

1 RUTAN & TUCKER, LLP
Ash Pirayou (State Bar No. 180869)
2 apirayou@rutan.com
David P. Lanferman (State Bar No. 71593)
3 dlanferman@rutan.com
Peter J. Howell (State Bar No. 227636)
4 phowell@rutan.com
611 Anton Boulevard, Suite 1400
5 Costa Mesa, California 92626-1931
Telephone: 714-641-5100
6 Facsimile: 714-546-9035

7 Attorneys for Petitioner and Plaintiff
EAST SACRAMENTO PARTNERSHIPS FOR A
8 LIVABLE CITY

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12 EAST SACRAMENTO PARTNERSHIPS FOR
13 A LIVABLE CITY, a California nonprofit
corporation

14 Petitioner and Plaintiff,

15 v.

16 CITY OF SACRAMENTO, CITY COUNCIL
17 OF THE CITY OF SACRAMENTO, DOES 1
through 20, inclusive,

18 Respondents and Defendants,
19

20 RCI-MCKINLEY VILLAGE, LLC, a Delaware
limited liability corporation, and ROES 1
21 through 20, inclusive

22 Real Parties in Interest.
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25
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27
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Case No.

**VERIFIED PETITION
FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**[California Environmental Quality Act
("CEQA"), Pub. Res. Code §§ 21168,
21168.5); Code of Civ. Proc., §§ 1085, 1094.5;
1060; 526 et seq.]**

1 Petitioner and Plaintiff EAST SACRAMENTO PARTNERSHIPS FOR A LIVABLE
2 CITY (“ESPLC,” or “Petitioner”) respectfully petitions this Court for issuance of a writ of
3 mandate pursuant to Code of Civil Procedure (“CCP”) section 1094.5 and Public Resources Code
4 (“PRC”) section 21168, or in the alternative pursuant to CCP § 1085 and PRC § 21168.5, and
5 complains for the issuance of temporary, preliminary, and permanent injunctive relief and for a
6 declaration of its rights pursuant to CCP §§ 526 and 1060, directed at Respondents and
7 Defendants CITY OF SACRAMENTO (“City”) and CITY COUNCIL OF THE CITY OF
8 SACRAMENTO (“City Council,” and collectively with City and Does 1-20, “Respondents”), and
9 Real Party in Interest RCI-MCKINLEY VILLAGE, LLC (“RCI” or “Developer” and collectively
10 with Roes 1-20, “Real Parties”), as follows:

11 **I. INTRODUCTION**

12 1. This action challenges the April 29, 2014 decision of the City and Council to
13 approve a 336-unit residential project commonly known as the McKinley Village Project (the
14 “Project”). The Project site (“Site”) consists of 48.8 acres entirely surrounded by the Capital City
15 Freeway (I-80) on one side and busy railroad tracks on the other. Up to 40 trains per day pass the
16 Site. It is located adjacent to a 172 acre landfill. Prior to the approval of the Project, the Site was
17 appropriately zoned for heavy industrial use, consistent with its surrounding environment. The
18 Project would convert the Site into a new residential compound, with 336 residential units and a
19 4,200 square foot recreation center.

20 2. The challenged Project involves the following determinations, decisions, and
21 approvals issued by Respondents: (1) Resolution No. 2014-0102, certifying an Environmental
22 Impact Report (“EIR,” as used herein, “EIR” collectively refers to the Draft and Final EIRs prepared
23 by the City) and approving a Mitigation Monitoring Plan; (2) Ordinance No. 2014-0011, approving a
24 Development Agreement; (3) Resolution No. 2014-0103, approving a General Plan Amendment; (4)
25 Ordinance No. 2014-0012, approving a Rezone; (5) Resolution No. 2014-0104, establishing a Planned
26 Unit Development (“PUD”); (6) Resolution No. 2014-0105 approving a Bikeway Master Plan
27 Amendment ; (7) Resolution No. 2014-0106, approving a Master Parcel Map, a Subdivision Tentative
28 Map, Subdivision Modifications, a Site Plan and Design Review, and Variances; and (8) Motion No.

1 2014-0094 (collectively, the “Project Approvals”).

2 3. The City failed to make required findings when approving the Project, and the few
3 findings made by the City were not supported by substantial evidence in light of the entire record.

