

1 BABAK NAFICY (State Bar No. 177709)
1504 Marsh Street
2 San Luis Obispo, CA 9340
3 Telephone: (805) 593-0926
4 Facsimile: (805) 593-0946
5 Email: babaknaficy@sbcglobal.net

6 John Buse (State Bar No. 163156)
7 Aruna Prabhala (State Bar No. 278865)
8 CENTER FOR BIOLOGICAL DIVERSITY
9 1212 Broadway, Suite 800
10 Oakland, CA 94612
11 Telephone: (510) 844-7100
12 Email: jbuse@biologicaldiversity.org
13 aprabhala@biologicaldiversity.org

14 Attorneys for Plaintiffs/Petitioners: CENTER FOR
15 COMMUNITY ACTION AND ENVIRONMENTAL
16 JUSTICE, SIERRA CLUB, and CENTER FOR BIOLOGICAL
17 DIVERSITY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SAN BERNARDINO**

20 CENTER FOR COMMUNITY ACTION AND
21 ENVIRONMENTAL JUSTICE, SIERRA CLUB,
22 and CENTER FOR BIOLOGICAL DIVERSITY,

23 Plaintiffs/Petitioners,

24 vs.

25 CITY OF FONTANA, FONTANA CITY
26 COUNCIL, and DOES 1-25, inclusive,

27 Defendants/Respondents,

28 UST-CB Partners GP, LLC, a Delaware limited
liability company, and DOES 26-50, inclusive,

Real Parties in Interest.

CASE NO.

[California Environmental Quality Act]

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

C.C.P. §§ 1085, 1094.5 & § 1021.5; Pub. Res.
Code §§ 21000 et seq.

1 Petitioners hereby alleges at follows:

2 I. **INTRODUCTION**

3 1. CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE,
4 SIERRA CLUB and CENTER FOR BIOLOGICAL DIVERSITY (collectively, “Petitioners”) petition
5 this Court for a writ of mandate and Order under Code of Civil Procedure § 1094.5 and § 1085,
6 directed to Respondents, CITY OF FONTANA and FONTANA CITY COUNCIL, (“Respondents” or
7 the “City”), setting aside Respondent’s approval of the massive West Valley Logistics Center, which
8 consists of seven warehouses totaling over 3.4 million square feet (“Project”).
9

10 2. Project approvals included Specific Plan Amendment No. 11-003, General Plan
11 Amendment No. 11-026, Zone Change No. 11-016, Development Agreement No.11-002, and
12 Tentative Parcel Map No. 19156 (TPM No 13-005) to change the General Plan land use designation
13 from Residential Planned Community (R-PC), Medium Density Residential (R-M), Multi-Family
14 Residential (R-MF), Recreational Facilities (P-R) to Light Industrial (I-L) and Open Space (OS) and a
15 Zone Change to change the Zoning District Map from Valley Trails Specific Plan to West Valley
16 Logistics Specific Plan. The application also includes a Specific Plan Amendment to change the land
17 use to industrial to facilitate the development of the seven warehouse buildings on 212.1 adjusted
18 gross acres.
19

20 3. A number of government agencies, nonprofit organizations, individuals, and even the
21 County of San Bernardino and neighboring cities submitted detailed comments expressing grave
22 concerns about the Project and its expected significant environmental impacts. The California Air
23 Resources Board, for example, expressed concern about the Project’s air quality impacts, noting that
24

25 [f]reight facilities, such as warehouse/distribution facilities, are frequented daily
26 by volumes of heavy-duty diesel truck and equipment that emit toxic diesel
27 emissions and contribute to regional pollution, as well as global climate change.
28 Residential homes are immediately adjacent to the east and south of the proposed
Project site. In communities already impacted by diesel pollution from existing
freight operations, the proposed land use change will exacerbate the adverse

1 health impacts already experienced by these residents.

2 4. The agency and public comments raise a number of serious concerns about the Project
3 and its expected environmental and public health impacts. The Project, moreover, will substantially
4 and disproportionately impact a community of color that is already besieged by numerous other large
5 industrial projects, including warehouse/distribution facilities, in the area.

6
7 5. Petitioners contend the EIR unlawfully failed to adequately analyze the Project’s
8 environmental and public health impacts, including impacts to air quality, traffic, special status
9 wildlife, and wildlife movement. The thousands of daily truck trips generated by this Project will
10 significantly contribute to the area’s polluted air, which is among the worst in the nation. In addition,
11 the Project will contribute very substantially to the unfolding climate disaster by generating very
12 substantial levels of Greenhouse Gas (“GHG”) emissions. Lastly, Petitioners contend the Project was
13 required to but failed to adequately consider the project’s impact on a community of color.
14

15 6. In this action, Petitioners seek a peremptory writ of mandate directing Respondents to
16 set aside all Project approval and their certification of a Final Environmental Impact Report (“EIR”)
17 for the Project.

