

THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO RULE 308 OF THE LOCAL RULES
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

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HUNTINGTON BEACH NEIGHBORS
(H.B.NEIGHBORS)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 04 2009

ALAN CARLSON, Clerk of the Court

BY C. PEDRAZA, DEPUTY

JUDGE NANCY WIEBEN STOCK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

30-2009

Case No. **00325686**

HUNTINGTON BEACH NEIGHBORS
(H.B. NEIGHBORS), a non-profit
organization,

Petitioner/ Plaintiff,

v.

THE CITY OF HUNTINGTON BEACH;
HUNTINGTON BEACH CITY COUNCIL;
and DOES 1-50,

Respondents/Defendants.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Code Civ. Proc. §§ 1094.5, 1085 and
Pub. Res. Code § 21000, *et seq.* (CEQA))

**NOTE TO COURT CLERK: THIS
PETITION INCLUDES A CALIFORNIA
ENVIRONMENTAL QUALITY ACT
(CEQA) CAUSE OF ACTION TO BE
ASSIGNED TO A SUPERIOR COURT
JUDGE DESIGNATED IN
ACCORDANCE WITH PUBLIC
RESOURCES CODE § 21167.1(b) WHO
HAS AN EXPERTISE IN CEQA**

23 Petitioner /Plaintiff Huntington Beach Neighbors (H.B. Neighbors) (“Petitioner”) is
24 informed and believes and on that basis alleges as follows in this Verified Petition for Writ of
25 Mandate under the California Environmental Quality Act (“CEQA”) and Other Laws:

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1 5. Respondents/Defendants, City of Huntington Beach ("City") is and at all relevant
2 times herein was, a California charter city located in the County of Orange. City is a public
3 agency under Section 21063 of the Public Resources Code. City is authorized and required by
4 law to hold public hearings, to determine the adequacy of and certify environmental documents
5 prepared pursuant to CEQA, and to take other actions in connection with the approval of projects
6 within its jurisdiction.

7 6. Respondents/Defendants, City Council of Huntington Beach ("Council") is a
8 legislative body, the governing board and the highest administrative body of the City.

9 7. Respondents/Defendants, DOES 1 through 50, inclusive, are individuals,
10 corporations, associations, public agencies, quasi-public agencies, or otherwise related to
11 Respondents/Defendants. Petitioner does not presently know the true names and capacities and
12 therefore sues such Respondents/Defendants by those fictitious names pursuant to *California*
13 *Code of Civil Procedure* section 474. Petitioner is informed and believes and thereon alleges that
14 each fictitious Respondent/Defendant is responsible for, participated in, or contributed to the
15 matters and things of which Petitioner complains herein and in some fashion has legal
16 responsibility thereof. When the identity of such fictitious Respondents/Defendants and the
17 extent and nature of and their responsibility for, participation in and contribution to the matters
18 and things herein alleged have been ascertained by Petitioner, Petitioner will seek leave of this
19 Court to amend this Petition/Complaint to show their true names and capacities.

20 8. Petitioner is informed and believes and thereon alleges that at all times material
21 hereto, each DOE Respondent/Defendant named in this Petition/Complaint was the agent and
22 employee of each of the other Respondents/Defendants herein, and was at all times material
23 thereto, acting within the course and scope of the agencies and the employment and with the
24 permission and consent of respondents/defendants.

25 **JURISDICTION, VENUE AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 9. This Court has jurisdiction over this action pursuant to Sections 1085, 1094.5 and
27 187 of the *California Code of Civil Procedure*, and Sections 21168 and 21168.5 of the *California*
28 *Public Resources Code*.

1 10. Venue is proper in this County under Sections 394 and 395 of the *California Code*
2 *of Civil Procedure* as the County in which the real property in dispute is located and as a County
3 in which some or all of the Respondents/Defendants reside.

4 11. Petitioner has complied with the requirements of *California Public Resources*
5 *Code* section 21167.5 by sending a Notice of Commencement of this Action to Respondents prior
6 to filing this Petition/Complaint. A true and correct copy of such notice is attached hereto as
7 Exhibit "A" and incorporated herein by this reference.

8 12. Petitioner has complied with the requirements of *California Public Resources*
9 *Code* section 21167.7 and *California Code of Civil Procedure* section 388 by mailing a copy of
10 the Petition/Complaint to the State Attorney General. A true and correct copy of such Notice is
11 attached hereto as Exhibit "B" and incorporated herein by this reference.

12 13. Petitioner has satisfied each and every exhaustion-of-remedies requirement that
13 must be satisfied in order to maintain this proceeding. In particular:

14 A. The violations of law challenged in this proceeding were identified for
15 Respondents orally or in writing by Petitioner or another person (if not both) prior to the close of
16 the public hearing on the Project, as required by *California Public Resources Code* section
17 21177(a).

18 B. Petitioner objected to the Project's approval prior to the close of the public
19 hearing on the Project, as required by Public Resources Code Section 21177(b); and at least one
20 of Petitioner's members objected as Petitioner was formed after the Project's approval, as
21 required by Public Resources Code Section 21177(c).

22 C. Any and all available appeals of the Project's approval were pursued, and
23 Respondents' approval of the Project is now final.

24 **STANDING**

25 14. Petitioner has standing as a party beneficially interested in the issuance of the
26 requested writ of mandate because the Project, as alleged more specifically herein, will have
27 significant adverse environmental impacts on members of the organization and individuals named
28 herein.

1 GENERAL ALLEGATIONS

2 15. In 2008, the City proceeded to commence the review process under the California
3 Environmental Quality Act ("CEQA"). This process culminated in the creation of a Draft and
4 Final Environmental Impact Report (the "EIR").

5 16. The project consists of an update of the Downtown Specific Plan (General Plan
6 Amendment No. 08-007, Local Coastal Program Amendment No. 08-002, Zoning Text
7 Amendment No. 08-004, Environmental Impact Report No. 08-001).

8 17. The Downtown Specific Plan area consists of approximately 336 acres. The
9 Downtown Specific Plan ("DTSP") area extends from the intersection of Goldenwest Street with
10 Pacific Coast Highway and curves along the coastline, including the Huntington Beach Pier,
11 down to Beach Boulevard.

