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Turn Down the Lights

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

10 TURN DOWN THE LIGHTS,
11 Petitioner,
12 v.
13 CITY OF MONTEREY,
14 Respondent.

Case No. **M116731**

**PETITION FOR WRIT OF MANDATE
AND TO ENFORCE CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

Petitioner TURN DOWN THE LIGHTS alleges as follows:

17 1. This petition arises from the City of Monterey's action to install throughout
18 the City new street lights that are new fixtures with bright light emitting diodes (LEDs).
19 The new lights are significantly brighter than the old lights. The City Council did not act
20 to approve the new fixtures or brighter lights. The City Council was not presented with
21 street light options, or a discussion of the impacts of the new street lights, or ways to
22 mitigate the impacts. The City did not perform the required environmental review of the
23 new lights pursuant to the California Environmental Quality Act (CEQA).

24 2. Petitioner TURN DOWN THE LIGHTS is an unincorporated association of
25 City of Monterey residents, private property owners, business owners, employees of
26 City businesses, visitors to the City, and people who drive through the City to get to
27 other Peninsula destinations. Members of Turn Down the Lights have a clear, present,
28 and beneficial interest in the natural environment and the built environment within the

1 City of Monterey, in the safety and security of persons within the City, and in the
2 enforcement of environmental quality laws affecting the City.

3 3. Respondent CITY OF MONTEREY (Respondent or City) is a public entity
4 and municipal corporation located in the State of California. It is located on the
5 Monterey Peninsula in Monterey County and is required to comply with its own General
6 Plan, its ordinances, its policies, certain Coastal Act policies, rules and regulations, and
7 the California Environmental Quality Act (CEQA), among other statutes, regulations,
8 and policies, in regard to land use, public hearings and planning decisions within the
9 City's jurisdiction.

10 CITY OF MONTEREY HISTORIC DISTRICT

11 4. According to the City,

12 Monterey is one of the most historic cities in
13 California. Original adobes are found on many street
14 corners. Some are open for tours while others house
15 contemporary businesses. Visitors can wander
16 through Monterey's rich past, from California's first
17 theatre to Colton Hall, where the state's original
18 constitution was written.

19 This statement is on the City's home page at <http://www.monterey.org/>.

20 5. The Monterey Old Town Historic District is a United States National
21 Historic Landmark. Monterey was established in 1826, and Monterey was the Mexican
22 capital of California until the American occupation in 1847. The Old Town Historic
23 District includes buildings from the 18th and 19th centuries that illustrate the Spanish
24 colonial era of the town. According to the National Register of Historic Places, the
25 District area totals over 800 acres (<http://www.nationalregisterofhistoricplaces.com>).
26 These buildings in the District include the Old Customhouse, the only custom house
27 north of Mexico from 1828-1845. In June 1932, the Old Customhouse became
28 California's first State Historic Landmark. The historic buildings also include the
Thomas Larkin House from 1835, one of the first two-story adobes in California, and

1 Casa Alvarado, the home of Juan Bautista Alvarado, the governor of California from
2 1836 to 1842.

3 6. The Monterey Old Town Historic District consists of two areas. The
4 southern section is bounded roughly by the four blocks surrounding the intersection of
5 Madison and Pacific streets. The northern section borders on the Monterey Bay and
6 includes the blocks surrounding the intersections of Scott, Pacific, Olivier, Calle
7 Principal, and Alvarado Streets. The district is included in the Monterey State Historic
8 Park, which is part of the California State Park system.

9 7. The Monterey State Historic Park is a group of restored historic buildings;
10 the Custom House, the Cooper-Molera Adobe Complex, the Larkin House, California's
11 First Brick House, Colton Hall (where the California Constitution was signed), Old
12 Whaling Company, the Stevenson House, the First Theater, the Pacific House
13 Museum, the Interpretive House, Casa del Oro, and Casa Soberanes. These houses
14 display the cultural diversity that guided California's transition from a remote Spanish
15 outpost in Las Californias province, to an agricultural Mexican Alta California territory, to
16 United States statehood. These influential adobe houses made up California's earliest
17 capitol buildings. Colton Hall was the site of the state's first constitutional convention.

18 8. The historic buildings of Monterey State Historic Park retain their rich
19 heritage, preserving an important part of Californian as well as Spanish, Mexican, and
20 American history. The State park includes an Interpretive Center and the Pacific House
21 Museum. The park provides tours of the historic houses and museums for the public.
22 The 'Secret Gardens of Old Monterey' are part of the open air museum for visitors.

