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CLERK'S OFFICE 21
CENTRAL DIVISION

2019 MAY -2 PM 1:33

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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15 Attorneys for Petitioner
16 HAROLD MICHAEL DENARDI

17 SUPERIOR COURT OF CALIFORNIA
18 COUNTY OF SAN DIEGO-CENTRAL DIVISION

19 HAROLD MICHAEL DENARDI, an
20 individual,
21
22 Petitioner,

23 v.

24 CORONADO CITY COUNCIL, a public
25 entity; and DOES 1 through 5, inclusive,
26
27 Respondent,

) Case No: 37-2019-00022681-CU-WM-CTL
)
) VERIFIED PETITION FOR WRIT OF
) ADMINISTRATIVE MANDAMUS [CODE
) CIV. PROC. § 1094 *et seq.*; GOV. CODE §§
) 65009, 54950 *et seq.*, & 54960.1]

28 ROBERT BARDIN, an individual, TPL, LLLP,
a limited liability limited partnership, C.
EDWARD MCVANEY individually and as
trustee of the C. EDWARD MCVANEY
REVOCABLE TRUST DATED 7/1/99;
CAROLE L. MCVANEY individually and as
trustee of the CAROLE L. MCVANEY
REVOCABLE TRUST DATED 7/1/99 and
DOES 1 through 10, inclusive,
Real Parties in Interest.

1 By this verified petition, Petitioner HAROLD MICHAEL DENARDI (hereinafter
2 "DENARDI" or "Petitioner"), seeks a writ of administrative mandamus for violations of
3 Government Code §§ 1094 *et seq.* and 54950 *et seq.* (the "Brown Act") by Respondent
4 CORONADO CITY COUNCIL (hereinafter the "CITY COUNCIL") regarding the CITY
5 COUNCIL's February 19, 2019 meeting (hereinafter the City Council Meeting). Petitioner
6 seeks a writ of mandamus ordering the CITY COUNCIL to reverse, or in the alternative to set
7 aside, its decision to grant the appeal filed by ROBERT BARDIN related to the Tree Removal
8 Request filed by ED MCVANEY on December 19, 2018.

9 INTRODUCTION

10 1. Petitioner is Plaintiff in a related case, *DENARDI v. TPL, LLLP*, et al., San Diego
11 Superior Court Case No. 37-2014-00040176-CU-OR-CTL (hereinafter "*DENARDI v. TPL*").
12 C. EDWARD MCVANEY, CAROL MCVANEY (hereinafter "the MCVANEYS") and their
13 real estate holding entity, TPL, LLLP (hereinafter "TPL") are Defendants in that lawsuit
14 (hereinafter collectively, "Defendants").

15 2. In *DENARDI v. TPL*, the trial court, in December 2015, ruled via summary adjudication
16 that DENARDI had a prescriptive easement over TPL's property at 609 First Street (hereinafter
17 the "Easement"). (RJN, Exh. 25.) In March 2016, the trial court issued a permanent injunction
18 compelling TPL to restore the Easement. (RJN, Exh. 26.) On April 26, 2017, the Court of
19 Appeal affirmed the trial court's decisions in all respects. (RJN, Exh. 27.) On July 19, 2017, the
20 California Supreme Court denied TPL's petition for review.

21 3. Despite court orders, Defendants refused to restore the Easement. On October 12, 2018,
22 the trial court granted DENARDI's Motion for the Entry of Additional Orders to Compel
23 compliance with the Intent of Summary Judgment and Permanent Injunction Previously Entered
24 in this Matter to compel Defendants to restore and reopen the Easement across the TPL property.
25 The Court issued a written order in connection with that motion on October 30, 2018. (RJN,
26 Exh. 28-29.)

27 4. On December 19, 2018, ED MCVANEY submitted a Public Right-of-Way Tree
28 Removal Request to the Coronado Street Tree Committee ("STC") seeking permission to

1 remove a tree as a condition precedent to obtaining permits needed to restore the Easement. On
2 January 10, 2019, the STC voted 3 to 1 to approve the Tree Removal Request.

3 5. On January 17, 2017, ROBERT BARDIN filed an Appeal of the STC's decision, seeking
4 to block removal of the tree at 609 First Street (hereinafter the "Appeal"). The CITY COUNCIL
5 granted the Appeal on a 3 to 2 vote on February 19, 2019 (hereinafter the "Decision"). That
6 Decision is the subject of this Petition.

7 6. Petitioner alleges that the Decision was improper pursuant to Government Code § 1094.5
8 because it was the result of apparent bias by Mayor Richard Bailey, was the result of substantial
9 undisclosed ex parte communications between City Councilmembers, Mayor Richard Bailey,
10 and residents, and was not supported by the evidence.

11 7. Petitioner alleges that the Decision was also improper pursuant to Government Code §
12 54950 *et seq.* because it was the result of private serial meetings which violated the Brown Act.
13 (Government Code §§ 54952.2 & 54953.)

14 8. The Brown Act, also known as the California Open Meeting Law, had a clear purpose:
15 "In enacting this chapter, the Legislature finds and declares that the public commissions, boards
16 and councils and other public agencies in this State exist to aid in the conduct of the people's
17 business. It is the intent of the law that their actions be taken openly and that their deliberations
18 be conducted openly. ¶ The people of this State do not yield their sovereignty to the agencies
19 which serve them. The people, in delegating authority, do not give their public servants the right
20 to decide what is good for the people to know and what is not good for them to know. The
21 people insist on remaining informed so they may retain control over the instruments they have
22 created." (Government Code § 54950.)

23 9. Thus, the Brown Act requires that local government meetings "be open and public, and
24 all persons shall be permitted to attend any meeting . . ." (Government Code § 54953.) This open
25 meeting requirement extends to a series of private meetings involving members of a legislative
26 body, by which a consensus is reached, or an exchange of information occurs that influences
27 decision making. (*216 Sutter Bay Ass'n. v. County of Sutter* (1997) 58 Cal.App.4th 860, 876-77.)
28

PARTIES

1
2 10. Petitioner DENARDI is and at all times relevant was a resident of San Diego County.
3 Petitioner has a beneficial interest in the February 19, 2019 Decision by the CITY COUNCIL
4 because the Decision directly affects his vested property right to access a prescriptive Easement
5 across Defendants' property, located at 609 First Street, Coronado, California (hereinafter the
6 "Property"). Petitioner's easement rights were established through summary adjudication,
7 issuance of a permanent injunction, and additional orders compelling TPL to restore the
8 Easement that is the subject of litigation in *DENARDI v. TPL*. The Decision by the CITY
9 COUNCIL to grant ROBERT BARDIN's Appeal effectively blocks issuance of the permits
10 required for Defendants to restore Petitioner's Easement.

11 11. Respondent CORONADO CITY COUNCIL is an elected legislative body in the State
12 of California that took the actions which are the subject of this Petition and is subject to the
13 requirements of the Brown Act, as well as Government Code § 1094.5.

14 12. Real Party in Interest ROBERT BARDIN is the individual who filed the Appeal that is
15 the subject of this Petition.

16 13. Real Party in Interest TPL, LLLP, a limited liability limited partnership, is the real estate
17 holding company and record owner of the Property located at 609 First Street, Coronado,
18 California.

19 14. Real Party in Interest C. EDWARD MCVANEY individually and as trustee of the C.
20 EDWARD MCVANEY REVOCABLE TRUST DATED 7/1/99 has an ownership interest in
21 TPL, LLLP which is the owner of record of the Property.

22 15. Real Party in Interest CAROLE MCVANEY individually and as trustee of the CAROLE
23 L. MCVANEY REVOCABLE TRUST DATED 7/1/99 has an ownership interest in TPL,
24 LLLP which is the owner of record of the Property.

25 16. Petitioner does not know the true names and capacities, whether individual, corporate,
26 associate, or otherwise, of Real Parties in Interest DOES 1 through 10, inclusive, and therefore
27 sues said Real Parties in Interest under fictional names. Petitioner alleges, upon information and
28 belief, that each fictionally named Real Party in Interest is responsible in some manner for

1 committing the acts upon which this Petition is based or has material interests affected by the
2 Property or the CITY COUNCIL's actions with respect to the Property or the Decision.
3 Petitioner will amend this Petition to show their true names and capacities if and when the same
4 have been ascertained.

5 **JURISDICTION AND VENUE**

6 17. Pursuant to California Code of Civil Procedure §1094.5, Government Code §§ 54960
7 and 54960.1, this Court has jurisdiction to issue a writ of mandamus to invalidate the CITY
8 COUNCIL's February 19, 2019 Decision with respect to Petitioner's easement rights across the
9 Property, including ordering the CITY COUNCIL to reverse its grant of ROBERT BARDIN's
10 Appeal, or in the alternative, ordering the CITY COUNCIL to reconsider the Decision to grant
11 ROBERT BARDIN's Appeal.

12 18. Venue is proper in this Court because the causes of action alleged in this Petition arose
13 in San Diego County.

14 19. Petitioner has a clear, present and beneficial right to the CITY COUNCIL's
15 performance of its duties to comply with the Brown Act and Code of Civil Procedure § 1094.5.

16 20. Petitioner has complied with the requirements of Government Code § 54960.1 by
17 delivering to the CITY COUNCIL a letter on February 22, 2019 demanding that the CITY
18 COUNCIL cure or correct its Brown Act violations. A copy of that letter is attached to the
19 Notice of Lodgment as Exhibit 21.

20 21. The CITY COUNCIL responded to Petitioner's Letter on April 18, 2018, claiming that
21 it had not violated the Brown Act and declining to cure or correct the violation identified by
22 Petitioner. A true and correct copy of that letter is attached to the Notice of Lodgment as
23 Exhibit 22.

24 22. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless
25 the Court issues the requested writ of mandamus to require Respondents to set aside the Board's
26 Decision taken in violation of the Brown Act and Code of Civil Procedure § 1094.5.

27 23. Petitioner has exhausted all available administrative remedies because Coronado
28 Municipal Code § 1.12.080 specifically provides that judicial review of a final determination of

1 the City Council on appeal may be had pursuant to Code of Civil Procedure § 1094.5.

2 24. Petitioner has complied with all Brown Act requirements, including sending a letter
3 demanding that the CITY COUNCIL cure or correct its Brown Act violations.

4 25. This Writ is based on the certified transcript of the proceedings at the City Council's
5 Meeting addressing the Appeal, which was requested by Petitioner on February 22, 2019 and
6 will be lodged with the Court upon receipt. The Writ is also based on information obtained by
7 Petitioner after the February 19, 2019 City Council Meeting (hereinafter the "City Council
8 Meeting") related to violations of the Brown Act and Code of Civil Procedure § 1094.5, issues
9 that could not have been raised at the City Council Meeting by a person exercising reasonable
10 diligence. Petitioner reserves the right to supplement the evidentiary record as additional
11 information is received.

12 **STATEMENT OF FACTS**

13 26. On December 19, 2018, ED MCVANEY, submitted a Public Right-of-Way Tree
14 Removal Request (hereinafter the "Tree Removal Request") to the STC in order to get the
15 permits necessary to restore DENARDI's Easement. However, when MR. MCVANEY
16 appeared at the January 10, 2019 STC meeting, he asked the Committee to deny his Request.
17 MR. MCVANEY has expressed publicly that even though he applied for the tree removal, it
18 was done under duress via court orders to restore the Easement.

19 27. Despite MR. MCVANEY's opposition, the STC voted 3 to 1 to approve the Request.
20 On February 17, 2017, Defendants' neighbor, Robert Bardin, filed the Appeal of the STC's
21 decision, which the CITY COUNCIL granted on a 3 to 2 Decision on February 19, 2019.

22 28. The City Council Decision is improper because the relationship between Mayor Richard
23 Bailey ("Mayor Bailey") and ED MCVANEY appears to have influenced Mayor Bailey to
24 support the Appeal.

25 29. There is an appearance of impropriety for Mayor Richard Bailey to refuse to recuse
26 himself (or disclose a request that he recuse himself) from a vote directly impacting the interests
27 of his supporters, Defendants ED MCVANEY, CAROLE MCVANEY, and TPL, LLLP. ED
28 MCVANEY and CAROLE MCVANEY made monetary contributions to the election campaign

1 of Mayor Richard Bailey in 2015. According to Bailey's campaign disclosures, each of the
2 MCVANEYs donated \$200 to Bailey's 2016 mayoral election.

3 30. Defendant TPL, LLLP and/or the MCVANEYs hosted a political event for Mayor Bailey
4 at the Hansen Mansion in Coronado in 2016, a historic mansion in which the MCVANEYs own
5 a beneficial interest. Petitioner is also informed and believes that the MCVANEYS hosted a
6 political event for Mayor Bailey at their home, 609 First Street (the Property at issue), in 2016.

