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**RULING ON PETITION FOR WRIT OF MANDATE  
(imaged)**

**COMMENT**



NEW FILE

1 Superior Court of California  
2 County of San Bernardino  
3 247 W Third Street Dept S23  
4 San Bernardino CA 92415 0210

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUN 27 2018

BY Monica Real Ramos  
MONICA REAL RAMOS DEPUTY

7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

10 GREENSPOT RESIDENTS ASSOCIATION)  
11 and SAN BERNARDINO VALLEY  
12 AUDOBON SOCIETY,

Case No: CIVDS615280

13 Plaintiffs,

**RULING ON PETITION FOR WRIT OF  
MANDATE**

14 v

15 CITY OF HIGHLAND, CITY OF HIGHLAND  
16 CITY COUNCIL, and Does 1-20, Inclusive,

17 Defendants

18  
19  
20 This matter came before the court for a hearing on a Petition for Writ of  
21 Mandate. The court has reviewed and considered the briefs of the parties as well as  
22 the arguments of counsel and issues its ruling as follows:

23 **PROCEDURAL/FACTUAL BACKGROUND**

24 On September 15, 2016, petitioners Greenspot Residents Association and San  
25 Bernardino Valley Audubon Society (collectively, "Petitioners") filed a Verified Petition  
26 for Writ of Mandate wherein they allege a single cause of action for California  
27 Environmental Quality Act ("CEQA") Violations. Respondent is City of Highland ("City"),  
28 and the Real Parties in Interest are County of Orange ("County"), Orange County Flood  
Control District ("OC Flood Control"), Orange County Board of Supervisors ("OC Board"),

1 and LCD Greenspot, LLC ("LCD")<sup>1</sup> The writ challenges City's decision to approve the  
2 Harmony Specific Plan ("Specific Plan") on the ground that the Final Environmental  
3 Impact Report ("FEIR") is legally inadequate The adoption of the Specific Plan,  
4 certification of the FEIR, and other discretionary and ministerial approvals by City are  
5 known as the "Project "

6 Petitioners contend City failed to comply with the CEQA statutory scheme  
7 because (1) it failed to consider the "whole of the action" and improperly defined the  
8 Project, (2) it failed to fully disclose and properly evaluate the significance of the  
9 Project's greenhouse gas emissions, as well as the inconsistencies with the regional  
10 transportation plan, and (3) it failed to properly analyze or mitigate downstream  
11 flooding impacts of the Project Petitioners now seek a peremptory writ of mandate  
12 requiring City to set aside its certification of the FEIR and all Project approvals The  
13 parties have submitted the requisite briefs, and these matters are now before this  
14 Court

15 In the interest of efficiency, the parties are directed to the court's decision for  
16 the related case, CIVDS 1615347, *Sierra Club, et al v City of Highland*, for a complete  
17 discussion of the factual and procedural background of this case

## 18 **DISCUSSION**

### 19 **I. Statement of the Law**

#### 20 **A. Governing Statute Under CEQA**

21 CEQA provides two statutes governing the standard of judicial review – Public  
22 Resources Code sections 21168 and 21168.5<sup>2</sup> A case is governed by Public Resources  
23 Code section 21168 if it seeks review of a "determination, finding or decision made as a  
24 result of a proceeding in which by law a hearing is required to be given, evidence is

25  
26  
27 <sup>1</sup> In the related case CIVDS 1615347 the Respondent is the same as are the Real Parties in Interest with  
28 the exception that the Orange County Board of Supervisors is not named The petitioners in the related case are  
Sierra Club Crafton Hills Open Space Conservancy Tri-County Conservation League and Friends of Riverside Hills.  
The writ petitions are substantially similar and raise some of the same issues As a result the analysis in this decision  
is curtailed and reference is made to the court's decision in CIV1615347 for a complete discussion of the issues

<sup>2</sup> It has been held that the distinction between Sections 21168 and 21168.5 is rarely significant and in  
either case the issue before the court is whether the agency abused its discretion (*Gentry v City of Murmeta* (1995)  
36 Cal App 4th 1359 1374 )

1 required to be taken, and discretion in the determination of facts is vested in a public  
2 agency " Section 21168 provides