4 4. Although the Project was promoted by the Developer as a sustainable “infill”
5 development project, in reality, it consists of wedging a residential complex into a corner of the
6 City that is utterly inappropriate for that use. The Site is adjacent to a landfill site and surrounded
7 by the Capital City Freeway (I-80) on one side and by the Union Pacific Railroad’s elevated
8 embankments and tracks on the other side. As a result, future residents of the Project will be
9 exposed to unacceptable health and safety risks. As succinctly opined by one of the many air
10 quality experts to raise concerns about the Project (in this case, a Professor Emeritus of Physics
11 and Atmospheric Sciences at the University of California, Davis), the health risks associated with
12 the project are “serious enough to make residential use of the property inadvisable.” Nonetheless,
13 the City largely brushed off such concerns by insisting that impacts to future residents of the
14 Project are “beyond the scope of required California Environmental Quality Act (CEQA) review.”

15 5. The Project will have significant adverse impacts on traffic, air quality, public
16 health and safety, noise, land use, water quality, and hydrology.

17 6. Respondents’ decision to approve the Project was made despite voluminous
18 comments and objections submitted by more than 100 commenters—including community groups,
19 environmental organizations, air quality experts, and governmental agencies—warning that the
20 EIR for the Project severely underestimated and misrepresented its environmental impacts.

21 7. The City’s approval of the Project violated the California Environmental Quality
22 Act, Public Resources Code § 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, Title 14,
23 California Code of Regulations § 15000 *et seq.* in several respects, including (a) the EIR failed to
24 adequately disclose, analyze, and mitigate the Project’s significant environmental impacts, and (b)
25 the City refused and failed to recirculate the Draft EIR (“DEIR”) after adding significant new
26 information to the EIR after the close of the public comment period on the DEIR.

27 8. In addition, the City violated State Planning and Zoning Law, as well as the City’s
28 own General Plan and Municipal Code by approving the development of a Project that is

1 inconsistent with its General Plan and by approving variances for the Project that are unsupported
2 by substantial evidence or the findings required by the City's Municipal Code.

3 **II. THE PARTIES**

4 9. Petitioner ESPLC is a grassroots organization whose purpose is to enhance the
5 livability of East Sacramento and the greater Sacramento area through environmental and historic
6 building stewardship; human-scaled, pedestrian-friendly, safe and healthy environments; and by
7 revitalizing neighborhoods and parks as a center of community life. Accordingly, ESPLC has a
8 significant interest in ensuring that the City adequately analyzes and mitigates the environmental
9 impacts of development within East Sacramento. Members of ESPLC reside in and own property
10 in Sacramento, including in the vicinity of the Project, and will be directly impacted by the
11 Project's impacts. ESPLC has a beneficial interest in the outcome of this case for itself and on
12 behalf of its members.

13 10. Respondent/Defendant City is, and at all times mentioned herein was, a California
14 charter city and municipal corporation organized and existing under the laws of the State of
15 California. The City has a mandatory duty to comply with the California Constitution, state-law
16 requirements, including CEQA, the CEQA Guidelines, and California zoning laws, as well as its
17 own Charter and City Code, when considering discretionary activities and land use regulatory
18 actions such as the Project Approvals.

19 11. Respondent/Defendant City Council is the elected decision-making body of the
20 City that issued the challenged Project Approvals for the Project.

21 12. Petitioner is ignorant of the true names and capacities of those sued herein as
22 DOES 1 through 20, inclusive, and therefore sues those respondents/defendants by such fictitious
23 names. Petitioner will amend this Petition to allege the true names and capacities of these
24 fictitiously named respondents/defendants when they have been ascertained. Petitioner designates
25 all other unknown persons or entities claiming any interests in the subject of this litigation as DOE
26 respondents/defendants.

27 13. Petitioner is informed and believes, and thereon alleges, that Real Party in Interest
28 RCI-MCKINLEY VILLAGE, LLC ("RCI" or "Developer") is, and at all times mentioned herein

1 was, a Delaware limited liability company conducting business in the State of California,
2 including the City. Petitioner is informed and believes that RCI is the recipient or intended
3 beneficiary of the Project Approvals. RCI is identified as the Project applicant on the Notice of
4 Determination filed by the City.

5 14. Petitioner is ignorant of the true names and capacities of those sued herein as
6 ROES 1 through 20, inclusive, and therefore sues those real parties in interest by such fictitious
7 names. Petitioner will amend this Petition to allege the true names and capacities of these
8 fictitiously named real parties in interest when they have been ascertained. Petitioner designate all
9 other unknown persons or entities claiming any interests in the subject of this litigation as ROE
10 real parties in interest.

