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9 VOICE OF SCRIPPS RANCH

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
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14 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**
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16 VOICE OF SCRIPPS RANCH,
17 a California Nonprofit Corporation,
18
19 Plaintiff and Petitioner,
20 v.
21 CITY OF SAN DIEGO, and
22 DOES ONE through TEN, inclusive,
23
24 Defendants and Respondents.

Case No.: 37-2020-00005321-CU-0004-CTL

**PETITION FOR WRIT OF MANDATE;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

25
26 SCRIPPS MESA APARTMENTS, L.P.;
27 MONARCH ESSEX SCRIPPS GP, LLC;
28 MONARCH ESSEX SCRIPPS, LLC;
MONARCH SCRIPPS MESA, LLC;
ESSEX SCRIPPS, LLC; SAN DIEGO
UNIFIED SCHOOL DISTRICT, and DOES
ELEVEN through THIRTY inclusive,
Real Parties in Interest.

I.

INTRODUCTION

1. The City of San Diego (“City”) is ministerially processing and approving the totality of a joint- and mixed- use school, residential, commercial, and park development project that violates the planning consistency doctrine due to direct conflicts with the Miramar Ranch

1 North Community Plan (“MRNCP”) as well as the zoning and development laws of City
2 through violations of its Municipal Code (“SDMC”).

3 2. Plaintiff and petitioner Voice of Scripps Ranch (“VOSR”) brings this action to
4 enforce development review and approval requirements to demand and ensure City’s
5 compliance of those and other laws, by setting aside and rescinding, via one or more writs of
6 mandate, any and all City approvals granting any development permit for the Project, and
7 concurrently and separately seeks declaratory and injunctive relief in order to resolve the legal
8 disputes between the parties whether City can approve or permit development of the Project
9 without compliance with the laws and claims as set forth herein.

10 **II.**

11 **GENERAL ALLEGATIONS**

12 3. Plaintiff and petitioner Voice of Scripps Ranch (“Petitioner” or “VOSR”) is a
13 registered California Corporation in the State of California and County of San Diego that is
14 comprised of directors, officers, members, and supporters who reside within the City of San
15 Diego, and in and around the Scripps Ranch and Miramar Ranch North communities, including
16 the Project area. VOSR has collectively formed and is currently united for the purpose to
17 monitor and ensure that laws are fully and faithfully complied with during the planning,
18 approval, and implementation of city projects in their own, and other communities, such as the
19 Project. VOSR has standing to enforce the laws alleged herein that are designed to provide for
20 sound planning and control of development to protect, and not degrade, community values, and
21 enforce state and local laws. The process, manner, and substantive decisions of City, in its
22 review and approval of the Project as alleged herein, will have detrimental impacts on VOSR,
23 its members, and the general public.

24 4. Defendant and respondent City of San Diego (“City”) is a charter city form of a
25 local public government, and agency and subdivision of the State of California, that is charged
26 with complying with applicable provisions of state law, including the general laws of this State,
27 the California Constitution, the City Charter, municipal code and other regulations of the City of
28 San Diego. For the purposes herein, the “City” includes all of its departments, officers, city

1 council members, city council president, mayor, and other appointed, elected, and employed
2 persons charged with the duties and obligations as alleged herein. To the extent any City or
3 City-related person, agent, or entity is unknown or is required to named as an additional
4 defendant or respondent in this action, VOSR hereby names said parties as DOES ONE through
5 TEN as unknown and yet unidentified defendants or respondents.

6 5. The herein subject and challenged project is a 375,085 square foot 264-unit
7 residential complex, with pool, spa, recreation area, and fitness center, located at 10380 Spring
8 Canyon Road on a 6.694-acre site (“Residential Complex”). For said residential development,
9 the project also includes a separately permitted five-story parking garage structure as Project
10 No. 640472 (“Parking Structure”). There is also a 2,044 square-foot undefined commercial
11 space (“Commercial Space”), and a 3,649 square-foot facility planned as a San Diego Unified
12 School District facility (“Educational Facility”) and community garden. (Project No. 641434).
13 The “Residential Complex,” “Parking Structure,” “Commercial Space,” “Educational Facility”
14 and all other related site and infrastructure developments are hereafter referred to as the
15 “Project.”

16 6. It is alleged and believed that City has accepted and approved one or more
17 development applications from Real Parties for the Project that were filed and submitted for
18 approval by City on or about October 2019.

