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15 Coalition for Historical Integrity, an
16 Unincorporated association

17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF VENTURA**

19 Coalition for Historical Integrity an
20 unincorporated association,

21 Petitioners and Plaintiffs,

22 v.

23 CITY OF SAN BUENAVENTURA, a
24 chartered municipal corporation, acting by and
25 through its CITY COUNCIL, its governing
26 legislative body; and DOES 1 through 100,
27 inclusive,

28 Respondents and
Defendants.

CASE NO.

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

["CEQA Case" filed under the California
Environmental Quality Act, Cal. Pub.
Resources Code, § 21000 et seq.]

INTRODUCTION

1. Petitioner and Plaintiff Coalition for Historical Integrity ("Petitioner") brings this action to remedy procedural and substantive deficiencies in the proceedings before the City of San Buenaventura regarding the removal of Landmark No. 3, the bronze Father Serra Statue standing in

1 front of the City Hall at 501 Poli Street.

2 **THE PARTIES**

3 2. Petitioner Coalition for Historical Integrity (“CHI”) is an unincorporated association
4 comprised largely of residents of the City.

5 3. Respondent the City of San Buenaventura (“City” or “Ventura”) is a chartered
6 municipal corporation and a political subdivision of the State of California. According to the City’s
7 Charter, “All powers of the City shall be vested in the City Council except as otherwise provided in
8 this Charter and the Constitution of the State of California. The legislative power of the City shall
9 be vested in the people through the initiative and referendum and in the City Council.” The City
10 Council is comprised of seven members, two of which are elected by their fellow Councilmembers
11 as Mayor and Deputy Mayor. The City and its Council shall collectively be referred to as
12 “Respondents” or “Defendants,” as the case may be.

13 4. Does 1 through 100, inclusive, are, on the basis of information and belief, agents,
14 affiliates, and associates of the named Respondents. The identities of said DOES are currently
15 unknown, and when they become known, the Petition will be amended to add them.

16 **GENERAL ALLEGATIONS**

17 5. The City was incorporated in or about 1866.

18 6. In or about 1936, the City placed a cement statue of Father Junípero Serra (the
19 founder of the San Buenaventura Mission) on California Street in front of what is now City Hall.
20 The City designated the Father Serra statue a historic landmark, City Landmark No. 3, in 1974.

21 7. Over time, the cement statue deteriorated due to weathering and vandalism.

22 8. In the late 1980s, the community raised over \$100,000 – placed in a trust account -
23 and commissioned a wooden statue of Father Serra so that a mold could be generated in order to
24 reconstruct the original statue. According to a 1986 Star Free Press article, a City Councilmember,
25 Russ Burns, “is an artist who specializes in large works. His enthusiastic involvement offers
26 assurance that Father Serra will be preserved faithfully and artistically.” Petitioner is informed and
27 believes, and on that basis alleges, that the City engaged historic resource experts to ensure that the
28 bronze statue would be a proper reconstruction of the original Father Serra statue.

1 9. In or about 1988, the City removed the original cement statue from its location at the
2 northern terminus of California Street with the help of a crane from and work by the Oilfield
3 Service and Trucking Company.

4 10. Petitioner is informed and believes, and on that basis alleges, that the bronze Father
5 Serra statue was unveiled at October 20, 1989 dedication. The handouts distributed at the unveiling
6 stated in bold letters: "From Concrete To Bronze." Throughout the ceremony it was noted that the
7 audience had witnessed a "landmark renewed."

8 11. Petitioner is informed and believes, and on that basis alleges, that the wooden Father
9 Serra statue is located in an atrium of City Hall for display. Petitioner is informed and believes, and
10 on that basis allege, that the City owns or otherwise controls the wooden statue.

11 12. Petitioner is informed and believes, and on that basis alleges, that the cement Father
12 Serra statue has been stored in a decayed wooden crate since 1989. Petitioner is informed and
13 believes, and on that basis alleges, that the City has not taken any action to maintain or otherwise
14 preserve the cement Father Serra statue and that it is extremely damaged.

15 13. The City did not remove the reconstructed Father Serra statue's designation as
16 Landmark No. 3 in 1989. Since 1989, the City has repeatedly referred to the bronze, reconstructed
17 Father Serra statue as the historic landmark.

18 14. Petitioner is informed and believes, and on that basis alleges, that in 2007, the City
19 engaged the Historic Resources Group, a historic preservation consulting firm now located in
20 Pasadena, California, to conduct a historic resources survey of downtown Ventura. That 2007
21 survey identifies the reconstructed Father Serra statue located at California and Poli Streets as a
22 historic landmark. The 2007 survey further noted that the Father Serra statue, identified as City
23 Landmark No. 3, was "located at the intersection of California and Poli Streets" and is one of six
24 historic sites in the City "that do not appear to be defined by individual parcels, and therefore
25 cannot be associated with specific parcel addresses"

26 15. The 2007 historic resources survey does not identify the concrete Father Serra statue
27 as a historic resource.

