

ELLISON FOLK (State Bar No. 149232)
EDWARD T. SCHEXNAYDER (State Bar No. 284494)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Folk@smwlaw.com
Schexnayder@smwlaw.com

ASHLEY WERNER (State Bar No. 282217)
LEADERSHIP COUNSEL FOR JUSTICE AND
ACCOUNTABILITY
764 P Street, Suite 012
Fresno, California 93721
Telephone: (559) 369-2790
awerner@leadershipcounsel.org

Attorneys for Petitioner
SOUTH CENTRAL NEIGHBORS UNITED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

SOUTH CENTRAL NEIGHBORS
UNITED,

Petitioner,

v.

CITY OF FRESNO, CITY COUNCIL OF
FRESNO, and DOES 1-20,

Respondents.

RICHARD CAGLIA; CAGLIA
ENVIRONMENTAL LLC dba CAGLIA
ENVIRONMENTAL; and DOES 21-40,

Real Parties in Interest.

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
RELIEF**

CCP § 1094.5 (Alternatively CCP § 1085);
Public Resources Code § 21000 et seq.
("CEQA"); State Planning & Zoning Law;
City of Fresno Municipal Code

INTRODUCTION

1. This action challenges the January 25, 2018 decision of the Fresno City Council to approve Development Permit Application No. D-16-109, which would allow a massive new industrial park on undeveloped land in the City of Fresno (“Industrial Park Project” or “Project”). The Project would operate directly across the street from a residential community that already bears a disproportionate burden of environmental and public health impacts from industrial warehouses and distribution centers, hazardous and solid waste sites, and other noxious development in Fresno. This petition and complaint (“Petition”) challenges the City Council’s reliance on the environmental assessment and mitigated negative declaration prepared for the Project (“MND”). The City failed to ensure that the MND disclosed, analyzed, and mitigated the Project’s many foreseeable public health and environmental impacts as required by the California Environmental Quality Act (“CEQA”), Public Resources Code Sections 21000 *et seq.*, and the CEQA Guidelines, Title 14, California Code of Regulations Sections 15000 *et seq.*

2. The City further failed to ensure the Industrial Park Project’s consistency with the City’s General Plan and the Roosevelt Community Plan. These plans contain multiple requirements designed to ensure that the City does not approve new development without confirming that adequate water supply exists to serve the development. In approving the Project, however, the City did not comply with these requirements. It therefore violated the City’s own mandate that the Project be consistent with the General Plan and any other applicable plan, like the Roosevelt Community Plan.

3. Finally, the City failed to comply with numerous requirements set forth in its Municipal Code prior to approving the Industrial Park Project. Many of these requirements are specifically designed to mitigate public health and environmental impacts from new development like the Industrial Park Project, but the City approved the Project without demonstrating how it would satisfy the Municipal Code’s obligations.

PARTIES

4. Petitioner South Central Neighbors United is an unincorporated association with members who live within the immediate vicinity and within one mile of the Industrial Park

1 Project site. South Central Neighbors United is dedicated to preventing environmental
2 degradation and to the improvement of environmental quality in the neighborhoods along East
3 Central Avenue between State Highways 99 and 41, other neighborhoods (including Daleville,
4 East Britten Avenue, East Malaga Avenue, and the Flamingo Mobile Home Park), and the
5 region, and to ensuring that residents in the City of Fresno and County of Fresno enjoy a decent
6 quality of life. South Central Neighbors United and its members participated in the
7 administrative process leading up to the City's approval of the Industrial Park Project, objecting
8 to the Project and warning the City of the illegalities identified in this lawsuit. The maintenance
9 and prosecution of this action will confer a substantial benefit on the public by protecting the
10 public from the environmental and other harms alleged herein and by ensuring that the City
11 abides by the procedures required under law in approving development projects like the one at
12 issue here. South Central Neighbors United is beneficially interested in this matter because it has
13 a direct interest in ensuring that the Respondents fulfill their duties to comply with CEQA, State
14 law, and the City's own municipal code and ordinances. South Central Neighbors United has an
15 interest in preserving and protecting, for the general public, the environment and character of
16 Fresno.

17 5. Respondent City of Fresno is a charter city in the State of California responsible
18 for administering and carrying out its laws and applicable state laws. The City is the "lead
19 agency" for the purposes of Public Resources Code Section 21067, with principal responsibility
20 for conducting environmental review of proposed actions. The City has a duty to comply with
21 CEQA, state law, and its own ordinances.

