

Claim of WILLIAM J. ZISK, JOHN W. ZISK, WILLIAM J. ZISK JR., KYLE M. ZISK, AND RYAN R. ZISK) CLAIM FOR PERSONAL INJURY AND
) WRONGFUL DEATH OF SPOUSE;
) CONSPIRACY TO VIOLATE AND
) VIOLATION OF CIVIL RIGHTS;
) DAMAGES FOR INVERSE
) CONDEMNATION; NEGLIGENCE;
V.S.) ERRORS AND OMISSIONS;
) INTENTIONAL TORTIOUS CONDUCT
) CAUSING DEPRESSION, PERSONAL
) INJURY AND PROPERTY DAMAGE;
CITY OF ROSEVILLE; CITY COUNCIL MEMBERS; CITY COMMISSION MEMBERS; CITY EMPLOYEES AND AGENTS) INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS;
) CONSTRUCTIVE FRAUD; SEARCH
) AND SEIZURE; INVASION OF PRIVACY;
) MALICIOUS PROSECUTION;
) DISCRIMINATION; PUBLIC NUISANCE;
) TRESSPASS; SLANDER

(Government Code Section 900 et. seq.)

CLAIM FOR DAMAGES

To the City Council of the City of Roseville, CA:

You are hereby notified that William J. Zisk, John W. Zisk, William J. Zisk Jr., Kyle M. Zisk, and Ryan R. Zisk claim damages from the City of Roseville, City Council members, City Planning Commission members, city employees and agents as follows:

The following statements are made in support of this claim:

(a) The name and post office address of claimant:

William J. Zisk
205 Thomas Street
Roseville, CA 95678-1858

(b) The post office address to which the persons presenting this claim desires notice to be sent:

William J. Zisk
205 Thomas Street
Roseville, CA 95678-1858

(c) The date, place and other circumstances of the occurrence or transaction, which gave, rise to the claim asserted:

The date, place and other circumstances of the occurrences which gave rise to the claim is of an ongoing and continuing character and was commenced on or about 1966 at 205 Thomas Street, Roseville, California 95678 and reached accrual of the claim for damages on November 22, 2000, the date of wrongful death of Lois E. Zisk. Lois E. Zisk is the spouse of claimant William J. Zisk, the mother of sons John W. Zisk and William J. Zisk Jr. and the grandmother of grandsons Kyle M. Zisk and Ryan R. Zisk.

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim:

The wrongful death of Lois E. Zisk resulted from the twenty eight (28) years of the extended ongoing willful and reckless disregard for her health and safety, and willful infliction of pain and suffering, evolving from the conspiracy to violate and violation of civil rights, damages for inverse condemnation, negligence, errors and omissions, intentional tortuous conduct causing

depression, personal injury and property damage, intentional infliction of emotional distress, constructive fraud, search and seizure, invasion of privacy, malicious prosecution, public nuisance and discrimination. The City of Roseville et. al. had a duty of care to prevent the twenty-eight (28) years of tortuous conduct and deprivation of constitutional rights of due process and equal protection of the law, which lead to her premature and unwarranted demise.

In 1966, William J. Zisk and Lois E. Zisk (Zisks') purchased property at 205 Thomas Street (subject property), which consists of 12.2 acres geographically located in the center of Roseville and contiguous to a section of Dry Creek. The zoning and land use at that time was R1 and R1-FP, single family dwellings, medium density, and was in full compliance with the General Plan of the City of Roseville.

The Zisks have conducted a Sand and Gravel and Trucking business in Roseville since 1952, and have operated that business at 205 Thomas Street, Roseville, CA since 1966, in the same non-conforming use as did the prior owner of the subject property, and the one prior, dating back to the turn of the century.

In 1966 the Zisks embarked on a massive project to clean and restore the subject property, which had been allowed to deteriorate into an eyesore and community health problem. The primary intent of the Zisks was to construct a new home on a portion of the subject property situated adjacent to the secluded peaceful and beautiful natural setting of Dry Creek.

In the beginning of 1967, the Zisks applied to the Roseville Planning Commission for a use permit to construct a new home on the subject property. At the use permit application public hearing of **February 23, 1967**, the city attorney, who was in attendance in an advisory capacity was Keith F. Sparks. The commission conditionally approved the application of the Zisks and continued the hearing to allow the Zisks to fulfill the requirements of the permit application. No time constraints were placed on the Zisks at the hearing, in which to complete the conditional requirements for the permit. The Zisks did in fact immediately commence the required massive

streambed improvement project on Dry Creek through the subject property, which was completed on October 1, 1973.

On **March 30, 1967** the Zisks received Streambed Alterations Notification No. 976 from the California Department of Fish and Game, purchased a dragline (dredger), and did in fact commence the major improvements to the portion of Dry Creek that traverses the subject property, as required by the Roseville Planning Commission as a condition of issuance of the use permit to construct a new home on the subject property.

Beginning in early 1968, the City of Roseville, through the City Council members, city attorneys, city commission members, agents, and City employees purposefully embarked on a vexatious, conspiratorial and collusive scheme to intentionally seize, damage and deprive the Zisks of any and all economic use and enjoyment of the subject property, in violation of the Fourth, Fifth, and Fourteenth Amendment of the Constitution of the United States, and Article I, Section 1, Section 3, Section 6, Section 7(a) & (b), Section 9, Section 13, Section 15, Section 16, Section 17, Section 19, Section 24 and Section 26 of the Constitution of the State of California.

