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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

FRIENDS OF CHANATE, Petitioner and Plaintiff, and COUNTY OF SONOMA, Respondent and Defendant, CHANATE COMMUNITY DEVELOPMENT PARTNERS, LLC, Real Party in Interest.	CASE NO. SCV 261103 PETITIONER/PLAINTIFF FRIENDS OF CHANATE'S OPENING BRIEF Complaint Filed: August 9, 2017 Trial Date: July 20, 2018 Assigned to: Hon Rene Chouteau Dept. 18

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I. INTRODUCTION

This Petition and Complaint is filed pursuant to Public Resources Code ("PRC") §21167 and Code of Civil Procedure ("CCP") §§1085 and 1094.5 and seeks a writ of mandate, injunction, declaratory relief and other relief for the failure of defendant County of Sonoma ("the County") to comply with the California Environmental Quality Act ("CEQA"), the Ralph M. Brown Act, and the California Constitution.

It is common for a developer to obtain rights to purchase real property, get a project entitled, and then sell the project at a profit, without risking much, if any, of the developer's capital. Usually, nothing is wrong with this kind of transaction. The agreement in this case is fairly typical of this type of transaction, with this exception: here, the developer is using public property to derive purely private profit, while the County discounted its sales price to account for the value of affordable housing which is required by law and may never be built and other community value which may never be realized, because the developer is not required to build the project.

The development agreement, negotiated by the County in closed session, calls for developing the Chanate property with between 400 and 850 housing units, commercial space, an ampitheater, a traffic circle, and other improvements. The sale is contingent upon entitlement by the City of Santa Rosa, making the agreement in this case not really a "sale" in the conventional sense—the project is, in reality, a development agreement with a sale and transfer of title contingent upon a successful entitlement process.

The sales price for the Chanate Campus is substantially less than the appraised value of the property. The County discounted the sales price after receiving the proposal from Real Party in Interest ("RPI"), to account for the value to the community of affordable housing units and other improvements called for in the proposed development. The sales price for the Chanate Campus depends upon the number of units entitled. The development agreement allows the developer to sell the entitled property to a third party who will not be bound by the agreement. The development agreement provides no mechanism for the public to ensure the residential units and other improvements will ever be built.

Petitioner's position on CEQA is simple: Before committing itself—and County taxpayers— to a specific course of action to develop the Chanate Campus and before agreeing to sell to a private

developer the environmentally-sensitive Parcel J, the County should have prepared an Initial Study to review environmental impacts. Although the City of Santa Rosa is the agency with authority to entitle the project, entitlement does not control whether CEQA applies.

II. FACTS

A. The site

The Chanate Campus is 82 acres of prime real estate located on Chanate Road, within the city limits of the City of Santa Rosa. (AR 009, 027.) The Chanate Campus has historically been an important site for provision of health care for the indigent, vulnerable and underserved population of Sonoma County. (AR 028.) Uses on the Chanate Campus currently include the former Community/Sutter Hospital buildings, the County Public Health building, an out-patient Mental Health clinic, the Norton Behavioral Health Center, the County morgue, other office buildings, the Bird Rescue Center, a women's shelter, various historic structures, including WPA buildings and rock walls. The site includes three open space parcels along Paulin Creek, one of which is referred to as "Parcel J." (AR 028-029, 030.)

The site is entirely within the city limits of the City of Santa Rosa and is zoned "Public Institutional." (AR 603.) City Code defines "Public and Institutional" as "areas appropriate for public facilities, utilities, hospitals, and public assembly facilities including: public schools, libraries, government offices, etc. The PI zoning district is consistent with and implements the Public/Institutional land use designation of the General Plan." (Santa Rosa City Code §20-26.020(C).)

B. Parties.

Petitioner and Plaintiff Friends of Chanate ("Friends of Chanate") is a grassroots, unincorporated neighborhood association with over 200 members. Individual members of Friends of Chanate are residents of the City of Santa Rosa and the County and live and/or work and/or own property in the area of the Project. (Petition, para. 3.) Individual members of Friends of Chanate attended public hearings before the Board of Supervisors and submitted written and verbal comments regarding the Project, as set forth below

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Respondent and Defendant County of Sonoma ("the County") is a public agency and a political subdivision of the State of California, and is the lead agency for approval of the Project described herein. (Petition, para. 5.)

Real Party in Interest Chanate Community Development Partners, LLC ("developer") is a California limited liability company located and doing business in Sonoma County. (AR 20209, 21189-90.) The principal of Chanate Community Development Partners, LLC is well-known and politically well-connected local developer, William P. Gallaher ("Gallaher"). (AR 21186)[1]

C. The Project and Notice of Exemption.

The "project," as defined by the County, is the proposed sale and development of the Chanate Campus as set forth in the Disposition and Development Agreement ("development agreement") approved in Ordinance no. 6205 adopted by the Board of Supervisors on July 11, 2017. The Ordinance, Exclusive Negotiating Agreement, and the development agreement all state that the project is exempt from CEQA on the grounds that it can be seen with certainty that there is no possibility that the activities in question may have a significant effect on the environment. (AR 11, 644, 21766.)

Nevertheless, on July 25, 2017, the County posted a Notice of Exemption stating both that the project is exempt from CEQA and also that it is not a "project" within the meaning of CEQA. (AR 1-2.)

The site requires rezoning and a general plan amendment if it is to be developed consistent with the development agreement. (AR 603.)

D. The RFP.

On August 11, 2015, the Board of Supervisors held a public hearing to accept a report from its Facilities Ad Hoc Committee regarding repurposing the Chanate Campus. (AR 021, 1201.)

On October 14, 2015, the County held a community informational meeting, attended by nearly 200 residents. (AR 10186, 10251.)

On October 28, 2015, the County noticed the Chanate Campus for sale for $15 million as surplus property according to the provisions of Government Code §54220. Any proposal for less than

[1]The developer's partner and project manager Komron Shahhosseini, is Chairwoman Zane's appointee to the County Planning Commission. (AR 21192-21193; 21768-21769.)

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$15 million would not be considered. (AR 009, 12871, 12875.) The County asserts it received no responses. (AR 26820.)

