SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MARK BAKER, Petitioner and Plaintiff, vs. BAY AREA TOLL AUTHORITY, METROPOLITAN TRANSPORTATION COMMISSION, CALIFORNIA DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, AND DOES 1-20, Respondents and Defendants,	Case No. CPF-24-518814 ORDER RE: RESPONDENTS BAY AREA TOLL AUTHORITY, METROPOLITAN TRANSPORTATION COMMISSIONS, AND STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF Hearing Judge: Hon. Jeffrey S. Ross Time: 1:00 p.m. Place: Department 606 Hearing Date: April 21, 2025

INTRODUCTION

The above-titled matter came on regularly for hearing on April 21, 2025, at 2:00 p.m. in Department 606 of the above-entitled court, the Honorable Jeffrey S. Ross presiding. Petitioner Mark Baker appeared remotely on ZOOM. Amy R. Higuera and Kathleen Kane appeared for Bay Toll Authority ("BATA") and Metropolitan Transportation Commission ("MTC"). Jennifer Flint appeared for California Department of Transportation ("CalTrans"; collectively "Respondents"). Respondents demur to all cause of action in the Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") on various grounds, including failure to state facts sufficient to constitute a cause of

action, uncertainty, and lack of subject matter jurisdiction. CalTrans also moves to strike the Petition in its entirety and a portion of the relief requested, which the court grants as to the prayer for an order requiring an ADA analysis by separate concurrent order. Having considered the pleadings and the arguments, the court **SUSTAINS** the demurrer as to the First, Second, Third, Fourth and Sixth Causes of Action[1] on the grounds of failure to state facts sufficient to constitute a cause of action and as to the Second, Third, and Fourth Causes of action because the court has no jurisdiction of the subject of the cause of action. (Code Civ. Proc. § 430.10, subds. (a) (e).) As to all the Petition's claims the **DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.**

BACKGROUND

A. Petition for Writ of Mandate

This matter arises from the approval of the Bay Lights 360 Project ("Project"), an art installation compromised of 50,000 Light Emitting Diode ("LED") lights on the San Francisco Bay Bridge ("Bay Bridge"). On December 16, 2024, Petitioner Mark Baker ("Petitioner") filed his unverified Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") against the Bay Area Toll Authority ("BATA"), Metropolitan Transportation Commission ("MTC"), California Department of Transportation ("CalTrans"), and Federal Highway Administration[2] (FHWA) (collectively, the Agencies); he also named the non-profit Illuminate as Real Party in Interest. Petitioner alleges the Project was approved in violation of the California Environmental Quality Act ("CEQA")—because an environmental impact report was not prepared and that the Project does not comply with the National Environmental Policy Act ("NEPA"), the Rehabilitation Act, and the Americans with Disabilities Act ("ADA"). Petitioner alleges five causes of action:

(1) First Cause of Action – Violations of CEQA

(2) Second Cause of Action – Violations of NEPA

(3) Third Cause of Action – Violations of ADA

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[1] The Petition does not plead any Fifth Cause of Action.
[2] Petitioner has since voluntarily dismissed FHWA.

(4) Fourth Cause of Action – Violations of Rehabilitation Act

(5) Sixth Cause of Action—Violations of Fourteenth Amendment Equal Protection Clause.

Petitioner seeks a writ of mandate directing the Agencies to: (i) develop a full environmental Report ("EIR"); (ii) develop a full CEQA analysis; (iii) develop a full NEPA analysis; (iv) develop an ADA analysis; (v) comply with Section 504 of the Rehabilitation Act; and (vi) comply with the Fourteenth Amendment's Equal Protection Clause. Petitioner also requests a temporary stay, restraining order, and preliminary and permanent injunctions restraining Respondents from taking any action to implement the Project pending compliance with the above.

B. Respondents' Demurrers to the Petition

BATA and MTC demur to the first cause of action (CEQA) based on the following arguments: (1) lack of standing; (2) failure to identify which claims are asserted against which parties; (3) lack of verification; (4) the claim is barred by laches; (5) the claim is barred by the applicable statute of limitations; and (6) the Petition fails to allege facts sufficient to state a claim. (Code Civ. Proc. § 430.10, subd. (e).) Respondent CalTrans joined that demurrer and argued that it is not the lead CEQA agency and did not make the challenged CEQA determinations.

As to the second cause of action (NEPA), Respondents argue NEPA is federal legislation and that federal courts have exclusive jurisdiction over claims under the statute. BATA and MTA also contend they have no obligations under NEPA. (Code Civ. Proc. § 430.10, subd. (a).)

With respect to the third cause of action (ADA) and fourth cause of action (Rehabilitation Act, Section 504), Respondents contend the Petitioner alleges no violation of law and fails to allege facts sufficient to state a claim. (Code Civ. Proc. § 430.10, subd. (e).)

