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6 Attorney for Petitioners

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN FRANCISCO**  
10

11  
12 San Francisco Beautiful; San Francisco  
13 Tomorrow; Dogpatch Neighborhood  
14 Association; Potrero Boosters  
15 Neighborhood Association; Duboce  
16 Triangle Neighborhood Association;  
17 and Does 1 to 10;

18 Petitioners,

19 v.

20 City and County of San Francisco;  
21 Board of Supervisors of the City  
22 and County of San Francisco; and  
23 Does 11 to 15;

24 Respondents,  
25 \_\_\_\_\_ /

26 AT&T California and Does 16-20;

27 Real Parties in Interest.  
28 \_\_\_\_\_ /

Case No.

**Petition for Writ of Mandamus**

California Environmental Quality Act

1 Petitioners allege:

2 **Introduction**

3  
4 1. A broad-based coalition of San Francisco community organizations, including San  
5 Francisco Beautiful, San Francisco Tomorrow, the Dogpatch Neighborhood Association, the  
6 Potrero Boosters Neighborhood Association, and the Duboce Triangle Neighborhood  
7 Association, bring this mandamus action in the public interest to enforce the mandates of the  
8 California Environmental Quality Act.  
9

10 At issue are well-loved urban landscapes along hundreds of blocks of San Francisco  
11 sidewalks, now threatened by the refrigerator-sized metal utility boxes proposed by AT&T for  
12 its telecommunications network. Petitioners welcome upgrades to data transmission services.  
13 However, over the past three years they have joined with scores of citizens and elected officials  
14 to provide voluminous evidence that the 726 boxes sought by AT&T may have adverse  
15 cumulative impacts on pedestrian safety and San Francisco's world-famous aesthetics.  
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18 In light of such evidence, an environmental impact report is required. Instead, a slim  
19 majority of the San Francisco Board of Supervisors pronounced the AT&T project to be  
20 "categorically exempt" from any environmental review whatsoever. The Board's findings that  
21 726 utility boxes could have no possible cumulatively significant environmental impacts are  
22 wholly unsupported. A project EIR must analyze the feasibility of undergrounding the new  
23 boxes or placing them on private property, as also required by the City's Director of Public  
24 Works since 2005, and to consider other feasible project alternatives and mitigation measures.  
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1 This Court's peremptory writ should issue in the public interest to require the City to  
2 comply with the salutary procedural and substantive mandates of CEQA by preparing an EIR for  
3 the AT&T project and then adopting feasible project alternatives and mitigation measures.  
4

### 5 **Jurisdiction**

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7 2. This Court has jurisdiction under Code of Civil Procedure sections 1085 and  
8 1094.5 and Public Resources Code sections 21168 and 21168.5. The parties and the affected real  
9 properties are located within the City and County of San Francisco.  
10

### 11 **Parties**

12  
13 3. Petitioner San Francisco Beautiful first formed in 1947 to halt the threatened  
14 elimination of the San Francisco cable car system, and later formed a non-profit corporation to  
15 protect and preserve the urban aesthetics and environs of San Francisco. San Francisco Beautiful  
16 members include community residents and concerned citizens who enjoy and appreciate San  
17 Francisco's beauty and urban environs and who use the City's sidewalks. They bring this  
18 petition on behalf of all others similarly situated that are too numerous to be named and brought  
19 before this Court as petitioners. Members of San Francisco Beautiful opposed the categorical  
20 exemption relied upon for approval of the AT&T project and exhausted administrative remedies.  
21

22  
23 4. Petitioner San Francisco Tomorrow was formed by neighborhood activists in 1970  
24 to promote environmental quality and neighborhood livability in San Francisco. San Francisco  
25 Tomorrow focuses on issues such as open space, downtown growth, neighborhood planning,  
26 and transit systems. San Francisco Tomorrow members include residents who enjoy and  
27  
28

1 appreciate San Francisco's beauty and urban environs and use its sidewalks. They bring this  
2 petition on behalf of all others similarly situated that are too numerous to be named and brought  
3 before this Court as petitioners. Members of San Francisco Tomorrow opposed the categorical  
4 exemption relied upon for approval of the AT&T project and exhausted administrative remedies.  
5

