



Chatten-Brown, Carstens & Minter LLP

2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
www.cbcearthlaw.com

Hermosa Beach Office

Phone: (310) 798-2400

Fax: (310) 798-2402

San Diego Office

Phone: (858) 999-0070

Phone: (619) 940-4522

Douglas Carstens

Email Address:

dpc@cbcearthlaw.com

Direct Dial:

310-798-2405

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Via email (cityclerk@longbeach.gov; citymanager@longbeach.gov;
district1@longbeach.gov; district2@longbeach.gov; district3@longbeach.gov;
district4@longbeach.gov; district5@longbeach.gov; district6@longbeach.gov;
district7@longbeach.gov; district8@longbeach.gov; district9@longbeach.gov;
mayor@longbeach.gov)

Mayor Robert Garcia

Council Members Mary Zendejas, Cindy Allen, Suzie Price, Daryl Supernaw, Stacy
Mungo, Suely Saro, Roberto Uranga, Al Austin, Rex Richardson

City Clerk Monique De La Garza

City Manager Tom Modica

Long Beach City Hall

411 W. Ocean Blvd.

Long Beach, CA 90802

Re: April 13, 2021 City Council Hearing, Agenda Item 8 (21-0308, 21-
0309): Appeal of Planning Commission Approval of Pacific Place Project,
3701 Pacific Place and 3916-4021 Ambeco Road (Mitigated Negative
Declaration-10-19-20)

Dear Mayor, City Council Members, City Manager, and City Clerk,

On behalf of the Riverpark Coalition, The River Project, and LA Waterkeeper, we submit these comments opposing the Planning Commission's approval of the Pacific Place Project ("Project") as proposed and the City's reliance on a mitigated negative declaration (MND) prepared for it. Riverpark Coalition is a collection of community groups and individuals including residents of western Long Beach. This community-based coalition works to promote public-serving open space in nature-deprived areas of western Long Beach. The River Project is a non-profit organization dedicated to planning

and action to protect, reclaim, and restore vital ecosystems in Los Angeles County. The River Project's mission is to realize a regenerative, equitable, just, and climate-resilient Los Angeles through evidence-based watershed planning, and positive action that provides local government and communities with tools to safely adapt to rapidly changing conditions. LA Waterkeeper is a non-profit organization that fights for the health of the region's waterways, and for sustainable, equitable and climate-friendly water supplies. LA Waterkeeper supports the restoration of the LA River in a way that maximizes ecological health while safeguarding local communities.

Riverpark Coalition appealed the Planning Commission's December 17, 2020 approval of the Project MND because of numerous flaws in the environmental review for the Project. We incorporate by reference our initial letter opposing the Project MND, submitted on November 16, 2020. (Exhibit ("Exh.") A.) In addition to the objections stated in that letter, we request that the City Council grant our appeal for the below reasons.

I. The Project Will Have Significant Public Health and Environmental Justice Impacts.

Development of the Project will have numerous significant environmental impacts that must be studied in an EIR, as outlined below and in our previous letter to the Planning Commission. (Exh. A.) Many of these impacts will have significant environmental justice consequences. The Project Site is located on a site formerly used for oil production activities, including oil wells and oil brine treatment. (Exh. B, Project MND, p.108.) As discussed further below in Sections II, III, and VIII, disturbance of the property in order to develop the Project Site will lead to further surface and groundwater contamination in the vicinity of the Project Site. The City must act to grant this appeal and prevent the site from becoming another disaster like the Exide Battery Facility, which poisoned communities in East Los Angeles. (Exh. C, Jessica Garrison, "*Exide ordered to clean up toxic substances near Vernon plant,*" LA Times, Dec. 18, 2013, available at: <https://www.latimes.com/local/la-xpm-2013-dec-18-la-me-exide-20131219-story.html>; Exh. D, Tony Barboza, "*Auditor slams California for Exide cleanup delays, says cost could reach \$650 million,*" LA Times, Oct. 27, 2020, available at:

<https://www.latimes.com/california/story/2020-10-27/auditor-slams-states-management-exide-cleanup-says-it-may-cost-650-million>.) Instead of installing a cap on the contaminated site, which we do not believe will be sufficient to prevent contamination and leaching into surface and groundwater, the City and DTSC must commit to a full cleanup and remediation of the site to protect the public health and safety of residents of western Long Beach.

