

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 909-949-7121

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

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8 July 2016

Marshall Merrifield, Chairman
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Via E-Mail Only

Re: Notice of Intent to Oppose and Sue

Dear Chairman Merrifield:

On behalf of my client, the San Diego Navy Broadway Complex Coalition, I am writing to give the San Diego Unified Port District notice of my client's intent to oppose the District on all major projects it brings forward for approval (either at the District or the California Coastal Commission) and to sue as necessary due to the District's piecemeal nature of waterfront planning. My client is concerned that the District will continue down the wrong path at the upcoming workshop for Seaport Village (euphemistically called the "Central Embarcadero Waterfront Development Opportunity") on July 13, 2016.

The District is already very familiar with my client's concerns about piecemeal planning. Over the last several years, you and several of your colleagues on the Board of Port Commissioners (BPC), along with upper management at the District, have met with Don Wood, Diane Coombs, and/or me to discuss these concerns. Similarly, the District has been upbraided more than once by the California Coastal Commission and judges for not taking a holistic approach when planning the waterfront's future.

The District itself has acknowledged the problem. The widely circulated October 2013 article by your BPC colleague, Ann Moore, in celebration of the District's 50th year in existence observed that "[t]he current Port Master Plan has been updated more than 30 times [today it's closer to 50] to accommodate various projects and land use needs. A new living document will, for the first time, look at the bay as a whole and incorporate both water and land assets, including upland links and their interactions with the Port tidelands." She went on to describe the evolution of San Diego's maritime activities and thereafter acknowledge that "all of this was done without an overarching plan, with no vision to guide us."¹

This long-overdue solution appeared imminent when Commissioner Moore announced that the District would be undertaking "a new integrated master planning process that will paint a vision

¹ Not long after Commissioner Moore's comments, when asked about all the amendments to the District's Port Master Plan over the years, planner Lesley Nishihira admitted that "none of those amendments have addressed the overarching policies. We haven't touched the whole of the document in 30-plus years."



and create an actionable and flexible blueprint to guide the evolution of our bay for the next five decades.” As she rightly admitted, “[u]ntil now, improvements above and below the water have been approached as individual projects, in piecemeal fashion, with the focus historically on San Diego’s downtown waterfront.” To begin remedying the situation, the BPC approved the Vision Statement and Guiding Principles in 2014 and the Framework Report (“complet[ing] the final portion of the visioning effort”) in 2015. Significantly, the Framework Report states (with my emphasis): “The **Port Master Plan Update** is intended to **proactively and constructively** address land use compatibility issues within the District, as well as with adjacent jurisdictions; and be based on a set of long-range, planning principles that form a framework for implementing a 50-year vision.”

I emphasize “Port Master Plan Update” and “proactively and constructively” to highlight why my client believes the District has gone off course, back to its old ways. As everyone knows, the update is far from complete. Indeed, the District’s May 2, 2016 estimate of the timeline for completing the update shows Coastal Commission approval in late 2018 – more than two years from now. Yet that same timeline shows major site-specific projects at the Tenth Avenue Marine Terminal, the Central Embarcadero (*i.e.*, Seaport Village), and Harbor Island completing their environmental reviews **before** the integrated plan’s update is completed. Given that by law the environmental reviews can only be performed **after** a definite project description exists, how can the District expect to be finishing environmental reviews of site-specific projects that presumably will conform to an update that hasn’t been finalized? (Answer: It can’t.)

My clients have been strong supporters of the integrated-planning process from the beginning. What the timeline tells the public is that the District, despite talking a good game, is no longer serious about, as Commissioner Moore put it, “look[ing] at the bay as a whole” and avoiding development “in piecemeal fashion.” (Cynics might argue that the District never was.)

Making this change in direction even worse is the District’s secrecy along the way. The District has a poor record of transparency when it comes to planning. To take one example: the District’s website doesn’t even contain the request for proposals (RFP) for the Harbor Island and Central Embarcadero opportunities. Instead it directs people to another website, Planet Bid Systems, where the RFPs and related documents **cannot** be downloaded because the response period has closed. Putting documents on the internet but making them inaccessible is not transparency.

Here’s another example: The District’s initial plan was to review each response to the Seaport Village RFP in private meetings with the proponents. The “Evaluation Procedure” section of the RFP states (on page 21 of 27) that “[t]he Selection Review Panel will evaluate the proposals.” **There is no mention of the public.** Fortunately the plan changed at the last minute, thanks to pressure from many quarters, and the result was a two-day open house at the Convention Center scheduled on short notice.² The open house was appropriate and appreciated; having to pressure the District to hold the open house was neither.

My client does not want to have to continue fighting the District’s approach to carrying out its public-trust responsibilities (though it will not shy away from doing so). The better course is for the District to ensure that the integrated-planning process is completed before any major site-specific

² My client presumes that there will be no private meetings with any Selection Review Panel because the open house occurred on June 13 and 14 – the same days set aside in the RFP for interviews with the Panel. According to the RFP, “[n]o other interview dates will be provided.” If the District still intends to hold any interviews, please let me know immediately. My client thinks such interviews would be a very bad idea.



projects come forward for approval. Hoping to get the District back on the right track, my client therefore recommends the following course of action to ensure that the essential purposes of the integrated-planning process are achieved before the site-specific projects' draft environmental impact reports are distributed for public comment:

1. Create a citizens advisory committee, *à la* the one used for the Chula Vista Bayfront Master Plan, that works with the District's staff and the public to identify public-realm tidelands throughout San Diego Bay that should be reserved for parks, recreation, and open space over the next 50 years (taking into account known constraints such as military facilities and environmentally sensitive lands). The remaining tidelands may be put to other uses as long as those uses are consistent with the public trust.
2. Incorporate the committee's recommendations into the draft environmental impact report for the updated Port Master Plan that will emerge from the integrated-planning process.
3. Dedicate the additional staff and financial resources necessary to accelerate completion of the integrated-planning process so that, with minimal to no delay, developers of site-specific projects can have certainty about the development standards they'll be expected to satisfy.

These measures are intended to accelerate the integrated-planning process so that our community's shared vision for the waterfront over the next 50 years is in fact decided by the community, not by developers in a piecemeal fashion, and so that developers who are interested in helping the community achieve that vision have the certainty they need to deliver what the public expects and is owed. By not implementing these measures, the District would be putting the proverbial cart before the horse by allowing site-specific development proposals to define the waterfront, in derogation of the concerns that prompted the integrated-planning process in the first place. The District cannot abdicate its planning role and effectively hand that over to developers.

Please consider including my client's proposal on your agenda for the upcoming workshop on July 13. If you have any questions, you should not hesitate to contact me.

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

