



Todd Simonson
(415) 342-3610
Todd@ToddSimonsonLaw.com

LAW OFFICE OF TODD SIMONSON

ATTORNEY/CLIENT PRIVILEGED EXECUTIVE SUMMARY OF INVESTIGATION

Employer: County of Humboldt

Subject: Supervisor Steve Madrone

Investigator: Todd Simonson

Date: March 28, 2023

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I. INTRODUCTION

The County of Humboldt (“County”) retained Todd Simonson of The Law Office of Todd Simonson (“Investigator”) to conduct an investigation of complaints made on behalf of the Cher-Ae Heights Indian Community of the Trinidad Rancheria (“Trinidad Rancheria”) in letters from Tribal Chairman Garth Sundberg about comments made by County Supervisor Steve Madrone at a March 29, 2022, Project Development Team meeting with Caltrans regarding improvements to US 101 in the Trinidad area that impact the Trinidad Rancheria.

Mr. Sundberg alleged in letters sent to the County on June 7 and December 13, 2022, that Supervisor Madrone, during the March 29, 2022, meeting, “asserted that our Tribe has no ancestral territory because Rancherias do not have the same rights as ‘real tribes’ and that Rancherias were for landless homeless Indians who did not have rights to ancestral territory. Supervisor Madrone’s theory that the Tribe is not a ‘real tribe’ and does not have any ancestral territory is without any basis in historical fact and has been expressly rejected by Congress and the courts.”

The County requested investigation of the following allegation:

Whether Supervisor Madrone violated the Board of Supervisors Code of Conduct and Ethics (“Code of Conduct”) and/or the County of Humboldt Harassment Policy with statements he made during a March 29, 2022, meeting with members of the Trinidad Rancheria.

This executive summary is a brief synopsis of the full investigative report, which contains detailed interview summaries and fully developed factual findings that integrate and cite to witness testimony and documentary evidence gathered during the course of the investigation.

II. METHODOLOGY OF THE INVESTIGATION

A. Persons Interviewed

The Investigator interviewed three witnesses over the course of the investigation, including Supervisor Madrone. Their respective interviews are summarized in the full investigative report.

B. Documents Reviewed

The Investigator reviewed numerous documents and other evidence, including: a recording of the March 29, 2022, meeting at issue made by a Trinidad community member invitee who is part of the “Friends of Westhaven” group; Supervisor Madrone’s partial transcription of the recording; an agenda and draft minutes of the March 29 meeting; Supervisor Madrone’s available Statement of Economic Interests (Form 700); Supervisor Madrone’s letter of apology to Tribal Chairman Garth Sundberg; the December 2017 Caltrans Project Study Report for the Trinidad Rancheria interchange project; public comments by Trinidad Rancheria members at the June 7, 2022 Board of Supervisors’ meeting; and, newspaper articles and other publicly available information about the Trinidad Rancheria interchange project.

III. CREDIBILITY ASSESSMENTS

In connection with determining the facts alleged, and consistent with EEOC guidelines, the Investigator assessed the credibility of each witness by evaluating the witness's demeanor, potential bias or motivation to be untruthful, ability to recall information, the specificity of the information provided, the consistency of statements with a witness's prior statements and/or the statements of other witnesses, the inherent plausibility of witness statements and, in some cases, the past record of a witness.

Each of the three witnesses interviewed were deemed to be credible and provided plausible accounts of their respective perceptions of relevant events, some of which were corroborated by other evidence.

When assessing the credibility of the complaints and witness statements and making the findings below, the Investigator took into consideration Supervisor Madrone's election to the Fifth District seat in 2018, unseating incumbent Ryan Sundberg—a Trinidad Rancheria member and proponent of the highway interchange project that was the subject of the March 29, 2022, meeting. Supervisor Madrone described, and contemporaneous local news articles confirmed, that during the campaign for the 2018 election and thereafter, Supervisor Madrone, Ryan Sundberg, and Trinidad Rancheria Tribal Chairman Garth Sundberg lobbed accusations at each other about the Trinidad Rancheria interchange project in various public statements.

IV. SUMMARY OF FINDINGS

In weighing the evidence, the general civil standard of proof was applied. An incident was found to have occurred if the preponderance of the evidence obtained during the investigation supported that conclusion. That is, it was more likely than not that the event happened. In reaching these determinations, it is critical that the information is both reliable and susceptible of proof. Credibility resolutions were made where appropriate.