We are particularly concerned with the grading that has already been done on the site. The DTSC Draft Response Plan indicates twelve areas of elevated concentrations of toxins on the site, including arsenic, total petroleum hydrocarbon (“TPH”), and lead. (Exh. E, DTSC Response Plan, pp. 139, 196, available at https://www.envirostor.dtsc.ca.gov/public/community_involvement/1460157096/LBIP-OOI_3rd%20DRAFT%20Response%20Plan_10-15-2020_Part%201%20of%202.pdf.) The areas of elevated concentrations are distributed across the site. (Exh. E, DTSC Response Plan, p. 196.) When the developer graded the site, those toxins were likely dispersed, impacting the health and safety of the adjacent community. Los Cerritos Elementary School, a public park and multiple residences are adjacent to the Project site.

Further, the DTSC Draft Response Plan’s discussion on exposure pathways did not provide notice that this site is but a few hundred feet from an elementary school and Los Cerritos Park, frequented by residents and their children. (Exh. E, DTSC Response Plan, p. 161.) No evaluation was done at these vulnerable locations. A full EIR is required to establish the baseline environmental setting and analyze impacts to these sensitive receptors.

II. The Tookey Parcel, Adjacent to the Project Site, Contains Toxic and Hazardous Substances, and Development of the Project Site would Exacerbate Risks from These Substances.

The Project Site is located in an area unsafe for development like the Project. The Tookey Parcel is a 0.25 acre parcel located on Ambeco Road and adjacent to 3701 Pacific Place, at the Project site. (Exh. F, Roux Associates, Inc., “Site Assessment Plan and Report of Findings Addendum, Tookey Parcel, Ambeco Road, Long Beach, California,”

April 10, 2020, p. 1 (“Tookey Parcel Report”).) The Tookey Parcel Report reveals the presence of hazardous substances at the Tookey Parcel site.

Fourteen metals regulated under Title 22 of the California Code of Regulations were detected in soil samples at the site. (Exh. F, Tookey Parcel Report, p. 218.) Of these, arsenic was detected in a concentration above a screening level and site-specific action level. (*Ibid.*) Arsenic is a confirmed carcinogen and can cause numerous acute and long-term health effects, including cancer, developmental effects, diabetes, pulmonary disease, and cardiovascular disease. (Exh. G, World Health Organization, Arsenic Fact Sheet, available at: <https://www.who.int/news-room/fact-sheets/detail/arsenic>.)

The soil analysis also revealed the presence of toluene above the laboratory method reporting limit at the Tookey Parcel site. (Exh. F, Tookey Parcel Report, p. 11.) Toluene is a volatile organic compound (VOC) that is linked to several acute and long-term health impacts, including central nervous system dysfunction and cardiac impacts. (Exh. H, U.S. EPA, Toluene Fact Sheet, available at: <https://www.epa.gov/sites/production/files/2016-09/documents/toluene.pdf>.) Numerous other VOC constituents were detected in soil vapor samples above laboratory method reporting limits as well. (Exh. F, Tookey Parcel Report, p. 219.)

Because the adjacent Tookey Parcel contains toxic and hazardous substances, there is at least a fair argument of a reasonable possibility that the Project will have significant environmental impacts. Thus, the City Council should grant the appeal and require the City to prepare an EIR that investigates and addresses these impacts.

III. The City’s Environmental Review Must Include the DTSC Analysis of the Project Site.

The Planning Commission approved the Project MND even though the Department of Toxic Substances Control (“DTSC”) was undergoing a separate and subsequent environmental review process for the Draft Response Plan analyzing toxic hazards risks for the Project site. DTSC received comments from the community from November 16, 2020 through January 7, 2021, and held a community meeting on

December 2, 2020. DTSC only *just* released its master response to the comments that were received during that time period, on April 6, 2021. (Exh. I, DTSC Master Response; Exh. J, DTSC Responsiveness Summary.) These reports must be analyzed and reviewed by the public and decisionmakers prior to approval of the Project. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394 [post-approval environmental review not allowed].)

The DTSC Master Response reveals several concerning issues that must be analyzed further in an EIR. The site “does not drain into the stormwater system and in fact is subject to dangerous sheet flow off the Site and into both the LA River and the larger stormwater conveyance system.” (Exh. I, p. 412.) This will certainly have water quality impacts and impacts to the water system. In *Friends of the Los Angeles River v. City of Los Angeles* (Los Angeles Superior Court case no. BS 067338), the court found the fact that water would flow over a parking lot and potentially carry oily waste into the Los Angeles River was substantial evidence supporting a fair argument the commercial project in that case could have a significant impact on the environment and therefore required an environmental impact report to address. Exhibit K includes various materials regarding that case, including a comment letter from Lawyers for Clean Water and a brief from the Attorney General. Comments made in that letter and brief about water runoff into the Los Angeles River are applicable to this case as well and we request the City to respond to them. The judgment and administrative record from the *Friends of the Los Angeles River* case are incorporated in this letter by reference. Similarly, in the present case, water flowing from the project site over a parking lot and into the Los Angeles River can create significant adverse environmental impacts.

