



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY, JANUARY 27, 2009 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Brett Peterson - Vice-President
Marty Weel - Treasurer
Tricia Evans - Secretary
Mark Levy - Director

STAFF

Aimee Bryer - SCC Director
Elizabeth Martyn - General Counsel
Bev Mileham - Admin. Assistant
Phil McWilliams - Grants Admin.
Steve Reighart - Caretaker
Meghan Warner - Bookkeeper

AGENDA

(A: Action Item) This document is available in PDF format at <http://www.smrpd.org>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC AND BOARD INPUT

Receive Public written or oral information/reports only; this is to enable Public input to the Board on any Park District relevant subject and is not a forum for discussion, though Directors may ask for clarification of points. Board input is limited to requests to add urgent items to this Agenda. Time limit is 5 minutes per person.

IV. CONSENT CALENDAR

A1: Approve and file the December 16, 2008 Board Meeting Minutes and Correspondence.

Note: *Directors may remove any item from Consent Calendar to be considered separately.*

V. PAYMENT OF DISTRICT BILLS

A2: Transmittal 01-09A for Directors' compensation for Board Meeting of December 16, 2008 to Directors Evans, Weel, Levy, Peterson and Hunt; \$250.00 total

A3: Transmittal 01-09B, District Bills, \$2,493.48 total

A4: Transmittal 01-09C, Utility Bills and Reimbursements, \$1,712.56 total

VI. CARETAKER'S REPORT

VII. CHILDREN'S CENTER DIRECTOR'S REPORT

(A) Discuss financial situation and contingency plans to address same.

VIII. GRANTS ADMINISTRATOR'S REPORT

A5: Discuss suspension of grant funds per notification letter from California Department of Parks, then decide whether to proceed with solar panel project out of pocket or not.

IX. OTHER DISTRICT BUSINESS

- (A) **A6:** Discuss and act on replacement of ash-contaminated sand in the playground at Modjeska Park.
- (B) Acknowledgement and thanks to 3rd District Supervisor Bill Campbell for the Proclamation issued by his office to commend outgoing Director Debbie Johnson on her seven years of service on the SMRPD Board.
- (C) **A7:** Decide on a course of action for the large pine tree in front of the two Silverado Community Center buildings. Problems are fire safety, root interference with utilities and sidewalk, and sun screening if the solar panels are installed.
- (D) **DIRECTOR'S COMMENTS: PURSUANT TO GOVERNMENT CODE §54954.2** members of the Board of Directors or Staff may ask questions for clarification, make brief announcements, make brief reports on their activities. The Board or a Board member may provide a reference to Staff or other resources for factual information, request Staff to report back at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future Agenda.
 - (1) Director Evans (2) Director Hunt (3) Director Levy
 - (4) Director Peterson (5) Director Weel

X. COMMITTEES

NOTE: There will be no discussion of Committee issues unless agendized below, or added to the Agenda by majority vote of the Board in Section III to address issues that require immediate attention for reasons to be explained in the motion to add. Other comments can be made under Director Comments.

STANDING COMMITTEES:

- (A) **RECREATION** (Evans, Peterson)
- (B) **FINANCE** (Hunt, Weel)
- (C) **PERSONNEL** (Evans, Levy)
- (D) **OPEN SPACE AND TRAILS** (Hunt, Levy)
- (E) **FACILITIES AND SAFETY** (Weel, Peterson)

AD HOC COMMITTEES:

- (F) **SILVERADO CHILDREN'S CENTER** (Evans, Weel)
Children's Center Advisory Committee (Evans, Weel, Bryer) (Public Members: Dawn Lynch, Julia Jones-Tester, Nancy Moore)
- (G) **IRC LIAISON COMMITTEE** (Peterson, Hunt) (Community Members: Judy Myers, Laura Bennet, Kristi Colgan, Carla Anderson)

XI. ADJOURNMENT

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on February 24, 2009.

Materials related to an item on this agenda submitted after distribution of the agenda packet are either available for public inspection at the Silverado Library, or posted on the SMRPD website at <http://www.smrpd.org/agenda-minutes.html>. Materials prepared by SMRPD will be available at the meeting, those provided by others after the meeting.



Advocating Open Space Preservation and Public Trails

**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY, DECEMBER 16, 2008 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Brett Peterson - Vice-President
Marty Weel - Treasurer
Tricia Evans - Secretary
Mark Levy - Director

STAFF

Aimee Bryer - SCC Director
Elizabeth Martyn - General Counsel
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MINUTES

(A: Action Item) This document is available in PDF format at <http://www.smrpd.org>

CALL TO ORDER

The meeting was called to order at 7:10 PM by Director Hunt who acted as chairperson.

ROLL CALL

Directors Hunt, Levy, Evans and Directors-Elect Peterson and Weel were present along with Grants Administrator McWilliams and Admin. Assistant Mileham.

PUBLIC PRESENT

Michelle Quinn, Chay Peterson, Scott Breeden, Mike Colgan, Jim Fainer

OATH OF OFFICE

The Oath of Office was administered by President Hunt to Director-Elect Brett Peterson and Director-Elect Marty Weel.

PUBLIC AND BOARD INPUT ON NON-AGENDIZED ITEMS

Silverado resident Michael Colgan read a letter to the Board and then delivered it as a formal written Public Records Request. The letter and request was related to the current litigation with the County of Orange and CCRC Farms regarding the Silverado Ranch SEIR #587's adherence to CEQA law. President Hunt stated that he would respond to the questions and request inasmuch as legal confidentiality requirements on the open litigation will allow.

Silverado resident Michelle Quinn requested information on the legal expenses related to that litigation. She also requested that a policy be written on how to start classes at the Community Centers. Director Weel is forming a website to help give instructions on how to do this.

CONSENT CALENDAR

Discussed a correspondence with Jani King, will send notices of non-renewal at the end term of contracts with both SMRPD and the Children's Center, then likely cancel the latter on contract anniversary in April, 2009.

1ST ACTION: Director Evans made a motion to approve the Minutes of Regular Board meeting of November 25, 2008 and correspondence. Director Levy seconded. Unanimously approved.

PAYMENT OF DISTRICT BILLS

2nd ACTION: Director Peterson made a motion to approve Transmittal 12-08A for Directors compensation for the Regular Board meeting of October 28, 2008 payable to Directors Peterson, Levy, Hunt, and Evans, \$50.00 each. \$200.00 total. Director Evans seconded. Unanimously approved.

3rd ACTION: Director Levy made a motion to approve payment of Transmittal 12-08B District Bills, \$1,510.00 total. Director Evans seconded. Unanimously approved.

4th ACTION: Director Levy made a motion to approve payment of Transmittal 12-08C, Utility Bills and reimbursements, \$703.29 total. Director Peterson seconded. Unanimously approved.

GRANTS ADMINISTRATOR'S REPORT

Phil McWilliams reported that concern about electrical spikes. Solar panel contractors explained that Edison has a policy establishing a maximum use per day in the summer, based in some manner on previous use records. If that peak use rate is exceeded even briefly (not the total kilowatt hours per day but the peak instantaneous rate) then the cost for electricity that day is raised from around 20 cents per kilowatt/hour to almost \$10 per kilowatt/hour, resulting in a daily charge to SMRPD as high as \$200. He was told that the industry nickname for the policy is "Edison's license to steal." It explains the occasional \$600 to \$800 electric bills for Silverado. Discussed with the Board a pine tree that has grown so big its roots are buckling the sidewalk, and will at some point interfere with nearby septic lines and tank and main electric lines and access well. The shadow of this tree will also mask the solar panels planned to be used on the Building A roof to help avoid the use spikes. Mr. McWilliams wants to ask the community for their input on possibly removing the tree. A new smaller tree may be planted to take its place. Mr. McWilliams will see if the grant could pay for all of this.

OTHER DISTRICT BUSINESS

The Annual election of Board Officers was held.

5th ACTION: Director Evans made a motion to nominate Robert Hunt as President. Director Levy seconded. Unanimously approved.

6th ACTION: Director Hunt made a motion to nominate Marty Weel as Treasurer. Director Evans seconded. Unanimously approved.

7th ACTION: Director Levy made a motion to nominate Tricia Evans as Secretary. Director Peterson seconded. Unanimously approved.

8th ACTION: Director Levy made a motion to nominate Bret Peterson as Vice President. Director Hunt seconded. Unanimously approved.

Committee assignments were discussed with indication for Director Weel, Finance; Personnel Director Evans and Director Levy; Open Space & Trails Director Levy; Facilities and Safety Director Weel. President Hunt will finalize these changes, and noted that Vice-President Peterson should begin chairing some of the meetings. This last in view of the fact that the Chair has not rotated annually for some time, and experience in the position will be needed after the next general election.

DIRECTOR'S INDIVIDUAL COMMENTS

Director Evans is working on the new Spring Recreation Brochure. Hiking was successful in the past she would like to get it started up again.

Director Hunt said that Michelle Quinn could contact him anytime to discuss a guitar class she's working to start. Residents of the District should be encouraged to contact individual Directors outside the Board Meetings since it's easier to have full conversations that way. Anyone may give input to the Board at a meeting, but there is no provision for back and forth discussions, because the purpose of the meeting is to conduct SMRPD official business. He reported that the Children's Center is suffering losses, and asked the Board to continue thinking of ideas to improve the situation.

Director Levy is waiting to hear from Linda Nguyen from CAL-TRANS to discuss Adopt-A-Highway plans. Needs D.O.T approved vests. Open Space meeting discussions will resume in January.

Director Peterson got skateboard ramps from Etnie's and will call CAPRI for use guidelines.

Director Weel looks forward to getting guidance on his new rolls and responsibilities.

ADJOURNMENT

President Hunt adjourned the meeting at 8:30 PM. The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00 PM on Tuesday, January 27, 2009

**LOCALLY GOVERNED DISTRICT
CLAIMS TRANSMITTED FOR PAYMENT**

**DATE: 01/13/09
REPORT 01-09A**

Sil-Mod Rec. and Parks Dist. x 8 2676	THE COUNTY AUDITOR IS AUTHORIZED TO DRAW THIS CHECK FROM FUND 728 AGENCY 728
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PAYEE NAME AND ADDRESS SOCIAL SECURITY /TAX ID	DATE INVOICE #	ORGN	OBJT REV/ BS ACCT	SUB OBJT REV	AMOUNT	AC'S USE ONLY DOC NUMBER	SC
X06505 Robert Hunt 28371 Modjeska Canyon Road Modjeska, CA 92676	12/16/08		0100		\$ 50.00		
					\$ 50.00		
W-9 ATTACHED Martin Weel 28614 Modjeska Canyon Road Modjeska, CA 92676	12/16/08		0100		\$ 50.00		
					\$ 50.00		
X06503 Mark Levy 17452 Olive Hill Road Modjeska Canyon, CA 92676	12/16/08		0100		\$ 50.00		
					\$ 50.00		
X06504 Brett Peterson P.O. Box 613 Silverado, CA 92676	12/16/08		0100		\$ 50.00		
					\$ 50.00		
X06506 Tricia Evans P.O. Box 464 Silverado, CA 92676	12/16/08		0100		\$ 50.00		
					\$ 50.00		

The claims listed above totaling **\$250.00** are approved for payment pursuant to an order entered in the Minutes of the Board of Directors of this District and I certify that the payees named who are described in Government Code Section 3101 have taken an oath or affirmation required by Government Code Section 3102.

APPROVED BY

COUNTERSIGNED

ATTESTED AND/OR COUNTERSIGNED

**LOCALLY GOVERNED DISTRICT
CLAIMS TRANSMITTED FOR PAYMENT**

**DATE: 1/13/09
REPORT 01-09B**

Sil-Mod Rec. and Parks Dist. THE COUNTY AUDITOR IS AUTHORIZED TO
P.O.Box 8 DRAW THIS CHECK FROM FUND 728 AGENCY 728
Silverado, CA 92676

PAYEE NAME AND ADDRESS SOCIAL SECURITY /TAX ID	DATE INVOICE #	ORGN	OBJT REV/ BS ACCT	SUB OBJT REV	AMOUNT	AC'S USE ONLY DOC NUMBER	SC
X06018 COOKSMITH LANDSCAPING 630 N. TUSTIN AVE #1518 ORANGE, CA 92867	INVOICE #6082		1400		\$340.00		
	INVOICE #6065		1400		\$235.00		
					\$575.00		
X05686 MEGHAN WARNER P.O. BOX 177 SILVERADO, CA 92676	INVOICE #08-197		1900		\$250.00		
					\$250.00		
X06016 STEVE REIGHART 28291 HILLTOP DRIVE MODJESKA, CA 92676	INVOICE #2063		1900		\$361.25		
					\$361.25		
X05603 LEWIS BRISBOIS BISGAARD & SMITH 221 N. FIGUEROA STREET, STE 1200 LOS ANGELES, CA 90012	INVOICE #650831		1900		\$502.19		
					\$502.19		
X00815-1 HOME DEPOT PO BOX 6031 THE LAKES, NV 88901	INVOICE DATED: 01/05/09		1400		\$75.64		
					\$75.64		
W-9 ATTACHED KC PROPANE P.O. BOX 17652 ANAHEIM, CA 92817	INVOICE #13122		2800		\$179.40		
					\$179.40		
X06508 PHIL MCWILLIAMS 28331 MODJESKA CANYON ROAD MODJESKA, CA 92676	INVOICE: 10/18/08 THRU 12/19/08		1900		\$550.00		
					\$550.00		
					\$0.00		
					\$0.00		

The claims listed above totaling **\$2,493.48** are approved for payment pursuant to an order entered in the Minutes of the Board of Directors of this District and I certify that the payees named who are described in Government Code Section 3101 have taken an oath or affirmation required by Government Code Section 3102.

APPROVED BY _____

COUNTERSIGNED BY _____

ATTESTED AND/OR COUNTERSIGNED _____

LOCALLY GOVERNED DISTRICT
CLAIMS TRANSMITTED FOR PAYMENT

DATE: 1/20/09
REPORT 01-09C

Sil-Mod Rec. and Parks Dist. THE COUNTY AUDITOR IS AUTHORIZED TO
P.O.Box 8 DRAW THIS CHECK FROM FUND 728 AGENCY 728
Silverado, CA 92676

PAYEE NAME AND ADDRESS SOCIAL SECURITY /TAX ID	DATE INVOICE #	ORGN	OBJT REV/ BS ACCT	SUB OBJT REV	AMOUNT	AC'S USE ONLY	SC
						DOC NUMBER	
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1600						
	PAID TO: JANI-KING						
	INVOICE #LAX010907 1			1400		\$210.00	
	CREDIT #LAX10081360			1400		-\$83.00	
	CREDIT #LAX10081369			1400	-\$20.75		
					\$106.25		
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1598						
	PAID TO: WASTE MANAGEMENT						
	INVOICE #0051911-2513-1			2800		\$154.50	
						\$154.50	
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1597						
	PAID TO: IRWD						
	METER #56569388 12/11/08			2800		\$173.42	
	METER #55418830 12/12/08			2800		\$15.95	
	METER #51441202 12/12/08			2800	\$84.86		
					\$274.23		
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1596						
	PAID TO: HOME DEPOT						
	INVOICE DATED: 12/05/08			1400		\$128.27	
						\$128.27	
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1593						
	PAID TO: SCE						
	INVOICE DATED: 12/12/08			2800		\$387.38	
						\$387.38	
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF DEBIT						
	PAID TO: AT&T						
	714-649-2850 12/10/08			702		\$32.33	
	714-649-2428 12/10/08			702		\$26.94	
						\$59.27	
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1593						
	PAID TO: SCE						
	INVOICE DATED: 01/10/09			2800		\$526.44	
						\$526.44	
X06022 SMRPD (BofA Account) P.O. Box 8 Silverado, CA 92676	REIMBURSEMENT OF CHECK #1597						
	PAID TO: IRWD						
	METER #56569388 01/09/09			2800		\$76.22	
						\$76.22	

The claims listed above totaling **\$1,712.56** are approved for payment pursuant to an order entered in the Minutes of the Board of Directors of this District and I certify that the payees named who are described in Government Code Section 3101 have taken an oath or affirmation required by Government Code Section 3102.