12 18. The DTSP Update is a City-initiated project to update Specific Plan No. 5 -
13 Downtown Specific Plan (DTSP). The project will reconfigure the existing 11 Specific Plan
14 districts into 7 districts, modify development and parking standards, incorporate design guidelines
15 and provide recommendations for street improvements, public amenities, circulation
16 enhancements, infrastructure and public facility improvements and parking strategies.

17 19. The development standard revisions include, but are not limited to, increasing
18 allowed, residential densities and modifications to maximum allowable building height based on
19 site criteria. The project also revises parking requirements and modifies parking ratios, eliminates
20 the Downtown Parking Master Plan and includes a Main Street Library Subdistrict on the Main
21 Street Library site and a Neighborhood Subdistrict on 1st and 2nd Streets.

22 20. The DTSP Update also consists of the General Plan Amendment No. 08-007,
23 which amends the Land Use and Circulation Elements to reflect the various changes in land use
24 and development standards. This includes increases in allowable residential densities and
25 elimination of Floor Area Ratio ("FAR") requirements in District 1 – Downtown Core, as well as
26 the reconfiguration of the districts. Changes to the General Plan include revisions to the Land
27 Use Map and modification to the Land Use Schedule and Community District and Subarea
28 Schedule and map in the land Use Element.

1 21. The amendment to the Circulation Element includes a revision to Figure CE-9:
2 Trails and Bikeways.

3 22. Zoning Text Amendment No. 08-004, amends the existing text of the Downtown
4 Specific Plan. Local Coastal Program Amendment No. 08-002 amends the Implementation
5 Program (“IP”), specifically the Downtown Specific Plan, and the Land Use Plan/Coastal
6 Element of the City’s certified Local Coastal Program. Amendments to the Coastal Element will
7 involve changes that are consistent with the changes to the Land Use and Circulation elements in
8 addition to several policies that are updated based on changes to the DTSP.

9 23. On or about October 6, 2009, Respondents’ Planning Commission certified the
10 EIR as adequate and complete with modifications and gave other approvals with respect to the
11 Project. On October 12, 2009, Respondents’ Planning Commission approved the CEQA Findings
12 of Fact with a Statement of Overriding Considerations and gave other approvals with respect to
13 the Project. That body’s decisions were appealed to Council.

14 24. On or about November 2, 2009, Council denied the appeal of the planning
15 commission’s decision.

16 25. On November 6, 2009, the City filed its Notice of Determination (“NOD”) with
17 the Office of the Planning and Research and the County Clerk, County of Orange.

18 26. This proceeding is being commenced not more than 30 days after the Notice of
19 Determination’s filing, as required by Section 21167(c) of the *California Public Resources Code*.
20 Therefore, this petition and complaint is timely filed.

21 27. Petitioner opposes the Project and challenges certain actions taken by
22 Respondents. In particular, Petitioner seeks to invalidate Respondents’ certification of the EIR
23 and related actions and approvals with respect to the Project on the grounds that Respondents
24 violated CEQA and other laws.

25 28. Petitioner has complied with any and all conditions precedent to filing the instant
26 action and has exhausted any and all available administrative remedies. There is no provision
27 known to Petitioner for any further administrative remedy action from Respondents’ decision to
28 certify the FEIR for the Project.

1 long-term impacts, providing decision-makers with enough information to enable them to make
2 an informed decision with full knowledge of the likely consequences of their actions, and
3 providing members of the public with enough information to participate meaningfully in the
4 project approval and the environmental review process. CEQA also requires that every EIR
5 identify and analyze a reasonable range of alternatives to a proposed project. CEQA further
6 requires that every EIR identify and analyze all reasonable mitigation measures for a proposed
7 project's significant adverse environmental impacts. In each respect, CEQA mandates that the
8 analyses contained in an EIR and all decisions of the lead agency based on the EIR be supported
9 by substantial evidence in the administrative record.

10 35. The primary purpose of an EIR is to inform decision-makers and the public about
11 a project's significant environmental impacts and ways to reduce them, to demonstrate to the
12 public that the environment is being protected and to insure political accountability. CEQA does
13 not require technical perfection in an EIR but rather adequacy, completeness, and a good faith
14 effort at full disclosure. (CEQA Guidelines § 15003(i))

15 36. The Project's EIR fails to provide adequate information and adequate analysis of
16 the significant adverse environmental impacts associated with this project. Many of the
17 environmental category sections of the EIR are deficient or inadequate, including, without
18 limitations, the following:

19 **TRAFFIC**

20 37. Section 4.12 of the EIR discusses the environmental impacts to traffic that will
21 result from the Project. This section concludes that "all impacts to transportation and parking
22 associated with the proposed project would be less than significant or mitigated to less than
23 significant levels. Therefore, no significant and unavoidable impacts related to land use and
24 planning would occur."

25 38. This conclusion is misleading and deprives the City and the public of the
26 information it needs to make an informed decision on the Project. In fact, the Project will allow
27 for increased densities and more intense land uses that will directly result in increased traffic.
28 The studies in the EIR indicate that the Levels of Service ("LOS") at a substantial number of

1 intersections will worsen with the implementation of the Project and corresponding development
2 that will result therefrom.

3 39. For example, pp. 4-198 and 4-199 detail the projected 2020 p.m. LOS at 24
4 intersections in the project area. Of the 24 intersections, 10 of these intersections will have an
5 inferior LOS after implementation of the Project, as compared to the No-Project Alternative.

6 40. Despite this data provided in the EIR, the EIR only recognizes impacts as
7 significant if an intersection will operate at an LOS of "E" or worse. This conclusion ignores the
8 negative impacts at the intersections that will result from an inferior LOS at a substantial number
9 of intersections when compared to the No-Project Alternative. Furthermore, the EIR does not
10 consider the cumulative impacts that will result from 10 intersections operating at a worse LOS
11 when compare to the No-Project Alternative.

