NARRATIVE OF FACTS SURROUNDING
DISPUTE BETWEEN DAVID PAHNOS/BARRY STEPHENS
AND THE CITY OF LAGUNA BEACH

David Pahnos and Barry Stephens (sometimes referred to as "Pahnos and Stephens") have been the defendants in Orange County Superior Court Case Nos. 12HM05768 and 12HM05769 brought by the City of Laguna Beach. These were criminal complaints based upon a local ordinance known as the Hedge Height Ordinance. Pahnos and Stephens, a gay couple, are the only persons the City has taken to criminal prosecution over the Hedge Height Ordinance. The ordinance purports to represent a City policy but it has not been enforced against all residents of the City equally, but rather discriminatorily, and in this instance, Pahnos and Stephens have been singled out for no reason other than that they have insisted on being afforded their property rights, physical safety, and constitutional rights, and because they made it clear from the outset that they are intolerant of corruption and are themselves incorruptible.

As background, Pahnos and Stephens have been in a relationship for 45 years. Most of that time they lived and worked in Pittsburgh, Stephens as a public school teacher and Pahnos in various positions, including Vice President of an environmental engineering firm and head of the Robotics Engineering Center at Carnegie Mellon University. In 1998 they bought their property in Laguna from a long-time friend, and within a few years both retired, sold their house in Pittsburgh, and moved to the California house, where they have lived since.

Their property is one of many sold on small lots and built upon for use as second homes in the first half of the twentieth century, when coastal land was cheap and plentiful. The zoning was nonexistent at that time, and the original homes were mostly wood-framed cottages of various sizes and styles. For most of the twentieth century the region formerly known as South Laguna was considered modest and middle class, at least compared to most of the coastal communities in Southern California, including Laguna proper.

Pahnos and Stephens' neighborhood is on a steep slope on the inland side of the main coastal road of Southern California (variously known as Coast Highway or Pacific

Coast Highway). The main attraction of the neighborhood (as with coastal communities generally) has always been its proximity to the ocean. The steep slope allows nearly all houses to have an ocean view.

As the population of Southern California ballooned and vacant land became rare, owners of properties in South Laguna realized that their modest beach houses had value far beyond what the original owners had bought their properties for—as getaways from the city or second homes. Gradually most of the cottages have been upgraded, but they still look as they did when first built, relatively modest and eclectic.

The more recent trend in this neighborhood has been to build increasingly grand homes on the few remaining vacant lots—or to tear down the older cottages and rebuild or to buy two or more properties and create one large house or estate with one or more guest houses. All new houses are designed to maximize the ocean view.

The adjacent property now owned by Wayne and Erika Phelps is uphill to clients' property. It had been a vacant lot until 2000 for good reason: an active water course runs right through the middle of property. It was considered unbuildable by Orange County engineers because of the logistical difficulties of designing around the water course, most of which is sub-surface with a flow of over 120,000 gallons per minute when the soil is saturated with rain water.. In addition, owners of neighborhood properties had been opposed to any development on the lot, as any building would require the removal of trees and other mature vegetation that had been planted to stabilize the soil and prevent mudslides, which had occurred numerous times in the past and threatened the safety of downhill owners. (Various parts of the larger City of Laguna Beach have been historically plagued by mudslides and landslides.)

Despite such obstacles, the then-owner of the Phelps' property hired an architect to design a modern and very expensive 3-story house (not in character with the neighborhood). Despite neighbors' protests in public hearings and geological surveys recommending against developing the property, the plans were ultimately approved, and the house as designed was built on and into the water course.

Within a short time after the house was completed and occupied, the then-owners were cruelly reminded that building on the property had indeed not been

advisable. Mold grew all through the house but particularly in the bedroom on the bottom floor where their child slept. Because of the mold, the child became very ill and suffered permanent lung damage. The owners moved and put the property up for sale. The Phelpses purchased the house at a greatly reduced price.

From the moment the Phelpses moved in (around 2004) they demanded that clients trim and clip trees to allow them the views they felt entitled to. Pahnos and Stephens cooperated with the Phelps' demands for years, notwithstanding the high cost of hiring outside tree services. The Phelpses continued to demand more. Pahnos and Stephens began to resist when the changes sought threatened to damage the root systems of their trees. They hired arborists and engineers, who documented the necessity of having mature vegetation and healthy trees with deep root systems to stabilize the soil on slope, as per the Safety Element of the Laguna Beach General Plan.