APPROVED BY _____

COUNTERSIGNED BY _____

ATTESTED AND/OR COUNTERSIGNED _____



December 30, 2008

RESPONSE TO PUBLIC RECORDS REQUEST

TABLE OF CONTENTS

- (1) Response letter, 12/30/08
- (2) Response letter, 12/21/08
- (3) Accounting of expenses related to CEQA litigation
- (4) Board Meeting Agenda, 8/6/07
- (5) Board Meeting Agenda, 8/28/07
- (6) Board Meeting Minutes, 8/28/07
- (7) Board Meeting Agenda, 9/25/07
- (8) Board Meeting Minutes, 9/25/07
- (9) Board Meeting Agenda, 10/29/07
- (10) Board Meeting Minutes, 10/29/07
- (11) Board Meeting Agenda, 12/18/07
- (12) Board Meeting Minutes, 12/18/07
- (13) Board Meeting Agenda, 2/26/08
- (14) Board Meeting Minutes, 2/26/08
- (15) Public Records Request, 12/16/08



Tuesday, December 30, 2008

Mr. Michael E. Colgan
P.O. Box 246
Silverado Canyon, CA 92676

Re: Your Public Records Request submitted at the SMRPD Board Meeting of Dec. 16, 2008

Dear Mike,

There are four requests for Records in the document referenced above:

- (1) *A full financial accounting of District funds spent in support of this lawsuit.... (with) copies of invoices, cancelled checks and receipts...*

Accounting - A one-page report giving the pre-litigation and litigation legal expenses as separate totals along with the time periods they cover has been prepared and delivered to you by email. It will be included again in this package

Invoices – Will need to be examined by Counsel for redaction of sensitive items, please advise if you want these in addition to the accounting. It will require an additional 14 days.

Cancelled Checks – These bills were paid by the O.C. Auditor-Controller's office and SMRPD doesn't see the checks before or after.

Receipts – None are issued except for notes of payment on the invoices/statements from MKB.

- (2) *A complete and accurate disclosure of the potential liability to the District in the event the lawsuit be dismissed, or otherwise not found in favor of the petitioners/plaintiffs.*

No such Records exist in any form.

- (3) *Full disclosure and copies of all written correspondence, letters and emails with co-litigants involved in the lawsuit.*

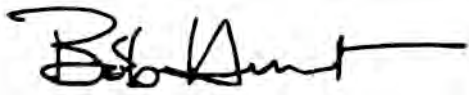
All such documents are privileged and confidential. They consist almost entirely of email updates with attached digital copies of pleadings submitted to the court. The pleadings are public documents and could probably be provided if desired. Digital copies are a preferable format else there will be copying costs because some of the documents are quite large. However, no storage file of these Records presently exists at SMRPD, neither digital nor hard copy.

- (4) *A listing of official Board meeting dates and locations where the subject of the lawsuit or the status of the arroyo toad habitat was agendized and/or discussed.*

Copies of Agenda and Minutes for the following dates are attached. They are also available online at <http://www.smrpd.org/agenda-minutes.html>:

8/06/07
8/28/07
9/25/07
10/29/07
12/18/07
2/26/08

Bob Hunt



President, SMRPD Board of Directors

cc: SMRPD Board of Directors
SMRPD General Counsel

Attachments in PDF format:

- (A) Accounting of litigation expenses and cover letter
- (B) Copies of Agenda and Minutes listed in (4) above
- (C) December 16, 2008 Public Records Request referenced in the subject line of this letter



Sunday, December 21, 2008

Mr. Michael E. Colgan
P.O. Box 246
Silverado Canyon, CA 92676

Re: Your information request submitted at the Board Meeting of December 16, 2008

Dear Mike,

This letter is to inform you that the request is being addressed. It has already become difficult to contact the necessary people due to holiday travel and work closures, and I am going to be visiting family in Northern California from December 22nd through the 27th.

The financial accounting part is complete save for verifying two figures in it. I will be working on the request again on my return to Orange County and will keep you advised of the progress. As you know, we have no full-time staff and so it often falls to board members to do the legwork.

Please don't hesitate to contact me if you'd like to discuss any of this, I'll be happy to meet with you at any mutually convenient time.

Best regards and a Merry Christmas to you and your family,

Bob Hunt

A handwritten signature in black ink that reads "Bob Hunt". The signature is stylized and includes a long horizontal flourish at the end.

President, SMRPD Board of Directors



Sunday, December 21, 2008

ACCOUNTING OF LEGAL EXPENSES RELATED TO SMRPD PARTICIPATION IN CEQA LITIGATION REGARDING SEIR #587 FOR THE SILVERADO (HOLTZ) RANCH PROJECT

(1) PRE-LITIGATION EXPENSES

From 8/2/07 to 11/2/07, legal billings from McCormick, Kidman and Behrens, LLP (MKB) for the services of District Counsel Elizabeth Martyn (COUNSEL) on this matter total \$3,915. Per contractual agreement (AGREEMENT) with co-litigant Rural Canyons Conservation Fund (RCCF), a maximum of \$3,000 will be reimbursed to the District.

(2) LITIGATION EXPENSES

From 11/19/07 to 12/21/08, COUNSEL performed document and case review and advisory duties for the SMRPD Board that resulted in total billings from MKB of \$3,750. Per the AGREEMENT, RCCF will reimburse a maximum of \$5,000 for these services in the course of the litigation that is scheduled to be heard on February 19, 2009 in the Superior Court of San Diego.

(3) Per the AGREEMENT, all costs of the litigation are to be borne by RCCF.

Prepared and submitted by,

A handwritten signature in black ink, appearing to read "Bob Hunt", with a long horizontal stroke extending to the right.

Bob Hunt, President
SMRPD Board of Directors

cc: Michael E. Colgan
Michelle Quinn
Roger Rohm
SMRPD Board of Directors
District Counsel
RCCF



P.O. BOX 8, SILVERADO, CALIFORNIA 92676

Advocating Open Space Preservation and Public Trails
SPECIAL MEETING OF THE BOARD OF DIRECTORS
MONDAY AUGUST 6, 2007 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676

DIRECTORS

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AGENDA

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I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS ON AGENDA ITEMS

Receive written or oral information/reports only; this is to enable Public input to the Board on any relevant subject and is not a forum for discussion.

IV. CLOSED SESSION WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(c) - Potential Litigation, 1 Case

V. RETURN TO OPEN SESSION

(A) Report on Closed Session action, if any.

VI. ADJOURNMENT

The next Regular Meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday August 28, 2007.



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY AUGUST 28, 2007 AT 6:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
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AGENDA (NOTE EARLY START TIME ABOVE)

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III. PUBLIC AND BOARD INPUT

Receive Public written or oral information/reports only; this is to enable Public input to the Board on any relevant subject and is not a forum for discussion, though Directors may ask for clarification of points. Board input is limited to requests to add urgent items to this Agenda.

IV. CLOSED SESSION WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(c) – Potential litigation – 1 case

V. RETURN TO OPEN SESSION (Anticipate at 7:00PM to 7:30PM)
(A) Report on Closed Session action, if any.

VI. CONSENT CALENDAR

A1: Approve and file the Minutes of the July 24, 2007 Regular Board Meeting, Aug. 6, 2007 Special Board Meeting, August 13, 2007 Open Space & Trails Committee Meeting, June 19, 2007 Safety Committee Meeting, and Correspondence.

Note: *Directors may remove any item from Consent Calendar to be considered separately.*

VII. PAYMENT OF DISTRICT BILLS

A2: Transmittal 08-07A for Directors' compensation for the Regular Board meeting of July 24, 2007 payable to Directors Evans, Hunt, Johnson, & Peterson, \$200.00 total

A3: Transmittal 08-07B, District Bills, \$1,985.73 total

A4: Transmittal 08-07C, Utility Bills, \$1,737.82 total

VIII. CHILDREN'S CENTER DIRECTOR'S REPORT

IX. GRANTS ADMINISTRATOR'S REPORT

X. CARETAKER'S REPORT

XI. OTHER DISTRICT BUSINESS

- (A) The Secretary of the Board shall announce that **“Now is the time for all members of the Public wishing to comment on the SMRPD FY2007-2008 Budget to come forward and do so.”** The Board will accept all Public Input, discuss and amend the Budget as so determined, then act upon Adoption of said Budget.
- (B) **A5:** RESOLUTION 082807-1: Adopt Final SMRPD FY2007-2008 Budget by Resolution of the Board with a Roll Call Vote.
- (C) Discussion of District position regarding the Santiago Canyon Road Scenic Corridor Task Force.
- (D) Discussion of contacting property owners regarding donation or sale of lands for open-space conservation. Determine how such contact will be made and who will oversee the information-gathering phase.
- (E) **A6:** Discussion of making a request to the County to use facilities on the Fleming Wilderness property for a Volunteers Appreciation Event to give due recognition to those who've contributed their time and talent to better parks and recreation in our community.
- (F) **PURSUANT TO GOVERNMENT CODE §54954.2** members of the Board of Directors or Staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to Staff or other resources for factual information, request the Staff to report back at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda. Such matters may be brought up under Directors' Comments:
 - (1) Director Evans
 - (2) Director Hunt
 - (3) Director Johnson
 - (4) Director Levy
 - (5) Director Peterson

XII. COMMITTEES

NOTE: There will be no discussion of Committee issues unless specifically agendized here, or added to the Agenda by majority vote of the Board in Section III of this Agenda to address issues that require immediate attention for reasons to be explained in the motion to add. Other comments can be made in the preceding Section.

STANDING COMMITTEES:

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- (B) FINANCE (Hunt, Johnson)
- (C) PERSONNEL (Evans, Johnson)
- (D) OPEN SPACE AND TRAILS (Hunt, Levy)(Community Members: Scott Breeden, Mary Schreiber, Dana Judd, Greg Bates)
- (E) FACILITIES AND SAFETY (Johnson, Peterson)

AD HOC COMMITTEES:

- (F) CHILDREN'S CENTER (Evans, Johnson)

XIII. ADJOURNMENT

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday September 25, 2007.



P.O. BOX 8, SILVERADO, CALIFORNIA 92676

Advocating Open Space Preservation and Public Trails

**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY AUGUST 28, 2007 AT 6:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

**Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director**

STAFF

**Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper**

MINUTES

(A: Action Item) These Minutes are available in PDF format at <http://www.smrpd.org>

CALL TO ORDER

President Hunt called the meeting to order at 6:05PM.

ROLL CALL

Directors Hunt, Levy, Johnson, Peterson and Evans, General Counsel Martyn, SCC Director Bryer, Caretaker Reighart, Grants Admin. McWilliams and Admin. Assist. Mileham were present.

PUBLIC ATTENDANCE

Scott Breeden, Sherry Meddick, Jeff Markell, Ed Amador, Judy Myers, Chay Peterson.

PUBLIC AND BOARD INPUT ON NON-AGENDIZED ITEMS

Ed Amador spoke about parking alternatives if a problem arises with the present event parking south of Silverado Canyon Road.

Jeff Markell spoke on additional loads on Silverado Canyon Road and local traffic from the proposed Silverado Ranch (Holtz) development.

Director Evans mentioned a leadership-training workshop being held on October 13th that might be of interest to the Board. It teaches how to prevent problems, and work out conservation and safety issues.

**CLOSED SESSION WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE 54956.9(C)-
Potential litigation - 1 case**

Entered into Closed Session at 6:15 PM.

RETURN TO OPEN SESSION AT 7:30 PM

The Board voted to write a letter to the BOS to be delivered prior to the Sept 11th hearing expressing the District's concerns about water quality and preservation of arroyo toad habitat.

CONSENT CALENDAR

1st ACTION: Director Levy made a motion to approve the Consent Calendar with the Minutes of July 24, 2007 Regular Board Meeting, August 6, 2007 Special Board Meeting, August 13, 2007 Open Space & Trails Committee Meeting, June 19, 2007 Safety Committee Meeting, and Correspondence. Director Johnson seconded. Unanimously approved

PAYMENT OF DISTRICT BILLS

2nd ACTION: Director Hunt made a motion to approve payment of Transmittal 08-07A, Director compensation for the Regular Board meeting of July 24, 2007 to Directors, Evans, Hunt, Johnson, & Peterson. \$200.00 total. Director Peterson seconded. Unanimously approved.

3rd ACTION: Director Hunt made a motion to approve payment of Transmittal 08-07B, District Bills \$1,985.73 total. Director Johnson seconded. Unanimously approved.

4th ACTION: Director Hunt made a motion to approve payment of Transmittal 08-07C, Utility Bills, \$1,737.82. Director Johnson seconded. Unanimously approved.

SILVERADO CHILDREN'S CENTER

Aimee Bryer said the center's enrollment is the same. The new Fall program will begin Aug 30. Workdays are planned for the future and they are looking for volunteers to help with painting, removing old sand and an old climbing structure.

Andrew Edwards of Extron Electronics donated \$10,000 to the center toward new playground equipment. Dan Dulac of Baker Canyon Greenwaste has volunteered heavy equipment and workers to remove the old unsafe equipment and other structures. Director Bryer is working on a Home Depot grant.

There are Staff and Parent meetings planned in August, and the Center is going to participate in the Silverado Fair. This year's Summer Program was a great success. There is need of a replacement van for next year's Summer Program.

GRANTS ADMINISTRATOR'S REPORT

The Board was given a quote and amended contract from Clean Products (facility and janitorial supplies vendor) to review.

5th ACTION: Director Hunt made a motion to direct the Facilities Committee to evaluate the Clean Products proposal, with authorization to enter into the contract if they deem it suitable, noting that it has a thirty-day right of cancellation. Director Johnson seconded. Unanimously approved.

The solar panel grant funds authorization and possible additional funding are being actively pursued. The Modjeska Community Center wood floor has been restored, and a bulletin board will be found to replace the temporary one now in place.

CARETAKER'S REPORT

So far this month, \$275 in rentals has been received. Repair of the air conditioning in Silverado's Building B is being arranged. The Concert in the Park series has been going very well except for a small disturbance reported after the last event by individuals who arrived apparently under the influence. Steps will be taken to prevent any recurrence. Red Hot Chimney Sweep donated a very nice BBQ and Danny Brown's Sil-Mod Propane is donating the fuel needed for it.

OTHER DISTRICT BUSINESS

PUBLIC HEARING

Secretary Levy announced that this was the time and place of the Public Hearing to receive comments and testimony from the Public regarding the SMRPD Proposed Budget for Fiscal Year 2007-2008.

Notice of Public Hearing was published in the Orange County Register on August 17 and 18, 2007, and the Affidavit of Publication/Proof of Publication is on file at the District Office at 27641 Silverado Canyon Road, Silverado 92676. A copy of the Proposed Budget was posted for Public Inspection at the Silverado Branch Library, 28192 Silverado Canyon Road, Silverado 92676 from August 16 to August 28, 2007.

There was no Public Comment. The Board briefly discussed anticipated rental income and Director Johnson moved for a vote on the Final Budget.

RESOLUTION 082807-1: To adopt the Final SMRPD FY 2007-2008 Budget. At the direction of President Hunt, Admin. Assistant Mileham conducted a Roll Call Vote of the Board: Director Hunt, AYE; Director Johnson; AYE; Director Peterson, AYE; Director Evans, AYE; Director Levy, AYE. Resolution was Adopted by unanimous vote of the Board.

Discussed contacting owners of undeveloped parcels that might be available for open-space preservation. The Board agreed that Director Levy should make the contacts and that a proposal letter would be drafted after consulting with open-space acquisition experts.

