



## TRACY EARTH PROJECT

A 501(c)3 nonprofit, Est.201  
FOR OUR COMMUNITY, FOR OUR PLANET,  
FOR OUR FUTURE

Mayor Nancy Young  
Mayor Pro-Tem Veronica Vargas  
Council Member Dan Arriola  
Council Member Eleassia Davis  
Council Member Mateo Bedolla

Date: November 2, 2021

CC: Tracy Interim City Manager, Robert Adams,  
Tracy City Clerk, Adrienne Richardson  
adrienne.richardson@cityoftracy.org

Subject: Sustainability Task Force

Good evening Mayor Young and City Council,

Tracy Earth Project, is a 501(c)3 nonprofit, whose mission statement is advocating for environmental best practices, targeting sustainable generational investments benefiting the community. We have held events in Tracy that include our Annual Tracy Earth Day and more recently our partnership events with California Clean Air Day, Tracy Bike Life and the City of Tracy during the first weeks of October to help promote cleaner transportation options for a healthier community.

To understand why we come to you tonight we need to review some legislation and policies that were the catalyst in creating Tracy's Sustainability Action Plan. Beginning in 2006, Governor Schwarzenegger signed AB32, a mandate for cities to reduce their carbon emissions and established targets that address energy efficiency, water conservation, land use, and transportation, etc. which created grant funding and a manual to reach Global Warming Solution policies and best practices. (1)

In 2008, the City of Tracy received the Emerald City Award, a pilot program awarded to two cities in the state, that allowed grant funding to develop environmental sustainability programs. Tracy was able to obtain grant

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funding that completely paid for the construction of the Tracy Transit Station, meeting one of the Transit Oriented District or TOD goals which is outlined in our Sustainability Action Plan. (2)(3)

The other recipient of the Emerald City Designation was the City of Riverside. This city created the Green Accountability Performance (GAP) Committee, composed of dedicated volunteers who ensure the successful implementation of their city's Green Action Plan with effective stakeholder communication. (4)(5)(6)(7)(8)

The City of Tracy is currently in the process of updating the seven master plans that incorporate many of Tracy's Sustainability Action Plan measures. The Global Warming Solutions Act, AB 32 addresses "the serious threat to our economic stability, public health, natural resources and the environment of California. The adverse impacts of global warming include the exacerbation of air quality problems, a drastic reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residents, damage to marine ecosystems and the natural environment, and in an increase in the incidences of infectious diseases, asthma, and other human-related problems." (CA Air Resources Board).

Therefore, we come to the council to ask for your support in an Sustainability task force that will monitor Tracy's Sustainability Action Plan targets and measures by establishing efficient communication with the City and its community. As residents of California, our governors have made policy commitments to reach Global Warming Solutions targets by 2030 and 2045. We need to establish a monitoring group of stakeholders that has the responsibility to communicate the progress of the city's sustainability measures. The goal is to keep the Tracy Sustainability Action Plan robust and dynamic to meet our state's climate objectives. We believe a task force can be the driving force in reaching our state and our community's climate objectives.(9)

Thank you,  
Tracy Earth Project  
Board Members;  
Dotty Nygard, Director  
Leslie Swift, Co-Director  
Karen Moore, Secretary  
Cindi Reis, Treasurer  
Ron Riesling, Member

\*Palo Alto's communication tool on their Sustainability Action Plan (they updated their plan in 2020)  
<https://www.cityofpaloalto.org/City-Hall/Sustainability/SCAP>

\*\*this letter is posted on our website <https://tracyearthproject.com>

Website links noted above:

(1) <https://www.dgs.ca.gov/-/media/Divisions/OS/Policies/CASPBPM.pdf>

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- (2) <https://www.cityoftracy.org/home/showdocument?id=2488>, page 2
- (3) <https://www.cityoftracy.org/our-city/departments/public-works/citywide-sustainability>
- (4) <https://riversideca.gov/utilities/greenriverside/about-us/history.asp>
- (5) [https://riversideca.gov/utilities/greenriverside/pdf/Green Action Plan%202012.pdf](https://riversideca.gov/utilities/greenriverside/pdf/Green_Action_Plan%202012.pdf)
- (6) [https://www.ttownmedia.com/tracy\\_press/archives/beyond-green-tracy-seeks-emerald-status/article\\_74c8de4a-9c87-514e-9dac-d897005ff87b.html](https://www.ttownmedia.com/tracy_press/archives/beyond-green-tracy-seeks-emerald-status/article_74c8de4a-9c87-514e-9dac-d897005ff87b.html)
- (7) [https://www.ttownmedia.com/tracy\\_press/archives/tracy-wants-green-input/article\\_8aeafa58-b72c-576a-a530-401523414dfc.html](https://www.ttownmedia.com/tracy_press/archives/tracy-wants-green-input/article_8aeafa58-b72c-576a-a530-401523414dfc.html)
- (8) <https://www.cityoftracy.org/home/showdocument?id=3692>
- (9) [https://en.wikipedia.org/wiki/Global\\_Warming\\_Solutions\\_Act\\_of\\_2006](https://en.wikipedia.org/wiki/Global_Warming_Solutions_Act_of_2006)

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## Agenda Item 3.F

-----Original Message-----

From: Getting it Right from the Start [REDACTED]  
Sent: Friday, October 29, 2021 5:35 PM  
To: Web - City Clerk <CityClerk@cityoftracy.org>; main-DES <main-DES@cityoftracy.org>  
Cc: Aurash Soroosh <[REDACTED]>; Alisa Padon <[REDACTED]>; Lynn Silver  
[REDACTED]  
Subject: Review Requested: Tracy 2021 Cannabis Policy Scorecard

Dear Mayor Young and Mr. Dean,

On behalf of Getting it Right from the Start [REDACTED], a project of the Public Health Institute, we would like to offer you an opportunity to review our evaluation of your local cannabis policies in effect as of January 1, 2021. Our project works with cities and counties throughout California, as well as community organizations and other states, to protect against youth and problem cannabis use, better reduce other cannabis-related harms, and promote social equity in jurisdictions that have opted to allow commercial cannabis activity.

Since 2018 we have collected information on the cannabis retail, marketing and taxation laws passed by all cities and counties in California, using resources including CannaRegs (a commercial database), databases of municipal codes and jurisdiction websites. Using these resources, we have developed a series of "scorecards" for every California jurisdiction that allowed cannabis storefront, and this year we added those that allow only delivery retail sales. These scorecards measure how far your jurisdiction has gone beyond state law to promote public health and advance social equity. Today we would like to give you an opportunity to review the 2021 scorecard for your jurisdiction to check for accuracy, and as a way for you to benchmark your local adoption of best practices for cannabis regulation. Please note, changes to your laws made after January 1, 2021 are not reflected in this scorecard - they will be in the 2022 scorecard.

The scores are based on six public health and equity focused categories, that capture recommended policies to protect youth, reduce problem cannabis use, and promote social equity. A summary of the methodology is enclosed. We are happy to share our full methodology, upon request, which details how we came to these measures and scores. Also enclosed is a map with concrete examples of best practices adopted by your fellow California cities and counties on the back page.

Please address any questions or feedback on your scorecard to Aurash Soroosh, at [REDACTED]. If we do not hear from you by November 5, 2021, we will assume our record of the cannabis regulations passed in your jurisdiction through January 2021 is accurate. We will be publicly releasing the 2021 scorecards in mid-November, which will be shared with you as well.

Lastly, we also provide free technical assistance, supported by the Conrad N. Hilton Foundation, and have developed tools and resources including three model local ordinances for California on cannabis retail, marketing and taxation, available at: [REDACTED].

We hope these resources help jurisdictions to allow legal sale without promoting the development of a new tobacco-like industry in our state.

Please let us know if you have any questions, or if we can be of assistance to your jurisdiction.

The Getting it Right from the Start team:

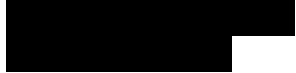
Alisa A. Padon, PhD  
Research Director

Aurash J. Soroosh, RD, MSPH

Policy Associate

Lynn Silver, MD, MPH, FAAP  
Director

Kiara Gonzalez Garcia  
Program Coordinator  
Getting it Right from the Start  
Public Health Institute

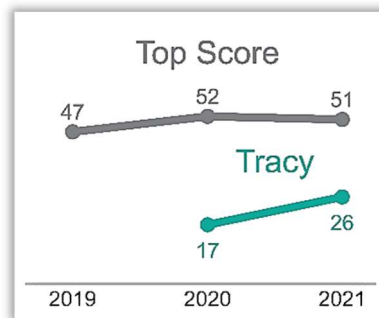


# Cannabis Policy

Tracy

## 2021 SCORECARD

This scorecard analyzes local cannabis ordinances passed prior to January 1, 2021, in each California city or county that legalized storefront retail sales, to assess policies in effect going into 2021. It evaluates to what extent potential best practices were adopted to protect youth, reduce problem cannabis use and promote social equity beyond those already in state law. Scores fall into six public health and equity focused categories for a total maximum of 100 points.



