

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 15 2016

By Alma Hernandez
Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

SIERRA CLUB, CRAFTON HILLS)	CASE NO.: CIVDS1615347
OPEN SPACE CONSERVANCY, TRI-)	
COUNTY CONSERVATION LEAGUE,)	JUDGE: D. Alvarez
and FRIENDS OF RIVERSIDE'S HILLS,)	DEPARTMENT: S23
)	ACTION FILED:
) Petitioners,	
) vs.	
))	PETITION FOR WRIT OF MANDATE
CITY OF HIGHLAND,)	
) Respondent,	(Code Civ. Proc. §§ 1094.5 and 1085; Cal. Pub. Res. C. § 21000 <i>et seq.</i> ; State CEQA Guidelines § 15000 <i>et seq.</i>)
_____ LCD GREENSPOT, LLC; COUNTY OF)	
ORANGE; ORANGE COUNTY FLOOD)	
CONTROL DISTRICT; and DOES 1)	CASE DESIGNATION: CEQA
through 100 inclusive,)	
) 1	
) Real Parties In Interest.	
_____))	
))	
))	

1
2 **INTRODUCTION**

- 3 1. Petitioners, Sierra Club, Crafton Hills Open Space Conservancy, Tri-County
4 Conservation League, and Friends of Riverside’s Hills respectfully request
5 issuance of a peremptory writ of mandate setting aside the approvals of
6 Respondent, City of Highland (“City”), made on or about August 11, 2016,
7 approving the Harmony Specific Plan project, including certification of a Final
8 Environmental Impact Report (Resolution No. 2016-046), an amendment to the
9 City of Highlands’s General Plan 2025 (Resolution No. 2016-047), and all
10 related approvals (collectively, “the Project”).
- 11 2. The Harmony Specific Plan Project concerns 1,650 acres of vacant and natural
12 lands immediately adjacent to the San Bernardino Mountains in the City of
13 Highland. The Project will construct approximately 3,632 housing units over
14 650 acres, thereby irreversibly impacting sensitive biological, water, and cultural
15 resources as well as creating traffic and public safety issues. The adverse
16 impacts associated with developing the unspoiled site have not been adequately
17 evaluated and/or mitigated in violation of the California Environmental Quality
18 (“CEQA”) (Public Resources Code § 21000 *et seq.*).
- 19 3. The City’s certification of the Environmental Impact Report (“EIR”) for the
20 Project must be vacated because the record lacks substantial evidence in support
21 of the EIR’s conclusions, and because the EIR fails to adequately describe or
22 disclose relevant information. Also, the Project results in significant and
23 unavoidable impacts but mitigation is ineffective to reduce impacts.
24 Additionally, the City improperly rejected reasonable alternatives that would
25 lessen some of the Project’s harmful effects.
- 26 4. During the administrative review process, numerous interested parties, including
27 public agencies, notified the City that there was need for further analysis and
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1 mitigation due to the Project's adverse effects including that the City should
2 adopt a smaller alternative which would avoid many of the Project's significant
3 or potentially significant impacts. In spite of these reasoned comments and
4 suggestions, the City approved the Project and certified the EIR.

5 5. By this verified petition, Petitioners allege the following:

6 **PARTIES**

- 7 6. Petitioner, Sierra Club, is a national environmental organization whose goals
8 include protecting California's lands, waters, air and wildlife. Local members of
9 the Sierra Club reside in the general vicinity of the Project site and are concerned
10 with the Project's impacts to the local and regional environment. Sierra Club
11 submitted comments opposing approval of the Project to the City.
- 12 7. Petitioner, Tri-County Conservation League, is an organization whose interests
13 include protecting the diverse and important biological and natural resources of
14 San Bernardino County. Tri-County Conservation League submitted comments
15 opposing approval of the Project to the City.
- 16 8. Petitioner, Crafton Hills Open Space Conservancy, is a non-profit corporation
17 dedicated to the preservation of the Crafton Hills immediately south of and
18 across Mill Creek from the Project site. Crafton Hills Open Space Conservancy
19 submitted comments opposing approval of the Project to the City.
- 20 9. Petitioner, Friends of Riverside's Hills, is a California non-profit corporation
21 formed for the purpose of preserving and protecting natural resources and
22 habitats including hillsides and water resources. Friends of Riverside's Hills
23 submitted comments opposing approval of the Project to the City.
- 24 10. Respondent, City of Highland, is a political subdivision of the State of
25 California. The City is a local governmental agency charged with the authority
26 of regulating and administering local land use and development within its
27 territory in compliance with the provisions of its general plan and zoning
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1 ordinances as well as applicable provisions of State law, including CEQA. The
2 City is the lead agency for the Project and is therefore charged with the duty of
3 ensuring compliance with applicable laws. Petitioners are informed, believe, and
4 thereon allege that the Project site was annexed by the City of Highlands in or
5 about the year 2000.

