

BRISCOE IVESTER & BAZEL LLP

155 SANSOME STREET
SEVENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
(415) 402-2700
(415) 398-5630 FAX

Peter S. Prows
pprows@briscoelaw.net
(415) 402-2708

18 March 2019

By Email Only

President Norman Yee
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689
Norman.Yee@sfgov.org

Subject: Outside Lands

Dear President Yee and Members of the Board of Supervisors:

I represent Another Planet Entertainment LLC, which has applied to extend its existing use permit to operate the Outside Lands festival in and around the Polo Fields of Golden Gate Park for an additional 10 years. Outside Lands is a major cultural event, now in its 12th year. In 2017 alone, Outside Lands generated economic activity of \$66.8 million for the City of San Francisco and \$75 million for the entire Bay Area, together with the equivalent of 700 full-time year-round jobs.¹

Another Planet appreciates City staff's determination that this permit extension ought to be exempt from CEQA, under categorical exemption 4 ("Minor Alterations to Land"). Another Planet encourages the Board of Supervisors to supplement staff's finding that this permit extension is exempt from CEQA with the additional findings that: (i) categorical exemption 1 ("Existing Facilities") applies, (ii) categorical exemption 23 ("Normal Operations of Facilities for Public Gatherings") applies, and (iii) no unusual circumstances exist here. Another Planet may supplement this letter with additional information by the 22 March comment deadline.

¹ *Economic Impact Analysis of the 2017 Outside Lands Festival on the City of San Francisco and the Bay Area*, Marin Economic Consulting.

Background

Golden Gate Park and the Polo Fields are the birthplace of the modern arts, culture, and rock music festival. (A relatively comprehensive list of festivals held there is attached as **Exhibit A**.) Highlights include:

- In 1894, the Midwinter Fair, a World's Fair, took place across more than 200 acres of the Park and attracted more than two million people.²
- In 1967, as a prelude to the Summer of Love, the Polo Fields hosted the first ever rock festival—the Human Be-In—where the Grateful Dead and Jefferson Airplane performed and attracted perhaps 30,000 people.³ The 40th and 50th anniversaries of the Summer of Love were celebrated with concerts in Golden Gate Park.
- In 1989, Jefferson Airplane returned for a concert in the Polo Fields with Bob Weir and Rob Wasserman.⁴
- In 1991, about 300,000 people gathered in and around the Polo Fields to celebrate the life of Bill Graham, with performances by The Grateful Dead, Santana, Joan Baez, and Crosby, Stills, Nash & Young.⁵

² Bob Bragman, *The Unknown Midwinter Fair – San Francisco 1894*, San Francisco Chronicle, 22 December 2015, available at: <https://www.sfgate.com/bayarea/article/SF-Midwinter-Fair-that-no-one-knows-about-6713601.php>.

³ <http://www.outsidelands.org/be-in.php>

⁴ <https://www.concertarchives.org/venues/polo-field-golden-gate-park>

⁵ Jonathan Weber, *Bay Area Plays Tribute to Graham: Memorial: About 300,000 gather for free concert at Golden Gate Park honoring the rock promoter who died 10 days ago in a helicopter crash*, Los Angeles Times, 4 November 1991, http://articles.latimes.com/1991-11-04/news/mn-715_1_golden-gate-park.

- The Polo Fields hosted the Ben & Jerry's One World One Heart Festival in 1992, and the Womad Festival (featuring Sinéad O'Connor and Peter Gabriel) in 1993.⁶
- In 1995, Pearl Jam played a massive show at the Polo Fields.
- In 1996, the Beastie Boys, Smashing Pumpkins, A Tribe Called Quest, Foo Fighters, Richie Havens, John Lee Hooker, Yoko Ono, Red Hot Chili Peppers, Björk, Sonic Youth, Rage Against The Machine, and the Fugees, among many others, all rocked the Polo Fields.⁷
- In 1999, the Polo Fields welcomed the Fleadh Festival, with talent including Elvis Costello, Ben Harper, Taj Mahal, and Van Morrison.⁸
- In 2004, the Dave Matthews Band, joined by Santana, jammed for charity for hours before a huge Polo Fields crowd.⁹

Since 2001, of course, Hardly Strictly Bluegrass has put on an annual, free, three-day music festival throughout the western-central portion of the Park.¹⁰

Outside Lands has also been an annual event in and around the Polo Fields since 2008. Outside Lands' current permit runs through 2021. Outside Lands is seeking an extension that would allow it to operate through 2031.

