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GOV'T CODE SEC 6103

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CITY OF LONG BEACH  
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES

16 CITY OF LONG BEACH, a municipal  
corporation,  
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Petitioner,  
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v.  
19 STATE OF CALIFORNIA DEPARTMENT  
20 OF TRANSPORTATION; ORANGE  
COUNTY TRANSPORTATION  
21 AUTHORITY; and DOES 1-10, inclusive  
22 Respondents.  
23 ORANGE COUNTY TRANSPORTATION  
AUTHORITY; and ROES 11-20, inclusive  
24  
Real Parties In Interest  
25

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90802

**FILED**  
Superior Court of California  
County of Los Angeles

JUL 16 2015

Sherri R. Carter, Executive Officer/Clerk  
By [Signature] Deputy  
Shaunya Bolden

Dept 1  
KEVIN  
C.  
BRAZILE

Case No. **BS156931**  
**PETITION FOR WRIT OF MANDATE**  
[California Environmental Quality Act  
("CEQA"), Pub. Res. Code §§ 21168,  
21168.5]; Code of Civ. Proc., §§ 1085, 1094.5]

~~[Signature]~~  
~~Chat Fant~~

NO FEE GOVT CODE SEC. 6183  
AMOUNT RECOVERABLE PURSUANT  
TO 6103.5 GC \$ 435.00  
PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGEMENT  
IF THE PARTY BECOMES A JUDGEMENT CREDITOR

07/16/2015

Rutan & Tucker, LLP  
attorneys at law

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8604024.2 a07/15/15

1 Petitioner City of Long Beach ("Long Beach") respectfully petitions this Court for issuance  
2 of a writ of mandate pursuant to Code of Civil Procedure ("CCP") section 1085 and Public  
3 Resources Code ("PRC") § 21168.5, or in the alternative pursuant to CCP section 1094.5 and PRC  
4 section 21168, directed at the State of California Department of Transportation ("Caltrans"), to  
5 require Caltrans to rescind its approval of the I-405 Improvement Project ("Project"), and to take no  
6 further action with regard to the Project until such time as it complies with the California  
7 Environmental Quality Act ("CEQA") (Pub. Res. Code §§ 21000 *et seq.*). Long Beach further  
8 petitions this Court for the issuance of a writ of mandate pursuant to CCP section 1085 and PRC  
9 section 21168.5, or in the alternative pursuant to CCP section 1094.5 and PRC section 21168,  
10 directed at Orange County Transportation Authority ("OCTA"), to require OCTA to rescind its  
11 approval of its actions implementing the Project, and to take no further action with regard to the  
12 Project until such time as it complies with CEQA.

13 **INTRODUCTION**

14 1. This action challenges Caltrans' decision to approve a \$1.7 billion dollar project to  
15 widen an approximately 16-mile stretch of the I-405 between State Route 73 ("SR-73") and  
16 Interstate 605 ("I-605") (the "Project"), and OCTA's actions in implementing the Project. The  
17 Project would consist of the construction and operation of a total of four (4) new lanes (consisting  
18 of a tolled express lane in each direction and a new general purpose lane in each direction), as well  
19 as various on-ramp, off-ramp and other ancillary improvements.

20 2. While Long Beach does not oppose improvements to the I-405 *per se*, it is essential  
21 that the potential environmental impacts of any such project be fully and properly evaluated, and  
22 that appropriate and enforceable mitigation measures be imposed to mitigate such impacts to the  
23 extent feasible, as required by CEQA.

24 3. In approving the Project, Caltrans failed to comply with CEQA's procedural and  
25 substantive requirements in numerous respects. In fact, Caltrans apparently formally approved the  
26 Project - behind closed doors and in secret - before it even released the Final Environmental  
27 Impact Report/Environmental Impact Statement ("EIR") for the Project, and months before it  
28 adopted the Findings, Statement of Overriding Considerations, and Mitigation and Monitoring

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1 Reporting Plan required by CEQA.

