Letter of Determination

September 13, 2017

Steven Vettel
Farella Braun + Martel, LLP
235 Montgomery Street
San Francisco, CA 94104

Site Address: 901 16th and 1200 17th Streets
Assessor's Block/Lot: 3949/001, 001A & 002 and 3950/001
Zoning District: UMU (Urban Mixed Use)
Staff Contact: Doug Vu, (415) 575-9120 or Doug.Vu@sfgov.org
Record No.: 2017-008521ZAD

Dear Mr. Vettel:

This letter is in response to your request for a Letter of Determination regarding the project at 901 16th Street/1200 17th Street. The subject project is located within the UMU (Urban Mixed Use) Zoning District and 68-X and 48-X Height and Bulk Districts. The request seeks 1) to extend the validity period of the Large Project Authorization (LPA) for the subject project and 2) to confirm the project is subject to the inclusionary housing requirements in effect on January 12, 2016.

Background

On May 12, 2016, the Planning Commission certified the Final Environmental Impact Report (“FEIR”) through Motion No. 19644 (Case No. 2011.1300E), and approved the LPA through Motion No. 19645 (Case No. 2011.1300X), that entitles the merger of four lots into two lots, demolition of an existing industrial and warehouse building, and the construction of a six-story, up to 68-foot tall mixed-use development containing 395 dwelling units, approximately 24,968 sq. ft. of commercial retail space, and 388 off-street parking spaces (hereinafter “Project”).

On June 10, 2016, the FEIR was appealed to the Board of Supervisors, which on July 26, 2016, denied the appeal and upheld the Planning Commission’s certification of the FEIR.

On August 26, 2016, a Petition for Writ of Mandate was filed against the City and Project Sponsor (dba Potrero Partners, LLC) with the San Francisco Superior Court seeking reversal of the FEIR certification and subsequent invalidation of the LPA. Following certification by the City of the Administrative Record and briefing on the merits by all parties, the San Francisco Superior Court held its hearing on the writ petition on May 12, 2017. The Court has not yet issued its decision, but is anticipated to issue a judgment by mid-September 2017. Your letter also states there is the expectation that the non-prevailing party will appeal the Superior Court’s judgment to the California Court of Appeal within the applicable 60 day appeal period. Assuming an appeal is filed, you state the litigation would likely not be concluded in the
Court of Appeal until late 2017. According to your letter, “should any party seek review in the California Supreme Court, another two or three months would be required for the Supreme Court to determine whether it would hear the case. In the event the California Supreme Court chose to hear the case, it would likely take up to three years from the time the California Supreme Court agrees to hear the case until the Supreme Court issues its final decision.”

Conditions of Approval included with Motion No. 19645 for the LPA state: “The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of this Motion.” Further, the Conditions of Approval state: “All time limits in the preceding paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.”

The Project is subject to the affordable housing requirements of Planning Code Section 415. Section 415.3(b) states: “Any development project that has submitted a complete Environmental Evaluation application prior to January 12, 2016 shall comply with the Affordable Housing Fee requirements, the on-site affordable housing requirements or the off-site affordable housing requirements, and all other provisions of Section 415.1 et seq., as applicable, in effect on January 12, 2016.” The Project Sponsor submitted their environmental review application on March 23, 2012, prior to January 1, 2013.

Further, Section 415.3(b)(4) states: “Any development project that constructs on-site or off-site affordable housing units as set forth in subsection (b) of this Section 415.3 shall diligently pursue completion of such units. In the event the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and 415.7, as applicable. Such deadline shall be extended in the event of any litigation seeking to invalidate the City’s approval of such project, for the duration of the litigation.”

**Determinations**

It is my determination that the Project at 901 16th Street/1200 17th Street is eligible for an extension of the three-year validity period as authorized in Motion No. 19645 due to the appeal of the FEIR to the Board of Supervisors and the filing of the Petition for Writ of Mandate regarding the FEIR. The maximum length of this extension period shall be equal to the number of days the FEIR appeal was pending before the Board of Supervisors (June 10, 2016 to July 26, 2016) and the number of days the Petition for Writ of Mandate has been pending before the San Francisco Superior Court (since August 26, 2016) until potential appeals to the Court of Appeal and California Supreme Court have been exhausted.