The sixth cause of action alleges violation of the Equal Protection Clause of the Fourteenth Amendment, but Respondents argue that it fails to allege facts sufficient to state a claim because it does not afford a private right of action, no law is alleged to have been applied in a discriminatory manner, and there is a statutory remedy. (Code Civ. Proc. § 430.10, subd. (e).)

Petitioner opposes the demurrer. Petitioner argues that Respondents' arguments fail because (1) he has standing under the interest of public benefits; (2) the Petition identifies the role of the Respondents; (3) he cured the verification defect; (4) the delay in filing does not support application of laches given his ongoing efforts to raise objections with Respondents throughout 2023; and (5) the CEQA claim is timely because no formal Project approval has occurred.

In reply Respondents contend Petitioner argues the merits of his case, which is irrelevant at the demurrer stage, that Petitioner has not established standing, that the pleading is uncertain, and Petitioner has not shown that his CEQA claim is timely for purposes of laches and the statute of limitations for CEQA.

LEGAL STANDARD

When the ground for objection to a complaint appears on the face thereof, the objection on that ground may be taken by a demurrer to the pleading. (Code Civ. Proc., § 430.30, subd. (a).) The party against whom a complaint has been filed may object to the pleading on the grounds that the court lacks jurisdiction over the subject of the action, the pleading does not state facts sufficient to constitute a cause of action, and the pleading is uncertain. (Code Civ. Proc. § 430.10, subds. (a), (e), (f).)

An issue of law arises upon a demurrer to the complaint or to some part thereof. (Code Civ. Proc., § 589, subd. (a).) "A demurrer tests the pleading alone and not the evidence or other extrinsic matters." (*SKF Farms v. Super. Ct.* (1984) 153 Cal.App.3d 902, 905.) Courts "must accept all factual allegations in the complaint as true . . . [and] may not consider conclusions of fact or law, opinions, speculation or allegations which are contrary either to law or to judicially noticed facts." (*Monterey Coastkeeper v. Central Coast Regional Water Quality Control Board* (2022) 76 Cal.App.5th 1, 16 (internal citations omitted).) "[F]acts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence." (*Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.)

Generally, a demurrer is sustained with leave to amend "if there is a reasonable possibility the defect in the complaint could be cured by amendment . . . ." (*City of Atascadero v. Merrill Lynch,*

Pierce, Fenner & Smith, Inc. (1998) 68 Cal.App.4th 445, 459.) The petitioner must "demonstrate the manner in which the complaint might be amended[.]" (*Ibid.*) But "where the nature of the [petitioner's] claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result." (*Ibid.*)

REQUESTS FOR JUDICIAL NOTICE

Respondents asked the court to take judicial notice of various notices and communications pursuant to Evidence Code section 452, and Petitioner attached various documents to his opposition.

The court must take judicial notice of any matter properly within the scope of Evidence Code section 452 if a party requests it, gives each adverse party sufficient notice of the request to enable the adverse party to prepare to meet the request, and furnishes the court with sufficient information to enable it to take judicial notice of the matter. (Evid. Code, § 453, subd. (a), (b).)

BATA and MTC request judicial notice of seven exhibits. The court **GRANTS** the request under Evidence Code section 452, subdivisions (c), (d), (h) as to the following documents: (1) CEQA notices of exemption filed by BATA, the lead CEQA agency, with the San Francisco County Clerk on June 8, 2012 (Exhibit A), May 14, 2015 (Exhibit B), and August 15, 2023 (Exhibit C, the "August 15, 2023 NOE"); (2) agenda and staff report of the BATA Oversight Committee on January 11, 2023 (Exhibits D and E); (3) email exchange between Petitioner and BATA staff on December 31, 2023, and January 2, 2024 (Exhibit F); and (4) the Department of Justice's 2010 ADA Standards of Accessible Design (Exhibit G).

Additionally, Petitioner asks the court to take judicial notice of and to consider materials beyond the scope of the pleading. He attaches Exhibits A–G to his March 5, 2025, opposition to the CalTrans demurrer (hereafter, Exhibits CT-A–CT-G). And he attaches a different set of exhibits, namely Exhibits A–J (hereafter, Exhibits BATA-A–BATA-J) to his "response" to the BATA and MTC demurrer, which he filed on February 28, 2025. These exhibits include consultant reports Petitioner commissioned for purposes of this litigation (BATA-G) and other materials far beyond the proper scope of judicial notice. BATA and MTC ask the court to strike all of the February 28,2025,

exhibits as impermissible extrinsic evidence. (Reply at p. 6:17–21.) Like CalTrans, BATA and MTC also filed separate objections purporting to object to all of the exhibits (BATA-A through BATA-J) but, therein, stating they do not object to judicial notice of certain exhibits that are also encompassed by *their* request, including Exhibits BATA-B (emails) and BATA-H (notice of exemption). Additionally, CalTrans objects to Exhibits CT-A–CT-G and Petitioner's asserted interpretation of certain documents as set forth in his opposition.