11 **III. JURISDICTION AND VENUE**

12 15. This Court has jurisdiction over this proceeding pursuant to CCP §§ 1085, 1094.5,
13 and 1060, and CEQA, including but not limited to Public Resources Code §§ 21168 and 21168.5.

14 16. Venue in this Court is proper pursuant to CCP § 394, in that Respondents are
15 located within the County of Sacramento.

16 17. All facts and issues raised in this Petition were presented to Respondents prior to
17 Respondents' decision to issue the Project Approvals on April 29, 2014. Petitioner has exhausted
18 all available administrative remedies, and submitted timely objections orally and in writing to
19 Respondents' approval of the Project.

20 **IV. FACTUAL BACKGROUND**

21 **A. Description of Project**

22 18. The Project Site consists of 48.8 acres surrounded by the Capital City Freeway (I-
23 80) and railroad tracks that carry up to 40 trains per day past the Site. It is located adjacent to a
24 172 acre landfill. Prior to the Project Approvals, the Site was appropriately zoned for heavy
25 industrial use, consistent with its surrounding environment. The Project would convert the Site
26 into an isolated residential compound of up to 336 residential units and a 4,200 square foot
27 recreation center.

28

1 **B. Environmental Review**

2 19. In or about November 2013, the City circulated the DEIR for public review.

3 20. Extensive comments—including not less than 129 letters—were submitted to the
4 City during the public comment period. The City failed to effectively address the vast majority of
5 the concerns raised in those comments. The comments included a letter submitted by ESPLC
6 (under its former name, East Sacramento Residents for a Better Community), informing the City
7 that its analysis of, and mitigation for, impacts to traffic, air quality and related health risks, land
8 use, flooding, stormwater, and noise were inadequate. ESPLC’s comment letter was supported by
9 an analysis of the DEIR prepared by a professional planning and CEQA firm, Terra Nova
10 Planning & Research, Inc. (“Terra Nova”), as well as traffic comments prepared by a traffic
11 engineering firm, Hexagon Transportation Consultants, Inc. (“Hexagon”). ESPLC requested that
12 the City address and try to correct the numerous deficiencies in the DEIR identified by ESPLC
13 and others and recirculate the revised EIR for further comment.

14 21. Many other commenters also submitted letters that were sharply critical of the
15 DEIR. For example, the Sacramento Metropolitan Air Quality Management District
16 (“SMAQMD”) warned that the DEIR’s use of SMAQMD’s evaluation criterion in evaluating the
17 cancer risk to future residents of the Project constituted “a serious misinterpretation of
18 [SMAQMD’s] guidance.” Of even “greater concern,” according to SMAQMD, was the City’s
19 inappropriate attempt to “deemphasiz[e]” and “downplay[]” cancer risk results through the use of
20 improper comparisons. SMAQMD also questioned the appropriateness of the City’s discussion of
21 “cancer burden” in concluding no significant impact existed, and opined that the EIR should
22 require specified mitigation measures to reduce pollution exposure to Project residents. The City
23 received numerous other objections to the Project from environmental groups, neighborhood
24 organizations, scientists, and concerned citizens criticizing the DEIR’s analysis of air quality,
25 traffic, biological resources, hazardous materials, noise, and safety, among other concerns.

26 22. Despite the extensive comments submitted on the Project, the City refused to
27 address many of the deficiencies identified therein, or to recirculate the DEIR. Instead, the City
28 set the Project for public hearing and posted a Final EIR (“FEIR”) on its website.

1 23. The revised Project as described in the FEIR included numerous changes to the
2 Project The FEIR failed to adequately address the deficiencies in the DEIR identified by Petitioner
3 and others. To the contrary, as discussed below, it included new information revealing additional
4 significant impacts that were not disclosed or analyzed in the DEIR.

5 **C. Public Hearings and Project Approval**

6 24. On or about March 27, 2014, the Planning and Design Commission conducted a
7 public hearing on the Project. In advance of the hearing, Petitioner and others submitted
8 comments on the FEIR, noting the City had failed to correct numerous deficiencies in the DEIR
9 raised by Petitioner and others. ESPLC also noted that new information included in the FEIR
10 revealed that the Project would have undisclosed significant impacts on traffic and transit, and
11 expanded upon previously raised concerns. The letter again urged the City to address the EIR's
12 deficiencies and to recirculate a revised DEIR. Counsel for Petitioner appeared at the Planning
13 and Design Commission hearing to object to the Project and express Petitioner's concerns.
14 Nonetheless, the Planning and Design Commission voted to recommend approval of the Project to
15 the City Council.

