

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SACRAMENTO  
3 HON. SHELLEYANNE W.L. CHANG, JUDGE, DEPARTMENT NO. 24

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5 STAND UP CALIFORNIA!, )  
6 ) Petitioner, )  
7 ) )  
8 ) -vs- ) Number  
9 ) ) 34-2016  
10 ) ) 800002493  
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REPORTER'S TRANSCRIPT OF WRIT OF MANDATE

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FRIDAY, JUNE 23, 2017

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APPEARANCES:

For the Petitioner:

BRIGIT BARNES  
Attorney at Law

For the Respondent:

MONA G. EBRAHIMI  
Deputy Attorney General

SCOTT PEARSON  
Attorney at Law

JONATHAN HOBBS  
Attorney at Law

Shiela M. Connolly, RPR, CSR No. 5659

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FRIDAY, JUNE 23, 2017

MORNING SESSION

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The matter of STAND UP! CALIFORNIA, Petitioner, versus CITY OF ELK GROVE, Respondent, Case Number 34-2016-80002493-CU-WM-GDS, came on this day before the Honorable SHELLEYANNE W.L. CHANG, Judge of the Superior Court of California, in and for the County of Sacramento, sitting in Department Number 24.

The Petitioner was represented by BRIGIT BARNES, Attorney at Law, and ANNIE EMBREE, Attorney at Law.

The Respondent was represented by MONA G. EBRAHIMI, Deputy Attorney General, SCOTT PEARSON, Attorney at Law, and JONATHAN HOBBS, Attorney at Law.

The following proceedings were then had:

THE COURT ATTENDANT: Please come to order. Court is now in session.

THE COURT: Good morning, your Honor.

MS. BARNES: Good morning, your Honor.

MS. EBRAHIMI: Good morning, your Honor.

MR. HOBBS: Good morning, your Honor.

MR. PEARSON: Good morning, your Honor.

MS. EMBREE: Good morning, your Honor.

THE COURT: Please have a seat.

May I have the appearances of counsel, please starting from my left?

MS. BARNES: My name is Brigit Barnes. I'm here

1 on behalf of Petitioners.

2 My associate, Annie Embree is here also, but I  
3 will be arguing.

4 THE COURT: All right. Thank you.

5 MS. EBRAHIMI: Mona Ebrahimi on behalf of  
6 the City Elk Grove, your Honor.

7 MR. HOBBS: Jonathan Hobbs, City Attorney, City of  
8 Elk Grove.

9 MR. PEARSON: Scott Pearson for the Real  
10 Parties in Interest, Elk Grove Town Center and the  
11 Howard Hughes Corporation.

12 THE COURT: All right. Ms. Barnes, I'm sure  
13 you've realized by now --

14 MS. BARNES: I do now, your Honor. In fact, I was  
15 going to start by apologizing.

16 I did not --

17 We were so focused on the -- on the detail in  
18 your Tentative that we didn't even notice it.  
19 Everything else had been noticed for 11,?

20 And there's no excuse. I was sitting downstairs.  
21 We were still reviewing, never even thinking that we  
22 were holding you up.

23 THE COURT: Okay.

24 MS. BARNES: So ...

25 THE COURT: Fortunately I don't have an 11 --

26 MS. BARNES: Thank God.

27 THE COURT: -- a.m. hearing, so I am prepared  
28 to go ahead and hear your request for oral

1 argument.

2 So go ahead, Ms. Barnes.

3 MS. BARNES: Thank you, your Honor.

4 And I have prepared an outline, which if  
5 the Court is -- decides after hearing me out  
6 today to reconsider any portions of her ruling, I  
7 would be happy to submit to you and to opposing  
8 counsel.

9 But let me follow the outline right now.

10 As I understand your position, and you have  
11 already -- already acknowledged three key findings  
12 which -- which we argued about a lot in our  
13 papers, but I'll start with those, which is that the  
14 BIA'S trust determination is not yet final, that BIA  
15 has begun to take the property into trust.

16 The decision to take the property into trust has  
17 been both administratively appealed, and the EIS has  
18 been separately challenged in Federal Court.

19 So at the moment, as to the IBIA appeal, no  
20 hearings have even been scheduled by IBIA. It's  
21 sitting in limbo, and so, it is unknown when all of the  
22 various administrative and the legal processes at the  
23 federal level will be concluded and what the results of  
24 those conclusions will be.

25 From that there's a -- there's a corollary to that  
26 that comes back which is that trust acquisitions can be  
27 reversed by both court order and just directly by the  
28 BIA under either.

1           There is a case, and I apologize to the court  
2 reporter, but I do have the cites for her,  
3 Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians  
4 versus Patchak, it's a 2012 decision, and easier to say  
5 County of San Diego versus BI -- BIA Regional Director,  
6 which is an IBIA 2013 decision. And I will submit all  
7 of these citations in detail.

8           In both cases the non-final decisions were  
9 reversed, and the land was taken out of trust due to  
10 procedural errors in one case and because the land  
11 had been taken into trust prematurely in the other  
12 case.

13           So we have -- so -- and the third point that  
14 the Court accepted from the arguments that had been  
15 submitted was that the property remains encumbered by  
16 the 2014 DA as a result of the successful referendum,  
17 the City's certification of the referendum.

18           So when I'm on behalf of the Petitioners  
19 interpreting the Tentative Ruling, it seems to me,  
20 your Honor, that what you're saying is that even  
21 though the property is sitting in kind of a no-man's  
22 land right now where the City still has jurisdiction  
23 and it's owned by the Tribe and Boyd, no harm, no  
24 foul.

