

1 Susan Brandt-Hawley/SBN 75907
2 BRANDT-HAWLEY LAW GROUP
3 P.O. Box 1659
4 Glen Ellen, CA 95442
5 707.938.3900, fax 707.938.3200
6 susanbh@preservationlawyers.com

7 Attorney for Petitioner SOHO

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

10
11 SAVE OUR HERITAGE ORGANISATION Case No.
12 (SOHO), a non-profit corporation;

13 Petitioner,

14 v.

**Petition for
Writ of Mandamus**

15 CITY OF SAN DIEGO,
16 CITY COUNCIL OF THE CITY OF
17 SAN DIEGO, CITY OF SAN DIEGO
18 PUBLIC WORKS DEPARTMENT, CITY
19 OF SAN DIEGO PARKS DEPARTMENT
and DOES 1 to 5;

California Environmental Quality Act
[CEQA]

20 Respondents.

21 _____/
22 THE PLAZA DE PANAMA COMMITTEE,
23 a non-profit corporation, and Does 6 to
24 10;

25 Real Parties in Interest.
26 _____/
27
28

1 The city approved the modified project based on an addendum to the 2012 EIR.
2 The Public Resources Code makes no provision for addenda, and CEQA Guidelines
3 section 15064 that purports to allow the use of addenda is without authority. The
4 California Supreme Court in *Friends of the College of San Mateo Gardens v. College*
5 *Community College District* (2016) 1 Cal.5th 937, 961, acknowledged the open question
6 of whether the CEQA Guidelines “improperly authorize lead agencies to approve certain
7 proposed project modifications through the use of addenda without public comment,
8 rather than requiring the issuance of a subsequent or supplemental EIR ...”
9
10

11 The city’s discretionary actions to implement and modify the Plaza de Panama
12 project cannot be based on a cursory addendum process, and instead require a
13 subsequent EIR. A peremptory writ is warranted in the public interest to achieve the
14 City’s compliance with the mandates of CEQA that protect the city’s jewel: Balboa Park.
15
16

17 **Jurisdiction**

18 2. This Court has jurisdiction under Public Resources Code sections 21168
19 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5. The parties and
20 project site are in San Diego County.
21

22 **Parties**

23 3. Save Our Heritage Organisation (SOHO) is a California nonprofit
24 corporation formed in 1969 to lead the San Diego community as a catalyst for historic
25 preservation by raising awareness and appreciation of the region’s rich architectural
26 and cultural heritage. SOHO’s members include community residents and concerned
27 citizens who enjoy and appreciate San Diego’s cultural, architectural, and historic
28

1 resources, including Balboa Park. SOHO brings this petition on behalf of all others
2 similarly situated that are too numerous to be named and brought before this Court as
3 petitioners. SOHO members repeatedly objected to the Balboa Park Plaza de Panama
4 project, including the city's discretionary 2016 approvals, and have exhausted
5 administrative remedies.
6

7 4. Respondents City of San Diego, its elected City Council, and its Public
8 Works and Parks Departments are collectively referred to as the city, the lead agency for
9 the Balboa Park Plaza de Panama project.
10

11 5. Real Party in Interest Plaza de Panama Committee is a non-profit
12 corporation formed to implement the Balboa Park Plaza de Panama project.
13

14 6. Does 1 to 10 are fictitiously named respondents and real parties whose true
15 names and capacities are currently unknown to SOHO. If and when their true names
16 and capacities are known, SOHO will amend this petition to assert them.
17

18 **General Allegations**

19 7. The paragraphs below refer to and rely on information in documents
20 relating to this action, all of which will be filed with this Court as part of the record of
21 proceedings and are here incorporated by reference.
22

23 8. Balboa Park is a 1200-acre urban cultural park owned and operated by the
24 city. First appropriated in 1869 from appropriated pueblo lands, its core design was
25 created for the 1915 Panama-California International Exposition. The exposition
26 celebrated the completion of the Panama Canal and San Diego's first port-of-call.
27
28

1 9. In the ensuing century, uses and buildings at Balboa Park evolved and
2 flourished. The historic Exposition design remains. The central core was declared a
3 National Historic Landmark and National Historic Landmark District in 1977, and is
4 honored with listing in both the National Register of Historic Places and in the
5 California Register of Historical Resources.
6

