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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

SOUTH CENTRAL NEIGHBORS UNITED, Petitioner, **v.** **CITY OF FRESNO; CITY COUNCIL OF THE CITY OF FRESNO, and DOES 1 -20,** Respondents.	Case No. 18CECG00690 **PEOPLE'S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SCOTT J. LICHTIG IN SUPPORT THEREOF** **[CEQA CLAIM]** **[Code Civ. Proc., §§ 387 and 1094.5; Gov. Code, § 12606; Pub. Resources Code, § 21167]** Date: July 12, 2018 Time: 3:30 P.M. Dept: 501 Judge: Hon. Mark Snauffer Action Filed: February 21, 2018
RICHARD CAGLIA; CAGLIA AND ENVIRONMENTAL LLC DBA CAGLIA ENVIRONMENTAL; and DOES 21-40, Real Party in Interest.	

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 12, 2018, at 3:30 P.M., in Department 501 of the Fresno County Superior Court, located at 1130 O Street, Fresno, CA, 93721, the People of the State of California *ex rel.* Xavier Becerra, Attorney General ("People"), will move, and hereby do move the Court for leave to intervene in one of the above-captioned consolidated actions pursuant to Code of Civil Procedure section 387, subdivision (b). The People's proposed Petition for Writ of Mandate in Intervention ("People's Petition") is attached to this motion as Exhibit 1. The People's Petition challenges a proposed industrial development project approved by Respondents the City of Fresno, the Fresno City Council, and Does 1-20 (collectively, "Respondents") under the California Environmental Quality Act. (Pub. Resources Code, §§ 21000 *et seq.*)

This motion is based on the following grounds:

1. Pursuant to Government Code section 12606, the People, as represented by the Attorney General, have an unconditional right to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects that could affect the public in general. Such facts are alleged in the current action.

2. The People have an unconditional right to intervene and must be permitted to intervene as a matter of right pursuant to Code of Civil Procedure section 387, subdivision (b).

3. The People's motion to intervene is timely and will not impair or impede the prompt resolution of the issues presented in this action.

4. Based on the unconditional right of the People to intervene pursuant to Government Code section 12606 and in accordance with Code of Civil Procedure sections 387, subdivision (b), and 388, this Court should grant the People leave to intervene in Case Number 18CECG00690.

This motion is based upon this notice, the People's Petition, the accompanying Memorandum of Points and Authorities and the Declaration of Scott J. Lichtig in support of the motion, any matters of which the Court may take judicial notice, the pleadings on file with the

Court in this action, and such other matters which may be brought to the attention of this Court before or during the hearing of this motion.

Dated: June 13, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
CHRISTIE VOSBURG
Environmental Justice Special Assistant

SCOTT J. LICHTIG
Deputy Attorney General
Attorneys for People of the State of California ex rel. Xavier Beccera, Attorney General

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR INTERVENTION

INTRODUCTION

Pursuant to Code of Civil Procedure section 387, subdivision (b), the People of the State of California *ex rel.* Xavier Becerra, Attorney General ("People") seek to intervene in Case Number 18CECG00690, filed under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.*, other state laws, and the Fresno Municipal Code. The People's proposed Petition for Writ of Mandate in Intervention ("People's Petition") is attached hereto as Exhibit 1. The People have an unconditional right to intervene in actions in which facts are alleged concerning pollution and adverse environmental effects that could affect the public in general. (Gov. Code, § 12606.) Petitioner South Central Neighbors United allege that a new large industrial complex approved by Respondents the City of Fresno, the Fresno City Council, and Does 1-20 (collectively, "Respondents") will result in air pollution and other significant adverse environmental effects in the nearby communities. Therefore, the People should be granted leave to file the People's Petition.

STATEMENT OF ALLEGED FACTS

On or about February 21, 2018, Petitioners filed a Petition for Writ of Mandate and Complaint for Injunctive Relief in Case Number 18CECG00690 ("Initial Petition"), against Respondents in Fresno County Superior Court. The Initial Petition alleges that Respondents violated CEQA by approving a new industrial complex consisting of seven separate concrete buildings totaling up to 2.1 million square feet intended for heavy industrial use ("Project"). The Project Site is located in the south Fresno community of Daleville, a neighborhood identified by the California Environmental Protection Agency ("CalEPA") as suffering amongst the highest pollution burdens in all of California. The Project will be located across the street from several residences, and less than a mile from the Orange Center Elementary school, where several hundred low-income students are enrolled.

The multi-million square foot industrial Project, expected to draw over 6,000 new daily vehicle trips through the community, may create significant environmental effects. The air

pollution anticipated from the Project's construction and operation poses a serious increased risk of respiratory illnesses and other adverse health effects to the people who reside, work, and attend school in the impacted community. The Initial Petition alleges that the mitigated negative declaration for the Project failed to adequately disclose and analyze the Project's individual and cumulative impacts, including impacts on air quality, greenhouse gas emissions, water supply, aesthetics, hazardous material, noise and vibration, and transportation and traffic safety. (Initial Petition, ¶ 37.) The Initial Petition also alleges that Respondents failed to adequately analyze feasible mitigation measures and alternatives to mitigate the Project's significant environmental impacts. (Initial Petition, ¶¶ 37-38.)

