

Riverpark Coalition  
[RiverParkCoalition.org](http://RiverParkCoalition.org)  
Contact: Amy Valenzuela-Mier, (562) 714-0965  
[press@riverparkcoalition.org](mailto:press@riverparkcoalition.org)



## Press Release

# Riverpark Coalition & LA Waterkeeper File Suit Against City of Long Beach to Save LA River Revitalization

**Long Beach, Cal., May 17, 2021:**

Riverpark Coalition (RPC) and the prominent environmental watchdog organization [Los Angeles Waterkeeper](http://LosAngelesWaterkeeper.org) (LAW) have partnered to file suit against the City of Long Beach for violations of the California Environmental Quality Act (CEQA).

Specifically, the organizations seek to force an environmental impact report (EIR), which is necessary to address significant environmental, biological, recreational, and cultural impacts that the development slated for 3701 Pacific Place would present and which would help forestall this ill-conceived, anti-river revitalization project. This parcel has long been promised to the western Long Beach community as its future river park and nature preserve, not simply as an addition to the concrete commercialized wasteland characterizing so much of the river through western Long Beach.

LA Waterkeeper has joined with Riverpark Coalition both as a co-petitioner (party to the lawsuit) as well as co-counsel. LAW attorney Kelly Clark will be supporting RPC attorney Douglas Carstens and his team at the environmental litigation firm Chatten-Brown, Carstens & Minter.

This action marks the next step to preserve the LA River and add much-needed park space, for all Long Beach residents to enjoy, rather than for the corporate developers prioritized by Long Beach City Hall.

"This lawsuit was made necessary because the City of Long Beach approved the project despite its extensive, inevitable impacts that should have been studied in an environmental impact report," said attorney Douglas Carstens. "The community tried to guide the City to a better-informed decision that would comply with the California Environmental Quality Act and that would be better for the area, but the City chose to disregard their input."

"LA Waterkeeper is glad to join the Riverpark Coalition to defend the LA River from further degradation and our park poor neighborhoods from increasing development pressures," added Kelly Clark, Senior Attorney for LA Waterkeeper. "Such pressures continue to put the economic interests of a few ahead of critical community needs for local green spaces."

**For Immediate Release**

This suit results from a vote by the Long Beach City Council on April 13<sup>th</sup> to approve InSite Property Group's development of 3701 Pacific Place. In so doing, the Council chose destruction of river open space over its own promises going back 14 years. This parcel, formerly a golf driving range and petroleum waste site, has been designated in LA River master planning on the city level (RiverLink Plan adopted by Long Beach City Council in 2007 and unanimously re-adopted in 2015) and on the county level (1996 LA River Master Plan, 2015 Lower LA River Revitalization Plan, 2020 LA River Master Plan) as pending future open space—to be known tentatively as the Wrigley Heights River Park—for over two decades. Indeed, the current 2020 LA River Master Plan calls it a “planned major project” for park development. (A graphical timeline of this parcel's designation in river plans can be viewed [here](#) in our prior press release.)

Instead of respecting the multi-decade river revitalization movement and urban planning, City Hall has instead greenlit an RV parking lot and self-storage facility at this site. It has done so without reaching out to the community and without so much as requiring an environmental impact report.

The latter is a gross violation of CEQA in manifold ways and the basis of our suit. An EIR is required because:

- Before serving as a driving range, this land was used for oil operations (oil brine evaporation and treatment ponds) dating back as far as 1926 and the contamination has never been fully assessed or remediated;
- The site has many abandoned oil wells and a storm drain which could be disturbed by the pressure of a new million-pound structure on unstable soil;
- The MND (mitigated negative declaration) authorized by the City, in lieu of a full EIR, fails to assess alternative uses of the site which may benefit the disadvantaged greater western Long Beach community;
- The parcel is situated beside and would impede full utilization of a Historic Equestrian Trail;
- The project has already impacted a designated California rare native plant species, the southern tarplant;
- The City approval process has ignored several areas of potential adverse impact raised by the California Department of Toxic Substances Control, including drainage issues which could lead to river contamination;
- The project would destroy rather than culturally preserve a former Gabrieleño-Tongva indigenous village and sacred site;
- The project improperly includes a height variance, allowing a height 16 feet over the limit.

This lawsuit will hold City Hall accountable for these violations. “We hope this will ultimately lead to the developer backing out and selling the land to the City,” said Amy Valenzuela-Mier, President of the Riverpark Coalition. “The project would add industrialization in an area already heavily impacted by environmental degradation, doing nothing to repair the fragile remaining ecosystem. The river and our community need a park, not a parking lot.”

[Funds already exist](#) with the regional Rivers & Mountains Conservancy and other sources for such an acquisition and park-building project.

Long Beach park inequity necessitates the prioritization of open green and recreational space for communities along the LA River:

- Western Long Beach has suffered from a history of environmental injustice. A lack of infrastructure investment has left it with just one acre of park space per thousand residents compared to approximately 17 acres per thousand in the far more affluent East Long Beach.
- The community agrees with Riverpark Coalition and over 1,400 residents have signed its petition for the EIR.
- The Sierra Club, the Audubon Society, the Los Cerritos Elementary School PTA, the Long Beach Reform Coalition, the Trust for Public Land, our partner LA Waterkeeper, Speaker Anthony Rendon, Assemblyman Patrick O'Donnell, and Congressman Alan Lowenthal have all lent their support to the Riverpark Coalition to see that the promised open space at 3701 Pacific Place is realized.

Please find our previous press releases [here](#) and our recent op-eds and editorial support [here](#).

Please find the conformed copy of our suit filed in Los Angeles Superior Court attached.

### **What is the Riverpark Coalition?**

We are Long Beach's only environmental justice organization dedicated exclusively to improving access to the lower Los Angeles River, promoting park equity, and developing planned green space in western Long Beach. As a community group and policy advocate, we are committed to holding Long Beach decision makers, elected officials, and city planners accountable for delivering on commitments to build green infrastructure along the river and facilitate community access.

### **What is LA Waterkeeper?**

For more than a quarter century, LA Waterkeeper has served as LA's water watchdog, safeguarding our inland and coastal waters using the law, science and community action. We work to eliminate pollution, achieve ecosystem health for our waterways and secure a resilient, multi-benefit, low-carbon water supply for the region. LA Waterkeeper is an organization of Waterkeeper Alliance, the world's fastest growing environmental movement. Along with nearly 350 other Waterkeeper Organizations, our movement works for swimmable, drinkable and fishable waterways worldwide. Visit us at [www.lawaterkeeper.org](http://www.lawaterkeeper.org) or follow us on social media @lawaterkeeper.

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CHATTEN-BROWN, CARSTENS & MINTEER LLP

Douglas P. Carstens, SBN 193439

Michelle Black, SBN 261962

Sunjana Supekar, SBN 328663

2200 Pacific Coast Hwy, Suite 318

Hermosa Beach, CA 90254

310.798.2400; Fax 310.798.2402

Email: [dpc@cbcearthlaw.com](mailto:dpc@cbcearthlaw.com)

Attorneys for Petitioners

RIVERPARK COALITION and LOS ANGELES WATERKEEPER

LOS ANGELES WATERKEEPER

Kelly Clark (Bar No. 312251)

120 Broadway Ste 105

Santa Monica, California 90401

Phone: (310) 394-6162; Fax: (310) 394-6178

Email: [kelly@lawwaterkeeper.org](mailto:kelly@lawwaterkeeper.org)

Attorneys for Petitioner

LOS ANGELES WATERKEEPER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

RIVERPARK COALITION and LA  
WATERKEEPER

Petitioners,

v.

