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CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 BRIGGS LAW CORPORATION [FILE: 1593.16]
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5 Attorneys for Plaintiff and Petitioner San Diegans
for Open Government
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO--HALL OF JUSTICE
10

11 SAN DIEGANS FOR OPEN GOVERNMENT,)
12 Plaintiff and Petitioner,)
13 vs.)
14 CITY OF SAN DIEGO and DOES 1 through 100,)
15 Defendants and Respondents;)
16 BH PARTNERSHIP, A CALIFORNIA LIMITED)
17 PARTNERSHIP and DOES 101 through 1,000,)
18 Defendants and Real Parties in Interest.)

CASE NO. **37-2013-00042425-CU-TT-CTL**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT, THE
SAN DIEGO CITY CHARTER, AND
OTHER LAWS**

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23 Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("Petitioner") is informed
24 and believes and on that basis alleges as follows in this Verified Petition for Writ of Mandate and
25 Complaint for Declaratory and Injunctive Relief:
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1 **Parties**

2 1. Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT (“Petitioner”) is
3 a non-profit organization formed and operating under the laws of the State of California. At least one
4 of Petitioner’s members resides in and pays taxes within the geographical jurisdiction of Defendant and
5 Respondent CITY OF SAN DIEGO and has an interest in, among other things, ensuring open,
6 transparent, and accountable government decision-making, and protecting the region’s environment.

7 2. Defendant and Respondent CITY OF SAN DIEGO (“Respondent”) is a public agency
8 under Section 21063 of the Public Resources Code. Respondent is authorized and required by law to
9 hold public hearings to determine whether the California Environmental Quality Act (“CEQA”) applies
10 to development within its jurisdiction, to determine the adequacy of and certify environmental
11 documents prepared pursuant to CEQA, and to determine whether a project is compatible with the
12 objectives, policies, general land uses, and programs specified in the General Plan.

13 3. Petitioner is informed and believes and on that basis alleges that BH PARTNERSHIP,
14 A CALIFORNIA LIMITED PARTNERSHIP (“BH Partnership”), is a Real Party in Interest insofar
15 as it is a party to the 40-year lease agreement with Respondents that is the subject of this proceeding.
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17 4. The true names and capacities of the Defendants and Respondents identified as DOES
18 1 through 100 are unknown to Petitioner, who will seek the Court’s permission to amend this pleading
19 in order to allege the true names and capacities as soon as they are ascertained. Petitioner is informed
20 and believes and on that basis alleges that each of the fictitiously named Respondents and Defendants
21 1 through 100 has jurisdiction by law over one or more aspects of the proposed project that is the
22 subject of this proceeding and that each of the fictitiously named Real Parties in Interest 101 through
23 1,000 either claims an ownership interest in the proposed project or has some other cognizable interest
24 in the proposed project.

25 **Background Information**

26 5. On February 26, 2013, Respondents’ city council approved a resolution (“Resolution”)
27 directing the Mayor to execute a new 40-year lease agreement with BH Partnership for the Bahia Resort
28

1 Property located at 998 West Mission Bay Drive, San Diego, California (“Project”). Respondent’s
2 approval of the Project was discretionary under CEQA.

3 6. The Project site consists of 13.053 acres of land, 2.4 acres of water, a resort hotel, and
4 marina facilities. Substantial portions, if not all, of the Project site are situated on Pueblo Lands.

5 7. The Resolution makes clear that approval of the Project was contingent upon BH
6 Partnership’s representation that it would invest in future development, expansion, and improvement
7 of the Project site, which would increase percentage rents to Respondents

8 8. The Request for Council Action states that the Project is categorically exempt from the
9 California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, Section 15301.

10 9. Approval of the Project will result in the future development, expansion, and
11 improvement of 13.053 acres of land and 2.4 acres of water, and also, the expansion and improvement
12 of the resort hotel and marina facilities.

13 10. Approval of the Project will result in a lease of Pueblo Lands for a duration of 40-years.

14 11. Petitioner opposes the Project and challenges certain actions taken by Respondents. In
15 particular, Petitioner seeks to invalidate the approval with respect to the Project on the grounds that
16 Respondent has violated CEQA and the San Diego City Charter’s prohibition on the lease of Pueblo
17 Lands for a period of time exceeding fifteen years.

18 **Notice Requirements and Time Limitations**

19 12. This proceeding is being commenced not more than 35 days after the notice authorized
20 by Public Resources Code Section 21152(b).

21 13. Petitioner has caused a Notice of Commencement of Action to be served on Respondent,
22 as required by Public Resources Code Section 21167.5. A true and correct copy of the Notice of
23 Commencement of Action is attached to this pleading as Exhibit “A.”

