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8 Superior Court of California, County of San Joaquin  
9 Unlimited Jurisdiction

10  
11 TRACY REGION ALLIANCE FOR A  
12 QUALITY COMMUNITY (TRAQC)

13 Petitioner,

14 vs.

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

17 Respondents.

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20 SURLAND COMMUNITIES, a California  
21 Limited Liability Company; THE SURLAND  
22 COMPANIES LLC, a California Limited Liability  
23 Company; SURLAND DEVELOPMENT  
24 COMPANY; and DOES 21-40 inclusive,

25 Real Parties in Interest.

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ROSA JORDAN AS CLERK  
BY RAFAELA GUTIERREZ  
DEPUTY

Case No. 39-2009-00201854-CU-WM-STK

(1) OBJECTION TO RETURN TO  
PEREMPTORY WRIT OF MANDATE,  
AND OBJECTION TO REQUEST TO  
DISCHARGE AND DISSOLVE WRIT  
ISSUED AGAINST THE CITY OF  
TRACY AND  
(2) REQUEST FOR HEARING ON THE  
RETURN OF WRIT

HEARING:

Date: None Set

Dept: 13

Time: None Set

Judge: Honorable Lesley Holland

1 INTRODUCTION

2 The Return of Peremptory Writ of Mandate is insufficient on its face. A Return of Writ  
3 must demonstrate compliance with the Peremptory Writ of Mandate. This Return merely alleges  
4 that the Respondent City of Tracy ("Tracy") does not have to comply with the Writ because the  
5 Approvals described in the Peremptory have been superseded by "Revised Approvals". The Return  
6 of Writ indicates only that there have been "Revised Approvals" not that ALL Approvals described  
7 in the Writ have been vacated and set aside. This does not demonstrate compliance with a  
8 Peremptory Writ of Mandate issued by this Court that required that all project Approvals be vacated  
9 and set aside.

10 The request to Discharge and Dissolve the Writ of Mandate which demonstrates on its face  
11 failure to comply with the Writ should be denied. The matter should be set for hearing.

12 THE RETURN OF PEREMPTORY WRIT OF MANDATE SHOWS ON ITS FACE  
13 FAILURE TO COMPLY WITH THE PEREMPTORY WRIT OF MANDATE

14 Respondent Tracy and Real Parties in Interest Surland ("Surland") requested dismissal of  
15 their Appeals. The dismissal of the Appeals was entered July 23, 2013. Tracy was then required to  
16 comply with the Peremptory Writ of Mandate within 30 days.

17 The Peremptory Writ of Mandate issued on October 31, 2011 required Tracy take the  
18 following actions.

19 "YOU ARE HEREBY COMMANDED to comply with the following:

- 20 1. Within thirty (30) days from service of this Writ, vacate and set aside the  
21 Development Agreement;
- 22 2. Within thirty (30) days from service of this Writ, vacate and set aside  
23 approval of the Project including, but not limited to the following actions,  
24 and all other actions taken to approve or implement the Project:
- 25 a. Certification of the Final Environmental Impact Report ("FEIR")  
26 Adopting Findings of Fact, A Statement of Overriding  
27 Considerations and a Mitigation Monitoring Program for the Surland  
28 Companies Applications No. 1-04-GPA, 1-04-A/P; 2-04-SPA;
  - b. Adoption of an Ordinance of the City of Tracy Approving a  
Development Agreement ("DA") with the Surland Companies,  
Application 2-06-DA;

- c. Approval of a Petition for Annexation, Application No. 1-04-GPA;
- d. Approval of a General Plan Amendment, Application No. 1-04-GPA; and
- e. Approval of the Ellis Specific Plan and Pre-Zoning, Application 2-04-SPA.

3. Respondents shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this Writ. 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 Respondents have complied with the directives of this Court."

None of the above Approvals has been set aside or vacated. The Return of Writ does not comply with any of these required actions and must be denied. The Return of Writ alleges the City made additional project Approvals in 2013 called "Revised Approvals". (Return of Writ 1:24-2:4) It alleges the Approvals specifically listed in the Peremptory Writ which this court ordered vacated and set aside, are "now superseded and replaced", but it does not allege they are "set aside and vacated". (Return of Writ 2: 4-8) The distinction is an important one because these prior Approvals remain in force and effect with known and unknown benefits, such as RGAs issued during the pendency of the appeal, remaining issued by Tracy and owned by Surland.