6         5.         Petitioner Dogpatch Neighborhood Association is a neighborhood organization  
7 encouraging thoughtful and visionary planning that respects, celebrates, and preserves the  
8 character, integrity, and quality of life of the central waterfront area as it evolves for the  
9 21st century. Its members enjoy and appreciate San Francisco's beauty and environs, including  
10 its sidewalks. The Association brings this petition on behalf of all others similarly situated too  
11 numerous to be named and brought before this Court as petitioners. Members opposed the  
12 AT&T project's categorical exemption and exhausted administrative remedies.  
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14

15         6.         Petitioner Potrero Boosters Neighborhood Association was founded in 1926 and is  
16 one of the oldest neighborhood associations in San Francisco. It was formed to protect and  
17 improve the district known as Potrero Hill, and reviews zoning, planning, and development  
18 programs to promote the best interests of the Potrero Hill neighborhood. The Boosters are strong  
19 advocates of planned growth and strive to preserve the unique community of Potrero Hill, and  
20 include residents who enjoy and appreciate San Francisco's beauty and urban environs and use  
21 its sidewalks. They bring this petition on behalf of all others similarly situated that are too  
22 numerous to be named and brought before this Court as petitioners. Boosters opposed the  
23 exemption relied upon for approval of the AT&T project and exhausted administrative remedies.  
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27         7.         Petitioner Duboce Triangle Neighborhood Association is a non-profit corporation  
28 comprised of residents, businesses and property owners in San Francisco's Duboce Triangle

1 neighborhood whose goal is to protect, maintain and improve neighborhood quality of life.  
2 Association members include residents who enjoy and appreciate San Francisco's beauty and  
3 urban environs and use its sidewalks. They bring this petition on behalf of all others similarly  
4 situated that are too numerous to be named and brought before this Court as petitioners. The  
5 Association opposed the exemption relied upon for approval of the AT&T project and exhausted  
6 administrative remedies.  
7

8  
9 8. Respondents City and County of San Francisco and its Board of Supervisors  
10 (collectively referred to as the City) is the lead agency that approved the AT&T Lightspeed  
11 project based on a categorical exemption from the California Environmental Quality Act.  
12

13 9. Real Party in Interest AT&T, a business entity, is the applicant for the AT&T  
14 Lightspeed project.

15 10. Does 1 to 20 are fictitiously named petitioners, respondents, and real parties in  
16 interest whose true names and capacities are currently unknown. If and when their true names  
17 and capacities are known, Petitioners will amend this petition to assert them.  
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19

### 20 **General Allegations**

21 11. The paragraphs below refer to and rely on information in documents relating to  
22 this action, all of which will be filed with this Court as part of the record of proceedings.  
23

24 12. On August 17, 2005, San Francisco Director of Public Works and now Mayor  
25 Edwin Lee issued Order No. 175, 566 entitled "Regulations for Issuing Excavation Permits for  
26 the Installation of Surface-Mounted Facilities in the Public Right-of Way." The Order requires  
27 that all surface-mounted utility facilities "be installed on private property or be placed  
28

1 underground to the extent either of these options is technologically and economically feasible,”  
2 and requires annual technology reviews that the City has not pursued since 2006.

3  
4 13. On June 13, 2008, the San Francisco Planning Department issued a categorical  
5 exemption for Case Number 2007.1350E, AT&T’s proposed Lightspeed Telecommunications  
6 Network Upgrade. AT&T proposed to install 850 refrigerator-sized utility boxes on sidewalks  
7 throughout the City. The tan or green metal boxes were proposed to be 51.7 inches wide and 26  
8 inches deep by 48 inches high, and would be located in the public right-of-way. The boxes  
9 would hold electronics allowing a broadband signal to be transmitted over an existing copper  
10 distribution network. The boxes would contain a fan and battery, and could also utilize  
11 generators from AT&T service vehicles. Installation of each box would require a 4-foot by 6-  
12 foot concrete foundation pad and significant trenching 3 to 4 feet deep and up to 300 feet long.  
13 Each box would be subject to Article 2.4 of the Public Works Code and Department of Public  
14 Works Order No. 175,566 regarding surface mounted facilities in the public right of way.  
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18 14. On June 21, 2008, San Francisco resident David Crommie appealed the  
19 categorical exemption on behalf of the Cole Valley Improvement Association and 275 members  
20 from the Cole Valley, Inner Sunset, Haight-Ashbury, and Panhandle neighborhoods.  
21