7 31. As a result of the appearance of bias, a Coronado resident asked Mayor Bailey to recuse
8 himself from the Vote at the City Council Meeting. This express written request for recusal for
9 conflict of interest was not made public prior to or at the City Council Meeting, nor disclosed
10 pursuant to public record requests, and raises the specter of bias.

11 32. Petitioner has obtained two emails between Mayor Bailey and Reader reporter Marty
12 Graham regarding an apparent conflict of interest involving Mayor Bailey and Defendants.
13 These emails raise an appearance of bias on the part of Mayor Bailey and in favor of the
14 MCVANEYS and TPL.

15 33. Mayor Bailey's responsive email to Marty Graham from his personal email account was
16 withheld from documents produced by the City of Coronado in response to a public records
17 request.

18 34. The City's refusal to produce all email communications that are responsive to public
19 records requests is an indication of an undisclosed conflict of interest and/or bias.

20 35. City Councilmembers and Mayor Bailey all failed to disclose significant ex parte
21 communications between themselves and residents, communications which were intended to
22 influence the City Council's vote on the Appeal. Through these ex parte communications,
23 residents promoted a theoretical "alternative location" for the Easement at 609 First Street. The
24 argument was that the tree removal was unnecessary because the Easement could be placed in an
25 alternative location that does not impact the tree. Substantial undisclosed communications were
26 directed to City Councilmembers and Mayor Bailey in advance of the City Council Meeting that
27 were calculated to convince City officials that the Tree Removal Request was unnecessary.

28 36. The City Council Vote ultimately incorporated the theory that an alternative location

1 makes the tree removal unnecessary, reflecting the content of the ex parte communications.

2 37. Because of the undisclosed ex parte communications, supporters of the Tree Removal
3 Request were unable to participate in deliberations, depriving them of a fair hearing. At the City
4 Council Meeting, the City Attorney instructed officials to disclose all ex parte communications
5 in order for the Vote to withstand a challenge.

6 38. Disclosures presented by Mayor Bailey and City Councilmembers were deficient.

7 39. According to the Minutes for the City Council Meeting, the disclosures of the City
8 Councilmembers and Mayor Richard Bailey were as follows:

9 **Mayor Bailey** reported that this issue first came up to the City Council somewhere
10 between four and six years ago as residents along the frontage road began to
11 change their driveway configurations. At that time, there was an effort made by
12 members of the City Council to reach out to various residents on the frontage road,
13 hear their concerns and see if a compromise could be reached. He met with several
14 community members at that time, specifically on this issue. Since that time, over
15 the years, he has met with a variety of folks, including the applicant [ED
16 MCVANEY] and the appellant [Robert T Bardin], on this issue.

17 **Councilmember Sandke** has discussed the project with Mr. Bardin, at his
18 invitation. He visited the site. He also met with the other party involved.

19 **Councilmember Benzian** has met with the appellant, Mr. Bardin, Suzy Heap,
20 Leslie Bell and took a phone call from a resident, Phil Manion.

21 **Mr. Sandke** added that he also met with Mr. Manion.

22 **Councilmember Heinze** received a phone call from Mr. Manion and went out and
23 had his own conversation with the tree.

24 **Councilmember Donovan** walked the site, looked it over, and, at the same time,
25 met with Suzanne Heap, Bob Bardin and Leslie Bell. He received emails from
26 Suzy Heap as well and Phil Manion. He met with Phil Manion to discuss the
27 project.

28 40. City Attorney Johanna Canlas urged the officials to amend their disclosures, by
providing context for the disclosures. Councilmembers and Mayor responded:

Mayor: I'll share the general consensus around the conversations I had was a
desire to keep the tree standing while providing enhanced access to the residents on
the frontage road.

Councilman Sandke: I would ditto those same comments.

Councilman Benzian: Same.

1 **Councilman Heinze:** My conversation with Mr. Manion was about the
2 circumstances surrounding the tree more than it was about the tree. And my
3 conversation with the tree was about its health.

4 **Mayor:** And what did it say?

5 **Councilman Heinze:** It has some distress.

6 **Councilman Donovan** my discussions with the folks I mentioned were basically
7 around what some of the history was and reasons why the tree should be -- not not be
8 taken down and that's pretty much what the discussions were.

9 41. None of the disclosures mentions the alternative location argument put forth by
10 supporters of the Appeal.

11 42. Following the City Council Meeting, Petitioner uncovered extensive undisclosed ex parte
12 communications between Mayor Bailey, City Councilmembers, and residents related to the
13 CITY COUNCIL's Decision on the Appeal.

14 43. Three depositions taken by Petitioner's counsel after the City Council Meeting, as well as
15 emails obtained by Petitioner, revealed extensive undisclosed ex parte communications, emails,
16 and on-site meetings between residents, the Mayor, and a majority of City Councilmembers,
17 addressing Robert Bardin's Appeal. This evidence should all be considered as part of the record
18 for this Writ Petition because it was impossible to raise at the City Council Meeting.

19 44. The undisclosed communications between residents and officials and the on-site
20 meetings between residents and officials were intended to influence the vote of the CITY
21 COUNCIL, arguing that there is an "alternative location," for the Easement and promoting the
22 aesthetic value of the tree. This evidence was introduced to officials outside of the public City
23 Council Meeting, denying a "fair hearing" on the Appeal.

24 45. As a result of the undisclosed ex parte communications between residents, the Mayor,
25 and City Councilmembers, residents Robert Bardin and Leslie Bell prepared and filed an
26 "Addendum" to the Appeal, which indicated on its face that the CITY COUNCIL had concluded
27 how to vote before the meeting.

28 46. The Addendum was drafted after the on-site meetings between residents and officials in
 order to bolster the argument that there is an alternative location. The on-site meetings occurred
 between January 24, 2019 and February 1, 2019 and the Addendum was filed with the City on

1 February 8, 2019.

2 47. The Addendum was intended to provide additional information to City Councilmembers
3 about the alternative location. The Addendum also substantiates that the on-site meetings
4 promoted the theory of an alternative location and the aesthetic value of the tree. The Addendum
5 states that “the City Council has had the opportunity to see firsthand the tree and proposed
6 alternative location and do further analysis and should be able to vote to SAVE THE TREE
7 accordingly.”

8 48. The presentation of evidence outside of the City Council meeting eliminates any
9 possibility of a fair hearing. (*English v. City of Long Beach, supra*, 35 Cal.2d at p. 158.)

10 49. The Addendum was late-filed and should not have been considered. According to CMC §
11 1.12.020, an appeal must be filed within 10 days of the determination and must “contain all
12 information that the appellant desires to be considered at the appeal hearing.” The date of
13 determination of the Street Tree Committee’s decision was January 10, 2019, and the
14 “Addendum” was filed on February 8, 2019. (NOL, Exh 9, at p. 1.) Thus, the Addendum was
15 weeks late and should have been excluded as part of the Appeal. The Addendum evidences an
16 unfair hearing.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Code of Civil Procedure § 1094.5 et seq. Against CORONADO CITY**
19 **COUNCIL and DOES 1 through 10, inclusive)**

20 50. Petitioner realleges and incorporates herein by reference each of the foregoing
21 paragraphs as though fully set forth herein.

22 51. The Decision reached by the CITY COUNCIL is not supported by substantial evidence
23 and the evidence presented at the City Council Meeting weighs heavily in favor of denying the
24 Appeal.

25 52. The evidence presented at the City Council Meeting indicates that the Tree Removal
26 Request should have been upheld as a routine development project. The City staff
27 recommended allowing the Removal Request, and the evidence it presented was
28 uncontroverted.

1 53. The evidence presented by the City Director of Public Services and Engineering in
2 support of the Tree Removal Request and in opposition to the Appeal included that the tree was
3 heavily pruned in a manner that violates arborist standards, is not an approved species, and
4 would likely be removed when the City moves ahead with its project to underground the utility
5 lines.

6 54. The City Director of Public Services and Engineering testified that tree removal requests
7 for development are almost always approved and that none have been disapproved in the
8 preceding five years he had been an employee of the City .

9 55. The Tree Removal Request in this case was for development and subordinate to a permit
10 application to allow the resident to "construct their accessway between First Street and the
11 access road."

12 56. Despite uncontroverted evidence in support of the Tree Removal Request, the Appeal
13 was granted on the basis of the existence of an alleged alternative location for the Easement.

14 57. There is no evidence that MCVANEYS or TPL have committed to or agreed to locate
15 the access point for the Easement in an alternative location.

16 58. Neither MCVANEYS nor TPL has applied for permits to locate the Easement in an
17 alternative location.

18 59. There is no evidence of the existence of an alternative location for the Easement.

19 60. The City Council's Decision appears to be influenced by bias that was undisclosed.
20 Mayor Bailey has been financially and politically supported by the MCVANEYS and TPL and
21 he failed to disclose recusal requests and email communications that indicated potential bias.

22 61. City Councilmembers and Mayor Bailey had significant undisclosed ex parte
23 communications, emails, and on-site meetings with residents, intended to influence the
24 Decision, that were undisclosed at the City Council Meeting.

25 62. Respondent failed to proceed in the manner required by law and denied Petitioner a fair
26 trial, in violation of Code of Civil Procedure § 1094.5.

27 63. Respondent committed prejudicial abuse of discretion in that its Decision is not
28 supported by the finding and the findings are not supported by the law.

1 64. Petitioner's fundamental vested rights are involved, requiring the Court to exercise its
2 independent judgment on the record. The Respondent's decision is not supported by the weight
3 of the evidence.

4 65. Respondent's decision is not supported by substantial evidence.

5 **SECOND CAUSE OF ACTION**

6 **(Violation of Brown Act, Government Code §§ 54950 *et seq.*, 54954.1, 54953, & 54952.2**

7 **Against CORONADO CITY COUNCIL and DOES 1 through 10, inclusive)**

8 66. Petitioner realleges and incorporates herein by reference each of the foregoing
9 paragraphs as though fully set forth herein.

10 67. Government Code §§ 54950 *et seq.*, 54953 & 54952.2 (hereinafter the "Brown Act"),
11 guarantees public access to meetings of local government agencies, and the statute is liberally
12 construed "in favor of openness in conducting public business." (*Shapiro v. Directors of Center*
13 *City Development Corp.* (2005) 134 Cal.App.4th 170, 180-81.)

14 68. Government Code § 54952.2 mandates that "[a] majority of the members of a legislative
15 body shall not, outside a meeting authorized by this chapter, use a series of communications of
16 any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of
17 business that is within the subject matter jurisdiction of the legislative body."

18 69. Government Code § 54953 mandates that "[a]ll meetings of the legislative body of a
19 local agency shall be open and public, and all persons shall be permitted to attend any meeting
20 of the legislative body of a local agency," with some exceptions, none of which are applicable
21 here.

22 70. Government Code § 54953 is violated by a series of meetings involving a majority of
23 the members of a legislative body, held in private, by which a consensus is reached, or an
24 exchange of information occurs that influences decision making. (*216 Sutter Bay Ass'n. v.*
25 *County of Sutter* (1997) 58 Cal.App.4th 860, 876-77.)

26 71. Mayor Bailey and the majority of City Councilmembers engaged in extensive *ex parte*
27 communications with residents via email, telephone, and in person on-site meetings. These
28 communications resulted in impermissible private serial meetings where information and

1 evidence were provided that influenced official decision making resulting in an invalid
2 Decision at the February 19, 2019 City Council Meeting relating to the Appeal.

3 72. Various residents acted as an intermediary(ies) by contacting every City
4 Councilmember and Mayor Bailey, providing information about the alleged alternative location
5 for the Easement, urging officials to vote in favor of the Appeal, and scheduling and
6 participating in on-site meetings with City officials that privately influenced their vote before
7 the February 19, 2019 City Council Meeting.

8 73. One purpose of the meetings between residents, Mayor Bailey, and Councilmembers
9 was to convince City officials, before the public City Council Meeting, to support the Appeal
10 on the basis of the theoretical alternative location for the Easement.

11 74. Following the private serial meetings between City officials and residents, the CITY
12 COUNCIL voted 3 to 2 to support the Appeal filed by ROBERT BARDIN.

13 75. These actions violate both the letter and the spirit of the Brown Act.

14 76. The CITY COUNCIL violated the Brown Act by not disclosing communications with
15 the public related to the serial private meetings involving the City Council Decision and the
16 Appeal.

