

1 BRIGGS LAW CORPORATION [FILE: 2060.04]
Cory J. Briggs (SBN 176284)
2 Janna M. Ferraro (SBN 328921)
99 East "C" Street, Suite 111
3 Upland, CA 91786
Telephone: 909-949-7115

4 Attorney for Plaintiff and Petitioner Project for
5 Open Government

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/18/2022 at 08:49:19 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO – HALL OF JUSTICE
9

10 _____)
PROJECT FOR OPEN GOVERNMENT,) CASE NO. 37-2022-00018873-CU-WM-CTL
11)
Plaintiff and Petitioner,)
12) **VERIFIED COMPLAINT FOR**
vs.) **DECLARATORY AND INJUNCTIVE**
13) **RELIEF AND PETITION FOR WRIT**
CITY OF SAN DIEGO; and DOES 1 through 100,) **OF MANDATE UNDER THE**
14) **CALIFORNIA ENVIRONMENTAL**
Defendants and Respondents,) **QUALITY ACT AND OTHER LAWS**
15)
_____)
TAILGATE DEVELOPMENT, LLC; PADRES NEXT)
16 FIFTY, LCC; and DOES 101 through 1,000,)
17)
Defendants and Real Parties in Interest.)
18 _____)

19 Plaintiff and Petitioner PROJECT FOR OPEN GOVERNMENT ("Petitioner") alleges as
20 follows:

21 **Parties**

22 1. Petitioner is a non-profit corporation formed and operating under the laws of the State
23 of California. It serves as a government "watchdog" for purposes of making sure that public agencies
24 and officials are transparent in their conduct, accountable for their conduct, and conform their conduct
25 to all applicable legal requirements. At least one of Petitioner's members resides in and pays taxes in
26 the City of San Diego.

27 2. Defendant and Respondent CITY OF SAN DIEGO ("Respondent") is a public agency
28 under Section 21063 of the Public Resources Code. Respondent is authorized and required by law to

1 hold public hearings to determine whether the California Environmental Quality Act (“CEQA”) applies
2 to development within its jurisdiction, to determine the adequacy of and certify environmental
3 documents prepared pursuant to CEQA, and to determine whether a project is compatible with the
4 objectives, policies, general land uses, and programs specified in Respondent’s General Plan.

5 3. Petitioner is informed and believes and on that basis alleges that Defendants and Real
6 Parties in Interest TAILGATE DEVELOPMENT, LLC, and PADRES NEXT FIFTY, LCC
7 (collectively, “RPI”), are the applicants for the proposed project (which includes the related contract
8 to which Respondent and RPI are parties) that is the subject of this lawsuit.

9 4. The true names and capacities of the Defendants/Respondents identified as DOES 1
10 through 100 and Defendants/Real Parties in Interest identified as DOES 101 through 1,000 are unknown
11 to Petitioner, who will seek the Court’s permission to amend this pleading in order to allege the true
12 name and capacities as soon as they are ascertained. Petitioner is informed and believes and on that
13 basis alleges that each of the fictitiously named Defendants/Respondents 1 through 100 has jurisdiction
14 by law over one or more aspects of the proposed project that is the subject of this lawsuit and that each
15 of the fictitiously named Defendants/Real Parties in Interest 101 through 1,000 either claims an
16 ownership interest in the proposed project or has some other cognizable interest in the proposed project.

17 **Background Information**

18 5. On or about April 19, 2022, Respondent’s city council approved that certain
19 “RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A DISPOSITION
20 AND DEVELOPMENT AGREEMENT FOR THE TAILGATE PARK SITE IN THE DOWNTOWN
21 SAN DIEGO COMMUNITY PLANNING AREA, MAKING CERTAIN RELATED FINDINGS AND
22 DETERMINATIONS, AND APPROVING RELATED ACTIONS” with RPI (the “Project”). The
23 Project entails Respondent’s sale and RPI’s future development of real property commonly known as
24 Tailgate Park (immediately adjacent to Petco Park) in downtown San Diego.

25 6. Petitioner opposes the Project (including all entitlements and other aspects thereof) and
26 challenges certain actions taken by Respondent. In particular, Petitioner seeks to invalidate the Project’s
27 approval on the grounds, among others, that Respondent has violated CEQA, the Planning and Zoning
28 Law (“PZL”), the San Diego City Charter, the San Diego Municipal Code, and/or other laws.

1 **Notice Requirements and Time Limitations**

2 7. This lawsuit was commenced not more than 30 days after the notice authorized by Public
3 Resources Code Section 21152(a) was filed (if such a notice was filed).

