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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**PLANNING ASSOCIATION FOR  
RICHMOND, California not for profit  
corporation, FRIENDS OF LANDS END,  
an unincorporated association,**

Plaintiffs,

v.

**U.S. Department of Veterans Affairs,**

Defendants.

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

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is a civil action for declaratory and injunctive relief. Plaintiffs Planning Association for Richmond and Friends of Lands End file this suit challenging the U.S. Department of Veterans Affairs (“VA” or “Veterans Affairs”) decision to issue a categorical exclusion and permit development of Building 16 as a 14,400 square foot research building at its

San Francisco Veterans Administration Medical Center (“Medical Center”).

2. This action by the VA violates the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, et seq. by unlawfully segmenting the construction of a research facility from environmental analysis of the ongoing plan for construction of additional buildings and research facility on an already dense and overpopulated Medical Center with inadequate parking. It also violates NEPA by improperly excluding environmental review of the development of Building 16 through a categorical exclusion. A categorical exclusion is wholly inappropriate in light of the potential for this project, among other things, to (1) adversely affect noise levels in the adjacent community, (2) pose contamination risks from the nature of the research, (3) introduce excessive and unnatural light, and (4) adversely affect already poor traffic, circulation and parking conditions in and around the Medical Center. Furthermore, the project was approved without providing an opportunity for participation from other agencies, state and local governments, and the public.

3. Plaintiffs seek to set aside the decision as arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. §706(2)(A), and that the VA be enjoined from proceeding with the development of Building 16 until full NEPA review is completed and the VA has made the finding that the action does cause any adverse significant environmental effects which are not fully and publicly examined and mitigated.

## JURISDICTION

4. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1346 (federal defendant) because this action arises under the law of the United States, including the National Environmental Policy Act, 42 U.S.C. §§ 4331 et seq. and the

1 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706 and involves the United States as a  
2 defendant. There is a present, actual and justiciable controversy between the parties, and the  
3 requested relief is therefore proper under 28 U.S.C. § 2201 (declaratory relief) and § 2202  
4 (injunctive relief), and 5 U.S.C. §§ 701-706. Plaintiffs may be entitled to an award of costs and  
5 attorneys fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.  
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7 **VENUE**  
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9 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all or a  
10 substantial part of the events or omissions giving rise to the claims herein occurred within this  
11 judicial district, Defendants maintain offices in this district, and the public lands and resources in  
12 question are located in this district.  
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**PARTIES**

6. Plaintiff PLANNING ASSOCIATION FOR RICHMOND (“PAR”) is the largest neighborhood organization in San Francisco, established in 1970, with a membership of about 1,600 households in the Richmond District. PAR membership is open to everyone living, working, or owning property in the Richmond District of San Francisco. PAR's purposes include to develop and implement policies and recommendations for the maintenance and enhancement of the physical and social dimensions of life in the Richmond District; to stimulate formation of neighborhood organizations in the areas of the Richmond District currently unserved; and to support individual associations in pursuing issues relating to planning and the physical and social environment. PAR’s areas of involvement include the Golden Gate National Recreation Area, planning and zoning with the Richmond district of San Francisco and the Veterans Administration Medical Center. PAR is a nonprofit corporation organized under the laws of the State of California.

7. Plaintiff FRIENDS OF LANDS END (“FOLE”) is an unincorporated association of residents and supporters of the Outer Richmond district in San Francisco, California, whose purposes include preservation and protection of the Land’s End area in San Francisco, California. FOLE seeks to protect the residential, natural, trails and picnic areas in and adjacent to the Land’s End area, including the Golden Gate National Recreation Area (“GGNRA”), from increasing environmental impacts caused by development, including the overcrowded and chaotic Medical Center campus.