Based on a review of the recording of the March 29, 2022, Zoom meeting, and the partial transcript Supervisor Madrone made of the recording, Supervisor Madrone's offending remarks were as follows:

. . . One of the statements that [a Trinidad Rancheria interchange consultant] . . . made—one of the things that he thought was really important here was the idea that at one time they owned all of this land. And it's important for you . . . and for all of you folks at Caltrans, to understand that there is a difference between rancherias and tribes. A rancheria is a tribe but rancherias were formed back in the early 1900s to provide places for Native American individuals that didn't have a place to be. So rancherias were formed for that specific purpose. But in order to become a member of the rancheria, as I understand it, and this is what the Yurok Tribe would present, I'm not presenting for them but they talk about this quite a bit in the Trinidad area, that the Yurok tribe for instance, does have ancestral rights, but when you become a member of a rancheria, you give up those ancestral rights to become a member of the rancheria.

So rancherias by the nature of their forming documents and regulation do not have ancestral territory. They may very well have Yurok heritage or Karuk heritage or Wiyot heritage, but they don't have the same ancestral rights that say the Yurok Tribe, the Karuk Tribe, and the Hoopa tribe have. It's important to recognize that, that when you say . . . that they all had all of this, well the Yurok Tribe, at one time, had all of this land, as ancestral properties, or ownerships, not the Rancheria.

Not to create division, but to be clear about the differences between Rancheria ancestral rights versus tribal ancestral rights. Because it's important to make sure that when we're making these foundational statements that they are accurate, and reflect what the real situation is.

1. **Supervisor Madrone's remarks at the March 29, 2022, meeting were not motivated by protected characteristics of members of the Trinidad Rancheria or Native Americans.**

There is no credible evidence that Supervisor Madrone's opinion about the differing rights of tribes and rancherias to ancestral territory was his attempt to disparage or otherwise offend the Trinidad Rancheria, its members, or Native American people about any of their enumerated "protected characteristics" in the County's Harassment Policy. Rather, the comments were his ill-advised attempt to correct a previous statement by the Trinidad Rancheria's project consultant at the meeting who stated, "when 101 was built it severed the Trinidad Rancheria's tribal lands . . . [and] it all used to be their land."

2. **Supervisor Madrone did not "explicitly state" that the individual opinions and positions he offered at the March 29, 2022, meeting "do not represent the opinion of the entire Board" as required in Section B.9 of the Code of Conduct.**

Section B.9 of the Board of Supervisors' Code of Conduct requires:

Board members shall represent the official policies or positions of the entire Board of Supervisors, to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Board members shall explicitly state they do not represent the opinion of the entire Board.

The Investigator reviewed the entire one hour, 28-minute recording of the March 29, 2022, meeting. During the meeting, Supervisor Madrone was identified and recognized as a member of the Board of Supervisors; however, he did not state, explicitly or otherwise, that his opinions did not represent the opinion of the entire Board of Supervisors. Accordingly, Supervisor Madrone violated Section B.9 of the Board of Supervisors' Code of Conduct.

3. **Supervisor Madrone's remarks did not violate other applicable standards in the Code of Conduct.**

The other potentially applicable provisions in the Board of Supervisors' Code of Conduct require Supervisors to: "work for the common good of the people of the County and not for any private or personal interest; comply with the law; "practice civility and decorum in discussions and debate, and refrain from abusive conduct, personal charges, unsubstantiated allegations . . . or verbal attacks upon the character or motives of . . . the public which has the effect of disrupting the County's business and bringing the County's government into disrepute"; and, "shall not use their official positions to influence decisions in which they have a conflict of interest of any nature."

There is no credible evidence that Supervisor Madrone's comments at the March 29 meeting sought to advance any "private or personal interest" or otherwise constituted a conflict of interest with his duties as a Supervisor. Supervisor Madrone's property in Trinidad would not be affected the interchange project and Supervisor Madrone has no discernable personal financial interest in the interchange project that would present a conflict of interest. Further, Supervisor Madrone's comments were found to be lawful, civil, politely articulated, not directed at a specific person, not a "verbal attack," and did not constitute "unsubstantiated allegations" as that term is defined.¹

Respectfully submitted,

Todd Simonson

Todd Simonson, Investigator
LAW OFFICE OF TODD SIMONSON, PC

¹ "Unsubstantiated" is defined in the Merriam-Webster Dictionary as "having no basis in reason or fact," and "allegation" is defined as "a statement that someone has done something wrong or illegal."