19 7. City has made a final decision to process all development applications and grant
20 development permits for the Project via ministerial review, without public notice or opportunity
21 for public input, and without the exercise of any discretion, and without making a determination
22 regarding community plan consistency as alleged herein.

23 8. The Project is located at the junction of Scripps Poway Parkway and Spring
24 Canyon Road, which are main roads within the Miramar Ranch North Community. The Project
25 site is located within the commercial visitor “CV-1-1” zone, Residential Tandem Parking
26 Overlay Zone, and the Miramar Ranch North Community Plan Area, for development purposes,
27 uses, and legal requirements related thereto.

1 9. Real party in interest San Diego Unified School District (“SDUSD”) is named
2 herein as a real party in interest owner of the subject real property where the Project is planned
3 and proposed to be developed subject to the development laws and rules of City, and as City is
4 required to follow according to other state, local and common law rules of law. Said real party
5 has rights and interests that stand to be actually or potentially affected by this action and are
6 therefore sued and named in case they want to appear and defend said rights.

7 10. Real parties in interest Scripps Mesa Apartments, LP, Monarch Essex Scripps
8 GP, LLC; Monarch Essex Scripps, LLC, Monarch Scripps Mesa, LLC, and Essex Scripps,
9 LLC are alleged and believed to be one or more fictitious business entities doing business
10 within the state of California, including the City and County of San Diego. Real Parties are
11 alleged and believed to be either owners, partners, and/or developers of the Project whose
12 rights and interests stand to be actually or potentially affected by this action and therefore are
13 sued and named in case they want to appear and defend said rights. To the extent there are any
14 additional unknown or unnamed real parties other than the above, VOSR hereby names DOES
15 ELEVEN through THIRTY as unknown and yet unidentified real parties in interest.

16 11. As above, VOSR is ignorant of the true names and capacities of the respondents,
17 defendants, and real parties sued herein as DOES ONE through THIRTY, inclusive, and
18 therefore sues these defendants by such fictitious names and VOSR will amend this Complaint to
19 allege their true names and capacities when and if ascertained. VOSR also designates all persons
20 unknown claiming any interests or liability in the Project as DOE Defendants.

21 12. Venue and jurisdiction in this Court are proper pursuant to the California Code
22 of Civil Procedure, and Local Rules, for a matter relating to subject Project that is located
23 within, and an administrative action that is and must be decided within, this Court’s
24 geographical venue jurisdiction.

25 **III.**

26 **FACTUAL, LEGAL, AND PROCEDURAL BACKGROUND GIVING RISE TO THIS ACTION**

27 **A. Legal Doctrine Regarding General and Community Plans**

1 13. General planning, as may be encompassed and more specifically delineated in
2 adopted community or specific plans, is required to adopted and followed by City for all
3 planning and development approvals according to Cal. Government Code § 65300. The
4 legislatively adopted land use designations and controls in such plans sit atop the hierarchy of
5 local government law regulating all development and decision-making – whether public or
6 private projects. A community plan governs any further development within a city’s specified
7 geographic area such that any and all development must be consistent with the adopted
8 community plan.

9 14. City originally adopted the MRNCP on March 4, 1980, with the most recent
10 amendments and updated plan adopted on September 29, 1998. The MRNCP is the most
11 specific and applicable state-required planning document that sets forth specific land
12 designations and uses, with affiliated land use maps and other objective development and
13 review requirements for the Project’s site, parcel, and area.

14 15. The CV-1-1 zone is a commercial visitor zone that is designed to accommodate
15 visitor-serving uses. While residential uses are permitted - subject to restrictions in SDMC
16 section §131.0540 and with a maximum density of 1 dwelling unit for each 1500 square feet of
17 lot area – the CV-1-1 zone has an objective purpose and use requiring “establishments catering
18 to the lodging, dining, and recreational needs of both tourists and the local population.” The
19 CV zone is intended for areas located near employment centers and areas with recreational
20 resources or other visitor attractions, and educational facilities are only allowed in the CV-1-1
21 zone upon issuance of a conditional use permit pursuant to SDMC Table 131-05B and SDMC §
22 126.0301 et seq.

23 16. The MRNCP has multiple substantive planning objectives and requirements to
24 consider, approve, and only develop a community “focal point” public, commercial, and visitor-
25 serving project, and preserve the public use and the single-family home density and height
26 character of the immediate project site and community.

