

JUL 15 2020

Sylvia Guajardo

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6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN BERNARDINO – SAN BERNARDINO DISTRICT
9

10
11 CIV DS 2013558

11 UPLAND COMMUNITY FIRST, and DOES 1 through
12 10,

13 Petitioners and Plaintiffs,

14 vs.

15 CITY OF UPLAND, and DOES 11 through 100,

16 Respondents and Defendants,

17 BRIDGE DEVELOPMENT PARTNERS, LLC, and
18 DOES 101 through 1,000,

Respondents and 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
AND OTHER LAWS

19 Petitioner and Plaintiff UPLAND COMMUNITY FIRST ("Petitioner") alleges as follows:

20 Parties

21 1. Petitioner is a non-profit, social-advocacy organization formed and operating under the laws
22 of the State of California. At least one of Petitioner's members resides in or near the City of Upland,
23 California, and has an interest in ensuring open, accountable, responsive government and in protecting the
24 region's environment.

25 2. Respondent and Defendant CITY OF UPLAND ("Respondent") is a public agency under
26 Section 21063 of the Public Resources Code. Respondent is authorized and required by law to hold public
27 hearings to determine whether the California Environmental Quality Act ("CEQA") applies to development
28 within its jurisdiction, to determine the adequacy of and certify environmental documents prepared pursuant



1 to CEQA, and to determine whether a project is compatible with the objectives, policies, general land uses,
2 and programs specified in Respondent's General Plan.

3 3. Petitioner is informed and believes and on that basis alleges that BRIDGE DEVELOPMENT
4 PARTNERS, LLC, is a Real Party in Interest insofar as it is identified by Respondent as the applicant for the
5 proposed project that is the subject of this proceeding.

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

14 **Background Information**

15 5. On or around April 1, 2020, Respondent's city council approved a mitigated negative
16 declaration ("MND"), mitigation monitoring program, site plan, design review, lot line adjustment, and
17 development agreement, for a proposed development located northeast of Central Avenue and Foothill
18 Boulevard in the City of Upland (APNs 1006-351-09, 1006-351-10, 1006-572-11, 1006-551-12, 1006-
19 551-22, and 1006-574-10) (the "Project"). Approval of the Project will result in the construction and
20 operation of a 201,096 square foot warehouse/parcel delivery service building and office/retail space, located
21 on 50.25 acres. Respondent's approval of the Project was discretionary under CEQA.

22 6. As a result of stay-at-home orders related to COVID-19, the city council meeting on the
23 Project occurred via teleconference despite one city councilwoman's motion to delay the meeting (which was
24 rejected by the other councilmembers) to encourage full public participation. The decision to conduct the
25 meeting by teleconference, along with Respondent's actions leading up the meeting, deprived the public of a
26 full and fair opportunity to be heard on the Project. By way of example and not limitation:

27 A. The Notice of Public Hearing for the Project (the "Notice") informs the public that
28 anyone who wishes to comment on the Project "may do so in writing between the date of this notice and the

1 public hearing; or, may appear and be heard at [Upland City Hall].” There is nothing in the Notice regarding
2 meeting by teleconference.

3 B. Contrary to the Notice, the public was unable to attend the meeting as it was held by
4 teleconference. In order to comment on the Project, any member of the public had to register two hours in
5 advance by sending an email to Respondent’s City Clerk containing the subject line “PUBLIC COMMENT,”
6 including the caller’s name and telephone number so that the caller could be telephoned when it was his or her
7 turn to speak at the meeting.

8 C. Among other things, people who registered to comment on the Project were never
9 telephoned to comment; the teleconference connection was choppy and participants’ comments cut in and out
10 during the meeting; and at least one person who wanted to provide visual aids regarding the Project’s traffic
11 impacts was not given the opportunity to do so.

12 D. The decision to hold the meeting by teleconference assumed that everyone who
13 opposed the Project had telephone or internet service to participate in the meeting, when in fact at least one
14 person who would have participated in person was precluded from doing so based on the technological
15 barriers imposed by Respondents..

16 E. The decision to hold the meeting in the midst of a pandemic ensured significantly
17 decreased public participation, which is at odds with the well-established public policy of full government
18 transparency and citizen participation in government decision-making.

19 7. Petitioner opposes the Project and challenges certain actions taken by Respondent. In
20 particular, Petitioner seeks to invalidate the approvals with respect to the Project on the grounds that
21 Respondent has violated CEQA, the Planning and Zoning Law (“PZL”), the Upland Municipal Code
22 (“UMC”), and Petitioner’s fair hearing and due process rights.

23 **Notice Requirements and Time Limitations**

24 8. This proceeding was commenced not more than 30 days after the notice authorized by Public
25 Resources Code Section 21152(a) was filed (if such a notice was filed).

1 9. Petitioner has caused a Notice of Commencement of Action to be served on Respondent, as
2 required by Public Resources Code Section 21167.5. A true and correct copy of the Notice of
3 Commencement of Action is attached to this pleading as Exhibit "A."

