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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**

14 GREENSPOT RESIDENTS ASSOCIATION
15 and SAN BERNARDINO VALLEY
16 AUDUBON SOCIETY,

17 Petitioners,

18 v.

19 CITY OF HIGHLAND; CITY OF
20 HIGHLAND CITY COUNCIL; and DOES 1
through 20, inclusive,

21 Respondents.

22 LCD GREENSPOT, LLC; ORANGE
23 COUNTY FLOOD CONTROL DISTRICT;
24 COUNTY OF ORANGE; ORANGE
COUNTY BOARD OF SUPERVISORS; and
DOES 21 through 40, inclusive,

25 Real Parties in Interest.

CASE NO. CIVDS 1615280

ACTION FILED: September 15, 2016

**COMBINED OPPOSITION BRIEF OF
RESPONDENTS CITY OF HIGHLAND
AND CITY OF HIGHLAND CITY
COUNCIL AND REAL PARTIES IN
INTEREST COUNTY OF ORANGE,
ORANGE COUNTY FLOOD CONTROL
DISTRICT, ORANGE COUNTY BOARD
OF SUPERVISORS AND LCD
GREENSPOT, LLC TO VERIFIED
PETITION FOR WRIT OF MANDATE**

CASE DESIGNATION: CEQA

Date: April 6, 2018
Time: 10:00 a.m.
Dept.: S23
Judge: Honorable D. Alvarez

TABLE OF CONTENTS

	Page
INTRODUCTION	1
STATEMENT OF FACTS	2
CEQA STANDARD OF REVIEW	9
ARGUMENT	13
I. The Final EIR Properly Evaluated The Mill Creek Bridge.....	13
A. The Mill Creek Bridge is Not a Part of the "Project" as Defined By CEQA	13
B. Neither the Facts Nor the Law Supports A Conclusion That the Final EIR Engaged in Piecemealing	15
C. Petitioners' Unsubstantiated Assertions Do Not Justify a Finding That Piecemealing Occurred	19
D. The Final EIR Properly Discloses Cumulative Impacts Relative To The Possibility That The City Might Pursue The Mill Creek Bridge.....	23
II. THE CITY'S ANALYSIS, DISCUSSION AND FINDINGS REGARDING THE PROJECT'S POTENTIALLY SIGNIFICANT GHG IMPACTS COMPLY WITH CEQA.....	24
A. Using Well Established Methodologies, the Final EIR Thoroughly Discloses the Project's GHG Impacts.....	25
B. The City Properly Determined That the Project Will Have Less Than Significant GHG Impacts.....	29
C. Substantial Evidence Supports the Finding That the Project Will Have Less Than Significant Impacts Regarding Conflicts With An Applicable Plan, Policy, Or Regulation Adopted For the Purpose of Reducing GHG Emissions	38
D. The Final EIR Adequately Discusses, Discloses and Evaluates The Project In Relation to California's Post-2020 GHG Emission Goals	41
III. The Final EIR's Analysis and Findings Regarding Flooding Impacts Comply With CEQA.....	44
A. The Final EIR Includes a Detailed Evaluation of Project Flooding Impacts and Mitigates them to Less than Significant.....	46
B. Petitioners Erroneously Argue That The Final EIR Omits Required Analysis of Project Flooding Impacts	48
CONCLUSION	52

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TABLE OF AUTHORITIES

Page(s)

CASES

Al Larson Boat Shop, Inc. v. Bd. of Harbor Com.
 (1993) 18 Cal.App.4th 7299

Anderson First Coalition v. City of Anderson
 (2005) 130 Cal.App.4th 117313

Bakersfield Citizens for Local Control v. City of Bakersfield
 (2004) 124 Cal.App.4th 118412, 49

Banning Ranch Conservancy v. City of Newport Beach
 (2012) 211 Cal.App.4th 1209 passim

Barthelemy v. Chino Basin Mun. Water Dist.
 (1995) 38 Cal.App.4th 160911, 49

In re Bay-Delta Programmatic Env'tl. Impact Report Coordinated Proceedings
 (2008) 43 Cal.4th 114312, 25

Bozung v. Local Agency Formation Com.
 (1975) 13 Cal.3d 26314

Browning-Ferris Industries v. City Council
 (1986) 181 Cal.App.3d 852.....50

California Native Plant Society v. City of Rancho Cordova
 (2009) 172 Cal.App.4th 60310

Center for Biological Diversity v. California Dept. of Fish and Wildlife
 (2015) 62 Cal.4th 204 passim

Citizens For A Megaplex-Free Alameda v. City of Alameda
 (2007) 149 Cal.App.4th 9110

Citizens for a Sustainable Treasure Island v. City and County of San Francisco
 (2014) 227 Cal.App.4th 10369, 52

Citizens for Responsible Equitable Env'tl. Dev. v. City of San Diego
 (2011) 196 Cal.App.4th 51512, 25

City of Long Beach v. Los Angeles Unified School Dist.
 (2009) 176 Cal.App.4th 88912

1	<i>City of Maywood v. Los Angeles Unified Sch. Dist.</i>	
2	(2012) 208 Cal.App.4th 362	23
3	<i>Cleveland National Forest Foundation v. San Diego Association of Governments</i>	
4	(2017) 3 Cal.5th 497	42, 43
5	<i>Communities for a Better Envt. v. City of Richmond</i>	
6	(2010) 184 Cal.App.4th 70	11
7	<i>Defend the Bay v. City of Irvine</i>	
8	(2004) 119 Cal.App.4th 1261	10, 13, 24
9	<i>East Sacramento Partnership For A Livable City v. City of Sacramento</i>	
10	(2016) 5 Cal.App.5th 281	14, 15
11	<i>Eller Media Co. v. Cmty. Redevelopment Agency</i>	
12	(2003) 108 Cal.App.4th 25	11
13	<i>Federation of Hillside & Canyon Associations v. City of Los Angeles</i>	
14	(2000) 83 Cal.App.4th 1252	29, 39
15	<i>Las Lomas Land Co., LLC v. City of Los Angeles</i>	
16	(2009) 177 Cal.App.4th 837	46
17	<i>Laurel Heights Improvement Assn. v. Regents of Univ. of Calif.</i>	
18	(1988) 47 Cal.3d 376	<i>passim</i>
19	<i>Maintain Our Desert Environment v. Town of Apple Valley</i>	
20	(2004) 124 Cal.App.4th 430	25
21	<i>Mira Mar Mobile Community v. City of Oceanside</i>	
22	(2004) 119 Cal.App.4th. 477	9
23	<i>Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou</i>	
24	(2012) 210 Cal.App.4th 184	11
25	<i>Oakland Heritage All. v. City of Oakland</i>	
26	(2011) 195 Cal.App.4th 884	9, 12, 49, 50
27	<i>Plan for Arcadia v. City Council of Arcadia</i>	
28	(1974) 42 Cal.App.3d 712.....	19, 20, 21
	<i>Ross v. Cal. Coastal Com.</i>	
	(2011) 199 Cal.App.4th 900	9, 24
	<i>Sacramento Old City Assn.,</i>	
	(1991) 229 Cal.App.3d 1011.....	45
	<i>San Diego Citizenry Group v. County of San Diego</i>	
	(2013) 219 Cal.App.4th 1	10

1	<i>San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus</i>	
2	(1994) 27 Cal.App.4th 713	48, 49
3	<i>Save Cuyama Valley v. County of Santa Barbara</i>	
4	(2013) 213 Cal.App.4th 1059	47
5	<i>Save Round Valley Alliance v. County of Inyo</i>	
6	(2007) 157 Cal.App.4th 1437	9, 10
7	<i>Schaeffer Land Trust v. City of San Jose</i>	
8	(1989) 215 Cal.App.3d 612.....	12
9	<i>Sierra Club v. City of Orange</i>	
10	(2008) 163 Cal.App.4th 523	10, 11
11	<i>Sierra Club v. County of Fresno</i>	
12	(2014) 226 Cal.App.4th 704	49
13	<i>Sierra Club v. County of Napa</i>	
14	(2004) 121 Cal.App.4th 1490	9
15	<i>South County Citizens for Smart Growth v. County of Nevada</i>	
16	(2013) 221 Cal.App.4th 316	10
17	<i>Tracy First v. City of Tracy</i>	
18	(2009) 177 Cal.App.4th 912	10, 36, 39
19	<i>Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora</i>	
20	(2007) 155 Cal.App.4th 1214	20, 21
21	<i>W. Placer Citizens v. County of Placer</i>	
22	(2006) 144 Cal.App.4th 890	11
23	<u>STATUTES</u>	
24	California Environmental Quality Act	<i>passim</i>
25	Code Civ. Proc. § 1094.5	11
26	<u>RULES AND REGULATIONS</u>	
27	Cal. Code Regs., tit. 14, § 15000 et seq.	<i>passim</i>
28	Cal. Pub. Res. Code	
	§ 21168.....	11
	§ 21168.5.....	9
	Code of Fed. Reg. Tit. 44, § 65.8.....	47

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OTHER AUTHORITIES

FEMA, <https://www.fema.gov/zone> (last visited February 6, 2018).....46

1 City of Highland and City of Highland City Council (collectively, "City") and Real Parties
2 in Interest Orange County Flood Control District ("District"), County of Orange, Orange County
3 Board of Supervisors and LCD Greenspot, LLC hereby oppose Greenspot Residents Association
4 and San Bernardino Valley Audubon Society's Verified Petition for Writ of Mandate.

5 INTRODUCTION

6 For decades the City of Highland ("City") General Plan has designated the 1,657 acre
7 property at the heart of this lawsuit for residential development. (AR 33297.) Specifically, the City
8 envisioned a "a one-of-a-kind, high-quality, master-planned estate community in the Seven Oaks
9 area that incorporates substantial scenic, open space, recreation and trail amenities" on the
10 property at issue. (AR 12.) After an extensive and rigorous environmental review that spanned
11 over five years, thousands of pages of evidence and analysis, and included public participation
12 across multiple meetings, the City certified a Final Environmental Impact Report ("Final EIR"),
13 approved the Harmony Specific Plan and associated discretionary land use approvals to implement
14 that vision.

15 The City Council's decisions establish a framework for a project proposed on land owned
16 by Real Party in Interest Orange County Flood Control District (collectively, "Real Parties in
17 Interest"). That project (i) largely focuses development in areas previously disturbed by orchards
18 and the removal of 6 million cubic yards of soil for Seven Oaks Dam construction; (ii) sets aside
19 more than ½ of the property for natural and manufactured open space; and (iii) simultaneously
20 helps address the City and region's housing shortage in a manner consistent with the City's needs
21 and interests ("Project"). (AR 36945-36946.) The City's master plan level approvals represent the
22 beginning of an entitlement process that will require many future implementing City, state and
23 federal wildlife agencies, FEMA and other public approvals.

24 The Final EIR fully complies with the requirements of the California Environmental
25 Quality Act ("CEQA") in all respects. As shown more fully below, the petitioners', Greenspot
26 Residents Association and San Bernardino Valley Audubon Society (collectively, "Petitioners"),
27 Opening Brief fails to set forth a full recitation of the evidence in the City's favor, which defeats
28

1 their claims at the outset. Further, those claims are legally meritless, factually incorrect, and
2 ignore substantial evidence in the record supporting the City's decision to certify the Final EIR.

3 First, the Final EIR properly analyzes the whole of the Project. Contrary to Petitioners'
4 assertions, the possible future development of the Mill Creek Bridge is not required in connection
5 with or a reasonably foreseeable consequence of the instant Project. The Final EIR nonetheless
6 analyzes the Mill Creek Bridge as a potential independent, future cumulative project, thereby fully
7 complying with CEQA's information disclosure mandate. Thus, Petitioners' piecemealing claim
8 fails.

9 Second, substantial evidence fully supports the Final EIR's detailed analysis of, and
10 conclusions regarding, greenhouse gas ("GHG") emissions impacts. Beyond that, as shown below,
11 the Final EIR painstakingly walks through multiple levels of analysis, supported along the way by
12 facts, expert opinion and accepted methodologies. In contrast, Petitioners' claims are unavailing as
13 they are premised only on argument and speculation.

14 Third and finally, Petitioners' narrow challenge to limited portions of the Final EIR's
15 hydrology and flooding analyses similarly fails to overcome the substantial evidence in the record.
16 Petitioners ignore and mischaracterize the evidence, data, and reports upon which the Final EIR's
17 conclusions and mitigation are based. Even under an indulgent reading, Petitioners' arguments
18 amount to no more than a disagreement with the City's experts, which does not and cannot form
19 the basis for invalidating an EIR.

20 In sum, the Final EIR complies with CEQA as it provided the public and decision makers
21 with adequate information upon which to evaluate the consequences of the City's decision to
22 approve the Project. CEQA requires no more and Petitioners have failed to meet their burden to
23 prove otherwise. For these reasons and as set forth below, the Court should deny the petition in its
24 entirety.

25 **STATEMENT OF FACTS**

26 **The Project Site, Historically Used as a "Borrow Site," is Largely Vacant.**

27 This case relates to approximately 1,657 acres of land located in the eastern portion of the
28 City within the "Seven Oaks Policy Area" ("Project Site"). (AR 1.) The Project Site is

1 approximately six miles east of the SR-210 freeway, 4.5 miles north of Interstate 10, and less than
2 a mile north of SR-38. (AR 1, 339.) The Project Site is located along the base of the San
3 Bernardino Mountains; the San Bernardino National Forest is immediately north of the Project
4 Site; Mill Creek forms the southern and southeastern boundary of the Project Site; Emerald
5 Avenue and a portion of Tres Lagos Street are the boundaries for the southwestern portion of the
6 Project Site; and the Santa Ana River forms the boundary to the west and northwest. (AR 339.)

7 Historical uses for the Project Site focused primarily on agriculture. (AR 16549.) In the
8 early 1990s, the Project Site became a "borrow site" for materials used to construct the nearby
9 Seven Oaks Dam. (AR 16550, 33413.) In total, the dam construction project removed
10 approximately six million cubic yards of material to a maximum depth of forty feet across about
11 35% of the total Project Site, and much of the proposed development will occur on those
12 previously disturbed areas. (AR 16550.) The Project Site has been vacant since the end of borrow
13 activities, and no standing structures exist. (AR 33413.) Remnants of prior building foundations,
14 roads, irrigation systems, and wells still exist on the Project Site. (AR 33413.)

15 Following completion of the dam project, the Project Site was transferred to the Orange
16 County Flood Control District ("District"), and annexed into the City in 2000. (AR 33413.) The
17 District designated the Project Site as surplus as it no longer has use for flood control purposes.
18 (AR 33413.) Consequently, the District considered entitling and selling the Project Site so as to
19 generate revenue to fund District flood control projects for the benefit of the public. (AR 33413.)
20 Following a request for qualifications process, the District selected LCD Greenspot, LLC to assist
21 with the planning, design and entitlement process described below. (AR 33413.)

22 **The Project Preserves Open Space While Providing Residents with Diverse**
23 **Residential, Commercial, Recreational, and Public Facilities.**

24 The heart of the Project¹ is the Harmony Specific Plan ("Specific Plan"), a comprehensive
25 plan for the development of a master-planned community on the Project Site. (AR 339.) The

26 _____
27 ¹ Contrary to CEQA's definition of a project, and misleadingly, Petitioners' brief defines the term
28 "Project" as including a bridge across Mill Creek that the record demonstrates is not required for,
nor a reasonably foreseeable consequence of, the Project.

