EMERALD LAW GROUP

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July 12, 2024

Board of Supervisors
Lake County
255 North Forbes Street
Lakeport, CA 95453

Re: COUNTY OF LAKE
BOARD OF SUPERVISORS
PUBLIC HEARING
for the Consideration of a) Appeal (AB 23-03), of Planning Commission's Decision to Revoke a Major Use Permit (UP19-15) for Legendary Farms, at 2290 Soda Bay Road, Lakeport (APN 008-010-29), for High Severity Violations and Deem Justin Smith and Melissa Smith Responsible Persons; and b) Appeals (AB 23-02 Roberto Estrada; and AB 23-04 Michael Wegner), of the Planning Commission's Decision to Deem Various Persons as Responsible Persons for the High Severity Violations

Appellants Legendary Farms and Roberto Estrada were provided notice of the above referenced hearing, currently set for July 16, 2024, at 1:30 P.M. A copy of the notice is attached hereto at Exhibit A.

Appellants Legendary Farms and Roberto Estrada has been informed by Mireya G. Turner, MPA, Director, Community Development that:

a. The time granted for any presentations is decided by the Board Chair; Most likely limited to 8-10 minutes;

b. There are no subpoenas issued;

c. There is no direct questioning of Staff at an appeal hearing.

Appellants Legendary Farms and Roberto Estrada hereby submits the following OBJECTIONS:

1. Appellant Roberto Estrada hereby joins in the objections submitted to the Board on July 11, 2024, and further incorporates herein, adopts and submits the letter memorandum attached hereto at Exhibit B.

2. THE IMPOSITION OF ADMINISTRATIVE PENALTIES IS IN EXCESS OF JURISDICTION:

   a. Appellant United's immediate, same day abatement of the Tirado Cannabis Cultivation rendered resolved the potential violation and obviated administrative penalties pursuant to LCC §§ 13-48.3, 13-50.2 and 13-54.

   b. The cannabis was timely abated within the safe harbor period provided by these sections – same for high severity violations.

3. LACK OF JURISDICTION - The BOS does not have jurisdiction to hear this appeal for the following reasons:

   a. Lake County failed to conduct the prerequisite Initial Review as required by LCC § 13-56.2.2.

   b. The hearing wasn't noticed within the 1-year limitations provided under LCC ch 13.

4. DENIAL OF DUE PROCESS - Lake County failed to produce all requested discovery. Denial of discovery is violation of Appellants' due process right to a fair hearing.

5. LACK OF NOTICE - The County's inadequate notice for the newly set hearing date of July 16, 2024, is less than 10 days after Appellants' receipt of the "Notice of Public Hearing", which was never published or dated, and which does not state that it is set for a regularly scheduled meeting of the Board of Supervisors.

   a. Further this hearing was originally set for July 23, 2024, and it was only after counsel for Mr. Estrada requested a continuance of that date, based on unavailability, having been previously advised July 16, 2024 was not an available setting date for the BOS, that the director instead advanced the hearing date to July 16, 2024.

6. DENIAL OF DUE PROCESS - Under the information provided by Mireya G. Turner, Appellants are denied their due process right to present and confront witnesses, and to present evidence in violation of LCC § 13-56.2.8 (e).

Respectfully,

Kali S. Perkins, Esq.

COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
Courthouse - 255 N. Forbes Street
Lakeport, California 95453
Telephone: (707) 263-2221 FAX: (707) 263-2225

COUNTY OF LAKE
BOARD OF SUPERVISORS
NOTICE OF PUBLIC HEARING
for the Consideration of a) Appeal (AB 23-03), of Planning Commission's Decision to Revoke a Major Use Permit (UP19-15) for Legendary Farms, at 2290 Soda Bay Road, Lakeport (APN 008-010-29), for High Severity Violations and Deem Justin Smith and Melissa Smith Responsible Persons; and b) Appeals (AB 23-02 Roberto Estrada; and AB 23-04 Michael Wegner), of the Planning Commission's Decision to Deem Various Persons as Responsible Persons for the High Severity Violations

NOTICE IS HEREBY GIVEN that the Board of Supervisors, County of Lake, State of California, will be conducting a **PUBLIC HEARING** on **TUESDAY, July 16, 2024, at 1:30 P.M.** or soon thereafter in the Board of Supervisors Chambers in the Courthouse located at 255 N. Forbes Street, Lakeport, CA 95453.

NOTICE IS FURTHER GIVEN that the public or any affected parties may review the Staff Memorandum and other relevant documents at the office of the Clerk of the Board of Supervisors, 255 North Forbes Street, Room 109, Lakeport, CA 95453. Members of the public may submit written comments on the matter to the Board of Supervisors prior to the public hearing and/or may appear at the public hearing and speak on the matter.

NOTICE IS FURTHER GIVEN that the Board Chambers are handicapped accessible. If special accommodation is required because of a sensory or mobility impairment or disability, or if an interpreter is needed, please contact Stephen L. Carter, Jr. at 707-263-2580 to arrange for that accommodation.

NOTICE IS FURTHER GIVEN that if you challenge the action of the Board of Supervisors on any of the above stated items in court, it may be limited to only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the Lake County Board of Supervisors at, or prior to, the public hearing.

SUSAN PARKER
Clerk of the Board

By: Johanna DeLong
Assistant Clerk to the Board

Exhibit A

ROGOWAY

July 11, 2024

VIA EMAIL ONLY

To: Nicole Johnson, Deputy County Counsel
Lake County Counsel's Office
255 N. Forbes St. #320
Lakeport, CA 95453
Email: Nicole.johnson@lakecountyca.gov

CC: Mireya G. Turner MPA, Director
County of Lake, Community Development Department
255 N. Forbes St. #330
Lakeport, CA 95453
Email: Mireya.turner@lakecountyca.gov

RE: County of Lake's Unlawful Revocation of UP 19-15; Failure to Adhere to Mandatory Procedural Requirements For High Severity Violations, Violations of Constitutional and Statutory Notice Requirements, Violations of Appellants' Due Process Rights, County's *Ultra Vires* Actions, Appellants' Demand to Set Aside County's Void Acts or Mandamus will Lie

Deputy County Counsel Johnson:

I. Introduction

The County of Lake, California, through the Lake County Counsel's Office ("County Counsel"), the Community Development Department ("CDD"), the Director of CDD, Ms. Mireya Turner ("Ms. Turner"), and the Lake County Planning Commission ("Planning Commission"), as well as other persons, departments, and agencies associated therewith, (collectively, the "County"), continue to pursue a grossly mismanaged action for alleged "High Severity Violations" ("HSV"), brought by the County pursuant to Chapter 13 of the Lake County Code ("LCC") against the holder of Major Use Permit UP 19-15, Legendary Farms LLC ("Legendary"), the owner of the real property located at 2290 Soda Bay Road, Lakeport, California 95453 ("Subject Property"), United Investment Ventures LLC ("United"), Michael Wegner, an individual ("Wegner"), Justin Smith, an individual ("J. Smith"), Roberto Estrada, an individual (hereinafter "Estrada"), Karl Kohlruss, an individual ("Mr. Kohlruss"), and Melissa Smith, an individual ("M. Smith") (J. Smith, M. Smith, Legendary, and United, collectively hereinafter referred to as the "Appellants").

This matter, including the appeal of the decision to revoke UP 19-15, arises from a Notice of Violation (defined below) issued on September 14, 2022, to Appellants, amongst

Exhibit B

others. As articulated herein below in detail, Appellants emphatically object to the County's actions in this matter, for reasons including, but not limited to, the following:

1. The County's refusal to adhere to Lake County Code §§ 13-56.2 and 13-56.3, which control the hearing procedure for High Severity Violations.

2. The failure of Director of the Community Development Department to perform an "Initial Review", as required by Lake County Code § 13-56.2.2, which renders subsequent County actions void.

3. The Planning Commission's lack of authority to conduct a hearing pursuant to Lake County Code Chapter 21, over alleged High Severity Violations, making the Planning Commission hearing here, *ultra vires*. Accordingly, the resulting Planning Commission decision was void and must be set-aside, or Mandamus lies.

4. The County's disregard of centrally material exculpatory evidence and County's use of material misstatements concerning the County's attempts, and lack thereof, to contact Mr. Tirado, require invalidating the Planning Commission's revocation of UP 19-15 (See, e.g., *B. W. v. Bd. of Medical Quality Assurance* (1985) 169 Cal. App. 3d 219).

5. The County unlawfully advancing the Board of Supervisors ("BOS") hearing and by providing grossly deficient notice, the County repeatedly violated Appellants' rights, and the BOS should not proceed as set.

6. The deprivation of Appellants' rights by County through misplaced reliance on inapplicable Lake County Code § 21-60.10, et seq., because High Severity Violations subject to the more rigorous hearing procedure set forth in Lake County Code § 13-15.2.8, which procedure for the adjudication of High Severity Violations includes important rights such as the right to call witnesses for direct examination and to confront witnesses through cross-examine, and to present and confront evidence brought by the County against Appellants, and which also necessitate different scheduling considerations than the County has implemented here.

7. Although no monetary penalties are sought by County, the County's improper action seeking non-monetary administrative penalties, such as revocation of UP 19-15 and the permanent ineligibility for County-issued commercial cannabis permits due to the "High Severity Violations" for alleged violations which were voluntarily abated within 24 hours is in contravention of Lake County Code §§ 13-48.3, 13-50.2 and 13-54.

8. The form of the County's Notice of Public Hearing regarding the appeal to the Board of Supervisors is improper and it violates applicable procedural requirements.

9. Compulsory hearing procedure for High Severity Violations pursuant to Lake County Code § 13-15.2 will subject Ms. Mireya Turner to substantial scrutiny for her egregious conduct in this matter, including, but not limited to, Ms. Turner's making knowingly material misrepresentations to the Planning Commission, in violation of the rights of

Appellants, Ms. Turner's unilateral advancement of the hearing date in violation of law, her inconsistent and arbitrary granting or denying of continuances of BOS hearing. As requested by Counsel for Appellant Estrada, are lawless and designed to give Ms. Turner ability to evade under-oath examination, subject to penalty of perjury; all in gross violation for County, State, and Federal Law and constitutes unequivocal violations of rights of Appellants.

10. Various other statutory and legal violations committed by the County.

For the reasons discussed herein, the Planning Commission hearing was an arbitrary, capricious and wholly improper action. And continuing the process under LCC Chapter 21 represents further arbitrary and capricious acts by the County. Accordingly, the County should stipulate to set aside the *ultra vires* decision of the Planning Commission to revoke UP 19-15, and the County should agree to follow the mandates of LCC §§ 13-56.2 and 13-56.3 for any future proceedings in this matter.

If the County continues proceeding in an arbitrary and capricious manner, in contravention of controlling authorities, Appellants will be left with no choice but to seek relief in Court, including possibly via writ of mandate, and Appellants will seek an award attorney's fees pursuant to California Government Code § 800.

