

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL

MINUTE ORDER

DATE: 06/03/2016

TIME: 11:28:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2013-00077213-CU-TT-CTL** CASE INIT.DATE: 11/25/2013

CASE TITLE: **San Diego Navy Broadway Complex Coalition vs California Coastal Commission**  
[E-FILE]

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

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**APPEARANCES**

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See attached Statement of Intended Decision

The Status Conference (Civil) is scheduled for 06/30/2016 at 03:00PM before Judge Joel R. Wohlfeil.

*Joel R. Wohlfeil*

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Judge Joel R. Wohlfeil

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**F I L E D**  
Clerk of the Superior Court

JUN 3 2016

By: J. CERDA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

SAN DIEGO NAVY BROADWAY  
COMPLEX COALITION; and DOES 1  
through 10,

Plaintiffs and Petitioners,

v.

CALIFORNIA COASTAL COMMISSION;  
and DOES 10 through 100,

Defendants and Respondents.

SAN DIEGO UNIFIED PORT DISTRICT;  
and DOES 101 through 1,000,

Defendants and Real Parties in Interest.

Case No. 37-2013-00077213-CU-TT-CTL  
*consolidated with* Case No. 37-2014-00006987-  
CU-TT-CTL

**STATEMENT OF INTENDED DECISION**

Hon. Joel R. Wohlfeil  
Dept. 73

This case came on regularly for trial on April 19 – 21, 2016 before the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiff / Petitioner San Diego Navy Broadway Complex Coalition (“Plaintiff” or “Petitioner”) was represented by Cory J. Briggs and Kelly E. Mourning of Briggs Law Corporation; Defendant California Coastal Commission (“CCC”) was represented by Jamee Jordan Patterson of Office of the Attorney General, State of California; Defendant San Diego Unified Port District (“Port District”) was represented by Michael M. Hogan of Hogan Law APC; Defendant / Intervenor City of San Diego (“City”) was represented by Glenn T. Spitzer of Office of

1 the City Attorney; and Defendant / Intervenor One Park Boulevard, LLC (“One Park”) was  
2 represented by Taiga Takahashi of Lathan & Watkins, LLP. The Court, after hearing testimony of  
3 witnesses (Don Wood, Diane Coombs, Jennifer Torres, John Decker, Darren Greenhalgh and Todd  
4 Hersperger (through his deposition taken on March 31, 2016)), receiving exhibits into evidence  
5 (Exhibits “102, 103, 106 – 125, 128 – 130, 132, 135 – 142, 144, 145, 150, 151, 155, 159 – 161,  
6 164, 167 – 171, 173, 174, 177, 179, 180, 184, 186, 196, 204, 211 and 215 – 220” – many of which  
7 were admitted for the non-hearsay purpose of notice to Plaintiff of facts that could have caused  
8 Plaintiff to recognize that the project’s proponents were City and One Park), reading trial briefs,  
9 hearing arguments of counsel, reading post-trial closing argument briefs (ROA #'s 266 and 272 –  
10 274), and good cause appearing therefore, hereby issues this Statement of Decision (“SOD”).

11  
12 **Introduction**

13  
14 Plaintiff challenges CCC's approval of the Port Master Plan Amendment (“PMPA”) for the  
15 San Diego Convention Center Phase III Expansion and Expansion Hotel Project (“project”).

16 In its verified First Amended Complaint (“FAC”) (ROA # 18), like in its verified  
17 Complaint (ROA # 1), Plaintiff alleges, in pertinent part, that Port District “was the proponent of  
18 the project that is the subject of this lawsuit when the project was presented to the Coastal  
19 Commission for approval.” See par. 3 of the FAC.

20 In its Answer (ROA # 25), CCC admits “the allegations of paragraph 3” in Plaintiff’s FAC.

21 In its Answer (ROA # 27), Port District denies the allegations in the third paragraph of  
22 Plaintiff’s FAC.

23 Defendants assert, in unison, that Plaintiff knew that City and One Park were the proponents  
24 or applicants (which, at the start of trial, counsel agreed are used interchangeably) of the project and  
25 failed to timely name them as Defendants in the lawsuit (Port District’s brief (ROA # 222) at page  
26 1; City’s brief (ROA # 226) at page 1; One Park’s brief (ROA # 236) at page 7; and CCC’s brief  
27 (ROA # 221) at page 2 “The Commission also joins in the City's, One Park's and Port's trial  
28 briefs.”)

1 Plaintiff disagrees and responds that it, through its board members and counsel, were  
2 “genuinely ignorant” of City and One Park’s alleged status as the proponents of the project, and  
3 therefore, entitled to substitute City as Doe 101 Defendant (ROA # 93) and One Park as Doe 102  
4 Defendant (ROA # 94).

5 In view of this threshold conflict, the Court bifurcated the trial to first resolve Defendants’  
6 statute of limitations defense, with the merits of Plaintiff’s claim and Defendants’ remaining  
7 defenses to be tried, if necessary, in the next phase.

8  
9 **Operative Pleadings**

10  
11 On November 25, 2013 – less than sixty (60) days after CCC’s “governing body  
12 unanimously certified the PMPA as being consistent with the Coastal Act and with the California  
13 Environmental Quality Act (“CEQA”)” - Plaintiff filed its original Complaint (ROA # 1, par. 8).

14 On January 28, 2014, Plaintiff filed its FAC. The FAC challenges the “San Diego Unified  
15 Port District Resolution no. 2012-135 certifying that certain environmental impact report (“EIR”)  
16 for the proposed Port Master Plan Amendment No. 45 (“PMPA”) purporting, in general terms, to  
17 allow the Port’s issuance of one or more coastal development permits covering Phase III of the San  
18 Diego Convention Center Expansion and the nearby Hilton Hotel Expansion; and Resolution no.  
19 2012-136 approving the PMPA itself.” Par. 5. The FAC includes a single cause of action alleging  
20 Defendants violated the California Coastal Act. Par’s 18 – 24.

