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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10
11 SAVE OUR HERITAGE ORGANISATION Case No.
12 (SOHO), a non-profit corporation;

13 Petitioner,

14 v.

**Petition for
Writ of Mandamus**

15
16 CITY OF SAN DIEGO, CITY COUNCIL
17 OF THE CITY OF SAN DIEGO, and
DOES 1 to 5;

California Environmental Quality Act
[CEQA]

18 Respondents.

19 _____/
20 1122 4th AVENUE, LLC,
21 SLOAN CAPITAL PARTNERS, LLC,
22 and Does 6 to 10;

23 Real Parties in Interest.
24 _____/
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1 Petitioner alleges:

2 **Introduction**

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4 1. Petitioner Save Our Heritage Organisation (SOHO) brings this mandamus action
5 in the public interest to challenge the approval by the City of San Diego of the
6 demolition of the historic California Theatre as part of the 1122 4th Avenue Project
7 (the project). Adaptive reuse of the rehabilitated California Theatre is a feasible
8 alternative to demolition and would allow the accomplishment of basic project
9 objectives and the revitalization of C street in a manner consistent with the City's
10 adopted plans and the mandates of the California Environmental Quality Act.
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12 SOHO seeks this Court's peremptory writ to enforce the protections of state law.

13 **Jurisdiction**

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16 2. This Court has jurisdiction under Public Resources Code sections 21168
17 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5. The parties and the
18 project site are in the City and County of San Diego.
19

20 **Parties**

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22 3. SOHO is a California nonprofit corporation formed in 1969 to lead the San
23 Diego community as a catalyst for historic preservation by raising awareness and
24 appreciation of the region's rich architectural and cultural heritage. SOHO's members
25 include community residents and concerned citizens who enjoy and appreciate San
26 Diego's cultural, architectural, and historic resources, including the California Theatre.
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1 SOHO 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. SOHO members
3 repeatedly objected to the demolition of the California Theatre and exhausted SOHO's
4 administrative remedies.
5

6 4. Respondents City of San Diego and its elected City Council are collectively
7 referred to as the city, the lead agency for the project.
8

9 5. Real Parties in Interest 1122 4th Avenue, LLC, and Sloan Capital Partners,
10 LLC, are business entities that own the California Theatre and/or that propose to
11 develop the project and are referenced in the project application, the subsequent
12 environmental impact report (EIR), and the Notice of Determination.
13

14 6. Does 1 to 10 are fictitiously named respondents and real parties whose true
15 names and capacities are currently unknown to SOHO. If and when their true names
16 and capacities are known, SOHO will amend this petition to assert them.
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18 **General Allegations**

19 7. The paragraphs below refer to and rely on information in documents
20 relating to this action, all of which will be filed with this Court as part of the record of
21 proceedings and that are here incorporated by reference.
22

23 8. The 1122 4th Avenue, LLC ("applicant") applied for approval of Centre City
24 Development Permit/Site Development Permit/Centre City Planned Development
25 Permit/Neighborhood Use Permit (CCDP/SDP/PDP/NUP) No. 2014-76 in the City of
26 San Diego for the demolition of the existing historic California Theatre building and
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1 construction of a mixed-use development comprised of a 40-story tower (approximately
2 422 feet tall) and podium located on a 25,000 square-foot site on the north side of C
3 Street between Third and Fourth avenues in the Civic/Core neighborhood of the DCP
4 area. The Project is comprised of 282 dwelling units, approximately 11,000 square feet
5 of retail space, and 325 automobile parking spaces. The application included
6 amendments to the General Plan/Downtown Community Plan and Centre City Planned
7 District Ordinance for the removal of the Employment Overlay from the project site, as
8 well as certification of the EIR and adoption of findings, a Statement of Overriding
9 Considerations, and the Mitigation and Monitoring Reporting Program.
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12 9. The Draft Subsequent EIR was circulated for public review beginning in
13 August 2016, after which responses to comments were published. The focus of the EIR
14 was the project’s proposed demolition of the California Theatre, eligible for listing in
15 the National Register of Historic Places and the California Register of Historical
16 Resources and therefore a qualified historic resource for purposes of CEQA. The
17 California Theatre was built in 1927 with 2200 seats, and was the largest vaudeville and
18 movie palace in San Diego. One sign (Sign #1) is painted on the north wall of the
19 adjacent 9-story office building. This sign advertises the Barbary Coast, a tavern located
20 within the building in the 1970s. Two additional signs (Signs #2 and #3) are painted on
21 the south and west sides of the theater’s stage fly structure. These signs date to 1962–
22 1963 and advertise the Caliente racetracks in Tijuana, Baja Mexico. Although
23 significantly faded, the signs are still legible. The theater continued operation as a
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1 movie theater until 1976, and remained a venue for special performances until the
2 1980s. The building underwent its last renovation in 1988.