8. Plaintiffs’ members regularly use the area in and around the Medical Center and GGNRA, including Fort Miley, for walking and recreation, including to observe and enjoy

1 nature, and to pursue other recreational, scientific, spiritual, and educational activities. Plaintiffs'  
2 members derive scientific, recreational, conservation, spiritual and aesthetic benefits from the  
3 existence of this natural and open space.  
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5 9. Plaintiffs' members are concerned by the potential impacts of both this project,  
6 and the larger Enhanced Use building and facility master planning projects of which Building 16  
7 is an element and which includes adverse effects from levels of noise, glare, contaminants,  
8 traffic, loss of parking, and an increased number of staff and personnel resulting in increased  
9 congestion at Medical Facility campus, all of which adversely affects neighbors and the  
10 surrounding environment such as the Golden Gate National Recreation Area.  
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13 10. Plaintiffs attempted to participate in a review process for Building 16, but were  
14 not provided any opportunity for review, including scoping.  
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16 11. The aesthetic, recreational, moral, educational, conservation, and scientific  
17 interests of plaintiffs' members have been and will continue to be adversely affected and  
18 irreparably injured if the VA continues to act and fail to act as alleged herein. These are actual,  
19 concrete injuries caused by the agencies' violation of mandatory duties under NEPA.. These  
20 injuries would be redressed by the relief sought.  
21

22 12. Defendant UNITED STATES DEPARTMENT OF VETERANS AFFAIRS  
23 ("VA" or "Veterans Affairs") is an agency or instrumentality of the United States, and is  
24 responsible for management of San Francisco Veterans Administration Medical Center.  
25

## 26 LEGAL BACKGROUND

27 13. NEPA is our basic national charter for protection of the environment. 43 U.S.C. §  
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1 4321 *et seq*; 40 C.F.R. §1500.1(a). NEPA’s sweeping commitment is to “prevent or eliminate  
2 damage to the environment and biosphere by focusing government and public attention on the  
3 environmental effects of proposed agency action.” Marsh v. Oregon Natural Resources Council,  
4 490 U.S. 360, 371 (1989) (*citing* 42 U.S.C. § 4321).

6 14. A central purpose of NEPA is to ensure that an agency "will not act on incomplete  
7 information, only to regret its decision after it is too late to correct." Marsh v. Oregon Natural  
8 Resources Council, 490 U.S. at 374; Friends of the Clearwater v. Dombeck, 222 F. 3d 552, 557-  
9 558 (9<sup>th</sup> Cir. 2000). NEPA’s action-forcing procedures require federal agencies to ensure “that  
10 the agency will inform the public that it has indeed considered environmental concerns in its  
11 decision making process.” Baltimore Gas and Electric Company v. NRDC, 462 U.S. 87, 97  
12 (1983). “NEPA procedures must insure that environmental information is available to public  
13 officials and citizens before decisions are made and before actions are taken.” Southern Utah  
14 Wilderness Alliance v. Norton, 301 F.3d 1217, 1237 (10<sup>th</sup> Cir. 2002)(emphasis added)(citing 40  
15 C.F.R. 1500.1(b) and Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1988)).

16 15. NEPA’s disclosure goals are two-fold: (1) to insure that the agency has carefully  
17 and fully contemplated the environmental effects of its action, and (2) “to insure that the public  
18 has sufficient information to challenge the agency.” Idaho Sporting Congress v. Thomas, 137  
19 F.3d 1146, 1151 (9<sup>th</sup> Cir. 1998). By focusing the agency’s action on the environmental  
20 consequences of its proposed action, “NEPA ensures that important effects will not be  
21 overlooked or underestimated only to be discovered after resources have been committed or the  
22 die otherwise cast.” Methow Valley Citizens Council, 490 U.S. at 349.

1           16.     Public comment and input into the review process is an important aspect of  
2 NEPA. 40 C.F.R. §§ 1501.3(a)(1)(4), 1506.6; California v. Block, 690 F.2d 753, 770-71 (9th  
3 Cir. 1982).  
4

5           17.     NEPA requires federal agencies to prepare an Environmental Impact Statement  
6 (“EIS”) for major federal actions that significantly affect the quality of the human environment.  
7 42 U.S.C. § 4332(2)(C).  
8