When it became clear that Pahnos and Stephens had stopped giving in to their demands, the Phelpses filed a claim under the relatively new and controversial ordinance known as the Hedge Height Ordinance. The ordinance is controversial for several reasons. It has been selectively enforced. It has been amended several times for vagueness or unenforceability. Finally, it was reinterpreted after the 2010 City Council election based upon a new City policy that property owners have the right to an ocean view. In support of that policy it goes so far as to construe discrete trees as constituting a "hedge," and if they block the view of another property owner, one or more of the trees can be ordered to be cut to a height of 6 feet or removed. Environmental or safety issues are not considered in the ordinance, nor is the California Urban Forestry Act, which mandates at Ca Gov Code Section 53067(a)(4):

> (4) That the California Department of Forestry and Fire Protection Guidelines for Developing and Evaluating Tree Ordinances 1991 publications states than an ordinance shall be developed for the purpose of prohibiting topping of public and private trees. Topping is the practice of cutting back large diameter branches of a mature tree to stubs and is a particularly destructive pruning practice. It is stressful to mature trees, and may result in reduced vigor, decline, or even death of trees. In addition, new branches that form below the cuts are only weakly attached to the tree and are in danger of splitting out.

> Topped trees require constant maintenance to prevent this from happening and it is often impossible to restore the structure of the tree crown after topping….

Thus, the practice of topping trees is in itself harmful to trees and the environment generally. An ordinance like that adopted in Laguna Beach goes much further: it encourages topping for the express purpose of affording views to selected property owners. The losers under this ordinance are the downhill neighbors who have mature trees and who are following the preservation--versus topping and pruning--practice according to State law. Pahnos and Stephens' trees are over 80 years old and reached mature height some 60 years ago.

Normally owners of real property apply to a design review board or architectural committee for a permit to build on or make improvements to their own property. The Laguna Beach Hedge Height ordinance works backwards, in that the party asking for real property improvements is not the owner of the property, but rather a neighbor. The neighbor asks the City to approve an application to force changes in another owner's property. The non-applying party has to defend his/her property rights. Specifically, an owner who feels his view is obstructed by trees or other plantings on adjacent properties files a claim with the City to have existing trees on the adjacent properties removed or trimmed, in order to enhance the claimant's view. The owners or their representatives of the targeted properties are required to appear at a City hearing to defend against the proposed changes to their property or lose by default. The City enforcement officer and the hearing officer are the same person. The officer makes a determination, which can amount to a relandscaping of property whose owners had not sought a permit or anything else from the City. The ordinance is enforced retroactively to before the City was incorporated. Either the claimant or the targeted owners can appeal the determination to the City Council. In any case, for the non-applying owner, the optimal outcome is hardly a victory, for that owner had been forced to appear and defend at public hearings, which usually requires the hiring of experts or an attorney—and the ordinance does not provide for the recovery of those costs. A negative outcome requires, in addition, paying for the costs of hiring landscapers and/or outside tree services to alter their own property to the neighbor's specifications —or being fined and/or imprisoned for refusal to comply.

In this case, as part of their claim Mr. and Mrs. Phelps presented a plan to drastically trim or remove all of the mature trees from clients' property. The Phelpses hired the former chairman of the Design Review Board—a clear conflict of interest--who lobbied the Hearing Officer and the Design Review Board members ex parte—illegal under all municipal public hearing laws and rules in California.

To defend themselves Pahnos and Stephens hired engineers and other experts who prepared reports recommending against the radical cuttings, which could kill the trees and other vegetation and present a danger of mudslides to them and to the downslope owners. They documented their property's and the area's history of mudslides and flooding. They produced numerous photographs of the view from the Phelps' property before it was built on, at the time the Phelpses bought the improved property, and currently. The pictures showed that the trees were taller before and at the time of the property purchase, and that the view now was better than ever because of Pahnos and Stephens' earlier careful trimmings. In other words, the Phelpses bought their property knowing their view prospects, which were not as they thought they were entitled to. Pahnos and Stephens submitted their reports and photographs to the hearing officer, the Design Review Board, and later to the City Council, to be read into the record of the hearings.

