

ENDORSED

2016 JUL 29 P 2:09

David H. Young, Jr., Clerk of the Superior Court
County of Santa Clara, California

By: J. CAO-NGUYEN

1 RICHARD DOYLE, City Attorney (88625)
NORA FRIMANN, Assistant City Attorney (93249)
2 ARDELL JOHNSON, Chief Deputy City Attorney (95340)
KATHRYN J. ZOGLIN, Senior Deputy City Attorney (121187)
3 Office of the City Attorney
200 East Santa Clara Street, 16th Floor
4 San José, California 95113-1905
Telephone Number: (408) 535-1900
5 Facsimile Number: (408) 998-3131
E-Mail Address: cao.main@sanjoseca.gov
6

7 Attorneys for CITY OF SAN JOSE

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10
11 CITY OF SAN JOSE,

12 Petitioner,

13 v.

14 CITY OF SANTA CLARA, and DOES 1-
15 25, inclusive,

16 Respondents.

17 RELATED COMPANIES, dba RELATED
18 SANTA CLARA, LLC, and DOES 26-50,
inclusive,

19 Real Parties in Interest.
20

Case Number: 16 CV 298317

CITY OF SAN JOSE'S PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
RELIEF

CEQA

21 Petitioner, CITY OF SAN JOSE, alleges:

22 1. Petitioner brings this action on its own behalf and on behalf of the general
23 public; to protect the public's interest, for judicial review and invalidation of Respondent
24 City of Santa Clara's approval, on June 28, 2016, of the project known as "CityPlace
25 Santa Clara" (CityPlace) and the related approvals herein described.

26 2. Petitioner is the City of San José, a charter city and municipal corporation,
27 located in Santa Clara County, organized and existing under the laws of the State of
28 California.

1 3. The Respondent is the City of Santa Clara ("Santa Clara"), a charter city and
2 municipal corporation, located in Santa Clara County, organized and existing under the
3 laws of the State of California.

4 4. The Real Party in Interest in this action is Related Companies ("Related").
5 Petitioner is informed and believes, and thereon alleges, that Related Companies is a
6 privately owned real estate development company headquartered in New York City, New
7 York, doing business in California in the form of an entity designated as Related Santa
8 Clara, LLC.

9 5. Petitioner does not know the true names or capacities of the Respondents sued
10 herein as DOES 1 through 25, and therefore identify said parties by fictitious names.
11 Petitioner is informed and believes, and thereon alleges, DOES 1 through 25 are either
12 necessary or indispensable parties to the relief sought in this action and will ask leave to
13 amend the petition and complaint to allege their true names and capacities when they are
14 ascertained.

15 6. Petitioner is informed and believes, and thereon alleges, that Respondent and
16 DOES 1 through 25 are the agents and/or employees of each other and acted within the
17 course and scope of such agency and/or employment with respect to the matters alleged
18 in this action.

19 7. Petitioner does not know the true names or capacities of the Real Parties sued
20 herein as DOES 26 through 50, and therefore identifies said parties by fictitious names.
21 Petitioner is informed and believes, and thereon alleges, DOES 26 through 50 are either
22 necessary or indispensable parties to the relief sought in this action and will ask leave to
23 amend the petition and complaint to allege their true names and capacities when they are
24 ascertained.

25 8. Petitioner is informed and believes, and thereon alleges, that Related and
26 DOES 26 through 50 are the agents and/or employees of each other and acted within the
27 course and scope of such agency and/or employment with respect to the matters alleged
28 in this action.

1 9. The court has jurisdiction over the causes of action herein alleged under the
2 California Environmental Quality Act ("CEQA"), Public Resources Code sections 21167,
3 21168 and 21168.5, and Code of Civil Procedure §§ 1085, 1094.5, and 1060.

4 10. Venue is proper in this court under Code of Civil Procedure section 394.

5 **FIRST CAUSE OF ACTION**
6 **(CEQA)**

7 11. Petitioner incorporates by reference the allegations in paragraphs 1 through 10,
8 inclusive into this cause of action.