1 approved Specific Plan establishes the vision, conceptual plans and implementing regulations for
2 the development of the Project. (AR 25-38.) To ensure that future implementing approvals are
3 consistent with that vision, the Specific Plan establishes the zoning for the Project Site and
4 includes a land use plan, designation of planning areas, infrastructure requirements, design and
5 landscaping guidelines, and development standards for the long term build-out of the Project Site.
6 (AR 18-22; 339.)

7 The Specific Plan consists of residential, neighborhood commercial, recreation and open
8 space, and community public facility land uses. (AR 339-340.) Residential land uses comprise
9 approximately 620 acres of the Project Site, providing a variety of residential detached and
10 attached housing types, including estate, low-, medium-, and high-density residential uses that are
11 covered by neighborhood commercial overlays. (AR 340.) Approximately 5.7 acres of the Project
12 Site is planned for development of neighborhood commercial land uses to provide retail goods and
13 services to the community. (AR 340.)

14 Approximately 874-acres (53% of the entire Project Site) is planned for parks, recreation,
15 and open spaces. (AR 340.) For example, approximately 582-acres of the Project Site will remain
16 natural open space, while approximately 104.2-acres of parks and 111.8-acres of community
17 greenway will be developed. (AR 340.) As the City Council noted, the Specific Plan offers its
18 residents the opportunity to connect with the natural topography of the Project Site and engage in
19 diverse recreational activities. (AR 340.) Parks will be improved as active and passive
20 recreational areas; active parks include soccer fields and baseball diamonds as well as open play
21 areas, picnic tables, and informal gathering areas, while passive parks are designed for activities
22 such as walking, hiking and quiet reflection. (AR 340.) The Project's multipurpose trails and
23 drainage features allow residents to explore the community's greenway system, which includes 1-
24 acre of designated Agricultural Overlay to provide space for community gardens, stands for local
25 farmers to sell their produce, and other recreational amenities for residents. (AR 340.) The
26 Specific Plan also includes approximately 4.3 acres for The Parkhouse, a private recreation facility
27 featuring a clubhouse, swimming pool, and other active and passive amenities. (AR 340.)
28

1 Finally, the public/community land uses under the Specific Plan provide for the
2 development of one elementary school on an 8.3 acre site; a new fire station on a 1.5 acre site; and
3 additional public facilities totaling 18.5 acres, which may include water reservoirs, a water
4 treatment facility, sewage treatment plant, or pump station. (AR 340-341.) The elementary school
5 is adjacent to a 5.0 acre joint-use neighborhood park positioned in the center of the community to
6 ensure equitable access for all residents. (AR 340.)

7 **The City Conducted an Extensive Environmental Review of the Project.**

8 On January 20, 2011, the County of Orange and Greenspot filed an application with the
9 City requesting numerous related land use entitlements for the Project. (AR 328, 341.) On July
10 20, 2012, in accordance with CEQA Guidelines ("Guidelines") § 15082, the City distributed a
11 Notice of Preparation ("NOP") of an EIR to the State Clearinghouse, local and regional responsible
12 agencies, and other interested parties. (AR 37559-37565.) The City invited and received written
13 comments on the scope of the Draft EIR ("DEIR") in response to the NOP (AR 2248-2298); the
14 public review period for the NOP was initially set to close on August 20, 2012, but the City
15 extended it to August 23, 2012. (AR 37559-37560, 37566.)

16 The City also held a scoping meeting on August 16, 2012, to which all NOP recipients
17 were invited. (AR 343, 37559.) Comments received during the scoping meeting and the NOP
18 public review period were considered in the preparation of the Draft EIR. (AR 343.)

19 The DEIR for the Project was then prepared and circulated for review and comment
20 between March 21, 2014 and May 5, 2014. (AR 37567-37580.) In an effort to promote further
21 public participation and input, the City extended the public comment period on the Draft EIR to
22 June 4, 2014. (AR 37582.)

23 In response to the Draft EIR, the City received fifty comments. (AR 33431.) After
24 reviewing and considering these comments, the City voluntarily conducted further environmental
25 review of the Project and elected to revise and recirculate the Draft EIR sections on air quality,
26 biological resources, and traffic impacts. (AR 37585.) More specifically, the Draft EIR was
27 revised to address: (1) the final location and design of the proposed wildlife corridor; (2) potential
28 impacts to least Bell's vireo; (3) plant communities on the Project Site; (4) potential cumulative

1 biological resources impacts, including those attributable to a potential independent effort to build
2 a bridge across Mill Creek near the eastern end of the Project Site; (5) traffic impacts in the City of
3 Redlands; and (6) air quality modeling results. (AR 33431.)

4 The Notice of Recirculation and Availability of the Revised DEIR was issued on August
5 29, 2014 and further public comments on the Revised DEIR were accepted from August 29, 2014
6 to October 13, 2014. (AR 343, 37585.) The City received 77 comment letters, seven of which
7 were received after the close of the public review period; nonetheless, in the interests of full public
8 disclosure and informed public participation, the City fully responded to each letter, in writing,
9 regardless of each comment's timeliness or untimeliness. (AR 15590-16400.) The Final EIR for
10 the Project was completed and made available to the public. (AR 33432.)

11 Throughout the processing of the Project, the City held multiple public meetings and public
12 hearings, each providing opportunities for public involvement and comment in addition to those
13 available through the environmental review process. The City established the Orange County
14 Property Subcommittee, which held 11 public meetings (with public notice) on the Specific Plan
15 between April 2010 and December 2015. (AR 33432.) The Subcommittee's work resulted in
16 numerous modifications to the draft Specific Plan and Tentative Tract Maps for the Project. (AR
17 33432.) Similarly, the City's Community Trails Committee discussed the Project during its
18 regularly scheduled meetings in December 2011 and November 2013. (AR 33433.)

19 In addition, the City hosted an open house on the Project on October 12, 2014 to update
20 area residents and provide a projected schedule for public hearings. (AR 33432-33433.) The City
21 also held a community outreach meeting on October 15, 2014. (AR 33433.)

22 The City's Planning Commission and City Council held a joint study session on October
23 28, 2014. (AR 33433.) The Planning Commission held another study session on December 3,
24 2015. (AR 33433.)

25 The Planning Commission held its first public hearing on the Project on March 31, 2016.
26 (AR 33433.) The hearing was continued to April 19, 2016 and then again to May 5, 2016. (AR
27 33433.) On May 5, 2016, the Planning Commission adopted a Resolution recommending that the
28

1 City Council approve each Project entitlement, and also offered several recommendations for
2 revisions to the draft Specific Plan. (AR 33433.)

3 The City Council then held a duly noticed public hearing on June 30, 2016, which was
4 continued to July 21, 2016 and then to August 11, 2016. (AR 35726.) During this time, although
5 not legally required to do so, the City responded to public comments and issues that were raised
6 during the initial hearing. (AR 35729-37735.)

7 On August 11, 2016, after considering all of the evidence in the record, the comment
8 letters, the responses to comments, the DEIR, RDEIR, and Final EIR, and after having heard
9 testimony from staff, the applicant, and the public, the City Council voted to adopt Resolution No.
10 2016-046, to certify the Final EIR and adopt Findings of Fact, the Mitigation Monitoring and
11 Reporting Program ("MMRP"), and a Statement of Overriding Considerations ("SOC") as required
12 by CEQA. (AR 328-511.) The City Council also adopted Resolution Nos. 2016-047 through
13 2016-049 for the Project's General Plan and Tentative Tract amendments. (AR 512-720.) Finally,
14 the Council introduced Ordinance Nos. 408-410 to approve the Zone Change, Specific Plan, and
15 Development Agreement for the Project. (AR 36396-36492; 3-327, 37611-37648.) The second
16 reading of the Ordinances occurred on August 23, 2016, at which time they were adopted. (*Id.*)
17 On August 24, 2016, the City filed and posted the Notice of Determination. (AR 1.)

18 **The City Adopted Comprehensive Findings of Fact and a Detailed SOC.**

19 The City's Findings of Fact span 170 pages (AR 332-506), are detailed and specific, and
20 support the conclusions in the Final EIR. The SOC highlights the City's extensive review of the
21 Project and pursuit of the public good, in light of the Project's limited, adverse impacts.
22 Specifically, the City independently reviewed the information in the DEIR and Final EIR; made a
23 reasonable and good faith effort to eliminate or substantially lessen the significant impacts
24 resulting from the Project to the extent feasible; and after balancing the benefits of the Project
25 against its impacts, determined that the Project should be approved, because specific economic,
26 legal, social, and other benefits of the Project outweigh its effects on the environment. (AR 508.)
27 Indeed, the City identified several benefits, each of which independently provides a sufficient
28

1 justification to override all unavoidable and significant adverse environmental impacts of the
2 Project:

- 3 • The Project helps maintain consistency with and carry out the goals, objectives,
4 and policies of the General Plan by providing a mix of housing types to implement
5 General Plan Policy 9.1.5 and to provide diverse and balanced housing options to
6 suit the various housing needs of residents across varying stages of life;
- 7 • The Project creates a one-of-a-kind, high-quality, master-planned estate
8 community in the Seven Oaks area that incorporates substantial scenic, open
9 space, recreation, and trail amenities to fulfill Goal 2.15 of the General Plan;
- 10 • The Project provides new housing, and a corresponding addition of approximately
11 11,822 to 12,385 new residents, consistent with the City's goal of supporting
12 existing and stimulating new commercial development within the City;
- 13 • The Project preserves and provides for hundreds of acres of natural and
14 manufactured open space;
- 15 • The Project provides a wildlife corridor that varies in width from 900 to 1,800 feet
16 to facilitate the movement of wild animals and biological resources, including
17 mule deer, mountain lion, bobcat, badger, and other small mammals such as the
18 black-tailed jackrabbit;
- 19 • The Project provides a balance of both active and passive recreational uses that
20 meet the demands of the Project's and surrounding residents;
- 21 • The Project enhances the City's fiscal health through the development of a mix of
22 residential and commercial uses and generates public revenue sources to
23 implement General Plan Policies 9.4.1 and 9.4.9, yielding (1) a net revenue surplus
24 to the City by year 2027 ranging from \$2,073,361 to \$3,117,681 per year, (2)
25 \$18.75 million in Public Benefit Payments to the City, and (3) millions in
26 additional road improvements on the Project Site and off-site;
- 27 • The Project will construct off-site roadway improvements and pay fair share
28 contributions to off-site roadway intersections within and outside the City;
- The Project provides for essential emergency response and fire suppression
services by constructing a fire station on 1.5-acres of the Project Site;
- The Project implements fuel modification zones to reduce the threat of fire through
vegetation and maintenance requirements;
- The Project will connect residents and promote healthy living and scenic beauty by
providing a comprehensive system of trails, community land uses for community
gardens, space for local farmers to sell produce, and recreational amenities; and
- The Project will contribute to an increase in the jobs-to-housing ratio for the City,
creating 124 to 451 jobs and a substantial number of temporary construction jobs.

(AR 508-510.)

1 CEQA STANDARD OF REVIEW

2 Under CEQA, "[a]n EIR is presumed adequate" (*Mira Mar Mobile Community v. City of*
3 *Oceanside* (2004) 119 Cal.App.4th. 477, 486) and the City's decision to certify an EIR is "given
4 substantial deference and . . . presumed correct." *Sierra Club v. County of Napa* (2004) 121
5 Cal.App.4th 1490, 1497 (citations and quotations omitted). A local agency's certification of an
6 EIR may only be overturned where the court finds that the agency prejudicially abused its
7 discretion. *Mira Mar Mobile Community, supra*, 119 Cal.App.4th at 486; Cal. Pub. Res. Code,
8 § 21168.5. An abuse of discretion, in turn, occurs if an agency does not comply with procedures
9 required by law, or if its determination or decision is not supported by substantial evidence. *Laurel*
10 *Heights Improvement Assn. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376, 393 ("*Laurel*
11 *Heights I*"). Substantial compliance with the requirements of CEQA precludes a finding of abuse
12 of discretion. *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1469;
13 *Al Larson Boat Shop, Inc. v. Bd. of Harbor Com.* (1993) 18 Cal.App.4th 729, 748 (finding failure
14 to comply with CEQA did not have a material impact on informed decision making or public
15 participation).

16 The level of detail of an EIR is determined by the nature of the project. *Citizens for a*
17 *Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036,
18 1052 (rejecting claim that a master planning level document required additional analysis and
19 details). An agency's conclusions regarding the significance of an environmental impact are
20 committed to the agency's discretion as a policy decision. See *Mira Mar Mobile, supra*, 119
21 Cal.App.4th at p. 493. Differences of opinion, even among experts, does not provide a basis for
22 rejecting an EIR. *Oakland Heritage All. v. City of Oakland* (2011) 195 Cal.App.4th 884, 900.
23 Courts may not disturb that discretion unless, based on the facts in the record, no reasonable person
24 could have reached such a decision. *Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 921-
25 22.

1 **A. Petitioners Have the Burden of Proof and Must Address All Evidence**
2 **Favorable to the City's Decision.**

3 Petitioners bear the burden of establishing the EIR is inadequate. *Save Round Valley*
4 *Alliance, supra*, 157 Cal.App.4th at 1468 (It is petitioners' burden to prove evidence relied upon by
5 agency is "clearly inadequate or unsupported"). To meet this burden, and avoid the failure of their
6 claims, Petitioners must describe the evidence favorable to the lead agency and then demonstrate
7 to the court why that evidence is lacking. *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th
8 523, 541. Petitioners must "*affirmatively show* there was no substantial evidence in the record to
9 support the [agency's] findings" and cannot "carry that burden by simply pointing to portions of the
10 administrative record that favored [their] position." *California Native Plant Society v. City of*
11 *Rancho Cordova* (2009) 172 Cal.App.4th 603, 626 (emphasis in original). When challenging a
12 CEQA determination, petitioners "must lay out the evidence favorable to the other side and show
13 why it is lacking." *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1,
14 17.

15 Where petitioners do not cite to evidence in the record supporting an agency's actions, they
16 fail to meet their burden as a matter of law. *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th
17 912, 934-935. Not presenting evidence favorable to the agency is "fatal" to petitioners' claims.
18 *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 331-
19 332. In such a circumstance, petitioners "cannot carry their burden of showing the evidence was
20 insufficient to support the agency's decision because support for that decision may lie in the
21 evidence [petitioners] ignore." *Citizens For A Megaplex-Free Alameda v. City of Alameda* (2007)
22 149 Cal.App.4th 91, 113; *Id.* at 112-113 (petitioner failed to carry its burden to show a subsequent
23 EIR was required when it failed to cite evidence supporting city's decision). "A reviewing court
24 will not independently review the record to make up for [petitioners'] failure to carry [their]
25 burden." *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.

26 **B. Applicable Standards of Review.**

27 The general "prejudicial abuse of discretion" standard governing CEQA review involves
28 two distinct and different standards for determining error. "[A] reviewing court must adjust its

1 scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one
2 of improper procedure or a dispute over the facts." *Sierra Club, supra*, 163 Cal.App.4th at 531.
3 An agency's action under CEQA may only be overturned for a "prejudicial abuse of discretion."
4 *Eller Media Co. v. Cmty. Redevelopment Agency* (2003) 108 Cal.App.4th 25, 31 (citing Cal. Pub.
5 Res. Code § 21168 and Code Civ. Proc. § 1094.5). It is not enough for a challenger to point to
6 mistakes in an EIR and assert in a conclusory fashion that the EIR is inadequate. A challenger must
7 show that the agency was not informed of relevant information and thus could not have understood
8 the decision it made — i.e., a demonstration of prejudice. See, e.g., *Mount Shasta Bioregional*
9 *Ecology Ctr. v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 203 (no prejudice where petitioner
10 could not demonstrate that difference of 7 percent between actual and approximate emissions
11 precluded informed decision-making or public participation).