4 10. Petitioner will have caused a copy of this pleading to be served on the Attorney General not
5 more than ten days after its filing, as required by Public Resources Code Section 21167.7 and Code of Civil
6 Procedure Section 388.

7 **Jurisdiction and Exhaustion of Administrative Remedies**

8 11. Petitioner seeks review by and relief from this Court under Public Resources Code Section
9 21168 or 21168.5, as applicable; and Code of Civil Procedure Sections 1060 *et seq.* and 1084 *et seq.*,
10 among other provisions of law.

11 12. Petitioner exhausted administrative remedies to the extent required by law; by way of example,
12 and without limitation, at least one of Petitioner's members participated in the teleconference meeting and
13 voiced its opposition to the Project.

14 13. Respondent's conduct in approving the Project without complying with CEQA, the PZL, the
15 UMC, and Petitioner's due process and fair hearing rights constitutes a prejudicial abuse of discretion because,
16 as alleged in this pleading, it failed to proceed in the manner required by law and made findings not supported
17 by substantial evidence.

18 14. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since its
19 members and other members of the public will suffer irreparable harm as a result of Respondent's violations
20 of CEQA, the PZL, the UMC, and other laws. Respondent's approval of the Project also rests on its failure
21 to satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Respondent is
22 permitted or required by law to exercise its discretion in approving projects under those laws, it remains under
23 a clear, present, ministerial duty to exercise its discretion within the limits of and in a manner consistent with
24 those laws. Respondent has had and continues to have the capacity and ability to approve the Project within
25 the time limits of and in a manner consistent with those laws, but Respondent has failed and refuses to do so
26 and has exercised its discretion beyond the limits of and in a manner that is not consistent with those laws.

27 15. Petitioner has a beneficial right and interest in Respondent's fulfillment of all its legal duties, as
28 alleged in this pleading.

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

16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

17. The Project does not comply with all applicable laws. By way of example and without limitation (including alternative theories of liability):

A. The Project violates CEQA. Specifically:

i. Whenever a project proposed to be carried out or approved by a lead agency has the potential to cause an adverse environmental impact, CEQA prohibits the agency from relying on a negative declaration. Instead, CEQA requires the preparation of an environmental impact report to identify and analyze the significant adverse environmental impacts of a proposed project, giving due consideration to both short-term and long-term impacts, providing decision-makers with enough information to enable them to make an informed decision with full knowledge of the likely consequences of their actions, and providing members of the public with enough information to participate meaningfully in the project's approval and environmental-review process. CEQA also requires every environmental impact report to identify and analyze a reasonable range of alternatives to a proposed project. CEQA further requires every environmental impact report to identify and analyze all reasonable mitigation measures for a proposed project's significant adverse environmental impacts. An environmental impact report must be prepared for a proposed project if there is a fair argument, supported by substantial evidence in the administrative record, that the project may have an adverse environmental impact; stated another way, a negative declaration may not be used unless the lead agency determines with certainty that there is no potential for the project to have an adverse environmental impact.

ii. There is a fair argument that the Project will have significant environmental impacts. By way of example and without limitation, the administrative record is replete with evidence that the Project will result in significant traffic, air quality, and noise impacts, among other environmental impacts. The Project will also result in cumulative impacts unaccounted for in the MND.

iii. The Project's significant direct, indirect, or cumulative adverse impacts on the environment give rise to Respondent's legal obligation to prepare an environmental impact report.

1 iv. Respondent's failure to prepare an environmental impact report is a violation
2 of CEQA.

3 v. As a result of Respondent's violation of CEQA, Petitioner has been harmed
4 insofar as Petitioner, its members, other members of the public, and the responsible decision-makers were not
5 fully informed about the potential adverse environmental impacts of the this Project, and insofar as Petitioner,
6 its members, and other members of the public did not have an opportunity to participate meaningfully in the
7 analysis of such impacts prior to approval of the Project.

8 B. The Project violates the PZL. In particular:

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

12 ii. As a result of Respondent's violation of the PZL, Petitioner, its members, and
13 the general public have been harmed insofar as Respondent has approved a project that is inconsistent with
14 the land-use rules designed to protect the public from harmful development.

15 C. The Project violates the UMC. By way of example and not limitation:

16 i. The UMC permits the approval of a development agreement only if it will
17 provide clear and substantial benefits to the City and its residents; complies with applicable policies and
18 regulations set forth in the Zoning Ordinance, other City ordinances, the General Plan and any other applicable
19 community or specific plan; complies with Government Code Section 65864; will promote the public health,
20 safety, and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or
21 improvements in the vicinity of the subject project; will be compatible with the uses allowed in, and the
22 regulations that apply to, the zone in which the subject property is located; will not cause adverse effects to
23 the orderly development of property or the preservation of property values in the City; will further important
24 Citywide goals and policies that have been officially recognized by the City Council; and will provide the City
25 with important, tangible benefits beyond those that may be required by the City through project conditions of
26 approval. The Project's development agreement authorizes land uses and activities that are in some way
27 inconsistent with the requirements of the UMC. Additionally and alternatively, Respondent failed to make the
28 findings required to support approval of the Project's development agreement.

