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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10 CENTRAL JUDICIAL DISTRICT
11

12 PALISADES BEACH PROPERTY
OWNERS ASSN., INC. and JONATHAN
13 ORNSTEIN,

14 Petitioners and Plaintiffs,

15 v.

16 THE CITY OF SANTA MONICA, a
17 municipal corporation, THE CITY
COUNCIL OF THE CITY OF SANTA
18 MONICA, its governing body, THE
SANTA MONICA PLANNING
19 COMMISSION, THE SANTA MONICA
20 LANDMARKS COMMISSION, THE
SANTA MONICA COMMUNITY &
21 CULTURAL SERVICES
DEPARTMENT, and DOES 1 through
22 100, inclusive,

23 Respondents and
24 Defendants,

25 THE STATE OF CALIFORNIA,
26 DEPARTMENT OF PARKS AND
RECREATION and THE ANNENBERG
27 FOUNDATION

28 Real Parties in Interest.

CASE NO.

VERIFIED PETITION AND COMPLAINT
FOR:

1. WRIT OF MANDATE – VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT;
2. WRIT OF MANDATE – VIOLATION OF SANTA MONICA MUNICIPAL CODE; AND
3. DECLARATION THAT PROJECT VIOLATES THE SANTA MONICA MUNICIPAL CODE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

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Petitioners and Plaintiffs Palisades Beach Property Owners Assn., Inc. and Jonathan Ornstein hereby petition this Court for: (1) a writ of mandate pursuant to California Code of Civil Procedure Sections 1085 and/or 1094.5, *et seq.*, directed to Respondents and Defendants City of Santa Monica, Santa Monica City Council, Santa Monica Planning Commission, Santa Monica Landmarks Commission, and Santa Monica Community & Cultural Services Department, and (2) a declaration under Code of Civil Procedure Section 1060. By this Verified Petition and Complaint, and in support thereof, Petitioners and Plaintiffs allege as follows:

INTRODUCTION

1. This is a challenge to actions by Respondents and Defendants City of Santa Monica, Santa Monica City Council (“City Council”), Santa Monica Planning Commission (“Planning Commission”), Santa Monica Landmarks Commission (“Landmarks Commission”), and Santa Monica Community & Cultural Services Department (a.k.a. Santa Monica Cultural and Recreation Services Department) (“Department”) (collectively, “Respondents” or “City”) in approving the 415 Pacific Coast Highway (“415 PCH”) Development Review Permit, Reduced Parking Permit, and Fence/Wall Height Modification, and in certifying the 415 PCH Environmental Impact Report, State Clearinghouse # 2005021137 (“EIR”). These approvals shall be referred to collectively herein as the “Project Approvals”.

2. Respondents (i) failed to address or analyze a number of environmental impacts in the EIR, as required by the California Environmental Quality Act (“CEQA”); (ii) omitted important issues and potential impacts from the EIR; (iii) failed to include feasible mitigation measures in the proposed mitigation program; and (iv) violated Santa Monica Municipal Code (“Municipal Code”) Section 9.04.08.46.050, which prohibits food service facilities over 2,000 square feet in size within the Beach Overlay District (“Proposition S”).

3. Petitioners and Plaintiffs seek a writ of mandate and declaratory and

1 equitable relief directing the City to set aside the Project Approvals and to recirculate a
2 revised EIR consistent with CEQA for revised project, consistent with Proposition S, the
3 Municipal Code, and CEQA.

4 **THE PARTIES**

5 4. Petitioner and Plaintiff, Palisades Beach Property Owners Assn., Inc.
6 (“Association”) is incorporated under the laws of the State of California. The
7 Association is composed of owners of residential and other property on Palisades Beach
8 Road in the City of Santa Monica, California. The portion of Pacific Coast Highway
9 (“PCH”) generally near 415 PCH is known as Palisades Beach Road.

10 5. Petitioner and Plaintiff Jonathan Ornstein is a resident of 506
11 Palisades Beach Road, Santa Monica, California.

12 6. The Association and Jonathan Ornstein shall be referred to
13 individually as a “Petitioner” and collectively as the “Petitioners.”

14 7. Petitioners are informed and believe and thereon allege that
15 Respondent and Defendant the City of Santa Monica is a municipal corporation duly
16 organized under the laws of the State of California and is located in the County of Los
17 Angeles.

