

1 BRIGGS LAW CORPORATION [FILE: 1918.00]
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5 Because Sudberry Won't

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

10
11 SAVE CIVITA BECAUSE SADBERRY WON'T,) CASE NO. _____

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.)

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

18 Plaintiff and Petitioner SAVE CIVITA BECAUSE SADBERRY WON'T ("Petitioner") alleges
19 as follows:

20 **Parties**

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

25 2. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "public agency"
26 under Section 21063 of the Public Resources Code and a "local government" under Section 30109 of
27 the Public Resources Code. As a "public agency," CITY is required to comply with California
28 Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.*

1 3. The true names and capacities of the Defendants and Respondents identified as DOES
2 1 through 1,000 are unknown to Petitioner, who will seek the Court’s permission to amend this pleading
3 in order to allege the true names and capacities as soon as they are ascertained. Petitioner is informed
4 and believes and on that basis alleges that each of the fictitiously named Respondents and Defendants
5 1 through 1,000 has jurisdiction by law over one or more aspects of the proposed project that is the
6 subject of this proceeding or has some other cognizable interest in the project.

7 **Background Information**

8 4. On or about October 30, 2017, CITY approved the Serra Mesa Community Plan
9 Amendment Roadway Connection Project (“Project”).

10 5. Petitioner opposes the Project’s approval because CITY failed to comply with CEQA
11 and other applicable laws.

12 **Notice Requirements and Time Limitations**

13 6. This proceeding is being commenced not more than 35 days after the notice described
14 in Public Resources Code Section 21167(d) was filed with the county clerk (if such a notice was filed).

15 7. Petitioner has caused a Notice of Commencement of Action to be served on
16 Respondents, as required by Public Resources Code Section 21167.5. A true and correct copy of the
17 Notice of Commencement of Action is attached to this pleading as Exhibit “A.”

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

21 **Jurisdiction and Exhaustion of Administrative Remedies**

22 9. Petitioner seeks review by and relief from this Court under Public Resources Code
23 Sections 21168 and/or 21168.5, as applicable, and Code of Civil Procedure Sections 1060 *et seq.* and
24 1084 *et seq.*, among other provisions of law.

25 10. Petitioner exhausted administrative remedies to the extent required by law; by way of
26 example and without limitation, one or more of Petitioner’s members submitted written comments to
27 the Respondents prior to the close of the public meeting on the Project.

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1 11. Respondents' conduct in approving this Project without complying with CEQA and
2 other applicable laws constitutes a prejudicial abuse of discretion because, as alleged in this pleading,
3 they failed to proceed in a manner required by law.

4 12. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since
5 its members and other members of the public will suffer irreparable harm as a result of Respondents'
6 violations of CEQA and other applicable laws. Respondents' approval of the Project also rests on their
7 failure to satisfy a clear, present, ministerial duty to act in accordance with the applicable laws. Even
8 when Respondents are permitted or required by law to exercise their discretion in approving projects
9 under those laws, they remain under a clear, present, ministerial duty to exercise their discretion within
10 the limits of and in a manner consistent with those laws. Respondents have had and continue to have
11 the capacity and ability to approve the Project within the time limits of and in a manner consistent with
12 those laws, but Respondents have failed and refused to do so and have exercised their discretion beyond
13 the limits of and in a manner that is not consistent with those laws.

14 13. Petitioner has a beneficial right and interest in Respondents' fulfillment of all their legal
15 duties, as alleged in this pleading.

16 **FIRST CAUSE OF ACTION:**
17 **Illegal Approval and Adoption of Project**
18 **(Against All Respondents and Real Parties in Interest)**

19 14. Paragraphs 1 through 13 are fully incorporated into this paragraph.

20 15. The Project does not comply with all applicable laws. By way of example and not
21 limitation (including alternative theories of liability):

22 A. The Project violates CEQA. In particular:

23 i. CEQA requires that every environmental impact report ("EIR") identify
24 and analyze the significant adverse environmental impacts of a proposed project, giving due
25 consideration to both short-term and long-term impacts, providing decision-makers with enough
26 information to enable them to make an informed decision with full knowledge of the likely
27 consequences of their actions, and providing members of the public with enough information to
28 participate meaningfully in the project-approval and environmental-review process. CEQA also
requires that every EIR identify and analyze a reasonable range of alternatives to a proposed project.

