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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

FRIENDS OF NORTHWEST SEBASTOPOL, a California nonprofit mutual benefit corporation ,

Petitioner,

v.

CITY OF SEBASTOPOL, acting by and through the Sebastopol City Council,

Respondent,

SONOMA APPLIED VILLAGES SERVICES, a California nonprofit mutual benefit corporation; and ST. VINCENT DE PAUL DISTRICT COUNCIL OF SONOMA COUNTY, INCORPORATED, a California nonprofit mutual benefit corporation,

Real Parties in Interest.

Case No. SCV270053

CITY OF SEBASTOPOL'S OPPOSITION TO PETITIONER'S EX PARTE APPLICATION FOR AN ALTERNATIVE WRIT OF ADMINISTRATIVE MANDAMUS

Assigned for All Purposes to:
Hon. Arthur A. Wick, Dept. 17

Ex Parte Date:	February 1, 2022
Time:	
Judge:	Hon. Arthur A. Wick
Dept.:	17
Action Filed:	January 21, 2022
Trial Date:	None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes, Regulations, Rules, and Codes

California Rule of Court

Code of Civil Procedure

Public Resources Code

Zoning Code

I. INTRODUCTION

The City of Sebastopol, as with many jurisdictions in California, is facing a homelessness crisis. Homeless individuals, mostly living out of recreational vehicles (RV's) and other vehicles have established illegal and unregulated camps on the City's streets. The City is pursuing several strategies to attempt to alleviate this crisis. Fortunately, the City is not alone. Like-minded parties, such as real parties in interest Sonoma Applied Village Services ("SAVS") and St. Vincent De Paul are also looking for solutions. One of these solutions is SAVS' "Horizon Shine Village," ("Village") a homeless shelter run by SAVS on land owned by St. Vincent De Paul at 845 Gravenstein Highway ("the Site") within the City.

Under the City's Zoning Code, the Village is, as a homeless shelter, a permitted use within the Commercial General (CG) zoning district in which the Village is located. As a permitted use, no City approval was required for SAVS to establish the Village. Just like any other use designated as a permitted use by the City's Zoning Code, there is no application needed, no permit required, no public hearings held, no decision made by the Planning Commission or City Council, and no legal requirement to conduct environmental review under the California Environmental Quality Act ("CEQA"). This is true whether the use is a homeless shelter, a commercial beekeeping operation, an office building, or a community garden.

The City's involvement with the Village consists of a Memorandum of Understanding ("MOU") and an Agreement through which the City agreed to recognize the Village as a permitted use and to reimburse SAVS for SAVS's lease payments in exchange for SAVS' guarantees regarding how the Village would be operated. The City determined that the City's expenditure of funds to support the Village was a discretionary decision subject to CEQA, but that the decision was exempt from CEQA under a number of statutory and categorical exemptions. The City filed a Notice of Exemption ("NOE") with the County of Sonoma on December 8, 2021.

Petitioner Friends of Northwest Sebastopol ("FNS"), an organization purportedly of neighbors to the Village site, has filed a Verified Petition for Writ of Administrative Mandamus ("Petition") to close the Village and send the homeless persons who currently reside there, and those who will join them in the near future, back out onto the streets. FNS claims that the City

violated the City's Zoning Code and CEQA in approving a "land use permit" for the Village and seeks an alternative and peremptory writ of mandate to overturn that decision.

There are multiple fatal flaws, both procedural and substantive, with FNS's Petition and ex parte application. These flaws justify not only the denial of the alternative writ, but dismissal of the Petition. First, FNS has not complied with the procedural requirements for CEQA or for an ex parte application. Critically, Public Resources Code section 21167.7 requires FNS to furnish a copy of their pleadings to the Attorney General. According to that statute, "[n]o relief, temporary or permanent, shall be granted until a copy of the pleadings has been furnished to the Attorney General." FNS has not complied with this requirement and, thus, "no relief," including issuance of an alternative writ, can be granted. In addition, any application for ex parte relief must be accompanied by evidence showing "irreparable harm, immediate danger, or any other statutory basis for granting ex parte relief." FNS has not attempted to comply with this requirement. Moreover, despite providing notice of the ex parte hearing on January 27, 2022, FNS only sent the City the application for the alternative writ and the memorandum of points and authorities in support late in the afternoon of January 31, 2022, the day before the ex parte. This is contrary to the rule that the application be served " at the first reasonable opportunity." Any one of these reasons merits denial of FNS's ex parte application.

