Litigation Due Diligence Analysis

Spjut v. Big Lagoon Park Company

July 27, 2023

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1.
SUMMARY

Craig Spjut (the "Client") is the owner of 10 Devils Canyon Road, Trinidad, CA 95570 (the "Property"). The Property is located within a common interest development in the northern California coastal community of Big Lagoon Park Company, Inc. ("BLPC," the "Company," or the "Corporation"). The Corporation is a mutual benefit corporation owned by holders of corporate certificates. Each certificate holder owns a cabin on Corporation land. Client is a certificate holder of the Corporation.

At issue is Client's application to erect a garage on his property which the Corporation board seems to have arbitrarily denied despite two experts' opinions that the proposed garage would have a de minimus impact on neighbors' views.

Client wants the garage application approved and his attorneys' fees and costs reimbursed.
Client's Potential Valid Claims: Failure to Comply with Governing Documents; Breach of Fiduciary Duty; and Disparate Treatment.

Strengths/Weaknesses of Client's Claims:

Breach of the Handbook: In denying Client's garage application, the board relied on, but misapplied, language in the Company's "Handbook" that states a new structure must not unduly impact present views or critical lines of sight. The terms "unduly impact" and "critical" are high standards, whereas the Client's proposed garage has a de minimis, or "low," impact on the complaining neighbors' views.

Breach of Fiduciary Duty: The board improperly put undue weight on the general, vague opinions of two neighbors (one of whom was a board member), and ignored the opinions of two experts. The board has approved several other applications for garages/sheds, including an application by the BLPC President. Client may also seek Declaratory Relief.

2.
PARTIES/SIGNIFICANT FIGURES

Name of Party / Significant Figure	**Significance to Underlying Matter/Dispute**
Craig Spjut ("Client")	Client is owner of the Property and applicant for construction of garage at the Property.

Big Lagoon Park Company	Community
Frank McLarnon	Board President
Lori Ewing Warren Lewis/Kathleen Lewis	Neighbors who objected to Client's proposed garage. W. Lewis was a board member at time garage application was denied.

The table above may be amended from time to time to reflect revisions to Client's narrative and/or new information that may become available in the future.

3.
STATEMENT OF FACTS / EVIDENTIARY SUPPORT

Date / NA	Fact	Evidence Supporting That Fact
1950s, 1960s	Client's family has owned the Property for over 60 years. His stepmother, Frances Rapin, purchased a cabin at Big Lagoon Park in the late-50s/early-60s prior to the Company's incorporation in November 1963. Ms. Rapin was one of the founding members of the Company and was instrumental in its establishment. Client has been active in the community since 1972.	Client Timeline
1985	Client's family cabin has been relocated twice. The first relocation occurred in 1985 when, due to concerns over bluff erosion, the cabin was moved back approximately 56 feet from its original location and further away from the bluff's edge.	Client Timeline

Post-1985	After the first relocation, Client and his family remained concerned about the instability of the adjacent bluffs. The Company developed a cabin relocation plan in the 1980s for the future relocation of affected cabin owners to Big Lagoon Park's North Planning Area which was considered more stable.	Client Timeline
2011	In early-2011, Client determined that the adjacent bluffs had become too unstable and decided to relocate to one of two available lots in Big Lagoon Park's North Planning Area that were reserved as part of the cabin relocation project.	
2011	Client spoke with his neighbor, Lola Harlan, about the Company's two relocation sites because the site selection process was essentially "first come, first serve." Client told Ms. Harlan that he wanted her to have first choice, and he would take the other relocation site. Harlan informed Client that she had no desire to relocate her cabin.	
September 2011	The board discussed removal of Client's garage adjacent to the cabin. It was a three-car, 550 square foot garage. At a previous board meeting, the board voted that the existing garage must be demolished upon approval of Client's cabin relocation. The board's rationale was that the existing garage would be "in the way" of Ms. Harlan's cabin when her cabin was eventually moved to a relocation site. The board agreed that the existing garage could remain in place until it had to be moved or demolished.	
9/8/2011	The board approved the relocation application at the September 8, 2011 board meeting.	
10/14/2011	Client asked a draftsman to draw up plans for the cabin's relocation to its current site (the "2011 Plans").	Client Statement
2012	The 2011 Plans included a structure immediately adjacent to the cabin. The structure was not identified as a particular type of structure, i.e., it was not described as a garage and/or shed. Its dimensions were consistent with a garage.	Client Statement

2012	Client and Ms. Rapin submitted the 2011 Plans for the cabin to the Company for approval sometime in 2012. The Company rejected the 2011 Plans because the Company prohibited slab on grade foundations (i.e., requiring a perimeter foundation). The Company's rejection letter said nothing about the structure adjacent to the cabin.	Client Statement
2012	Client asked the draftsman to modify the 2011 Plans to address the Company's concerns. Client did not ask for any other modifications.	Client Statement
4/9/2012	Letter from Jackie Tidwell (board member) asking Client's step-mother Frances Rapin to set up "tell tale" poles for the garage. (Client says the cabin and adjacent structure were "staked out," and tell tale poles were not erected.)	4/19/2012 Jackie Tidwell letter to Client's step-mother, Frances Rapin. 6/22/2023 Tel/Con with Client
4/24/2013	Cabin relocation site plans, stamped "Approved April 24, 2013 Humboldt County Planning Division." (NOTES BELOW SAY COUNTY APPROVED THESE PLANS ON 3/24/2013.)	Client cabin relocation notes; Cabin relocation site plans, stamped "Approved" by County 4/24/2013
3/13/2013	On March 3, 2013, Client and Ms. Rapin submitted the revised plans to the Company (the "Revised Plans").	Client Statement
3/14/2013	On March 14, 2013, the Company issued written approval for the Revised Plans (the "Approval Letter"), subject to conditions recommended by SDRC. "Existing Rapin shed" can be left in place until neighbor relocates. (Note use of term "shed" to describe the garage. Also, note involvement of SDRC in application process.)	3/14/2013 Letter from Board to Rapin
3/24/2013	On March 24, 2013, the Revised Plans were approved by Humboldt County.	See Stamped Plans
9/23/13	On September 23, 2013, during the cabin relocation, Humboldt County Planning wrote Rapin informing her of receipt of a "complaint" that cabin was being rebuilt without proper permits or approvals. (Note that information in file says that on 9/23/2013 County issued a stop work order because it decided to reclassify the project as new construction. The original approval classified the project as a "relocation." This may be accurate, but the 9/23/2013 County letter does not say this.)	9/23/2013 Letter from Humboldt County Planning to Rapin