6 11. Real Party in Interest, LCD Greenspot, LLC, was the applicant for the Project,
7 has an ownership interest in the property, and/or claims an interest in the Project
8 approvals at the subject of this lawsuit. Specifically, Petitioners are informed,
9 believe, and thereon allege that LCD Greenspot, LLC has an “option” to acquire
10 ownership of all or a portion of the subject property from Real Parties in Interest,
11 the County of Orange and/or Orange County Flood Control District, and that
12 LCD Greenspot, LLC has been “authorized” by Orange County to process the
13 Project’s land use entitlements and enter into the subject Development
14 Agreement with the City of Highland.

15 12. Real Party in Interest, County of Orange, was the applicant for the Project, has
16 an ownership interest in the property, and/or claims an interest in the Project
17 approvals at the subject of this lawsuit. Specifically, Petitioners are informed,
18 believe, and thereon allege that the County of Orange took ownership of the
19 Project site from various public entities following construction of the Seven
20 Oaks Dam in the mid-to- late 1990’s.

21 13. Real Party in Interest, Orange County Flood Control District, was the applicant
22 for the Project, has an ownership interest in the property, and/or claims an
23 interest in the Project approvals at the subject of this lawsuit. Specifically,
24 Petitioners are informed, believe, and thereon allege that the County of Orange
25 took ownership of the Project site from various public entities following
26 construction of the Seven Oaks Dam in the mid- to-late 1990’s.

1 14. DOES 1 through 100 are individuals or entities that may have an ownership
2 interest in the property, were project applicants, or claim an interest in approvals
3 at the subject of this lawsuit. Petitioners are unaware of the true names or
4 capacities of the Real Parties in Interest identified herein under the fictitious
5 names DOES 1 through 100 inclusive.
6

7 **STATEMENT OF FACTS**

8 **The Project**

9 15. The Harmony Specific Plan Project is described as a comprehensive plan for the
10 development of approximately 1,650 acres at the foothills of the San Bernardino
11 Mountains in the City of Highland. The Project divides the site into 49
12 residential Planning Areas, and it will develop a combination of estate, low
13 density, medium density, medium-high density, and high-density residential
14 units. The Project provides for 5.7 acres of development of neighborhood
15 commercial land uses. The Project provides for optional additional commercial
16 development: 13.9 acres within Planning Areas 20A and 20C and a 1.0-acre
17 portion of each of Planning Areas 35 and 40 are given the “Neighborhood
18 Commercial Overlay (NC)”, meaning these areas can be developed as
19 residential, commercial or a combination of both. The Project will construct a
20 maximum of 3,632 residential units with a population ranging from 11,822 to
21 12,385 depending on whether and to what extent additional commercial areas are
22 developed.

23 16. The Project site is bounded by the San Bernardino National Forest to the North;
24 the Santa River to the west and northwest; the Mill Creek Wash to the south;
25 citrus groves and scattered residences to the southwest; and rural, low-density
26 residential homes on large acreage to the east. The site is mostly vacant with
27 vegetation and natural terrain. The topography is gently sloping and rolling in
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1 the south and west with moderately to steeply sloping terrain in the north and
2 northwest.

