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County of Santa Clara,
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7 Attorney for Petitioners
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12

13 Pomeroy Eichler Neighborhood
14 Preservation Society, an
15 unincorporated association,
16 and Ken Kratz;

Case No. 18CV334205

Petition for Writ of Mandamus

17 Petitioners,

California Environmental Quality Act
[CEQA]

18 v.

19 City of Santa Clara and City
20 Council of the City of Santa Clara;

21 Respondents,
22 _____/

23 Daryoush Marhamat and
24 Does 1-10;

25 Real Parties in Interest.
26 _____/

1 Petitioners allege:

2
3 **Introduction**

4 1. The Pomeroy Eichler Neighborhood Preservation Society, an
5 unincorporated association, and Santa Clara resident Ken Kratz (collectively, the
6 Society) bring this mandamus action in the public interest to enforce mandatory
7 environmental and land use laws. The Society challenges the City of Santa Clara's
8 failure to comply with the California Environmental Quality Act (CEQA) before
9 approving the 1075 Pomeroy Avenue Residential Subdivision Project.
10

11 The City Council approved the four-lot subdivision via rezoning to a Planned
12 Development that is inconsistent with adopted City Codes. The project requires
13 discretionary approvals for demolition, grading, design review, and encroachment, and
14 would have potentially significant environmental impacts on the surrounding mid-
15 century multi-family "Pomeroy Eichler" neighborhood. The City's failure to prepare an
16 environmental impact report before considering approval of the project violated CEQA.
17
18

19 Having exhausted administrative remedies, the Society turns to this Court for
20 issuance of a peremptory writ to require the City to comply with mandates of state law.
21

22 **Jurisdiction**

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24 2. This Court has jurisdiction under Public Resources Code section 21168 and
25 CCP section 1094.5. The parties and site are located in the County of Santa Clara.
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Parties

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3 3. Petitioner Pomeroy Eichler Neighborhood Preservation Society is an
4 unincorporated association formed in the public interest in August 2018 after the City's
5 approval of the 1075 Pomeroy Avenue Residential Subdivision Project. The Society's
6 goal is to protect the unique Eichler housing complexes on Pomeroy Avenue from
7 incompatible development. Petitioner Ken Kratz is a member of the Society and a
8 resident of the neighborhood. Peggy Parkin, Diane Harrison, and other community
9 residents and concerned citizens, are members of the Society and enjoy and appreciate
10 Santa Clara's environmental and historical resources. The Society brings this petition
11 on behalf of all others similarly situated that are too numerous to be named and
12 brought before this Court as petitioners. Petitioner Ken Kratz objected to the City's
13 approval of the 1075 Pomeroy Avenue Residential Subdivision Project and exhausted
14 administrative remedies on behalf of himself and the later-formed Society.
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18 4. Respondents City of Santa Clara and its City Council (collectively referred
19 to as the City) are the governmental body and lead agency that approved the project
20 based on a mitigated negative declaration.
21

22 5. Real party in interest Daryoush Marhamat is the project applicant
23 identified in the CEQA Notice of Determination.

24 6. Does 1 to 10 are fictitiously-named real parties whose true names and
25 capacities are currently unknown to the Society members. If and when their true names
26 and capacities are known, the Society will amend the petition to assert them.
27
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1 7. The paragraphs below refer to and rely on information in documents
2 relating to this action, all of which will be filed with this Court as part of the record of
3 proceedings and are here incorporated by reference.
4

5 **General Allegations**

6

7 ***Environmental Setting***

8 8. The 1075 Pomeroy Avenue Residential Project proposes to divide a 12,400
9 square-foot property, currently containing a single-family home built in 1955, into four
10 parcels each developed with a detached two-story single-family home. The project site
11 is adjacent to the Pomeroy Green and Pomeroy West developments that were designed
12 by famed developer Joseph Eichler.
13

14 9. Eichler was active in the bay area in the 1950s and 1960s. Eichler homes
15 including the Pomeroy Eichlers have a distinctive mid-century modern architectural
16 style. Eichler is well known nationwide for home designs that featured intimate
17 relationships between in and outdoors, ideal for California living. He was one of the few
18 developers of his time to engage architects to achieve standardized designs affordable to
19 the middle class. Among his signature design features are living rooms with large
20 windows and sliding-glass doors facing back patios ideal for family use. Clubhouses,
21 playgrounds, swimming pools, and extensive landscaping with benches facilitate
22 informal community gatherings in now-iconic Eichler developments.
23
24