21 On February 13, 2014, CCC filed its Answer to Plaintiff’s FAC.

22 On March 11, 2014, Port District filed its Answer to Plaintiff’s FAC.

23 On February 18, 2015, One Park filed a Complaint in Intervention (ROA # 79) and asserts,  
24 at par. 4, that “... One Park and the City of San Diego (“City”) are the sole Project applicants.” In  
25 its Answer to Plaintiff’s FAC, One Park asserts a Fourth Affirmative Defense as follows: “The  
26 Complaint and each purported cause of action alleged therein are barred by the statute of limitations  
27 set forth in Public Resources Code section 21167, section 30801 and / or section 30802.”  
28

1 On February 18, 2015, City filed a Complaint in Intervention (ROA # 82) and asserts, at  
2 par. 4, that "... the City and the developer, One Park Boulevard, LLC ("One Park") are the sole  
3 Project applicants." In its Answer to Plaintiff's FAC, City asserts a Fourth Affirmative Defense as  
4 follows: "The Complaint and each purported cause of action alleged therein are barred by the  
5 statute of limitations set forth in Public Resources Code section 21167, section 30801 and / or  
6 section 30802."

7 On May 4, 2015, Plaintiff filed amendments to its FAC substituting City as Doe 101  
8 Defendant (ROA # 93) and One Park as Doe 102 Defendant (ROA # 94).

9  
10 **Bifurcation**

11  
12 In its bifurcation Motion (ROA # 190), City stated, at page 2:

13  
14 "By this motion, the Intervenors seek to bifurcate  
15 their statute of limitations defense from the trial on the  
16 merits. Bifurcating and addressing the Intervenor's  
affirmative defense first is the most logical, expeditious,  
and efficient way to handle the consolidated cases.

17 The Court already addressed the statute of  
18 limitations issue and ruled on May 26, 2015, that the cases  
19 shall be dismissed if Petitioner's Doe Amendments naming  
20 Intervenors do not relate back to the original filing. Thus,  
21 the sole issue that needs to be tried with respect to the  
22 statute of limitations defense is this relations-back issue:  
23 i.e., whether Petitioner was genuinely ignorant of the  
24 Intervenors' role with respect to the convention center and  
25 hotel expansion project that is the subject of the  
26 consolidated lawsuits ("Project"), through an "evidentiary  
27 hearing." Exh. 2 (Court's May 26, 2015 Order, at p. 3)  
28 (ROA No. 104)."

The Court's February 11, 2016 minute order (ROA # 196) states, in pertinent part:

"The Joint Motion (ROA # 190) by the City of San  
Diego ("City") and One Park Boulevard, LLC ("One Park")  
for Bifurcation under Code of Civil Procedure sections 598  
and 1048(b), is GRANTED.

1 .....  
2 Code Civ. Proc. §§ 597 and 1048(b). Adjudication  
3 of the statute of limitations defense prior to adjudication of  
4 the merits of this claim will potentially be conducive to  
5 expedition and economy in the event that this defense  
6 completely disposes of the claim. The asserted equitable  
7 tolling will also be tried during this initial phase of trial.  
8 Intervenor's did not materially delay in seeking this relief,  
9 and in any event there is no asserted prejudice. In addition,  
10 Plaintiff and Petitioner San Diego Navy Broadway  
11 Complex Coalition's argument regarding appellate review  
12 lacks merit. Finally, a footnote in Petitioner's opposition  
13 brief alludes to the potential for relying on the same  
14 evidence in support of both the claimed equitable tolling  
15 and the merits of this claim. However, there is no evidence  
16 or argument supporting this bare statement. In any event,  
17 some minimal amount of overlap does not outweigh the  
18 potential economy of avoiding a trial on the merits.”

19 The City's Notice (ROA # 204) states, in pertinent part:

20 “The trial of the City's affirmative defense (statute of limitations) is set to begin on April 19,  
21 2016, at 9:00am. The Court has set aside three days for the trial (April 19 - 21).”

22 **Joint Trial Readiness Conference Report (“TRC”)**

23 In their TRC (ROA # 218), Plaintiff and Defendants agree that the following legal issue is  
24 not disputed: “If Petitioner was not "genuinely ignorant" of the facts giving rise to its cause of  
25 action under the Coastal Act that required the naming of the City and / or OPB as real parties within  
26 the statute of limitations period, the Doe Amendments filed by Petitioner on May 4, 2015, may not  
27 legally relate back to the dates of the original filings. (Court's Minute Order of May 26, 2015, p.  
28 2.)”

The parties agree that the following legal issues are disputed:

“1) Whether City and OPB are necessary and  
indispensable parties. (All parties except Petitioner  
contend this issue has already been decided per the Court's  
Minute Order of May 26, 2015.)

1                   2) Whether the 60-day Coastal Act statute of  
2 limitations period under Public Resources Code section  
3 30801 applies to both cases. (All parties except Petitioner  
4 contend this issue has already been decided per the Court's  
5 Minute Order of May 26, 2015.)

6                   3) Whether the case "shall be dismissed" (May 26,  
7 2015 Order) because Petitioner did not name the City and  
8 OPB as parties to the litigation within the statute of  
9 limitation period. (All parties except Petitioner contend  
10 this issue has already been decided per the Court's Minute  
11 Order of May 26, 2015.)

12                   4) Whether the defense of equitable tolling may be  
13 asserted to relieve Petitioner of its failure to name the City  
14 and / or OPB as real parties within the statute of limitations  
15 period, even if Petitioner was aware of the facts giving rise  
16 to its cause of action under the Coastal Act that required the  
17 naming of the City and / or OPB as real parties within the  
18 statute of limitations period."

19 The parties agree that the following factual issues are disputed:

20                   "1) Whether Petitioner named the City or OPB  
21 within the statute of limitations period. (All parties except  
22 Petitioner contend this issue has already been decided per  
23 the Court's Minute Order of May 26, 2015.)

