

ORIGINAL

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FILED - Joshua Tree District
SUPERIOR COURT
SAN BERNARDINO COUNTY

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By Melina Stewart Deb Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO-JOSHUA TREE DISTRICT

CIVMS 1200585

12 SPRING VALLEY LAKE ASSOCIATION,

13 Petitioner and Plaintiff,

14 vs.

15 CITY OF VICTORVILLE and DOES 1 through
16 100,

17 Respondents and Defendants;

18 ROTHBART DEVELOPMENT CORPORATION;
19 and DOES 101 through 1,000,

20 Real Parties in Interest.

CASE NO. _____

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

BY FAX

21 Petitioner and Plaintiff SPRING VALLEY LAKE ASSOCIATION ("Petitioner") alleges as
22 follows:

23 **Parties**

24 1. Petitioner is a non-profit organization formed and operating under the laws of the State
25 of California. At least one of Petitioner's members resides in or near the City of Victorville, California,
26 and will be adversely affected by the proposed project that is the subject of this action.

27 2. Respondent and Defendant CITY OF VICTORVILLE ("Respondent") is a public agency
28 under Section 21063 of the Public Resources Code. Respondent is authorized and required by law to

1 hold public hearings, to determine whether the California Environmental Quality Act ("CEQA") applies
2 to development within its jurisdiction, to determine the adequacy of and certify environmental
3 documents prepared pursuant to CEQA, and to determine whether a project is compatible with the
4 objectives, policies, general land uses, and programs specified in the General Plan.

5 3. Petitioner is informed and believes and on that basis alleges that Rothbart Development
6 Corporation is a Real Party in Interest insofar as it is the applicant for the proposed project that is the
7 subject of this proceeding or has some other cognizable interest in the project.

8 4. The true names and capacities of the Respondents identified as DOES 1 through 100 and
9 Real Parties in Interest identified as DOES 101 through 1,000 are unknown to Petitioner, who will seek
10 the Court's permission to amend this pleading in order to allege the true names and capacities as soon
11 as they are ascertained. Petitioner is informed and believes and on that basis alleges that each of the
12 fictitiously named Respondents 1 through 100 has jurisdiction by law over one or more aspects of the
13 proposed project that is the subject of this proceeding and that each of the fictitiously named Real
14 Parties in Interest 101 through 1,000 either claims an ownership interest in the proposed project or has
15 some other cognizable interest in the proposed project.

16 **Background Information**

17 5. The Tamarisk Marketplace Walmart consists of a Zone Change, a Site Plan, a
18 Conditional Use Permit, a Parcel Map, and all associated entitlements ("Project").

19 6. A draft environmental impact report ("EIR") was prepared for this Project in November
20 2010.

21 7. On or around January 11, 2012, Respondents' planning commission conducted a public
22 hearing at which it voted in favor of recommending that Respondents' city council approve the Project,
23 including certifying the EIR. Petitioner submitted comments on the Project for that hearing.

24 8. On or around September 18, 2012, Respondents' city council approved the Project,
25 including certifying the final EIR. Respondents' approval of the Project was discretionary under
26 CEQA.

27 9. Petitioner opposes the Project and challenges certain actions taken by Respondents. In
28 particular, Petitioner seeks to invalidate Respondents' adoption of the EIR and related actions and

1 approvals with respect to the Project on the grounds that Respondents violated CEQA, the Planning and
2 Zoning Law, and other laws.

3 **Notice Requirements and Time Limitations**

4 10. A Notice of Determination for the Project was filed in the Office of the County Clerk
5 for the County of San Bernardino on or around September 18, 2012. Alternatively, no Notice of
6 Determination for the Project has been filed.

7 11. This proceeding is being commenced not more than 30 days after the Notice of
8 Determination's filing, as required by Public Resources Code Section 21167(c), if there was a filing;
9 and within the period of time otherwise prescribed for commencement of the proceeding if there was
10 no such filing.

11 12. Petitioner has caused a Notice of Commencement of Action to be served on
12 Respondents, as required by Public Resources Code Section 21167.5. A true and correct copy of the
13 Notice of Commencement of Action is attached to this pleading as Exhibit "A."

14 13. Petitioner will have caused a copy of this pleading to be served on the Attorney General
15 not more than ten days after the commencement of this proceeding, as required by Public Resources
16 Code Section 21167.7 and Code of Civil Procedure Section 388.