II. Statement of Facts

A. This Matter Arose from Conduct by a Third Party, Robert Luis Tirado, that Appellants Could Not Prevent or Control.

Factually, this matter arises from violations alleged by the County to have occurred on or about September 14, 2022, when representatives of the County went to the Subject Property for Appellant Legendary's annual inspection pursuant to the conditions of approval for UP 19-15.

The conduct at issue underlying the alleged HSV is, in essence, derived from an unpermitted hoop house, which contained unpermitted cannabis, which hoop house was located on a different portion of the Subject Property than Legendary's leased premise for its permitted and licensed commercial cannabis cultivation business.

On September 14, 2022, the County issued a "Notice of Violation and Notice of Nuisance and Order to Abate" (the "Notice of Violation") relating to this conduct.

Immediately following the issuance of the Notice of Violation, Appellants communicated with the County through this law firm. Ms. Turner and Deputy County Counsel Carlos Torrez, Esq. ("Deputy County Counsel Torrez") communicated the County's position to Appellant's counsel. At that time, Appellants first presented the County with the most singularly material item of evidence in this case, the notarized, sworn statement, in the form of a declaration, by Mr. Robert Luis Tirado (the "Tirado Sworn Statement" and "Mr. Tirado", respectively; the Tirado Sworn Statement is attached as **Exhibit "A"**).

Through the Tirado Sworn Statement, Mr. Tirado admitted sole responsibility for the cultivation at issue underlying the HSV (the "Tirado Cannabis Cultivation".)

Additionally, Mr. Tirado, in the Tirado Sworn Statement, declared that Appellants were not involved with, and did not have knowledge of, the Tirado Cannabis Cultivation. In his declaration, Mr. Tirado also included his phone number with the express instruction for County to contact him if the County had any questions.

The County did not formally respond to Appellants' production of the Tirado Sworn Statement, other than Deputy County Counsel Torrez claiming, without apparent basis, during a phone call with Appellants' counsel in 2022, that he, Deputy County Counsel Torrez, "doesn't buy it"; ostensibly referring to his belief as to a lack of veracity of the Tirado Sworn Statement.

Appellants' counsel then asked Deputy County Counsel Torrez to specify any information that he may have had concerning his stated belief as to the veracity of the Tirado Sworn Statement and Appellants' counsel also asked Deputy County Counsel Torrez to provide any evidence that he possessed which he believed contravened the Tirado Sworn Statement. Deputy County Counsel Torrez declined to do so.

The County, thereafter, initiated no action to revoke UP 19-15, and initiated no communication with Appellant, concerning this matter, for nearly one year[1].

B. <u>The County, Through Ms. Turner, Retaliated Against Appellants by Setting a Hearing Before the Planning Commission.</u>

After this significant passage of time, without any action or communication by the County, and with no apparent pursuit of the HSV, Appellants, through counsel sought to progress various permits that the County was requiring Legendary to obtain relevant to UP 19-15.

On August 18, 2023, Appellants sent correspondence to the County addressing and criticizing the County's failure to process these ancillary permits that the County was requiring of Legendary (the "August 18 Letter".)

Then, as a part of the County's response to Appellant's August 18 Letter, on that same day, within the same email responding to the August 18 Letter, Ms. Turner advised Appellants that the County was seeking revocation of UP 19-15 and that Ms. Turner was scheduling a hearing before the Planning Commission in order to do so. Ms. Turner further advised that if the Planning Commission finds that a HSV occurred, the parties deemed responsible for the HSV would be "permanently ineligible to obtain any cannabis operation permits in Lake County". Therefore, Ms. Turner advised that the CDD, which she directs, would not support any of the permits Appellant addressed in the August 18 Letter.

[1] Appellant reserves any and all defenses related to applicable statute of limitations although not discussed further herein.

The circumstances of Ms. Turner's August 18, 2023 same-day response on behalf of the County, to Appellant's August 18 Letter expressing concern regarding the County's failure to advance the ancillary permit applications, conveyed by Ms. Turner, who directs the department responsible for processing the ancillary permit applications, was startling. At the time that Appellants conveyed their August 18 2023 letter to the County, Appellants had concluded that the County was not moving forward with any violation proceedings due to the nearly one year which had elapsed since the Notice of Violation was issued to Appellants, and because the Tirado Sworn Declaration constituted an admission, under penalty of perjury, that Mr. Tirado claimed sole and complete responsibility for the hoophouse, and the unpermitted cannabis plants he was cultivating within the hoophouse underlying the alleged HSV.

This appears to be a demonstrable event of retaliation, by the County, through Ms. Turner, against Appellants and in violation of Appellants' right due to Appellants' August 18 Letter expressing criticism of the County's permit processing delays. Evidently, Ms. Turner took umbrage at Appellant's critique of the County's permit processing, which Ms. Turner apparently perceived as critique of the CDD, and implicitly, a critique of Ms. Turner as well.

C. <u>The Planning Commission, Without Legal Authority to Hold Hearings and to Make Determinations Concerning HSVs, Abused its Discretion by Doing So in this Matter.</u>

On September 28, 2023, Ms. Turner brought this matter before the Planning Commission and requested that the Planning Commission make the findings required to revoke UP 19-15 and deem Appellants, and others, as "Responsible Parties", thereby rendering Appellants permanently ineligible for cannabis operating permits in the County.[2]

The County, through Ms. Turner, acted through deception and misdirection throughout the process. Ms. Turner's presentation to the Planning Commission, which could be viewed as a "master class" of deception and gamesmanship, wherein she repeatedly *conflated Appellant United and Appellant Legendary*, so as to depict them as one in the same, without producing any of the kinds of evidence that a court of competent jurisdiction would require in order to sustain a finding of *alter ego*. By conflating Legendary, the permit holder, with United, the owner of the Subject Property, Ms. Turner sought, through confusion and misdirection, to have Legendary found to be responsible for conduct that legally, it had no ability to prevent or control as to the conduct of a different tenant, subject to a different lease, on a different portion of the Subject Property.

The Planning Commission adopted each of the findings requested by Ms. Turner and found that a HSV had occurred and that all parties alleged by Ms. Turner to be responsible for the HSV, including Appellants, were "Responsible Parties" pursuant to the terms of LCC Ch. 13. Alarmingly, Mr. Tirado, who is not a party to this action, and who had not received any notice of the public hearing before the Planning Commission, or notice the County was seeking to make him permanently ineligible for cannabis operations permit, was, *sua sponte,* deemed by the Planning Commission to be a "Responsible Party" for the HSV despite the fact that the Planning

[2] Despite participating in the Planning Commission hearing, Appellants do <u>not</u> concede that LCC Chapter 21 was the proper procedure.

Commission had not jurisdiction to take any action as to Mr. Tirado aside from the larger ultra vires issues as discussed herein.

D. Ms. Turner Made Knowingly False Statements Regarding her Claimed, Multiple Attempts to contact Mr. Tirado, Which Attempts Did Not Occur, in Violation of Appellants Rights.

In issuing its decision to find a HSV here and to revoke UP 19-15, the Planning Commission relied upon the presentation by Ms. Turner as to the facts and law at issue. During the course of her presentation, Ms. Turner repeated, emphatically, that she, and other personnel from CDD, as well as personnel from other County departments, called the number Mr. Tirado provided in his declaration but could not reach Mr. Tirado despite their multiple attempts to do so.

These statements by Ms. Turner were false, and Ms. Turner knew these statements were false when she made them, which is obvious because she referred to calls that she, herself, did not make but falsely claimed that she did make.

The Planning Commission unquestioningly relied upon these misrepresentations of Ms. Turner and, without any scrutiny whatsoever, expressly adopted the false content of these misrepresentations, as if they were true, in their discussion of the matter and in their findings. Ultimately, the Planning Commission entirely discounted the Tirado Sworn Statement because they took Ms. Turner at her word and believed the intentionally false narrative invented by Ms. Turner that she, and other County officials, tried many times to contact Mr. Tirado, but that Mr. Tirado was unresponsive. At the Planning Commission hearing, various Planning Commissioners stated, in essence, that if Mr. Tirado could not be reached by the County to confirm the contents of the Tirado Sworn Statement, then the sworn statement could not be believed and would not be considered by the Planning Commission (except that, as discussed herein, those same sworn statements were used as the sole basis to make findings adverse to Mr. Tirado).

In consideration of the evidence presented by Ms. Turner, including her false statements that she, and other personnel at different departments of the County, attempted to contact a Mr. Tirado, but were unsuccessful, the Planning Commission granted the relief sought by Ms. Turner as discussed herein.

Subsequent to the ultra vires Planning Commission hearing, the County admitted, in their response to Appellants' Public Records Act Request (hereinafter referred to as "PRAR") that the County had no records of any attempts, by anyone associated with the County, to contact Mr. Tirado prior to the Planning Commission hearing to revoke UP 19-15.

Specifically, in response to Appellants' PRAR, the County admitted that, after an exhaustive and diligent search, including on the personal devices of County employees, ***the***

County could find no record of any County employees ever having attempted to contact Mr. Tirado. (See copies of emails from the County, attached **Exhibit "B"**.)[3]

Ms. Turner knew, at the time that she told the Planning Commission that she had personally attempted to reach Mr. Tirado, that this statement was not true, because, obviously, Ms. Turner knew that she made no such attempts. Evidently, Ms. Turner cannot be taken at her word.

Instead of telling the Planning Commission the truth, that the County, for the over one year that had elapsed since first obtaining the Tirado Sworn Statement, to the date of the Planning Commission Hearing, did not attempt to contact Mr. Tirado, and let the process play out subject to the evidence presented, Ms. Turner proceeded with a "win at any costs approach" and knowingly made these material misstatements to the Planning Commission in the hopes that her deception would cause her to prevail in the action that she has initiated and prosecuted against Appellants.

While Ms. Turner's motive for lying to the Planning Commission is not the central issue subject to this proceeding, it is relevant to show that Ms. Turner appears to have commenced a crusade against Appellants, which is demonstrated by her willingness to lie to the adjudicative body that she selected, in contravention of clearly applicable law, as discussed herein, regarding the most significant exculpatory item of evidence in favor of Appellants.

It appears that Ms. Turner's first priority is to use her position as Director of the County's permitting department, CDD, to violate Appellants rights, and to oppress Appellants more generally. It also appears that Ms. Turner's second priority is in gaming the County's different hearing procedures to protect her own, individual interests, which, relevant to this issue, is to evade under oath testimony where Appellants will have the opportunity to confront her over her lies to the Planning Commission as discussed herein.

