



ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
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September 1, 2015

Honorable Winifred Y. Smith, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

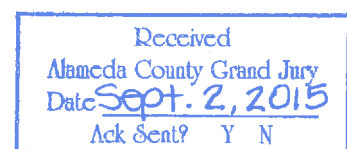
Subject: *Zone 7's Response to Findings and Recommendations in Grand Jury Report*

Dear Judge Smith:

Pursuant to Penal Code §933, *et seq.*, Zone 7 Water Agency (Zone 7) is submitting these responses to each of the Findings and Recommendations presented in the 2014-15 Grand Jury Report. We thank the Grand Jury for its thoughtful review of a citizen's complaint about the Agency's transparency leading up to the purchase of the former Patterson Ranch Property, which Zone 7 refers to as the Lake Del Valle Property.

Zone 7 takes transparency in government very seriously. We know that the Grand Jury also takes great interest in good government and public transparency and we have appreciated this opportunity to share our thoughts on how best to conduct the public's business. Since the Brown Act was adopted, Zone 7 has complied with all legal requirements for advanced posting, notifications and accommodating public participation in board meetings. Beyond that, Zone 7 includes transparency in its Core Values and has recently been awarded a "District Transparency Certificate of Excellence" by the California Special District Association's Leadership Foundation. Therefore, Zone 7 respectfully disagrees with the 2014-15 Grand Jury's Findings challenging its transparency and compliance with the Brown Act, as detailed in the attached. Zone 7 also disagrees with the suggestion that there may have been any violation of the Mitigation Fee Act, also as detailed in the attached.

Zone 7 agrees with the Grand Jury that public agencies can always improve the way in which they conduct the public's business to become more transparent while also ensuring the effective and efficient delivery of public services. Zone 7 strives to balance these sometimes differing goals and thanks the Grand Jury for its thoughts on how we can better do our job for the public. Determination of measures for additional transparency beyond what is required by the Brown Act will be referred to the Board of Directors, which will consider the Grand Jury's recommendations carefully.



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Zone 7 appreciates your consideration of these responses. If you have any questions, please feel free to contact either me or Zone 7's General Manager Jill Duerig (at the number above or by email at jduerig@zone7water.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Palmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Palmer, PhD
President, Zone 7 Board of Directors

Attachment:

Specific Responses to Each of the Findings and Recommendations
in the 2014-15 Grand Jury Report

cc: Cassie Barner c/o Alameda County Grand Jury, 1401 Lakeside Drive, Suite 1104,
Oakland, CA 94612
Zone 7 Board of Directors

Specific Responses to Each of the Findings and Recommendations in the Grand Jury Report

Finding 15-15: The Zone 7 Water Agency Board of Directors failed to follow the Brown Act, limiting opportunities for public comment and discussion throughout its decision-making process of the Patterson Ranch Property Purchase.

Zone 7 disagrees with this finding. Government Code §54956.81, which authorizes the governing boards of public agencies to hold closed sessions regarding real property negotiations, states that "Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase...of real property...for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase..." Closed session discussions between the Zone 7 Board and Zone 7's negotiator, the General Manager, concerning the purchase of the Patterson Ranch Property adhered to this limited closed session description in the Brown Act, discussing with the Agency Negotiator only negotiating strategy, price and terms. Each closed session discussion was properly noticed as part of the public posted agendas for the respective meetings, with all parcel numbers listed. No members of the public appeared or spoke on the potential real property purchase at any of these meetings. After each closed session, the Board of Directors reconvened in open session and made the disclosures that are required by the Brown Act. In the case of real property negotiations, the Brown Act does not require any report other than "no reportable action was taken in closed session" when a public agency only gives instructions to its negotiators.

The Grand Jury's report implies that disclosure beyond that required by the Brown Act is necessary in order to serve the values of openness, transparency and fiscal responsibility in the conduct of the public's business. Zone 7 respectfully disagrees with this view. As is well-known to anyone who has purchased a home, sometimes confidentiality is important in order to be able to secure real property. The Brown Act's requirement that a public agency identify the specific parcels under discussion balances that need for confidentiality against the public's right to know how public funds may be used at the time of negotiation. As noted above, despite the fact that the parcel numbers and the names of the negotiating parties representing the Patterson Ranch owners were clearly posted on Zone 7's agendas for five months before the July 17, 2013 meeting that authorized the purchase of the property, not one member of the public expressed concern about the potential purchase.