12 1. Proceeding in a Manner Required by Law

13 The "failure to proceed in a manner required by law" standard focuses on improper
14 procedure. "Improper procedure" may include, for example, whether the EIR as a whole fails as an
15 informative document. See, e.g., *Communities for a Better Envt. v. City of Richmond* (2010) 184
16 Cal.App.4th 70, 85, 95. The standard for assessing an EIR's compliance with CEQA as an
17 informative document does not require that consensus be achieved on all conclusions in the EIR,
18 "nor does it require an analysis to be exhaustive." *W. Placer Citizens v. County of Placer* (2006)
19 144 Cal.App.4th 890, 899 (citation omitted). Rather, the test is whether the EIR reflects a "good
20 faith effort at full disclosure." *Id.* The "analysis in an EIR must be specific enough to permit
21 informed decision making and public participation . . . The need for thorough discussion and
22 analysis is not to be construed unreasonably, however, to serve as a way of defeating projects.
23 Absolute perfection is not required. . . ." *Id.*

24 Petitioners cannot obtain a more favorable standard of review merely by arguing that an
25 EIR fails to contain certain information. *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38
26 Cal.App.4th 1609, 1690. Of particular importance in this case, the

27 substantial evidence standard is applied to conclusions, findings and
28 determinations. It also applies to challenges to the scope of an
EIR's analysis of a topic, the methodology used for studying an

1 impact and the reliability or accuracy of the data upon which the
2 EIR relied because these types of challenges involve factual
questions.

3 *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.

4 2. Substantial Evidence Standard

5 In applying the substantial evidence test, the court looks for "enough relevant information
6 and reasonable inferences from this information that a fair argument can be made to support a
7 conclusion, even though other conclusions might also be reached." Guidelines, § 15384 subd. (a)²;
8 The court must "resolve all conflicts in the evidence and any reasonable doubts...in favor of the
9 agency's findings and decision." *Citizens for Responsible Equitable Envtl. Dev. v. City of San*
10 *Diego* (2011) 196 Cal.App.4th 515, 522-23. The court "is not to weigh conflicting evidence and
11 determine who has the better argument." *Laurel Heights I, supra*, 47 Cal.3d at 393. The court may
12 not set aside the decision even though "an opposite conclusion would have been equally or more
13 reasonable." *Oakland Heritage All., supra*, 195 Cal.App.4th at 900. So long as substantial
14 evidence in the administrative record supports an agency's decision to certify an EIR, the court
15 must uphold that decision.

16 As a result of this standard, "[t]he court does not pass upon the correctness of the EIR's
17 environmental conclusions, but only upon its sufficiency as an informative document." *In re Bay-*
18 *Delta Programmatic Envtl. Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1161
19 (citations and quotations omitted). "In so doing, [a reviewing court] look[s] to see whether
20 policymakers have been adequately informed of the consequences of their decisions, and whether
21 the public has sufficient information to evaluate the performance of their elected officials."
22 *Schaeffer Land Trust v. City of San Jose* (1989) 215 Cal.App.3d 612, 620; see also *City of Long*
23 *Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 897 (reviewing court's role
24 is "not to determine whether the EIR's ultimate conclusions are correct but only whether they are
25 supported by substantial evidence in the record and whether the EIR is sufficient as an information
26 document"). As such, "the court must uphold an EIR if there is any substantial evidence in the

27 _____
28 ² The Guidelines are found at Cal. Code Regs., tit. 14, § 15000 *et seq.*

1 record to support the agency's decision that the EIR is adequate and complies with CEQA."
2 *Defend the Bay, supra*, 119 Cal.App.4th at 1265.

3 **ARGUMENT**

4 **I. The Final EIR Properly Evaluated The Mill Creek Bridge**

5 Contrary to what Petitioners intimate, while the Project does not propose nor require a
6 bridge over Mill Creek near the southeastern edge of the Project Site ("Mill Creek Bridge"), the
7 Final EIR did not ignore the issue. The City completed technical and expert evaluations of the
8 potential need for the Mill Creek Bridge in connection with its evaluation of the Project. The Final
9 EIR describes the results of those studies and discloses that no traffic, public safety, or other basis
10 justifies the Mill Creek Bridge as a Project condition, element, or requirement. However,
11 consistent with CEQA's requirements, the Final EIR analyzes the Mill Creek Bridge as a
12 reasonably foreseeable, independent, future cumulative project. Thus, the Final EIR's treatment of
13 the Mill Creek Bridge complies with CEQA.

14 Under these circumstances, neither the law nor the facts support Petitioners' claim that the
15 City engaged in piecemealing. To the contrary, the City more than satisfied CEQA's goal of
16 informed decision making as it relates to the Mill Creek Bridge and the Project. Therefore, this
17 Court should reject Petitioners' claims.

18 **A. The Mill Creek Bridge is Not a Part of the "Project" as Defined By CEQA**

19 CEQA's definition of a "project" speaks to the "whole of the action" under consideration by
20 the lead agency. (Guidelines § 15378.) While the term "project" must not be too narrowly
21 construed, CEQA does not require an examination of the impacts of facilities that are planned
22 independently and less defined. *Anderson First Coalition v. City of Anderson* (2005) 130
23 Cal.App.4th 1173, 1189-1190 (rejecting claim that the definition of a shopping center project had
24 to include a freeway interchange, the shopping center needed to mitigate cumulative traffic
25 impacts). Instead, the courts have asked whether a future improvement is a "reasonably
26 foreseeable consequence" of the project as proposed. *Laurel Heights I, supra*, 47 Cal.3d at 396;
27 *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1227
28

1 ("Banning Ranch") (finding park project that would build road improvements on and for a property
2 proposed private development was a different "project" for CEQA purposes).

3 Based on the above concepts, courts have established that CEQA prohibits what is often
4 referred to as piecemealing or segmentation. Those decisions describe the prohibition as existing
5 to prevent agencies from avoiding full environmental review "by chopping a large project into
6 many little ones—each with a minimal potential impact on the environment—which cumulatively
7 may have disastrous consequences." *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d
8 263, 283-284 (finding city annexed land so it could be rezoned for development). As one court put
9 it, "[i]mproper piecemealing occurs 'when the purpose of the reviewed project is to be the first step
10 toward future development' or 'when the reviewed project legally compels or practically presumes
11 completion of another action.'" *East Sacramento Partnership For A Livable City v. City of*
12 *Sacramento* (2016) 5 Cal.App.5th 281 ("ESPLC"), 293 (quoting *Banning Ranch Conservancy,*
13 *supra*, 211 Cal.App.4th at 1223).

14 In evaluating a piecemealing claim, the *Banning Ranch* decision is instructive as it explored
15 the concept of what qualifies as a "reasonably foreseeable consequence." At issue was whether the
16 city had to analyze a proposed private development in an EIR for a park project. *Banning Ranch,*
17 *supra*, 211 Cal.App.4th at 1214. The court rejected the piecemealing argument as it found that the
18 private development "[was] not a consequence of the park project just because the park access road
19 will accommodate" the private development. *Id.* at 1227 (relying on the city's findings and a
20 traffic study showing the city intended to build the road for the park to address traffic deficiencies
21 independent of the private development project). The court reached that conclusion even though
22 the accommodations between the two projects included the private project providing the city with
23 the required right of way for the access road, and the city designing, providing CEQA clearance
24 for, permitting, and constructing a portion of the access road as well as a widened freeway—both
25 of which would clearly benefit the private project. *Id.* at 1226, fn.7. The court described those
26 levels of assistance as "baby steps" that did not commit the city to approving the private
27 development project in a way that would trigger the piecemealing prohibition. *Id.* at 1226-1227.

28

1 The *ESPLC* decision is also particularly illustrative as, similar to here, the project
2 opponents argued that the City engaged in piecemealing because the EIR's project description did
3 not define a mixed-use project as including some infrastructure improvements. The public
4 improvement at issue, a vehicular tunnel under Alhambra Boulevard, would "be used only for
5 access to and from the Project." *ESPLC, supra*, 5 Cal.App.5th at 294. The *ESPLC* record also
6 reflected that the tunnel improvement was "the City's top priority," the city council affirmatively
7 approved a proposal to study the improvement's feasibility and the developer agreed to partially
8 fund the improvement and the study. *Id.* at 291, 294. Nonetheless, the court rejected the
9 piecemealing argument. The court reached that conclusion because the city had not approved the
10 tunnel and evidence showed the project did not need the tunnel. *Id.* at 293-294. As evidence of
11 that fact, the court noted "the Project was not conditioned upon construction" of the tunnel as the
12 project was served by two other vehicular access points. *Id.*

13 As the cases above demonstrate, the concept of piecemealing applies in a narrow range of
14 circumstances. For the reasons described in more detail in the Section that follows, those
15 circumstances do not apply to the Project and the Mill Creek Bridge. The Court should thus reject
16 Petitioners' piecemealing claims.

17 B. Neither the Facts Nor the Law Supports A Conclusion That the Final EIR Engaged
18 in Piecemealing

19 As the following discussion shows, Mill Creek Bridge is not a "reasonably foreseeable
20 consequence" of the Project, not a condition of the Project, and the approval of the Project does not
21 compel or practically presume completion of the Mill Creek Bridge. The Final EIR succinctly
22 explains the lack of the required relationship between the potential Mill Creek Bridge and the
23 Project:

24 As shown in Section 5.16 of the DEIR, a new bridge across Mill
25 Creek is not required or proposed by the Project from any
26 perspective, including, without limitation, traffic and access. . . .
27 This connection was analyzed as an alternative scenario in the
28 Traffic Impact Analysis (TIA) . . . [and the] TIA concluded that
acceptable levels of service are achieved with implementation of
recommended improvements identified in Table 5.16-J of the
DEIR; thus, a connection to SR-38 is not required.

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However, the City of Highland conducted a supplemental biological evaluation of the future potential project of a bridge over Mill Creek and recirculated portions of the DEIR. Although the RDEIR included an analysis of such a bridge for cumulative impact discussion, it is not a required component of the Project. Rather, it is only a potential alignment and is the preferred location along this reach of Mill Creek based on limited environmental constraints due to existing disturbance from an Arizona crossing. The actual bridge location will be based on City approval of detailed engineering studies and coordination with jurisdictions within and adjacent to the bridge footprint. (AR 15862.)

The *Banning Ranch* decision establishes the importance of the reasonably foreseeable causal connection to a piecemealing argument. *Banning Ranch, supra*, 211 Cal.App.4th at 1227. That connection does not exist between the Project and the Mill Creek Bridge. By way of background, the approved Specific Plan establishes the vision, conceptual plans and the implementing regulations for the development of the Project. (AR 25-38.) Circulation, access, utilities and emergency evacuation routes are some of the many topics addressed by the Specific Plan and its underlying reports and plans. (AR 38, 86-99, 100-117.) Yet, contrary to Petitioners' piecemealing claim, the Specific Plan does not reference the Mill Creek Bridge, let alone require construction of that improvement to serve the Project. (AR 14-246.) For example, Exhibit 6-1 of the Specific Plan illustrates the Project's approved circulation plan. (AR 106.) That exhibit shows the Project's required offsite connections to the north and south via the Greenspot Bridge and the Garnet Bridge, respectively, but includes no mention of the Mill Creek Bridge. (*Id.*) Exhibit 5-2 shows that Project will tie into water facilities west of the Project Site and Specific Plan Chapter 5 identifies other services as also coming from the west or being provided on-site. (AR 87-88, 94.) Again, the Specific Plan reflects that the Project does not require to Mill Creek Bridge.

The technical analysis underlying the Specific Plan also demonstrates that the Mill Creek Bridge is not a reasonably foreseeable consequence of the Project. The Project's Traffic Impact Analysis ("TIA") specifically examined whether the Project required the Mill Creek Bridge and determined that Project operations (directly and cumulatively) do not. That analysis considered conditions and impacts with and without the Mill Creek Bridge (referred to in the TIA as potential future intersection 40 - Newport/SR-38 Connection) and with and without the Project. (AR 7092-

1 7093; see also AR 7159-7160, 7164-7167.) The Final EIR notes that the "with Newport
2 Avenue/SR-38" and the "without Newport Avenue/SR-38" analysis includes two interim year
3 scenarios (Year 2021 and Year 2023) and the cumulative, Year 2035, buildout scenario. (AR
4 17073.) Final EIR Tables 5.16-J through 5.16-M show the traffic mitigation improvements
5 required under the "with Newport Avenue/SR-38" and "without Newport Avenue/SR-38"
6 conditions. (AR 17098-17133.) "The TIA results indicate that the proposed circulation system
7 operates at satisfactory LOS with implementation of the identified improvements and does not
8 necessitate a Newport Avenue/SR-38 connection via a bridge over Mill Creek." (AR 17095.)

9 Further evidence that the Project does not need or require the Mill Creek Bridge exists in
10 the form of the Project's Fire Protection Plan approved by the City Fire Department. (AR 16845,
11 648-719.) The plan identified a range of issues including fuel modification zones, fire resistant
12 landscaping, water flow and water supply, emergency access and fire station location. With
13 respect to access in the event of a wildland fire, the study determined that the three (two to
14 Greenspot Road and one to Newport Road) external connections on the west end of the Project
15 provide adequate emergency access. (AR 669.) The Fire Protection Plan does not require, nor
16 necessitate, the Mill Creek Bridge as a reasonably foreseeable consequence of the Project.

17 In addition to the similarities to *Banning Ranch*, the substantial evidence above makes this
18 case like the *ESPLC* decision. In *ESPLC*, the court rejected a piecemealing argument as the tunnel
19 at issue was not needed by the project. *ESPLC, supra*, 5 Cal.App.5th at 293-294. The TIA and
20 Fire Protection Plan analysis demonstrate that the same lack of need causal connection between the
21 Project and the Mill Creek Bridge.

22 In another similarity with the *ESPLC* decision, the Project approvals do not obligate the
23 Project to study the feasibility, design, permit or construct the Mill Creek Bridge. See *Id.*
24 Resolution No. 2016-049, approving the tentative subdivision map that divides the Project Site into
25 planning areas (70 numbered and 99 lettered lots), includes extensive conditions. (AR 563-720.)
26 Those conditions address only one bridge related improvement—the Project's obligations to
27 facilitate access to the south via a new Garnet Street Bridge. (AR 599 [subpart 3], 611 [condition
28 25].) The tentative map conditions also impose a lengthy list of other non-bridge related circulation

1 improvements, from widening streets to expanding intersections to contributing funds toward
2 interchange improvements. (AR 610-615, 625-626.) Tellingly, neither the subdivision maps nor a
3 single condition of approval requires the Mill Creek Bridge for the Project. (AR 548-720.)
4 Further, the City Council's unchallenged tentative map findings, without any Mill Creek Bridge
5 requirement, include finding 3(d) regarding General Plan consistency (AR 549-550) and finding
6 3(g) that the "design of the subdivision or type of improvements is not likely to cause serious
7 public health problems." (AR 551-552.)

