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8 COMMUNITY VENTURES PARTNERS, NC.  
9

**FILED**

**DEC 16 2014**

KIM FURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: R. Smith, Deputy

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

11 CV 1404718

12 COMMUNITY VENTURES PARTNERS, )  
13 INC., )

14 Petitioner/Plaintiff, )

15 vs. )

16 COUNTY OF MARIN, )

17 Respondent/Defendant. )  
18 )  
19 )  
20 )

**VERIFIED PETITION  
FOR WRIT OF MANDATE;  
INJUNCTIVE AND  
DECLARATORY RELIEF FOR  
VIOLATIONS OF THE  
RALPH M. BROWN ACT  
WITH EXHIBITS A THROUGH J**

*[Cal. Government Code Section 54950, et seq.]*

21 This action seeks relief from the failure of Respondent/Defendant, COUNTY  
22 OF MARIN, to perform as required by the California Government Code Sections 54950, et seq.  
23 Petitioner, COMMUNITY VENTURES PARTNERS, INC., seeks a writ of mandate, injunctive,  
24 declaratory relief, costs and attorneys' fees under California Code of Civil Procedure Sections  
25 1085 and 1060 and Government Code Sections 54960 and 54960.1. In this Verified Petition,  
26 Petitioner alleges as follows:  
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28

**VERIFIED PETITION FOR WRIT OF MANDATE**





1           6.     In August, 2014 COUNTY published the Agenda for the August 19, 2014  
2 meeting of the COUNTY Board of Supervisors ("Agenda"). The Agenda did not include an  
3 agenda item related to the Housing Element or a "brief description" of each item to be discussed  
4 or acted upon or regarding the Housing Element. A true and correct copy of the Agenda for  
5 August 19, 2014 is attached hereto as Exhibit B and incorporated herein by reference.  
6

7           7.     On August 19, 2014, the Marin County Board of Supervisors convened a meeting  
8 noticed by the above mentioned Agenda. No notice was provided to the public regarding  
9 discussion or deliberation regarding the 2015 - 2023 Housing Element. A true and correct copy  
10 of the COUNTY Minutes for the August 19, 2014 Board of Supervisors meeting is attached  
11 hereto as Exhibit C and incorporated herein by reference.  
12

13           8.     The following events occurred at the August 19, 2014 COUNTY Board of  
14 Supervisors meeting. COUNTY Board of Supervisors: 1) discussed Housing Element issues  
15 with COUNTY Staff for approximately 26 minutes; 2) requested and listened to a formal  
16 presentation by the COUNTY Community Development Director, Brian Crawford; 3) engaged  
17 in lengthy discussion with Mr. Crawford and COUNTY Principal Planner, Lee Lee Thomas; and  
18 4) discussed and opined on Housing Element issues that were under consideration by the County  
19 Planning Commission. A true and correct copy of a timeline identifying the actions at the  
20 August 19, 2014 meeting is attached hereto as Exhibit D and incorporated herein by reference.  
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22

23           9.     First, during the Supervisors' Report, agenda item #2 (Minutes 4:00-9:17),  
24 Supervisors Rice and Arnold described the need to educate the public on the subject of the  
25 Housing Element. Neither Supervisor Rice nor Arnold described her discussions as a report  
26 from a subcommittee or personal interaction or Board assignment. At Minute 4:17, Supervisor  
27  
28

1 Rice stated, "I am glad to see Mr. Crawford here to speak about the Housing Element process."

2 At Minute 5:18, Supervisor Rice stated, "I just wanted to make one more comment on this item."

3  
4 10. Second, at Minute 14:40, COUNTY Administrator and Clerk of the Board of  
5 Supervisors, Matthew Hymel, stated, "Supervisor Rice has asked the Community Development  
6 Director Brian Crawford to discuss the Housing Element." Mr. Hymel then introduced Mr.  
7 Crawford.