22 6. Respondent City Council of the City of Fresno is, and at all times herein
23 mentioned was, the duly elected decisionmaking body of Respondent City. As the
24 decisionmaking body, the City Council was charged with responsibilities under CEQA for
25 conducting a proper review of the proposed action's environmental impacts and granting the
26 various approvals necessary for the Project.

27 7. Petitioner is unaware of the true names and capacities of Respondents fictitiously
28 named Does 1 through 20 and sues such respondents by fictitious names. Petitioner is informed

1 and believes, and on that basis alleges, that the fictitiously named respondents are also
2 responsible for the actions described in this Petition. When the true identities and capacities of
3 these Respondents have been determined, Petitioner will amend this petition, with leave of the
4 court if necessary, to insert such identities and capacities.

5 8. Petitioner is informed and believes, and thereon alleges that Real Parties in
6 Interest Richard Caglia and Caglia Environmental, LLC are, and at all times herein mentioned
7 were, the applicants for the approvals granted by the City for the Industrial Park Project.
8 Petitioner is further informed and believes, and thereon alleges, that Caglia Environmental, LLC
9 was at all times herein mentioned doing business as Caglia Environmental.

10 9. Petitioner is unaware of the true names and capacities of Real Parties in Interest
11 Does 21 through 40 and sue such real parties in interest by fictitious names. Petitioner is
12 informed and believes, and on that basis alleges, that the fictitiously named real parties in
13 interest are directly and materially affected by the actions described in this Petition. When the
14 true identities and capacities of these real parties in interest have been determined, Petitioner
15 will amend this Petition, with leave of the court if necessary, to insert such identities and
16 capacities.

17 **JURISDICTION AND VENUE**

18 10. This Court has jurisdiction of the matters alleged herein pursuant to Code of Civil
19 Procedure Sections 526, 527, 1085, 1087, and 1094.5, Public Resources Code Sections 21168
20 and 21168.5, and Fresno Municipal Code Section 15-6308.

21 11. Venue for this action properly lies in the Superior Court for the State of California
22 in and for the County of Fresno pursuant to Code of Civil Procedure Section 394. Respondents'
23 main offices are located in and the activities authorized by Respondents will occur in the City of
24 Fresno, which is located in Fresno County.

25 12. Petitioner has performed any and all conditions precedent to filing the instant
26 action and has exhausted any and all available administrative remedies to the extent possible and
27 required by law. Petitioner and its members submitted numerous objections to the approvals for
28 the Project and the City's reliance on a MND.

13. Respondents have taken final agency actions with respect to adopting the MND and granting approval of the Project. Respondents have a duty to comply with applicable state laws, including but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit. Petitioner possesses no effective remedy to challenge the approvals at issue in this action other than by means of this lawsuit.

14. On February 22, 2018, Petitioner complied with Public Resources Code Section 21167.5 by emailing and mailing to Respondents a letter stating that Petitioner planned to file a Petition for Writ of Mandate seeking to invalidate Respondents' approvals for the Industrial Park Project. Attached hereto as Exhibit A is the true and correct copy of this letter.

15. On February 23, 2018, Petitioner complied with Public Resources Code Section 21167.7 and Code of Civil Procedure Section 388 by furnishing the Attorney General of the State of California with a copy of the Petition. Attached hereto as Exhibit B is the true and correct copy of the letter transmitting the Petition to the Attorney General.

16. Pursuant to Public Resources Code Section 21167.6(b)(2), Petitioner elects to prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner is filing a notice of election to prepare the administrative record.

17. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside their adoption of the MND and approvals for the Industrial Park Project. In the absence of such remedies, Respondents' approvals will remain in effect in violation of state law, and the environment, Petitioner, and residents and property owners of the City of Fresno and nearby communities will be irreparably harmed. No money damages or legal remedy could adequately compensate Petitioner and the residents and property owners of the City for that harm.

STATEMENT OF FACTS

Description of the Project Area and Project

18. The site for the proposed Industrial Park Project consists of over 110 acres of currently undeveloped open space on the edge of the City of Fresno. Portions of the project site are zoned for open space uses while others are zoned for heavy industrial uses.