3 17. The Project site contains numerous natural and high-value resources. Areas of
4 biological significance include the riparian areas of Mill Creek and its mature
5 Riversidean Alluvial Fan Sage Scrub (RAFSS), which is habitat for sensitive and
6 protected wildlife species. Historically the site has been used for agriculture,
7 and it presently contains mature orange groves. Several large ranches occupied
8 the site over the years, including Featherstone Ranch, Brown Ranch and Roberts
9 Ranch. The EIR discloses that the foundations and remnants of these important
10 agricultural operations are still present. Evidence of three historic water delivery
11 facilities is also found on the site. The site has sensitive topography as it slopes
12 upward from the west to east starting at a grade of 7-10% to a point where the
13 slope rapidly steepens approaching the mountains.

14 18. The Project site is also uniquely situated. It receives stormwater runoff from the
15 foothills lying to the north and northeast, and the runoff is conveyed through the
16 site and ultimately to the Santa Ana River to the west and Mill Creek to the
17 south. The site is located within the San Andreas Fault Zone and branches of the
18 San Andreas Fault intersect the site. The 550-foot Seven Oaks Dam lies
19 immediately to the east of the site within the mountains; as such, the site is
20 located within the dam's "inundation" area. The City's General Plan designates
21 the site as being within a very high fire danger area. Access to the property is
22 limited: the two-lane Greenspot Road currently provides the primary access with
23 secondary access via Newport Avenue. In southern areas, the site lies within the
24 Federal Emergency Management District's 100-year Flood Plain.

25 19. In order to develop the site as proposed, the Project includes the following land
26 use approvals:

27 a) General Plan Amendment GPA-011-003 (Resolution No. 2016-047)

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1 to amend the General Plan Land Use Element, Table 2.1 Notes to
2 correct the “assumed density” for the Seven Oaks Planned
3 Development of the area of 2.2 du/ac. The Table currently provides,
4 “The assumed density for the Seven Oaks Planned Development area
5 assumes one dwelling unit per five acres.” This is 331 total. The
6 language in the Table will be modified to read, “The Harmony
7 Specific Plan may yield up to 3,632 dwelling units.

- 8 b) General Plan Amendment GPA-011-003 to amend the General Plan
9 Circulation Element to provide for a new roadway classification and
10 cross-section and updated Roadway Network Map and Bikeways
11 Map.
- 12 c) Zone Change No. ZC 011-003 (Ordinance Nos. 408, 409) to change
13 the existing zoning classification from Planned Development to
14 “Harmony Specific Plan SPR 011-001.”
- 15 d) Specific Plan SPR-011-001 to establish the rules and regulations that
16 will govern the development of the Specific Plan area, thus
17 establishing the zoning that will govern the Project site.
- 18 e) Development Agreement DA 012-002 (Ordinance No. 410), a contract
19 between the owner/developer and the City of Highland governing the
20 terms of the development of the Harmony site.
- 21 f) Tentative Tract No. 18861 (Resolution No. 2016-048) subdividing the
22 property into eight lots for the purpose of finance and conveyance; and
23 g) Tentative Tract No. 18871 (Resolution No. 2016-049), further
24 subdividing the property into 70 numbered and 99 lettered lots to
25 serve as the Project’s Master Tract Map.

26 **CEQA Review and Project Approval**

27 20. On July 20, 2012, the City distributed a Notice of Preparation (“NOP”) of
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1 Draft Environmental Impact Report (“DEIR”) for the Project, with the public
2 review period ending on August 23, 2012.

3 21. The City prepared a DEIR and released a Notice of Availability (“NOA”) of
4 DEIR with a comment period of March 21, 2014 to May 5, 2014, with an
5 extension given to June 4, 2014.

6 22. The City released a Notice of Recirculation and Availability for a Recirculated
7 Draft Environmental Impact Report (“RDEIR”) with a comment period from
8 August 29, 2014 to October 13, 2014.

9 23. Two public meetings were held regarding the Project on December 1, 2015 and
10 December 3, 2015.

11 24. The Project’s Final EIR was released on March 17, 2016.

12 25. The EIR (ENV 014-002) concludes that the Project will result in significant and
13 unavoidable impacts in the areas of air quality and traffic. In all other areas, the
14 EIR claims that impacts are less-than-significant, or less-than-significant with
15 mitigation imposed.

16 26. On March 31, 2016, and again on April 19, 2016, the City of Highland Planning
17 Commission held public hearings on the Project. On May 5, 2016, the Planning
18 Commission held a further public hearing and voted by Resolution No. 2016-005
19 to recommend approval of the Project to the City Council.