2 4. Caltrans' repeated disregard of CEQA's requirements resulted in an incomplete and  
3 inaccurate EIR that fails as an informational document. The EIR fails to identify and disclose the  
4 Project's true environmental impacts, and, as a result, fails to identify mitigation measures and/or  
5 project alternatives that could avoid those impacts.

6 5. Long Beach, as well as numerous other public agencies and other community  
7 groups and individuals, made numerous attempts (both informally and through formal comment  
8 letters) to bring the CEQA deficiencies raised in this Petition to Caltrans' attention and to  
9 convince Caltrans to correct such deficiencies. Caltrans, however, rejected or ignored the  
10 concerns expressed by Long Beach and others, and approved the Project without compliance with  
11 CEQA.

12 6. Caltrans prejudicially abused its discretion in certifying the EIR and approving the  
13 Project. Accordingly, Caltrans' approval of the Project and certification of the Final EIR must be  
14 set aside.

15 7. Likewise, Respondent and Real Party in Interest OCTA, a co-sponsor and/or  
16 proponent of the Project and a responsible agency under CEQA, has prejudicially abused its  
17 discretion in approving and beginning to implement the Project without complying with CEQA.

18 **PARTIES**

19 8. Long Beach is a charter city organized and existing under the laws of the State of  
20 California and the Long Beach City Charter. Long Beach and its residents have a beneficial  
21 interest in Caltrans' and OCTA's lawful performance of their duties, particularly with respect to  
22 certification of an EIR for a project that is directly located, in part, within Long Beach's  
23 boundaries, and which has environmental effects within Long Beach. Among other adverse  
24 impacts of the Project, residents of Long Beach will experience a dramatic increase in traffic on  
25 Long Beach streets due to bottlenecks that will be created when the additional Project general  
26 purpose lanes and toll lanes terminate at the I-405 and I-605 Freeways near the Long Beach border  
27 and drivers either sit and idle in traffic on the freeway or attempt to use Long Beach streets as a  
28 shortcut around the new traffic the bottlenecks will create. This massive increase in local street

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1 traffic will cause higher repair and resurfacing costs in the future for damage to Long Beach  
2 streets, and will increase adverse air quality, traffic, noise and health impacts on Long Beach  
3 residents due to increased traffic. In addition, Long Beach and its residents will be adversely  
4 affected by the environmental impacts of the construction, operation, and maintenance of the  
5 Project. Thus, Long Beach is beneficially interested in Caltrans' and OCTA's lawful performance  
6 of their duties.

7 9. Caltrans is a state agency and was the lead agency responsible for approving the  
8 Project under CEQA.

9 10. OCTA is a governmental entity that serves as Orange County's primary  
10 transportation agency. OCTA is referred to in some of the Project documents as the "Project  
11 Proponent," and will apparently take the lead in the construction and implementation of the  
12 Project. As such, OCTA is a "responsible agency" under CEQA and is also a real party in interest.

13 11. Long Beach is ignorant of the true names of Respondents DOES 1-10 ("Doe  
14 Respondents"), inclusive, and therefore sues said Doe Respondents by such fictitious names.  
15 Long Beach is informed and believes and thereon alleges that each of the fictitiously named Doe  
16 Respondents has or may have an interest in the subject matter of this action. Long Beach will  
17 amend this Petition to set forth the true names and capacities of such Doe Respondents if and  
18 when the same have been ascertained.

19 12. Long Beach is ignorant of the true names of Real Parties in Interest ROES 11-20  
20 ("Roe Real Parties In Interest"), inclusive, and therefore sues said Roe Real Parties in Interest by  
21 such fictitious names. Long Beach is informed and believes and thereon alleges that each of the  
22 fictitiously named Roe Real Parties in Interest has or may have an interest or stake in the subject  
23 matter of this action. Long Beach will amend this Petition to set forth the true names and  
24 capacities of such Roe Real Parties in Interest if and when the same have been ascertained.