■ Policy Adopted Beyond State Law

■ No Policy Adopted Beyond State Law

■ Weaker than State Law

RETAILER REQUIREMENTS		TAXES & PRICES		PRODUCT LIMITS		MARKETING		SMOKE-FREE AIR		EQUITY & CONFLICTS OF INTEREST	
Limit # of retailers (max. 10 pts)	10	Local retail tax (6 pts)	6	Limit high potency products (max. 6 pts)	0	Limit billboards (max. 6 pts)	0	Prohibit temporary event permits (5 pts)	0	Licensing priority for equity applicants (3 pts)	0
Require distance >600 ft. from schools (5 pts)	0	Revenue dedicated to youth, prevention or equity (max. 6 pts)	0	<b>END THE CANNABIS KIDS MENU</b>		Prominent health warnings on ads (4 pts)	0	Prohibit on-site consumption (3 pts)	3	Equity in hiring requirements (3 pts)	3
Require distance between retailers (2 pts)	0	Tax by THC content (5 pts)	0	No flavored products for combustion or inhalation (max. 5 pts)	0	Limit therapeutic or health claims (3 pts)	0			Cost deferrals for equity applicants (1 pt)	0
Other location restrictions (max. 3 pts)	0	Prohibit discounting (2 pts)	0	No cannabis-infused beverages (4 pts)	0	Business signage restrictions (3 pts)	3			No prescriber on retail premises (1 pt)	1
Health warnings posted in store (4 pts)	0	Minimum price (1 pt)	0	Limit other products/packaging attractive to youth (2 pts)	0	Limit marketing attractive to youth (2 pts)	0			No prescriber in ownership (1 pt)	0
Health warnings handed out (4 pts)	0										
<b>10</b>	<b>+</b>	<b>6</b>	<b>+</b>	<b>0</b>	<b>+</b>	<b>3</b>	<b>+</b>	<b>3</b>	<b>+</b>	<b>4</b>	

**TOTAL SCORE = 26**

## 2021 SCORECARD METHODOLOGY

Based on the best available research, we identified **six primary categories of policies** where local government can act to protect youth, public health, and equity if they opted to allow cannabis retail commerce. Criteria with the greatest potential for achieving these goals receive higher points, based on evidence from tobacco, alcohol and/or cannabis research. Cannabis laws of all California cities and counties passed by January 1st, 2021 were scored, using legal databases including Municode and Cannaregs, as well as municipal websites, accompanied by direct outreach to county or city clerks when needed. The maximum score possible was 100.

- 1) RETAILER & DELIVERER REQUIREMENTS:** Strategic limits on cannabis retailers can decrease youth use and exposure to cannabis.
  - **Caps on Retailers (10 points max).** Limit the number of licensed retailers, we used the ratio to number of inhabitants
  - **Distance from Schools (5 points).** Mandate a distance greater than 600 feet between K-12 schools and retailers
  - **Retailer Buffers (2 points).** Mandate a required distance between retailers
  - **Other Location Restrictions (3 points).** Mandate required distance between retailers and other youth serving locations not covered by state law such as parks, playgrounds, or universities, or other locations such as residential areas.
  - **Health Warnings Posted in Stores OR Handed Out to Customers (4 points each).** Mandate retailers post and/or hand out health warnings informing consumers of relevant risks at point of sale

**Delivery-only requirements:**

  - **Local Permit (12 points max).** Mandate a local permit be obtained by deliverers originating within and outside the jurisdiction
  - **Medical Cannabis Sales (3 points).** Allow delivery sales of medicinal cannabis
  - **Independent ID Verification Process (10 points max).** Mandate use of an independent age and identity verification process before cannabis delivery
  - **Delivery Destinations (10 points max).** Limit where deliveries can terminate, i.e., no delivery to college dormitories
- 2) TAXES & PRICES:** Taxes & higher prices can decrease youth access while raising valuable revenue for local communities.
  - **Local Cannabis Tax (6 points).** Impose a local tax on cannabis retail
  - **Dedicated Tax Revenue (6 points max).** Dedicate tax revenue to youth, prevention, or reinvestment in communities most affected by the war on drugs
  - **Tax by THC Content (5 points).** Impose higher tax rates for high potency (high THC) products (if sale is allowed)
  - **Discounting (2 points).** Prohibit discounting on cannabis such as coupons or discount days
  - **Minimum Price (1 point).** Establish a minimum price floor for cannabis
- 3) PRODUCT LIMITS:** End the Cannabis Kids Menu of products that appeal to youth and limit products which increase adverse effects.
  - **Limit Potency (6 points max).** Prohibit sale of high potency cannabis flower and products through bans or ceilings
  - **Flavored Products (Non-Edibles) (5 points).** Prohibit sale of flavored combustible or inhalable (non-edible) products
  - **Cannabis-Infused Beverages (4 points).** Prohibit sale of cannabis-infused beverages
  - **Products Attractive to Youth (2 points).** Prohibit sale of products attractive to youth more clearly than state law
- 4) MARKETING:** Limited exposure to marketing to decrease youth use and provide accurate warnings to inform consumers.
  - **Billboards (6 points max).** Restrict or prohibit the use of billboards to advertise cannabis
  - **Health Warnings on Ads (4 points).** Require health warnings on all cannabis advertisements
  - **Therapeutic or Health Claims (3 points).** Prohibit the use of therapeutic or health claims on cannabis products, packages, or ads
  - **Business Signage Restrictions (3 points).** Restrict on-site business advertising
  - **Marketing Attractive to Youth (2 points).** Detailed restrictions on packaging or advertising attractive to youth
- 5) SMOKE-FREE AIR:** Smoke-free air policies can improve air quality, protect kids, and reduce secondhand smoke exposure.
  - **Temporary Events (5 points).** Prohibit temporary cannabis events such as at county fairs or concerts in parks
  - **On-Site Consumption (3 points).** Prohibit on-site cannabis consumption, whether by smoking, vaping or use of edibles
- 6) EQUITY & CONFLICTS OF INTEREST:** Cannabis policy can promote social equity and reduce conflicts of interest.
  - **Priority in Licensing (3 points).** Prioritize equity applicants when issuing cannabis business licenses
  - **Equity in Hiring (3 points).** Require hiring to prioritize low-income, transitional, or other workers from communities disadvantaged by the war on drugs
  - **Cost Reduction/Deferral (1 point).** Reduce/defer the costs of cannabis business licenses for equity applicants
  - **Prescribers (1 point each).** Prohibit on-premises patient evaluations and prescriber ownership of retailers

# THE STATE OF CANNABIS POLICY IN CALIFORNIA'S CITIES & COUNTIES in 2021



Advancing Public Health & Equity in Cannabis Policy

## Examples of what your neighbors are doing to protect youth, public health, and social equity



**Del Norte County:** Protected youth by increasing the **buffer between schools and retailers** to 1,000 ft. (52 other jurisdictions also increased the state required 600 ft buffer)

**Weed:** Protected the public and workers against secondhand smoke by not allowing **on-site consumption** (along with 132 other places such as Merced, Los Angeles City, Pasadena, & Sacramento)

**Sacramento:** Promoted **social equity** through equity in licensing provisions (as well as Oakland, Los Angeles City, Long Beach, San Francisco, Watsonville, El Monte & 13 other places)

**Contra Costa County:** Protected youth by prohibiting **flavored products** for combustion or inhalation (along with Chico, Watsonville & Mammoth Lakes), and banning vaping products

**Grass Valley:** Protected youth and mental health by **taxing high potency products** (Cathedral City, too), and sugar sweetened cannabis beverages

**Stanislaus County:** Increased the number of **sites with a required buffer** from retailers (as well as 114 other jurisdictions)

**Mono County:** Protected consumers by not allowing **health or therapeutic claims** on cannabis products or their marketing (as did Palm Springs)

**Watsonville:** Protected youth by prohibiting **advertising, packaging and products attractive to youth** (along with Mono County, Mammoth Lakes, Turlock, and 8 others)

**Salinas:** Protected youth by **capping** the number of licensed retailers at 1 for every ~32,000 people (99 other jurisdictions also capped the number of dispensaries)

**Pasadena:** Protected youth by prohibiting **promotions and coupons** offering discounted cannabis (along with 3 others)

**West Hollywood:** Protected consumers by requiring cannabis-related **health and safety training** of dispensary staff (Long Beach, Pasadena, Mt. Shasta, Mammoth Lakes & Mono County did, too)

**El Monte:** Protected youth by **dedicating tax revenue to youth** programs, addiction prevention and recreation (Riverside County, Sonoma County, Placerville, Pomona, Merced, Santa Ana, Turlock & Davis funded similar programs for youth)

**Santa Ana:** Informed consumers by requiring cannabis-related **health risks information on signs or in handouts** in dispensaries (along with 23 others, including San Francisco, San Jose, Culver City, Richmond & Chico)



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TRACY, CALIFORNIA 95378

November 2, 2021

**VIA EMAIL ONLY**

Honorable Mayor, Members of the City Council  
City Hall  
333 Civic Center Plaza  
Tracy, CA 95376

**Re: My Client: Mary Mitracos  
City Council Meeting  
November 2, 2021  
Agenda Item 3G**

Honorable Mayor, Members of the City Council:

This letter is to warn the City, the City Council, and any Council member that votes to allow negotiations to add additional property to the 2018 Development Agreement (2013 DA as amended and restated twice) will be in contempt of court. The proposed amendments that have no public benefit, are an unconstitutional gift of public funds which would inflict incredible financial damage on the City. The requests seek a gift of public funds for no consideration, and a delegation of control of over \$55,000,000 to a private developer. The requested negotiations are a violation of a court prohibitory injunction.