8 Just like the conditions of approval, neither the adopted Mitigation, Monitoring and
9 Reporting Program ("MMRP") nor the approved Development Agreement require the Mill Creek
10 Bridge. The MMRP specifies numerous circulation improvements required to mitigate Project
11 impacts and an additional 25 improvements beyond those the TIA identifies as required by the
12 Project. (AR 599-602, 17098-17104 [Table 5.16-J].) Not one of those improvements imposes a
13 Project obligation with respect to the permitting, design or construction of Mill Creek Bridge. (*Id.*)
14 The Development Agreement, which the City negotiated in connection with granting the Project
15 vested rights, also does not include even a mention of the Mill Creek Bridge as a Project
16 requirement. (AR 253-327.)³

17 In sum, neither the facts nor the law support Petitioners' position. As stated in a City
18 Council Staff Report, a "new bridge over Mill Creek is not required or proposed by the Project
19 from any perspective, including, without limitation, traffic and access." (AR 35732.) For all the
20 reasons cited above, and based on the Project's traffic studies, the General Plan and Tentative Map
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22 _____
23 ³ The Development Agreement requires a substantial public benefit payment that the City can use
24 "on any public improvements at the City's discretion constructed by or on behalf of the City on any
25 portion of Greenspot Road east of Santa Paula Street and in any other areas located east of the
26 Project's western boundary and south of the San Bernardino National Forest." (AR 267-268.)
27 Under *Banning Ranch* and *ESPLC*, even assuming for argument's sake that the public benefit
28 payment might facilitate the Mill Creek Bridge, that payment would not require a finding that
piecemealing occurred. *Banning Ranch, supra*, 211 Cal.App.4th at 1226-1227 (rejecting
piecemealing claim even though City funded road improvements that benefitted the private
project); *ESPLC, supra*, 5 Cal.App.5th at 294 (finding no piecemealing despite developers'
obligation to partially fund the tunnel study and construction).

1 findings, the conditions of approval, and the Final EIR's consideration of the Mill Creek Bridge as
2 a cumulative project, the Court should reject Petitioners' claims that piecemealing occurred.

3 C. Petitioners' Unsubstantiated Assertions Do Not Justify a Finding That
4 Piecemealing Occurred

5 City staff clearly considered imposing construction of Mill Creek Bridge as a condition of
6 Project approval. But when viewed in context, as discussed in the subsections above, those
7 discussions are understandable and actually show the thoroughness of the City in evaluating
8 whether the requisite nexus exists between the Mill Creek Bridge and the Project. Citations to
9 those discussions do not support a piecemealing argument.⁴

10 Petitioners cite to the *Plan for Arcadia v. City Council of Arcadia* case for support but,
11 similar to the *ESPLC* decision, *Arcadia* contradicts Petitioners' piecemealing claim. The *Plan for*
12 *Arcadia* opponents argued piecemealing occurred because the CEQA document's description of the
13 "project" did not include a shopping center and some road widening improvements. *Plan for*
14 *Arcadia v. City Council of Arcadia* (1974) 42 Cal.App.3d 712,726. The *Plan for Arcadia* court
15 distinguished between different types of improvements in deciding whether piecemealing
16 occurred. For a road widening that the City formally imposed as a condition of the shopping
17 center approval, the court found piecemealing. *Id.* at 723 fn.5, 726. However, the court rejected
18 that argument as to another road improvement project because (i) the City had determined a need
19 existed for the road widening before the developer even submitting the shopping center project and
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21
22 ⁴ Petitioners' arguments rely on an incomplete and inaccurate paraphrasing of a Staff Report for an
23 October 2015 Planning Commission public Project study session regarding the design of the Mill
24 Creek Bridge as it relates to the Project. (OB, p. 20:7-8 [citing to AR 44435].) Petitioners omitted
25 the following key language from City staff's response that shows Petitioners' argument lacks merit:
26 "Construction of second bridge/crossing of Mill Creek is not required as a result of this project.
27 Traffic level of service and public safety are satisfactory without a second bridge. However, the
28 City does desire to have such a bridge constructed across Mill Creek near the current at-grade
crossing at Fish Hatchery Road. The City intends to begin design of this bridge immediately
following approval of the Harmony Specific Plan. Construction will occur when funding is
available. This bridge is included in the "Cumulative Impacts" section of the EIR." (AR 31437
[actual staff report]; 44435 [attachment to an email cited by Petitioners].)

1 (ii) the court found that the City had not made the applicable road widening a private obligation.
2 *Plan for Arcadia, supra*, 42 Cal.App.3d at 724.

3 Again, as the Project conditions do not require the construction of Mill Creek Bridge, the
4 Mill Creek Bridge is just like the road improvement in *Plan for Arcadia* where the court found no
5 piecemealing. In another similarity to the *Plan for Arcadia* improvement where piecemealing did
6 not exist, the City identified its desire for another Mill Creek bridge years before the Project was
7 proposed. The 2006 General Plan's Circulation Element, which predates the Project, identifies a
8 potential connection of a "Greenspot Road extension to Bryant Street." (Declaration of Brian Fish
9 ("Fish Dec.", Ex. 1.)⁵ The General Plan's Land Use Element's also contradicts Petitioners'
10 position. That Element's discussion of the Project Site references the potential for future access to
11 Bryant Street, but also discloses that Project Site access "is available from the South via the City of
12 Redlands." (Fish Dec., Ex. 1.) The General Plan's use of the present tense "is" to describe that
13 alternative access shows it is referring to the existing Garnet Street bridge that will serve the
14 Project. (AR 106.) Along the same lines, the Circulation Element does not state that such a
15 connection is contingent upon, or only required to serve, development on the Project Site. (AR
16 7157.)

17 Petitioners also heavily rely on the *Tuolumne County Citizens for Responsible Growth, Inc.*
18 *v. City of Sonora* decision to justify their piecemealing claim. *Tuolumne County Citizens for*
19 *Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1219-1220 ("*Tuolumne*
20 *County*"). That reliance is misplaced. Like here, that case involved an EIR for a project approval
21 (a Lowe's anchored shopping center) and the opponents argued the definition of the "project" had
22 to include a public improvement—the realignment of Old Wards Ferry Road. The court focused
23 on whether the public improvement is "an action that will be taken to complete the project as
24 proposed." *Id.* at 1228. Unlike here, the court concluded piecemealing occurred because Lowe's
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26 _____
27 ⁵ As Bryant Street is located south and east of the Project Site, and across Mill Creek, such a
28 connection would require a bridge. (AR 7157 [map depicting Bryant Street as existing intersection
33].)

1 "commencement of business operations at the site is conditioned upon the completion of the
2 realignment of Old Wards Ferry Road." *Id.* at 1227. In conclusion, the court held

3 the home improvement center project is dependent upon, not
4 independent of, the road realignment because the opening of the
5 home improvement center was conditioned upon the completion of
6 the road realignment. Therefore, we conclude the two acts are part
7 of a single project for purposes of CEQA.

8 *Id.* at 1231. Substantial evidence supports the City's determination that the Project can proceed
9 without the Mill Creek Bridge and the City did not condition the Project to perform feasibility
10 studies, design, land acquisition, or permitting, let alone construction, of the Mill Creek Bridge.
11 Thus, the decision in *Tuolumne County*, like *ESPLC* and *Plan for Arcadia*, actually supports the
12 Final EIR's treatment of Mill Creek Bridge as a separate project.

13 Ignoring the holding of the *Tuolumne County*, Petitioners attempt to overcome that fatal
14 flaw in their piecemealing argument by making the bald assertion that the Mill Creek Bridge "will
15 exist solely to serve the Harmony development." (OB, p. 19:1-4-20:3-4.) Based on the *ESPLC*
16 decision, even assuming for argument's sake that Petitioners' statement were true, it would not be
17 sufficient to support the piecemealing claim. *ESPLC*, *supra*, 5 Cal.App.5th at 294 (rejecting
18 piecemealing claim even though the court found that the Alhambra Boulevard tunnel would only
19 be used for access to the project at issue.)

20 Of course, Petitioners' statement is not true. First, as noted in the paragraphs above, the
21 General Plan identified a Mill Creek Bridge crossing in the vicinity of the Project Site years before
22 the Project was proposed. Second, Petitioners' record references do not support the offered
23 conclusion about the purpose of Mill Creek Bridge. (AR 16772 [GHG analysis identifying the
24 number of Project's future residents]; 16515 [color land use plan that does not include the Mill
25 Creek Bridge]; 16276 [responses to comments that repeatedly explain that the Project can proceed
26 without the Mill Creek Bridge]; 16323 [response to comment explaining that the neighborhood
27 commercial overlay does not depend on the construction of the Mill Creek Bridge].) Thus,
28 substantial evidence does not support Petitioners' claim that the Mill Creek Bridge will solely serve
the Project.

1 Along the same lines, citing to a preliminary draft of a tentative map condition, Petitioners
2 contend that piecemealing occurred because the Project must construct "B" street within the
3 Project Site. (OB, p. 18: 23-25.) However, even Petitioners do not allege that the "B" Street
4 condition requires a crossing of Mill Creek as the required "B" Street extension is only 200 feet
5 long. (AR 106, 561.) In addition, the actual text of the condition does not support Petitioners'
6 position. The first draft condition (D 34) proves only that uncertainty existed about the likelihood
7 of a future Mill Creek Bridge as it conditioned construction of that limited extension of "B" Street
8 within the Project to a point "after completion of a future bridge, if constructed by the City." (AR
9 45906.) In fact, the final version of that same condition (relabelled D 37) included no reference to
10 the Mill Creek Bridge at all. (AR 614, 46712.) That condition only imposes a phasing obligation
11 regarding the limited extension as shown on the Specific Plan circulation plan and the tentative
12 map. (AR 106, 561.)

13 The facts and the law do not support Petitioners' (il)logical leap that such a minor
14 improvement or other components of the Project "compels or practically presumes completion" of
15 the Mill Creek Bridge as required to invoke the piecemealing prohibition. See *Banning Ranch*,
16 *supra*, 211 Cal.App.4th at 1225-1226 (finding construction of access roads and other circulation
17 improvements that are "easing the way for" another project does not mean that the piecemealing
18 prohibition applies to the challenged EIR); *Laurel Heights I, supra*, 47 Cal.3d at 388-389, 396, 399
19 (finding piecemealing where the UC Regents purchased the entire Laurel Heights building but only
20 performed CEQA analysis of their occupancy of a portion of that building and it was "indisputable
21 that the future expansion and general type of future use [of the entire building] is reasonably
22 foreseeable"). Here, the Mill Creek Bridge is also not an expansion or extension of the Project as
23 the record makes clear that the Mill Creek Bridge is not required, from any perspective, for
24 construction or occupancy of the Project. Petitioners also fail to disclose that the Mill Creek
25 Bridge is actually located outside the City's jurisdiction and that neither the City nor Real Parties
26 own the land required for the actual bridge improvements. (AR 16503 [showing Mill Creek is
27 located within San Bernardino County and the City of Redlands], 16677.) The Project may
28

1 accommodate the Mill Creek Bridge, but *Banning Ranch* and the other case law cited show much
2 more is needed for Petitioners to prevail on their piecemealing argument.

3 D. The Final EIR Properly Discloses Cumulative Impacts Relative To The Possibility
4 That The City Might Pursue The Mill Creek Bridge

5 Regardless of whether CEQA required the analysis,⁶ Petitioners arguments are further
6 undermined as the Final EIR analyzes the potential for the Project to have cumulatively
7 considerable biological, traffic and noise impacts in conjunction with the potential Mill Creek
8 Bridge. The prior subsections of this Section of the Opposition Brief describe the traffic analysis
9 of the Project with the Mill Creek Bridge. That analysis discloses the traffic impacts and required
10 improvements under the cumulative Year 2035 scenarios with and without the Project. (AR
11 17085-17095; 17254-17263.) "As shown in Table FFFF of the TIA, all study area intersections are
12 projected to operate at a satisfactory LOS under build-out of the Project either with or without the
13 potential development of Newport Avenue/SR-38 Connection [Mill Creek Bridge]." (AR 17095.)

14 For cumulative noise impacts, the Final EIR considered the cumulative traffic noise
15 conditions in the 2035 Buildout Year with the Project traffic. (AR 17250.) The analysis identifies
16 the potentially significant impacts with and without the Mill Creek Bridge (referred to here as the
17 State Route 38/Newport Avenue connection). (*Id.*) The only difference between the two scenarios
18 is along the new Greenspot Road with Mill Creek Bridge, and the Final EIR concludes that MM
19 NOI 1 is sufficient to reduce those cumulative noise impacts to a less than significant level. (*Id.*)

20 With respect to biology, Final EIR Section 5.4.8 discloses the results of the technical
21 studies that evaluated impacts of the Project and the Mill Creek Bridge to wildlife corridors,
22 sensitive habitat (intermediate RAFFS), critical habitat (San Bernardino Kangaroo Rat and Santa

23 ⁶ CEQA requires that an EIR's cumulative impact analysis evaluate the combined impacts of the
24 project at issue along with "past, present and probable future projects" producing related impacts.
25 (Guidelines §15130(b)(1)(A).) Although the General Plan and a SANBAG Development
26 Mitigation Nexus Study include general references to the Mill Creek Bridge, no formal planning,
27 permitting, applications, design or environmental review has occurred with respect to the Mill
28 Creek Bridge. Thus, the Mill Creek Bridge does not technically qualify as a cumulative project the
Final EIR had to analyze. See *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208
Cal.App.4th 362, 397 [holding mere awareness of a potential future freeway off ramp
improvement is not sufficient to require analysis as a cumulative project].

1 Ana sucker), and jurisdictional waters of the U.S. and state. (AR 16676-16680; 29006-29013
2 [RBF biological impact analysis].) The discussion notes the potential for the Mill Creek Bridge to
3 "impact jurisdictional waters and bisect the designated Mill Creek Regional Corridor." (AR
4 16681.) As the City's consideration of the Mill Creek Bridge is still at a very early stage, the Final
5 EIR identifies the uncertainty that exists and the City, regional, state and federal permitting that
6 still needs to occur. (AR 16681-16682.) The Final EIR also identifies a list of design features and
7 preventative measures the City could consider to minimize impacts if the City decides to pursue
8 the Mill Creek Bridge. (AR 16677, 16681-16682.)

9 While there is little that the Opening Brief accurately portrays about this issue, Petitioners
10 are correct that the topic of potential Mill Creek Bridge was discussed early and often in the
11 Project review process. Some expressed preliminary opinions about whether the Project
12 necessitated or should include the Mill Creek Bridge, but data, planning and technically driven
13 topics such as this are complex and require professional expertise and judgment to evaluate
14 existing and future conditions and requirements. As a result, the City did not rush to judgment and
15 instead let the planning process run its course. That analysis demonstrates that piecemealing did
16 not occur and the Final EIR satisfies CEQA's information disclosure requirements by studying the
17 Mill Creek Bridge as a cumulative project in the Project's EIR.

18 **II. THE CITY'S ANALYSIS, DISCUSSION AND FINDINGS REGARDING THE**
19 **PROJECT'S POTENTIALLY SIGNIFICANT GHG IMPACTS COMPLY WITH**
20 **CEQA**

21 Petitioners "bear[] the burden of showing the agency's findings are not supported by
22 substantial evidence." *Ross, supra*, 199 Cal.App.4th at 921-922. As the following illustrates,
23 Petitioners' characterization of the Final EIR's treatment of GHG issues does not meet Petitioners'
24 burden to "lay out the evidence favorable to the other side and show why it is lacking. Failure to
25 do so is fatal." *Defend the Bay, supra*, 119 Cal.App.4th at 1266. On that basis alone, the Court
26 should find in favor of the City and Real Parties in Interest as it relates to Petitioners' GHG
27 arguments.

