

for immediate release

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Environmental Lawsuit Challenges Laurel Heights Project; Seeks Feasible Alternative Allowing New Housing and Protecting Historic Resources

San Francisco. Jan 2, 2020. The Laurel Heights Improvement Association of San Francisco, Inc., filed suit against the City and County of San Francisco today in the San Francisco County Superior Court. (Attached.) The case challenges the City's failure to comply with the California Environmental Quality Act (CEQA) in approving a million-and-a-half square feet of mixed-use development without adopting feasible mitigations mandated by state law.

The association proposes a feasible alternative that would allow substantial expansion while avoiding needless impacts to the historic 1957 Fireman's Fund Insurance Company complex that is currently the UCSF Laurel Heights campus — and still provide for construction of all of the project's 744 housing units.

The existing 354,000 square-foot four-story International Style building was designed by master architect Edward Bradford Page (1905-1994). Landscaping is an integral part of the original design by the highly-acclaimed master landscape architectural firm of Eckbo, Royston & Williams.

The Fireman's Fund building dramatically transformed the former Laurel Hill cemetery site and stands as the most prominent postwar commercial development in the Laurel Heights neighborhood. The building is eligible for the National Register of Historic Places and is listed in the California Register of Historical Resources.

"The association advocates for appropriate development of the site," said association president Kathryn Devincenzi. "Much of the natural green landscaping and landmark building can be preserved and adapted to residential use under state-sanctioned historic design guidelines. We support sustainable development complying with the city's general plan policies, responding to site constraints, and compatible with the historic locale."

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9 Laurel Heights Improvement Association
10 of San Francisco, Inc.

ENDORSED
FILED
San Francisco County Superior Court

JAN 02 2020

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO

13 Laurel Heights Improvement
14 Association of San Francisco, Inc.,
15 a California non-profit
16 corporation;

17 Petitioner;

18 v.

19 City and County of San Francisco;
20 San Francisco Board of
21 Supervisors; and Does 1 to 10;

22 Respondents;
23 _____/

24 Laurel Heights Partners LLC,
25 a Delaware Limited Liability
26 Company; Don Bragg; and
27 Does 11-20;

28 Real Parties in Interest.
_____/

Case No. **CPF-20-516973**

Environmental Leadership CEQA Challenge

Petition for Writ of Mandamus

Introduction

1
2 1. Petitioner Laurel Heights Improvement Association filed its first environmental
3 citizen suit to enforce the California Environmental Quality Act (CEQA) over 30 years ago.
4 The California Supreme Court issued a unanimous landmark decision that comprehensively
5 interpreted CEQA and has guided environmental compliance for countless projects in the
6 decades since. (*Laurel Heights Improvement Association of San Francisco, Inc., v. Regents of the*
7 *University of California (Laurel Heights)* (1988) 47 Cal.3d 376.)

8 The association now seeks a second peremptory writ due to needless significant
9 environmental impacts attending approvals of a million-and-a-half square feet of mixed-use
10 development in San Francisco's Laurel Heights neighborhood. The project proposes
11 substantial demolition of buildings and landscaping at the historic Fireman's Fund Insurance
12 Company complex that is currently the UCSF Laurel Heights campus.



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24 The association contends that the city's approvals of the project, *including affordable*
25 *housing at a density that the association fully supports*, fail to comply with CEQA. The city certified
26 and relied upon an inadequate environmental impact report (EIR) and failed and refused to
27 adopt feasible mitigation measures and project alternatives to reduce significant impacts.

1 Following its review of a substantial regional project in southern California a few years
2 ago, the California Supreme Court ruled that voluminous environmental review — indeed, a
3 12-year process — remained flawed. The Court emphasized that neither a project’s touted
4 merit nor delay attending environmental compliance may affect judicial review, which

5 ... *does not turn* on our independent assessment of the project’s environmental merits
6 ... CEQA’s requirements for informing the public and decision makers of adverse
7 impacts, and [imposing] feasible mitigation measures, *still need to be enforced*.

8 (*Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 240, italics
9 added; cf. dis. opn. of Chin, J., at 254.) Here, in a much shorter timeframe, the sole EIR and
10 CEQA process fail to comply with the mandates of CEQA.

