

1 Kevin I. Shenkman (SBN 223315)
Mary R. Hughes (SBN 226622)
2 John I. Jones II (SBN 225411)
SHENKMAN & HUGHES
3 28905 Wight Road
Malibu, California 90265
4 Telephone: (310) 457-0970

5 R. Rex Parris (SBN 96567)
Ashley Parris (SBN 239537)
6 **R. REX PARRIS LAW FIRM**
43364 10th Street West
7 Lancaster, California 93534
Telephone: (661) 949-2595
8 Facsimile: (661) 949-7524

9 Milton C. Grimes (SBN 59437)
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
10 Los Angeles, California 90043
Telephone: (323) 295-3023

11 Attorneys for Plaintiff

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

By Fax

15 LISA GARRETT

16 Plaintiff,

17 v.

18 CITY OF HIGHLAND, CALIFORNIA; and
19 Does 1-100, Inclusive.

20 Defendants.

CASE NO. CIVDS 1410696

CORRECTED ~~PROPOSED~~ JUDGMENT

21
22
23 This cause came on for trial pursuant to notice and order of the Court on January 13, 2016,
24 in Department S-26 of the San Bernardino Superior Court, Hon. David S. Cohn, judge presiding.
25 The trial concluded on January 19, 2016. Plaintiff Lisa Garrett appeared through her attorneys of
26 record: Kevin Shenkman of Shenkman & Hughes PC; R. Rex Parris and Kitty Szeto of the R. Rex
27 Parris Law Firm; and Milton Grimes of the Law Offices of Milton C. Grimes. Defendant, City of
28

1 Highland, California, appeared through its attorneys of record: Patrick Bobko and Youstina Aziz of
2 Richards, Watson & Gershon LLP.

3 At the conclusion of the trial on January 19, 2016, following the closing arguments of the
4 parties the parties did not request a written statement of decision, and so the Court issued its ruling
5 and explained its rationale for its findings and ruling orally. The Court directed Plaintiff's counsel
6 to prepare a proposed judgment.

7 After hearing and considering all of the testimony, evidence and arguments presented, the
8 Court now enters its Judgment in the above-captioned case.

9 The Court finds as follows:

10 1. Defendant is a political subdivision as that term is defined in California Elections
11 Code Section 14026. The governing body of Defendant is the City Council of Highland,
12 California. The City Council of Highland, California is elected by an "at large method of election"
13 as that term is defined in California Elections Code Section 14026, as it has been since
14 incorporation of the City of Highland.

15 2. Defendant admitted, and the Court agrees, that elections in Highland are
16 characterized by "racially-polarized voting" as that term is defined in California Elections Code
17 Section 14026, and that its at-large elections violate the California Voting Rights Act (Cal. Elec.
18 Code §14025, et seq., hereinafter "CVRA").

19 3. Though not necessary to show a CVRA violation, Plaintiff has also demonstrated
20 that at least one majority-Latino district (by citizen-voting-age-population), out of five districts,
21 may be drawn in a compact and contiguous fashion, with equal populations in each district, in the
22 City of Highland. The Court has considered this in determining an appropriate remedy, pursuant to
23 Elections Code section 14028(c).

24 4. In the face of racially polarized voting patterns of the Highland electorate,
25 Defendant has imposed an at-large method of election in a manner that impairs the ability of
26 Latinos to elect candidates of their choice and their ability to influence the outcome of an election,
27 as a result of the dilution or the abridgment of the rights of Latino voters.

28

1 5. In July 2014, the City of Highland adopted Ordinance No. 393. Ordinance No. 393
2 provided for the implementation of district-based elections for the Highland City Council and
3 included a description of the boundaries of five equal-population districts. Pursuant to the
4 provisions of the Government Code at that time, Ordinance No. 393 was required to be approved
5 by an at-large vote of the electorate of the City of Highland. In November 2014, the electorate of
6 the City of Highland rejected Ordinance No. 393, though a significant majority of Latino voters,
7 and a majority of voters in the Western portion of the City of Highland, voted in favor of the
8 district-based elections of Ordinance No. 393.

9 6. The CVRA does not require the imposition of district-based elections. Rather, both
10 the statutory language and legislative history of the CVRA support the conclusion that the Court
11 has broad authority to implement an array of appropriate remedies. In circumstances different than
12 those presented in this case, at-large remedies, such as cumulative voting, might be appropriate.
13 That cumulative voting has not previously been implemented in the election of the governing board
14 of any political subdivision of the State of California is irrelevant to the availability of cumulative
15 voting as a remedy under the CVRA. The Court was presented with a letter from Secretary of State
16 Alex Padilla dated September 1, 2015, directed to Hon. Terry Green, Judge of the Los Angeles
17 Superior Court, regarding implementation of cumulative voting. In that letter, Secretary of State
18 Padilla notes that there is no express statutory authority for cumulative voting in elections for
19 governing boards of political subdivisions of the State of California. The Secretary of State's letter
20 does not express a view that cumulative voting is either unlawful or unavailable as a remedy under
21 the CVRA, and, in any event, this Court is not bound by the views of the Secretary of State.
22 Regardless of the Secretary of State's letter, this Court finds that cumulative voting is a legally
23 permissible method of electing the governing board of a political subdivision of the State of
24 California, and is an available remedy under the CVRA.