At the hearing before the Design Review Board, the Board barred Pahnos and Stephens from speaking to present their defense, reasoning that the Phelpses, and not Pahnos and Stephens, were the applicants for the permit and therefore that Pahnos and Stephens had no standing to speak. The Phelps' relandscaping plan was adopted. None of the materials submitted by Pahnos and Stephens were read or incorporated into the hearing process. Safety was one among the extremely important issues presented by Pahnos and Stephens but not allowed to be considered, as a matter of City policy, as per a letter from City Planning stating that the Phelpses need not show that the relandscaping would be safe or in accordance with the Safety Element of the City's General Plan, nor could evidence of safety risk presented Pahnos and Stephens be considered, even though their property had experienced multiple destructive mudslides in the past.

Pahnos and Stephens asked for a review by the City Council. The City Manager ordered a de novo hearing. Before and after the City Council hearing, City Ordinance Enforcement Officials came out to Pahnos and Stephens' property and declared that they were in compliance with the Hedge Height Ordinance. The officials were later ordered by higher-ups, who had been lobbied by the Phelpses, to reverse their findings. (In other words, the interpretation of the law on any given day was variable and, in this case, based on political influence.)

Between the Design Review Board and City Council hearings, several communications on City letterhead were sent to Pahnos and Stephens purporting to document the City's position on what had clearly become an adversary proceeding. The letters, dated March 30, 2011 and April 20, 2011, contradicted each other, one removing the Design Review Board from the process in accordance with an amendment to the Hedge Height Ordinance, another endorsing the findings from that hearing and allowing the subsequent City Council hearing to take place. Under any objective reading, the letters exemplify unintelligible double-talk.

The City Council hearing on April 26, 2011 turned out not to be de novo, contrary to what the City Manager had ordered. Pahnos was given only five minutes to speak and was not allowed to present testimony or to cross-examine. As at the Design Review Board hearing, none of the materials submitted by Pahnos and Stephens were read or incorporated into the hearing process. At a very short hearing on the matter, the City Council voted 3 to 2 to uphold the Design Review Board's decision to adopt the Phelps' landscaping plan, even though the Design Review Board had been legislatively removed from the process prior to the Design Review Board hearing, and under state law, the Design Review Board has no jurisdiction to hold ordinance enforcement hearings – no one was seeking a permit for new construction.

The City Attorney promptly proceeded to act upon the City Council's decision by acting as a prosecutor to coerce Pahnos and Stephens into complying with the Design Review Board determination. He had the City issue citations against Pahnos and Stephens on August 1, 2011 and again on September 1, 2011 (because the previous citations were fatally defective), with threats of substantial fines and jail terms. Pahnos and Stephens contested the citations, and on September 26, 2011 a hearing before Gary I.

Kusunoki, a State Certified Administrative Hearing Officer, was held. Even though the Phelpses were not parties to the proceedings, they were present and demanded standing, which was denied. After taking testimony from Pahnos and representatives of the City and after reviewing a lengthy brief submitted by Pahnos, the hearing officer dismissed the citations. Laguna Beach Municipal Code 1.15.110 (a) states that "The decision of the hearing officer shall be final." Pahnos and Stephens thought that the matter, which took more than a year, was settled.

Undeterred by its own Code, the City filed criminal charges in Orange County Superior Court. (The Director of Community Development, whose department enforces ordinances, explained in an email to the Phelpses (which is improper and unethical) that the City wanted to prevent Pahnos and Stephens from being able to appeal another administrative ruling.) The criminal complaints sought imprisonment of six months and fines of $1,000 per day, retroactive to the City Council hearing. The complaints were based upon the March 30 and April 20 letters from the Zoning Administrator..

Up to this point Pahnos and Stephens were able to handle the onslaught by the City on their own. They knew they had suffered compensable damages and should take the offensive against the City. They also knew that, to continue to defend themselves and to go to the next stage, they needed to hire a good litigator. They found and hired a local sole practitioner.

At the hearing on the Motion to Dismiss on January 17, 2012, the court made findings that the citations were "totally invalid." Judge Carter dismissed both complaints and added, "I could give you a lot more reasons for the dismissal], but I don't believe anything more is necessary."

Pahnos and Stephens worked closely with their attorney, Charles Mollis, to prepare a writ of declaratory relief, which was filed in Orange County Superior Court on around August 12, 2012. They asked for findings of denial of their due process, denial of equal protection, intentional misuse of the administrative building approval process for fraudulent purposes, and willful endangerment of clients' safety and that of their downslope neighbors, among other things. They conducted extensive discovery,

including requests for production of documents and interrogatories and took depositions of various City officials and representatives.