17 77. Petitioner and the public were prejudiced by these violations in several ways, including,
18 but not limited to, denial of the opportunity to prepare and provide meaningful comments and
19 evidence to the CITY COUNCIL on the issues addressed in these serial meetings, meaningful
20 notice of discussions in which they had an interest and should have had the opportunity to
21 participate, and access to records which would have assisted them in participating in the CITY
22 COUNCIL's Decision.

23 78. On April 5, 2019, pursuant to Government Code § 54960.1(b), Petitioner timely
24 submitted a demand to the CITY COUNCIL to cure or correct the action taken on February 19,
25 2019 in violation of the Brown Act. The CITY COUNCIL responded April 18, 2019 that it
26 would not.

27 **PRAYER FOR RELIEF**

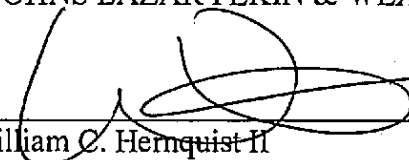
28 WHEREFORE, Petitioner prays for judgment as follows:

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1. Under each cause of action, that a Writ of Administrative Mandamus issue under seal of this Court commanding Respondent to set aside the February 19, 2019 Decision granting the Appeal;
2. Under each cause of action, that a Writ of Administrative Mandamus issue under seal of this Court commanding Respondent to reverse the Appeal granted on February 19, 2019;
3. Under each cause of action, that this Court award Petitioner reasonable attorneys' fees and costs of suit incurred herein;
4. Under each cause of action, that this Court grant Petitioner such other, different, or further relief as the Court may deem just and proper.

Dated: May 2, 2019

WILLIAM C. HERNQUIST II, A.P.C.
And
FOX JOHNS LAZAR PEKIN & WEXLER, APC

By: 
William C. Hernquist II
Attorneys for Petitioner

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VERIFICATION

I, Harold Michael DeNardi, am Petitioner in the above-entitled action. I have read the foregoing Verified Petition for Writ of Administrative Mandamus and know the contents thereof to be true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of May, 2019, at Coronado, California.


Harold Michael DeNardi

CLERK'S OFFICE 21
CENTRAL DIVISION

2019 MAY -2 PM 1:34

CLERK-SUPERIOR COURT
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15 Attorneys for Plaintiff

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26 a limited liability limited partnership, C.
27 EDWARD MCVANEY individually and as
28 trustee of the C. EDWARD MCVANEY
REVOCABLE TRUST DATED 7/1/99;
CAROLE L. MCVANEY individually and as
trustee of the CAROLE L. MCVANEY
REVOCABLE TRUST DATED 7/1/99 and
DOES 1 through 10, inclusive,

Real Parties in Interest.

) Case No: 37-2019-00022681-CU-WM-CTL

)
) REQUEST FOR JUDICIAL NOTICE IN
) SUPPORT OF PETITION FOR WRIT OF
) ADMINISTRATIVE MANDAMUS [CODE
) CIV. PROC. § 1094 *et seq.*; GOV. CODE §§
) 65009 & 54960.1]
)
)
)
)

1 Petitioner, HAROLD MICHAEL DENARDI (hereinafter "Petitioner" or "DENARDI"),
2 hereby requests that the Court take judicial notice, pursuant to California Evidence Code sections
3 451, 452, and 453, of the following documents in support of his Petition for Writ of
4 Administrative Mandamus, filed in *DENARDI V. TPL, LLLP, et al.*, San Diego Superior Court
5 Case No. 37-2014-00040176-CU-OR-CTL:

6 1. The Order Granting Motion for Summary Adjudication, filed on about December 9,
7 2015, a true and correct copy of which is attached to the Notice of Lodgment as Exhibit 25.

8 2. The Order Granting Motion for Permanent Injunction, filed on about March 15, 2016, a
9 true and correct copy of which is attached to the Notice of Lodgment as Exhibit 26.

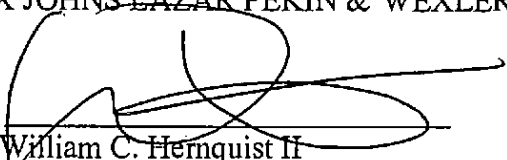
10 3. The Court of Appeal's decision in this matter, filed on about April 26, 2017, a true and
11 correct copy of which attached to the Notice of Lodgment as Exhibit 27.

12 5. The Minute Order Granting Plaintiff's Motion for Additional Orders to Compel
13 Compliance with the Intent of Summary Judgment and Permanent Injunction Previously Entered
14 in this Matter, a true and correct copy of which is attached to the Notice of Lodgment as Exhibit
15 28.

16 6. The Order Compelling TPL, LLLP's Compliance with the Intent of Summary Judgment
17 and Permanent Injunction Previously Entered in this Matter, a true and correct copy of which is
18 attached to the Notice of Lodgment as Exhibit 29.

19 Dated: May 2, 2019

WILLIAM C. HERNQUIST II, A.P.C.
And
FOX JOHNS LAZAR PEKIN & WEXLER, APC

21
22 By: 
23 William C. Hernquist II
24 Attorneys for Petitioner
25 HAROLD MICHAEL DENARDI

26
27
28

2019 MAY -2 PM 1:34

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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15 Attorneys for Plaintiff
16 HAROLD MICHAEL DENARDI

17 **SUPERIOR COURT OF CALIFORNIA**

18 **COUNTY OF SAN DIEGO-CENTRAL DIVISION**

19 HAROLD MICHAEL DENARDI, an
20 individual,

21 Petitioner,

22 v.

23 CORONADO CITY COUNCIL, a public
24 entity; and DOES 1 through 5, inclusive,

25 Respondent,

) Case No: 37-2019-00022681-CU-WM-CTL

) **DECLARATION OF HAROLD MICHAEL
DENARDI IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS [CODE
CIV. PROC. § 1094 et seq.; GOV. CODE §§
65009 & 54960.1]**

26 ROBERT BARDIN, an individual, TPL,
27 LLLP, a limited liability limited partnership, C.)
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trustee of the C. EDWARD MCVANEY
REVOCABLE TRUST DATED 7/1/99;
CAROLE L. MCVANEY individually and as
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REVOCABLE TRUST DATED 7/1/99 and
DOES 1 through 10, inclusive,

Real Parties in Interest.

2019 MAY -2 PM 1:36

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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17 **SUPERIOR COURT OF CALIFORNIA**
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) Case No: 37-2019-00022681-CU-WM-CTL

)
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) **DENARDI IN SUPPORT OF VERIFIED**
) **PETITION FOR WRIT OF**
) **ADMINISTRATIVE MANDAMUS [CODE**
) **CIV. PROC. § 1094 et seq.; GOV. CODE §§**
) **65009 & 54960.1]**

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SAN DIEGO COUNTY, CA

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15 Attorneys for Petitioner
16 HAROLD MICHAEL DENARDI

17 SUPERIOR COURT OF CALIFORNIA
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25 Respondent,

) Case No: 37-2019-00022681-CU-WM-CTL

)
) DECLARATION OF WILLIAM C. HERNQUIST
) II IN SUPPORT OF VERIFIED PETITION FOR
) WRIT OF ADMINISTRATIVE MANDAMUS
) [CODE CIV. PROC. § 1094 *et seq.*; GOV. CODE
) §§ 65009 & 54960.1]

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CAROLE L. MCVANEY individually and as
trustee of the CAROLE L. MCVANEY
REVOCABLE TRUST DATED 7/1/99 and
DOES 1 through 10, inclusive,

Real Parties in Interest.

1 I, WILLIAM C. HERNQUIST II, declare:

2 1. I am an attorney licensed to practice in and before all courts in the State of California
3 and am one of the attorneys of record for Petitioner HAROLD MICHAEL DENARDI
4 (hereinafter "MR. DENARDI") in this matter. I am also one of the attorneys of record for
5 Plaintiff HAROLD MICHAEL DENARDI in a related case, *DENARDI v. TPL, LLLP*, et al.,
6 San Diego Superior Court Case No. 37-2014-00040176-CU-OR-CTL. If called as a witness I
7 could and would testify to the following facts which are within my own personal knowledge
8 except for those matters stated upon my information or belief based upon my review of the
9 Court's file in this matter, and as to each such matter, I believe it to be true.

10 2. I substituted into this case as counsel of record for MR. DENARDI in the *DENARDI v.*
11 *TPL, LLLP* case on February 23, 2018. Prior to the substitution of attorney, Linda C. Beresford
12 was counsel of record for MR. DENARDI. Derek Wilson represents Defendants TPL, LLLP
13 (hereinafter "TPL") as well as all other defendants in *DENARDI v. TPL*.

14 3. *DENARDI v. TPL* arose out of an easement dispute between DENARDI and
15 Defendants.

16 4. On December 9, 2015, via a Motion for Summary Adjudication in *DENARDI v. TPL*,
17 the Court determined that MR. DENARDI has a prescriptive easement over the southerly 50
18 feet of TPL's property for use as a road and driveway (hereinafter the "Easement"). (Request
19 for Judicial Notice, "RJN," Ex. 25.) On March 15, 2016, in entering a permanent injunction,
20 the trial Court ordered TPL to restore the Easement. (RJN, Ex. 26.) In response, TPL appealed
21 and, on April 26, 2017, the Court of Appeal affirmed the trial Court's decisions. (RJN, Ex. 27.)
22 TPL then filed a petition for review with the California Supreme Court. On July 19, 2017, the
23 California Supreme Court denied TPL's petition for review.

24 5. To compel TPL to comply with the previously entered permanent injunction and order
25 granting summary adjudication, in August 2018, Plaintiff filed a Motion for Additional Orders
26 to Compel Compliance with the Intent of Summary Judgment and Permanent Injunction
27 Previously Entered in this Matter. On October 12, 2018, this Court granted Plaintiff's Motion,
28 and on October 30, 2018, the Court entered Plaintiff's Order Compelling TPL, LLLP's

1 Compliance with the Intent of Summary Judgment and Permanent Injunction Previously
2 Entered in this Matter. (RJN, Ex. 28-29.)

3 6. Defendants have been ordered to restore an access point (“Access Point 1”) connecting
4 First Street to the Frontage road, which collectively constitute MR. DENARDI’s prescriptive
5 easement across Defendants’ property. There is a tree adjacent to the location where
6 Defendants have been ordered to re-open Access Point 1. In order to have a public right of way
7 that is wide enough to comply with City requirements in the prescribed location, the tree must
8 be removed.

9 7. On November 2, 2019, TPL applied for a permit to install a curb cut to reopen the
10 easement access to First Street (“Access Point 1”). Attached to the Notice of Lodgment as
11 Exhibit 1 is a true and correct copy of the permit application and related email produced by the
12 City of Coronado pursuant to a public records request from my office.

13 8. On or about November 30, 2018, Johanna N. Canlas, City Attorney for the City of
14 Coronado, advised me via email that TPL’s permit application to reopen Access Point 1 was
15 approved, subject to the City of Coronado’s Street Tree Commission’s action on the tree
16 removal request. Attached to the Notice of Lodgment as Exhibit 2 is a true and correct copy of
17 the email communication from Coronado’s City Attorney.

18 9. On December 19, 2018, TPL’s principal, Defendant C. Edward McVaney, submitted to
19 the City of Coronado a Public Right-of-Way Tree Removal Request (hereinafter the “Tree
20 Removal Request”) ostensibly seeking the removal of the tree affecting the permit application
21 to reopen Access Point 1. Attached to the Notice of Lodgment as Exhibit 3 is a true and correct
22 copy of that Tree Removal Request.

23 10. On January 10, 2019, the Coronado Street Tree Committee (hereinafter “STC”) held a
24 Special Meeting to vote on Mr. McVaney’s Tree Removal Request. Despite Mr. McVaney’s
25 oral objection to the removal of the tree stated at the hearing, the Street Tree Committee voted 3
26 to 1 to approve the removal request.

27 11. On January 17, 2019, Robert Bardin filed an appeal of the City of Coronado’s decision
28 to grant a permit to Mr. McVaney and TPL, LLLP to install a public right of way and remove

1 the tree at 609 First Street (hereinafter the "Appeal"). Attached to the Notice of Lodgment as
2 Exhibit 4 is a true and correct copy of the Appeal. Leslie Bell helped Mr. Bardin research and
3 draft the Appeal. The Appeal is exhibit 6 to the deposition transcript of Robert Bardin.