9           18.     If an agency determines that the proposed action is one which does not  
10 categorically require an EIS under the agency’s procedures, the agency must prepare an  
11 Environmental Assessment (“EA”). 40 C.F.R. § 1501.4(a), (b); Nat’l Parks & Conservation  
12 Ass’n v. Babbitt, 241 F.3d 722, 730 (9th Cir. 2001).  
13

14           19.     If the federal agency determines on the basis of the EA not to prepare an EIS, the  
15 agency must prepare a Finding of No Significant Impact (“FONSI”) setting forth a “convincing  
16 statement of reasons” to explain why the action will not have a significant impact on the  
17 environment. 40 C.F.R. §§ 1501.4(e), *see also* 40 C.F.R. § 1508.13.  
18

19           20.     Supplementing existing NEPA documents with a new EIS is required when there  
20 are significant new circumstances or information relevant to environmental concerns and bearing  
21 on the proposed action or its impacts. 40 C.F.R. §§ 1502.9(c)(1)(i) and (ii).  
22

23           21.     In limited circumstances, the NEPA regulations authorize agencies to use a  
24 Categorical Exclusion (“CE”) for a “category of actions which do not individually or  
25 cumulatively have a significant effect on the human environment and which have been found to  
26 have no such effect in procedures adopted by a Federal agency in implementation of these  
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1 regulations.” 40 C.F.R. §§ 1508.4, 1500.4(p). Neither an EIS nor an EA is required for  
2 categorically excluded actions, but the NEPA regulations require Federal agencies to provide for  
3 “extraordinary circumstances” in which otherwise categorically excluded actions require an EA  
4 or EIS. 40 C.F.R. §§ 1507.3(b)(2)(ii) & 1508.4.

6 22. Each federal agency must develop specific criteria for and identification of actions  
7 that qualify for a Categorical Exclusion. 40 C.F.R. § 1507.3. The VA procedures and criteria are  
8 found at Title 38 Code of Federal Regulations Part 26. This Part describes what decisions are  
9 appropriate for Categorical Exclusions and documents the agency list of categorically excluded  
10 activities. *Id.*; 38 .CF.R. § 26.6. A proposed action may be categorically excluded from  
11 documentation in an EA or EIS only if (i) the action is within a category listed in section 26.6  
12 (b) and (ii) there are no extraordinary circumstances that may result in significant individual or  
13 cumulative environmental impacts. 38 C.F.R. §26.6(b).

16 23. The VA is required, during the preparation of environmental documents, to  
17 include participation of environmental agencies, applicants, state and local governments and the  
18 public to the extent practicable and in conformance with CEQ regulations. 38 C.F.R. § 26.9. The  
19 VA must provide information on environmental documents to interested persons when requested.  
20 *Id.* The VA also must consider local zoning and similar laws and consult with local officials  
21 when carrying out its planning and development of a project, as required by 40 U.S.C. §  
22 3312(b)(c). 304.5.

#### 25 **FACTS GIVING RISE TO PLAINTIFFS’ CAUSE OF ACTION**

26 24. Lands End is in the western end of San Francisco. Its ownership is divided  
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1 between the City of San Francisco and the National Park Service. East and West Fort Miley are  
2 located within Lands End and are part of the Golden Gate National Recreation Area  
3 (“GGNRA”). East and West Fort Miley are listed on the National Register of Historic Places.  
4 The fortifications of both of these forts are under consideration for National Landmark status as  
5 part of the group nomination for the seacoast fortifications of San Francisco Bay. West Fort  
6 Miley is located on the western edge of San Francisco near the Cliff House. It provides a grassy  
7 area with picnic facilities, walking areas, and spectacular views of the Pacific Ocean, Sutro  
8 Heights Park, and Ocean Beach.  
9

11 25. The Medical Center at Fort Miley is located on 29.5 acres and is surrounded on  
12 three sides by the Lands End parkland. Those wanting to visit, picnic and recreate at West Fort  
13 Miley are allowed access through the Medical Center.  
14

15 26. From time to time since 1970 the VA has tried to annex parts of both East and  
16 West Fort Miley, or attempted to get permanent easements or long-term permit areas.  
17 Particularly since 1972 when both forts were placed in the GGNRA, the VA has refused to  
18 accept the geographic limits of the campus, instead pressuring to allow hospital use of park land.  
19 These efforts have been consistently rebuffed and stopped.  
20