**Initiating Negotiations to Add Property to the 2018 DA is Contempt of Court:**

The Staff Report contains the following legally incorrect conclusion:

“The appeal stayed the effect of the Superior Court’s order and, as a result, the Second Amendment remains in effect while the appeal is pending. Consequently, unless and until the Court of Appeal affirms the ruling of the Superior Court, the existing DA between the City and Surland consists of the 2013 DA, as amended by the First and Second Amendments.” (Staff Report Pg. 3)

This conclusion is incorrect. Any person or entity that continues to implement any provisions of the 2018 DA will be violating a prohibitory injunction and will be in contempt of court. A Notice of Appeal DOES NOT STAY a prohibitory injunction as entered on September 30, 2020. The Judgment contains what is called a “prohibitory injunction” which will be explained below. The Judgment’s prohibitory injunction language is:

“Injunctive relief is granted consistent with this ruling.

Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them ***are permanently enjoined from any and all actions to further implement the 2018 Development Agreement*** as described in paragraph 1(a) above.”

Judgment 2:14-18

The requested negotiations are actions to further implement the 2018 DA. What is worse, the proposed negotiations to add additional property are exactly what made both the 2008 and 2018 DAs void: the ability to add property.

This is not the first time the City and Surland have been warned that they were pursuing a path to contempt of court. On March 15, 2021 a letter making this same warning of incorrect legal advice leading the Council to act in contempt of court was submitted. It is attached as Exhibit 1 to this letter.

The proposal is to negotiate the addition of real property to the 2018 DA, exactly what renders a DA void and is enjoined:

“The **Avenues neighborhood shall become subject to the development agreement** except for Section 1.07 (a) to (f)(2), and the term of the development agreement shall be amended to begin on the effective date of this amendment.”

Staff Report pg., 8

The illegality of the requested negotiation is only one reason it must be denied. As will be discussed later, staff recommends denial of this request because there is no benefit to the City. (Staff Report Pg. 4)

The City, Surland, the City Council and any individual member of the City Council who takes any action to implement any part of the 2018 DA, also called the “Second Amendment” in the Staff Report, will be violating this permanent injunction. Any person or entity taking that action will be held in contempt of court.

The Judgment contained both “mandatory injunction” and “prohibitory injunction” provisions. The parts that order the City to set aside the 2018 DA are “mandatory” in that they order the City to do something.

The provision of the Judgment that states that Surland, the City and their agents, employees, and persons acting in concert with them ***are permanently enjoined from any and all actions to further implement the 2018 Development Agreement*** is “prohibitory”. It prohibits Surland, the City, Council members and even employees of the City from any further act to implement the 2018 DA. The City is prohibited from issuing RGAs pursuant to that 2018D A, from paying *any* City funds to Surland pursuant to that DA, from issuing *any* entitlements to Surland pursuant to that DA, and certainly from adding additional property to the 2018 DA (2013 DA with its First and Second Amendments).

While “mandatory” injunctions are generally stayed pending an appeal, “prohibitory” injunctions are not stayed. (*Wolf v. Gall* (1916) 174 Cal. 140, 142 [“By a line of decisions

beginning with the early history of the state, the rule has been settled that an appeal does not stay the force of a prohibitory injunction.”.) California courts have not deviated from this rule that a prohibitory injunction remains in effect while an appeal challenging that injunction is pending. (See *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 482 [“A prohibitory injunction is not stayed by an appeal.”]; *Union Pacific R. Co. v. State Bd. of Equalization* (1989) 49 Cal.3d 138, 158 [“The writ was prohibitory and was thus not stayed by [defendant]’s appeal.”]; *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709 [“Prohibitory portions of an order are not automatically stayed pending appeal.”]; *People v. Lynam* (1968) 261 Cal.App.2d 490, 499 [“The injunction was prohibitory and, hence, was not stayed by an appeal.”].)

The injunction here permanently enjoins Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them from any and all actions to further implement the 2018 Development Agreement. It is strictly “prohibitory” and still in effect in spite of an appeal.

Even if the Judgment were considered with both a “mandatory” Writ and “prohibitory” injunction, the injunction must still be enforced. *Where an injunction has both mandatory and prohibitory features, the prohibitory portions are not stayed.* (*Ohaver v. Fenech* (1928) 206 Cal. 118, 123 [“An injunction may grant both prohibitive and mandatory relief, and when it is of this dual character, and an appeal is taken, such appeal will not stay the prohibitive features of the injunction”]; *Agric. Labor Relations Bd. v. TexCal Land Management* (1985) 192 Cal. App. 3d 1530, 1539, *aff’d* 43 Cal.3d 696 [ordering trial court to move forward with contempt proceedings as to the defendant’s violation of the prohibitory portions of the injunction].)

What matters is not the exact wording of the injunction, but what it requires. While a prohibitory injunction can be phrased in mandatory terms, and vice versa, the test is whether compliance with the injunction requires an affirmative act or merely refraining from some act. (See *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 85, citing Civ. Code, § 3368; Code Civ. Proc., § 525; *Oiye v. Fox* (2012) 211 Cal.App.4th 1036; Yale Law J. Vol. 25, No. 7, at pp. 591-592; *Ohaver v. Fenech* (1928) 206 Cal. 118, 123.) There is no question the City, Council, all Staff and Surland were ordered to refrain from implementing the entire 2018 DA.

Here, the prohibition against “...any and all actions to further implement the 2018 Development Agreement” does not require Defendant, or anyone else, to do anything but only refrain from certain activities. (See *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048 [finding an injunction commanding that the defendant “not transfer any assets other than for normal business and necessities of life” to be prohibitory because “[i]t directs affirmative inaction by defendant, not affirmative action.”]; see also *United Railroads*, *supra*, 172 Cal. at p. 85.) *Jaynes v. Weickman* (1921) 51 Cal. App. 696 [injunction prohibiting a firm from using a disputed name held to be prohibitory even though to comply it was necessary for the defendant to remove the offending name].)

Mary Mitracos urges the City NOT TO ACT IN CONTEMPT OF THE PROHIBITORY INJUNCTION by entering negotiations to add the Avenues property to the DA as this is action to implement the 2018 DA.

## **A VOID AB INITIO DEVELOPMENT AGREEMENT CANNOT BE AMENDED.**

The 2018 DA was determined to be void ab initio. This means it does not legally exist as the City and Surland were without legal authority to enter it. When that legal conclusion is upheld on appeal, all actions taken even pursuant to an amendment will also be void. Amended A void ab initio document is ineffective.

## **SURLANDS NEGOTIATION REQUESTS ARE FOR HUGE GIFTS OF PUBLIC FUNDS TO SURLAND.**

Surland now seeks millions of dollars of taxpayer money. The request are for massive gifts of public funds. As to almost all the requests staff identifies this complete lack of public benefit, the request a gift to an individual developer, and recommends denial.

The requested gifts of public funds to Surland requests are illegal and violation of the California Constitution. . (*Conlin v. Board of Supervisors of City and County of San Francisco* (1893) 99 Cal. 17, *Jordan v. Department of Motor Vehicles* (2002) 100 Cal. App. 431, Section 6, Article XVI of the California Constitution)

The term "gift" in the constitutional provision "includes all appropriations of public money for which there is no authority or enforceable claim," even if there is a moral or equitable obligation. (*Conlin v. Board of Supervisors* (1893) 99 Cal. 17, 21-22 [33 P. 753]. Here all Surlands requests are for appropriations of public money for which it has no enforceable claim. Surland has no claim of any of the direct gifts of taxpayer money, shifting of costs to the City or relief from payment of its contractual obligations pursuant to any DA, void or not, with the City. In fact, the only valid DA not determined to be void ab initio, the 2013 DA, indicates Surland has no right to these public funds.

Surland's subjects of negotiation requests are nothing more than a request for gifts of public funds. There are many examples.

**Example 1:** Surland proposes the ECFD fund through Bond sales Waste water treatment plan expansion, new water sources and transmission, and construction of Fire Station #99 all for a total of over \$12,000,000.00. (Staff Report pg. 7). This is a gift of public funds because as the Staff Report indicates: "Expanding the FIP beyond the ESP area may create a funding shortfall both in Ellis FIP and in the Master Plan Impact Fees where projects, like the Avenues, have been considered when developing the fees." (Staff Report pg. 8) Surlands gain would be Tracy's loss.

**Example 2:** Surland proposes "The Avenues neighborhood shall become subject to the development agreement except for Section 1.07 (a) to (f)(2), and the term of the development agreement shall be amended to begin on the effective date of this amendment." (Staff Report pg. 8)

This is clearly a violation of the injunction and the findings of two courts that real property cannot be added to a DA, but it is also a gift of funds to Surland, and lack of any public benefit, is explained in the Staff Report:

“Staff does not recommend that the City Council accept this proposal, as it would have significant adverse implications on the City’s infrastructure funding programs and Master Plans by extending the provisions of the Ellis Development Agreement’s Finance and Implementation Plan to the Avenues property and removing the Avenues from the City’s infrastructure and public services Master Plans, with no corresponding benefit to the City.” (Staff Report pg. 8)

Again, Surland’s gain would be the City’s loss.