25 7. In November 2015, the Highland City Council approved Resolution No. 2015-042.
26 Defendant argued that this Court must defer to Defendant's selection of remedies set forth in
27 Resolution No. 2015-042. However, this Court need not defer to Resolution No. 2015-042 for
28 several reasons. First, the CVRA commands this Court, not Defendant, to implement appropriate

1 remedies. Second, Resolution No. 2015-042 is not a legislative plan. Specifically, Resolution No.
2 2015-042 is not a legislative act at all because it does not serve to adopt any remedies; rather, it
3 merely states that “[i]f directed by a court to implement a cumulative voting system” it will do so.
4 The Highland City Council could have adopted cumulative voting on its own, but it chose not to
5 actually adopt any change in its elections. Moreover, Resolution No. 2015-042 provides no details
6 regarding the remedies referenced therein, or their implementation. For example, Resolution No.
7 2015-042 references “changing its staggered elections so that three members of [the City] Council
8 are elected during presidential election years and two members are elected during gubernatorial
9 election years.” but provides no specifics about that change – e.g. how it is to be determined which
10 of the three current members of the Highland City Council whose terms were set to expire only in
11 2018 is to be cut short. Third, as explained more fully below, Defendant’s proposed remedial plan
12 would not effectively and completely remedy the established violation of the CVRA and dilution of
13 Latino votes in the City of Highland.

14 8. The “threshold of exclusion” is useful in evaluating whether cumulative voting
15 would be an effective remedy. The threshold of exclusion is equal to $1/(1+N)$, where N is the
16 number of seats up for election at the same time. In a two-seat election, the threshold of exclusion
17 is 33.3%. In a three-seat election, the threshold of exclusion is 25%. The parties presented
18 evidence of various measures of the Latino proportion of the Highland electorate for comparison to
19 the applicable thresholds of exclusion: the Latino proportion of the citizen-voting-age-population
20 (“LCVAP”); the Latino proportion of the registered voters; and the Latino proportion of the voters
21 who actually cast ballots in recent elections. The Court finds that the appropriate measure for
22 comparison to the threshold of exclusion is the Latino proportion of the voters who actually cast
23 ballots in recent elections. The historical evidence of the Latino proportion of the voters who
24 actually cast ballots is the best measure of what will be the Latino proportion of the electorate in
25 upcoming elections. To instead compare LCVAP or the Latino proportion of registered voters to
26 the threshold of exclusion ignores the depressed voter turnout of the Latino community in
27 Highland, which may be a symptom of the electoral futility that the CVRA is intended to remedy.

28

1 9. To estimate the Latino proportion of the voters who cast ballots in recent elections in
2 Highland, experts offered by both Plaintiff and Defendant started with matching the names of
3 voters with the U.S. Census Department's list of Spanish surnames. This is an accepted method of
4 estimating the proportion of Latinos in a large group. While the parties agree that this method of
5 Spanish surname matching tends to underestimate the Latino proportion of a group, they disagree
6 on the amount of that underestimation. Defendant's expert, Douglas Johnson, increased his
7 estimates of the Latino proportion of voters by approximately 11% based on the 1990 Colby-
8 Perkins study that investigated the error rates of Spanish surname matching in each State.
9 Plaintiff's expert, David Ely, criticized that 11% adjustment because it is based on an outdated
10 study that was not focused on the City of Highland, and the demographics of Highland in 2016 are
11 significantly different than those of California, or any other State, in 1990, in ways that impact the
12 accuracy of Spanish surname matching. The Court agrees with Mr. Ely. Adjusting the estimates
13 from Spanish surname matching, for the purpose of comparing those estimates to the thresholds of
14 exclusion is inappropriate. Nonetheless, even if the Spanish surname matching estimates of the
15 Latino proportion of the electorate were increased as suggested by Mr. Johnson, the conclusions of
16 this Court would be the same.

17 10. In the most recent four elections in the City of Highland - 2008, 2010, 2012 and
18 2014 - the Latino proportion of the electorate varied between 20.1% and 25.2% (between 22% and
19 28% if adjusted, as suggested by Defendant's expert, based on the Colby-Perkins study). In each
20 instance, the Latino proportion of the electorate was significantly less than the threshold of
21 exclusion for a two-seat election (33.3%). In fact, in three out of the four most recent elections, the
22 Latino proportion of the electorate in Highland was even lower than the threshold of exclusion for a
23 three-seat election (25%). Therefore, this Court finds that cumulative voting is not likely to be an
24 effective remedy, and thus it is not an "appropriate remedy" under the CVRA in the particular
25 circumstances of the City of Highland. While unstaggering the elections for the Highland City
26 Council, i.e. having all five council seats elected at the same time rather than two or three at a time
27 every two years, would reduce the threshold of exclusion, the Court was not presented with such a
28 proposal.

