



Court of Appeal Strictly Construes Brown Act Requirement to Make Documents Available for Public Inspection at the Time of Distribution to the Legislative Body

In *Sierra Watch v. Placer County et al.*, the court held when public agencies distribute written materials relating to an open session agenda item less than 72 hours prior to the meeting, the written materials must be made available for public inspection at a public office or location that is open and accessible to the public *at the time* the materials are distributed to all, or a majority of all, the members of the legislative body. In other words, the phrase “made available” means “made *actually* available.”

Sierra Watch involved a development project located in Placer County that drew the attention of the California Attorney General over concerns about the proposed project’s impacts on the Lake Tahoe Basin. The Attorney General met with the County and requested that the County require the project proponent, Squaw Valley Real Estate (“SVRE”), to pay an air quality mitigation fee to the Tahoe Regional Planning Agency, notwithstanding that the proposed project would not be located in the Lake Tahoe Basin. Although, the County declined to impose the fee, SVRE agreed to pay the fee in exchange for the Attorney General agreeing not to challenge the project.

The Attorney General and SVRE reached agreement on a Monday preceding the scheduled Tuesday Board of Supervisors meeting at which the project would be considered. Shortly thereafter, County Counsel updated the development agreement that accompanied the agenda item to reflect payment of the air quality mitigation fee requirement. At 5:36 p.m. County Counsel emailed the updated development agreement, together with a memo explaining the revision and certain other project information, to the County Clerk. At 5:42 p.m., the County Clerk emailed the two documents to all Board of Supervisors members. The next day and prior to the Board’s meeting, County staff placed project documents, including the memo explaining the revision to the development agreement, at a public table. The Board subsequently approved the project.

Sierra Watch challenged the Board’s action as a violation of the Brown Act because it did not make the revised development agreement or the memo explaining the revision available at the time the materials

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were distributed to the Board of Supervisors. The appellate court agreed with Sierra Watch, stating that no document at the County clerk's office was available for public inspection at a time when the County Clerk's office was closed. Therefore, the County violated the Brown Act by distributing documents to the Board less than 72 hours prior to a meeting and did not make them available to the public until the following day when the County Clerk's office reopened for business.

However, the court stated that any prejudice incurred by Sierra Watch by the late disclosure did not provide a basis to vacate the Board of Supervisors' approval of the project.

As a result of this decision, public agencies must either reconsider the public office or location designated for placing written documents distributed less than 72 hours prior to a meeting or delay the distribution to the legislative body until the public will have actual access at the time of the distribution.