On November 17, 2015, the Board of Supervisors appropriated $100,000 for real estate advisory services relative to repurposing the Chanate Campus. (AR 1310.)

On February 2, 2016, the Board of Supervisors held a public hearing on a proposal for a Request for Proposals ("RFP") to solicit a master developer to work with the County on repurposing the Chanate Campus. (AR 48.)

The RFP was issued on February 3, 2016. (AR 14380.) The RFP stated "*As indicated in the County's Surplus Property Notice the County expects to generate at least $15 million in payments to Sonoma County.*" (AR 14408; italics in original.) The RFP noted the existence of Paulin Creek traversing the site and that it "is part of an urban nature preserve that provides a safe haven for natural plants and wildlife...." (AR 14393.) Pursuant to County Code 526-89-040(C), the RFP required a minimum of 20% affordable housing onsite. (AR 14408.)

On May 6, 2016, the County General Services Department received two proposals in response to its RFP. (AR 604.)

On June 21, 2016, the Board of Supervisors "received" the two development proposals in open session (AR 551, 1438), but the contents of the proposals were not revealed to the public. Following receipt of the two proposals described above, a County Evaluation and Selection Committee (hereinafter "Committee") met in private to review and rank the proposals. The Committee included representatives from County departments as well as the City of Santa Rosa. The Committee chose RPI Chanate Community Development Partners, LLC ("the developer") as the final developer with whom it would exclusively negotiate for the sale and development of the Chanate Campus. (AR 934-935.)

Subsequently, three closed sessions were held by the Board of Supervisors: September 13, 2016, January 10, 2017, and January 24, 2017. The agenda stated that the Board would consider: "Under Negotiation: Direction to Real Property Negotiators regarding the potential sale of County owned land along with potential open space uses of District and Agency owned land. (Government Code Section 54956.8)." (AR 19787, 20156, 20201.)

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On February 6, 2017, 5 months after directing its staff to negotiate exclusively with the developer, and 6 months after the Board of Supervisors accepted the proposals responding to the RFP, the County for the first time published on its website the two development proposals it had received in response to its RFP. (See revised AR index p. 86 showing the date of publication.) (Gallaher's proposal is at AR 21186 – 21260.) Gallaher offered $6 million for the property, with an increase of $15,000 per residential unit over 400 units, to a maximum purchase price of $12 million. (AR 21208.) The competing proposal offered "fair market value" and a "fair-market financial return" for the property without specifying a specific dollar amount. (AR 21633, 21635.) Gallaher proposed building multi-unit housing on Parcel J. (AR 26896, 26946.)

The public requested more time to review the proposals before the Board of Supervisors selected a developer. (AR 21173.)

Immediately after the two proposals were posted on the County's website, the public began raising concerns about the Paulin Creek open space and Parcel J. (See for example, AR 20606, 21702 – 21711, 22039.) According to an internal County memo emailed on March 19, 2017, the County knew that Parcel J was included in the proposed sale of the Chanate Campus and that the Board of Supervisor's direction to General Services staff to work with the developer on the purchase contract included Parcel J. (AR 22546.)

The very next day, on February 7, 2017, the Board of Supervisors held its first public hearing to approve the Exclusive Negotiating Agreement ("ENA") (AR 21765-21786) with the developer. For the first time, the County revealed the identity of the developer as William Gallaher. (AR 554, 1620-1621.) The ENA states that the agreement was a "project," but was exempt from CEQA under the "common sense" exception. (AR 21766.) The staff report stated that the RFP sought "fair market, financial return of at least $15 million" and that Gallaher's proposal was consistent with the Government Code and the Board's development and planning objectives as expressed in the RFP. (AR 556.) The public requested more time to consider the proposal. (AR 21428-21429, 27216.) The Chairwoman of the Board of Supervisors told the public that the City of Santa Rosa would perform the environmental review of the project and "that the city has been involved with us from the very beginning, which is great." (AR

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1527:8-23, 1561:2, 1578:14.) During this time, the County was apparently also negotiating an MOU with City staff (AR 21524-21527), which has never been made public.

The ENA provided for a sale price equal to the site's unentitled value, plus $16,250 per unit for each unit over 400, for a maximum of $12.5 million. (AR 575.)

On March 28, 2017 the Board of Supervisors again held a closed session. The agenda for the closed session stated: "Under Negotiation: Price and Terms of payment for purchase (Government Code Section 54956.8)."[2] (AR 23664.)

The Board of Supervisors held two more closed sessions on May 2, 2017 and on May 16, 2017. Both agendas stated that the Board would consider: "Under Negotiation: Terms and conditions of the potential sale or lease of the Property." (Government Code Section 54956.8)." (AR 26518; 26523-26525; 27514; 27521-27522.)

On May 18, 2017, the developer wrote to the County threatening to withdraw his bid. His letter stated that "due to the prolonged process relating to the acquisition" of the project, the developer would withdraw its offer to purchase and develop the property unless the development agreement was completed with a "positive vote from the Board of Supervisors" by June 30, 2017. (AR 27559.)

On May 23, 2017, the Board of Supervisors again held a closed session. The agenda stated: "Under Negotiation: Terms and conditions of the potential sale or lease of the Property. (Government Code Section 54956.8.)" (AR 27720.)

On June 6, 2017, the County finally posted on its website the proposed development agreement so the public could review it. (AR 1702:3.)

On June 20, 2017, the Board of Supervisors held a public hearing to approve the development agreement. A 4/5ths vote was required. (AR 29817; 29823.) The public asked for a delay of the hearing (AR 29552.) Caroline Judy, the County Administrator, began the meeting by stating that "the [development] agreement has been discussed and deliberated in closed session multiple times." (AR 1701:18-24.) Members of the Board discussed a proposed easement to protect Parcel J. (AR 1740:19-

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[2] Gov. Code §54956.8 provides: "...a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease." (Emphasis added.)

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1741:1742:22.) The Board of Supervisors received public comments from numerous concerned residents. (AR 1772:12–1832:23.) In an effort to remove Parcel J from the sale, the County reduced the sales price to $6 million plus $13,800[3] per unit for every unit over 400 units, for a maximum of $11.5 million.[4] (AR 601-605.)