18 **II. PARTIES**

19 7. Petitioner CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL
20 JUSTICE (CCAIEJ) is a membership-based California non-profit environmental health and justice
21 organization with its primary membership residing in Riverside and San Bernardino Counties.
22 CCAIEJ’s core mission is to bring people together to improve their social and natural environment, and
23 to empower the community to create safer and healthier places to live, work, learn, and play. CCAIEJ
24 has its physical office in Jurupa Valley, immediately adjacent to the Project site. Many of CCAIEJ’s
25 members live in Fontana, Jurupa Valley, or San Bernardino County in the vicinity of the Project.
26 CCAIEJ has identified Jurupa Valley as a “community at risk” for a variety of environmental
27
28

1 injustices, particularly for bearing a disproportionate share of the impacts from high polluting
2 industries, heavy-duty diesel truck and other mobile source emissions, and suffering other disparities
3 created by zoning and discriminatory and irresponsible land use planning and decision-making.
4 CCAEJ, along with co-petitioners, submitted numerous comments to the City of Fontana regarding
5 this Project, thereby raising serious concerns about this Project’s detrimental impacts on the health and
6 welfare of the local disadvantaged residents.

8 8. Petitioner Sierra Club is a national non-profit organization with approximately 600,000
9 members nationally, including over 7,000 members in the San Gorgonio Chapter. Sierra Club is
10 dedicated to exploring, enjoying, protecting the wild places of the earth, to participating and
11 encouraging protection of the environment and restoration of the quality of natural and human
12 environments. Members of the San Gorgonio Chapter of the Sierra Club live, work, and recreate in the
13 vicinity of the Project, and will be affected by its construction and operation. Sierra Club submitted
14 extensive comments concerning this Project, urging the City not to approve the Project until and
15 unless the serious CEQA violations are addressed.

17 9. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a
18 non-profit, public interest corporation with over 69,000 members with offices in Oakland, Los
19 Angeles, and Joshua Tree, California, as well as offices in Arizona, Oregon, Colorado, and
20 Washington, D.C. The Center and its members are dedicated to protecting diverse native species and
21 habitats through science, policy, education, and environmental law. Center members reside in and own
22 property throughout California as well as San Bernardino County. The Center and its members would
23 be directly, adversely and irreparably harmed by the Projects and its components, as described herein,
24 until and unless this Court provides the relief prayed for in this petition. The Center brings this action
25 on its own behalf, for its members, and in the public interest.

27 10. Respondent and Defendant, City of Fontana, is the “lead agency” within the meaning
28

1 of CEQA, and the local government agency and subdivision of the State of California charged with
2 authority to regulate and administer land use and development within its territory, but only in
3 compliance with the duly adopted provisions of its zoning ordinances, General Plan, and all
4 applicable provisions of state law, including the California Environmental Quality Act, the Planning
5 and Zoning law, and the Subdivision Map Act.

7 11. Respondent and Defendant City Council of Fontana is the legislative body and highest
8 administrative body of the City. The City Council has the authority to approve and is responsible for,
9 amendments to the General Plan, the Specific Plan, the Zoning Ordinance, as well as the approval of
10 tentative maps and Development Agreement at issue in this case.

11 12. Petitioners are informed and on that basis alleges that USB-CB Partners L.P (“Real
12 Party”), a Delaware corporation, is the real party in interest by virtue of being a project
13 applicant/representative, a recipient of a project approval(s), and having an ownership interest in the
14 subject of this litigation.

16 13. Petitioners do not know the identity of DOES 26-50, but will amend the Petition as
17 required to specifically identify each such person or entity as a real party in interest if the identity,
18 interest and capacity of such party, if any, becomes known.

19 **III. PROCEDURAL ALLEGATIONS**

21 14. Petitioners have performed any and all conditions precedent to filing the instant action and
22 have exhausted any and all administrative remedies to the extent required by law, by inter alia,
23 submitting written comments on the project and its environmental review at every step of the
24 administrative review process.

25 15. Petitioners have requested that the City not approve this Project and certify the EIR. Any
26 further attempts to pursue administrative remedies would be futile.

28 16. Petitioners have complied with the requirements of Public Resources Code section 21167.5

1 by mailing a written notice of the commencement of this action to Respondent prior to filing this
2 petition and complaint.

