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6 Attorney for Petitioners *Neighbors to Preserve*
7 *the Waterfront, et al.*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

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12 Neighbors to Preserve the Waterfront; Friends Case No.
13 of Golden Gateway; Telegraph Hill Dwellers;
14 San Franciscans for Reasonable Growth;
15 Golden Gateway Tenants Association;
16 San Francisco Neighborhood Network;
17 Coalition for San Francisco Neighborhoods;
18 and Does 1 to 5;

Petition for Writ of Mandamus
[California Environmental
Quality Act]

17 Petitioners,

18 v.

19 City and County of San Francisco; Planning
20 Commission of the City and County of San
21 Francisco; and Does 6 to 10;

22 Respondents,
_____/

23
24 Port of the City and County of San Francisco;
25 Port Commission of the City and County of San
26 Francisco; and Does 11-20;

26 Real Parties in Interest.
_____/

1 Petitioners allege:

2 **Introduction**

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4 The spectacular San Francisco waterfront provides a diverse, scenic, and bustling eastern
5 boundary to the City. Waterfront development affects scores of neighborhoods and businesses
6 and engages local residents and visitors from around the world. The newly-formed Neighbors to
7 Preserve the Waterfront has joined an unprecedented coalition of six other public interest
8 San Francisco neighborhood organizations to challenge the City’s recent violations of the
9 California Environmental Quality Act (CEQA) in planning the future of the waterfront.

10
11 To guide upcoming waterfront projects, the City prepared the Northeast Embarcadero
12 Study during 2009-2010. The Study is important and worthwhile: its proclaimed intent is to
13 “guide the development of properties along the west side of the Embarcadero” and to “establish
14 guidelines” for site design and massing of development. However, the Study is already being
15 implemented without the environmental review required by CEQA. On July 8, 2010, a 4-3 vote
16 of the San Francisco Planning Commission formally “recognize[d] the design principles and
17 recommendations of the Northeast Embarcadero Study for public realm improvements and new
18 development in the area” and “urged” the Port of San Francisco to apply them.

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21 As was pointed out to the Planning Commission, its endorsement of the Study will have
22 environmental consequences that cannot lawfully occur without prior CEQA review to consider
23 impacts and alternatives. CEQA applies to any discretionary government action that may have a
24 significant environmental impact. Its review processes must be scrupulously followed and must
25 occur early enough in any planning process to avoid *post hoc* rationalization of decisions already
26 made. The California Supreme Court recently reiterated that an agency action is illegally
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1 premature if it moves a project’s momentum significantly forward without first complying with
2 CEQA — even if the action taken is short of a final, formal project approval.

3
4 The Northeast Embarcadero Study is a “project” under applicable CEQA definitions,
5 akin to a general plan or specific planning document. It will lead to direct environmental
6 consequences by influencing the shape of future development along the waterfront.

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8 Petitioners thus request that a peremptory writ of mandate issue (1) to order the Planning
9 Commission to rescind its action taken on July 8, 2010, to implement the Northeast
10 Embarcadero Study and (2) to require City decisionmakers to refrain from further application or
11 recommendation of the Study and its guidelines in waterfront planning processes pending
12 completion of an adequate EIR.

13
14 The Court’s writ is of critical importance not only to the development of the San
15 Francisco waterfront but to the ongoing implementation of CEQA throughout the City.