The People move to intervene to ensure that Respondents disclose and mitigate the impacts of the Project in a manner that fully complies with CEQA.

THE PEOPLE SHOULD BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT

The standard for intervention as a matter of right is contained in Code of Civil Procedure section 387, subdivision (b): "If any provision of law confers an unconditional right to intervene… the court shall, upon timely application, permit that person to intervene."

The People, through the Attorney General, have an unconditional right to intervene in the current action pursuant to Government Code section 12606, which provides that: "The Attorney General *shall* be permitted to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects which could affect the public generally." (Emphasis added.) Government Code section 12606 is to be read in conjunction with Public Resources Code section 21167.7, which requires service of all CEQA pleadings on the Attorney General. CEQA's service requirement "has the effect of informing that office of the action and permits the Attorney General to lend its power, prestige and resources to secure compliance with CEQA and other environmental laws…." (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 561.) It is well established that "the Attorney General can intervene in an action to enforce compliance with CEQA." (Id. at p. 556, fn.7.)

As noted above, the Initial Petition alleges that Respondents violated CEQA, and that the Project will result in air pollution and other adverse environmental impacts. This action clearly constitutes a "judicial . . . proceeding in which facts are alleged concerning pollution or adverse environment effects which could affect the public generally." (See Gov. Code, § 12606.) The Attorney General, on behalf of the People, therefore has an unconditional right to intervene.

THE MOTION TO INTERVENE IS TIMELY

The People filed a timely motion for leave to intervene under Code of Civil Procedure section 387, subdivision (b). The People have met the standard of timeliness given that the consolidated proceedings are in an early phase and the parties will not be prejudiced by the People's intervention at this stage in the proceedings.

A. Standard for Timeliness.

Code of Civil Procedure section 387, subdivision (b) provides, in relevant part: "If any provision of law confers an unconditional right to intervene . . . the court shall, upon timely application, permit that person to intervene." In determining whether the standards for intervention have been met, courts have held that California Code of Civil Procedure section 387 "should be liberally construed in favor of intervention." (*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505; *Lincoln National Life Ins. Co. v. State Bd. of Equalization* (1994) 30 Cal.App.4th 1411, 1423.)

Section 387 does not place a statutory time limit on motions to intervene. (*Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842.) However, "it is the general rule that a right to intervene should be asserted within a reasonable time and that the intervener must not be guilty of an unreasonable delay after knowledge of the suit." (*Allen v. California Water & Tel. Co.* (1947) 31 Cal.2d 104, 108 [complaint in intervention untimely where filed 11 years after the commencement of the action, and several years after the trial.]) Depending on the circumstances of the case, leave to intervene may even be granted after judgment has been rendered. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 437 ["intervention is possible, if otherwise appropriate, at any time, even after judgment."].) Intervention is timely even when the statute of limitations has run on the claims alleged in the complaint in intervention. (*Mar v. Sakti Internat.*

Corp. (1992) 9 Cal.App.4th 1780, 1785 [the running of the statute of limitations "was to be calculated not from the filing of the complaint in intervention, but from the date the underlying complaint was filed."].)

B. The People's Intervention Will Not Prejudice the Parties.

Intervention is not untimely unless any party opposing intervention can show any prejudice from any delay attributable to filing of a motion to intervene. (*Truck Ins. Exchange v. Superior Court* ("*Truck Ins. Exchange*") (1997) 60 Cal.App.4th 342, 351.) In *Truck Ins. Exchange*, the court held that a motion to intervene in a lawsuit, which had been pending for four years, was timely when real parties in interest had not shown any prejudice "other than being required to prove their case." (*Ibid.*)

Here, the legal challenge is still in an early phase. The deadline to certify the administrative record is July 5, 2018. (Declaration of Scott J. Lichtig in Support of People's Motion for Leave to Intervene ("Lichtig Decl."), ¶ 5.) The next Case Management Conference is scheduled on August 1, 2018. (Ibid.) Neither a briefing schedule nor the date for a hearing on the petitions has been set in this matter. (Ibid.)

The People's intervention in this action will not prejudice the parties. As in the *Truck Ins. Exchange* case, here Respondents and Real Parties in Interest cannot show any prejudice from the timing of the People's motion to intervene.

C. The People Are Seeking to Intervene Within a Reasonable Time.

In February 2018, Petitioners notified the California Attorney General's Office of their petitions in compliance with Public Resources Code section 21167.7. (Lichtig Decl., ¶ 4.) Since receiving notice of the petitions, the People have spent considerable time and effort reviewing the petitions and the related environmental disclosures for the Project; evaluating and verifying the factual and legal allegations in the petitions, communicating and meeting with the parties to fully understand the arguments on both sides, and preparing pleadings seeking to intervene in the action. (Lichtig Decl., ¶ 7.) The Attorney General now seeks to exercise his unconditional right to intervene at the early stages of this case as the State's chief law officer and on behalf of the

People of California in order to enforce CEQA and protect the public interest. There has been no unreasonable delay in the filing of the People's Motion for Intervention.

