October 31, 2016

Fair Political Practices Commission
advice@fppc.ca.gov

Re: Nevada County request for advisory opinion
dated Sept 29, 2016

On behalf of the Nevada County Historical Landmarks Commission, thank you for the opportunity to supplement the email request from County Counsel for an advisory opinion on whether the Commissioners are required to file form 700 disclosures.

Many of the reasons the Commissioners are opposed to the filing requirement are best set forth in the letter dated September 24, 2014, signed by each Commissioner, most of whom are still on the Commission, that is attachment 1.

Each member of the Commission is an unpaid volunteer, contributing time and effort because of an interest in local history and a desire to promote it. We serve at the pleasure of the appointing Supervisor. We also contribute our own funds in the sense the we are not reimbursed for expenses such as mileage or printing business cards. In the Commission's 47 year history, to our knowledge, no member has been required to file a financial disclosure. To the contrary, before I applied to be considered for the Commission, I specifically asked whether I would have to file a financial disclosure form, and was assured in writing that I would not. That exchange is attachment 2. Note this exchange is a year after the County adopted its Conflict of Interest code which we are now told requires a disclosure filing. Other Commissioners tell me they too were told they would not have to file a financial disclosure form.

The notion that our work is rubber stamped misperceives the landmarking process. The current process for registering a landmark in Nevada County, in accordance with Board resolutions and our procedures, begins with an application by a property owner. The form can be found on the mynevadacounty.com/ website. The Commission then reviews the application for historical accuracy and significance. If it appears in order, it approves the application and transmits it to the Board, with a request that the Board grant final approval and designate the landmark. The decision on whether anything will be landmarked is entirely for the Board. Board Resolution 92363, adopted June 16, 1992, directs the Commission to "present all proposed historical landmarks to the Board of Supervisors for final approval." Likewise, Section L-II 4.3.6 B.2 of the Nevada County Land Use And Development Code makes clear that all the Commission can do is make a recommendation.

This is reflected in the Board Resolutions, which until very recently, have read:

"WHEREAS, the Nevada County Historical Landmarks Commission has unanimously approved the application to designate the property known as the Anthony House, Lake Wildwood, as a Nevada County Historical Landmark and has requested the Board of Supervisors to endorse and certify the designation,

NOW THEREFORE, BE IT RESOLVED, the Nevada County Board of Supervisors hereby declares the Anthony House, Lake Wildwood, as Nevada County Historical Landmark No. NEV 10-01".

Any recent change in the language was done without our participation or approval and appears inconsistent with our governing rules.

I have been on the Commission for three years. During that time, the Commission has submitted six requests for landmark designation to the Board of Supervisors. The Board acted favorably on three and rejected one. Two are pending. The rejection belies County Counsel's assertion that our requests are routinely rubber stamped. In 2015, the Commission unanimously decided to begin recommending to the Board that it designate a new type of landmark, a historic mining community. Traces of these communities have either disappeared, or are rapidly disappearing; hence the need for landmark designation. Because the landmark would be for a geographic area, as opposed to a specific property, and many are now on Forest Service or BLM land, we concluded that there could be no application from a property owner, and were prepared to amend our procedures accordingly. Nor would there be a monument or plaque. Instead, the "virtual" landmark would be marked on an interactive map created by the County and accessible on the internet. Notwithstanding the fact that many such communities had been granted landmark status in the past, our request that Hunt's Hill be landmarked was rejected. We spent about a year trying to convince the Board and its staff to adopt our point of view, to no avail. That categorical rejection meant that the next four anticipated mining community landmarks, Relief Hill, Gaston, Cherokee and Blue Tent, were never even submitted to the Board. For your benefit, some of the correspondence that surrounds that request and rejection is attachments 3 and 4.

It is not our decision to have landmark applications placed on the Board's consent calendar. One of our long serving members tells me that it is only in the past two or three years that the Board has moved our requests to the consent calendar. We welcome public comment.

When I joined the Commission in 2013, our annual budget was about $200. For the current fiscal year, it is about $1200, partly in recognition of the fact that we have greatly expanded our internet and social media presence to reach out to the younger generation that communicates principally that way. We are not in a position to award contracts or do anything of financial significance. We simply want to continue to volunteer our time to promote Nevada County history, without the trouble and privacy invasions that filing a Form 700 financial disclosure entail. We understand that your regulations (18751) encourage counties to adopt exemption procedures for people like us, and urge you to advise the county to exempt us from any filing requirement.

This supplement was authorized by the unanimous vote of the Commission at its October 28, 2016 meeting.

Respectfully submitted,

Bernard Zimmerman
Chair

Nevada County Historical Landmarks Commission
P.0. Box 1014
Nevada City, California 95959

September 23, 2014

Nevada County Board Of Supervisors
950 Maidu Ave.
Suite 200
Nevada City, Cal. 95959

Gentlemen:

We, the members of the Nevada County Historical Landmarks Commission, collectively and unanimously, urge you not to adopt the recommendation of County Counsel that we be required to file financial disclosure form 700. A copy of her email to Chairman Jim Dierberger dated August 28, 2014, containing her recommendation, is attached for your convenience.

