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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES
9

10 TRACT NO. 7260 ASSOCIATION, INC., a
California corporation; and RICHARD S.
11 HARMETZ, an individual resident and taxpayer of
the City of Los Angeles,
12

13 Petitioners and Plaintiffs,

14 v.

15 CITY OF LOS ANGELES, a municipal corporation;
16 CITY COUNCIL OF THE CITY OF LOS
ANGELES; and DOES I - XX, inclusive,
17

18 Respondents and Defendants.
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20 TRAMMELL CROW COMPANY; and DOES XXI -
XL, inclusive,
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22 Real Parties in Interest.
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25
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27
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CASE NO.

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

(Code Civ. Proc., §§ 1094.5, 1085;
California Environmental Quality Act,
Pub. Resources Code, § 21168.5)

1 COME NOW Petitioners and Plaintiffs TRACT NO. 7260 ASSOCIATION, INC. and
2 RICHARD S. HARMETZ, and allege as follows:

3 **INTRODUCTION**

4 1. This action concerns the approval by the City Council of the City of Los Angeles of the
5 “2000 Avenue of the Stars” development (“the Project”), to be located at the corner of Constellation
6 Boulevard and Avenue of the Stars in Century City. The Project involves the demolition of two
7 eight-story buildings encompassing 678,822 square feet of commercial space and the construction of
8 a new 15-story building encompassing 778,947 square feet of commercial space. The City Council
9 certified the Environmental Impact Report (“EIR”) for the Project, adopted a Statement of Overriding
10 Considerations, adopted a Mitigation Monitoring Program, and approved the Project. Unfortunately,
11 in so doing, the City Council acted in contravention of the requirements of the California
12 Environmental Quality Act (Pub. Resources Code, § 21000 et seq., hereinafter “CEQA”), the Century
13 City North Specific Plan (“CCNSP”), and the West Los Angeles Transportation Improvement and
14 Mitigation Specific Plan (“WLA TIMP”).

15 2. At its core, the EIR is based on false assumptions and faulty methodology. For example, in
16 assessing the significance of Project impacts on traffic, the EIR relies on an improper “baseline.”
17 The EIR is expressly required by law to analyze the Project’s impacts in comparison to the “physical
18 environmental conditions *at the time the notice of preparation is published . . .*” (CEQA
19 Guidelines, Cal. Code Regs., tit. 14, § 15125, subd. (a) (emphasis added).) Instead of comparing the
20 Project’s environmental impacts to conditions existing at the time the notice of preparation was
21 published, however, the EIR for the 2000 Avenue of the Stars Project employs a fictitious baseline
22 that serves to artificially minimize the EIR’s conclusions regarding traffic generated by the Project.
23 As a direct result of the improper and illegal baseline, the EIR concludes — incredibly — that *a*
24 *development with 100,125 square feet of new commercial space, and an additional 432,223 square*
25 *feet of new office space, will generate less traffic than the existing, less developed, uses.* The
26 improper baseline renders the EIR legally insufficient and necessitates preparation of a new traffic
27 study and analysis.

28 3. The EIR’s erroneous conclusion that the Project will lead to a net decrease in traffic was

1 especially critical to Respondents and Real Party in Interest because it obviated the need to comply
2 with most of the mandates of the CCNSP and the WLA TIMP. Furthermore, the improper baseline
3 leads directly to the EIR's implausible conclusion that the Project will have a significant impact on
4 only one of 38 relevant intersections. Adding insult to injury, the EIR offers a legally inadequate
5 Transportation Demand Management program for that lone intersection.

6 4. In certifying the EIR and approving the Project, Respondents have failed to follow the law in
7 other ways, as well. For example, the EIR fails to respond meaningfully to comments, fails to
8 adequately consider project alternatives, fails to adequately consider substantial environmental
9 impacts, and otherwise fails to comply with the provisions of CEQA.

10 5. Petitioners have been deprived of their rights by these actions. Because Respondents have
11 failed to comply with CEQA by including and relying upon legally deficient, factually erroneous, and
12 completely illogical arguments in the EIR, members of the public — including Petitioners herein —
13 have been deprived of the opportunity to exercise their rights under CEQA to review and comment
14 on the Project, and to have their comments considered and responded to by the government
15 decisionmakers. Petitioners ask only that the EIR fairly assess the environmental impacts and
16 mitigation measures in a neutral, even-handed manner — the basic process required by law.

17 **PARTIES**

18 6. Petitioner and Plaintiff TRACT NO. 7260 ASSOCIATION, INC. (“the Association”) is an
19 incorporated nonprofit association that is organized for the purpose of advancing the community
20 interests of homeowners living in a tract located just to the west of the Project. The Association, and
21 individual members of the Association, including its president, Petitioner and Plaintiff Richard S.
22 Harmetz, participated in administrative proceedings before the City concerning the Project by filing
23 comment letters and giving testimony at public hearings before a Planning Department hearing
24 officer, the Planning Commission, the Planning and Land Use Committee of the City Council, and
25 the City Council.

26 7. Petitioner and Plaintiff RICHARD S. HARMETZ is an individual resident and taxpayer of
27 the County of Los Angeles who lives in a tract just to the west of the Project and will be adversely
28 affected by the Project. He participated in administrative proceedings before the City concerning the

1 Project Permit application by filing comment letters and giving testimony at public hearings before a
2 Planning Department hearing officer, the Planning Commission, the Planning and Land Use
3 Committee of the City Council, and the City Council.

4 8. Respondent and Defendant CITY OF LOS ANGELES is a municipal corporation, duly
5 organized and existing under the laws of the State of California as a charter city located in the County
6 of Los Angeles.

