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SAN DIEGO COUNTY, CA

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PUBLIC RIGHTS TO BAY ACCESS AND PARKS

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO, CENTRAL DIVISION

9 PUBLIC RIGHTS TO BAY ACCESS AND)
10 PARKS, a California Nonprofit Entity,)

11 *Petitioner,*)

12 v.)

13 SAN DIEGO UNIFIED PORT DISTRICT, a)
14 public entity; and DOES ONE through)
TWENTY-FIVE, inclusive,)

15 *Respondent,*)

16 NORTH EMBARCADERO VISIONARY)
17 PLAN JOINT POWERS AUTHORITY, a public)
entity of unknown creation, authority or)
18 legitimacy; REDEVELOPMENT AGENCY OF)
THE CITY OF SAN DIEGO, a public entity;)
19 CITY OF SAN DIEGO, a public entity;)
CENTRE CITY DEVELOPMENT)
20 CORPORATION, a quasi public entity, acting as)
a purported nonprofit entity, of unknown)
21 creation, authority or legitimacy; LANKFORD)
LANE FIELD, LLC, a registered California)
22 Limited Liability Company; THE IRVINE)
COMPANY, LLC, a registered California)
23 Limited Liability Company; UNITED STATES)
NAVY, an agency or department of the United)
24 States Government; MANCHESTER PACIFIC)
GATEWAY, LLC, a registered California)
25 Limited Liability Company; BOSA)
DEVELOPMENT CALIFORNIA, INC., a)
26 registered California Corporation; and DOES)
TWENTY-SIX through FIVE HUNDRED,)
27 inclusive,)

28 *Real Parties in Interest.*)

Case No.: 37-2009-00095664-CU-WM-CTL

VERIFIED PETITION
FOR WRIT OF MANDATE

1 Petitioner, Public Rights to Bay Access and Parks, alleges as follows:

2 I.

3 **INTRODUCTION**

4 1. This action involves a challenge brought by Public Rights to Bay Access and
5 Parks ("Petitioner") to set aside and rescind the approvals, resolutions and/or decisions of the
6 San Diego Unified Port District ("Port") made on July 7, 2009 to approve the North
7 Embarcadero Visionary Plan Phase I Coastal Access Features Project ("Phase I Project"),
8 including but not limited to its approval of a Local Coastal Development Permit or Local
9 Coastal Plan (hereafter, "Coastal Permit"), and making a determination and certification under
10 the California Environmental Quality Act ("CEQA") that "no further or additional
11 environmental review was required" ("CEQA Decision") (collectively, "Phase I Project
12 Approvals") based on a prior Master Environmental Impact Report ("MEIR") prepared in 2000
13 for the North Embarcadero Visionary Plan ("NEVP").

14 2. Based on current existing and baseline conditions, the cumulative effects from a
15 number of other approved bayfront projects, differences from the original NEVP, and
16 variations from the approved Port Master Plan ("PMP"), there are new, different, and
17 additional potential significant adverse effects to the environment and there are impermissible
18 inconsistencies with the NEVP and/or PMP arising from the Phase I Project Approvals. Recent
19 specific, varied, and detailed projects have been added, changed and/or come to fruition along
20 relevant portions of the initial year 2000 NEVP, such that public access, parking, views, and
21 parks are being eliminated, reduced and overall impacted on direct, indirect and/or cumulative
22 scales.

23 3. By approving the Phase I Project Approvals, the Port has improperly applied
24 state environmental protection laws, coastal zone protection laws, and the Port's own adopted
25 master plan, which were enacted to ensure development uniformity, compatibility, and to
26 ensure that public assets and resources are protected and not adversely impacted.

1 Approvals and adopted the resolution(s), ordinance(s), and/or findings, making it otherwise
2 responsible for all conduct which is the subject of this litigation.