7 10. Solutions for Balboa Park parking and traffic circulation issues have been
8 debated for decades. The 1989 Balboa Park Master Plan, supported by SOHO, called for
9 removal of parking in the Plaza de Panama and its restoration for pedestrian use.
10

11 11. The Plaza de Panama Committee formed in 2010 under the leadership of
12 philanthropist Irwin Jacobs and then-mayor Jerry Sanders, to raise funds and to
13 implement the Plaza de Panama project. Dr. Jacobs and the Committee committed to
14 raise most of the \$40 million in projected costs to remove parking from the Plaza de
15 Panama area and to construct a paid-parking garage, roadways, and a bypass bridge.
16

17 12. While removal of parking from the Plaza de Panama is widely supported,
18 many San Diegans passionately opposed and continue to oppose the proposed new
19 bridge and parking garage. Concerns relating to adverse project impacts on the Park's
20 historic integrity and public access to Balboa Park have been detailed at various times
21 by SOHO, the State Office of Historic Preservation, CalTrans, the city's Department of
22 Parks and Recreation, the League of Women Voters, the Albatross Neighborhood
23 Association, Between the Heights, the Burlingame Neighborhood Association, the City
24 Heights Area Planning Committee, the Committee of One Hundred, the Golden Hill
25 Community Development Corporation, the Heart of Kensington, the Hillcrest History
26
27
28

1 Guild, the La Jolla Historical Society, La Playa Heritage, Mission Hills Heritage, the
2 National Trust for Historic Preservation, the Neighborhood Historic Preservation
3 Coalition, the North Park Historical Society, the North Park Planning Committee, the
4 Old Town San Diego Community Planning Group, the San Diego Council of Design
5 Professionals, the University Heights Development Corporation, and the University
6 Heights Historical Society, among many other groups.
7

8
9 13. A Plaza de Panama project EIR was prepared in 2012, after which a
10 City Council majority certified the EIR and approved the Plaza de Panama Project in
11 July 2012 via a Balboa Park Master Plan Amendment, Central Mesa Precise Plan
12 Amendment, and a Site Development Permit. SOHO filed a mandamus action that
13 included challenges to the city's CEQA compliance that were denied by the San Diego
14 County Superior Court and affirmed on appeal to the Fourth District.
15

16 14. While the appeal was pending, the city restored the Plaza de Panama to
17 pedestrian use by removing parking, and made related Plaza improvements.
18

19 15. In 2016, the city proposed modifications to the Plaza de Panama project
20 through its Departments of Public Works and Parks, described as a cooperation
21 agreement between the city and the Plaza de Panama Committee, authorization for the
22 mayor to award a construction contract, and authorization of funding. The city
23 describes the project as previously approved to remove vehicular access and parking
24 from the Plaza de Panama, El Prado, Plaza de California, the Mall, and Pan American
25 Road East and allow these areas to be used by pedestrians only. A new 'Centennial
26 Bridge\` would connect the eastern end of Cabrillo Bridge to the western side of the
27
28

1 Alcazar parking lot. From that point a new 'Centennial Road' would traverse through
2 the Alcazar parking lot exiting to the east, continue to the south past a new Organ
3 Pavilion parking structure and then connect to Presidents Way. Additional parkland
4 would be provided atop the new parking structure. A tram would provide service from
5 the parking structure to the Plaza de Panama with possible expansion to serve other
6 areas of the Park. Excavation activities required for construction of the underground
7 parking structure would require that the project dispose of excess soils within the
8 inactive Arizona Street Landfill.
9
10

11 16. In addition to authorizations relating to funding, a cooperation agreement,
12 and authorization of a construction contract, the city now proposes project
13 modifications that reduce bridge supports for the Centennial Bridge; redesign storm
14 water basins and add a new basin in Gold Gulch; add ventilation equipment in the
15 subterranean parking structures; change the final elevation at the Arizona Street
16 Landfill; and make further changes to meet current building code requirements.
17
18

19 17. In September 2016 the City approved \$1 million to its budget for
20 construction drawings in conjunction with the Plaza de Panama Committee.
21

22 18. SOHO and scores of concerned community members objected to the
23 approval and implementation of the modified project, raising objections including but
24 not limited to the city's failure to address new information and changed circumstances
25 relating to the Plaza de Panama's cleared parking and successful pedestrian use; the
26 completed 650-space Balboa Park Zoo parking structure that provides almost three
27 times the parking proposed by the Plaza de Panama project; the city's adopted Climate
28

