

JAN 31 2005

John A. Clarke, Executive Officer/Clerk

By: _____
DEPUTY

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4 Long Beach, California 90804
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SSUEL

7 Attorneys for Petitioner
8 Lakewood Village Neighborhood Association

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 LAKEWOOD VILLAGE)
12 NEIGHBORHOOD ASSOCIATION,)
13 an unincorporated association,)
14 Petitioner,)

Case No.: NC036580

15 v.)

16 VERIFIED PETITION FOR)
17 WRIT OF MANDATE)

18 CITY OF LONG BEACH, a)
19 political subdivision of the State of)
20 California; LONG BEACH CITY)
21 COUNCIL, a legislative body; and)
22 AND DOES 1-10)

CASE MANAGEMENT CONFERENCE
SET FOR 8:30 a.m.

23 Respondents.)

JUN 30 2005

IN DEPARTMENT 5

24 BOEING REALTY)
25 CORPORATION, a coporation; and)
26 DOES 11-100)

27 Real Parties in Interest.)
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INTRODUCTION

1. By this action, Petitioner Lakewood Village Neighborhood Association (“Petitioner”) challenges the approval on December 14, 2004, by the City of Long Beach and the Long Beach City Council (collectively “City” or “Respondents”) of the Douglas Park development proposed by Real Party In Interest, Boeing Realty Corporation (“Project”). Petitioner also challenges Respondent’s certification of an environmental impact report (“EIR”) for the Project. Petitioners allege that these actions violate the California Environmental Quality Act, Public Resources Code, section 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, Title 14, California Code of Regulations, section 15000 *et seq.* Petitioners seek a determination from this Court that Respondents’ approval of the Project is invalid and void and that the EIR prepared for the Project fails to satisfy the requirements of CEQA and the CEQA Guidelines.

PARTIES

2. Petitioner Lakewood Village Neighborhood Association is an unincorporated non-profit association made up of residents of the area of Long beach commonly referred to as Lakewood Village and other interested individuals, businesses and business owners that share the Association’s concerns regarding the Project and the area’s resources, including air and water quality, the preservation of character and quality of life, and the protection of environment. Petitioner is committed to public education regarding these various issues and ensuring governmental compliance with the law of this state. Petitioner is composed of persons whose economic, personal, aesthetic, and property interests will be severely injured if the adoption of the Project is not set aside pending full compliance with CEQA and all other environmental laws. Petitioner brings this petition on behalf of all others similarly situated who

1 are too numerous to be named and brought before this court as petitioners. As a group
2 composed of residents, property owners, businesses, business owners and concerned citizens
3 generally within the City of Long Beach, Petitioner is within the class of persons beneficially
4 interested in, and aggrieved by, the acts of respondents as alleged below. Petitioner's members
5 participated in the administrative processes herein, and exhausted its remedies. Accordingly,
6 Petitioner has standing to sue.
7

8 3. Petitioner and its members have a direct and substantial beneficial interest in
9 ensuring that Respondents comply with the laws relating to environmental protection,
10 particularly CEQA. Petitioner and its members are affected by Respondents' failure to prepare
11 an adequate EIR for the Project.
12

13 4. Respondent City of Long Beach is a political subdivision of the State of California
14 and a body corporate and politic exercising local government power. The City of Long Beach is
15 the CEQA "lead agency" for the Project. As lead agency for the Project, The City of Long
16 Beach is responsible for preparation of an environmental document that describes the Project
17 and its impacts, and, if necessary evaluates mitigation measures and/or alternatives to lessen or
18 avoid any significant environmental impacts.
19

20 5. Respondent Long Beach City Council is a legislative body duly authorized under
21 the California Constitution and the laws of the State of California to act on behalf of the City of
22 Long Beach. Respondent Long Beach City Council is responsible for regulating and controlling
23 land use within the City including, but not limited to, implementing and complying with the
24 provisions of CEQA and the CEQA Guidelines.
25

26 6. Petitioner is unaware of the true names and capacities of Respondents identified as
27 Does 1-10. Petitioner is informed and believes, and on that basis alleges, that Respondents
28 Does 1-10, inclusive, are individuals, entities or agencies with material interests affected by the

1 oral comments on the Final EIR. Petitioner, though its member Candy Robinson, properly
2 exhausted all avenues of appeal provided to it by the City of Long Beach.