We urge you not to adopt her recommendation for several reasons. First, such filings are not required by California Government Code sec. 87200 which contains the filing requirement. It reads as follows

"This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election."

As you can plainly see, we are not members of any of the enumerated bodies to which this law applies. Nor are we "public officials who manage public investments." We are appointed volunteers who receive no remuneration of any kind. We do not even get our travel expenses reimbursed. We have no ability to award contracts to third parties. Our authority is essentially limited to processing requests from landowners who seek landmark designation and making recommendations to the Board, which decides whether to grant landmark status.

Attachment 1

The Commission has been in existence about 45 years and its members have never been asked to file financial disclosures. The filings are burdensome and an invasion of personal privacy, as you gentlemen are no doubt aware. While these burdens may be appropriate to the categories of elected and appointed officials listed in the law, it is not appropriate to extend them to volunteers who have as little authority as we do.

Our motivation in serving on this Commission is to promote Nevada County and preserve its history. Counsel's recommendation will not further that. We urge you not to adopt it.

Yours truly,

James Dierberger, Chair
District III

Niel Locke
District I

Stephen Fry
District I

Neila Whiting
District II

Lorie Silvera
District II

Charles Jakobs
District III

James Jacobitz
District IV

Weldon Travis
District IV

Barbara Czerwinski
District V

Bernard Zimmerman
District V

cc:Alison Barratt-Green
encl.: Barratt-Green email

From: Donna Landi <Donna.Landi@co.nevada.ca.us>
Subject: RE: Nevada County Historical Landmarks Commission
Date: September 5, 2013 at 5:24:09 PM PDT
To: 'Bernie Zimmerman' <berniez46@gmail.com>

No, a financial disclosure form is not required for this Commission.

Donna Landi
Clerk of the Board
950 Maidu Avenue, Suite 200
Nevada City, CA 95959
Office: 530.265.1480 Fax: 530.265.9836
Website: http://www.mynevadacounty.com/nc/bos/cob

From: Bernie Zimmerman [mailto:berniez46@gmail.com] **Sent:** Sunday, September 01, 2013 4:56 PM **To:** Donna Landi **Subject:** Re: Nevada County Historical Landmarks Commission

Will I have to file a financial disclosure form?

Attachment 2

Nevada County Historical Landmarks Commission
P.O. Box 1014
Nevada County, California 95959

July 18, 2015

Honorable Board of Supervisors
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, Cal., 95959

Gentlemen:

The Nevada County Historical Landmarks Commission respectfully recommends that the Board of Supervisors enact a resolution designating the site of Hunt's Hill, also known as Gouge Eye, a historical landmark.

The Commission plans in the future to recommend historical landmark designation for a number of pioneering mining communities in Nevada County, which today are essentially non-existent or ghost towns. Many of these sites are virtually unknown to younger generations and are becoming increasingly difficult to locate. We do not intend to place physical markers on these sites since they are extremely likely to be vandalized, and many of the sites are on public lands. Instead, we will add these sites, with appropriate identifying information, to our interactive map, as well as to any future edition of "Exploring Nevada County" that may be published. We view this plan as an important component of the mission the Board gave us to identify, preserve and promote the historical resources of this county. Hunt's Hill is our first such effort.

Attached is a short history of Hunt's Hill, prepared by one of our commissioners, Bernie Zimmerman. As you can see, for about 40 years, it was a substantial and prosperous mining community located near Greenhorn Creek across from Red Dog, which this Board designated a landmark in 1975. We recommend designating the site as a historical landmark so its history can be preserved for future generations.

Yours truly,

_____
James Dierberger
Chairman

Attachment 3

Begin forwarded message:
From: Eve Diamond <Eve.Diamond@co.nevada.ca.us>
Subject: RE: Request for "virtual" designation of Hunt's Hill
Date: August 21, 2015 at 11:54:06 AM PDT
To: Bernie Zimmerman <berniez46@gmail.com>
Cc: "Jim Dierberger (dierberger@aim.com)" <dierberger@aim.com>, Ed Scofield <Ed.Scofield@co.nevada.ca.us>, Julie Patterson-Hunter <Julie.Patterson-Hunter@co.nevada.ca.us>

Hi, Bernie,

I have confirmed that yes, we do need to follow the process in place if the Board is to take any official action in this matter. Please feel free to contact County Counsel (265-1319) if you have any further questions or concerns.

Thank you,

Eve

Eve Diamond, Analyst

Board of Supervisors

Nevada County

950 Maidu Avenue

Nevada City, CA 95959

Ph: 530-265-7247
Eve.diamond@co.nevada.ca.us

Attachment 4

From: Eve Diamond
Sent: Thursday, August 20, 2015 3:54 PM
To: 'Bernie Zimmerman'
Cc: Jim Dierberger (dierberger@aim.com); Ed Scofield; Julie Patterson-Hunter
Subject: RE: Request for "virtual" designation of Hunt's Hill

Hi, Bernie,

I do understand your question and will need to get back to you about that section (e). There is also an earlier definition which states, "(j) "Historical resource" includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California." But—I get the distinction. So; I'll need to check back with Counsel.