9 12. On June 29, 2016, Respondent filed a Notice of Determination for the project
10 in the office of the Santa Clara County Clerk.

11 13. Petitioner has complied with the requirements in Public Resources Code §
12 21167.5 by providing Respondent with a notice of intent to file this action. A true and
13 correct copy of the proof of service is attached as Exhibit 1. Petitioner has performed all
14 conditions precedent to filing this action. Before filing this action, Petitioner unsuccessfully
15 sought a tolling agreement for the purpose of working with Respondent and Real Party to
16 supplement the EIR without litigation.

17 14. Respondent has acted as the lead agency responsible under CEQA for
18 evaluating the environmental impacts of the CityPlace project proposed by Real Party.
19 The project involves converting 240 acres owned by Respondent, most of which was an
20 active waste landfill until sometime in 1993, from the existing park/open space use called
21 for in Respondent's General Plan, to a multi-phased, mixed-use development consisting of
22 as much as 9.16 million gross square feet of office buildings, retail and entertainment
23 facilities, hotel rooms, and a minimum of 200 but no more than 1,360 residential units.

24 15. On or about October 9, 2015, Respondent released for public review a draft
25 environmental impact report for the project. Thereafter, Petitioner, other public agencies,
26 interested groups, and individuals made oral comments identifying deficiencies in the draft
27 EIR and, later, the Final EIR.

28 ///

1 16. On April 19, 2016, Respondent published the final EIR. On or about June 3,
2 2016, Respondent made available voluminous new materials. Other materials were only
3 made available a few days before the Santa Clara City Council considered and approved
4 the Final EIR. The release of significant new information was untimely and, required
5 Respondent to re-circulate the EIR to allow the public to review and to comment on that
6 information, but Respondent failed to do so.

7 17. Notwithstanding notice of the deficiencies in the EIR and the untimely release
8 of significant new information, the Santa Clara City Council approved the CityPlace project
9 on June 28, 2016. The approvals included:

10 i. Accepting the Planning Commission's recommendations for the
11 CityPlace Santa Clara Project located at 5155 Stars and Stripes Drive, *et al.*, on an
12 approximately 240 acre site including properties including Assessor Parcel Numbers
13 104-03-036, 104-03-037, 104-03-038, 104-03-039, 104-01-102, 097-01-039, and
14 097-01-073 in the County of Santa Clara;

15 ii. Adopting a Resolution approving and certifying an Environmental
16 Impact Report (EIR);

17 iii. Adopting CEQA findings;

18 iv. Adopting a Statement of Overriding Considerations (SOC);

19 v. Adopting a Mitigation Monitoring and Reporting Program (MMRP);

20 vi. Adopting a Resolution approving Amendment #83 to the General
21 Plan changing the designated land use designation for the subject property from
22 Parks/Open Space and Regional Commercial to Urban Center/Entertainment
23 District; changing Figure 2.3-1 Areas of Potential Development and Table 8.6-2
24 Proposed Development (Approved, Not Constructed and Pending Projects), and
25 making related text amendments; and revising the Climate Action Plan to add
26 Transportation Demand Management (TDM) and Vehicle Miles Traveled (VMT)
27 goals for the new land use designation;

28 ///

1 vii. Adopting a Resolution approving rezoning the subject properties
2 from Public, Quasi-Public, Park or Recreation (B) and Commercial Park (CP) to
3 Planned Development-Master Planned Community (PD-MC);

4 viii. Approving the Master Community Plan to allow the phased
5 development of a new multi-phased, mixed-use development of up to 9.16 million
6 gross square feet of office buildings, retail and entertainment facilities, residential
7 units, hotel rooms, surface and structured parking facilities, new open space and
8 roads, landscaping and tree replacement, and new upgraded and expanded
9 infrastructure and utilities, subject to the development implementing the Increased
10 Housing Alternative and Enhanced Open Space Variant analyzed in the EIR;

11 ix. Passing to print an Ordinance approving the Development
12 Agreement;

13 x. Adopting a Resolution approving Disposition and Development
14 Agreement;

15 xi. Passing to print an Ordinance allowing leases up to 99 years in
16 length within the CityPlace Santa Clara Master Community Plan (MCP) area; and

17 xii. Adopting a Resolution Overriding Airport Land Use Commission
18 Determination of Inconsistency.

