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April 2, 2004

Mr. Mark Morse, Environmental Coordinator City of Roseville,
Community Development Department
311 Vernon Street
Roseville, CA 95678

RE: RESPONSE TO DRAFT ENVIRONMENTAL IMPACT REPORT FOR HARDING BOULEVARD TO ROYER PARK BIKEWAY PROJECT DATED FEBRUARY 2004

State Clearing House No. 2000122078
Lead Agency: City of Roseville
Environmental Consultant: Jones & Stokes
Review Period: February 18, 2004 to April 20, 2004

Mr. Mark Morse:

Thank you for the opportunity to respond to the Draft Environmental Impact Report for the proposed phase two portion of the proposed Harding Boulevard to Royer Park bikeway project, which is dated February, 2004, State Clearinghouse No. 2000122078.

The City of Roseville proposes to construct a bikeway from Harding Boulevard to Royer Park. The proposed project site is located in the City of Roseville in southwestern placer county. The proposed project area encompasses the riparian corridor along Dry Creek and various existing surface streets between Lincoln Estates Park and Royer Park. The proposed project area is generally bounded by Atlantic street on the north, Harding Boulevard on the south and east, and Douglas Boulevard on the west. The City, as the state lead agency undertaking the proposed project, is required to prepare an appropriate environmental document, in this case an environmental impact report (EIR), under the California Environmental Quality Act (CEQA). This EIR alleges to disclose the environmental effects associated within the proposed alignment, and construction and operation of the proposed bikeway to the satisfaction of CEQA requirements. Compliance with NEPA is also required because funds for preliminary engineering and environmental assessment for the proposed project were provided in part under the federal Intermodal Surface Transportation Efficiency Act (ISTEA).

This response to the draft environmental impact report will focus on the inadequacy and errors and omissions of the DEIR as it relates to the CEQA/NEPA requirements, as well as the alleged claims of ownership of Zisk property by the City of Roseville, and the wrongful death of my spouse, Lois E. Zisk resulting from the thirty (30) years of extended ongoing willful and reckless disregard for her health and safety. This response to the DEIR will also focus on the prior thirty (30) years of conspiracy to violate and violation of civil rights; deprivation of the constitutional requirements of equal treatment and application of the law; damages in inverse condemnation; negligence; intentional tortuous conduct; personal injury and property damage, intentional infliction of emotional distress; constructive fraud; search and seizure; invasion of privacy; malicious prosecution, discrimination, duress and obstruction of justice.

On March 9, 2004, a public hearing was held before the City of Roseville transportation commission to hear testimony on the DEIR. During the public hearing William J. Zisk testified to his claim of purchase and ownership of the 205 Thomas Street, Roseville, CA property, consisting of twelve and two tenths (12.2) acres (parcel(s) No.(s) 013-040-003, 013-040-004, and 013-040-005). I briefly referenced our application to the Roseville planning commission for a lot split and use permit to section off a half (1/2) acre portion at the southeast corner of our privately owned property to construct our new single family residence on the secluded passive surroundings adjacent to Dry Creek, and the thirty (30) year history of interference that followed by the City of Roseville into our private residential and business affairs and the ability to use and enjoy "OUR" private property.

William J. Zisk requested a continuance of the March 9, 2004 public hearing before the transportation commission and an extension of time of the comment period to enable the submittal of the prior thirty (30) year history of the property of William J. Zisk and Lois E. Zisk, 205 Thomas Street, Roseville, CA into the DEIR for the proposed phase two of the Harding Boulevard to Royer Park bike trail. The commission granted the continuance of the public hearing and extension of the public comment period to April 20, 2004. The submittal of the prior thirty (30) year history of the Zisk property into the DEIR follows:

VERIFIED STATEMENT OF THE HISTORY OF THE PROPERTY OF WILLIAM J. ZISK AND LOIS E. ZISK, 205 THOMAS STREET, ROSEVILLE, CALIFORNIA, 95678

Petitioners William J. Zisk and Lois E. Zisk purchased the 12.2 acre parcel of land in central Roseville in 1966, located at 205 Thomas Street, Roseville, California (hereafter subject property). The parcel contains two (2) single family residences and two (2) assessory buildings and fifteen hundred feet of Dry Creek traverses the subject property.

At the time of purchase, the zoning and land use designation was R1 and R1-FP, medium density, single family residences. The majority of the entire parcel was designated above and outside of the established 100-year floodplain elevations. The site has been the basis of sand and gravel and trucking operations since the turn of the century. Petitioners are self employed and have resided and conducted their sole livelihood in the sand and gravel and trucking business on the subject property since 1966.

On February 23, 1967 petitioners presented an application to respondents City of Roseville planning department to construct a new single family residence on petitioners private property. Present in an advisory capacity during the public hearing was then Roseville city attorney, Keith F. Sparks. As a condition of approval, respondents required petitioners must first clean and straighten the portion of Dry Creek and adjacent that traverses the subject property and obtain a lot split. No time constraints were placed on the conditional use permit application as granted. Petitioners immediately obtained the necessary stream alteration permits from the California Department of Fish and Game, purchased the necessary heavy duty dragline equipment for dredging the stream, utilized petitioners dump truck and rubber tired front end loader and commenced to fulfill respondents conditional requirements precedent to construction of petitioners new residential dwelling, while continuing to maintain the sand and gravel and trucking business operations on site.

On March 20, 1968 by Resolution Number 68-21, respondents adopted a Park and Streambed Plan as an element of the General Plan showing petitioners' entire 12.2 acre parcel as a "future" proposed public park site.

Upon petitioners nearing completion of the monumental herculean task commenced on February 23, 1967 as required by respondents, on December 8, 1971, respondents then required of petitioners by Interim "Emergency" Ordinance Number 1158, that in order to complete the permit application, an additional grading permit and renewal of the California Department of Fish and Game stream alteration permit would now be required. Petitioners immediately applied for the "additional" grading permit which was subsequently granted on January 24, 1972.

On August 30, 1972, by Resolution Number 72-75, respondents adopted an "Interim" Open Space Plan as an element of the General Plan. Petitioners R-l zoned property was now designated as open space.

On November 29, 1972, respondents adopted Ordinance Number 1190 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 petitioners requested the parcel map and lot split to create a parcel to build their new home on the subject property in compliance with the original conditional use permit application granted on February 23, 1967. On March 14, 1973, respondents now determined that the construction of petitioners new single family residence on their R-1 zoned parcel would now have a "non-trivial" effect on the environment and an environmental impact report was now required before any further processing of petitioners permit application would be allowed even though no such E.I.R. was required back on February 23, 1967. Petitioners appealed such determination to the Roseville City Council, pursuant to Ordinance No. 1190, which was subsequently denied on April 25, 1973.

On April 25, 1973 respondent public works director, Frederick L. Barnett, revoked his previous granted January 24, 1972 grading permit and directed that all work within seventy-five feet of Dry Creek on petitioners' property shall cease.

Petitioners immediately retained the services of a local engineering firm, Atteberry and Associates, at substantial cost to petitioners, to fulfill the requirements of respondents, as set forth in Resolution 72-94. Petitioners submitted the environmental study entitled - ENVIRONMENTAL IMPACT STATEMENT FOR BILL ZISK RESIDENCE, THOMAS STREET, ROSEVILLE, CALIFORNIA 95678, dated June 1973.

The purpose of the E.I.S. was to identify, assess and quantify the impact of the development of a single-family residential structure adjacent to Dry Creek on the physical, biological and socio-economic aspects of the Roseville community. The purpose of the project is to provide a home for the Zisk family adjacent to and overlooking Dry Creek in an area of outstanding beauty. The proposed home site is located above and outside the Intermediate Floodplain (146.00 feet above mean sea level) as determined by a study of the United States Army Corps of Engineers, dated May 1973.

The work performed by Mr. Zisk on cleaning and straightening the channel of Dry Creek has changed the channel's coefficient of roughness and has consequently increased the channel's flood carrying capacity approximately 200%. The E.I.S. concluded with:

> "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 has 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 impact. 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".

By Ordinance Number 1190, adopted by respondents on November 29, 1972, the E.I.S. would be approved if respondent registered no objection within fifty (50) days of submittal. Over one hundred (100) days later, without prior objection to the E I.S., the Planning Commission refused to issue the lot split and use permit on September 13, 1973.

On June 20, 1973, by resolution Number 73-56, respondent adopted an Open-Space and Conservation Element of the City of Roseville General Plan. Petitioners property was thereby designated open space for park purposes.

On July 13, 1973, in responding to the draft environmental impact report for the Bill Zisk residence in Roseville, California, the United States Army Corps of Engineers stated that since in the case in point the house itself would be outside of the intermediate regional flood zone, the project itself would not have a significant effect on water surface elevations on Dry Creek during the occurrence of the intermediate regional flood.

On July 24, 1973, respondent planning director wrote to the Sacramento District Corps of Engineers requesting a "re-study" of the proposed parcel map of the Zisk property and would therefore withhold further processing of the proposed parcel map.

On August 29, 1973 respondent City Council adopted a "tentative" plan for a "future" proposed bicycle trail through the middle of petitioners proposed residential home site location.

On August 31, 1973, respondent public works director, Frederick L. Barnett, wrote to the Sacramento District Corps of Engineers requesting transposition of floodplain mapping, based upon outdated "1956" topographic maps, which did not reflect any of the Zisk family seven year reclamation project on Dry Creek on petitioners property.

On September 5, 1973, respondent public works director, Frederick L. Barnett wrote to respondent Planning Director Leo Cespedes, recommending denial of a parcel map for petitioners' property, based upon the adverse impacts of a "tentative" plan for a "future" proposed bicycle trail through the middle of petitioners proposed home site.

On or about September 13, 1973, the respondent Planning Commission in furtherance of a total and conjunctive plan, purpose, scheme and design of the Park, Streambed and Recreation Element, and the various Floodplain Ordinances heretofore mentioned, the Open Space and Conservation Element of the General Plan and the Open Space Zoning Ordinance and in ignoring the Environmental Impact Report of June 1, 1973 which states that plaintiffs' development would have no adverse impact on the environment, and for no valid or lawful cause and without any evidence to the contrary, did summarily deny petitioners' February 23, 1967 application for a land use permit and lot split. Said denial was in furtherance of the aforementioned plan, purpose, scheme and design of respondents.

