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LONG BEACH UNIFIED SCHOOL DISTRICT

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10 CENTRAL DISTRICT

11 LONG BEACH UNIFIED SCHOOL
DISTRICT,

12 Petitioner and Plaintiff,

13 v.

14 THE CITY OF LONG BEACH, a municipal
15 corporation;
16 LONG BEACH CITY COUNCIL;
17 LONG BEACH PLANNING COMMISSION;
and DOES 1 - 30, inclusive,

18 Respondents and Defendants.

19 THE CITY OF LONG BEACH, AIRPORT
BUREAU, and
20 ROES 1-30, inclusive,

21 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)

LAW OFFICES OF
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SAN DIEGO, CALIFORNIA 92101

1 Petitioner and Plaintiff, LONG BEACH UNIFIED SCHOOL DISTRICT, alleges as
2 follows:

3 **I.**

4 **INTRODUCTION**

5 1. This action involves the City of Long Beach's ("City") decision to approve the
6 Long Beach Terminal Area Improvement Project ("Project"). The Project will have a significant
7 environmental impact on, among others, students, faculty and staff of the Long Beach Unified
8 School District ("School District").

9 2. The Defendants and Respondents failed to properly exercise their duties as lead
10 agency and decision-making body under the California Environmental Quality Act (Pub.
11 Resources Code, § 21000 et seq.) ("CEQA"), resulting in the City's improper approval of the
12 Project without an adequate or proper environmental review under CEQA. Through this lawsuit,
13 the School District seeks to enforce the provisions of CEQA and the regulations implementing
14 CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.) ("State CEQA Guidelines") as they apply to the
15 Project.

16 3. In addition to its failure to comply with CEQA, the City also violated the State
17 Planning and Zoning Law by adopting the Project, which is inconsistent with the City's General
18 Plan. Thus, the School District also seeks to enforce the State Planning and Zoning Law as it
19 applies to the Project.

20 **II.**

21 **THE PARTIES**

22 4. Petitioner and Plaintiff, Long Beach Unified School District, is, and at all times
23 herein mentioned was, a school district duly organized and existing under Education Code
24 sections 35000, et seq. Established in 1885, the School District provides school facilities and
25 public education services to more than 95,000 students in 95 public schools throughout the cities
26 of Long Beach, Lakewood, Signal Hill, and Avalon on Catalina Island. The School District, third
27 largest in California, employs more than 8,000 faculty and staff. Students, faculty and staff of the
28 School District may be affected by Project impacts. In addition to its academic mission, the

1 School District is committed to providing a safe environment and school facilities for each of its
2 students and employees. Due to this commitment, the School District submitted written
3 comments to the City on the Draft Environmental Impact Report prepared for the Project to the
4 City.

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

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

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

24 8. The School District is not aware of the true names and capacities, whether
25 individual, corporate, or otherwise, of Defendants and Respondents Does 1 through 30, inclusive,
26 and therefore the School District sues them by such fictitious names. The School District is
27 informed and believes, and on that basis alleges, that Does 1 through 30 have been or will be
28 responsible in some manner for the action alleged in this Petition and Complaint.

1 parking spaces from 10 to up to 14, an increase in airline ticketing facilities by approximately
2 6423 square feet, and construction of a new parking structure to accommodate 3,451 vehicles.
3 Other proposed improvements include construction of additional office and meeting space,
4 holdrooms, restrooms, concession area, and passenger and baggage screening. These
5 improvements will increase both the Airport's physical size and capacity. For example, while the
6 Airport served three million annual passengers in 2003, the Project will increase the Airport's
7 capacity to serve approximately 4.2 million annual passengers. Additionally, the Airport will
8 nearly double in size from 56,320 square feet to 102,850 square feet. (*Ibid.*)

9 15. The Project threatens significant and far-reaching environmental impacts,
10 including, among others, air quality and noise impacts.

11 16. The Project site is located within the City, and within five miles of at least 25 of
12 the School District's schools.

13 IV.

14 FACTS AND PROCEDURAL BACKGROUND

15 17. On or about September 22, 2003, the City prepared an Initial Study for the Project
16 and circulated it, along with the Notice of Preparation ("NOP"), from September 22, 2003 to
17 October 22, 2003.