The County's interests, in pertinent part, are in ensuring that its process are fair and conducted pursuant to the relevant authorities, thereby protecting the rights the People of the County of Lake and all those who come before the County, including Appellants. Ms. Turner continues to evidence that her interests, are not those of the County and that by pursuing this action in furtherance of her own individual interests, as discussed herein, and not pursing those of the County, Ms. Turner is conflicted and her continued role in these proceedings, in not her continued role as Director of CDD, is injurious to the People of the County of Lake, injurious to County itself, injurious to Appellants and anyone who may ask questions or express perceived criticism of Ms. Turner, and injurious to Ms. Turner, herself.

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[3] These include a representation by the County, that "[i]n response to your request for all records concerning communication and correspondence for Mr. Tirado, sent, or received by the county, covering the period from August 1,2022 through September 29, 2023, we regret to inform you that our extensive efforts yielded zero results. We diligently pursued multiple avenues to fulfill your request, including reaching out to Verizon Wireless for any relevant records, conducting a thorough examination of our IT department's communication logs, and meticulously reviewing a code enforcement cell phone for any communications linked to the cell phone number 440-308-0085. After exhausting all these investigative efforts, we can confirm that there are no records or communications in our possession pertaining to Mr. Tirado for the specified timeframe."

E. Following Appellant's timely Appeal of the *Ultra Vires* Planning Commission Decision, and the timely filing of Appellant's Appeal of the Planning Commission's Decision, Parties Entered into Settlement Discussions Where More County Gamesmanship Ensued.

On October 3, 2023, Appellants filed a timely appeal of the Planning Commission's decision. Subsequently, the County, through Ms. Turner, Deputy County Counsel Torrez, and Deputy County Counsel Nicole Johnson, Esq., engaged in settlement discussions with Counsel for Appellants. During these discussions, Deputy County Counsel Torrez, in a nearly shouting, raised voice, emphatically argued that the County had, in fact, called the number provided by Mr. Tirado multiple times and was unsuccessful in reaching him. When Counsel for Appellant requested additional information supporting this claim, Deputy County Counsel Torrez refused to do so, and instead continued to belligerently repeat his unsupported, factually inaccurate, and entirely ignorant claim which had already been discredited by the County. Deputy County Counsel Torrez, as of the drafting of this correspondence, has never provided a single smidgen of evidence to support his nonsensical claims, which claims, his employer, and County, have admitted are not true in its Response to Appellants' PRAR.

At the conclusion of the settlement discussion, Ms. Turner stated that she would further consider and was likely to support, a possible proposed resolution which would not include a High Severity Violation. Ms. Turner later responded to Appellant's counsel and advised that there would be no settlement and that the BOS hearing would be moved to July 23, 2024.

F. Improper and Late Notice from the County About the BOS Hearing.

On July 8th, 2024, Appellants first received an undated "Notice of Public Hearing" from the County, delivered to Appellants' counsel, by U.S. Mail, purportedly notifying Appellants that a hearing before the County's BOS, appealing the *ultra vires* and legally void decision by the Planning Commission, had been advanced and would occur on Tuesday July 16, 2024, at 1:30 p.m. In contravention of State and County law, this "Notice of Public Hearing" was received less than 10 days before the hearing date, it did not state that the hearing would occur at a regularly scheduled meeting of the Board of Supervisors, and it did not state that a public notice would be published in a newspaper of general circulation.

G. The County Incorrectly Asserts that the Procedure in LCC Chapter 21, Rather Than LCC Chapter 13, Governs Appeals of High Severity Violations, Possibly to Let Ms. Turner Avoid Testifying.

Although the County has expressly relied upon LCC Ch. 13, enacted through Ordinance 3112 (hereinafter "Ord. 3112", which is the ordinance creating HSV), in order to allege the HSV in this action, the County has ignored the provisions of the same ordinance, Ord. 3112, and the corresponding provisions of the LCC, which set forth the exclusive and compulsory administrative appeals hearing procedure for HSVs.

Instead, the County, through both Ms. Turner and Deputy County Counsel Nicole Johnson, Esq. ("Deputy County Counsel Johnson"), have boldly claimed that a different and

inapplicable hearing procedure contained within Chapter 21 of the LCC, applies here without any reference whatsoever to LCC 13-56.3.4, which, as discussed further below defines the exclusive and controlling hearing procedure for the County's administrative appeals of High Severity Violations.

H. Ms. Turner's Uneven, yet, Unbridled Pursuit of Appellants and the Personal Conflicts Her Pursuit have Created, Continue to Drive this Unlawful Process Causing Damages to Appellants and Causing County Incur Liability.

Amongst other things, Ms. Turner has a personal interest in these proceedings, which conflicts with the County's interests in these proceedings. Ms. Turner has a substantial interest in not being compelled to testify under oath because of the proven and malicious lies that she made to the Planning Commission. In pursuit of her personal goal to avoid this under oath testimony, Ms. Turner has intentionally mis-advised, in her official capacity and under color of law, that the LCC Ch. 21 hearing process rather than the process delineated in the Ord. 3112, concerning HSVs applies, and she has noticed the hearing before the BOS accordingly.

In so doing, and amongst other things, Ms. Turner, has put her personal interests in avoiding consequences for her knowingly false and material misstatements made in this matter, above her obligations to faithfully carry out the duties of her official capacity as Director of CDD, including, but not limited to, official guidance that she provides to other County officials and to Appellants, her official acts of scheduling hearings, and her official acts of conducting hearings and otherwise taking action against use permits and use permit holders, or in declining to do so.

Through Ms. Turner making knowingly false mis-statements, selecting incorrect provisions from different Chapters of the LCC to attempt to avoid being formally confronted with her knowing, false, and material misstatement, and other things that she has done in this matter, Ms. Turner, in addition to rendering the County's acts void, as discussed herein, has destroyed Appellant Legendary's business, greatly diminished the value of the Subject Property owned by Appellant United, and made J. Smith and M. Smith permanently ineligible for cannabis permitting in the County.

Ms. Turner's outrageous misconduct while in County office and the resulting injuries to Appellants and to the rule of law, potentially render Ms. Turner personally liable for her acts under the color of law, which have thus far, far exceeded any cognizable limited legal authority she may have in her official capacity.

III. Discussion

A. The County Violates its Own County Code in Utilizing Hearing Procedures found within LCC Chapter 21; LCC §§ 13-56.2 and 13-56.3 Control the Hearing Procedure for High Severity Violations.

"In revoking a permit lawfully granted, due process requires that [the County] act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a

finding of revocation." (*City of San Marino v. Roman Catholic Archbishop of Los Angeles* (1960) 180 Cal. App. 2d 657, 669)

LCC §§ 13-56.2 and 13-56.3, enacted through Ord. 3112 by the BOS, expressly govern the process for administrative appeals of alleged HSVs, delineating the review process which goes from an Initial Review of the alleged HSV by Mr. Turner then directly to the BOS for the appeal hearing. These LCC sections are attached here as **Exhibit "C"**.

In a June 20, 2024 email from Deputy County Counsel Johnson to Kali Perkins, Esq., counsel for Estrada, Deputy County Counsel Johnson incorrectly cited LCC § 21-58 as controlling the hearing process for HSVs. (A copy of these emails are attached here as **Exhibit "D"**.) However, LCC § 21-58 does not apply to administrative appeals for HSVs.

HSV are expressly controlled by LCC § 13-56.2.1 which directs the administrative appeals process for HSVs to be conducted pursuant to LCC § 13-56.3.

LCC § 13-56.3, entitled "*Administrative appeal-Expedited Hearing Process for High Severity Violations*" delineates the filing requirements (56.3.1), consequences for failing to submit a sufficient Request for Administrative Hearing (56.3.2), and Hearing Date and Notice of Hearing (56.3.3).

Additionally, LCC § 13-56.3.4 states: **"*With the exception noted herein in subsections 56.3.2 and 56.3.3, the hearing procedure shall adhere to the requirements of Section 13-56.2 herein*."** (Emphasis added.)

Therefore, as is clearly set forth in LCC § 13-56.3.4, the administrative appeal hearing process controlling the HSV alleged by the County here *shall* adhere to the hearing procedure of LCC § 13-56.2. This is unambiguous and mandatory.

Notably, LCC § 13-56.2.8, entitled "*Procedures at the Administrative Hearing,"* states, in pertinent part:

> "***Each party shall have the opportunity to testify, cross-examine witnesses and present witnesses and evidence in support of his or her case. Written and oral evidence submitted at the hearing shall be submitted under penalty of perjury. Documentary and other tangible evidence must be authenticated to the satisfaction of the Board of Supervisors.*** (see LCC § 13-56.2.8(e)) (emphasis added).)

Therefore, the process that Deputy County Counsel Johnson described for the upcoming BOS hearing, in the June 20, 2024 email to Ms. Perkins, which mirrors prior incorrect claims by Ms. Turner, is also incorrect, and inapplicable to this matter.

Appellants intend to present a fulsome response to the BOS, where Ms. Turner, Deputy County Counsel Torrez, Mr. Tirado, and others will be called as witnesses. The witnesses will be testifying under penalty of perjury, and evidence will be presented. The County, through the actions of Ms. Turner, Deputy County Counsel Torrez and Deputy County Counsel Johnson, is

attempting to suppress Appellant's ability to avail themselves of the rights the BOS afforded to Appellants when the BOS enacted Ord. 3112.

B. The Director of the CDD Failed to Perform the "Initial Review", as Required by Lake County Code § 13-56.2.2, Rendering Subsequent County Actions Void.

As discussed herein, Chapter 13 of the LCC mandates the administrative hearing procedure for HSVs. Sec. 13-56.2.2 states as follows:

> "*Initial Review. The Responsible Person may contest an Administrative Citation no later than ten (10) calendar days after the Administrative Violation is served. The appeal request must be in writing, specifying the basis for the appeal in detail, and filed with the administrative processing agency as indicated in the Administrative Citation.*
>
> *The Initial Review* ***will be completed*** *by the head official of the Issuing Department or their designee.*" (Emphasis added.)

The Initial Review required to have been conducted at the outset of this matter, pursuant to Sec. 13-56.2.2, did not occur, rendering the subsequent actions by the County, with respect to the revocation of UP 19-15, void. When the state or local government imposes particular statutory requirements, it does not intend for them to be disregarded. (*Cox v. California Highway Patrol* (1997) 51 Cal.App.4th 1580, 1587.)

This demonstrates the County's failure to follow its own enacted process to adjudicate administrative appeals of HSVs, as contained within LCC Chapter 13. As noted herein, LCC Chapter 13 contains the express and exclusive hearing process administrative appeals of HSVs. The County has not followed the mandatory process in this matter because, as discussed above, and amongst other things, the County, through Ms. Turner, did not perform the requisite Initial Review as required by the LCC.

