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10 *Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon*
Society

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF RIVERSIDE

13 CENTER FOR COMMUNITY ACTION AND
14 ENVIRONMENTAL JUSTICE, CENTER FOR
15 BIOLOGICAL DIVERSITY, COALITION FOR
16 CLEAN AIR, SIERRA CLUB, SAN
BERNARDINO VALLEY AUDUBON
SOCIETY,

17 Petitioners/Plaintiffs,

18 v.

19 CITY OF MORENO VALLEY, a municipal
corporation; CITY COUNCIL OF THE CITY OF
20 MORENO VALLEY,

21 Respondents/Defendants,

22 HIGHLAND FAIRVIEW; HF PROPERTIES, a
California general partnership; SUNNYMEAD
23 PROPERTIES, a Delaware general partnership;
THEODORE PROPERTIES PARTNERS, a
Delaware general partnership; HL PROPERTY
24 PARTNERS, a Delaware general partnership;
13541 THEODORE, LLC, a Delaware limited
25 liability company; HIGHLAND FAIRVIEW
PROPERTIES, LLC, a California limited liability
26 company; HF PHASE II PROPERTIES, a
California general partnership; SKINNER
27 PROPERTIES PARTNERS, a Delaware general
partnership; EASTGATE PROPERTIES
28 PARTNERS, a Delaware general partnership;

Case No:

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

[Code Civ. Proc. §§ 1060, 1085, and 1094.5]

1 GB PROPERTIES, a California general
2 partnership; PASADENA PROPERTIES
3 PARTNERS, a Delaware General Partnership;
4 CHE PROPERTIES PARTNERS, a Delaware
5 general partnership; HFM PROPERTY
6 PARTNERS, a Delaware general partnership;
7 COLVILLE PROPERTIES, a Delaware general
8 partnership; HIGHLAND FAIRVIEW
9 PROPERTIES, a California general partnership;
10 WESTCOAST PROPERTY PARTNERS; HF
11 EDUCATIONAL PARTNERS; 13451
12 THEODORE LLC, a California limited liability
13 company; and DOES 1 through 30, inclusive,

14 Real Parties in Interest.

15 INTRODUCTION

16 1. Petitioners Center for Community Action and Environmental Justice, Sierra Club,
17 Center for Biological Diversity, Coalition for Clean Air, and San Bernardino Valley Audubon
18 Society (collectively “Petitioners”) hereby submit this petition challenging the City Council and City
19 of Moreno Valley’s (collectively “City”) adoption of two unlawful initiatives to circumvent existing
20 law and to facilitate the development of the World Logistics Center (“WLC” or “Project”), a 2,610
21 acre, 40+ million square foot warehouse complex. At full construction, WLC’s indoor warehouse
22 space would be larger than New York’s Central Park, and may be the largest development of its kind
23 in the world.

24 2. Due to the massive size of the Project, the City’s attempt to illegally approve the
25 WLC through the initiative process would commit approximately 10% of the City’s total land mass
26 indefinitely to be developed and used solely for warehouses, distribution centers and other logistics
27 support. The City’s approval of the Project through the initiative process comes after failing to meet
28 the legal requirements and obligations under the California Environmental Quality Act (“CEQA”).

1 Throughout the City’s decision making process, several organizations, individuals,
2 and governmental agencies, including the County of Riverside, expressed serious concerns about the
3 Project and the associated environmental review conducted by the City under the CEQA. The South
4 Coast Air Quality Management District (“SCAQMD”) expressed significant concerns about the
5 “unprecedented scale” of the Project. These concerns were also echoed by the California Air

1 Resources Board (“ARB”), which was just as troubled about the implications of the Project’s
2 dramatic increase in heavy-duty truck traffic and the resulting public health impacts unaddressed by
3 the City’s proposed mitigation measures set forth in the Final Environmental Impact Report (“EIR”).

4 4. As noted in the comments submitted by Petitioners and other affected parties, the
5 WLC raises myriad concerns due to its ecological and public health impacts. The physical size of the
6 Project and the more than 14,000 truck trips per day it would generate will substantially add to the
7 existing presence of ozone, ozone precursors, and other contaminants, such as carcinogenic diesel
8 particulate matter (“DPM”), in an air basin that already suffers from some of the worst air quality in
9 the nation. This additional air pollution will only exacerbate the serious direct health impacts already
10 experienced by residents in the region. In addition, the Project will contribute significant levels of
11 greenhouse gas (“GHG”) emissions that will add to, rather than reduce climate change impacts. As a
12 result, the Project directly conflicts with existing State GHG reduction goals. The Project will also
13 impose severe and detrimental impacts on a variety of imperiled species, habitats and other
14 biological resources. Yet, the Project’s environmental review document and the City’s
15 environmental review process failed to adequately address these impacts. As a result, Petitioners and
16 other concerned parties, including the County of Riverside and SCAQMD, filed legal challenges
17 related to the inadequate CEQA review and EIR for the Project.

18 5. Instead of correcting the serious deficiencies with the EIR, the developer and project
19 proponents (collectively “Highland Fairview”) crafted a strategy intended to moot the ongoing
20 CEQA litigation, and avoid its obligation to comply with this bedrock environmental law. The
21 strategy relies on a 2014 California Supreme Court decision finding that certain circumstances allow
22 projects to proceed without CEQA review. *Tuolumne Jobs & Small Bus. All. v. Sup. Ct.* (2014) 59
23 Cal.4th 1029, 1043. Highland Fairview prepared and financed three initiatives to convert the City’s
24 August 2015 project approvals into entitlements purportedly immune from a CEQA challenge. On
25 November 16, 2015, the initiatives were submitted to the City Clerk, who found that each measure
26 had sufficient signatures under Elections Code section 9215 and presented them to the City Council.
27 On November 24, 2015, instead of allowing the electorate to vote, the City Council adopted the
28 initiatives outright. Indeed, “[t]hese are the same City Council members whose elections” Highland

1 Fairview “spent \$600,000 trying to influence last fall,” as detailed by the Los Angeles Times
2 Editorial Board in November 2015.

