SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

SAN GERONIMO ADVOCATES, an unincorporated association; and AMELIA N. BROWN, Petitioners/Plaintiffs v. THE COUNTY OF MARIN; BOARD OF SUPERVISORS OF THE COUNT OF MARIN, Respondents/Defendants	Case No.: CIV 1704467 DECISION PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioners' Motion for Preliminary Injunction came on for hearing on June 8, 2018 at 1:30 PM, Judge Paul M. Haakenson presiding. Todd Smith, Riley Hurd, and Ashling McAnaney appeared for Petitioners. David Zaltsman and Tarisha Bal appeared for Respondents.

After consideration of the pleadings, all moving and opposition papers, oral arguments, and the cited authorities, the court rules as follows:

Petitioners' Motion for Preliminary Injunction is granted. For the reasons discussed below, the court finds that Petitioners are likely to prevail on their claim that the County failed to engage in a proper CEQA analysis prior to approving sale and committing to important features of the County's

restoration plan. As discussed in detail herein, the County committed to a "project" that included not only the purchase of property, but a definite course of action that required CEQA analysis, without having engaged in such analysis. The balance of hardships weighs in Petitioner's favor, and thus preliminary injunction must be ordered.

II. FACTS

A. Procedural Summary

Petitioners, Amelia Brown (an individual who resides in San Geronimo Valley), and San Geronimo Advocates (an organization made up of San Geronimo Valley residents), filed the instant petition for writ of mandate challenging the County of Marin's November 17, 2017 decision to approve the purchase the 157-acre San Geronimo Valley Golf Course, including clubhouse and restaurant (collectively "the property") and to convert its use as a golf course to "open space protection and park purposes." (Smith decl. p. 144.)

The County's stated purposes underlying the decision to purchase the property are: to discontinue the property's use as a golf course within two years; to phase-out diversion of water from Larsen Creek, (also discontinuing the purchase of water from the district); to convert the property into public open space and parks; and to restore the wildlife migration corridors and fish habitats that run through the property, paying particular attention to increasing stream flow and water quality to San Geronimo Creek and Larsen Creek, which purportedly are critical spawning and rearing habitats for the threatened steelhead trout and the endangered Central Coast Coho salmon. Lagunitas Creek, and its tributaries, Larsen and San Geronimo creeks, allegedly contain "the largest and most stable population of the endangered Coho salmon south of Fort Bragg," while "San Geronimo [Creek] also supports threatened steelhead trout and a fall run of Chinook salmon." (Smith decl. p. 254.)

In their Petition for Writ of Mandate (Code Civ. Proc., §§ 1085, 1094.5; Pub. Res. Code § 21168.5), and in their claim for injunctive relief, Petitioners allege that: Respondents approved the purchase of the property and committed themselves to a definite course of action to convert the golf course and its clubhouse for park, open space, and habitat restoration activities, before conducting the environmental review required by California Environmental Quality Act (CEQA) (Pub. Res. Code, §

21000 et seq.); and Respondents approved spending County funds to close the golf course, contrary to the express language in the local San Geronimo Valley Community Plan, which purportedly requires future uses of the property to include its continued use as a golf course.

In their petition, Petitioners seek a court order directing Respondents to set aside the resolution approving the purchase and sale agreement relating to the subject property, and to conduct the environmental review of this project under CEQA. Here, Petitioners seek a preliminary injunction prohibiting the close of escrow during the pendency of this action. Petitioners also seek an order enjoining Respondents from spending additional public monies and taking any other further action to complete the purchase of the property during the pendency of this lawsuit.

B. Project History

In March, 2017, while aware that the owners of the San Geronimo Valley Golf Course (i.e., the trustees of the Lee Family Trust, a.k.a. the "Lees") desired to sell the subject property by the end of 2017, the County commenced discussions with the Trust for Public Land (TPL) to agree upon terms of TPL's temporary purchase of the 157-acre property in order to keep it out of private hands, and to hold the property for sale to the County. The County and TPL ultimately agreed that the TPL would purchase the property and thereafter sell it to the County for a price not to exceed $8.85 million. They agreed that the property ultimately would be used "for park and open space purposes." (Smith decl. pp. 68, 190-225.) Further, the County and TPL agreed that the Lees would be granted a two-year phase-out period for operation of the golf course commencing upon the anticipated date of TPL's purchase of the property in October or November 2017. (Smith decl. pp. 199-201.) The County also discussed with TPL the likely project phases and rough cost estimates for the restoration, the potential public and non-profit funding sources that would be utilized for the acquisition and restoration, and the recruitment of funding partners from other conservation organizations to further help fund the restoration and reuse activities. (Smith decl. pp. 206-211.)

The County intended its acquisition and restoration plan to build upon numerous conservation and fish habitat projects that had been completed by the County in the surrounding Lagunitas watershed over the past few years. The County further intended to secure outside investments based

upon this vision. The previous conservation projects to be built upon included: the County's Fish Passage and Creek Restoration program for creeks in the San Geronimo Valley; the Leo Cronin Fish Viewing Area; Salmon Enhancement Plan; and San Geronimo Ridge Acquisition and Lagunitas Creek Floodplain and Riparian Habitat Design. (Smith decl. pp. 307-308.)

As described in the "San Geronimo Golf Course Acquisition FAQs" posted on the County Park Department's website, the County decided to buy the property in order to preserve the land for "park and public uses," phase-out golf course use, and ultimately use the land for a "turnkey greenbelt park with a ready-made network of multiuse pathways" for access between the towns in the San Geronimo Valley. The County would also restore the fish and native wildlife habitats, and entertain proposals from the public for any future public uses, including continuation of the existing public garden, public event facilities, and playground facilities. (Smith decl. p. 95.)

This announcement also provided that the acquisition of this property for fish habitat restoration will eliminate the site from further consideration as a wastewater recycling unit, since that proposed use is incompatible with the use of the property "for park purposes, a salmon enhancement plan, and the restoration of the watershed." (Smith decl. p. 97.)

The purpose behind the County's purchase of the golf course was also explained in its successful grant request in August 2017 to the California Wildlife Conservation Board (WCB) wherein the County sought $3,410,000 in funding under the WCB's Stream Flow Enhancement Program. (Smith decl. pp. 227-228.) To be eligible for these WCB funds, the proposed projects "must measurably enhance stream flows at a time and location necessary to provide fisheries or ecosystems/habitat benefits or improvements that enhance existing flow conditions and are greater than required applicable environmental mitigation measures or compliance obligations." (Smith decl. p. 229.)

In its WCB grant application, the County articulated that it wanted to discontinue the use of the golf course, phase in public park uses, terminate long-time water diversion to the golf course from Larsen Creek, cease the additional purchases of water from MMWD, and petition the State Water Resources Control Board to permanently dedicate at least 20 acre-feet per year (AFY) of water "to instream flow annually." (Smith decl. pp. 229, 236-237, 245.) The County envisioned that the

property and its existing golf course cart paths would be used for walking and bicycle trails, and for public open space connecting the property to thousands of acres of existing open space parks and public pathways surrounding property. The County also envisioned that such use would provide a network of paved trails and safe alternative non-motorized transportation routes across Sir Francis Drake and other vehicular roads. (Smith decl. pp. 242, 248.)

The proposed renovation or reuse activities also would include improving creek bank stability, restoring native canopy over the creeks, creating "pool shelters," "retire[ing] the existing impoundment on Larsen Creek, increasing the connectivity and public access to the site and surrounding protected areas, and repurposing existing structures and cart paths for visitor serving and education purposes." (Smith decl. pp. 237, 245.)

The WCB application further described the County's restoration plans for the property:

> Under its ownership, MCP [Marin County Parks] would plan, permit, fundraise for and implement a comprehensive restoration program for the property. This process would begin with a 6-9 month process to engage the local communities, broader public, other stakeholders and experts in a discussion of the opportunities and constraints resulting in a Restoration and Reuse Concept Plan. Possible restoration actions include the temporary installation of pumps to move water through the impoundments on Larsen Creek until they can be completely removed, daylighting of Larsen Creek and restoration of the historic floodplain for both Larsen and San Geronimo creeks. MCP will also ensure that the fish passage barrier at Roy's Pools is resolved.

(Smith decl. p. 238.)

In September 2017, the County obtained an additional $750,000.00 in restricted "Proposition 1" conservation funds from the Coastal Conservancy for the acquisition of the property and restoration to San Geronimo and Larsen creeks, as described above. (Smith decl. p. 294 et seq.)

In its application to the Coastal Conservancy, the County conceded that the acquisition and planned restoration qualifies as a "project" under CEQA, but that the project is categorically exempt from environmental review. (Smith decl. p. 307.) The County stated:

> The proposed project is exempt under CEQA. Marin County Parks will file a CEQA Notice of Exemption with the County of Marin for the acquisition of the San Geronimo Valley golf course property. The Notice of Exemption will be filed under the following categorical exemptions: 15313. Acquisition of Lands for Wildlife Conservation Purposes; 15136. Transfer of Ownership of Land in Order to Create Parks; and 15325. Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources.

(Smith decl. p. 307, *emphasis added*.)

C. Notice of Intent to Purchase Land

In a report to the Board of Supervisors by the staff of the Parks Department dated October 10, 2017, the staff recommended approving a Notice of Intent to purchase the property from TPL "for park and open space purposes." (Smith decl. p. 68.) The staff report explained that TPL would purchase the property from the owners for not more than $8,850,000, and hold the property until the County could gather the necessary financing to buy it from TPL, sometime in 2018. (Smith decl. p. 68.) The staff noted that the County's share of the estimated purchase price would be $3.91 million, with the balance of $4.94 million made up of funds from outside public and private conservation sources. (Smith decl. p. 69.)

