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

12 LOS CERRITOS WETLANDS LAND)
13 TRUST,)

14 Petitioner,)

15 v.)

16 CITY OF LONG BEACH,)

17 Respondent.)

18 _____)
19 and DOES 1 to 10;)

20 Real Parties in Interest.)
21)
22)
23)
24)
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28)

CASE NO.:

(California Environmental Quality Act;
Planning and Zoning Law)

PETITION FOR WRIT OF MANDATE

1 **INTRODUCTION**

2 1. On September 19, 2017, over numerous public objections, the City of Long Beach
3 (“City”) approved the Southeast Area Specific Plan (“SEASP” or the “Project”), a land use plan
4 that would govern all land use decisions made in southeast Long Beach over the next several
5 decades. As approved, the Plan would permit the construction of 2.4 million square feet of
6 commercial development and 6,663 dwelling units in the SEASP area.

7 2. SEASP replaces the Southeast Area Development Improvement Plan (SEADIP),
8 the governing land use plan for southeast Long Beach. Petitioner supported updating SEADIP
9 to better protect Los Cerritos Wetlands. However, the resulting SEASP land use plan fails to
10 contain several important protections for wildlife and Los Cerritos Wetlands and instead
11 proposes taller buildings and greater density in this sensitive area.

12 3. SEASP would permit the construction of 7-story buildings up to 80 feet in height
13 in areas frequented by resident and migratory birds. Under SEASP, areas intended to serve as
14 buffers between wetlands and developed areas of the SEASP area would be as narrow as 25 feet
15 wide – far narrower than generally permitted by the Coastal Commission and state wildlife
16 agencies – and could contain public buildings, utilities, and other human uses. The reduced
17 intensity alternative would permit 1,164 more houses than permitted under SEADIP, an amount
18 of growth that cannot be accommodated by the existing environment and transportation
19 infrastructure. Recent density bonus and accessory use legislation means that the number of
20 dwelling units permitted in SEASP may increase by an additional 35 percent.

21 4. The environmental impact report (EIR) for the Project required by the California
22 Environmental Quality Act (CEQA) failed to adequately disclose and mitigate all of SEASP’s
23 likely significant adverse environmental impacts. For example, the EIR failed to disclose or
24 analyze the Project’s weekend traffic generation and improperly relies on an unenforceable
25 traffic demand management plan for large reductions in vehicle miles travelled. The EIR also
26 finds that the Project has no likelihood to adversely impact wildlife, despite the proximity of
27 Los Cerritos Wetlands.

1 **STATEMENT OF FACTS**

2 **The Project Site**

3 13. The Southeast Area Specific Plan (SEASP) area includes 1,486 acres of southeast
4 Long Beach, including the remaining Long Beach portions of Los Cerritos Wetlands, Los
5 Cerritos Channel, and Alamitos Bay.

6 14. Los Cerritos Wetlands are important for wildlife, including both resident and
7 migratory birds. Los Cerritos Wetlands are home to sensitive wildlife and special status species
8 that include the western yellow-billed cuckoo, Belding’s savannah sparrow, tricolored blackbird,
9 light-footed clapper rail, California least tern, coastal California gnatcatcher, least Bell’s vireo,
10 Santa Ana sucker, and Pacific green sea turtle.

11 15. Until approval of SEASP, the governing land use plan for southeast Long Beach
12 was the Southeast Area Development Improvement Plan (SEADIP), adopted in 1977.

13 **The Project**

14 16. SEASP would replace SEADIP as the specific plan for the project area. This
15 requires an amendment to the City’s Zoning Code to repeal the existing PD-1 SEADIP zoning
16 and adopt SP-2 SEASP Zoning. Three zone changes would be required to rezone parcels in the
17 SEASP area from PD-1 (SEADIP) to SP-2 (SEASP), to rezone Fire Station 14 as Institutional,
18 and to rezone 38 residential properties as R-1-S instead of PD-1. The SEASP Project also
19 removes references to PD-1 (SEADIP) from the City’s local coastal program and, therefore,
20 requires a local coastal program (LCP) amendment to be certified by the California Coastal
21 Commission. Additionally, as the City’s LCP is part of its General Plan, the Project requires a
22 General Plan amendment.

23 17. As approved, SEASP would permit 2.4 million acres of commercial development,
24 375 hotel rooms, and 6,663 dwelling units within the SEASP area. In addition to allowing 1,164
25 dwelling units more than allowed by the previous SEADIP Plan, the Project would increase the
26 maximum heights of buildings from 35 feet to 80 feet in areas known to be frequented by
27 migrating and resident birds.

