



1 Zone Change No. 16-003 (Ordinance No. 1771), Specific Plan Amendment No.  
2 16-002 (Ordinance No. 1772), Tentative Parcel Map No. 19711, Design Review  
3 Project No. 15-017 (Resolution No. 2018-006), Development Agreement No.  
4 16-005 (Ordinance No. 1773), and all related land use approvals (collectively,  
5 “the Project”).

- 6 2. The Southwest Fontana Logistics Center project concerns the development of  
7 two industrial warehouse buildings totaling approximately 1.6 million square  
8 feet on 73.3 acres of vacant and semi-improved land in the City of Fontana. The  
9 buildings will operate as high cube warehouse logistics centers, meaning that  
10 diesel trucks will bring cargo to the buildings for storage and sorting for  
11 transport on other trucks to destinations in and outside California. These  
12 operations will occur 24 hours per day, seven days per week. The Project’s  
13 Environmental Impact Report (“EIR”) anticipates that the Project will generate  
14 5,938 daily vehicle trips including 2,319 diesel truck trips. The Project site is  
15 surrounded by existing residential uses—in fact, two single-family homes will  
16 be located within **15 feet** of Project operations. In addition, a school – Citrus  
17 High School – is located to the immediate north of the site. Yet the admittedly  
18 adverse and significant impacts associated with the Project have not been  
19 adequately evaluated and/or mitigated in violation of the California  
20 Environmental Quality (“CEQA”) (Public Resources Code § 21000 *et seq.*).
- 21 3. The City of Fontana’s certification of the Final EIR for the Project must be  
22 vacated because the record lacks substantial evidence in support of the EIR’s  
23 conclusions, and because the EIR fails to adequately describe or disclose  
24 relevant information. Also, the EIR concludes that the Project results in  
25 significant and unavoidable impacts but the City failed to adopt all feasible  
26 mitigation and adopted mitigation is ineffective to reduce significant impacts.  
27 Additionally, the City failed to evaluate a reasonable alternative to the proposed  
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1 Project and improperly rejected alternatives that would lessen or avoid some of  
2 the Project's harmful effects.

- 3 4. During the Project's administrative review process, interested parties notified the  
4 City that there was need for further analysis and mitigation due to the Project's  
5 adverse effects including that the City should consider additional mitigation  
6 measures for significant air quality and greenhouse gas emission impacts as well  
7 as alternatives to the proposed project. In spite of these reasoned comments in  
8 the record, the City approved the Project and certified the EIR.
- 9 5. By this verified petition, Petitioner alleges the following:

10 **PARTIES**

- 11 6. Petitioner, SIERRA CLUB, is a national environmental organization of 829,913  
12 members, of which 182,402 members reside in California. The San Gorgonio  
13 Chapter of the Sierra Club encompasses San Bernardino County and has  
14 membership of 7,439 individuals. Sierra Club's goals include protecting  
15 California's lands, waters, air and wildlife. Local members of the San Gorgonio  
16 Chapter of the Sierra Club reside in the general vicinity of the Project site and  
17 are concerned with the Project's impacts to the local and regional environment.  
18 Sierra Club submitted comments opposing approval of the Project to the County.
- 19 7. Respondent, CITY OF FONTANA, is a political subdivision of the State of  
20 California. The City is a local governmental agency charged with the authority  
21 of regulating and administering local land use and development within its  
22 territory in compliance with the provisions of its general plan and zoning  
23 ordinances as well as applicable provisions of State law, including CEQA. The  
24 City is the lead agency for the Project and is therefore charged with the duty of  
25 ensuring compliance with applicable State and local laws.

- 1 8. Real Party in Interest, GLC FONTANA II LLC, is identified in the record as the  
2 applicant for the Project, has an ownership interest in the property, and/or claims  
3 an interest in the Project approvals at the subject of this lawsuit.
- 4 9. DOES 1 through 100 are individuals or entities that may have an ownership  
5 interest in the property, were project applicants, or claim an interest in the  
6 approvals at the subject of this lawsuit. Petitioner is unaware of the true names  
7 or capacities of the Real Parties in Interest identified herein under the fictitious  
8 names DOES 1 through 100 inclusive.