3 6. The initiatives concern Petitioners for several reasons. First, a project of this scope
4 and size will have an indelible impact on the health of residents in the Inland Empire; on the vital
5 ecological resources in the Project area; and the climate due to its large quantities of GHG
6 emissions. This Project is precisely the type of project that requires the scrutiny of CEQA. If
7 Highland Fairview is successful in evading CEQA compliance for all or a portion of the Project, the
8 Project would proceed without an adequate analysis of its severe air quality, climate change and
9 ecological impacts. Moreover, if successful in evading CEQA compliance through these initiatives,
10 the mitigation measures necessary to address the Project’s impacts, although insufficient, would not
11 be in an enforceable form also required under CEQA.

12 7. Petitioners are also concerned about the use of the initiative process to enact
13 development agreements for private gain. This would allow developers to misuse the initiative
14 process to obtain significant financial gain simply by having 10% of the electorate sign an initiative
15 petition. In addition to running afoul of California’s statutes governing development agreements, this
16 approach violates important State constitutional protections specifically aimed at preventing private
17 corporations from using the initiative process for pecuniary gain.

18 **PARTIES**

19 8. Petitioner and Plaintiff CENTER FOR COMMUNITY ACTION AND
20 ENVIRONMENTAL JUSTICE (“CCA EJ”) is a membership-based California non-profit
21 environmental health and justice organization with its primary membership in and around Riverside
22 County. CCA EJ’s mission is to bring people together to improve their social and natural
23 environment, and to build community power in order to create safer, healthier, toxic free places to
24 live, work, learn and play in and around the counties of Riverside and San Bernardino. CCA EJ has
25 its physical offices in Jurupa Valley and organizes to build leadership for community action in
26 Jurupa Valley, Mira Loma, in the City of Moreno Valley and the City of Riverside, as well as other
27 cities throughout the counties of Riverside and San Bernardino. CCA EJ has identified the City as a
28 “community at risk” for various environmental injustices, including bearing a disproportionate share

1 of the impacts from high polluting industries, heavy-duty diesel truck and other mobile source
2 emissions, and suffering other disparities created by zoning and irresponsible land use planning.
3 Accordingly, CCAEJ, together with co-petitioners to this action and other environmental groups,
4 filed extensive comments that are part of the administrative record for the City's approval of the
5 Project and Final EIR. CCAEJ's members are extremely concerned that the Project will
6 detrimentally impact their health and wellbeing, and the health and wellbeing of their children, of
7 their community, and the environment, and that it will detrimentally impact the area's surrounding
8 resources. Most of CCAEJ's members who reside in and around Riverside County and around the
9 proposed site for the Project already suffer a disproportionate burden from existing stationary and
10 mobile sources of pollution, including significant air pollution from, *inter alia*, the movement of
11 goods throughout region to existing warehouses and other large-scale storage and distribution
12 centers. As such, the CCAEJ submitted extensive comments to the City, throughout its decision
13 making process regarding the Project, which are now part of the administrative record of the City's
14 decision to approve the Project and its Final EIR. In addition, it submitted a comment letter along
15 with co-petitioners asking the City Council not to approve the initiatives in November 2015.

16 9. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is
17 a non-profit corporation with offices in San Francisco, Los Angeles, and elsewhere throughout
18 California and the United States. The Center is actively involved in environmental protection issues
19 throughout California and North America and has over 50,000 members, including many throughout
20 California and in Riverside County. The Center's mission includes protecting and restoring habitat
21 and populations of imperiled species, reducing GHG pollution to preserve a safe climate, and
22 protecting air quality, water quality, and public health. The Center's members and staff include
23 individuals who regularly use and intend to continue to use the areas in Riverside County and
24 elsewhere affected by the Project, including numerous members who are particularly interested in
25 protecting the native, endangered, imperiled, and sensitive species and habitats found in the San
26 Jacinto Wildlife Area ("SJWA"), who will be detrimentally impacted by the construction and
27 operation of the Project. As such, the Center submitted extensive comments to the City, throughout
28 its decision making process regarding the Project, which are now part of the administrative record of

1 the City’s decision to approve the Project and its Final EIR. In addition, it submitted a comment
2 letter along with co-petitioners asking the City Council not to approve the initiatives in November
3 2015.

4 10. Petitioner and Plaintiff COALITION FOR CLEAN AIR (“CCA”) is a California non
5 profit organization that is dedicated to restoring clean healthy air to California by advocating for
6 effective public policy and practical business solutions. For the past 44 years CCA has made
7 significant improvements to California’s air by advocating for innovative policy solutions through
8 both state and federal legislation; encouraging the early adoption of new technologies; advising
9 businesses on regulatory compliance and clean air practices; and has empowered its allies with
10 technical and policy expertise to educate decision-makers and the public on air pollution solutions.
11 CCA has offices in Los Angeles and Sacramento, and has a direct interest in protecting and
12 improving the quality of the air throughout Southern California and throughout the State. As such,
13 CCA submitted comments to the City, during its decision making process regarding the Project,
14 which are now part of the administrative record of the City’s decision to approve the Project and its
15 Final EIR. In addition, it submitted a comment letter along with co-petitioners asking the City
16 Council not to approve the initiatives in November 2015.

