

ORIGINAL FILED

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**LOS ANGELES
SUPERIOR COURT**

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

BS071279

12 STOP TAKING OUR PARKS, an Unincorporated
13 Association; and CALIFORNIA EARTH CORPS, a
14 Not-For Profit Corporation

15 Petitioners,

16 vs.

17 CITY OF LONG BEACH, and DOES 1 through 50,
18 inclusive,

19 Respondents,

20 DOES 1 through 50, inclusive,

21 Real Parties in Interest

Case No.

PETITION FOR WRIT OF
MANDATE

(CALIFORNIA
ENVIRONMENTAL QUALITY
ACT; PLANNING AND ZONING
LAW; CITY CHARTER;
MUNICIPAL CODE; STATE
AND FEDERAL PARK
PRESERVATION LAWS)

1 **INTRODUCTION**

2 1. This action challenges the approval by the City of Long Beach of a proposed
3 police station on 2.5 acres of existing public parkland at Scherer Park in north Long Beach
4 ("Project") based upon an inadequate Environmental Impact Report ("EIR") which failed to
5 consider a reasonable range of alternatives to use of the park. The failure to consider a
6 reasonable range of alternatives was the result of a pre-commitment to siting the Project at
7 Scherer Park so the City could avoid land acquisition costs by using parkland for the police
8 station. However, the use of such parkland is contrary to the City's General Plan and violates
9 state and federal park preservation requirements. Further, the approval of the Project was
10 based upon findings that alternatives to the Project were not feasible, and those findings are
11 not supported by substantial evidence. Finally, the City's amendment to its General Plan
12 renders the General Plan internally inconsistent and the City's action violates various Charter
13 and Municipal Code provisions.

14 **PARTIES**

15 2. Stop Taking Our Parks ("S.T.O.P.") is an unincorporated community action
16 group formed by concerned citizens to halt the continued use of parkland for non-park
17 purposes by the City of Long Beach. Many of the members of STOP live by, and use,
18 Scherer Park. STOP members have been concerned for some time about the number of City
19 parks where the City has converted portions of the parkland to non-park uses.

20 3. The California Earth Corp ("CEC") is a not for profit corporation organized
21 under the laws of the State of California. It was founded in 1984 and incorporated 1992 for
22 the purpose of using scientific methods and educational programs to increase public safety
23 and protect the environment.

24 4. The City of Long Beach is a duly incorporated charter city and a political
25 subdivision of the State of California.

26 **PROJECT DESCRIPTION AND HISTORY**

27 5. The Project would consist of a one-story building with a total floor area of
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1 21,505 square feet. It would serve 211 employees, 202 of whom would be sworn police
2 officers. The Project would replace a 7,110 square foot temporary police substation which is
3 made up of one small (1500 square feet) building constructed in 1984, and two 20' by 60'
4 trailers added in 1992. The "temporary substation," which houses 113 employees, was
5 installed without a variance or zone change. The Project would triple the building footprint
6 and double the number of employees when compared with the existing temporary facility.

7 6. According to the EIR, the 8th Council district, where Scherer Park is located,
8 has 1.2 acres of parkland per 1,000 residents, while the city-wide average is 3.2. According
9 to a City staff report on the Project, Citywide, in 1973 the City had seven acres of open
10 space per 1,000 residents, but that ratio diminished to six acres per 1,000 in 1995. According
11 to the staff report, the North Long Beach Community Planning Area has the least amount of
12 recreation/open space per capita in the City. The National Recreation and Park Association
13 recommends 10 acres of parkland for every 1,000 people.

14 **Review And Approval of The Relocation Project**

15 7. Even before a Draft EIR was prepared, there was evidence that the City already
16 was committed to construction of a permanent police station at Scherer Park. On or about
17 May 4, 2000, at a community meeting, the Project manager for the City and City Real Estate
18 Officer, said "tonight's meeting is really not to discuss alternative locations. I'm not in a
19 position to make that decision. That decision has pretty much been made by the city council
20 and the mayor of the city." The agenda for the community meeting also had noted that
21 alternative sites would not be considered at the meeting. Further, on May 26, 2000, the
22 Project Manager sent a letter to an architectural firm stating that she expected a contract for
23 architectural services for the North Police Station to be approved by the City Council on June
24 13, 2000.