The scheme was initiated by the City Council on **March 20, 1968** by adoption of a Park, Streambed and Recreation Element of the General Plan of the City of Roseville. The only property which has been effected by the adoption of this plan is the subject Zisk property. The plan envisioned the use of open space and floodplain zoning as a means of preserving future park sites. All of the subject Zisk Property was shown on the plan for future use as a public park for the City.

Thereafter, the members of the Roseville City Councils, commissions, and city employees proceeded to adopt a series of Open Space and Floodplain Zoning Regulations which were calculated to fraudulently prevent the Zisks from any use, return or enjoyment of the subject property at 205 Thomas Street, Roseville, California 95678.

While other similarly situated property within the City were permitted to use and enjoy their property, the Zisks were held in a falsified restraint, and the council members, commissions, and city employees proceeded with a policy of "selective enforcement" of the adopted Ordinances and Regulations

On **March 20, 1968**, by Resolution No. 68-21, the Roseville City Council adopted a Park, Streambed and Recreation Element of the General Plan of the City of Roseville, showing the entire subject Zisk property, was shown to be planned for future use as a public park.

On **December 8, 1971**, the Roseville City Council adopted Emergency Ordinance No. 1158, AN INTERIM ORDINANCE PROHIBITING CONSTRUCTION UPON OR GRADING OF PROPERTY WITHIN CERTAIN AREAS SUBJECT TO FLOODING ADJACENT TO DRY, LINDA, CIRBY AND ANTELOPE CREEKS AND STRAP RAVINE, UNLESS A PERMIT HAS BEEN ISSUED. The Zisks applied for the required permit and on March 3, 1972 the Public Works Director, Frederick L. Barnett, issued a grading permit to Bill Zisk to excavate the vicinity of Dry Creek, and to place excavated material adjacent to Dry Creek on the subject property, as shown on the plan dated 1-24-72. The permit was issued pursuant to Chapter 70 of the Uniform Building Code and the requirements of the Department of Fish and Game of State of California. This permit was granted pursuant to Ordinance No. 1158, adopted by the City Council on 12-8-71, and was for the purpose of completing the channel improvements to Dry Creek as required by the use permit application submitted by the Zisks on 2-23-67.

On **March 23, 1972**, the Zisks received a letter of approval from Public Works Director, Fredrick L. Barnett to place a barbwire type fence on the property boundaries in order to discourage trespassers and control livestock.

On **August 30, 1972** the City Council, by Resolution No. 72-75 approved AN INTERIM OPEN SPACE PLAN – GENERAL GOALS AND POLICIES AND ACTION PROGRAM. The plan envisioned the Zisk property be designated as open space.

On **November 29, 1972** the City Council adopted Ordinance No. 1190 – ENACTING ARTICLE 8A OF THE CODE OF THE CITY OF ROSEVILLE RELATING TO ENVIRONMENTAL REVIEW OF PERMITS ISSUED BY THE CITY OF ROSEVILLE AND DECLARING THE SAME TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY.

On **March 1, 1973** the Zisks submitted a request to the City Planning Department for a Parcel Map and Lot Split to create a parcel for the purpose of obtaining a loan to build a new home for the owners.

On **March 14, 1973**, the City Planning Department made a determination that an environmental Impact Report was now required in connection with the Zisk permit application. Despite the fact that the use permit application was submitted on February 23, 1967 and the project was commenced long before the California Environmental Quality Act (CEQA) of 1970 was enacted, and the request was in full compliance with all existing city ordinances and land use regulations, and the property was properly zoned for the intended use, the planning department made the following findings:

It is expected that the proposed parcel map and ultimate single family development of Parcel “A” will have a non-trivial effect of the environment because:

1. *Parcel “A” is located within the floodplain of Dry Creek.*
2. *Parcel “A” is included in the Park and Streambed Plan for public use and development.*

On **March 22, 1973** the Zisks appealed the denial of the request for a parcel map and lot split.

On **April 25, 1973** the City Council upheld the Planning Departments denial of the request for a parcel map and lot split, and further directed that an Environmental Impact Report be required before any further processing of the permit application.

On **April 25, 1973** the Public Works Director, Fredrick L. Barnett sent a letter to the Zisks, advising them to cease all work within 75 feet of the waters' edge of Dry Creek and re-apply for a new permit to complete the 2-23-67 use permit application requirements.

In **May, 1973** the City received the results of a requested study conducted by the U.S. Army Corps of Engineers entitled, FLOODPLAIN INFORMATION, DRY CREEK AND TRIBUTARIES, ROSEVILLE, CALIFORNIA, **MAY 1973**. It showed that a portion of the Zisk property adjacent to Dry Creek was within the limits of a projected 100-year flood. However, the maps used in making this determination were flown on **February 4, 1956 and April 18, 1956** and in no way reflected the physical topography of the streambed on the Zisk property in **May 1973**, especially the improvements to the channel the Zisks had made, which improved the flow capacity by 200%. This fact was brought to the attention of the City who then requested the Corps of Engineers conduct a special study of the Zisk property. This new study revealed that the Zisk property was above and outside the projected 100-year floodplain elevations and that the Corps did not object to the building of a home at the disputed location. The City has never accepted this revised position.

Between **May 11 and June 8, 1973** the Zisks re-applied to various agencies within the City and the State of California Fish and Game for renewal of the permits, which were subsequently granted on **June 8, 1973**.

On **June 1, 1973**, the Zisks, through their engineer, Atteberry & Associates of Roseville CA., filed an Environmental Impact Report with the City, examining the effect on the environment of the construction of a single family home on a half acre portion at the westerly boundary of the Zisk property. The EIR summarized the following at page 14:

“The proposed project is the culmination of a seven year program undertaken by the Zisk family in 1967 to clean up and improve a piece of creek side property that had been exploited for many years and allowed to deteriorate into an eyesore and community health problem.

