

LAW OFFICES OF KELLY A. AVILES

January 3, 2019

VIA FAX (209) 532-4513, EMAIL (DBO@SONORAHS.K12.CA.US) AND CERTIFIED MAIL

Board of Trustees
Sonora Union High School District
100 School Street
Sonora, CA 95370

Re: Brown Act Demand for Cure and Correction (pursuant to Gov't. Code §§ 54960 and 54960.1) and Public Records Act Request (pursuant to Gov't. Code § 6250, et seq.)

Dear Board of Trustees:

This demand is made on behalf of our client, the Tuolumne County Farm Bureau, and concerns the District's closed sessions related to and the ultimate sale of the property commonly referred to as Wildcat Ranch (18461 Wards Ferry Road, Sonora, California, Assessor's Parcel Number 97-130-04) to the Regional Community Park Foundation ("Park Foundation"). Please direct all further communications regarding this matter to our office.

On October 23, 2018, the Board held a special meeting. Item 3.A. on the closed session agenda was listed as follows:

3.A. Conference with Real Property Negotiators (Government Code section 54956.8)

Rationale:

Property: Wildcat Ranch Property; APN: 097-130-04

Negotiator: Mark Miller

Negotiating Parties: Sonora UHSD and The Park Foundation

Under Negotiation: Price and/or Terms of Sale

A similar item appeared on the closed session agenda for the November 6th regular meeting, as Item 7.A.:

7.A. Conference with Real Property Negotiators (Government Code section 54956.8)

Rationale:

Property: Wildcat Ranch Property; APN: 097-130-04

Negotiator: Mark Miller

Negotiating Parties: Sonora UHSD and The Park Foundation

Under Negotiation: Price and/or Terms of Sale

Government Code section 54956.8 provides that “a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and **terms of payment** for the purchase, sale, exchange, or lease.” (Emphasis added.) Instead, the agendas indicate that “Price and/or **Terms of Sale**” were to be discussed. (Emphasis added.) During these closed sessions, the Board went far beyond discussion of price and terms of payment, and addressed and made decisions on a variety of wide-ranging terms of the sale that are not permitted to be discussed in closed session. (See *Shapiro v. City Council of San Diego* (2002) 96 Cal.App.4th 904; 94 Ops.Cal.Atty.Gen. 82 (2011).)

The purpose of the closed session provision relating to real property is to ensure that the agency is not forced to disclose information that might compromise its bargaining position to the buyer. Discussing the reasoning behind this closed session provision, the California Attorney General noted that “[n]o purchase would ever be made for less than the maximum amount the public body would pay if the public (including the seller) could attend the session at which that maximum was set...” Here, the purpose of the closed session provision was entirely undermined, as the Park Foundation, was in the October closed session and participated in the negotiations. This is a “semi-closed” meeting and is not permitted under the Brown Act. (See Gov’t. Code § 54956.8 (“negotiators may be members of the legislative body of the local agency”); see also 46 Ops.Cal.Atty.Gen. 34, 35 (1965); California Attorney General’s Guide to the Brown Act, p. 31.)

In addition, while no action was reported out after either closed session, actions were taken. The Brown Act defines “action taken” to mean “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a

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body or entity, upon a motion, proposal, resolution, order or ordinance.” (Gov’t. Code § 54952.6.) The Trustees and the Park Foundation agreed on a number of terms regarding the sale in the October closed session. The Board itself also made numerous decisions about the property and the sale in both the October and November closed sessions. These actions were illegal and must be rescinded.

The culmination of these illegal closed session negotiations was the Board’s vote to sell the property to the Park Foundation at its December 4, 2018 Special Meeting. (See 12/4/18 Agenda, Item 5.I. “Approve Purchase and Sale Agreement with The Park Foundation for Surplus Property at Wildcat Ranch.”) The Board’s approval of the Purchase and Sale Agreement was nothing more than a rubber stamp of the terms which had been illegally discussed and agreed upon in the two illegal closed sessions. Therefore, this action must also be rescinded.

The secrecy with which this transaction was conducted flies in the face of the spirit of the Brown Act. Not only were the actions illegal, but they deprived members of the public and my client a meaningful opportunity to participate in this important decision and the discussions and actions leading up to it. Additionally, the secret negotiations are particularly concerning here because various legal questions have been raised about the sale of this property, including the District’s refusal to comply with CEQA, whether the District properly complied with the surplus property disposal requirements, the sale price, which appears significantly lower than market value, and the terms of the agreement, which seem to be incredibly one-sided in favor of the buyer and were released only hours before the meeting where the Board approved the sale.

Therefore, in order to ensure that the public has the ability to meaningfully participate in the decision-making process relating to this property and any sale, my client hereby demands that pursuant to Government Code sections 54960 and 54960.1, the Board cure and correct its illegal action by (1) disclosing the contents of the illegal discussions and decisions that occurred in the October 23 and November 6 closed sessions related to the Wildcat Ranch; (2) rescinding all actions taken during the October 23 and November 6 closed sessions related to the Wildcat Ranch; and (3) rescinding approval of the Purchase and Sale Agreement with the Park Foundation during the December 4 meeting.

In addition, pursuant to the California Public Records Act, my client would like copies of the following records:

1. Any and all communications, including but not limited to, emails, letters, text messages, voicemails, letters, memos, from January 2018 to present, to or from any Board Member, former Board Member, Superintendent, the District’s legal counsel, or any District official or employee regarding the Wildcat Ranch Property, including any communications that exist on personal devices.

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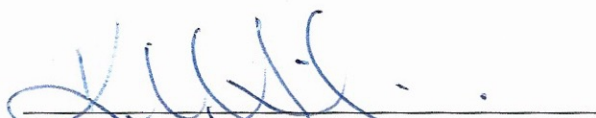
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2. Any and all communications, including but not limited to, emails, letters, text messages, voicemails, letters, memos, from January 2018 to present, to or from any Board Member, former Board Member, Superintendent, the District's legal counsel, or any District official or employee, including any communications that exist on personal devices, to or from any employee, official, agent, representative, or legal counsel of the Park Foundation.
3. Any and all weekly reports, sometimes referred to as Friday Reports, Weekly Reports, Weekly Memos, or Weekly Updates, from the Superintendent to the Board from January 2018 to the present.
4. All Form 700 forms filed between 2017 to 2018.

These records should be released to my client and the public prior to any reconsideration of this action or any sale of the Wildcat Ranch property to ensure that the public has the information necessary to be involved in a meaningful way in the decision-making process.

The Board must notify this office of its decision to cure and correct as described, or of its refusal to do so, within 30 days. If the Board fails or refuses to cure and correct as demanded, my client will seek judicial invalidation of the challenged actions pursuant to § 54960.1, as well as other relief set out in § 54960, in which case, we will also seek an award of court costs and reasonable attorney fees pursuant to Government Code § 54960.5.

Sincerely,



Kelly Aviles

cc: Dr. Mark Miller, Superintendent, via email to shssupt@sonorahs.k12.ca.us
Dana Vaccarezza, Chief Business Official, via email to dvaccarezza@sonorahs.k12.ca.us