CITY OF LONG BEACH

Respondent.

ARTESIA ACQUISITION COMPANY, LLC;

MACDONALD TRUST; INSITE

PROPERTY GROUP; PAUL BROWN;

DOES 1-10

Real Parties In Interest

CASE NO.: 21STCP01537

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT**

(California Environmental Quality Act)

## **INTRODUCTION**

1. Over extensive public opposition and in violation of the California Environmental Quality Act (“CEQA”) and the Long Beach Municipal Code, on April 13, 2021, the City of Long Beach approved the Pacific Place Project (“Project”) based on a mitigated negative declaration (“MND”) instead of an environmental impact report (“EIR”), even though a fair argument exists that the Project will have significant adverse environmental impacts.

2. The Project would replace over 19 acres of open space along the Los Angeles River with a large-scale commercial warehouse, storage, office, and parking lot development that would have adverse impacts on the environment with regard to air quality, aesthetics, biological resources, geology/soils, hazards/hazardous materials, historic and cultural resources, tribal resources, and hydrology and water quality, among other impacts. The Project will also significantly reduce any possible relief and recreational opportunities in the area, whereas currently the surrounding community would be able to use portions of this space and nearby areas for passive and active recreation.

3. The City’s MND lacks substantial evidence to support many of its conclusions that the Project’s potential adverse impacts on the environment will not be significant.

4. Since a fair argument exists that the Project will have significant adverse impacts on historic resources, aesthetics, biological resources, hydrology and water quality, and recreation, and since the MND fails entirely to acknowledge, analyze, or fully mitigate these potential impacts to a level below significance, the City’s approval violates the California Environmental Quality Act, and the Project approvals must be rescinded.

## **JURISDICTION**

5. This Court has jurisdiction over the writ action under section 1094.5 of the Code of Civil Procedure.

6. This Court also has jurisdiction over the writ action under section 1085 of the Code of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

**PARTIES**

7. Petitioner Riverpark Coalition is a community-based coalition who joined together to work in partnership with neighborhoods, local equestrian and Indigenous groups, philanthropists, businesses, and government officials to expand access to recreational green space, hiking and equestrian trails, native habitat, and riparian wetlands in Long Beach, CA and the surrounding cities. The Riverpark Coalition works toward a healthier, happier environment for communities within the watershed of the lower Los Angeles River revitalization zone. Its mission is to work in partnership with neighborhoods, local equestrian and Indigenous groups, philanthropists, businesses, and government officials to expand access to recreational green space, hiking and equestrian trails, native habitat, and riparian wetlands in Long Beach, CA and the surrounding cities.

8. Petitioner Los Angeles Waterkeeper (“LA Waterkeeper”) is a non-profit organization whose mission is to promote and protect the health of all coastal and inland water resources in Los Angeles County and ensure a sustainable water supply for the Los Angeles Region. LA Waterkeeper fights for the health of the region’s waterways, and for sustainable, equitable, and climate-friendly water supplies.

9. Respondent City of Long Beach is a political subdivision of the State of California.

10. On information and belief, Real Party in Interest InSite Property Group is the Applicant for the Project. Paul Brown is listed as a representative for InSite Property Group.

11. On information and belief, Real Party in Interest Artesia Acquisition Company, LLC is the owner of the Artesia Parcels.

12. On information and belief, Real Party in Interest MacDonald Trust is the owner of the MacDonald Parcels.

13. Real Parties in Interest named as Does I to X are given fictitious names because their names and capacities are presently unknown to Petitioners.

## **STATEMENT OF FACTS**

### **Project Area**

14. The Project Site is in the City of Long Beach in Los Angeles County. It is separated into two areas: (1) the Artesia Acquisition Company, LLC parcels (“Artesia Parcels”) and (2) the MacDonald Trust parcels (“MacDonald Parcels”).

15. As proposed, the Project on the Artesia Parcels (Artesia Project) will transform a formerly recreational use (i.e., golf driving range) into a three-story, 152,745 square foot self-storage unit, recreational vehicle (RV) storage area for 578 vehicles, and a self-serve car wash with a waste disposal station. Specifically, the Artesia Project would develop an asphalt parking lot to accommodate over 500 vehicles, including trailers, campers, boats, and trucks. The Project’s three-story structure would be permitted to build additional office space and would have a maximum height of 43 feet 11 inches, exceeding the current maximum building height of 28 feet under proposed Commercial Storage (CS) zoning. (MND, p. 3-1.)

16. The Project on the MacDonald Parcels would include a 77,000 square foot single-story warehouse and a 10-truck loading dock. This development would be permitted for and assumed to consist of warehouse space and office space that would be built on the MacDonald Parcels north of the Artesia Parcels. (Notice of Intent (NOI), p. 2.)

17. Combined, the Project area totals approximately 19.41 acres. (NOI, p. 1-2.)

18. Heightening the potential for adverse environmental impacts, there are 13 abandoned oil wells in the Project area, surrounded by land that formerly stored toxic waste and sewage that is now buried. (NOI p. 2.)

19. The Project requires numerous entitlements including a general plan amendment, conditional use permit, site plan review, specific plan amendments, zone change, and a height standards variance.

20. The height standards variance that the Applicant requests is only necessary because the Applicant requests a zone change from the original zone designation of Light Industrial (IL), which allows structures up to 60 feet (Long Beach Municipal Code § 21.33.130, Table 33-3), to Commercial Storage (CS), which allows structures up to only 28 feet.

1 **Project Site History: Oil Production and Golf Facility.**

2 21. The Artesia Parcels were formerly used as an oil brine water treatment facility  
3 beginning in 1926 for nearby and onsite oil production activities. Oil brine was pumped to  
4 evaporation and treatment ponds (i.e., oil sumps) located on the Artesia Parcels and the  
5 majority of the Artesia Parcels were used as a treatment sump. Water was allowed to evaporate  
6 from the brine or seep into the subsurface below the sumps leaving behind a sludge. Following  
7 evaporation, the remaining sludge was left in the sumps or transported to an offsite location.  
8 Evaporation operations reportedly ceased at the Project site in the mid-1950s. Fill soil was  
9 imported to the site in the 1970's; the fill was not suitable for unrestricted use (DTSC 2020).

10 22. Between 1937 and 1981, 13 oil wells were drilled onsite; 11 of these oil wells  
11 produced oil. All 13 wells were abandoned between 1961 and 2014.

12 23. A golf learning facility opened on the Project Site between 1995 and 1998  
13 consisting of driving range; putting practice and chipping areas; a snack bar; a golf shop; a  
14 maintenance building; and a paved parking lot. The learning facility was listed in the City  
15 Directory as late as 2014.

