COUNTY ADMINISTRATOR'S OFFICE
PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

February 23, 2018

Albert V. Lannon

Re: **Your Appeal of Chief Civil Deputy County Attorney's Response to your January 2, 2018 Regulatory Bill of Rights Complaint**

Dear Mr. Lannon:

As you may not know, the Regulatory Bill of Rights was passed by the Legislature to generally restrict and regulate how a county uses its licensing and permitting authority and required a board of supervisors to receive complaints about violations of Title 11, Chapter 11. The 2015 amendments to the Regulatory Bill of Rights complaint process of A.R.S. § 11-1608 required a board of supervisors to adopt a complaint procedure for any person adversely affected by county regulation that violates the rights protected by the Regulatory Bill of Rights contained in Title 11, Chapter 11 or the procedures for rules required by A.R.S. § 11-251.18. Pima County's complaint procedure is Board of Supervisors Policy C 2.8. The Regulatory Bill of Rights complaint procedure mandated by A.R.S. § 11-1608 is limited to complaints about violations of the Regulatory Bill of Rights laws contained in A.R.S. Title 11, Chapter 11 or A.R.S. § 11-251.18. Your complaint cannot be brought under the Regulatory Bill of Rights complaint procedure because it does not involve a complaint about a violation of the Regulatory Bill of Rights laws.

As near as I can tell, your complaint is that Pima County staff, the Department of Transportation and others, including myself continue to interact with the Arizona Department of Transportation (ADOT) in their location evaluations for an interstate highway, known as Interstate 11. You apparently believe that Pima County staff is prohibited from providing information or interaction with the ADOT on this matter because of Board of Supervisors Resolution 2007-343.

Board of Supervisors Resolution 2007-343 involved specific early planning efforts of the ADOT related to addressing future traffic congestion between Tucson and Phoenix. The ADOT I-10 Phoenix-Tucson Bypass Study, issued in 2008, examined the need for such a bypass and identified multiple routes connecting I-10 east of Tucson to Casa Grande,

including a western bypass identified as Route 4 through Avra Valley. Due to the concerns based on this general alignment study, including Route 4 potential environmental, historic, archaeological and urban form impacts, the Board of Supervisors passed Resolution 2007-343 which opposed construction of a Tucson-Phoenix bypass. In fact, Route 4 actually bisected the CAP wildlife mitigation corridor. However, this resolution did support the "continuation of studies relating to this bypass such that the full costs of mitigation measures can be brought forth." Pima County staff has complied with Resolution 2007-343 in providing information for the current ADOT I-11 Study.

Major transportation corridor planning that has interstate implications is the sole responsibility of the ADOT as well as the Federal Highway Administration of the United States Department Transportation. Pima County has no decision-making authority in the location of a future Interstate 11. Our only role is to provide review and comment on proposals that may impact County facilities, property, parks, environmental, cultural and historical features, as well as general impacts to private property.

To date, the locational planning process, managed by ADOT and the Federal Highway Administration has not provided sufficient detail to make any specific evaluations. When a location alternative is selected, the County will provide comments on these impacts. The Board of Supervisors may also evaluate staff recommendations on these impacts and make their own independent decisions regarding opposition, approval or other actions regarding their position on Interstate 11.

Since your complaint does not allege a violation of the Regulatory Bill of Rights and is not germane to the process in which Pima County is engaged in, reviewing and commenting on specific proposals of State and Federal agencies and the County has no authority over these agencies, your appeal is dismissed.

Sincerely,

C.H. Huckelberry
County Administrator

Enclosure

c: The Honorable Chairman and Members, Pima County Board of Supervisors
Carmine DeBonis, Deputy County Administrator for Public Works
Ana Olivares, Director, Transportation Department
Andrew Flagg, Chief Civil Deputy County Attorney
Julie Castañeda, Clerk of the Board of Supervisors

Albert V. Lannon
13141 W. Camino de Conejo
Tucson, AZ 85743
February 20, 2018

Charles Huckelberry,
Pima County Administrator
130 W. Congress Street
Tucson, AZ 85701

RE: APPEAL

Sir:

Although it seems inappropriate to direct this Appeal from the Deputy County Attorney's non-response to my January 2 Pima County Regulatory Bill of Rights Complaint, I am following procedure. A copy of this goes also to the Board of Supervisors whose Chair is the appropriate equivalent of the relevant "Department director."

After filing a complaint on January 2, 2018, with the Chair of the Pima County Board of Supervisors pursuant to the Pima County Regulatory Bill of Rights, I expected a response at the end of the 15 business days allowed by the statute. It didn't come. The complaint charged that County Administrator Charles Huckelberry and his staff had, for at least five years, promoted and publicized an Interstate 11 route through the Avra Valley in violation of BOS Resolution 2007-343. I, and others, have been "adversely affected" by this through mis-use of tax dollars and in other ways.

Chair Sharon Bronson resigned instead, and on January 16 Richard Elias took her place. Giving the BOS the benefit of the doubt, I waited another 15 business days, but still no response. While standing at the Call to the Public podium at the February 6 BOS meeting to insist on the response I am due, BOS attorney Andrew Flagg told me he thought a response had been sent. It had not. On February 14, 2018, Flagg sent this email:

After our conversation last week, I reviewed our file, and you were inadvertently left off our response list. Attached is the response you should have received sooner. I apologize for the error.