2013	Client and Ms. Rapin agreed to the additional requirements of new construction (e.g., fire sprinkler, additional hold downs on foundation, energy calculations, etc.) in order to obtain the County's approval.	6/22/20223 Client Statement During Telephone Call
Late 2013	In late 2013, Humboldt County approved the Revised Plans as new construction. The approved plans included the structure adjacent to the cabin.	Client Statement
5/17/2015	On or about May 17, 2015, Ms. Rapin transferred title for the cabin to Client.	Deed
July 2015	Construction of the cabin at the new relocation site was completed in July 2015. The construction did not include the structure adjacent to the cabin nor did it include a garage.	Client Statement
2016	In 2016, former neighbor Ms. Harlan passed away and her daughter, Debbie McCullen, inherited the Harlan cabin. Ms. McCullen sold the cabin that year, and the new owner applied for permission to relocate the cabin to a site Ms. Harlan selected. At this point, the board ordered demolition of the 3-car garage Client shared with Harlan. Client was still using this garage, at least for storage.	Client Statement
2019	In 2019, Client created plans for the construction of a new garage at the cabin's current location.	Client Statement
4/14/20	On April 14, 2020, Client submitted an application to the Company for the construction of a new garage at the Cabin's current site (the "2020 Garage Application"). The 2020 Garage Application called for the construction of a 12' wide x 20' long (240 sq./ft.) freestanding structure, with a gabled roof that is 10'6" at its peak.	Client Statement; Application
April 2020	In April 2020, Client erected story poles at the location of the proposed garage at the board's request. While Client was erecting the story poles, Lori Ewing, whose cabin is adjacent to Client's cabin, asked him to move the location of the proposed garage four feet to the east. Client did so.	Client Statement; Photographs

4/26/2020	An email from board President Frank McLarnon to the board describes the history of Client's 2011 cabin relocation and specifically whether the board gave Client permission to construct a garage at the new site. McLarnon says there is no documentation of the permission (which Client claims), and therefore an application for construction of a "new" garage is required.	4/26/2020 Board President Frank McLarnon Email to Board
5/14/2020	An email from board President F. McLarnon email to board: the board must consider three relevant findings of fact for decision on the 2020 Garage Application: Handbook section V.C.2.h. ii (does not unduly impact critical view of neighbors), iii (does not result in substantial soil erosion), and iv (does not substantially alter the drainage pattern of the site or area)	5/14/2020 McLarnon Email to Board Handbook Section V.C.2.h
5/23/20	On May 23, 2020, the board issued a letter to Client denying the 2020 Garage Application (the "Denial Letter"). The Denial Letter stated the denial was partly influenced by Company Handbook. The Denial Letter stated that the primary reason the 2020 Garage Application was denied is that the proposed construction "failed to fully meet" six of the sixteen criteria set forth in Section VI.C.2.h of the Company's handbook. The six criteria cited were: (ii) the project would not unduly impact the view shed of neighbors; (iii) the project would not adversely affect the surrounding natural environment; (vii) the project would not impinge on privacy, natural light or air circulation of adjacent cabins; (x) the project would not result in substantial soil erosion or loss of topsoil; (xi) the project would not substantially alter the drainage pattern of the site or area; and (xii) the project would not involve or include expanding, clearing, or planting of vegetation into corporate common areas, such as meadows, brush lands, and forest areas, e.g., beyond a member's existing maintained site.	5/23/2020 Denial Letter
5/20-6/20	From May 27, 2020 – June 10, 2020, Client and the board exchanged multiple written communications	Email Correspondence

	regarding the board's reasons for rejecting the 2020 Garage Application.	
6/4/2020	6/4/2020 email from Warren Lewis to board members: This email shows that Lewis actively participated in board discussion re Client's 2020 Garage Application. Since Lewis was a board member and neighbor of Client who objected to the garage, should Lewis have recused himself from board's decision process?	6/4/2020 Warren Lewis Email Correspondence
6/18/20	On June 18, 2020, Client submitted an Engineering Geologic Assessment to the board prepared by engineering geologist Giovanni A. Vadurro (the "Geologic Assessment"). Mr. Giovanni's Geologic Assessment stated that the "garage structure may be constructed at the intended location such that it will not be subject to unreasonable risk of damage from slope stability nor result in soil erosion or loss of topsoil." Client provided the board with the Geologic Report to the board to address one of the reasons that the board denied the 2020 Garage Application. (See criteria x.)	Vadurro Geologic Assessment
6/19/20 - 10/21/20	Numerous correspondence exchanged between Client and the board from June 19, 2020, when Client submitted his formal appeal to the board re the denial of the 2020 Garage Application, and October 21, 2020 when the board agreed to review the Garage Application as a "new proposal." Client's appeal argued that the board did not follow the required procedures in deciding the 2020 Garage Application, including submission of the 2020 Garage Application for review and a recommendation by the Company's Site Development and Review Committee (the "SDRC"). The board responded that the ongoing COVID-19 pandemic made it difficult to adhere to standard procedures.	Email Correspondence
10/21/20	On October 21, 2020, the board advised Client that the 2020 Garage Application would be treated as a new	10/21/2020 Letter

	proposal. The board also said it would act as the SDRC and make the required findings of fact.	
June 2021	In June 2021, board member Nancy Howatt asked Client if he wanted the 2020 Garage Application placed on the agenda for the July 10, 2021 board meeting. Client agreed, and the matter was put on the agenda.	Client Statement
July 2021	Prior to the July 10, 2021 board meeting, Client provided the board with two expert opinions in support of the 2020 Garage Application.	July 2021 Letter from Client to Board
July 2021	Licensed landscape architect Erin Ponte prepared a report that included several photo simulations of the proposed garage (the "Ponte Report"). The Ponte Report states that the proposed garage would have little to no impact on the views from the Ewing and Lewis cabins. The Ponte Report states that "[i]t is my professional opinion that there is no impact to ocean view and minimal impact to sky view. A shadow study is also provided (Exhibit C) which shows minimal shade impact. The existing trees cast more shade, as will the Escallonia hedge as it grows."	Expert Erin Ponte Report, July 2021
July 2021	Licensed architect Mark Gaxiola, AIA, of Matson & Vallerga Architects inspected the site for the proposed garage and prepared a letter stating that, in his opinion, the proposed garage would not violate the guidelines from the Company's Handbook (the "Gaxiola Letter"). The Gaxiola Letter states, "I feel confident that, per verbiage in your guidelines, that the proposed garage will not unduly or critically impact viewsheds or the ambiance of adjoining properties."	Matson & Vallerga Report, July 2021
7/10/21	The minutes of the July 10, 2021 board meeting note that the 2020 Garage Application was sent to the nearby neighbors for their input. All of the neighbors were "comfortable" with the 2020 Garage Application except two neighbors located to the north of Client, Lori Ewing and Warren and Kathleen Lewis. Their comments were noted in the minutes as follows:	Minutes of July 10, 2021 Board Meeting

