

1 Susan Nash (State Bar # 122533)
Law Office of Susan Nash
2 P.O. Box 4036
Idyllwild CA 92549
3 Telephone: (909) 228-6710
Fax: (951) 659-2718
4 E-mail: snash22@earthlink.net

5 *Attorney for Petitioners/Plaintiffs*

6

7

8

SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF RIVERSIDE

10

11

**ALBERT THOMAS PAULEK;
FRIENDS OF THE NORTHERN SAN
JACINTO VALLEY,**

12

13

Petitioners/Plaintiffs,

14

vs.

15

**CITY OF MORENO VALLEY; AND
DOES 1 through 20 inclusive**

16

17

Respondent,

18

**HIGHLAND FAIRVIEW, a privately
held real estate development
company, and Does 21 through 50,
inclusive**

19

20

Real Party in Interest

21

22

23

24

25

26

27

28

Case No.

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

[Code Civil Proc. §§ 1085 and 1094.5; Pub.
Res. Code § 21000, *et seq.* (California
Environmental Quality Act)]

Case Designation: CEQA

INTRODUCTION

- 1
2 1. In this action, Petitioners and Plaintiffs Albert Thomas Paulek (Paulek) and the
3 Friends of the Northern San Jacinto Valley (Friends) challenge the August 19,
4 2015 decision by the Moreno Valley City Council (Respondent) to approve the
5 World Logistics Center Project (WLC or Project) and certify the Environmental
6 Impact Report (EIR) for the Project.
- 7
8 2. The Project evaluated in the Draft EIR (SCH No. 2012021045) covers 3918 acres
9 and proposes a maximum of 41.4 million square feet of “high-cube logistics”
10 warehouse distribution uses classified as “Logistics Development” (LD) and
11 200,000 square feet of warehouse-related uses classified as “Light Logistics” (LL)
12 on 2,710 acres with the WLC Specific Plan. Project refers to all related
13 development and planning activities currently proposed by Highland Fairview
14 (Real Party in Interest) in the eastern end of the City of Moreno Valley. The
15 Project site is generally located south of SR-60, east and north of Mystic Lake and
16 the San Jacinto Wildlife Area managed by the California Department of Fish and
17 Wildlife (CDFW) in Trust for the People of California. The Draft EIR “Project
18 Area” refers to the entire 3,918-acre area covered by the EIR, which encompasses
19 (a) the Specific Plan Area (2,710 acres); (b) the CDFW Conservation Buffer Area
20 (910 acres) (c) the Public Facilities Land Area (194 acres); and (d) the Off-site
21 Improvement Area (104 acres).
- 22
23 3. Over 30 years ago, the SJWA was established as a mitigation site for the State
24 Water Project, the transformative project that brought northern California water
25 to southern California. Over the ensuing years the State of California’s Wildlife
26 Conservation Board continued to acquire lands and secure a long-term recycled
27 water source for the new wildlife area. Today, the SJWA includes 19,000 acres of
28 plant and animal habitats managed by the CDFW. The SJWA includes the 10,000
acre Davis Road Unit, which shares a common property line with the southern
boundary of the WLC Specific Plan and the easterly 9,000 acre Potrero Creek
Unit. The SJWA represents over a \$90 million dollar public investment in wildlife
conservation and has developed into the most significant state wildlife
conservation site in southern California.
4. The Riverside County Habitat Conservation Agency (RCHCA) was formed in 1990

1 for the purpose of planning, acquiring and managing habitat for the Stephens'
2 kangaroo rat (SKR) and other endangered, threatened and candidate species. The
3 RCHCA is a Joint Powers Agreement agency. The City of Moreno Valley is a
4 signatory to the SKR Incidental Take Permit [Implementation Agreement (IA)]
5 allowing the “take” of SKR and designating the SJWA a “Core Reserve” [SKR
6 Conservation Area] pursuant to the federal Endangered Species Act, 16 U.S.C.
7 §1531 et seq. and the State Natural Community Conservation Planning Act [Fish
and Game Code §§ 2800-2835).