Finding 15-16: The Zone 7 Water Agency Board of Directors failed to follow its organizational core values of openness, transparency, and fiscal responsibility throughout the process of acquiring the Patterson Ranch property.

Zone 7 disagrees with this finding. The referenced Core Value states, "OPEN AND TRANSPARENT – The Board's meetings and communications shall be open and public, except when the Brown Act authorizes otherwise." [emphasis added] As discussed above,

all Zone 7's actions were consistent with both the letter and the spirit of the Brown Act as well as with this Core Value, by extension.

Other core values were similarly followed, as is the tradition at Zone 7. For example, the core value "We will operate in a productive, cost effective, transparent and efficient manner to ensure sound financial stability" has clearly been followed. Budgets include retailer and public meetings followed by public adoption, posting of a first draft and then posting of the adopted budget. The Zone 7 Budget Book won the Government Finance Officers Association's Distinguished Budget Award in both 2014 and this year. This year, it was also awarded the Budget Award from the California Society of Municipal Finance Officers Association (CSMFO). Each year, a third party audit is also conducted, discussed in public board meetings and posted on the website (see <http://www.zone7water.com/publications-reports/financial-documents>).

Finding 15-17: The Zone 7 Water Agency Board of Directors failed to make a public case supporting and justifying the purchase of the Patterson Ranch property prior to the actual acquisition of the same.

Not all members of the public may have internalized Zone 7's ongoing messages and notifications of watershed concepts and protection. This points to a crucial need for public education. What may have seemed obvious to the agency may not have been to those not intimately familiar with watershed management and issues. Zone 7 is continuing to develop our outreach and education programs, including increased use of our e-newsletter and educational programs. We are also actively pursuing the possibility of video-taping our meetings, as suggested by the Grand Jury.

It is important that the Grand Jury understand the constraints that were facing Zone 7 in connection with the potential purchase of the Patterson Ranch. The seller's lead negotiator indicated that, due to the diverse members of the respective trusts, if the property were not purchased by a single seller in a short period of time, the property might very well be taken off the market or sold piecemeal to developers. The potential revenues to the seller of such a piecemeal sale would be substantially greater than the price that Zone 7 could have paid; thus, the Board of Directors believed that it was important that Zone 7 act quickly in order to be able to acquire the property at an affordable price. This was a purchase from a willing seller and it was important to negotiate price and terms (including timing) with that willing seller.

Further, as discussed below, the acquisition of the Patterson Ranch property, while not specifically contemplated prior to February 2013, was entirely consistent with Zone 7's approach to watershed management as reflected in the Stream Management Master Plan (SMMP), which was approved by the Board of Directors in 2006 and which has guided Zone 7's activities ever since. This approach to integrated water resources management, wherein a public agency protects habitat surrounding a reservoir in order to protect drinking water quality and better manage flood risk, is common throughout California;

for instance, Contra Costa Water District uses these principles to manage Los Vaqueros Reservoir and protect downstream areas from flooding.

Residential development around Lake Del Valle on the Patterson Ranch property would inevitably create water quality and stormwater runoff problems for Zone 7 in the form of additional erosion, runoff of contaminants (e.g., sediments, grease, oil and pesticides/herbicides), habitat loss and other issues related to development in, or degradation of, the watershed. It is for these reasons that other water agencies in the Bay Area (such as Contra Costa Water District) do not permit any development around or use of their reservoirs. Property acquisition as part of a watershed protection program is not limited to Contra Costa Water District. Other examples of environmental stewardship programs which include a watershed protection component with public ownership of watershed lands to limit development include San Francisco Public Utilities Commission's Alameda Watershed Program and similar programs at Sonoma County Water District, East Bay Municipal Utility District and Santa Clara Valley Water District.

Such watershed protection programs are often associated with Habitat Conservation Plans (see, for example, <http://sfwater.org/index.aspx?page=412>). In Zone 7's case, the January 2015 "Grazing Management and Watershed Protection Plan" for the Lake Del Valle Property is based on the Eastern Alameda County Conservation Strategy which was accepted by the Zone 7 Board on March 16, 2011, to provide guidance for Zone 7's future projects.