28 16. The City's Downtown Specific Plan, adopted by the City Council in 2007, identifies

1 the bronze, reconstructed Father Serra statue as a historic landmark. The Specific Plan includes a
2 map (Figure I-2) depicting the exact location of the statue at the intersection of California and Poli
3 Streets.

4 17. The Downtown Specific Plan does not identify the original concrete Father Serra
5 statue as a historic resource.

6 18. On June 18, 2020, the City held a closed session at a special meeting agenized
7 pursuant to Government Code section 54957, which authorizes, in its subsection (a), closed sessions
8 “with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police,
9 or their respective deputies, or a security consultant or a security operations manager, on matters
10 posing a threat to the security of public buildings, a threat to the security of essential public
11 services, including water, drinking water, wastewater treatment, natural gas service, and electric
12 service, or a threat to the public’s right of access to public services or public facilities.”

13 19. In a June 18, 2020, letter jointly authored by the City’s Mayor, the Pastor of Mission
14 San Buenaventura, and the Tribal Chair of Barbareño/Ventureño Band of Mission Indians
15 (Chumash), the authors stated that the Mayor organized a meeting regarding the Father Serra statue
16 that “resulted in a friendly, collaborative, and honest dialogue where everyone recognized that the
17 time for action is now.” The letter continued, “We have listened and we have heard the calls from
18 those in the community and believe the time has come for the statue to be taken down and moved to
19 a more appropriate non-public location.”

20 20. The June 18, 2020, letter identified the Father Serra statue as “a designated
21 landmark.”

22 21. Petitioner is informed and believes, and on that basis alleges, that the City again
23 engaged the Historic Resources Group to prepare a report, this time specifically regarding the
24 Father Serra statue. Reversing course from its 2007 historic resources survey, the Historic
25 Resources Group issued a report on June 25, 2020 (“2020 HRG Report”) that concluded: the
26 “Landmark No. 3” status followed the original, concrete Father Serra statue.

27 22. City staff – as the project applicant - prepared a staff report for a public hearing
28 before the City’s Historic Preservation Committee on July 1, 2020. In that staff report, they

1 included the 2020 HRG report and recommended that the City's Historic Preservation Committee
2 find that the landmark designation remained with the concrete statue.

3 23. The City's Historic Preservation Committee adopted a resolution recommending to
4 the City Council that the 1989 Father Serra Statue in front of City Hall is not a historic landmark.

5 24. On July 7, 2020, the City Council held a public hearing regarding the removal of the
6 Father Serra Statue. At the outset of the meeting it was acknowledged that the Mayor was going to
7 be excused from the proceedings because he was not impartial having already prejudged the matter.
8 It was also at that time that it was acknowledged that the City had not properly noticed the CEQA
9 issue before the council so that it could not take action on that matter.

10 25. On July 15, 2020, the City Council held a second public hearing regarding the
11 removal of the Father Serra statue. The hearing was held "virtually" pursuant to the Governor's
12 Emergency Ordinance. It was also acknowledged that while the normal process would have
13 allowed for an appeal first to the planning department, that step was eliminated pursuant to the
14 City's Emergency Ordinance that "streamlined" the process. At the outset of that meeting it was
15 also acknowledged that there had been a challenge to the impartiality of Council members Wier and
16 Brown. The City attorney noted that in relation to Ms. Brown it was a "close call" but in the end a
17 bias finding would have to be more explicit. At the conclusion of that hearing the City found that
18 the Father Serra statue was not a historic resource and that it should be removed. The City
19 determined that its actions were exempt from the provisions of CEQA pursuant to CEQA
20 Guidelines section 15061, subsection (b)(3), otherwise known as the "common sense exemption."

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES, INADEQUATE REMEDY AT LAW,**

22 **JURISDICTION, AND VENUE**

23 26. Petitioner has exhausted all available administrative remedies before Respondents or
24 is otherwise excused from doing so.

25 27. Petitioner has no plain, speedy, or adequate remedy at law, and thus seeks a writ of
26 mandate from this Court.

27 28. This Court has jurisdiction to issue the requested writ of mandate pursuant to
28 California Code of Civil Procedure sections 1085 and/or 1094.5. This Court has jurisdiction

1 regarding the complaint for injunctive and declaratory relief pursuant to California Code of Civil
2 Procedure section 1060.