19 18. Respondent's actions, described above, violated CEQA in that Respondent
20 failed to proceed in the manner required by law and its decisions are not supported by
21 substantial evidence as hereafter stated.

22 19. The project description in the EIR fails to include the whole of the action,
23 resulting in the understatement of the project's environmental impacts. It is incomplete
24 and misleading in that it fails to describe integral infrastructure improvements to the
25 existing retention basin, critical traffic intersections and interchanges, the landfill gas
26 recovery and leachate systems, and storm water collection facilities. The EIR further fails
27 to describe the disposition of disturbed landfill material.

28 ///

1 20. The EIR violates the prohibition against piecemeal planning by deferring the
2 consideration of an infrastructure Master Plan including, but not limited to, integral project
3 components including, but not limited to infrastructure improvements to the existing
4 retention basin, critical traffic intersections and interchanges, parking structures, the
5 landfill gas recovery and leachate systems, and storm water collection facilities.

6 21. On November 16, 2010, the Santa Clara City Council adopted the 2010-2035
7 General Plan after completing a comprehensive environmental review process that began
8 in 2008 and culminated with an EIR, which the Council certified on November 16, 2010.
9 The adopted General Plan did not anticipate, or accommodate, the project on the selected
10 site. In fact, the project conflicts with the General Plan in numerous respects and violates
11 consistency requirements imposed by the California Government Code. For example, the
12 project creates an imbalance in Respondent's jobs/housing ratio by creating almost
13 25,000 jobs while adding a minimum of 200 housing units and no more than 1,360
14 housing units. The project is inconsistent with stated General Plan policies relating to
15 vehicle miles traveled, respecting the character and quality of adjacent neighborhoods,
16 reducing the use of personal vehicles, preserving trees and reducing greenhouse gas
17 emissions.

18 22. Respondent failed to comply with CEQA before amending its General Plan.
19 Respondent failed to issue a notice of determination or notice of preparation for the project
20 to amend the General Plan. Respondent failed to conduct any environmental review
21 before approving the amendment of the General Plan to accommodate Real Party's
22 project. The amendment changed the land use designation for the project site from
23 Parks/OpenSpace and Regional Commercial to Urban Center/Entertainment District and
24 made other changes which materially changed the General Plan. The amendment to
25 Respondent's General Plan was a separate and independent public project under CEQA
26 and required environmental review independent of the EIR for Real Party's private
27 development project.

28 ///

1 23. Respondent Santa Clara failed to perform an environmental review or
2 otherwise comply with CEQA requirements before rezoning the property comprising the
3 project site from Public-Quasi-Public, Park or Recreation (B) and Commercial Park (CP) to
4 Planned Development-Master Planned Community (PD-MC).

5 24. The project is irreconcilably inconsistent with the City of Santa Clara's General
6 Plan in material respects that create profound environmental impacts which, unneces-
7 sarily, have a regional effect. The proposed 9.16 million square foot development, which
8 anticipates creating 24,760 new jobs, shifts the environmental burden and expense to
9 support that economic development onto neighboring cities and counties by limiting
10 housing within the development to a minimum of 200 units and a maximum of 1,360 units.
11 According to the development agreement, the Related Santa Clara is only required to
12 build 200 housing units. The San Francisco Bay Regional Water Quality Control Board,
13 which must approve the project, has never to date approved a residential development on
14 a landfill due to potential adverse health impacts to residents living in homes built over
15 waste. Instead of mitigating that risk by requiring a clean closure of the landfill, which
16 would allow residential development consistent with an environmentally sound project,
17 Respondent's EIR has understated and/or whitewashed the impacts the project creates,
18 leaving its own citizens and neighboring communities to bear the burdens, risks, and costs
19 of these impacts.