Director Evans made a request to HB&P Senior Park Ranger Vicky Malton asking if SMRPD could use the Howard House in the Fleming Wilderness area for occasional special events such as a planned Volunteer Appreciation Day. Ranger Malton replied favorably, asking for a written request from the Board to set the arrangements in place.

6th ACTION: Director Hunt made a motion to write a formal request to the County asking to use the Howard House for special events, on a per request basis. Director Peterson seconded. Unanimously approved.

DIRECTOR COMMENTS:

Director Evans- The Fall Brochure is nearing completion. Anyone having information for the brochure was asked to turn it in ASAP. Volunteers are needed for the Goat Shed Breakfast Hike September 22.

Director Johnson- There is a facility meeting coming up. Director Johnson is still working on the CAL-Card and is pricing new refrigerators for the community centers and the caretaker's residence.

Director Hunt – The Irvine Ranch Land Reserve Trust will be installing an alternate final leg at the top of the Mesa approach road in Silverado in order to keep the path open for equestrians, hikers and bicyclists. Due to repeat abuses of the restrictions against motorized vehicles, that sort of access will be further restricted. The road addition is being added on Kane Ranch property with their permission and cooperation to allow continued public access. The construction expense is being borne entirely by IRLRT.

Director Peterson - \$3,000 was donated to SMRPD for sound equipment for the scheduled Concerts in the Park and all future events. The money was raised at the Rockin' Jake concert organized by Zachary Dupre.

ADJOURNMENT

The meeting was adjourned at 8:45PM. The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday September 25, 2007.



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY SEPTEMBER 25, 2007 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director

STAFF

Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper

AGENDA

(A: Action Item) This Agenda is available in PDF format at <http://www.smrpd.org>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC AND BOARD INPUT

Receive Public written or oral information/reports only; this is to enable Public input to the Board on any relevant subject and is not a forum for discussion, though Directors may ask for clarification of points. Board input is limited to requests to add urgent items to this Agenda.

IV. CONSENT CALENDAR

A1: Approve and file the Minutes of the August 28, 2007 Regular Board Meeting, the Aug. 13, 2007 Open Space & Trails Committee Meeting, and Correspondence.
Note: *Directors may remove any item from Consent Calendar to be considered separately.*

V. PAYMENT OF DISTRICT BILLS

A2: Transmittal 09-07A for Directors' compensation for the Regular Board meeting of August 28, 2007 payable to Directors Evans, Hunt, Johnson, Levy, and Peterson, \$250.00 total

A3: Transmittal 09-07B, District Bills, \$9,024.78 total

A4: Transmittal 09-07C, Utility Bills, \$1,883.68 total

VI. CHILDREN'S CENTER DIRECTOR'S REPORT

VII. GRANTS ADMINISTRATOR'S REPORT

VIII. CARETAKER'S REPORT

- (A) Discuss security of community center doors as it relates to unauthorized entry and use.
- (B) **A6:** Authorize HVAC repair or replacement in the new wing of the Silverado Community Center.

IX. OTHER DISTRICT BUSINESS

- (A) **A5:** Approve purchase of 3 refrigerators at \$580 each plus delivery charges, to replace the aging energy-wasting units at the Silverado and Modjeska Community Centers and the Caretaker's residence.
- (B) Discuss Recreation Program fee structure, and assign an ad hoc committee to define it in detail.
- (C) Discuss organizing a community dedication ceremony for the newly completed riding/hiking/bicycling access route to the Silverado Truck Trail at the top of the Mesa access road, recently installed by the Irvine Ranch Conservancy with the permission of Kane Ranch. The cooperative effort of these two entities ensures continued public access to the popular trail route.
- (D) **A6:** Authorize HVAC repair or replacement in the new wing of the Silverado Community Center.
- (E) **A7:** Discuss the format and location of a Volunteer Appreciation event with a budget authorization, and assign an ad hoc committee to work out the details.
- (F) **PURSUANT TO GOVERNMENT CODE §54954.2** members of the Board of Directors or Staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to Staff or other resources for factual information, request the Staff to report back at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda. Such matters may be brought up under Directors' Comments:
 - (1) Director Evans
 - (2) Director Hunt
 - (3) Director Johnson
 - (4) Director Levy
 - (5) Director Peterson

X. CLOSED SESSION PURSUANT TO GOVT. CODE §54956.9(c) – Potential litigation – 1 case

XI. RETURN TO OPEN SESSION

- (A) Report on Closed Session action, if any.

XII. COMMITTEES

NOTE: There will be no discussion of Committee issues unless specifically agendaized here, or added to the Agenda by majority vote of the Board in Section III of this Agenda to address issues that require immediate attention for reasons to be explained in the motion to add. Other comments can be made by individual Directors in the preceding Section.

STANDING COMMITTEES:

- (A) RECREATION (Evans, Peterson)
- (B) FINANCE (Hunt, Johnson)
- (C) PERSONNEL (Evans, Johnson)
- (D) OPEN SPACE AND TRAILS (Hunt, Levy)(Community Members: Scott Breeden, Mary Schreiber, Dana Judd, Greg Bates)
- (E) FACILITIES AND SAFETY (Johnson, Peterson)

AD HOC COMMITTEES:

- (F) CHILDREN'S CENTER (Evans, Johnson)

XIII. ADJOURNMENT

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday October 23, 2007.



Advocating Open Space Preservation and Public Trails

**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY SEPTEMBER 25, 2007 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director

STAFF

Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper

MINUTES

(A: Action Item) These Minutes are available in PDF format at <http://www.smrpd.org>

CALL TO ORDER

President Hunt called the meeting to order at 7:00PM.

ROLL CALL

Directors Hunt, Levy, Johnson, Peterson and Evans, Caretaker Reighart, Grants Admin. McWilliams, SCC Director Bryer and Admin. Assist. Mileham were present.

PUBLIC ATTENDANCE

Scott Breeden

PUBLIC AND BOARD INPUT ON NON-AGENDIZED ITEMS

Director Evans asked that the Board review the new Recreation Brochure that needs to go out by October 1st.

CONSENT CALENDAR

1st ACTION: Director Peterson made a motion to approve the Consent Calendar with the Minutes of The Regular Board Meeting August 28, 2007, the August 13, 2007 Open Space & Trails Committee Meeting, and Correspondence. Director Levy seconded. Unanimously approved.

PAYMENT OF DISTRICT BILLS

2nd ACTION: Director Johnson made a motion to approve payment of Transmittal 09-07A, Directors compensation for the Regular Board meeting of August 28, 2007 to Directors Evans, Hunt, Levy, Johnson, and Peterson in an amount of \$50.00 each, \$250.00 total. Director Peterson seconded. Unanimously approved.

3rd ACTION: Director Johnson made a motion to approve payment of Transmittal 09-07B, District Bills \$9,024.78 total. Director Evans seconded. Unanimously approved.

4th ACTION: Director Johnson made a motion to approve payment of Transmittal 09-07C, Utility Bills, \$1,883.68 Director Evans seconded. Unanimously approved.

SILVERADO CHILDREN'S CENTER

Director Bryer reported that the Fall program started. Enrollment figures have not decreased. Parents' workdays and generous volunteers from the community combined to demolish and remove the old non-code playground structures. Director Bryer expressed appreciation for all the wonderful helpers. Rain gutters have been cleaned out, filters replaced, and leaves raked. The Center is participating in the Silverado Country Fair. Applications were submitted for Cox and Home Depot grants.

GRANTS ADMINISTRATOR'S REPORT

Phil McWilliams reported that the \$60,000 plus grant reimbursement check should arrive soon, at which time the remaining grant balances will be exactly determined so that investigation of solar power panels for the Silverado Community Center can begin.

CARETAKER'S REPORT

Steve Reighart replaced needed locks at the Modjeska Community Center, so that the Board can select archival District records to be stored there. Fascia boards, doorstops and a motion sensor outdoors light switch were installed at Modjeska. The picnic tables there need resurfacing. Some cleanup of the vegetation behind Modjeska Community Center is needed.

5th ACTION: Director Hunt made a motion to approve up to \$650 for Bob Miller to repair the air conditioner units at Silverado Building B. Director Johnson seconded. Unanimously approved.

OTHER DISTRICT BUSINESS

A. Discussed purchasing new energy efficient refrigerators for the community center and the Caretakers residence.

6th ACTION: Director Hunt made a motion to purchase 2 refrigerators that cost \$580.00 ea. plus tax for the Silverado Community and the Caretakers residence. Director Johnson seconded. Unanimously approved.

B. Discussed Rec Program fee structures, which have not been formalized. President Hunt directed the Recreation Committee to create a proposal for the Board to review and adopt.

C. Discussed a community dedication ceremony for a newly completed riding/biking/bicycling access route to the Silverado Truck Trail at the top of the Mesa access road. It was recently installed by the Irvine Ranch Conservancy with the permission of Kane Ranch in order to keep access open for hikers, bicyclists and equestrians. Directors Hunt and Peterson are the ad hoc committee to plan a ceremony.

E. The Board discussed having a volunteer appreciation event for the many community volunteers. November 3rd was selected and it will be held in both the A and B buildings in Silverado. Director Levy proposed honoring the volunteers and their families with a BBQ and certificates of appreciation.

7th ACTION: Director Levy made a motion to budget \$1,000 for the volunteer and employee Appreciation BBQ. Director Evans seconded. 4 – AYE and 1 – NO (Director Johnson opposed). Passed by majority vote of the Board.

DIRECTORS' COMMENTS:

Director Evans- Asked the Board to look at the new Fall brochure and provide immediate feedback so that it can be distributed in time.

Director Johnson- No comments.

Director Hunt – Asked if anyone wanted to volunteer to help with the 241 Adopt-A-Highway trash pickup on Sunday.

Director Levy – Is looking forward to making the volunteer appreciation event memorable. Asked if anyone wanted to volunteer to help with the 241 Adopt-A-Highway trash pickup on Sunday. Two up, two down.

Director Peterson – Reported that the Summer Music in the Park nights were very well run and attended. The concerts were family oriented and helped pull the community together. The Board briefly discussed the benefits of formally sponsoring the event next year.

CLOSED SESSION PURSUANT TO GOVT. CODE 54956.9(C) - Potential litigation - 1 case
Entered into Closed Session at 8:30 PM.

RETURN TO OPEN SESSION AT 9:10 PM

There were no reportable actions from Closed Session.

ADJOURNMENT

The meeting was adjourned at 9:15PM. The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday October 23, 2007.



**EMERGENCY[†] MEETING OF THE BOARD OF DIRECTORS
MONDAY OCTOBER 29, 2007 AT 7:00PM
AT "CAMP SILVERADO" EVACUATION CENTER
SOUTHWEST CORNER OF CHAPMAN & JAMBOREE, CITY OF ORANGE**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director

STAFF

Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper

AGENDA

(A: Action Item) This Agenda will be available in PDF format at <http://www.smrpd.org>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC AND BOARD INPUT

Receive Public written or oral information/reports only; this is to enable Public input to the Board on any relevant subject and is not a forum for discussion, though Directors may ask for clarification of points. Board input is limited to requests to add urgent items to this Agenda.

IV. CONSENT CALENDAR

A1: Approve and file the Minutes of the September 25, 2007 Regular Board Meeting, and Correspondence.

Note: *Directors may remove any item from Consent Calendar to be considered separately.*

V. PAYMENT OF DISTRICT BILLS

A2: Transmittal 10-07A for Directors' compensation for the Regular Board meeting of September 25, 2007 payable to Directors Evans, Hunt, Johnson, Levy, and Peterson; \$50.00 each, \$250.00 total

A3: Transmittal 10-07B, District Bills, \$9,074.07 total

A4: Transmittal 10-07C, Utility Bills and Reimbursements, \$2,598.53 total

VI. OTHER DISTRICT BUSINESS

(A) **A5:** Acceptance of the FY2006-2007 Annual District Audit.

- (B) **A6:** Determination of a location for the continued meeting to address the closed session of Item VII below.**
- (C) **PURSUANT TO GOVERNMENT CODE §54954.2** members of the Board of Directors or Staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to Staff or other resources for factual information, request the Staff to report back at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda. Such matters may be brought up under Directors' Comments:
- (1) Director Evans
 - (2) Director Hunt
 - (3) Director Johnson
 - (4) Director Levy
 - (5) Director Peterson

VII. CLOSED SESSION WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(c) – Potential litigation – 1 case

VIII. RETURN TO OPEN SESSION

- (A) Report on Closed Session action, if any.

IX. ADJOURNMENT

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday November 27, 2007.

† Emergency meeting authorization, per advice of Counsel on October 28,2007:

“The Brown Act has a new emergency section which allows you to meet outside the boundaries of the agency because of fire, etc. [.....]

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.”

**AT 7:30 PM the Closed Session, Item VII, was adjourned to a time and place determined by unanimous vote of the Board, to wit: 7:00 PM, October 30, 2007 at Santiago Canyon College, Bldg. U84, 8045 E. Chapman Ave., Orange, CA 92869-4512. At the opening of the adjourned meeting, Public Comment will be accepted with a maximum speaking time of 3 minutes per person. Director Brett Peterson will be participating in the Closed Section by phone at (949) 702-7547, from Wildcat Canyon in Silverado Canyon. This has been posted in as public a place as is available in Wildcat Canyon given the current restrictions due to the ongoing wildfire in that area. District Counsel will also participate on an as-needed basis by phone at (949) 636-9737. – Robert Hunt, Board President

At 5:00 PM, November 1, 2007 the meeting was further continued to 6:00 PM, November 2, 2007 at the same location.

At 3:00 PM, November 2, 2007 the meeting was continued for lack of a quorum to 4:00 PM, November 3, 2007 at the same location.



**MINUTES OF THE EMERGENCY[†] MEETING OF THE BOARD OF DIRECTORS
MONDAY OCTOBER 29, 2007 AT 7:00PM
AT "CAMP SILVERADO" EVACUATION CENTER
SOUTHWEST CORNER OF CHAPMAN & JAMBOREE, CITY OF ORANGE**

DIRECTORS

Robert Hunt - President
Deborah Johnson - Vice-President
Brett Peterson - Treasurer
Mark Levy - Secretary
Tricia Evans - Director

STAFF

Aimee Bryer - SCC Director
Elizabeth Martyn - General Counsel
Bev Mileham - Admin. Assistant
Phil McWilliams - Grants Admin.
Steve Reighart - Caretaker
Meghan Warner - Bookkeeper

MINUTES

(A: Action Item) This Agenda will be available in PDF format at <http://www.smrpd.org>

CALL TO ORDER

President Hunt called the meeting to order at 7:00 PM.

ROLL CALL

Directors Evans, Johnson, and Hunt were present.

PUBLIC ATTENDANCE

Scott Breeden

PUBLIC AND BOARD INPUT

There was no input from the Public or Directors

CONSENT CALENDAR

A1: Director Johnson made a motion to approve and file the Minutes of the September 25, 2007 Regular Board Meeting, and Correspondence. Director Evans seconded, unanimously approved.

PAYMENT OF DISTRICT BILLS

A2: Director Evans moved to approve payment of Transmittal 10-07A, compensation of Directors Evans, Hunt, Johnson, Levy and Peterson for the Regular Board meeting of September 25, 2007, \$250 total. Director Johnson seconded, unanimously approved.

A3: Director Johnson moved to approve payment of Transmittal 10-07B, District Bills, \$9,074.07 total. Director Evans seconded, unanimously approved.

A4: Director Evans moved to approve payment of Transmittal 10-07C, Utility Bills & Account Reimbursements, \$2,598.53 total. Director Johnson seconded, unanimously approved.

OTHER DISTRICT BUSINESS

A5: Director Evans moved to accept and file the FY2006-2007 Annual District Audit. Director Johnson seconded, unanimously approved.