24                   2) Whether the 60-day limitations period in the lead  
25 case (No. 37-2013-00077213-CU-TT-CTL) runs from  
26 October 10, 2013, which is the date of the Coastal  
27 Commission "certified the PMPA as being consistent with  
28 the Coastal Act and with [CEQA]." (Petition, ¶ 8.) In  
which case, the statute of limitations period expired on  
December 9, 2013. (All parties except petitioner contend  
this issue has already been decided per the Court's Minute  
Order of May 26, 2015.)

                  3) Whether the 60-day limitations period in the  
consolidated case (No. 37-2014-00006987-CU-TT-CTL)  
runs from February 13, 2014, which is the date the Coastal  
Commission adopted revised findings to support its  
certification of the PMPA. In which case, the statute of  
limitations period expired on April 14, 2014. (All parties  
except petitioner content / this issue has already been  
decided per the Court's Minute Order of May 26, 2015.)

                  4) Whether Petitioner was "genuinely ignorant" of  
the facts giving rise to its cause of action under the Coastal

1 Act that required the naming of the City and / or OPB as  
2 real parties within the statute of limitations period.

3 5) Whether Petitioner delayed unreasonably in  
4 filing Doe Amendments naming the City and OPB upon  
5 learning of the facts giving rise to its cause of action under  
6 the Coastal Act that required the naming of the City and  
7 OPB as real parties.

8 6) Whether the City has been prejudiced by any  
9 unreasonable delay by Petitioner in filing the Doe  
10 Amendment against the City;

11 7) Whether OPB has been prejudiced by any  
12 unreasonable delay by Petitioner in filing the Doe  
13 Amendment against OPB.”

14 **Requests for Judicial Notice**

15 City’s Request (ROA # 225) for judicial notice of Exhibit 1 (also identified as Defense  
16 Exhibit 146) and Exhibit 2 (also identified as Defense Exhibit 176), is DENIED.

17 In the Request, at page 4, the City argues:

18 “... in Sierra Club v. California Coastal  
19 Commission (1979) 95 Cal. App. 3d 495, the court held  
20 that the plaintiff Sierra Club was required to timely name  
21 necessary and indispensable parties because its counsel had  
22 knowledge of the facts giving rise to the claim against the  
23 developer, which knowledge the counsel gained from his  
24 involvement in a separate case. Id. at p. 505 (“Obviously,  
25 since the same counsel represented the Sierra Club both  
26 here and in the League To Save Lake Tahoe case, he must  
27 have been aware of the various factors which made it  
28 appropriate that Moores, as a developer of the project under  
attack, be joined as a party.”)”

Even if the Court were to accept Defendant’s argument that counsel’s “knowledge” is  
imputed to the party he represents, the Sierra Club case is distinguishable in at least one significant  
respect. As pointed out by the Court, “the same counsel represented the Sierra Club both here and

1 in the League To Save Lake Tahoe case.” In other words, “the same counsel” represented the same  
2 party – namely, the Sierra Club – in both cases. Here, Mr. Briggs represents different parties.

3 According to the City, at page 2, Briggs represented **San Diegans for Open Government**  
4 **(SDOG)** in Browning v. City of San Diego, SDSC Case No. 37-2012-00094831-CU-MC-CTL  
5 (emphasis added by the Court).

6 In this case, Mr. Briggs represents Plaintiff San Diego Navy Broadway Complex Coalition.  
7 Similarly, Magnolia Square Homeowners Ass. v. Safeco Ins. Co. (1990) 221 Cal. App. 3d 1049,  
8 1056 involved the Court’s decision to take judicial notice of the requested pleadings by identical  
9 Plaintiffs in two actions. Watson v. Sutro (1890) 86 Cal. 500, 516, 517; Knapp v. Doherty (2004)  
10 123 Cal. App. 4th 76, 95; Stalberg v. Western Title Ins. Co. (1991) 230 Cal. App. 3d 1223, 1230,  
11 1231; and Nelson v. Nelson (1933) 131 Cal. App. 126, 133, 134 are likewise distinguishable.

12 Plaintiff’s Requests (ROA # 242, 244) for judicial notice is GRANTED. The Court takes  
13 judicial notice of Exh. "A" - The trial court's ruling in the case of City of San Diego v. Shapiro et  
14 al., San Diego County Superior Court Case No. 37-2012-00094831-CUMC-CTL; and Exh. "B" -  
15 The decision of the Court of Appeal for the Fourth Appellate District, Division One for the State of  
16 California in the case of City of San Diego v. Shapiro et al., Court of Appeal Docket No. D063997.

17  
18 **Witnesses and Exhibits at Trial**

19  
20 Don Wood, Diane Coombs, Darren Greenhalgh and Todd Hersperger testified to his / her  
21 recollection of events which took place years ago. The recollection of these witnesses have been  
22 influenced by their bias, prejudice or personal relationship with the parties involved in this case. If  
23 for no reason other than the passage of time, the Court questions the capacity of the witnesses to  
24 accurately recollect and communicate his / her perception of the events. The witnesses have  
25 “testified untruthfully about some things but told the truth about others” and, accordingly, the Court  
26 has accepted the part it perceives to be true and has ignored the rest. CACI 107, 212. In addition,  
27 two or more of the witnesses asserted the attorney client privilege and attorney work product  
28

1 doctrine. The Court has drawn no inferences from nor allowed the assertion of the privilege /  
2 doctrine to influence its decision. CACI 215.