It is also my determination that the Project is subject to the affordable housing requirements in effect on January 12, 2016 in compliance with the requirements of Section 415.3(b). Further, pursuant to Section 415.3(b)(4), the deadline to procure a building or site permit for construction of the affordable units may be extended from the December 7, 2018 by the number of days the Petition for Writ of Mandate has been pending before the San Francisco Superior Court (since August 26, 2016) until any potential appeals to the Court of Appeal and California Supreme Court have been exhausted.
The Project Sponsor shall promptly notify the Zoning Administrator in writing when the Writ of Mandate has been resolved in the courts to confirm the Project's new validity period and deadline for compliance under Section 415.3(b)(4).

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,

Scott Sanchez
Zoning Administrator

c: Property Owner
    Neighborhood Groups
    Doug Vu, Planner
June 20, 2017

Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Re: 901 16th Street and 1200 17th Street
(Block 3949, Lots 001, 001A and 002; Block 3950, Lot 001)
Case No. 2011.1300X
Request for Letter of Determination

Dear Mr. Sanchez:

I am writing on behalf of Potrero Partners LLC, the project sponsor of the 901 16th Street/1200 17th Street project (the “Project”) to request a letter of determination as described below.

**Factual Background.** The Project is comprised of 395 dwelling units and 24,968 gross square feet of ground floor retail space. The Project sponsor submitted an Environmental Evaluation application to the Department on March 23, 2012, and it was “logged in” by Planning Department on April 4, 2012. On August 12, 2015, the Department published the Project’s Draft EIR, and on April 28, 2016, the Department published the Final EIR.

On May 12, 2016, the Planning Commission certified the Final EIR and granted a Large Project Authorization for the Project in its Motion No. 19645 (the “LPA Motion”). The “Validity” condition of approval of the LPA Motion specifies that the authorization shall remain valid provided a site permit is issued within 3 years of the effective date of the motion. The “Extension” condition states: “All time limits in the preceding three paragraphs [including the Validity condition] may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.” A copy of these conditions is attached hereto as Exhibit A.

The EIR certification was appealed to the Board of Supervisors, which affirmed the Planning Commission’s certification action on July 26, 2016.

On August 26, 2016, Petitioners Save the Hill and Grow Potrero Responsibly filed a Petition for Writ of Mandate against the City and Potrero Partners in the San Francisco Superior Court.
Court, seeking a writ mandating that the Final EIR certification be reversed, that the City’s CEQA Findings be invalidated, and that the Project’s LPA approval be voided. A copy of the Petition is attached as Exhibit B.

On May 12, 2017, the San Francisco Superior Court (Judge Cynthia Ming-mei Lee) held its hearing on the writ petition, following certification by the City of the Administrative Record and briefing on the merits by all parties. As of this date, the Court has not yet issued its decision. We expect a decision and judgment from the Superior Court by mid-September, 2017. We and the City Attorney’s Office expect that the non-prevailing party will appeal the Superior Court’s judgment to the California Court of Appeal within the applicable 60 day appeal period (by approximately mid-November, 2017). Appeals to the Court of Appeal generally require nearly two years to be decided,\(^1\) such that, assuming an appeal is filed, the litigation will likely not be concluded in the Court of Appeal until late 2019. Should any party seek review in the California Supreme Court, another two or three months would be required for the Supreme Court to determine whether it would hear the case. In the event the California Supreme Court chose to hear the case, it would likely take up to three years from the time the California Supreme Court agrees to hear the case until the Supreme Court issues its final decision.