In conclusion, faced with a situation where Zone 7 needed to move expeditiously and confidentially in order to secure watershed property in keeping with existing strategies, policies and programs, at a price and under terms and conditions that would be affordable by Zone 7, the quick action was very much in the public interest and Zone 7 acted to secure that property in full compliance with the Brown Act.

Finding 15-18: The Zone 7 Water Agency failed to publicly disclose funds to acquire the Patterson Ranch property, except as a broad watershed investment, when its Capital Improvement Program Strategic Priorities were adopted.

Zone 7 disagrees with this finding. Zone 7 does not have a "Capital Improvement Program Strategic Priorities" document. The Capital Improvement Program and the Strategic Planning Priorities are two separate documents, with the Budget a third document (more budget discussion below). The Strategic Planning Priorities (SPP) document was amended on October 16, 2013. This document provides strategic direction from the board to the staff at the agency. This is revisited and updated annually.

During the Summer 2013 retreat, a public Special Board Meeting (conducted on August 19, 2013), the board discussed how best to manage the parcel for watershed protection and referred the matter to its Water Resources Committee in anticipation of the acquisition. At the September 24, 2013 meeting of the Water Resources Committee, the

item was discussed. In October 2013, the Board adopted changes to the SPP based on the Water Resources Committee's recommendations in order to guide staff's approach to developing a "Grazing Management and Watershed Protection Plan for the Lake Del Valle Property." This was used to define key tenant responsibilities for long-term leasing that would be compatible with watershed protection.

Finding 15-19: The Zone 7 Water Agency failed to adequately disclose detailed budget information regarding the purchase of the Patterson Ranch property prior to adoption of the 2013-2014 annual budget. The purchase included a questionable use of restricted funds.

Zone 7 disagrees with this finding. The 2013-14 Budget was discussed at two public meetings: the April 22, 2013 Finance Committee Meeting and the May 15, 2013 Regular Board Meeting.

The Agency has long acknowledged the multiple benefits of any watershed protection projects in addressing flood control, water management and environmental stewardship. This is described in the Agency's August 2006 Stream Management Master Plan, posted on the Agency's website at: <http://www.zone7water.com/publications-reports/reports-planning-documents/35-final-smmp>. Projects in Zone 7's Master Planning documents that have multiple benefits are funded from the program funds receiving the identified benefits. An example is a project for a flood control channel that improves the stability of the existing channel, expands stormwater capacity and enhances groundwater recharge. The portion that improves channel stability would be funded from Flood Control (Fund 200). The portion that increases flow capacity in the channel would be funded from developer impact fees (Fund 210). And the portion that enhances groundwater recharge would be funded from water rates (Fund 100). The relative apportionments would be based upon an analysis of relative benefits.

In the case of purchasing the Patterson Ranch property, multiple benefits were realized. A rigorous analysis was performed on each parcel to determine pro-rated shares in the purchase price for each parcel to be provided from each impacted fund. The analysis resulted in the funding breakdown presented in the proposed 2013-14 budget which was later adopted during open, public sessions. No questions were raised concerning the proposed breakdown at either of the public meetings at which the budget was discussed nor were any requests for additional detail received. The analysis can be provided which shows that no questionable use of restricted funds occurred.

The Grand Jury's comment that Development Impact Fees can only be used only for downstream improvements is not correct. Regional detention and upstream watershed management are crucial to the protection of downstream areas. Protection of and storage in areas that may be upstream of a development reduces flows, better manages peak flows and thereby offsets the constraints in downstream receiving streams in a cost-effective and environmentally sound manner.

In the case of the Patterson Ranch property, proper management of the lands above Lake Del Valle reduces the instantaneous runoff into the Lake and so reduces the quantity of water that is released into downstream areas and reduces silting of the reservoir. In this way the acquisition of the Patterson Ranch property and its proper management by Zone 7 represents a very cost-effective way to reduce potential flooding downstream of Lake Del Valle. Spending Development Impact Fees to defray the appropriate portion of the acquisition cost (as determined from a detailed analysis) was a very cost-effective way to provide the flood control benefits that are the purpose of those funds.

Finding 15-20: The Zone 7 Water Agency claimed that the acquisition of the Patterson Ranch property would provide important "watershed" or "watershed protection" or "protection of water rights," broadening its strategic interests in the region. These interests were not explained to the public until inserted in the documents after the actual acquisition of the property.