1 B. Factual Background

2 17. On or about August 1, 2014, SDUSD issued a Request For Proposals (RFP) for
3 the joint use of the property at the current Project site.

4 18. On or about September 29, 2015, SDUSD authorized staff to negotiate a joint
5 occupancy agreement for the Project Site with one or more Real Parties.

6 19. On June 19, 2018, SDUSD certified an EIR for the Scripps Mesa Joint
7 Occupancy Project, including a joint use agreement between SDUSD and one or more Real
8 Parties for the Project for potential development of the Project, including the Educational
9 Facility. The Project requires independent and separate review and approval by City before,
10 and if, it can be allowed to proceed or commence.

11 20. On June 25, 2019, a report created and made available to City, by and through
12 its housing commission, confirmed that the Project was not yet reviewed or approved: "This
13 action does not constitute approval of a project. Approval will occur once the environmental
14 review has been completed in accordance with CEQA Section 15004. This action will not
15 foreclose review of alternatives or mitigation measures by the public as part of the CEQA
16 process. The proposed actions are approval of preliminary steps to issue bonds and do not
17 constitute approval of the development activity or authorization for the issuance of bonds.
18 Future actions to consider and approve development entitlement approvals related to the future
19 development of the site will require additional review under the provisions of CEQA by the lead
20 agency."

21 21. On or about October of 2019, City accepted applications for building and other
22 permits for the Project under project nos. 641434 and 640472 (Exhibits 1 and 2 hereto) and
23 began processing said permits under a ministerial process. Ministerial approval of the Project
24 has and can occur at any time without notice to the public or VOSR, and without any
25 opportunity for public review, public comment, or public hearing.

26 22. Because the City will not notice or hold any hearings during its ministerial
27 review and approval process for the Project, VOSR has no administrative remedies available for
28 it to pursue or exhaust at or before any City agency or decision-making body.

1 IV.

2 **FIRST CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

3 **Violation of Community Plan Consistency Requirements**

4 **(Cal. Government Code § 65300 et seq.)**

5 23. VOSR hereby realleges and incorporates by reference ¶¶ 1-22 above as though
6 fully set forth herein.

7 24. City's Project approvals, ministerial, discretionary, or otherwise, must be
8 consistent with City's legislatively adopted community plan.

9 25. It is alleged and believed herein that City has not and will not discretionarily
10 review and consider any community plan objectives and requirements as a set forth herein.

11 **Count 1 - Inconsistency with Miramar Ranch North Community Plan (Based on Non-**
12 **Existent or De Minimis Commercial and Visitor Serving Uses)**

13 26. The MRNCP designates the area of the Project site as "commercial recreational"
14 indicating and requiring that surrounding areas be developed as commercial developments and
15 commercial land uses, including a MRNCP substantive objective that such commercially
16 designated uses and provided areas "Provide sufficient commercial area for retail, professional,
17 and recreational uses and social and other services to meet the basic requirements of residents
18 and workers in the community."

19 27. Based on the *de minimis* commercial space portion of Project being less than 1
20 percent of the Project's usable and/or developed area, the Project cannot be legally or factually
21 defined or considered a commercial or "mixed-use" project, thereby making it inconsistent with
22 the commercial objectives and other related mandatory requirements set forth in the MRNCP.

23 28. City's MRNCP does not contain or contemplate a massively-bulked Mission
24 Valley style four and five story housing complex at the Project site, and therefore the Project
25 impermissibly conflicts with multiple substantive provisions of the MRNCP.

26 29. The amount, level, and suitability of commercial development for the Project site
27 requires special discretionary review and site planning as contained and defined in the MRNCP
28 as a "Special Development Area" and special "Anchor" project. Real Parties' planned and

1 permitted Project has not had any such special discretionary site planning before City, its
2 decisionmakers, or members of the public.

3 **Count 2 - Inconsistency with Miramar Ranch North Community Plan (Based on Lack of**
4 **a Neighborhood Shopping or Community Center)**

5 30. The primary land use designation and planning focus of the Project site in the
6 MRNCP is for subregional commercial, office, recreation and/or industrial park support
7 commercial. The MRNCP designates the Project site for commercial and community needs as
8 (1) a small, convenience-oriented community/neighborhood shopping center, and (2) a
9 neighborhood center about ten acres in size, or a community center of approximately 20 acres.

