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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 CPF - 16 - 515238

12 SAVE THE HILL AND GROW
13 POTRERO RESPONSIBLY,
14 unincorporated associations;

15 Petitioners,

16 vs.

17 CITY AND COUNTY OF SAN
18 FRANCISCO, its PLANNING
19 COMMISSION and BOARD OF
20 SUPERVISORS, and DOES 1-5;

21 Respondents,
22 _____ /

23 POTRERO PARTNERS LLC, PRADO
24 GROUP INC., WALDEN
25 DEVELOPMENT, LLC, DAN SAFIER,
26 JOSH SMITH, and DOES 6-10;

27 Real Parties in Interest.
28 _____ /

FILED

Superior Court of California
County of San Francisco

AUG 26 2016

CLERK OF THE COURT

BY: *Clara*
Deputy Clerk

Case No. _____

PETITION FOR
WRIT OF MANDAMUS

California Environmental Quality Act
[CEQA]

Petition for Writ of Mandamus
City and County of San Francisco

BY FAX

1 Petitioners allege:
2

3 **Introduction**

4 1. The community organizations Save the Hill and Grow Potrero Responsibly
5 (collectively, "Citizens", hereafter) bring this mandamus action in the public interest to
6 challenge the environmental review conducted for the 901 16th Street and 1200 17th
7 Street mixed use residential project ("Project", hereafter) proposed by Potrero Partners,
8 LLC, Prado Group Inc., and Walden Development, LLC ("Developer", hereafter) in
9 order to enforce mandatory environmental laws protecting Potrero Hill and the
10 Showplace Square areas of San Francisco. Positioned at the gateway of the Potrero Hill
11 community, the Project covers 3.5 acres and has the capacity to alter the very nature of
12 the iconic Potrero Hill environs. It is one of the largest projects to be proposed in the
13 history of Potrero Hill.
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16 The City of San Francisco ("City", hereafter) improperly relied upon an outdated
17 2008 Eastern Neighborhoods Plan Environmental Impact Report (PEIR) for their
18 application of a Community Plan Exemption as well as an exception under Public
19 Resources Code section 21099 that relieves certain mixed use transit oriented projects
20 from considering aesthetics impacts during environmental review; and the Project's
21 Environmental Impact Report (EIR) is inadequate and incomplete. The PEIR
22 underestimated the level of development of residential units currently implemented
23 and proposed throughout the Potrero Hill and Showplace Square Areas, thereby
24 impacting the analysis of land use impacts, consistency with area plans and policies
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1 and direct and cumulative traffic impacts. The Developer asserts the Project's addition
2 of 395 residential units with admitted impacts to traffic and loss of PDR is a transit
3 friendly project merely because the site is located within a transit area. In actuality,
4 Potrero Hill is experiencing severe traffic congestion and the area is severely
5 underserved by area transit. Considering this, along with the Project's incorporation of
6 388 parking spaces, the Project cannot be considered transit friendly and therefore is
7 not exempted from the requirement of reviewing aesthetics and views impacts.
8

9 The Project EIR failed to adequately analyze impacts in the areas of: traffic and
10 circulation, transit and transportation, aesthetics and views, shadows, recreation and
11 open space, land use, consistency with area plans and policies, and cumulatively
12 considerable impacts; failed to adequately analyze and review alternatives to the
13 Project; and the Final EIR failed to adequately respond to substantive comments made
14 on the Draft EIR.
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17 Citizens are not against the development of Potrero Hill; they are acting in the
18 public interest to ensure the community does not shoulder the burden of a project with
19 undisclosed impacts due to the reliance on an outdated Area Plan EIR and inadequate
20 Project EIR. Citizens reasonably assert that decision makers and the public should first
21 be apprised of the actual effects of the Project so that all feasible mitigation can be
22 reviewed and adopted in advance of its adoption.
23

24 Under mandatory provisions of the California Environmental Quality Act
25 (CEQA), the City cannot merely adopt a statement of overriding considerations when
26 approving a project with substantial environmental impacts, it must first analyze the
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1 Project's actual impacts and adopt feasible alternative and mitigation measures that
2 substantially lessen or avoid these impacts prior to consideration of its adoption.