Instead of conducting the requisite Initial Review, Ms. Turner diverted this appeal out of the legal process, which she officiates as Director of CDD, and placed this matter with the Planning Commission, which lacks legal authority to hear and decide matters involving HSV appeals, in order to obtain a determination that Appellants had committed a HSV. This is despite the legal certainty that the Planning Commission has no legal authority to preside over HSV appeals, nor does the Planning Commission have any legal authority to render any decisions as to alleged HSVs. This fatal flaw at the outset, the disregard of the mandatory Initial Review, makes all subsequent County acts void.

C. Planning Commission is Without Authority to Conduct a Hearing Over an Alleged High Severity Violation, Making the Planning Commission Hearing Here *Ultra Vires*; The Resulting Decision will be Void and must be Set-Aside, Mandamus Lies.

As stated above, LCC § 13-56.2 delineates the exclusive and mandatory hearing process for the administrative appeal of HSVs, and Section 13-56.2 does not allow for a hearing before the Lake County Planning Commission, nor does it allow for the Planning Commission to make

any determinations with respect to HSVs. Instead, the applicable LCC section states that "[a] Responsible Person(s) may request an Administrative Hearing *before the Board of Supervisors*." (LCC § 13-56.3, emphasis added). Because of this, the Planning Commission's hearing, and the resulting decision in this matter, were both *beyond the legal authority of the Planning Commission*, and thus, *ultra vires.*

As a result of the Planning Commission *ultra vires* acts, the Planning Commission's decision in this matter is void. And an administrative mandate will lie to nullify void acts. (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal. 4th 1017, 1042). It is well settled that administrative agencies have only the powers conferred on them, either expressly or by implication, by Constitution or statute. (*Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 103). "When an administrative agency acts in excess of the powers conferred upon it, its action is void." (*B. W. v. Board of Medical Quality Assurance* (1985) 169 Cal. App. 3d 219, 234).

When "statutory procedures [are] designed to protect individuals who are the subjects of adverse governmental action . . . a failure [by the government] to comply with applicable procedures invalidates any sanctions taken against [the individuals]." (*People v. McGee* (1977) 19 Cal. 3d 948, 955.) Here, the LCC protects valuable permit rights by establishing an individual right to contest administrative citations through administrative hearings before the BOS. (LCC § 13-56.2.) Through this procedure, individuals, namely the "Responsible Persons", possess among other things, "the opportunity to testify, cross-examine witnesses, and present witnesses and evidence in support of his or her case." (LCC § 56.2.8).

Thus, it is in the interests of all parties for the County, including to protect valuable individual rights and to preserve County resources, to stipulate to set aside the Planning Commission's determinations of any issues it decided during the *ultra vires* hearing in this matter, rather than to force, potentially multiple parties to this action, to commence administrative mandate proceedings to nullify the County's void acts.

D. <u>The County's Disregard of Exculpatory Evidence and Lies About Factual Matters Require Invalidating the Planning Commission's Revocation of UP 19-15.</u>

The County's disregard of the exculpatory Tirado Sworn Declaration, overreach in naming Mr. Tirado a "Responsible Party" for the HSV, and false testimony by Ms. Turner at the Planning Commission hearing, require invalidating the Planning Commission's revocation of UP 19-15. (See, e.g., *B. W. v. Bd. of Medical Quality Assurance* (1985) 169 Cal. App. 3d 219, 234 ["[T]he Board exceeded its power by such use [of improper evidence], making its decision void."]; *Aylward v. State Bd. of Chiropractic Examiners* (1948) 31 Cal. 2d 833, 839 ["Where a board's order is not based upon a determination of fact, but upon an erroneous conclusion of law, and is without the board's authority, the order is clearly void and hence subject to collateral attack, and there is no good reason for holding the order binding."])

Here, in deeming Mr. Tirado a "Responsible Party" for the HSV, the Planning Commission clearly acted outside of its legal authority. Because Mr. Tirado is not a party to the action, he was not provided with any notice that the County would subject him to any action. The

Planning Commission had no jurisdiction over Mr. Tirado for these and other reasons, not the least of which is the Due Process Clause enshrined in the U.S. Constitution.

Appellants also contend the Planning Commission relied on improper evidence and abused its discretion by using certain provisions of the Tirado Sworn Statement as the basis for adverse findings against Mr. Tirado (who, as discussed above, is not a party to this action and therefore not subject to the jurisdiction of the Planning Commission), while disregarding the fact that those same exact statements within the Tirado Sworn Statement exculpate Appellants.

Put another way, the County cannot have it both ways, where the Planning Commission would make findings and take punitive actions based on the contents of the same sworn statement that the County entirely discounted for exculpatory purposes. If the County gave the Tirado Sworn Statement the same weight for exculpatory purposes as it did for inculpatory purposes, it would relieve Appellants of responsibility for the violations underlying this matter. This issue, therefore, demonstrates an abuse of discretion by the Planning Commission, which acted arbitrarily and without legal authority.

Additionally, Ms. Turner's lies to the Planning Commission about attempts to contact Mr. Tirado, which Ms. Turner knew to be false when she made those statements, void the Planning Commission decision. As noted above, in response to Appellants' PRARs, the County went to great lengths, including "reaching out to Verizon Wireless for any relevant records, conducting a thorough examination of our IT department's communication logs, and meticulously reviewing a code enforcement cell phone for any communications linked to the cell phone number 440-308-0085" to investigate and validate Ms. Turner's claimed attempts to reach Mr. Tirado. (*See* Exhibit "B"). However, by the County's own admission, **it possessed no record of any County employees ever having attempted to contact Mr. Tirado**.

The County's lack of "unsubstantiated determinations", through relying on Ms. Turner's lies about attempting to contact Mr. Tirado, and the selective use of the Tirado Sworn Testimony, as opposed to the to find that the evidence exculpates the Appellants, represent arbitrary and capricious act. (See e.g., *Atkinson v. Dep't of Motor Vehicles* (2024) No. F081372, 2024 WL 3084511 ["unsubstantiated determinations (such as findings based on speculation or conjecture instead of sufficient evidence) can qualify as arbitrary conduct."])

E. <u>County's Unlawful Advancement of the Hearing, and the Grossly Insufficient of Notice Provided by the County, Violated Appellants' Rights; The Hearing Cannot Proceed as Scheduled.</u>

Holding the appeal hearing before the BOS on July 16, 2024 will violate procedural due process rights. As the California Supreme Court has observed, "[b]oth the federal and state Constitutions compel the government to afford persons due process before depriving them of any property interest." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212.) And "[t]he requirements of due process extend to administrative adjudications." (*Id.* at p. 214.)

Further, as the California Supreme Court has stated: "The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 348, 96 S.Ct. 893, 47 L.Ed.2d 18; see *Cleveland Board of Education v. Loudermill* (1985) 470 U.S. 532, 546, 105 S.Ct. 1487, 84 L.Ed.2d 494.)" (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education*, *supra*, 57 Cal.4th at p. 212.) And "[t]he opportunity to be heard must be afforded 'at a meaningful time and in a meaningful manner." (*Armstrong v. Manzo* [(1965)] 380 U.S. 545, 553, 85 S.Ct. 1187; accord, *People v. Allen* (2008) 44 Cal.4th 843, 869, 80 Cal.Rptr.3d 183, 187 P.3d 1018.)" (*Ibid.*)

To meet this requirement, "notice, however given, 'must be that notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (*Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314[, 70 S.Ct. 652, 94 L.Ed. 865] . . . .)' (*Hankla v. Governing Bd.* [(1974)] 46 Cal.App.3d [644,] 654, 120 Cal.Rptr. 827.)" (*California School Employees Assn. v. Livingston Union School Dist.* (2007) 149 Cal.App.4th 391, 399 [noting that "while respondent has daily access to employees during most of the year, there will be extended periods during each year when respondent knows it will not be able to deliver notices in person through normal work channels"].) So, "[i]f the notice permits or requires action by the person notified, the notice must be given in time to reasonably permit action." (*Id.* at p. 397.)

Here, in pertinent part, the County first advised that the appeal hearing would take place on July 16, 2024.

Then, lawlessly and pursuant to her own fiat, Ms. Turner unilaterally and abruptly reschedule the BOS hearing to July 23, 2024.

Then, weeks later, and again lawlessly and pursuant to her own fiat, Ms. Turner again changed the hearing date and advised counsels that the County was unilaterally advancing the hearing back to July 16, 2024. The is against the objection of Estrada, through counsel, as well as against the objection of Appellants who have lodged there objection here.

The County's process for scheduling the BOS hearing is legally incoherent when viewed through the lens of applicable statutes and due process considerations The setting and resetting, and then advancing of the BOS hearing appears to be meant to deprive the Appellants of their substantial rights, which are afforded by the County Code, California State statutes, and the Constitutions of the State of California and of the United States.

These proceedings are not a game. The County, through Ms. Turner in particular, is attempting to take away Appellant's livelihood and to deprive their real property of substantial value, all of which aggregates into many millions of dollars of damages suffered by Appellants. By having this matter sent through illegal tribunals, acting without legal authority, and making up false narratives aimed at hurting respected members of the community, is not how the County should comport itself, but, through Ms. Turner, this is precisely what has occurred here.

The County has already caused substantial violations of the rights of Appellants. The County is now on notice that it has proceeded in error and that the County has a legal obligation to act pursuant to established legal authorities, including those legal authorities that the County, itself, creates.

Here, the County has failed in its legal obligations to Appellants in every way as articulated herein. The County, regardless of whether it wants to win at the BOS hearing, has a legal obligation to ensure the process follows the dictates of relevant laws, that the process is fair, that its employees acting under color of law do not veer outside of that authority, and that the rights of those who come before the County, in its quasi-judicial capacities, are protected.

F. Appellants' Rights are Violated by County's Reliance on LCC Chapter 21 Because High Severity Violations are Subject to More Rigorous Hearing Procedure, with the Right to Call Witnesses and Confront Evidence, Sworn Testimony; Necessitating Different Scheduling Considerations than the County has Implemented Here.

A stubborn insistence on following an unauthorized" hearing procedures will constitute an arbitrary and capricious action by the County. (*Midstate Theatres, Inc. v. Bd. of Supervisors* (1975) 46 Cal. App. 3d 204, 211). The County's hurried advancement of the BOS hearing to July 16, 2024, presumes incorrectly, that the hearing process enacted with the creation of HSVs, to appeal HSV violations (LCC §§ 13-56.2 and 13-56.2), does not apply. This action, and statements by Ms. Turner and Deputy County Counsel Johnson in their emails to Ms. Perkins (see Exhibit "D") imply the County intends to follow the incorrect LCC Chapter 21 hearing procedure. However, the applicable LCC provision states that "[e]ach party shall have the opportunity to testify, cross-examine witnesses, and present witnesses and evidence in support of his or her case. Written and oral evidence submitted at the hearing shall be submitted under penalty of perjury. Documentary and other tangible evidence must be authenticated to the satisfaction of the Board of Supervisors." (LCC § 13-56.2.8(e)). These represent important evidentiary rights for participants in HSV appeal hearings.

