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8 LONG BEACH COUNCIL OF
9 PARENTS AND TEACHERS, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 CENTRAL DISTRICT

13 LONG BEACH COUNCIL OF PARENTS
14 AND TEACHERS, INC., on behalf of itself
15 and its members,

16 Petitioner and Plaintiff,

17 v.

18 THE CITY OF LONG BEACH, a municipal
19 corporation; LONG BEACH CITY
20 COUNCIL; LONG BEACH PLANNING
21 COMMISSION; and DOES 1 - 30, inclusive,

22 Respondents and Defendants.

23 THE CITY OF LONG BEACH, AIRPORT
24 BUREAU; JETBLUE AIRWAYS
25 CORPORATION; and ROES 1-30, inclusive,

26 Real Parties in Interest.

Case No.
(CEQA Case)
Judge:

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

(Code Civ. Proc., §§ 1094.5 and 1085; Pub.
Resources Code, § 21000 et seq.)

(CEQA)

27 Petitioner and Plaintiff, LONG BEACH COUNCIL OF PARENTS AND TEACHERS,
28 INC. (“LBCPTA”), alleges as follows:

I.

INTRODUCTION

1. This action involves the City of Long Beach’s (“City”) decision to approve the Long Beach Terminal Area Improvement Project (“Airport Expansion Project”), which will increase the size of the existing permanent facilities at the Long Beach Airport by more than three

1 hundred percent. The Airport Expansion Project will have a significant negative environmental
2 impact on children who live and attend schools in Long Beach, Lakewood, and Signal Hill,
3 California, the promotion of whose welfare is a primary objective of the LBCPTA.

4 2. The Defendants and Respondents failed to exercise their duties properly as lead
5 agency and decision-making body under the California Environmental Quality Act (Pub.
6 Resources Code, § 21000 et seq.) (“CEQA”), resulting in the City’s improper approval of the
7 Airport Expansion Project without an adequate or proper environmental review under CEQA.
8 Through this lawsuit, the LBCPTA seeks to enforce the provisions of CEQA and the regulations
9 implementing CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.) (“State CEQA Guidelines”) as
10 they apply to the Airport Expansion Project.

11 3. In addition to its failure to comply with CEQA, the City also violated the State
12 Planning and Zoning Law by adopting the Airport Expansion Project, which is inconsistent with
13 the City’s General Plan. Thus, LBCPTA also seeks to enforce the State Planning and Zoning
14 Law as it applies to the Airport Expansion Project.

15 **II.**
16 **THE PARTIES**

17 4. Petitioner and Plaintiff, Long Beach Council of Parents and Teachers, Inc.
18 (“LBCPTA”), is, and at all times herein mentioned was, the largest council in the Thirty-Third
19 District PTA, which is a regional unit of the California Congress of Parents, Teachers, and
20 Students, Inc. The LBCPTA has over 15,000 members, many of whom will be directly impacted
21 by the Airport Expansion Project. The LBCPTA’s geographic area of coverage is co-extensive
22 with the Long Beach Unified School District, which provides school facilities and public
23 education services to more than 95,000 students in 95 public schools throughout the cities of
24 Long Beach, Lakewood, Signal Hill, and Avalon on Catalina Island. These students and their
25 families, including many members of the LBCPTA, will be significantly affected by Airport
26 Expansion Project impacts, in school, at home, and at play in their neighborhoods, undermining
27 the LBCPTA’s core purpose of promoting the welfare of children and youth in their home,
28 school, community and place of worship and securing (and encouraging the enforcement of)

1 adequate laws for the care and protection of children and youth. In furtherance of this purpose,
2 the LBCPTA submitted written comments to the City on the Draft Environmental Impact Report
3 prepared for the Airport Expansion Project; representatives of the LBCPTA testified at hearings
4 before the Planning Commission; the LBCPTA appealed the Planning Commission’s decision to
5 certify the EIR; and representatives of the LBCPTA testified at the appeal hearing before the City
6 Council.

7 5. Defendant and Respondent City of Long Beach is located within the County of
8 Los Angeles and is duly organized and existing under Government Code sections 34000 et seq.
9 The City is, and at all times herein mentioned was, the lead agency under CEQA for the Long
10 Beach Terminal Area Improvement Project. (State CEQA Guidelines, § 15051.)

11 6. Defendant and Respondent City Council of the City of Long Beach (“City
12 Council”) is, and at all times herein mentioned was, the duly elected governing legislative body of
13 the City, duly organized and existing under and by virtue of the laws of the State of California
14 and the City. Following appeal of the Planning Commission’s certification of the EIR and
15 approval of the Airport Expansion Project, the City Council was the local body charged with and
16 responsible for, *inter alia*, lead agency decision-making for the Airport Expansion Project under
17 CEQA and assuring that the Airport Expansion Project complies with all applicable provisions of
18 the State Planning and Zoning Law and all federal, state and local laws.

