

1 ANDREW J. GUILFORD, CAL. BAR NO. 66048
2 SEAN P. O'CONNOR, CAL. BAR NO. 155940
3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
4 A Limited Liability Partnership
5 Including Professional Corporations
6 650 Town Center Drive, 4th Floor
7 Costa Mesa, California 92626-1925
8 Telephone: (714) 513-5100
9 Facsimile: (714) 513-5130

10 Attorneys for Plaintiff and Petitioner
11 COTTONWOOD CHRISTIAN CENTER

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 COTTONWOOD CHRISTIAN CENTER, a) Case Number:
15 non-profit religious)
16 corporation,)
17 Plaintiff and Petitioner,) VERIFIED COMPLAINT FOR:
18 v.) 1) VIOLATIONS OF RELIGIOUS LAND
19 REDEVELOPMENT AGENCY OF THE) USE AND INSTITUTIONALIZED
20 CITY OF CYPRESS, a public body,) PERSONS ACT;
21 corporate and politic; CITY OF) 2) VIOLATIONS OF FIRST
22 CYPRESS, a municipal charter) AMENDMENT;
23 corporation and political) 3) VIOLATIONS OF FIFTH
24 subdivision of the State of) AMENDMENT;
25 California, acting by and) 4) VIOLATIONS OF FOURTEENTH
26 through its city counsel,) AMENDMENT;
27 commissions, committees, staff,) 5) VIOLATIONS OF CALIFORNIA
28 agencies, departments and) CONSTITUTION;
) 6) INVALIDATION OF AGENCY AND
) CITY ACTIONS;
) 7) DECLARATORY RELIEF; AND
) 8) INJUNCTIVE RELIEF.
)
) DEMAND FOR JURY TRIAL
)
)
) VERIFIED PETITION FOR
) PEREMPTORY WRIT OF MANDATE
)
) [Cal. Pub. Res. Code § 21168.5
) and Cal. Civ. Proc. Code
) § 1085]

1 Plaintiff and Petitioner, COTTONWOOD CHRISTIAN CENTER
2 ("Cottonwood"), files this combined Verified Petition for Viola-
3 tions of Religious Land Use and Institutionalized Persons Act,
4 Violations of First Amendment, Violations of Fifth Amendment,
5 Violations of Fourteenth Amendment, Violations of California
6 Constitution, Invalidation of Agency and City Actions, Declaratory
7 Relief and Injunctive Relief, and Verified Petition for Peremptory
8 Writ of Mandate and alleges as follows:

9

10 NATURE OF ACTION

11 1. This suit seeks relief from the clear and purposeful
12 deprivation of Cottonwood's rights to freedom of religion, speech,
13 and association, as well as its rights to due process and equal
14 protection of the laws. In this action, Cottonwood alleges that
15 the land use and zoning laws, regulations and plans of the City of
16 Cypress (the "City") and Redevelopment Agency of the City of
17 Cypress ("Agency") (collectively, "Defendants"), both on their face
18 and as they were applied by Defendants against religious assemblies
19 and institutions in general and Cottonwood in particular, violate
20 the United States and California Constitutions, the Religious Land
21 Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc
22 et seq. ("RLUIPA"), and California Government Code section 65008 by
23 treating private religious institutions on less than equal terms
24 with nonreligious institutions, and by depriving Cottonwood the
25 ability to fairly and adequately secure a place to assemble for
26 conducting religious worship. In this action, Cottonwood also
27 petitions for a peremptory writ of mandate and other appropriate
28 orders concerning the City's Moratorium, Defendants' Second

1 Amendment to the Redevelopment Plan for the Los Alamitos Race Track
2 and Golf Course Redevelopment Project Area and Agency's requested
3 Statements of Interest in Participation and Requests for Proposal.

4
5 2. Cottonwood alleges that Defendants, through the imple-
6 mentation of its laws, regulations and plans, treat private relig-
7 ious institutions, including Cottonwood, on unequal terms with
8 nonreligious institutions by discriminating against non-tax gener-
9 ating religious institutions and favoring tax-generating users such
10 as large retailers.

11
12 3. Cottonwood alleges that Defendants substantially burden
13 its exercise of religious liberty, its expression on religious
14 matters, and its association for purposes of religious and educa-
15 tional activity by, among other things, engaging in a deliberate
16 course of conduct designed to discriminate against Cottonwood and
17 its plans to develop a new church site within the boundaries of the
18 City. These burdened activities are central to Cottonwood's
19 religious vision and the purpose for which Cottonwood was
20 established.

21
22 4. Cottonwood further alleges that Defendants wrongfully
23 implemented land use decisions adversely impacting Cottonwood, and
24 the City violated California Government Code section 65008 by
25 making religion the basis of land use decisions.

26
27 5. Cottonwood seeks injunctive, declaratory and compensatory
28 relief under RLUIPA, 42 U.S.C. § 1983, the California Constitution,

1 and California Government Code section 65008 for its injuries
2 suffered as a result of Defendants' unlawful conduct. Cottonwood
3 also seeks costs and attorney fees.

4
5 JURISDICTION AND VENUE

6 6. This Court has jurisdiction over this action pursuant to
7 28 U.S.C. §§ 1331 and 1343(3)(4) and 42 U.S.C. § 2000cc, et seq.,
8 which confer original jurisdiction on federal district courts in
9 suits to redress the deprivation of rights, privileges and immuni-
10 ties secured by the laws and Constitutions of the State of
11 California and the United States, particularly the First and
12 Fourteenth Amendments to the Constitution of the United States and
13 the Religious Land Use and Institutionalized Persons Act of 2000.
14 The Court has jurisdiction over the request for declaratory relief
15 pursuant to 28 U.S.C. §§ 2201 and 2202. This action is also
16 authorized by 42 U.S.C. § 1983 because Defendants are state actors
17 who have abridged the constitutional rights of Cottonwood. This
18 Court has pendant and supplemental jurisdiction over all state law
19 claims under 28 U.S.C. § 1367(a).

20
21 7. Venue is proper in this District because the acts and
22 transactions complained of occurred in this District pursuant to
23 28 U.S.C. §1367(b).

24
25 DESCRIPTION OF PARTIES

26 8. Cottonwood was established in 1983 and is a non-
27 denominational Christian church, functioning as a non-profit
28 religious corporation under 26 U.S.C. § 501(c)(3). Cottonwood owns

1 approximately 17.9 acres of undeveloped land (the "Cottonwood
2 Property") at the northwest corner of Katella Avenue and Walker
3 Street in the City.

4
5 9. Cottonwood is informed and believes, and on that basis
6 alleges, that the City is, and at all times relevant herein was, a
7 municipal charter corporation existing under the laws of the State
8 of California. Cottonwood is further informed and believes, and on
9 that basis alleges, that the City is a political subdivision of the
10 State of California located within the County of Orange, exercising
11 its authority through its City Council and other commissions,
12 committees, staff agencies, departments and officials.

13
14 10. Cottonwood is informed and believes, and on that basis
15 alleges, that the Agency is, and at all times relevant herein was,
16 a public body, corporate and politic, exercising governmental
17 functions and powers, and organized and existing under Chapter 2 of
18 the Community Redevelopment Law of the State of California
19 ("Redevelopment Law").

20
21 11. Cottonwood is ignorant of the true names and capacities,
22 whether individual, corporate, associate or otherwise, of DOES 1
23 through 10, inclusive. Cottonwood is informed and believes, and on
24 that basis alleges, that each fictitious party was in some way
25 responsible for or participated in or contributed to the matters
26 and things of which Cottonwood complains herein, and in some
27 fashion is legally responsible therefor. When the exact nature and
28 identification of such fictitious parties' responsibility for,

1 participation in and contribution to the matters herein alleged is
2 ascertained by Cottonwood, it will seek to amend this petition and
3 complaint and all proceedings herein to set forth the same.