22 15. On July 29, 2008, the Board of Supervisors held a lengthy public hearing on the  
23 categorical exemption appeal, at which environmental problems with the utility boxes were  
24 eloquently described and the needs to study potential undergrounding and placement on private  
25 property were emphasized. At the close of the public testimony, AT&T withdrew its application  
26 for a categorical exemption just as the Supervisors were poised to take action on the appeal.  
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1           16.     Three years later, AT&T submitted a revised Lightspeed Network Upgrade  
2 proposal. Case number 2010.0944E proposed to slightly reduce the number of requested  
3 cabinets from 850 to 726; integrated the power supply meter into the new cabinets to eliminate  
4 an attached power panel; doubled the “pairing” distance from new cabinets to existing cabinets,  
5 from 150 feet to 300 feet; and removed requests for new cabinets located within the boundaries  
6 of designated City historic or conservation districts.  
7

8           17.     In December 2010, the City adopted the “Better Streets Plan” and supporting  
9 legislation. The City’s General Plan now provides that “San Francisco has an image and  
10 character in its city pattern which depends especially upon views, topography, streets, building  
11 form and major landscaping. This pattern gives an organization and sense of purpose to the city,  
12 denotes the extent and special nature of districts, and identifies and makes prominent the centers  
13 of human activity. The pattern also assists in orientation for travel on foot, by automobile and by  
14 public transportation. The city pattern should be recognized, protected and enhanced.” Further,  
15 “[i]n a dense city such as San Francisco, the sidewalk is a vital source of open space, a refuge  
16 for sun and air. It is the space that everyone shares, the place in which the entire spectrum of  
17 urban life is encountered and experienced, for better or for worse. Since everyone is a pedestrian  
18 at one point or another, the sidewalk provides a strong sense of the overall image of the city.”  
19 Following the Board of Supervisors’ approval of the Better Streets Plan, additional sidewalk  
20 protections were added to the City’s General Plan and Municipal Code.  
21  
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23           18.     On February 8, 2011, the San Francisco Planning Department issued a Historic  
24 Resource Evaluation Response for the revised 2010 AT&T project. On February 22, 2011, the  
25 Planning Department again issued a Class 3 categorical exemption. The claimed category  
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1 applies to the “construction and location of limited numbers of new, small facilities or  
2 structures” or to the “installation of small new equipment and facilities in small structures.” The  
3 first excavation permit for a proposed Lightspeed box issued thereafter.  
4

5 19. On March 14, 2011, Petitioner San Francisco Beautiful timely appealed the  
6 project’s categorical exemption to the Board of Supervisors.

7 20. On April 19, 2011, the San Francisco Planning Department issued a staff report  
8 recommending that the Board uphold the Determination of Exemption from Environmental  
9 Review and that it deny the appeal of the categorical exemption by San Francisco Beautiful.  
10

11 21. On April 20, 2011, the Planning Association for the Richmond also appealed the  
12 City’s categorical exemption determination for the project.  
13

14 22. On April 22, 2011, San Francisco Beautiful submitted a supplemental appeal letter  
15 addressed to Board President David Chiu and the Supervisors presenting additional evidence  
16 and legal authority to support its appeal of the categorical exemption. On April 26, 2011, the  
17 Planning Department issued a supplemental staff response.  
18

19 23. A lengthy public hearing on the categorical exemption appeal was held on April  
20 26, 2011, and was then closed. The Board of Supervisors continued the matter twice for  
21 decision. On July 19, 2011, AT&T provided the City with a Memorandum of Understanding in  
22 which it promised to make voluntary efforts to provide increased notice to residents within 300  
23 feet of proposed utility box locations, to consider locating boxes on non-sidewalk sites, to hire  
24 local workers, to reimburse City staff time for processing box permits, to strive to remove new  
25 graffiti promptly, and to pay for relocating boxes when required for a governmental use. That  
26 same day, a narrow majority of the members of the Board of Supervisors denied the appeal and  
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1 upheld the categorical exemption determination. The Supervisors voting to grant the appeal,  
2 including Board President David Chiu, raised many cogent environmental concerns about the  
3 expansive, unstudied project and the inappropriateness of a categorical exemption.  
4

5 24. The City filed a Notice of Exemption with the San Francisco County Clerk on July  
6 21, 2011. This action is timely filed within 35 days of the posting of that notice.