3 29. Venue in this Court is appropriate pursuant to California Code of Civil Procedure
4 section 394 because Respondents are located in the County of Ventura.

5 **FIRST CAUSE OF ACTION**

6 **(Writ of Mandate against All Respondents: Failure to Support Removal of Landmark No. 3**
7 **Designation with Substantial Evidence)**

8 30. Paragraphs 1 through 31 are incorporated here as if fully set forth herein.

9 31. Since 1989 until this month, the City identified the bronze Father Serra statue as City
10 Landmark No. 3. For three decades, the City treated the bronze statue as a reconstruction and
11 continuation of the original, concrete statue. For historic resources purposes, the City determined
12 that the bronze statue was deserving of historic treatment and protection.

13 32. Contrary to this conduct, the City effectively removed the historic designation from
14 the Father Serra statue on July 15, 2020. The City instead determined, for the first time ever and
15 contrary to its own official documents, that the City Landmark No. 3 designation actually followed
16 the original, concrete statue into storage. The City based its newfound determination on a single
17 study from its consultant that did not consider the possibility that the bronze statue could be a
18 reconstruction and continuation of City Landmark No. 3.

19 33. Respondents abused their discretion because their conclusions regarding the status of
20 City Landmark No. 3 were not supported by substantial evidence.

21 **SECOND CAUSE OF ACTION**

22 **(Writ of Mandate against All Respondents: Inconsistency with Downtown Specific Plan)**

23 34. Paragraphs 1 through 33 are incorporated here as if fully set forth herein.

24 35. The City's operative Downtown Specific Plan identifies the existing, bronze Father
25 Serra statue at California and Poli Streets as City Landmark No. 3 and a historic resource.

26 36. On July 15, 2020, the City Council determined that the existing, bronze father Serra
27 statue is not a historic resource. The City Council further determined that it would remove the
28 Father Serra statue from its existing location. The City did not amend its Downtown Specific Plan,

1 including its provisions regarding the Father Serra statue or its landmark or historic resource status.

2 37. San Buenaventura Municipal Code section 24.555.090 states in part, "The effects of
3 the adoption or amendment of a specific plan shall be to require that all zoning actions,
4 subdivisions, public improvement projects, development agreements, and any other discretionary
5 land use permits and other approvals within the Plan's effective area be consistent with the specific
6 plan."

7 38. The City's actions on July 15, 2020, are inconsistent with the provisions of the
8 Downtown Specific Plan.

9 39. Respondents failed to proceed in the manner required by law and abused their
10 discretion.

11 **THIRD CAUSE OF ACTION**

12 **(Writ of Mandate against All Respondents: Violation of CEQA: Improper Exemption 13 Determination)**

14 40. Paragraphs 1 through 39 are incorporated here as if fully set forth herein.

15 41. The City determined that its July 15, 2020, actions regarding the Father Serra statue
16 were exempt from CEQA pursuant to CEQA Guidelines sections 15061. CEQA Guidelines section
17 15061, subsection (b)(3) states that a project is exempt from CEQA where "[t]he activity is covered
18 by the common sense exemption that CEQA applies only to projects which have the potential for
19 causing a significant effect on the environment. Where it can be seen with certainty that there is no
20 possibility that the activity in question may have a significant effect on the environment, the activity
21 is not subject to CEQA."

22 42. There is a possibility that the City's actions on July 15, 2020, will have an adverse,
23 significant effect on the environment.

24 43. The Father Serra statue at California and Poli Streets is a historic resource for CEQA
25 purposes.

26 44. Pursuant to CEQA Guidelines section 15064.5, subsection (b), "A project with an
27 effect that may cause a substantial adverse change in the significance of an historical resource is a
28 project that may have a significant effect on the environment."

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2020;


3. For a temporary stay, temporary restraining order, and preliminary or permanent injunctive relief or other order enjoining Respondents from taking any physical action in furtherance of its actions of July 15, 2020 during the pendency of this action;
4. For costs of the suit;
5. For reasonable attorney fees pursuant to Code of Civil Procedure section 1021.5; and
6. For such other and further relief as the Court deems just and proper.

Dated: July 21, 2020

Respectfully Submitted,

FERGUSON CASE ORR PATERSON LLP

By:


James Q. McDermott
Attorneys for Petitioner and Plaintiff
Coalition of Historical Integrity

VERIFICATION

I, James McDermott, am the attorney for the COALITION OF HISTORICAL INTEGRITY, the petitioner in this proceeding and am authorized to make this verification on its behalf. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know the contents thereof. The contents are true of my own knowledge, except as to matters stated therein 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 on July 21, 2020, at Ventura, California.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.