4
5

COTTONWOOD

6 12. Cottonwood is a fast growing non-denominational Christian
7 church. Cottonwood provides, among other things, significant
8 outreach, assistance and support programs to individuals and
9 families, including single parents. Cottonwood is guided by its
10 Statement of Faith, which provides as follows:

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

We believe that there is one God, eternally
existent in three persons: God the Father, God
the Son, and God the Holy Spirit. We believe
in the deity of our Lord Jesus Christ, in His
virgin birth, and in His bodily resurrection.
We believe the Bible to be the inspired and
infallible Word of God. We believe in salva-
tion by grace through faith in the Lord Jesus
Christ. We believe in the baptism of the Holy
Spirit with the evidence of speaking in other
tongues as a subsequent gift to salvation. We
believe in the provision of bodily healing in
atoning work of Jesus our Savior. We believe
in the return of the Lord Jesus Christ and the
resurrection of both the saved and the lost,
the one unto eternal life, the other unto
damnation.

1 Cottonwood is further guided by its Vision of "Bringing a Living
2 Jesus to a Dying World," which provides as follows:

3

4 At CCC, we believe in the incredible potential of
5 every human being, and are helping people to
6 discover and develop that potential in all its
7 fullness. Each person is very precious and has a
8 vital part to play.

9

10 We emphasize and are helping people to develop a
11 vibrant relationship with God through faith in Jesus
12 Christ.

13

14 We are committed to teaching the Word of God and its
15 application to real everyday life.

16

17 As a community of people of different cultures,
18 backgrounds, ages and stages of life, we encourage
19 all to care for each other and to be a strength,
20 support and help to each other.

21

22 We are committed to reach out and help one another
23 to love life and to live it to the fullest.

24

25 We are inspiring people to work together to make a
26 lasting impact here in the Southland and around the
27 world. We strongly believe that we are called to
28 reach out and make a difference here in our own

1 local communities and to extend from there out to
2 the four comers of the earth. By faith in Jesus
3 Christ and our God-honoring relevant life-styles we
4 are bringing hope and life to a hurting world.
5

6 13. Cottonwood's worship services are broadcast nationally in
7 fifty states, and internationally via an extensive network of
8 broadcasts. Cottonwood's message is broadcast to the following
9 countries: Afghanistan, Algeria, Angola, Armenia, Austria,
10 Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium,
11 Bhutan, Botswana, Brunei, Bulgaria, Burundi, Cambodia, Cameroon,
12 Channel Islands, China, Croatia, Cyprus, Czech Republic, Denmark,
13 Egypt, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece,
14 Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel,
15 Italy, Jordan, Kenya, Kirghistan, Kuwait, Laos, Latvia, Lebanon,
16 Lithuania, Luxembourg, Majorca, Malaysia, Malawi, Malta, Monaco,
17 Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New
18 Zealand, Niger, Norway, Oman, Pakistan, Philippines, Poland,
19 Portugal, Qatar, Romania, Russia, Rwanda, Saudi Arabia, Slovak
20 Republic, Singapore, Slovenia, South Africa, Spain, Sri Lanka,
21 Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tenerife,
22 Thailand, Tunisia, Turkey, Turkmenistan, U.A.E., Uganda, Ukraine,
23 United Arab Emirates, United Kingdom, Uzbekistan, Vietnam, Yemen,
24 Zambia and Zimbabwe.

25
26 14. Cottonwood currently owns property and worships in the
27 City of Los Alamitos, at 3311 Sausalito Street ("Sausalito Street
28 Property"). The Sausalito Street Property has a seating capacity

1 of approximately 700. Cottonwood has outgrown all of its worship,
2 administrative and educational spaces at the Sausalito Street
3 Property, as recent growth rates for worship and pre-school size
4 reflect the need for larger facilities. Worship attendance
5 averages nearly 4,000 adult attendees per week, with an additional
6 1,200 children and youth in weekly Sunday school. Cottonwood holds
7 two services on Saturday and four services on Sunday to further the
8 worshiping needs of its congregants. Onsite parking at the
9 Sausalito Street Property is woefully inadequate, and worshipers at
10 every service are required to park offsite, reaching the premises
11 with the help of Cottonwood's shuttle ministry. Even with the
12 multiple services and the accommodations made by way of
13 Cottonwood's shuttle ministry, there is insufficient room at the
14 Sausalito Street Property, and worshipers are turned away because
15 of this insufficient room. This severely restricts Cottonwood's
16 religious exercise:

17
18
19
20
21
22
23
24
25
26
27
28

"And Jesus came and spoke to them, saying 'All
authority has been given to Me in heaven and on
earth. Go therefore and make disciples of all
the nations, baptizing them in the name of the
Father and the Son and of the Holy Spirit,
teaching them to observe all things that I have
commanded you; and lo, I am with you always,
even to the end of the age.'"
(Matthew 28:18-20).

1 15. Realizing the need for expanding its facilities,
2 Cottonwood members raised funds and purchased the 17.9 acres that
3 comprise the currently undeveloped Cottonwood Property. Cottonwood
4 spent over a year acquiring the Cottonwood Property from multiple
5 landowners for the purpose of building a new church home.
6 Cottonwood and its worshipers believe that it is essential to
7 attend a Bible-believing church where one will find teaching to
8 understand the Bible and meet other believers. This new church is
9 necessary for Cottonwood's religious exercise:

10

11 "On arriving there, they gathered the church
12 together and reported all that God had done
13 through them and how he had opened the door of
14 faith to the Gentiles."

15 (Acts 14:27)

16

17 16. Cottonwood intends to develop the Cottonwood Property
18 into a church site and a well-planned community-oriented project
19 ("Proposed Cottonwood Project") that will include such facilities
20 as a worship center, daycare center, youth center, gymnasium,
21 bookstore, and parking structure. The Proposed Cottonwood Project
22 envisions a 300,000 square foot worship center with more than 4,700
23 fixed seats. The Proposed Cottonwood Project also envisions a 200-
24 child daycare program for working parents of both congregational
25 members and the surrounding business community. Cottonwood also
26 plans to open a "state-of-the-art" youth center, with a gymnasium
27 and study rooms for the teens and adults of the community.
28 Cottonwood and its representatives have attended numerous meetings

1 with Defendants discussing the Proposed Cottonwood Project.
2 Cottonwood has spent a considerable amount of time and resources
3 studying the Proposed Cottonwood Project's potential environmental
4 impacts, including with respect to potential traffic and noise
5 impacts, appropriate mitigation measures based upon an environ-
6 mental review of the Proposed Cottonwood Project, and conducting
7 and developing a site plan and project design that will insure
8 compatibility with the surrounding uses.

9

10 17. Cottonwood adheres to the religious belief that a church
11 performs three functions: ecclesiastical, educational, and social.
12 Each function is vital to the religious life of the church and its
13 congregation. The Cottonwood Property is ideal in that the
14 Proposed Cottonwood Project will allow Cottonwood to continue
15 performing these vital functions. The Cottonwood Property has
16 sufficient size to accommodate both present and projected future
17 church needs and can support sufficient parking – a major factor in
18 church growth today. With a significant portion of its present
19 congregation living in the City, the Cottonwood Property is
20 strategically located to serve them, as well as serving commuter
21 and two-income households who may desire the services of a church-
22 run pre-school. In addition, the Cottonwood Property provides good
23 access and visibility to and from a major arterial, has available
24 infrastructure, is virtually flat, and is easily accessible to
25 major freeways. The Cottonwood Project will be a well-planned,
26 high quality environment, and will include ancillary church and
27 youth-related uses and activities. The new facilities are intended

28

1 to implement Cottonwood's vision and to serve as a platform for
2 supporting Cottonwood's many programs and ministries.