1 Even if Petitioners had properly cited to the record, as demonstrated in the following,
2 substantial evidence supports the City's determination that the Project will have less than
3 significant GHG impacts. At the outset, it is important to establish what Petitioners do not
4 challenge. Petitioners do not argue that the City utilized an improper threshold of significance.
5 Petitioners also do not assert that the City failed to quantify properly the Project's GHG emissions
6 or the reductions in GHG achieved by the many Project features. Petitioners have waived any and
7 all claims regarding those issues by failing to raise an argument in their opening brief. See
8 *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 439.

9 Petitioners' sole claim, notwithstanding some creative word choice, is that substantial
10 evidence does not support the City's conclusion that the Project will have less than significant
11 GHG impacts. With such a claim, "[t]he court does not pass upon the correctness of the EIR's
12 environmental conclusions, but only upon its sufficiency as an informative document." *In re Bay-*
13 *Delta, supra*, 43 Cal. 4th at 1161 (citations and quotations omitted). To uphold an EIR, a court
14 need only find "enough relevant information and reasonable inferences from this information that a
15 fair argument can be made to support a conclusion, even though other conclusions might also be
16 reached." CEQA Guidelines ("Guidelines"), § 15384(a). In evaluating the record, the court must
17 "resolve all conflicts in the evidence and any reasonable doubts...in favor of the agency's findings
18 and decision." *Citizens for Responsible Equitable Env'tl. Dev., supra*, 196 Cal.App.4th at 522-23.
19 The court "is not to weigh conflicting evidence and determine who has the better argument."
20 *Laurel Heights I, supra*, 47 Cal.3d at 393. Under the facts and law, Petitioners' GHG argument
21 lacks merit.

22 A. Using Well Established Methodologies, the Final EIR Thoroughly Discloses the
23 Project's GHG Impacts

24 Because Petitioners have failed to do so, the following summarizes the Final EIR's
25 extensive treatment and exhaustive analysis of GHG. Although not challenged by Petitioners, and
26 thus now beyond attack, the following presentation of the analytical path the City followed in
27 assessing GHG impacts provides context for the later discussion of why Petitioners' claims lack
28 merit. As the California Supreme Court has recognized, "[m]eeting our statewide [GHG]

1 reduction goals does not preclude all new development. Rather, the Scoping Plan - the state's
2 roadmap for meeting Assembly Bill 32's target—assumes continued growth and depends on
3 increased efficiency and conservation in land use and transportation from all Californians." *Center*
4 *for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 220
5 ("Newhall Ranch"). The Final EIR does not shy away from the fact that the Project is a large
6 master-planned community that will annually generate as much as 82,817 metric tons CO2
7 equivalent emissions (hereafter, "MTCO2e"). (AR 16799.) The Final EIR also discloses that the
8 applicable adopted climate change plans for the region already specifically account for the growth
9 and GHG emissions contemplated by the Project. (See AR 16806 [discussing the Transportation
10 Analysis Zones ("TAZ") analysis that shows development greater than contemplated by the Project
11 at the Project Site].)

12 Of note, the Final EIR includes 82 pages of discussion and analysis of the Project's
13 potentially significant GHG impacts (AR 16736-16818), a 426 page Climate Change Technical
14 Report prepared by the GHG experts at Rambol Environ (AR 4540-4964), numerous responses to
15 comments and supplemental GHG information prepared by Rambol Environ that was presented
16 prior to City Council action on the Project. (AR 35953-35965, 36042-36133.) That information
17 provides the substantial evidence to support the more than 9 pages of GHG findings adopted by the
18 City Council. (AR 353-360, 478-479.) While page length is not always an indicator of quality, as
19 discussed below, it is in this case. The City provided the decision makers and the public with
20 detailed information about the Project's GHG impacts. Consistent with CEQA's requirements, that
21 information describes the applicable regulatory structure, the thresholds of significance, the
22 amount of the Project's GHG emissions and the support that exists for the City Council's finding
23 that the Project will have less than significant GHG impacts.

24 The Final EIR's GHG discussion starts with background information regarding the science
25 that underlies climate change. (AR 16736-16741.) Thereafter, Section 5.7.2 explains that the
26 Final EIR analyzed the Project in terms of the two thresholds of significance identified in
27 Appendix G of the Guidelines. (AR 16742-16744.) First, the Appendix G threshold asks whether
28 a Project would "generate greenhouse gas emissions, either directly or indirectly, that may have a

1 significant impact on the environment." Second, the Appendix G threshold inquires whether the
2 Project "conflict[s] with an applicable plan, policy, or regulation adopted for the purpose of
3 reducing the emissions of greenhouse gases."

4 As to the first threshold, the California Supreme Court's decision in *Newhall Ranch* upheld
5 the use of consistency with Assembly Bill ("AB") 32's mandates as the basis for the evaluation.
6 *Newhall Ranch, supra*, 62 Cal.4th at 221. The Final EIR did just that. The Final EIR "selected
7 consistency with AB 32's mandates as determined by comparisons of the Project's GHG emissions
8 to emissions reduction targets called for under AB 32." (AR 354, 16743.) That analysis looked to
9 two sources to establish independent bases for that determination. (*Id.*) Initially, the Final EIR
10 "evaluated the Project's consistency with AB 32's mandates as determined by comparisons of the
11 Project's GHG emissions to emissions reduction targets called for under AB 32." (AR 354.) As
12 an additional level of analysis, the Final EIR also includes "a combination approach that uses
13 consistency with [AB 32's] quantitative emission reduction targets and a qualitative analysis of
14 whether the Project is compliant with applicable statewide and local regulatory programs designed
15 to reduce GHG emissions consistent with AB 32." (*Id.*)

16 Regarding the second CEQA GHG threshold of significance, the Final EIR "evaluated
17 whether the Project conflicts with the applicable plans, policies and regulations adopted for the
18 purpose of reducing emissions of GHG." (AR 16743.) That evaluation included consideration of
19 the Project in light of the relevant plans for the region—the Southern California Association of
20 Government's ("SCAG") Regional Transportation Plan/Sustainable Communities Strategy
21 ("RTP/SCS") adopted pursuant to SB 375 and the San Bernardino Associated Government's
22 ("SANBAG") Regional Greenhouse Gas Reduction Plan (RGRP). (*Id.*) While Petitioners do not
23 challenge those thresholds, the Final EIR provides the necessary information for decision makers
24 and the public to understand how and why the City selected the two significance thresholds.

25 Thereafter, the Final EIR provides a lengthy and comprehensive discussion of the key
26 international, federal, multi-state, state, regional and local "regulations" that relate to GHG and
27 climate change. (AR 16744-16768.) In particular, the analysis includes much more than a
28 discussion of just AB 32. The Final EIR describes in detail more than 30 laws, regulations,

1 policies and plans that could influence how the respective levels of government address GHG
2 emissions and climate change. Each of the categories includes a paragraph or more of explanation
3 regarding the nature of the "regulations" including, without limitation, Executive Order B-30-15,
4 AB 32, SB 375, SCAG's RTP/SCS, the RGRP, the City of Highland General Plan and the City of
5 Highland Municipal Code. (AR 16749-16753, 16761-16768.) On its own, the analysis of the
6 General Plan's GHG related goals and policies is more than 6 pages. (AR 16761-16768.)

7 The Final EIR's analysis of GHG continues with a description of the Project, including
8 Project design features that the Final EIR considered when determining the Project's GHG
9 emissions. (AR 16772-16774.) As just one example, the Project's residential and non-residential
10 buildings must be at least 35 percent more energy efficient than the 2008 Title 24 part 6 Building
11 Code. (*Id.*) The GHG evaluation also incorporates a separate calculation to account for the
12 potential that neighborhood commercial overlay (NC) areas of the Project could develop as either
13 commercial, mixed-use or exclusively residential. (AR 16774.)

14 With the specifics of the Project explained, the Final EIR goes on to describe the
15 methodology used for and the results of the Project's GHG emissions inventory analysis. (AR
16 16772-16798.) The City worked with the experts at Rambol Environ, and utilized scientific and
17 factual data along with widely accepted modeling programs such as CalEEMod™ and the
18 California Air Resources Board's EMFAC and OFFROAD programs. (AR 16775.) For each of
19 the seven "source" emissions categories, the Final EIR determined the Project's emissions and
20 provides a detailed explanation of the basis for that determination. (AR 16777-16798; 20961-
21 20980.) The analysis also contains a discussion of the "applicable regulatory measures designed to
22 reduce GHG emissions from particular activities consistent with AB 32" and the Project's
23 compliance with the same. (AR 16777.)

24 The Final EIR discloses that the Project would result in annual MTCO_{2e} emissions of
25 82,817 or 79,779, with and without the NC overlay, respectively. (AR 16799.)⁷ Those annual
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27 ⁷ As disclosed in the CEQA findings, CalEEMod's newer version 2013.2.2 demonstrates even
28 lower emissions for the Project "with" the NC overlay GHG emissions inventory decreasing 7,020

1 GHG emissions are approximately 32,000 to 33,000 MTCO₂e less per year than would occur with
2 a similar project without the Project's GHG emission reducing characteristics. (AR 16799.) The
3 analysis uses a very conservative approach that means the Final EIR does not take credit for many
4 future regulatory and other "GHG-reducing control measures . . . [that] are likely to reduce the
5 Project's GHG emissions." (AR 34727, 16772.)

6 The Final EIR uses the data described above to evaluate whether the Project will result in
7 significant GHG impacts. Those significance determinations include multiple layers of analysis.
8 As described in more detail in the sections that follow, Final EIR Section 5.7 provides the type of
9 CEQA compliant, multi-pronged analysis of potential GHG impacts contemplated by the *Newhall*
10 *Ranch* decision and applicable law.

11 B. The City Properly Determined That the Project Will Have Less Than Significant
12 GHG Impacts

13 Consistent with the California Supreme Court's *Newhall Ranch* decision, the parties agree
14 that the City complied with CEQA in evaluating consistency with AB 32 for purposes of analyzing
15 the significance threshold that asks whether the Project will "generate greenhouse gas emissions,
16 either directly or indirectly, that may have a significant impact on the environment." (OB, p.
17 25:23-25.) Thus, the sole question presented by the Petition relates to the methodology the City
18 used to evaluate, and the conclusions reached regarding, the Project's GHG emissions. The
19 substantial evidence standard applies because challenges to "the scope of the analysis, the
20 methodology for studying an impact, and the reliability or accuracy of the data present factual
21 issues, so such challenges must be rejected if substantial evidence supports the agency's decision as
22 to those matters and the EIR is not clearly inadequate or unsupported." *Federation of Hillside &*
23 *Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1259.

24 The City's methodology relied on three independent basis for determining the Project's
25 consistency with AB 32. (AR 354-358.) One approach analyzed the Project in light of the AB 32
26 Scoping Plan's statewide GHG reduction goal of 28.5%, sometimes referred to as the BAU,
27 MTCO₂e per year (or 8.5%), and the Project "without" NC overlay GHG emissions inventory
28 decreasing 5,813 MT CO₂e per year (or 7.3%). (AR 357, 15746-15748.)

1 "business as usual", NAT, or "no action taken" approach. (AR 354, 16770.) As a second, stand-
2 alone, basis for evaluating consistency with AB 32, the Final EIR determined whether the Project
3 met the "26.2% reduction required for statewide land-use driven GHG emissions to achieve [the
4 emissions reductions] required by AB 32" as identified in analysis conducted by the GHG experts
5 at the Bay Area Air Quality Management District ("BAAQMD"). (AR 16771, 356.) The third
6 independent basis considered the Project in relation to a "combination of consistency with the
7 quantitative emission reduction targets and compliance with applicable statewide and local
8 regulatory programs designed to reduce GHG emissions consistent with AB 32." (AR 16771,
9 356.) As the following illustrates, substantial evidence supports the City's reliance on those
10 methodologies and the conclusion that each, independently, supports the determination that the
11 Project will not generate GHG emissions, either directly or indirectly, that may have a significant
12 impact on the environment.

13 1. Substantial Evidence Supports the Final EIR's Use of, and Significance
14 Conclusions Based On, CARB's 28.5% and BAAQMD's 26.2% GHG
15 Emissions Reduction Targets

16 By way of background, the 28.5% GHG emissions reduction target comes from the AB 32
17 Scoping Plan (2008) that AB 32 required CARB to develop. For the BAU analysis, CARB
18 determined that achieving the 1990 emissions level by 2020 would require a reduction of GHG
19 emissions of approximately 28.5 percent in the absence of new laws and regulations. (AR 4557);
20 *Newhall Ranch, supra*, 62 Cal.4th at 216. The California Supreme Court did not prohibit the use
21 of BAU analysis for purposes of evaluating the significance of a project's GHG impacts. Rather,
22 the Supreme Court rejected the Department of Fish and Wildlife's ("DFW") finding "because the
23 administrative record discloses no substantial evidence" in support of the use of that methodology
24 for the specific project at issue in that case. *Id.* at 225. The California Supreme Court then
25 clarified that "we hold only that DFW erred in failing to substantiate its assumption that the
26 Scoping Plan's statewide measure of emissions reduction can also serve as the criterion for an
27 individual land use project." *Id.* at 228. In rejecting that EIR, the *Newhall Ranch* decision found
28 that the developer "points to no expert opinion stating generally that the Scoping Plan

1 contemplates the same emission reductions from new buildings as from existing ones, or more
2 particularly" that the standard "applies without modification to a new residential or mixed use
3 development project." *Id.* at 226.

4 In contrast to *Newhall Ranch*, the Project's administrative record includes substantial
5 evidence to support the City's reliance on the statewide 28.5% reduction from BAU as one,
6 independent basis for evaluation of the significance of Project impacts. By extension, substantial
7 evidence supports the City's second, independent methodology of comparing the Project against
8 the less conservative 26.2% reduction BAAQMD derived from the Scoping Plan's data for land use
9 based GHG emissions. In fact, substantial evidence would have supported the use of a much lower
10 threshold.

11 Evidence in the record shows that CARB approved the final "First Update to the Climate
12 Change Scoping Plan" on May 22, 2014. (AR 16752.) Based on updated information about 1990
13 GHG emissions, GHG emissions during the recession of the late 2000's and the 2020 BAU
14 condition, AB 32 requires "approximately a 15.3 percent reduction (compared to a 28.5 percent
15 reduction as set forth in the original Scoping Plan)." (AR 16753.) That information, coupled with
16 the Scoping Plan's assignment of "only 8 percent" of the emissions inventory to the commercial
17 and residential sector and other factors set forth in the record, shows that "the percent of reduction
18 that the state estimated would be achieved based on land use approvals is much smaller than the
19 overall 28.5 percent reduction called for under AB 32." (*Id.*)

20 One example of the expert opinions the City relied upon in determining the propriety of the
21 use of the 28.5% reduction is a document submitted to the City in response to written comments
22 received after the close of the DEIR's public comment period. Rambol Environ provided the City
23 with an "Evaluation of AB32 Scoping Plan Business-As-Usual Thresholds For the Harmony
24 Specific Plan" that includes the kind of expert opinion that DFW was missing in the *Newhall*
25 *Ranch* case. (AR 36043-36049.) The analysis of the GHG experts at Rambol Environ provides:

26 The BAAQMD and [San Luis Obispo Air Pollution Control
27 District] SLOAPCD analyses can be used to represent what the
28 reduction from a BAU scenario for the land use-driven sector
would be. The extensive analysis from both agencies and the
creation of the efficiency metric confirmed their position that

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reductions from existing and future land uses would be the same to meet AB 32 goals. This makes sense given the steep reductions that are available from existing land uses by implementing retrofit programs as discussed above. In addition, the SCAG RTP/SCS demonstrates that the region is doing its fair share as it relates to land use related emissions. Both the BAAQMD and the SLOAPCD concluded that the reductions required from the land use-driven sector are lower than the statewide reduction required under AB 32.