3 17. Petitioners have complied with the requirements of Public Resources Code section 21167.7
4 and Code of Civil Procedure section 388 by mailing a copy of the Petition/Complaint to the state
5 Attorney General.
6

7 18. Petitioners have no plain, speedy or adequate remedy in the ordinary course of law unless
8 this Court grants the requested writ of mandate to require Respondents to comply with their duties and
9 set aside the approval of the Project until they have prepared a legally sufficient EIR. In the absence
10 of such remedies, Respondents' approvals will remain in effect in violation of CEQA.
11

12 19. If Respondents are not enjoined from approving the Project, and from undertaking acts in
13 furtherance thereof, Petitioners will suffer irreparable harm from which there is no adequate remedy at
14 law in that the Project area and surrounding areas would be irrevocably altered and significant adverse
15 impacts on the environment would occur. Petitioners and the general public have also been harmed by
16 Respondents' failure to provide an environmental document that accurately and fully informs
17 interested persons of the Project's impacts.
18

19 20. In pursuing this action, which involves enforcement of important rights affecting the public
20 interest, Petitioners will confer a substantial benefit on the general public, citizens of Fontana, Jurupa
21 Valley, San Bernardino County and the State of California, and will therefore be entitled to attorneys'
22 fees and costs pursuant to, inter alia, Code of Civil Procedure § 1021.5.
23

24 21. Petitioners bring this action in part pursuant to Public Resources Code § 21168.5 and Code
25 of Civil Procedure § 1085 or § 1094.5, which require that an agency's approval of a project be set
26 aside if the agency has prejudicially abused its discretion. Prejudicial abuse of discretion occurs either
27 where an agency has failed to proceed in a manner required by law or where its determination or
28 decision is not supported by substantial evidence. Respondents have prejudicially abused their

1 discretion because Respondents have failed to proceed according to the law, and their decision is not
2 supported by substantial evidence.

3 **IV. STATEMENT OF FACTS**

4 22. The proposed Project consists of the development and operation of the seven warehouse
5 buildings, totaling more than 3.4 million square feet, on 212.1 adjusted gross acres in the City of
6 Fontana.
7

8 23. The Project site is located within the southeastern portion of the City of Fontana, in the
9 southwest “Valley Region” of San Bernardino County. The site is bounded on the north by a Southern
10 California Edison (SCE) utility corridor, on the west by the Jurupa Hills, on the south by a residential
11 neighborhood in the City of Jurupa Valley, and on the east by the community of Bloomington in San
12 Bernardino County. The Jurupa Hills, a major landform in southern Fontana, are the natural backdrop
13 to the Specific Plan site and surrounding neighborhoods.
14

15 24. According to the Revised West Valley Specific Plan, the West Valley Logistics Center
16 consists of 291.31 acres, of which 212.11 acres is planned for warehouse/distribution logistics uses,
17 16.47 acres of which are within existing detention basins, approximately 55.23 acres of natural hillside
18 will be preserved in open space, and 7.5 acres will consist of roadways.
19

20 25. Because the Project site was originally designated for residential use, the City’s approval of
21 the Project required wholesale revisions of the City’s General Plan and West Valley Specific Plan.
22 Accordingly, Project approvals included Specific Plan Amendment No. 11-003, General Plan
23 Amendment No. 11-026, Zone Change No. 11-016, Development Agreement No.11-002, and
24 Tentative Parcel Map No. 19156 (TPM No 13-005) to change the General Plan land use designation
25 from Residential Planned Community (R-PC), Medium Density Residential (R-M), Multi-Family
26 Residential (R-MF), Recreational Facilities (P-R) to Light Industrial (I-L) and Open Space (OS) and a
27 Zone Change to change the Zoning District Map from Valley Trails Specific Plan to West Valley
28

1 Logistics Specific Plan.

2 **PROJECT SETTING and PROJECT IMPACTS**

3 Air Quality

4 26. The Project is located in an area that is violation of the Clean Air Act’s National Ambient
5 Air Quality Standards (“NAAQS”). The South Coast Air Basin is designated as an extreme
6 nonattainment area for the 2008 8-hour ozone standard, a moderate nonattainment area for the 2012
7 PM 2.5 (microparticulate) standard, a serious nonattainment area for the 2006 PM 2.5 standard, and a
8 moderate nonattainment area for the 1997 PM 2.5 standard¹. According to state and local air agencies,
9 achieving attainment will require massive emissions reductions from all pollution sources, even in the
10 absence of any growth in emissions associated with new projects.
11