Zone 7 disagrees with this finding. As described below, Zone 7 has for many years been committed to a watershed approach to providing flood protection, improving water quality and protecting habitat, mirroring the watershed approach adopted by the US EPA. The acquisition of the Patterson Ranch furthered all of these goals and so was entirely consistent with previous strategic direction from the Board of Directors and plans that were approved by the Board of Directors. The acquisition of the Patterson Ranch did not broaden Zone 7's strategic interests in the region, it rather allowed for more environmentally sound management of the region already within our sphere of influence.

As noted above, this land acquisition had multiple benefits. By purchasing the property, a large fraction of the watershed directly above Lake Del Valle can be protected, which provides both water quality and flood control benefits. The 2006 Stream Management Master Plan (SMMP) is a holistic management program that improves water quality, enhances habitat and manages flood waters, while allowing multiple uses of property and facilities for recreation and other public purposes. The SMMP was developed as a result of an extensive public stakeholder effort and is posted on Zone 7's website.

This integrated approach to managing water resources with flood facilities is well-established in all Zone 7's documents. For instance, the 2012 Annual Report (released in Spring 2013 and posted on the website at <http://www.zone7water.com/publications-reports/reports-planning-documents/>), entitled "We're All About Water," highlights the significance of Zone 7's strong commitment to Integrated Water Resources Management as a tool to manage water resources and facilities in a holistic, cohesive fashion. The President's message states, "The interdependence of these valuable resources was evident as the agency worked to complete a project to improve Cope Lake, a key facility in Zone 7's future Chain of Lakes, to be used for both Valley-wide flood protection and water supply. The interrelated nature of water resources was celebrated during the 50th anniversary of Zone 7 groundwater management. Zone 7 uses State Water Project supplies and the Valley's vast system of arroyos -- which double as flood control channels -- to recharge the groundwater basin."

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Finding 15-21: The Zone 7 Water Agency Board of Directors did not follow Brown Act protocols by failing to disclose in a timely manner actions taken during closed session that affected a Zone 7 partnership with East Bay Regional Parks District serving mutual interests after the acquisition of the Patterson Ranch property.

Zone 7 disagrees with this finding. The seller first approached EBRPD to determine whether that agency would be interested in purchasing the property. The seller was, as noted above, interested in a quick sale with little publicity due to the difficulty of obtaining agreement on a sale from all of the owners of the property. EBRPD was not able to move quickly in the manner desired by the seller; hence, the seller was willing to discuss a sale to Zone 7 as long as Zone 7 would be able to move quickly and also had EBRPD's support for the purchase. Authorizing the negotiator to execute the Memorandum of Understanding (MOU) with EBRPD positioned Zone 7 to acquire the property at a reasonable price during the short time period that the seller was willing to sell. In this way, the discussion of the MOU was an integral element of the terms and conditions of the purchase of the Patterson Ranch property and so well within the provision of the Brown Act authorizing the Board of Directors to give direction on the terms for the proposed acquisition to the general manager.

Zone 7 did not form a "Partnership" with EBRPD under the terms of the MOU. The key "Understandings" are that the MOU allows the Parties to better coordinate acquisition and management efforts and that there should not be any significant changes to the site's use until a public planning process and associated environmental reviews are conducted. This does not preclude us from a future partnership, but this was not included in this MOU.

Recommendation 15-15: The Zone 7 Water Agency Board of Directors and general manager must strictly follow established rules and practices for conducting agency business in an open and transparent manner consistent with its organizational core values and the Brown Act.

Specifically, the Zone 7 Water Agency must:

- a. Post board meeting agenda items in advance of public meetings as required by law.
- b. Provide ample time and opportunity for public comment and participation before taking actions.
- c. Publicly report actions and individual votes made by each board member in closed sessions.

Zone 7 believes that the agency already conducts its business in a manner that is fully consistent with the Brown Act and other governing laws, as well as our core values, and that Zone 7 did so in connection with the purchase of the Patterson Ranch property. Since the adoption of the Brown Act, Zone 7 has always been in compliance with both the spirit and the letter of the law, posting board agendas in advance, providing time for

public comment during the meetings and reporting actions taken in closed session as required under the law.