On July 11, 2017, the Board of Supervisors adopted Ordinance no. 6205 approving the development agreement. (AR 5-13.) The County determined that the Project is exempt from CEQA pursuant to §15061(b)(3) of the CEQA Guidelines, because "it can be seen with certainty that there is no possibility that the activities in question may have a significant effect on the environment." The staff report, however, stated both that the project was exempt from CEQA and that it was not a project within the meaning of CEQA, because land use authority is retained by the City of Santa Rosa and the city would evaluate the environmental impacts. (AR 11, 930.)

The staff report for the July 11, 2017 meeting acknowledged that the County did not receive market value for the property and that the proposed sales price for the Chanate Campus was significantly reduced from the $15 million minimum payment set by the Board of Supervisors and required by the RFP, to between $6 million to $11 million. (AR 936-938.) In its analysis, the staff added the cost of building affordable housing units[5], demolition costs, the costs of environmental review and entitlement, and avoided annual capital, security and maintenance costs for an unspecified period, to come up with an estimated value to the County of $42,481,862 to $71,901,862. (AR 937-938.) No economic study was done.

The Board also appropriated $300,000 for the Project. (AR 940, 947.)

On July 25, 2017, the County posted its Notice of Exemption stating both that the project is exempt from CEQA and also that it is not a "project" within the meaning of CEQA. (AR 1-2.)

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[3] Reduced from $16,250. (AR 575.)

[4] Reduced from $12.5 million. (AR 575.)

[5] 20% affordable housing was a requirement of the County's RFP and is mandated by County Code 526-89-040 (C). (AR 14408.)

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On July 28, 2017, the County and the developer entered into a Right of Entry and Access Agreement by which the County granted the developer the right to enter the Chanate Campus to perform invasive and non-invasive testing and investigation. (AR 30585-30593.)

Members of the public raised numerous issues, including traffic and other environmental impacts, the fate of Parcel J, the integrity of the process, homeless issues, and the sales price for the Chanate Campus. (AR 929-931.)

This Petition and Complaint followed.

E. Terms of the development agreement.

The executed development agreement attached to the ordinance is found at Disputed Administrative Record ("DAR")[6] 1-156. The proposed development agreement is at AR 613-882.

1) The sale is contingent upon entitlement of a detailed development plan.

The sale of the property is "as is with all faults." (DAR 30, para. 2.15, AR 557.) The sale is contingent upon entitlement of the proposed development by the City of Santa Rosa. (DAR 21, para 2.4, DAR 22 para. 2.4.6) The developer does not pay for the property and the sale does not occur unless and until the project is fully entitled. (DAR 22, paras. 2.5 and 2.5.3) Escrow is to close and title is to transfer to the developer no later than three years after execution of the development agreement. (DAR 11, 14, 24-25, para. 2.7.)

The sales price is dependent upon the number of housing units entitled, not built. The final sales price is equal to the sum of $6 million plus the product obtained by multiplying $13,800 by the number of units approved in excess of 400 units, not to exceed $12.5 million. (DAR 20-22, para. 2.2.) Nothing in the development agreement requires the units or other improvements to be built.

The planned development consists of a new mixed-use community providing housing, including a village center with15,000 - 33,000 square feet retail services, arts and cultural opportunities, and extensive open space areas, including landscaping, related parking and infrastructure, including a traffic circle on Chanate Road. (DAR 31, para. 25)) The development agreement requires no fewer than 400

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[6] The County disputes whether the executed development agreement is properly part of the record because it was not fully executed until after the Petition was filed. Petitioner therefore requests the court to take judicial notice of the executed agreement and its contents. (Petitioner's Request for Judicial Notice ("RJN") #1.)

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housing units, 20% of which will be very low income and 20% affordable senior units. (DAR 38, para. 4.1, AR 605.) County staff is to assist the developer to obtain project approvals. (DAR 32, para, 3.4.)

The development agreement provides that the City of Santa Rosa will act as the lead agency for the purposes of CEQA. (DAR 9, para. I.) It states that the development agreement is exempt from CEQA. (DAR 9, para, J.)

If the City fails to entitle the project as required by the development agreement, the County can take back the project and lead the entitlement effort itself. (DAR 32, para. 3.4.)

2) The development agreement deprives the public of reasonable protection for the public's investment

The development agreement requires the developer to deposit the sum of $2.5 million with the County. (DAR 20, para. 2.2.) Of the developer's $2.5 million deposit, $2 million plus simple interest at the prime rate, is refundable to the developer should the developer default.[7] (DAR 21, para. 2.2, DAR 41, para. 5.3.) The agreement provides:

> "If this Agreement is terminated prior to Closing due to an uncured Default by Developer, Developer shall be entitled to a partial refund of the Developer Deposit in the amount of Two Million and 00/100 dollars ($2,000,000.00)...County shall repay to developer the Developer Refund plus interest thereon...." (DAR 41, para. 5.3.)
> The County retains $500,000 as liquidated damages. (DAR 41, para. 5.3.)

No personal guarantee was required from the developer's principal. (See DAR 1-156.)

The agreement reads in relevant part: "...nor any person or entity...who acquires title or possession by foreclosure...or otherwise shall be obligated ... to construct or complete with improvement on the property..." (DAR 37, para. 3.17.2.) Nothing in the development agreement prevents the developer from selling the project after receiving entitlements and following close of escrow. The development agreement allows the developer, after close of escrow, to encumber the Chanate Campus with a mortgage or deed of trust to secure loans for construction and development of improvements. If the developer sells the project or defaults on a construction loan or mortgage secured by the property, or provides a deed in lieu of foreclosure, the new owner is not bound by the development agreement. (DAR 36-37, para. 3.17.1.)

[7] Interest at a rate of 4.5% on $2 million is $90,000 per year.

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And, as set forth above, the sales price is based upon the number of housing units entitled, not built.