16 **Project Surroundings.**

17 24. The Project Site is located on the east bank of the Los Angeles River. The Project  
18 Site is also adjacent to a historic equestrian trail. It is also located within the boundaries of a  
19 historic Tongvan village site.

20 25. The Project's census tract in western Long Beach ranks *worse than 85 percent of*  
21 *the rest of the state for pollution burden, attributable to contaminated sites, solid waste and*  
22 *hazardous vehicle emissions in the area. (See <https://oehha.ca.gov/calenviroscreen> (last visited*  
23 *Nov. 14, 2020.) The Project area is also a designated "Disadvantaged Community" per*  
24 *California Senate Bill (SB) 535. The area is a predominantly Hispanic and Asian community*  
25 *that is 82% people of color. The area has more people living with asthma, emergency*  
26 *department visits for asthma symptoms, and deaths from asthma, than 91% of census tracts*  
27 *throughout California. The proposed Project not only exacerbates these critical health impacts,*  
28 *but brings in a land use that in no way serves this underserved community.*



26. Directly across from the Project Site, on the other side of the Metro A Line and Del Mar Ave, are Los Cerritos Elementary School and a public park, Los Cerritos Park.

27. Single-family residential homes are also adjacent to the Project Site. Petitioner Riverpark Coalition includes landowners and residents who reside in these adjacent homes.

28. In 1930, cogstones were found at the Rancho Los Cerritos, which makes this location a Sacred Site. The site is one of the last remaining open spaces that can be utilized for continuation of Tongvan cultural practices by Tongvan people.

### **Project Review and Approval**

29. In October of 2020, the City of Long Beach issued an Initial Study and Mitigated Negative Declaration for the Pacific Place Project. The City anticipated industrial uses including a single-story building consisting of 73,500 square-foot warehouse space and 3,500 square-foot of office space, car wash, and RV parking facility. The Initial Study also evaluated potential environmental effects associated with the Project's construction and operation.

30. Findings determined that the Project has the potential to have significant impacts on the following topics unless the recommended mitigation measures described were incorporated into the Project: air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, and tribal cultural resources.

31. Prior to any project approval, and during the public review process for the MND, the Project Applicant performed a "surcharge test" to measure the bearing capacity of the area beneath the building footprint. This involved grading and moving soil from the northern end of the Site to the southern end, creating a mound of soil approximately 15 feet high to simulate future building weight, and field monitoring to evaluate settlement behavior of the Site for several months. While the DTSC work notice stated that this mound of soil would be covered, it was not.

32. In November of 2020, the Riverpark Coalition and other community members submitted extensive and detailed comments opposing the Project as proposed and comments regarding the need for an EIR to properly analyze the potential significant environmental impacts of the Project. Petitioner was concerned with the harmful impact of allowing industrial

development on a site designated as a “Disadvantaged Community” per California State Bill (SB) 535. Petitioner also commented that the Project area has more people living with asthma, emergency department visits for asthma symptoms, and deaths from asthma, than 91% of census tracts throughout California.

33. Petitioner’s comments also noted environmental impacts that the City’s MND did not sufficiently address including air quality, available park space, construction noise impacts, drainage and flood issues, traffic, exposure to toxic and hazardous substances, biological resources, tribal, cultural and historic resources, aesthetics and scenic vistas, hydrology and water quality, mobility and transportation, social equity and land use and planning, recreation and open space, public services, utilities, geology and soils. Petitioner also contended that the developer’s premature surcharge tests violated CEQA.

34. On or about December 17, 2020, the City’s Planning Commission held a public hearing and approved the Project MND. Petitioner appealed their decision due to numerous flaws in the environmental review process.

35. The City agendized Petitioner’s appeal for the April 12, 2021 City Council Meeting. Petitioner submitted extensive comments regarding the significant public health and environmental impacts of the Project as proposed.

36. On or about April 13, 2021, the City posted a Notice of Determination for the Project.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

### **AND INADEQUATE REMEDIES AT LAW**

37. Petitioners objected to the Project in the administrative process, and fully exhausted their administrative remedies. Petitioners submitted letters during the comment period raising the issues set forth herein.

38. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writs of mandate and injunctive relief. In the absence of such remedies, Respondent’s approval of the project would form the basis for a development project that would proceed in violation of state law.

39. Petitioners have complied with Public Resources Code section 21167.7 by filing a copy of this petition with the California Attorney General. A copy of that notice is attached as Exhibit A.

40. Petitioners have complied with Public Resources Code section 21167.5 by providing the City of Los Angeles with notice of its intention to commence the action. A copy of that notice is attached as Exhibit B.

41. Petitioners elect to prepare the administrative record. A copy of that election is attached as Exhibit C.

**FIRST CAUSE OF ACTION**

(VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT)

42. Petitioners incorporate all previous paragraphs as if fully set forth.

## The Fair Argument Standard Requires Preparation of an EIR

43. CEQA prohibits a lead agency from approving a project that may have a significant impact on the environment without first preparing, considering, and certifying an EIR. The City violated CEQA by adopting an MND for the Project, despite substantial evidence supporting a fair argument that the project may have a significant impact on the environment.

44. The purpose of the initial study is to provide the lead agency with adequate information regarding a project to determine the appropriate environmental review document and “documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment.” (*Ctr. for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1170, citations omitted.) There must be a basis within the record to support the conclusions reached by the initial study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1201.) “Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate.” (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, 1597, citations omitted.)

1           45. There is substantial evidence in the record to support a fair argument that the  
2 project may have significant adverse effects on the environment, including, but not limited to,  
3 the following impacts:

4                           **a. Land Use Planning and Recreation Impacts Would be Significant.**

5           46. Under CEQA, lead agencies must analyze whether a proposed project is  
6 inconsistent with applicable land use policies, such as the governing general plan. (Cal. Code  
7 Regs, tit. 14 (“CEQA Guidelines”) § 15125, subd. (d).) If substantial evidence supports a fair  
8 argument that the proposed project conflicts with the General Plan, then an EIR is required.  
9 (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930.)

10           47. The City of Long Beach General Plan Land Use Element requires implementation  
11 of the Long Beach Riverlink Plan. Implementation Strategy LU-M-86 requires the City to:  
12 “Update and implement the Long Beach Riverlink Plan to create a continuous greenway of  
13 pedestrian and bike paths and linkages along the east bank of the Los Angeles River, as well as  
14 to connect to existing and future parks, open space and beaches along western portions of the  
15 City.”

16           48. Due to historical development trends that favored industry with high levels of  
17 pollution, western Long Beach has a severe lack of parks and open space. In 2002, the City’s  
18 Open Space and Recreation Element formally established a goal to reverse this harmful trend  
19 and achieve an average of eight (8.0) acres of recreational open space per 1,000 residents.  
20 Subsequently, in 2007, the Long Beach Department of Parks, Recreation and Marine authored  
21 the RiverLink planning document (RiverLink). The RiverLink provides a vision of an  
22 integrated open space system and a framework to connect westside neighborhoods and greater  
23 Long Beach with the Los Angeles River (LA River.) When fully implemented the RiverLink  
24 was supposed to contain 263 acres of open space. Long Beach’s vision for the LA River is one  
25 of a “River that provides aesthetic, recreational, and ecological benefits, in addition to serving  
26 its flood control purposes.” (*See* LA RiverLink planning document,  
27 [http://www.longbeach.gov/globalassets/park/media-library/documents/business-](http://www.longbeach.gov/globalassets/park/media-library/documents/business-operations/about/in-development/riverlink-report/)  
28 [operations/about/in-development/riverlink-report/](http://www.longbeach.gov/globalassets/park/media-library/documents/business-operations/about/in-development/riverlink-report/) (last visited Nov. 15, 2020.)