Petitioners appealed said decision to respondent City Council and on or about October 3, 1973, said City Council, pursuant to and in furtherance of the plan, purpose, scheme and design of the Park, Streambed and Recreation Element and the Open Space and Conservation Element, and in spite of the June 1, 1973 Environmental Impact Report, and for no valid or lawful cause, and with no evidence to the contrary, and in violation of law did summarily deny petitioners' said appeal for the following reasons as specified by the October 3, 1973, Council Meeting Minutes:

> "Motion by Reed, seconded by Waltrip, that the Planning Commission's decision to deny the use permit for property at 205 Thomas Street be affirmed on the basis of evaluation of 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 Plan, an Element of the General Plan, and that council give notice that City intends to purchase a bike and pedestrian trail system along the streambed".

Said denial without a hearing or other procedure as required by the Fifth and Fourteenth Amendments to the United States Constitution did constitute a denial of substantive and/or procedural due process of law as guaranteed by said amendments to the United States Constitution.

All of respondents hereinbefore stated acts, conduct and statements were initiated and consummated with the sole motive and intent being to deny petitioners there due Constitutional rights, by deliberately and fraudulently preventing William J. Zisk and Lois E. Zisk from developing either the portion of the subject property subsequently condemned or its remainder for any lawful use, other than parks and recreation use, and hence in furtherance of the respondent express and/or implied purpose, plan, scheme and design to depress the fair market value of the subject property and/or prevent an increase in the fair market value of the subject property so as to economically benefit the respondents to acquire the subject property.

The adoption of the aforesaid Park, Streambed and Recreation Element, the various Floodplain Ordinances, the Open Space and Conservation Element to the General Plan and the aforementioned Open Space Ordinance by respondents, was designed to and did in fact depreciate the full market value of all of petitioners' subject property; did constitute a de facto taking of all of the subject property; did prevent any development for its highest and best use; did deprive petitioners of any practical, beneficial or economical use of the subject property; and was confiscatory in nature as applied to the subject property and therefore in violation of the Fifth and Fourteenth Amendment to the United States Constitution and Article 1, Section 19 of the California State Constitution.

As a direct and proximate result of all of respondents' acts, conduct and statements, petitioners' subject property has been rendered without any practical, beneficial or economical use and petitioners have further been required to hold said property solely for the use and benefit of respondents' public use, without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 19 of the California State Constitution.

Respondents' acts, conduct and statements in denying petitioners' application for use permit and lot split as herein alleged, are unreasonable, oppressive discriminatory confiscatory as applied and a prelude to a direct condemnation action in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 19 of the California State Constitution, that as a direct and proximate consequence and result of respondents' acts, conduct and statements, petitioners have been prevented from using or developing said property for any lawful private purpose and have been unable to derive value, rents, revenues or profits from the subject property, all the while being required to spend money for taxes and other holding costs in maintaining the subject property.

All of respondents' acts and conduct herein alleged and otherwise were and are illegal, oppressive and unreasonable, and constitute a de facto taking and damaging of the subject property, for and in connection with a public use and purposes, to-wit: park, recreational and open space uses, without just compensation and in violation of the Constitution and laws of the

State of California including, but not limited to Article I, Section 13, and Article 1, Section 19, of the Constitution of the State of California, and all in derogation of the Constitution and laws of the United States, including, but not limited to, the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

Petitioners believe and therefore allege that their administrative remedies, pursuant to respondents' ordinances and state law, were effectively exhausted on October 3, 1973, the date of taking, that to apply to respondent, city, or any of its agents or departments would constitute an idle act.

Thereafter, in furtherance of the plan, purpose, scheme and design as alleged herein, and to further accomplish a depreciation in the fair market value of the subject property taken by respondents for a public use, so as to avoid payment of just compensation, respondents' Floodplain Committee and Planning Commission, both agents of said respondents and while acting within their respective scope of employment, determined to further restrict use of the subject property by including all of said property within a permanent floodplain area. Petitioners attended public hearings precedent and relative to respondents' final adoption of permanent Floodplain Ordinance. On such occasions, objected to said Floodplain Ordinance and the proposed floodplain zone area as being vague, arbitrary, and in furtherance of respondents' plan, purpose, scheme and design to acquire the subject property for a public use, after depreciating its fair market value. Petitioners related to respondents that a Petition for Writ of Mandate relative to Respondents' October 3, 1973, denial of petitioners' request for use permit and lot split, had been filed against respondent on November 1, 1973, and that a claim, pursuant to the provisions of Title 1, Division 3.6 of the Government Code of the State of California, had been filed against respondent on November 12, 1973, for damages in inverse condemnation.

Respondent City Council thereafter, in spite of petitioners' Petition for Writ of Mandate and claim for damages, on or about November 28, 1973, and in furtherance of respondents' plan, purpose, scheme and design to acquire the subject property for public use after depreciating its fair market value, did adopt Ordinance No 1224 relative to permanent regulations of land uses within possible flood areas and Ordinances No. 1227, adding Subsections 161 and 162 to Section 30.01A of Article 3 of respondents' Ordinance No 802, designating certain property in and along Dry, Linda, Cirby, and Antelope Creeks as within the permanent FW (Floodway) and FF (Floodway Fringe) combining zones, all in furtherance of the plan, purpose, scheme and design as herein alleged.

Petitioners are informed and believe and thereon allege that in adopting Ordinance No. 1224 and Ordinance No. 1227 the respondents relied in part on a study specially prepared for respondents by the Sacramento District Corps of Engineers, Department of Army, when the Roseville City Council adopted the aforementioned Floodplain Ordinances. Petitioners are informed and believe and thereon allege that, in fact, this report by the Corps of Engineers was conducted in May, 1973 for the benefit of respondents and does not reflect the actual boundaries of previous floods or determinative flood histories or studies, and were fraudulently applied to antedated "1956" topographic maps, which were allegedly furnished to the Corps by

the Roseville Public Works Department and did not reflect the current topography of the subject property in 1973 and therefore cannot properly be relied upon by the respondents.

All of the subject property is now included within the boundaries of said Floodplain Ordinances and said boundaries coincide, in furtherance of respondents plan, purpose, scheme and design as mentioned above, with the Open Space and Conservation Element, the aforementioned Open Space Ordinance, and the aforementioned Park, Streambed and Recreation Element of the General Plan.

All of the subject property referred to immediately above has been discriminated against by respondents, its agents and various departments. Only the subject property is covered by the Floodplain Ordinances and the Park, Streambed and Recreation Element of the General Plan hereby imposing a double restraint upon petitioners' property. No other property in the area is covered with such a "double restraint."

The placing of a "double restraint" on petitioners' property was done in furtherance of respondents aforementioned plan, purpose, scheme and design.

The adoption of said permanent Floodplain Ordinances, are vague and arbitrary in terms of boundaries was in fact a gross misexercise of police power and a further de facto taking and further devaluation by direct legal restraint of petitioners property, all in furtherance of the plan, purpose scheme and design as alleged herein.

Pursuant to the provisions of Title I, Division 3.6 of the Government Code of the State of California relative to claims for damages against local public entities petitioners could not file the complaint in inverse condemnation until their pending claim against respondents was approved or denied, or upon the expiration of forty-five days from the date of filing said claim.

On or about November 12, 1973, petitioners did file a claim for damages, and that on December 19, 1973, respondent did approve petitioners' claim in part and did deny the claim in part.

Thereafter, and in furtherance of and pursuant to the total plan, purpose, scheme and design herein alleged, and in an attempt to deny to petitioners their legal remedies secured by an action in inverse condemnation, respondents' City Council, did also on December 19, 1973, adopt Condemnation Resolution No. 73-122 relative to a portion of the subject property for public park and "future" bicycle path purposes, and on December 20, 1973, respondent filed a complaint in eminent domain in Placer County Superior Court Action No. 41104 to acquire a portion of the subject property for said proposed public use, without complying with all of the legal conditions precedent to filing an action in eminent domain and contrary to the express intent of the Legislature.

Respondents herein alleged conduct and cursory acts were in furtherance of the aforementioned plan, purpose, scheme and design of respondent city, and was consummated in defiance of such conditions precedent relative to the institution of an eminent domain action by a

public entity as are specified in Government Code Section 7267 requiring an appraisal of the property to be taken and good faith negotiations with the property owner, and respondent also failed to demonstrate whether sufficient public funds are available to acquire said portion of the subject property and whether the "proposed" public park and bicycle path are so compatible with the subject property environment as to comply with State and Federal environmental regulations.

Respondents herein alleged conduct was in derogation of State and Federal statutes mentioned above, but not limited thereto; the Constitution of the State of California; and the Constitution of the United States of America in that, among other things respondents had, as evidenced by their unprecedented immediate filing of an eminent domain suit in violation of the aforementioned statutes and constitutional provisions, decided before hearing all the evidence in the case that respondents plan was to be taken in part rather than in the whole and thus depriving petitioners of their right to a hearing under the due process clause of the United States Constitution and in denial of the aforementioned statutes and constitutional provisions.

Petitioners, on or about November l, 1973, did file an action in Administrative Mandate against respondent city and its councilmen to comply with all requirements for exhaustion of administrative remedies. All of the actions of respondents herein referred to were null and void because not enacted in the manner provided by law, that said acts were unreasonable, arbitrary, discriminatory, fraudulent, and an abuse of legislative discretion vested in the City Council and all agencies and commissions of the City and that said acts would and did constitute a taking and/or damaging of petitioners' property without payment of just compensation contrary to the provisions of the Constitutions as hereinabove alleged, and such acts were done in furtherance of respondents aforementioned plan, purpose, scheme and design.

Respondents commenced the eminent domain proceeding on December 20, 1973, Placer County Superior Court No. 41104, to take over one-half of petitioners' subject property as described herein above. In furtherance of and pursuant to the total plan, purpose, scheme and design as herein alleged, and in further attempt to deprive petitioners of due process, just compensation and equal protection of the law, respondents failed or refused to timely deposit the "total sum" of the judgment into court. As a direct and proximate result and consequence of the wrongful, illegal, and oppressive activities and conduct of respondents, petitioners have not received one cent in any form of compensation to the present date, in violation of the Constitution and laws of the State of California including, but not limited to Article I, Section 13, and Article 1, Section 19, of the Constitution of the State of California, and all in derogation of the Constitution and laws of the United States, including, but not limited to, the Fourth, Fifth and Fourteenth Amendments of the Constitutions of the United States.

On November 6, 1973 a petition for writ of mandate was filed to compel issuance of the use permit prior to the adoption of the floodplain zoning ordinance. A claim was also presented to the City for damages on November 12, 1973. On November 28, 1973, the City Council adopted permanent floodplain zoning ordinances numbers 1224 and 1227, to take effect in thirty days.

