

1 Edward E. Yates, Esquire SB# 135138
2 LAW OFFICE OF EDWARD E. YATES
3 1000 Fourth St., Suite 800
4 San Rafael, CA 94901
Telephone: (415) 526-6314
Email: eyates@marinlandlaw.com

5 Attorney for Petitioner
6 COMMUNITY VENTURES PARTNERS, INC.

FILED

MAR 11 2015

KIM FURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

11 COMMUNITY VENTURES PARTNERS,)
12 INC.,)

13 Petitioner/Plaintiff,)

14 vs.)

16 COUNTY OF MARIN,)

17 Respondent/Defendant.)

Case No.: CV 1404718

**OPPOSITION TO MOTION
FOR JUDGMENT DENYING
THE WRIT OF MANDATE;
WITH EXHIBITS A THROUGH G**

*[Cal. Government Code Section 54950, et seq.;
Code of Civ. Pro. Section 1005]*

Date: March 25, 2015

Time: 8:30 am

Dept.: B

Honorable Roy O. Chernus

19
20 **I.**

21 **INTRODUCTION AND SUMMARY**

22 At its August 19, 2014 meeting, Respondent, Marin County ("County") Board of Supervisors
23 made a surprise announcement that it had planned for a discussion of the Draft 2015 - 2021 Housing
24 Element ("HE"), an item that was not on the August 19, 2014 Agenda ("Agenda") and for which no public
25 notice was given. The Discussion included lengthy dialogs by two Board members and a formal
26 presentation by the Planning Director, Brian Crawford. Much of this presentation focused on disputing
27 points raised by Petitioner, Community Ventures Partners, Inc. ("Petitioner"), in a letter of August 12,
28 2014. Because the discussion was not on the posted agenda, Petitioner and other members of the public
did not attend or comment on the subject matter of the presentation or discussion. This discussion, without

1 the required notice, violates the public's right to participate in the deliberations and decision-making
2 process of local agencies, a right guaranteed by the Brown Act and the California Constitution. Therefore,
3 Petitioner submitted a letter demanding that the County cease and desist such actions. The County failed
4 to respond. Petitioner then filed this action, requesting that this Court declare that the Board's actions
5 violated the Ralph M. Brown Act (Government Code Sections 54950, et seq.), and for an order requiring
6 the County to cease and desist from similar future actions.

7 In filing its Motion for Judgment Denying the Peremptory Writ ("MFJ"), the County relies on CCP
8 Section 1094. Yet, this type of motion is only allowed where no triable issues of fact exist. Respondent,
9 however, has contradicted Petitioner's factual allegations, providing its own evidentiary affidavits.
10 Therefore, the Court should accept the facts set out in the Petition as true for purposes of deciding this
11 motion. The County makes five main claims regarding the substantive issues set out in the Petition.

12 First, the County contends that because there was such public interest and controversy over the
13 2015 - 2023 Housing Element ("HE"), Respondent's eagerness to discuss that same HE somehow excuses
14 the County from Brown Act notice requirements. This argument has no support in law and is nonsensical
15 on its face; of course the interested public would want notice of a discussion of such a controversial item,
16 which is why the State Legislature passed the Brown Act.

17 Second, the County argues that its actions were allowed pursuant to an exception in the Brown
18 Act, which provides that "a member of a legislative body or its staff may ask a question for clarification,
19 make a brief announcement, or make a brief report on his or her own activities." Yet the presentation and
20 extensive discussion on substantive, significant topics before the Board does not fall under this very
21 limited exception to the general prohibition of discussing any item not listed on the posted agenda. In
22 fact, such an interpretation would eviscerate the notice requirements in the Brown Act.

23 The County's third argument is that the Brown Act only provides relief for "actions taken."
24 However, that is only true where a party seeks to "cure and correct" an action taken, pursuant to
25 Government Code Section 54960.1. There is no similar requirement under the more general cause of
26 action set forth in Sections 54960(a) and 54960.2. Instead, the Brown Act provides for cease and desist
27 demands under Section 54960.2, which can include a lack of notice required under Section 54945.2(a).
28 The County curiously spends several pages citing inapplicable cases arguing against the Petitioner's use

1 of Section 54960.1, when the Petition does not request the nullification remedy provided by Section
2 54960.1. Instead, the County ignores the actual allegations in the Petition, which were presented pursuant
3 to the cease and desist procedures set forth in Section 54960.2.

4 Fourth, the County argues that relief can only be provided upon a showing of present or continuing
5 violations or a threat of future violations. The County's analysis was only arguable (and even then, not
6 necessarily correct) prior to the passage of Senate Bill 1003 (Yee), *over two years ago*. S.B. 1003
7 expressly overturned case law limiting actions for past violations and established a procedure to challenge
8 past violations of the Brown Act, now codified at Government Code, section 54960.2.

9 Finally, the County argues that no reasonable relief can be granted for violations of the lack of
10 notice prohibitions. In so arguing, the County mischaracterizes the Petition's allegations and the relief
11 sought. Petitioner does not seek to prohibit the County from making similar future reports, but only to
12 provide the notice required by the Brown Act when such reports and discussion are conducted. The Brown
13 Act's notice requirement is ministerial, is not at done at the County's discretion, and is, therefore, proper
14 relief sought via Petitioner's writ of mandate.

15 II.

16 STATEMENT OF FACTS

17 The County is required by State law to adopt their HE for the eight year period from 2015 to 2023
18 by Government Code, section 65583. The decision maker for such certification is the County's Board of
19 Supervisors ("Board"). Due to the long term significance of County decisions regarding its housing
20 element, on August 12, 2014, Petitioner sent a letter to the County regarding the Draft 2015 - 2023 HE.
21 Petitioner's letter addressed issues such as the number of units required under housing element law and
22 the timeline required for adoption of the HE by the County. (Exhibit A.)

23 On or about August 13, 2015, the County published the Agenda for the Board's August 19, 2014
24 meeting ("Agenda"; Exhibit B). The Agenda did not include any item related to the Housing Element.

25 Yet, at the August 19, 2014 Meeting, the Board discussed HE issues with County Staff for
26 approximately 26 minutes, including receiving a formal presentation by County Community Development
27 Director, Brian Crawford, engaging in lengthy discussion with Mr. Crawford and County's Principal
28

1 Planner, Lee Lee Thomas, and discussing and opining on HE issues that were under consideration by the
2 County (Exhibits C, D, D2.)¹

3 During the Board of Supervisors' Matters item, agenda item #2 (Minutes 4:00-9:17), Supervisors
4 Rice and Arnold described the need to educate the public on the subject of the HE. Neither Supervisor
5 Rice nor Arnold described her discussions as being her own activities, such as a report from a
6 subcommittee or personal constituent interaction. At Minute 4:17, Supervisor Rice stated: "I am glad to
7 see Mr. Crawford here to speak about the Housing Element process." At Minute 5:18, Supervisor Rice
8 stated: "I just wanted to make one more comment on this item."

9 At Minute 14:40, County Administrator and Clerk of the Board of Supervisors, Matthew Hymel,
10 stated, "Supervisor Rice has asked Community Development Director Brian Crawford to discuss the
11 Housing Element." Mr. Hymel then introduced Mr. Crawford. At Minutes 14:50-25:40, Community
12 Development Director, Brian Crawford, opened a folder, read directly off *prepared, written text* and
13 discussed specific timelines, policies and legal issues regarding the Housing Element. Ten minutes later,
14 at Minute 14:50, Mr. Crawford stated: "Thank you members of the Board for the opportunity to address
15 your Board on the status of the Housing Element." At Minute 18:50, Mr. Crawford referenced a meeting
16 with County Counsel wherein he received advice regarding issues brought up by Petitioner in recent letters
17 (See Exhibit A). At Minute 25:30, Mr. Crawford stated, "With that I'll complete my comments." (Exhibits
18 D, D2.)

19 At Minutes 25:50 - 30:00, the Board engaged in a Question and Answer period regarding the 2015-
20 2023 HE with Mr. Crawford and County Principal Planner for HE, Lee Lee Thomas. The Minutes for the
21 August 19, 2014 meeting (Exhibit C) state that: "Mr. Hymel introduced Community Development Agency
22 Director Brian Crawford, who provided an update on the status of the Draft Housing Element. Mr.
23 Crawford and Ms. Thomas responded to questions from Board members regarding various components
24 of the Draft Housing Element." (Exhibits D, D2.)

25
26
27 ¹ Exhibit D2 is an audio and video recording of the Aug. 19, 2014 Board meeting.
28 2015 California Rules of Court, Rule 2.1040 provides that the judge may allow such
recordings for good cause and where the proceedings are uncontested. Here, the
County has agreed that "there is no disputed issue of material fact posed by this
petition...." MFJ, Pages 5-6, Lines 26-1.)

1 At Minutes 1:07-1:12:30, County Supervisors engaged in discussion regarding Mr. Crawford's
2 presentation of HE and provided opinions about the County's compliance with HE requirements, HE
3 policy preferences, and the adequacy of the HE public participation process. (Exhibits D, D2.) This
4 discussion did not briefly respond to statements made or questions posed by persons exercising their public
5 testimony rights, nor was it a report on their own activities.

6 On September 18, 2014, Petitioner, through its legal counsel, sent a letter to the County, which
7 included a Demand to Cease and Desist (Cease and Desist Demand) pursuant to Government Code §
8 54960.2 ("Demand") to the Board. (Exhibit E.) In the Demand letter, Petitioner requested that the Board
9 "cease and desist" violations of the Ralph M. Brown Act.

10 County Counsel, Stephen Woodside, was reported by the Marin Independent Journal in a
11 newspaper article of September 24, 2014 "saying Yates' Brown Act complaint is all bark and no bite,
12 asserted nothing illegal or otherwise inappropriate was done regarding the board's "off agenda" exchange."
13 The article quoted Mr. Woodside: "I looked at the tape of the meeting," Woodside said. "Nothing illegal
14 was done." (Exhibit F.)

15 The County did not respond to Petitioner's Cease and Desist Demand. (Exhibit G.) Therefore, on
16 December 16, 2014, Petitioner commenced this action seeking a declaration that the County's presentation
17 and extensive discussion regarding the HE at its August 19th meeting, violated the Brown Act, and for a
18 peremptory writ of mandate ordering the County to only discuss and take action on matters within its
19 subject matter jurisdiction after it has been properly noticed on a posted agenda.

20 On February 17, 2014, before Petitioner had even started its discovery in this matter, the County
21 filed a Motion for Judgment on the Writ of Mandate.