1           49. The RiverLink plan specifically stated for the “Wrigley Height-North” portion  
2 “Riverlink proposes keeping the driving range and improving the excess River right -of-way as  
3 a riparian woodland to complement the adjacent wetland at Dominguez Gap (see Exhibit 18).”  
4 On the “Wrigley Heights-South” portion, Riverlink “proposes that as much of the area as  
5 possible become an open space destination containing a restored wetland, riparian woodland,  
6 pedestrian and bicycle paths, and a neighborhood park with a playground, picnic areas, and  
7 other amenities (see Exhibit 21).”

8           50. With the current proposed project and others similar to it that put planned  
9 greenspace to other uses (such as the Riverwalk project in 2015), the open space vision in the  
10 RiverLink document would never be achieved.

11           51. Paving over this land to build a parking lot and storage center would permanently  
12 deepen east and western Long Beach’s parkland disparity. Additionally, coverage with  
13 pavement can contribute to the heat island effect that disproportionately impacts disadvantaged  
14 communities with increased local temperatures. These impacts are significant and require  
15 preparation of an EIR.

16           52. The Project would foreclose public access and green space on the Project site.  
17 Thus, an EIR must be prepared to analyze this significant impact.

18           53. There is an enormous disparity of park and open space access in the City of Long  
19 Beach. According to the Long Beach Department of Parks, Recreation of Marine’s (“DPRM”)   
20 2003 Strategic Plan, the West park district has only 1 acre of parkland per 1,000 residents,  
21 while the East park district has 16.7 acres per 1,000 residents. To respond to this disparity,  
22 DPRM included Strategy 1.1 as part of its Strategic Plan, which established a target of 8 acres  
23 per 1,000 residents. Strategy 1.1 identified 50 acres in Wrigley Heights for park development.  
24 The City failed to maintain its commitment to provide much needed park space in western Long  
25 Beach through reserving the Project site for park access.

26           54. These are significant recreational impacts that the MND fails to mitigate.

27           55. The MND does not evaluate the Project’s compatibility with the City’s LA River  
28 Master Plan, and fails to identify significant inconsistencies with the RiverLink planning

document. (*See* LA River Master Plan (last visited Nov. 14, 2020); *See* Long Beach RiverLink planning document, <http://www.longbeach.gov/globalassets/park/media-library/documents/business-operations/about/in-development/riverlink-report/>: (last visited Nov.14 2020.)) The MND also fails to examine or even mention the Project's inconsistency with horse overlay zones that cover sections within Wrigley and are adjacent to the site. (Ord. C-6533 § 1 (part), 1988.) These horse overlay zones were approved to preserve and protect the unique equestrian culture and cherished community within the City and region..

56. The Project sits near one of the last remaining equestrian-zoned properties within the City of Long Beach, located adjacent to the Los Angeles County Flood Control/Historical Equestrian Trail. This area has specific and unique needs which incorporate utilization and access of the existing sized strip of County Land parallel to the Flood Control region for ingress/egress, emergency services, access to the Equestrian trail and preservation of the zoning and intended use of residents' lands. Approving the Project would adversely impact equestrian-zoned properties and adjoining trails.

57. The Project is located within the site of an historic Tongvan village and as one of the last remaining open spaces within that site where traditional cultural practices can be observed. The MND claimed that there were no tribal cultural resources to be considered in development of this site. However, indigenous cultural practices by their very nature require and are inextricable from access to and interaction with the land, habitat and waterways. Paved, commercial development obliterates access to cultural practices and as such represents significant negative impact. Even a cursory investigation of the site's history reveals its importance as a Tongvan village; documentation of such is available in multiple public records.

58. The requirement of a variance is a significant land use impact that should have been identified as an inconsistency with the zoning ordinance under CEQA and analyzed in a full EIR.

59. An EIR was required.

**b. The Project Could Have Adverse Impacts on Biological Resources.**

60. 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. 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). Members of the public including Petitioners objected to the proposed mitigation of impacts to these species, noting that transplantation of the southern tarplants would likely be ineffective. 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. This removal was done without specific written permits from DTSC, the City of Long Beach, or the California Department of Fish and Wildlife to authorize the removal of the tarplants. 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.

61. 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. In the letter, CDFW recommended that "The vegetated area that was removed before adequate surveys were conducted should be identified as a significant impact." 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."

62. CDFW also recommended additional analysis and mitigation of impacts to Crotch's Bumble Bee; bat species, including California Species of Special Concern; burrowing owl; southern tarplant; special status plants; nesting birds; tree removal; and aquatic resources. The likelihood of each of these potential impacts exceeds the fair argument standard, requiring the City to prepare a full EIR.

63. The MND purportedly includes mitigation measures to protect wildlife from the impacts of Project construction, but no mitigation was incorporated to reduce the impacts of Project operation.

64. Thus, a fair argument exists that the Project will have a significant adverse impact on sensitive plant and insect species, and an EIR is required.

65. The MND also fails to analyze the cumulative adverse impacts on biological resources caused by construction of the Project.

66. No CEQA review has occurred for this project.

**c. The Spread of Hazardous Materials Caused by the Project Could be Significant.**

67. The Project site has an extensive history of oil extraction and is marked by 13 abandoned oil wells, some abandoned as recently as the late 1990s to early 2000s. The Project area was previously used as a dumping ground and still contains thick layers of crude oil byproduct, solid waste, and noxious gas that have accumulated over the years. (MND, p. 5-49.) In fact, Signal Hill had a contract with Oil Operators to accept waste from their sewage plant for many years. Residents have also reported midnight dumping at the Project area.

68. Mitigation measures for hazardous materials impacts would not be formulated until after Project approval, and after its efficacy or potential environmental impacts could no longer be assessed by the public or decision-makers. Deferred mitigation violates CEQA Guidelines Section 15126.4(a)(1)(B). Deferral is permitted when a mitigation measure commits to specific performance standards, but no such standards are included here. Without an understanding of the actual conditions in the Project area, the MND's analysis of the project's potential hazardous impacts is insufficient and fails to satisfy CEQA's basic purpose to "inform governmental decision makers and the public about the potential significant effects" of the proposed project. (CEQA Guidelines § 15002 (a)(1).)

69. The MND's Hazards and Hazardous Materials Section Mitigation Measure HAZ-5 states that "the City shall not issue a Certificate of Occupancy for development on the McDonald Trust parcels until any regulatory agency involved has issued a document approving



1 ... in conformance with that agency's requirements."

2 70. The Project Site is located on a site formerly used for oil production activities,  
3 including oil wells and oil brine treatment. Disturbance of the property in order to develop the  
4 Project Site will lead to further surface and groundwater contamination in the vicinity of the  
5 Project Site. Installing a cap on the contaminated site will not be sufficient to prevent  
6 contamination and leaching into surface and groundwater, especially with the added weight of  
7 development on top of the Project site. The City and DTSC failed to commit to a full cleanup  
8 and remediation of the site to protect the public health and safety of residents of western Long  
9 Beach.