4 12. Suzie Heap sent a series of emails to Coronado City Council Members and neighbors
5 related to the Appeal prior to the City Council Meeting at which the Appeal was to be heard.
6 Attached to the Notice of Lodgment as Exhibit 5 are true and correct copies of emails from
7 Suzie Heap related to the Appeal, dated from January 12, 2019 to February 20, 2019. These e-
8 mails were produced by Leslie Bell at her deposition. (LESBELL000001-000008.) Attached to
9 the Notice of Lodgment as Exhibit 6 are true and correct copies of emails from Suzie Heap
10 related to the Appeal dated February 14, 2019, also produced by Leslie Bell at her deposition.
11 (LESBELL000009-000010.)

12 13. Between approximately January 22 and January 23, 2018, Leslie Bell sent emails to the
13 Coronado City Councilmembers and Coronado Mayor Richard Bailey, asking them for
14 meetings to discuss removal of the tree. Attached to the Notice of Lodgment as Exhibit 7 are
15 true and correct copies of emails between Leslie Bell, the Coronado City Councilmembers and
16 Mayor Richard Bailey, produced by the City of Coronado in response to a public records
17 request, also included in Exhibit 4 to the deposition transcript of Leslie Bell.

18 14. On about January 23, 2019, Leslie Bell emailed Robert Bardin a schedule of the
19 meetings with the City Councilmembers and Mayor Richard Bailey. Attached to the Notice of
20 Lodgment as Exhibit 8 are true and correct copies of emails between Leslie Bell and Robert
21 Bardin about meetings with and the Coronado City Councilmembers and Mayor Richard
22 Bailey, produced by the City of Coronado in response to a public records request, also Exhibit 6
23 to the deposition transcript of Leslie Bell.

24 15. On about February 8, 2019, Leslie Bell and Robert Bardin prepared and filed an
25 "Addendum" to the Appeal with the City of Coronado. Attached to the Notice of Lodgment as
26 Exhibit 9 is a true and correct copy of the "Addendum" to the Appeal, which was exhibit 7 to
27 the deposition transcript of Leslie Bell and Exhibit 7 to the deposition transcript of Robert
28 Bardin. The Addendum also appears on p. 170-78 of the City Council Agenda, Exhibit 10 to the

1 Notice of Lodgment.

2 16. On February 19, 2019, the Coronado City Council had a meeting at which it voted 3 to 2
3 to grant the Appeal. Attached to the Notice of Lodgment as Exhibit 10 is a true and correct
4 copy of portions of the February 19, 2019 City Council Agenda, which I obtained from the City
5 of Coronado website. Attached to the Notice of Lodgment as Exhibit 11 is a true and correct
6 copy of portions of the February 19, 2019 City Council Minutes, which I obtained from the City
7 of Coronado website.

8 17. On February 22, 2019, pursuant to Code Civil Procedure sections 1094.6 & 65009, my
9 office requested a certified transcript of the record of the February 19, 2019 City Council
10 meeting at which the Appeal was heard in support of this Writ, but the transcript has not been
11 received yet. When it is received, it will be provided to the Court. Attached to the Notice of
12 Lodgment as Exhibit 12 is a true and correct copy of that request. Petitioner reserves the right to
13 supplement the evidence as it is obtained. Attached to the Notice of Lodgment as Exhibit 13 is a
14 true and correct copy of a transcript of the video recording of the February 19, 2019 City
15 Council meeting (hereinafter the "City Council Meeting").

16 18. Petitioner is supplementing the record with information that was not raised at the City
17 Council Meeting because it was not disclosed or discovered until after the City Council
18 Meeting, despite Petitioner's exercise of due diligence. Petitioner has taken three depositions
19 since the City Council Meeting, transcripts of which are included as evidence supporting this
20 Writ. In addition, Petitioner has obtained emails related to the Appeal from third parties, as well
21 as documents obtained from the City of Coronado pursuant to public records requests sent after
22 the City Council Meeting.

23 19. Attached to the Notice of Lodgment as Exhibit 14 and addressed in the Declaration of
24 Petitioner Harold DeNardi is a copy of an email from Daron Case requesting that Mayor
25 Richard Bailey recuse himself from voting on the Appeal. Mr. Case provided that email to
26 Petitioner after the City Council meeting. (DeNardi Declaration, ¶¶ 6-7.) This e-mail was not
27 disclosed by the City of Coronado despite relevant public records requests submitted by my
28 office.

1 20. Appellant Robert Bardin was deposed pursuant to a deposition subpoena issued by
2 Petitioner on or about February 25, 2019. Attached to the Notice of Lodgment as Exhibit 15 is a
3 true and correct copy of portions of the deposition transcript of Robert Bardin.

4 21. Phillip Manion was deposed pursuant to a deposition subpoena issued by Petitioner on
5 or about April 1, 2019. Attached to the Notice of Lodgment as Exhibit 16 is a true and correct
6 copy of portions of the deposition transcript of Phillip Manion.

7 22. Leslie Bell was deposed pursuant to a deposition subpoena issued by Petitioner on or
8 about April 1, 2019. Attached to the Notice of Lodgment as Exhibit 17 is a true and correct
9 copy of portions of the deposition transcript of Leslie Bell.

10 23. My office has obtained emails between Reader reporter Marty Graham and Mayor
11 Richard Bailey regarding his connections to the MCVANEYS. Attached to the Notice of
12 Lodgment as Exhibit 18 is a true and correct copy of a redacted email between Graham and
13 Bailey dated September 1, 2017, which was disclosed by the City of Coronado pursuant to a
14 public records request. Attached to the Notice of Lodgment as Exhibit 19 is a true and correct
15 copy of an email sent to Marty Graham by Mayor Richard Bailey from his private email
16 account, dated September 1, 2017. This email was not disclosed by the City of Coronado,
17 despite public records requests asking for it.

18 24. Attached to the Notice of Lodgment as Exhibit 20 is a true and correct copy of Mayor
19 Richard Bailey's campaign disclosures from 2016, produced by the City of Coronado in
20 response to a public records request. It shows that Ed McVaney and Carole McVaney each
21 donated \$200 to Bailey's campaign on November 16, 2015.

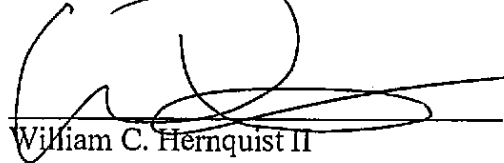
22 25. On April 5, 2019, my office provided the Coronado City Council and Coronado Mayor
23 Richard Bailey with a Demand to Cure or Correct Coronado City Council Action taken on
24 February 19, 2019. Attached to the Notice of Lodgment as Exhibit 21 is a true and correct copy
25 of that demand. On or about April 18, 2019, the City Council, through its attorney, refused to
26 cure or correct the action. Attached to the Notice of Lodgment as Exhibit 22 is a true and
27 correct copy of the correspondence from the City of Coronado.

28 26. Attached to the Notice of Lodgment as Exhibit 23 is a true and correct copy of the

1 Coronado Street Tree Master Plan.

2 27. On or about February 20, 2019, after the City Council voted to grant the Appeal,
3 MCVANEY's and TPL's counsel, Derek Wilson, contacted me via email. His email stated, "I
4 don't see how it is possible to restore access as ordered by the permanent injunction." The
5 email never indicated that Defendants were willing to locate the easement in an alternative
6 location. Attached to the Notice of Lodgment as Exhibit 24 is a true and correct copy of the
7 email from Mr. Wilson.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed at Encinitas, California, on May 2, 2019.

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12 William C. Hernquist II

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2019 MAY -2 PM 1:33

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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15 Attorneys for Petitioner
16 HAROLD MICHAEL DENARDI

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) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF VERIFIED**
) **PETITION FOR WRIT OF**
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) **CIV. PROC. § 1094 et seq.; GOV. CODE §§**
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1 Petitioner, HAROLD MICHAEL DENARDI (hereinafter "DENARDI" or "Petitioner"),
2 respectfully submits the following points and authorities in support of his petition for a writ of
3 administrative mandamus (hereinafter the "Writ").

4 I. INTRODUCTION

5 A. Procedural Summary

6 Petitioner is bringing this Writ to invalidate a decision reached at the February 19, 2019
7 Coronado City Council (hereinafter City Council) meeting because that vote was biased, tainted
8 by undisclosed ex parte communications that produced an unfair hearing, not supported by the
9 evidence, and was the result of private meetings that violate the Brown Act's open meeting
10 provisions. The City Council's decision blocked issuance of permits needed to restore
11 Petitioner's easement rights.

12 Petitioner has an absolute right to restoration of a prescriptive easement; a right which was
13 fully and thoroughly adjudicated by the trial court, the Court of Appeal, and affirmed by the
14 California Supreme Court. (Request for Judicial Notice "RJN", Ex. 25-29; Declaration of
15 William C. Hernquist "Hernquist Decl., ¶4.) The City Council acted improperly and without
16 justification in blocking the permit process needed to reopen the easement. In the interests of
17 justice, this Court should exercise judicial review and reverse the City Council's decision,
18 requiring issuance of the permits needed to re-open the easement right-of-way that was awarded
19 to Petitioner in 2015 and affirmed in 2016, 2017, and 2018 (hereinafter the "Easement"). (RJN,
20 Ex. 25-29.)

21 On February 19, 2019, the City Council improperly granted an appeal from a decision
22 rendered on January 10, 2019 by the Coronado Street Tree Committee (the "STC"). On January
23 10, 2019, after considering the evidence presented, the STC voted to allow removal of a tree that
24 was obstructing the restoration of Petitioner's easement. (Hernquist Decl., ¶¶ 6-10.) A neighbor
25 filed an appeal asking the City Council to reverse the STC's decision and block removal of the
26 tree (hereinafter the "Appeal"). (NOL, Exs. 3, 4.) On February 19, 2019, the City Council
27 reversed the STC. That decision appears to preclude ED MCVANEY and other Defendants in
28

1 the underlying case¹ the right to remove the tree and obtain permits needed to reopen the
2 Easement. (NOL, Ex. 11, at p. 55.)

3 This Court should order the City Council to reverse its decision and deny the Appeal on the
4 basis that: (1) the vote was biased; (2) undisclosed ex parte communications produced an unfair
5 hearing; (3) the decision was not supported by the evidence; and (4) the City Council's actions
6 were the result of impermissible private serial meetings that influenced and decided the vote
7 ahead of time.

8 **B. Underlying Case Background**

9 This matter arises out of an easement dispute between Petitioner and C. EDWARD
10 MCVANEY, CAROL MCVANEY (hereinafter "the MCVANEYS") and their real estate
11 holding entity, TPL, LLLP (hereinafter "TPL") (collectively, the "Defendants") regarding an
12 historical travelled way over the MCVANEYS' property. (TPL is the record owner of the
13 MCVANEYS' property.) In 2014, Defendants destroyed the long existing 30' wide frontage
14 road and access to First Street ("Access Point 1") located on TPL's property used by Petitioner
15 and other adjacent property owners. Petitioner thereafter filed a lawsuit to restore the easement.

16 In December 2015, the trial court ruled that Petitioner had a prescriptive Easement over
17 TPL's property "for use as a road and driveway" and entered summary judgment in his favor.
18 (RJN, Ex. 25.) In March 2016, the Court issued a permanent injunction which compelled TPL to
19 "restore the frontage road and Access Point 1 that previously existed on Lot 19" so it could again
20 be used "as a frontage road and driveway." (RJN, Ex. 26.) On April 26, 2017, the Court of
21 Appeal affirmed this Court's decisions in all respects. (RJN, Ex. 27.) On July 19, 2017, the
22 California Supreme Court denied TPL's petition for review.

23 On October 12, 2018, this Court granted Petitioner's Motion for the Entry of Additional
24 Orders to Compel compliance with the Intent of Summary Judgment and Permanent Injunction
25 Previously Entered in this Matter to compel Defendants to restore and reopen the easement
26 across the TPL property. The Court issued a written order in connection with that motion on
27

28 ¹ The underlying lawsuit is *DENARDI v. TPL, LLLP, et al.*, San Diego Superior Court Case No. 37-2014-00040176-CU-OR-CTL.

1 October 30, 2018. (RJN, Ex. 28-29.)

2 On December 19, 2018, ED MCVANEY, submitted a Public Right-of-Way Tree Removal
3 Request (hereinafter the "Tree Removal Request") to the STC. (NOL, Ex. 3.) However, when
4 MR. MCVANEY appeared at the January 10, 2019 STC meeting, he asked the STC to deny his
5 Request. (MCVANEY has expressed publicly that even though he applied for the tree removal,
6 it was done under duress via court orders to restore the Easement.) Despite MR. MCVANEY's
7 opposition, the STC voted 3 to 1 to approve the Request. (Hernquist Decl., ¶10.) On February
8 17, 2017, Defendants' neighbor, Robert Bardin, filed the Appeal of the STC's decision, which
9 the City Council granted on a 3 to 2 vote. That decision is the subject of this Petitioner's Writ.