25 **JURISDICTION AND VENUE**

26 13. This Court has jurisdiction over this proceeding pursuant to CCP section 1085 and  
27 PRC section 21168.5, or alternatively, CCP section 1094.5 and PRC sections 21168.

28 14. Venue in this Court is proper pursuant to CCP section 393 and/or section 395, in

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1 that the Project will involve construction in Los Angeles County and will create significant  
2 environmental impacts in Los Angeles County.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 15. All facts and issues raised in this Petition were presented to Caltrans and OCTA  
5 prior to the approval of the Project. Long Beach has exhausted all available administrative  
6 remedies, and submitted timely objections to Caltrans' approval of the Project. In addition, on  
7 July 15, 2015, Long Beach sent written notice to Caltrans and OCTA pursuant to PRC section  
8 21167.5 of its intent to file this Petition. The notice was sent to Respondents electronically, and  
9 was also sent by mail. A true and correct copy of the notice is attached hereto as Exhibit A.

10 **BACKGROUND AND GENERAL ALLEGATIONS**

11 16. The Project contemplates widening the I-405 between SR-73 and I-605. This  
12 approximately 16-mile-long Project corridor is primarily located in Orange County on the I-405  
13 and traverses the cities of Costa Mesa, Fountain Valley, Huntington Beach, Westminster, Garden  
14 Grove, Seal Beach, Los Alamitos, Long Beach, and the community of Rossmoor. Estimated to  
15 cost \$1.7 billion dollars, per Caltrans' own calculations, the daily vehicle miles travelled ("VMT")  
16 for the improved segment of freeway will increase by 39% (over 1.5 million VMT) over the  
17 baseline condition, and by 22% (over 1 million VMT) compared to the "future without project"  
18 condition.

19 17. In fall of 2009, Caltrans issued a Notice of Preparation ("NOP") for an EIR for the  
20 Project and invited input on the scope of the EIR. In response, on October 22, 2009, Long Beach  
21 submitted comments requesting that the EIR evaluate various potential traffic impacts, including  
22 impacts to specific traffic facilities within and around Long Beach.

23 18. Caltrans released the Draft EIR ("DEIR") in May of 2012. The DEIR presented  
24 four (4) alternative projects, including a No Build Alternative. Alternative 1 involved adding a  
25 new general purpose lane in each direction. Alternative 2 would have added two general purpose  
26 lanes in each direction. Alternative 3 (the "Project") included adding one general purpose lane  
27 and one tolled express lane in each direction.

28 19. In June and July 2012, Long Beach submitted comments on the DEIR, and

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1 expressed its disappointment that the issues raised in its comments on the NOP had not been  
2 addressed. For example, the DEIR failed to evaluate potential traffic impacts within Long Beach.

3 20. Thereafter, Caltrans prepared a Supplemental Traffic Study to analyze traffic  
4 impacts in portions of Los Angeles County, including Long Beach, and a Supplemental DEIR  
5 (“SDEIR”) was circulated for public review beginning June 2013.

6 21. On August 12, 2013, Long Beach submitted comments on the SDEIR, including a  
7 traffic analysis prepared by Iteris. Long Beach again expressed disappointment that Caltrans had  
8 failed to adequately respond to Long Beach’s concerns and comments. In particular, Long Beach  
9 noted serious deficiencies in the impact analysis and the mitigation measures proposed to address  
10 traffic impacts within Los Angeles County. To remedy those deficiencies, Long Beach proposed  
11 alternative mitigation measures developed by its traffic engineers.

12 22. Many other agencies and other parties also submitted extensive comments on the  
13 DEIR and SEIR, pointing out numerous flaws in Caltrans’ analysis, as well as its failure to follow  
14 CEQA’s procedural mandates.