19 7. Defendant and Respondent City of Long Beach Planning Commission (“Planning
20 Commission”) is, and at all times herein mentioned was, the duly appointed administrative body
21 of the City, duly organized and existing under and by virtue of the laws of the State of California
22 and the City. The Planning Commission is, and at all times relevant herein was, the local body
23 with and responsible for, *inter alia*, preparing and planning for the Airport Expansion Project
24 under CEQA and assuring that the Airport Expansion Project complies with all applicable
25 provisions of the State Planning and Zoning Law and all federal, state and local laws.

26 8. The LBCPTA is not aware of the true names and capacities, whether individual,
27 corporate, or otherwise, of Defendants and Respondents Does 1 through 30, inclusive, and
28 therefore the LBCPTA sues them by such fictitious names. The LBCPTA is informed and

1 believes, and on that basis alleges, that Does 1 through 30 have been or will be responsible in
2 some manner for the action alleged in this Petition and Complaint.

3 9. Real Party in Interest Long Beach - Airport Bureau (“Airport Bureau”) administers
4 the Long Beach Airport facility. The Airport Bureau is identified as the applicant for the Airport
5 Expansion Project approvals challenged in this litigation. The LBCPTA is informed and believes
6 that the Airport Bureau, a bureau within the City of Long Beach’s Public Works Department, is
7 the Airport Expansion Project applicant for which the Airport Expansion Project approvals
8 challenged in this litigation were issued.

9 10. Real Party in Interest JetBlue Airways Corporation (“JetBlue”) is a Delaware
10 Corporation that, upon information and belief, leases a portion of the Long Beach Airport for its
11 commercial air travel operations. The LBCPTA is informed and believes, and on that basis
12 alleges, that JetBlue has a beneficial interest in the Airport Expansion Project because of promises
13 made by the City of Long Beach to JetBlue at the time JetBlue introduced service to the Long
14 Beach Airport that the City would undertake new airport construction and renovation projects
15 totaling more than Fifty Million Dollars, thereby providing for expanded commercial airline
16 operations at the Long Beach Airport.

17 11. The LBCPTA is not aware of the names and capacities, whether individual,
18 corporate, or otherwise, of Real Parties in Interest Roes 1 through 30, inclusive, and therefore the
19 LBCPTA sues them by such fictitious names. The LBCPTA is informed and believes, and on
20 that basis alleges, that Roes 1 through 30 have been or will be responsible in some manner for the
21 action alleged in this Petition and Complaint.

22 12. The Superior Court of the County of Los Angeles is the proper venue within which
23 to file this action. The property and the Airport Expansion Project are located within the City of
24 Long Beach. The City of Long Beach is located wholly within the County of Los Angeles.

25 13. The City Council voted to certify the EIR on June 20, 2006, and filed with the
26 County Clerk a Notice of Determination for the Airport Expansion Project, pursuant to the
27 California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*), on
28 June 22, 2006. On July 11, 2006, the City Council voted to suspend the effectiveness of the

1 Notice of Determination, tolling the statute of limitations until October 24, 2006. The City
2 Council subsequently voted to extend the date twice more, first until January 5, 2007, then until
3 April 6, 2007. This lawsuit has therefore been commenced within the time limits imposed for this
4 action under the Code of Civil Procedure and the Public Resources Code.

5 14. The LBCPTA has performed all conditions precedent to filing this action by
6 complying with all requirements of the Public Resources Code including the giving of prior
7 written notice to the City of Long Beach on March 9, 2007, prior to filing this action, and has no
8 other remedy.

9 **III.**

10 **THE AIRPORT EXPANSION PROJECT**

11 15. The City’s Environmental Impact Report (“EIR”) describes the Airport Expansion
12 Project as the Long Beach Terminal Area Improvement Project, which would involve both
13 alteration of existing facilities and construction of new facilities at the Long Beach Airport. The
14 EIR for the Airport Expansion Project states that the improvements “are being designed to
15 accommodate the demand based on the minimum requirements of the [City’s] Airport Noise
16 Compatibility Ordinance.” (Draft Environmental Impact Report, at p. 2-8.) As described in the
17 EIR, the Airport Expansion Project’s more significant components include an increase in the
18 number of airline gates from 8 to 11, increased aircraft parking spaces from 10 to up to 14, an
19 increase in airline ticketing facilities by approximately 6,423 square feet, and construction of a
20 new parking structure to accommodate 3,451 vehicles. Other proposed improvements include
21 construction of additional office and meeting space, holdrooms, restrooms, concession area, and
22 passenger and baggage screening. These improvements will increase both the Airport’s physical
23 size and capacity. For example, while the Airport served three million annual passengers in 2003,
24 the Airport Expansion Project will increase the Airport’s capacity to serve approximately 4.2
25 million annual passengers. Additionally, the permanent facilities at the Airport will more than
26 triple in size, from approximately 30,000 square feet to 98,000 square feet, and will nearly double
27 in size from 56,320 square feet if both permanent and temporary facilities are taken into account.
28 (*Ibid.*)

