

1 BRIGGS LAW CORPORATION [FILE: 1593.64]  
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4 Attorneys for Plaintiff and Petitioner San Diegans  
5 for Open Government

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**11/01/2018** at 04:30:00 PM  
Clerk of the Superior Court  
By Yvette Mapula, Deputy Clerk

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

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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 \_\_\_\_\_  
DOES 101 through 1,000, )  
17 Defendants and Real Parties in Interest. )  
18 \_\_\_\_\_

37-2018-00055910-CU-TT-CTL

CASE NO. \_\_\_\_\_  
**VERIFIED COMPLAINT FOR  
DECLARATORY RELIEF AND  
PETITION FOR WRIT OF MANDATE  
UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT AND  
OTHER LAWS**

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

21 **Parties**

22 1. Petitioner is a non-profit organization formed and operating under the laws of the State  
23 of California. At least one of Petitioner's members resides in, or near, the City of San Diego,  
24 California, and has an interest in, among other things, ensuring open, accountable, and responsive  
25 government and in protecting the City's quality of life.

26 2. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "public agency" under  
27 Section 21063 of the Public Resources Code and a "local government" under Section 30109 of the  
28 Public Resources Code. As a "public agency," CITY is required to comply with California

1 Environmental Quality Act (“CEQA”), Public Resources Code Section 21000 *et seq.* As a “local  
2 government,” CITY is also required to comply with the California Coastal Act (“Coastal Act”), Public  
3 Resources Code Section 30000 *et seq.*

4 3. The true names and capacities of the Defendants/Respondents/Real Parties in Interest  
5 identified as DOES 1 through 1,000 are unknown to Petitioner, who will seek the Court’s permission  
6 to amend this pleading in order to allege the true names and capacities as soon as they are ascertained.  
7 Petitioner is informed and believes and on that basis alleges that each of the fictitiously named DOES  
8 1 through 100 has jurisdiction by law over one or more aspects of the proposed project that is the  
9 subject of this proceeding and DOES 101 through 1,000 has some other cognizable interest in the  
10 subject matter of this lawsuit.

11 **Background Information**

12 4. CITY implements and administers a local coastal program (“LCP”) that was certified  
13 by the California Coastal Commission as being consistent with the Coastal Act. Generally speaking,  
14 the LCP applies to all development and land uses in CITY’s portion of the “coastal zone” as defined  
15 by Public Resources Code Section 30103.

16 5. CITY’s LCP includes the Mission Bay Park Master Plan (“Master Plan”). The Master  
17 Plan was adopted by CITY’s city council in 1994, approved by the California Coastal Commission  
18 thereafter, subsequently subjected to judicial review, approved with modifications by the Commission  
19 in 1996, which modifications were adopted by CITY’s city council in 1997. The modifications included  
20 but were not limited to the insertion of the words “Retain Gleason Road” on Figure 12 (depicting the  
21 Bahia Point Development Area) of the Master Plan.

22 6. On or about October 3, 2018, CITY exercised its discretion and made an “administrative  
23 correction” to Figure 12 in the Master Plan by deleting the words “Retain Gleason Road” (“Project”).  
24 The Project was approved unilaterally by CITY’s director of the planning department (and not by the  
25 city council) without any prior public notice, public input, or the posting of a Notice of Right to Appeal  
26 Environmental Determination (“NORA”) as mandated by San Diego Municipal Code Section  
27 112.0310(a). As a result, the Master Plan no longer requires CITY or any developer to maintain the  
28 public’s access to Mission Bay via Gleason Road, contrary to decisions made more than 20 years ago.



1 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a  
2 manner consistent with those laws. Defendants/Respondents have had and continue to have the capacity  
3 and ability to approve the Project within the time limits of and in a manner consistent with those laws,  
4 but Defendants/Respondents have failed and refused to do so and have exercised their discretion beyond  
5 the limits of and in a manner that is not consistent with those laws.

6 15. Petitioner has a beneficial right and interest in Defendants/Respondents' fulfillment of  
7 all their legal duties, as alleged in this pleading.

8 **FIRST CAUSE OF ACTION:**  
9 **Illegal Approval of Project**  
10 **(Against All Defendants/Respondents and Real Parties in Interest)**

11 16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

12 17. The Project does not comply with all applicable laws. By way of example and not  
13 limitation (including alternative theories of liability):

14 A. The Project violates CEQA. In particular:

15 i. CEQA applies to every discretionary project proposed to be carried out  
16 or approved by a public agency, unless the project is exempt from CEQA. Generally speaking, the  
17 public agency must review the potentially significant environmental impacts of every discretionary  
18 project subject to CEQA review that the agency proposes to carry out or approve. Such review involves  
19 determining whether the proposal is exempt, should be the subject of a negative declaration, or should  
20 be the subject of an environmental impact report.

21 ii. The use of a CEQA exemption is inappropriate when a project may have  
22 significant environmental impacts or when there are potentially significant environmental impacts due  
23 to unusual circumstances.

24 iii. The Project constitutes a "project" under CEQA because its approval  
25 involved the exercise of discretion and has the potential to cause significant direct, indirect, or  
26 cumulative adverse impacts (if not all such impacts) on the environment, including but not limited to  
27 conflicts in Defendants/Respondents' land-use and zoning regulations.  
28

1                   iv.     These significant direct, indirect, or cumulative adverse impacts on the  
2 environment give rise to Defendants/Respondents' legal obligation to subject the Project to CEQA  
3 review.

4                   v.     Defendants/Respondents' refusal to apply CEQA to the Project and  
5 subject it to environmental review constitutes a violation of CEQA.