15 23. Despite the extensive comments submitted on the Project, Caltrans and OCTA  
16 moved full speed ahead, repeatedly demonstrating a pre-commitment to proceed with the Project -  
17 and specifically, Alternative 3 - before completing the environmental review process required by  
18 CEQA. For example:

- 19 a. OCTA began pursuing revisions to the Southern California Association of  
20 Governments (“SCAG”) Regional Transportation Plan (“RTP”)/Sustainable  
21 Communities Strategy (“SCS”) to incorporate the Project (Alternative 3) even  
22 before the DEIR/EIS was circulated.
- 23 b. On July 25, 2014, Caltrans issued a press release indicating it had already  
24 determined and informed OCTA that Alternative 3 was the “Preferred Alternative.”
- 25 c. As far back as July 2010, Caltrans began the process of seeking approval  
26 from the Federal Highway Administration of the toll lanes contemplated by  
27 Alternative 3.
- 28 d. OCTA co-sponsored a bill allowing it to use design-build procurement for

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the "I-405 Improvement Project," which was introduced to the State Legislature on February 15, 2003.

e. On or about October 22, 2014, OCTA initiated solicitations for design-build construction services for the Project on its website. The description of the proposed Project included "dual tolled express lanes in each direction on the I-405 from SR-73 to I-605."

f. At its April 28, 2015 meeting, OCTA made clear that Alternative 3 was preordained, by approving a term sheet with Caltrans for the construction and operation of Alternative 3. OCTA's Chair also confirmed that the decision was already made, remarking to the press: "at this point, it is not a discussion about tolls or no tolls. ... If we don't do it, Caltrans is going to do it."

g. On May 4, 2015, OCTA's Regional Planning and Highway Committee authorized the CEO of OCTA to initiate discussions with property owners for the acquisition of property necessary for the Project and approved the selection of a construction management firm for the Project.

24. In the meantime, Caltrans rotely continued the environmental review process to justify the decision it had already made. It completed the Final EIR ("FEIR") for the Project on or about March 26, 2015, and thereafter, on April 3, 2015 issued a notice of availability indicating it was available for public review until May 4, 2015.

25. On May 4, 2015, Long Beach submitted comments on the FEIR, expressing dismay that Caltrans had already effectively approved the Project and begun implementing it, without completing the CEQA process. Long Beach pointed out a number of specific CEQA violations, including, but not limited to: (1) Caltrans' and OCTA's approval of the Project in advance of the certification of the FEIR and adoption of CEQA Findings and/or a Statement of Overriding Considerations; (2) the FEIR's use of an improper baseline in analyzing the Project's environmental impacts; (3) the FEIR's failure to identify the "thresholds of significance" by which environmental impacts were measured; (4) the FEIR's improper compression of "the analysis of impacts and mitigation measures into a single issue;" (5) the FEIR's failure to adequately analyze

1 air quality impacts; (6) the FEIR's failure to adequately analyze or disclose impacts related to  
2 GHG emissions; (7) the FEIR's failure to adequately analyze traffic impacts, or to respond to  
3 Long Beach's prior traffic concerns; (8) the FEIR's failure to adequately analyze noise impacts;  
4 (9) the FEIR's failure to require clear and enforceable measures to mitigate impacts to Long  
5 Beach; (10) the FEIR's failure to acknowledge the Project's growth inducing effects; (11) the  
6 FEIR's failure to address water quality impacts to Long Beach; and (12) Caltrans' failure to  
7 adequately respond to comments on the DEIR. Long Beach also warned Caltrans that, because of  
8 the significant new information added to the FEIR after the circulation of the DEIR, recirculation  
9 of the EIR was required. Long Beach also expressed its concern that Caltrans was deleting  
10 e-mails related to the Project, thus jeopardizing the ability to produce a complete administrative  
11 record relating to its decision to approve the Project. Numerous other parties also submitted  
12 comments on the FEIR. Long Beach also submitted a supplemental comment letter regarding a  
13 recent court ruling.

