause.

### 6 7 **X. RELIEF REQUESTED**

8  
9 71. Plaintiff respectfully requests that the Court enter judgment:

10 72. A) Writ of mandate directing Respondents to develop a full EIR;

11 73. B) Writ of mandate directing Respondents to develop a full CEQA analysis;

12 74. C) Writ of mandate directing Respondents to develop a full NEPA analysis;

13 75. D) Writ of mandate directing Respondents to develop an ADA analysis;

14 76. E) Writ of mandate directing Respondents to comply with Section 504 of the  
15 Rehabilitation Act.

16 77. F) Writ of mandate directing Respondents to comply with the 14<sup>th</sup> Amendment Equal  
17 Protection Clause.

18 78. G) For a temporary stay, temporary restraining order, and preliminary and permanent  
19 injunctions restraining Respondents and Real Parties in Interest and their representative  
20 agents, servants, and employees, and all others acting in concert with Respondents or Real  
21 Parties in Interest on their behalf, from taking any action to implement the Project pending  
22 full compliance with the requirements of CEQA, CEQA Guidelines, NEPA, ADA,  
23 Rehabilitation Act, and 14<sup>th</sup> Amendment;

79. H) For costs of the suit;

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80. I) For Petitioner’s attorneys’ fees as authorized by Code of Civil Procedure section 1021.5 and/or other provisions of law; and

81. J) For such other and further relief as the Court deems just and proper.

Dated: December 14, 2024

Respectfully Submitted,

By: /s/ Mark Baker  
9450 SW Gemini Drive PMB 44671  
Beaverton, OR 97008  
mbaker@softlights.org

# Exhibit A



9450 SW Gemini Drive  
PMB 44671  
Beaverton, OR 97008

December 14, 2024

## **BY POSTAL MAIL AND EMAIL**

Alan Steinberg, Deputy Chief Counsel  
California Department of Transportation  
alan.steinberg@dot.ca.gov  
1120 N Street Stop 57  
Sacramento, CA 95814

Kathleen Kane, General Counsel  
Bay Area Transit Authority  
Metropolitan Transportation Commission  
kkane@bayareametro.gov  
375 Beale Street  
San Francisco, CA 94105

J Ayanna Butler, Chief Counsel  
Federal Highway Administration  
OSTGovAffairs@dot.gov  
1200 New Jersey Ave., SE  
Washington, DC 20590

## **Re: Notice of Commencement of CEQA Litigation – Bay Lights 360**

To Whom it May Concern:

This letter is to notify you that Mark Baker, President of the Soft Lights Foundation (“Petitioner”), will file, In Pro Per, against the Bay Area Transit Authority, Metropolitan Transportation Commission, California Department of Transportation, and Federal Highway Administration (together, “Respondents”) for failure to observe the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., the National Environmental Policy Act, section 4321 et seq., Americans with Disabilities Act, section 1201 et seq., Rehabilitation Act section 504, and 14<sup>th</sup> Amendment Equal Protection clause in the administrative process involving the Bay Lights 360 (TBL360) Project.

This notice is given pursuant to Public Resources Code section 21167.5.

Sincerely,

/s/ Mark Baker

President

Soft Lights Foundation  
[mbaker@softlights.org](mailto:mbaker@softlights.org)

**PROOF OF SERVICE**

**Mark Baker v. Bay Area Toll Authority, et al.**

**Superior Court of the State of California – County of San Francisco**

At the time of service, I was over 18 years of age and not a party to this action. I am a resident of the county where the mailing occurred. My address is

On December 14, 2024, I served a true copy of the following document described as:

**NOTICE OF COMMENCEMENT OF CEQA LITIGATION – BAY LIGHTS 360**

on the parties in this action as follows:

Kathleen Kane, General Counsel  
Bay Area Transit Authority  
Metropolitan Transportation Commission  
kkane@bayareametro.gov  
375 Beale Street  
San Francisco, CA 94105

Alan Steinberg, Deputy Chief Counsel  
California Department of Transportation  
alan.steinberg@dot.ca.gov  
1120 N Street Stop 57  
Sacramento, CA 95814

J Ayanna Butler, Chief Counsel  
Federal Highway Administration  
OSTGovAffairs@dot.gov  
1200 New Jersey Ave., SE  
Washington, DC 20590

BY MAIL: I enclosed the document in a sealed envelope or package addressed to the persons at the addresses listed above and deposited the sealed envelope with the United States

Postal Service, with the postage fully prepaid. I am a resident in the county where the mailing occurred. The envelope was placed in the mail at

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document to be sent from the e-mail address \_\_\_\_\_ to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on 12-14-2024, at \_\_\_\_\_ CA