28 18. Recent legislation permitting density bonuses and accessory uses essentially “by
right” could increase the number of houses permitted in SEASP by 35 percent beyond the

1 number approved by the City or analyzed in the EIR. This would be more development than the
2 environment and roadway infrastructure can accommodate.

3 19. While SEASP does contain some protections for wetlands, the Project defers
4 wetland delineations to future project-specific processes and would permit development and use
5 of areas intended as buffers between development and wetlands. SEASP also defines open
6 space to include commercial and private space within developments, including indoor gyms,
7 balconies, and porches that may not be publicly accessible.

8 **Processing of the Challenged Approval**

9 20. A Notice of Preparation (“NOP”) was prepared for the Project in 2015. Petitioner
10 provided scoping comments to the City in November 2015.

11 21. The draft EIR (DEIR) for the Project was released on July 20, 2016 with a 60-day
12 comment period that ended September 19, 2016. Petitioner and many other community groups
13 and community members submitted comments on the DEIR and requested additional analysis
14 and mitigation of potentially significant impacts on birds, Los Cerritos Wetlands, air quality,
15 and traffic. Petitioner’s comments included analysis submitted by expert traffic and biological
16 resources consultants.

17 22. The City recirculated the Transportation and Traffic portion of the EIR for 45 days
18 between February 17, 2017 and April 3, 2017. Petitioner again submitted expert analysis of a
19 traffic consultant in support of its comments on the recirculated portions of the EIR.

20 23. In May 2017, the City released the final EIR (FEIR) and responses to comments.
21 Petitioner again submitted comments to the City, articulating its concerns about tall buildings
22 near the wetlands, nighttime lighting, the need for enforceable buffer standards, and
23 development pressures on the wetlands caused by traffic congestion.

24 24. On June 1, 2017, the Planning Commission conducted a hearing on SEASP and
25 formally recommended city council approval of the reduced intensity alternative. Petitioner
26 and members of the public expressed concerns about increased traffic and density and
27 development pressures on the wetlands.

28 25. Shortly thereafter, the Planning Commission’s recommendation was appealed to

1 the City Council by Long Beach Citizens for Fair Development.

2 26. On September 19, 2017, the Long Beach City Council held a hearing on the
3 SEASP and on the appeal of the Planning Commission recommendation. Many community
4 members, as well as Petitioner, raised concerns about the Project's density, allowable building
5 heights, and the Project's impacts on traffic and wildlife residing and travelling through Los
6 Cerritos Wetlands. At the end of the hearing, the City Council voted unanimously in support of
7 approving SEASP.

8 27. The City Council adopted a resolution certifying the EIR, selecting the reduced
9 intensity alternative, making findings of fact, adopting a statement of overriding considerations,
10 and approving a Mitigation Monitoring and Reporting Program for the Southeast Area Specific
11 Plan. The City Council also adopted resolutions amending the City's Local Coastal Program,
12 establishing the Southeast Area Specific Plan, and directing the City to submit a request to the
13 Coastal Commission to certify the amendment to the Local Coastal Program. The City further
14 conducted the first reading of ordinances: (1) amending the Long Beach Municipal Code to
15 establish SEASP and repeal the existing PD-1 Southeast Area Development and Improvement
16 Plan (SEADIP); and (2) amending the Land Use District Map to reflect the establishment of
17 SEASP.

18 28. The City issued a Notice of Determination for the Project that was posted by the
19 County Clerk on September 21, 2017.

20 29. This action was timely filed.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
22 **AND INADEQUATE REMEDIES AT LAW**

23 30. Petitioner's members objected to the Project in the administrative process and fully
24 exhausted their administrative remedies. They wrote letters to the City and appeared at public
25 hearings raising the issues set forth herein.

26 31. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
27 unless this Court grants the requested writs of mandate and declaratory and injunctive relief. In
28 the absence of such remedies, the City's approval of the Project will proceed in violation of

1 state law.

2 32. Petitioner has complied with Public Resources Code section 21167.7 by filing a
3 copy of this petition with the California Attorney General with a proof of service. A copy of
4 that notice and proof of service is attached as Exhibit A.

5 33. Petitioner has complied with Public Resources Code section 21167.5 by providing
6 the City with notice of intention to commence the action. A copy of that notice is attached as
7 Exhibit B.

8 34. Petitioner elects to prepare the administrative record. A copy of that election is
9 attached as Exhibit C.

10 **FIRST CAUSE OF ACTION**

11 **(VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT)**

12 **(Failure to Properly Analyze and Mitigate Significant Impacts)**

13 35. Petitioner incorporates all previous paragraphs as if fully set forth.