25 8. On June 14, 2000, the City prepared an initial study, and on June 19, 2000
26 issued a Notice of Preparation for an EIR on the Project.

27 9. On February 6, 2001, a Draft EIR was released for public comment. The EIR

1 analyzed only three alternatives to the Project: a no project alternative, an alternative location
2 at the site of a Dooley's Hardware store, and a location known as Atlantic Plaza. The EIR
3 determined that location of the Project at the later two sites was infeasible, but did not
4 identify any feasible site other than Scherer Park. On or about May 3, 2001, at a Planning
5 Commission hearing, residents of the area learned that the Dooley Hardware Store was being
6 acquired by the Long Beach City School District for school use, and the property went into
7 escrow in April, 2001, months before the EIR was certified. Also, before the EIR was
8 certified, City officials informed residents that the Atlantic Plaza site was infeasible because
9 there was an oil pipeline through the site.

10 10. The Dooley's Hardware store and Atlantic Plaza site alternatives were
11 found by the City to be infeasible because, among other reasons, they were not within the
12 City's budgetary goals due to the high cost of land acquisition. Using portions of Scherer
13 Park would avoid those direct costs, but the federal Land and Conservation Act, which is
14 applicable because federal funds were used for acquisition of part of the Park, requires
15 replacement parkland. So does the State Park Preservation Act. The EIR acknowledged that
16 conversion of part of Scherer Park to a police station "would require replacement property"
17 but stated "such replacement is not within the project budget and is therefore considered
18 unmitigatable." Although a mitigation measure to provide replacement parkland was added
19 as a response to comments, the environmental review process did not describe where that
20 parkland would be, and other evidence suggests that the City proposes to convert an old
21 landfill, which does not serve the same community, to parkland, even though the land is not
22 of comparable value. Further, there is no assurance the necessary funding will be available
23 for acquisition and development, while the EIR suggests funding will not be available.

24 11. During the comment period on the Draft EIR, numerous members of the public
25 urged the City to consider alternative sites for the police station. One of the
26 recommendations was that the City consider a short term alternative of relocating the
27 temporary substation to the old Roberts Department Store, a vacant building located in the
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1 Bixby Shopping Center in the 4400 block of Atlantic Avenue, or the Forman property, a
2 vacant property on Long Beach Blvd. at Bixby Road, and revise the Draft EIR to consider
3 other sites and recirculate it for public comment. Both the Roberts Department Store and the
4 Forman sites provide existing buildings or lot sizes of adequate size. Prior to the City
5 Council's approval of the Project, petitioner STOP identified 12 different sites which should
6 be considered as alternative locations for the police station. Members of the public also
7 urged that a number of small sites be considered as an alternative to a centralized police
8 station for North Long Beach, consistent with community based policing approaches, and
9 enabling shorter response times.

10 12. The EIR stated significant, unmitigable impacts would occur from construction
11 of the Project at Scherer Park with respect to aesthetics, land use, recreational opportunities,
12 and noise from the Project. The Project will block a significant portion of the view of the
13 adjacent park from Del Amo Boulevard and Atlantic Avenue and the proposed structures will
14 visually dominate the adjacent park. The Project will cause the removal of up to 45 mature
15 trees and may disrupt certain animal life.

16 13. On May 3, 2001, the City Planning Commission approved the amendment to
17 the General Plan and the Zoning Code redesignating the 2.5 acres as "I" for Institutional
18 uses rather than "P" for park uses.

19 14. On or about June 26, 2001, the City's Recreation Commission unanimously
20 opposed the Project on a vote of 6-0. The City Attorney advised the Commission that they
21 had not been involved in the input process because "the proposed building is not recreational
22 in nature."

23 15. On July 17, 2001, the City Council heard an appeal of the Planning
24 Commission's approval of the General Plan Amendment and zone change. On July 24,
25 2001, the City of Long Beach granted final approval to the Project. A notice of
26 determination was executed by the City on the same day.

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 16. Petitioners have exhausted all available administrative remedies and have
3 raised each of the legal deficiencies asserted in this petition to the City of Long Beach, as
4 required by Public Resources Code Section 21177.