3 7. Real Parties in Interest NORTH EMBARCADERO VISIONARY PLAN JOINT
4 POWERS AUTHORITY ("NEVP JPA"), a public entity of unknown creation, authority or
5 legitimacy; REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO ("Agency"), a
6 public entity; CITY OF SAN DIEGO ("City"), a public entity; Port; and CENTRE CITY
7 DEVELOPMENT CORPORATION ("CCDC"), a quasi public entity, acting as a purported
8 nonprofit entity, of unknown creation, authority or legitimacy, and DOES TWENTY-SIX
9 through FIVE HUNDRED are all purportedly ultimate decisionmaking "partners" in
10 development of the NEVP. All of the above parties have purportedly arranged, aligned, and/or
11 have granted all direction and most every decisionmaking authority into the NEVP JPA, but the
12 Agency, City, and CCDC are named individually herein just in case they conveniently claim
13 the NEVP JPA does not have any such relative independent authority, or they are otherwise
14 necessary to resolution and enforcement of this suit. These NEVP JPA, Agency, City, CCDC
15 and DOE real parties in interest are hereafter referred to as "Other Government Real Parties."

16 8. Real Parties in Interest LANKFORD LANE FIELD, LLC, a registered
17 California Limited Liability Company; THE IRVINE COMPANY, LLC, a registered
18 California Limited Liability Company; UNITED STATES NAVY, an agency or department of
19 the United States Government; MANCHESTER PACIFIC GATEWAY, LLC, a registered
20 California Limited Liability Company; BOSA DEVELOPMENT CALIFORNIA, INC., a
21 registered California Corporation, and DOES TWENTY-SIX through FIVE HUNDRED are
22 each alleged and believed to be "partners" or "participants" in the design and/or development
23 of some or all of the Phase I Project or Phase I Project Approvals, or stand to contribute or
24 benefit financially from said project, and therefore said additional real parties in interest are
25 persons, entities or parties whose rights and entitlements stand to potentially adversely be
26 affected by this litigation such that they may be entitled or required to have a right to appear
27 and object. While Petitioner believes these contributing landowners are tangentially related to
28 the Phase I Project, they are not indispensable to either the defense or enforcement of this

1 action nor are they so differently or greatly financially vested in the Phase I Project as
2 compared with many other ordinary local landowners, taxpayers and others who might be
3 subjected to build or pay in association with the Phase I Project. Nonetheless, based on the
4 history of tactics, legal strategies, and antics of the Port and Other Government Real Parties in
5 opposing and defending legitimate public interest lawsuits, such as this, seeking dismissals
6 based on legal technicalities of failing to name a potential real party in interest, Petitioner
7 names the parties found in one or more Port, NEVP JPA and/or CCDC staff reports that state or
8 infer these above non-government real parties “coordinated the design” and “the public
9 improvements [are] to be constructed by these private development projects.” These named
10 DOE and real parties in interest are hereafter referred to as “Private Developer Real Parties.”

11 9. Should any named real party in interest desire or believe that it need not appear or
12 present argument regarding potential rights, duties, and interests contained or framed by this
13 lawsuit, then such real party may not need to appear, respond, and/or defend this suit, and may
14 be entitled to a dismissal, assuming there is agreement and stipulation by Respondent and other
15 principal Government Real Parties that such real party is dispensable, need not appear in this
16 action, with an understanding it would otherwise be bound by any ruling, affect, or order of the
17 Court.

18 10. Petitioner has made a good faith effort to determine the correct names of the
19 Government Real Parties and Private Developer Real Parties as named and contained herein,
20 but, based on the extremely short statute of limitations and time to prepare and file this action,
21 Petitioner is currently unaware of any other primary proponents, applicants, developers, and/or
22 landholders who stand to be directly affected by this litigation, but Petitioner will amend this
23 complaint at a later time to the extent that such entities, divisions, partners, mergers, parent
24 companies and other business derivatives were overlooked but need to be named, corrected, or
25 renamed, and Petitioner will do so within a reasonable time that such other persons or entities
26 become known, consistent with the laws of this State for adding DOE respondents or real
27 parties in interest. Petitioner alleges that, all times relevant herein mentioned, each of the real
28 parties and respondents DOE defendant were the agent(s) and/or employee(s) of each of the

1 remaining respondents or real parties and were at all times acting within the purpose and scope
2 of such agency and/or relationship.

3 11. This lawsuit has been commenced within the time limits imposed for actions
4 under the California Code of Civil Procedure and California Public Resources Code, as
5 possibly made further applicable to the Port by its codes or ordinances or by the general laws of
6 this State.