18 8. Petitioners are informed and believe and thereon allege that
19 Respondent the City Council is the City’s duly-elected governing body, created and
20 organized under Article VI of the Charter of the City of Santa Monica (“Charter”).

21 9. Petitioners are informed and believe and thereon allege that
22 Respondent the Planning Commission is an appointed body of the City which has
23 authority over City’s zoning and subdivisions under Charter Sections 1007 and 1008.

24 10. Petitioners are informed and believe and thereon allege that
25 Respondent the Landmarks Commission is an appointed body of the City which has
26 authority over the City’s historic landmarks under Municipal Code Sections 9.36.020,
27 9.36.040 and 9.36.060.

28 11. Petitioners are informed and believe and thereon allege that

1 Respondent the Department works on recreational and cultural facilities under Municipal
2 Code Section 2.12.230.

3 12. Petitioners are informed and believe and thereon allege that the State
4 of California, Department of Parks and Recreation owns the property located at 415 PCH
5 in the City of Santa Monica.

6 13. Petitioners are informed and believe and thereon allege that Real
7 Party in Interest the Annenberg Foundation has committed to provide the City with
8 approximately \$20 million to fund the project at 415 PCH.

9 14. Petitioners do not know the names or capacities of the respondents
10 and defendants named herein as Does 1-100 and will amend this Petition and Complaint
11 when their names and capacities have been ascertained.

12 15. Petitioners have no plain, speedy, or adequate remedy at law, in that
13 unless this Court grants the relief requested, the Project Approvals will result in
14 irreparable harm to Petitioners without proper consideration and accommodation of the
15 policies and mandates embodied in CEQA, Proposition S, and the Municipal Code. No
16 monetary damages or other legal remedy can adequately compensate Petitioners for this
17 harm.

18 16. Petitioners have exhausted their administrative remedies, if and to
19 the extent that such remedies existed. Petitioners timely appealed the actions of the
20 Planning Commission and Landmarks Commission. Petitioners also submitted written
21 evidence to the City Council, Planning Commission and Landmarks Commission and
22 gave oral testimony at various public hearings, including the May 25, 2006 City Council
23 hearing, raising the objections which form the basis of this Petition and Complaint.

24 **JURISDICTION AND VENUE**

25 17. This Court has jurisdiction to issue writs of mandate pursuant to
26 Code of Civil Procedure Sections 1085 and/or 1094.5 *et seq.*, to render judicial
27 determinations and to issue declarations under Code of Civil Procedure Section 1060, and
28 is otherwise authorized to grant the relief prayed for herein.

1 18. Venue is proper in this Court pursuant to Code of Civil Procedure
2 Section 393(b) as the 415 PCH property is located in the City of Santa Monica, County of
3 Los Angeles.

4 **STATEMENT OF FACTS**

5 19. The Department proposes to redevelop the former Marion Davies
6 estate located at 415 PCH for use as a public recreation facility with space for cultural
7 and social event programming ("Project"). The 4.91 acre Project site is surrounded by
8 private residences to the north and south, many of which are owned by members of the
9 Association. Petitioner Jonathan Ornstein resides to the south of the Project site.

10 20. The Department applied for Project Approvals in connection with
11 the Project. In conjunction with the application for the Project Approvals, the City, as the
12 lead agency, prepared the EIR pursuant CEQA.

13 21. The Project Approvals were first before the Planning Commission
14 on March 15, 2006.

15 22. Petitioners submitted substantial evidence to the Planning
16 Commission on March 15, 2006 indicating that the Project Approvals would violate
17 CEQA, Proposition S and the Municipal Code. Petitioners also gave oral testimony.

18 23. The Planning Commission continued the March 15, 2006 public
19 hearing on the Project until April 5, 2006.

20 24. The Project Approvals were again before the Planning Commission
21 on April 5, 2006.

22 25. Petitioners again submitted substantial evidence to the Planning
23 Commission indicating that the Project Approvals would violate CEQA, Proposition S
24 and the Municipal Code. In addition, the environmental planning firm of Christopher A.
25 Joseph & Associates submitted evidence, on behalf of the Petitioners, to the Planning
26 Commission that the Project Approvals would violate CEQA. Petitioners also gave oral
27 testimony.