11 Appellant respectfully requests judgment and a preemptory writ of mandamus in the
12 public interest to enforce CEQA’s protections for Laurel Heights and its environs.

13 **Jurisdiction**

14 2. This Court has jurisdiction under Public Resources Code section 21168 and Code
15 of Civil Procedure section 1094.5. The parties and the environmental resources at issue are
16 located in the City and County of San Francisco.

17 **Environmental Leadership CEQA Challenge**

18 3. The Governor has certified the 3333 California Street Mixed Use Project as a
19 leadership project under Public Resources Code sections 21182-21184 *et seq.* and it is subject to
20 California Rules of Court, Rule 3.2223, and other associated statutes and rules for leadership
21 projects. The person or entity that applied for certification of the project as a leadership project
22 must, if the matter goes to the Court of Appeal, make the payments required by Public
23 Resources Code section 21183, subdivision (f). The statutes and rules for leadership projects
24 expedite judicial review but do not waive or affect any of CEQA’s procedural or substantive
25 mandates in any manner.

26 **Parties**

27 4. Petitioner Laurel Heights Improvement Association of San Francisco, Inc., is a
28 non-profit California corporation formed in 1950. The association’s purposes are to protect
and improve the real property known as the Laurel Heights tract, to promote the mutual
welfare of its members, and to do any and all other acts and things, and to exercise any and all

1 other powers that a non-profit corporation could do and exercise and which now or hereafter
2 may be authorized by or not inconsistent with the laws of the United States or of the State of
3 California. Members of the association enjoy and appreciate the 3333 California buildings and
4 landscaping and will be affected by the construction and operational noise, traffic, air
5 emissions, impairment of historical resources, excavation, destruction of trees, and other
6 environmental impacts that would result from the proposed project. The association brings
7 this petition on behalf of all others similarly situated that are too numerous to be named and
8 brought before this Court as petitioners. Its members objected to the respondents' approval of
9 the 3333 California Street Mixed Use Project and exhausted their administrative remedies.

10 5. Respondents City and County of San Francisco and its Board of Supervisors
11 (collectively, the city) is the governmental body that approved the project and certified its
12 environmental impact report and is the lead agency responsible for CEQA compliance.

13 6. Real parties in interest Laurel Heights Partners, LLC, a Delaware Limited
14 Liability Company, and its project manager Don Bragg are the 3333 California Street Mixed
15 Use Project proponents named as applicants (collectively, applicant) in the Notice of
16 Determination filed by the city on December 2, 2019.

17 7. Does 1 to 20 are fictitiously named respondents and real parties in interest whose
18 true names and capacities are currently unknown to the association. If and when their true
19 names and capacities are known, the association will amend this petition to assert them.

20 8. A copy of this petition has been mailed to the California Attorney General.



General Allegations

9. The paragraphs below refer to and rely on information in documents that will be lodged with this court as part of the record of proceedings.

Environmental Setting

10. The 10-acre project site at 3333 California Street is in the Laurel Heights neighborhood. Presidio Heights lies to the north. Pacific Heights and the Western Addition lie to the east and portions of the Laurel Heights area and the Anza Vista area of the inner Richmond lie to the south. Built in 1957 on the site of the former Laurel Hill Cemetery, a 354,000 square-foot, a horizontal four-story International Style building and 13,000 square-foot annex building on the site were designed by master architect Edward Bradford Page (1905-1994) for the Fireman’s Fund Insurance Company’s new corporate headquarters. Landscaping is an integral part of the original design by the highly-acclaimed master landscape architectural firm of Eckbo, Royston & Williams.

11. The Fireman’s Fund building dramatically transformed the former cemetery site and stands as the most prominent postwar commercial development in the Laurel Heights neighborhood. The building retains integrity in all seven categories of historicity — location, setting, design, materials, workmanship, feeling, and association. It is eligible for the National Register of Historic Places and is listed in the California Register of Historical Resources.



12. In 1985, the Regents of the University of California purchased the site to alleviate space constraints at its Parnassus campus. Concerns over the potential dangers of conducting

1 “scientific research using toxic chemicals, carcinogens, and radioactive materials” in the
2 residential neighborhood prompted an EIR process. The association brought a successful
3 CEQA challenge resulting in the Supreme Court decision cited above. UCSF ultimately
4 implemented an alternative plan for offices and social and behavioral research and instruction.