3

4

THE CITY'S GENERAL PLAN

5

6

7

18. In or about February, 1993, the City Council adopted the
current City of Cypress General Plan Update (as may have been
amended from time to time, "General Plan").

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

19. The General Plan designates the Cottonwood Property as
Business Park. As to the uses permitted under such a designation,
the General Plan states: "To ensure compatibility of land uses
permitted within the classification with the character of surround-
ing development, and within a development area, the location, land
use type, density and building intensity standards will be
specifically governed by the adoption of a Specific Plan, or by
standard zoning mechanisms." Because churches, day care centers,
and educational and recreational facilities are permitted uses
under the Specific Plan, subject to a conditional use permit
("CUP"), such uses are also permitted and consistent with the
spirit and language of the General Plan. Retail as a primary use
is not permitted under the zoning designation applicable to the
Cottonwood Property, as referenced below.

23

24

THE CITY'S SPECIFIC PLAN

25

26

27

28

20. The Cottonwood Property is governed by the Cypress
Business & Professional Center Specific Plan (the "Specific Plan").
The Specific Plan designates the Cottonwood Property area as
Professional Office. The permitted uses in the areas designated as

1 Professional Office are those listed in the Specific Plan as well
2 as those uses set forth in Section 11.1 of the City of Cypress
3 Zoning Code (the "Code"). Table 11.3 of the Code specifically
4 lists churches as a permitted use subject to a CUP. In addition,
5 the Code provides that permitted uses under the Professional Office
6 designation shall also include "all uses of the PS zoning as
7 referred to in Section VI.B. . ." Section VI. B lists, among other
8 things, public or private nonprofit schools and colleges,
9 nurseries, nursery schools and churches as permitted uses subject
10 to a CUP. Retail as a primary use is not permitted under the
11 Professional Office designation.

12 13 THE CITY'S ZONING

14 21. The Code designates the Cottonwood Property as PBP -
15 Planned Business Park. The permitted uses in the areas designated
16 as Planned Business Park are those set forth in Section 15.3 of the
17 Code. Table 15.3 of the Code specifically lists churches as a
18 permitted use subject to a CUP. As noted above, the Specific Plan
19 references Section 11.1 of the Code, and not Section 15.3 of the
20 Code, for a list of permitted uses consistent with the Specific
21 Plan. Churches, daycare centers, and educational and recreational
22 facilities are listed as permitted uses subject to a CUP under both
23 sections. Retail as a primary use is not permitted under the
24 Planned Business Park designation.

25 26 THE AGENCY'S REDEVELOPMENT PLAN

27 22. On or about June 18, 1990, the City Council adopted
28 Ordinance No. 851 approving and adopting the Agency's Redevelopment

1 Plan for the Los Alamitos Race Track and Golf Course Redevelopment
2 Project ("Redevelopment Plan") which established the Los Alamitos
3 Race Track and Golf Course Redevelopment Project Area ("Redevelop-
4 ment Project Area"). The Cottonwood Property is located within the
5 Redevelopment Project Area.

6
7 23. On or about January 9, 1995, the City Council adopted
8 Ordinance No. 952 which amended the Redevelopment Plan to conform
9 to the requirements of Assembly Bill 1290 as codified in Health &
10 Safety Code section 33333.6 ("First Amendment").

11
12 24. The Redevelopment Plan designates the planning for the
13 Cottonwood Property as Business Park. Permitted uses under such a
14 designation include: "public, semi-public land uses such as
15 colleges and universities, churches, church schools, religious
16 facilities." Retail as a primary use is not permitted use for the
17 Cottonwood Property.

18
19 CYPRESS TOWN CENTER MASTER PLAN PROJECT

20 25. In or about October 2000, Defendants informed Cottonwood
21 and others that Defendants had directed staff to proceed with the
22 development of a Town Center Master Plan within the geographical
23 limits of the Redevelopment Plan. The proposed area for the Town
24 Center Master Plan included the Cottonwood Property. Defendants
25 announced in a letter to Cottonwood dated October 17, 2000, that
26 the Town Center Master Plan "will need to incorporate a tenant mix,
27 with two or three larger anchor retailers/entertainment uses to
28 create the necessary synergy to draw a cross-mix of consumers to

1 shop the project along with drawing the additional quality
2 retailers to augment the anchor tenant mix... while the exact
3 tenant mix will be dependent upon specific marketing efforts, it is
4 anticipated that the components of the Town Center could include
5 the following types and scales of uses:

6

7 "Major anchor of approximately 130,000-
8 160,000 square feet – discount warehouse-type
9 user, which generates over \$150 million in
10 annual taxable sales . . ."

11

12 THE SECOND AMENDMENT OF THE REDEVELOPMENT PLAN

13 26. On March 26, 2001 the City and the Agency held a joint
14 public hearing concerning their proposed Second Amendment to the
15 Redevelopment Plan for the Los Alamitos Race Track and Golf Course
16 Redevelopment Project ("Second Amendment"), which would amend the
17 Redevelopment Plan. The Second Amendment proposed to extend the
18 Agency's eminent domain authority under the Redevelopment Plan for
19 twelve years, amended the Land Use section of the Redevelopment
20 Plan to provide that land uses within the Redevelopment Project
21 Area shall be as set forth in the City's General Plan and
22 applicable zoning ordinances, all as then existing or thereafter as
23 amended from time to time, and made other textual changes to the
24 Redevelopment Plan.

25

26 27. In a letter dated March 26, 2001 to Defendants from
27 Sheppard, Mullin, Richter & Hampton LLP ("SMRH"), Cottonwood
28 objected to the proposed Second Amendment for being premature and

1 in violation of California's Redevelopment Law (Cal. Health &
2 Safety Code § 33000 et seq.) and in violation of the California
3 Environmental Quality Act ("CEQA"), based upon the proposed
4 negative declaration dated as of February 28, 2001 ("Negative
5 Declaration") prepared by the Planning Manager of the City in
6 connection with the Second Amendment. Defendants did not hold any
7 further public hearings on the Second Amendment until August 27,
8 2001.

9
10 28. On August 27, 2001, Defendants held their second joint
11 meeting concerning the Second Amendment. In a letter dated
12 August 27, 2001 to the Defendants from SMRH, Cottonwood restated
13 its original comments, objections and concerns related to the
14 Second Amendment and the Negative Declaration.

15
16 29. At the August 27, 2001 hearing, Defendants took the
17 following actions: (i) by Resolution No. 5463, the City issued
18 responses to all objections to the adoption of the Second Amend-
19 ment, including those made by Cottonwood; (ii) by Resolution
20 No. 5464, the City adopted the Negative Declaration prepared in
21 connection with the Second Amendment and in alleged compliance with
22 CEQA; (iii) by Resolution No. CRA-99, the Agency adopted the
23 Negative Declaration prepared in connection with the Second
24 Amendment and in alleged compliance with CEQA; and (iv) the City
25 introduced Ordinance No. 1014 for the adoption of the Second
26 Amendment. On September 10, 2001, the City adopted Ordinance No.
27 1014 after its second reading.

