L. Parlin Open Forum BOS 5/9/17

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4/26/17

Planning Commission
County of El Dorado
2850 Fair Lane Court, Bldg. C
Placerville, CA 95667 (sent by email)

RE: FORCED: Lessons to learn from the *Banning Ranch Conservancy* decision.

Dear Commissioners:

Planning Commissioners and County Supervisors who are responsible for reviewing and certifying Environmental Impact Reports can learn a great deal from the recent unanimous decision of the California Supreme Court in the *Banning Ranch Conservancy* case (attached). I am sending you this letter on behalf of Rural Communities United, to help you understand your important role in helping El Dorado County to comply with the California Environmental Quality Act (CEQA).

1) Forecast the Foreseeable.

One issue that came up in the case is the obligation of a lead agency to evaluate the impacts of a project, even when those impacts are somewhat uncertain. Quoting a much earlier case, the Court wrote:

> "The fact that precision may not be possible . . . does not mean that no analysis is required. 'Drafting an EIR . . . involves some degree of forecasting. While foreseeing the unforeseeable is

> The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 391-392.)" (*Vineyard*, *supra*, 40 Cal.4th at p. 449; see *Concerned Citizens*, *supra*, 42 Cal.3d at pp. 935-936.) The subject of ESHA on Banning Ranch was raised early and often by City residents and Coastal Commission staff. The City owed them a reasoned response.
>
> (Banning p. 26-27)

A County would be wise to avoid repeating inaccurate, curt, boilerplate responses to reasonable environmental concerns repeatedly raised in comments on EIRs by sister agencies and concerned citizens. As a Planning Commissioner, if citizens and/or agencies identify defective responses to comments before or during public hearings on the plan or project, it is your responsibility to recommend that the EIR be sent back to the Planning Department and its EIR consultants for correction. If a Supervisor is aware of defective responses to comments, it is a Supervisors legal obligation not to certify the EIR. If you need the help of outside CEQA counsel to review the responses, have them do so.

4) Consider and Integrate the related regulatory schemes of sister agencies.

Another question that arose in the case was whether a local lead agency could ignore the regulatory schemes of a state agency when evaluating alternatives, and defer that consideration until the state agency reviewed the project. The Court first noted that CEQA calls for a local lead agency not only to consider the regulatory schemes of other agencies, but also to concurrently integrate CEQA review with other planning and environmental review procedures. The Court wrote:

> CEQA sets out a fundamental policy requiring local agencies to "integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively." (§ 21003, subd. (a).) The CEQA guidelines similarly specify that "[t]o the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency." (Guidelines, § 15080.)

and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response*.' " (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842; accord, *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 (*Concerned Citizens*).)

(*Banning*, p. 25)

Thus, a Planning Commissioner or Supervisors should scrutinize staff responses to comments from sister agencies to ensure that the County's responses are well reasoned.

6) Disclose disagreements among agencies and experts.

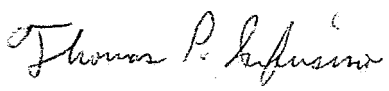
The Court also recognized that a disagreement among agency experts over an environmental impact may not be resolved during the environmental review process. In these instances, it is the lead agency's obligation to disclose these disagreements in the EIR. The Court wrote:

> In order to serve the important purpose of providing other agencies and the public with an informed discussion of impacts, mitigation measures, and alternatives, an EIR must lay out any competing views put forward by the lead agency and other interested agencies. (See § 21061; *Laurel Heights I*, *supra*, 47 Cal.3d at p. 391.) The Guidelines state that an EIR should identify "[a]reas of controversy known to the lead agency including issues raised by [other] agencies." (Guidelines, § 15123, subd. (b)(2).) "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts." (Guidelines, § 15151.) "[M]ajor environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail." (Guidelines, § 15088, subd. (c).)
>
> (Banning, pp. 24-25.)

The Court went on to note that:

> [B]oth the commissioners and interested members of the public are entitled to understand the disagreements between commission staff and the City on the subject of ESHA. The requirement that the City spell out its differences with commission staff " 'helps [e]nsure the integrity of the

Sincerely,



Thomas P. Infusino, for

Rural Communities United

cc. BOS, Chief Assistant County Counsel, Planning Department

Filed 3/30/17

IN THE SUPREME COURT OF CALIFORNIA

BANNING RANCH CONSERVANCY, Plaintiff and Appellant, v. CITY OF NEWPORT BEACH et al., Defendants and Appellants; NEWPORT BANNING RANCH LLC et al., Real Parties in Interest and Appellants.	)	S227473 Ct.App. 4/3 G049691 Orange County Super. Ct. No. 30-2012-00593557

The City of Newport Beach (the City) approved a project for the development of a parcel known as Banning Ranch. Banning Ranch Conservancy (BRC) opposed the project and sought a writ of mandate to set aside the approval. It alleged two grounds for relief: (1) the environmental impact report (EIR) was inadequate, and (2) the City violated a general plan provision by failing to work with the California Coastal Commission (Coastal Commission) to identify wetlands and habitats. The trial court found the EIR sufficient, but granted BRC relief on the ground that the general plan required the City to cooperate with the Coastal Commission before approving the project.

alternative goals for the area. The preferred option is community open space, with development limited to nature education facilities and a park. The second alternative would allow construction of up to 1,375 residential units, 75,000 square feet of retail facilities, and 75 hotel rooms. As to both alternatives, the plan calls for consolidating the oil operations and restoring wetlands and wildlife habitats. A general plan "strategy" titled "Coordination with State and Federal Agencies" requires the City to "[w]ork with appropriate state and federal agencies to identify wetlands and habitats to be preserved and/or restored and those on which development will be permitted." (City of Newport Beach, General Plan (July 2006) ch. 3, Land Use Element, p. 3-76.)

In addition to having a general plan, every local government in the coastal zone must submit a local coastal program for Coastal Commission approval. The program consists of a coastal land use plan (CLUP) and implementing regulations. The CLUP may be completed first, with regulations developed later. (*Yost v. Thomas* (1984) 36 Cal.3d 561, 566; § 30500.) The City had yet to enact its regulatory component, or to adopt procedures for issuing coastal development permits, and thus did not have a certified local coastal program. (See § 30600, subd. (b)(1).) Accordingly, the Coastal Commission exercised permitting authority over development on Banning Ranch. (See § 30600, subd. (c).)

The City did have a certified CLUP, but chose to exclude Banning Ranch from its scope. The general plan explains that "Banning Ranch is a Deferred Certification Area . . . due to unresolved issues related to land use, public access, and the protection of coastal resources." (City of Newport Beach, General Plan, *supra*, ch. 13, Implementation Program, p. 13-8.) The CLUP defines ESHA in the same terms as section 30107.5 of the Coastal Act: "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem . . . which could be easily disturbed or

ultimately approved by the City, see appen. A.) West Coast Highway, which runs along the coastline, forms the southern boundary. The eastern boundary is intersected or approached by 15th, 16th, 17th, and 18th Streets. The southeastern corner of the site is bordered by Sunset Ridge Park, a separate City project that was in progress at the time of NBR's proposal. NBR's plans called for a new "Bluff Road," running north from the highway and curving east to meet 15th Street, with another segment extending northward. The Orange County master plan of arterial highways (MPAH) envisioned Bluff Road as a six-lane divided road running north and south through the eastern portion of Banning Ranch, connecting 19th Street with the highway. However, NBR proposed to omit the segment between 19th and 17th streets in order to limit ESHA impacts. It contemplated amending the MPAH to reflect this change.

The mayor and city council wanted Bluff Road to run all the way to 19th Street. NBR submitted a revised plan, saying it would accommodate the "road circulation network requested by the City of Newport Beach as a public benefit." NBR's biological consultant pointed out that the changes "would significantly impact scrub, wetlands, and riparian habitat that would be considered [ESHA] pursuant to the City's [CLUP] as well as the California Coastal Act . . . . It is important to note that impacts to ESHA are prohibited [by the] California Coastal Act except for certain allowable uses, and the proposed connectors would be problematic to the California Coastal Commission."

Under CEQA, the "lead agency" is "the public agency which has the principal responsibility for carrying out or approving a project." (§ 21067.) As lead agency for the NBR project, the City was responsible for preparing an EIR. (See § 21100, subd. (a).) The process entails circulation of a notice of preparation, followed by draft and final EIRs. The public may submit comments on the notice

the unpermitted activity and its impacts. The ecologist decided that two cleared areas, one on Banning Ranch and one straddling the boundary between the ranch and City property, met the definition of ESHA.[3] The City and NBR disputed that determination and submitted documents supporting their view. Ultimately, however, they chose not to contest the ESHA findings.

The parties formalized a stipulation that commission staff's ESHA findings would be determinative only as to the two areas at issue, and that the commission would undertake a separate analysis of other areas in any future proceedings. The City and NBR noted their disagreement with the findings and retained the right to present evidence on whether other areas were ESHA. The commission adopted the staff findings, which included a determination that the unpermitted activity was inconsistent with policies in the City's CLUP.[4] It issued consent orders requiring the City and NBR to restore the damaged sites.

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[3] The ecologist prepared a memorandum describing the December 2010 site visit. She noted that the parties had discussed "our approach to making an ESHA determination." The memorandum refers to the map of potential ESHA on Banning Ranch that was part of the biological report accompanying NBR's original project proposal. It observes that the biological report "was posted on the City of Newport Beach website and downloaded in August 2009; it has since been removed. . . . Given that the vegetation . . . and ESHA . . . exhibits portray the expert opinion of [NBR's consultant] at the time they were developed, we believe it is appropriate to consider this information, along with other sources, in our ESHA determination. We note that these data support our ESHA conclusions . . . ."

[4] Staff noted that until the City obtained certification of its local coastal program, Coastal Act standards governed permitting and enforcement. However, "because the City's CLUP has been certified and Banning Ranch is within the City's sphere of influence, it serves as a valuable guidance document in such matters." The report quotes at length from the CLUP's provisions regarding ESHA.

occupied by the endangered California gnatcatcher. After working with the City and considering several alternatives, staff had identified a route that would avoid direct impacts on gnatcatcher habitat. Staff was prepared to recommend approval of this alignment if the road was restricted to two lanes with limited daily usage and gnatcatcher habitat was created on each side, with some other habitat improvements.

The City and NBR would not agree to these conditions. The draft EIR for the Banning Ranch project, which had just circulated, proposed widening the road to four lanes. It would serve both the park and the NBR development, becoming a major arterial road used by thousands of vehicles a day. Commission staff observed that such a road would directly affect the ESHA already identified, and others that were likely to be determined. The staff report concluded:

"To summarize, staff has been working earnestly with the City to identify a [park] project that could be approved pursuant to modifications and special conditions to bring it into compliance with the Coastal Act. However, after further review, and after further communication with the City and with [NBR], it has become clear that they cannot address the threshold issue of foreclosing future expansion of the park access road, so that ESHA, buffers, and the California gnatcatcher that relies on them, are permanently protected . . . . Compromises on the widths and kinds of uses within buffers would also be required, that could only be offset by revegetating the buffers with [plants] suitable for use by gnatcatchers, and permanently preserving those areas. Certain issues remain unresolved related to vernal pools and the legality of mowing habitat that would otherwise be ESHA. Therefore, in our final analysis based on the information now before us, staff determined that the proposed [park] project is not consistent with the Coastal Act, and the proposed project must be denied. If the City and [NBR] anticipate a larger road . . . to serve future development on the Banning Ranch property, all impacts

The City acknowledged that in doing so, the commission would take guidance from the CLUP.

