

rec'd 9/20/07  
GPU 125

# Humboldt Watershed Council

P.O. Box 1301, Eureka CA 95502 707.443.7433 sheds@humboldt1.com

September 20, 2007

Planning Commission  
County of Humboldt  
3015 H Street  
Eureka, CA 95501

**Re: Request for Recusal of Commissioner Herman**

Dear Commissioners,

On September 11<sup>th</sup>, the Humboldt Watershed Council addressed the Board of Supervisors to bring to their attention recently discovered information which we believe indicates a conflict of interest regarding Commissioner Tom Herman on issues relating to Pacific Lumber Company and policies for industrial timberlands. Based on this information, we requested that Commissioner Herman recuse himself from any and all discussions and/or decisions of land-use designations and policies for timberlands in Humboldt County as a part of the General Plan Update. It is our understanding from comments made to the press that Commissioner Herman does not intend to recuse himself on these issues.

In making our request, we stated clearly that we took no issue with Mr. Herman's past employment or relationship with Pacific Lumber Company, nor did we make any assertions regarding his fairness or competency as a Commissioner.

Since making our request, certain information has been brought to our attention which suggests that Mr. Herman's conflicts may be considerably larger than the very narrow conflict upon which we based our request. This information indicates direct actions taken by Commissioner Herman which, if true, might violate his responsibilities as a Commissioner.

We are seeking to determine the veracity of these accusations. While we have been able to find documentation of some of these actions, we would like to give Commissioner Herman the opportunity to address them, himself.

1. Have you ever met with County staff either with, or on behalf of, any client of your lawfirm?
2. Has your firm ever represented clients who had projects before the Planning Commission?
3. Has your firm ever had written contact with Planning staff on issues which were scheduled to come before the Planning Commission?
4. Have you, yourself, ever addressed the Forest Review Committee at their meetings when they were considering the very policies which are now before this Planning Commission for your consideration?
5. During your time as a Planning Commissioner, have you ever heard testimony on any project in which any client of your firm had a financial interest?
6. If the answer to any of these questions is yes, then did you take appropriate action by recusing yourself from any discussion or consideration of the issue?

Tom Hofweber  
November 13, 2006  
Page 2

Second, we have been unable to assure our witnesses that their time will be well-spent Thursday evening. For their convenience, we ask that we cooperatively set this matter for hearing on a night when it is likely to be fully heard and considered. Some witnesses will be traveling great distances to attend the hearing. Their convenience should be considered in timing a hearing on this petition.

Third, we have just recently identified areas of potential common ground. The public interest favors consideration of areas of agreement that could make it more likely staff can support our petition. We need some additional days to schedule time to meet with you and others to negotiate those areas of potential common ground, and to come to terms as to how to best implement an agreement when it is reached. Rushing to terms in order to meet this week's schedule would be imprudent and impractical. We know you have many other areas of work to attend to this week, and our time will be better spent if we organize times for negotiation and agreement. We are pleased with our most recent communications with staff indicating that our time may be well spent in such negotiations in the public interest. We simply need some time to do accomplish this together.

?  
What  
are these  
areas

For these reasons we ask that staff join us Thursday evening in requesting a continuance, *not to exceed sixty (60) days*, so that we might promptly conclude agreements leading to a full and fair consideration of our petition for General Plan Amendment.

Thank you.

Very truly yours,

William F. Barnum

WFB:b  
cc: Client

index letter to tom Hofweber nov 13, 2006

# **Humboldt Watershed Council**

P.O. Box 1301, Eureka CA 95502 707.443.7433 sheds@humboldt1.com

In the September 18<sup>th</sup> issue of the Independent, you were quoted as saying "*I don't base my decisions on how they're going to affect any particular client of mine.*" This seems to indicate that you do not feel any responsibility to serve the best interests of your clients. Even if we are to take such a comment at face value, this does not in anyway address these every real conflicts, nor is it considered appropriate behavior as a public decision-maker.

In addition, failing to act in the best interest of your clients could also suggest violations of the California State Bar's Rules of Professional Conduct, including Rule 3-300 *Avoiding Interests Adverse to a Client* and Rule 3-310 *Avoiding the Representation of Adverse Interests*.

We have provided two attachments in support of our concerns:

1. November 13<sup>th</sup>, 2006 letter from Barnum and Herman to Senior Planner Tom Hofweber on behalf of Andrea and Steve Tabor, in advance of their project's November 16<sup>th</sup> 2006 hearing before the Planning Commission.
2. October 31<sup>st</sup>, 2006 e-mails from Barnum & Herman to Andrea Tabor, Steve Tabor and Larry Henderson regarding their project.
3. Partial speaker list from the March 29<sup>th</sup>, 2006 Forest Review Committee meeting, including comments from Tom Herman to the FRC.

Again, the Humboldt Watershed Council requests that the Planning Commission with County Counsel on this matter, and take immediate and appropriate action.

Respectfully,

Mark Lovelace  
Humboldt Watershed Council

Cc:

Ralph Faust, Humboldt County Counsel  
Laura Nikolas, Chief Administrative Officer  
Kirk Girard, Director of Community Development  
Humboldt County Board of Supervisors  
Kevin Bundy, Shute, Mihaly and Weinberger

rec'd 9/29/07  
GPH

**BARNUM & HERMAN**

*AN ASSOCIATION OF SOLE PRACTITIONERS*

POST OFFICE BOX 179  
525 SECOND STREET  
SECOND FLOOR EAST  
EUREKA, CALIFORNIA 95501  
TELEPHONE: (707) 442-6405  
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William F. Barnum  
Thomas M. Herman

Judith A. Richards  
Legal Assistant

November 13, 2006

**VIA E-MAIL AND  
FIRST CLASS MAIL**

Tom Hofweber  
Senior Planner  
Humboldt County  
Community Development Services  
3015 H Street  
Eureka, California 95501

**Re: Request to Continue Hearing of Andrea & Steve Taber Petition**

Dear Tom:

I represent Andrea and Steve Taber in the matters set for hearing before the Planning Commission this coming Thursday evening, November 16<sup>th</sup>.

