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

11 SURFRIDER FOUNDATION, an Incorporated
12 Association

13 Petitioner,

14 vs.

15 THE PORT OF LONG BEACH, CITY OF LONG
16 BEACH, and DOES 1 through 5, inclusive,

17 Respondents,

18 CARNIVAL CRUISE LINES; CARNIVAL
19 CORPORATION and DOES 1 through 5, inclusive,

20 Real Parties in Interest
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22
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24
25

) Case No.

PETITION FOR WRIT OF
MANDATE

(CALIFORNIA
ENVIRONMENTAL QUALITY
ACT; LONG BEACH CHARTER
AND MUNICIPAL CODE; and
COASTAL ACT)

INTRODUCTION

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3 1. This action challenges the approval by the Board of Harbor Commissioners
4 ("Board") for the Port of Long Beach ("the Port") of the Carnival Cruise Lines Relocation
5 Project ("Cruise Line Project" or "Project") based upon an inadequate Environmental
6 Impact Report ("EIR"). In order to proceed with the Cruise Line Project, the Port not only
7 overlooked crucial issues of water quality, air pollution and traffic problems, but has
8 overstepped its authority by approving a project on lands under the City Council's
9 jurisdiction.

10 2. Further, this action also challenges the approval by the Long Beach City
11 Council ("City Council") of an amendment to its zoning for a portion of the Queensway Bay
12 area without preparation of an EIR for that zoning amendment, relying instead upon the EIR
13 for the Cruise Line Project.

14 3. The Port violated the California Environmental Quality Act ("CEQA"), in that
15 the Port did not prepare an adequate Environmental Impact Report ("EIR"). Furthermore,
16 the decision of the Port to function as the lead agency, and approve any project, was
17 inappropriate, as such approval disregards a 1992 ordinance which gives the City, rather
18 than the Port, jurisdiction over the land where the Cruise Line Project is proposed. At the
19 time of its approval, the Port had no discretionary authority over the land in question because
20 it was in the exclusive jurisdiction of the City of Long Beach.

PARTIES

21
22 4. The Surfrider Foundation is an international, non-profit, environmental
23 organization dedicated to the protection and enjoyment of the world's oceans, waves and
24 beaches. Surfrider was established in 1984 to promote its goals through conservation,
25 activism, research and education. Surfrider is committed to preserving natural living and
26 non-living diversity and integrity of the coastal environment. The Foundation promotes the
27 right to free and open low-impact access to the world's coastlines, waves and beaches and it
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1 acts to preserve this right of access. Surfrider is dedicated to the protection, rehabilitation
2 and restoration of native coastal ecosystems and strives to be accurate and nonpartisan in its
3 communications with the public.

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

6 6. Respondent Port of Long Beach is a semi-autonomous department established
7 under the City Charter of the City of Long Beach. The Port claims to be the lead agency for
8 conducting environmental reviews with respect to this project under the California
9 Environmental Quality Act (CEQA). The Port certified the EIR, and approved this project
10 on November 13, 2000. It filed a Notice of Determination for the Cruise Line Project on
11 November 15, 2000, a copy of which is attached to this Petition as Exhibit A.

12 7. Real Party in Interest Carnival Cruise Lines and Carnival Corporation is a
13 foreign corporation whose principle address is 3655 N.W. 87th Ave. Miami, Florida.

14 **PROJECT DESCRIPTION AND HISTORY**

15 **The Long Beach Harbor and Port Master Plan.**

16 8. On December 19, 1978, the City Council of Long Beach by Ordinance
17 transferred jurisdiction over relevant portions of land in the Harbor to the jurisdiction of the
18 Port by Ordinance number C-5450.

19 9. The Port divided the Long Beach Harbor District into ten planning districts in
20 1978 as part of the Port Master Plan of Long Beach ("PMP"). The purpose of the PMP is
21 purportedly to provide a planning tool to guide future port developments. The PMP is kept
22 current through updates setting forth major changes to the Plan and clarifying the PMP's
23 goals and objectives for the 10 planning districts.

24 10. In 1986, the Board approved the Queensway Bay Rezoning and
25 Redevelopment Project. The rezoning for this planning district, which includes the site of
26 the proposed Cruise Line Project, became part of the City's Zoning Regulations for
27 Queensway Bay.

