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8
9 Attorneys for Petitioner, LA JOLLA SHORES TOMORROW

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO, HALL OF JUSTICE

12 LA JOLLA SHORES TOMORROW, a non-profit)
13 corporation,) GENERAL CIVIL (CEQA)
14 Petitioner,) CASE NO.: 37-2015-00037115-CU-TT-CTL
15 vs.)
16 CITY OF SAN DIEGO, a public entity;) **PETITION FOR WRIT OF MANDATE**
17 and DOES 1 through 5, inclusive,) (CCP Section 1094.5 and PRC Section 21168)
18 Respondent,)
19)
20 BOB WHITNEY; PLAYA GRANDE, LLC, and)
21 DOES 6 through 10,)
22 Real Parties in Interest.)
23)
24)
25)
26)
27)
28)

23 Petitioner LA JOLLA SHORES TOMORROW, hereby petitions this Court for a Writ of
24 Mandate under Section 1094.5 of the Code of Civil Procedure and Section 21168 of the Public
25 Resources Code, directed to Respondent CITY OF SAN DIEGO ("City"), and by this verified Petition
26 represents that:
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1 **GENERAL ALLEGATIONS**

2 1. LA JOLLA SHORES TOMORROW (“LJST”) is a California non-profit corporation.
3 The members of LJST reside in or visit the La Jolla Shores community in the City of San Diego, State
4 of California.

5 2. LJST believes in protecting the local environment through wise planning, lawful
6 stewardship of lands, and following the community plans, ordinances, and land use/environmental
7 laws in order to ensure a quality of life for visitors and residents of La Jolla Shores. As residents,
8 community members, and visitors, members of LJST are directly affected by the October 5, 2015
9 decision of the City to deny the appeals of the Planning Commission’s action certifying Environmental
10 Impact Report (“EIR”) No. 182513, adopting the Mitigation, Monitoring, and Reporting Program
11 (“MMRP”), and approving a Coastal Development Permit, Site Development Permit, and Map Waiver
12 (collectively, “development permits”) for the Whitney Mixed Use Project in the community of La
13 Jolla Shores ("Project") as alleged below.

14 3. LJST and its members have been injured as a result of the City’s actions approving the
15 Project. The City’s actions adversely affect the recreational, aesthetic, environmental, health, and
16 safety interests of LJST and its members. The interests of LJST members have been and will continue
17 to be adversely affected by the City’s unlawful actions in violation of the San Diego Municipal Code
18 (“SDMC”), California Environmental Quality Act ("CEQA"), and the Code of Civil Procedure
19 ("CCP"). The relief sought in this Petition would redress LJST and LJST’s injuries.

20 4. Respondent City of San Diego is a local government which is a subdivision of the State
21 of California and a body corporate and politic exercising local government powers, as specified in the
22 Constitution and the laws of the State of California. At all times mentioned in the Petition, the City
23 has assumed the role of the governmental agency charged by law with administering the provisions of
24 the SDMC and CEQA.

25 5. LJST does not know the true names or capacity of the persons or entities sued herein as
26 Does 1 through 5, and therefore sues these Respondents by fictitious names. LJST will amend the
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1 Petition to set forth names and capacity of said Respondents along with appropriate charging
2 allegations when the same have been ascertained.

3 6. Real Party in Interest BOB WHITNEY is an individual. BOB WHITNEY is identified
4 on the Notice of Determination as the Project Applicant.

5 7. Real Party in Interest PLAYA GRANDE, LLC is a California limited liability
6 corporation. PLAYA GRANDE, LLC is identified in the project file as being the Owner.

7 8. LJST does not know the true names or capacity of the persons or entities sued herein as
8 Does 6 through 10, and therefore sues these Real Parties in Interest by such fictitious names. LJST
9 will amend the Petition to set forth the names and capacity of said Real Parties in Interest along with
10 appropriate charging allegations when the same have been ascertained.