On December 19, 1973 respondent City Council adopted a Resolution of Intent to Condemn (No. 73-122), pertaining only to Petitioners new home site and only with respect to the portion adjacent and parallel to the stream, which had been the subject of the seven year reclamation effort. The condemnation resolution was passed even though the City did not, and had not adopted any specific bicycle trail project or plan, and prior thereto, did not conduct a feasibility study, did not demonstrate that sufficient funds were available for acquisition, did not have any part of the Zisk property appraised to establish the fair market value or severance damages, did not make an offer to purchase, did not enter into any negotiations for acquisition, did not certify an E.I.R. for a proposed project, and to this very day have not done so for any other adjoining property in the City.

A race to the courthouse occurred the very next day, December 20, 1973. The City filed an instant action in eminent domain, Placer Superior No. 41104, and petitioners filed their inverse condemnation and civil rights complaint just minutes apart on the "same date" (Placer County Superior Court No. 41105). The trial court entered a judgment dismissing the civil rights action, and abating by interlocutory judgment the inverse condemnation cause of action due to the pendency of the city's condemnation action and to retain jurisdiction over the subsequent action. Petitioners were now being required to proceed within the confines of the city's eminent domain action.

Petitioners property was thus condemned for a "speculative, future purpose" contrary to the express requirements for the exercise of eminent domain powers which thirty years after its exercise, remains as unfulfilled as it did in 1973. In that period of time, petitioners' property is the only parcel ever interfered from private ownership in the entire city. The abuse of the eminent domain power was clear then and is even more compelling now.

On November 6, 1974, without "any" knowledge, whatsoever, or participation of petitioners, petitioners attorney, Richard F. Desmond and respondent city attorney, G. Richard Brown mutually agreed to enter into a "secret" stipulation, purporting to waive petitioners' right to recover their litigation expenses and attorney fees in the condemnation proceedings. Attorney Desmond did not divulge the existence of the secret stipulation to petitioners until November 23, 1977, at the conclusion of the six (6) week eminent domain trial, while William J. Zisk was on the witness stand.

The trial court, per Judge Harold P. Wolters, then dismissed petitioners' civil rights cause of action in Placer County Superior Court No. 41105, Zisk v. City of Roseville, 56 C.A. 3d 41; 127 Cal. Rptr. 896, thereby generating appeal Civil No. 15121 in the Third District Court of Appeals on February 20, 1976, "prior" to commencement of the eminent domain proceeding (No. 41104) on November 1, 1977.

Six appeals have been generated throughout the condemnation proceeding. The only opinion that has been published is contained in Zisk v. City of Roseville 56 Cal. App. 3d at 41-51. The opinion itself contains an important error in the introductory portion, which purports to review the factual and procedural history of the case. The error remains significant because

every subsequent appeal considered this opinion to be an impeccable source of information regarding the earliest history of the case. The erroneous portion relates to the timing of petitioners' original application for the building permit, and the adoption by respondent of a Park and Streambed Element to the General Plan. The opinion correctly recites that respondents adoption of the Park and Streambed Plan occurred in March 1968, while incorrectly reciting that the application for petitioners building permit did not occur until March, 1973. The appellate court relied upon this chronology to conclude, "the plan was adopted five years 'before' petitioners applied for the land use permit" (56 Cal. App 3d at p 51). In fact, petitioners applied for the first and only land use permit on "February 23, 1967", which is recorded in the hearing minutes and was granted upon petitioners satisfaction of the seven (7) year reclamation project on the subject property and obtaining a lot split. The condemnation trial was delayed and set to commence on November 1, 1977. On June 15, 1977, by Resolution No. 77-54, approximately four (4) months "before" the condemnation trial was set to begin, respondents adopted Resolution of the Council of the City of Roseville adopting the General Plan and repealing "former" General Plans and Plan Elements. In so doing, respondents "repealed" the Park and Streambed Plan Element of the General Plan (Resolution No. 68-21); the Interim Open Space Plan (Resolution No. 72-75); and the Open Space and Conservation Element of the General Plan (Resolution No. 73-56). The repealed elements were the basis of commencing the eminent domain proceeding in the first instance.

At this point, petitioners again encountered Keith F. Sparks who had been elevated to the Placer County Superior Court since his participation as respondent city attorney in the original permit application process. This time his role was to preside over the pre-trial conference for the eminent domain action, Placer Superior Court No. 41104. The circumstances mandated recusal upon his own initiative. Judge Sparks presided over the conference and issued a ruling, which aggrieved petitioners to this day. He ruled that evidence of bad faith and prejudicial pre-condemnation activities by the respondents would be excluded from jury consideration in the eminent domain trial.

The effect of this ruling cannot be overstated. The appellate decision on the demurrer stated that the abatement of the inverse condemnation action would be permanant "if the eminent domain proceeding is carried through to a dispositive conclusion", 56 Cal App 3d p. 48. "If for any reason the eminent domain action aborts, the first cause of action will become viable", 56 Cal App 3d p. 48.

Therefore, the City only had to survive the condemnation action to escape liability for its pre-condemnation activities. It was the obvious intention and understanding of the appellate court that all issues related to the taking of petitioners' property to be resolved in one action. Now the trial court, through Judge Sparks (former city attorney for City of Roseville), was effectively granting immunity for pre-condemnation activities by precluding their discussion altogether. Further, the land was down-zoned to floodplain "after" the time of the taking, which meant that valuation would be determined on that basis as opposed to R-I, which it had been prior to the zoning changes improperly implemented and only against petitioners property.

Armed with this devastating ruling, the city proceeded to offer $13,110.00 for the six acres of now improved, lush, level streamside property into which petitioners had poured over $200,000.00 of personal funds and seven years of continuous daily efforts to meet the city's conditions for the issuance of the building permit for their new home.

Faced with Judge Sparks evidentiary ruling excluding valuations based upon anything other than floodplain zoning, the jury verdict awarded $96,381.00, or approximately one-quarter of its R-1 zoning value.

At this point petitioners first became aware that they not only needed to be concerned about actions taken by respondents but those taken by petitioners' own attorneys. Law in effect at that time, C.C.P. 1249.3 specified, if the final offer of the public agency for the condemned property was unreasonable, the property owner could recover litigation expenses including attorneys fees, for defending the condemnation action. The disparity between the final offer of the City and petitioners final demand, when considered in light of the jury verdict clearly indicated litigation expenses would be appropriately awarded. On the motion to award litigation expenses, however, the court ruled that litigation expenses would not be awarded because petitioners' attorney, Richard F. Desmond and respondent attorney G. Richard Brown had executed a written stipulation on November 6, 1974, which purported to waive petitioners' rights to receive such litigation expenses. The existence of the "secret" stipulation came as a complete surprise and shock to petitioners especially since Desmonds' attorney's fees approximated the entire award and various trial strategies had been reluctantly agreed to, solely to improve petitioners' ability to recover all litigation expenses.

Desmond admitted to petitioners on November 23, 1977, that he had committed malpractice by entering into stipulation with respondent city attorney and that, as a consequence, he had a conflict of interest. The fact that the stipulation had been in existence for three years previously without disclosure to petitioners indicates that a conflict existed during most of the course of his representation. Nonetheless, Desmond agreed to pursue reversal of the denied expenses and exclusion of evidence regarding the pre-condemnation actions taken by the respondent to down zone the subject property. Desmond later filed a notice of appeal specifying only a "portion" of the judgment to be appealed and then withdrew from representation. Petitioners then hired attorney William Sherwood, to pursue the litigation expenses when Desmond reversed by surprise and withdrew from representation during appeal before the Third District Court of Appeals.

Sherwood was successful in obtaining a reversal of denial of litigation expenses on appeal and the matter was remanded to the trial court for further proceedings consistent with its ruling. The condemnation judgment specified deposit of the "total sum", including accruing interest at 7%, as a condition of entry of a final order of condemnation. However, the respondent was granted the final order of condemnation without paying the total sum of the judgment into court. Respondent waited the full 30 days after the remittitur issued from the appellate court before making any deposit whatsoever. Said deposit occurred on May 15, 1981, and consisted of the principal amount of the judgment only, with no interest whatsoever. The respondent argued that it was entitled to offset interest because of petitioners' possession of the property

after judgment and filed a motion to have the right to offset interest. Sherwood filed a concurrent motion for award of litigation expenses, and both motions were heard on June 12, 1981. Justice William Newsom, who had presided over the eminent domain trial, considered the issue of offset against the accrued interest and ruled that the value of the possession under the circumstances was nominal and that $750.00 per year could be offset against interest.

With respect to the question of litigation expenses, the purpose and scope of the hearing was to determine "entitlement" to expenses in accordance with the statutory prerequisites for such an award, not the amount to be awarded if such entitlement were found. The court set a later date for a determination based upon evidence to be submitted at that time, when it ruled that petitioners were to be awarded litigation expenses. The subsequent hearing on the appropriate amount of litigation expenses was never held. It was obscured by the issue that had arisen between petitioners and respondent regarding the deposit of the correct amount of interest and whether its earlier deposit of the principal amount of the judgment stopped the running of interest. This matter was argued to the court and submitted for ruling on the correct calculation of interest at the same time as the litigation entitlement issue and interest offset issue. The minute order granting litigation expenses however failed to address the interest calculation issue.

Thereafter, on September 28, 1981, petitioners' attorney Sherwood filed a motion for implied abandonment and dismissal of the condemnation proceedings, based upon former Code of Civil Procedure Section 1255a. The respondent responded by filing a motion to reconsider the award of litigation expenses. On October 9, 1981 or four days prior to the hearing on the pending motion to dismiss, the respondent deposited interest accrued to the date of deposit (May 15, 1981) of the principal amount, less the annual interest offset, in the amount of $20,748.77. This amount had been withheld by the respondent based upon the claim of offset for petitioners' post-judgment possession of the subject property. The deposit occurred five months "after" deposit of the principal amount of the judgment. It was the respondents' position that interest on the latter funds was not required.

The motion to dismiss based upon C.C.P. Section 1255a and the respondents' motion to reconsider the litigation expense award were submitted on October 13, 1981. No ruling was forthcoming from Justice Newsom until March 16, 1982. The ruling did not address either motion, but ruled instead on a matter never argued or requested, namely, the amount of litigation expenses that petitioners would recover.

Justice Newsom awarded $20,000.00 for trial counsel Desmond, $20,000.00 for Sherwood, and $2,500.00 in miscellaneous costs. The order was subsequently amended to include $18,500.00 for appraisal and engineering fees incurred in the condemnation.