**Example 3:** Surland proposes “Within one year after this Amendment is approved all public infrastructure constructed in Valpico Road for the benefit of the Fire Station and/or the City of Tracy, including storm, sewer, and water infrastructure, shall be identified, and included as program Improvements.” (Staff Report pg .5)

Staff recommends denial because “...it would have significant adverse implications on the City’s infrastructure funding programs and Master Plans by shifting a significant portion of the cost burden for the above-described infrastructure from Surland (and other property owners that may develop the benefiting properties) to the City, with no corresponding benefit to the City.” (Staff Report pg. 9) This is an example of reliving Surland of an obligation to be assumed by he City. That is a gift of public funds.

**Example 4:** Surland proposes that at its “...discretion, sole cost and expense, shall have the right to deepen or otherwise improve the basin to create additional Owner capacity. The cost of deepening and/or improving the basin to create additional capacity shall be recognized as program improvements.” (Staff Report pg. 9)

Superficially this sounds reasonable, but Staff Recommends denial because: “In addition, the proposal to have the basin improvements and additional capacity recognized as “program improvements” would require the City and City-wide property owners to subsidize project-specific improvements because project costs would be spread to non-benefitting properties.” (Staff Report pg. 9)

The above is again an example of Surland seeking to shift its cost to the City.

**Example 5:** Surland proposes “There shall be no other obligations for fire facilities required for the full build out of the ESP and DA Property regarding Fire.” Staff Report pg. 9

Again Staff recognized the cost shifting and gift of public funds:

“Staff does not recommend that the City Council accept this proposal, as it would have significant adverse implications on the City’s Public Building and Public Safety infrastructure funding programs and Master Plans by shifting portions of the cost burden for such facilities from Surland (and other property owners that may develop the benefiting properties) to the City, with no corresponding benefit to the City” (Staff Report Pg. 9)

**Example 6:** Surland requests “Fee credits or infrastructure capacity may be

applied to any Owner or Owner's property within the ESP, or DA property, which is expressly described and identified in the ESP or DA.” (Staff Report pg. 10)

This is a direct application of benefits of the 2018 DA to property not described in the DA. It is a violation of the same violation of the Government Code that rendered both the 2008 and 2018 DAs void ab initio.

In addition, Staff recognized this as a gift of benefits of the DA to property not described in the DA:

“It would also require the City to extend to the Avenues property certain existing DA benefits intended solely for the original Ellis property, without any corresponding benefit to the City.” (Staff Report pg. 10)

**Example 7:** Surland’s proposal to add Inspection Fees to Plan Check fees would “...require the city to substantially subsidize processing costs for the Ellis and Avenues projects, without any corresponding benefit to the City.” (Staff Report Pg. 10) Subsidizing a private developer with tax payer money is a gift of public funds.

**Example 8:** Surland requests “All program improvements for the ESP and Master Plan MP or Ellis Finance and Implementation Plan ("EFIP") impact fee water components are conclusively deemed to fully and completely satisfy Owners' obligation.” (Staff Report pg. 10)

Staff again identified the gift of public funds:

“Staff does not recommend that the City Council accept this proposal, as it could have significant, adverse impacts on the City’s fee program, result in the under-collection of impact fees, and require the City to establish and fund a new Capital Improvement Program to fund water infrastructure for a single development project. Such effects could require the City to allocate general fund revenues to subsidize a single development project, without any corresponding benefit to the City.” Staff Report pg. 11)

What staff has identified is a gift of general fund revenues to subsidize a single development project with no benefit to the City. This is a textbook case of a gift of public funds.

**Example 9:** Surland demands the “ESP Property shall pay the applicable finance plan wastewater fee. City, at City's sole cost expense, shall provide all necessary collection capacity when needed by implementing improvements infrastructure.” (Staff Report pg. 11)

Staff recognized the gift of public funds:

“Staff does not recommend that the City Council accept this proposal, as it could have significant, adverse impacts on the City’s fee program, result in the under-collection of impact fees, and require the City to establish and fund a new Capital Improvement Program to fund water infrastructure for a single development

project. Such effects could require the City to allocate general fund revenues to subsidize a single development project, without any corresponding benefit to the City.” (Staff Report pg. 11)

### **IMPROPER DELEGATION TO SURLAND OF CITY CONTROL AND AUTHORITY:**

The City cannot delegate away its police power. It cannot delegate away its ability to control expenditure of taxpayer funds to a private developer. Surland seeks to control \$55,000,000.00 of public funds by retaining veto power of the City as to the development of the swim center. Les Serpa and Surland would be final authorities in Tracy as to the Swim Center including the use of taxpayer money.

Staff describes how Surland seeks to “bind the City to, and give Surland veto power, over any future changes to the Conceptual Plan hereby relinquishing the City’s discretion to make changes to the Plan, with no corresponding benefit to the City” when the City is contributing \$55,000,000.00 and Surland has contributed \$2,000,00.00. (Staff Report pg. 6) “Staff does not recommend that the City allow a third party to control the design process for a public facility that is primarily funded by public monies.” (Staff Report pg. 7)

### **PRIOR WARNINGS AGAINST ACTING IN CONTEMPT OF COURT:**

The City Council and Surland have been warned several times not to act in contempt of court. On March 15, 2021 the attached letter was submitted to the City addressing the same issues addressed in this letter. That letter is attached as Exhibit 1.

On April 5, 2021 another warning letter was sent against taking the action proposed here. That letter is attached as Exhibit 2.

On April 19, 2021 another letter warning of contempt was submitted. It is attached as Exhibit 3.

The City, Surland and all persons involved cannot claim they were not warned of the implications of their actions.

### **CONCLUSION**

Surland is in the final stages of a massive scam of the City. This incredible request for millions of dollars of debt relief, shifting of costs to the City and others a direct request for taxpayer money must be rejected.

Surland seeks to negotiate to add the Avenues property to the DA which will result in all parties participating being in contempt of court by violating the Court’s prohibitory injunction as well as violating the Government Code that was the basis of two courts determining the 2008 and 2018 DA’s were void. Surland seeks vast gifts of public funds with no benefits to the City.

Surland seeks to control \$55,000,000.00 in public expenditures. The City should NOT enter negotiation on these subjects. If the City does, then it and every party and person participating is acting in violation of the prohibitory injunction in effect.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark V. Connolly', with a stylized, cursive flourish.

MARK V. CONNOLLY



## Exhibit 1 to November 2, 2021 Letter

# MARK V. CONNOLLY

Attorney at Law

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www.connollylaw.net

PO BOX 1109  
TRACY, CALIFORNIA 95378

March 15, 2021

## **VIA EMAIL ONLY**

Honorable Mayor, Members of the City Council  
City Hall  
333 Civic Center Plaza  
Tracy, CA 95376

**Re: My Client: Mary Mitracos  
Agenda Item 3E**

Honorable Mayor, Members of the City Council:

This letter is to warn the City Council that it is again being provided incorrect legal advice. The Staff Report on Agenda Item 3.E contains a dangerous and inaccurate statement that if followed places the City, the City Council, and any Council member in the position of being in contempt of court.

That false legally incorrect statement concerning the injunction issued by the court is:

“Upon filing of the Notice, the Superior Court’s ruling was stayed, meaning it is no longer in effect. This means that the Second Amendment is currently in effect and the parties can continue to implement its provisions as they jointly appeal the ruling.”

Staff Report pg. 1

This statement is false. Any person or entity that continues to implement any provisions of the 2018 DA will be violating a prohibitory injunction and will be in contempt of court. As will be explained, a Notice of Appeal DOES NOT STAY a prohibitory injunction as entered on September 30, 2020. A copy of that Judgment is attached.

The objective of this letter is to avoid having Council members inadvertently while relying on inaccurate legal advice commit a contempt of court. The Judgment contains what is called a “prohibitory injunction” which will be explained below. The Judgment’s prohibitory injunction language is:

“Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them *are permanently enjoined from any and all actions to further implement the 2018 Development Agreement* as described in paragraph 1(a) above.”

Judgment 2:14-18

The City, Surland, the City Council and any individual member of the City Council who takes any action to implement any part of the 2018 DA, also called the “Second Amendment” in the Staff Report, will be violating this permanent injunction. Any person or entity taking that action would risk being held in contempt of court, which is not in the best interests of any person involved.

This is not the first time the City has been given bad legal advice. The City was told the 2008 Development Agreement was valid. That was wrong. That DA was determined to be a violation of the law.

Attorney Steve Herum for Surland told this Council the Second Amendment or 2018 DA was valid. He was again wrong. That 2018 DA was ruled void. The City and Council are again being given bad advice that this time could result in someone being held in contempt of court if the 2018 DA is implemented in any way.

**I. THE LANGUAGE OF THE JUDGMENT  
IS A PROHIBITORY INJUNCTION NOT STAYED  
BY THE FILING OF A NOTICE OF APPEAL**

Because the Council has been given incorrect legal opinions by counsel for Surland more than once it is necessary to explain the legal issues. To avoid Counsel for Surland confusing the issues, this letter will go into more legal analysis than most comment letters do.