5 ***Administrative Process***

6 13. The proposed 3333 California Street Mixed Use project as described in the Notice
7 of Determination filed by the city on December 2, 2019, would demolish the annex building,
8 surface parking lots, and circular garage ramps; partially demolish the four-story office
9 Fireman’s Fund building and divide it into two separate buildings, vertically expanding the
10 existing building to add two to three levels; construct 13 new buildings that would include
11 978,000 square feet of residential uses containing a total of 744 units, approximately 35,000
12 square feet of retail use, and approximately 15,000 square feet of child care use and
13 approximately 400,000 square feet devoted to off-street vehicular parking with 754 parking
spaces, bicycle parking, loading facilities, and streetscape alterations.

14 14. The city published the project’s Initial Study in April 2018. The Draft EIR was
15 published in November 7, 2018 with a 60-day public comment period. The city’s historic
16 preservation commission and planning commission held public hearings on the Draft EIR in
December 2018. Responses to comments were published on August 22, 2018.

17 15. In September 2019, following public hearing the city’s planning commission
18 certified the Final EIR; adopted CEQA findings, a Statement of Overriding Considerations,
19 and a Mitigation Monitoring and Reporting Program; recommended approval of planning
20 code and zoning map amendments to create the 3333 California Street Special Use District;
21 recommended execution of the project Development Agreement; and approved a Conditional
22 Use Authorization and Planned Unit Development. The same month, the city’s Public Works
23 Director approved a Tentative Map conditioned on final approval by the Board of Supervisors
24 and the Mayor of all project-related legislation, relied upon the City’s adopted CEQA findings,
25 Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting
Program, and recommended passage of a major encroachment permit ordinance.

26 16. The city’s Municipal Transportation Agency Board of Directors approved aspects
27 of the project under its jurisdiction and adopted the CEQA findings, Statement of Overriding
28 Considerations, and the Mitigation, Monitoring and Reporting Program related to
transportation and circulation in October 2019.

1 17. The association filed administrative appeals of the planning commission's
2 CEQA-related actions and approvals and the Public Works Director's conditional approval of
3 the Tentative Map. During the administrative proceedings, including the appeal to the board
4 of supervisors, the association identified mitigation measures and project alternatives to allow
5 the mixed-use development to proceed without loss of housing units but with substantial
6 reduction to significant impacts to the historic building and landscaping.

7 18. Following public hearing, the board of supervisors upheld the planning
8 commission's certification of the Final EIR, the planning commission's approval of the
9 Conditional Use Authorization and Planned Unit Development, and the city Public Works
10 Director's approval of the Tentative Map, and adopted the planning commission's CEQA
11 Findings and its own supplemental CEQA findings and mitigation, a Statement of Overriding
12 Considerations, and a Mitigation Monitoring and Reporting Program on November 12, 2019.
13 Among the findings made by the board of supervisors was that the project would cause a
14 substantial adverse change in the significance of a historical resource.

15 19. On November 12 and 19, 2019, the board of supervisors approved ordinances
16 amending the planning code and zoning map to create the 3333 California Street Special Use
17 District, approved the project Development Agreement and an ordinance authorizing a Major
18 Encroachment Permit, and adopted the planning commission's CEQA Findings, a Statement of
19 Overriding Considerations, the Mitigation Monitoring and Reporting Program, and its own
20 supplemental CEQA findings and mitigations for the three ordinances.

21 20. The city filed a Notice of Determination on December 2, 2019. This action is
22 timely-filed within the 30-day statute of limitations.

23 21. The association has no plain, speedy and adequate remedy in the ordinary
24 course of law. Issuance of a peremptory writ is needed to avoid immediate, severe, and
25 irreparable harm to San Francisco City and County and California residents via demolition
26 and construction of the 3333 California Mixed Use project without compliance with state law.
27 The city has the capacity to correct its violations of law but has failed and refused to do so.

