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Via Electronic Mail Only

Board of Supervisors
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Re: Response to Rise Grass Valley's Letter to Board

Dear Board Members:

On behalf of the Community Environmental Advocates Foundation, we write to address the letter that Rise Grass Valley, Inc. ("Rise") submitted to the Nevada County Board of Supervisors ("Board") on June 1, 2023. The letter alleges that Rise was deprived of due process at the County Planning Commission's hearing on the Idaho-Maryland Mine Project ("Project").[1] During this hearing, the Planning Commission unanimously voted to recommend that the Board deny the Project and decline to certify its Environmental Impact Report ("EIR").

The allegations in Rise's letter are meritless. At the outset, Rise fundamentally misunderstands the legislative nature of the Planning Commission's action. This misunderstanding renders virtually all of Rise's many complaints irrelevant. Regardless, the Planning Commission's consideration of the Project comported both with due process principles and with the Commission's obligations to consider public input on a matter of great local importance. Rise might have preferred for the Planning Commission to ignore the community's views or reach a different decision. But this does not make the Commission's process or recommendations illegitimate. In any event, Rise's allegations have no bearing on the Board's own future decision on the Project.

[1] The letter includes a single cursory allegation that County officials also violated the Brown Act. Rise never explains what Brown Act violations it believes the County has committed and nothing described in the letter implicates the Act.

Rise's entire letter is premised on an assumption that procedural due process requirements applied to the Planning Commission's decision. That assumption is wrong. The due process principles that Rise cites apply *only* when a local decision-making body is acting in a quasi-adjudicatory capacity. *Save Civita because Sudberry Won't v. City of San Diego* (2021) 72 Cal.App.5th 957, 983–84. They do not apply to quasi-legislative acts.[2] *Id.*; *id.* at 994 & n.45.

The Planning Commission was acting in a quasi-legislative capacity when it made its recommendations on the Project. The Project cannot be developed unless the County rezones the Project site. And the Planning Commission expressly recommended to deny the rezoning application.[3] The California Supreme Court made clear over forty years ago that such rezoning decisions are *categorically* legislative. *See Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 524 (in bank) ("[T]he current California rule that rezoning is a legislative act is well settled by precedent and comports with both federal and state constitutional requirements."); *see also id.* at 514, 521–25. As a result, the Planning

[2] Consistent with this rule, each of the land use cases that Rise's letter references involved a quasi-adjudicatory decision. *See Petrovich Dev. Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 972; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021; *Nasha LLC v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482; *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1223–24; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170–71; *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 554–55, 559.

[3] Specifically, the Planning Commission unanimously voted "to approve Recommendation A [in the Planning Commission Staff Report], with the exception of not certifying the Environmental Impact Report." May 11 Special Meeting Rec. 7:37:20. "Recommendation A" includes the recommendation "that the Board of Supervisors deny the Rezone (RZN12-0002) to rezone the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME)." Staff Report 5. Recommendation A involved taking no action on the necessary Development Agreement (MIS22-0019), since the denial of the rezone would be sufficient to deny the Project outright. *See id.* But any express decision on the Development Agreement would also be a legislative action. *See S.F. Tomorrow*, 229 Cal.App.4th at 526, 528; Govt. Code § 65867.5(a), (b).

Commission's decision was not subject to due process principles.[4] *See id.* at 521; *Save Civita*, 72 Cal.App.5th at 994 & n.45. In overlooking these basic rules, Rise's letter wastes a dozen pages arguing that the Planning Commission violated requirements that did not apply in the first place.

The hearing process was entirely consistent with the legal principles that *actually* govern these types of legislative decisions. Courts have long recognized that local decisionmakers have "not only a right but an obligation to discuss issues of vital concern" with their constituents and to "state [their] views on matters of public importance." *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 780 (in bank). These obligations are especially acute when the decision involves the location and construction of a major project that could have significant economic and environmental impacts on the region. *See id.*; *see also Cohan*, 30 Cal.App.4th at 559 ("[O]pposition of neighbors to a development project is a legitimate factor in legislative decisionmaking.").