The Return of Writ argues that the "Revised Approvals" are now beyond any legal challenge. (Return of Writ 2:9-20) which is not relevant to whether the Approvals ordered vacated and set aside were vacated and set aside.

The Return of Writ next argues that the appeal has been dismissed and the "issues of the superseded prior approvals' compliance with CEQA have become moot". (Return of Writ 2:24-25) This misses the point. Once the appeal is dismissed the Peremptory Writ becomes final and must be complied with as written. This means the prior Approvals, whether or not Tracy believes the findings upon which the Peremptory Writ were based are moot, must be set aside and vacated.

What the Return of Writ is saying on its face is that because Tracy in 2013 approved "Revised Approvals" it no longer has to comply with a valid final Peremptory Writ. The Return of Writ is a refusal and failure to comply with the Writ.

1                    **RESPONDENT HAS NOT RESCINDED ALL APPROVALS LEAVING**  
2                    **BENEFITS SUCH AS RGAS FROM THE PRIOR APPROVALS OUTSTANDING**

3                    The Court and Petitioner TRAQC are left to guess at what hidden benefits Tracy leaves  
4 with Surland by failing to comply with the Writ. It is certain that the refusal of the City to comply  
5 with the Peremptory Writ and set aside and vacate all prior Approvals leaves benefits, such as the  
6 issuance of RGAs under those prior Approvals in the hands of Surland.

7                    This is not the first attempt to obtain or keep RGAs issued in violation of court orders. On  
8 May 31, 2012 TRAQC filed an Application for an OSC re Contempt against Tracy and Surland.  
9 The OSC alleged that Tracy issued 125 RGAs to Surland in May 2012 in violation of the  
10 injunction then in place during the appeal. (May 31, 2012 Application 2:15-27) Counsel for  
11 Tracy and Surland both claimed ignorance of this issuance of RGAs in violation of the injunction.  
12 (Declaration of Rick Jarvis, June 3, 2012, 6:14-17) The City ultimately rescinded and set aside  
13 this particular allocation of 125 RGAs, made that representation to the court on or about June 11,  
14 2012 and the Application for an OSC re contempt was denied without prejudice.

15                    Tracy wants the Court to forget that Tracy also issued to Surland RGAs in 2010 and 2011  
16 when this action was pending before the Trial Court. One hundred and twenty-five (125) RGAs  
17 issued per year means 250 RGAs were issued by the City to Surland when this action was pending  
18 before the Trial Court before the Injunction contained in the Judgment or the Peremptory Writ was  
19 issued. Tracy and Surland got caught trying to violate the injunction in 2012. Now they seek to  
20 escape with 250 RGAs the Peremptory Writ requires be voided and set aside. The 250 RGAs  
21 issued when the matter was before the Trial Court must be vacated and set aside pursuant to the  
22 now final Peremptory Writ. TRAQC does not believe this is another oversight, but will not be  
23 surprised if Tracy, Surland and their counsel all appear before the court saying they forgot about  
24 the 250 RGAs.

25                    This Objection is not intended to describe every benefit of the prior approvals that may  
26 remain with Tracy and Surland due to Tracy's failure to comply with the Peremptory Writ. That  
27 would require a hearing. Two hundred and fifty (250) 250 RGAs issued pursuant to approvals that  
28 Tracy has failed to set aside is just a one specific example. The only way to avoid other benefits

1 being improperly or secretly retained by Surland is to require compliance with the Peremptory  
2 Writ. This means City Council action to set aside and vacate the prior approvals.

3 **"REVISED APPROVALS" ARE NOT THE SAME**  
4 **AS SETTING ASIDE AND VACATING ALL APPROVALS**

- 5 1. **This Court has no way of knowing if the "Revised Approvals" addressed and**  
6 **corrected all the underlying issues addressed in the now final Judgment and**  
7 **Statement of Decision.**

8 The Return of Writ alleges that the "Revised Approvals" somehow rendered moot all the  
9 defects described in the Statement of Decision, the Judgment and Peremptory Writ.

10 First, action to render "moot" some issues was not option allowed by the Writ. The Writ  
11 allowed ONLY the setting aside of ALL Approvals. By dismissing the Appeal the Judgment and  
12 Writ as written are final.