28

1 30. The City erred in adopting the Second Amendment for
2 several reasons, including the following:

3
4 a. The Second Amendment lacks specificity required
5 under the Redevelopment Law. The Second Amendment at Section
6 401 states in part, "[t]he land uses permitted by this Plan
7 shall be those permitted by the General Plan and Zoning
8 Ordinance . . . as they exist now or are hereafter amended."
9 Section 410 of the Second Amendment also provides the follow-
10 ing: "[t]he limits on building intensity, type, size and
11 height, shall be established in accordance with the provisions
12 of the General Plan, the applicable zoning ordinances . . . as
13 they now exist or are hereafter amended." The Redevelopment
14 Law provides that a redevelopment plan must, among other
15 things, include, "[l]imitations on type, size, height, number,
16 and proposed use of buildings." However, the Second Amendment
17 not only incorporates existing uses but also any future
18 changes in uses that occur in future amendments to the General
19 Plan or applicable zoning ordinance by relying upon the gen-
20 eral language of "or are hereafter amended." This language
21 does not conform with the specificity and other requirements
22 of Redevelopment Law.

23
24 b. The Second Amendment's reference to land uses
25 permitted "as they exist now or are hereafter amended" will
26 also effectively allow the City and the Agency to circumvent
27 the law by not requiring the Agency to follow Redevelopment
28 Law's applicable amendment procedures for an amendment of the

1 Redevelopment Plan to account for any future changes in
2 permitted uses in relevant zoning and planning documents.

3
4 c. The Second Amendment fails to make a finding of
5 blight required by Redevelopment Law. Redevelopment Law
6 establishes a 12-year time limit for a governmental agency to
7 exercise its power of condemnation in the project area, which
8 time limit can only be extended by an amendment to the Rede-
9 velopment Plan. Cal. Health & Safety Code § 33333.2(a)(4).
10 In connection with this power of condemnation, the govern-
11 mental agency must find the existence of both physical and
12 economic blight. Cal. Health & Safety Code § 33031. The
13 Agency made the requisite findings of blight approximately 12
14 years ago. In contravention of Redevelopment Law, the Second
15 Amendment extends the power of condemnation for an additional
16 12 years without undertaking any additional "blight" study and
17 making any new findings of blight.

18
19 31. Defendants erred under CEQA in adopting the Negative
20 Declaration. The Initial Study dated February 28, 2001, which was
21 prepared in connection with the adoption of the Second Amendment,
22 fails to take into account the proposed Cypress Town Center Master
23 Plan Project. This failure constitutes a fatal flaw in the
24 environmental analysis and, therefore, the Negative Declaration
25 should not have been adopted. Had the Cypress Town Center Master
26 Plan Project been included in the analysis, an Environmental Impact
27 Report ("EIR") would have been required pursuant to CEQA because
28 such a project would have potentially-significant physical impacts

1 on the environment. The initial study also violated Defendant's
2 own guidelines for the evaluation of environmental impacts con-
3 tained in Section 3.3. of the Initial Study/Environmental
4 Checklist. For example, Section 3.3(2) states that: "All answers
5 must take account of the whole action involved, including offsite
6 as well as onsite, cumulative as well as project level, indirect as
7 direct, and construction as well as operational impacts." Defen-
8 dant's analysis in the Initial Study ignores the Town Center
9 Project as if it does not exist and fails to take into account any
10 of the impacts of the Town Center Project. Further, Section 3.3 of
11 the Environmental Checklist form requires a finding of "potentially
12 significant impact" if the lead agency lacks information to make a
13 finding of insignificance. Throughout the Initial Study, Defen-
14 dants have stated that information is unknown, but contrary to the
15 guidelines for Evaluation of Environmental Impacts, have concluded
16 that there will be no significant impact.

17
18 DEFENDANT'S EARLY DISCRIMINATORY

19 TREATMENT OF COTTONWOOD

20 32. Defendants' bias against Cottonwood is evident in a
21 letter dated June 4, 1999 to SMRH from the City. While Defendants
22 acknowledged that churches are permitted uses subject to a CUP
23 under the Specific Plan, Defendants made it clear that such a use
24 was not favored for the simple fact that Cottonwood, a religious
25 establishment, would not produce much revenue for the City.
26 Specifically, Defendants explained as follows: "While a church
27 could be considered subject to a Conditional Use Permit, it is
28 unlikely that a church would be found consistent with the goals and

1 objectives of the Redevelopment Plan and/or Specific Plan that
2 govern this area. Therefore, . . . consideration of a church use
3 would require an amendment to the goals, objectives and policies of
4 the Specific Plan. . . . The foregoing is intended to provide you
5 an overview or a framework of plans and goals which emphasize the
6 City's stated policy and intention to see this area developed as a
7 business park and to promote revenue generating uses." Thus, from
8 inception, Defendants have demonstrated their bias against
9 Cottonwood, and have prevented Cottonwood from developing its
10 property by imposing requirements in addition to the CUP process.
11 Defendants exclude Cottonwood from developing its land, in part,
12 simply because it will not generate as much revenue as would a
13 nonreligious institution. Defendants' actions are clearly
14 discriminatory.

15
16 33. In October 1999 and October 2000, Defendants allowed
17 Cottonwood to have special community events (which were non-
18 religious in nature) on the Cottonwood Property. Moreover, around
19 this same time frame, the City allowed the high school to conduct a
20 fund-raising event on the Cottonwood Property (with Cottonwood's
21 permission). In the Spring of 2000, Cottonwood requested the right
22 to have an outdoor Easter Service on the Cottonwood Property, for
23 which the City required Cottonwood to submit a Temporary Use Permit
24 application. However, despite City Staff's recommendation to allow
25 the outdoor Easter Service, the City denied Cottonwood's
26 application and no Easter Service was held on the Cottonwood
27 Property. On November 12, 2000, Cottonwood and some of its congre-
28 gants met at the Cottonwood Property to engage in a traditional

1 prayer event. On November 15, 2000, the City sent an insulting
2 letter to a representative of Cottonwood, claiming that
3 Cottonwood's actions were a "clear and deliberate breach of the
4 Temporary Use Permit process."
5

6 COTTONWOOD'S PLANNING AND CUP APPLICATION

7 34. On October 6, 2000, Cottonwood submitted an application
8 for a conditional use permit ("CUP Application") for the Proposed
9 Cottonwood Project. In addition, Cottonwood voluntarily conducted
10 and submitted extensive reports and studies along with the CUP
11 Application. Such additional materials include a Geotechnical
12 Investigation dated as of August 17, 1999, a Phase I Environmental
13 Site Assessment Update dated as of August 30, 1999, a Cultural
14 Resources Reconnaissance dated as of September, 2000, a Preliminary
15 Traffic Assessment dated as of September 27, 2000, a Biological
16 Assessment for the Cottonwood Property dated as of September 29,
17 2000, a Paleontologic Resource Assessment dated as of September 29,
18 2000, a Noise Impact Analysis dated as of October 2, 2000, a Fiscal
19 Impact Report dated as of October 3, 2000 and a booklet entitled
20 "Project Descriptions and Plans," dated as of September 20, 2000,
21 which address the project details, program, phasing, development
22 issues and environmental compliance. Such plans, reports and
23 studies are far beyond that normally required by Defendants or
24 otherwise under the Code or any other applicable law.
25

26 35. On October 26, 2000, the City's Planning Department
27 ("Planning Department") sent Cottonwood a letter in which it took
28 the position that the CUP Application for the Cottonwood Project

1 was allegedly incomplete because no preliminary design review
2 application had been submitted prior to the CUP Application and,
3 therefore, the CUP Application could not be processed. The
4 Planning Department also noted that the application was allegedly
5 incomplete because consideration of the proposed use as a church
6 would require an amendment to the goals, objectives and policies of
7 the Specific Plan and no such application for a specific plan
8 amendment was included in the submittals.