Request for Determination. We request that you make the following determinations:

1. We request that you exercise your discretion under the Extension condition of approval of the LPA Motion to extend the Validity period of the LPA during the pendency of the EIR appeal to the Board of Supervisors (between May 12, 2016, and July 26, 2016) and during the pendency of the legal challenge to the City’s EIR and CEQA Findings, commencing on August 26, 2016, and concluding on the date that is the latter of (a) the writ petition is denied by the Superior Court and no party appeals the writ denial within the applicable 60-day appeal period, (b) the Superior Court judgment is appealed and the Court of Appeal issues it Remittitur upholding denial of the writ, or (c) the California Supreme Court either denies review or takes review and upholds denial of the writ. Should the Superior Court, Court of Appeal or Supreme Court order issuance of a writ of mandate overruling certification of the EIR or the validity of the City’s CEQA Findings, this request would most likely be moot because the LPA Motion would most likely have been voided by the court.

The effect of this request that you grant the requested extension would be that the 3-year Validity condition of approval for issuance of a site or building permit would commence upon expiration of the extension period described in the preceding paragraph.

2. We request that you determine that the Project is subject to the inclusionary housing requirements in effect on January 12, 2016, and that the litigation described above

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\(^1\) For example, the appeal of the San Francisco Superior Court’s denial of the writ petition in *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* was filed on February 8, 2013, and the Court of Appeal issued its Remittitur upholding the Superior Court’s denial of the writ petition on November 25, 2014.
extends the period within which a building or site permit must be issued to maintain such inclusionary “grandfathering” provisions for the duration of the litigation.

Planning Code Section 415.3(b) provides: “Any development project that has submitted a complete Environmental Evaluation application prior to January 1, 2013 shall comply with the Affordable Housing Fee requirements, the on-site affordable housing requirements or the off-site affordable housing requirements, as applicable, in effect on January 12, 2016.” Section 415.3(b)(4) provides: “Any development project that constructs on-site or off-site affordable housing units as set forth in subsection (b) of this Section 415.3 shall diligently pursue completion of such units. In the event the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and 415.7, as applicable. Such deadline shall be extended in the event of any litigation seeking to invalidate the City's approval of such project, for the duration of the litigation.” The proposed amendments to Section 415 now pending before the Board of Supervisors in Board File No. 161351 do not revise these subsections.

The Project sponsor submitted its Environmental Evaluation application on March 23, 2012, prior to January 1, 2013. Accordingly, we seek your confirmation that the first sentence of Section 415.3(b) applies and the Project is subject to the inclusionary housing requirements in effect on January 12, 2016. Second, we seek your confirmation that the pending CEQA litigation extends the December 7, 2018, deadline for the Project to obtain a building or site permit in order to retain its inclusionary grandfathering for the duration of the lawsuit, being the period between the filing of the writ petition on August 26, 2016, and the conclusion of the lawsuit as described in Request No. 1 above.

Enclosed is a draft letter for your consideration, as well as the LOD fee in the amount of $664. Thank you for considering this request.

Very truly yours,

Steven L. Vettel

SLV:hd
Enclosure

cc: Chris Townes, Planner
Josh Smith, Potrero Partners

268426060916.1
Exhibit A
Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

Validity. The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period. For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

Expiration and Renewal. Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization. For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

Diligent Pursuit. Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved. For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

Extension. All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay. For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

Conformity with Current Law. No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval. For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

Improvement and Mitigation Measures. Improvement and Mitigation Measures described in the MMRP for the Project EIR (Case No. 2011.1300E) attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor.
Exhibit B
SAVETHETHILLANDGROW
unincorporatedassociations;

Petitioners,

vs.

CITYANDCOUNTYOFSAN
FRANCISCO, itsPLANNING
COMMISSIONandBOARDOF
SUPERVISORS, andDOES1-5;

Respondents,

POTREROPARTNERSLLC,PRADO
GROUPINC., WALDEN
DEVELOPMENT, LLC, DANSAFIER,
JOSHSMITH,andDOES6-10;

RealPartiesinInterest.