4 8. Petitioner has caused a Notice of Commencement of Action to be served on Respondent,
5 as required by Public Resources Code Section 21167.5. A true and correct copy of the Notice of
6 Commencement of Action is attached to this pleading as Exhibit "A."

7 9. Petitioner will have caused a copy of this pleading to be served on the Attorney General
8 not more than 10 days after its filing, as required by Public Resources Code Section 21167.7 and Code
9 of Civil Procedure Section 388.

10 **Jurisdiction and Exhaustion of Administrative Remedies**

11 10. Petitioner seeks review by and relief from this Court under Public Resources Code
12 Section 21168 or 21168.5, as applicable; Government Code Section 65000 *et seq.*; and Code of Civil
13 Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*, among other provisions of law.

14 11. Petitioner exhausted administrative remedies to the extent required by law; by way of
15 example and without limitation, at least one of Petitioner's members expressed opposition to the
16 Project. Additionally and/or alternatively, Petitioner was not required to exhaust its administrative
17 remedies under the circumstances presented by the Project.

18 12. Respondent's conduct in approving the Project without complying with CEQA and other
19 applicable laws constitutes a prejudicial abuse of discretion because, as alleged in this pleading, it failed
20 to proceed in the manner required by law and made findings not supported by substantial evidence.

21 13. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since
22 its members and other members of the public will suffer irreparable harm as a result of Respondent's
23 violations of CEQA and other laws. Respondent's approval of the Project also rests on its failure to
24 satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Respondent
25 is permitted or required by law to exercise its discretion in approving projects under those laws, it
26 remains under a clear, present, ministerial duty to exercise its discretion within the limits of and in a
27 manner consistent with those laws. Respondent has had and continues to have the capacity and ability
28 to approve the Project within the time limits of and in a manner consistent with those laws, but

1 Respondent has failed and refuses to do so and has exercised its discretion beyond the limits of and in
2 a manner that is not consistent with those laws.

3 14. Petitioner has a beneficial right and interest in Respondent's fulfillment of all its legal
4 duties, as alleged in this pleading.

5 **FIRST CAUSE OF ACTION:**
6 **Illegal Approval of Project**
7 **(Against All Respondents and Real Parties in Interest)**

8 15. Paragraphs 1 through 14 are fully incorporated into this paragraph.

9 16. Petitioner is informed and believes and on that basis alleges that the Project does not
10 comply with all applicable laws. By way of example and without limitation (including alternative
11 theories of liability):

12 A. The Project violates CEQA. For example:

13 i. Whenever a project proposed to be carried out or approved by a lead
14 agency has the potential to cause an adverse environmental impact, CEQA prohibits the agency from
15 relying on a negative declaration. Instead, CEQA requires the preparation of an environmental impact
16 report to identify and analyze the significant adverse environmental impacts of a proposed project,
17 giving due consideration to both short-term and long-term impacts, providing decision-makers with
18 enough information to enable them to make an informed decision with full knowledge of the likely
19 consequences of their actions, and providing members of the public with enough information to
20 participate meaningfully in the project's approval and environmental-review process. CEQA also
21 requires every environmental impact report to identify and analyze a reasonable range of alternatives
22 to a proposed project. CEQA further requires every environmental impact report to identify and analyze
23 all reasonable mitigation measures for a proposed project's significant adverse environmental impacts.
24 An environmental impact report must be prepared for a proposed project if there is a fair argument,
25 supported by substantial evidence in the administrative record, that the project may have an adverse
26 environmental impact; stated another way, a negative declaration may not be used unless the lead
27 agency determines with certainty that there is no potential for the project to have an adverse
28 environmental impact.

1 ii. The Project’s significant direct, indirect, or cumulative adverse impacts
2 on the environment give rise to Respondent’s legal obligation to prepare an environmental impact report
3 specifically for the Project.

4 iii. Respondent failed to prepare an environmental impact report specifically
5 for the Project, and that failure is a violation of CEQA.

6 iv. As a result of Respondent’s violation of CEQA, Petitioner has been
7 harmed insofar as Petitioner, its members, other members of the public, and the responsible decision-
8 makers were not fully informed about the potential adverse environmental impacts of the this Project,
9 and insofar as Petitioner, its members, and other members of the public did not have an opportunity to
10 participate meaningfully in the analysis of such impacts prior to approval of the Project.

11 B. The Project violates the PZL. For example:

12 i. Respondent did not approve the Project by ordinance, in violation of
13 Government Code Section 65867.5(a).