22 III.

23 ARGUMENT

24 A. SECTION 1094 PRECLUDES COUNTY FROM CHALLENGING ANY FACTS 25 ALLEGED BY PETITIONER

26 In filing its MFJ, the County depends on CCP Section 1094. (MFJ, Page 5-6). However, motions
27 under Section 1094 are only allowed where there are no triable issues of fact. Section 1094 states that:
28

1 If a petition for a writ of mandate filed pursuant to Section 1088.5 presents no triable issue
2 of fact or is based solely on an administrative record, the matter may be determined by the
3 court by noticed motion of any party for a judgment on the peremptory writ.

4 While the County alleges that “there is no disputed issue of material fact posed by this Petition,”
5 (MFJ, Page 5-6) it has submitted its own evidentiary affidavits, and based much of its argument on its
6 own version of the facts. For instance, the County includes facts and affidavits to supports its contention
7 that the decision to have a HE presentation and discussion was made during the August 19 meeting. (MFJ,
8 Page 2, Lines 12-22.) The County is attempting to have it both ways; prevent Petitioner from preparing
9 its motion, after adequate time for discovery, while still avoiding the procedural requirements of either a
10 demurrer (CCP § 438) or a motion for summary judgment (CCP § 583).

11 Therefore, any facts used in the determination of this motion should rely on Petitioner’s facts, and
12 should disregard any disputed facts set forth by the County.

13 **B. COUNTY HAS NOT OVERCOME ITS BURDEN TO PROVE THAT THE PETITION**
14 **SHOULD BE DISMISSED AND HAS NOT SHOWN THAT COUNTY HAS NOT**
15 **VIOLATED THE BROWN ACT**

16 **1. PUBLIC INTEREST AND CONTROVERSY DO NOT CREATE AN EXCEPTION**
17 **TO BROWN ACT NOTICE AND AGENDA REQUIREMENTS**

18 Government Code § 54954.2(a) (2) reads as follows:

19 No action or *discussion* shall be undertaken on any item not appearing on the posted
20 agenda, except that members of a legislative body or its staff may briefly respond to
21 statements made or questions posed by persons exercising their public testimony rights
22 under Section 54954.3. In addition, on their own initiative or in response to questions posed
23 by the public, a member of a legislative body or its staff may ask a question for clarification,
24 make a brief announcement, or make a brief report on his or her own activities.
25 Furthermore, a member of a legislative body, or the body itself, subject to rules or
26 procedures of the legislative body, may provide a reference to staff or other resources for
27 factual information, request staff to report back to the body at a subsequent meeting
28 concerning any matter, or take action to direct staff to place a matter of business on a future
agenda.” (Emphasis added.)

29 The County seems to be downplaying the discussion of an item not properly agendized because
30 there was great public interest and controversy surrounding the topic. This argument has no support in
31 law and is nonsensical on its face – of course the interested public wants to be provided notice of a
32 discussion of such a controversial item. To achieve the Brown Act’s aim to ensure the public’s right to
attend the meetings of public agencies, the Brown Act requires that an agenda be posted at least 72 hours

1 before a regular meeting and forbids action on any item not on that agenda. *International Longshoremen's*
2 *and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287; *Cohan v.*
3 *City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.

4 The County further argues that: a) such a decision to discuss the HE was made during the August
5 19 meeting; and b) that the Brown Act allows municipalities to discuss items of law, policy and
6 countywide interest during the Supervisor's and County Administrator's (Administrator) agenda items.
7 (MFJ, Page 2, Lines 12-22; Declaration of Judy Arnold in Support of Motion for Judgment on the
8 Peremptory Writ, Declarations of Judy Arnold and Katie Rice in Support of Motion for Judgment on the
9 Peremptory Writ.) First, the facts show that the decision to discuss the HE was planned well before the
10 start of the meeting. The County concedes in its MFJ (Page 4, Line 17) and Supervisors Arnold and Rice
11 admit that because of emails in prior weeks, Mr. Crawford was asked to speak about the HE because it
12 was "anticipated" that community members would speak to the issue in open time. (MFJ Page 2, Line 13,
13 Arnold Declaration Page 2.) Supervisor Rice's contention that she just was reacting to the presence of
14 interested activists and just happened to see Mr. Crawford in the audience is not credible. Further, such a
15 contention is contradicted by Rice's specific request for a full report on the housing element from Mr.
16 Crawford, which, since it was not made at the meeting, (Exhibits D, D-2) must have been made earlier.
17 (Rice Declaration Page 2, Line 25.) Mr. Crawford had no business items at the Board that day besides a
18 minor consent calendar item not discussed (Exhibit B), and the presence of Ms. Thomas, whose only duty
19 is staffing the Housing Element, further demonstrated that the discussion of the Brown Act on August 19
20 was planned and prepared for prior to the meeting.

21 Further, at minutes 4:00 - 6:55, and 6:55 - 9:17 Supervisors Rice and Arnold made prepared
22 comments about the HE. (Exhibits D; D2.) Most tellingly, from minutes 14:50 to 25:40, Mr. Crawford
23 read a written, prepared, formal presentation regarding the Housing Element for over ten minutes,
24 concluding "[w]ith that, I'll complete my statement." (Exhibits D1; D2.) Given the admissions that this
25 lengthy discussion of the HE was in fact to respond to the public interest, not noticing the discussion was
26 even more egregious. If the County was so concerned about providing information to the public, it could
27 have easily docketed an agenda item for two weeks later, months before any HE deadline or simply noticed
28 it 72 hours before the August 19 meeting.

1 **2. COUNTY’S USE OF THE NARROW “BRIEF REPORTS” COUNTY**
2 **ADMINSTRATOR’S AGENDA ITEM WERE IMPEMISSABLE AND USED TO**
3 **AVOID THE BROWN ACT’S NOTICE AND AGENDA REQUIREMENTS**

4 The County argues that “there is no question that a brief report for a matter not on the agenda is
5 allowed, especially a report responding to statements made or question posed by persons exercising their
6 public testimony rights.” MFJ, Page 6, Lines 21-24. County repeats this contention throughout its MFJ.
7 See MFJ, Pages 9 (Lines 8-11), 10 (Line 4). This interpretation, though, mangles the intent and letter of
8 Section 54954.2, which actually reads “[i]n addition, on their own initiative or in response to questions
9 posed by the public, a member of a legislative body or its staff may ask a question for clarification, make
10 a brief announcement, or make a brief report on his or her own activities.” The very specific and narrow
11 exceptions to notice in Section 54954.2 are only allowed for a question for clarification, to make a brief
12 announcement, or to make a “brief report *on his or her own activities*.” The 26 minutes of prepared reports
13 and discussion addressing legal and policy issues on the HE are not brief clarifications or announcements,
14 nor are they the legislators or staff’s “own activities.” Additionally, during public comment, no member
15 of the public made any question on this topic to respond to. (Exhibit D2.) The HE is part of the County’s
16 General Plan (Government Code §65300 et seq.). General Plans are the “Constitution for future
17 development.” (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. If the
18 County is allowed to shoehorn a lengthy discussion of amending its own “Constitution” into a Supervisor’s
19 or Administrator’s reports on his/her own activities, what subject matter would be not eligible for such
20 non-noticed discussion?

21 There is no exception or authority for the County’s strategy to avoid the Brown Act’s agenda
22 requirements by discussing topics at length during the Administrator’s time as claimed in Affidavits by
23 Supervisors Arnold and Rice. Such an argument that an agency can slip any discussion unrelated into the
24 Administrator’s report would in fact eviscerate the notice provision of the Brown Act and conflict with
25 judicial interpretation of the Brown Act. As the Court in *Sacramento Newspaper Guild v. Sacramento*
26 *County Board of Supervisors* (1968) 263 Cal.App.2d 41, 50, specifically noted regarding the Brown Act:
27 “In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block
28 evasive techniques.”

1 Even if there were any question about how to construe the term “brief,” the California Constitution,
2 Article 1, Section 3(b)(2) mandates broad construction in favor of transparency and the people's right of
3 access:

4 A statute, court rule, or other authority, including those in effect on the effective date of this
5 subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly
6 construed if it limits the right of access.

7 **3. “ACTION TAKEN” IS NOT AN ELEMENT OF THE BROWN ACT SECTION PLED
8 AND NOT REQUIRED FOR THE REMEDY SOUGHT BY PETITIONER**

9 The County contends that “even a cursory review of Section 54960.1 shows that this statute only
10 applies to actions of a legislative body... not discussions.” (MFJ, Page 7, Lines 18-21.) Yet a review of
11 the Demand Letter and the Petition shows that neither cites to nor requests relief for nullification under
12 Section 54960.1. Petitioner only seeks relief under Sections 54960(a) and 54960.2.

13 The Brown Act contains two separate statutes, providing for separate and distinct remedies –
14 judicial nullification of a specific “action taken” pursuant to Government Code section 54960.1, and
15 declaratory, injunctive, and mandamus relief pursuant to Government Code section 54960.

16 Government Code section 54960.1(a) provides that:

17 The district attorney or any interested person may commence an action by mandamus or
18 injunction for the purpose of obtaining a judicial determination that an action taken by a
19 legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5,
20 54954.6, 54956, or 54956.5 is null and void under this section....

21 Separately, Government Code section 54960(a) provides that:

22 The district attorney or any interested person may commence an action by mandamus,
23 injunction, or declaratory relief for the purpose of stopping or preventing violations or
24 threatened violations of this chapter by members of the legislative body of a local agency
25 or to determine the applicability of this chapter to ongoing actions or threatened future
26 actions of the legislative body, or to determine the applicability of this chapter to past
27 actions of the legislative body, subject to Section 54960.2,....

28 Thus, while Government Code section 54960.1 provides for nullification to remedy a specific
illegal action taken by an agency, Government Code section 54960 exists to remedy a broader scope of
behavior and to insure that future conduct of the agency is in line with the requirements of the Brown Act.
It also provides for declaratory relief to define the rights of the public and the duties of the agency when
there is a controversy over what the Brown Act requires. This should be clear given that the notice

1 requirements and statutory deadlines are different for each statute. Government Code section 54960.1(c)
2 requires that the Petitioner make a written demand of the agency within 90 days of an action taken in open
3 session and just 30 days of an action taken in open session. Government Code section 54960(a) has no
4 such requirement if the Petitioner seeks relief for the purpose of stopping or preventing violation of the
5 Brown Act. If the action seeks to determine the applicability of the Brown Act to past actions of the
6 agency, the Petition must comply with Government Code section 54960.2. That section, enacted over two
7 years ago, sets forth a very specific cease and desist procedure. Highlighting this difference, the State
8 Legislature provided a precise definition of "action taken" as it relates to cure and correct in section
9 54960.1 (Government Code section 54952.6); the County appears to be confusing this defined term with
10 the more general term "action" used more broadly throughout the Brown Act.