It is in compliance with existing zoning and has no long-range unavoidable adverse impacts.

The work accomplished to date by the Zisk family indicates the quality of their goals and the ultimate benefit to the community in improved health conditions and scenic qualities.”

On **June 20, 1973** the City Council adopted an Open Space and Conservation Element to the General Plan by Resolution No. 73-56, which changed the land use designation of the Zisk property from R-1-FP, single family dwellings, to open space for park purposes.

On **July 13, 1973** the Corps of Engineers reported to the City Planning Department that the proposed lot split and construction by the Zisks would not have a significant effect on water surface elevations in the floodplain and the Corps did not object to the construction of the Zisk Family new home.

On **July 24, 1973** the City Planning Director, Leo Cespedes, wrote to the Corps of Engineers asking them to restudy their determinations and further stating that the Planning Department would hold further processing the Zisk application for a Lot Split and Use Permit until a reply was received from the Corps.

On **August 29, 1973** the Council adopted “tentative” plan for a “tentative trail system” on Dry Creek, but only through the Zisk property, and directed staff to send notification to Mr. Zisk. No other upstream or downstream property owners was notified.

On **August 31, 1973** the Director of Public works for the City of Roseville wrote to the Corps of Engineers, summarizing a determination of the Roseville Floodplain Committee that no development be allowed within the primary floodway, and the secondary zone of Floodway Fringe be utilized for Greenbelt, Agricultural, Parks and Recreation uses.

On **September 5, 1973** the Public Works Director in commenting on the Environmental Impact Report submitted by the Zisks, wrote to the Planning Director and advised that although the work of excavating and grading done by the Zisks on the subject property showed a rise in the floodplain on the property, the decisive fact in evaluating the Environmental Impact Report was that construction of the home by the Zisks on the proposed lot would interfere with the proposed bicycle path and streambed acquisition, and that, therefore the Zisk project would have an adverse impact on the environment.

On **September 7, 1973** the Roseville City Manager, Robert Hutchison, wrote to the Zisks and officially notified them that the City intended to acquire portions of the subject property for a bicycle trail and that the City's project was in conflict with the Zisk plan to build a home on a half acre portion of the subject property.

On **September 10, 1973** the City Planning Director wrote a memorandum to the Planning Commission recommending denial of the Zisks permit because no final Corps of Engineers report had been received as of yet and because the Zisks' development of their property interfered with and was in conflict with the "tentative" proposed bicycle path.

On **September 13, 1973** the Roseville Planning Commission denied the Zisks' application. Evidence submitted at the hearing in opposition to the Zisk application, was the proposal to build a home on the subject property conflicted with the Park and Streambed Plan, the Open Space Element of the General Plan, and the plan for acquisition of a bicycle trail across the subject property. No adjacent property upstream or downstream was affected.

Pursuant to Notice of Appeal by the Zisks of the Planning Commission denial of the Zisk application for a permit, the Roseville City Council did on **October 3, 1973**, deny the appeal by the Zisks, "on the basis of evaluation by the City of the Environmental Impact Report, the conflict with the bike and pedestrian trail as tentatively approved by the City Council and conflict with its development, and further, that the plan is in conflict with the Park and Streambed Element of the General Plan, and the Council give notice that City intends to purchase a bike and pedestrian trail

system along the streambed.” During the public hearing the Public Works Director, Frederick L. Barnett, stated that the Zisks home site was above the 100-year floodplain. Since October 3, 1973 the Zisks did no further physical development on their property.

On **October 5, 1973**, there was a joint meeting between the Roseville Planning Commission and the City Floodplain Commission for a public hearing on Ordinance No. 1224 which was the Floodplain Ordinance to preserve everything within the boundaries as natural area for park and recreation and that the application to buy the Zisk property was consistent with the Park and Recreation element of the General Plan. No other property was affected.

On **October 25, 1973** the Roseville Planning Commission passed Floodplain Ordinance No. 1224, finding the ordinance consistent with the Open Space and Conservation element and the Park and Streambed Plan.

On **November 1, 1973**, the attorney for the Zisks, Richard F. Desmond, filed a Writ Of Mandamus in Placer Court Superior Court (No. 40862) to require issuance of the qualified permit application. Within 30 days, Roseville City Attorney, William Owens, answered the Writ Of Mandamus filed by defense attorney Desmond. In furtherance of this collusive conspiratorial scheme, all further proceedings on the Writ Of Mandamus, Placer Superior Court No. 40862, were abandoned by both attorneys.

On **November 12, 1973**, the Zisks attorney, Richard Desmond filed with the City of Roseville, a claim for damages for Inverse Condemnation of their property.

On **November 26, 1973**, the City Attorney, William Owen, wrote a letter to the Mayor and City Council stating that one of the purposes of the Floodplain Ordinance is to protect Open Space and Parks and Recreation.

On **November 27, 1973** a special meeting of the Roseville Planning Commission was held to discuss acquisition of the Zisk property.

On **November 28, 1973** the City Council adopted Floodplain Ordinance No. 1224, and Floodplain Zoning Ordinance No 1227. The Zisk Property was rezoned from R-1 and R1-FP to permanent Floodway and Floodway Fringe (FW & FF).