9 **STATEMENT OF FACTS**

10 **The Project**

- 11 10. The Southwest Fontana Logistics Center project is a proposal for the  
12 construction and operation of two industrial warehouse logistics buildings,  
13 totaling 1,628,936 square feet, on 73.3 vacant and semi-improved acres in the  
14 southern area of the City of Fontana.
- 15 11. The Project site is bounded by Santa Ana Avenue to the north, Jurupa Avenue to  
16 the south, and Cyprus Avenue to the east.
- 17 12. The Project will function as logistics facilities for warehousing, distribution, and  
18 goods-movement.
- 19 13. The Project's Building 1 will occupy the northern portion of the site along Santa  
20 Ana Avenue and consist of approximately 540,564 square feet of warehouse use  
21 and 20,000 square feet of office use. Building 2 will occupy the southern portion  
22 of the site and consist of approximately 1,048,372 square feet of warehouse use  
23 and 20,000 square feet of office use. Buildings 1 and 2 may be up to 60 feet in  
24 height per the Project's site plan.
- 25 14. The Project includes a tentative parcel map to consolidate 22 separate parcels  
26 into two separate parcels for the two proposed warehouse buildings. The  
27 Project's map excludes two, contiguous residential properties that are located at  
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1 the northwest corner of Jurupa and Cypress Avenue. These homes will be  
2 located within 15 feet of Project operations. The Project's Building 2 will  
3 operate 76 truck loading docks in immediate proximity to these existing  
4 residences.

5 15. The Project site is otherwise surrounded by a residential community to the south;  
6 undeveloped land, a church and residential properties to the east; residential  
7 properties to the west, and a high school (Citrus High School) and low density  
8 residential uses to the north.

9 16. The Project's Building 1 will operate 39 truck loading docks in immediate  
10 proximity of the low density residential uses as well as Citrus High School, in  
11 particular the school's outdoor recreational/sports fields. Also, heavy duty  
12 trucks will access the Project site (Building 1) from Santa Ana Avenue, adjacent  
13 to these homes and the high school.

14 17. The Project includes a General Plan Amendment to amend the City of Fontana  
15 General Plan land use map from Residential Planning Community (R-PC) to  
16 General Industrial (I-G) and a Zoning Change from Residential Planned  
17 Community (R-PC) to Southwest Industrial Park Specific Plan (SWIP).

18 18. The Project purports to include a "future public (City) park" on a non-contiguous  
19 17.45 site on the eastern side of Cypress Avenue. The EIR includes the park in  
20 the description of the proposed project and claims that the park is evaluated by  
21 the EIR on a "programmatic level".

22 **CEQA Review and Project Approval**

23 19. The City circulated a Notice of Preparation of Draft Environmental Impact  
24 Report pursuant to CEQA on September 23, 2016.

25 20. The Draft EIR was circulated for public comment on September 5, 2017.

26 21. The Project's Final EIR was completed on or about November 21, 2017.

27 22. On November 7, 2017, December 5, 2017, and December 19, 2017, the City  
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1 Planning Commission held public hearings on the Project. At the public hearing  
2 on December 19, 2017, the Planning Commission voted to approve the Project  
3 including a Resolution recommending approval of the Project including  
4 certification of the Final EIR to the City Council.

5 23. On January 23, 2018, the City Council held a public hearing on the Project and  
6 voted 3-1-1 to approve the Project including certification of the Final EIR, and  
7 adoption of a Statement of Overriding Considerations and CEQA Findings of  
8 Fact.

9 24. The Final EIR concludes that the Project will result in significant and  
10 unavoidable environmental impacts with respect to air quality, greenhouse gas  
11 emissions, noise and traffic.