3 A peremptory writ should issue in the first instance, requiring the City to
4 prepare an adequate EIR that complies with CEQA, fairly identifies the Project's actual
5 environmental impacts, and reviews feasible mitigations and alternatives prior to
6 further consideration of the Project. Citizens look to this Court to enforce the mandates
7 of state law that protect the Potrero Hill and Showplace Square areas.
8

9 **Jurisdiction**

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11 2. This Court has jurisdiction under Public Resources Code sections 21168 and
12 21168.5 and Code of Civil Procedure sections 1085 and 1094.5. The parties and the site
13 are located in the City and County of San Francisco.
14

15 **Parties**

16 3. Petitioners are comprised of two unincorporated public benefit community
17 organizations. Save the Hill was formed in 2012; its mission is to protect and promote
18 the Potrero Hill neighborhood's unique identity, to support its locally run businesses
19 and to ensure that neighborhood growth promotes the highest standards of urban
20 development and planning. Grow Potrero Responsibly was formed in 2013; its mission
21 is to promote the reasonable development of Potrero Hill.
22

23 Petitioners' members include community residents and concerned citizens who
24 have for many years personally enjoyed and appreciated the unique resources of the
25 Potrero Hill area and bring this petition on behalf of all others similarly situated who
26 are too numerous to be named and brought before this Court as petitioners. Petitioners'
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1 members objected to the adoption of the Community Plan Exemption, the certification
2 of the EIR and the Project approval.

3 4. Respondents, the City and County of San Francisco are the governmental
4 bodies that applied the Community Plan Exemption, certified the EIR, approved the
5 Project, and acted as lead agency under CEQA.

6 7. Real Parties in Interest, Potrero Partners LLC, Prado Group Inc., Walden
7 Development, LLC, Dan Safier, and Josh Smith are listed as the owners/ applicants who
8 propose to develop the Project site.

9 6. Does 1 to 10 are fictitiously named Respondents and Real Parties in Interest
10 whose true names and capacities are currently unknown to Petitioner. If and when
11 their true names and capacities are known, Petitioner will amend this petition to assert
12 them. If any of the listed entities are determined to be not indispensable to the
13 litigation, Petitioners will consider dismissing the party from litigation.

14 7. The paragraphs below refer to and rely on information in documents relating
15 to this action, all of which will be filed with this Court as part of the Administrative
16 Record of Proceedings and which are here incorporated by reference.

17 **General Allegations**

18 **Project Description and Locale**

19 8. The Project site consists of four adjacent lots in the lower Potrero Hill
20 neighborhood. The approximately 3.5-acre site is bounded by 16th Street to the north,
21 Mississippi Street to the east, 17th Street to the south, and residential and industrial
22 buildings to the west. The site currently contains four existing buildings: two metal-

1 clad industrial warehouse buildings (102,500 square feet), a brick office building (1,240
2 square feet), and an office building (5,750 square feet). The 1926 brick building was
3 originally constructed by the Pacific Rolling Mill Co. to house the office functions of the
4 company's steel fabricating operation. In total, the four existing buildings constitute
5 approximately 109,500 gross square feet.
6

7 9. The Project is located in the UMU Zoning District along a transitioning
8 industrial corridor connecting the Mission neighborhood to Mission Bay within the
9 Showplace Square/Potrero Hill Plan Area. Adjacent properties to the north, west, east,
10 and south are all zoned UMU (Urban Mixed Use). Properties further northwest are
11 zoned PDR-1-D (Production, Distribution, Repair- 1- Design) while properties further
12 south are primarily zoned RH-2 (Residential-House, Two Family).
13