In furtherance of the plan and scheme, on **November 28, 1973** the City Council down zoned virtually the entire Zisk property to permanent floodplain (FF & FW). Prior to the down zoning, both the U. S. Army Corps of engineers and the Director of Public Works for the City of Roseville, Frederick L. Barnett, public acknowledged during the hearings, that the majority of the Zisk property was above and outside the limits of the 100-year floodplain. Numerous other properties throughout the city, including City property, that had been designated by the U. S. Army Corps of Engineers as being within the 100-year floodplain, were completely excluded from the boundaries of the 100-year floodplain on the Official Floodplain Zoning Map of the City of Roseville, and were allowed to be completely developed. The Zisk Property is the only property that is above the 100-year floodplain that has been placed within the boundaries of the 100-year floodplain.

On **December 6, 1973** the Roseville Planning Commission met again to consider acquisition of the Zisk property and ended up in a tie vote.

On **December 19, 1973** the Roseville City Council acted on the Zisk claim for damages. The claim was partially approved by the Council, but the amount of damages was denied.

On the same date and time, **December 19, 1973** the City Council duly adopted Condemnation Resolution No 73-122, authorizing acquisition of over half of the Zisk Property. The Zisks were not given an opportunity to be heard before adoption of the Resolution.

Prior to filing of the eminent domain action in Placer County Superior Court (No. 41104), the Zisks were never made an offer of settlement for their property, nor had their property been appraised by the City, nor had the City complied with the California Environmental Quality Act

of 1970, nor did the City have an officially adopted “Project”, nor did the City make any attempt to acquire any adjoining property upstream or downstream of the Zisk property.

On **December 20, 1973**, the City Council voted to institute an action in eminent domain (Placer County Superior Court No. 41104), to take over one half (1/2) of the Zisk property for the “tentative” plan for a bicycle trail across the Zisk property. Prior to the filing of the eminent domain proceeding:

1. The Zisks were not given an opportunity to be heard at a public hearing before the adoption of a Resolution of Intent to Condemn (NO. 73-122).
2. There was no adopted “project” to necessitate condemnation.
3. There was no compliance with the California Environmental Quality Act (CEQA) of 1970.
4. There was no compliance with the requirements of Government Code Sections 7267.1 to 7267.7 inclusive.
 - (a) No negotiations to acquire the Zisk property.
 - (b) No appraisal of the Zisk Property.
 - (c) No offer of just compensation for the taking and damaging of the Zisk property.

The eminent domain proceeding (No. 41104) was filed on **December 20, 1973**, but the actual trial was delayed until **November 1, 1977**. During the four-year delay in furtherance of this collusive conspiratorial scheme, Plaintiff City Attorney, G. Richard Brown, and Defense Attorney, Richard F. Desmond, “secretly” waived the statutory rights of William and Lois Zisk to recover their litigation costs in the eminent domain proceeding. And, in furtherance of this scheme, during the pleading stage and before the eminent domain action went to trial, the Third District Court of Appeal rendered a published opinion (ZISK v. CITY OF ROSEVILLE: 56C.A.3d41:127 Cal.Rptr.896), which was based on a complete reversal of the timing of the factual chronology of the merits of this action (Placer Superior Court No. 41104). The record in these proceedings verifies that fact.

Since the filing of the eminent domain proceeding (No. 41104) on the Zisk property on **December 20, 1973**, no other property within the entire City of Roseville has ever been condemned for a “tentative” plan for a bicycle trail.

On **December 20, 1973** the City of Roseville filed eminent domain action No. 41104 in Placer County Superior Court. Five (5) minutes later on the same date, Inverse Condemnation Action No. 41105 was filed by the Zisks attorney, Richard F. Desmond. The proceedings in the Inverse Condemnation Action No. 41105 were abated and were subsequently raised in the Eminent Domain Action No. 41104 by answer and cross-complaint. The inverse condemnation issues raised by the cross-complaint were abated by order of the trial court, and have not been heard by any court to the present date.

In furtherance of this collusive conspiracy, the former City Attorney, Keith F. Sparks, had extensive prior involvement with circumstances of this proceeding. First, as an attorney representing the City of Roseville, Second, as a Superior Court Judge presiding over aspects of the original eminent domain proceeding (No. 41104), and third as an associate Justice of the Third District Court Of Appeals. As attorney for the City of Roseville, Keith F. Sparks advocated then on behalf of the passage of a Floodplain Ordinance, which ultimately provided a vehicle for the City of Roseville to seize the Zisk property. As a superior Court Judge, he presided over the pre-trial conferences in the Eminent Domain Action No. 41104, and made rulings excluding from the Jury’s consideration, important issues regarding the City’s fraudulent use of open space and floodplain zoning to freeze development of the Zisk property.

Moreover, given the prior, personal participation of Keith F. Sparks in the decision-making process that underlies every piece of litigation generated at a time prior to his appointment as a Superior Court Judge, and Justice of the Third District Court of Appeal, it would appear that all contact with the case in a judicial role was and remains objectionable.

Keith F. Sparks presided as an Appellate Justice of the panel considering an appeal in a related case, attorney Richard F. Desmond V. William and Lois Zisk, 3 Civil 24543, which involved a cross-complaint for legal malpractice against the attorney representing the Zisk interests in the Eminent Domain Action no. 41104. In fact, he personally authored the opinion, which upheld the granting of a non-suit in favor of Attorney Desmond, despite sufficient legal evidentiary support for a contrary ruling.

Keith F. Sparks presided as an Appellate Justice of the panel considering an appeal in another related case, Henderson V. Zisk and related cross-actions, 3 Civil 0000651 (26512), (Placer Superior Court No. 70229), which involved a cross-complaint for legal malpractice against Attorney Henderson for his representation in the legal malpractice against Attorney Richard Desmond, and the City' Eminent Domain Action No. 41104. Keith F. Sparks also authored the Appellate opinion in that Appeal.