Pahnos and Stephens were stonewalled in every way possible. Almost no email printouts or documents were ever produced by the City. In fact, a City officer testified at her deposition that all of the emails relating to the Pahnos/Stephens matter had been deleted and that all related documents in their property file had gone missing. (The Deputy City Attorney, an associate of Rutan & Tucker, was the last to sign out the file.) However, even without the City's cooperation, Pahnos and Stephens have compiled a wealth of evidence, including thousands of pages of email printouts (they had carefully preserved all emails from their end) and deposition transcripts, which show misconduct, material misrepresentations, and destruction of evidence.

Meanwhile, the City continued to pursue the criminal prosecutions, by refiling the same charges after shopping for a different judge. The City also filed numerous and repetitive motions in the civil matter, all of which required responsive pleadings and court appearances by Pahnos and Stephens' attorney. Pahnos and Stephens have been forced to pay huge attorney's fees and costs due to the numerous contradictory and frivolous filings, one of which both the City and the City Attorney were sanctioned for. The City's clear intent has been to bury them in paperwork and attorney's fees.

The civil case was originally handled by Superior Court Judge Shulman, who dismissed all the City's motions. As the case was readying to go to trial, Judge Schulman retired, and the case was assigned to Judge Lewis. It then languished for four years, becoming the oldest civil case in the Orange County court system. The judge scheduled a trial three times. In reliance upon the court dates, Pahnos and Stephens issued subpoenas and flew in expert witnesses, only to have the judge cancel each trial. But according to an earlier ruling of Judge Schulman, the case had to go to trial. Finally, without a trial, the court issued a contradictory three-page minute order, which denied a trial and which did not mention or adjudicate the "causes of the complaint." The minute order was written and signed by Judge Monarch, a retired family court judge, who had not read the briefs or held a hearing on the matter. Judge Monarch also dismissed a tort case filed by Pahnos & Stephens because the City alleged that their attorney did not fill out a City claim form to the City's satisfaction, and the judge denied

Pahnos and Stephens' motion to amend. In an unpublished ruling the appeals court upheld the decision, holding that, although it found no defect in filling out the claim form, it was within the judge's discretion to dismiss, regardless of the facts of the case. (The California Supreme Court has separately held that a claim written on a napkin is sufficient to proceed. Evidently the Orange County courts believe that this precedent need not apply when inconvenient to the County's largest law firm.)

It took no time for the City Attorney to announce to the press that the ordinance had been upheld by the courts. (Interestingly, the City's law firm, Rutan and Tucker, provides JAMS cases to retired judges at the rate of $1,000 per hour.)

On the criminal side, the City continued to pursue Pahnos and Stephens. Their cases comprised the oldest criminal prosecution on the docket in Orange County (four years). Judge Wilkinson , a retired civil judge, who was assigned the case, gave a pre-trial warning to Pahnos and Stephens in open court that they had better reach a settlement agreement with the City or face over $1 million in fines and six months in jail, even though Judge Carter had previously ruled that the City's case was "totally invalid." As before, Pahnos and Stephens had issued subpoenas and flown in expert witnesses to testify in the criminal trial. The judge reversed an earlier ruling by Judge Hatchimonji and barred Pahnos and Stephens from subpoenaing City Council members as witnesses. (Judge Hatchimonji had ruled that Pahnos and Stephens had a consititutional right to face their accusers in court.) He also stated that he would bar expert testimony at trial, thus cutting the legs out from under their case and forcing a settlement. (Throughout both the civil and criminal proceedings, the City has not named any expert witnesses with experience or education relevant to the case.)

After four years in the Orange County court system and being bounced between six judges with contradictory rulings, a civil settlement agreement was reached in the Pahnos and Stephens matters, and the criminal court dismissed the charges against Pahnos and Stephens. However, the City Attorney continues to threaten legal action by the City because the Phelpses are not yet satisfied and want still a better ocean view. Incidentally, the law firm of Rutan & Tucker, acting as City Attorney and prosecutor in this matter (for which it has billed the City millions of dollars in legal fees between 2011 and 2016), has improperly and unethically referred to the Phelpses as its clients. Pahnos

& Stephens in an effort to protect their property from mudslide and to demand their constitutional rights have spent over $350,000 on attorney fees, court costs, depositions, etc., while the City payed the bill for the Phelpses, even though the courts ruled that the Phelpses have no legal claim against Pahnos and Stephens.