1 ii. As a result of Respondent's violation of the UMC, Petitioner, its members,
2 and the general public have been harmed insofar as Respondent has approved a project that is inconsistent
3 with the land-use rules designed to protect the public from harmful development.

4 18. There is currently a dispute between Petitioner and Respondent over the Project's legal force
5 and effect. Petitioner contends that the Project has no legal force or effect because it violates CEQA, the PZL,
6 the UMC, and/or one or more other applicable laws. Respondent disputes Petitioner's contention. The
7 parties therefore require a judicial determination of the Project's legal force and effect (if any).

8 **SECOND CAUSE OF ACTION:**
9 **Violation of Due Process and Fair-Hearing Rights**
 (Against All Respondents)

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

11 20. Basic legal principles governing public hearings require that all participants be provided a fair
12 hearing and that their right to due process not be violated. An elementary and fundamental requirement of due
13 process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested
14 parties of the pendency of the action and a fair opportunity to present their objections. Despite these rules,
15 Petitioner did not receive a fair hearing on the Project. By way of example and without limitation:

16 A. The Notice failed to mention the hearing on the Project was by teleconference.

17 B. It was unduly burdensome to participate in the hearing on the Project.

18 C. People who registered to comment on the Project were never telephoned to comment;
19 the teleconference connection was choppy and participants' comments cut in and out during the meeting; and
20 at least one person who wanted to provide visual aids regarding the Project's traffic impacts was not given
21 the opportunity to do so.

22 D. The decision to hold the meeting by teleconference assumed that everyone who
23 opposed the Project had telephone or internet service to participate in the meeting, when in fact at least one
24 person who would have participated in person was precluded from doing so based on the technological
25 barriers imposed by Respondents.

26 E. The decision to hold the meeting in the midst of a pandemic ensured significantly
27 decreased public participation, which is at odds with the well-established public policy of full government
28 transparency and citizen participation in government decision-making.

1 21. Petitioner's fair hearing and due process rights were violated as a result of Respondent's failure
2 to provide a fair hearing on the Project.

3 22. As a result of Respondent's violations of Petitioner's fair-hearing and due-process rights,
4 Petitioner has been harmed insofar as Petitioner, its members, and the general public have been denied the
5 benefits and protections provided by compliance with the law governing Petitioner's fair hearing and due
6 process rights.

7 **Prayer**

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

11 A. A judgment or other appropriate order determining or declaring that Respondents failed to fully
12 comply with CEQA and/or one or more other applicable laws as they relate to the Project and that there must
13 be full compliance therewith before final approval and implementation of the Project may occur;

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

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

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

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

27 F. Any and all further relief that this Court may deem appropriate.
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Dated: April 23, 2020.

Respectfully submitted,

BRIGGS LAW CORPORATION

By:



Anthony N. Kim

Attorney for Plaintiff and Petitioner Upland
Community First

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

Exhibit "A"

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 909-949-7121

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

City of Upland

Recipient: Keri Johnson, City Clerk

Recipient's fax number: (909) 931-4123

Date: 4-27-2020 BLC File: 2028.00

Total Pages (including cover sheet): 2

Sender: ANTHONY N. KIM

Sender's fax number: 619-515-6410 909-949-7121

Message: PLEASE SEE ATTACHED

NOTICE OF COMMENCEMENT OF
ACTION.

Original Document to Follow? Yes No

CONFIDENTIALITY

The document accompanying this facsimile transmission contains information that may be either confidential, legally privileged, or both. The information is intended only for the use of the recipient(s) named on this cover sheet. If not done by or at the direction of the recipient(s), disclosure, copying, distribution, or reliance on any of the contents of this transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone so that we can arrange for its return at no cost to you.

BRIGGS LAW CORPORATION

*San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110*

Telephone: 619-497-0021

Please respond to: Inland Empire Office

*Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786*

*Telephone: 909-949-7115
Facsimile: 909-949-7121*

BLC File(s): 2028.00

27 April 2020

City Clerk Keri Johnson
City of Upland
460 North Euclid Avenue
Upland, CA 91786

Re: Notice of Commencement of Action

Dear City Clerk:

I represent Upland Community First and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Bernardino County Superior Court against your agency. The action will challenge your agency's approval of the Bridge Development Project (approved on or around April 1, 2020) on the grounds that the approval violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*), the Planning and Zoning Law, the Upland Municipal Code, and the right to a fair administrative hearing. The action may also challenge your agency's approval of the Project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Anthony N. Kim



VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

I have read the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a member of Upland Community First

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on April 24, 20 20, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Steve Bierbaum Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

on in this action by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL I deposited such envelope in the mail at California. The envelope was mailed with postage thereon fully prepaid. As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at California. (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG) (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)