20 27. On June 30, 2016 the City of Highland City Council held a public hearing
21 regarding the Project. Numerous persons testified as to the Project’s adverse
22 environmental effects. The Council then “closed” the public hearing by
23 disallowing further “public input” but the Council continued the hearing to July
24 21, 2016 for the purpose of receiving the *applicant rebuttal* as well as *Staff*
25 *responses* to the testimony and other written comments in the record. At the
26 further “special” meeting on July 21, 2016, the Council explicitly did not allow
27 public testimony yet the Council moved to “continue” the “public hearing” to
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1 August 11, 2016.

2 28. On August 11, 2016, the City Council held a “continued public hearing” at
3 which the applicant was permitted to briefly address the Council. Following the
4 applicant’s statement, the Council then again “closed” the “public hearing”;
5 moved to make certain changes to the Project including moving the fire station
6 location subject to approval by the Fire Marshal; voted to certify the EIR; voted
7 to adopt Findings of Fact, a Mitigation, Monitoring and Reporting Program
8 (“MMRP”), and a Statement of Overriding Considerations; and voted to approve
9 the other land use approvals.

10 29. On August 16, 2016, the City posted with the County Clerk the Notice of
11 Determination (“NOD”) for the Project.

12 30. On August 23, 2016, the City held a further hearing to conduct the second
13 reading of the subject Ordinances.

14 **JURISDICTION AND VENUE**

15 31. This Court has jurisdiction to issue writs of mandate under Code of Civil
16 Procedure Section 1094.5 and declaratory relief under Section 1060.

17 32. Venue is proper in this Court pursuant to Code of Civil Procedure
18 Sections 393 and 394 as the Project is located in, and the relevant events
19 occurred in, San Bernardino County, and because the City is located in San
20 Bernardino County.

21 33. The City’s approval of the Project will cause Petitioners irreparable injury
22 for which Petitioners have no adequate remedy at law. Petitioners and their
23 members will be irreparably harmed by the City’s actions in approving the
24 Project. Petitioners were harmed by, among other things, the failure of the City
25 in its certification of the EIR to adequately evaluate the potential impacts of the
26 Project, and the City’s approval of the Project without providing adequate and
27 effective mitigation measures contrary to the requirements of State law.

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2 34. The maintenance of this action is for the purpose of enforcing important public
3 policies of the State of California with respect to the protection of the
4 environment under CEQA and conformance with state law and local law. The
5 maintenance and prosecution of this action will confer a substantial benefit upon
6 the public by protecting the public from environmental and other harms alleged
7 in this Petition. Petitioners are acting as private attorneys general to enforce
8 these public policies and prevent such harm.

9 35. Petitioners have performed all conditions precedent to filing the action by
10 complying with the requirements of Public Resources Code § 21167.5, in
11 notifying Respondent of the filing of this action (attached hereto as Exhibit "A"),
12 and by complying with the requirements of Public Resources Code § 21167.6, in
13 notifying Respondent of Petitioner's election to prepare the record of
14 Respondent proceedings in connection with this action (attached hereto as
15 Exhibit "B").

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 36. During the Project's administrative review process, Petitioners commented to the
18 City that the Project would result in potentially significant impacts to/from
19 including, but not limited to: aesthetics, air quality, biological resources, cultural
20 resources, hydrology, geological resources, greenhouse gases, public safety and
21 traffic. Petitioners commented that the EIR was legally inadequate; that further
22 mitigation was required; and that project alternatives were feasible.

23 37. As a result of these comments in the record, Petitioners exhausted their
24 administrative remedies within the meaning of Public Resources Code, § 21177.

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2 **CAUSE OF ACTION**

3 **(Writ of Mandate)**

4 **(All parties did not comply with the requirements of CEQA.)**

5 38. Petitioners hereby reallege and incorporate paragraphs 1 through 37 above as
6 though set forth in full herein.