1 11. In 1987, the Long Beach City Council adopted Ordinance No. C-6356,
2 creating the Queensway Bay Planned Development District ("PD-21"). PD-21 was
3 originally numbered PD-2 but at all times relevant to this action is referred to by the City and
4 Port as PD-21. PD-21 covers all of Terminal H, adjacent submerged lands, and the land to
5 the south west of the terminus of the Los Angeles River. The creation of a planned
6 development district and ordinance for Queensway Bay was purportedly designed to provide
7 "a flexible planning mechanism related to the phased recreation-commercial development
8 planned at that time for the Queen Mary Hotel and adjacent shorelands along Queensway
9 Bay." (See Port of Long Beach Port Master Plan, pg. II-8.)

10 12. The City Council divided PD-21 into five sub-areas as part of Ordinance C-63-
11 56.

12 13. Land and water uses and development standards that are specified in PD-21
13 were intended to comply with Chapter 8 of the Coastal Act and with the PMP. PD-21 was
14 intended to insure that "the Port and City will provide specific guidelines for preserving the
15 landmark status for this area." (Port of Long Beach Port Master Plan, pg. II-8.)

16 14. The City of Long Beach General Plan assumes that the water and land use
17 composition within the Harbor area is separately formulated and adopted as the specific plan
18 of the Long Beach Harbor. The General Plan indicates that the responsibilities for planning
19 within the legal boundaries of the Harbor lies with the Board.

20 15. On November 12, 1992, the Board adopted ordinance No. HD-1605, which
21 transferred certain tide and reclaimed submerged lands, including the land at issue, to the
22 control of the City Council. HD-1605 ordained, in part, as follows:

23 Section 1: The Board hereby finds and determines that the title and
24 reclaimed submerged lands within the Harbor District of the City of Long Beach ("the
25 Lands") shown on the drawing attached hereto marked Exhibit A are not necessary for port
26 purposes or harbor development.

27 Section 2: The Board hereby transfers control of the Lands to the City
28 Council together with all City owned improvements situated on, under and above the Lands
and all leases, franchises, permits, licenses, contracts, and agreements (the "Agreements")
affecting said Lands to which the Board is a party or which otherwise encumber the Lands.

1 16. On information and belief, the Board's action with regard to PD-21 was
2 ratified

3 by the City Council on or about December 1992.

4 17. Long Beach City Charter section 1203(d) describes, as part of the powers and
5 duties of the Harbor Commission, the power to "control and have jurisdiction of that part of
6 the City hereinafter defined as the "Harbor District"....and to make and enforce in the Harbor
7 District the general rules and regulations, to the extent that may be necessary or requisite for
8 port purposes and Harbor development, and in carrying out the powers elsewhere vested in
9 the Commission; provided, however, that with the approval of the city council, the
10 Commission may , with the prior approval of the electors, relinquish to the City Council
11 control of portions of the Harbor District."

12 18. On November 13, 2000, the land at issue for the Carnival Cruise Lines
13 Relocation Project was, therefore, out of the Board's jurisdiction and wholly within the
14 jurisdiction of the City Council of the City of Long Beach. (Ordinance No. HD-1605.)

15 **Review And Approval of The Relocation Project.**

16 19. On February 9, 2000, the Carnival Corporation submitted an application for a
17 Harbor Development Permit relating to the relocation of Carnival Cruise Lines operations
18 from San Pedro to Pier H in PD-21. Such application was deemed complete on June 30,
19 2000.

20 20. The Project description includes: development of approximately 40,000 square
21 foot of the existing dome used for the Spruce Goose into a two-story terminal facility to be
22 used for passenger processing, baggage handling and U.S. Customs; construction of an
23 1,100 foot offshore pier; and dredging of approximately 15,000 cubic yards of sediment;
24 construction of a 1,500 car parking structure; utilities and landscaping; and modifications to
25 adjoining roadways and parking areas.

26 21. On August 14, 2000, the Port, acting by and through its Board, and claiming it
27 was lead agency under CEQA and the permitting authority under Chapter 8 of the
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1 California Coastal Act, caused to be prepared a combined Draft EIR and Application
2 Summary Report ("ASR") describing the Project.