5 **COMPLIANCE WITH CEQA'S PROCEDURAL REQUIREMENTS**

6 17. This action is filed within 30 days of the filing of the Notice of Determination
7 by the City, as required by Public Resources code section 21167.

8 18. Petitioners have complied with the requirements of Public Resources Code
9 Section 21167.5 by mailing a written notice of commencement of this action to the City of
10 Long Beach, a copy of which is attached as Exhibit A.

11 19. Petitioners have advised the City of Long Beach that Petitioners elect
12 to prepare the record of the proceedings relevant to the approval of this Project, in compliance
13 with Public Resources Code Section 21167.6. A copy of that notice is attached as Exhibit B.

14 20. Petitioners have complied with Public Resources Code Section 21167.7 by
15 sending a notification with a copy of the petition to the California Attorney General. A copy
16 of the letter of notification is attached as Exhibit C.

17 **INADEQUATE REMEDY AT LAW**

18 21. Petitioner has no adequate remedy under law unless the Court grants the
19 requested writ of mandate requiring the City of Long Beach to set aside its approval of the
20 certification of the EIR, Project approval, adoption of a statement of overriding
21 considerations, approval of a General Plan amendment, approval of a zone change, and
22 approval of a site plan. In the absence of such remedy, the respondent's approval will remain
23 in effect in violation CEQA, the Land and Water Conservation Fund Act, the Park
24 Preservation Act, the Government Code, and the City's Municipal Code.

25 **FIRST CAUSE OF ACTION**
26 **(CEQA Violations)**

27 ▶ 22. Petitioner hereby incorporates by reference the allegations contained in
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1 paragraphs 1 through 21, inclusive.

2 23. The City of Long Beach's approval of the Project constitutes a prejudicial
3 abuse of discretion in that there was not a good faith evaluation of alternatives and impacts of
4 the Project at Scherer Park because the City of Long Beach was already committed to
5 constructing the Project at Scherer, and would not consider alternative Project locations. As a
6 result, the City failed to comply with CEQA and CEQA Guidelines.

7 24. The Project EIR is inadequate. The deficiencies in the EIR includes, but is not
8 limited to, the following:

9 a. The failure to analyze and consider a reasonable range alternatives to
10 construction of the Project at Scherer Park, including alternative sites and the alternative of
11 several smaller police substations;

12 b. The failure to consider the Project's effect of irretrievably committing
13 resources and foreclosing recreational opportunities at a portion of Scherer Park;

14 c. The EIR failed to analyze how the City would comply with State and
15 Federal park preservation laws that require acquisition of comparable property for park uses
16 when parkland is taken for non-park purposes;

17 d. The cumulative impacts of the approval of the Project when considered
18 in the context of the City's past practices of putting non-park uses in City parks;

19 e. The EIR failed to properly consider the conflicts which the Project,
20 including the redesignation of parkland for institutional purposes, would create with the City's
21 General Plan; and

22 f. The FEIR failed to adequately respond to public comments, and in the
23 case of a detailed comment by the President of STOP, failed to respond entirely.

24 25. In adopting the findings and Statement of Overriding Considerations, the City
25 of Long Beach adopted a number of findings which were not supported by substantial
26 evidence, including, but not limited to, the conclusions that the Project considered all
27 reasonable alternatives and that the significant benefits of the Project would include

1 improving adjacent park land.

2 **SECOND CAUSE OF ACTION**
3 **(Violation of Government Code: Plan Inconsistency)**

4 26. Petitioners hereby incorporates by reference the allegations contained in
5 paragraphs 1 through 25, inclusive.

6 27. The Open Space Element for Outdoor Recreation establishes a City goal "to
7 protect parks against the intrusion of non-park uses, or if the public interest clearly calls for a
8 non-park use of park land, it should be replaced by other land for park purposes of equal value
9 and area." The Land Use element provides: "Given that such distribution has been made, there
10 should be rigid constraints on the amounts and types of urban forms and structures which are
11 permitted to invade open spaces and parks."

12 28. The North Long Beach area community is extremely park poor.