Second, the Petition is wholly without merit. The Petition challenges a "land use permit," sometimes described by FNS as a "RV encampment permit," that the City never approved. The City did not issue a "RV encampment permit," or any other permit, for the Village. Instead, the City (1) made an interpretation of its own legislation that the Village is a permitted use and (2) made a determination to enter into the MOU and Agreement with SAVS regarding the operation of the Village and the expenditure of funds for the Village. The Petition challenges neither of these actual decisions made by the City. Thus, the Court cannot grant FNS the relief it requests to issue an order to the City to set aside a decision the City never made, nor could the City comply with such a writ were it issued. The Court should, therefore, deny the Petition outright.

Third, to the extent the Court considers the merits of FNS's claims, it must do so on the basis of a complete and certified record of proceedings. FNS may be "content to proceed on the

basis of the partial record it has lodged" but the City would be prejudiced by review on a partial record, especially one as woefully incomplete as that submitted by FNS. Under the standard of review applicable to administrative mandamus claims such as those alleged here, the Court's review will examine whether the City's findings and determinations are supported by "substantial evidence in light of the whole record." The Court cannot conduct this inquiry unless the "whole record" is before the Court. As such, the Court should deny the ex parte, allow the City to prepare and certify the complete administrative record, and allow the parties to brief the merits of the Petition once the certified administrative record is complete.

Fourth, even on the partial "record" currently available to the Court, FNS's claims fail on the merits. Again, the Petition does not challenge any decision made by the City, only a fictitious "RV encampment permit" the City never granted. Even construing the Petition as challenging the City's actual decisions and determinations, FNS's claims must fail. FNS first claims that the City violated the City's Zoning Code by determining the Village qualifies as a "homeless shelter" under the Zoning Code. The City's interpretation of its own Zoning Code, however, is entitled to substantial deference, especially where the City's determination is the product of well thought-out, reasoned analysis by senior City officials. Here, the City's Planning Director, who is vested with the power of interpreting the Zoning Code on behalf of the City, examined the Village, the zoning applicable to the Site, and the other provisions of the Zoning Code. She included her analysis in a memorandum with her determination that the Village was a "homeless shelter," and therefore a permitted use under the Zoning Code. FNS's disagreement with that interpretation is insufficient to overturn the City's interpretation of its own legislation.

FNS's second cause of action, alleging that the City issued a permit for the Village without complying with the Zoning Code's procedural requirements for issuing a permit similarly fails because the City did not issue a permit, nor was the City required to do so. Likewise, FNS's third cause of action, that the City did not provide proper notice before issuing a permit, has no merit for the same reasons.

Finally, FNS's CEQA claim is barred by the statute of limitations. The City determined that the only discretionary decision made by the City, the decision to enter the MOU and

Agreement, was exempt from CEQA and filed the NOE on December 8, 2021. Under CEQA, the statute of limitations to challenge an agency's reliance on an exemption is 35 days. This means that any challenge needed to be filed by January 12, 2021. The Petition was not filed until, at the earliest, January 21, 2021. As such, the claim is time barred.

For all of these reasons, the Court should deny FNS's ex parte application and dismiss the Petition. In the alternative, the City requests that the Court deny FNS's ex parte application and allow the case to proceed with the benefit of a complete record.

II. FACTUAL BACKGROUND

The City has been dealing with a homelessness crisis for some time. (Partial Administrative Record, p. 5-7, Declaration of Lawrence McLaughlin, ¶¶ 2-3.)[1] One manifestation of the shelter crisis emergency is the prevalence of unregulated, unpermitted, and illegal camping by homeless persons in RVs and other vehicles, especially along Morris Street in the City. (*Id*.) This unpermitted and unregulated encampment is on "City-owned property" only insofar as Morris Street is a public right of way. (Memorandum of Points and Authorities in Support of Application for Alternative Writ ("MPA"), p. 8; .) The so-called "Morris Street Encampment" is, in reality, a collection of homeless individuals that have gathered on Morris Street; it is not a sanctioned or regulated homeless shelter. The unpermitted and unregulated encampment of homeless persons has resulted in significant impacts to the public including trash, waste, and noise and air pollution, among other issues.