Petitioner did not provide notice to all parties of the request, nor did he provide sufficient information for the court to take judicial notice of all the exhibits. (Evid. Code, § 453.) And a demurrer tests only the legal sufficiency of the pleading based on the allegations on the face of the pleading or matters *properly* subject to judicial notice. (See *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994 [finding that the party was ignoring the "limited role of a demurrer—to test the legal sufficiency of the complaint. In reviewing the ruling on a demurrer, a court cannot consider… the substance of declarations, matter not subject to judicial notice, or documents judicially noticed but not accepted for the truth of their contents"] [internal citations omitted].) Accordingly, Petitioner's request is **DENIED AS MOOT** as to Exhibits CT-A–CT-C (the notices of exemption already submitted by Respondents) and **DENIED** as to Exhibits CT-D–CT-G that he relies upon for their truth and for matters beyond the scope of the demurrer. As for the exhibits to the February 28, 2025, response, and for similar reasons, Petitioner's request is **DENIED AS MOOT** as to Exhibits BATA-B and BATA-H and is otherwise **DENIED** as to Exhibits BATA-A, BATA-C through BATA-G, BATA-I (a video), and BATA-J.

In reply, BATA and MTC request judicial notice of: Petitioner's social media post (Exhibit A); State Senator Scott Weiner's press release announcing SB 607 ("The Fast & Focused CEQA Act" Exhibit B); and CalTrans District Director Bijan Sartipi's January 24, 2012, letter to BATA Deputy Executive Director Andrew Fremier delegating BATA as CEGA Lead Agency for the Bay Lights project (Exhibit C). The court **GRANTS** this request with the exception of Reply Exhibit A. (Evidence Code, section 452 (c), (d), (h).).

DISCUSSION

Because CalTrans joins in BATA's and MTC's demurrer, and CalTrans makes many of the same arguments in its demurrer, the court addresses Respondents' arguments together. They argue the causes of action fail to allege facts sufficient to state a claim and establish Petitioner's standing, fail due to uncertainty, are not set forth in a properly-verified Petition, and are barred by laches and the statute of limitations. The court addresses the various causes of action in turn.

A. The CEQA Claim (First Cause of Action)

1. The Statute of Limitations

Respondents demur to the First Cause of Action on the following bases: (1) lacks standing; (2) failure to identify which claims are asserted against which parties; (3) lack of verification; (4) the claim is barred by laches; (5) the claim is barred by the applicable statute of limitations; and (6) the Petition fails to allege facts sufficient to state a claim. They contend that the CEQA cause of action is barred by CEQA's statute of limitations under both the 35-day and 180-day limitations periods as set forth in Public Resource Code section 21167. (BATA and MTC Demurrer at pp. 16–19)

Petitioner argues that the Project was never formally approved, thus the 35-day statute of limitation is not applicable. (Opposition at p. 8, ¶ 23.) He further asserts that the Petition was timely filed within 180 days of Project commencement. (*Id.* at ¶ 24.)

a. CEQA's 35-Day Limitations Period

CEQA requires public agencies to consider the environmental consequences of discretionary projects they propose to carry out or approve. (Pub. Resources Code, § 21000 et seq.) On the other hand, CEQA is sensitive to the need for finality and certainty in land use planning decisions. Accordingly, CEQA provides "unusually short" limitations periods for challenging projects. (Cal. Code Regs., tit. 14 (the "CEQA Guidelines"), § 15112(a).)

Certain projects are statutorily exempt from CEQA, and these include "ministerial projects"—those whose approval involves little or no exercise of discretion or judgment by the public agency. (Pub. Resources Code, § 21080, subd. (b)(1); CEQA Guidelines, § 15369.) If a local agency

determines that a project it has approved or decided to carry out is exempt for this reason, it may file a "notice of [this] determination"—otherwise known as a notice of exemption, or NOE. (*Id.* at § 21152, subd. (b); CEQA Guidelines, §§ 15062, 15374.)

Public Resource Code section 21167(d), and its implementing guidelines, CEQA Guidelines section 15112(c), establish that when an agency has determined a project to be exempt from CEQA and filed a NOE on that basis, a lawsuit challenging that decision must be filed within 35 days. (*San Bernardino Associated Governments v. Super. Ct.* (2006) 135 Cal.App.4th 1106, 1121 [35-day limitations period of Public Resources Code 21167(d) began to run when agency responsible for shaping transportation sales tax measure posted notice of exemption, not when board of supervisors placed measure on ballot].)