12 41. Furthermore, Section 4.12 of the EIR makes no mention of the buses that will be
13 drawn to the Cultural Arts Center to transport groups of visitors. The addition of buses to the
14 already crowded streets will increase traffic volume and congestion. Buses move slowly,
15 especially in crowded areas, stop traffic to load and unload passengers, and create greater impacts
16 on the environment, including but not limited to air quality and noise. These adverse
17 environmental impacts should have been addressed in the EIR.

18 42. Additionally, the EIR projects that development related to the project will result in
19 13,397 additional daily trips per day to the Project area, after accounting for internal capture and
20 mode shift. Without accounting for internal capture and mode shift, the projected additional daily
21 trips per day are projected to be 20,454. A minimum of 13,397 additional daily trips per day will
22 certainly gridlock the existing, congested downtown streets. This is a significant, unavoidable
23 adverse impact to traffic.

24 43. When compared to the No-Project Alternative, the project will cause significant,
25 adverse impacts to traffic. These significant, adverse impacts are not identified as such in the
26 EIR. Therefore, the conclusion regarding the impacts to traffic in Section 4.12 of the EIR is
27 flawed and misleading.

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1 PARKING

2 44. Section 4.12 of the EIR discusses the impacts to parking caused by the Project.
3 The Kimley-Horne Parking Master Plan Study dated March 2009 conducted the parking survey
4 on August 18 and 23, 2007. This Parking Study does not adequately analyze the current
5 Downtown parking issues for the following reasons:

- 6 a. The survey was conducted during the second half of August 2007 after
7 many students have returned to school or are preparing for school. The
8 primary demographic group populating Downtown Huntington Beach
9 ("DTHB") in summer is young people (15 to 25 years old).
- 10 b. New businesses have opened and occupancy has increased since August
11 2007. Parking is significantly in higher demand and the shortage of parking
12 has gotten worse.
- 13 c. The Parking Study does not analyze building occupancy, a basic factor in
14 most parking studies. During the time of the study, many on the DTHB
15 buildings had significant vacancy that, upon stabilized occupancy, would
16 significantly increase parking demand.
- 17 d. The DTSP and EIR are voluminous documents and they do not adequately
18 summarize the total number of new parking stalls that will be added by all
19 new proposed developments within the DTSP. The cumulative effect of
20 parking from some projects such as the proposed Waterfront Hotel is not
21 adequately mentioned.
- 22 e. The Parking study does not adequately analyze the effects of parking
23 occupancy with certain garages charging higher parking fees and having
24 long exit cueing, private and public validations effect on parking demand,
25 and the beach parking lots posting "Full" signage at entrances during mid-
26 day to discourage parking.
- 27 f. The Parking Study states that mix-use projects with clustered uses (retail,
28 office, residential, etc.) will create less trips and require less parking

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demand. This theory works with clustered uses that include grocery stores, medical office space, hardware stores, etc that would actually minimize the number of trips. The DTSP does not encourage these types of uses, thus it understates the future parking demand.

g. The Strand parking garage is now open and should be included in the Parking Study.

h. The alternative parking solutions such as a valet system and automated parking garage are not feasible. Unless the entire garage is controlled and operated by one parking operator, they cannot obtain or afford liability insurance. It is not feasible to have entire large garages operate with valet. The numbers of possible valet spaces are substantially overstated. There are very few automated parking garages in Southern California. They require large ground floor queuing areas, and they are designed for long term parking.

45. The In-Lieu parking program, mentioned in the DTSP Parking section, does not adequately describe the number of outstanding In-lieu parking stalls that the City needs to build, or the outstanding fees to fund alternative parking facilities. The City has undercounted these stalls. The Parking Study depends upon the DTSP stated number of outstanding parking stalls, and the DTSP future parking supply would be significantly affected once a proper accounting is concluded. This is a very important component of the Parking Plan, current inventory, and the future in-Lieu parking program.

46. The EIR concludes that there will be no significant adverse impact to parking because "parking is required to meet minimum code requirements." This is misleading. Such conclusions in the EIR fails to address that the "minimum code requirements" are being reduced by the Project by reducing ratios of required parking (p. 3-25), further increasing parking demands resulting from new development, impacts of which were not analyzed in the EIR.

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1 CULTURAL RESOURCES

2 47. The EIR identifies four significant historical resources located within the Project
3 boundaries. Three of these significant historical resources are listed on the National Register of
4 Historic Places ("NRHP") and the fourth is listed as NRHP eligible. All four of these significant
5 historical resources are listed on the California 'Register of Historic Resources ("CRHR").

6 48. The EIR states on p. 4-63 that the "CEQA Guidelines require that a resource shall
7 be considered by the lead agency to be 'historically significant' if the resource meets the criteria
8 for listing on the California Register of Historical Resources."

9 49. The Main Street Library (the "Library") should have been identified as an
10 historical resource in the EIR, pursuant to both §§15064.5(a)(2) and (3). Furthermore, since the
11 Library is an historical resource, the EIR should have evaluated the impacts to the Library that
12 will result from the Project.

13 50. Impacts to cultural resources are considered significant when the Project "would
14 cause a substantial adverse change in the significance of an historical resource (as defined per §
15 15064.5 of the CEQA Guidelines). The impacts to the Library will unequivocally cause a
16 substantial adverse change in the significance of the Library.

17 51. An EIR must analyze whether the Project will cause a substantial adverse change
18 in the significance of any and all historical resources. CEQA Guidelines § 15065.5. Therefore,
19 the EIR should have analyzed whether the Project will cause a substantial adverse and the
20 significance of the Library.

21 LAND USE AND PLANNING

22 52. Section 4.7 of the EIR discusses environmental impacts to land use and. planning
23 that will result from the Project. This section of the EIR concludes that the Project will not result
24 in any significant environmental impacts to land use and planning. However, this conclusion fails
25 to recognize the significant environmental impacts that will result from the Project's
26 inconsistencies with the General Plan.

27 53. Pursuant to Section 4.7 of the EIR, impacts resulting from implementation of the
28 Project would be considered significant if they conflict with any applicable land use plan, policy,

1 or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding
2 or mitigating an environmental effect. P. 4-112. The Project conflicts with an applicable land use
3 plan, the Huntington Beach General Plan.