14 10. The Project proposes to merge four lots into two lots, totaling approximately
15 3.5 acres, demolish a surface parking lot and approximately 109,000 square feet of
16 existing warehouse (PDR) use to construct two four- to six-story mixed use buildings.
17 The Project entails the preparation of an EIR and request for a Large Project
18 Authorization. The two buildings consist of a North Building ("16th Street Building"), a
19 6-story, 68-foot tall, 402,943 gross square foot, with 260 dwelling units, 20,318 square
20 feet of retail, and 263 off-street parking spaces; and, a South Building ("17th Street
21 Building"), a 4-story, 48-foot tall, 213,009 gross square foot mixed use building with 135
22 dwelling units, 4,650 square feet of retail and 125 off-street parking spaces. The Project
23 would construct a pedestrian alley connecting 16th Street to 17th Street along the
24 western property line. Combined, the two new buildings would construct a total of 395
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1 dwelling units, 24,468 gross square feet of retail space and 388 off-street parking spaces.
2 The Project would retain an existing two-story, brick historic building.

3 **Administrative Review Process**

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5 11. The Eastern Neighborhoods Area Plan EIR, upon which the Project's
6 Community Plan Exemption and EIR tiers, was adopted in 2008.

7 12. The Draft EIR was released for public review in August 2015. The Draft EIR
8 found the Project would result in direct significant unavoidable impacts to traffic and
9 circulation and cumulatively significant impacts contributing to the loss of PDR and
10 worsening of area traffic and circulation but claimed there were no feasible mitigation
11 measures that would lessen or avoid these impacts. The Draft EIR considered a No
12 Project Alternative, Reduced Density Alternative, and Metal Shed Reuse Alternative
13 and found the Reduced Density Alternative to be the environmentally superior
14 alternative.
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17 13. Citizens and numerous concerned area residents commented that the
18 Community Plan Exemption improperly relied on an outdated Eastern Neighborhoods
19 Plan EIR and that the Project EIR failed to adequately analyze: traffic and circulation,
20 transit and transportation, aesthetics and views, shadows, recreation and open space,
21 land use, cultural and historic resources, consistency with area plans and policies, and
22 cumulatively considerable impacts. The EIR also failed to adequately analyze
23 alternatives to the Project.
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26 14. On October 1, 2015 the City held a hearing on the Draft EIR. Citizens and
27 others objected on the bases stated.

1 15. On April 28, 2016, the City published the Final EIR. Citizens stated the Final
2 EIR failed to adequately respond to comments in the areas of, *inter alia*, scale, height
3 and density, aesthetic and views, recreation and open space, and consistency with area
4 plans and policies. Citizens noted the EIR failed to respond to comments made about
5 the Project's inconsistency with area plans and policies, including the Showplace
6 Square/Potrero Area Plan and the Urban Design and Housing Elements of the City's
7 General Plan. The EIR disregarded established City policies and failed to adequately
8 respond to comments regarding the Project's conflicts with neighborhood scale and
9 character, the requirement to provide adequate infrastructure, and the preservation of
10 PDR uses.
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13 16. On May 12, 2016, the Planning Commission held a public hearing, certified
14 the EIR, made CEQA findings, adopted a Statement of Overriding Considerations and
15 approved the Project *via* Motions 19643-19645. Citizens reiterated their objections to the
16 Project approval and the environmental review conducted for the Project on the bases
17 stated.
18

19 17. On June 10, 2016, Citizens appealed the application of the Community Plan
20 Exemption and the EIR; the appeal was accepted by the Board of Supervisors as
21 complete and was calendared for hearing. Thereafter, on July 15, 2016, Citizens
22 submitted an extensive appeal packet to support their objections to the Project and its
23 environmental review. The appeal included, *inter alia*, the following objections.
24