Many comments on the Banning Ranch draft EIR complained about the omission of an ESHA analysis. One comment asserted that the avoidance of any ESHA determination was "egregious" because both NBR and the City *knew* there were ESHA on Banning Ranch because of the Coastal Commission consent orders. A consultant retained by BRC claimed that while the draft EIR did not include a map of probable ESHA, a computer search would reveal "numerous wetland polygons . . . indicating the EIR preparer's opinion regarding the limits of wetland ESHA on the project site; many of these areas are proposed for permanent impacts, which is inconsistent with the Coastal Act." Another comment referred to a hearing on the park access road, from which "it appears that the Coastal Commission has identified ESHA at Banning Ranch where the City had not. Habitat mapping [in the EIR] must be revised to reflect [the] observations and the standards of the Coastal Commission."

The Coastal Commission submitted 15 pages of staff comments, noting they "should not be construed as representing the opinion of the Coastal Commission itself." Staff said the City's CLUP provided "strong guidance" even though no local coastal program was in place. They suggested the EIR address whether the proposed development was consistent with policies in both the CLUP and the Coastal Act. Several comments pertained to ESHA.

Commission staff pointed out that under the Coastal Act, development must avoid impacts to ESHA. They said section 30240 does not permit "non-resource dependent impacts to an ESHA area," even if there is mitigation in other areas. "Rather, Section 30240 requires that proposed new development be located outside of ESHA areas. Additionally, Section 30240 requires siting, design, and appropriate buffers to ensure that development adjacent to ESHA does not result

Coastal Commission or elucidate on the Coastal Commission's ultimate conclusions [*sic*]. Rather, as appropriate under CEQA, the City has analyzed the impacts of the project, and concluded that they can be reduced to a less-than-significant level or avoided with appropriate measures. As stated in the Consent Orders, a separate analysis will be undertaken by the Coastal Commission in connection with any future Coastal Development Permit application or proceeding before the Coastal Commission involving these properties."

In a general discussion of ESHA, the City emphasized that Sunset Ridge Park and the NBR development were separate projects, and that the park was beyond the scope of the Banning Ranch EIR. Although the Coastal Commission was responsible for ESHA determinations, the City had "taken into consideration . . . the policies of the Coastal Act in the Draft EIR and provide[d] a consistency analysis of the proposed Project and those policies." The City referred to a table in the draft EIR finding the project generally consistent with a list of Coastal Act provisions, but without any mention of ESHA. It recognized that "the proposed alignment of Bluff Road is within areas that were identified as ESHA by the Coastal Commission in the Consent Orders. The Coastal Commission has not reviewed the Newport Banning Ranch proposal and has not made any recommendations regarding Bluff Road at this time. The Coastal Commission has, however, reviewed the City's Sunset Ridge Park application which included a park access road in this same area and made recommendations on reconfiguring the entry road to minimize impacts to sensitive coastal resources in a manner that could be found consistent with the Coastal Act and Section 30240 in particular." The City did not mention that it had rejected those recommendations, saying only that it had later "revised its application for Sunset Ridge Park."

The City disavowed any obligation to further consider ESHA. It claimed it had "fulfilled its obligation under CEQA to analyze the significant impacts of a

In response to commission staff's ESHA comments, the City stated: "The purpose of the Draft EIR is to analyze a proposed project's impact on the physical environment. It is not, in and of itself, a policy consistency analysis, except to the extent that such inconsistencies reveal environmental impacts that otherwise are not discussed. . . . [T]he Draft EIR analyzes the proposed Project's impact on biological resources, including federal and State listed endangered and threatened species, sensitive plant and animal species, and specific habitats such as wetlands and vernal pools. All impacts to these resources would be mitigated or avoided with the Mitigation Program . . . . The Draft EIR acknowledges that the Coastal Commission makes the determination as to whether any or all of these constitute ESHA under the Coastal Act, and application of the policies of the Coastal Act to the existing conditions on the Project site would be undertaken as part of the Coastal Commission's Coastal Development Permit process." The City did not directly respond to staff's concern about the identification of potential ESHA "before land use areas and development footprints are established." It did not respond at all to the suggestion that ESHA and buffer zone delineations be reviewed by commission staff before the EIR was finalized.

The City extensively addressed commission staff's comments on the Bluff Road access from West Coast Highway. It acknowledged that the staff recommendations prepared for the Sunset Ridge Park permit application included a finding that the proposed arterial road would be inconsistent with the Coastal Act. However, the City noted that no action had yet been taken on the Sunset Ridge Park application. It repeated that staff had indicated they would approve an access road from West Coast Highway under some circumstances. A new connection from 19th Street to the highway was a "fundamental goal" of the project, and the City had accepted funding from the county ("Measure M" funds) premised on the condition that it would complete that link. It found that

mitigation measures. However, the trial court granted BRC's petition, finding that the City had failed to meet its obligations under the general plan.

The Court of Appeal reversed the grant of relief, concluding that the general plan did not require the City to work with the Coastal Commission before project approval. On the CEQA issue, the court agreed with the City that ESHA designations were a legal determination to be made by the Coastal Commission, and not a subject for consideration in the EIR. Like the trial court, the Court of Appeal found support in *Banning Ranch I*, *supra*, 211 Cal.App.4th at pages 1233-1234. It acknowledged that in *Banning Ranch I* the park *was* subject to the City's CLUP, and the City *did* identify potential ESHA in the EIR. However, it deemed these differences unimportant, finding it sufficient for the Banning Ranch EIR to note that the project was outside the scope of the CLUP and the Coastal Commission would determine whether ESHA would be affected. The court concluded, "CEQA does not require the City to prognosticate as to the likelihood of ESHA determinations and coastal development permit approval."

II. DISCUSSION

A. *Sufficiency of the EIR*

"[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,'

environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively." (§ 21003, subd. (a).) The CEQA guidelines similarly specify that "[t]o the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency." (Guidelines, § 15080.)

An EIR project description must include "[a] list of related environmental review and consultation requirements [found in] federal, state, or local laws, regulations, or policies. *To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements*." (Guidelines, § 15124, subd. (d)(1)(C), italics added; see also Guidelines, § 15006, subd. (i).) Toward that end, agencies are encouraged to "[c]onsult[] with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it." (Guidelines, § 15006, subd. (g).) Here, the City ignored its obligation to integrate CEQA review with the requirements of the Coastal Act, and gave little consideration to the Coastal Commission's needs.

The Guidelines specifically call for consideration of related regulatory regimes, like the Coastal Act, when discussing project alternatives. An EIR must "describe a range of reasonable alternatives to the project," or to its location, that would "feasibly attain" most of its basic objectives but "avoid or substantially lessen" its significant effects. (Guidelines, § 15126.6, subd. (a).) Among the factors relevant to the feasibility analysis are "other plans or regulatory limitations, [and] jurisdictional boundaries (projects with a regionally significant impact should consider the regional context)." (*Id.*, subd. (f)(1).) By definition, projects with substantial impacts in the coastal zone are regionally significant.

ESHA, or consider impacts on the two ESHA delineated in the Coastal Commission's consent orders. As a result, the EIR did not meaningfully address feasible alternatives or mitigation measures.[7] Given the ample evidence that ESHA are present on Banning Ranch, the decision to forego discussion of these topics cannot be considered reasonable.

None of the City's justifications for deferring the ESHA analysis is persuasive. It contends it has no authority to designate ESHA on Banning Ranch because only the Coastal Commission can do that. Amicus curiae League of California Cities makes a similar argument that lead agencies are not required to make legal determinations within the province of another agency. The League expresses concern that ESHA identifications in EIRs might be subject to de novo judicial review. However, a lead agency is not required to make a "legal" ESHA determination in an EIR. Rather, it must discuss potential ESHA and their ramifications for mitigation measures and alternatives when there is credible evidence that ESHA might be present on a project site. A reviewing court considers only the sufficiency of the discussion.[8]

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[7] We express no view as to whether ESHA impacts must be avoided, as opposed to mitigated. (See *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507.) The issue never arose here because the EIR did not discuss ESHA impacts. We use "mitigation" in a general sense, to include such measures as buffer zones.

[8] BRC contends the City *did* have legal authority to designate ESHA, relying on *Douda v. California Coastal Com.* (2008) 159 Cal.App.4th 1181. *Douda* is inapposite; there the court reviewed a challenge to the *Coastal Commission's* authority to designate ESHA. (*Id.* at p. 1191.) In passing, the court noted that a local government may become an "issuing agency," i.e., an agency empowered to issue a coastal development permit, before it certifies a local coastal program. (*Id.* at pp. 1188, 1191.) For that to happen, however, the local agency must "establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit." (§ 30600, subd. (b)(1).) The City had no such procedures in place.

(footnote continued on next page)

It also appears that the City has evaluated ESHA impacts as a matter of course for other projects. The EIR explained that even though it did not have a certified local coastal program and therefore could not issue coastal development permits, the City did review project applications for consistency with its general plan, zoning regulations, and CLUP. Applicants would then seek a coastal development permit from the Coastal Commission. Accordingly, it seems the City *routinely* applied its CLUP requirements, which include specific ESHA guidelines, even though ultimate ESHA determinations would be made by the commission. The City's excuse for not doing so in this case is that Banning Ranch is not covered by the CLUP. However, the EIR acknowledged that the commission would consider the CLUP's provisions when it assessed ESHA on Banning Ranch. Nothing prevented the City from doing the same, just as it does for projects within the CLUP.

The City insists that ESHA would be fully considered during the permitting phase of the project. Such a delay is inconsistent with CEQA's policy of integrated review. (§ 21003, subd. (a).) As noted, a lead agency must consider related regulations and matters of regional significance when weighing project alternatives. (Guidelines, § 15126.6.) The City's argument is also undermined by *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433. There, the EIR did not discuss a mitigation measure proposed by the United States Army Corps of Engineers. The city justified the omission by claiming the corps would act to protect wetlands during the permit process. The court was not persuaded. "*Each* public agency is required to comply with CEQA and meet its responsibilities, including evaluating mitigation measures and project alternatives. (See Guidelines, § 15020.)" (*Citizens for Quality Growth*, at p. 442, fn. 8.) Lead agencies in particular must take a *comprehensive* view in an EIR. (§ 21002.1,

interested agencies. (See § 21061; *Laurel Heights I*, *supra*, 47 Cal.3d at p. 391.) The Guidelines state that an EIR should identify "[a]reas of controversy known to the lead agency including issues raised by [other] agencies." (Guidelines, § 15123, subd. (b)(2).) "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts." (Guidelines, § 15151.) "[M]ajor environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail." (Guidelines, § 15088, subd. (c).)

