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8 COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO, CENTRAL DISTRICT

11 COASTAL ENVIRONMENTAL RIGHTS) Case No.
12 FOUNDATION, INC., a California non-profit)
13 public benefit corporation;)
14 Plaintiff and Petitioner,) **VERIFIED COMPLAINT AND PETITION**
15 v.) **FOR WRIT OF MANDATE**
16 CITY OF SAN DIEGO, a California public) **(Pub. Res. Code §§21167(a), 21168.5. Cal.**
17 agency;) **Code Civ. Proc. §§1094.5, 1085, 1060)**
18 Defendant and Respondent.)
19 _____)

20 Plaintiff and Petitioner Coastal Environmental Rights Foundation, Inc. (“Petitioner” or “CERF”) hereby
21 requests relief as follows:

22 **I. INTRODUCTION**

23 1. Petitioner is informed, and hereby alleges the City of San Diego (“City”) has significant
24 discretion to determine the appropriateness of events on City-owned property, and to require changes to
25 such events or mitigation of event-related impacts to the environment and nearby communities. This
26 discretion to constrain or affect a proposed project is the hallmark trigger of a California Environmental
27 Quality Act (“CEQA”) (California Public Resources Code §§ 21000 *et seq*) obligation.

28 2. Petitioner believes, is informed, and hereby alleges, on or about May 24, 2011, the City

1 approved amendments to the San Diego Municipal Code (“SDMC”) to continue, establish and further its
2 unlawful approval of events without CEQA review, and in violation of CEQA, by attempting to make
3 Park Use Permits “ministerial”.

4 3. Petitioner further believes, is informed, and hereby alleges, that the City, having failed to
5 create a ministerial approval process for Park Use Permits through its May 24, 2011 SDMC
6 amendments (“First Amendment”), amended its SDMC again on November 14, 2011 (“Second
7 Amendment”) with the same intent.

8 4. Petitioner believes, is informed, and hereby alleges, that the City violated CEQA in
9 approving the aforementioned Second Amendment to its SDMC.

10 **II. THE PARTIES**

11 5. Petitioner is informed and believes and thereon alleges that the City is a California
12 municipal corporation.

13 6. Petitioner is a non-profit public benefit environmental organization incorporated and
14 existing under the laws of the State of California. Petitioner’s principal place of business is located in
15 Encinitas, California. Petitioner’s purpose is to protect and enhance coastal natural resources (including
16 the beaches, coastline, ocean waters, coastal parks and waterways in and around the City) and the
17 quality of life of coastal residents.

18 **III. JURISDICTION AND VENUE**

19 7. Jurisdiction is proper under Code of Civil Procedure (“CCP”) §§ 1060, 526, 1085, and
20 1094.5, and under Pub. Resources Code (“PRC”) §§ 21167 and 21168.5. Venue is proper under CCP §
21 393.

22 8. Petitioner complied with PRC § 21167.5 by mailing written notice of the commencement
23 of this action to the City prior to filing suit. Petitioner also sent City a notice of intent to sue. A copy of
24 both notices is attached as “Exhibit A”.

25 **IV. STATEMENT OF FACTS**

26 **The City’s Open Space and Park Land**

27 9. Petitioner believes, is informed, and hereby alleges City is the second largest city in
28 California, and the seventh largest city in the United States, with a population of more than one and a

1 quarter million people.

2 10. Petitioner believes, is informed, and hereby alleges City boasts miles of beautiful
3 beaches, bays, and major attractions. San Diego is a tourist destinations with 39,737 acres of developed
4 and undeveloped park land and open space, and 65 view areas and coastal access points.

5 11. Petitioner believes, is informed, and hereby alleges the City approves thousands of events
6 at City parks, playgrounds, plazas, beaches, and beach areas each year. Petitioner further believes, is
7 informed, and hereby alleges many of these events occur annually, a number of which have done so for
8 decades.

9 12. Petitioner further believes, is informed, and hereby alleges many events coincide with
10 holidays, such as the 4th of July and New Year's Eve.

11 **The City's Municipal Code**

12 13. The City approves use of its City-owned public parks, playgrounds, plazas, beaches, and
13 beach areas, as well as City streets, facilities and services through various permits defined in the SDMC.

14 14. Division 40 of Article 2 of Chapter 2 of the SDMC is the City's legislatively enacted
15 Special Event Ordinance (the "Special Event Ordinance"). The purpose of the Special Event Ordinance
16 is to "establish a process for permitting Special Events conducted by the private sector to use City
17 Streets, facilities or services". (SDMC §22.4002) The Special Events Ordinance is "further intended to
18 supplement land use regulations, to provide a coordinated process for the regulation of certain activities
19 to be conducted in conjunction with Special Events". (*Id.*) The Special Event Ordinance defines the term
20 "Special Event," and it provides that, except as otherwise provided in the Special Event Ordinance
21 itself, a "Special Event Permit" from the City is required for every Special Event. The Special Event
22 Permit results in a "discretionary" approval as defined by CEQA. (14 C.C.R. §§15352, 15357).

23 15. Division 1 of Article 3 of Chapter 6 of the SDMC is the City's legislatively enacted Park
24 Use Ordinance (the "Park Use Ordinance") relating to the issuance of permits for the use of the City's
25 public parks, playgrounds, plazas, beaches, and beach areas. Pursuant to the Park Use Ordinance, the
26 City issues various permits, including the "Park Use Permit".

27 16. Before the First Amendment, a Park Use Permit resulted in a "discretionary" approval as
28 defined by CEQA. The First Amendment to the SDMC resulted in an approval process that afforded the
City even greater discretion in issuing Park Use Permits. The Second Amendment created a hybrid

1 ministerial and discretionary approval process for Park Use Permits.

2 **History of First and Second Amendments**

3 17. Since 2010, Petitioner and the City have been disputing: (a) whether the Park Use and
4 Special Event Permits are discretionary, thereby trigger the requirement to conduct CEQA review for
5 events approved via these permits; and (b) which events require Special Event Permits.

6 18. In 2010, these disputes resulted in litigation. Petitioner instituted an action against the
7 City, alleging it had violated both CEQA and the SDMC in approving a specific event held at a public
8 park. (*CERF v. City of San Diego*, San Diego Superior Court Case No. 37-2010-00095062-CU-TT-CTL,
9 [*CERF I*]). The challenged event was the annual fireworks show held at Ellen-Browning Scripps Park,
10 adjacent to La Jolla Cove (the “La Jolla Cove fireworks show”).