3) Parcel J

The Paulin Creek Preserve is a 46 acre nature preserve on the Chanate Campus, consisting of three parcels. The central section, Parcel J, is owned by the County; the two other parcels are owned by the Water Agency and the open space preserve. (AR 26903.) The public has used Parcel J for recreational activities since 2002. The purpose was to maintain the open space character of the area as the initial phase of a proposed 46-acre preserve. (AR 26903-04.) Parcel J was included in the County's proposed sale of the Chanate Campus to the developer, who originally proposed to build apartments on it. (AR 26896, 26946.) After the public started raising objections, Supervisor Zane said the County was "blindsided" by the Parcel J issue. (AR 27116.) Supervisor Zane told a member of the public that Parcel J needed to be included or the whole deal would collapse. (AR 27098.)

On May 2, 2017, the County requested an appraisal of Parcel J "as it is" and with development of 99 multi-family units or 9 single-family homes. (AR 26573, 26943-44.) The AR does not appear to include this appraisal and, if it exists, it was never made public.

Due to public outcry over the proposal to sell and develop Parcel J (see, e.g., AR 24350-24352, 26580-81, 27019, 27098, 27100-01, 27112-27118, 27128-139, 27141-153, 27191-197, 27233-34[8]) the development agreement sells Parcel J to the developer, but requires the developer to "dedicate [it] to a conservation organization reasonably acceptable to the County Administrator and County Counsel at Closing and as a condition of the Close of Escrow." (DAR 39-40, para 4.9.) The organization is not identified, nor does the agreement provide for any alternative should no organization be willing to accept it.

F. Additional facts specific to the unconstitutional gift of public funds.

As set forth above, the sales price for the Chanate Campus depends upon the number of units entitled by the City of Santa Rosa, not to exceed $12.5 million. Two appraisal reports were prepared for

[8] The AR contains many letters, comments and voice mail messages from the public regarding Parcel J, but Petitioner is mindful of Local Rule 4.18 requiring Petitioner to submit to the Court hard copies of all references to the AR, so these citations are provided as examples.

the County. They reflect the market value of the Chanate Campus as follows:

2014 appraisal: **As is:** $7,070,000 **Entitled:** $15,075,000 (AR 3178.)

2016 appraisal: **As is:** $7.150,000 **Entitled:** $30,640,000 (AR 19000.)

The public objected to the sale of the Chanate Campus as proposed in the development agreement on the ground that the purchase price is substantially less than the $15 million demanded by the RFP and substantially less than fair market value, as shown by the appraisal. (AR 21175-21177.)

III. ISSUES PRESENTED

1. Did the County violate the Brown Act by conducting negotiations for the development plan in closed session?

2. Did the County's sale of the Chanate Complex violate the constitutional prohibition against a gift of public funds?

3. Did the County's adoption of the development agreement without an initial study violate CEQA?

IV. ARGUMENT

A. The County's agreement with the developer constitutes an improper gift of public funds in violation of the California Constitution.

Cal. Const., art. XVI, sec. 6, provides in relevant part:

> The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever....

The term 'gift' includes all appropriations of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation. (*San Diego County Dept. of Social Services v. Superior Court* (2005) 134 Cal.App.4th 761, 765.) The prohibition of art. XVI, sec. 6 applies to counties. (*Golden Gate Bridge, etc. Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 207.) Where

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consideration for an agreement consists of an exchange of promises, that one party's promise is illusory generally means there is no consideration. (*Steiner v. Thexton* (2010) 48 Cal.4th 411, 423.)

The development in this case guarantees only the developers' profit. As discussed below, the only thing guaranteed to the public is the sales price, which is indisputably well below its appraised value. Nothing in the development agreement guarantees the public will ever realize the other values promised.

1) The County failed to get fair value for the property

Here, the developer puts up no capital, risks less than $500,000 (because he is entitled to a refund of $2 million plus interest of his $2.5 million deposit), and then, after obtaining entitlements with the help of County staff, has the right to sell the property for at least $30 million, while paying the County at most $12.5 million. The developer has no obligation to even put a shovel in the ground. The private profit here is not merely incidental to the contract, because it far exceeds the County sales price while the County is not guaranteed to receive the promised benefits of the project.

As set forth above, the County discounted the price from the $15 million demanded in its notice of surplus property and its RFP, to reflect the value received by the community in the form of the value of 20% affordable housing, the avoided cost of demolition, and the cost to maintain the property. But the County's reasoning is specious. The "value" being received by the public is illusory because it may never be realized. Nothing requires the project to actually be built or the demolition to take place; the developer may sell the property after receiving entitlements, and the agreement contains no mechanism to enforce the developer's promises after close of escrow.

The development agreement provides that any third party acquiring title to the property through foreclosure or "otherwise" (e.g., sale) is not obligated to build the project in accordance with the terms of the agreement. Therefore, this agreement provides no guarantee to the public that it will ever receive the promised benefits that led the County to discount the sales price. The developer's consideration for the reduced sales price is therefore illusory.

The County's other stated reasons for discounting the sales price are also specious. As stated above, the County Code already requires affordable housing. The RFP demanded $15 million for the property *and* required the bidders to include 20% affordable housing in their proposals, so the value of

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the affordable units was already built into the $15 million price tag. Further, the development agreement sells the property to the developer "as is with a few flaws", meaning that the *developer* assumes the obligation of demolishing existing buildings and maintaining the property. In other words, these costs and avoided costs were already accounted for in the original $15 million price the County demanded in its RFP. To use them to reduce that price is double-counting.

The $12.5 million sales price of the property as entitled is a fraction of the $30 million appraised value of the property as entitled, and the public has no guarantee it will ever receive the other values promised and no way to enforce those promises.

For these reasons, the supposed "consideration" given by the developer for purchase of public lands at a grossly discounted price is illusory and this agreement constitutes a gift of public property in violation of the California Constitution.

2) The County improperly allows public property to be encumbered to secure private debt.

Further, the County improperly authorized public property to be used as security for private debt. The public should have an ownership interest in the entitlements on the property because the value of the entitlements is built into the sales price of the property. The development agreement allows the developer to use the entitled property to secure a construction loan. If the developer defaults on the loan secured by the property, anyone who then acquires the property through foreclosure, a deed in lieu of foreclosure, or otherwise, is not bound by the terms of the development agreement. In that case, the public loses the value of the units promised under the development agreement. This provision puts County taxpayers' interests at risk and potentially leaves the taxpayers holding the bag.

