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FILED
 Superior Court of California
 County of San Francisco

MAR 5 2009

GORDON, JAMES CLARK
 BY: [Signature]

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN FRANCISCO**

CPF-09-509285

BAYVIEW HUNTERS POINT
 COMMUNITY ADVOCATES,
 a non-profit corporation,

Petitioner,

v.

SAN FRANCISCO PLANNING
 DEPARTMENT,

Respondent.

DARLING INTERNATIONAL INC., a
 corporation,

Real Party in Interest.

CALIFORNIA ENVIRONMENTAL
 QUALITY ACT

VERIFIED PETITION FOR WRIT OF
 MANDATE OF AN APPEAL TO A
 CATEGORICAL EXEMPTION

California Code of Civil Procedure §§ 1085,
 1094.5

Petitioner Bayview Hunters Point Community Advocates alleges as follows:

INTRODUCTION

1. Petitioner Bayview Hunters Point Community Advocates brings this action against Respondent San Francisco Planning Department to set aside a September 8, 2008, decision granting a categorical exemption under the California Environmental Quality Act (CEQA) to Darling International Inc.

2. Respondent's September 8 decision exempted from review under CEQA Darling's

1 proposed addition of a biodiesel facility to its existing rendering facility (Project) in Bayview Hunters
2 Point. *See* Ex. A, San Francisco Planning Department's Certificate of Determination. Darling's
3 proposed biodiesel facility is designed to produce 7.5 to 10 million gallons of biodiesel annually. *See*
4 Ex. B, Memorandum of the San Francisco Port Commission from September 4, 2008.

5 3. Respondent's September decision concluded that the Project was exempt from review
6 under CEQA because it qualified as a Class 1 exemption because the new facility would not result in a
7 10,000 square feet increase to the existing facility. Ex. A. The exemption also stated that there were no
8 unusual circumstances surrounding the Project that would suggest a reasonable possibility of a
9 significant environmental effect. *Id.*

10 PARTIES

11 4. Petitioner Bayview Hunters Point Community Advocates, Inc. (Advocates) is a non-
12 profit California corporation whose principal place of business is San Francisco, California. Advocates
13 works within the Bayview Hunters Point neighborhood of San Francisco to ensure environmental
14 justice, to promote economic alternatives that contribute to the development of environmentally safe
15 neighborhoods and livelihoods, and to secure the political, economic, cultural, and social liberation of
16 this community. Original and current board members of this group include many longtime activists
17 from the Bayview Hunters Point neighborhood. Since its founding in the early 1990s, Advocates has
18 successfully undertaken local projects to both encourage greater economic development opportunities
19 and benefit the environment, such as fighting the introduction of new industrial activities that would
20 further pollute the community.

21 5. Respondent is the local agency with regulatory power over land use and development in
22 San Francisco. Respondent is responsible for initial CEQA review for projects in the City of San
23 Francisco. *See* S.F. Municipal Code §§ 31.04, 31.05.

24 6. Real Party in Interest Darling International, Inc. is a Delaware corporation. Darling is the
25 applicant for the Project, owner of the property where the Project is to be located, and would operate the
26 Project. Darling's current rendering facility at 429 Amador Street in Bayview Hunters Point, San
27 Francisco, has operated for several years. Darling's rendering facility takes used animal and food by-
28 products and renders them down to materials that can be resold as soap, feedstock, and other chemicals.

JURISDICTION, EXHAUSTION OF REMEDIES AND STATUTE OF LIMITATIONS

7. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure §§ 1085 and/or 1094.5 and Public Resources Code § 21168.

8. The public was not given a public hearing before the Planning Department to raise objections before the September 8, 2008, decision. Therefore, the exhaustion requirement does not apply. *See* Public Resources Code § 21177.

9. Venue is proper in the Superior Court of the State of California in and for the County of San Francisco pursuant to California Code of Civil Procedure § 394 because the cause of action alleged arose in the County of San Francisco.

10. Petitioner has complied with the requirements of Public Resources Code § 21167.5 by mailing a written notice of the commencement of this action to Respondent prior to filing this Petition. A copy of the prior written notice provided to Respondent, with proof of service thereof, is attached hereto as Exhibit C.

11. Petitioner has complied with the requirements of Public Resources Code § 21167.7 and Code of Civil Procedure § 388 by mailing a copy of the Petition to the state Attorney General. In pursuing this action, which involves enforcement of important rights affecting the public interest, Petitioner will confer a substantial benefit on the general public including to the residents of the Bayview Hunters Point neighborhood, the City of San Francisco, and the State of California, and therefore will be entitled to attorneys' fees and costs pursuant to, *inter alia*, Code of Civil Procedure § 1021.5.