CONCLUSION

The People have an unconditional right to intervene in Case Number 18CECG00690, and, therefore, the Court should grant the People leave to file the People's Petition.

Dated: June 13, 2018

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
CHRISTIE VOSBURG
Environmental Justice Special Assistant

SCOTT J. LICHTIG
Deputy Attorney General
Attorneys for People of the State of California ex rel. Xavier Beccera, Attorney General

DECLARATION OF SCOTT J. LICHTIG

I, Scott J. Lichtig, declare as follows:

1. I am a Deputy Attorney General with the California Attorney General's Office in Sacramento. I have been assigned to represent the People of the State of California, *ex rel.* Xavier Becerra, Attorney General ("People") in the above-entitled action.

2. I make the following statements based upon personal knowledge of the facts and, if called as a witness, I could competently testify to these statements.

3. Petitioner South Central Neighbors United filed a writ of mandate and complaint for declaratory relief against Respondents the City of Fresno, the City Council of Fresno, and Does 1-20 in Fresno County Superior Court. The petitions alleged violations of the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*

4. In February 2018, Petitioners notified the California Attorney General's Office of its petition in compliance with Public Resources Code section 21167.7.

5. The action is still in an early phase. The deadline for certification of the administrative record is currently July 5, 2018. A case management conference is scheduled for August 1, 2018. I have been informed by Petitioners' counsel that neither a briefing schedule nor dates for further hearings on the petitions have been set in this matter.

6. Given the early stage of the proceedings, the People's intervention in this action will not prejudice the parties.

7. Since receiving notice of the petition, the Attorney General's Office has spent considerable time and effort reviewing the petition, evaluating and verifying the factual and legal allegations in the petition and related record, communicating and meeting with the parties to fully understand the arguments on both sides, and preparing pleadings seeking to intervene in the action. As a result, the People did not unreasonably delay filing their motion for leave to intervene.

I, Scott Lichtig, declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 13, 2018 at Sacramento, California.

SCOTT J. LICHTIG
Deputy Attorney General

SA2018300785

EXHIBIT 1

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Exempt from Filing Fees pursuant to Government Code section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

SOUTH CENTRAL NEIGHBORS UNITED, Petitioner, **v.** **CITY OF FRESNO; CITY COUNCIL OF THE CITY OF FRESNO, and DOES 1 -20,** Respondents.	Case No. 18CECG00690 **PEOPLE'S PETITION FOR WRIT OF MANDATE IN INTERVENTION** **[CEQA CLAIM]** **[Code Civ. Proc., §§ 387 and 1094.5; Gov. Code, § 12606; Pub. Resources Code, § 21167]** Dept: 501 Judge: Hon. Mark Snauffer Action Filed: February 21, 2018
RICHARD CAGLIA; CAGLIA AND ENVIRONMENTAL LLC DBA CAGLIA ENVIRONMENTAL; and DOES 21-40, Real Party in Interest.	

INTRODUCTION

1. The People of the State of California, acting by and through Attorney General Xavier Becerra ("the People"), intervene as of right in this action pursuant to Government Code section 12606. The People challenge the adequacy of the approvals by Respondents the City of Fresno, the City Council of Fresno, and Does 1-20 (collectively, "Respondents") of a new large-scale industrial development ("Project") under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq*.

2. Respondents' review of the environmental impacts anticipated from the Project represents a mere token attempt at CEQA compliance, failing to provide both decision makers and the public with accurate information regarding the Project's likely significant environmental impacts. Respondents' approval of the Project based on such an inadequate review violates California law and must be overturned.

3. On January 25, 2018, Respondents approved Development Permit No. D-16-109 for the Project, authorizing Real Party in Interest Richard Caglia and Caglia Environmental, LLC to construct a seven-building complex totaling up to 2,145,420 square feet of commercial space intended for heavy industrial use. The massive industrial Project, the equivalent size of over 37 football fields, will be located on 110 acres of currently undeveloped land in south Fresno.

4. The Project will be located across the street from a low-income residential community that bears one of the heaviest pollution burdens in all of California. The Project site is less than a mile from two other residential communities exposed to exceedingly high pollution burdens, in addition to the Orange Center Elementary School, where hundreds of low-income students are enrolled.

5. Despite the enormous size of the Project and its close proximity to the elementary school and residential communities, Respondents did not prepare a project-specific environmental impact report ("EIR") analyzing the Project's impacts. Instead, Respondents approved the Project by adopting a Mitigated Negative Declaration ("MND"), concluding, after its initial project review, that the Project will not have a significant adverse effect on the environment. The MND upon which Respondents relied is devoid of substantive disclosure of the Project's

foreseeable impacts on the existing environment, an analysis of those impacts, and enforceable, defined mitigation measures to minimize those impacts, all of which are required by CEQA.

6. This Petition challenges Respondents' approval of the Project based on the finding in the MND that the large-scale industrial Project will not have a significant effect on the environment, including additional significant direct, indirect, or cumulative effects.