	Lori Ewing, 810 Big Lagoon Park Rd, asked that the board preserve her current critical lines of sight, privacy in her backyard, and her day and nighttime view shed. She commented that Client did not have a "right" to a garage since at the time of the relocation there was no record of the board approving a "grandfathered" garage. Her yard would become a boxed in area with the garage looming over her yard. She asked the board to follow the Handbook in their decision about the garage. Warren Lewis, 806 Big Lagoon Park Rd, stated that he and Kathleen have owned their cabin for over forty years. When Client's cabin was relocated the Lewis family did not complain about the location even though it did block their view of Patricks Point. The addition of the garage changes the ambiance of their backyard. The 20 foot by 10 foot wall is all that they would see and they would lose the open feel. The lot is too small and the garage is too large for the location."	
7/10/21	No expert opinion was offered by Ms. Ewing, the Lewises, or the board to refute the opinions of Ponte and Gaxiola.	Board minutes; Client Statements
7/10/21	The minutes state that Client noted the favorable expert opinions offered on his behalf, and the lack of any expert opinion in opposition to the 2020 Garage Application. He also said that his previous three-car garage was much larger than the proposed garage, and that his previous cabin was much larger than the current cabin.	Board Minutes
7/10/21	All seven members of the board voted against the 2020 Garage Application. board member Warren Lewis did not recuse himself from the vote. The minutes note that that the 2020 Garage Application was denied because it did not conform to the requirements of Section VI.C.2.h. of the Company's Handbook which states, "A proposed project shall not	Board Minutes

	unduly impact the present views and critical lines of sight of potentially impacted Members"	
8/6/2021	In August 2021, Client appealed the board's denial of the 2020 Garage Application. The appeal was scheduled for hearing at the September 11, 2021 board meeting.	August 6, 2021 Client appeal letter to board August 2021 board correspondence to Client Client Statements
August 2021	Prior to September 11, 2021 board meeting, Client invited each board member to join him at the proposed garage site to observe the proposed garage story poles and discuss the proposed construction. No board member accepted Client's invitation.	August 2021 Client invitation to board; confirmed in Meeting Minutes
9/11/21	At the September 11, 2021 board meeting, the board continued the appeal hearing to November 13, 2021.	September 11, 2021 Meeting Minutes
11/13/21	The appeal hearing concluded at the November 13, 2021 board meeting. The board voted 6-0 to deny the appeal. Member Warren Lewis abstained. No expert opinion was offered to refute the opinions of Client's experts Ponte and Gaxiola.	November 13, 2021 Meeting Minutes November 15, 2021 Letter from Board to Client
1985 - 2021	Long-time BLPC board member Terry Spreiter recently (7/2023) told Client that she could not recall any other garage application being denied. Client: "Terry did tell me that all three new garages that were built on Huckleberry Lane, that all owner's [sic] were on the BLPC board when they were approved."	Client's 7/11/2023 Email to Firm
12/22/21	The board requested that Client remove the story poles for the proposed garage.	December 22, 2021 Letter from Board to Client
	DISPARATE TREATMENT ISSUE	
	Cabin 1010. Shed approximately within 10 years	Client Statement; See Client 6/24/2023 Memo

	Cabin 1017. This new cabin was constructed within approximately 20 years ago, The garage is located on the bottom floor. This cabin did not have a garage at it prior location.	Client Statement; See Client 6/24/2023 Memo
	Cabin 1042: The garage was reconstructed between 2019 and 2021	Client Statement; See Client 6/24/2023 Memo
	Cabin 1047. Garage was approved by the board in around 1985 when cabin was being relocated.	Client statement; see Client 6/24/2023 Memo
	Cabin 1047 removed the garage instead of relocating their garage. Cabin 1047 had the board approve allowing a garage and additional space to be added to cabin at the new site. This garage and addition to cabin were never built.	Client Statement; See Client 6/24/2023 Memo
	Cabin 1047. "The Cabin located at 12 Huckleberry Lane, certificate #1047, has a 20' by 22' addition approved for the east side of the cabin and decks on the north, west and south sides of the cabin approved. The dimensions of the decks are as shown on the drawings approved by the board and contained in the files. These improvements will be built sometime in the future."	Client Statement; See Client 6/24/2023 Memo Quoted text is from Handbook of the Big Lagoon Park Company, Section V. Transfer of Ownership Policy and Procedure, C. Disclosure Statement, 7. 12 Huckleberry Lane.
	Cabin 1051. Cabin 1051 garage is located within 25 feet of client's cabin. Cabin 1051 was allowed an addition with board approval. To the best of client's knowledge there was no SDRC report or much discussion. Basically, President Don Tuttle made the decision to approve the project and the board agreed. This increased the size of garage by about a quarter. The increase in size of the structure pushed it to the north into Cabin 1051 backyard. The existing garage was about the same condition and construction as client's old garage. Cabin 1051 owner completely rebuilt the structure, framing, siding, added electricity and poured a concrete slab, perhaps without a county building permit.	Client Statement; See Client 6/24/2023 Memo

	Cabin 1061 was relocated from the North Planning Area to its new location sometime around 1998. Cabin 1061 rebuilt the shed prior to relocating the cabin. The shed was moved when the cabin was relocated. The shed may have been converted to living area.	Client Statement; See Client 6/24/2023 Memo
	Cabin 1063. Received board approval to replace existing shed.	Client Statement; See Client 6/24/2023 Memo
	Cabin 1066. May have had a carport. An aerial photo from prior to construction indicates possible carport.	Client Statement; See Client 6/24/2023 Memo; Aerial Photo
	Cabin 1071. board approved the garage. Was built within the last 15 years.	Client Statement; See Client 6/24/2023 Memo

This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client's litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

4.
NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS

Document Name Article / Section No.	**Text of the Selected Article/Sections No.** **(if none, put "N/A"; delete rows that you didn't use; maintain formatting)**
Section VI.C.2.h. of the Company's Handbook	"A proposed project shall not unduly impact the present views and critical lines of sight of potentially impacted Members."

Section VI.B. of the Company's Handbook	B. Policy The board of Directors has adopted this policy as a guide for Members regarding repairs, improvements, or replacement of their cabin. To retain the north-coast village ambiance, recreational character, and present views, and to minimize impact on the common areas, the water systems, and limited area available for leach fields, the following objectives and rules are hereby adopted to guide the board and Members in formulating, designing, and reviewing proposed improvements: 1. Objectives a. Preserve present views and critical lines of sight. b. Preserve the coastal village ambiance and feeling. c. Preserve the openness and accessibility of Members to the common areas. d. Preserve the historical architectural style of the cabins. e. Preserve the privacy and quality of life of Members. f. Protect the Corporate infrastructure (roads, water, fences, fire house).| g. Preserve the Members' nighttime and daytime view shed and solar access. h. Allow the Member to replace, to the extent reasonable, a cabin destroyed by fire, natural causes, or demolition. i. Manage the natural resources and environment of Corporate land for the maximum benefit and safety of the Members. j. Preserve areas suitable for septic systems. k. Minimize impacts on Members' parking spaces, water, and sewer facilities and corporate common areas.

