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The Inland Oversight Committee and
CREED-21

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 2 2015

BY 
JASMIN CASILLAS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO - CIVIL DIVISION

CIVDS1501357

THE INLAND OVERSIGHT COMMITTEE and
CREED-21,

Plaintiffs and Petitioners,

vs.

CITY OF CHINO and DOES 1 through 100,

Defendants and Respondents,

RV STORAGE ASSOCIATES, LLC, and DOES
101 through 1,000,

Defendants and Real Parties in Interest.

CASE NO. _____

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER CEQA, THE PLANNING
AND ZONING LAW, THE CHINO
MUNICIPAL CODE, AND OTHER LAWS**

Plaintiffs and Petitioners THE INLAND OVERSIGHT COMMITTEE and CREED-21
(collectively, "Petitioners") allege as follows:

Parties

1. THE INLAND OVERSIGHT COMMITTEE ("IOC") is a non-profit organization formed and operating under the laws of the State of California. At least one of IOC's members resides in, or near, the City of Chino, California, and has an interest in, among other things, ensuring open, accountable, and responsive government and in promoting responsible land use and planning. CREED-21 is a non-profit organization formed and operating under the laws of the State of California. At least one of CREED-21's members resides in, or near, the City of Chino, California, and has an interest in,

1 among other things, ensuring open, accountable, and responsive government and in promoting
2 responsible land use and planning.

3 2. Defendant and Respondent CITY OF CHINO ("Respondent") is a public agency and
4 is authorized and required by law to hold public hearings and determine whether a project is compatible
5 with the objectives, policies, general land uses, and programs specified in the Chino General Plan and
6 other planning documents.

7 3. Petitioners are informed and believe and on that basis allege that RV STORAGE
8 ASSOCIATES, LLC is a Real Party in Interest insofar as it is the applicant for the project that is the
9 subject of this proceeding or has some other cognizable interest in the project.

10 4. The true names and capacities of the Defendants and Respondents identified as DOES
11 1 through 100 are unknown to Petitioners, who will seek the Court's permission to amend this pleading
12 in order to allege the true names and capacities as soon as they are ascertained. Petitioners are informed
13 and believe and on that basis allege that each of the fictitiously named Respondents and Defendants 1
14 through 100 has jurisdiction by law over one or more aspects of the proposed project that is the subject
15 of this proceeding and that each of the fictitiously named Real Parties in Interest 101 through 1,000
16 either claims an ownership interest in the proposed project or has some other cognizable interest in the
17 proposed project.

18 **Background Information**

19 5. The project being challenged in this proceeding is the development of a recreational
20 vehicle (RV) storage facility, located on the northwest corner of Edison and Mountain Avenues. The
21 project includes approval of a general plan amendment, specific plan amendment, and certification and
22 adoption of an environmental impact report ("EIR") (collectively, the "Project"). Furthermore, the staff
23 report for the Project indicates a site approval and special conditional use permit will also be considered
24 for the Project at a future date.

25 6. On or around January 6, 2015, Respondent's city council certified the Project's EIR, and
26 approved the Project's general plan amendment and specific plan amendment.

27 7. Petitioners oppose the Project and challenge certain actions taken by Respondent. In
28 particular, Petitioners seek to invalidate the Project's approval on the grounds that Respondent has

1 violated the California Environmental Quality Act ("CEQA"), the Planning and Zoning Law, and the
2 Chino Municipal Code.

3 **Notice Requirements and Time Limitations**

4 8. A Notice of Determination for the Project's EIR was filed on or after January 6, 2015.
5 Alternatively, no Notice of Determination for the Project has been filed.

6 9. This proceeding is being commenced not more than 30 days after the Project was
7 approved, as required in Public Resources Code section 21167 (c).

8 10. Petitioners have caused a Notice of Commencement of Action to be served on
9 Respondent, as required by Public Resources Code section 21167.5. A true and correct copy of the
10 Notice of Commencement of Action is attached to this pleading as Exhibit "A."

11 11. Petitioners will have caused a copy of this pleading to be served on the Attorney General
12 not more than ten days after its filing, as required by Code of Civil Procedure Section 388.

13 **Jurisdiction and Exhaustion of Administrative Remedies**

14 12. Petitioners seek review by, and relief from, this Court under Public Resources Code
15 section 21168 or 21168.5, as applicable, Code of Civil Procedure sections 1060 *et seq.* and 1084 *et seq.*,
16 among other provisions of law.