7 12. Venue and jurisdiction in this Court are proper pursuant to the California Code
8 of Civil Procedure for a matter relating to subject property located within, and an
9 administrative action decided within, the Court's jurisdiction.

10 13. Petitioner, by and through itself and its members, state agencies, residents,
11 citizen groups and citizens living, residing or operating within the vicinity of the Phase I
12 Project, city and greater area of the San Diego, have made oral and written comments, and have
13 been present, participated in the public hearings or have otherwise raised the legal deficiencies
14 asserted in this petition for writ of mandate.

15 14. Petitioner has performed all conditions precedent to filing this action by
16 complying with all requirements of the California Public Resources Code, including the giving
17 of prior written notice to Respondent prior to filing this action, and have no other remedy other
18 than to bring this action. All other requests of Respondent, having been previously made,
19 would be futile.

20 III.

21 **FIRST CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

22 **Violation of the California Environmental Quality Act**

23 **(Cal. Public Resources Code § 21000 et seq.; 14 Cal. Code Regs. § 15000 et seq.)**

24 15. Petitioner hereby realleges and incorporates by reference ¶¶ 1-14 above as
25 though fully set forth herein.

26 16. Respondent's action in processing, circulating, adopting, and/or certifying a
27 purported Initial Study/Addendum to the NEVP MEIR, and determining "no further
28 environmental review is required," along with adoption of a mitigation and monitoring
reporting program for the July 7, 2009 Phase I Project and Phase I Project Approvals,

1 constitutes a prejudicial abuse of discretion in that Respondent failed to proceed in a manner
2 required by law, it did not adopt requisite findings, and/or its decisions and findings are not
3 supported by substantial evidence.

4 17. Information and evidence in the record, as well as in the final approvals and
5 findings (or lack of legally adequate or honest disclosures and/or findings) made by
6 Respondent, indicate the procedural and substantive deficiencies of CEQA, including adverse
7 impacts to views, traffic and parking impacts, public safety seismic and geologic hazards, net
8 losses of usable parks, and cumulative losses of public access and rights in the same views and
9 parks, parking and traffic and seismic /geologic public safety hazards which have not been
10 sufficiently analyzed or mitigated. Detailed reasons and explanations of these legal defects
11 under CEQA are set forth in written and verbal comments made to Respondent prior to the
12 close of the July 7, 2009 public hearing, including, those matters raised in the letters of the
13 California Coastal Commission dated April 2, 2009 and July 2, 2009 (attached hereto
14 respectively as Exhibit 1 and Exhibit 2 and incorporated herein by such references), and the
15 March 22, 2009 written comments of the Broadway Complex Coalition (the title page and table
16 of contents indicating the same was timely submitted for consideration and review by
17 Respondent is attached hereto as Exhibit 3, the entirety of which is incorporated herein by such
18 reference). Additional examples of direct, indirect and cumulative adverse impacts arising and
19 needing to be addressed in the Phase I Project Approvals include but are not limited to: the
20 NEVP, as part of the public tidelands, is virtually unrecognizable from the open public access
21 called for in the PMP; eliminating public access facilities included redacting a PMP-designated
22 10-acre waterfront public tideland park, a public Bay front pier, and promised green grass park
23 and picnic areas along the blue Bay's Esplanade; the Port unlawfully attempting and approving
24 replacement of the public park and pier with two new cruise ship terminals, and on the last
25 North Embarcadero parcel, a six-story cruise ship industry parking garage that will cause a
26 substantial complete walling-off of San Diego Bay under Port trusteeship. Recently developed
27 and massed high-rise development along Harbor Drive also cumulatively adds to such adverse
28 impacts; filling the Esplanade with tree groves, multiple tree rows, and structures does not
preserve, protect or enhance view corridors – rather they diminish, impact and substantially
eliminate them; and the Port has eliminated additional major North Embarcadero

1 public tideland facilities, including a public Embarcadero park (Broadway Landing Park) and
2 public access on San Diego Bay pier (Broadway Pier). These impacts have recently occurred
3 and result in cumulative losses of access, parking, public usable coastal open spaces and public
4 tidelands, and increased traffic and public safety seismic/geological impacts.