The arbitrary nature of the award is evident from the fact that counsels' fees were equal when in fact petitioners were billed $69,556.72 by petitioners' trial counsel Desmond and $21,200.52 by counsel Sherwood up to the time of the court's award. To equal the value of counsels is patently arbitrary and capricious given the evidence of actual cost incurred. This is especially true when such an award does not relieve a party of the responsibility of paying more

than the court believes is reasonable. Petitioners moved to set aside this ruling on the grounds that petitioners had not been afforded a hearing, had not requested the order in the first instance and that it was patently insufficient. The motion was denied.

It was at this point that attorney Sherwood declined to represent petitioners further with respect to appeal of the litigation expenses and denial of the motion to dismiss and also with respect to an independent malpractice action against attorney Desmond. After exhaustive search, petitioners retained the third attorney J. Collinsworth Henderson. The difficulty in locating substitute counsel arose from several factors, the complexity of condemnation actions generally, the relatively small number of attorneys who practice condemnation law, and most importantly, the reluctance of many area attorneys to pursue a malpractice action against a prominent and powerful local attorney such as Desmond. Attorney Henderson affirmatively misrepresented petitioners. Contrary to what petitioners were told, attorney Henderson had no experience whatsoever either in condemnation practice or in malpractice litigation and had no jury trial experience.

Appeal was filed asserting the impropriety of entry of a final order in condemnation, when the conditions of payment specified in the judgment had not been satisfied. Such failures resulted in an implied abandonment of the judgment and further that the litigation expenses were insufficient and fixed without an opportunity to be heard on the amount to be awarded.

Henderson prepared and filed briefs, indicating petitioners were proceeding "in propria persona". The Court of Appeal disagreed with each contention purporting that an implied abandonment required some subjective intent on the part of the public entity to abandon the proceedings before the judgment would be nullified.

The statute in question, former CCP Section 1255a, stated: "Failure to comply with Section 1251 of this code shall constitute an implied abandonment of the proceeding." Former Section 1251 stated in relevant part: "The plaintiff must within thirty days after final judgment pay the sum of money assessed . . ."

The court reasoned that the legislature intended to "protect the public entity" by enacting this section, relying upon secondary commentary of a C.E.B. author and disregarding the observations of its brethren on the bench who agreed with County of Los Angles v. Bartlett (1963) 223 Cal App. 2d 353, 358 that . . ."every requirement of the statute giving the least semblance of benefit to the owner must be complied with . . ." it was the legislative intention to require dismissal when the award has not been paid as provided by Section 1251 . . ."30 days".

The litigation expense issue was dispensed with summarily as well. The court held the trial judge was sufficiently aware of the value of trial and appellate counsel's services to make a determination, even in the absence of any presentation of evidence or argument directly upon the matter at issue.

Petitioners did not obtain an abandonment of the condemnation judgment or a reversal of the order awarding litigation expenses. Attorney Desmond then filed a lien against the

condemnation judgment for attorneys fees in the full amount charged, which meant that approximately $69,000.00 of the $96,000.00 judgment was claimed as attorneys fees in a case where petitioners had been awarded attorneys fees. In addition, Sherwood placed a lien on the judgment for an additional $13,231.65 in fees, disallowed by Justice Newsom because they related to the abandonment and dismissal motion which he refused to grant.

The evidence was uncontroverted that respondent failed to deposit "any" interest until four days before the hearing on the motion to dismiss, by which time all of Sherwood's fees had been incurred, although petitioners had never been billed. The exclusion of the fees from the litigation expense award eroded the compensatory portion of the judgment and in fact deprived petitioners of just compensation as required by both State and Federal Constitutions.

At this point the condemnation action was splintered into a malpractice action against Desmond and a conflict with Sherwood over the claimed balance of his fees. Sherwood had agreed to handle oral argument on the implied abandonment and litigation expense issue if petitioners agreed to give him a specific lien on any "additional" litigation expenses to be awarded by the Court of Appeal. Petitioners agreed and attorney Henderson prepared a document, which appeared to express this agreement in plain terms. When the Appellate Court refused to increase the litigation award to cover the additional fees claimed by Sherwood, he filed a motion in the original condemnation action to be paid out of the original judgment, contrary to the clear language of the agreement that such a lien would arise upon, and be solely payable out of any supplementary award by the Court of Appeal or by the trial Court on remand.

Prior to hearing on Sherwoods' motion for payment out of the condemnation fund, Henderson had been concurrently handling the malpractice against Desmond. Henderson was given summons and complaint for amendment and service on Desmond, and appeared to have the matter under control. The history of that action reveals the inadequacy of his representation.

Desmond filed his own action for payment of attorneys fees, and, in what was then described as "an abundance of caution" by Henderson, a cross-complaint in malpractice was filed in Desmonds' fee action.

Shortly thereafter and at a point in which Henderson had been handling the Desmond malpractice action, Desmond successfully obtained a dismissal for Hendersons' failure to timely return the original summons and proof of service. Petitioners were then forced to rely solely upon the cross-complaint. This put petitioners in the procedural posture of having filed malpractice of Desmond only after he had filed against petitioners for his attorney fees, a terrible disadvantage.

Petitioners continued to receive regular and extensive billings from Henderson for work allegedly performed in preparing for trial with Desmond. Henderson had the case for 3 years without even taking Desmonds' deposition or engaging in any substantial discovery whatsoever. Sherwood filed the motion for payment of his fees out of the condemnation judgment, which remained intact pending appeal of petitioners' motion to dismiss the condemnation for implied abandonment. Henderson declared a conflict based upon his preparation of the Sherwood

agreement and filed a motion to withdraw as petitioners' attorney of record. Both Hendersons' motion and Sherwoods' motion were scheduled for hearing the same day. Prior to the hearing of both motions, but while both were pending, Henderson appeared at a trial setting conference and committed petitioners to a trial date on the Desmond attorneys fee and malpractice case. Henderson then appeared at the motion to withdraw hearing and over petitioners' objections, was allowed to withdraw. The moment the order was out of Judge Wayne Wylies' mouth, Henderson was taking the witness stand to testify that he understood the Sherwood agreement he prepared to specify the conditions of payment to Sherwood to require payment immediately in full, out of the condemnation fund, and contrary to petitioners understanding, payment was not conditional upon recovery of additional amounts and even though he was petitioners attorney and used the term "lien", what he really meant was an assignment of a portion of the funds such that no separate action or trial was necessary for Sherwood to establish his right to the fees and payment out of the condemnation fund. Judge Wylie, incredibly granted the motion and Sherwood, was allowed to withdraw the sum of $13,231.65 immediately from the condemnation fund.

Now petitioners had to face a trial against Desmond, in pro per, to a complex malpractice case and were not prepared. Petitioners began a virtually statewide search to obtain counsel. Again, several factors consistently militated against any attorney becoming involved. The best petitioners could do was to obtain a conditional agreement to petition the trial court for a continuance of the trial date to allow discovery to be conducted by substitute counsel. Judge Wylie was not receptive to such a continuance and repeatedly berated petitioners for not having obtained counsel sooner, despite testimony that petitioners had contacted dozens of attorneys in the several months since Hendersons' withdrawal. At the continuance motion hearing, before Judge Richard Couzens, the attorneys for Desmond countered that they had discussed the case at length with the prospective attorney and his response was non-committal. Judge Couzens phoned the attorney and was not personally satisfied that he would accept the case if a continuance were granted. Judge Couzens denied the continuance request and petitioners were required to appear in propria persona at Desmonds' trial.

In petitioners' cross-examination of Desmond at trial, Desmond admitted the stipulation was a mistake, but he qualified his testimony by saying that he informed petitioners that "maybe" he had committed malpractice. Petitioners testified that his words were direct and unqualified, that he admitted he had committed malpractice by execution of the secret stipulation.

The trial Judge, Charles T. Fogerty, non-suited Petitioners on the cross-complaint, stating on the record that petitioners needed to have an expert witness testify that it was malpractice and that Desmonds' testimony and prior admission was not sufficient. Case law indicates an admission of negligence by a professional is sufficient to take the case to jury.

The jury verdict reduced Desmonds' fees from $69,556.72 to $48,000.00. Judge Couzens increased the amount by granting prejudgment interest to Desmond of $19,918.36. The prejudgment interest was absolutely unjustified because Desmonds' demand was always more than he was entitled to. Petitioners could not have avoided the accrual of interest except

by paying more than was owed. Petitioners were entitled to an offset which was unliquidated and had not been determined by a court or jury and was not therefore subject to calculation.

The failure to grant a continuance, the non-suit and the prejudgment interest award were all appealed. During the pendency of the appeal Desmonds' attorneys applied ex parte, for a writ of execution against the condemnation funds on deposit and obtained possession of the entire amount claimed, including the prejudgment interest, before petitioners were aware of the action.

Again, petitioners encountered Justice Keith F. Sparks, sitting on the panel at the state Court of Appeal, stating the denial of the continuance was not an abuse of discretion because of warning by the trial judge on several occasions to obtain new counsel and petitioners allegedly neglected or refused to do so. That the non-suit was also proper because petitioners needed an expert witness to establish damage as a result of the secret stipulation.

The trial court focused on the necessity of an expert to establish negligence, not damage, resulting there from. Damage was subject to proof, because Sherwood had to be employed to prosecute the appeal, to have the effect of the stipulation voided. The trial Court would have awarded fees in the first instance. The stipulation was secret, collusive and a fraud. Petitioners testified to the mental and emotional anguish it caused. Such is cognizable legal damage, which must come from the victim, not from the lawyer.

At this point petitioners turned to the actions and abuses of Henderson to provide some form of relief for the morass of actions taken and purportedly committed for petitioners' benefit over the prior three years.

Petitioners finally procured the services of yet another attorney, George Mandich, to pursue the malpractice action against Henderson. Mandich gave petitioners every indication of capability and desire to handle the malpractice action to conclusion. He was aware of petitioners' prior history of misfortune and he was particularly aware of petitioners' susceptibility to severe emotional distress and breakdown if we were once again abandoned or deceived by counsel. He assured us that he was a man of integrity.

As should be apparent by the course of things past, such was not to occur. Henderson complained for $15,000.00 "additional" fees, but quickly dismissed the action at the commencement of trial upon advice of counsel. However, Henderson did persuade the trial judge, George Yonehiro, to rule that any actions taken by Henderson after the order granting withdrawal was issued, was irrelevant and would not be discussed before the jury. This ruling was issued in response to a motion in limine to exclude evidence of any post-withdrawal conduct. The order could not have been more erroneous or contrary to statute, rules of ethics and existing case law.

Attorney Mandich asked Judge Yonehiro if he could conduct voir dire of petitioner William Zisk as an offer of proof to test the evidentiary limits of the court's ruling. This was allowed, but when Mandich inquired as to Henderson's conduct, the court stated that he was violating the

terms of the in limine order by inquiring into such matters. At this time, Henderson's counsel moved for a non-suit on the basis of insufficiency of the offer of proof.