10 71. Some grading has already been done on the site but more is necessary for the  
11 Project. The DTSC Draft Response Plan indicates twelve areas of elevated concentrations of  
12 toxins on the site, including arsenic, total petroleum hydrocarbon ("TPH"), and lead. The areas  
13 of elevated concentrations are distributed across the site. When the developer graded the site,  
14 those toxins were likely dispersed, impacting the health and safety of the adjacent community.  
15 Los Cerritos Elementary School, a public park and multiple residences are adjacent to the  
16 Project site.

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

22 73. The Planning Commission approved the Project MND even though the  
23 Department of Toxic Substances Control ("DTSC") was undergoing a separate and subsequent  
24 environmental review process for the Draft Response Plan analyzing toxic hazards risks for the  
25 Project site. DTSC received comments from the community from November 16, 2020 through  
26 January 7, 2021, and held a community meeting on December 2, 2020. DTSC released its  
27 master response to the comments that were received during that time period on April 6, 2021.

28 74. The DTSC report notes that the "City is responsible for assessing potential impacts

1 associated with surface water related to the operations of the development. Water quality  
2 analysis associated with construction and operations is the City's responsibility." The City  
3 failed to adequately analyze and mitigate these impacts before approving the Project.

4 75. The DTSC Master Response notes that groundwater quality at the Project site is  
5 highly degraded, and notes that "historic oil and gas production in the area and on-Site  
6 contributed to poor water quality."

7 76. In the MND's Hydrology and Water Quality section, the analysis improperly  
8 concludes that the "Project development would not increase the rate or amount of surface  
9 runoff...[and] because "[t]he Project site is outside of 100-year flood hazard zones... no  
10 mitigation is required." (MND, 5-61.) The MND does not acknowledge that heavy metals, oil,  
11 grease, trash, and other contaminants typical of urban runoff will inevitably be generated in the  
12 normal operation of the Project. Runoff from site surcharging and cleanup operations will also  
13 contain contaminants. These will adversely impact the nearby LA River, and ultimately flowing  
14 to surrounding properties.

15 77. As described in greater detail below, the storm drain pipe is only 24 inches, 36%  
16 smaller capacity than what the Applicant's plans describe. Further, the mound of dirt created by  
17 the Applicant's surcharge test places enormous pressure on the aging storm pipes, and may  
18 cause them to fail, pushing contaminated soil into the cracks between each of the 8-foot pipe  
19 segments.

20 78. Although the MND acknowledges that the Project's "[o]n-site drainage would  
21 generally be directed to a series of catch basins along the site perimeters (MND, p.3-2), it fails  
22 to consider the risk that toxic runoff and any failures of the drain pipe system and the  
23 overcapacity of the 24-inch storm drain would be directed to the land and equestrian trail to the  
24 west of the Project site, and Los Angeles River-adjacent communities to the south, both of  
25 which already have a documented history of cumulative negative flooding impacts.

26 79. The MND and the City of Long Beach's Modeled Stormwater System maps show  
27 no storm-water drain pipes in the Project location or along the trail/river land, which is clearly  
28 identified as the "Dominguez Gap basin," south of the 405. This basin concept is the only

1 designated infrastructure to receive runoff from the Los Cerritos berm/levee and from the now  
2 “surcharged” parcels to the east of the river. This basin also collects any runoff (up-stream)  
3 that has not been diverted to the inside the river channel. Runoff from the north and east in the  
4 Los Cerritos and Virginia Country Club areas that has not made it into the designated storm  
5 drains continues southward until it picks up a big head and floods all in its path. The City relies  
6 on detention basins to reduce impacts from discharge of these contaminants into the Los  
7 Angeles River and nearby properties but does not address the possibility that a storm event  
8 might overwhelm existing basins.

9 80. The City’s Basin concept for the area surrounding the Project is insufficient and  
10 substandard for the increased runoff needs since the 1930s and 1940s and 1950s completion of  
11 the Federal levee project. To guard against significant contamination of the LA River and  
12 surrounding properties, the Project should have been required to sample stormwater to track  
13 potential water contamination and to install permeable surfaces to reduce runoff. However, the  
14 City failed to impose feasible mitigation measures for potentially significant impacts.

15 81. Thus, the MND’s conclusions that the Project will not have impacts from the  
16 spread of hazardous materials are unsupported.

17 **d. Impacts to Water Resources and Public Utilities Could be**  
18 **Significant.**

19 82. The Project will have additional significant impacts to water resources. The  
20 surcharge is directly loading weight (approximately 1 million pounds) and displacing the only  
21 storm sewer pipe serving the site and the neighborhood to the east, including Los Cerritos Park.  
22 The displacing of the pipe segments will cause the most highly contaminated “toothpaste  
23 consistency” soil surrounding the underground pipe to leak into the storm drain pipe which  
24 discharges directly into the LA River. The displacement of the pipe segments will also cause  
25 the storm drain to cease working as intended resulting in sinkholes and flooding to the area.

26 83. The surcharge is directly loading weight on and potentially causing damage to two  
27 abandoned oil wells on the site, immediately north of the proposed building and four active oil  
28 pipelines.

84. The plans from Project Applicant 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. 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 which will likely not be working as intended after the surcharge work is completed. Instead, during storm events, the permeable earth absorbs much of the rain and some sheet-flowed to the west. By paving over the Project Site, the Project will exacerbate flooding issues by removing the permeable surface that is so crucial for proper storm drainage in the area.

85. The InSite plans detail onsite storm drainage tying into the existing 30 inch storm drain, yet available plans from the County Flood Control District and the City of Long Beach indicate a storm drain pipe 24 inches in diameter, a 36% smaller capacity. The smaller drain capacity means that Project impacts relating to stormwater drainage will be more severe than anticipated, as the storm drain has less capacity than anticipated to channel away stormwater.

86. The Project would contribute to increased flooding, negatively impacting a nearby equestrian bridle/hiking trail, as well as equestrian communities to the south.

87. Projects like the 1998 Los Angeles County Drainage Area (LACDA) Flood Control Project actually increased negative flood impacts in neighborhoods surrounding the Project site. By reducing the margin of open space in between that used for retention basin and absorption, and also pushing a bridle/hiking trail into the “swale” within the basin, the LACDA Flood Control Project created more flood impact vulnerability instead of reducing it.

88. Here, the Project’s high-density design and surcharge action will create high west-facing slopes that form a “funnel effect.” This funnel effect will run over mostly impermeable surfaces such as asphalt and concrete, channeling runoff more rapidly than before. The MND should analyze and craft improved mitigation measures to address Project impacts on flood control and hydrology within the floodplain.

89. 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

1 displace groundwater, and displacement of groundwater is going to spread contamination to  
2 new locations. This is a significant environmental effect that must be addressed in an EIR.