14         26.     Unbeknownst to Long Beach, at the time the above-described comments were  
15 submitted, Caltrans had apparently not only effectively approved the Project, but had already  
16 formally done so. According to the Notice of Determination ("NOD") filed for the Project, the  
17 Project was approved on March 26, 2015.

18         27.     Caltrans' secret approval of the Project was not disclosed until months later,  
19 however, because Caltrans failed to comply with the CEQA Guidelines' requirement that a NOD  
20 is required to be filed within five (5) working days after a decision to approve a project.  
21 (Guidelines, § 15094.) Instead, the NOD was not filed until June 17, 2015, 83 days after the  
22 Project was approved.

23         28.     Caltrans' approval of the Project further violated CEQA because it preceded - by  
24 more than a month - its adoption of CEQA Findings, a Statement of Overriding Considerations,  
25 and/or a Mitigation Monitoring and Reporting Program, all of which are required to be adopted by  
26 CEQA before a Project is approved. (Guidelines, §§ 15091 [specifying findings required before  
27 approval of project], 15093 [statement of overriding considerations], 15097 [mitigation  
28 monitoring and reporting].) Although due to the lack of transparency in Caltrans' process, it is not

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1 clear exactly when those documents were approved, as all are dated "June 2015."

2 **FIRST CAUSE OF ACTION**

3 **(Petition for Writ of Mandate for Violations of CEQA Against All Respondents and Real**

4 **Parties in Interest)**

5 29. Long Beach hereby incorporates the allegations of the foregoing paragraphs as  
6 though set forth in full herein by this reference.

7 30. Pursuant to CEQA, before a public agency approves any discretionary project, it  
8 must first assess and publicly disclose the project's potential environmental effects. An agency  
9 may not approve a project that has the potential to have significant environmental impacts if there  
10 are feasible alternatives or mitigation measures that would avoid or substantially lessen the  
11 adverse environmental impacts.

12 31. In doing the things herein alleged, Respondents failed to comply with their  
13 mandatory duties under CEQA in several substantial and prejudicial respects, including without  
14 limitation, the violations outlined in the following paragraphs.

15 32. Caltrans and OCTA pre-committed to and approved the Project, and specifically  
16 "Alternative 3," long before they completed the environmental review process, certified the FEIR,  
17 and made all required findings.

18 33. Caltrans approved the Project before adopting the required CEQA Findings,  
19 Statement of Overriding Considerations, and Mitigation and Monitoring Reporting Program.  
20 OCTA also took actions to implement the Project prior to the certification of the EIR and also  
21 without making the findings required of a responsible agency under CEQA.

22 34. The EIR's entire analysis is based upon the wrong baseline comparison. Instead of  
23 evaluating the Project against existing physical conditions, as required by CEQA (*see* Guidelines §  
24 15125), Caltrans improperly used a speculative "future" baseline. As a result, the EIR failed to  
25 disclose the Project's true impacts, and failed to require adequate mitigation to address those true  
26 impacts.

27 35. The EIR failed to identify the "thresholds of significance" by which environmental  
28 impacts were measured to determine their significance. In fact, Caltrans' response to comments

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1 reveals that it intentionally avoided identifying clear standards for determining the significance of  
2 potential impacts, as required by CEQA (*see* Guidelines § 15064.7), and instead left conclusions  
3 regarding significance to the subjective determination of an unidentified “Project Development  
4 Team,” which apparently included OCTA and Caltrans staff, as well as their consultants.

5 36. The EIR improperly compressed its assessment of the Project’s potential  
6 environmental impacts by blurring the distinction between Project impacts and the effect of  
7 mitigation measures on those impacts. (*See Lotus v. Department of Transportation* (2014) 223  
8 Cal. App. 4th 645, 656 [Caltrans violated CEQA by “compressing the analysis of impacts and  
9 mitigation measures into a single issue”].)