24 14. Petitioner will have caused a copy fo this pleading to be served on the Attorney General
25 not more than ten days after the commencement of this proceeding, as required by Public Resources
26 Code Section 21167.7 and Code of Civil Procedure Section 388.

27 **Jurisdiction and Exhaustion of Administrative Remedies**
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1 proposal is exempt, should be the subject of a negative declaration, or should be the subject of an
2 environmental impact report.

3 22. The Project as approved by Respondents is a “discretionary project” within the meaning
4 of CEQA.

5 23. The Project has the potential to cause significant direct, indirect, or cumulative adverse
6 impacts (if not all such impacts) on the environment, including, among other things, air-quality impacts,
7 noise impacts, and significant greenhouse gas emissions.

8 24. The potential of the Project to cause significant direct, indirect, or cumulative adverse
9 impacts on the environment makes CEQA applicable to the Project and gives rise to Respondents’ legal
10 obligation to subject it to environmental review.

11 25. Respondents’ refusal to apply CEQA to the Project and subject it to environmental
12 review constitutes a violation of CEQA.

13 26. As a result of Respondents’ violation of CEQA, Petitioner has been harmed insofar as
14 Petitioner, its members, other members of the public, and the responsible decision-makers were not
15 fully informed about the potential adverse environmental impacts of the Project, and insofar as
16 Petitioner, its members, and other members of the public did not have an opportunity to participate
17 meaningfully in the analysis of such impacts prior to approval of the Project.

18 **SECOND CAUSE OF ACTION:**
19 **Violation of the San Diego City Charter**
20 **(Against All Respondents)**

21 27. Paragraphs 1 through 26 are fully incorporated into this paragraph.

22 28. San Diego City Charter Article XIV, Section 219 states, in pertinent part, that “The City
23 Manager shall have authority to lease Pueblo Lands, provided that any lease for a term exceeding one
24 year shall not be valid unless first authorized by ordinance of the Council. No lease shall be valid for
25 a period of time exceeding fifteen years.”

26 29. Substantial portions, if not all, of the Project site is situated on Pueblo Lands.

27 30. Approval of the Project would result in the creation of a new lease with a 40-year term,
28 extending BH Partnership’s leasehold to approximately November 2052.

1 C. *On All Causes of Action*

2 1. Injunctive Relief prohibiting Respondents and Real Parties in Interest (and any
3 and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from
4 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
5 Respondents comply with all applicable provisions of CEQA, the San Diego City Charter, and all other
6 applicable laws, as determined by the Court.

7 2. Any and all other relief that may be authorized by CEQA, the San Diego City
8 Charter, or both, but is not explicitly or specifically requested elsewhere in this Prayer; and

9 3. All legal fees and other expenses incurred by Petitioner in connection with this
10 proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil
11 Procedure.

12 4. Any and all further relief that this Court may deem appropriate.

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14 Date: April 2, 2013.

Respectfully submitted,

BRIGGS LAW CORPORATION

Original Signed

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17 By:

Cory J. Briggs

18 Attorneys for Plaintiff and Petitioner San Diegans for
19 Open Government
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**Verified Petition for Writ of Mandate and Complaint for
Declaratory and Injunctive Relief**

Exhibit "A"

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1593.16

2 April 2013

City of San Diego
Office of the City Clerk
202 "C" St., Second Floor
San Diego, CA 92101
Fax no.: (619) 533-4045

Via Email to cityclerk@sandiego.gov
Via Facsimile to (619) 533-4545

Re: Notice of Commencement of Action

Dear City Clerk:

I represent San Diegans for Open Government ("SanDOG"), and I am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego Superior Court against your agency. The action will challenge your agency's approval of the 40-year lease agreement with BH Partnership for the Bahia Resort Hotel (and all associated entitlements and certifications), on February 26, 2013, on the grounds that the approval violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*). The action may also challenge your agency's approval of the project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Anthony N. Kim



TRANSMISSION VERIFICATION REPORT

TIME : 04/02/2013 11:11
NAME :
FAX :
TEL :
SER.# : 000M3J198110

DATE, TIME	04/02 11:11
FAX NO./NAME	16195334045
DURATION	00:00:14
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

OLC File(s): 1593.16

2 April 2013

City of San Diego
Office of the City Clerk
202 "C" St., Second Floor
San Diego, CA 92101
Fax no.: (619) 533-4045

Via Email to cityclerk@sandiego.gov
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If you have any questions, please feel free to contact me.

Sincerely,

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief under the California Environmental Quality Act, San Diego City Charter, and other laws and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

_____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for San Diegans for Open Government a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on April 2, 20 13, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Original Signed

Cory J. Briggs
Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California. I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 _____, I served the foregoing document described as _____

_____ on _____ in this action
 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
 by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
 * I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.
 As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 20 _____, at _____, California.
 *(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
Executed on _____, 20 _____, at _____, California.
 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
 (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)