- 8 5. The Western Riverside County Regional Conservation Authority (RCA) was
9 created in 2004 to implement the Multiple Species Habitat Conservation Plan
10 (MSHCP) protecting 146 native species of plants and animals. The City of Moreno
11 Valley is a signatory to the MSHCP Incidental Take Permit [Implementation
12 Agreement (IA)] allowing the “take” of MSHCP covered plants and animals and
13 designating the SJWA “Conserved Habitat” pursuant to the federal Endangered
14 Species Act, 16, U.S.C. § 1531 et. Seq. and the state Natural Community
15 Conservation Planning Act (Fish and Game Code §§ 2800-2835).
- 16 6. The CEQA review of the Project recognized numerous significant impacts
17 resulting from the construction and subsequent operation of the WLC Specific
18 Plan. The Specific Plan proposes a massive warehouse development immediately
19 adjacent to the environmentally sensitive public lands of the SJWA and Lake
20 Perris State Recreation Area. These public lands are now designated “Core
21 Reserves” and “Conserved Habitat” under the SKRHCP and the MSHCP.
- 22 7. Instead of disclosing and analyzing the impacts on the environment in order to
23 address the Project’s significant impacts, the EIR fails to provide a complete and
24 accurate depiction of the Project and its environmental setting. As a result of the
25 EIR’s flawed analysis, environmental impacts were dismissed without substantial
26 evidence and contrary to the California Environmental Quality Act (Pub. Res.
27 Code § 21000 et seq. “CEQA”)
- 28 8. The EIR also fails to follow the substantive mandate of CEQA and neglects to
require adoption of feasible mitigation measures and alternatives that would
lessen the Project’s significant impacts, especially those related to Biological
Resources.

1 9. Petitioners accordingly request that this Court issue a writ of mandate under Cal.
2 Code of Civil Procedure §§ 1085 and 1094.5 directing Respondent to vacate and
3 set aside the approval of the Project and certification of the EIR. This request is
4 based on the following allegations:

5 **JURISDICTION AND VENUE**

6 10. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, 187,
7 and 526 of the California Code of Civil Procedure, and sections 21168 and 21168.5
8 of the Public Resources Code.

9 11. Venue for this action properly lies in the Riverside County Superior Court because
10 Respondent and the proposed site of the Project are located in Riverside County.

11 **THE PARTIES**

12 12. Petitioner/Plaintiff ALBERT THOMAS PAULEK (Paulek) is a retired (28.5 years)
13 Department of Fish and Wildlife Associate Wildlife Biologist and was the area
14 manager of the Department's SJWA from 1991 to 2006. Paulek is a Certified
15 Wildlife Biologist having extensive knowledge and experience working with the
16 wildlife resources and conservation programs of western Riverside County and the
17 state of California. Paulek participated in the CEQA review of the Project as an
18 individual and as the Conservation Chair of the Friends of the Northern San
19 Jacinto Valley. Petitioners seek to compel the City of Moreno Valley to properly
20 implement its CEQA duties to avoid and mitigate Project impacts to the plant and
21 animal resources of western Riverside County and the state of California and to
22 conserve existing and future wildlife habitat values of the San Jacinto Wildlife
23 Area.

24 13. Petitioner/Plaintiff the FRIENDS OF THE NORTHERN SAN JACINTO VALLEY
25 (Friends) is a California non-profit conservation group dedicated to preserving
26 and protecting the northern San Jacinto Valley, the San Jacinto Wildlife Area, and
27 surrounding environmental resources. Friends' members reside and recreate in
28 the San Jacinto Valley area of Riverside County. The organization sponsors
regular nature walks and environmental restoration activities at the SJWA and
works to influence a wide variety of land use issues that affect the SJWA, Mystic

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lake, and the northern San Jacinto Valley.