The staff report explained that during the period between the Board's approval of the Purchase and Sale Agreement (PSA) with TPL and the anticipated close of escrow by the end of December 2018, "Marin County Parks would begin a public process to formulate a vision for future public uses on the property through the development of a Restoration and Reuse Concept Plan." (Smith decl. Ex. 5, p. 69.)

As to potential uses, the staff report notes:

> Much of the existing property can become a turnkey greenbelt park with a ready-made network of multiuse pathways that will allow circulation between Woodacre, San Geronimo, Forest Knolls, and Lagunitas with no interaction with motorized traffic on Sir Francis Drake Boulevard or Nicasio Valley Road due to the existing tunnel under Sir Francis Drake and the bridge over Nicasio Valley Rd. In addition, this property provides a valuable opportunity for resident Central Coast Coho and steelhead, as well as other native wildlife. Restoring the site for fish will create many other benefits for people and native wildlife, including enhanced floodplain protection for downstream communities and protection of wildlife migration corridors.

(Smith decl. p. 69.)

The staff report added that any future use would be determined following an extensive public comment process and that future use(s) would be subject to CEQA review:

> The County may consider other future public-serving uses that are consistent with the character of the community and compatible with park uses. Any future uses will be fully

> explored with the community, would need to be approved by the Board of Supervisors prior to implementation, and would be subject to CEQA review.

(Smith decl. p. 69.)

On October 10, 2017, at a public hearing before the Board of Supervisors, the Board adopted Resolution No. 2017-113 to issue a Notice of Intent to buy the golf course from TPL with Board approval no later than November 14, 2017. (Smith decl. Ex. 6, pp. 72-73.) The Resolution also concluded that the purchase of the property is categorically exempt from environmental review under CEQA Guidelines, 14 Cal. Code Regs. § 15325 – Transfer of Ownership to Preserve Existing Natural Conditions and Historical Resources because it is being acquired "in order to preserve open space or park purposes." (Smith decl. Ex. 6, p. 72.)

During the following weeks the Parks' staff conducted further analyses and issued a "Memorandum to File" dated October 24, 2017 stating that "MCP's acquisition of the golf course is a project under CEQA." (Zaltsman Ex. A, p. 3.) The memorandum also reflected that additional CEQA Categorical Exemptions applied to the project, (i.e., Guidelines § 15316 – Transfer of Land to Create Parks; §15301 – Operation, Repair and Maintenance of Existing Facilities). Finally, the memorandum expressed the conclusion that no § 15300.2 unusual circumstance "exception" to the exemptions existed since "the project merely entails the transfer of ownership of the property." (Zaltsman Ex. Ap. pp. 3-4, emphasis added.) (Oppo. p. 5.)

D. Agreement to Purchase/Notice of Exemption

The Board of Supervisors scheduled a public hearing for November 14, 2017 to discuss the proposal to approve execution of the PSA. The PSA provides, in part, that the acquisition is for "open space protection and parks purposes," the purchase price is not to exceed $8.85 million with the County paying $3.9 million from its own funds, and the balance paid by third-party, public, and private funds. (Smith decl. p. 145.) The purchase date is November 17, 2017, and the date for the close of escrow would be no later than December 31, 2018. (Smith decl. p. 149.)

In its report to the Board dated November 14, 2017 the staff recommended the Board approve the execution of the PSA because this agreement will provide "a valuable opportunity for resident

Central Coast Coho Salmon and steelhead, as well as other native wildlife. Restoring the site for fish will create many other benefits for people and native wildlife, including enhanced floodplain protection for downstream communities and protection of wildlife migration corridors." (Smith decl. p. 111.)

The staff report recommended that the County execute a maintenance and management agreement with TPL to allow the County to preserve the property's aesthetic appeal and the integrity of its infrastructure, "as well as to accommodate some level of immediate public access to and use of the property's network of paths." (Smith decl. p. 113.)

This report repeated the representations made in the earlier October 10 staff report:

> Any future public uses will be fully explored with the community, would need to be approved by the Board of Supervisors prior to implementation, and would be subject to further CEQA review. The County may consider other future public serving uses of the clubhouse parcel and other portions of the property that are consistent with the character of the community and compatible with park uses.

(Smith decl. p. 113.)

Prior to this meeting, Petitioner association and other opponents objected to the project on grounds that the County's use of restricted conservation funds to acquire the golf course for park/open space and habitat restoration bound the County to these uses and limited the scope of alternative uses without first conducting CEQA review; the market value of the property is much lower than the purchase price agreed to by the County; and that this decision was made prior to meaningful public discussion of alternatives or of the additional operating costs needed to maintain and manage the expanded park area. (Smith decl. pp. 77-78, 89-90, 99-101, 318.)

The critics also challenged the County's claims that the transaction fell within the Categorical Exemptions from preparation of an EIR under CEQA, asserting: the change of use from golf course to open space and habitat restoration requires an amendment to the San Geronimo Valley Plan (which is part of the Countywide Plan) and a rezoning of the property, which triggers a CEQA review; given the unknown scope of the County's future "Restoration and Reuse Concept Plan" County is unable to conclude that no "unusual circumstances" exist that would otherwise take this project outside of the Categorical Exemptions; the potential existence of pesticides and chemicals used for the golf course

requires preparation of an EIR before the County may commit to convert the property to public use; the County did not evaluate whether conversion from golf course use to open space will increase the risk of wildfires; and County impermissibly avoided environmental review by "piecemealing" the activities to which the County had committed itself as part of this purchase. (*Id*. at pp. 76-80, 89, 99.)

After receiving extensive public comments, listening to 81 speakers, and agreeing with the staff's recommendation (Smith decl. pp. 112-115), on November 14, 2017 the Board of Supervisors unanimously adopted Resolution No. 2017-126 "for the reasons presented in the staff report accompanying this resolution," and which authorized the County to execute the PSA with TPL "to provide park land and open space, and to provide for restoration of land to natural conditions; [and] that the proposed action only provides for transfer of title to the Property and any future projects on the property would be subject to review pursuant to CEQA; . . ." (Smith decl. pp. 165-166.)

The operation and maintenance of the clubhouse by the County would continue temporarily, and the premises would remain open to the public. Under the purchase agreement, TPL was to continue the golf course use under an interim 2-year lease if a third-party vendor to operate the golf course could be found. (Smith decl. p. 145, ¶ 1.3.) Any possible future uses of the clubhouse facilities, including suggestions to construct of a fire station, or for use as a community center, would be decided after engaging in extensive public discussion and subject to applicable CEQA review. (Smith decl. p. 113.)

Also as contained in the staff report, before deciding upon any future uses of the property, the County committed itself to "begin a public process to formulate a vision for the future of the property through the development of a restoration and/or reuse concept plans" by soliciting the public's ideas about the most suitable use of the property, with any future public use subject to CEQA review. (Smith decl. pp. 112-113.)

The Resolution states that the transfer of ownership to the County is categorically exempt from CEQA review under Guidelines § 15301(h) – "Existing Facilities because the project entails transfer of land from a private party to the County of Marin to enable the restoration of the existing golf course," § 15316 – "Transfer Of Ownership Of Land In Order To Create Parks," Guidelines § 15325(c) – acquisition of property "to allow restoration of natural conditions, including plant and

animal habitats," and § 15325(f) – acquisition "to preserve open space or lands for park purposes." (Smith decl. p. 165-166.)

The County also concluded that no "exceptions" under Guidelines § 15300.2 bar application of the Categorical Exemptions, since no potentially significant impacts to the environment would exist from either the "mere transfer of ownership," or due to "unusual circumstances" from the project, and because "any future projects that affect the environment would have to undergo review pursuant to CEQA." (Smith decl. pp. 165-166.)

The total purchase price of $8.85 million, including $150,000 for the fixtures and equipment, will be paid for with $1.4 in County General Funds for the purchase of the Club House parcel and other fixtures; $2.5 million Measure 'A' conservation funds[1] for the Golf Course parcels; and $4.94 million in outside private and public grant money restricted to parks and habitat restoration (including the WCB funds) for purchase of the Golf Course parcels. (Smith decl. p. 114.)

The Notice of Exemption that was filed on November 15, 2017 states the property was acquired "to support the future restoration of the site" including the San Geronimo and Larsen creeks which serve as "rearing and spawning habitat for the Central Coast Coho salmon and steelhead trout." (Smith decl. p. 168.)

The Notice of Exemption relied on categorical exemptions Guidelines §§ 15316, 15325, and 15301, and explained that the reasons for the exemptions are: "The project entails the transfer of land from a private party to the County of Marin to enable the restoration of lands and creation of parklands. Operation and maintenance of the existing golf course club house would continue." (Smith decl. p. 168.)

On December 12, 2017, purportedly out of an abundance of caution, the Board of Supervisors passed and adopted Resolution No. 2017-135 noticing and confirming the purchase of the San

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[1] Measure "A" funds are derived from a special sales tax approved by the County's voters for projects restricted to conservation and parks/open space uses, including: stream restoration within county parks and preserves; enhance biodiversity and control populations of invasive, non-native weeds; repair, maintain and replace deteriorating recreational facilities and infrastructure in county parks and on regional pathways; purchase land for purposes of permanently protecting and/or restoring natural areas, streams and native ecosystems . . . . (Ex. A, pp. 14-15.)

Geronimo Golf Course. (Smith decl. pp. 172-173.) The Resolution passed by a vote of 4-1, with Supervisor Judy Arnold reversing her previous support for the purchase. (Smith decl. p. 173.) This timely petition followed.