ALLEGATIONS SUPPORTING INTERVENTION

7. Pursuant to Government Code section 12606, the People, acting through the Attorney General, intervene in this action, which alleges facts concerning pollution and adverse environmental effects. The Attorney General has an unconditional right pursuant to Government Code section 12606 to "intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects which could affect the public generally." Intervention is timely in that the deadline for certification of the administrative record is July 5, 2018, and the next case management conference is not scheduled until August 1, 2018. No prejudice will occur to the existing parties from this intervention.

PARTIES

8. The Attorney General, as the chief law enforcement officer of the State of California, has broad independent powers under the California Constitution and the California Government Code to participate in all legal matters in which the State is interested, and he has special and explicit statutory authority to participate in cases involving the protection of California's environment. (Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612.) The Attorney General also has a unique and important role in the enforcement of CEQA, as recognized by statute. (Pub. Resources Code, §§ 21167.7, 21177, subd. (d).)

9. Petitioner South Central Neighbors United is an unincorporated association with members residing in the neighborhoods surrounding the Project that is dedicated to preventing environmental degradation in the south Fresno area. South Central Neighbors United participated in the administrative process leading up to Project approval, objecting to the inadequacy of the environmental review being undertaken.

10. Respondent City of Fresno ("City") is and was, at all relevant times, a charter city

and a political subdivision of the State of California organized and existing under Government Code sections 34000 *et seq*. The City is a local governmental agency charged with regulating and controlling local land use and development within its territory in compliance with provisions of state law, including CEQA. The City is the lead agency for the Project under Public Resources Code section 21067.

11. Respondent City Council of Fresno ("City Council") is the legislative body of the City of Fresno. The City Council is responsible for hearing administrative appeals for decisions made by individual city departments, making certain land use decisions, and ensuring its decisions are made in compliance with applicable laws. As the decisionmaking body with the authority to grant Project approval, the City Council was responsible for conducting a proper review of the Project's environmental impacts pursuant to CEQA.

12. Does 1 through 20, inclusive, are persons whose names and identities are unknown to the People at this time, and the People therefore sue them under these fictitious names. The People will amend this petition to allege the true names and capacities of Does 1 through 20 as soon as they are discovered.

13. The People are informed and believe and therefore allege that Real Parties in Interest Richard Caglia and Caglia Environmental, LLC (dba Caglia Environmental) (collectively, "Caglia"), are, and at all times were, the applicants for this Project.

JURISDICTION AND VENUE

14. Pursuant to Public Resources Code sections 21168 and 21168.5, California Code of Civil Procedure section 1085 and 1094.5, and Fresno Municipal Code section 15-6308, this Court has jurisdiction over this matter.

15. Venue is appropriate in this judicial district pursuant to Code of Civil Procedure section 394. Respondents' main offices are located in Fresno County and the Project authorized will be located in Fresno County.

16. The People have satisfied all statutory prerequisites to filing this action.

BACKGROUND

Project Review Under CEQA

17. CEQA serves the important purpose of alerting governmental decisionmakers and the public to a project's potential significant environmental effects before the project is approved and those effects become irreversible. (Cal. Code Regs., tit. 14, 15002, subd. (d).) Critically, CEQA also provides information regarding the cumulative impacts of multiple projects approved separately, so that these individual projects do not overwhelm a community when taken as a whole.

18. CEQA requires that a lead agency authorizing a project conduct an initial study to determine if the project may have a significant effect on the environment, including direct impacts and reasonably foreseeable indirect impacts. (Cal. Code Regs., tit. 14, §§ 15063, subd. (a), 15378.) This initial study must evaluate the "whole of the action" that may result in physical changes, including all phases of the Project's planning, implementation, and operation. (Ibid.)

19. After conducting the initial study, if the lead agency determines that substantial evidence in the record shows that the project may have a significant direct, indirect, or cumulative effect on the environment, the lead agency must prepare an EIR. (Cal. Code Regs., tit. 14, § 15064, subd. (f)(1).) The threshold for preparation of an EIR is a low one. An EIR is required whenever substantial evidence supports a "fair argument" that the proposed project may have a significant effect on the environment, even if other substantial evidence before the lead agency indicates that the project will not have a significant effect. (Ibid.)

20. If substantial evidence shows that the project may have a significant effect on the environment, but the lead agency determines (1) that project revisions would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur; and (2) there is no substantial evidence in light of the whole record before the agency that the project, as revised, may have a significant effect on the environment, the lead agency may prepare an MND. (Cal. Code Regs., tit. 14, § 15070, subd. (b).)

21. An MND is appropriate only if project revisions would mitigate the potentially significant effects identified in the initial study to a point where clearly no significant effect on

the environment would occur, and there is no substantial evidence in the record before the agency "that the project, as revised, may have a significant effect on the environment." (Pub. Resources Code § 21064.5.)