8  
9 11. Third, at Minutes 14:50-25:40, Community Development Director, Brian  
10 Crawford, opened a folder, read off prepared, written notes and discussed specific timelines,  
11 policies and legal issues regarding the Housing Element. The formal and prepared nature of the  
12 presentation was made clear by Mr. Crawford's reading a prepared, written presentation on the  
13 topic of the Housing Element. At Minute 14:50, Mr. Crawford stated, "Thank you members of  
14 the Board for the opportunity to address your Board on the status of the Housing Element." At  
15 Minute 18:50, Mr. Crawford referenced a meeting with County Counsel wherein he received  
16 advice regarding issues brought up by Petitioner in recent letters (See Exhibit A). At Minute  
17 25:30, Mr. Crawford stated, "With that I'll complete my comments."

18  
19 12. Fourth, at Minutes 25:50-30:00, COUNTY Board of Supervisors engaged in a  
20 Question and Answer period regarding the 2015 - 2023 Housing Element with Mr. Crawford and  
21 COUNTY Principal Planner, Lee Lee Thomas. The Minutes for the August 19, 2014 meeting  
22 (Exhibit C) state, "Mr. Hymel introduced Community Development Agency Director Brian  
23 Crawford, who provided an update on the status of the Draft Housing Element. Mr. Crawford  
24 and Ms. Thomas responded to questions from Board members regarding various components of  
25 the Draft Housing Element."  
26  
27  
28

1           13. Fifth, at Minutes 1:07-1:12:30, COUNTY Supervisors engaged in discussion  
2 regarding Mr. Crawford's presentation of Housing Element and provided opinions about  
3 COUNTY compliance with Housing Element requirements, Housing Element policy  
4 preferences, and the adequacy of the Housing Element public participation process. This  
5 discussion did not briefly respond to statements made or questions posed by persons exercising  
6 their public testimony rights.  
7

8           14. On September 18, 2014, Petitioner, through its legal counsel, sent a letter to  
9 COUNTY, which included a Demand to Cease and Desist pursuant to Government Code §  
10 54960.2 ("Demand") to the Board. A true and correct copy of the Demand is attached hereto as  
11 Exhibit E and incorporated herein by reference.  
12

13           15. In the Demand letter, Petitioner requested that the COUNTY Board of  
14 Supervisors "cease and desist" violations of the Ralph M. Brown Act. Petitioner requested  
15 written notice, sent by direct mail, email, and an ad in the Marin Independent Journal of any  
16 attention to cease and desist or not cease and desist these actions.  
17

18           16. County Counsel, Stephen Woodside, was reported by the Marin Independent  
19 Journal in a newspaper article of September 24, 2014 "saying Yates' Brown Act complaint is all  
20 bark and no bite, asserted nothing illegal or otherwise inappropriate was done regarding the  
21 board's "off agenda" exchange." The article quoted Mr. Woodside: "I looked at the tape of the  
22 meeting," Woodside said. "Nothing illegal was done." A true and correct copy of the September  
23 24, 2014 article is attached hereto as Exhibit F and incorporated herein by reference.  
24

25           17. Petitioner has not received any response from COUNTY Board of Supervisors  
26 regarding Petitioner's Cease and Desist letter of September 18, 2014. A true and correct copy of  
27  
28

1 an email from Petitioner's counsel to Mr. Woodside is attached hereto as Exhibit G and  
2 incorporated herein by reference.

3  
4 18. On November 13, 2014, Petitioner's Counsel sent a Public Records Act request  
5 letter to COUNTY requesting a copy of the video file of the August 19, 2014 hearing. "A true  
6 and correct copy of the November 13, 2014 letter is attached as Exhibit H and incorporated  
7 herein by reference.

8  
9 19. Petitioner's Public Records Act (PRA) request was denied by COUNTY. A true  
10 and correct copy of an email thread regarding the PRA request is attached as Exhibit I and  
11 incorporated herein by reference.

12  
13 20. On December 15, 2014 Petitioner's attorney of record called County Counsel's  
14 office and asked if a letter had been sent from the Board of Supervisors to Petitioner responding  
15 to the Demand. Deputy County Counsel Steven Perl replied that a response was sent from Mr.  
16 Woodside, not the Board of Supervisors, and that Mr. Woodside's administrative assistant would  
17 verify that the letter was sent. Mr. Perl email an unsigned copy of a letter from Mr. Woodside to  
18 Petitioner's attorney that same day. Petitioner cannot confirm that this letter was sent as  
19 Petitioner's attorney never received it. A true and correct copy of an email thread regarding the  
20 Demand is attached as Exhibit J and incorporated herein by reference.