Based on the rushed rescheduling of the BOS hearing and the representations to Ms. Perkins that the parties would only have "8-10 minutes" for presentations to the BOS, the BOS hearing calendar for July 16, 2024 likely has not set aside sufficient time for this matter. And, the scheduling gives Appellants, the other parties, and their counsel, much less time to prepare for the hearing. Furthermore, Appellants intend to exercise all their evidentiary rights under the LCC, including calling witnesses and presenting evidence, but the rushed timeframe and short presentation period preclude this. Appellants will suffer deprivations of substantial rights such as the right to conduct a fair hearing pursuant to the LCC if the July 16, 2024 hearing date is not vacated or continued. (See e.g., *Doe v. Univ. of S. California* (2016) 246 Cal. App. 4th 221, 253; Denial of a fair hearing and the opportunity to present evidence can justify granting mandamus.)

G. The County Cannot Impose Administrative Penalties for Abated Violations.

The County improperly imposed penalties based on the assertion that Appellants committed HSVs, when the conduct at issue was abated within the timeframe imposed by the LCC. Multiple sections of the LCC articulate an express right to abate conduct constituting a HSV, prior to and preclusive of the establishment of administrative penalties for the HSV. These include, without limitation:

LCC § 13-48.3, which states that, with respect to a HSV, "an administrative penalty may be imposed within the amounts set forth below *if the violation is not addressed and/or abated or successfully appealed by the date specified in the Notice of Violation*" (emphasis added);

LCC § 13-50.2, which states that "Notice of Violation for violations deemed high severity shall allow for no more than fifteen (15) days and *no less than ten (10) days to correct the violation(s)*" (emphasis added); and

LCC § 13-54, which states that "[i]f the Enforcement Official determines that public or private property, or portions thereof, is being maintained or permitted to exist in a manner for which administrative penalties may be imposed pursuant to this article which pertains to building, plumbing, electrical, structural or zoning issues, *the responsible party(ies) shall be provided with a reasonable period of time to correct the violation prior to imposition of the administrative penalties*" (emphasis added).

Here, as stated above and in Ms. Turner's own staff report prior to the improper Planning Commission hearing, it is unequivocal that United's "[a]batement efforts concluded" by expediently disposing of the cannabis waste and securing a demolition permit to remove the existing structures on United's property immediately following issuance of the Notice of Violation. Within 24 hours of the Notice of Violation being issued, United corrected the alleged violations by ensuring that all purported unpermitted cannabis plants were eradicated and removed for destruction, and the County possesses receipts of this abatement. By United's immediate correction of the violation, the LCC precludes imposition of administrative penalties for the alleged HSV. However, the County did just that, thus making the administrative penalties at issue here *ultra vires*.

H. The County's "Notice of Public Hearing" Regarding the Appeal to the Board of Supervisors is in Improper Form and Violates Requisite Procedure.

State and local laws impost strict procedural requirements for notices of public hearings. Among these requirements, LCC § 13-56.2.4 states "[t]he hearing shall be set for a date that is not less than ten (10) days from the date of mailing of the notice of hearing." LCC § 13-56.3.3 states "[t]he expedited hearing shall be set for the next available regularly scheduled meeting of the Board of Supervisors." And, California Government Code Section 65090(a) requires that notice of a public hearing "shall be published…in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing, or if there is no such newspaper of general circulation, the notice shall be

posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency."

Here, the County's purported "Notice of Public Hearing" embodied numerous procedural violations, rendering the notice itself inadequate. Appellants first received the undated "Notice of Public Hearing" from the County, on July 8th, 2024, U.S. Mail, purportedly notifying Appellants that the BOS hearing would occur on Tuesday July 16, 2024, at 1:30 p.m.

First, this constitutes inadequate notice for the newly set hearing date because it was received less than 10 days before the hearing date, in contravention of LCC § 13-56.2.4.

Second, this "Notice of Public Hearing" did not state that the hearing would occur at a regularly scheduled meeting of the Board of Supervisors, in contravention of LCC § 13-56.3.3.

Third, "Notice of Public Hearing" was apparently also never published in a newspaper of general circulation within the County of Lake, or otherwise publicly disseminated, in contravention of California Government Code Section 65090(a).

These represent even more examples of the County's apparent disdain for important procedural requirements. These procedural requirements, however, exist to protect important due rights. The County's cavalier disregard of these procedural protections will invalidate any findings by the BOS if a hearing occurs on July 16, 2024.

I. <u>County's Conduct Towards Appellants, Demonstrated Through Selective Use of Chapter 13 for HSV's Generally, and Chapter 21 for Administrative Appeal Procedure Benefiting Ms. Turner, is Arbitrary and Violates Rights of Appellants.</u>

Following a change in Ms. Turner's settlement posture on behalf of the County, Ms. Turner arbitrarily reset the BOS administrative appeal hearing in this matter multiple times, ultimately advancing the hearing, in response to, and as an apparent punishment for, counsel for Estrada requesting a continuance, counsel asking questions about the hearing process, and counsel expressing concern over Ms. Turner's setting and resetting this matter without regards to the scheduling needs of non-County parties and their counsel.

Ms. Turner further cited to the wrong LCC provisions and stated that the BOS hearing process does not allow for the calling of witness, examination under penalty of perjury, or any meaningful ability to confront and present evidence, which contravenes the processes expressly enacted by the County for administrative appeals of HSVs, as per the County's controlling ordinance (LCC §§ 13-56.2 and 13-56.3). This is all the more problematic because, as stated above, Ms. Turner has a personal interest in not testifying under penalty of perjury, following notice to her that she would be called as a witness for Appellants' case. This is because, as noted above, Ms. Turner made a false statement to the Planning Commission regarding her claimed attempts, which did not actually occur according to the County's PRAR response, to contact Mr. Tirado, who took responsibility for the cultivation at issue and is Appellant's primary exculpatory witness. Appellants object to all of the above as violative of the Appellants' due

process rights as guaranteed under the United States and California constitutions, as well as violative of Appellants California state statutory rights as discussed herein.

J. The County Committed Other Statutory and Legal Violations.

The County has failed in additional, material ways, to follow its own mandatory procedure for HSVs and other legal requirements.

It has been nearly two years since the claimed incident underlying the HSV purportedly occurred and the Notice of Violation was first issued and contested by Appellants. Pursuant to LCC § 13-56.2.2(a): "If, following the initial review, the citation is upheld, the responsible Person shall be notified by mail and informed of their obligation to pay the Administrative Fine within fifteen (15) days of the mailing or of their right to request an Administrative Hearing." However, this process was not followed, and at this late date, long after the time period prescribed in the LCC, it is not clear that the County has any legal authority to restart the compulsory process.

Further, if an initial review were to occur, pursuant to LCC § 13-56.2.3, the administrative hearing would be an appeal from the initial review by, in this case, the CDD Director, directly to the Board of Supervisors, which has exclusive jurisdiction to hear such an appeal pursuant to the authorities cited herein. But this procedure has not been followed here.

Thus, as stated above, the County has so far, and it appears to continue to, mandate a process which is contradicted by the County's own code.

Additionally, the County disregarded its own definition of a "High Severity Violation", by assessing one against conduct that was fully abated, as discussed above. LCC § 13-47.1(k) defines a "High Severity Violation" as a "violation of considerable environmental impact at the time it first occurs and which impact will be greatly acerbated by its continuing to occur." But, by virtue of the immediate abatement discussed above, a HSV could not have occurred because no "considerable environmental impact" would continue to occur.

And, the County acted improperly by conflating Legendary and United, and holding Legendary liable for actions outside its control. First, without conflating these entities, there does not appear to be a clear theory of liability against Legendary, because Legendary had a lease for its own distinct premise, but was not otherwise able to enter into Mr. Tirado's greenhouse, which greenhouse was subject to its own lease. Second, Legendary has no legal responsibility over Mr. Tirado or the separate premises under the control of Mr. Tirado. By conflating Legendary, the permit holder, with United, the owner of the Subject Property, Legendary was held responsible for conduct that legally, it had no ability to prevent or control. Such a finding "is not supported by a fair or substantial reason", representing yet another arbitrary and capricious legal impropriety, among the many others discussed above. (*Madonna v. Cnty. of San Luis Obispo* (1974) 39 Cal. App. 3d 57, 62).

IV. Conclusion

The County must stipulate to set aside as void, the *ultra vires* decision of the Planning Commission.

If the County refuses to so stipulate, then Appellants will be left with no reasonable alternative but to seek relief from the Courts, inclusive of injunctive relief and a stay of the proceedings, until this issue is fully adjudicated, or alternatively a writ of mandamus overturning a decision by the BOS based on improper facts and/or law. Any petition for judicial relief will include a request for an award attorney's fees pursuant to California Government Code §800.

Please provide the County's response to Appellants' demand, and anything else that the County may wish to discuss, no later than July 12, 2024, at 5:00 p.m.

This letter is not intended to be a complete statement of the facts or law relevant to this matter. Additionally, nothing contained herein shall constitute an admission of any kind whatsoever, nor shall it constitute a waiver of any rights or remedies at law, in equity, or otherwise, all of which are hereby expressly reserved.

Sincerely,
Rogoway Law Group, P.C.

Joe Rogoway

Joe Rogoway, Esq.
Attorneys for Appellants:
Legendary Farms LLC, United Investment Ventures LLC,
Mrs. Melissa Smith, and Mr. Justin Smith

EXHIBIT A

DECLARATION OF ROBERT LUIS TIRADO

I, Robert Luis Tirado, declare:

1. My name is Robert Luis Tirado, and my birthdate is November 3, 1993.
2. My phone number is 440-308-0085.
3. Since March 2022, I have leased a portion of the property located at 2290 Soda Bay Road, Lakeport, CA 95453 from United Investment Ventures LLC, the property owner.
4. I am not now, nor have I ever been a member, manager, associate, agent, or had any other role in Legendary Farms LLC or United Investment Ventures LLC.
5. I am solely responsible for the ten (10) unpermitted hoop houses that I am informed and believe Lake County Code Enforcement identified at 2290 Soda Bay Road, Lakeport, CA 95453 on or about September 14, 2022.
6. I am solely responsible for the unpermitted cannabis cultivation that I am informed and believe Lake County Code Enforcement identified at 2290 Soda Bay Road, Lakeport, CA 95453 on or about September 14, 2022.
7. I am solely responsible for the unpermitted plumbing that I am informed and believe Lake County Code Enforcement identified at 2290 Soda Bay Road, Lakeport, CA 95453 on or about September 14, 2022.
8. Neither United Investment Ventures LLC, Legendary Farms LLC, nor any of the individuals associated with either of those entities were participants in the unpermitted hoop houses, unpermitted cannabis cultivation, or unpermitted plumbing described herein, or with any other violations related to the conduct subject to the September 14, 2022, inspection.