7 9. Respondent and Defendant CITY COUNCIL OF THE CITY OF LOS ANGELES is the
8 governing body of the City of Los Angeles. Among the duties and responsibilities of the City
9 Council are the duties to responsibly and legally administer and apply the zoning and land use laws in
10 compliance with state statutes and Los Angeles municipal law. Respondent Council, and those
11 members of the Council who have illegally applied state and municipal law to the development at
12 issue, are sued herein in their official capacities.

13 10. Respondents and Defendants DOES I through XX, inclusive, are persons who act on behalf
14 of, as agents of, administer decisions reached by, or carry out responsibilities placed upon them by
15 Respondents. Petitioners and Plaintiffs are unaware of the true names, identities, and official titles of
16 Does I through XX, and are currently unable to learn them. They therefore sue them by these
17 fictitious names. When Petitioners and Plaintiffs have ascertained the names, identities, and official
18 titles of Does I through XX, they will seek leave of court to amend this petition and complaint to
19 allege the same.

20 11. Real Party in Interest TRAMMELL CROW COMPANY, a Delaware corporation, is the
21 owner and/or developer of the property that is the subject of this action and the underlying
22 determinations challenged herein, and is the proponent of the Project and the applicant for the Project
23 Permit that is the subject of this action.

24 12. Real Parties in Interest DOES XXI through XL, inclusive, are persons who act on behalf of,
25 as agents of, administer decisions reached by, or carry out responsibilities placed upon them by Real
26 Party in Interest TRAMMELL CROW COMPANY. Petitioners and Plaintiffs are unaware of the
27 true names, identities, and official titles of Does XXI through XL, and are currently unable to learn
28 them. They therefore sue them by these fictitious names. When Petitioners and Plaintiffs have

1 ascertained the names, identities, and official titles of Does XXI through XL, they will seek leave of
2 court to amend this petition and complaint to allege the same.

3 **JURISDICTION AND VENUE**

4 13. Jurisdiction lies in this Court pursuant to Code of Civil Procedure section 1085, in that
5 Petitioners seek to compel the performance of acts which the law specifically enjoins, namely, the
6 denial of certification of an inadequate environmental impact report, full compliance with the
7 provisions of CEQA, and denial of a Project Permit that does not comply with CEQA and that is
8 inconsistent with the CCNSP and the WLA TIMP, which are part of the duly adopted Los Angeles
9 Municipal Code. Jurisdiction also lies with this Court pursuant to Code of Civil Procedure section
10 1094.5, in that this suit seeks review of an agency action where by law a hearing was required to be
11 held and evidence taken, and where the agency was required to exercise its discretion, in that this suit
12 challenges the issuance by Respondents of the Project Permit, certification of the EIR and approval of
13 the associated findings and Statement of Overriding Considerations and Mitigation Monitoring
14 Program.

15 14. Venue in this Court is proper pursuant to Code of Civil Procedure section 394, in that
16 Respondent City of Los Angeles is within the County of Los Angeles.

17 **STATUTORY FRAMEWORK**

18 15. The California Environmental Quality Act, found at Public Resources Code section 21000 et
19 seq., is based upon the principle that “[t]he maintenance of a quality environment for the people of
20 this state now and in the future is a matter of statewide concern.” (Pub. Resources Code, § 21000 ,
21 subd. (a).) CEQA requires that “public agencies should not approve projects as proposed if there are
22 feasible alternatives or feasible mitigation measures available which would substantially lessen the
23 significant environmental effects of such projects.” (Pub. Resources Code, § 21002.)

24 16. In CEQA, the Legislature has established procedures designed to achieve these goals,
25 principally the Environmental Impact Report. This procedure provides both for determination and for
26 full public disclosure of the potential adverse effects on the environment of discretionary projects
27 which governmental agencies propose to approve, as well as describe feasible alternatives to such
28 proposed projects and feasible mitigation measures to lessen their environmental harm. (Pub.

Resources Code, § 21002.) CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment until and unless all feasible mitigation measures are employed to minimize that harm. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b).) Only when all feasible mitigation has been required may agencies approve projects that will have significant adverse effects on the environment, and then only if they first make specific and detailed findings that overriding social, economic, or other considerations justify approving a project that does significant environmental damage. (Pub. Resources Code, § 21081.) These findings must be supported by substantial evidence in the record. (Pub. Resources Code, § 21081.5.)

17. Besides adopting all feasible mitigation measures, the public agency must also adopt a mitigation monitoring plan that specifies exactly who will carry out the mitigation measures and how their execution will be monitored and assured. Public Resources Code section 21081.6 requires that the “reporting or monitoring program shall be designed to ensure compliance during project implementation.” It is clearly the intent of the statute that mitigation measures, once approved and adopted, be fully implemented by those responsible for carrying out an environmentally damaging project.

18. The Legislature has also specified the circumstances under which an environmental impact report must be supplemented, providing for supplemental CEQA documentation when:

“(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

“(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

“(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.” (Pub. Resources Code, § 21166.)

Thus, the Legislature recognized that changes in the project that is being carried out or approved, changes in the environment that would be affected by the Project, or new information, could all make an environmental impact report inadequate or even misleading, necessitating a supplemental

environmental impact report.

1 19. Failure either to comply with the substantive requirements of CEQA or to carry out the full
2 CEQA procedures so that complete information as to the Project's impacts is developed and publicly
3 disclosed may constitute a prejudicial abuse of discretion that requires invalidation of the public
4 agency action regardless of whether full compliance would have produced a different result. (Pub.
5 Resources Code, § 21005.)