23 9. According to the City's recently completed Downtown Area Historic
24 Context Statement and Reconnaissance Survey, 55 properties within the survey area
25 are designated historic resources on a National, State, or local level. Thirty of the 55
26 resources are listed in the National Register of Historic Places. Of the 30 properties, 24
27 are contributors to the National Historic Landmark District. Two additional properties,
28 539 Hartnell Street (Fremont Adobe) and 230 Olivier Street (Thomas Cole House), are

1 recommended for inclusion in the National Historic Landmark District. The survey
2 found that 12 additional properties appear eligible for the National Register, 24
3 properties appear eligible for local designation, and 140 properties, based on their age
4 and architectural appearance, may be individually significant and are recommended for
5 future evaluation.

6 10. The City's 1991 Downtown Area Plan recommends as follows:

7 a series of infrastructure improvements –
8 modifications to streets, sidewalks, street furniture,
9 light fixtures, etc. – which would: (a) identify when a
10 person has entered historic downtown Monterey and
11 (b) complement the historic buildings

12 Infrastructure recommendations are to . . . design
13 street lights, benches, etc., for each subarea based
14 on its historic period

15 Another . . . goal is to remove streetscape elements,
16 which have a negative effect on historic sites. This
17 includes overhead wires, contemporary streetlights,
18 benches, street signs, fire hydrants, etc. It is difficult
19 to take a clear photograph of any historic building
20 without the intrusion of one of these contemporary
21 street fixtures. The Historic Preservation Commission
22 suggests that any streetscape improvements near
23 historic buildings be reviewed for their impact on the
24 setting of a historic building. Over time, the intrusions
25 can be eliminated or minimized.

26 11. The Downtown Plan has a specific policy and implementing program as
27 follows:

28 POLICY F: Establish infrastructure improvements which
identify the entrances to the historic area and historic
subareas.

Program F5: Fixtures. Street lights, benches, etc.
could be designed for each subarea based on its
historic period.

1 **FACTUAL BACKGROUND**

2 12. On or about November 25, 2009, a City staff person prepared a document
3 entitled "Project Application" for "Light Bulb Replacements." The description stated that
4 the project was "bulb replacement . . . w/induction lighting." Induction lighting is a long
5 life lamp with energy saving potential higher than LED. Induction lighting is 50% more
6 efficient than compact fluorescent light bulbs, and cuts energy usage of traditional
7 lamps like mercury vapor and high pressure sodium by half or more. It has a tested
8 lifespan of over 30,000 hours. It is considered an environmentally friendly solution that
9 symbolizes reduction, recycle, and reuse.

10 13. On the "Project Application" document, the City was shown as the
11 applicant and property owner. The document asserted that the "light bulb replacement"
12 project was exempt under CEQA guidelines, section 15301, subdivision (b). That
13 assertion is dated "1/4/09." Section 15301 provides a categorical exemption for
14 "existing facilities" where the project involves "negligible or no expansion of use."
15 Subdivision (b) addresses "existing facilities of both investor and publicly owned utilities
16 used to provide electric power."

17 14. The Monterey City Council agenda typically includes a consent calendar.
18 The consent calendar is intended for routine and noncontroversial items. No public
19 hearing is held and no special notice is provided. Decision making bodies, such as the
20 Monterey City Council, generally vote on all the items on the consent calendar as a
21 group, without discussion of individual items.

22 15. On or about December 1, 2009, the City Council's consent calendar
23 contained thirteen items. One consent item was identified on the agenda as follows:
24 "Authorizing the Application for a Low-Interest Loan from the California Energy
25 Commission to Implement Energy Efficient Measures (ARRA)." The agenda did not
26 mention any specific proposed use of the loan.

27 16. The author of the staff report was the General Services Superintendent.
28 The first paragraph of the staff report stated in its entirety as follows:

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RECOMMENDATIONS

That the City council adopt the attached resolution authorizing the City of Monterey to apply for a low-interest (1.00%) energy efficiency loan from the California Energy Commission (CEO) of up to \$1,560,000 to implement energy efficient measures.

17. Further down, the staff report stated in part as follows:

ENVIRONMENTAL DETERMINATION

None required as part of this action. Implementation of these energy efficiency measures are not categorized as a project under California Environmental Quality Act (CEQA). No conceivable environmental impact is foreseen

18. The City Council adopted the consent calendar without any discussion of the application for a low-interest loan.

19. On or around early December 2009, the City apparently contacted the Office of Historic Preservation as part of a federal section 106 consultation. The consultation was not part of a CEQA review. On December 21, 2009, the State Historic Preservation Officer wrote to the City that he understood that "all external fixtures will remain unchanged." He reminded the City that if the project description changed, the City may have future responsibilities. No mention was made of LED lights.

