



# Minute Orders

[Home](#)   [Complaints/Parties](#)   [Actions](#)   [Minutes](#)   [Pending Hearings](#)   [Case Report](#)   [Images](#)

**Case CIVBS800607 - BIOLOGICAL DIVERSITY-V-TOWN OF YUCCA VALLEY,ETAL**

**Action:**

## HEARING RE: WRIT OF MANDATE

**05/14/2009 - 1:30 PM DEPT. R9**

BARRY L PLOTKIN PRESIDING.

CLERK: GINA ZAMUDIO

COURT REPORTER ROCIO GONZALEZ ROCIO GONZALEZ

COURT ATTENDANT PHILIP COOPER

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### APPEARANCES:

ATTORNEY MATTHEW VESPA PRESENT FOR PLAINTIFF/PETITIONER.

ATTORNEY TED A GEHRING AND HENRY SHIELDS PRESENT FOR DEFENDANT/RESPONDENT.

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### PROCEEDINGS:

PREDISPOSITION HEARING HELD

ACTION CAME ON FOR FURTHER ARGUMENT ON WRIT OF MANDATE.

ORAL ARGUMENT PRESENTED BY ATTORNEY JOHN G MCCLENDON .

ORAL ARGUMENT PRESENTED BY ATTORNEY HENRY SHIELDS .

ORAL ARGUMENT PRESENTED BY MATTHEW VESPA .

THE COURT DENIES THE RESPONDENTS REQUEST FOR JUDICIAL NOTICE.

02:42

COURT IN RECESS.

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02:52

COURT RECONVENES ALL COUNSEL PRESENT.

ARGUMENTS CONTINUE.

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THE COURT HAVING CONSIDERED ORAL ARGUMENTS PRESENTED BY COUNSEL RULES AS FOLLOWS:

THE COURT ADOPTS THE WRITTEN TENTATIVE RULING ISSUED ON 04/28/09 AS MODIFIED.

PETITIONERS COUNSEL TO PREPARE WRIT.

ACTION - COMPLETE

=== MINUTE ORDER END ===



1 Grant each request for judicial notice.

2 Deny petition for writ of mandate on grounds that the Town's failure to timely  
3 update its housing element does not invalidate its General Plan in this case or the  
4 adoption of the subject commercial Specific Plan.

5 Deny petition for writ of mandate on grounds that the Town's failure to meet the  
6 CEQA Guidelines (14 CCR § 15108) time deadline for certification of the Project's final  
7 EIR is not a failure to proceed in a manner required by law constituting a prejudicial  
8 abuse of discretion warranting the setting aside of that certification on petitioners'  
9 behalf.  
10

11 Deny petition for writ of mandate as substantial evidence supports the EIR's  
12 analysis and findings regarding traffic impact significance and required mitigation and  
13 the EIR's traffic baseline does not violate CEQA.  
14

15 Grant petition for writ of mandate to set aside the approvals herein and to order  
16 the Town to revise the EIR's urban decay discussion (Chapter 4.17) based on  
17 significant new information submitted by Dr. King and TNDG and recirculate that  
18 portion of the EIR.  
19

20 Deny petition for writ of mandate as the EIR's reliance on the CAT report to  
21 conclude that the Project's cumulative global climate change impact is less than  
22 significant does not violate CEQA as a direct contravention of Guidelines, §  
23 15064(h)(3).  
24

25 Grant petition for writ of mandate to set aside approvals herein and order the  
26 Town to revise the EIR's cumulative global climate change analysis on grounds that  
27 the EIR is violative of CEQA since the findings that the Project complies with all  
28 applicable CAT strategies is not supported by substantial evidence; on grounds of

1 abuse of discretion in that the EIR simply ignores the CAPCOA scientific and factual  
2 analysis regarding attainment of California GHG emission targets in its discussion of  
3 the cumulative impact of the Project; and on grounds that the EIR fails to consider the  
4 entire GHG emission output of the Project as required by the OPR and recirculate that  
5 portion of the EIR.  
6

7 Grant petition for writ of mandate to set aside the approvals herein and to order  
8 the Town to revise the EIR discussion of alternatives on grounds of failure to include  
9 the feasible and environmentally superior "green" Wal-Mart Supercenter alternative  
10 and recirculate that portion of the EIR.  
11

12 Grant petition for writ of mandate to set aside approvals herein until Town  
13 makes the required finding of infeasibility of the environmentally superior alternative  
14 under Pub. Res. Code, § 21081(a)(3) supported by substantial evidence in the record  
15 as the Town has not made that finding and such constitutes prejudicial error.  
16

17 Grant petition for writ of mandate to set aside approvals herein and to order  
18 Town to revise the EIR discussion of significant air quality impacts on grounds of  
19 failure to include discussion of all feasible mitigation measures and failure to make the  
20 required findings of infeasibility for rejected mitigation measures and recirculate that  
21 portion of the EIR.  
22

23  
24 DATED: APR 28 2009

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26 **Barry Plotkin**

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Barry L. Plotkin  
28 Judge of the Superior Court