11 **VENUE**

12 9. Venue and jurisdiction in this Court are proper pursuant to the California Code of Civil
13 Procedure, for a matter relating to subject property located within, and discretionary, quasi-legislative
14 and administrative actions decided within, this Court's jurisdiction.

15 **PROJECT DESCRIPTION AND HISTORY**

16 10. The Project is located on a 0.09-acre lot at 2202 and 2206 Avenida de la Playa, on the
17 northeast corner of El Paseo Grande and Avenida de la Playa in the Commercial Center Zone of the La
18 Jolla Shores Planned District, Coastal Overlay Zone, Coastal Height Limit Overlay Zone, Residential
19 Tandem Parking Overlay Zone, and the Parking Impact Overlay Zone (Beach Impact Area) of the La
20 Jolla Community Plan area.

21 11. The Project includes a Coastal Development Permit (No. 662551), Site Development
22 Permit (No. 662678), and Tentative Map Waiver (No. 683254) to demolish an existing single story
23 residence and ground floor retail store, and construct a new mixed use development of approximately
24 8,518 square feet.¹ New accessible ramps will be installed at two intersections –Avenida de la Playa
25 and El Paseo Grande; and Calle Clara and El Paseo Grande.

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28 ¹ LJST believes the applicant has misrepresented the size of the building by incorrectly excluding the carport and the ground floor covered terrace from the calculation of gross floor area per SDMC § 113.0234.

1 12. The site is designated by the La Jolla Community Plan (“LJCP”) for commercial and
2 mixed uses. The purpose of the Commercial Center Zone, the zone of the project site, is to
3 accommodate community-serving commercial services and retail uses.

4 13. The Project includes a new three-story building, with a height of 30 feet. This building
5 will have two residential condominium units on the second (3,179 square feet) and third (2,780 square
6 feet) floors, 1,867 square feet of retail on the ground floor with two retail parking spaces along Calle
7 Clara on the north side of the Project, and six residential parking spaces in a subterranean garage
8 accessed via parking elevator. Grading will cover the entire site with a total excavation of 1,700 cubic
9 yards to a depth of 14 feet.

10 14. On October 1, 2009, the La Jolla Community Planning Association (“CPA”) voted 14-
11 1-1 to recommend denial of the Project because “the form and relationship of the project would disrupt
12 the character and architectural unity of the streetscape” and the plans and presentation did not show
13 “what dewatering will be needed by the project before and after completion and how any dewatering
14 will be accomplished.”

15 15. On March 16, 2010, the La Jolla Shores Planned District Advisory Board considered
16 the Project, but was unable to obtain a majority vote on any motion. The Board asked the applicant to
17 consider some design changes and continued the item to the April 20, 2010 meeting.

18 16. On April 20, 2010, the La Jolla Shores Planned District Advisory Board was still
19 unable to achieve a majority vote on any motion for the Project, and voted 4-0 with no consensus for a
20 recommendation of the project.

21 17. On July 28, 2010, the Hearing Officer of the City of San Diego approved the
22 development’s Coastal Development Permit, Site Development Permit, and Tentative Map Waiver. A
23 Variance originally part of the project was removed by the Hearing Officer, and conditions for
24 additional offsets along the Project’s east elevation were added. A stipulation for compliance with La
25 Jolla Community Plan’s Commercial Development Recommendations was also added.

26 18. The CPA filed an appeal of the Hearing Officer’s decision on August 10, 2010.
27 Bernard Segal filed an appeal on August 11, 2010. LJST filed an appeal on August 11, 2010.
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1 19. On September 9, 2010 the Planning Commission of the City of San Diego considered
2 the appeals of the Hearing Officer’s decision. The Planning Commission voted 5-1-1 to certify
3 Mitigated Negative Declaration No. 182513 (“MND”) and adopt the MMRP. The Planning
4 Commission denied the appeals and upheld the Hearing Officer’s decision to approve the development
5 permits.