18 18. Following several scoping meetings and two hundred fifty-one (251) responses to
19 the NOP, in which the community expressed concern regarding the scope of the Project and its
20 potential impacts, and after the City Council considered recommendations of the Airport
21 Advisory Commission, the City Council directed preparation and circulation of a second revised
22 NOP. The second NOP was circulated between April 14, 2005, and May 16, 2005.

23 19. The Draft EIR was circulated for public review beginning on November 7, 2005.
24 The School District, the South Coast Air Quality Management District, CalTrans, the City of Seal
25 Beach, the City of Huntington Beach, and other affected parties expressed serious concerns
26 regarding the Project through the submission of written comments to the City. The School
27 District submitted comments stating that although the Draft EIR indicates that the Project only
28 includes facilities improvements, those improvements will accommodate and facilitate increased

1 numbers of airline flights. Further, the School District commented that increased flights might
2 result in additional noise and air quality impacts that could affect not only students and
3 employees, but could also constrain School District activities in the future. The School District's
4 comment also noted that the Draft EIR failed to investigate the potential impacts of single-event
5 noise on educational activities. The School District suggested specific, feasible mitigation
6 measures to address the Project's potential noise impacts. Finally, the School District invited the
7 City's staff to work collaboratively with it to address health and safety impacts raised by the
8 Project.

9 20. On May 4, 2006, after discovering that the City's responses to comments on the
10 Draft EIR failed to address the School District's concerns, the School District submitted another
11 comment letter. The School District again urged the City to study the potential impact of single-
12 event noise on students and staff, and to consider several specific mitigation measures to address
13 the School District's concerns. Again, the School District invited the City to work with it to
14 study the Project's potential impacts on the District's educational environment.

15 21. On May 11, 2006, a representative of the School District appeared before the
16 Planning Commission to raise issues regarding the Project's potential to facilitate increased
17 airline operations, and the related air quality and noise impacts that could occur. At that meeting,
18 the School District again urged the City to confer with the School District regarding possible
19 impacts affecting their students and staff. In response to the School District's stated concerns,
20 one Commissioner replied: "Hey, I'm a CEQA lawyer, and that's real gobbledygook, ma'am.
21 Let's cut out, you know, all the rigamarole." Despite the concerns raised by the School District
22 and many others, the Planning Commission certified the EIR, adopted a statement of overriding
23 considerations and mitigation and monitoring plan, and approved, in concept, the site plan review
24 for the Project at its May 11, 2006, meeting.

25 22. The School District and forty-eight other interested parties appealed the Planning
26 Commission's certification of the EIR and approval of the site plan review for the Project to the
27 City Council. On June 13, 2006, the President of the School District's Board of Education
28 ("Board") appeared before the City Council to again raise concerns regarding the EIR's failure to

1 fully analyze potential noise impacts. The President of the Board testified that while the EIR
2 identified impacts to only two schools, the School District's own survey revealed potentially
3 significant impacts to at least twelve schools. One elementary school, for example, estimated that
4 over thirty (30) minutes of instruction are lost per day due to over flight noise. Another school
5 experienced noise related interruptions in its speech and language therapy center. At yet another
6 school, teachers noted that students with autism are particularly sensitive to and distracted by over
7 flight noise. In addition to interruptions within the classroom, the School District's survey also
8 indicated that outdoor activities, such as concerts, also suffer interference due to airplane noise.
9 One teacher reported that the interruption extends beyond any single noise event, because its
10 interferes with the learning environment.

11 23. Despite the evidence presented to the City by the School District and other
12 appellants, on June 20, 2006, the City Council denied the appeals and sustained the Planning
13 Commission's certification of the EIR, adoption of a statement of overriding considerations,
14 mitigation and monitoring plan, and, with minor revisions, approval of the Project.

15 24. Also at its June 20, 2006 hearing, the City Council certified the EIR with the
16 following to the revisions EIR:

17 COUNCILMEMBER RICHARDSON: I'll restate it. Receive the
18 supporting documentation into the record, conclude the public
19 hearing, deny the appeals and adopt a resolution certifying the final
20 environmental impact report for a project to a maximum of 12
21 parking positions and adopt a program – and adopt a sound
22 attenuation program that would be approved by the Council, apply
23 for funds and go out to bid and adopt a statement of overriding
24 considerations and mitigation monitoring program.