I declare under penalty of perjury that the foregoing is true and correct, except as to matters stated under information and belief, which I believe to be true. Executed on this 14 day of October 2022, in Lake County, CA.

Dated: 10-14-22

Respectfully,

Roberto Tirado

Robert Luis Tirado

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

File No: _____

APN No: _____

STATE OF California)SS
COUNTY OF LAKE)

On Oct 14, 2022 before me, SHARON BASSHAM , Notary Public, personally appeared Robert Luis Tirado

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sharon Bassham

SHARON BASSHAM
COMM # 2275127
LAKE County
California Notary Public
Comm Exp Feb. 3, 2023

This area for official notarial seal.

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER(S) TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity Name of Person or Entity

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: Declaration

NUMBER OF PAGES One DATE OF DOCUMENT 10-14-2022

SIGNER(S) OTHER THAN NAMED ABOVE _____

EXHIBIT B

Gmail

Josh Zetlin <joshzetlin@rogowaylaw.com>

PRAR- Mr. Tirado

Julie Cannard <Julie.Cannard@lakecountyca.gov> Fri, Oct 13, 2023 at 10:27 AM
To: "joshzetlin@rogowaylaw.com" <joshzetlin@rogowaylaw.com>

Good morning, Mr. Zetlin,

After conducting a comprehensive review of our records, we have not found any communication between *County of Lake* and Mr. Tirado with a date range of August 1, 2022, to September 29,2023. If you should have any questions, please feel free to contact me at 1-707-263-2221 Extension 37110.

Thank you,

Julie Cannard

Helpline/Complaint Technician

Department of Community Development

255 N. Forbes St.

Lakeport, CA 95453

Phone: (707) 263-2221 x 37110

Fax: (707) 263-2225

Email: julie.cannard@lakecountyca.gov

STAY CONNECTED:

Gmail

Josh Zetlin <joshzetlin@rogowaylaw.com>

PRAR-Mr. Tirado, Luis, Robert

Julie Cannard <Julie.Cannard@lakecountyca.gov> Fri, Oct 27, 2023 at 4:14 PM
To: "joshzetlin@rogowaylaw.com" <joshzetlin@rogowaylaw.com>

Dear Mr. Zetlin,

In response to your request for all records concerning communication and correspondence for Mr. Tirado, sent, or received by the county, covering the period from August 1,2022 through September 29, 2023, we regret to inform you that our extensive efforts yielded zero results. We diligently pursued multiple avenues to fulfill your request, including reaching out to Verizon Wireless for any relevant records, conducting a thorough examination of our IT department's communication logs, and meticulously reviewing a code enforcement cell phone for any communications linked to the cell phone number 440-308-0085. After exhausting all these investigative efforts, we can confirm that there are no records or communications in our possession pertaining to Mr. Tirado for the specified timeframe. We hope this addresses you request appropriately. If you have any further questions or require assistance, please do not hesitate to contact us.

Sincerely,

Julie Cannard

Helpline/Complaint Technician

Department of Community Development

255 N. Forbes St.

Lakeport, CA 95453

Phone: (707) 263-2221 x 37110

Fax: (707) 263-2225

Email: julie.cannard@lakecountyca.gov

STAY CONNECTED:

EXHIBIT C

Sec. 13-56.2. - Administrative appeal.

56.2.1 *Applicability.* The Administrative Appeal procedure described in Section 13-56.2 is applicable to an appeal of all administrative citations other than High Severity Violations which Are Subject to an Expedited Review Process as described in Section 13-56.3 herein.

56.2.2 *Initial Review.* The Responsible Person may contest an Administrative Citation no later than ten (10) calendar days after the Administrative Violation is served. The appeal request must be in writing, specifying the basis for the appeal in detail, and filed with the administrative processing agency as indicated in the Administrative Citation.

The Initial Review will be completed by the head official of the Issuing Department or their designee.

a. If, following the initial review, the citation is upheld, the Responsible Person shall be notified by mail and informed of their obligation to pay the Administrative Fine within fifteen (15) days of the mailing, or of their right to request an Administrative Hearing.

56.2.3 *Hearing Before the Board of Supervisors—Filing Requirements.*

a. If the Responsible Person chooses to contest the outcome of the Initial Review, within fifteen (15) days of the mailing of the results of the Initial Review, the Responsible Person shall submit a written request, on an official form provided by the County, requesting an Administrative Hearing before the Board of Supervisors. Said form, hereinafter referred to as a Request for Administrative Hearing, shall include an advance deposit in the full amount of the Administrative Fine or one thousand dollars ($1,000.00), whichever is less, or written proof of financial hardship as specified in Section 13-53 herein. A hearing shall be scheduled with the Board of Supervisors when the aforementioned conditions are met.

b. In lieu of the advance deposit required, written proof of financial hardship, which shall be in the form of a declaration signed by the Responsible Person under penalty of perjury, along with supporting documentation as specified by the County, shall be filed with the Issuing Department.

c. A Responsible Person who fails to submit a Request for Administrative Hearing within fifteen (15) days, or who fails to make the required deposit or provide written proof of financial hardship, will have waived the right to contest the Initial Review and shall pay the Administrative Fine in accordance with the timeline set forth in paragraph (a)(1), above.

56.2.4 *Hearing Date—Notice of Hearing.* The hearing shall be set for a date that is not less than ten (10) days from the date of mailing of the notice of hearing. The notice of hearing shall state the date, time and place of the hearing and direct the property owners or occupant and other responsible

parties to appear and show cause why the administrative fine should not be imposed. The Notice of Hearing may be delivered to the person(s) or may be mailed to the address(es) listed in the Notice of Appeal.

56.2.5 *Continuances.* The Board of Supervisors may, in their its discretion, grant or deny a continuance of the hearing date upon a request by the Responsible Person(s) or the Issuing Department and a showing of good cause.

56.2.6 *Failure to Attend a Hearing.* If the Responsible Person(s) or his or her representative fails to attend the scheduled hearing, he or she shall be deemed to have waived his or her right to an Administrative Hearing. Under these circumstances, the Board of Supervisors shall find the Responsible Person(s) in default, and shall issue a written notice to that effect. A default under this section shall constitute a forfeiture of the Administrative Fine and a waiver of any right to challenge the assessed Enforcement Costs and Administrative Costs. A default under this section shall also be a bar to judicial review of the hearing officer decision based upon failure to exhaust administrative remedies. A default under this provision may be set aside by the Board of Supervisors at the request of the Responsible Party upon a showing of good cause for failing to appear at the Administrative Hearing.

a. If a financial hardship waiver was granted and the Responsible Person is in default as provided above or a challenge to the citation is withdrawn pursuant to above, the Administrative Fine, Enforcement Costs, and Administrative Costs shall be due and payable by the Responsible Person(s) to the County within fifteen (15) calendar days following the date that had been set for the Administrative Hearing.

56.2.7 *Withdrawal of Appeal.* A Responsible Person(s) who has been issued an Administrative Citation and who has requested an administrative hearing to challenge the citation as provided in this article may request in writing that his or her challenge to the citation be withdrawn and the hearing cancelled. Upon receipt of a request to withdraw a challenge to the Administrative Citation, the County shall cancel the pending hearing, and issue a written notice to that effect. A withdrawal under this subdivision shall constitute a forfeiture of the Administrative Fine and a waiver of any right to challenge the assessed Enforcement Costs and Administrative Costs. A withdrawal under this subdivision shall also be a bar to judicial review of the hearing officer decision based upon failure to exhaust administrative remedies.

56.2.8 *Procedures at the Administrative Hearing.*

a. The Board of Supervisors shall hear all facts and testimony presented and deemed relevant. The hearing is informal in nature, and formal rules of evidence and discovery do not apply. The proceedings shall be audio-recorded by the County. Any relevant evidence shall be

admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

b. The Board of Supervisors shall only consider evidence that is relevant to whether the violation(s) occurred and whether the recipient of the Administrative Citation has caused or maintained the violation(s) on the date(s) specified in the Administrative Citation.

c. The County bears the burden of proof at an administrative hearing to establish the existence of the Administrative Violation specified on the citation. The standard of proof in deciding the issues shall be preponderance of the evidence.

d. The Administrative Citation and any additional documents submitted by the Issuing Department shall be accepted by the Board of Supervisors as prima facie evidence of the respective facts contained in those documents. The Enforcement Officer, or if unavailable, his/her/their supervisor shall attend the hearing.

e. Each party shall have the opportunity to testify, cross-examine witnesses, and present witnesses and evidence in support of his or her case. Written and oral evidence submitted at the hearing shall be submitted under penalty of perjury. Documentary and other tangible evidence must be authenticated to the satisfaction of the Board of Supervisors. Nothing shall preclude the use of telephonic or other electronic means of communication if deemed appropriate by the Board of Supervisors.

f. The Board of Supervisors may continue the hearing as necessary. The decision of the Board of Supervisors shall be final upon adoption of an order containing its determination.

g. The Board of Supervisors' decision shall include that an aggrieved party may file a petition for review with the California Superior Court, County of Lake, pursuant to California Government Code § 53069.4. The failure of a responsible party to appear at the Administrative Citation hearing shall be deemed a failure to exhaust administrative remedies.

(Ord. No. 3112, § 1, 9-21-2021)

Editor's note— Ord. No. 3112, § 1, adopted Sept. 21, 2021, set out provisions intended for use as § 13-58. Inasmuch as there were already provisions so designated, said section has been codified herein as § 13-56.2 at the discretion of the editor.

Sec. 13-56.3. - Administrative appeal—expedited hearing process for high severity violations.

56.3.1 *Hearing Before the Board of Supervisors—Filing Requirements.*

A Responsible Person(s) may request an Administrative Hearing before the Board of Supervisors within the time specified in the Notice of Violation, which time period shall be not less than ten (10) days and no more than fifteen (15) days from the date the Notice is issued. Said form, hereinafter referred to as a Request for Administrative Hearing, shall include an advance deposit in the full

amount of the Administrative Fine or one thousand dollars ($1,000.00), whichever is less, or written proof of financial hardship as specified in Section 13-53 herein. A hearing shall be scheduled with the Board of Supervisors when the aforementioned conditions are met on the next available regularly scheduled meeting of the Board.

a. In lieu of the advance deposit required, written proof of financial hardship, which shall be in the form of a declaration signed by the Responsible Person(s) under penalty of perjury, along with supporting documentation as specified by the County, shall be filed with the Issuing Department within the time period specified in this Notice of Violation.

56.3.2 A Responsible Person(s) who fails to submit a Request for Administrative Hearing within the time to appeal specified in the Notice, or who fails to make the required deposit or provide written proof of financial hardship, will have waived the right to contest the violation(s) and shall pay the Administrative Fine as specified in subsection 56.3.1.

