

To: Sonoma Board of Supervisors

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Date: May 6, 2025

SUBJECT/ASK:

1) Reject Consent Calendar Agenda Item 18

2) SB 300 and Gov. Code Section 14670.10.5 (aka "Enabling Legislation" or "Authorizing Statutes" or "Special Statute") are anathema to each other. The Special Statute enacted for the SDC seeks to protect a broad range of Public Policy interests as recognized by the legislature; whereas the Builder's Remedy only focuses on Housing. In short, Builder's Remedy would allow the building of 1000 homes even if it destroys public resources and places those of us who live in the Valley at greater risk of death because of increased evacuation times. Further, the Builder's Remedy was never intended to apply to a rural area like the SDC and Glen Ellen as has previously been brought to your attention.

3) Don't take it from me. Seek an advisory opinion from the Sonoma County Superior Court on which law the County is obliged to follow. This will protect the county against both DGS and Rogal/Grupe/Eldridge Renewal's claims they are entitled to a Builders' Remedy. Please. Get a court order to protect the county. It's a lot cheaper than the \$1Million being asked for here today.

4) YOU ARE BEING ASKED TO FUND an EIR that Rogal/Grupe/ Eldridge Renewal, LLC. would otherwise be responsible IF THE BUILDERS' REMEDY APPLIED: Have Rogal/Grupe/ Eldridge Renewal, LLC. pay for their own EIR! Not the taxpayers.

5) Dyett & Bhatia have already cost Sonoma County not only the cost of a failed EIR, but also \$500,000 of taxpayer money to fund SCALE who brought the successful suit. The height of insanity is to do the same thing over and expect a different result! DON'T BE FOOLED AGAIN!

5) Reschedule Item 18 ONLY AFTER you've received a court order instructing you on which law to follow going forward. Seeking a declaratory relief is a lot more cost effective than the road Permit Sonoma has chosen.

BACKGROUND

On September 20, 2015, the Potrero Group in consultation with the Sonoma County Board of Supervisors (BOD") and the SDC Coalition¹ created a framework for the disposition of the SDC. In brief, the reason this group of community leaders came together is because they all recognized (as our community still recognizes) the unique cultural, historical, natural, and public resource assets that are contained on this former hospital site that has a long history of caring for those who were unable to care for themselves.

On April 5, 2019 the BOS passed the "Resolution Regarding Land Use Planning and Disposition of the SDC". This resolution, in part and in tandem with the Potrero Group and the SDC Coalition was successful in passing Special Legislation to guide development at the SDC.

On June 27, 2019 SB 82, a Special Statute was passed to specifically govern the development of the SDC (Gov. Code Section 149670.10.5).

The history of this Special Statute is important to remember. The reasons it was passed can be found in the statute itself. In a nutshell, it recognized that the SDC is in fact, special. It contains a wealth of public resources that all levels of government have a responsibility to hold in trust for the citizens of the state of California; among those public trust assets are:

- 1) a wildlife corridor whose pinch point exists at the core campus;
- 2) navigable waters in the form of Sonoma Creek and its tributaries on SDC lands and the core campus;
- 3) steelhead, chinook salmon and other wildlife have been well documented by the Sonoma Ecology Center and the Sonoma Land Trust. Water. Water that neither the State nor Sonoma County "owns"; but rather they have an

¹ Susan Gorin, District 1, Sonoma County; Board of Supervisors; Sonoma Land Trust; Parent Hospital Association; Sonoma Ecology Center; Sonoma County Agricultural Preservation & Open Space District; Sonoma County Health & Human Services; Sonoma County Regional Parks Department; Sonoma County Water Agency; Sonoma Mountain Preservation; Valley of the Moon Natural History Association (Jack London Partners)

obligation under the public trust doctrine to hold these resources for the benefit of all Californians.

In addition to the public trust resources, the property contains rich historical assets that needs to be preserved in perpetuity. Some of that history is quite disturbing. The practice of eugenics is but one sad chapter. And like the holocaust, that history needs to be preserved lest we repeat it. That history also includes a story of human compassion and what might be accomplished if we follow the better nature of our angels. Given the current status of our democracy and political disfunction, those lessons need to be applied now. None of us are immune to repeating past mistakes. Which brings us to the most current history of government overreach being done in our name by DGS.

Therefore, I urge you to revisit the history of the planning process of the SDC and hopefully that will inform the choices you are about to make. DON'T throw away a million dollars (\$1,000,000) of taxpayer money on a flawed and ill-informed process. You have time. Use it wisely.

Why the Builder's Remedy and the Specific Statute are Anathema to Each Other

On October 10, 2019, SB 330, aka the "Builder's Remedy" was passed. This legislation post-dates the SDC Specific Legislation (i.e. Gov. Code Section 14670.10.50) by approximately three (3) weeks.