17 11. Petitioner and Plaintiff SIERRA CLUB is a national nonprofit organization of
18 approximately 600,000 members. Sierra Club is dedicated to exploring, enjoying, and protecting the
19 wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems
20 and resources; to educating and encouraging humanity to protect and restore the quality of the
21 natural and human environment; and to using all lawful means to carry out these objectives. Sierra
22 Club’s particular interest in this case and the issues that this Project approval concerns stem from the
23 Sierra Club’s local San Gorgonio Chapter’s interests in preserving the native, endangered, imperiled
24 and sensitive species and wildlife habitats of the SJWA; decreasing rather than increasing heavy-
25 duty and medium-duty truck traffic in an already highly overburdened air basin; and ensuring that
26 good, livable and healthy jobs are brought to the area. The members of the San Gorgonio Chapter—
27 which covers both San Bernardino and Riverside counties—live, work, and recreate in an around the
28 areas that will be directly affected by the construction and operation of the Project. The Chapter has

1 6,032 members, with 2,678 members in Riverside County and more than 100 in the City of Moreno
2 Valley. Sierra Club submitted extensive comments to the City throughout its environmental review
3 process for the Project, which are now part of the City's record of its decision to approve the Project
4 and its Final EIR. In addition, Sierra Club submitted a letter along with co-petitioners asking the City
5 Council not to approve the initiatives in November 2015.

6 12. Petitioner and Plaintiff SAN BERNARDINO VALLEY AUDUBON SOCIETY
7 ("SBVAS") is a local chapter of the National Audubon Society, a non-profit corporation that focuses
8 on inspiring and mobilizing people nationwide to protect hundreds of bird species and their habitats
9 through conservation, education and advocacy efforts. Founded in 1948, the SBVAS chapter area
10 covers almost all of Riverside and San Bernardino counties and includes the Project site. The
11 SBVAS chapter has approximately 2,000 members, about half of whom live in Riverside County,
12 and whom regularly engage in the bird watching, conservation, education and advocacy activities to
13 protect bird species in and around the area where the Project construction and operation will take
14 place. The SBVAS' mission extends beyond the preservation of bird species and is to preserve
15 imperiled and sensitive habitats throughout the area for all wildlife, and to maintain the quality of
16 life in the Inland Empire. As such, the SBVAS chapter is particularly concerned with the impacts
17 that the construction and operation of the Project will have on various species including but not
18 limited to bird species in the SJWA, in and around the City and throughout Riverside and San
19 Bernardino counties. As such, the SBVAS submitted extensive comments to the City, throughout its
20 decision making process regarding the Project, which are now part of the administrative record of
21 the City's decision to approve the Project and its Final EIR. In addition, it submitted a comment
22 letter along with co-petitioners asking the City Council not to approve the initiatives in November
23 2015.

24 13. By this action, Petitioners seek to protect the health, welfare, and economic interests
25 of their members and the general public, and to enforce the City's duties under California law and
26 the California Constitution. Petitioners' members and staff have an interest in their health and well-
27 being, in the health and well-being of others, including the residents of the City and its surrounding
28 areas in Riverside County and in the region. Petitioners also have a strong interest in conserving and

1 protecting the environment, in protecting the aesthetic and ecological integrity of the areas
2 surrounding the Project area, and have economic interests in Riverside County. Petitioners' staff and
3 members who live and work near the Project also have a right to and a beneficial interest in the
4 City's compliance with California law and the California Constitution. These interests have been,
5 and continue to be, threatened by the City's decision to certify the Final EIR and approve the Project
6 in violation of CEQA. These interests are further threatened by the decision of the City to pass
7 unlawful initiatives aimed at evading accountability. Unless the relief requested in this case is
8 granted, Petitioners' staff and members will continue to be adversely affected and irreparably injured
9 by the City's failure to comply with California law and the California Constitution.

10 14. Respondent and Defendant CITY OF MORENO VALLEY is a municipally funded,
11 general law City, incorporated, organized and existing under the laws of the state of California since
12 the year 1984, with the capacity to sue and be sued.

13 15. Respondent CITY COUNCIL FOR THE CITY OF MORENO VALLEY is the
14 legislative body of the City. If an initiative petition has the requisite number of valid signatures and
15 otherwise qualifies for the ballot, the City Council has the duty, under Elections Code section 9215,
16 to adopt the initiative outright, submit it to the voters, or order the preparation of an impact report.
17 On November 24, 2015, the City Council adopted the two initiatives challenged in this litigation.

18 16. On information and belief, Real Party in Interest Highland Fairview has an interest in
19 the WLC property. The City, the press, supporters of WLC, and the public refer to the project
20 developer as Highland Fairview. Likewise, the EIR and the City's Notice of Determination issued in
21 connection with the City's August 2015 approval of the Project list Highland Fairview as the project
22 applicant. Ordinance No. 901, adopted by the City on August 25, 2015, states that Highland
23 Fairview has a legal or equitable interest in the WLC project real estate. On November 24, 2015, the
24 Moreno Valley City Attorney observed that Highland Fairview is the owner of the WLC property.

25 17. On information and belief, Real Party in Interest HF Properties, a California General
26 Partnership, has an ownership interest in the WLC Property. HF Properties was also listed as a
27 signatory to the Development Agreement adopted by the City in August 2015 regarding the WLC
28 Property.

1 18. On information and belief, Real Party in Interest Sunnymead Properties, a Delaware
2 General Partnership, has an ownership interest in the WLC property. Sunnymead Properties was also
3 listed as a signatory to the Development Agreement adopted by the City in August 2015 regarding
4 the WLC property.

5 19. On information and belief, Real Party in Interest Theodore Properties Partners, a
6 Delaware General Partnership, has an ownership interest in the WLC property. Theodore Properties
7 Partners was also listed as a signatory to the Development Agreement adopted by the City in August
8 2015 regarding the WLC property.