Later, on March 27, 2018 the Board of Supervisors adopted Resolution No. 2018-27 which authorized the County to execute an agreement with the State Coastal Conservancy to accept a $150,000 grant of Proposition 1 watershed protection and restoration funds (to be matched with up to $150,000 county funds) for use in preparing a conceptual "Reuse And Restoration Plan" for the San Geronimo Golf Course. (Smith Supp. decl. pp. 854, 902-903.) The Board of Supervisors noted that the Reuse and Restoration planning process will include a 6-9 month extensive public engagement effort to develop proposals for future uses of the property that includes restoration and protection of the salmonid population, and as well as future uses of existing facilities like the club house and the community garden, and other existing and proposed amenities; e.g., a fire station, playground or wastewater treatment plant. (Smith Supp. decl. pp. 850-851.)

Also on March 27, 2018, the Board of Supervisors authorized the execution of a contract with a vendor, Touchstone Golf, LLC, for the interim management and operation of the San Geronimo Golf Course until late 2019. (Smith Supp. decl. p. 903.)

E. The County Committed to Certain Important Aspects of Development

The court has carefully examined the record with an eye toward determining what future actions, if any, the county has committed to implement. That is, as discussed below, the court must determine whether the County simply agreed to purchase property with a general objective, intent, and vision, or alternatively, whether the County went beyond the plan to purchase the property, by committing itself to implementing a specific restoration plan through a definite course of action. (14 C.C.R. § 15352(a); 14 C.C.R. §15004(b); *Save Tara v. City of West Hollywood et al.* (2008) 45 Cal.4th 116, 138-139.) This distinction becomes important in the court's analysis of the parameters of the "project" and the application of any categorical exemptions.

Some of the County's future plans with regards to the property are generalized, aspirational, and visionary. In its broadest conception, the County envisioned the project as "a unique, once-in-a-

lifetime *opportunity* for the County to acquire a large property in the heart of Marin and preserve land for park and public uses." (Smith decl. p. 95, italics added.) Similarly, in the Proposition 1 (2014) Grant request submitted by the County to the California State Coastal Conservancy, the County states:

> "The project presents an *opportunity* to create a significant new public park on the Valley floor and serve a broad range of additional community needs *such as* by adapting the clubhouse for community events, expanding an existing community garden and potentially siting a new public firehouse."

(Smith decl. p. 296, italics added.)

The County further suggests in that same grant request that "the project presents an *opportunity* to significantly increase stream flows and plan for comprehensive restoration of the property to enhance habitat for salmonids," as well as federally endangered steelhead trout. (Smith decl. pp. 296, 235.) According to the grant request submitted by the County to the WCB, such "possible restoration actions include the temporary installment of pumps to move water through the impoundments on Larsen Greek until they can be completely removed . . ." (Smith decl. p. 238.) These statements express a broad, over-arching end goals envisioned by the County, namely to acquire property for the purpose of habitat restoration. In these statements, the County speaks of actions in terms of opportunities and potentialities that may or may not ultimately be actualized. In such statements, the County does not commit itself to a definite course of action.

However, the record reveals certain project activities wherein the County has "approved," and thus committed itself to a definite course of action. In fact, the County is contractually obligated to pursue these specific development processes.

First, the record indicates that the County has committed itself to the curtailment of water diversion from Larsen Creek, so as to increase the stream flow of the Larsen and San Geronimo Creeks by at least 20 acre-feet per year (AFY). The County has promised, as a condition of its obtaining funding from the WCB, to dedicate at least 20 AFY of water to the Larsen and San Geronimo Creeks. (Smith decl. pp. 258, 298.) Questions 7 and 8 of the Proposition 1 (2014) Grant request submitted by the County to the WCB address the "durability of [the] investment" made by the WCB. (Smith decl. p. 251.) Question 7 asks the applicant to describe the "durability / permanency of the [purported] stream flow enhancement," and establish whether the applicant will make "provisions to maintain the

enhancement." (Smith decl. p. 251.) Question 8 asks the applicant to describe what long-term management will "*assure the entire project's sustainability* beyond the term of the grant agreement." (Smith decl. p. 251, italics added.)

In response to question 7, the County reported to WCB that the durability of the stream flow enhancement would be permanent, because "MCP would file a permanent Section 1707 instream flow dedication of at least 20 AFY." (Smith decl. p. 251; Cal.Water Code §1707.) In response to question 8, the County submitted to the WCB that "[Marin County Parks] *will* lead the process of *permanently dedicating water instream* through a Section 1707 permit." (Smith decl. p. 251; Cal.Water Code §1707 italics added.) The County augmented its commitment to demonstrating the longevity of the stream flow enhancement by promising to submit to the WCB "annual monitoring reports [that] will analyze the data" from the Larsen Creek. (Smith decl. p. 256.) The County's commitment to "legally dedicate at least 20 acre-feet / year of water . . ." is also clearly expressed in the County's Proposition 1 (2014) Grant request submitted by the County to the California State Coastal Conservancy (Smith decl. pp. 296-297, 299.) At no point during these proceedings has the County contested this commitment.

Second, the County has committed to closing the Golf Course. The County conceded through their own FAQ document that the closure of the Golf Course was a necessary means to secure Grant approval by stating that the golf course would not remain open "in the long run, because full restoration is *critical to the fundraising effort*." (Smith decl. p. 96. italics added.) The closure of the golf course is a critical aspect of the plan, and undoubtedly necessary to increase the Larsen Creek stream flow. Moreover, the closure of the golf course is more than a passive termination of use. The closure will certainly involve landscape modifications and changes. The County in fact has engaged in some budgetary analysis relating to that change, including considering the cost of off-hauling thousands of cubic yards of greenwaste and the cost of other physical modifications that will be necessary to convert the greens and fairways to a more natural topography. (See Smith decl. p. 206.)

Thus, the County has committed itself to increasing the creek flow of the Larsen and San Geronimo Creeks, as well as closing and converting the golf course. The implication of these commitments is discussed below.

III. The Allegations - First Amended Petition and Complaint

In the operative First Amended Verified Petition and Complaint for Injunctive Relief filed on February 13, 2018, Petitioners allege Respondents abused their discretion by not proceeding in the manner required by law (Code Civ. Proc., §§1085, 1094.5; Pub. Res. Code, § 21168.5) as follows:

> The County gave its activities related to the purchase an impermissibly narrow definition as the "mere acquisition of the property", resulting in the improper "piecemealing" of the project into artificially disconnected, environmentally benign activities;
>
> The purchase and discontinuance of the golf course use was achieved without complying with the Countywide Plan, the San Geronimo Valley Community Plan and the zoning for the property;
>
> The County approved the purchase and committed itself to a course of conduct that eliminated alternative uses or mitigation measures *before* conducting an environmental review in violation of CEQA, and impermissibly deferring its activities to future CEQA review;
>
> The County improperly relied on Categorical Exemptions without considering evidence of the existence of significant environmental effects due to "unusual circumstances";
>
> The County relied on the Categorical Exemptions without considering the historical value of this golf course which was the last one designed by Arthur Vernon Macan, whom Petitioners refer to as "the preeminent golf course architect in the Pacific Northwest." (¶ 99);
>
> No Categorical Exemptions exist for the acquisition and planned use of the Golf Course and Club House parcels; and
>
> The County has a ministerial duty to prepare a Master Plan pursuant to the San Geronimo Valley Community Plan before discontinuing the use of the property as a golf course.

Petitioners now move for a preliminary injunction to maintain the status quo (i.e., preventing the County's purchase of the property) pending judgment, claiming that if the sale is not enjoined the property will be irreparably altered and taxpayer money will have been irretrievably spent. (MPA p. 14.)

The County opposes, arguing the adoption of the Resolution that merely approved the purchase the golf course is not a "project" as defined by CEQA; and even assuming this purchase is a project, it is subject to several categorical exemptions removing it from CEQA review and that no "exceptions" apply. (Oppo. p. 8)

IV. DISCUSSION

In reviewing a petition for traditional mandate under CEQA, the court determines whether the agency abused its discretion, i.e., (1) – the agency has not proceeded in a manner required by law; or (2) – the agency's determination is not supported by substantial evidence. (Public Resources Code, § 21168.5; Code Civ. Proc., § 1085; *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181, 190–191.)

In deciding whether to grant a preliminary injunction, the court considers two factors: (1) – has Petitioner shown a reasonable probability they are likely to prevail on the merits at trial; and (2) – does the interim harm Petitioners will suffer from not issuing the injunction outweigh the harm Respondent will suffer if the injunction issues. (*14859 Moorpark Homeowner's Ass'n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. [Citation.]" (*14859 Moorpark Homeowner's Ass'n, supra,* 63 Cal.App.4th at p. 1402.)

Nonetheless, "[a] trial court may not grant a preliminary injunction, *regardless of the balance of interim harm*, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. [Citations.]" (*Association of Orange County Deputy Sheriffs v. County of Orange* (2013) 217 Cal.App.4th 29, 49,)

A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS

The court concludes that Petitioners are likely to prevail on the merits of their petition. Briefly stated, and as discussed in detail below, Petitioners have shown that the County's actions relative to their proposed purchase of the San Geronimo Golf Course property constitute a "project" under the California Environmental Quality Act (CEQA). Petitioners have further shown that the County wrongfully determined that the "project" is exempt from CEQA analysis, where it is not. Based upon this erroneous claim of exemption, the County failed to issue a negative declaration or prepare an environmental impact report as required. Consequently, Petitioners are likely to prevail on the merits.

1. CEQA Procedures

" 'The basic purposes of CEQA are to: [¶] (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities; [¶] (2) Identify ways that environmental damage can be avoided or significantly reduced; [¶] (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible; [¶] (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.' ([Guidelines], § 15002)." (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285–286.) CEQA's purpose is to compel government to make decisions with environmental consequences in mind. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I*.).)