The Supreme Court has interpreted this provision strictly, holding that "Section 21167(d) makes clear that suits claiming a project was 'improperly' approved as exempt from CEQA must be brought within the *35-day period after an NOE is filed and posted.*" (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 501, 505–506, emphasis added.) "[W]hen a properly filed NOE complies in form and content with CEQA requirements and declares the agency has taken an action that would constitute final approval of a project under a CEQA exemption, the 35-day period for challenging the validity of this asserted approval under CEQA begins to run." (*Ibid.*)

i. The NOE of May 14, 2015

Respondents argue that the Petition indicates that Petitioner's complaints are with the installation of the LED lights on the Bay Bridge as a general matter, not with the recent changes to the Project. (See Petition, ¶¶ 2, 23–30.) They contend that the Project was approved for permanent installation of LED lights on the Bay Bridge in 2015, and the NOE was filed by BATA on May 14, 2015 ("2015 NOE"). (Respondents' RJN, Exh. B.) Respondents further argue that, to the extent the Petition challenges any installation of LED lights on the Bay Bridge, the time to bring that claim was on or before June 18, 2015, and the statute of limitations has since expired. (Demurrer at p. 16.)

Petitioner does not meaningfully address the 2015 NOE in the Petition. Instead, he asserts that the Bay Lights 360 project is an entirely new project due to its expanded scope. (Opposition at p. 5, ¶ 16.)

To the extent Petitioner challenges the continuing operation or presence of the original Bay Lights installation, or asserts cumulative impacts from its use, the court agrees with Respondents that those claims are untimely. Petitioner filed suit *nearly nine years* after the 2015 NOE. Any CEQA challenge to the 2015 approved installation is therefore time barred under Section 21167(d).

ii. The NOE of August 14, 2023

Respondents next argue that even if the 2015 NOE did not apply to the Project's expansion, BATA filed another NOE on August 14, 2023 ("2023 NOE"), which, Respondents contend, triggered a 35-day period such that suit had to be filed by September 19, 2023, in which case Petitioner's CEQA claim is still time-barred. (Demurrer at pp. 17–18; Petition, ¶ 36.) In response, Petitioner argues the 35-day statute of limitation does not apply because the Project was never approved. (Opposition at p. 7, ¶ 19.) He alleges that between January 11, 2023, and August 15, 2023, there was no action by BATA to approve the Project. (*Id.* at ¶¶ 19–22.) He further contends that the filing of the 2023 NOE was only with the County Clerk-Recorder, and, thus, did not trigger the CEQA timeline. (Opposition at p. 9, ¶ 36.) Petitioner cites no authority to support his position on the 2023 NOE; the court finds the 2023 NOE, issued by BATA, the CEQA lead agency, is valid and consistent with CEQA's notice requirements. Therefore, a petition filed in December 2024 would be untimely and barred by the statute of limitations.

Petitioner acknowledges that Respondents publicly presented the Project's expanded scope at a meeting held on January 11, 2023. (Opposition at p. 7, ¶ 20) During a public meeting of the BATA Oversight Committee, there was an information item informing the Committee and the public that the Project was changing to include interior LED lights and increasing their total number to approximately 50,000. (*Id* ; RJN, Exh. D [1/11/2023 BATA Oversight Committee Agenda], E [1/1/2023 BATA Staff Report].) Petitioner also acknowledges that the NOE was filed on August 15, 2023. (Petition, ¶ 36.)

Petitioner admits he began objecting to the Project in early 2023. (Petition, ¶ 6.) Thus, his claim is admittedly untimely.

Moreover, Petitioner argues that the 2023 NOE did not initiate the CEQA timeline because it was filed with the County Clerk-Recorder. (Opposition at p. 9, ¶ 36.) Respondents correctly note that this is a conclusion of law, not a factual allegation, and is therefore not taken as true, even on demurrer. (*Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 395.) In addition, Respondents argue that the 2023 NOE was properly filed because, at the time, agencies such as BATA and MTC, were only required to file such notices with the applicable county clerk. (See *Committee to Relocate Marilyn v. City of Palm Springs* (2023) 88 Cal.App.5th 607, 631.) The requirement to also file the notice of exemption with the State Clearinghouse was added by a subsequent bill that only became effective January 1, 2024, months after the 2023 NOE had been filed. (Stats. 2023, ch. 860 ("SB 69").) Thus, Petitioner is incorrect on this point of law, and the court finds the 2023 NOE complied with CEQA's filing requirements for local agency projects and was sufficient to trigger the statute of limitations.