25           I'm kind of jumping to the very end, because at  
26 the bottom of your Tentative Rulings, you mention that  
27 even if the City were to take action, how are the  
28 Petitioners damaged?

1           And so, what we tried to do last night was lay  
2 out two scenarios for you, two alternative scenarios,  
3 and I'm going to go through those first and then come  
4 back.

5           The first would be that DOI BIA, which would  
6 be the Federal Government, actually completes and  
7 takes title to the property and what happens if that  
8 occurs, and the second would be that that part of the  
9 conclusion never happens, and Boyd and the Tribe just  
10 continue to retain the property and its California  
11 property without the benefits. It's owned by the  
12 Tribe, but without the benefits and the protections of  
13 being taken into trust because those are the two  
14 alternatives that could have happened as we face it  
15 today.

16           And one of the key -- the key differences that  
17 it seems to me in our argument that the Court did not  
18 accept was that we're arguing that for as long as  
19 the property remains non-accepted properly by the  
20 Federal Government, which could be forever, the  
21 property -- the obligations on the property and the  
22 benefits on the property remain under California  
23 law.

24           If we assume for the moment that the property  
25 is California law, then there are a series of  
26 actions that the City is mandated to take that it did  
27 not take.

28           The first of those actions is that under the --

1 that the whole structure of the mall property has  
2 multi levels. It has the Lent Ranch Specific Plan  
3 area which is a zoning ordinance. It had a series of  
4 environmental restrictions that were imposed in 2001 as  
5 part of the original approvals and have never been  
6 substantially modified.

7 The modifications that have occurred over  
8 that whole property, both in 2008 -- and I won't  
9 bore you with all those details -- and in 2014  
10 retained the shopping center only restrictions  
11 under the Zoning Code, retained the height restrictions  
12 and insisted that traffic and parking was supposed to  
13 be part of a cohesive whole, and that's what connected  
14 to the ingress and egress circulation plan for the  
15 mall.

16 So if Tribe's attempts are proved unsuccessful,  
17 all of that still stays on the property from a zoning  
18 standpoint.

19 Under the Lent Ranch SPA, the City is  
20 obligated to make some decisions. Either it mandates  
21 that it continue to be maintained as a shopping center,  
22 built and developed as a shopping center or as is  
23 obvious because they entered into the MOU with the  
24 Tribe, they want to allow for a change, then public  
25 hearings for the rezoning and a review of the necessary  
26 impacts to both the property and off of the mall  
27 property has to be considered and updated and  
28 evaluated.

1           None of that has been done.  None of it has been  
2 done --

3           THE COURT:  Well --

4           MS. BARNES:  -- and it is a mandatory --

5           Excuse me, your Honor.  Go ahead.

6           THE COURT:  But Ms. Barnes, you're speculating  
7 about events that may or may not occur in the  
8 future.

9           We don't know what the BIA is going to do --

10          MS. BARNES:  Sure.

11          THE COURT:  -- and we don't know what the City is  
12 or isn't going to do, even assuming it has some  
13 mandatory duties.

14          We don't know if they're going to comply with  
15 as you say their zoning ordinance obligations.  I'm not  
16 accepting the fact that they have any at least under  
17 the authority that you cited in your papers.

18          But even assuming they have some sort of  
19 affirmative duty, nothing has happened for this Court  
20 to issue a Writ of Mandate against the City to do  
21 anything because you're talking about events that may  
22 or may not occur in the future.

23          MS. BARNES:  Your Honor, that is more the case  
24 with zoning than it is with the Development Agreement,  
25 because under the Development Agreement, it provides in  
26 Sections 10.1 through 10.7 that upon a transfer, an  
27 assignment of the property, which we all know has  
28 happened, that deed has recorded.  It was part of what



1 was submitted to you. And I'm talking about the deed  
2 from Hughes, the Real Parties in Interest, over to the  
3 Tribe and Boyd.

4 From and after that day, according to the specific  
5 language, it's mandatory language that there will be a  
6 determination and that no assignment to that third  
7 party is valid under that DA unless a public hearing is  
8 held.

9 THE COURT: But Ms. Barnes, how are your clients  
10 third-party beneficiaries of that Development  
11 Agreement?

12 MS. BARNES: Okay. Ah. You didn't raise that in  
13 the Tentative, so I wasn't sure.

14 THE COURT: Well, that was an argument made in the  
15 papers.

16 MS. BARNES: That's true. You just didn't include  
17 it in the Tentative.

18 THE COURT: But you're raising it now --

19 MS. BARNES: Okay.

20 THE COURT: -- so if you want to argue that  
21 somehow you have some claim under the Development  
22 Agreement, then tell me how your clients have standing  
23 to argue that, when they may or may not, at least  
24 according to the Respondents, be third-party  
25 beneficiaries of that agreement.

26 MS. BARNES: Right.

27 They are identified. The people of Elk Grove and  
28 explicitly the surrounding residential property

1 owners of the mall are identified in five separate  
2 sections of the findings that were adopted with the  
3 Development Agreement, and those were incorporated with  
4 our -- with a copy of the Development Agreement that  
5 was attached to the Amended Writ.

6 And in those findings, specifically it says  
7 that the Project, referring to all of Lot A at the time  
8 because this is written in 2014, will be compatible and  
9 preserve or increase the property values of the  
10 predominantly residential development proposed and  
11 otherwise approved for surrounding areas by providing  
12 necessary and desirable services nearby.

13 Will provide a visually pleasing, safe and  
14 attractive gathering place that will encourage  
15 community identity.

16 There are other sections. They explicitly mention  
17 the residential areas that are surrounding -- they call  
18 it the Planned Residential Developments.