1 11. In contrast to cumulative voting, competent evidence demonstrates that the
2 implementation of district-based elections, consistent with the district boundaries specified in
3 Ordinance No. 393, will be effective at remedying Defendant's violation of the CVRA and the
4 dilution of the Latino vote in the City of Highland. One of the five districts includes a Latino
5 majority of eligible voters, while Latinos in another district have a strong plurality of eligible
6 voters. Even more compelling are the results of the 2014 election in the City of Highland. In that
7 election, the clear preference of Latinos was to implement district-based elections – "Yes" on
8 Ballot Measure T. While Ballot Measure T did not gain a majority of votes in the city as a whole,
9 the Latino preference in that election did receive a majority of the votes cast in two of the five
10 districts – the districts with the highest proportion of Latinos. Defendant's argument that Latinos in
11 the Easternmost portion of the City would be disenfranchised by district-based elections, misses the
12 point; in any district-based election system voters are afforded a voice in the selection of the
13 representative for the district in which they reside. The Court therefore finds that the imposition of
14 district-based elections is an appropriate remedy to address the effects of the admitted history of
15 racially-polarized voting.

16 12. Districts drawn to remedy a violation of the CVRA should be nearly equal in
17 population, and should not be drawn in a manner that may violate the federal Voting Rights Act.
18 Other factors may also be considered -- the topography, geography and communities of interest of
19 the city should be respected, and the districts should be cohesive, contiguous and compact. *See*
20 Elections Code Section 21600, et seq. The Western portion of the City of Highland is less affluent
21 and has a significantly greater proportion of Latinos than the Eastern portion of the City of
22 Highland. The districts specified in Ordinance No. 393 are appropriately compact, cohesive and of
23 nearly equal population. Moreover, that district plan properly takes into consideration the factors
24 of topography, geography, cohesiveness, contiguity and compactness of territory, and community
25 of interest of the districts.

26 13. The current members of the Highland City Council were elected through unlawful
27 elections. The citizens of the City of Highland deserve to have a lawfully elected city council as
28 soon as is practical. The citizens of the City of Highland are entitled to have a council that truly

1 represents all members of the community. Latino citizens of Highland, like all other citizens of
2 Highland, deserve to have their voices heard in the operation of their city. This can only be
3 accomplished if all members of the city council are lawfully elected. To permit some members of
4 the council to remain who obtained their office through an unlawful election may be a necessary
5 and appropriate interim remedy but will not cure the admitted violation of the CVRA.

6
7 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
8 Defendant has violated the California Voting Rights Act (California Elections Code Sections 14025
9 - 14032).

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant's at-large
11 elections for its City Council violate Elections Code Sections 14027 and 14028.

12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is
13 permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any further
14 at-large elections, and/or the results thereof, for any positions on its City Council.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is
16 permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any elections,
17 and/or the results thereof, for any positions on its City Council, except an election in conformity
18 with this judgment.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all further elections,
20 from the date of entry of this judgment to the next decennial redistricting cycle in 2021, for any
21 seats on the Highland City Council, shall be district-based elections, as defined by the California
22 Voting Rights Act, in accordance with the maps attached hereto as Exhibit A, taken from
23 Ordinance No. 393.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall hold
25 a district-based special election, consistent with the district map described above and depicted in
26 Exhibit A on November 8, 2016 for each of the five seats on the Highland City Council, and the
27 results of said election shall be tabulated and certified in compliance with applicable sections of the
28 Elections Code.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any person, other
2 than a person who has been duly elected to the Highland City Council through a district-based
3 election in conformity with this judgment, is prohibited from serving on the Highland City Council
4 after December 31, 2016.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the districts used for
6 elections of Highland's City Council shall be adjusted upon each decennial redistricting cycle
7 beginning in 2021, in compliance with Elections Code Sections 21600, et seq., the California
8 Voting Rights Act of 2001 and the federal Voting Rights Act.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains
10 jurisdiction to interpret and enforce this judgment and to adjudicate any disputes regarding
11 implementation or interpretation of this judgment.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Elections
13 Code Section 14030, Plaintiff is the prevailing and successful party and is entitled to recover
14 reasonable attorneys' fees and costs, including expert witness fees and expenses, in an amount to be
15 determined by this Court through a post-judgment motion.

16
17 The Clerk is directed to enter this Judgment.