14 36. CEQA requires the City to conduct adequate environmental review prior to
15 making any formal decision regarding projects subject to the Act. (CEQA Guidelines, 14 Cal.
16 Code Regs. § 15004).

17 37. CEQA requires public agencies first to analyze all of a project's reasonably
18 foreseeable environmental effects in the EIR and to analyze mitigation measures and
19 alternatives to the project. Because the City's approval of the project violates CEQA, the
20 approval must be set aside.

21 38. CEQA imposes upon the City a clear, present and mandatory duty to include all
22 feasible mitigation measures or adopt alternatives which would substantially lessen the
23 significant environmental effects of the Project.

24 39. The City did not adequately analyze or mitigate the significant impacts of the
25 Project. Public comments regarding these impacts were not sufficiently answered. Impacts that
26 were not properly analyzed or mitigated include, but are not limited to, the following:

27 //

1 **Biological Resources**

2 40. CEQA requires an EIR to disclose, analyze, and mitigate a project’s potentially
3 significant adverse impacts on wildlife.

4 41. Los Cerritos Wetlands are home to sensitive species such as the western yellow-
5 billed cuckoo, Belding’s savannah sparrow, bank swallow, tricolored blackbird, light-footed
6 clapper rail, California least tern, coastal California gnatcatcher, least Bell’s vireo, Santa Ana
7 sucker, and Pacific green sea turtle.

8 42. Biologists and state agencies recommend at least 100-foot buffers between urban
9 development and wildlife areas. Despite including all of Long Beach’s remaining Los Cerritos
10 wetlands in the SEASP area, the Project would permit buffers between wetlands and developed
11 areas to be as narrow as 25 feet wide.

12 43. Furthermore, SEASP would permit the construction of interpretive centers,
13 utilities, and bicycle trails within buffers, as well as the use of these buffers for human
14 activities. The EIR fails to analyze the potentially significant adverse impacts of these activities
15 on the continued viability of the wetlands and wildlife areas.

16 44. Additionally, if used for development and human use, these areas would not
17 actually serve as buffers. Accordingly, the EIR’s conclusions that buffers would serve as
18 mitigation and prevent harm to biological resources lack substantial evidence.

19 45. Development within the area of southeast Long Beach contemplated by SEASP
20 has the potential to disrupt circadian rhythms of wildlife in the Los Cerritos Wetlands and other
21 adjacent areas, and to attract migratory birds to artificial light sources. Millions of migratory
22 birds are killed each year after being attracted to artificial light sources.

23 46. The EIR relies on a “lights out for birds” program to conclude that the Project will
24 not have adverse impacts related to nighttime lighting. However, participation in this program
25 is voluntary and not guaranteed to occur. Thus, the EIR fails to disclose and mitigate the
26 potentially adverse impacts of nighttime lighting on birds.

27 47. SEASP would permit the construction of 7-story, 80-foot-tall buildings in areas
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1 frequented by birds, if hotel uses are included in the development and undefined public benefits
2 are provided. The EIR fails to adequately disclose, analyze, or mitigate the potential impacts of
3 these tall developments on sensitive bird species that frequent Los Cerritos Wetlands, the Los
4 Cerritos Channel, or Alamitos Bay.

5 48. SEASP and the EIR fail to consider daily travel of herons, egrets, and other water
6 birds between Alamitos Bay and the Los Cerritos Wetlands that would be disrupted by the
7 placement of tall buildings between the two. These impacts should have been disclosed,
8 analyzed, and mitigated in the EIR but were not.

9 **Land Use**

10 49. The City is required by CEQA to analyze any inconsistencies of the proposed
11 project with applicable regional plans, including the City's General Plan.

12 59. The Project's lack of consistency with the General Plan's Land Use Element and
13 Mobility Element are violations of Government Code section 65300.5's requirement to ensure
14 projects are consistent with the General Plan and significant land use impacts cognizable under
15 CEQA.

16 60. SEASP's high-density residential and retail uses are inconsistent with the low-
17 density residential uses provided in the governing Land Use Element of the General Plan. The
18 1989 Land Use Element states, "Retaining this overall low density is necessary for preserving
19 the quality of the SEADIP environment."

20 61. SEASP is also inconsistent with the Mobility Element of the General Plan,
21 particularly Mobility Element Policy 1-3 concerning making pedestrians feel safer and more
22 comfortable walking along Pacific Coast Highway. The Project includes wider roadways that
23 are associated with less pedestrian use and longer, more dangerous street-crossing times.

24 62. These are significant land use impacts that were required to be analyzed in the
25 EIR, but were not.