12 25. Petitioner is informed and believes, and thereon alleges, that the CEQA Notice  
13 of Determination was posted on January 24, 2018.

14 26. The City's approval of the Project will cause Petitioner irreparable injury  
15 for which Petitioner has no adequate remedy at law. Petitioner and its members  
16 will be irreparably harmed by the City's actions in approving the Project, among  
17 other things, the failure of the City in its certification of the EIR to adequately  
18 evaluate the potential impacts of the Project, and the City's approval of the  
19 Project without providing adequate and effective mitigation measures contrary to  
20 the requirements of State law.

21 27. The maintenance of this action is for the purpose of enforcing important public  
22 policies of the State of California with respect to the protection of the  
23 environment under CEQA and conformance with state law and local law. The  
24 maintenance and prosecution of this action will confer a substantial benefit upon  
25 the public by protecting the public from environmental and other harms alleged  
26 in this Petition. Petitioner is acting as a private attorney general to enforce these  
27 public policies and prevent such harm.

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- 1 33. Petitioner hereby realleges and incorporates paragraphs 1 through 32 above as  
2 though set forth in full herein.
- 3 34. The California Environmental Quality Act (“CEQA”) (Public Resources Code §  
4 21100 et seq.), enacted in 1971, requires government agencies to consider the  
5 environmental consequences of their actions before approving projects subject to  
6 CEQA’s provisions.
- 7 35. The Environmental Impact Report (“EIR”) is considered “the heart” of CEQA.  
8 To effectuate the Legislature’s goals of environmental protection, CEQA  
9 provides that an adequate EIR must evaluate all potentially significant  
10 environmental impacts of a proposed project including both direct and indirect  
11 impacts as well as cumulative impacts. State CEQA Guidelines “Guidelines”,  
12 § 15126, 15126.2 (a), 15130.
- 13 36. An EIR must also accurately describe the project it analyzes. Guidelines §  
14 15124. An inaccurate or incomplete project description undermines CEQA’s  
15 purposes, particularly where it minimizes the project’s environmental impacts.  
16 “An accurate, stable, and finite project description is the *sine qua non* of an  
17 informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles*  
18 (1977) 71 Cal.App.3d 185, 192-93.
- 19 37. CEQA further establishes a substantive mandate on the part of the lead agency to  
20 mitigate the significant environmental impacts of a project. Public Resources  
21 Code §§ 21002, 21002.1; Guidelines, § 15021 (a). A lead agency may not  
22 approve a project for which there are significant environmental impacts unless  
23 the agency makes findings that: (a) mitigation measures have been required of  
24 the project which avoid or substantially lessen the significant environmental  
25 impacts, or (b) mitigation measures are found to be infeasible based on  
26 substantial evidence. Public Resources Code §§ 21081, 21081.5; Guidelines, §§  
27 15091 (a)(b), 15092 (b).  
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1 38. CEQA additionally provides that adopted mitigation measures must be certain  
2 and enforceable. Public Resources Code § 21081.6(b); Guidelines, §  
3 15126.6(a)(2). The lead agency must ensure that mitigation measures are  
4 required by or incorporated into the project to ensure that the measures are  
5 actually carried out. Public Resources Code § 21081.6 (a), (b).

6 39. CEQA's finally mandates that the lead agency evaluate alternatives to the  
7 proposed project, or the location of the project, which would attain most of the  
8 basic objectives of the project but would avoid or substantially lessen any of the  
9 project's significant environmental effects. Guidelines § 15126.6 (a). The lead  
10 agency has a duty to adopt a project alternative if it is feasible. Public Resources  
11 Code § 21002. A lead agency may not reject an alternative unless the agency  
12 makes findings supported by substantial evidence showing that the alternative is  
13 infeasible. Public Resources Code §§ 21081, 21081.5; Guidelines §§ 15091 (a)  
14 (3), 15092.