21 27. In April 2005 the VA released the “U.S. Department of Veterans Affairs Medical  
22 Center, San Francisco California at Fort Miley Facility Master Plan” (“Facility Master Plan”)  
23 intended to provide the basis for extensive facility improvements. This document, developed by  
24 the Smith Group, evaluated the 29 acre “chaotic” Medical Center campus for improvements and  
25 development. Among other things, it described the already proposed “Enhanced Use project” to  
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1 be located in the northwest corner of the site. The Enhanced Use project is an approximately  
2 200,000 square foot building intended to provide space for all research at the Medical Center.  
3 The Enhanced Use project is the first step in the creation of a research zone at the Medical  
4 Center. The Enhanced Use project will replace parking lots 9, 10 and 11, thereby removing 263  
5 parking spaces. The Enhanced Use projects is intended to be permanent by Fiscal Year 2009.  
6

7  
8 28. Currently Building 203 provides research space. The Enhanced Use project will  
9 accommodate this research once it is developed. At present Building 203 is slated for  
10 redevelopment due to seismic retrofit.  
11

12 29. Building 16 is currently a 3,600 square foot 'temporary' computer building. On  
13 June 21, 2005 the VA issued a Design-Build Request for Proposal/Statement of Work for Project  
14 # 662-05-3-6440-0062, "Research Trailer/Modular Building Lot 4/Building 16 Replacement for  
15 the SF Veterans Administrative Medical Center." It is located immediately adjacent to West  
16 Fort Miley and the boundary line for the GGNRA.  
17

18 30. Subsequently, on August 2, 2005 the VA developed an Environmental  
19 Assessment for Project No. 662-0411, to develop a 14,400 square foot building to provide space  
20 for undisclosed research activities displaced from Building 203. The research will encompass  
21 8400 square feet of wet laboratory and 6000 square feet of dry laboratory research facilities in a  
22 two story building. The replacement of Building 16 requires grading, cut-fill, and will include  
23 development of a stairway from Clement Street in order to provide access to those who park off-  
24 site. The project will increase traffic and parking needs with an increase in size and use from the  
25 existing building. The new building is proposed to be located on the boundary line with the  
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GGNRA, next to West Fort Miley and close to the picnic and other recreational facilities provided at the fort. The development of Building 16 is but one step in a planned expansion of research facilities at the Medical Center, contributing to a piecemeal development scheme utilized by the VA to avoid required NEPA review.

31. The proposed Building 16 will be built approximately 75 feet from the rear of a dense residential community located on Seal Rock Drive and Clement Street, which is on the southern perimeter of the Medical Center campus. A steep, narrow gravel roadway on the Medical Center property also borders the residences and the road now terminates at the western boundary with West Fort Miley, parkland with trails and picnic areas and breathtaking views of the Pacific Ocean to the west with the panorama of the Pacific Coast as far as Devil's Slide in Northern San Mateo County.

32. The proposed Building 16 will cause substantial and hazardous environmental impacts to the Seal Rock Drive and Clement Street residences and outer Richmond District residential community, such as Point Lobos Avenue and Geary Boulevard homes, as well as the GGNRA parkland at West Fort Miley; exacerbate the chronic and progressive overcrowding of the Medical Center campus; and place veterans, visitors and employees at risk when accessing the area due to inadequate safe access. The Facility Master Plan characterizes the Medical Center as having the largest VA research program in the United States, which has "exasperated the zoning chaos on the campus." One of the pernicious products of the VA's aggressive quest for more research is the creation of a parking nightmare in the surrounding community, which already has significant parking deficit, to be further increased from incremental development. VA actions reveal a preference for research space over clinical, patient care and administrative

1 functions, thereby adversely impacting the principal mission of the Medical Center, *i.e.* the  
2 treatment of Veterans.