20. On or around September 7, 2010, the City Council's consent calendar contained thirteen items. One consent item was identified on the agenda as follows: "Awarding a Contract for the Recreation Trail Inductive Lighting Installation Project, and Appropriating the Funds for the Energy Efficient Projects American Recovery and Reinvestment Act (ARRA) 1% Loan." The agenda did not mention any specific energy efficient project for which the loan proceeds might be used.

21. The author of the staff report was the General Services Superintendent. The first paragraph of the staff report stated in its entirety as follows:

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RECOMMENDATIONS

That City Council adopt the attached resolutions:

1. Awarding a contract to JM Electric in the amount of \$141,800, and authorizing staff to expend up to an additional 15% for contingencies, for the execution of the Recreation Trail Inductive Lighting Installation Project; American Recovery and Reinvestment Act (ARRA).

2. Authorizing the appropriation of \$1,551,918 for the Energy Efficiency Measures 1% interest loan from the California Energy Commission to implement energy saving projects.

22. Further down, the staff report stated in part as follows:

ENVIRONMENTAL DETERMINATION

This project is exempt from California Environmental Quality Act (CEQA) determination.

23. The City Council adopted the consent calendar without any discussion of the appropriation of funds or of specific "energy saving projects" that might be funded. The resolution only authorized and directed the Finance Director to make budget appropriations. The resolution did not adopt a CEQA determination or approve a specific lighting project.

24. On or about November 1, 2011, the City Council's agenda included an item called: "Award Street and Tunnel Lighting Replacement Project Contract."

25. The first paragraph of the staff report stated in its entirety as follows:

RECOMMENDATIONS

That the City Council adopt the attached resolution awarding a contract to Republic Street and Tunnel Lighting Replacement Project for the base bid plus additive alternate bid amount of \$934,655, and authorize staff to expend up to an additional 10% for

1 construction contingencies as authorized by the
2 Assistant City Manager, or his designee.

3 26. Further down, the staff report stated in part as follows:

4 ENVIRONMENTAL DETERMINATION

5 The City's Planning, Engineering, and Environmental
6 Compliance Division determined that this project is
7 exempt from CEQA regulations under Article 19,
8 Section 15302.

9 27. The staff report did not disclose a design of the proposed replacement
10 fixtures, or identify possible adverse impacts of the lights, or mitigations to the impacts,
11 or alternatives to the contract. The meeting minutes do not show any council
12 comments or public comments on the item. The item was approved. The agenda did
13 not mention a CEQA determination or a specific lighting project. The resolution did not
14 adopt a CEQA determination or approve a specific lighting project.

15 28. The installation of the new lights is a project under the California
16 Environmental Quality Act. According to the City, the new lights are intended to last ten
17 years.

18 29. The City did not prepare an Initial Study, Mitigated Negative Declaration or
19 Environmental Impact Report (EIR) pursuant to CEQA. Other than on energy usage
20 impacts, the City did not prepare an environmental assessment of the new lights. The
21 City's new lights were not reviewed or approved by the City's Historic Preservation
22 Commission, Architectural Review Committee, Planning Commission, or City Council.
23 The City did not hold a public hearing to present the new lights to public scrutiny. The
24 City did not have a demonstration or test installation of the lights in order to allow the
25 public and decisionmakers the ability to see the lights and assess their impacts and for
26 residents to give feedback.

27 30. In January 2012, the City began replacing the street lights. The new lights
28 were far more than "light bulb replacements." Instead, the entire top part of the street
light is removed and replaced with a different fixture that is approximately six feet long,

1 with a different head, a different light source, and significantly brighter lights. The
2 previous fixtures had a diffusing shade, which diffused the light. The new fixtures do
3 not have a diffusing shade. On the new street light fixtures, the bright light-emitting
4 diodes are directly visible to the naked eye from nearby and from blocks away.

5 31. Members of the public, including members of Turn Down the Lights,
6 immediately began to object to the new lights for many reasons. The reasons included
7 the visual impacts of the street light fixtures themselves, and the harsh glaring light cast
8 by the new fixtures. Members of the public commented that the new lights are painful
9 to look at, are obtrusive, create unsafe situations, and detract from the quality of life in
10 the City. They commented that the new lighting invaded private property, shone
11 through private windows in private property, and had significant effects on historic
12 resources in the City.

13 32. At the February 21, 2012 Council meeting, James Bryant spoke about the
14 new LED lighting that is being installed throughout the City. Mr. Bryant asked that a
15 different standard be established for the Historic District. He cautioned that the new
16 lights would detract from the atmosphere of the Historic District. Mr. Bryant is a past
17 president of the Alliance of Monterey Area Preservationists, owns a business in the
18 Historic District, and occupies a residence in the Historic District.

