

AMY J. BRICKER (State Bar No. 227073)
LAURA D. BEATON (State Bar No. 294466)
SHUTE, MIHALY & WEINBERGER LLP
396 I laves Street
San Fnincisco, California 94 102
Telephone: (415) 552-7272
Facsi mile: (415) 552-58 16
Bricker@smwlaw.com
Bcaton@smwlaw.com

Attorneys for Sierra Watch

FILED
PERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

JAN 13 2u1

JAKE CHATTERS
ITIVE OFFICER & CL
/ C Lester, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

SIERRA WATCH,

Petitioner,

v.

PLACER COUNTY; PLACER COUNTY
BOARD OF SUPERVISORS; and DOES
1-20,

Respondents.

Squaw Valley Real Estate.LLC; Squaw
Valley Resort) LLC; Poulsen Commercial
Properties, LP; Does 2 1-40,

Real Parties in Interest.

Case No. **SCV0038917**

Verified Petition for Writ of Mandate
and Complaint for Injunctive and
Declaratory Relief

[Ralph M. Brown Act, Gov. Code § 54950
et seq.: CCP § J 085 (alternatively 1094.5)]

BY FAX

1 **INTRODUCTION**

2 1. This action alleges violations of the Ralph M. Brown Act, Government Code
3 section 54950 et seq. ("Brown Act" or "Act"), by Placer County and the Placer County Board of
4 Supervisors ("County") regarding the Board of Supervisors' November 15, 2016 meeting. At
5 that meeting, the Board adopted the Village at Squaw Valley Specific Plan ("Specific Plan") and
6 associated resolutions and ordinances, including an ordinance to approve a Development
7 Agreement (collectively, "the Project") and certified the environmental impact report ("EIR")
8 for the Project. Petitioner Sierra Watch separately challenged the Project approval and
9 certification of the EIR on the grounds that the County violated the California Environmental
10 Quality Act ("CEQA"), which matter is currently pending before the Placer County Superior
11 Court (Case No. SCV0038777). Due to the differing timing requirements set forth in CEQA
12 and the Brown Act, the causes of actions under the two statutes could not be filed concurrently.

13 2. The Brown Act, also known as the California open meeting law, has a clear and
14 forcefully stated purpose: "In enacting this chapter, the Legislature finds and declares that the
15 public commissions, boards and councils and the other public agencies in this State exist to aid
16 in the conduct of the people's business. It is the intent of the law that their actions be taken
17 openly and that their deliberations be conducted openly. [] The people of this State do not
18 yield their sovereignty to the agencies which serve them. The people, in delegating authority, do
19 not give their public servants the right to decide what is good for the people to know and what is
20 not good for them to know. The people insist on remaining informed so that they may retain
21 control over the instruments they have created." Gov. Code § 54950.

22 3. "To accomplish these vital goals, the Brown Act, inter alia, (1) requires that an
23 agenda be posted at least 72 hours before a regular meeting and (2) forbids action on any item
24 not on that agenda. In this way, "[t]he [Brown] Act ... serves to facilitate public participation
25 in all phases of local government decisionmaking and to curb misuse of the democratic process
26 by secret legislation of public bodies. " *San Joaquin Raptor Rescue Center v. County of Merced*
27 (2013) 216 Cal.App.4th 1167, 1176 (citations omitted).

1 4. As set forth below and in Petitioner's pending CEQA action, the Project at issue
2 proposes a massive development, including 850 units in a series of tall high-rises as well as
3 intensive commercial development (such as a 90,000 square foot indoor water park), in a narrow
4 alpine valley near the Lake Tahoe Basin. The Project would completely transform the region,
5 and result in serious environmental consequences for decades to come. As a result, the Project
6 garnered widespread public opposition throughout the administrative process. Although the
7 transparency of government officials' action is important in every case, it is particularly
8 significant in the present case given the incredibly high stakes of the approvals at issue. Indeed,
9 Sierra Watch and other members of the public on several occasions notified the County that full
10 public information and participation regarding this Project was vital.

11 5. Yet, at its November 15, 2016 public hearing on the Project, the Board took action
12 on a matter that was not properly noticed on the agenda, as required by the Brown Act, thereby
13 catching Sierra Watch and the public entirely off guard. Specifically, the Board considered and
14 adopted an ordinance approving a substantively different Development Agreement than the one
15 described in and attached to the posted agenda. Unbeknownst to Sierra Watch and other
16 members of the public, the County had amended the Development Agreement to reflect an
17 eleventh hour deal between the County, the Project Applicant, and the California Attorney
18 General's Office that purported to address issues of great importance to Sierra Watch and the
19 general public, including impacts to the Lake Tahoe Basin. Equally troubling, the day before
20 the hearing, on November 14, the Board was provided with a 107-page memorandum, with
21 attachments, discussing the revisions to the Development Agreement and other significant
22 concerns raised by the Attorney General-key information for the Board's actions at the
23 November 15 meeting-but this document was not made available to the public at that time, as
24 required by the Brown Act.

25 6. Without notice that the Board would be taking action on a substantial change to
26 the Development Agreement for the Project that concerned matters of great importance to Sierra
27 Watch and the public, and without access to the memorandum provided to the Board the day
28 before the meeting, Sierra Watch and the public were not only ambushed regarding an approval

1 by the Board that was elected to serve them, but also denied the opportunity to prepare and
2 provide meaningful comment on this significant matter, in violation of the Brown Act.