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

#### 5 **e. Air Quality Impacts Could Be Significant**

6 91. The MND'S Air Quality section only seems to consider the diesel PM impacts  
7 from construction and not from the operation of the MacDonald's parcel as a warehouse.  
8 (MND, p. 5-14.) In particular, the MND limits its discussion of exposure to sensitive receptors  
9 to diesel PM exposure from construction activities, not from diesel truck traffic created as a  
10 result of the warehouse. (MND, p. 5-18.) Furthermore, the MND doesn't describe the types of  
11 vehicles that will visit the warehouse beyond stating that there will be "134 daily vehicle trips."  
12 (MND, p. 5-15.) However, it does acknowledge trucks will visit the warehouse by stating:  
13 there are 18 truck parking spots (MND, pp. 5-15, 3-3), limits on truck idling as a noise  
14 mitigation measure, and 10 truck dock doors (MND, p. 5-68). Nevertheless, the MND states  
15 that the operational emissions from the MacDonald site will be very low (see MND, p. 5-17).  
16 There is no valid evidence to support an assertion that daily diesel truck trips to and from the  
17 warehouse would result in less than 1 pound of PM<sub>2.5</sub> and 1 pound of NO<sub>x</sub> per day.

18 92. Furthermore, the MND does not analyze *any* additional impacts from the fact that  
19 the warehouse will be refrigerated and that at least some of the heavy-duty trucks will use  
20 transport refrigeration units (TRUs), which are known to result in higher emissions. (See  
21 California Air Resources Board, Information about Transport Refrigeration Unit,  
22 <https://ww2.arb.ca.gov/our-work/programs/transport-refrigeration-unit> (last visited Nov. 16,  
23 2020).) Although the MND recognizes transport refrigeration units (TRUs) will use the  
24 Project's warehouse, it does not account for studies that have shown that TRUs can emit up to 6  
25 times more NO<sub>x</sub> and 29 times more PM than a truck's main engine. (Staff, *Emissions trading*  
26 *and refrigerated truck engines under scrutiny*, The Guardian (Nov. 10, 2017),  
27 [https://www.theguardian.com/environment/2017/nov/10/emissions-trading-and-refrigerated-](https://www.theguardian.com/environment/2017/nov/10/emissions-trading-and-refrigerated-truck-engines-under-scrutiny)  
28 [truck-engines-under-scrutiny](https://www.theguardian.com/environment/2017/nov/10/emissions-trading-and-refrigerated-truck-engines-under-scrutiny).)

1           93. Although the MND’s Air Quality Introduction clearly states that the Project site is  
2 located within the South Coast Air Basin (“Basin”), it hides the fact that the Basin is designated  
3 as a state and federal non-attainment area. In fact, the Basin is in extreme nonattainment for  
4 federal ozone standards, meaning that it is the highest level of nonattainment. Rather than  
5 stating this simple fact, the MND forces the reader to analyze a chart to determine the  
6 attainment status of the of the Basin for criteria pollutants. After exhaustively detailing how  
7 regional ambient air quality is measured, the MND briefly states in a footnote on page 5-17  
8 (Cumulative Impacts section) “Los Angeles County is also a nonattainment area for lead, but  
9 the concern for lead emissions is limited to specific industrial sources such as battery  
10 manufacturing and reprocessing facilities,” followed by no mention of specific negative health  
11 related impacts from either criteria pollutants or lead. Reading this, a member of the public  
12 would reasonably overlook this critical information and might even assume that there are no  
13 traces of lead at the site—which has not been established by the MND. It is also difficult to  
14 decipher the air quality data in Table 4 (Air Quality Levels Measured at the Long Beach  
15 Monitoring Stations) within the text and a reader who is unfamiliar with how ambient air  
16 quality is measured would not easily grasp that the Project has been proposed in a federal non-  
17 attainment area that would likely be exacerbated by the Project’s construction and operational  
18 emissions.

19           94. The MND’s air quality analysis regarding construction-related emissions is also  
20 vague and too conclusory. This section does not adequately disclose the long-term health risks  
21 that exposure to construction emissions such as diesel exhaust and TACs pose. (The Report on  
22 Diesel Exhaust, Cal. Air Res. Bd., <http://www.arb.ca.gov/toxics/dieseltac/de-fnds.htm> (last  
23 visited Nov. 14, 2020).) Absent substantive analysis, the MND’s Air Quality section asserts on  
24 page 5-7 that “the majority of the populace can overcome short-term air quality health  
25 concerns” without acknowledging that the Project is being proposed in a vulnerable community  
26 that already has more asthma-related emergency room visits than *91% of all census tracts* in  
27 California.

28           95. Long Beach’s air quality is already poor, attributable to the geography of the

1 region, *decades* of non-attainment of air quality standards, and the high number of vehicle trips  
2 and resultant exhaust emissions. Although the MND claims that Volatile Organic Compound  
3 (VOC) and Nitrogen Oxide (NOx) emissions will not be significant due to a majority of local  
4 clientele and shorter vehicle trips to and from the site it (MND, p. 5-46), it does not account for  
5 how the emissions will interact with existing pollution at the site, and how those emissions will  
6 interact over time. The Project will also attract visitors, during both the construction and  
7 operational phases, which will increase traffic and emissions, further impacting air quality in  
8 the area.

9 96. Furthermore, the Project would require use of diesel-powered trucks and earth-  
10 moving machinery on what is likely *highly* contaminated soil. Therefore, containing fugitive  
11 dust and preventing it from spreading to surrounding sensitive receptors is critical. The MND  
12 claims developers will adhere to strict “[d]ust watering” regiments to control fugitive dust.  
13 (MND, p. 5-11.) However, neighbors recently documented construction activities proceeding  
14 in the Project area without *any* watering of the soil. Thus, evidence shows the Project  
15 proponent would not adhere to the strict watering regimen described in the MND. The MND  
16 has failed to provide feasible mitigation or project alternatives to prevent exposure to  
17 significant construction or air quality impacts.

18 **f. Impacts to Historic and Cultural Resources Are Likely Significant**  
19 **and Not Properly Analyzed.**

20 97. The Los Cerritos area of Long Beach has a long and storied history. It is home to  
21 residents who have lived in western Long Beach for generations. Some are descendants of the  
22 Gabrieleno-Tongva people, with parents and grandparents who worked at oil refineries and  
23 witnessed toxic dump sites, like the one beneath the Project area’s surface. In 1930, cogstones  
24 were found at the Rancho Los Cerritos, which makes this location a Sacred Site. More recently,  
25 a Tongva village (Tevaaxa’nga) was recorded as being located along the river near the Rancho  
26 Los Cerritos. Similarly, a Los Cerritos resident of Gabrieleno-Tongva ancestry documented two  
27 tribal village sites that were likely in the immediate vicinity of the Project area. Indigenous  
28 survivors of European settlement lived on these sites to work as farmers and horseman on the

1 Los Cerritos Rancho. This open space is precious and preserving this land is critical for cultural  
2 preservation. We question whether the Native American Heritage Commission has been  
3 meaningfully informed about the nature of the Project. The City is required to comply with AB  
4 52 consultation requirements.