3 **Don Wood**: He is an officer of Plaintiff aka Navy Broadway or NBCC. He recognizes  
4 Plaintiff's By-Laws. Exh. "102." Ian Trowbridge recruited him to become involved with Plaintiff.  
5 Diane Coombs is Plaintiff's VP. Trowbridge was President. Briggs has been Plaintiff's attorney  
6 though not clear if from beginning. Exh "151." Karen Langwasser is Plaintiff's CFO. Briggs is  
7 Plaintiff's agent for service of process. Plaintiff's office was Briggs' former office. He identified  
8 the project as a hotel and convention center expansion project. He authenticated his comments in  
9 Exh "103". The purpose of the Mayor's Citizen's Task Force was to explore the feasibility of  
10 convention center expansion. He filed comments in response to the task force's invitation for  
11 public comments. He considered the Port District to be the project lead and not the City. His  
12 testimony was not entirely consistent with his comments in Exh "103." He expected City to  
13 analyze the hotel project. He received Port District's meeting agendas. He attended the November  
14 8, 2011 Port District meeting. He heard Mayor Sanders make a presentation on the project. The  
15 Mayor "floated" in "with his posse" to make his presentation. He did not see minutes of Port  
16 District meetings. He does not recall whether he attended the November 29, 2011 Port District  
17 meeting. Exh. "117." Port District did not provide a copy of meeting minutes to Plaintiff. He  
18 attended Port District's February 14, 2012 meeting. He read the meeting's agenda and staff report  
19 but not the financing agreement. He read Exh. "124." He authenticated his comments in Exh.  
20 "130." He attended and spoke at CCC's October 10, 2013 certification hearing. Exh. "170." Exh.  
21 "196.094." Exh. "129." He authenticated his comments in Exh. "144." He authenticated his  
22 comments in Exhs. "150, 155, 159 and 164." He authenticated the string of emails in Exh. "145."  
23 He authenticated his correspondence to Mary Shallenberger, CCC's chairwoman (Exh. "161").  
24 Exh. "177." Plaintiff has relied on Briggs' knowledge and initiative in pursuing this case. Plaintiff  
25 opposed CCC's certification of the PMPA. Exh. "171." He understood the project consisted of the  
26 convention center and hotel expansion when he first looked at drawings several years ago. He has  
27 known Kip Howard for several years. He saw Howard at the project's meetings but did not know  
28 he represented Hilton. Exh. "145." He saw hundreds of people at CCC's October 10, 2013

1 meeting. He does not recall hearing Howard speak at the hearing. He consulted on the  
2 development of the "list of problems" to Exh. "171." Plaintiff initiated the lawsuit and Briggs has  
3 managed the lawsuit. He does not have any knowledge of One Park and City's involvement as  
4 applicants in the project prior to the lawsuit. Exhs. "215 and 216."

5 **Diane Coombs**: She is a member of Plaintiff's board. Plaintiff was formed in 2002. She  
6 has been a member of Plaintiff from 2002 to the present. She and Wood are Plaintiff's only board  
7 members. Trowbridge was Plaintiff's only other board member until his death in February 2013.  
8 For several years, she worked with San Diego County performing land use responsibilities. She is  
9 familiar with CEQA. She attended Port District's November 8, 2011 meeting. She heard the  
10 Mayor's presentation on the subject of financing the convention center expansion. She understood  
11 that City was involved in the project. Exh. "137." She spoke on behalf of Plaintiff at the September  
12 19, 2012 meeting. She objected to part of the proposed financing. Charles Black represented  
13 "downtown special interests." She is 84 years old. She attended CCC's October 10, 2013 meeting  
14 on behalf of Plaintiff. Wood and Briggs also attended the meeting. Exh. "171" refreshes her  
15 memory that Plaintiff filed written papers in opposition to the project. She did not provide any  
16 "direct input" into the preparation of Exh. "171." She recognizes the "list of problems" attached to  
17 Exh. "171" to reflect Plaintiff's "concerns." She did not provide Plaintiff's counsel with any of the  
18 documents attached to Exh. "171." She reviewed Port District's September 19, 2012 agenda and  
19 CCC's staff report attached to Exh. "171." Plaintiff authorized Briggs to file Exh. "171" with CCC.  
20 She did not provide any input to prepare Plaintiff's Complaint. Exh. "145." She has heard of, but  
21 does not know, Kip Howard. She spoke on behalf of Plaintiff at CCC's October 10, 2013 meeting  
22 to object to the PMPA. Exh. "196.092." She heard Briggs speak at the meeting on behalf of  
23 Plaintiff. She heard Wood speak at the meeting on behalf of Plaintiff. She relied on Briggs to  
24 prepare Exh. "171." She reviewed Exh. "215" before CCC's October 10, 2013 meeting. She did  
25 not see any reference to City or One Park in Exh. "215." She reviewed Exh. "216" before CCC's  
26 February 2014 meeting. She did not see any reference to City or One Park in Exh. "216." She  
27 expected to see "full disclosure" and a "complete description of the project" in project documents.  
28 She does not know whether Sunroad is involved in the project. Exh. "138." At the County, she read

1 staff reports of proposed projects. She was trained to read staff reports to separate the wheat from  
2 the chaff.

3 **Corey Briggs**: After accepting a series of evidentiary stipulations from counsel (notably,  
4 the admission of Exh. "171"), the Court granted Plaintiff's motion to quash Defendants' request to  
5 call Briggs as a witness at trial.

6 **Scott Chadwick**: Plaintiff and City stipulated that the City was aware of the consolidated  
7 lawsuits "when they were filed," as a result of which Plaintiff agreed not to call Chadwick as a  
8 witness at trial. City and One Park also agreed to withdraw their claims of "prejudice" as a result of  
9 Plaintiff's alleged "unreasonable delay" in filing Doe Amendments adding City and One Park.

10 **Jennifer Torres**: She is a certified court reporter. She transcribed an audio interview of  
11 Briggs posted on KPBS's website. Exh. "167" is a true and accurate transcription of the interview.  
12 She transcribed a video interview of Briggs posted on KPBS's website. Exh. "173" is a true and  
13 accurate transcription of the interview. She identified Briggs in the courtroom as the person  
14 depicted in the video interview.