12. Petitioner brings this action pursuant to Public Resources Code § 21168 and Code of Civil Procedure §§ 1085 and/or 1094.5 which require that an agency's approval of a project be set aside if the agency has prejudicially abused its discretion. Prejudicial abuse of discretion occurs where Respondent has failed to proceed in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence.

13. The statute of limitations to appeal a CEQA exemption depends on whether the lead agency filed the notice of exemption in compliance with the CEQA Guidelines, Cal.Code Regs., tit. 14 [CEQA Guidelines], § 15062. That section provides that "the notice of exemption shall be filed with the

1 county clerk of each county in which the project will be located [and that] Each notice shall remain
 2 posted for a period of the 30 days.” CEQA Guidelines § 15062. The Planning Department’s decision to
 3 exempt the Project was not filed with the county clerk of San Francisco. *See* Ex. D (e-mail confirming
 4 that notice of exemption was not filed with county clerk as of February 24, 2008).

5 14. If the notice is not filed with the county clerk, the applicable statute of limitation is 180
 6 days after the public agency’s decision to undertake the project or, if the project is undertaken without a
 7 formal decision, 180 days after commencement of the project. *See* Public Resources Code § 21167(d);
 8 CEQA Guidelines, 14 C.C.R. § 15112(c)(5)(B). Regardless of whether construction commenced, this
 9 action is thus timely if filed by March 7, 2009, within 180 days of September 8, 2008, when the
 10 categorical exemption decision was made. Since this appeal is filed on March 5, 2009, it is timely.

11 FACTUAL BACKGROUND

12 15. Darling’s rendering facility has a history of odor pollution with 28 confirmed complaints
 13 and 30 unconfirmed complaints from 2003 to 2007. *See* Ex. B at 2.

14 16. Darling announced in early 2008 that it intended to build a new biodiesel facility that
 15 would use the rendered fat from its currently operating plant to produce biodiesel. The Project would
 16 construct an entirely new facility capable of producing 10,000,000 gallons of biodiesel next to Darling’s
 17 current rendering plant. *See id.* at 1-2. Darling projects that the biodiesel facility will take five to six
 18 months to construct and will cost an estimated \$7 million dollars. *See id.* at 3, attach. B. Darling’s
 19 proposed biodiesel facility will add three to four 100,000 gallon above-ground storage tanks, four to five
 20 10,000 gallon above-ground storage tanks, fat refining vessels, a methanol recovery system, a methanol
 21 recovery scrubber, a marine fueling station, and a loading system to its existing rendering plant. *See id.*
 22 at 3, 6, 15. This facility will be producing, using, handling, and storing hazardous wastes that are not
 23 used in the current rendering operation such as methanol and biodiesel. *See* Ex. B.

24 17. On September 8, 2008, the Planning Department issued a “Certificate of Determination:
 25 Exemption from Environmental Review” for Darling’s proposed biodiesel facility. Ex. A. The
 26 Planning Department found that the Project was exempt from review under CEQA because it qualified
 27 as a Class 1 exemption and there were “no unusual circumstances that would suggest a reasonable
 28 possibility of a significant environmental effect.” *Id.*

FIRST CLAIM

18. Petitioner realleges and incorporates by reference Paragraphs 1 through 17, as though fully alleged herein.

19. CEQA requires the County to conduct adequate environmental review prior to making any formal decision regarding projects subject to the Act. *See* CEQA Guidelines § 15004.

20. Respondent failed to consider all aspects of Darling's proposed project to add a new biodiesel process to existing facility. Respondent failed to consider that, once constructed, Darling's new biodiesel facility will include: 3 to 4 100,000 gallon above-ground storage tanks, 4-5 10,000 gallon above-ground storage tanks, possible methanol recovery systems, a loading system, and marine fueling station. *See* Ex. B. The Project would handle and store hazardous wastes not currently used by the rendering facility. Moreover, the Project would generate air, water, and solid wastes. Respondent improperly relied on planned mitigation measures for these wastes in its September 8, 2008 decision. In addition, it would increase truck and boat traffic in the area. *See id.*

21. The exemption only considered the above-ground storage tanks when performing the environmental review. The exemption did not consider the marine fueling station that the Port anticipates being built. *Compare* Ex. B with Ex. A. The exemption did not take into account that hazardous substances, such as methanol, will be stored on site. *Id.* Nor did the exemption take into account Darling's past odor complaints or any possible increased traffic in the neighborhood.

22. Respondent should not have applied the Class 1 exemption to Darling's project. The "key consideration" of whether to apply a "Class 1" categorical exemption is whether the project involves "negligible or no expansion of an existing use." CEQA Guidelines § 15301. The Project, which involves changing a rendering plant into a biodiesel production facility, is an entirely new use. Therefore, the categorical exemption does not apply.