...

Therefore, the proposed Project's utilization of the statewide reduction from BAU as a CEQA threshold as one approach to evaluating significance represents a conservative and logical approach to analyzing the proposed Project's GHG emissions that is supported by substantial evidence. (AR 36048-36049.)

In support of the methodology the City used, the experts at Rambol Environ analyzed technical evaluations of the AB 32 Scoping Plan performed by two different air quality districts within the state - BAAQMD and SLOAPCD. (AR 36043-36044.) The BAAQMD determined that the AB 32 Scoping Plan relied on a 26.2% reduction from BAU for statewide land-use driven sectors, an amount lower than the statewide overall reduction from all sectors of 28.5%. (AR 36044.) Significantly, the BAAQMD evaluation shows that the Scoping Plan's "required reductions from existing and future land use would be approximately the same" as "the great majority (over 90%) of future and existing emissions from the land use sectors are covered by rules and regulations that substantially reduce GHG emissions." (*Id.*)

SLOPACD evaluated CARB's post-Scoping Plan Functional Equivalent Document ("FED") analysis that accounted for reduced state GHG emissions during the recession of the late 2000's. (AR 36044.) SLOAPCD's review demonstrates that "the percent reduction goal from statewide land use-driven sectors is 10.12 percent based on the BAU assumptions consistent with the FED. This is lower than the statewide reduction used in the FED of 15.8 percent." (*Id.*) In addition to further substantiating lower necessary emissions reductions for the land use-driven sector than the overall statewide reductions, SLOAPCD also uses "the same reduction levels in emissions for existing and future land use." (*Id.*)

1 The City supported its determination regarding the GHG methodology with other data
2 points regarding the use of the 28.5% GHG emissions reduction for a new land use project.
3 Although the majority in the *Newhall Ranch* case asked (but did not answer) the question of
4 whether new development should have a higher threshold, Rambol Environ's analysis shows that
5 the Scoping Plan "does not state that new development must exceed the statewide target to offset
6 emissions from existing land use development." (AR 36045.) Similarly, the 2014 First Update to
7 the Scoping Plan also does not impose greater requirements on new development. (AR 36045-
8 36046.)

9 The logic supporting those assessments, as the Rambol Environ analysis explains, is that
10 new development is already very GHG emissions efficient due to existing regulatory requirements,
11 like Title 24 energy efficiency standards and the Green Building Code. (*Id.*) Enacted legislation
12 such as SB 350, which imposes significant obligations for use of renewable energy by utility
13 companies that supply power to, and energy efficiency of, existing buildings, "essentially requires
14 the energy efficiency of existing buildings to double by 2030." (*Id.*) As additional support, a
15 study commissioned by the California Homebuilding Foundation determined that "retrofitting
16 existing residential homes is likely much more cost-effective to reduce GHGs than [imposing]
17 further energy efficiency requirements to new housing." (AR 36046.) Substantial evidence also
18 supports the Final EIR's conclusion that new development does not require a higher percentage
19 GHG emissions reduction because, for "nearly all the sources [of energy and fuels] associated with
20 land use development projects, compliance with [AB 32's] 2020 goals is assured by the Cap-and-
21 Trade Program." (AR 36046-36047.)

22 Thus, on a statewide basis, substantial evidence supports the City's determination that new
23 land use projects can demonstrate compliance with AB 32 by achieving a 28.5% reduction from
24 BAU. However, the City went a step further in its analysis. To establish that the Final EIR's
25 conservative use of the 28.5% GHG emissions reduction adequately addressed the reductions
26 required for the specific region where the Project is located, the record includes more of the type of
27 additional expert analysis the California Supreme Court found lacking in the *Newhall Ranch* case.
28 A more detailed discussion of that analysis occurs in Subsections (B)(2) and (C) below. For these

1 purposes, we note that the City utilized information from the experts at Rambol Environ to analyze
2 the SCAG region's (where Highland is located) 2012 and 2016 RTP/SCS and the RGRP.
3 Substantial evidence supports the City's finding of Project consistency with the RTP/SCS. (AR
4 358-360.) The RGRP, a region specific plan, establishes an overall GHG reduction target for new
5 land use projects within the City of Highland of 22% below projected BAU emissions in 2020 and
6 a 29% reduction below BAU emissions. (AR 359-360, 16807.) The City determined that the
7 Project's more than "28.5% reduction is consistent with the City emission reduction listed in the
8 RGRP." (AR 16807-16808.)

9 As the above demonstrates, substantial evidence demonstrates that the Final EIR's
10 reduction target is sufficient to achieve the GHG emissions reductions necessary for AB 32
11 compliance for a new land use project within the City of Highland and the SCAG region. Unlike
12 the situation in the *Newhall Ranch* case, that substantial evidence is not limited to GHG emissions
13 reductions generally required for overall statewide compliance. Further, Petitioners have not
14 challenged the substantial evidence showing that the Project will achieve a 28.7% GHG emissions
15 reduction. (AR 356-357.) Thus, the City properly concluded that the Project would have less than
16 significant impacts, directly and indirectly, associated with its GHG emissions.

17 2. *As Another Independent Basis, Substantial Evidence Supports the City's*
18 *GHG Impact Analysis and Findings That Rely On A Combined Qualitative*
19 *and Quantitative Analysis of the Project's Consistency With AB 32*

20 In its *Newhall Ranch* decision, the California Supreme Court identified "potential pathways
21 to compliance, depending on the circumstances of a given project." *Newhall Ranch, supra*, 62
22 Cal.4th at 229. One of the identified methodologies for assessing AB 32 consistency involved
23 "looking to compliance with regulatory programs designed to reduce greenhouse gas emissions
24 from particular activities." (*Id.*) Consistent with that guidance, the Project's CEQA findings
25 disclose that "[i]n addition to demonstrating that the Project achieves a percent reduction in excess
26 of emission reduction numeric threshold designed to achieve AB 32's mandates, the DEIR
27 evaluates the Project's qualitative consistency with applicable statewide and local regulatory
28

1 programs designed to reduce GHG emissions consistent with AB 32's goals and the relevant
2 Highland General Plan policies designed to reduce GHG impacts." (AR 357.)

3 The Final EIR's qualitative regulatory measures analysis, coupled with the substantial
4 evidence that supports the Final EIR's quantitative analysis, fills the gap that existed in the *Newhall*
5 *Ranch* case where the California Supreme Court found DFW relied solely on assumptions about a
6 quantitative approach to AB 32 compliance. Contrary to Petitioners' assertions, and unlike the
7 *Newhall Ranch* case, the Final EIR's discussion of the applicable regulatory measures is far from
8 general or generic in nature. Initially, the Final EIR includes a detailed description of the
9 applicable regulatory programs and plans. (AR 16748-16768.) "Regulatory measures analyzed
10 included United States EPA and National Highway Traffic Safety Administration standards for
11 CO2 emissions and fuel consumption, CARB rules regarding idling by heavy-duty diesel vehicles,
12 South Coast Air Quality Management District Rule 445 regarding use of natural gas, AB 1309's
13 requirements for reduction in energy consumption by outdoor lighting, Title 24 energy efficiency
14 and CalGreen standards, SB 350's higher renewable energy targets for the state, AB 341's
15 statewide solid waste source reduction measures and others." (AR 357.)

16 The applicable regulatory measures discussed in the Final EIR are too numerous and all-
17 inclusive to address in detail in this Opposition Brief. Just by way of example of the scope of the
18 information provided, the discussion of SB 375 summarizes the purpose of the law, informs that
19 SCAG adopted an SCS/RTP specific to the region where the Project is located and discloses that
20 the SCS/RTP analysis includes growth at the Project Site equal to or greater than the Project. (AR
21 16750.) Similarly, for AB 1493 (also known as the "Pavley Standard"), the Final EIR describes
22 the law's intent to reduce emissions from non-commercial passenger vehicles and light duty trucks,
23 its status and that its standards will address GHG emissions from those types of vehicles "used by
24 residents, employees of and deliveries to the proposed Project." (AR 16756.) In contrast, for SB
25 605, the Act that requires an emissions reduction strategy for short-lived climate pollutants such as
26 methane, the Final EIR notes "it is not clear whether any of the Project emissions will be reduced
27 by the strategy. However, SB 605 is another piece of the larger statewide effort to reduce GHG
28 emissions that will allow the state to meet its statewide GHG goals." (AR 16753.)

1 The Final EIR's descriptions of the regulations formed the foundation for the next level of
2 analysis - an exploration of how the regulatory measures help establish the Project's consistency
3 with AB 32. For each construction and operational GHG emissions category - area sources,
4 energy use, solid waste, mobile sources, water and wastewater, construction, and vegetation
5 changes - the Final EIR evaluates the Project's compliance with those applicable regulatory
6 measures designed to reduce GHG emissions for that particular category. (AR 355, 357-358,
7 16778-16779, 16783, 16784, 16785, 16790, 16792, 16793-16794, 16762-16768 [General Plan and
8 Municipal Code], 17216-17219 [RTP/SCS], 21292- 21359 [RTP/SCS Impact reduction
9 measures].) This type of "compliance with laws" analysis for determining significance is expressly
10 contemplated by CEQA and frequently incorporated into CEQA documents. *Tracy First, supra*,
11 177 Cal App. 4th at 933-934 (upholding final EIR's reliance on Building Code standards to
12 determine a project will have a less than significant impact).

13 As the above referenced list of citations illustrates, the Final EIR's extensive regulatory
14 measures analysis was far from conclusory and far too voluminous to even briefly summarize here.
15 As one example, under the construction emissions source category, the Final EIR ultimately
16 concludes that as "the Project must comply with the applicable regulations imposed by law relative
17 to construction emission sources, the Project is consistent with the applicable regulatory programs
18 designed to achieve AB 32's goals." (AR 16779.) In support of that conclusion, the regulatory
19 measures discussion immediately preceding mentions federal regulations tailored to construction
20 emissions such as "heavy-duty pickup trucks and vans, and vocational vehicles", "airborne toxic
21 control measures to limit heavy-duty diesel motor vehicle idling" and "replacement of older, dirtier
22 engines with new emission controlled models." (AR 16778-16779.) Table 10 then quantifies how
23 these and other construction equipment related measures reduce the Project's GHG emissions.
24 (AR 20995.) Similarly, to support the conclusion of AB 32 consistency regarding area sources-
25 lighting, the Final EIR discloses that "AB 1109 requires at least a 25% reduction in energy
26 consumption from outdoor lighting by 2018 [and that] a Project design feature requires the use of
27 LED lighting for street lights within the Project." (AR 16784.)
28

1 At the regional and local level, the Final EIR also provides the necessary substantial
2 evidence in support of the City's GHG impact findings. The RTP/SCS and RGRP are key
3 documents for purposes of achieving AB 32 compliance at the local and regional level. Subsection
4 C below discusses the in depth analysis that supports the Project consistency finding regarding
5 RTP/SCS. The City also has 20 General Plan goals or policies designed to reduce GHG impacts,
6 all of which the Final EIR analyzes. (AR 16762-16768.) Many of those goals are not directly
7 applicable to an individual project. However, by means of example, Goal 3.4, Policy 11 promotes
8 improved pedestrian connections between homes and activity centers such as jobs, retail and parks.
9 The City found the Project consistent with that policy as the Project's mix of uses within a master
10 planned environment incorporates "an integrated system of pedestrian pathways and bikeways
11 [that] allows residents to access public and private recreation, neighborhood commercial services,
12 and public facilities." (AR 16763.) As another example, General Plan Goal 10.12 "Encourage[s]
13 development that is energy efficient and environmentally sustainable." (AR 16767.) The Final
14 EIR includes a consistency discussion that explains the Project's energy efficiency and
15 environmentally sustainable elements such as reduction of potable water use by 20% below
16 baseline levels, use of LED technology for public street lighting, and the pedestrian friendly,
17 mixed-use nature of the Project. (AR 16767, 16764.) The Final EIR also discusses three City
18 Municipal Code sections that will influence the Project's GHG emissions, and ultimately AB 32
19 compliance, in the areas of integrated waste management, mobile source emission reductions and
20 transportation controls. (AR 16768, 4922-4926.)

21 Petitioners argue that the Final EIR's "cited regulations are not always actually applicable"
22 and that "none of these actually regulate the construction or operation of a land use project." (OB,
23 29:18, 23-24.) The administrative record demonstrates otherwise. (AR 355, 357-358, 16752,
24 16771, 16778-16779, 16783, 16784, 16785, 16790, 16792, 16793-16794, 16762-, 17216-17219,
25 21292- 21359.) With respect to the regulations Petitioners specifically mention, the Scoping Plan's
26 calculation of reductions required to achieve the 2020 emissions level already "account for
27 measures incorporated into the inventory, including Pavley (vehicle model-years 2009-20016) and
28 the renewable portfolio standard (12% - 20%)." (AR 16752, 16771.) Similarly, the Project's GHG

1 analysis addresses Executive Order S-01-07 as it "will decrease GHG emissions by reducing the
2 full fuel-cycle and the carbon intensity of the transportation fuel pool in California." (AR 16793.)
3 Inclusion of the regulatory measures in the Project's AB 32 consistency analysis makes perfect
4 sense as they combine to increase overall fuel economy and decrease GHG emissions from the fuel
5 used, all of which reduce GHG emissions from the Project's operational passenger vehicle trips
6 "consistent with AB 32's reduction goals." (AR 20981, 16756, 20967.) As to the final regulation
7 Petitioners mention, the Final EIR explains that while the Project analysis conservatively does not
8 take credit for the lower emissions, "[p]hasing in of cap-and-trade compliance obligation for
9 transportation fuel providers further reduces the GHG emissions attributable to mobile sources."
10 (AR 16757.) As mobile sources represent the largest share of the Project's GHG emissions, no
11 merit exists for Petitioners' assertion that a qualitative AB 32 consistency analysis should ignore
12 these regulatory measures. To the contrary, the regulations identified will directly influence GHG
13 emissions of the workers for, residents of, and visitors to the Project. (AR 16798 [approximately
14 67,000 of the overall 83,000 MTCO_{2e} emissions are passenger vehicle related].)

15 The Final EIR's qualitative and quantitative AB 32 consistency discussion provides a
16 broad-spectrum analysis consistent with CEQA's informed decision making mandate. By
17 evaluating how state, regional, and local regulatory measures influence the GHG emissions of this
18 specific Project, located on the Project Site, in the City of Highland, the Final EIR includes the
19 analytical roadmap that was missing in the *Newhall Ranch* case. Thus, the record provides the
20 substantial evidence needed to support the City's conclusions that the Project will have less than
21 significant GHG impacts based under the combined qualitative and quantitative analysis of
22 compliance with AB 32. (AR 357-358.)

23 C. Substantial Evidence Supports the Finding That the Project Will Have Less Than
24 Significant Impacts Regarding Conflicts With An Applicable Plan, Policy, Or
25 Regulation Adopted For the Purpose of Reducing GHG Emissions

26 The City selected consistency with SCAG's RTP/SCS for the region where the Project is
27 located, and the SANBAG's 2014 RGRP for its City-specific emissions reduction targets and
28 strategies, as the basis for evaluating the second GHG significance threshold. (AR 358, 16805.)

1 To reiterate, Petitioners do not challenge the City's use of those plans as the basis for the
2 consistency analysis or the Final EIR's analysis of consistency with the RGRP, and those claims
3 are waived. *See Tracy First, supra*, 177 Cal.App.4th at 934-935. Instead, the Opening Brief solely
4 raises a substantial evidence objection to the information and analysis the City relied upon in
5 concluding that the Project would not conflict with the applicable RTP/SCS. *See Federation of*
6 *Hillside & Canyon Associations v. City of Los Angeles, supra*, 83 Cal.App.4th at 1259.