1 Action Plan that requires increased use of public transportation over private cars,
2 reduction of parking spaces, reduction of greenhouse gases, and increased use of public
3 transportation options; increased ADA parking in the lot behind the organ pavilion and
4 the Alcazar lot; and the Plaza de Panama project's lengthening of ADA paths of travel
5 and elimination of drop-offs for the California Plaza, Old Globe, Plaza de Panama and
6 associated museums. SOHO requested that a supplemental EIR process analyze and
7 mitigate access for the Park's disabled patrons and address new information regarding
8 bridge traffic patterns and mitigation available from Caltrans' recent lengthy closure of
9 the Cabrillo Bridge. The Caltrans project is relevant to the feasibility of alternatives for
10 closing the bridge or restricting hours of use. SOHO pointed out that Plaza de Panama
11 project costs have doubled and affect the analysis and evidence of public benefit and
12 overriding considerations; that the popularity of ride-share programs like UBER now
13 significantly reduce the need for parking and affect transit patterns; that nine new
14 Houses of Pacific Relations are approved and affect project impacts; that new City Code
15 regulations for safety and stormwater must be applied; and that the project's
16 greenhouse gas emissions under the current environmental setting must be addressed
17 with reference to the ruling of the California Supreme Court in *Center for Biological*
18 *Diversity v. Department of Fish and Wildlife* (2015) 64 Cal.4th 204. SOHO presented
19 the city with a petition with over 7000 opposing the modified project.
20
21
22
23
24

25 19. Following review by the Council's Infrastructure Committee on October 27,
26 2016, and without any CEQA public review or comment period or Committee action,
27 on November 14, 2016 the City Council held a public hearing and approved the
28

1 modified project and agreements with the Plaza de Panama Committee to accept
2 donations for the parking structure, bypass bridge, and roadway. The Council approved
3 adoption of CEQA addendum 516820 to the 2012 EIR; authorized a Plaza de Panama
4 Cooperation Agreement with the Plaza de Panama Committee; accepted contributions
5 to be made in the future from the Plaza de Panama Committee; authorized negotiation
6 and execution of one or more agreements to accept donations in a cumulative amount
7 estimated to be \$30 million, and to deposit said funds in a special revenue fund;
8 authorized the Chief Financial Officer to increase the Capital Improvement Program
9 Budget in CIP No. L-17002, Balboa Park Plaza de Panama Project, and to appropriate
10 and expend up to an additional \$48 million; authorized a construction contract not to
11 exceed \$75.0 million; authorized reimbursement through bond proceeds for any
12 eligible costs expended prior to the issuance of bonds; approved an ordinance for
13 execution and delivery of a site lease, facilities lease, bond purchase agreement and a
14 continuing disclosure certificate; authorized the execution, delivery, and performance
15 of an indenture by the Public Facilities Financing Authority; authorized issuance and
16 sale of lease revenue bonds not to exceed \$50,000; and approved the execution and
17 delivery of the bonds for project financing in an amount not to exceed \$50,000,000.
18
19
20
21
22

23 20. The city filed a Notice of Determination on November 21, 2016 that
24 incorrectly stated that the Balboa Park Plaza de Panama project will have no significant
25 environmental impacts. This action is timely filed on December 21, 2016.

26 21. SOHO has no plain, speedy, and adequate remedy in the ordinary course of
27 law. Issuance of a peremptory writ is needed to avoid immediate, severe, and
28

1 irreparable harm to SOHO and San Diego residents via the implementation and
2 construction of the Plaza de Panama project without compliance with environmental
3 mandates. The city has the capacity to correct its violations of law but refuses to do so.
4

5 22. SOHO provided the city with a copy of its notice of intention to commence
6 this action and also provided notice to the office of the Attorney General.
7

8 **Violations of the California Environmental Quality Act**

9
10 23. SOHO incorporates all previous paragraphs as if fully set forth.