10 37. The EIR failed to adequately analyze or disclose the Project’s significant air quality  
11 impacts. Among other problems, the air quality analysis failed to utilize thresholds of significance  
12 developed by the Southern California Air Quality Management District (“SCAQMD”), or any  
13 other objective and meaningful threshold of significance. Instead, despite the fact that the Project  
14 will dramatically increase the amount of vehicle trips on the I-405, the single page of the EIR  
15 devoted to CEQA analysis of air quality impacts arbitrarily concluded that all of the Project’s air  
16 quality impacts are less than significant, and that no mitigation is necessary. Further, Caltrans  
17 ignored the SCAQMD’s request for a Health Risk Assessment, despite the fact that the Project  
18 will cause large numbers of persons living in close proximity to this segment of the freeway to be  
19 subjected to significant increases in traffic and the related air quality impacts.

20 38. The EIR’s greenhouse gas (“GHG”) analysis is flawed in that it failed to determine  
21 and disclose whether GHG emissions are significant. The analysis completely ignored CEQA  
22 Guidelines section 15064.4 - which was adopted in 2010 and provides specific direction regarding  
23 the process to be followed in assessing the significance of impacts from GHG emissions - and did  
24 not even attempt to identify any threshold of significance by which to evaluate the Project’s GHG  
25 impacts. Instead, Caltrans shirked its duty by insisting that it was “too speculative” to make a  
26 determination regarding the significance of the Project’s GHG impacts. This refusal to make a  
27 determination is particularly egregious, because it is clear that no reasonable analysis could  
28 conclude the Project’s GHG emissions will be insignificant. The EIR discloses that GHG

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1 emissions will substantially increase with the Project, thus impeding the achievement of state  
2 goals requiring a dramatic reduction in GHG emissions. Moreover, the GHG calculations  
3 included in the EIR are not supported by substantial evidence, and understate the Project's true  
4 GHG emissions.

5 39. The EIR's traffic analysis contains numerous serious flaws in methodology that  
6 result in a failure to identify, disclose, and/or mitigate the Project's traffic impacts. For example,  
7 but without limitation, the traffic analysis: (1) made unsupported and illogical assumptions  
8 regarding traffic flow at the Orange County/Los Angeles County line; (2) improperly relied upon a  
9 "single demand forecast" to evaluate different alternatives, without accounting for how those  
10 alternatives would influence demand; (3) failed to evaluate all affected routes, or to present an  
11 accurate representation of Project impacts along affected routes; (4) failed to adequately address  
12 how and to what extent the Project would shift traffic between the I-405 and arterial streets;  
13 (5) relied upon unfounded assumptions regarding the extent to which traffic would increase  
14 without the Project, while improperly discounting the Project's contribution to future traffic  
15 increases; (6) utilized an incorrect "fair share" funding formula; (7) failed to use the correct model  
16 (*i.e.*, the Gateway Cities Travel Demand Model) in evaluating traffic impacts in Long Beach and  
17 Los Angeles County; (8) failed to use appropriate thresholds of significance; and (9) failed to  
18 require adequate mitigation of traffic impacts.

19 40. The EIR's noise analysis is flawed in that it: (1) failed to analyze impacts north of  
20 the County border, despite the fact that the Project will significantly increase traffic north of the  
21 border; (2) failed to use an appropriate baseline; improperly compressed the analysis of impacts  
22 and mitigation measures into a single issue; and (3) relied on an arbitrary decibel level to screen  
23 out locations for its analysis.

24 41. The EIR failed to require clear and enforceable measures to mitigate impacts.  
25 Among other problems, the EIR relied on agreements that have yet to be negotiated to mitigate  
26 traffic impacts within Los Angeles County, and failed to make any provision for the event that an  
27 agreement could not be reached. This is particularly troubling because one of the contemplated  
28 agreements is between Long Beach and Caltrans/OCTA, and is very unlikely to materialize given

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1 the significant dispute between Long Beach and Caltrans regarding the scope of the improvements  
2 necessary to mitigate the Project's impacts within Long Beach, as well as what the Project's fair  
3 share contribution to those improvements is. The EIR also takes the untenable position that the  
4 implementation of T-11, which relates to "improvements at intersections owned by the State of  
5 California" that are to "be implemented by Caltrans" (FEIR, p. 4-107) cannot be guaranteed,  
6 because those improvements are "outside the control of the project proponent" (OCTA). Caltrans  
7 thus improperly disavows responsibility for ensuring that traffic improvements to its own facilities  
8 are implemented.