While petitioner William J. Zisk was still on the stand with wife Lois E. Zisk in the audience, Mandich, our attorney, "left the courtroom". Everyone present assumed that the departure was temporary, but after a few minutes of silence, the court ordered the bailiff to summon Mr. Mandich back to the courtroom. Mandich was located at his car in the parking lot and stated that he would not be returning because of the court ruling.

The bailiff returned to court and reported Mandichs' response, which was a tremendous blow to petitioners. The fact that the nightmare could continue and even intensify in such a manner was and is beyond comprehension, beyond mere coincidence, misfortune, and literal belief. Judge Yonehiros' response was to question whether Henderson's counsel wanted to renew his non-suit motion. The motion was renewed. The court asked petitioners for any response, acknowledging that petitioners were operating under a "vast handicap". When no coherent response was forthcoming, the motion was granted and judgment entered for Henderson.

Petitioners filed Notice of Appeal in propria persona on August 4, 1986, discharging Mandich from representation in the process. When the members of the panel in the Third District Court of Appeal was announced to include Justice Keith F. Sparks, "again", petitioners requested recusal based upon prior involvement in the case to the point where he could not be impartial. This recusal motion was denied by written order dated March 22, 1988. A decision written by Justice Keith F. Sparks was issued April 13, 1988 which purports to grant a new trial against Henderson.

Respondents continued to purposefully and fraudulently increase the floodplain elevations on petitioners subject property from 146.0 feet to 151.0 feet above mean sea level.

On October 16, 1991, petitioners filed a complaint in Placer County Superior Court (No. S-1495) seeking (1) declaratory relief to determine validity of ordinance, Code of Civil Procedure § 1060 (2) damages for negligence and intentional tortuous conduct causing personal injury and property damage (3) intentional infliction of emotional distress.

The complaint was amended and served on respondents on October 14, 1994. On November 19, 1994 respondent moved to dismiss for lack of prosecution and in the alternative, demurrer to the verified complaint.

On December 27, 1994 pursuant to California Code of Civil Procedure § 170.3 (C), (1), petitioners filed objection to selection of Judge[s] James L. Roeder, J. Richard Couzens and James D. Garbolino. On the same date, pursuant to Code of Civil procedure § 170.1, petitioners filed statements of disqualification's for named judges to hear or participate in this matter. Respondents failed to respond within ten (10) days and were disqualified "as a matter of law". Respondents proceeded to "whiteout and back-date" court documents to avoid

disqualification and then Judge Roeder summarily dismissed petitioners complaint on January 30, 1995.

On February 14, 1995, petitioners filed in the Supreme Court of the State of California, a verified petition for review of the denial of writ of mandate by the Third District Court of Appeal. The California Supreme Court denied petitioners' petition for review on April 12, 1995.

On November 24, 1995 petitioners filed No. Civ.-S-95 2134 EJG/GGH in Federal District Court for violations of the Fifth and Fourteenth Amendments to the Constitution of the United States and conspiracy to violate and violation of petitioners civil rights.

The complaint was amended and served on respondents on February 6, 7, and 8, 1996. Absolutely "no written response", whatsoever, was received by petitioners from respondents, or the district court during the twenty (20) days that followed.

Judge Garcia voluntarily recused himself on February 29, 1996, due to his prior affiliation as a partner in respondent counsels' law firm of Porter, Scott, Weiberg & Delehant. Judge Garcia was replaced with Judge William A. Shubb, whom petitioners learned had his daughter, Carrisa A. Shubb, employed as an attorney with the very same respondent counsels' law firm, Porter Scott, Weiberg & Delehant.

Before Judge Shubb made "any" rulings in the case, petitioners requested his "immediate" recusal pursuant to title 28 U.S.C.A. § 455(a). Judge Shubb refused to recuse, refused to enter default and proceeded to summarily dismiss all but one (1) cause of action in petitioners' verified civil complaint, then recused.

Judge Shubb was replaced with Judge Garland E. Burrell Jr., who refused to vacate Judge Shubbs' orders, refused to enter default and then summarily dismissed petitioners last remaining cause of action.

The record in this proceeding is uncontroverted. Respondents are in default, have never been relieved of default and are still in default.

The history of this litigation has been spawned by respondents' deceptive and fraudulent actions so long ago. Petitioners have been the victims of a continuous stream of tortuous conduct engaged from 1967 forward and implemented and perpetuated by every attorney, trial judge and appellate justice who has participated thereafter. Laws designed to protect citizens and property owners from the tyrannous abuse of authority and power have been disregarded at every stage of litigation resulting from condemnation. The courts have refused to correct the abuse and lawlessness upon the fallacious and destructive justification that the end justifies the means. The abuses and injustices have continued with the participants undoubtedly encouraged by court inaction.

It is clear that something more than misfortune or coincidence is at work in these cases. Could such a tale be the product of our legal system operating within ordinary tolerances for error and occasional injustice? The legal system to this point has utterly failed because all participants' without petitioners' knowledge have combined to make it so. As a consequence, petitioners have improved their property by their own hands at tremendous expense of time and effort, forcibly removed from petitioners by fraudulent means, upon purported compensation that was itself preyed upon by voracious and unethical attorneys. Is this the true character of our constitutional rights and justice under our legal system?

Is it nothing more than a dangerous and foul back alley, populated by thugs who are free to gang up on all who enter seeking only what is promised at the entrance, impartial justice and the right to redress for wrongs committed? If it is not so characterized, how has it become so, for petitioners?

Petitioners pray for investigation that is not only necessary but appropriate to redress the wrongs obviously and demonstrable committed, to correct and punish the abuses chronicled herein. Petitioners have never had an opportunity to present to an impartial tribunal, the fraud and deceit and deprivation of constitutional rights practiced upon petitioners, which has taken petitioners' private property, years of petitioners lives, petitioners entire life savings, retirement securities, emotional tranquility, and petitioners right in pursuit of happiness to build the home of our dreams on our private property.

Issue orders to annul the eminent domain action Nunc Pro Tunc, based upon the extrinsic frauds perpetrated, including violations of due process, equal treatment and deprivation of just compensation allowed to pass uncorrected by the interested state and federal courts. Order the City of Roseville, California, and the attorneys and judges involved to show cause why the matters transpired have been allowed to mock our system of justice. Order each to show cause that any matter stated herein is not the absolute demonstrable truth, that there are definite unclean hands.

The present status of matters is a travesty of justice, and every moment it continues is a continuing infliction of pain upon petitioners and a decay of democracy. Windows have been broken out of our vehicles and home, the cabin trashed, outbuildings set on fire, strange people and vehicles on our property, crank calls and we fear daily for our lives. The recent deaths of my spouse Lois E. Zisk on November 22, 2000, and my son William Zisk Jr. on February 17, 2002 are very suspect. Petitioners pray this madness and abuse stops and that those perpetrating the terrorism be brought to justice, as the result to petitioners simply seeking to keep property that is rightfully ours, and not that of the City of Roseville.

The only resolution and relief that remains is complete investigation and prosecution by Federal and State Jurisdictional Authority.

Petitioners hereby respectfully request a full scale investigation to correct and vacate the massive continuous stream of controlling errors of law and abuses chronicled above.

"Thirty-five years ago", petitioners embarked on a project to build a home of our dreams on "our private property". The application as submitted to respondents was in full compliance with all land use zoning regulations and general plans at that time. Today, not only does petitioners not have the home of our dreams on our private property, but our property itself has been forcibly and fraudulently removed from our possession, for no lawful reason, whatsoever, after tremendous expenditures in preparation of our home site as required by respondents. Petitioners have been forced to expend vast amounts of litigation expenses and attorney fees defending respondents abusive and unwarranted actions, while respondents systematically and fraudulently down-zoned petitioners' entire 12.2 acre parcel to a public use as noted above.

During the course of this entire thirty-five (35) year ordeal, petitioners have never received one cent in any form of compensation, while being required to expend hundreds of thousands of dollars of our personal funds to defend the massive continuous stream of controlling errors of law and abuses chronicled above. Is this the true character of our constitutional civil rights?

I, William J. Zisk, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verified statement was executed on April 2, 2004 at Roseville, California.

_____

William J. Zisk

VERIFICATION

I, William J. Zisk, am the spouse of the deceased Lois E. Zisk in the above captioned matter. I have read the foregoing VERIFIED STATEMENT OF THE HISTORY OF THE PROPERTY OF WILLIAM J. ZISK AND LOIS E. ZISK, 205 THOMAS STREET, ROSEVILLE, CALIFORNIA 95678, and am familiar with its content. The matters stated herein based on personal knowledge and information are true and correct. 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 under the laws of the State of California that the foregoing is true and correct.

Executed this April 2, 2004 at Roseville, California, 95678.

_____

William J. Zisk
205 Thomas Street
Roseville, California 95678-1858
Telephone: (916) 782-2233

As to the alleged claim of ownership of Zisk property, Assessors Parcels No.(s) 013-040-003 and 013-040-005 by the City of Roseville, on March 23, 2004 William J. Zisk hand carried a written request under the public information act to Roseville city attorney, Mark Doane to provide me with an immediate written response to twelve (12) direct questions relating to the City of Rosevilles' alleged claim to legal title ownership of parcel(s) 013-040-003 and 013-040-005. The March 23, 2004 letter to Mr. Doane was as follows:

William J. Zisk
205 Thomas Street
Roseville, California 95678

Telephone: 916-782-2233
FAX: 916-783-3408

March 20, 2004

Mark J. Doane
City Attorney
City of Roseville
311 Vernon Street
Roseville, CA 95678

RE: Parcels: 013-040-003-000
013-040-004-000
013-040-005-000

Subject: LEGAL TITLE OWNERSHIP

Mr. Mark J. Doane:

As the city attorney for the City of Roseville, you have publicly stated City fee simple title ownership of all or portions of parcels 013-040-003, 013-040-004, and/or 013-040-005. Pursuant to the Public Information Act, provide me with an immediate written response to the following:

1. THE EXACT DATE(S) OF PURPORTED ACQUISITION.

2. THE EXACT APPRAISED VALUE(S) OF EACH OF THE PURPORTED ACQUISITION(S).

3. THE ZONING AND LAND USE DESIGNATION OF EACH OF THE PURPORTED ACQUISITION(S) ON THE DATE(S) OF PURPORTED ACQUISITION(S).