18 Dated: 4/2/14

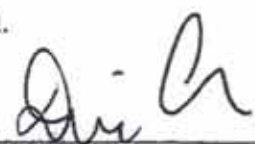
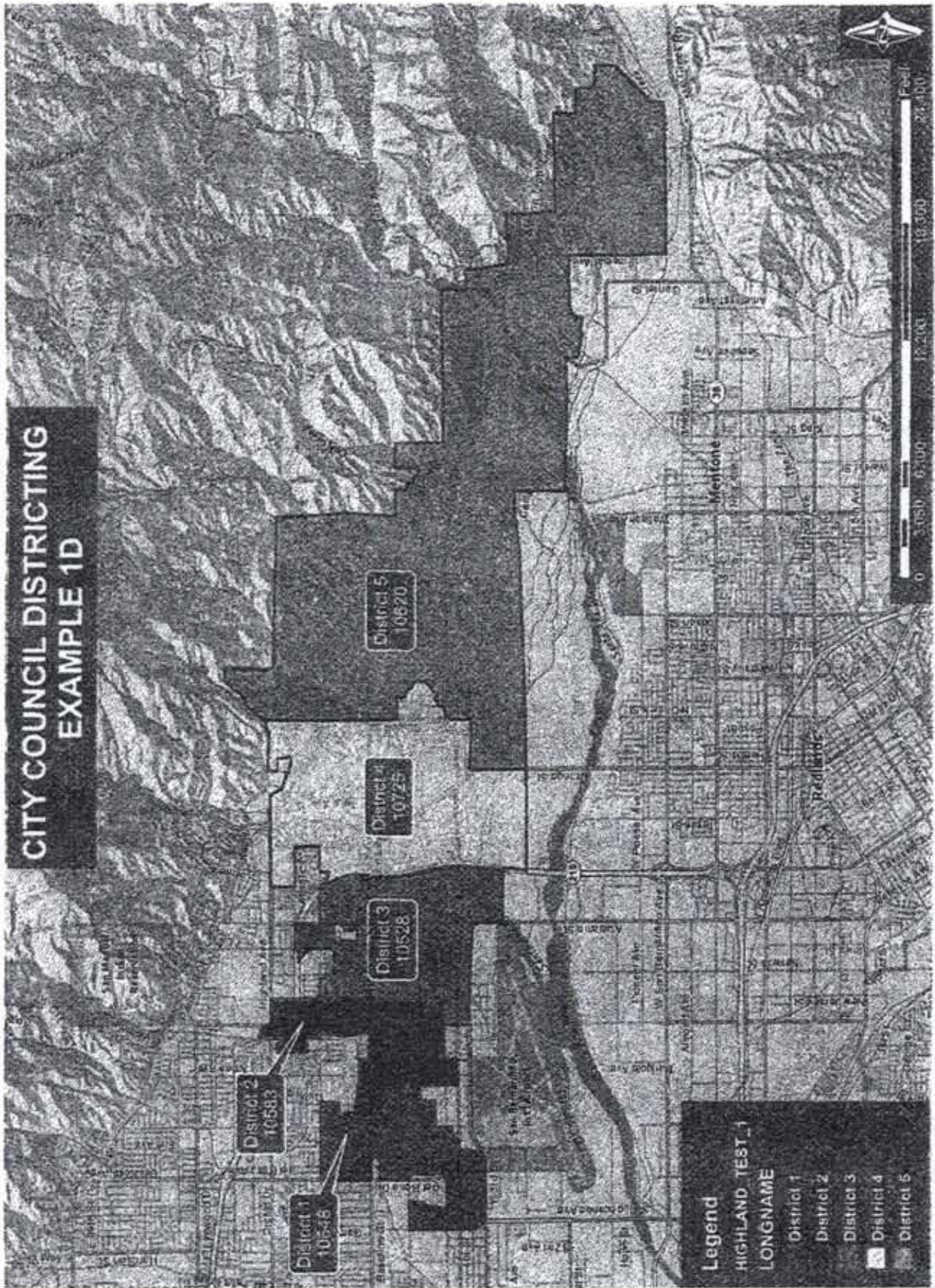
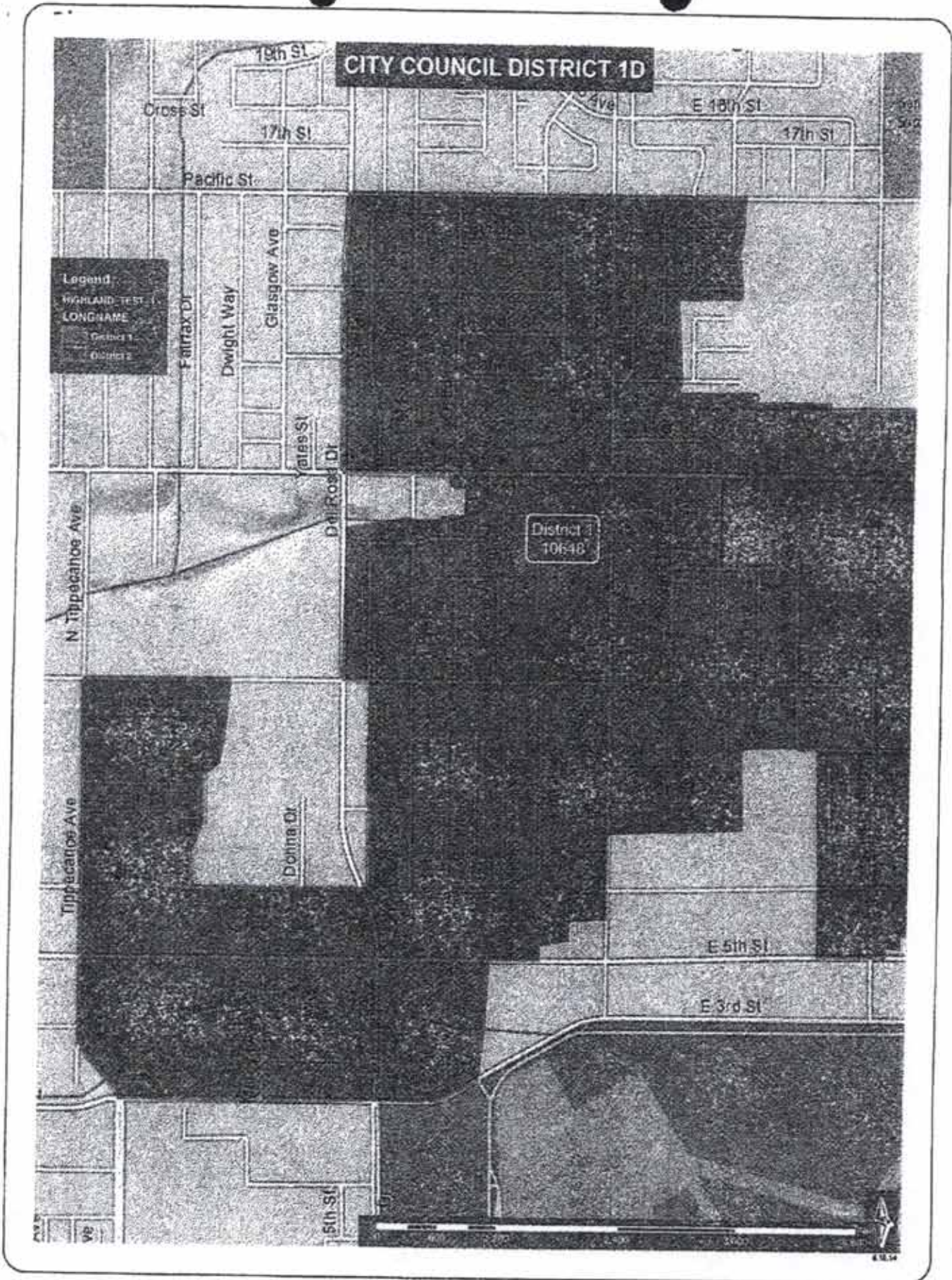