10 II. LEGAL ARGUMENT

11 A. Writ of Mandamus Pursuant to Government Code § 65009

12 Govt. Code § 65009, if applicable, provides that a writ of mandamus filed to challenge a
13 local government decision related to zoning or planning is limited to the issues "raised in the
14 public hearing or in written correspondence delivered to the public agency prior to, or at, the
15 public hearing," except when the issue could not have been raised by a person exercising
16 reasonable diligence. In the instant case, Writ is based on the certified transcript of the
17 proceedings at the City Council Meeting addressing the Appeal, requested by Petitioner on
18 February 22, 2019. (Hernquist Decl., ¶17; Ex. 12.) The Writ is also based on information
19 obtained by Petitioner after the City Council Meeting related to violations of the Brown Act
20 (Govt. Code §§ 54953 & 54952.2), the extent of which were unknown until after the meeting
21 occurred. The Writ is further based on information obtained after the City Council Meeting
22 related to improper ex parte communications, as well as evidence of bias by City officials.

23 B. Writ of Mandamus Pursuant to Code of Civil Procedure § 1094.5 et seq.

24 1. Coronado Municipal Code incorporates Code of Civil Procedure § 1094.5.

25 Judicial review of the City Council's decision is authorized by the plain language of Code of
26 Civil Procedure ("CCP") § 1094.5 and also because Coronado Municipal Code ("CMC")
27 sections 1.12.010 and 1.12.080 provide that judicial review of an appeal to the City Council of a
28 Street Tree Committee decision committee may be had pursuant to CCP § 1094.5.

1 **2. The Court should exercise independent judicial review under CCP § 1094.5.**

2 CCP § 1094.5, subd. (b) provides two standards for review of an administrative hearing
3 when ruling on a petition for a writ of administrative mandamus. First, as is the case here, if the
4 court is authorized to exercise independent judgment (de novo review), it is to conclude the
5 agency abused its discretion if its decision was not “supported by the weight of the evidence.”
6 (*Ibid.*) Second, the lower level of review will result in an abuse of discretion finding if the
7 decision was not “supported by substantial evidence in light of the whole record.” (*Ibid.*)

8 The de novo independent judgment/weight of the evidence standard applies to questions of
9 law and decisions affecting fundamental rights. (*Van Wagner Communications, Inc. v. City of*
10 *Los Angeles* (2000) 84 Cal.App.4th 499, 508 [stating that a person aggrieved by an agency
11 determination has a right to “independent judicial review” of questions of law and requesting
12 agency interpretation of an ordinance]; *Benetatos v. City of Los Angeles* (2015) 235 Cal. App.
13 4th 1270, 1280 [holding that if “the administrative decision involved or substantially affected a
14 ‘fundamental vested right,’ the superior court exercises its independent judgment].) Regarding
15 questions of fact or non-fundamental rights, courts apply the substantial evidence test.
16 (*Advanced Choices, Inc. v. Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1669.)

17 Petitioner’s interest in the use of his Easement is a vested property right. (*Bello v. ABA*
18 *Energy Corp.* (2004) 121 Cal.App.4th 301, 308; *see, Schmidt v. Bank of America, N.A.* (2014)
19 223 Cal.App.4th 1489, 1501 [holding that a private easement vests rights in the dominant
20 estate]; RJN Exs. 25-29.) Therefore, Petitioner is entitled to the Court’s independent review of
21 the evidence under the “weight of the evidence” standard. (CCP §1094.5(c).) However, under
22 either standard of review, the City Council abused its discretion in granting Mr. Bardins’s
23 Appeal and thereby reversing the Street Tree Committee’s decision.

24 **3. The Coronado City Council’s decision was improper under C.C.P. §1094.5.**

25 This Court should annul or modify the City Council’s vote on February 19, 2019 (hereinafter
26 the “Vote”) because it was not based on a fair hearing and involved a prejudicial abuse of
27 discretion.

28 The inquiry [in a writ of administrative mandamus] shall extend to the questions
whether the respondent has proceeded without, or in excess of, jurisdiction;

1 whether there was a fair trial; and whether there was any prejudicial abuse of
2 discretion. Abuse of discretion is established if the respondent has not proceeded
3 in the manner required by law, the order or decision is not supported by the
4 findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).)

5 a. The City Council Meeting did not constitute a fair hearing or trial.

6 i. *Apparent bias and/or misconduct by City Officials was undisclosed.*

7 The City Council Vote was improper because the relationship between Mayor Richard
8 Bailey (“Mayor Bailey”) and ED MCVANEY appears to have influenced Mayor Bailey to
9 support the Appeal. The Coronado Municipal Conflict of Interest Code incorporates by reference
10 the Political Reform Act of 1974 (hereinafter the “Act”), Government Code § 81000 *et seq.*, as
11 well as amendments adopted by the Fair Political Practices Commission. (CMC § 1.20.010 subd.
12 (A).) Government Code § 92001 subd. (a) provides that, “[p]ublic officials, whether elected or
13 appointed, should perform their duties in an impartial manner, free from bias caused by their
14 own financial interests or the financial interests of persons who have supported them.” The
15 prohibition on biased conduct extends even to the appearance of improprieties. (*Witt v. Morrow*
16 (1977) 70 Cal. App. 3d 817, 822-34 [holding that “the whole purpose of the Political Reform
17 Act of 1974 is to preclude a government official from participating in decisions where it appears
18 he may not be totally objective”].)

19 There is an appearance of impropriety for Mayor Richard Bailey to refuse to recuse himself
20 (or disclose a request for recusal) from a vote directly impacting the interests of his supporters,
21 Not only did Defendants ED MCVANEY and CAROLE MCVANEY make monetary
22 contributions to the election campaign of Mayor Richard Bailey in 2015 (according to Bailey’s
23 campaign disclosures, each of the MCVANEYS donated \$200 to Bailey’s 2016 mayoral election
24 [NOL, Ex. 20]), they hosted a political event for Mayor Bailey at the Hansen Mansion in
25 Coronado in 2016, a historic mansion in which the MCVANEYS own a beneficial interest.
26 (NOL, Ex. 16, at p. 13:17-21; at p. 67:17-68:2; NOL, Ex. 19). Petitioner is also informed that
27 MCVANEYS hosted a political event for Mayor Bailey at 609 First Street in 2016, the very
28 property at issue in this matter. (NOL, Ex. 14.) As a result of these connections and the
appearance of bias, a Coronado resident asked Mayor Bailey to recuse himself from the Vote at
the City Council Meeting. (NOL, Ex. 14.) This express written request for recusal for conflict of

1 interest was not made public prior to or at the City Council Meeting, not disclosed pursuant to
2 public record requests, and raises the specter of bias. (Hernquist Decl., ¶ 10.)

3 In addition, Petitioner has obtained two emails between Mayor Bailey and Reader reporter
4 Marty Graham regarding an apparent conflict of interest involving Mayor Bailey and
5 Defendants. The first email was disclosed by the City of Coronado pursuant to a public records
6 request, and the second was withheld without explanation. (Hernquist Decl., ¶ 23, NOL, Exs. 18-
7 19.) The email that was produced by the City of Coronado appears to be surreptitiously redacted.
8 (Hernquist Decl., NOL, Ex. 18.) In the produced email, Marty Graham writes, "I am working on
9 a story about the ongoing fight between Mr. McVaney and his neighbors on First St. The
10 neighbors say they are not optimistic, in part because of Mr. McVaney's relationship with you. I
11 would welcome a comment ASAP." (*Ibid.*) Mayor Bailey's response to Marty Graham's email
12 appears redacted because his response states, "Hi Marty" followed by a blank space and his
13 electronic signature. (NOL, Ex. 18.)

14 Petitioner's counsel obtained from Marty Graham a copy of Mayor Bailey's actual
15 responsive email, because the City of Coronado did not disclose it despite a related public
16 records request. (Hernquist Decl., ¶ 23, NOL, Ex. 19.) The responsive email was from Mayor
17 Bailey's private email account. (*Ibid.*) The Mayor's handling of the emails with Marty Graham
18 and the recusal request violate the principle that public officials should act in a manner free from
19 apparent bias. (*Witt v. Morrow, supra*, 70 Cal. App. 3d at p. 822-34.) The City's refusal to
20 produce all email communications that are responsive to public records requests is an indication
21 of an undisclosed bias or conflict of interest. The lack of transparency casts considerable doubt
22 over the City Council's Vote.

23 *ii. Undisclosed ex parte communications produced an unfair hearing.*

24 City Councilmembers and Mayor Bailey all failed to disclose significant ex parte
25 communications between themselves and residents intended to influence the City Council's vote
26 on the Appeal. Through these ex parte communications, residents promoted a theoretical
27 "alternative location" for the Easement. The argument was that the tree removal was
28 unnecessary because the Easement could be placed in an alternative location that does not

1 impact the tree. [NOL, Ex. 7.) Substantial undisclosed communications were directed to City
2 Councilmembers and Mayor Bailey in advance of the City Council Meeting that were calculated
3 to convince City officials that the Tree Removal Request was unnecessary. (NOL, Exs, 7, 9,
4 NOL, Ex. 15, at p. 82:25-84:25; Ex. 17; at p. 87:2-89:2.)

5 The City Council Vote ultimately incorporated the theory that an alternative location makes
6 the tree removal unnecessary, reflecting the content of the ex parte communications. (NOL, Ex,
7 11 at p. 55, ¶ 7.) Because of the undisclosed ex parte communications, supporters of the Tree
8 Removal Request were unable to participate in deliberations, depriving them of a fair hearing. At
9 the City Council Meeting, the City Attorney instructed officials to disclose all ex parte
10 communications, in order for the Vote to withstand a challenge. (NOL, Ex. 13, at p. 2:24-3:14.)

11 Ex parte communication or communication that you received prior to the public
12 hearing cannot be considered because it was not done during the public hearing.
13 You need to disclose that and I believe that we have -- the mayor is going to
14 prompt you when you do that. ¶ The standard for courts to review a quasi-judicial
15 function or an administrative decision is whether or not there's sufficient evidence
16 on the record to support your decision in order for it to be -- for it to be upheld.
17 There's also communication in terms of when one council member can, in fact,
18 participate in the decision. As you all know, as any decision before the City
19 Council, specifically a public hearing, you need to go with an open mind and being
20 objective and be fair. That's just a function of it.

21 For the most part, the disclosures were shockingly deficient. Due process principles and
22 fundamental fairness dictate that ex parte evidence gathering and/or communications that
23 occurred prior to a quasi-judicial hearing must be disclosed. (*Mathews v. Eldridge* (1976) 424
24 U.S. 319.) Ex parte evidence includes oral and written communication, as well as other sensory
25 information like a site visit that occurs outside of the formal proceedings. (*Flagstad v. City of*
26 *San Mateo*, (1957) 156 Cal.App.2d 138.) It is longstanding law that evidence considered at a
27 quasi-judicial hearing must be publicly introduced.

28 Administrative tribunals exercising quasi judicial powers which are required to
make a determination after a hearing cannot act on their own information. Nothing
may be treated as evidence which has not been introduced as such, inasmuch as a
hearing requires that the party be apprised of the evidence against him in order that
he may refute, test and explain it.
(*La Prade v. Department of Water and Power of City of Los Angeles* (1945) 27 Cal.2d 47,
51-52.) When evidence introduced to decision makers outside of a public hearing is considered
by the decision-making body, it "amounts to denial of a hearing." (*English v. City of Long Beach*

1 (1950) 35 Cal.2d 155, 158.) Appropriate disclosures of ex parte communications must fully
2 reveal the extent and content of the information exchanged, without concealment, so opposing
3 parties may challenge the privately introduced evidence. (*Flagstad v. City of San Mateo* (1957)
4 156 Cal.App.2d 138, 141.) Undisclosed ex parte communications create an unfair hearing since
5 individuals excluded from those communications face a critical disadvantage, as is the case here.

6 **Disclosures at the City Council Meeting**

7 According to the Minutes for the City Council Meeting, the disclosures of the City
8 Councilmembers and Mayor Richard Bailey were as follows:

9 **Mayor Bailey** reported that this issue first came up to the City Council somewhere
10 between four and six years ago as residents along the frontage road began to
11 change their driveway configurations. At that time, there was an effort made by
12 members of the City Council to reach out to various residents on the frontage road,
13 hear their concerns and see if a compromise could be reached. He met with several
14 community members at that time, specifically on this issue. Since that time, over
15 the years, he has met with a variety of folks, including the applicant and the
16 appellant, on this issue.