4 54. As discussed above, the Library is listed as an historical resource in the General
5 Plan. Because the Project proposes the demolition or alteration of the Library, the Project is in
6 direct conflict with the General Plan.

7 55. Furthermore, the current DTSP provides for the Historical Resources Board
8 (“HRB”) to serve in an advisory capacity to the Planning Commission to oversee the selection of
9 the local landmarks that are identified in the General Plan. The DTSP update does not provide
10 for the HRB to retain its advisory role, which is inconsistent with the General Plan, nor does it
11 analyze the impacts associated with removing the HRB from providing such advisory role.

12 56. In addition, the Project proposes to change the land use designation at the Library
13 site from “public” to “downtown core mixed-use.” The “downtown core mixed-use” designation
14 promotes mixed used development of visitors, serving and neighborhood-serving commercial
15 uses as well as office and residential development. (p.-4-112). Despite dramatically changing the
16 land use designation for the Library site, the EIR does not discuss any of the related impacts.

17 57. Additionally and alternatively, the Project’s EIR fails to provide adequate
18 identification and analysis of a reasonable range of alternatives to the Project. Further, neither the
19 analysis of alternatives in the EIR nor Respondents’ certification of the EIR in this respect is
20 supported by substantial evidence in the administrative record.

21 58. Additionally and alternatively, the Project’s EIR fails to provide adequate
22 identification and analysis of measures to mitigate the Project’s significant adverse environmental
23 impacts and fails to eliminate or substantially reduce all such impacts. Further, neither the
24 analysis of mitigation measures nor Respondents’ certification of the EIR in this respect is
25 supported by substantial evidence in the administrative record.

26 59. As a result of Respondents’ violations of CEQA, Petitioner has been harmed in
27 that Petitioner, the public, and the decision-makers who approved the Project were not fully

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1 informed about the impacts of, mitigation measures for, and alternatives to the Project prior to its
2 approval.

3 **SECOND CAUSE OF ACTION**
4 **Violation of CEQA;**
5 **Failure to Adequately Analyze Project Impacts**
6 **(Against All Respondents/Defendants)**

7 60. Petitioner hereby incorporates by reference each and every allegation contained in
8 Paragraphs 1 through 59 as set forth above.

9 61. Under CEQA, Respondents are required to prepare a complete and legally
10 adequate EIR prior to approving any discretionary projects that may have a significant adverse
11 effect on the environment. The EIR must fully disclose and adequately analyze the Project's
12 potentially significant environmental effects. Respondents are required, pursuant to CEQA, to
13 consider mitigation measures and alternatives to the Project, adopt all feasible mitigation
14 measures and/or alternatives, to determine whether proposed mitigation measures will or will not
15 be effective in avoiding or substantially lessening the Project's significant environmental impacts,
16 and to make an adequate Statement of Overriding Consideration for those significant
17 environmental impacts deemed unavoidable.

18 **AESTHETICS**

19 62. Adverse effects on existing scenic vistas will occur with the proposed Project. The
20 City's Design Review process does not include standards to encourage the preservation of scenic
21 vistas. The EIR does not identify and analyze the significant impact to the visual character of the
22 Downtown Huntington Beach area associated with demolition or alterations to the Library, and
23 associated with the increase density and more intense land uses. Additionally, this section does
24 not discuss the impacts related to shades and shadows that will be cast due to the increase
25 building height. Furthermore, this section does not adequately discuss the impacts that will be
26 caused by new sources of light and glare introduced by the construction of new buildings in the
27 area. In addition, there will be significant adverse impacts to the existing view along Pacific
28 Coast Highway, from 6th Street to 9th Street, resulting from a change to building height from 35
feet to 55 feet.

1 **NOISE**

2 63. The EIR does not identify and analyze impacts associated with the addition of the
3 Cultural Art Center and the noise related to the attendance of 300,000 to 400,000 annual visitors
4 thereto. This analysis is critical to the EIR because a substantial number of residents live in
5 locations near the Library.

6 64. The impact of noise upon the Project area and impacted residents outside the
7 Project area (who did not receive adequate notice related to the Project) was not adequately
8 addressed in the DTSP or EIR. The noise survey was conducted on a non-peak, mid-week day at
9 lunchtime in early December 2008, and no noise monitors were located in the first three blocks of
10 Main Street. There is no mention in the DTSP or EIR of the primary existing noise issue in the
11 Project area, including both daytime and nighttime noise from City Police helicopters. With the
12 Project's proposed development at a higher density, there will clearly be higher demands for the
13 City Police to increase patrols to the neighborhood through the use of helicopters, creating more
14 noise in the Project area. Further, the impact of noise within the Project area due to increased
15 traffic from non-residents and tourists (loud motorcycles, cars, trucks, busses, etc.) was not
16 mentioned nor analyzed. This significant impact was not identified nor analyzed in the EIR.

17 **POPULATION AND HOUSING**

18 65. The Project will induce extensive population growth in the Project area. The
19 Project area is already overcrowded and the resulting residential density will exceed residential
20 capacity therein. This is a significant unavoidable impact that should be identified as such in the
21 EIR.

22 **UTILITIES AND SERVICE SYSTEMS**

23 66. Significant unavoidable impacts result from cumulative impacts of development in
24 the Project area. Specifically, water supply and infrastructure will be adversely affected. These
25 impacts should be specifically identified as significant and unavoidable impacts in the EIR.

26 **PUBLIC SERVICES**

27 67. A true quantitative analysis of the potential downtown growth is not presented in
28 the EIR. Currently the police services are challenged with the existing supply of bars and

1 restaurants, the changes to the Specific Plan will allow the current number to nearly double. The
2 Fire Department has expressed concerns; however, there was no discussion in response to the
3 change in response time with the realigned and narrower streets through the downtown area. The
4 demands on the downtown library and parks will increase simply because more people will be
5 living in the neighborhood.

6 68. The DTSP calculates the need for more police services upon full development
7 build-out based upon the number of new residential units. On page 4-164 of the DTSP, the police
8 staffing ratio is 1.1 officers per 1,000 resident units. Adding 1562 residents will require the
9 additional staffing of 1.5 police personnel. The DTSP and EIR do not adequately address the
10 very high concentration of alcohol-serving restaurants (36 establishments within a few city
11 blocks) and the future impact of new restaurants on this neighborhood.