ADJOURNMENT

AT 7:30 PM the Closed Session, Item VII, was adjourned to a time and place determined by unanimous consent of the Board, to wit: 7:00 PM, October 30, 2007 at Santiago Canyon College, Bldg. U84, 8045 E. Chapman Ave., Orange, CA 92869-4512. At the opening of the adjourned meeting, Public Comment is to be accepted with a maximum speaking time of 3 minutes per person. Director Brett Peterson will participate in the Closed Section by phone at (949) 702-7547, from Wildcat Canyon in Silverado Canyon. This was posted in as public a place as possible in Wildcat Canyon given the current restrictions due to the ongoing wildfire in that area. District Counsel will also participate on an as-needed basis by phone at (949) 636-9737

OCTOBER 30, 2007

The Emergency Meeting of the Board of Directors was reconvened at the time and place indicated in the preceding paragraph.

President Hunt called the meeting to order at 7:00 PM.

Present were Directors Evans, Hunt, Johnson and Levy. Director Peterson and Counsel Elizabeth Martyn participated in the closed session by phone as described above.

Approximately 12 members of the public gave testimony to the Board, uniformly urging participation in the anticipated litigation by RCCF in regard to defects in the EIR/SEIR for the Silverado Ranch development in Silverado Canyon. Those present included Scott Breeden, Ed Amador, Wendy Hayden, Jeff and Mary Markell, Annie Looi, and others to be added as the Directors present may recall (the sign-in sheet was misplaced).

The Board retired to Closed Session at 7:45 PM.

The Board returned to Open Session at 8:45 PM and announced one reportable item. The Board voted unanimously to approve a four-point conditional agreement with RCCF to join them in litigation, and has requested a response to the proposal by Thursday, November 1, 2007.

At 9:15 PM the meeting was adjourned to this same location at 7:00 PM, November 1, 2007 and a revised Agenda was posted at Camp Silverado.

NOVEMBER 1, 2007

At 5:00 PM, November 1, 2007 the meeting was continued by President Hunt to 6:00 PM, November 2, 2007 at the same location and a revised Agenda was posted at Camp Silverado.

NOVEMBER 2, 2007

At 3:00 PM, November 2, 2007 the meeting was continued by President Hunt for lack of a quorum to 4:00 PM, November 3, 2007 at the same location, and a revised Agenda was posted at Camp Silverado.

NOVEMBER 3, 2007

Due to an OCFA announcement at Camp Silverado at 4:00 PM regarding the reopening of Silverado Canyon, Directors Evans and Hunt were present at the meeting place at 4:00 PM and Directors Johnson and Levy arrived at 4:20 PM.

At 4:25 PM President Hunt called the continued meeting to order.

Present were Directors Evans, Hunt, Johnson and Levy. No members of the public were in attendance.

At 4:27 PM the Board retired to Closed Session to consider the RCCF response to the Conditional Agreement to Join Litigation presented to them on October 30, 2007.

The Board returned to Open Session at 4:35 PM and took the following action.

President Hunt read the following Resolution to the Board:

RESOLUTION 110307-1

Be it hereby resolved that the Board of Directors of the Silverado-Modjeska Recreation and Park District shall authorize the Board President and District Counsel to execute an agreement with RCCF to become a party to the lawsuit addressing defects and irregularities in the processing of the EIR/SEIR #587 for the Silverado Ranch development project located in Silverado Canyon, adjacent to the District park facility there.

Director Johnson moved that the Board adopt the Resolution and was seconded by Director Evans. The Board voted 4-0 in favor of this motion and the Resolution was thereby adopted.

There being no further business to come before the Board the meeting was adjourned at 4:37 PM, and a report of the action was posted at the now accessible Silverado Community Center at 7:00 PM.

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday November 27, 2007.



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY DECEMBER 18, 2007 AT 6:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director

STAFF

Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper

AGENDA

(A: Action Item) This Agenda is available in PDF format at <http://www.smrpd.org>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC AND BOARD INPUT

Receive Public written or oral information/reports only; this is to enable Public input to the Board on any relevant subject and is not a forum for discussion, though Directors may ask for clarification of points. Board input is limited to requests to add urgent items to this Agenda.

IV. CLOSED SESSION WITH LEGAL COUNSEL pursuant to Govt. Code §54956.9(a), SMRPD et al v. County of Orange

V. RETURN TO OPEN SESSION

Report on Closed Session action, if any

VI. CONSENT CALENDAR

A1: Approve and file the Minutes of the November 27, 2007 Regular Board Meeting, the December 9, 2007 Safety Committee Meeting, and Correspondence.

Note: *Directors may remove any item from Consent Calendar to be considered separately.*

VII. PAYMENT OF DISTRICT BILLS

A2: Transmittal 12-07A for Directors' compensation for the Regular Board meeting of November 27, 2007 payable to Directors Evans, Hunt, Johnson, Levy, and Peterson; \$50.00 each, \$250.00 total

A3: Transmittal 12-07B, District Bills, \$1,137.71 total

A4: Transmittal 12-07C, Utility Bills and Reimbursements, \$1,291.33 total

VIII. CHILDREN'S CENTER DIRECTOR'S REPORT

IX. GRANTS ADMINISTRATOR'S REPORT

X. CARETAKER'S REPORT

XI. OTHER DISTRICT BUSINESS

(A) Discuss cleanup of 241 Tollway in December.

(B) **PURSUANT TO GOVERNMENT CODE §54954.2** members of the Board of Directors or Staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to Staff or other resources for factual information, request the Staff to report back at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda. Such matters may be brought up under Directors' Comments:

- (1) Director Evans
- (2) Director Hunt
- (3) Director Johnson
- (4) Director Levy
- (5) Director Peterson

XII. COMMITTEES

NOTE: There will be no discussion of Committee issues unless specifically agendaized here, or added to the Agenda by majority vote of the Board in Section III of this Agenda to address issues that require immediate attention for reasons to be explained in the motion to add. Other comments can be made in the preceding Section.

STANDING COMMITTEES:

- (A) RECREATION (Evans, Peterson)
- (B) FINANCE (Hunt, Johnson)
- (C) PERSONNEL (Evans, Johnson)
- (D) OPEN SPACE AND TRAILS (Hunt, Levy)(Community Members: Scott Breeden, Mary Schreiber, Dana Judd, Greg Bates)
- (E) FACILITIES AND SAFETY (Johnson, Peterson)

AD HOC COMMITTEES:

- (F) CHILDREN'S CENTER (Evans, Johnson)

XIII. ADJOURNMENT

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday January 22, 2008.



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY DECEMBER 18, 2007 AT 6:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director

STAFF

Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper

MINUTES

(A: Action Item) These Minutes are available in PDF format at <http://www.smrpd.org>

CALL TO ORDER

President Hunt called the meeting to order at 6:00 PM.

ROLL CALL

Directors Hunt, Levy, and Peterson, Caretaker Reighart and Admin. Assist. Mileham were present.

CLOSED SESSION WITH LEGAL COUNSEL, pursuant to Govt. Code 54956.9(a).
SMRPD et al v. County of Orange.

RETURN TO OPEN SESSION at 6:30 PM

There were no reportable actions from the Closed Session.

CONSENT CALENDAR

1st ACTION: Director Peterson made a motion to approve the Consent Calendar with the Minutes of November 27, 2007 , Safety Committee Meeting of December 9, 2007 and Correspondence. Director Levy seconded. Unanimously approved.

PAYMENT OF DISTRICT BILLS

2nd ACTION: Director Hunt made a motion to approve payment of Transmittal 12-07A for Directors compensation for the Regular Board meeting of November 27, 2007 payable to Directors Evans, Hunt, Johnson, Levy and Peterson for \$50 each, \$250 total. Director Peterson seconded. Unanimously approved.

3rd ACTION: Director Hunt made a motion to approve payment of Transmittal 12-07B, District Bills, \$1,137.71 total. Director Peterson seconded. Unanimously approved.

4th ACTION: Director Johnson made a motion to approve payment of Transmittal 12-07C, Utility Bills and Reimbursements, \$1,291.33 total Director Levy seconded. Unanimously approved.

SILVERADO CHILDREN'S CENTER

The Directors reviewed the Children's Center financial report. Director Levy had one question for Aimee Bryer about a recorded loss of \$2,600. Beyond that everything is going very well at the center.

GRANTS ADMINISTRATION REPORT

No report this month

CARETAKER'S REPORT

Steve Reighart repaired vandalized toilets again in Silverado. He also repaired a lock box and purchased a light for the Modjeska kitchen. He added door sweeps and kick stops to all the doors at the Silverado Community Center.

OTHER DISTRICT BUSINESS

The Directors reviewed SMRPD Districts financial statements.

The monthly 241 Toll Road cleanup will occur sometime between Christmas and New Years Day. Directors Hunt, and Levy along with Scott Breeden faithfully continue cleaning the adopted section of highway.

ADJOURNMENT

The meeting was adjourned at 7:30 PM. The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon road at 7:00PM on January 22, 2008.



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY FEBRUARY 26, 2008 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson - Vice-President
Brett Peterson - Treasurer
Mark Levy - Secretary
Tricia Evans - Director

STAFF

Aimee Bryer - SCC Director
Elizabeth Martyn - General Counsel
Bev Mileham - Admin. Assistant
Phil McWilliams - Grants Admin.
Steve Reighart - Caretaker
Meghan Warner - Bookkeeper

AGENDA

(A: Action Item) This Agenda is available in PDF format at <http://www.smrpd.org>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC AND BOARD INPUT

Receive Public written or oral information/reports only; this is to enable Public input to the Board on any relevant subject and is not a forum for discussion, though Directors may ask for clarification of points. Board input is limited to requests to add urgent items to this Agenda.

IV. CONSENT CALENDAR

A1: Approve and file the Minutes of the January 22, 2008 Regular Board Meeting and Correspondence.

Note: *Directors may remove any item from Consent Calendar to be considered separately.*

V. PAYMENT OF DISTRICT BILLS

A2: Transmittal 02-08A for Directors' compensation for the Regular Board meeting of December 18, 2007 payable to Directors Hunt, Evans, Johnson, and Peterson; \$50.00 each, \$200.00 total

A3: Transmittal 02-08B, District Bills, \$6,291.82 total

A4: Transmittal 02-08C, Utility Bills and Reimbursements, \$1,297.44 total

VI. CHILDREN'S CENTER DIRECTOR'S REPORT

VII. GRANTS ADMINISTRATOR'S REPORT

VIII. CARETAKER'S REPORT

IX. OTHER DISTRICT BUSINESS

- (A) Discuss cooperation with the Irvine Ranch Conservancy (IRC) to enhance the appearance of the Silverado Canyon entry and Black Star Canyon Road.
- (B) **A5: RESOLUTION 022608-1:** approve and adopt SMRPD ADA Policy
- (C) **PURSUANT TO GOVERNMENT CODE §54954.2** members of the Board of Directors or Staff may ask questions for clarification, make brief announcements, make brief reports on his/her own activities. The Board or a Board member may provide a reference to Staff or other resources for factual information, request the Staff to report back at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda. Such matters may be brought up under Directors' Comments:
 - (1) Director Evans
 - (2) Director Hunt
 - (3) Director Johnson
 - (4) Director Levy
 - (5) Director Peterson

X. COMMITTEES

NOTE: There will be no discussion of Committee issues unless specifically agendized here, or added to the Agenda by majority vote of the Board in Section III of this Agenda to address issues that require immediate attention for reasons to be explained in the motion to add. Other comments can be made in the preceding Section.

STANDING COMMITTEES:

- (A) RECREATION (Evans, Peterson)
 - (1) IRC scheduled hikes on the Baker Canyon Loop and Lower Mesa Loop.
- (B) FINANCE (Hunt, Johnson)
- (C) PERSONNEL (Evans, Johnson)
- (D) OPEN SPACE AND TRAILS (Hunt, Levy)(Community Members: Scott Breeden, Mary Schreiber, Dana Judd, Greg Bates)
 - (1) Discuss cooperation with IRC on Master Plan of Trails overlay with their system of trails.
- (E) FACILITIES AND SAFETY (Johnson, Peterson)
 - (1) Establish cleaning routine for Modjeska Community Center

AD HOC COMMITTEES:

- (F) CHILDREN'S CENTER (Evans, Johnson)

XIII. CLOSED SESSION pursuant to Govt. Code Section 54956.9(a) – SMRPD et al v. County of Orange, Marnell

XIV. RETURN TO OPEN SESSION, announce any reportable items from Closed Session

XV. ADJOURNMENT

The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon Road at 7:00PM on Tuesday, March 25, 2008.



**REGULAR MEETING OF THE BOARD OF DIRECTORS
TUESDAY FEBRUARY 26, 2008 AT 7:00PM
AT THE SILVERADO COMMUNITY CENTER
27641 SILVERADO CANYON ROAD, SILVERADO 92676**

DIRECTORS

Robert Hunt - President
Deborah Johnson – Vice-President
Brett Peterson – Treasurer
Mark Levy – Secretary
Tricia Evans – Director

STAFF

Aimee Bryer – SCC Director
Elizabeth Martyn – General Counsel
Bev Mileham – Admin. Assistant
Phil McWilliams – Grants Admin.
Steve Reighart – Caretaker
Meghan Warner – Bookkeeper

MINUTES

(A: Action Item) This Agenda is available in PDF format at <http://www.smrpd.org>

CALL TO ORDER

The meeting was called to order at 7:06 PM by Director Hunt who acted as chairperson.

ROLL CALL

Directors Hunt, Levy, Johnson, and Peterson were present. Childrens Center Director Bryer, Caretaker Reighart, Grant Administrator McWilliams, & Admin. Assistant Mileham were present.

PUBLIC ATTENDANCE

Zach Dupre

PUBLIC AND BOARD INPUT ON NON-AGENDIZED ITEMS

Silverado resident Zach Dupre asked the Board about starting up the Music in the Park events again. He would like to have the events for 5 months and sell food in the kitchen where the profits would go to a special 4th of July celebration. He has a lot of other great ideas, Director Hunt asked him to put them all in writing for consideration by the Board at the next regular meeting.

CONSENT CALENDAR

1st ACTION: Director Levy made a motion to approve the Open Space Minutes of January 21, 2008 and Open Space Minutes of February 18, 2008. Director Peterson seconded.

Unanimously approved. The Minutes of January 22, 2008 Regular Board Meeting will be on the next Agenda for approval.

PAYMENT OF DISTRICT BILLS

2nd ACTION: Director Levy made a motion to approve payment of Transmittal 0208-A for Directors compensation for the Regular Board meeting of December 18, 2007 payable to Directors Hunt, Evans, Johnson and Peterson \$200.00 total. Director Peterson seconded. **Unanimously approved.**

3RD ACTION: Director Johnson made a motion to approve payment of Transmittal 02-08B, District Bills totaling \$6,291.82. Director Levy seconded. Unanimously approved.

4th ACTION: Director Johnson made a motion to approve payment of Transmittal 02-08C, Utility Bills and Reimbursements totaling, \$1,297.44. Director Peterson seconded. Unanimously approved.

SILVERADO CHILDREN'S CENTER

Children's center Director Aimee Bryer said they had 1 new enrollment. Parent workdays coming up, they have been working on the play yard, replacing the sand with wood chips per CAPRI's request. Staff has taken classes and been recertified in CPR and first aid. Director Bryer has been working on the new budget. The annual Chili Cook-off Fundraiser at Irvine Lake is being planned. A van is to be donated to the Children Center and the center will work on getting it registered. IRC has requested using the Children Center's parking lot for a trailhead and staging area for its future hikes.

5th ACTION: Director Hunt made a motion to approve ICL using the Children Center's parking lot as a staging area for trails and hikes. Director Johnson seconded. Unanimously approved.

CARETAKERS REPORT

Director Hunt said that the annual Possessory Interest report for the Caretaker's residence is due. The question is does the District pay this or the Caretaker? The Board decided that the District should pay it. Director Hunt will handle the paper work.

