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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

AUG 04 2010

BY Jawong Lubsan
DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO-RANCHO CUCAMONGA

CIVRS 1008458

11 _____
12 CITIZENS FOR RESPONSIBLE EQUITABLE)
13 ENVIRONMENTAL DEVELOPMENT,)

14 Petitioner,

15 vs.

16 CITY OF CHINO and DOES 1 through 100,

17 Respondents;
18 _____

19 DOES 101 through 1,000,

20 Real Parties in Interest.
21 _____

CASE NO. _____

**VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT AND
OTHER LAWS**

22
23 Petitioner CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL
24 DEVELOPMENT is informed and believes and on that basis alleges as follows in this Verified Petition
25 for Writ of Mandate under the California Environmental Quality Act and Other Laws:

26 **Parties**

27 1. Petitioner CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL
28 DEVELOPMENT is a non-profit organization formed and operating under the laws of the State of

1 California. At least one of Petitioner's members will be impacted by this project, and has an interest
2 in protecting the region's air quality, minimizing and ameliorating traffic, ensuring informed and
3 responsible growth, and promoting other environment-related quality-of-life issues.

4 2. Respondent CITY OF SAN CHINO ("CITY") is a public agency under Section 21063
5 of the Public Resources Code. CITY is authorized and required by law to hold public hearings, to
6 determine the adequacy of and certify environmental documents prepared pursuant to the California
7 Environmental Quality Act ("CEQA"), and to take other actions in connection with the approval of
8 projects within its jurisdiction, including actions under the Planning and Zoning Law ("PZL").

9 3. The true names and capacities of the Respondents identified as DOES 1 through 100 and
10 Real Parties in Interest identified as DOES 101 through 1,000 are unknown to Petitioner, who will seek
11 the Court's permission to amend this pleading in order to allege the true names and capacities as soon
12 as they are ascertained. Each of the fictitiously named Respondents 1 through 100 has jurisdiction by
13 law over one or more aspects of the action that is being challenged in this proceeding and that each of
14 the fictitiously named Real Parties in Interest 101 through 1,000 either is a party to the challenged
15 action or has some other cognizable interest in the action.

16 **Background Information**

17 4 There are three related projects that are the subject of this action: the Envision Chino
18 General Plan 2025, the Focused Growth Plan, and the amendments to the City of Chino Municipal
19 Code ("Project"). The Project includes the certification of an Environmental Impact Report ("EIR")
20 as well as the approval of the Envision Chino General Plan 2025 and the amendments to the municipal
21 code.

22 5. On or about July 6, 2010, Respondents' city council certified the EIR. That body's
23 decision was final and not subject to administrative appeal.

24 6. On or about July 6, 2010, Respondents' city council approved the Envision Chino
25 General Plan 2025. On or about July 6, 2010, Respondents' city council also approved amendments
26 to the Zoning and Subdivision Titles of the Chino Municipal Code and certified the Official Zoning
27 Map.

1 7. Petitioner opposes the Project and challenges certain actions taken by Respondents. In
2 particular, Petitioner seeks to invalidate Respondents' certification of the EIR and related actions and
3 approvals with respect to the Project on the grounds that Respondents violated CEQA and other laws.

4 **Notice Requirements and Time Limitations**

5 8. A Notice of Determination for the Project was filed in the Office of the County Clerk
6 for San Bernardino County on or about July 7, 2010. Alternatively, no Notice of Determination for the
7 Project has been filed.

8 9. This proceeding is being commenced not more than 30 days after the Notice of
9 Determination's filing, as required by Section 21167(c) of the Public Resources Code if there was a
10 filing; and within the period of time otherwise prescribed for commencement of the proceeding if there
11 was no such filing.

12 10. Petitioner has caused a Notice of Commencement of Action to be served on
13 Respondents, as required by Public Resources Code Section 21167.5. The Notice of Commencement
14 of Action is attached to this pleading as Exhibit "A."

15 11. Petitioner will have caused a copy of this pleading to be served on the Attorney General
16 not more than ten days after the commencement of this proceeding, as required by Public Resources
17 Code Section 21167.7 and Code of Civil Procedure Section 388.

18 **Jurisdiction and Exhaustion of Administrative Remedies**

19 12. Petitioner seeks review by and relief from this Court under, as applicable, Public
20 Resources Code Section 21168 or 21168.5, Government Code Section 65751; and Code of Civil
21 Procedure Sections 1060 *et seq.* and 1084 *et seq.*, among other provisions of law.

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

24 A. The violations of law challenged in this proceeding were identified for
25 Respondents orally or in writing by Petitioner or another person (if not both) prior to the close of the
26 public hearing on the Project, as required by Public Resources Code Section 21177(a) and Government
27 Code Section 65009(b)(1).
28

1 B. Petitioner objected to the Project's approval prior to the close of the public
2 hearing on the Project, as required by Public Resources Code Section 21177(b) and Government Code
3 Section 65009(b)(1); and at least one of Petitioner's members objected if Petitioner was formed after
4 the Project's approval, as required by Public Resources Code Section 21177(c).