17 **Councilmember Sandke** has discussed the project with Mr. Bardin, at his
18 invitation. He visited the site. He also met with the other party involved.

19 **Councilmember Benzian** has met with the appellant, Mr. Bardin, Suzy Heap,
20 Leslie Bell and took a phone call from a resident, Phil Manion.

21 **Mr. Sandke** added that he also met with Mr. Manion.

22 **Councilmember Heinze** received a phone call from Mr. Manion and went out and
23 had his own conversation with the tree.

24 **Councilmember Donovan** walked the site, looked it over, and, at the same time,
25 met with Suzanne Heap, Bob Bardin and Leslie Bell. He received emails from
26 Suzy Heap as well and Phil Manion. He met with Phil Manion to discuss the
27 project.

28 (NOL, Ex. 11, at p. 49 [emphasis supplied].)

City Attorney Johanna Canlas urged the officials to amend their disclosures, by providing
context for the disclosures. (NOL, Ex. 13, at p. 15:16-21.) Councilmembers and Mayor
responded:

Mayor: I'll share the general consensus around the conversations I had was a
desire to keep the tree standing while providing enhanced access to the residents
on the frontage road.

Councilman Sandke: I would ditto those same comments.

1 **Councilman Benzian:** Same.

2 **Councilman Heinze:** My conversation with Mr. Manion was about the
3 circumstances surrounding the tree more than it was about the tree. And my
4 conversation with the tree was about its health.

4 **Mayor:** And what did it say?

5 **Councilman Heinze:** It has some distress.

6 **Councilman Donovan** my discussions with the folks I mentioned were basically
7 around what some of the history was and reasons why the tree should be -- not not be
8 taken down and that's pretty much what the discussions were.

8 (NOL, Ex. 13, at p. 15:22-16:16; *see* Ex. 11, at p. 49, ¶ 6 - p. 50, ¶ 2.) Given that at least one of
9 the meetings between officials and residents lasted at least 15 minutes, one sentence or one-word
10 disclosures are shockingly incomplete. (NOL, Ex. 17, at p. 87:13-16.) Not one of the disclosures
11 mentions the alternative location argument put forth by supporters of the Appeal.

12 Investigation by Petitioner has confirmed that the foregoing disclosures are grossly
13 inadequate. Three depositions taken by Petitioner's counsel after the City Council meeting, as
14 well as emails obtained by Petitioner, revealed extensive undisclosed ex parte communications
15 and meetings between residents, the Mayor, and some City Councilmembers, regarding Mr.
16 Bardin's Appeal. (NOL, Exs. 6-8, *see, e.g.* Exs. 15-18.) This evidence should all be considered
17 as part of the record for this Writ because it was impossible to raise at the City Council Meeting.

18 **Undisclosed emails between Leslie Bell and officials**

19 There is an email chain between Leslie Bell and officials, obtained by Petitioner after the
20 City Council meeting, that were not disclosed by elected officials. On January 22, 2019, the
21 following email was sent by Leslie Bell (who helped draft Mr. Bardin's Appeal), to all City
22 Councilmembers as well as Mayor Bailey.

23 Dear Mayor and City Council,

24 On behalf of Bob Bardin, and other concerned residents, I am writing in regards to
25 the appeal of the Street Tree Committee decision approving the removal of a
26 beautiful and healthy Eucalyptus tree at 609 First Street.

26 The stated purpose for the removal of the tree is for the installation of a new
27 driveway. **However, a reasonable alternative exists that would provide
28 McVaney access to his property while preserving the tree.**

28 I am inviting you to meet with me and Bob on site so you can see the tree and
alternative driveway location in person. We believe visiting the site will help

1 inform your decision regarding the appeal. Please let me and Bob know when your
2 schedule allows to meet and we will be available accordingly.

3 Best,
4 Leslie. (Hernquist Decl. ¶13, NOL Ex. 7, at p. 1 [emphasis added].)

5 Receipt of this email and its contents were entirely undisclosed by Mayor Bailey and every
6 City Councilmember. (NOL, Ex. 11, at p. 49, ¶ 6- p. 50, ¶ 2.) In addition, each recipient
7 responded to the email and every official except for Councilmember Heinze participated in an
8 on-site meeting between the dates of January 24, 2019 and February 1, 2019. (NOL, Exs. 7-8.)
9 Not one member of the City Council or the Mayor disclosed this ex parte communication at the
10 City Council Meeting. (NOL, Ex. 7; NOL, 11, Ex. at p. 49, ¶ 6 - p. 50, ¶ 2.)

11 As a result of these email exchanges, Mayor Bailey, Councilmember Benzian and
12 Councilmember Donovan all visited the site and met with Robert Bardin, Leslie Bell, and Suzie
13 Heap. (NOL, Ex. 17, at p. 85:2-90:10; 93:7-23; 94:16-24; 96:19-104:24; NOL, Ex.15, at p.
14 83:12-84:25; NOL, Ex. 8.) Gail Bardin attended at least some of the meetings. (*Ibid.*)
15 Councilmember Sandke visited the site and met with Robert Bardin and Leslie Bell. (*Ibid.*)

16 **Undisclosed content from site visit meetings**

17 The purpose of the on-site meetings, according to Leslie Bell and Robert Bardin, was to
18 discuss the “alternative location” with the elected officials. None of the officials who visited the
19 site disclosed that there was a discussion about an “alternative location.” (NOL, Ex. 17, at p.
20 85:2-90:10; 93:7-23; 94:16-24; 96:19-12; NOL, Ex. 15, at p. 83:12-84:25; NOL, Ex. 11, at p.
21 49, ¶ 6 - p. 50, ¶ 2.) In addition, none of the officials who visited the site discussed what they
22 saw or their impressions of the tree, except for Councilmember Heinze. (NOL, Ex. 13, at p.
23 15:22-16:16.) Given that the City Council Vote turned on the health of the tree and the
24 theoretical existence of an alternative location, these critical issues absolutely should have been
25 disclosed by officials for a fair hearing to afford opponents with a meaningful opportunity to
26 respond. (NOL, Ex. 11, at p. 55, ¶ 7.)

27 **Undisclosed emails from Suzie Heap**

28 In January 2019 Suzie Heap sent an email to every Councilmember and Mayor Bailey:

To whom it may concern:
Attached is a letter sent to my neighbor, Harry DeNardi re a mature tree on the

1 property at 609 First Street, directly across the street from my 820 First Street
2 address. Please read my letter to Mr. DeNardi and view the attached picture. I
3 understand the tree is hostage in a law suite [sic] re the Bay View Estates frontage
4 road. However, since the tree is in good health, presenting no extraordinary hazard
5 and violating no precedent, I question the Street Tree Committee's decision to
6 remove it.

7 Given I do live across the street from the tree, but surely in the neighborhood, and
8 there is, just a few feet away from the tree already a legal cut, I question for the
9 good of the neighborhood why the tree has to be removed. As explained in my
10 letter to Mr. DeNardi it will make an eye sore view from my property, an old
11 Jessop house.

12 Thank You,
13 Suzanne R. Heap (NOL, Ex. 5, at p. 7-8.)

14 On February 14, 2019, Suzie Heap sent an email to every Councilmember and Mayor
15 Bailey:

16 Gentlemen, thank you to those of you who were able to meet with Bob Bardin,
17 Leslie Bell and me by the Lemon Scented Gum at 609 First Street to discuss our
18 concerns re the removal of this tree. I am sending this as a reminder of our
19 concerns. I am in possession of a Courtesy Notice sent to me by Nancy Reynolds re
20 this item on the Council February 19th meeting agenda. I will be attending that
21 meeting. Attached below is the original message sent to Council members on
22 January 13, 2019 and a photograph of the tree taken from my front porch, directly
23 across the street from the tree. (NOL, Ex. 6, at p. 1-2.)

24 Mayor Bailey, Councilmember Sandke, Councilmember Benzian, and Councilmember
25 Heinze all failed to disclose these two emails from Suzie Heap. (NOL, Ex. 11, at p. 49, ¶ 6- p.
26 50, ¶ 2.) Only Councilmember Donovan disclosed them, but not their content. (*Ibid.*) These
27 emails were clearly intended to influence the vote and should have been disclosed to ensure a
28 fair hearing.

Additional failures to disclose

29 **Mayor Bailey** did not disclose the site visit or meetings with Leslie Bell, Gail Bardin, Suzie
30 Heap, or with Phillip Manion. (NOL, Ex. 17, at p. 85:2-90:10; Ex. 15, at p. 83:12-84:25; Ex. 8;
31 Ex. 16, at p. 53:3-5; Ex. 11, at p. 49, ¶ 6 - p. 50, ¶ 2.)

32 **Councilmember Sandke** did not disclose his meeting with Leslie Bell. (NOL, Ex. 17, at p.
33 94:16-24; Ex. 8; Ex. 11, at p. 49, ¶ 6 - p. 50, ¶ 2; Ex. 7.)

34 **Councilmember Benzian** did not disclose his site visit. (NOL, Ex. 11, at p. 49, ¶ 6 - p. 50,
35 ¶ 2; Exs. 7-8; NOL, Ex. 17, at p. 93:7-23; NOL, Ex. 15, at p. 83:12-84:25.)

36 The undisclosed communications by residents and the on-site meetings between residents
37 and officials were plainly intended to influence the vote of the City Council, arguing that there

1 is an “alternative location,” and promoting the aesthetic value of the tree. This evidence was
2 introduced to officials outside the City Council Meeting, denying a “fair hearing” on the
3 Appeal. (*English v. City of Long Beach, supra*, 35 Cal.2d at p. 158.)

4 *iii. The “Addendum” was improper and the result of undisclosed communications.*

5 As a direct result of the undisclosed ex parte communications between Robert Bardin,
6 Leslie Bell, Suzie Heap and City Councilmembers, these residents prepared and filed an
7 “Addendum” to the Appeal, which indicated on its face that the City Council had concluded
8 how to vote before the meeting. The Addendum was drafted *after the on-site meetings between*
9 *residents and officials in order to bolster the argument that there is an alternative location.*

10 The on-site meetings occurred between January 24, 2019 and February 1, 2019 and the
11 Addendum was filed with the City on February 8, 2019. (NOL, Ex. 7-9.) According to the
12 deposition testimony of Leslie Bell, who helped draft the Appeal and the Addendum, the
13 Addendum was intended to provide additional information to City Councilmembers about the
14 alternative location, information that the City Councilmembers wanted to evaluate the Appeal.
15 (NOL, Ex. 17, at p. 97:15-104:24.) The Addendum also substantiates that the on-site meetings
16 promoted the theory of an alternative location and the aesthetic value of the tree. (NOL, Ex. 9,
17 at p. 1-2.) The Addendum states that “the City Council has had the opportunity to see firsthand
18 the tree and proposed alternative location and do further analysis and should be able to vote to
19 SAVE THE TREE accordingly.” (NOL, Ex. 17, at p. 104:12-19.) This creates a strong
20 inference that the *City Council had received evidence and been influenced before the City*
21 *Council Meeting*. The law is clear that such presentation of evidence outside of the City
22 Council meeting eliminates any possibility of a fair hearing. (*English v. City of Long Beach,*
23 *supra*, 35 Cal.2d at p. 158.)

24 Furthermore, the Addendum was late-filed and should not have been considered. According
25 to CMC § 1.12.020, an appeal must be filed within 10 days of the determination and must
26 “contain all information that the appellant desires to be considered at the appeal hearing.” The
27 date of determination of the Street Tree Committee’s decision was January 10, 2019, and the
28 “Addendum” was filed on February 8, 2019. (NOL, Ex 9, at p. 1.) Thus, the Addendum was

1 weeks late and should have been excluded as part of the Appeal. The Addendum evidences an
2 unfair hearing.

3 b. The City Council Meeting findings were not supported by the evidence

4 1) **There is no alternative location.**

5 The denial of the removal request in this case is singular and without evidentiary support.
6 The City Council's decision is invalid because it was based on a **fictional alternative location**
7 and wholly ignored the strength of the evidence in favor of granting the permit to remove the
8 tree. A review of the record makes it clear that the only apparent basis for the City Council's
9 vote to grant Mr. Bardin's Appeal is a fictional option to locate the Easement at an alternate
10 location. (NOL, Ex.15, at p. 60:4-24; at p. 61:2-13; at p. 89:6-90:15; at p. 90:22-91:25; at p.
11 94:18-95:2; Ex. 13, at p. 18:10-14; at p. 23:15-24:22; 39:24-40:24; Ex. 11, at p. 50, ¶ 3, at p. 55,
12 ¶ 7; Ex. 4, at p. 3, ¶ 2.) There is absolutely nothing in the record indicating that there was an
13 actual, viable alternative location for the Easement.