17 13. Petitioners exhausted administrative remedies to the extent required by law; by way of
18 example and without limitation, Petitioners submitted written comments during the administrative
19 proceedings relating to this Project.

20 14. Respondent's conduct in approving this Project without complying with CEQA, the
21 Planning and Zoning Law, and the Chino Municipal Code, constitutes a prejudicial abuse of discretion
22 because, as alleged in this pleading, it failed to proceed in the manner required by law and made
23 findings not supported by substantial evidence.

24 15. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law
25 since their members will suffer irreparable harm as a result of Respondent's violations of CEQA, the
26 Planning and Zoning Law, the Chino Municipal Code, and other laws. Respondent's approval of the
27 Project also rests on its failure to satisfy a clear, present, ministerial duty to act in accordance with those
28 laws. Even when Respondent is permitted or required by law to exercise its discretion in approving

1 projects under those laws, it remains under a clear, present, ministerial duty to exercise its discretion
2 within the limits of and in a manner consistent with those laws. Respondent has had and continues to
3 have the capacity and ability to approve the Project within the time limits of and in a manner consistent
4 with those laws, but Respondent has failed and refused to do so and has exercised its discretion beyond
5 the limits of and in a manner that is not consistent with those laws.

6 16. Petitioners have a beneficial right and interest in Respondent's fulfillment of all its legal
7 duties, as alleged in this pleading.

8 **FIRST CAUSE OF ACTION:**
9 **Violation of the California Environmental Quality Act**
10 **(Against All Respondents and Real Parties in Interest)**

11 17. Paragraphs 1 through 16 are fully incorporated into this paragraph.

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

23 19. The Project's EIR fails to provide adequate identification and analysis of the significant
24 adverse environmental impacts of the Project, including, but not limited to the following: (i)
25 hazards/hazardous materials (ii) air quality; (iii) general plan consistency; (iv) traffic and transportation;
26 (v) hydrology and water quality; (vi) greenhouse gas emissions; (vii) aesthetics; and (viii) biological
27 impacts. Further, neither the analysis of impacts in the Project's EIR nor Respondent's certification of
28 the EIR in this respect is supported by substantial evidence in the administrative record.

1 20. Additionally and alternatively, the Project's EIR fails to provide adequate identification
2 and analysis of a reasonable range of alternatives to the Project. Further, neither the analysis of
3 alternatives in the EIR nor Respondent's certification of the EIR in this respect is supported by
4 substantial evidence in the administrative record.

5 21. Additionally and alternatively, the Project's EIR fails to provide adequate identification
6 and analysis of measures to mitigate the Project's significant adverse environmental impacts and fails
7 to eliminate or substantially reduce all such impacts. By way of example and without limitation, the
8 Project's EIR fails to provide adequate mitigation measures for biological impacts, and more specifically,
9 the Project's impact on burrowing owls. Further, neither the analysis of mitigation measures nor
10 Respondent's certification of the EIR in this respect is supported by substantial evidence in the
11 administrative record.

12 22. Respondent's failure to provide adequate identification and analysis of the significant
13 adverse environmental impacts, reasonable range of alternatives, and mitigation measures for the
14 Project constitutes multiple violations of CEQA.

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

20 24. Respondent approved the Project based on one or more written findings that there exist
21 considerations outweighing the Project's significant adverse environmental impacts, but there is not
22 substantial evidence in the administrative record to support all such findings. Additionally and
23 alternatively, Respondent approved the Project based on one or more non-written findings that such
24 considerations exist. Respondent also failed to make all required written findings regarding the
25 Project's impacts as required by CEQA.

26 25. Respondent's approval of the Project based on one or more written findings unsupported
27 by evidence in the administrative record and its failure to make all written findings required regarding
28 the Project's impacts constitute multiple violations of CEQA.

1 26. CEQA also forbids "piecemeal" review of the significant environmental impacts of a
2 project and mandates that environmental considerations do not become submerged by chopping a large
3 project into many little ones, which cumulatively may have disastrous consequences.

4 27. The staff report for the Project states that the Project includes a site approval and a
5 special conditional use permit. However, the Project's EIR makes a passing reference to the site
6 approval and special conditional use permit with no description of the nature and extent of the site
7 approval and special conditional use permit. Consequently, the EIR's Project description is inadequate
8 under CEQA. Furthermore, approval of the Project qualifies as unlawful piecemealing under CEQA
9 because Respondent has completely failed to consider the environmental impacts of the entire Project
10 -- i.e., the site approval and special conditional use permit -- and only considered the general plan
11 amendment and specific plan amendment.