7 By way of background, the RTP/SCS is a requirement of SB 375. (AR 16749.) SB 375
8 introduced the RTP/SCS as "a new planning process to coordinate land use planning, regional
9 transportation plans, and funding priorities in order to help California meet the GHG reduction
10 goals established in AB 32." (*Id.*) CARB established regional targets for GHG reductions for each
11 applicable RTP/SCS. "For the area under SCAG's jurisdiction, including the Project area, [CARB]
12 adopted Regional Targets for reduction of GHG emissions by 8 percent for 2020 and by 13 percent
13 for 2035." (AR 16749-16750.) Based on its modeling and overall compliance with its programs,
14 goals and policies, the 2012 and 2016 RTP/SCS determined that the RTP/SCS "would meet or
15 exceed the region's GHG targets set by CARB by achieving a 9 percent per capita reduction by
16 2020 and a 16 percent per capita reduction by 2035 compared to the 2005 level on a per capita
17 basis." (AR 36119.)

18 SCAG's use of the "by achieving" language in the above statement shows the fatal flaw in
19 Petitioners' argument about the Project's RTP/SCS consistency analysis. The RTP/SCS figures are
20 different from the aspirational AB 32 Scoping Plan thresholds that identify the amount of
21 reductions needed to comply with AB 32. The RTP/SCS does not establish the percent reductions
22 as thresholds that each individual project must achieve. As the RTP/SCS language quoted above
23 demonstrates, the RTP/SCS already determined what reductions will occur with implementation of
24 the RTP/SCS and that those reductions achieve compliance with AB 32. In CARB Executive
25 Order G-12-039, issued on June 4, 2012, CARB concurred that "implementation of the RTP/SCS
26 would achieve the 2020 and 2035 GHG emission reduction targets established by CARB." (AR
27 16750.)

28

1 To determine the reductions anticipated by the RTP/SCS, SCAG performed modeling
2 analysis of "energy, water, non-transportation GHG emissions, and public health data." (AR
3 36120-36121.) For land use related emissions, "the modeling analysis underlying the RTP/SCS is
4 based on SCAG's growth forecast data for population and housing by areas divided into TAZ."
5 (AR 16805.) TAZ's correlate to specific properties within a jurisdiction and the Project Site "is
6 located in TAZ numbers 53848200, 53848300, and 53872200. SCAG's growth forecasting data
7 assumes that this TAZ area will grow by 3,500 residential units and 1,248 new jobs by the year
8 2035." (AR 16806.) When combined with other existing and future growth, as noted in Final EIR
9 Table 5.7-M and the related discussion, the SCAG modeling shows that the RTP/SCS analysis and
10 projections already incorporate the growth associated with the Project. (*Id.*) Thus, the City
11 properly concluded that the Project does not conflict with the RTP/SCS.

12 As further support for its less than significant impact conclusion, the Final EIR also
13 includes extensive analysis of the relevant policies, programs and goals SCAG identified as the
14 means of achieving the overall reductions contemplated by the RTP/SCS. Contrary to Petitioners'
15 allegations, and unlike Petitioners' Opening Brief, the Final EIR does not cherry pick which goals
16 and policies to evaluate. Final EIR Section 6.3.2 lists every RTP/SCS goal and it includes a
17 corresponding analysis of consistency and applicability to the Project. (AR 17216-17219.) The
18 City also evaluated the 2016 RTP/SCS, adopted just months before the Project approval, and the
19 record reflects that the "recent update to the 2016 RTP/SCS approved in April 2016, did not
20 change any of the applicable goals identified in the 2012 RTP/SCS. The 2016 RTP/SCS added
21 two new guiding policies, but neither of those apply to an individual development project." (AR
22 35958.)

23 Although never mentioned by Petitioners, Appendix G.2 charts the RTP/SCS GHG
24 reduction "measures that could reduce impacts from planning, development and transportation."
25 (AR 4898.) While the RTP/SGS does not establish those measures as a checklist that every project
26 must satisfy, in 68 pages of analysis, the Final EIR nonetheless tracks which measures potentially
27 apply to the Project, and the extent to which the Project accomplishes compliance with those
28 applicable measures. (AR 4897-4965.) Examples of Project features that achieve that compliance

1 include, without limitation, an integrated system of pathways, bikeways and other circulation
2 elements that facilitate movement by non-vehicular means (AR 4955-4956), preferential parking
3 for lower emissions vehicles (AR 4958), and landscaping appropriate for the region's climate and
4 weather-based automatic irrigation systems. (AR 4961, 4965.)

5 For the reasons discussed herein, substantial evidence supports the City's RTP/SCS
6 consistency analysis. It is particularly significant that the RTP/SCS already contemplates the
7 growth, and therefore the GHG emissions, associated with the Project on the Project Site (not just
8 within the region as a whole). In contrast, Petitioners offer an opinion that the Court should find
9 the Project's location to be per se inconsistent with the RTP/SCS because the Project Site is not an
10 infill location adjacent to existing public transportation. (OB, p. 32:18 - 33:2.) Yet, the TAZ
11 analysis is property specific such that the RTP/SCS planning and modeling already accounts for
12 the Project's distance from transit and employment. It is certainly true that the RTP/SCS "focuses
13 new growth and development in existing urbanized areas and opportunity areas such as the high
14 quality transit corridors (HQTAs) and incorporates strategies to increase walking, biking, or other
15 forms of active transportation.' However, the 2016 RTP/SCS does not restrict other types of
16 developments and its analysis and projections include development of the Project." (AR 36047
17 [quoting the Program EIR for the 2016 RTP/SCS].)

18 In sum, Petitioners' arguments misstate the scope of the RTP/SCS and erroneously focus on
19 isolated provisions of the same. Those arguments also ignore the larger fact that the Project is
20 already included in the RTP/SCS conclusion that the region will achieve the SB 375 (and by
21 extension AB 32) required emission reductions and the substantial evidence that supports the City's
22 findings regarding the Project's consistency with the RTP/SCS. Thus, the City correctly concluded
23 that substantial evidence exists to find that the Project will not have significant adverse GHG
24 impacts.

25 D. The Final EIR Adequately Discusses, Discloses and Evaluates The Project In
26 Relation to California's Post-2020 GHG Emission Goals

27 The California Supreme Court recently concluded that an agency preparing a regional
28 transportation plan/sustainable communities strategy "did not abuse its discretion in declining to

1 adopt the 2050 goal as a measure of significance in light of the fact that the Executive Order [S-3-
2 05] does not specify any plan or implementation measures to achieve its goal." *Cleveland*
3 *National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 517
4 (hereafter, "*CNFF v. SANDAG*"). The Supreme Court recognized the futility of such a metric as
5 there is no "guidance as to how the 2050 goal translates into specific reduction targets broken
6 down by region or sector of emission-producing activity." *Id.* The record for the Project also
7 establishes that similar, or perhaps greater, limitations exist as to the 2030 interim goal identified
8 in Executive Order B-30-15. (AR 16800, 35961-35962 ["CARB is still evaluating how the state
9 will meet Executive Order B-30-15 and no approved targets or legislative requirements exist yet].)
10 Therefore, CEQA does not require the Final EIR to use either of those Executive Orders as a
11 measure of significance of the Project's GHG impacts.

12 In accordance with the level of analysis the California Supreme Court found acceptable in
13 *CNFF v. SANDAG*, the City expressly addressed the Project in relation to Executive Orders S-3-05
14 and B-30-15. (AR 357-358, 478, 16749, 16800-16802.) Sufficiency of that discussion is
15 measured against the standard of whether an EIR "obscure[s] the existence or contextual
16 significance of the Executive Order's emission reduction target" or fails to make "clear that the
17 2050 target is part of the regulatory setting in which the Plan will operate." *CNFF v. SANDAG*,
18 *supra*, 3 Cal.5th at 515-516.

19 The Final EIR complies with the standards announced by the California Supreme Court.
20 Final EIR Section 5.7.3.4, as part of the Final EIR's regulatory setting discussion, describes the
21 broad goals the Executive Orders identify for the state's GHG emission reductions after 2020. (AR
22 16744, 16749.) The 80% below 1990 levels by 2050 and 40% below 1990 levels by 2030 goals
23 are also identified a number of times. (AR 16749, 16800, 34726, 35962.) In addition, the Final
24 EIR appropriately discloses the limitations that exist with respect to an analysis of those goals. As
25 to both Executive Orders, the state has not established specific compliance plans or targets for
26 individual projects or segments of the environment. (AR 16800-16801, 35962.) The analysis
27 shows that studies exist regarding what might be required and that the goals "can only be reached
28 with substantial changes in electricity production, transportation fuels, and industrial processes"

1 and perhaps "technologies that have not yet been proven." (AR 35962, 16801.) Nonetheless, with
2 respect to the state's ability to meet the goals, the Final EIR informs:

3 The more recent Updated Scoping Plan adopted in May 2014 states
4 that "California is on track to meet the near-term 2020 greenhouse
5 [GHG] gas limit and is well positioned to maintain and continue
6 reductions beyond 2020 as required by AB 32" and it recognizes
7 the potential for California to "reduce emissions by 2030 to levels
8 squarely in line with those needed in the developed world and to
9 stay on track to reduce emissions to 80 percent below 1990 levels
10 by 2050." (AR 16801.)

11 As the California Supreme Court articulated, an EIR should include a comparison of the
12 project-relevant emissions and the goals of the Executive Orders. *CNFF v. SANDAG, supra*, 3
13 Cal.5th at 516. That discussion complies with CEQA if it "presented the information enabling that
14 comparison 'in a manner calculated to adequately inform the public and decision makers, who may
15 not be previously familiar with the details of the project.'" *Id.* (citation omitted). The Final EIR
16 meets that standard and substantial evidence supports the City's findings.

17 The Final EIR discloses that the Project would generate as much as 82,817 MTCO₂ per
18 year at full buildout for the life of the Project. (AR 16799.) The Final EIR explains that, even
19 though Project completion and its associated GHG emissions will occur at a much later date than
20 2020, the analysis overstates impacts by assigning those total Project annual emissions to 2020.⁸
21 (AR 16772.) That number represents the Project's annual GHG emissions in total, not the overall
22 Project emissions over the life of the Project, so the decision makers and public know the Project's
23 yearly post-2020 emissions. As such, the Final EIR complies with CEQA by both disclosing the
24 goals of the Executive Orders and conservatively identifying what Project annual GHG emissions
25 will be in the 2030 and 2050 time horizons relevant to the Executive Orders.

26 Although not required by CEQA, the City made findings regarding the Project in relation to
27 the Executive Orders' goals. The City found that "the Project will not impede the policies
28

⁸ This makes the Project critically different from an approval like SANDAG's RTP/SCS where 2050 was the build-out date for regional planning/CEQA purposes and the EIR relied on a comparison to existing GHG emissions as one of the significance thresholds. *CNFF v. SANDAG, supra*, 3 Cal.5th at 516.

1 described by the California Air Resources Board's Scoping Plan Update, or other future laws or
2 policies that will help achieve Executive Order S-3-05's or B-30-15's goals." (AR 357-358, 478.)

3 The supporting documentation includes much of the analysis already summarized in Subsections
4 (B) and (C) above. By way of example, the record discloses that the Project:

5 will need to comply with future applicable state and local laws and
6 ordinances that are established to help the state reach its GHG
7 reduction goals. These include future Title 24 standards adopted
8 over the lengthy build out of the project. . . . Furthermore, the
9 Harmony Specific Plan has incorporated project design features to
10 help reduce GHG, including installation of solar panels on
commercial building roofs, a trail and circulation use design that
promotes walking, biking and other non-motorized transport, use of
radiant ("white") roofs for residential uses, limitations on the
number of fireplaces, and solar-ready designs for residential roofs.
(AR 35962-35963.)

11 Additionally, CARB "has recognized that compliance with Sustainable Communities
12 Strategies is essential to meeting 2050 goals. (See California Air Resources Board, Climate
13 Change Scoping Plan First Update: Discussion Draft for Public Review and Comment at p. 80.)"
14 (AR 16801.) The RTP/SCS evaluates the region's existing and future GHG emissions, including
15 the specific growth contemplated by the Project, and determined that the region will achieve the
16 GHG emissions reduction requirements during the 2016-2040 timeframe. (AR 35957.) Previously
17 discussed substantial evidence also supports the Final EIR's conclusion that as "the Project will
18 reduce emissions consistent with AB 32 and continue to incorporate additional emissions reducing
19 measures as may be required by law, it is not inconsistent with Executive Order S-3-05." (AR
20 16801.) In light of the above, and the other supporting documentation, the Court should find that
21 the City prepared a CEQA-compliant GHG analysis.

22 **III. The Final EIR's Analysis and Findings Regarding Flooding Impacts Comply With**
23 **CEQA**

24 The City undertook a thorough review of the Project's potentially significant impacts on
25 water resources, including flooding, consistent with the CEQA mandate of promoting informed
26 decision making. Given the overlap and range of possible concerns, the Final EIR includes
27 information about the Project's potential impacts on hydrology, flooding and water quality. (AR
28 16850-16881.) Underlying the Final EIR are several expert-authored documents related to those

1 topics including: (1) the Hydrology and Sedimentation Technical Study (Appendix I.1); (2) the
2 Conceptual Water Quality Management Plan (CWQMP) for Harmony Tentative Tract No. 18871;
3 (3) the Harmony Specific Plan, Domestic Water System Technical Study (Appendix I.2); (4) the
4 Harmony Water Supply Assessment (Appendix I.3); (5) the Harmony Specific Plan, Sewer
5 Analysis (Appendix I.4); and (6) the Conceptual Master Drainage and Grading Plans (AR 98-99.)
6 In response to Petitioners' late filed CEQA comments, the record also includes additional materials
7 by Proactive Engineering Consultants ("Proactive") which summarize the extensive work done to
8 evaluate flooding, downstream impacts and stormwater flows as a result of or in relation to the
9 Project. (AR 36239-36242.)

10 The Final EIR's analysis is guided by Appendix G of the CEQA State Guidelines which
11 identifies the significance criteria for the topics of water quality and hydrology. (AR 16860.) The
12 Project's potentially significant water resources impacts were exhaustively examined in the expert
13 documents and related exhibits. When the analysis revealed impacts requiring mitigation,
14 measures were imposed to render potential impacts less than significant. (AR 16870-18769.)
15 Implementation of the mitigation measures, coupled with compliance with federal, state, and local
16 law, satisfy CEQA's requirements to both provide sufficient information for the agency to make an
17 informed decision, and to incorporate specific performance criteria into forward looking
18 mitigation. *Sacramento Old City Assn v. City Council*, (1991) 229 Cal.App.3d 1011, 1029.
19 Petitioners' limited challenges to components of the City's decisions relative to flooding impacts,
20 specifically that the Final EIR contains "an incomplete and unstable description of the amount of
21 earthmoving and fill needed to raise a portion of the residential and commercial development out
22 of the 100 year floodplain" and that the Final EIR "fails to consider the on-site and downstream
23 impacts of the massive amount of grading" (OB, p. 35:28-36:3), ignore the substantial evidence in
24 the record supporting the City's CEQA findings and have no merit.