11 19. In *CERF I*, Petitioner alleged the City abused its discretion in failing to (1) require a
12 Special Event Permit and (2) conduct CEQA review for the La Jolla Cove fireworks show. Petitioner
13 also alleged the Park Use Permit issued for the La Jolla Cove fireworks show was a discretionary
14 approval, triggering the requirement to conduct CEQA review.

15 20. The City and real party in *CERF I* filed demurrers. The Court overruled the demurrers to
16 the causes of action for violation of CEQA and failure to comply with the Special Events Ordinance.
17 Though the City and real party alleged the *CERF I* action was moot because the La Jolla Cove fireworks
18 show had already taken place, the Court found an exception to the mootness doctrine applied because
19 the issues of interpretation and enforcement of the SDMC and application of CEQA are issues of public
20 concern and the dispute between Petitioner and City regarding these issues was likely to recur.

21 21. The Court also found the Park Use Permit was not purely ministerial for purposes of
22 CEQA. A copy of the Court’s ruling is attached as “Exhibit B”

23 22. While *CERF I* was still pending, on April 25, 2011, the City introduced the First
24 Amendment: amendments to SDMC sections 63.0102 and 63.0103 of the Park Use Ordinance, and to
25 section 22.4005 of the Special Event Ordinance to specifically exempt firework shows from the
26 requirement to obtain a Special Event Permit. That same day, the City issued a notice that it had
27 determined the First Amendment was exempt from CEQA pursuant to the “common sense
28 exemption” codified in 14 C.C.R. §15061(b)(3).

23. Petitioner believes, is informed, and hereby alleges, the First Amendment was a direct

1 response to the demurrer ruling in *CERF I*, wherein the Court found Park Use Permits were not
2 ministerial. Petitioner believes, is informed, and hereby alleges, because the Court found the Park Use
3 Permit was discretionary, the City attempted to make the Park Use Permit ministerial in order to moot
4 Petitioner’s claims in *CERF I*.

5 24. At the time the City approved its First Amendment the Court had already determined the
6 Park Use Permit was not ministerial in the context of the *CERF I* demurrer ruling. The City nonetheless
7 relied on the CEQA common sense exemption for its approval of the First Amendment on the sole basis
8 that “since the code amendment does not change existing process, there is no possibility that the activity
9 may have a significant impact on the environment.”

10 25. Petitioner’s representatives and members attended the City’s April 25, 2011 City Council
11 hearing, testifying in opposition to the First Amendment and the CEQA exemption determination. Prior
12 to and at the hearing, CERF also submitted to the City extensive written comments and exhibits
13 regarding the City’s amendments and CEQA exemption determination, including expert opinions,
14 scientific studies, and articles constituting substantial evidence that direct and indirect, short and
15 longterm, individual and cumulative impacts to wildlife, water quality, air quality, traffic, biological
16 resources, public services, and noise would result from the First Amendment in general and with respect
17 to the La Jolla Cove fireworks show in particular.

18 26. On May 6, 2011, Petitioner appealed the City’s use of the common sense exemption. At
19 the May 24, 2011 hearing on this appeal, Petitioner provided additional written and oral testimony
20 regarding the City’s failure to comply with CEQA in approving the First Amendment, and evidence that
21 the First Amendment did not reflect the City’s “existing practice”.

22 27. The City Council denied the appeal, and gave final approval of the First Amendment at
23 the May 24, 2011 hearing. Petitioner believes, is informed, and hereby alleges the City approved the
24 First Amendment with the intent to moot Petitioner’s claims in *CERF I* and enable the City to continue
25 approving fireworks shows without conducting CEQA review.

26 28. Notwithstanding the First Amendment, on May 27, 2011, the Court ruled in favor of
27 Petitioner in *CERF I*, finding the City abused its discretion in failing to (1) require a Special Event
28 Permit for the 2010 La Jolla Cove fireworks show and (2) conduct the requisite CEQA review.

29 29. The Court considered the pre- and post-First Amendment Park Use Ordinance in its final

1 ruling. As to pre-First Amendment Park Use Permits, the Court reiterated its prior ruling on the
2 demurrers, finding before the First Amendment, Park Use Permits were discretionary. The Court further
3 held that Park Use Permits remained discretionary pursuant to the First Amendment, despite the City’s
4 argument that the First Amendment created a ministerial Park Use Permit. A copy of the Court’s ruling
5 in *CERFI* is attached as “Exhibit C” and is incorporated herein by reference.

6 30. Petitioner believes, is informed, and hereby alleges the City had intended (but failed) to
7 remove all discretion from the Park Use Permit through the First Amendment. Because the City failed,
8 as determined by the Court in *CERFI*, the City changed the Park Use Permitting process again on
9 November 14, 2011 through the Second Amendment.

10 31. To support its approval, the City once again found the Second Amendment exempt from
11 CEQA. Petitioner appealed the City’s CEQA exemption determination for the Second Amendment and
12 again submitted numerous studies and exhibits detailing the significant environmental impacts that
13 would result from the City’s decision to divest itself of the ability to deny, alter, condition or mitigate
14 events for which it issues Park Use Permits. Petitioner also submitted – again – substantial evidence that
15 the City’s “existing” permitting practice was not the practice articulated by the City to support its CEQA
16 exemption determination. Despite this evidence, the City denied Petitioner’s appeal and approved the
17 Second Amendment.

18 32. For Park Use Permits, the Second Amendment creates a new ministerial approval
19 process, while also leaving in place a discretionary approval process for certain enumerated events.

20 33. Concurrent with the Second Amendment, City staff determined the “capacities” of City
21 parks using their professional experience and discretion. Pursuant to the Second Amendment, if
22 attendance at an event does not exceed the determined capacity for a specific park, the event must be
23 approved (resulting in a ministerial approval). Certain activities – such as the use of glass or selling
24 merchandise – remain subject to discretionary approval. These activities are specifically enumerated in
25 the Second Amendment.

26 34. The “discharge of fireworks” is the only activity *specifically* exempt from the
27 discretionary Park Use Permit approval process in the Second Amendment. All other firework and
28 firearm related activities receive discretionary review pursuant to the Second Amendment.

1 35. The Second Amendment requires the City manager to issue a Park Use Permit if there is
2 capacity for the event. Petitioner believes, is informed, and hereby alleges the City unlawfully and
3 inconsistently determines the capacity needs of events on a case-by-case basis.

