

1 CHATTEN-BROWN & ASSOCIATES
2 Jan Chatten-Brown, SBN 050275
3 Douglas Carstens, SBN 193439
4 Amy Minter, SBN 223832
5 3250 Ocean Park Avenue, Suite 300
6 Santa Monica, CA 90405
7 310.314.8040; Fax 310.314.8050

8
9 Attorneys for Petitioner
10 Citizens for Local Government Accountability

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF RIVERSIDE

13 CITIZENS FOR LOCAL GOVERNMENT)
14 ACCOUNTABILITY;)

15 Petitioner,)

16 v.)

17 COMMUNITY REDEVELOPMENT)
18 AGENCY OF THE CITY OF PALM)
19 SPRINGS; and Does 1-10;)

20 Respondents.)

21 AGUA CALIENTE BAND OF CAHUILLA)
22 INDIANS; and DOES 10 to 20;)

23 Real Parties in Interest.)
24
25
26
27
28

CASE NO.:

**PETITION FOR WRIT OF MANDATE
AND ALTERNATIVE WRIT OF
MANDATE**

(HEALTH AND SAFETY CODE ; PUBLIC
CONTRACT CODE; CALIFORNIA
ENVIRONMENTAL QUALITY ACT)

1 **INTRODUCTION**

2 1. Petitioner Citizens for Local Government Accountability brings this action to
3 enforce Health and Safety Code, Public Contract Code, and California Environmental Quality
4 Act (“CEQA”) requirements related to restrictions on redevelopment agency assistance to
5 gambling enterprises, competitive bidding for public contracts, and environmental review of
6 public agency projects. The Community Redevelopment Agency (“CRA”) of the City of Palm
7 Springs illegally approved a parking lot construction and use project for valet parking
8 (“Project”) to serve a casino owned by the Agua Caliente Band of Cahuilla Indians (“Tribe”).

9 2. The CRA approved a document styled a “First Amended License Agreement”
10 (“Agreement”) to allow the Tribe to construct a \$2 million, 475-space parking lot on CRA-
11 owned land known as the Schooner Parcel, and lease a portion of the parking lot for exclusive
12 use of the Tribe as 200 spaces of valet parking. The portion of the parking lot unused by the
13 Tribe on an exclusive basis would be shared with the City of Palm Springs’ Convention Center.

14 3. No competitive bids were obtained before the CRA awarded the contract for
15 construction of the \$2 million parking lot to the Tribe.

16 4. The parking lot to be constructed pursuant to the Agreement would generate
17 hundreds of daily car trips around the clock, and would potentially interfere with the circulation
18 patterns of local traffic.

19 5. No environmental review was undertaken in connection with the Agreement. No
20 consideration of alternatives or mitigation measures was given in connection with the CRA’s
21 approval of the Agreement.

22 6. The CRA purported to commit to the preparation of a Development Agreement for
23 a long term use of the parking lot over the next three years, but the CRA has not begun
24 proceedings to develop such an agreement.

25 7. The CRA did not file a Notice of Determination in connection with the CRA’s
26 approval of the Agreement.

1 **JURISDICTION**

2 8. This Court has jurisdiction under sections 1085 of the Code of Civil Procedure
3 (“CCP”) and section 21168 of the Public Resources Code.

4 9. The parties and the project site are located in Riverside County.

5 **PARTIES**

6 10. Petitioner Citizens for Local Government Accountability is an unincorporated
7 association formed in October 2003. It was organized for the purpose of ensuring local
8 government agencies such as the CRA adhere to legal requirements before approving
9 development projects. Its members are residents and taxpayers in the City of Palm Springs and
10 throughout the Coachella Valley. It includes people who have previously opposed the First
11 Amended License Agreement.

12 11. On information and belief, Respondent Community Redevelopment Agency of
13 Palm Springs is a duly incorporated redevelopment agency organized pursuant to the Health and
14 Safety Code.

15 12. On information and belief, Real Party in Interest Agua Caliente Band of Cahuilla
16 Indians (“Tribe”) is the proposed project developer of the property that is the subject of the
17 Project.