16 25. On or about April 29, 2014, the City Council conducted a hearing on the project.
17 In advance of the hearing, ESPLC submitted yet another letter objecting to the Project and
18 reiterating and expanding upon its concerns. Again, counsel for Petitioner and members of
19 ESPLC orally objected to the Project. Nonetheless, the City Council voted 6-3 to approve the
20 Project, including all of the Project Approvals listed above. On April 30, 2014, the City filed a
21 Notice of Determination, providing notice of its approval of the Project.

22 **FIRST CAUSE OF ACTION**

23 **(Petition for Writ of Mandate for Violations of CEQA – Failure to Analyze and Mitigate**
24 **Impacts of Project)**

25 26. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
26 set forth in full herein by this reference.

27 27. Pursuant to CEQA, before a public agency approves any discretionary project, the
28 agency must first identify, assess, and publicly disclose the project's potential environmental

1 effects. An agency may not approve a project that has the potential to have significant
2 environmental impacts if there are feasible alternatives or mitigation measures that would avoid or
3 substantially lessen the adverse environmental impacts.

4 28. In doing the things herein alleged, Respondents failed to comply with their
5 mandatory duties under CEQA in several substantial and prejudicial respects, including without
6 limitation, the following:

7 29. The EIR fails to provide a complete, accurate, finite, and stable description of the
8 Project. For example, the DEIR failed to disclose that the Project would require numerous city
9 approvals that were not analyzed in the DEIR, including, but not limited to: (a) a development
10 agreement; (b) a Bikeway Master Plan amendment; (c) subdivision modifications; and (d)
11 driveway variances. Furthermore, the failure of the DEIR to properly disclose the various
12 necessary approvals concealed substantive, physical features of the Project, including the fact that
13 the Project will include sub-standard intersections, roadway configurations, and turnarounds, and
14 that it will require variances from Sacramento City Code requirements for driveway width. The
15 DEIR did not analyze the impacts of any of these features, and the public and other interested
16 parties were not given an opportunity to comment on those project features in connection with the
17 DEIR.

18 30. The EIR for the Project fails to adequately disclose, analyze, or identify mitigation
19 measures for the Project's significant individual and cumulative impacts on the environment,
20 including but not limited to the Project's impacts on air quality, public health and safety, traffic,
21 noise, land use, water quality, hydrology, and land use. These inadequacies are detailed in
22 comment letters submitted to the City on behalf of Petitioner and others. For example:

23 a. As set forth in detailed expert comments provided by Petitioner and others,
24 the EIR fails to adequately analyze, disclose, or mitigate the Project's true traffic
25 impacts. The EIR's traffic analysis is conclusory and fails to provide sufficient
26 data for the public to adequately review and confirm the assertions made therein.
27 For example, based upon its review of the DEIR, Hexagon concluded that certain
28 proposed mitigation measures were infeasible because they would require the

1 elimination of bike lanes. In response, the City dismissed that concern by simply
2 stating the Project “does not propose to eliminate existing bike lanes,” but did not
3 provide any explanation or evidence to demonstrate that the measures could
4 actually be constructed without impacting the bike lanes. The City similarly
5 dismissed concerns about feasibility of other mitigation measures without
6 explanation or evidence. Likewise, the City failed to explain how the EIR’s
7 cumulative traffic forecasts were derived. The EIR fails to analyze impacts to
8 several local streets and intersections that are likely to be significantly impacted by
9 the Project. The EIR also fails to include any analysis of the Project’s impacts to
10 traffic around the elementary and middle schools to which it would add traffic. The
11 EIR’s analysis of cumulative traffic impacts improperly assumes the completion of
12 speculative traffic improvements that are not designed or funded, and is not
13 supported by substantial evidence.