Section VI.B. of the Company's Handbook	**2. General Rules** **a. A proposed project shall not unduly impact the present views and critical lines of sight of potentially impacted Members.** b. The proposed project shall be in keeping with and preserve the historical architecture and village ambiance of the community, including scale and shape. c. Proposed projects will not unduly affect existing grades and/or common areas. d. The size of proposed physical structures shall, under no circumstances result in total living area exceeding 1000 square feet and no more than two bedrooms and one full bathroom. e. A new replacement or remodeled cabin, which is constructed, shall not exceed 16 feet in height at the peak as measured from the adjacent public or private road or as measured from the natural grade where the cabin floor is closest to the ground. If the original cabin was a two-story and can be legally reconstructed on the existing site, the Member shall be permitted to construct a two-story cabin in the same place. In all cases, the new cabin shall not exceed the floor area limitations in paragraph 2d above, or the cabin's original height. f. A proposed shed must be detached from any other structure and shall not exceed 120 square feet. The location shall not unduly impact neighbors' views, daylight, and sun exposure or fire safety. It shall not be used for, converted to, or counted as living quarters. g. Existing garages or sheds shall not be converted to living quarters. They may not be used or converted to any use that results in a loss of parking space. **h. New garages are discouraged, but will be considered on a case-by-case basis provided they meet all of the stated objectives.** i. Proposed decks and railings shall not unduly impact neighbor's views, daylight, and sun exposure. j. No new fences will be approved. Fences that existed prior to November 7, 1963 (date of incorporation) may be replaced in kind with board notification. k. A workshop, shed, carport, or garage shall not be considered as living quarters or part of the original cabin when calculating space for cabin replacement. l. Proposed or existing night lighting shall not unduly impact other Members' nighttime view sheds. If applicable, night lighting shall be shielded to control glare. m. Driveways and parking areas shall not be paved with impervious material. n. Invasive plants, such as pampas grass, scotch broom, English ivy, English holly, and ice plant shall not be maintained or encouraged in any way. o. Members shall maintain landscaping so that it does not impede on other Members' views or access, or create a safety hazard. p. Storage of materials and debris (over 30 days) requires a permit from the board.

Section VI.C. of the Company's Handbook	C. Application Process 1. Introduction and Definitions When owners are contemplating a change to their physical structure, landform, or native vegetation they should contact a board member to determine whether a formal application to the board is necessary. Following is a guide to help determine when an application is necessary. An application form appears at the end of this section, and can also be obtained from the Secretary. a. Activities that do not require board notification or approval i. General maintenance activities that do not alter the building envelope. ii. Painting, re-siding, or re-trimming of a cabin. iii. Re-roofing, replacement in kind of windows, doors, existing walkways, driveways, or parking areas when no change in size, shape, height, or area is planned. (Bd. 5/13/2014). iv. Trimming shrubbery less than 4 inches in diameter on the member's occupied site. (Bd. 5/13/2014) v. Planting of non-invasive trees and shrubs on the Member's occupied site, but Members must maintain them so they do not impinge on the view shed of other Members. b. Activities or projects that require notification to the board i. Rebuilding or replacement of existing structures or parts of structures, even if no change in size is planned, so that measurements may be taken of the existing structures. ii. Re-roofing a cabin if there are minor changes. (Bd. 5/13/2014) iii. Replacing an existing deck where any minor changes in size, shape, elevation, or railing are planned. iv. Replacing windows or doors where any changes in size, shape, or location are planned. v. Construction of storage area under a cabin or deck. c. Activities or projects that require board approval i. Demolition of Member's structure such as a deck, fence, shed, garage or cabin. ii. Building remodels, reconstruction, or replacement of existing structures. iii. Enlargement of an existing porch, deck, or other existing structure. (Bd. 5/13/2014) iv. Construction of a new porch, deck, pergola, trellis, lattice, or other permanent structure. (Bd. 2/15/2017) v. Placement of any pre-manufactured structure on corporate land. vi. Additions to the exterior of a cabin, garage, or outbuilding. vii. Location and installation of windows or skylights that can impact neighbors' nighttime view shed. viii. Any change to the natural topography such as clearing, grading, filling, or paving.

	ix. Cutting of trees over 4 inches in diameter, at breast height. x. Location and installation of any satellite dish or outside communication antenna. xi. Location and installation of any new outside lights. xii. Location and installation of a new septic tank and/or leach field. xiii. Location and installation of propane, kerosene or other fuel tanks. xiv. Expanding, clearing, or planting of vegetation into corporate common areas, such as meadows, brush lands, and forest areas, e.g. beyond Member's existing maintained site.
Section VI.C. of the Company's Handbook	2. The Review Process for board Notification or Approval a. Big Lagoon Park Company's Bylaws, Article IV, Section 4, defines the duties of the President, including having general management duties of the corporation and such other duties and powers as may be prescribed by the board of Directors or the By-Laws. b. The board may authorize the President to form a Site Development and Review Committee (SDRC) which will report to and provide written reports to the President when requested. The SDRC shall be composed of at least two Members and one board Member. Action by the SDRC requires concurrence by a majority of the SDRC. Dissenting Members may submit minority reports to the President. c. Any Member who plans a project that requires board Notification or board Approval as described in Section 1 above shall submit an application to the Secretary for action by the President. d. The President may either: i. Determine that the project proposed in the application qualifies for Notification Only and instruct the Secretary to inform the Member in writing that work may commence. The Secretary shall include notice of the project in the agenda and minutes for the next board meeting; ii. Determine the project is so minor that it can go straight to the board for review; (Bd. 2/15/2017) or iii. Request that the SDRC review the Member's application and report on the project with the SDRC's recommendations.

Section VI.C. of the Company's Handbook	e. If a Member's application is referred by the President to the SDRC for its consideration, the SDRC will review the application and submit a report with its recommendations to the President. i. The SDRC's report can conclude that the project qualifies for Notification Only status and recommend that the Secretary inform the Member in writing that the project may commence. The Secretary will include notice of the project determination in the agenda and minutes for the next board meeting. ii. The SDRC's report shall set forth the SDRC's recommendation for further action on the proposed project, in which case the President shall: 1) Accept the SDRC's report, with or without referring the report and recommendations to other members of the board, or 2) Return the report to the SDRC for further study and/or additional information. f. When the Final Report and Recommendation from the SDRC has been received, the President will instruct the Secretary to place the matter on the agenda for the next board meeting, provide a copy of the SDRC's Final Report and Recommendations to the applying Member, and invite the Member to respond to the SDRC's recommendations prior to the board meeting on which the matter is to be heard. Placement on the agenda is the means by which other members are informed of and invited to comment on the proposed new project. The Bard may approve, deny, or modify the proposed project after considering the applicant's response. g. If the project is approved by the board, the Secretary will provide a letter describing the project as approved to the applicant Member who can then submit the letter to the County Building Division when applying for a Building Permit, if a Building Permit for the project is necessary. board approval may include assignment of a board member to act as liaison with the applicant Member when considered necessary for the project monitoring. h. board action shall be based on findings of fact about the proposed project including the following: i. The project is in keeping with and preserves the historical architecture and village ambiance of the community. ii. The project does not unduly impact the view shed of neighbors. iii. The project does not adversely affect the surrounding natural environment. iv. The project preserves common areas. v. The project does not adversely impact Corporation infrastructure. vi. The project is in scale with other cabins in the community. vii. The project does not impinge on privacy, natural light or air circulation of adjacent cabins. viii. The project is consistent with the Rules, Regulations and Policies of the Corporation. ix. The project does not create a new significant source of light or glare, which would adversely affect day or nighttime views in the area. x. The project does not result in substantial soil erosion or loss of topsoil.