14 First, there are multiple court orders that mandate restoration of the Easement in its original
15 location, a location requiring removal of the tree pursuant to the Tree Removal Request. (RJN,
16 Exs. 25-29.) This location is definitively established through the Court's grant of summary
17 adjudication on the issue of Petitioner's prescriptive Easement, a permanent injunction affirmed
18 by the Court of Appeal and the California Supreme Court, as well as additional orders by this
19 Court to restore the Easement immediately. (RJN, Ex. 25-29.) In addition, ED MCVANEY
20 specifically requested that the tree be removed to provide for restoration of the Easement in its
21 original location. (NOL, Ex. 1-3.)

22 Appellant Robert Bardin suggested that there is an "alternative location" where the Easement
23 could be located, but this alternative location is simply a red herring intended to distract from
24 Petitioner's right to have the Easement restored in the original location. On the record before the
25 City Council Meeting, there was simply no evidence whatsoever that the owners of 609 First
26 Street, Defendants ED MCVANEY, CAROLE MCVANEY, or TPL, LLLP, consented to or
27 offered to place the Easement at an "alternative location." The record is devoid of permit
28 applications or any other commitment by Defendants to an alternative location. Only Defendants

1 have the right to apply for permits for an alternative location and they have pointedly refused to
2 do so. Indeed, following the City Council's Vote on the Appeal, MCVANEY's and TPL's
3 counsel stated that it seemed impossible to restore access as ordered by the Court, and failed to
4 offer an alternative location for the Easement. (NOL, Ex. 24.)

5 In his deposition, Appellant Robert Bardin admitted that the Defendants never committed to
6 locating the access point in an alternative location. (NOL Ex. 15, at p. 60:4-24; at p. 89:6-91:25;
7 at p. 94:18-95:2.) Furthermore, Leslie Bell, who helped draft Mr. Bardin's Appeal,
8 acknowledges that ED MCVANEY never said he was willing to install the Easement in an
9 alternate location. (NOL, Ex. 17, at p. 22:21-23:15; at 47:6-20.) In addition, Phillip Manion, who
10 was actively involved in lobbying the City Council and Mayor Bailey to grant the Appeal,
11 admits that he did not know whether there was an alternative location for the Easement. (NOL,
12 Ex. 16, at p. 48:24-50:8, at p. 51:23-53:5, at p. 65:1-23.) Rather, Phillip Manion's beliefs were
13 based on statements from Robert Bardin that there was an alternative location. (NOL, Ex. 16, at
14 p. 45:5-48:17.) Apparently, if enough people say the same thing, everyone starts to believe it.

15 Petitioner, in speaking at the City Council hearing, specifically identified this issue when he
16 declared that he knows of no alternative location. "First, there isn't an option, that I know of, to
17 place the western access at a different location at 609 First Street. Secondly, there is no driveway
18 today at 609 First Street from First Street to the Frontage Road." (NOL, Ex. 13, at 26:1-5.)

19 **1) The weight of the evidence is in favor of granting the Appeal; and**
20 **there is not substantial evidence supporting the Appeal.**

21 The evidence presented at the City Council Meeting overwhelmingly indicates that the Tree
22 Removal Request should have been upheld as a routine development project. *Indeed, it is the*
23 *only denied development request on record.* Instead, it was denied under highly questionable
24 circumstances. The City Staff recommended allowing the Removal Request, and the evidence it
25 presented was uncontroverted. Nonetheless, the Appeal was granted on the basis of the
26 manufactured claim of an "alternative location." (NOL, Ex. 4, at p. 3, ¶ 2; Ex. 13, at p. 39:24-
27 40:3.) According to testimony of Cliff Maurer, Director of Public Services and Engineering, tree
28 removal requests for development are almost always granted so long as a replacement tree is

1 planted. (NOL, Ex. 13, at p. 6:2-16.) Here, the Tree Removal Request is a subordinate request to
2 allow the resident to “construct their accessway between First Street and the access road.” (NOL,
3 Ex. 13, at p. 4:18-8:12; Exs. 1-3.) Tree removal requests that are subordinate to development
4 requests are almost always approved in Coronado. (NOL, Ex. 13, at p. 6:2-8:12.)²

5 During the City Council meeting, Cliff Maurer testified that the City’s recommendation “is
6 to deny the appeal. It is very important to understand that city staff reviews development
7 requests that result in the removal of city street trees all the time. **And since I’ve been here,**
8 **almost five years, we have never disapproved one of them.**” (NOL, Ex. 13, at p. 6:2-19
9 [emphasis added].) The City Council Agenda Resolution for the February 19, 2019 summarizes
10 the evidentiary issues presented at the STC meeting, *which were uncontroverted at the City*
11 *Council Meeting:*

- 12 1. The original request was a development request (right-of-way permit for the
13 construction of an access driveway). The tree removal request was subordinate
14 to the Applicant’s development request to enable the access driveway to
15 conform with the current City design standards.
- 16 2. The Applicant is required to plant a replacement tree of a species from the
17 Approved Street Tree List at another location on the parkway, if feasible.
- 18 3. The following facts support the removal of the Lemon Scented Gum in the
19 parkway at 609 First Street:
 - 20 a) The tree, at issue, has been pruned in a manner that violates International
21 Society of Arboriculture standards;
 - 22 b) The Lemon Scented Gum is not a tree species on the City’s Approved
23 Street Tree List;
 - 24 c) This area was designated as the highest priority within the City for a
25 utility undergrounding project; should the undergrounding project go
26 forward, the subject tree and all other City-owned Lemon Scented
27 Gums on the north side of First Street will be removed.

28 (NOL, Ex. 10, at p. 79-80.)

21 In its Agenda, the City again recommended denying the Appeal, stating, “[i]t is routine for
22 the City to approve removal of street trees for City approved development projects, usually
23 mitigated with replacement tree(s) at a non-conflicting location within the property owner’s
24 section of the City parkway. (NOL, Ex. 10, at p. 77-80.) The Agenda explained that the tree was
25 heavily pruned in a manner that violates arborist standards, is not an approved species, and

26 _____
27 ² C.M.C. § 52.32.110 and the City of Coronado Street Tree Master Plan provide that tree
28 removal requests are proper for landscape renovation or residential renovation, as in the instant
case. (NOL, Ex. 23, at p. C1, ¶ 2.)

1 would likely be removed when the City moves ahead with its project to underground the utility
2 lines. (NOL, Ex. 10, at p. 78, ¶ 3-4.) The City recommendation concluded that the “request to
3 remove the tree and install a conforming driveway meets the City’s requirements and is therefore
4 supported.” (*Ibid.*)

5 The evidence presented at the City Council Meeting reflected the City’s stance in the
6 Agenda, that the tree is not a protected species, it has been heavily pruned for years so it is
7 misshapen, and when the City moves utility lines underground, the tree will have to be removed.
8 (NOL, Ex. 13, at p. 6:17-7:22.) *None of the evidence presented by the City in favor of removing*
9 *the tree was disputed.*

10 There was essentially one argument made by Appellant and his supporters at the February
11 19, 2019 meeting: that the tree could be saved through use of an alternate location. (NOL, Ex. 4,
12 at p. 3, ¶ 2; Ex. 13, at p. 18:10-16; 23:11-20; 24:10-22; 28:2-8.) In support of this idea, some
13 individuals discussed the aesthetic value of the tree, ignoring the facts that there is no evidence
14 of the existence of an alternative location. (NOL, Ex. 13, *passim*; Ex. 6-7.)

15 **Mr. Bardin’s Appeal does not provide any factual support for denying removal of the**
16 **tree.** (NOL, Ex. 4.) The Appeal cites two prior tree removal requests that the STC denied, but
17 they are irrelevant for two reasons. First, they have no precedential value. (NOL, Ex. 13, at p.
18 11:12-25.) Second, these denied requests were made on the basis that the trees were hazardous,
19 not for development purposes. (NOL, Ex. 4, at p. 105-111; at p. 139-150.) In both instances cited
20 in the Appeal, the STC recommended non-removal because the trees were not hazardous. (*Ibid.*)
21 As discussed *supra*, removal requests for development are almost always approved. (NOL, Ex.
22 13, at p. 6:3-16; 9:8-20.)

23 The rationale stated by Mayor Bailey in favor of the Appeal is unsupported in the record.
24 “I’ll make the motion that the city council uphold the appeal from Mr. Bardin based on the
25 factors that the tree is healthy, does not pose a hazard to the community, and the landscape
26 renovation is not in itself necessary.” (NOL, Ex. 13, at 39:24-40:3.) Councilman Benzian
27 seconded Mayor Bailey’s motion. The City Council approved the appeal three to two. (NOL, Ex.
28 13, at p. 40:19-24.) *There is little evidentiary support for this vote.* The residents advocating for

1 the Appeal did not cite any evidence that MCVANEY will provide an alternate location for the
2 easement. Given that the Tree Removal Request was not based on hazardous conditions, the only
3 relevant consideration is whether the landscape renovation was necessary. *There is simply no*
4 *evidence that "the landscape renovation is not itself necessary,"* as stated by Mayor Bailey.
5 Speculation that the Easement can be relocated to an alternative location is groundless.
6 Defendants never offered an alternate location nor applied for permits for an alternative location.
7 Thus, *there is no substantive basis upon which to uphold the Appeal and deny the Tree Removal*
8 *Request.* Thus, Pursuant to Government Code §1094.5, the City Council Decision should be
9 reversed due the lack of a fair trial at the City Council Meeting and the lack of evidence
10 supporting the City Council's Decision.

11 **C. Writ of Mandamus for Violations of the Brown Act [Government Code § 54960.1]**

12 The evidence obtained by Petitioner after the City Council Meeting demonstrates that serial
13 private meetings attended by Mayor Bailey and City Councilmembers prior to the City Council
14 Vote violated the Brown Act's open meeting requirements. Residents met with a majority of the
15 City Councilmembers, including Mayor Bailey, and apparently persuaded them ahead of time to
16 vote to grant the Appeal. The "Addendum" drafted by Leslie Bell and Robert Bardin is a
17 "smoking gun" showing that deliberative decision making occurred outside of the City Council
18 meeting, leading directly to the Vote to grant the Appeal. The Addendum, drafted after private
19 meetings with City Officials, states that *"the City Council has had the opportunity to see first*
20 *hand the beautiful tree and proposed alternate location and do further analysis and should be*
21 *able to vote to SAVE THE TREE accordingly."* (NOL, Ex. 9, at p. 2 [emphasis added].) This
22 statement in the Addendum evidences the fact that the meetings between residents and City
23 officials informed, influenced, and ultimately decided the outcome of the Vote before the public
24 City Council Meeting.

25 Violations of the Brown Act can be remedied by a writ of mandamus. (Govt. Code § 54953.)
26 To nullify the actions of a local government body through a writ of mandamus, the petitioner
27 must allege: (1) violations of the Brown Act by the legislative body of a local agency; (2) that
28 there was action taken by the legislative body connected to the violation; and (3) petitioner made

1 a timely demand that the legislative body correct the action and the legislative body failed to
2 correct or cure the action. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 684;
3 Gov. Code, § 54960.1.) The City Council violated the Brown Act through private serial meetings
4 resulting in an invalid Vote, Petitioner demanded that the City Council cure or correct the
5 Action, and the City Council has declined to do so. (Hernquist Decl., ¶ 25; Exs. 21-22.)

6 **1. The City Council Participated in Impermissible Closed Serial Meetings in**
7 **Violation of Government Code §§ 54953 & 54952.2.**

8 Govt. Code §§ 54950 *et seq.* (hereinafter the “Brown Act”), guarantees public access to
9 meetings of local government agencies, and the statute is liberally construed “in favor of
10 openness in conducting public business.” (*Shapiro v. Directors of Center City Development*
11 *Corp.* (2005) 134 Cal.App.4th 170, 180-81.) The Brown Act requires that local government
12 meetings “be open and public, and all persons shall be permitted to attend any meeting . . .
13 “(Gov. Code, § 54953 subd. (a).) This provision is violated by private meetings, which includes
14 a series of meetings involving members of a legislative body, held in private, by which a
15 consensus is reached, or an exchange of information occurs that influences decision making.
16 (*216 Sutter Bay Ass’n. v. County of Sutter* (1997) 58 Cal.App.4th 860, 876-77; *See, e.g.* SB
17 1732, Ch. 63, Reg. Sess. (Cal. 2008) [stating that the Brown Act “prohibits use of direct
18 communication, personal intermediaries, or technological devices that [are] employed by a
19 majority of the members of the legislative body to develop a collective concurrence as to the
20 action to be taken on an item, with an exception for an authorized teleconference”].)
21 Government Code § 54952.2 addresses “serial meetings” as follows:

22 (a) As used in this chapter, “meeting” means any congregation of a majority of
23 the members of a legislative body at the same time and location, including
24 teleconference location as permitted by Section 54953, to hear, discuss,
25 deliberate, or take action on any item that is within the subject matter jurisdiction
26 of the legislative body.