The statement in the Staff Report that “...the Second Amendment is currently in effect and the parties can continue to implement its provisions as they jointly appeal the ruling” is dangerously wrong. It invites the Council to violate of a prohibitory injunction still in effect and not stayed by an appeal. If followed, it could result in the City, the City Council, and any individual council member who acts in violation of the injunction being held in contempt. This situation needs to be avoided.

The Judgment contained both “mandatory injunction” and “prohibitory injunction” parts”. The parts that order the City to set aside the 2018 DA are “mandatory” in that they order the City to do something. HOWEVER, the part of the Judgment that says Surland, the City and their agents, employees, and persons acting in concert with them *are permanently enjoined from any and all actions to further implement the 2018 Development Agreement* is “prohibitory”. It prohibits Surland, the City, Council members and even employees of the City from any further act to implement the 2018 DA. The City is prohibited from issuing RGAs pursuant to that 2018 DA, from paying *any* City funds to Surland pursuant to that DA, from issuing *any* entitlements to Surland pursuant to that DA.

While “mandatory” injunctions are generally stayed pending an appeal, “prohibitory” injunctions are not stayed. (*Wolf v. Gall* (1916) 174 Cal. 140, 142 [“By a line of decisions beginning with the early history of the state, the rule has been settled that an appeal does not stay the force of a prohibitory injunction.”].) California courts have not deviated from this rule that a prohibitory injunction remains in effect while an appeal challenging that injunction is pending. (See *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 482 [“A prohibitory injunction is not stayed by an appeal.”]; *Union Pacific R. Co. v. State Bd. of Equalization* (1989) 49 Cal.3d 138, 158 [“The writ was prohibitory and was thus not stayed by [defendant]’s appeal.”]; *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709 [“Prohibitory portions of an order are not automatically stayed pending appeal.”]; *People v. Lynam* (1968) 261 Cal.App.2d 490, 499 [“The injunction was prohibitory and, hence, was not stayed by an appeal.”].)

The injunction here permanently enjoins Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them from any and all actions to further implement the 2018 Development Agreement. It is strictly “prohibitory” and still in effect in spite of an appeal.

Even if the Judgment were considered with both a “mandatory” Writ and “prohibitory” injunction, the injunction must still be enforced. *Where an injunction has both mandatory and prohibitory features, the prohibitory portions are not stayed.* (*Ohaver v. Fenech* (1928) 206 Cal. 118, 123 [“An injunction may grant both prohibitive and mandatory relief, and when it is of this dual character, and an appeal is taken, such appeal will not stay the prohibitive features of the injunction . . . .”]; *Agric. Labor Relations Bd. v. TexCal Land Management* (1985) 192 Cal. App. 3d 1530, 1539, aff’d 43 Cal.3d 696 [ordering trial court to move forward with contempt proceedings as to the defendant’s violation of the prohibitory portions of the injunction].) No one wishes to have any party commit a contempt of court because it believes an appeal meant the prohibitory injunction still in effect was somehow not in effect because a Writ requiring the City to set aside the Development Agreement was also issued.

What matters is not the exact wording of the injunction, but what it requires. While a prohibitory injunction can be phrased in mandatory terms, and vice versa, the test is whether compliance with the injunction requires an affirmative act or merely refraining from some act. (See *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 85, citing Civ. Code, § 3368; Code Civ. Proc., § 525; *Oiye v. Fox* (2012) 211 Cal.App.4th 1036; Yale Law J. Vol. 25, No. 7, at pp. 591-592; *Ohaver v. Fenech* (1928) 206 Cal. 118, 123.) Here there is no question the City, Council, all Staff can Surland are ordered to refrain from implementing the entire 2018 DA.

Here, the prohibition against “...any and all actions to further implement the 2018 Development Agreement” does not require Defendant, or anyone else, to do anything but only refrain from certain activities. (See *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048 [finding an injunction commanding that the defendant “not transfer any assets other than for normal business and necessities of life” to be prohibitory because “[i]t directs affirmative inaction by defendant, not affirmative action.”]; see also *United Railroads*, supra, 172 Cal. at p. 85.) *Jaynes v. Weickman* (1921) 51 Cal. App. 696 [injunction

prohibiting a firm from using a disputed name held to be prohibitory even though in order to comply it was necessary for the defendant to remove the offending name].)

Mary Mitracos urges the City NOT TO ACT IN CONTEMPT OF THE PROHIBITORY INJUNCTION by taking any action to implement the 2018 DA. The Council is playing with fire in renegotiating the 2018 DA it has been instructed not to implement.

## **II. THE ILLEGAL 2018 DA IS A MASSIVE GIFT OF PUBLIC FUNDS TO SURLAND**

The Staff Report describes a boondoggle and gift of public funds to a favored developer breathtaking in its scope. Here are the FACTS from the Staff Report.

### **1. Gift of taxpayer money and benefits:**

The following acts are directly from the Staff Report.

Surland agreed in 2013 to pay \$10,000,000 to the City. It paid \$2,000,000 in 2014. The other \$8,000,000 was due in 2014. Seven years later, it remains unpaid as the City has granted extension after extension while the swim center was never built. The City only received **\$2,000,000**.

What has Surland received? The City paid Surland \$1,200,000. Surland received water supply for 2,250 RGAs valued \$2,700,000. Surland was given wastewater treatment worth \$5,400,000. Surland was gifted wastewater conveyance worth \$900,000. Surland has received a total of **\$10,200,000** in cash and benefits.

The City has given away **\$8,200,000** to Surland in excess of what Surland has paid the City in cash and benefits. This gift of public funds is at best gross negligence. Surland spins circles around the City in every negotiation. At worst this is a gift of public funds.

The gift of RGAs is worse.

### **2. Gift of RGAs:**

The Staff Report states “Based on the approved maps within the Ellis DA Property, the total residential unit count is like to be near 1,100 units. (Staff Report pg. 3.) At the same time the Staff Report indicates the DA provides Surland the benefit of 2,250 RGAs for use at Ellis Specific Plan, which can only use 1,100 RGAs! (Staff Report pg. 3.) Surland is getting at least 1,150 RGAs it can’t use at Ellis. The water supply attached to these spare RGAs along with the RGAs is worth \$1,320,000! Two courts have ruled that it is illegal to use those RGAs on other property. Why is the City trying to renegotiate the 2018 DA that gives away to Surland RGAs worth millions of dollars that can’t legally be used at Ellis? It again appears to be a gift of RGAs that could be used to leverage affordable housing or build in the downtown or Bowtie.

3. **Surland Would Like To Build The Aquatics Center Rather Than Pay \$8,000,000 Because Surland Would Make Money!**

The Staff Report indicates that Surland will not pay the \$8,000,000 but provide design and construction costs for the swim center. (Staff Report pg. 3.) According to the Staff Report, the approved final conceptual plan has a cost of \$65,000,000. If Surland negotiates a contract where it makes an overhead profit of just 15% on design and construction of the swim center, that will be \$9,750,000 in profit. Surland will make an additional net profit of \$1,750,000.00 over the \$8,000,000 which was due in 2014. That does not even consider the interest Surland has saved and the City has lost on that money.

4. **The City Needs To Stop Negotiating With Surland As It Loses Ever Time.**

Every time the City negotiates with Surland the taxpayers lose millions of dollars and the swim center gets delayed. A swim center Surland said it would build for the City now has a price tag of \$65,000,000. Two of the negotiations with Surland have resulted in void Development Agreements overturned by courts. The City has been out negotiated EVERY TIME. The City needs to STOP negotiating.

**III. THE CITY SHOULD NOT ENTER INTO NEGOTIATIONS WHICH THE CITY HAS ALWAYS LOST**

First, taking any action that can be interpreted as “implementing” the 2018 DA (2<sup>nd</sup> Amendment) would be a violation of the Prohibitory Injunction contained in the Judgment. If negotiations result in any agreement or amendment that can be deemed “implementing” the 2018 DA than it would be a violation of the injunction. Surland’s and its counsel have consistently misrepresented the law to the City.

Second, the City has come away from every negotiation much worse than when negotiations commenced. Each time the Swim Center gets further away and more expensive and Surland gets money and benefits from the City. Surland needs to live up to its contractual obligations of the 2013 DA in effect before the void 2<sup>nd</sup> Amendment/2018 DA. That DA obligated Surland to pay \$10,000,000. \$8,000,000 of which was due on April 4, 2018, which was 4 years after it was originally due and 3 years ago.

Three simple requests are made to the Council, its counsel, and staff: (1) Don’t act in contempt of court by violating a prohibitory injunction, (2) Make Surland pay what it owes and do what it agreed to pursuant to the last legal 2013 DA, and (3) STOP NEGOTIATING! There must be a day when the City stops giving extensions to Surland and make Surland comply with the last valid Contract.

Very truly yours,



MARK V. CONNOLLY

**ATTACHMENT 1**

1 Mark V. Connolly SBN 105091  
2 CONNOLLY LAW BUILDING  
3 121 E. 11th Street  
4 Tracy, CA 95376  
5 Telephone: (209) 836-0725  
6 Facsimile: (209) 832-3796

7 Attorney for Mary Mitracos

FILED  
SUPERIOR COURT  
Brandon E. Riley, Clerk

Danielle Jeandebien  
September 30, 2020

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
9 UNLIMITED JURISDICTION

10 MARY MITRACOS

11 Petitioner,

12 vs.