3 **PARTIES**

4 7. Petitioner Sierra Watch is a community-based organization of individuals
5 dedicated to protecting the unique scenic, biological, and natural resources of the Sierra Nevada
6 region, including Squaw Valley, and is organized as a California nonprofit public benefit
7 corporation. Sierra Watch was formed to assist Sierra-based groups and individuals with
8 education and information so that they can participate effectively in local planning processes.
9 Supporters of Sierra Watch use and enjoy the natural and scenic resources of Squaw Valley,
10 where the Project would be developed, and use and enjoy the recreation opportunities offered in
11 Squaw Valley. Supporters of Sierra Watch include citizens of California and residents and
12 taxpayers of Placer County who would be negatively affected by the Project's adverse
13 environmental impacts and improper approvals and who have an interest in the County's
14 compliance with the Brown Act. Sierra Watch has been extensively involved in the public
15 process for approval of the Project, commenting in detail on all aspects of the Project, its
16 environmental review, and associated approvals at every opportunity. Accordingly, Sierra
17 Watch and its supporters have a direct and beneficial interest in the County's compliance with
18 the Brown Act. These interests are directly and adversely affected by the County's violation of
19 the Brown Act, as set forth in this Petition. The maintenance and prosecution of this action will
20 confer a substantial benefit on the public by remedying the County's Brown Action violations
21 and ensuring the Act's purpose of ensuring public participation in government is achieved.

22 8. Respondent Placer County is a political subdivision of the State of California and
23 is subject to the requirements of the Brown Act.

24 9. Respondent Board of Supervisors is the duly elected legislative body for Placer
25 County and is the legislative body that took the actions that are the subject of this lawsuit.

26 10. Petitioner does not know the true names and capacities, whether individual,
27 corporate, associate, or otherwise, of Respondents Doe 1 through Doe 20, inclusive, and
28 therefore sue said Respondents under fictional names. Petitioner alleges, upon information and

1 belief, that each fictionally named Respondent is responsible in some manner for committing the
2 acts upon which this action is based. Petitioner will amend this Petition to show their true
3 names and capacities if and when the same have been ascertained.

4 11. Real Party in Interest Squaw Valley Real Estate, LLC is a party to the
5 Development Agreement approved by the Board of Supervisors at its November 15, 2016
6 meeting. Real Party in Interest Squaw Valley Real Estate, LLC is also listed as a "Project
7 Applicant/Owner" on the Notice of Determination for the Final Environmental Impact Report
8 for the Project filed and posted by the County Clerk of Placer County on November 21, 2016.
9 Petitioner is informed, and on that basis alleges, that Squaw Valley Real Estate, LLC is a
10 company incorporated in the State of Delaware and doing business in the State of California.

11 12. Real Party in Interest Squaw Valley Resort, LLC is a party to the Development
12 Agreement approved by the Board of Supervisors at its November 15, 2016 meeting. Petitioner
13 is informed, and on that basis alleges, that Squaw Valley Resort, LLC is a company incorporated
14 in the State of Delaware and doing business in the State of California.

15 13. Real Party in Interest Poulsen Commercial Properties, LP is a party to the
16 Development Agreement approved by the Board of Supervisors at its November 15, 2016
17 meeting. Petitioner is informed, and on that basis alleges, that Poulsen Commercial Properties,
18 LP is limited partnership registered and doing business in the State of California.

19 14. Petitioner does not know the true names and capacities, whether individual,
20 corporate, associate, or otherwise, of Real Parties in Interest Doe 21 through Doe 40, inclusive,
21 and therefore sues said Real Parties in Interest under fictional names. Petitioner alleges, upon
22 information and belief, that each fictionally named Real Party in Interest is responsible in some
23 manner for committing the acts upon which this action is based or has material interests affected
24 by the Project or by the County's actions with respect to the Project. Petitioner will amend this
25 Petition to show their true names and capacities if and when the same have been ascertained.

26 **JURISDICTION AND VENUE**

27 15. Pursuant to California Code of Civil Procedure sections 526, 527, 1085
28 (alternatively section 1094.5), and 1087; and Government Code sections 54960, 54960.1, and

1 54960.2, this Court has jurisdiction to issue a writ of mandate and grant injunctive relief to
2 invalidate the Board's November 15, 2016 actions with respect to the Project, including
3 adoption of the ordinance approving the revised Development Agreement, and to declare that
4 the County violated the Brown Act by failing to make available to the public a memorandum
5 provided to the Board a day before the meeting, and issue a writ of mandate directing the
6 County to comply with the Brown Act.

7 16. Venue is proper in this Court because the causes of action alleged in this Petition .
8 arose in Placer County.

9 17. Petitioner has complied with the requirements of Government Code section
10 54960.1 and 54960.2 by delivering to the County a letter on December 5, 2016 demanding that
11 the County cure or correct and cease and desist its Brown Act violations. A copy of the letter,
12 without its original attachments, is attached hereto as Exhibit A.

13 18. The County responded to Petitioner's letter on December 30, 2016, claiming that it
14 had not violated the Brown Act and declining to cure or correct the violation identified by
15 Petitioner. The County's letter also failed to provide an unconditional commitment to comply
16 with the Brown Act going forward. A copy of this letter is attached hereto as Exhibit B.

17 19. Petitioner will comply with the requirements of Code of Civil Procedure section
18 388 by sending a copy of this Petition to the California Attorney General within the required
19 time period.

20 20. Petitioner has performed any and all conditions precedent to filing this instant
21 action and has exhausted any and all available administrative remedies to the extent required by
22 law.

23 21. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law
24 unless this Court grants the requested writ of mandate to require Respondents to set aside the
25 Board's actions taken in violation of the Brown Act. In the absence of such remedy, the Board's
26 approval will remain in effect in violation of state law.