19 33. On February 21, 2012, the City filed a Notice of Exemption with the
20 County of Monterey. The project was described as "replacement of existing street and
21 tunnel lights with LED street light fixtures and induction fixtures in the tunnel." In the
22 notice, the City claimed that the project was exempt under CEQA Guidelines, section
23 15302. That section provides an exemption for "replacement or reconstruction of
24 existing structures and facilities where the new structure will be located at the same site
25 as the structure replaced and will have substantially the same purpose and capacity of
26 the old structure replaced"

27 34. The City of Monterey General Plan requires as follows: "A proposed
28 private or public project must be found consistent with the recommendations of the

1 general plan before it can be approved by the city. Consistency with the general plan
2 under state law means that a proposed project must conform or agree with the goals,
3 policies, objectives, land uses, and programs specified in the general plan.” (General
4 Plan, p. 14.) The City did not make a consistency finding as to the new lights.

5 35. Petitioner complied with Public Resources Code section 21167.5 by, on
6 March 22, 2012, faxing and mailing notice to Respondent of Petitioner’s intent to file an
7 action under CEQA. Proof of service of that notice is attached to this petition as Exhibit
8 A.

9 CALIFORNIA ENVIRONMENTAL QUALITY ACT

10 36. The fundamental purpose of CEQA is to ensure “that environmental
11 considerations play a significant role in governmental decision-making” (*Friends of*
12 *Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 263). Consequently,
13 environmental information should be furnished to the decisionmakers “at the earliest
14 possible stage” (*Bozung v. Local Agency Formation Commission of Ventura County*
15 (1975) 13 Cal.3d 263, 282).

16 37. The Supreme Court has repeatedly observed that the Legislature
17 intended CEQA to be interpreted to afford the fullest possible protection to the
18 environment within the reasonable scope of the statutory language. (See, e.g., *Citizens*
19 *of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563-564.) Central to
20 CEQA is the environmental impact report (EIR), which has as its purpose informing the
21 public and government officials of the environmental consequences of decisions before
22 they are made. (*Laurel Heights Improvement Association of San Francisco, Inc. v.*
23 *Regents of University of California* (1988) 47 Cal.3d 376, 392.) “An EIR must be
24 prepared on any ‘project’ a local agency intends to approve or carry out which ‘may
25 have a significant effect on the environment.’ ” (Pub. Resources Code, §§ 21100,
26 21151; CEQA Guidelines, § 15002, subd. (f)(1).)

27 38. Under CEQA, the term “project” is broadly defined and includes any
28 activities which have a potential for resulting in a physical change in the environment,

1 directly or ultimately. (Pub. Resources Code, § 21065; CEQA Guidelines, §§ 15002,
2 subd. (d), 15378, subd. (a).)

3 39. The purpose of environmental review pursuant to CEQA is “to inform the
4 public and its responsible officials of the environmental consequences of their decisions
5 before they are made.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52
6 Cal.3d 553, 564.)

7 IMPACTS OF STREET LIGHTS

8 40. Street lights, and LED lights in particular, are known for having potential
9 impacts and problems. Glare has long been recognized as a potential problem with
10 street lights.

11 41. A 2011 City of Pittsburgh study examined LED street lights, and
12 discussed the assumption that “street lights should illuminate but not be seen.” One of
13 the study’s basic criteria was that “the LED light source should not be visible to drivers
14 or pedestrians, unless they are looking directly up.” The study pointed out that “glare
15 should be eliminated from most viewing angles with the exception of looking straight
16 up.” The study suggested dimming the lights during periods of time with low activity, in
17 order to create additional energy savings. As for overall visual experience of LED street
18 lighting, the study emphasized that “the total effect of intensity, color temperature,
19 clarity of light, and beam spreads should enhance the safety and aesthetic beauty of
20 the landscape and be a place where people want to be.”

21 42. The Pittsburgh study recommended:

22 All replacement luminaires and new luminaires should
23 be tested and certified to meet the performance
24 criteria set forth in this report.

25 43. As to historic areas, the report recommended:

26 Contemporary luminaire design is encouraged except
27 in historic districts where luminaire design should be
28 compatible with the local context.

1 44. As to actual impacts of the replacement LED lights, the Pittsburg report
2 recommended these steps before committing to new fixtures (luminaires):

3 Testing and evaluation of the replacement luminaires
4 should be conducted in a laboratory with proper
5 photometric equipment. Also, field evaluation of
6 installed LED luminaires in the three selected
7 business districts should be conducted using a
8 scoring system that will rate beam spread, color
9 rendering, light intensity, clarity, glare, integration with
 the surrounding context, visual experience, and
 luminaire enclosure design.