11 Petitioner's Demand Letter of September 18, 2014 (Exhibit E) made clear that Petitioner was not
12 seeking nullification of any action pursuant to Government Code section 54960.1, but instead was asking
13 the agency to cease and desist, pursuant to Government Code section 54960.2. The Board did not agree
14 to cease and desist, and therefore this lawsuit was expressly provided for pursuant to Government Code
15 Section 54960.2. The Petition (Petition, Page 6, Lines 8-12, Page 8, Lines 10-28 to Page 9, Lines 1-19,
16 Page 12, Lines 19-23) asked the Court to declare the County in violation of Government Code section
17 54960.2.

18 Even prior to the enactment of the cease and desist provisions of Section 54960.2, case law made
19 clear that Section 54960 was applicable where there was a threat of future similar violations, which is
20 evidenced by the failure to concede to past violations. See *Frazer v. Dixon Unified School Dist.* (1993)
21 18 Cal.App.4th 781, 798, where the County claimed that there should be no relief for engaging in a
22 meeting without notice and the court issued declaratory relief and held, "We also agree that the District's
23 persistent denials that such a gathering was a "meeting" subject to the Brown Act." Similarly here, the
24 County Counsel has made such a denial by publicly declaring, "[n]othing illegal was done." (Exhibit F.)

25 In *Farron v. City and County of San Francisco* (1989) 216 Cal.App.3d 1071 and *McKee v. Orange*
26 *Unified Sch. Dist.* (2003) 110 Cal.App.4th 131, both Courts rejected Respondent's claims that there was
27 no action available to nullify or reverse the Respondent's previous decisions. See also, *Common Cause*
28 *v. Stirling* (1983) 147 Cal.App.3d 518; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.*

1 (1968) 263 Cal.App.2d 41 at p. 48; *Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d
2 231, 234; *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 794.

3 **C. FUTURE ALLEGED VIOLATION IS NOT A REQUIRED ELEMENT OF BROWN ACT**
4 **SECTIONS PLED BY PETITIONER**

5 The County contends that “even a modicum of legal research by petitioners would have very
6 quickly and easily revealed that [Section 54960(a)] only applies to future alleged violations or threatened
7 violations.” Thus, the County accuses Petitioner of poor legal research when in fact the County ignored
8 or chose not to reveal to this Court that the Brown Act was amended over two years ago to overrule case
9 law and to provide relief for *past* actions. Senate Bill 1003 (Chapter 732, Signed Sept. 28, 2012)
10 overturned an Appellate Court opinion that concluded there was no remedy for past violations. Legislative
11 History of SB 1003 states that:

12
13 This bill would state that it is the provisions related to past actions that are intended to
14 supersede the decision of the California Court of Appeal for the Fifth District in *McKee v.*
15 *Tulare County Bd. of Sup'rs* (Nov. 2, 2011, F061146) in a nonpublished opinion. This bill
16 would state that its provisions related to past actions are declaratory of existing law.

17 Cal. Senate, Office of Senate Floor Analysis, 2011-2012-SB-1003, Page 5 (Aug. 24, 2012). See also, Cal.
18 Senate, S. Governance and Finance Comm. 2011-2012-Consultant Rep. for SB-1003, (2012).

19 SB 1003 requires that if the action seeks to determine the applicability of the Brown Act to past
20 actions of the agency, the Petition must comply with Government Code section 54960.2. That section
21 sets forth a very specific cease and desist procedure. If the agency does not comply with the cease and
22 desist demand within 30 days, Government Code 54960.2(a) expressly provides for the commencement
23 of litigation to “determine the applicability of this chapter to past actions.”

24 The County cites *Regents of the University of California v. Superior Court* (1999) 20 Cal.4th 509,
25 522, for the proposition that “the law has been clear for the last fifteen (15) years that the first clause of
26 Section 54960(a) cannot reach past violations...” MFJ, Page 8, Lines 17-18. In *Regents*, the Court was
27 presented with the question of whether the Bagley-Keene Open Meeting Act applies to past actions, as
28 well as current or future actions. The statute in question in *Regents*, Government Code section 11130(a),
was similar to the Brown Act statute in question, as both (at the time) provided that “any interested person
may commence an action ... for the purpose of stopping or preventing violations or threatened violations

1 of the act or “to determine the act’s “applicability...to actions or threatened future action.” The Court
2 held that “section 11130(a) grants a right of action: (1) to stop or prevent a present or future violation of
3 the act – but not to reach back to a past one; and (2) to determine whether the act is applicable to a present
4 or future action –but not a past one.”

5 Displeased with the Court’s narrow reading of that section, the Legislature quickly moved to
6 correct the issue, enacting AB 1234 (Shelley), which declared the “intent of the Legislature in making
7 these changes to the act to supersede the decision of the California Supreme Court.” The Bagley-Keene
8 Act now expressly applies to past actions.

9 The County scolds Petitioner again for having “no excuse” to be aware of the clearly inapplicable
10 and legislatively overturned *Regents* case. But it is the County that has either intentionally left out the fact
11 that the Brown Act (and the *Regents* case) have been legislatively amended, hoping that Petitioner and the
12 Court would not notice, or the County has intentionally misstated the law, by stating that “Section
13 54960(a) cannot reach past violations...” (MFJ, Page 8, Line 18.)

14 **D. PETITION PROPERLY ALLEGES A CAUSE OF ACTION THAT PROVIDES FOR**
15 **DECLATORY AND INJUNCTIVE RELIEF**

16 **1. PETITION PROPERLY ALLEGES A MINISTERIAL ACTION THAT PROVIDES**
17 **FOR DECLATORY AND INJUNCTIVE RELIEF**

18 The County contends that the Brown Act provides for “brief reports” on matters not on the agenda
19 and that Petitioner’s request for a Court order requiring the County to notice and agendaize those items is
20 “nonsense.” (MFF Page 9, Lines1-8.) Specifically, the County contends that because “brief reports” are
21 discretionary and not ministerial, that no order can issue.

22 Government Code section 54960(a) provides that: the district attorney or any interested person
23 may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or
24 preventing violations or threatened violations of this chapter by members of the legislative body of a local
25 agency. In *Los Angeles Times v. L.A. Co. Bd. of Sup'rs* (2003) 112 Cal.App.4th 1313, 1332-33, the Court
26 found: “[T]he Brown Act expressly permits actions to “determine the applicability” of the act. (§ 54960,
27 subd. (a).) As a result of their petition, appellants also obtained a declaration that the Board's actions ...
28

1 were illegal, thus clarifying the scope of the Brown Act's initiation-of-litigation exception." Also, see
2 *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 798, where the court stated,

3 We also agree that the District's persistent denials that such a gathering was a "meeting"
4 subject to the Brown Act warrants declaratory relief in favor of appellants. [Citation.]
5 Accordingly, we reverse the trial court's judgment ... and remand for entry of an
6 appropriate declaratory judgment consistent with this opinion.

7 As opposed to these cases, specifically interpreting the Brown Act, the County only provides a cite
8 to one case (*Mooney v. Garcia* (2012) 207 Cal. App. 4th 229, 232) addressing a specific requirement under
9 the Education Code Section regarding placing items on school board agendas. The Petitioner, Mooney,
10 contended that the school district had a ministerial duty to place her proposed item on the Board's agenda
11 and the Court ruled against the petitioner. But this case is inapplicable because first, this addresses a
12 specific requirement in the Education Code; *Moony* itself states that; "we examine the entire statutory
13 scheme to determine whether the [entity] must exercise significant discretion to perform a duty." (*Mooney*
14 at 233.) A review of the entire statutory scheme in this matter leads to the conclusion that the Brown
15 Act's requirements are ministerial because the Legislature specifically provided for relief via writ of
16 mandate. Second, in the case at hand, Petitioner is not requesting an order for the County to engage in a
17 discretionary act to either place an item on the agenda or prepare a report, but instead, to refrain from
18 discussion when a ministerial duty to notice the item has not been complied with. Such notice and agenda
19 requirements have been held to be enforceable under the Brown Act. The Court in *San Joaquin Raptor*
20 *Rescue Ctr. v. Cnty. of Merced* (2013) 216 Cal. App. 4th 1167, 1176-77 held that "[a]pplying the agenda
21 requirement of the Brown Act to the undisputed facts of this case, we have no difficulty concluding that
22 the Commission violated that requirement. The Brown Act clearly and unambiguously states that an
23 agenda shall describe "each item of business to be transacted or discussed" at the meeting."

24 The Petition does not request that the County not prepare brief reports. However, the Court can
25 clearly mandate that the County comply with the actual and pled prohibitions in the Brown Act, such as
26 the agenda requirement, as in *San Joaquin Raptor*. Also, the Petition requests injunctive and declaratory
27 relief and a writ of mandate can be used in a prohibitory manner as well. Such an order from this Court
28 could declare that the County's discussion on this matter exceeded what is allowed as a "brief report on

1 their own activities” under the Brown Act, and that the County refrain from doing so in the future. Thus,
2 there is ample specific authority under the Brown Act for declaratory and injunctive relief.

3 **2. PETITION PROPERLY ALLEGES A JUSTICIABLE CONTROVERSY THAT**
4 **PROVIDES FOR DECLATORY AND INJUNCTIVE RELIEF**

5 The County claims that there is no justiciable controversy and thus no grounds for relief. (MFJ,
6 Page 9, Lines 17-18.) But courts have routinely held that declaratory and injunctive relief under the Brown
7 Act is allowable and meets the requirement for justiciable controversy. In *California Alliance for Util.*
8 *Safety & Education v. San Diego* (1997) 56 C.A.4th 1024, the Court held that the complaint alleged an
9 actual controversy between the parties for which declaratory relief was available. See also *Environmental*
10 *Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877. In *CAUSE v. City of*
11 *San Diego* (1997) 56 Cal.App.4th 1024, the Court discussed the City's belief in the propriety of its actions:

12 [C]ity does not believe any violation has occurred. [Citing *Common Cause v. Stirling*
13 (1983) 147 Cal. App. 3d 518, 524]... Thus there can be no serious dispute that a
14 controversy between the parties exists over the city's past compliance with the Brown
15 Act....On that basis alone plaintiffs are entitled to declaratory relief resolving the
16 controversy.