5 98. The Project area is eligible to be designated a Tribal Traditional Landscape. As  
6 with National Register sites, it is not necessary to have artifacts or physical evidence on a Sacred  
7 Site or Traditional Tribal Landscape for a place to be considered worthy of preservation. The  
8 MND improperly concludes that the Project would not result in a significant adverse impact to  
9 any identified or eligible historical resources. Mitigation measure MM CULT-1 further states  
10 that if “cultural (archaeological) resources are inadvertently unearthed during excavation  
11 activities...[t]he Project Applicant/Developer shall retain a qualified professional archaeologist,  
12 subject to approval by the lead agency, to evaluate the significance of the find and determine an  
13 appropriate course of action.” (MND, p. 5-28). This measure is vague and improperly deferred  
14 in violation of CEQA. There is no valid reason that village sites, artifact finds, equestrian trails,  
15 and historic pathways on and adjacent to the Project have not yet been evaluated in a historic  
16 resource report to determine its eligibility for the California Register and to list its character  
17 defining features.

18 99. Another example of the historic cultural significance of the Project site is found in  
19 the Diary of Father Pedro Font, who documented the Portola Expedition traveling near the  
20 Project area. This historic diary is readily available for evaluation. Father Font was the chaplain  
21 of Juan Bautista de Anza's expedition that explored Alta California from 1775 to 1776. His  
22 diary, *With Anza to California*, serves as the principal account of this expedition. Father Font  
23 refers to the view of the alluvial delta of the Los Angeles River looking southward toward the  
24 San Pedro Bay. (See Figure 1). On May 29, 1776, he recorded that the expedition travelled  
25 south along the Los Angeles River and made a stop at the “Los Cerritos,” which in those days  
26 was a reference to a water/spring source and the old name for Signal Hill (Willow Springs)  
27 according to Sarah Bixby Smith in her book *Adobe Days*. This means the expedition’s historic  
28 travels included a southward trek toward the ocean from the San Gabriel mission using the Los



1 Angeles River and adjacent lands for trail and camp purposes, the very same lands constituting  
2 the Project site. Furthermore, the aforementioned book, *Adobe Days*, describes life in the late  
3 19<sup>th</sup> Century in the area and is a testimonial to the cultural significance of the area including the  
4 Project site.

5 100. There is no reason to defer the formulation of mitigation for when cultural  
6 resources are encountered during Project construction. Deferred mitigation violates CEQA.

7 101. The MND's assertion that the Project is too degraded or too low in elevation to  
8 contain any tribal cultural evidence is inaccurate as both cultural evidence and human remains  
9 have been unearthed in similar locations and therefore cannot be assumed not to exist at the  
10 project site. The description of the cultural/archaeological area around the project is limited to  
11 0.5 miles but excludes the existing Rancho Los Cerritos, which may be small now but until it  
12 was sold off by the Bixby's, the Rancho Los Cerritos included the Project area. An EIR is  
13 required.

14 **g. Failure To Adequately Describe the Existing Environment.**

15 102. The MND fails to adequately reference or disclose updated air quality data  
16 addressing the "high pollution burden" surrounding the Project area. According to  
17 CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for  
18 "pollution burden" and vulnerability, the Project's census tract ranks *worse than 85 percent of*  
19 *the rest of the state for pollution burden*, attributable to contaminated sites, solid waste and  
20 hazardous vehicle emissions in the area. (See <https://oehha.ca.gov/calenviroscreen>.)  
21 CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment  
22 that uses environmental, health, and socioeconomic information to produce scores and rank  
23 every census tract in the state. (CalEnviroScreen 3.0, Cal. Off. Environmental Health Hazard  
24 Assessment <<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>> (last visited Nov.  
25 15, 2020). A census tract with a high score is one that experiences a much higher pollution  
26 burden than a census tract with a low score.

27 103. The Project area is also a designated "Disadvantaged Community" per California  
28 Senate Bill (SB) 535, a bill that was passed to identify and target funds to assist communities

disproportionately burdened by pollution. (Grayson Schmidt, *Asthma Alley: Long Beach ranks worst in U.S. for air quality*, CRONKITE NEWS (Oct. 1, 2019), <https://cronkitenews.azpbs.org/2019/10/01/long-beach-air-quality-problems/>.)

104. Western Long Beach is divided by heavily-trafficked freeways that carry countless truck routes leading to and from major ports, warehouses, and commercial distribution centers. These routes increase diesel particulate pollution due to the diesel-powered ships, trains, trucks, cargo handling equipment and other machinery involved in freight movement in Southern California.

105. The MND also overlooks the Project area's community demographics and how they could render the area especially susceptible to the potential environmental impacts of the Project. In other words, the MND completely fails to acknowledge the serious and adverse environmental justice impacts this Project would have. The area is a predominantly Hispanic and Asian community that is 82% people of color with an asthma score of 91, meaning the area has more people living with asthma, emergency department visits for asthma symptoms, and deaths from asthma, than 91% of census tracts throughout California.

106. The area also includes a wide range of other sensitive receptors that would be significantly impacted by the Project. The area's population is 11% children under the age of 10-years and 11% elderly, over the age of 65-years—both of whom are especially vulnerable to cancer, asthma, heart disease, and other health impacts aggravated by pollution. Although the MND admits that the Project is proposed near “single-family residences, the Los Cerritos Elementary School, and Los Cerritos Park (approximately 160 feet east northeast of the Project site),” the MND does not meaningfully acknowledge the Project's close proximity to prominent cycling routes like the Los Angeles River Bikeway and equestrian pathways such as the Los Angeles River Regional Equestrian Trail. The MND also overlooks areas slated to be revitalized for passive and recreational use along the LA River.

107. The MND must account for all sensitive receptors surrounding the Project area, as well as the high pollution burden that they already endure. As written, the MND is not an adequate informational document because it lacks critical data that is required to properly

1 analyze and mitigate the Project's environmental impacts. Furthermore, the MND's  
2 deficiencies prevent the reader from comprehending how the Project would combine with and  
3 exacerbate the area's current pollution burden. A full Environmental Impact Report (EIR)  
4 analyzing environmental impacts at the Project area and feasible mitigation measures is  
5 required.

## 6 **SECOND CAUSE OF ACTION**

### 7 **(Violation of Municipal Code Variance Findings Requirements.)**

8 108. Petitioners incorporate all previous paragraphs as if fully set forth.

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

12 110. Under the Long Beach Municipal Code, a variance may only be approved in cases  
13 of undue hardship where it is necessary to enjoy a property right and does not convey a special  
14 privilege or remedy a self-imposed hardship. (Long Beach Municipal Code §§ 21.15.2890,  
15 21.25.306; *Broadway, Laguna, etc., Ass'n v. Board of Permit Appeals* (1967) 66 Cal.2d 767,  
16 772). An inconvenience is not sufficient to show an undue hardship. (Long Beach Municipal  
17 Code §§ 21.15.2890.) In this case, the excessive height of the building is a self-imposed  
18 hardship related to the building design the project applicant desires. There is no basis for  
19 granting a variance from the generally applicable Municipal Code.

20 111. Further, the requirement of a variance is a significant land use impact that should  
21 have been identified as an inconsistency with the zoning ordinance under CEQA and analyzed  
22 in a full EIR.