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Violations of the California Environmental Quality Act



22. The association incorporates all previous paragraphs as if fully set forth.

23. CEQA requires agencies to conduct a prescribed, public EIR process before taking actions that may have a significant adverse environmental impact. The point of the process is to inform the public and to provide necessary information to allow elected officials and decisionmakers to comply with CEQA's **substantive** mandate: to adopt feasible project mitigations and alternatives that can reduce a project's significant environmental impacts.

24. The city abused its discretion and failed to act in the manner required by law in approving the 3333 California Street Mixed Use Project with significant environmental impacts, *inter alia* and as documented and supplemented by the to-be-lodged record of proceedings, including:

a. Certification of an inadequate EIR without a stable, accurate, finite project description; with overly-narrow project objectives; with insufficient analysis of project impacts, mitigations, and alternatives as a matter of law to adequately provide information to the decisionmakers and the public (*e.g.*, *Sierra Club v. County of Fresno* (2018)); with inadequate analysis of the revised project; with inadequate analysis of shadow impacts; failing to analyze project inconsistencies with the city's general plan priorities, goals, policies, and elements; and with inadequate analysis and mitigation for project impacts on biological resources, construction noise, and the integrated historic architecture and landscape;

b. Failure to adequately respond to comments on the EIR;

1 c. Reliance on findings that are not supported by substantial evidence in the whole of
2 the record of proceedings and contrary to facts and analysis in the record, including
3 inadequate findings that all significant project environmental effects have been eliminated or
4 substantially lessened when feasible in light of expert analysis and information to the contrary.

5 d. Failure to adopt identified project mitigation measures and alternatives that could
6 reduce or avoid various identified environmental impacts, including mitigations set forth in
7 the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for*
8 *Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* to substantially reduce
9 significant impacts to the historic resources on site.

9 **WHEREFORE**, the association prays:

10 1. That the Court issue judgment and a peremptory writ ordering the city
11 respondents to set aside all actions and approvals relating to the 3333 California Street Mixed
12 Use Project, requiring that before further consideration of project approval the city must revise
13 and recirculate the project EIR and identify and adopt feasible mitigations and alternatives and
14 make all findings required by CEQA, supported by substantial evidence;

15 2. That the Court enjoin the city, real parties, and their employees and agents from
16 all physical actions furthering the project while the petition is pending and after judgment
17 pending compliance with the writ;

18 3. For the association's reasonable costs, expenses, and attorney fees pursuant to
19 Code of Civil Procedure section 1021.5; and

20 4. For other and further relief as the Court finds proper.

21 January 2, 2020

BRANDT-HAWLEY LAW GROUP



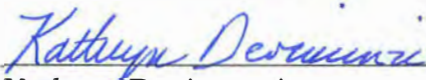
22 _____
23 Susan Brandt-Hawley, Attorney for
24 Laurel Heights Improvement Association
25 of San Francisco, Inc.

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VERIFICATION

I, Kathryn Devincenzi, am the president of the petitioner Laurel Heights Improvement Association of San Francisco, Inc., and I have read this petition and know its contents. The matters stated are true and correct based on my knowledge, except matters stated on information and belief that I believe to be true.

I declare under penalty of perjury that the above is true to the best of my knowledge and is executed on January 2, 2020, at San Francisco, California.


Kathryn Devincenzi

1 *Laurel Heights Improvement Assoc. of San Francisco, Inc. v.*
2 *City and County of San Francisco, et al.*
3 San Francisco County Superior Court Case No. _____

4 **PROOF OF SERVICE**

5 I am a citizen of the United States and a resident of the County of Sonoma. I am
6 over the age of eighteen years and not a party to this action. My business address is
7 P.O. Box 1659, Glen Ellen, CA 95442.

8 On January 2, 2020, I served one true copy of:

9 **Petition for Writ of Mandamus**

10 by placing a true copy enclosed in a sealed envelope with prepaid postage, in the United
11 States mail in Petaluma, California addressed to:

12
13
14 SALLY MAGNANANI, Deputy Attorney General
15 State of California
16 Department of Justice
17 P.O. Box 944255
18 Sacramento CA 94244-2550

19 I declare under penalty of perjury that the foregoing is true and correct and is
20 executed on January 2, 2020, at Petaluma, California.

21 
22 _____
23 Jeanie Stapleton