Sincerely,

Andy

Andy Flagg | Chief Civil Deputy

Pima County Attorney's Office – Civil Division

The non-response was identical to one sent to dozens of other Pima County residents who had submitted shorter, but similar, complaints.

At the February 6 BOS meeting Chairman Richard Elias said he knew nothing about the complaint, despite the fact that BOS video of the meeting show me handing copies to the County Clerk, Julie Castañeda.

Here is Flagg's non-response, along with relevant citations that show his errors:

February 14, 2018
R£: Your complaint filed January 2,2018
Dear Albert Lannon,
This letter responds on behalf of the Pima County Administrator to your complaint filed January 2, 2018. The complaint was not submitted to a department director as required by Board of Supervisors Policy C 2.8.

Policy C 2.8 states: "Individuals alleging that they have been adversely affected by a county or flood control district ordinance, rule, substantive policy statement or practice in violation of the applicable Regulatory Bill of Rights may submit a written complaint to the relevant department Director or their designee."

Since the complaint is against the "relevant department Director," County Administrator Charles Huckelberry, it is curious that Flagg writes "on behalf of the Pima County Administrator." Missing from Flagg's analysis, however, is any reference to County Code 2.04.070:

"<u>The county administrator shall report to the board of supervisors of Pima County, and under the direction of the board of supervisors</u> the county administrator shall be responsible for the general direction, supervision, administration and coordination of all affairs of the county...Subject only to policies adopted or directions given by official actions of the board...." (Emphasis added)

Flagg continues: In any event, the allegations in your complaint do not involve any County ordinance, rule, regulation, substantive policy statement, or county practice. Therefore, the actions you describe in your complaint are not subject to A.R.S. §§ 11-251.18 or A.R.S. Title 11, Chapter 11, Article 1.

Andrew L.Flagg

Chief Civil Deputy County Attorney

My 10-page January 2, 2018, complaint, of which you have copies, stated: **"Since at least 2013 the County Administrator has been actively pursuing, advertising, and promoting an Avra Valley route for a proposed Interstate 11 in blatant violation of BOS Policy, as expressed in Resolution 2007-343 (copy attached). He has used copious County resources and personnel in his continuing deliberate reinterpretation of BOS Policy, including the publication of maps (attached). He has spoken for the County in the current Arizona Department of Transportation Interstate 11 Tier 1 Environmental Impact Study (attached) creating the impression that Pima County favors an Avra Valley route for I-11, despite the clear language of BOS 2007-343, and Supervisor Bronson's statement to a Picture Rocks community meeting prior to the last election that the BOS opposes an Avra Valley I-11 route consistent with BOS 2007-343.**

"As a result the current ADOT study continues to show an Avra Valley I-11 route as one of only two possible 'recommended alternatives' despite overwhelming community opposition. Adverse effects of the County Administrator/ADOT's proposed I-11 Avra Valley route include the displacement of 47 families, noise and air pollution, light pollution, infringement on protected land such as the Tucson Wildlife Mitigation Corridor established when the CAP canal was constructed to facilitate wildlife movement, and diminishing of current recreational facilities.

"Loss of tourism dollars may well lead to increased property taxes to make up the difference, which adversely affects me, a fixed-income senior. The misuse of my tax dollars on this issue over the past five years affects me adversely.

"The impact of an Avra Valley interstate highway nearby would adversely affect me and many others by denying us the enjoyment we now have of Saguaro National Park West, Tucson Mountain Park, the Arizona-Sonora Desert Museum, Ironwood National Monument and Kitt Peak Observatory. I, and my neighbors, would be subject to the dangers of hazardous cargo, human and drug smuggling in our communities. Those, like myself, who have medical conditions like Chronic Obstructive Pulmonary Disease would be put at increased physical risk from increased air pollution, an adverse situation. I, and others, would adversely face decreased property values with a freeway nearby."

Since Mr. Flagg's rejection of my Complaint, on your behalf, is transparently without merit and ignores the documented facts, I hereby appeal his dismissal and urge that it be routed to the appropriate designee for immediate action. That person, according to Pima County Code cited above, would be the Chair of the Board of Supervisors. Pima County Code states:

1.04.040 - Acts by deputies.

Whenever a power is granted to, or a duty is imposed upon a public officer or employee, the power may be exercised, or the duty may be performed by a deputy of the officer or employee <u>or by a person otherwise duly authorized pursuant to law or ordinance,</u> unless this code expressly provides otherwise.

(Ord. 1985-183 § 12, 1985) (Emphasis added)

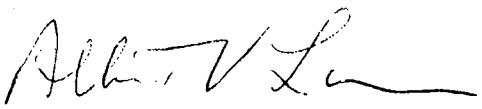
Your own Administrative Procedure 3/26, revised 9/24/13, prohibits decisions where there is a conflict of interest:

Arizona law (A.R.S. 38-501 et. seq.) requires any Pima County officer or employee who has a substantial interest in any...decision of Pima County to make the interest known in the County's official records and <u>to refrain from any participation in an official capacity in the...decision</u>." (Emphasis added)

As anyone can see, the person charged in the Complaint, or his agent, should not be the person deciding on the merits of the Complaint or making a self-serving decision to ignore the facts presented. I ask, therefore, that this Appeal be properly directed to the Chair of the Pima County Board of Supervisors for the long-overdue response the law requires.

Please note that this Appeal is being hand-delivered on the fourth business day following Mr. Flagg's communication.

Sincerely,



Albert V. Lannon

Cc: Pima County Board of Supervisors

Deputy County Attorney

Clerk of the Board