6 20. CEQA authorizes and directs the State Office of Planning and Research to adopt guidelines
7 for the implementation of CEQA by public agencies. (Pub. Resources Code, § 21083.) These
8 guidelines, which are found at title 14, California Code of Regulations, section 15000 et seq.
9 (hereafter "Guidelines"), are binding on all state and local agencies, including Respondents.

10 21. The Century City North Specific Plan sets forth the zoning and land use law governing
11 development in the area of the City of Los Angeles in which the Project is located. All development
12 within that area must proceed in accordance with the CCNSP, and the CCNSP includes specific
13 substantive and procedural requirements for obtaining a Project Permit such as the one at issue here.
14 The land use and zoning provisions of the Los Angeles Municipal Code ("Municipal Code") also
15 generally apply to development within the City of Los Angeles.

16 22. Development rights for a property within the CCNSP are determined by the Cumulative
17 Automobile Trip Generation Potential ("CATGP") or other motor vehicle trips associated with that
18 property. CATGP trips are the cumulative total daily trips generated by projects on commercially
19 zoned lots within the CCNSP area for which building permits were issued subsequent to November
20 15, 1981.

21 23. Development in the CCNSP area has been broken down into two phases. Phase I allows for
22 development permits of up to 15,226.606 trips, and projects approved under Phase I require
23 administrative approval. Phase II encompasses development not to exceed 30,156.789 trips, including
24 projects developed under Phase I. Phase II projects require approval of a Project Permit from the City
25 Planning Commission (which has the discretion to reject any project, even if it conforms to the
26 CCNSP), and development can commence only when all public improvements set forth in Section 3C
27 of the CCNSP have been completed.

28

1 24. New development is also permitted under the CCNSP if a building, or portion thereof, is
2 demolished. Such development “may generate no more than the Trips generated by the previous use,
3 the Trips, if any, allocated to the lot by this Ordinance, and any Trips transferred to the lot.” (CCNSP,
4 § 3.C.3.)

5 25. The purpose of the phasing of the Specific Plan, and particularly of the requirement that the
6 Planning Commission consider factors such as traffic on a case-by-case basis, is “to provide street
7 capacity and other public facilities adequate for the intensity and design of development” (*Id.* at
8 § 3.A.) Within this framework is the specific mandate that the Planning Commission give
9 consideration to a project’s impact on the vehicular circulation system. (*Id.* at § 3.C.1.g.)

10 26. The West Los Angeles Transportation Improvement and Mitigation Specific Plan sets forth
11 the law regulating transportation and traffic created by development in the area of the City of Los
12 Angeles in which the Project is located. All development in that area must proceed in accordance
13 with the WLA TIMP, which includes specific substantive and procedural requirements for obtaining a
14 Project Permit such as the one issued to Real Party in Interest here. The provisions of the WLA TIMP
15 are in addition to those set forth in the planning and zoning provisions of the Municipal Code.

16 27. The WLA TIMP provides that “no building, grading or foundation permit for a Project shall
17 be issued until the Los Angeles Department of Transportation (“LADOT”) and the City Engineer have
18 certified completion of mitigation measures required by this Section.” (Mitigation Plan at § 4.A.1.)
19 The Plan establishes a methodology for calculating peak hour traffic generated by a project and sets
20 forth specific mitigation requirements for projects, based on the number of trips generated by that
21 project. (*Id.* at § 4.E-G.)

22 28. The WLA TIMP further provides that one of its purposes is to “[p]revent Peak Hour Level of
23 Service (‘LOS’) on streets and intersections from reaching LOS ‘F’ or, if presently at LOS ‘F,’
24 preclude further deterioration in the Level of Service.” (*Id.* at § 1.A.) LOS describes the quality of
25 traffic flow. Levels of Service A to C denote conditions in which traffic operations are proceeding
26 with no interruptions in traffic flow. Level D is the level for which a metropolitan area street system
27 is typically designed. Level E represents volumes at or near roadway capacity, which will result in
28 possible stoppages of momentary duration and occasional unstable flow. Level F is a forced-flow

condition, occurring when vehicles experience stop-and-go traffic with delays of long duration.

GENERAL ALLEGATIONS

29. Real Party in Interest Trammell Crow Company (“Real Party” or “developer”) proposes to redevelop 9.20 acres of a 14.02-acre site within Century City, at the southeast corner of Constellation Boulevard and Avenue of the Stars. The proposal includes demolishing two eight-story buildings (known as the “ABC Entertainment Center”) that contain 678,822 square feet of commercial space and replacing them with a fifteen-story building to contain 778,947 square feet of commercial space (known as “2000 Avenue of the Stars”). The project site is subject to the requirements of the Century City North Specific Plan and the West Los Angeles Transportation Improvement and Mitigation Specific Plan.

30. On or about January 7, 2002, a Notice of Preparation (“NOP”) of an EIR was issued in order to solicit comments from individuals, organizations and public agencies on the scope of the environmental analysis and the content of the EIR. The NOP was circulated for 30 days so that comments could be submitted for possible inclusion in the EIR, and numerous parties expressed concern about various aspects of the proposed project.

31. On or about January 14, 2002, a Public Scoping meeting was held and public testimony was taken on the environmental impacts of the proposed Project. One of the speakers at that meeting was Mr. Dan Niemann, Senior Vice-President of Real Party in Interest Trammell Crow.

32. In November 2002, a draft environmental impact report (“DEIR”) was prepared and circulated for use by Respondents, and for public circulation, purporting to identify, to describe and to allow public review of the proposed Project’s adverse effects on the environment.