56.3.3 *Hearing Date—Notice of Hearing.* The expedited hearing shall be set for the next available regularly scheduled meeting of the Board of Supervisors. The notice of hearing shall state the date, time and place of the hearing and direct the property owners or occupant and other responsible parties to appear and show cause why the administrative fine should not be imposed. The Notice of Hearing may be delivered to the person(s) or may be mailed to the address(es) listed in the Notice of Appeal. The decision of the Board of Supervisors shall be final.

56.3.4 With the exception noted herein in subsections 56.3.2 and 56.3.3, the hearing procedure shall adhere to the requirements of Section 13-56.2 herein.

(Ord. No. 3112, § 1, 9-21-2021)

Editor's note— Ord. No. 3112, § 1, adopted Sept. 21, 2021, set out provisions intended for use as § 13-56.3. Inasmuch as there were already provisions so designated, said section has been codified herein as § 13-56.3 at the discretion of the editor.

EXHIBIT D

Gmail

Rosie Favila <rosiefavila@rogowaylaw.com>

Fwd: [EXTERNAL] 2290 Soda Bay Road Appeal

[redacted]

---------- Forwarded message ---------
From: **Mireya Turner** <Mireya.Turner@lakecountyca.gov>
Date: Tue, Jul 2, 2024 at 11:37 AM
Subject: RE: [EXTERNAL] 2290 Soda Bay Road Appeal
To: Kali Perkins <kali@emeraldlaw.org>
Cc: Nicole Johnson <Nicole.Johnson@lakecountyca.gov>, Julisa Gonzalez <Julisa@emeraldlaw.org>, Rachelle Daniel <Rachelle@emeraldlaw.org>, Hila Fichtelberg <hila@emeraldlaw.org>, Carlos Torrez <Carlos.Torrez@lakecountyca.gov>, Johanna DeLong <johanna.delong@lakecountyca.gov>, Joe Rogoway <joerogoway@rogowaylaw.com>, E.D. Lerman <edlermanesq@gmail.com>

Dear Ms. Perkins,

Thank you for your input. As with all our scheduled hearings, we emphasize that they are tentatively scheduled because they are subject to change until the hearing notice goes out. I do apologize for any inconvenience. Your previous objection to the tentative date of 7/23/24 will be included in the public record.

Cordially,

Mireya G. Turner, MPA
Director
Community Development
255 N. Forbes St.
Lakeport, CA 95453
Phone: (707) 263-2221
Fax: (707) 263-2225
Email: mireya.turner@lakecountyca.gov

From: Kali Perkins <kali@emeraldlaw.org>
Sent: Tuesday, July 2, 2024 11:34 AM
To: Mireya Turner <Mireya.Turner@lakecountyca.gov>
Cc: Nicole Johnson <Nicole.Johnson@lakecountyca.gov>; Julisa Gonzalez <Julisa@emeraldlaw.org>; Rachelle Daniel <Rachelle@emeraldlaw.org>; Hila Fichtelberg <hila@emeraldlaw.org>; Carlos Torrez <Carlos.Torrez@lakecountyca.gov>; Johanna DeLong <johanna.delong@lakecountyca.gov>; Joe Rogoway <joerogoway@rogowaylaw.com>; E.D. Lerman <edlermanesq@gmail.com>
Subject: Re: [EXTERNAL] 2290 Soda Bay Road Appeal

Hi Mireya,

Since you long ago told us that date wouldn't work, we have since filled that date and we are not available on July 16, 2024. It is very unfair that you told us that date would not work a long time ago, and now only a short time before that date, you schedule it for the very same date you said wouldn't work? I am strongly objecting to the handling of this matter.

Truly,

Kali Perkins, Esq.
(707) 367-0314

Emerald Law Group
280 North Oak Street
Ukiah, CA 95482
Tel: (707) 468-8300
Fax:(707) 937-2209
www.emeraldlawgroup.org

NOTICE OF UNAVAILABILITY:

Please be advised I will be out of the office (and not available via phone) on the following dates:

July 4-5, 18-22

August 1-5, 23, 26 2024

Due to the volume of emails received by this recipient, we kindly ask that you cc our Office Manager, Hila Fichtelberg (Hila@emeraldlaw.org) and her Assistant, Julisa Gonzalez (Julisa@emeraldlaw.org), as well as my assistant Rachelle Daniel (Rachelle@emeraldlaw.org) on all of your communications. If you do not receive a timely response and this is an urgent matter, please telephone our office at 707-468-8300, and our receptionist will alert the appropriate recipient.

On Tue, Jul 2, 2024 at 11:27 AM Mireya Turner <Mireya.Turner@lakecountyca.gov> wrote:

> Good morning Kali,
>
> Thank you for checking in. Our calendar conflict was resolved and we can hold the hearing at the previously scheduled date: Tuesday, July 16, 2024, at 1:30 p.m. Attached please find the notice that will be sent out via USPS today.
>
> Thank you for keeping all parties on the email to be updated.
>
> Cordially,
>
> **Mireya G. Turner, MPA**
> **Director**
> **Community Development**
> **255 N. Forbes St.**
> **Lakeport, CA 95453**
> **Phone: (707) 263-2221**
> **Fax: (707) 263-2225**
> **Email:** mireya.turner@lakecountyca.gov

From: Kali Perkins <kali@emeraldlaw.org>
Sent: Tuesday, July 2, 2024 10:35 AM
To: Nicole Johnson <Nicole.Johnson@lakecountyca.gov>
Cc: Mireya Turner <Mireya.Turner@lakecountyca.gov>; Julisa Gonzalez <Julisa@emeraldlaw.org>; Rachelle Daniel <Rachelle@emeraldlaw.org>; Hila Fichtelberg <hila@emeraldlaw.org>; Carlos Torrez <Carlos.Torrez@lakecountyca.gov>; Johanna DeLong <johanna.delong@lakecountyca.gov>; Joe Rogoway <joerogoway@rogowaylaw.com>; E.D. Lerman <edlermanesq@gmail.com>
Subject: Re: [EXTERNAL] 2290 Soda Bay Road Appeal

Hi Nicole and Mireya - are you in receipt of my correspondence dated June 17, 2023? To date I have not received any response. The date of July 23, 2024 was set for hearing without checking on our availability. Unfortunately we are unavailable that date as we have a previous matter set in court. Accordingly we need the date rescheduled to a new date so that we are available to attend for our client.

It is my understanding that you reached out to other counsel on the case to check their availability for the July 23rd hearing, but we never received that courtesy. We are again requesting a continuance of the July 23rd date. Please advise.

Thank you,

Kali Perkins, Esq.
(707) 367-0314

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Fax:(707) 937-2209
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July 4-5, 18-22

August 1-5, 23, 26 2024

Due to the volume of emails received by this recipient, we kindly ask that you cc our Office Manager, Hila Fichtelberg (Hila@emeraldlaw.org) and her Assistant, Julisa Gonzalez (Julisa@emeraldlaw.org), as well as my assistant Rachelle Daniel (Rachelle@emeraldlaw.org) on all of your communications. If you do not receive a timely response and this is an urgent matter, please telephone our office at 707-468-8300, and our receptionist will alert the appropriate recipient.

On Thu, Jun 20, 2024 at 1:31 PM Nicole Johnson <Nicole.Johnson@lakecountyca.gov> wrote:

> Hello Kali,
>
> No problem. Questions are welcome.
>
> The rules from which the BOS gets its authority include Cal. Gov. Code Section 25003 *et. seq.* (generally), Cal. Gov. Code Section 25003 (specifically), California Government Code 54950 et seq., and Article 58, Chapter 21 of the Lake County Code.
>
> As for the questions in your email:
>
> 1. *we will only get 8-10 minutes TOTAL to present our case before the BOS (that includes any video/power point presentation we wish for the BOS to review)?*
>
> The amount of time a public speaker, a presenter, or an appellant will have depends on the BOS' rules for their hearings. To get a better understanding of process, you would need to contact the Administrative Office. The Secretary of the BOS is in that office and staff there handles the preparation for the meetings.
>
> 2. *During that presentation we won't be allowed to present witnesses or question staff about the investigation and evidence?*
>
> You, your client, and any member of the public may present whatever evidence necessary to convince the decision maker to approve or deny the appeal. So, if you have people who will speak, they may speak along with any other member of the public. There is typically no

subpoena process and evidence rules can be a little more relaxed than in a court, however, the BOS does swear in anyone who will be speaking on certain items.

Also, the hearing is typically not a "back and forth" where staff is questioned by the public. Staff presents their findings and recommendations, then other interested parties present their evidence, the BOS asks questions if they have any, weighs the evidence, and the BOS makes a decision.

3. *You are unable to change the date of the hearing or grant a request for additional time, only the BOS can do those things at this point?*

Correct. The Admin office manages the BOS agenda and meetings. To affect change to an agenda, you would have to go through staff there. However, after a certain point, they cannot make changes and you will need to directly ask the BOS for a continuance. If you do plan to ask the BOS directly, please be ready to provide a reason why. There may be findings the BOS will need to make to vote yes or no on a continuance.

4. *The community development department has provided all available discovery regarding this inspection, and more specifically the investigation with respect to my client's property, and there is no evidence that has not been turned over to the parties, except that the staff report will be issued 72 hours before the hearing.*

There are State rules and County rules as to how and when hearing materials will be distributed to the BOS and the public. Admin will have more detail on the BOS process, but you would also find information on how meetings are to be held in the Brown Act (California Government Code 54950 et seq.).

I also called and left a much shorter voice message. If you have any further questions, do not hesitate to reach out. I'll try my best to answer.

Sincerely,

Nicole Johnson

Deputy County Counsel

Lake County Counsel's Office

255 N. Forbes St #320

Lakeport, CA 95453

Nicole.johnson@lakecountyca.gov

707-263-2321

From: Kali Perkins <kali@emeraldlaw.org>
Sent: Thursday, June 20, 2024 12:18 PM
To: Mireya Turner <Mireya.Turner@lakecountyca.gov>
Cc: Julisa Gonzalez <Julisa@emeraldlaw.org>; Rachelle Daniel <Rachelle@emeraldlaw.org>; Hila Fichtelberg <hila@emeraldlaw.org>; Carlos Torrez <Carlos.Torrez@lakecountyca.gov>; Nicole Johnson <Nicole.Johnson@lakecountyca.gov>; Johanna DeLong <johanna.delong@lakecountyca.gov>; Joe Rogoway <joerogoway@rogowaylaw.com>; E.D. Lerman <edlermanesq@gmail.com>
Subject: Re: [EXTERNAL] 2290 Soda Bay Road Appeal

Hi again Mireya,

Apologies for so many questions - I'm a novice, as I haven't done one of these types of hearings before in Lake County so I am trying to understand, and I certainly appreciate your help with the procedures.