These facts, which are either evident from the face of the Petition or based on judicially-noticed records, establish that Petitioner had actual knowledge of the Project and had a full opportunity to timely challenge the 2023 NOE but failed to do so. The Petition was not filed until more than one year later, on December 16, 2024. Petitioner's failure to file suit within 35 days of the 2023 NOE renders his CEQA claim untimely under Section 21167(d).

b. CEQA's 180-Day Limitations Period

CEQA also establishes a 180-day statute of limitations for challenging exception decisions. This longer limitation period is triggered by the agency's decision to approve or carry out a project. (Public Resources Code § 21167(d).) If a notice of exemption has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project. (Section 21167(d).)

Under CEQA, "approval" of a project is "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." (CEQA Guidelines, § 15352(a).) This occurs upon the agency's earliest approval, not the last. (CEQA Guidelines, § 15352(b); *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134.)

A limited exception applies only when a project has changed after its approval. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 939 ["if the agency makes substantial changes in a project ... an action challenging the agency's noncompliance with CEQA may be filed within 180 days of the time the plaintiff knew or reasonably should have known" that the project under way differs substantially from the one approved]; *Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429, 436-437; *Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College Dist.* (2012) 206 Cal.App.4th 1036, 1044, [180-day limitations period of Pubic Resource Code section 21167(d) began to run when college district passed resolutions directing that site be made available for rental by outside entities; subsequent execution of lease did not constitute substantial change in original project triggering new limitations period].)

Respondents contend that the CEQA claim is untimely under the 180-day limitations period as well because, as stated in the Petition, Petitioner long had knowledge of the changes to the Project. (Demurrer at p. 19.) Petitioner contends that the 180-day period did not begin to run until December 9, 2024, when construction began on the Project. (Opposition at p. 8, ¶ 24.) He argues that this was the first definitive act of the Project's implementation and that he filed his Petition seven days later, on December 16, 2024, within the 180-day window. (*Id.*) Even assuming the changes to the Project were "substantial" changes, Petitioner filed more than 180-days from the approval of those changes, changes of which he was aware.

This argument is contrary to the applicable statutory definitions, above. The Petition and judicially-noticed records, again, support Respondents' argument that even under the more generous 180-day limitations period, the CEQA claim is untimely. Petitioner's own allegations establish that he

either knew or should have known about the Project's progression well before construction first began and before he filed suit on December 16, 2024. (*Concerned Citizens of Costa Mes*a, *supra*, 42 Cal.3d at p. 939.)

Here, the Project was undertaken no later than January 11, 2023, when BATA Oversight Committee held a public meeting where the new scope of the Project was presented. (RJN, Exh. D.) BATA included an information item on its Oversight Committee's agenda titled "Update of the Bay Lights Project on the San Francisco Oakland Bay Bridge." (*Id.*) As stated in the staff report attached to that item, "[t]he new [Bay Lights 360] Project will install forty-eight thousand (48,000) new energy-efficient LEDs, replacing the existing LEDs on the north side and adding new LEDs on the driver's (south-facing) side of the same suspender cables on the west span of the bridge for a 360-degree view of the lights." (RJN, Exh. E.) BATA's public meeting reflects a commitment to move forward with the Project, and the public was provided with notice of these changes. (*Save Tara, supra,* 45 Cal.4th at p. 134.)

As discussed above, BATA then filed and prepared the 2023 NOE. (Petition, ¶ 36.) The 2023 NOE described the Project changes and provided notice of those changes. (RJN, Exh. C.) The Legislature has determined that filing and posting an NOE in the manner prescribed by statute provides the public adequate constructive notice. (*Communities for a Better Environment v. Bay Area Air Quality Management Dist*. (2016) 1 Cal.App.5th 715, 725; *Committee for Green Foothills v. Santa Clara Cnty. Bd. of Supervisors* (2010) 48 Cal.4th 32, 47.) This posting was sufficient to trigger the 180-day limitations period.

In addition, the Petition confirms that Petitioner spent "over the past year and a half" contacting officials associated with Respondents and Illuminate regarding the project. (Petition, ¶ 6.) Petitioner alleges that he warned Illuminate Founder Ben Davis of the potential environmental impacts from LED lights as early as March 4, 2023 (*Id.*, at ¶ 35.) In opposition, Petitioner admitted that he submitted an ADA accommodation request on December 31, 2023; and asked CalTrans directly on May 31, 2024, whether CEQA review would occur. (Opposition at pp. 5-6, ¶ 16) Here, these

allegations make clear that Petitioner had actual or constructive knowledge of the Project's new scope in December 2023, well in advance of its physical implementation. These admissions undercut Petitioner's theory that the limitations period did not begin to run until the start of construction.