28 26. The Planning Commission approved the Project, including each of

1 the Project Approvals, on April 5, 2006.

2 27. On the afternoon of April 10, 2006, Petitioner Association timely
3 appealed the Planning Commission's April 5, 2006 Project Approvals. Appeals of
4 Planning Commission decisions are heard by the City Council.

5 28. At the Landmarks Commission Hearing on the evening of April 10,
6 2006, following Petitioner Association's timely appeal of the Planning Commission's
7 April 5, 2006 Project Approvals, Petitioners submitted substantial evidence to the
8 Landmarks Commission asserting its inability to act on the Certificate of Appropriateness
9 in the absence of a final, certified Project EIR. Petitioners also gave oral testimony at the
10 Landmarks Commission hearing.

11 29. Despite Petitioner Association's April 10, 2006 appeal of the Project
12 Approvals and the Landmarks Commission's inability to act on a Certificate of
13 Appropriateness in the absence of a final, certified Project EIR, the Landmarks
14 Commission approved a Certificate of Appropriateness for the Project on April 10, 2006.

15 30. On April 18, 2006, Petitioners timely appealed the Landmarks
16 Commission's April 10, 2006 approval of the Certificate of Appropriateness. Appeals of
17 Planning Commission decisions are heard by the City Council.

18 31. On April 18, 2006, Petitioner Ornstein timely appealed the Planning
19 Commission's April 5, 2006 Project Approvals.

20 32. At the City Council Hearing on May 25, 2006, Petitioners submitted
21 substantial evidence to the City Council that the Project Approvals would violate CEQA,
22 Proposition S and the Municipal Code. Christopher A. Joseph & Associates submitted
23 additional evidence, on behalf of Petitioners, to the City Council on May 25, 2006
24 demonstrating that the Project Approvals would violate CEQA. Petitioners also gave oral
25 testimony at the City Council hearing.

26 33. The City Council denied Petitioners' timely appeals and approved
27 the Project Approvals on May 25, 2006.

28

1 34. The City's discretionary approval process concluded with the City
2 Council's approval of the Project Approvals on May 25, 2006.

3 35. The Project's Notice of Determination was filed with the Los
4 Angeles County Clerk on May 26, 2006. Petitioners do not know whether or when it was
5 posted.

6 **EIR Fails to Require a Traffic Signal at Lot 10N Intersection to Mitigate the**
7 **Significant Traffic and Circulation Impact**

8 36. The Project would result in a significant and unavoidable Traffic and
9 Circulation impact at the PCH and the Lot 10N entrance intersection ("Lot 10N
10 Intersection"), the Project's primary access point. Without mitigation, the level of
11 service at the Lot 10N Intersection under the cumulative base and cumulative plus project
12 conditions is Level of Service ("LOS") F. LOS F intersections are characterized by
13 tremendous delays with continuously increasing queue lengths.

14 37. The EIR concludes that a full traffic signal at the Lot 10N
15 Intersection would fully mitigate the Project's Traffic and Circulation significant and
16 unavoidable impact by facilitating left turns in and out of the Project site. Specifically, a
17 full traffic signal would improve the LOS from LOS F to LOS A and LOS B.

18 38. Although a full traffic signal would mitigate the Project's significant
19 and unavoidable impact at the Lot 10N Intersection to a less than significant level, the
20 Project does not include this mitigation measure. The EIR concludes that "because this
21 intersection is owned by Caltrans, implementation of the proposed mitigation measure is
22 beyond the control of the City of Santa Monica and thus the impact at this location may
23 remain significant and unavoidable."

24 39. In a comment letter regarding the Project, Caltrans did not provide
25 any indication that a full traffic signal at the Lot 10N Intersection would be infeasible.

26 40. Petitioners are informed and believe and thereon allege that the City
27 has imposed conditions and mitigation measures on private developers that require
28 implementation of such conditions and mitigation measures even where the required

1 improvements are outside the control of the project applicant.

2

3 **EIR Does Not Identify and Assess Significant Impact of Locker Building Demolition**

4 41. Demolition of the historically-significant Locker Building, located at
5 415 PCH, is proposed as a part of the Project and was contemplated by the Project
6 Approvals.

7 42. The EIR fails to appropriately and adequately assess the significant
8 adverse impact of the demolition of the Locker Building.