3  
4 33. The potential environmental impacts to the Seal Rock Drive, Clement Street,  
5 Point Lobos and Geary Boulevard homes include a biohazard risk from research emissions;  
6 exposure to continuous noise produced by acid waste and Heating Ventilation Air Conditioning  
7 exhausts; tanks placed at the residents' boundary line containing unidentified gasses or liquids  
8 that may be toxic and /or flammable; bright lighting along the building and roadway shining into  
9 the rear windows of the adjoining homes; noise produced by 80 or more Building 16 employees  
10 with the twenty-four hour/seven days a week personnel access; and noise produced by employee  
11 parking and truck traffic.  
12

13  
14 34. The VA treated the Building 16 project as categorically excluded from NEPA.  
15 The public was not provided any opportunity to participate during the preparation of the CE, or  
16 comment upon the project or its potential for cumulative effects in relation to the larger projects  
17 that are ongoing or are planned for the Medical Center, including the Enhanced Use project and  
18 the redevelopment of Building 203.  
19

20  
21 35. The VA has failed to provide to the City and County of San Francisco an  
22 opportunity for review of proposed Building 16 and other planned development, through an  
23 institutional master plan, a planning document required by San Francisco Planning Code section  
24 304.5. The purpose of the institutional master plan is to disclose plans by a hospital such as the  
25 Medical Center its plans at an early stage of development so as to provide an opportunity for  
26 early and meaningful involvement by the public and the City and County of San Francisco in  
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1 such plans prior to building design. The VA has ignored its duty and failed to submit the  
2 required institutional master plan to the City and County of San Francisco.

3  
4 **FIRST CLAIM FOR RELIEF:**  
5 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**  
6 **Unlawful segmentation of the Building 16 project.**

7 36. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

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9 37. NEPA requires that proposals “which are related to each other closely enough to  
10 be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R.  
11 § 1502.4(a). A NEPA document is also required to analyze the impacts of “[c]onnected actions.”  
12 Id. 1508.25(a)(1). Actions are connected if they: “(i) automatically trigger other actions which  
13 may require environmental impact statements; (ii) cannot or will not proceed unless other actions  
14 are taken previously or simultaneously; [or] (iii) are interdependent parts of a larger action and  
15 depend on the larger action for their justification.” Id.

16  
17 38. Consequently, an agency is required to consider the full implications of each  
18 decision in light of other potential projects if the are connected in any manner as outlined by 40  
19 C.F.R. § 1508.25(a)(1); *see also* Kleppe v. Sierra Club, 427 U.S. 390, 408, 96 S.Ct. 2718, 2730,  
20 49 L.Ed.2d 576, 590 (1976).

21  
22 39. The Building 16 project, Building 203 project, Enhanced Use project, and the  
23 Facility Master Plan are clearly “connected actions” as defined by NEPA. The Building 203 and  
24 Enhanced Use projects depend upon the Building 16 project to facilitate the creation of a  
25 research zone at the Medical Center. Furthermore, the environmental document for the Building  
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27 16 project clearly states that construction of Building 16 is intended to provide space for research  
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1 activities displaced by Building 203. By failing to address these connected actions in a single  
2 NEPA document, defendant violated NEPA, 42 U.S.C. §§ 4321-4370d.

3  
4 40. This is a classic case of unlawful segmentation to avoid NEPA review. In cases  
5 with much less obvious connections between actions than the connection presented between the  
6 Buildings 16 and 203 and Enhanced Use project, all intended to accomplish the Facility Master  
7 Plan design, the courts have required the impacts to be addressed in a single NEPA analysis. For  
8 example, in Thomas v. Peterson, 753 F.2d 754, 758-60 (9th Cir. 1985), the court held that the  
9 NEPA document for a road must address the timber sales for which the building of the road is  
10 necessary; *see also* Save the Yaak Committee v. Block, 840 F.2d 714 (9th Cir. 1988) (same);  
11 Washington Trails Ass'n v. U.S. Dept. of Veterans Affairs, 935 F. Supp. 1117, 1122-23 (W.D.  
12 Wash. 1996) (environmental impact of an off-road vehicle trail project must be evaluated in  
13 conjunction with other proposed off-road vehicle trail developments in the area, because all of  
14 the trails in the area might eventually be connected).