Petitioner again argues that construction began on December 9, 2024, and that later date triggers the 180-day statute. (Opposition at p. 8, ¶ 24.) As stated above, CEQA does not require a formal action by vote or resolution for a project to be approved or undertaken. A project is approved when a public agency commits to a definite course of action. (CEQA Guidelines, § 15352(a).) The court finds that based on the factual allegations in the Petition and the judicially-noticed facts, that the Project had been approved—and Petitioner knew or reasonably should have known of this approval—by no later than early 2023. As such, the 180-day statute of limitations began to run at that time, not at the start of construction, and expired well before Petitioner filed this action. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 [for a demurrer based on the statute of limitations to be sustained, the untimeliness of the lawsuit must clearly and affirmatively appear on the face of the complaint and matters judicially noticed].) Accordingly, the court finds that the CEQA claim is barred by the statute of limitations.

The court credits each of Respondents' arguments and finds the CEQA claim is untimely and barred by the statute of limitations.

2. Laches

The defense of laches is available in both CEQA cases and in land use cases generally. (See, e.g., *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 812–13.) "The defense of laches can be raised by demurrer where the laches is apparent upon the face of the petition or complaint." (*Griffin v. International Longshoremen's and Warehousemen's Union, Local 1-13* (1952) 109 Cal.App.2d 823, 824.) "The application of the doctrine of laches depends upon the facts and circumstances in each case." (*Id.*) "To prevail, the defendant must show (1) unreasonable delay; and (2) either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.*

(2021) 62 Cal.App.5th 583, 602 [internal quotation marks omitted].) While the court finds, based on the record, that the standard for laches is satisfied, it is unnecessary to rule on this additional basis given the court's findings as to all the other grounds for demurrer.

a. Petitioner Unreasonably Delayed

It is undisputed that the Bay Bridge LED lights project have been ongoing since their initial installation in 2012 and as modified in 2015. (Demurrer at p. 15.) Respondents argue that Petitioner could have raised CEQA challenges during earlier iterations of the lighting installation (2012 or 2015) or at the time changes to the Project were publicly disclosed, including after the third Notice of Exemption ("NOE") was filed on August 15, 2023. (*Id.*) Petitioner, in opposition, contends that the Project constitutes a new and distinct project, due to the increase in the number of LED lights, and the shift from 180-degree to 360-degree viewing angles. (Opposition at p. 5, ¶ 16.) However, even accepting Petitioner's characterization that the Bay Lights 360 constitutes a new and distinct project, the now-verified Petition confirms that he had actual knowledge of the Project's new scope by early 2023, and that he began raising objections at that time. (Petition, ¶¶ 4, 6)

The Petition alleges that "over the past year and a half," he contacted "numerous officials associated with Respondents and Illuminate about the environmental impacts and discriminatory nature of LEDs" but received no substantive response. (Petition, ¶ 6.) He specifically alleges that on March 4, 2023, he notified Illuminate Founder Ben Davis that the LED lights are harmful to the environment and hazardous for human health. (*Id.* at ¶ 35.) Petitioner also alleges that "Respondents started work on the Project on December 9, 2024, despite not having yet approved the Project." (*Id.* at ¶ 4.) These allegations confirm that Petitioner had actual knowledge of the Project and the CEQA deficiencies well in advance of filing this Petition.

Petitioner argues in opposition that the delay in filing the Petition was justified because Respondents failed to respond to his inquiries about CEQA and ADA accommodations. (Opposition at p. 6, ¶¶ 16–17.) The court finds this argument unpersuasive. As discussed above, Petitioner began raising concerns about the Project in early 2023, yet did not file suit until December 16, 2024—over

21 months later. Whether or not Respondents chose to respond, Petitioner had an obligation to timely pursue any remedy.

There is no specific number of days, months, or years that necessarily results in an application of laches, but rather, each situation must be judged on its own merits. (See, e.g., *Julian Volunteer Fire Co. Assn.*, *supra*, 62 Cal.App.5th at p. 602.) In determining whether the delay is unreasonable, the time both before and after the filing of suit must be included. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68; *Vernon Fire Fighters Assn. v. City of Vernon* (1986) 178 Cal.App.3d 710, 720.) Delays of even less than a year have been held to be unreasonable for purposes of laches. (See, e.g., *Julian Volunteer Fire Co.*, *supra*, 62 Cal.App.5th 583 at p. 602; *Vernon Fire Fighters.*, *supra*, 178 Cal.App.3d at p. 717.) Moreover, knowledge can be shown by constructive knowledge. (*Garstang v. Skinner* (1913) 165 Cal. 721, 727.) Constructive knowledge is knowledge of circumstances that would have put a prudent person upon inquiry. (Civ. Code, § 19.)