4 36. Petitioner believes, is informed, and hereby alleges the City adopted an unlawful,
5 arbitrary and capricious interpretation of event “attendance” for purposes of determining whether an
6 event meets or exceeds the capacity of a public playground, park, plaza, beach, or beach area.

7 37. Petitioner believes, is informed, and hereby alleges that in determining the capacity
8 requirement for firework shows, the City only considers the few workers responsible for the actual
9 launching and discharge of the fireworks, and unlawfully excludes from its consideration up to tens of
10 thousands of people attending or watching the event.

11 38. Petitioner exhausted all available administrative remedies. Neither Public Resources
12 Code Section 21177(a)-(b) nor any other exhaustion-of-remedies requirement may be applied to
13 Petitioner. Petitioner submitted written comments during the administrative proceedings, provided oral
14 testimony, and participated extensively in all public hearings on the Second Amendment.

15 **Related Lawsuits**

16 39. The City and real party have appealed *CERF I*. The appeal and two other related lawsuits
17 in San Diego Superior Court are pending, and the *CERF I* ruling is currently stayed.

18 40. In *CERF v. City of San Diego*, San Diego Superior Court Case No. 37-2010-00102574-
19 CU-TT-CTL, [*CERF II*], CERF challenged the City’s pattern and practice of failing to (1) conduct
20 CEQA review for Special Events and (2) require Special Event Permits for all Special Events as defined
21 by the SDMC. This case was stayed pending resolution of *CERF I*, and currently remains stayed.

22 41. In *CERF v. City of San Diego*, San Diego Superior Court Case No. 37-2011-00092008-
23 CU-TT-CTL, [*CERF III*], CERF challenged the City’s approval of the First Amendment (the May 24,
24 2011 SDMC amendments to both the Special Event Ordinance and Park Use Ordinance). The City’s
25 approval of the Second Amendment mooted Petitioner’s claims therein regarding the Park Use
26 Ordinance. Only Petitioner’s challenge to the Special Event Ordinance amendment remains in *CERF III*.

27 **Potential Environmental Impacts**

28 42. Events conducted on City-owned property and requiring use of City street, facilities or

1 services include events attended by thousands of people.

2 43. Firework shows in particular cause air pollution and result in the discharge of toxic
3 metals, salts, and trash.

4 44. The noise from fireworks negatively impacts marine mammals, birds, and other wildlife.

5 45. The tens of thousands of people who attend the fireworks shows, like the La Jolla Cove
6 fireworks show, cause traffic gridlock, require the City to close roads, and throw untold amounts of litter
7 on and around sensitive park and natural habitat.

8 46. The nature and location of firework shows, such as the show conducted at La Jolla Cove,
9 result in the closing of beaches and beach areas, and restriction on coastal access during the fireworks
10 shows, which constitute significant environmental impacts.

11 47. Firework shows, such as the those conducted annually at La Jolla Cove, in close
12 proximity to coastal beaches result in the release of pollutants to beaches and coastal surface waters
13 including aluminum, magnesium, strontium, barium, sodium, potassium, iron, copper, sulfate, nitrate,
14 and perchlorate. Firework shows also result in the release to surface waters of debris from exploded and
15 unexploded shells such as paper, cardboard, wire and fuses. As a result of these recognized potentially
16 significant environmental impacts, the San Diego Regional Water Quality Control Board (“Water
17 Board”) considers pollutant releases from firework events over or adjacent to surface waters as “point
18 source discharges of pollutants” subject to the permit requirements of the federal Clean Water Act..

19 **V. PRELIMINARY ALLEGATIONS**

20 48. Petitioner is informed and believes and thereon alleges that the City approved the
21 November 14, 2011 Second Amendment to its SDMC in an effort to render moot CERF’s claims in the
22 *CERF I* appeal.

23 49. Petitioner is informed and believes and thereon alleges that the City approved the Second
24 Amendment in order to exempt from CEQA the La Jolla Cove fireworks show, and all fireworks shows
25 also exempt from the Special Event Ordinance pursuant to the First Amendment.

26 50. Petitioner is informed and believes and thereon alleges that in approving the Second
27 Amendment, the City failed to review or consider the significant individual and cumulative
28 environmental impacts of the Second Amendment and simultaneously deprived itself of authority

1 conferred by the Park Use Ordinance to minimize or avoid these environmental impacts, unlawfully
2 avoiding the requirement to review these events - and their environmental consequences - under CEQA.

3 51. Petitioner is informed and believes and thereon alleges that, as result of the Second
4 Amendment, the number of events held within the City will likely increase, causing further impacts to
5 wildlife, water quality, air quality, traffic, biological resources, public services, and noise.

6 52. Petitioner is informed and believes and thereon alleges that absent the relief sought in this
7 action, the City, in considering and approving events for which a Park Use Permit is required, will not
8 review the impacts of such events pursuant to CEQA, and that, as a result, Petitioner, its members and
9 the public will suffer the amendments' significant environmental consequences. Absent resolution in
10 this case of the issues raised herein, Petitioner anticipates filing multiple lawsuits challenging specific
11 event approvals.

12 53. The interests Petitioner seeks to protect by this action are germane to its fundamental
13 purpose of protecting the environment. Petitioner and its members are particularly harmed by the
14 amendments' environmental and other impacts, as well as by the City's failure to comply with CEQA in
15 approving the amendments. Members of Petitioner live in areas of the City that are impacted by the
16 amendments' environmental effects, including the area impacted by fireworks shows. Members of
17 Petitioner regularly uses areas and resources impacted by events that will be permitted pursuant to the
18 Second Amendment, without CEQA review, including, without limitation, for surfing, swimming,
19 kayaking, snorkeling, scuba diving, bird watching and enjoying nature. The quality of life of
20 Petitioner's members who live in or use areas impacted by events permitted under the Second
21 Amendment are negatively affected by such events, as well as by the City's interpretations alleged
22 herein. Neither the claims asserted nor the relief requested by Petitioner requires its members'
23 participation in this action.

24 54. Petitioner brings this action to enforce public rights and to compel compliance with
25 public duties that arise under CEQA. Other beneficially interested individuals would find it difficult or
26 impossible to seek vindication of the rights asserted. Petitioner's interests in this action are in no way
27 competitive or commercial, and are instead entirely consistent with public duties it asserts. Petitioner
28 has a continuing interest in, and a well-established commitment to, the public rights asserted. Petitioner

1 has repeatedly advised the City that approval of the Second Amendment pursuant to the CEQA
2 exemptions is unlawful.