PetitionforWritofMandamus
CityandCountyofSanFrancisco

PETITIONFOR
WRITOFMANDAMUS

CaliforniaEnvironmentalQualityAct
[CEQA]
Petitioners allege:

Introduction

1. The community organizations Save the Hill and Grow Potrero Responsibly (collectively, "Citizens", hereafter) bring this mandamus action in the public interest to challenge the environmental review conducted for the 901 16th Street and 1200 17th Street mixed use residential project ("Project", hereafter) proposed by Potrero Partners, LLC, Prado Group Inc., and Walden Development, LLC ("Developer", hereafter) in order to enforce mandatory environmental laws protecting Potrero Hill and the Showplace Square areas of San Francisco. Positioned at the gateway of the Potrero Hill community, the Project covers 3.5 acres and has the capacity to alter the very nature of the iconic Potrero Hill environs. It is one of the largest projects to be proposed in the history of Potrero Hill.

The City of San Francisco ("City", hereafter) improperly relied upon an outdated 2008 Eastern Neighborhoods Plan Environmental Impact Report (PEIR) for their application of a Community Plan Exemption as well as an exception under Public Resources Code section 21099 that relieves certain mixed use transit oriented projects from considering aesthetics impacts during environmental review; and the Project's Environmental Impact Report (EIR) is inadequate and incomplete. The PEIR underestimated the level of development of residential units currently implemented and proposed throughout the Potrero Hill and Showplace Square Areas, thereby impacting the analysis of land use impacts, consistency with area plans and policies.
and direct and cumulative traffic impacts. The Developer asserts the Project’s addition of 395 residential units with admitted impacts to traffic and loss of PDR is a transit friendly project merely because the site is located within a transit area. In actuality, Potrero Hill is experiencing severe traffic congestion and the area is severely underserved by area transit. Considering this, along with the Project’s incorporation of 388 parking spaces, the Project cannot be considered transit friendly and therefore is not exempted from the requirement of reviewing aesthetics and views impacts.

The Project EIR failed to adequately analyze impacts in the areas of: traffic and circulation, transit and transportation, aesthetics and views, shadows, recreation and open space, land use, consistency with area plans and policies, and cumulatively considerable impacts; failed to adequately analyze and review alternatives to the Project; and the Final EIR failed to adequately respond to substantive comments made on the Draft EIR.

Citizens are not against the development of Potrero Hill; they are acting in the public interest to ensure the community does not shoulder the burden of a project with undisclosed impacts due to the reliance on an outdated Area Plan EIR and inadequate Project EIR. Citizens reasonably assert that decision makers and the public should first be apprised of the actual effects of the Project so that all feasible mitigation can be reviewed and adopted in advance of its adoption.

Under mandatory provisions of the California Environmental Quality Act (CEQA), the City cannot merely adopt a statement of overriding considerations when approving a project with substantial environmental impacts, it must first analyze the

Petition for Writ of Mandamus
Project's actual impacts and adopt feasible alternative and mitigation measures that substantially lessen or avoid these impacts prior to consideration of its adoption.

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

Jurisdiction

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

Parties

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

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

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

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

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

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

General Allegations

Project Description and Locale

8. The Project site consists of four adjacent lots in the lower Potrero Hill neighborhood. The approximately 3.5-acre site is bounded by 16th Street to the north, Mississippi Street to the east, 17th Street to the south, and residential and industrial buildings to the west. The site currently contains four existing buildings: two metal-
clad industrial warehouse buildings (102,500 square feet), a brick office building (1,240 square feet), and an office building (5,750 square feet). The 1926 brick building was originally constructed by the Pacific Rolling Mill Co. to house the office functions of the company’s steel fabricating operation. In total, the four existing buildings constitute approximately 109,500 gross square feet.

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

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

**Administrative Review Process**

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

12. The Draft EIR was released for public review in August 2015. The Draft EIR found the Project would result in direct significant unavoidable impacts to traffic and circulation and cumulatively significant impacts contributing to the loss of PDR and worsening of area traffic and circulation but claimed there were no feasible mitigation measures that would lessen or avoid these impacts. The Draft EIR considered a No Project Alternative, Reduced Density Alternative, and Metal Shed Reuse Alternative and found the Reduced Density Alternative to be the environmentally superior alternative.