14. Petitioners presented written comments and objections during the administrative hearings on this matter being challenged in this petition. Petitioners and their members would be directly, adversely and irreparably affected if the Project proceeds. Petitioners would continue to be prejudiced by the Project and its components, as described herein, until and unless this Court provides the relief prayed for in this petition.

15. Respondent CITY OF MORENO VALLEY was incorporated in 1984 as a general law city. A council-manager government governs the City. The City is divided into five districts, each of which elects a representative to the city council. On August 19, 2015, the Moreno Valley City Council voted to approve the World Logistics Center Specific Plan and certified the Final EIR for the Project.

16. Does 1 through 20, inclusive are persons presently unknown to Petitioners, which are subdivisions or officers of the City or state of California, who are responsible for the actions described herein or for carrying out the functions of the city or state and who may be affected by this litigation. Petitioners will amend this petition to specifically identify each respondent as required and as the capacity and identity of each respondent becomes known.

17. Petitioners are informed and believe and based thereon allege that the Real Party in Interest HIGHLAND FAIRVIEW is a privately held real estate development company specializing in large scale industrial, commercial, and residential developments. Iddo Benzeevi is the President/Chief Executive of Highland Fairview. Highland Fairview is the developer of the Project and is headquartered in the City of Moreno Valley. Highland Fairview is the recipient of the August 19, 2015, Moreno Valley City Council approval of the Project.

18. Does 21-50, inclusive, are persons presently unknown to petitioners and who have a legal interest in the project being challenged herein, or are the property owners, developers, or others with a legal or equitable interest in the real property at issue herein. Petitioner will amend this petition to specifically identify each such respondent as required and as capacity and identity of each such respondent becomes known.

1 **GENERAL ALLEGATIONS**

2 19. Petitioners hereby re-allege and incorporate the allegations set forth in
3 paragraphs 1 through 18 inclusive.

4 20. The public lands of the San Jacinto Wildlife Area immediately south and
5 contiguous with the WLC Specific Plan southern boundary were acquired by the
6 state Wildlife Conservation Board (WCB) in fee simple in May 2001. The WCB
7 minutes of May 18, 2001¹ indicates the acquisition of these public lands was
8 funded using the Safe Neighborhood Parks, Clean Water, Clean Air and Coastal
9 Protection Bond Act of 2000 (Proposition 12).

10 21. The May 18, 2001 WCB minutes indicate funding for these wildlife conservation
11 lands was made pursuant to Proposition 12 § 5096.350 (a)(3) T & E for the
12 restoration or acquisition from a willing seller of habitat for threatened and
13 endangered species or for the purpose of promoting the recovery of those species.
14 Proposition 12 made the funds available for expenditure by the WCB for
15 “acquisition, development, rehabilitation, restoration and protection of real
16 property benefiting fish and wildlife, for the acquisition, restoration, or protection
17 of habitat that promotes the recovery of threatened, endangered or fully protected
18 species, maintain the genetic integrity of wildlife populations and serves as
19 corridors linking otherwise separate habitat to prevent habitat fragmentation...”

20 22. The Western Riverside County Regional Conservation Authority (RCA) was
21 created in 2004 to implement the Multiple Species Habitat Conservation Plan
22 (MSHCP). The MSHCP impetus is to assure the conservation of 146 species of
23 plants and animals on designated reserve lands [the SJWA is the most significant
24 MSHCP core reserve] in order to mitigate the “take” [loss] of species incidental to
25 the development of lands not designated for MSHCP conservation. Similarly, the
26 SKR Habitat Conservation Plan [state and federal endangered species “take”
27 permits] includes the SJWA as a primary “core” reserve to mitigate the incidental
28 habitat impact resulting from the development of lands not designated for SKR
conservation.

23. Of the 1.26 million acres covered by the MSHCP, 500,000 acres are designated for

¹ Submitted with Petitioner’s comment letters on the Draft EIR, April 5, 2013 and the Final EIR, June 9, 2015, for inclusion in the administrative record.