11 24. The city abused its discretion and failed to act in the manner required by
12 law in approving discretionary actions in furtherance of the modified Balboa Park Plaza
13 de Panama project and mitigation monitoring program on the basis of an addendum to
14 the 2012 EIR. Addenda are not allowed by CEQA; this addendum is a revised EIR that
15 did not follow mandated public process and is not an adequate, complete, good faith
16 effort at disclosure. The city relied upon the addendum to revise the 2012 EIR without
17 adequate analysis under Public Resources Code section 21166 and the public review
18 process required to precede EIR certification.
19
20

21 25. A supplemental EIR is required due to project modifications affected by
22 changed circumstances, availability of new feasible mitigation measures that the city
23 failed to adopt, and new information since certification of the Plaza de Panama EIR in
24 2012, as alleged in this petition and as contained in the administrative record and to be
25 determined subject to proof. Substantial modification of the EIR is required, including
26 but not limited to an amended project description, changed environmental setting,
27
28

1 changed project objectives in light of the already-pedestrian-oriented Plaza de Panama,
2 updated analysis of impacts of the modified project based on current information and
3 circumstances including mandates of current statutes, regulations, and ordinances such
4 as the Climate Action Plan, and consideration of now-feasible project mitigation
5 measures and alternatives that avoid or reduce significant project impacts to the Balboa
6 Park landmark. The city previously claimed that such significant project impacts were
7 unavoidable, but circumstances have changed that require additional EIR analysis of
8 the modified project along with consideration of feasible mitigation and alternatives
9 and the city's compliance with all of CEQA's substantive mandates.
10
11

12 26. The city's findings approving the addendum and project implementation
13 and modifications are not supported by substantial record evidence. The city's prior
14 findings as to project impacts and the feasibility of alternatives and mitigation
15 measures identified in the EIR and brought forward during the public hearing process,
16 and the statement of overriding considerations, and the findings for the modified
17 project are not supported by substantial evidence under the changed circumstances.
18
19

20
21 **WHEREFORE**, Petitioner SOHO prays:

22 1. That the Court issue a peremptory writ of mandamus ordering the city to
23 rescind its approvals of the CEQA addendum and all other 2016 approvals modifying
24 and implementing the Balboa Park Plaza de Panama project, and all project
25 entitlements, and to refrain from reconsidering approvals pending its certification of an
26 adequate supplemental project EIR and its full compliance with CEQA;
27
28

1 2. That the Court issue a temporary restraining order and preliminary
2 injunction prohibiting the city and its commissions and employees and agents from
3 proceeding with any physical actions furthering construction of the Plaza de Panama
4 project while this action is pending;

6 3. For SOHO's costs and attorney fees pursuant to CCP section 1021.5; and

7 4. For such other and further relief as the Court finds proper.

9 December 21, 2016

BRANDT-HAWLEY LAW GROUP

11 By 

12 Susan Brandt-Hawley
13 Attorney for Petitioner SOHO

14 **Verification**

15 I, Susan Brandt-Hawley, am an attorney for petitioner SOHO whose members
16 are located outside of Sonoma County where I have my law offices, and so I verify this
17 petition on its behalf. I have read the Petition for Writ of Mandamus and know its
18 contents. The matters stated in it are true and correct based on my knowledge, except
19 as to matters that are stated on information and belief, and as to those matters, I believe
20 them to be true.
21

22 I declare under penalty of perjury that the above is true to the best of my
23 knowledge. This declaration is executed on December 21, 2016 at Glen Ellen, California.
24

25 
26 _____
27 Susan Brandt-Hawley
28

1 *Save Our Heritage Organisation (SOHO) v. City of San Diego, et al.*
2 San Diego County Superior Court Case No. _____

3
4 **PROOF OF SERVICE**

5 I am a citizen of the United States and a resident of the County of Sonoma. I am
6 over the age of eighteen years and not a party to this action. My business address is P.O.
7 Box 1659, Glen Ellen, CA 95442.

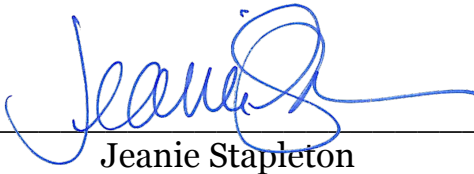
8 On December 21, 2016, I served one true copy of:

9
10 **Petition for Writ of Mandamus**

11 by placing a true copy enclosed in a sealed envelope with prepaid postage, in the United
12 States mail in Glen Ellen, California addressed to:

13 SALLY MAGNANANI, Deputy Attorney General
14 State of California
15 Department of Justice
16 P.O. Box 944255
17 Sacramento CA 94244-2550

18 I declare under penalty of perjury that the foregoing is true and correct and is
19 executed on December 21, 2016, at Glen Ellen, California.

20
21 
22 _____
23 Jeanie Stapleton