33. The DEIR’s “Existing Project Site Trip Generation” and “Project Traffic Generation” analyses rely on four *theoretical* methodologies (the CCNSP, WLA TIMP, LADOT Methodology, and the Revised LADOT Methodology) to calculate the number of trips generated by the existing site and the proposed development. (DEIR, Section V.M.) The number of trips generated by the existing site is compared to the number of trips generated by the proposed development in order to assess the Project’s impacts on traffic.

34. Each of the four theoretical methodologies predict that the Project will lead to a *decrease* in

1 overall trip generation, despite the fact that the Project includes 432,223 square feet of new office
2 space and 100,125 square feet of additional new commercial development overall. The CCNSP
3 methodology predicts that the Project will save 6,711 trips (DEIR at p. 228); the WLA TAMP
4 methodology predicts that the Project will save 1,937 PM peak hour trips (*id.* at p. 229); the LADOT
5 predicts that the Project will save 588 AM peak hour trips, 1,937 PM peak hour trips and 20,570 net
6 daily trips (*ibid.*); and finally, the Revised LADOT Methodology predicts that the Project will save 80
7 AM peak hour trips, 899 PM peak hour trips and 11,357 net daily trips. (*Id.* at p. 230.)

8 35. The four theoretical methodologies used to calculate the project's impact on traffic predict a
9 decrease in traffic because they are each based on a legally improper and patently fictitious baseline.
10 The baseline is supposed to describe the existing environmental conditions before the project is built,
11 and it is then compared to the predicted environmental effects of the proposed Project in order to
12 assess the Project's environmental impact. CEQA Guidelines explicitly requires that the baseline
13 describe "the physical environmental conditions in the vicinity of the project, *as they exist at the time*
14 *the notice of preparation is published*, or if no notice of preparation is published, at the time
15 environmental analysis is commenced." (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15125, subd.
16 (a) (emphasis added).) At the time the Notice of Preparation was published for the Project, on
17 January 7, 2002, the buildings to be demolished were by Real Party's own admission largely vacant.
18 Nevertheless, the DEIR's baseline is premised on the false assumption that the buildings to be
19 demolished were instead fully occupied at that time. The assumption that the buildings were fully
20 occupied skews the results of the four theoretical calculations in the following fundamental way:
21 Demolishing a full building eliminates more trips than demolishing a largely vacant building; hence,
22 the DEIR's false assumption that the buildings to be demolished are fully occupied results in
23 substantially overstating the number of trips that are supposedly eliminated by demolishing the
24 existing use, and therefore substantially overstating as well the number of trips available to the
25 proposed Project as a result of the demolition.

26 36. Rather than employing a baseline that describes the physical environmental conditions as they
27 existed at the time the Notice of Preparation was published, the DEIR thus employs a baseline that
28 describes conditions that existed, if ever, at some point long before January 7, 2002. This was

1 conceded by Real Party's Senior Vice-President, Mr. Dan Niemann, at the January 14, 2002, Public
2 Scoping Meeting — only one week after the Notice of Preparation was issued. Mr. Niemann declared
3 that “[a]fter a couple of years of really exhaustively planning and many different schemes and trying
4 to save the buildings, we determined that the buildings were not only vacant, but they weren’t
5 marketable.” (Tr. of Jan. 14, 2002, hg., p. 15.) Mr. Niemann further noted that “[t]he Shubert
6 Theater has been dark over the last five years all but 20 weeks . . . [a]nd if you look at the businesses
7 [on the site] right now, you will understand what I’m talking about. Half of them are vacant; the other
8 half don’t pay.” (*Id.* pp. 18-19.)

9 37. The assumption of full occupancy is the cornerstone of the DEIR’s traffic analysis and has the
10 effect of necessarily overstating the reduction in trips associated with the removal of present uses and
11 correspondingly *understating* the Project’s impact on traffic. This analytical flaw pervades the Final
12 EIR, which incorporated the DEIR’s analysis, and necessarily informed Respondents’ approval of the
13 Project.

14 38. The baseline, and the entire EIR, is further rendered invalid by the use of an internal trip-
15 making adjustment (i.e., trips made between uses on the same site without requiring use of the
16 surrounding streets) in the Revised LADOT Methodology of 50%, a number far too low to accurately
17 reflect the number of walking trips to and from the restaurant and retail uses at the ABC
18 Entertainment Center. This artificially low internal trip-making rate substantially overstates the
19 number of trips supposedly generated by the existing site and correspondingly understates the
20 Project’s impact on traffic.

21 39. The baseline, and the entire EIR, is also rendered invalid by a wildly overstated calculation of
22 vehicle trips to high-turnover restaurants at the existing site during peak traffic hours. In reality, there
23 are very few vehicle trips to such restaurants, because parking is prohibitively expensive and because
24 most people walk from nearby offices to the restaurants. Therefore, the DEIR should use trip-
25 generation rates associated with a “general office building,” which includes adjustments for office
26 buildings with multiple tenants, including banks, retail stores and restaurants. Instead, the DEIR
27 makes no adjustment for the fact that very few people drive to the high-turnover restaurants on site,
28 especially during peak hours. Indeed, while each of the 11 restaurants in the ABC Entertainment

Center are open for lunch, only three are even open for breakfast (the AM peak hour) and only four are open for dinner (PM peak hour.) The DEIR's artificially high calculation of trips to restaurants on the existing site thus overstates the number of trips generated by the existing site and correspondingly understates the Project's impact on traffic.