The court finds that Petitioner had actual knowledge of the Project and its alleged environmental impacts for at least 21 months before filing this Petition. This extended period supports a finding of unreasonable delay.

b. The Delay Prejudiced the Respondents

Respondents argue they have been prejudiced by Petitioner's delay in bringing this action. The court agrees. The Petition confirms that construction of the Project began on December 9, 2024, and that the lawsuit was not filed until December 16, 2024. (Petition, ¶ 4.) Respondents argue that approximately $11,000,000 in new private funding had been raised for the Project. (Petition, ¶ 33.) And Respondents relied on those funds as they have moved forward with the Project. (Petition, ¶¶ 33, 35.) Respondents contend that because of Petitioner's delay, work on the Project would cease mid-stream and existing contractual obligations would be halted. (Demurrer at p. 16.) Petitioner does not dispute in his Petition that the Project's construction had already begun when he filed his Petition or that he remained silent following the NOE filing in August 2023. Respondents argue that had Petitioner filed a timely CEQA claim after the 2023 NOE, that action and any relief ordered could

have been completed by late 2024—before this case was filed (See Pub. Resources Code, § 21151.5 [providing one year for completing and certifying environmental impact reports (EIRs)].) The court finds that Respondents have made a substantial showing—based on the facts set forth in the Petition—of actual prejudice by Petitioner's delay. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 815 ["The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors"].) The court finds Petitioner's delay prejudiced Respondents.

3. Failure to State a CEQA Cause of Action

Respondents also contend, on other grounds, that the Petition fails to state a claim under CEQA. (Demurrer at p. 20.) In light of the court's decision with respect to the statute of limitations, the court does not reach these additional issues.

4. Standing

Whether or not Petitioner has standing to bring the CEQA claim, in view of the court's decision that the cause of action is barred by both the statute of limitations and laches, the court need not address Respondents' argument that the Petition fails to allege facts sufficient to show Petitioner has standing. (Demurrer at p. 13.)

5. Uncertainty

Respondents correctly observe that the Petition does not identify which causes of action are alleged against which party or parties. (Demurrer at p. 14; Cal. Rules of Court, Rule 2.112(4).) They argue that absent identification of which causes of action are asserted against which parties, Respondents do not know which causes of action are directed at them. (*Id.*) In opposition, Petitioner argues that at the time of filing, he was only vaguely familiar with the agencies involved in the Project. (Opposition at p. 4; ¶ 5.)

The court finds the Petition does not comply with California Rules of Court Rule 2.112, which requires each separately stated cause of action to identity "[t]he party or parties to whom it is directed." (Cal. Rules of Court, rule 2.112(4).) Even so, the court is not persuaded that the pleading is

so ambiguous, uncertain, or unintelligible that the demurrer on this additional ground is justified. The demurrer on the ground of uncertainty is **OVERRULED**.

6. Verification

Although the Petition was initially unverified, Petitioner has since filed a verification on February 13, 2025. (Opposition, 4.) The verification is sufficient and moots Respondents' arguments on that issue. (Code Civ. Proc., § 1086.)

B. The Second Cause of Action (NEPA)¶¶

Respondents demur on the grounds that Petitioner lacks standing to bring the NEPA claim; that NEPA creates no private right of action; that NEPA claims must be brought pursuant to the federal Administrative Procedures Act (APA); and that NEPA claims must be brought in federal court. (*Qualification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 832, 834–35.) Further, NEPA requires **federal** agencies to conduct environmental reviews and, therefore, is inapplicable to Respondents. (See 42 U.S.C. §4331(b); *Ely v. Velde* (4th Cir. 1971) 451 F.2d 1130, 1139.) Petitioner offers no contrary legal authority, and the court concludes that on each of these independent grounds, the NEPA claim must be dismissed.

C. The Third Cause of Action (ADA)

Respondents observe that the Petition concedes "there is no specific law that requires an 'ADA analysis' for a project." (Pet., ¶¶ 6, 67.) Further they argue that, to allege a claim under Title II of the ADA, a plaintiff must allege: (1) That he is an individual with a disability; (2) That he is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) That he was either excluded from participation in or denied the benefits of the public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and (4) Such exclusion, denial of benefits, or discrimination was by reason of his disability. (*Black v. Department of Mental Health* (2000) 83 Cal.App.4th 739, 749.)

Petitioner does not allege a disability or that he has used or intends to use the Bay Bridge. Whether or not he could amend the petition to allege those facts, he admits that the Project did not

require an ADA analysis. Further, denial of "meaningful access" exists only where "there was a violation of a relevant implementing regulation" as related to a public benefit. (*Goodwin v. Marin County Transit District* (N.D. Cal. 2022) 675 F. Supp 3d 1016, 1022; see also *Alexander v. Choate* (1985) 469 U.S. 287, 304.) The court agrees with Respondents; for the reasons set forth in Respondents' briefs, Petitioner fails to state a claim and the demurrer to the third cause of action must be **SUSTAINED**. Additionally, in his prayer relative to the third cause of action, Petitioner asks the court to order an ADA analysis. In a concurrently filed order, the court has stricken that prayer from the Petition.