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18 41. Defendant's decision to not include the Building 16 project in the EIS process  
19 for the larger Building 203 and Enhanced Use projects and Facility Master Plan violates NEPA,  
20 and is arbitrary and capricious within the meaning of the APA. 5 U.S.C. §§ 702, 706(2).

21  
22 **SECOND CLAIM FOR RELIEF:**

23 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

24 **The Building 16 project Requires Adequate NEPA analysis.**

25 42. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

26  
27 43. Regardless of its failure to consider connected actions, the VA violated NEPA by  
28 issuing a CE for the Building 16 project.

1           44.     When a proposed action is not covered by a categorical exclusion, the agency  
2 must “prepare an environmental assessment.” 40 C.F.R. § 1501.4(b). ““An agency satisfies  
3 NEPA if it applies its categorical exclusions and determines that neither an EA nor an EIS is  
4 required, so long as the application of the exclusion of the facts of the particular action is not  
5 arbitrary and capricious.’ Bicycle Trails Council of Marin v. Babbitt, 82 F.3d 1445, 1456, n. 5  
6 (9<sup>th</sup> Cir. 1996).” Committee for Idaho’s High Desert v. Collinge, 148 F.Supp.2d 1097, 1102 (D.  
7 Id. 2001) (emphasis in original).  
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10           45.     The Building 16 project should not have been categorically excluded from NEPA  
11 review. CEs are only appropriate for types of actions that are known in advance not to have  
12 significant impacts. 40 C.F.R. § 1508.4.  
13

14           46.     Each federal agency must develop specific criteria for and identification of actions  
15 that qualify for a Categorical Exclusion. 40 C.F.R. § 1507.3. The VA procedures and criteria are  
16 found in 38 Code of Federal Regulations Part 26 at section 26.6. This provision describes what  
17 decisions are appropriate for Categorical Exclusions and documents the agency list of  
18 categorically excluded activities. Id. A proposed action may be categorically excluded from  
19 documentation in an EA or EIS only if:(i) the action is within a category listed in section 26.6  
20 (b) and (ii) there are no extraordinary circumstances that may result in significant individual or  
21 cumulative environmental impacts. 38 C.F.R. §26.6(b).  
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24           47.     The Building 16 project does not qualify as a project covered by 38 Code of  
25 Federal Regulations section 26.6. Although the project appears to fit within the provision for  
26 new construction of 75,000 gross square feet or less, Building 16 is not a typical action because  
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1 of it does not meet the criteria which must be satisfied to allow a categorical exclusion. For  
2 example, the Building 16 project will have more than a minimal effect on the environment and  
3 will contribute to significant cumulative effects from exposure to potential toxic contaminants,  
4 increased light, glare, and traffic, and enhanced shortage of parking. 38 C.F. R. §26.6 (b)(2).  
5

6 48. Even if the Building 16 project qualifies as a CE activity under section 26.6 (b),  
7 extraordinary circumstances warrant further NEPA analysis. In determining whether  
8 extraordinary circumstances warrant further analysis, section 26.6 (b)(3) directs the VA to  
9 consider (i) actions in highly populated or congested areas, (ii) potential for degradation,  
10 although slight, of existing environmental conditions, and (iii) potential presence of hazardous or  
11 toxic substances. 38 C.F.R. §26.6(b)(3). Furthermore, a cumulative increase of the number of  
12 cars is at least twenty percent on the access roads to the site requires an EIS. 38 C.F.R. §  
13 26.6(a)(2)(ii.)  
14  
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16 49. In this case, development of Building 16 will expand an existing computer  
17 building to create a two story wet and dry laboratory facility. It will increase dramatically the  
18 number of people who work in and visit the building. This will increase traffic and parking  
19 impacts, as the only access to the site is a small single lane roadway. As Building 16 sits at the  
20 end of a cul de sac, it is not readily accessible by emergency vehicles. To construct Building 16,  
21 the small site must be graded removing trees and creating cutfill in order to locate this building  
22 on the site. Building 16 sits on the edge of the Medical Center campus, adjacent to residents on  
23 Clement Street and Seal Rock neighborhood. A large tank is depicted to be installed as part of  
24 the project, several feet away from the Building 16 and close to adjacent residences. The VA has  
25 refused to disclose the purpose and contents of the tank. Noise will be increased in the  
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1 surrounding area from laboratory air compression, vacuum intakes and exhaust, and alarm  
2 systems, as well as public announcement systems from the larger Medical Center campus.  
3 Unnatural lighting will also be increased due to attempts at security and safety measures, also  
4 impacting adjacent neighbor. These conditions will impact residents as well as those who rely  
5 upon West Fort Miley for recreation and other uses.  
6