40. The baseline, and the entire EIR, is additionally rendered invalid by the failure to include *any* internal trip adjustment for the movie theater at the ABC Entertainment Center. The assumption that *nobody* walks from his or her office to a movie theater on the same site is pure fiction. Furthermore, the DEIR calculated traffic generated by the movie theater with a rate-per-seat calculation associated with suburban movie theaters rather than high-density urban surroundings. This artificially high calculation of trips to the movie theater overstates the number of trips generated by the existing site and correspondingly understates the Project's impact on traffic.

41. The baseline, and the entire EIR, is likewise rendered invalid by the DEIR's assumption that *any* traffic is generated by the Shubert Theater, a live theater on the existing site. The four methodologies calculate that the *empty theater* generates between 2,550 (under the "conservative" LADOT Methodology) and 3,808 daily trips (CCNSP Methodology). The notion that an empty theater generates thousands of daily trips is nothing short of preposterous. That the theater is empty cannot be disputed: Mr. Niemann stated, at the January 14, 2002, Public Scoping Meeting, that "[t]he Shubert Theater has been dark over the last five years all but 20 weeks." The EIR's artificially high calculation of trips to the Shubert Theater thus overstates the number of trips generated by the existing site and correspondingly understates the Project's impact on traffic.

42. Finally, the baseline is rendered invalid by the fact that the traffic counts taken at 38 intersections near the project site, for the purpose of calculating the Critical Movement Analysis ("CMA") and LOS at each intersection, were conducted well before the Notice of Preparation was issued, in direct contravention of the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15125, subd. (a).) Indeed, of the 40 traffic counts, only *five* of them were conducted contemporaneous with the January 7, 2002, Notice of Preparation — on February 5 and 7, 2002. Another 31 counts were conducted between March 14, 2001, and April 5, 2001 — a full 9 months before the Notice of Preparation was published. And the remaining four counts were conducted in September 2000 — a full *16 months*

before the Notice of Preparation was published.

1 43. The use of an improper baseline renders the DEIR's discussion of significant impacts, as well
2 as its analysis of alternatives, invalid and useless to inform the public, interested public agencies, and
3 Respondent decisionmakers of the impacts of the Project. Thus, the DEIR does not clearly state the
4 scope or nature of significant impacts of any of the studied alternatives, much less the impact of the
5 Project, as required by CEQA.

6 44. Furthermore, the DEIR concludes that "the Project may have a potentially significant impact
7 at one study intersection, Santa Monica Boulevard (North) at Avenue of the Stars, in the AM peak
8 hour. This impact can be mitigated to a less than significant level through implementation of
9 mitigation measure T-1." (DEIR at p. 239.) Unfortunately, the DEIR's improper analysis obscures
10 the fact that the Project will have a significant impact on more than one intersection.

11 45. To mitigate the impact at this lone intersection, the DEIR offers Mitigation Measure T-1, a
12 program to encourage ridesharing, transit usage and bicycle usage. The DEIR boldly claims that this
13 program will decrease vehicular trip generations by 5%. To the contrary, this mitigation program will
14 not adequately mitigate traffic generated by the Project and falls short of what is required by CEQA.

15 46. The DEIR's consideration of alternative developments similarly falls short of what is required
16 by CEQA. The DEIR identifies four alternatives to the proposed development. (DEIR at p. 276.)
17 The DEIR fails to adequately compare and relate the alternatives to the proposed project, as it offers
18 no specific information regarding the trip distribution, analysis of traffic conditions, impacts in 2005,
19 and necessary mitigation measures associated with the presented alternatives.

20 47. The DEIR fails to adequately address the impact on parking during construction and the
21 resulting effect on traffic conditions. Appendix 18 to the DEIR indicates that there are 3,548 parking
22 spaces under the existing Century Plaza Towers and that 4,205 parking spaces are required for the
23 Towers. The use of 1,878 parking spaces under the ABC Entertainment Center will be lost during
24 construction of the Project. Therefore, during the construction period, there will be a shortage of at
25 least 657 parking spaces that are needed to support the Century Plaza Towers. The EIR must evaluate
26 the impacts of this shortage and must develop measures to mitigate the significant impacts.

27 48. The DEIR does not take into account the fact that the Project will reduce the area devoted to
28

1 high-turnover restaurant uses by approximately 100,000 square feet, which will create significant
2 additional pedestrian crossings of the streets in the area and will generate additional offsite trips,
3 particularly during lunch time. The impact of these additional crossings on intersection capacity and
4 additional traffic impacts must be evaluated and mitigated.

5 49. The DEIR's trip distribution is also fatally flawed. The DEIR projects that 60% of trips will
6 use surface streets and 40% will use freeways. This cannot be the case, because all traffic must use
7 surface streets to reach the adjacent freeways that are approximately two miles to the west and to the
8 south.

9 50. The DEIR incorrectly assumes that the requirements of the CCNSP do not apply to the
10 Project. Indeed, the DEIR makes scant reference to either Phase I or Phase II of the CCNSP, and it
11 fails to even mention the mitigation measures required by the CCNSP, instead concluding that the
12 CCNSP's requirements are entirely inapplicable because the Project will, allegedly, use replacement
13 trips (i.e., trips created through the demolition of existing buildings) and generate no new trips. As
14 detailed above, however, the conclusion that the Project will generate no new trips is based on an
15 erroneous baseline.

16 51. On information and belief, the Project is subject to the restrictions, requirements and
17 regulatory controls imposed by Phase II of the CCNSP.

18 52. On information and belief, the Department of City Planning, in violation of the CCNSP
19 (Section 4.G) has not maintained a record of the number of trips allocations made pursuant to the
20 CCNSP, nor has it kept records sufficient to provide an accurate account of trips and transferred tips
21 available for use on any lot within the Specific Plan Area.