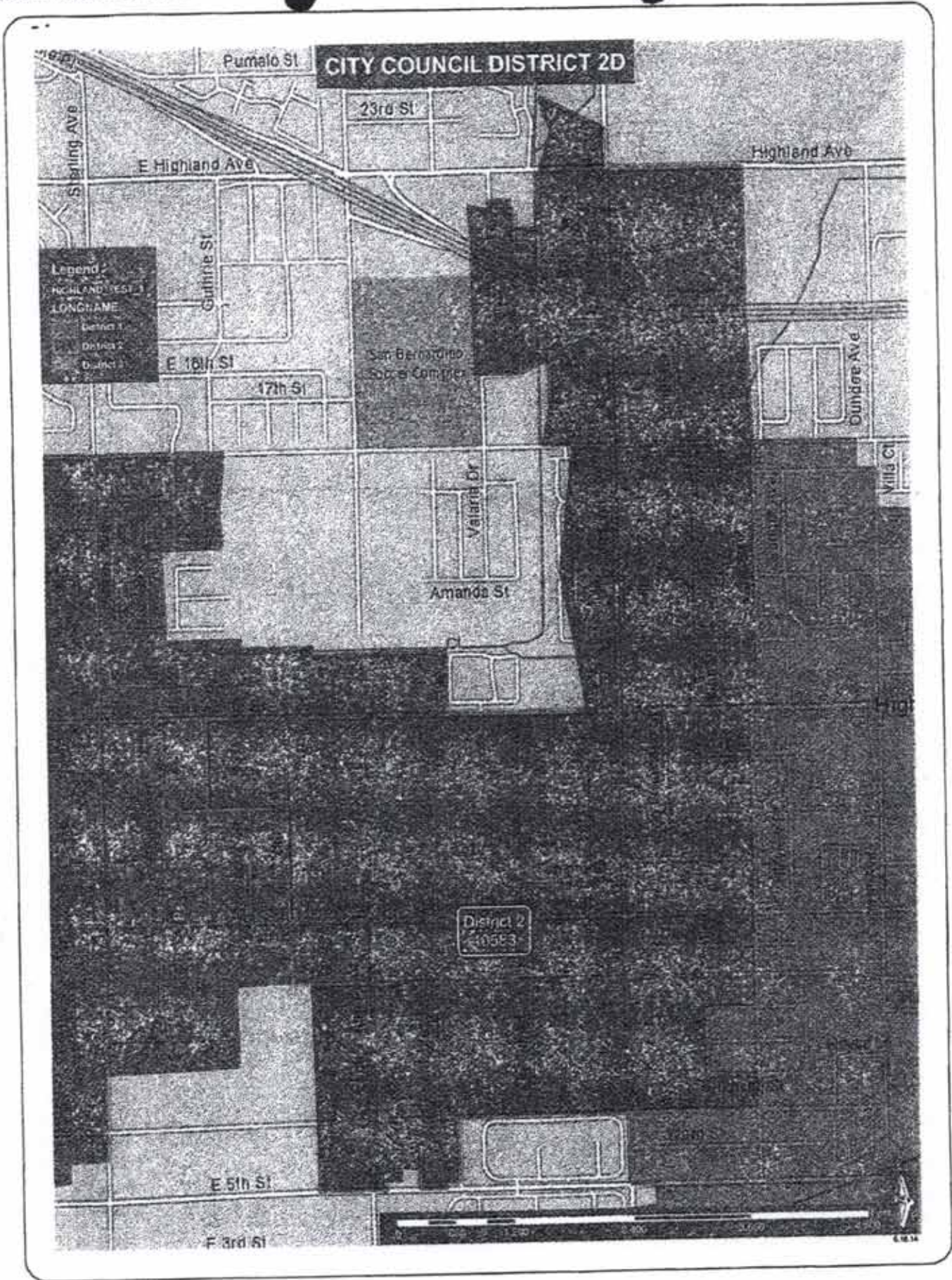
19 
20 _____
21 Hon. David S. Cohn
22 Judge of the San Bernardino Superior Court
23
24
25
26
27
28