The City correctly points out that the ultimate findings regarding ESHA on Banning Ranch will be made by the California Coastal Commissioners themselves, not commission staff. But both the commissioners and interested members of the public are entitled to understand the disagreements between commission staff and the City on the subject of ESHA. The requirement that the City spell out its differences with commission staff " 'helps [e]nsure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug. . . . [W]here comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be good faith, reasoned analysis in response*.' " (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842; accord, *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 (*Concerned Citizens*).) Rather than sweep disagreements under the rug, the City must fairly present them in its EIR. It is then free to explain why it declined to accept commission staff suggestions.

Some information on ESHA and the disputes between the City and commission staff can be gleaned from a diligent search of the EIR appendices and

Ranch was raised early and often by City residents and Coastal Commission staff. The City owed them a reasoned response.

We note that the City's handling of the Banning Ranch EIR not only conflicted with its CEQA obligations, but also ignored the practical reality that the project must ultimately pass muster under the Coastal Act. As one court has observed, coordination between a lead agency and a permitting agency "serves the laudable purpose of minimizing the chance the City will approve the Project, only to have later permits for the Project denied . . . ." (*California Native Plant*, *supra*, 172 Cal.App.4th at p. 642.) Agreement between the agencies is not necessary, as we have discussed, but conflicts may be avoided or reduced by consultation in early stages.

B. *Reversal Is Required*

By certifying an inadequate EIR, the City abused its discretion. "[F]ailure to disclose information called for by CEQA may be prejudicial 'regardless of whether a different outcome would have resulted if the public agency had complied' with the law (§ 21005, subd. (a))." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463.) On the other hand, "there is no presumption that error is prejudicial." (§ 21005, subd. (b).) "Insubstantial or merely technical omissions are not grounds for relief. [Citation.] 'A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' " (*Neighbors for Smart Rail*, at p. 463; see *Sierra Club*, *supra*, 7 Cal.4th at pp. 1236-1237.)

III. DISPOSITION

We reverse the Court of Appeal's judgment and remand for further proceedings consistent with the views expressed herein.

CORRIGAN, J.

WE CONCUR:

CANTIL-SAKAUYE, C. J.
WERDEGAR, J.
CHIN, J.
LIU, J.
CUÉLLAR, J.
KRUGER, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Banning Ranch Conservancy v. City of Newport Beach

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Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 236 Cal.App.4th 1341
Rehearing Granted

Opinion No. S227473
Date Filed: March 30, 2017

Court: Superior
County: Orange
Judge: Robert Louis Becking, Temporary Judge*, Nancy Weiben Stock and Kim Garlin Dunning

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Counsel:

Leibold McClendon & Mann, John G. McClendon, Douglas M. Johnson and David H. Mann for Plaintiff and Appellant.

The Law Office of Julie M. Hamilton, Julie M. Hamilton and Leslie Gaunt for Friends of the Canyon as Amicus Curiae on behalf of Plaintiff and Appellant.

Law Offices of Stephan C. Volker, Stephan C. Volker, Alexis E. Krieg and Daniel P. Garrett-Steinman for North Coast Rivers Alliance as Amicus Curiae on behalf of Plaintiff and Appellant.

Lisa T. Belenky; Coast Law Group and Marco Gonzalez for Center for Biological Diversity, California Native Plant Society and Coastal Environmental Rights Foundation as Amici Curiae on behalf of Plaintiff and Appellant.

Aaron Harp, City Attorney, Leonie Mulvihill, Assistant City Attorney; Remy Moose Manley, Whitman F. Manley and Jennifer S. Holman for Defendants and Appellants.

Thomas Law Group and Tina Thomas for California Infill Builders Federation as Amicus Curiae on behalf of Defendants and Appellants.

Joshua P. Thompson and Christopher M. Kieser for Pacific Legal Foundation as Amicus Curiae on behalf of Defendants and Appellants.

The Sohagi Law Group, Margaret M. Sohagi, Nicole H. Gordon and R. Tyson Sohagi for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Defendants and Appellants.

Manatt, Phelps & Phillips, Susan K. Hori and Benjamin G. Shatz for Real Parties in Interest and Appellants.

Kamala D. Harris, Attorney General, John A. Saurenman, Assistant Attorney General, and Jamee Jordan Patterson, Deputy Attorney General, for California Coastal Commission as Amicus Curiae.

*Pursuant to California Constitution, Article VI, section 21.

The materials just distributed to you concern violations of Constitutional Oaths of Office. One is addressed to Supervisor Shiva Frentzen, and the other is addressed to District #2 Planning Commissioner, Gary Miller. Everything contained in the letters before you are based on truth, fact, evidence and valid law.

John Hidahl, you were present to witness the Bureaucratic Shenanigans that transpired during the April 13th Planning Commission hearing. Just one example is Roger Trout's fraudulent 3-Strikes policy which Gary Miller referred to on multiple occasions stating, "There isn't a 3-strikes policy!" *A policy that doesn't exist cannot be lawfully enforced.*

You are reminded that there are no exceptions to the Supreme Law of the Land. By now you are all well aware that any enterprise undertaken by any public official who tends to weaken public confidence and undermines the sense of security for individual rights, is against public policy. The First Amendment guarantees the Right of free speech and the Right to petition government for **redress of grievances**, which, the oath taker, pursuant to his oath, is mandated to uphold. If he fails this requirement, then, he has violated two provisions of the First Amendment, the Public Trust and perjured his oath.

Collusion between departments is a major factor in depriving Citizens of their right to access public information and due process. Fraud, in its elementary common-law sense of deceit, is the simplest and clearest definition of that word. Notably, both Shiva Frentzen and Commissioner Gary Miller refused me the right to respond publicly by foreclosing meaningful public dialog concerning the purposeful cover up of government malfeasance, thus maintaining the status quo.

You are either part of the solution, or you are part of the problem. As long as this Board turns a blind eye and deaf ear to abuses of power and obstruction of justice, then, you are aiding and abetting El Dorado County corruption.

If you have any questions or comments, please make them at this time, in order that I can respond.

Madam Clerk: Please enter a copy of both letters into the public record.

M. Lane, Open Forum BOS 5/9/17

Melody Lane
Compass2Truth
P.O. Box 598
Coloma, CA 95613

May 8, 2017

Supervisor Shiva Frentzen, Dist. #2
El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Supervisor Shiva Frentzen,

This letter is lawful notification to you, and is hereby made and sent to you pursuant to the national Constitution, specifically, the Bill of Rights, in particular, Amendments I, IV, V, VI, VII, IX and X, and the California Constitution, in particular, Article 1, Sections 1, 2, 3, 9, 10, 11, 21, 23, and Article 3 Section 1. This letter requires your written rebuttal to me, specific to each claim, statement and averment made herein, within 30 days of the date of this letter, using fact, valid law and evidence to support your rebuttal.

You are hereby noticed that your failure to respond within 30 days as stipulated, and rebut with particularity everything in this letter with which you disagree is your lawful, legal and binding agreement with and admission to the fact that everything in this letter is true, correct, legal, lawful and binding upon you, in any court, anywhere in America, without your protest or objection or that of those who represent you. Your silence is your acquiescence. See: *Connally v. General Construction Co.*, 269 U.S. 385, 391. Notification of legal responsibility is "the first essential of due process of law." Also, see: *U.S. v. Tweel*, 550 F. 2d. 297. *"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading."*

What I say in this letter is based in the supreme, superseding authority of the Constitution for the United States of America, circa 1787, as amended in 1791, with the Bill of Rights, and the California Constitution, to which all public officers have sworn or affirmed oaths, under which they are bound by Law. It is impossible for an oath taker to lawfully defy and oppose the authority of the documents to which he or she swore or affirmed his or her oath. My claims, statements and averments also pertain to your actions taken regarding violations of the California Ralph M. Brown Act and deprivation of my rights pursuant to your oaths. When I use the term "public officer(s)", this term includes you.

The Supreme Law and superseding authority in this nation is the national Constitution, as declared in Article VI of that document. In Article IV, Section 4 of that Constitution, every state is guaranteed a republican form of government. Any "laws", rules, regulations, codes and policies which conflict with, contradict, oppose and violate the national and state Constitutions are null and void, *ab initio*. It is a fact that your oath requires you to support the national and state Constitutions and the rights of the people secured therein.

All public officers are required to abide by their oaths in the performance of their official duties. No public officer, including you, has the constitutional authority to oppose, deny, defy, violate and disparage the very documents to which he or she swore or affirmed his or her oath. All actions by public officers conducted in the performance of their official duties either support the national and state Constitutions, or deny them.

In order for America to survive as a Constitutional Republic, it is imperative that all aspects of government, including you, all other members of the Board of Supervisors and El Dorado County public officers, abide by all Constitutional requirements while conducting your official duties. When you and other public officers violate the Constitutions, at will, as an apparent custom, practice and policy of office, you and they subvert the authority, mandates and protections of the Constitutions, thereby act as domestic enemies to these Republics and their people. When large numbers of public officers so act, this reduces America, California and the County of El Dorado to the status of frauds operating for the benefit of governments and their corporate allies, and not for the people they theoretically serve.

Unfortunately, officials at all levels of government, including you, have unlawfully insulated themselves from their constituents through the unconstitutional use of security barriers, regulations restricting what is said at public meetings, and other tactics that run afoul of the First Amendment's safeguards for free speech, public assembly and the right to petition the government for redress of grievances, as well as all aspects of due process of law. Constitutionally secured rights are intended to empower citizens to push back against those who would stifle the ardor of citizens, arbitrarily silence critics and impede efforts to ensure transparency in government.

You swore an oath to uphold and support the Constitution of the United States of America, and pursuant to your oath, you are required to abide by that oath in the performance of your official duties. You have no Constitutional or other valid authority to defy the Constitution, to which you owe your LIMITED authority, delegated to you by and through the People, and to which you swore your oath.

On March 18, 2017, correspondence and accompanying evidence was submitted to the Planning Commissioners, Development Services Director, Roger Trout, and the Board of Supervisors regarding the upcoming March 23rd Planning Commission hearing relevant to the revocation of the Villa Florentina Special Use Permit and multiple violations of the River Management Plan.

After the March 23rd and the April 13th Commission hearings it became evident while in the course of conversations with Commissioners James Williams and Gary Miller, that none of those materials had been read by the Planning Commissioners prior to rubber-stamping their unanimous decisions made during the hearings. **(See Exhibit A)**

Then, on March 29, 2017, I addressed a letter to you, Supervisor Michael Ranalli and the Planning Commissioners. The correspondence concerned specific violations of the Brown Act, due process and District #2 Planning Commissioner Gary Miller's Principal Agent Oath of Office. As principal, you have delegated authority to your appointed agent, Commissioner Gary Miller, to act on your behalf. When you or any public officer has knowledge of wrong doing, yet fails to take corrective action, then, that public officer aids, abets and condones the unlawful action of the agent, thereby maintaining the status quo, and thus you become complicit and liable. In some cases, it's the agent who can be held responsible for misconduct, illegal activity, or violations of business standards.