The report notes that the “City is responsible for assessing potential impacts associated with surface water related to the operations of the development. Water quality analysis associated with construction and operations is the City’s responsibility.” (Exh. I, p. 412.) The City must analyze these impacts before approving the Project.

The DTSC Master Response notes that groundwater quality at the Project site is highly degraded, and notes that “historic oil and gas production in the area and on-Site contributed to poor water quality.” (Exh. I, p. 414.)

The DTSC Master Response also provided explanation regarding the “cap” that will be installed to attempt to mitigate the Project site’s toxicity (Exh. I, pp. 415-16), the surcharging process DTSC underwent in October 2020 prior to CEQA review (Exh. I, pp. 416-18.), and the alternative of excavating and removing toxic soils at the site (Exh. I, pp. 418-20.). This information should have been in front of the public and decisionmakers and analyzed *before* the Planning Commission approval of the Project.

IV. The City of Long Beach General Plan Land Use Element Requires Implementation of the Riverlink Plan.

Under CEQA, lead agencies must analyze whether a proposed project is inconsistent with applicable land use policies, such as the governing general plan. (Cal. Code Regs, tit. 14 (“CEQA Guidelines”) § 15125, subd. (d).) If substantial evidence supports a fair argument that the proposed project conflicts with the General Plan, then an EIR is required. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930.) The City of Long Beach General Plan Land Use Element requires implementation of the Long Beach Riverlink Plan. (Exh. L.) Implementation Strategy LU-M-86 requires the City to: “Update and implement the Long Beach Riverlink Plan to create a continuous greenway of pedestrian and bike paths and linkages along the east bank of the Los Angeles River, as well as to connect to existing and future parks, open space and beaches along western portions of the City.” (Exh. L, p. 603.) The Project will surely conflict with this implementation measure, as it will foreclose public access and green space on the Project site. Thus, an EIR must be prepared to analyze this significant impact.

V. The Project Will Have Significant Biological Impacts that Must Be Analyzed in an EIR, Including Impacts to Southern Tarplants.

The MND identified that the Project would impact the southern tarplant (*Centromadia parryi ssp. australis*), a special status species on the Project site; approximately 830 southern tarplant individuals were located on the site. (Exh. B, Project MND, pp. 110-11, 113.) Southern tarplant is considered a California Rare Plant Rank (CRPR) List 1B species, which indicates that it is considered rare, threatened, or

endangered within California by the California Native Plant Society (CNPS). Riverpark Coalition previously objected to the proposed mitigation of impacts to these species, noting that transplantation of the southern tarplants would likely be ineffective. (Exh. A, Riverpark Coalition MND letter, p. 33.)

Prior to the surcharge work beginning in October 2020, and prior to the Planning Commission's approval of the Project, the Project applicant removed all vegetation from the Project site, including the southern tarplants. It appears this removal was done without any permits from DTSC, the City of Long Beach, or the California Department of Fish and Wildlife, despite repeated requests for such information. The unauthorized removal of rare plants violates the California Endangered Species Act, CEQA, the Native Plant Protection Act (Fish & Game Code § 1900 et seq.) and constitutes a significant impact under CEQA. The southern tarplants did not survive the removal.

The California Department of Fish and Wildlife ("CDFW") submitted a letter commenting on the MND with respect to the Project's biological impacts, including environmental impacts resulting from the unauthorized vegetation removal. (Exh. M, CDFW letter, available at: https://files.ceqanet.opr.ca.gov/265257-2/attachment/_GXmGIUvfe0NjRJWXs_NF6RntAFKdSI00gDTjZ1hAGR0WJWWSU1CTRaEks0YnW2IKcnABgf1LIY7cUWF0.) In the letter, CDFW recommended that "The vegetated area that was removed before adequate surveys were conducted should be identified as a significant impact." (Exh. M, p. 608.) CDFW also noted that the MND's planned mitigation of southern tarplant impacts would be ineffective, stating that the "Project may result in population declines or local extirpation of the species." (Exh. M, pp. 612-13.)

CDFW also recommended additional analysis and mitigation of impacts to Crotch's Bumble Bee (Exh. M, pp. 608-09); bat species, including California Species of Special Concern (Exh. M, pp. 609-11); burrowing owl (Exh. M, pp. 611-12); southern tarplant (Exh. M, pp. 612-13); special status plants (Exh. M, pp. 614-15); nesting birds (Exh. M, pp. 615-16); tree removal (Exh. M, pp. 616-17); and aquatic resources (Exh. M, pp. 617-618.) Each of these exceeds the fair argument standard, requiring the City to prepare a full EIR. (*Pocket Protectors, supra*, 124 Cal.App.4th 903, 928.)