1 19. The site is bordered by South Orange Avenue on the west, South Cedar Avenue on
2 the east, East Central Avenue to the south, and the Orange Avenue Disposal Company to the
3 North. Much of the surrounding land uses are currently devoted to open space, agriculture, or
4 residential uses. Directly across Central Avenue from the Project site is a small neighborhood of
5 single family homes located in unincorporated Fresno County. The closest home is less than 150
6 feet from the Project site.

7 20. The communities near the Project site are disproportionately comprised of lower
8 income households and households with incomes below the federal poverty line and are exposed
9 to disproportionate environmental burdens compared to the City and the County of Fresno as a
10 whole. Neighborhoods and sensitive uses adjacent to and near the Project site include the homes
11 along East Central Avenue between Orange and Cedar Avenues which face the Project site, the
12 disadvantaged unincorporated community of Daleville, neighborhoods located on East Britten
13 and East Malaga Avenues between Highways 41 and 99, the Flamingo Mobile Home Park, and
14 Orange Center Elementary School. According to the California Department of Education,
15 approximately 90.7% of the children who attend Orange Center Elementary School qualify for
16 free or reduced price lunch under the National School Lunch Program based on their income and
17 42% of students are English Language Learners.

18 21. These areas are already subject to substantial air pollutant emissions from existing
19 industrial uses in the area and freeway traffic. In fact, under the California Environmental
20 Protection Agency's CalEnviroScreen ("CES") 3.0 methodology, which identifies communities
21 that are disproportionately burdened by multiple sources of pollution, neighborhoods in South
22 Fresno rank among the most burdened by multiple sources of pollution in the State of
23 California. The census tract where the Project is located ranks in the 100th percentile under CES
24 for pollution burden, the 97th percentile for PM 2.5 air pollution, and the 98th percentile for
25 ozone and toxic releases compared to other census tracts in California. Many of the households
26 located near the Project site have had one or multiple cancer incidences and cancer-related
27 deaths that likely are due at least in part to pollutant exposure.

28 22. Additionally, the Project site is located in the Kings Sub-basin, which the

1 California Department of Water Resources has classified has a high priority basin because it is
2 in critical overdraft. Most of the homes in the communities adjacent to and near the Project Site
3 rely on private domestic wells to meet residents' needs for water for drinking, cooking, cleaning,
4 and other household purposes. Since the drought that began in 2012, the wells at many of the
5 homes in the area have run shallow or dry, forcing residents to spend thousands of dollars to
6 drill deeper wells and to make emergency connections to neighbors with wells that continue to
7 function.

8 23. On or about September 30, 2016, Real Parties in Interest applied for a
9 development permit to build an "industrial business park" at the Project site. Although the City's
10 permit review includes few details about the proposed Project, Development Permit Application
11 No .D-16-109 discloses that the Industrial Park Project would construct seven massive concrete
12 buildings, totaling more than 2,100,000 square feet in area. The Industrial Park Project alone
13 would add 6,260 vehicle trips to the roads immediately surrounding the Project site and would
14 operate twenty four hours a day, seven days per week.

15 24. In addition to the Industrial Park Project, the City recently approved two other
16 large-scale warehouse projects in the Project's immediate vicinity. A new Ulta Beauty
17 distribution center is being constructed at the junction of Orange & Central Avenue at the
18 western boundary of the Project site. A new Amazon warehouse is being built less than .6 miles
19 from the Project site. These two projects alone are constructing 1,525,000 square feet of new
20 warehouse space and will generate new air quality, water, light, noise, traffic, and other
21 environmental impacts in the immediate area of the Project site. Construction of the Amazon
22 Warehouse has generated excessive amounts of dust that coats residents' homes and cars and
23 triggers allergic and asthmatic responses and has resulted in increased truck traffic that passes in
24 front of residents' homes throughout the day and night, resulting in ongoing noise and vibration
25 impacts that can be heard and felt within residents' homes.