The California Supreme Court in *Tomlinson, supra,* 54 Cal.4th 281, described the three-step process under CEQA for achieving these goals:

> 1 – The public agency must decide if the proposed development is a "project," i.e., "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment <u>*undertaken, supported, or approved by a public agency*</u>." (§ 21065, italics added.)
>
> 2 – If the proposed activity is a "project", the agency must decide whether it is exempt from compliance with CEQA under either a statutory exemption (§ 21080) or a categorical exemption set forth in the regulations (§ 21084, subd. (a); Cal. Code Regs., tit. 14, § 15300). "A categorically exempt project is not subject to CEQA, and no further environmental review is required. [Citations.]"
>
> If the project is not exempt, the agency must determine whether the project may have a significant effect on the environment. If the agency decides the project will not have such an effect, it must adopt a negative declaration to that effect. (§ 21080, subd. (c); see Cal. Code Regs., tit. 14, § 15070.); and
>
> 3 – If the agency does not issue a negative declaration, "the agency must prepare an environmental impact report of the project. (§§ 21100, subd. (a), 21151, subd. (a).)"

(*Tomlinson v. County of Alameda, supra,* 54 Cal.4th at p. 286.)

"However, an agency has no duty of compliance with CEQA unless its actions will constitute (1) 'approval' (2) of a 'project.' [Citation.]" (*Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181, 191.)

Here, the County first argues that its purchase of the subject property, and vision for restoration do not constitute a project under CEQA. The County further argues that even if the purchase is considered a project, it is exempt from CEQA. As a result, the County did not issue a negative declaration or prepare an environmental impact report.

In the following analysis, the court examines the parameters of the "project." Applying the proper project definition, the court then analyzes the CEQA requirements. The court's conclusions are detailed below.

2. The Acquisition of San Geronimo Golf Course is a Project

As a threshold matter, there can be no reasonable dispute that the County's purchase of the property in order to phase-out the golf course in favor of park, open space, and habitat restoration purposes, is a "project" under CEQA, contrary to Respondents' assertion. In fact, the County conceded on several occasions that its activities constituted a "project." (See *post*.)

For CEQA to apply, the activity or decision at issue must constitute a "project" under the statute. (Pub. Res. Code, § 21080, subd. (a).) " 'If there was no "project," there was no occasion to prepare either a negative declaration or an EIR.' [Citations.]" (*San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1376.)

The CEQA Guidelines define "project" to mean "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. . . ." (Guidelines, § 15378, subd. (a); *Association for a Cleaner Environment v. Yosemite Community College Dist.*, (2004) 116 Cal.App.4th 629, 637; also, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* (2004) 131 Cal.App.4th 1170, 1180.) The types of activities that constitute projects include "'public works construction and related activities, clearing or grading of land [and] improvements to existing public structures . . . .' (Guidelines, § 15378, subd. (a)(1).)" (*County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089, 1100.)

"[T]he requirements of CEQA 'cannot be avoided by chopping up proposed projects into bite-sized pieces' which, when taken individually, may have no significant adverse effect on the environment [Citations.]" (*Association for a Cleaner Environment, supra,* 116 Cal.App.4th at p. 638; accord. *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 277–278.) The guidelines specify that a project refers to "the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies" but does not include "each separate governmental approval." (Guidelines, § 15378, subd. (c); see *Concerned McCloud Citizens, supra,* 147 Cal.App.4th at p. 192.)

A "project" has two essential elements. First, it is a discretionary activity directly undertaken by a public agency, or an activity supported in whole or in part by a public agency, or an activity involving the issuance by a public agency of some form of entitlement, permit, or other authorization. Second, it is an activity that may cause a direct, or reasonably foreseeable indirect, physical environmental change. (Pub. Res. Code, § 21065(a); Guidelines, § 15378(a)(1); *Association for a Cleaner Environment, supra,* 116 Cal.App.4th at p. 637.)

Whether the public agency's challenged activity is a "project" is an issue of law that can be decided on undisputed facts in the record. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com'n* (2007) 41 Cal.4th 372, 381–382; accord. *San Lorenzo Valley, supra,* 139 Cal.App.4th at p. 1377.)

As to the first prong, there can be no serious no dispute that the County's challenged action in this case is an "activity directly undertaken by any public agency." (§ 21065, subd. (a); see e.g., *Association for a Cleaner Environment, supra,* 116 Cal.App.4th at pp. 638-639 [college district's decision to close, cleanup and demolish campus firing range and transfer shooting range operations to city's shooting range, is a "project"].) The County here has committed to purchasing property with specific vision and commitment to restore, rehabilitate, and reuse the property. Even the "mere" acquisition, as the County put it, is sufficient to constitute a project.

Further, the court does not consider this action as a mere acquisition. As precondition to the purchase of the property from TPL, the County agreed to discontinue the golf course use, provide for the interim use of the cart paths as walking and bicycle paths, continue operation of the club house

and restaurant, and implement a habitat restoration and reuse plan that definitively includes certain project plans such as increasing the stream flow within Larsen Creek and removing the golf course (i.e., terminating the use of the property as a golf course, and replacing the greens and fairways with other vegetation). These activities also were part of the County's contractual commitments to conduct certain restoration and conservation measures as a condition for obtaining funding from outside conservation agencies and organizations.

These agreed upon and reasonably foreseeable activities go beyond the County's claim that it is merely acquiring title to the property. While the County has not defined *all* of the actual restoration and rehabilitation details, the project does include the acquisition of the property; a generalized vision and commitment to restore, rehabilitate, and reuse the property; and certain restoration details such as closure and physical removal of the golf course terrain, and dedicated increase in stream flow. The County's decision as a whole, including its promises and commitment to certain features of the restorative plan, satisfy the first element discussed above.

As to the second prong, the purchase and subsequent plans undoubtedly have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The change from the golf course to public use, and the proposed fish habitat and watershed restoration activities, e.g., directing more water into the creeks, removing fish passage barriers, trimming landscaping to create daylight and replacing invasive, non-native vegetation, may possibly cause direct physical changes in the environment. (Smith decl. pp. 230, 298, 329-361.) Accordingly, the second prong also has been satisfied.

On this record, the court finds that the planned acquisition of the golf course, together with the County's plans for the property's use (some definite, and some aspirational) constitute a binding, discretionary activity directly undertaken by the County, with the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. This action unquestionably involves a project within the meaning of CEQA.

The County's reliance on *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549 in support of its claim that the purchase is not a "project," is not persuasive. (Oppo. p. 9.) There, the City of Sacramento had entered into an agreement with the owners of its "Kings" professional

basketball team to build a new sports arena complex for the purpose of keeping the team from moving to Seattle. To facilitate the timely opening of the arena, the Legislature modified several CEQA deadlines and allowed the City to exercise limited eminent domain powers before completing its environmental review. (*Id*. at p. 556.) As part of the new sports complex the City would have to demolish part of an existing downtown shopping plaza for the construction of the new arena. Also, the City took steps towards planning the proposed downtown area with the team's owners, including the details of the new arena and related retail, commercial, office and residential development, and new hotel rooms. The City also prepared a demolition and construction schedule. (*Id*. at pp. 559-560.)

The City Council approved a "preliminary nonbinding term sheet" for development of this downtown arena that listed several issues yet to be resolved, including: the preferred location, financing, ownership, design, construction. (*Id*. at p. 559.)

The term sheet included "a disclaimer that that the City had no obligation to build, finance, or approve the project until it completed its environmental review and secured all necessary permits for the project. The term sheet further stated the City retained sole discretion to weigh the environmental consequences and even to reject the project entirely. (*Id*., 234 Cal.App.4th at p. 559.)

Pursuant to the expedited CEQA environmental review of the project as approved by the special legislation, the City prepared a draft and then a final EIR under tight deadlines with reduced public comment opportunities, which was certified by the City Council on May 20, 2104. Demolition of the existing shopping plaza commenced in summer 2014. (*Id*. at p. 561.)

Petitioner challenged the project, contending: the City violated CEQA by committing itself to the downtown plan ***before*** finishing its EIR; the City failed to consider alternative feasible proposals; it did not consider impacts from the increase of traffic on the nearby freeway due to games; and it did not consider the indirect impacts from large crowds in the downtown area during the events. (*Id*. at pp. 556-557.)

The Supreme Court denied the petition, holding in part: "the City did not prematurely commit itself to approving the downtown arena project before completing its environmental review."

(*Id*. at p. 557.) In language the County claims is dispositive of the issue before this court, the Supreme Court held:

> Under CEQA, the City was allowed to engage in land acquisition for its preferred site before finishing its EIR.

(*Saltonstall, supra,* 234 Cal.App.4th at p. 557.)

The *Saltonstall* finding must be limited to the unique facts of that case. Of particular relevance to the County's claim here, the Supreme Court held that no improper pre-approval of the project had been made by the City since under the "preliminary nonbinding term sheet" the City had no obligation to enter into definitive transaction documents, no approval of the project would occur until ***after*** the project was reviewed according to CEQA, and that at all times the City had complete discretion to refuse to approve the project. (*Id*. at pp. 569-570.) The Supreme Court found that the term sheet was not a binding contract at all, but "was an agreement to negotiate." (*Id*. at p. 570.) Thus, the *Saltonstall* case is distinguishable from the present action. In deciding that the City did not violate CEQA, the Supreme Court necessarily concluded that no "project" had yet been approved. The court relied on the rule that CEQA applies only when a public agency proposes to approve a "project." (Pub Res C, §21080(a); 14 Cal Code Regs., §15004; *Save Tara v City of W. Hollywood supra,* 45 Cal. 4th 116; *Saltonstall, supra,* 234 Cal.App.4th at p. 566.)

Moreover, the *Saltonstall* Court held that the "preliminary nonbinding term sheet" was not a binding contract, but an "agreement to negotiate." The same conclusion cannot be made as to the PSA between the County and TPL to purchase the golf course, terminate that use and convert it into a public park and open space.

There is nothing "preliminary" about this PSA here, as the Board of Supervisors has approved execution of the agreement, has contracted with a vendor to operate the golf course during the two-year phase-out period while the County will continue to operate the clubhouse and restaurant and maintain the grounds, has planned immediate use of the golf cart pathways for walking and cycling uses, and the County will begin creek restoration planning.