When Zone 7 moved into the current North Canyons Office, the board room was designed with enhanced public access in mind. Over the years, Zone 7 has received awards for outreach from the Association of California Water Agencies including taking first place in Region 5 Outreach in 2008, 2009 and 2011, as well as a "Best in Blue" finalist award in 2013 and a Clair Hill Finalist award in 2015.

Zone 7 has been very active in many statewide outreach campaigns, especially during the recent drought. These include participation in the "Save Our Water" program; participation in development and implementation of the Value of Water Program (educating consumers on the role and value of public water agencies); and participation in other statewide outreach programs on a variety of water quality issues.

Since the internet has become a popular way to provide information to the public, website postings of all meeting materials have been added to hard copy mailings (board meetings going back to 2008; expanded to include committee meetings in 2010). In addition, eNewsletters have been added to the Outreach Program. The website is in a constant state of improvement to enhance its user-friendliness and to make information and key reports (for example, the Stream Management Master Plan, Annual Budgets and Audits, the Strategic Planning Priorities and many others) available to the public.

Zone 7 has always been scrupulous about encouraging public comment on agenda items during public meetings. Indeed, on many matters, the President of the Board has actively invited and encouraged public comments during the meeting. To the extent that the Grand Jury recommendation suggests that matters should be carried over for more than one meeting after proper notice in order to encourage greater public participation, that suggestion is not to be found in the Brown Act. The President of the Board has the discretion to direct staff to carry over matters to allow for greater deliberation and/or to enable questions to be addressed; again, the President has exercised that discretion on a number of matters.

Recommendation 15-16: The Zone 7 Water Agency must provide greater transparency, making archived video or audio of public meetings available on Zone 7's website.

While Zone 7 thanks the Grand Jury for this recommendation, Zone 7's current approach does go well beyond the requirements of the Brown Act. Any determination of measures for additional transparency beyond what is required by the Brown Act are properly committed to the discretion of the Board of Directors, which will consider the Grand Jury's recommendations carefully. Nonetheless, as mentioned above, the Board of Directors is actively considering whether to videotape Board meetings.

Zone 7 has been awarded a District Transparency Certificate of Excellence by the California Special District Association's Special District Leadership Foundation (SDLF). This certificate is statewide recognition by a non-partisan, impartial

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professional organization that Zone 7 satisfies not only the basic government transparency requirements of the Brown Act but also achieves website and outreach openness typical of excellent special districts.

Zone 7 will continue its ongoing strategic efforts to increase transparency beyond the minimum required under the Brown Act. Note that Zone 7's website is a major source of information to the public about the Agency and the Lake Del Valle Property. For instance, the "Grazing Management and Watershed Protection Plan for the Lake Del Valle Property" is posted on Zone 7's website under Watershed Stewardship at: <http://www.zone7water.com/reports-a-planning-documents>. Zone 7 conducted a Request for Proposal (RFP) process to identify the ideal tenant to implement the Watershed Protection Plan. The RFP was broadly distributed and posted on the website, interviews of the top three candidates were conducted at an open, Special Board Meeting and the final selection was made during a Regular Board Meeting. Members of the public were present and spoke on behalf of various candidates.

Detailed minutes from public meetings (both committee and full board) are posted when approved. Draft minutes are posted three days in advance of the regular board meetings as part of the board meeting agenda packages.

Recommendation 15-17: The Zone 7 Water Agency Board of Directors must implement a plan of action to ensure public awareness and provide opportunities for attendance and participation at board meetings.

All public agencies should do this. There is always room for increased public education as has previously been discussed. Any determination of measures for additional transparency beyond what is required by the Brown Act are committed to the discretion of the Board of Directors. Zone 7's meetings are open to the public. All meetings are held in locations within its service area that are accessible to the public. Any member of the public can request to be added to Zone 7's eNewsletter distribution list to receive timely notification of major developments at Zone 7. Members of the public do attend Board and committee meetings and do participate and comment on matters of interest. Every meeting of the Board of Directors is covered by the local media, which describes – often in great detail – the activities of Zone 7.

Zone 7 has also been the recipient of Outreach Awards from the Association of California Water Agencies (ACWA). That being said, in keeping with its Core Values, Zone 7 will continue to strive to maintain and improve transparency beyond the minimum requirements of the Brown Act and Zone 7 thanks the Grand Jury for their recommendations.