The City Council has been actively looking for solutions. The Council formed an Ad Hoc Committee for the Unhoused ("Committee") to investigate potential means for addressing

[1] The City objects to FNS's Partial Administrative Record ("PAR"). The documents submitted by FNS contain no declaration as to authenticity or foundation for the documents FNS included in this collection. Nor, given the extraordinarily short time period the City has before responding the FNS's application, can the City verify the authenticity or completeness of these documents. Nevertheless, to the extent the Court considers the merits of the application, and for ease of the Court's reference, the City will cite to FNS's submitted "Partial Administrative Record" where appropriate. However, as is detailed below, the City further objects to the resolution of this case on a partial record and submits that the Court should only decide this case on the basis of a complete and certified record.

homelessness in the City. (See PAR, pp. 4-12.) Initially, the City considered hosting a temporary homeless shelter on one or more City-owned parking lots. (*Id*.) However, logistical and practical consideration made that option infeasible. (*Id*.) On October 27, 2021, at a City Council meeting, the Council directed the Committee to explore a proposal by SAVS to operate a temporary homeless shelter.

The Committee, in turn, asked the City's Planning Director to determine whether the Village would be allowed at the Site as a permitted use, or whether it would require the City to approve a permit. (Declaration of Kari Svanstrom, ¶¶ 3-4.) The City's Planning Director determined that the Village would qualify as a "homeless shelter" under the City's Zoning Code and was, therefore, a permitted use under the Site's General Commercial (GC) Zoning. (*Id*. at ¶¶ 4-5.) Ms. Svanstrom memorialized her determination in a memorandum dated November 18, 2021. (*Id*. at ¶ 5, Exh. 1.)

St. Vincent De Paul acquired the Site and proposed to allow SAVS to run a homeless shelter on the Site for up to one year. SAVS, in turn, obtained a grant that would provide funding for the operation of the Village for up to one year. (Declaration of Adrienne Lauby, ¶ 14.) The Village differs greatly from an unmanaged homeless camp. Residents are not only provided with porta potties and trash pick-up, but with the structure and support needed to put their lives back together. (*Id*. at ¶ 15.) Neighbors are offered a 24/7 phone number to call for problems. (*Id*. at ¶ 16.) The Village has an 8 foot high fence, a locked gate, a security presence and a curfew. (*Id*.) A Community Advisory Committee meets at least monthly to address any neighborhood complaints or problems. (*Id*.) Villagers are held accountable to Horizon Shine rules by their peers and the professional staff. (*Id*. at ¶ 17.) The rules include but are not limited to no drug dealing, no drug or alcohol use in public, no loitering at nearby businesses, no parking outside the village. (*Id*.) Significant or repeated rule violations will result in expulsion from the Village. (*Id*.) Villagers make a monthly work commitment. (*Id*.) The residents will be supported by four highly trained social service staff members, an over-night manager and a cadre of local volunteers. (*Id*. at ¶ 18.) SAVS does not offer services to those outside the village – therefore, there is no buildup of people loitering for meals or social services – it is a self-contained homeless village. (*Id*. at ¶ 19.)

Currently, five homeless people live at Horizon Shine Village. They live with a variety of serious illnesses, and they have been in danger of losing the trailers they live in due to registration problems. (*Id*. at ¶ 22.)

The Site owner, St. Vincent de Paul, has committed to allowing SAVS to lease the Site for one year to provide services for the homeless. However, SAVS grant does not allow for lease payments to be made from the grant funds. Thus, in order to allow the Village to move forward, the City considered and approved the MOU with SAVS on November 30, 2021 and an Agreement with SAVS on December 8, 2021. Together, through the MOU and the Agreement, the City agreed to recognize the Village as a permitted use and to provide reimbursement for any lease payments up to $5000 per month and SAVS agreed to certain operation requirements for the Village. Also on December 8, 2021, the City filed a Notice of Exemption with the County of Sonoma regarding the City's decision to approve the MOU and the Agreement. (*See* Svanstrom Dec., Exhibit 2).