21  
22 21. The purpose of the Ralph M. Brown Act is to provide notice and opportunity for  
23 members of the public to participate in the decision-making process of local agencies. The  
24 failure to properly notice this matter, as well as the formal presentation and discussion of  
25 COUNTY's legal requirements and policy considerations, violates the Brown Act in that it  
26 deprives the notice and the opportunity to be heard regarding matters of great public importance.  
27

**CAUSE OF ACTION  
FOR VIOLATION OF THE CALIFORNIA RALPH M. BROWN ACT  
(RELIEF PURSUANT TO GOV. CODE §§ 54960, 54960.1, 54960.2;  
CCP SECTIONS 1060, 1085)**

22. Petitioner hereby realleges and incorporates herein by reference Paragraphs 1 through 21 of this Petition as though set forth herein in full.

23. 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).

24. The Board violated Government Code § 54952.2 by discussing COUNTY'S 2015 - 2023 Housing Element and State law requirements for Housing Element compliance, without properly listing it on any agenda or providing a brief description or providing any public notice.

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

"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. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff



1 to report back to the body at a subsequent meeting concerning any matter, or take action  
2 to direct staff to place a matter of business on a future agenda.”

3           26. The lengthy discussions by Board members regarding Housing Element policy  
4 preferences, legal compliance, public participation, and the formal presentation specifically  
5 requested by a Board member and the lengthy prepared response by COUNTY staff clearly do  
6 not qualify as making “a brief announcement,” “a brief report on his or her own activities,” or  
7 asking “a question for clarification” as allowed for under Government Code Section  
8 54954.2(a)(2).  
9

10  
11           27. Petitioner alleges that these violations of the Brown Act, as set forth above,  
12 ignore the State’s open meeting laws, and have deprived Petitioner and members of the public of  
13 proper notice and of their right to address the Board on Housing Element compliance and  
14 implementation by COUNTY.  
15

16           28. Without a writ of mandate and declaratory and injunctive relief provided for by  
17 the Brown Act, Petitioner is informed and believes, and on that basis alleges, that it and other  
18 interested persons, citizens, and taxpayers will be irreparably harmed because they will be denied  
19 notice of and the opportunity to participate in the Board’s meetings, a right guaranteed by law.  
20

21           29. Government Code Section 54960(a) provides that any interested person, such as  
22 the Petitioner, may commence an action by mandamus, injunction, or declaratory relief for  
23 the purpose of stopping or preventing violations or threatened violations of this chapter by  
24 members of the legislative body of a local agency or to determine the applicability of this  
25 chapter to actions or threatened future action of the legislative body, or to determine whether any  
26 rule or action by the legislative body to penalize or otherwise discourage the expression of one or  
27

1 more of its members is valid or invalid under the laws of this State or of the United States, or to  
2 compel the legislative body to audio record its closed sessions as hereinafter provided.

3 30. Because the Board has failed to acknowledge its violations of the Brown Act, the  
4 Board is likely to continue to violate the Brown Act in the future.  
5

6 31. Because legal counsel for the Board has stated that the Board's actions did not  
7 constitute violations of the Brown Act, it is likely the Board will continue to violate the Brown  
8 Act in the future.

9 32. Petitioner has complied with all notice and demand requirements set forth in  
10 Government Code Section 54960.1.  
11

12 33. The Board has also failed to make an unconditional commitment to refrain from  
13 similar behavior in the future, as required by Petitioner's Demand and Government Code Section  
14 54960.2.