3 **First Cause of Action**
4 **(Writ of Mandate (CEQA))**

5 55. Petitioner incorporates all prior allegations as if fully set forth herein.

6 56. The City must strictly comply with CEQA's procedural rules. *Citizens of Goleta Valley v.*
7 *Board of Supervisors* (1990) 52 Cal. 3d 553,564; *Environmental Protection Information Center v.*
8 *Johnson* (1985) 170 Cal.App. 3d 604, 622. The City has failed to do so.

9 57. The City's approval of the Second Amendment, SDMC sections 63.0103 and 63.0105,
10 was an approval of a discretionary project subject to CEQA.

11 58. The City prejudicially abused its discretion when it approved the Second Amendment
12 without conducting CEQA review, and in upholding its environmental determination that its approval
13 was exempt from CEQA pursuant to 14 CCR § 15061(b)(3) and §15301.

14 59. The City prejudicially abused its discretion by failing to review, consider, avoid and
15 mitigate the individual and cumulative impacts of the Second Amendment for those events and for
16 categories of events that will be approved ministerially and will never be subject to future CEQA
17 review.

18 60. The City prejudicially abused its discretion by failing to review, consider, avoid and
19 mitigate the individual and cumulative impacts of, and deferring CEQA review for, those events subject
20 to the discretionary Park Use Permit approval process until approval of the individual events. The City
21 thereby failed to conduct CEQA review at the earliest stage in the planning process, concurrent with its
22 approval of the Second Amendment.

23 61. Petitioner is informed and believes and thereon alleges that, unless enjoined and
24 restrained, the City will implement and apply the unlawful Second Amendment once it becomes
25 operative, and in doing so, will not require CEQA review for events permitted thereunder.

26 62. Petitioner is informed and believes and thereon alleges that the City's approval of the
27 Second Amendment and its interpretation of event attendance and capacity result in unlawful project
28 segmentation and piece-mealing.

63. Unless the City is enjoined and restrained, Petitioner and its members will suffer

1 irreparable harm as a result of the City’s maintenance, application and implementation of the Second
2 Amendment, and the City’s failure to review, avoid and mitigate individual and cumulative impacts of
3 its Second Amendment pursuant to CEQA.

4 64. Unless the City is enjoined and restrained, it will unlawfully approve events pursuant to
5 the Second Amendment, which will result in significant cumulative air and water quality, wildlife,
6 biological, traffic, and noise impacts which the City failed to consider in approving the Second
7 Amendment.

8 65. Petitioner has no adequate remedy at law with respect to City’s unlawful approval of the
9 amended SDMC and its policies and interpretations in approving events pursuant to the Second
10 Amendment.

11 66. Petitioner consequently petitions for a writ of mandate prohibiting and correcting the
12 City’s abuses of discretion, and compelling the City to comply with its mandatory duties under CEQA.
13 Petitioner has no plain, speedy or adequate remedy at law.

14 67. Petitioner also seeks preliminary and permanent injunctive relief prohibiting the City
15 from implementing or applying the Second Amendment unless and until it conducts the required CEQA
16 review.

17 **Second Cause of Action**
18 **(Declaratory Relief)**

18 68. Petitioner incorporates all prior allegations as if fully set forth herein

19 69. Petitioner is informed and believes and thereon alleges that the City’s interpretation of
20 event attendance for purposes of determining “capacity” in conjunction with its issuance of Park Use
21 Permits is arbitrary and capricious and contrary to law.

22 70. Petitioner is informed and believes and thereon alleges that the City unlawfully interprets
23 the capacity requirement of a firework show as solely the number of people required to set up and
24 conduct the firework display. This interpretation unlawfully results in piece-mealing and project
25 segmentation.

26 71. As a result of the City’s unlawful determination that the firework show capacity
27 requirement is confined only to the number of people required to set up and conduct the firework show,
28 the City does not consider the “whole of the action” in approving firework shows, and unlawfully

1 excludes the impacts of the tens of thousands of attendees from its review of firework shows.

2 72. The City’s interpretation of attendance for purposes of determining capacity is unlawful
3 and directly contradicts the Court’s ruling in *CERF I* regarding the scope and definition of the La Jolla
4 Cove fireworks show.

5 73 Petitioner is informed and believes and thereon alleges the City has never reviewed
6 firework shows pursuant to CEQA, and that due to the significant environmental impacts to noise,
7 traffic, air quality, water quality, and marine and wildlife that will result from these shows, no CEQA
8 exemptions are applicable, and a full Environmental Impact Report is required..

9 74. Petitioner is informed and believes and thereon alleges that the City will continue in its
10 pattern and practice of failing to apply CEQA to firework shows under the Second Amendment and
11 pursuant to its unlawful interpretation of “attendance” and “capacity” for firework shows.

12 75. Petitioner contends that the City’s policy of considering approval of the La Jolla Cove
13 fireworks show a “ministerial” approval, and its pattern and practice of failing to apply CEQA to the La
14 Jolla Cove firework show, are contrary to law, and that the La Jolla Cove firework show will always
15 exceed park capacity for the Ellen-Browning Scripps Park.

16 76. Petitioner is informed and believes and thereon alleges that the City disputes Petitioner’s
17 contentions alleged in the eight preceding paragraphs.

18 77. Petitioner is informed and believes and thereon alleges that, absent the relief sought
19 herein, the City will continue to maintain and implement its policy, pattern and practice of failing to
20 apply CEQA to fireworks shows, and its unlawful interpretation of “attendance” and “capacity”.

21 78. An actual controversy has arisen and now exists between Petitioner and the City as to the
22 City’s interpretation and determination of “attendance” and “capacity” for purposes of approving events
23 under the Second Amendment. Petitioner accordingly seeks judgment declaring that the City’s
24 interpretation and determination regarding “attendance” and “capacity” are unlawful; that the tens of
25 thousands of attendees at firework shows must be considered in determining whether a specific location
26 has capacity for an event and in order to consider the “whole of the action”; and that its application of
27 this pattern and practice to the Second Amendment is and/or will be unlawful and an abuse of discretion
28 and result in project segmentation and piece-mealing. Such a declaration is necessary and appropriate in

1 order that Petitioner may ascertain the right to have the City act in compliance with CEQA.