15 40. Petitioner and others commented that the EIR's Project Description was  
16 inadequate as a matter of law because the EIR describes the Project as including  
17 a 17.45-acre park, when a park is not actually a component of the proposed  
18 Project. The City Council Staff Report acknowledges that "no specific  
19 improvements for facilities are proposed for the park at this time," and the  
20 "application does not include the development or layout of the park." Moreover,  
21 the Project Description is confusing where the EIR purports to evaluate the  
22 proposed Project on a project-level basis and the park on a  
23 "programmatic" basis.

24 41. Petitioner and others commented that the EIR failed to adequately evaluate  
25 impacts to/from including, but not limited to, air quality, energy, greenhouse gas  
26 emissions, land use, noise, and traffic. By way of example, Petitioner and others  
27 commented that:  
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1 a) The EIR's analysis of the Project's energy impacts is inadequate in terms  
2 of State CEQA Guidelines, Appendix F. The City failed to require  
3 sufficient analysis of the Project's energy consumption, transportation  
4 energy impacts, and to demonstrate that the Project is taking steps to  
5 reduce dependency on fossil fuels. For instance, the City failed to  
6 evaluate or demonstrate how the Project "increases reliance on renewable  
7 energy sources." Moreover, the City failed to adopt feasible mitigation  
8 measures relative to energy impacts such as requiring that the Project  
9 utilize *any* solar energy.

10 b) Contrary to the EIR's conclusions, there are significant land use impacts  
11 due to the Project's conflicts with the City's General Plan including  
12 policies relative to noise protections for residential uses and energy  
13 conservation.

14 c) The EIR concludes that noise impacts during construction and operational  
15 phases are less than significant, but this is not demonstrated based on  
16 substantial evidence in the record. For instance, the EIR's noise analysis  
17 indicates that construction noise levels are well above ambient conditions  
18 at the nearest homes to the Project site; accordingly, the Project results in  
19 "a substantial temporary increase in ambient noise conditions," *i.e.*, the  
20 Project exceeds an adopted threshold of significance.

21 42. Petitioner and others commented that not all feasible mitigation was required of  
22 this Project, and Petitioner and others proposed feasible mitigation that has not  
23 been shown to be infeasible based on substantial evidence in the record.

24 a) For instance, Petitioner proposed mitigation with respect to the Project's  
25 significant air quality (NO<sub>x</sub>) impacts, such as requiring that the Project  
26 incorporate the phase-in of electric, hybrid electric, hydrogen electric, or  
27 battery operated (*i.e.*, non diesel) trucks. In addition, Petitioner  
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1 repeatedly urged the City to require that the Project be conditioned such  
2 that only 2010 model year trucks have permission to access the Project  
3 site. The City declined to adopt these and other feasible mitigation  
4 measures to address significant air quality as well as greenhouse gas  
5 emission impacts, and the City failed to make findings supported by  
6 substantial evidence that the measures are infeasible.

7 b) Also for instance, Petitioner commented that the Project should be limited  
8 to the assumptions of the air quality study in terms of truck trips (number  
9 and trip length) in order to ensure that significant impacts (NO<sub>x</sub>) are not  
10 more severe than assumed by the EIR. Again the City declined to adopt  
11 feasible mitigation to address significant impacts, and the City failed to  
12 make findings supported by substantial evidence that the measure is  
13 infeasible.

14 c) Again for instance, Petitioner commented that the Project shall be  
15 required to install solar panels sufficient to achieve “net zero”, *i.e.*, handle  
16 the peak energy demands of the Project, or at a minimum require that the  
17 Project construct and utilize solar energy infrastructure for some  
18 reasonable portion of the Project’s energy needs. The City declined to  
19 adopt feasible mitigation to address significant impacts, and the City  
20 failed to make findings supported by substantial evidence that the  
21 measure is infeasible.

22 43. Petitioner and others commented that proposed mitigation measures were  
23 uncertain, unenforceable, ineffective and/or deferred in violation of CEQA. By  
24 way of example, Petitioner commented that the mitigation measure stating that  
25 the Project “shall encourage all fleet vehicles to conform to 2010 air quality  
26 standards or better” is inadequate. As written, this measure is entirely  
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1 permissive in violation of CEQA's requirement that mitigation measures shall be  
2 fully enforceable.