12 27. According to the EIR, the Project will introduce up 2,432 daily truck trips, of which the
13 EIR claims 60.3% will be 4+ axle trucks, 17.7% will be three-axle trucks, and 22% will be two-axle
14 trucks. According to CARB’s public comments, the 2,432 figure is likely underestimated. Larger
15 trucks will generate significantly larger amounts of emissions of diesel particulate matter, or DPM,
16 greenhouse gasses (GHGs), and other pollutants compared to other vehicles. The EIR does not include
17 any adequate explanation of where these percentages were obtained. Owing to this failure, the EIR’s
18 project description is inadequate and flawed because it is impossible to determine the diesel truck
19 emissions generated by this Project without accurate description of the number of each type of truck
20 that will be making deliveries to and from the Project.
21

22 28. The EIR admits the Project will exceed South Coast Air Quality Management District’s
23 (SCAQMD) thresholds of significance for nitrogen oxides (NOx) and volatile organic compounds
24 (VOCs), and will therefore cause a significant impact on air quality, but does not identify and analyze
25 a reasonable range of potentially feasible mitigation measures to reduce this impact to a less than
26

27
28 ¹ U.S. EPA, Nonattainment Areas for Criteria Pollutants (Green Book), available at
<https://www.epa.gov/green-book>

1 significant level. Despite the inadequate analysis of mitigation measures, the City and the Final EIR
2 conclude that the significant impacts on air quality and climate change are “unavoidable.”

3 29. Petitioners and other commentators and agencies identified a number of potentially feasible
4 mitigation measures to address the significant air quality and climate change impacts. The Final EIR
5 and the City rejected these proposed mitigation measures without any adequate analysis or discussion.
6 Suggested mitigation measures included mitigation measures previously suggested by the SCAQMD
7 for similar projects, those discussed by the EIR for the Kimball Business Park Project and climate
8 change mitigation measures suggested by CAPCOA’s Quantifying Greenhouse Gas Mitigation
9 Measures. See Response to Comments, Final EIR at 2-13. The Final EIR rejected these potentially
10 feasible mitigation measures without any adequate discussion or analysis.
11

12 30. As required by CEQA and recently confirmed by the California Supreme Court in Sierra
13 Club v. County of Fresno (2018) 6 Cal.5th 402, the EIR was required to include a discussion of the
14 Project’s health impact on the local residents. To this end, the City prepared a Health Risk Assessment
15 (HRA), which is discussed in the EIR. As set forth in public comments, the EIR’s discussion of the
16 Project’s public health impacts, and the HRA on which it is based, are seriously flawed and do not
17 pass legal muster. The HRA fails, for example, to incorporate age-specific inhalation rates or to
18 analyze the differential impact of diesel emissions on infants and children.
19

20 31. The City concluded that the “minor increases in regional air pollution from project-
21 generated ROG [reactive organic gasses that can create ozone] and NO_x, and CO would have nominal
22 or negligible impacts on human health.” It is inconceivable that the addition of more than 2,400 daily
23 heavy-duty truck trips in the immediate vicinity of residential neighborhoods would result in only
24 “nominal or negligible” impacts on human health.
25

26 Climate Change

27 32. The California Global Warming Solutions Act of 2006 mandates that greenhouse gas
28

1 emissions be reduced to 1990 levels by 2020. Despite the California legislature’s unequivocal mandate
2 that local planning decision-makers must specifically consider and address their planning decisions’
3 impacts on global climate change, the City failed to adequately analyze and mitigate this Project’s
4 impacts on global warming.

5
6 33. The City concluded that owing to the Project’s expected overall emission of 60,000 metric
7 tons of CO2 equivalents (MTCO2e) per year, which exceed the SCAQMD’s recommended 3,000
8 MTCO2e threshold by a factor 20, the Project’s impact on climate change would be significant.

9 34. The City concluded that the Project would result in a significant impact on climate change
10 also because the Project will conflict with applicable regulatory plans, policies, and regulations
11 intended to reduce GHG emissions. In particular, the City concluded the Project conflicts with the
12 ARB 2017 Scoping Plan Update, which sets a 2030 target of 40% reductions below 1990 levels,
13 consistent with Executive Order B-3014 and SB 32. The EIR contends the Project will comply with
14 every component of the 2017 Scoping Plan Update, but concludes, however, that the Project would
15 result in a significant impact on account of conflicts with the 2017 Scoping Plan Update’s target
16 because the Project exceeds the numerical threshold and would result in a cumulatively significant
17 impact. The EIR fails as an informational document because its analysis of the Project’s consistency
18 with the 2030 40% reduction target is wholly inadequate.