10 45. The Pittsburgh study, as well as significant other information relating to
11 the impacts of LED street lights, is readily available on the web and easily accessible at
12 no cost to the City. There is no indication that the City sought out this information or
13 other information about the impacts and potential impacts of LED lights on this City or
14 on communities in general.

15 46. A 2007 New Yorker article submitted to the City during its review of the
16 City's green building ordinance discussed the problems of bright light and glare. The
17 article pointed out that bright lighting can be painful to look at, and as the eye tries to
18 adapt to it, the eye cannot see anything darker. The human eye can take up to an hour
19 to recover their full function after exposure. Deer appear to be extremely vulnerable to
20 temporary blinding by bright light. Bright lights can be lethal to insects, who are drawn
21 to the light; also the light causes the insects to rest, where they become easy prey.

22 47. The New Yorker article pointed out how bright floodlights often do not help
23 prevent crime, and that darkness and motion sensor lights can be more effective. In
24 general, as one expert stated, "the darker the area, the less light you need."

25 48. The New Yorker article discussed how some cities and communities have
26 addressed and mitigated the impacts of bright lights. Tucson's city code limits the
27 brightness of exterior light fixtures and requires them to employ a light source that
28 cannot be seen by someone standing to the side. This eliminates the problems of light

1 fixtures that cast their light sideways, into the eyes of passers by. Caltrans has
2 significantly reduced its use of continuous lighting on highways, and has increased its
3 use of reflectors and other passive guides, which concentrate luminance where drivers
4 need it rather than dispersing it over broad areas. Passive guides also save money,
5 because they do not require electricity.

6 49. Light trespass is a serious environmental problem. Light trespass is easily
7 quantifiable as a measure of illuminance and easily measured in the field by a standard
8 light meter (similar to a meter purchased from a camera store). For example, a San
9 Diego County ordinance limits the amount of stray light that is allowed to fall at a point
10 1.5 meters inside a private property line. An Illinois city ordinance classifies light falling
11 on residences from a roadway lighting system in excess of 3 lux as a public nuisance.

12 50. Light trespass can be correctly equated to wasted energy. Energy wasted
13 by the misdirection of roadway light is a direct side effect of light trespass. According to
14 experts, ways to minimize the problems of light trespass are simple and inexpensive,
15 and include proper placement and the selection of the appropriate light fixture for the
16 location. For example, a fixture that may be appropriate for a broad multilane City
17 thoroughfare would be inappropriate for a narrow residential road.

18 51. The solutions to minimizing the problems of light trespass are simple and
19 inexpensive. Prior to installing the new lights, the City did not take any steps to analyze
20 or minimize light trespass of the new lights.

21 52. The adverse aesthetic effect caused by considerable wasted light is
22 characterized as clutter. Another adverse aesthetic effect is the visual distraction
23 caused by a large number of lighting sources with noticeable source luminance. The
24 lighting design should be used to enhance the aesthetics of the area, not destroy it.

25 **RESPONDENT'S ACTIONS**

26 **VIOLATION OF LAW**

27 53. The City's claimed categorical exemptions do not apply to the new lights.
28 "A categorical exemption does not apply where there is any reasonable possibility that

1 proposed activity may have a significant effect on the environment.” (*Berkeley Hillside*
2 *Preservation v. City of Berkeley* (2012) 203 Cal.App.4th 656, 669.)

3 54. Here, there is a reasonable possibility that the new street lights may have
4 a significant effect on the environment. Given that many of the new lights are already
5 installed, that possibility is reality: the new lights are having a significant effect on the
6 environment. Because there is substantial evidence to support a fair argument under
7 CEQA that the new lights would have one or more significant impacts, an exemption is
8 not appropriate for the street light replacement project. (See *Berkeley Hillside*
9 *Preservation v. City of Berkeley, supra*, 203 Cal.App.4th 656, 675.)

10 55. The City of Monterey’s new lights cause unanalyzed and unmitigated
11 impacts. These impacts include, but are not limited to: glare, including glare in the eyes
12 of drivers and pedestrians causing unsafe conditions; aesthetic impacts; visual clutter;
13 visual distraction; energy waste; inappropriate design that is not consistent with the
14 City’s historic areas, including the National Register Downtown Historic Districts and the
15 adobes and historic properties in various areas of the City; brightness and glare that is
16 inconsistent with and harms the Historic Districts, thereby causing negative impacts on
17 cultural resources; security impacts; wildlife impacts, including birds who rested on the
18 previous fixtures; other biological resources impacts; energy impacts; impacts on
19 private property, including illumination of private property; unwelcome trespass on
20 private land; the creation of conditions that present a life safety hazard; the creation of a
21 condition on or use of property which is a menace to the public health and safety; and
22 the creation of undesirable condition of private property.