13 Second, even if the Writ did allow some "Revised Approvals" rather than the vacating and  
14 setting aside of all approvals, a party just cannot assert compliance. In cases where a party is  
15 allowed to try to correct defects by "revised approvals" hearings and proof are required:

16 "The parties submitted a substantial administrative record concerning whether the  
17 water quality study complied with the writ and CEQA, and extensively briefed those  
18 issues on the motion to discharge the writ. Acting in the 2003 action, the trial court  
19 granted the motion to discharge the writ. The trial court's order granting the discharge  
20 states: '[T]he County has complied with the commands of the Writ, thereby justifying  
21 the Writ being discharged. The Court further finds that in so complying with the  
22 commands of the Writ, the County has complied with CEQA\* with respect to the  
23 issues alleged in the instant action.'" *Silverado Modjeska Recreation and Parks  
24 District v. County of Orange, CCRC Farms, LLC* (July 8th 2011) 197 Cal.App.4th  
25 282, 295

26 Tracy cannot just assert that it remedied all the problems addressed in the Statement of  
27 Decision even if that were a remedy allowed in the now final Writ, which it is not. The Court has  
28 absolutely no evidence concerning whether any "Revised Approvals" mooted any issue. There has  
29 never been a hearing on these assertions. No court has made any such finding. TRAQC strongly  
30 disagrees with Tracy's claims. Did the "Revised Approvals" properly consider the alternative  
31 locations which was a defect in the FEIR as stated in the final Judgment and Statement of  
32 Decision? TRAQC says it did not. Tracy and Surland may say it did. Is there any evidence  
33 before the Court on that issue? No.

1 How did the "Revised Approvals" address defects regarding airport noise? How did they  
2 address defects regarding traffic impacts or application of the Environmentally Superior  
3 Alternative? There is no way for this Court to know whether the "Revised Approvals" properly  
4 dealt with any of these issues, even if such consideration were appropriate. The Court knows  
5 nothing about the "Revised Approvals". Yet the Court is asked to Discharge and Dissolve a final  
6 Writ ordering ALL Approvals be set aside and vacated because some unknown "Revised  
7 Approvals" not before the Court were approved in 2013.

8 (There is NO legal authority to allow failure to comply with a final Peremptory Writ merely  
9 because some subsequent approvals were made for the same project.)

10 **2. "Revised Approvals" are not relevant to the failure and refusal to comply with a final**  
11 **Peremptory Writ.**

12 Tracy argues correctly that TRAQC did not challenge the "Revised Approvals" approved  
13 by Tracy. TRAQC correctly argues that Tracy and Surland dismissed the Appeals and the  
14 Peremptory Writ is now final and must be enforced. It does not matter what Tracy approved since  
15 the Writ was issued, it still has to comply with the Writ.

16 If the "Revised Approvals" are freestanding and not dependent on the project approvals  
17 described in the Peremptory Writ then compliance with the Peremptory Writ will be of no  
18 consequence to and have no effect upon the "Revised Approvals."

19 (If the "Revised Approvals" were "Amendments" or "Restatements" of the approvals  
20 described in the Writ, then it is possible that Tracy has have to set aside even the "Revised  
21 Approvals".)

22 Tracy seeks to avoid this issue entirely by just not complying with the Writ and not setting  
23 aside the prior approvals, and therefore having two sets of approvals for the same project remain  
24 approved and in the public record. What must happen is that Tracy be required to comply with the  
25 Writ. After that occurs and a Return of Writ is filed indicating what Tracy did to comply with the  
26 Writ (as opposed to the Return of Writ now filed which simply says Tracy did not set aside  
27 anything) then the issue can be addressed as whether Tracy set aside all approvals or not.  
28

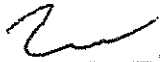
1     **3. The Court should not be baited into trying to determine what the "Revised**  
2     **Approvals" did or did not accomplish or what issues the "Revised Approvals" may**  
3     **have addressed.**

4             Enforcement of a final Peremptory Writ is simple and direct: The City must vacate and set  
5     aside ALL Approvals. The Return of Writ on its face demonstrates that no action was taken to  
6     vacate or set aside all project approvals. That is the only issue before the court now. What  
7     "Revised Approvals" did or did not accomplish are not issues before the Court and should not be  
8     issues before the Court until Tracy files a Return of Writ indicating it set aside and vacated the  
9     approvals described in the Writ. At that time the "Revised Approvals" may become an issue.