27

28

1 **STATEMENT OF FACTS**

2 22. In 2012, Squaw Valley Real Estate, LLC (a Real Party in Interest in this case and
3 the "Applicant") began the process of seeking entitlements that would dramatically intensify
4 resort development in the North Tahoe region. The Project, as approved, would allow for an
5 unprecedented and transformational level of development in Tahoe's Squaw Valley. Squaw
6 Valley is an internationally famous resort known for hosting the 1960 Winter Olympics and for
7 the challenging ski terrain that has inspired generations of innovation in the world of skiing.
8 The Project proposes approximately 51 acres of development on a 93.3 acre site, including
9 retail, residential, and resort industrial uses, with buildings ranging in height from 35 to 96 feet,
10 roughly nine acres of 20-foot tall parking structures, and an equipment yard and timeshare units
11 near Squaw Creek and the mouth of Shirley Canyon, a popular hiking spot. Existing roadways
12 would cover another eight acres of the Project area. The Project calls for 1,493 new bedrooms
13 concentrated in the proposed condo hotel high-rises and approximately 274,000 square feet of
14 new commercial space, including a 96-foot tall, 90,000 square foot indoor waterpark dubbed a
15 "Mountain Adventure Camp." Planned uses for the water-park include: indoor water slides,
16 action rivers, arcades, wake boarding, 30 bowling lanes, simulated sky diving, miniature golf,
17 water skiing, trampoline, an indoor wave rider, and more. The Project also includes a 30,000
18 gallon propane tank "farm," which will serve as the resort's gas supply. Approximately 92,000
19 square feet of commercial space, largely contained within the historic Olympic buildings, would
20 be demolished. The Project would also include up to 300 bedrooms of dormitory style
21 employee housing, another parking structure, and 20,000 square feet of commercial space
22 containing a market and a shipping and receiving center.

23 23. The Project was subject to environmental review under CEQA. Sierra Watch and
24 other organizations and members of the public were extensively involved in this public process.
25 On or about October 10, 2012, the County issued a Notice of Preparation ("NOP") of a Draft
26 Environmental Impact Report ("DEIR") for the proposed Village at Squaw Valley Specific Plan
27 and Phase I Project. Sierra Watch and other agencies, individuals, and organizations submitted
28 comments to the County on this NOP. Subsequently, on or about February 21, 2014, the County

1 issued a revised NOP for the Project. Again, several agencies, individuals, and organizations,
2 including Sierra Watch, submitted comments on the revised February 2014 NOP.

3 24. On or about May 18, 2015, the County circulated the DEIR for the Project. At
4 least 350 interested agencies, organizations, and individuals submitted comments on the DEIR,
5 including Sierra Watch, which submitted extensive comments on the DEIR, detailing numerous
6 flaws in the document, including its failure to evaluate the full scope of the Project's impacts on
7 the environment. Several other conservation groups, including but not limited to the Center for
8 Biological Diversity, League to Save Lake Tahoe, Friends of Squaw Valley, Friends of the West
9 Shore, Mountain Area Preservation, Mother Lode Chapter of the Sierra Club, and North Tahoe
10 Preservation Alliance, submitted comments on the DEIR regarding these and other issues. Over
11 300 individuals and more than a dozen interested government agencies also commented on the
12 DEIR and objected to the Project and the inadequate environmental review. Of these comments,
13 most raised concerns about the Project's impacts on the Tahoe Basin, traffic, or both. Notably,
14 these comments included a letter from the Tahoe Regional Planning Agency detailing the failure
15 of the DEIR to adequately analyze and mitigate the impacts of the Project on the Tahoe Basin.

16 25. On or around April 7, 2016, the County released its responses to comments on the
17 DEIR and issued the final environmental impact report ("FEIR") for the Project. Dozens of
18 individuals, organizations, and agencies commented on the FEIR. Sierra Watch again submitted
19 extensive comments, detailing how the FEIR did not adequately respond to or correct the
20 inadequacies of the DEIR identified by Sierra Watch or other commenters during the review
21 process. The California Attorney General's Office also submitted a letter on the FEIR,
22 expressing her concerns that the environmental review did not adequately analyze or mitigate
23 the Project's impacts on the Lake Tahoe Basin, a nationally treasured California resource.

24 26. The Project was first considered by the Squaw Valley Municipal Advisory
25 Council. Municipal Advisory Councils (or "MACs"), which were created by the Placer County
26 Board of Supervisors, are comprised of local residents who advise the Board of Supervisors on
27 issues or concerns regarding proposed projects and other matters that may affect their
28 communities. On May 14, 2016, the Squaw Valley MAC held a meeting to consider the Project.

1 Approximately 200 people attended the meeting and more than 150 stood when a Sierra Watch
2 representative asked anyone in the audience that was opposed to the Project to stand. Twenty-
3 four people spoke at the meeting, twenty of whom were opposed to the Project. Speakers
4 included individuals and representatives from organizations including Sierra Watch, Friends of
5 Squaw Valley, Friends of Squaw Creek, and the Squaw Valley Homeowners Association
6 Forum. According to the official minutes from the MAC meeting: "The gist of the rest of the
7 comments were that the project is too large, the proposed benefits are outweighed by the
8 environmental impacts, and the general loss of a 'sense of place.'"

9 27. After the close of public comment, the MAC passed two motions, both by a vote
10 of three to one. The first motion was to "recommend denial of the project as proposed." The
11 MAC's second approved motion was to "recommend serious consideration be given to the
12 project at a level approximately 50% of what is currently proposed subject to further research to
13 support the conclusions previously reached in the Draft EIR."