6 20. On September 22, 2010 LJST appealed the Planning Commission’s environmental
7 determination to the San Diego City Council.

8 21. On September 23, 2010, Bernard Segal filed an appeal of the Planning Commission’s
9 environmental determination to the San Diego City Council.

10 22. The City Council considered the appeals on November 16, 2010. The City Council
11 voted 5-3-0 to grant the appeal; denying certification of the MND; setting aside the environmental
12 determination and remanding the matter back to the Planning Commission.

13 23. On January 20, 2011, the Planning Commission considered the City Council’s remand
14 and voted 5-0-0 to certify the MND, adopted the MMRP; and approved the development permits.

15 24. The CPA appealed the Planning Commission’s January 20, 2011 environmental
16 determination to the City Council.

17 25. The City Council considered the appeal on May 3, 2011 and voted 6-1-1 to grant the
18 appeal by Resolution No. R-306794, again denying certification of the MND. The City Council found
19 an MND could not be certified because the record contained substantial evidence to support a fair
20 argument the Project may have a significant effect on the environment requiring an EIR.

21 26. The City Council found substantial evidence to support a fair argument the Project may
22 have a significant impact on neighborhood character, geology and soils, archaeological and
23 paleontological resources, land use, and traffic safety. The City Council requested more information
24 on groundwater hydrology.

25 27. After the City Council granted the appeals of the MND, the applicant modified the
26 project to use a mat slab foundation rather than cassions/piers for the building structure. To
27 accommodate the mat slab foundation, the ramp to the subterranean parking was removed and
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1 replaced with two car elevators. Minor modifications were also made to the second floor balconies; a
2 ground floor veranda was added to the retail component; and the square footage was reduced from
3 8,950 square feet to 8,518 square feet.

4 28. On June 24, 2011 the City of San Diego posted the Public Notice of Preparation of a
5 Draft Environmental Impact Report (“DEIR”).

6 29. On October 28, 2013 the City posted the Public Notice of a DEIR.

7 30. At the November, 2013 meeting the La Jolla Shores Permit Review Committee voted
8 4-0-2 that the findings could not be made for a Site Development Permit or a Coastal Development
9 Permit.

10 31. On November 19, 2013, the La Jolla Shores Planned District Advisory Board
11 considered the Project and voted 5-0 to make no recommendation.

12 32. On December 5, 2013, the CPA considered the Project and voted 13-3-2 that findings
13 could not be made for a Site Development Permit or Coastal Development Permit for the Project,
14 stating the upper floor building area was “excessive” and “out of character in form and relationship
15 with the other mixed use buildings in the area.” The CPA also voted 10-3-1 that the DEIR was
16 inadequate and disagreed with the DEIR’s conclusions that the project was in conformance with the La
17 Jolla Shores Planned District Ordinance (“PDO”), the La Jolla Shores PDO Design Manual, and the
18 SDMC.

19 33. LJST submitted a comment letter on the DEIR on December 13, 2013.

20 34. On February 18, 2015, the City completed the Project’s Final EIR No. 182513 and
21 MMRP. The EIR identified potentially significant environmental impacts could occur if grading and
22 excavation encounters unknown subsurface archaeological resources.

23 35. On April 16, 2015, the Planning Commission again considered the Project. The
24 Planning Commission voted 5-1-1 to certify EIR No. 182513, adopt the MMRP, and approve the
25 development permits and map. Commissioner Quiroz voted to deny certification of the EIR,
26 commenting the EIR did not analyze groundwater issues that were specifically raised during the May
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1 2011 City Council meeting granting the appeals of the MND and were specifically raised in the City
2 Council Resolution granting those appeals.

3 36. The CPA, Peggy Davis, Bernard Segal, Myrna Naegle, and LJST appealed the Planning
4 Commission's decision to the City Council.