3  
4 Any action or proceeding to attack, review, set aside, void or annul  
5 a determination, finding, or decision of a public agency, made as a  
6 result of a proceeding in which by law a hearing is required to be  
7 given, evidence is required to be taken and discretion in the  
8 determination of facts is vested in a public agency, on the grounds  
9 of noncompliance with the provisions of this division shall be in  
10 accordance with the provisions of Section 1094 5 of the Code of  
11 Civil Procedure

12 In any such action, the court shall not exercise its independent  
13 judgment on the evidence but shall only determine whether the act  
14 or decision is supported by substantial evidence in the light of the  
15 whole record

16 (Code Civ Proc , § 21168 )

17 When a challenge to an agency's CEQA determination is governed by Section 21168,  
18 the agency's action on the project is reviewable under Code of Civil Procedure section  
19 1094 5

20 **B. Writ Proceeding Pursuant to CCP § 1094.5**

21 Code of Civil Procedure section 1094 5(a) vests authority in the court to review  
22 the validity of any final administrative order or decision made as a result of a  
23 proceeding in which, by law, a hearing is required to be given, evidence is required to  
24 be taken and discretion in the determination of facts is vested in the inferior tribunal  
25 The court's inquiry "shall extend to the questions of whether the respondent has  
26 proceeded without, or in excess of jurisdiction, whether there was a fair trial, and  
27 whether there was any prejudicial abuse of discretion" (Code Civ Proc , §1094 5(b),  
28 *Environmental Protection & Info Ctr v Cal Dept of Forestry & Fire Protection* (2008)  
44 Cal 4th 459, 520-21 )

Abuse of discretion is established if the respondent has not proceeded in the  
manner required by law, the order or decision is not supported by the findings, or the  
evidence does not support the findings (Code Civ Proc , §1094 5(b), *Sierra Club v.*  
*State Bd of Forestry* (1994) 7 Cal 4th 1215, 1236 ) If the petitioner claims that the

1 evidence does not support the findings, then in cases where the court is authorized by  
2 law to exercise its independent judgment on the evidence, the abuse of discretion is  
3 established if the court determines that the findings are not supported by the weight of  
4 the evidence. In all other cases, abuse of discretion is established if the court  
5 determines that the findings are not supported by substantial evidence in light of the  
6 whole record. (*Code Civ Proc*, §1094.5, subd (c) )

7 The court in its review can enter judgment either denying the writ or  
8 commanding the respondent to set aside the order/decision. If the judgment is to set  
9 aside the order/decision, then the court may order the reconsideration of the case in  
10 the light of the court's opinion and judgment, and order respondent to take further  
11 action as is specially enjoined upon it by law. However, the judgment cannot limit or  
12 control in any way the discretion legally vested in the respondent. (*Code Civ Proc*,  
13 §1094.5, subd (f) )

14 **B. Substantial Evidence – Standard of Review**

15 "When a trial court reviews an administrative determination by writ of  
16 administrative mandate, the appropriate standard of review depends on both the type  
17 of agency rendering the decision and the nature of the right involved." (*Rodriguez v.*  
18 *City of Santa Cruz* (2014) 227 Cal App 4th 1443, 1451 ) "[I]f the administrative decision  
19 maker is a local agency, the substantial evidence standard of review applies only if "the  
20 administrative decision neither involves nor substantially affects a fundamental vested  
21 right." [Citation]" (*Id*)

22 The reviewing court is not permitted to make its own factual findings. (*Burbank-*  
23 *Glendale-Pasadena Airport Authority v Hensler* (1991) 233 Cal App 3d 577, 590 ) As  
24 stated in *San Joaquin Raptor/Wildlife Rescue Center v County of Stanislaus* (1994) 27  
25 Cal App 4th 713, at 721-722

26  
27 "The ultimate decision of whether to approve a project, be that  
28 decision right or wrong, is a nullity if based upon an EIR that does  
not provide the decision-makers, and the public, with the  
information about the project that is required by CEQA." [Citation  
omitted] The error is prejudicial "if the failure to include relevant

1 information precludes informed decision making and informed  
2 public participation, thereby thwarting the statutory goals of the  
3 EIR process " [Citation omitted ]