1 increased airline operations, and the related air quality and noise impacts that could occur. The
2 public comments by the LBCPTA and others in the community were met with derision by the
3 Planning Commissioner, with one Commissioner referring to the serious concerns that were
4 raised about the inadequacy of the EIR as “real gobbledygook.” Despite the concerns raised by
5 the LBCPTA and many others, the Planning Commission certified the EIR, adopted a statement
6 of overriding considerations and mitigation and monitoring plan, and approved, in concept, the
7 site plan review for the Airport Expansion Project at its May 11, 2006, meeting.

8 22. The LBCPTA and forty-eight other interested parties appealed the Planning
9 Commission’s certification of the EIR and approval of the site plan review for the Airport
10 Expansion Project to the City Council. On June 13, 2006, a representative of the LBCPTA
11 appeared before the City Council to again raise concerns regarding the EIR’s failure to fully
12 analyze potential noise and air quality impacts that the EIR failed to study. For instance, the
13 LBCPTA objected to the EIR’s failure to consider the capacity-enhancing potential of the Airport
14 Expansion Project, the failure to conduct adequate monitoring of current air pollution caused by
15 the existing flight operations and the failure to consider at all the increased air pollution that will
16 result from increased flight operations, and the failure to consider cumulative impacts of the
17 Project. Other members of the community raised similar concerns. The President of the Board of
18 the Long Beach Unified School District testified, for example, that while the EIR identified
19 impacts to only two schools, the School District’s own survey revealed potentially significant
20 impacts to at least twelve schools. One elementary school, for example, estimated that over thirty
21 (30) minutes of instruction are lost per day due to over-flight noise. Another school experienced
22 noise-related interruptions in its speech and language therapy center. At yet another school,
23 teachers noted that students with autism are particularly sensitive to and distracted by over flight
24 noise. In addition to interruptions within the classroom, the School District’s survey also
25 indicated that outdoor activities, such as concerts, also suffer interference due to airplane noise.
26 One teacher reported that the interruption extends beyond any single noise event, because it
27 interferes with the learning environment.

28

1 23. Despite the large amount of evidence presented to the City by the LBCPTA and
2 other appellants, and after refusing to offer appellants an opportunity to respond to city staff
3 rebuttal, as had been explicitly promised both orally and in writing, the City Council on June 20,
4 2006, denied the appeals and sustained the Planning Commission's certification of the EIR,
5 adopted a statement of overriding considerations, mitigation and monitoring plan, and approved
6 the Airport Expansion Project.

7 24. Also at its June 20, 2006 hearing, the City Council certified the EIR with the
8 following revisions to the EIR without *any* opportunity for public comment to the revisions:

9 COUNCILMEMBER RICHARDSON: I'll restate it. Receive the
10 supporting documentation into the record, conclude the public
11 hearing, deny the appeals and adopt a resolution certifying the final
12 environmental impact report for a project to a maximum of 12
13 parking positions and adopt a program – and adopt a sound
14 attenuation program that would be approved by the Council, apply
15 for funds and go out to bid and adopt a statement of overriding
16 considerations and mitigation monitoring program.

17 MAYOR O'NEILL: You've heard the motion. Please record your
18 vote.

19 MR. HERRERA: Motion carries. Five votes yes, two votes no.

20 In addition, following certification of the EIR, the City Council revised the Airport Expansion
21 Project by reducing its size from approximately 102,000 square feet to approximately 98,000
22 square feet.

23 25. On July 22, 2006, the County Clerk for the County of Los Angeles filed and
24 posted the City's Notice of Determination for the Airport Expansion Project. On July 11, 2006,
25 the City Council voted to suspend the effective date of the Notice of Determination, tolling the
26 statute of limitations first to October 24, 2006, then to January 5, 2007, and then again to April 6,
27 2007. The LBCPTA timely filed before that date this Petition for Writ of Mandate and Complaint
28 for Declaratory and Injunctive Relief pursuant to Public Resources Code section 21167.