25 Citizens stated that when the Planning Commission certified the Eastern
26 Neighborhoods Plan EIR in 2008, they approved a Preferred Project that allowed for
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1 3180 residential units in the Showplace/Potrero area by 2025. But the analysis done for
2 the Project indicated that as of February 2016, 3315 units had been approved or were in
3 the pipeline. Additional analysis done for the 2011-2015 Eastern Neighborhoods
4 Monitoring Report showed 4,526 residential units had been approved or were in the
5 pipeline, well in excess of what was anticipated in the Eastern Neighborhoods Plan EIR
6 for the Showplace/Potrero Area. The Monitoring Report indicated that the entire
7 Eastern Neighborhoods Area was now on track to exceed projections of 9,785 units by
8 nearly 2,000 units.
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11 Citizens stated traffic congestion in the immediate area of the Project is already a
12 readily recognized fact of life, with multiple intersections operating at "F" levels. The
13 Eastern Neighborhoods Plan EIR's cumulative traffic analysis was based on
14 assumptions about the level of development and traffic counts that are now outdated,
15 had not accounted for traffic at key intersections surrounding the Project site, and had
16 not included large projects such as the Warriors Arena.
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18 Citizens stated the Project's single massive structure positioned at the base of
19 Potrero Hill, along with its height, bulk, and massing will obscure a cherished
20 landmark of Potrero Hill – scenic public views of downtown San Francisco. Potrero
21 Hill, like San Francisco as a whole, is known for its dramatic City views and
22 sweeping vistas. The height, bulk, and mass of the Project will effectively wall off a
23 large portion of lower Potrero Hill from public views of downtown that have been
24 enjoyed by visitors for generations. Just like the recent San Francisco campaign against
25 "walling off" the waterfront, Citizens stated Potrero Hill should be protected from
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1 "walls" of out-of-scale development. The Project also conflicts with long-standing City
2 and state policies regarding protection of public scenic vistas.

3 Citizens provided substantial evidence countering the assumptions made in the
4 Developer's study and the City's findings regarding the infeasibility of alternatives; the
5 Metal Shed Reuse Alternative is a feasible alternative that would reduce the Project's
6 admittedly significant impacts to traffic and loss of PDR and would yield sufficient
7 profits. The Developer's study improperly used land value, instead of land acquisition
8 costs, which is the appropriate measure for assessing feasibility as defined by the
9 Planning Department, and thereby inflated the costs of the Project and skewed the
10 cost/profit analysis. Utilizing the appropriate land cost data, the Metal Shed
11 Alternative met the targeted 18%-25% profit margin utilized by the Developer. Other
12 errors in the study included the use of outdated information regarding the value of
13 rental square footage in PDR uses. The study assumed a \$2.50 per square foot value for
14 the Metal Shed Alternative, whereas, current figures were estimated at nearly twice
15 that, at \$4.00 per square foot. The analysis improperly devalued the potential profit
16 margin for this alternative. The Developer's study also neglected to include financial
17 data about the Project that would allow a fair comparison of the Project's costs and
18 profits to that of the alternatives', as required by law, and it burdened alternatives with
19 unnecessary flaws that made them appear to result in more severe traffic impacts and
20 less profit. Citizens stated:

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26 If a project will result in significant environmental impacts that will not be
27 avoided or substantially lessened by mitigation measures, the agency must
28 consider the environmentally superior alternatives identified in the EIR

1 and find that they are "infeasible" before approving the project. (Pub. Res.
2 Code § 21081(a)(3), *See also* CEQA Guidelines 14 Cal. Code Regs. §
3 15091(a)(3).) Feasible means capable of being accomplished in a successful
4 manner within a reasonable period of time, taking into account economic,
5 environmental, social, technological, and legal factors. (Pub. Res. Code §
6 21061.1; Guidelines §15364.) The requirement for an infeasibility finding
7 flows from the public policy that states:

8 It is the policy of the state that public agencies should not approve
9 projects as proposed if there are feasible alternatives or feasible
10 mitigation measures available which would substantially lessen the
11 significant environmental effects of such projects ... the Legislature
12 further finds and declares that in the event specific economic, social,
13 or other conditions make infeasible such project alternatives or such
14 mitigation measures, individual projects may be approved in spite
15 of one or more significant effects thereof.