The County fails to persuade the court that the acquisition, and future plans for the property are not a project. On this subject, the court also notes that as a condition for its filing of the Notice of Exemption, the County has already concluded that the activity is a "project."

Guidelines § 15061 provides:

> (a) Once a lead agency has determined that ***an activity is a project*** subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(See also Guidelines, § 15062(a) [a notice of exemption "shall be filed, if at all, ***after*** approval of the project."]; *San Lorenzo Valley*, *supra,* 139 Cal.App.4th at pp. 1384-1385.)

The County conceded as much as its Notice of Exemption states: "The ***project*** entails the transfer of land from a private party to the County of Marin to enable the restoration of lands and creation of parklands", and continued "[o]peration and maintenance of the existing golf course club house. . . ." (Smith decl. p. 168. Emphasis added.)

Further, as discussed above, the County admitted that its activities are a project for CEQA purposes in its application for funds from the Coastal Conservancy. (Smith decl. p. 307.) Additionally, in the October 24, 2017 "Memorandum to File" prepared by a Park staffer, the author expressly states:

> ***MCP's acquisition of the golf course is a project under CEQA***. . . . For CEQA purposes, the project entails the transfer of ownership of the property and the continued operation and maintenance of the facilities. The MCP does not have any plans for construction or other physical changes, including tree removal, and intends to maintain the existing facilities on site until it completes and implements a restoration plan.

(Zaltsman decl. Ex. A, p. 3, emphasis added.)

Unquestionably, the County's acquisition of the property, and restorative plan, constitute a project under CEQA.

3. Scope of Project

To rule on this motion, and the ultimate merits of the petition, the scope of the project must be determined. If the project amounts simply to an acquisition of property, (albeit with a generalized vision and certain end-use aspirations), various categorical exemptions to the otherwise required CEQA analysis may apply. (See, for example, the Class 25 exemption discussion, below.)

Alternatively, if the project entails acquisition ***and*** specific project development plans that go beyond mere generalized intent and vision, the County's claimed exemptions (applicable to acquisition only) may not apply. Thus, the court must clearly determine the scope of the project.

The County asserts that even if the mere acquisition of title to the golf course for "interim park purposes" and "possible future habitat restoration" constitutes a project, CEQA environmental review of the project is ***not*** triggered since it has not received grant funding for specific proposals, and that any future reuse and restoration activities will be decided only after extensive public comment. (Oppo. p. 8-10.) The record belies this conclusion. As discussed herein, the County has in fact already decided upon, and committed to certain restoration activities, including closure of the golf course and increasing the creek stream flow by at least 20 AFY. The project definition must include these development commitments.

A "project" is defined as the "whole of the action" that may result in a direct or reasonably foreseeable indirect impact on the environment. (Guidelines, §15378, *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 129.) A governmental entity cannot segment, or piecemeal a series of approvals into separate projects. (See *Association for a Cleaner Environment*, *supra,* 116 Cal.App.4th at p. 638.)

The decision in *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173 is instructive on this subject. There, the Third District Court of Appeal considered whether certain categorical exemptions were properly applied to a "project" that included the acquisition of property for the purpose of converting agricultural land into wildlife habitat. The Court held that the project did not come within any of the claimed CEQA categorical exceptions. Pivotal to the decision was the court's finding as to the scope of the project.

Like in the present case the project entailed acquisition of property for purposes that would arguably exempt CEQA analysis if the project were limited to the acquisition. However, the *California Farm Bureau* project also encompassed a definite course of action as to actual conversion of the property to a wildlife habitat. Specifically, at the time of the acquisition, the state agencies had committed to a management plan and various restoration details. The conversion plan required reconstruction of existing levees, construction of permanent interior levees, development of ditches,

the installment of water control structures, construction of channels or swales, development of small linear loafing bars, and the planting of certain vegetation. Like here, the project was funded in part by a grant fund obtained by a conservation agency - there, the California Waterfowl Association (CWA). The CWA work plan submitted in connection with the grant application listed specific work to be done. That work included refurbishing an existing pump, installing a 1500 foot pipeline for irrigation, refurbishing levees, constructing a catch basin, constructing 15 acres of brood ponds, cutting swales through the wetland units, planting vegetation, and constructing berms. (*Id.* at 175.)

In examining the applicability of claimed exemptions, the court distinguished projects including solely the acquisition of property from projects that included the acquisition *and* an ultimate construction plan or definite features of such construction. The court found that the "project" included more than mere acquisition. The court held that the "project" included the acquisition of the property, *and* significant development plans. The court stated, "Section 15325 by its terms covers only acquisitions, sales or other transfers of ownership interests for particular purposes. It does not cover anything else. Therefore, *even if* we were to decide that the acquisition of the property in this case could be covered by section 15325, which we do not, the exemption would not cover the project as defined by the State Agencies with its management plan component requiring significant construction." (*California Farm Bureau Federation, supra* at p. 193. original italics.) The construction plans that were already in place were pivotal to the court's decision. The "project" taken as a whole necessarily included those plans.

The decision in *Golden Gate Land Holdings LLC v. East Bay Regional Park District* (2013) 215 Cal.App.4th 353 is also instructive. While the *Golden Gate Land* holding did not directly address the legal issue considered here, the appellate court described the trial court's findings on this subject in great detail, and ultimately affirmed the trial court's decision without criticism of those findings. The rationale underlying the trial court's decision is consistent with this court's interpretation of the scope of the project here.

There, Golden Gate Land Holdings LLC (Golden Gate) owned 140 acres of land on the east shore of San Francisco Bay. Eight acres of Golden Gate's property was to be condemned to help complete portions of the Eastshore State Park and to construct a segment of the San Francisco Bay

Trail. The East Bay Regional Park District (the District), which approved the resolution necessary to condemn the property, concluded that the project was exempt from CEQA review, pursuant to §15325 of the Guidelines, applicable to the acquisition of property for the purpose of open space protection and future public access. (*Id.* at 361). The District stated, " '[t]his project consists of the acquisition of land in order to protect open space and to secure future public access to [Eastshore Park] and the . . . Bay Trail. Any development of this property and land use changes would be subject to future CEQA review.'" (*Id.*)

Golden Gate filed a petition for writ of mandate asserting the District had violated CEQA in that the District erroneously issued a notice of exemption. The scope of the "project" was of primary importance in evaluating the propriety in issuing the notice of exemption. The District contended that the project amounted only to the acquisition of the property, not the ultimate construction of the Bay Trail. Thus, the District contended, the exemption applicable to such acquisition was proper. The District argued that it had not committed itself to a definite course of action to build the Bay Trail, and thus, CEQA review of the construction phase was not yet ripe.

Quoting the trial court, the First District Court of Appeal stated:

> On May 8, 2012, the trial court filed a statement of decision and order granting, in part, Golden Gate's petition for a writ of mandate. The trial court concluded: (1) that the District had approved a "project" including both the proposed acquisition and the proposed trail improvements; [and] (2) that the District's resolution erroneously concluded the project was exempt from CEQA compliance; . . .
>
> The court stated: "[T]he project is 'to acquire the real property' 'to help to complete the [Eastshore Park] and provide the opportunity to construct an important segment of the . . . Bay Trail.' . . . [¶] . . . [¶] . . . For CEQA purposes, the 'project' includes both the proposed acquisition and the proposed improvements, as addressing the two parts sequentially would be improper piecemealing of the project. The proposed improvements are sufficiently definite given that [the District] considered three options for a trail site . . . , selected one, has a design and price estimate for the improvements . . . , and is now initiating the condemnation proceeding. [¶] . . . [¶] . . . Having selected the location of the trail, obtained engineering and costs studies for the trail, and initiated a proposed real estate acquisition that worked for that trail plan but not the alternatives, the [District] committed itself to a definite course of action in regard to the CEQA project. As a result, the [District] was required to state a CEQA exemption or describe CEQA compliance in the Resolution." The court concluded that no exemptions applied because "the project properly defined includes the building of the trail, the construction of fences, retaining walls, and drains, the loss of 133 parking spaces, and changes to existing roads."

(*Golden Gate Land Holdings, supra* at p. 363.)

In the present action, the County has also committed to a definite course of action beyond the mere acquisition of the property. As noted above, the County has committed to termination of the property's use as a golf course, physical removal of the golf course landscaping, and increasing the stream flow, dedicating at least 20 AFY of water to the Larsen and San Geronimo Creeks. While these commitments are not as extensive as those described in the *Farm Bureau* or *Golden Gate Land Holdings* cases, the commitments nevertheless are deemed approvals that must be considered as part of the project. That is, the County has committed to a definite course of action that extends beyond the acquisition of the property.

As described by the Court in *Save Tara, supra*, under certain circumstances, the government's contractual commitments relating to a development plan amount to an "approval" of certain project elements that require CEQA review before such approval. The Court stated:

> *Stand Tall, supra,* 235 Cal.App.3d 772, 1 Cal.Rptr.2d 107, involved an agreement to purchase property, an activity that, as a practical matter in a competitive real estate market, may sometimes need to be initiated before completing CEQA analysis. The CEQA Guidelines accommodate this need by making an exception to the rule that agencies may not "make a decision to proceed with the use of a site for facilities which would require CEQA review" before conducting such review; the exception provides that "agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." (Cal.Code Regs., tit. 14,, § 15004, subd. (b)(2)(A).) The Guidelines' exception for land purchases is a reasonable interpretation of CEQA, but it should not swallow the general rule (reflected in the same regulation) that a development decision having potentially significant environmental effects must be *preceded,* not *followed,* by CEQA review. (See *Laurel Heights I, supra,* 47 Cal.3d at p. 394, 253 Cal.Rptr. 426, 764 P.2d 278 ["A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved"].)