5 37. LJST submitted a comment letter on the Project on October 5, 2015.

6 38. On October 5, 2015, the City Council considered the five appeals. The City Council
7 only considered the Planning Commission's environmental determination and did not consider the
8 development permits or Map Waiver that were also part of the Project. LJST's attorney and members
9 of LJST provided public testimony both orally and in writing at this City Council meeting. The City
10 Council passed Resolution Number R-309997 6-2, denying the appeals of the Planning Commission's
11 environmental determination, approved EIR No. 182513, adopted findings, and adopted the MMRP
12 for the Project.

13 39. The City filed a Notice of Determination with the County Clerk of the County of San
14 Diego on October 8, 2015.

15 40. LJST is informed and believes the filing of the Notice of Determination is the final
16 action the City intends to take regarding approval of the Project under CEQA and other applicable
17 laws.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
19 **AND INADEQUATE REMEDIES AT LAW**

20 41. LJST has exhausted all available administrative remedies, and objections to the Project
21 have been presented orally and in writing to the City.

22 42. LJST has complied with the requirements of Public Resources Code Section 21167.5
23 by mailing a written notice of commencement of this action to the City on October 26, 2015. A true
24 and correct copy of that notice is attached hereto as Exhibit 1.

25 43. LJST has no adequate remedy at law unless this Court grants the requested writ of
26 mandate requiring the City to set aside its approval of the Project and set aside its certification of the
27 EIR, MMRP, development permits, and map waiver until the Project complies with CEQA. In the
28 absence of such remedy, the City's approval will remain in effect in violation of State law, and LJST

1 will suffer irreparable harm due to violations of applicable land use laws and regulations and
2 significant adverse environmental impacts caused by the Project that have not been properly analyzed
3 under CEQA.

4 44. LJST has performed all conditions precedent to filing this action by complying with all
5 requirements and has no other remedy other than to bring this action.

6 **FIRST CAUSE OF ACTION**

7 **(Failure to Proceed in the Manner Required by Law - Violation of CEQA)**

8 **(Public Resources Code § 21000 et. seq. & CCP §1094.5)**

9 45. Petitioner incorporates by reference each of the allegations set forth in this Petition as if
10 set forth herein in full.

11 46. The purpose of an EIR is to provide public agencies and the public with detailed
12 information about the effect a proposed project is likely to have on the environment. (Pub. Res. Code
13 § 21061.) Under CEQA, the lead agency is required to prepare a complete and legally adequate EIR
14 prior to approving any discretionary project that may have a significant adverse environmental effect.
15 (Pub. Res. Code § 21100(b)(1).) The EIR must be prepared with a sufficient degree of analysis to
16 provide decision-makers with information enabling them to make a decision that intelligently takes
17 account of environmental consequences. (CEQA Guidelines § 15151.)

18 **FAILURE TO CONSIDER THE PROJECT WITH CONSIDERATION OF THE EIR**

19 47. CEQA requires that the same decision-making body approve or disapprove the project
20 and complete the environmental review. (*Citizens for Restoration of L Street v. City of Fresno* (2014)
21 229 Cal.App.4th 340, 359; quoting *Poet, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th
22 681, 721.)

23 48. The City Council failed to consider the Project along with its consideration of the EIR,
24 thereby foreclosing the City Council's ability to reach its own conclusions concerning the contents of
25 the EIR. The City Council heard the EIR without hearing the merits of the project and therefore did
26 not have the ability to modify the project to avoid or lessen impacts.

1 **EXECUTIVE SUMMARY**

2 49. The Executive Summary fails to provide a summary of the contents of the EIR in a
3 manner that will facilitate formation of accurate findings based on substantial evidence in the record,
4 as required by CEQA.

5 50. The Executive Summary fails to accurately describe areas of controversy known to the
6 lead agency, as required by CEQA. This Project has been the subject of numerous public hearings, as
7 outlined above, however the Executive Summary fails to include that information. Moreover, the
8 Project History portion of the Executive Summary fails to accurately describe why the City Council
9 did not adopt the MND in 2010 and 2011.