25 10. The Pomeroy Green and Pomeroy West developments share classic Eichler
26 attributes and are also fine examples of Eichler's fewer and less-known multi-family
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1 projects. Both complexes are early examples of intense cluster housing to preserve
2 diminishing open space. Eichler aficionados tout his genius for designing intense
3 development while preserving privacy in adjacent units housing and buildings. Many
4 contemporary as well as contemporaneous articles and books applaud the Pomerooy
5 Eichler complexes as outstanding examples of innovative cluster housing. They remain
6 of historic and academic interest to practicing architects, architects, architectural
7 historians, and writers addressing the contemporary American architectural scene.
8
9

10 ***CEQA Review***

11
12 11. Following the Marhamat project application in September 2016 and its
13 review by staff, a 20-day public review period for a proposed mitigated negative
14 declaration began in September 2017. The City's CEQA Initial Study checklist included
15 no discussion of visual or historic resource impacts and made summary findings that
16 the project would have no potentially significant environmental impacts.
17

18 12. The City filed a CEQA Notice of Determination (NOD) in March 2018,
19 three months before the City Council approved the project in June 2018.
20

21 ***Project Approval Process***

22
23 13. The City Planning Commission reviewed the project and following a
24 hearing in September 2017 recommended approval based on the mitigated negative
25 declaration. The City Council considered the project in November 2017, at which time
26 its staff prepared a Notice of Determination. But the Council did not approve the
27
28

1 project, instead ordering review by the Historical and Landmarks Commission (HLC)
2 in light of the site's adjacency to Pomeroy Green.

3
4 14. The HLC reviewed the project in January 2018 and recommended that the
5 City Council delay action pending consideration by the State Historical Resources
6 Commission of Pomeroy Green's qualification for the National Register of Historic
7 Places. The HLC made further recommendations; to wit:

- 8
9 • "Consider the neighborhood properties (i.e. Pomcroy Green and Pomeroy
10 West) as eligible for historical designation based on criteria in the
11 California Register of Historical Resources and criteria A, B, and C of the
12 City's recently adopted historic preservation ordinance.
- 13
14 • Redesign the proposed project to increase setbacks and reduce shade
15 impacts, lower roof slope, lower overall height, reduce use of stucco finish,
16 replace horizontal siding, provide carports instead of garages, and
17 synchronize window geometry.
- 18
19 • Conduct a staff-facilitated community meeting to review the design and
20 find an agreeable solution.
- 21
22 • Return to HLC for review and recommendation."

23 15. The City Council did not accept most HLC recommendations and never
24 returned the project to HLC for further review. The Council held a second public
25 hearing in March 2018, and approved the mitigated negative declaration prepared in
26 September 2017. It did not yet approve the project, referring it to its Architectural
27 Review Committee (ARC) to develop design recommendations following a public
28

1 process. While approval was still pending, the City filed a premature Notice of
2 Determination (NOD) with the County Clerk on March 9, 2018.

3
4 16. Following review by the ARC on March 14 and April 4, the City Council
5 held a further public hearing on June 26, 2018. Among the objectors to approval of the
6 project and failure to prepare an EIR were residents urging the Council to consider that

7 [a]ppropriate, compatible development near historical properties can bring
8 great cultural and monetary value to Santa Clara. Incompatible development
9 may unintentionally harm our city's historic resources... The [project] will be
10 completely surrounded by 216 Eichler units (78 units at Pomeroy
11 Green and the 138 units at Pomeroy West). Compatibility is vital. We as Santa
12 Clara citizens and residents of these communities care for and work hard to
13 preserve the architectural, cultural, and historical value that Eichlers bring to
14 Santa Clara, and ask that you provide governmental stewardship for these city
15 resources in your capacity as our elected representatives...

16
17 Co-petitioner Ken Kratz pointed out that the project would be too massive and too close
18 to the surrounding Pomeroy Green complex, and provided examples of feasible
19 alternate project designs that would be more compatible with the historic surroundings
20 and, unlike the project, would meet standards of all of the City's "zoning ordinances,
21 City Design Guidelines, and the City's Architectural Committee Community Design
22 Guidelines ..." Dave Weinstein, writer and mid-century architecture and design expert,
23 objected to the project: "Pomeroy Green and Pomcroy West are historically important
24 examples of early (1960s) cooperative housing that were built by [Eichler,] the nation's
25 most important builder of mid-century modern tract homes. Both appear eligible for
26 listing on the National Register of Historic Places and the California Register of
27
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1 Historical Resources. Both residential complexes remain largely intact, preserving their
2 historic qualities. Allowing for [this project design] in a central area between the two
3 complexes would irreparably harm the historic fabric.” Preservation architect Craig
4 Mineweaser, AIA, concurred.
5

6 17. The City Council nonetheless approved the project on June 26, 2018, on
7 the basis of the mitigated negative declaration and without preparation of an EIR. Some
8 project revisions and recommendations of the Historical and Landmarks Commission
9 and Architectural Review Committee were imposed but many were not. The codified
10 20-foot setback was rejected in favor of a widely-opposed, problematic 10-foot setback.
11