The City of Roseville filed the Eminent Domain proceedings, Placer Superior Court No. 41104, against the Zisks on **December 20, 1973**. The action was delayed, and did not proceed to trial until **November 1, 1977**, and was concluded on **December 15, 1977**. At the concluding portion of the Jury trial, on **November 23, 1977** the Zisks were informed by their defense counsel Desmond, of the “secret” waiver of the Zisks statutory rights to recover their litigation cost. The “secret” waiver had been signed by Attorney Desmond and City of Roseville Attorney, G. Richard Brown, on **November 6, 1974**. The Zisks were completely unaware of the “secret” waiver during the entire 3 years of representation by Attorney Richard F. Desmond.

In furtherance of this collusive conspiratorial scheme, on **March 21, 1978** the Interlocutory Judgement was entered in the City of Rosevilles' Eminent Domain proceedings, Placer County Superior Court No. 41104. The relevant pertinent portion of the judgement reads as follows:

“It is hereby ordered, adjudged and decreed that the just compensation to be paid for the taking of Parcels A and B - - - is the

amount of \$96,381, which is the amount assessed by the verdict herein, together with interest thereon at the rate of seven percent (7%) from the date of entry of Judgment herein to the date of payment of said total sum into court.”

The final date that the City of Roseville was to pay the “Total Sum” of the Judgment into Court was **May 15, 1981**. The City made partial token payments into the Court on **May 18, 1981**; **October 13, 1981**; **June 14, 1983**; **August 22, 1983**; and **December 19, 1983**. However, the City of Roseville has never paid the “Total Sum” of the judgement into Court, and consequently, the Zisks have never received one cent in any form of compensation to the present date.

In furtherance of the collusive plan and scheme, commencing in 1970, the City Councils Planning Commissions, and city employees have purposefully embarked on a program to allow the streambeds and floodways within the City to be overgrown and congested, so as to obstruct and impede the free flow of floodwaters. In addition, chain link fences, footbridges, pipelines, and structures were placed across and within the floodway to further impede the passage of floodwaters. In addition, floatable materials and debris was allowed to be stored in the floodway during the winter rain season. In addition, City landfill dumpsites were maintained within the floodway, raising the land elevations within the floodway to further impede the flow of floodwaters and create uncontrolled detention facilities. In addition, fill materials, roadbeds and bridge structures were placed across the floodway, to further impede the passage of floodwaters.

In 1983 the City entered the Federal Emergency Management Agency (FEMA) flood insurance program. FEMA had conducted a study of the Dry Creek Drainage Basin within the City of Roseville, based on information and data obtained from the U. S. Army Corps of Engineers. The results of the FEMA/Corps of Engineers study placed the majority of the Zisks property above and outside of the limits of the 100-year floodplain. The 1983 FEMA 100-year Flood Boundary Map places the Zisk property in Zone “B”, above the 100-year floodplain.

On **November 30, 1983** the Roseville City Council adopted floodplain ORDINANCE NO. 1751, ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE REPEALING AND REENACTING ARTICLE 23 OF ORDINANCE 802, THE ZONING ORDINANCE OF THE CITY OF ROSEVILLE, RELATING TO REGULATION OF LAND USE IN FLOOD PRONE AREAS. In adopting Ordinance No. 1751, the City Council merely changed the text of the Ordinance to qualify for participation in the FEMA flood Insurance program. However, the boundaries of the 100-year floodplain were not changed to coincide with the 100-year floodplain boundaries as depicted on the 1983 FEMA Flood Boundary Map, which places the subject Zisk property in Zone “B”, above the 100-year floodplain. In furtherance of the collusive plan and scheme, the subject Zisk property is the only property above the established 100-year floodplain boundary elevations on the 1983 FEMA Flood Boundary Map, that remained in the fraudulent 100-year floodplain zoning designation on the Official Floodplain Zoning Map of the City of Roseville, dated **October, 1973**. Numerous other parcels of land, including City parcels, that were designated within the 100-year floodplain boundaries on the 1983 FEMA Flood Boundary Map, were excluded from the 100-year floodplain map as depicted on the Official floodplain Zoning Map of the City of Roseville, dated **October 1973**, and were allowed to be filled and fully developed.

During 1983, the City Attorney for the City of Roseville, Michael Dean, filed a criminal misdemeanor action in Municipal Court of Placer County at Roseville, Case No. 8064, falsely charging William J. Zisk with an alleged violation of the Zoning Ordinance of the City of Roseville. No evidentiary support was ever submitted to support the alleged zoning violation and the cause of action, Placer Municipal Court No. 8062, was dismissed in October, 1984.

In furtherance of the conspiratorial collusive plan and scheme, commencing in 1984, the Members of the City Councils, City Planning Commissions, and city employees expanded the land Use Zoning to 4 new Specific Plan areas throughout the City, the Southeast, Northeast, North-Central and Northwest. Each Specific Plan was given approval on an independent “piecemeal” basis without addressing the overall “cumulative impacts” on drainage capabilities throughout the City, as required by the California Environmental Quality Act (CEQA) of 1970.

Thereafter, in **January, 1984**, in furtherance of the overall collusive, conspiratorial plan and scheme, the City of Roseville embarked on a new flood study by employing the services of Nolte and Associates of Stockton/Sacramento.