15 **John Decker**: He is director of programming at KPBS. He described the process by which  
16 KPBS posts television interviews, "within moments" after interviews are completed, on the  
17 station's website. Exh. "168" is the station's October 9, 2013 interview of Briggs. Exh. "174" is  
18 the station's October 10, 2013 interview of Briggs. He posted the interviews of Briggs on the  
19 station's website. He recognizes Briggs' voice on the October 9, 2013 interview. He does not  
20 know whether Exh. "168" was edited. He identified Briggs in the courtroom as the person depicted  
21 in the video interview. KPBS ran a series of stories involving Briggs within the last year. KPBS  
22 installed firewalls to prevent the station's "money-making" to influence the content / journalism of  
23 the station's programming.

24 **Darren Greenhalgh**: He works with the City. Currently, he is assistant director of City's  
25 environmental services department. Previously, he worked in City's public works department. He  
26 worked on the project when transferred from the convention center to City in 2011. In 2011, City  
27 assumed responsibility for managing the project. He managed the project until told to stop in  
28 December 2013 or January 2014. He continued to do geotechnical work until summer 2014. There

1 was no more money left to fund the project. He does not know Wood, Coombs or Trowbridge. He  
2 had not met with or spoken to Briggs before his deposition. He did not hear of Plaintiff before  
3 Plaintiff filed this lawsuit. As City's manager, he directed that "bills" relating to the project be  
4 paid. He attended, but did not speak at, CCC's October 10, 2013 meeting. City did not pay CCC  
5 any money for Port District to submit the application to CCC. He participated in the preparation of  
6 Port District's application to CCC. City prepared many of the documents which were submitted by  
7 Port District to CCC. Mayor Filner submitted a letter on behalf of City in support of the project.  
8 He heard Briggs make a presentation at CCC's October 10, 2013 meeting. Shortly after CCC's  
9 meeting, he learned of Plaintiff's lawsuit. City did not pay Port District any money for the PMPA.  
10 City and the Hilton Hotel had a cost sharing agreement with Port District. Exh. "204." He does not  
11 know whether Plaintiff, or its representatives, were notified of the cost sharing agreement. He does  
12 not know of any communications issued by City which identified City as the "proponent" of the  
13 PMPA application. He considered City to be a joint proponent of the application. The application  
14 for certification of the PMPA submitted to CCC only identified Port District as the project's  
15 proponent.

16 **Todd Hersperger (through his deposition taken on March 31, 2016):** He has worked in  
17 management for Sunstone Investors for 6 years. Sunstone owns 75% of One Park. One Park owns  
18 the Hilton Hotel on the waterfront. In November 2013, One Park learned of Plaintiff's lawsuit.  
19 One Park has not done any work on the PMPA; however, he denies that any developer would build  
20 a project "with pending litigations on entitlement."

21  
22 **Defendant's Affirmative Defense of Statute of Limitations (Public Resources Code section**  
23 **21167, section 30801 and / or section 30802)**

24  
25 The threshold issue is, as agreed to by the parties in the TRC Report and as reflected in  
26 Defendants' trial briefs (Port District - ROA # 222, at page 1; City - ROA # 226, at page 4; and One  
27 Park - ROA # 236, 249, at pages 5 – 6), "Whether Plaintiff was "genuinely ignorant" of the facts  
28

1 giving rise to its cause of action under the Coastal Act that required the naming of the City and / or  
2 One Park as real parties within the statute of limitations period?"

3 The evidence presented by Defendants is impressive.

4 In its' FAC, Plaintiff alleges, at paragraph 5:

5 "On or about September 19, 2012, the Port's  
6 governing body passed and adopted San Diego Unified Port  
7 District Resolution no. 2012-135 certifying that certain  
8 environmental impact report ("EIR") for the proposed Port  
9 Master Plan Amendment No. 45 ("PMPA") purporting, in  
10 general terms, to allow the Port's issuance of one or more  
11 coastal development permits covering Phase III of the San  
12 Diego Convention Center Expansion and the nearby Hilton  
13 Hotel Expansion; and Resolution no. 2012-136 approving  
14 the PMPA itself."

15 Resolution no. 2012-135 (Exh. "136") states, in pertinent part:

16 "... the District has a lease with the San Diego  
17 Convention Center Corporation for property in the vicinity  
18 of the existing San Diego Convention Center (SDCC) to  
19 pursue entitlements to develop the SDCC Phase III  
20 Expansion (Phase III Expansion)...

.....

... the District is also in discussions with One Park  
Boulevard, LLC (OPB), the District's lessee of the Hilton  
San Diego Bayfront Hotel (Hilton Hotel), to pursue  
entitlements to develop a 500-room expansion of the Hilton  
Hotel (Expansion Hotel)..."

21 Resolution no. 2012-136 (Exh. "135") states, in pertinent part:

22 "... the applicant for the San Diego Convention  
23 Center Phase III Expansion component of the Proposed  
24 Project is the City of San Diego and the applicant for the  
25 Expansion Hotel component of the Proposed Project is One  
26 Park Boulevard, LLC (OPB); and

... City of San Diego and One Park Boulevard, LLC  
are collectively referred to as the "Applicants"..."

27 In his October 10, 2013 letter to the CCC (Exh. "171"), Briggs identified a "List of  
28 Problems" and attached an Exhibit Index which included, in pertinent part, the following materials:

1 Notice of Determination (Port District document no. 59374 filed September 28, 2012)  
2 which identifies City and One Park as the "Project Applicant" (separately admitted as Exh. "142").

3 Resolution no. 2012-135 (separately admitted as Exh. "136").

4 Port District's Findings of Fact and Statement of Overriding Considerations dated  
5 September 2012 which, at page 2, identifies City and One Park as the Project Applicants.

6 Port District's Agenda item 23AB dated September 19, 2012 which identifies Port District's  
7 lease with City to "pursue entitlements to develop the ... SDCC Phase III Expansion" and Port  
8 District's "discussions" with One Park to "pursue entitlements to develop a ... Expansion Hotel"  
9 (separately admitted as Exh. "140").