14 b. In addition, despite the fact that the Project will cause certain streets and
15 intersections to operate at a Level of Service F, the EIR improperly fails to disclose
16 this as a significant impact, or to require appropriate mitigation to reduce that
17 impact. Instead, the EIR applies an inappropriate and unsupported threshold of
18 significance to conclude that the failure of such streets and intersections is not a
19 significant impact. The Project will have substantial impacts to residents of
20 adjacent neighborhoods in terms of delays, access to emergency services, noise, air
21 quality, and impacts to pedestrians and bicyclists that have not been adequately
22 disclosed or mitigated. Respondents’ finding that the Project will not have any
23 significant traffic impacts is thus unsupported by substantial evidence.

24 c. The EIR fails to disclose the Project’s lack of transit access as a significant
25 impact, or to require mitigation measures to reduce that impact. The City’s General
26 Plan expressly requires that all new neighborhoods are “to include transit stops that
27 connect to and support a citywide transit system and are within a ½-mile walking
28 distance of all dwellings.” None of the dwellings in the Project will meet this

1 requirement, and the closest bus stops to some dwellings will be up to ¾ of a mile
2 for southbound travel and up to 1 ¼-miles” for northbound travel. The EIR failed
3 to disclose this as a significant impact or to identify and require feasible mitigation
4 measures to reduce this impact, such as providing shuttle service from the Project
5 to transit hubs. Accordingly, Respondents’ finding that the Project will not have
6 any significant transit impacts is thus unsupported by substantial evidence.

7 d. The EIR improperly minimizes the cancer risk to future residents of the
8 Project and fails to disclose that risk as a significant impact by utilizing an
9 inappropriate threshold of significance that is not supported by substantial
10 evidence. The acknowledged cancer risk to future residents of up to 120 cases per
11 million is twelve times higher than the 10 cases per million threshold of
12 significance recommended and used by experts and air quality agencies throughout
13 the state. Despite the fact that multiple commenters pointed out that the City was
14 previously forced to use a 10 cases per million threshold to evaluate a similar
15 project as a result of litigation, the City refused to apply that threshold here, in
16 order to avoid having to disclose cancer risk as a significant impact. Instead, the
17 EIR conceals the true risk by utilizing a threshold of significance that the California
18 Air Pollution Control Officers Association (CAPCOA) has criticized as
19 “misleading and not scientifically supported,” in order to wrongly conclude there is
20 no significant impact. Further, as a result of failing to characterize the cancer risk
21 as a significant impact, the EIR failed to require or analyze appropriate mitigation
22 measures or alternatives to reduce this risk.

23 e. In addition, as a result of defects in the methodology used by the City to
24 calculate health risks from air pollution—pointed out in comments submitted by
25 several air quality experts—the EIR understated and failed to disclose or mitigate
26 the true health risks (including cancer and non-cancer health risks) to future
27 residents of the Project. Respondents’ finding that the Project will not have any
28 significant air quality impacts is thus unsupported by substantial evidence.

1 f. The EIR fails to adequately analyze, disclose, and/or mitigate potential
2 hazards related to methane migration from the adjacent landfill site. The EIR's
3 analysis of those hazards is deficient because it is based upon data from methane
4 monitoring wells that CalRecycle and the Sacramento County Environmental
5 Management Department ("County EMD") have indicated are not functioning
6 properly and thus cannot be appropriately relied upon to determine the extent of
7 methane gas migration. Furthermore, while the FEIR represents that these issues
8 have been resolved by a report completed by the City after the circulation of the
9 DEIR, it fails to disclose that CalRecycle and County EMD have informed the City
10 that that report is deficient in numerous respects. Thus, both the DEIR and FEIR
11 contain incomplete, flawed, and inaccurate data relating to methane migration. In
12 addition, the City ignored specific direction from CalRecycle regarding the
13 mitigation measures required in order to mitigate potential impacts from migrating
14 landfill gas, and failed to require sufficient mitigation to reduce impacts related to
15 methane migration to less than significant. Respondents' finding that the Project
16 will not have any significant impacts related to hazardous materials is thus
17 unsupported by substantial evidence.

18 g. The EIR fails to adequately analyze, disclose, and/or mitigate noise impacts
19 to future residents of the Project. Despite the fact that noise levels of 65-68
20 decibels ("dBA") will far exceed the 60 dBA standard set forth in the City's
21 General Plan, the EIR fails to disclose this as a significant impact or to require
22 sufficient mitigation to reduce this impact to less than significant. Respondents'
23 finding that the Project will not have any significant noise impacts is thus
24 unsupported by substantial evidence.