Moreover, under the County's Land Use and Development Code, the Planning Commission was specifically tasked with determining whether the rezone would be "consistent with and further[]" the County's General Plan policies and "will not be detrimental to the public interest, health, safety, convenience, or welfare of the County." Nevada Cty. Land Use & Dev. Code ("LUDC") § L-II 5.9(G)(1), (2); *see also* Staff Report 78, 85–86, 116–19. And, under the California Environmental Quality Act ("CEQA"), the County was required to solicit, consider, and respond to input from the public and other agencies regarding the Project's environmental impacts. *See* CEQA Guidelines §§ 15086–15088.

The Planning Commission satisfied these obligations. Its members heard and respected the public's views regarding a sprawling, complicated Project that would impact the community for decades. They carefully scrutinized the analyses provided by their own staff, Rise and its consultants, and other agencies. And they disclosed their personal views on these matters, which were informed both by the information presented during the hearing process and by their own relevant experiences. After considering that wide range of input, they reached a unanimous decision that the Project would not advance the

[4] The same is true of the Planning Commission's recommendation to decline to certify the EIR. Because the "underlying action that the [County] was analyzing in the []EIR" was quasi-legislative, the Planning Commission's decision regarding the EIR was itself quasi-legislative, and thus not subject to procedural due process requirements. *See Save Civita*, 72 Cal.App.5th at 992–94.

County's policy interests. This was not a biased adjudication. It was a legislative process working as intended.

Additionally, even assuming that due process principles applied in some way to the Planning Commission's action, the Commission satisfied those requirements. While Rise's letter sets forth a laundry list of purported transgressions, a few core legal principles show that the Commission was not biased against Rise:

- First, because none of the Planning Commissioners had a "financial interest in the outcome of the" vote, they are all "presumed to be impartial." *Hauser v. Ventura Cty. Bd. of Supervisors* (2018) 20 Cal.App.5th 572, 580. Rise's scattered allegations cannot overcome that starting presumption.

- Second, because the Planning Commissioners have "an obligation to discuss issues of vital concern with [their] constituents," Rise could not have been deprived of a fair hearing simply because the Commissioners were contacted by or met with members of the public. *City of Fairfield*, 14 Cal.3d at 780; *see also Petrovich*, 48 Cal.App.5th at 974; *Hauser*, 20 Cal.App.5th at 580. It is puzzling that Rise would suggest otherwise, given that Rise itself has met with County officials multiple times and apparently intends to do so in the future.

- Third, although Rise faults Planning Commissioners merely for associating with members of community groups opposed to the Project, a decisionmaker can be an *active member* of such a group without being impermissibly biased against a project. *See Petrovich*, 48 Cal.App.5th at 971, 974 (holding councilmember's active membership in neighborhood association opposed to project "did not establish bias" in and of itself).

- Fourth, even in a quasi-adjudicatory context, decisionmakers retain some ability to express their views on the merits of pending projects. *See City of Fairfield*, 14 Cal.3d at 780; *Petrovich*, 48 Cal.App.5th at 974; *Cohan*, 30 Cal.App.4th at 559 ("[A] councilperson has a right to state views or concerns on matters of community policy without having his voted impeached."); *Breakzone*, 81 Cal.App.4th at 1234 n.23 ("[A] point of view about a question of law or policy is not a disqualification by itself, and . . . a predisposition about legislative facts that helps answer a question of law or policy is not by itself a disqualification."). The Planning Commissioners' remarks were consistent with these guidelines.

In short, the Planning Commission's action plainly was not adjudicatory. Yet Rise nonetheless received all the due process to which it would have been entitled if it were.

Finally, putting all else aside, nothing in Rise's letter threatens the validity of the Board's own upcoming decision on the Project. Consistent with the legislative nature of its actions, the Planning Commission merely issued *recommendations* to the Board. It did not—and could not—definitively deny the rezone, decline to certify the EIR, or address any of the many other approvals the Project requires. *See* LUDC § L-II 5.9(E); Govt. Code § 65855. Those final decisions rest within the independent judgment of the Board and will be made only after another public hearing process. *See* LUDC § L-II 5.9(F); Govt. Code §§ 65856, 65857; CEQA Guidelines § 15025(b). During that process, Rise is free to present any complaints that the Planning Commission got the facts wrong, considered improper evidence, or weighed the public policy considerations incorrectly—as Rise already has, and surely will continue to do. Once the Board has considered those allegations and all the relevant information, it can and should reach the same well-reasoned conclusions as the Planning Commission. But those decisions will be the Board's alone.

Very truly yours,

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