22 53. The DEIR fails to include numerous mitigation measures required by the WLA TIMP because
23 the Project, allegedly, will generate no new trips. As detailed above, however, the conclusion that the
24 Project will generate no new trips is based on an erroneous baseline.

25 54. On information and belief, the Project will generate new trips and, therefore, the Project is
26 subject to the restrictions, requirements, regulatory controls and traffic mitigation requirements
27 imposed by the WLA TIMP.

28 55. On information and belief, money set aside to mitigate the effects of the 2000 Avenue of the

1 Stars Project, as well as mitigation funds from other previously approved Century City development
2 projects, has been and will be used to direct traffic from Motor Avenue onto Pico Boulevard and
3 Overland Avenue, which will lead to a significant increase in traffic in the vicinity of Petitioners'
4 neighborhood.

5 56. On information and belief, the result of this mitigation program will be a significant increase
6 in traffic, as defined by the WLA TIMP (Section 3), which necessitates an independent EIR for the
7 mitigation program.

8 57. During the public comment period on the DEIR, many parties commented on the technical
9 inadequacy of the analysis and the failure of the DEIR to address various impacts deemed significant
10 by members of the public. These comments were summarized and purportedly responded to in the
11 Final EIR, which was circulated in or about November 2002.

12 58. Respondents and Real Parties in Interest did not adequately respond to the public comments
13 revealing the DEIR's inadequacies. Instead, the Final EIR adopted the DEIR's conclusions regarding
14 traffic without change and largely ignored the public comments.

15 59. For example, Tom Brohard, P.E., commented that the DEIR's analytical framework for
16 capturing cinema trip generation rates in the peak hour was fatally flawed. Mr. Brohard pointed out
17 that "[w]hile 50% reduction factors were used . . . with the restaurant, retail, and health club uses, no
18 such reductions were applied to the cinema." Furthermore, Mr. Brohard noted that the DEIR used a
19 methodology designed for suburban cinemas, rather than one associated with an urban area such as
20 Century City. The response in the final EIR was that "the existing cinema was considered a 'drive to'
21 destination and estimated to have negligible internal capture affecting its trip generation. LADOT
22 concurred . . . and, therefore, no internal trip adjustments were made to the cinema use." The
23 response did not address the substance of the comment or defend the analysis as technically sound.

24 60. Petitioners and others have requested that the above problems be remedied through
25 recirculation of a revised or supplemental EIR. The lack of a recirculation of a revised or
26 supplemental EIR has deprived Petitioners of the opportunity to have a fully developed administrative
27 record on the points raised herein.

28 61. On June 17, 2003, the Planning and Land Use Committee of the City Council held a public

hearing on, and voted to approve, the Project.

1 62. On June 20, 2003, Respondent City Council, without a public hearing, voted to approve the
2 Project.

3 63. On or about June 30, 2003, Respondent City filed a Notice of Determination in which
4 Respondent City asserts that it has complied with CEQA with respect to the conduct here challenged.
5 This action is timely filed within the requirements of Public Resources Code section 21167.

6 **FIRST CAUSE OF ACTION**
7 (California Environmental Quality Act)

8 64. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 63 above by this
9 reference as though set out fully herein.

10 65. Petitioners bring this action to set aside Respondents' approval of the 2000 Avenue of the
11 Stars Project; their certification and adoption of the Final Environmental Impact Report for the above-
12 mentioned Project; their adoption of any and all findings made pursuant to section 21081 of the
13 Public Resources Code; their adoption of the Statement of Overriding Considerations for the above-
14 mentioned Project; their adoption of the Mitigation Monitoring Program as required by Public
15 Resources Code section 21081.6; and their adoption of any and all findings made by the City Planning
16 Commission or Department of City Planning in support of their approval of the above-mentioned
17 Project.

18 66. In deciding to undertake the actions set forth in the preceding paragraph despite the facts that
19 the process and procedure violated CEQA and that the EIR was otherwise inadequate, Respondents
20 City and City Council proceeded in excess of their jurisdiction, deprived Petitioners of a fair hearing,
21 and committed a prejudicial abuse of discretion by not proceeding in the manner required by law, and
22 by reaching a decision and findings that were not supported by substantial evidence.

23 67. In particular, the certification of the EIR and approval of the Project Permit by Respondents
24 violated CEQA, and Respondents failed to proceed in the manner required by law and/or made
25 decisions or findings not supported by substantial evidence, in at least the following respects:

26 1. CEQA requires that the baseline conditions for determining the significance of
27 a proposed project's environmental impacts reflect conditions actually in existence at the time the
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1 Notice of Preparation is published, not a theoretical estimate of conditions that existed, if ever, years
2 earlier. Respondents violated CEQA by, *inter alia*, determining the significance of the Project's
3 impacts by comparing the projected conditions to a fictitious baseline that did not represent the
4 existing environmental conditions at the time the Notice of Preparation was published.

5 2. The use of improper and inconsistent baseline conditions in the EIR
6 undermines the entire EIR. Respondents violated CEQA by, *inter alia*, certifying the EIR despite the
7 fact that the EIR is inadequate and insufficient in that it fails to analyze either the significance of
8 environmental impacts or the differences among alternatives in any meaningful way because of the
9 improper and inconsistent baseline conditions.

10 3. CEQA requires the EIR to discuss all significant environmental impacts of the
11 project. Respondents violated CEQA by, *inter alia*, certifying the EIR despite the fact that the EIR is
12 inadequate and insufficient in that it fails to address, or to address adequately, numerous potentially
13 significant adverse environmental impacts, and that substantial evidence does not support the EIR's
14 conclusions and findings that the Project will cause only those significant adverse impacts identified
15 in the EIR.