4 "[T]he substantial evidence test applies to the court's review of the  
5 agency's factual determinations " [Citation omitted ] Substantial  
6 evidence means "enough relevant information and reasonable  
7 inferences from this information that a fair argument can be made  
8 to support a conclusion, even though other conclusions might also  
9 be reached " (State CEQA Guidelines, § 15384, subd (a), see also  
10 *Laurel Heights [Improvement Assn v Regents of University of  
11 California ("Laurel Heights I")* (1988) 47 Cal 3d 376, 393 )

12 Therefore, in applying the substantial evidence standard, the court must view the record  
13 "in a light most favorable to the decision of the [agency] and its factual findings must be  
14 upheld if they are supported by substantial evidence " [Citation ]' [Citation ]" (*Pollack v*  
15 *State Personnel Bd* (2001) 88 Cal App 4th 1394, 1404, see also, *Topanga Association*  
16 *for a Scenic Community v County of Los Angeles* (1974) 11 Cal 3d 506, 514 ) The  
17 court does not reweigh the evidence, but rather, it indulges all presumptions and  
18 resolves all conflicts in favor of the agency's decision (*California Youth Authority v*  
19 *State Personnel Bd* (2002) 104 Cal App 4th 575, 584 )

20 It is well-settled that "'[s]ubstantial evidence' is relevant evidence that a  
21 reasonable mind might accept as adequate to support a conclusion [Citation ] Such  
22 evidence must be reasonable, credible, and of solid value " (*California Youth Authority,*  
23 *supra*, 104 Cal App 4th at 584-585 ) Under the substantial evidence test, the inquiry  
24 "begins and ends with the determination as to whether, *on the entire record*, there is  
25 substantial evidence, contradicted or uncontradicted, which will support the  
26 determination, and when two or more inferences can reasonably be deduced from the  
27 facts, a reviewing court is without power to substitute its deductions for those of the  
28 trial court *If such substantial evidence be found, it is of no consequence that the trial*  
*court believing other evidence, or drawing other reasonable inferences, might have*  
*reached a contrary conclusion [Citations omitted ]" (*Bowers v Bernards* (1984) 150  
Cal App 3d 870, 873-874 (*italics in original* )*

1 In assessing whether substantial evidence exists, the court considers all evidence  
2 presented, including that which fairly detracts from the evidence supporting the Board's  
3 determination (*California Youth Authority, supra*, 104 Cal App 4th at 586 ) However,  
4 issues regarding the failure to include relevant information in the EIR "normally will rise  
5 to the level of a failure to proceed in a manner required by law only if the analysis in  
6 the EIR is clearly inadequate or unsupported [Citation]" (*Barthelemy v Chino Basin  
7 Municipal Water District* (1995) 38 Cal App 4th 1609, 1620 ) These issues present legal  
8 questions that are reviewed *de novo* (*City of Marina v Bd of Trustees of California  
9 State Univ* (2006) 39 Cal 4th 341, 355 )

10 **II. Analysis**

11 **A. City Must Consider "Whole of the Project"**

12 Petitioners contend the FEIR fails as a matter of law because it does not describe  
13 and evaluate the whole of the Project, and improperly excludes consideration of the  
14 Newport Avenue bridge connection from the Project Site across Mill Creek to Highway  
15 38, otherwise known as the "new Mill Creek Bridge" or "Fish Hatchery Bridge" [AR  
16 1462, 1471, 1474, 1974 ] According to Petitioners, the Bridge will exist solely to serve  
17 the Project's residents, and will bring customers to the Project's commercial zones  
18 Petitioners note that the conditions for approval for the Project require the extension of  
19 Newport Avenue to a new two-lane street with eight-foot shoulders to the new Bridge  
20 [AR 46712, 45906, 614 ]

21 As thoroughly discussed in the related case decision, the issue here is whether  
22 the proposed Mill Creek Bridge – which purports to connect the Project Site, via  
23 Newport Avenue, across Mill Creek to SR-38 – should be considered part of the Project,  
24 and thus, included in the Project description Petitioners here also rely on *Tuolumne  
25 County Citizens for Responsible Growth v City of Sonora* (2007) 155 Cal App 4th 1214

26 As discussed in the related case decision, it is not clear that the Bridge is entirely  
27 separable from the Project Although the FEIR states that the Bridge is not included as  
28 part of the Project, it also explains that the Bridge "would provide an exit point from the  
proposed [P]roject [S]ite to Highway 38 " [AR 29006 ] This statement, in conjunction