	xi. The project does not substantially alter the drainage pattern of the site or area. xii. The project does not involve or include expanding, clearing, or planting of vegetation into corporate common areas, such as meadows, brush lands, and forest areas, e.g., beyond a Member's existing maintained site. i. If the board cannot make such findings, or the Member cannot mitigate impacts to the satisfaction of the board, the board may deny the application. j. If the board votes to disapprove the project, the Secretary will notify the applicant in writing describing the reason for the disapproval. k. A time limit of two years from the date of board approval for the completion of work will apply to all projects. With necessary justification, a Member may request a single extension of not more than one year to complete the project which will be considered by the board on a case-by-case basis. If the project is still incomplete after the approved time limit, the Member will be required to file a new application as described above.
Handbook, VIII. 17.	**17. Dispute Resolution Procedure** a. A member may appeal a Board action if that member believes the action was unfair, unreasonable, or beyond its authority. b. The Board may grant a rehearing on the matter provided: *i.* It receives the appeal within 30 days of the contested Board action. *ii.* The appeal specifies the reason(s) the member believes the contested action is unfair, unreasonable, or beyond the Board's authority. c. The appeal will be placed on the Board's agenda for their next regularly scheduled meeting. d. If the Board cannot act on the appeal at the scheduled meeting, the appeal may be continued to the next regularly scheduled meeting or a special meeting. Further investigation may be required if there are legal matters that require advice from the Board's attorney. e. The decision of the Board is final.

The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client's case (e.g., binding arbitration, attorneys' fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client's case.

5.
ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

The Firm should follow up with Client regarding the following items/issues:

1. 4/9/2012 letter from former board member Nancy Tidwell to Client re garage, asking Client to erect tell-tale poles.

2. Any documents related to board's 2013 approval of the Client's cabin relocation plan (which included a structure adjacent to residence that could be garage or shed).

3. March 14, 2013 written approval by the board of Client's cabin relocation plans (which included a shed/garage structure).

4. Respective dimensions (foot print and square footage) of current and previous cabins.

5. Has the board approved new garages for other members who have relocated? (See client 6/27/2023 memo.)

This section of the LADD may be amended from time to time as new information becomes known.

6.
CIVIL CODE § 5200 DOCUMENT DEMAND

The BLPC produced some documents in response to a Civil Code section 5200 demand. The Firm will complete its review of those documents to determine whether any that should've been included are in fact missing.

7.
ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

Please see section 5, above, for information/documents needed.

This section of the LADD may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

8.
THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

Client believes that one or more third parties has possession, custody, control, and/or knowledge of the following documents/information.

Document/Information	Significance of the Document/Information	Identity of Third Party
Board's file regarding 2013 approval of cabin relocation, specifically documents related to approval of new "garage" structure adjacent to cabin. g.	(Note: although the following information may have originated with the board, third parties, e.g., former board members and community members, may have this information.) The possibility exists that the board implicitly approved the construction of a new "garage" when Client's relocation plans were approved in 2013. Client's 2013 relocation plans included a cabin and an adjacent structure similar in size to a garage or a large shed. Client did not build this structure when the cabin was built because he was still using the existing three-car garage shared with Harlan, and therefore had no pressing need to build a new garage. The board denies the existence of any garage-related documents, but Client says he got a letter from board member Nancy Tidwell dated 4/9/2012 asking him to erect tell tale poles for the garage.	Big Lagoon Park Company
County construction permits and inspection records.	There are many instances of board approval of improvements, either affirmatively or by not requiring County permits or inspections, indicating an arbitrary and/or unequal application of community building standards.	Humboldt County

The table above may be amended from time to time as new information comes to light.

9.
POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH

9.1.
Breach of Contract

Elements—Breach of Contract

— "The essential elements of a claim of breach of contract, whether express or implied, are the contract, plaintiff's performance or excuse for non-performance, defendant's breach, and the resulting damages to plaintiff." (*Darbun Enterprises Inc. v. San Fernando Community Hosp.* (2015) 239 Cal.App.4th 399, 409; *San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Remedies—

— Compensatory (money) damages are available for all expected harm caused by the breach. (Civ. Code, § 3300.) In other words, damages must be reasonably foreseeable. (Civ. Code, § 3300; *Erlich v. Menezes* (1999) 21 Cal.4th 543.)

— Emotional distress damages are generally *not* available *unless* the breach caused bodily harm or a serious emotional disturbance was a particularly likely result. (*Erlich v. Menezesm, supra,* 21 Cal.4th at 558; *Plotnik v. Meihous* (2012) 208 Cal.App.4th 1950 [breach of settlement agreement by hitting dog with baseball bat].)

— Specific performance is an available remedy for breach if the non-breaching party desires to affirm the contract. (Civ. Code, § 1680; *Kassir v. Zahabi* (2008) 164 Cal.App.4th 1352.)

— Rescission (accompanied by restitution) is available in certain circumstances. (Civ. Code, § 1692.) Mutual rescission is available if all parties consent. (Civ. Code, § 1689(a).) Unilateral rescission is available by statute for mistake, fraud, duress, undue influence, failure of or void consideration, or if the contract is unlawful or against public policy. (Civ. Code, § 1689(b).)

— As to whether attorneys' fees are available to the prevailing party, see "Attorneys' Fees and Costs" section below.

Applicable Statute of Limitations—

— For breach of verbal contracts, the statute of limitations is two years. (Code Civ. Proc., § 339.)

— For breach of *most* written contracts, the statute of limitations is four years. (Code Civ. Proc., § 337.)

— For breach of *negotiable instruments* (e.g., promissory notes), the statute of limitations is six years. (Comm. Code, § 3118.)

Application—Application of the Law to Client's Facts

— Members of the BPLC receive copies of the Handbook, which sets forth various requirements for the construction of improvements. The Handbook also requires that the BPLC review architectural applications and provide the applicant owner with a report detailing the BPLC's findings.

— The board breached its obligation under the Handbook to refer Client's 2020 Garage Application to the SDRC (a review committee). (Handbook, VI.C.2.e.) The SDRC is supposed to review an application and then make a recommendation to the board. The board did not follow this requirement. After the application was denied initially, Client pointed out this requirement to the board. The board responded that it would act as the SDRC. However, the board did not comply with certain requirements while acting as the SDRC, such as preparing a report and providing the report to the applicant.

— Further, Section VI.C.2.h. of the Company's Handbook states: "A proposed project shall not unduly impact the present views and critical lines of sight of potentially impacted Members."

— The board breached its obligation to decide the application in conformity with the standards set forth in the Handbook. In this instance, the board determined that the applicable inquiry was whether the garage would unduly impact the critical views of two neighbors. (Handbook, VI.C.2.h.) This is the standard set forth in the Company Handbook, and it is a high standard, yet the board was not presented meaningful evidence that this was the case. In fact, the board ignored the opinions of two experts stating the garage would have a de minimis impact on views, if at all.