7  
8 50. Of particular concern is that the VA has made no effort to assess the impacts of  
9 this project on surrounding residents from fumes released by roof vents. Building 16 involves  
10 construction of twelve Biosafety Level 2 laboratories, which by definition are associated with  
11 human disease hazard and will include animal experimentation. Roof vents will be installed to  
12 release air fumes from the facility, with potential exposure to Seal Rock neighbors of laboratory  
13 related emissions and levels of airborne contaminants and pathogens.  
14

15 51. Additionally, the construction of Building 16 is intended solely to provide a  
16 temporary location for research activities while the larger development of Building 203 and the  
17 Enhanced Use project go forward. As such, the impacts of Building 16 are cumulative to these  
18 larger projects, and should have been analyzed collectively in an environmental impact  
19 statement. Such an analysis would include and not be limited to evaluation of the cumulative  
20 impacts on the Medical Center campus and the surrounding neighborhood from all of this  
21 development on parking, traffic, lighting, noise, air contaminants, and impact on waste systems.  
22

23  
24 52. The Facility Master Plan states that the Medical Center is the largest research  
25 program of any VA in the country. It also states that this research has “exasperated the zoning  
26 chaos on campus, since research has taken over space whenever possible” [and] that “[m]any  
27 buildings or areas that would be better suited for clinical, patient or administrative functions have  
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1 been consequently taken over by Research.” Facility Master Plan 2.1. The VA is engaging in  
2 piecemeal development for research, without complying with NEPA by analyzing the cumulative  
3 effects of the development in an EIS. Such piecemeal development includes but is not limited  
4 to the redevelopment of Building 203, the development of the Enhanced Use project, and the  
5 demolition and construction of the building adjacent to the existing Building 16, increasing the  
6 footprint by 72%. Such cumulative impacts constitute extraordinary circumstances which  
7 preclude use of a categorical exclusion.  
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10 53. The presence of these extraordinary resource conditions warrants further NEPA  
11 review through an EA or EIS. *See Alaska State Snowmobile Ass’n, Inc. v. Babbitt*, 79 F.  
12 Supp.2d 1116 (D.Alaska 1999); *Rhodes v. Johnson*, 153 F.3d 785 (7th Cir. 1988) (presence of an  
13 extraordinary circumstance requires the Forest Service to prepare an EA).  
14

15 54. The VA’s use of a CE violates NEPA and its implementing regulations, and is  
16 arbitrary and capricious within the meaning of the APA. 5 U.S.C. §§ 702, 706(2).  
17

### 18 **THIRD CLAIM FOR RELIEF:**

#### 19 **VIOLATION OF THE CONSULTATION REQUIREMENTS**

#### 20 **The Building 16 project requires Consultation with Local Government and the Public.**

21 55. Plaintiffs reallege and incorporate by reference all preceding paragraphs.  
22

23 56. During the preparation of environmental documents the VA shall include the  
24 participation of environmental agencies, applicants, state and local governments and the public  
25 and shall provide information on environmental documents upon request. 38 C.F.R. § 26.9.  
26

27 57. The VA is also required to consider all requirements of local zoning laws and to  
28

1 consult with local and state officials in the preparation of plans for building. 40 U.S.C. §  
2 3312(b)(c). One such requirement is the obligation imposed by San Francisco Zoning Code  
3 §304.5 to submit an institutional master plan.  
4