2 **Prayer for Relief**

3 WHEREFORE, Petitioner and Plaintiff respectfully requests:

4 1. A preremptory writ of mandate prohibiting the City from implementing or applying its
5 Second Amendment, amended SDMC sections 63.0103 and 63.0105, as unlawful and contrary to
6 CEQA, and requiring the City to rescind its approval of the Second Amendment and its determination
7 that approval of the Second Amendment was exempt from CEQA;

8 2. Preliminary and permanent injunctive relief restraining the City from implementing or
9 applying the Second Amendment, SDMC sections 63.0103 and 63.0105, and vacating the City's
10 approvals thereof;

11 3. Judgment declaring the City's interpretation of capacity and attendance of firework
12 shows is unlawful and contrary to the ruling in *CERF I*, results in project segmentation and piece-
13 mealing, and fails to consider the whole of the action for purposes of CEQA;

14 4. Attorneys' fees as allowed by law, including under Cal. Code Civ. Proc. § 1021.5;

15 5. Costs of suit; and

16 6. Such other relief as the Court the deems just and proper.

17
18 DATED: December 15, 2011

COAST LAW GROUP LLP

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20
21 Marco A. Gonzalez
22 Attorney for Petitioner and Plaintiff,
23 COASTAL ENVIRONMENTAL
24 RIGHTS FOUNDATION

25 //

26 //

EXHIBIT A



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December 2, 2011

Glenn Spitzer
Deputy City Attorney
San Diego City Attorney's Office
1200 3rd Avenue, 15th Floor
San Diego, CA 92101

Via Electronic Mail
gspitzer@sandiego.gov

Re: Notice of Intent to Sue/Settlement Offer
City Amendments to SDMC Sections 63.0102, 63.0105; CEQA Violations

Dear Mr. Spitzer:

As you know, Coast Law Group LLP represents the Coastal Environmental Rights Foundation (CERF). Please accept this correspondence as formal notification that CERF intends to file suit against the City of San Diego (City) for its approval of amendments to San Diego Municipal Code sections 63.0102 and 63.0105 at the November 14, 2011 City Council hearing, in violation of the California Environmental Quality Act (CEQA) and the City's Municipal Code. This letter is further sent in an effort to resolve the matter without litigation.

CERF's anticipated lawsuit will allege that the City's approval of the aforementioned Municipal Code amendments without conducting CEQA review constitutes an abuse of discretion.¹ The petition will be brought on the grounds that the City has inappropriately invoked the "common sense" and "existing facilities" CEQA exemptions. CERF has previously and extensively articulated its position, which will be the basis of the petition, on many occasions: (1) in its correspondence to the City on February 23rd, April 21st, and April 24th, and in its May 6th appeal of the environmental determination for the City's first amendments to the aforementioned Municipal Code sections; (2) in its appeal of the environmental determination on October 3rd and correspondence to the City on November 11th and 14th; and (3) in testimony at the two City Council hearings on October 11, 2011 and November 14, 2011.

The petition will also seek an award of attorneys' fees under Code of Civil Procedure section 1021.5. This letter provides notice of the same pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577. CERF recognizes the public interest would be best served if the City were to voluntarily comply with its statutory duties, repeal the proposed Municipal Code amendments, and conduct the required CEQA review in order to avoid the unnecessary expenses of litigation. If the City is interested in resolving this matter, please contact me immediately.

Sincerely,

COAST LAW GROUP LLP

Marco A. Gonzalez
Attorney for
Coastal Environmental Rights Foundation

¹ CERF also anticipates filing suit in federal court on Constitutional grounds.

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9 Attorneys for Petitioner,
10 COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 COASTAL ENVIRONMENTAL RIGHTS) Case No.
14 FOUNDATION, INC., a California non-profit)
15 public benefit corporation;)
16)
17 Petitioner,) **NOTICE OF COMMENCEMENT OF**
18) **ACTION PURSUANT TO THE**
19 v.) **CALIFORNIA ENVIRONMENTAL**
20) **QUALITY ACT**
21 CITY OF SAN DIEGO, a California public)
22 agency;) [Pub Res. Code § 21167.5]
23)
24 Respondent.)
25)
26)
27)
28)

1 TO RESPONDENT CITY OF SAN DIEGO:

2 Please take notice, on or before December 14, 2011, Coastal Environmental Rights Foundation
3 (CERF) intends to commence an action seeking a writ of mandamus, declaratory review, and injunctive
4 relief to overturn, set aside, void, and annul the City of San Diego (City)'s November 14, 2011 action to
5 amend its Park Use Ordinance, San Diego Municipal Code Sections 63.0103 and 63.0105. This action
6 will be based on the grounds that the City's approval of the Municipal Code amendments, and its
7 determination that this action was exempt from California Environmental Quality Act (CEQA) (Public
8 Resources Code Section 21000 *et seq*) was unlawful pursuant to CEQA and the City's Municipal Code.

9 CERF intends to seek attorneys' fees pursuant to C.C.P 1021.5.

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12 DATED: December 2, 2011

COAST LAW GROUP LLP



13
14 Marco A. Gonzalez
15 Attorney for Petitioner,
16 COASTAL ENVIRONMENTAL RIGHTS
17 FOUNDATION
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NOTICE OF EXEMPTION

(Check one or both)

TO: RECORDER/COUNTY CLERK
P.O. BOX 1750, MS A-33
1600 PACIFIC HWY, ROOM 260
SAN DIEGO, CA 92101-2422

FROM: CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
1222 FIRST AVENUE, MS 501
SAN DIEGO, CA 92101

OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET, ROOM 121
SACRAMENTO, CA 95814

PROJECT TITLE: PARK USE PERMIT ORDINANCE AMENDMENTS

PROJECT LOCATION-SPECIFIC: Citywide

PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

PROJECT DESCRIPTION: Amendments to the San Diego Municipal Code provisions relating to the issuance of permits for the use of the City's parks, plazas, beaches, and beach areas, to conform the Municipal Code to the current practice of issuing the permits when space is available, with limited exceptions. In addition, this ordinance revises the process for issuance of park use permits which also require a Special Event Permit, codifies the summer moratorium on the issuance of Special Event Permits in specific areas as well as the exceptions to the moratorium, and codifies the City's practice of not issuing park use permits in specified locations, on specific City holidays, except as provided. Lastly, the ordinance exempts City sponsored or City-recognized Park and Recreation Department advisory committee sponsored events from the permitting requirements of Chapter 6.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego City Council

NAME OF PERSON CARRYING OUT PROJECT: Stacey LoMedico, Park and Recreation Department Director, 202 C Street, 9th floor, San Diego, CA 92101, (619) 236-6643

EXEMPT STATUS: (CHECK ONE)

- MINISTERIAL (SEC. 21080(b)(1); 15268);
- DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a));
- EMERGENCY PROJECT (SEC. 21080(b)(4); 15269 (b)(c))
- CATEGORICAL EXEMPTION: 15301; EXISTING FACILITIES.
- STATUTORY EXEMPTIONS:
- GENERAL RULE (SEC. 15061(B)(3)).