GRAND ADMINISTRATOR REPORT

Phil McWilliams said that there was \$18,750 left over from the previous grants. The Board had earlier decided to use this money for solar panels at the Silverado Community Center. Mr. McWilliams is checking into discounts that apply to Government agencies.

OTHER DISTRICT BUSINESS

The Board discussed the opportunity to work in cooperation with the Irvine Ranch Conservancy to enhance the appearance of the Silverado Canyon entry and Black Star Canyon Road. IRC wants to work in partnership with the District and in harmony with the community. President Hunt will assign ad hoc committees for this and trails program cooperation.

RESOLUTION 022608-1: Adoption of SMRPD ADA Policy

6th Action: Director Hunt moved to vote on the adoption of the SMRPD ADA Policy. Director Peterson seconded. Roll-Call Vote: Director Levy, Aye; Director Hunt, Aye; Director Peterson, Aye; Director Johnson, Aye.

CLOSED SESSION: The Board went into Closed Session at 8:30 PM pursuant to Govt. Code Section 54956.9(a) – SMRPD et al v. County of Orange, Marnell.

The Board returned from Closed Session at 9:00PM. There were no reportable items.

ADJOURNMENT

The meeting was adjourned at 9:05PM. The next regular meeting of the Board of Directors will be at the Silverado Community Center, 27641 Silverado Canyon road at 7:00PM on Tuesday March 25, 2008.

December 16, 2008

Board of Directors Silverado-Modjeska Recreation and Parks District

I have read with interest the letter written by Director Bob Hunt on behalf of the Silverado-Modjeska Recreation and Parks District (SMRPD) regarding the history and status of the Silverado Ranch / Arroyo Toad Habitat Litigation. I applaud the Board for making an attempt to keep constituents informed of actions the board has taken that could significantly affect the district's future and reputation.

I feel Director Hunt's account of the history and status of this litigation is truthful in content, however, it seems to be grossly devoid of additional important facts that constituents are entitled to be apprised of, and represents what I believe to be a narrow perspective of the overall issue. One would have to wonder if specific facts were intentionally left out of this document. In fact, it may be intended to be just that and if so, it at least provides the reader with a basis to ask some very important questions of the Board.

This letter explains in general terms what the basis is for the lawsuit, but doesn't explain why the Board feels compelled to sustain a suit that has very little potential benefit for the District in terms of enhancing the quality of recreation and/or parks within the District. Further, it doesn't explain why the Board chose to violate a legal agreement with the Marnelle Corporation that would have netted the SMRPD management rights to approximately 50 acres of the "Riviera" and \$100,000 in funding for the District to begin managing this property.

What is the ultimate gain expected by the Board versus the obvious loss of credibility and potential real assets to the District? What is the very real potential liability of loss of our current real property based upon court costs should the District lose in this action, and be ordered to pay court costs? Residents have been told that there has not been any expenditures of District funds on this lawsuit. However, several residents (myself included) have asked for a full and complete disclosure and accounting of expenses, and have yet to receive this disclosure. At the very least the District has expended hours of effort on this litigation. On behalf of the residents of the District, I am still requesting this full disclosure of expenses and time spent on this litigation.

Another important fact not covered in Director Hunt's document is the question of why this matter and the subsequent action by the Board was not agendaized and discussed at a regularly scheduled Board Meeting? Why was the Board's discussion and vote held under a very obscure and little used provision of the "Brown Act" ("Emergency Meeting") during a time when all of the affected residents of Silverado and Modjeska Canyons were displaced from their homes due to a very real emergency, the Santiago Fire?

The Santiago Fire was truly a disaster for our communities, and at the time, any action to or decision to sue the County over the arroyo toad was most likely not the number one issue on the minds of residents at that time, nor were most even aware of this so called emergency meeting. I'm not sure most of us agree that the action and decision taken during this so called emergency meeting was truly of an emergency nature, and that key provisions of the Brown Act were not violated by calling this an emergency meeting.

We have heard the argument that the P.R.C. places the Board in the position of protecting the toad. Well, there are 200 plus pages of charges that the board has that are not fully realized by SMRPD. To single out this specific item in the code seems to be a stretch of the Board's true duties and responsibilities at the expense of much more important issues affecting recreation in our communities.

Many of your constituents feel that this action is an example of how some members of the Board are attempting to manipulate the SMRPD towards an anti-development lobby for the canyon communities. Many more of your constituents are tired of having a narrow vision, "all or none" approach to the Silverado Ranch Project. Most of us feel that the SMRPD should remain focused upon providing the community with recreational activities, and has a very narrow charge when it comes to zoning and land use issues.

This paper leads the reader to believe that the lawsuit is over an endangered toad that allegedly was discovered on the proposed property. Let us follow this line of logic for a moment. If the arroyo toad habitat is truly the District's concern, how can the District encourage and allow the use of the facility that sits directly within this alleged habitat? How can they encourage parking and destruction of this so called "habitat" during the Silverado Country Fair, concert events, fund raisers, board meetings, and community activities?

Based upon the Boards actions and comments of individual Board Members, it has become obvious to most of us that there are underlying and ulterior motives for the law suit. The toad is only a vehicle some of the local special interest groups and individuals are using for their personal agenda, which has resulted in dragging the SMRPD into a long and protracted court battle, with little hope for a productive outcome that will enhance recreational activities or parks in the District.

Please accept this letter as my formal written request under the California Public Records Act (CAPRA), Government Code Section 6250 – 6276.48. My formal request is as follows:

1. A full financial accounting of District funds spent in support of this lawsuit, to include both direct and indirect costs. Copies of all written invoices, cancelled checks and receipts related to expenses for the lawsuit.
2. A complete and accurate disclosure of the potential liability to the District in the event the lawsuit be dismissed, or otherwise not found in favor of the petitioners/plaintiffs .

3. Full disclosure and copies of all written correspondence, letters, and e-mails with co-litigants involved in the lawsuit.
4. A listing of official Board meeting dates and locations where the subject of the lawsuit or the status of the arroyo toad habitat was agenzized and/or discussed.

If there are any fees for searching or copying these records, please inform me before filling my request. If you deny any, or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of appeal procedures available to me under the law.

Further, I formally request that my written correspondence be entered into the official minutes of the December 16, 2008 Board Meeting as a matter of public record.

Respectfully submitted by:

Michael E. Colgan
P.O. Box 246
Silverado Canyon, CA 92676
Phone: (714) 649-2903

1 ANGEL LAW
Frank P. Angel (SBN: 113301)
2 September Hopper (SBN: 253046)
2601 Ocean Park Boulevard, Suite 205
3 Santa Monica, CA 90405-5269
Tel.: (310) 314-6433
4 Fax: (310) 314-6434

5 Attorneys for Plaintiffs/Petitioners
SILVERADO MODJESKA RECREATION
6 AND PARKS DISTRICT, RURAL
CANYONS CONSERVATION FUND,
7 and RAY CHANDOS

8

9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION, HALL OF JUSTICE

11

UNLIMITED CIVIL CASE

12

13 SILVERADO MODJESKA RECREATION)	Case No. 37-2008-00087783-CU-WM-CTL
AND PARKS DISTRICT)	
14 RURAL CANYONS CONSERVATION)	NOTICE OF MOTION AND MOTION OF
FUND, and)	PETITIONERS/PLAINTIFFS SILVERADO
15 RAY CHANDOS)	MODJESKA RECREATION AND PARKS
)	DISTRICT ET AL. FOR PEREMPTORY
16 Petitioners/Plaintiffs,)	WRIT OF ADMINISTRATIVE
)	MANDAMUS AND INJUNCTIVE
17 v.)	RELIEF; MEMORANDUM OF POINTS
)	AND AUTHORITIES IN SUPPORT
18 COUNTY OF ORANGE,)	
BOARD OF SUPERVISORS OF ORANGE)	CASE ASSIGNED FOR ALL PURPOSES
19 COUNTY, and)	TO THE HONORABLE RONALD S.
DOES 1 through 20, inclusive,)	PRAGER
20)	
Respondents/Defendants)	DEPARTMENT: C-71
21)	Hearing Date: February 17, 2009
)	Time: 10:00 a.m.
22 CCRC FARMS, LLC,)	
CCRC FARMS,)	Action Transferred and Filed in San Diego
23 ANTHONY A. MARNELL II,)	County Super. Ct.: July 7, 2008
MARNELL CORRAO ASSOCIATES, INC.,)	
24 FOCUS 2000, INC., and)	Action Filed in Orange County Super. Ct.:
DOES 21 through 40, inclusive,)	November 5, 2007
25)	
Real Parties in)	
26 Interest/Defendants.)	
)	

27

28

1 TO RESPONDENTS/DEFENDANTS COUNTY OF ORANGE ET AL., AND REAL
2 PARTIES IN INTEREST/DEFENDANTS CCRC FARMS, LLC, ET AL.:

3 PLEASE TAKE NOTICE that on Tuesday, February 17, 2009, at 10:00 a.m., or as soon
4 thereafter as counsel may be heard, in Department 71 of the Superior Court of the County of San
5 Diego, Hall of Justice, located at 330 West Broadway, San Diego, California 92101,
6 petitioners/plaintiffs Silverado Modjeska Recreation and Parks District, Rural Canyons
7 Conservation Fund (**RCCF**) and Ray Chandos (hereafter sometimes collectively, **SMRPD**), as
8 an individual petitioners, and on behalf of present and future residents of respondent/ defendant
9 County of Orange (**county**) interested in adequate environmental information disclosure as
10 required by the California Environmental Quality Act (**CEQA**) (Pub. Resources Code, § 21000
11 et seq.) and the State CEQA Guidelines (**Guidelines**) (Cal. Code Regs, tit. 14, § 15000 et seq.),
12 present and future visitors to the Cleveland National Forest, interested in the preservation of the
13 national forest's ecosystem, and present and future citizens of the United States, interested in the
14 conservation of endangered species, will move this Court for a judgment:

15 1. Directing the issuance of a peremptory writ of administrative mandamus
16 commanding respondents/defendants county and county Board of Supervisors (**board**) to:

17 1.1. Set aside and void the board's certification of supplemental environmental impact
18 report no. 587 (**SEIR**) for a residential subdivision project of real party in interest/defendant
19 CCRC Farms, LLC (**CCRC**), proposing to divide 68.7 acres of open-space lands, located just
20 north of Silverado Creek, in the county's unincorporated Silverado Canyon area, into 12 large
21 graded lots (up to 5.3 acres in size) for custom equestrian estate residences (**project**);

22 1.2. Set aside and void board resolution no. 07-176, certifying the SEIR, and all
23 determinations, findings and conditions contained or adopted therein;

24 1.3. Prepare, circulate, review and certify a legally adequate, revised SEIR, or revised
25 SEIR chapters (hereafter, collectively "**RSEIR**"), as may be appropriate (see Guidelines,
26 § 15088.5, subd. (c)), before taking any further action on the project (or an alternative project
27 design), and disclosing and evaluating (a) all baseline data relevant to accurate and complete
28 analysis of the project's adverse impacts on a near-extinct amphibian species, the arroyo
southwestern toad (**toad**), listed as an endangered species under the Endangered Species Act of
1973 (**ESA**) (16 U.S.C. § 1531 et seq.), and discovered in Silverado Creek on April 23, 2005,
after completion of the draft SEIR (**DSEIR**), but before its certification as a final EIR (**FEIR**) by
the board on October 2, 2007; (b) the previously unidentified adverse environmental impacts of

1 the project on the toad (unknown prior to the April 23, 2005 discovery); and (c) appropriate
2 mitigation measures and an alternative, specifically designed to avoid or minimize the adverse
3 project impacts on the Silverado Creek toad population, and the adverse modification of its
4 breeding, foraging and burrowing habitat;

5 1.4. Revise the vesting tentative tract map (VTTM 16191) and the site development
6 permit (Site Development Permit PA [planning application] 02-022) for the project, to
7 implement the project design changes or mitigation measures necessary to protect the toad to the
8 maximum extent feasible;

9 1.5. Adopt a mitigation monitoring and enforcement program to ensure that all toad-
10 related project design changes or mitigation measures avoiding or minimizing the project's
11 impacts to the toad and its habitat will be fully carried out in a timely manner, enforced and
12 adequately monitored; and

13 1.6. Make such findings and take such other specific action as is specifically enjoined
14 upon the county and the board by CEQA and the Guidelines, as well as all other federal, state
15 and local laws applicable to any project activity on the project site.

16 2. Ordering the county and CCRC to suspend all project activities, and to cause their
17 agents to suspend all project activities that could result in an adverse change or alteration to the
18 physical environment, until the county has recirculated and certified a legally adequate, RSEIR,
19 and has taken such action as shall be necessary to bring its environmental review, decisions,
20 determinations, findings, conditions and mitigation measures into full compliance with CEQA
21 and the Guidelines, as well as all other federal, state and local laws applicable to any project
22 activity on the project site.

23 3. Enjoining the county from granting or issuing any further discretionary or
24 ministerial entitlements purporting to implement the project, until the county has taken all
25 actions as shall be necessary to bring its environmental review, decisions, determinations,
26 findings, conditions and mitigation measures into full compliance with CEQA and the
27 Guidelines, as well as all other federal, state and local laws applicable to any project activity on
28 the project site.

4. Enjoining CCRC and its employees, contractors and agents, as well as all persons
acting in concert with it, from implementing any purported entitlements or carrying out any
project activity that could result in an adverse change or alteration to the physical environment
until the county has taken such action as shall be necessary to bring its environmental review,

1 decisions, determinations, findings, conditions and mitigation measures into full compliance with
2 CEQA and the Guidelines, as well as all other federal, state and local laws applicable to any
3 project activity on the project site.

4 5. Granting SMRPD such other and further relief as the Court may deem necessary
5 pursuant to its equity powers.

6 The grounds for this motion are that in light of the discovery on April 23, 2005, of young
7 and mature larvae (in the tadpole, aquatic stage) of the endangered toad, in a reach of Silverado
8 Creek located *328 feet from the edge of the project site's southwesterly boundary*, immediately
9 downstream of the project's 40.36-acre mass grading and fuel modification footprints, which
10 both substantially overlap with toad dispersal, foraging and aestivation (burrowing) habitat -- as
11 determined by the U.S. Fish and Wildlife Service (**USFWS**), based on the toad's dispersal range
12 (established by radiotracking surveys and scientific studies), and site-specific habitat
13 characteristics, including habitat connectivity to the project site through on-site drainage
14 tributaries to Silverado Creek, facilitating toad migration and dispersal onto the site -- the county
15 prejudicially abused its discretion under CEQA and the Guidelines by:

16 (a) Failing to recirculate a revised draft SEIR (**RDSEIR**) disclosing and
17 evaluating the new Silverado Creek toad baseline conditions and the attendant, as yet
18 unaddressed adverse impacts to the toad, as well as mitigation measures and a scaled-down
19 project alternative designed to avoid or minimize those specific impacts, despite the showing that
20 the significant new biological baseline now not only exposes the endangered toad (including its
21 highly vulnerable egg strings, larvae and metamorphs) to risks of loss or injury from direct, off-
22 site impacts of the project, but also places a substantial portion of the proposed mass grading,
23 fuel modification and development (roadway, driveways, flood control and drainage
24 infrastructure, building pads and equestrian facilities), as well as urban and equestrian uses (and
25 their edge effects) within the toad's dispersal range. The county's failure to recirculate violates
26 the basic CEQA rule that when a potential substantial impact on an endangered species has not
27 been addressed in a lead agency's draft environmental document, recirculation is mandated, as
28 such an impact "is per se significant." (*Vineyard Area Citizens for Responsible Growth, Inc. v.*
City of Rancho Cordova (2007) 40 Cal.4th 412, 449.)