D. The Fourth Cause of Action (Rehabilitation Act)

Respondents demur to the fourth cause of action because a claim under the Rehabilitation Act requires that the project receive federal assistance. The Petition alleges that the Project is *entirely privately funded*. (Pet., ¶ 33.) They also contend that Petitioner lacks standing to bring the claim. The court agrees with Respondents that no claim as been stated. For the reasons stated in Respondents' demurrers, the court **SUSTAINS** the demurrer to the fourth cause of action.

E. The Sixth Cause of Action (The Equal Protection Clause of the Fourteenth Amendment)

Respondents argue that there is no private right of action under the Equal Protection Clause of the Fourteenth Amendment; rather it empowers Congress to enact legislation to enforce certain rights. (*Alexander v. Sandoval* (2001) 532 U.S. 275, 286.) They explain that a prerequisite to an equal protection claim is the existence of a law that treats two classes of people differently. (*People v. Moore* (2021) 68 Cal.App.5th 856, 862.) Petitioner admits there is no such law or standards exists here. (Pet., ¶¶ 24, 67, 70.) The absence of the predicate law upon which to base an equal protection claim defeats the sixth cause of action. Respondents also demur based on Petitioner's lack of standing to bring the claim. For all the reasons asserted by Respondents the demurrer to the sixth cause of action is **SUSTAINED**.

F. The Demurrer is Sustained Without Leave to Amend

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "The burden of proving such reasonable possibility is squarely on the plaintiff." (*Id.* at 318.) In order to demonstrate a reasonable possibility of curing the defect in the complaint, the plaintiff must show how the complaint can be amended and how the amendment will change the pleading's legal effect. (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 7–8.) On the other hand, "a trial court does not abuse its discretion by sustaining a general demurrer without leave to amend if it appears from the complaint that under applicable substantive law there is no reasonable possibility that an amendment could cure the complaint's defect." (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 486.)

The CEQA claim is time-barred under Public Resource Code section 21167(d). Petitioner failed to carry his burden of showing there is a reasonable possibility that these defects can be cured by an amendment. And the court finds that—in light of the facts subject to judicial notice, and especially Petitioner's admissions—these fatal flaws cannot be overcome by amendment. The court sustains the demurrer to first cause of action without leave to amend.

The second cause of action, likewise, cannot be amended to overcome the jurisdictional bar: NEPA applies to federal agencies, and not Respondents; and claims must be brought in federal court. Therefore, the demurrer to the second cause of action is also sustained without leave to amend.

The third and fourth causes of action cannot be saved by amendment as there are no laws which provide the basis for the claim and none could be alleged. Likewise, the sixth cause of action is fatally flawed and could not be rectified by amendment.

With respect to the demurrer to the entire Petition on the ground of laches, the court found both unreasonable delay and prejudice to Respondents. Under other circumstances the court might have sustained the demurrer with leave to amend the Petition to plead further facts to overcome the court's findings as to laches. However, in light of the court's decision to sustain the demurrer as to every

cause of action without leave to amend—on grounds other than laches—there is no basis for amendment as to the laches defense.

CONCLUSION

For the reasons stated above IT IS HEREBY ORDERED that Respondents' demurrers are sustained as to the First, Second, Third, Fourth and Sixth Causes of Action on the grounds of failure to state facts sufficient to constitute a cause of action and as to the Second, Third, and Fourth Causes of action because the court has no jurisdiction of the subject of the cause of action. (Code Civ. Proc. § 430.10, subds. (a) (e).) As to all causes of action—the first, second, third, fourth and sixth causes of action—the demurrers are **SUSTAINED WITHOUT LEAVE TO AMEND**. In its March 21, 2025, order, the court extended to Tuesday, May 20, 2025, the time for each public agency to prepare and to certify the record of proceedings pursuant to California Public Resources Code sections 21167.6(b)(1)(A) and (c). IT IS FURTHER ORDERED that Respondents time to prepare and to certify the record of proceedings is stayed pending further order of the court.

Dated: April 25, 2025

JEFFREY S. ROSS
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Johnny Sengmany, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 25, 2025, I electronically served the ORDER RE: RESPONDENTS BAY AREA TOLL AUTHORITY, METROPOLITAN TRANSPORTATION COMMISSIONS, AND STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF, via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: April 25, 2025

Court Executive Officer, Brandon E. Riley

By: _____
Johnny Sengmany, Deputy Clerk