Mr. Miller has repeatedly committed violations of the Brown Act and his Principal Agent Oath of Office. One such example was read into the public record after I questioned Commissioner Miller's voting rationale and his unprofessional conduct during the March 23rd hearing, as quoted here below, verbatim:

> *"I don't really need to explain to you what I did...I don't need to justify myself to you. You get what I give you!...I suggest you make a complaint to the BOS & have me removed. That would break my heart!...There isn't a 3 strikes policy! I know there's no such policy!...There is nothing in the Brown Act that says you can talk 3 or 5 minutes. One of the unique things about being a Chairman is you don't get to tell me what I can do!...Sounds like you are threatening to take me to court...County Council was right there. I assure you, that if I was in violation of the Brown Act he would have said something."*

As elected officials, you are responsible to deal directly and transparently with the constituents whom you profess to serve. During the April 11th Open Forum, I addressed the aforementioned Planning Commission grievances to you and Supervisor Ranalli which mandates appropriate dialog, scheduling the topic for a future meeting and remedial action as required under the Brown Act, Section 54954.2(a), which states in part:

> Where a member of the public raises an issue which has not yet come before the legislative body, the item may be briefly discussed but no action may be taken at that meeting. The purpose of the discussion is to **permit a member of the public to raise an issue or problem with the legislative body** or to permit the legislative body to provide information to the public, provide direction to its staff, or **schedule the matter for a future meeting**. (§ 54954.2(a).)

The Board of Supervisors has been regularly apprised that they are routinely receiving false information from the River Management Advisory Committee, Parks & Recreation, the CAO, and the Planning Commission. Any enterprise, undertaken by a public official, such as you and other Board of Supervisor members, which tends to weaken public confidence and undermines the sense of security for individual rights, is against public policy. Fraud, in its elementary common-law sense of deceit, is the simplest and clearest definition of that word.

Additionally, Public Record Act requests for information pertinent to the River Management Plan have been ignored, are late, or are insufficiently responded to as required by law. Just one example is Roger Trout's fraudulent 3-Strikes policy which Commissioner Gary Miller referred to and has been the topic of meetings with county staff. **(See Exhibit B)**

Collusion between departments appears to be a major factor in depriving citizens of their right to access public information and due process. Following is Clerk to the Board, Jim Mitrisin's, 3/24/17 reply to a CPRA requesting said 3-Strikes policy, *"There are no records responsive to your request. I phoned the Planning Department to learn more and was informed the reference to "1,2,3" was made by an applicant and restated by Mr. Trout regarding steps taken to address a use permit issue. You may want to contact Mr. Trout for additional information."*

Prior to the March 23rd Planning Commission hearing, sufficient evidence was submitted for the Item #5 Villa Florentina SUP revocation along with a request made to pull from Consent Item #2, RMP Update. Apparently those materials were never read by any of the commissioners, nor were they properly posted to the government website prior to the hearing. I conversed at length with District #4 Commissioner James Williams about the anomalies, and he concurred with my assessment of the situation by encouraging me to request in writing that the decisions be repealed and reversed for lack of due process. **(See Exhibit C)**

However, as spokesperson for the Board on April 11th, you denied me due process when my repeated requests were ignored to **appeal and reverse** the aforementioned 3/23/17 Planning Commission decisions. Instead of responding appropriately to my request, you deferred to Chief Counsel, Mike Ciccozzi. Counsel has no authority to respond on behalf of the BOS or any other EDC employee, nor is it appropriate for Counsel to give his *opinion* and/or interpretation of the law such as transpired on April 11th. As John Adams, our nation's second president once said, "Facts are stubborn things." I want ONLY valid, relevant facts, and not opinions rendered by mouthpiece for the BOS. This conduct by you and the other BOS members is evasive, an egregious violation of due process of law, the Constitutions to which you swore your oaths, and perjury of those oaths. At the behest of Mike Ciccozzi, you shut off the microphone after I refused to yield my sovereignty until you specifically responded appropriately to specific grievances concerning Planning Commission malfeasance.

As such, Mike Ciccozzi's interference has been habitually without authority, and is in violation of the Brown Act and the Bagley-Keene Act. Thus, he too denied my

constitutionally secured rights and due process. See *Miller v. United States*, 230 F.2d 486 (5th Cir. 1956); "The claim and exercise of a constitutional right cannot be converted into a crime."

When I refused to yield my sovereignty and pressed for a response to schedule the issues on the BOS calendar for public discussion, you violated your Oath of Office by your reply, *"What you're asking me to do is to remove my appointee from the Planning Commission which I'm not going to do...or to discipline him...You asked me a question and you did not like my answer, so I would politely ask you to please let the rest of the meeting flow...If you do not agree to let the meeting flow, I will call for a five minute break...Can you kill the microphone please?"*

In violation of the Brown Act and your Oath of Office, you deprived me, and other members of the public, the right to due process, to testify and address public officers for the purpose of redressing grievances, specifically regarding issues of El Dorado County corruption, to wit:

> The Preamble of the Ralph M. Brown Act states:
>
> "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created."**
>
> It further states:
>
> §54954.3 Public's right to testify at meetings. (c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law. **Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.**
>
> **As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body.** Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. *(Leventhal v. Vista Unified School Dist. (1997) 973 F. Supp. 951; Baca v. Moreno Valley Unified School Dist. (1996) 936 F. Supp. 719.)* **These decisions found that prohibiting critical comments was a form of viewpoint discrimination and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialog.**

It has been brought to your attention on numerous occasions that county staff is habitually submitting erroneous data and/or false information regarding interrelated issues to the Board of Supervisors. You are reminded of your fiduciary duty to the public. Consequently, decisions made by the Supervisors that are based on deliberately falsified information submitted by staff will ultimately adversely affect all EDC tax payers, thus undermining the public trust in local government.

It is apparent the public's input has been reduced to irrelevancy by how the Board and Planning Commission vote unanimously, and/or rubber-stamp Consent items, thereby demonstrating that public meetings are little more than dog and pony shows with predetermined outcomes designed to falsely give the public an impression of government transparency and accountability. Furthermore, informal hallway conversations, such as took place February 14th and February 28th during BOS meeting breaks, are unacceptable substitutes for Citizen requests for transparency, due process and honest services.

Shiva, you were not elected by El Dorado County constituents to maintain the status quo. In addition to the Political Reform Act, Sunshine laws and Government Ethics laws, federal anticorruption law broadly guarantees the public "honest services" from public officials. *Your depriving the public of honest services is a federal crime.* My claims, statements and averments also pertain to your actions taken regarding your failure to provide honest public services, pursuant to your oaths.

The First Amendment guarantees the Right of free speech and the Right to petition government for **redress of grievances**, which, you, the oath taker, pursuant to your oath, are mandated to uphold. If you fail this requirement, then, you have violated two provisions of the First Amendment, the Public Trust and perjured your oath. Further, by not responding and/or not rebutting, you deny me, the Citizen, remedy; thus, deny constitutional due process of law, as stated within the Bill of Rights. An American Citizen can expect, and has the Right and duty to demand, that his or her government officers uphold their oaths to the Constitution(s) and abide by all constitutionally imposed mandates of their oaths. This is an un-enumerated Right guaranteed in the Ninth Amendment which I claim and exercise.

There is no legitimate argument to support the claim that oath takers, such as you, are not required to respond to letters, which, in this case, act as petitions for redress of grievances, stating complaints, charges and claims made against them by their constituents or by Citizens injured by their actions. When public officers, such as you, harm the Citizens by their errant actions, and then refuse to respond to or rebut petitions from Citizens, then those public officers are domestic enemies, acting in sedition and insurrection to the declared Law of the land and must be opposed, exposed and lawfully removed from office.

You perjured your oath by violating my constitutionally guaranteed Rights, in particular those secured in the Bill of Rights, including but not limited to my 1st

Amendment Rights. By your unlawful actions, you acted in sedition and insurrection against the Constitutions, both federal and state, and in treason against the People, in the instant case, me.

Anytime you and other public officers, pursuant to their oaths, violate Rights guaranteed to Citizens in the Constitutions, they act outside their limited delegated authority, thus, perjure their oaths, and by their own actions, invoke the self-executing Sections 3 and 4 of the 14th Amendment; thereby vacate their offices and forfeit all benefits thereof, including salaries and pensions, as you did on April 11, 2017 and several other occasions which are now a matter of public record.

As stated previously, actions by you and other public officers either uphold the Constitutions and rights secured therein, or oppose them. By your stepping outside of your delegated authority you lost any "perceived immunity" of your office and you can be sued for your wrongdoing against me, personally, privately, individually and in your professional capacity, as can all those in your jurisdiction, including any judges or prosecuting attorneys and public officers for that jurisdiction, if, once they are notified of your wrongdoing, they fail to take lawful actions to correct it, pursuant to their oaths and their duties, thereto.

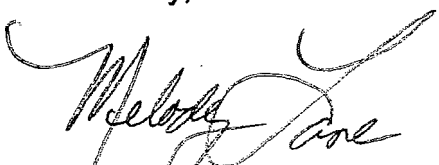
If they fail to act and correct the matter, then, they condone, aid and abet your criminal actions, and further, collude and conspire to deprive me and other Citizens of their Rights guaranteed in the Constitutions, as an apparent custom, practice and usual business operation of their office and the jurisdiction for which they work. This constitutes treason by the entire jurisdiction against the people, in the instant case, me, and based upon the actions taken and what exists on the public record, it is impossible for you and any public officer to defend himself against treason committed. *See: 18 USC § 241 - Conspiracy against rights. See also: U.S. v. Guest, Ga. 1966, 86 S.Ct. 1170, 383 U.S. 745, 16 L.Ed 239.*

Pursuant to the constitutional mandates imposed upon them, by and through their oaths, there is no discretion for you to oppose the Constitutions and your oaths thereto, nor to be selective about which, if any, mandates and protections in the Constitutions you support. The mandates and protections set forth in the Constitutions are all encompassing, all-inclusive and fully binding upon you and all public officers, without exception.

If you disagree with anything in this letter, then, rebut that with which you disagree, in writing, with particularity, to me, within 30 days of the date of this letter, and support your disagreement with evidence, true fact and valid law.

Your failure to respond, as stipulated, is your agreement with and admission to the fact that everything in this letter is true, correct, legal, lawful, and is your irrevocable agreement attesting to this, fully binding upon you, in any court in America, without your protest or objection or that of those who represent you.