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

11                 B.     The Project violates the Coastal Act. In particular:

12                   i.     Public Resources Code Section 30512(a) provides in part as follows: "The  
13 land use plan of a proposed local coastal program shall be submitted to the commission. The  
14 commission shall, within 90 days after the submittal, after public hearing, either certify or refuse  
15 certification, in whole or in part, the land use plan pursuant to the following procedure. . . ."

16                   ii.     Public Resources Code Section 30514(a) provides as follows: "A certified  
17 local coastal program and all local implementing ordinances, regulations, and other actions may be  
18 amended by the appropriate local government, but no such amendment shall take effect until it has been  
19 certified by the commission."

20                   iii.     The Project has never been submitted to the California Coastal  
21 Commission, has not been certified by the Commission, and thus has no legal force or effect even  
22 though Defendants/Respondents insist that it does have legal force and effect.

23                   iv.     As a result of Defendants/Respondents' violation of the Coastal Act,  
24 Petitioner has been harmed insofar as Petitioner, its members, other members of the public have not  
25 received the protection of California Coastal Commission oversight of the Project to ensure that it  
26 complies with the public-access and other policies of the Coastal Act.

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C. The Project violates the SDMC. In particular:

i. CITY was required by the SDMC to determine whether CEQA applies to the Project. The determination entitles anyone who disagrees with it to appeal to CITY's city council.

ii. CEQA failed to make the requisite determination as to CEQA's applicability to the Project.

iii. As a result of Defendants/Respondents' violation of the SDMC, Petitioner has been harmed insofar as Petitioner, its members, other members of the public have not received the protection afforded through compliance with the SDMC.

18. There is currently a dispute between Petitioner and Defendants/Respondents over the Project's legal force and effect. Petitioner contends that the Project has no legal force or effect because it violates CEQA, the Coastal Act, the SDMC, and/or one or more other applicable laws. Defendants/Respondents dispute Petitioner's contention. The parties therefore require a judicial determination of the Project's legal force and effect (if any).

**Prayer**

FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against Defendants/Respondents (and any and all other parties who may oppose Petitioner in this proceeding):

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

B. A judgment or other appropriate order determining or declaring that Defendants/Respondents failed to comply with CEQA, the Coastal Act, the SDMC, and/or one or more other applicable laws as they relate to the Project and that its approval and implementation was illegal in at least some respect, rendering the approval and implementation null and void;

C. Injunctive relief prohibiting Defendants/Respondents (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from taking any action on any

1 aspect of, in furtherance of, or otherwise based on the Project unless and until Defendants/Respondents  
2 comply with CEQA, the Coastal Act, SDMC, and all other applicable laws, as determined by the Court;

3 D. Any and all other relief that may be authorized by CEQA, the Coastal Act, the SDMC,  
4 or other applicable laws, or any combination of them, but is not explicitly or specifically requested  
5 elsewhere in this Prayer;

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

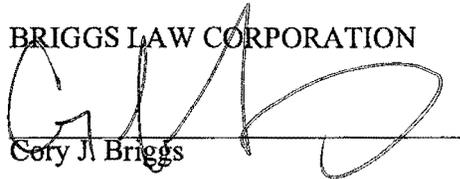
9 F. Any and all further relief that this Court may deem appropriate.

10 Date: November 1, 2018.

Respectfully submitted,

11 BRIGGS LAW CORPORATION

12  
13 By:

  
Cory J. Briggs

14 Attorneys for Plaintiff and Petitioner San Diegans for  
15 Open Government  
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION  
FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL  
QUALITY ACT AND OTHER LAWS**

Exhibit "A"

# BRIGGS LAW CORPORATION

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

*Telephone: 619-497-0021*

*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): 1593.64*

1 November 2018

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

**Via Fax Only to 619-533-4045**

Re: Notice of Commencement of Action

Dear City Clerk:

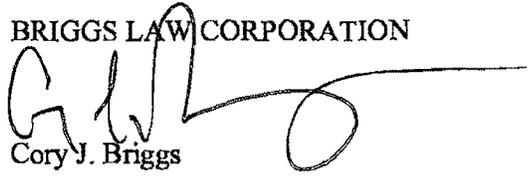
I represent San Diegans for Open Government and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego County Superior Court against your agency. The action will challenge your agency's approval of an "administrative correction" to the Figure 12 in the Mission Bay Park Master Plan on or about October 3, 2018, 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

  
Cory J. Briggs



# BRIGGS LAW CORPORATION

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

Telephone: 619-497-0021  
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99 East "C" Street, Suite 111  
Upland, CA 91786

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

## FACSIMILE COVER SHEET

Recipient: City Clerk Elizabeth Maland

Recipient's fax number: 619-533-4045

Date: 1 November 2018 BLC File: 1593.64

Total Pages (including cover sheet): 2

Sender: Cory J. Briggs

Sender's fax number: \_\_\_ 619-515-6410  909-949-7121

Message: Please see the attached notice of commencement  
of action. Thank you.

Original Document to Follow? \_\_\_ Yes  No

### CONFIDENTIALITY

The document accompanying this facsimile transmission contains information that may be either confidential, legally privileged, or both. The information is intended only for the use of the recipient(s) named on this cover sheet. If not done by or at the direction of the recipient(s), disclosure, copying, distribution, or reliance on any of the contents of this transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone so that we can arrange for its return at no cost to you.



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NAME :  
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DATE, TIME 11/01 09:18  
FAX NO./NAME 16195334045  
DURATION 00:00:42  
PAGE(S) 02  
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**BRIGGS LAW CORPORATION**

*San Diego Office:*  
4891 Pacific Highway, Suite 104  
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Telephone: 619-497-0021  
Facsimile: 909-949-7121

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Message: Please see the attached notice of commencement of action. Thank you.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief 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 San Diegans 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 November 1, 20 18, 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.

Pedro Quiroz, Jr. 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

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)