⁶ <https://www.concertarchives.org/venues/polo-field-golden-gate-park>

⁷ *Id.*

⁸ <https://www.setlist.fm/festival/1999/guinness-fleadh-san-francisco-1999-73d6daf1.html>

⁹ <https://davematthewsband.shop.musictoday.com/product/DMDD19/dmb-live-trax-vol-2-golden-gate-park>

¹⁰ In a lyric resolution, co-sponsored by Supervisor Peskin, the Board "urg[ed]" Warren Hellman to ensure the festival remained in the Park. (SF Board of Supervisors Resolution No. 253-04, Approved on 29 April 2004.)

Additional Categorical Exemptions: CatEx Nos. 1 & 23

City staff have concluded that Outside Lands qualifies for categorical exemption 4. Outside Lands qualifies for this exemption because it is a “[m]inor temporary use of land” akin to a “carnival”. (14 Cal. Code Regs. § 15304(e).)

Categorical exemption 4 is subject to a limitation that most other categorical exemptions are not: it does not apply where the activity “may impact” a “precisely mapped” resource. (14 Cal. Code Regs. § 15300.2(a).) Although the Polo Fields and western-central Park areas where Outside Lands takes place are not in the mapped area of the Coastal Zone, appellants assert that Outside Lands may impact those mapped Coastal-Zone areas in the western portion of the Park.

Two additional, broader, categorical exemptions also apply to Outside Lands: categorical exemption 1 (“Existing Facilities”) and categorical exemption 23 (“Normal Operations of Facilities for Public Gatherings”). These two additional categorical exemptions seem tailor-made for events like Outside Lands. They are also not subject to the ‘precisely-mapped’ limitation that categorical exemption 4 can be.

Categorical exemption 1 applies to the “operation, ... permitting, leasing, licensing, or minor alteration of existing public ... facilities ... involving negligible or no expansion of existing or former use.” (14 Cal. Code Regs. § 15301.) Large music festivals like Outside Lands are a longstanding use of the Polo Fields and western-central Park area. Outside Lands does not seek any significant expansion of its existing permit. Because extending Outside Lands’ permit would not significantly expand any existing or former use, categorical exemption 1 applies.

Categorical exemption 23 applies to “the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose.” (14 Cal. Code Regs. § 15323.) “Past history” means “that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility.” (*Id.*) “[S]tadiums”, “auditoriums”, and “amphitheaters” are given as examples of facilities included within this exemption. (*See Campbell v. Third Dist.*

Agricultural Assn. (1987) 195 Cal.App.3d 115, 118 (racetrack operations near residential area exempt); *Citizens for Environmental Responsibility v. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 572 (rodeo operations near residential area exempt)¹¹.) The Polo Fields and western-central Park areas have been used for large music festivals like Outside Lands for decades, if not more than a century, and Outside Lands proposes merely to continue that proud musical tradition. Categorical exemption 23 applies.

A Board finding that categorical exemptions 1 and 23 also apply would bolster City staff's conclusion that extension of Outside Lands' permit is exempt from CEQA.

**The Board Should Make An Express Finding That
No Unusual Circumstances Exist Here**

Appellants assert that "unusual circumstances" prevent use of categorical CEQA exemptions here. (*See* 14 Cal. Code Regs. § 15300.2(c) (exemptions do not apply where "activity will have a significant effect on the environment due to unusual circumstances").) A lead agency's finding that no unusual circumstances exist will be affirmed by the courts if any substantial evidence exists in the record that supports the finding. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114.) No unusual circumstances exist here: events like Outside Lands have been held at the Polo Fields and western-central Park area for decades. There is nothing unusual about continuing those kinds of events. The Board should make an express finding that no unusual circumstances exist here.

¹¹ *Citizens for Environmental Responsibility* also rejected an argument by the Lozeau Drury firm that the firm makes again on behalf of appellants here. Mr. Drury, on behalf of appellants, argues here that "[a] project that requires mitigation measures cannot be exempted from CEQA", and that various traffic- and noise-related terms of the permit constitute mitigation measures. But terms that merely "formalize[] practices that had been implemented for decades" are not mitigation measures that preclude application of CEQA exemptions. (242 Cal.App.4th at 570.) The terms of the proposed permit renewal here are not materially different from the terms of prior Outside Lands permits, and they merely formalize best practices already implemented for similar events by the City.

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Thank you for your consideration of these comments.