18 13. Respondents and real parties named as Does are given fictitious names because
19 their names and capacities are presently unknown to Petitioner.

20
21 **STATEMENT OF FACTS**

22 14. On September 3, 2003, the City’s Community Redevelopment Agency entered an
23 agreement for the construction of a parking lot with approximately 475 parking spaces in the
24 downtown area of Palm Springs bounded by Amado Road, Calle Encilia, Tahquitz Canyon
25 Road and Calle El Segundo to support the new Spa Casino and the expanded Convention
26 Center. The parking lot would be built on a parcel known as the Prairie Schooner parcel.

27 15. Since April 1995, the Tribe has operated the Spa Resort Hotel and Casino adjacent
28 to the Prairie Schooner parcel with a 240-room hotel, a restaurant and gaming floor area of

1 30,000 square feet. In the past year, the Tribe constructed a \$100 million casino complex that
2 stretches across several blocks of downtown Palm Springs and includes three restaurants, a 150-
3 seat entertainment complex, and a new 119,000 square foot casino. The new casino was
4 constructed on land under the jurisdiction of the Tribe. Thus, no environmental review
5 pursuant to the California Environmental Quality Act was required for the Tribe's construction
6 of the casino complex so none was certified by any public agency.

7 16. During the course of the Tribe's construction of the new casino, on November 1,
8 2002, the CRA and Tribe approved a Construction License Agreement, to allow the Tribe to use
9 the Prairie Schooner parcel for "construction supervision compound and overflow parking."

10 17. The new, larger casino required a greater amount of parking. Therefore, the Tribe
11 embarked on an effort to obtain parking lots on various sites surrounding the casino. One of the
12 sites the Tribe negotiated for parking on was the Prairie Schooner parcel.

13 18. Contemporaneously with the Tribe's efforts to construct a new casino, the City of
14 Palm Springs was seeking to expand its Convention Center. In the course of studying an
15 expansion of its Convention Center, the City prepared an "Environmental Assessment for the
16 Palm Springs Convention Center Expansion," dated May 7, 2003. The assessment analyzed the
17 use of the Prairie Schooner parcel for use with the Convention Center, but it did not analyze its
18 use in conjunction with the casino.

19 19. The CRA and the Tribe approved First Amended License Agreement on
20 September 3, 2003. This agreement is "to expand the Tribe's use of the Owner's [CRA's]
21 Parcel . . . for the purpose of constructing and operating a parking lot which will be used . . . by
22 the Tribe in conjunction with the Tribe's adjacent casino."

23 20. The Agreement provided that the Tribe would construct the parking lot at its own
24 expense. The CRA agreed it would repay the Tribe's construction costs of \$2 million over a
25 period of 10 years. The Agreement gave the Tribe exclusive use of 200 parking spaces for valet
26 parking for the casino for a period of three years, which could be extended by subsequent
27 agreement. The entire parking lot would provide up to 550 parking spaces. Those spaces that
28 were not reserved for the exclusive use of the Tribe would be shared with the nearby Convention

1 Center. On a quarterly basis, the Tribe would confer with representatives of the Convention
2 Center to coordinate dates on which the Convention Center's event parking demand would
3 require its use of the entire remainder of 350 spaces of the parking lot. In return for use of the
4 entire parking lot, the Tribe will pay the CRA \$700,000 annually, of which 38 percent
5 (\$266,000) is a rental payment and 62 percent (\$434,000) is to pay for tourism promotion for the
6 CRA. The Tribe is to deduct \$16,666.67 each month, or \$200,000 each year, from its rental and
7 tourism promotion payments to the CRA to recoup the cost of constructing the parking lot.

8 21. The City analyzed the use of 475 spaces of the parking lot for the nearby
9 Convention Center in May 2003. However, the CRA chose not to conduct environmental
10 review when it allowed the Tribe to use the parking lot, including using 200 spaces of the
11 parking lot exclusively for casino parking. Instead, the CRA purported to rely upon the May
12 2003 environmental assessment for the Convention Center expansion.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
14 **AND INADEQUATE REMEDIES AT LAW**

15 22. Petitioner's members objected to the project in the administrative process, and
16 fully exhausted their administrative remedies.