9 42. The EIR fails to acknowledge the growth inducing effects of the \$1.7 billion  
10 Project and instead relied on a flawed - and internally inconsistent - idea that because the Project  
11 area is built out, the Project will not induce growth. Increasing the capacity of a public facility  
12 such as the I-405 falls squarely within the definition of growth-inducing in CEQA Guideline  
13 15126.2(d). Further, the premise that the area served by the Project is already "built-out" to the  
14 extent that the Project cannot induce growth is contradicted by the EIR's own projection that daily  
15 trips in the vicinity of Long Beach will increase by 37% because of new development.

16 43. The EIR completely failed to address potential water quality impacts in Long  
17 Beach. The water quality discussion in the EIR was limited to the Orange County portion of the  
18 Project, and failed even to mention the Los Angeles Basin Plan, Los Angeles NPDES MS4  
19 Permit, and/or Long Beach NPDES MS4 Permit, let alone consider whether the Project would  
20 impact compliance with their requirements.

21 44. The EIR failed to disclose that the Project is part of a plan to develop a regional  
22 express toll lane network, and/or to describe or analyze the extent to which the Project is related to  
23 other toll lane projects. In so doing, Caltrans violated CEQA by engaging in unlawful  
24 "piecemealing," i.e. the process of "chopping a large project into many little ones - each with a  
25 minimal potential impact on the environment - which cumulatively may have disastrous  
26 consequences," in order to avoid meaningful environmental review. (*Bozung v. Local Agency  
27 Formation Commission* (1975) 13 Cal.3d 263, 283-284.)

28 45. The EIR fails to provide a complete, accurate, finite, and stable description of the

1 Project. For example, the EIR fails to include complete information regarding the demolition and  
2 construction activities the Project will require. The FEIR contradicts statements in the SDEIR  
3 regarding how the express lanes will be operated, and includes inconsistent information regarding  
4 the Project's GHG emissions and traffic.

5 46. Caltrans failed to adequately respond to public comments on the DEIR and SDEIR,  
6 in violation of Public Resources Code section 21091(d)(2)(A). Caltrans repeatedly dismissed,  
7 ignored, and otherwise disregarded valuable public comments from Long Beach, other affected  
8 cities, and prominent state regulatory agencies commenting within their respective fields of  
9 specialty.

10 47. Caltrans also failed to provide public agencies that commented on the Project with  
11 "a written proposed response" at least 10 days prior to certifying the Final EIR, as expressly  
12 required by CEQA. (*See* PRC § 21092.5(a); Guidelines, § 15088(b).)

13 48. Caltrans failed to recirculate the Final EIR for public review and comment, despite  
14 the fact that the Final EIR included "significant new information" that was not included in the  
15 DEIR and/or SDEIR. Among that significant new information was the disclosure that traffic  
16 impacts within Los Angeles County (i.e., Long Beach) may be significant and unavoidable. The  
17 FEIR also included dramatically different data regarding GHG emissions and traffic than was  
18 provided in the DEIR and SDEIR.

19 49. Caltrans improperly failed to evaluate the cumulative impacts of the Project and  
20 other reasonably anticipated and interrelated projects.

21 50. Caltrans failed to consider feasible alternatives to the Project, or to consider  
22 feasible mitigation measures for the Project's environmental impacts.

23 51. Caltrans destroyed e-mails relating to the Project, precluding the preparation of an  
24 adequate administrative record for the Project, particularly in light of the fact that the approval  
25 process occurred behind closed doors, without a public hearing.