10 51. The Project Location and Setting mislead the reader by failing to accurately describe
11 the area being developed. The EIR misleads the reader into believing the area is developed with a
12 multitude of four and five story buildings. The EIR's inaccurate description of location and setting
13 prejudices any analysis of land use and visual effects/neighborhood character.

14 **ENVIRONMENTAL SETTING**

15 52. The Environmental Setting section of the EIR fails to accurately describe the
16 characteristics of the surrounding community by placing an undue focus on larger buildings that are
17 not located in the Commercial Center of La Jolla Shores.

18 53. The Project History section of the Environmental Setting fails to accurately describe
19 why the City Council did not adopt the MND in 2010 and 2011.

20 54. The Planning Context section of the Environmental Setting fails to accurately describe
21 inconsistencies with the community character policies of the LCP, the PDO, the Design Manual, and
22 the SDMC.

23 **PROJECT DESCRIPTION**

24 55. An accurate, stable, finite project description is an indispensable pre-requisite to a
25 certifiable EIR. The EIR fails to include an accurate, stable, and consistent description of the proposed
26 project. The project plans are not consistent between the EIR, the staff report, and the renderings
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1 presented by the applicant at the 2015 Planning Commission hearing. The reader is left with no ability
2 to consider the design features of the project due to this lack of consistency between plans.

3 56. The text describing the project does not match the features shown on the plans.

4 57. CEQA requires a statement of objectives sought by the proposed project. (CEQA
5 Guidelines § 15124(b) and (d).) A clearly drafted statement of objectives assists the lead agency in
6 creating a range of alternatives to evaluate in the EIR. (CEQA Guidelines § 15124(b).) The stated
7 Purpose and Objectives are misleading. The Project is doing little to expand residential opportunities
8 proximate to urban commercial uses; there are very limited employment or multi-modal transportation
9 opportunities within walking distance of the project site. The Project provides a very limited area for
10 community use, creates hazards to pedestrian safety, and does not provide architectural and design
11 elements ensuring a high quality design and aesthetic.

12 58. If a public agency must make one or more decisions on a project, all of its decisions
13 subject to CEQA should be listed. (CEQA Guidelines § 15124(d)(2).) The Project Description fails to
14 describe the need for a variance or list any approvals that might be needed from other agencies, i.e. the
15 Regional Water Quality Control Board.

16 59. The Project Description fails to provide a list of agencies that will use the EIR.

17 **ENVIRONMENTAL ANALYSIS**

18 60. CEQA requires that an EIR disclose and analyze all possible significant environmental
19 impacts of a proposed project. (Pub. Res. Code § 21100(b)(1) and CEQA Guidelines § 15126.) The
20 Environmental Analysis in the EIR is incomplete and the findings are not supported by substantial
21 evidence in the record.

22 61. The EIR fails to adequately consider substantial evidence of significant impacts to Land
23 Use, Visual Effects/Neighborhood Character, Transportation/Traffic Circulation/Parking, and
24 Groundwater Hydrology.

25 ***Land Use***

26 62. The analysis of Land Use Impacts is inadequate and fails to properly identify significant
27 impacts. The findings of no significance are not supported by substantial evidence in the record.
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1 63. The Land Use section fails to properly identify the project site’s location in the Beach
2 Parking Impact Overlay Zone.

3 64. The Land Use section fails to identify applicable policies in the Community Plan, PDO,
4 Design Manual, and SDMC.

5 65. The Project is not consistent with the policies of the Community Plan, PDO, and
6 Design Manual related to bulk and scale and the protection of community character and the EIR fails
7 to identify this as a significant impact.