25 MAYOR O'NEILL: You've heard the motion. Please record your
26 vote.

27 MS. HERRERA: Motion carries. Five votes yes, two votes no.

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

29 25. On July 22, 2006, the County Clerk for the County of Los Angeles filed and
30 posted the City's Notice of Determination for the Project. The School District timely filed this

1 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief pursuant to
2 Public Resources Code section 21167.

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

7 27. In approving the Project, the City violated CEQA in several respects. First, the
8 Final EIR fails to comply with CEQA because it fails to provide an adequate project description.

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

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

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

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

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

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

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

26 35. The School District has no plain, speedy, and adequate remedy in the ordinary
27 course of law other than the relief sought in this Petition and Complaint that will prevent
28 Defendants and Respondents from acting outside their legal authority.

1 36. The School District has performed all conditions precedent to the filing of this
2 Petition and Complaint and has exhausted all available administrative remedies by submitting
3 numerous written comments on the Draft EIR, and appearing before both the Planning
4 Commission and City Council to provide comments..

5 37. The School District served a written Notice of Commencement of this action on all
6 parties and the State Attorney General concurrent with this action and pursuant to section 21167.5
7 of the Public Resources Code.

8 38. Attached as Exhibit "A" is the Notice of Intent to File a CEQA Petition served by
9 mail and facsimile on the City, City Council, the Planning Commission and the Attorney General
10 on July 21, 2006.

11 39. Defendants' and Respondents' actions in certifying the Final EIR and adopting its
12 findings constituted a prejudicial abuse of discretion in that Defendants and Respondents failed to
13 proceed in the manner required by law and their decision is not supported by substantial evidence.

14 V.

15 **FIRST CAUSE OF ACTION**

16 **(Petition for Writ of Mandate pursuant to Code Civ. Proc., §§ 1094.5 and 1085**
17 **Against All Defendants and Respondents and Real Parties in Interest for Violation of**
18 **CEQA)**

19 **A. The EIR Fails To Provide an Adequate Project Description**

20 40. The School District incorporates by reference paragraphs 1 through 39, above, as
21 though set forth in full.

22 41. CEQA requires that an EIR include an adequate project description. (State CEQA
23 Guidelines, § 15124.) A finite, stable project description is the *sine qua non* of an adequate EIR.
24 (County of Inyo v. City of Los Angeles (1977) 71 Cal.App. 3d 185, 193.) CEQA and the State
25 CEQA Guidelines further define a "project" to mean the "whole of an action, which has a
26 potential for resulting in either a direct physical change in the environment, or a reasonably
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1 foreseeable indirect physical change in the environment.” (Pub. Resources Code, § 21065; State
2 CEQA Guidelines, § 15378.)

3 42. The EIR describes the Project as comprising solely improvements to existing
4 airport facilities. The EIR further states that increased flights could occur pursuant to the City’s
5 Airport Noise Compatibility Ordinance, but claims that such increase would be permitted
6 regardless of whether the Project is approved. The EIR contains evidence, however, that the
7 facilities improvements will facilitate and support such increased airline flights to and from the
8 Airport. Additionally, while the EIR contains an analysis of an “Optimized Flight” scenario that
9 addresses potential impacts resulting from increased flights, the EIR continues to claim that such
10 impacts could result regardless of the Project, and are, therefore, not project impacts.

11 43. The EIR fails to include significant information regarding the scope of the Project.
12 For example, the EIR never indicates how many additional flights the airport could support as a
13 result of the increased capacity envisioned in the proposed Project.

14 44. The EIR’s misleading project description caused significant confusion regarding
15 the environmental review process and approval hearings before both the Planning Commission
16 and City Council. More importantly, as explained further below, as a result of the EIR’s
17 misleading project description, the EIR understated the Project’s potentially significant impacts.

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19 **B. The EIR Fails to Adequately Assess And Evaluate Project Impacts**

20 45. The School District incorporates by reference paragraphs 1 through 44, above, as
21 though set forth in full.

22 46. CEQA provides that an environmental impact report must identify and focus on
23 the significant environmental effects of a proposed project, both direct and indirect, giving due
24 consideration to both short and long-term effects. (See Pub. Resources Code, § 21100; State
25 CEQA Guidelines, § 15126.2.) An environmental impact report must contain a “sufficient degree
26 of analysis to provide decision-makers with information which enables them to make a decision
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1 which intelligently takes account of environmental consequences.” (State CEQA Guidelines, §
2 15151.)