On January 21, 2022, the City's understanding is that this lawsuit was filed. A process server delivered by through the mail slot at City hall copies of the Verified Petition for Writ of Administrative Mandamus (CCP § 1094.5), a Civil Case Cover Sheet, a Notice of Judicial Assignment to this Department, a Request for a Hearing under Public Resources Code section 21167.4, subdivision (a), and a Proof of Service by mail on the City. (Declaration of Edward Grutzmacher, ¶ 2.) The Petition alleges four "counts." The first, though difficult to parse, apparently alleges that the Village is not permitted on the Site as a homeless shelter under either the Zoning Code or state law. (Petition, ¶¶ 43 – 51.) It claims that the "approval should be set aside." (*Id*. at ¶ 51.) The second apparently claims that the City violated procedural requirements by issuing an "RV Camp Permit" and the decision to issue such a permit "was a prejudicial abuse of discretion in that Respondent failed to proceed in the manner required by law." (*Id*. at ¶¶ 52 – 56.) The third alleges that the City "issued the permit" without the requisite written notice. (*Id*. at ¶¶ 57-62.) Finally, FNS's fourth count alleges that the City failed to comply with CEQA prior to issuing the permit. (*Id*. at ¶¶ 63 – 69.) FNS requests that the Court issue alternative and peremptory writs of mandate to "set aside [the City's] decision issuing the RV encampment

permit." (*Id*. at ¶¶ 71, 73.)

On January 27, 2022, counsel for FNS informed outside counsel for the City that it would be seeking an ex parte application for an alternative writ on February 1, 2022 at 10:30 a.m. in this Court. (Grutzmacher, Dec. ¶ 3.) On January 31, 2022, outside counsel for the City emailed counsel for FNS and inquired whether FNS would be serving its ex parte application and supporting memorandum. (*Id*., ¶ 4.) FNS's counsel agreed that it would send over its papers "hopefully today." (*Id*., ¶ 5.) FNS emailed the City's outside counsel a copy of the proposed "partial administrative record" at 3:09 p.m. on January 31, 2022. (*Id*., ¶ 6.) At 4:50 p.m. on January 31, 2022, the City final received an email with FNS's application for an alternative writ. (*Id*., ¶ 7.)

III. STANDARD OF REVIEW

The Court may issue an alternative writ where the Court determines " 'that, in the ordinary course of the law, the petitioner is without an adequate remedy.' " (*Bridgestone/Firestone, Inc. v. Superior Ct.* (1992) 7 Cal.App.4th 1384, 1389.) The issuance of an alternative writ however "does not stand for the proposition … that petitioner was correct on the merits, or justified, but merely that extraordinary relief is the only adequate avenue for review." (*Ibid*.) However, the law "does not require that an alternative writ or order to show cause issue in every instance in which a timely, procedurally sufficient, but apparently meritless writ petition is filed." (*Landau v. Superior Ct.* (1998) 81 Cal.App.4th 191, 206.) The Court "may deny an ex parte petition for an alternative writ of mandate 'out of hand' when it appears from the face of the petition that a peremptory writ will not be issued" and "may do so even though the defendant has not appeared by answer of demurrer." (*Kingston v. Dep't of Motor Vehicles* (1969) 271 Cal.App.2d 549, 552.) Where " 'it is clear from the petition that the peremptory writ ought not to issue, the alternative writ should be denied, thus avoiding delay and expense to the parties.'" (*Patterson v. Bd. of Sup'rs of Los Angeles Cty.* (1947) 79 Cal.App. 2d 670, 671.) "In neither the statutory nor the case law is there any authority for treating the issuance of an alternate writ of mandate as a matter of right, or requiring a court to grant such writ merely as an 'appropriate step in the proceeding.' " (*Id*. at 671-672.)

IV. ARGUMENT

There are multiple flaws with FNS's ex parte application for an alternative writ and with the Petition. These flaws should result in the denial of the ex parte application, the Petition, or both.