9 43. According to the EIR, the Locker Building “was constructed in 1948
10 and is associated with the reuse of the [Project] site as a hotel and beach club.”

11 44. The EIR discloses that the 415 PCH property, including the Locker
12 Building, was formally determined eligible for listing in the California Register of
13 Historical Resources (“California Register”) in 1994 as part of a National Historic
14 Preservation Act Section 106 determination of eligibility required for Federal Emergency
15 Management Agency funding following the 1994 Northridge earthquake.

16 45. As result of the 1994 determination of eligibility, the Locker
17 Building was automatically listed in the California Register by operation of law, and is
18 therefore, *per se* a significant historic resource under CEQA.

19 46. Under CEQA, the EIR must analyze the Locker Building as
20 historically significant *per se* and treat its demolition as a significant, unmitigated impact.

21 47. The EIR fails to analyze the significant impact caused by demolition
22 of the Locker Building. The EIR states that “Based on additional research and analysis
23 conducted on the Locker Building for the 2002 Technical Report, [Historic Resources
24 Group] concluded that the Locker Building was incorrectly listed as a contributor to the
25 Marion Davies Estate.” Relying on a consultant’s conclusion that the Locker Building
26 was incorrectly listed in the California Register, the EIR states that the Locker Building
27 demolition would have no significant impact.

28 48. The City failed to timely seek removal by the State Historical

1 Resources Commission of the Locker Building from the California Register in the
2 manner required by law.

3 49. Removal of a resource from the California Register requires a
4 written request which includes a detailed justification and documentation. The State
5 Historical Resources Commission must also hold a public hearing prior to the removal of
6 a resource from the California Register.

7 50. Petitioners are informed and believe and thereon allege that the State
8 Historical Resources Commission has not removed the Locker Building from the
9 California Register. As such, the Locker Building remains listed on the California
10 Register today.

11 **Additional EIR Inadequacies Under CEQA**

12 51. The EIR fails to address the secondary impacts related to the offsite
13 parking contemplated by Mitigation Measure T-2. Mitigation Measure T-2 requires
14 parties who schedule events at the Project site on peak summer days or other peak beach
15 days to secure off-site parking within 5 miles of the Project site for the guests and to
16 arrange for a shuttle bus system to transport the guests to the Project site.

17 52. Under CEQA, lead agencies must evaluate the whole of an action at
18 one time, including all reasonably foreseeable future phases and consequences.

19 53. Potential secondary impacts related to the offsite parking
20 contemplated by Mitigation Measure T-2 were not analyzed in the EIR. These include
21 access and traffic impacts related to increased use of the offsite facilities, impacts upon
22 the primary recreational uses if public parking areas are used (such as beach access),
23 noise and lighting impacts upon sensitive receptors adjacent to the offsite parking areas,
24 and secondary traffic impacts caused by vehicles that are unable to park at the Project site
25 and take alternative routes or make U-turns to reach offsite parking areas.

26 54. The analysis of impacts and the proposed mitigation measures
27 impermissibly defer analysis to a later date without providing specific performance
28 standards or adequate specificity as to the types of measures that would be implemented

1 to ensure the remaining impacts would be less than significant. For instance, regarding
2 light and glare impacts, Mitigation Measure AES-3(c) provides that the City *shall*
3 develop a Lighting Plan.

4 55. The Statement of Overriding Considerations is not supported by
5 substantial evidence in the record. The Project will not “preserve the history of the site”
6 as claimed in the Statement of Overriding Considerations. Instead, the Project proposes
7 to demolish the Locker Building, a California Register-listed resource. The EIR
8 incorrectly concludes that the impacts to historic resources will be less than significant
9 after mitigation even though the EIR fails to correctly analyze the demolition of the
10 Locker Building.

11 56. The cumulative impact analysis is deficient throughout the EIR. For
12 instance, the analysis of transportation cumulative impacts relies upon the assumption
13 that several regional transportation improvements will be completed but provides no
14 support for that assumption.

15 57. The EIR fails to identify the increase in operational noise as a
16 significant impact upon the nearby residential uses. The analysis of the increased noise
17 from the parking areas ignores the increase in noise from the additional cars as well from
18 the extended hours of operation. The noise analysis also fails to analyze the cumulative
19 effect of hundreds of cars and people, focusing instead on individual point sources.
20 Further, the EIR fails to include analysis of noise from onsite mechanical equipment.