17 The County cites *Selby Realty Co. v. City of Buenaventura* (1973). *Selby* is a land use case that
18 sets out the principle that inverse condemnation challenges to municipalities must be “as applied” and not
19 based on potential damages if a land use permit could be denied in the future. *Selby* is not applicable,
20 because here, there is an actual action – a lack of notice – that gives rise to a violation for which Courts
21 have provided declaratory and injunctive relief. The Petition describes how Petitioner and the public have
22 been damaged by the lack of notice of the Board’s discussion of the HE, which is distinguishable from
23 *Selby’s* attempt to obtain declaratory relief for an action which had yet to occur. Petition, Page 3, Lines
24 20-26, Page 9, Lines 11-20.

25 **IV.**

26 **CONCLUSION**

27 Petitioner and other members of the public were not provided notice of the extensive discussion
28 of the HE item on August 19, 2014 and thus, did not have the opportunity to attend or comment on the
subject matter of this presentation and discussion item. This violates the Petitioner’s and the public’s right
to participate in the agenda items and decision-making process of its local agencies, a right guaranteed by

1 the Brown Act and the California Constitution. The County responds that such reports and discussion of
2 significant public policy and legal issues do not require notice to the public. The County has not met its
3 burden to show that it complied with the Brown Act. In fact, as Petitioner has explained, proper analysis
4 of the issue requires a finding that the County did violate the Brown Act. Therefore, Petitioners seek a
5 declaration that the Board's actions violated the Ralph M. Brown Act (Government Code Section 54950
6 et seq.), and for an order requiring the Respondent to cease and desist in such future actions.

7 Respectfully Submitted,

8
9 

10 Edward E. Yates
11 Attorney for Petitioner
12 Community Ventures Partners
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION
(C.C.P. §§ 446 and 2015.5)
Petitioner, Community Ventures Partners

COMMUNITY VENTURES PARTNERS, INC., Petitioner, v. COUNTY OF MARIN, Petitioner

I, Bob Silvestri, President of Petitioner COMMUNITY VENTURES PARTNERS, INC., in the above entitled action and proceeding have read the OPPOSITION TO MOTION FOR JUDGMENT DENYING THE WRIT OF MANDATE; WITH EXHIBITS A THROUGH G, and know the contents thereof, and I certify that the same is true and correct of my own knowledge, except as to those matters which are therein stated upon my information and belief, and as to those matters I believe it to be true.

This Verification was executed on MARCH 10, 2015

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

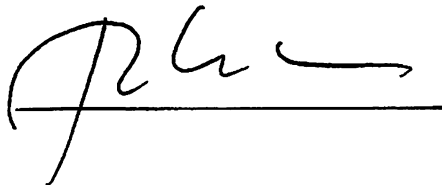


EXHIBIT A

Community Venture Partners, Inc.

A Catalyst for Sustainable Solutions

August 12, 2014

Marin County Board of Supervisors
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

**Re: REQUEST TO AMEND THE MARIN COUNTY HOUSING ELEMENT & EXTEND
THE PUBLIC REVIEW AND APPROVAL PROCESS**

Dear Marin County Supervisors:

On Monday, August 25th, the Draft of the Marin County "Housing Element" (HE) for the 2015-2023 planning cycle will have its final review by the Planning Commission before being sent to the Department of Housing and Community Development (HCD) in Sacramento.

The County Housing Element plan will have significant impacts on all residents of Marin County. It is important that the public and our elected representatives on the Board of Supervisors have adequate time to review and comment on the plan prior to submission to HCD.

For the reasons noted below, we find that the proposed HE and its approval process schedule is unresponsive to community needs and unacceptable. We believe the submission should be HCD delayed and the review process extended to allow for greater public participation and comments by our Marin County Supervisors.

- 1. Public Workshops Failed:** The County workshops that were held to solicit public input were biased toward predetermined outcomes. Its participants were not provided with sufficient facts about potential housing project site conditions or impacts to make reasonable, informed decisions.
- 2. Site and Density Decisions Lack Sufficient Logic:** The methodologies and criteria used by the County to designate development sites and unit densities are generally inconsistent, inequitable and illogical. No reasonable feasibility analysis has been conducted to evaluate potential negative or unforeseen outcomes.
- 3. Fast-Track Schedule is Unnecessary:** The County is fast-tracking the review, submittal and approval of the HE unnecessarily. The County has until May 31st of 2015 to gain final certification of the HE from HCD, without risk of penalty of any kind.
- 4. The Fast-Track Schedule Denies Sufficient Public Participation:** The fast-track timetable for submittal of the Draft HE to the Department of Housing and Community Development (HCD) is unreasonable and fails to adequately involve the participation of the general public. The final document has not been made available to the public yet.

Once the Draft HE is sent to HCD, the opportunity for public input is over, for all practical purposes. And many residents are out of town this month, so are unable to either respond to the draft HE or attend the August 25th public hearing.

5. **The Fast-Track Schedule Denies Sufficient Participation by Our Elected Officials:** The fast-track timetable for submittal of the Draft HE to the Department of Housing and Community Development (HCD) fails to adequately provide for preliminary review and comment by our elected representatives on the County Board of Supervisors. Once the Draft HE is sent to HCD, the opportunity for significant input or changes by the BOS is over, for all practical purposes.
6. **Housing Density Far Exceeds Our Legal Requirements:** The HE's site and density designations are in excess of the state mandated Regional Housing Needs Allocation (RHNA) quota requirements (the so-called "buffer") and are unprecedented and potentially damaging to the character and economic and environmental sustainability of our County. The HE and its Alternatives propose to increase the number of mostly market rate housing units to approximately 422 percent of the RHNA requirement (781 units planned for instead of 185 required), and the number of high density affordable units to approximately 242 percent of the RHNA requirement (148 units instead of 61 required). There is no logical reason or legal requirement to do this.
7. **The State Density Bonus Adds 35 Percent More Units But Is Not Considered:** The HE fails to account for additional units that will result from the State Density Bonus law, which can automatically add up to 35 percent more units for projects providing minimal affordable housing. This could potentially increase the overall number of mostly market rate housing units approvable under this HE to approximately 470 percent (870 units planned for instead of 185 required) of the RHNA requirement.
8. **Failure to Ensure Affordable Housing:** Many of the HE policies and programs are untested and unlikely to result in the construction of any truly affordable housing for those most in need in Marin County. More than half the "affordable" units noted in the HE are for families making more than \$97,100 a year.
9. **Significant Community and Environmental Impacts:** The housing locations and densities proposed in the HE will overly impact our local roads, schools, water resources, infrastructure, and public services, and dramatically alter the character of our communities, and require further investigation.

We are strong supporters of realistic affordable housing solutions. However, based on the findings noted above, we hereby respectfully request that the County:

1. **Delay the submission of the Draft Housing Element to HCD until such time as the public has had adequate opportunity to review it and comment on it, and until such time as the Board of Supervisors can schedule a public hearing to review it and comment on it prior to submission to HCD.**

- II. **Reduce the number of designated building sites and units that are in excess of our legal requirements (the "buffer") to a number which more realistically addresses our RHNA obligations under the law, and which is more reasonable and consistent with what other cities and counties have done.**

- III. **Refocus on how to create affordable housing in ways that protect public health and safety, are more equitably distributed throughout the County, and are more appropriate for the small-scale character of our towns and the infill development opportunities in our communities, and that do not place unsustainable burdens on the capacity of our roads, schools, water resources, utilities, infrastructure, and public services.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Silvestri', with a stylized flourish at the end.

Bob Silvestri
President

EXHIBIT B

AGENDA FOR
MARIN COUNTY BOARD OF SUPERVISORS
MARIN COUNTY HOUSING AUTHORITY BOARD OF COMMISSIONERS
MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD OF
SUPERVISORS

Agenda items will be heard at the time specified or later, depending on the progress of the meeting.

The Marin County Board of Supervisors encourages a respectful dialogue that supports freedom of speech and values diversity of opinion. The Board, staff and the public are expected to be polite and courteous, and refrain from questioning the character or motives of others. Please help create an atmosphere of respect by not booing, whistling or clapping; by adhering to speaking time limits; and by silencing your cell phone.

AGENDA

Tuesday, August 19, 2014
Board of Supervisors Chambers, Room 330, Civic Center

9:00 a.m. Convene Meeting of the Marin County Housing Authority Board of Commissioners (In Room 324A)

Convene in Open Session

Convene in Closed Session

- 1a. Conference with legal counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a). Name of case: Michelle Twegbe v. Housing Authority of the County of Marin, et al. in Marin County Superior Court, Civil Action No. 1301115.

9:30 a.m. Reconvene Meeting of the Marin County Housing Authority Board of Commissioners (In Room 330)
Announcement from Closed Session

- 1b. Approval of minutes of the meeting of July 29, 2014.
1b - DRAFT MINUTES
- 1c. Board of Commissioners' matters.
- 1d. Open time for public expression, up to three minutes per speaker, on items not on the Housing Authority Agenda. (While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda, and, generally, may only listen.)
- 1e. Executive Director's Report.

- 1f. **Request to accept 2013 Annual Marin Housing Authority Audited Financial Statements and Audit Reports.
Recommended actions: Accept reports.**
- 1f - STAFF REPORT
1f - ATTACHMENT
- 1g. **Authorize the Executive Director to negotiate and execute Housing Opportunities for Persons with AIDS ("HOPWA") agreement with the California Department of Public Health, in the amount of \$294,000, to provide tenant-based rental assistance for people living with HIV/AIDS.
Recommended actions: Approve.**
- 1g - STAFF REPORT
1g - AGREEMENT
- 1h. **Authorize the Executive Director to modify the Family Self-Sufficiency Services Case Manager and Family Self-Sufficiency Services Coordinator classifications.
Recommended actions: Approve.**
- 1h - STAFF REPORT
- 1i. **Hearing: Conduct a public hearing and approve revisions to the Administrative Plan governing the Housing Choice Voucher Program for submittal to the Department of Housing and Urban Development ("HUD").
Recommended actions: Approve.**
- 1i - STAFF REPORT
1i - ATTACHMENT
- 1j. **Hearing: Conduct a public hearing and approve revisions to the Admissions and Continued Occupancy Plan that governs the Public Housing Program for submittal to the Department of Housing and Urban Development ("HUD").
Recommended actions: Approve.**
- 1j - STAFF REPORT
1j - ATTACHMENT

Adjourn as the Marin County Housing Authority Board of Commissioners

10:00 a.m. Convene as the Board of Supervisors

2. **Board of Supervisors' matters.**
3. **Administrator's report.**
4. **Consent Calendar A (Items CA-1 through CA-10)
(*Consent Calendar A" reflects those agenda items that have prior policy approval from the Board.)**
- CA-1 **Board of Supervisors:**

- a. Request for In Memoriam adjournments as requested by Board Members during Board of Supervisors' matters.
- b. Approval of minutes of the special meetings of July 28, 31, August 4 and 12, 2014 and the regular meetings of July 22 and 29, 2014.