A. The Court Must Deny the Ex Parte Application Due to FNS's Procedural Errors

Three procedural errors mandate denial of the Ex Parte Application. First, FNS has alleged a claim under CEQA (Petition, ¶¶ 63-69), but has not complied with several of CEQA's procedural requirements. Public Resources Code ("PRC") section 21167.7 requires that FNS file the Petition with the Attorney General. "No relief, temporary or permanent, shall be granted until a copy of the pleading has been furnished to the Attorney General." FNS has not shown compliance with this requirement and, therefore, no relief, including issuance of the alternative writ, can be granted to FNS. FNS also failed to comply with PRC section 21167.5, which requires FNS to file "concurrently with the initial pleading" "[p]roof of service by mail upon the public agency carrying out or approving the project of a written notice of the commencement of any action or proceeding described in [PRC] Section 21167. Finally, FNS did not comply with PRC section 21167.6 which, as is discussed in more detail below, requires that "[a]t the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings related to the subject of the action or proceeding. These failures mandate denial of the ex parte application.

Second, ex parte relief can only be granted upon "an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." (Cal. Rule of Court, Rule 3.1202, subdivision (c).) FNS has made no attempt to comply with this requirement. As such, FNS cannot obtain ex parte relief.

Third, California Rule of Court, Rule 3.1206 requires that "Parties appearing at the ex parte hearing must serve the ex parte application or any written opposition on all other appearing parties *at the first reasonable opportunity*." (Emphasis added.) FNS noticed this ex parte hearing

on January 27, 2022, four days before the scheduled ex parte. (Grutzmacher Dec., ¶ 3.) FNS did not serve its ex parte papers until after 4 p.m. on January 31, 2022. FNS has provided no explanation why 4 p.m. on the day before the ex parte constituted the "first reasonable opportunity" for service of ex parte papers for an ex parte FNS notice four days prior. Clearly, leaving the City mere hours to review and respond to these papers has prejudiced the City and warrants denial of the ex parte application.

B. The Court Cannot Issue A Writ Commanding the City to Set Aside a Permit Approval the City Never Made, Nor Could the City Comply With Such a Writ If Issued

FNS's entire Petition is built on a fallacy – that the City issued or approved some sort of land use permit for the Village. The fact that the City did not issue any permit for the Village undermines the entire inquiry this Court is supposed to take under Code of Civil Procedure section 1094.5 ("1094.5").

Normally under 1094.5, "the inquiry is 'whether there was any prejudicial abuse of discretion.' (Code Civ. Proc., § 1094.5, subd. (b).)" (*City of Hesperia v. Lake Arrowhead Cmty. Servs. Dist.* (2019) 37 Cal.App.5th 734, 748.) An "abuse of discretion is established 'if the [agency] has not proceeded in the manner required by law' (Code Civ. Proc., § 1094.5, subd. (b)) or 'if the court determines that the findings are not supported by substantial evidence in the light of the whole record' (Code Civ. Proc., § 1094.5, subd. (c))." (*Ibid*.)

FNS does not explain how the Court is supposed to conduct this inquiry, on an ex parte basis and on only a partial administrative record no less, when the City did not actually make the decision that FNS is challenging. Nor does FNS explain how this Court can issue a writ of mandate commanding the City to set aside a decision the City did not make, nor how the City would be able to comply with such a writ.

Even on the extremely truncated administrative record FNS has provided, it is clear that the City did not approve a "RV encampment permit," or any other land use permit for the Village. Rather, the item noticed for November 30, 2021, and considered by the City Council was "Discussion and Consideration of Approval of Memorandum of Understanding for Pilot Program with Sonoma Applied Village Services (SAVS) to Operate a Temporary RV Village on City

Owned Property." (AR 1, 82.)[2] During the Council discussion of the item, Councilmember Slater commented that

> "I looked up the zoning. This is general commercial. And there are a number of uses that are permitted by right, rather than by permit. This would not be a conditional useful [sic] this is a permitted use which means no variances, to special permissions are needed to use the property in this way. And I think this would probably fall under our zoning code definition as a homeless shelter." (PAR, p. 100.)