— Client's damages include the fact that he has no garage, and he has incurred substantial legal costs to enforce his rights under the Handbook.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— The board's denial of Client's 2020 Garage Application was based largely on a finding that the garage would unduly impact the critical views of two neighbors. This is the standard set forth in the Company Handbook, and it is a high standard, yet the board was not presented meaningful evidence that this was the case. In fact, the board ignored the opinions of two experts stating the garage would have a de minimis impact on views, if at all. The fact that one of the two neighbors who objected was a board member suggests he exerted undue influence on the board's determination.

— Client and his family have been members of the BLPC community for over 60 years.

— Client followed all of the required procedures for approval of each relocation.

— The board's initial rejection of the 2020 Garage Application was invalid because board member Warren Lewis failed to recuse himself from participating in the board's review of the application and voting against it. Lewis is a neighbor who asked the board to deny the application because it affected his view.

— Courts give substantial weight to a board's decision on a matter involving improvements and new construction. A policy of liberally second guessing boards would in effect require the courts to The function as reviewing agencies in too may instances.

— The board's mishandling of the review process for the application may be viewed as a technical violation and therefore immaterial because the board, not the SDRC, makes the final decision, and ultimately Client was afforded the opportunity to be heard and present evidence.

9.2.
Implied Covenant of Good Faith and Fair Dealing

Elements—Breach of the Implied Covenant of Good Faith and Fair Dealing

— The elements of a claim for breach of the implied covenant of good faith and fair dealing are: (i) the existence of a contract; (ii) the plaintiff's performance of the contract or excuse for nonperformance; (iii) the conditions required for the defendant's performance occurred or were excused; (iv) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract; and (v) the plaintiff was harmed. (See *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349-350; *Racine & Laramie, Ltd. v. Dept. of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032.)

— Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. (Rest.2d Contracts, § 205.) "The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith. [Citations.]" (C*arma Developers (Cal.), Inc., v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 372.) "All that is required for an implied covenant claim is the existence of a contractual or relationship between the parties. (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 49.)

— The "implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose." (*Schoolcraft v. Ross* (1978) 81 Cal.App.3d 75; accord *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 401.) A "breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself." (*Congleton v. National Union Fire Ins. Co.* (1987) 189 Cal.App.3d 51, 59.) Indeed, "breach of a specific provision of the contract is not . . . necessary' to a claim for breach of the implied covenant of good faith and fair dealing." (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244.) The essence of the good faith covenant is objectively reasonable conduct. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779.)

— The duty of a contracting party under the covenant of good faith and fair dealing is to act in a commercially reasonable manner. *(California Pines Property Owners Assn. v. Pedotti* (2012) 206 Cal.App.4th 384, 394-396; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779.)

— While tortious breach of the implied covenant is generally restricted to the insurance context, it is possible to establish such a breach outside the insurance context if: (i) the breach is accompanied by a common law tort (e.g., fraud, conversion, etc.); (ii) the means used to breach the contract (or its implied covenant) are tortious (e.g., involving deceit or coercion); or (iii) a party intentionally breaches the contract (or implied covenant) with the intent/knowledge that such a breach will cause severe and unmitigable harm to the other party in the form of mental anguish, personal hardship, or substantial consequential damages. (*Erlich v. Menezes* (1999) 21 Cal.4th 779.)

— As to whether attorneys' fees are available to the prevailing party, see "Attorneys' Fees and Costs" section below.

Remedies—

— General contractual remedies are available, including compensatory (money) damages. (Civ. Code, § 3300.)

— Tort damages are generally unavailable for real estate related matters other than leases and wrongful eviction claims that are classified as torts. (*Ginsburg v. Gamson* (2012) 205 Cal.App.4th 873.)

Applicable Statute of Limitations—

— Same as breach of contract. Four years for written contract (Code Civ. Proc., § 337), two years for oral contract (Code Civ. Proc., § 339), and six years for negotiable instrument (e.g., promissory note) (Comm. Code, § 3118).

Application—Application of the Law to Client's Facts

— BLPC breached the covenant of good faith and fair dealing because: (i) the Handbook is a contract between Client and the BPLC; (ii) Client (plaintiff in this scenario) complied with his obligations under the contract including the submission of the 2020 Garage Application that complied with the Handbook; (iii) the BPLC had the supporting documentation and expert opinions to approve the 2020 Garage Application; (iv) the BPLC's unreasonable and unsupported denial of the 2020 Garage Application interfered with Client's ability to obtain the proposed improvement (the garage); and (v) as a result of the BPLC's denial, Client has sustained harm.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— Client has a compelling reason to challenge the BPLC's denial of the 2020 Garage Application because the BPLC has been unable to date to provide an explanation justifying its conclusion that the

proposed garage would interfere with the view of any surrounding owners. View concerns can be subjective, so it is possible that BPLC will argue that even the slightest view change (even if negligible) would result in a breach of the Handbook's provisions on views.

9.3.
Negligence

Elements—Negligence

- To prove a claim for negligence, plaintiff must establish: (i) duty; (ii) breach of duty; (iii) proximate cause; and (iv) damages. (*Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680, 687.)

- In simple terms, negligence is the commission of an unintentional a wrongful act where one fails to exercise the degree of care in a given situation that an otherwise reasonable person would exercise to prevent another from harm. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753–54.)

- The "enforcement" issue raised in the context of the "Breach of CC&Rs" cause of action above is also applicable in the context of a negligence claim.

Remedies—

- Compensatory damages are available for all harm proximately caused by a defendant's wrongful acts. (Civ. Code, §§ 3281, 3333-3343.7.)

- Injunctive Relief is available. Courts can fashion equitable relief to remedy negligent conditions. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.)

- Damages for emotional distress are only available in connection with bodily injury. (*Potter v. Firestone Tire & Rubber* (1993) 6 Cal.4th 965.) Such relief, when available, arises out of a claim for *negligent infliction of emotional distress*, which often involve "bystander situations"—e.g., witnessing injury to a family member. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064.) Emotional distress damages for negligence *without* injury (e.g., fear of illness such as cancer if exposed to toxic substances threatening cancer) available if defendant acted with malice, fraud, or oppression, and the fear is based on knowledge corroborated by reliable medical or scientific evidence. (*Potter v. Firestone Tire & Rubber, supra*, 6 Cal.4th at pp. 999-1000.)

- As to whether attorneys' fees are available to the prevailing party, see "Attorneys' Fees and Costs" section below.

Applicable Statute of Limitations—

— Two years for personal injuries. (Code Civ. Proc., § 335.1.)

— Three years for claims related to injury to property. (Code Civ. Proc., § 335.1.)

Application—Application of the Law to Client's Facts

— As the governing body for architectural applications in the community, BPLC and its review committee have a duty to review applications in accordance with the Handbook and based on a reasonable person standard.