12 AIR QUALITY

13 69. The projected construction NOx emissions related to the Project are greater than
14 the significance thresholds established by the South Coast air quality management District.
15 Additionally, the Project is inconsistent with the South Coast Air Quality Management Plan
16 because of increases in traffic and population. P. 4-48. Projected long-term ROG and PM₁₀
17 emissions will unavoidably exceed the South Coast Air Quality Management District thresholds
18 by 40% to 45%. P. 4-52. Finally, projected long-term PM₂₅ emissions will unavoidably exceed
19 the new national emission standard, as detailed on P. 4-43 of the EIR.

20 GLOBAL WARMING IMPACTS

21 70. The EIR is inadequate because it fails to contain an analysis of the Project's
22 greenhouse gas emissions and global warming impacts. The Project will result in foreseeable and
23 quantifiable emission of carbon dioxide and other greenhouse gases during both the construction
24 and the lifetime of the Project from sources included but not limited to vehicles and the
25 heating/cooling and lighting of the retail units and other facilities. These emissions will
26 contribute directly and cumulatively to the increase in atmosphere greenhouse gases and this will
27 contribute directly and cumulatively to global warming.

28 71. CEQA requires that an EIR be detailed, complete and reflect a good faith effort at

1 full disclosure. (Guideline section 15151.) The document should be prepared with a sufficient
2 degree of analysis to provide decision-makers with the information that enables them to make a
3 decision which intelligently takes account of environmental consequences. (Guideline section
4 15151.) In conducting a greenhouse gas inventory, all phases of the Project must be considered.
5 In addition, the inventory and for the Project must include the Project's direct and indirect
6 greenhouse emissions. An inventory of the Project's emission should have included at a
7 minimum, an estimate of emissions from the following:

8 **Direct Impacts:**

- 9 • Construction emissions (from machinery and vehicles);
- 10 • Vehicle trips from transportation emissions generated by the project;
- 11 • Fugitive emissions, such as methane leaks from pipelines systems and leaks of
12 HFCs from air conditioning systems; and
- 13 • Wastewater and solid waste storage or disposals including transport where
14 applicable.

15 **Indirect Impacts:**

- 16 • Electricity generation and transmission for heating, cooling, and lighting and
17 other energy demands of the building; and
- 18 • Energy consumed from supplying water to the project.

19 72. The EIR fails to include a full and adequate inventory of the Project's greenhouse
20 emissions. Without a complete inventory, there is no way that the EIR can adequately discuss
21 alternatives, avoidance and mitigation measures to reduce those impacts. Because the failure to
22 conduct an inventory precludes adequate analysis of environmental impacts in all sections of the
23 EIR, the EIR is inadequate, deficient, and fails to fully disclose the impacts of the Project on the
24 environment. Therefore, the EIR must be rescinded.

25 73. The City, as the lead agency, must meaningfully attempt to quantify a particular
26 impact and determine whether the impact is significant. The impact from the Project adding
27 additional amounts of greenhouse gases to the environment should have been considered
28 cumulatively significant, and mitigation measures should have been recommended to reduce the

1 impacts to the extent feasible.

2 **NOTICE**

3 74. Respondents further failed to provide adequate notice related to the Project,
4 including notice of public hearing related thereto, to residents impacted by the Project.
5 Specifically, the notification area designated by Respondents does not adequately cover the actual
6 impacted area, nor do notification summaries adequately explain the Project or supporting
7 documents. Further, those supporting materials that were provided to interested parties were
8 fragmented, unorganized and beyond the scope of a reasonable person's ability to comprehend.

9 75. The EIR itself recognizes that the Project will have significant impact throughout
10 the City, beyond the boundaries noted by the DTSP. However, despite this recognition, notice
11 was only provided to residents within those boundaries, as opposed to the entire 92648 zip code,
12 the residents of which are significantly impacted by the DTSP.

13 76. Respondents' certification of the FEIR and approval of the Project is an abuse of
14 discretion because Respondents have not proceeded in a manner required by law. Respondents'
15 Project approval as set forth above, constitutes prejudicial abuse of discretion and should be set
16 aside, rescinded and voided by issuance of a writ of mandate.

17 77. CEQA requires every lead agency to identify all adverse environmental impacts of
18 a proposed project that will be significant and determine whether such impacts can be avoided or
19 mitigated. With respect to any such impacts that cannot feasibly be avoided or mitigated, the lead
20 agency must make at least one written finding that there are specific overriding economic, legal,
21 social, technological, or other benefits of the proposed project that outweigh the impacts.

22 78. Respondents approved the Project based on one or more written findings that there
23 exist considerations outweighing the Project's significant adverse environmental impacts, but
24 there is not substantial evidence in the administrative record to support all such findings.
25 Additionally and alternatively, Respondents approved the Project based on one or more non-
26 written findings that such considerations exist.

27 79. Respondents also failed to make all required written findings regarding the
28 Project's impacts.

1 **FOURTH CAUSE OF ACTION**

2 **Violation of CEQA;**

3 **The EIR Failed to Analyze Environmental Impacts Associated**
4 **With Amending the General Plan**
5 **(Against All Respondents/Defendants)**

6 87. Petitioner hereby incorporates by reference each and every allegation contained in
7 Paragraphs 1 through 86 as set forth above.

8 88. The Project states that in order to adopt the DTSP updates which is inconsistent
9 with the General Plan, the Zoning Text and the Local Coastal Program, the City must amend the
10 General Plan, the Zoning Text and the Local Coastal Program. Without amending these
11 documents, the Project would not be consistent with one of its objectives: to be consistent with
12 and to further objectives of the General Plan by providing detailed criteria for development within
13 the DTSP area and public streetscape improvements. P. 4-113.

14 89. Despite recognizing the Project requires the amendment of the General Plan, the
15 Zoning Text and the Local Coastal Program the EIR failed to analyze the environmental impacts
16 associated with such amendments.