The information and data used to compile the Nolte study was follows:

1. The resistant “N” factor of the streams within the City of Roseville were calculated and estimated from aerial photography flown on December 13, 1984, when the streams were in the most congested and overgrown condition since 1970.
2. The stream gage flow data from the gages within the Dry Creek Basin were discarded, and stream flow gage data from a drainage basin outside of the Dry Creek Drainage Basin was used to convolute estimated discharge flows.
3. The peak discharge flow estimates were grossly exaggerated to incorporate a “worst case scenario” for a “future” full build-out of all of South Placer County. FEMA does not recognize or except “future conditions,” in a Flood Insurance Study.
4. The City of Roseville forwarded the fraudulent convoluted “future condition” study to FEMA with a request for revision of the 100-year flood boundaries within the City. The Corps of Engineers peak discharge flow on Dry Creek through the Zisk property was determined to be 7300 CFS for a 100-year flood event. The Nolte Study was commenced 60 days after the FEMA floodplain Maps were adopted on **December 15, 1983**, and increased the fraudulent peak discharge flow on Dry Creek through the Zisk property to 16,140 CFS for a 100-year flood event. This would constitute a falsified rise of the flood elevation on the Zisk property by 4 to 5 feet.

A duplicate verified copy of the computer runs and work product maps used in the 1984 Nolte Study have confirmed the fact that the study represents “future conditions” and not the “present conditions” as required by FEMA Flood Insurance Studies.

In **February 1986**, the City of Roseville was subjected to the most severe and prolonged concentration of rainfall on record, which resulted in the most severe flooding in Roseville of record. As a result of the foregoing negligent acts and omissions of the members of the City Councils Planning Commissions, and city employees, in furtherance of the conspiratorial collusive plan and scheme, the Zisks have been subjected to continued intentional infliction of pain and suffering, and physical and emotional damage to their Health, Welfare and Safety, and the use and enjoyment of their property and livelihood.

On **February 17, 1988** the Roseville City Council adopted ORDINANCE NO. 2091, ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE REPEALING AND REENACTING ARTICLE 23 OF ORDINANCE OF THE CITY OF ROSEVILLE, RELATING TO FLOOD PRONE AREAS.

In adopting Ordinance No. 2091, the following Finding of Fact is stated in relevant part under Article 23, Section 23.01 (a): - - - these flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities - - -

Under Section 23.01 (b): Regulation of areas of special flood hazard is necessary because of the compelling need to insure safety and the availability of flood insurance to the residents of the City of Roseville, in that the Government of the United States, through the Federal Emergency Management Agency and the Federal Insurance Agency, requires that these regulations be adopted before flood insurance can be obtained by residents.

Article 23, Section 23.14 reads:

23.14 Maintenance of Pre-existing uses. Nothing in this Article shall be construed to prohibit the normal, ordinary, or necessary maintenance or repair of a pre-existing, nonconforming use or structure in accordance with Article 29 of this Zoning Ordinance. It is the intent of this section that current lawful uses of flood prone lands shall be grandfathered and permitted.

As stated earlier in this Claim, the Zisks have maintained the same residence and business operation on the subject property since 1966, the same as the prior owners, dating back to the turn of the century.

On **March 2, 1989** Roseville City Attorney, Michael F. Dean, And Deputy City Attorney, Steven Bruckman filed another lawsuit against William J. Zisk and Lois E. Zisk, Placer County Superior Court No. 84527. The False allegations in Placer County Superior Court No. 84527 are virtually the same as the false allegations City Attorney Michael F. Dean filed during 1983, in the criminal Misdemeanor action against William J. Zisk in Placer County Municipal Court No. 8062, which was dismissed by that court in October, 1984. As was the case in Placer Municipal Court No. 8062, no factual evidence was presented to support the allegations in Placer Superior Court No. 84527. The City of Roseville has forced the Zisks to “defend” constant litigation in the Courts for over 28 years.

On **June 29, 1988**, City Attorney, Michael F. Dean and Former City Attorney G. Richard Brown filed another complaint in Eminent domain on the subject Zisk Property, Placer County Superior Court No. 82206, for the purpose of removing a live 15 inch sewer line on the subject Zisk property, and installing a 63 inch sewer line in its place. The contractor employed by the City of Roseville to accomplish this task, purposefully and maliciously destroyed every single living fruit and nut tree and domestic landscaping on the Zisk property in a swath 100 feet wide and 750 feet long. In the course of construction, the Zisks were severed from access to their home and business, their domestic water supply was severed 4 times, and raw untreated sewerage was spilled on the ground and stored in cesspools on the Zisk property, creating a health problem. William Zisk sustained sores over his body and required medical attention.

On **April 17, 1989** William J. Zisk was publicly slandered in the local newspaper with false allegations of illegal activity on the subject property. A substantial character impact on the Zisk sole business and livelihood has occurred.

On **May 12, 1989** deputy City Attorney, Steve Bruckman, Public Works director, Fredrick L. Barnett, City employees, agents and City excavating equipment entered onto the subject Zisk property without a writ or warrant and trenched 7 excavations to depths of 15 feet, and surveyed and photographed the entire Zisk property. Shortly thereafter, Deputy City Attorney, Steve Bruckman later seized and searched the Zisk private business records without a writ or warrant.

On **November 7, 1990**, in furtherance of the conspiratorial collusive plan and scheme, the Roseville City Council adopted ORDINANCE NO. 2374, ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE ADDING CHAPTER 9.80 TO TITLE 9 OF THE ROSEVILLE MUNICIPAL CODE RELATING TO FLOOD DAMAGE PREVENTION. This Ordinance was adopted under TITLE 9 of the HEALTH AND SAFETY CODE of the City of Roseville, and incorporated the Federal Emergency Management Agency (FEMA) Flood Insurance Study of September 28, 1990. The **September 28, 1990** Flood Insurance Study contains and applies the falsified fraudulent “future conditions,” study of the City of Rosevilles’ 1984 **NOLTE STUDY**, which raised the flood elevations on the Zisk property by 4 to 5 feet over the previous 1983 FEMA Flood Insurance Study.