19 They find that having a shopping center, a  
20 shopping mall in that area allows the City to argue  
21 that the vehicle's mile travelled were reduced for all  
22 of those property owners, and --

23 Let's see. There's multiple sites that come back  
24 to the citizens. There's four separate sections. It's  
25 in Findings 2 and 3 and 4 specifically.

26 That -- that was the basis for why we believe  
27 the Development Agreement was entered into by the  
28 City, and that was why we believe it's a mandatory

1 duty on the part of the City to take the actions,  
2 because the City is working with the developer to put  
3 the Development Agreement together.

4 It makes specific findings as part of that public  
5 hearing that's supposed to benefit the public, but  
6 especially the residential owners surrounding there,  
7 and it's -- it is the residential owners that are  
8 petitioners of the City.

9 That's the basis for the argument.

10 In the papers that we argued back and forth with  
11 the City, we distinguished the primary cases that they  
12 were relying upon.

13 The primary case they were relying upon -- and I  
14 can look it up -- I can look up the name for you in a  
15 minute -- had to do with not a Development Agreement,  
16 but had to do with a subdivision development bond and  
17 whether or not an individual owner had a right to  
18 assert third-party beneficiary status under the  
19 individual development bond. We'll get the name for it  
20 in a minute.

21 So the facts are completely un -- inconneted  
22 (sic) to our situation here.

23 But coming -- so let me come back to where I was  
24 going for a minute.

25 So if -- if there is never a (sic) approved trust  
26 acquisition and therefore there is never a casino, the  
27 appropriate use of the property under the Development  
28 Agreement and under the zoning, the only use -- in

1 fact, it makes it very clear. It's exclusive use for  
2 this property -- as part of the entire Lent Mall SPA  
3 which is a commercial zoning broadly, a shopping center  
4 exclusively on Lot A.

5 So if -- so what we have is a situation where the  
6 City is looking at it now, and they don't know if the  
7 Tribe's ever going to be able to get this all done.

8 So it says in the Development Agreement that upon  
9 the assignment to the Tribe is not effective unless and  
10 until they hold these hearings. And I shouldn't just  
11 say Tribe. Boyd.

12 And at that hearing they're supposed to  
13 investigate whether Boyd and the Tribe can have  
14 their -- have the financial ability, the fiscal  
15 ability, the background acumen to develop it in  
16 compliance with the terms of the Development Agreement.  
17 None of that was attempted.

18 And like I said, at a hearing of that nature  
19 properly noticed they could consider other uses too,  
20 but they would have to go through those procedures,  
21 none of which have been done.

22 You asked how are the public damaged if the  
23 City didn't do it even though, your Honor, I submit  
24 that when you look at the language of the Development  
25 Agreement, it's mandatory. It's not a discretionary  
26 duty that they can defer.

27 You could make the argument, although I don't  
28 agree with it, that on general zoning issues and

1 because nothing is resolved, to an extent the zoning  
2 would be discretionary by the City.

3 So in other words, a tribe will come in and submit  
4 an application and a permit, and the City would say no,  
5 you've got to go through a use permit or you have to go  
6 through a zoning. So we have to do one of those types  
7 of alternatives.

8 Here in the Development Agreement it's not.  
9 It says it is -- the City shall hold a hearing, and  
10 it says that the assignment is not valid unless.

11 So it's an action that has to be taken and hasn't  
12 been.

13 And that part of our argument, the Second Cause of  
14 Action applies whether or not the BIA and Department of  
15 Interior ever finish and conclude the transfer into  
16 trust.

17 We did cite in our papers the Crest-Dehesa  
18 decision, which is a BIA 2015 decision, and that one  
19 explicitly confirmed that the Tribe takes based on  
20 what is already recorded against its property, and  
21 the Federal Government receives it in the same  
22 condition.

23 That's the whole reason that BIA has the ALTA's  
24 title standards and requires that encumbrances to title  
25 have to be removed before they take it into trust  
26 because they acknowledge that they accept it subject to  
27 that right.

28 So if -- so you -- so they're sent up here. Under

1 either of your scenarios, it gets in or it doesn't get  
2 in, a direct conflict with the Development Agreement  
3 which now remains on the property, and --

4 So the hearing has to be held.

5 As long as the Tribe goes forward and builds a  
6 shopping center and can prove to the City that they're  
7 going to be able to do so and they have the financial  
8 ability to do so, you would be correct.

9 If they followed the designs, the height  
10 restrictions and everything else, then the damage to  
11 the City's residents would have been substantially  
12 ameliorated by holding that. But none of that has  
13 occurred.

14 And looking at the record here, that should  
15 have occurred sometime between December when Real  
16 party in Interest executed the Grant Deed to Boyd and  
17 the Tribe or January when the Tribe recorded that deed,  
18 but nothing happened in that period of time.

19 However, if you'll consider reconsidering that  
20 issue, and I certainly hope you will, that -- and  
21 you believe that I haven't adequately asserted  
22 these points in the Pleading, we'd ask permission to  
23 revise it.

24 The case law, California case law supports our  
25 position in either direction too, because in the  
26 Friends of East Willits case that we did cite to you,  
27 in that particular case, BIA again accepted land into  
28 trust, and it was under the -- and they had the

1 Williamson Act contract on it. It works exactly the  
2 same way.

3 That one was at 101 CalApp4th, 191, and the  
4 specific holding is at page 123.

5 And the Court held, California Court held that  
6 federal law does not void prior restrictions on land  
7 agreed to before the land passed into trust.

8 Now, the agreed to portion would work with  
9 any kind of a contractual obligation that's  
10 voluntarily accepted by the Tribe like the  
11 Development Agreement.