 26. The LBCPTA, by and through itself and its members, State Agencies and citizens
living, residing or operating in the vicinity of the Long Beach Airport, have made oral and written
comments and have been present and participated in the public hearings and meetings raising
each of the legal deficiencies asserted in this petition for writ of mandate and complaint.

1 27. In approving the Airport Expansion Project, the City violated CEQA in several
2 respects. First, the Final EIR fails to comply with CEQA because it fails to provide an adequate
3 project description.

4 28. Second, the EIR fails to comply with CEQA because it fails to adequately assess
5 and evaluate Project impacts.

6 29. Third, the EIR fails to comply with CEQA because it fails to adequately consider
7 and adopt all feasible mitigation measures.

8 30. Fourth, the EIR fails to comply with CEQA because it fails to consider a
9 reasonable range of alternatives.

10 31. Fifth, Defendants and Respondents failed to prepare legally adequate findings.

11 32. Sixth, Defendants and Respondents failed to prepare adequate responses to
12 comments timely received on the Draft EIR.

13 33. Seventh, Defendants and Respondents failed to recirculate the Draft EIR following
14 the submission of evidence indicating a potentially significant environmental impact that the
15 Draft EIR failed to consider, and indicating that the Draft EIR was so inadequate that it precluded
16 public review and comment.

17 34. Eight, Defendants and Respondents failed to recirculate the Draft EIR following
18 the revisions to the Project on June 20, 2006, thereby precluding analysis of potential impacts
19 from the revisions to the Project adopted by the City Council and depriving the public of the
20 opportunity to review and comment on those revisions.

21 35. The LBCPTA has no plain, speedy, and adequate remedy in the ordinary course of
22 law other than the relief sought in this Petition and Complaint that will prevent Defendants and
23 Respondents from acting outside their legal authority.

24 36. The LBCPTA and its members have performed all conditions precedent to the
25 filing of this Petition and Complaint and have exhausted all available administrative remedies by
26 submitting numerous written comments on the Draft EIR, and appearing before both the Planning
27 Commission and City Council to provide comments.

28

1 increased airline flights to and from the Airport. Additionally, while the EIR contains an analysis
2 of an “Optimized Flight” scenario that addresses potential impacts resulting from increased
3 flights, the EIR continues to claim that such impacts could result regardless of the Airport
4 Expansion Project, and are, therefore, not Project impacts.

5 43. The EIR fails to include significant information regarding the scope of the Airport
6 Expansion Project. For example, the EIR never indicates how many additional flights the airport
7 could support as a result of the increased capacity envisioned in the proposed Airport Expansion
8 Project.

9 44. The EIR’s misleading Project description caused significant confusion regarding
10 the environmental review process and approval hearings before both the Planning Commission
11 and City Council. More importantly, as explained further below, as a result of the EIR’s
12 misleading Project description, the EIR understated the Airport Expansion Project’s potentially
13 significant impacts.

14 **B. The EIR Fails to Assess And Evaluate Airport Expansion Project Impacts**
15 **Adequately.**

16 45. The LBCPTA incorporates by reference paragraphs 1 through 43, above, as though
17 set forth in full.

18 46. CEQA provides that an environmental impact report must identify and focus on
19 the significant environmental effects, both direct and indirect, of a proposed Project, giving due
20 consideration to both short- and long-term effects. (See Pub. Resources Code, § 21100; State
21 CEQA Guidelines, § 15126.2). An environmental impact report must contain a “sufficient degree
22 of analysis to provide decision-makers with information which enables them to make a decision
23 which intelligently takes account of environmental consequences.” (State CEQA Guidelines, §
24 15151).

25 47. The EIR fails to consider adequately the significant environmental impacts of the
26 Airport Expansion Project, including, but not limited to, significant impacts related to air quality,
27 noise, land use planning, and growth-inducing impacts.
28

1 48. The EIR’s analysis of air quality is inadequate in several respects. For example,
2 the Draft EIR failed to include information regarding model output for its carbon monoxide hot
3 spots and criteria pollutants modeling. As a result of this omission, results could not be verified.
4 Further, evidence submitted to the City indicates that the EIR failed to account for particulate
5 matter emissions adequately, and that further study of such potential impacts is warranted. In
6 addition, as city staff and city consultants have acknowledged, the number and location of air
7 pollution monitors was inadequate.