CA-1b - DRAFT MINUTES OF JULY 22, 2014
CA-1b - DRAFT MINUTES OF JULY 28, 2014
CA-1b - DRAFT MINUTES OF JULY 29, 2014
CA-1b - DRAFT MINUTES OF JULY 31, 2014
CA-1b - DRAFT MINUTES OF AUGUST 4, 2014
CA-1b - DRAFT MINUTES OF AUGUST 12, 2014

- c. Request from Supervisor Kinsey to adopt resolution commending Whistlestop's 60th anniversary.

CA-1c - RESOLUTION

CA-2

Community Development Agency:

Authorize President to execute fourth amendment to agreement with Steven F. Scholl for a time-only contract extension for work associated with the update of the Marin County Local Coastal Program Amendment ("LCPA").

CA-2 - STAFF REPORT
CA-2 - AGREEMENT

CA-3

County Administrator:

- a. Authorize President to execute agreement with Marin Family Action, in the amount of \$45,000, to support the Youth Financial Literacy program and Safe and Friendly Environment ("SAFE") program.

CA-3a - STAFF REPORT
CA-3a - AGREEMENT

- b. Authorize President to execute extension of ground lease with United States Postal Service ("USPS") for approximately 38,135 square feet of land with an address commonly known as 2 Civic Center Drive, San Rafael, CA (APN: 179-270-019) for a lease term of five years, with an option for the USPS to extend another five years, for one dollar per year.

CA-3b - STAFF REPORT
CA-3b - AGREEMENT

CA-4

Finance:

Request to approve temporary transfer of available funds within the County Treasury, in an amount not to exceed \$17,500,000, to accommodate Teeter Plan Interim financing of the buyout of the June 30, 2014 tax delinquencies.

CA-4 - STAFF REPORT

CA-5

Fire:

Authorize President to execute agreement with Wittman Enterprises, LLC, in an amount not to exceed \$28,000, to provide medical billing related to ambulance services provided by the Marin County Fire Department.

CA-5 - STAFF REPORT

CA-5 - AGREEMENT

CA-6

Health and Human Services:

NOTE: Agreements in items CA-6a - CA-6d are renewals of existing agreements that were included in and funded in the FY 2014-15 budget.

a. Authorize President to execute renewal of HIV Surveillance Data Use agreement with the California Department of Public Health.

CA-6a - STAFF REPORT

CA-6a - AGREEMENT

b. Authorize President to execute FY 2014-17 California Department of Public Health Standard agreement #14-10026 and related documents, in the amount of \$174,192, for the Childhood Lead Poisoning Prevention Program.

CA-6b - STAFF REPORT

CA-6b - AGREEMENT

c. Authorize President to execute FY 2014-15 agreement with Ritter Center, in the amount of \$568,900, to provide case management, general medical care, medical and psychiatric evaluations, expedited enrollment in SSI/SSDI, housing, and supportive services to the safety net population.

CA-6c - STAFF REPORT

CA-6c - AGREEMENT

d. Authorize President to execute FY 2014-15 agreement with Golden Gate Regional Center ("GGRC") to allow the Division of Mental Health and Substance Use Services to provide psychiatric medication assessment to GGRC clients in the Outpatient Medication Clinic.

CA-6d - STAFF REPORT

CA-6d - AGREEMENT

e. Authorize President to execute FY 2014-15 agreement with Patricia Holmstrand, dba Home Based Family Advocates, in the amount of \$50,000, to provide parent advocacy services in collaboration with Marin Children and Family Services.

CA-6e - STAFF REPORT

CA-6e - AGREEMENT

CA-7

Human Resources:

Effective August 31, 2014, request to reallocate one FTE Technology Systems Specialist II in the Department of Health and Human Services to Technology Systems Specialist III, as detailed in staff report dated August 19, 2014.

CA-7 - STAFF REPORT

CA-8

Library:

Approve one day closure of all branches of the Marin County Free Library on Friday, September 19, 2014, to allow all library employees to attend "All Staff Day."

CA-8 - STAFF REPORT

CA-9

Public Works:

a. Approve request by the Bolinas Community Center for the temporary closure of Wharf Road in Bolinas on Monday, September 1, 2014 from 10:00 a.m. to 6:30 p.m. for the annual Labor Day Celebration.

CA-9a - STAFF REPORT

b. Request to approve a five-hour temporary closure of Scott Street, between Laverne Avenue and Evergreen Avenue in Mill Valley (District 3), on August 24, 2014 from 2:00 p.m. to 7:00 p.m. for a block party.

CA-9b - STAFF REPORT

c. Authorize President to execute agreement with Harris & Associates, Inc., in a total amount not to exceed \$257,423, to provide environmental and detailed design services for Marin Veterans' Memorial Auditorium Parking Lot Improvements (Project No. CAP 13-013).

CA-9c - STAFF REPORT

CA-9c - AGREEMENT

d. Authorize President to execute Amended and Restated Memorandum of Understanding ("MOU") by and between the Marin Emergency Radio Authority ("MERA") and the County of Marin specifying that the parcel tax revenues will be used solely for the purpose of funding the Next Generation Radio System.

CA-9d - STAFF REPORT

CA-9d - MEMORANDUM OF UNDERSTANDING

e. Request to approve hangar space sublease at Gness Field between Bemac Properties and Andres Amil III.

CA-9e - STAFF REPORT

f. Request to (i) approve plans and specifications; (ii) direct Clerk to advertise for bids for 2014 Wharf Road Retaining Wall Repair project (Project No. 2014-21); and (iii) authorize Public Works Director to award construction contract to lowest responsible bidder.

CA-9f - STAFF REPORT

- g. Request to schedule hearing for September 9, 2014 at 10:30 a.m. to consider Marin Sanitary Service's requested 5.52% rate increase, along with execution of a new consolidated agreement for the Central Marin franchise areas serviced by Marin Sanitary Service, as detailed in staff report dated August 19, 2014.

CA-9g - STAFF REPORT

- h. Request to (1) approve award of Request for Proposal ("RFP") No. 2694 to First Building Maintenance of San Francisco, in the annual amount of \$284,784 with an option to extend four additional years, for janitorial services to provide floor maintenance at 16 County locations; and (2) authorize Purchasing Agent to approve subsequent annual contract extensions with the same terms and conditions as the originally approved contract, including mutually agreed upon price increase, as detailed in staff report dated August 19, 2014.

CA-9h - STAFF REPORT

CA-10

Sheriff:

Request to adopt resolution to approve the Marin Operational Area Mass Care and Sheltering Plan as an annex to the Marin Operational Area Emergency Operations Plan ("EOP").

CA-10 - STAFF REPORT

CA-10 - DRAFT RESOLUTION

CA-10 - ATTACHMENT

5. Consent Calendar B (Items CB-1 through CB-3)
("Consent Calendar B" reflects those agenda items requiring 4/5 vote of available members relating to budgetary matters.)

CB-1

County Administrator:

Request to approve monthly budget adjustments as detailed in staff report dated August 19, 2014.

CB-1 - STAFF REPORT (revised)

CB-1 - ATTACHMENT (revised)

CB-2

Health and Human Services:

Effective for the August 17, 2014 pay period, approve cost neutral personnel and budget adjustments in Division of Public Health, to address new and emerging needs and to further implement the Department's new organizational structure, as detailed in staff report dated August 19, 2014.

CB-2 - STAFF REPORT

CB-3

Public Works:

- a. Request to (i) accept grant, in the amount of \$85,461.92, from the Marin County Hazardous and Solid Waste Joint Powers Authority ("JPA") for outreach and coordination of Recycling, Food Scrap and Composting Program and supplies; and (ii) approve related budget actions, as detailed in staff report dated August 19, 2014.

CB-3a - STAFF REPORT

- b. Effective January 1, 2015, request to (i) add 1.0 FTE Engineering Technician position; and (ii) approve related budget actions, as detailed in staff report dated August 19, 2014.

CB-3b - STAFF REPORT

6. Open time for public expression, up to three minutes per speaker, on items not on the Board of Supervisors' agenda. (While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda, and generally may only listen.)
7. Request from the County Administrator for Board concurrence and adoption of response to 2013-2014 Grand Jury Report: "Aging in Marin: What's the Plan?" (June 13, 2014).
Recommended actions: Concur in and thereby adopt response and direct the President to submit the response to the Presiding Judge.

7 - STAFF REPORT

7 - RESPONSE

7 - GRAND JURY REPORT

8. Request from the Sheriff to authorize execution of a Memorandum of Understanding ("MOU") with the Sonoma County Sheriff's Office to temporarily house up to fifteen (15) Sonoma County inmates in the Marin County Jail at the rate of \$100 per day per inmate, as detailed in staff report dated August 19, 2014.
Recommended actions: Approve.

8 - STAFF REPORT

8 - MEMORANDUM OF UNDERSTANDING

9. Request from County Parks to add new positions funded by Measure A to address natural resource management, landscape architecture, and communications workloads, and approve related budget actions as detailed in staff report dated August 19, 2014.
Recommended actions: Approve.

9 - STAFF REPORT

10. Hearing: Ordinance amending Marin County Code Title 19 (Marin County Building Code) regarding alternative building Codes in support of sustainable construction methods.
Recommended actions: Conduct public hearing and consider adopting ordinance.

10 - STAFF REPORT

10 - DRAFT ORDINANCE

11. Request from the County Administrator to increase authorization to review and execute professional services contracts from an amount not to exceed \$25,000 to a revised amount not to exceed \$50,000.
Recommended actions: Approve.

11 - STAFF REPORT

12. **Appointments:**
- a. **Disaster Council (DC3)**
One vacancy representing the American Red Cross (Marin chapter). An application has been received from Andrew McClelland.
Recommended action: Make appointment.
 - b. **Kentfield Planning advisory Board**
One term expiration. Incumbent Alan Derwin has reapplied.
Recommended action: Make appointment.
 - c. **Strawberry Design Review Board**
One vacancy. Applications have been received from Christopher Marino, Robert Martyn, Penna Omega, and Barbara Rowe.
Recommended action: Make one appointment.

Recess as the Board of Supervisors

10:45 a.m. Convene as the Marin County Flood Control and Water Conservation District Board of Supervisors

- 13a. Approval of minutes of the meeting of August 5, 2014.
- 13a - DRAFT MINUTES
- 13b. Open time for public expression, up to three minutes per speaker, on items not on the Flood Control and Water Conservation District Agenda. (While members of the public are welcome to address the Board, under the Brown Act Board members may not deliberate or take action on items not on the agenda, and generally may only listen.)
- 13c. Board of Supervisors' matters.
- 13d. Staff report on District matters.
- 13e. Request to authorize budgetary adjustments for funding of replacement of the Santa Venetia Pump Station No. 2, Pump No. 2, Flood Control Zone ("FCZ") No. 7, Supervisorial District 1.
Recommended action: Approve.