The Project & Environmental Setting

22. On or about September 30, 2016, Caglia submitted an Environmental Assessment Application for the Project requesting authorization to construct a seven-building, 2.1 million square foot "industrial business park" on several contiguous parcels at or around 3751 South Cedar Avenue in Fresno, CA. Caglia identifies the intended use of the Project as "Industrial Warehouse [sic] & distribution" to be operated 24-hours-a-day, seven-days-a-week. The Project as proposed will include seven separate "Distribution Buildings," each between 124,300 and 1,000,000 square feet, with receiving areas for trucks including 359 dock-high doors and 38 grade-level doors. The Project as proposed will include 1,842 parking stalls and is anticipated to create 6,260 daily vehicle trips.

23. The Project will be constructed in a south Fresno neighborhood that includes residents bearing some of the heaviest burdens from pollution in all of California. The Project is directly across the street from several residences along East Central Avenue and less than a mile from both the community of Daleville and the Flamingo Mobile Home Park. The Orange Center Elementary School, where over 90% of the 300 enrolled students qualify for free or reduced price lunch, is located less than one mile away.

24. The census tract in which the Project is located ranks higher than any other census tract in the state – in the 100th percentile – for overall pollution burden according to the California Environmental Protection Agency's screening tool CalEnviroScreen.[1] The area is exposed to air pollution at the highest levels in the state. It is in the 97th percentile for particulate matter 2.5 ($PM_{2.5}$), which are inhalable microscopic particles that travel deep into the human lung and are linked to increased risk of premature death, cardiovascular disease, lung cancer, and asthma

[1] CalEnviroScreen is a tool that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. (See CalEnviroScreen 3.0 Report, Office of Environmental Health Hazard Assessment, January 2017, available at https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf)

attacks. The area also ranks in the 98th percentile for ozone exposure, which is similarly linked to serious respiratory illness, and is in the 98th percentile for toxic releases that can cause a wide array of other disease and impairment.

25. The residents in the communities near the Project suffer from an asthma burden in the 90th percentile, and have a risk of cardiovascular disease in the 92nd percentile, two medical conditions that are caused and exacerbated by air pollution.

26. On the properties adjacent to the Project, Respondents recently authorized two other large-scale warehouse projects, one in 2015 permitting up to 2,125,728 square feet of heavy industrial space and the other in 2016 permitting up to 986,198 square feet of heavy industrial space. According to the City's analysis, these two already-approved projects will create an additional 17,451 vehicle trips per day in the same area as the Project.

27. Pursuant to these previous approvals, an approximately 855,000 square foot Amazon fulfillment warehouse has been constructed next-door to the Project and is expected to commence operations in the near future. On the other side of the Amazon warehouse, and adjacent to the Orange Center Elementary School and the Daleville residential community, Ulta Beauty will soon commence operations in a newly-built distribution warehouse totaling approximately 670,500 square feet. Before operations of these two large-scale warehouses have even begun, local residents have provided evidence demonstrating that the construction of these facilities has generated significant negative environmental impacts, including worsened air quality due to excessive construction dust and ongoing noise and vibration impacts felt within residents' homes from continuous truck traffic.

Respondents' Project Approval

28. On or about September 18, 2017, the City released the results of its initial study evaluating the Project ("Initial Study"), concluding that there was "no substantial evidence" that the Project, including mitigation, may have "additional significant, direct, indirect, or cumulative effects on the environment." Based on its Initial Study, Respondents determined that CEQA did not require preparation of an EIR analyzing the impacts of this large-scale industrial development, and an MND was sufficient. The MND incorporates the City's Initial Study to

support its findings.

29. Without sufficient explanation or analysis, the MND asserts that the Project is a so-called "subsequent project" previously identified and analyzed in the environmental review prepared years earlier for the 2014 Fresno General Plan Update. The MND purports to rely on elements of the General Plan's Master EIR (MEIR) and its mitigation measures to support its finding that the Project's impacts will be less than significant. The MND simultaneously recognizes that the Project will cause environmental impacts not previously analyzed or mitigated in the MEIR and is outside the scope of the previous environmental analysis.

30. The MND concludes that the Project may result in significant impacts to the environment including air quality, global climate change, noise, transportation, traffic, hydrology, water quality, public services, and hazardous materials. However, the MND asserts that a combination of compliance with existing regulations and mitigation measures reviewed in the MEIR, in addition to a small number of additional "Project-specific" mitigation measures, will reduce those impacts to a less than significant level.

31. In response to the MND, the public submitted comments expressing serious concerns regarding the Project's potentially significant impacts and the substantial deficiencies with the analysis in the MND. Among other things, residents complained that the MND failed to adequately consider the Project's foreseeable construction and operational impacts, in addition to the Project's cumulative impacts, particularly in light of the other recently approved and constructed industrial warehouse facilities adjacent to the Project.

32. On October 24, 2017, without public hearing, the City's Development and Resource Management Director approved the Project.

33. The Project's approval was appealed to the City's Planning Commission, where members of the public expressed similar concerns regarding the City's inadequate review of the Project. The Planning Commission approved the Project on December 20, 2017.

34. The Project's approval was subsequently appealed to the City Council, and at a hearing on January 25, 2018, the public submitted comments and testified regarding the Project's foreseeable environmental impacts and the deficiency of the MND's analysis. Despite these

comments, the City Council approved the Project without modification.