12 We also want to argue that the -- that that  
13 is underscored again by the Crest-Dehesa decision  
14 that -- we submitted a copy to you because it  
15 goes into great detail about why the Tribe and the  
16 Federal Government would be bound by the  
17 Development Agreement.

18 There is another aspect of this, because to  
19 the extent that the Court would be bothered under  
20 Friends of Willits by the language it talks about,  
21 agreed to because --

22 You know, often cases people take land subject  
23 to Williamson Act, but let's assume for the  
24 hypothetical that they consciously accepted it because  
25 it had Williamson Act, and so they're getting the  
26 benefit of the tax write-off as well as using it for ag  
27 property.

28 A recent case, the Voices for Rural Living versus

1 El Dorado Irrigation District, which is the 2012 case,  
2 209 CalApp4th, 1096 addressed the issue of the  
3 obligations of the agency.

4 And in that particular case, LAFCO had  
5 involuntarily imposed on the Shingle Springs Band  
6 restrictions on what uses they could use the water  
7 that they were getting.

8 They had control over the annexation of water  
9 as a district, and they imposed restrictions saying you  
10 cannot run a commercial operation which ran afoul of  
11 their intent to operate as a casino on their trust  
12 land, long-term trust land.

13 So none of the issues that we're facing here  
14 occurred.

15 In that case, the Court of Appeal upheld that  
16 LAFCO's rights were valid and had to be followed,  
17 because in that particular case, El Dorado Irrigation  
18 District was trying to ignore it.

19 They took the position that LAFCO didn't have  
20 the right to tell a sovereign tribe what to do on  
21 its land, and therefore the use of the water for  
22 commercial purposes could not be restricted.

23 That was overturned.

24 THE COURT: Ms. Barnes.

25 MS. BARNES: Yes.

26 THE COURT: I appreciate your arguments this  
27 morning.

28 So let me just make sure I'm clearly understanding



1 what your argument is, because as you know, the Court's  
2 ruling basically evaluated and analyzed each individual  
3 Cause of Action.

4 At least so far all I've heard this morning is  
5 some argument with respect to the Second Cause of  
6 Action, the Development Agreement, the breach of the  
7 Development Agreement.

8 MS. BARNES: Okay. I --

9 THE COURT: So maybe what I'm asking is if you can  
10 perhaps focus your arguments to the specific Causes of  
11 Action --

12 MS. BARNES: Okay.

13 THE COURT: -- and the ruling that the -- the  
14 rulings that the Court made with respect to the  
15 individual Causes of Action.

16 Because I don't know. I'm not entirely clear  
17 exactly what part of the Court's ruling you're  
18 contesting, and I'm sorry, but I just am not clear.

19 MS. BARNES: Okay.

20 THE COURT: So if you are asking the Court to  
21 revisit its ruling with respect to every cause of  
22 action, then I would like to know that.

23 If you're asking the Court to simply have leave  
24 to amend the Second Cause of Action, I believe  
25 that's the Development Agreement, then I just want to  
26 be real clear on what your request for leave is this  
27 morning.

28 MS. BARNES: All right. I'm sorry if I haven't

1       been better clear.

2               I had started out with an agreement about the if  
3 then, your Honor, only because I think the way I was  
4 reading your Tentative, the if then analysis applied to  
5 all five.

6               So if I was successful in convincing you that  
7 under either scenario, taking it into trust or not  
8 taking into trust, there was injury by the City's  
9 failure to hold hearings.

10              That's why I started with that. I believe that  
11 would apply to all five. That was why I was discussing  
12 what happens.

13              You are looking at me like I didn't make any sense  
14 on that.

15              THE COURT: Well, I have to --

16              Well --

17              MS. BARNES: Okay. That's all right.

18              THE COURT: -- I disagree with you.

19              MS. BARNES: That's fine.

20              THE COURT: Let's just put it this way.

21              MS. BARNES: Your Honor, I --

22              THE COURT: The Fifth Cause of Action deals  
23 with --

24              MS. BARNES: Zoning and --

25              THE COURT: -- zoning.

26              So where in the statute that you cited,  
27 Government Code section 65860, does it say that the  
28 City has a mandatory duty to hold some sort of

1 hearing?

2 All that statute talks about is that the City or  
3 any kind of municipality has to enact zoning  
4 ordinances.

5 MS. BARNES: Right.

6 That was interpreted as a mandatory duty in  
7 Neighbors in Support of Appropriate Land Use.

8 So this is on the First Cause of Action to be  
9 precise or more precise than I was, and that's versus  
10 County of Tuolumne, 2007, 157 CalApp4th, 997.

11 And that's a case where the staff was aware --  
12 This is the County or general law cities -- the staff  
13 was aware of the intended use which was more intense  
14 than was permitted under the Zoning Code.

15 And staff and the County took the position that  
16 they did not have to rezone the property, and it was --  
17 and that decision was overturned by the Court in that  
18 above-referenced case.

19 THE COURT: Okay.

20 MS. BARNES: But -- and also as to the zoning  
21 cases, and I know that there is a strong disagreement  
22 with the City on the issue, but we do ask you to  
23 re-look at your citing to Santa Rosa Band upon bulk --  
24 Santa Rosa Band of Indians and the Humboldt cases,  
25 because in both of those cases you have a situation  
26 where the land had been taken into trust in one case  
27 40 years before zoning was even enacted.

28 So that's an after-the-fact attempt to impose

1 restrictions on the sovereign tribe. That's the  
2 Santa Rosa Band case.

3 And in the Humboldt case, the same problem exists.  
4 The argument is that under federal land title law, the  
5 Tribe and then the Bureau of Interior is taking subject  
6 to certain types of restrictions.