8 49. The EIR’s analysis of potential noise impacts is similarly flawed. In particular, the
9 EIR completely failed to analyze potentially significant single-event noise impacts, despite
10 evidence of adverse consequences on schools and the adjoining residential neighborhoods in
11 which students live, among others, and despite the Noise Element’s statement that measurement
12 of single-event noise is a more direct method of assessing aircraft noise, because the report’s
13 authors claimed that there are no adopted standards to address such impacts. Additionally, the
14 EIR failed to analyze fully the impacts resulting from low-level flight patterns.

15 50. The EIR failed to analyze the land use implications of the Airport Expansion
16 Project adequately. In particular, the EIR failed to analyze how increasing the capacity of the
17 airport, and reasonably foreseeable increases in airport activity as a result, may affect future
18 upgrading and siting of schools in the Airport Expansion Project vicinity.

19 51. Finally, as a result of the EIR’s stunted Project description, the EIR fails to analyze
20 growth-inducing impacts of the Airport Expansion Project adequately. Rather, the EIR assumes
21 that all flight increases would result only from optimization of operations under the existing
22 Noise Ordinance.

23 52. The EIR violates CEQA by failing to contain a “sufficient degree of analysis” that
24 “intelligently takes account of environmental consequences[.]” because it fails to sufficiently
25 analyze impacts to air quality, noise, and land use planning, as well as growth-inducing impacts.
26 (State CEQA Guidelines, § 15151).

27 **C. The EIR Fails To Adequately Consider all Feasible Mitigation Measures**

28 53. CEQA requires that environmental impact reports contain adequate evaluation of

1 measures to mitigate adverse environmental impacts. (See Pub. Resources Code, § 21100; State
2 CEQA Guidelines, § 15126.4). In addition, CEQA requires that a public agency adopt all feasible
3 mitigation measures that substantially lessen Project impacts. (See, e.g., Pub. Resources Code,
4 §§ 21002, 21081; State CEQA Guidelines, §§ 15021, subd. (a)(2), 15126.4).

5 54. The EIR failed adequately to address mitigation of impacts such as air quality and
6 noise, despite specific suggestions for feasible mitigation. For example, the only mitigation
7 identified in the EIR to address noise impacts is to implement a land use compatibility program to
8 provide noise attenuation for residents within the 65 CNEL contour and schools within the 60
9 CNEL contour. This measure is inadequate because it fails to include any detailed information
10 about the contents of the proposed program. Moreover, that measure does nothing to address the
11 potentially significant single-event noise impacts identified by several commentors. The
12 LBCPTA and others suggested feasible mitigation to address such impacts. The EIR, however,
13 failed to analyze the feasibility or effectiveness of those, or any, mitigation measures to address
14 single-noise events. The Final EIR does not provide an adequate justification for the conclusion
15 that the noise impacts will be less than significant. Accordingly, the proposed mitigation is
16 insufficient to reduce potential impacts to below a level of significance.

17 **D. The EIR Fails to Consider a Reasonable Range of Alternatives**

18 55. The EIR must evaluate a reasonable range of alternatives. (State CEQA
19 Guidelines, § 15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,
20 565). “The EIR shall include sufficient information about each alternative to allow meaningful
21 evaluation, analysis, and comparison with the proposed Project.” (State CEQA Guidelines, §
22 15126.6, subd. (d); *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1, 14).

23 56. In addition to the proposed Airport Expansion Project, the EIR purports to analyze
24 two alternatives plus a no-Project alternative. The two alternatives are nearly identical to the
25 proposed Airport Expansion Project, except for minor variations in the size of certain facilities.
26 Significantly, the alternatives and the proposed Airport Expansion Project include the same
27 number of airline gates, same number of aircraft parking positions, and same number of vehicular
28 parking spaces, the very items that are most likely to result in growth-induced impacts. Several

1 commentors, including the LBCPTA, urged the City to analyze alternatives that would constrain
2 additional flights. In fact, both the 2003 and 2005 NOP indicated that the EIR would include
3 such alternatives. The EIR failed to do so. As a result, impacts resulting from the Airport
4 Expansion Project were found to be “similar in nature” to impacts resulting from the alternatives.
5 The EIR failed to include alternatives that the LBCPTA repeatedly requested and which are
6 designed to reduce impacts, particularly the growth-induced impacts. In addition to the
7 inadequate analysis of alternatives in the Draft EIR, the Final EIR failed to include any
8 substantial evidence to justify rejection of a constrained-capacity alternative.

9 57. The EIR violated CEQA because it failed to discuss feasible alternatives in detail
10 and because it failed to revise and recirculate the EIR for additional comment regarding the
11 alternatives proposed by the LBCPTA and other commentors. (State CEQA Guidelines, §
12 15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565).