25 h. The EIR fails to adequately analyze, disclose, and/or mitigate stormwater
26 and sewer impacts. In response to concerns raised by Petitioner and others
27 regarding storm water impacts to the City's already impacted combined sewer
28 system ("CSS") caused by dewatering discharges, the FEIR indicates that

1 dewatering discharges to the City's CSS are not anticipated because the initial
2 phases of construction, including utilities, will occur during the dry season and/or
3 on another part of the Site. However, the City did not impose any mitigation
4 measures to require construction during summer months or to require discharge on
5 other parts of the Site. Thus, the City did not require adequate mitigation to reduce
6 this potential impact to less than significant. Respondents' finding that the Project
7 will not have any significant stormwater and sewer impacts is thus unsupported by
8 substantial evidence.

9 31. The City violated CEQA by adopting findings that are not supported by the
10 evidence in the Record. For example:

11 a. Respondents' determination that the adoption of mitigation measures has
12 mitigated all significant environmental impacts of the Project to a less than
13 significant level is not supported by substantial evidence. Substantial evidence
14 does not support Respondents' determination that the impacts on air quality, traffic,
15 transit, public health and safety, noise, and hydrology and water quality would be
16 less than significant and that the adopted mitigation measures would avoid or
17 lessen the Project's significant effects on the environment.

18 b. Respondents further violated CEQA by adopting findings that do not
19 provide the reasoning, or analytic route, from facts to conclusions, as required by
20 law.

21 32. The EIR failed to comply with CEQA by failing to identify and evaluate a
22 sufficient range of feasible alternatives to the Project. Among other deficiencies, the EIR fails to
23 consider an alternative site for the Project. In addition, the use selected for the No Project/Existing
24 Zoning Alternative is speculative and unrealistic, and the analysis is insufficiently detailed to
25 allow for meaningful comparison with the proposed Project. The Lower Density Alternative is
26 similarly unrealistic and deliberately designed in order to make it undesirable. Further, the EIR's
27 stated reasons for rejecting the Lower Density Alternative are unsupported by substantial
28 evidence.

1 33. The City failed to make required findings when approving the Project. The
2 purported findings made by the City were not supported by substantial evidence in light of the
3 whole record.

4 34. As a result of the foregoing defects, the City's actions in approving the Project
5 were not in compliance with procedures required by law, were not supported by substantial
6 evidence in the public record, were not reflected in legally adequate findings, and were arbitrary,
7 capricious, and reflected a prejudicial abuse of discretion.

8 35. Petitioner has no plain, adequate and speedy remedy at law to redress the wrongs
9 described in this Petition.

10 36. Petitioner has performed any and all conditions precedent to filing this action and
11 has exhausted any and all available administrative remedies to the extent required by law by, *inter*
12 *alia*, submitting written and oral comments objecting to the Project, the Project Approvals, and the
13 failure to comply with CEQA at each stage of the City's administrative process. To the extent any
14 matter raised in this Petition was not addressed in Petitioner's comments, Petitioner is informed
15 and believes that such matters were raised by other persons or entities who objected to the Project,
16 or that Petitioner had no effective opportunity to raise such comments before the complained of
17 actions were taken, or that Petitioner was otherwise excused from or not obligated to raise such
18 issues before pursuing them in this action.

19 37. Pursuant to PRC § 21167.5, Petitioner has provided written notice of the
20 commencement of this action to Respondents.

21 38. Pursuant to PRC § 21167.7 and CCP § 388, Petitioner has or will provide written
22 notice of this action to the State Attorney General.

23 39. Petitioner brings this action pursuant to PRC §§ 21168 and 21168.5 and CCP §§
24 1085, 1088.5 and 1094.5, which require that an agency's approval of a project be set aside if the
25 agency has prejudicially abused its discretion. Prejudicial abuse of discretion occurs where the
26 City has failed to proceed in the manner required by law, the decision is not supported by the
27 findings, or the findings are not supported by substantial evidence.

28 40. Pursuant to CCP §§ 1094.5 and/or 1085, a writ of mandate should issue directing

1 Respondents to rescind the Project Approvals, including the certification of the EIR, invalidating
2 any and all purported approvals or permits based on such inadequate CEQA review, and
3 prohibiting Respondents from taking any subsequent action to approve the Project, and restraining
4 the Real Parties and their agents from taking any action to change or develop the Site, or make any
5 physical alterations to the Site, unless and until they have complied with CEQA, including, but not
6 limited to, by recirculating a revised draft environmental impact report that corrects the
7 deficiencies in the EIR.