13e - STAFF REPORT

Adjourn as the Main County Flood Control and Water Conservation District Board of Supervisors

Reconvene as the Board of Supervisors

14. **Closed Session:**
- a. Conference with legal counsel regarding anticipated litigation pursuant to California Government Code Section 54956.9(d)(2). Number of Potential Cases: One.
 - b. Conference with labor negotiator (Roger Crawford, Marin County Human Resources) regarding negotiations with Service Employees International Union ("SEIU") 1021 (nurses) and Marin County Fire Department Fire Fighters Association, pursuant to California Government Code Section 54957.6(a).

1:30 p.m. Reconvene in Open Session
Announcement from Closed Session.

15. **Hearing: Consideration of the Barner et al. Appeal of the Planning Commission's approval of the Granucci Design Review and Tree Removal Permit, 290 Grandview Avenue, Novato (APN 157-103-50).**
Recommended actions: (a) Review administrative record; (b) conduct public hearing; and (c) make determination on appeal.

15 - STAFF REPORT
15 - DRAFT RESOLUTION
15 - ATTACHMENT

EXHIBIT C

**REGULAR MEETING OF THE MARIN COUNTY BOARD OF SUPERVISORS HELD
TUESDAY, AUGUST 19, 2014, AT 10:50 A.M.**

Roll Call

Present: Supervisor Arnold; Supervisor Kinsey; Supervisor Rice; Supervisor Sears

Absent: Supervisor Adams

The Board convened as the Marin County Housing Authority Board of Commissioners at 9:05 a.m. and convened as the Board of Supervisors at 10:50 a.m. Supervisor Adams was absent.

2. Board of Supervisors' matters

Whistlestop

Supervisor Rice commented briefly on Consent Calendar Item CA-1c, a resolution commending Whistlestop Wheels.

Lomita Park Community Meeting

Supervisor Rice reported on a recent community meeting in Lomita Park.

Consent Calendar Items CB-3a and CB-3b

Supervisor Rice commented briefly regarding Consent Calendar Items CB-3a and CB-3b related to zero waste goals.

Draft Housing Element

Supervisors Rice and Arnold commented briefly regarding correspondence from community members related to the Draft Housing Element.

In Memoriam

Supervisor Sears requested adjournment in memory of Beatrice "Bea" Seidler and Robin Williams.

3. Administrator's report

Agenda Modifications

County Administrator Matthew Hymel advised that Public Works has asked that Consent Item CA-9h, regarding a Request for Proposal for janitorial services, be removed from the agenda.

Mr. Hymel also advised that a revised monthly budget adjustments letter has been submitted for Consent Calendar Item CB-1.

Marin Emergency Radio Authority ("MERA")

Mr. Hymel commented briefly on actions taken at last week's meeting of the MERA's governing board to address issues that were raised by the Board of Supervisors at their meeting on July 22, 2014.

Mr. Hymel responded to questions from Board members regarding future MERA upgrades.

Draft Housing Element

Mr. Hymel introduced Community Development Agency Director Brian Crawford, who provided an update on the status of the Draft Housing Element.

Mr. Crawford and Principal Planner Leelee Thomas responded to questions from Board members regarding various components of the Draft Housing Element.

4. Consent Calendar A (Items CA-1 through CA-10)
("Consent Calendar A" reflects those agenda items that have prior policy approval from the Board.)

M/s Supervisor Arnold - Supervisor Kinsey to approve Consent Calendar A, with CA-9h removed.

CA-1. Board of Supervisors:

- a. Request from the Board to adjourn in memory of Bea Seidler and Robin Williams.
- b. Approval of minutes of the special meetings of July 28, 31, August 4 and 12, 2014 and the regular meetings of July 22 and 29, 2014.

CA-1b - MINUTES OF JULY 22, 2014

CA-1b - MINUTES OF JULY 28, 2014

CA-1b - MINUTES OF JULY 29, 2014

CA-1b - MINUTES OF JULY 31, 2014

CA-1b - MINUTES OF AUGUST 4, 2014

CA-1b - MINUTES OF AUGUST 12, 2014

- c. Request from Supervisor Kinsey to adopt resolution commending Whistlestop's 60th anniversary.

CA-1c - RESOLUTION

CA-2. Community Development Agency:
Authorize President to execute fourth amendment to agreement with Steven F. Scholl for a time-only contract extension for work associated with the update of the Marin County Local Coastal Program Amendment ("LCPA").

CA-2 - STAFF REPORT

CA-2 - AGREEMENT

CA-3. County Administrator:

- a. **Authorize President to execute agreement with Marin Family Action, in the amount of \$45,000, to support the Youth Financial Literacy program and Safe and Friendly Environment ("SAFE") program.**

CA-3a - STAFF REPORT

CA-3a - AGREEMENT

- b. **Authorize President to execute extension of ground lease with United States Postal Service ("USPS") for approximately 38,135 square feet of land with an address commonly known as 2 Civic Center Drive, San Rafael, CA (APN: 179-270-019) for a lease term of five years, with an option for the USPS to extend another five years, for one dollar per year.**

CA-3b - STAFF REPORT

CA-3b - AGREEMENT

CA-4. Finance:

Request to approve temporary transfer of available funds within the County Treasury, in an amount not to exceed \$17,500,000, to accommodate Teeter Plan interim financing of the buyout of the June 30, 2014 tax delinquencies.

CA-4 - STAFF REPORT

CA-5. Fire:

Authorize President to execute agreement with Wittman Enterprises, LLC, in an amount not to exceed \$28,000, to provide medical billing related to ambulance services provided by the Marin County Fire Department.

CA-5 - STAFF REPORT

CA-5 - AGREEMENT

CA-6. Health and Human Services:

NOTE: Agreements in items CA-6a - CA-6d are renewals of existing agreements that were included in and funded in the FY 2014-15 budget.

- a. **Authorize President to execute renewal of HIV Surveillance Data Use agreement with the California Department of Public Health.**

CA-6a - STAFF REPORT

CA-6a - AGREEMENT

- b. Authorize President to execute FY 2014-17 California Department of Public Health Standard agreement #14-10026 and related documents, in the amount of \$174,192, for the Childhood Lead Poisoning Prevention Program.

CA-6b - STAFF REPORT

CA-6b - AGREEMENT

CA-6b - RESOLUTON

- c. Authorize President to execute FY 2014-15 agreement with Ritter Center, in the amount of \$568,900, to provide case management, general medical care, medical and psychiatric evaluations, expedited enrollment in SSI/SSDI, housing, and supportive services to the safety net population.

CA-6c - STAFF REPORT

CA-6c - AGREEMENT

- d. Authorize President to execute FY 2014-15 agreement with Golden Gate Regional Center ("GGRC") to allow the Division of Mental Health and Substance Use Services to provide psychiatric medication assessment to GGRC clients in the Outpatient Medication Clinic.

CA-6d - STAFF REPORT

CA-6d - AGREEMENT

- e. Authorize President to execute FY 2014-15 agreement with Patricia Holmstrand, dba Home Based Family Advocates, in the amount of \$50,000, to provide parent advocacy services in collaboration with Marin Children and Family Services.

CA-6e - STAFF REPORT

CA-6e - AGREEMENT

- CA-7. Human Resources:
Effective August 31, 2014, to reallocate one FTE Technology Systems Specialist II in the Department of Health and Human Services to Technology Systems Specialist III, as detailed in staff report dated August 19, 2014.

CA-7 - STAFF REPORT

- CA-8. Library**
Approve one day closure of all branches of the Marin County Free Library on Friday, September 19, 2014, to allow all library employees to attend "All Staff Day."

CA-8 - STAFF REPORT

CA-9. Public Works:

- a. **Approve request by the Bolinas Community Center for the temporary closure of Wharf Road in Bolinas on Monday, September 1, 2014 from 10:00 a.m. to 6:30 p.m. for the annual Labor Day Celebration.**

CA-9a - STAFF REPORT

- b. **Request to approve a five-hour temporary closure of Scott Street, between Laverne Avenue and Evergreen Avenue in Mill Valley (District 3), on August 24, 2014 from 2:00 p.m. to 7:00 p.m. for a block party.**

CA-9b - STAFF REPORT

- c. **Authorize President to execute agreement with Harris & Associates, Inc., in a total amount not to exceed \$257,423, to provide environmental and detailed design services for Marin Veterans' Memorial Auditorium Parking Lot Improvements (Project No. CAP 13-013).**

CA-9c - STAFF REPORT

CA-9c - AGREEMENT

- d. **Authorize President to execute Amended and Restated Memorandum of Understanding ("MOU") by and between the Marin Emergency Radio Authority ("MERA") and the County of Marin specifying that the parcel tax revenues will be used solely for the purpose of funding the Next Generation Radio System.**

CA-9d - STAFF REPORT

CA-9d - MEMORANDUM OF UNDERSTANDING

- e. **Request to approve hangar space sublease at Gross Field between Bemac Properties and Andres Amil III.**

CA-9e - STAFF REPORT

- f. **Request to (i) approve plans and specifications; (ii) direct Clerk to advertise for bids for 2014 Wharf Road Retaining**

Wall Repair project (Project No. 2014-21); and (iii) authorize Public Works Director to award construction contract to lowest responsible bidder.

CA-9f - STAFF REPORT

- g. Request to schedule hearing for September 9, 2014 at 10:30 a.m. to consider Marin Sanitary Service's requested 5.52% rate increase, along with execution of a new consolidated agreement for the Central Marin franchise areas serviced by Marin Sanitary Service, as detailed in staff report dated August 19, 2014.

CA-9g - STAFF REPORT

- h. This item, regarding the approval of an award of Request for Proposal for janitorial services, was removed from the agenda.

- CA-10. Sheriff:
Request to adopt Resolution No. 2014-75 to approve the Marin Operational Area Mass Care and Sheltering Plan as an annex to the Marin Operational Area Emergency Operations Plan ("EOP").

CA-10 - STAFF REPORT

CA-10 - RESOLUTION NO. 2014-75

CA-10 - ATTACHMENT

- Vote: Motion carried 4-0
- AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears
- ABSENT: Supervisor Adams

- 5. Consent Calendar B (Items CB-1 through CB-3)
("Consent Calendar B" reflects those agenda items requiring 4/5 vote of available members relating to budgetary matters.)

M/s Supervisor Rice - Supervisor Arnold to approve Consent Calendar B, with revisions to CB-1.