21 58. The EIR does not provide an objective and quantitative analysis of
22 aesthetic impacts. No line of sight analysis was provided to show the alteration of views
23 from PCH and other viewing areas. In addition, the aesthetic impacts analysis does not
24 discuss the public view impacts of the 7’ 4” high wall along PCH or impacts upon views
25 from other properties.

26 59. The analysis of cumulative impacts is inadequate and fails to provide
27 reasonable analysis, as required by CEQA. The EIR fails to discuss related impacts on
28 views, lighting and glare, and visual compatibility from the 112 projects on the

1 cumulative projects list.

2 60. Although the EIR identifies the private residences located
3 immediately north and south of the Project site as sensitive receptors, it fails to provide
4 adequate analysis of air quality impacts upon these residences. The long term exposure
5 of these sensitive receptor residences to reactive organic gases, nitric oxides, carbon
6 monoxide and respirable particulate matter is not analyzed. The EIR is silent on the
7 impacts of the emissions and dust created by the increased parking activities on the
8 nearby residential uses.

9 61. The EIR errs in concluding that construction period impacts will be
10 mitigated to a less-than-significant level. For instance, the analysis of construction period
11 air quality impacts calculates only roadway emissions and provides a quantitative
12 discussion of dust emissions. There is no quantitative analysis of the impact of localized
13 emissions on the nearby neighbors from the construction dust or from emissions from
14 construction equipment.

15 62. The EIR's discussion of Hazards and Hazardous Materials omits the
16 Cortese list information required by Section 21092.6 of the Public Resources Code. This
17 information was also omitted from the Project's Notice of Preparation.

18 63. The EIR fails to address Biological Resources impacts despite
19 concerns regarding the Snowy Plover; fails to address Land Use impacts despite concerns
20 regarding compliance with Proposition S and the Municipal Code; and fails to address
21 Utilities impacts despite construction-period impacts which may be exacerbated by the
22 need for utility improvements.

23 **Project Does Not Comply with Proposition S and the Municipal Code**

24 64. The Project is located in the Beach Overlay District and includes an
25 approximately 6,155 square foot Event House.

26 65. According to the City Council's February 28, 2006 staff report, the
27 Event House is a food service facility which will host a total of 102 social functions and
28 276 meetings per year.

1 66. Proposition S (Municipal Code Section 9.04.08.46.050) prohibits the
2 development of restaurants and/or food service facilities in excess of 2,000 square feet in
3 the Beach Overlay District. Proposition S is an initiative passed by voters of the City of
4 Santa Monica on November 6, 1990.

5 67. The Project's operating budget relies heavily upon the revenue from
6 the use of the Event House as a food service facility. The City assumes annual revenues
7 of \$652,000 from social functions, meetings and catering fees at the Event House. This
8 income represents over 40% of the Project's \$1,624,000 annual revenues.

9 68. The total annual value of the Event House catering contracts, food
10 service contracts, is assumed to be \$1,635,780. The City will received 10% of the total
11 gross catering revenues.

12 **Landmarks Commission Action Not Timely**

13 69. On the afternoon of April 10, 2006, Petitioner Association filed a
14 timely appeal of the Planning Commission's April 5, 2006 Project Approvals. Appeals
15 of Planning Commission decisions are heard by the City Council.

16 70. As provided in Municipal Code Section 9.04.20.24.040(b), an
17 action of the Planning Commission "appealed to the City Council shall not become
18 effective unless and until approved by the City Council."

19 71. Notwithstanding the pending appeal and an EIR which was not
20 certified, the Landmarks Commission approved a Certificate of Appropriateness for the
21 Project on the evening of April 10, 2006.

22 **FIRST CAUSE OF ACTION**

23 **(WRIT OF MANDATE – VIOLATION OF CEQA RE: CITY'S APPROVAL OF**
24 **AN INADEQUATE EIR)**

25 72. Petitioners incorporate in full all preceding paragraphs by this
26 reference.

27 73. Under CEQA Guidelines Section 15088.5, the failure to disclose key
28 project information and to analyze all significant environmental impacts in an EIR are

1 grounds for recirculation of that EIR.

