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Attorney for: Sebastopol Tomorrow

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SONOMA

Sebastopol Tomorrow, Petitioner/Plaintiff	)))	Case No. SCV
v.	)))	
City of Sebastopol City Council, Respondent	)))	<b>VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND ATTORNEYS FEES AND LITIGATION COSTS</b>
And Armstrong Development Properties, Inc., Pete Pellini, Real Parties in Interest, and	)))	Judge: Dept. Date:
Does 1 through 10		

By this verified petition, Petitioners allege as follows:

**SUMMARY OF PETITION AND RELIEF SOUGHT**

Petitioner/plaintiff Sebastopol Tomorrow brings this action to protect the environment from inappropriate development, to ensure proper implementation of the rules and laws governing development at the local and state level. Petitioner respectfully petitions this court for a writ of mandate pursuant to California Code of Civil Procedure (“CCP”) section 1085 and 1094.5 setting aside the adoption by respondents/defendants City Council of Sebastopol of the Permit 2010-008 a.k.a. CVS-Chase Project, Alcohol Use permit, and Initiation of Barnes Road Abandonment, due to its failure to comply with the California Environmental Quality Act (“CEQA”) Public Resources Code (“PRC”) section 21000 *et seq.* Contrary to CEQA, respondent abused its discretion by failing

to proceed in a manner required by law when it approved a mitigated negative declaration for the project and by failing to base the approval upon substantial evidence in the record. (PRC 21168.5).

### **PARTIES**

Petitioner/plaintiff, Sebastopol Tomorrow is an unincorporated association of individuals committed to the sustainable development of the City of Sebastopol and its surrounds, to environmental protection, and to proper implementation of the rules and laws governing development in Sebastopol, Sonoma County, and California. To this end members of Sebastopol Tomorrow participated in a volunteer capacity for many months in the development of the City of Sebastopol's General Plan, attended public hearings on the CVS-Chase Project, and testified and submitted written comments on the same.

Respondent City of Sebastopol City Council is the governing body and California public agency charged by law with serving as the lead agency under CEQA for approval of the mitigated negative declaration for the CVS-Chase project. The respondent is charged by law with the responsibility for administering and assuring compliance with the requirements of CEQA.

Real party in interest Armstrong Development Properties, Inc. is the applicant and project proponent and is a Pennsylvania corporation active in California and on record with the California Secretary of State. Real party in interest Pete Pellini is the owner of the property that is the subject of the proposed development.

### **JURISDICTION AND VENUE**

This court has jurisdiction of this proceeding pursuant to CCP sections 1085 and 1094.5, Public Resources Code 21168 and 21168.5, and Article VI, Section 10 of the California Constitution.

Venue is proper in this court pursuant to CCP sections 393, 394, and 395.

This petition is timely filed within 30 days of the local government Respondent's filing of the Notice of Determination with the County clerk's office in accordance with the California Public Resources Code.

### **FACTUAL BACKGROUND**

The "project" as approved by the respondent involves the demolition of a car dealership located on a very congested intersection in the middle of town, the abandonment of a city roadway, the approval of an alcohol permit, construction of a chain pharmacy and retail store with drive through convenience, construction of a separate international bank branch, with drive through convenience, and large parking lots. On April 12, 2011, the City released a Notice of Intent to Adopt a Mitigated Negative Declaration ("MND") for the CVS-Chase project. The Notice of

Determination was dated July 7, 2011. The project is the subject of concern for many city residents that currently experience many delays traversing the city due to traffic congestion. The main arteries on which residents must drive intersect at the proposed new location for the CVS pharmacy and the new Chase bank. The current location of the CVS is to be abandoned by CVS, requiring customers that currently patronize the CVS from the outer skirts of the city to the north, drive into the highly congested downtown area to shop.

The chain pharmacy and retail store is currently located approximately a mile away servicing city residents and out-of-city residents at the north end of town. It is currently in a medium sized shopping center with adequate parking and other services including a grocery store, auto parts, and restaurants. The current location of this pharmacy and retail store is not only consistent with the cities General Plan goals, it contributes to a lessening of the congestion in the middle of town. Demolishing and abandoning buildings, abandoning a much needed roadway, and constructing a new CVS and bank with drive through conveniences at this highly congested corner of the city clearly may have significant adverse environmental effects requiring a full environmental impact report.