23 56. Monterey has many narrow streets, curving roadways, and hills. The new
24 lights are not adapted to the narrow streets, curved roads, or hills, and cause particular
25 impacts in those areas. The City’s new lights cause blinding glare, discomfort glare and
26 disability glare. These impacts are caused when confronted by a single light and a
27 series of lights.

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1 57. Discomfort glare is the annoying or even painful sensation from viewing a
2 bright light, which may result in driver error. Disability glare is the actual temporary
3 vision loss attributed to looking at a bright light. Disability glare causes persons to avert
4 their eyes from the veil of light being scattered across their retinas. The veil reduces
5 the ability to see.

6 58. Bright lights shining onto streets may temporarily blind drivers. Older
7 drivers are particularly vulnerable to the effects of bright lights, because older drivers'
8 eyes undergo a naturally aging process that reduces their visual abilities. Drivers with
9 common eye conditions also are more vulnerable to the impacts of bright lights. The
10 hazards created by bright lights on streets are well documented. Bright lights creates
11 dangerous conditions for drivers, and the City's new LED lights increase the level of
12 danger for drivers in the City. As a result, all persons in vehicles, sidewalks, and
13 crosswalks are placed at increased risk.

14 59. Light and glare are environmental impacts under CEQA. Appendix G to
15 the CEQA Guidelines is a sample environmental checklist form that is used by many
16 agencies, including the City of Monterey, to prepare initial studies under CEQA. On the
17 checklist, the first environmental impact category is aesthetics. One of the four
18 aesthetics questions that should be asked by an agency is "Would the project create a
19 new source of substantial light or glare which would adversely affect day or nighttime
20 views in the area?"

21 60. Glare is referred to by experts as "the most annoying and safety related
22 aspect of light pollution." According to experts, glare can easily be reduced.

23 61. Historic resources are protected under CEQA. The Appendix G checklist
24 includes a section on cultural resources. The first question is "Would the project cause
25 a substantial adverse change in the significance of a historic resource"? The City's new
26 lights have negative impacts on historic resources. The fixtures are visually
27 incompatible with the historic districts and inconsistent with the purposes of the districts.
28 The City's new lights violate the 1991 Downtown Area Plan policies. The contemporary

1 design creates an artificial setting for the 18th and 19th century historic district. The
2 contemporary design and light impacts detract from the historic setting rather than
3 contribute to it. The new lights degrade the experience of an historic resource as it was
4 during its period of significance. The brightness of the LED lighting introduces a
5 disharmonious element unknown in the 18th and 19th centuries. In the City, many of
6 the historic resources are not lit at night, and those that are lit are gently illuminated with
7 lights whose light sources are unseen. The City's new streetlights has significantly
8 changed that. The introduction of harsh modern lighting adjacent to the historic
9 structures, or within a person's view of the historic structures, affects the experience
10 and historic nature of the cultural resources.

11 62. To comply with CEQA and to prevent significant impacts to cultural
12 resources, lighting in historic districts should be planned in such a way that provides
13 adequate safety but does not overly illuminate the property. Fixture design, in
14 particular, should be appropriate to the building and district. The City's new modern
15 lights overly illuminate the historic resources, and the fixture design is not appropriate to
16 the historic district. The new lights provide indiscriminate area lighting, which also is not
17 appropriate to the historic district.

18 63. The new lights are causing impacts of light trespass throughout the City.
19 The new lights allow some of the new bright light to fall on areas away from the road
20 such as private gardens and houses, brightening the rooms of private residences. In
21 some cases, the effect is the same as if a City employee were standing on the street
22 shining a bright spotlight into private residences. The new lights are causing significant
23 impacts that the previous lights did not.

24 64. Night-time lighting is known to affect human health, including cancer risk.
25 The City's new lights create significant new light that may affect human health. For
26 example, the new lights cast light that trespasses into private residences and hotels,
27 and decreases the ability of residents and visitors to have a darkened room to sleep in.
28 Loss of sleep affects human health. Whiter light, such as that cast by the City's LED

1 lights, causes more problems than the yellow glow of the old lighting. The human eye
2 is more sensitive to whiter light, so when light from the LEDs enters windows, it can
3 reduce melatonin production in the human brain. Melatonin is a naturally occurring
4 hormone that serves many functions in the human body.

5 65. The new lights cause residents to be unable to see the stars from their
6 residential property as they could before. The new lights are on every night at full
7 brightness, and compete with – and decrease the ability to see – the natural cycles of
8 the moon.