14 28. After the MAC's review, the Project was considered by the Placer County
15 Planning Commission, which held a public hearing on the Project on or about August 11, 2016.
16 The Planning Commission considered and made recommendations on all aspects of the Project,
17 its environmental review, and its related approvals, including the initial version of the
18 Development Agreement for the Project. Dozens of people, including concerned residents and
19 representatives from Sierra Watch and other conservation groups, provided public testimony in
20 opposition to the Project due to its scale and its serious environmental threats to North Tahoe
21 and the Lake Tahoe Basin, as well as the EIR's failure to adequately evaluate or mitigate those
22 impacts. When asked by a Sierra Watch representative to stand if they opposed the project,
23 more than 200 attendees rose to register their disapproval. The Planning Commission, by a vote
24 of four to two, voted to recommend approval of the Project and certification of the EIR to the
25 Board of Supervisors.

26 29. The Board of Supervisors scheduled a public hearing for the Project on November
27 15, 2016. The County made available to the public about 1,000 pages of documentation
28 regarding the Project by posting on its website on November 9, 2016, including the agenda for

1 the November 15 Board of Supervisors meeting. The agenda for the meeting described the
2 relevant item to this lawsuit as: "Conduct a Public Hearing to consider a recommendation from
3 the Placer County Planning Commission for APPROVAL of the following: . . . Adoption of an
4 ordinance to approve the Development Agreement relative to the Village at Squaw Valley
5 Specific Plan." The agenda packet for the meeting included a draft ordinance adopting the
6 version of the Development Agreement that was reviewed and recommended by the Planning
7 Commission and a copy of that Development Agreement.

8 30. Neither the agenda nor the materials in the agenda packet anywhere mentioned
9 that County officials had met or would meet with the Attorney General's Office regarding the
10 Project or that, as a result of that meeting, the Board would be considering significant changes to
11 the Development Agreement that was considered and recommended for approval by the
12 Planning Commission. Yet, at the November 15, 2016 meeting the Board approved an amended
13 version of the Development Agreement, which included changes that were the result of a last-
14 minute negotiation between the County, the Applicant, and the Attorney General's Office and
15 that attempted to address the Attorney General's grave concerns about the Project's impacts to
16 the Tahoe Basin. According to oral testimony by Supervising Deputy County Counsel Karin
17 Schwab, the Development Agreement was amended to reflect a commitment by the Applicant to
18 make payments of a Tahoe Regional Planning Agency Air Quality fee. Because this new item
19 for Board action was not included in the agenda posted 72 hours before the meeting, Sierra
20 Watch and the public were denied notice of the Board's action and their right to meaningfully
21 participate in this government action.

22 31. Prior to and at the November 15 hearing, Sierra Watch submitted extensive written
23 and oral testimony on virtually all aspects of the Project, providing extensive evidence and
24 reasons why the Board of Supervisors should deny the Project. However, due to the lack of
25 notice on the agenda of the Board's action on the new version of the Development Agreement,
26 Sierra Watch and other members of the public were unable to prepare and present any
27 substantive comments on the County's and the Applicant's last minute deal with the Attorney
28

1 General and changes to the Development Agreement, which were made to avoid potential
2 litigation with the State.

3 32. Compounding the problem, unbeknownst to Sierra Watch and the public, on
4 November 14, 2016-the day before the Board of Supervisor's meeting-Supervising Deputy
5 County Counsel Schwab provided the Board with a 107-page memorandum, which included as
6 attachments supplemental responses to comments on the FEIR regarding the Project's impacts to
7 the Lake Tahoe Basin; a significant amendment to the Development Agreement that was the
8 result of a last-minute attempt to settle the Attorney General's concerns about the Project; a
9 revised Ordinance approving the amended Development Agreement; and a revised copy of the
10 Development Agreement.

11 33. This memorandum and its attachments, which dealt with an issue extremely
12 important to the public, were not, to Petitioner's knowledge, made available to the public at the
13 time they were received by a majority of the Board (or at any time before or during the
14 meeting). Indeed, this document was not posted to the County's website, as it is the County's
15 custom to do with documents supporting agenda items for Board meetings and as the County did
16 with all other documents related to the November 15 meeting's action items.

17 34. By failing to notify the public of the addition to the agenda and failing to give the
18 public access to the memorandum and its attachments, the County denied Sierra Watch and the
19 public their right to provide meaningful comments on issues of great importance to the public.
20 Indeed, as evidenced by the large number of comments made on the Project-especially those
21 about impacts to Lake Tahoe, which the memorandum and its attachments purported to
22 address-had the public known of this new agenda item, resulting from the County's and the
23 Project Applicant's negotiations with the Attorney General's Office, and the contents of the
24 memorandum, one or more representatives from Sierra Watch would have provided substantive
25 comments to the Board thereon, as likely would have numerous other conservation
26 organizations and members of the public. Indeed, Sierra Watch has provided extensive, detailed
27 comments on virtually every other aspect of the Project and its environmental review and related
28 approvals, but here, it was denied that opportunity, in violation of the Brown Act.

1 35. Highlighting the significance of the changes to the Development Agreement,
2 County Code section 17.58.240(B) instructs that when a development agreement is amended
3 after the Planning Commission has already considered it, the Board should refer the matter back
4 to the Planning Commission for consideration and recommendation. Despite this, the Board
5 neither referred the matter back to the Planning Commission, nor included the amendment on its
6 agenda for the November 15 hearing.

7 36. Though the action was not noticed in its agenda, on November 15, 2016, by a vote
8 of four to one, the Board adopted Ordinance 5846-B to approve the new Development
9 Agreement for the Project, as revised subsequent to the County's and Applicant's negotiations
10 with the Attorney General's Office.