1 with the condition of approval requiring the Applicants to construct the Newport Road  
2 extension, seems to imply that one of the purposes of the Bridge – if not the only  
3 purpose for the Bridge – is to provide a point of ingress and egress between the Project  
4 and SR-38. The FEIR also goes on to note that certain wildlife movement corridors are  
5 located on and at the boundaries of the Project Site, and that “[w]ithout building into  
6 the [B]ridge design consideration, i.e., sufficient clearance for wildlife to pass under the  
7 [B]ridge, , a road and bridge at the southeast corner of the [Project] area could have  
8 a significant impact on wildlife movement” [AR 29007] “Given the biological  
9 sensitivity of Mill Creek southeast of the [P]roject [S]ite, the placement of a bridge will  
10 have to be carefully selected to avoid or minimize impacts to these biological  
11 resources” [AR 29007]

12 Therefore, although the FEIR states that the Bridge is not included as part of the  
13 Project, these statements seem to indicate not only that the purpose of the Bridge is to  
14 provide access to SR-38 from the southeastern portion of the Project Site, but also that  
15 Bridge may have a significant impact on the viability and success of the wildlife  
16 corridors on and near the Project Site. While City may be correct that approval of the  
17 Project does not compel or presume completion of the Bridge, and the Bridge is not an  
18 express condition of the Project, this is not necessarily indicative of whether the Bridge  
19 should be included as part of the Project. As found in *Tuolumne CCRG*, “whether  
20 projects are ‘integral’ to each other is not dependent on whether they can be  
21 implemented independently” (*Aptos Council v County of Santa Cruz* (2017) 10  
22 Cal App 5th 266, 283, citing to *Tuolumne CCRG, supra*, 155 Cal App 4th at p 1330 )  
23 Instead, projects are considered “integral” if the activity is part of the “whole of an  
24 action” (*Tuolumne CCRG, supra*, 155 Cal App 4th at p 1330 ) In this instance, the  
25 contemplated relationship between the Project and the Bridge, the express condition of  
26 approval of completion of the Newport Road extension, and the Bridge’s impact on  
27 certain mitigations required for approval of the Project, indicate that the Bridge should  
28 be considered part of the Project. Accordingly, the writ will be granted on this issue,  
and it is found that the EIR does not analyze the “whole of the action”



1           **B. Greenhouse Gas (GHG) Emissions Impacts**

2           Petitioners contend City improperly relied on two thresholds to conclude that the  
3 Project's GHG emissions will be less than significant – namely, whether the Project  
4 would achieve consistency with AB 32's emission reduction goals, and whether the  
5 Project would conflict with the Southern California Association of Government's 2012  
6 Regional Transportation Plan / Sustainable Communities Strategy [AR 16799-808 ]  
7 According to Petitioners, the FEIR improperly relies on the same analysis that the  
8 California Supreme Court rejected as defective in *Center for Biological Diversity v*  
9 *Department of Fish and Wildlife ("Newhall Ranch")* (2015) 62 Cal 4th 204 Petitioners  
10 also contend the FEIR fails as an informational document because there is no  
11 substantial evidence supporting its claim that the Project will not impede the goals of  
12 Executive Orders B-30-15 and S-3-05 [AR 16802 ] Lastly, Petitioners argue that the  
13 FEIR fails to use meaningful criteria to evaluate the Project's consistency with the  
14 Regional Transportation Plan / Sustainable Communities Strategy, especially passenger  
15 vehicle CO2 emissions reduction goals [AR 36119 ]

16           Regarding the methodology used in the FEIR to evaluate GHG emissions  
17 reduction goals, the parties are directed to the thorough analysis provided in the related  
18 case decision In short, unlike the flawed analysis used by the lead agency in *Newhall*  
19 *Ranch*, the FEIR sets forth a thorough and detailed discussion of its choice of  
20 methodology, the quantitative and qualitative methods relied upon in analyzing the  
21 thresholds of significance for GHG emissions for the Project, and how the Project meets  
22 the targets called for in AB 32 and the RTP/SCS