17 90. Furthermore, the City has not provided the text of the amendments of the General
18 Plan, the Zoning Text, and the Local Coastal Program to the public. The City has commented
19 that these amendments are not completed and will not be available until after the close of the
20 public comment period of the EIR. As such, the public cannot view these amendments, nor
21 analyze significant impacts associated with their adoption.

22 91. As stated above, the EIR must analyze the whole of the action, which in this case
23 includes the amendments to the General Plan, the Zoning Text, and the Local Coastal Program.
24 Accordingly, the EIR does not analyze the whole of the Project, and is therefore inadequate to
25 serve as an environmental document for the Project.

26 **FIFTH CAUSE OF ACTION**

27 **Violation of CEQA;**

28 **The EIR failed to Analyze Cumulative Impacts Associated**
With the Pacific City Project
(Against Respondents/Defendants)

92. Petitioner hereby incorporates by reference each and every allegation contained in

1 Paragraphs 1 through 91 as set forth above.

2 93. The City Council approved the Pacific City mixed use project (the "Pacific City
3 Project") in June 2004. The Project consists of 31.5 gross acres split along Pacific Coast
4 Highway. According to the City of Huntington Beach's website, the mixed use project will
5 consist of 191,000 sq. ft. of retail, office, restaurant, cultural, and entertainment uses; a 163,000
6 sq. ft, 165 room, eight story, luxury boutique hotel, spa, and health club; and 516 condominium
7 units within a mix of two, three, and four story buildings.

8 94. The commercial portion of the Project includes carts and kiosks, outdoor dining,
9 alcoholic beverage sales, live entertainment, indoors and outdoors activities and dancing within
10 the proposed restaurants and hotel development. Parking will be provided in two, two-level
11 subterranean parking structures.

12 95. Although the Pacific City Project was approved over five years ago, very little
13 construction has taken place since then. Indeed, the majority and most disruptive, of the
14 construction work has yet to begin, and may begin at anytime. Because the Pacific City Project
15 has cleared all necessary hurdles to begin construction, the construction of the Pacific City Project
16 may coincide with development related to the Project.

17 96. Therefore, there is a strong possibility that there will be significant cumulative
18 related to the construction activities of both projects in the downtown area. Specifically, there
19 will be debilitating impacts to parking and traffic in the downtown area, amongst other impacts.
20 These cumulative impacts should have been analyzed throughout the EIR. They were not.
21 Accordingly, the EIR is-inadequate to serve as-the environmental document for the Project.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of CEQA;**

24 **Failure to Adequately Analyze and Implement Mitigation Measures
(Against Respondents/Defendants)**

25 97. Petitioner hereby incorporates by reference each and every allegation contained in
26 Paragraphs 1 through 96 as set forth above.

27 98. In addition to containing an inadequate analysis of impacts, the EIR fails to
28 contain a reasonable analysis of mitigation measures to avoid, minimize or mitigate

1 environmental impacts of the Project.

2 99. CEQA imposes upon Respondents a clear, present and mandatory duty to analyze
3 and adopt all feasible mitigation measures as well as consider a reasonable range of alternatives
4 and adopt any and all feasible alternatives that would substantially lessen the significant
5 environment effects of the Project.

6 100. Concrete, enforceable mitigation measures must be required for a Project or
7 incorporated into the design. Failure to analyze and adopt feasible mitigation measures violates
8 CEQA.

9 101. The Project EIR failed to adequately analyze and implement mitigation measures
10 in the following areas: aesthetics, air quality, noise, parking, population and housing, public
11 services creation, traffic, utilities, and service systems.

12 **SEVENTH CAUSE OF ACTION**
13 **For Declaratory Relief**
(Against All Respondents/Defendants)

14 102. Petitioner hereby incorporates by reference each and every allegation contained in
15 Paragraphs 1 through 101 as set forth above.

16 103. An actual controversy has arisen between Petitioner and Respondents, in that
17 Petitioner contends that Respondents' certification of the Final EIR and approval of the
18 Downtown Specific Plan did not comply with CEQA and the provisions of the CEQA Guidelines.

19 104. Petitioner is informed and believes and on that basis alleges that Respondents
20 dispute the contention of Petitioner as described in the proceeding paragraphs.

21 105. The parties at this time require a judicial determination of their respective rights
22 and duties with respect to Respondents' compliance with CEQA and the provisions of CEQA
23 Guidelines regarding the Project.

24 **PRAYER FOR RELIEF**

25 WHEREAS, Petitioner respectfully prays for the following relief against Respondents
26 (and any and all other parties who may oppose Petitioner in this proceeding):

27 1. That this Court issue an Alternative and Preemptory Writ of Mandate commanding
28 Respondents, City of Huntington Beach and City Council for the City of Huntington Beach to

1 rescind, void, annul, vacate and set aside the certification of the Final EIR (State Clearinghouse
2 No. 2008011124) and all Project approvals associated with the Huntington Beach Downtown
3 Specific Plan Update, including any and all resolutions, ordinances and approvals and all other
4 discretionary administrative action authorizing any aspect of the Project.

5 2. That pending the resolution of the issues presented herein, the Court issue a
6 Preliminary Injunction restraining Respondent from taking further action to implement or proceed
7 with the proposed Project during the pendency of the litigation;

8 3. That the Court issue a Preliminary Injunction restraining Respondent/Defendant
9 from taking further action to implement or proceed with the proposed Project prior to satisfying
10 this Court or a higher tribunal, that Respondents have fully complied with CEQA with respect to
11 this Project by, among other things, preparing a new EIR that truly and accurately addresses the
12 environmental impact set forth above; and

13 4. That the Court allow for costs of this lawsuit herein and reasonable attorneys fees
14 and other such relief as the Court deems proper.