13 CITY OF TRACY, BY AND THROUGH THE  
14 CITY COUNCIL; and DOES 1-20 inclusive,

15 Respondents.

16 SURLAND COMMUNITIES, LLC, a California  
17 limited liability company, and DOES 21-40  
18 inclusive,

19 Real Parties in Interest.

Case No. STK-CV-UWM-2018-5531

 JUDGMENT

Hearing/Trial:  
Date: October 28, 2019  
Time: 9:00 a.m.  
Dept.: Dept. 10A

Honorable George Abdullah.

BY FAX



1 This matter came regularly for hearing on October 28, 2019 at 9:00 in Department 10(A) of  
2 this court located at 180 E. Weber Avenue, Stockton, CA before the Honorable George Abdullah,  
3 Judge of the Superior Court. Petitioner Mary Mitracos ("Mitracos") was represented by counsel  
4 Mark V. Connolly. Respondent City of Tracy ("City") was represented by Counsel Kevin D.  
5 Siegel. Real Party in Interest Surland Communities, LLC ("Surland") was represented by Steven  
6 A. Herum.

7 The court having reviewed the record of Respondent City's proceedings in this matter, the  
8 briefs submitted by counsel, and the arguments of counsel, the matter having been submitted for  
9 decision, and the court having issued its Tentative Decision on February 20, 2020 and its Statement  
10 of Decision, and good cause appearing therefore,

11 IT IS SO ORDERED, DECREED AND ADJUDGED that:

12 1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner  
13 Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent  
14 committed a prejudicial abuse of discretion in taking the following actions:

15 (a) Adopting, approving and entering into the Second Amendment to Amended  
16 and Restated Development Agreement by and between The City of Tracy and  
17 Surland Communities, LLC" ("2018 DA").

18 (b) Adopting Ordinance 1253

19 2. The court finds the 2018 DA does not comply with Government Code Sections  
20 65865(b) and 65865.2 and is therefore void ab initio.

21 3. A Preemptory Writ of Mandate direct to Respondents shall issue under seal of this  
22 Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of  
23 Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in  
24 paragraph 2 above in their entirety and all other actions taken by Respondents to approve or  
25 implement the Development Agreement. Respondent City is ordered to:

26 (a) Set aside, rescind, and vacate the "Second Amendment to Amended and  
27 Restated Development Agreement by and between The City of Tracy and  
28 Surland Communities, LLC" ("2018 DA").

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- (b) Set aside, rescind, and vacate Ordinance 1253.
- (c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

Dated: \_\_\_\_\_  
 September 30, 2020

\_\_\_\_\_  
 HON. GEORGE J. ABDALLAH, JR.  
 Judge of the Superior Court

*George Abdallah*

BY FAX

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**PROOF OF SERVICE**

I, the undersigned, declare that: I am, and was at all times herein mentioned, a citizen of the United States, over the age of 18 years; not a party to the within action or proceeding; employed in the County of San Joaquin, State of California; and my business address is 121 E. 11<sup>th</sup> Street, Tracy, California 95376.

On March 19, 2020, I served the following document(s):

- **(PROPOSED) JUDGMENT**

by placing a true and correct copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the party(ies) addressed below:

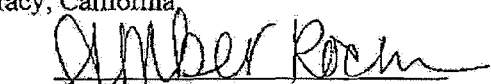
Kevin D. Siegel Burke, Williams & Sorensen, LLP 1901 Harrison Street, Suite 900 Oakland, CA 94612 Email: ksiegel@bwslaw.com	<i>Attorneys for Respondent City of Tracy, by and through the City Council</i>  <i>KSiegel@bwslaw.com</i>
Steven A. Herum Herum Crabtree Suttgart 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 Email: sherum@herumcrabtree.com	<i>Attorney for Real Parties in Interest Surland Communities, LLC</i>  <i>sherum@herumcrabtree.com</i>
Leticia Ramirez City Attorney City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Email: attorney@cityoftracy.org	<i>Attorney for Respondent City of Tracy, by and through the City Council</i>

~~XXX~~ **BY MAIL:** U.S. Postal Service by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing mail in accordance with this office's practice, whereby the mail is deposited in a U.S. Mailbox in the City of Tracy, California after the close of the day's business.

~~XXX~~ **BY ELECTRONIC MAIL:** I caused said document(s) to be transmitted electronically to the addressee(s) designated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 19, 2020 at Tracy, California,

  
Amber Rocha

BY FAX

## Exhibit 2 to November 2, 2021 Letter

# MARK V. CONNOLLY

Attorney at Law

Telephone (209) 836 0725

Fax (209) 832 3796

E-mail: mconnolly@connollylaw.net

www.connollylaw.net

PO BOX 1109  
TRACY, CALIFORNIA 95378

April 5, 2021

## **VIA EMAIL ONLY**

Honorable Mayor, Members of the City Council  
City Hall  
333 Civic Center Plaza  
Tracy, CA 95376

**Re: My Client: Mary Mitracos  
Agenda Item 3B**

Honorable Mayor, Members of the City Council:

This letter is to urge you to (1) vote to NOT continue negotiations with Surland to Amend the 2018 DA that has been determined to be a violation of the Government Code and void, (2) not to risk committing a contempt of court by taking any action that can be interpreted as implementing the 2018 DA, (3) wait for the outcome of the court case lost by the City and Surland before taking any action on the 2018 DA.

If the renegotiation is truly just something the City has requested and Surland is just accommodating the City, then the City should terminate any attempt to renegotiate immediately. Since Surland did not request negotiations, it should not care if they cease. Negotiating an illegal DA and risking contempt provides no public benefit.

Surland's objective, as in any scam, is to keep the ball in air, always keep negotiating, make ever grander promises regardless of how much worse the situation becomes and always create new issues and distractions. Attempting to renegotiate the 2018 DA before the pending litigation about the validity of the 2018 DA is just how the scam continues. Like a Ponzi scheme, if it stops it collapses.

Counsel for Surland Steve Herum has lost both cases where he argued the Development Agreements were valid. At hearings like this when he does make legal arguments, they are incorrect or on irrelevant diversionary issues. More usually makes irrelevant personal attacks concerning the motives of anyone who correctly challenges Surland and the Ellis project.

1. **Surland is Setting the City up for responsibility for being in contempt.**

In its March 19, 2021 letter to the City, Surland makes the following statement:

“Even though we are willing to collaborate with you, this is a request to open DA discussions by the City and not Surland.”

Surland March 19, 2021 Letter, Staff Report pg. 437

This statement is designed to put the responsibility for any contempt or renegotiation solely on the City, with Surland arguing it was just doing what the City wanted.

The Staff Report makes it clear that both parties must agree to enter into negotiations. The Council should now decline to continue any negotiations. A motion should be passed terminating any negotiations and directing staff to cease negotiations.

2. **Surland is asking the City to lay out its entire objectives and goals in the beginning of negotiations with Surland providing nothing.**

In its March 19, 2021 letter Surland asks the City to continue negotiations by laying out in public everything the City wants. This is a ridiculous bad faith starting position.

“Therefore, it is most appropriate for the City to detail what is being asked and what the City is willing to offer in exchange. That will provide clarity of the deal points the City wants us to consider. Most importantly, we are interested in being expeditious with timing so as not to interfere with the progress of the Aquatic park as expected by our community.”

Surland March 19. 2021 Letter, Staff Report pg. 437

It is impossible to imagine that the Council would accept this invitation to not just accept any blame for violating an injunction but to lay all its cards on the table in public as a condition of negotiation. Again, the Council should be motion to terminate negotiations.

Additionally, Surland has repeatedly stated it will proceed with the aquatic park regardless of litigation. Now it threatens to again hold the park hostage. The best way to ensure the swim center gets built, or more likely reality is faced, is to make Surland live up to its obligations BEFORE the 2018 DA with no further stalling negotiating tactics.

3. **When the Council acted previously it had incorrect legal advice concerning whether proceeding to implement the 2018 DA would be a contempt of Court.**

At the prior City Council meeting the Council was provided in that Staff Report (for that prior meeting) on Agenda Item 3E dangerous and inaccurate legal advice that if followed would place the City, the City Council, and any Council member in the position of being in contempt of court.

That false legally incorrect statement concerning the injunction issued by the court was:

“Upon filing of the Notice, the Superior Court’s ruling was stayed, meaning it is no longer in effect. This means that the Second Amendment is currently in effect and the parties can continue to implement its provisions as they jointly appeal the ruling.”

Staff Report pg. 1

By letter we provided legal authority that a Notice of Appeal DOES NOT STAY a prohibitory injunction as entered on September 30, 2020. A copy of that Judgment is again attached. The Judgment’s prohibitory injunction language is:

“Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them *are permanently enjoined from any and all actions to further implement the 2018 Development Agreement* as described in paragraph 1(a) above.”

Judgment 2:14-18

It is hoped the City Attorney has had the opportunity to now verify the above law so the Council is aware that ANY action to implement the 2018 DA will be a contempt of court.

**4. The City should not enter into negotiations which the City has always lost.**

First, taking any action that can be interpreted as “implementing” the 2018 DA (2<sup>nd</sup> Amendment) would be a violation of the Prohibitory Injunction contained in the Judgment. If negotiations result in any agreement or amendment that can be deemed “implementing” the 2018 DA than it would be a violation of the injunction. Surland and its counsel have consistently misrepresented the law to the City.