- CB-1. County Administrator:
Request to approve monthly budget adjustments as detailed in revised staff report dated August 19, 2014.

CB-1 - STAFF REPORT (revised)

CB-1 - ATTACHMENT (revised)

- CB-2. Health and Human Services:
Effective for the August 17, 2014 pay period, approve cost neutral

personnel and budget adjustments in Division of Public Health, to address new and emerging needs and to further implement the Department's new organizational structure, as detailed in staff report dated August 19, 2014.

CB-2 - STAFF REPORT

CB-3. Public Works:

- a. Request to (i) accept grant, in the amount of \$85,461.92, from the Marin County Hazardous and Solid Waste Joint Powers Authority ("JPA") for outreach and coordination of Recycling, Food Scrap and Composting Program and supplies; and (ii) approve related budget actions, as detailed in staff report dated August 19, 2014.

CB-3a - STAFF REPORT

- b. Effective January 1, 2015, request to (i) add 1.0 FTE Engineering Technician position; and (ii) approve related budget actions, as detailed in staff report dated August 19, 2014.

CB-3b - STAFF REPORT

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears

ABSENT: Supervisor Adams

8. **Request from the Sheriff to authorize execution of a Memorandum of Understanding ("MOU") with the Sonoma County Sheriff's Office to temporarily house up to fifteen (15) Sonoma County inmates in the Marin County Jail at the rate of \$100 per day per inmate, as detailed in staff report dated August 19, 2014**

8 - STAFF REPORT

8 - MEMORANDUM OF UNDERSTANDING

By letter dated August 19, 2014, Sheriff-Coroner Bob Doyle submitted his report and recommendations regarding the above-captioned matter.

Sheriff Doyle responded to questions from Board members regarding various aspects of the proposed Memorandum of Understanding ("MOU").

M/s Supervisor Kinsey - Supervisor Arnold to authorize execution of a Memorandum of Understanding ("MOU") with the Sonoma County Sheriff's Office to temporarily house up to fifteen (15) Sonoma County inmates in the Marin County Jail at the rate of \$100 per day per inmate, as detailed in staff report dated August 19, 2014.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor
Sears

ABSENT: Supervisor Adams

6. Open time

Iraq

A member of the public addressed the Board to express opposition to recent U.S. military action in Iraq.

Draft Housing Element

Several members of the public expressed various concerns regarding the Draft Housing Element and asked for a delay in its submission to the California Department of Housing and Community Development ("HCD").

Two members of the public and a representative of the Marin Association of Public Employees ("MAPE") expressed support for updating the Housing Element in a timely manner and spoke about affordable housing issues in Marin County.

Supervisor Arnold commented briefly regarding public testimony.

7. Request from the County Administrator for Board concurrence and adoption of response to 2013-2014 Grand Jury Report: "Aging in Marin: What's the Plan?" (June 13, 2014)

7 - STAFF REPORT

7 - RESPONSE

7 - GRAND JURY REPORT

By letter dated August 19, 2014, County Administrator Matthew Hymel submitted his report and recommendations regarding the above-captioned matter.

Mr. Hymel commented briefly regarding staff's response to the Grand Jury Report.

Board members commented on the importance of highlighting the needs of the County's aging population and spoke about the work of community partners.

M/s Supervisor Rice - Supervisor Kinsey to concur in and thereby adopt response and direct the President to submit the response to the Presiding Judge.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor
Sears

ABSENT: Supervisor Adams

9. Request from County Parks to add new positions funded by Measure A to

address natural resource management, landscape architecture, and communications workloads

9 - STAFF REPORT

By letter dated August 19, 2014, Assistant Parks Director Ron Miska submitted his report and recommendations regarding the above-captioned matter.

Parks Director Linda Dahl summarized staff's recommendations for adding new positions.

Ms. Dahl responded to questions from Board members regarding the use of metrics to illustrate the accomplishments of Measure A funding separate from ongoing programs of the Parks Department.

M/s Supervisor Kinsey - Supervisor Rice to approve the addition of new positions funded by Measure A to address natural resource management, landscape architecture, and communications workloads, and approve related budget actions as detailed in staff report dated August 19, 2014.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears

ABSENT: Supervisor Adams

- 10. Hearing: Ordinance amending Marin County Code Title 19 (Marin County Building Code) regarding alternative building Codes in support of sustainable construction methods

10 - STAFF REPORT

10 - ORDINANCE NO. 3619

By letter dated August 19, 2014, Community Development Agency Director Brian Crawford and Deputy Director Bill Kelley submitted their report and recommendations regarding the above-captioned matter.

Mr. Crawford acknowledged Bill Kelly and Building and Safety staff for their efforts.

The hearing was declared open to receive public testimony.

The Executive Director of the Community Land Trust Association of West Marin ("CLAM"), Co-Founder of the Regenerative Design Institute of Bolinas, and two members of the public expressed support for the proposed ordinance.

Seeing no one else present to speak, the public hearing was closed.

M/s Supervisor Arnold - Supervisor Rice to adopt Ordinance No. 3619 amending Marin County Code Title 19 (Marin County Building Code) regarding alternative building Codes in support of sustainable construction methods.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears

ABSENT: Supervisor Adams

- 11. Request from the County Administrator to increase authorization to review and execute professional services contracts from an amount not to exceed \$25,000 to a revised amount not to exceed \$50,000

11 - STAFF REPORT

By letter dated August 19, 2014, County Administrator Matthew Hymel and Deputy County Administrator Dan Eilerman submitted their report and recommendations regarding the above-captioned matter.

Mr. Eilerman briefly introduced the item, summarizing the results of a survey of seven comparison counties regarding their policies delegating authority to the County Administrator as a Deputy Purchasing Agent.

M/s Supervisor Arnold - Supervisor Kinsey to increase authorization to review and execute professional services contracts from an amount not to exceed \$25,000 to a revised amount not to exceed \$50,000, effective October 1, 2014.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears

ABSENT: Supervisor Adams

Small Plane Crash

In response to a request from Supervisor Arnold, Fire Emergency Medical Officer Michael Giannini briefly reported on a small plane crash and fire occurring in West Marin early this morning.

- 12. **Appointments**

- a. **Disaster Council (DC3)**

Link to Commission

One vacancy representing the American Red Cross (Marin chapter). An application was received from Andrew McClelland.

M/s Supervisor Rice - Supervisor Arnold to appoint Andrew McClelland.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears

ABSENT: Supervisor Adams

- b. **Kentfield Planning Advisory Board**

Link to Commission

One term expiration. Incumbent Alan Derwin reapplied.

M/s Supervisor Rice - Supervisor Arnold to reappoint Alan Derwin.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice,
Supervisor Sears

ABSENT: Supervisor Adams

c. Strawberry Design Review Board

Link to Commission

One vacancy. Applications were received from Christopher Marino, Robert Martyn, Penna Omega, and Barbara Rowe.

M/s Supervisor Rice - Supervisor Arnold on behalf of Supervisor Sears, to appoint Barbara Rowe.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice,
Supervisor Sears

ABSENT: Supervisor Adams

The Board recessed at 12:27 p.m. to meet as the Marin County Flood Control and Water Conservation District Board of Supervisors and reconvened at 12:31 p.m. Supervisor Adams was absent.

The Board recessed at 12:32 p.m. to meet in closed session.

14. Closed Session

The Board met in closed session to discuss the following:

a. Conference with legal counsel regarding anticipated litigation pursuant to California Government Code Section 54956.9(d)(2). Number of Potential Cases: One.

b. Conference with labor negotiator (Roger Crawford, Marin County Human Resources) regarding negotiations with Service Employees International Union ("SEIU") 1021 (nurses) and Marin County Fire Department Fire Fighters Association, pursuant to California Government Code Section 54957.6(a).

The Board reconvened in open session at 1:39 p.m. Supervisor Adams was absent.

The President reported that the Board met in closed session and had nothing to report.

15. Hearing: Consideration of the Barner et al. Appeal of the Planning Commission's approval of the Granucci Design Review and Tree Removal Permit, 290 Grandview Avenue, Novato (APN 157-103-50)

15 - STAFF REPORT

15 - RESOLUTION NO. 2014-74

15 - ATTACHMENT

Link to complete documentation

By letter dated August 19, 2014. Planner Lorene Jackson and Community Development Agency Director Brian Crawford submitted their report and recommendations regarding the above-captioned matter.

Assistant Community Development Agency Director Tom Lai briefly summarized the matter before the Board.

Ms. Jackson made a presentation highlighting elements of the proposed project, outlining the basis of appeal, summarizing the Planning Commission's consideration of the project and recommending that the Board deny the appeal and sustain the conditionally approved Granucci Design Review and Tree Removal Permit.

The hearing was opened to receive public testimony.

Attorney Rob Epstein, representing the applicant, addressed the Board. Mr. Epstein referred to his letter dated August 13, 2014, identified other members of the project team who were present, and commented on the matter before the Board.

Project designer Bill Bagby advised he was available to respond to questions.

On behalf of the appellant, Don Drummer addressed the Board. Mr. Drummer commented on the basis of appeal, highlighted considerations related to the proposed septic system and concluded his remarks requesting the Board grant the appeal.

Mr. Lai responded to comments made by speakers regarding the proposed septic system, the median home size within the neighborhood and the proposed tree removal as part of the project application.

One speaker expressed support for the proposed project.

Two speakers expressed support for the appeal.

Mr. Epstein briefly responded to comments made by the previous speakers.

Seeing no one else present who wished to speak, the public hearing was closed.

Supervisor Arnold briefly commented on the proposed project, issues raised by the appellants, and work underway to revise the Black Point Community Plan. Supervisor Arnold concluded her remarks recommending modification of the conditions of approval to include a construction management plan and to further address landscape requirements.

Supervisor Sears acknowledged those present and expressed support for the design requirements applied by the Planning Commission, as well as the

additional conditions of approval requested by Supervisor Arnold.

M/s Supervisor Arnold - Supervisor Kinsey to adopt Resolution No. 2014-74 denying the Barner et al., appeal and conditionally approving the Granucci Design Review and Tree Removal permit.

Vote: Motion carried 4-0

AYES: Supervisor Arnold, Supervisor Kinsey, Supervisor Rice, Supervisor Sears

ABSENT: Supervisor Adams

Mr. Lai advised that, based on the Board's direction, the final resolution would reflect additional conditions of approval related to a construction management plan and landscaping requirements.

The meeting was adjourned at 2:22 p.m. in memory of Bea Seidler and Robin Williams.