19
20
21 35. The EIR fails to consider, let alone establish Project consistency with other significant state
22 GHG policies and plans. For instance, without any adequate explanation the GHG emissions analysis
23 fails to establish consistency with Executive Order S-3-05, which requires a reduction in GHG
24 emissions to 80 percent below 1990 levels by 2050.

25 36. The EIR and the City conclude that “no feasible mitigation measures exist that would
26 reduce project-related emissions to levels that are less-than-significant.” (Recirculated Draft EIR
27 [RDEIR] at 4.2.7-42.) This contention is based on a misstatement of the applicable CEQA standard,
28

1 pursuant to which, where the lead agency concludes an impact is be significant effect, it must adopt *all*
2 feasible mitigation measures to reduce that effect, even if the effect would remain significant. The
3 City’s conclusion that it could not adopt mitigation measures to reduce GHG emissions from mobile
4 sources is not supported by substantial evidence. Petitioners supplied the City with several examples
5 of such mitigation measures that could effectively reduce the Project’s GHG emissions.
6

7 Biological Resources

8 37. As set forth above, the Project site abuts a large, relatively intact open space area. The EIR
9 claims that there are “no existing habitat features that occur between Rattlesnake Mountain and the
10 Jurupa Hills that would be expected to support a wildlife movement corridor.” (RDEIR at 4.2.3-16.)
11 However, a local expert explained the City’s position incorrectly assumes this area lacks the necessary
12 features to serve as a wildlife movement corridor for avian species, when, in fact, wildlife corridors
13 are often forced corridors resulting from human land development. (RDEIR, Appx. B3 at PDF 16.)
14 Similarly, the RDEIR incorrectly claims that the Project area “does not represent an opportunity for
15 avian movement between undeveloped areas in the Jurupa Hills and Rattlesnake Mountain, and the
16 project site in its current condition does not provide an east-west movement corridor for avian
17 species.” (RDEIR at 4.2.3-28.) These claims are not supported by any evidence, and were refuted by
18 the expert opinions of Dr. Smallwood and the California Department of Fish and Wildlife (“CDFW”).
19 (See CDFW Letter at RDEIR, Appx. B3 at 79-83.) This statement is even at odds with an earlier
20 version of the RDEIR, which stated “The project site is currently the only open space connecting the
21 native Riversidean Sage Scrub (RSS) habitats in the Jurupa Hills and Rattlesnake Mountain.
22
23

24 38. The EIR’s conclusion regarding the absence of the federally-listed California coastal
25 gnatcatcher is not supported by substantial evidence because the City never bothered to undertake a
26 protocol level survey for this species. The EIR, moreover, misleadingly claims that undisturbed
27 gnatcatcher habitat “that meets the Critical Habitat definition occurs exclusively within the proposed
28

1 conservation area,” when in fact most of the Project site is designated gnatcatcher critical habitat. The
2 EIR fails to address the Project’s impacts to gnatcatcher critical habitat and to gnatcatcher recovery.
3 As a result of these deficiencies, the EIR’s conclusion that the impact on the gnatcatcher would be less
4 than significant is not supported by substantial evidence.

5
6 39. The EIR’s analysis of the Project impacts on the burrowing owl (a California species of
7 special concern) is inadequate. The burrowing owl survey was not conducted during the breeding
8 season and was otherwise not based on the established protocol. Despite the fact that one owl was
9 detected and the EIR admits the site contains suitable owl habitat, the EIR improperly deferred
10 protocol surveys until after Project approval.

11
12 40. Likewise, the EIR’s analysis of the Project impacts on the federally-listed Delhi Sands
13 flower-loving fly is inadequate. Adequate surveys for this species were never conducted.

14
15 41. The EIR does not include any adequate mitigation measures to address potential impacts
16 on special status plants. The EIR improperly defers the formulation of such mitigation measures until
17 after Project approval, albeit without identifying any performance criteria or analysis of whether
18 mitigation would be feasible, as required by CEQA.

19 Environmental Justice

20
21 42. Environmental justice is the fair treatment of people of all races, cultures, and incomes
22 with respect to the development, adoption, implementation, and enforcement of environmental laws,
23 regulations, and policies. Senate Bill (“SB”) 115; Cal. Gov. Code § 65040.12(e). The Project has an
24 environmental justice impact because it would disproportionately affect a minority population or a
25 low-income population.