7 25. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of  
8 law. Issuance of a peremptory writ is needed to avoid immediate, severe, and irreparable harm to  
9 Petitioners' members via installation of up to 726 AT&T utility cabinets in San Francisco that  
10 may result in significant environmental impacts. The City has the capacity to correct its  
11 violations of the environmental laws but has failed and refused to do so.  
12

13 26. Petitioners have complied with Public Resources section 21167.7 by providing a  
14 copy of this petition to the California Attorney General. Proof of service is attached.  
15

16 27. Petitioners have complied with Public Resources section 21167.5 by providing the  
17 City with a copy of their notice of intention to commence this action. The original notice and  
18 proof of service are being concurrently filed with this petition.  
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### 21 **Violations of the California Environmental Quality Act**

22 28. Petitioners incorporate all previous paragraphs as if fully set forth.  
23

24 29. The City prejudicially abused its discretion and failed to act in the manner  
25 required by law in approving the AT&T Lightspeed Network Upgrade project on the basis of a  
26 Class 3 categorical exemption instead of requiring environmental review and the consideration  
27 and adoption of feasible project mitigation measures and alternatives.  
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1           30.    The Class 3 categorical exemption determination is not supported by substantial  
2 evidence. The AT&T project does not qualify as the “construction and location of limited  
3 numbers of new, small facilities or structures,” since it includes 726 boxes placed citywide. It  
4 also does not qualify as the “installation of small new equipment and facilities in small  
5 structures,” since that category applies to existing structures.  
6

7           31.    Even if substantial evidence supported a finding that 726 AT&T boxes could fit  
8 into a Class 3 exemption, exceptions to the exemption apply; to wit:  
9

10          a.     A categorical exemption is not applicable where the cumulative impact of  
11 successive projects of the same type in the same place may be significant over time. The AT&T  
12 project is a conglomerate of 726 individual site-specific projects. Environmental review is  
13 required because the administrative record contains substantial evidence supporting a fair  
14 argument that the AT&T project may result in cumulative significant direct and indirect  
15 environmental impacts relating to, among other things, pedestrian flow and traffic safety; visual  
16 impacts due to graffiti, cluttered sidewalks, and impeded views; vandalism; attraction of trash  
17 around and on top of the boxes; and the detraction from ongoing efforts to create an attractive  
18 urban environment. Cumulative impacts relate to the large numbers of proposed AT&T boxes in  
19 conjunction with existing and future boxes and structures located on city sidewalks.  
20  
21

22          b.     The AT&T project includes mitigation conditions that defeat the categorical  
23 exemption. Mitigations intended to reduce environmental impacts are inconsistent with a  
24 categorical exemption, because any failed condition could result in impacts. The AT&T  
25 Lightspeed project includes delineated considerations for siting each utility box, which have  
26 been deferred to future study and unlawfully segmented from the whole of the action.  
27  
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1 Conditions include compliance with the federal *Secretary of the Interior's Standards* for boxes  
2 proposed in potential historic districts. The very need for such conditions precludes exemption.  
3  
4 In addition, the July 19, 2011, Memorandum of Understanding relied upon by the Board of  
5 Supervisors' majority to uphold the categorical exemption appeal includes mitigation measures.

