

ENDORSED
FILED
ALAMEDA COUNTY

SEP -3 2010

CLERK OF THE SUPERIOR COURT
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10

11 **Concerned Library Users (CLU),**
12 **an unincorporated association, and**
13 **Does 1 to 5;**

14 Petitioners and Plaintiffs,

15 v.

16 **City of Berkeley, City Council**
17 **of the City of Berkeley, and Does 6 to 10;**

18 Respondents and Defendants;
19
20 _____ /

Case No. RG10533979

**First Amended
Petition for Writ of Mandamus;
Reverse Validation Complaint**

California Environmental Quality Act
[CEQA]

Assigned for all Purposes to
The Honorable Frank Roesch
Department 31

BY FAX

1 Petitioners and Plaintiffs Concerned Library Users allege:

2 1. Concerned Library Users (collectively, CLU) bring this mandamus action in the
3 public interest. CLU challenges the City of Berkeley's actions in furtherance of the
4 demolition and substantial alteration of the City's historic public libraries without first
5 complying with the California Environmental Quality Act. In addition, CLU challenges the
6 City's issuance of bond funds pursuant to Measure FF for public library projects that require
7 demolition, because such bond funds are only validly issued to "renovate, expand, and make
8 seismic and access improvements."
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11 In July 2010, the City adopted an ordinance amending the Berkeley Municipal Code to
12 provide that a use permit rather than a variance will now suffice to change, expand, or
13 demolish any of its public libraries. The City Council declared that the ordinance was
14 intended "to facilitate" library improvements authorized under Measure FF, which authorized
15 general obligation bonds of up to \$26 million. In July 6, 2010, the City approved the
16 ordinance and also authorized the issuance of \$16 million in Measure FF funds. Significant
17 alterations, including the demolition of two libraries, are pending and will have significant
18 adverse environmental impacts.
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22 A peremptory writ should issue to require the City to comply with CEQA. The Court is
23 also requested to determine that Measure FF funds may not validly issue for any project that
24 includes the demolition of any of Berkeley's public libraries.
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1 10. Members of the public, and one member of the City Council, expressed concern
2 and objection to adoption of the library exemption ordinance, because of its facilitation of
3 demolition and alteration of the existing public libraries in a manner inconsistent with
4 mandatory City zoning requirements. City staff conceded that the purpose of the ordinance
5 was to allow library alterations that would otherwise not conform to zoning, noting that some
6 pending library projects might not be able to meet the stringent legal requirements for a
7 variance but could more easily meet use permit requirements. Objections were also made to
8 the use of Measure FF funds for projects that would require the demolition of two of the
9 existing libraries, with significant impacts on historic resources. Objections were also made to
10 the City's approval of the ordinance without preparing an EIR.
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14 11. On July 6, 2010, the City Council approved the library variance ordinance on
15 the basis of a Negative Declaration. It also approved the issuance of \$16 million of Measure
16 FF bond funds for upcoming library projects.
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18 12. A Notice of Determination was filed on July 29, 2010. This initial petition in
19 this action was timely filed on the first court day following the 30th day thereafter.
20

21 13. Petitioners and Plaintiffs have no plain, speedy, and adequate remedy in the
22 ordinary course of law. Issuance of a peremptory writ is needed to avoid immediate, severe,
23 and irreparable harm to Berkeley residents via the implementation of the library use permit
24 ordinance and the issuance of bond funds that facilitate demolition of historic resources. The
25 City has the capacity and opportunity to correct its violations of law but refuses to do so.
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1 First Cause of Action

2 **Violations of the California Environmental Quality Act**

3 14. CLU incorporates all previous paragraphs as if fully set forth.

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5 15. The City abused its discretion and failed to proceed in the manner required by
6 law in approving the amendment of the Berkeley Municipal Code to exempt existing public
7 libraries from variance requirements for change, expansion, or demolition, on the basis of a
8 Negative Declaration. The record contains a fair argument that demolition of historic
9 resources will be facilitated by reducing approval requirements to a use permit, and is
10 inconsistent with Measure FF. There may also be significant impacts relating to traffic,
11 parking, and aesthetics.
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14 16. The City's subject code amendment is the first step in already-pending projects
15 to alter and demolish public libraries. The City unlawfully segmented and piecemealed its
16 environmental review of the whole of the action. The variance should be reviewed and
17 considered together with all of the other discretionary City actions required to approve the
18 pending library projects. Inconsistency with Measure FF should also be reviewed.
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20 17. The City's findings are not supported by substantial evidence in the record. The
21 City prepared an inadequate initial study and inadequately assessed the environmental setting
22 and the reasonably foreseeable impacts of the substitution of the use permit process for the
23 existing variance requirement for alteration, change, or demolition of public libraries.
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1 22. CLU seeks a permanent injunction enjoining the City from issuing bonds
2 pursuant to Measure FF and from spending bond funds for any library projects that entail
3 demolition and are thereby beyond Measure FF's prescribed scope to "renovate, expand, and
4 make seismic and access improvements."
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6 23. Should this cause of action be determined to be invalid for any reason, a writ of
7 mandamus is requested in the alternative under CCP section 1085, for failure to perform a
8 mandatory duty in accordance with the express terms of Measure FF.
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11 WHEREFORE, Petitioners and Plaintiffs pray:

12 1. That the Court issue a peremptory writ of mandamus ordering the City of
13 Berkeley and its City Council to set aside and void all approvals relating to the amendment of
14 the Berkeley Municipal Code to exempt its public libraries from variance requirements, use of
15 Measure FF funds for projects involving demolition, or other library alterations, until full
16 compliance with CEQA is achieved, including the preparation and certification of an
17 adequate Environmental Impact Report and the adoption of feasible mitigations and
18 alternatives based upon findings supported by substantial evidence;
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21 2. That the Court determine that Measure FF bond funds are invalid for use in
22 furtherance of any project that includes the demolition of any Berkeley public library facility
23 as a material element, including but not limited to the pending projects to demolish the South
24 Branch and West Branch libraries, and that the Court order that Measure FF funds not be
25 issued or used for any phase of such projects;
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Concerned Library Users v. City of Berkeley
Alameda County Superior Court

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma.
I am over the age of eighteen years and not a party to the within entitled action;
my business address is P.O. Box 1659, Glen Ellen, CA 95442.

On September 3, 2010, I served one true copy of:

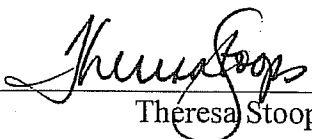
**First Amended Petition for Writ of Mandamus;
Reverse Validation Complaint**

X By placing a true copy thereof enclosed in a sealed envelope and postage thereon fully prepaid, in the United States mail in Glen Ellen, California addressed to the persons listed below.

X Zach Cowan, City Attorney
City of Berkeley
2180 Milvia Street
Berkeley CA 94704

Attorney for Respondents

I declare under penalty of perjury that the foregoing is true and correct and is executed on September 3, 2010, at Glen Ellen, California.



Theresa Stoops