9
10 36. In a letter dated November 8, 2000 to the City from SMRH,
11 Cottonwood appealed the Planning Department's decision on the CUP
12 Application ("Appeal"). In particular, Cottonwood appealed the
13 Planning Department's determination that a Preliminary Design
14 Review application should have been submitted prior to the submis-
15 sion of the CUP Application. In fact, the City's Code has no such
16 requirement. Section 35.153 of the Code only provides that the
17 Design Review Process shall be required prior to the issuance of
18 any building permit. It does not require a preliminary review
19 prior to the submission of a CUP Application. Furthermore,
20 although there is no Code section regarding a Preliminary Project
21 Review Process, the City's checklist for such a process (sent to
22 Cottonwood on September 13, 2000) specifically states that
23 "Preliminary Project Review approval is an optional submittal prior
24 to submission of a formal application for a Conditional Use Permit
25 and/or a Major Design Review Permit." The only restriction the
26 Code has in connection with a CUP application is that it must be
27 made only for those uses specified as allowable conditional uses in
28 the applicable zoning district. Code § 35.79. Here, the

1 Cottonwood Property is primarily governed by the Specific Plan.
2 The Specific Plan designates the Cottonwood Property as Profes-
3 sional Office. The permitted uses under such a designation,
4 subject to a CUP, include churches, day care centers, and educa-
5 tional and recreational facilities. Given that the Cottonwood
6 Project contemplates a permitted use subject to a CUP under the
7 Code and there are no other Code requirements for submission of a
8 CUP application, Cottonwood's CUP Application was complete.

9
10 37. The Planning Department's attempt to impose an additional
11 requirement for the submission of an application for a specific
12 plan amendment concurrently with the CUP Application is completely
13 without merit. There is no such requirement under the Code and it
14 should not have been any basis for finding Cottonwood's CUP
15 Application incomplete.

16
17 38. The City Council was originally scheduled to consider the
18 Appeal on December 11, 2000, but the hearing on the Appeal was
19 continued several times pending discussions between Cottonwood and
20 Defendants and was then scheduled for and considered by the City on
21 January 14, 2002. After commencing the public hearing on the
22 Appeal and taking testimony concerning the Appeal, including from
23 representatives of Cottonwood, the City Council continued the
24 hearing on the Appeal to January 28, 2002. On behalf of
25 Cottonwood, SMRH submitted a letter dated January 11, 2002 to the
26 City with supporting documentation and Code provisions which
27 clearly establish that the Planning Department's decision was
28 completely without merit and arbitrary and capricious.

1 entitlements, zoning variances, general plan amendments, specific
2 plan amendments, or other discretionary land permits where such
3 application has, prior to October 30, 2000, been deemed complete by
4 City staff or where City staff has, prior to October 30, 2000,
5 scheduled such completed application for consideration by the
6 applicable legislative body of either the City or the Agency for
7 public hearing and possible action. The Moratorium was further
8 extended by the City Council on October 8, 2001 for a period not to
9 exceed one year.

10

11 42. The Moratorium purported to affect a large geographic
12 area for the stated purpose of not allowing discretionary land use
13 permits pending completion of studies and other actions for the
14 establishment of a "Town Center" retail/entertainment proposal.
15 In practice, the Moratorium only affected Cottonwood. For example,
16 the Moratorium, through the exemptions mentioned above, allowed the
17 following projects which were arguably inconsistent with the
18 Town Center project: a hotel and a subdivision for
19 office/warehouse/manufacturing buildings. Cottonwood is informed
20 and believed that these projects received approvals and/or permits
21 from Defendants around the same time that the City found
22 Cottonwood's CUP Application incomplete.

23

24 43. In a letter to the City dated November 27, 2000 from
25 SMRH, Cottonwood objected to the Moratorium Extension, stating in
26 part that Cottonwood viewed the Moratorium Extension as one of the
27 City's steps to eliminating Cottonwood from developing the
28 Cottonwood Property with a new church. Cottonwood also alerted the

1 City to the fact that it was violating the Religious Land Use and
2 Institutionalized Persons Act of 2000. This same letter raised a
3 number of other objections, including Cottonwood's contention that
4 the Moratorium Extension did not comply with the City's Redevelop-
5 ment Plan, that the Moratorium Extension resulted in unlawful
6 discriminatory spot zoning, that it violated equal protection,
7 substantive due process and procedural due process, as guaranteed
8 by the Fourteenth Amendment of the United States Constitution, and
9 that the Moratorium Extension constituted a temporary taking
10 without just compensation.

11

12 STATEMENT OF INTEREST AND REQUEST FOR PROPOSAL

13 44. On or about October 17, 2000, the Agency sent letters to
14 Cottonwood and other property owners in the Redevelopment Project
15 Area inviting the submission to the Agency of a "Statement of
16 Interest in Participation" and a request for proposal ("RFP").
17 This letter purported to seek if Cottonwood was interested in
18 participating in the project described as the "Town Center Master
19 Plan Project." This Town Center Master Plan Project was proposed
20 to be located on the Cottonwood Property and real property located
21 adjacent thereto. This letter provided, in part: "While the exact
22 tenant mix will be dependent upon specific marketing efforts, it is
23 anticipated that the components of the Town Center could include
24 the following types and scales of uses - major anchor of approxi-
25 mately 130,000-160,000 square feet - discount warehouse-type user,
26 which generates over \$150 million in taxable sales." At this point
27 in time, it became absolutely clear to Cottonwood that the City did
28 not want a church and its worshipers on the Cottonwood Property.

1 Instead, the City wanted certain easily identifiable large retail
2 users, which would generate large sales tax revenues. The Agency
3 requested that the Statement of Interest in Participation be
4 submitted by November 16, 2000.

5
6 45. The RFP explained the Agency's intention to redevelop a
7 portion of the Redevelopment Project Area with a proposed shopping
8 center, the Cypress Town Center Master Plan Project, and provided
9 each property owner within the Redevelopment Project Area an
10 opportunity to be a part of the proposed redevelopment.

11
12 46. The RFP did not explain any legal or other justification
13 for the Agency pursuing a shopping center project, located in part
14 on the Cottonwood Property, when the permitted uses for the
15 Cottonwood Property under the General Plan, Specific Plan,
16 Redevelopment Plan and applicable zoning permit church uses but do
17 not allow the retail uses being proposed.

18
19 47. Cottonwood and its representatives asked Defendants for
20 rules concerning a response to the RFP. Defendants refused this
21 request, forcing Cottonwood to obtain necessary documents through a
22 public records request. On November 15, 2000, and within the time
23 period specified in the RFP, Cottonwood submitted to the Agency its
24 Statement of Interest in Participation ("Statement of Interest")
25 wherein Cottonwood stated its desire to participate in the rede-
26 velopment of the Cottonwood Property as proposed by Cottonwood for
27 a church and other uses as proposed in its CUP Application, and
28 welcomed the opportunity to work with the Agency, the City and

1 other City representatives to develop a proposed redevelopment
2 project that would provide mutual benefits to both Cottonwood and
3 the City.

4
5 THE BIASED CITY SURVEY

6 48. The City and/or the Agency retained a firm named Decision
7 Research to conduct a poll entitled "Cypress City Issues Survey."
8 Four hundred interviews were allegedly conducted from March 30 to
9 April 2, 2001, at which time Decision Research asked a variety of
10 questions. This type of survey is commonly referred to as a "push"
11 poll, which Cottonwood is informed and believes was organized and
12 designed to influence the person being surveyed with a negative
13 bias against Cottonwood. The survey was clearly one-sided. For
14 example, the organization and structure of the issues surveyed
15 primarily focused on taxes and the many benefits of a retail
16 development. In contrast, no mention was ever made of the many
17 benefits a church would have on the community.