35. On February 21, 2018, Petitioner South Central Neighbors United filed a petition for writ of mandate and complaint for injunctive relief. The People file this petition in support of those claims.

FIRST CAUSE OF ACTION

(Violation of CEQA)

(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)

36. The allegations in paragraphs 1 through 34 are realleged and incorporated by reference herein as though set forth in full.

37. The Project is a discretionary act subject to CEQA. (Cal. Code Regs, tit. 14, § 15378.)

Failure to Identify Existing Environmental Setting

(Cal. Code Regs., tit. 14, § 15125)

38. In order to accurately assess the significance of changes to the environment a project might cause, CEQA requires that a lead agency treat the existing conditions on the ground as the environmental baseline against which the significance of a project's impacts to the environment are measured. (See Cal. Code Regs., tit. 14, § 15125)

39. It is well established that the significance of a project's effects depends on the environmental setting in which it occurs. Human beings are an integral part of this environmental setting and must be considered in any analysis of the Project's impacts. An agency is required to find that a "project may have a 'significant effect on the environment'" if, among other things, "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (Pub. Resources Code, § 21083, subd. (b)(3); see also Cal. Code Regs., tit. 14, § 15126.2.) In making a determination regarding the significance of a project's impacts, lead agencies must therefore take special care to consider the presence of impacted communities, including the presence of any "sensitive receptors" to significant environmental impacts.

40. The MND does not adequately describe the existing environmental setting

surrounding the Project and consequently fails to properly consider the significance of the Project's impacts on that existing setting. The MND includes virtually no disclosure of the Project's impacts on human beings located in the surrounding area, including sensitive receptors such as the families living in nearby residences and the students at Orange Center Elementary School. Because the MND fails to adequately consider the Project's impacts on the existing environmental setting, its subsequent conclusions that the Project will not create significant environmental impacts are unsupportable pursuant to CEQA.

Failure to Adequately Analyze the Project's Environmental Impacts

(Cal. Code Regs., tit. 14, §§ 15063 and 15064)

41. CEQA requires that the lead agency evaluate the "whole of the action" that may result in direct or reasonably foreseeable indirect physical effects, including all phases of the Project's planning, implementation, and operation. (Cal. Code Regs., tit. 14, §§ 15063, subd. (a)(1), 15378, subd. (a).) These effects include off-site and on-site impacts, cumulative and project-level impacts, and construction and operational impacts. A "truncated project concept" that does not consider the entirety of a project and its foreseeable impacts renders the ultimate approval based on such incomplete information legally deficient pursuant to CEQA.

42. Respondents violated CEQA by failing to disclose, analyze, and mitigate the entirety of the Project's scope and its foreseeable impacts. The MND ignores foreseeable impacts that will result from the Project's approval, rendering its conclusions unsupportable pursuant to CEQA. For example, the MND fails to sufficiently describe, analyze, or mitigate the entirety of the Project's foreseeable operational impacts. The Project is nebulously described as an "industrial business park" proposed for an unidentified heavy industrial use, but the MND fails to describe, analyze or mitigate any heavy industrial uses on the environment. Despite Real Party in Interest's own assertion that the Project will be used for industrial warehouse and distribution purposes, the MND includes virtually no analysis of the environmental impacts from such a use, or any other allowable heavy industrial uses onsite, which include concrete plants, heavy equipment manufacturing, smelting, petrochemical tank farms, and pesticide manufacturing.

43. The Project purportedly analyzed in the MND does not consider the entirety of the

direct and foreseeable indirect impacts of the Project and therefore violates CEQA.

Failure to Prepare an EIR

(Cal. Code Regs., tit. 14, § 15064, subd. (f))

44. Upon completion of the Initial Study and the receipt of public comments, Respondents violated CEQA by not preparing an EIR despite substantial evidence in the record supporting a fair argument that the Project may have significant environmental impacts. (Cal. Code Regs., tit. 14, § 15064, subd. (f)(1).) Substantial evidence supports a fair argument that the Project may have significant environmental impacts on, amongst other things, air quality, GHGs, hazards and hazardous materials, aesthetics, hydrology and water quality, land use and planning, noise, and public health. Respondents' failure to prepare an EIR despite this evidence violated CEQA.