7 39. CEQA requires that an EIR evaluate the proposed “project,” which is defined as
8 “the whole of the action which has the potential for resulting in either a direct
9 physical change in the environment, or a reasonably foreseeable indirect physical
10 change in the environment.” (State CEQA Guidelines, § 15378 (a).) CEQA also
11 prescribes that an EIR must provide a project description and that the project
12 description must be accurate and complete. (State CEQA Guidelines, § 15124;
13 *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) Petitioners
14 and others commented that the EIR excludes certain reasonably foreseeable
15 components of the Project. For example, the EIR excludes the easterly Newport
16 Avenue bridge/connection to Highway 38. The Project provides two points of
17 westerly access – Greenspot Road and a westerly entrance on Newport Avenue.
18 The bridge/connection would connect easterly areas of the Project site from
19 Newport Avenue to Highway 38, and would provide a logical point of ingress
20 and egress for Project residents. This connection will represent a major point of
21 access and will capture substantial traffic flows yet it was not evaluated in the
22 DEIR or RDEIR. The exclusion of the bridge/connection from the EIR’s
23 analysis was in error.

24 40. CEQA provides that an adequate EIR must evaluate all potentially significant
25 environmental impacts of a proposed project including both direct and indirect
26 impacts as well as cumulative impacts. (State CEQA Guidelines, §§ 15126,
27 15126.2 (a), 15130) Petitioners and others commented that the EIR failed to
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1 adequately evaluate and conclusions are not based on substantial evidence with
2 respect to impacts to/from including, but not limited to, aesthetics, air quality,
3 biology and habitats, cultural/historical resources, flooding, geology, greenhouse
4 gas emissions, hazards, hydrology, land forms, land use, noise, public safety,
5 noise, toxics, and traffic. By way of example, Petitioners and others commented
6 that:

- 7 a) There is an existing wildlife corridor in the easterly areas of the Project
8 site, and that viability of the wildlife corridor depends on unimpeded
9 natural open space in the upper Mill Creek Wash, enabling wildlife
10 movement between the San Bernardino Mountains to the Crafton Hills.
11 The EIR failed to fully evaluate and mitigate the biological effects of
12 developing high-density residential and commercial uses in the eastern
13 areas of the Project site within and/or in close proximity to the wildlife
14 corridor. The EIR likewise failed to properly evaluate the impacts
15 associated with the future connection of Newport Avenue to Highway 38,
16 which will be located in the most sensitive area of the wildlife corridor
17 connection to Crafton Hills.
- 18 b) The Project conflicts with County of San Bernardino policies relating to
19 the preservation of Mill Creek as an important riparian area as well as
20 preservation of the upper reaches of the Santa Ana River. The Project
21 impacts mature RAFSS habitat within Mill Creek, and the Project
22 proposes an enclave of commercial use at a site where Mill Creek and its
23 associated RAFSS habitat are narrowest and most vulnerable to human
24 activity. The Project fails to fully evaluate or mitigate these impacts.
- 25 c) The Project will involve fill in the Santa Ana River and Mill Creek
26 floodplain(s) but the EIR does not evaluate how this fill may affect
27 downstream areas.
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- 2 d) Aesthetic impacts have not been fully evaluated, and impacts are
3 significant because the Project introduces an area of mass grading and a
4 dense residential community where none currently exists in the visual
5 setting. Likewise, impacts of construction grading activities have not
6 been fully evaluated and indeed the “conceptual” grading plan does not
7 show that impacts are less than significant, particularly when it is known
8 that the site contains very steep slopes.
- 9 e) The EIR failed to adequately evaluate the effects of the Project on the
10 community at large in terms of fire response time/emergency evacuation
11 issues. While the site and surrounding areas are known to be highly
12 vulnerable to fire danger, the EIR fails to analyze how evacuating Project
13 traffic will affect the ability of current residents to evacuate in the event
14 of a fire emergency. The EIR’s traffic analysis states that the internal
15 circulation system is adequate but does not address what happens when
16 thousands of residents evacuate to external streets in combination with
17 existing residents. Overall, the EIR fails to properly evaluate how the
18 added human activity due to the Project may increase fire risk to the
19 existing community.
- 20 f) The Project sites a new housing development in an earthquake fault zone
21 and/or on a fault line, which, contrary to the EIR’s conclusions, must be
22 deemed a significant impact of the Project.
- 23 g) The analysis of greenhouse gas emissions (“GHGs”) fails to justify the
24 use of the 28.5% reduction as the threshold of significance in view of a
25 recent Supreme Court case law holding that a 29% reduction over the
26 “business as usual” threshold may be insufficient when evaluating a
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1 specific development proposal. (*Center For Biological Diversity v.*
2 *California Dep't of Fish and Wildlife* (2015) 62 Cal.4th 204, 227.)

