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February 6, 2013

Law Offices of A. Alan Berger
95 South Market Street, Suite 545
San Jose, CA 95113
Fax: 408.536.0504

San Leandro City Attorney
Attn: Jennifer Faught
555 - 12th Street #1500
Oakland, CA 94607

Sally Barros, Secretary to the BZA
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

RE: Letter to Chairman of San Leandro BZA and San Leandro City Attorney Regarding Intent of the City of San Leandro to Adopt a Mitigated Negative Declaration on the Application of Halus Power Systems to Install a Wind Turbine. PLN2012-00006.

Dear Mr. Berger:

I am in receipt of a copy of the letter that you sent to the San Leandro BZA Chairperson (who is a woman ergo not a Chairman) and have consulted with a private attorney on this matter. Personally, in my 15+ years as a CEQA practitioner, I have seen some nasty comment letters, but I believe that your letter wins the prize for project comment via character assassination. My attorney advised me that since your letter will be part of the public record for the Halus Project that I compose a point-by-point rebuttal stipulating the errors in your opinions and presumptions along with corrections.

I will direct you to excerpts from Patch from several people from two different comment threads that I was apparently party to before I realized that Patch is a forum for people who like to hear themselves deride and attack liberals and government supporters. Unfortunately, some of the same people show up at every opportunity to provoke other citizens so they can belittle them and makes themselves feel good about their own prejudices.

Comment 1:

Your accusation that I have published prejudicial and unethical comments is without merit. I made a comment that I was disappointed that the candidate I supported did not win the Council election, which seemed to immediately escalate into a free-for-all from the staunch supporters of the winning candidate. No direct disparaging remarks were made about anyone in particular, therefore nothing prejudicial or unethical has been proven.

Comment 2:

You note that I engaged in an "absurd rant" and how alarming my "ignorance" is. So who is engaging in slander here? I made exactly six comments including the one where I asked Chris Crow to stop defending me. In between several people weighed in on my merits or demerits of the Halus project and the fact that the streets at Heron Bay, while not technically gated, prevent non-residents to park anywhere nearby and if they do they are towed. I have a right to voice my displeasure at the fact that these residents have not been very gracious neighbors to other San Leandro residents. That does not constitute a "rant showing ignorance."

Comment 3:

It is a fact that Halus has local support. It is also true that some residents would like to see the "private streets" be public, including it seems the new Councilmember Benny Lee. Mr. Lee in fact wrote letters of opposition to the Halus project prior to winning the election, so apparently his letters should not be part of the staff report showing his personal opinion, but they are. Perhaps he should not have been allowed to serve on the Council given his prejudice against the Halus project.

Comment 4:

You seem to put much stock in a Mr. Steve Leroux, whom you do not even know. This would be the same Steve Leroux who stated that Marga Lacabe was one of those people "who have lost touch with reality" believing that Chris Crow would win the Council election. That type of comment shows me that Mr. Leroux is undeserving of much credibility when he accuses me of being in violation of AICP code of ethics. He clearly shows no understanding of what constitutes an ethics violation in APA, since I committed no such violation. My record to date on the BZA will show that I have listened attentively to every presentation and voted fairly after considering of the whole record.

Comment 5:

I never said anything in a "weak" attempt to soften my viewpoint, I firmly and clearly wanted to clarify my point that I had not threatened anyone, nor was I in violation of any AICP ethic (as being on BZA has nothing to do with being a professional planner), nor could I not still listen to the whole argument on the Halus case before making a decision. In fact, I spent an entire evening reading every word of the staff report packet. And to be very clear, I never conveyed my viewpoint to any other BZA member on the Halus application.

In closing, my attorney recommend that I simply not attend the February 7 BZA meeting. I have been part of some three-ring circuses comprised of both sides of an issue on many projects in my professional career, but I will not be part of a last-ditch effort to win an EIR by defamation of character. Mr. Berger – you should be ashamed of yourself, but I'm sure that you are not.