26 **Traffic**

27 63. The staff report prepared for the City Council hearing on the Project
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1 acknowledges, “traffic congestion within the SEASP is serious.”

2 64. Even so, the EIR and underlying traffic impact analyses fail to disclose important
3 information about the SEASP Project’s traffic generation. For example, the EIR fails to
4 disclose the number of weekend peak trips that would be generated by the Project. This is
5 significant, as the SEASP area is coastal and a weekend destination. The EIR’s failure to
6 disclose and analyze the likely significant adverse impact of weekend peak trip generation
7 violates CEQA.

8 65. The EIR similarly fails to disclose existing weekend baseline conditions and fails
9 to evaluate cumulative traffic conditions at Project buildout in 2035. An accurate baseline is
10 required to ensure that the Project’s likely environmental impacts are neither exaggerated nor
11 obscured. Mere projections of baseline information are insufficient for baseline analysis.
12 (*Fairview Neighbors v. County of Ventura*, (1999) 70 Cal.App.4th 238; *Save Our Peninsula*
13 *Committee v. Monterey Bd. of Supervisors*, (2001) 87 Cal.App.4th 99 [CEQA “requires that the
14 preparers of the EIR conduct the investigation and obtain documentation to support a
15 determination of preexisting conditions.”]). *Citizens for East Shore Parks v. State Lands*
16 *Commission*, (2011) 202 Cal.App.4th 549 held the proper baseline for analysis of
17 environmental impacts is “what [is] actually happening,” not what might happen or should be
18 happening. Failure to include this information in the EIR results in an environmental document
19 with omissions that preclude proper mitigation and informed decision-making.

20 66. Although the recirculated DEIR claimed to discuss seven additional intersections,
21 no level of service calculations were included in the EIR for these intersections, and the traffic
22 counts for these intersections were omitted from the EIR appendices. Additionally, the traffic
23 counts for these intersections were taken at different times of and under different conditions,
24 without adjustments to compensate for seasonal variations. Thus, the EIR’s discussion of these
25 intersections cannot provide substantial evidence for any conclusions about the Project’s likely
26 impact on traffic or the efficacy of mitigation. Other deficiencies of the EIR’s traffic analysis
27 include, but are not limited to:

1 67. The EIR fails to provide evidence that the Project would have a beneficial impact
2 on bicycle facilities, given that the EIR does not address additional rights of way or the
3 elimination of motor vehicle traffic lanes that would be required to accommodate Class IV
4 Cycle tracks on Pacific Coast Highway and Studebaker Road or Class II bicycle lanes on 2nd
5 Street, Shopkeeper Road, and Marina Drive.

6 68. The EIR’s conclusion that the Project’s bicycle and pedestrian improvements
7 would reduce vehicle generation by 5 percent is unsupported, as is the assertion that the
8 Project’s vehicle miles travelled would be reduced by 40 percent.

9 69. The RDEIR fails to fully define the portion of Katella Avenue that would be
10 impacted by the Project.

11 70. The EIR relies on an ill-defined and unenforceable Traffic Demand Management
12 program to conclude the Project would reduce per capita vehicle miles travelled by 19 percent.
13 Thus, the Project’s true traffic impacts are likely understated.

14 71. Further, the EIR fails to evaluate the effectiveness of the Traffic Demand
15 Management strategies because they are not disclosed in the EIR. Environmental documents
16 must evaluate the efficacy of mitigation measures. (*San Joaquin Raptor Rescue Center v.*
17 *County of Merced* (2007) 149 Cal.App.4th 645.)

18 72. As analyzed in the EIR, the Project would mitigate significant traffic impacts at
19 only one of 18 intersections in the year 2035. The City dismisses other mitigation as
20 infeasible.

21 73. The City cannot legally conclude that traffic impacts are significant and
22 unavoidable until after it has attempted to impose all feasible alternatives and mitigation
23 measures. Only after specific traffic measures or alternatives have been identified and
24 evaluated can the City dismiss them as infeasible. “CEQA does not authorize an agency to
25 proceed with a project that will have significant, unmitigated effects on the
26 environment...unless the measures necessary to mitigate those effects are truly infeasible.”
27 (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal. 4th 341,
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1 368.) Substantial evidence is required to support any conclusion of infeasibility, but was not
2 presented in the EIR.

3 74. The mitigation for the Project’s significant impacts is not concrete and
4 enforceable, as required. (Pub. Res. Code 21081.6(b); *Lincoln Place Tenants Ass’n v. City of*
5 *Los Angeles* (2007) 155 Cal. App. 4th 425, 445). Vague and unenforceable mitigation
6 requirements violate CEQA.

