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5 ZOE ROSELL, In Pro Per

6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
7 EAST COUNTY DIVISION

8 Plaintiff,

9 ZOE ROSELL

10 Defendant(s),

11 GORDON HAMMERS, Chair of Potrero
12 Planning Group; Potrero Planning Group
13 and Members of the Board; San Diego
14 County Board of Supervisors; San Diego

) CASE NO:

) 37-2007-00058535-CU-WM-EC

) SUPPLEMENTAL DECLARATION

15 I, ZOE ROSELL, declare that the following has either occurred or been
16 discovered since my initial declaration was submitted to this Court

17 Potrero Planning Group Meeting, May 10, 2007

18
19 1. After posting the agenda for the May 10, 2007 meeting, which
20 included a closed session to discuss this lawsuit, Chair Hammers was ordered
21 by County Counsel to open the entire meeting.

22 2. Chair Hammers refused to give notice to (by ignoring) my hand
23 to request to speak on several occasions, causing me to have to speak out
24 of order to address the meeting.

25 3. Former Planning Group member Emil Susu, who had recently been
26 removed from his appointed (not elected) seat due to the fact that he was
27 not a registered voter of Potrero, was seated at the Planning Group table
28 as though still a member. A motion was made to re-nominate him, since he
has re-registered here from Florida. The nomination will now be forwarded
to the County Board of Supervisors.

4. Two San Diego County Sheriff's Deputies were present at the back

1 of the room. They had been called by Brenda Wise, Chair of the
2 Potrero/Tecate Disaster Defense Team, who feared that protesters were going
3 to block access to the meeting. The protesters amounted to two elderly people
4 handing out free 'Stop Blackwater' T-shirts.

5 "Group Members are encouraged to avoid situations that could give the
6 appearance of such a conflict (of interests)." County Board of Supervisors
7 Policy I-1, pg. 19, Article VI, Section VII. (See Exhibit H)

8 5. Chair Hammers and Wise and unknown others accepted an invitation
9 to lunch on the Blackwater yacht in San Diego Harbor, meeting under the
10 auspices of Disaster Preparedness. A community member has stated that Brenda
11 Wise later stated how wonderful it was, and that they had room for 150 people
12 on their boat in case of a disaster. One couldn't help but wonder who was
13 going to choose the 150 people to be saved.

14 6. Chair Hammers was seen dining at the Potrero Cafe with someone
15 wearing a Blackwater logo T-shirt and hat with camouflaged pants. The license
16 plates on the white SUV of the unknown person were from North Carolina, the
17 state where Blackwater has its main facility.

18 7. When Raymond Lutz of Citizen's Oversight addressed Mary Johnson,
19 Secretary of the PPG at the May 10th meeting concerning the Blackwater T-
20 Shirt she was wearing (which she had gotten on her recent trip to the Moyock,
21 North Carolina Blackwater facility, she defiantly stated, "And who are you
22 now, the Clothes Police?"

23 8. Chair Hammers crumbled up a piece of correspondence at the May
24 meeting sent to the PPG which questioned the integrity of the members, stating
25 that he was going to hire a private investigator to find out who the person
26 was. The person had included a self-addressed envelope for a reply.

27 9. Chair Hammers gave a presentation about Blackwater to the La Mesa
28 Kiwanis Club, the tone of which was such that a person in attendance thought
that he was a Blackwater Representative. It was covered by local TV Channel
51 on the evening news.

Intimidation

10. Chair Hammers allowed a letter to the PPG from community member
and former group member Jack Reider to be appropriate correspondence to be
read at the May 10th meeting. Mr. Reider thought that Jan Hedlun, the only
group member who is in opposition to the Blackwater Project, should be
censured (or censored) for allegedly putting forth misinformation concerning
the Blackwater Project. The letter also gave her address of residence, stating

1 that she was in violation of County Codes, and that she should be reported
2 for such violations. A few days later, I was informed that Code Enforcement
3 had sent her a letter and wanted to set up a meeting to inspect her residence.
4 In an interview with The Alpine Sun reporter Miriam Raftery, Hammers admitted
5 that he had known about Ms. Hedlun's living arrangements "for years", and
6 added, "I told her that little girls who live in glass houses shouldn't throw
7 stones, or sooner or later it would catch up with her." He also stated that
8 she had had ample time to restart her life after her husband's unexpected
9 death, although he used the excuse that he had lost all PPG documents,
including the By-Laws, (which people were asking for at one of the meetings)
in the fire that destroyed his house a full five years ago, and that he had
not had time to replace them.