1 wildlife conservation. Of that half million acres, 347,000 acres were already
2 conserved as public or quasi-public land. The acquisition of the remaining
3 153,000 acres [additional reserve lands] for MSHCP wildlife conservation is the
4 primary function of the RCA. After the 2004 approval of the MSHCP, the 2001
5 WCB Proposition 12 land acquisitions of approximately 1,000 acres were
6 immediately included in the MSHCP Conservation Area and Counted toward the
7 Additional Reserve Lands.

8 24. In February 2012 the CEQA Notice of Preparation (NOP) of a Draft EIR was
9 circulated to the public, Trustee and Responsible agencies for comment.
10 Petitioner's March 22, 2012 NOP response letter advised the City of Moreno
11 Valley that the NOP was deceptive in that the WLC Specific Plan wrongly
12 identified the public lands acquired by the WCB in May 2001 as the "CDFW
13 Conservation Buffer Area". Similarly, the March 22, 20112 NOP response letter
14 from the California Department of Fish and Game², the state agency having
15 jurisdiction by law over fish and wildlife resources, advised the City of Moreno
16 Valley regarding the defective Project description, the need for compliance with
17 the requirements of CEQA, the MSHCP, the SKRHCP and the incidental "take"
18 permits for endangered, threatened, and/or candidate species (Fish and Game
19 Code § 2800 et seq.)

20 25. The Draft EIR was released for public and agency review in February 2013. The
21 CEQA review presented by the City of Moreno Valley and the Project proponent
22 fashioned straw man fallacies using the "CDFW Conservation Buffer Area" and
23 the SJWA "Open Space" designation. In doing so they sought to avoid addressing
24 the mandatory significant impacts to biological resources the WLC will have. The
25 straw man fallacies were presented in the EIR to avoid the required CEQA
26 consideration of significant impacts to the public lands of the SJWA, the MSHCP,
27 the SKRHCP, and the wildlife conservation mandates of the state of California.
28 The Final EIR used a different Project boundary line to analyze impacts to the
SJWA.

26. Petitioners have exhausted all administrative remedies by submitting written
comments to the City of Moreno Valley prior to the Project's approval to request

² The Department's name was changed to Fish and Wildlife on January 1, 2013.

1 compliance with CEQA and the completion of full and adequate environmental
2 review. All issues raised in this petition were raised before Respondent by
3 Petitioners, other members of the public, or public agencies prior to the approval
4 of the project.

5 27. Petitioners have complied with Public Resources Code section 21167.5 by prior
6 service of a notice upon the City of Moreno Valley indicating its intent to file this
7 petition. Proof of Service of this notification with the notification, is attached as
8 Exhibit A.

9 28. Petitioners have elected to prepare the record of proceedings in the above-
10 captioned proceedings or to pursue an alternative method of record preparation
11 pursuant to Pub. Rec. Code § 21167.6(b)(2). Notification of the Election to
12 Prepare the Administrative Record is attached as Exhibit B.

13 29. Petitioners have served a copy of this Petition on the Attorney General's office to
14 give notice of Petitioner's intent to bring this proceeding as a private attorney
15 general under Code of Civil Procedure section 102`1.5, which notice is attached as
16 Exhibit C.

17 30. Petitioner's have filed and served a request for Hearing and thus complied with
18 Pub. Res. Code § 21167.4. A copy of that notice is attached as Exhibit D.

19 31. This petition is timely filed in accordance with Public Resources Code section
20 21167 and CEQA Guidelines § 15112.

21 32. Respondents have abused their discretion and failed to act as required by law in
22 the following ways:

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF CEQA (PUBLIC RESOURCES CODE § 21000, *et seq.*)**

25 **The City of Moreno Valley did not comply with CEQA**

26 33. Petitioners hereby incorporate by reference each and every allegation set forth
27 above.

28 34. CEQA requires a lead agency for a project to prepare an EIR that complies with
the requirements of the statute. The lead agency must also provide for public
review and comment on the project and associated environmental documentation.
An EIR must provide sufficient environmental analysis such that decision makers

1 can intelligently consider environmental consequences when acting on proposed
2 projects.