16 17 **Jurisdiction**

18 2. This Court has jurisdiction under Code of Civil Procedure section 1085 and Public
19 Resources Code section 21168.5. The parties and affected real properties are located within the
20 City and County of San Francisco.
21

22 23 **Parties**

24 3. Neighbors to Preserve the Waterfront is a non-profit public-interest
25 unincorporated association of individuals and groups formed in August 2010. Neighbors’ goal is
26 to promote and ensure comprehensive planning to protect the environmental values of the San
27 Francisco waterfront for the benefit of all City residents and existing neighborhoods. The
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1 Neighbors' group brings this petition on behalf of all others similarly situated that are too
2 numerous to be named and brought before this Court as petitioners. Neighbors' members
3 include persons and groups whose members live in San Francisco and who enjoy the waterfront
4 and its resources. Their personal interests will be severely injured if the Northeast Embarcadero
5 Study is approved and applied without the benefit of a completed CEQA process. Among the
6 members of Neighbors are Richard E. Stewart and the Friends of the Golden Gateway.
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9 4. The Friends of Golden Gateway is a non-profit public-interest unincorporated
10 association formed in 2002 and composed of individuals dedicated to retaining the open
11 recreational space known as the Golden Gateway Tennis and Swim Club on the Embarcadero.
12 The Friends bring this petition on behalf of all others similarly situated that are too numerous to
13 be named and brought before this Court as petitioners. Friends' members live in San Francisco
14 and appreciate and enjoy the waterfront and its resources. Their personal interests will be
15 severely injured if the Northeast Embarcadero Study is approved and applied without the benefit
16 of a completed CEQA process.
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19 5. The Telegraph Hill Dwellers (THD) was founded in 1954. It is a non-profit public
20 interest corporation representing over 700 residents from the Telegraph Hill, North Beach, and
21 northeast waterfront neighborhoods. THD was created to protect the character, building scale,
22 and open space of these neighborhoods and to perpetuate their place in San Francisco
23 history. THD has been concerned with land use issues affecting the City's northeast waterfront
24 for over four decades. Its representatives have served on various waterfront advisory committees
25 dating back to the 1980s and were actively involved in the Waterfront Land Use Plan planning
26 process. THD members bring this petition on behalf of all others similarly situated that are too
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1 numerous to be named and brought before this Court as petitioners. Their personal interests will
2 be severely injured if the Northeast Embarcadero Study is approved and applied without the
3 benefit of a completed CEQA process.
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5 6. San Franciscans for Reasonable Growth (SFRG) is . SFRG
6 members bring this petition on behalf of all others similarly situated that are too numerous to be
7 named and brought before this Court as petitioners. SFRG members live in San Francisco and
8 appreciate and enjoy the waterfront and its resources. Their personal interests will be severely
9 injured if the Northeast Embarcadero Study is approved and applied without the benefit of a
10 completed CEQA process.
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12 7. The Golden Gateway Tenants Association is [date/form of
13 organization]_____. Dedicated to improving environmentally-balanced urban living,
14 the Association advocates for the preservation of park and recreational spaces and for the
15 advancement of sound urban environmental policies. Association members bring this petition on
16 behalf of all others similarly situated that are too numerous to be named and brought before the
17 Court as petitioners. Association members live in San Francisco and appreciate and enjoy the
18 waterfront and its resources. Their personal interests will be severely injured if the Northeast
19 Embarcadero Study is approved and applied without the benefit of a completed CEQA process.
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22 8. The San Francisco Neighborhood Network is an unincorporated association
23 founded in 2003. The Network membership includes individuals residing throughout San
24 Francisco, including Bayview, Pacific Heights, the Mission, the Castro, SOMA, Glen Park, Polk
25 Street, Duboce Triangle, Russian Hill, Eureka Valley, Russian Hill, Telegraph Hill and North
26 Beach, who work together to promote good government and good planning. Network members
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1 bring this petition on behalf of all others that are too numerous to be named and brought before
2 the Court as petitioners. Network members live in San Francisco and appreciate and enjoy the
3 waterfront and its resources. Their personal interests will be severely injured if the Northeast
4 Embarcadero Study is approved and applied without the benefit of a completed CEQA process.