13 **E. The City’s Findings Are Not Legally Adequate**

14 58. Defendants and Respondents were required by CEQA to determine in written
15 findings that (1) changes or alterations have been required in, or incorporated into, the Project
16 which avoid or substantially lessen the significant environmental effect as identified in the Final
17 EIR; (2) that such changes are within the responsibility and jurisdiction of another public agency
18 and that such changes have been adopted by such other agency or can and should be adopted by
19 such other agency; or (3) that specific economic, legal, social, technological, or other
20 considerations, including provision of employment opportunities for highly trained workers,
21 make infeasible the mitigation measure or Project alternatives identified in the Final EIR. (State
22 CEQA Guidelines, § 15091).

23 59. Defendants’ and Respondents’ actions certifying the Final EIR constitute an abuse
24 of discretion in that the findings are not supported by substantial evidence in the record and fail to
25 comply with CEQA and the State CEQA Guidelines. Among other things, the findings are
26 conclusory, editorial, internally inconsistent, fail to state with specificity the reasons for rejecting
27 proposed alternatives, and fail to bridge the analytical gap between the raw evidence and the
28 conclusions. Additionally, independent of Airport Expansion Project approval, Defendants and

1 Respondents appeared to improperly condition certification of the EIR on certain limitations to
2 the Airport Expansion Project, adoption of a sound attenuation program, and adoption of a
3 statement of overriding considerations and mitigation monitoring plan.

4 60. Defendants and Respondents found that: (1) certain identified environmental
5 impacts were not significant when there was no substantial evidence in the record supporting the
6 finding; or (2) certain identified significant adverse environmental impacts were considered
7 mitigated below a level of significance, but Defendants and Respondents failed to adopt adequate
8 mitigation measures to justify these conclusions.

9 61. The findings violate CEQA because they do not fulfill the requirements of section
10 15091 of the State CEQA Guidelines.

11 **F. The City Failed To Respond To Comments Adequately**

12 62. CEQA provides that agencies must provide a “good faith” reasoned analysis in
13 response to comments on the EIR and that “[c]onclusory statements unsupported by factual
14 information will not suffice.” (State CEQA Guidelines, § 15088, subd. (b)). Agencies must
15 address recommendations and objections in detail and explain why specific comments and
16 suggestions were not accepted. (*Ibid.*) Failure to respond adequately to comments before
17 approving a Project frustrates CEQA’s informational purpose and could “render[] the final EIR
18 fatally defective.” (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842).

19 63. The EIR violated CEQA because Defendants and Respondents failed to respond
20 adequately to comments, suggestions, and recommendations about the Airport Expansion
21 Project’s impacts, mitigation measures, alternatives, and other matters, as alleged above.

22 **G. The City Failed to Recirculate the EIR**

23 64. When significant new information regarding a potentially substantial adverse
24 effect or feasible methods to mitigate such an effect is added to an EIR, CEQA requires the lead
25 agency to recirculate the EIR. (State CEQA Guidelines, § 15088.5). Additionally, a lead agency
26 must recirculate its EIR when it is so fundamentally flawed that it precludes meaningful public
27 review and comment. (*Ibid.*)

28 65. During public review of the Draft EIR, information was provided to the City

1 indicating that various impacts, including air quality and noise impacts, for example, were
2 underestimated or not evaluated. Additionally, commentors suggested both alternatives and
3 mitigation measures that would clearly reduce such impacts, but the City failed to adopt either.
4 By failing to analyze the additional flights that the proposed facilities improvements would
5 accommodate, the EIR was fundamentally inadequate as an informational document. The City's
6 failure to recirculate the Draft EIR was, therefore, a prejudicial abuse of discretion.

7 66. In addition, the City failed to recirculate the Draft EIR despite revisions to the
8 Airport Expansion Project at the City Council's June 20, 2006 meeting, thereby precluding an
9 analysis of impacts from the revisions and depriving the public of the opportunity to review and
10 comment on the revisions. The City's failure to recirculate was a prejudicial abuse of discretion.

11 **H. Attorney's Fees**

12 67. The LBCPTA has had to employ attorneys to bring this litigation, which has
13 resulted in and will continue to result in substantial attorneys' fees and litigation costs because of
14 the Defendants' and Respondents' unlawful acts.

15 68. This litigation, if successful, will result in enforcement of important rights
16 affecting the public interest and conferring a significant benefit on a large class of persons.

17 69. The LBCPTA is entitled to be reimbursed for their attorneys' fees and costs
18 because they are functioning as private attorneys general pursuant to section 1021.5 of the Code
19 of Civil Procedure. The LBCPTA is also entitled to attorneys' fees and costs pursuant to section
20 800 of the Government Code.