11 37. In a letter dated December 5, 2016, Sierra Watch notified the Board of Supervisors
12 and Clerk of the Board that the failure to notice on the agenda for the November 15, 2016
13 meeting that the Board would take action on the substantial changes to the Project's
14 Development Agreement violated the Brown Act, and demanded that the Board cure and correct
15 the violation within 30 days of the Board's receipt of the letter. The letter also warned the
16 County to cease and desist the practice of failing to make County documents provided to the
17 Board less than 72 hours prior to the meeting available to the public at the same time the
18 materials are provided to the Board, and requesting that the County provide its unconditional
19 commitment to cease, desist from, and not repeat that violation.

20 38. On December 30, 2016, the County responded that it had committed no Brown
21 Act violation at its November 15, 2016 meeting, and thus, it would not cure or correct the
22 alleged violations. The County also claimed that the material related to Development
23 Agreement "was available at the Clerk of the Board of Supervisor's Office at the same time it
24 was provided to the majority of the Board." Thus, the County claimed there was "no reason to
25 cease and desist." Nor would it provide an unconditional commitment to avoid such violations
26 in the future. However, the County's response fails to provide any details to substantiate this
27 claim or demonstrate compliance with the Brown Act. For example, the County's response does
28 not indicate whether the public had enough time to review the 107-page document during hours

1 when the Clerk's office was open to the public. This is critical given that the Memorandum is
2 dated November 14, 2016, and the hearing took place at 9:00 a.m. on November 15, 2016. Oral
3 testimony at the hearing indicates that the Memorandum was prepared last minute and therefore
4 was likely not available to the public during normal business hours. Indeed, in a press release
5 posted on its own website after the hearing, Placer County admitted that the new version of the
6 Development Agreement was "a late-breaking development." Nor did the County make any
7 announcement regarding the public availability of the memorandum on the County's website,
8 per its standard practice regarding agenda items, by e-mail to the notice list, or at any time
9 during the November 15, 2016 hearing. Furthermore, even if the memorandum had been made
10 available at the Clerk's office, that office is a roughly two-hour drive from the hearing location,
11 and the public would have had no idea that it had become available.

12 39. Petitioner contacted counsel for the County and Real Party in Interest in the
13 pending CEQA action regarding the possibility of filing an amended and supplemental petition
14 and complaint in that matter to raise the related Brown Act allegations stated herein, but given
15 the Brown Act's short time limitations there was insufficient time to do so by stipulation or
16 motion. Petitioner therefore files the instant action and will file a notice of related case currently
17 herewith.

18 **FIRST CAUSE OF ACTION**
19 (Violation of Brown Act, Gov. Code § 54954.2)

20 40. Petitioner hereby realleges and incorporates by reference the preceding paragraphs
21 in their entirety.

22 41. The purpose of the Brown Act is to encourage public participation in government
23 decision making.

24 42. In furtherance of its goal of public participation, the Brown Act requires that at
25 least 72 hours before a regular meeting, a legislative body must post an agenda containing a
26 brief description of each item of business to be acted upon at the meeting. The legislative body
27 may not take any action on an item not appearing on the posted agenda, except in certain
28 situations not applicable here.

1 meeting, it must be made available to the public at the same time that it is provided to all or a
2 majority of the members of the legislative body.

3 49. The County violated the Brown Act by providing the November 14 memorandum
4 to the all or a majority of the members of the Board less than 72 hours prior to the meeting
5 without making it available to the public at the same time.

6 50. The County denies that it has violated the Brown Act by distributing this
7 memorandum to the Board without making it publicly available and refuses to make an
8 unconditional commitment to cease, desist from, and not repeat such violations of the Brown
9 Act. Accordingly, a controversy exists regarding Respondents' past compliance with the Act,
10 and the County is likely to continue such violations of the Act.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner prays for judgment as follows:

13 1. For alternative and preemptory writs of mandate directing the County to vacate
14 and set aside its November 15, 2016 actions taken in violation of the Brown Act, including but
15 not limited to approval of the amended Development Agreement and the related ordinance;

16 2. For alternative and preemptory writs of mandate directing the County to comply
17 with the Brown Act's requirement that County documents provided to a legislative body less
18 than 72 hours before an open meeting be made simultaneously available to the public;

19 3. For a declaration that the Board's actions of November 15, 2016, including the
20 adoption of an ordinance to approve an amended Development Agreement are null and void due
21 to the Board's violations of the Brown Act;

22 4. For a declaration that the County violated the Brown Act by providing to the
23 Board County documents less than 72 hours before an open meeting without making them
24 available at the same time to the public;

25 5. For a stay, and preliminary and permanent injunctions, restraining the County and
26 Real Party in Interests and their agents, employees, officers, and representatives from
27 undertaking any activity to implement the Project in any way pending the County's full
28 compliance with the requirements of the Brown Act;

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

6. For costs of the suit;

7. For attorneys' fees as authorized by Government Code section 54960.5 and Code of Civil Procedure section 1021.5; and

8. For such other and future relief as the Court deems just and proper.

DATED: January 13, 2017

SHUTE, MIHALY & WEINBERGER LLP

By: 

LAURA D. B. ATON

Attorneys for Sierra Watch

856531.5

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

VERIFICATION

I, Tom Mooers, am Executive Director of Sierra Watch, the Petitioner in this action. I am authorized to execute this verification on behalf of Petitioner. I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition"). I am familiar with its contents. All facts alleged in the above Petition not otherwise supported by exhibits or other documents are true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Nevada City, CA on January 12, 2017.