8 66. The Project is inconsistent with the SDMC, which requires a 10’x10’ visibility triangle
9 on either side of the parking spaces and the car elevator exiting onto Calle Clara. The number and
10 width of proposed driveways exceeds that allowed by the Municipal Code. SDMC § 142.0560 allows
11 one, 20-foot wide driveway along Calle Clara. The Project proposes two parking spaces and two car
12 elevators along Calle Clara for a total driveway width of 42 feet. The EIR fails to analyze these
13 significant impacts.

14 ***Visual Effects & Neighborhood Character***

15 67. The analysis of Visual Effects and Neighborhood Character fails to properly identify
16 significant impacts. The findings of no significance are not supported by substantial evidence in the
17 record.

18 68. The EIR fails to accurately state the existing conditions and appropriate policies
19 governing visual effects and neighborhood character. The EIR leads the reader to believe the
20 neighborhood character is defined by commercial buildings and residential buildings from one to five
21 stories high, which is not the case.

22 69. The Project does not comply with the PDO in that it severely contrasts with the
23 surrounding neighborhood character. This is a significant impact that is not identified in the EIR.

24 70. The Project exceeds the height and bulk of the existing pattern of development in the
25 Commercial Center of La Jolla Shores. This is a significant impact that is not identified in the EIR.

26 71. At the Planning Commission hearing in 2010, three property owners in the Commercial
27 Center of La Jolla Shores testified they were interested in coming forward with similar projects, but
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1 were waiting to see what happened with this Project. It is reasonably foreseeable that this Project will
2 have a cumulative effect on neighborhood character by allowing significantly larger buildings in the
3 Commercial Center in the future. The City’s thresholds of significance find this to be a significant
4 impact, but it is not analyzed in the EIR.

5 ***Transportation/Traffic Circulation/Parking***

6 72. The analysis of Transportation/Traffic Circulation/Parking impacts is inadequate and
7 fails to properly identify significant impacts. The findings of no significance are not supported by
8 substantial evidence in the record.

9 73. The existing conditions inaccurately describe Calle Clara. The EIR describes Calle
10 Clara by stating “[A]ccording to City of San Diego staff, Calle Clara functions as an alley.” The
11 SDMC defines an alley as “no wider than 25 feet that is dedicated as secondary access to an abutting
12 property.” (SDMC § 113.0103.) Calle Clara is 30 feet wide and serves as the primary access to a
13 number of properties, including the apartment building across Calle Clara from the Project. Therefore,
14 Calle Clara is defined as a street by the SDMC.

15 74. The SDMC requires a visibility triangle of 10’ x 10’ at the intersection of a street and a
16 driveway to provide adequate sight distance. (SDMC § 113.0273.) The Project has four driveways on
17 Calle Clara, there are no visibility triangles provided for these driveways as required by the SDMC.
18 The City’s thresholds of significance find a significant impact if the Project would increase traffic
19 hazards to motor vehicles, bicyclists, or pedestrians due to a proposed non-standard design feature
20 such as poor sight distance. The Project’s failure to provide the required visibility triangles is a
21 significant impact.

22 75. The Project exceeds the number and width of driveways allowed by the SDMC and will
23 eliminate one parking space. The project site is located in the Beach Impact Overlay Zone which
24 places an emphasis of the protection of on-street parking to facilitate access to the beach. The project
25 would have the significant impact of eliminating on-street parking due to an excessive number of
26 driveway openings.

1 ***Groundwater Hydrology***

2 76. The EIR has failed to analyze the impacts of the Project on Groundwater Hydrology as
3 requested by the City Council in 2011. The EIR fails to discuss groundwater hydrology in any way.
4 The water table in La Jolla is located close to the ground surface.

5 ***Cumulative Effects***

6 77. CEQA requires an EIR consider reasonably foreseeable cumulative impacts from a
7 proposed project. (Pub. Res. Code § 21100 and CEQA Guidelines § 15130.) The analysis of
8 Cumulative Effects is inadequate and fails to properly identify significant impacts. The findings of no
9 significance are not supported by substantial evidence in the record.