26
27 43. The California Department of Justice, through the Office of the Attorney General, released
28 a report in 2012 entitled “Environmental Justice at the Local and Regional Level—Legal Background”
 (“report”) which interprets existing CEQA law as imposing several environmental justice obligations

1 on local governments. According to the report, while CEQA does not use the term “environmental
2 justice”, it centers on “whether or not a proposed project may have a “significant effect on the
3 environment.”” Pub. Res. Code. § 21000(b). A “project may have a ‘significant effect on the
4 environment’” if, among other things, “[t]he environmental effects of a project will cause substantial
5 adverse effects on human beings, either directly or indirectly.” Pub. Res Code. § 21083(b)(3). An EIR
6 shall identify and focus on the significant environmental effects of a proposed project. 14 Cal. Code
7 Regs., (hereinafter cited as “CEQA Guidelines”) § 15126.2(a). The discussion should include
8 “population concentration, the human use of the land..., health and safety problems” and “[t]he EIR
9 shall also analyze any significant environmental effects the project might cause by bringing
10 development and people into the area affected.” Id.

11
12 44. The EIR does not include any analysis of the Project’s environmental justice impacts or
13 disparate impacts on a community disproportionately comprised of people of color.
14

15 **PROCEDURAL HISTORY**

16 45. A Draft EIR for the West Valley Logistics Center Specific Plan (“WVLCSP”) was made
17 available for public comment beginning on April 22, 2014 and ending on June 5, 2014. After
18 receiving extensive public comments, the City decided to recirculate the entire Draft EIR pursuant to
19 the provisions of CEQA Guidelines § 5088.5 (a). A Recirculated Draft EIR was made available for
20 public comment beginning on December 18, 2014, and ending on February 2, 2015.
21

22 46. The City received extensive comments from the agencies and the public. Based on these
23 comments, the applicant revised the proposed project by altering the routing of trucks between the
24 project site and area freeways. Largely as a result of these revisions, the EIR’s analysis of the Project’s
25 traffic impact analysis, air quality, greenhouse gas, and noise were revised and the EIR was
26 recirculated for a second time.

27 47. The Second Recirculated Draft EIR was circulated for 45 days, from February 5, 2018 to
28

1 March 23, 2018. In October 2018, the City released a Final EIR, consisting of the comments and
2 responses to comments on the Draft EIR, First Recirculated Draft EIR, and Second Recirculated Draft
3 EIR; revisions to the Second Recirculated Draft EIR; and an erratum making minor, non-substantive
4 changes to the Final EIR.

5
6 48. The Planning Commission held public hearings on December 18, 2018 and January 15,
7 2019, and recommended that the City Council approve the Project, subject to all conditions of
8 approval adopted and mandated by the City Council, with a further recommendation that the City
9 Council not approve the Project until street improvements consistent with mitigation measures TRA-
10 1A, 1B, 1C, 1D, and 1E have been approved and agreed to by the various jurisdictions.

11 49. On March 12, 2019, the City Council held a public hearing and approved the Project,
12 certified the Final EIR, and adopted findings in support of the Project approval.

14 **CEQA MANDATES**

15 50. CEQA was enacted to require public agencies and decision-makers to document and
16 consider the environmental implications of their actions before formal decisions are made. Pub. Res.
17 Code § 21000, and to “[e]nsure that the long-term protection of the environment shall be the guiding
18 criterion in public decisions.” Pub. Res. Code § 21001(d) “CEQA was intended to be interpreted in
19 such a manner as to afford the fullest possible protection to the environment within the reasonable
20 scope of the statutory authority.” CEQA Guidelines § 15003(f), citing Friends of Mammoth v. Board
21 of Supervisors, (1972) 8 Cal. 3d 247. “[T]he overriding purpose of CEQA is to ensure that agencies
22 regulating activities that may affect the quality of the environment give primary consideration to
23 preventing environmental damage. CEQA is the Legislature's declaration of policy that all necessary
24 action be taken ‘to protect, rehabilitate and enhance the environmental quality of the state. Save our
25 Peninsula v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 117, citing Laurel
26 Heights Improvement Assn. v. Regents of University of California, (1988) 47 Cal.3d 373, 392; and
27
28

1 Pub. Res. C § 21000.

2 51. The lead agency must identify all potentially significant impacts of the project, and must
3 therefore consider all the evidence in the administrative record, not just its initial study. Pub. Res.
4 Code § 21080 (c), (d), § 21082.2. The CEQA Guidelines direct lead agencies to conduct an Initial
5 Study to “determine if the project may have a significant on the environment.” § 15063(a). “All phases
6 of the project planning, implementation, and operation must be considered in the Initial Study”.
7 CEQA Guidelines § 15063(a)(1). Besides the direct impacts, the lead agency must also consider
8 reasonably foreseeable indirect physical changes in the environment in the area in which significant
9 effects would occur, directly or indirectly. See CEQA Guidelines § 15064(d) & § 15360; see also
10 Laurel Heights Improvement Assn, supra, 47 Cal. Ed at 392.
11