3 10. The project applicant 1122 4th Ave LLC, a subsidiary of Sloan Capital,
4 bought the property in 2006. For the next five years, the city's code enforcement
5 officers repeatedly notified the owners that they needed to retrofit the building for
6 safety. Instead the owners sought approval for demolition, and SOHO is informed and
7 believes and therefore alleges that the applicant's choice not to maintain or retrofit the
8 building since 2006 caused significant deterioration by neglect.
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11 11. The EIR considered alternatives to the project, but all included full or
12 partial demolition of the California Theatre. SOHO and others objected to the EIR's
13 failure to consider a preservation alternative, among other project objections. SOHO
14 and others provided evidence that preservation of the California Theatre would be
15 feasible and submitted offers from qualified developers to purchase and develop the site
16 without demolition of the California Theatre. The city's appointed Historical Resources
17 Board recommended denial of the project's required planned development and site
18 development permit in January 2017 in light of the proposed demolition of the
19 California Theatre, based *inter alia* on an inadequate review of alternatives in the EIR.
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22 12. In April 2017, the San Diego City Council certified the EIR and adopted
23 CEQA findings and a Mitigation Monitoring and Reporting Program. The Council also:
24 approved a resolution and an ordinance amending the General Plan/Downtown
25 Community Plan and the Centre City Planned District Ordinance to remove the project
26 site from the Employment Overlay; approved a Site Development Permit for demolition
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1 of an historic resource; approved the Centre City Development Permit; approved a
2 Planned Development Permit with requested Deviations; and approved a
3 Neighborhood Use Permit for the Comprehensive Sign Plan and outdoor seating
4 associated with an eating and drinking establishment. The initial approval on April 4
5 was followed by a second reading of ordinances two weeks later.
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7 13. On April 21, 2017, the city posted a Notice of Determination. The 30th day
8 following the NOD was a Sunday; this action is timely filed on Monday, May 22, 2017.
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10 14. SOHO has no plain, speedy, and adequate remedy in the ordinary course
11 of law. Issuance of a peremptory writ is needed to avoid immediate, severe, and
12 irreparable harm to SOHO and San Diego residents via the implementation and
13 construction of the project including demolition of the California Theatre, without
14 compliance with environmental mandates. The city has the capacity to correct its
15 violations of law but refuses to do so.
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17 15. SOHO provided the city with a copy of its notice of intention to commence
18 this action and also provided notice to the office of the California Attorney General.
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21 **Violations of the California Environmental Quality Act**

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23 16. SOHO incorporates all previous paragraphs as if fully set forth.

24 17. The city abused its discretion and failed to proceed in the manner required
25 by law in certifying and relying upon the Subsequent EIR for the 1122 4th Avenue
26 project including demolition of the California Theatre, because, inter alia according to
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1 proof in the administrative record:

- 2 • The EIR fails to consider a required range of alternatives according to the rule of
3 reason, including but not limited to alternatives avoiding demolition of the
4 California Theatre and its Signs, and alternatives that are fully consistent with the
5 city's adopted plans and policies;
- 6 • The EIR fails to consider impacts from the baseline of the project developer's
7 ownership of the project and its overt failure to maintain an historic resource
8 based on pursuit of demolition;
- 9 • The city's findings certifying the EIR and approving the project, including but
10 not limited to its findings that alternatives to demolition are infeasible, are not
11 supported by substantial evidence;
- 12 • The city's statement of overriding considerations is inadequately supported;
- 13 • The city failed to recirculate the EIR to consider new information and changed
14 circumstances, including offers to purchase and rehabilitate the California
15 Theatre and thereby avoid significant environmental impacts;
- 16 • The city failed to comply with CEQA mandates requiring that it not approve a
17 project with significant environmental impacts if there are project mitigations or
18 alternatives that avoid or lessen such impacts.

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25 **WHEREFORE**, Petitioner SOHO prays:

26 1. That the Court issue a peremptory writ of mandamus ordering the city to
27 set aside its approval of the 1122 4th Street project and demolition of the historic
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1 California Theatre, and all project entitlements, and to refrain from considering
2 approvals pending its certification of an adequate subsequent EIR and full compliance
3 with CEQA;

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5 2. That the Court issue a temporary stay prohibiting the real parties and
6 respondents and employees and agents from proceeding with any physical actions in
7 pursuit of the project while this action is pending;

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9 3. For SOHO's costs and attorney fees pursuant to CCP section 1021.5; and

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

11
12 May 22, 2017

BRANDT-HAWLEY LAW GROUP

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14 By 

Susan Brandt-Hawley
Attorney for Petitioner SOHO

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17 **Verification**

18 I, Susan Brandt-Hawley, am an attorney for petitioner SOHO whose members
19 are located outside of Sonoma County where I have my law offices, and so I verify this
20 petition on its behalf. I have read the Petition for Writ of Mandamus and know its
21 contents. The matters stated in it are true based on my knowledge, except as to matters
22 stated on information and belief, and as to those matters, I believe them to be true.
23

24 I declare under penalty of perjury that the above is true to the best of my
25 knowledge. This declaration is executed on May 22, 2017 at Glen Ellen, California.
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Susan Brandt-Hawley

1 *Save Our Heritage Organisation (SOHO) v. City of San Diego, et al.*
2 San Diego County Superior Court Case No. _____

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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 P.O.
7 Box 1659, Glen Ellen, CA 95442.

8 On May 22, 2017, I served one true copy of:

9
10 **Petition for Writ of Mandamus**

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

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

18 I declare under penalty of perjury that the foregoing is true and correct and is
19 executed on May 22, 2017, at Glen Ellen, California.

20
21 

22 _____
23 Susan Brandt-Hawley