## 23 **PRAYER FOR RELIEF**


24 In each of the respects enumerated above, Respondent has violated its duties under law,  
25 abused its discretion, failed to proceed in the manner required by law, and decided the matters  
26 complained of without the support of substantial evidence. Accordingly, the approval of the  
27 MND and the approval of the Project must be set aside.

28 WHEREFORE, Petitioners pray for relief as follows:

- 1           1.     For an alternative and peremptory writ of mandate, commanding Respondent:  
2                 A.     To set aside and vacate its approval of the Initial Study and Mitigated  
3 Negative Declaration and Findings of Fact supporting the approval of the Project; and  
4                 B.     To set aside and vacate any approvals for the Project based upon the Initial  
5 Study and Negative Declaration supporting the Project; and  
6           2.     For an order enjoining Respondent and Real Parties in Interest from taking any  
7 action to construct any portion of the Project or to develop or alter the Project site in any way  
8 that could result in a significant adverse impact on the environment unless and until a lawful  
9 approval is obtained from Respondent after the preparation and consideration of an adequate  
10 EIR and adoption of all feasible alternatives and mitigation measures;  
11           3.     For costs of the suit;  
12           4.     For reasonable attorneys' fees; and  
13           5.     For such other and further relief as the Court deems just and proper.

14  
15 DATE: May 12, 2021

Respectfully Submitted,  
CHATTEN-BROWN, CARSTENS & MINTEER LLP

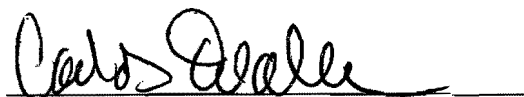
16  
17  
18 By:   
19 Douglas P. Carstens  
20 Sunjana Supekar  
21 Attorneys for Petitioners  
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**VERIFICATION**

I, the undersigned, declare that I am a member of Riverpark Coalition, a Petitioner in this action, and I am authorized to make this verification. I have read the foregoing Petition for Writ of Mandate and know the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of May 2021, in Long Beach, California.



Carlos Ovalle

# EXHIBIT A



**Chatten-Brown, Carstens & Minter LLP**

**Hermosa Beach Office**

Phone: (310) 798-2400

Fax: (310) 798-2402

**San Diego Office**

Phone: (858) 999-0070

Phone: (619) 940-4522

2200 Pacific Coast Highway, Suite 318

Hermosa Beach, CA 90254

[www.cbcearthlaw.com](http://www.cbcearthlaw.com)

**Douglas Carstens**

Email Address:

[dpc@cbcearthlaw.com](mailto:dpc@cbcearthlaw.com)

Direct Dial:

310-798-2405

May 12, 2021

By U.S. Mail

California Attorney General

300 South Spring Street, Ste. 1700

Los Angeles, CA 90013

Re: Challenge under the California Environmental Quality Act to  
the approval of the Pacific Place Project

Honorable Attorney General:

Please find enclosed a copy of the Petition for Writ of Mandate filed to challenge  
City of Long Beach's failure to comply with the California Environmental Quality Act (CEQA)  
in approving the Pacific Place Project.

This Petition is being provided pursuant to the notice provisions of the Public  
Resources Code. Please contact me if you have any questions.

Sincerely,

Douglas P. Carstens

Enclosure

**PROOF OF SERVICE**

I am employed by Chatten-Brown, Carstens & Minter LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254. On May 12, 2021, I served the within documents:

**LETTER TO THE CA ATTORNEY GENERAL REGARDING  
PETITION FOR WRIT OF MANDATE**

VIA UNITED STATES MAIL.

I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 12, 2021, at Hermosa Beach, California 90254.

/s/ Cynthia Kellman

---

Cynthia Kellman

**SERVICE LIST**

Office of the CA Attorney General  
300 South Spring Street, Ste. 1700  
Los Angeles, CA 90013



# EXHIBIT B



Chatten-Brown, Carstens & Minter LLP

2200 Pacific Coast Highway, Suite 318  
Hermosa Beach, CA 90254  
[www.cbcearthlaw.com](http://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](mailto:dpc@cbcearthlaw.com)  
Direct Dial:  
310-798-2405

May 12, 2021

*By U.S. Mail*

Monique De La Garza, CMC  
Long Beach City Clerk  
City Hall  
411 W. Ocean Blvd.  
Long Beach, CA 90802

Re: Challenge under the California Environmental Quality Act (CEQA) to  
the approval of the Pacific Place Project

Dear Ms. De La Garza ,

Please take notice that Riverpark Coalition and LA Waterkeeper plan to file a Petition for Writ of Mandate challenging the City of Long Beach's failure to comply with the California Environmental Quality Act (CEQA) in approving the approval of the Pacific Place Project.

Sincerely,

Douglas Carstens

**PROOF OF SERVICE**

I am employed by Chatten-Brown, Carstens & Minter LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254. On May 12, 2021 I served the within documents:

**LETTER TO LONG BEACH CITY CLERK**

**VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 12, 2021, at Hermosa Beach, California 90254.

/s/ Cynthia Kellman

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Cynthia Kellman

**SERVICE LIST**

Monique De La Garza, CMC  
Long Beach City Clerk  
City Hall  
411 W. Ocean Blvd.  
Long Beach, CA 90802

# EXHIBIT C

CHATTEN-BROWN & CARSTENS LLP  
Douglas P. Carstens, SBN 193439  
Michelle Black, SBN 261962  
Sunjana Supekar SBN  
2200 Pacific Coast Hwy, Suite 318  
Hermosa Beach, CA 90254  
310.798.2400; Fax 310.798.2402  
Email: [dpc@cbcearthlaw.com](mailto:dpc@cbcearthlaw.com);  
[mnb@cbcearthlaw.com](mailto:mnb@cbcearthlaw.com); [sss@cbcearthlaw.com](mailto:sss@cbcearthlaw.com)

Attorneys for Petitioner  
RIVERPARK COALITION and LA WATERKEEPER

LOS ANGELES WATERKEEPER  
Kelly Clark (Bar No. 312251)  
120 Broadway Ste 105  
Santa Monica, California 90401  
Phone: (310) 394-6162; Fax: (310) 394-6178  
Email: [kelly@lawwaterkeeper.org](mailto:kelly@lawwaterkeeper.org)

Attorneys for Waterkeeper  
LOS ANGELES WATERKEEPER

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

RIVERPARK COALITION and LA  
WATERKEEPER

Petitioners,  
v.

CITY OF LONG BEACH  
Respondent.

ARTESIA ACQUISITION COMPANY, LLC;  
MACDONALD TRUST; INSITE PROPERTY  
GROUP; PAUL BROWN; DOES 1-10

Real Parties In Interest

) CASE NO.:

**NOTICE OF ELECTION TO PREPARE  
ADMINISTRATIVE RECORD**


(California Environmental Quality Act)

1 PLEASE TAKE NOTICE:

2 Pursuant to Public Resources Code section 21167.6, Petitioners Riverpark Coalition and LA  
3 Waterkeeper hereby elect to prepare the administrative record in this matter

4 DATE: May 12, 2021

5 Respectfully Submitted,  
6 CHATTEN-BROWN & CARSTENS LLP

7 By:   
8 Douglas P. Carstens  
9 Sunjana Supekar  
10 Attorneys for Petitioners  
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