13. Citizens and numerous concerned area residents commented that the Community Plan Exemption improperly relied on an outdated Eastern Neighborhoods Plan EIR and that the Project EIR failed to adequately analyze: traffic and circulation, transit and transportation, aesthetics and views, shadows, recreation and open space, land use, cultural and historic resources, consistency with area plans and policies, and cumulatively considerable impacts. The EIR also failed to adequately analyze alternatives to the Project.

14. On October 1, 2015 the City held a hearing on the Draft EIR. Citizens and others objected on the bases stated.

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15. On April 28, 2016, the City published the Final EIR. Citizens stated the Final EIR failed to adequately respond to comments in the areas of, *inter alia*, scale, height and density, aesthetic and views, recreation and open space, and consistency with area plans and policies. Citizens noted the EIR failed to respond to comments made about the Project's inconsistency with area plans and policies, including the Showplace Square/Potrero Area Plan and the Urban Design and Housing Elements of the City's General Plan. The EIR disregarded established City policies and failed to adequately respond to comments regarding the Project's conflicts with neighborhood scale and character, the requirement to provide adequate infrastructure, and the preservation of PDR uses.

16. On May 12, 2016, the Planning Commission held a public hearing, certified the EIR, made CEQA findings, adopted a Statement of Overriding Considerations and approved the Project *via* Motions 19643-19645. Citizens reiterated their objections to the Project approval and the environmental review conducted for the Project on the bases stated.

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

Citizens stated that when the Planning Commission certified the Eastern Neighborhoods Plan EIR in 2008, they approved a Preferred Project that allowed for
3180 residential units in the Showplace/Potrero area by 2025. But the analysis done for the Project indicated that as of February 2016, 3315 units had been approved or were in the pipeline. Additional analysis done for the 2011-2015 Eastern Neighborhoods Monitoring Report showed 4,526 residential units had been approved or were in the pipeline, well in excess of what was anticipated in the Eastern Neighborhoods Plan EIR for the Showplace/Potrero Area. The Monitoring Report indicated that the entire Eastern Neighborhoods Area was now on track to exceed projections of 9,785 units by nearly 2,000 units.

Citizens stated traffic congestion in the immediate area of the Project is already a readily recognized fact of life, with multiple intersections operating at “F” levels. The Eastern Neighborhoods Plan EIR’s cumulative traffic analysis was based on assumptions about the level of development and traffic counts that are now outdated, had not accounted for traffic at key intersections surrounding the Project site, and had not included large projects such as the Warriors Arena.

Citizens stated the Project’s single massive structure positioned at the base of Potrero Hill, along with its height, bulk, and massing will obscure a cherished landmark of Potrero Hill – scenic public views of downtown San Francisco. Potrero Hill, like San Francisco as a whole, is known for its dramatic City views and sweeping vistas. The height, bulk, and mass of the Project will effectively wall off a large portion of lower Potrero Hill from public views of downtown that have been enjoyed by visitors for generations. Just like the recent San Francisco campaign against “wallowing off” the waterfront, Citizens stated Potrero Hill should be protected from
"walls" of out-of-scale development. The Project also conflicts with long-standing City and state policies regarding protection of public scenic vistas.

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

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

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

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

(Pub. Res. Code § 21002.) Reflecting this policy, Public Resources Code section 21081(a)(1)-(3) provides that if one or more significant impacts will not be avoided or substantially lessened by adopting mitigation measures, alternatives described in the EIR that can avoid or reduce the impact must be found infeasible if they are not adopted. Under this scheme, a public agency must avoid or reduce a project's significant environmental effects when it is feasible to do so. (Pub. Res. Code §§ 21002, 21002.1(b); 14 Cal. Code Regs §§s 15021(a) and 15091(a)(1).) As explained by the California Supreme Court in Mountain Lion Foundation v. Fish & Game Commission (1997) 16 Cal.4th 105, 124, "Under CEQA, a public agency must ... consider measures that might mitigate a project's adverse environmental impact and adopt them if feasible. (Pub. Res. Code §§ 21002, 21081.)" The Court 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
Cal.App.4th 1336.