7 75. Instead of providing timelines for the implementation of improvements that
8 would be required to mitigate Project traffic, the EIR finds, “Public realm improvements would
9 occur as funding becomes available.” (DEIR p. 3-18.) These improvements are not tied to any
10 particular project, the development of any particular area, or performance standards of any kind.

11 76. The EIR concludes that the Project will have a less than significant impact on
12 emergency access because traffic and circulation components of the Project would be designed
13 in accordance with applicable design standards. However, the EIR fails to account for the fact
14 that 12 of 21 study intersections will operate at LOS E or F during one or both peak hours in
15 2035 if the Project is implemented

16 77. The EIR also fails to provide analysis of impacts to emergency vehicles under
17 future, with-Project conditions, despite existing congestion and delays in the Project area.
18 Thus, the EIR fails to disclose a significant impact on human beings, as well as a significant
19 impact related to traffic and the provision of emergency services in the SEASP area.

20 78. The EIR also concludes that adding traffic to some intersections will improve
21 traffic circulation and levels of service. These conclusions lack substantial evidence.

22 79. The EIR fails to include any traffic mitigation that will actually be implemented,
23 as the EIR acknowledges that nearly all of the proposed traffic mitigation relies on outside
24 agencies or is otherwise infeasible.

25 80. The EIR’s failure to disclose, analyze, and mitigate the project’s traffic impacts
26 violates CEQA.

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1 **Air Quality and Greenhouse Gases**

2 81. Petitioner’s traffic consultant identified omissions in the Project’s traffic impact
3 analysis. The EIR’s failure to disclose all of the Project’s trip generation results in its failure to
4 quantify all of the Project’s air emissions, particularly those generated by increased traffic.

5 82. Increases in ecosystem nitrogen, such as those emitted by motor vehicles, can
6 cause adverse impacts to wetlands. The Project’s potential to harm wetlands by increasing the
7 emissions of motor vehicles was not disclosed, analyzed, or mitigated in the EIR.

8 83. The SEASP Project will permit construction of 300,000 square feet of new
9 commercial development and 1,164 new dwelling units but does not require this development
10 to be net zero for energy use for greenhouse gas generation even though it is currently feasible
11 to do so. The EIR therefore fails to adequately disclose, analyze, and fully mitigate SEASP’s
12 impacts due to climate change.

13 84. The EIR also fails to include a health risk assessment (HRA) that incorporates the
14 most recent OEHHA Guidance, adopted by the South Coast Air Quality Management District
15 prior to the City’s approval of SEASP. For example, SCAQMD staff estimate that a six-month
16 construction project for a typical one-acre office project could cause a significant HRA impact
17 and adversely affect the health of children or the elderly.

18 85. The SEASP Project encompasses 1,472 acres of the City of Long Beach and
19 proposes the construction of 1,164 new houses and 300,000 new square feet of retail and
20 commercial space. The construction that this will entail will result in significant construction
21 and operational air quality impacts, which must be carefully calculated, analyzed, and
22 mitigated.

23 **Alternative Analysis**

24 86. CEQA prohibits approval of a project with adverse environmental impacts if
25 feasible alternatives are available. (CEQA Guidelines § 15021(a)(2).) An EIR must evaluate a
26 reasonable range of alternatives to SEASP. (*Laurel Heights Improvement Association v. Board*
27 *of Regents*, 47 Cal.3d at 400; Guidelines § 15126.6(a).) “[T]he discussion of alternatives shall
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1 focus on alternatives to the project or its location which are capable of avoiding or substantially
2 lessening any significant effects of the project, even if these alternatives would impede to some
3 degree the attainment of the project objectives, or would be more costly.” (CEQA Guidelines §
4 15126.6(b).)

5 87. The EIR admits SEASP implementation will cause significant and unavoidable
6 impacts on air quality, cultural resources, greenhouse gas emissions, noise, and traffic, in
7 addition to likely significant but undisclosed impacts on biological resources. Thus, the EIR’s
8 alternatives analysis was required to focus on alternatives that would reduce or avoid the
9 Project’s significant air quality, cultural resources, greenhouse gas, noise, and traffic impacts.

10 88. The EIR’s failure to admit likely significant impacts to biological resources has
11 resulted in the EIR’s failure to analyze alternatives to the Project that are designed to reduce the
12 Project’s impacts on biological resources. Such alternatives would include a development
13 footprint with wider buffers, and reduced building heights along flyways and near wetlands.