9 20. On information and belief, Real Party in Interest HL Property Partners, a Delaware
10 General Partnership, has an ownership interest in the WLC Property. HL Property Partners was also
11 listed as a signatory to the Development Agreement adopted by the City in August 2015 regarding
12 the WLC property.

13 21. On information and belief, Real Party in Interest 13541 Theodore, LLC, a Delaware
14 Limited Liability Company, has an ownership interest in the WLC property.

15 22. On information and belief, Real Party in Interest Highland Fairview Properties, LLC,
16 a California Limited Liability Company, has an ownership interest in the WLC property.

17 23. On information and belief, Real Party in Interest HF Phase II Properties, a California
18 General Partnership, has an ownership interest in the WLC property.

19 24. On information and belief, Real Party in Interest Skinner Properties Partners, a
20 Delaware General Partnership, has an ownership interest in the WLC property.

21 25. On information and belief, Real Party in Interest Eastgate Properties Partners, a
22 Delaware General Partnership, has an ownership interest in the WLC property.

23 26. On information and belief, Real Party in Interest GB Properties, a California General
24 Partnership, has an ownership interest in the WLC property.

25 27. On information and belief, Real Party in Interest Pasadena Properties Partners, a
26 Delaware General Partnership, has an ownership interest in the WLC property.

27 28. On information and belief, Real Party in Interest Che Properties Partners, a Delaware
28 General Partnership, has an ownership interest in the WLC property.

1 44. Indeed, the rapid increase in the construction and operation of warehouses, storage
2 and distribution centers in the area has been recognized as an environmental, public health and
3 policy concern by California government agencies and executive officers, including the Attorney
4 General, ARB, and the California Department of Transportation. These State officers and agencies
5 are especially concerned with the lack of environmental review conducted to analyze the
6 environmental consequences of large-scale commercial sales, storage and distribution centers like
7 the Project, and the lack of consideration for the traffic, air pollution and public health impacts these
8 projects bring with them.

9 45. The part of Riverside County where the City is located falls under the jurisdiction of
10 the SCAQMD – the regional air pollution control agency with authority to regulate the “critical air
11 pollution problems” throughout the South Coast Air Basin (“Basin”), which includes all of Orange
12 County and the non-desert portions of Los Angeles, Riverside and San Bernardino counties.

13 46. SCAQMD is specifically responsible for clean air planning in and throughout the
14 Basin, pursuant to Clean Air Act. The air quality planning SCAQMD conducts is critical to meeting
15 national air pollution control standards set forth under the Clean Air Act, including National
16 Ambient Air Quality Standards (“NAAQS”) aimed at reducing the presence of contaminants of
17 concern that severely impact public health and the environment, and which contribute to climate
18 change. These contaminants include but are not limited to, nitrogen oxide (“NOx”), particulate
19 matter (“PM”), which produce soot, ground-level ozone (or “smog”) and ozone precursors that are
20 highly prevalent throughout the Basin, and specifically in the Western portion of Riverside County
21 where the City is, and where the Project will be located.

22 47. The Basin experiences complex and significant air quality issues caused by an
23 extremely high concentration of a variety of industrial activities as well as vehicle traffic, including
24 severe health issues caused by diesel emissions from heavy-duty truck traffic. As a result, the Basin
25 exceeds federal public health standards for both ozone and ozone precursors, and PM, resulting in its
26 residents experiencing some of the worst air pollution in the nation.

27 48. The western portion of Riverside and San Bernardino counties and the area
28 specifically surrounding the City have been identified as air pollution hot spots by air quality

1 regulators including SCAQMD for decades. The area suffers from some of the worst PM
2 concentrations in the nation as a result of pollution blowing in from both Los Angeles and Orange
3 counties, combined with high concentrations of air pollution from other sources farther east that
4 become trapped by surrounding mountain ranges. The area has also experienced worsening air
5 quality as a result of increased diesel pollution from trucks used to transport goods into the region's
6 growing warehouse and other storage and distribution facilities. Notably, DPM, which is highly
7 prevalent throughout the Basin and throughout Riverside and San Bernardino counties, contains
8 dangerous levels of PM, carbon, soot and other harmful and carcinogenic contaminants that can
9 cause a host of short term acute exposure impacts and can cause respiratory diseases, including
10 asthma and lung cancer.

11 49. CalEnviroScreen, the California Environmental Protection Agency's health screening
12 tool, identifies the City and its surrounding area as having some of the State's worst concentrations
13 of ozone and PM, traffic density, and diesel truck pollution. Residents in the area suffer from high
14 rates of asthma, as well as other respiratory and pollution related health conditions. This includes
15 residents in areas like Jurupa Valley that are located along commonly used truck routes between the
16 Ports of Los Angeles and Long Beach and Riverside County.

17 50. Based on its 24-hour PM monitoring conducted at the Mira Loma monitor, EPA has
18 found that the Basin did not attain the 2006 NAAQS for fine PM or PM 2.5 by the Basin's statutory
19 deadline set for the year 2015. *See* 81 Fed. Reg. 1514, 1514 n.3 (Jan. 16, 2016) (reclassifying the
20 Basin as "serious" because Mira Loma and Rubidoux monitors showed violations of PM2.5
21 standard). The Mira Loma monitoring station is located along state route 60 ("SR 60"), in close
22 proximity to numerous residents.

23 51. ARB, the state agency charged with monitoring the regulatory activity of California's
24 35 local air districts including SCAQMD, has determined that diesel exhaust is responsible for over
25 70% of the health risks associated with air pollution statewide. SCAQMD has likewise determined
26 that DPM accounts for over 68% of the health risks associated with breathing air in and around the
27 Basin.