(*Save Tara v. City of West Hollywood, supra,*45 Cal.4th 116, 134.)

The question raised by the above language is whether the County here has made a development decision, and committed to certain project features. Indeed the County made certain development decisions and the County is contractually obligated by way of their funding agreements to follow through with these development plans.

To the extent the County now agrees that there is a "project" under CEQA, the County's project description is still too narrow when considered as the "whole of the project." (MPA p. 8-10.) Based on the uncontradicted evidence and, as the Respondents have described the project at several places in the administrative record, the court determines that the "whole" of the project includes not only the acquisition of the golf course and club house, but also the interim use of the golf cart paths for pedestrian and bicycle use, the continued operation and maintenance of the clubhouse and restaurant for the golf course purposes, and, most importantly, the binding commitments to close the golf course, and increase the creek stream flow.

The above conclusion is further supported by the County's concessions found throughout the record. The record shows several instances where the project was considered more than a simple acquisition. For instance, in his letter to the Wildlife Conservation Board (WCB), David Sutton (Acting California State Director for TPL) writes the following project description in the title line, "Re: San Geronimo Valley Golf Course Acquisition *and Stream Flow Enhancement Project*." (Smith Decl. p. 225. italics added.) In the body of the letter, he writes, "[w]e believe that MCP's proposed Stream Flow Enhancement project is a rare opportunity to protect anadromous fish habitat – in a project that will yield many benefits for wildlife and the public." (*Id*.) Similarly, it its application for a grant from WCB, the County calls the project: San Geronimo Golf Course Acquisition and Stream Flow Project." (*Id*. at 229.) Seemingly, the County considered this as a *stream flow enhancement* project.

Accordingly, the court will examine the CEQA compliance, and application of any categorical exemptions, in the context of the above project description.

4. Environmental Review was Required Before the County Committed to Project Implementation and Development Plans.

The County did not engage in required CEQA analysis before approving the project. The County cannot delay environmental review under such circumstances where a detailed course of action has already been approved. While not included in a specific written approval, the County is deemed to have approved the project elements to which it has already agreed and has become

contractually obligated to develop (i.e., the closure of the golf course and the increased stream flow). On this subject, the *Save Tara* Court stated:

> we have emphasized the practical over the formal in deciding whether CEQA review can be postponed, insisting it be done early enough to serve, realistically, as a meaningful contribution to public decisions. (See *Fullerton, supra,* 32 Cal.3d at p. 797, 187 Cal.Rptr. 398, 654 P.2d 168 ["as a practical matter," school district succession plan was a project requiring review]; *No Oil, Inc., supra,* 13 Cal.3d at p. 77, fn. 5, 118 Cal.Rptr. 34, 529 P.2d 66 [" 'Statements must be written . . . early enough so that whatever information is contained can practically serve as an input into the decision making process' "]; see also *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1221, 66 Cal.Rptr.2d 102 [CEQA review should not be delayed to the point where it would "call for a burdensome reconsideration of decisions already made"].) The full consideration of environmental effects CEQA mandates must not be reduced " 'to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined.' " (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271, 126 Cal.Rptr.2d 615.)
>
> We note as well that postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA's goal of transparency in environmental decisionmaking. Besides informing the agency decision makers themselves, the EIR is intended "to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions." (*No Oil, Inc., supra,* 13 Cal.3d at p. 86, 118 Cal.Rptr. 34, 529 P.2d 66; accord, *Laurel Heights I, supra,* 47 Cal.3d at p. 392, 253 Cal.Rptr. 426, 764 P.2d 278.) When an agency reaches a binding, detailed agreement with a private developer and publicly commits resources and governmental prestige to that project, the agency's reservation of CEQA review until a later, final approval stage is unlikely to convince public observers that before committing itself to the project the agency fully considered the project's environmental consequences. Rather than a "document of accountability" (*Laurel Heights I,* at p. 392, 253 Cal.Rptr. 426, 764 P.2d 278), the EIR may appear, under these circumstances, a document of post hoc rationalization.

(*Save Tara ,supra* 45 Cal.4th 116, at p. 135-136.)

The *Save Tara* Court recognized the need to balance other considerations. For instance, the Court stated:

> [C]ities often reach purchase option agreements, memoranda of understanding, exclusive negotiating agreements, or other arrangements with potential developers, especially for projects on public land, before deciding on the specifics of a project. Such preliminary or tentative agreements may be needed in order for the project proponent to gather financial resources for environmental and technical studies, to seek needed grants or permits from other government agencies, or to test interest among prospective commercial tenants. While we express no opinion on whether any particular form of agreement, other than those

> involved in this case, constitutes project approval, we take the League's point that requiring agencies to engage in the often lengthy and expensive process of EIR preparation before reaching even preliminary agreements with developers could unnecessarily burden public and private planning. CEQA review was not intended to be only an afterthought to project approval, but neither was it intended to place unneeded obstacles in the path of project formulation and development.

Weighing these competing considerations, the Court cited *Citizens for Responsible Government v. City of Albany, supra,* 56 Cal.App.4th 1199 on the subject of whether an EIR must be prepared before a public agency executes a detailed agreement for development. The Court stated:

> In [*Citizens for Responsible Government*], the city council decided to place before the voters a proposal for development of a gaming facility at a racetrack; included in the proposal was an agreement with the private developer setting out details of the proposed facility and its operation. (*Id.* at p. 1206, 66 Cal.Rptr.2d 102.) Although the agreement called for the developer to submit any studies needed " 'to address any potential adverse environmental impact of the Project' " and provided that " '[a]ll reasonably feasible mitigation measures shall become conditions' " of the city's implementation agreement (*id.* at pp. 1219–1220, 66 Cal.Rptr.2d 102), the appellate court held the city council had approved the project, for CEQA purposes, by putting it on the ballot, and thus the agreed-to environmental analysis came too late: "[T]he appropriate time to introduce environmental considerations into the decision making process was during the negotiation of the development agreement. Decisions reflecting environmental considerations could most easily be made when other basic decisions were being made, that is, during the early stage of 'project conceptualization, design and planning.' Since the development site and the general dimensions of the project were known from the start, there was no problem in providing 'meaningful information for environmental assessment.' At this early stage, environmental review would be an integral part of the decisionmaking process. Any later environmental review might call for a burdensome reconsideration of decisions already made and would risk becoming the sort of '*post hoc* rationalization [ ] to support action already taken,' which our high court disapproved in [*Laurel Heights I*]." (*Citizens for Responsible Government,* at p. 1221, 66 Cal.Rptr.2d 102.)

Noting that *Citizens for Responsible Government* did not result in a general rule against the use of conditional agreements to postpone CEQA review, the court noted:

> The development agreement in *Citizens for Responsible Government,* once approved by the voters, vested the developer with the right to build and operate a card room within particular parameters set out in the agreement. The city had thus "contracted away its power to consider the full range of alternatives and mitigation measures required by CEQA" and had precluded consideration of a "no project" option. (*Citizens for Responsible Government, supra,* 56 Cal.App.4th at pp. 1221–1222, 66 Cal.Rptr.2d 102.) "Indeed, the purpose of a development agreement is to provide developers with an assurance that they can complete the project. After entering into the development agreement with [the

> developer], the City is not free to reconsider the wisdom of the project in light of environmental effects." (*Id.* at p. 1223, 66 Cal.Rptr.2d 102.)

The court added:

> [W]e apply the general principle that before conducting CEQA review, agencies must not "take any action" that significantly furthers a project "in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." (Cal.Code Regs., tit. 14, § 15004, subd. (b)(2)(B); accord, *McCloud, supra,* 147 Cal.App.4th at p. 196, 54 Cal.Rptr.3d 1 [agreement not project approval because, inter alia, it "did not restrict the District's discretion to consider any and all mitigation measures, including the 'no project' alternative"]; *Citizens for Responsible Government, supra,* 56 Cal.App.4th at p. 1221, 66 Cal.Rptr.2d 102 [development agreement was project approval because it limited city's power "to consider the full range of alternatives and mitigation measures required by CEQA"].)
>
> In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See Cal.Code Regs, tit. 14, § 15126.6, subd. (e).)

The Court finally summarized the proper analysis as follows:

> A frequently cited treatise on CEQA (Remy et al., Guide to the Cal. Environmental Quality Act (CEQA) (11th ed.2006)) summarizes this approach in a useful manner. "First, the analysis should consider whether, in taking the challenged action, the agency indicated that it would perform environmental review before it makes any further commitment to the project, and if so, whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review. Second, the analysis should consider the extent to which the record shows that the agency or its staff have committed significant resources to shaping the project. If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has 'approved' the project." (*Id.* at p. 71.) As this passage suggests, we look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development constitutes a "decision . . . which commits the agency to a definite course of action in regard to a project." (Cal.Code Regs., tit. 14, § 15352.)

While the agreements at issue here are not "development agreements," they have the same effect. Here, the County has contractually obligated itself to certain project "features" that seemingly preclude alternatives, or mitigation measures that CEQA would otherwise require to be considered. Under the guidance of the *Save Tara* Court, this court considers whether the County

took "any action" that significantly furthers the project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project, including the no project alternative.