10 Resolution no. 2012-136 (separately admitted as Exh. "135").

11 The administrative record includes the following materials:

12 Resolution no. 2014-55 (Exh. "179") which states, in pertinent part: "... the applicant for  
13 the Phase III Expansion component of the Project is ... City and the applicant for the Expansion  
14 Hotel component of the Project is One Park ..."

15 Resolution no. 2014-56 (Exh. "180") which states, in pertinent part: "...the applicant for  
16 the Phase III Expansion component of the Project is ... City and the applicant for the Expansion  
17 Hotel component of the Project is One Park ..."

18 Notice of Determination (Port District document no. 61765 filed May 1, 2014) which  
19 identifies City and One Park as the "Project Applicant" (separately admitted as Exh. "186").

20 The Court also notes, in its' review of the documentary exhibits, Resolution Number R-  
21 307705 with a passage date of October 3, 2012, which identifies City "as the Project Applicant with  
22 respect to the Phase III Expansion (Exh. "211").

23 If this were the full extent of the evidence, the Court would be inclined to find that Plaintiff  
24 was not "genuinely ignorant" of the facts giving rise to its cause of action under the Coastal Act  
25 and, as a result, failed to timely name City and One Park within the statute of limitations period;  
26 however, the question, on which the Court has reflected most, is whether Defendants' theory is  
27 undermined by CCC's admission that Port District was, as alleged by Plaintiff (ROA # 18, par. 3)  
28 "the proponent of the project that is the subject of this lawsuit when the project was presented to the

1 Coastal Commission for approval.” See CCC’s verified Answer (ROA # 25, at par. 3 on page 2):  
2 “The Commission admits the allegations of paragraph 3”.

3 In Thurman v. Bayshore Transit Management, Inc. (2012) 203 Cal. App. 4th 1112, 1154,  
4 the Court stated:

5 “We conclude that the trial court erred in relieving  
6 Thurman from the effect of his judicial admission. In  
7 Valerio v. Andrew Youngquist Construction (2002) 103  
8 Cal.App.4th 1264, (Valerio), the Court of Appeal  
9 concluded that the trial court erred in ignoring the  
10 respondent's judicial admission in his answer to the  
11 appellant's cross-complaint that a contract existed between  
12 the parties. (Id. at p. 1266.) The Valerio court noted that  
13 “[t]he admission of fact in a pleading is a ‘judicial  
14 admission.’ ... ‘An admission in the pleadings is not treated  
15 procedurally as evidence; i.e., the pleading need not (and  
16 should not) be offered in evidence, but may be commented  
17 on in argument and relied on as part of the case. And it is  
18 fundamentally different from evidence: It is a waiver of  
19 proof of a fact by conceding its truth, and it has the effect  
20 of removing the matter from the issues. Under the doctrine  
21 of “conclusiveness of pleadings,” a pleader is bound by  
22 well pleaded material allegations or by failure to deny well  
23 pleaded material allegations. [Citations.]’ ” (Id. at p. 1271,  
24 quoting 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading,  
25 § 413, pp. 510–511.)”

18 See also Thomas v. Westlake (2012) 204 Cal. App. 4th 605, 614 (a party is “bound by the  
19 legal consequences of his allegations”).

20 The Court also notes CCC’s judicial admission is consistent with Greenhalgh’s testimony  
21 that “The application for certification of the PMPA submitted to CCC only identified Port District  
22 as the project’s proponent.”

23 In its post-trial brief (ROA # 266), CCC argues, at pages 2 – 4 as follows:

24 “The complaint contains no definition of the word “project” so the Commission  
25 understood the term to be used loosely and without specific meaning. In subsequent paragraphs,  
26 the complaint amplifies that SDNBCC is challenging the PMPA and that the PMPA would “allow  
27 the Port's issuance of one or more coastal development permits covering Phase III of the San Diego  
28 Convention Center Expansion and the nearby-Hilton Hotel Expansion.” (Verified First Amended

1 Complaint, pp. 2-3, 15.) SDNBCC sought a judgment determining that the Commission "failed to  
2 comply with the Coastal Act and CEQA as they relate to the PMPA's consistency certification."  
3 (Verified First Amended Complaint, p. 9, prayer.) SDNBCC sought a judgment determining that  
4 the PMPA certification was null and void. (Ibid.) SDNBCC further sought to enjoin the  
5 Commission and Port from "taking any action on any aspect of, in furtherance of, or otherwise  
6 based on the PMPA (including issuance of any coastal development permit thereunder)" until the  
7 Commission complied with the law. (Id. p. 10, par. C.) The Commission understood SDNBCC to  
8 be challenging the PMPA for which the Port was the "proponent." The City and One Park are the  
9 "applicants" for the convention center expansion and the Hilton Hotel expansion, as indicated in  
10 Exhibit 171, letter from Cory Briggs to the Commission with attached exhibits, including the Port's  
11 Notice of Determination that identifies the City and One Park as the applicants. (Trial Exhibit 171,  
12 p. 1 of Exhibit 1.)

13           Only ports can prepare PMPs and PMPAs that allow for future development by third  
14 parties. (Pub. Resources Code, § 30714.) Only the Commission can certify PMPs and PMPAs as  
15 consistent with the Coastal Act. (Ibid.) But the fact that a port is a proponent of a PMPA does not  
16 end the inquiry regarding whether the developers of the development to be permitted under the  
17 PMPA are necessary and indispensable parties. The question turns on whether the PMPA would  
18 authorize specific development for a specific site or whether the PMPA more generally applies to  
19 all owners and lessors of property within the port's jurisdiction who may propose development in  
20 the future. Where a PMP or PMPA is not specific to a particular site or tied to a specific  
21 development, all potentially affected owners or lessors are not necessary and indispensable parties  
22 because they are not affected any differently than all others subject to the PMP or PMPA. When  
23 the PMP or PMPA is not specific to a particular site or a specific development, this makes sense  
24 because it would be unduly burdensome on petitioner challenging such generally applicable plans  
25 to include all property owners within the port's jurisdiction.