7 This is not a piece of residential or rural  
8 property that just has a broad zoning designation.  
9 This was a complex set of regulations that are  
10 inter-related on this property since 2001.

11 And when we're calling it zoning, I'm also  
12 referring to the fact that the City as part of the  
13 non-public actions that it took not only didn't have  
14 a zoning hearing, which I'm stating under the  
15 friends of Tuolumne we need a -- we can mandate a  
16 hearing to, but they removed the Circulation Plan  
17 and the finance payment of the parking, and they  
18 conditionally removed the environmental rule -- the  
19 environmental regulations that had been imposed as part  
20 of the shopping center.

21 And a failure to have the hearing, you also ask at  
22 the end of the First Cause of Action in your Tentative  
23 Ruling, what is the damage?

24 The damage is that none of these adverse impacts  
25 are being considered and mitigated for.

26 In some ways, your Honor, you're right. It is  
27 a no man's land. Much of this comes to first  
28 impression because of the unique levels of restrictions

1 that were already imposed on the land for purposes of  
2 the benefit of the public, many -- all of which were  
3 attempted to be taken off of the property, one of which  
4 was pushed back by the citizens successfully, and the  
5 City has removed the rest of them without any hearing  
6 or has refused to hold the hearings that we argue is  
7 mandated.

8 But that is my point as to re-visiting the First  
9 Cause of Action. You are right, that I was mostly  
10 talking about the Second Cause of Action, the  
11 Development Agreement.

12 However, the Crest-Dehesa case is directly on  
13 point on the Development Agreement argument, as is  
14 Friends of East Willits and the Voices for Rural Living  
15 2012 case on the Development Agreement.

16 And that's because the language in the DA is  
17 mandatory. No assignment shall be effective until the  
18 City, by action of the City Council approves the  
19 assignment.

20 That's the language. It doesn't say may, sure or  
21 anything, and it goes on to require review -- as I  
22 mentioned, reviews of the financials to make sure that  
23 they can successfully build and operate the mall  
24 property.

25 One of the things that got lost in the complete  
26 shuffle by the decision to allow this to go forward  
27 without the hearings,.

28 As I mentioned briefly, unless there's a

1 hearing, it's not going to be addressed, your Honor,  
2 and that is that the mall property was designed as an  
3 integrated -- not just shopping. It had parking and it  
4 had circulation in a circle going around. That allowed  
5 for the traffic that's supposed to come in and out of  
6 it, to come out at specific locations.

7 But unless the Tribe is going to continue that  
8 design which the City removed. When they took the  
9 license agreement off, they took that part of it out,  
10 and that has not been with a hearing. That just flat  
11 got taken off. It just recorded, and we had that cited  
12 in our Amended Petition. They recorded the release of  
13 that.

14 That means that the traffic is going to flow  
15 out, and there is nowhere in one place off of the  
16 tribal property, and there is nowhere that I can find  
17 in the Federal documents, and there's nothing in the  
18 State documents that address how that kind of traffic  
19 impact is going to be addressed.

20 It's the same kind of problem that we have if  
21 you -- if hearings are not mandated, because there is  
22 no addressing the enormous water and sewer change that  
23 occurs by this very, very intense use. And I'm not  
24 talking about whether it's a good idea or a bad idea.  
25 I'm talking about the intense use.

26 The inclusion of a casino and hotel if approved  
27 adds four times the amount of water use than what was  
28 evaluated by the State EIR.

1           The EIS only says it may be required by  
2 Sacramento County Water Agency to consider it. No  
3 one's even looking at the cumulative impacts. If  
4 there are no hearings, we can't even get to these  
5 points.

6           So it's true that our arguments on the First and  
7 Second Cause of Action do merge, but they can be seen  
8 as distinct because the DA rights I believe are  
9 stronger to protect the members of the public.

10           The Third Cause of Action I am not directly  
11 arguing today because I acknowledge that it was a  
12 conditional release, that what the City did was  
13 conditional, your Honor.

14           My concerns related to the environmental impacts  
15 are the ones that I stated to you, but they would --  
16 could be addressed if the Court mandated the hearings  
17 that I'm asking for.

18           And so, if they were addressed and if mitigation  
19 was imposed, you're right. It wouldn't be a -- a (sic)  
20 adverse impact to the citizens or damages that would  
21 need to be alleged.

22           The Fourth Cause of Action is a re-plead of the  
23 issue that there are no hearings.

24           So I focused for today on the issue of whether or  
25 not hearings should be mandated under either the First  
26 or the Second Cause of Action.

27           And the Fifth was for declaratory relief, and the  
28 Court really didn't address that, but if the rest of it

1 fails, it fails too.

2 So that's why I was really just focused on the  
3 First and the Second Cause of Action.

4 THE COURT: All right. Okay. I want to hear from  
5 the Respondents.

6 Ms. Ebrahimi, are you going to --

7 MS. EBRAHIMI: Thank you, your Honor.

8 I'll go ahead and start with the Respondent's  
9 First Cause of Action.

10 Petitioner's counsel cites the County of Tuolumne  
11 case which can be distinguished here.

12 First of all, there was a project application  
13 before the County in that case.

14 There is no application before the City in this  
15 case, so it's irrelevant whether that county in that  
16 case had a hearing or was required to have a hearing.

17 Petitioners have failed to cite with any authority  
18 because none exist as to why the City ought to have had  
19 additional public hearings.

20 Additionally, under the First Cause of Action, as  
21 the Tentative Ruling states, there are one of two  
22 possible outcomes.