So to clarify, you are saying:

1. we will only get 8-10 minutes TOTAL to present our case before the BOS (that includes any video/power point presentation we wish for the BOS to review)?

2. During that presentation we won't be allowed to present witnesses or question staff about the investigation and evidence?

3. You are unable to change the date of the hearing or grant a request for additional time, only the BOS can do those things at this point?

4. The community development department has provided all available discovery regarding this inspection, and more specifically the investigation with respect to my client's property, and there is no evidence that has not been turned over to the parties, except that the staff report will be issued 72 hours before the hearing.

Can you please confirm if this is all correct?

Thank you,

Kali Perkins, Esq.
(707) 367-0314

Emerald Law Group
280 North Oak Street

Ukiah, CA 95482
Tel: (707) 468-8300
Fax:(707) 937-2209
www.emeraldlawgroup.org

NOTICE OF UNAVAILABILITY:

Please be advised I will be out of the office (and not available via phone) on the following dates:

July 18-22

August 1-5, 23, 26 2024

Due to the volume of emails received by this recipient, we kindly ask that you cc our Office Manager, Hila Fichtelberg (Hila@emeraldlaw.org) and her Assistant, Julisa Gonzalez (Julisa@emeraldlaw.org), as well as my assistant Rachelle Daniel (Rachelle@emeraldlaw.org) on all of your communications. If you do not receive a timely response and this is an urgent matter, please telephone our office at 707-468-8300, and our receptionist will alert the appropriate recipient.

On Tue, Jun 11, 2024 at 1:21 PM Mireya Turner <Mireya.Turner@lakecountyca.gov> wrote:

> Hi again Ms. Perkins,
>
> This is an appeal hearing, so there are no subpoenas issued. All your questions should be directed to the BOS and they will make a request for staff personnel if they deem it necessary. There is no direct questioning of Staff at an appeal hearing.
>
> A few months ago, we rescheduled the hearing for months later, to accommodate the schedules of the various attorneys of the appeals. Rather than continue that process, given the multiple parties and since I know the BOS is interested in hearing the item without unnecessary delay, further rescheduling will now be left to the BOS' discretion. The appeal is tentatively scheduled for 7/23, and you are welcome to submit a letter requesting a continuance which will be included in the agenda item as an attachment, if it is received no later than July 10, 2024, for their consideration.
>
> Please let me know if I can be of further assistance.
>
> Cordially,
>
> Mireya G. Turner, MPA
>
> Director, Community Development Department
>
> County of Lake
>
> 707.263.2221
>
> > On Jun 11, 2024, at 1:05 PM, Kali Perkins <kali@emeraldlaw.org> wrote:
> >
> > In addition to my request to continue the hearing from 7/23, due to our unavailability, I also have two other questions I need clarification on:
> >
> > 1. you indicated that we only have 8-10 minutes to present, does that include the questioning of witnesses?
> >
> > 2. I didn't see a response to my original email re: Will we need to issue subpoenas for county workers that we will want to question at the hearing, or can we assume the relevant parties will be present?
> >
> > Please clarify when you have a chance.
> >
> > Thank you!
> >
> > Kali Perkins, Esq.
> > (707) 367-0314
>
> Emerald Law Group
> 280 North Oak Street
> Ukiah, CA 95482
> Tel: (707) 468-8300
> Fax:(707) 937-2209

www.emeraldlawgroup.org

NOTICE OF UNAVAILABILITY:

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June 7, 21-24, 2024

July 18, 19

August 1-5, 23, 26 2024

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On Tue, Jun 11, 2024 at 12:44 PM Kali Perkins <kali@emeraldlaw.org> wrote:

> Understood, but how do we request a new date since we are unavailable on 7/23?
>
> Thanks,
>
> Kali Perkins, Esq.
> (707) 367-0314
>
> Emerald Law Group
> 280 North Oak Street
> Ukiah, CA 95482
> Tel: (707) 468-8300
> Fax:(707) 937-2209
> www.emeraldlawgroup.org
>
> **NOTICE OF UNAVAILABILITY:**
>
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>
> **June 7, 21-24, 2024**
>
> **July 18, 19**
>
> **August 1-5, 23, 26 2024**
>
> **Due to the volume of emails received by this recipient, we kindly ask that you cc our Office Manager, Hila Fichtelberg (Hila@emeraldlaw.org) and her Assistant, Julisa Gonzalez (Julisa@emeraldlaw.org), as well as my assistant Rachelle Daniel (Rachelle@emeraldlaw.org) on all of your communications. If you do not receive a timely response and this is an urgent matter, please telephone our office at 707-468-8300, and our receptionist will alert the appropriate recipient.**

On Tue, Jun 11, 2024 at 12:22 PM Mireya Turner <Mireya.Turner@lakecountyca.gov> wrote:

Hi Kali,

Staff is no longer available on that date.

Cordially,

Mireya G. Turner, MPA

Director

Community Development

255 N. Forbes St.

Lakeport, CA 95453

Phone: (707) 263-2221

Fax: (707) 263-2225

Email: mireya.turner@lakecountyca.gov

From: Kali Perkins <kali@emeraldlaw.org>
Sent: Tuesday, June 11, 2024 11:53 AM
To: Mireya Turner <Mireya.Turner@lakecountyca.gov>
Cc: Julisa Gonzalez <Julisa@emeraldlaw.org>; Rachelle Daniel <Rachelle@emeraldlaw.org>; Hila Fichtelberg <hila@emeraldlaw.org>; Carlos Torrez <Carlos.Torrez@lakecountyca.gov>; Nicole Johnson <Nicole.Johnson@lakecountyca.gov>
Subject: Re: [EXTERNAL] 2290 Soda Bay Road Appeal

Hi, I apologize for my confusion, but when was it agreed that the date would be changed to the 23rd of July? We were told the 16th, and have had that date in our calendar for quite some time. We are not available on the 23rd. Please advise what other dates are available.

Thank you,

Kali Perkins, Esq.
(707) 367-0314

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Ukiah, CA 95482
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July 18, 19

August 1-5, 23, 26 2024

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(Rachelle@emeraldlaw.org) on all of your communications. If you do not receive a timely response and this is an urgent matter, please telephone our office at 707-468-8300, and our receptionist will alert the appropriate recipient.

On Tue, Jun 11, 2024 at 11:48 AM Mireya Turner <Mireya.Turner@lakecountyca.gov> wrote:

> Dear Ms. Perkins,
>
> Thank you for your email regarding the Legendary Farms appeal. Please note, the date of this hearing has been changed to July 23, 2024, at 10:00 a.m.
>
> The time granted for any presentations is decided by the Board Chair. I recommend keeping any presentation to no more than 8-10 minutes.
>
> Other than a PRA request, please refer to the Staff Report considered by the Planning Commission for details considered by the Planning Commission. The staff report for the appeal will be available as soon as the Administrative Office posts the agenda, no later than 72 hours prior to the Board of Supervisors meeting. Please note, there is a 96-hour time limit to submit any documents to have them considered by the BOS. I strongly recommend all appellants submit any materials they wish to have considered by the Board no later than Wednesday, July 10, 2024, in order to be included with my Staff Memorandum and attachments.
>
> Cordially,

Mireya G. Turner, MPA

Director

Community Development

255 N. Forbes St.

Lakeport, CA 95453

Phone: (707) 263-2221

Fax: (707) 263-2225

Email: mireya.turner@lakecountyca.gov

From: Kali Perkins <kali@emeraldlaw.org>
Sent: Thursday, June 6, 2024 1:47 PM
To: Mireya Turner <Mireya.Turner@lakecountyca.gov>
Cc: Julisa Gonzalez <Julisa@emeraldlaw.org>; Rachelle Daniel <Rachelle@emeraldlaw.org>; Hila Fichtelberg <hila@emeraldlaw.org>
Subject: Re: [EXTERNAL] 2290 Soda Bay Road Appeal

Hello Ms. Turner,

I have a few questions about the upcoming appeal hearing on the above referenced matter. I understand it is now set for July 16, 2024. On that date, how long will we have to present our power point? how long will we have to question witnesses? Will we need to issue subpoenas for county workers that we will want to question at the hearing, or can we assume the relevant parties will be present?

We are having a hard time obtaining discovery in this matter. In Ms. Claybon's report it indicates that officers went onto our clients property, however, we have not received any actual evidence of that. The sheriff's department reports they have no evidence of that. Can I assume no discovery exists, or do you or Ms. Claybon or Mr. Amelung have evidence of what occurred on 9/15 with respect to our client and the allegations against him as property owner of 2350 soda bay road? Can you advise what evidence your department will use to attempt to prove that our client is a responsible party? Is there anything beyond the allegation that there were cords running from one property to another? If there is any discovery you have, that you intend to use against our client, Roberto Estrada, please forward it to us at your very earliest opportunity.
Very Truly,

Kali Perkins, Esq.
(707) 367-0314

Emerald Law Group
280 North Oak Street
Ukiah, CA 95482
Tel: (707) 468-8300
Fax:(707) 937-2209
www.emeraldlawgroup.org

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July 18, 19

August 1-5, 23, 26 2024

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On Mon, Nov 13, 2023 at 10:44 AM Mireya Turner <Mireya.Turner@lakecountyca.gov> wrote:

> Good morning Julisa
>
> Thank you for contacting me regarding the scheduling of the appeals. I can understand how packed your calendar must be. I do not have a tentative date yet, but would be happy to reach out to you when it is ready to schedule, to check calendars at that time.
>
> I will make note of your email address in my file for that purpose..
>
> Cordially,

Mireya G. Turner, MPA
Director
Community Development
255 N. Forbes St.
Lakeport, CA 95453
Phone: (707) 263-2221
Fax: (707) 263-2225
Email: mireya.turner@lakecountyca.gov

From: Julisa Gonzalez <Julisa@emeraldlaw.org>
Sent: Thursday, November 9, 2023 10:24 AM
To: Mireya Turner <Mireya.Turner@lakecountyca.gov>; Kali Perkins <kali@emeraldlaw.org>; Rachelle Daniel <Rachelle@emeraldlaw.org>;

Hila Fichtelberg <hila@emeraldlaw.org>
Subject: [EXTERNAL] 2290 Soda Bay Road Appeal

Good morning Mireya,

I was wondering if there's any way you could provide me with some insight as to when the appeal of Legendary Farms located at 2290 Soda Bay Rd, will be scheduled. Our office represents Mr. Estrada, and given our busy calendar, we want to make sure that we are available for the date scheduled for the appeal. I know that sometimes dates can change, however, if you have any indication at this time as to when the appeal will be heard by the Board of Supervisors, your insight would be greatly appreciated.

Thank you,

Julisa Gonzalez

Cell: (707) 472-8215

Emerald Law Group
280 North Oak Street
Ukiah, CA 95482
Tel: (707) 468-8300
Fax:(707) 937-2209

www.emeraldlaw.org