



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

September 13, 2017

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

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

Dear Mr. Vettel:

This letter is in response to your request for a Letter of Determination regarding the project at 901 16<sup>th</sup> Street/1200 17<sup>th</sup> 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

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Suite 400  
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Information:  
**415.558.6377**

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 16<sup>th</sup> Street/1200 17<sup>th</sup> 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.

Steven Vettel  
235 Montgomery Street  
San Mateo, CA 94104

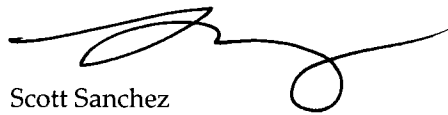
September 13, 2017  
Letter of Determination

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

cc: Property Owner  
Neighborhood Groups  
Doug Vu, Planner



June 20, 2017

R # 2017-008521 ZAD  
CK # 597390 \$ 664.-  
R. SUCRE (SE)

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

Re: 901 16<sup>th</sup> Street and 1200 17<sup>th</sup> 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 16<sup>th</sup> Street/1200 17<sup>th</sup> 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, 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,<sup>1</sup> 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 its 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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<sup>1</sup> 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.

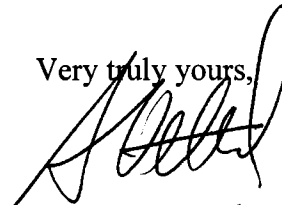
extends the period within which a building or site permit must be issued to maintain such inclusionary “grandfathering” provisions for the duration of the litigation.

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

# 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](http://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](http://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](http://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](http://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](http://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

1 Rachel Mansfield-Howlett/SBN 248809  
2 PROVENCHER & FLATT, LLP  
3 823 Sonoma Ave.  
4 Santa Rosa, CA 95404  
5 Phone: 707.284.2378  
6 Fax: 707.284.2387  
7 Email: Rhowlettlaw@gmail.com

8 Attorney for Petitioners

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

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

14 Petitioners,

15 vs.

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

20 Respondents,

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

25 Real Parties in Interest.

26  
27 Petition for Writ of Mandamus  
28 City and County of San Francisco

**FILED**  
Superior Court of California  
County of San Francisco

AUG 26 2016

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

CPF - 16 - 515238

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

PETITION FOR  
WRIT OF MANDAMUS

California Environmental Quality Act  
[CEQA]

**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 16<sup>th</sup> Street and 1200 17<sup>th</sup>  
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.  
14  
15

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  
25  
26  
27

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.  
15

16         Citizens are not against the development of Potrero Hill; they are acting in the  
17 public interest to ensure the community does not shoulder the burden of a project with  
18 undisclosed impacts due to the reliance on an outdated Area Plan EIR and inadequate  
19 Project EIR. Citizens reasonably assert that decision makers and the public should first  
20 be apprised of the actual effects of the Project so that all feasible mitigation can be  
21 reviewed and adopted in advance of its adoption.  
22

23         Under mandatory provisions of the California Environmental Quality Act  
24 (CEQA), the City cannot merely adopt a statement of overriding considerations when  
25 approving a project with substantial environmental impacts, it must first analyze the  
26

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**

10  
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'  
27

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 5. Real Parties in Interest, Potrero Partners LLC, Prado Group Inc., Walden  
8 Development, LLC, Dan Safier, and Josh Smith are listed as the owners/applicants who  
9 propose to develop the Project site.  
10

11 6. Does 1 to 10 are fictitiously named Respondents and Real Parties in Interest  
12 whose true names and capacities are currently unknown to Petitioner. If and when  
13 their true names and capacities are known, Petitioner will amend this petition to assert  
14 them. If any of the listed entities are determined to be not indispensable to the  
15 litigation, Petitioners will consider dismissing the party from litigation.  
16

17 7. The paragraphs below refer to and rely on information in documents relating  
18 to this action, all of which will be filed with this Court as part of the Administrative  
19 Record of Proceedings and which are here incorporated by reference.  
20

### 21 **General Allegations**

#### 22 **Project Description and Locale**

23 8. The Project site consists of four adjacent lots in the lower Potrero Hill  
24 neighborhood. The approximately 3.5-acre site is bounded by 16<sup>th</sup> Street to the north,  
25 Mississippi Street to the east, 17<sup>th</sup> Street to the south, and residential and industrial  
26 buildings to the west. The site currently contains four existing buildings: two metal-  
27

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 16<sup>th</sup> Street to 17<sup>th</sup> Street along the  
24 western property line. Combined, the two new buildings would construct a total of 395  
25  
26  
27  
28

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**

4  
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.  
15  
16

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.  
24

25  
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.  
11

12  
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.  
27

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.  
9

10  
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.  
17

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.4<sup>th</sup> 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.4<sup>th</sup> 412; *City of Marina v. Board of*  
*Trustees of the California State University* (2006) 39 Cal.4<sup>th</sup> 341; *County of San*  
*Diego v. Grossmont-Cuyamaca Community College District* (2006) 141  
Cal.App.4<sup>th</sup> 86; and *Preservation Action Council v. City of San Jose* (2006) 141

1 Cal.App.4<sup>th</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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.  
27

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  
27

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  
6

7 Authorization. Citizens stated:

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

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

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

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

27 (5) The Board shall reverse the Planning Commission's certification  
28 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 16<sup>th</sup> Street and 1200 17<sup>th</sup> 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 16<sup>th</sup> Street and 1200 17<sup>th</sup> 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

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**Verification of Petition**

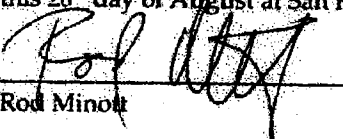
I, Alison Heath, am a member of Petitioner, Grow Potrero Responsibly. I have read the Petition for Writ of Mandamus and know its contents. The matters stated in it are true and correct based on my knowledge, except as to the matters that are stated on information and belief, and as to those matters,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

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

  
Rod Minott

*Save the Hill, et al. v. City of San Francisco, et al.*  
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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
Rachel Mansfield-Howlett SBN# 248809  
Provencher & Flatt, LLP  
823 Sonoma Ave. Santa Rosa, CA 95404

TELEPHONE NO.: 707-291-6585 FAX NO.: 707-291-2378  
ATTORNEY FOR (Name): Petitioners, Save the Hill and Grow Potrero Responsibly

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco  
STREET ADDRESS: 400 McAllister  
MAILING ADDRESS: 400 McAllister  
CITY AND ZIP CODE: San Francisco 94102  
BRANCH NAME: Civic Center Courthouse

FOR COURT USE ONLY  
**FILED**  
Superior Court of California  
County of San Francisco  
AUG 26 2016  
CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

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

**CIVIL CASE COVER SHEET**  
 Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 Counter  Joinder  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CPF-16-515238**  
JUDGE:  
DEPT: 503 [CEQA]

Items 1-6 below must be completed (see instructions on page 2).

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

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<b>Other P/VPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/VPD/W/D (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<b>Non-P/VPD/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/VPD/W/D tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

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. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  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.)

**BY FAX**

Date: August 26, 2016  
Rachel Mansfield-Howlett  
(TYPE OR PRINT NAME)

*[Signature]*  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- 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 serve 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 a 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 the time of its first appearance a joinder in the plaintiff's designation, 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

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other P/IPD/W/D (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/W/D (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other P/IPD/W/D

## Non-P/IPD/W/D (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-P/IPD/W/D Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

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)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

*Save the Hill, et al. v. City of San Francisco, et al.*  
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