10 78. The EIR’s consideration of cumulative effect must consider actions that are a
11 foreseeable consequence of the project. During the public hearings in 2010, a number of property
12 owners stated their intent to follow the Project with similar projects. The Project is so different from
13 the character of the surrounding neighborhood, that it is reasonably foreseeable that other such
14 changes to the neighborhood will follow.

15 ***Alternatives Analysis***

16 79. CEQA requires an EIR to examine a range of reasonable alternatives that would
17 feasibly achieve most of the project objectives, but avoid or substantially lessen any significant
18 adverse effects. (CEQA Guidelines § 15126.6.) The range of alternatives in the EIR does not provide
19 the decision-makers with adequate information about the range of options available to reduce or avoid
20 environmental impacts. This failure to consider a reasonable range of alternatives is a fatal flaw in the
21 EIR.

22 80. The EIR must consider a reasonable range of alternatives regardless of whether the
23 impacts of the project will be mitigated. The EIR fails to consider a reasonable range of alternatives
24 designed to avoid or reduce impacts. The EIR considers a “No Project” alternative and an “All
25 Commercial Development” alternative. This range of alternatives does not provide the decision-
26 makers with adequate information about the range of options available to reduce or avoid
27 environmental impacts.

1 **FINDINGS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

2 81. CEQA requires that a lead agency’s findings for approval of a project be supported by
3 substantial evidence in the administrative record. CEQA further requires a lead agency to provide an
4 explanation of how evidence in the record supports the conclusions it has reached.

5 82. As described above, the City violated CEQA by adopting findings that are inadequate
6 as a matter of law in that they are not supported by substantial evidence in the record.

7 83. The City also violated CCP § 1094.5 by abusing its discretion by failing to proceed in
8 the manner required by law by making a decision to certify the EIR that was not supported by findings
9 in the administrative record.

10 **SECOND CAUSE OF ACTION**

11 **(Failure to Proceed in the Manner Required by Law - Violation of Municipal Code)**

12 84. Petitioners incorporate by reference each of the allegations set forth in this Petition as if
13 set forth herein in full.

14 85. As described above, the Project’s bulk and scale (severely contrasting with the
15 surrounding neighborhood character) does not comply with the aesthetics/neighborhood character
16 policies of the PDO.

17 86. As described above, the Project’s bulk and scale does not comply with the
18 aesthetics/neighborhood character policies of the La Jolla Shores Design Manual.

19 87. As described above, the Project’s bulk and scale does not comply with the
20 aesthetics/neighborhood character policies of the Community Plan.

21 88. As described above, the Project violates the requirements of the SDMC with regard to
22 parking, traffic hazards, driveway openings and width, and visibility triangles.

23 89. The City has failed to require a Variance for the Project applying SDMC sections
24 113.0273(a) and 113.0273(c) (measuring visibility areas for an alley rather than a street) to the
25 Project’s development along Calle Clara.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, LJST respectfully prays:

1 1. That this Court find that, by certifying the EIR for the Project, the City has not
2 proceeded in a manner required by law and/or its decision is not supported by substantial evidence;

3 2. That this Court order the City to vacate and set aside its decision made on or about
4 October 5, 2015 and that there be issued a writ of mandate ordering the City to set aside its
5 certification of the EIR and any other permits issued or approved based upon the certification of the
6 EIR;

7 3. That this Court issue a peremptory writ of mandate declaring that one or more of the
8 decisions rendered by the City on or about October 5, 2015 and any additional discretionary or
9 ministerial approvals by the City relating to, or dependent upon, the EIR are null and void and of no
10 force or effect;

11 4. That the Court issue a peremptory writ of mandate ordering the City to set aside its
12 approval of the Coastal Development, Site Development Permit, and Map Waiver for the Project until
13 the Project complies with the SDMC, PDO, Design Manual, and all other local ordinances, rules,
14 community plans, and policies;