Sincerely,



Melody Lane
Founder - ***Compass2Truth***

Attachments:
Exhibit A – March 18, 2017 Villa Florentina SUP & RMP violations
Exhibit B - 10/4/16 CPRA Ethics Agenda
Exhibit C - March 29, 2017 Planning Comm. Hearing letter to Sups. Frentzen & Ranalli

CC: District #1 Supervisor John Hidahl
District #3 Supervisor Brian Veerkamp
District #4 Supervisor Ranalli
District #5 Supervisor Sue Novasel

Compass2Truth

Citizens for Constitutional Liberty

P.O. Box 598
Coloma, CA 95613

March 18. 2017

El Dorado County Planning Commission
C/o Development & Planning Services
2850 Fairlane
Placerville, CA 95667

RE: Villa Florentina Bed & Breakfast SUP #S10-0009 Violations & Revocation

Dear Commissioners,

I have been a resident of Coloma for nearly 20 years living close to the intersection of Carvers and Mt. Murphy Roads located within the Quiet Zone of the S. Fork American River. Not only can we hear excessively loud events emanating from Villa Florentina, residents are frequently bombarded simultaneously by multiple amplified events at the Coloma Resort and other surrounding campgrounds. **(See Exhibit A)**

Egress in the event of an emergency is also cause for concern frequently expressed by neighbors on the north side of the Mt. Murphy Road Bridge. This becomes a public safety issue when large events create traffic jams.

The Quiet Zone as described in the River Management Plan (RMP) begins at Indian Creek above Coloma, and ends at Greenwood Creek below Rivers Bend. RMP noise restrictions apply to the river rafters as well as to campgrounds, business establishments, and private property owners. The majority of residents moved to Coloma for the peace and quiet of the rural lifestyle. The purpose of the Quiet Zone is to respect the rights and reasonable expectations of adjoining landowners.

The specifics of SUPs and requirements are delineated in Sections 4 through 8 of the RMP. Section 8.2 of the RMP states only the County Sheriff's Department has the authority to fine and enforce County Code violations involving private campgrounds and private land owners. Should a resident desire to obtain a Temporary Use Permit (TUP) for a special amplified music event, they would be required to pay a fee to obtain a permit through the Sheriff's Department. To date, Public Record Act requests for information reveal there have only been about a dozen TUPs issued by EDSO over the course of more than 15 years, most of them held at Henningson-Lotus Park. None have ever been issued for Villa Florentina.

Significantly excessively noisy events, such as those emanating from Villa Florentina, have negative impacts not only upon the quality of life of residents living within this stretch of the river, but also upon the value of neighboring homes. The historic failure of the county to apply consequences for SUP violations as per the RMP exacerbates the problem of unacceptable levels of noise. The campgrounds, businesses, and event

Exhibit A

coordinators expect Code and Law Enforcement to turn a blind eye and deaf ear to resident's complaints; hence business continues as usual in EDC.

Noise violations within the Quiet Zone have been a bone of contention in our community long before I even moved here. Once it was realized what a problem SUP violations actually were, I joined others in circulating petitions for SUP revocations and volunteered as secretary for the Community Clamor Committee (CCC). The purpose of the CCC was to mitigate the frequent SUP violations, lack of appropriate monitoring within the Quiet Zone, and to develop a plan of action to bring the offending parties into compliance. Because these meetings could get very contentious, I invited law enforcement to actively participate as per the RMP. Note it is not necessary to have a decibel meter or hire a professional to determine the level of noise. **(See Exhibit B)**

The minutes of the CCC meetings were integrated into the RMP, but in essence the county failed to recognize and/or take any remedial action. Consequently bully tactics were applied against anyone who dared complain about disturbances of the peace. Ultimately the Sheriff's Department and Code Enforcement failed miserably to abide by the requirements of the RMP. Again, business continued as usual.

Every resident has a right to live in peace and safety. Therefore in 2010 we began meeting with Sheriff D'Agostini as well as County and CA State Parks personnel to further develop a plan of action to mitigate the RMP noise problems and associated concerns that have plagued our community for decades.

It is significant that Adam Anderson, owner of Villa Florentina, is the Business Representative for the River Management Advisory Committee (RMAC). I was accompanied by four individuals to the September 14, 2015 RMAC meeting. Supervisor Ranalli was also present. The purpose of the agenda item I'd specifically requested was to address RMP violations and recommend revocation of the SUPs to the Planning Commission. In addition to multiple audio recordings, my four witnesses can attest Adam Anderson falsely accused me of using profanity while I was quietly seated in the audience. Adam has failed to demonstrate integrity, and in fact, has a conflict of interest as delegate to RMAC. (Please refer to Consent Item #2 for the RMP to be pulled & removed.)

Using RMAC as a bully pulpit, it became evident RMAC delegates had colluded with county personnel to set up and publicly discredit me and the organization, ***Compass2Truth***. Consequently that incident became the subject of meetings with County Counsel, Supervisor Ranalli and other EDC staff. **(See Exhibit C)**

Please ensure that the Planning Commission REVOKE the SUP for Villa Florentina Bed & Breakfast.

Sincerely,

Melody Lane
Founder ~ ***Compass2Truth***

Attachments:
Exhibit A – Trout letters to American River Resort & Coloma Resort
Exhibit B - EDSO Examples of Sound Levels
Exhibit C - 11/14/16 RMP Public Comments

CC: Roger Trout
Supervisors Districts #1, 2, 3, 4 & 5

Tuesday October 4, 2016 @ 2:30 PM

Don Ashton, Mike Ranalli, Paula Franz

I. CPRAs - FOIA
   A. Guide to CPRAs
   B. Government PRA Tracking system – COB Discrepancies
   C. Legal vs. Lawful

II. Ethics & HR policies
   A. Brown Act Violations
   B. Transparency & Accountability
      1. BOS
      2. EDSO
      3. CAO

III. Obstacles - Bureaucratic Shenanigans
   A. Communication breakdown
   B. Fees - Resolution 113-95 v. AB1234
   C. Code/Law Enforcement policy inconsistencies

IV. Follow up - Target date

Exhibit B

Compass2Truth

Citizens for Constitutional Liberty

P.O. Box 598
Coloma, CA 95613

March 29, 2017

TO: District #4 Supervisor Mike Ranalli
District #2 Supervisor Shiva Frentzen

CC: EDC Planning Commissioners
CAO Don Ashton
Supervisor Brian Veerkamp
Supervisor Sue Novasel
Supervisor John Hidahl

RE: 3/23/17 Planning Commission Hearing – RMP & Villa Florentina

Dear Supervisors Frentzen & Ranalli,

Please ensure the entirety of this correspondence is posted to Public Comments for Villa Florentina SUP scheduled for the August Planning Commission hearing. The following comments apply to the 3/23/17 Planning Commission Consent Item #2 – RMP Update & Implementation, and Item #5 – Villa Florentina SUP hearing:

Note I did not address Mike Ciccozzi during the 3/28/17 Open Forum. My purpose in specifically addressing Supervisor Ranalli and Chair Frentzen was to briefly dialog, as permitted under the Brown Act, and receive a public response as to scheduling the item on the BOS calendar for public dialog and remedial action by the BOS.

Refer to the Brown Act § 54954.2(a) and § 54954.3 (c) which state in part,

> "Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body…As such members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body…These decisions found that prohibiting critical comments was a form of viewpoint discrimination *and that such prohibition promoted discussion artificially geared toward praising and maintaining the status quo, **thereby foreclosing meaningful public dialog**…*The purpose of the discussion is ***to permit a member of the public to raise an issue or problem*** with the legislative body or to permit the legislative body to provide information to the public, provide direction to its staff, or ***schedule the matter for a future meeting."***

Additionally, based upon the BOS knowledge of falsified data submitted by Parks & Recreation staff member Noah Rucker-Triplet and CSD Director Roger Trout, and the subsequent denial of the public's due process, I

Exhibit C

also submit this request to **appeal and reverse** the 3/23/17 **Planning Commission Consent Item #2** unanimous vote to:

1) Approve 2016 Annual Report to implementation of RMP; and
2) Recommend continued implementation of the River Management Plan as currently prescribed

Prior to the hearing sufficient evidence was submitted for the #5 Villa Florentina SUP and request to pull from Consent Item #2 RMP Update. Apparently those materials were not read by the commissioners or properly posted to the government website. My records indicate one of the emails I had submitted was NOT posted to #5 Villa Florentina SUP. Lucky I had those materials with me which I presented three times to Char Tim during the hearing before she finally accepted them into the public record. ***Also significantly omitted was Adam Anderson's power point presentation that falsely targeted my home as a "noise hot spot" on a map of the river.***

You, our elected officials, are responsible to deal directly and transparently with the constituents whom you profess to serve. *Counsel has no authority whatsoever to respond on behalf of the BOS or any other EDC employee, nor is it appropriate for Counsel to give his opinion and/or interpretation of the law.* Mike Ciccozzi's comment to post missing documents *after the public hearing* is a typical form of discrimination artificially geared toward praising and maintaining the status quo, thus ***denying the public their right to due process.*** As such Mike Ciccozzi's reply was unacceptable.

Adam Anderson is not an exception to the law or any of the RMP restrictions in the Quiet Zone of the S. Fork American River. Adam has an apparent conflict of interest with RMAC, and in the presence of Supervisor Ranalli, Adam has proven his lack of integrity. Mr. Anderson has abused the authority delegated to him by you, the entire Board of Supervisors.

Furthermore, The Mountain Democrat article was a blatant misrepresentation of the 3/23/17 Planning Commission hearing orchestrated by the Chamber Political Action Committee (CPAC). Commission Chairman Gary Miller turned the Villa Florentina hearing into a biased kangaroo courtroom. The Channel 13 public relations stunt, plus special considerations given to Adam during the 3/21 BOS Open Forum, perpetrated sympathy and certainly generated profitable revenues in support of his plight.
http://sacramento.cbslocal.com/tag/villa-florentina

Supervisor Frentzen, you especially need to be aware that District #2 Commissioner Gary Miller violated the Brown Act in addition to being discriminatory, disrespectful and arrogant during the 3/23/17 Commission hearing. I was the *only person whom he harassed,* demonstrating exactly the same unacceptable behavior as Ron Mikulaco while he was Chairman of the BOS. Gary's mocking attitude while we spoke Tuesday evening was bizarre, abrasive and unreasonable. This is just a sampling of some of his comments when I questioned his voting rationale and unprofessional conduct during the hearing:

> *"I don't really need to explain to you what I did...I don't need to justify myself to you. You get what I give you!...I suggest you make a complaint to the BOS & have me removed. That would break my heart!...There isn't a 3 strikes policy! I know there's no such policy!...There is nothing in the Brown Act that says you can talk 3 or 5 minutes. One of the unique things about being a Chairman is you don't get to tell me what I can do!...Sounds like you are threatening to take me to court...County Council was right there. I assure you, that if I was in violation of the Brown Act he would have said something."*

It is troubling that Commissioner Miller remarked about his fear of being sued. Similar comments were made by Kim Kulton during the February 15th CL Fire Safe Council. Some of the same community members at the CL FSC meeting addressed the 3/23/17 Planning Commission hearing as mentioned in the Mtn. Democrat

article concerning the Villa Florentina SUP. This is an issue that Supervisor Ranalli and Roger Trout have taken great pains to avoid addressing, particularly as it involves the RMP, SUP violations, Code & Law Enforcement, and related public safety issues in Coloma.

Comments made by Roger Trout during the Villa Florentina hearing raised several red flags, particularly his evident reluctance to respond to numerous requests for the written "3-strikes" Special Use Policy. How can a policy be enforced if it doesn't even exist?