18
19 TOLLING AGREEMENTS

20 49. On February 12, 2001, Defendants and Cottonwood entered
21 into a Tolling Agreement ("February 12 Tolling Agreement"). The
22 February 12 Tolling Agreement tolled all statutes of limitations
23 pertaining to the adoption, implementation and other actions and
24 inactions by Defendants relating to or arising from the Moratorium
25 and the Moratorium Extension from the effective date of the
26 February 12 Tolling Agreement (December 1, 2000) until the earlier
27 of (i) August 13, 2001, or (ii) 30 days after written notice by the
28

1 Defendants to Cottonwood of the termination of the February 12
2 Tolling Agreement.

3

4 50. On August 13, 2001, the City, the Agency and Cottonwood
5 executed a First Amendment to Tolling Agreement which extended the
6 term of the February 12 Tolling Agreement to September 10, 2001.

7

8 51. On September 13, 2001, the City, the Agency and
9 Cottonwood executed an Amended and Restated Tolling Agreement
10 ("Cottonwood Amended and Restated Agreement") which tolled all
11 statutes of limitation pertaining to the adoption, implementation
12 and other actions and inactions by the City and the Agency relating
13 to or arising from the Moratorium, the Moratorium Extension and the
14 Second Amendment until the earlier of (i) 60 days from the date of
15 the Cottonwood Amended and Restated Agreement or (ii) 30 days after
16 written notice by the City and the Agency to Cottonwood of the
17 termination of the tolling provided in the Cottonwood Amended and
18 Restated Agreement.

19

20 52. On November 13, 2001, the City, the Agency and Cottonwood
21 executed a First Amendment to Amended and Restated Tolling Agree-
22 ment which extended the term of the Cottonwood Amended and Restated
23 Agreement to December 17, 2001 (together with the Cottonwood
24 Amended and Restated Agreement, the "Cottonwood Tolling Agree-
25 ment").

26

27

28

1 Cottonwood Project (at least on the adjacent Los Alamitos Property)
2 without further wrongful delay by Defendants or the need to resort
3 to legal action, an option that Cottonwood wanted to avoid because
4 of delays that would inevitably arise therefrom for the Proposed
5 Cottonwood Project and given Cottonwood's desperate need for its
6 new facilities.

7
8 55. One of the positions presented by Defendants at the out-
9 set of the discussions in connection with the Draft Memorandum was
10 a required monetary payment to Defendants by Cottonwood because
11 Cottonwood was exempt from paying property taxes. In a
12 September 6, 2001 meeting among the parties, Patrick Importuna, the
13 City Manager, raised the issue of a payment because of the exemp-
14 tion from property taxes in order to defuse Defendants' concerns
15 and objections over a non-tax-producing use of the adjacent
16 property. Cottonwood made it clear to Defendants in an October 10,
17 2001 meeting with counsel for the City and counsel for the Agency
18 that Cottonwood would not agree to pay property taxes or any
19 payment in lieu. Despite Cottonwood's objections to "voluntary"
20 payments, Defendants have insisted on exacting these payments from
21 Cottonwood. Specifically, Sections II. F.5 and II. F.9 of the
22 Draft Memorandum (version 4) contemplate the payment of property
23 taxes for what would become the new Cottonwood parking area (by the
24 fee interest owner) and for what would become the new Cottonwood
25 parcel (by Cottonwood). Ordinarily, religious institutions are
26 exempt from property taxation by Section 3(f) of Article XIII of
27 the California Constitution for property used exclusively for
28 religious worship. Section 206.1 of the California Revenue and

1 Taxation Code extends that exemption to "all real property that is
2 necessarily and reasonably required for the parking of automobiles
3 of persons who are attending religious services" In
4 essence, the terms insisted upon by Defendants would require that
5 Cottonwood give up its tax-exempt status as a condition for
6 Defendants' agreement.

7
8 56. In November and December, 2001, Cottonwood entered into
9 discussions with Defendants for the purpose of further amending the
10 Cottonwood Tolling Agreement to provide that the term of the
11 Cottonwood Tolling Agreement be extended to January 28, 2002.
12 However, in a letter dated December 20, 2001, Defendants informed
13 Cottonwood of certain actions taken by them at a "closed" door
14 meeting on Monday, December 17, 2001, which included decisions not
15 to continue to extend the termination date for certain actions by
16 Defendants with respect to the Second Amendment under the
17 Cottonwood Tolling Agreement and to only continue the City Appeal
18 hearing on Cottonwood's CUP Application to January 14, 2002.

19
20 57. Defendants' decision not to extend the Cottonwood Tolling
21 Agreement was both unfair and unanticipated, given the holidays and
22 Cottonwood's belief that progress was being made towards an
23 amicable planning resolution. This bad faith stance by Defendants
24 has severely jeopardized any possibility of a deal among
25 Defendants, Los Alamitos and Cottonwood with regard to the Land
26 Exchange. This stance and the more recent acts of Defendants (as
27 described below) indicate that Defendants were merely stalling
28 Cottonwood from taking any action pending further discussions with

1 the aforementioned retailer user and the commencement of a plan to
2 condemn the Cottonwood Property. Cottonwood entered into good
3 faith negotiations with Defendants in the belief that Defendants
4 would also adhere to a good faith standard. Instead, Defendants
5 misled Cottonwood and Los Alamitos into believing that the proposed
6 Land Exchange would be possible. The negotiations among the
7 parties have been extensive and time-consuming and by all appear-
8 ances seemed to have progressed significantly. Cottonwood has
9 demonstrated its patience and willingness to work with Defendants
10 for an amicable solution during every step of the negotiations. In
11 contrast, Defendants have shown questionable good faith and by all
12 of their actions (including their December 17, 2001 action) and
13 their insistence on keeping certain terms in the Draft Memorandum
14 which would exact "voluntary" payments from Cottonwood, have given
15 a strong signal of other plans and hindered any possibility of a
16 deal between the parties.

17

18 58. Defendants have clearly engaged in conduct deliberately
19 aimed at prohibiting Cottonwood from going forward with its
20 Proposed Cottonwood Project. Defendants have succeeded in making
21 the Proposed Cottonwood Project difficult for Cottonwood. However,
22 it is contrary to Cottonwood's religious beliefs to quit in the
23 face of Defendants' actions:

24

25

26

27

28

1 "Have I not commanded you? Be strong and of
2 good courage; do not be afraid, nor be
3 dismayed, for the Lord your God is with you
4 wherever you go."

5 (Joshua 1:9)
6

7 59. Defendants have also started down a path towards acquir-
8 ing the Cottonwood Property by eminent domain. First, Agency sent
9 a letter dated December 28, 2001, to Cottonwood concerning a new
10 "Opportunity to Express Interest in Participating in a Proposed
11 Walker/Katella Retail Property." Second, Agency sent a letter
12 dated January 3, 2002 to Cottonwood which advises Cottonwood of
13 Agency's decision to appraise the Cottonwood Property, and that the
14 Cottonwood Property is being considered for "a retail/commercial
15 project referred to as the Walker/Katella Retail Project." Third,
16 Cottonwood also received a letter dated January 3, 2002 from
17 Donahue & Company, Inc. which provides that such company has been
18 retained by the law firm of Rutan & Tucker (counsel for the Agency)
19 to provide appraisals services for the potential acquisition of the
20 Cottonwood Property by the Agency.
21

22 60. Cottonwood has exhausted all available administrative
23 remedies required to be pursued by it with respect to the CUP
24 Application, the Moratorium and the Moratorium Extensions and the
25 Second Amendment.
26

27 61. Cottonwood has no plain, speedy and adequate remedy in
28 the ordinary course of law, other than the relief sought in this

1 Complaint and Petition, that will prevent Defendants from acting
2 outside its legal authority and contrary to State and Federal laws.
3 Cottonwood has a beneficial interest in the outcome in this action
4 and has performed all conditions precedent to the filing of the
5 Complaint and Petition, including delivery by facsimile
6 transmission and overnight courier of the formal written notice
7 attached hereto as Exhibit "A" to this Complaint and Petition and
8 incorporated herein by this reference.