45. The MND's conclusion that the Project will not have significant environmental effects is unsupported by sufficient evidence and represents mere conjecture. Respondents violated CEQA by approving the Project without preparation of an EIR for reasons that include, but are not limited to, the following:

a. Substantial evidence supports a fair argument that the Project will have a significant adverse impact on air quality. The MND readily admits that the Project will likely create levels of air pollutants and contaminants that exceed thresholds of significance during both construction and operation, yet the MND includes no accounting of those harmful pollutants or an analysis of their impacts on the local population. The San Joaquin Valley Air Quality Management District (SJVAPCD) agreed that the Project may exceed several different thresholds of significance for harmful air pollutants, including those for oxides of nitrogen (NOX), reactive organic gases (ROG), and particulate matter of 10 microns or less in size (PM_{10}). The SJVAPCD recommended additional analysis of the Project's impacts, including identification and quantification of emissions from the Project's stationary and mobile sources, respectively, and preparation of an EIR if Project emissions exceeded the thresholds. The SJVAPCD further recommended additional analysis of nuisance odors and Toxic Air Contaminants (TAC)

including diesel exhaust fumes from heavy truck traffic that may cause or contribute to an increase in mortality or serious illness. Respondents not only failed to prepare the recommended EIR, but the MND makes no attempt to identify and quantify any of these air quality impacts to determine their significance or assess their effects on nearby sensitive receptors.

b. Substantial evidence supports a fair argument that the Project will have a significant adverse impact on noise. The MND acknowledges that the Project's construction could expose local residents and their homes to "excessive" ground borne vibration and noise levels, yet the MND asserts that those impacts are less than significant because the Project's construction activity is exempted from the City's noise regulations. Despite the MND's declaration otherwise, simply exempting significant environmental impacts from regulation does not render those impacts less than significant. Substantial evidence also exists that Project operations, including the associated heavy truck trips through residential neighborhoods, may have a significant noise impact.

c. Substantial evidence supports a fair argument that the Project will have a significant adverse impact on traffic and public safety from the drastic increase in truck traffic through the community. The Project will add over 6,000 daily vehicle trips to the surrounding area and includes 1,842 parking spots and 359 high-dock doors and 38 grade-level doors intended for large trucks. Despite this substantial increase in heavy truck and car traffic, the MND includes no analysis of these traffic impacts on public safety and the local population, including children travelling to and from the nearby elementary school.

d. Substantial evidence supports a fair argument that the Project will have a significant adverse impacts from light and glare, including lights from both construction and operations and related vehicular traffic. The around-the-clock operation will create substantial adverse impacts on the neighboring community due to its extensive lighting and will likely attract significant nighttime vehicular traffic through the nearby residential neighborhood.

e. Substantial evidence supports a fair argument that the Project will have a

significant adverse impact on water quality, including impacts on local groundwater supplies. The Project is located in the Kings Sub-basin, which is classified by the California Department of Water Resources as a high priority basin in a condition of critical overdraft. Nearby residential communities rely on groundwater wells for domestic uses including drinking, cooking, and cleaning, and the Project's use and/or impact of local groundwater wells may be significant.

f. Substantial evidence supports a fair argument that the Project will have a significant adverse impact on hazardous materials. The Project is located next door to a historic landfill and a construction and demolition waste and salvage business, and historical evidence shows that these waste operations may have impacted the proposed Project site in several ways, including by both wind-blown contaminated soil and the spill-over of waste operations onto the Project site. Construction of the Project and the disturbance of such contaminated soils may have a significant impact on both the nearby population and workers.

g. Substantial evidence supports a fair argument that the Project will have a significant adverse impact on GHG emissions. The Project is intended for heavy industrial use and is anticipated to attract an additional 6,120 vehicle trips, yet the MND includes no Project-specific accounting of the foreseeable GHG emissions from construction or operations.

h. Substantial evidence supports a fair argument that the Project will have a significant adverse impact on land use and planning. The Project as approved is inconsistent with numerous provisions of the Fresno General Plan, including a failure to provide a sustainable and stable water supply, failure to ensure that potable water production and supply are available, and failure to mitigate impacts on the long-term water supply. The Project as approved also is inconsistent with the Roosevelt Community Plan's requirement that findings be made regarding adequacy of a potable water supply for fire suppression and domestic uses prior to prior to project approval.

i. Substantial evidence supports a fair argument that the Project will have significant

cumulative impacts, including the Project's incremental contribution to the significant environmental impacts already being felt by this heavily burdened community. (Pub. Resources Code § 21083 subd. (b).) A lead agency must determine whether pollution from a proposed project will have significant effect on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from future projects. The fact that an area is already heavily polluted makes it more likely that any additional, unmitigated pollution will be significant. On top of the 3.1 million square feet of industrial warehouse space that was recently approved and that is already anticipated to attract over 17,000 daily vehicle trips, the Project will add an additional 2.1 million square foot of industrial space anticipated to attract over 6,000 more daily vehicle trips. These impacts will occur within a community already substantially burdened by significant air quality, noise, and water quality impacts, amongst others. Respondents' unsubstantiated findings that the Project will not create additional significant cumulative impacts is unsupported by adequate evidence and violates CEQA.

Failure to Mitigate Significant Environmental Impacts

(Cal. Code Regs., tit. 14, §§ 15021, 15070, 15074, and 15097, subd. (a))

46. CEQA prohibits public agencies from approving projects if feasible mitigation measures are available that would substantially lessen the project's significant environment effects. (Pub. Resources Code, 21002.) Approval of a project without including such feasible mitigation measures to avoid or minimize environmental damage violates CEQA. (Cal. Code Regs., tit. 14, § 15021.)