10                             CONCLUSION

11             TRAQC respectfully requests the Court reject the Return of Writ of Mandate which on its  
12     face shows Tracy failed to comply with the requirements of the Peremptory Writ. Pursuant to the  
13     terms of the Peremptory Writ wherein is Court retained jurisdiction until the Court determined that  
14     Respondent Tracy complied with the Writ and the directives of the Court contained in the Writ,  
15     TRAQC requests the Court set this matter for hearing on the failure of Tracy to comply with the  
16     Peremptory Writ.

17     Dated: August 7, 2013

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20                             Mark V. Connolly, Esq.  
21                             Attorney for TRAQC

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**PROOF OF SERVICE**

*TRAQC vs. City of Tracy, et al*  
*San Joaquin County Superior Court Case No: 39-2009-00201854-CU-WM-STK*

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 the date below, I served on the parties identified below the following document(s):

**DOCUMENTS:**

- 1. **OBJECTION TO RETURN TO PEREMPTORY WRIT OF MANDATE, AND OBJECTION TO REQUEST TO DISCHARGE AND DISSOLVE WRIT ISSUED AGAINST THE CITY OF TRACY AND REQUEST FOR HEARING ON THE RETURN OF WRIT**

**PARTIES:**

See attached Service List

- BY MAIL to the person(s) at the address(s) listed above. I caused such envelope containing such document(s) with postage thereon fully prepaid as first class mail to be placed in the United States mail at Tracy, California.
- BY EMAIL to the email addresses listed above. I caused such document(s) to be transmitted via email before 5:00 p.m.
- BY PERSONAL SERVICE. I caused such document(s) to be delivered by hand to the person(s) at the office address(s) listed above.
- BY FEDERAL EXPRESS MAIL. I caused such document(s) to be deposited into Federal Express mail for delivery to the person(s) at the address(s) listed above.
- BY FACSIMILE TRANSMISSION. I caused such document(s) to be delivered by facsimile transmission to the person(s) at the facsimile number(s) listed above.

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

Executed on August 8, 2013 at Tracy, California

  
Isabel Ramirez-Jimenez



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**SERVICE LIST**

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***San Joaquin County Superior Court Case No: 39-2009-00201854-CU-WM-STK***

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# BRENT IVES

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My name is Marla Israel. I have resided @ 1682 Duncan Drive, Tracy, for 25 years. I am the coordinator of my Neighborhood Watch Group # 09-2077-32. I am a caregiver for my elderly, invalid relative. I felt compelled to take time out of my very busy schedule tonight, to talk to the Council about a matter of public safety in my neighborhood.

I have one main question for the council tonight — when you, the council, votes that the city should take an action, you assign a city staffer to get the job done and you allocate city funds for that, do you have an accountability process by which you check to see if the job was ever done?

For 10 years, my neighborhood has been plagued by the problems of a blight house @ 1690 Duncan Drive. These problems pose a real public safety threat, including a fire threat and a public health threat. The current owner purchased the property in the mid 1990's and rented it out until around 2004. At that time; the renters took legal action against her due to lack of property maintenance. The authorities ruled that conditions on the property were so substandard that it could not be rented

to the public. The owner moved in temporarily until about 2005, during which time she further degraded the property, by hauling in and storing massive amounts of junk and debris. The weight of that junk and debris piled against our common fence near pushed that fence over into my yard. I asked the owner to correct it. She simply left it there and moved away! Tracy Code Enforcement was unable to get her to clean up the place. Finally former Fire Chief Boesch was able to get her to clean up the the yard. A city building inspector said that it appeared the rear of the house was moving off its foundation. Boesch presented this blight case to a Tracy City interdepartmental meeting in 2006.

Since 2006, various other conditions on the property have threatened the public safety nearly:

(1) All utilities to the property were long ago cut off, but unauthorized people and animals have broken in there and lived there temporarily until they are run off. A homeless man once told me he had squatters rights to live there because it was abandoned

(2) After those repeated break ins and

Witnesses have reported that the inside of the house is filled with trash, debris, waste - including dead animals! For their own safety, whoever cleans up the mess in the future would have to wear Haz Mat suits. That situation is very disturbing to the neighbors!

(3) The front yard weeds are only mowed 2x/year. The backyard hindered dry overgrowth is not cleared. It presents a real fire threat to homes nearby.