14 89. The EIR analyzes two “no project” alternatives, a reduced intensity alternative,
15 and a reduced height alternative. The reduced intensity alternative would permit slightly less
16 development in the SEASP area, but would still allow buildings in excess of 35 feet in height
17 adjacent to wetlands. The reduced height alternative would permit the same maximum amount
18 of development as the proposed SEASP. This allegedly reduced height is still several stories
19 higher than is currently permitted under SEADIP and was not crafted to reduce the Project’s
20 significant but undisclosed impacts on biological resources.

21 90. The EIR’s alternatives analysis appears reverse-engineered to favor the SEASP
22 project. For example, with regard to aesthetics, the EIR strangely finds that the No
23 Project/Adopted PD-1 (SEADIP) alternative, which has a height limit of 35 feet, will have
24 greater aesthetic impacts than SEASP, which would permit development up to 75 feet. The
25 EIR reasons that SEADIP would have greater adverse aesthetic impacts because “it would not
26 enhance view corridors.” The EIR claims SEADIP would somehow have greater adverse
27 aesthetic impacts because it would not construct a tall building that would limit scenic vistas to
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1 artificial view corridors. Substantial evidence does not support the EIR's conclusion.

2 91. The EIR wrongly claims SEADIP does not meet Project objectives. The project
3 objectives for SEASP are: (1) Implement projects that give equal consideration to planning,
4 environmental, and economic feasibility; (2) Balance responsible growth with resource
5 preservation through a flexible land use plan; (3) Provide clear standards and guidelines to
6 encourage development that respects the wetlands, protects views, and creates a sense of place;
7 (4) Expand multimodal transportation options; (5) Provide options to increase public
8 connectivity to open space; and (6) Identify and plan for enhanced gateway and landmark
9 locations. (DEIR p. 7-3.) Nothing prevents the SEADIP from satisfying these objectives,
10 although the EIR claims otherwise. SEADIP does not prevent implementation of future
11 projects that give equal weight to planning, environmental, and economic considerations.
12 SEADIP provides a variety of land uses as well as wetland buffers. Projects could easily be
13 approved under SEADIP that increase multimodal transportation, connectivity to public space,
14 and gateway monumentation.

15 **Statement of Overriding Considerations**

16 92. When a project will cause significant and unavoidable impacts, CEQA requires
17 adoption of a Statement of Overriding Considerations. (Pub. Resources Code § 21081.) The
18 City may not adopt a Statement of Overriding Considerations without making a finding,
19 supported by substantial evidence, that SEASP incorporates all feasible mitigation or
20 alternatives. (Guidelines §§ 15043, 15093(b).)

21 93. The EIR lacks the requisite substantial evidence that significant traffic, air
22 quality, biological resources and other environmental impacts associated with development
23 allowed by the SEASP are mitigated by all feasible mitigation measures. Adverse traffic
24 impacts are significant and unavoidable.

25 94. Feasible and effective mitigation measures, such as incorporation of a baseline
26 land use allocation policy, elimination of 7-story buildings in the SEASP area, and the
27 prohibition of intense, human uses of buffer areas, were suggested by Petitioner but rejected by
28

1 the City.

2 95. Additional measures, such as the traffic demand management program and
3 wetlands delineations, have been deferred to a future time. Without performance standards,
4 these mitigation measures are both vague and unenforceable, and impermissibly deferred.
5 (*Endangered Habitats League v. County of Orange* (2005) 131 Cal. App. 4th 777, 793-94;
6 CEQA Guidelines § 15126.4(a)(1)(B).)

7 96. The City also rejected feasible alternatives to the Project, such as a version of the
8 reduced intensity alternative with lower height limits or inclusion of a baseline density
9 allocation, suggested by Petitioner.

10 97. The City cannot support the findings required to adopt a Statement of Overriding
11 Considerations for the SEASP Project.

12 **Responses to Comments**

13 98. CEQA requires the City to respond to the public’s comments and questions with
14 “reasoned, good faith analysis.” (CEQA Guidelines § 15088.) When a comment raises a
15 significant environmental issue, the lead agency must address the comment in detail, giving
16 reasons why the comment was not accepted.

17 99. The level of detail of responses to comments must be commensurate with the
18 level of detail of the comments. (*Friends of the Eel River v. Sonoma County Water Agency*
19 (2003) 108 Cal.App.4th 859, 878 [“the determination of the sufficiency of the agency's
20 responses to comments on the draft EIR turns upon the detail required in the responses”].)

21 100. The final EIR failed to respond adequately to comments raised in Los Cerritos
22 Wetlands Land Trust’s comment letters, including, but not limited to:

23 101. Comment A7-26 requests preparation of a Health Risk Analysis (HRA) given that
24 the Project would permit construction of 2.4 million square feet of commercial development
25 and 6,663 dwelling units on 1,472 acres, and chronic exposure to diesel particulate matter
26 generated by construction could cause adverse impacts on human health. Response to comment
27 A7-26 claims no such HRA is necessary because LST analysis is better applicable to short-term
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1 construction impacts of individual projects. However, the SEASP Project is a long-term, not a
2 short-term project. This is not the good faith response required by CEQA.