EXHIBIT A

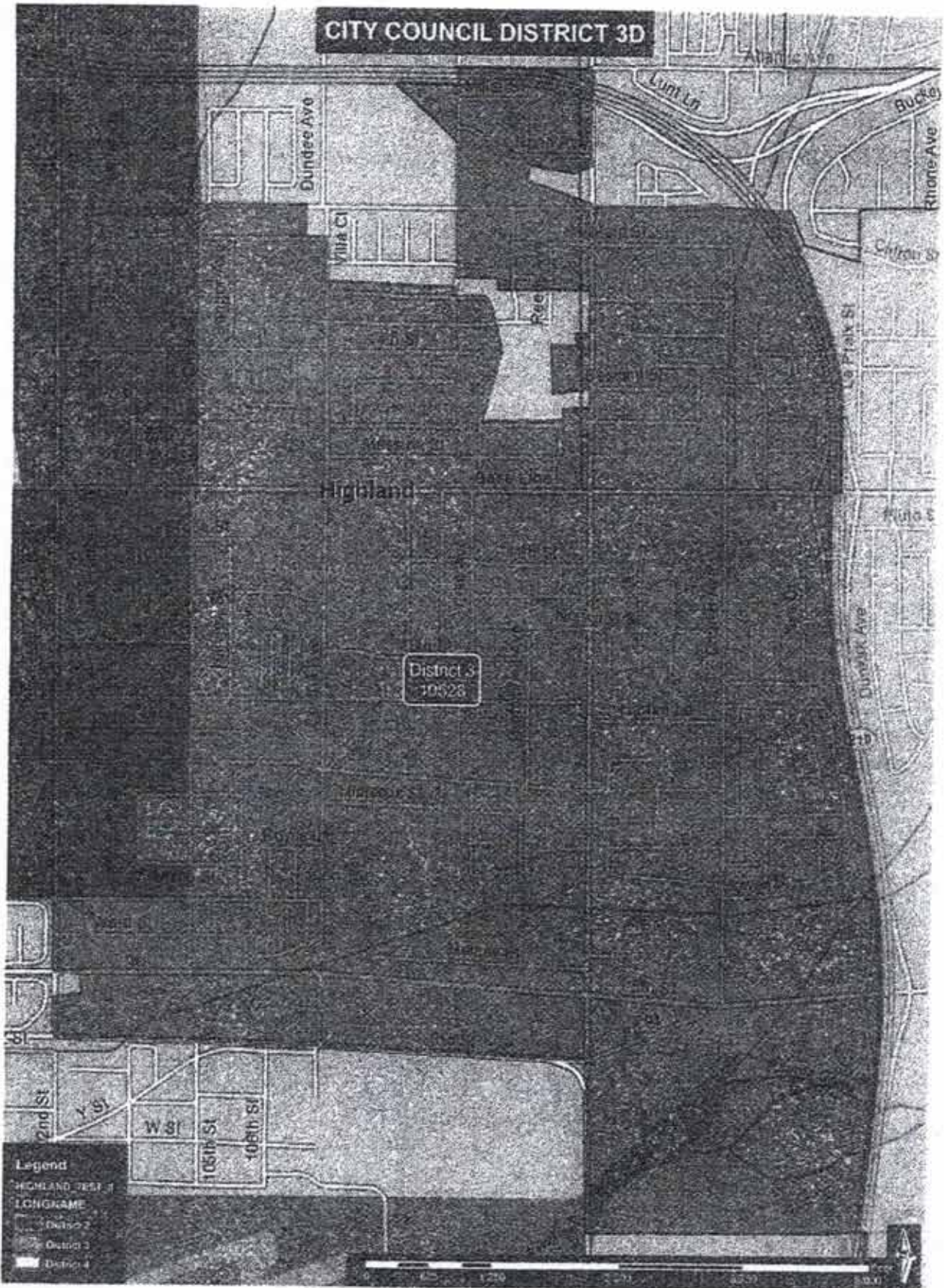
CITY COUNCIL DISTRICTING EXAMPLE 1D





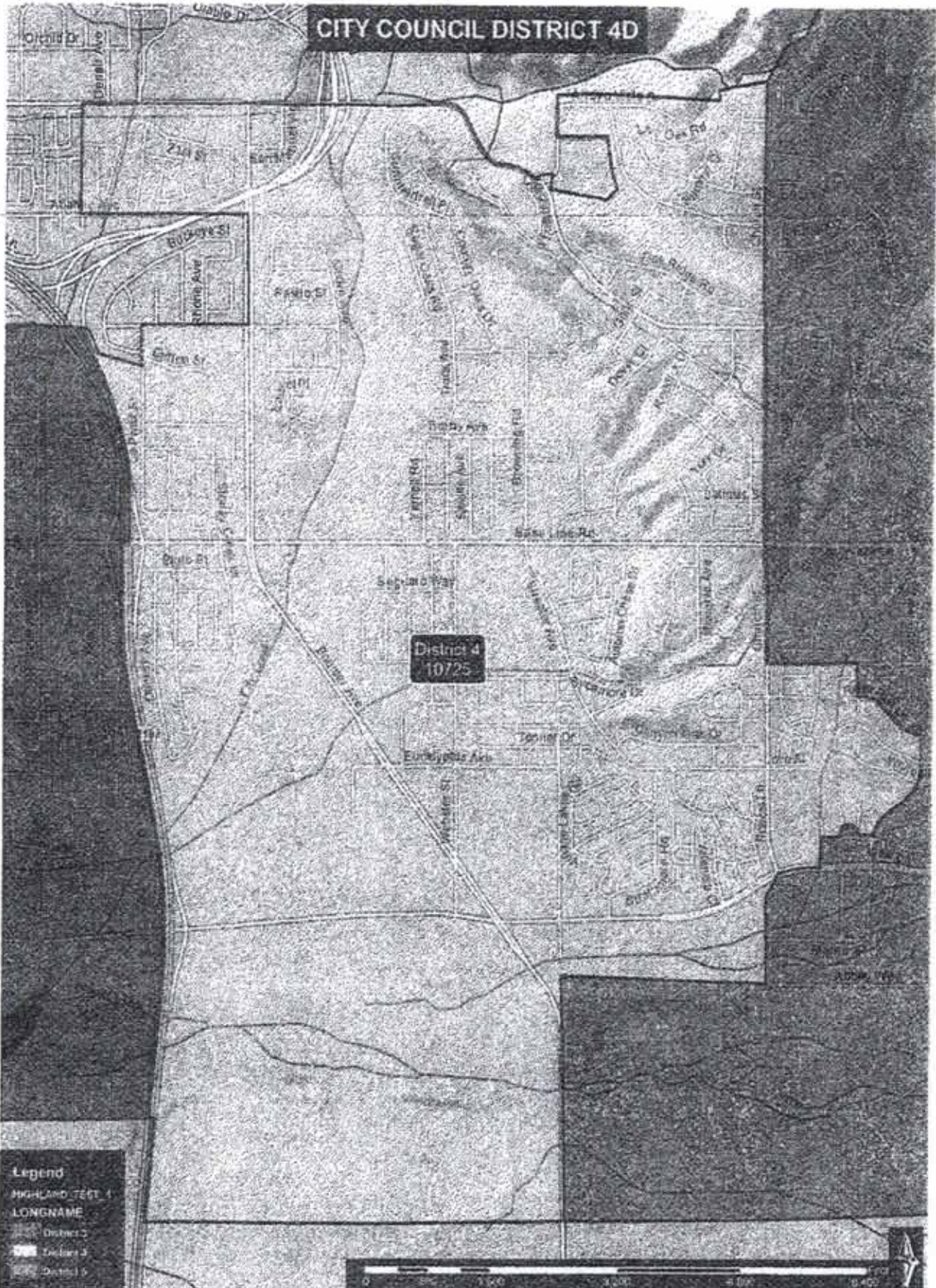