3 h) Contrary to the EIR's conclusions, there are significant land use impacts
4 due to the Project's marked deviations from the City's General Plan for
5 density, and because of deviations from the Municipal Code with respect
6 to construction grading.

7 41. CEQA establishes a duty on the part of the lead agency to mitigate the
8 significant environmental impacts of a project. (Public Resources Code § 21002,
9 21002.1; Guidelines, § 15021 (a).) A lead agency may not approve a project for
10 which there are significant environmental impacts unless the agency makes
11 findings that: (a) mitigation measures have been required of the project which
12 avoid or substantially lessen the significant environmental impacts, or (b)
13 mitigation measures are found to be infeasible based on substantial evidence.
14 (Public Resources Code §§ 21081, 21081.5; Guidelines, §§ 15091 (a)(b), 15092
15 (b).) Petitioners and others commented that not all feasible mitigation was
16 required of this Project, and Petitioners and others proposed feasible mitigation
17 that has not been shown to be infeasible based on substantial evidence in the
18 record. For instance, Petitioners proposed mitigation with respect to the wildlife
19 corridor that was not adopted and not shown to be infeasible. Also for instance,
20 Petitioners commented that there was no mitigation adopted for fire
21 hazards/public safety, and that in fact the "Conceptual Fire Protection Plan" is
22 not part of the CEQA mitigation program.

23 42. CEQA provides that adopted mitigation measures must be certain and
24 enforceable. (Public Resources Code § 21081.6(b); Guidelines, §
25 15126.6(a)(2).) The lead agency must ensure that mitigation measures are
26 required by or incorporated into the project. (Public Resources Code §21081.6
27 (b).) Petitioners and others commented that proposed mitigation measures were
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1 uncertain, unenforceable, ineffective and/or deferred in violation of CEQA. By
2 way of example, Petitioners and others commented that:

- 3 a) Long-term mitigation for loss of/impacts to the wildlife corridor are not
4 sufficiently mitigated; in particular the viability of the corridor is not
5 assured when it is the City and the applicant who are responsible for
6 monitoring the corridor, and when the applicant would fund the
7 management activities for only five years following Project completion.
8 Monitoring by a qualified third party such as a resource conservancy, with
9 a permanent non-wasting monetary endowment would ensure the desired
10 functions of the corridor in perpetuity.
- 11 b) The City is permitted to dispense with the Project's "final" fire facility if
12 the City approves other "functionally-equivalent" measures. This
13 represents uncertain mitigation.
- 14 c) The standards of MM GEO-1 relating to implementation of a 50-foot
15 buffer between housing structures and the earthquake fault line are
16 uncertain and deferred. Indeed, structures are *allowed* in the 50-foot
17 setback subject to a future report that will be prepared outside the CEQA
18 review process.
- 19 d) Hydrology mitigation is deferred when a Water Quality Management Plan
20 (WQMP) has not yet been prepared.
- 21 e) Mitigation for hazards/soils is deferred when MM HAZ-2 calls for the
22 preparation of a report and development of a remediation plan after
23 Project approval and outside the CEQA review process.

24 43. CEQA provides that a lead agency has a duty to adopt a project alternative if it is
25 feasible. (Public Resources Code § 21002) A lead agency may not reject an
26 alternative unless the agency makes findings supported by substantial evidence
27 showing that the alternative is infeasible. (State CEQA Guidelines, §§ 15091
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1 (a)(3), 15092.) Petitioners and others commented that alternatives were
2 available that would lessen the significant impacts of the proposed project but
3 that these alternatives had not been shown to be infeasible based on substantial
4 evidence in the record. The environmentally superior alternative – the Smaller
5 Project Alternative (Alternative 4) – would reduce significant environmental
6 impacts by developing only 1,400 units and avoid development in some of the
7 site’s most sensitive areas. This alternative has not been shown to be infeasible
8 based on substantial evidence in the record.