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6 9. The Coalition for San Francisco Neighborhoods was formed in 1972 and
7 incorporated in 1991 as a non-profit civic organization. Its purposes include supporting the
8 principles that existing neighborhoods are a valuable resource to be protected, maintained, and
9 enhanced, and that stable, healthy neighborhoods are the key to healthy cities. Coalition
10 members bring this petition on behalf of all others that are too numerous to be named and
11 brought before the Court as petitioners. Coalition members live in San Francisco and appreciate
12 and enjoy the waterfront and its resources. Their personal interests will be severely injured if the
13 Northeast Embarcadero Study is approved and applied without the benefit of a completed
14 CEQA process.

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18 10. Respondent City and County of San Francisco and its Planning Commission
19 (collectively referred to as the City) is the agency that prepared and endorsed the Northeast
20 Embarcadero Study. Real Party in Interest Port of the City and County of San Francisco is an
21 agency responsible for managing the 7.5 miles of San Francisco Bay shoreline within its
22 jurisdiction. The Port Commission is its decisionmaking body.

23
24 11. Does 1 to 20 are fictitiously named Petitioners, Respondents, and Real Parties in
25 Interest whose true names and capacities are currently unknown to Petitioners. If and when their
26 true names and capacities are known, Petitioners will amend this petition to assert them.

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28 12. The paragraphs below refer to and rely on information in documents relating to

1 this action, all of which will be filed with this Court as part of the record of proceedings and are
2 here incorporated by reference.

3 4 **General Allegations**

5 13. In 1990, a citizen’s ballot initiative required the development of a Waterfront Land
6 Use Plan, which was prepared by the Port and remains in effect.

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8 14. In February 2009, San Francisco Board of Supervisors President David Chiu
9 informed the Port Commissioners of his opinion that an update to the Port’s Waterfront Plan
10 was needed. To that end, he proposed that the City Planning Department and the Port
11 Commission lead a “focused public planning process” to address pending development affecting
12 the Port’s seawall [SWL] 351 property.

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14 15. Following President Chiu’s recommendation, the Port Commission funded a study
15 “on the future of Port SWL 351 and at other seawall lot properties on the northern waterfront.”
16 The document produced was the Northeast Embarcadero Study. It took a year to prepare, from
17 May 2009 to May 2010. Community meetings to discuss the Study were held and public
18 comments were solicited. The Study was not subjected to any environmental review under the
19 procedures enumerated in the California Environmental Quality Act (CEQA).
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22 16. The Northeast Embarcadero Study declared its intent to “guide the development of
23 properties along the west side of the Embarcadero, from Washington Street to North Point
24 Street, in a common direction.” The Study includes guidelines for “site design and massing” for
25 new development. Internal City documents from the outset of the year-long process reflect
26 staff’s pointed direction to an intended outcome: justification of a reduction in open space and
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1 an increase in current building height limits, specifically as applied to pending new waterfront
2 development. The final version of the Study in fact includes a recommended building height
3 increase along Washington and Drumm Streets, from 84 feet to 130 feet.
4

5 17. The Study was presented to the San Francisco Planning Commission on July 8,
6 2010. By a 4-3 vote, the Commission adopted a resolution stating that it “recognizes the design
7 principles and recommendations of the Study for public realm improvements and new
8 development in the area” and “urges the Port of San Francisco to consider the principles and
9 recommendations proposed in the North Embarcadero Study when considering proposals for
10 new development in the study area and when considering public infrastructure improvements in
11 the area.” Members of the public and the Commission pointed out that the Commission’s action
12 violated CEQA because it endorsed development guidelines with potentially significant
13 environmental impacts. The Commission was requested to simply receive the report and to take
14 no action. The Commission majority refused, proceeding to adopt a resolution stating that its
15 action was not a project approval or a commitment to any proposed project.
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19 18. No CEQA determination was made by the Planning Commission, and no
20 administrative appeal was available to the public, including Petitioners.
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22 19. Following the Planning Commission’s endorsement of the Study, a pending
23 project application at 8 Washington Street encompassing SWL 351 and adjacent parcels was
24 amended to request an increased height limit of 136 feet.
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26 20. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of
27 law. Issuance of a peremptory writ is needed to avoid immediate, severe, and irreparable harm
28 to Petitioners via the processing of development applications on the waterfront based on

standards that will allow significant environmental impacts. The City has the capacity to correct its violations of law but refuses to do so.