6 c. Due to unusual circumstances relating to the large numbers of individual boxes  
7 proposed throughout the City, and the already-demonstrated adverse environmental impacts of  
8 existing boxes, the record contains a fair argument of potentially significant environmental  
9 impacts that defeats any categorical exemption.  
10

11 d. Opinions relating to significant aesthetic impacts are subjective. There are credible  
12 subjective opinions that the 726 boxes may have site-specific or cumulative aesthetic impacts.  
13

14 e. The approval of the Lightspeed project is inconsistent with Order No. 175, 566,  
15 the "Regulations for Issuing Excavation Permits for the Installation of Surface-Mounted  
16 Facilities in the Public Right-of Way." The Order requires that all surface-mounted utility  
17 facilities "be installed on private property or be placed underground to the extent either of these  
18 options is technologically and economically feasible." The Order is an admission that utility  
19 boxes have potential environmental impacts that should be avoided. The AT&T project is also  
20 inconsistent with the City's Better Streets Plan, the General Plan, and the Municipal Code in its  
21 failure to protect City sidewalks. Potential inconsistencies with plans or ordinances adopted for  
22 environmental protection also raise a fair argument of significant impact that defeats exemption.  
23  
24

25 32. Substantial new information of potentially significant project impacts must be  
26 considered as part of the upcoming siting and approvals of each discretionary site permit. AT&T  
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1 has drafted the proposed sites for all or most of the 726 utility boxes and yet has not provided  
2 that information as a baseline for environmental review. Such segmentation violates CEQA.

3  
4 33. The categorical exemption appeal was for the entire network upgrade project. The  
5 appeal was incorrectly noticed as if for one particular utility box on La Playa Street.  
6

7 WHEREFORE, Petitioners pray:  
8

9 1. That the Court issue a peremptory writ of mandamus ordering respondents City of  
10 San Francisco, et al., to set aside and void all approvals relative to the AT&T Lightspeed  
11 Network Update project and to refrain from further consideration of project approval until full  
12 compliance with CEQA is achieved, including the preparation and certification of an adequate  
13 environmental impact report and the adoption of feasible mitigations and alternatives based  
14 upon findings supported by substantial evidence;  
15

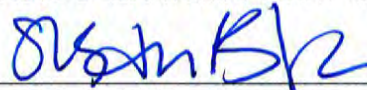
16 2. That the Court issue an administrative stay order, temporary restraining order,  
17 and/or preliminary injunction prohibiting any and all physical actions relating to the project's  
18 construction, including but not limited to pre-construction demolition, grading, and excavation  
19 for any individual AT&T utility box;  
20

21 3. For Petitioners' costs and attorneys fees pursuant to CCP section 1021.5; and  
22

23 4. For such other and further relief as the Court finds proper.  
24

25 August 24, 2011

BRANDT-HAWLEY LAW GROUP

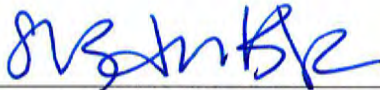
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28 Susan Brandt-Hawley, Attorney for Petitioners

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**Verification**

5 I, Susan Brandt-Hawley, am the attorney for Petitioners who are located outside of  
6 Sonoma County where I have my law offices, and so I verify this petition on their behalves. I  
7 have read the Petition for Writ of Mandamus and know its contents. The matters stated in it are  
8 true and correct based on my knowledge, except as to the matters stated on information and  
9 belief, and as to those matters, I believe them to be true.  
10

11 I declare under penalty of perjury that the above is true and correct and is executed on  
12 August 24, 2011, at Glen Ellen, California.  
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16 \_\_\_\_\_  
Susan Brandt-Hawley  
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*San Francisco Beautiful, et al. v. City and County of San Francisco, et al.*  
San Francisco County Superior Court Case No. \_\_\_\_\_

## **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 August 24, 2011, I served one true copy of:

### **Petition For Writ Of Mandamus**

by placing a true copy thereof enclosed in a sealed envelope with prepaid postage, in the United States mail in Glen Ellen, California addressed as follows:

SALLY MAGNANANI KNOX, Deputy Attorney General  
State of California  
Department of Justice  
P.O. Box 944255  
Sacramento CA 94244-2550

### **PURSUANT TO PUBLIC RESOURCES CODE § 21167**

I declare under penalty of perjury that the foregoing is true and correct and is executed on August 24, 2011, at Glen Ellen, California.

  
\_\_\_\_\_  
Jeanie Stapleton