3 102. Comment A7-23 is a concern about emergency access due to greater traffic
4 congestion. Response to Comment A7-23 states, “emergency responders should not be
5 significantly impacted” because “the law requires vehicle traffic to yield right of way and drive
6 to the right side of the roadway.” (RTC p. 3-26.) City traffic often results in situations where
7 there is too much congestion for vehicles to move to pull to the side and allow emergency
8 vehicles to pass. Without actual analysis of whether emergency responders will be able to
9 maintain appropriate response times, the EIR is inadequate.

10 103. In Comment A18-8, traffic engineer Tom Brohard noted that the revised Traffic
11 Demand Management Plan lacks effective enforcement measures or penalties for
12 noncompliance. Response A18-8, points to goals and monitoring but not to penalties or
13 required actions if targets are not met by SEASP.

14 104. Response to Comment A18-9 does not provide a satisfactory explanation for the
15 revised traffic impact analysis’ failure to include judgments to compensate for seasonal
16 variations in traffic counts performed at different times of year.

17 105. As pointed out by Tom Brohard and Associates in his comments on both the
18 DEIR and the revised traffic impact analysis, the SEASP EIR fails to acknowledge, quantify,
19 analyze, or mitigate the additional weekend peak hour trips that will be generated by SEASP’s
20 thousands of new housing units and 300,000 square feet of new retail and commercial uses.
21 The Response to Comments directs a reader to Comment A7-103. However, A7-103 merely
22 states that fewer significant impacts would be likely to occur on weekends, not that they will
23 not occur. This missing information is required to be included in the EIR.

24
25 **SECOND CAUSE OF ACTION**

26 **(VIOLATION OF STATE PLANNING AND ZONING LAW)**

27 **(Government Code §65300 et. seq.)**

28 106. Petitioner incorporates all previous paragraphs as if fully set forth.

1 107. A City’s general plan is the “‘constitution’ for future development” located at the
2 top of “the hierarchy of local government law regulating land use.” (*DeVita v. County of Napa*
3 (1995) 9 Cal.4th 763, 773.) All land use approvals in the City must be consistent with the
4 General Plan.

5 108. Any project that obstructs implementation of the general plan’s goals and policies
6 is inconsistent with the general plan and may not be lawfully approved. (*Napa Citizens for*
7 *Honest Gov’t v. County of Napa* (2001) 91 Cal.App.4th 342, 378; *Families Unafraid to Uphold*
8 *Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.)

9 109. The City violated state planning and zoning law when it approved the Project
10 because the Project is incompatible with the General Plan and related development ordinances,
11 because it does not meet their development standards and goals, examples of which are
12 described in the following paragraphs.

13 110. The City of Long Beach requires development in the City to be consistent with
14 the General Plan.

15 111. SEASP recognizes an aspiration to “implement” the goals and policies of the
16 City’s General Plan Update and claims to have been designed to be consistent with the City’s
17 General Plan goals and policies.

18 112. SEASP’s high-density residential and retail uses are inconsistent with the low-
19 density residential uses provided in the governing Land Use Element of the General Plan. The
20 1989 Land Use Element states, “Retaining this overall low density is necessary for preserving
21 the quality of the SEADIP environment.”

22 113. SEASP is also inconsistent with the Mobility Element of the General Plan,
23 particularly Mobility Element Policy 1-3 concerning making pedestrians feel safer and more
24 comfortable walking along Pacific Coast Highway.

25 114. State law requires a general plan to contain certain elements and meet certain
26 requirements. (Gov’t Code §§ 65300 *et seq.*; *Camp v Board of Supervisors* (1981) 123
27 Cal.App. 3d 334, 348.)

28 115. A general plan’s land use element must contain standards of population density
and building intensity. (*Twain Harte Homeowners Association v. County of Tuolumne* (1982)

1 138 Cal.App.3d 664, 699; Gov't Code § 65302.)

2 116. The policies and elements contained within a general plan must also be internally
3 consistent, or “correlated,” if they are to be implemented. (*Concerned Citizens of Calaveras*
4 *County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 99-103; Gov't Code § 65300.5.)

5 117. A city cannot approve a new development project that “implicates” key defects in
6 the general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d
7 1176, 1188.)