23 Either the property falls out of trust and there's  
24 no evidence suggesting that the Tribe would build a  
25 casino, an entertainment facility, at which point  
26 there's nothing before the City.

27 Alternatively it remains in trust, and the City  
28 doesn't have any jurisdiction, and for these reasons,



1 we just believe that the First Cause of Action fails  
2 and the Demurrer should be sustained.

3 With respect to the Second Cause of Action  
4 regarding the Development Agreement, Petitioner  
5 seems to suggest that generalized findings in support  
6 of the Development Agreement somehow confer  
7 third-party beneficiary status to them which is simply  
8 incorrect.

9 The express language of the Development  
10 agreement articulates that the Agreement was intended  
11 for the benefit of the parties to the Agreement which  
12 were the Elk Grove Town Center and the City of  
13 Elk Grove.

14 Petitioner keeps insisting that the Court  
15 look at whether the public or the Petitioners were  
16 damaged, but that's not really the question before the  
17 Court.

18 The question is whether the Petitioner has stated  
19 facts which articulate a cause of action, and that is  
20 not true here either.

21 Government Code section 65865.4 expressly  
22 articulates that a Development Agreement is enforceable  
23 by any party to that Development Agreement, which  
24 Petitioners are not; therefore, that Second Cause of  
25 Action also fails.

26 And because the Petitioners here do not have  
27 standing to challenge the Development Agreement, the  
28 question of whether a hearing should or should not have

1 occurred again is irrelevant.

2 There is no standing even to the extent a hearing  
3 should have occurred. That is something that would  
4 have been decided between the City and the Real Parties  
5 in Interest.

6 The Petitioners essentially concede to the Third  
7 Cause of Action failing, but belatedly seem to now be  
8 asking the Court for a public hearing on the  
9 Environmental Impact Report which statute of  
10 limitations has long since expired.

11 And I don't think that there's anything to respond  
12 to on the Fourth Cause of Action or the Fifth Cause of  
13 Action, but I'm happy to answer any questions that the  
14 Court may have.

15 THE COURT: Thank you.

16 Mr. Pearson, do you wish to be heard?

17 MR. PEARSON: Very briefly, your Honor.

18 I don't think that the Petitioners have talked  
19 about us at all and have not addressed your Tentative  
20 which we agree with with respect to us.

21 I have a couple of points that I want to address  
22 very briefly --

23 THE COURT: Sure.

24 MR. PEARSON: -- which, you know, I think are  
25 frankly piling on a little bit, because considering  
26 nothing's been said about us, this is probably not  
27 necessary, so I promise I will not take a long time  
28 with this.

1           Number one. The suggestion that this parcel that  
2 was sold to the Tribe was permitted to be used only for  
3 a shopping center and not for anything else.

4           There's nothing in the record about that, and  
5 that's just simply not true which I just think the  
6 Court should be aware of.

7           We made an argument with -- about the  
8 Development Agreement, which is not addressed in the  
9 Tentative and which was not responded to at all by  
10 Plaintiff and is completely dispositive here in  
11 addition to the standing issue, which is by the express  
12 terms of the Development Agreement.

13           The theory that hearings are required even if they  
14 had standing is not true. That's not what the  
15 Agreement says.

16           A Development Agreement as your Honor knows is an  
17 entitlement. You know, it can be -- we discussed  
18 this at the last hearing. It can be considered an  
19 encumbrance in certain respects as well.

20           But the point is is that the rights that  
21 are -- that Elk Grove Town Center had under that  
22 Development Agreement were not assigned to the Tribe,  
23 and so for that reason, no hearings were required.

24           This issue was completely ignored by -- by the  
25 Plaintiff -- by the Petitioners, and it's completely  
26 dispositive of the Second Cause of Action.

27           Even if they had standing, the only requirement  
28 under that Agreement to have a hearing is if the

1 entitlements were transferred, and they were not, and  
2 there's no dispute about that.

3 The Agreement is attached to the Petition and  
4 therefore can be considered on demurrer.

5 And then the last point that I'd like to make,  
6 your Honor, is again Petitioner is sitting here talking  
7 about all of these things that should be done to  
8 restrict the use of the Tribe's land. The Tribe's not  
9 here.

10 You know, I respect the Court's ruling on  
11 the indispensable party issue, but I don't  
12 understand how this Court could make any rulings  
13 affecting property that the Tribe owns without the  
14 Tribe here. I think there's a serious jurisdictional  
15 question.

16 So to the extent that any of the grounds for the  
17 Court sustaining the Demurrer with prejudice were not  
18 sustained, I think that that's an additional reason why  
19 sustaining the Demurrer is appropriate.

20 And I think -- I think that's all I have unless  
21 the Court has questions.

22 THE COURT: No.

23 Thank you.

24 Ms. Barnes?

25 MS. BARNES: Yes, your Honor.

26 I'll start at the end first and go back this  
27 time.

28 The reason I did not address the Real Party in

1 Interest is because I believe that it is connected  
2 integrally to the Second Cause of Action.

3 If the -- if the actions that we have claimed that  
4 the Real Party in Interest did not take come from the  
5 City's claim that they had no duty to hold a hearing  
6 because it wasn't requested by Real Party in Interest  
7 as is pled in the Complaint.

8 We have a material factual difference of agreement  
9 as to what does the DA itself say.

10 The Development Agreement -- and I read to you a  
11 quote from the Development Agreement. I agree with  
12 Mr. Pearson that it was attached and made part of the  
13 Complaint and therefore can be considered in total by  
14 this Court.

15 However, all of the inferences are supposed to be  
16 drawn for purposes of the Demurrer in favor of the  
17 Petitioners.