— Using the above standards, the BPLC breached its duty to Client by concluding that the proposed garage in the 2020 Garage Application violated the Handbook.

— The Handbook, however, specifically states that the proposed improvement must "unduly impact… critical lines of sight," which is not the case. Even if the proposed garage would have a hindrance of interference on the view of a surrounding owner, it would not meet the high threshold set forth in the Handbook for a view obstruction.

— As a consequence of the board's denial of the proposed garage, Client has sustained damages. Client is still without a garage after three years of submitting his application and due to the BPLC's actions and stonewalling, Client has also incurred significant costs to retain counsel and mediate with the BPLC.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— Client has a viable claim for negligence because the BPLC has unreasonably denied his plans. That said, view concerns have a subjective element and although the language in the view provision demonstrates a strict standard to constitute a view obstruction, the BPLC may argue that the angles from where the proposed garage would be viewed are all critical lines of sight.

9.4.
Breach of Fiduciary Duty

Elements—Breach of Fiduciary Duty

— The elements of a claim for breach of fiduciary duty are: (i) the existence of a fiduciary relationship; (ii) its breach; and (iii) damage proximately caused by that breach. (*Tribeca Companies, LLC v. First American Title, Ins.* (2015) 239 Cal.App.4th 1088.)

— Associations owe a fiduciary duty to their members. (*Raven's Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642.)

— Directors of an association are fiduciaries and are thus required to exercise due care and undivided loyalty for the interests of the association. (*Francis T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513; *Mueller v. Macban* (1976) 62 Cal.App.3d 258, 274.)

— Among its acts, directors may not make decisions for the association that benefit their own interests at the expense of the association and the entire membership. (*Raven's Cove Townhomes, Inc. v. Kruppe Development Co.* (1981) 114 Cal.App.3d 783, 799.) This is typically referred to as "self-dealing."

— The "enforcement" issues discussed in the context of the "Negligence" causes of action above are also applicable to a breach of fiduciary duty claim.

— A homeowners' association has broad discretion to grant or withhold consent to an owner's proposed construction or improvement project if the CC&R's grant such discretion. (*Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 977.) However, "It is a settled rule of law that homeowners' associations must exercise their authority to approve or disapprove an individual homeowner's construction or improvement plans in conformity with the declaration of covenants and restrictions" and that they must do so in good faith, consistent with their fiduciary obligations to the homeowners. (*Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 650, 651; see also *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 383.)

Remedies—

— If the breach results in damage to property, available compensatory damages are the cost to remedy defects and for loss of use during the period of injury. (*Raven's Cove Townhomes Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 802.)

— Civil Code § 3333: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

— Equitable remedies such as constructive trust, rescission, and restitution are available when the defendant has been unjustly enriched by the breach. (*Miester v. Mensinger* (2014) 230 Cal.App.4th 381.)

— Punitive damages may be available if the breach constitutes constructive fraud. (Civ. Code., § 3294; *Hobbs v. Bateman Eichler, Hill Richards Inc.* (1985) 164 Cal.App.3d 174.)

— As to whether attorneys' fees are available to the prevailing party, see "Attorneys' Fees and Costs" section below.

Applicable Statute of Limitations—

— A claim for breaching a fiduciary duty must be brought within four years of the breach. (Code Civ. Proc., § 343; *William L. Lyon & Assoc, Inc. v. Sup. Ct.* (2012) 204 Cal.App.4th 1294, 1312.) If the breach of fiduciary duty stems from the defendant's fraud (even if pleaded as breach of fiduciary duty), which has a statute of limitations of only three years, the claim must be brought within ***three*** years. (Code Civ. Proc., § 338; *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 691.)

Application—Application of the Law to Client's Facts

— As detailed above, one of the individuals who served on the BPLC board and engaged in discussions/voting regarding Client's 2020 Garage Application was one of the members in proximity to the Property and arguably affected by the proposed garage. Despite the clear conflict of interest, this interested board member failed to recuse himself. This self-serving conduct is a quintessential example of a board member's breach of his or fiduciary duty.

— The other board members also breached their fiduciary duties to Client because they made a conclusion on the view inquiry without providing any proof that the proposed garage would indeed "unduly impact" the "critical lines of sight" of nearby owners.

— Long-time BLPC board member Terry Spreiter recently (7/2023) told Client that she could not recall any other garage application being denied. Client: "Terry did tell me that all three new garages that were built on Huckleberry Lane, that all owner's [sic] were on the BLPC board when they were approved." (See Client's 7/11/2023 email to TO.)

— The board has approved several other applications for garages/sheds, including an application by the BLPC President, further indicating that the BPLC's denial of the 2020 Garage Application affirms the board's disparate treatment of Client.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— Client has a strong claim that at a very minimum one of the BPLC board members breached his fiduciary duty to Client by participating in the review and decisionmaking of the 2020 Garage Application when he had a clear conflict of interest. Given the specific requirements for a view obstruction under the Handbook, and the fact that the BPLC has not shown how the garage would violate the specific requirements of that provision, the BPLC may not have broad discretion to interpret the 2020 Garage Application as interfering with any owner's view.

9.5.
Declaratory Relief

Elements—Declaratory Relief.

— The essential elements of a declaratory relief cause of action are: (i) an actual controversy between the parties' contractual or property rights; (ii) involving continuing acts/omissions or future

consequences; (iii) that have sufficiently ripened to permit judicial intervention and resolution; and (iv) that have not yet blossomed into an actual cause of action. (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366–69.)

— In an action for declaratory relief, an "actual controversy" is one that "admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts; the judgment must decree, not suggest, what the parties may or may not do." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110.)

— Code Civ. Proc., § 1060 explicitly permits declaratory relief claims to determine the rights and duties of a homeowner.

— The "enforcement" issues discussed in the context of the "Breach of CC&Rs" and "Negligence" causes of action above are also applicable to a declaratory relief claim.

— The "failure to maintain" issue discussed in the context of the "Breach of CC&Rs," "Negligence," and "Nuisance" causes of action above is also applicable in the context of a claim for declaratory relief.

Remedies—

— The remedy for a declaratory relief cause of action is a judicial declaration specifying the rights and obligations of the parties. (Code Civ. Proc., § 1060.)

— As to whether attorneys' fees are available to the prevailing party, see "Attorneys' Fees and Costs" section below.

Applicable Statute of Limitations—

— The statute of limitations governing a request for declaratory relief is the one applicable to an ordinary legal or equitable action based on the same claim. (*Mangini v. Aerojet–General Corp.* (1991) 230 Cal.App.3d 1125, 1155.)

Application—Application of the Law to Client's Facts

— Client is entitled to declaratory relief in this dispute because: (i) there is an actual controversy relating to property rights in Client's dispute; (ii) the dispute involves the BPLC's unreasonable denial of the 2020 Garage Application; and (iii) following mediation and an attempt to resolve the dispute without escalation, the issue is now ripe for judicial intervention and resolution. Client's claims render the BPLC liable for breach of the Handbook, so that is already a cause of action that is ripe.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— Client's claims render the BPLC liable for breach of the Handbook, so that is already a cause of action that is ripe. Because California courts have fashioned strict requirements for enforceable view restrictions, Client may be entitled to declaratory relief on the question of whether the Handbook's view restrictions are even applicable to the 2020 Garage Application (see below under Section 11).