28

1 52. Consistent and continued exposure to DPM is, therefore, a serious concern for Basin
2 residents and particularly for those residing along heavy-duty truck thoroughfares. The Interstate
3 highway 15 (“I-15”) and SR 60 are just some of the thoroughfares that especially impact Riverside
4 County, City residents and residents of the areas surrounding the City. Other thoroughfares such as
5 the Interstate highway 710 (“I-710”) and highways 91 and 22, also impact numerous residents living
6 closer to the ports. These residents suffer impacts from heavy pollution caused by ships and port-
7 based pollution sources in addition to increased truck traffic to ship goods out of the port area, and
8 towards storage and distribution centers located at far distances.

9 53. In addition to the region’s grave DPM, ozone and other PM emission concentrations,
10 the Basin and the western portion of Riverside and San Bernardino counties, like the rest of the state,
11 are experiencing increased impacts from climate change including decreasing water supply and
12 rainfall as well as increasing temperatures, which often exacerbate air pollution concentrations.

13 54. GHG emissions contribute to local, regional and global climate change impacts and,
14 as such, they have been the subject of increased statewide regulatory efforts.

15 55. In addition to impacting human health and resource availability and access over time,
16 climate change also directly impacts the environment including the presence and viability of
17 numerous biological species and their habitats throughout the State and locally, within Riverside
18 County. Many native, sensitive and imperiled species and their habitats are found in and around the
19 City, and many are located in the immediate vicinity of the Project.

20 56. The SJWA’s total 19,000 square acres is home to a number of imperiled biological
21 species, many of which are native to California. Others migrating through the Pacific Flyway – a
22 migratory bird passage that extends from the southernmost tip of South America along the Pacific
23 Ocean, to the North Slope of Alaska – also rely on the SJWA en route. Nine thousand acres of the
24 SJWA is also comprised of restored wetlands, which provide critical habitats to these migratory
25 birds as well as terrestrial species that may also migrate to the area in search of limited water.

26 57. Just some of the animal and plant species that are found in the SJWA include the
27 Burrowing Owl (a species of special concern, whose viability is threatened by continued urban and
28 sub-urban development); the Tri-Colored Blackbird (a bird that has received emergency protection

1 status in 2014, and whose population remains in rapid decline); the California Golden Eagle; 25
2 species of raptors and at least 65 of the 146 species of plants and animals covered by the Western
3 Riverside County Multiple Species Habitat Conservation Plan including the Los Angeles pocket
4 mouse (a threatened and State special status species native to the San Bernardino and Riverside
5 County areas). The SJWA is also home to three threatened and endangered plant species such as the
6 Spreading Navarretia, Threadleaved Brodiaea, and the San Jacinto Crownscale.

7 58. A significant portion of the land found in the area immediately adjacent to the
8 approved Project is used specifically for habitat and species conservation, and is comprised of the
9 part of the SJWA and reserve lands that are governed by the Western Riverside County Multiple
10 Species Habitat Conservation Plan.

11 **II. The Project and Its Environmental Impacts.**

12 59. The Project involves construction and operation of a 40.6 million square foot
13 warehouse complex, which, according to the EIR and other approval documents will be used to
14 provide a major logistics center to accommodate an undefined “portion” of the trade volumes at the
15 Ports of Los Angeles and Long Beach.

16 60. The total area needed to effectuate the Project’s construction and operations include
17 committing almost 4,000 acres within the City to indefinite future use for logistics – receiving and
18 distributing shipments by truck, conducting sales and offering storage services – or logistics support.
19 The land use changes involved in the Project’s approvals commits approximately 10% of the City’s
20 total land mass to be developed and used solely for warehouses, distribution centers, and associated
21 facilities indefinitely.

22 61. Given the size and scope of the Project, the Project approvals that have been or will
23 be issued by the City include the following: a new Specific Plan and Specific Plan Amendment; a
24 General Plan Amendment; execution of a development agreement consistent with the construction of
25 the Project as described in its notice and environmental review documents; and adoption or approval
26 of a tentative parcel map to be governed by the Project’s approvals and used for the purpose of
27 financing the Project’s operations.

28

1 62. As proposed, the Project will also involve drastic deviations from the City's current
2 General Plan designations and goals, which include, *inter alia*, (1) properly screening manufacturing
3 and industrial land uses to support mixed-use development and to avoid increased traffic flows as
4 well as disruptive construction and operation; (2) mitigating and minimizing where necessary,
5 increased traffic, noise, light and glare caused by land use activities; and (3) requiring development
6 along scenic roadways to be visually attractive.

7 63. Because the Project involves construction and operation of a warehouse complex that
8 is so vast in size, the Project will necessarily involve single-use development throughout a vast
9 portion of the City's land; increased traffic flows and will involve disruptive construction and
10 operation as well as high levels of light, noise and glare, which will also obstruct scenic views.

11 64. Because the Project will also necessarily attract increased truck and other vehicular
12 traffic, the Project will also significantly impact the air quality in the immediate vicinity of the
13 Project, as well as throughout the City, the County and the region.

14 65. Moreover, because the Project will be located at least 80 miles away from the nearest
15 seaport, and because the only other point of entry for goods that appear likely to be stored at the
16 WLC is the Ontario Airport, the Project is likely to cause significant impacts along all roadways,
17 thoroughfares, highways and highway corridors linking the ports of Los Angeles and Long Beach to
18 Moreno Valley. Just some of these thoroughfares include the I-710, I-5 and SR 60, which already
19 host thousands of truck trips per day causing severe public health and environmental impacts
20 throughout the region, as described above.