20 25. Respondent failed to comply with CEQA by depriving the public, other public
21 agencies and Respondent's own elected representatives of adequate time to review and
22 comment on the EIR and associated actions approved by the City Council on June 28,
23 2016. Petitioner is informed and believes and thereon alleges that Respondent's City
24 Planning staff produced a massive amount of highly detailed and technical new
25 information after publication of the Final EIR on April 19, 2016. The new information
26 included new Project documents and environmental analysis comprising well over 2,000
27 pages of text and data and was available for review by members of the public and affected
28 agencies for less than one month. Some of the new information, such as the Project

1 Disposition and Development Agreement, contained details about Project implementation
2 and was available for less than two days before Respondent approved the project.
3 Respondent's failure to recirculate the EIR for comment after including new information
4 precluded meaningful public review and comment in violation of CEQA.

5 26. Respondent failed to comply with CEQA before approving the project because
6 the analysis of traffic impacts in the EIR upon which Respondent relied is incomplete and
7 inadequate. The EIR used a faulty baseline for its traffic and transportation analysis,
8 failed to identify and analyze intersections impacted by the project, failed to identify and
9 analyze the project impacts on transit operations, and failed to identify and analyze
10 enforceable measures to mitigate the traffic, transportation, noise, and transit impacts
11 attributable to the project.

12 27. Respondent failed to comply with CEQA because the analysis of air quality
13 impacts and greenhouse gas emissions attributable to the project in the EIR is incomplete
14 and inadequate. The EIR does not disclose how air pollutants attributable to the project
15 may impact the public's health and fails to identify or discuss feasible measures to mitigate
16 these impacts.

17 28. The EIR is inadequate because it fails to identify and disclose the project is
18 inconsistent with the habitat conservation plan Respondent approved on May 2, 2000 to
19 preserve 44.5 acres within the proposed site to preserve the burrowing owl population.

20 29. Respondent failed to comply with CEQA because the EIR fails to identify and
21 to analyze impacts to biological resources adequately, including, but not limited to, plant
22 species affected by nitrogen deposition, the impact on burrowing owls, wetland habitat,
23 and anadromous fish.

24 30. Respondent failed to comply with CEQA because the analysis of impacts
25 associated with hazards inherent in developing the project on a landfill site and the
26 analysis of feasible mitigation measures for these hazards are inadequate.

27 31. Respondent failed to provide notice of the preparation of the EIR to one or
28 more public agencies whose discretionary approval is required by the project. Petitioner is

1 informed and believes that Respondent failed to provide notice to the Santa Clara Valley
2 Water District, which must approve a new bridge crossing over San Tomas Aquino Creek
3 proposed as part of the project.

4 32. Respondent failed to comply with CEQA because the EIR fails to identify
5 adequate water resources to support the project, fails to analyze or disclose potential
6 impacts associated with delivering potable water through a landfill and fails to identify or to
7 discuss feasible measures to mitigate such impacts.

8 33. Respondent failed to comply with CEQA because the analysis of impacts to
9 groundwater and impacts from storm water and wastewater are inadequate. The analysis
10 of impacts to deep aquifers from leaching contaminants due to construction is inadequate.
11 The EIR fails to identify or discuss feasible measures to mitigate such impacts.

12 34. Respondent failed to comply with CEQA because the analysis impacts and
13 feasible mitigation measures relating to destruction of protected trees is incomplete and
14 inadequate.

15 35. The EIR does not comply with CEQA in that it fails to consider feasible
16 alternatives to the project as a whole, or alternatives that would mitigate the above-
17 described impacts, including, but not limited to, complete or partial clean closure of the
18 landfill before development, postclosure maintenance, control measures and long term
19 management of gases, leachate and other contamination from the landfill, reducing the
20 size/intensity of the project, changing the ratio of residential, commercial and recreational
21 use, alternatives to reduce vehicle trips associated with the project, and incorporating
22 transit access and facilities replacing public recreational and open space subsumed by the
23 project.