16 (Pub. Res. Code § 21002.) Reflecting this policy, Public Resources Code
17 section 21081(a)(1)-(3) provides that if one or more significant impacts will
18 not be avoided or substantially lessened by adopting mitigation measures,
19 alternatives described in the EIR that can avoid or reduce the impact must
20 be found infeasible if they are not adopted. Under this scheme, a public
21 agency must avoid or reduce a project's significant environmental effects
22 when it is feasible to do so. (Pub. Res. Code §§ 21002, 21002.1(b); 14 Cal.
23 Code Regs §§ 15021(a) and 15091(a)(1).) As explained by the California
24 Supreme Court in *Mountain Lion Foundation v. Fish & Game Commission*
25 (1997) 16 Cal.4th 105, 124, "Under CEQA, a public agency must ... consider
26 measures that might mitigate a project's adverse environmental impact
27 and adopt them if feasible. (Pub. Res. Code §§ 21002, 21081.)" The Court
28 reiterated "CEQA's substantive mandate that public agencies refrain from
approving projects for which there are feasible alternatives or mitigation
measures." (*Id.* at 134.) CEQA's substantive mandate was again
underscored by the California Supreme Court in *Vineyard Area Citizens v.*
City of Rancho Cordova (2007) 40 Cal.4th 412; *City of Marina v. Board of*
Trustees of the California State University (2006) 39 Cal.4th 341; *County of San*
Diego v. Grossmont-Cuyamaca Community College District (2006) 141
Cal.App.4th 86; and *Preservation Action Council v. City of San Jose* (2006) 141

1 Cal.App.4th 1336.

2 Increased costs of an alternative do not equate to economic infeasibility:
3 "[t]he fact that an alternative may be more expensive or less profitable is
4 not sufficient to show that the alternative is financially infeasible. What is
5 required is evidence that the additional costs or lost profitability are
6 sufficiently severe as to render it impractical to proceed with the project."
7 (*Citizens of Goleta Valley v. Board of Supervisors (Goleta I)* (1988) 197
8 Cal.App.3d 1167, 1181; *see also Kings County Farm Bureau v. City of Hanford*
9 (*1990*) 221 Cal.App.3d 692, 736; *City of Fremont v. San Francisco Bay Area*
10 *Rapid Transit District* (1995) 34 Cal.App.3d 1780 [addition of \$60 million in
11 costs rendered subterranean alternative for BART extension infeasible.]) In
12 *Citizens of Goleta Valley v. County of Santa Barbara (Goleta I)* (1988) 197
13 Cal.App.3d 1167, the court found that the record included no analysis of
14 the comparative costs, profits, or economic benefits of a scaled down
15 project alternative and was insufficient to support a finding of economic
16 infeasibility. In *Uphold Our Heritage v. Town of Woodside* (2007) 147
17 Cal.App.4th 587, a project applicant's preference against an alternative does
18 not render it infeasible. In *County of San Diego v. Grossmont Cuyamaca*
19 *Community College Dist.* (2006) 141 Cal.App.4th 86, 108, the court found that
20 a community college's proportional share of cost of off-campus traffic
21 mitigation measures could not be found economically infeasible in absence
22 of cost estimates. In *Burger v. County of Mendocino* (1975) 45 Cal.App.3d
23 322, the court found that an infeasibility finding based on economic factors
24 cannot be made without estimate of income or expenditures to support
25 conclusion that reduction of motel project or relocation of some units
26 would make project unprofitable.

21 Citizens stated the Project cannot meet the "impractical to proceed" standard
22 articulated in *Goleta I*.

24 18. On July 18, 2016, eight days before the appeal hearing before the Board of
25 Supervisors, the Planning Department asserted Citizens could not file an appeal to the
26 Planning Commission's CEQA determinations without also appealing the Large Project

1 Authorization. Citizens countered that the San Francisco Administrative Code section
2 31.16 provided the bases for the Board of Supervisor's rejection of the Planning
3 Commission's adoption of the CEQA determination and findings *via* a CEQA appeal;
4 their action to uphold the appeal would necessarily void the Planning Commission's
5 approval of the Project and was not premised on the appeal of the Large Project
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7 Authorization. Citizens stated:

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9 It is well settled that discretionary project approvals subject to CEQA, as
10 here, must first be premised on adequate environmental review under
11 Public Resources Code Sections 21100(a) and 21151(a). If the Board rejects
12 the environmental determination or findings made by the Commission, the
13 Large Project Approval will be deemed void. ... "The Board shall reverse
14 the Planning Commission's certification of the EIR if the Board finds that
15 the EIR does not comply with CEQA, including that it is *not adequate,*
16 *accurate and objective, is not sufficient as an informational document, that its*
17 *conclusions are incorrect or it does not reflect the independent judgment and*
18 *analysis of the City, or that the Planning Commission certification findings are*
19 *incorrect." "Any actions approving the project in reliance on the reversed CEQA*
20 *decision, shall be deemed void." (Emphasis added.) The relevant sections are*
21 *quoted in full below.*

22 Section 31.16 (b), relevant to "Appeal Procedures" states:

23 (10) If the Board reverses the CEQA decision, the prior CEQA
24 decision and any actions approving the project in reliance on the
25 reversed CEQA decision, shall be deemed void.

26 Section 31.16 subdivision (c), relevant to "Appeal of Environmental Impact
27 Reports" states:

28 (5) The Board shall reverse the Planning Commission's certification
of the EIR if the Board finds that the EIR does not comply with
CEQA, including that it is not adequate, accurate and objective, is
not sufficient as an informational document, that its conclusions are
incorrect or it does not reflect the independent judgment and
analysis of the City, or that the Planning Commission certification
findings are incorrect. If the Board reverses the Planning
Commission's certification of the final EIR, it shall remand the final

1 EIR to the Planning Commission for further action consistent with
2 the Board's findings. Any further appeals of the EIR shall be limited
3 only to the portions of the EIR that the Planning Commission has
4 revised and any appellant shall have commented on the revised EIR
5 at or before a public hearing held on the revised EIR or the project, if
6 any, The Board's subsequent review, if any, also shall be limited to
7 the portions of the EIR that the Planning Commission has revised
8 including, without limitation, new issues that have been addressed.
9 Any additional appeals to the Board shall comply with the
10 procedures set forth in this Section 31.16.

11 19. On July 26, 2016, the Board of Supervisors held a public hearing to consider
12 the appeal. After several hours of testimony, from Citizens and others voicing their
13 objections, and deliberation by the Board, the Board denied the appeal and upheld the
14 Planning Commission's decisions that adopted the Project and its environmental
15 review. Prior to their deliberation, the Board was instructed by Planning staff not to
16 consider the feasibility of alternatives in their deliberation. Just before the vote was
17 taken, Supervisor Malia Cohen asked the Developer to contribute funding for the
18 development of Jackson Park; the Developer promptly replied by offering \$800,000.
19 Supervisor Aaron Peskin strongly objected to the interchange between the Developer
20 and the Board member and stated that all of the Board members should be recused due
21 to its impropriety. Shortly before the vote was taken, Supervisor Cohen was recused
22 from voting on the Project. Supervisor Peskin concurred with Citizens appraisal of the
23 San Francisco Code provisions relative to the appeal and voted to uphold the appeal.

24 20. On July 29, 2016, the Notice of Determination was filed. This action is timely
25 filed.
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- or adopted;
- g. The City's findings certifying the EIR, rejecting alternatives as infeasible, and approving the Project are not supported by substantial evidence in light of the whole record;
- h. The City's Findings adopting the Statement of Overriding Considerations are not supported by substantial evidence.

WHEREFORE, Petitioners pray:

1. That the Court issue a peremptory writ of mandate ordering Respondents to set aside and void all approvals relating to the 901 16th Street and 1200 17th Street Project and to refrain from further approval until it fully complies with CEQA;
2. That the Court issue a stay order enjoining Respondents and Real Parties in Interest or their agents from engaging in any physical construction or pre-construction activities in furtherance of the 901 16th Street and 1200 17th Street Project while this Petition is pending;
3. For Petitioners' costs and attorney fees pursuant to Code of Civil Procedure section 1021.5; and
4. For other and further relief as the Court finds proper.

Dated: August 26, 2016



Rachel Mansfield-Howlett