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

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

18. On July 18, 2016, eight days before the appeal hearing before the Board of Supervisors, the Planning Department asserted Citizens could not file an appeal to the Planning Commission's CEQA determinations without also appealing the Large Project.
Authorization. Citizens countered that the San Francisco Administrative Code section 31.16 provided the bases for the Board of Supervisor's rejection of the Planning Commission's adoption of the CEQA determination and findings via a CEQA appeal; their action to uphold the appeal would necessarily void the Planning Commission's approval of the Project and was not premised on the appeal of the Large Project Authorization. Citizens stated:

It is well settled that discretionary project approvals subject to CEQA, as here, must first be premised on adequate environmental review under Public Resources Code Sections 21100(a) and 21151(a). If the Board rejects the environmental determination or findings made by the Commission, the Large Project Approval will be deemed void. "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." "Any actions approving the project in reliance on the reversed CEQA decision, shall be deemed void." (Emphasis added.) The relevant sections are quoted in full below.

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

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

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

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

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

20. On July 29, 2016, the Notice of Determination was filed. This action is timely filed.
21. Petitioners have no adequate remedy at law. Absent the relief prayed for in this Petition, the Project will proceed with significant irreparable and irreversible environmental impacts to the Potrero Hill/Showplace Square environs. The City has the ability to correct its violations of law but has failed to do so.

VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

22. Petitioners incorporate all previous paragraphs as if fully set forth.

23. The City abused its discretion and failed to act in the manner required by law in applying the Community Plan Exemption, certifying the Environmental Impact Report and approving the Project because:

a. The City improperly relied upon an outdated EIR prepared for the Eastern Neighborhoods Plan when it applied the Community Plan Exemption and certified the Project EIR.

b. The EIR is inadequate and incomplete and its conclusions are not supported by substantial evidence;

c. The City failed to adequately review significant environmental impacts related to: residential growth, traffic and circulation, aesthetics and views, shadow, recreation and open space, transit and transportation, land use, inconsistencies with area plans and cumulative impacts;

d. The Board of Supervisors failed to fully address Citizens' CEQA appeal;

e. The EIR failed to conduct an adequate alternatives analysis;

f. The City unlawfully approved a project with significant environmental impacts when the record discloses feasible alternatives and mitigation measures that would substantially reduce impacts and those alternatives and mitigation measures were not adequately considered
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

[Signature]

Rachel Mansfield-Howlett
Verification of Petition

I, Alison Heath, a member of Petitioner, Grow Potrero Responsibly. I have read the Petition for Writ of Mandamus and know its contents. The matters stated in it are true and correct based on my knowledge, except as to the matters that are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 26th day of August at San Francisco, California.

Alison Heath

I, Rod Minott, am a member of Petitioner, Save the Hill. I have read the Petition for Writ of Mandamus and know its contents. The matters stated in it are true and correct based on my knowledge, except as to the matters that are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 26th day of August at San Francisco, California.

Rod Minott
San Francisco Superior Court Case No. __________

PROOF OF SERVICE

I am a citizen of the United States, over the age of eighteen years and I am not a party to the within entitled action;

On AUGUST 26, 2016, I served one true copy of the following documents:

NOTICE OF COMMENCEMENT OF ACTION
PETITION FOR WRIT OF MANDATE
CIVIL CASE COVER SHEET
NOTICE OF ELECTION TO PREPARE RECORD

X by placing a true copy thereof enclosed in a sealed envelope and postage thereon fully prepaid, in the US mail in Santa Rosa, California to the addresses and persons listed below.

City of San Francisco and its Board of Supervisors and Planning Commission
Clerk of the Board
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

City Attorney
1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, Ca. 94102-4689

Attorney General's Office
California Department of Justice
Kamala D. Harris
P.O. Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury, that the foregoing is true and correct.
Executed on AUGUST 26, 2016, at Santa Rosa California.

Rachel Mansfield-Howlett
CIVIL CASE COVER SHEET

CASE NAME:
Save the Hill, et. al. v. City of San Francisco, et al.