In a nutshell, the Builders Remedy (and its progeny SB 8, approved by the Governor on September 16, 2021), is, by definition a "General Statute." A "General Statute" is a law that pertains uniformly to an entire community or all persons generally. A "Special Statute" or "Special Legislation" is essentially a law that applies to a particular person, place, or interest.² While both the Builder's Remedy and the Special Statute both relate to the planning process; the Special Statute was passed specifically to apply to the planning process at the SDC; whereas the Builder's Remedy was meant to apply generally to private property owners and counties who were non-compliant with their own housing element. It was NEVER meant to apply to either the State of California generally, nor to the specific planning process at the SDC under the Special Statute. If it was the intent of the legislature to apply the Builder's Remedy to the Special Statutes (or even the specific special statute related to the SDC specifically), the Legislature had two (2) opportunities to modify the Special Statute to conform to the Builder's Remedy (6/27/2019 and 9/16/2021 when they passed SB 8). They didn't.

² Chris Micheli, Snodgrass & Micheli, LLC, Adjunct Professor at McGreogre School of Law

DGS, as an administrative agency should not be allowed to change the Specific Statute that was passed specifically to apply to the SDC through what they claim are their ministerial powers to administer the Special Statute. But this is exactly what DGS has chosen to do.

DGS and Applicants have Placed Sonoma County and Permit in an Untenable Position

It is clear to anyone who has been paying attention that DGS has clearly overstepped their ministerial authority in allowing the filing of the Builder's Remedy when in fact it does not, and should not apply.

In December of last year, Permit Sonoma approached the BOS requesting that they be allowed to "abandon" the Specific Plan Process. What they were trying to tell you at the time is they could not apply the Builder's Remedy and the Specific Statute simultaneously. Permit Sonoma encouraged you to opt for the Builder's Remedy. Because of James Gore's concerns about returning \$3.5mm to the state for a failed Specific Plan process, this BOS opted to follow both, which put Permit Sonoma in an untenable position.

The only remedy out of this mess is to instruct Permit Sonoma to ask the Sonoma County Superior Court which law (Builder's Remedy or Specific Statute) applies to the SDC Planning Process. At that point, Permit Sonoma would be given clear instruction on what path to follow.

If this doesn't happen, the net effect will be that Permit Sonoma will be submitting a Specific Plan and EIR to the BOS is in fact Rogal/Grupe/Eldridge Renewal, LLC's Builder's Remedy. This will, in effect end the Specific Statute planning process and breaking the promises made by the BOS and the State of California to our community. This is NOT ACCEPTABLE. Our community has invested thousands of hours and hundreds of thousands of dollars in preserving the SDC. We will not allow this to happen! The promises made to the SDC Coalition and our dreams for the SDC need to be kept.

Doing the Same Thing Twice and Expecting a Different Result

I was here on the night of December 16, 2022, after a marathon of a public meetings, this BOS (sans Supervisors Rebecca Hermosillo and Linda Hopkins) when the Specific Plan was passed. The EIR was also passed that evening with absolutely NO discussion by the BOS. Our community was prepared to share with you that evening our grave concerns regarding the sufficiency of the EIR. SCALE and other in our community

raised money to change the EIR because of its inadequacy. Our community spent over \$500K. Our concerns were validated by the overwhelming rejection of that EIR that was prepared by Dyett & Bhatia. This community is therefore shocked to learn that Permit Sonoma is once again seeking to retain Dyett & Bhatia to do another EIR. Given their track record at the SDC and the \$500,000 the County of Sonoma was order to pay because of that failed EIR and Specific Plan, why would you ever consider retaining them again? Dyett & Bhatia betrayed the pubic trust by not delivering a Specific Plan and EIR that was supported by the community and at a minimum provided an EIR that passed legal muster. Next time you ask the taxpayers for more money, how do you think it will be received? And now you want to give another \$1mm to redo what they should have done in the first place?

But that is not all. You approved approximately 640 to 660 homes to be built. Rogal/Grupe/Eldridge Renewal, LLC's Builder's Remedy seeks over 990 (and increases every time they resubmit an application). Do you really think you're going to get a better result given the increase in scope? How much more taxpayer money do you want to throw into this? If this process is to have any credibility at all, you need a different consultant. And for the process to be effective, you need to seek and obtain a declaratory relief regarding the Builder's Remedy v. Specific Statute conundrum.

Why Are the Taxpayers Paying for Rogal/Grupe/Eldridge Renewal, LLC's Builder's Remedy EIR

Given that the Specific Plan will or already has been morphed into the applicant's Builders' Remedy, why not have the applicant pay? Why is the county assuming the risk of another community challenge at taxpayer expense? The notion that the Builder's Remedy and the Special Statute can somehow be harmonized into one Program EIR and Project EIR is at best a fairy tale, and at worst, a factitious lie.

If Rogal/Grupe/Eldridge Renewal, LLC's and DGS were really serous in working with our community in finding solutions, they would drop the Builder's Remedy farce as an article of good faith. And work with our community to protect and preserve the SDC in building the kind of project our community can support. Perhaps the suit filed by the Sonoma Valley Next 100 will help bring the parties together to create the kind of project envisioned back in the September 20, 2015 Potrero Group report.

ITS TIME TO RETHINK SDC!

Respectfully subject,

Jim Price, Sonoma Valley Taxpayer