My clients request your cooperation in seeking a continuance of the hearing of their Petition for General Plan Amendment so that it can be fully heard and considered on another Planning Commission agenda within the next sixty (60) days.

We have examined the agenda for this week's hearing and the content and number of petitions to be considered appears daunting. Ours is near the end of the proposed hearing agenda.

There are at least three (3) good reasons for us to cooperatively continue the matter, including the following:

First, we have serious due process concerns for this week's hearing. As our project appears late in the calendar, the likelihood is that the Commission will have exhausted a reasonable amount of time in hearing the other matters, before ours can be heard and considered. When this happens, often projects that deserve a full hearing are ignored, poorly considered or overlooked, resulting in a bad outcome for either the public or the applicant. Due process considerations argue in favor of continuing this petition to a later Commission agenda so that it can be fully heard and considered.

CONTINUANCE

BARNUM  
HERMAN

rec'd 9/20/07  
GPA

**BARNUM & HERMAN**  
Post Office Box 173  
525 Second Street, Suite 211  
Eureka, California 95502

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

From: "Larry Henderson" <Larrydhenderson@cox.net>  
To: "Andrea Taber" <andreataber@sbcglobal.net>  
Cc: "Bill Barnum" <wfb@reninet.com>; <jane@humboldt1.com>;  
<jguttero@aol.com>  
Sent: Tuesday, October 31, 2006 9:42 AM  
Subject: RE: Trinidad Rezoning-1\_.doc

Is the following okay?

Re: APN 517-031-014, 517-031-013, 517-031-12

The owners of the referenced properties would agree to implement the following public benefit measures in connection with the rezoning and subdivision of the parcels.

- 1) After partitioning of Parcel -12 (that is owned by Dr. Jane Williams and Jeff Cuttero as tenants in common), Dr. Williams intends to donate a portion of her part of the partitioned property to the Trinidad Land Trust for permanent preservation as open space and wildlife habitat.
- 2) Andrea and Steve Taber will grant to Humboldt State University permission to use a portion of their land on the west side of Patrick's Point Drive for the installation of High Frequency Radar and Associated Communications Equipment (HSU will use the equipment to monitor ocean currents offshore, which in turn will help scientists protect critical wildlife habitats and other important work).
- 3) The Tabers will: With approval of the subdivision and development permit(s), the Tabers intend to do the following concurrently with the development of the properties, the Tabers intend to:
  - a) Concurrent with the subdivision of their property east of Patrick's Point Drive, donate an easement for public use from Patrick's Point Drive to Scotty's Point (Scotty's Point is a popular location in Trinidad for fishing, hiking, climbing, and wildlife viewing).
  - b) Concurrent with any new development of their property east of Patrick's Point Drive, improve the trail to Scotty's Point, making it safe for pedestrians and incorporating erosion control measures (the existing access to Scotty's Point is a volunteer trail that is dangerous for public use and subject to erosion).

From: "Bill Barnum" <wfb@reninet.com>  
Subject: Re: Trinidad Rezoning-1\_.doc  
Date: October 31, 2006 10:42:45 PST  
To: "Larry Henderson" <Larrydhenderson@cox.net>, "Andrea Taber" <andreataber@sbcglobal.net>  
Cc: <jane@humboldt1.com>, <Jguttero@aol.com>

Hello All,

My suggested edits were simple to cut and paste in, so here is what I suggest:

Re: APN 517-031-014, 517-031-013, 517-031-12

The owners of the referenced properties propose to implement the following public benefit measures in connection with the rezoning and subdivision of the parcels.

- 1) After partitioning of Parcel -12 (that is owned by Dr. Jane Williams and Pam and Jeff Guttero as tenants in common), Dr. Williams intends to donate a portion of her part of the partitioned property to the Trinidad Land Trust for permanent preservation as open space and wildlife habitat.
- 2) Andrea and Steve Taber will grant to Humboldt State University permission to use a portion of their land on the west side of Patrick's Point Drive for the installation of High Frequency Radar and Associated Communications Equipment (HSU will use the equipment to monitor ocean currents offshore, which in turn will help scientists protect critical wildlife habitats and other important work).
- 3) Upon approval of the subdivision and development permit(s), the Tabers propose to do the following concurrently with the development of the properties:
  - a) Concurrent with the recordation of a Final Map for subdivision of their property east of Patrick's Point Drive, they will record (as a donation to a responsible land trust) an easement for public trail use from Patrick's Point Drive westerly to Scotty's Point (Scotty's Point is a popular location in Trinidad for fishing, hiking, climbing, and wildlife viewing).
  - b) Concurrent with any new development of their property east of Patrick's Point Drive, the Tabers propose to improve the trail to Scotty's Point, making it easier for pedestrians to use and incorporating erosion control measures (the existing access to Scotty's Point is a volunteer trail that is difficult for public use and subject to erosion).

HSU

Scotty Point

Where would the development be?

Bill

William F. Barnum