15
16 Date: December 4, 2009

LAW OFFICE OF MARK J. SKAPIK, APC

17
18 By: *Geralyn L. Skapik*
19 Geralyn L. Skapik
20 Philip A. Kraft
21 Attorneys for Plaintiff/Petitioner,
22 HUNTINGTON BEACH NEIGHBORS
23 (H.B. NEIGHBORS)
24
25
26
27
28

EXHIBIT A

MARK J. SKAPIK*
GERALYN L. SKAPIK

TIMOTHY Q. DAY
RICHARD R. ROHDE
T. GINA BAZAZ
BRYAN L. MCNALLY

* A PROFESSIONAL CORPORATION

LAW OFFICE OF
MARK J. SKAPIK

A PROFESSIONAL CORPORATION
250 W. First Street, Suite 330
Claremont, California 91711

TEL: (909) 398-4404
FAX: (909) 398-1883

WRITER'S E-MAIL ADDRESS:
GSkapik@skapiklaw.com

December 2, 2009

VIA CERTIFIED MAIL

Joan L. Flynn
Office of the City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Re: **NOTICE OF COMMENCEMENT OF ACTION /
DOWNTOWN SPECIFIC PLAN UPDATE ("PROJECT")**

Notice is hereby given that under Section 21167.5 of the California Public Resources Code, Petitioner, Huntington Beach Neighbors (H.B. Neighbors), a non-profit organization, intends to file a petition under the provisions of the California Environmental Quality Act against Respondents, The City of Huntington Beach and Huntington Beach City Council ("Huntington Beach"), challenging its certification of the Final Environmental Impact Report ("FEIR") and approval of a project known as Downtown Specific Plan Update ("Project"), on December 4, 2009. The City's adoption of the EIR and approval of the Project was improper under the California Environmental Quality Act ("CEQA"), because of its failure to adequately analyze all of the Project's significant impacts on the environment and for its failure to properly mitigate the Project's significant impacts to a less than significant level; and on the grounds that the approval violated the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*). The action may also challenge your agency's approval of the project based on one or more violations of other laws.

Very truly yours,

LAW OFFICE OF MARK J. SKAPIK, APC



GERALYN L. SKAPIK
Attorneys for HUNTINGTON BEACH NEIGHBORS
(H.B. NEIGHBORS)

GLS:mr

PROOF OF SERVICE


I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 250 West First Street, Suite 330, Claremont, CA 91711.

On December 2, 2009, I served the following document(s): **NOTICE OF COMMENCEMENT OF ACTION / COMMERCIAL RETAIL CENTER: WAL-MART SUPERCENTER** on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

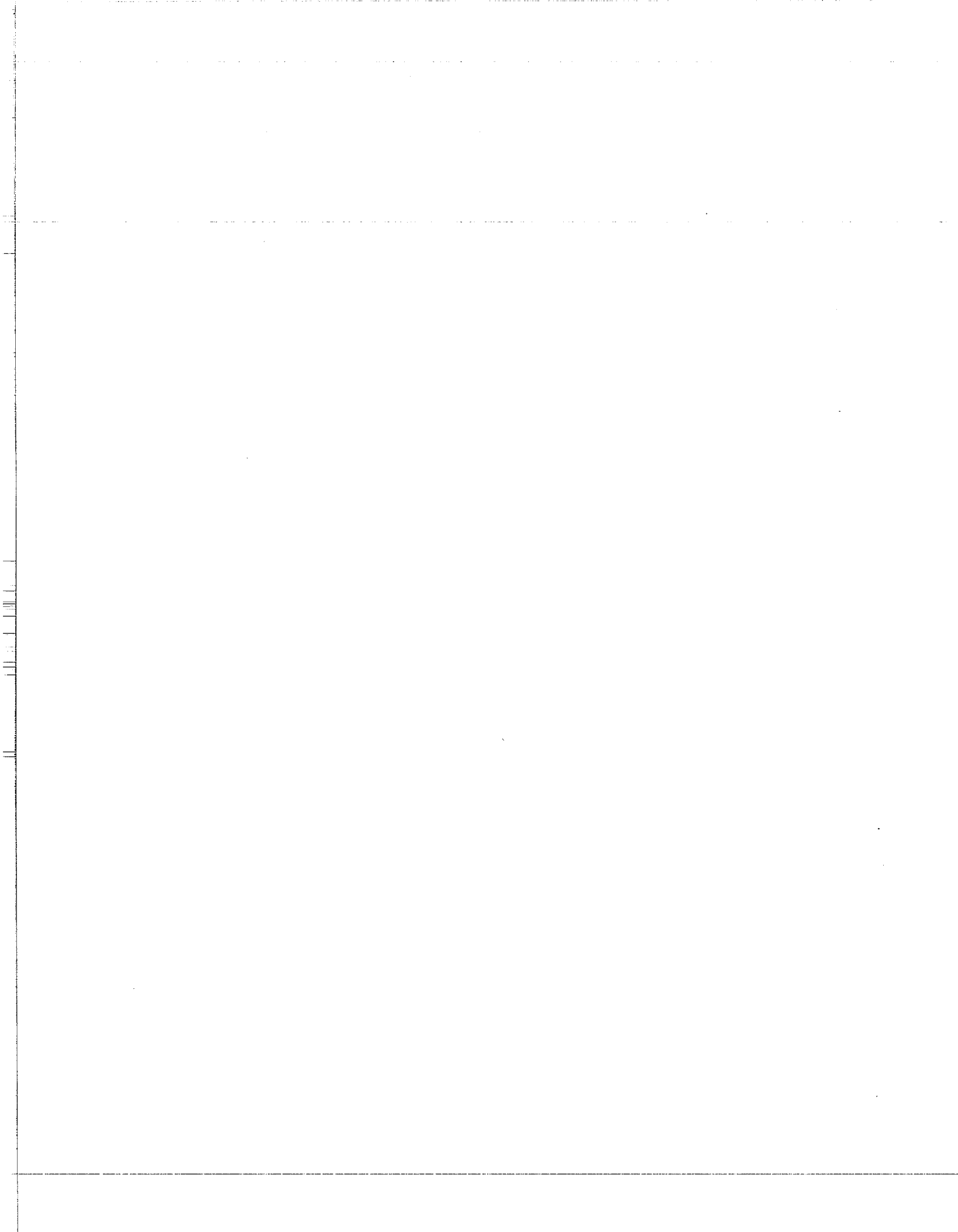
Joan L. Flynn
Office of the City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

- (X) **By U.S. Postal/Certified Mail.** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Claremont, California.
- () **By overnight courier,** I caused the above-referenced document(s) to be deposited in a box or other facility regularly maintained by the overnight courier, or I delivered the above-referenced document(s) to an overnight courier service, for delivery to the above addressee(s).
- () **By facsimile.** The facsimile transmission of the foregoing document was reported as complete and without error. A copy of the transmission report as issued by the transmission facsimile machine is attached pursuant to California Rules of Court, Rule 2.306.
- (X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- () (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed December 2, 2009, in Claremont, California.