23           The methodology used by City relies on three independent bases for determining  
24 the Project's consistency with AB 32 (1) analyzing the Project in light of the AB 32  
25 Scoping Plan's statewide GHG emissions reduction goal of 28.5%, referred to as the  
26 "business as usual or BAU approach", (2) determining whether the Project met the  
27 26.2% reduction goal required for statewide land-use driven GHG emissions mandated  
28 by AB 32, as identified in analysis conducted by the Bay Area Air Quality Management  
District, and (3) considering the Project in relation to a "combination of consistency with

1 the quantitative emission reduction targets and compliance with applicable statewide  
2 and local regulatory programs designed to reduce GHG emissions consistent with AB  
3 32 " [AR 16770-71, 354-58 ] The Applicants note that the 28.5% GHG emissions  
4 reduction is derived from the AB 32 Scoping Plan (2008) [AR 4557 ]

5 The FEIR acknowledges there are several potentially applicable GHG plans it  
6 analyzes to determine significance, including local plans such as Southern California  
7 Association of Governments 2012 Regional Transportation Plan / Sustainable  
8 Communities Strategy ("SCAGs RTP/SCS"), the San Bernardino Associated  
9 Governments' Regional Greenhouse Gas Reduction Plan ("RGRP"), and City's General  
10 Plan. In addition, the FEIR asserts that the City "quantified and calculated the Project's  
11 GHG emissions to provide full disclosure of the Project's GHG impacts " [AR 16743 ] As  
12 a result, with respect to the first threshold question under the CEQA Checklist, City  
13 selected "consistency with AB 32's mandates as determined by comparisons of the  
14 Project's GHG emissions to emissions reduction targets called for under AB 32, and also  
15 a combination approach that uses consistency with the quantitative emission reduction  
16 targets and a qualitative analysis of whether the Project is compliant with applicable  
17 statewide and local regulatory programs designed to reduce GHG emissions consistent  
18 with AB 32 " [Id] Regarding the second threshold question, the FEIR states that City  
19 "evaluated whether the Project conflicts with the applicable plans, policies, and  
20 regulations adopted for the purpose of reducing emissions of GHG, including SCAG's  
21 RTP/SCS and the RGRP " [Id]

22 The FEIR notes that under Senate Bill ("SB") 375, SCAG was required to  
23 incorporate a "sustainable communities strategy" ("SCS") into its regional transportation  
24 plans ("RTPs") that would achieve GHG emission reduction targets by reducing vehicle  
25 miles traveled. In 2010, ARB adopted regional targets for the reduction of GHG applying  
26 to the years 2020 and 2035 [AR 16749 ] For the area under SCAG's jurisdiction,  
27 including the Project Site, ARB adopted regional targets for reduction of GHG emissions  
28 by 8% for 2020, and by 13% for 2035 [AR 16749-50 ] The FEIR notes that SCAG's SCS  
is included in the SCAG 2012-2035 RTP/SCS, and it was adopted by SCAG in April 2012.

1 The FEIR further notes that ARB "accepted the RTP/SCS's quantification of GHG  
2 emission reductions and determined that implementation of the RTP/SCS would achieve  
3 the 2020 and 2035 GHG emission reduction targets established by [C]ARB " [AR  
4 16750 ]

5 The FEIR then discusses the June 2013 SANBAG Regional GHG Reduction Plan  
6 ("RGRP"), which summarized the actions each member city has selected in order to  
7 reduce GHG emissions and each city's progress towards their selected GHG emissions  
8 reduction goals [AR 16761 ] The FEIR asserts that the City of Highland selected a goal  
9 to reduce its community GHG emissions to a level that is 22% below its projected BAU  
10 emissions in 2020 [AR 16762 ] In addition, the FEIR notes that "[t]he RGRP also  
11 demonstrates that the City complies with [C]ARB's AB 32 Scoping Plan recommendation  
12 by reducing GHG emissions by 2020 to a level that is 15% less than the City's 2008  
13 GHG emissions " [Id] The FEIR states that City has also committed to additional local  
14 measures to reduce GHG emissions, including "a performance standard for new  
15 development that seeks to achieve a 29% reduction below projected BAU emissions for  
16 new projects " [Id] The FEIR goes on to state that City has confirmed that the Project's  
17 28 5% reduction is consistent with the 29% reduction listed in the RGRP [Id]