21 **VI.**

22 **SECOND CAUSE OF ACTION**

23 **(Petition for Writ of Mandate pursuant to section 1085 of the**
24 **Code of Civil Procedure Against All Defendants and Respondents for Airport Expansion**
25 **Project Inconsistency with the City's General Plan)**

26 70. The LBCPTA re-alleges and incorporates by reference the allegations contained in
27 paragraphs 1 through 69, above, as though set forth in full.

28 71. All Projects approved by the City must be consistent with its General Plan.

1 (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988, 998). To be consistent
2 with the General Plan, a Project must further the General Plan's policies and objectives, and not
3 obstruct their attainment. (*Corona-Norco Unified Sch. Dist. v. City of Corona* (1993) 17 Cal.
4 App. 4th 985, 994).

5 72. The Airport Expansion Project is inconsistent with the City's General Plan in
6 several respects. The Land Use Element states, for example, that "Long Beach resists pressures
7 to expand operations at Long Beach Airport to accommodate regional air travel needs." (City of
8 Long Beach General Plan, Land Use Element, Pages 1.10.11). The Land Use Element further
9 states, "Long Beach has adopted a firm policy to limit growth of its airport in order to protect
10 surrounding residential neighborhoods from the noise and other hazards of frequent over flights."
11 (City of Long Beach General Plan, Land use Element, Page 1.11). However, despite these
12 declarations of City Policy, the Airport Expansion Project is specifically intended to
13 accommodate more than the flight capacity required by the settlement agreement, irrespective of
14 local air travel need.

15 73. The Transportation Element also calls for reducing single-occupant vehicle trips
16 by 20% and encouraging alternate transportation. (City of Long Beach General Plan,
17 Transportation Element, Policy 5.1.4). The Airport Expansion Project does not provide for such
18 measures. Similarly, the Airport Expansion Project's failure to include measures to encourage
19 carpools, vanpools, shuttles or other means of reducing per passenger vehicle trips, runs counter
20 to the Air Quality Element's policies supporting reduction in automobile usage. (City of Long
21 Beach General Plan, Air Quality Element, Policy 2.1). In addition, and perhaps most importantly,
22 the Airport Expansion Project will have both construction and operational noise impacts. The
23 Noise element of the General Plan states that "the thrust of this report is that many things can be
24 done to control noise." (P. 10.iii.) However, the Airport Expansion Project includes little in the
25 way of mitigation or control of noise pollution.

26 74. In addition, the Noise element states: "[T]he prime objective in any composite
27 noise rating scheme should be validity in terms of human response to aircraft noise." (P. 10.66).
28 Based on the Airport Expansion Project EIR, the City has failed to evaluate the validity of its

1 chosen method of noise rating (CNEL) in light of this specific statement. The Noise element
2 further states: “A more direct method of evaluating the impact of aircraft noise is to assess the
3 single event exposure levels.” (Emphasis added). The Noise element recognizes the impacts of
4 increased flight operations on speech conversations: “one measure of intrusion is the speech
5 interference caused by the [single event] noise... With a total of about 12-15 jet operations each
6 day, this amounts to approximately 3 minutes per day above 65 dBA.” (P.10.68). This amounts
7 to about 22 minutes of speech intrusion per day based on 41 commercial and 25 commuter flights,
8 not to mention impacts from potential increases in flights due to the Airport Expansion Project’s
9 capacity-enhancing improvements. The Airport Expansion Project does not currently include
10 mitigation measures based on the Airport Expansion Project’s impacts in terms of single events.

11 75. The LBCPTA has no adequate remedy at law for the injuries alleged herein, other
12 than the relief sought in this Petition and Complaint.

13 76. The LBCPTA asks the Court for an award of attorneys’ fees and costs against
14 Defendants and Respondents as permitted or required by law.

15 **VII.**

16 **THIRD CAUSE OF ACTION**

17 **(Declaratory Relief against all Defendants and Respondents and Real Parties in Interest)**

18 77. The LBCPTA realleges and incorporates by reference the allegations contained in
19 paragraphs 1 through 76, above, as though set forth in full.

20 78. An actual controversy has arisen and now exists between the LBCPTA and
21 Defendants and Respondents. The LBCPTA contends that Defendants and Respondents have not
22 complied with the provisions of CEQA and the State CEQA Guidelines in certifying the Final
23 EIR and approving the Airport Expansion Project. The LBCPTA believes that the Airport
24 Expansion Project will have significant adverse effects on the environment that will require the
25 preparation and recirculation of a revised EIR.

26 79. The LBCPTA is informed and believes and on that basis alleges that Defendants
27 and Respondents dispute the contentions of the LBCPTA as described in the immediately
28 preceding paragraph.