21. Petitioners have complied with Public Resources section 21167.7 by providing a copy of this petition to the California Attorney General. A copy of the transmittal memorandum is attached.

22. Petitioners have complied with Public Resources section 21167.5 by providing the City respondents with a copy of its notice of intention to commence this action. The original notice and proof of service are being concurrently filed with this petition.

Violations of the California Environmental Quality Act

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

24. CEQA requires the City to conduct environmental review prior to taking action approving or implementing the Northeast Embarcadero Study in any way. Because there is substantial evidence to support a fair argument that the planning guidelines and recommendations contained in the Study may lead to development with significant environmental impacts, an environmental impact report is required prior to its approval or use.

25. The Planning Commission's action to formally "recognize" the contents of the Study and to "urge" the Port to utilize its guidelines was a discretionary action with potentially significant environmental impacts. Such action constituted an abuse of discretion because no CEQA review was conducted. As the California Supreme Court recently held in *Save Tara v. City of West Hollywood* (2009) 45 Cal.4th 116, the fact that an agency may take action while contending that it is not approving a project and promising that it will comply with CEQA at a

1 later stage is not dispositive. As the Court held, “conditioning [] final approval on CEQA
2 compliance is relevant but not determinative.” (*Id.* at 139.) “As a practical matter” the Planning
3 Commission’s action was effective to indicate City commitment to the provisions of the Study.
4

5 26. The Commission’s resolution was an action substantially furthering the
6 implementation of the Northeast Embarcadero Study without CEQA review, and constituted a
7 failure to proceed in the manner required by law.
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9 27. Because the action of the Planning Commission violated CEQA, its Resolution of
10 July 8, 2010 must be set aside.
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12 **Declaratory Relief**

13 28. Petitioners incorporate all previous paragraphs as if fully set forth.

14 29. Petitioners desire a declaration of rights with regard to the law governing the
15 Planning Commission’s approval of the Northeast Embarcadero Study, and in particular
16 whether, as Petitioners believe, the City may not lawfully implement a planning study including
17 recommendations and guidelines for significant development without first complying with
18 CEQA’s requirements for environmental review.
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20 30. There is an actual controversy relating to the legal rights and duties of the
21 respective parties. Unless declaratory relief is granted, the guidelines and recommendations of
22 the Study may be implemented despite the City’s failure to comply with CEQA, and the City
23 may proceed with similar studies and planning processes without CEQA compliance.
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1 **WHEREFORE**, Petitioners pray:

2 1. That the Court issue a peremptory writ of mandamus ordering the Planning
3 Commission to void its resolution of July 8, 2010, relating to the Northeast Embarcadero Study;
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5 2. That the Court issue an administrative stay order, temporary restraining order,
6 and/or preliminary injunction prohibiting the City and its agencies and commissions and
7 employees from proceeding with any actions pursuant to the Northeast Embarcadero Study
8 while this action is pending;
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10 3. For a declaration that the City may not implement any planning study including
11 recommendations and guidelines for significant development that may result in significant
12 environmental impacts, pending full compliance with CEQA.
13

14 4. For Petitioners' costs and attorney fees pursuant to CCP section 1021.5; and

15 5. For such other and further relief as the Court finds proper.
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17 August 18, 2009

BRANDT-HAWLEY LAW GROUP

19 By _____
20 Susan Brandt-Hawley
21 Attorney for Petitioner
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Verification

I, Susan Brandt-Hawley, am an attorney for Petitioners whose members are located outside of Sonoma County where I have my law offices, and so I verify this petition on their behalf. 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 to the best of my knowledge and that this declaration is executed on August 18, 2009, at Glen Ellen, California.

Susan Brandt-Hawley