REASONS WHY PROJECT IS EXEMPT: The proposed amendment to San Diego Municipal Code Section 63.0103 will conform the code to the current practices by the Park and Recreation Departments regarding the issuance of park use permits when there is park space available, unless otherwise excepted. This aspect of the proposed ordinance amendment is exempt per CEQA section 15301 (Existing Facilities) since it involves the operation of existing city park facilities. There is no expansion of the existing uses of city parks. A revised process is set forth for Park Use Permits which also need a Special Events Permit, requiring an applicant to reserve park space before a special event permit can be issued. The summer moratorium is codified for Special Event Permits in specified parks, and specified events are exempt from the moratorium. In addition a waiver process is established regarding the summer moratoria provisions. The proposed ordinance amendments reflect current practice and the establishment of additional processes do not have the potential for causing a significant impact on the environment. Therefore, there is no possibility that the activity may have a significant impact on the environment per section 15061(b)(3) of the CEQA Guidelines. In addition, in accordance with CEQA section 15004, CEQA review of park permitting decisions that are discretionary is premature, but will occur at a later date for those permits requiring CEQA review. Municipal Code section 63.0105 would be amended to codify the City's practice of exempting events from the permitting requirements of Chapter 6, Article 3 when the event is sponsored by the City, or by a City-recognized Park and Recreation Department advisory committee. Any Special Event Permitting requirements and processes would continue to apply.

LEAD AGENCY CONTACT PERSON: JEAN CAMERON

TELEPHONE: (619) 446-5379

IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?
 YES NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA

Revised September 19, 2011mjh

() YES () NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA



JEAN CAMERON/SENIOR PLANNER
CHECK ONE:

9/20/11
DATE

SIGNED BY LEAD AGENCY
 SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:

EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - December 02, 2010**

EVENT DATE: 12/03/2010 EVENT TIME: 01:30:00 PM DEPT.: C-74

JUDICIAL OFFICER:Linda B. Quinn

CASE NO.: 37-2010-00095062-CU-TT-CTL

CASE TITLE: COASTAL ENVIRONMENTAL RIGHTS FOUNDATION INC VS. CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Opposition - Other, 11/05/2010

Defendant/Real Party in Interest La Jolla Community Fireworks Foundation, Inc.'s Demurrer to First, Second, and Third Causes of Action in First Amended Verified Petition for Writ of Mandate is sustained in part and overruled in part.

The demurrer on the ground of mootness is overruled. There is an exception to the mootness doctrine where there are issues of public interest. (See, e.g. *NBC Subsidiary (KNBC-TV) v. Superior Court* (1999) 20 Cal.4th 1178, 1190.) The issue of the City's alleged interpretation and enforcement of the SDMC and application of CEQA are issues of public concern and the case should proceed. Further, the violations alleged are likely to occur since they are alleged to have occurred for the last 26 years. (FAP ¶1.)

The demurrer to third cause of action for declaratory relief is sustained without leave to amend. The court may sustain a demurrer to a cause of action that is "merely duplicative" and "adds nothing to the complaint by way of fact or theory". (*Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128, 1135.) The declaratory relief action is duplicative of the issues alleged in the first two causes of action and will be fully resolved prior to the court having a trial on the declaratory relief claim.

All requests for judicial notice are granted.
Defendant is to file an answer within the next ten days.

Defendant City of San Diego's Demurrer to Petitioner's First Amended Verified Petition for Writ of Mandate is sustained in part and overruled in part.

The demurrer to the first cause of action for violation of CEQA is overruled. CEQA applies to discretionary projects, as opposed to ministerial projects. (Pub. Res. Code §21080(a).) The City contends the issuance of the Park Use Permit is a ministerial function because it hinges on three issues: (1) is there park space available for the applicant; (2) did the applicant pay the application fee; and (3) did the applicant provide proof of insurance. In support of this argument, the City relies on a declaration of the Park and Recreation Director. This evidence is beyond the scope of the First Amended Petitioner

("FAP") and cannot be considered on demurrer in support of this argument. In addition, the San Diego Municipal Code allows discretion to deny the permit. For example, the Park Use Permit can be denied if the activity will unreasonably add congestion or interfere with vehicular or pedestrian traffic. (SDMC §63.0103(d) and (f); See also SDMC §§63.0105 and 63.0110.) Thus, based upon the applicable statute, the decision to issue the Park Use Permit is not purely ministerial because it grants the Park and Recreation Department leeway in determining whether to issue a permit. To the extent the City asserts the conditions to be considered are a simple checklist, the plain language of the SDMC does not support this argument. Regardless, "section 21080 extends CEQA's scope to hybrid projects of a mixed ministerial-discretionary character; doubt *whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.*" (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 271, citations omitted.) Therefore, the demurrer is overruled.

The City also argues any action or inaction with regard to the Special Events Permit is insufficient to support a CEQA claim on the grounds the controversy is not ripe. The City contends no discretion was exercised as to the Special Events Permit because no action was taken and because the application was not "deemed complete." The FAP alleges the City exercised discretion by not requiring a Special Events Permit. (FAP ¶46.) Where an agency had authority to require a discretionary permit but did not do so, the project is considered "discretionary". (See, e.g. *Friends of Westwood* at 273.)

With regard to the ripeness argument, as discussed above, the Park Use Permit is a discretionary act for the purposes of CEQA. Therefore, it is irrelevant whether the Special Events Permit was "deemed complete" for the purposes of CEQA.

The demurrer to the second cause of action for writ of mandate pursuant to CCP §1085 is overruled. Judicial review in traditional §1085 mandamus cases "is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] failed to follow the procedure and give the notices required by law." (*Strumsky v. San Diego County Employees Retirement Assoc.* (1974) 11 Cal.3d 28, 34, fn. 2.) CERF has alleged the City failed to comply with the law and abused its discretion by not requiring a Special Events Permit. (FAP ¶¶44-46, 63.) CERF has standing to assert this claim under the "public duty" exception to the beneficial interest rule.

The demurrer to third cause of action for declaratory relief is sustained without leave to amend. The court may sustain a demurrer to a cause of action that is "merely duplicative" and "adds nothing to the complaint by way of fact or theory". (*Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128, 1135.) The declaratory relief action is duplicative of the issues alleged in the first two causes of action and will be fully resolved prior to the court having a trial on the declaratory relief claim.