23. Respondent erred by applying the categorical exemption because there is a reasonable possibility that Darling's proposed facility will have a significant effect on the environment due to unusual circumstances. *See* CEQA Guidelines § 15300.2. At a minimum, the Planning Department should have considered all the aspects of the Project when reviewing it for CEQA applicability.

PRAYER FOR RELIEF


1 WHEREFORE, Petitioner prays for relief as follows:

- 2 1. For a peremptory writ of mandate directing Respondent to set aside the Categorical
3 Exemption.
- 4 2. For a peremptory writ of mandate directing Respondents to set aside and vacate any and
5 all approvals given for the Project.
- 6 3. For a peremptory writ of mandate directing Respondent to comply with CEQA.
- 7 4. For a permanent writ of mandate restraining all Respondent and their agents, servants and
8 employees, all Real Parties in Interest and all others acting in concert with them or in their behalf, from
9 undertaking any construction or development, issuing any construction or development approvals or
10 permits, including without limitation conditional use permits or authorizations, granting or approving
11 any funding, or taking any other action in any way to implement the Project, pending full compliance
12 with CEQA, the CEQA Guidelines and all other requirements of law.
- 13 5. For costs of the suit incurred herein.
- 14 6. For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure; and
- 15 7. For such other and further relief as the Court deems just and proper.
- 16
- 17

18 Dated: March 5, 2009

Environmental Law and Justice Clinic
Golden Gate University School of Law

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21 BY


Deborah Behles
Kenneth Blackwood
Cheryl Tang, Certified Law Student

23 **Attorneys for Petitioner**
24 Bayview Hunters Point Community Advocates
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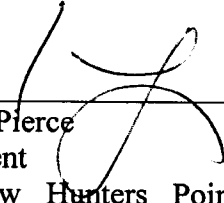
VERIFICATION

I, Karen Pierce, declare:

I am the President of Petitioner Bayview Hunters Point Community Advocates ("Advocates") and am authorized to make this verification. I have read the above Verified Petition for Writ of Mandate and know its contents. The facts alleged in the Verified Petition for Writ of Mandate are true of my own knowledge and belief.

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

Executed this 4 day of March 2009 at San Francisco, California.



Karen Pierce
President
Bayview Hunters Point Community Advocates

Bayview Hunters Point Community Advocates vs. San Francisco Planning Department

INDEX TO EXHIBITS

- Exhibit A: September 8, 2008 San Francisco Planning Department Decision
Re: Darling Biodiesel Facility
- Exhibit B: September 4, 2008 San Francisco Port Memorandum
Re: Darling Lease Amendment
- Exhibit C: March 4, 2009 Letter
Re: Notice of Commencement of CEQA Action
- Exhibit D: Email Correspondence with County Clerk
Re: Status of Filing Categorical Exemption



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination EXEMPTION FROM ENVIRONMENTAL REVIEW

Case No.: 2008.1052E
 Project Title: 429 Amador Street (Pier 92) - Darling Biodiesel Facility
 Zoning: M-2, 40-X
 Block/Lot: 4502A/002
 Lot Size: 195,000 square feet
 Project Sponsor: Diane Oshima, Port of San Francisco, (415)274-0553
 Staff Contact: Don Lewis (415) 575-9095, don.lewis@sfgov.org

1650 Mission St.
 Suite 400
 San Francisco,
 CA 94103-2479

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Planning
 Information:
 415.558.6377

PROJECT DESCRIPTION:

Darling International proposes to add a biodiesel facility within its existing rendering facility to process refined fats, oils, and greases into biodiesel, which is a renewable fuel for diesel engines, and is a clean burning alternative fuel. The biodiesel facility would include the installation of five chemical tanks, two small methanol recovery vessels, and two fat refining vessels to further support the processing of finished fats into biodiesel, and three 100,000-gallon aboveground storage tanks (AST's) to hold the biodiesel product. All proposed tanks would be aboveground with double walled secondary containment. The proposed biodiesel operation would use the existing building adjacent to the east side of the existing tank terminal for the rendering facility.

(Continued on Second Page.)

EXEMPT STATUS:

Categorical Exemption, Class 1 [State CEQA Guidelines Section 15301(e)(2)]

REMARKS:

See next page.

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.