By allowing the developer to use the land as entitled as security for his private debt, with no recourse for County taxpayers should the promised units never be built, the County is pledging its credit for the payment of the liabilities of an individual, in violation of the plain language of the Constitution. The developer's right to encumber the property as entitled constitutes an improper gift of public funds and must be set aside to protect the public's interest. For these reasons, Petitioner requests this court to issue a writ of mandate requiring the County of Sonoma to set aside this development agreement.

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B. The County's closed session negotiations violated the Brown Act.

The County's closed session negotiations violated the Brown Act in two ways: 1) Its closed session negotiations exceeded the scope of its representations to the public in its agendas; and 2) the Board of Supervisors negotiated the terms of an entire, complex development agreement, even though the real estate negotiations exception to the Brown Act does not allow a public agency to discuss anything more than the price and terms of payment.

The Brown Act is California's Open Meetings Act. The Brown Act requires that all public business be conducted in public. (Gov. Code §54953). Under certain, specified conditions, a public agency may conduct business in closed session. Gov. Code §54960(a) authorizes injunctive relief where the allegations and proof of the practices of a local legislative body regarding closed meetings extend to past actions and violations that are related to present or future ones. (*Shapiro v. San Diego Council* (2002) 96 Cal.App.4th 904, 915 ("*Shapiro*").) The Brown Act is construed liberally in favor of open meetings. (Id. at 917.)

As set forth above, the Board of Supervisors conducted four closed sessions over a period of two months from March 26, 2017 to May 23, 2017,[9] to negotiate the terms of the development agreement with the developer, relying on Gov. Code §54956.8. The County represented in its agendas that the scope of its closed door sessions was to consider "terms and conditions of the potential sale or lease" of the Chanate campus or "Price and Terms of payment for purchase."

Gov. Code §54956.8 provides in relevant part:

> Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the *price and terms of payment* for the purchase, sale, exchange, or lease." (Emphasis added.)

The real estate exception of Gov. Code §54956.8 is narrowly crafted, "for the purpose of giving instructions to the negotiators concerning a particularized and realistically anticipated transaction that the City may complete, whether as an individualized transaction or as part of a larger one." *(Shapiro, supra,* 96 Cal.App.4th at 924.) A public agency cannot claim this exception where its anticipated

[9] The closed session dates are March 28, 2017, May 2, 2017, May 16, 2017 and May 23, 2017.

project discussions exceed the scope of the safe harbor notice provisions, and range far afield of a specific buying and selling decision that the negotiator is instructed to work toward. (Id.)

Whether the County complied in this case with the requirements of the Brown Act turns on the interpretation of "terms and price of payment." In interpreting a statute, the Court's primary goal is to ascertain the Legislature's intent. The Court must look "first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence." (*Dyna-Med Inc. v. Fair Empl. & Housing Commn.* (1987) 43 Cal. 3d 1379, 1386-1387.)

According to a recent Attorney General Opinion, the phrase "terms of payment" is "best understood as the *form, manner, and timing* upon which the *agreed-upon price* is to be paid—for example, an all-cash transaction, a seller-financed mortgage, an exchange of property or property rights, or similar. It is significant that the word "terms" is immediately modified by the words "of payment." This "modification rules out any possibility that the statute is meant to authorize closed-session discussions of any and all terms of the transaction as a whole." (94 Ops. Cal. Atty. Gen. 82; emphasis added.)[10] The Attorney General reviewed the legislative history of the language of the real estate exception, and found that "the Legislature considered and rejected the broader phrase ("terms" of the proposed transaction) in favor of the narrower phrase ("terms of payment"). Moreover, the reported appellate decisions in which the phrase "terms of payment" appears reveals a consistent understanding that it is meant to describe how and when the price is to be paid." (Id.)

In *Shapiro, supra*, a city council considered a development project that included the construction of a new baseball stadium for the San Diego Padres. The city council argued that the complexity of the proposed transaction justified closed-session discussion of various matters, including land acquisition, design, infrastructure and parking, environmental impact report considerations, alternative sites, traffic, stadium naming rights, expert consultants, and impacts of the project on the homeless, that were "reasonably related" to the ballpark deal. The *Shapiro* court acknowledged the "perceived value of confidentiality" in negotiations, but nevertheless concluded that the council's closed-session discussions exceeded the scope of the "safe harbor notice provisions" on the council's

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agenda and the topics ranged "far afield of a specific buying and selling decision." (*Shapiro, supra*, 96 Cal.App.4th at 917.) In the words of the *Shapiro* Court, by interpreting the Brown Act to allow closed session negotiations of all of the provisions of the transaction, "we would be turning the Brown Act on its head, by narrowly construing the open meeting requirements and broadly construing the statutory exceptions to it."

Further, the Brown Act provides that, in the closed session, the legislative body is limited to consideration of *only those matters covered in its agenda statement*. (Gov. Code §54957.7(a).) The Brown Act also requires that, "[a]t least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." (Gov. Code §54954.2(a).)

The County's closed session discussions here far exceeded the scope of both the County's disclosure in its agenda statement and the real estate exception to the Brown Act. It cannot be denied that the Board of Supervisors discussed all of the terms of this complex, detailed development agreement in closed session In the words of the County Administrator, the development agreement was "discussed and deliberated in closed session multiple times." (AR 1701:18-24.)

Four major terms negotiated in secret by the County stand out. These items were not included in the County's RFP, are contrary to the public interest and were unknown to the public until the County finally published the proposed development agreement, and are obviously not included in "price and terms of payment": 1) the developer is authorized to encumber the entitled property as security for his private construction loan (DAR 36-37, para. 3.17.1); 2) the County will refund the developer $2 million of his $2.5 million deposit plus interest *in the event the developer defaults* (DAR 41, para. 5.3.); 3) a subsequent purchaser or holder is not bound by the development agreement (DAR 37, par. 3.17.2); and 4) a sale of Parcel J to the developer with the requirement that he record a conservation easement. (DAR 39-40.) These specific provisions of the development agreement were unknown to the public, prejudice the public's interests as discussed above and are not related to merely price and terms of payment. They should not have been negotiated in closed session.