The demurrer on the ground of mootness is overruled. There is an exception to the mootness doctrine where there are issues of public interest. (See, e.g. *NBC Subsidiary (KNBC-TV) v. Superior Court* (1999) 20 Cal.4th 1178, 1190.) The issue of the City's alleged interpretation and enforcement of the SDMC and application of CEQA are issues of public concern and the case should proceed. Further, the violations alleged are likely to occur since they are alleged to have occurred for the last 26 years. (FAP ¶1.)

All requests for judicial notice are granted.
Defendant is to file an answer in the next ten days.

Defendant Promote La Jolla, Inc.'s unopposed Motion to be Dismissed is granted.

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 06/22/2011

TIME: 10:01:00 AM

DEPT: C-74

JUDICIAL OFFICER PRESIDING: Linda B. Quinn

CLERK: Mary Jean Barham

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2010-00095062-CU-TT-CTL** CASE INIT.DATE: 06/25/2010

CASE TITLE: **Coastal Environmental Rights Foundation Inc vs. City of San Diego**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

APPEARANCES

The Court has reviewed Real Party in Interest's Request for Statement of Decision and its Proposed Statement of Decision.

The Court issues the following Proposed Statement of Decision: The ruling issued on 5/27/2011 will serve as the Statement of Decision.

Linda B. Quinn

Judge Linda B. Quinn

JUN 20 2011

M. BARHAM, Deputy

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

COASTAL ENVIRONMENTAL RIGHTS)	CASE NO. 37-2010-00095062-CU-TT-CTL
FOUNDATION, INC., a California non-profit)	
public benefit corporation;)	PROPOSED JUDGMENT GRANTING
)	PETITIONER'S PETITION FOR
Petitioner,)	PEREMPTORY WRIT OF MANDATE
)	
v.)	ASSIGNED FOR ALL PURPOSES TO:
)	Hon. Linda B. Quinn
CITY OF SAN DIEGO, a California public)	
agency;)	Action filed: June 25, 2011
)	
Respondent.)	
<hr/>		
)	
LA JOLLA COMMUNITY FIREWORKS)	
FOUNDATION, INC., a California non-profit)	
public benefit corporation et al.;)	
)	
Real Parties-in-Interest.)	

The Petition in this action came on for hearing on May 27, 2011 in Department 74 of the above-entitled Court, located at 330 West Broadway, San Diego, California.

Attorneys Marco A. Gonzalez and Livia Borak appeared on behalf of Petitioner; Glenn Spitzer appeared on behalf of Respondent; and Jeffrey P. Carlin appeared on behalf of Real Party-in-Interest.

Having considered the Administrative Record of Proceedings and the briefs submitted by counsel, and the oral arguments of counsel, and the matter having been submitted for decision, the Court affirmed its tentative ruling by way of Minute Order dated May 27, 2011 (a copy of which is attached as

1 "Exhibit A" and is incorporated herein by reference), and thereby granted the Petition in this action.

2 THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that:

- 3 1. Judgment is entered in favor of Petitioner.
- 4 2. A peremptory writ of mandate shall be issued under seal of this court that is identical in
5 all material respects to the "[Proposed] Peremptory Writ of Mandate" attached hereto as
6 "Exhibit B".
- 7 3. Petitioner is awarded its costs of suit.
- 8 4. The Court retains jurisdiction to determine whether Petitioner is entitled to attorneys' fees
9 under Code of Civil Procedure § 1021.5 and if so in what amount.

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12 Date:

6-20-11

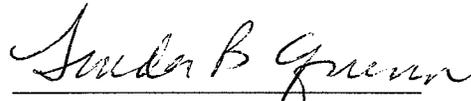

Hon. Linda B. Quinn
Judge of the Superior Court

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 05/27/2011

TIME: 11:00:00 AM

DEPT: C-74

JUDICIAL OFFICER PRESIDING: Linda B. Quinn

CLERK: Mary Jean Barham

REPORTER/ERM: Teri Smith CSR# 7949

BAILIFF/COURT ATTENDANT: Tom Neal

CASE NO: 37-2010-00095062-CU-TT-CTL CASE INIT.DATE: 06/25/2010

CASE TITLE: Coastal Environmental Rights Foundation Inc vs. City of San Diego

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Hearing on Petition

MOVING PARTY: Coastal Environmental Rights Foundation Inc

CAUSAL DOCUMENT/DATE FILED: Amended Petition, 09/10/2010

APPEARANCES

MARCO GONZALEZ, counsel, present for Petitioner(s).

Glenn Spitzer, counsel, present for Respondent(s).

Livia Borak present on behalf of petitioner. Jeffrey P. Carlin on behalf of RPI La Jolla Community Fireworks Foundation.

The Court hears oral argument and confirms the tentative ruling as follows:

Petitioner Coastal Environmental Rights Foundation's Petition for Writ of Mandate is granted.

The court begins by addressing the merits of the writ by analyzing the SDMC sections in effect at the time of the issuance of the 2010 permit. Petitioner contends the City abused its discretion by not requiring a Special Events Permit for the 2010 Event and, instead, only requiring a Park Use Permit. Special Events are defined in SDMC §22.4003, in pertinent part, as:

Special Event means:

...

(c) any other organized activity conducted by a Person for a common or collective use, purpose or benefit which involves the use of, or has an impact on, other public property or facilities and the provision of City public safety services in response thereto.

(d) Examples of Special Events include concerts, parades, circuses, fairs, festivals, block parties, community events, mass participation sports (such as, marathons and running Events, bicycle races or tours, -over-the-line tournaments), or spectator sports (such as, football, basketball and baseball games, golf tournaments or hydroplane or boat races).

(Emphasis added.)

The City asserts its interpretation of the term "organized activity" includes only events which include the

sale of food or alcohol. However, there is nothing within the definition of "Special Event" which contains this criteria. The City's interpretation is supported only by the declaration of Carolyn Wormser and not in any publication provided by the City. Further, there is no other evidence in the record of application of this standard to otherwise qualifying Special Events. Thus, the City's interpretation is not supported by the SDMC. Based upon the plain language of the statute, the 2010 Event qualifies as an "organized activity" for which a Special Event Permit should have been required. The event included a sponsor (94AR1018), attendance of 10,000 to 20,000 people (11AR128, 13AR163, 94AR1018), and includes a concert (94AR1020). Therefore, the City abused its discretion by not requiring a Special Events Permit.