 BILL WYCKO
 Acting Environmental Review Officer


 Date

cc: Diane Oshima, Port of San Francisco
 Harry O'Brien
 Supervisor Sophie Maxwell

Exemption / Exclusion File
 Bulletin Board
 M.D.F

PROJECT DESCRIPTION (continued):

Darling International, a current Port of San Francisco tenant, currently operates a rendering facility on the project site which is located in the southern waterfront, south of Islais Creek on Pier 92. The existing rendering facility, which processes byproducts from food industries, includes a tank terminal of approximately 30 existing AST's ranging in size from approximately 2,500 to 270,000 gallons. The proposed project would not remove any of the existing rendering facility. The fats produced from the rendering facility would be further processed into biodiesel through a process called trans-esterification. The biodiesel may then be used in pure form (B100) in certain types of engines, or mixed in smaller, varying proportions with petroleum-based diesel to meet other engine specifications. The proposed biodiesel facility would not involve any petroleum products or mixing.

The project site is within the M-2 (Heavy Industrial) zoning district and is within a 40-X height and bulk district. The current rendering plant is operated under a Conditional Use authorization from the San Francisco Planning Commission, and the Zoning Administrator has determined that the proposed biodiesel facility would be consistent with that authorization. The proposed biodiesel facility would also require additional permits from the Bay Area Air Quality Management District (BAAQMD), the Department of Public Health, and the Port of San Francisco, and the San Francisco Fire Department.

REMARKS:

The proposed project would refine finished fats, oils, and greases into biodiesel and would store the biodiesel onsite. This type of B100 biodiesel has a very low volatility and produces a mild odor since it takes volatility to release odor. Users of B100 describe its scent as being very similar to cooking oils, and storage of the B100 would be similar to storing vegetable or olive oil. The equipment associated with the biodiesel production does not generate noise except for the electric motors which are not expected to add to the already low noise level from the existing rendering operation. Additionally, the project site is located in a heavy industrial area and does not provide habitat for any rare or endangered plant or animal species.

The Bay Area Air Quality Management District (BAAQMD) has established thresholds for projects requiring its review for potential air quality impacts. These thresholds are based on the minimum size of projects that the District considers capable of producing air quality problems due to vehicle emissions or stationary sources of pollution. Emissions from heavy-duty diesel engines are a major source of particulate matter, oxides of nitrogen, and air toxics, and reducing these emissions is a high priority for the BAAQMD, and other air quality agencies. Biodiesel is a cleaner-burning diesel replacement fuel made from natural, renewable sources such as new and used vegetable oils and animal fats. The proposed biodiesel facility would reduce the amount of harmful emissions from diesel engines by producing an alternative fuel to be used instead of petroleum-based diesel. Darling International is in negotiations to amend its lease with the Port of San Francisco to accommodate the proposed improvements for the biodiesel facility. The amended lease would include provisions requiring Darling International to comply with all applicable environmental regulatory standards and requirements. The BAAQMD has found that Darling's current plant operations meet or exceed all applicable air emissions regulations. Additional

Exemption from Environmental Review**CASE NO. 2008.1052E
Pier 92 – Darling Biodiesel Facility**

BAAQMD permits may be required as a condition of biodiesel processing operations, depending on design specifications of tanks and the degree of heating involved. Therefore, no significant air quality impacts would be generated by the proposed project.

The project proposes to store the biodiesel into three 100,000-gallon AST's that would be double walled with secondary containment. B100 biodiesel has few of the problems associated with regular petroleum diesel, since it is much less flammable and toxic. Even so, biodiesel meets the definition of "hazardous substance" provided in the California Health and Safety Code because the most recent ASTM biodiesel specifications allow 0.2% of methanol, which is a hazardous substance. The State Water Resources Control Board only provides regulations for underground storage tanks. The existing rendering facility would need to update its current permits with the Department of Public Health (DPH), the regulating agency as directed by the EPA, and the San Francisco Fire Department would also need to be contacted before the project is implemented.

The project would not generate wastewater or result in discharges that would have the potential to degrade water quality or contaminate a public water supply. Project-related wastewater and storm water would flow to the City's combined sewer system and would be treated to standards contained in the City's National Pollutant Discharge Elimination System (NPDES) Permit for the Southeast Water Pollution Control Plant prior to discharge. Therefore, the proposed project would not result in significant water quality impacts.

Conclusion

The proposed biodiesel facility would install a total of 12 aboveground storage tanks (AST's) that would occupy an area of approximately 1,500 square. The proposed AST's would be smaller in size than the majority of the existing AST's and would result in less than a five percent increase in the overall AST footprint and less than a three percent increase in the overall operational footprint of the existing rendering facility. CEQA State Guidelines Section 15301(e)(2), or Class 1, provides an exemption from environmental review for additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet. Therefore, the proposed addition of the biodiesel facility would be exempt under Class 1.

CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity would have a significant effect on the environment due to unusual circumstances. There are no other unusual circumstances surrounding the proposed project that would suggest a reasonable possibility of a significant environmental effect. The proposed project would be exempt under the above-cited classification.

For all of the above reasons, the proposed project is appropriately exempt from environmental review.