18 And that language has mandatory language in it.  
19 It doesn't -- it doesn't split the benefits and the  
20 entitlements that come to the development of the  
21 property from the encumbrances and say oh. Well, there  
22 could have been a private arrangement between Hughes  
23 and Boyd and the Tribe to just transfer the benefits,  
24 but not the encumbrances.

25 I mean, that was the whole reason for the first  
26 amendment to the Development Agreement and the attempt  
27 to get it off the property in the first place.

28 So that just doesn't even -- isn't even logical.

1 THE COURT: But Ms. Barnes --

2 MS. BARNES: Yes, Ma'am.

3 THE COURT: -- the Court's ruling with respect to  
4 the Real Party in Interest was premised on several  
5 things.

6 First of all, Writ of Mandate doesn't lie against  
7 a private entity which the Real Parties in Interest  
8 are.

9 Second, with respect to the declaratory relief  
10 cause of action, you haven't alleged any damages, any  
11 basis upon which a dec relief cause of action could  
12 stand against Real Parties in Interest, and then  
13 finally, the Real Party in Interest no longer owns the  
14 land.

15 So what affirmative relief can this Court give  
16 to a party that is no longer the owner of the  
17 land?

18 MS. BARNES: Well, to the extent that you're  
19 looking at it only from the Writ of Mandate, I agree  
20 with you, your Honor.

21 I was just trying to point out factually that the  
22 arguments that Mr. Pearson was just making don't apply  
23 to the Development Agreement as to the assignment of  
24 the benefits and burdens under the DA.

25 That was -- I was just trying to respond to the  
26 points that he was just making.

27 THE COURT: But --

28 MS. BARNES: I understand what you're saying.

1 I understand that you're saying that under the Writ,  
2 we have no right to expect him, and I accept that.

3 We had anticipated that -- or not anticipated.  
4 We're hoping you're going to go back and look at this  
5 and allow the Development Agreement to stand, in which  
6 case the assignment -- the language mandating a hearing  
7 starts with a requirement that the then owner request a  
8 hearing which they did not do.

9 That is why they were added to the case. That  
10 would come under the Development Agreement, but -- I  
11 mean, excuse me -- under the declaratory relief action,  
12 but only if the Court does not order a hearing. It was  
13 an alternative argument.

14 So if you decide not to grant our request to allow  
15 us, you know -- in other words to overturn the Demurrer  
16 as to the Second Cause of Action, I acknowledge that  
17 it's going to fall here under the Development Agreement  
18 because I haven't pled it yet. But that's why I was  
19 asking for the opportunity to amend.

20 If you -- because I can't -- I cannot in good  
21 faith say to you that I can quantify the damages. You  
22 are concerned that they conveyed the property, but my  
23 point is it's an invalid conveyance by the language of  
24 the Development Agreement unless and until the City  
25 holds the hearing to consider the assignment.

26 There's a circle going on here, and that's my  
27 problem. I didn't draft the Development Agreement.  
28 I'm trying to understand and apply it to this unique

1 set of facts where Hughes actually conveys the property  
2 without asking for what's required under the  
3 Development Agreement, and the City doesn't step in  
4 to say well, regardless we're going to do this because  
5 we're required to.

6 So I'm coming to you and saying a Writ of Mandate  
7 as to the City should be granted on that cause of  
8 action.

9 I agree with you that the Writ would not apply  
10 specifically to the Real Party in Interest if damages  
11 occur, that that would come under declaratory relief,  
12 but we have not pled that at this time and we would ask  
13 permission to.

14 THE COURT: Mr. Pearson, let me ask you this  
15 question.

16 I'm sorry to cut you off.

17 MS. BARNES: Oh. No that's okay.

18 THE COURT: But you raise a point, and it is of  
19 some concern to the Court, and that is there is  
20 obviously case law out there that says that a  
21 party should be given at least one opportunity to  
22 amend their initial Pleading in this case, the  
23 Pleading that is being challenged by the Demurrer,  
24 and that the failure by the Court to allow that party  
25 to at least amend it and attempt to cure the  
26 deficiencies is an abuse of discretion.

27 And obviously the Court's Tentative Ruling does  
28 not give the Petitioner leave to amend, but I'd like to



1 get your thoughts on whether or not you think it  
2 appropriate given what Ms. Barnes has stated this  
3 morning for the Court to at least allow Petitioners one  
4 opportunity to amend.

5 And I'm going to pose this question to you as  
6 well, Ms. Ebrahimi.

7 MR. PEARSON: Well, your Honor, I have two  
8 responses to that.

9 The first is that they already have amended once,  
10 and second, the law's quite clear that the burden is  
11 on the Plaintiff to explain to the Court how the  
12 Complaint could be amended to state a cause of  
13 action.

14 And I submit that the Petitioner has not said  
15 anything even today suggesting how it could be  
16 amended to state a cause of action. I think it's  
17 impossible. The Development Agreement is attached to  
18 the Complaint.

19 You know, with all due respect to Ms. Barnes,  
20 lawyers have obligations, and to suggest that the  
21 Agreement does not say what I just said it says I  
22 think is inappropriate. I think it's -- it's crystal  
23 clear.

24 There's a form attached to the Development  
25 Agreement. If you want to assign the rights out under  
26 the Agreement, this is the form that you use.

27 The Conveyance is attached to the Pleadings here.  
28 Only the land was conveyed. There were no entitlements

1 conveyed.

2 I mean, this is a completely frivolous cause of  
3 action, and I'm not hearing any suggestions on any type  
4 of additional claim that could be pled.