26 **The City's Project Review and Approval**

27 25. On or about September 18, 2017, City staff released an Environmental Assessment
28 and Mitigated Negative Declaration for the Industrial Park Project. The City determined that the

1 MND was not fully within the scope of the Master Environmental Impact Report (“MEIR”)
2 prepared for the Fresno General Plan and adopted by the City Council in 2014, but the City still
3 relied on portions of the MEIR and its mitigation measures to conclude that the Project would
4 not create significant environmental impacts. The MND asserted that despite the Project’s size
5 and close proximity to residential communities, the Project would have no significant,
6 unmitigated environmental impacts. The City provided notice of the availability of the
7 Environmental Assessment only in the Fresno Bee and at the County Clerk’s Office. Prior to its
8 approval by the Development and Resource Management Director, the City provided no direct
9 notice of the Environmental Assessment or of the Project itself to residents or owners of
10 property in the communities surrounding the Project site or to Orange Center Elementary
11 School.

12 26. Public comments submitted to the City highlighted numerous deficiencies in the
13 MND. For instance, commenters noted that the MND failed to describe and analyze various
14 construction-related impacts and the impacts of foreseeable uses of the Industrial Park Project,
15 including uses that are allowed by right with no further environmental review under the City’s
16 Municipal Code. Public comment also noted that the MND failed to evaluate the Project’s
17 cumulative environmental impacts. Public comments also noted the City’s failure to submit the
18 Project to the City Council District 3 General Plan Implementation Committee for its
19 consideration and recommendation as required by the Municipal Code. In addition, public
20 comments requested that the Development Director exercise her authority under Fresno
21 Municipal Code Section 15-204 to refer the permit application for this project to the Planning
22 Commission for consideration and a public hearing.

23 27. On October 24, 2017, despite these and other concerns raised by the public, the
24 City’s Development and Resource Management Director approved the Industrial Park Project
25 without a public hearing.

26 28. On November 8, 2017, Petitioner’s members, along with multiple other groups
27 concerned about the Project’s potential impacts, filed an appeal to the City’s Planning
28 Commission pursuant to the Fresno Municipal Code. Petitioner submitted comments in support

1 of the appeal, which incorporated previous concerns raised about the MND's inadequacies and
2 noted that City staff was recommending Project approval without complying with applicable
3 requirements of the Fresno Municipal Code, the General Plan, or the Roosevelt Community
4 Plan, all of which were designed to minimize the impacts of new development on nearby
5 properties,

6 29. On December 20, 2017, the City of Fresno Planning Commission heard the appeal
7 of the Project approval. Members of the public attended the meeting to express their concern
8 over the City's inadequate review process and the Project's foreseeable impacts. Despite these
9 comments, the Planning Commission voted to recommend that the City Council deny the appeal
10 and adopt the MND.

11 30. On January 25, 2018, Respondent City Council heard the appeal with the Planning
12 Commission's recommendation. Prior to the hearing, Petitioner submitted additional comments
13 in support of the appeal. Those comments noted numerous deficiencies in the MND, including
14 its failure to: (i) analyze or mitigate the Project's foreseeable air quality impacts even though the
15 community surrounding the Project site already experiences one of the heaviest pollution
16 burdens in the State, (ii) adequately analyze or mitigate the Project's groundwater impacts even
17 though the King Sub-basin is in critical overdraft, (iii) include any analysis or appropriate
18 mitigation relating to the disturbance of soils on a site adjacent to and with no physical
19 separation from a landfill and another hazardous waste site; (iv) address concerns raised by
20 responsible agencies regarding these issues and other inadequacies in the MND, and (v) the
21 City's failure to comply with CEQA and its own Municipal Code in its approval of the MND
22 and Development Permit.

23 31. At the City Council hearing on January 25, 2018, several members of South
24 Central Neighbors United, South Central Neighbors United's attorney, and other members of the
25 public spoke in support of the appeal, raising concerns with the MND, the lack of public notice
26 about the Project prior to its approval, and the City's failure to comply with its Municipal Code.
27 Despite the written and oral comments provided to the City Council, the City Council voted to
28 adopt, without modification, the MND prepared for the Project, and it denied the appeal and

1 upheld the decision the issue a development permit for the Project.

2 **FIRST CAUSE OF ACTION**

3 **Violation of CEQA**

4 32. Petitioner realleges and incorporates by reference the preceding paragraphs in their
5 entirety.

6 33. CEQA is designed to ensure that government agencies incorporate the goal of
7 long-term protection of the environment into decisions that may affect the environment,
8 consistent with the provision of a decent home and suitable living environment for every
9 Californian. CEQA applies to any discretionary action taken by an agency that may cause a
10 reasonably foreseeable change in the environment.