Planning Director Svanstrom concurred, stating: "I do concur that the homeless shelter definition is what this would be classified as. This certainly does fit under that definition. … And you're correct, it is a permitted use in our zoning ordinance for this zone. So that means, as we discussed before, there is no public hearing required for it." (PAR, 101.) Thus, clearly staff and the Council were on the same page that there was no approval of a permit of any kind either required for the Village, or before the Council on November 30, 2021. The City Council then went on to authorize the City to execute the MOU with SAVS. (*Id*. at 140.)

In the course of their discussions, the City Council did also approve a motion to approve the "use" of the Site as the appropriate location for the Village. (*Id*. at 137 – 138.) However, this was not an approval of a land use permit. Rather, this motion has to be considered in conjunction with the Committee and the Council's earlier investigation of using City-owned properties as the location for a homeless shelter. (See PAR, pp. 8, 10, 21 [discussing why other sites in the City would not work for a homeless shelter], p. 83 [Councilmember Glass discussion of Committee investigations into siting Village on City owned property], p. 133 [Council consensus determination to discontinue consideration of the Public Works Storage Yard as a potential location for the Village.] The motion to approve the selection of the Site as the location for the Village was, in fact, a ratification of the Council's direction to put the City's collective efforts behind ensuring the success of the Village at the Site, nothing more. There is no reasonable interpretation of the Council discussion or actions in which the Council either thought they were approving a land use permit for the Village, or actually approved a land use permit for the Village.

[2] As FNS correctly points out, the description of this item was in error in that it descried the Site as "City Owned Property." The Site, as discussed at length in the minutes of the November 30, 2021 meeting, is owned by St. Vincent De Paul.

As such, there is no approval of any land use permit that this Court can order the City to set aside, nor any such approval that the City could set aside in order to comply with such a writ. Because the relief requested cannot be given, the Petition must fail.

C. Any Consideration of the Merits of the Petition Must Proceed On a Certified Administrative Record

FNS contends that it is "content to proceed on the basis of the partial record it has lodged" and that it is allowed to do so. (Ex Parte Application For Alternative Writ of Mandamus, p. 2.) While FNS may be content with this procedure, consideration of the merits of the Petition on only a partial administrative record would be contrary to both 1094.5 and CEQA, and inherently prejudicial to the City.

First, as noted above, review of the City's decisions under 1094.5 is for "abuse of discretion," which can be established only through by showing that the City "has not proceeded in the manner required by law" or if the City's "findings are not supported by substantial evidence *in the light of the whole record*." (Emphasis added.) CEQA echoes these requirements in PRC section 21168, which requires that when conducting review of an agency's decision under CEQA "the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence *in the light of the whole record*." Clearly, the Court cannot inquire into the "whole" record if the whole record is not before the Court.

Moreover, CEQA contains detailed requirements for the contents and certification of the administrative record by the lead agency. (See PRC, § 21167.6, subd. (b) [requiring the lead agency to prepare and certify the administrative record], subd. (e) [detailing the required contents of the administrative record].) As one court colorfully described these requirements "the administrative record will include pretty much everything that ever came near a proposed development *or* to the agency's compliance with CEQA in responding to that development." (*County of Orange v. Superior Ct.* (2003) 113 Cal.App.4th 1, 8.) This is because "when it comes to the administrative record in a CEQA case, any reduction in its contents is *presumptively* prejudicial to project proponents." (*Id*. at 13.)

Here, even a cursory review of the Partial Administrative Record shows that it is woefully inadequate. It consists, in its entirety, of the notice, staff report, and minutes of the November 30, 2021 City Council meeting. There are none of the City's planning files, notes, or memoranda, no record of the communications sent or received from the City, and nothing at all regarding the City's December 8, 2021 approval of the Agreement with SAVS, to name just a few of the missing categories of documents.

FNS cites only one case, Elizabeth D. v. Zolin (1993) 21 Cal.App.4th 347, 355, for support of the proposition that this case may proceed on the basis of a partial administrative record. That case, however, concerned review of a DMV decision regarding a driver's license, and did not implicate the specific requirements of CEQA regarding the preparation and review of the administrative record. Moreover, that court admonished "that litigants should not participate in 'gamesmanship' that deprives a trial court of the opportunity to properly review claims of error in administrative proceedings." (*Id*.) That is exactly what FNS is attempting here by insisting on proceeding on the basis of a partial administrative record.