4. THE EXACT DATES OF NEGOTIATIONS FOR THE PURPORTED ACQUISITION(S).

5. THE EXACT REASON(S) OR PURPOSE(S) THAT REQUIRED THE PURPORTED ACQUISITION(S).

6. THE SPECIFIC PROJECT(S) THAT REQUIRED THE PURPORTED ACQUISITION.

7. THE SPECIFIC PUBLIC NECESSITY THAT REQUIRED THE PURPORTED ACQUISITION(S).

8. THE EXACT DATE(S) IN WHICH THE PAYMENT OF THE TOTAL SUM OF THE ACQUISITION(S) WAS PURPORTEDLY PAID TO WILLIAM J. ZISK AND LOIS E. ZISK.

9. THE EXACT DATE(S) IN WHICH THE CITY PURPORTEDLY TOOK POSSESSION OF THE PURPORTED ACQUISITION(S).

10. THE EXACT DATE(S) IN WHICH THE CITY FULFILLED THE CEQA REQUIREMENT FOR THE PURPORTED ACQUISITION(S).

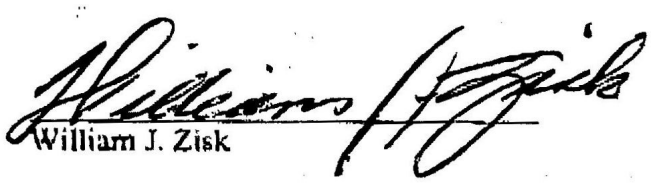
11. THE EXACT DATE(S) IN WHICH THE CITY PROVIDED A PUBLIC HEARING FOR THE BENEFIT OF WILLIAM J. ZISK AND LOIS E. ZISK REGARDING THE PURPORTED PUBLIC NECESSITY FOR THE PURPORTED ACQUISITION(S).

12. THE EXACT DATE(S) IN WHICH THE CITY ACQUIRED ANY AND ALL ADJOINING PARCEL(S), INCLUDING EXACT TOTAL ACREAGE, TOTAL APPRAISAL VALUE, AND TOTAL ACQUISITION PRICE, THE PURPOSE OR PUBLIC NECESSITY OF THE ACQUISITION(S), THE DESIGNATED ZONING AND LAND USE FOR EACH PARCEL, AND THE DATE(S) IN WHICH THE CITY TOOK POSSESSION.

If you have any question(s) on the foregoing, please do not hesitate to contact me immediately at the above.

Thank you for your courtesy.

Sincerely,



On March 24, 2004, at approximately 5:15 p.m., city attorney Mark Doane hand carried a large brown envelope to me at my residence at 205 Thomas Street. The envelope contained nine (9) pages, purportedly in response to the twelve questions that William J. Zisk had hand carried to him at his office at 311 Vernon Street the day before, regarding his claim of ownership by the City of Roseville of Parcel(s) No.(s) 013-040-003 and 013-040-005 of the Zisk property. The brown envelope contained a two page letter dated March 24, 2004 addressed to William J. Zisk from city attorney Mark Doane, summarizing a small isolated "portion" of thirty-one (31) years of litigation between the City of Roseville and William J. Zisk and Lois E. Zisk; a three page document entitled final order of condemnation, dated April 19, 1982 and August 30, 1983; a copy of a one page document entitled order re trust funds on deposit, dated April 9, 1982; a copy of a document entitled accounts payable document in the amount of $99,329.57 to William J. Zisk and Lois E. Zisk, dated April 9, 1992; a copy of a one page document entitled County of Placer office of auditor-controller admittance advice with a copy of a check in the amount of $99,329.57 to William J. Zisk and Lois E. Zisk, dated April 17, 1992; a one page copy of an envelope postmarked April 20, 1992, purportedly addressed to William J. Zisk and Lois E. Zisk. The nine page contents of the brown envelope clearly does not support any claim of ownership by the City of Roseville of Parcel(s) No.(s) 013-040-003 and 013-040-005 of the Zisk property, nor does it respond to the twelve questions regarding claim of ownership posed to city attorney Mark Doane by William J. Zisk on March 23, 2004.

Review of the above twenty (20) page VERIFIED STATEMENT OF THE HISTORY OF THE PROPERTY OF WILLIAM J. ZISK AND LOIS E. ZISK, 205 THOMAS STREET, ROSEVILLE, CALIFORNIA 95678, will controvert any and all claims of ownership by the City of Roseville.

Mr. Doane did not respond to any and all of the twelve questions regarding ownership.

There is no valid response to any of the questions which are simple requirements to obtaining ownership. The City of Roseville does not hold ownership of any part of the Zisk property. A thorough investigation is needed to resolve this matter.

For clarification purposes the nine page contents of the brown envelope hand delivered by Mr. Doane on March 24, 2004 to William J. Zisk at his residence on the subject property at 205 Thomas Street, Roseville, California 95678 is as follows:

CITY OF ROSEVILLE
TRADITION·PRIDE·PROGRESS

City Attorney
311 Vernon Street
Roseville, California 95678-2649

March 24, 2004

Mr. William J. Zisk
205 Thomas Street
Roseville, CA 95678

Dear Mr. Zisk:

This responds to the letter you hand delivered to me yesterday, March 23rd, regarding the City of Roseville's acquisition of a portion of your property for public purposes. Preliminarily, I need to note that on a number of past occasions you and I have reviewed the same information and questions contained in your latest letter. The matters referenced in your letter stretch back over a thirty-one year period and involve no less than six state or federal lawsuits [1] including appeals, not to mention numerous related lawsuits between you and the lawyers who represented you in those actions. Since you were the primary litigant in all of those cases, and since I only arrived on the scene in 1994, your memory and files are undoubtedly more extensive than mine. Accordingly, this letter will not attempt to exhaustively list every milepost in your lengthy dispute with the City. Rather, I intend to concentrate on the core issues: the City's ownership of the property in question; the amount and location of the funding for the acquisition; and the public necessity for the acquisition.

The City's acquisition of the property referenced in your letter dates back to a Final Order of Condemnation issued by the Placer County Superior Court on April 19, 1982 (copy attached). That Final Order condemned a fee simple ownership interest in the property to the City of Roseville for "public park, recreational, bicycle, hiking and maintenance purposes". The Order further notes that the City had deposited with the Court the correct amount of money to pay for the property, including interest and costs.

Following the entry and recording of that Final Order of Condemnation, you filed several appeals, and lawsuits were exchanged between you and your lawyers [2] that resulted in adjustments being made to the amount that the City had deposited with the Court. For example, attorney Sherwood succeeded in obtaining a court order permitting him to withdraw $13,231 from the condemnation deposit to satisfy unpaid legal billings. At any rate, once the dust from all that litigation settled the Placer County Superior Court

[1] City vs. Zisks (1973) Placer Superior Court No. 41104 (Condemnation); Zisk vs. Roseville (1984) Placer Superior Court No. 69081 (Flood Ordinance); Zisk vs. Roseville (1986) Placer Superior Court No. 77050 (Flood Damage); City vs. Zisk (1989) Placer Superior Court No. 84527 (Nuisance); Zisk vs. City (1994) Placer Superior Court No. S-1495 (Zoning Ordinance); Zisk vs. City (1995) Federal District Court No. CIV-S-95-2134 EJG (Civil Rights)

[2] For example: Desmond vs. Zisk, Superior Court No. 54839; Sherwood vs. Zisk, Municipal Court No. CV 2-93; Zisk vs. Henderson – case citation unknown.

issued an Order on April 9, 1992 which noted that the remaining monies on deposit in the (now 19 year old) condemnation action had not been claimed by the Zisks, even though the case had been "fully litigated and final judgment...entered" in the case. The Order therefore, ordered the court clerk to pay over the remaining funds in the account over to you and your wife (a copy of the Order is attached).

The court clerk and the County Auditor complied almost immediately. A check in the amount of $99,329.57 and payable to you and your wife was issued on April 17, 1992. The check was mailed on April 20, 1992 (copies of the accounts payable warrant, the check and the postmarked envelope are attached). For reasons unknown to me, you never cashed that check. Later, due to a change in the law the account holding the deposited condemnation proceeds was transferred from Placer County to the State Treasurer's Office, where it remains to this day. The account contained $71,210.55 in June, 1994. The City has had no power or control over the account since at least the April 9, 1992 court order. I am informed that you may withdraw the remaining funds on account at any time you choose.

Finally, I draw your attention to the last two lawsuits listed in footnote 1. Recall that in those lawsuits you challenged a variety of City zoning, floodway and bike trail project activities under a variety of legal theories, including inverse condemnation, conspiracy to violate civil rights, intentional infliction of emotional distress and declaratory relief. Those lawsuits (and appeals) were decided against you and the cases were ultimately dismissed with prejudice. That means that you are legally barred from relitigating those issues or facts.

Sincerely,

MARK J. DOANE
City Attorney

Enclosures

cc: Transportation Commission Members
Mike Wixon
Mark Morse
Rob Jensen

Roseville CA 95678

OFFICIAL RECORDS
REQUESTED BY
City of Roseville

APR 19 11 27 AM '82

GAY TROMBLEY
PLACER CO. RECORDER

NO FEE REQUIRED

13702

FILED

APR 19 1982

GAY TROMBLEY
COUNTY CLERK OF PLACER COUNTY
BY _____ DEPUTY

VOL 2493 PAGE 174

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

CITY OF ROSEVILLE, a municipal corporation,

Plaintiff

v.

WILLIAM J. ZISK and LOIS E. ZISK, et al.,

Defendants

NO. 41104

FINAL ORDER OF CONDEMNATION

It appearing to the Court that Plaintiff City of Roseville has deposited into Court for the Defendants entitled thereto the sum of money assessed by the Judgment in Condemnation entered in this proceeding in Book 35 at Page 177, plus interest and costs in compliance with such judgment;

NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the real property situated in the County of Placer, State of California, known as Parcel and Parcel B, and more particularly described in Exhibit "A", attached hereto and made a part hereof, be condemned to Plaintiff City of Roseville for

Date Entered APR 19 1982

Book 49 Page 440

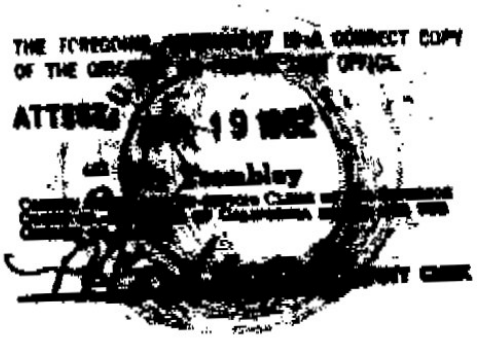
public park, recreational, bicycle, hiking and maintenance purposes, in fee simple absolute.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a certified copy of this order be recorded in the Office of the County Recorder of the County of Placer, State of California, and thereupon title to said property described in Exhibit "A" shall vest in Plaintiff and all interests of Defendants William J. Zisk, Lois E. Zisk, the County of Placer, Mary A. Zisk, trustor, Title Insurance and Trust Company, a corporation, trustee, and Marjorie Arnett, as Trustee under the Last Will and Testament of Mabel M. Phillips, deceased, beneficiary, in and to said real property shall be terminated.