(b) Failing to make CEQA-mandated findings showing changes to the project
or other mitigation measures that would avoid or mitigate the project's significant direct, indirect
and cumulative impacts to the Silverado Creek toad population, thereby violating Public

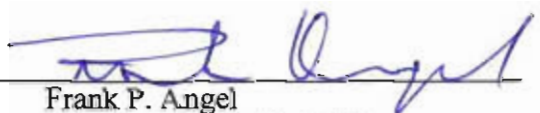
1 Resources Code section 21081, which requires lead agencies to adopt findings for each
2 significant effect of a project; avoiding CEQA's mandatory finding of significance despite the
3 project's potential to substantially reduce the number or restrict the range of an endangered, rare
4 or threatened species, thereby violating Guidelines section 15065; improperly deferring
5 environmental review and mitigation measures to the USFWS, and failing to provide for
6 adequate and enforceable mitigation monitoring, in violation of Public Resources Code sections
7 21081, 21081.6 and Guidelines sections 15091, and 15126.4.^{1/}

8 This motion is based on SMRPD's verified petition for peremptory writ of administrative
9 mandamus and complaint for injunctive relief; this notice of motion and attached memorandum
10 of points and authorities; the full administrative record prepared by the county, as may be
11 supplemented to ensure compliance with Public Resources Code section 21167.6, subdivision (e)
12 and Code of Civil Procedure section 1094.6, subdivision (c); and any additional evidence,
13 judicial notice and further legal argument as may be lawfully presented to the Court.

14 Respectfully submitted,

15 DATED: January 17, 2009

16 ANGEL LAW
17 Frank P. Angel
18 September Hopper

19 By: 
20 Frank P. Angel
21 Attorney for Petitioners/Plaintiffs
22 SILVERADO MODJESKA RECREATION
23 AND PARKS DISTRICT et al.

24
25 _____
26 ^{1/} Further unlabeled statutory references in the memorandum of points and authorities in
27 support of this motion are to the Public Resources Code, unless otherwise indicated. Section
28 21092.1 and Guidelines section 15088.5 will be referred to as "§ 21092.1," and "§ 15088.5,"
respectively.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION AND PROCEDURAL CONTEXT OF THIS CASE.**

3 SMRPD challenges the board’s decision certifying an SEIR for a 12-lot, high-income
4 subdivision, known as the Silverado Canyon Ranch project, proposed on 68.7 acres of open-
5 space lands, located within the county’s inland unincorporated territory, in the foothills of the
6 Santa Ana Mountains. (4 AR 2153, 55, 57, 59; 5 AR 2601; 3 OAR 1394; 15 OAR 6371.)^{1/}

7 This is not the first time the county violated CEQA in its EIR review of the project. On
8 August 19, 2003, the board certified a final EIR (**FEIR**) for the project. (1 AR 4.) That EIR was
9 the subject of a separate action prosecuted in Orange County Superior Court (**OCSC**) by
10 petitioners RCCF and Chandos.^{2/} On June 18, 2004, Judge Jameson issued his decision in the
11 former case, finding (a) substantial deficiencies in the 2003 FEIR’s disclosure and assessment of
12 baseline water quality conditions and mitigation for the project’s adverse water quality impacts;
13 and (b) inadequate mitigation for coastal sage scrub habitat loss, and improper deferral of
14 mitigation therefor. The judgment entered pursuant to this decision, among other things, ordered
15 preparation of an SEIR to remedy those deficiencies. (4 AR 1974-80.)^{3/} The county then
16 prepared an SEIR on remand from the OCSC. It is the board’s decision to certify that SEIR,
17 including its determination that despite the discovery of the Silverado Creek toad population,
18 CEQA did not require recirculation, which has spawned the instant litigation. SMRPD’s petition
19 for peremptory writ in the case at bar challenges the county’s action on the following grounds:

20 (a) Contrary to Judge Jameson’s decision and CEQA, the county failed to cure the
21 deficiencies in the EIR’s treatment of water quality impacts. (1st cause of action.) The county
22 did not actually test for SEIR-identified pollutants of concern, used outdated sampling data taken

23 ^{1/} References to “**AR**” are to five administrative record volumes originally produced by
24 the county. References to “**SAR**” are to a supplement to the AR, which includes documents
25 submitted by petitioners, which the county had first failed to produce. References to “**OAR**”
26 (standing for “old AR”) are to the AR in the former CEQA action in the OCSC.

27 ^{2/} *Rural Canyons Conservation Fund v. County of Orange* (Super. Ct. Orange County,
28 2004, No. 03CC00422, consolidated with No. 03CC00517 (Hon. C. Robert Jameson, Judge
Presiding). SMRPD was not a party to that action.

^{3/} RCCF and Chandos also had argued that the 2003 EIR was inadequate due to an
incomplete project description; failed to consider cumulative effects of the project on traffic
circulation; and failed to provide an alternatives review in compliance with CEQA’s rule of
reason. Judge Jameson found in favor of the county on those remaining issues.

1 at offsite locations that are not representative of the *project site*'s baseline water quality
2 conditions, and relied on a sampling frequency that fails to meet generally accepted scientific
3 standards; and it still deferred selection of mitigation measures or addressing their own
4 environmental impacts. (4 AR 1989-2003; SAR 45-49.)

5 (b) Contrary to CEQA, the county failed to prepare a RDSEIR following the 2005
6 discovery of the Silverado Creek toad population (1 AR 175-78, 182-87), which occurred after
7 circulation of the DSEIR, but long before its certification. (2nd cause of action.) Such RDSEIR
8 should have evaluated the as yet unaddressed significant impacts of the project on the toad --
9 impacts unknown when the DSEIR was completed. In fact, the 2003 EIR had dismissed those
10 impacts as nonexistent (5 AR 2639, 2642-43; 1 OAR 486), because at the time, regional experts
11 were unaware of any sightings of the toad in Silverado Creek. (13 OAR 4869.) Based on
12 USFWS records, at all times relevant to the county's 2002/03 EIR review, the "nearest" toad
13 sighting was in Santiago Creek "where it drains into Irvine Lake" (*id.*), that is, more than three
14 miles downstream of the project, out of the toad's dispersal range. (4 AR 2155; 1 AR 175.)

15 (c) Due to the defective SEIR and the board's failure to order preparation of a RDSEIR,
16 the board further failed to proceed in the manner required by CEQA, in that its CEQA findings,
17 mitigation measures and mitigation monitoring program are inadequate as a matter of law, and
18 unsupported by substantial evidence. (3rd cause of action.)^{4/}

19 II. FACTUAL AND PROCEDURAL BACKGROUND.

20 A. Brief Description of the Project and its Environmental Setting.

21 Largely surrounded by the Santa Ana Mountains' rugged, coastal sage scrub- and

22 ^{4/} Last year, CCRC demurred to all three causes of action. The demurrer was heard in
23 Department 72 (Hon. Michael M. Anello, Judge Presiding). While Judge Anello's tentative
24 ruling overruled the demurrers on all causes of action, his ultimate order, entered on October 8,
25 2008, sustained the demurrer as to the 1st cause of action, on the ground that the OCSC had
26 discharged the 2004 writ in the old action. Judge Anello, however, reaffirmed his tentative
27 decision overruling CCRC's demurrers to the 2nd and 3rd causes of action.

28 On November 19, 2008, after Judge Anello had moved to the federal bench, this Court
(Hon. Ronald S. Prager, Judge Presiding), at a hearing on an ex parte application by CCRC for
an order setting a new briefing schedule and trial date, heard argument on a request by SMRPD
for clarification of the scope of the briefing in light of Judge Anello's order overruling the
demurrer to the 3rd cause of action (which raises issues overlapping with, and related to, issues
raised in the 1st cause of action); or, alternatively, for scheduling a motion for reconsideration of
the ruling sustaining the demurrer to the first cause of action. This Court found that no new law
or evidence warranted reconsideration. SMRPD, therefore, will refrain from briefing in this
motion the SEIR's treatment of the water quality impacts of the project.

1 chaparral-covered foothills, the project site is one of three parcels of historic Holtz Ranch, a 318-
2 acre private inholding in the Cleveland National Forest. (1 OAR 29.) Silverado Canyon Rd.
3 marks the project site's southerly boundary. From the early 1900's until the late 60's, the ranch
4 was used as a poultry farm and it contained fruit orchards. (5 AR 2594, 2638-39; 8 OAR 3089.)
5 The project would create 12 lots (averaging 5.3 acres) for custom equestrian estates, with
6 extraordinarily large graded building pads (up to 3.8 acres; averaging 1.8 acres in size) for
7 single-family residences, barns and other appurtenant facilities.^{5/} The building pads are located
8 on gradually sloping land, including areas previously used for agricultural uses which are
9 surrounded by a bowl of hills, with the pads extending into the hills themselves, thus forcing
10 grading into the hills. (4 AR 2193; 5 AR 2539, 2579-80, 2636, 46; 11 OAR 4287.) Given the
11 size of the building pads, the grading footprint extends over more than 40 acres.^{6/}

12 Two drainages traverse the site. They are described in a wetlands delineation CCRC had
13 commissioned to estimate wetlands and riparian habitat loss associated with the project. The two
14 drainages merge near the site's southwesterly corner, just before they flow into Silverado Creek,
15 a U.S.G.S.-mapped, blue-line stream. (3 OAR 1035-37, 1092, 94, 96; 15 OAR 6371; 5 AR

16 ^{5/} The average 1.8-acre building pad is substantially larger than an entire football field
17 (which measures 57,600 square feet). The largest pad can hold nearly three football fields. A
18 "decent home and satisfying living environment for every Californian" (§ 21000, subd. (g)) can
19 surely be provided at far less environmental cost. Considering existing demographic occupancy
20 patterns in the county's unincorporated territory -- 1.8 persons per dwelling unit (2 AR 950) --
21 and the project's proposed average lot size (5.3 acres per dwelling unit), the project commits
22 2.94 acres of open space per new resident. This yields a population density of 0.34 persons per
23 acre, or *218 per square mile*, which is completely out of the norm. For example, the City of San
24 Diego, with a land area of 324.3 square miles and an estimated 2008 population of 1,336,865,
25 has a population density of *4,122 persons per square mile*. By CCRC's site planning, San Diego
26 would need to find another 5,808.1 square miles of finite open space -- 17.9 times more than its
27 324.3 square miles of land -- to accommodate its population ([1,336,865/218 - 324.3]).

28 Suffice it to say, the project is a far cry from legislative and judicially sanctioned smart
growth, air quality, energy and open-space preservation policies. (See *DeVita v. County of Napa*
(1995) 9 Cal.4th 763, 791; Gov. Code, § 65561; §§ 21000, subd. (d), 21100, subd. (b)(3); Sen.
Bill No. 375 (2007-2008 Reg. Session) § 1, approved by the Governor, Sept. 30, 2008, at
<<http://www.assembly.ca.gov/acs/acsframeset2text.htm>> [as of Jan. 10, 2009].) Enacted as a
comprehensive anti-sprawl measure intended to foster sustainable growth patterns and cut new
residential development's carbon footprint, to help meet state greenhouse gas emission targets,
Senate Bill No. 375 is but the latest expression of California's anti-sprawl policies.

^{6/} Total earthwork movement amounts to 689,500 cubic yards. Landforms would be
altered by 239,500 cubic yards of cut and fill, and an additional 450,000 cubic yards of
excavation for remedial fill placement would be needed. (5 AR 2636, 46; 10 OAR 3967; 11
OAR 4337, 41.) Sewage effluent would be discharged on-site into septic pits. (5 AR 2567.)

1 2963-70.) Silverado Creek parallels Silverado Canyon Rd. all along the site's downslope,
2 southerly boundary, south of the road. Just past the site's southwesterly corner, an old road
3 bridge crosses the creek as the creek veers north. Silverado Creek receives all of the project
4 site's drainage, through the on-site drainage channels, which collect surface flows from the site
5 itself and its larger watershed. Silverado Creek flows into Santiago Creek approximately 1.5 km
6 west of the project site. Silverado Creek lies within the project's *direct*, off-site impact area. (2
7 OAR 890-92 [county review comment noting that "the project will directly impact impaired
8 water bodies"], 913; 13 OAR 4869; 4 AR 2044-63, 2181; 5 AR 2580, 2611-14.)^{7/}

8 B. County SEIR Proceedings and the Instant CEQA Litigation.

9 On October 26, 2004, following remand from the OCSC, the county filed its notice of
10 preparation (**NO**P) of the DSEIR. On April 8, 2005, it circulated for public review the DSEIR it
11 had completed meanwhile. (1 AR 5.)

12 On April 23, 2005, then, Department of Defense zoologist Robert T. Haase observed
13 young and mature larvae in Silverado Creek, below the old bridge. In Mr. Haase's opinion, this
14 "serves to confirm that breeding-age adult individuals occupy this portion of the drainage and its
15 adjacent upland habitat." (1 AR 184, 182-187; 188-189 [additional Haase observations on 5/6
16 and 5/8/2005, of an adult and a subadult, respectively, further downstream at Silverado Creek's
17 crossing with Black Star Canyon Rd. (14 OAR 5646)], 171-74, 200-220 [SMRPD comments].)
18 In a letter from the USFWS to a CCRC representative, Brad Schnepf, dated June 6, 2007,
19 discussing Haase's recorded field observations, the USFWS observed that the toad population
20 surveyed near the old road bridge, at a distance of about 328 feet from the project boundary,
21 "appears to be a relatively small population that breeds intermittently and therefore may be
22 vulnerable to threats such as loss and degradation of habitat." The USFWS also expressed its
23 opinion that "there is a high likelihood that ... toads are present on the [project site]," citing
24 detailed reasons in support of its opinion, and noting that pursuant to its toad survey protocol,
25 " [a]reas within one kilometer (1 km [0.62 miles]) of arroyo toad sites (documented by the
26 " " [a]reas within one kilometer (1 km [0.62 miles]) of arroyo toad sites (documented by the

24 ^{7/} Santiago Creek is dammed downstream of its point of confluence with Santiago Creek,
25 forming Irvine Lake, a municipal drinking water reservoir. The Santa Ana-based Regional
26 Water Quality Control Board (**RWQCB**) has determined that Silverado and Santiago creeks are
27 "impaired" water bodies under Section 303 (d) of the federal Clean Water Act. Silverado Creek
28 is impaired for pathogens, salinity, total dissolved solids (TDS) and chlorides. (2 OAR 890.)
Santiago Creek is a direct tributary of the Santa Ana River, which originates in the San Gabriel,
San Bernardino and San Jacinto mountains, and forms Southern California largest river basin.

1 presence of eggs, larvae, juveniles, or adults) that have suitable habitat shall be presumed to have
2 arroyo toads'" (1 AR 175-178, 179-181 [survey protocol].)^{8/} The site has suitable soil and
3 upland habitat for aestivation and foraging by the toad. (1 AR 176.) The adult toad is a mostly
4 terrestrial amphibian, with the ability to move generally up to 1 km along stream channels, and
5 close to 1,000 feet perpendicularly from streams.^{9/}

6 The county was advised of the toad discovery as early as May 2005. (4 AR 1987-88,
7 2065-74.) CCRC's consultants then conducted their own surveys, one in July 2005, and another
8 between March 24 and July 16, 2006. They found no evidence of the endangered species
9 (obviously rare) on the site, or within 300 yards upstream and downstream of the site.
10 Thereafter, the county completed the FSEIR, which was distributed on July 10, 2007. Based on
11 the results of CCRC's consultants' surveys which *did not detect* toads, the FSEIR found that the
12 toad "*is not present* on the site," and that, therefore, the project would have no direct or indirect
13 impact on the toad or toad habitat. Accordingly, the FSEIR concluded that recirculation was not
14 necessary under § 15088.5. (1 AR 5, 438, emphasis added; 1 AR 441-42.)