3 47. The EIR fails to adequately consider the significant environmental impacts of the
4 Project, including, but not limited to, significant impacts related to air quality, noise, land use
5 planning, and growth-inducing impacts.

6 48. The EIR’s analysis of air quality is inadequate in several respects. For example,
7 the Draft EIR failed to include information regarding model output for its carbon monoxide hot
8 spots and criteria pollutants modeling. Results could not, therefore, be verified. Further,
9 evidence submitted to the City indicates that the EIR failed to adequately account for particulate
10 matter emissions, and that further study of such potential impacts is warranted.

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

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

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

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

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

2 53. CEQA requires that environmental impact reports contain adequate evaluation of
3 measures to mitigate adverse environmental impacts. (See Pub. Resources Code, § 21100; State
4 CEQA Guidelines, § 15126.4.) In addition, CEQA requires that a public agency adopt all feasible
5 mitigation measures that substantially lessen project impacts. (See, e.g., Pub. Resources Code,
6 §§ 21002, 21081; State CEQA Guidelines, §§ 15021, subd. (a)(2), 15126.4.)

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

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21 **D. The EIR Fails To Consider A Reasonable Range Of Alternatives**

22 55. The EIR must evaluate a reasonable range of alternatives. (State CEQA
23 Guidelines, § 15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,
24 565.) “The EIR shall include sufficient information about each alternative to allow meaningful
25 evaluation, analysis, and comparison with the proposed project.” (State CEQA Guidelines, §
26 15126.6, subd. (d); *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1, 14.)

27 56. In addition to the proposed Project, the EIR purports to analyze two alternatives
28 plus a no project alternative. The two alternatives are nearly identical to the proposed Project,

1 except for minor variations in the size of certain facilities. Significantly, the alternatives and the
2 proposed Project include the same number of airline gates, aircraft parking positions, and
3 vehicular parking spaces. Several commentators, including the School District, urged the City to
4 analyze alternatives that would constrain additional flights. In fact, both the 2003 and 2005 NOP
5 indicated that the EIR would include such an alternative. The EIR failed to do so. As a result,
6 impacts resulting from the Project were found to be “similar in nature” to impacts resulting from
7 the alternatives. The EIR failed to include alternatives that the School District repeatedly
8 requested and which are designed to reduce impacts. In addition to the inadequate analysis of
9 alternatives in the Draft EIR, the Final EIR failed to include any substantial evidence to justify
10 rejection of a constrained capacity alternative.

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

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

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

26 59. Defendants’ and Respondents’ actions certifying the Final EIR constitute an abuse
27 of discretion in that the findings are not supported by substantial evidence in the record and fail to
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1 comply with CEQA and the State CEQA Guidelines. Among other things, the findings are
2 conclusory, editorial, internally inconsistent, fail to state with specificity the reasons for rejecting
3 proposed alternatives and fail to bridge the analytical gap between the raw evidence and the
4 conclusions. Additionally, independent of Project approval, Defendants and Respondents
5 appeared to improperly condition certification of the EIR on certain limitations to the Project,
6 adoption of a sound attenuation program, and adoption of a statement of overriding
7 considerations and mitigation monitoring plan.

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

13 61. The findings violate CEQA because they do not fulfill the requirements of section
14 15091 of the State CEQA Guidelines.

15
16 **F. The City Failed To Adequately Respond To Comments**

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

24 63. The EIR violated CEQA because Defendants and Respondents failed to respond
25 adequately to comments, suggestions, and recommendations about the Project’s impacts,
26 mitigation measures, alternatives, and other matters, as alleged above.
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1 **G. The City Failed to Recirculate the EIR**

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

8 65. During public review of the Draft EIR, information was provided to the City
9 indicating that various impacts, including air quality and noise for example, were underestimated
10 or not evaluated. Additionally, commentors suggested both alternatives and mitigation measures
11 that would clearly reduce such impacts, but the City failed to adopt either. By failing to analyze
12 the additional flights that the proposed facilities improvements would accommodate, the EIR was
13 fundamentally inadequate as an informational document. The City's failure to recirculate the
14 Draft EIR was, therefore, a prejudicial abuse of discretion.