On **March 20, 1991** the Roseville City Council adopted Ordinance No. 2408, ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE ADDING SECTION 23.23 TO ARTICLE 23 OF ORDINANCE 802, THE ZONING ORDINANCE, RELATING TO FLOOD PRONE AREAS. The fraudulent “**future conditions**” of the 1984 Nolte Study were applied to the Official Floodplain Zoning Map of the City of Roseville. The flood elevations on the subject Zisk property have been fraudulently raised by 4 to 5 feet.

Claimant has been deprived of due process and equal treatment during the ongoing proceedings in which by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the decision making body. Claimant has been deprived of his inalienable right to speak freely on all subjects during the public hearings and he was restrained and abridged of his constitutional right to submit testimony on all subjects during the public hearings which related to the applications by the City of Roseville, repugnant to

the Declaration of Rights, Article 1, Section 1 of the State of California Title 42 U.S.C.A. Sections 1983 and 1985 and the Fifth and Fourteenth Amendments to the Constitution of the United States.

Claimant has been deprived of the fact that the Roseville City Councils and the Roseville Planning Commissions did not consider the fact that the hydraulic analysis for the applications of flood encroachment permits of past, present and future proposed projects on Dry Creek, Miners Ravine Creek, Antelope Creek, Cirby Creek and Linda Creek in Roseville, has been compared to the 1984 Nolte Flood Plain Study (***future conditions***). The Nolte Study measured channel widths, depths and “n” factors of the creeks in Roseville as they existed on **December 13, 1984**. The 1984 channel widths and depths were in the most congestive, restrictive and impeding conditions that existed during the course of the prior twenty-five (25) years. These 1984 congestive channel widths and depths have been considered the baseline by the City for assessing encroachments into the floodplain of the creeks within the City of Roseville. Any requests for encroachment into the floodplain are measured against the channel widths and depths as they existed in **December 1984**, *without any considerations for the significant adverse increased peak discharge flows that have been and continue to be injected into the streams in Roseville since December 1984, and the overall cumulative effects of obstructions in areas of special flood hazards which increases flood heights and velocities*. For hydraulic modeling purposes, a significant impact will occur, effecting significant changes in geometry, hydraulic conditions, significant increases in Manning Roughness factors (“n” values), higher floodwater surface elevations and backwater effects. The foregoing amounts to the seizure and taking and damaging of property without due process and the payment of just compensation as required by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

Claimant has been deprived of the fact that the Roseville City Council and the Roseville Planning Commission have not considered the incremental cumulative impacts of past, present, and future proposed projects, obstructing the free flow of floodwaters within the floodplain of

Dry Creek, Antelope Creek, Cirby Creek, Linda Creek, and Miners Ravine Creek, which include but are not limited to:

The encroachment of approximately twenty thousand (20,000) cubic yards of fill into the designated floodplain on the west bank of Dry Creek adjacent to Royer Park where the public safety building currently sits; the encroachment of the basement of the main Taylor Street library into the floodway on the west bank of Dry Creek adjacent to Royer Park; the encroachment within the floodway of the concrete floodwall and gabion structures on the west bank of Dry Creek adjacent to Royer Park; the placement of a sixty-six (66) inch diameter sewer line across and adjacent to Dry Creek within Royer Park; the encroachment of gabion structures and limestone rip-rap within the east bank of the “*floodway channel*” of Dry Creek in Royer Park; the encroachment of three (3) footbridges within the “*floodway channel*” of Dry Creek in Royer Park (two have been swept away during past floods and lodged within the “*floodway channel*” during peak flows); the huge trees which have eroded away within the “*floodway channel*” and lodged within the channel and against all of the bridges; chain link fences have been anchored across the “*floodway channel*” with cables, collecting floating debris (torn loose during peak flows of past floods); the Veterans Memorial Building within the floodplain, immediately adjacent to the east bank of Dry Creek in Royer Park; the twenty-four (24) inch diameter sewer line placed immediately adjacent to the foundation of the Veterans Memorial Building on the east bank of Dry Creek in Royer Park, coupled with the gabion structures and rip-rap later placed in the “*floodway channel*” of Dry Creek, in an attempt to protect the sewer line; the placement of Rosevilles’ first landfill “*dump site*” within the seventeen (17) acre portion of the floodplain of Dry Creek in what is now Saugstad Park; the fifty (50) thousand cubic yards of fill dirt imported

to the Saugstad Park site to cap the raised filled “dump site”; the sewer lines running parallel and perpendicular to the flow of Dry Creek in Saugstad Park; the Darling way bridge; the gabion structures on the east bank of Dry Creek in Saugstad Park; at the confluence of Cirby Creek, with the raised surface exposed sewer line running perpendicular to the flow of Dry Creek; the Riverside Avenue Bridge; the BMX bicycle facility; the Vernon Street bridge; the Southern Pacific Subway Railroad Bridge; the Atkinson Road and parallel Southern Pacific Railroad Bridges and Regional Wastewater Treatment Plant settling ponds off of Booth Road.