15 On October 2, 2007, after a planning commission recommendation that the board certify
16 the FSEIR as adequate, which the commission made at a hearing on July 25, 2007, the board
17 held its own hearing on the FSEIR. The board certified the SEIR without ordering recirculation,
18 finding that "no significant new information [had] been added to this SEIR pursuant to ... §
19 15088.5...." (1 AR 5-7, 10-12, 17.) The maker of the motion to certify the SEIR, Supervisor
20 Bill Campbell (representing the area) twice shared his belief that the county need not "redo this
21 thing one more time" because the USFWS has responsibility for protecting endangered species.
22 (1 AR 134-35; 148-49 ["I'm going to rely on the [USFWS] to do the right thing"].)^{10/}

23 Petitioners then commenced this action in OCSC. A month later, SMRPD moved under
24 Code of Civil Procedure section 394 to transfer the action to a neutral county. Due to protracted

25 ^{8/} The USFWS listed the toad as an endangered species in 1994. (8 OAR 3386.) A
26 species is "endangered" when it "is in danger of extinction throughout all or a significant portion
27 of its range." (16 U.S.C. § 1532(6).)

28 ^{9/} For a description of the toad, its breeding pool and its upland habitat needs, and
migration patterns, see 8 OAR 3383-3391.

^{10/} Supervisor Campbell went so far as to intimate that the toad larvae had been planted in
Silverado Creek -- presumably, to delay the project. (1 AR 128 [referring to unattributed
"assertions" by people other than CCRC that "the larvae were imported"].)

1 opposition to this motion by CCRC, the matter was not transferred out of the county until
2 approximately late June 2008, when the OCSC (Hon. David C. Velasquez, Judge Presiding)
3 ordered the transfer to the San Diego venue. As noted before, a demurrer by CCRC to this action
4 was heard before Judge Anello last year. CCRC's demurrer to the 2nd cause of action rested on
5 three grounds: (1) res judicata (contending that the toad issues raised in the case at bar had
6 already been adjudicated in the 2003 action -- which was not true since the operative facts upon
7 which SMRPD's second cause of action is based could not have been before the OCSC for
8 adjudication in 2004);^{11/} (2) failure to state facts sufficient to constitute a cause of action
9 (contending that the writ in the 2003 action somehow forbade SMRPD, or, for that matter, any
10 petitioner, from objecting to the county's failure to circulate an adequate SEIR, or its refusal to
11 recirculate when CEQA recirculation provisions (§ 21092.1; § 15088.5) are triggered);^{12/} and (3)
12 statute of limitations bar (claiming that SMRPD's CEQA challenge was late although it was
13 filed within CEQA's applicable statute of limitations of section 21167). By overruling CCRC's
14 demurrers to the 2nd and 3rd causes of action, evidently, Judge Anello rejected all legal grounds
15 CCRC relied on in support of the demurrers to those causes of action.^{13/}

15 ^{11/} CCRC claimed that SMRPD, which was not even a party to the 2003 action, along
16 with RCCF, was but "repackaging" a supposedly "closed Arroyo Toad Issue in a different legal
17 theory." (Demurrer at 9:10-11; see *id.* at 1:20-25 [painting the 2007 action is "a last-ditch delay
tactic" or "dilatatory and wasteful procedural maneuvering" seeking "merely to re-litigate old
issues previously decided in ... favor [of the county]"].)

18 ^{12/} Any final EIR must include the comments on a draft EIR and the lead agency's
19 responses. (Guidelines, § 15132.) During public review of the DSEIR, the Haase report, and
20 many public comments discussing it, had been submitted to the county. Because the report and
21 comments, and the county's responses acknowledging the *new information* (albeit dismissing it
22 as insignificant), were included in the FSEIR, clearly, this new information was "added to" the
23 SEIR. Still, CCRC raised the puzzling defense that SMRPD was not permitted to challenge the
county's failure to recirculate when the county received significant new information and added it
to the SEIR. CCRC's demurrer conveniently ignored the fact that the writ in the 2003 action
contained no such restriction against future judicial enforcement of § 21092.1, and that it had
ordered CEQA relief unrelated to the new toad issues now before this Court -- issues that did not
exist and were not ripe for adjudication in 2004. (See also Code Civ. Proc., § 1094.5, subd. (f).)

24 ^{13/} Judge Anello's explanation for his ruling on the 2nd and 3rd causes of action, contained
25 in his final minute order of October 8, 2008, is noteworthy:

26 "The 2007 case at bar is not subject to res judicata as a result of any ruling in the
27 2003/2004 cases in Orange County. The parties and issues in the 2003/2004 cases
28 (consolidated) decided in Orange County, and the 2007 case transferred to San Diego
from Orange County, are not identical nor are the issues. The 2007 action also addresses
the discovery of significant new information concerning the Arroyo Toad's presence in
(Footnote continued on next page . . .)

1 III. LEGAL ARGUMENT.

2 A. Scope and Standards of Judicial Review.

3 Because the county’s review of the project involves the exercise of an adjudicative
4 function, as opposed to a quasi-legislative function (*California Water Impact Network v.*
5 *Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482-1483), CEQA provides for
6 judicial review under the administrative mandamus standards of Code of Civil Procedure section
7 1094.5. (See §§ 21168, 21168.7; *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215,
8 1235.) Therefore, judicial inquiry extends to:

8 “[W]hether the board abused its discretion in approving these plans. (Code Civ. Proc.,
9 § 1094.5, subd. (b).) ‘Abuse of discretion is established if the respondent [agency] has
10 not proceeded in the manner required by law, the order or decision is not supported by
11 the findings, or the findings are not supported by the evidence.’ (*Ibid.*; see also,
12 § 21168.5.)”

11 (*Id.* at 1235-1236.) Judicial review must ensure that agencies exercise their discretion cabined
12 by the mandates of CEQA. Though refraining from substituting their judgment for that of the
13 agency, courts must “ ‘scrupulously enforce[e] all legislatively mandated CEQA requirements.’
14 [Citation.]” (*Vineyard*, 40 Cal.4th at 435.)

14 1. Judicial Review of the Adequacy of EIRs.

15 “[T]he EIR is the “ ‘heart of CEQA,” ’ protecting the environment and requiring
16 informed self-government. [Citation.]” (*Chaparral Greens v. City of Chula Vista* (1996) 50
17 Cal.App.4th 1134, 1142.) Its “purpose ... is to provide public agencies and the public in general
18 with detailed information about the effect which a proposed project is likely to have on the
19 environment; to list ways in which the significant effects of such a project might be minimized;
20 and to include alternatives to such a project.” (§ 21061.) The EIR has been aptly described as an
21 “ ‘alarm bell” ... [meant to] to alert the public and its responsible officials to environmental
22 changes before they have reached ecological points of no return.’ [Citation.]” (*Mira Monte*
23 *Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365; see *Santiago County*
24 *Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) Because the EIR must be

24 the appropriate environmental impact area. See Pub. Res. Code sections 21091.2 and/or
25 21166. Accordingly, the tentative ruling which overruled the demurrer regarding the 2nd
26 and 3rd c/a is confirmed.”

26 (Emphasis added.) Opposing parties cannot now rehash their rejected arguments. (Code Civ.
27 Proc., § 1008; see *Sandco American, Inc. v. Notrica* (1990) 216 Cal.App.3d 1495, 1508-1509.)

1 certified or rejected by public officials, it is also a “document of accountability.” (*Laurel*
2 *Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392
3 (*Laurel Heights I.*))

4 When an agency certifies an EIR that does not comply with CEQA’s or the Guidelines’
5 informational provisions -- e.g., omits EIR content requirements -- the agency abuses its
6 discretion by not proceeding in the manner required by law. (*Sierra Club*, 7 Cal.4th at 1236;
7 accord, *Vineyard*, 40 Cal.4th at 435.) Hence, “the existence of substantial evidence supporting
8 the agency’s ultimate decision ... is not relevant when one is assessing a violation of the
9 information disclosure provisions of CEQA.” (*Association of Irrigated Residents v. County of*
10 *Madera* (2003) 107 Cal.App.4th 1383, 1392; see *Joy Road Area Forest & Watershed Assn. v.*
11 *California Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 684; *id.* at 676-
12 678.) “[P]rejudice is presumed” when a gap in relevant information frustrates public comment
13 provisions, or impedes meaningful assessment of potentially significant impacts or identification
14 of site-specific mitigation. (*Sierra Club*, 7 Cal.4th at 1236-1237.)

13 2. Judicial Review of Lead Agency Decisions not to Recirculate.

14 A lead agency’s decision not to prepare and circulate a revised EIR, including a finding
15 whether new information added to an EIR prior to its certification is “significant,” so as to
16 trigger CEQA’s recirculation requirement (§ 21092.1), is reviewable under the substantial
17 evidence test. (*Vineyard*, 40 Cal.4th at 447; *Laurel Heights Improvement Assn. v. Regents of*
18 *University of California* (1994) 6 Cal.4th 1112, 1132-1133 (*Laurel Heights II*); *Chaparral*, 50
19 Cal.App.4th at 1147.) This means the board’s decision to certify the SEIR without recirculation
20 must be upheld if, but only if, it is supported by substantial evidence in the light of the whole
21 record. (§§ 21168, 21168.7; Code Civ. Proc., § 1094.5, subs. (b), (c).)^{14/} “ ‘Substantial
22 evidence’ ... means enough relevant information and reasonable inferences from this
23 information that a fair argument can be made to support a conclusion, even though other

24 ^{14/} In the specific context of judicial review of agency decisions:

25 “ ‘ “The ‘in light of the whole record’ language means that the court reviewing the
26 agency’s decision cannot just isolate the evidence supporting the findings and call it a
day, thereby disregarding other relevant evidence in the record [i.e., evidence detracting
from the decision]. [Citation.]” ’ [Citation.]”

27 (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 503.)

1 conclusions might also be reached.” (Guidelines, § 15384, subd. (a).)^{15/}

2 B. The County Prejudicially Abused Its Discretion Under CEQA by Refusing to
3 Recirculate the SEIR Following the Discovery of the Arroyo Southwestern Toad,
4 an Endangered Species, in a Specific Reach of Silverado Creek Immediately
5 Downstream of the Project; This Is Significant New Information, Disclosing a
6 New Significant Environmental Effect that Had not been Previously Addressed.

7 A lead agency must prepare and circulate (“recirculate”) a RDEIR whenever, after a
8 DEIR’s public release, but before certification of a FEIR, “significant new information” is added
9 to the FEIR. (§ 21092.1; *Vineyard*, 40 Cal.4th 412, 421, 447; *Chaparral*, 50 Cal.App.4th at
10 1146-1147; §15088.5.) This means a new NOP must issue, and a new public comment period,
11 including inter-agency consultation, on the previously missing information is required. (*Id.*)

12 Here, the county has swept under the proverbial rug a new significant impact, left
13 unaddressed in the old EIR as the baseline information concerning this impact was not known,
14 and could not have been known, when the old EIR was certified. The county’s manner of
15 proceeding typifies prejudicial CEQA error: it deprived the public of meaningful impact analysis
16 and comment on the project’s effects on the toad, and mitigations or an alternative specifically
17 designed to offset those effects. (*Vineyard*, 40 Cal.4th at 421, 447-450; *Mira Monte*, 165
18 Cal.App.3d at 365.) The county contends it need not recirculate, purportedly because the new
19 2005 baseline information is not “significant” within the meaning of §§ 21092.1 and 15088.5,
20 such as to trigger its duty to recirculate. The county’s contention is erroneous as a matter of law.
21 Nor does it find any support in substantial evidence.

22 1. The SEIR Failed to Evaluate the Project’s Direct Impacts to the Toad.

23 a. The Discovery of the Toad in Silverado Creek Is New Information.

24 The county cannot dispute that the DSEIR does not address the adverse impacts of the
25 project on the toad population in Silverado Creek. (4 AR 2132-33, 2141, 2221-24.) Nor does it
26 dispute that the 2005 discovery of the toad in Silverado Creek is new information. (1 AR 11.)

27 The record of the board’s 2003 FEIR certification conclusively shows that at all relevant
28 times prior to the Spring of 2005, no information whatsoever existed, showing the toad to occur
in Silverado Creek, in a location now placing not only the toad, toad larvae and toad egg strings

^{15/} “Substantial evidence must be reasonable in nature, credible, and of solid value.”
(*Surfside Colony, Ltd. v. California Coastal Com.* (1991) 226 Cal.App.3d 1260, 1270. It “is not
argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or
erroneous....” (§ 21080, subd. (e).)

1 within the project's direct impact area -- and thus at risk of being smothered or injured by
2 hydrographic changes such as increased run-off flows or water/substrate temperature
3 fluctuations, increased siltation in the grading phase, predation by household cats, or other
4 project-related edge effects (8 OAR 3385-86) -- but also placing significant portions of the
5 project site itself within the toads' dispersal range -- thus further increasing take risks to the
6 species during portions of its life cycle when it is aestivating or foraging upland. (See generally
7 *Babbitt v. Sweet Home etc.* (1995) 515 U.S. 687, 691, 697-698, 704-705 [132 L. Ed. 2d 597]; see
8 *id.* at 709-710 [conc. opn. of O'Connor, J.].) Given the toad species baseline data that existed in
9 2003, the FEIR, in response to a comment from the Center for Biological Diversity (which took
10 issue with the DEIR finding that the project would not result in any adverse impacts to any
11 sensitive species), explained that a protocol survey for the toad in the reach of Silverado Creek in
12 the project site's vicinity or direct impact area was not called for, because the then-closest,
13 confirmed sighting of the toad -- as reported in the Federal Register for the USFWS's proposed
14 designation of critical habitat for the toad in 2000 (65 Fed. Reg. 36512-36548 (June 8, 2000)) --
15 was "in Santiago Creek where it drains into Irvine Lake." (13 OAR 4869/4867; 8 OAR 3391.)
16 Correctly noting that the distance from the site to Silverado Creek's point of confluence with
17 Santiago Creek is 1.5 km (close to a mile) downstream of the site, the 2003 final EIR concluded
18 that Silverado Creek "would therefore not necessitate a protocol survey." (13 OAR 4869.)^{16/}
19 The 2003 FEIR further emphasized that the Federal Register posted no reported sighting of the
20 toad anywhere in Silverado Creek, "and no sightings [were then] known by regional experts Mr.
21 Peter Bloom and Mr. Ruben Ramirez." (*Id.*) Clearly, the discovery of the toad in Silverado
22 Creek in the Spring of 2005 is new information within the meaning of CEQA.

20 b. The New Information Concerning the Presence of the Toad in
21 Silverado Creek Is Significant.

22 The 2005 discovery of the toad in Silverado Creek is also "*significant* new information"

23 ^{16/} Significantly, the county thus accepted that protocol surveys must be conducted within
24 at least 1 km of known breeding sites. (13 OAR 4869; 10 OAR 3973-74.) Its present rejection
25 of SMRPD's and other public commentators' requests that it circulate a revised SEIR to review
26 the project's as yet undisclosed impacts on the Silverado Creek toad population, which were
27 found within 328 feet of the site, is inconsistent with its earlier position. For that reason alone, it
28 carries no weight. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th
1, 13 [even in a quasi-legislative, regulatory context, a "vacillating" agency position is owed
no deference]; accord, *Bolsa Chica*, 71 Cal.App.4th 493, 505; see *id.* at 507.)

1 within the meaning of CEQA. Guidelines section 15088, subdivision (a) includes these two
2 examples of categories of new information it considers “significant”:

3 “(1) A new significant environmental impact would result from the project or from a new
4 mitigation measure proposed to be implemented.