27 (b)(1) **A majority of the members of a legislative body shall not, outside a**
28 **meeting authorized by this chapter, use a series of communications of any**
kind, directly or through intermediaries, to discuss, deliberate, or take action
on any item of business that is within the subject matter jurisdiction of the
legislative body. (Gov. Code, § 54952.2 [emphasis supplied].)

In addressing the nature of serial meetings, the California Supreme Court held that “the
intent of the Brown Act cannot be avoided by subterfuge; a concerted plan to engage in

1 collective deliberation on public business through a series of letters or telephone calls” violates
2 the open meeting requirement. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 376.)
3 Furthermore, recognizing the nature of private communications, courts allow inferences of
4 improper communications from the circumstances. (*Page v. MiraCosta Community College*
5 *District* (2009) 180 Cal.App.4th 471, 503-04 [holding that a court can infer improper
6 deliberations from individual meetings with intermediaries].)

7 As discussed *supra*, and incorporated herein, Mayor Bailey and Councilmembers engaged in
8 extensive *ex parte* communications with residents. These communications resulted in
9 impermissible serial meetings where information was exchanged that influenced decision
10 making. (*216 Sutter Bay Ass’n. v. County of Sutter, supra*, 58 Cal.App.4th at p. 876-77.) Leslie
11 Bell acted as an intermediary by contacting every City Councilmember and Mayor Bailey,
12 providing information about the supposed alternative location, scheduling and participating in
13 on-site meetings with City officials that influenced their vote. (NOL, Exs. 7-8, Ex. 17, at p.
14 82:25-90:10; Ex. 16, at 62:21-25.) Robert Bardin testified that Mayor Bailey, Councilmembers
15 Benzian, and Sandke met with Mr. Bardin, Gail Bardin, Suzie Heap, and Leslie Bell. (NOL, Ex.
16 15, at p. 83:15-84:25.) As discussed *supra*, the purpose of the meetings between residents Leslie
17 Bell, Robert Bardin, Gail Bardin, Suzie Heap, and Mayor Bailey, Councilmembers was to
18 convince City officials to support the Appeal on the basis of the theoretical alternative location.
19 (NOL, Ex. 17, at p. 82:25-90:10; 93:7-23; 94:16-24; 96:19-104:24; Ex. 15, at p. 83:12-84:25.)
20 These meetings violate Govt. Code §§ 54952.2 & 54953; they were attended by a majority of
21 City Council, and the purpose was to exchange information to reach a consensus. (*Ibid.*)

22 Councilmember Heinze was the only City Councilmember who declined the on-site meeting
23 with residents. Of the City Council Members who attended the on-site meetings, Mayor Bailey,
24 Councilmember Benzian, and Councilmember Sandke *all voted to grant the Appeal and block*
25 *removal of the tree.* (NOL, Ex. 11, at p. 55.) It makes no difference that Mayor and City
26 Councilmembers were not present at the same meetings.

27 Under the Brown Act, “[a]ll meetings of the legislative body of a local agency
28 shall be open and public, and all persons shall be permitted to attend,” except as
otherwise provided by the act. (§ 54953.) It is the expressed intent of the Brown
Act that the local legislative body both act and deliberate openly. ¶ (§

1 54950.) Thus, "the Brown Act ... is not limited to gatherings at which action
2 is taken by the relevant legislative body; 'deliberative gatherings' are
3 included as well. (Sacramento Newspaper Guild [v. Sacramento County Bd.
4 of Suprs. (1968)] 263 Cal.App.2d [41,] at p. 48.) Deliberation in this context
5 connotes not only collective decisionmaking, but also 'the collective
6 acquisition and exchange of facts preliminary to the ultimate decision.' . . . ¶
7 To prevent evasion of the Brown Act, a series of private meetings (known as
8 serial meetings) by which a majority of the members of a legislative body
9 commit themselves to a decision concerning public business or engage in
10 collective deliberation on public business would violate the open meeting
11 requirement.

12 (216 Sutter Bay Associates v. County of Sutter (1997) 58 Cal.App.4th 860, 876-877 [emphasis
13 supplied].) See, e.g. Page v. MiraCosta Community College Dist. (2009) 180 Cal.App.4th 471,
14 502 ["Brown Act open meeting requirements encompass not only actions taken, but also fact
15 finding meetings and deliberations leading up to those actions"]. Prohibitions against closed
16 meetings extend to use of "personal intermediaries" to exchange facts so as to reach a
17 'collective concurrence' outside the public forum." (Page, supra, 180 Cal.App.4th at p. 504.)
18 The individual(s) organizing and attending meetings with each of the involved City
19 Councilmembers, including the Mayor, were acting as intermediaries between the various
20 members, and were advocating for the City Council to uphold the Appeal. The emails, on-site
21 meetings, and admission in the Addendum provide an overwhelming inference that residents
22 successfully convinced three of the five City Councilmembers to vote to grant the Appeal long
23 before there was a public debate on the matter. The Court should grant the Writ of Mandamus
24 for clear violations of the Brown Act.

25 III. CONCLUSION

26 For the foregoing reasons, the Court should grant Plaintiff's Petition for Writ of
27 Administrative Mandamus and issue a Writ reversing the City Council's grant of the Appeal.

28 Dated: May 2, 2019

WILLIAM C. HERNQUIST II, A.P.C. &
FOX JOHNS LAZAR PEKIN & WEXLER, APC

By: 

William C. Hernquist II
Attorneys for Petitioner

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17 SUPERIOR COURT OF CALIFORNIA
18 COUNTY OF SAN DIEGO-CENTRAL DIVISION

19 HAROLD MICHAEL DENARDI, an
20 individual,

21 Petitioner,

22 v.

23 CORONADO CITY COUNCIL, a public
24 entity; and DOES 1 through 5, inclusive,

25 Respondent,

26 ROBERT BARDIN, an individual, TPL, LLLP,
27 a limited liability limited partnership, C.
28 EDWARD MCVANEY individually and as
trustee of the C. EDWARD MCVANEY
REVOCABLE TRUST DATED 7/1/99;
CAROLE L. MCVANEY individually and as
trustee of the CAROLE L. MCVANEY
REVOCABLE TRUST DATED 7/1/99 and
DOES 1 through 10, inclusive,

Real Parties in Interest.

) Case No: 37-2019-00022681-CU-WM-CTL

) NOTICE OF LODGMENT OF EXHIBITS IN
) SUPPORT OF VERIFIED PETITION FOR
) WRIT OF ADMINISTRATIVE MANDAMUS
) [CODE CIV. PROC. § 1094 *et seq.*; GOV.
) CODE §§ 65009 & 54960.1]

1 Petitioner, HAROLD MICHAEL DENARDI, hereby lodges true and correct copies of the
2 following exhibits in support of his Petition for Writ of Administrative Mandamus [CODE CIV.
3 PROC. § 1094 *et seq.*; GOV. CODE §§ 65009 & 54960.1]:

4 Exhibit 1: Email dated November 11, 2018 from Samuel Katzenstein to Ed Walton
5 regarding the Engineering Permit Application for Driveway and Permit
6 Application for a Curb Cut at 609 First Street.

7 Exhibit 2: Email dated November 2, 2019, 2018 from City Attorney Johanna N. Canlas
8 Regarding TPL's Permit Application

9 Exhibit 3: Tree Removal Request dated December 19, 2018 signed by McVaney.

10 Exhibit 4: Tree Removal Appeal dated January 17, 2017.

11 Exhibit 5: Email thread dated February 19, 2019 between Bardin, Leslie Bell and Suzie
12 Heap regarding the tree removal Appeal.

13 Exhibit 6: Emails dated February 14, 2019 authored by Suzie Heap.

14 Exhibit 7: Email (thread) dated January 22, 2019 between Leslie Bell and the City Council
15 regarding the tree removal appeal.

16 Exhibit 8: Email dated January 23, 2019 between Leslie Bell and Bardin regarding
17 tree removal appeal.

18 Exhibit 9: Addendum to Appeal dated February 8, 2019.

19 Exhibit 10: City of Coronado, City Council Agenda dated February 19, 2019.

20 Exhibit 11: City of Coronado, Minutes of February 19, 2019, City Council Meeting.

21 Exhibit 12: Correspondence dated February 22, 2019 from William C. Hernquist II to City
22 of Coronado/Mary Clifford re Request for Records from February 19, 2019
23 City Council meeting regarding the Street Tree Committee.

24 Exhibit 13: Item 8A to the transcript of February 19, 2019 City Council Meeting.

25 Exhibit 14: Email (with attachments) dated February 19, 2019 from Daron Case to the City
26 Attorney, Richard Bailey and Mary Clifford re Request for Bailey Recuse for
27 Item 8A of Council Meetings with attachments.

28 Exhibit 15: Portions of the deposition transcript of Robert Bardin taken on

- 1 February 20, 2019, in the case of DeNardi v. TPL, LLLP, San Diego Superior
2 Court, Case No. 37-2014-00040176-CU-OR-CTL.
- 3 Exhibit 16: Portions of the deposition transcript of Phillip Mannion taken on April 1,
4 2019, in the case of DeNardi v. TPL, LLLP, San Diego Superior Court, Case No.
5 37-2014-00040176-CU-OR-CTL.
- 6 Exhibit 17: Portions of the deposition transcript of Leslie Bell taken on April 1, 2019, in the
7 case of DeNardi v. TPL, LLLP, San Diego Superior Court,
8 Case No. 37-2014-00040176-CU-OR-CTL.
- 9 Exhibit 18: Email dated September 1, 2017 from The Reader to Richard Bailey inquiring
10 about McVaney and neighbors.
- 11 Exhibit 19: Email dated March 22, 2019 from The Reader to William C. Hernquist II
12 forwarding Bailey's response to The Reader.
- 13 Exhibit 20: 2016 Bailey for Mayor Campaign Forms 420 and 460.
- 14 Exhibit 21: Correspondence dated April 5, 2019 from William C. Hernquist, II to Richard
15 Bailey, Coronado City Attorney and Coronado City Council re Demand to
16 Cure/Correct (Brown Act).
- 17 Exhibit 22: Correspondence (CORRECTED) dated April 18, 2019, Thomas B. Brown,
18 Special Litigation Council for City of Coronado to William C. Hernquist, II.
- 19 Exhibit 23: City of Coronado, Street Tree Master Plan (2016).
- 20 Exhibit 24: Email dated February 20, 2019 from Derek Wilson to William C. Hernquist, II,
21 Re: update City's decision regarding removal of tree.
- 22 Exhibit 25: Order Granting Motion for Summary Adjudication (Beresford) dated
23 December 9, 2015 entered in the case of DeNardi v. TPL, LLLP, San Diego
24 Superior Court, Case No. 37-2014-00040176-CU-OR-CTL.
- 25 Exhibit 26: Order Granting Motion for Permanent Injunction dated March 15, 2016
26 entered in the case of DeNardi v. TPL, LLLP, San Diego Superior
27 Court, Case No. 37-2014-00040176-CU-OR-CTL.
- 28 Exhibit 27: Court of Appeal Opinion dated April 26, 2017 entered in the case of DeNardi v.

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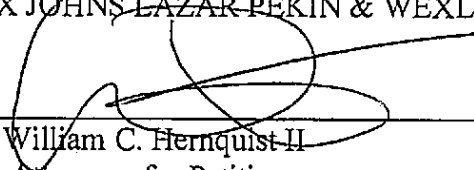
TPL, LLP, Court of Appeal, 4th District, Division 1, Case No. D070152.

Exhibit 28: Minute Order for Motion to Compel dated October 12, 2018, entered in the case of DeNardi v. TPL, LLLP, San Diego Superior Court, Case No. 37-2014-00040176-CU-OR-CTL.

Exhibit 29: Order Compelling TPL, LLLP's Compliance with the Intent of Summary Judgment and Permanent Injunction dated October 30, 2018.

Dated: May 2, 2019

WILLIAM C. HERNQUIST II, A.P.C.
And
FOX JOHNS LAZAR PEKIN & WEXLER, APC

By: 
William C. Hernquist II
Attorneys for Petitioner