12 52. An indirect impact is a physical change in the environment, not immediately related to the
13 project in time or distance, but caused indirectly by the project and reasonably foreseeable. CEQA
14 Guidelines § 15064(d)(2) & § 15358(a)(2). Indirect impacts to the environment caused by a project’s
15 economic or social effects must be analyzed if they are “indirectly caused by the project, are
16 reasonably foreseeable, and are potentially significant.” CEQA Guidelines § 15064(d)-(e). A lead
17 agency may not limit environmental disclosure by ignoring the development or *other activity* that will
18 ultimately result from an initial approval. City of Antioch v. City Council (1986) 187 CA3d 1325
19 (emphasis added). The guidelines specifically require that an Initial Study must consider “all phases of
20 project planning, implementation, and operation.” CEQA Guidelines § 15063(a)(1).
21

22 53. The EIR must contain a sufficient degree of analysis to provide the decision-makers with
23 enough information to make an intelligent decision. CEQA Guidelines § 15151. The analysis in the
24 EIR must be sufficient to connect the dots between facts and conclusion; it may not include the
25 agency’s bare conclusions or opinions. Citizens of Goleta Valley v. Board of Supervisors (1990) 52
26 Cal.3d 553, 568. “The grounds upon which an administrative agency has acted must be ‘clearly
27
28

1 disclosed and adequately sustained.” San Bernardino Valley Audubon Society, Inc. v. County of San
2 Bernardino (1984) 55 Cal.App.3d 738, 752.

3 54. CEQA requires that agencies “mitigate or avoid the significant effects on the environment
4 of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code §
5 21002.1(b); Napa Citizens for Honest Gov’t v. Napa County Bd. Of Supervisors (“Napa”) (2001) 91
6 Cal.App.4th 342, 360 (“the EIR must propose and describe mitigation measures that will minimize the
7 significant environmental effects that the EIR has identified.” “CEQA does not authorize an agency
8 to proceed with a project that will have significant, unmitigated effects on the environment, based
9 simply on a weighing of those effects against the project’s benefits, unless the measures necessary to
10 mitigate those effects are truly infeasible.” City of Marina v. Board of Trustees of the California State
11 University (2006) 39 Cal.4th 341, 368-369. Because the EIR admits the Project’s cumulative impact
12 on climate change and air quality will be significant, the EIR was required to consider and impose all
13 feasible mitigation measures and alternatives to reduce this impact to the extent feasible.

14 55. Where the CEQA environmental process was procedurally or substantively defective,
15 reviewing courts may find prejudicial abuse of discretion even if proper adherence to CEQA mandates
16 may not have resulted in a different outcome. Pub. Res. Code § 21005(a). For example, the Court in
17 Citizens to Preserve Ojai v. County of Ventura (1985) 176 Cal.App.3d 421, 428 held that the
18 certification of an EIR that had not adequately discussed the environmental impacts of the project
19 constituted a prejudicial abuse of discretion even if strict compliance with the mandates of CEQA
20 would not have altered the outcome. The Court in Resource Defense Fund v. LAFCO (1987) 191
21 Cal.App.3d 886, 897-8, went so far as to declare that failure to comply with CEQA procedural
22 requirements was per se prejudicial. The court in Kings County Farm Bureau v. City of Hanford
23 (1990) 221 Cal.App.3d 692 explained that an agency commits prejudicial error if “the failure to
24 include relevant information precludes informed decision making and informed public participation,
25
26
27
28

1 thereby thwarting the statutory goals of the EIR process.” Id., at 712.

2 56. CEQA’s environmental review process is intended to provide the public with assurances
3 that “the agency has, in fact, analyzed and considered the ecological implications of its actions.”
4 Laurel Heights Improvement Ass. v. Regents of the University of California (1988) 47 Cal.3rd 376,
5 392. The function of the environmental review, then, is not merely to result in informed decision
6 making on the part of the agencies, it is also to inform the public so they can respond to an action with
7 which they disagree. Id.

9 **FIRST CAUSE OF ACTION**

10 (Violations of CEQA)

11 57. Petitioners refer to and incorporate herein by this reference paragraphs 1-56, inclusive, of
12 this Petition as though fully set forth herein.