MYRA RIOS



1 GERALYN L. SKAPIK (SBN 145055)
2 PHILIP A. KRAFT (SBN 226636)
3 LAW OFFICE OF MARK J. SKAPIK, APC
4 250 West First Street, Suite 330
5 Claremont, CA 91711
6 Tel: (909) 398-4404
7 Fax: (909) 398-1883
8 Email: gskapik@skapiklaw.com

9 Attorneys for Plaintiff/Petitioner
10 HUNTINGTON BEACH NEIGHBORS
11 (H.B. NEIGHBORS)

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

14 HUNTINGTON BEACH NEIGHBORS
15 (H.B. NEIGHBORS), a non-profit
16 organization,

Case No.

**NOTICE TO ATTORNEY GENERAL
OF PETITION**

17 Plaintiff/Petitioner,

v.

18 THE CITY OF HUNTINGTON BEACH;
19 HUNTINGTON BEACH CITY COUNCIL;
20 and DOES 1-50,

21 Defendants/Respondents.

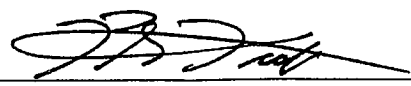
22 **TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:**

23 **NOTICE IS HEREBY GIVEN**, pursuant to *Public Resources Code* section 21167.7 and
24 *Code of Civil Procedure* section 388 that on or about December 4, 2009, plaintiff/petitioner
25 HUNTINGTON BEACH NEIGHBORS (H.B. NEIGHBORS), a non-profit organization, filed a
26 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition").

27 A copy of the Petition is attached to this Notice.

28 Date: December 4, 2009

LAW OFFICE OF MARK J. SKAPIK, APC

By: 

GERALYN L. SKAPIK
PHILIP A. KRAFT
Attorneys for Plaintiffs/Petitioners, HUNTINGTON
BEACH NEIGHBORS (H.B. NEIGHBORS)

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 250 West First Street, Suite 330, Claremont, CA 91711.

On December __, 2009, I served the following document(s): **NOTICE TO ATTORNEY GENERAL OF PETITION** on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

OFFICE OF THE ATTORNEY GENERAL
300 S. Spring Street
Los Angeles, CA 90013-1230
Phone: (213) 897-2000

- By U.S. Mail.** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Claremont, California.
- By facsimile.** The facsimile transmission of the foregoing document was reported as complete and without error. A copy of the transmission report as issued by the transmission facsimile machine is attached pursuant to California Rules of Court, Rule 2.306.
- By E-Mail or Electronic Transmission.** I caused a copy of the document(s) to be sent to persons at the email addresses listed in the Service List. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed December __, 2009, in Claremont, California.

MYRA RIOS

EXHIBIT C

1 GERALYN L. SKAPIK (SBN 145055)
2 PHILIP A. KRAFT (SBN 226639)
3 LAW OFFICE OF MARK J. SKAPIK, APC
4 250 West First Street, Suite 330
5 Claremont, CA 91711
6 Tel: (909) 398-4404
7 Fax: (909) 398-1883
8 Email: gskapik@skapiklaw.com

9 Attorneys for Plaintiff/Petitioner
10 HUNTINGTON BEACH NEIGHBORS
11 (H.B.NEIGHBORS)

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ORANGE

14 HUNTINGTON BEACH NEIGHBORS
15 (H.B. NEIGHBORS), a non-profit
16 organization,

17 Plaintiff/Petitioner,

18 v.

19 THE CITY OF HUNTINGTON BEACH;
20 HUNTINGTON BEACH CITY COUNCIL;
21 and DOES 1-50,

22 Defendants/Respondents.

Case No.

**NOTICE OF PETITIONER'S ELECTION
TO PREPARE ADMINISTRATIVE
RECORD**

[Pub. Res. Code § 21167.6]

23 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS:

24 PLEASE TAKE NOTICE that Plaintiff/Petitioner HUNTINGTON BEACH
25 NEIGHBORS (H.B. NEIGHBORS), a non-profit organization, pursuant to Section
26 21167.6(b)(2) of the *Public Resources Code*, elects to prepare the administrative record for the
27 project that is the subject of this proceeding. Petitioner therefore requests that Respondents
28 assemble the items that constitute the administrative record and notify Petitioner's attorneys of
record in writing when the items are available for inspection and photocopying. To the extent
necessary to facilitate Respondents' prompt response to this notice, Petitioner's request should
be deemed a request to inspect public records under the California Public Records Act.

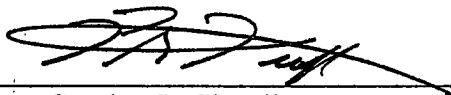
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Petitioner reserves the right to request that Respondents prepare any portion of the record that is not otherwise reasonably available except from one or more of Respondents. However, nothing in this notice shall be construed as Petitioner's express or implied agreement to make any payment to Respondents for their assembly of the items that constitute the administrative record or for any other expense incurred by Respondents in providing Petitioner with access to the items constituting the record. In the absence of Petitioner's express written acknowledgment to the contrary, this notice asks Respondents to do nothing more than provide access to the items constituting the record.

Date: December 4, 2009

LAW OFFICE OF MARK J. SKAPIK, APC

By: 
Geraldyn L. Skapik
Philip A. Kraft
Attorneys for Plaintiffs/Petitioners, HUNTINGTON
BEACH NEIGHBORS (H.B. NEIGHBORS)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a President of Huntington Beach Neighbors (H.B. Neighbors) a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 4, 2009 at Huntington Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DAVID RICE

Type or Print Name

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

Signature

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____

_____ on _____ in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____

California in the ordinary course of business. I am aware that on motion of the

party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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