3 44. Petitioner and others commented that the EIR fails to adequately consider  
4 alternatives to the proposed project, consistent with the mandate of Guidelines §  
5 15126.6 (a). By way of example, the EIR discusses a development option—  
6 "Option A"— which would develop an optional site plan with 1,272,150 square  
7 feet in a single warehouse building with a 17.35-acre park just north of the  
8 warehouse development. Option A would substantially reduce the Project's  
9 adverse environmental effects in particular relative to the residential and school  
10 uses to the north of the Project site. Also, it is known that Option A would result  
11 in 22% fewer vehicle trips than the proposed Project. Yet the EIR does not  
12 evaluate Option A as an *alternative* to the proposed project in violation of  
13 CEQA. Furthermore, the City did not make findings that Option A is infeasible  
14 based on substantial evidence in the record, contrary to CEQA.

15 45. For these reasons, the City violated CEQA and the Project approvals must be set  
16 aside. Code Civ. Proc., §§ 1085, 1094.5; Public Resources Code § 21168.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Petitioner prays the following relief on all causes of action:

- 19 a) For the Court's peremptory writ of mandate requiring Respondent, City of  
20 Fontana, to set aside its decision certifying the EIR for the Project.  
21 b) For the Court's peremptory writ of mandate requiring Respondent, City of  
22 Fontana, to set aside all Project approvals.  
23 c) For such other and further relief, including preliminary and permanent  
24 injunctive relief, in the event that a Real Parties in Interest, or their agents  
25 or instrumentalities, intend to commence construction on the site while  
26 this lawsuit is pending.  
27 d) For such other relief as may be just and proper.  
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1 e) For the costs of this suit, including attorney's fees, pursuant to Code of  
2 Civil Procedure § 1021.5.

3 DATED: February 22, 2018

4 Respectfully submitted,  
LAW OFFICES OF ABIGAIL SMITH

5  
6 By: Abigail Smith  
7 Abigail A. Smith  
8 Attorneys for Petitioner  
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VERIFICATION

1  
2 I, the undersigned, certify and declare that I have read the foregoing Petition for  
3 Writ of Mandate and know its contents. The statement following the box checked is  
4 applicable.  
5

6 I am ( ) a member, (X) an officer of SIERRA CLUB SAN CARLOS CHAPTER  
7 a party to this action, and I am authorized to make this verification for and on its behalf,  
8 and I make this verification for that reason. The matters stated in the document described  
9 above are true of my own knowledge and belief except as to those matters stated on  
10 information and belief, and as to those matters I believe them to be true.  
11

12 I declare under penalty of perjury under the laws of the State of California that the  
13 foregoing is true and correct.  
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15 Dated: February 21, 2018

By: Mary Ann Ruiz  
MARY ANN RUIZ  
CHAPTER CHAIR

**EXHIBIT "A"**

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EXHIBIT "A"

**Law Offices of Abigail Smith**

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*VIA U.S. MAIL*

February 21, 2018

Karen Porlas, City Clerk  
City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92335

**Re: *Notice of Intent to File CEQA Petition in the Matter of the Approval of the Environmental Impact Report for the Southwest Fontana Logistics Center Project and all related approvals***

To the City of Fontana:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that this letter serves as written notice of the intent of Petitioner, SIERRA CLUB, to file a Petition for Writ of Mandate under the provisions of the California Environmental Quality Act ("CEQA") against Respondent, CITY OF FONTANA, challenging the City's approval of the Southwest Fontana Logistics Center Project including Environmental Impact Report (SCH No. 2016091057) and all related land use approvals (General Plan Amendment No. 15-006 etc.)

Sincerely,



Abigail Smith, Esq.



**EXHIBIT "B"**

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EXHIBIT "B"