10 31. More specifically, the Project site is intended to be part of a centrally located
11 commercial center to “strengthen the identity and usage of the Ranch Center, while providing
12 community residents and employment center personnel with convenient access to basic needed
13 services and goods.”

14 32. As alleged above in the prior claim and count, the corner and predominant
15 “Anchor” location of the Project site expressly requires “special” discretionary review and site
16 planning for the Ranch Center as set forth in the MRNCP.

17 33. It is alleged and believed that City has not (and will not) procedurally or
18 substantively implement the discretionary review, considerations, or approvals for the specially
19 designated anchor site and development area for the Ranch Center as set forth in the MRNCP.

20 34. As currently proposed and/or approved by City, the Project impermissibly
21 conflicts with these objective special discretionary site planning, review, consideration, and
22 approval requirements.

23 **Count 3 - Inconsistency with Miramar Ranch North Community Plan (Based on**
24 **Inconsistent Height, Bulk, Scale, and Other Community Existing Neighborhood**
25 **Conditions and Standards)**

26 35. The MRNCP designates the Project site for development of a commercial center
27 “in a unified manner, to create an overall atmosphere” and a “common aesthetic effect.” Thus,
28 “tall building blocks are inappropriate. . .” Specifically, developers and City officials are

1 required to implement projects that conform with siting, building, circulation, and urban design
2 guidelines that (discretionarily) do not unnecessarily conflict with, or exceed, existing
3 neighborhood conditions and standards.

4 36. Additionally, as alleged above, the density, bulk, height, scaling, and design for
5 development of the Project requires special discretionary review, consideration, and approval for
6 the Project's site Special Development Area and "anchor" site land use designations.

7 37. It is alleged and believed that City has not (and will not) procedurally or
8 substantively implement the discretionary review, considerations, or approvals regarding the
9 appropriateness of the bulk, height, scale, and design for development of the Project site for the
10 special and specific site designations for the Project site and/or Ranch Center as set forth in the
11 MRNCP.

12 38. As currently proposed and approved by City, the Project impermissibly conflicts
13 with objectively required standards and discretionary planning, review, and approval
14 considerations.

15 **Count 4 - Inconsistency with Miramar Ranch North Community Plan (Based on**
16 **Inconsistency with Density Limitations)**

17 39. Figure 11 of the MRNCP identifies legislatively authorized land uses areas and
18 designations for residential development, including a range from very-low residential to a
19 maximum of medium-high residential. The currently proposed and permitted Project does not
20 meet the designated land use standards for residential development as set forth in Figure 11 of
21 the MRNCP. Furthermore, the maximum contemplated density per net acre (expressed as
22 "du/net acre") for the MRNCP is 12-24 (medium-high and moderate-income housing). The
23 MRNCP specifically does not include "Extremely low and high residential densities" because the
24 public and legislators expressly enacted MRNCP standards so that an appropriate and controlled
25 "suburban, affordable character is sought for the community."

26 40. The current proposed Project is alleged and believed to have a density of 39.44
27 du/net acre which exceeds the planned and contemplated density limits set forth in the MRNCP
28 for the Project area and Project site. The public and legislators expressly enacted the MRNCP to

1 identify a different location in the MRNCP to include a minimum 247 moderate-income unit
2 complex that does not include the specially designated and anchor Project site.

3 41. Table 5 of the MRNCP identifies medium-housing residential as having a
4 maximum of three story multifamily. The Project contains several four-story multifamily units
5 as well as five-story associated, related, and required parking structure.

6 42. The Miramar Ranch North Community Plan does not contain or contemplate the
7 Project and the Project impermissibly conflicts with the legislatively adopted Miramar Ranch
8 North Community Plan, and therefore any permits or approvals for the current Project are
9 unlawful and must be precluded and rescinded to establish that any such approvals and permits
10 are null and void, and have no legal or lawful effect.

11 **V.**

12 **SECOND CAUSE OF ACTION – PETITION FOR WRIT OF MANDATE**
13 **VIOLATIONS OF THE SAN DIEGO ZONING AND DEVELOPMENT CODE**

14 43. VOSR hereby realleges and incorporates by reference ¶¶ 1-42 above, as
15 though fully set forth herein.

16 44. Despite the above-alleged discretionary site planning considerations set forth in
17 the MRNCP, City has and will continue to approve multiple development permits for the
18 Project through a ministerial non-discretionary review and approval process.

19 45. The Project contains construction and intended use of a 3,649 square foot
20 Educational Facility for K-12 students of the San Diego Unified School District.