[10] Friends of Chanate requests this Court to take judicial notice of this Attorney General Opinion. See RJN#2.

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The County's closed-door negotiations far exceeded the narrow scope of the real estate exemption and the County's agendas which stated it was negotiating "Price and Terms of payment for purchase." No authority whatsoever authorizes the County to negotiate an entire development agreement under the guise of settling the price and terms of payment for the sale of real property. The County's practice here, of negotiating an entire development plan for the Chanate Campus violates both the real estate exception and the general notice provisions of the Brown Act and the Board's subsequent actions should be void as contrary to law.

C. The County's adoption of a detailed development plan and investment of public funds without environmental review violates CEQA

1) The Court examines the County's adoption of the development agreement for abuse of discretion.

To establish noncompliance by the public agency in a CEQA proceeding, an opponent must show "there was a prejudicial abuse of discretion." (PRC §21168.5; *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 776.) Abuse of discretion is shown if the agency has not proceeded in a manner required by law, or the determination is not supported by substantial evidence. (Id.) If the project is exempt from CEQA, no further environmental review is necessary. (Id.)

2) CEQA's general provisions.

a) CEQA has broad application.

CEQA is a comprehensive scheme designed to provide long-term protection to the environment. It is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 183 ("*California Farm Bureau Federation*").) CEQA requires an examination of the project "as a whole.' (Id. at 191.)

CEQA requires an evaluation of environmental issues, such as feasible alternatives and mitigations measures, before an agency approves a project. (PRC §§21002, 21061; *POET, LLC v. California Air Resources Board* (2013) 218 Cal.App.4th 681, 715.)

A "significant effect on the environment' " is statutorily defined as "a substantial, or potentially substantial, adverse change in the environment." (PRC §21068.) "Environment' means the physical

conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (PRC § 21060.5.) Combining these statutory definitions, a "significant effect on the environment" under CEQA is a substantial or potentially substantial adverse change in the physical conditions existing within the area affected by the project. (*California Farm Bureau Federation, supra,* at 185.)

b) CEQA requires review at a point when genuine flexibility remains

The underlying purpose of CEQA is to require review "at a point when genuine flexibility remains, before momentum strips the EIR of any real influence or decision-making." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) Agencies must not take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures without first carrying out CEQA review. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138 ("*Save Tara*"); *St. Vincent's School for Boys v. City of San Rafael* (2014) 161 Cal.App.4th 989, 1001 ("*St. Vincent's*").)

In this case, little to no flexibility remains. The County entered into an enforceable contract for the development of a particular project, with a specified number of resident units, commercial development, Parcel J easement, and other details, and *the sales price is entirely dependent upon the perceived value of the project as defined in the development agreement.* These decisions were made with the participation of the City from the very beginning. No flexibility remains.

c) Sale of land may be subject to CEQA review.

The transfer of ownership of land to preserve existing uses and historical resources may be categorically exempt from CEQA. (CEQA Guidelines §15325.) The sale of land is not categorically exempt from CEQA where the sale requires significant change in use or construction. (*California Farm Bureau Federation, supra,* at 180.) A project is not categorically exempt from CEQA where the whole purpose of the acquisition was to convert the property into new uses, not to preserve a natural condition or existing habitat. (Id. at 190.)

Here, the whole purpose of the sale to convert a former hospital site with office buildings into a housing and commercial/retail development, not to preserve the existing uses. The project in this case is, therefore, not categorically exempt from CEQA.

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In addition, the sale of Parcel J to the developer is not exempt from CEQA. As set forth above, Parcel J is an integral part of a long-term public open space plan. The public has used Parcel J for years. The sale of Parcel J to a private developer is entirely inconsistent with its existing public use. The sale of Parcel J should therefore have been subject to CEQA review, as discussed more specifically below.

3) CEQA's three-tier review process

CEQA and its implementing administrative regulations (CEQA Guidelines) establish a three-tier process to ensure that public agencies inform their decisions with environmental considerations. The first tier is jurisdictional, requiring that an agency conduct a preliminary review to determine whether an activity is subject to CEQA. (CEQA Guidelines §15060; see PRC §21065.) The second tier concerns exemptions from CEQA review. If a public agency properly finds that a project is exempt from CEQA, no further environmental review is necessary. The agency need only prepare and file a notice of exemption, citing the relevant statute or section of the CEQA Guidelines and including a brief statement of reasons to support the finding of exemption. If a project does not fall within an exemption, the agency must conduct an initial study to determine if the project may have a significant effect on the environment. If there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment, the agency must prepare a negative declaration briefly describing the reasons supporting its determination. (*Muzzy Ranch Co. v Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 379-380 ("*Muzzy Ranch*").) In this case, only the first two tiers need be examined in order to determine whether the County was required to conduct an initial study.

a) The County failed to make a threshold determination whether CEQA applies.

Here, as set forth above, the County determined both that the development agreement is and is not a "project." The project is not Schrodinger's cat and the County cannot be allowed to have it both ways. By determining that it both is and is not a project, the County failed to fulfill its threshold jurisdictional obligation to determine whether or not CEQA applies because, in effect, the. County made no determination whatsoever. The County's failure to make a determination is contrary to law and therefore an abuse of its discretion.

The County should have found that the development agreement is a "project." PRC §21065 defines a "project" broadly. Issuance of entitlements is only <u>one</u> way in which an activity may

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constitute a "project" within the meaning of CEQA. "Project" also includes an activity directly undertaken by any public agency. Section 21065 provides:

> "Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:
>
> (a) An activity directly undertaken by any public agency.
>
> (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
>
> (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

CEQA Guidelines §15378 provides:

> (a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
>
> (1) An activity directly undertaken by any public agency....
>
> (2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies....A "project" is "the whole of the action" that may result in "a direct or reasonably foreseeable indirect impact." (CEQA Guidelines §15378(a); *Save Tara, supra,* 45 Cal.4th at 129.)