12 18. The City did not file a Notice of Determination after approving the project.
13 A valid NOD triggers a 30-day statute of limitations to file a CEQA challenge to a
14 project based on either a negative declaration or EIR. Without an NOD, a 180-day
15 CEQA statute of limitations runs from the date of project approval. As the adequacy of
16 CEQA review can only be assessed as to an approved project, by statute an NOD must
17 be filed after project approval. It is required to recite that a lead agency has approved a
18 described project and to give notice of the type and date of CEQA compliance relied
19 upon for the approval. In this case, the statute of limitations was not triggered in March
20 2018 when the City prematurely filed an NOD before approving the project. If the
21 statute of limitations had been triggered at that time, the CEQA statute of limitations
22 would have expired before the project was even approved. This action is timely filed
23 within 180 days of the City Council’s project approval date. That date was in June 2018
24 and the CEQA statute of limitations therefore does not run until December 2018.
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1 19. The Society served a copy of this petition on the Attorney General.

2 20. The Society has no adequate remedy at law. Absent the relief prayed for in
3 this petition, the project will proceed with significant irreparable environmental
4 impacts to the Santa Clara environment and residents. The City has the ability to
5 correct its violations of law but has failed and refused to do so.
6

7
8 **Violation of the California Environmental Quality Act**

9 21. The Society incorporates all previous paragraphs as if fully set forth.

10 22. The City of Santa Clara abused its discretion and failed to act in the
11 manner required by law in approving the 1075 Pomeroy Avenue Residential
12 Subdivision project based on a mitigated negative declaration. According to proof
13 following certification of the record of proceedings:
14

- 15 a. The City unlawfully approved a project with potentially significant environmental
16 impacts without preparing an EIR to inform its discretion. The record contains
17 substantial evidence supporting a fair argument of potentially significant
18 environmental impacts, including, *inter alia*, impacts relating to aesthetics/
19 visual impacts and views, impacts to surrounding unique resources, landscaping,
20 sun and shade, light and glare, parking, historic resources, and inconsistencies
21 with the City's Design Guidelines and setbacks and the City's adopted land use
22 plans, codes, and policies, among other environmental impacts supported by
23 evidence in the administrative record.
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- 1 b. The City failed to make CEQA findings and its refusal to prepare an
2 environmental impact report is not based on findings supported by substantial
3 evidence in the record.
4
5 c. The City failed to make findings supported by substantial evidence that Pomcroy
6 Green is not an eligible historic resource for purposes of CEQA.
7

8 **WHEREFORE**, petitioners pray:

- 9 1. That the Court issue a peremptory writ of mandate ordering the City to set
10 aside and void all approvals furthering the 1075 Pomeroy Avenue Residential
11 Subdivision project and to refrain from reconsideration of project approvals until it
12 fully complies with CEQA by preparing an adequate EIR and adopting feasible
13 alternatives and mitigation measures consistent with City plans and ordinances;
14
15 2. That the Court enjoin the City and real party in interest and their
16 employees and agents from all construction activities relating to the project while the
17 petition is pending;
18
19 3. For the Society's reasonable costs and attorney fees pursuant to Code of
20 Civil Procedure section 1021.5; and
21
22 4. For other and further relief as the Court finds proper.
23

24 August 30, 2018

BRANDT-HAWLEY LAW GROUP



27 Susan Brandt-Hawley
28 Attorney for Petitioners

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Verification

I am an attorney for petitioners located outside of Sonoma County where I have my law offices, and so I verify this petition on their behalf. I have read this 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 is executed on 30 August 2018 at Glen Ellen, California.



Susan Brandt-Hawley

1 *Pomeroy Eichler Neighborhood Preservation Society, et al. v. City of Santa Clara, et al.*
2 Santa Clara County Superior Court Case No. _____

3
4 **PROOF OF SERVICE**

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

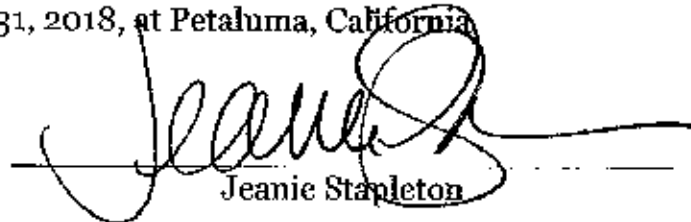
8 On August 31, 2018, I served one true copy of:

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 Petaluma, California addressed to:

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

19 I declare under penalty of perjury that the foregoing is true and correct and is
20 executed on August 31, 2018, at Petaluma, California

21
22 
23 Jeanie Stapleton