Tom Mooers

EXHIBIT A

SHUTE} MIHALY
-WEINBERGER 1.1.P

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

AMY J. BRICKER
Attorney
bricker@smwlaw.com

December 5, 2016

Via Registered Mail, Return Receipt Requested & E-mail

Board of Supervisors
& Megan Wood, Clerk of the Board
Placer County
175 Fulweiler Ave.
Auburn, CA 95603
bos@placer.ca.gov

Re: Brown Act Cure and Correct/Cease and Desist Letter. Board of Supervisors Meeting, November 15, 2016, Agenda Item No. I

Dear Supervisors and Clerk of the Board:

We submit this letter of behalf of Sierra Watch to notify the Board of Supervisors and its Clerk of violations of the Brown Act at its November 15, 2016 meeting. Specifically, the Board violated the Brown Act by taking actions related to approval of the Village at Squaw Valley Specific Plan (Agenda Item No. I) because (1) the Board took action on an item not on its agenda for the meeting, and (2) the Board considered documents provided to it less than 72 hours prior to the meeting that were not made available to the public at the same time.

I. **Cure and Correct: The Agenda for the November 15, 2016 Board of Supervisors Meeting Violated the Brown Act.**

The Board of Supervisors violated the Brown Act on November 15, 2016 by voting to approve an amended Development Agreement for the Village at Squaw Valley without adequate notice to the public on the posted agenda for the meeting. The Brown Act requires posting of an agenda including a description of each item of business to be considered at a legislative body's meeting at least 72 hours prior to the meeting. Gov. Code § 54954.2(a)(1). This requirement applies unless the legislative body makes certain determinations, none of which were made by the Board in this case. *See id.* § 54954.2(b). Here, the Board voted to approve a new amendment to the Development Agreement, without announcing on the agenda that it was to consider a substantive

Board of Supervisors
Clerk of the Board of Supervisors
December 5, 2016
Page 2

amendment to the proposed Development Agreement, without the Planning Commission's consideration.

The amendment to the Development Agreement would require the developer to make payments of a Tahoe Regional Planning Agency ("TRPA") Air Quality Fee. *See* November 14, 2016 Memorandum to Board of Supervisors, Att. B (attached hereto as Exhibit 1). This provision was added to the proposed Development Agreement only on November 14, 2016-the day before the Board of Supervisors' meeting-and was not considered by the Planning Commission.

Under the County Code, adding provisions to a Development Agreement that were not considered by the Planning Commission typically requires that the Board refer the matter back to the Planning Commission for consideration. Placer County Code § 17.58.240(B). This section makes plain the significance of changes to a Development Agreement by requiring the Planning Commission's initial consideration of any terms of a Development Agreement prior to the Board's approval. Nonetheless, without notifying the public in the Board's agenda of either the Board's consideration of this substantive addition to the Development Agreement, or the Board's determination that the Development Agreement should not be referred back to the Planning Commission, the Board took action on this matter.

The addition of this amendment to the proposed Development Agreement was only made public at the Board's November 15, 2016 meeting. As explained above, consideration of this amendment and the decision not to refer the matter back to the Planning Commission goes beyond what was included in the agenda and its attachments. Had the agenda indicated that these issues would be considered at the meeting, Sierra Watch and other members of the public would have had a chance to comment on and voice their objections to them. Indeed, the amendment includes significant new terms that were never considered by the Planning Commission and must be remanded to the Planning Commission before it can be approved.

Furthermore, the Development Agreement is a negotiated agreement that it is integrally related to and inseparable from the remaining approvals granted with respect to the Village at Squaw Valley Specific Plan on November 15, 2016 (Agenda Item 1). Accordingly, pursuant to Government Code section 54960.1, Sierra Watch demands that the Board of Supervisors cure and correct the illegally taken action by (1) setting aside the approvals issued on November 15, 2016 with respect to the Village at Squaw Valley Specific Plan, including but not limited to the Ordinance approving the Development Agreement and (2) not holding another hearing of the Board of Supervisors regarding the

Village at Squaw Valley Specific Plan and related approvals, including but not limited to the amended Development Agreement, unless and until the agenda for which properly informs the public of the subjects for discussion at that hearing. In the alternative, Sierra Watch requests that, at a minimum, the Board of Supervisors rescind the amended Development Agreement and only reconsider it after proper procedures have been followed. Sierra Watch additionally notes that, if the Planning Commission fails to review the proposed amendment to the Development Agreement prior to the Board's reconsideration of it, the County will remain in violation of Placer County Code section 17.58.240(B).

If the violation is not cured or corrected within 30 days, Sierra Watch will be forced to take legal action to invalidate the Board's action. *See* Gov. Code § 54960(a), (c)(3).

II. Cease and Desist: The Board Failed to Make Available to the Public Documents It Considered Before the Meeting.

The Board further violated the Brown Act by considering documents provided to it less than 72 hours prior to the meeting that were not made available to the public at the same time. *See* Gov. Code § 54957.5(b)(1). Specifically, on November 14, 2016, the Board was provided with a 107-page memorandum from Karin Schwab, which included supplemental responses to comments on the Squaw Valley FEIR, an additional provision for the Development Agreement, and a revised draft ordinance. *See* Exhibit 1.

Under the Brown Act, writings that are "distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body . . . shall be made available" to the public. Gov. Code § 54957.5(a). If a writing is distributed less than 72 hours prior to a meeting-after the agenda is posted-the writing "shall be made available for public inspection . . . at the time the writing is distributed to all, or a majority of all, of the members of the [legislative] body." Gov. Code § 54957.5(b)(1).

However, the November 14, 2016 memorandum to the Board was not made public at the time it was distributed to the Board, or at any time before or during the meeting. Indeed, Sierra Watch and other members of the public had no idea the Board had this information until during the meeting. Sierra Watch and the public were thus prevented from reviewing and commenting on the information on which the Board relied. This violation resulted in the County inserting into the record, at beyond the eleventh

hour, a completely one sided characterization of a conversation with members of the Attorney General's ("AG's") office about the AG's concerns regarding the Project's environmental review, without providing the public (or the AG's office) an opportunity to comment upon that characterization.