11 34. In furtherance of its goal of environmental protection, CEQA requires that an
12 agency prepare an EIR for a project whenever substantial evidence in the record supports a fair
13 argument that the project may have a significant impact on the environment. The EIR is the
14 cornerstone of the CEQA process and discloses a project's potential adverse environmental and
15 human impacts. The EIR also informs decisionmakers, responsible agencies, and the public of
16 alternative mitigation measures, project elements, or project designs that would lessen or avoid
17 the project's adverse environmental impacts.

18 35. CEQA also mandates that the lead agency adopt feasible and enforceable
19 mitigation measures that would reduce or avoid any of a project's significant environmental
20 impacts. If substantial evidence in the record supports a fair argument that any of the project's
21 significant environmental impacts cannot be mitigated to a less than significant level, an agency
22 may not rely on a Mitigated Negative Declaration and must instead prepare an EIR.

23 36. The City's approval of a development permit constitutes a discretionary act that
24 triggers its obligation to comply with CEQA.

25 37. The City violated CEQA when it approved the Industrial Park Project by failing to
26 adequately evaluate and mitigate its project impacts for the following non-exclusive list of
27 reasons:

28 a. The MND fails to completely and adequately describe the Project and its

1 effects, including, but not limited to, failing to evaluate impacts from
2 foreseeable uses of the Project site such as potential air quality and public
3 health impacts, construction-related activities necessary to develop the
4 Industrial Park Project and any related impacts. The MND also improperly
5 segments project approvals and actions in its analysis, precluding a full
6 understanding of the Project's significant impacts.

- 7 b. The MND fails to provide an adequate description of baseline conditions
8 against which the City must measure the Project's impacts. For example, the
9 air quality analysis fails to accurately disclose the current levels of harmful air
10 pollutants near the Project site, even though the surrounding community is one
11 of the most environmentally-burdened communities in the state.
- 12 c. The City improperly relied on the MEIR and CEQA Guidelines Section 15178
13 in the MND because the Project is not consistent with the MEIR's impact
14 analysis. Even if the City could rely on the MEIR in part, the City failed to
15 adopt mandatory mitigation measures set forth in the City's MEIR.
- 16 d. The MND fails to adequately analyze and mitigate the Project's air quality
17 impacts. For example, the MND ignores comments from the San Joaquin
18 Valley Air Pollution Control District indicating that the City failed to closely
19 study potential criteria pollutants and toxic air contaminants and failed to
20 evaluate how these pollutants will impact nearby sensitive receptors and
21 general public health. The MND further fails to consider and mitigate odor
22 impacts to nearby sensitive receptors. The MND improperly defers mitigation
23 of potentially-significant air quality impacts.
- 24 e. The MND fails to adequately analyze and mitigate the Project's potential to
25 expose individuals to Valley Fever.
- 26 f. The MND fails to adequately analyze and mitigate the Project's greenhouse
27 gas emissions. For example, the MND made no attempt to quantify the
28 Project's greenhouse gas emissions even though there is substantial evidence

1 that these emissions would be significant.

- 2 g. The MND fails to adequately analyze and mitigate the Project's water supply
3 impacts. For example, the MND failed to provide any analysis of the water
4 quantity that operations at the new Industrial Park Project will require.
5 Petitioner is further informed and believe that no Water Supply Assessment
6 was prepared for the Project, contrary to the requirements of California Water
7 Code Section 10910. The MND also contained misleading information
8 concerning the availability of water for the Project site by incorrectly claiming
9 that there was a guarantee of water for the Project.
- 10 h. The MND fails to adequately analyze and mitigate the Project's aesthetic and
11 light impacts. For example, the Project site is less than 150 feet away from the
12 nearest residence, but the MND does not adequately address foreseeable
13 nighttime light impacts to that or other nearby residences.
- 14 i. The MND fails to adequately analyze and mitigate the Project's impacts from
15 disturbing contaminated soils. The Project site is located directly adjacent to,
16 and without any physical boundary separating it from, a site designated by the
17 Department of Toxic Substance Control and ("DTSC"). Two other DTSC sites
18 are also located less than 1/3 of a mile away from the Project site. But the
19 MND does not address the potential for Project construction and operation to
20 create significant impacts by, for example, spreading contaminated dust and
21 other hazardous materials to nearby homes and the Orange Elementary School.
- 22 j. The MND fails to adequately analyze and mitigate the noise and vibration
23 impacts caused by construction and operation of the Project. Instead, the MND
24 improperly defers analysis of these impacts to some uncertain future date. The
25 Project's noise and vibration impacts are readily foreseeable given the sensitive
26 receptors that live and go to school in the Project's immediate vicinity.
- 27 k. The MND fails to adequately analyze and mitigate the Project's traffic safety
28 impacts. The Project will add over 6,000 new daily truck trips to the roads