9 44. CEQA provides that an EIR must be recirculated after significant new
10 information is added after the public comment period. (State CEQA Guidelines
11 § 15088.5.) Significant new information was added to the EIR following
12 circulation of the RDEIR including but not limited to information regarding
13 greenhouse gas emission impacts. The City failed to comply with CEQA by not
14 again re-circulating the EIR for public review and comment.

15 45. At the June 30, 2016 City Council meeting, the Council continued the public
16 hearing to July 21, 2016 but indicated that the Council would not consider any
17 material after that date except for materials presented by the applicant or Staff,
18 and it informed the public that the public hearing was “closed” to the public for
19 further testimony or presentation of written comments. This is contrary to
20 CEQA which allows any claim to be “presented to the public agency orally or in
21 writing ...prior to the close of the public hearing on the project.” (Public
22 Resources Code § 21177(b).) The Council’s instruction to the public was at best
23 confusing and lead to a misunderstanding of the public’s right to present
24 additional information and testimony until the actual close of the public hearing,
25 which appears to have occurred on August 11, 2016. In addition to causing
26 confusion among members of the public and undermining the information-

1 gathering purposes of CEQA, the City's actions may also excuse parties from
2 CEQA's exhaustion requirements.

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4 46. For these reasons, the City violated CEQA and the Project approvals must be set
5 aside. (Code Civ. Proc., §§ 1085, 1094.5; Public Resources Code § 21168.)

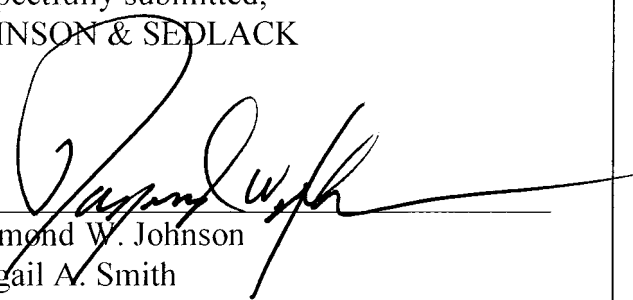
6 **PRAYER FOR RELIEF**

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

- 8 a) For the court's peremptory writ of mandate requiring Respondent, City of
9 Highland, to set aside its decision certifying the EIR for the Project.
10 b) For the Court's peremptory writ of mandate requiring Respondent, City of
11 Highland, to set aside all Project approvals.
12 c) For such other and further relief, including preliminary and permanent
13 injunctive relief, in the event that a Real Parties in Interest, or their agents
14 or instrumentalities, intend to commence construction on the site while
15 this lawsuit is pending.
16 d) For such other relief as may be just and proper.
17 e) For the costs of this suit, including attorney's fees, pursuant to Code of
18 Civil Procedure § 1021.5.

19 DATED: September 15, 2016

Respectfully submitted,
JOHNSON & SEDLACK

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22
23 By: 
24 Raymond W. Johnson
25 Abigail A. Smith
26 Kimberly A. Foy
27 Kendall Holbrook
28 Attorneys for Petitioners

VERIFICATION

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

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

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.
14

15 Dated: September 14, 2016

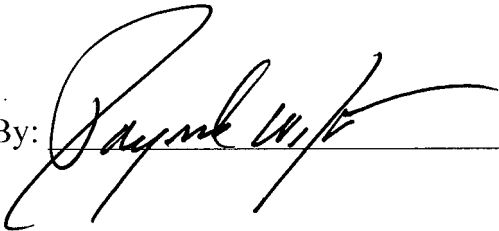
By: Tim F. Floyd

VERIFICATION

1
2 I, Raymond W. Johnson, attorney for Petitioner Crafton Hills Open Space
3 Conservancy, declare that I have read the foregoing Petition for Writ of Mandate and
4 know its contents. The matters stated in the Petition are true of my own knowledge and
5 belief except as to those matters stated on information and belief, and as to those matters
6 I believe them to be true. I verify the foregoing Petition for Writ of Mandate for the
7 reason that the Petitioners are absent from the county wherein my office is located.