17 **Jurisdiction and Exhaustion of Administrative Remedies**

18 14. Petitioner seeks review by and relief from this Court under Public Resources Code
19 Section 21168 or 21168.5, as applicable; and Code of Civil Procedure Sections 1060 *et seq.* and 1084
20 *et seq.*, among other provisions of law.

21 15. Petitioner has satisfied each and every exhaustion-of-remedies requirement that must
22 be satisfied in order to maintain this proceeding. In particular, the violations of law alleged in this
23 proceeding were identified for Respondents orally or in writing by Petitioner or by one or more other
24 persons (if not by both) prior to the close of the public hearing on the Project, as required by Public
25 Resources Code Section 21177(a); by way of example and without limitation, Petitioner submitted
26 comment letters to Respondents' city council and planning commission prior to the close of the final
27 city council hearing approving the Project.

28

1 16. Respondents' conduct in approving the Project and purporting to comply with CEQA
2 and other laws constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they
3 failed to proceed in the manner required by law and made findings not supported by substantial
4 evidence.

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

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

17 **FIRST CAUSE OF ACTION:**
18 **Failure to Prepare Adequate Environmental Impact Report**
19 **(Against All Respondents and Real Parties in Interest)**

20 19. Paragraphs 1 through 18 are fully incorporated into this paragraph.

21 20. CEQA requires that every environmental impact report identify and analyze the
22 significant adverse environmental impacts of a proposed project, giving due consideration to both short-
23 term and long-term impacts, providing decision-makers with enough information to enable them to
24 make an informed decision with full knowledge of the likely consequences of their actions, and
25 providing members of the public with enough information to participate meaningfully in the project-
26 approval and environmental-review process. CEQA also requires that every environmental impact
27 report identify and analyze a reasonable range of alternatives to a proposed project. CEQA further
28 requires that every environmental impact report identify and analyze all reasonable mitigation measures
for a proposed project's significant adverse environmental impacts. In each respect, CEQA mandates

1 that the analyses contained in an environmental impact report and all decisions of the lead agency based
2 on the report be supported by substantial evidence in the administrative record.

3 21. The Project's EIR fails to provide adequate identification and analysis of the significant
4 adverse environmental impacts of the Project, including but not limited to the following: (i) traffic and
5 transportation; (ii) air quality; (iii) greenhouse gas emissions; (iv) urban decay; (v) water supply; (vi)
6 hydrology and water quality; and (vii) cumulative impacts. Further, neither the analysis of impacts in
7 the Project's EIR nor Respondents' certification of the EIR in this respect is supported by substantial
8 evidence in the administrative record.

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

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

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

21 25. As a result of Respondents' violations of CEQA, Petitioner has been harmed in that
22 Petitioner, the public, and the decision-makers who approved the Project were not fully informed about
23 the impacts of, mitigation measures for, and alternatives to the Project prior to its approval.

24 **SECOND CAUSE OF ACTION**
25 **Failure to Recirculate Environmental Impact Report**
(Against All Respondents and Real Parties in Interests)

26 26. Paragraphs 1 through 25 are fully incorporated into this paragraph.

27 27. CEQA requires that when significant new information is added to an EIR after public
28 notice is given of the availability of the draft EIR for public review, but before certification, the lead

1 agency must recirculate the EIR. Additionally, a lead agency must recirculate the EIR when it is so
2 fundamentally flawed that it precludes meaningful public review and comment.

3 28. Significant new information was added to the EIR after public notice was given of the
4 availability of the draft EIR. By way of example and without limitation, new hydrology reports were
5 prepared months after the public-comment period and even after the planning commission's hearing
6 but prior to certification, leaving the public and other agencies without the opportunity to evaluate the
7 new data and the validity of the conclusions drawn from them.

8 29. Respondents' failure to recirculate the EIR after significant new information was added
9 to the EIR effectively deprived the public of the opportunity to meaningfully review and comment on
10 the analysis of impacts resulting from the new information and constitutes a violation of CEQA.

11 30. As a result of Respondents' violations of CEQA, Petitioner has been harmed in that
12 Petitioner, the public, and the decision-makers who approved the Project were not fully informed about
13 the impacts of, mitigation measures for, and alternatives to the Project prior to its approval.