8 118. Key defects of the City’s General Plan include land use and mobility elements
9 that are not properly correlated and the omission of required information concerning public
10 safety and sea level rise. Any approval made pursuant to an inadequate general plan is
11 considered invalid at the time of approval.

12 119. The City has recognized that the update of the Land Use and Urban Design
13 Element “is necessary to meet legal mandates for a current General Plan consistent across all of
14 its elements.”

15 120. The City’s General Plan contains elements last updated in 1989 (land use), 1975
16 (scenic routes and public safety), and 1973 (open space).

17 121. Since the City last updated the Land Use and Urban Design Element in 1989,
18 California has mandated the inclusion of numerous legal requirements. The existing Land Use
19 Element lacks consistent and adequate population data and related planning projections or
20 consistent standards for population density and building intensity. The Land Use Element
21 further fails to mention Los Cerritos Wetlands.

22 122. The Project will result in large population increases in the SEASP area, as well as
23 generate traffic, noise, and impacts on the wetlands, thereby implicating these deficiencies in
24 the Land Use Element. It cannot be lawfully approved.

25 123. The General Plan’s Land Use and Mobility Elements are not properly correlated.
26 The land uses described in the 1989 Land Use Element are not correlated with the 2013
27 Mobility Element’s circulation plans. The Project will permit thousands of new houses and
28 300,000 square feet of new commercial development, in addition to thousands of new vehicle
trips per day. The Project’s new land uses and impacts on mobility are evident. Thus, the

1 Project implicates this deficiency of the General Plan and cannot be lawfully approved.

2 124. The City's 1975 Public Safety Element fails to discuss sea level rise and its
3 obvious public safety implications for the low-lying, coastal SEASP area that will add
4 significant population and development under the Project. SEASP implicates this deficiency.

5 125. The General Plan's Noise Element lacks current noise contours for the SEASP
6 area. The Project will permit thousands of new houses and 300,000 square feet of new
7 commercial development, in addition to thousands of new vehicle trips per day. The
8 construction and operation of the Project will generate large amounts of noise. Accordingly,
9 SEASP implicates this deficiency of the General Plan and cannot be lawfully approved.

10 126. The City's 1973 Conservation Element is out of date and fails to contain legally
11 required information about flooding, the wetlands, and sea level rise. All of this missing
12 information is implicated by the SEASP project, which would govern development in and
13 adjacent to these important conservation areas.

14 127. The City's Open Space Element lacks the open space action plan required by
15 Government Code section 65564, meaning the SEASP project cannot be assessed for
16 consistency with this absent plan. As development of open space and conservation areas, the
17 Project implicates this General Plan deficiency and cannot be lawfully approved.

18 128. The General Plan also fails in other ways implicated by SEASP, including, but
19 not limited to:

20 129. Land use, transit, and infrastructure are not correlated.

21 130. The planned uses and essential infrastructure, including emergency access due to
22 congestion in the SEASP, sea level rise-related infrastructure, and transit are not timely
23 correlated; and

24 131. The planned land uses are not correlated with timely provision of services and
25 utilities.

26 **PRAYER FOR RELIEF**

27 In each of the respects enumerated above, Respondent has violated its duties under law,
28 abused its discretion, failed to proceed in the manner required by law, and decided the matters

1 complained of without the support of substantial evidence. Accordingly, the certification of the
2 EIR and the approval of the Project must be set aside.

3 WHEREFORE, Petitioner prays for relief as follows:

4 1. For an alternative and peremptory writ of mandate, commanding Respondent:

5 A. To set aside and vacate its certification of the EIR supporting the Project;

6 B. To set aside and vacate any approvals for the Project based upon the EIR
7 supporting the Project;

8 C. To set aside and vacate any approvals for the Project based on consistency
9 with the General Plan;

10 D. To set aside and vacate any approvals for the Project that implicate
11 deficiencies in the General Plan or correlation of its elements; and

12 E. To prepare and certify a legally adequate EIR for the project so that
13 Respondent will have a complete disclosure document before it that identifies for the decision-
14 makers and public the potential significant impacts of the Project, and that enables them to
15 formulate realistic and feasible alternatives and mitigation measures to avoid those impacts;

16 2. For an order enjoining Respondent from taking any action to implement any
17 portion of the Project or to develop or alter the Project site in any way that could result in a
18 significant adverse impact on the environment unless and until a lawful approval is obtained
19 from Respondent after the preparation and consideration of an adequate EIR and the resolution
20 of deficiencies in the General Plan implicated by the Project;

21 3. For costs of the suit;

22 4. For reasonable attorneys' fees; and

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

24
25 DATE: October 19, 2017

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS LLP

26
27 By: _____
Michelle N. Black
28 Attorneys for Petitioner

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