16 4. Respondents violated CEQA by, *inter alia*, certifying the EIR despite the fact
17 that the EIR is inadequate and insufficient in that it fails to disclose the Project's inconsistencies with
18 relevant City code provisions. Among other deficiencies, the EIR fails to disclose the Project's
19 incompatibility with the Century City North Specific Plan and the West Los Angeles Transportation
20 Improvement and Mitigation Specific Plan.

21 5. CEQA requires that an EIR include an adequate discussion of construction
22 impacts and that it identify adequate means of mitigating these impacts. Respondents violated CEQA
23 by, *inter alia*, failing to identify and to discuss adequately the Project's construction impacts. In
24 particular, the discussion of construction impacts does not address the parking shortage that will be a
25 direct result of Project construction.

26 6. CEQA requires that an EIR describe alternatives that would feasibly attain the
27 basic objectives of the project and evaluate the comparative merits of the alternatives. Respondents
28 violated CEQA by, *inter alia*, certifying the EIR despite the fact that the EIR is inadequate and

1 insufficient in that, among other defects, it inadequately discusses and evaluates alternatives by, *inter*
2 *alia*, failing to provide a systematic analysis of the environmental impacts of each proposed
3 alternative; failing to acknowledge or to set forth adequately environmentally superior alternatives;
4 and failing to consider additional alternative projects that would reduce adverse environmental
5 impacts while meeting project objectives.

6 7. CEQA requires that a final EIR contain information and analysis that responds
7 in good faith to issues raised in comments on the Draft EIR. Respondents violated CEQA by, *inter*
8 *alia*, certifying the EIR despite the fact that many of the responses to comments on the Draft EIR fail
9 to respond in a meaningful way to the questions raised, to address the issues or concerns raised by the
10 comments, or to supply additional required information. Consequently, the EIR is inadequate and
11 insufficient in that it fails to respond adequately to comments on the Draft EIR. The EIR is also
12 inadequate for each of the reasons stated in Petitioners', and all others', comments on the Draft EIR.

13 8. CEQA requires that the public agency approving a project make adequate
14 written findings as set forth in, *inter alia*, Public Resources Code section 21081 and section 15088 of
15 the Guidelines. Respondents violated CEQA by, *inter alia*, certifying the EIR despite the fact that
16 Respondents failed to make adequate written findings. Specifically, Respondents adopted findings
17 that are not supported by substantial evidence, findings that are not legally adequate under Guidelines
18 section 15091, and findings that do not support the decisions reached by Respondents. The deficient
19 findings include, but are not limited to, findings regarding the scope, degree and significance of
20 significant adverse impacts, the effectiveness of proposed mitigation measures and the feasibility of
21 alternatives to the proposed project.

22 9. Respondents violated CEQA by, *inter alia*, adopting the Statement of
23 Overriding Considerations for the EIR despite the lack of substantial evidence to support the findings
24 upon which Respondents' adoption of the Statement of Overriding Considerations rests, and the fact
25 that Respondents' findings do not support the decision to adopt the Statement of Overriding
26 Considerations. Specifically, Respondents adopted findings that do not support the decisions reached
27 by Respondents and/or that are legally inadequate, as well as findings that themselves are not based
28 on substantial evidence, including but not limited to, findings regarding the scope, degree and

1 significance of significant adverse impacts, the effectiveness of proposed mitigation measures and the
2 feasibility of alternatives to the proposed project.

3 10. Respondents violated CEQA by, *inter alia*, adopting the Mitigation Monitoring
4 Program for the EIR despite a lack of substantial evidence to support the findings upon which
5 Respondents' adoption of the Mitigation Monitoring Program rests, and the fact that Respondents'
6 findings do not support the decision to adopt the Mitigation Monitoring Program. Specifically,
7 Respondents have adopted a Mitigation Monitoring Program that, *inter alia*, will fail to ensure that
8 specified mitigation measures will actually be carried out or will be adequate to mitigate the Project's
9 adverse environmental effects. Substantial evidence did not support Respondents' decision to the
10 contrary.

11 68. Petitioners have a direct and beneficial interest in the action herein and bring this action as
12 private attorneys general pursuant to Code of Civil Procedure section 1021.5 to vindicate their own
13 interests and those of the taxpayers and citizens of the City of Los Angeles in the proper
14 implementation of the environmental and land use laws.

15 **SECOND CAUSE OF ACTION**

16 (Writ of Mandate, Code Civ. Proc., § 1094.5)

17 69. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 68 above by this
18 reference as though set out fully herein.

19 70. Pursuant to California Code of Civil Procedure section 1094.5, Petitioners bring this
20 administrative mandamus action to set aside Respondents' approvals of the Project under the Century
21 City North Specific Plan and the West Los Angeles Transportation Improvement and Mitigation
22 Specific Plan; their certification and adoption of the Environmental Impact Report for the above-
23 mentioned Project; their adoption of all findings made pursuant to section 21081 of the Public
24 Resources Code; their adoption of the Statement of Overriding Considerations for the above-
25 mentioned Project; their adoption of the Mitigation Monitoring Program as required by Public
26 Resources Code section 21081.6; and their adoption of any and all findings made by the City Planning
27 Commission or Department of City Planning in support of their approval of the above-mentioned
28 Project.