10 11. Chair Hammers had publicly announced that he was going to sue
11 all community members who were the proponents of his Recall Petition". A
12 letter has been received by most of those people from the law-firm of Huston
13 and McEwen, stating that he wants them to cease all "libelous and/or
14 defamatory" comments about his client, Chair Gordon Hammers. The letter states
15 that Hammers is "deeply concerned that untrue, libelous, and/or defamatory
16 comments have been made about him, which are neither legal nor constitution-
ally protected."

16 Potrero Planning Group Recall

17 12. All members of the Potrero Planning Group, except Jan Hedlun,
18 were served Notices of Intent to Recall at the May 10th meeting. Since Emil
19 Susu had been removed while the petitions were being prepared, he could not
20 be included in the process. If the County Board of Supervisors approves his
21 re-appointment, the people of Potrero would have to wait another 90 days
22 before he could be put forth for recall. My attempts to find out who was
23 responsible for missing that piece of information concerning his voting
24 registration when he filled out his paperwork has been fruitless. The Office
25 of the Registrar of Voters said that it is the responsibility of the DPLU.
26 Cheryl Jones, the contact person for the PPG at the DPLU says that it is
27 not her's or the DPLU's responsibility. County Policy I-1 states that "the
28 Department (of Planning and Land Use) shall co-ordinate the appointments
and confirmation of new planning group and sponsor group members with the
Board of Supervisors, the Registrar of Voters, and the Director of Community
Involvement Office as necessary." (See Exhibit H, Policy I-1, pg. 9, Planning
and Sponsor Group Assistance)

1 The Registrar of Voters, while certifying the Recall Petitions given
2 to them by the citizens of Potrero, discovered that two other people sitting
3 on the Potrero Planning Group were never officially appointed by the County
4 to do so; these are Mike Rubalcava and Eric Berger. They, too have been
5 removed and their seats declared vacant. That brings the total to three people
6 who should not have been voting, leaving only six official members, five
7 of which are facing a recall vote. The three unofficial members who have
8 been removed could be put up for nomination at the next meeting by Chair
9 Hammers and the Planning Group for appointment by the Board of Supervisors.
10 This is very serious concern for the people of Potrero who are trying to
11 consolidate a Planning Group that truly represents them and will help them
12 with an appeal, should the County Board of Supervisors approve the Multi-
13 Use Permit for the Blackwater Training Facility.

11 **The New County System, Business Process Reengineering, or BPR**

12 13. On April 25, 2007, the day after I filed this lawsuit, Jarrett
13 Ramaiya, the new DPLU lead person for the proposed Blackwater Facility Project
14 extended the Public Comment Period on the first draft EIR for another 30
15 days, which ended May 25th. He said he was doing this to show good faith,
16 especially since the project switched managers in mid-stream (of which the
17 community had not been notified), and phone and fax numbers were wrong and
18 people were complaining about the confusion. The main purpose of the BPR,
19 put forth by the San Diego County Land Use and Environmental Group, or LUEG,
20 is to cut the time for processing Negative Declarations and EIR's in half,
21 which, in the case of EIR's, is from 45 to 22 months. (See Exhibit R) The
22 proposed Blackwater Facility Project is a Pilot Project under the new methods
23 of streamlining the permitting process by the County.

24 14. When I realized that the term Business Process Reengineering was
25 the technical term for the newly implemented fast-track process 'project',
26 I was able to research it online.

27 a. LUEG, the DPLU, and the BOS have agreed, by adopting the BPR,
28 also known as POD 05-072, that the changes made through the BPR, including
29 how 'Thresholds of Significance' are determined for all EIR subjects (or
30 topics), is exempt from CEQA review since the "Activity is exempt because
31 it is not a project as defined in Section 15061(b)(3)." (See Exhibit R, NOE
32 and #15, below)

33 b. Under the BPR, revisions made to Policy I-119 will replace the
34 current policy of having County Counsel review the EIR before Public Review

1 with a consulting review role. The revision will allow the County Environmen-
2 tal Coordinator to initiate Public Review of Draft EIR's. County Counsel
3 review will not take place until after Public Review. Currently, Jason Giffen
4 is the CEC. (See Exhibit R, pg 10)

5 c. Due to the extensive nature of the revisions, since each of the
6 EIR topics are being revised as to how to determine 'Significance', the topics
7 have been divided into three sections, referred to as Phases I, II, and III.
8 Phases I and II have been completed and were approved on September 26, 2006,
9 and March 19, 2007, respectively. Phase III is not slated for approval until
10 probably August, since it was not put out for Public Review until June 16th,
11 2007. (See Exhibit S)

12 d. Changes are being made in EIR report format, also.