3 35. Respondents violated CEQA by certifying an EIR for the project that is inadequate
4 and fails to comply with CEQA. Respondents:

- 5 a. Failed to adequately disclose or analyze the project’s impacts on the
6 environment, including but not limited to, the project’s impacts on biological
7 resources, the San Jacinto Wildlife Area, the MSHCP and the SKRHCP.
- 8 b. Failed to provide a stable, consistent and adequate description of the project,
9 which prohibited an accurate depiction of the project’s impacts on the
10 environment.
- 11 c. Failed to provide an adequate description of the existing environmental
12 settings of the project, vicinity, and regional context.
- 13 d. Failed to adopt a consistent and appropriate environmental “baseline” for
14 analysis of the project’s environmental impacts that contributed to the EIR’s
15 flawed analysis of environmental impacts.
- 16 e. Failed to adequately identify and analyze the project’s biological resource
17 impacts—including direct, indirect and cumulative impacts on the SJWA, the
18 MSHCP, the SKRHCP and wildlife resources.
- 19 f. Failed to adequately identify, analyze and adopt all feasible mitigation
20 measures and/or alternatives that would minimize direct, indirect and
21 cumulative impacts on biological resources.
- 22 g. Improperly relied upon regional plans to avoid full disclosure and mitigation
23 of the project’s impacts.
- 24 h. Improperly deterred impact analysis and mitigation measures in
25 contravention of CEQA’s requirement that mitigation measures be clearly
26 defined and enforceable.
- 27 i. Failed to adopt feasible mitigation measures and alternatives to reduce or
28 avoid significant impacts in direct contravention of CEQA’s substantive
mandate that all feasible mitigation measures be adopted to avoid or reduce a
project’s significant and potentially significant impacts.
- j. Failed to consider a reasonable range of alternatives by improperly dismissing
feasible alternatives, including those recommended by the public, trustee and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

responsible agencies and relying upon an improperly narrow list of project objectives to justify the elimination of feasible alternatives.

- k. Failed to properly disclose, analyze or mitigate conflicts with existing local, state and federal laws.
- l. Failed to adequately respond to comments submitted by the public and governmental agencies during review of the EIR.
- m. Failed to recirculate the EIR, or any portion of the EIR, despite the availability of significant new information within the meaning of Public Resources Code section 21092.1 and CEQA Guidelines § 15088.5.
- n. Failed to adopt an adequate Mitigation Monitoring or Reporting Program in order to assure that the mitigation measures and program revisions identified in the EIR are implemented.
- o. Failed to adopt adequate findings that alternatives to the project and proposed mitigation measures and alternatives that would have avoided or lessened the significant impacts of the project were infeasible and failed to disclose the readily available mitigation measures and alternatives that would meet the basic project objectives.

36. As a result of the foregoing defects, Respondent prejudicially abused their discretion by certifying an EIR that does not comply with CEQA and by approving the project in reliance thereon. Accordingly, Respondent's certification of the EIR and approval of the project must be set aside.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

- 1. For alternative and preemptory writs of mandate, commanding Respondent:
 - A. To vacate and set aside all approvals of the Project.
 - B. To suspend any and all activity pursuant to Respondent’s approval of the Project until Respondent has complied with all requirements of CEQA as are directed by this Court pursuant to Public Resources § 21168.9
- 2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by Respondent pursuant to Respondent’s approval of the Project until Respondent has fully complied with all requirements of CEQA.
- 3. For a declaration that the Project Approval is inconsistent with CEQA.
- 4. For costs of suit.
- 5. For Attorney fees pursuant to the Code of Civil Procedure section 1021.5; and
- 6. For such other and further relief as the Court deems just and proper.

Dated: September , 2015

By _____
 Susan Nash
 Attorney for Petitioners and Plaintiffs
 ALBERT THOMAS PAULEK
 FRIENDS OF THE NORTHERN SAN JACINTO VALLEY