18 As more thoroughly discussed in the related Decision, the FEIR sufficiently  
19 analyzes the thresholds of significance and the methodology used to reach its  
20 conclusion regarding GHG emissions impacts In the related Decision, it was concluded  
21 that substantial evidence supported the methodology used to determine the Project's  
22 compliance with AB 32 Therefore, the writ on this issue is denied

23 ***C. Water Resource / Flood Hazard Impacts***

24 Petitioners contend the FEIR fails to address the Project's hydrological impact on  
25 two issues (1) the incomplete description of the amount of earth-moving and fill  
26 needed to raise a portion of the Project Site out of the 100-year floodplain, and (2)  
27 consideration of the on-site and downstream impacts of the grading needed at the  
28 Project's southern boundary

1 As noted in the related Decision, City concedes that approximately 68 acres near  
2 the southern boundary of the Project Site is designated as being within FEMA Flood  
3 Hazard Zone A [AR 16859-60 ] "Zone A" refers to "an area of land subject to potential  
4 inundation by a storm that has a one percent probability of occurring in any given  
5 year," and is more commonly known as the "100-year flood plain " [AR 16859-60 ]  
6 However, City contends the "Zone A" designation does not mean that this portion of the  
7 Project Site is within the flood plain [AR 36239-40 ] In support, City points to the  
8 Hydrology and Sedimentation Technical Study and the Conceptual Master Drainage  
9 Plan <sup>3</sup> [AR 98, 21614-22404, 36239 ] City also contends that the mitigation measures  
10 demonstrate compliance with FEMA regulations, and thus, the implementation of these  
11 mitigation measures will reduce the impacts posed by the 100-year flood plain to less  
12 than significant [AR 16877 ]

13 However, as discussed in the related Decision, City admits that FEMA has not yet  
14 reviewed and approved detailed hydrological analyses for this zone [Fish Decl , Exh 2,  
15 AR 36239 ] Moreover, although the underlying hydrology study suggested this  
16 mitigation measure is based on the then-existing Flood Insurance Rate Maps data  
17 promulgated by FEMA, the study also states that the County of San Bernardino "is  
18 currently processing a levee certification with FEMA for the Mill Creek Levees As part of  
19 the process, new hydrology, hydraulics, and floodplain mapping may be adopted by  
20 FEMA in the future " [AR 21625 ] It is not known if that certification process has been  
21 completed and/or if FEMA has adopted new flood plain mapping for the area

22 Other questions regarding the adequacy of the mitigation measures are raised by  
23 City's reliance on the Conceptual Grading Plan [AR 16870 ] The FEIR asserts that the  
24 "Project layout and the Conceptual Grading Plan will avoid placing structures within the  
25 100 year flood zone by elevating the building pads outside of the 100-year flood plain,"  
26  
27

28 <sup>3</sup> City also asserts its engineering consultants considered hydrological data from other projects in the vicinity including the plans to replace the Garnet Street Bridge across Mill Creek downstream from the Project Site, and the hydrological calculations developed in connection with the design of the floodwall constructed by the County of San Bernardino [AR 36239 ]

1 and raising the elevations of these planning areas by approximately 40 feet [AR 16870,  
2 16877 ]

3         However, the Conceptual Grading Plan is nothing more than "a guide for the final  
4 grading design," and the FEIR expressly states that "[m]ore detailed grading plans will  
5 be required as part of the approval of any Tentative and Final subdivision maps " [AR  
6 16522 ] Indeed, regarding the Conceptual Grading Plan, the FEIR states that "all  
7 grading work will be balanced on-site," "no import or export of soils is anticipated," and  
8 "encroachment into a future development may occur" in order to achieve earthwork  
9 balance within a development phase [AR 16870 ] This description indicates that at the  
10 time City considered the FEIR, the Conceptual Grading Plan was less than certain. As a  
11 result, it is unclear how City could definitively conclude the Conceptual Grading Plan  
12 would adequately elevate certain planning areas to avoid the potential for flooding  
13 and/or dam inundation [AR 16877 ("the Project's grading plan proposes to raise the  
14 elevation of these planning areas"), AR 16878 ]