It is certainly true that the Board only recently began affirming historical designations by Resolution---when we first began loading documents onto your HLC County website this year we were only able to go back to about 2002 to find the first Resolution. But once that process began, there have been no historical landmark designations without the application by property owner, Resolution and recordation as part of the process.

Will let you know what I find out…..

Thanks,
Eve

From: Bernie Zimmerman [mailto:berniez46@gmail.com]
Sent: Thursday, August 20, 2015 1:41 PM
To: Eve Diamond
Cc: Jim Dierberger (dierberger@aim.com); Ed Scofield; Julie Patterson-Hunter
Subject: Re: Request for "virtual" designation of Hunt's Hill

I was aware of the provision. We are not proposing there be any restrictions on alterations or demolitions. See (e). I don't think this applies. I am checking with former commissioners to see if this was followed in the past. I doubt that it was followed for Red Dog, You Bet or similar locations. Has anyone checked?

Bernie Zimmerman

On Aug 20, 2015, at 12:33 PM, Eve Diamond <Eve.Diamond@co.nevada.ca.us> wrote:

Hi, Jim and Bernie,

County Counsel has researched the legality of your request for the Board to pass a resolution designating a historical landmark, without having an application/permission from the property owner and without a legal description of the property. The California Public Resources code requires that, if the Board passes a Resolution designating a historical landmark, it must include the property owner and a legal description as part of the Resolution and file the recordation with the Clerk Recorder(highlights are mine):

California Government Code Sec. 27288.2.
Pursuant to Section 5029 of the Public Resources Code, after March 15, 1993, the county recorder shall record a certified resolution establishing an historical resources designation issued by the State Historical Resources Commission or a local agency, or unit thereof.

Public Resources Code 5029.

(b) Any local agency, or unit thereof, shall, within 90 days of an historical resources designation by the local agency or unit for an individual property, submit to the county recorder for recordation, and the county recorder shall record, a certified resolution establishing the historical resources designation. For historical resources designations made prior to March 15, 1993, the local agency, or unit thereof, may submit for recordation, and the county recorder shall record, a certified resolution of historical resources designation.

(c) The resolution shall include the name of the current property owner, the designating entity, the specific historical resources designation, and a legal description of the property.

(d) The recorder shall index the recorded resolutions of the commission or local agency, or unit thereof, listing the respective agency as the "grantor" and the current owner as the "grantee" for that purpose.

(e) For the purpose of this section, the term "historical resources designation" means the California Register of Historical Resources and any local historical resources designation resulting in restrictions on demolitions or alterations.

(f) This section shall have no effect on the right, title, or interest in the property identified after March 15, 1993, which is acquired by a bona fide purchaser for value between the time of designation of the property as a historical resource and time that the designation is recorded unless the purchaser had actual knowledge of the designation.

(g) This section shall have no effect upon the title to any property that is subject to this section.

So, we must decline your request for this Resolution without

going through the process we have been following.

Please let me know if you need any other information, or if you'd like to pursue this designation using the required process.

Thank you,

Eve

Eve Diamond, Analyst

Board of Supervisors

Nevada County

950 Maidu Avenue

Nevada City, CA 95959

Ph: 530-265-7247
Eve.diamond@co.nevada.ca.us

-----Original Message-----
From: Eve Diamond <Eve.Diamond@co.nevada.ca.us> To: Jim Dierberger <dierberger@aol.com>
Sent: Thu, Aug 6, 2015 1:10 pm
Subject: RE: Hunt's Hill designation

OK, thank you.

Will you also have supporting documents such as: application from landowner, parcel number(s) and location map? I will need all materials by August 26.
Thanks,
Eve

From: Jim Dierberger [mailto:dierberger@aol.com] **Sent:** Thursday, August 06, 2015 12:29 PM
To: Eve Diamond
Subject: Re: Hunt's Hill designation

Eve, one more thing: A motion at our July meeting ask that I pursue the Hunt's Hill project. We will be adopting those minutes in our August meeting.
Jim

From: Eve Diamond
Sent: Friday, July 24, 2015 9:40 AM **To:** 'dierberger@aol.com'
Cc: Julie Patterson-Hunter **Subject:** Hunt's Hill designation

Hi, Jim,

Julie has let me know your intention to request the Board designate Hunt's Hill a historical landmark. I know you are checking on what date you'd like this to come to the Board. I would be preparing the Board packet so I have a few more questions.

In the past, requests from the HLC for Board resolutions of this nature have included the following:
A statement that at a certain HLC meeting the Commission voted on the request for designation. Pursuant to the HLC application process at http://www.mynevadacounty.com/nc/bos/cob/Pages/Historical-Landmark-

Commission-Process.aspx, there would be an application from the landowner. We would also need to identify the parcel number(s) and having a location map would be good.

Thanks and let us know when you are ready to proceed,

Eve

Eve Diamond, Analyst Board of Supervisors Nevada County