26 52. Caltrans and OCTA failed to make required findings when approving the Project.  
27 The purported findings made by Caltrans were not supported by substantial evidence in light of  
28 the whole record.

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1           53.     As a result of the foregoing defects, Caltrans' actions in approving the Project were  
2 not in compliance with procedures required by law, were not supported by substantial evidence in  
3 the public record, were not reflected in legally adequate findings, and were arbitrary, capricious,  
4 and reflected a prejudicial abuse of discretion.

5           54.     OCTA approved and began implementing the Project without considering the EIR  
6 and/or making the findings required to be made by a responsible agency. (*See Guidelines, §*  
7 *15096.*)

8           55.     Long Beach has no plain, adequate and speedy remedy at law to redress the wrongs  
9 described in this Petition.

10          56.     Long Beach has performed any and all conditions precedent to filing this action and  
11 has exhausted any and all available administrative remedies to the extent required by law by, *inter*  
12 *alia*, submitting written and oral comments objecting to the Project and Respondents' failure to  
13 comply with CEQA at each stage of the administrative process. All matters raised in this Petition  
14 were raised in Long Beach's comments and/or comments submitted by other persons or entities  
15 who objected to the Project.

16          57.     Pursuant to Public Resources Code section 21167.5, Long Beach has provided  
17 written notice of the commencement of this action to Caltrans and OCTA.

18          58.     Pursuant to Public Resources Code section 21167.7, and CCP section 388, Long  
19 Beach has or will provide written notice of this action, including a copy of this Petition and  
20 Complaint, to the State Attorney General.

21          59.     Long Beach brings this action pursuant to Public Resources Code sections 21168  
22 and 21168.5 and CCP sections 1085, 1088.5 and 1094.5, which require that an agency's approval  
23 of a project be set aside if the agency has prejudicially abused its discretion. Prejudicial abuse of  
24 discretion occurred where Caltrans has failed to proceed in the manner required by law, its  
25 decision is not supported by the findings, or the findings are not supported by the evidence.

26          60.     Pursuant to CCP sections 1085 and/or 1094.5, a writ of mandate should issue  
27 directing Respondents to rescind their approvals of the Project and prohibiting Respondents from  
28 taking any subsequent action to approve the Project until they have complied with CEQA.

07/15/15

1 PRAYER FOR RELIEF

2 WHEREFORE, Petitioner City of Long Beach prays for relief as follows:

3 1. For a writ of mandate:

4 a. Directing Respondents to rescind, vacate and set aside Respondents'  
5 certification of the EIR and approval of the Project and any actions implementing the Project;

6 b. Commanding Respondents to immediately suspend all activities in  
7 furtherance or implementation of the Project;

8 c. Commanding Respondents to prepare a revised draft environmental impact  
9 report and circulate it for public review and comment, consistent with the requirements of CEQA,  
10 and to comply with all other requirements of CEQA, prior to taking any subsequent action to  
11 approve the Project; and

12 d. Commanding Respondents to make all required CEQA findings prior to  
13 taking any subsequent action to approve the Project.

14 2. For an interim order granting a stay of the Project's implementation, a temporary  
15 restraining order, and/or a preliminary injunction pending the entry of judgment.

16 3. For an award of attorneys' fees, litigation expenses and costs as permitted or  
17 required by law, including but not limited to CCP section 1021.5 and other statutory and common  
18 law provisions.

19 4. For such other and further relief as the Court deems just and proper.

20 Dated: July 16, 2015

RUTAN & TUCKER, LLP  
M. KATHERINE JENSON  
PETER J. HOWELL

21  
22 By: 

M. Katherine Jenson  
Attorneys for Petitioner CITY OF LONG  
23 BEACH  
24

25 Deemed verified pursuant to Code of Civil Procedure § 446(a), par. 2.  
26  
27  
28

07/16/2015

07/16/2015