Over the years we had met with Roger Trout, Sheriff D'Agostini, Supervisor Ranalli, Supervisor Briggs, Don Ashton and County Counsel on several occasions to discuss the 3 strikes policy and related code and law enforcement matters. However all meetings proved to be exercises in futility primarily because Roger Trout and Supervisor Ranalli remained unresponsive to constituent concerns about SUP enforcement affecting the entirety of El Dorado County.

Finally a District #4 constituent who couldn't be present for the hearing submitted a CPRA for the 3 strikes policy. It wasn't until 3/28/17 that I received the following response to the CPRA:

There are no records responsive to your request. I phoned the Planning Department to learn more and was informed the reference to "1, 2, 3" was made by an applicant and restated by Mr.Trout regarding steps taken to address a use permit issue. You may want to contact Mr. Trout for additional information.

Thank you,
Jim Mitrisin
Clerk of the Board

Special Use Permits are a major component of the RMP, particularly restrictions put upon business establishments within the Quiet Zone of the S. Fork American River.

During the hearing when District #4 Commissioner James Williams addressed concerns discussed prior to the hearing, Noah Rucker-Triplett made some disturbing comments and revealing admissions concerning the River Management Plan. Noah stated RMAC isn't required to respond to the public, nor had the RMAC held any meetings since the Annual November 2016 RMAC. That meeting was in reality less than 25 minutes in duration with only three members of the public present, me included. Additionally there was no Annual RMP Update submitted to the Planning Commission for the year 2015.

Commissioner Williams made the astute observation that the RMAC can't advise the BOS if they aren't meeting or the RMAC issues aren't publicly vetted. However Chairman Miller recommended approval of the RMP as submitted by staff. Subsequently the Commission unanimously approved the RMP despite the apparent discrepancies which had been brought to their attention. Apparently the facts didn't matter; business as usual. Thus the public was denied due process in violation of the Brown Act and legal mandates within the RMP.

The BOS has been made aware of the frequent RMP violations and safety aspects affecting the quality of life for river residents within District #4. Yet your failure to effectively address and remedy these issues is dereliction of duty making you complicit in their perpetuation.

Accordingly, you've been reminded on more than one occasion of AB1234 Mandatory Ethics Training for Public Officials, wherein it states in part:

- The law provides only minimum standards for ethical conduct. Just because a course of action is legal, doesn't make it ethical/what one ought to do.

- Because of the breadth of federal anticorruption law, avoid any temptation to walk closely to the line that divides legal from illegal conduct under state law. Even though a course of action may be lawful under the state law, it may not be lawful under federal law.
- Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Allow the public to participate in meeting, listening to the public's views before decisions are made.
- Cannot retaliate against those who whistle-blow.
- Must conduct public hearings in accordance with due process principles.
- The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. *Don't take that risk.*

Included as an attachment is the Ron Mikulaco Declaration-Affidavit referenced above. It should serve as a wake-up call to all public officials to take their Constitutional Oaths seriously. Don't forget, you work for us.

In anticipation of your cooperation and in accordance with Constitutional principles I look forward to your prompt response.

Sincerely,

Melody Lane
Founder – ***Compass2Truth***

Attachments:
1. 3/27/17 Villa Florentina Mtn. Democrat article
2. Ron Mikulaco Declaration-Affidavit

Melody Lane
Compass2Truth
P.O. Box 598
Coloma, CA 95613

May 8, 2017

Gary Miller, District #2 Planning Commissioner
330 Fair Lane
Placerville, CA 95667

Mr. Miller,

This letter is lawful notification to you, and is hereby made and sent to you pursuant to the national Constitution, specifically, the Bill of Rights, in particular, Amendments I, IV, V, VI, VII, IX and X, and the California Constitution, in particular, Article 1, Sections 1, 2, 3, 9, 10, 11, 21, 23, and Article 3 Section 1. This letter requires your written rebuttal to me, specific to each claim, statement and averment made herein, within 30 days of the date of this letter, using true fact, valid law and evidence to support your rebuttal.

You are hereby noticed that your failure to respond within 30 days as stipulated, and rebut, with particularity, everything in this letter with which you disagree is your lawful, legal and binding agreement with and admission to the fact that everything in this letter is true, correct, legal, lawful and binding upon you, in any court, anywhere in America, without your protest or objection or that of those who represent you. Your silence is your acquiescence. See: *Connally v. General Construction Co.*, 269 U.S. 385, 391. Notification of legal responsibility is "the first essential of due process of law." Also, see: *U.S. v. Tweel*, 550 F. 2d. 297. *"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading."*

What I say in this letter is based in the supreme, superseding authority of the Constitution for the United States of America, circa 1787, as amended in 1791, with the Bill of Rights, and the California Constitution, to which all public officers have sworn or affirmed oaths, under which they are bound by Law. It is impossible for an oath taker to lawfully defy and oppose the authority of the documents to which he or she swore or affirmed his or her oath. My claims, statements and averments also pertain to your actions taken regarding violations of the California Ralph M. Brown Act and deprivation of my rights pursuant to your Principal Agent Oaths of Office. When I use the term "public officer(s)", this term includes you.

The Supreme Law and superseding authority in this nation is the national Constitution, as declared in Article VI of that document. In Article IV, Section 4 of that

Constitution, every state is guaranteed a republican form of government. Any "laws", rules, regulations, codes and policies which conflict with, contradict, oppose and violate the national and state Constitutions are null and void, *ab initio*. It is a fact that your Principal Agent oath requires you to support the national and state Constitutions and the rights of the people secured therein.

All public officers are required to abide by their oaths in the performance of their official duties. No public officer, including you, has the constitutional authority to oppose, deny, defy, violate and disparage the very documents to which he or she swore or affirmed his or her oath. All actions by public officers conducted in the performance of their official duties either support the national and state Constitutions, or deny them.

As principal, Supervisor Shiva Frentzen has delegated authority to you, Gary Miller, to act on her behalf, as her agent. When any public officer has knowledge of wrongdoing, yet, fails to take corrective action, then, that public officer aids and abets the unlawful action of the agent, thereby maintaining the status quo, and thus becomes complicit and liable. As you have been made aware, in some cases, it's the agent who can be held responsible for misconduct, illegal activity, or violations of business standards such as you have committed.

Your Principal Agent Oath of Office requires you to uphold and support the Constitution of the United States of America, and pursuant to your oath, you are required to abide by that oath in the performance of your official duties. You have no constitutional or other valid authority to defy the Constitution, to which you owe your LIMITED authority, delegated to you by and through the People.

On March 18, 2017, correspondence and accompanying evidence was submitted by me to the Planning Commission, Development Services Director Roger Trout, and the Board of Supervisors regarding the upcoming March 23rd Planning Commission hearing relevant to the revocation of the Villa Florentina Special Use Permit and multiple violations of the River Management Plan. **(See Exhibit A)**

Prior to the hearing Commissioner Williams and I spoke on the phone. It was agreed that the Commission would ask Roger Trout to produce the SUP revocation "3-strikes policy" in writing. That policy is vitally pertinent to the River Management Plan and El Dorado County Law/Code Enforcement.

During the March 23rd hearing, discrimination was evident when you allowed certain individuals to speak in excess of ten minutes, but denied me due process when you repeatedly interrupted, harassed, and refused to allow me to respond to blatantly false statements publically made against me by RMAC representative and Villa Florentina owner, Adam Anderson. Furthermore, none of the commissioners ever requested that Roger Trout provide the 3 strikes policy in writing, as previously agreed. Acting as judge, jury and executioner, you essentially turned the hearing into a kangaroo courtroom, thus, mocking the Citizens and the constitutions to which you swore an oath of allegiance.

It became evident after the hearing in the course of conversation with you that none of those materials had been read by the Planning Commissioners prior to rubber-stamping their unanimous decisions made during the March 23rd Planning Commission hearing, nor were they properly posted to the government website. Afterwards, I conversed at length with District #4 Commissioner, James Williams, about your hostile attitude and March 23rd hearing anomalies. Mr. Williams concurred with my assessment of the situation by encouraging me to request in writing that the Planning Commission decisions made that day be appealed and reversed for lack of due process.

Subsequently, on March 29, 2017 I addressed a letter to Supervisors Shiva Frentzen and Michael Ranalli. Pursuant to my questioning of your voting rationale and unprofessional conduct during the March 23rd hearing, one example citing your own verbatim words from that correspondence was read into the public record during the April 11, 2017 BOS meeting. **(See Exhibit B):**

> *"I don't really need to explain to you what I did...I don't need to justify myself to you. You get what I give you!...I suggest you make a complaint to the BOS & have me removed. That would break my heart!...There isn't a 3 strikes policy! I know there's no such policy!...There is nothing in the Brown Act that says you can talk 3 or 5 minutes. One of the unique things about being a Chairman is you don't get to tell me what I can do!...Sounds like you are threatening to take me to court...County Council was right there. I assure you, that if I was in violation of the Brown Act he would have said something."*

All five Planning Commissioners also received via email a copy of the March 29th correspondence concerning specific violations of your Principal Agent Oath of Office, the Brown Act, and due process. It is noteworthy that although the materials had been emailed prior to the April 13th Planning Commission hearing, the said correspondence was not distributed by Char Tim until just moments before said hearing commenced, nor was sufficient time even given to the Commissioners to read the materials before the hearing commenced. **(See Exhibit C)**

During the April 13th Planning Commission hearing, I addressed the aforementioned grievances which mandates appropriate dialog, scheduling the topic for a future meeting, and remedial action as required under the Brown Act, Section 54954.2(a), which states in part:

> Where a member of the public raises an issue which has not yet come before the legislative body, the item may be briefly discussed but no action may be taken at that meeting. The purpose of the discussion is to **permit a member of the public to raise an issue or problem with the legislative body** or to permit the legislative body to provide information to the public, provide direction to its staff, or **schedule the matter for a future meeting**. (§ 54954.2(a).)

You were also reminded that the Planning Commissioners and the Board of Supervisors have been regularly apprised that they are routinely receiving false

information from the River Management Advisory Committee, Development Services, Parks & Recreation staff, and the CAO. When I asked if you had any questions or further comments, you audibly replied, *"No."* It soon became evident by your openly hostile demeanor that you had no intention whatsoever to respond to repeated requests to address the problems, schedule the matter for a future meeting, or to take remedial action.

Such abuse of power and actions against me constitute obstruction of justice and due process. In the course of our dialog, it is significant that you mentioned your fear of being sued. Apparently you were aware that any enterprise undertaken by any public official who tends to weaken public confidence and undermines the sense of security for individual rights is against public policy. Fraud, in its elementary common-law sense of deceit, is the simplest and clearest definition of that word.

Just one example is Roger Trout's fraudulent 3-Strikes policy which you, Commissioner, Gary Miller, referred to on multiple occasions stating, *"There isn't a 3 strikes policy!"* ***A policy that doesn't exist cannot be lawfully enforced.*** Then on April 13th, you permitted Roger Trout to speak out of turn and provide testimony in defense of his 3-strikes position. Notably, you refused me the right to respond publicly by foreclosing meaningful public dialog for purposeful cover up of government malfeasance and thus maintaining the status quo.