The City has come away from every negotiation much worse than when negotiations commenced. Each time the Swim Center gets further away and more expensive and Surland gets money and benefits from the City. Now Surland asks the City to publicly list its objectives. This bad faith tactic if accepted will leave little doubt which side is the better negotiator.

Surland needs to live up to its contractual obligations of the 2013 DA in effect before the void 2<sup>nd</sup> Amendment/2018 DA. That DA obligated Surland to pay \$10,000,000. \$8,000,000 of which was due on April 4, 2018, which was 4 years after it was originally due and 3 years ago.

Three simple requests are made to the Council: (1) vote to cease negotiations with Surland to Amend the 2018 DA that has been determined to be a violation of the Government Code and void, and (2) do not risk committing a contempt of court by taking

any action that can be interpreted as implementing the 2018 DA, (3) wait for the outcome of the court case lost by the City and Surland before taking any action on the 2018 DA.

**STOP NEGOTIATING!** There must be a day when the City stops giving extensions to Surland and make Surland comply with the last valid Contract.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Mark V. Connolly', written in a cursive style.

MARK V. CONNOLLY



**ATTACHMENT 1**

1. Mark V. Connolly SBN 105091  
2. CONNOLLY LAW BUILDING  
3. 121 E. 11th Street  
4. Tracy, CA 95376  
5. Telephone: (209) 836-0725  
6. Facsimile: (209) 832-3796  
7.  
8. Attorney for Mary Mitracos

FILED  
SUPERIOR COURT  
Brandon E. Riley, Clerk

Danielle Jeandebien  
September 30, 2020

8. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
9. UNLIMITED JURISDICTION

10. MARY MITRACOS

Case No. STK-CV-UWM-2018-5531

11. Petitioner,

 JUDGMENT

12. vs.

Hearing/Trial:  
Date: October 28, 2019  
Time: 9:00 a.m.  
Dept.: Dept. 10A

13. CITY OF TRACY, BY AND THROUGH THE  
14. CITY COUNCIL; and DOES 1-20 inclusive,

15. Respondents.

16. SURLAND COMMUNITIES, LLC, a California  
17. limited liability company, and DOES 21-40  
18. inclusive,

Honorable George Abdullah.

18. Real Parties in Interest.

BY FAX

1 This matter came regularly for hearing on October 28, 2019 at 9:00 in Department 10(A) of  
2 this court located at 180 E. Weber Avenue, Stockton, CA before the Honorable George Abdullah,  
3 Judge of the Superior Court. Petitioner Mary Mitracos ("Mitracos") was represented by counsel  
4 Mark V. Connolly. Respondent City of Tracy ("City") was represented by Counsel Kevin D.  
5 Siegel. Real Party in Interest Surland Communities, LLC ("Surland") was represented by Steven  
6 A. Herum.

7 The court having reviewed the record of Respondent City's proceedings in this matter, the  
8 briefs submitted by counsel, and the arguments of counsel, the matter having been submitted for  
9 decision, and the court having issued its Tentative Decision on February 20, 2020 and its Statement  
10 of Decision, and good cause appearing therefore,

11 IT IS SO ORDERED, DECREED AND ADJUDGED that:

12 1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner  
13 Mitracos in this proceeding. Judgment is entered because the Court finds that Respondent  
14 committed a prejudicial abuse of discretion in taking the following actions:

15 (a) Adopting, approving and entering into the Second Amendment to Amended  
16 and Restated Development Agreement by and between The City of Tracy and  
17 Surland Communities, LLC" ("2018 DA").

18 (b) Adopting Ordinance 1253

19 2. The court finds the 2018 DA does not comply with Government Code Sections  
20 65865(b) and 65865.2 and is therefore void ab initio.

21 3. A Preemptory Writ of Mandate direct to Respondents shall issue under seal of this  
22 Court, ordering Respondents to vacate and set aside, within (30) days from service of the Writ of  
23 Mandate, all approvals and adoptions of the 2008 DA and Ordinance 1253, as described in  
24 paragraph 2 above in their entirety and all other actions taken by Respondents to approve or  
25 implement the Development Agreement. Respondent City is ordered to:

26 (a) Set aside, rescind, and vacate the "Second Amendment to Amended and  
27 Restated Development Agreement by and between The City of Tracy and  
28 Surland Communities, LLC" ("2018 DA").

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(b) Set aside, rescind, and vacate Ordinance 1253.

(c) Set aside, rescind, and vacate any actions taken pursuant to the "Second Amendment to Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC" ("2018 DA") and Ordinance 1253.

4. Respondent City shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondent has complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. Petitioner is the successful party pursuant to Code of Civil Procedure § 1021.5. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner Mitracos may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are permanently enjoined from any and all actions to further implement the 2018 Development Agreement as described in paragraph 1(a) above.

Dated: \_\_\_\_\_

September 30, 2020

HON. GEORGE J. ABDALLAH, JR.  
Judge of the Superior Court

BY FAX

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that: I am, and was at all times herein mentioned, a citizen of  
3 the United States, over the age of 18 years; not a party to the within action or proceeding;  
4 employed in the County of San Joaquin, State of California; and my business address is 121 E.  
5 11<sup>th</sup> Street, Tracy, California 95376.

6 On March 19, 2020, I served the following document(s):

7 • **(PROPOSED) JUDGMENT**

8 by placing a true and correct copy thereof enclosed in a sealed envelope and served in the  
9 manner and/or manners described below to each of the party(ies) addressed below:

<p>10 Kevin D. Siegel 11 Burke, Williams &amp; Sorensen, LLP 12 1901 Harrison Street, Suite 900 13 Oakland, CA 94612 14 Email: ksiegel@bwslaw.com</p>	<p><i>Attorneys for Respondent City of Tracy, by and through the City Council</i></p> <p><i>KSiegel@bwslaw.com</i></p>
<p>15 Steven A. Herum 16 Herum Crabtree Sntag 17 5757 Pacific Avenue, Suite 222 18 Stockton, CA 95207 19 Email: sherum@herumcrabtree.com</p>	<p><i>Attorney for Real Parties in Interest Surland Communities, LLC</i></p> <p><i>sherum@herumcrabtree.com</i></p>
<p>20 Leticia Ramirez 21 City Attorney 22 City of Tracy 23 333 Civic Center Plaza 24 Tracy, CA 95376 25 Email: attorney@cityoftracy.org</p>	<p><i>Attorney for Respondent City of Tracy, by and through the City Council</i></p>

26 ~~XXX~~ **BY MAIL:** U.S. Postal Service by placing such envelope(s) with postage thereon  
27 fully prepaid in the designated area for outgoing mail in accordance with this  
28 office's practice, whereby the mail is deposited in a U.S. Mailbox in the City of  
Tracy, California after the close of the day's business.

~~XXX~~ **BY ELECTRONIC MAIL:** I caused said document(s) to be transmitted  
electronically to the addressee(s) designated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on March 19, 2020 at Tracy, California

  
Amber Rocha

BY FAX

Exhibit 3 to November 2, 2021 Letter

# MARK V. CONNOLLY

Attorney at Law

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Fax (209) 832 3796

E-mail: mconnolly@connollylaw.net

www.connollylaw.net

PO BOX 1109  
TRACY, CALIFORNIA 95378

April 19, 2021

## VIA EMAIL ONLY

Honorable Mayor, Members of the City Council  
City Hall  
333 Civic Center Plaza  
Tracy, CA 95376

**Re: My Client: Mary Mitracos  
Agenda Item 3B**

Honorable Mayor, Members of the City Council:

I represent Mary Mitracos. I do not represent anyone else in making these comments. Surland and its proxies often make false and unsupported claims to the contrary.

This letter is to ask the Council to follow the recommendation of the Planning Commission and reject this addition of a low-density residential sprawl development which will require RGAs and building permits needed desperately for affordable housing.

I have appeared as recently as last week to warn the Council concerning serious issues including contempt that might be triggered by action on the Ellis project. There are serious policy issues and serious legal issues. Some basic background is necessary first.

First, I want to caution the Council about following the advice of counsel for Surland. Twice counsel for Surland has told the Council that Development Agreements or Amendments to Development Agreements were consistent with State law. Both times the Development Agreements were determined to be void.

Secondly, Counsel and Surland tend to engage in wild conspiracy theories and personal attacks based on those conspiracy theories. They imagine plots behind every corner. Often Surland, its counsel or proxies' resort to vague innuendo with no supporting facts about hidden evil developers trying to defeat the good developer, Surland. These tactics are designed to divert attention from the important policy and legal decisions.

Last, Counsel for Surland usually misrepresents that whatever decision is at hand, no matter how important, is just a minor ministerial decision. It is a legislative act of the highest importance: amending a general plan. The council can just say “no”. The council is being asked to allow the Avenues (“ASP”), just annexed to the City in January 2021, to jump to the front of the line so it can build low density residential development. In his letter to the Planning Department, Counsel for Surland has misrepresented that this has nothing to do with the allocation of RGAs, and that is simply false. As the Staff report correctly states, this is all about RGAs and building permits.