1 CEQA further requires that every EIR identify and analyze all reasonable mitigation measures for a
2 proposed project's significant adverse environmental impacts. In each respect, CEQA mandates that
3 the analyses contained in an EIR and all decisions of the lead agency based on the report be supported
4 by substantial evidence in the administrative record.

5 ii. The Project's EIR fails to provide adequate identification and analysis
6 of the significant adverse environmental impacts of the Project. neither the analysis of impacts in the
7 Project's EIR nor Respondents' certification of the EIR in this respect is supported by substantial
8 evidence in the administrative record.

9 iii. Additionally and alternatively, the Project's EIR fails to provide adequate
10 identification and analysis of a reasonable range of alternatives to the Project. Further, neither the
11 analysis of alternatives in the EIR nor Respondents' certification of the EIR in this respect is supported
12 by substantial evidence in the administrative record.

13 iv. Additionally and alternatively, the Project's EIR fails to provide adequate
14 identification and analysis of measures to mitigate the Project's significant adverse environmental
15 impacts and fails to eliminate or substantially reduce all such impacts. Further, neither the analysis of
16 mitigation measures nor Respondents' certification of the EIR in this respect is supported by substantial
17 evidence in the administrative record.

18 v. Respondents' failure to provide adequate identification and analysis of
19 the significant adverse environmental impacts, reasonable range of alternatives, and mitigation
20 measures for the Project constitutes multiple violations of CEQA.

21 vi. CEQA requires every lead agency to identify all adverse environmental
22 impacts of a proposed project that will be significant and determine whether such impacts can be
23 avoided or mitigated. With respect to any such impacts that cannot feasibly be avoided or mitigated,
24 the lead agency must make at least one written finding that there are specific overriding economic,
25 legal, social, technological, or other benefits of the proposed project that outweighs the impacts.

26 vii. Respondents approved the Project based on one or more written findings
27 that there exist considerations outweighing the Project's significant adverse environmental impacts, but
28 there is not substantial evidence in the administrative record to support all such findings. Additionally

1 and alternatively, Respondents approved the Project based on one or more non-written findings that
2 such considerations exist. Respondents also failed to make all required written findings regarding the
3 Project's impacts as required by CEQA.

4 viii. Respondents' approval of the Project based on one or more written
5 findings unsupported by evidence in the administrative record and its failure to make all written
6 findings required regarding the Project's impacts constitute multiple violations of CEQA.

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

12 B. The Project violates the Planning and Zoning Law ("PZL"). In particular:

13 i. The PZL prohibits the approval of any project that is not consistent with
14 the applicable general and specific plans and their components. The Project authorizes land uses and
15 activities that are in some way inconsistent with the general and specific plans and their components.

16 ii. As a result of Respondents' violation of the PZL, Petitioner, its members,
17 and the general public have been harmed insofar as Respondents have approved a project that is
18 inconsistent with the land-use rules designed to protect the public from harmful development.

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

23 **Prayer**

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

26 A. A judgment or other appropriate order determining or declaring that Respondents failed
27 to fully comply with CEQA and/or one or more other applicable laws as they relate to the Project and
28

1 that there must be full compliance therewith before final approval and implementation of the Project
2 may occur;

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

7 C. Injunctive relief prohibiting Respondents (and any and all persons acting at the request
8 of, in concert with, or for the benefit of one or more of them) from taking any action on any aspect of,
9 in furtherance of, or otherwise based on the Project unless and until Respondents comply with CEQA
10 and all other applicable laws, as determined by the Court;

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

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

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

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Date: November 22, 2017.

Respectfully submitted,
BRIGGS LAW CORPORATION

By: _____
Cory J. Briggs

Attorneys for Plaintiff and Petitioner Save Civita
Because Sudberry Won't

**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:
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): 1918.00

16 November 2017

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

Via fax to 619-533-4045

Re: Notice of Commencement of Action

Dear City Clerk:

I represent Save Civita Because Sudberry Won't 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 Item 200 on City Council Agenda for October 30, 2017 (Serra Mesa Community Plan Amendment Roadway Connection Project), 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

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4891 Pacific Highway, Suite 104
San Diego, CA 92110

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FACSIMILE COVER SHEET

Recipient: City Clerk Elizabeth Maland

Recipient's fax number: 619-533-4045

Date: 17 November 2017 BLC File: 1918.00

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.

Original Document to Follow? Yes No

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