5 18. By approving the Project and not complying with CEQA, the Port has failed to
6 proceed in a manner required by law and/or the decision(s) and findings relating to Port's
7 purported CEQA compliance are not supported by the substantial evidence. With regards to
8 the above, and by its approvals and actions taken under CEQA, the Port has misapplied the
9 concepts and legal requirements for analysis and mitigation of potential adverse impacts
10 pertaining to: application of a master EIR, further impacts not anticipated in a master EIR,
11 outdated use of a master EIR, analysis of impacts not based on correct baseline or existing
12 conditions, analysis of impacts not considering or analyzing cumulative impacts, analysis of
13 impacts not correctly considering new and additional impacts, and attempting or purporting to
14 make an addendum or update to a MEIR but at the same time adopting a finding "no further
15 environmental review is required."

16 19. A peremptory writ of mandamus is requested to be issued by this Court ordering
17 the Port to rescind its herein challenged July 7, 2009 final approvals, and remand the matter to
18 the Port for preparation of an EIR, and reconsider the project consistent with requirements of
19 CEQA, and as otherwise may be ordered by this Court.

20 IV.

21 SECOND CAUSE OF ACTION – PETITION FOR WRIT OF MANDATE

22 Violation and Inconsistency of the Project with the Port Master Plan, 23 NEVP, and Prior California Coastal Act Permit (or Certified Program)

24 20. Petitioner hereby realleges and incorporates by reference ¶¶ 1-19 above, as
25 though fully set forth herein.

26 21. A general plan and the Port Master Plan, as amended, is a comprehensive, long-
27 term plan for the physical development by a local agency of any land within or outside its
28 boundaries that, in its judgment, bears a relationship to its planning. A general plan and the

1 PMP sit atop the hierarchy of government law regulating land uses and development. As such, a
2 general plan governs any further development, such that any development must be consistent
3 with a general plan and the PMP.

4 22. The Port has enacted by legislation, including a comprehensive PMP,
5 development plans, and standards which are designed to specifically govern development in the
6 Phase I Project area.

7 23. Respondent's approval of the Phase I Project is not consistent with important
8 purposes, policies, and/or plan elements and features contained in its operative PMP relating to
9 the development of parks, protections of views, and other open usable public spaces, including
10 those matters raised in the letters of the California Coastal Commission dated April 2, 2009 and
11 July 2, 2009 (attached hereto respectively as Exhibit 1 and Exhibit 2 and incorporated herein by
12 such references), and the March 22, 2009 written comments of the Broadway Complex
13 Coalition (the title page and table of contents indicating the same was timely submitted for
14 consideration and review by Respondent is attached hereto as Exhibit 3, the entirety of which is
15 incorporated herein by such reference). Additional examples and page references to alleged
16 PMP inconsistencies include but are not limited to: PMP Page 59 - "The plan proposes two
17 major parks and plazas at the County Building and the foot of Broadway, and includes
18 recreational piers and associated public facilities...." The Port NEVP eliminates said major park
19 and recreational pier without offset mitigation; PMP Page 61 - Figure 11 shows 10-acre
20 Broadway Landing Park fanning out at the end of Broadway Street into the Lane Field and Navy
21 Broadway parcels. The Figure 11 schematic also clearly shows the first two thirds of Broadway
22 Pier also designated as "Park/Plaza"; PMP Page 63 - "The esplanade expands into plazas at...
23 Broadway Pier. These plazas will be designated to provide open space, sitting and strolling
24 areas for tourists and nearby workers, and to increase the sense of destination for Embarcadero
25 visitors." This Port NEVP eliminates this public open space access with new Port Cruise Ship
26 Terminal #2 and the new Port Cruise Ship Terminal #1 approved at Lane Field; PMP Page 63 -
27 "Passive green spaces (parks) are proposed between the plazas on the esplanade, providing
28 recreational opportunities and places for people to relax, play, and enjoy Bay views"; PMP Page

1 63 - "The wharf side remains clear of objects or furnishings that would block Bay views. A
2 delicate string of lights, a planting area with tall palms, and a 10 foot wide bike path border the
3 landward side of the promenade"; and PMP Page 64 - "Broadway Pier will continue to provide
4 recreational space on its plaza and viewing platform, as well as accommodating commercial
5 shipping and miscellaneous vessel berthing, including day cruisers."