### **FIRST CAUSE OF ACTION**

#### **(Writ of Mandate to Set Aside Approval of CVS-Chase Project as Contrary to California Environmental Quality Act and Declaratory and Injunctive Relief to Declare Unlawful Permit 2010-008 (CVS Chase Project and Restrain Respondent and Real Parties in Interest)**

The paragraphs set forth above are realleged and incorporated herein by reference.

Approval of a mitigated negative declaration under CEQA can only occur if there is no substantial evidence in light of the whole record that the project as proposed may pose a significant adverse environmental affect on the environment. (PRC 21157.5(b)). Evidence includes reasonable presumptions predicated upon fact. The approval of the CVS-Chase Project mitigated negative declaration, as opposed to an environmental impact report, by the respondent occurred in violation of CEQA insofar as the public did make a fair argument based upon substantial evidence that the project might have a significant adverse environmental impact. If substantial evidence supports the existence of a fair argument, an EIR must be prepared, even if the record contains substantial evidence to the contrary. (Guidelines, § 15064, subd. (f)(1); *Pocket Protectors v. City of Sacramento* (2005) 124 Cal.App.4<sup>th</sup> 903, 930-931; *League for Protection of Oakland's Architectural Resources, supra*, 52 Cal.App.4<sup>th</sup> at pp. 904-905.) In addition, if a fair argument is

made, “it cannot be overcome by substantial evidence to the contrary.” (Guidelines, § 15063, subd. (b)(1); accord Pub. Res. Code, § 21100, subd. (a); § 15002, subd. (f)(1), (2); *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4<sup>th</sup> 1544.)

A. The respondent violated CEQA by approving the MND for the project in light of substantial evidence that the project might have significant adverse environmental impacts. The respondent improperly ignored evidence of impacts including increased traffic congestion in the middle of downtown Sebastopol posed by the project. The public, specifically Scot Stegman, a highly respected CEQA consultant, provided studies and referenced the respondent’s own records on the poor level of service in this section of town during the weekdays and on weekends.

In addition, Stegman explained that the City’s acceptance of a traffic analysis that supports the project to the exclusion of an analysis that might harm project approval was improper. The reports and studies demonstrate that the pressure on city streets to provide proper level of service conditions is already great. The studies describe, for example, the demands of a large long-planned subdivision that will add many vehicle trips per day to the only thoroughfare available to its residents - the state Highway 12 and Highway 116 intersection targeted by the project proponents. A proper evaluation of the impacts of the subdivision proposed in the affected area of the CVS-Chase project were left out of the analysis of the CVS-Chase project review. In addition, the respondent relied upon an unapproved project (Northeast Area Plan) traffic analysis to determine that the current project would not be as bad as the CVS-Chase project. Not only is such a comparison irrelevant, it only highlights the improper nature of the review of the CVS-Chase project impacts on the proper baseline conditions.

The studies in the record and referenced by the public show that traffic is a serious issue and that substituting a full-service-CVS pharmacy/retail store and bank, with associated drive up automatic teller and sales services, for a business that currently receives very light traffic might have significant adverse impacts. Studies in the record indicate that there will be increased traffic congestion, increased idling of vehicles resulting in increased emissions from cars waiting at the numerous traffic lights and turn signals, and increased noise, among other significant impacts. Because the public made a fair argument based upon substantial evidence that impacts may occur as a result of the project, the approval of a mitigated negative declaration was improper.

B. The respondent violated CEQA by approving the MND for the project in light of evidence that the project might have adverse cumulative environmental impacts. The baseline condition, needed

in order to compare the environmental conditions before the project and subsequent to project construction, set by the respondent is highly improper and severely undermines the conclusions of the impacts analysis. The courts have held that hypothetical future conditions, as relied upon by the respondent, as a baseline are disallowed. The evidence in the record shows that the properly defined baseline conditions with respect to traffic, noise, and other issues at the time of the Notice of Preparation, are currently much better than those conditions will be after project construction. That is to say, the project will have significant adverse impacts.