15         The FEIR's discussion of water drainage issues is similarly inadequate [AR  
16 16867 ] As with the flood plain impacts, the drainage development standards require  
17 the Applicants to provide evidence to City that a CLOMR and LOMR has been received  
18 from FEMA before City will issue grading or building permits [*Id*] In addition, the FEIR  
19 contemplates a drainage plan whereby the natural runoff from the foothills northeast of  
20 the Project Site will be collected in a separate "bypass" storm drain system which will  
21 send the runoff to Mill Creek. Another storm drain system is supposed to take the  
22 remaining runoff from the Project and send it to the Santa Ana River and Mill Creek  
23 [AR16765 ] The FEIR states that "the proposed storm drains will parallel or cross low-  
24 flow water quality features that are consistent with the San Bernardino Water Quality  
25 Management Plan requirements," and opines the release of nuisance flows and lower  
26 rate storm flows will promote the capture and recharge of storm water [AR 16767 ]

27         However, the FEIR seems to contemplate the need for a future hydrology study  
28 as part of the approval process. Indeed, the FEIR states that prior to the approval of  
the first tentative tract map, "a detailed hydrology study and hydraulic calculations shall

1 be submitted to and approved by the City of Highland. The study and calculations shall  
2 define rates of storm water runoff for pre- and post-development conditions, identify  
3 the size and location of proposed improvements and demonstrate compliance with the  
4 latest San Bernardino County MS4 permit " [AR 16867 ] This suggests that at the time  
5 the FEIR was approved, the Applicants had not yet determined storm water runoff rates  
6 for the Project, nor had they demonstrated compliance with the performance standards  
7 contemplated by the MS4 permit. Therefore, any determinations regarding the impacts  
8 significant and/or mitigation measures are partially based on hydrology studies which  
9 have yet to be conducted. CEQA prohibits the deferral of needed studies of  
10 environmental impacts (*Pub Res C*, § 21065, Guidelines, § 15378, subd (a) )  
11 Accordingly, the writ on the issue of water resources and flood hazard impacts will be  
12 granted

13  
14 **DISPOSITION**

- 15 1 GRANT Petitioners' Petition for Writ of Mandate on the ground that City failed to  
16 analyze the whole of the Project
- 17 2 DENY Petitioners' Petition for Writ of Mandate as to the adequacy of the FEIR's  
18 analysis of GHG emissions impacts, on the ground that substantial evidence  
19 supports City's conclusions on this issue
- 20 3 GRANT Petitioners' Petition for Writ of Mandate as to the adequacy of the FEIR's  
21 analysis of hydrological / flooding impacts, on the ground that there is no  
22 substantial evidence supporting City's conclusions on this issue

23  
24 Dated this 27 day of June, 2018

25  
26   
27 DONALD ALVAREZ  
28 Judge of the Superior Court

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO</b>  SAN BERNARDINO SUPERIOR COURT JUSTICE CENTER 247 W Third Street San Bernardino, CA 92415	<b>CASE NUMBER</b>  <b>CIVDS1615280</b>
GREENSPOT RESIDENTS ASSOCIATION and SAN BERNARDINO VALLEY AUDOBON SOCIETY,  <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center;">vs</div> CITY OF HIGHLAND, CITY OF HIGHLAND CITY COUNCIL, and Does 1-20, Inclusive  <div style="text-align: right;">Defendants</div>	Donald Alvarez, Judge  Department S23

I, Nicci Martinez, certify that I am not a party to the above-entitled case, that on the date shown below, I served the following document(s)

**RULING ON PETITION FOR WRIT OF MANDATE**

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below, each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at San Bernardino, California

SHUTE, MIHALY & WEINBERGER LLP 396 Hayes Street San Francisco, Ca 94102	RICHARDS WATSON GERSHON 355 South Grand Ave , 40 <sup>th</sup> Floor Los Angeles, CA 90071-3101
Law Offices of Abigail Smith 1455 Frazee Road, Suite 500 San Diego, Ca 92108	DENTONS US LLP 4655 Executive Drive, Suite 700 San Diego, CA 92121-3128

**NANCY EBERHARDT**  
 Court Executive Officer

Dated 6-28-18

By   
 NICCI MARTINEZ

CLERK'S CERTIFICATE OF SERVICE BY MAIL