1 71. In undertaking the actions set forth in the preceding paragraph despite the facts that the
2 process and procedure violated municipal and state laws, Respondents City and City Council
3 proceeded in excess of their jurisdiction, deprived Petitioners of a fair hearing, and committed a
4 prejudicial abuse of discretion by not proceeding in the manner required by law, by reaching a
5 decision that was not supported by the findings, and by making findings that were not supported by
6 the evidence.

7 72. In particular, the actions set forth above violated municipal and state law, and Respondents
8 proceeded in excess of their jurisdiction, deprived Petitioners of a fair hearing, and committed a
9 prejudicial abuse of discretion, in at least the following respects:

10 1. In approving the Project Permit, Respondents failed adequately to consider
11 traffic impacts as required by the CCNSP. This failure violated the laws of the State of California
12 and the City of Los Angeles, including, *inter alia*, the CCNSP and the Municipal Code.

13 2. In approving the Project Permit, Respondents failed adequately to consider
14 traffic impacts as required by the WLA TIMP. This failure violated the laws of the State of
15 California and the City of Los Angeles, including, *inter alia*, the CCNSP and the Municipal Code.

16 73. Petitioners have a direct and beneficial interest in the action herein and bring this action as
17 private attorneys general pursuant to Code of Civil Procedure section 1021.5 to vindicate their own
18 interests and those of the taxpayers and citizens of the City of Los Angeles in the proper
19 implementation of the land use laws.

20 **THIRD CAUSE OF ACTION**

21 (Injunctive Relief, Code Civ. Proc., § 526, subd. (a))

22 74. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 73 above by this
23 reference as though set out fully herein.

24 75. Petitioners and Plaintiffs have no plain, speedy, and adequate remedy at law, in that unless
25 Respondents and Defendants are enjoined by this Court to set aside and rescind their approval of the
26 Project; their certification and adoption of the Final Environmental Impact Report for the above-
27 mentioned Project; their adoption of all findings made pursuant to section 21081 of the Public
28 Resources Code; their adoption of the Statement of Overriding Considerations for the above-

1 mentioned project; their adoption of the Mitigation Monitoring Program as required by Public
2 Resources Code section 21081.6; and their adoption of any other findings made by the City Planning
3 Commission or Department of City Planning in support of their approval of the above-mentioned
4 Project, and unless Real Parties in Interest are enjoined by this Court from proceeding with the
5 proposed project, Real Parties in Interest may proceed with the development of their Project in
6 violation of existing state and city laws designed to protect and preserve the environment and the
7 character of Petitioners' and Plaintiffs' community. No amount of monetary damages or other legal
8 remedy can adequately compensate Petitioners and Plaintiffs for the irreparable harm that they and the
9 other residents of their community would suffer from the violations of law described herein.

10 **FOURTH CAUSE OF ACTION**

11 (Declaratory Relief, Code Civ. Proc., § 1060)

12 76. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 75 above by this
13 reference as though set out fully herein.

14 77. A dispute has arisen between Petitioners and Plaintiffs, on the one hand, and Respondents and
15 Defendants and Real Parties in Interest, on the other, in that Petitioners and Plaintiffs believe and
16 contend, for the reasons set forth above, that Respondents' actions as set forth above were unlawful
17 and invalid. Petitioners and Plaintiffs are informed and believe, and on that basis contend, that
18 Respondents and Defendants and Real Parties in Interest contend in all respects to the contrary. A
19 judicial declaration as to the validity of Respondents' approval of the Project, and as to the validity of
20 Respondents' actions as set forth above, is therefore necessary and appropriate to determine the
21 respective rights and duties of the parties.
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PRAAYER FOR RELIEF

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WHEREFORE, Petitioners and Plaintiffs respectfully pray for judgment as follows:

1. On the First and Second Causes of Action, that this Court issue its alternative and peremptory writs of mandate commanding Respondents CITY OF LOS ANGELES and CITY COUNCIL OF THE CITY OF LOS ANGELES to set aside and rescind their approval of the Project; their certification and adoption of the Final Environmental Impact Report for the Project; their adoption of the Statement of Overriding Considerations for the Project; their adoption of the Mitigation Monitoring Program for the Project; and their adoption of any other findings made by the City Planning Commission or Department of City Planning in support of their approval of the above-mentioned Project.

2. On the Third Cause of Action, that this Court issue a temporary restraining order and preliminary and permanent injunctions:

(a) enjoining Respondents to set aside and rescind their approval of the Project; their certification and adoption of the Final Environmental Impact Report for the Project; their adoption of the Statement of Overriding Considerations for the Project; their adoption of the Mitigation Monitoring Program for the Project; and their adoption of any other findings made by the City Planning Commission or Department of City Planning in support of their approval of the above-mentioned Project; and

(b) enjoining Real Parties in Interest from proceeding with the development of the Project, or any portion thereof, until such time as Respondents have certified and adopted a new Environmental Impact Report that complies with the law; have adopted a legally adequate Mitigation Monitoring Program as required by Public Resources Code section 21081.6; and have adopted all other necessary findings and approvals for the Project as mandated by and in compliance with state and city laws.

3. On the Fourth Cause of Action, that this Court issue its judgment declaring that the approval of the Project, certification and adoption of the Final Environmental Impact Report for the Project, adoption of the Statement of Overriding Considerations for the Project, adoption of the Mitigation Monitoring Program for the Project, and adoption of any findings made by the City Planning

1 Commission or Department of City Planning in support of the Project are invalid, unlawful and of no
2 force or effect.

3 4. On each and every cause of action, that this Court grant Petitioners and Plaintiffs their costs,
4 including out-of-pocket expenses and reasonable attorneys' fees; and

5 5. On each and every cause of action, that this Court grant such other, different or further relief
6 as the Court may deem just and proper.

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