24 36. The EIR fails to identify and disclose adequately the environmental risks and
25 associated impacts inherent in constructing the project on a landfill. These include, but
26 are not limited to, risks and impacts relating to vapor intrusions containing volatile organic
27 compounds, land subsidence, ground water contamination, and the management of
28 methane gas from the landfill.

1 37. The EIR is inadequate in that it fails to apply an appropriate baseline by
2 omitting altogether and inadequately describing environmental impacts associated with
3 approved projects for which Respondent previously sought and obtained commitments for
4 mitigation measures and, further, by relying on such mitigation measures to address new
5 impacts and cumulative impacts arising from the project.

6 38. Petitioner is informed and believes, and thereon alleges, that the project
7 description is legally inadequate because it failed to disclose or analyze impacts to two
8 grade rail crossings.

9 39. Petitioner is informed and believes, and thereon alleges, Respondent and Real
10 Party intend to, and will, proceed with the project as approved unless prohibited by court
11 order from doing so. Petitioner does not have a plain, speedy, or adequate remedy at law
12 to prevent irreparable injury and environmental damage which will occur if the project
13 proceeds pursuant to Respondent's approvals and actions taken without complying fully
14 with CEQA. Pursuant to Public Resources Code §§ 21168 and 21168.5, together with
15 Code of Civil Procedure §§ 1085, 1085.5, and 1094.5, Petitioner is entitled to have said
16 approvals and actions set aside where, as here, Respondent has abused its discretion by
17 failing to proceed as required by law, evidence does not support Respondent's findings, or
18 its findings do not support its approvals and actions.

19 40. Petitioner seeks a writ of mandate directing Respondent to rescind all
20 approvals for the project alleged herein, and commanding Respondent to comply with
21 CEQA. Petitioner further seeks temporary, preliminary and permanent injunctive relief
22 prohibiting Respondent and Real Party from taking any further action with respect to the
23 project until such time as they have complied with CEQA.

24 **SECOND CAUSE OF ACTION**
25 **(Declaratory Relief)**

26 41. Petitioner incorporates by reference the allegations in paragraphs 1 through
27 40, inclusive into this cause of action.

28 ///

1 42. An actual controversy exists between Petitioner and Respondent and Real
2 Party over Respondent's approvals to proceed with the CityPlace project. Petitioner
3 contends Respondent was required to but failed to perform an EIR before amending the
4 General Plan or exempting the project from the General Plan, and that Respondent failed
5 to perform a complete or adequate environmental review of the project before
6 Respondent's City Council approved the project and related agenda items. Petitioner is
7 informed and believes, and thereon alleges, Respondent and Real Party dispute these
8 contentions and claim the actions to amend the General Plan and to exempt the project
9 from it were lawful, and that the EIR supporting the project is complete, adequate and
10 complies with CEQA.

11 43. Petitioner therefore seeks a declaration that Respondent's amendment to the
12 General Plan and action purporting to exempt the project from the General Plan are invalid
13 because Respondent was required to but failed to perform an EIR before amending the
14 General Plan or exempting the project from it, and, a declaration that the project EIR fails
15 to comply with CEQA and Respondent's approvals relating to the project must be set
16 aside.