14 ii. In approving the Project, Respondent failed to make the finding required
15 by Government Code Section 65867.5(b); and there is no substantial evidence in the record to support
16 such a finding even if it had been made.

17 C. The Project violates Government Code Sections 52201 and 52203 and Health
18 and Safety Code Section 33433. For example:

19 i. Prior to the public hearing on the Project, Respondent failed to publish
20 notice of the hearing’s time and place in compliance with Government Code Section 52201(a)(1) and
21 Health and Safety Code Section 33433(a)(1).

22 ii. In approving the Project, Respondent failed to make the finding required
23 by Section 52201(b)(1)-(2); and there is no substantial evidence in the record to support such a finding
24 even if it had been made.

25 iii. Before approving the Project, Respondent failed to hold the public
26 hearing or make the finding required by Government Code Section 52203(b); and there is no substantial
27 evidence in the record to support such a finding even if it had been made.

28 D. The Project violates the San Diego City Charter. For example:

1 i. Respondent is selling Tailgate Park for less than fair-market value and
2 is thereby making a gift of public funds, in violation of City Charter Section 93.

3 E. The Project violates the San Diego Municipal Code (“SDMC”). In particular:

4 i. The Project does not require the annual submission of an affidavit as
5 prescribed by SDMC Section 124.0103(a)(6).

6 ii. Respondent’s planning commission did not hold a hearing on the Project
7 prior to its approval by the city council, in violation of SDMC Section 124.0104(a)-(b).

8 In approving the Project, Respondent failed to make the finding required
9 by SDMC Section 124.0104(c)(1)-(3); and there is no substantial evidence in the record to support such
10 a finding even if it had been made.

11 17. There is currently a dispute between Petitioner and the other parties to this lawsuit over
12 the Project’s legal force and effect. Petitioner contends that the Project’s approval has no legal force
13 or effect because it violates CEQA and/or one or more other applicable laws. The other parties to this
14 lawsuit dispute Petitioner’s contention. The parties therefore require a judicial determination of the
15 legal force and effect (if any) of the Project’s approval.

16 **Prayer**

17 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against all
18 Defendants/Respondents and all Defendants/Real Parties in Interest (and any all other parties who may
19 oppose Petitioner in this lawsuit):

20 A. A judgment or other appropriate order determining or declaring that
21 Defendants/Respondents failed to fully comply with CEQA, the PZL, and/or one or more other
22 applicable laws as they relate to the Project and that there must be full compliance therewith before final
23 approval and implementation of the Project may occur;

24 B. A judgment or other appropriate order determining or declaring that
25 Defendants/Respondents failed to comply with CEQA, the PZL, and/or one or more other applicable
26 laws as they relate to the Project and that its approval was illegal in at least some respect, rendering the
27 approval (including any subsequent actions or omissions based on the approval) null and void;

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

6 D. Any and all other relief that may be authorized by CEQA, the PZL, or other applicable
7 laws, or any combination of them, but is not explicitly or specifically requested elsewhere in this Prayer;

8 E. Any and all legal fees and other expenses incurred by Petitioner in connection with this
9 lawsuit, including but not limited to reasonable attorney fees as authorized by the Code of Civil
10 Procedure; and

11 F. Any and all further relief that this Court may deem appropriate.

12 Dated: May 17, 2022.

Respectfully submitted,
BRIGGS LAW CORPORATION

14 By: Cory J. Briggs
15 Cory J. Briggs

16 Attorney for Plaintiff and Petitioner Project for
17 Open Government

18
19
20
21
22
23
24
25
26
27
28

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT AND OTHER LAWS**

Exhibit "A"



99 East "C" Street, Suite 111
Upland, CA 91786
T: 909-949-7115
F: 909-949-7121

BLC File(s): 2060.04

17 May 2022

Elizabeth Maland, City Clerk
City of San Diego
202 "C" Street, 2nd Floor
San Diego, CA 92101

Via E-Mail to emaland@san Diego.gov

Re: Notice of Commencement of Action

Dear City Clerk:

I represent Project for Open Government and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that my client intends to commence a civil action in San Diego County Superior Court against your agency. The action will challenge your agency's approval of the project that was the subject of Item 334 on the city council's April 19, 2022 agenda (Tailgate Park/Padres Development Team), 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

A handwritten signature in black ink that reads 'Cory J. Briggs'.

Cory J. Briggs



Cory Briggs

From: Cory Briggs
Sent: Tuesday, May 17, 2022 6:14 AM
To: Elizabeth Maland (emaland@sandiego.gov)
Cc: San Diego City Clerk
Subject: Notice of Commencement of Action
Attachments: 2022_05-17_NCA.pdf

Dear City Clerk:

Please see the attached Notice of Commencement of Action.