3 22. On September 5, 2000, the Board conducted a public hearing on the adequacy
4 of the DEIR/ASR for the Project and received both written and oral comments including
5 comments from Petitioner Surfrider expressing concern over the Project causing a number of
6 problems, including but not limited to poor water quality, impacts on biological resources an
7 increase in noise pollution, added pressure on the sewer system and an aggravation of traffic
8 problems. Additionally, before the close of the public comment period, commenters
9 objected to the Port's action in excess of jurisdiction. A particular concern of Surfrider is
10 that the Project would require maintenance of the Long Beach Breakwater on the east side of
11 Pier J. The Long Beach Breakwater was originally constructed to protect the United States
12 Navy 6th Fleet, which is no longer stationed in Long Beach. Thus, the breakwater could be
13 reconfigured, which would vastly improve water quality, sand accretion, and wave action.
14 Surfrider supports reconfiguring of the Breakwater, and is deeply concerned that
15 construction of the Cruise Line Project at the proposed location, using the currently
16 proposed mooring techniques, would effectively preclude such removal or reduction from
17 being fairly considered.

18 23. Responses to written comments, including by those submitted by Surfrider and
19 some of its members, were released on November 3, 2000. A number of the responses to
20 comments were inadequate because they were not responsive to the comments, or provided
21 an incomplete response.

22 24. Based on an inadequate EIR, and without seriously considering Cruise Line
23 Project alternative locations or mooring techniques, the Board approved the Project on
24 November 13, 2000.

25 25. Acting within its jurisdiction and pursuant to the City's Municipal Code,
26 which requires zone changes to be reviewed by the Planning Commission before those
27 amendments are considered by the City Council, the Planning Commission of the City on

1 November 16, 2000, approved a zoning amendment for PD-21 to allow a cruise ship
2 passenger terminal as a permitted use within the entire Planned Development District. The
3 Planning Commission did not certify an EIR.

4 26. On December 12, 2000, the Long Beach City Council approved the
5 amendment to PD-21 to allow a cruise terminal as a permitted use within two of the sub-
6 areas of the PD-21. The issue of jurisdiction, having been raised by Surfrider member Don
7 May, was addressed by the City Council by the first reading of an ordinance to transfer
8 power and authority to enter a lease to the Board. The ordinance did not transfer the land
9 and submerged waters contained within PD-21 back to the jurisdiction of the Board.
10 However, only having had a first reading, and a second reading being required Municipal
11 Code and scheduled for December 19, 2000, the zoning code has not yet been amended.

12 27. Even if the ordinance is approved upon a second reading, Section
13 21.25.103(B)(2)(b) of the Long Beach City Municipal Code mandates that a change in
14 zoning that affects properties in the Coastal Zone must be "transmitted to the Coastal
15 Commission for a determination of consistency with the certified local coastal program or
16 amendment thereto. The change in the text or rezoning shall not be effective in the Coastal
17 Zone until after Coastal Commission approval."

18 EXHAUSTION OF ADMINISTRATIVE REMEDIES.

19 28. Petitioner has exhausted all available administrative remedies and has raised
20 each of the legal deficiencies asserted in this petition to the Port and City of Long Beach, as
21 required by Public Resources Code Section 21177.

22 COMPLIANCE WITH CEOA'S PROCEDURAL REQUIREMENTS.

23 29. A Notice of Determination was filed by the Board on November 15, 2000.
24 This action is filed within 30 days of the filing of the Notice of Determination by the Port, as
25 required by Public Resources code section 21167.

26 30. Petitioner has complied with the requirements of Public Resources Code
27 Section 21167.5 by mailing a written notice of commencement of this action to the Port and
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1 City of Long Beach, a copy of which is attached as Exhibit B.

2 31. Petitioner has advised the Port and City of Long Beach that Petitioner elects
3 to prepare the record of the proceedings relevant to the approval of this project, in
4 compliance with Public Resources Code Section 21167.6. A copy of that notice is attached
5 as Exhibit C.

6 32. Petitioner has complied with Public Resources Code Section 21167.7 by
7 filing a copy of the original petition with the California Attorney General. A copy of the
8 letter of notification is attached as Exhibit D.

9 **INADEQUATE REMEDY AT LAW**

10 33. Petitioner has no adequate remedy under law unless the Court grants the
11 requested writ of mandate requiring the Port and City of Long Beach to set aside its approval
12 of the project, EIR certification and Zone Amendment. In the absence of such remedy, the
13 respondent's approval will remain in effect in violation CEQA, the Coastal Act, the City's
14 charter and municipal code, and the Board's own agreement with City of Long Beach
15 regarding jurisdiction.

16 **FIRST CAUSE OF ACTION**

17 **(CEQA VIOLATIONS)**

18 34. Petitioner hereby incorporates by reference the allegations contained in
19 paragraphs 1 through 33, inclusive.