9
10 **COUNT I**

11 **Violation of Religious Land Use and Institutionalized**

12 **Persons Act of 2000 - "Equal Terms"**

13 **(42 U.S.C. § 2000cc et seq.)**

14 62. Paragraphs 1 through 61 are incorporated by reference as
15 if set forth fully herein.

16
17 63. Defendants have deprived and continue to deprive
18 Cottonwood of its right to be free from religious discrimination,
19 as secured by the Religious Land Use and Institutionalized Persons
20 Act, by treating it on less than equal terms than a nonreligious
21 assembly or institution.

22
23 **COUNT II**

24 **Violation of Religious Land Use and Institutionalized**

25 **Persons Act of 2000 - "Substantial Burden on Religious Exercise"**

26 **(42 U.S.C. § 2000cc et seq.)**

27 64. Paragraphs 1 through 63 are incorporated by reference as
28 if set forth fully herein.

1 secured by the First Amendment to the United States Constitution
2 and made applicable to the States by the Fourteenth Amendment, by
3 discriminating against Cottonwood because of its religious
4 character and by substantially burdening its ability to freely
5 exercise its religious faith.

6
7 COUNT V

8 **Violation of the United States Constitution**
9 **Free Exercise of Religion: Article 1, Section 4**
10 **(42 U.S.C. § 1983)**

11 70. Paragraphs 1 through 69 are incorporated by reference as
12 if set forth fully herein.

13
14 71. Defendants have deprived and continue to deprive
15 Cottonwood of its right to freedom of religion, as secured by
16 Article 1, Section 4 of the California Constitution, by discrim-
17 inating against Cottonwood because of its religious character and
18 by substantially burdening its ability to freely exercise its
19 religious faith.

20
21 COUNT VI

22 **Violation of the United States Constitution**
23 **Freedom of Speech: First and Fourteenth Amendments**
24 **(42 U.S.C. § 1983)**

25 72. Paragraphs 1 through 71 are incorporated by reference as
26 if set forth fully herein.

27

28

1 73. Defendants have deprived and continue to deprive
2 Cottonwood of its right to speak on matters of religion, as secured
3 by the First Amendment to the United States Constitution and made
4 applicable to the States by the Fourteenth Amendment, by discrim-
5 inating against Cottonwood based on the religious viewpoint of its
6 expression, by inhibiting its right to freely express its faith to
7 the congregants, students, and staff of Cottonwood and to the
8 community, and by applying vague statutes, ordinances and
9 regulations against it.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT VII

Violation of the California Constitution

Freedom of Speech: Article 1, Sections 1 and 2

74. Paragraphs 1 through 73 are incorporated by reference as if set forth fully herein.

75. Defendants have deprived and continue to deprive Cottonwood of its right to speak on matters of religion, as secured by Article 1, Sections 1 and 2 of the California Constitution, by discriminating against Cottonwood based on the religious viewpoint of its expression, by inhibiting its right to freely express its faith to the congregants, students, and staff of Cottonwood and to the community, and by applying vague statutes, ordinances and regulations against it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT X

Violation of the United States Constitution
Equal Protection: Fourteenth Amendments
(42 U.S.C. § 1983)

80. Paragraphs 1 through 79 are incorporated by reference as if set forth fully herein.

81. Defendants have deprived and continue to deprive Cottonwood of its right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against Cottonwood in its application of the laws, regulations and plans of the State of California and those of the City and the Agency.

COUNT XI

Violation of the California Constitution
Equal Protection: Article 1, Section 7

82. Paragraphs 1 through 81 are incorporated by reference as if set forth fully herein.

83. Defendants have deprived and continue to deprive Cottonwood of its right to equal protection of the laws, as secured by Article 1, Section 7 of the California Constitution, by discriminating against Cottonwood in its application of the laws, regulations and plans of the State of California and those of the City and the Agency.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT XII

Violation of the United States Constitution

Due Process: Fourteenth Amendment

(42 U.S.C. § 1983)

84. Paragraphs 1 through 83 are incorporated by reference as if set forth fully herein.

85. Defendants have deprived and continue to deprive Cottonwood of due process of law, as secured by the Fourteenth Amendment to the United States Constitution, by denying Cottonwood the use of its property for religious education and worship, by denying Cottonwood the use of its property for religious education and worship based on criteria and standards in the City's General Plan, Specific Plan and Municipal Code and the Agency's Redevelopment Plan that are vague and indefinite, and by denying Cottonwood reasonable notice of the standards that would be used by Defendants in denying Cottonwood its proposed use of its property for religious education and worship.

COUNT XIII

Violation of the California Constitution

Due Process: Article 1, Section 7

86. Paragraphs 1 through 85 are incorporated by reference as if set forth fully herein.

87. Defendants have deprived and continue to deprive Cottonwood of due process of law, as secured by Article 1, Section 7 of the California Constitution, by denying Cottonwood the use of

1 its property for religious education and worship, by denying
2 Cottonwood the use of its property for religious education and
3 worship based on criteria and standards in the City's General Plan,
4 Specific Plan and Municipal Code and the Agency's Redevelopment
5 Plan that are vague and indefinite, and by denying Cottonwood
6 reasonable notice of the standards that would be used by the City
7 in denying Cottonwood its proposed use of its property for
8 religious education and worship.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT XIV

Violation of the United States Constitution

Taking: The Fifth Amendment

88. Paragraphs 1 through 87 are incorporated by reference as if set forth fully herein.

89. Defendants have deprived and continue to deprive Cottonwood of its right to just compensation, as secured by the Fifth Amendment to the United States Constitution, by denying Cottonwood the reasonable use of its property without providing just compensation to Cottonwood.

COUNT XV

Violation of California Government Code § 65008

Invalidity of Discriminatory Acts

90. Paragraphs 1 through 89 are incorporated by reference as if set forth fully herein.

1 planning commission at a public hearing reopened for that purpose
2 (Section 33455), (f)the redevelopment agency and the legislative
3 body may hold a joint public hearing on the proposed amendment in
4 lieu of separate hearings (Section 33458), (g) the reports and
5 information required by Section 33352 of the Cal. Health & Safety
6 Code must be prepared and made available to the public prior to the
7 public hearing on the proposed amendment, to the extent warranted
8 by the proposed amendment (Section 33457.1), and (h) the legisla-
9 tive body must adopt an amendment pursuant to an ordinance that
10 contains the findings required by Section 33367 of the Cal, Health
11 & Safety Code, to the extent warranted by the proposed amendment
12 (collectively, "Redevelopment Plan Amendment Requirements").

13
14 94. Defendants failed to comply with any of the legal
15 requirements set forth in the preceding paragraph, in that the
16 Second Amendment referenced to land use as permitted "as they exist
17 now or hereafter amended" will allow the City and the Agency to
18 circumvent the law by effectively amending the Redevelopment Plan
19 without going through the procedures set forth under Redevelopment
20 Law.

21
22 **COUNT XVII**

23 **Writ of Mandate (Cal. Civ. Proc. § 1085)**

24 **Violations of Community Redevelopment**

25 **Law Relating to Lack of Requisite Specificity**

26 **and Lack of Requisite Finding of Blight**

27 95. Paragraphs 1 though 94 are incorporated by reference as
28 if set forth fully herein.