The Lincoln Street Bridge; the sixty-six (66) inch sewer line upstream on the west bank of Dry Creek; the encroachment of an additional two hundred (200) cubic yards of rip-rap extending into the “*floodway channel*” of Dry Creek at 140 Folsom Road (McCurry dental facility); the six (6) inch sewer line placed perpendicular to the flow, two (2) feet above the ground level of Dry Creek (since destroyed by prior floods); the Folsom Road Bridge; the sixty-six (66) inch and twenty-four (24) inch sewer lines, again just upstream of the Folsom Road Bridge, encroaching into the “*floodway channel*” of Dry Creek with fill material, gabion structures, rip-rap structures and steel wall structures on the west bank of Dry Creek, and solid wooden and chain link fences on the east bank perpendicular to the flow of floodwaters on the east designated “floodway” of Dry Creek; the encroachment of five hundred (500) cubic yards of limestone rip-rap into the “*floodway channel*” on the west bank of Dry Creek at the terminus of Columbia Avenue; the gabion structure placed on the east bank of Dry Creek at the terminus of Marilyn Avenue (since failed and eroded, sliding directly into and obstructing the “*floodway channel*” of Dry Creek; the placement of an eighteen (18) inch sewer line on the northwest bank of Dry Creek (at rear of

Adelante School facility), which eroded during high waters and collapsed into Dry Creek, discharging raw untreated sewerage into Dry Creek; the placement of two hundred (200) cubic yards of broken concrete, cement dust and debris encroaching into the east bank of Dry Creek at the rear of 339 Evelyn Avenue (Marion Residence); the six hundred (600) cubic yards of concrete rubble and dust and debris currently dumped on the southeast bank of Dry Creek forming a “wing-dam” at the rear of 318 Maciel Avenue (Roberta Bechtel residence) and encroaching, without permission, onto property owned by William J. Zisk and Lois E. Zisk; the filling of a historical natural “*drainage swale*” and “wetlands” at the rear of 706 Atlantic Street (Abundant Life Church); the encroachment into the entire width of the Dry Creek “floodway” and “*wetlands*” at the confluence of Antelope Creek, Secret Ravine and Miners Ravine in 1984, with the continuous solid raised filling of a four (4) lane roadbed structure at what is currently Harding Boulevard, and the placement of floatable massive bundles of wooden trusses which were stored on the upstream side (Latham lumber) of the filled Harding Boulevard structure, which floated over the top of the filled structure during the 1986 flood and lodged within the “*floodway channel*” and against the downstream bridges. A human fatality occurred at this location during the 1986 flood.

Traveling further upstream on the Antelope Creek tributary of Dry Creek; the encroachment into the floodplain and “wetlands” of Antelope Creek, of the placement of over twenty thousand (20,000) cubic yards of fill dirt to raise the approach to the Harding Blvd. over-crossing structure over Atlantic Street at the Southern Pacific railroad track; the Harding Blvd. on-ramp bridge over Antelope Creek at Wills Road; the encroachment into the “*floodplain and*

wetlands” during the widening of Atlantic Street over Antelope Creek; the narrow Southern Pacific railroad bridge over Antelope Creek; the narrow culvert bridge crossing over Antelope Creek to the City of Roseville raised Berry Street land fill “dump site”, and the encroachment into the “*floodplain and wetlands*” of Antelope Creek, of the City of Roseville Berry Street raised land fill “dump site” itself.

Neither, the Berry Street land fill “dump site” (within the floodplain of Antelope Creek), nor the Saugstad Park land fill “dump site” (within the floodplain of Dry Creek) incorporated any barrier protection to the underground water table and neither “dump site” incorporated any restrictions as to the quality and contents of the disposal buried on site, nor was there conducted any environmental assessments of the proposed projects prior to commencement of the “land fill dump sites”. Currently, erosion at the proposed Saugstad Park project site on Dry Creek has exposed buried “*blacktop*” and landfill debris within the “floodway channel” of Dry Creek.

Traveling further upstream on the Miner’s Ravine tributary of Dry Creek: the encroachment into the “*wetland and floodplain*” of the pristine Miners Ravine Creek with the placement of sewer lines and five (5) restrictive and obstructive “*low level*” concrete bicycle trail bridges crossing the streambed (1994), all five (5) of the obstructive “*low level*” bicycle trail bridges failed and were heavily damaged and eroded during the peak discharge flows of the 1995 flood. All five (5) of the obstructive “*low level*” bicycle trail bridges were repaired and replaced in 1998 (using federal FEMA funding) in the identical same locations and elevations as was the original obstructive “*low level*” bridge structures.

The forgoing statements and facts relating to the incremental cumulative impacts are verified and supported by a study prepared especially for the City of Roseville by the United States Army Corps of Engineers, entitled: FLOOD PLAIN INFORMATION, DRY CREEK AND TRIBUTARIES, ROSEVILLE, CALIFORNIA, DATED, MAY 1973.

- (e) **The name or names of the public employee or employees causing the injury, damage, or loss, if known:**

The full names of the public employees causing the injury, damage, and loss, are known to Claimants at the present time, but are known to the City of Roseville, and, include but are not limited to the past and present Members of the Roseville City Council, the past and prior members of the Roseville Planning Commission, City Attorneys and City Managers, City Staff, employees and agents of the City.

- (f) **The amount claimed as of the date of presentation of the claim including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the presentation of the claim, together with the basis of computation of the amount claimed:**

The amount of this claim exceeds ten thousand dollars (\$10,000). Jurisdiction over this claim would rest in superior court.

Submitted this first day of March 1, 2001

William J. Zisk
Claimant

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF PLACER

I William J. Zisk declare:

I have read the matters and statements made in the above and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. If called to testify as a witness in this matter I can competently testify as to matters of fact.

I declare under penalty of perjury that the foregoing is TRUE and CORRECT.

Executed this first day of March 1, 2001 at Roseville, California 95678.

William J. Zisk

Claimant