5 “(2) A substantial increase in the severity of an environmental impact would result unless
6 mitigation measures are adopted that reduce the impact to a level of insignificance.”^{17/}

7 In the case at bar, unquestionably, the discovery of the Silverado Creek toad population
8 shows that a new significant environmental impact would result from the project; or that impacts
9 on biological resources substantially increase in their severity (if one views the impacts to the
10 toad as a “sub-category” of biological resources impacts). Either way, CEQA required
11 recirculation. Because the toad is an endangered species, this conclusion obtains as a matter of
12 law. As our high court held in *Vineyard*, 40 Cal.4th 412, at page 449, a “potential substantial
13 impact on endangered, rare or threatened species is per se significant[.]” (40 Cal.4th at 449.)^{18/}
14 A consistent body of California Supreme Court and appellate opinions that have enforced or
15 interpreted § 21092.1, makes clear that recirculation is required where a new impact on an
16 environmentally sensitive resource, or an increase in the severity of such an impact, comes to
17 light following circulation of a draft EIR -- even when the affected resource is not in as great
18 jeopardy as a species the federal government has listed as being at risk of extinction. (See
19 *Vineyard*, 40 Cal.4th 412, 449; *Laurel Heights II*, 6 Cal.4th at 1131; *Mira Monte*, 165

18 ^{17/} Conversely, clarifying information or new information calling for but “insignificant
19 modifications” in the prior EIR analysis do not require recirculation. (*Id.*, subd. (b).)

20 ^{18/} Our high court’s treatment of impacts on endangered species gives due effect to strong
21 Congressional and state legislative intent to preserve and protect species diversity. As the U.S.
22 Supreme Court observed in *TVA v. Hill* (1978) 437 U.S. 153 [57 L. Ed. 2d 117], when Congress
23 enacted the ESA, it had received alarming data showing species extinctions and disruption of
24 ecosystems at an ever-increasing rate. (437 U.S. 153, 176.) The U.S. Supreme Court quoted a
25 House Committee report, which presciently described genetic variations as “ ‘keys to puzzles
26 which we cannot solve, and may provide answers to questions which we have not yet learned to
27 ask.’ ” (*Id.* at 178.) To a large degree, Congressional intent to stem the losses of genetic
28 variations underlies its enactment of the ESA. (*Id.* at 178-179.) It is thus the declared purpose of
the ESA to conserve fish, wildlife and plant species in danger of, or threatened with, extinction,
and the ecosystems upon which they depend. (16 U.S.C. § 1531(b).) CEQA likewise embodies
state policy “to [¶] [p]revent the elimination of fish and wildlife species due to man’s activities,
insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve
for future generations representations of all plant and animal communities” (§ 21001,
subd. (c); see also *Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166
Cal.App.4th 1349, 1363-1364.)

1 Cal.App.3d at 360-365; see also *Sierra Club*, 7 Cal.4th at 1220-1223, 1228-1230, 1234.)

2 In *Vineyard*, a phased, mixed use project depended in part on groundwater withdrawals
3 from an aquifer (known as the “Well Field”), located upstream of, and hydrologically connected
4 to, the Cosumnes River, which is habitat for anadromous fish. (*Id.* at 424.) The DEIR there --
5 which was already a first revised DEIR (see *id.* at 422, fn. 1) -- “did not discuss the impact
6 groundwater extraction at the Well Field would have on the river’s flows and habitats.” This
7 impact -- loss of river surface flows due to a lowering of the groundwater table in the aquifer
8 resulting from water extraction for the project -- was revealed later, in public comments on the
9 draft EIR, when commentators expressed concern on the subject. (*Id.* at 424-425, 448.) The
10 FEIR dismissed the species impacts as insignificant, yet vaguely noted that during very low flow
11 periods, the species could be potentially impacted. (*Id.* at 425-426.) The FEIR was certified
12 without recirculation. Plaintiffs claimed that “potential impacts on migratory salmon in the
13 Cosumnes River, disclosed in the final EIR, should instead have been incorporated in a revised
14 draft EIR and recirculated for public comment.” (*Id.* at 421.) Our high court agreed, reasoning:

13 “We do not consider [the FEIR] response substantial evidence that the loss of stream
14 flows would have no substantial effect on salmon migration. *Especially given the*
15 *sensitivity and listed status of the resident salmon species*, the County’s failure to address
16 loss of Cosumnes River stream flows in the draft EIR “deprived the public ... of
17 meaningful participation” ’ [citation] in the CEQA discussion. [Citation.]”

16 (*Id.* at 449, emphasis added.) Finding that the lead agency’s failure to recirculate violated
17 § 21092.1, the court thus held that “the draft EIR must be revised and recirculated for public
18 comment on the newly disclosed potential impact on Cosumnes River fish migration.” (*Id.* at
19 421; see *id.* at 447-449.)

20 *Laurel Heights II*, too, is on point. In its review of CEQA’s recirculation provisions, the
21 high court discussed (and approved of) *Sierra Club v. Gilroy City Council* (1990) 222
22 Cal.App.3d 30. In *Gilroy*, the presence on the project site of the then *potentially* endangered
23 California tiger salamander was discovered after the close of the public comment period for the
24 draft EIR. The lead agency there, in stark contrast to the county, commissioned a study of the
25 salamander in response to this discovery, and then circulated the study for public comment
26 before final EIR certification. The *Laurel Heights II* court thus reflected on the environmental
27 review process in *Gilroy*:

27 “The new information, the presence of the tiger salamander, demonstrated that the draft
28 EIR had not addressed a potentially substantial adverse environmental effect. *Therefore*,

1 *revision and recirculation were required* and were voluntarily undertaken by the
2 agency.”

3 (6 Cal.4th 1112, 1131, emphasis added.)^{19/}

4 *Mira Monte* is equally apposite. There, a resurvey (conducted by lead agency staff only
5 four days *prior to* certification, far later than here), discovered that a proposed street’s
6 encroachment on a wetland, home to a rare plant species, was 0.25 acres “greater than previously
7 thought.” (165 Cal.App.3d at 361.) Still, the board of supervisors certified the EIR without
8 circulating a further environmental document inquiring into the impacts of the newly discovered
9 wetlands. Though the agency had added new mitigation conditions to offset those impacts, the
10 *Mira Monte* court found that the agency’s manner of proceeding discounted the EIR’s value as
11 an informational document, and held that the failure to prepare a subsequent or supplemental
12 EIR upon discovery of the wetlands encroachment was a “failure to proceed as required by law.”
13 (*Id.* at 364-365.)^{20/}

14 For purposes of CEQA’s revised EIR preparation and recirculation requirements, it is noteworthy
15 setting well as additional data or other information.” (§ 15088.5, subd. (a).) This is important,
16 since establishing reliable, quantified baseline data is crucial to meaningful analysis of direct and
17 cumulative impacts, as well as meaningful alternatives review. (*Vineyard*, 40 Cal.4th 412, 440-

18 ^{19/} Conversely, where new information, such as new mapping and evaluation produced in
19 the context of multiple species conservation program planning, merely amplifies *information*
20 *already contained in the EIR* -- with the new information being based on the same data as those
21 used for the EIR -- no new, potentially substantial adverse environmental effect is shown, and
22 such information cannot be found “significant” for purposes of recirculation. (See
23 *Chaparral*, 50 Cal.App.4th at 1148-1149 & fn. 15; see *id.* at 1151 [multiple species conservation
24 planning materials “did not set forth data or otherwise identify any new or more severe
25 environmental impact”]; substantial evidence therefore supported the decision not to recirculate].)

26 ^{20/} *Sierra Club*, 7 Cal.4th 1215, though not involving interpretation of recirculation
27 requirements, is instructive nonetheless. There, our high court held that the forestry board failed
28 to proceed in the manner required by CEQA when it rejected a Department of Fish and Game
29 (DFG) request for surveys of four old-growth species, and approved a timber harvest plan (THP)
30 without adding in it a survey report (to offer new impact analysis), based on the surveys of the
31 four species. (*Id.* at 1220-1225, 1228-1229, 1234 [citing § 21001, subdivision (c)].) The court
32 pointed to a DFG report that noted that although its records did not disclose that the four species
33 occurred on the THP site, habitat characteristics suggested they may occur there. (*Id.* at 1223.)
34 Based on a record lacking data and recommendations regarding whether any of the four species
35 that may occur in the affected THP area, actually do occur there, the forestry board’s finding that
36 the proposed timber harvesting in an old-growth forest will have no significant effect on old
37 growth-dependent species or their habitat could not be sustained. (*Id.* at 1220, 1236-1237.)

1 441.)^{21/} As such, then, § 15088.5’s definition of “information” is highly relevant to determining
2 whether new information is “significant” enough to trigger CEQA’s recirculation requirements.

3 The board exclusively relied on CCRC’s consultants for its finding that the project would
4 not directly or indirectly affect the toad. CCRC’s consultants’ inconclusive surveys, however,
5 lack probative value. *The absence of observed toads is not equivalent to the absence of toads,*
6 *much less the absence of adverse impacts to toads.* (See *Sierra Club*, 7 Cal.4th 1215, 1220-
7 1225, 1228-1229, 1234, 1236.) This is especially true when toads breed intermittently or remain
8 burrowed for long periods of time -- or when surveys do not follow proper USFWS protocol. (1
9 AR 176 [#4].)^{22/} CCRC’s consultants’ inference of no toads is the more unreasonable as toads
10 had been observed in Silverado Creek not too long before the consultants conducted their
11 surveys. Their inference is not substantial evidence. It is based on a conjectural quantum leap.
12 (See *Estate of Young* (2008) 160 Cal.App.4th 62, 76 [“ ‘inferences must be “a product of logic
13 and reason...” [citation]; inferences that are the result of mere speculation or conjecture cannot
14 support a finding [citations]’ [citation]”]; Guidelines, § 15384, subd. (a).)

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2. The SEIR Failed to Evaluate the Project’s Cumulative Impacts to the Toad.

Just as omission of the Silverado Creek toad population from the biological baseline

^{21/} Because the impacts of a project “must be measured against the ‘real conditions on the ground’ [citations]” (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121), “proper analysis of project impacts [is] impossible” when the description of the project’s environmental setting is incomplete or inadequate or incomplete. (*Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1121-1122; see *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874.)

^{22/} As for the 2005 CCRC consultants’ survey, the USFWS found that it was not valid because was conducted primarily in late July -- contrary to USFWS toad survey protocol. At that time, most toads in this portion of their range have metamorphosed and “become harder to detect as they are buried underground or are foraging in the upland environment.” (1 AR 176.) The 2006 CCRC consultants’ survey did not adhere to proper survey protocol either. As the USFWS noted, “it was much drier [in 2006] than in 2005, and it appears that there was no [toad] breeding along Silverado Creek that year.” (*Id.*; 1 AR 181 [field surveys conducted during severe weather conditions may not be valid].) As the USFWS further noted, “[a]lthough arroyo toads were not observed at Silverado Creek in 2006, *they can remain buried in the soil for extended periods of time*, emerging to breed or forage only when conditions are appropriate, so based on the observation of breeding arroyo toads at this location in 2005, it is likely that toads are still present in suitable habitat along Silverado Creek.” (1 AR 176, emphasis added; 210-11.) The USFWS comments belie the misleading statements in the SEIR to the effect that the CCRC consultants’ surveys were conducted consistent with USFWS survey protocol.

1 conditions failed to set the stage for disclosing a significant direct impact of the project, it
2 likewise undermined cumulative impacts evaluation. (See *Friends of the Eel River*, 108
3 Cal.App.4th at 874-875; *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214
4 Cal.App.3d 1043, 1051.)^{23/}

5 3. The SEIR Failed to Discuss Mitigation Measures or an Alternative to
6 Avoid or Minimize the Project’s Impacts to the Toad and Its Habitat.

7 Any revised SEIR must include a discussion of mitigation measures specifically designed
8 to avoid or substantially reduce the project’s significant effect on the Silverado Creek toad
9 population -- e.g., elimination of, or substantial limits on, allowable horse-keeping on-site (8
10 OAR 3349; 4 AR 1983-85); increased buffers from on-site drainages (through smaller building
11 pads or a reduction in the density of the project along westerly drainage B). (*Friends of the Eel*
12 *River*, 108 Cal.App.4th 859, 873.) “CEQA mandates a lead agency to conduct a thorough review
13 of the project in question even though additional review might later be undertaken by other
14 agencies with jurisdiction over specific resources. [Citation.]” (*Save San Francisco Bay Assn. v.*
15 *San Francisco Bay Conservation etc. Com.* (1992) 10 Cal.App.4th 908, 921.)

16 C. The County Prejudicially Abused Its Discretion Under CEQA by Failing to Make
17 the CEQA-Mandated Finding for the Project’s Significant Effect on the Silverado
18 Creek Toad Population.

19 The board neglected to make the required finding under section 21081, subdivision (a)(1)
20 for the project’s newly discovered significant effect on the toad. (See Guidelines, §§ 15091,
21 subd. (c); 15065, subd. (a).)

22 IV. CONCLUSION.

23 Faced with a fateful choice to inform themselves and the public about the chances of
24 survival of an endangered species in a county where it has almost gone extinct, the board
25 members responded by burying their heads in the sand. Their manner of proceeding does not
26 pass muster under CEQA. SMRPD urges the Court to order the requested relief.
27


28 ^{23/} Given the few remaining toad populations within the entire lower Santa Ana River
Basin (8 OAR 3391), key questions for a RDSEIR to inquire into are: (1) what are the cumulative
and indirect ecosystem effects of losing the Silverado Creek toad population (or not protecting,
rehabilitating or enhancing its breeding, feeding and burrowing habitat, or otherwise mitigating
direct project impacts to this population and habitat)?; and (2) how significant are those effects in
the biogeographic context of the lower Santa Ana River Basin?

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Respectfully submitted,

DATED: January 17, 2009

ANGEL LAW
Frank P. Angel
September Hopper

By: 
Frank P. Angel
Attorney for Petitioners/Plaintiffs
SILVERADO MODJESKA RECREATION
AND PARKS DISTRICT et al.

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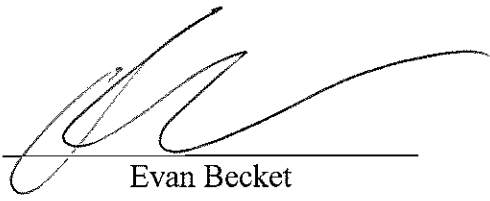
I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party in this case. My business address is: 2601 Ocean Park Blvd., Suite 205, Santa Monica, California 90405-5269.

On January 17, 2009, I served a copy of the foregoing document entitled "NOTICE OF MOTION AND MOTION OF PETITIONERS/PLAINTIFFS SILVERADO MODJESKA RECREATION AND PARKS DISTRICT ET AL. FOR PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS AND INJUNCTIVE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT" on respondents/defendants County of Orange et al., and real parties in interest/defendants CCRC Farms, LLC et al. I performed such service by enclosing full copies of this document in envelopes designated by Overnight Express, with delivery fees provided for, checking the box "Next Day Overnight." I then sealed such envelopes and prepared Overnight Express airbills, addressing them to the following recipients:

SEE ATTACHED SERVICE LIST.

Next, I inserted each filled-out airbills in the plastic wrappers affixed to the back of the sealed Overnight Express envelopes. On the same day, January 17, 2009, I delivered both envelopes to the Overnight Express Weekend drop-off box located at 926 Colorado Avenue, Santa Monica, California 90401.

I declare under penalty of perjury that the above is true and correct, and that I have executed this proof of service in Santa Monica, California, January 17, 2009.


Evan Becket

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SERVICE LIST RE SDCSC CASE NO. 37-2008-00087783-CU-WM-CTL

<p>OFFICE OF COUNTY COUNSEL Attn: Mark Servino, Esq. 10 Civic Center Plaza, 4th Floor Santa Ana, CA 92701 Email: Mark.Servino@coco.ocgov.com</p> <p>Counsel for respondents/defendants County of Orange and Board of Supervisors of the County of Orange</p>	<p>IRELL & MANELLA LLP Carlton Morse 840 Newport Center Drive, Suite 400 Newport Beach, California 92660-6324 Email: cmorse@irell.com</p> <p>Counsel for real parties in interest/defendants CCRC Farms, LLC, CCRC Farms, Anthony A. Marnell II, Marnell Corrao Associates, Inc., Focus 2000, Inc.</p>
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