

# THE SILVERSTEIN LAW FIRM

*A Professional Corporation*

215 NORTH MARENGO AVENUE, 3RD FLOOR  
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

ROBERT@ROBERTSILVERSTEINLAW.COM  
WWW.ROBERTSILVERSTEINLAW.COM

February 7, 2018

**VIA FACSIMILE (805) 568-2249**  
**AND EMAIL**

**[sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)**

**[jcleary@countyofsb.org](mailto:jcleary@countyofsb.org)**

**[rmorgan@co.santa-barbara.ca.us](mailto:rmorgan@co.santa-barbara.ca.us)**

Santa Barbara County Flood Control &  
Conservation District Bd. of Directors  
c/o Clerk of the Board  
105 East Anapamu Street, Fourth Fl.  
Santa Barbara, CA 93101

**VIA FACSIMILE (805) 568-2982**  
**AND U.S. MAIL**

Michael Ghizzoni, Esq.

County Counsel

Office of the Santa Barbara

County Counsel

105 East Anapamu Street, Suite 201  
Santa Barbara, CA 93101

Re: Proposed Resolution of Necessity and other issues related to   
324 De La Vina Street, Santa Barbara

Dear All:

As stated in my January 8 and 19, 2018 letters, this firm and the undersigned represent De La Vina Holdings, LLC, owner of the property located at 324 De La Vina Street, Santa Barbara.

In my January 8 and 19, 2018 letters, I raised several issues about the County's proposed taking of my client's entire property in fee. To this point, the County has not provided a single response to the legal and factual issues I have raised, nor taken any steps to remedy them, assuming they can be remedied.

We have also sent several Public Records Act requests, and we have objected to the County's refusal to comply with Code of Civil Procedure § 1263.025 regarding payment of \$5,000 for an appraisal in furtherance of my client attempting to negotiate with the County.

With regard to the Public Records Act requests I personally have sent, unless and until we receive all responsive documents sufficiently in advance of any new hearing date on the County's proposed adoption of the resolution of necessity and approval of authorization for testing on my client's property, those hearing dates should be continued.

Santa Barbara County Flood Control  
Michael Ghizzoni, Esq.  
February 7, 2018  
Page 2

I understand they are now set for February 27, 2018. However, we object and again request a continuance until after our Public Records Act requests have been fulfilled.

Can staff please clearly inform us of the status of production of those documents? The County's written response and production related to our Friday, January 19, 2018 CPRA requests were due no later than **January 29, 2018**. We have received nothing to date; the County is in violation of the CPRA, and we contend, has waived any objections to our requests.<sup>1</sup> If it would help to arrange a meeting or call with County staff to facilitate and expedite our receipt of the requested documents, we offer to do so at the earliest date possible. Please advise.

Further, among other requests, our January 19, 2018 CPRA Request No. 3 sought:

“All documents that refer or relate to this statement at p. 3 of the January 9, 2018 Agenda Letter for Agenda item No. 6: “Initially, staff considered acquiring only permanent and temporary easements, however upon a review of the entire Mission Creek Project, including the overall operation and maintenance of Reaches 2B, 3, 4 and portion of 5, (Attachment 3), it has become apparent that the vacant parcel [the subject property] provides a strategic location that is beneficial for the current and future operation and maintenance of the overall Mission Creek Project in this area” – including but not limited to all documents that refer or relate to how “it has become apparent that the vacant parcel [the subject property] . . . is beneficial for the current and future operation and maintenance of the overall Mission Creek Project.”

We are perplexed and alarmed by the County's substantially changed project description related to the overall project and proposed use/taking of my client's property.

---

<sup>1</sup> On Monday, January 22, 2018 at approximately 7:30 a.m., the County sent links titled “De la Vina 1-4-18” and “De La Vina 1-5-18” only to my assistant, which were non-responsive (nor could they have been) to our Friday evening, 6:43 p.m., January 19, 2018 CPRA requests. The links sent appear to be repetitive of documents previously provided to Mrs. Mirtorabi. Similarly, on January 23, 2018 at 8:30 a.m., the County's Mr. Morgantini emailed a letter to Mrs. Mirtorabi only, even though the County by that date knew I represent Mr. and Mrs. Mirtorabi. Mr. Morgantini's letter expressly addressed only Mrs. Mirtorabi's December 20, 2017 email. My point is that to date, we have **not** received any of the separate documents required by, and responsive to, my detailed January 19, 2018 requests. The County has not even acknowledged my requests.

Santa Barbara County Flood Control  
Michael Ghizzoni, Esq.  
February 7, 2018  
Page 3

Those changes are the basis for the County's current proposed full taking of the property in fee, as opposed to the previously-disclosed partial (and some temporary) proposed takings of easements only.

Turning to the appraisal issue, as noted in my January 8, 2018 correspondence, the County's approach violates the law, and frustrates the purpose behind CCP § 1263.025 and Govt. Code § 7267.2. The County cannot hold these funds in exchange for attempting to force a disclosure of the appraisal report. Such "strings attached" are not allowed or provided for in the plain language of the statute.

By copy of this letter to Mr. Ghizzoni, I am requesting that these funds be provided without any conditions outside the plain language of the statute. Under Govt. Code § 7267.1(a), the County's goal must be to attempt in good faith to negotiate with my client expeditiously. The legislature provided for this \$5,000 to improve the property owner's ability to engage with the condemnor.<sup>2</sup>

I am authorized to attempt to engage in discussions with the County. Yet the County's attaching of illegal conditions to the dispersal of the funds to which my client is entitled is hampering that process.

I invite Mr. Ghizzoni to contact me to work through these various issues, and in furtherance of a potential global resolution of the disputes.

Please include this letter in the administrative record for this matter. Thank you for your courtesy and prompt attention to these issues. I look forward to your response.

Very truly yours,



ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:vl

---

<sup>2</sup> Govt. Code § 7267.1(a) provides "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation." Seeking to pursue such negotiations, on December 20, 2017, my client wrote to the County's James Cleary that it "would consider selling at fair market value, but intend to accept the County's payment of \$5,000, pursuant to Code of Civil Procedure Section 1263.025, towards an independent appraisal." In response, we received the County's improper "strings attached" communication. Thus, to date, my client has not had use of those funds.