21 **III. The City of Moreno Valley's Project Approval and Environmental Review Process.**

22 **A. The City's Draft EIR**

23 66. On February 24, 2013, the City released a Draft EIR for a 60-day review and public
24 comment period, which closed on April 8, 2013.

25 67. More than a hundred members of the public, including Petitioners, submitted
26 extensive comments to the City regarding numerous, severe flaws contained in the Draft EIR's
27 analyses. Such comments expressed serious concerns about the Draft EIR's failure to adequately
28 analyze or mitigate the Project's significant adverse traffic impacts; its failure to adequately analyze

1 or mitigate the Project's significant and adverse impacts to air quality and human health, including
2 the Project's potentially severe DPM and GHG emissions impacts, as well as its growth inducing
3 impacts.

4 68. Numerous public commenters, including Petitioners, also discussed at length the
5 Draft EIR's failure to adequately analyze or mitigate the Project's significant and adverse impacts on
6 biological resources including imperiled, sensitive and endangered species and habitats located in
7 the nearby SJWA. These comments specifically highlighted the Draft EIR's omission of mitigation
8 measures necessary to address the impacts that both construction and operation of the Project will
9 have on wildlife habitats.

10 69. Commenters, including Petitioners, also submitted detailed comments regarding
11 additional legal inadequacies in the Draft EIR's analyses, including but not limited to the Draft
12 EIR's failure to provide a project-level analysis of the known Project impacts based on the
13 specifications that would be contained in the terms of the development agreement; the need for re-
14 circulation of the EIR as a result of its inadequate analyses; and the document's failure to adequately
15 analyze a reasonable range of alternatives in order to minimize the impacts from the Project's
16 construction and operation.

17 70. These and additional comments raised during the Draft EIR comment and review
18 period were echoed and supported by dozens of other public health and environmental organizations
19 as well as government agencies such as the United States Fish and Wildlife Service, the California
20 Department of Fish and Wildlife, ARB, SCAQMD, and others.

21 **B. The City's Final EIR and Draft Statement of Overriding Consideration.**

22 71. On May 1, 2015, the Final EIR was released for a 45-day comment period. At the
23 same time, the City also prepared and released for comment a draft Statement of Overriding
24 Considerations outlining the overriding economic, legal, social, technological, or other benefits of
25 the Project that allegedly outweigh the significant effects on the environment.

26 72. Given that the Final EIR failed to address the Draft EIR's deficiencies, Petitioners
27 repeated their concerns about the Final EIR's failure to, *inter alia*: adequately analyze the Project's
28 impacts in a project-level, rather than a programmatic EIR – again, in light of the project-level

1 details contained in the City's draft development agreement; its failure to adequately evaluate and
2 mitigate the Project's significant traffic, air quality, public health, and environmental impacts, with
3 specific emphasis on its failure to adequately disclose and evaluate the Project's GHG, DPM and
4 other toxic air emissions as well as its failure to adequately analyze the Project's impacts to
5 endangered, imperiled and sensitive biological species and habitats of the SJWA; its inclusion of
6 significant new information; and document's overall failure to adequately analyze a reasonable range
7 of project alternatives.

8 **C. The City's Approval of the Final EIR and Statement of Overriding**
9 **Considerations.**

10 73. On June 30, 2015, the Moreno Valley Planning Commission approved the Project
11 with a 6-1 vote, despite Petitioners' arguments and comments regarding the severe flaws in the Final
12 EIR's analyses of the Project's impacts on public health, air quality, GHG and biological species, in
13 addition to numerous other flawed points of analyses set forth in the Final EIR. After the City
14 Planning Department issued its approval, and before the Project was to be approved by the City
15 Council, Petitioners continued to submit additional comments, including an expert report published
16 by the University of Southern California that refuted many of the claims made in the Draft Statement
17 of Overriding Considerations. Petitioners and other affected parties, including the ARB and
18 SCAQMD, among others, also submitted further comments emphasizing the need to re-evaluate the
19 Project's impacts and urging the City to reject the Final EIR and Project approval.

20 74. On August 19, 2015, the City Council on a 3-2 vote decided to approve the Final EIR
21 and the Project. The City Council made the following approvals:

22 (1) Ordinance No. 900 approving (1) *Change of Zone* to replace zoning with logistics
23 development, light logistics, and open space areas within the WLC site boundary; (2) *WLC*
24 *Specific Plan* for the development of up to 40.6 million square feet of high-cubed logistics
warehouse distribution facilities; (3) *Pre-Zoning/Annexation* of 85 acre site located along
Gilman Springs Road and Alessandro Boulevard; and (4) *Repeal of the Moreno Highlands*
Specific Plan that was previously adopted in 1992;

25 (2) Resolution No. 2015-56 certifying the EIR and adopting a Statement of Overriding
26 Considerations and Mitigation Monitoring Program;

27 (3) Resolution No. 2015-57 approving General Plan Amendments to modify land use
28 designations to business park/light industrial within the WLC specific plan area;

1 (4) Resolution No. 2015-58 approving Tentative Parcel Map No. 36457 to establish 26
2 parcels for financing and conveyance purposes without creating development rights;

3 (5) Resolution No. 2015-59 requesting that Riverside County Local Agency Formation
4 Commission (“LAFCO”) initiate proceedings to allow the City to annex the 85 acre site;

5 (6) Ordinance No. 901 approving the development agreement for the WLC; and

6 (7) Resolution No. CSD 2015-29 requiring that Moreno Valley Community Services District
7 request that LAFCO initiate proceedings for the expansion of the Community Services
8 District’s boundaries to include 85 acre site.