8 **SECOND CAUSE OF ACTION**

9 **(Petition for Writ of Mandate for Violations of CEQA – Failure to Recirculate)**

10 41. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
11 set forth in full herein by this reference.

12 42. CEQA and the CEQA Guidelines, including without limitation Public Resources
13 Code section 21092.1 and CEQA Guideline § 15088.5, require a lead agency to recirculate an
14 environmental impact report for further public review when significant information is added to
15 that draft document or circumstances surrounding the Project substantially change after public
16 notice is given of its availability.

17 43. Respondents violated CEQA by failing to recirculate a DEIR after adding
18 significant new information to the EIR after the close of the public comment period on the DEIR.
19 For example, the FEIR reveals significant new environmental impacts that were not disclosed in
20 the DEIR, including traffic impacts to C Street and impacts to transit. The FEIR also confirms
21 that there will be significant health risks and impacts to future residents that were not properly
22 disclosed in the DEIR. The FEIR also disclosed that the Project would require numerous
23 discretionary city approvals that were not disclosed or analyzed in the DEIR, including, but not
24 limited to: (a) a development agreement; (b) a Bikeway Master Plan amendment; (c) subdivision
25 modifications; and (d) driveway variances. The failure of the DEIR to properly disclose the
26 various necessary approvals concealed substantive, physical features of the Project, including the
27 fact that the Project will include sub-standard intersections, roadway configurations, and
28 turnarounds, and that it will require variances from Sacramento City Code requirements for

1 driveway width. The FEIR also changed the requested Zone Change from only R-1 to include R-
2 2, in order to allow a new land use (condominium units) not described in the DEIR. The Project
3 objectives were likewise changed to include the provision of condominium units. Further, the
4 FEIR included substantial changes in the EIR's analysis of storm flows, resulting in a 20%
5 increase in storm flows, without any change in the capacity requirement of detention tanks, and
6 without explanation or analysis. The FEIR revised several portions of the DEIR in their entirety
7 and/or added entirely new discussions, including portions related to air quality, the Health Risk
8 Assessment, the Sustainable Community Strategy consistency analysis, and an additional forty
9 pages related to the landfill. All of this constituted significant new information requiring
10 recirculation of the EIR.

11 44. By approving the Project and certifying the EIR without recirculating a revised
12 DEIR, Respondents failed to proceed in the manner required by law and committed a prejudicial
13 abuse of discretion.

14 45. Pursuant to CCP §§ 1094.5 and/or 1085, a writ of mandate should issue directing
15 Respondents to rescind the Project Approvals, including the certification of the EIR, invalidating
16 any and all purported approvals or permits based on such inadequate CEQA review, and
17 prohibiting Respondents from taking any subsequent action to approve the Project, and restraining
18 the Real Parties and their agents from taking any action to change or develop the Site, or make any
19 physical alterations to the Site, unless and until they have complied with CEQA, including, but not
20 limited to, by recirculating a revised draft environmental impact report that corrects the
21 deficiencies in the EIR.

22 **THIRD CAUSE OF ACTION**

23 **(Petition for Writ of Mandate for Violation of the City's Planning and Development Code,**
24 **General Plan and Planning Law)**

25 46. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
26 set forth in full herein by this reference.

27 47. The City's Charter and Municipal Code require that development be consistent
28 with the City's General Plan. (*See, e.g.*, Sacramento City Code §§ 17.900.010, 17.916.010,

1 17.808.210.) As set forth in the comments provided by Petitioner and others, the Project is
2 inconsistent with numerous goals, policies, and “Guiding Principles” set forth in the City’s
3 General Plan. For example, the City’s General Plan expressly requires “all parts of new
4 neighborhoods be within ½-mile of a central gathering place on a collector or minor arterial...that
5 includes public space, shopping areas, access to transit, and community-supportive facilities and
6 services.” (Land Use Policy 4.5.4.) Likewise, new neighborhoods must include transit stops that
7 connect to and support a citywide transit system and are within a ½ mile walking distance of all
8 dwellings.” (Land Use Policy 4.5.4.) The Project does not satisfy any of these criteria.
9 Moreover, the approval of a project that will expose residents to unacceptable levels of air
10 pollution, as well as to hazards from potential methane migration, is also inconsistent with
11 numerous General Plan policies requiring the City to promote the health and well-being of the
12 community and to “protect the public from the adverse effects of vehicle generated air emissions.”
13 (See, e.g., Land Use Policy 2.7.5; Public Health and Safety Goal 3.1, Introduction to the General
14 Plan, p. 1-3.) By approving a Project that is inconsistent with the City’s General Plan,
15 Respondents failed to proceed in the manner required by law and committed a prejudicial abuse of
16 discretion.