And this memorandum did not concern merely technical or unimportant issues. The memorandum and its attachments concerned aspects of the proposed project that would impact the Tahoe basin and Lake Tahoe, including increased traffic-issues that are of utmost importance to the public, as evidenced by the volume of public comment focused on impacts to Lake Tahoe and its surroundings.

Accordingly, pursuant to Government Code section 54960.2(a), Sierra Watch hereby notifies the Board of Supervisors and the Clerk of the Board of Supervisors that the Board must immediately cease and desist from distributing writings to the Board less than 72 hours before a meeting that it does not make available to the public at the same time. Pursuant to Government Code section 54960.2(b), the Board must respond to this letter within 30 days, providing to Sierra Watch its unconditional commitment to cease, desist from, and not repeat the violation described here. If it does not, Sierra Watch may take legal action for such violations of the Brown Act. See Gov. Code § 54960(b).

In light of the agenda-related Brown Act violation at the November 15, 2016 meeting, which requires setting aside the Board's action and a new hearing on the matter, we believe the best way for the Board to establish its unconditional commitment to complying with the Brown Act is for it to set aside all actions on the Village at Squaw Valley development taken at its November 15, 2016 meeting, and to hold a new public hearing on the whole matter (or at a minimum on the revised Development Agreement to which the omitted memorandum relates), after the public has an opportunity to properly review all materials relied upon by the Board.

III. Conclusion

Pursuant to Government Code sections 54960.1(c)(2) and 54960.2(b), you have thirty days to address the violations of the Brown Act identified in this letter. If you do not take the necessary actions described above, Sierra Watch will seek judicial invalidation of the Board's actions, judicial determination of the applicability of the Brown Act to the Board's past violation of the Act; declaratory or injunctive relief to prevent future such violations of the Act; as well as its costs and reasonable attorneys' fees. See Gov. Code §§ 54960(a), 54960.1(a), 54960.5.

Board of Supervisors
Clerk of the Board of Supervisors
December 5, 2016
Page 5

Please do not hesitate to contact me should you wish to discuss this matter further.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in cursive script that reads "Amy J. Bricker". The signature is written in black ink and is positioned above the printed name.

Amy J. Bricker

cc.

Tom Mooers, Sierra Watch

Alexis Ollar, Mountain Area Preservation

Darcie Goodwin Collins & Shannon Eckmeyer, League to Save Lake Tahoe

Joanne Marchetta, Tahoe Regional Planning Agency

Tony Lashbrook, Town of Truckee

Nicole Rinke, Office of the California Attorney General

8464L13

EXHIBIT B



PLACER COUNTY COUNSEL

GERALD O. CARDEN, COUNTY COUNSEL

175 Fulweiler Avenue
Auburn, California 95603
Telephone: 530-889-4044
Facsimile: 530-889-4069
www.placer.ca.gov

December 30, 2016

VIA ELECTRONIC & U.S. MAIL

Amy J. Bricker
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Email: bricker@smwlaw.com

Re: Letter Dated December 5, 2016 to the Placer County Board of Supervisors, concerning the Placer County Board of Supervisors Meeting on November 15, 2016 and Agenda Item No. 1

Dear Ms. Bricker:

This letter responds your letter of December 5, 2016 to the Placer County Board of Supervisors on behalf of your client, Sierra Watch,¹ alleging violations of the Brown Act by the Placer County Board of Supervisors at its November 15, 2016 meeting. As explained herein, your letter mischaracterizes the provisions of the Brown Act, the Placer County Code, and the facts regarding the November 15 meeting. Each item of business discussed and/or acted upon at the Board's November 15, 2016 meeting was included in the agenda for the meeting, which contained brief general descriptions of each item of business as required by the Brown Act. Also, all documents distributed to the members of the Placer County Board of Supervisors were available for public inspection at the same time they were presented to the Board as required under the Brown Act.

I. The December 5, 2016 letter mischaracterizes the provisions of the Brown Act, the Placer County Code, and the facts regarding the November 15 meeting

a. Section 54854.2 of the Brown Act

The December 5, 2016 letter challenges the validity of the Board's approval of the Development Agreement for the Village at Squaw Valley, alleging that the agenda did not provide adequate notice to the public on that item. Gov. Code § 54954.2

¹ We also address the December 13, 2016 letter from the League to Save Lake Tahoe, which echoed Sierra Watch's allegations in the December 5, 2016 letter, but did not raise any new issues.

requires a local agency to post an agenda, at least 72 hours prior to a regular meeting, which contains "a brief general description of each item of business to be transacted or discussed at the meeting." The statute goes on to state that "[a] brief general description of an item generally need not exceed 20 words." (Gov. Code, § 54954.2.) The statute also prohibits a local agency from acting on or discussing "any item not appearing on the posted agenda" with some exceptions. (*Ibid.*)

The agenda for the November 15, 2016 meeting was posted in compliance with the statute and contained the following brief general description of the item of business involving the Development Agreement for the Village at Squaw Valley: "7. Adoption of an ordinance to approve the Development Agreement relative to the Village at Squaw Valley Specific Plan ..." (November 15, 2016 Board of Supervisors Agenda, p. 2.) The agenda adequately describes the item of business that the Board of Supervisors discussed and transacted in regards to the Development Agreement for the Village at Squaw Valley.

The December 5 letter attempts to fabricate an "amended Development Agreement" separate from the Development Agreement listed in the agenda, but no such separate "amended Development Agreement" exists. The fact the applicant requested the Board approve a change the Development Agreement that was properly on the agenda to voluntarily pay air quality mitigation fees to the Tahoe Regional Planning Agency to resolve a dispute with the Attorney General of California did not require the Board to re-notice its meeting considering the Project and Development Agreement as you suggest. Based on your reading of the Brown Act, the Board cannot make any changes to improve a project after the notice is circulated. Such an interpretation would set terrible precedent and is not consistent with purposes of the Brown Act.