17 23. This action was timely filed. Petitioner has no plain, speedy, and adequate remedy
18 in the ordinary course of law.

19 24. Petitioner has complied with Public Resources Code section 21167.7 by filing a
20 copy of this petition with the California Attorney General. A copy of that notice is attached as
21 Exhibit A.

22 25. Petitioner has complied with Public Resources Code section 21167.5 by providing
23 the CRA with notice of intention to commence the action. A copy of that notice is attached as
24 Exhibit B.

25 26. Petitioner elects to prepare the administrative record. A copy of that election is
26 attached as Exhibit C.

1 **FIRST CAUSE OF ACTION**
2 **(VIOLATION OF CALIFORNIA HEALTH AND SAFETY CODE)**

3 27. Petitioner incorporates all previous paragraphs as if fully set forth.

4 28. Petitioner alleges that the CRA abused its discretion and failed to act in the
5 manner required by law in approving the First Amended License Agreement.

6 **A. Violation of Health and Safety Code Section 33426.5's Prohibition on Assistance to**
7 **Gambling**

8 29. Health and Safety code section 33426.5 states:

9 "[A redevelopment] agency shall not provide any form of direct assistance
10 to:

11 . . .

12 (c) A development or business, either directly or indirectly, for the
13 acquisition, construction, improvement, rehabilitation, or replacement of property
14 that is or would be used for gambling or gaming of any kind whatsoever including,
15 but not limited to, casinos, gaming clubs, bingo operations, or any facility wherein
banked or percentage games, any form of gambling device, or lotteries, other than
the California State Lottery, are or will be played. . . ."

16 30. Approval of the project violates the restriction section 33426.5 places upon
17 redevelopment agencies because the CRA would be directly assisting a gambling enterprise by
18 leasing CRA owned land to the Tribe for its exclusive use as a parking lot.

19 31. This is the exact type of situation section 33426.5 was intended to prevent. The
20 legislative history of Assembly Bill 2063, the bill that amended section 33426.5 to add the
21 prohibition on assistance to gambling, shows the Legislature considered the lease of
22 redevelopment land as a parking lot for a gaming facility as being direct or indirect assistance to
23 a gambling enterprise. The analysis of the bill which amended section 33426.5 to include the
24 prohibition on assistance to gambling enterprises states:

25 Two of the state's RDA's [Redevelopment Agencies] have recently been involved
26 in assisting, directly or indirectly, gambling enterprises. In the 1980s, the City of
27 Bell Gardens RDA (Los Angeles County) signed a 55-year lease with the Bicycle
28 Club, a card casino, to use agency-owned land as a parking lot for \$750,000 a
year. More recently, the City of Palm Springs RDA (Riverside County) proposed

1 to give land to an Indian tribe so that the tribe could establish a gambling casino
2 downtown in conjunction with Caesar's.

3 32. Therefore, the CRA's approval of the Agreement is an abuse of discretion and
4 contrary to law.

5 **B. Violation of Health and Safety Code Section 33433's Financial Report Requirement**

6 33. Section 33433 of the Health and Safety Code requires the preparation and public
7 review of a financial report that includes information about a redevelopment agency property's
8 fair market value and potential economic use before it is sold or leased.

9 34. Section 33433 applies to the Prairie Schooner property.

10 35. Section 33433 requires the CRA to hold a public hearing on a proposed lease and
11 that "Notice of the time and place of the hearing shall be published in a newspaper of general
12 circulation in the community at least once per week for at least two successive weeks, as
13 specified in Section 6066 of the Government Code, prior to the hearing."

14 36. The CRA's approval of the First Amended License Agreement violates several of
15 section 33433's requirements because no financial report was prepared or timely published as
16 required.

17 37. Information about fair market value and other statutorily-identified issues was not
18 presented for public review as required.

19 38. The required public notice of the lease of the property was not provided.