26           In contrast, where a PMPA such as the one at issue here is tied to a specific  
27 development (e.g., the Convention Center Expansion and Hilton Hotel Expansion) and is not  
28 generally applicable to all property owner's under the Port's jurisdiction, then the owners or lessors

1 of that property are necessary and indispensable. This is so because their specific property rights  
2 are at issue. And neither the Commission nor the Port can adequately defend such necessary and  
3 indispensable parties' specific rights and interests in the development that would be permitted under  
4 the specific PMPA. (See Beresford Neighborhood Assn. v. City of San Mateo (1989) 207 Cal.  
5 App. 3d 1180, 1189; Save Our Bay v. San Diego Unified Port District (1996) 42 Cal. App. 4th 686,  
6 695; Sierra Club v. California Coastal Commission (1979) 95 Cal. App. 3d 495, 499.)

7           The Commission's admission of paragraph 3 of the Verified First Amended Complaint  
8 was not an admission that the Port was the applicant in this case; rather, it was an admission that the  
9 Port was the proponent of the PMPA. SDNBCC was required to name the City and One Park as  
10 necessary and indispensable parties. Having failed to timely and properly do so, SDNBCC's  
11 lawsuits must be dismissed.”

12           Arguably, Plaintiff's FAC, as asserted by CCC, “contains no definition of the word  
13 “project;” however, CCC’s argument that “the Commission understood the term to be used loosely  
14 and without specific meaning,” is not reasonable. As clearly set forth in paragraph 3 of the FAC,  
15 “project” is “the project that is the subject of this lawsuit when the project was presented to the  
16 Coastal Commission for approval.” The “project” is, as further specified at paragraph 5 of  
17 Plaintiff's FAC, “Phase III of the San Diego Convention Center Expansion and the nearby Hilton  
18 Hotel Expansion,” citing San Diego Unified Port District Resolution no. 2012-135 and Resolution  
19 no. 2012-136. In response to which, CCC admitted that “the Port's governing body passed and  
20 adopted Resolution no. 2012-135 and Resolution no. 2012-136 for the Port Master Plan  
21 Amendment (PMPA)...” See CCC’s Answer at page 2, paragraph 5.

22           If CCC, which was in a superior position to review and certify the “project,” considered Port  
23 District to be the “proponent” of the “project,” why should Plaintiff have thought differently?

24           The Court cannot reconcile CCC’s judicial admission with Defendants’ theory that Plaintiff  
25 was not “genuinely ignorant” of the facts giving rise to its cause of action under the Coastal Act and  
26 therefore should have named City and One Park before May 2015. ROA #'s 93, 94. Again, if CCC  
27 didn’t know, why should Plaintiff have known?

28

1 In view of the Court's finding that Plaintiff was genuinely ignorant of City and One Park,  
2 the Court further finds that Plaintiff's amendments naming City and One Park as Defendants, relate  
3 back to the filing of Plaintiff's original Complaint (ROA # 1).

4 Though not necessary to the disposition of this phase of the trial, the Court, in the interests  
5 of completing the record, makes the following observations of Plaintiff's "defense of equitable  
6 tolling."

7 In Sierra Club, Inc. v. California Coastal Com. (1979) 95 Cal. App. 3d 495, 5-3 – 55, the  
8 Court stated:

9 "Plaintiff contends that dismissal of the action was  
10 inconsistent with the remedial purposes of the California  
11 Coastal Act of 1976 (Pub. Resources Code, 30000-30900).  
12 Plaintiff cites no authority in support of this argument and  
13 also advances no persuasive reasoning. The fact is that  
14 section 30801, which prescribes the 60-day statute of  
15 limitations, is a part of the California Coastal Act of 1976;  
16 therefore, it should be enforced as fully as any other  
17 provision of the act. There is nothing unreasonable in the  
18 imposition of a 60-day statute of limitations. Once a  
19 developer has fully complied with all of the requirements  
20 of the act and has obtained a permit, he should not be  
21 required to postpone construction for prolonged periods of  
22 time while awaiting the commencement of litigation which  
23 seeks to challenge the legality of his proposed  
24 development.

19 Plaintiff also argues that the statute of limitations  
20 was equitably tolled by the filing of the original mandamus  
21 petition against the regional commission and the  
22 commission. Why? Because, argues plaintiff, it will have  
23 no remedy if dismissal of the action is upheld. Plaintiff  
24 also claims that Moores was in no way prejudiced by being  
25 named as a party within 40 days after the filing of the  
26 original petition. These contentions are without merit.

27 .....

28 Even if plaintiff had raised the issue in the trial  
court, we find that the doctrine of equitable tolling is  
inapplicable for at least two reasons. First, the doctrine  
applies only in a situation where the plaintiff commences a  
second action which is in reality a continuation of an earlier  
action "involving the same parties, facts, and cause of

1 action . . . .’ ” (Tannhauser v. Adams (1947) 31 Cal.2d 169,  
2 177.) Here, the very crux of the problem is that the parties  
3 to the original petition and the amended petition were Not  
4 the same, since Moores, although an indispensable party,  
5 was not named a party in the original petition.