VI. The City’s Continued Non-Provision of Documents Requested Under the Public Records Act Hinders Public Review.

Counsel for Riverpark Coalition filed a Public Records Act request on November 23, 2020, prior to the Planning Commission’s approval of the MND (Request # C009364-112320). The City responded a month later, on December 23, 2020, stating that responsive records exist and will be disclosed. However, the City has yet to provide any documents.

The Public Records Act at Government Code section 6253, subdivision (c) requires public agencies to respond to requests for public records within 10 days of receipt of a request, and authorizes extensions of no more than 14 days only under unusual circumstances. Even if a 14-day extension were warranted, the City cannot justify a delay of **over four months** in providing documents.

Because the Riverpark Coalition has been unable to obtain these documents, it has not had the opportunity to review all possible documents relating to the Project site. Thus, the Project should not move forward until the public has had the opportunity to review these documents and raise all potential concerns regarding the Project site.

VII. The Project Site Was Intended for Much Needed Park Development in Western Long Beach.

There is an enormous disparity of park and open space access in the City of Long Beach. Six out of seven members of the Long Beach Post Community Editorial Board recently published an editorial entitled “Make Green Space Not Development The Priority On The LA Riverfront,” urging the City Council to prioritize green space on the LA River and to “stop plans for development in order to conduct a full Environmental Impact Report and to continue to advocate for the River Park.” (Exh. N, Long Beach Post, Community Editorial Board, “*Make Green Space Not Development The Priority On The LA Riverfront*,” Apr. 9, 2021, available at: <https://lbpost.com/voices/editorial-make-green-space-not-development-the-priority-on-the-la-riverfront>.)

According to the Long Beach Department of Parks, Recreation of Marine's ("DPRM") 2003 Strategic Plan, the West park district has only 1 acre of parkland per 1,000 residents, while the East park district has 16 acres per 1,000 residents. (Exh. O, p. 630.) To respond to this disparity, DPRM included Strategy 1.1 as part of its Strategic Plan, which established a target of 8 acres per 1,000 residents. (Exh. O, p. 631.) Strategy 1.1 identified 50 acres in Wrigley Heights for park development. (Exh. O, p. 631.) The City must maintain its commitment to provide much needed park space in western Long Beach by reserving the Project site for park access.

VIII. The Project Will Have Additional Significant Impacts to Water Resources.

The Project will have additional significant impacts to water resources. The surcharge is directly loading weight (1 million lbs) and displacing the only storm sewer pipe serving the site and the neighborhood to the east, including Los Cerritos Park. The displacing of the pipe segments will cause the most highly contaminated "toothpaste consistency" soil to leak into the storm drain pipe which discharges directly into the LA River. The displacement of the pipe segments will also cause the storm drain to cease working as intended resulting in flooding to the area.

The surcharge is directly loading weight on and potentially causing damage to two abandoned oil wells on the site, immediately north of the proposed building and two active oil pipelines. Exhibit P shows the location of the oil wells, surcharge pile, and their position relative to the storm drain.

The plans from developer InSite detail onsite treatment of storm drainage from the nearly 14 acres of impervious surface (asphalt and concrete paving, and the building) plus some storm drainage from the access road leading to the site. (Exh. Q.) The treated stormwater will then be dumped into the existing storm drain under the building. These 14 acres were never intended to drain into the storm drain pipe (referenced above) which will likely not be working as intended after the surcharge work is completed; instead, the permeable earth absorbed much of the rain during storm events.

The InSite plans detail onsite storm drainage tying into the existing 30 inch storm drain, yet available plans from the County Flood Control District indicate a storm drain pipe 24 inches in diameter, a 36% smaller capacity. (Exh. Q; Exh. R, County Flood Control District Plans.) Exhibit S is a graphic showing the difference in drain diameters.

Further, as mentioned above, the Project is located on a site contaminated from former oil drilling activities. Compaction, as is required prior to building on the site, is going to displace groundwater, and displacement of groundwater is going to spread contamination to new locations. This is a significant environmental effect that must be addressed in an EIR.

For all these reasons, a full EIR is needed to analyze and mitigate these impacts to water resources.