47. Pursuant to CEQA, a mitigated negative declaration can be employed only if enforceable mitigation measures would lessen all identified potentially significant effects to a point where clearly no significant effects would occur, and no substantial evidence exists to support a fair argument that the project, including mitigation measures, may have a significant effect on the environment. (See Pub. Resources Code, § 21080, subd. (c).)

48. The MND does not identify enforceable mitigation measures that will adequately mitigate the Project's significant environmental impacts to a less than significant level, including

but not limited to the significant environmental impacts disclosed in the MND on air quality, GHGs, noise, traffic, hydrology and water quality, and hazardous materials. Despite the Project's foreseeable adverse environmental impacts, most mitigation measures identified in the MND are merely conclusory statements requiring either future study, conformity with existing regulations, or other vaguely-defined future efforts to allegedly ensure that those significant environmental impacts are decreased to a less than significant amount. Such deferred mitigation renders the MND insufficient pursuant to CEQA because the efficacy of future mitigation measures is dependent on unformulated plans that have not been analyzed nor reviewed by the public. The inadequate mitigation measures include, but are not limited to, the following:

a. The MND does not provide sufficient evidence to support its finding that the Project's significant air quality impacts will be mitigated to a less than significant level. Rather, in violation of CEQA, the MND improperly defers disclosure and analysis both of the Project's air quality impacts and of the mitigation measures necessary to make them less than significant. In addition, several of the deferred mitigation measures included are required only in limited circumstances and may not adequately address the air quality impacts on the existing residential population.

b. The MND does not provide sufficient evidence to support its finding that the Project's noise impacts will be mitigated to a less than significant level. The MND impermissibly defers future analysis and mitigation of the noise impacts of the foreseeable heavy industrial operations on the nearby residents and schoolchildren, including the projected thousands of daily vehicle trips and round-the-clock operations. Further, the mitigation measures require such future acoustical analysis only in limited circumstances and address only a fraction of the Project's foreseeable noise impacts.

c. The MND does not provide sufficient evidence to support its finding that the Project's impacts from lighting and glare will be mitigated to a less than significant level. The limited mitigation proposed will not ensure that the light impact from the round-the-clock industrial operation and associated nighttime truck traffic is decreased to a less than significant level.

d. The MND does not provide sufficient evidence to support its finding that the Project's impacts on hazardous materials and contaminated soil will be mitigated to a less than significant level. Despite the historic waste operations adjacent to the Project site and their likely impacts, the scant mitigation measures proposed to address potential onsite contamination do not ensure that these foreseeable adverse environmental impacts from construction of the Project will be mitigated to a less than significant level. Further, given the well-established site history, deferral of mitigation to address the foreseeable impacts from potential soil contamination was unnecessary and violates CEQA.

49. Respondents violated CEQA by failing to incorporate several feasible mitigation measures that would substantially lessen the significant effects that the Project will have on the environment. (Cal. Code Regs., tit. 14, § 15021, subd. (a).)

50. In addition, the MND does not include a sufficient mitigation monitoring or reporting program to ensure that mitigation measures imposed are implemented in accordance with the applicable requirements. (Cal. Code Regs., tit. 14, § 15097, subd. (a).) Such monitoring is necessary to ensure that feasible mitigation measures are actually implemented as a project condition and not merely adopted and then neglected or disregarded.

51. Because Respondents failed to comply with CEQA, Project approval should be set aside.

PRAYER FOR RELIEF

The People pray for judgment as follows:

1. For peremptory or alternative writs of mandate under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.9:

a. Directing Respondents to void every determination, finding and/or decision approving the Project;

b. Directing Respondents and Real Parties in Interest to suspend any and all activities pursuant to, or in furtherance of, Respondents' determination, finding and/or decision related to the Project approval, until Respondents have taken all actions necessary to bring the determination, finding and/or decision into

compliance with CEQA; and

c. Directing Respondents to fully comply with the requirements of CEQA with respect to the Project, and take any other specific action that may be necessary to bring Respondents' determination, finding and/or decision into compliance with CEQA.

2. For costs of this suit;

3. For attorney's fees as authorized in Code of Civil Procedure section 1021.8 and other provisions of law; and

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

Dated: June 13, 2018

Respectfully Submitted,

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Attorney General of California
CHRISTIE VOSBURG
Environmental Justice Special Assistant

SCOTT LICHTIG
Deputy Attorney General
Attorneys for People of the State of California ex rel. Xavier Beccera, Attorney General

SA2018300785

DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT MAIL

Case Name: **South Side Neighbors v. Fresno**
Case No.: **18CECG00690**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **Golden State Overnight**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On June 13, 2018, I served the attached

- **PEOPLE'S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SCOTT J. LICHTIG IN SUPPORT THEREOF**
- **EXHIBIT 1 – PEOPLE'S PETITION FOR WRIT OF MANDATE IN INTERVENTION**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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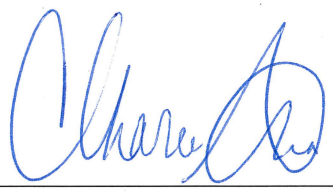
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2018, at Sacramento, California.



Charlene M. Andrews
Declarant

Signature

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