9 66. The new lights are inconsistent with numerous City of Monterey General
10 Plan policies and with the stated overriding goal of the General Plan: “The overriding
11 goal of all General Plans since the 1939 Master Plan has been to conserve historic,
12 natural, and scenic values” For example, the new lights are inconsistent with City
13 of Monterey General Plan Urban Design Policy f.9, which states:

14 Discourage high levels of ambient light and maintain
15 night skies where stars can be seen.

16 67. The new lights are inconsistent with City of Monterey General Plan Urban
17 Design Policy h.4, which states that the City shall “protect and enhance” the City’s
18 scenic entrances (Urban Design Goal h) as follows:

19 Roadway lighting and signing should be minimized, of
20 low-profile design, and designed to enhance the
21 scenic character of the corridor.

22 68. The new lights are inconsistent with City of Monterey General Plan Urban
23 Design Policy h.20, which states:

24 Avoid further illumination along Ryan Ranch and
25 Garden Road Business Park areas.

26 69. The City encourages pedestrians and bicyclists (e.g., General Plan Land
27 Use Policy b.4), but the new lighting creates safety problems for pedestrians and
28 bicyclists.

1 70. The safety impacts of the new lights are inconsistent with the safety goals
2 and policies of the General Plan. For example, the public is less safe due to the
3 impacts of the light, both due to visual distraction, glare, and clutter, and due to the
4 increased dark shadows cast by the new lights.

5 71. The new lights are inconsistent with General Plan Urban Design Goal e
6 (“Historic buildings, gardens, districts, and their settings should continue to be protected
7 and restored, keeping the flavor of the past”) and with Urban Design Policy e.1, “Protect
8 and enhance the setting of historic buildings.” The new lights are inconsistent with
9 Circulation policy b, which states in part: “The mobility needs of the community must be
10 met while preserving natural and historic resources.” The new lights are inconsistent
11 with Economic Policy b.1: “Preserve and enhance Monterey’s historic character”

12 72. According to the City’s General Plan, greenbelts create a beautiful setting
13 and preserve a number of natural resources including Monterey Pine trees. Greenbelts
14 serve as wildlife corridors. The General Plan’s Urban Design Element encourages
15 preservation of these forested hillsides as an essential element of the City setting. The
16 City’s greenbelts provide open space directly adjacent to developed areas. The open
17 space resources of the City are also addressed in the Urban Design and Conservation
18 Elements. The Urban Design Element focuses on the visual attributes of open space.
19 The Conservation Element addresses habitat and wildlife issues related to open space.
20 The new lights cause impacts on greenbelts and open space within the City. For
21 example, the new lights illuminate greenbelts and open space that was not illuminated
22 or only dimly illuminated before. This changes humans’ night-time experience of the
23 area, and places wildlife increasingly at risk from predation. The increased night-time
24 lighting and brightness may have significant effects on wildlife

25 73. The impacts of the City’s new lights have not been adequately addressed
26 or mitigated under CEQA. Mitigations could include different designs, shields that are
27 built into the fixtures and fully shield the light source, reduced brightness of the LEDs,
28 motion sensors for the lights, reduced hours of the lights, dimmed lights during periods

1 of low activity, fewer locations of the lights, use of reflectors instead of lights, reduced
2 electricity to the light which reduces the brightness, and other options.

3 74. Several of these potential mitigations would require less energy usage
4 than the City's lighting project, which would mean reduced environmental impacts,
5 including reduced greenhouse gas impacts. Several of the mitigations also would have
6 significantly less cost than the City's lighting project, due to reduced energy, reduced
7 cost of the materials, and other reasons. For example, dimming or turning off the lights
8 during period of low activity would save energy costs.

9 75. Alternatives to the new lights were not adequately explored by the City
10 under CEQA because the City truncated the environmental review when the City
11 decided to proceed under an exemption, instead of doing an initial study. Alternatives
12 could include different fixture designs, including designs that would be appropriate for
13 the historic district and designs that would prevent light from illuminating private
14 property, shields that are built into the fixtures, other kinds of light sources and fixtures,
15 reduced brightness of the LEDs, motion sensors for the lights, reduced hours of the
16 lights, fewer locations of the lights, reflectors instead of lights, reduced electricity to the
17 light, and other alternatives.

18 76. Several of these lighting alternatives would require less energy usage
19 than the City's lighting project, which would mean reduced environmental impacts,
20 including reduced greenhouse gas impacts. Several of the alternatives also would cost
21 significantly less than the City's lighting project, due to reduced energy, reduced cost of
22 the materials, and other reasons. For example, the lower intensity LED light fixture
23 costs approximately half of the high intensity LED fixture (approximately \$350
24 compared to approximately \$700, according to City records), while also saving money
25 through reduced energy usage.