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

19 **H. Attorney's Fees**

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21 67. The School District has had to employ attorneys to bring this litigation.
22 Furthermore, the School District has incurred and will incur substantial attorneys' fees and
23 litigation costs because of the Defendants' and Respondents' unlawful acts.

24 68. This litigation, if successful, will result in enforcement of important rights
25 affecting the public interest. Such enforcement will confer a significant benefit on a large class of
26 persons.

27 69. The School District is entitled to be reimbursed for their attorneys' fees and costs
28 because they are functioning as private attorneys general pursuant to section 1021.5 of the Code

1 of Civil Procedure. The School District is also entitled to attorneys' fees and costs pursuant to
2 section 800 of the Government Code.

3
4 **VI.**

5 **SECOND CAUSE OF ACTION**

6 **(Petition for Writ of Mandate pursuant to section 1085 of the**
7 **Code of Civil Procedure Against All Defendants and Respondents for Project Inconsistency**
8 **with the City's General Plan)**

9 70. The School District realleges and incorporates by reference the allegations
10 contained in paragraphs 1 through 66, above, as though set forth in full.

11 71. All projects approved by the City must be consistent with its General Plan.
12 (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal. App. 3d 988, 998.) To be consistent
13 with the General Plan, a project must further the General Plan's policies and objectives, and not
14 obstruct their attainment. (*Corona-Norco Unified Sch. Dist. v. City of Corona* (1993) 17 Cal.
15 App. 4th 985, 994.)

16 72. The Project is inconsistent with the City's General Plan in several respects. For
17 example, the Land Use Element states that "Long Beach resists pressures to expand operations at
18 Long Beach Airport to accommodate regional air travel needs." (City of Long Beach General
19 Plan, Land Use Element, Pages 1.10.11.) The Land Use Element further states, "Long Beach has
20 adopted a firm policy to limit growth of its airport in order to protect surrounding residential
21 neighborhoods from the noise and other hazards of frequent over flights." (City of Long Beach
22 General Plan, Land use Element, Page 1.11.) However, despite these declarations of City Policy,
23 the Project is specifically intended to accommodate the flight capacity required by the settlement
24 agreement, irrespective of local air travel need.

25 73. The Transportation Element also calls for reduction of single-occupant vehicle
26 trips by 20% and encouraging alternate transportation. (City of Long Beach General Plan,
27 Transportation Element, Policy 5.1.4) The Project however, does not provide for such measures.
28 Similarly, the Project's failure to include measures to encourage carpools, vanpools, shuttles or

1 other means of reducing per passenger vehicle trips, runs counter to the Air Quality Element's
2 policies supporting reduction in automobile usage. (City of Long Beach General Plan, Air
3 Quality Element, Policy 2.1.) In addition, and perhaps most importantly, the Project will have
4 both construction and operational noise impacts. The Noise element of the General Plan states
5 that "the thrust of this report is that many things can be done to control noise." (P. 10.iii.)
6 However, the Project includes little in the way of mitigation or control noise.

7 74. In addition, the Noise element states: "[T]he prime objective in any composite
8 noise rating scheme should validity in terms of human response to aircraft noise." (P. 10.66.)
9 Based on the Project EIR, the City has failed to evaluate the validity of its chosen method of noise
10 rating (CNEL) in light of this specific statement. The Noise element further states: "A more
11 direct method of evaluating the impact of aircraft noise is to assess the single event exposure
12 levels." (Emphasis added) The Noise element recognizes the impacts of increased flight
13 operations on speech conversations: "one measure of intrusion is the speech interference caused
14 by the [single event] noise... With a total of about 12-15 jet operations each day, this amounts to
15 approximately 3 minutes per day above 65 dBA." (P.10.68.) This amounts to about 22 minutes
16 of speech intrusion per day based on 41 commercial and 25 commuter flights, not to mention
17 impacts from potential increases in flights due to the Project's capacity-enhancing improvements.
18 The Project does not currently include mitigation measures based on the Project's impacts in
19 terms of single events.

20 75. The School District has no adequate remedy at law for the injuries alleged herein,
21 other than the relief sought in this Petition and Complaint.

22 76. The School District asks the Court for an award of attorneys' fees and costs
23 against Defendants and Respondents as permitted or required by law.