DATED: April 9, 1975

JUDGE OF THE SUPERIOR COURT

vol 2493 rec 175



55

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All that portion of the South half of Section 35, Township 11 North, Range 6 East, M. D. B. & M., described as follows:

Parcel A Beginning at the South One-Quarter corner of said Section 35, thence from said point of beginning along the South line of said Section 35, South 89° 16' 53" West, 638.32 feet to the most southerly corner of that certain parcel of land described in the Deed recorded in Book 438, Page 319, Official Records of Placer County; thence along the easterly line of said parcel, North 01° 02' 38" West, 95.38 feet; thence leaving said easterly line, North 85° 41' 05" East, 186.03 feet; thence North 69° 42' 02" East, 208.98 feet; thence South 87° 34' 57" East, 257.38 feet to a point located on the east line of the Southwest One-Quarter of said Section 35; thence along said east line South 00° 30' 32" East, 163.00 feet to the point of beginning.

Parcel B Beginning at the South One-Quarter corner of said Section 35, thence along the east line of the Southwest One-Quarter of said Section 35, North 00° 30' 32" West, 202.00 feet; thence North 89° 16' 53" East, 804.00 feet; thence South 00° 30' 32" East, 202.00 feet to the south line of said Section 35; thence along said South line South 89° 16' 53" West, 804.00 feet to the point of beginning.

EXHIBIT "A" OF FINAL ORDER OF CONDEMNATION CITY OF ROSEVILLE V. ZISK PLACER COUNTY No. 41164

13702

Vol. 2493 Page 176 et seq. OR
When embossed and printed in purple, this is certified to be a true copy of the records of the Placer County Recorders Office.
Date Aug 31 1983 Gay Trombley, Recorder
By Ellen Mahoney Deputy

FILED

APR 9 1992

CARL DePIETRO
CLERK OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

CITY OF ROSEVILLE, a municipal corporation, Plaintiff, vs WILLIAM J. ZISK, LOIS E. ZISK, et al., Defendants.	)	No. 41104 ORDER RE TRUST FUNDS ON DEPOSIT

It appearing to the court that monies placed on deposit with the clerk of this court remain unclaimed by defendants and further finds that this case has been fully litigated and final judgment has been entered.

Good cause appearing therefore, it is ordered that the clerk pay over such funds remaining on deposit to the defendants and close out such trust account.

Dated: April 9, 1992

James E. Roeder
Assistant Presiding Judge

PLEASE FORWARD WITH WARRANT

MUST BE PAID BY

PLACER COUNTY

ACCOUNTS PAYABLE DOCUMENT

(Circle Transaction Type)

33 MEMO EXPENDITURE 50 ACCOUNTS PAYABLE SET UP

16

VENDOR NO. | PAY TYPE

ZISK, WILLIAM J. and LOIS E.

LAST NAME (40 Characters)

205 Thomas Street

ADDRESS (25 Characters)

DISTRIBUTION CODE

Roseville, CA 95678

ADDRESS (25 Characters)

CITY (25 Characters) STATE (2 Characters) ZIP (9 Characters)

DATE & A/P NUMBER

SHADED AREA FOR AUDITOR'S USE ONLY

PURCHASE REQ.	P.O./CONTRACT/ ENC	PAYMENT DUE DATE

MEMO EXPEND

№ 17496

TAX CODE	FUND/ORG.	ACCOUNT	TASK	OPTION	COST ACCOUNT	ACCT. REF.	AMOUNT	P/C	INVOICE (10 Characters)	DESCRIPTION/ PA # (25 Characters)
	35980	0554				01	83,154.35		41104	DP #5670 5/18/81 679-R
	↓	↓				02	16,175.22		↓	#1778 10/13/81 757-C
						03				Dispersement of fund that
						04				remain in trust per Court
						05				Order 4-9-92
						06				
						07				
						08				
						09				
						10				
						11				
						12				
						13				
						14				
						15				
						16				

TOTAL 99,329.57

SOCIAL SECURITY NO. OR FED. ID

EXPENDITURES AUTHORIZED AND APPROVED

DEPT./AGENCY AUTHORIZED SIGNATURE

DATE 4-9-92

58-00160 REVISED 1-19-90 DISTRIBUTION: ACCOUNTS PAYABLE WHITE–Auditor CANARY–Auditor Remittance (Optional) PINK–Dept.

VENDOR 888888888

COUNTY OF PLACER

OFFICE OF THE AUDITOR-CONTROLLER
REMITTANCE ADVICE

A959534

ZISK, WILLIAM J AND LOIS E

APR 17, 1992

FUND/ORG.	ACCOUNT	TASK	OPTION	COST ACCOUNT	P.O./CONTRACT	A/P NUMBER	INVOICE	AMOUNT
035980	0554					R6452901	41104	83,154.35
035980	0554					R6452902	41104	16,175.22

LEGAL TRUST

WARRANT TOTAL 99,329.57

COUNTY OF PLACER

WARRANT NUMBER

VOID AND CANCELLED IF NOT PRESENTED FOR PAYMENT WITHIN SIX MONTHS AFTER DATE OF ISSUE

AUBURN, CALIFORNIA
95603

11-4
1210

A 959534
A959534

APR 17, 1992

AMOUNT
***99,329.57

PAY EXACTLY NINETY-NINE THOUSAND THREE HUNDRED TWENTY-NINE DOLLARS FIFTY -SEVEN CENTS

SECURITY PACIFIC NATIONAL BANK
Auburn, California 95603

PAY TO THE ORDER OF
ZISK, WILLIAM J AND LOIS E
205 THOMAS ST

ROSEVILLE CA

000095678

KIMBUCK WILLIAMS, JR.
PLACER COUNTY AUDITOR - CONTROLLER

⑈1959534⑈ ⑆121000044⑆928⑈97132⑈

After 5 Days Return To

KIMBUCK WILLIAMS, JR.

AUDITOR-CONTROLLER

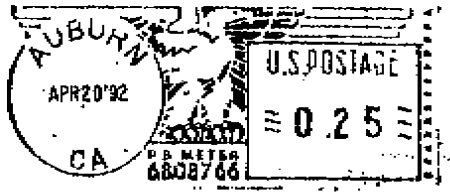
OF PLACER COUNTY

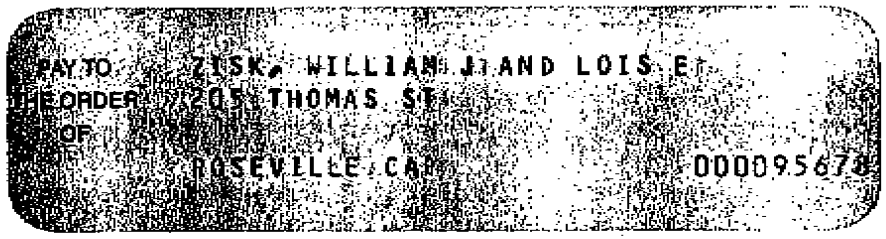
135 FULWEILER AVENUE

AUBURN, CALIFORNIA 95603

PRESORTED

FIRST-CLASS





The purpose of the DEIR is to identify, assess and quantify the impacts associated with the proposed development of a proposed bicycle trail within the Dry Creek corridor between Harding Boulevard and Royer Park on the physical, biological and socio-economic aspects of the Roseville community.

William J. Zisk and my deceased spouse, Lois E. Zisk have been resident property owners within the City of Roseville during the course of the past fifty (50) years and currently the owners, since 1966, of the 12.2 acre parcels located at 205 Thomas Street, commonly identified as assessor parcel(s) number(s) 013-040-003, 013-040-004 and 013-040-005, which includes approximately 1500 feet of Dry Creek. I/We have been consistently responding to a multitude of "proposed" bicycle trail environmental impact reports, which would directly impact our property located at 205 Thomas Street. We have consistently expressed our extreme opposition to any such proposal which has and would continue to significantly impact our property. CEQA requires the EIR to address the cumulative impacts in a unified and effective way and provide an individual project-level analysis.

For the record in this DEIR, I wish to continue to express my objection and extreme opposition to any consideration of a proposed bicycle trail on the north side of Dry Creek for the following reasons:

In order to understand the magnitude of impacts of such a proposal, it is necessary to summarize the thirty-five (35) year history of significant impacts endured by the Zisk family at 205 Thomas Street, which predate the suspect premature wrongful deaths of my spouse, Lois E. Zisk, on November 22, 2000 and my son William Zisk Jr. on February 17, 2002.

In 1966, William J. Zisk and Lois E. Zisk (Zisks') purchased the 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 properties 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, 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 submitted 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 February 23, 1967.

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 Roseville 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 on 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 Zisk's February 23, 1967 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 on their property 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 their requested study conducted by the U.S. Army Corps of Engineers in Sacramento entitled, FLOODPLAIN INFORMATION, DRY CREEK AND TRIBUTARIES, ROSEVILLE, CALIFORNIA, MAY 1973. It showed that a small portion of the Zisk property adjacent to Dry Creek was within the limits of a projected 100year flood. However, the maps submitted to the Corps by the City 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 taking into consideration the improvements to the channel of Dry Creek 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 new home at the designated location. The City has never accepted this revised position.

Between **May 11 and June 8, 1973** the Zisks did in fact re-apply 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 portion 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 longrange 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 and R-l-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 withhold further processing the Zisk application for a Lot Split and Use Permit until a reply was received from the Corps of Engineers.

On **August 29, 1973** the City Council adopted a "tentative" plan for a "proposed 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 were notified or effected.

On **August 31, 1973,** the Director of Public works for the City of Roseville Frederick L. Barnett wrote to the Corps of Engineers, summarizing a determination of the Roseville Floodplain Committee that no development be allowed within the designated 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 Frederick L. Barnett in commenting on the **June 1. 1973** Environmental Impact Report submitted by the Zisks, wrote to the Planning Director and advised that although his determination of 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 "tentative" 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 "tentative" plan for a bicycle trail and that the City's project was in conflict with the **Zisk's February 23, 1967** 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 proposed 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 and outside of the I00-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 County 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, publicly 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.