2 74. The EIR fails to mitigate the Project's significant impact at the Lot
3 10N Intersection. Implementation of a full traffic signal is required by CEQA as a
4 feasible mitigation measure notwithstanding Caltrans' ownership of the Lot 10N
5 Intersection.

6 75. The EIR concludes that a full traffic signal would fully mitigate the
7 Project's significant and unavoidable Traffic and Circulation impact at the Lot 10N
8 Intersection. Nevertheless, the Project does not include this mitigation measure. The
9 EIR concludes that "because this intersection is owned by Caltrans, implementation of
10 the proposed mitigation measure is beyond the control of the City of Santa Monica and
11 thus the impact at this location may remain significant and unavoidable."

12 76. Under Public Resources Code Section 21002, "it is the policy of the
13 state that public agencies should not approve projects as proposed if there are feasible
14 alternatives or feasible mitigation measures available which would substantially lessen
15 the significant environmental effects of such projects".

16 77. The EIR must be revised to include the Lot 10N Intersection traffic
17 signal as a mitigation measure, consistent with CEQA.

18 78. The EIR fails to adequately assess the significant impact of the
19 Locker Building demolition. The City must identify and analyze the demolition of the
20 Locker Building as a significant unmitigated impact.

21 79. According to the EIR, the 415 PCH property, including the Locker
22 Building, was formally determined eligible for listing in the California Register in 1994.
23 Resources listed in the California Register are significant *per se* under the California
24 Public Resources Code.

25 80. Under CEQA, the failure to disclose key project information and to
26 analyze all significant environmental impacts in an EIR constitutes grounds for
27 recirculation of that EIR.

28 81. The EIR attempts to avoid the significant impact caused by

1 demolition of the Locker Building, a historic resource, with a consultant's assertion that
2 the 1994 formal determination of eligibility was incorrect.

3 82. Only the State Historical Resources Commission may remove a
4 property from the California Register. Paid consultants may not remove properties from
5 the California Register.

6 83. Removal of historic resources from the California Register requires,
7 among other things, a formal written request, a detailed justification and a noticed
8 hearing. Although there is an application pending to remove the Locker Building from
9 the California Register, to date the State Historical Resources Commission has not
10 removed the Locker Building. As such, the Locker Building remains listed on the
11 California Register today.

12 84. The City must prepare a new, legally adequate, EIR which treats the
13 demolition of the Locker Building as a significant unmitigated impact.

14 85. The EIR fails to address the secondary impacts related to the offsite
15 parking contemplated by Mitigation Measure T-2. Mitigation Measure T-2 requires
16 parties who schedule events at the Project site on peak summer days or other peak beach
17 days to secure off-site parking within 5 miles of the Project site for the guests and to
18 arrange for a shuttle bus system to transport the guests to the Project site.

19 86. Under CEQA, lead agencies must evaluate the whole of an action at
20 one time, including all reasonably foreseeable future phases and consequences.

21 87. The EIR must be revised to address the secondary impacts related to
22 the offsite parking contemplated by Mitigation Measure T-2, including access and traffic
23 impacts related to increased use of the offsite facilities, impacts upon the primary
24 recreational uses if public parking areas are used (such as beach access), noise and
25 lighting impacts upon sensitive receptors adjacent to the offsite parking areas, and
26 secondary traffic impacts caused by vehicles that are unable to park at the Project site and
27 take alternative routes or make U-turns to reach offsite parking areas.

28 88. The analysis of impacts and the proposed mitigation measures

1 impermissibly defer analysis to a later date without providing specific performance
2 standards or adequate specificity as to the types of measures that would be implemented
3 to ensure the remaining impacts would be less than significant.

4 89. Specific performance standards must be incorporated in the EIR to
5 as to the types of mitigation measures that would be implemented to ensure the remaining
6 impacts would be less than significant.

7 90. The Statement of Overriding Considerations is not supported by
8 substantial evidence in the record. The Project will not “preserve the history of the site”
9 as claimed in the Statement of Overriding Considerations. Instead, the Project proposes
10 to demolish the Locker Building, a California Register listed resource.

11 91. The Statement of Overriding Considerations must be revised such
12 that each statement of overriding consideration is supported by substantial evidence in the
13 record.