1 A. The Final EIR Includes a Detailed Evaluation of Project Flooding Impacts and
2 Mitigates them to Less than Significant

3 FEMA designates approximately 68 acres in the southern boundary of the Project site as
4 being within FEMA Flood Hazard Zone A.⁹ (AR 16859, 16860 [depiction of the 100 year Flood
5 Hazard Zone].) Zone A refers to "an area of land subject to potential inundation by a storm that
6 has a one percent probability of occurring in any given year." (*Id.*) That zone, which the Final
7 EIR colloquially refers to as the "100 year flood plain," is not an area where FEMA has already
8 reviewed and approved "detailed hydraulic analyses . . . Base Flood Elevations (BFEs) or flood
9 depths." (Fish Dec., Ex. 2, FEMA, <https://www.fema.gov/zone> (last visited February 15, 2018);
10 AR 36239 [Zone A "is a place saver zone that denotes an area where FEMA lacked sufficient
11 detail to determine flood depths and width.].) The "Zone A designation does not mean that the
12 portion of the project site is within the flood plain." (AR 36239.)

13 The engineering experts at Proactive Engineering Consultants, in response to Petitioners'
14 late filed comment letter, explained the situation best when they wrote:

15 based on the data and our years of experience with these types of
16 issues, we determined that the flood plain for Mill Creek does not
17 extend to the areas the project proposes to develop for residential or
18 commercial purposes. Consistent with the law, our conclusion
19 requires confirmation from FEMA through the Conditional Letter
20 of Map Revision (CLOMR) Letter of Map Revision (LOMR)
21 process. As required by law, that process cannot begin until after
22 the City issues its approvals. As further imposed by Mitigation
23 Measure HYD 3, the City is prohibited from issuing a grading
24 permit for the project areas presently mapped as Zone A unless and
25 until FEMA issues a CLOMR confirming our analysis that the
26 proposed improvements are not within the mapped flood plain.
27 (AR 36240.)

28 Technical data, prepared by qualified engineers and evaluated by City staff, in support of
those conclusions include the Project specific Hydrology and Sedimentation Technical Study and
the Conceptual Master Drainage Plan. (AR 98, 21614-22404, 36239.) Proactive Engineering

⁹ Petitioners do not challenge the other aspects of the Final EIR's water resource analysis, including, without limitation, impacts to hydrology, storm water, water quality or risks associated the Seven Oaks Dam. Thus, Petitioners have waived such claims and those issues are not addressed in this brief. See *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 855.

1 Consultants also considered engineering and hydrological data from other projects in the vicinity
2 including the plans to replace the Garnet Street bridge across Mill Creek downstream from the
3 Project and the hydraulic calculations "developed in connection with the design of the floodwall
4 constructed by the County" on the other side of Mill Creek for the majority of the Project Site's
5 southern boundary. (AR 36239.) Substantial evidence in the record demonstrates "that the flood
6 plain for Mill Creek does not extend to the areas the Project proposes for residential or commercial
7 purposes." (AR 35957.) Further, the Conceptual Grading Plan does not show "vast amounts of fill
8 within the floodplain" as Petitioners allege. (AR 99, 36240.)

9 MM HYD 3 also supports the Final EIR's conclusions about the significance of the
10 Project's direct and indirect flooding impacts. MM HYD 3 provides that prior to issuance of any
11 grading permit or recordation of the first tentative tract map for an area within the 100 year flood
12 plain, OCFCD shall provide evidence to the City that a CLOMR has been received from FEMA
13 acknowledging that the proposed improvements "remove the subject area" from the 100 year flood
14 plain.¹⁰ (AR 596.) OCFCD shall also provide evidence that a LOMR has been approved by
15 FEMA prior to issuance of a building permit. (*Id.*) These FEMA approved map changes are
16 required because, as noted above, the Zone A designation "is a place saver zone that denotes an
17 area where FEMA lacked sufficient detail to determine flood depths and width." (AR 36239.)

18 MM HYD 3 uses the term "remove" because it refers to the CLOMR/LOMR mapping
19 process whereby FEMA reviews site-specific engineering analysis to determine whether a property
20 is in "the flood plain." (AR 596.) To read the measure as Petitioners do, to mean that that the

21
22 ¹⁰ By not raising the issue in its Opening Brief, Petitioners waived any claim that the CEQA
23 concept of deferral required the Project to complete some unspecified additional studies and the
24 FEMA process before the City certified the Final EIR. Even if they could pursue that claim,
25 Petitioners would not prevail. For the reasons described in this Section of the brief, no deferral
26 occurred because the requisite Project specific studies and analysis by RBF, Proactive Engineering
27 Consultants and the City were already performed and the mitigation measures set. See *Save*
28 *Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070-1071 (finding no
deferral as mitigation requiring compliance with environmental regulations is sufficient relative to
hydraulic conditions). In addition, FEMA will not review nor approve Proactive Engineering
Consultants' analysis of the flood plain issue until after the City approves the Project. (AR 36240;
Code of Fed. Reg. Tit. 44, § 65.8.)

1 Project must place significant fill (according to Petitioners over 2 million cubic feet (OB, p. 37:3-
2 4)) in the flood plain to remove the Project Site from the flood plain, would ignore the record as a
3 whole and contradict the conclusions of the engineering experts that analyzed all the relevant data
4 regarding the Project and the Project Site. (AR 36240 [expert engineers evaluated the Property and
5 "determined that the flood plain for Mill Creek does not extend to the areas the project proposes to
6 develop for residential or commercial purposes"].) In this case, the engineering analysis itself will
7 "remove" the development from the flood plain. The CLOMR and the LOMR merely serve as
8 written confirmation of the experts' Project Site-specific determination. (AR 36240.) In sum,
9 substantial evidence supports the City's findings that the Project will have less than significant
10 impacts.

11 B. Petitioners Erroneously Argue That The Final EIR Omits Required Analysis of
12 Project Flooding Impacts

13 Despite the substantial evidence to the contrary, Petitioners claim that the Final EIR omits
14 information about quantity of fill to be placed in the flood plain and associated impacts that would
15 result. (OB, p. 36:4-7.) Petitioners frame this issue as a failure of the Final EIR to include an
16 accurate and stable Project description. However, Petitioners rely on out of context citations to the
17 record and opinions based on incomplete information to make those assertions. Again, as
18 demonstrated in the preceding paragraphs, that argument is based on a false premise as substantial
19 evidence supports the conclusion that the Project as proposed will not place fill in the actual flood
20 plain.

21 Nonetheless, under CEQA, an EIR must contain "sufficient information about a proposed
22 project, the site and surrounding area and the projected environmental impacts arising as a result of
23 the proposed project or activity to allow for an informed decision" by the agency. *San Joaquin*
24 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 718. In *San*
25 *Joaquin Raptors*, the one case cited by Petitioners in support of this particular argument (OB, p.
26 36:24-25), the EIR omitted any analysis or discussion of a proposed sewer expansion necessary for
27 the project. *Id.* at 730. The omission led the Court of Appeal to conclude "the failure to consider
28 the expansion of the wastewater treatment plant as part of the project under construction resulted in

1 an inaccurate project description and incomplete identification and analysis of the environmental
2 effects of the development project," which in turn precluded informed decision-making. *Id.* at 734.

3 *San Joaquin Raptors* is factually distinguishable. First, among other things, the Final EIR
4 includes significant discussion of the potential for development within the flood plain. The Project
5 record includes 20 pages of Final EIR analysis of potential flooding impacts, the Conceptual
6 Master Drainage and Grading Plans, and the nearly 800 page "Hydrology and Sedimentation
7 Technical Study" which details, among other topics, existing site conditions, proposed conditions
8 and proposed mitigation relative to drainage, floodplains and stream stability. (AR 98-99, 16867,
9 16870, 16877-16879, 21614-22404.) Second, and in response to Petitioners' late filed comments,
10 the record includes a letter report prepared by the engineering experts that analyzed conditions at
11 the Project Site and in the vicinity, prepared the tentative maps, and worked on the Project's
12 drainage and grading plans. Those experts explained that evidence in the record shows that the
13 Project Conceptual Master Grading Plan they designed will not deposit fill for residential and
14 commercial development in the flood plain because the Zone A designation from FEMA does not
15 identify the actual boundaries of the flood plain. (AR 36240.) The extensive study and analysis
16 underlying these reports show that, unlike in *San Joaquin Raptors*, the City did not duck a critical
17 impact or fail to consider a necessary element of the Project. See *Sierra Club v. County of Fresno*
18 (2014) 226 Cal.App.4th 704, 740, review granted Oct. 1, 2014 (distinguishing *San Joaquin*
19 *Raptors* for the same reasons that exist here as the issue in dispute "was mentioned in the draft EIR
20 and expanded upon in the final EIR.").

21 Indeed, the above demonstrates that Petitioners think the City should have reached a
22 different decision based on the information in the record. But Petitioners may not graft the more
23 favorable standard of review afforded a "lack of information" claim to an argument that challenges
24 the sufficiency of the evidence in the administrative record. *Barthelemy, supra*, 38 Cal.App.4th at
25 1690. The substantial evidence standard is applied to conclusions, findings, determinations, and as
26 to whether mitigation was sufficient. *Bakersfield Citizens for Local Control, supra*, 124
27 Cal.App.4th at 1198; see also *Oakland Heritage All., supra*, 195 Cal.App.4th at 903.

28

1 Petitioners' substantial evidence claim thus fails as it relies on pure speculation and
2 argument.¹¹ By way of example, Petitioners support their claim with a citation to an isolated
3 sentence in the Final EIR that as "part of the Project any proposed residential and commercial land
4 use that is within the Zone A flood plain will be required to be graded and elevated so that they are
5 removed from the flood plan." (OB, p. 36:10-12.) However, the quoted language does not say that
6 the Project must or will raise pad elevations in the flood plain. Statements in the Final EIR about
7 residential or commercial buildings in the flood plain use conditional or contingent language. By
8 using a qualifier like "any proposed residential . . ." prior to a mention of the "Zone A flood plain,"
9 the Final EIR is not contradicting the engineering analysis upon which it is based. Instead, the
10 references describe the situation that would apply if the Project had to place a building pad in the
11 actual FEMA adjudicated flood plain. (AR 437-438, 16474, 16877.) The engineers that evaluated
12 the Project specific data explained why the Project would not trigger that contingency when they
13 wrote that:

14 the project will not deposit fill in the flood plain for purposes of
15 developing the residential and commercial components of the
16 project. Text in the FEIR regarding grading within Zone A are
17 merely references to work that will be done in areas the current
18 FEMA map designates as Zone A. That language is not a statement
19 that grading for residential or commercial development will occur
20 in the flood plain as defined by FEMA. (AR 36240.)

21 For the same reasons set forth above, Petitioners' argument that Project planning areas will
22 be raised by 20 feet has no bearing on the issue presented. (OB, p. 36:15-20.) That proposed
23 grading referenced by Petitioners is within Zone A, but not within the adjudicated flood plain.
24 (AR 16877, 35957.) As discussed in Subsection 1 above, the record demonstrates "that the flood
25 plain for Mill Creek does not extend to the areas the Project proposes for residential or commercial
26 purposes." (AR 35957.) Thus, Petitioners' argument is based on a false premise, as the Project
27 proposed no fill in the flood plain for the Final EIR to analyze.

28 ¹¹ Even if it were otherwise, "a public agency may choose between differing expert opinions" and
that exercise of discretion is afforded great deference by the courts. *Oakland Heritage All., supra*,
195 Cal.App.4th at 900 quoting *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d
852, 866.

1 Petitioners' general plan consistency argument is equally flawed. (OB, p. 37:23-28.) The
2 Final EIR discloses that City's General Plan Goal 6.3.3 (p. 6-21) requires a drainage study prior to
3 proposed development. (Fish Dec., Ex. 1; AR 16864.) Petitioners' argument also ignores the
4 approved Conceptual Master Grading and Drainage Plans (AR 98-99) and all the flooding analysis
5 in the Final EIR. (AR 16522, 16850-16881.) Petitioners similarly fail to note the Harmony
6 Specific Plan Drainage Development Standards require "all [d]rainage and flood control facilities
7 and improvements shall be provided in accordance with the City of Highland requirements . . ."
8 which is set forth in the Final EIR. (AR 89; 616-617; 16867; 16910.) Further, Petitioners do not
9 disclose that MM HYD 1 requires such a study. (AR 596.) Although the City has already
10 approved the Conceptual Master Drainage Plan, the City has not issued approvals for specific
11 development sites so the engineering and technical details do not exist as to how the drainage
12 system and design measures would be applied to individual areas. Therefore, the MM HYD 1
13 requires a Master Drainage Plan that "shall define rates of storm water runoff for pre and post
14 development conditions, identify the size and location of proposed improvements" in compliance
15 with applicable laws identified in the measure. (*Id.*) Thus, these arguments also do not satisfy
16 Petitioners' burden of proof.

17 Petitioners then cite to a letter submitted by their attorneys late in the process, and an
18 attachment from Baseline Environmental Consulting, to support their claims. (OB, p. 36:26-37:6.)
19 The opinions expressed in those materials explicitly acknowledge that Petitioners' consultants
20 "have assumed that all 68 acres within the floodplain would be filled" based on their
21 "interpretation of the above statement" - a single out of context sentence from the Final EIR. (AR
22 37755-37756.) Petitioners' characterization of Proactive's response to Baseline Report misstates
23 the record. (OB, p. 38:1-23.) Again, Proactive is the engineering firm that has the most
24 knowledge about the Project Site, the Project design and the flood plains. The record reflects that
25 discrepancies do not exist. "[T]he current FEMA Zone A designation on a portion of the Property
26 does not mean that future development in those areas will be within the flood plain. To the
27 contrary, the extensive analysis . . . demonstrate[s] that the flood plain for Mill Creek does not
28 extend to the areas the Project proposes for residential or commercial purposes." (AR 35957.)

1 Thus, substantial evidence supports the City's finding that "with implementation of mitigation
2 measure MM HYD 3 and compliance with laws such as Municipal Code Chapter 16.76, impacts
3 will be less than significant as the Project will not place housing within a 100 year flood hazard
4 area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood
5 hazard delineation map or place within a 100 year flood hazard area structures which would
6 impede or redirect flood flows." (AR 438, 440 [less than significance finding regarding risk of
7 loss, injury or death involving flooding].)

8 The City thoroughly analyzed and disclosed the Project's potentially significant flooding
9 impacts. Petitioners' arguments attempt to sow confusion about FEMA's Zone A and the flood
10 plain. However, no residential or commercial development is proposed for the actual flood plain,
11 the Project will not deposit fill in the flood plain and the Final EIR includes all the required
12 analysis. The Final EIR need not analyze an impact that will not occur. *Citizens for a Sustainable*
13 *Treasure Island, supra*, 227 Cal.App.4th at 1060-1061.

14 CONCLUSION

15 CEQA does not demand perfection, but instead a good faith effort at full disclosure. The
16 City's CEQA process was robust and exhausting, requiring the details to be examined, questioned
17 and justified. The City, other agencies, and the public put the Project under a microscope and the
18 result is a fully compliant Final EIR with findings supported by substantial evidence. In contrast,
19 Petitioners' challenge is unjustified under CEQA as a matter of fact and law as Petitioners' rely on
20 misleading, partial presentations of record information and CEQA's requirements. For the reasons
21 set forth in this Opposition Brief, Respondents and Real Parties in Interest respectfully request that
22 the Court deny Petitioners' claims.

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Dated: February 16, 2018

Respectfully submitted,

RICHARDS, WATSON & GERSHON

By: 

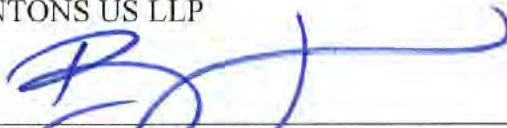
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