12 28. Respondent's approval of the Project without an adequate project description and
13 through unlawfully piecemealing environmental review constitutes multiple violations of CEQA.

14 29. As a result of Respondent's violations of CEQA, Petitioners have been harmed insofar
15 as Petitioners, their members, and the responsible decision-makers were not fully informed about the
16 potential adverse environmental impacts of the Project, and insofar as Petitioners and their members
17 did not have an opportunity to participate meaningfully in the analysis of such impacts prior to approval
18 of the Project.

19 **SECOND CAUSE OF ACTION:**
20 **Violation of Government Code Section 65358**
(Against All Respondents and Real Parties in Interest)

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

22 31. Government Code section 65358 requires that any general plan amendment be "in the
23 public interest."

24 32. In approving the Project, Respondent was legally obligated to make a finding that the
25 general plan amendment is in the public interest and to support the finding with sufficient evidence in
26 the record. Respondent violated the Government Code by failing to make a finding that the general plan
27 amendment is in the public interest. Additionally and alternatively, any such finding was not supported
28 by substantial evidence. By way of example and without limitation, the Project reduces the amount of

1 open/recreation space in the City, despite the fact that there is already a deficiency of such land in the
2 City.

3 33. Petitioners, their members, and other members of the public have been harmed as a result
4 of Respondent's violations of Government Code section 65358 because they have been denied the
5 benefits and protections provided by compliance with this statute.

6 **THIRD CAUSE OF ACTION:**
7 **Violation of the Chino Municipal Code**
8 **(Against All Respondents and Real Parties in Interest)**

9 34. Paragraphs 1 through 33 are fully incorporated into this paragraph.

10 35. In approving a general plan amendment, Respondent is required to consider and clearly
11 establish the following findings of fact set forth in Chino Municipal Code Chapter 20.23.040, giving
12 specific reasons as to how each of the findings has been met: (i) the proposed amendment is internally
13 consistent with the general plan; (ii) the proposed amendment will not be detrimental to the public
14 interest, health, safety, convenience or welfare of the City, (iii) the proposed amendment will maintain
15 the appropriate balance of land uses within the city; and (iv) in the case of an amendment to the general
16 plan land use map, the subject site is physically suitable, including, but not limited to, parcel size, shape,
17 access, availability of utilities and compatibility with adjoining land uses, for the requested land use
18 designation and anticipated development.

19 36. Respondent approved the Project based on findings unsupported by substantial evidence
20 in the administrative record. Additionally and alternatively, Respondent approved the Project while
21 failing to make the findings required by Chino Municipal Code Chapter 20.23.040.

22 37. In approving a specific plan amendment, Respondent is required to consider and clearly
23 establish the following findings of fact set forth in Chino Municipal Code Chapter 20.23.050, giving
24 specific reasons as to how each of the findings has been met: (i) the proposed specific plan amendment
25 is internally consistent with the general plan; (ii) the proposed specific plan amendment will not be
26 detrimental to the public interest, health, safety, convenience or welfare of the City, (iii) the proposed
27 specific plan amendment will maintain the appropriate balance of land uses within the city; and (iv) in
28 the case of an amendment to a specific plan land use map, the subject site is physically suitable,

1 including, but not limited to, parcel size, shape, access, availability of utilities and compatibility with
2 adjoining land uses, for the requested land use designation and anticipated development.

3 38. Respondent approved the Project based on findings unsupported by substantial evidence
4 in the administrative record. Additionally and alternatively, Respondent approved the Project while
5 failing to make the findings required by Chino Municipal Code Chapter 20.23.050.

6 39. Petitioners, their members, and other members of the public have been harmed as a result
7 of Respondent's violations of the Chino Municipal Code because they have been denied the benefits
8 and protections provided by compliance with this statute.

9 **Prayer**

10 FOR ALL THESE REASONS, Petitioners respectfully pray for the following relief against
11 Respondent and Real Parties in Interest (and any and all other parties who may oppose Petitioners in
12 this proceeding):

13 A. *On the First Cause of Action:*

14 1. A judgment determining or declaring that Respondent failed to comply with
15 CEQA as it relates to the Project and that the EIR's certification was illegal in at least some respect,
16 rendering the EIR null and void;

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

20 3. A judgment determining or declaring that Respondent must prepare a sufficient
21 EIR and certify it fully in accordance with CEQA before final approval of the Project may be granted.