14 92. The EIR’s cumulative impact analysis is deficient, relying on
15 assumptions without appropriate support. It must be supplemented with adequate support
16 for each of its conclusions.

17 93. The EIR fails to identify the increase in operational noise as a
18 significant impact upon the nearby residential uses. The analysis of the increased noise
19 from the parking areas ignores the increase in noise from the additional cars as well from
20 the extended hours of operation. The noise analysis also fails to analyze the cumulative
21 effect of hundreds of cars and people, focusing instead on individual point sources.
22 Further, the EIR fails to include analysis of noise from onsite mechanical equipment.

23 94. The EIR’s noise analysis must be revised to identify and
24 appropriately all Project noise impacts, including cumulative impacts.

25 95. The EIR does not provide an objective and quantitative analysis of
26 aesthetic impacts. No line of sight analysis was provided to show the alteration of public
27 views from PCH and other viewing areas. In addition, the aesthetic impacts analysis does
28 not discuss the impacts of the 7’ 4” high wall along PCH or impacts upon views from

1 other properties.

2 96. The EIR must provide an objective and quantitative analysis of
3 aesthetic impacts, including impacts of the 7' 4" high wall along PCH and impacts upon
4 public views and views from other properties.

5 97. The EIR fails to provide adequate analysis of air quality impacts
6 upon the residences to the north and south of the Project site. The long term exposure of
7 these sensitive receptor residences to reactive organic gases, nitric oxides, carbon
8 monoxide and respirable particulate matter is not analyzed. The EIR is silent on the
9 impacts of the emissions and dust created by the increased parking activities on the
10 nearby residential uses.

11 98. The EIR must provide adequate analysis of air quality impacts upon
12 the residences located adjacent to the Project site, but fails to do so.

13 99. The EIR errs in concluding that construction period impacts will be
14 mitigated to a less-than-significant level. For instance, the analysis of construction period
15 air quality impacts calculates only roadway emissions and provides a quantitative
16 discussion of dust emissions. There is no quantitative analysis of the impact of localized
17 emissions on the nearby neighbors from the construction dust or from emissions from
18 construction equipment.

19 100. The EIR must be revised to adequately address all Project impacts or
20 to find a significant and unavoidable construction period impact.

21 101. The EIR fails to disclose or analyze the significant land use impact
22 owing to the Proposition S violation. The Project's Initial Study plainly states that the
23 Project will not "Conflict with any applicable land use plan, policy or regulation of an
24 agency with jurisdiction over the project (including but not limited to the general plan,
25 specific plan, coastal program, or zoning ordinance)," but that is incorrect.

26 102. In direct contradiction of Proposition S and the Municipal Code, the
27 Project includes a 6,155 square foot food service facility in an area where that is
28 prohibited.

1 103. The Project's 6,155 square foot food service facility creates a
2 significant unmitigated land use impact which was not disclosed or analyzed in the EIR.

3 104. The City's certification of the EIR constitutes a direct violation of
4 CEQA and must be set aside pending recirculation of a revised EIR which is consistent
5 with CEQA.

6 **SECOND CAUSE OF ACTION**

7 **(WRIT OF MANDATE – VIOLATION OF PROPOSITION S AND MUNICIPAL**
8 **CODE RE: CITY'S APPROVAL OF A 6,155 SQUARE FOOT FOOD SERVICE**
9 **FACILITY)**

10 105. Petitioners incorporate in full all preceding paragraphs by this
11 reference.

12 106. Proposition S, an initiative passed by voters of the City of Santa
13 Monica on November 6, 1990 and codified as Municipal Code Section 9.04.08.46.050,
14 prohibits the development of restaurants and/or food service facilities in excess of 2,000
15 square feet in the Beach Overlay District.

16 107. In violation of the voter-approved Proposition S and the Municipal
17 Code, the City has approved the Project, which includes construction of a 6,155 square
18 foot Event House, a food service facility, in the Beach Overlay District.

19 108. According to the City Council's February 28, 2006 staff report, the
20 Event House is a food service facility which will host a total of 102 social functions and
21 276 meetings per year.

22 109. The Project's operating budget relies heavily upon the revenue from
23 the use of the Event House as a food service facility. The City projects annual revenues
24 of \$652,000 from social functions, meetings and catering fees at the Event House. This
25 income represents over 40% of the Projects \$1,624,000 projected annual revenues.