Thus, the Court cannot comply with the requirements under 1094.5 and CEQA to examine the City's decision "in light of the whole record" on the partial, uncertified record submitted by FNS. Doing so would be presumptively prejudicial to the City. As such the Court, should it not deny the Petition outright, should allow the City to prepare the complete administrative record and order the parties to brief the merits of the Petition on that complete record.

D. Even on the Partial Administrative Record, FNS's Cannot Meet Its Burden to Show The City Abused Its Discretion

Should the Court consider FNS's claims on the Partial Administrative Record, FNS's claims still must fail because FNS cannot meet its burden to show a prejudicial abuse of discretion by the City. "[P]etitioner in an administrative mandamus proceeding has the burden of proving that the agency's decision was invalid and should be set aside, because it is presumed that the agency regularly performed its official duty." (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.) Petitioner must demonstrate an abuse of discretion by establishing that the City's findings were not supported by substantial evidence in light of the entire administrative

record. *See id.* at 334. Under the substantial evidence standard, "it is presumed that the findings and actions of the administrative agency were supported by substantial evidence." *See id.* at 335.

1. FNS Cannot Show That The City Abused Its Discretion In Issuing a Land Use Permit for the Village When the City Did Not Issue Such a Permit

As set forth in section IV.B., above, the City did not issue a land use permit for the Village. Thus, the City cannot have abused its discretion in issuing a land use permit for the Village because no such decision exists.

2. The City's Planning Director's Interpretation of the Zoning Code is Correct, and is Entitled to Substantial Deference

The City's Planning Director determined that the Village constitutes a "homeless shelter" under the Zoning Code and that, as a homeless shelter, is a permitted use in the General Commercial (GC) zoning district in which the Site is located. (See Svanstrom Dec., ¶¶ 4-5, Exh. 1.) Planning Director Svanstrom's analysis is detailed in her memorandum and concurrently filed Declaration, and is incorporated herein by reference.

The City's "interpretation of its own ordinance is ' "entitled to deference" in our independent review of the meaning or application of the law." [Citation]; *see Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193, 30 Cal.Rptr.3d 738 [' "an agency's view of the meaning and scope of its own [ ] ordinance is entitled to great weight unless it is clearly erroneous or unauthorized" '].)" (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434.) "Greater deference should be given to an agency's interpretation where ' "the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion." ' [Citations.]" (*Id*. at 435.) "Greater deference is also appropriate where there are 'indications of careful consideration by senior agency officials.' [Citation.]" (*Ibid*.)

Here, both circumstances providing for "greater deference" are present. The issue of whether the Village constitutes a "homeless shelter" and the interplay of the various provisions of the Zoning Code is technical, complex, and entwined with issues of fact, policy, and discretion. In addition, the evidence shows that "senior agency officials" including the Planning Director, the

City Attorney, and City Councilmembers provided careful consideration of the issue. (Svanstrom Dec., ¶¶ 4-6, Exh.1.) As such, the Court should defer to the City's interpretation of its own ordinances.

FNS's main argument appears to be that because a separate provision of the Zoning Code, Section 17.100.070.C.4 generally prohibits using RV's as "residences," the Village cannot constitute a "homeless shelter." However, as Planning Director Svanstrom explains, FNS is misinterpreting Section 17.100.070.C.4 and the City has previously allowed RV's to be used as temporary shelter for unhoused individuals. (Svanstrom Dec., ¶¶ 10-13.)

Thus, the Court should reject FNS's unsupported interpretation of the Zoning Code and affirm the City's interpretation that the Village constitutes a homeless shelter and a permitted use.

3. The City Was Not Required to Comply with Permit Application Procedures or Provide Notice of Consideration of a Permit Application Because There Was No Land Use Permit Before the City

FNS's second and third claims are easily dismissed. In its second claim, FNS alleges that the City was required to comply with Zoning Code section 17.400.030.D's procedural requirements for permit applications. (MPA, p. 12.) Similarly, in its third claim, FNS alleges that the City was required to comply with Zoning Code notice provisions for consideration or a permit and/or variance. (MPA, pp. 12-13.)