6  
7 Second, in Addison v. State of California (1978) 21  
8 Cal.3d 313, 319, upon which plaintiff itself relies, the court  
9 pointed out that the application of the doctrine of equitable  
10 tolling requires “reasonable and good faith conduct on the  
11 part of the plaintiff.” In this instance, plaintiff has never  
12 attempted to explain, either here or in the trial court, why  
13 Moores was not named as a party in the original mandamus  
14 petition. The possibility that this omission was the result of  
15 an oversight would appear to be eliminated by the  
16 following facts: The Sierra Club (plaintiff in this case) was  
17 a plaintiff in League To Save Lake Tahoe v. Tahoe Reg.  
18 Plan. Agcy. (9th Cir. 1977) 558 F.2d 914. All plaintiffs in  
19 that action were represented by counsel for the Sierra Club  
20 Legal Defense Fund. (p. 915.) The primary issue on appeal  
21 in that case was whether the developers of various projects  
22 had properly been dismissed as parties defendant in an  
23 action which alleged that the Tahoe Regional Planning  
24 Agency had violated an interstate compact by approving  
25 the developers' projects. There, the plaintiffs argued, on  
26 appeal, that the developers had been improperly dismissed  
27 as defendants. The Court of Appeals agreed, pointing out  
28 that if the plaintiffs were successful in the action, they  
would have the right to prohibit construction of the  
developers' projects; that if the developers were not present  
in court, they would not be bound by any decree of  
invalidity; and that joinder of the developers would make it  
possible to afford complete relief to the plaintiffs and to  
prevent the possibility of multiple lawsuits. (pp. 917-918.)

Obviously, since the same counsel represented the  
Sierra Club both here and in the League To Save Lake  
Tahoe case, he must have been aware of the various factors  
which made it appropriate that Moores, as the developer of  
the project under attack, be joined as a party.

We note, also, that plaintiff has not complied with  
the provisions of subdivision (c) of section 389, Code of  
Civil Procedure, which requires that “A complaint . . . shall  
state the names, if known to the pleader, of any persons as  
described in paragraph (1) or (2) of subdivision (a) who are  
not joined, and the reasons why they are not joined.” (...)  
Although Moores was clearly such a party, it appears that

1 no attempt was made to explain plaintiff's failure to join  
2 him. We must conclude, therefore, that, even had plaintiff  
3 raised the doctrine of equitable tolling of the statute of  
4 limitations in the trial court, plaintiff could not have  
5 established that its failure to make Moores a party prior to  
6 the expiration of the 60-day period was the result of  
7 reasonable and good faith conduct on its part.”

8 In its trial brief, City states, at page 9:

9 “The “three core elements are: (1) timely notice to the defendant in filing the first  
10 claim; (2) lack of prejudice to defendant in gathering evidence to defend against the second claim;  
11 and, (3) good faith and reasonable conduct by the plaintiff in filing the second claim.” Collier, 142  
12 Cal. App. 3d at p. 924. “The timely notice requirement essentially means that the first claim must  
13 have been filed within the statutory period.” Ibid. “The second prerequisite essentially translates to  
14 a requirement that the facts of the two claims be identical or at least so similar that the defendant's  
15 investigation of the first claim will put him in a position to fairly defend the second.” Id. at 925.”

16 Here, Defendants, through stipulations, do not contest the first two elements of “notice” and  
17 “prejudice.” The real issue is whether Plaintiff has demonstrated “good faith and reasonable  
18 conduct ... in filing the amendments (ROA #'s 93, 94)).”

19 In their joint post-closing brief (ROA # 274), Defendants assert, at page 14:

20 “The Parties agree that **the element of whether Petitioner's conduct was**  
21 **“reasonable” and in “good faith” for the equitable tolling doctrine overlaps, in great part if**  
22 **not completely, with the inquiry into whether Petitioner was “genuinely ignorant” of the**  
23 **relevant facts or perpetrated a sham for the relation-back doctrine.** If Petitioner was not  
24 “genuinely ignorant” of the City and / or One Park's status as applicants for the Convention Center  
25 Expansion Project and Expansion Hotel Project (respectively) at the time Petitioner filed its  
26 lawsuits, then Petitioner's conduct necessarily cannot be considered to be “reasonable” or in “good  
27 faith” for purposes of equitable tolling, necessary and indispensable parties, or any other remedy  
28 grounded in equity.” (emphasis added by the Court)

1 Once again, Defendants' arguments (CCC's trial brief at page 4; Port District's brief at page  
2 9; City's brief at page 9; and One Park's brief at page 8; Defendants' joint post-closing brief at 2 -  
3 11) that Plaintiff's failure to name City and One Park was not precipitated by "good faith and  
4 reasonable conduct," are impressive; however, like above, the Court cannot reconcile CCC's  
5 admission with Defendants' theory.

6 If CCC considered Port District to be the project's proponent, why should Plaintiff's claim  
7 of "good faith and reasonable conduct" undermine its ignorance that City and One Park "are the  
8 sole Project applicants?"

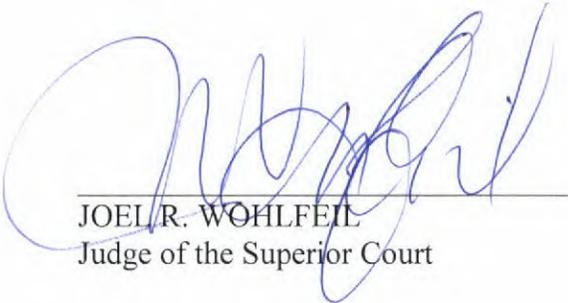
9 The Court finds that, under these circumstances, the statute of limitations against City and  
10 One Park was "equitably tolled" until Plaintiff's filing of the amendments in May 2015.  
11

12 **Conclusion**

13  
14 The Court finds, as set forth above, in favor of Plaintiff and against Defendants on  
15 Defendants' Affirmative Defense of Statute of Limitations. The balance of Plaintiff's claim and  
16 Defendants' affirmative defenses will be tried together in the next phase of the trial. The Court sets  
17 a Status Conference on June 30, 2016 at 3:00 pm for the purpose of establishing a trial and briefing  
18 schedule. The Court will also hear the Case Management Conference in San Diego Navy  
19 Broadway Complex Coalition vs. California Coastal Commission - 37-2015-00019980-CU-WM-  
20 CTL.

21  
22 IT IS SO ORDERED.

23  
24  
25 Dated: 6-3-16

26   
27 \_\_\_\_\_  
28 JOEL R. WOHLFEIL  
Judge of the Superior Court