IX. The Project Site is Not Stable Enough to Support Construction of the Project.

The Project Site is not suitable to support construction of the Project. We incorporate by reference a May 27, 2009 Final Remedial Investigation Report for the Former Oil Operators North Site, 3701 Pacific Place, Long Beach, California, prepared by LFR Inc. (“May 2009 Report”). This report is available at: https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/8662384510/LB%20In d.%20Park_May%2027%202009_LFR_CRG_RI%20Report%20%28Full%20%26%20F INAL%29.pdf.

In that report, LFR states that GEOFON, Inc. performed a geotechnical investigation to provide an evaluation of subsurface conditions at the Site in relation to the design and construction of a proposed business park development. (Exh. T, Excerpt from May 2009 Report, p. 659.) GEOFON concluded that surface conditions at the time were not suitable for supporting structures on shallow foundations. (Exh. T, Excerpt from May 2009 Report, p. 660.) The sump materials have highly variable engineering properties and are too compressible for supporting structures or fills. (*Ibid.*) A full EIR is required to evaluate these impacts.

X. The Project Variance is Not Supportable Because it is a Self Imposed Hardship, and the Requirement of a Variance is an Significant Land Use Impact.

The Project includes application for a variance from height restrictions to allow for a building height of 43 feet 11 inches, almost 16 feet over the maximum allowable height of 28 feet. There is no justification that would support a variance.

Under the Long Beach Municipal Code, a variance may only be approved in cases of undue hardship where it is necessary to enjoy a property right and does not convey a special privilege or remedy a self-imposed hardship. (Long Beach Municipal Code §§ 21.15.2890, 21.25.306; *Broadway, Laguna, etc., Ass'n v. Board of Permit Appeals* (1967) 66 Cal.2d 767, 772). An inconvenience is not sufficient to show an undue hardship. (Long Beach Municipal Code §§ 21.15.2890.) In this case, the excessive height of the building is a self-imposed hardship related to the building design the project applicant desires. There is no basis for granting a variance from the generally applicable Municipal Code.

Further, the requirement of a variance is a significant land use impact that should have been identified as an inconsistency with the zoning ordinance and analyzed in a full EIR. (*Pocket Protectors, supra*, 124 Cal.App.4th 903, 930-31 [finding that a project's inconsistency with city land use regulations triggered a full EIR].)

XI. Conclusion.

For the foregoing reasons, we urge the City Council to grant this appeal and direct the Planning Commission to require the City to prepare a full EIR and ensure the requirements of CEQA are adequately followed. Thank you for considering our comments. We look forward to the City's preparation of an EIR for this Project that carefully considers the direct and cumulative environmental impacts of the Pacific Place Project and that contains a thorough analysis of alternatives and mitigation measures

designed to reduce and avoid these adverse impacts on the City of Long Beach and its residents.

Sincerely,



Sunjana Supekar
Douglas P. Carstens

Enclosures:

- A. Riverpark Coalition November 16, 2020 Letter Opposing MND
- B. Excerpts from Project Initial Study and Mitigated Negative Declaration, October 19, 2020.
- C. LA Times Article, Jessica Garrison, "*Exide ordered to clean up toxic substances near Vernon plant,*" Dec. 18, 2013.
- D. LA Times Article, Tony Barboza, "*Auditor slams California for Exide cleanup delays, says cost could reach \$650 million,*" Oct. 27, 2020.
- E. DTSC Draft Response Plan, Long Beach Industrial Park, Revised Oct. 15, 2020.
- F. Site Assessment Plan and Report of Findings Addendum, Tookey Parcel, prepared by Roux Associates, Inc., Apr. 10, 2020.
- G. Arsenic fact page, World Health Organization
- H. Toluene fact page, US Environmental Protection Agency
- I. DTSC Master Response to Comments, Draft Response Plan, Apr. 6, 2021.
- J. DTSC Responsiveness Summary, Draft Response Plan, Apr. 6, 2021.
- K. Materials relating to *Friends of the Los Angeles River v. City of Los Angeles* (Los Angeles Superior Court case no. BS 067338).
- L. Excerpts of City of Long Beach General Plan Land Use Element.
- M. November 17, 2020 Comment Letter from CDFW on the Project MND
- N. Long Beach Post, Community Editorial Board, "*Make Green Space Not Development The Priority On The LA Riverfront,*" Apr. 9, 2021.
- O. Excerpts from Long Beach Department of Parks, Recreation, and Marine 2003 Strategic Plan Executive Summary, Apr. 7, 2003.
- P. Diagram showing surcharge loading weight on oil wells on site
- Q. Conceptual site plans for InSite Pacific Self Storage
- R. County Flood Control District Plans
- S. Graphic showing the difference in drain pipe diameters
- T. Excerpts from May 27, 2009 Final Remedial Investigation Report for the Former Oil Operators North Site, prepared by LFR Inc.