6 24. By approving the Phase I Project, Respondent creates results which are directly,
7 indirectly, and cumulatively inconsistent with the current PMP and prior NEVP adopted and
8 incorporated into the PMP in the year 2000, the Port has failed to proceed in a manner required
9 by law and/or the decision and findings relating to consistency with the PMP and NEVP are not
10 supported by the substantial evidence or as a matter of law. A peremptory writ of mandamus
11 should issue compelling the Port to revoke its July 7, 2009 approvals and the matter should be
12 remanded to the Port to reconsider its Phase I Project Approvals in light of the findings, decision
13 and judgment rendered by this Court.

14 V.

15 **THIRD CAUSE OF ACTION – PETITION FOR WRIT OF MANDATE**

16 **Violation and Misapplication of the California Coastal Act, and**
17 **Adopted / Certified Local Coastal Program and Coastal Development Permit**

18 25. Petitioner hereby realleges and incorporates by reference ¶¶ 1-24 above, as
19 though fully set forth herein.

20 26. The California Coastal Act requires that when there is a conflict between the
21 Act's policies and standards, the conflict must be resolved in a manner most protective of
22 significant coastal resources.

23 27. As set forth in Paragraph 17 above, the prior approved local coastal program or
24 local coastal permit that encompassed and was approved for the 2000 the NEVP and/or PMP
25 did not contain the changes, additions, deletions, and alterations now being promoted, imposed,
26 and approved by the Port in its Phase I Project.

27 28. It is alleged herein that there will be direct, indirect and cumulative losses of
28 public access, views and parks which constitute one or more violations of access, views and

1 meaningfully available usable public open spaces as required by the legal protections and
2 policies set forth in the California Coastal Act.

3 29. The Port has unlawfully, incorrectly and without evidentiary support decided
4 that the Phase I Project is consistent with a prior issued local coastal program or permit, such
5 that much of the legal basis for approving and granting itself a July 7, 2009 Coastal
6 Development Permit (CDP) should be set aside.

7 30. By issuing and granting a coastal development permit for the Phase I Project,
8 the Port has failed to proceed in a manner required by law and/or the decision(s) and findings
9 relating to Port's grant of the CDP are not supported by the substantial evidence. A
10 peremptory writ of mandamus is requested to be issued by this Court ordering the Port to
11 rescind its July 7, 2009 final approvals and the matter should be remanded to the Port to
12 reconsider its final approvals consistent with allegations and arguments made by Petitioner, as
13 proven at trial, and as otherwise ordered by the Court after trial.

14 VI.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully prays for judgment as follows:

- 17 1. That this Court find that by making the final approvals Respondent has not
18 proceeded in a manner required by law, has not adopted requisite findings, and/or its decisions
19 are not supported by the substantial evidence;
- 20 2. That this Court issue a peremptory writ of mandate declaring that the decision(s)
21 rendered by Respondent on July 7, 2009, and any additional resolutions, permits, and/or plans
22 of Respondent relating to, or dependent upon, the same are null and void and of no force and
23 effect;
- 24 3. That this Court order Respondent to vacate and set aside each of the decisions
25 for the Phase I Project made on or about July 7, 2009, including any and all resolutions,
26 administrative approvals, permits, and quasi-judicial decisions of Respondent with respect
27 thereto;
- 28

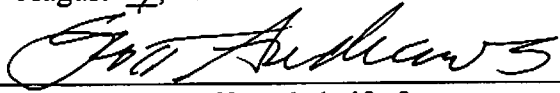
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VII.

VERIFICATION

I, SCOTT ANDREWS, as an authorized representative of the nonprofit organization PUBLIC RIGHTS TO BAY ACCESS AND PARKS, hereby verify this *VERIFIED PETITION FOR WRIT OF MANDATE* pursuant to California Code of Civil Procedure Section 446. The facts herein alleged are true of my own knowledge, except as to the matters which are based on information and belief, which I believe to be true. I declare under the penalty of perjury under the laws of California that the above foregoing is true and correct and that this verification was executed on the below stated date in San Diego County, California.

Dated: August 7, 2009

By: 
SCOTT ANDREWS on behalf of
PUBLIC RIGHTS TO BAY ACCESS AND PARKS