

SCANNED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUL 14 2015
BY *Edwin R.*
DEPUTY

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8 The Inland Oversight Committee and
9 CREED-21

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

12 THE INLAND OVERSIGHT COMMITTEE and)
13 CREED-21,

14 Plaintiffs and Petitioners,

15 vs.

16 CITY OF CHINO and DOES 1 through 100,

17 Defendants and Respondents,

18 RV STORAGE ASSOCIATES, LLC, RVSA, LLC,
19 and DOES 101 through 1,000,

20 Defendants and Real Parties in Interest.

CASE NO. CIVDS1501357

VERIFIED FIRST AMENDED 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

By Fax

[Filed by right per CODE OF CIV. PROC. §
472]

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

23 Parties

24 1. THE INLAND OVERSIGHT COMMITTEE ("IOC") is a non-profit organization
25 formed and operating under the laws of the State of California. At least one of IOC's members resides
26 in, or near, the City of Chino, California, and has an interest in, among other things, ensuring open,
27 accountable, and responsive government and in promoting responsible land use and planning. CREED-
28 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 and RVSA, LLC are Real Parties in Interest insofar as they are the applicant for
9 the project that is the subject of this proceeding or have 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, special conditional
22 use permit, site approval, and certification and adoption of an environmental impact report ("EIR")
23 (collectively, the "Project").

24 6. On or around January 6, 2015, Respondent's city council certified the Project's EIR, and
25 approved the Project's general plan amendment and specific plan amendment. On or around June 16,
26 2015, Respondent's city council approved the Project's special conditional use permit and site approval.

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 amended pleading to be served on the
12 Attorney General not more than ten days after its filing, as required by Code of Civil Procedure Section
13 388.

14 **Jurisdiction and Exhaustion of Administrative Remedies**

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

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

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

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

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

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

9 **FIRST CAUSE OF ACTION:**
10 **Violation of the California Environmental Quality Act**
(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' 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 Project's EIR makes a passing reference to the site approval and special conditional
5 use permit with no description of the nature and extent of the site approval and special conditional use
6 permit. Consequently, the EIR's Project description is inadequate under CEQA. Furthermore, approval
7 of the Project qualifies as unlawful piecemealing under CEQA because Respondent failed to consider
8 the environmental impacts of the site approval and special conditional use permit together with the
9 general plan amendment and specific plan amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 39. In approving a specific conditional use permit, Respondent is required to consider and
5 clearly establish the following findings of fact set forth in Chino Municipal Code Chapter 20.23.080,
6 giving specific reasons as to how each of the findings has been met: (i) the proposed use is consistent
7 with the goals and policies of the city's adopted general plan and/or applicable specific plan(s); (ii) the
8 subject site is physically suitable, including, but not limited to, parcel size, shape, access and availability
9 of utilities, for the type and intensity of use proposed; (iii) the subject site relates to streets and highways
10 properly designed, both as to width and type of pavement to carry the type and quantity of traffic
11 generated by the proposed use; (iv) the proposed use is compatible with those on abutting properties and
12 in the surrounding neighborhood; (v) the proposed location, size, and operating characteristics of the
13 proposed project use will not be detrimental to the public interest, health, safety or general welfare; (vi)
14 the proposed use will not have a significant adverse impact on the environment; and (vii) the minimum
15 safeguards necessary to protect the public health, safety and general welfare have been required of the
16 proposed use.

17 40. Respondent approved the Project based on findings unsupported by substantial evidence
18 in the administrative record. Additionally and alternatively, Respondent approved the Project while
19 failing to make the findings required by Chino Municipal Code Chapter 20.23.080.

20 41. In approving a site approval, Respondent is required to consider and clearly establish the
21 following findings of fact set forth in Chino Municipal Code Chapter 20.23.090, giving specific reasons
22 as to how each of the findings has been met: (i) the proposed project is consistent with the goals and
23 policies of the city's adopted general plan and/or applicable specific plan(s); (ii) the proposed project
24 is permitted within the zoning district in which it is proposed and complies with all applicable
25 provisions of the city's zoning code; (iii) the subject site is physically suitable, including, but not limited
26 to, parcel size, shape, access and availability of utilities, for the type and intensity of the development
27 proposed; (iv) the subject site relates to streets and highways properly designed, both as to width and
28 type of pavement to carry the type and quantity of traffic generated by the proposed project; (v) the

1 proposed project is compatible with those on abutting properties and in the surrounding neighborhood;
2 (vi) the proposed location, size, and operating characteristics of the proposed project will not be
3 detrimental to the public interest, health, safety or general welfare; (vii) the proposed project will not
4 have a significant adverse impact on the environment; and (viii) the minimum safeguards necessary to
5 protect the public health, safety and general welfare have been required of the proposed project.

6 42. Respondent approved the Project based on findings unsupported by substantial evidence
7 in the administrative record. Additionally and alternatively, Respondent approved the Project while
8 failing to make the findings required by Chino Municipal Code Chapter 20.23.090.

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

12 **Prayer**

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

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

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

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

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

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

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

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

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

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

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

11 D. *On All Causes of Action:*

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

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

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

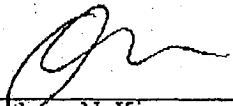
23 4. Any and all further relief that this Court may deem appropriate.

24 Date: July 9, 2015.

Respectfully submitted,

BRIGGS LAW CORPORATION

26
27 By:



Anthony N. Kim

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