20 39. Hotel development was identified in the CRA's redevelopment plan for the area as
21 the highest and best use of the Prairie Schooner parcel. Health and Safety Code section 33433
22 requires that "The consideration [for a lease] is not less than the fair market value at its highest
23 and best use in accordance with the plan."

24 40. The First Amended License Agreement violates the requirement of section 33433
25 that land be leased for consideration which is equivalent to what would be obtained at its highest
26 and best use, in this case a hotel development.

1 **C. Violation of Health and Safety Code Section 33423’s Requirement to Pay Prevailing**
2 **Wage**

3 41. Health and Safety Code section 33423 requires that before awarding a contract, the
4 CRA shall ascertain the general prevailing wages and provide that it be paid in the contract.
5 This requirement is extended to contractors and subcontractors of the CRA by Health and Safety
6 Code section 33424.

7 42. The First Amended License Agreement is a construction contract between the
8 CRA and the Tribe. The Tribe is a “contractor or subcontractor” pursuant to section 33424
9 because the Tribe has an agreement with the CRA to build the parking lot.

10 43. Neither the CRA nor the Tribe has ascertained the general prevailing wage prior to
11 the awarding of this construction contract. Additionally, the contract does not provide for
12 prevailing wage to be paid for the construction of the parking lot. Therefore the CRA’s
13 approval of the Agreement is a violation of section 33423.

14 **D. Violation of Health and Safety Code Section 33435’s Requirement to Include a Non-**
15 **Discrimination Clause**

16 44. Health and Safety Code section 33435 requires a non-discrimination clause in any
17 lease of redevelopment agency land. Health and Safety Code section 33436 sets forth the
18 mandatory language that must appear.

19 45. The mandatory language set forth in section 33436 does not appear in the First
20 Amended License Agreement.

21 46. The Agreement violates Health and Safety Code section 33435 because it allows
22 the Tribe exclusive use of a portion of the parking lot without a binding commitment to non-
23 discrimination in its use of the parking lot.

24 **SECOND CAUSE OF ACTION**
25 **(VIOLATION OF CALIFORNIA PUBLIC CONTRACT CODE)**

26 47. Petitioner incorporates all previous paragraphs as if fully set forth.

27 48. Public Contract Code section 20688.2, is applicable to the CRA. It requires that
28 “Any work of . . . construction undertaken by the agency shall be done by contract after

1 competitive bids if the cost of such work exceeds the amount specified in section 37902 of the
2 Government Code as that section presently exists or may be hereafter amended.” Statutory
3 provisions such as section 20688.2 requiring competitive bidding in letting public contracts are
4 designed to guard against favoritism, improvidence, extravagance, fraud and corruption; to
5 prevent the waste of public funds; and to obtain the best economic result for the public.

6 49. CRA and the Tribe agreed that the price for construction of the parking lot would
7 be \$2 million. No documents available to the public explain the basis for this conclusion.

8 50. The \$2 million construction cost exceeds the amount specified in section 37902 of
9 the Government Code for requiring competitive bidding.

10 51. CRA abused its discretion and failed to proceed in a manner required by law in
11 approving the Agreement because it was required to obtain competitive bids for construction of
12 the parking lot but failed to do so.

13
14 **THIRD CAUSE OF ACTION**
15 **(VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT)**

16 52. Petitioner incorporates all previous paragraphs as if fully set forth.

17 53. Petitioner alleges that the CRA abused its discretion and failed to act in the manner
18 required by law in approving the First Amended License Agreement.

19 **A. Failure to Provide Adequate Notice.**

20 54. The CRA failed to conduct any environmental review of the Agreement at all. It
21 improperly relied upon the assessment for the convention center expansion project done by the
22 City in May 2003.

23 55. The City never filed a notice of determination for the environmental assessment
24 for the convention center expansion.

25 56. The CRA failed to prepare a negative declaration to state the Agreement will not
26 have a significant effect as required by section 15153 subdivision (c) of Title 14 of the
27 California Code of Regulations (hereinafter “CEQA Guidelines”) when an agency relies upon an
28 EIR prepared for an earlier project.