13 15. As to 14a above, concerning the Notice of Exemption:
14 CCR, Title 14, Chapter 3, Article 5, Section 15061(b)(3) states:

15 "The activity is covered by the general rule that CEQA only applies to
16 projects which have the potential for causing a significant effect on the
17 environment. Where it can be seen with certainty that there is no possibility
18 that the activity in question may have a significant effect on the environment
19 the activity is not subject to CEQA." In the following Discussion of the
20 Section, it states that "subsection (b)(3) provides a short way for agencies
21 to deal with discretionary activity which could arguably be subject to the
22 CEQA process, but which common sense provides should not be subject to the
23 Act."

24 I do not think that the BPR 'project' is covered by this general
25 rule. Changing the amount of time for finalizing an EIR from 45 to 22 months
26 will, in itself, definitely effect the environment, especially the remaining
27 amount of Riparian Habitat that struggles to survive here in rural East San
28 Diego County. Included under the Biological EIR checklist of Topic of Spring
Bloom for Rare and Endangered Plant Species. There was hardly any Spring
Bloom this year. Many species did not germinate. Much of what did germinate
did not survive long enough to go to seed. Seed can lay dormant in the soil
for years until the right conditions exist. If the habitat is disturbed during
that time, there is a good possibility that the seed will be lost. With the
continuing drought in its eighth year, and concerns of global warming,
reducing the amount of time to conduct a truly comprehensive EIR might cause
worse harm than the drought itself. At least with a 45 month time frame,
hopefully one spring in those almost four years will produce a Spring Bloom

1 that is truly indicative of existing species. In this instance, the common
2 sense issue tends to lean more towards placing the 'activity' under non-
3 exempt status and submit it for CEQA scrutiny.

4 With San Diego County as home to over 200 species federally listed
5 as threatened or endangered or rare; and that **San Diego County is listed**
6 **as one of two counties in the U.S. as 'hotspots' containing unique and**
7 **unusual species**, one would hope that the land use planners would err on
8 the side of more stringent practices. There is only 5% of Riparian Woodland
9 left from the amount that existed when California became a state. **5%!**

10 **16.Review for Exemption, 15061(a)** states: After determining that
11 a project is exempt, the agency may prepare a NOE as provided under Section
12 15062. Although the Notice may be kept with the project application at this
13 time, the NOE shall not be filed with the Office of Planning and Research
14 until the project has been approved."

15 a.The 'project', designated as POD 05-072, amending the CEQA
16 Guidelines, was approved on February 28, 2006 by the County Board of
17 Supervisors. (See Exhibit T) **Thresholds of Significance, Section 15064.7(b)**
18 states: Thresholds of Significance to be adopted for general use as part
19 of the lead agency's environmental review process, must be adopted by
20 ordinance, resolution, rule, or regulation, and developed through a public
21 process and be supported by substantial evidence." The discussion clarifies
22 further: must be adopted by ordinance, resolution, rule or regulation "**at**
23 **the conclusion of a public review process.**"

24 b.Gary Pryor, who last June resigned (or retired from) his position
25 as Director of the DPLU, in a letter to an attorney expressing concerns
26 relating to changing the Guidelines for Determining Significance through
27 the BPR, stated: "Regarding concerns relating to CEQA compliance, the guide-
28 lines are not adopted significance thresholds that fall within the require-
ments of Section 15064.7. In actuality, the guidelines are a compilation
of current department practices on how the department applies existing codes
and ordinances to discretionary permit applications...Lastly, although public
input is not required for department guidance documents, the department
made the documents available for an extended review period".."For example,
the latest set of guidelines...were sent to all Planning and Sponsor Groups."
(See Exhibit) All the Notices of Intent I have seen stated that they WERE
changing the ways in which Thresholds of Significance are determined. Also,
if the latter part of the statement is true, to my knowledge, Chair Hammers

1 of the PPG did not notify the people of Potrero about the BPR or the Public
2 Review Process.

3 Since the County Board of Supervisors decides Land Use issues in
4 the unincorporated areas of San Diego County exclusively, I do not think
5 that their method of noticing the public by announcing in the San Diego
6 Daily Transcript is a proper method to notify the people of East County
7 or other unincorporated areas. The Union Tribune would be a more logical
8 source to reach rural residents. Especially in such a case as happened in
9 Potrero, with the PG never giving notice of it.