Collusion between departments is a major factor in depriving Citizens of their right to access public information and due process, topics discussed extensively in meetings with Sheriff D'Agostini and District Attorney, Vern Pierson. Following is Clerk to the Board, Jim Mitrisin's, 3/24/17 reply to another constituent's CPRA requesting Mr. Trout's 3-Strikes policy, *"There are no records responsive to your request. I phoned the Planning Department to learn more and was informed the reference to "1,2,3" was made by an applicant and restated by Mr. Trout regarding steps taken to address a use permit issue. You may want to contact Mr. Trout for additional information."*

Additionally, repeated requests that I made to **appeal and reverse** the aforementioned 3/23/17 Planning Commission decisions were blatantly ignored. During the April 13th hearing, I specifically addressed my concerns of malfeasance to you and Commissioner James Williams. Instead of responding appropriately to my request, you made it a point to defer all responses to Development Services Director, Roger Trout, and Counsel David Livingston. Neither Roger Trout nor Counsel has any authority to respond on your behalf, nor was it appropriate for Counsel to give his opinion and/or interpretation of the law.

In violation of the Brown Act and your Principal Agent Oath of Office, you thus deprived me the right to due process, to testify and address the Planning Commission specifically for the purpose of redressing grievances, to wit:

The Preamble of the Ralph M. Brown Act states:

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created."**

It further states:

§54954.3 **Public's right to testify at meetings.** (c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law. **Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.**

As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body. Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. *(Leventhal v. Vista Unified School Dist. (1997) 973 F. Supp. 951; Baca v. Moreno Valley Unified School Dist. (1996) 936 F. Supp. 719.)* **These decisions found that prohibiting critical comments was a form of viewpoint discrimination and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialog.**

It has been brought to your attention on numerous occasions by ***Compass2Truth*** that county staff is habitually submitting erroneous data and/or false information regarding interrelated issues to the Board of Supervisors. Consequently, decisions made by the Supervisors that are based on deliberately falsified information will ultimately adversely affect all EDC tax payers, thus, undermining the public trust in local government.

It is apparent that the public's input has been reduced to irrelevancy by how the Planning Commission votes unanimously, and/or rubber-stamps Consent items, thereby demonstrating that public meetings are little more than dog and pony shows with predetermined outcomes designed to falsely give the public an impression of government transparency and accountability.

Depriving the public of honest services is a federal crime. My claims, statements and averments also pertain to your actions taken regarding your failure to provide honest public services, pursuant to your oaths.

The First Amendment guarantees the Right of free speech and the Right to petition government for **redress of grievances**, which, the oath taker, pursuant to his oath, is mandated to uphold. If he fails this requirement, then, he has violated two provisions of the First Amendment, the Public Trust and perjured his oath.

Additionally, by not responding and/or not rebutting, the oath taker denies the Citizen remedy, thus, denies the Citizen constitutional due process of law, as stated within the Bill of Rights. An American Citizen, such as I, can expect, and has the Right and duty to demand, that his government officers uphold their oaths to the Constitution(s) and abide by all Constitutionally imposed mandates of their oaths. This is an un-enumerated Right guaranteed in the Ninth Amendment, which I hereby claim and exercise.

Furthermore, there is no legitimate argument to support the claim that oath takers, such as you, are not required to respond to letters, which, in this case, act as petitions for redress of grievances, stating complaints, charges and claims made against them by their constituents or by Citizens injured by their actions. When public officers harm the Citizens by their errant actions, and then refuse to respond to or rebut petitions from Citizens, then, those public officers, as are you, are domestic enemies, acting in sedition and insurrection to the declared Law of the land and ***must be opposed, exposed and lawfully removed from office.***

You perjured your oath by violating my constitutionally guaranteed Rights, in particular those secured in the Bill of Rights, including but not limited to my 1st Amendment Rights. By your unlawful actions, you acted in sedition and insurrection against the constitutions, both federal and state, and in treason against the People, in the instant case, me.

Anytime public officers, such as you, pursuant to their oaths, violate Rights guaranteed to Citizens in the Constitutions, they act outside their limited delegated authority, thus, perjure their oaths, and by their own actions, invoke the self-executing Sections 3 and 4 of the 14th Amendment; thereby vacate their offices and forfeit all benefits thereof, including salaries and pensions.

As stated previously, actions by a public officer either uphold the Constitutions and rights secured therein, or oppose them. By your stepping outside of your delegated authority you lost any "perceived immunity" of your office and you can be sued for your wrongdoing against me, personally, privately, individually and in your professional capacity, as can all those in your jurisdiction, including any judges or prosecuting attorneys and public officers for that jurisdiction, if, once they are notified of your wrongdoing, they fail to take lawful actions to correct it, pursuant to their oaths and their duties, thereto.

If they fail to act and correct the matter, then, they condone, aid and abet your criminal actions, and further, collude and conspire to deprive me and other Citizens of their Rights guaranteed in the Constitutions, as a custom, practice and usual business operation of their office and the jurisdiction for which they work. This constitutes treason by the entire jurisdiction against the People, in the instant case, me, and based

upon the actions taken and what exists on the public record, it is impossible for any public officer to defend himself against treason committed. *See: 18 USC § 241 - Conspiracy against rights. See also: U.S. v. Guest, Ga. 1966, 86 S.Ct. 1170, 383 U.S. 745, 16 L.Ed 239.*

Pursuant to the constitutional mandates imposed upon them, by and through their oaths, there is no discretion on the part of public officers, including you, to oppose the Constitutions and their oaths thereto, nor to be selective about which, if any, mandates and protections in the Constitutions they support. The mandates and protections set forth in the Constitutions are all encompassing, all-inclusive and fully binding upon public officers, without exception, as they are upon you.

If you disagree with anything in this letter, then, rebut that with which you disagree, in writing, with particularity, to me, within 30 days of the date of this letter, and support your disagreement with evidence, fact and law.

Your failure to respond, as stipulated, is your agreement with and admission to the fact that everything in this letter is true, correct, legal, lawful, and is your irrevocable agreement attesting to this, fully binding upon you, in any court in America, without your protest or objection or that of those who represent you.

Sincerely,

Melody Lane
Founder - ***Compass2Truth***

Attachments:
Exhibit A – March 18, 2017 Villa Florentina Evidence
Exhibit B - March 29, 2017 SUP/RMP Planning Commission Hearing letter
Exhibit C – 4/12/17 Request to pull items from Consent for discussion & action

CC: District #1 Supervisor John Hidahl
District #2 Supervisor Shiva Frentzen
District #3 Supervisor Brian Veerkamp
District #4 Supervisor Ranalli
District #5 Supervisor Sue Novasel
Planning Commissioners, Districts 1, 3, 4 & 5
Development Services Director Roger Trout

Compass2Truth

Citizens for Constitutional Liberty

P.O. Box 598
Coloma, CA 95613

March 18. 2017

El Dorado County Planning Commission
C/o Development & Planning Services
2850 Fairlane
Placerville, CA 95667

RE: Villa Florentina Bed & Breakfast SUP #S10-0009 Violations & Revocation

Dear Commissioners,

I have been a resident of Coloma for nearly 20 years living close to the intersection of Carvers and Mt. Murphy Roads located within the Quiet Zone of the S. Fork American River. Not only can we hear excessively loud events emanating from Villa Florentina, residents are frequently bombarded simultaneously by multiple amplified events at the Coloma Resort and other surrounding campgrounds. **(See Exhibit A)**

Egress in the event of an emergency is also cause for concern frequently expressed by neighbors on the north side of the Mt. Murphy Road Bridge. This becomes a public safety issue when large events create traffic jams.

The Quiet Zone as described in the River Management Plan (RMP) begins at Indian Creek above Coloma, and ends at Greenwood Creek below Rivers Bend. RMP noise restrictions apply to the river rafters as well as to campgrounds, business establishments, and private property owners. The majority of residents moved to Coloma for the peace and quiet of the rural lifestyle. The purpose of the Quiet Zone is to respect the rights and reasonable expectations of adjoining landowners.

The specifics of SUPs and requirements are delineated in Sections 4 through 8 of the RMP. Section 8.2 of the RMP states only the County Sheriff's Department has the authority to fine and enforce County Code violations involving private campgrounds and private land owners. Should a resident desire to obtain a Temporary Use Permit (TUP) for a special amplified music event, they would be required to pay a fee to obtain a permit through the Sheriff's Department. To date, Public Record Act requests for information reveal there have only been about a dozen TUPs issued by EDSO over the course of more than 15 years, most of them held at Henningson-Lotus Park. None have ever been issued for Villa Florentina.

Significantly excessively noisy events, such as those emanating from Villa Florentina, have negative impacts not only upon the quality of life of residents living within this stretch of the river, but also upon the value of neighboring homes. The historic failure of the county to apply consequences for SUP violations as per the RMP exacerbates the problem of unacceptable levels of noise. The campgrounds, businesses, and event

Exhibit A

coordinators expect Code and Law Enforcement to turn a blind eye and deaf ear to resident's complaints; hence business continues as usual in EDC.

Noise violations within the Quiet Zone have been a bone of contention in our community long before I even moved here. Once it was realized what a problem SUP violations actually were, I joined others in circulating petitions for SUP revocations and volunteered as secretary for the Community Clamor Committee (CCC). The purpose of the CCC was to mitigate the frequent SUP violations, lack of appropriate monitoring within the Quiet Zone, and to develop a plan of action to bring the offending parties into compliance. Because these meetings could get very contentious, I invited law enforcement to actively participate as per the RMP. Note it is not necessary to have a decibel meter or hire a professional to determine the level of noise. **(See Exhibit B)**

The minutes of the CCC meetings were integrated into the RMP, but in essence the county failed to recognize and/or take any remedial action. Consequently bully tactics were applied against anyone who dared complain about disturbances of the peace. Ultimately the Sheriff's Department and Code Enforcement failed miserably to abide by the requirements of the RMP. Again, business continued as usual.

Every resident has a right to live in peace and safety. Therefore in 2010 we began meeting with Sheriff D'Agostini as well as County and CA State Parks personnel to further develop a plan of action to mitigate the RMP noise problems and associated concerns that have plagued our community for decades.

It is significant that Adam Anderson, owner of Villa Florentina. is the Business Representative for the River Management Advisory Committee (RMAC). I was accompanied by four individuals to the September 14, 2015 RMAC meeting. Supervisor Ranalli was also present. The purpose of the agenda item I'd specifically requested was to address RMP violations and recommend revocation of the SUPs to the Planning Commission. In addition to multiple audio recordings, my four witnesses can attest Adam Anderson falsely accused me of using profanity while I was quietly seated in the audience. Adam has failed to demonstrate integrity, and in fact, has a conflict of interest as delegate to RMAC. (Please refer to Consent Item #2 for the RMP to be pulled & removed.)