1 surrounding the Project site. Those trucks will pass in front of homes and
2 schools, often on narrow two-lane roads that lack shoulders or sidewalks. But
3 the MND ignores whether this massive increase in traffic will cause safety
4 hazards to cyclist and pedestrians, including residents and schoolchildren that
5 walk along the roads.

- 6 1. The MND fails to adequately analyze whether the Project is inconsistent with
7 applicable General Plan and Community Plan policies adopted for the purpose
8 of avoiding or mitigating environmental impacts. The MND thereby fails to
9 alert the public and decision-makers of the numerous inconsistencies of the
10 Project with the General Plan and Roosevelt Community Plan and fails to
11 effectively mitigate the impacts of the Project.
- 12 m. The MND fails to adequately analyze and mitigate any of the Project's
13 cumulative impacts, including, but not limited to, aesthetic and light, air
14 quality, greenhouse gas, noise, public health, public safety, and traffic impacts.
15 Instead, it improperly relies on the MEIR's previous cumulative impact
16 analysis even though that analysis did not consider the impacts from industrial
17 development like the proposed Project.

18 38. Moreover, the City lacks substantial evidence to support its conclusion that
19 identified mitigation measures will actually mitigate the Project's significant impacts. For
20 example, the City fails to demonstrate how mitigation measures contained in the MEIR that the
21 City relied on to approve the Project can adequately mitigate the Project's foreseeable air quality
22 and groundwater impacts.

23 39. The City violated CEQA by failing to prepare an EIR for the Project when the
24 record demonstrates that the Project may cause the potentially significant environmental impacts
25 described above, among others, which have not been adequately disclosed, analyzed, or
26 mitigated to a less than significant level.

27 40. Finally, the City failed to conduct a public scoping meeting prior to preparing the
28 MND despite CEQA's clear requirements. California Code of Regulations, title 14, ("CEQA

Guidelines”) Section 15082(c)(1) requires a public agency to hold at least one scoping meeting for projects of statewide, regional, or areawide significance. CEQA Guidelines Section 15206(b) states that a “proposed project is of statewide, regional, or areawide significance” if it is industrial in nature and encompasses more than 650,000 square feet of floor area. The Industrial Park Project plans to construct over 2,000,000 square feet of industrial floor area and consequently is a project of statewide, regional, or areawide significance. Despite this designation, the City never conducted the scoping meeting required by law.

41. For all of the above reasons, the City prejudicially abused its discretion and failed to comply with the law.

SECOND CAUSE OF ACTION

Inconsistency with Fresno General Plan

42. Petitioner realleges and incorporates by reference the preceding paragraphs in their entirety.

43. Government Code Section 65300 requires the legislative body of each city to adopt a general plan for the physical development within the city. The general plan is often called a “constitution” for future development to which all other land use decisions must conform. Accordingly, any decision of the City affecting land use and development, including approving development permits, must be consistent with the general plan. See *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1182-86.

44. Fresno Municipal Code Section 15-5206 permits the City to approve a Development Permit only where it finds that an application is consistent with the “General Plan and any operative plan or policies that the City has adopted.”

45. Despite this requirement, the Project as approved is inconsistent with numerous provisions of the General Plan. These inconsistencies include:

- a. Failing to ensure that the Project provide a sustainable and stable water supply.
- b. Failing to ensure that potable water production and supply are in place to serve the Project.

1 c. Failing to mitigate the Project's effect on the "long-range water budget" to
2 ensure adequate supply for current and future users.

3 46. Respondents' conclusory findings of plan consistency, moreover, are inadequate
4 as a matter of law and are not supported by substantial evidence. The findings consist of simple
5 checkbox and do not demonstrate how the Project's largescale development will be consistent
6 with the General Plan. Moreover, the City failed to articulate the connection between its findings
7 and the evidence in the record in contravention of the California Supreme Court's decision in
8 *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

9 47. Because (1) Respondents did not proceed in the manner required by law, (2) their
10 decision was arbitrary and capricious, and (3) their decision was not supported by substantial
11 evidence, the City's approval of the Project should be set aside as set forth below.