That the County of Sonoma is a public agency and, in adopting the development agreement, it engaged in an activity within the meaning of CEQA cannot reasonably be disputed. (*See Muzzy Ranch Co, supra,* 41 Cal.4th at 382 (adoption by the airport commission of a land use plan was an activity within the meaning of CEQA).) On facts very similar to the case at bar, in *Save Tara, supra*, the Supreme Court concluded that the City of West Hollywood's conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes, an "approval" of a "project". (45 Cal.4th at 121–122.)

Here, the development agreement effectively makes the County the partner of the developer for the purposes of developing the Chanate project. The County appropriated funds to help the developer through the City's entitlement process and, as in *Save Tara, supra*, the County's sale of the land is conditional upon development according to the terms of the development agreement. The development

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agreement authorizes the developer to use the property as entitled, despite the public's interest in the entitlements, as security for a loan. County officials have repeatedly made public statements committing the County to the development. If the City does not go along with the plan, the development agreement authorizes the County to conduct a County-led entitlement process.

For these reasons, the project is both "an activity directly undertaken by a public agency" and "an activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies..." within the meaning of PRC §21065 and CEQA Guidelines §15378. The development agreement therefore meets the first tier test under *Muzzy, supra,* and qualifies as a "project" within the meaning of CEQA. The County's failure to make a determination that the development agreement is a "project" is contrary to law and therefore an abuse of the County's discretion.

The next question is whether it qualifies for the "common sense" exemption to CEQA.

b) The "common sense" exemption does not apply to the Chanate project.

1. The County has the burden to prove that it properly applied the "common sense" exemption of the CEQA Guidelines.

The County has the burden to prove to this Court's satisfaction that "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines §15601(b)(3); *Muzzy Ranch, supra,* 41 Cal.4th at 386.)

The common sense exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies. Whether a particular activity qualifies for the common sense exemption presents an issue of fact. (*Muzzy Ranch, supra,* 41 Cal.4th at 386.)

The question whether alleged physical changes are reasonably foreseeable requires an examination of the evidence presented in the administrative record. (Id.) An agency obviously cannot declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment" *if it has not considered the facts of the matter.* (Id. at 387.) The agency's exemption determination must be supported by evidence in the record *demonstrating that the agency considered possible environmental impacts in reaching its decision.* (*California Farm Bureau Federation, supra*, at 186.)

The decision in *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 704 *("Rominger")* is instructive. There, the County of Colusa asserted that its approval of a tentative map subdivision was entitled to the common sense exemption from CEQA. The *Rominger* court held that for the exemption to apply:

> "...the county would have to show as a factual matter, based on the evidence in the record, that there is no possibility that the approval of the Adams subdivision may result in a significant effect on the environment, i.e., that despite the subdivision of the property into smaller parcels to facilitate lease or sale, *there is no possibility that purpose will be achieved and the creation of the smaller parcels will not lead to the development of those parcels and to resulting significant environmental effects.*" (Id. at 705; emphasis added.)

2. The County cannot meet its burden of proof.

The County cannot meet its burden to demonstrate that it considered facts regarding possible environmental impacts in reaching its decision, as required by *Muzzy Ranch* and *Rominger, supra.* The record reflects no consideration of the possible environmental impacts in deciding that the common sense exemption applied. Instead, the County simply and repeatedly shifted that responsibility onto the City of Santa Rosa.

The County's treatment of Parcel J reveals the fallacy behind the County's application of the common sense exemption. The County never considered the impacts of its agreement to sell the developer Parcel J for development. Public outcry showed indisputably that the County's sale of Parcel J for development would significantly impact Parcel J and the public's use and enjoyment of the Paulin Creek open space. The County never conducted even the most preliminary or cursory environmental review to identify specific impacts to Parcel J and determine the appropriate way to mitigate those impacts. No alternatives were publicly considered, although County staff considered a variety of options in private. (AR 22755-22756.)

The public remains in the dark as to whether or not the County's agreement to sell fee title to Parcel J to the developer in return for a conservation easement will adequately protect the public's interest in Parcel J and the Paulin creek open space, and the County was taken by surprise. The development agreement fails to define the required conservation easement. Several critical questions remain unanswered: To whom will the developer dedicate the conservation easement? No agency is

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identified to manage the conservation easement and maintain and manage the property. The property is 9 acres in the middle of the city, surrounded by residential and commercial development—it is unlikely to fit the strategic objectives of most local nonprofits. What happens if no one wants it? Or wants to place conditions on it? No one has any idea whether the provisions in the development agreement actually mitigate the impacts to Parcel J of its sale to this developer, because the Country failed to conduct a CEQA analysis.

Furthermore, the County cannot show that there is no possibility that its purpose will be achieved and the project will not lead to the development called for with resulting significant environmental effects under *Rominger, supra.* The development agreement not only contemplates a change of use for the Chanate Campus, but the entire sale is *conditioned upon* the change of use. Further, the County has a *vested financial interest* in the change of use—the entire sale depends upon entitling the proposed development and the final sales price depends upon maximizing the number of housing units entitled. The County has already invested $300,000 toward achieving the purposes of the development agreement. The County cannot now plausibly argue that there is no possibility its stated purpose will be achieved and that the project will not lead to development of the Chanate Campus.

For these reasons, the "common sense" exemption does not apply. The County's insistence on avoiding the mandates of CEQA is contrary to law and must be overturned.

4) The County improperly created momentum behind the project and foreclosed consideration of alternatives without CEQA review.

As set forth above, CEQA requires consideration of impacts at a point when genuine flexibility remains, before momentum strips the EIR of any real influence or decision-making. An agency must not take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures without first carrying out CEQA review. (*Laurel Heights Improvement Assn., supra,* 47 Cal. 3d at 396; *St. Vincent's, supra,* 161 Cal.App.4th at 1001.) If the agency is committed to a particular course of action, as a practical matter, it must conduct CEQA review. (*Save Tara, supra,* 45 Cal.4th at 132.) No authority whatsoever allows the County to shield itself from the requirements of CEQA by shifting to the City the County's responsibility to conduct environmental review.