5 58. The VA failed and refused to allow participation by the public during the  
6 preparation of the CE for Building 16, and failed to provide information on environmental  
7 documents when requested.  
8

9 59. The VA also failed to include participation by and consult with local government,  
10 including the City and County of San Francisco, in its preparation of the CE for Building 16. The  
11 VA also has failed to consider local law by failing to submit a required institutional master plan.  
12

13 60. The VA's failure to allow participation by other agencies and the public in the  
14 preparation of the CE, its failure to consult with local government, and its failure to consider  
15 local law violates its own regulations and 40 U.S.C. § 3312(b)(c), and is arbitrary and capricious  
16 within the meaning of the APA. 5 U.S.C. §§ 702, 706(2).  
17

18 **FOURTH CLAIM FOR RELIEF:**

19 **VIOLATION OF THE APA**

20 **The VA Acted Arbitrarily and Capriciously and Not in Accordance with Law.**

21 61. Plaintiffs reallege and incorporate by reference all preceding paragraphs.  
22

23 62. The Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, entitles a party to  
24 seek judicial review of an agency action where a legal wrong is alleged and the party alleging the  
25 violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706 (2)  
26 (A), (D), a reviewing court shall hold unlawful and set aside an agency action found to be  
27 arbitrary, capricious, or otherwise not in accordance with the law. The APA authorizes a court to  
28

1 compel agency action which has been unlawfully withheld. 5 U.S.C. § 706(1). The VA acted  
2 illegally for all the reasons set forth above.

3  
4 63. The VA acted illegally and violated the APA by illegally segmenting the Building  
5 16 project from other connected and cumulative actions, including the development of the  
6 Enhanced Use project, the redevelopment of Building 203, and other changes and alterations to  
7 the VA Medical Center campus.

8  
9 64. The VA acted illegally and violated the APA by failing to prepare an EA or EIS  
10 that would properly disclose and evaluate significant environmental effects.

11  
12 65. The VA acted illegally and violated the APA by failing to allow participation by  
13 other agencies, state and local government and the public during the preparation of the CE for  
14 Building 16 and by failing to provide information on environmental documents when requested.

15  
16 66. The VA acted illegally and violated the APA by failing to comply with its duties  
17 to consider zoning and local law and consult with local officials prior to its authorization of  
18 Building 16 through a CE.

19  
20 **PLAINTIFFS' PRAYER FOR RELIEF:**

21 WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

22  
23 1. Order, declare and adjudge that Defendants are in violation of NEPA by  
24 unlawfully segmenting the Building 16 project from the Building 203 and Enhanced Use projects  
25 and Facility Master Plan;

26  
27 2. Order, declare and adjudge that Defendants are in violation of NEPA by issuing a  
28 categorical exclusion for the Building 16 project;

1           3.       Direct by injunctive relief that Defendants are required to include the Building 16  
2 project in an overall Research project EIS process;

3  
4           4.       Direct by injunctive relief that Defendants must not allow the Building 16 project  
5 to continue until it the NEPA process is complete;

6           5.       Order, declare and adjudge that the Defendants are in violation of 38 C.F.R. §  
7 26.9 by failing to allow participation by the public and other public agencies during the  
8 preparation of the environmental documents for the Building 16 project;

9  
10          6.       Order, declare and adjudge that the Defendants are in violation of 38 C.F.R. §  
11 26.9 by failing to provide information on environmental documents when requested;

12  
13          7.       Order, declare and adjudge that the Defendants are in violation of 40 U.S.C.  
14 §3312 (b) and (c) by failing to consider local zoning law and consult with local government  
15 officials for the Building 16 project;

16  
17          8.       Award plaintiffs reasonable costs, litigation expenses, and attorney fees associated  
18 with this litigation as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

19  
20          9.       Such other and further relief as this Court deems just and proper.

21 DATED: March 30, 2006  
22  
23  
24

25                               Respectfully submitted,

26                               \_\_\_\_\_/s/ Sharon E. Duggan\_\_\_\_\_  
27

28                               Sharon Duggan

                                  David H. Williams

Attorneys for Plaintiffs

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