20 35. The Port of Long Beach's approval of the project constitutes a prejudicial
21 abuse of discretion in that there was not a good faith evaluation of impacts and alternatives
22 because the Port of Long Beach was already committed to the relocation of the Carnival
23 Cruise Lines, and would not consider alternative project locations for Carnival, nor would it
24 consider the no-project alternative. As a result, the EIR failed to comply with CEQA and
25 CEQA Guidelines.

26 36. The Project EIR is inadequate. The EIR includes, but is not limited to the
27 following deficiencies:

- 1 a. The failure to consider fully and analyze reasonable alternatives to relocation in
2 Long Beach Harbor;
- 3 b. The analysis of traffic and air quality impacts is inadequate because it
4 concludes that both impacts meet the criterion for significance and can not be mitigated to a
5 reasonable level, but fails to fully analyze the significance of these impacts;
- 6 c. The failure, under the analysis of water quality impacts, to consider the
7 Project's effect of foreclosing the possibility of reconfiguring of the Long Beach Breakwater,
8 thus irretrievably committing resources and foreclosing recreational opportunities;
- 9 d. The EIR failed to properly consider feasible project mitigation measures;
- 10 e. The EIR failed to adequately consider the visual and audio impacts of ordinary
11 ship maintenance such as cleaning, sewage disposal;
- 12 f. The EIR project description is erroneous in that it sets forth a map (p. I-3)
13 asserting Port jurisdiction over the area when in fact the City has jurisdiction; and
- 14 g. The FEIR failed to adequately respond to public comments.
- 15 h. The EIR failed to adequately consider the impacts of the project on biological
16 resources including but not limited to those caused by importation of non-native species and
17 disruption of established communities by dredging and spoil disposal.

18 37. In adopting the Statement of Overriding Considerations, the Port of Long
19 Beach adopted a number of findings not supported by substantial evidence, including, but not
20 limited to the conclusions that the Project complements the City of Long Beach's planning
21 goals regarding the Queensway Bay Project and the Aquarium of the Pacific.

22 38. The City Planning Commission and the City Council relied upon the Project
23 EIR in reviewing the environmental impacts of the amendment to the zoning code for
24 permitted uses in PD-21. However, the Project EIR does not consider the environmental
25 impacts of an amendment to the zoning ordinance that would allow cruise terminal berthing
26 facilities at other locations within sub-area 5 of PD-21 and modified other permitted uses
27 within sub-area 4. Thus, the City Council did not have an adequate EIR for purposes of
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1 reviewing the impacts of the amendment to PD-21.

2 **SECOND CAUSE OF ACTION**

3 **(ACTION IN EXCESS OF JURISDICTION; CHARTER VIOLATION)**

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

6 40. The approval by the Board exceeds its jurisdiction since jurisdiction over the
7 property at issue resides with the City Council of the City of Long Beach, pursuant to
8 Ordinance HD-1605.

9 41. The City Council, not the Board of Harbor Commissioners, has jurisdiction to
10 approve the Relocation Project. The Board's approval was, therefore, in excess of its
11 jurisdiction and should be voided for lack of jurisdiction.

12 **THIRD CAUSE OF ACTION**

13 **(MUNICIPAL CODE VIOLATIONS)**

14 42. Petitioner hereby incorporates by reference the allegations contained in
15 paragraphs 1 through 41, inclusive.

16 43. The approval of the Cruise Line Project by the Board violated Section
17 21.25.704(C) of the Long Beach City Municipal Code, which dictates that the City Council
18 "has the sole authority to act on the specific plan and proposed rezoning. If the council
19 approves the specific plan and zone change, the PD zone shall be indicated on the official
20 zoning map..." The Board's November 13, 2000 approval of the Project, therefore, is
21 ineffective.

22 44. The approval by the Board violated Section 21.37.060 of the Long Beach City
23 Municipal Code which requires site plan review for all development proposals within PD
24 districts "pursuant to Division V of Chapter 21.25" of the Code. This section mandates that a
25 Site Plan Review Committee "shall refer to the Planning Commission all planned
26 development project applications which vary from the general or specific use and
27 development standards but which are consistent with the intent of the particular planned
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1 development district." This procedure was not followed and therefore the Board's approval
2 is ineffective.

3 45. The Board approved the Project, which includes uses which are not permitted
4 sub-area 5 under Ordinance C-6356. The City Council has not approved this Project, and is
5 not scheduled to consider the Project despite the fact that the land and submerged lands on
6 which the Project is proposed to be located are within the City Council's jurisdiction.