13 29. The general plan, its elements and parts must form an integrated, internally
14 consistent and compatible statement of policies for the adopting agency. (Gov. Code §
15 65300.5.) Approval of the general plan amendment, zone change, standards variance,
16 and the Project were inconsistent with general plan policies and goals, including but not
17 limited to that of the Open Space Element, that require the preservation of open space, park
18 areas, and public recreation opportunities.

19 **THIRD CAUSE OF ACTION**
20 **(Charter and Municipal Code Violations)**

21 30. Petitioner hereby incorporates by reference the allegations contained in
22 paragraphs 1 through 29, inclusive.

23 31. The Project was not approved by the Recreation Commission, which in fact
24 unanimously disapproved the Project, even though such approval is required pursuant to Long
25 Beach Charter Section 902 and Long Beach Municipal Code Section 2.54.005.

26 32. The approval of the Project violated the requirement of section 21.25.020
27 of the Long Beach City Municipal Code that site plan review for projects in a park district
28 ensure buildings within park districts will be consistent with and maintain the serenity of the

1 park and its primary open space and passive use character.

2 33. For projects in an institutional district over forty thousand square feet in
3 size, section 21.34.020 of the Long Beach Municipal Code requires the applicant to prepare
4 and the City to review and approve a long range development plan which includes all
5 development of the site and site expansions anticipated for the following 20 years. The
6 approval of the Project violated the Long Beach City Municipal Code requirements because a
7 long range development plan was not prepared or submitted.

8 34. The approval of the Project violated section 21.25.106 of the Long Beach
9 Municipal Code which requires that findings be made that a proposed zone change will not
10 adversely affect the character, livability, or appropriate development of the surrounding area,
11 and that the proposed change is consistent with the goals, objectives and provisions of the
12 General Plan.

13 35. The approval of the Project violated section 21.25.306 of the Long Beach
14 Municipal Code, which requires that a finding be made that a proposed height variance
15 (“standards variance”) is for a site that is physically unique, that a denial will result in the
16 applicant experiencing hardships depriving it of substantial rights, and that the variance will
17 not cause substantial adverse effects upon the community.

18 36. The approval of the Project violated the 2010 Strategic Plan.

19 **FOURTH CAUSE OF ACTION**
20 **(Land and Water Conservation Fund Act Violations)**

21 37. Petitioner hereby incorporates by reference the allegations contained in
22 paragraphs 1 through 36, inclusive.

23 38. The Land and Water Conservation Fund Act (“LWCFA”), section 6(f)(3),
24 requires that no property acquired or developed with assistance under LWCFA shall be
25 converted to other than public outdoor recreation uses without the approval of the Secretary of
26 the Interior. The Secretary shall approve such conversion only if he finds it to be in accord
27 with the then existing comprehensive statewide outdoor recreation plan and only upon such
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1 conditions as he deems necessary to assure the substitution of other recreation properties of at
2 least equal fair market value and of reasonably equivalent usefulness and location. Scherer
3 Park is subject to LWCF, but no approval from the Secretary of the Interior was obtained
4 before approval of the Project. Therefore, the City violated its obligations under LWCF.

5 **FIFTH CAUSE OF ACTION**
6 **(Violation of the Park Preservation Act;**
7 **Public Resources Code Sections 5400 et Seq.)**

8 39. Petitioner hereby incorporates by reference the allegations contained in
9 paragraphs 1 through 38, inclusive.

10 40. California's Park Preservation Act requires a public entity to provide adequate
11 compensation when transferring park land to non-park purposes. The Board, by its approval
12 of the Project, transferred Park land to non-park purposes without providing replacement park
13 land or adequate compensation for the loss of park land, in violation of the Park Preservation
14 Act.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, petitioners pray for relief as follows:

17 1. For alternative and preemptory writs of mandate, commanding respondent to
18 set aside and vacate their certification of an EIR for the Project, and all approvals for the
19 Project;


20 3. For costs of the suit;

21 4. For attorney's fees pursuant to the Code of Civil Procedure Section 1021.5; and

22 5. For such other and further relief as the Court deems just.

23 Dated: August 22, 2001

24 CHATTEN-BROWN & ASSOCIATES

25 
26 Jan Chatten-Brown
27 Douglas P. Carstens
28 Attorneys for Petitioners
STOP and CEC