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# Wingspread pact challenged

## Patton says County gift-lease deal with developer is defective

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SANTA CRUZ — Supervisor Gary Patton has looked Wingspread Beach developer Ryland Kelley's gift horse in the mouth, and he says some of its teeth are missing.

According to Patton, a proposed gift-lease agreement between the developer and the county is defective. The Third District supervisor, who has opposed Kelley's project tenaciously for more than a year, has recommended that the Board of Supervisors hire an "independent legal counsel" to review the agreement, which was recently negotiated between Kelley's attorneys and

County Counsel Dwight Herr.

Patton made his recommendation in a 10-page memo delivered to his fellow board members late Monday afternoon. Supervisors, who approved Kelley's project "in concept" more than 17 months ago, are expected to take final action on the development proposal and the gift-lease deal following a public hearing scheduled to start at 1:30 p.m. today.

Patton said the proposed deal between the county and Conference Associates — the limited partnership which will build and operate Wingspread — is flawed because it:

- Could collapse if Conference Associates defaults on mortgages.
- Violates a county ordinance which bars the county from becoming financially involved in the hotel-conference center-performing arts complex which Kelley wants to build on the Porter-Sesnon property in Aptos.
- Fails to guarantee adequate public control of the performing arts center.
- Disguises a promotional budget for Kelley's development as a subsidy for the center.

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## Wingspread

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Kelley leased the 66-acre Porter-Sesnon site from the University of California for 99 years in 1979.

Under the agreement proposed for board approval today, the developer would give his lease to the county in exchange for approval of the Wingspread project. The county, in turn, would lease the Porter-Sesnon site back to Conference Associates for 75 years.

Conference Associates would pay the county at least \$1 million a year in rent during the project's first 10 years of operation, \$1.5 million annually over the next 10 years, \$2 million a year during Wingspread's third decade, and at least \$2.5 million annually thereafter.

The partnership would also be required to make substantial payments to the Wingspread Arts Foundation, the private group which will run the performing arts center. The agreement calls for Conference Associates to pay the Arts Foundation \$750,000 during the first four years following final approval of the Wingspread project, and at least \$500,000 annually after the development is completed.

Guaranteed revenues to the county and the Arts Foundation could run higher under the agreement, which calls for periodic increases in rent payments and subsidies to reflect inflation. The agreement further provides that the county and the Arts Foundation must receive percentages of the Wingspread development's gross revenues over the years, if those amounts prove greater than the minimum rent and subsidy payments.

The agreement stipulates that the county cannot be held responsible for any loans which Kelley or Conference Associates may have already secured — or might take out in the future — against the Porter-Sesnon lease. And it gives Conference Associates a free hand to borrow more money against the lease. It also states that the county's minimum rental guarantees are out the window if Conference Associates defaults on its loans, and another party acquires the Porter-Sesnon lease at a foreclosure sale.

In his memo to the board, Patton said that clause made the agreement "unenforceable." Warned the supervisor: "Any financial failure by the developer to pay a mortgage will likely result in all of the county's interests being wiped out."

Patton said that if supervisors were bent on approving the development and going ahead with the deal with Kelley, they should ask an independent attorney "with a specialty in real-estate development and commercial law" to examine the agreement to make sure that the project's public benefits "will be adequately protected."

Patton charged in his memo that local artists and performing groups could not count on much support from Conference Associates, despite the hefty performing arts subsidies called for under the proposed Wingspread agreement. He noted that under an existing agreement between Kelley's partnership and the Wingspread Arts Foundation, 70 percent of the money would be used to stage and promote "outstanding artistic events," and could not be used for "ongoing maintenance and administration" of the three-hall performing arts complex.

"The annual subsidy to the performing arts is not, in fact, a subsidy to local artists and performing arts groups," asserted Patton, who said it would be used instead, "largely... for marketing the hotel/performing arts facilities for the developer."

Patton warned that the remaining money would not be enough to pay to operate and maintain the halls, leaving the "people who use the facilities" to pay the bills.

"My prediction," he said, "is the cost will be... so high that local groups may not be able to afford the facilities."

Asked about Patton's concern, Herr said Monday that the "intent" of the agreement "is to make sure that doesn't happen." He said the agreement stipulates that local non-profit groups may not be charged any more for use of the performing arts center than is necessary to cover "reasonable" operation and maintenance costs.

Project conditions proposed by the county Planning Department call for the Board of Supervisors to appoint two of the members of the Arts Foundation board. The conditions also state that the Arts Foundation must "form a joint use committee" with Cabrillo College.

In his memo to the board, Patton said these steps would not be sufficient to assure that the private, non-profit group would remain responsive to public interests. He said conditions relating to the arts facilities should be revised to ensure that the Board of Supervisors and the college are "able to exert actual control" over them.

Patton said that the proposed gift-lease agreement between Conference Associates and the county violates the provisions of an ordinance which bars the county from financial participation in Wingspread. Drafted by opponents of the project, that measure was adopted by supervisors last year after Wingspread foes gathered enough signatures to qualify it as a ballot initiative.

According to Herr, the agreement does not violate the ordinance, because the county is not spending any money to acquire the Porter-Sesnon lease.