9 75. On September 23, 2016, Petitioners initiated litigation challenging the City’s failure
10 to comply with the CEQA in approving the WLC. *Ctr. for Cmty. Action & Envtl. Justice et al. v.*
11 *City of Moreno Valley*, Riverside Cty. Sup. Ct. Case No. RIC 1511327. Other community, labor,
12 environmental and governmental entities filed lawsuits challenging the City’s approval. Currently,
13 there are nine CEQA lawsuits challenging the Project that are pending in Riverside County Superior
14 Court.

15 **IV. The Developer-Sponsored Initiatives and Attempts to Circumvent the CEQA.**

16 76. In response to the pending CEQA challenges, Highland Fairview initiated a strategy
17 to use the initiative process as a way to evade the accountability provided by CEQA. Robert D.
18 Harris, the identified proponent of the initiatives, wrote in the Notice of Intent to Circulate Petition
19 that the purpose of the proposed three initiatives was to “affirm” “the City Council approval of the
20 World Logistics Center ... which is being challenged through lawsuits filed by those who would like
21 to stop the Project for their own interests.” In referencing “those,” the initiative proponent appears to
22 mean the SCAQMD, the County of Riverside, the Riverside County Transportation Commission,
23 Petitioners and others that filed CEQA lawsuits.

24 77. On November 16, 2015, the proponent submitted the three initiatives to the City
25 Clerk. First, the Land Use Initiative (also known as the “Moreno Valley Jobs Initiative”) addresses
26 the land use entitlements for the WLC. Specifically, it repeals Ordinance 900, Resolution 2015-57,
27 and 2015-59, which had been adopted by the City Council in August 2015. It then re-amends the
28 general plan and zoning map, re-repeals the Moreno Highlands Specific Plan, and re-adopts the
World Logistics Center Specific Plan. Stated more simply, these are the land use decisions that
allowed the property to shift from a housing and commercial development plan (i.e. the Moreno

1 Highlands Specific Plan) to a large warehouse development plan (i.e. World Logistics Center
2 Specific Plan). It also incorporates the CEQA mitigation monitoring program as “conditions of
3 development”, appended as “Exhibit F” to the initiative.

4 78. Second, the Development Agreement Initiative (also called the “Moreno Valley
5 Workforce Training Initiative”) addresses the development agreement for the Project. This initiative
6 repeals Ordinance 901, which was adopted by the City Council on August 25, 2015. It then adopts a
7 “new” World Logistics Center Development Agreement appended as “Exhibit B” to the initiative,
8 which is substantially similar to the agreement originally adopted by the City. The main difference is
9 that instead of including the original signatories to the Development Agreement – i.e. HF Properties,
10 Sunnymead Properties, Theodore Properties Partners, 13451 Theodore, LLC, and HL Property
11 Partners as landowner parties to the agreement, the new development agreement identifies “(t)he
12 Property Owners as of the Effective Date of the Agreement” as the landowner parties.

13 79. Third, the WLC Land Benefit Initiative deals with the action of the City Council in its
14 capacity as the Board of Directors of the City of Moreno Valley Community Services District.
15 Specifically, it repeals Resolution No. 2015-29, which called for the expansion of the boundary of
16 the District to accommodate the Project. This litigation does not challenge WLC Land Benefit
17 Initiative.

18 80. After the City Clerk determined that each measure had sufficient signatures under
19 Elections Code section 9215, the initiatives were submitted to the City Council. On November 24,
20 2015, the City Attorney presented the City Council with three options under Elections Code section
21 9215: (a) adopt the initiatives outright; (b) present the initiatives to the voters; or (c) prepare a report
22 pursuant to Elections Code section 9212. The City Council voted to adopt the three initiatives
23 outright pursuant to Election Code section 9215(a) instead of having the initiatives put to a full vote
24 by the City’s electorate.

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of State Law)**

3 81. Petitioners incorporate by reference the allegations set forth in paragraphs 1 through
4 80 above.

5 82. The initiative power conferred by the State Constitution is limited to effectuating
6 legislative actions. It may not be used to “render an administrative decision, adjudicate a dispute, or
7 declare by resolution the views of the resolving body.” *Am. Fed’n of Labor v. Eu* (1984) 36 Cal.3d
8 687, 714.

9 83. Section 8 of the Land Use Initiative, which imposes project “conditions of
10 development,” fails to constitute legislation and the approval of these conditions by the City, does
11 not constitute a legislative act. As such, the conditions may not be adopted via an initiative. Section
12 8 references a generic description of the CEQA mitigation measures previously approved by the City
13 through the EIR process. In particular, mitigation measures involve the “application of general
14 standards to specific parcels of real property,” which is an administrative or quasi-adjudicatory act
15 that cannot be effectuated through the initiative process. *Horn v. Cty. of Ventura* (1979) 24 Cal.3d
16 605, 614.

17 84. Further, the “conditions of development” document contained in “Exhibit F,” which
18 is incorporated through Section 8 of the Initiative, is not severable from the remaining sections of the
19 Initiative. The “conditions of development” under Section 8 of the Initiative are not grammatically,
20 functionally and/or volitionally separable from the remaining sections of the Initiative. Indeed, the
21 City Council findings and other evidence indicate that the Council would not have adopted the Land
22 Use Initiative if it did not contain the “conditions of development” under Section 8 to mitigate the
23 Project’s impacts. Moreover, Section 13 of the Initiative states that each exhibit, including Exhibit F,
24 (which contains the “conditions of development”) “attached to this Initiative is incorporated by
25 reference for all purposes related to this Initiative.” The removal of Section 8 would, therefore,
26 render Section 13 nonsensical because “Exhibit F” containing the “conditions of development”
27 would not be incorporated for all purposes of the Initiative.
28

1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Constitution, Article II, § 12)**

3 92. Petitioners incorporate by reference the allegations set forth in paragraphs 1 through
4 91 above.