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

10
11 Dated: September 15, 2016

By:  _____

VERIFICATION

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

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

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.
14

15 Dated: September 13, 2016

By: K.R. Ballmer

VERIFICATION

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

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

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.
14

15 Dated: September 14, 2016

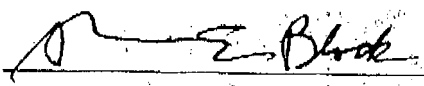
16 By: 
17 Richard E. Block
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EXHIBIT "A"

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Johnson & Sedlack

A T T O R N E Y S a t L A W

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September 14, 2016

VIA U.S. MAIL

City of Highland
City Clerk
27215 Base Lane
Highland, CA 92346

RE: Notice of Intent to File CEQA Petition in the Matter of the Certification of an Environmental Impact Report for the Harmony Specific Plan Project (SPR-011-001)

To the City of Highland:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5 that this letter serves as written notice of the intent of Petitioners, SIERRA CLUB, CRAFTON HILLS OPEN SPACE CONSERVANCY, TRI-COUNTY CONSERVATION LEAGUE, AND FRIENDS OF RIVERSIDE'S HILLS, to file a Petition for Writ of Mandate under the provisions of the California Environmental Quality Act ("CEQA") against Respondent, CITY OF HIGHLAND, challenging the City's certification of an Environmental Impact Report (ENV-014-002) and all associated approvals for the Harmony Specific Plan Project made on or about August 11, 2016.

Sincerely,



Raymond W. Johnson
JOHNSON & SEDLACK

EXHIBIT "B"

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1 JOHNSON & SEDLACK
RAYMOND W. JOHNSON SBN 192708
2 ABIGAIL A. SMITH SBN 228087
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6 abby@socalceqa.com

7 Attorneys for Petitioners, Sierra Club, Crafton Hills Open Space Conservancy, Tri-
County Conservation League, and Friends of Riverside's Hills
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNADINO**

12 SIERRA CLUB, CRAFTON HILLS) CASE NO.:
13 OPEN SPACE CONSERVANCY, TRI-)
14 COUNTY CONSERVATION LEAGUE,)
and FRIENDS OF RIVERSIDE'S HILLS,) JUDGE:
15) DEPARTMENT:
16) ACTION FILED:

17 Petitioners,)

18 vs.)

19 CITY OF HIGHLAND,)

20)
21 Respondents,)
22)

23 LCD GREENSPOT, LLC, COUNTY OF)
24 ORANGE, ORANGE COUNTY FLOOD)
25 CONTROL DISTRICT, and DOES 1)
through 100 inclusive:)

26 Real Parties In Interest.)
27)
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**PETITIONERS' NOTICE OF
ELECTION TO PREPARE THE
ADMINISTRATIVE RECORD**

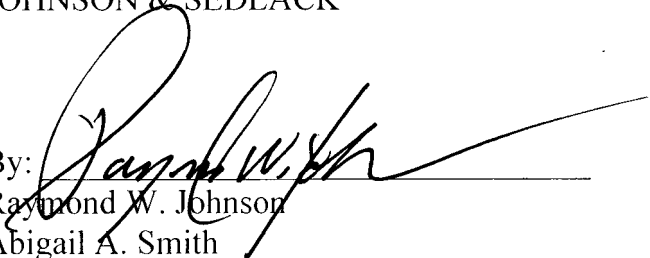
(Cal. Pub. Res. C. § 21167.6)

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that pursuant to California Public Resources Code §
3 21167.6, Petitioners SIERRA CLUB, CRAFTON HILLS OPEN SPACE
4 CONSERVANCY, TRI-COUNTY CONSERVATION LEAGUE, and FRIENDS OF
5 RIVERSIDE'S HILLS, hereby notify Respondent, CITY OF HIGHLAND, of
6 Petitioners' election to prepare the Administrative Record of proceedings relating to this
7 action.

8
9 DATED: September 15, 2016

Respectfully submitted,
JOHNSON & SEDLACK

10
11
12 By: 
13 Raymond W. Johnson
14 Abigail A. Smith
15 Kimberly A. Foy
16 Kendall Holbrook
17 Attorneys for Petitioner
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