## **FACTS**

The Judgment imposing a Permanent Prohibitory Injunction prohibits implementation of the 2018 Development Agreement (“2018 DA”). The 2018 DA was a restated and amended version of a 2013 DA. A copy of all the documents establishing that is included in the Letter to the Planning Commission attached to the Staff Report.

Legal authority was provided before the Planning Commission that the prohibitory injunction is NOT stayed while the City and Surland’s appeal is pending. Although the City attorney indicates she does not believe this is true, NO authority to the contrary has been provided. Pending appeal, the City cannot be forced to set aside the 2018 DA. It can be and is prohibited from doing ANYTHING to implement the 2018 DA.

The ASP is residential low density and would remain residential low density after being added to the ESP. (Staff Report 4.) The Council is being asked to amend the General Plan to add the ASP to the Secondary Residential Growth Area. (Staff Report pgs. 4-5.) Without being added to the Secondary Growth Area, or to a Development Agreement, the ASP cannot receive RGAs and therefore building permits. (Staff Report pg. 5.) Counsel for Surland statements to the Planning Commission that this was not about RGAs were just false.

Tracy Hills and Ellis are entitled to a majority of the building permits under GMO Guideline Section F.4. (Staff Report pg. 5.) If the Council approves the General Plan Amendment adding the ASP the ESP, then the ASP would become eligible for building permits under GMO Section F.4. Approval would Amend the General Plan adding the ASP to the Secondary Residential Growth Areas, making it eligible to apply for residential building permits. Approval would add the ASP to the ESP making it eligible for F-4 RGAs and permits instead of the lower priority F.5 RGAs. (Staff Report 7.)

Surland or Ellis gets additional permits through GMO Section F.3, which is the Section referencing the Development Agreements. (Staff Report pg. 5.) F.3 would not apply to Surland because the ASP is not part of the DA. (Staff Report 6.) Two courts have determined that the ASP, or no other property, can be added to the 2018 DA or any DA.

The 2018 DA creates the special entitlement to ESP buyers that for payment of an annual assessment of \$110.00 for each lot to be in the ECFD and have a free annual all



access family pass to the aquatic center. (Staff Report pg. 2.) This benefit is created by the void 2018 DA.

The 2018 DA provides that Surland is entitled to receive any RGAs and permits under GMO Section F.4, including unused RGAs (2018 DA pg. 10, 11-12, 13, 14). Again, the entire 2018 DA have been determined to be void ab initio.

The GMO Guideline F-3 (Development Agreement Section) and F-4 (Tracy Hills & Ellis Specific Projects section) were adopted to implement the Tracy Hills and Surland DAs. These are guidelines were enacted to implement the Surland 2013 DA and therefore Surland 2018 DA, the most recent amended and restated version.

The numerical division in GMO Section F.4 is a division of the limited number of RGAs divided between Tracy Hills and Ellis allocating the spoils of their respective Tracy Hills and Ellis DAs. (GMO Guidelines 5-6.) For example, in a year with 750 RGAs available, Tracy Hills gets 406 and Ellis 194, which comes out to exactly 600 RGAs, leaving 150 for all other residential development other than affordable housing, which is exempt (C.5). Of these 150 remaining RGAs, 100 are allocated to, the primary growth areas (F-2). Leaving a mere 50 RGAs. It should be remembered that affordable housing RGAs are exempt from the RGA limits, however RGAs are still needed to leverage affordable housing i.e., to offer a developer some market rate to build affordable. For example, a developer could be 50 market rate RGAs if 50 affordable units are built as well.

In years with a 600 RGA limit, Tracy Hills and Ellis divide up 480 RGAs, leaving 120 for the rest of the City of which 80 are designated for Primary Growth Areas. That leaves 40 RGAs for the rest of Tracy. Tracy Hills and Ellis effectively take all the RGAs necessary for any significant project. What makes this even more obscene is that Ellis has 1,100 more RGAs allocated to it than it can use on Ellis, starving Tracy of needed RGAs. Of course, if the City does not add property to the Surland DA (an act prohibited by the court) these 1,100+ RGAs will flow back to the City.

Adding the ASP to the ESP, and thereby allowing Surland and the ASP to benefit from GMO Guidelines F-4 is merely a backdoor way to implement the 2018 DA. The 2018 DA is codified in Guideline Section F-4. If adding the ASP to the ESP gets it the benefits of F-4, then the 2013 DA and its void 2018 DA amended and restated version, is being implemented in violation of the permanent injunction. Guideline F-4 is the guideline codifying and implementing the Surland 2018 DA. Adding the ASP to the ESP triggering F-4 benefits to flow to the ASP is therefore implementing the 2018 DA.

### **BASIC POLICY ISSUES**

This is a very basic legislative discretionary policy decision. It should not be trivialized by the developer and his counsel as it was some ministerial clerical administrative fore-gone act.

The basic policy decision is whether the City Council wants to add a low-density development of land annexed to the City just two months ago to the ESP moving it to a

high priority for development which would 480 RGAs and permits? No policy reason has been provided why the City would do this.

There are a limited number of RGAs and permits, as the Staff Report makes clear. Does Tracy need to add an additional 100 acres+ of low-density residential development land to it inventory which would require 480 RGAs the City needs for infill and affordable house? The obvious answer is “no”. (Again, Affordable housing is exempt from the limits but market rate RGAs provide the incentive for inclusionary housing.) The City needs any surplus RGAs and permits to leverage affordable housing and infill. Approving sprawl developments that take RGAs is the opposite of what should happen.

Does the ASP bring some great benefit to the City that should allow it to jump ahead of other properties that have been in the city for 20 years in some cases, and are better suited in some cases for high density transit-oriented development? No. Surland has not even built the swim center promised in the first DA in 2008! Surland is a scheme that requires every new Council be enticed by some greater promise of a benefit or solution created by the last DA and phase of development. A scam can never stop. If it does, it collapses. All scams collapse sooner later. Sooner is better.

Would adding the ASP to Ellis (ESP) bring another project to Tracy pressuring the City to set aside growth limits? Yes.

Does the ASP provide ANY affordable housing? No.

Is the ASP part of Tracy’s long-term vision, or General Plan? No. It was just annexed to the City two months ago. Other primary growth area projects have been waiting for many years.

Is there any policy reason why the City would want to give the gift to future buyers at ASP of lifetime family passes to the Swim Center at just a little over \$100.00 per year? No.

The ONLY person who benefits from this project is Surland. It is another gift of a public benefit to some favored developer to the detriment of the citizens of Tracy for no public purpose.

## **LEGAL ISSUES**

The Letter to the Planning Commission is attached to the Staff Report and it will not be repeated. The court enjoined implementation of the 2018 DA. Authority has been provided that that injunction is NOT stayed on appeal. No contrary authority has been provided. Counsel for Surland has previously tried to confuse the Council with inapplicable legal arguments twice resulting in Council action being reversed. This time the danger is greater. It is contempt of court.

The proposed action demonstrates two obvious ways the action would be contempt. The 2018 DA is an amended and restated version of the 2013 DA. The City

and all Council members have been enjoined from implementing ANY part of it. The Growth Management Ordinance (GMO) is the codification of the Tracy Hills and Surland 2018 DAs. This includes Section F.4 which allocates the RGAs provided Surland and Tracy Hills in their respective DAs. It divides the spoils of victory over prudent planning in Tracy. Adding the ASP to the ESP allows the ASP to benefit from F-4. Therefore, approving the addition of the ASP to the ESP is merely a backdoor way of getting benefits from the 2018 DA to the ASP. It is implementing the 2018 DA.

Allowing the benefit of a \$100 lifetime family pass to flow from the 2018 DA to future residents of the ASP is a clear implementation of the 2018 DA.

### **CONCLUSION**

My client Mary Mitracos has summarized this better than I as an attorney could. "Just say no." This is a discretionary legislative decision. The requested action offers no benefit to the citizens of Tracy. It adds an additional low density residential development pulling needed RGAs from higher priority development. It puts the City and Council in contempt of court for no good reason.

The Planning Commission recommended the City not adopt the 2018 DA. That advisement as ignored. That DA was determined to be void ab initio. The Planning Commission has recommended denial of this application. The Planning Commission is again correct, and it is recommended the City Council heed its wise advice.

Very truly yours,



MARK V. CONNOLLY



# THE SURLAND COMPANIES

October 28, 2021

Via email: [Robert.adams@cityoftracy.org](mailto:Robert.adams@cityoftracy.org)  
[Adrienne.richardson@cityoftracy.org](mailto:Adrienne.richardson@cityoftracy.org)

*Residential*

*Commercial*

Mr. Robert Adams  
Interim City Manager  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

1024 CENTRAL AVE.

TRACY

CALIFORNIA

95376

TELEPHONE

(209)832-7000

FACSIMILE

(209)833-9700

WEBSITE

[www.surlandcompanies.com](http://www.surlandcompanies.com)

Dear Mr. Robert Adams, Interim City Manager:

Surland hereby withdraws the request to amend its Development Agreement with the City of Tracy and the corresponding Draft Amendment to Development Agreement Outline.

By virtue of withdrawing this request, City of Tracy Council Agenda Item 3.G of the November 2, 2021 agenda is vacated.

Sincerely,

Les Serpa  
President  
Surland Companies

cc: Adrienne Richardson, Tracy City Clerk