22 B. *On the Second Cause of Action:*

23 1. A judgment determining or declaring that Respondent failed to comply with the
24 Planning and Zoning Law as it relates to the Project and that Respondent must comply with the
25 Planning and Zoning Law before final approval of the Project may be granted; and

26 2. A judgment determining or declaring that Respondent failed to comply fully with
27 the Planning and Zoning Law as it relates to the Project and that its approval (including all associated
28 entitlements) was illegal in at least some respect, rendering the approval null and void.

1 C. *On the Third Cause of Action:*

2 1. A judgment determining or declaring that Respondent failed to fully comply with
3 the Chino Municipal Code as it relates to the Project and that Respondent must comply with the Chino
4 Municipal Code before final approval of the Project; and

5 2. A judgment determining or declaring that Respondent failed to comply fully with
6 the Chino Municipal Code as it relates to the Project and that its approval (including all associated
7 entitlements) was illegal in at least some respect, rendering the approval null and void.

8 D. *On All Causes of Action:*

9 1. Injunctive relief prohibiting Respondent and Real Parties in Interest (and any and
10 all persons acting at the request of, in concert with, or for the benefit of one or more of them) from
11 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
12 Respondent complies with all applicable provisions of CEQA, the Planning and Zoning Law, the Chino
13 Municipal Code, and all other applicable laws, as determined by the Court;

14 2. Any and all other relief that may be authorized by CEQA, the Planning and
15 Zoning Law, the Chino Municipal Code, or any combination of them, but is not explicitly or specifically
16 requested elsewhere in this Prayer;

17 3. All legal fees and other expenses incurred by Petitioners in connection with this
18 proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil
19 Procedure; and

20 4. Any and all further relief that this Court may deem appropriate.

21 Date: January 27, 2015.

Respectfully submitted,

22 BRIGGS LAW CORPORATION

23 *Original Signed*

24 By:

Anthony N. Kim

25 Attorneys for Plaintiff and Petitioner The Inland
26 Oversight Committee and CREED-21
27
28

Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief

Exhibit "A"

Anthony Kim

From: Anthony Kim
Sent: Tuesday, January 27, 2015 3:52 PM
To: Robles, Angela
Subject: Notice of Commencement of Action
Attachments: Notice_of_Commencement.pdf

JournalPM: J
JournalPMSeqNo: 63254
StiPmID: 7873d1f5-a67f-11e4-adc6-005056c00008

Dear Angela:

Please see the attached Notice of Commencement of Action. If you have any trouble opening the file, please let me know. Thanks.

Anthony N. Kim

Briggs Law Corporation

99 East "C" Street, Suite 111, Upland, CA 91786

Telephone: 909-949-7115 Fax: 909-949-7121

E-mail: anthony@briggslawcorp.com

Important Notice: This message contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not an addressee or the person responsible for delivering this message to the addressee(s), you are hereby notified that reading, disseminating, distributing, or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify me by replying to this message and then delete the original message and your reply immediately thereafter. Thank you very much.

BRIGGS LAW CORPORATION

*San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110*

*Telephone: 619-497-0021
Facsimile: 619-515-6410*

Please respond to: Inland Empire Office

*Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786*

*Telephone: 909-949-7115
Facsimile: 909-949-7121*

BLC File(s): 1708.26

January 27, 2015

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

Re: Notice of Commencement of Action

Dear City Clerk:

I represent The Inland Oversight Committee and CREED-21 and am sending this Notice of Commencement of Action on my clients' behalf.

Please be advised that an action is to be commenced by my clients in San Bernardino County Superior Court against your agency. The action will challenge your agency's approval of the project (and all associated entitlements and certifications) that was the subject of Item 12 on the City Council's Agenda for January 6, 2015 (Chino RV Storage Facility Project), on the grounds that the approval violated the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*), the Planning and Zoning Law, and the Chino Municipal Code. This action may also challenge your agency's approval of the project based on one or more violations of other laws.

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

Sincerely,

BRIGGS LAW CORPORATION

Anthony N. Kim



Anthony Kim

From: Robles, Angela <arobles@cityofchino.org>
To: Anthony Kim
Sent: Tuesday, January 27, 2015 3:56 PM
Subject: Read: Notice of Commencement of Action

Your message

To:
Subject: Notice of Commencement of Action
Sent: Tuesday, January 27, 2015 3:56:32 PM (UTC-08:00) Pacific Time (US & Canada)

was read on Tuesday, January 27, 2015 3:56:21 PM (UTC-08:00) Pacific Time (US & Canada).

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief etc. and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ 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 CREED-21

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 January 27, 20 15, 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)