12 **THIRD CAUSE OF ACTION**

13 **Inconsistency with Roosevelt Community Plan**

14 48. Petitioner realleges and incorporates by reference the preceding paragraphs in their
15 entirety.

16 49. Development in the Project area is also covered by the Roosevelt Community
17 Plan, which was adopted by Respondent City Council in 1992 and contains multiple mandatory
18 requirements that govern the Project. For example, the Community Plan requires that "a specific
19 finding be made by the City Public Utilities Director and Fire Chief to document that an
20 adequate supply of clean potable water can be provided to serve the domestic and fire
21 suppression needs of each proposed development prior to approval" of a project. This policy's
22 express purpose is to ensure "continued provision of an adequate water supply to serve" the
23 planning area.

24 50. Despite this clear and mandatory requirement, the City Public Utilities Director
25 and Fire Chief made no finding that there was adequate water supply to serve the Project. In
26 fact, the comments by the Fire Department state that each proposed building diagram was "not
27 approved" by the Department. This example demonstrates that the City failed to abide by the
28 Roosevelt Community Plan's clear mandates when it approved the Project, and as a result

1 violated Fresno Municipal Code Section 15-5206.

2 51. Respondents' conclusory findings of plan consistency, moreover, are inadequate
3 as a matter of law and are not supported by substantial evidence. The findings consist of simple
4 checkbox and do not demonstrate how the Project's largescale development will be consistent
5 with the Community Plan. Moreover, the City failed to articulate the connection between its
6 findings and the evidence in the record in contravention of the California Supreme Court's
7 decision in *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal.3d
8 506 (1974).

9 52. Because (1) Respondents did not proceed in the manner required by law, (2) their
10 decision was arbitrary and capricious, and (3) their decision was not supported by substantial
11 evidence, the City's approval of the Project should be set aside as set forth below.

12 **FOURTH CAUSE OF ACTION**

13 **Violations of City of Fresno Municipal Code**

14 53. Petitioner realleges and incorporates by reference the preceding paragraphs in their
15 entirety.

16 54. The City of Fresno Municipal Code contains mandatory regulations governing
17 proposed developments like the Industrial Park Project that were adopted to ensure consistency
18 of new development with the surrounding community and to reduce the potential for new
19 development to impact existing land uses. As described below, the City repeatedly ignored these
20 mandatory requirements of its Municipal Code when it approved the Project.

21 55. Fresno Municipal Code Section 15-4906(D)(1) provides that a General Plan
22 District Implementation Committee "shall review and provide recommendations to the Planning
23 Commission and City Council on every application for a . . . Development Permit . . . to develop
24 property within the committee's boundaries." The Committee "shall consider every plan to
25 which the development is subject." The Project falls within the boundaries of the District 3
26 Implementation Committee's boundaries, which represents the poorest areas of the City and
27 areas of the City with greatest concentration of people of color and immigrant populations.
28 Despite the clear requirements of its code, however, the City failed to present the Project to the

1 District 3 Implementation Committee prior to approving the Project.

2 56. The City failed to comply with Fresno Municipal Code Section 15-2512, which
3 prohibits uses from operating “in a manner that emit dust, fumes, smoke, or particulate matter
4 adverse to the public health, safety, or general welfare of the community or detrimental to
5 surrounding properties or improvements” But the Project-specific air quality mitigation
6 measures adopted by the City fail to require compliance with this code Section or otherwise
7 prevent the emissions of dust, fumes, smoke and particulate matter from impacting the
8 community and the surrounding properties.

9 57. The City failed to comply with Fresno Municipal Code Sections 15-2015 and 15-
10 2508 which requires that Project lights “be placed to deflect light away from adjacent properties
11 and public streets” and take other steps to prevent light and glare from impacting neighboring
12 properties. The mitigation measures adopted to address light and glare impacts do not ensure
13 compliance with these mandatory obligations because they only require implementation if
14 “excessive lighting spillover onto adjacent properties” occurs. Thus, the City’s approval
15 documents fail to contain any information showing that the Project will comply with the
16 Municipal Code’s requirements to prevent light and glare impacts to nearby properties.