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While a CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, if the agreement, viewed in light of all the surrounding circumstances, *commits the public agency as a practical matter to the project*, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review. (*Save Tara, supra,* 45 Cal.4th at 132.)

The facts in *Save Tara, supra,* are exactly like the facts here. In S*ave Tara,* the issue was whether the agency's execution of a development agreement with a private developer triggered CEQA, or whether a condition in the agreement committing the project to a future CEQA review was sufficient. The Supreme Court held that if an agreement, viewed in light of all the surrounding circumstances, commits the agency as a practical matter to the project, the CEQA process must be completed before the agreement is signed. (Id.) The Court concluded that "the City of West Hollywood's conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes, an approval of the project... ." (Id. at 121–122.)

Here, the County, with the participation of the City—which will conduct the environmental review—selected a developer and created an entire development plan. The County then entered into a agreement to sell the Chanate Campus conditioned on development in compliance with the terms of the development agreement, and coupled that with an investment of significant public funds and staff time committed toward obtaining entitlements from the City. County officials have repeatedly made statements in public supporting the project. The development agreement provides that if the City does not entitle the project to the County's satisfaction, the County can take back the project and lead the entitlement effort itself. The sales price is contingent upon the number of housing units entitled. The County appears to have negotiated an MOU with the City – or at least tried to - which has never been made public. What little formal public review and input was received by the County occurred at the very *end* of the process, *after* the County negotiated a detailed development with its selected developer, and *after* the County agreed to a sales price far below that set in its RFP, and *after* the developer threatened to withdraw his offer. The County has done everything it can to create momentum behind the project before environmental review has been conducted.

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The County therefore violated CEQA and a writ of mandate should issue, prohibiting the County from proceeding pursuant to the terms of the development agreement and mandating the County to comply with CEQA.

5) Redevelopment of the Chanate Campus with 400-800 housing units and commercial/retail development as called for by the development plan will indisputably have significant environmental impacts.

If the County achieves its stated objectives in which it has made a significant financial investment, those objectives will indisputably have significant environmental impacts. These environmental impacts should have been reviewed by the County at the outset. Its failure to review them violates CEQA's mandate of "review early enough to attempt to influence the decision-making process," (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at 396.)

It doesn't take an environmental scientist to see that the destruction and removal of multiple, aged office buildings will create significant environmental impacts. The old Community Hospital likely contains asbestos, a well-known hazardous substance which requires precautions for removal and disposal. Numerous historical structures are located on the Chanate Campus and will be removed. The development called for in the development agreement will change the nature of the property and increase the intensity of its use. Building 400-850 housing units will significantly impact traffic on Chanate Rd., a winding, two-lane road which lacks sidewalks and bicycle lanes. Trees and other vegetation will be removed and, in fact, are already being removed.

The public brought all of these significant impacts to the County's attention. Yet, the County refused to examine them before entering into the development agreement and investing significant public funds to support the developer's application to the City of Santa Rosa.

Furthermore, in this case, we have a real-world example of immediate impacts from the development agreement which were overlooked by the County because it failed to conduct a CEQA review. Parcel J and the Paulin Creek open space shine the spotlight on the County's failure to consider environmental impacts in this project. Only after significant public outcry, did the County start paying attention to what would happen to Parcel J and the Paulin Creek open space should its objectives be

achieved. Because the County conducted absolutely no initial study, the public is left in the dark as to whether the development agreement provides the appropriate protections for Parcel J and the Paulin Creek open space.

This is exactly the type of issue that would have been—and should have been—addressed during an initial study of the project.

For the reasons set forth above, Petitioner requests this Court to issue a writ of mandamus ordering the County to refrain from seeking entitlements from the City and to conduct the appropriate review of this project as required by CEQA.

V. RELIEF REQUESTED

Petitioner/Plaintiff requests issuance of a writ of mandate compelling the County to set aside Ordinance no. 6205 and to comply with CEQA, a declaration voiding the development agreement, an order prohibiting the County from moving forward with the development agreement and a declaration that Ordinance no. 6205 is void as contrary to law. Further, Petitioner/Plaintiff requests an award of attorney's fees and costs according to proof.

Dated: May 17, 2018

O'BRIEN WATTERS & DAVIS, LLP

By: Noreen M. Evans
Noreen M. Evans
Attorney for Petitioner and Plaintiff Friends of Chanate

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PROOF OF SERVICE
Code of Civil Procedure Section 1013a(3), 2015.5

I declare that:

I am over the age of eighteen years, and am not a party to this action. My business address is Fountaingrove Corporate Centre I, 3510 Unocal Place, Suite 200, Santa Rosa, CA 95403, which is located in the county where this mailing described below took place.

On May 17, 2018, I served the attached:

DOCUMENTS:

PETITIONER/PLAINTIFF FRIENDS OF CHANATE'S OPENING BRIEF

ADDRESSED TO:

Michael King Debbie Latham County of Sonoma Office of the County Counsel 575 Administration Drive, Suite 105 A Santa Rosa, CA 95402 Debbie.latham@sonoma-county.org Michael.king@sonoma-county.org (*Respondent and Defendant*)	Tina Wallis, Esq. Law Office of Tina Wallis, Inc. 100 E Street, Suite 209 Santa Rosa, CA 95404 twallis@twallislaw.com (*Attorney for Real Party in Interest Chanate Community Development Partners, LLC*)

( ) (BY PERSONAL SERVICE) I caused each such envelope and the documents above to be delivered by hand to the addressee(s) noted above.

( ) (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid, on the date of e execution of this declaration, with our office outgoing mail following ordinary business practices. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

( ) (BY FACSIMILE) I caused the said document to be transmitted to Facsimile machine to the number indicated above.

() (BY OVERNIGHT MAIL SERVICE) I caused each such envelope to be delivered by Express Mail service to the addressee(s) noted above.

(X) (BY ELECTRONIC MAIL) I caused each such document above to be delivered by electronic mail to the addressee(s) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 17, 2018.

Heather Hernandez