SINE DIE

PRESIDENT

ATTEST:

CLERK

EXHIBIT D

ATTACHMENT TO E YATES SEPTEMBER 17 LETTER TO MARIN COUNTY BOARD OF SUPERVISORS

Summary of Certain Comments Made at August 19, 2014 Board of Supervisors Hearing Regarding 2015-2023 Housing Element

Minutes 4:00-6:55

Supervisor Rice: speaks about the Housing Element. This is not a report from a subcommittee or personal interaction or Board assignment.

Minute 4:17

Supervisor Rice: "I am glad to see Mr. Crawford here to speak about the process."

Minute 5:18

Supervisor Rice: "I just wanted to make one more comment on this item."

Minutes 6:55- 9:17

Supervisor Arnold: speaks about the Housing Element. This is not a report from a subcommittee or personal interaction or Board assignment.

Minute 14:40

County Administrator Hymel: Supervisor Rice has asked the Community Development Director Brian Crawford to discuss the housing element.

Minutes 14:50-25:40

Community Development Director Brian Crawford reads off prepared notes and discusses specific timelines, policies and legal issues regarding the housing element. Mr. Crawford also referenced a meeting with County Counsel (Minute 18:50) where he received advice regarding issues brought up by Community Ventures Partners in recent letters.

Minute 14:50

Community Development Director Brian Crawford: "Thank you members for the Board for the opportunity to address your Board on the status of the housing element."

Minute 25:30

Community Development Director Brian Crawford: "With that I'll complete my comments."

Minutes 25:50-30:00

Question and Answer by Board Members to Community Development Director Brian Crawford and staff member LeeLee Thomas.

Minutes 1:07-1:12:30

Comments by all Supervisors regarding Mr. Crawford's discussion of housing element and opinions regarding appropriateness of current housing element process and proposal.

EXHIBIT D2

EXHIBIT E

Law Office of Edward E. Yates

1000 Fourth Street, Suite 800
San Rafael, CA 94901
415-628-8314
eyates@marinlandlaw.com

September 18, 2014

Matthew Hymel, County Administrator/Clerk of the Board
Marin County Board of Supervisors
3501 Civic Center Drive, Suite 329
San Rafael, CA 94903

Dear Mr. Hymel and Members of the Board,

I represent Community Venture Partners, Inc., (CVP) in regard to the 2015-2023 Marin County General Plan Housing Element amendment (Housing Element) and related matters.

This letter is to call your attention to what was a substantial violation of central provisions of the Ralph M. Brown Act by the Marin County Board of Supervisors (Board). This letter also demands that you cease and desist such violations. The nature of the violation is as follows: in its meeting of August 19, 2014, the Board planned for and engaged in extensive discussions of an item that was not on the agenda and for which no public notice was given. The item was the 2015-2023 Housing Element.

Government Code Section 54954.2(a) (2) states that "No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3." The actions taken by the Board were not in compliance with Section 54954.2(a)(2) because there was no notice to the public on the posted agenda or any other place for such an agenda item.¹ Further, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon. Government Code § 54954.2(a)(1). No such description was provided to the public.

Both Brown Act obligations were violated on August 19 because the Board made no such notice or description and yet proceeded to: 1) discuss Housing Element issues at length; 2) request and listen to a formal presentation by the Community Development Director Brian Crawford; 3) engage in lengthy discussion with and questions for Mr. Crawford and staff member LeeLee Thomas; and 4) discuss and opine on Housing Element issues that are currently under consideration by the County. (See Attachment.) In all, the Board spent approximately 26 minutes discussing and opining on Housing Element issues. The lengthy, formal presentation requested by a Board member and the lengthy opinions and responses by the Board clearly do not qualify as making "a brief announcement, or "a brief report on his or her own activities," or asking "a question for clarification" as allowed for under Government Code Section 54954.2(a)(1-2).

¹ Also, there was no finding made by the Board that urgent action was necessary on a matter unforeseen at the time the agenda was posted. Government Code § 54954.2(b)."

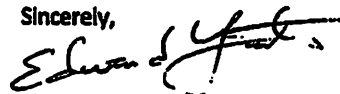
In addition, the video of the August 19th meeting shows a clear *intent* to have an unnoticed, lengthy, formal agenda item on the subject of the Housing Element. During the Supervisors Report agenda item, Supervisors Rice and Arnold described the need to educate the public on the subject of the Housing Element and Ms. Rice stated that Mr. Crawford "is here to discuss the Housing Element process." County Administrator Mathew Hymel introduced Mr. Crawford by stating that "Supervisor Rice had asked the Community Development Director, Brian Crawford to discuss the Housing Element." (Emphasis added.) Neither Mr. Crawford nor Ms. Thomas had any reason to be at the Board meeting (no non-consent agenda items) and Mr. Crawford and Ms. Lee only appeared at the meeting during this discussion item.

The formal and prepared nature of the presentation was made clear by Mr. Crawford reading a prepared, written presentation on the topic of the Housing Element. Mr. Crawford spent over 11 minutes reading off prepared notes regarding the Housing Element. This was in essence a staff report that the Brown Act requires be distributed to the public 72 hours before the meeting or made available at the meeting. Government Code § 54957.5(b). This was not done. Mr. Crawford ended his discussion by thanking the members of the Board "for the opportunity to address your Board on the status of the Housing Element."

Further demonstration of intent to evade the Brown Act is the fact that much of the topic of Mr. Crawford's presentation was a point by point response to comments made by my client in a previous letter to the County regarding the Housing Element. (See Letter from Bob Silvestri, Community Ventures Partners, to Marin County Planning Commission, August 12, 2014.) In particular, given that the intent of Supervisor Rice and Mr. Crawford was to discuss my client's letter, it is even more egregious that my client, a representative of my client or any other member of the public were not given the required notice.

I request written notice that your Board and other County bodies will cease, desist from, and not repeat the past actions that violate the Brown Act.

Sincerely,



Edward E. Yates

Cc: Steven Woodside, County Counsel

ATTACHMENT TO E YATES SEPTEMBER 17 LETTER TO MARIN COUNTY BOARD OF SUPERVISORS

Summary of Certain Comments Made at August 19, 2014 Board of Supervisors Hearing Regarding 2015-2023 Housing Element

Minutes 4:00-6:55

Supervisor Rice: speaks about the Housing Element. This is not a report from a subcommittee or personal interaction or Board assignment.

Minute 4:17

Supervisor Rice: "I am glad to see Mr. Crawford here to speak about the process."

Minute 5:18

Supervisor Rice: "I just wanted to make one more comment on this item."

Minutes 6:55- 9:17

Supervisor Arnold: speaks about the Housing Element. This is not a report from a subcommittee or personal interaction or Board assignment.

Minute 14:40

County Administrator Hymel: Supervisor Rice has asked the Community Development Director Brian Crawford to discuss the housing element.

Minutes 14:50-25:40

Community Development Director Brian Crawford reads off prepared notes and discusses specific timelines, policies and legal issues regarding the housing element. Mr. Crawford also referenced a meeting with County Counsel (Minute 18:50) where he received advice regarding issues brought up by Community Ventures Partners in recent letters.

Minute 14:50

Community Development Director Brian Crawford: "Thank you members for the Board for the opportunity to address your Board on the status of the housing element."

Minute 25:30

Community Development Director Brian Crawford: "With that I'll complete my comments."

Minutes 25:50-30:00

Question and Answer by Board Members to Community Development Director Brian Crawford and staff member LeeLee Thomas.

Minutes 1:07-1:12:30

Comments by all Supervisors regarding Mr. Crawford's discussion of housing element and opinions regarding appropriateness of current housing element process and proposal.

EXHIBIT F

marinij.com

Flap erupts over Marin board's 'off agenda' housing chat

By Nels Johnson

njohnson@marinij.com [@nelsjohnsonnews](#) on Twitter

Posted: 09/24/2014 03:40:30 PM PDT [3 Comments](#)

A legal kerfuffle involving the public's right to know erupted this week as an attorney representing housing policy foes squared off with county officials on state anti-secrecy law.

Attorney Ed Yates of San Rafael, representing Community Venture Partners, says county supervisors violated key provisions of the Ralph M. Brown Act by discussing housing issues that were not on the agenda of a public meeting last month. His client, Community Venture Partners, an organization headed by housing policy critic Bob Silvestri, says it believes "those most in need of affordable housing solutions are best served by a bottom up approach to planning, development and government decision making."

Yates, citing "substantial violation of central provisions of the Ralph M. Brown Act," filed a letter with the county Board of Supervisors that "demands that you cease and desist such violations." The county must respond within 60 days, at which time the matter could proceed to court.

County Counsel Steve Woodside, saying Yates' Brown Act complaint is all bark and no bite, asserted nothing illegal or otherwise inappropriate was done regarding the board's "off agenda" exchange.

At issue is a housing discussion requested by Supervisor Katie Rice during a period for supervisors' statements as a regular board meeting began Aug. 19. The matter was not on the

agenda, but she inquired about housing policy procedures, and development chief Brian Crawford, alerted to attend, outlined issues. No deliberation or decision was made.

Advertisement

Yates, noting the discussion lasted 26 minutes, said the law requires notice be given, including an agenda listing, and added that the county violation of the Brown Act was "crystal clear."

The county's top lawyer begged to differ. "I looked at the tape of the meeting," Woodside said. "Nothing illegal was done."

"Asking staff to provide information on a subject not on the agenda ... is not a violation of the Brown Act or anti-secrecy law," Supervisor Rice said. "I asked Brian to provide information about the housing element update so as to highlight the opportunities for public participation throughout, including upcoming Planning Commission and Board of Supervisors' meetings," she said. "Seems like providing clarity on the process is a good thing ... encouraging public participation and assuring an open and transparent public process."

Next time, Yates indicated, make sure the discussion is posted on the agenda so that those interested can attend and opine.

EXHIBIT G



Edward Yates <eyates@marinlandlaw.com>

Brown Act Cease and Desist Demand

1 message

Edward Yates <eyates@marinlandlaw.com>

Sat, Dec 13, 2014 at 11:20 AM

To: "Woodside, Steven" <swoodside@marincounty.org>

Cc: Bob Silvestri <communityventurepartners@comcast.net>, "mhymel@marincounty.org" <mhymel@marincounty.org>

Mr. Woodside,

Regarding the Brown Act Cease and Desist Demand letter that I sent the County on September 18, 2014, I have not received any response or other correspondence from you or Marin County by email, U.S. mail or any other method.

Ed Yates

--

Law Office of Edward E. Yates
1000 Fourth Street, Suite 800
San Rafael, CA 94901
415-990-4805
www.marinlandlaw.com

This communication (including any attachments) contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive messages for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the communication. If you have received the communication in error, please advise the sender by reply e-mail and delete the communication.