Sincerely,

BRISCOE IVESTER & BAZEL LLP

/s/ Peter Prows

Peter S. Prows
Attorneys for
Another Planet Entertainment LLC

cc: Board of Supervisors
Clerk to the Board

Exhibit A:
Golden Gate Park Festivals

#	Date	Performers	Location
1	1/13/1967	Big Brother & the Holding Company and Quicksilver Messenger Service	Polo Field
2	6/20/1967	Big Brother & the Holding Company and Quicksilver Messenger Service and Grateful Dead	Polo Field
3	7/7/1968	Big Brother & the Holding Company	Polo Field
4	3/16/1969	Boogie, Crazy Horse, Alice Cooper	Speedway Meadows
5	5/6/1969	Grateful Dead	Polo Field
6	11/15/1969	Crosby, Stills, Nash & Young	Polo Field
7	5/30/1975	Jefferson Starship	Marx Meadows
8	7/30/1975	Jefferson Starship	Marx Meadows
9	9/28/1975	Grateful Dead & Jefferson Starship	Lindley Meadows
10	9/2/1985	Country Joe & The Fish	Polo Field
11	9/12/1987	Country Joe & the Fish, Bib Brother & the Holding Company	Polo Field
12	11/1/1991	Laughter, Love and Music: In Memory of Bill Graham	Polo Field
13	9/1993	WOMAD Festival	Polo Field
14	6/24/1995	Neil Young & Pearl Jam	Polo Field
15	6/1996	Tibetan Freedom Concert	Polo Field
16	10/12/1997	30th Anniversary - Summer of Love	Beach Chalet Field
17	6/5/1999	Guinness Fleadh	Polo Field
18	10/27/2001	Hardly Strictly Bluegrass	West End
19	9/7/2002	Power to the Peaceful	Speedway Meadow

20	10/1/2002	Hardly Strictly Bluegrass	West End
21	4/20/2003	We The Planet Festival	Speedway Meadow
22	6/1/2003	Alice's Summerthing	Speedway Meadow
23	9/6/2003	Power to the Peaceful	Speedway Meadow
24	10/1/2003	Hardly Strictly Bluegrass	West End
25	6/1/2004	Alice's Summerthing	Speedway Meadow
26	9/11/2004	Power to the Peaceful	Speedway Meadow
27	9/12/2004	Dave Matthews Band	Polo Field
28	10/2004	Hardly Strictly Bluegrass	West End
29	06/2005	Alice's Summerthing	Speedway Meadow
30	9/7/2005	Power to the Peaceful	Speedway Meadow
31	10/1/2005	Hardly Strictly Bluegrass	West End
32	6/1/2006	Alice's Summerthing	Speedway Meadow
33	9/9/2006	Power to the Peaceful	Speedway Meadow
34	10/1/2006	Hardly Strictly Bluegrass	West End
35	6/17/2007	Alice's Summerthing	Speedway Meadow
36	9/2/2007	Country Joe & The Fish	Speedway Meadow
37	9/8/2007	Power to the Peaceful	Speedway Meadow

38	10/1/2007	Hardly Strictly Bluegrass	West End
39	4/20/2008	Yonder Mountain String Band	Speedway Meadow
40	6/2008	Alice's Summerthing	Speedway Meadow
41	8/2008	Outside Lands	West
42	9/6/2008	Power to the Peaceful	Speedway Meadow
43	10/2008	Hardly Strictly Bluegrass	West
44	6/2009	Alice's Summerthing	Speedway Meadow
45	8/2009	Outside Lands	West
46	9/12/2009	Power to the Peaceful	Speedway Meadow
47	10/2009	Hardly Strictly Bluegrass	West End
48	10/25/2009	Chambers Brothers	Speedway Meadow
49	6/27/2010	Alice's Summerthing	Speedway Meadow
50	8/2010	Outside Lands	West
51	9/11/2010	Power to the Peaceful	Speedway Meadow
52	10/1/2010	Hardly Strictly Bluegrass	West End
53	6/26/2011	Alice's Summerthing	Speedway Meadow
54	8/2011	Outside Lands	West
55	9/2011	Hardly Strictly Bluegrass	West
56	6/8/2012	Chipotle Cultivate Festival	Hellman Hollow

57	6/24/2012	Alice's Summerthing	Hellman Hollow
58	8/2012	Outside Lands	West
59	10/2012	Hardly Strictly Bluegrass	West
60	6/2013	Alice's Summerthing	Speedway Meadow
61	8/2013	Outside Lands	West
62	10/1/2013	Hardly Strictly Bluegrass	West End
63	4/26/2014	Michael Milano	Speedway Meadow
64	06/2014	Alice's Summerthing	Hellman Hollow
65	8/2014	Outside Lands	West
66	10/2014	Hardly Strictly Bluegrass	West
67	06/2015	Alice's Summerthing	Hellman Hollow
68	8/2015	Outside Lands	West
69	10/2015	Hardly Strictly Bluegrass	West
70	5/22/2016	All Day I Dream	Hellman Hollow
71	8/2016	Outside Lands	West
72	9/2016	Hardly Strictly Bluegrass	West
73	6/25/2017	All Day I Dream	Hellman Hollow
74	8/2017	Outside Lands	West
75	10/2017	Hardly Strictly Bluegrass	West
76	8/2018	Outside Lands	West
77	10/2018	Hardly Strictly Bluegrass	West