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

7 14. Alternatively and additionally, Petitioner is informed and believes and on that basis
8 alleges that neither Public Resources Code Section 21177(a)-(b), Government Code Section
9 65009(b)(1), nor any other exhaustion-of-remedies requirement may be applied to Petitioner.

10 15. Respondents' conduct in approving the Project and purporting to comply with CEQA
11 constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they failed to proceed
12 in the manner required by law and made findings not supported by substantial evidence.

13 16. Petitioner has no plain, speedy, adequate remedy in the ordinary course of law, since its
14 members and other members of the public will suffer irreparable harm as a result of Respondents'
15 violations of CEQA and other laws. Respondents' approval of the Project also rests on the failure to
16 satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Respondents
17 are permitted or required by law to exercise their discretion in approving projects under those laws, they
18 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
19 manner consistent with those laws. Respondents have had and continue to have the capacity and ability
20 to approve the Project within the limits of and in a manner consistent with those laws, but Respondents
21 have failed and refuse to do so and have exercised their discretion beyond the limits of and in a manner
22 that is not consistent with those laws.

23 17. Petitioner has a beneficial right and interest in Respondents' fulfillment of all their
24 legal duties, as alleged in this pleading.

25 **FIRST CAUSE OF ACTION:**
26 **Failure to Prepare Adequate Environmental Impact Report**
27 **(Against All Respondents and Real Parties in Interest)**

28 18. Paragraphs 1 through 17 are fully incorporated into this paragraph.

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

12 20. The Project's EIR fails to provide adequate identification and analysis of the significant
13 adverse environmental impacts of the Project, including but not limited to the following: (i) agricultural
14 resources; (ii) biological resources; (iii) global climate change; (iv) water supply and quality; (v) air
15 quality; (v) public services and utilities; and (vi) cumulative impacts. Further, neither the analysis of
16 impacts in the Project's EIR nor Respondents' certification of the EIR in this respect is supported by
17 substantial evidence in the administrative record.

18 21. The project description and accompanying analysis must be consistent throughout the
19 EIR and administrative process. The project description and accompanying analysis have not been
20 stable and consistent throughout the EIR and the administrative process.

21 22. Additionally and alternatively, the Project's EIR fails to provide adequate identification
22 and analysis of a reasonable range of alternatives to the Project. Further, neither the analysis of
23 alternatives in the EIR nor Respondents' certification of the EIR in this respect is supported by
24 substantial evidence in the administrative record.

25 23. Additionally and alternatively, the Project's EIR fails to provide adequate identification
26 and analysis of measures to mitigate the Project's significant adverse environmental impacts and fails
27 to eliminate or substantially reduce all such impacts. Further, neither the analysis of mitigation
28

1 measures nor Respondents' certification of the EIR in this respect is supported by substantial evidence
2 in the administrative record.

3 24. As a result of Respondents' violations of CEQA, Petitioner has been harmed in that
4 Petitioner, the public, and the decision-makers who approved the Project were not fully informed about
5 the impacts of, mitigation measures for, and alternatives to the Project prior to its approval.

6 **SECOND CAUSE OF ACTION:**
7 **Failure to Make Adequate Written Findings Regarding Project's Significant Impacts**
8 **(Against All Respondents and Real Parties in Interest)**

8 25. Paragraphs 1 through 24 are fully incorporated into this paragraph.

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

14 27. Respondents approved the Project based on one or more written findings that there exist
15 considerations outweighing the Project's significant adverse environmental impacts, but there is not
16 substantial evidence in the administrative record to support all such findings. Additionally and
17 alternatively, Respondents approved the Project based on one or more non-written findings that such
18 considerations exist.

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

21 29. As a result of Respondents' violations of CEQA, Petitioner has been harmed in that
22 Petitioner and the public will have to endure significant, avoidable, unmitigated adverse environmental
23 impacts without there being any (or there being insufficient) benefits to outweigh such impacts.

24 **THIRD CAUSE OF ACTION:**
25 **Failure to Respond Adequately to Comments on Environmental Impact Report**
26 **(Against All Respondents and Real Parties in Interest)**

27 30. Paragraphs 1 through 29 are fully incorporated into this paragraph.
28

1 31. CEQA requires every lead agency to provide a good-faith, reasoned analysis in response
2 to comments received on an environmental impact report, to address recommendations and objections
3 in detail, and to explain why specific comments and suggestions were not accepted.

4 32. Petitioner and others commented on, made recommendations about, and objected to the
5 Project and the EIR throughout the process leading up to Respondents' certification of the EIR and
6 approval of the Project.

7 33. Respondents failed to respond adequately to the comments, recommendations, and
8 objections made by Petitioner and others with regard to the Project, the sufficiency of the EIR, and the
9 overall process for considering whether the Project should be approved. Respondents also failed to
10 provide written responses to public agencies on comments made by them with respect to the EIR at
11 least ten days prior to certification of the EIR.