Sincerely,

Janet Palma, AICP



Feb 05 13 01:33p A A Berger

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**LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
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San Jose, CA 95113
Telephone: 408-536-0600
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February 5, 2013

Chairman of the Board of Zoning Adjustments
The Honorable Catherine Vierra Houston
c/o Sally Barros, Secretary to the BZA
835 E. 14th Street
San Leandro, CA 94577

City Attorney of the City of San Leandro
Attn: Jennifer Faught
555 12th Street #1500
Oakland, CA 94607

Re: The Intent of the City of San Leandro to Adopt a Mitigated Negative Declaration
Relative to the Application of Halus Power Systems to Install a Wind Turbine.
PLN2012-00006.

Via Overnight Mail, Facsimile and Email

Gentlepersons,

This is to advise you that I am the attorney for the Heron Bay Homeowners Association. As you are no doubt aware, I have previously filed on behalf of Heron Bay Homeowners Association Opposition and Amended Opposition to the application of Halus Power Systems (hereinafter referred to as "Halus") to install a 100-foot wind turbine on their property located in the City of San Leandro, adjacent to the homes of Heron Bay. I am advised that after several continuances, the above entitled matter is now set for public hearing and comment before the Board of Zoning Adjustments (hereinafter referred to as the "BZA") on Thursday, February 7, 2013.

1
I am directing this correspondence to your attention because it has recently been brought to my attention that one of the sitting members of the BZA, who apparently intends to rule on the Halus application on Thursday night, is guilty of egregious, unethical and illegal conduct. Board Member Janet Palma has published prejudicial and unethical comments that clearly indicate that she is not fit to hear or decide any issues relative to the Halus application or, frankly, any issues at all relative to Heron Bay Homeowners Association. On behalf of the Association, we hereby demand that Janet Palma recuse herself, or in the event that she refuses recusal, be removed from any hearing, argument

or vote regarding the Halus project. Only the City Council may decide whether or not she is even fit to serve the City and this Board in the future.

2

I have attached a ten page excerpt from the San Leandro Patch dated November 7, 2012 et.al. for your review. It is obvious that Ms. Palma was very disappointed that Benny Lee, a former President of the Heron Bay Homeowners Association and now an elected City Councilperson, won recent election over Mr. Chris Crow. On page 4, 9:47 pm, Nov.7, Ms. Palma states: "Damn Chris, I really thought you would make it. We need some real change in this city not someone who is going to back one "gated" community that should never and would never now have been built. Next time." Her obvious and stated prejudice against Benny Lee and the Heron Bay Association should be enough to have her removed from any vote involving Heron Bay, but she unfortunately goes much further in her later absurd rants. (I might note that her ignorance is also alarming, to wit: Heron Bay is not a "gated" community).

At page 4, 10:55 am, Nov. 8, in response to a comment by Carlos J. that its time to have the wind mill (sic) approved, she states: "That's right Carlos! Thank you."

3

At page 5, 12:01 pm, Nov. 8, Palma states: "...not true that Halus has no local support, in fact just the opposite. And you never know what can happen about those supposed "private streets." Heron Bay are not good neighbors and do not believe in supporting the great San Leandro citizenry." Could there be a more clear statement demonstrating Ms. Palma's inherent prejudice to Heron Bay? Can one regard her comments as anything but a threat to Heron Bay relative to their private streets? She also clearly indicates her support of the Halus project notwithstanding that these comments were made before the final public comments and before the public hearing to be held this Thursday. To allow her to remain on the Board for this hearing is a mockery of fair play and public interest.

4

I direct your attention to the comments of Mr. Steve Leroux, who I do not know but whom I anticipate is a member of the Heron Bay community, made on page 5-6, 12:28 pm, Nov. 8. Mr. Leroux expresses his opinion as to the conduct of Ms. Palma with justifiable outrage and in a manner that should represent every owner of a home in Heron Bay and frankly every member of the City of San Leandro. Every citizen, at some time, may be a victim of Ms. Palma's predetermined decisions and prejudice. It is hard to imagine how she could have more clearly violated her oath as an appointed representative of the City Council and the People of San Leandro.