(4) The blight house owner now lives @ 1700 Duncan Drive. There @ 1700 Duncan Drive she illegally burns household garbage in the fireplace on no burn days, releasing noxious fumes and ash to the surrounding area. We must always be on the alert for this so we can close our doors & windows.

(5) The property has been a habitat for vermin. Neighbors have observed rats running out of the house into the neighborhood and then returning there. At one point the rat infestation was so bad that there was a visible rat poop trail around the front of the house. Swarms of mosquitoes have been observed flying out of the property into the neighborhood.

Neighbors have also observed swarms of termites arising from a wooden fence @ 1700 Duncan Drive, and flying into neighboring yards. To protect ourselves my family has had to hire Clark Pest Control to provide rat poison bait stations in our yard, and termite protection service.

I have reported all these matters to various government agencies - San Joaquin County Public Health, Mosquito Abatement District, TFD, TPD, Public Works and Code Enforcement. Code Enforcement has issued numerous warnings, citations and fines to the blight owner, who has not complied with them. I have a binder full of letters I have written to agencies, notes from phone calls and face to face meetings with the agencies, minutes from Neighborhood Watch Group meetings, and even a photocopy of one of the publicly displayed citations

On November 1, 2011, I <sup>and a City official</sup> spoke before the City Council on this subject and begged for help with this long standing problem. Those council members present that night were Brent Lues, Steve Abercrombie, Bob Elliott, Mike Maciel and Robert Dickman.

Some expressed surprise that the city had allowed the problem to go on for so long. Some apologized for that. The council voted to get the problem resolved, assigned a city staffer to do the job, and allocated city funds for the project.

Please fast forward to today - August 20, 2013  
The problem has still not been corrected!

At our fall 2011 Neighborhood Watch Group meeting, that city staffer assigned the task of problem correction told us the problem would be resolved by the end of 2011. It was not.

At our May 2012 Neighborhood Watch Group meeting, that staffer told us that the city considered our problem a top priority, that the City would be going soon to a judge to get permission to enter & clean the house, that the janitorial service would soon start the clean-up. We were told that the City would be taking over the property into a receivership. As of this date August 20, 2013, no one has ever cleaned the place up.

That same staffer was invited to our recent Neighborhood Watch Group meeting,

on August 5, 2013, so that that staffer could explain to us why nothing had been done. That staffer no showed to that meeting. Our best cop. and a CERT rep. did come to our meeting. ~~That staffer who no showed did apologize for his mistake.~~

After the August 5 meeting, I realized that, whether I had time or not I had to come to you, the Council again, and beg for help again, let you know that the job you had ordered be done 22 months ago had not been done yet!

The city staffer who no showed later did apologize and requested I set up another meeting ASAP. I had to decline that request, due to my caregiver responsibilities. That staffer asked that I write a letter to a judge and an attorney ASAP. I had to decline that also due to my caregiver responsibilities.

During the past 22 months, since you, the council, voted that our problem should be corrected; but it was never corrected, I could only wonder why this was happening?

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- 1) Could it be that the city staffer assigned to do the job had forgotten about us?
  - 2) Could it be that resolution of the problem was mired in red tape?
  - 3) Could it be that there was insufficient staff to do the job?
  - 4) Could it be that the staff lacked the knowledge or expertise to do the job?
  - 5) Could it be that the staff was afraid to move against the lawbreaker homeowner more than they feared letting down lawabiding homeowners nearby?
  - 6) OK Could it be that the problem had never been corrected because there was no accountability process whereby the council could keep track of assigned jobs to see if they were ever done!

I again ask the council — do you have an accountability process by which you check-up on staffers to see if they are doing their job? If you don't have one, this case demonstrates why you need one!



If city staffers do not complete a job the council gives them 22 months ago, there is a real problem of staff accountability!

Would one of you Council members personally take interest in this situation and find out why staff never completed the job you gave them? Would you please communicate your findings to me directly?

There is a saying - Justice delayed is Justice denied. I believe my neighborhood has been denied justice, and forced to live in a situation that threatens public safety. I feel that my neighborhood has been treated like second class citizens. I feel that our neighborhood watch group # 09-2011-32 should be referred to as "the ~~citizens~~ neighborhood which the city forgot"!!! We have been given the royal run around for years. We have been given only lip service, false promises, stalling. We need some action by the City now - not words.

Understandably, I am frustrated, fed up and furious with this whole mess! Would you please help my neighborhood now?