14 **THIRD CAUSE OF ACTION:**
15 **Failure to Make Adequate Written Findings Regarding Project's Significant Impacts**
16 **(Against All Respondents and Real Parties in Interests)**

17 31. Paragraphs 1 through 30 are fully incorporated into this paragraph.

18 32. CEQA requires every lead agency to identify all adverse environmental impacts of a
19 proposed project that will be significant and determine whether such impacts can be avoided or
20 mitigated. Where significant effects on the environment would occur, the project cannot be approved
21 unless, pertinent to this project, the public agency makes findings that changes or alterations have been
22 incorporated into the project which would mitigate or avoid the project's significant effects on the
23 environment.

24 33. Respondents approved the Project based on one or more written findings that significant
25 effects on the environment would occur and could be avoided or mitigated, but there is not substantial
26 evidence in the administrative record to support such findings; by way of example and without
27 limitation, the EIR states that the Project will have significant traffic and transportation impacts. Yet,
28 the only mitigation measures considered involve the payment of development fees toward infrastructure

1 improvements, a measure that does not reduce traffic. In fact, no mitigation measures were aimed at
2 reducing traffic even though feasible mitigation measures were available.

3 34. Respondents also failed to make all required written findings regarding the Project's
4 impacts; by way of example and without limitation, there is no clear baseline for the greenhouse gas
5 emission findings in the Climate Change Analysis. The EIR states that the Project will, among other
6 things, result in an 80-percent reduction in greenhouse gas emissions below 1990 levels by 2050
7 because of its sustainable design features. However, the property is currently vacant and there is no
8 explanation for how a project that emits greenhouse gas emissions between 16,381 and 17,312 CO₂e
9 per year would reduce greenhouse gas emissions to a level less than that which exists on a vacant parcel
10 of land.

11 35. Respondents' approval of the Project based on one or more written findings unsupported
12 by evidence in the administrative record, and Respondents failure to make all written findings required
13 regarding the Project's impacts, constitute multiple violations of CEQA.

14 36. As a result of Respondents' violations of CEQA, Petitioner has been harmed in that
15 Petitioner and the public will have to endure significant, avoidable, unmitigated adverse environmental
16 impacts without there being any (or there being insufficient) benefits to outweigh such impacts.

17 **FOURTH CAUSE OF ACTION:**
18 **Violation of the Subdivision Map Act--Government Code Section 66473.5**
(Against All Respondents and Real Parties in Interest)

19 37. Paragraphs 1 through 36 are fully incorporated into this paragraph.

20 38. The Project was approved by Respondents without a finding by their legislative body
21 that the parcel map contemplated by the Project is consistent with the General Plan and any applicable
22 specific plan under Government Code Section 66473.5. Alternatively, Respondents approved the parcel
23 map based on a finding that it is consistent with the General Plan and any applicable specific plan under
24 Section 66473.5, but the finding was not supported by sufficient evidence in the record; by way of
25 example and without limitation:

26 A. Implementation Measure 7.1.1.4 of Respondents' General Plan requires the
27 generation of electricity on-site to the maximum extent feasible.

1 B. The conditions of approval for this Project do not require the generation of
2 electricity on-site to the maximum extent feasible.

3 C. Respondents did not make any findings that generating electricity on-site would
4 be infeasible.

5 39. Respondents' failed to make the findings described in Government Code Section
6 66473.5. Alternatively, Respondents made the findings but failed to support them with sufficient
7 evidence in the record.

8 40. Petitioner, its members, and other members of the public have been harmed as a result
9 of Respondents' violations of Government Code Section 66473.5 because they have been denied the
10 benefits and protections provided by compliance with this statute.

11 **FIFTH CAUSE OF ACTION:**
12 **Violation of the Subdivision Map Act—Government Code Section 66474**
13 **(Against All Respondents and Real Parties in Interest)**

14 41. Paragraphs 1 through 40 are fully incorporated into this paragraph.

15 42. Government Code Section 66474 provides that a legislative body shall deny approval
16 of a parcel map if it finds the proposed map is not consistent with the applicable General Plan.
17 Respondents could not approve the parcel map absent findings that it was consistent with the General
18 Plan.

19 43. Respondents failed to make the findings required for approval under Government Code
20 Section 66474.

21 44. Additionally and/or alternatively, the Project was approved by Respondents based on
22 findings under the various sub-parts of Government Code Section 66474 that were not supported by
23 sufficient evidence in the record.