Again, the City did not consider a land use permit or variance for the Village because the City determined that the Village was a permitted use under the Zoning Code. As such, FNS's second and third counts are without merit and should be dismissed.

4. The City Fully Complied With CEQA and FNS Filed Its Challenge Outside of the Applicable Statute of Limitations

FNS's fourth and final count is that the City failed to comply with CEQA in "approving" a "permit" for the Village. (MPA, pp. 13 – 14.) FNS correctly argues that the City's approval of funding for the Village through the MOU and the Agreement is a "project" subject to CEQA, but incorrectly claims that the City made no CEQA determinations for that project. (*Id*.)

The City made two determinations. The first, the determination that the Village is a permitted use, is a ministerial decision and is not subject to CEQA. (See *Friends of Juana Briones*

House v. City of Palo Alto (2010) 190 Cal.App.4th 286, 299 ["CEQA applies only to discretionary projects and approvals; it does not apply to purely ministerial decisions. (§ 21080, subds. (a), (b)(1); Guideline § 15268, subd. (a)"].) "The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.)

The second decision, the City's agreement to provide funds to the Village in the MOU and Agreement is a discretionary project and is subject to CEQA. That is why the City, following the City Council's approval of the Agreement, filed a Notice of Exemption with the County of Sonoma for this decision. (Svanstrom Dec., ¶¶ 7-8, Exh. 2.) "[W]hen a properly filed NOE complies in form and content with CEQA requirements and declares the agency has taken an action that would constitute final approval of a project under a CEQA exemption, the 35–day period for challenging the validity of this asserted approval under CEQA begins to run." (*Stockton Citizens for Sensible Plan. v. City of Stockton* (2010) 48 Cal.4th 481, 505.)

The 35-day statute of limitations period to challenge the December 8, 2021 Notice of Exemption expired on January 12, 2022. FNS did not file the Petition until January 21, 2022. As such, FNS's CEQA claims are time barred.

Even were the Court to not consider the CEQA claims time barred, however, the Petition contains no allegations that the City improperly relied on CEQA exemptions to exempt its approval of the MOU and Agreement. Thus, FNS cannot meet its burden of showing that the City's reliance on these exemptions was flawed.

Thus, the Court should deny the Petition's CEQA claims.

V. CONCLUSION

For all the foregoing reasons, the City respectfully requests that this Court deny FNS's Petition outright. In the alternative, the City respectfully requests that the Court deny the ex parte application, allow the City to prepare and certify the complete administrative record, and order the parties to brief the merits of the Petition from the complete, certified administrative record.

DATED: February 1, 2022

MEYERS NAVE

By: _____

EDWARD GRUTZMACHER
Attorneys for Respondent CITY OF SEBASTOPOL

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PROOF OF SERVICE

***Friends of Northwest Sebastopol v. City of Sebastopol, Sonoma Superior Court* Case No. SCV270053**

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1999 Harrison Street, 9th Floor, Oakland, CA 94612.

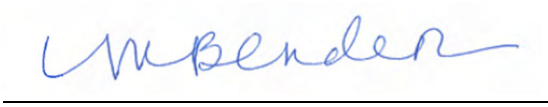
On February 1, 2022, I served true copies of the following document(s) described as **CITY OF SEBASTOPOL'S OPPOSITION TO PETITIONER'S EX PARTE APPLICATION FOR AN ALTERNATIVE WRIT OF ADMINISTRATIVE MANDAMUS** on the interested parties in this action as follows:

Tony Francois, Esq. Peter Prows Esq. Briscoe Ivester & Bazel LLP 235 Montgomery Street, Suite 935 San Francisco, CA 94104	Attorneys for Petitioner FRIENDS OF NORTHWEST SEBASTOPOL Telephone: (415) 402-2700 Facsimile: (415) 398-5630 Email: tfrancois@briscoelaw.net Email: pprows@briscoelaw.net

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to Odyssey eFileCA through the user interface at www.odysseyefileca.com.

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

Executed on February 1, 2022, at Oakland, California.



Melissa Bender