1 57. The CRA did not provide a public review period of 20 days or greater of a
2 negative declaration as required Public Resources Code section 21092 subdivisions (a) and (b)
3 and CEQA Guidelines section 15072.

4 58. CEQA Guidelines section 15153 requires that where a lead agency proposes to use
5 an EIR from an earlier project as the environmental review for a separate, later project, the lead
6 agency shall follow mandated procedures. These mandatory procedures include reviewing the
7 proposed project with an initial study, providing public review with a notice stating it plans to
8 use the previously prepared EIR, preparing a response to comments received during the review
9 period, and filing a notice of determination. CRA failed to undertake any of these required
10 actions.

11
12 **B. Improper Segmentation of Environmental Review for the Project.**

13 59. Public agencies that propose to approve development projects must comply with
14 CEQA. CEQA requires that an entire project be analyzed as a whole, not segmented into small
15 portions.

16 60. The Agreement provides for the Tribe’s use of the parking lot in conjunction with
17 it casino for a period of three years. During those three years, the CRA and Tribe intend to
18 develop a Development and Disposition Agreement that provides for the Tribe’s use of the
19 parking lot for a longer period of time.

20 61. The CRA acknowledged that a Development and Disposition Agreement will be
21 prepared and an Environmental Impact Report certified for subsequent potential use of the
22 Prairie Schooner parcel as a parking lot for the casino.

23 62. The First Amended License Agreement could not be approved on the basis of
24 environmental review that is separate from an Environmental Impact Report for the
25 Development and Disposition Agreement because this is impermissible segmentation.

26 63. The construction of a parking lot on the Prairie Schooner parcel as contemplated in
27 the Agreement is merely one component of a program of parking lot development that includes
28

1 at least four other parking lots throughout Palm Springs undertaken by the Tribe for its Spa
2 Casino.

3 64. The Tribe submitted plans to the City for parking lots separately without reference
4 to the entire project of parking lot development.

5 65. The Tribe filed plans with the City of Palm Springs to increase by approximately
6 131 percent the number of parking spaces that it reported in its Traffic Impact Study Update for
7 the casino project. According to plans submitted to the City thus far, the number is projected to
8 increase from 1,313 to approximately 3,036. Therefore, the parking lot expansion is just one
9 component of a larger plan to increase parking for the casino.

10 66. The First Amended License Agreement could not be approved on the basis of
11 environmental review that fails to consider the fact that the parking lot is merely one component
12 of a larger program of parking lot development being undertaken by the Tribe in support of its
13 casino.

14 67. The CRA's failure to consider the parking lot as a component of the Tribe's larger
15 program of parking lot development was an abuse of discretion and contrary to law.

16 **C. Failure To Prepare an EIR Despite Potentially Significant Traffic and Noise**
17 **Impacts.**

18 68. Noise and traffic impacts from the Convention Center expansion project were
19 based upon the projected parking demand and traffic profile for the Convention Center, and do
20 not include the impacts of the casino.

21 69. The parking lot's additional use by casino patrons will substantially increase
22 adverse noise and traffic impacts above those that would occur with the Convention Center's use
23 of the parking lot.

24 70. There will be a significant impact from the valet system at the parking lot on the adjacent
25 public road system.

26 71. Because of the potential for additional adverse traffic and noise impacts, the CRA was
27 required to certify an environmental impact report before it approved the First Amended License
28 Agreement. The CRA failed to do so.

1 **WHEREFORE, Petitioner Prays:**

- 2 1. That the Court issue an alternative and peremptory writ of mandate ordering the
3 City's Community Redevelopment Agency to set aside and void its approval of the First
4 Amended License Agreement.
- 5 2. That the Court issue a statement of decision;
- 6 3. For Petitioner's costs and attorney fees pursuant to CCP section 1021.5; and
- 7 4. For other and further relief as the Court finds proper.

8
9 Dated: October 27, 2003

Respectfully Submitted,

10
11 By: _____
12 Jan Chatten-Brown
13 Douglas Carstens
14 Amy Minter
15 Attorneys for Petitioner
16
17
18
19
20
21
22
23
24
25
26
27
28