Using RMAC as a bully pulpit, it became evident RMAC delegates had colluded with county personnel to set up and publicly discredit me and the organization, ***Compass2Truth***. Consequently that incident became the subject of meetings with County Counsel, Supervisor Ranalli and other EDC staff. **(See Exhibit C)**

Please ensure that the Planning Commission REVOKE the SUP for Villa Florentina Bed & Breakfast.

Sincerely,

Melody Lane
Founder – ***Compass2Truth***

Attachments:
Exhibit A – Trout letters to American River Resort & Coloma Resort
Exhibit B - EDSO Examples of Sound Levels
Exhibit C - 11/14/16 RMP Public Comments

CC: Roger Trout
Supervisors Districts #1, 2, 3, 4 & 5

Compass2Truth

Citizens for Constitutional Liberty

P.O. Box 598
Coloma, CA 95613

March 29, 2017

TO: District #4 Supervisor Mike Ranalli
District #2 Supervisor Shiva Frentzen

CC: EDC Planning Commissioners
CAO Don Ashton
Supervisor Brian Veerkamp
Supervisor Sue Novasel
Supervisor John Hidahl

RE: 3/23/17 Planning Commission Hearing – RMP & Villa Florentina

Dear Supervisors Frentzen & Ranalli,

Please ensure the entirety of this correspondence is posted to Public Comments for Villa Florentina SUP scheduled for the August Planning Commission hearing. The following comments apply to the 3/23/17 Planning Commission Consent Item #2 – RMP Update & Implementation, and Item #5 – Villa Florentina SUP hearing:

Note I did not address Mike Ciccozzi during the 3/28/17 Open Forum. My purpose in specifically addressing Supervisor Ranalli and Chair Frentzen was to briefly dialog, as permitted under the Brown Act, and receive a public response as to scheduling the item on the BOS calendar for public dialog and remedial action by the BOS.

Refer to the Brown Act § 54954.2(a) and § 54954.3 (c) which state in part,

> "Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body…As such members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body…These decisions found that prohibiting critical comments was a form of viewpoint discrimination *and that such prohibition promoted discussion artificially geared toward praising and maintaining the status quo, thereby foreclosing meaningful public dialog*…The purpose of the discussion is ***to permit a member of the public to raise an issue or problem*** with the legislative body or to permit the legislative body to provide information to the public, provide direction to its staff, or ***schedule the matter for a future meeting.***"

Additionally, based upon the BOS knowledge of falsified data submitted by Parks & Recreation staff member Noah Rucker-Triplet and CSD Director Roger Trout, and the subsequent denial of the public's due process, I

Exhibit B

also submit this request to ***appeal and reverse*** *the 3/23/17* ***Planning Commission Consent Item #2*** unanimous vote to:

1) Approve 2016 Annual Report to implementation of RMP; and
2) Recommend continued implementation of the River Management Plan as currently prescribed

Prior to the hearing sufficient evidence was submitted for the #5 Villa Florentina SUP and request to pull from Consent Item #2 RMP Update. Apparently those materials were not read by the commissioners or properly posted to the government website. My records indicate one of the emails I had submitted was NOT posted to #5 Villa Florentina SUP. Lucky I had those materials with me which I presented three times to Char Tim during the hearing before she finally accepted them into the public record. ***Also significantly omitted was Adam Anderson's power point presentation that falsely targeted my home as a "noise hot spot" on a map of the river.***

You, our elected officials, are responsible to deal directly and transparently with the constituents whom you profess to serve. *Counsel has no authority whatsoever to respond on behalf of the BOS or any other EDC employee, nor is it appropriate for Counsel to give his opinion and/or interpretation of the law.* Mike Ciccozzi's comment to post missing documents *after the public hearing* is a typical form of discrimination artificially geared toward praising and maintaining the status quo, thus ***denying the public their right to due process.*** As such Mike Ciccozzi's reply was unacceptable.

Adam Anderson is not an exception to the law or any of the RMP restrictions in the Quiet Zone of the S. Fork American River. Adam has an apparent conflict of interest with RMAC, and in the presence of Supervisor Ranalli, Adam has proven his lack of integrity. Mr. Anderson has abused the authority delegated to him by you, the entire Board of Supervisors.

Furthermore, The Mountain Democrat article was a blatant misrepresentation of the 3/23/17 Planning Commission hearing orchestrated by the Chamber Political Action Committee (CPAC). Commission Chairman Gary Miller turned the Villa Florentina hearing into a biased kangaroo courtroom. The Channel 13 public relations stunt, plus special considerations given to Adam during the 3/21 BOS Open Forum, perpetrated sympathy and certainly generated profitable revenues in support of his plight.
http://sacramento.cbslocal.com/tag/villa-florentina/

Supervisor Frentzen, you especially need to be aware that District #2 Commissioner Gary Miller violated the Brown Act in addition to being discriminatory, disrespectful and arrogant during the 3/23/17 Commission hearing. I was the *only person whom he harassed,* demonstrating exactly the same unacceptable behavior as Ron Mikulaco while he was Chairman of the BOS. Gary's mocking attitude while we spoke Tuesday evening was bizarre, abrasive and unreasonable. This is just a sampling of some of his comments when I questioned his voting rationale and unprofessional conduct during the hearing:

> *"I don't really need to explain to you what I did...I don't need to justify myself to you. You get what I give you!...I suggest you make a complaint to the BOS & have me removed. That would break my heart!...There isn't a 3 strikes policy! I know there's no such policy!...There is nothing in the Brown Act that says you can talk 3 or 5 minutes. One of the unique things about being a Chairman is you don't get to tell me what I can do!...Sounds like you are threatening to take me to court...County Council was right there. I assure you, that if I was in violation of the Brown Act he would have said something."*

It is troubling that Commissioner Miller remarked about his fear of being sued. Similar comments were made by Kim Kulton during the February 15th CL Fire Safe Council. Some of the same community members at the CL FSC meeting addressed the 3/23/17 Planning Commission hearing as mentioned in the Mtn. Democrat

article concerning the Villa Florentina SUP. This is an issue that Supervisor Ranalli and Roger Trout have taken great pains to avoid addressing, particularly as it involves the RMP, SUP violations, Code & Law Enforcement, and related public safety issues in Coloma.

Comments made by Roger Trout during the Villa Florentina hearing raised several red flags, particularly his evident reluctance to respond to numerous requests for the written "3-strikes" Special Use Policy. How can a policy be enforced if it doesn't even exist?

Over the years we had met with Roger Trout, Sheriff D'Agostini, Supervisor Ranalli, Supervisor Briggs, Don Ashton and County Counsel on several occasions to discuss the 3 strikes policy and related code and law enforcement matters. However all meetings proved to be exercises in futility primarily because Roger Trout and Supervisor Ranalli remained unresponsive to constituent concerns about SUP enforcement affecting the entirety of El Dorado County.

Finally a District #4 constituent who couldn't be present for the hearing submitted a CPRA for the 3 strikes policy. It wasn't until 3/28/17 that I received the following response to the CPRA:

There are no records responsive to your request. I phoned the Planning Department to learn more and was informed the reference to "3, 3" was made by an applicant and restated by Mr.Trout regarding steps taken to address a use permit issue. You may want to contact Mr. Trout for additional information.

Thank you.
Jim Mitrisin
Clerk of the Board

Special Use Permits are a major component of the RMP, particularly restrictions put upon business establishments within the Quiet Zone of the S. Fork American River.

During the hearing when District #4 Commissioner James Williams addressed concerns discussed prior to the hearing, Noah Rucker-Triplett made some disturbing comments and revealing admissions concerning the River Management Plan. Noah stated RMAC isn't required to respond to the public, nor had the RMAC held any meetings since the Annual November 2016 RMAC. That meeting was in reality less than 25 minutes in duration with only three members of the public present, me included. Additionally there was no Annual RMP Update submitted to the Planning Commission for the year 2015.

Commissioner Williams made the astute observation that the RMAC can't advise the BOS if they aren't meeting or the RMAC issues aren't publicly vetted. However Chairman Miller recommended approval of the RMP as submitted by staff. Subsequently the Commission unanimously approved the RMP despite the apparent discrepancies which had been brought to their attention. Apparently the facts didn't matter, business as usual. Thus the public was denied due process in violation of the Brown Act and legal mandates within the RMP.

The BOS has been made aware of the frequent RMP violations and safety aspects affecting the quality of life for river residents within District #4. Yet your failure to effectively address and remedy these issues is dereliction of duty making you complicit in their perpetuation.

Accordingly, you've been reminded on more than one occasion of AB1234 Mandatory Ethics Training for Public Officials, wherein it states in part:

- The law provides only minimum standards for ethical conduct. Just because a course of action is legal, doesn't make it ethical/what one ought to do.

- *Because of the breadth of federal anticorruption law, avoid any temptation to walk closely to the line* that divides legal from illegal conduct under state law. Even though a course of action may be lawful under the state law, it may not be lawful under federal law.
- Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Allow the public to participate in meeting, listening to the public's views before decisions are made.
- Cannot retaliate against those who whistle-blow.
- Must conduct public hearings in accordance with due process principles.
- The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. *Don't take that risk.*

Included as an attachment is the Ron Mikulaco Declaration-Affidavit referenced above. It should serve as a wake-up call to all public officials to take their Constitutional Oaths seriously. Don't forget, you work for us.

In anticipation of your cooperation and in accordance with Constitutional principles I look forward to your prompt response.

Sincerely,

Melody Lane
Founder – ***Compass2Truth***

Attachments:
1. 3/27/17 Villa Florentina Mtn. Democrat article
2. Ron Mikulaco Declaration-Affidavit

Melody Lane

From:	Melody Lane <melody.lane@reagan.com>
Sent:	Wednesday, April 12, 2017 3:35 PM
To:	shiva.frentzen@edcgov.us; Michael Ranalli; James Williams; gary.miller@edcgov.us
Cc:	'Donald Ashton'; jeff.haberman@edcgov.us; jeff.hansen@edcgov.us; brian.shinault@edcgov.us; planning@edcgov.us; 'Roger Trout'; 'Roger Niello'; brian.veerkamp@edcgov.us; sue.novasel@edcgov.us; john.hidahl@edcgov.us; Jim Mitrisin; bosfive@edcgov.us; bosfour@edcgov.us; bosone@edcgov.us; bosthree@edcgov.us; bostwo@edcgov.us
Subject:	Please pull from 4/13/17 Planning Commission Consent Item #1 for public discussion
Attachments:	RMP Villa Florentina SUP 3-29-17.pdf
Importance:	High

Please ensure the following Item #1 is pulled from the 4/13/17 Planning Commission Consent Agenda for public discussion and appropriate action as required under the Brown Act, § 54954.2(a) and § 54954.3(c):

1. 17-0380 Clerk of the Planning Commission recommending the Commission approve the MINUTES of the regular meeting of March 23, 2017.

As per the attached letter, the public has been denied due process as required by law. This topic was addressed to the BOS & Planning Commission on 3/30/17, but in violation of your Constitutional Oath of Office, was again ignored and diverted during yesterday's 4/11/17 BOS meeting.

Melody Lane
Founder – Compass2Truth

Any act by any public officer either supports and upholds the Constitution, or opposes and violates it.

Exhibit C