The City does not dispute a Special Events Permit is a discretionary permit. CEQA applies to discretionary projects, as opposed to ministerial projects. (Pub. Res. Code §21080(a).) Since the court concludes a Special Events Permit was required, the 2010 Event is subject to CEQA.

Instead of requiring a Special Events Permit, the City issued a Park Use Permit. The City asserts a Park Use Permit is a ministerial act. "'Ministerial' describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision..." (14 CCR § 15369.) The SDMC allows discretion to deny the permit. For example, the Park Use Permit can be denied if the activity will unreasonably add congestion or interfere with vehicular or pedestrian traffic. (SDMC §63.0103(d) and (f); See also SDMC §§63.0105 and 63.0110.) Thus, based upon the applicable statute, the decision to issue the Park Use Permit is not purely ministerial because it grants the Park and Recreation Department leeway in determining whether to issue a permit. To the extent the City asserts the conditions to be considered are a simple checklist, the plain language of the SDMC does not support this argument. Regardless, "section 21080 extends CEQA's scope to hybrid projects of a mixed ministerial-discretionary character; doubt *whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.*" (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 271, citations omitted.) Therefore, decision to issue a Park Use Permit for the 2010 Event was a discretionary act, not ministerial.

On May 24, 2011, the City Council amended the SDMC sections in effect at the time the 2010 Event permit was issued. Respondents contend the newly adopted SDMC sections support a finding issuance of a Park Use Permit is ministerial. Section 63.0103(d) now states a Park Use Permit "shall issue if the activity will not conflict or interfere with any other event previously scheduled or interfere with the public's general use of the park, plaza, beach, or beach area." (Carlin Dec. Ex. 5.) Subsection j (formerly subsection k) states: The City Manager may make such other regulations as may be reasonably necessary for the enforcement of Section 63.0103. (*Id.*) The City contends the amended code does not allow the City discretion to shape an event and the permit must issue. However, based upon the plain language of the statutes, the City still has discretion in whether to issue a permit since the code allows for the City Manager to determine whether the event will interfere with the public's general use of the site. "Interfere" is not defined by the statutes and thus, since there is discretion for denial of a Park Use Permit, granting of the permit is subjective. Therefore, Petitioner's claims succeed under statutes in effect in 2010 and as amended.

All requests for judicial notice are granted. The evidentiary objections are overruled and motion to strike is denied.



Judge Linda B. Quinn

JUN 20 2011

M. BARHAM, Deputy

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

COASTAL ENVIRONMENTAL RIGHTS
FOUNDATION, INC., a California non-profit
public benefit corporation;

Petitioner,

v.

CITY OF SAN DIEGO, a California public
agency;

Respondent.

LA JOLLA COMMUNITY FIREWORKS
FOUNDATION, INC., a California non-profit
public benefit corporation; et al.

Real Parties-in-Interest.

CASE NO. 37-2010-00095062-CU-TT-CTL

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

ASSIGNED FOR ALL PURPOSES TO:
Hon. Linda B. Quinn

Action filed: June 25, 2011

TO RESPONDENT CITY OF SAN DIEGO AND TO THE CITY COUNCIL AND MAYOR OF THE
CITY OF SAN DIEGO, THEIR AGENTS, ATTORNEYS, EMPLOYEES, AND TO ALL PERSONS
ACTING ON THEIR BEHALF, OR THROUGH OR UNDER COLOR OF THEIR AUTHORITY:

1 Judgment having been entered in this action, ordering that a peremptory writ of mandate be
2 issued from this Court,

3 YOU ARE HEREBY DIRECTED AND COMMANDED, UPON RECEIPT OF THIS WRIT,
4 IN ACCORDANCE WITH YOUR RESPECTIVE OBLIGATIONS UNDER THE LAW:

5 1. To take the action required to comply with the California Environmental Quality Act
6 ("CEQA") prior to issuing any Park Use Permit or any other permit issued pursuant to San Diego
7 Municipal Code, Chapter 6, Article 3, Division 1. Pursuant to the Court's June 3, 2011 Order,
8 enforcement of this paragraph shall be stayed for a period of ninety ("90") days, until August 31, 2011,
9 at 8:30 a.m., at which time the City of San Diego ("City") shall advise the Court regarding the status of
10 the City's efforts to evaluate options to comply with the Court's May 27, 2011 Order granting petitioner
11 Coastal Environmental Rights Foundation's petition for writ of mandate, including compliance with
12 CEQA in connection with the City's issuance of Park Use Permits or any other permit issued pursuant to
13 San Diego Municipal Code, Chapter 6, Article 3, Division 1.

14 2. To take the action required to comply with the CEQA prior to issuing any Special Event
15 Permit or any other permit issued pursuant to San Diego Municipal Code, Chapter 2, Article 2, Division
16 40. Pursuant to the Court's June 3, 2011 Order, enforcement of this paragraph shall be stayed for a
17 period of ninety ("90") days, until August 31, 2011, at 8:30 a.m., at which time the City of San Diego
18 shall advise the Court regarding the status of the City's efforts to evaluate options to comply with the
19 Court's May 27, 2011 Order.

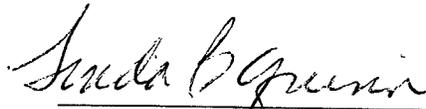
20 3. To make and file a return to this Writ on or before _____ 2011, as
21 directed by the Court at the August 31, 2011 hearing, setting forth any actions the City has taken or
22 intends to take to comply with the Court's May 27, 2011 Order and this Writ. Any objections to such
23 return shall be filed within 10 days of the service and filing of such return. The Court shall review the
24 return and any objections to the return, as well as make a decision as to the legal sufficiency of the
25 return, at a hearing to be held on _____, 2011. At the _____ hearing, the Court shall,
26 if necessary, set a date for the filing of a supplemental return which will address any remaining actions
27 required to comply with this Writ.

1 4. Under Public Resources Code section 21168.9(c), the Court does not direct the City to
2 exercise its lawful discretion in any particular way.

3 5. The Court retains jurisdiction over the City pursuant to Public Resources Code section
4 21168.9(b). Upon determination by this Court that the actions taken by the City comply in all respects
5 with the terms of this Peremptory Writ of Mandate, the Court shall discharge the writ.
6

7 **LET THE FOREGOING WRIT ISSUE.**

8
9 Dated: 6-20, 2011



10
11 THE HONORABLE LINDA B. QUINN
12 Judge of the San Diego Superior Court
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