15 34. Therefore, Government Code Section 54960.2 specifically authorizes Petitioner to  
16 file a lawsuit to determine the applicability of this chapter to any past action if the legislative  
17 body fails or refuses to make the unconditional commitment as described in Petitioner's Demand  
18 and Government Code Section 54960.2.  
19

20 35. The people of California have elevated the right to open government to one  
21 protected by their State Constitution. The California Constitution, Article 1, Section 7,  
22 Paragraphs (a) - (b), states:  
23

24 The people have the right to instruct their representatives, petition  
25 government for redress of grievances, and assemble freely to consult for the  
26 common good.  
27

1           The people have the right of access to information concerning the conduct  
2 of the people's business, and, therefore, the meetings of public bodies and the  
3 writings of public officials and agencies shall be open to public scrutiny.  
4

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

8           36. Code of Civil Procedure Section 1060 provides:

9           Any person interested ... who desires a declaration of his or her rights or duties  
10 with respect to another ... may, in cases of actual controversy relating to the legal  
11 rights and duties of the respective parties, bring an original action or cross-  
12 complaint in the superior court for a declaration of his or her rights and duties in  
13 the premises, including a determination of any question of construction or validity  
14 arising under the instrument or contract. He or she may ask for a declaration of  
15 rights or duties, either alone or with other relief; and the court may make a  
16 binding declaration of these rights or duties, whether or not further relief is or  
17 could be claimed at the time.  
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20           37. There presently exists, between the Petitioner and the Board, an actual  
21 controversy relating to: (1) the legal rights of Petitioner and other members of the public under  
22 the Brown Act and the California Public Records Act; and (2) the Ministerial duties imposed  
23 upon the Board by the Brown Act.  
24

25           38. Petitioner requests a judicial determination that Respondent has violated and is  
26 likely to continue to violate the Brown Act.  
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1           39.     This determination is necessary and proper because Respondent refuses to  
2 conform to the requirements of the Brown Act.

3           40.     Respondent has a ministerial duty to perform according to the laws of the State of  
4 California, including the Brown Act.

5           41.     Respondent has failed and refused to perform its ministerial duties as required by  
6 the Brown Act.

7           42.     Petitioner has a clear, present, and legal right to Respondent's performance of its  
8 ministerial duties, as required by the Brown Act.

9           43.     Respondent has a present legal duty and present ability to perform its ministerial  
10 duties set forth in the Brown Act.

11           44.     Petitioner has an interest in having the laws executed and public duties enforced  
12 and, therefore, has a beneficial interest in the outcome of the proceedings.

13           45.     Through this action, Petitioner seeks no greater relief than that which would be  
14 afforded to any other member of the public.

15           46.     Petitioner has exhausted all of its administrative remedies.

16           47.     Petitioner has sent a Brown Act Demand to Cease and Desist pursuant to 27  
17 Government Code Section 54960.2" ("Demand") to the Board.

18           48.     The Board, through its legal counsel, has failed to make an unconditional  
19 commitment to cease and desist.

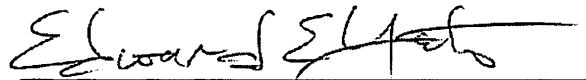
20           49.     The only plain, speedy, and adequate remedy left to Petitioner is the relief  
21 provided by Government Code Sections 54960 and 54960.1.

1 WHEREFORE, PETITIONER PRAYS AS FOLLOWS:

- 2 1. For a declaration that Respondent COUNTY OF MARIN violated the Ralph M.  
3 Brown Act by discussing the COUNTY compliance with the Housing Element  
4 without proper notice in violation of Government Code Sections 54952.2(a) (1) 13  
5 and 54954.2(a) (2);  
6  
7 2. To direct that a peremptory writ of mandate issue, ordering Respondent COUNTY  
8 OF MARIN to perform as required by the Brown Act, by only discussing and/or  
9 taking action on the matters within the Board's subject matter jurisdiction where the  
10 item appears on a posted agenda adequately describing subjects to be discussed;  
11  
12 3. That the Petitioner/Plaintiff recover attorneys' fees incurred in this action pursuant to  
13 Government Code Section 6259 and/or Code of Civil Procedure Section 1021.5;  
14  
15 4. For an award of costs incurred in this action; and  
16  
17 5. For such other and further relief as the Court deems just and proper.

18 Dated this 15<sup>th</sup> day of December, 2014

19  
20 LAW OFFICES OF EDWARD E. YATES

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22 Edward E. Yates  
23 Attorney for Petitioner

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VERIFIED PETITION FOR WRIT OF MANDATE