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VII.

THIRD CAUSE OF ACTION

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

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

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

79. The School District is informed and believes and on that basis alleges that Defendants and Respondents dispute the contentions of the School District as described in the immediately preceding paragraph.

80. The School District seeks a judicial declaration and determination of the respective rights and duties of these Defendants and Respondents to abide by their duties and obligations.

81. A judicial declaration and determination is necessary and appropriate at this time in order that the School District may ascertain its rights with respect to the duties and obligation of each of these Defendants and Respondents and in order to resolve all controversies between the parties hereto regarding such rights and duties.

82. The School District asks that this Court for an award of attorney's fees and costs against Defendants and Respondents as permitted or required by law.

VIII.

FOURTH CAUSE OF ACTION

(Injunctive Relief against all Defendants and Respondents and Real Parties in Interest)

83. The School District realleges and incorporates by reference the allegations contained in paragraphs 1 through 82, above, as though set forth in full.

1 84. The School District brings this action because the School District, its student and
2 staff, and the general public will suffer irreparable injury if Defendants' and Respondents' actions
3 are not immediately set aside. Defendants and Respondents have approved the Project. If
4 Defendants and Respondents are not immediately enjoined and stayed from taking further actions
5 to carry out the Project, pending resolution of this lawsuit on its merits, the School District, its
6 student and staff, and the general public will be irreparably harmed and forced to incur
7 considerable environmental damage. The public interest warrants the issuance of a writ of
8 mandate, a temporary restraining order and the preliminary and permanent injunctions requested
9 by the School District.

10 85. The School District has no adequate remedy at law for the injuries alleged herein
11 in that the School District has exhausted all administrative remedies, and damages cannot
12 compensate for the threat that the Project poses to the School District, its student and staff, and
13 the general public.

14 86. The School District requests that this Court issue a temporary restraining order, a
15 preliminary and permanent injunction enjoining Defendants and Respondents and Real Parties in
16 Interest from taking any action in furtherance of the Project until Defendants and Respondents
17 have complied with all applicable laws and regulations.

18 IX.

19 PRAYER

20 WHEREFORE, the School District prays for judgment as follows:

21 ON THE FIRST CAUSE OF ACTION

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23 1. For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and
24 1094.5 and Public Resources Code section 21167 directing Defendants and Respondents as
25 follows:

- 26 A. To cease, vacate, and set-aside all actions related to the authorization,
27 approval, and execution of the proposed Project;

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- B. To prepare and circulate, in compliance with CEQA and the State CEQA Guidelines, an adequate EIR to examine and fully mitigate any significant impacts to the environment; and
- C. To prohibit any action by Defendants and Respondents or Real Parties in Interest in furtherance of the Project until Defendants and Respondents comply with the mandates of CEQA.

ON THE SECOND CAUSE OF ACTION

2. For a peremptory writ of mandate ordering Defendants and Respondents to comply with California Planning and Zoning Law by adopting a project that is consistent with the City's General Plan.

ON THE THIRD CAUSE OF ACTION

3. That this Court declare that Defendants and Respondents have not complied with the requirements of CEQA with respect to the failure to prepare an adequate EIR and that the Defendants and Respondents must prepare an adequate EIR for the Project in order to meet these requirements.

ON THE FOURTH CAUSE OF ACTION

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

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ON ALL CAUSES OF ACTION

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

DATED: July 21, 2006

BEST BEST & KRIEGER LLP

By: 
CINDY DAY-WILSON
CHRISTOPHER H. CALFEE
BROOKE RENZAS
Attorneys for Petitioner and Plaintiff
LONG BEACH UNIFIED SCHOOL
DISTRICT

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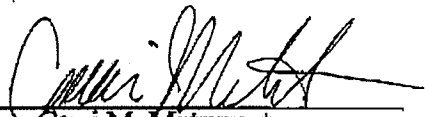
VERIFICATION

I, CARRI M. MATSUMOTO, declare:

I am the Executive Director, Facilities Development and Planning, for petitioner and plaintiff Long Beach Unified School District in the above-entitled action, and am authorized to make this verification for and on its behalf, 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 20th day of July, 2006.

By: 
Carri M. Matsumoto
for and on behalf of Petitioner and Plaintiff
Long Beach Unified School District

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