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ORANGE, CA 92866

1 the requirements of CEQA with respect to the failure to prepare an adequate EIR and that the
2 Defendants and Respondents must prepare an adequate EIR for the Airport Expansion Project in
3 order to meet these requirements.


4 **ON THE FOURTH CAUSE OF ACTION**

5 4. That this Court issue a temporary restraining order, a preliminary injunction and
6 permanent injunction, all preventing Defendants and Respondents and/or Real Parties in Interest
7 from taking any action in furtherance of the Airport Expansion Project until and after Defendants
8 and Respondents comply with CEQA.

9 **ON ALL CAUSES OF ACTION**

- 10 5. For an award of attorneys' fees incurred in this matter as permitted or required by law;
11 6. For the LBCPTA's costs of suit incurred herein; and
12 7. For such other and further relief as the Court deems just and proper.

13
14 DATED: March 15, 2007

15 By: 
16 JOHN C. EASTMAN
17 Attorney for Petitioner and Plaintiff
18 LONG BEACH COUNCIL OF
19 PARENTS AND TEACHERS, INC.
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VERIFICATION

I, ELENA M. WRIGHT, declare:

I am the Treasurer for petitioner and plaintiff Long Beach Council of Parents and Teachers, Inc., and member of its Select Committee on Environmental Issues, and am authorized to make this verification for and on its behalf in the above-entitled action, and I make this verification for that reason. I have read the above Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. I am also informed and believe, and on that ground allege, that the matters stated in the herein are true.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed at Long Beach, California on the 11th day of March, 2007.

By: Elena M. Wright
Elena M. Wright
for and on behalf of
Petitioner and Plaintiff
LONG BEACH COUNCIL OF
PARENTS AND TEACHERS, INC.

Exhibit A

John C. Eastman, Esq.
c/o Chapman University School of Law
One University Drive
Orange, California 92866
(714) 628-2587

March 8, 2007

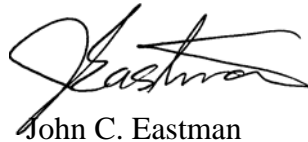
Mayor, City Council and Planning Commission of the City of Long Beach
c/o City Clerk's Office
Lobby Level, 333 W. Ocean Blvd.
Long Beach, CA 90802

Re: Notice of Intent to File CEQA Petition - Public Resources Code § 21167.5

Dear Mayor Foster, Council Members, and Planning Commissioners:

I am representing the Long Beach PTA in connection with its objections to the Environmental Impact Report ("EIR") for the Long Beach Terminal Area Improvement Project ("Airport Expansion Project") that was certified by the City Council last June. Since that time, representatives of the City have been meeting with a core group of appellants who had challenged the validity of the EIR. Although the PTA was not party to those discussions, it has been kept apprised of them by members of the core group. It now appears that the City has no intention of supplementing the EIR to address the severe deficiencies that have been identified. Please take notice, therefore, pursuant to section 21167.5 of the California Public Resources Code, that Long Beach PTA intends to file a petition under the provisions of the California Environmental Quality Act ("CEQA") against the City of Long Beach, City Council of the City of Long Beach, and Planning Commission of the City of Long Beach as respondents. The petition will challenge respondents' certification of the EIR for and approval of the Airport Expansion Project due to the failure of the EIR to comply with CEQA in numerous respects, including its failure to study, assess and offer mitigation for the significant air quality and noise pollution impacts that are quite likely to result from the increased commercial air traffic made possible by the major expansion of the airport terminal space and increase in number of airline gates and parking pads being proposed.

Sincerely,



John C. Eastman
Counsel for Long Beach PTA

JOHN C. EASTMAN, ESQ.
C/O CHAPMAN UNIVERSITY SCHOOL OF LAW
ONE UNIVERSITY DRIVE
ORANGE, CA 92866

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PROOF OF SERVICE

I, Gloria Davis, the undersigned declare that I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Chapman University School of Law, One University Drive, Orange, California 92866. On March 9, 2007, I served the within documents:

CORRESPONDENCE DATED MARCH 8, 2007 RE: NOTICE OF INTENT TO FILE CEQA PETITION-PUBLIC RESOURCES CODE § 21167.5

I caused the above document to be served by placing a true copy in a separate envelope addressed to each addressee, respectively, as indicated below. I then sealed each envelope and caused each to be placed for deposit in the United States Postal Service, postage prepaid, this same day.

Mayor, City Council & Planning Commission
c/o City Clerk's Office
City of Long Beach
Lobby Level, 333 W. Ocean Blvd.
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 12, 2007, at Orange, California.


Gloria L. Davis