17 58. The City failed to comply with Fresno Municipal Code Section 15-1304(G) which
18 requires that the Project’s “[s]ervice and loading areas should be integrated with the design of
19 the building and shall be screened from residential areas. Special attention shall be given when
20 designing loading facilities in a location that is proximate to residential uses.” But the City’s
21 approval documents fail to contain any information showing that the Project will comply with
22 this requirement.

23 59. The City failed to comply with Fresno Municipal Code Section 15-5204(b) which
24 requires that a “Development Permit application be accompanied by a written narrative,
25 operational statement, site plans, elevations, three-dimensional renderings, and other related
26 materials necessary to show that the proposed development, alteration, or use of the site
27 complies with all applicable provisions of this Code.” The application materials failed to comply
28 with this requirement and the Development Permit should not have been approved.

60. For all of the above reasons, the City abused its discretion and failed to comply with the law in approving the Development Permit for the Industrial Park Project.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside their approval of the Project;

2. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside the MND for the Project;

3. For alternative and peremptory writs of mandate directing the Respondents to comply with the requirements of CEQA and take any other action required by Public Resources Code Section 21168.9, comply with the requirements of the City of Fresno General Plan and the Roosevelt Community Plan, and to comply with the City of Fresno Municipal Code;

4. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents and Real Parties in Interest and their representative agents, servants, and employees, and all others acting in concert with Respondents or Real Parties in Interest on their behalf, from taking any action to implement the Project pending full compliance with the requirements of CEQA, the City of Fresno General Plan and the Roosevelt Community Plan, and the City of Fresno Municipal Code;

5. For costs of the suit;

6. For Petitioner's attorneys' fees under Code of Civil Procedure Section 1021.5 and other applicable authority; and

7. For such other and further relief as the Court deems just and proper.

DATED: February 23, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: 

ELLISON FOLK

Attorneys for Petitioner

SOUTH CENTRAL NEIGHBORS UNITED

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VERIFICATION

I, Daniel Madros, am a member of South Central Neighbors United, petitioner in this action. I have read the foregoing Petition for Writ of Mandate. I am familiar with the contents of the Petition. All facts alleged in the above Petition, not otherwise supported by exhibits or other documents, are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Fresno, California on February 21, 2018.



973895.1

EXHIBIT A

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ELLISON FOLK
Attorney
folk@smwlaw.com

February 22, 2018

Via E-Mail and U.S. Mail

Ms. Yvonne Spence
City Clerk
City of Fresno
2600 Fresno Street, Room 2133
Fresno, California 93721

Re: Notice of Commencement of CEQA Litigation Challenging
Approval of Development Permit D-16-109

Dear Ms. Spence:

This letter is to notify you that South Central Neighbors United will file suit against the City of Fresno ("City") and its City Council for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., state law, the City's General Plan, the Roosevelt Community Plan, and the City's Municipal Code when the City approved Development Permit D-16-109 and adopted a Mitigated Negative Declaration for that permit. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, pursuant to Public Resources Code section 21167.6, the record of proceedings for City's actions includes, among other items, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all e-mails and other internal communications related to the Project are part of the administrative record for the lawsuit to be filed by South Central Neighbors United, the City may not destroy or delete such documents prior to preparation of the record in this case.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

PROOF OF SERVICE

South Central Neighbors United v. City of Fresno et al.

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On February 22, 2018, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Larkin@smwlaw.com to the person(s) at the e-mail address(es) listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on February 22, 2018, at San Francisco, California.



Patricia Larkin

SERVICE LIST

South Central Neighbors United v. City of Fresno et al.

Ms. Yvonne Spence
City Clerk
City of Fresno
2600 Fresno Street, Room 2133
Fresno, California 93721
Telephone: (559) 621-7650
Facsimile: (559) 457-1106
clerk@fresno.gov

EXHIBIT B

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ELLISON FOLK
Attorney
folk@smwlaw.com

February 23, 2018

Via U.S. Mail

Attorney General Xavier Becerra
Office of the Attorney General
1300 "T" Street
Sacramento, California 95814

Re: Notice of Filing CEQA Litigation: South Central Neighbors United
v. City of Fresno et al.

Dear Attorney General Becerra:

Enclosed please find a copy of the Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") in the above-captioned action. The Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

Encl.

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