17 48. In addition, the City failed to comply with the requirements for granting variances
18 for the Project. In order to grant a variance from the standards set forth in the City’s Code, the
19 City Council must make a number of specific findings. (Sacramento City Code § 17.808.210; see
20 also Gov. Code § 65906.) Moreover, such findings must be supported by substantial evidence and
21 must “bridge the analytic gap between the raw evidence and ultimate decision or order.”
22 (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.)

23 49. Respondents approved driveway variances necessary for the Project, but failed to
24 make many of the findings necessary for such variances. Further, the findings the City Council
25 did make with respect to the variances were not supported by substantial evidence. As such,
26 Respondents prejudicially abused their discretion in approving the variances.

27 50. Pursuant to CCP §§ 1085 and/or 1094.5, a writ of mandate should issue directing
28 Respondents to rescind the Project Approvals, and prohibiting Respondents from approving any

1 project that is inconsistent with the City's General Plan and/or Planning and Development Code,
2 and restraining and enjoining the Respondents and Real Parties from taking any action to
3 implement the challenged Project Approvals or to make any physical change in the Site.

4 **FOURTH CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 51. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
7 set forth in full herein by this reference.

8 52. An actual controversy exists between Petitioner and Respondents and Real Parties
9 involving substantial questions regarding Respondents' approval of the Project. Petitioner
10 maintains that Respondents' approval of the Project violates state law, including CEQA, as well as
11 the City's own Municipal Code and General Plan, as described above. Petitioner is informed and
12 believes and thereon alleges that Respondents and Real Parties maintain the contrary.
13 Accordingly, declaratory relief is appropriate and necessary to determine Respondents' authority
14 to approve the Project.

15 53. To remedy Respondents' violations of law, as described above, Petitioner seeks a
16 declaration that Respondents' approval of the Project was invalid and contrary to law, including
17 but not limited to the City's own Municipal Code, General Plan, and CEQA. Such a declaration is
18 a necessary and proper exercise of the Court's power to prevent future actions by Respondents in
19 violation of the law.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner respectfully prays for judgment as follows:

22 1. For a Writ of Mandate:

23 a. Directing Respondents to rescind, vacate and set aside Respondents'
24 certification of the EIR and approval of the Project, including each of the Project Approvals;

25 b. Commanding Respondents and Real Parties to refrain from taking any
26 further actions in furtherance or implementation of the Project, including but not limited to: (i) the
27 issuance or approval of any site plans, grading permits, or building permits, and (ii) any
28 construction in furtherance of any development associated with the Project; and

1 c. Commanding Respondents to prepare a revised draft environmental impact
2 report and circulate it for public review and comment, consistent with the requirements of CEQA,
3 and to comply with all other requirements of CEQA, prior to taking any subsequent action to
4 approve the Project;

5 2. For the declaratory relief requested above;

6 3. For a temporary restraining order and/or preliminary injunction ordering the
7 Respondents and Real Parties refrain from proceeding with the Project, taking any action to
8 change or develop the Site, or make any physical alterations to the Site, while this action is
9 pending;

10 4. For a permanent injunction ordering the Respondents and Real Parties refrain from
11 proceeding with the Project pending Respondents' full compliance with the procedural mandates
12 of the law;

13 5. For an award of attorney's fees, litigation expenses, and costs as permitted or
14 required by law, including but not limited to CCP § 1021.5, Government Code § 800, and other
15 statutory and common law; and

16 6. For such other relief as the Court deems just and proper.

17


18 Dated: May 30, 2014

RUTAN & TUCKER, LLP
ASH PIRAYOU
DAVID P. LANFERMAN
PETER J. HOWELL

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By: 
Peter J. Howell
Attorneys for Petitioner and Plaintiff
East Sacramento Partnerships for a Livable
City

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents.

I am an officer of East Sacramento Partnerships for a Livable City, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on May 30, 2014, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

East Sacramento Partnerships for a Livable City

By: 

Caroline Goddard, President