5 And you know, we had a conversation at the last  
6 hearing about, you know, the Court is inclined to let  
7 people litigate and to show some -- a fair amount of  
8 leniency in terms of how aggressively people are going  
9 to plead things,.

10 But I will tell you, you know, this is  
11 expensive for my client, and we don't think that  
12 they should be permitted to proceed if they can't  
13 indicate this is the amendment that we're proposing and  
14 for it to be something that's colorable because with  
15 all due respect, this entire thing is completely  
16 frivolous.

17 THE COURT: Ms. Ebrahimi?

18 MS. EBRAHIMI: Thank you, your Honor.

19 First of all, I'm going to keep bringing it back  
20 to the question that's before the Court, and the  
21 question is can the Petitioners plead additional facts,  
22 a stated cause of action under the second claim, and  
23 the answer is squarely no.

24 Setting aside the fact that the Petitioner  
25 has already in their -- in their Amended Complaint  
26 used up 30 pages to try to convince the Court that  
27 a cause of action exists here, I find it doubtful  
28 that given another opportunity, that they would be

1 able to find a way to plead additional facts, and  
2 the reason why I say this is because it doesn't  
3 exist.

4 The law is very clear. The Government Code is  
5 clear that the parties to a Development Agreement  
6 are -- are those who can make modifications or to  
7 invoke any of the terms therein.

8 The Development Agreement expressly states that  
9 there are no intended third party beneficiaries, and  
10 those facts are not in dispute.

11 The only instance in which this cause of action  
12 could reverse is if Petitioners somehow were a party to  
13 this agreement. That fact cannot be pled, and  
14 therefore I believe that the Court's Tentative Ruling  
15 had it right, that not only should this Cause -- the  
16 Demurrer be sustained, but without leave to amend  
17 because there's no way to revive this.

18 THE COURT: All right. Ms. Barnes --

19 MS. BARNES: Briefly.

20 THE COURT: -- I'll give you the closing  
21 argument.

22 MS. BARNES: Thank you, your Honor.

23 Okay. First of all, I ask that you go back and  
24 you look at Section 2.3 of the Development Agreement on  
25 page 6 and all of Section 10.

26 Section 2.3 makes the agreement a binding  
27 covenant on the parties and explicitly cites to the  
28 old Section 1468, covenants running with the land

1 language and binding on each party and each successive  
2 owner during the ownership of such parties and any  
3 portion thereof.

4 It does not make a severance in the manner that  
5 Mr. Pearson has described. Section 10.1 says that the  
6 developer shall have the right to assign, encumber,  
7 sell or otherwise transfer, that is true, but Section 2  
8 says that no such assignment will occur.

9 So the argument would have to be that the only  
10 thing that we're assigned were the benefits, but the  
11 benefits are to develop the land in accordance with the  
12 language of the Development Agreement.

13 The body of the Development Agreement explicitly  
14 discusses that it's going to be developed as a shopping  
15 center.

16 At the time that the Development Agreement was  
17 adopted in 2014, it had been changed from a high-end  
18 open-air mall design to what they were describing as a  
19 marketplace, but it's still a shopping center. No one  
20 attempted to reduce the nature or scope of the height  
21 restrictions as an example.

22 So the restrictions go with the benefit, and the  
23 benefit is shopping center.

24 Coming back to this issue of third party  
25 beneficiary, Ms. Ebrahimi and the City acknowledge and  
26 agree with us that there were two initial parties  
27 for the Agreement, and that is the City and the  
28 developer.

1 But who is the City?

2 It's the citizens of the City. They have a --

3 And so, they have come and petitioned the Court  
4 for Writ of Mandate to compel the City, the direct  
5 actor to enforce these sections.

6 Where the confusion I think on the third party  
7 beneficiary is the traditional fights that occur when  
8 you're suing for breach of contract.

9 I'm asking the City to compel them to enforce the  
10 contract language. But that's a horse of a slightly  
11 different color, and that's why I believe that we are  
12 entitled to it, and we ask again that the Court  
13 reconsider its ruling as to the Second Cause of Action,  
14 First and Second, but especially as to the Second  
15 because the rights of the --

16 It's not just the Petitioners. When you have a  
17 Referendum that's served by over 12,000 people, there's  
18 a lot of people that are very, very interested in  
19 what's going to happen with this property.

20 Thank you, your Honor.

21 THE COURT: Okay. All right. Thank you.

22 Is the matter submitted?

23 MS. BARNES: Yes.

24 Would you like a copy of the cases that I cited  
25 that were new, your Honor?

26 THE COURT: Yes, please.

27 Submitted?

28 MS. EBRAHIMI: Yes, your Honor.

1 MR. PEARSON: Yes, your Honor.

2 THE COURT: Thank you.

3 I will take this matter under submission.

4 (Proceedings Concluded)

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CERTIFICATE OF OFFICIAL SHORTHAND REPORTER

STATE OF CALIFORNIA     )  
                                  )     ss.  
COUNTY OF SACRAMENTO    )

I, SHIELA M. CONNOLLY, hereby certify that I am a Certified Shorthand Reporter, and that I recorded verbatim in stenotype the proceedings had on FRIDAY, JUNE 23, 2017, in the matter of STAND UP! CALIFORNIA, Petitioner, versus City of Elk Grove, Respondent, Case Number 34-2016-80002493-CU-WM-GDS, completely and correctly to the best of my ability; that I caused said shorthand notes to be transcribed into typewriting, and that pages 1 - 38 constitute a complete and accurate transcript of said stenotype notes taken at the above-mentioned proceedings.

Dated: July 14, 2017.

\_\_\_\_\_  
SHIELA M. CONNOLLY, RPR, CSR No. 5659

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