26 110. The total annual value of the Event House catering contracts is
27 assumed to be \$1,635,780. The City will received 10% of the total gross catering
28 revenues.

1 111. The Project Approvals constitute a direct violation of Proposition S
2 and the Municipal Code and must be declared null and void pursuant to Municipal Code
3 Section 9.04.06.070.

4 **THIRD CAUSE OF ACTION**

5 **(DECLARATORY AND EQUITABLE RELIEF – PROJECT APPROVALS**
6 **VIOLATE THE MUNICIPAL CODE, PROPOSITION S, AND CEQA)**

7 112. Petitioners incorporate in full all preceding paragraphs by this
8 reference.

9 113. The Actions of the Respondents constitute a violation of CEQA,
10 Proposition S, and the Municipal Code. Therefore, pursuant to California Code of Civil
11 Procedure Sections 1085 and/or 1094.5, *et seq.*, and Code of Civil Procedure Section
12 1060, Petitioners are entitled to declaratory and equitable relief to restrain the violation.

13 114. An actual and present controversy now exists between Petitioners
14 and City in that Petitioners' interests as nearby residents and property owners are
15 threatened by Respondents' failure to act within the bounds and provisions of Proposition
16 S, the Municipal Code, and CEQA. The Project Approvals are based on an inadequate
17 EIR and violate the Municipal Code and Proposition S. Petitioners are entitled to
18 declaratory relief to restrain these violations. Such a declaration is a necessary and
19 proper exercise of the Court's power at this time under the circumstances now present in
20 order to prevent further actions by the City in violation of its clear obligations.

21 115. Unless restrained by this Court, the City's actions expose Petitioners
22 to irreparable harm. City's actions also subject Petitioners and the public to losses related
23 to the untimely destruction of a historic structure which, once destroyed, cannot be
24 rebuilt.

1 **PRAYER FOR RELIEF**

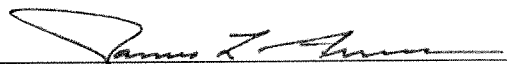
2 Wherefore, Petitioners pray for relief as follows:

- 3 1. As to the First Cause of Action, for a writ of mandate commanding
4 the City to:
- 5 (a) set aside its May 25, 2006 action in full; and
 - 6 (b) take no further action absent full compliance with CEQA;
- 7 2. As to the Second Cause of Action, for a writ of mandate
8 commanding the City to set aside its approval of the Project's food service facility;
- 9 3. As to the Third Cause of Action, for a declaration by this Court that
10 the Project Approvals violate Proposition S and that that EIR is legally inadequate;
- 11 4. For costs of suit and attorneys' fees incurred herein; and
- 12 5. For such further relief as the Court deems just and proper.

13 Dated: June 23, 2006

Respectfully submitted,

14 LATHAM & WATKINS LLP
15 James L. Arnone
16 Damon P. Mamalakis
17 Sean T. Matsler

18 By 
19 James L. Arnone
20 Attorneys for Petitioners and Plaintiffs
21 Palisades Beach Property Owners Assn.,
22 Inc. and Jonathan Ornstein
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FROM LATHAM & WATKINS LLP 213-891-8763 45FL. (THU) 6. 22' 06 15:00/ST. 14:56/NO. 4861884684 P 21

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VERIFICATION

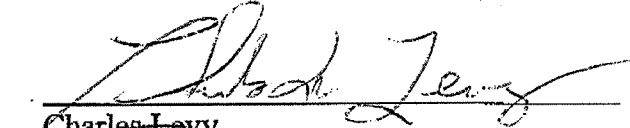
I, Charles Levy, declare that:

I am the ~~Chief Executive Officer~~ ^{PRESIDENT} of Petitioner and Plaintiff, Palisades

Beach Property Owners Assn., Inc., in this action and am making this verification on its behalf. I have read the foregoing Petition and Complaint and am familiar with its contents. All facts alleged in the Petition and Complaint are either true of my own knowledge, or I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 22nd day of June, 2006, at Santa Barbara, California.


Charles Levy
Chief Executive Officer, Palisades Beach
Property Owners Assn., Inc.
~~Chief Executive Officer~~ ^{PRESIDENT}