3 18. Petitioner has complied with the requirements of Public Resources Code, section
4 21167.5 by mailing written notice of this action to the Respondents. A copy of this written
5 notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

6 19. Petitioner complied with Public Resources Code section 21167.6 by concurrently
7 filing a request concerning preparation of the record of administrative proceedings relating to
8 this action.

9 20. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
10 unless this Court grants the requested writ of mandate to require Respondents to set aside their
11 approval of the mine expansion Project, and certification of the Final EIR. In the absence of
12 such remedy, Respondents' approvals will remain in effect in violation of State law.
13
14

15 STANDING

16 21. Petitioner has standing to assert the claims raised in this Petition because Petitioner
17 and its members' aesthetic and environmental interests are directly and adversely affected by the
18 County's approval of the Project.

19 ARBITRARY AND CAPRICIOUS ACTIONS

20 22. Petitioner brings this action on the basis, among others, of Government Code
21 section 800, which awards Petitioner's attorneys' fees in actions to overturn agency decisions
22 that are arbitrary and capricious, such as the decisions here in question.

23 FIRST CAUSE OF ACTION 24 (Abuse of Discretion) 25 VIOLATIONS OF CEQA

26 23. Petitioner realleges and incorporates by reference Paragraphs 1 through 22,
27 inclusive, of this Petition, as if fully set forth below.
28

1 24. Respondents committed a prejudicial abuse of discretion and failed to proceed in a
2 manner required by law by relying on an EIR that fails to meet the requirements of CEQA for
3 disclosure, analysis, and/or mitigation of significant project impacts. As discussed below, the
4 deficiencies in the Final EIR include an inadequate project description, an inadequate
5 alternative analysis, an inadequate analysis regarding impacts to, biological resources, land use,
6 traffic and circulation, water resources, water quality, air quality and health and safety. The
7 EIR also includes an inadequate response to comments and inadequate mitigation measures.

8 25. The EIR fails to comply with the requirements of CEQA in that it fails to
9 adequately disclose, analyze and/or mitigate the Project's environmental impacts as required by
10 law, and its conclusions regarding the Project's environmental impacts are not supported by
11 substantial evidence. As a result, the Project will result in significant environmental impacts
12 that the EIR failed to address or adequately mitigate. For example, the EIR fails to adequately
13 address and mitigate the significant environmental impacts resulting from placement of homes
14 next to the Long Beach Municipal Airport and within its scope of operations. The EIR also
15 defers adequate analysis and mitigation of the Project's foreseeable impacts to some point in the
16 future.

17 26. The EIR fails to provide an adequate description of the Project and fails to
18 acknowledge existing environmental conditions and to adequately address the environmentally
19 superior alternatives that may be able to meet project objectives. For example, the EIR failed to
20 acknowledge that Boeing plans to development additional contiguous property or analyze the
21 impacts of the entirety of the development it plans and the Project description and the
22 description of the environment setting is inadequate as a result of this failure. Further, the EIR's
23 description of the environmental setting failed to acknowledge numerous public complaints
24 regarding the Project's impacts.

25 27. The EIR fails to provide adequate mitigation measures that avoid, minimize,
26 rectify, reduce, or compensate for significant environmental impacts. The EIR also improperly
27 contains mitigation measures that amount to the deferral and speculation of the solutions to
28 significant environmental impacts. For example, the EIR improperly avoids analysis of impacts

1 that are foreseeable and will be a direct result of Project approval, and thus improperly defers
2 analysis of the actual impacts and formulation of mitigation measures.

3 28. The EIR fails to adequately consider and evaluate all potentially feasible measures
4 to mitigate the Project's significant impacts.

5 29. The EIR fails to provide a selection and discussion of alternatives that fosters
6 informed decision-making and informed public participation. The alternatives analysis in the
7 EIR does not meet the requirement of a reasonable range of alternatives that lessen the Project's
8 significant environmental impacts, and does not focus on alternatives that either eliminate
9 adverse impacts or reduce them to insignificance, even if they would to some degree impede the
10 Project's objectives, as required by CEQA.

11 30. The responses to comments in the Final EIR fail to meet the requirements of
12 CEQA in that they neither adequately dispose of all the issues raised, nor provide specific
13 rationale for rejecting suggested Project changes, mitigation measures, or alternatives. CEQA
14 requires that the lead agency evaluate and respond to all environmental comments on the Draft
15 EIR that it receives during the public review period. The response(s) must describe the
16 disposition of the issue(s) raised and must specifically explain reasons for rejecting suggestions
17 and for proceeding without incorporating the suggestions. The Final EIR's responses to
18 comments fail to meet this standard.