10.
STRATEGIC CONSIDERATIONS

10.1.
Statute of Limitations

This section is *not* intended to address whether or not the statute of limitations has run on a particular cause of action that might have otherwise been relevant under the facts. Those specifics can be found in reference to each of the potential causes of action discussed above. This section of the LADD is intended only to highlight the earliest statute of limitations of a claim that remains available to Client.

If Client wants to file a lawsuit containing the applicable the causes of action discussed above, the action must be filed on or before **November 15, 2024** (the *earliest* of the applicable non-expired statutes of limitations deadlines given the desired causes of action).

10.2.
Applicability of Davis-Stirling Act

The Davis-Stirling Act does not apply to the facts of this dispute.

10.3.
Jurisdiction

10.3.1.
Arbitration

There is no binding arbitration provision in the Corporation Handbook. There is a "Dispute Resolution Procedure" at section VIII.17 that allows a member to appeal a board action by requesting a "rehearing."

10.3.2.
Venue

Because this dispute involves Client's property located in Humboldt County, the proper venue is Humboldt County.

10.4.
Standing

As a certificate holder of the Corporation, Client has standing to pursue every cause of action described above against the Corporation.

10.5.
Anti-SLAPP Analysis

Anti-SLAPP Overview—

- Strategic Lawsuits Against Public Participation ("SLAPP") are lawsuits designed to hinder or prevent parties (typically the defendant) from engaging in constitutionally protected activities (e.g., petitioning or free speech). For example, development companies have used SLAPP suits to harass environmental groups standing in the way of large development/construction projects. These companies would file lawsuits against the environmentalists for the express purpose of tying up the smaller (and not as well-funded) environmental groups' financial resources, effectively preventing them from having their "day in court." In response, the Legislature passed the anti-SLAPP statute, which was codified in Code of Civil Procedure section 425.16. This statute allows the defending party to file a special motion to strike (called an anti-SLAPP motion) to have the court determine whether the lawsuit can proceed or should instead be thrown out as a meritless attack on the defendant's acts made in furtherance of his or her right "to petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (Code Civ. Proc., § 425.16(b)(1).)

- The granting of an anti-SLAPP motion can have *severe* consequences, not the least of which is the dismissal of the at-issue claim(s)—or even the entire complaint—depending on the circumstances. In addition, a defendant who prevails on an anti-SLAPP motion *must* be awarded his or her attorneys' fees and costs, which, given the complexity of anti-SLAPP motions, is typically quite significant. (Code Civ. Proc., § 425.16(c)(1).)

Anti-SLAPP Statute's Application in HOA-Related Cases—

- SLAPP suits can, and have, arisen in lawsuits by and against HOAs and HOA members. For example, a member might file a lawsuit against a director or committee member to pressure that person to change a critical vote regarding some issue or another. To prevent that type of abuse, and

to discourage members from naming individual board members as defendants in litigation, courts have determined that the protections offered under the anti-SLAPP statute apply to various issues that arise in the HOA arena. (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 130-36 [tree trimming dispute between adjacent homeowners that involved covenants to all lots in the community satisfied the definition of "public interest"]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476-77 [newsletter published to 3,000 residents of an HOA was a "public forum" even if access to the newsletter was selective and limited]; *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1409-10 [letters from attorney to management company and the HOA's board regarding nuisance caused by an HOA member].)

— Obviously, however, not all HOA-related disputes are covered by the anti-SLAPP statute. (*Talega Maintenance Corp. v. Standard Pac. Corp.* (2014) 225 Cal.App.4th 722, 732 [holding that HOA proceedings must have a strong connection to governmental proceedings to qualify as "official proceedings"]; but see *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 540-46 [holding that HOAs "functioned similar to a quasi-governmental body" to constitute a "public forum"].)

Anti-SLAPP Test—

— The courts use a two-prong test to determine if a claim is protected under the anti-SLAPP statute. First, the defendant must prove that the at-issue claim arises from a constitutionally protected activity. (*Ruiz v. Harbor View Community Assn., supra,* 134 Cal.App.4th at 1466; Code Civ. Proc., § 425.16(b)(1).) If the defendant satisfies his or her burden, the burden shifts to the plaintiff to show that there is a probability that he or she will prevail on the merits of the at-issue claim. (*Ibid.*; *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16(b)(1).)

— With regard to the first prong, there are four categories that the anti-SLAPP statute is intended to protect:

- Any statement (written or oral) or document generated in connection with (or as part of):

  → Any official proceedings authorized by law—e.g., legislative, executive, or judicial proceedings. (Code Civ. Proc., § 425.16(e)(1).)

  → Any issue under consideration or review by a legislative, executive, or judicial body. (Code Civ. Proc., § 425.16(e)(2).)

- Any statement (written or oral) or document made in a place open to the public (or in a public forum) and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(3).)

- Any other conduct made in furtherance of the exercise of a constitutional right of petition or free speech and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(4).)

Application/Analysis/Conclusion—

— Based upon the applicable facts and claims, an anti-SLAPP motion is unlikely because none of the conduct complained of arises from constitutionally protected activities.

10.6.
Pre-Filing Requirements
(e.g., Notice or Mediation Requirements)

Inapplicable. Client and BLPC attended mediation in an attempt to resolve dispute without litigation.

10.7.
Attorneys' Fees and Costs

There is no applicable statutory or contractual provision entitling the prevailing party to his/her attorneys' fees and costs.

If new information comes to light that affects Client's right to attorneys' fees and costs, Client will be notified.

11.
FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

Under California law a landowner has no right to an unobstructed view over adjoining property, and " 'the law is reluctant to imply such a right.' " (*Boxer v. City of Beverly Hills* (2016) 246 Cal.App.4th 1212, 1219; accord, *Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1152.) Although such a right may be created through adoption of enforceable CC&R's (see, e.g., *Posey v. Leavitt* (1991) 229 Cal.App.3d 1236, 1250), "[i]t is a general rule that restrictive covenants are construed strictly against the person seeking to enforce them, and any doubt will be resolved in favor of the free use of land." (*White v. Dorfman* (1981) 116 Cal.App.3d 892, 897(White); *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1377; see generally 6 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 16:17, p. 16-73 ["restrictive covenants are to be construed strictly against limitations upon the free use of property, and where a provision is subject to more than one interpretation, the construction that is consonant with the unencumbered use of the property will be adopted"].) That said, it is also "our duty to interpret the deed restriction 'in a way that is both reasonable and carries out the intended purpose of the contract.' " (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1378; see *Ezer v. Fuchsloch* (1979) 99 Cal.App.3d 849, 861; see also 6 Miller & Starr, supra, § 16:17 at p. 16-75 ["[i]n the

absence of ambiguity, the fair intent of the parties is enforced"].) *Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 635-636.

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.