5 93. The California Constitution states:

6 No amendment to the Constitution, and no statute proposed to the electors by the Legislature
7 or by initiative, that names any individual to hold any office, or names or identifies any
8 private corporation to perform any function or to have any power or duty, may be submitted
to the electors or have any effect.

9 The California Supreme Court has articulated that the “evil which the constitutional prohibition
10 seeks to prevent” is “the conferring of special privilege upon some organization sponsoring the
11 initiative.” *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 832-33.

12 94. The City Council violated this Constitutional provision when it approved the
13 Development Agreement Initiative because the ordinance confers directly on private organizations
14 the vested right to develop the WLC, in addition to establishing functions, duties and powers related
15 to that development.

16 95. The Development Agreement Initiative identifies “The Property Owners as of the
17 Effective Date of This Agreement” as parties to the agreement. The Development Agreement
18 requires these “Property Owners” “represent and hereby warrant that they have legal and equitable
19 interests in” the property where the WLC will be located. The Development Agreement Initiative
20 links the Property Owners to the owners of specific parcels of property, and as such “confer[s]
21 special privilege [and] advantage” on specific private entities. The specific property owners include
22 HF Properties; Sunnymead Properties; Theodore Properties Partners; HL Property Partners; 13541
23 Theodore, LLC; Highland Fairview Properties, LLC; HF Phase II Properties; Skinner Properties
24 Partners; Eastgate Properties Partners; GB Properties; Pasadena Properties Partners; CHE Properties
25 Partners; HFM Property Partners; Colville Properties; Highland Fairview Properties; Westcoast
26 Property Partners; and HF Educational Partners.

27 96. The Moreno Valley City Attorney detailed this thinly veiled attempt to evade
28 Constitutional requirements that bar using the initiative process to confer special privilege on the

1 organization sponsoring the initiative. The City Attorney explained that the specific property owners
2 did not need to be listed on the agreement “because in the proposed development agreement...the
3 property owners are tied to the property owners that were in place on a specific date certain, which
4 in our case, in this particular case, is Highland Fairview.”

5 97. Given that the City violated the California Constitution by adopting the Development
6 Agreement Initiative, its decision must be vacated and set aside.

7 **FOURTH CAUSE OF ACTION**

8 **(Violation of Government Code § 65865(a) and Civil Code § 1550)**

9 98. Petitioners incorporate by reference the allegations set forth in paragraphs 1 through
10 97 above.

11 99. A City may “enter into a development agreement with any person having a legal or
12 equitable interest in real property for the development of property...” Government Code § 65865(a).
13 By definition an agreement must have a second party, and an agreement lacking a second party
14 violates contract law. Civ. Code § 1550 (“It is essential to the existence of a contract that there
15 should be: (1) Parties capable of contracting;....”); *Klajic v. Castaic Lake Water Agency* (2001) 90
16 Cal.App.4th 987, 997 (“It is so elementary that it hardly need be stated that there must be at least two
17 parties to a contract.”) (internal quotations omitted).

18 100. The Development Agreement Initiative intentionally does not name the other parties
19 entering the agreement with the City. Instead, it uses the term “Property Owners as of the Effective
20 Date of this Agreement.” The City Attorney explained the reason for this as follows: “There’s been
21 case law that pertains to Development Agreements that are being introduced or proposed by
22 initiatives that prohibits those kinds of Development Agreements from including the name of the
23 corporation and so that’s why the name Highland Fairview was replaced with property owners.”

24 101. A unilateral development agreement, which inserts a party or parties after a certain
25 date is not a valid contract. Government Code section 65865(a) requires a City to enter into an
26 agreement with another contracting person or entity. Moreover, a voter initiative may not do that
27 which the City itself is not permitted to do. *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674-75.
28 Indeed, at least one California Court of Appeal has noted it may be “impossible” to draft valid ballot

1 measure involving development agreements because development agreements must refer to specific
2 parties. *Citizens for Responsible Gov't v. City of Albany* (1997) 56 Cal.App.4th 1199, 1230.

3 102. The City violated California's Development Agreement Statute and Civil Code
4 section 1550 by adopting the Development Agreement Initiative, and this Court should vacate and
5 set aside this decision.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioners pray for judgment as set forth below:

8 A. For alternative and peremptory writs of mandate directing Respondents to vacate the
9 November 24, 2015 decision adopting the Development Agreement Initiative and the Land Use
10 Initiative;

11 B. For a declaration that the Development Agreement Initiative and the Land Use
12 Initiative are an unlawful exercise of the initiative power under California law;

13 C. For a temporary stay, a temporary restraining order, and preliminary and permanent
14 injunctions restraining Respondents and Real Parties in Interest and their agents, servants, and
15 employees, and all others acting in concert with them or on their behalf, from taking any action (a)
16 to implement any portion of the Development Agreement Initiative or the Land Use Initiative, or (b)
17 to approve any permits, entitlements, licenses, or authorizations for the Project pursuant to the
18 Initiatives;

19 D. For costs of the suit;

20 E. For attorneys' fees under Code of Civil Procedure section 1021.5 and other applicable
21 authority; and

22 F. For such other legal and equitable relief as this Court deems appropriate and just.

23
24 DATED: February 22, 2016

Respectfully submitted,



25
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VERIFICATION

I, Aruna Prabhala, hereby declare:

I am a Staff Attorney of the Strategic Litigation Group at the Center for Biological Diversity, a non-profit corporation with offices in San Francisco, California and elsewhere in the United States. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and am familiar with its contents. The facts alleged in it are true to my personal knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on this 22 day of February 2016 at San Francisco, California.



Aruna Prabhala