26 77. In deciding to proceed with the project, and in relying on documents which
27 purport to exempt the project from CEQA, Respondent violated CEQA because, *inter*
28 *alia*:

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- (A) Respondent failed to proceed in the manner required by law and abused its discretion under CEQA;
- (B) Respondent's claim of exemption under CEQA is contrary to law;
- (C) The claimed CEQA exemption does not apply to the replacement of light fixtures with different fixtures that have different impacts from the previous fixtures;
- (D) Respondent's decision to proceed with the new lights was arbitrary and capricious because it was not based on research, reasonable investigation, or public hearings, and it was not consistent with adopted City plans, and;
- (E) Respondent failed to consider in any way the negative environmental impacts of the new lights and fixtures, and should be estopped and precluded from contending that no review was necessary.

ADEQUATE REMEDY

78. Unless and until the project approval is set aside or voided and/or Respondent is enjoined, Petitioner and the public will suffer irreparable harm in that the violations of law, including CEQA, will continue, the lighting will continue to cause significant unmitigated impacts, irreparable harm will occur at the expense of the citizens, residents, property owners, and visitors of and to the City of Monterey.

79. Petitioner is entitled to have the approvals set aside or voided, and is entitled to temporary and permanent relief enjoining and prohibiting Respondents from installing or maintaining the new lights without compliance with law, including CEQA.

WHEREFORE, Petitioner prays for entry of judgment as described below.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for:

1. That this Court order Respondent to vacate, void, and set aside the decisions to proceed with the installation of the new lights.

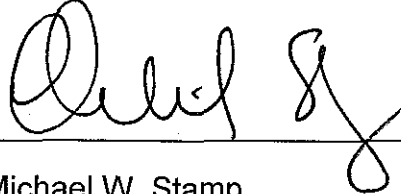
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2. That this Court order Respondent to take additional and appropriate steps to follow CEQA with regard to the new lights.
3. That this Court order Respondent to take temporary steps to mitigate the impacts of the new lights pending a decision of this Court.
4. Temporary and permanent injunctive relief.
5. An award of attorney fees and costs pursuant to law.
6. Such other relief that the Court considers just and proper.

Respectfully submitted,

Dated: March 22, 2012

LAW OFFICES OF MICHAEL W. STAMP



Michael W. Stamp
Molly E. Erickson
Olga Mikheeva

Attorneys for Petitioner,
Turn Down the Lights


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VERIFICATION

I, Julie Engell, declare as follows:

I am the authorized representative of Turn Down the Lights, Petitioner in the above matter. I have read the petition in this matter, and know the contents thereof. The same is true of my own knowledge, except as to matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed this 22nd day of March, 2012, in Monterey, California.



Julie Engell

EXHIBIT A

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF MONTEREY

3 I am employed in the County of Monterey, State of California. I am over the age
4 of 18 and not a party to the within action. My business address is 479 Pacific Street,
Suite One, Monterey, California 93940.

5 On March 22, 2012, I served the document described as follows:

6 **March 22, 2012 letter from Michael W. Stamp to Bonnie Gawf,**
7 **City Clerk of the City of Monterey,**
8 **providing written notice that Turn Down the Lights intends to file a petition under**
9 **the California Environmental Quality Act regarding the LED street lights, and**
10 **referencing Public Resources Code section 21167.5**

11 on the parties in this action as follows:

12 (X) sending via facsimile machine pursuant to Rule 2.306. Said documents were
13 sent to the below listed party(s). The fax number I used was (831) 373-0242.
14 The facsimile machine I used complied with Rule 2.302 and no error was
15 reported by the machine.

16 (X) by placing a true copy thereof enclosed in a sealed envelope and addressed as
17 shown below, and placing the envelope for collection and mailing on the date
18 and at the place shown below following our ordinary business practices. I am
19 readily familiar with this business practice for collecting and processing
20 correspondence for mailing. On the same day that the correspondence is placed
21 for collection and mailing, it is deposited in the ordinary course of business with
22 the United States Postal Service in a sealed envelope with first class postage
23 fully prepaid.

24 Addressed as follows:

25
26 Bonnie Gawf
27 City Clerk
28 City Hall
580 Pacific Street
Monterey, CA 93940

Christine Davi
City Attorney
City Attorney's Office
512 Pierce St.
Monterey, CA 93940

(Fax: (831) 646-3702)

(Fax: (831) 373-1634)

Executed, faxed and mailed on March 22, 2012 at Monterey, California.

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

25
26 *Rachael Mache*
27 _____
28 Rachael Mache