10 **17. Notice of Exemption, Section 15062(d)** states: The filing of a
11 NOE and the posting on the list of notices start a **35 day Statute of**
12 **Limitations period on legal challenges** to the agency's decision that the
13 project is exempt from CEQA." The Discussion states: "Subsection (d) notes
14 that the timing and processing of the NOE is to be compatible with the
15 the requirement in Section 15062 that the Notice is not be be filed until
16 after the agency had made a decision on the project. Section 15061(d) allows
17 the NOE to be completed during the preliminary review and to be kept with
18 the project file during the processing of the project application. By
19 including the NOE in the file, the agency would show any people reviewing
20 the file that CEQA had been considered, that the agency regarded the project
21 as exempt, and that the agency would be ready to file the NOE as soon as
22 the decision was made on the project."

23 I have included these Sections concerning the Notice of Exemption
24 since I believe that the County erred in procedure. I believe that
25 POD 05-072, along with the NOE, should have been attached to each Phase
26 being put out for Public Review so that the general public could understand
27 the implications of what was being done. Did the County err also in adopting
28 (approving) the CEQA Guidelines amended by POD 05-072 on February 28th of
2006, which was before the end of the Public Review period? The earliest
Notice that I found was DPLU document number Misc 06-024, dated August 24,
2006, signed by Christine Stevenson, for Guidelines for Determining
Significance for Biological Resources.

*NOTE: Please refer to Title 14, Chapter 3, Article 20, Definitions for
CEQA related terms.

Conflicts and Connections

During my online research it seemed as though the people in charge
of these different agencies were in conflict of the purpose of the agency.

1 18. Chandra Waller, DCAO of LUEG, the County Land Use and Environ-
2 mental Group, stated at a Roundtable Discussion with the Building Industry
3 Association, or BIA, "We can get you guys on the ground more quickly..."(See
4 Exhibit). At another meeting with BIA Board of Directors, "We need more
5 more clarity on what you want...we can be your consultant; we know what
6 environmental groups want, we know what planning groups want and we can
7 guide you through the process." BACPAC, the San Diego Builders Associates
8 and Contractors Political Action Committee is close to achieving their goal
9 of a million dollar political warchest. Past and future regulatory battles
10 play an important role on their decisions of which political candidates
11 to back.

12 19. Ivan Holler, who also left the DPLU in June, had been in charge
13 of overseeing the county's GP 2020 since 2001, and was also in charge of
14 overseeing the County's Multiple Species Conservation Program, or MSCP.
15 His vision of that comprehensive environmental plan was "(the MSCP) is
16 designed to set aside 'ribbons' of environmentally sensitive habitat safe
17 from development around the county." Ribbons might aptly describe wildlife
18 pathways, but certainly not habitat. At the Public Scoping Meeting for the
19 proposed Blackwater Facility, when someone from the audience asked why the
20 project was on the fast-track process, (remember that the people of Potrero
21 knew nothing about the BPR and that it WAS the fast-track process), Ivan
22 Holler replied, "Let me tell you something about the fast-track process.
23 Blackwater just happens to be one of the first projects on this fast-track
24 time-line." During his tenure, unfortunately, he did not find the time to
25 make sure that there was a copy of the Holland Code available to the public.
26 The San Diego Regional Holland Code defines vegetative communities for
27 mapping purposes. All maps made by the County must use the Holland Code.
28 How are the people supposed to make informed decisions if the materials
are not available for them to educate themselves with?

 20. The letter from Gary Pryor to an attorney addressing the issue
of the County withholding certain documents pertaining to the Blackwater
project states: "These documents are exempt from disclosure under the
California Public Records Act (Gov. Code Section 6250 et seq.), Section
6254(a) and Section 6255. The Public Interest in withholding these records
outweighs the Public Interest in disclosing them, because of the strong
potential for the public (including yourself and your clients) to become
mis-informed or misled by erroneous information which may be contained in

1 the draft studies, which may be deleted, corrected, or further explained
2 in the final document. The determination to deny access to these draft
3 documents has been made with consultation with the County Counsel's Office.
4 (See Exhibit)

5 My question then, is why would this same agency revise the way in
6 which it handles EIR's and allow, through the BPR, a revision of Policy
7 I-119, to release **DRAFT EIR's** for Public Review? If they don't think that
8 the public is intelligent enough to scrutinize other draft documents, then
9 why would they think that the public can make sense of and comment on a
10 Draft EIR? If a citizen of East County were doing their civic duty of
11 participating in what is proposed for their region, they would be commenting
12 on Phases I, II, and III of the BPR, responding by Public Comment on MUP
13 069-06 (the Proposed Blackwater Facility), and responding by Public Comment
14 on the Sun Rise Power Link Alternate Route D.
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