17 WHEREFORE, Petitioner seeks the following relief:

18 1. For a writ of mandate:

- 19 i. directing Respondent to rescind and set aside all approvals described in
20 the June 28, 2016 Agenda Item 14 relating to the CityPlace project;
21 ii. directing Respondent to amend the project description so that it is legally
22 sufficient;
23 iii. commanding Respondent to cease all actions to implement the project
24 including, but not limited to, the execution of agreements, approval of plans,
25 issuance of permits and grading or other construction activity;
26 iv. commanding Respondent to prepare and circulate for comment a CEQA-
27 compliant EIR for the amendment of the General Plan; and
28

- 1 v. commanding Respondent to prepare and circulate for comment a CEQA-
2 compliant EIR for the project;
- 3 2. For declaratory relief requested above;
- 4 3. For a temporary restraining order and/or preliminary injunction prohibiting
5 Respondent and Real Party from proceeding with the project while this action is pending;
- 6 4. For a permanent injunction prohibiting Respondent and Real Party from
7 proceeding with the project until such time as this Court determines Respondent has
8 complied with CEQA;
- 9 5. For costs of suit, including attorney's fees pursuant to Civil Code § 1021.5; and
10 6. For such other relief as the Court deems just and proper.

11
12 Dated: July 28, 2016

Respectfully submitted,

RICHARD DOYLE, City Attorney

13
14
15 By:



ARDELL JOHNSON
Chief Deputy City Attorney

Attorneys for CITY OF SAN JOSE

16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 RICHARD DOYLE, City Attorney (88625)
NORA FRIMANN, Assistant City Attorney (93249)
2 ARDELL JOHNSON, Chief Deputy City Attorney (95340)
KATHRYN J. ZOGLIN, Senior Deputy City Attorney (121187)
3 Office of the City Attorney
200 East Santa Clara Street, 16th Floor
4 San José, California 95113-1905
Telephone Number: (408) 535-1900
5 Facsimile Number: (408) 998-3131
E-Mail Address: cao.main@sanjoseca.gov

6 Attorneys for CITY OF SAN JOSE
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10
11 CITY OF SAN JOSE,
12 Petitioner,
13 v.
14 CITY OF SANTA CLARA,
15 and DOES 1-25, inclusive,
16 Respondents,
17 RELATED COMPANIES, dba RELATED
18 SANTA CLARA, LLC, and DOES 26-50,
inclusive,
19 Real Parties in Interest.
20

Case Number:
**NOTICE OF INTENT
TO FILE CEQA PETITION**

21 PLEASE TAKE NOTICE, under Public Resources Code §21167.5, that Petitioner,
22 City of San José, intends to file a petition under the provisions of the California
23 Environmental Quality Act against the City of Santa Clara and Real Party in Interest
24 Related Companies, doing business in California as Related Santa Clara LLC. The
25 petition will challenge the City of Santa Clara's approval of the CityPlace Santa Clara
26 project, the certification of the Environmental Impact Report, the amendment to the City's
27 General Plan, the adoption of a Mitigation Monitoring and Reporting Program, the
28 rezoning of properties constituting the CityPlace Project site, the Master Community Plan,

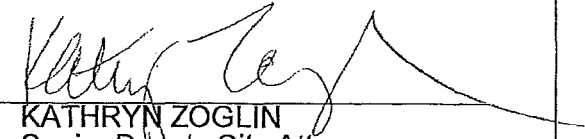
1 and the Resolution Overriding Airport Land use Commission Determination of
2 Inconsistency. The petition will seek an order compelling the City of Santa Clara to set
3 aside the referenced approvals and to comply with CEQA.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: July 25, 2016

RICHARD DOYLE, City Attorney

By: 
KATHRYN ZOGLIN
Senior Deputy City Attorney

Attorneys for CITY OF SAN JOSE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

CASE NAME: CITY OF SAN JOSE v. CITY OF SANTA CLARA, et al.

CASE NO.:

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On July 25, 2016, I caused to be served the within:

NOTICE OF INTENT TO FILE CEQA PETITION

by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

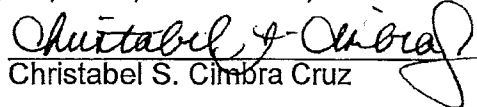
I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

Addressed as follows:

City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Phone Number: (408) 615-2220
Fax Number: (408) 241-6771

City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Phone Number: (408) 615-2230
Fax Number: (408) 249-7846

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 25, 2016, at San Jose, California.


Christabel S. Cimbra Cruz