CITY COUNCIL DISTRICT 3D

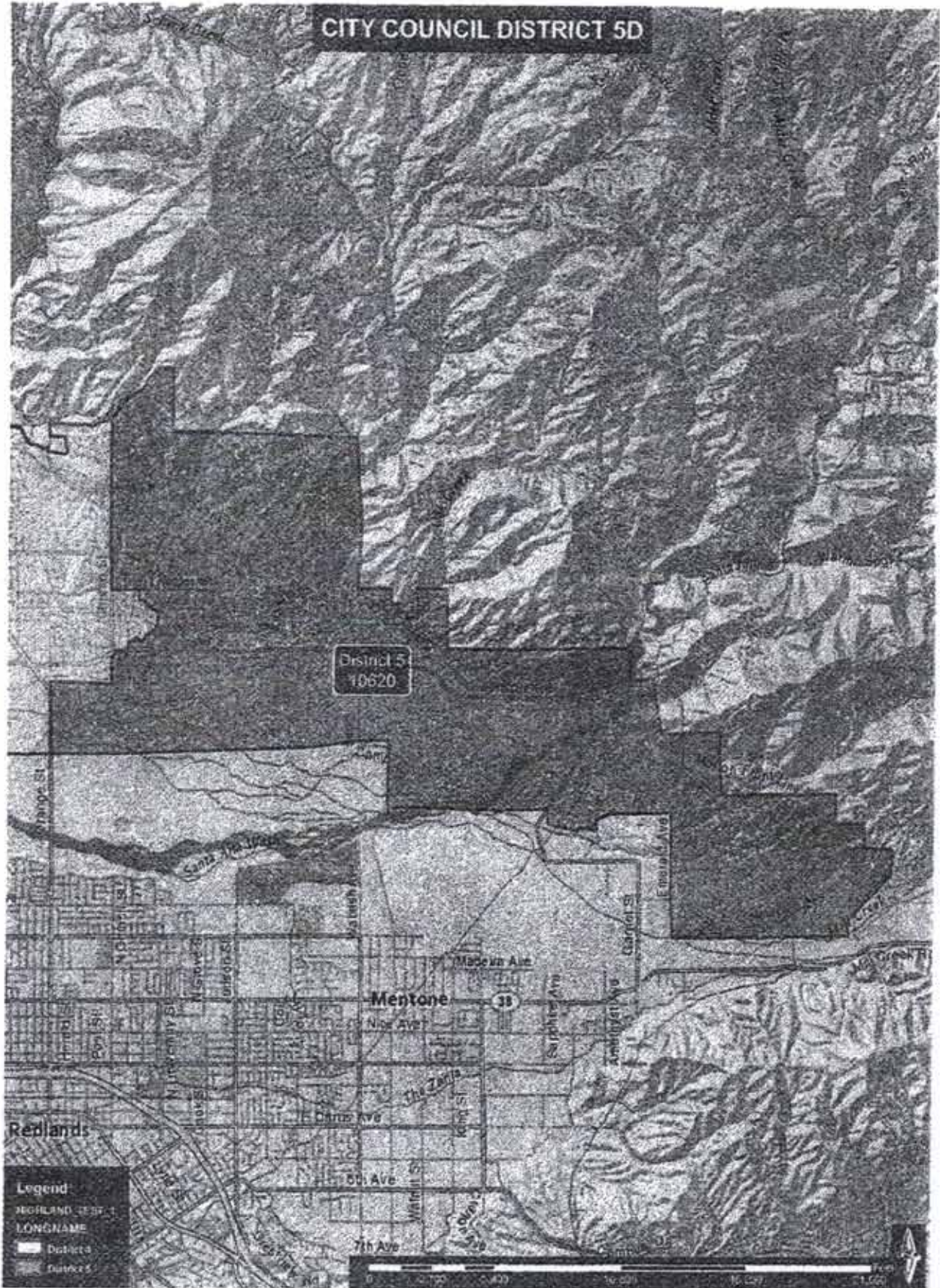


- Legend
- HIGHLAND TEST 1
 - LONGGAME
 - Outlot 2
 - Outlot 3
 - District 4





CITY COUNCIL DISTRICT 5D



Legend

- REDLANDS, CA ST. LONGNAME
- District 4
- District 5