An actual controversy has arisen and now exists in that the floodplain zoning ordinances are tortuously false, discriminatory, invalid, illegal and unenforceable, both on their face and as construed, because they placed the subject Zisk property under floodplain zone restrictions, when the property is above the 100 year floodplain elevation, thus decreases value and prohibits the full use and enjoyment of the subject Zisk property, all of which is in violation of the Fourth, Fifth, Thirteenth and Fourteenth Amendments of the Constitution of the United States, the deprivation of Civil Rights under Title 42 of the U.S. Code, Sections 1983 and 1985, and Article I, Sections 1, 3, 6, 7, (a) (b), 9, 13, 15, 16, 17, 19, 24, and 26 of the Constitution of the State of California.

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 or during adoption of the Resolution to condemn.

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 pretrial 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 (former City of Roseville attorney) 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 (former City of Roseville attorney) 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, Justice Sparks 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 (former City of Roseville attorney) 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 the Zisks attorney Henderson for his representation in the legal malpractice against Attorney Richard Desmond, in the Citys' Eminent Domain Action No. 41104. Keith F. Sparks (former City of Roseville attorney) 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 Judgment was entered in the City of Rosevilles' eminent domain proceedings, Placer County Superior Court No. 41104. The relevant pertinent portion of the judgment 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%) per annum 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 late 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 judgment 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 l00-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. 8062, 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 as 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, 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 30 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 Brockman, 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 fraudulently 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. The entire subject Zisk property has been systematically, purposefully and fraudulently down-zoned to "permanent floodplain." Irreparable harm, damage, and injury has been done and will further follow, unless the acts and conduct of the members of the City Councils, City Commissions, City agents, and City employees, as heretofore complained of are enjoined, because the acts and conduct have the effect of altering the course of waters traveling through the City of Roseville and purposefully redirecting and increasing the flow of waters onto property owned by William J. Zisk and Lois E. Zisk.

William J. Zisk and Lois E. Zisk seek a determination as to the validity of the Ordinances, both on their face and as applied to their property, and a judicial declaration is necessary and appropriate so that the Zisks may ascertain their rights and duties.

The members of the City Councils, City Commissions, City agents and City employees and each of them, exhibited conduct which was intentional and malicious and done for the purpose of causing the Zisks to suffer and continue to suffer humiliation, mental anguish, and emotional and physical distress, and confirmed and ratified the conduct of each of the other members of the City Councils, City commissions, City agents, City employees and each of them, and such confirmation and ratification was done with knowledge that emotional distress would be and was hereby increased.

The Zisk's have 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. William J. Zisk 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 for flood encroachment permits, repugnant to the Declaration of Rights, Article 1, Section 1 of the State of California and Title 42 U.S.C.A. Sections 1983 and 1985 and the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Zisks have 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 of 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 has occurred, 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.

The Zisks have 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 sets; 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 cast 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 "wine-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 and the placing of a three (3) story sanctuary on top of the filled drainage swale (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. overcrossing structure over Atlantic Street at the Southern Pacific railroad track; the filling of 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 *"landfill dump sites".* Currently, erosion at the Saugstad Park dump 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 lever'* 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.

The hydrology analysis of these projects has been assessed on the basis of a "multiple choice" of hydrology studies, some of which have been fraudulently applied to achieve the purpose intended, especially on the Zisk twelve (12) acre parcel located at 205 Thomas Street.

The first and most accurate hydrology study was performed for the City of Roseville by the Sacramento Branch of Corps of Engineers in 1973. The peak discharge flows for a one hundred (100) year event on Zisk property were calculated to be 7,300 cfs.

A second hydrology study was performed by Gill & Pulver in 1983 for FEMA for flood insurance purposes. The peak discharge flows for a 100 year event on Zisk property were calculated to remain approximately the same at 7,300 cfs.

A third hydrology study was performed for the City of Roseville by Nolte and Associates in 1984. The peak discharge flows for a 100 year event on Zisk property were calculated by Nolte to be 16,140 cfs, fraudulently raising the 100 year flood elevations by approximately 5 feet on the Zisk property.

A fourth hydrology study was performed by Montgomery for Placer County in 1992. The peak discharge flows for a 100 year event on the Zisk property was calculated to be 10,360.

Currently, the City of Roseville is utilizing a Swanson Hydrology Study which does not appear to calculate peak discharge flows for a 100 year event but rather simply states that the current proposed project will not change the water surface elevations on Dry Creek. The same

Swanson Study also states that the planting of thousands of trees in the "floodway" of Dry Creek will not effect the "n" factor, backwater or water surface elevations!!

It does not take a rocket scientist to determine that the placement of thousands of trees in the "floodway", coupled with the placement of gabion structures, boulder revetments, weirs, concrete walls and sewer lines, narrowing the "floodway" width and raising the bottom of the streambeds, as well as the increases in peak discharge flows from 7,300 cfs to 16,140 cfs will obviously result in environmental consequences and significant "cumulative impacts", as well as significant impacts on human beings, either directly or indirectly.

The foregoing verified statement of the history of the property of William J. Zisk and Lois E. Zisk, 205 Thomas Street, Roseville, CA 95678 is by no means adequate and complete. It is only the tip of the iceberg.

The City of Roseville, as lead agency, in preparing this environmental document has an absolute conflict of interest in completing the preparation of CEQA/NEPA requirements.

The City of Roseville, as lead agency, is utilizing federal and state financial assistance and grants to cover-up and conceal the prior thirty (30) years of extended ongoing willful and reckless disregard for health and safety; the conspiracy to violate and violations of civil rights; deprivation of the constitutional requirements of equal treatment and application of the law; damages in inverse condemnation; negligence; intentional tortuous conduct; personal injury and property damage; intentional infliction of emotional distress; constructive fraud; search and seizure; invasion of privacy; malicious prosecution; discrimination; duress and obstruction of justice that has been incurred on the 12.2 acre Zisk parcel as a result of the Zisk familys' simple request to pursue the "American Dream" to build the home of our dreams on "OUR" privately owned property, located within the quiet, peaceful, passive surroundings adjacent to Dry Creek. The quiet peaceful passive surroundings were the result of the Zisk familys' seven (7) year reclamation project "so long ago" as well as the blood and sweat and financial burdens the Zisk family endured to achieve their goals. The DEIR remains silent on all of these issues and significant impacts.

The City of Roseville, as lead agency in the preparation of the DEIR remains silent on the issue of the history of the Citys' attempts to reposition the physical boundaries between the Zisk Property and the former Taylor property and the Citys' ownership uncertainties that exist at that location. (Parcel No. 013-040-003 and 013-040-004)

The photographic mapping used in the DEIR to illustrate a proposed alignment of a proposed bike trail on the north side of Dry Creek does not depict an accurate current topography of the centerline of Dry Creek and the adjacent land conditions as they currently exist in relation to a proposed bike trail alignment (Parcel(s) No.(s) 013-040-003 and 013-040-005).

The City of Roseville, as lead agency in the preparation of the DEIR remains silent as to the presence and existence of the historical natural drainage swale that originates at Atlantic Street and the Enwood District, travels through the Zisk property and exits into Dry Creek (Parcel(s) No.(s) 013-040-003, 013-040-004 and 013-040-005).

The City of Roseville, as lead agency in the preparation of the DEIR remains silent as to the presence and existence of the Zisk family historical, established water rights, both domestic and riparian on Assessors Parcels Numbers 013-040-003, 013-040-004 and 013-040-005.

The City of Roseville, as lead agency in the preparation of the DEIR remains silent as to a proposed bicycle trail alignment on the north side of Dry Creek at the west end of Parcel No. 013-040-005 and 013-040-004 that would require cutting, grading and filling of the steep embankment adjacent to the narrow section of Dry Creek at that location that has protected the Zisk property from hazards of flooding since 1966. The opposite bank of this narrow section of Dry Creek has already had the placement of over six hundred (600) yards of rip-rap placed into the channel of Dry Creek by Roberta Bechtel of 318 Maciel Drive, forming a wing dam and diverting floodwaters and currently eroding the north bank. At this same location, at the top of the north bank of Dry Creek, a proposed bike trail alignment would meet directly with a large oak tree and a large growth of elderberry bushes which provides habitat and nourishment for the protected and endangered elderberry beetle.

The City of Roseville, as lead agency in the preparation of the DEIR remains silent in desperation to attempt to overcome and conceal the thirty (30) years of conspiracy and tortuous conduct as described above, by falsely claiming ownership of assessors parcels 013-040-003 and 013-040-005 of the Zisk property. By taking this position in the DEIR the city is purposefully concealing the CEQA/NEPA requirements to respond to the past, present and future "significant cumulative impacts" of a proposed alignment of a proposed bike trail on the north side of Dry Creek through the Zisk property. By taking this position the city is attempting to avoid the liabilities and responsibilities of invasion of privacy, vandalism, break-ins, thefts, trespass, property damage, noise, pollution, wildfires, and the complete destruction of the passive natural surroundings adjacent to Dry Creek that the Zisk family worked so hard to achieve so long ago. The ability of the city to maintain control of any potential trail users to stay within the confines of a proposed alignment on the north side of Dry Creek would be a near impossibility.

The only logical and feasible and safe alternative alignment is to continue from the recently completed alignment of phase one on the south side of Miners Ravine Creek and continue beneath the Harding Boulevard bridge to the south side of Dry Creek and continue on the south side of "city owned" property on through to Lincoln Estates Park, and if so desired continue on through on "city owned" property to Evelyn Avenue. I have personally walked the portion of "city owned" property form Evelyn Avenue to Harding Boulevard on the south side of Dry Creek on several occasions and found that a narrow pathway currently exists in that area that is currently being used by both bicycles and pedestrians and is perfectly adaptable to expansion and use.

As to the history of the Zisk property and assessors parcels number 013-040-003, 013-040-004, and 013-040-005, I believe that a full scale and thorough state and federal investigation is necessary to resolve this matter.

Respectfully submitted,

_____
William J. Zisk

I, William J. Zisk, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verified statement was executed on April 19, 2004 at Roseville, California

_____
William J. Zisk

VERIFICATION

I, William J. Zisk, am the spouse of the deceased Lois E. Zisk in the above captioned matter. I have read the foregoing RESPONSE TO DRAFT ENVIRONMENTAL IMPACT REPORT FOR HARDING BOULEVARD TO ROYER PARK BIKEWAY PROJECT DATED FEBRUARY 2004, and am familiar with its content. The matters stated herein based on personal knowledge and information are true and correct. 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 under the laws of the State of California that the foregoing is true and correct.

Executed this April 19, 2004 at Roseville, California 95678

_____

William J. Zisk
205 Thomas Street
Roseville, California 95678
Telephone: (916) 782-2233