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111, Upland, CA 91786
Telephone: 909-949-7115 (office); 619-736-9086 (direct)
Facsimile: 909-949-7121
E-mail: cory@briggslawcorp.com

Please consider the environment before printing this e-mail, and print double-sided whenever possible.

Important Notice: This message contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not an addressee or the person responsible for delivering this message to the addressee(s), you are hereby notified that reading, disseminating, distributing, or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify me by replying to this message and then delete the original message and your reply immediately thereafter. Thank you very much.

Internal Revenue Service Circular 230 Disclosure: Nothing in this message is intended or written by Briggs Law Corporation (including its attorneys and staff) to be used and cannot be used for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this message.

Cory Briggs

From: Oliva, Mailei <MOliva@sandiego.gov>
Sent: Tuesday, May 17, 2022 8:28 AM
To: Cory Briggs
Cc: Maland, Elizabeth
Subject: RE: Notice of Commencement of Action

Good morning, Mr. Briggs.

The Office of the City Clerk is in receipt of your email and attachment regarding the Notice of Commencement of Action. Our office will process accordingly.

Thank you and please let me know if you have any questions.

Sincerely,

Mailei K. Oliva
Program Manager
City of San Diego
Office of the City Clerk

(T) 619-533-4060
moliva@sandiego.gov

Please take a moment to complete a short [customer satisfaction survey](#) for the Office of the City Clerk

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

From: CLK City Clerk <CityClerk@sandiego.gov>
Sent: Tuesday, May 17, 2022 7:34 AM
To: Berry, Jennifer <JLBerry@sandiego.gov>; Oliva, Mailei <MOliva@sandiego.gov>
Cc: Davis, Tina <TDavis@sandiego.gov>
Subject: FW: Notice of Commencement of Action

Please see below and attached. I have added the procedure for Info counter staff to follow.

From: Cory Briggs <cory@briggslawcorp.com>
Sent: Tuesday, May 17, 2022 7:27 AM
To: Maland, Elizabeth <EMaland@sandiego.gov>
Cc: CLK City Clerk <CityClerk@sandiego.gov>
Subject: [EXTERNAL] RE: Notice of Commencement of Action

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

Did you delete the e-mail without reading it?

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111, Upland, CA 91786
Telephone: 909-949-7115 (office); 619-736-9086 (direct)
Facsimile: 909-949-7121
E-mail: cory@briggslawcorp.com

Please consider the environment before printing this e-mail, and print double-sided whenever possible.

Important Notice: This message contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not an addressee or the person responsible for delivering this message to the addressee(s), you are hereby notified that reading, disseminating, distributing, or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify me by replying to this message and then delete the original message and your reply immediately thereafter. Thank you very much.

Internal Revenue Service Circular 230 Disclosure: Nothing in this message is intended or written by Briggs Law Corporation (including its attorneys and staff) to be used and cannot be used for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this message.

From: Cory Briggs
Sent: Tuesday, May 17, 2022 6:14 AM
To: Elizabeth Maland (emaland@sandiego.gov) <emaland@sandiego.gov>
Cc: San Diego City Clerk <cityclerk@sandiego.gov>
Subject: Notice of Commencement of Action

Dear City Clerk:

Please see the attached Notice of Commencement of Action.

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111, Upland, CA 91786
Telephone: 909-949-7115 (office); 619-736-9086 (direct)
Facsimile: 909-949-7121
E-mail: cory@briggslawcorp.com

Please consider the environment before printing this e-mail, and print double-sided whenever possible.

Important Notice: This message contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not an addressee or the person responsible for delivering this message to the addressee(s), you are hereby notified that reading, disseminating, distributing, or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify me by replying to this message and then delete the original message and your reply immediately thereafter. Thank you very much.

Internal Revenue Service Circular 230 Disclosure: Nothing in this message is intended or written by Briggs Law Corporation (including its attorneys and staff) to be used and cannot be used for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this message.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE etc. 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 _____

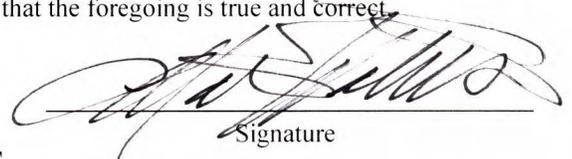
PROJECT FOR OPEN GOVERNMENT

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 _____ 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 May 17, 20 22, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mat Wahlstrom
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 scaled 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)