CIVIL CASE COVER SHEET

<table>
<thead>
<tr>
<th>Unlimited</th>
<th>Limited</th>
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<tbody>
<tr>
<td>Amount demanded</td>
<td>Amount demanded is exceeds $25,000</td>
</tr>
</tbody>
</table>

Complex Case Designation

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

1. Check one box below for the case type that best describes this case:

<table>
<thead>
<tr>
<th>Auto Tort</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auto (22)</td>
<td>Breach of contract/warranty (06)</td>
</tr>
<tr>
<td>Uninsured motorist (45)</td>
<td>Rule 3.740 collections (09)</td>
</tr>
<tr>
<td>Other PP/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort</td>
<td>Other collections (09)</td>
</tr>
<tr>
<td>Asbestos (04)</td>
<td>Other contract (37)</td>
</tr>
<tr>
<td>Product liability (24)</td>
<td>Real Property</td>
</tr>
<tr>
<td>Medical malpractice (45)</td>
<td>Eminent domain/Inverse condemnation (14)</td>
</tr>
<tr>
<td>Other PP/DP/WD (23)</td>
<td>Wrongful eviction (33)</td>
</tr>
<tr>
<td>Non-PP/DP/WD (Other Tort)</td>
<td>Other real property (25)</td>
</tr>
<tr>
<td>Business tort/fair business practice (07)</td>
<td>Public nuisance (18)</td>
</tr>
<tr>
<td>Civil rights (08)</td>
<td>Unlawful Detainer</td>
</tr>
<tr>
<td>Defamation (13)</td>
<td>Commercial (31)</td>
</tr>
<tr>
<td>Fraud (16)</td>
<td>Residential (32)</td>
</tr>
<tr>
<td>Intellectual property (19)</td>
<td>Drugs (38)</td>
</tr>
<tr>
<td>Professional negligence (25)</td>
<td>Professional negligence (39)</td>
</tr>
<tr>
<td>Other non-PP/DP/WD tort (35)</td>
<td>Sexual harassment (37)</td>
</tr>
<tr>
<td>Employment</td>
<td>Wrongful termination (36)</td>
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<tr>
<td>Wrongful termination (36)</td>
<td>Right to work (31)</td>
</tr>
<tr>
<td>Other employment (15)</td>
<td>Other employment review (36)</td>
</tr>
</tbody>
</table>

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. ☐ Large number of separately represented parties
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☐ Substantial amount of documentary evidence
d. ☐ Large number of witnesses
e. ☒ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): ☑ monetary ☐ nonmonetary; declaratory or injunctive relief ☐ punitive

4. Number of causes of action (specify): (1) CEQA

5. This case ☐ is ☑ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 26, 2016
Rachel Mansfield-Howlett

TYPED OR PRINT NAME

NOTE:
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must file a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.
INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files an responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than 30 days after an initial appearance a joinder designating whether the case is complex, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

<table>
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</tr>
</tbody>
</table>

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.490-3.493)**
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

**Enforcement of Judgment**
- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County) (41)
- Confession of Judgment (non-domestic relations) (24)
- Sister State Judgment (20)
- Administrative Agency Award (20)
- Petition/Certification of Entry of Judgment on Unpaid Taxes (20)
- Other Enforcement of Judgment (20)

**Miscellaneous Civil Complaint**
- RICO (27)
- Other (not specified above) (42)
- Declatory Relief Only (non-harassment) (27)
- Mechanics Lien (27)
- Other Commercial Complaint (27)
- Other Civil Complaint (27)

**Miscellaneous Civil Petition**
- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
- Civil Harassment (21)
- Workplace Violence (21)
- Elder/Dependent Adult Abuse (21)
- Election Contest Petition for Name Change (21)
- Election Petition for Relief From Late Claim (21)
- Other Civil Petition (21)
San Francisco Superior Court Case No. __________

PROOF OF SERVICE

I am a citizen of the United States, over the age of eighteen years and I am not a party to the within entitled action;

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California Department of Justice
Kamala D. Harris
P.O. Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury, that the foregoing is true and correct.
Executed on AUGUST 26, 2016, at Santa Rosa California.

Rachel Mansfield-Howlett

[Signature]