5

In the remainder of the chain of comments, Ms. Palma obviously realizes that she has committed her preformed notions, her prejudices and her unethical conduct to written form. She weakly attempts to soften her position but in this case the damage is done. She is clearly not fit to participate in any manner in the Halus application. Every citizen has the right to rely on the fact that each and every Board member approaches the entire hearing process in an unbiased manner and with no preformed judgments. Should she be allowed to participate, this egregious behavior will definitely be the subject of Court action. Frankly, it remains to be seen if she has already conveyed her poisonous attitude to other members of the BZA or to staff members of the City who have voiced an opinion

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on the reasonableness of the Halus application. At a minimum the City must see that she does not participate on Thursday.

Very truly yours,



A. Alan Berger

Enclosure
AAB/ceb

Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:05 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

[View as Webpage](#)



Hi Janet Palma,

Fred Eiger also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Everyone at Guido' knew Chris Crow was going to lose. Hey Marga, if you are sad to live in a city with Benny Lee does that mean you'll be doing us a favor by moving?"

To respond [view the comment on Patch](#).

You received this email because you commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#) on [San Leandro Patch](#). To stop receiving updates for this Article, click [here](#). To manage all of your email updates, click [here](#). To unsubscribe from all Patch emails, click [here](#).

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Sent: Wednesday, February 06, 2013 6:05 PM
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Hi Janet Palma,

Fred Eiger also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Hell David, Leah is just a hop skip and a jump from Oakland. She could have had her nirvana by buying on the other side of Durant. I have no idea why she didn't."

To respond [view the comment on Patch](#).

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Hi Janet Palma,

Fred Eiger also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Those are private streets. If people want them "public" then the City should be the ones who maintain them. But then they'd just crumbled under the shoddy material the government uses."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:10 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

David also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Chris, The 21st century belongs to fossil fuels, as did the 20th century. There is no reason to "offset" our demand for oil, especially when the "offsets" are *more* expensive than oil. Not only are they more expensive than oil, they are far more expensive than oil "should be" if it weren't regulated out of existence in California, for example. If some innumerate fool wants to waste his money on a windmill, go for it. Problem is that my money is being wasted on this idiot vis a vis my taxes and all the bull*** subsidies thrown at "alternative" energy."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:10 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

David also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#)

"Back to the 14th Century, Progressives! Forward to the past! Let's power our cities with windmills and wood just like in the Middle Ages. Or how about we stick a straw in the ground and get some tasty, high-energy oil and natural gas. California has oodles of it just oozing into the ocean and elsewhere. There's a reason people moved on to fossil fuels. I'll leave it to you to try to figure it out. I'll give you a hint, energy density."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:28 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

David also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#)

"And how much do you want to be that money won't dent OUSD abysmal graduation rate Leah? But hey, good job Oaklanders. Throwing good money after bad is always a brilliant idea. Again, Leah, the border is just a couple blocks away from you. Move. You already send your kid to a private school, so there's no reason not to."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 12:16 PM
To: janetpalma@comcast.net
Subject: New comment on 'Ghetto Housing' Or Affordable Apartments Near BART?

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Hi Janet Palma,

David also commented on 'Ghetto Housing' Or Affordable Apartments Near BART?

"And never has, Paul. If she had, she'd be like everyone else who grew up in, or lived near a project--can't get out soon enough! Typical "liberal"--ghetto housing, mass transit, etc, are all great for everyone else."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 12:09 PM
To: janetpalma@comcast.net
Subject: New comment on 'Ghetto Housing' Or Affordable Apartments Near BART?

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Hi Janet Palma,

David also commented on 'Ghetto Housing' Or Affordable Apartments Near BART?.

"No, Theresa, according to you, it's ok to steal if the thieves outnumber the people they're stealing from (renters outnumber landlords, so they should enact rent control, according to you). Yes, Theresa, it **could** happen that a landlord doubles the rent. And it **could** happen then that the renter moves. I'm pretty sure that you can appreciate that's not a wise business decision. You're complaining about something that happened in Alameda; this is San Leandro. So, how will enacting rent control in San Leandro "help" somebody in Alameda? You need a course in reading comprehension. I never called renters thieves. I called your concept of rent control thievery (which it is), that you justified by renters outnumbering landlords (which doesn't change the facts about rent control)."

To respond [view the comment on Patch](#).

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