13 58. The Final EIR fails to adequately describe the Project setting and to establish the
14 environmental baseline. The EIR fails, for example, to adequately describe the suitability of the
15 habitat for harboring special status species such as the gnatcatcher, or to serve as a critical wildlife
16 movement corridor. The EIR’s analysis of the environmental baseline does not include reliable
17 protocol level surveys for special status species.

18 59. The EIR fails to adequately analyze Project’s environmental impacts, including but not
19 limited to impacts on air quality and related public health impacts, biological resources, climate
20 change, energy use, traffic and noise. The Final EIR, moreover, fails to adequately analyze the
21 Project’s cumulative or potential growth-inducing impacts.

22 60. The EIR fails to adequately analyze, discuss and propose potentially feasible mitigation
23 measures to address the Project’s potentially significant impacts, including mitigation measures to
24 address the Project’s impacts on air quality, biological impacts, climate change, traffic and noise. In
25 some cases, formulation of mitigation measures are improperly deferred without any discussion of the
26
27
28

1 feasibility of mitigation or identifying performance criteria.

2 61. The EIR fails to include an adequate analysis of the Projects' environmental justice
3 implications or the Project's potential to impact communities comprised primarily of people of color
4 or socio-economically disadvantaged communities.

5 62. The EIR fails to adequately and in good faith respond to public and agency comments.

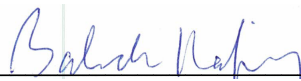
6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioners pray for judgment against the City, as set forth herein below.:

- 9 (1) That the Court issue an alternative and peremptory writ of mandate commanding
10 Respondent the City of Fontana and Fontana City Council to set aside, invalidate and
11 void all approvals in connection with the West Valley Logistics Project;
12
13 (2) The City set aside its certification of the EIR for the West Valley Logistics Project;
14
15 (3) For declaratory judgment, stating that the actions of Respondents in approving West
16 Valley Logistics Project and certifying the EIR were in violation of CEQA;
17
18 (4) For a temporary restraining order, preliminary injunction, and permanent injunction
19 prohibiting any actions by Respondents and/or Real Parties in Interest pursuant to the
20 approval of West Valley Project until Respondents have fully complied with the
21 California Environmental Quality Act, all other applicable state, local laws and
22 requirements
23 (5) For an award of costs and attorney's fee, and
24 (6) For an award of such other and further relief as the Court deems just and proper.

25 Dated: April 12, 2019

LAW OFFICES OF BABAK NAFICY

26 By: 
27 Babak Naficy
28 Attorney for Plaintiffs/Petitioners

Verification

1
2 I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and
3 Injunctive Relief and Petition for Writ of Mandate and know its contents. I am an officer of the
4 Center for Community Action and Environmental Justice, one of the the Plaintiff/Petitioners in this
5 action. The matters stated therein are true of my knowledge except as to those matters which are
6 stated on information and belief, and as to those matters those matters, I believe them to be true.

7 Executed on April 12 2019, in, _____ in the County of
8 San Bernardino.
9

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

12
13 Signed: 

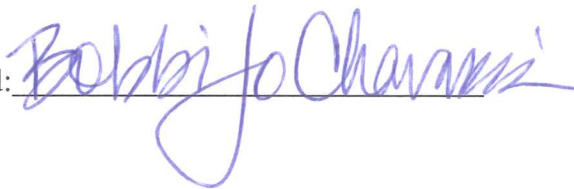
Dated: 4/12/2019

Verification

1
2 I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and
3 Injunctive Relief and Petition for Writ of Mandate and know its contents. I am an officer of the
4 Sierra Club, one of the the Plaintiff/Petitioners in this action. The matters stated therein are true of
5 my knowledge except as to those matters which are stated on information and belief, and as to those
6 matters those matters, I believe them to be true. Executed on April 12, 2019, in,
7 in the County of San Bernardino.

8
9 I declare under the penalty of perjury under the laws of the state of California that the
10 foregoing is true and correct.

11
12 Signed:



Dated:

4/12/19

Verification

1
2 I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and
3 Injunctive Relief and Petition for Writ of Mandate and know its contents. I am an officer of the
4 Center for Biological Diversity, one of the Plaintiff/Petitioners in this action. The matters stated
5 therein are true of my knowledge except as to those matters which are stated on information and
6 belief, and as to those matters those matters, I believe them to be true. Executed on April 11, 2019,
7 in Shelter Cove, in the County of Humboldt.
8

9 I declare under the penalty of perjury under the laws of the state of California that the
10 foregoing is true and correct.
11

12 Signed: petra senn

Dated: April 11, 2019