12 34. As a result of Respondents' violations of CEQA, Petitioner has been harmed in that
13 Petitioner, the public, and the decision-makers who approved the Project were not fully informed about
14 the impacts of the Project prior to the EIR's certification and about Respondents' reasons for rejecting
15 the various comments, recommendations, and objections.

16
17 **FOURTH CAUSE OF ACTION:**
18 **Improper Reliance on Program Environmental Impact Report**
(Against All Respondents and Real Parties in Interest)

19 35. Paragraphs 1 through 34 are fully incorporated into this paragraph.

20 36. When an EIR has been prepared and certified for a program, a lead agency may rely on
21 the EIR for subsequent approvals when certain conditions are met and when certain procedures are
22 used. When an agency is relying on a program EIR for a later project and the agency is required to
23 issue public notice, the notice must state that: (1) the activity is within the scope of the program
24 approved earlier and (2) the program EIR adequately describes the activity for the purposes of CEQA.

25 37. The amendments to the Zoning Title of the Chino Municipal Code, the amendments to
26 the Subdivision Title of the Chino Municipal Code, and/or the adoption of the Official Zoning Map
27 were not adequately described and/or analyzed in the Envision Chino General Plan 2025 EIR.
28

1 44. Petitioner, its members, and other members of the public have been harmed as a
2 result of Respondents' violation of Government Code Section 65090 because they have been denied
3 the benefits and protections provided by compliance with this statute.
4

5 **Prayer**

6 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
7 Respondents and Real Parties in Interest (and any and all other parties who may oppose Petitioner in
8 this proceeding):

9 A. *On the First, Second, Third, and Fourth Causes of Action:*

10 1. A judgment determining or declaring that Respondents failed to comply fully
11 with CEQA as it relates to the Project and that the EIR's certification was illegal in at least some
12 respect, rendering the EIR null and void;

13 2. A judgment determining or declaring that Respondents failed to comply fully
14 with CEQA as it relates to the Project and that its approval (including all associated entitlements) was
15 illegal in at least some respect, rendering the approval null and void;

16 3. A judgment determining or declaring that Respondents must prepare an
17 environmental impact report and certify it fully in accordance with CEQA before final approval of the
18 Project may be granted;

19 4. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any
20 and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from
21 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
22 Respondents comply with all applicable provisions of CEQA, as determined by the Court; and

23 5. Any and all other relief that may be authorized by CEQA but is not explicitly
24 or specifically requested elsewhere in this Prayer.

25 B. *On the Fifth Cause of Action:*

26 1. A judgment determining or declaring that Respondents failed to comply fully
27 with the PZL, the SMA, or both with respect to the Project and that its approval (including all
28 associated entitlements) was illegal in at least some respect, rendering the approval null and void; and

1 2. A judgment determining or declaring that Respondents must comply fully with
2 the PZL and SMA before final approval of the Project may be granted.

3 C. All legal fees and other expenses incurred in connection with this proceeding, including
4 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure and the
5 Government Code.


6 D. Any and all further relief that this Court may deem appropriate.

7
8 Date: August 3, 2010.

Respectfully submitted,

BRIGGS LAW CORPORATION

9
10
11 By:



Cory J. Briggs

12 Attorneys for Petitioner Citizens for Responsible
13 Equitable Environmental Development
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BRIGGS LAW CORPORATION

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Recipient: Angela Robles, Chino City Clerk

Recipient's fax number: 909-591-6829

Date: July 27, 2010 BLC File: 1619.00

Total Pages (including cover sheet): 2

Sender: Valerie Mosqueda

Sender's fax number: 858-495-9138 909-949-7121

Message: Please see attached.

Original Document to Follow? Yes No

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Please respond to: Inland Empire Office

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Upland, CA 91786

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Facsimile: 909-949-7121

BLC File(s): 1619.00

27 July 2010

Angela Robles, City Clerk
13220 Central Avenue
Chino, CA 91710

Re: Notice of Commencement of Action

Dear City Clerk:

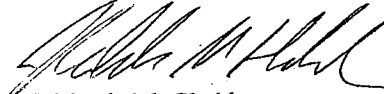
I represent Citizens for Responsible Equitable Environmental Development and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Bernardino County Superior Court against your agency. The action will challenge your agency's approval of the projects (and all associated entitlements and certifications) that were the subject of Items 10 and 11 on the City Council's agenda for July 6, 2010, on the grounds that the approval violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*). The action may also challenge your agency's approval of the projects based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Mekaela M. Gladden



VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND OTHER LAWS and know its contents.

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

I am an Officer a partner a _____ of _____
CHECK APPLICABLE PARAGRAPH

Citizens for Responsible Equitable Environmental Development a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on August 2, 20 10, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Richard Lawrence

Type or Print Name

Richard Lawrence

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California. I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 _____, I served the foregoing document described as _____

on _____ in this action by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
 by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
 * I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.
 As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 20 _____, at _____, California.

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

Executed on _____, 20 _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
 (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)
*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)