21 46. The CV-1-1 zone only permits the construction and use of educational facilities
22 for grades kindergarten through grade twelve if a conditional use permit is applied for and
23 approved as required and set forth in Table 131-05B and SDMC § 126.0301 et seq..

24 47. As alleged above, the CV-1-1 zone and MRNCP has objective purposes and use
25 requirements including but not limited to “establishments catering to the lodging, dining, and
26 recreational needs of both tourists and the local population. The CV zones are intended for
27 areas located near employment centers and areas with recreational resources or other visitor
28 attractions.” As set forth in SDMC § 131.0505, the Project must be consistent with the adopted

1 community plan and the special discretionary site planning considerations for the Project as set
2 forth in said MRNCP.

3 48. City's failure to require, consider, and possibly approve a conditional use permit
4 for the Project violates City's zoning code.

5 **VI.**

6 **THIRD CAUSE OF ACTION – DECLARATORY AND INJUNCTIVE RELIEF**

7 49. VOSR hereby realleges and incorporates by reference ¶¶ 1-48 above, as
8 though fully set forth herein.

9 50. VOSR is beneficially interested in the issuance of one or more declarations of
10 law and injunctions by virtue of the propositions of facts and law set forth herein.

11 51. VOSR has a clear, present and beneficial right to the proper performance by
12 City with respect to its interpretation, application, and implementation of the enacted
13 community plan and laws of the City. VOSR has no plain, speedy or adequate remedy in the
14 ordinary course of the law other than the relief herein sought.

15 52. The declaratory relief requested herein is proper to delineate and clarify the
16 parties' rights and liabilities and resolve, quiet, or stabilize an uncertain or disputed jural
17 relation. Without the grant of declaratory relief and the granting of an injunction City will
18 continue to proceed in an unlawful manner, resulting in harm to VOSR, its individual
19 members, real parties in interest, and the citizenry of the San Diego community for whom the
20 laws and community plans of the city are enacted to protect.

21 53. Specifically, City has accepted and has or stands to immediately approve one or
22 more of Real Parties' applications for various permits for the Project and is processing each
23 and all of them ministerially in violation of the SDMC and MRNCP as alleged herein.

24 54. VOSR seeks a declaration of law that the review and approval of the Project by
25 City must include at least a Process Three level of discretionary review pursuant to SDMC
26 §126.0301 et seq. and SDMC § 126.0501 et seq., and as confirmed by SDMC § 126.0503 and
27 SDMC § 126.0404(a)(1) because the Project will adversely affect the MRNCP.

28 55. VOSR requests a declaratory judgment and the issuance of an injunction to

1 enjoin and prevent any conduct or action of City to approve or act on any permit application for
2 the Project, or allow Real Parties to implement or act on any permit or approval, until and
3 lawful compliance is followed as alleged and proven in the claims and counts set forth in this
4 action.

5
6 **VII.**

7 **PRAYER FOR RELIEF**

8 WHEREFORE, VOSR respectfully prays for judgment as follows:

9
10 1. For each of the causes of action and counts alleged herein, that this Court find
11 and issue one or more declarations of law and injunctions that City, by and through its
12 ministerial processing of the Project without at least a Process Three level of discretionary
13 review and approval, has not proceeded in a manner required by law, and City is improperly
14 reviewing and approving one or more applications and permits for the Project that are
15 inconsistent and impermissibly conflict with the legislatively adopted Miramar Ranch North
16 Community Plan, and violate one or more municipal codes and zoning codes of City;


17
18 2. For each of the causes of action and counts alleged herein, that this Court issue
19 one or more peremptory writs of mandamus ordering rescission of the above alleged actions,
20 decisions, approvals, and/or permits made or issued by City for the Project and that said alleged
21 and proven unlawful actions, decisions, approvals, and/or permits made or issued by City for
22 the Project be rescinded, set aside, rendered null and void, and have no legal force or effect;

23
24 3. That VOSR be awarded its reasonable costs incurred in this action, including
25 attorneys' fees under Cal. Code of Civil Procedure § 1021.5 for this matter brought in the
26 public interest; and
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1 4. For such other and further relief as the Court deems just, proper, and necessary
2 to implement an adequate remedy for any of the claims made and proven in this case.

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Dated: January 28, 2020

CRAIG A. SHERMAN, APC


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VOICE OF SCRIPPS RANCH