In sum, there was one discussion and transaction relating to the Development Agreement on November 15, 2016, which was one item of business before the Board, and required only one brief general description of that item on the agenda. Therefore, the agenda for the November 15, 2016 meeting complied with section 54954.2 of the Brown Act.

b. Relevant case law on Brown Act

The December 5, 2016 letter's interpretation of the Brown Act is not consistent with relevant California precedent. The California Court of Appeal has held that "an agency fulfills its agenda obligations under the Brown Act so long as it substantially complies with statutory requirements." (*San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 642-643 [citing *Castaic Lake Water Agency v. Newhall County Water Dist.* (2015) 238 Cal.App.4th 1196, 1205].) The *San Diegans* court went on to state that a local agency substantially complies with the "brief general description" obligation when the agenda provides "fair notice of the essential nature of what an agency will consider." (*Id.* at p. 310.) The court also rejected the idea that simply because an agenda could have been more informative, the agenda violated the Brown Act; stating that "the Legislature has not required such detail or precision in local agency agendas." (*Ibid.*)

Here, the agenda for the November 15, 2016 meeting provided the public with "fair notice of the essential nature" of the Development Agreement for the Village at Squaw Valley, which is what the Board of Supervisors considered. The agenda was not required to include detailed descriptions of each proposed provision of the Development Agreement, as that would be neither brief nor general, and contrary to the language of Gov. Code, § 54954.2. The agenda for the November 15, 2016 meeting did not violate this or any other provision of the Brown Act and there is no need to cure and correct.

c. Section 17.58.240 of the Placer County Code

The December 5 letter also mischaracterizes the applicable provisions of the Placer County Code. Section 17.58.240 requires "development agreement draft document(s)" to be considered by the planning commission at a public hearing, after which the commission shall report its recommendations on the "proposed development agreement" in writing to the Board of Supervisors. The Board then must hold its own public hearing, after which "it may accept, modify, or disapprove the recommendation of the planning commission. It may, but shall not be required to, refer matters not previously considered by the planning commission during its hearing back to the commission for report and recommendation." (Placer County Code, § 17.58.240.)

The Board, in its discussion of the Development Agreement item of business, chose to modify the recommendation of the planning commission based on a request from the Applicant. As stated above, the Placer County Code allows the Board of Supervisors to do so, and expressly states that the Board is not required to refer the modified Development Agreement back to the planning commission for consideration. Section 17.58.240 contains no requirement that the planning commission consider "any terms of a Development Agreement" as the December 5, letter alleges. That section only requires the planning commission to consider "development agreement draft document(s)" and to make recommendations and findings for the Board on the "proposed development agreement." (*Ibid.*) Hence, the Board did not violate the Placer County Code in exercising its discretion to approve the modified Development Agreement without referring it back to the Planning Commission.

d. Section 54957.5 of the Brown Act

The December 5 letter alleges that the Placer County Board of Supervisors violated the Brown Act by considering documents, distributed less than 72 hours prior to the meeting, which allegedly were not made available to the public at the same time. This is a misstatement of the facts regarding the November 15, 2016 meeting and a misstatement of the requirements of the Brown Act. Gov. Code, § 54957.5 subdivision (a), states that "any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the [CPRA]." Subdivision (b) requires any "writing" that qualifies under subdivision (a) and "that relates to an agenda item for an open session of a regular meeting" to be "made available for public inspection" when the writing is "distributed to all, or a majority of all, of the members of the body." Subdivision (b) goes on to explain that "available for public inspection" means "at a public office or location

that the agency shall designate for this purpose." The address of which must be in the agenda. (*Ibid.*)

The December 5 letter incorrectly alleges that the Board of Supervisors violated subdivision (b) of section 54957.5 because "Sierra Watch and other members of the public had no idea the Board had this information until during the meeting." But, as stated above, subdivision (b) requires writings be made available for public inspection "at a public office or location that the agency shall designate for this purpose" and that location must be listed in the agenda. The third page of the agenda for the November 15, 2016 meeting states that "[m]aterials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection at the Clerk of the Board of Supervisor's Office, 175 Fulweiler Avenue, Auburn." Here, the materials distributed to the Board regarding the Development Agreement, including the applicant proposed change, was available at the Clerk of the Board of Supervisor's Office at the same time it was provided to the majority of the Board. In addition, the materials were available for the public's review at the Tahoe hearing venue before, during and after the Nov 15, 2016 hearing. The statement in the agenda, and the Board's consideration of the memoranda, fully complied with the requirements of Gov. Code, § 54957.5. Thus, there was no violation of the Brown Act, and no reason to cease and desist.

II. Conclusion

The Placer County Board of Supervisors did not violate the provisions of the Brown Act or the Placer County Code in its actions at the November 15, 2016 meeting. The agenda for that meeting contained the required brief general description of each item of business discussed and transacted by the Board, which provided the public with notice of the essential nature of each item. Additionally, the Board acted within its discretion in approving the modified Development Agreement without referring it back to the planning commission for consideration. Lastly, the documents submitted to the Board after the distribution of the agenda packets were made available for public inspection as required under the Brown Act. Because there were no violations of the Brown Act, the Board is not required to either cure and correct or cease and desist as demanded in the December 5, 2016 letter.

Please do not hesitate to contact us, should you have any questions or wish to discuss this matter further.

Very truly yours,

PLACER COUNTY COUNSEL'S OFFICE


-----;-----
Karin Scwab
Supervising Deputy County Counsel

cc: Clerk of the Board