7 46. The City Council's re-zoning of PD-21 to allow cruise line use affects property
8 in the Coastal Zone. The City re-zoned property in PD-21 but failed to transmit this re-
9 zoning to the Coastal Commission for a determination of consistency with the certified local
10 coastal program, as required by Municipal Code section 21.25.103(B)(2)(b).

11 **FOURTH CAUSE OF ACTION**
12 **(COASTAL ACT VIOLATIONS)**

13 47. Petitioner hereby incorporates by reference the allegations contained in
14 paragraphs 1 through 46, inclusive.

15 48. The City has an approved Local Coastal Plan. However, the LCP does not
16 include PD-21. The Port of Long Beach has an approved Port Master Plan. However, the
17 Port's Master Plan does not apply because the Port does not have jurisdiction over PD-21.
18 Under the Coastal Act, the City and Port of Long Beach may not approve development which
19 is inconsistent with these plans. (Public Resources Code §30600.5(c). Therefore, under the
20 Coastal Act, a permit is required before approval of the project. No such permit was
21 obtained.

22 49. On information and belief, because this project is outside the jurisdiction of the
23 Port, it is seaward of the tideline, and it is not included in an approved LUD or LCP, it
24 requires an original coastal permit.

25 50. The Port approval of the Project and the City's approval of the amendment to
26 the zoning code violates the Local Coastal Program and the Coastal Act for reasons, included
27 but not limited to the fact that implementation of the Project under the conditions of approval
28

1 development district." This procedure was not followed and therefore the Board's approval
2 is ineffective.

3 45. The Board approved the Project, which includes uses which are not permitted
4 sub-area 5 under Ordinance C-6356. The City Council has not approved this Project, and is
5 not scheduled to consider the Project despite the fact that the land and submerged lands on
6 which the Project is proposed to be located are within the City Council's jurisdiction.

7 46. The City Council's re-zoning of PD-21 to allow cruise line use affects property
8 in the Coastal Zone. The City re-zoned property in PD-21 but failed to transmit this re-
9 zoning to the Coastal Commission for a determination of consistency with the certified local
10 coastal program, as required by Municipal Code section 21.25.103(B)(2)(b).

11 FOURTH CAUSE OF ACTION

12 (COASTAL ACT VIOLATIONS)

13 47. Petitioner hereby incorporates by reference the allegations contained in
14 paragraphs 1 through 46, inclusive.

15 48. The City has an approved Local Coastal Plan. However, the LCP does not
16 include PD-21. The Port of Long Beach has an approved Port Master Plan. However, the
17 Port's Master Plan does not apply because the Port does not have jurisdiction over PD-21.
18 Under the Coastal Act, the City and Port of Long Beach may not approve development which
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20 Coastal Act, a permit is required before approval of the project. No such permit was
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25 50. The Port approval of the Project and the City's approval of the amendment to
26 the zoning code violates the Local Coastal Program and the Coastal Act for reasons, included
27 but not limited to the fact that implementation of the Project under the conditions of approval
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1 will fail to minimize adverse impacts and maintain and protect biological resources; disrupt
2 marine and wildlife habitats the associated dredging and spoils disposal plan; failing to
3 prepare a dredging and spoils disposal plan; and permitting the construction of facilities
4 which alter the natural shoreline but are not required to serve coastal-dependent uses.

5 51. The City's amendment of zoning to permit cruise line uses violates the Coastal
6 Act because it impermissibly modifies the City's approved Local Coastal Plan without a
7 consistency determination by the Coastal Commission.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, petitioners pray for relief as follows:

- 10 1. For alternative and peremptory writs of mandate, commanding respondents to
11 set aside and vacate their approval of the Carnival Cruise Lines Relocation Project,
12 certification of an EIR for the project, and amendment of zoning;
- 13 2. That the Court stay the effectiveness of the approval of the Carnival Cruise
14 Lines Relocation Project, EIR, and zoning amendment pending trial and the Court's decision
15 on the merits, and order respondent to suspend all activity pursuant to the approval that could
16 result in an adverse change or alteration to the physical environment, until respondent has
17 taken such action as shall be necessary to bring their environmental review and the project
18 into full conformance with the law.
- 19 3. For costs of the suit;
- 20 4. For attorney's fees pursuant to the Code of Civil Procedure Section 1021.5; and
21 5. For such other and further relief as the court deems just.

22
23 Dated: December 14, 2000

CHATTEN-BROWN & ASSOCIATES

24 
25 Jan Chatten-Brown
26 Douglas P. Carstens

27 Attorneys for Petitioner
28 Surfrider Foundation