In addition, the scope of the cumulative impacts analysis improperly limited the impacts and evidence the City evaluated. Evidence in the record, however demonstrates that the scope was improper and did not consider past, present, and reasonably foreseeable impacts from projects within the affected area. The reasonably foreseeable impacts of the Laguna Vista and Barlow Projects – both pending and in close proximity to the CVS-Chase project, were improperly removed from the analysis of cumulative impacts. The absence of a cumulative impacts analysis with a proper geographic and temporal scope is an abuse of discretion in violation of CEQA.

C. The respondent violated CEQA by approving the MND for the project in light of evidence that the project might have adverse direct and indirect environmental impacts. The abandonment of the CVS store in the northern section of town has not been evaluated. The record shows that the building in which the CVS is now located will likely be vacant for an indefinite amount of time and this could have adverse economic impacts on the area that will lead to adverse environmental impacts. The other businesses in the same shopping center may experience less patronage due to the relocation of a corporation with an aggressive business model similar to that of Walmart. Blight may occur, especially in this poor economic climate when attracting business and running a business are very difficult to accomplish when a CVS chain store is permitted to take its business elsewhere without proper consideration. The impacts of relocating and perhaps undermining a shopping center (Redwood Shopping Center) by removing an anchor business has not been adequately addressed and may result in significant adverse impacts.

D. The respondent violated CEQA by approving the MND for the project in despite substantial evidence that the project might have significant adverse environmental impacts on climate change and that climate change may affect the project causing flooding damage and environmental damage.

Substantial evidence in the record including the applicant's own studies, demonstrate that

traffic delays will increase green house gas emissions. The project states that bike lanes will not be possible due to existing conditions, and although suggested, no bus lane was built into the project design, and more vehicle trips will, therefore, result. The impacts on green house gas problems may be significant. The failure of the respondent to properly consider the substantial evidence in the record that shows there may be a significant increase in green house gas emissions as a result of the project is a violation of CEQA.

With respect to flooding impacts, the well known Bay Institute studies referred to in public comment show that flooding will increase as a result of climate change. The respondent did not properly consider this information and rather chose to defer dealing with the flood issue until a time uncertain. Deferral of the analysis and mitigation is improper and constitutes a failure to proceed in a manner required by law. In addition, the studies show that current flood zones will change significantly due to climate change and flooding will cause direct and indirect adverse impacts.

Proper consideration of the evidence dictates that a full environmental impact is required.

E. The respondent violated CEQA by failing to prevent or minimize environmental damage through findings as required by CCR 15091 and 15093. A statement made pursuant to Section 15093 does not substitute for the findings required by that section. The decision makers were not provided by the Planning Commission, nor did it publish specific findings of its own, to support its decision. Approval of the mitigated negative declaration despite this error in process was improper. It is not sufficient to satisfy CEQA's findings requirement by making conclusory statements or by merely reiterating the language of a local rule or of a statutory requirement.

### **RELIEF REQUESTED**

WHEREFORE, petitioner prays for judgment and further relief as follows:

1. For a peremptory writ of mandate directing the respondent to vacate and set aside its approval of the mitigated negative declaration for the CVS-Chase Project;
2. In the alternative, a peremptory writ of mandate directing the respondent to remand their decision back to the planning commission until the project receives proper CEQA review;
3. For declaratory relief declaring the approval of the MND unlawful, and for interlocutory and permanent injunctive relief restraining the respondent and real parties in Interest from implementing the project until a hearing and ruling on this matter;
4. For a ward to petitioners of their attorneys' fees and costs of suit (including all necessary and reasonable litigation costs) as authorized by CCP 1021.5, 1032, and

1033.5; and

5. For such other equitable relief as the Court deems appropriate.

Dated: August 8, 2011

Respectfully submitted,

KIMBERLY BURR  
*Attorney for Petitioner and Plaintiff*  
*Sebastopol Tomorrow*