19 31. Where mitigation measures and alternatives to a project are not adopted, the CEQA
20 findings must identify specific economic, legal, social and technological and other
21 considerations that make infeasible the adoption of mitigation measures or alternatives. All
22 CEQA findings must be supported by substantial evidence in the record and must disclose the
23 analytical route by which approval of the project is justified. The findings regarding the
24 impacts, mitigation measures, and alternatives relied upon by Respondent's approval of the
25 Project are not supported by substantial evidence in the record, and the links between evidence
26 and conclusions are not satisfactorily provided.

1 (e) suspend all activity that could result in any change or alteration to the
2 physical environment until Respondents have taken such actions as may be necessary to bring its
3 determination, findings or decision regarding the Project into compliance with CEQA;

4 2. For a determination that the Project conflicts with applicable general plans,
5 statements and land use directives;

6 3. For Petitioner's costs associated with this action;

7 4. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
8 section 1021.5; and

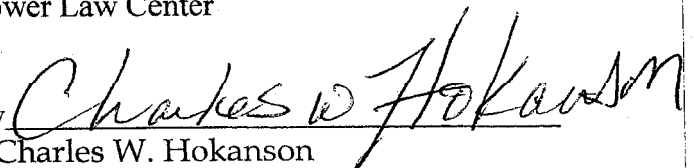
9 5. For such other and further relief as the Court may deem just and proper.
10

11 Respectfully submitted,

12 Tower Law Center

13
14 Dated: January 31, 2005.

15 By



16 Charles W. Hokanson

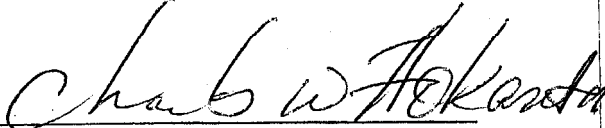
17 Attorney for Petitioner

18 Lakewood Village Neighborhood Association
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VERIFICATION

1
2 I am the attorney for Petitioner Lakewood Village Neighborhood Association.
3 Petitioner's members fear retribution if identified personally and are also not available
4 to sign this verification. Additionally, as a resident of Long Beach, I have personal
5 knowledge of the facts set forth in the foregoing Petition to the same extent as
6 Petitioner's members. For those reasons, I make this verification for and on its behalf
7 pursuant to the California Code of Civil Procedure section 446. I have read the
8 foregoing Verified Petition for Writ of Mandate and know its contents. The matters
9 stated in this Verified Petition for Writ of Mandate are true of my own knowledge
10 except those matters stated on information and belief, and as to those matters I believe
11 them to be true.
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15 I declare under penalty of perjury that the above is true and correct. Executed
16 this 31st ___ day of January 2005, at Long Beach, California.

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19 Charles W. Hokanson
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January 31, 2005

Mayor Beverly O'Neal
Vice Mayor Jackie Kell
Councilmember Dan Baker
Councilmember Bonnie Lowenthal
Councilmember Frank Colonna
Councilmember Patrick O'Donnell
Councilmember Laura Richardson
Councilmember Tonia Reyes Uranga
Councilmember Rae Gabelich
Councilmember Val Lerch
City Attorney Robert Shannon
City Manager Gerald Miller
City Clerk Larry Herrera
333 West Ocean Blvd.
Long Beach, Ca 90802

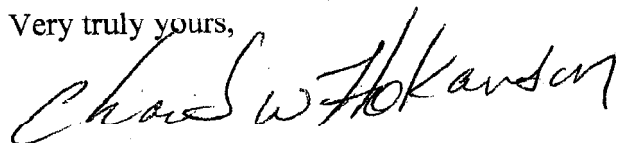
Re: NOTICE OF INTENT TO FILE CEQA PETITION

Ladies and Gentlemen:

Please take notice, under Public Resources Code section 21167.5, that Petitioner Lakewood Village Neighborhood Association intends to file a Petition for Writ of Mandate in Los Angeles County Superior Court under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.* against the City of Long Beach and the Long Beach City Council challenging the December 14, 2004, approval of the Proposed Douglas Park Project

The Petition for Writ of Mandate will request that the court direct the City to vacate and rescind all Project approvals and direct it to comply with CEQA. Additionally, the Petition will seek Petitioner's costs and attorney's fees associated with this action.

Very truly yours,



Charles W. Hokanson