"The Bigger Picture"

The City pulled out all stops, devoting unlimited funds and influence to manipulate the outcome of the Pahnos/Stephens matter in Orange County courts in order to conceal evidence of widespread corruption. The courts have been complicit by not allowing voluminous documentary evidence to be admitted at trial or for the case to go to trial.

In 2014, the City enacted a new view ordinance which explicitly creates a property right to an ocean view, despite state and federal case law going back over 100 years. (The California Supreme Court decided long ago that, as a statewide rule, there is no right to a view.)

The City's General Plan and state law have long required the City to perform mandatory geological hazard mapping. This was to have been completed in 1998. Not only has the mapping not been done, but for 18 years the City Council and the City Manager have failed to enforce mandatory disclosure of geological hazards in real estate transactions, even though the State has designated the entire city as Geological Hazard District No. 17. Therefore, thousands of transactions without disclosure have occurred, resulting in inflated property values in the billions and consequently higher property taxes flowing to the City and County.

The City's view ordinances exacerbate the public safety risk and inflate real estate prices and taxes even more by destroying tree root systems that hold the soil. To this day, all city officials refuse to acknowledge or discuss the role that trees play in mitigating mudslide hazards with Pahnos/Stephens, their attorney, or their consulting engineer. This is despite the fact that the California Geological Survey uses a photo of Laguna Beach on the cover of it mandatory guidelines for mapping landslide/mudslide hazards.

The latest:

Several months ago Pahnos observed that Tony Farr, the City's Enforcement Officer, and Noam Duzman, in-house counsel at Rutan & Tucker who for the past 2 years has been the point man/tough guy in the litigations against Pahnos and Stephen, were at the Phelps's house next door. (Recall that the Phelpses have not been a party to these cases. (Three judges ruled that the Phelpses have no legal standing against Pahnos/Stephens.) Still, the City's attorneys have treated them like private clients and refer to them as their clients, with the taxpayers footing the bill.) On January 21 Duzman left a phone message with Pahnos. He said that he wants to set up a meeting with himself, Tony Farr, and a City Councilman (unnamed), and Pahnos & Stephens and Charles Mollis to discuss issues around the civil agreement. (Query why Duzman didn't call Mollis instead.) Pahnos spoke with Mollis about the call and the proposed meeting. He suggested that he (Pahnos) and the City Councilman meet one-on-one to discuss a range of issues surrounding the view ordinances and how the City handled this matter, prior to any meeting with the attorneys and Tony Farr. On Monday, January 25, Mollis passed this proposal on to Duzman. Duzman's response was: Absolutely not; the City will control how things work.

Pahnos, Mollis, Tony Farr, and Duzman met on February 11. Duzman and Farr produced photographs purporting to show that foliage on Pahnos' property had grown beyond what was allowed under the civil agreement and demanded that new trimmings were past due; if Pahnos and Stephens did not comply within a short time, they would be criminally prosecuted. Pahnos and Mollis argued that the growth claimed by the City was scientifically impossible and that the Phelpses were trying to reinterpret the agreement. The meeting broke up without agreement on anything and with the threat of criminal prosecution still pending.

Within the past few months the Pahnos/Stephens homeowner's insurance policy came up for renewal. For years they had insured with AAA. This time AAA refused to renew. Pahnos asked to speak to an underwriter. The underwriter replied that the property was in a slide zone and not insurable under AAA's own guidelines. Pahnos

asked why now. The underwriter explained that his company had previously worked from City maps, which did not show geological risks (because, as stated earlier, the City has failed to perform mandatory geological hazard mapping); however, currently AAA is using Satellite technology and is not relying on the City's lack of data. The new technology clearly shows the risk in the area. Pahnos/Stephens have since been able to obtain a policy through the State of California for high risk properties. Clearly the State and insurance companies recognize the risks that the city refuses to acknowledged, discuss, or map.

As of early September 2016, Tony Farr continues to meet with the Phelpses, and the City Attorney's Office continues to send demanding and threatening letters to Pahnos/Stephens and their attorney.