Examining the project as a whole, the court concludes that the improvement and restoration plan is sufficiently definite to have required CEQA analysis before the approval (i.e., entering into the purchase agreement). Accordingly, the County abused its discretion by a failing to engage in CEQA analysis prior to approval of the project.

a. Increased Stream Flow

The most evident development commitment is the County's agreement to increase the stream flow. The court finds that the County's commitment to increasing Larsen Creek stream flow constitutes action that significantly furthers the project in a manner that forecloses alternatives or mitigation measures. Pursuant to its obligations to funding sources, the County is required to increase the stream flow in Larsen Creek as part of the project. This change in stream flow undoubtedly results in a change in the environment, the effects of which have not been reviewed. While logic might suggest that such change would have positive effects upon the environment, the court is not permitted to so conclude, and to effectively exempt CEQA review based upon such supposition. As a point of comparison, had the County committed to a project necessarily diverting water from the creek, and decreasing stream flow, CEQA review clearly would be required and no reasonable argument to the contrary could be made. The increase in stream flow cannot be analyzed by this court any differently. Whether that change will have a significant negative environmental impact would be the subject of expert analysis, not this court's view. Further, even if the end result of increased stream flow would necessarily benefit the environment, the process in reaching that end result may itself have significant environmental effects. On this subject, the *Farm Bureau* court stated:

> Here the administrative record reflects the State Agencies consistently took the position the loss of agricultural land was not itself an adverse environmental impact, but the State Agencies do not point us to any evidence in the record showing they considered the potential environmental impacts from the management plan and the construction and maintenance of this new habitat. "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra,* 54 Cal.App.4th at p. 119, 62 Cal.Rptr.2d 612; see, e.g., *Dunn–*

> *Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 11 Cal.Rptr.2d 850, disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th 559, 570, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) There may be environmental costs to an environmentally beneficial project, which must be considered and assessed. The State Agencies have not adequately shown there is "no possibility" this project, considered as a whole (Guidelines, § 15378, subd. (a)), may cause significant environmental impacts. Therefore, we do not need to reach the issue of whether a change in use of land from agriculture to habitat will itself otherwise trigger CEQA.
>
> We conclude, despite the intended beneficial environmental purpose of this project, it is not categorically exempt from CEQA.

(*California Farm Bureau Federation, supra*, at p. 196.)

Here, had the County simply purchased the property with a generalized vision of restoration, without a commitment to certain project features, it may have been entitled to the acquisition-related exemption it claimed. However, in light of the above authorities, it is evident that the County did more than purchase property with a generalized vision. Instead, it committed to certain project aspects, including increasing the stream flow by a precise minimal amount and closing the golf course and removing or replacing the golf course landscaping. This commitment excludes mitigation alternatives that may otherwise be subject to consideration. The County conceded that it would be required to conduct further CEQA review before proceeding with development or restoration efforts. However, under the current circumstances, the County will not be able to consider mitigation measures that are inconsistent with the above-described commitments the County has made to its funding sources.

To the extent the County argued that all mitigation measures remain possible, and that the County would simply find additional funding sources if they are compelled to breach their agreement based upon suggested mitigation measures, the court is not so persuaded. The County admittedly bound itself to certain project features, and has approved them. The County cannot effectively argue that it could simply breach its contract if mitigation measures require as much.

b. Termination of the use as a golf course

The County's plan to terminate the use of the property as a golf course and convert the course into a natural habitat also has been pre-determined. This termination includes more than a

simple passive end in use. Just as in *California Farm Bureau*, *supra*, (wherein the state agencies intended to convert agricultural land to a wildlife habitat), even accepting that such conversion has an intended beneficial environmental purpose, CEQA review is required. The environmental effect of such conversion has not been considered by the County, yet the County has committed itself, at a minimum, to land restoration, vegetation changes, and stream flow changes. In addition to its contractual commitments, the County has engaged in a budgeting process that includes details of the impending golf course termination. In an email entitled "Note: re restoration cost" Sharon Farrell (Parks Department) wrote to Max Korten (County of Marin):

> I've been thinking more about the project we discussed and the proposed cost. The more I thought about it, the cost seems lower than I would anticipate. Not knowing how the estimate is constructed, I am wondering if it includes the following (Note: these are back of the envelope estimates based upon not knowing the specifics about the site):
>
> Seed collection, plant propagation. If you assume that 70% of the area will be revegetated (converted from golf course green) on an average of 3-foot centers at a plant cost of $6 . . . it comes out to $2-2.5M
>
> Planting: . . . would be another $750K
> . . .
>
> Green waste removal – assuming worst case scenario that you remove and have to haul off the top 6 inches of turf for 70% of the site would mean off-hauling approximately 56K cuyds of greenwaste. . .
> . . .
>
> Creek channel enhancement (not sure if you need to regrade, dewater, add gravel to bed, remove infrastructure, stabilize banks, etc.) but imagine that cost may be close to $1M
>
> Grading to produce more natural topography -???
>
> Enhancement to path tread. . .
>
> Environmental clean-up if any required due to past use.

(Smith Declaration, pp. 206-207.)

The budget analysis not only suggests that the project extends beyond the mere acquisition, it also underscores the conclusion that the project implementation will have environmental effects for which mitigation measures are already precluded. Thus, notwithstanding the intended end-result is

intended to benefit the environment, CEQA review was required. The County abused its discretion by failing to engage in such analysis.

5. The Cited Categorical Exemptions do not Apply to the Project as Properly Defined

The court now turns to Petitioners' claim that the activities the County proposes to be conducted on the property are not covered by the cited categorical exemptions. (MPA p. 10) It is undisputed that CEQA does not apply to projects that are statutorily or categorically exempt. (Guideline, § 15061, subd. (b).)

Certain classes of projects are categorically exempt because the Secretary of California's Natural Resources Agency "has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument might be made that they are potentially significant." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104 –1105; Pub. Resources Code, § 21084, subd. (a); Guidelines, § 15300.) Of the 33 classes of Categorical Exemptions contained in the Guidelines, the County relies on: (1) the Class 1 exemption – § 15301 "Existing Facilities," exempting the acquisition of the clubhouse parcel; and (2) the Class 25 exemption – § 15325 "Transfers Of Ownership Of Interest In Land To Preserve Existing Natural Conditions And Historical Resources," exempting the purchase of the golf course parcels property for public park/open space uses and habitat restoration. (Oppo. pp. 10, 20.)

In examining the claimed exemptions, the court "must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency's factual finding that the project falls within the exemption. [Citations.] The lead agency has the burden to demonstrate such substantial evidence." (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185.)

"Under CEQA, 'substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact' and 'is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.' (Pub. Resources

Code, § 21080, subd. (e).)" (*Aptos Residents Association v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1046–1047.)

A party challenging the exemption has the burden of producing evidence supporting an exception listed in Guidelines section 15300.2. (*Berkeley Hillside Preservation, supra,* 60 Cal.4th at p. 1105; *California Farm Bureau, supra,* 143 Cal.App.4th at p. 186.) Guidelines §15300.2 (c) provides: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to *unusual circumstances*." (Emphasis added.)

The court reviews the agency's finding that there exist no "unusual circumstances" when compared to projects typical of the exempt class, under the traditional substantial evidence standard of review. (*Berkeley Hillside Preservation, supra,* 60 Cal.4th at pp. 1114-1115.) In determining the substantial evidence issue, the agency acts as a trier of fact and this court, "after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to support it. [Citations.]." (*Id*. at pp. 1114-1115.) But when unusual circumstances are found to exist, the court reviews the agency's finding of no significant environmental effects under the "fair argument" standard pursuant to §15064(f)(1) – was the lead agency presented with substantial evidence to support "a fair argument that a project may have a significant effect on the environment" (*Berkeley Hillside Preservation, supra,* 60 Cal.4th at pp. 1115-1116.)

"A determination by the agency that a project is categorically exempt constitutes an implied finding that none of the exceptions applies. [Citations.]" (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 689.)

a. Class 25 Exemption

The County contends that Guidelines § 15325 subdivisions (a), (c), and (f) apply to the purchase of the golf course parcels. (Oppo. p. 10.) Section 15325 reads in relevant part:

> Class 25 consists of the transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

(a) Acquisition, sale, or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats. [¶]

(b) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats. [¶] . . .

(f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

Interpreting the terms "natural conditions," "open space," "habitats," "restoration," and "park" in their plain language (*San Lorenzo Valley, supra,* 139 Cal.App.4th at p. 1387), the court previously concluded (in its prior tentative decision) that substantial evidence supported the County's determination that its acquisition of the golf course property for public recreational uses and for repair and preservation of the wildlife and fish habitats, was exempt from CEQA analysis pursuant to the Class 25 exemption. In that prior decision, the court considered the Class 25 exemption too broadly. As Petitioners persuasively argued, (and as the decision in *California Farm Bureau, supra,* makes clear) the Class 25 exemption is limited to projects that include *only* the acquisition of property. Since this court has determined that the project here, taken as a whole, includes important features of the development implementation, the Class 25 exemption is inapplicable on its face. As stated by the court in *California Farm Bureau,* the exemption does not cover a project with a management plan or development component requiring significant construction. The Class 25 exemption does not apply to this project that includes more than mere acquisition.

b. Class 1 Exemption

The County applied the Class 1 exemption to the clubhouse portion of the property only. The court finds substantial evidence to support the County's claim that the interim use of the clubhouse falls within the exemption for "Existing Facilities" in Guidelines § 15301. (Oppo. p. 11.) That exemption reads in part:

> Class 1 consists of the ***operation***, ***repair***, ***maintenance***, permitting, leasing, licensing, or ***minor alteration of existing public or private structures, facilities***, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all inclusive of the types of projects which might fall within Class 1. ***The key consideration is whether the project involves negligible or no expansion of an existing use***.

(Emphasis added.)

Here, the County's agreed-upon and reasonably foreseeable planned activities relating to the clubhouse portion fall within the Class 1 exemption. The fact the County will ultimately change the use of this facility does not preclude the application of the Class 1 exemption. The County's only stated commitment for this parcel is to maintain its current use. The County has not precluded mitigation measures that may apply to future uses. For purposes of this motion for preliminary injunction, the court finds substantial evidence to support this categorical exemption.

Of course the fact the County has established the applicability of the Class 1 exemption to the clubhouse portion of the property has no bearing on the final result. The County must establish that the entire project is exempt. Since the County has not done that, the applicability of the Class 1 exemption to the clubhouse portion of the property is immaterial.