24 45. In approving the Project, Respondents were legally obligated to support their findings
25 under the various sub-parts of Government Code Section 66474 with sufficient evidence in the record.

26 46. Respondents' approval of the Project based on its failure to make findings required for
27 approval, or based on its findings under the various sub-parts of Government Code Section 66474 that
28 were not supported by sufficient evidence in the record, constitutes violations of Government Code
Section 66474; by way of example and not limitation:

1 A. Implementation Measure 7.1.1.4 of Respondents' General Plan requires the
2 generation of electricity on-site to the maximum extent feasible.

3 B. The conditions of approval for this Project do not require the generation of
4 electricity on-site to the maximum extent feasible.

5 C. Respondents did not make any findings that generating electricity on-site would
6 be infeasible.

7 47. Petitioner, its members, and other members of the public have been harmed as a result
8 of Respondents' violations of Government Code Section 66474 because they have been denied the
9 benefits and protections provided by compliance with this statute.

10 **SIXTH CAUSE OF ACTION**
11 **Violation of Planning and Zoning Law – Government Code Section 65860**
12 **(Against all Respondents and Real Parties in Interest)**

13 48. Paragraphs 1 through 47 are fully incorporated into this paragraph.

14 49. Government Code Section 65860 provides that all city zoning ordinances shall be
15 consistent with the General Plan. A zoning ordinance is consistent with the General Plan if the various
16 land uses authorized by the ordinance are compatible with the objectives, policies, general land uses,
17 and programs specified in the plan.

18 50. In approving the Project, Respondents' city council adopted a zoning ordinance to re-
19 zone the Project site from C-A (administrative offices) to C-2 (general commercial).

20 51. The zoning ordinance for the Project authorizes land uses that are inconsistent with the
21 General Plan; by way of example and without limitation:

22 A. Implementation Measure 7.1.1.4 of Respondents' General Plan requires the
23 generation of electricity on-site to the maximum extent feasible.

24 B. The conditions of approval for the Project do not require the generation of
25 electricity on-site to the maximum extent feasible.

26 C. Respondents did not make any findings that generating electricity on-site would
27 be infeasible.

28 52. Respondents' approval of a zoning ordinance that is inconsistent with the General Plan
is a violation of the Planning and Zoning Law.

1 53. Petitioner, its members, and other members of the public have been harmed as a result
2 of Respondents' violations of the Planning and Zoning Law because they have been denied the benefits
3 and protections provided by compliance with this statute.

4 **Prayer**

5 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
6 Respondents and Real Parties in Interest (and any and all other parties who may oppose Petitioner in
7 this proceeding):

8 A *On the first, second, and third causes of action:*

9 1. A judgment determining or declaring that Respondents failed to fully comply
10 with CEQA as it relates to the Project and that the EIR's certification was illegal in at least some
11 respect, rendering the EIR null and void;

12 2. A judgment determining or declaring that Respondents failed to fully comply
13 with CEQA as it relates to the Project and that its approval (including all associated entitlements) was
14 illegal in at least some respect, rendering the approval null and void;

15 3 A judgment determining or declaring that Respondents must prepare an EIR and
16 certify it fully in accordance with CEQA before final approval of the Project may be granted;

17 4. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any
18 and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from
19 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
20 Respondents comply with all applicable provisions of CEQA, as determined by the Court; and

21 5. Any and all other relief that may be authorized by CEQA but is not explicitly or
22 specifically requested elsewhere in this Prayer.

23 B. *On the fourth, fifth, and sixth causes of action:*

24 1. A judgment determining or declaring that Respondents failed to comply fully
25 with the Government Code as it relates to the Project and that its approval (including all associated
26 entitlements) was illegal in at least some respect, rendering the approval null and void;

27 2. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any
28 and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from

1 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
2 Respondents comply with all applicable provisions of the Government Code, as determined by the
3 Court; and

4 3. Any and all other relief that may be authorized by the Government Code but is
5 not explicitly or specifically requested elsewhere in this Prayer.

6 C. *On all causes of action:*

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

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

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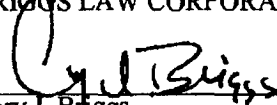
11 Date: October 12, 2012.

Respectfully submitted,

12 BRIGGS LAW CORPORATION

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14 By:


Cory J. Briggs

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Attorneys for Petitioner and Plaintiff Spring Valley
Lake Association

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