1 96. Defendants erred in adopting the Second Amendment based
2 on, among other things, the following reasons:

3
4 a. The Second Amendment lacks specificity required
5 under the Redevelopment Law. The Second Amendment at Section
6 401 states in part, "[t]he land uses permitted by this Plan
7 shall be those permitted by the General Plan and Zoning
8 Ordinance . . . as they exist now or are hereafter amended."
9 Section 410 of the Second Amendment also provides the follow-
10 ing: "[t]he limits on building intensity, type, size and
11 height, shall be established in accordance with the provisions
12 of the General Plan, the applicable zoning ordinances . . . as
13 they now exist or are hereafter amended." The Redevelopment
14 Law provides that a redevelopment plan must, among other
15 things, include, "[l]imitations on type, size, height, number,
16 and proposed use of buildings." However, the Second Amendment
17 not only incorporates existing uses but also any future
18 changes in uses that occur in future amendments to the General
19 Plan or applicable zoning ordinance by relying upon the
20 general language of "or are hereafter amended." This language
21 does not conform with the specificity requirement of the
22 Redevelopment Law.

23
24 b. The Second Amendment fails to make a finding of
25 blight required by Redevelopment Law. Redevelopment Law
26 establishes a twelve (12) year time limit for a governmental
27 agency to exercise its power of condemnation in the project
28 area, which time limit can only be extended by an amendment to

1 the redevelopment plan. Cal. Health & Safety Code
2 § 33333.2(a)(4). In connection with this power of
3 condemnation, the governmental agency must find the existence
4 of both physical and economic blight. Cal. Health & Safety
5 Code § 33031. The Agency made the requisite findings of
6 blight approximately twelve years ago. In contravention of
7 Redevelopment Law, the Second Amendment extends the power of
8 condemnation for an additional twelve (12) years without
9 undertaking any additional "blight" study and making any new
10 findings of blight.

11
12 **COUNT XVIII**

13 **Writ of Mandate (Cal. Pub. Res. Code § 21168.5)**
14 **Violations of CEQA Relating to Lack of Substantial**
15 **Evidence in Environmental Assessment to Support**
16 **the Adoption of the Negative Declaration**

17 97. Paragraphs 1 through 96 are incorporated by reference as
18 if set forth fully herein.

19
20 98. The State Office of Planning and Research has promulgated
21 Guidelines to implement CEQA. 14 Cal. Code Regs. §§ 15000 et seq.
22 (the "Guidelines").

23
24 99. Defendants did not carry out the environmental review of
25 the Second Amendment that is mandated by CEQA and the Guidelines,
26 as follows:

1 a. The Initial Study dated February 28, 2001,
2 which was prepared in connection with the adoption of the
3 Second Amendment, fails to take into account the proposed
4 Cypress Town Center Master Plan Project. This failure
5 constitutes a fatal flaw in the environmental analysis and,
6 therefore, the Negative Declaration should not have been
7 adopted. Had the Cypress Town Center Master Plan Project been
8 included in the analysis, an Environmental Impact Report
9 ("EIR") would have been required pursuant to CEQA because such
10 a project would have potentially-significant physical impacts
11 on the environment.

12
13 b. The initial study also violated Defendants' own
14 guidelines for the evaluation of environmental impacts con-
15 tained in Section 3.3. of the Initial Study/Environmental
16 Checklist. For example, Section 3.3(2) states that: "All
17 answers must take account of the whole action involved,
18 including offsite as well as onsite, cumulative as well as
19 project level, indirect as direct, and construction as well as
20 operational impacts." The Defendants' analysis in the Initial
21 Study ignores the Town Center Project as if it does not exist
22 and fails to take into account any of the impacts of the Town
23 Center Project.

24
25 c. Further, Section 3.3. of the Environmental
26 Checklist form requires a finding of "potentially significant
27 impact" if the lead agency lacks information to make a finding
28 of insignificance. Throughout the Initial Study, Defendants

1 have stated that information is unknown, but contrary to the
2 guidelines for Evaluation of Environmental Impacts, has
3 concluded that there will be no significant impact.
4

5 **COUNT XIX**

6 **Action for Invalidation of Agency and City Actions**
7 **(Cal. Civ. Proc. Code § 860 et seq.) Violation of CEQA**
8 **By Approval of Second Amendment Despite Inadequate**
9 **Environmental Review**

10 100. Paragraphs 1 through 99 are incorporated by reference as
11 if set forth fully herein.
12

13 101. It is appropriate and necessary for the Court to judi-
14 cially determine and decree that the actions of Defendants, as set
15 forth above, are invalid, null and void, pursuant to the provisions
16 of Code of Civil Procedure, Sections 860 et seq., and for the Court
17 to enter its decree to invalidate the Second Amendment and any
18 permits, approvals, contracts, resolutions, ordinances or other
19 actions issued, granted, executed or taken by the City or the
20 Agency purporting to implement or enforce the Second Amendment.
21

22 **COUNT XX**

23 **Action for Invalidation of Agency and City Actions**
24 **(Cal. Civ. Proc. Code § 860 et seq.)**
25 **Violation of Community Redevelopment Law**

26 102. Paragraphs 1 through 101 are incorporated by reference as
27 if set forth fully herein.
28

1 expand Cottonwood's facilities, extra costs for architectural
2 services, consultants, engineers, damages to Cottonwood's mission,
3 and legal services, as required by Defendants;

4

5 (5) An award to Cottonwood of full costs and attorneys'
6 fees arising out of Defendants' actions and land use decisions and
7 out of this litigation;

8

9 (6) Issue an order immediately enjoining (a) the
10 effectiveness of any and all permits, approvals, contracts,
11 resolutions, ordinances or other actions issued, granted, adopted,
12 executed or taken by the City or the Agency relating to the Second
13 Amendment, and (b) the effectiveness of any and all permits,
14 approvals, contracts, resolutions, ordinances or other actions
15 issued, granted, adopted, executed or taken by the City or the
16 Agency relating to the Moratorium and the Moratorium Extension; and

17

18 (7) Issue a peremptory writ of mandate (a) ordering the
19 City and the Agency to set aside any resolutions, permits,
20 approvals, contracts, ordinances or other actions issued, granted,
21 adopted, executed or taken by the City or the Agency relating to
22 the Second Amendment, the Moratorium, and/or the Moratorium
23 Extensions, including without limitation any such action by the
24 City or the Agency relating in any way to the condemnation or other
25 acquisition of all or any portion of the Cottonwood Property; and
26 (b) enjoining the City and the Agency from issuing, granting,
27 adopting, executing or taking any further permits, approvals,
28 contracts, resolutions, ordinances or other actions relating to the

1 Second Amendment, the Moratorium and/or the Moratorium Extensions,
2 including without limitation any such action by the City or the
3 Agency relating in any way to the condemnation or other acquisition
4 of all or any portion of the Cottonwood Property; and

5
6 (8) Such other and further relief as this Court may deem
7 just and appropriate.

8
9 DEMAND FOR JURY

10 Pursuant to Rule 38(b) of the Federal Rules of Civil
11 Procedure, Cottonwood hereby demands a trial by jury in this action
12 of all issues so triable.

13
14 Cottonwood respectfully submits this on the 15th day of
15 January, 2002.

16
17 Dated: January 15, 2002

18 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

19
20
21 By: _____
22 ANDREW J. GUILFORD
23 Attorneys for Plaintiff and Petitioner
24 COTTONWOOD CHRISTIAN CENTER
25
26
27
28