6. The Project Does not Conflict with Planning and Zoning Laws

For sake of completeness, the court examines the additional argument raised by Petitioners, that the project is impermissible and must undergo CEQA analysis because the project conflicts with the County's General Plan. Petitioners claim that the County's acquisition of the property and planned termination of its use as a golf course are inconsistent with the permitted uses of the property as provided by the Countywide Plan, the San Geronimo Valley Community Plan, and the zoning for the property. Petitioners claim further that the County ignored the legally-mandated procedures for adopting a different use. (MPA p. 7-8.) These claims are contained in the allegations in the First and Second causes of action alleging failure to proceed as required by CEQA, and in the Ninth and Tenth causes of action alleging non-CEQA prejudicial abuse of discretion. (Code Civ. Proc., §§ 1094.5, 1085.)

First, with regard to the assertion that the project is inconsistent with the property's zoning, the court disagrees. Petitioners note that the property has an "RC- Commercial Recreation" land use designation in the Marin Countywide Plan, and is zoned RCR (Resort and Commercial Recreation) in the zoning ordinance. (Marin County Development Code for Commercial/Mixed Use and Industrial Districts, Chapter 22.12.)

The Marin Countywide Plan provides:

> The Recreational Commercial land use category is established for resorts, lodging facilities, restaurants, and privately owned recreational facilities, such as golf courses and recreational boat marinas. Housing for employees for very low and low-income households may also be permitted.

The zoning ordinance, Chapter 22.12.020 H provides:

> RCR (Resort and Commercial Recreation) District. The RCR zoning district is intended to create and protect resort facilities in pleasing and harmonious surroundings with emphasis on public access to recreational areas within and adjacent to developed areas. The RCR zoning district is consistent with the Recreational Commercial land use category of the Marin Countywide Plan.

Here, the intended restoration, rehabilitation, and use of the property as a public park, is consistent with the RCR zoning designation. The uses allowed under the RCR zoning district include "golf courses and country clubs" as well as "public parks and playgrounds." (Chapter 22.12.030, Table 2-7.) (Smith decl. p. 50.) As such, the County's avowed use of the property for parks and open space does not violate the zoning ordinance, and does not create a zoning amendment inconsistent with the Marin Countywide Plan or the local Community Plan. Accordingly, Petitioners' argument that the project is inconsistent with the property zoning fails.

Petitioners next argue that the purchase and intended use of the property run afoul of the Community Plan (and thus, General Plan), triggering CEQA review as well as constituting direct abuse of discretion by the board. Petitioners allege, without contradiction, that the San Geronimo Valley Community Plan is part of the Marin Countywide Plan (MPA p. 1, n. 3), and the San Geronimo Valley Community Plan declares the San Geronimo Golf Course to be an important recreational resource that should be retained. The Community Plan provides

> The golf course is 157 acres of developed recreational land including clubhouse and restaurant facilities. The course represents an important visual and recreational resource in the Valley. *The golf course use should be retained with no major expansion of the facilities. Future uses should be limited to those which support the primary use as a golf course*.

(San Geronimo Valley Community Plan; Smith decl. p. 62, emphasis added.)

In relevant part, the San Geronimo Valley Community Plan contains Objective CD-7.0 – "To Maintain Existing Recreational Facilities, and Provide Recreational Opportunities for All Residents in the Valley." As applied to the golf course, this goal's implementing policy, CD – 7.3, reads:

> Major changes in the use of the San Geronimo Golf Course ***should be evaluated by a master plan*** which could address traffic and other impacts as well as the rural character of the Valley.

(Smith decl. p. 65-66, emphasis added.)

Petitioners argue that County unlawfully changed (or committed to change) the property's use without preparing a Master Plan as required by the San Geronimo Valley Community Plan. Petitioners also argue that the planned elimination of the golf course unlawfully and directly conflicts with the above-stated limitations addressed in the Community Plan.

Petitioners rely on the general rule that the County's general plan is the "constitution for all future development" and that any subordinate land use decision that is not consistent with the general plan is "invalid at the time it is passed." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.) Making reasoned arguments, but providing no case authority directly on point, Petitioners fervently argued that the County absolutely is required to comply with its own General Plan. Conversely, Respondent suggested that while the County is required to comply with its own General Plan when permitting private party projects, it is not required to comply with its General Plan when approving its own activities on publicly held land. Respondents cite only *Sunny Slope Water Co. v. City of Pasadena* (1934) 1 Cal.2d 87, 98 [city is not bound by its own zoning ordinance] for this proposition.

In other contexts, a county is exempt from complying with a city's local ordinances. (See *Lawler v. City of Redding* (1992) 7 Cal.App.4th 778, 783-784 [cities and counties are exempt from complying with each other's building and zoning regulations]; accord. *Los Angeles County v. City of Los Angeles* (1963) 212 Cal.App.2d 160, 165 [the county is not bound to comply with certain ordinances of the city in the course of its activities within the City's territorial limits]. Considering the above-cited authorities, and the reasoned arguments of counsel, the court is persuaded that the County must indeed comply with its own General Plan. The rationale in *SunnySlope* cannot reasonable extend

to a rule exempting a county from its own General Plan. As noted, the General Plan is the constitution for "all" future development. To allow a County to engage (itself) in property development activities on public land county-wide, without any required consistency with the General Plan applicable to all other development, would be senseless. The court finds no reason to distinguish between the County's approval of private development and the County's own development in the application of the County's own General Plan. Thus, the County was required to comply with its own General Plan in making the development decisions it made here.

The court finds, however, that the instant project is not inconsistent with its General Plan. Taken as a whole, the language from the Community Plan that the golf course use "should" be retained with no major expansion of the facilities, does not prohibit any and all other uses. Similarly the language that future uses "should" be limited to those which support the primary use as a golf course is not mandatory. The County could have used the word "shall" or "must" but did not. A reasonable interpretation of the cited language in the context of the Community Plan and zoning ordinances suggests that the County was more concerned about expanding the commercialization of the parcel, and that the language was meant to limit such expansion. Fairly interpreted, the General Plan and Community Plan do not prohibit termination of the golf course under the present circumstances.

More important than the court's interpretation of the above language is the County's interpretation of its own General Plan. The County interpreted the General Plan to permit the instant purchase and restoration plan. The County must be given deference as to such interpretation. The court in *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 142 stated,:

> When we review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021, 162 Cal.Rptr. 224.) Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 29 Cal.Rptr.2d 182; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 407, 200 Cal.Rptr. 237.) A reviewing court's role "is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project

conforms with those policies." (*Sequoyah Hills Homeowners Assn. v. City of Oakland, supra,* 23 Cal.App.4th at p. 720, 29 Cal.Rptr.2d 182.)

Here, as noted, the County has interpreted its General Plan to permit the restoration and rehabilitation of this property as detailed in its purchase agreement and funding commitments. Based upon that reasonable interpretation, the court concludes that the County's actions do not conflict with its General Plan.

Additionally, the local plan's policy any change of use "should be evaluated by a master plan" also is not mandatory. The County's interpretation of its plan, again, is given deference.

Accordingly, Petitioners are not likely to prevail on its Planning and Zoning violation claims.

B. THE BALANCE OF HARDSHIPS WEIGHS IN PETITIONERS' FAVOR

As noted above, in deciding whether to grant a preliminary injunction, the court considers two factors: (1) – has Petitioner shown a reasonable probability they are likely to prevail on the merits at trial; and (2) – does the interim harm Petitioners will suffer from not issuing the injunction outweigh the harm Respondent will suffer if the injunction issues. (*14859 Moorpark Homeowner's Ass'n v. VRT Corp., supra,*63 Cal.App.4th 1396, 1402.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. [Citation.]" (*14859 Moorpark Homeowner's Ass'n, supra,* 63 Cal.App.4th at p. 1402.)

As discussed above, the court finds that Petitioners are likely to prevail on their claim that the County failed to engage in required CEQA analysis before committed to the "project" as defined above. The claimed categorical exemptions do not save the County from such failure. Having found a likelihood of success, the court must balance the hardships.

Here, the court finds that the hardship that will befall Petitioners if not granted the requested injunctive relief would be substantial. Should the County be entitled to proceed with the purchase of the property, the instant petitioner will be rendered effectively moot. Even if ultimately successful on the merits of the petition, Petitioners will be left with no remedy, if the sale will be complete and

prior to decision on the petition. Although escrow is scheduled to close no later than the end of December 2018, it seemingly can close at any time.

Alternatively, the hardship facing the County is negligible. As noted, escrow is scheduled to close between now and the end of December, 2018. The County has expressed no hardship that would result by their closing escrow near the end of that window. The court has every expectation to have hearing on the instant petition in the fall. The parties have effectively prepared their ultimate legal briefs in connection with the instant motion and should be prepared to accept a briefing schedule that allows the matter to conclude at such time.

Accordingly, in balancing the hardships, the court finds that injunctive relief is proper.

V. CONCLUSION

Considering the scope of the project as defined above, the court finds Petitioners are reasonably likely to prevail on the merits of their claims that Respondent failed to comply with CEQA in approving the purchase of the San Geronimo property. Petitioners are likely to suffer irreparable harm if injunctive relief is not granted. Accordingly, the Motion for Preliminary Injunction is granted.

VI. ORDER

It is hereby ordered:

Respondents County of Marin and Board of Supervisors of the County of Marin, and Real Party in Interest Trust for Public Land, and those acting on their behalf, are prohibited from taking any action in reliance on Board Resolution 2017-126, including, without limitation, expending taxpayer monies to or otherwise closing escrow on the County's purchase of the San Geronimo Golf Course property until further order of this court.

Dated June 27, 2018

_____

PAUL M. HAAKENSON
Judge of the Superior Court