15 5. That the City refrain from granting any additional permits, entitlements, or other
16 approvals related to the Project until it has taken action necessary to bring such approvals into
17 compliance with the San Diego Municipal Code, CEQA, and all other local ordinances, rules,
18 community plans, and policies;

19 6. That LJST be awarded its reasonable costs incurred in this action;

20 7. That LJST be awarded reasonable attorney's fees pursuant to Cal. Code of Civil
21 Procedure Section 1021.5; and

22 8. For such other legal or equitable relief that the Court deems just and proper.

23
24 Dated: November _____, 2015

Respectfully Submitted,

25
26 _____
27 Julie M. Hamilton
28 Attorney for Petitioner
LA JOLLA SHORES TOMORROW

VERIFICATION

I, Richard McCormack declare:

I am President of LA JOLLA SHORES TOMORROW, Petitioner in this action. I have read the above Petition for Writ of Mandate and know its contents. All the facts alleged in the Petition not otherwise by citation to the record, exhibits, or other documents are true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Diego, California, this ____ day of November, 2015.

Richard McCormack

LA JOLLA SHORES TOMORROW

EXHIBIT 1



Law Offices of
Julie M. Hamilton

NOTICE OF INTENT TO FILE CEQA PETITION

**TO: CITY OF SAN DIEGO
CLERK OF THE CITY OF SAN DIEGO
202 C Street, 2nd Floor
San Diego, CA 92101**


PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that LA JOLLA SHORES TOMORROW intends to file a Petition for Writ of Mandate under the provisions of the California Environmental Quality Act against the City of San Diego, challenging its certification of an Environmental Impact Report (No. 182513), adoption of a Mitigation Monitoring and Reporting Program, and approval of developmental permits and map waiver for the Whitney Mixed Use Project (Project No. 182513) located at 2202 and 2206 Avenida de la Playa in the La Jolla Shores Planned District (collectively, "Project") at its October 5, 2015 City Council meeting.

The petition will seek the following relief:

- A. That the court order the City to vacate and set aside certification of the Environmental Impact Report and related approvals of the Mitigation Monitoring and Reporting Program, developmental permits, and map waiver, and that the court issue a writ of mandate ordering the City to reconsider its adoption and approval once the project complies with CEQA;
- B. Costs of suit;
- C. Reasonable attorney's fees; and
- D. Such other relief granted as the Court deems just and proper.

DATE: October 26, 2015

BY:



Julie M. Hamilton

Attorney for Petitioner,
LA JOLLA SHORES TOMORROW

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La Jolla Shores Tomorrow v. City of San Diego

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, in which county the within mentioned delivery occurred, and not a party to the subject cause. My business address is 2835 Camino del Rio S., Suite 100, San Diego, California, 92108. On **October 26, 2015** I served the document listed below on the parties in this action.

NOTICE OF INTENT TO FILE CEQA PETITION

SERVED UPON:

City of San Diego
Clerk of the City of San Diego
202 C Street, 2nd Floor
San Diego, CA 92101

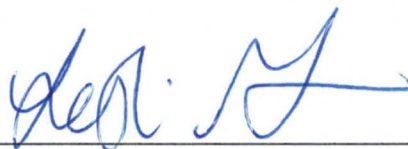
(BY MAIL) I caused such envelopes with **first class** postage thereon fully prepaid to be deposited in the U.S. Mail mailbox at San Diego, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by Diversified Legal Services Inc. to receive documents to be delivered the same date.

(BY FEDERAL EXPRESS) I am readily familiar with the firm's practice for the collection and processing of correspondence for overnight deliver and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

(BY FACISIMILE) I caused to be transmitted the document(s) described herein via the FAX number(s) listed on the attached service list.

Executed on **October 26, 2015** at San Diego, California. I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.



Leslie Gaunt