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July 16, 2018

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

Re: Objections to July 17, 2018 Departmental Agenda
Item No. 6 (File No. 18-00575)
324 De La Vina Street, Santa Barbara
Proposed Resolution of Necessity and Authorization for Testing

Honorable Board of Directors:

This firm and the undersigned represent De La Vina Holdings, LLC, owner of the property located at 324 De La Vina Street, Santa Barbara (the "Subject Property").

This letter incorporates by reference and renews all objections contained in our and our client's prior correspondence and comment letters, including but not limited to our January 8, 2018 letter and attachments.

We have requested a further continuance of the above-referenced agenda item, including because my clients are unavailable on the date set by the County for this hearing. Mrs. Mirtorabi wrote to the County requesting a continuance (see **Exh. 1** hereto), but her request was denied. That her request was denied given the circumstances she identified is disappointing, to say the least.

Substantively, we note that the County has taken little action to remedy the multiple flaws in its precondemnation process vis-à-vis my client – pursuant to mandatory Government Code and Code of Civil Procedure requirements – as set out in

detail in our January 8, 2018 letter. On that basis, if the County nonetheless proceeds with the disputed agenda items, the County's approvals would be *void ab initio*.

We also note that the County's revised offer continues to fail to comply with Government Code precondemnation requirements. We still have not received the \$5,000 pursuant to Code Civ. Proc. § 1263.025. Further, the mandatory Govt. Code § 7267.2 precondemnation offer remains defective, including but not limited to the fact that the County's March 8, 2018 "offer" letter is internally inconsistent and illegal, at one point stating the offer price spelled out as: "ONE MILLION SEVEN HUNDRED **SIXTY THOUSAND DOLLARS** [sic] **AND NO/100 [sic] DOLLARS**" (emphasis added), and immediately following that, stating "\$1,700,000.00" using numerals. (See top of p. 2 of the County's March 8, 2018 letter.) So is it: (1) \$1,760,000; (2) zero; or (3) \$1,700,000? The "offer" is hopelessly confusing and improper. Govt. Code § 7267.2 provides in pertinent part: "(a)(1) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence." As a result, approval of the Resolution of Necessity is illegal. Under the Eminent Domain Law regarding a proper, mandatory offer being made sufficiently in advance of adoption of an RON, the matter must be continued until compliance has been shown.

Second, among other requests, our January 19, 2018 CPRA Request No. 3 seeks:

"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." (Emphasis added.)

We remain deeply concerned by the County's unexplained and substantially changed project description for and intended use of my client's property. Those changes are the basis of the current proposed full taking of the property in fee, as opposed to the previously-disclosed partial (and some temporary) easement takings. These dramatic changes are not supported by the required CEQA and other public review and approval processes.

Although hampered by the County's failures to timely comply with our CPRA requests, we do provide the following additional comments for your review and consideration:

Lower Mission Creek Flood Control Feasibility Study Final EIS/EIR, September 2000

The Final EIS/EIR-recommended alternative/Preferred Plan (Alternative 12) indicates that the site owned by our client (referred to as the Caltrans property in the Final EIS/EIR) provides an opportunity to construct an additional habitat expansion zone (page ES-4 and also Figure 3.5.2-3 Location of Possible Habitat Expansion Zone in the Upper Part of the Oxbow and Figure 3.5.2.1-11 Gutierrez Street Bridge to Highway 101 and Figure 3.5.2.1-13 New Overflow Culvert that Bypasses the Oxbow between Highway 1010 and Chapala Street Bridge) in addition to the five habitat expansion zones proposed in Alternative 12. The Final EIS/EIR appears to indicate that the "Caltrans property" is not needed as a habitat expansion zone in order to provide the required biological mitigation.

The Final EIS/EIR describes, evaluates and mitigates future operation and maintenance activities (cleaning, repair, removal of sediment) in the channel of 15 to 30 days per year (Section 3.5.3.2 page 3-47 and 3.5.3.3 page 3-53) but the need for a permanent site for operation and maintenance activities is not identified.

Lower Mission Creek Reaches 1 – 7 Design Documentation Report, July 2011

The July 2011 Design Documentation Report (page 1) prepared for the Army Corps of Engineers identifies four proposed changes to the project (mimicking a natural channel, selectively maintaining vertical walls, optimizing the concrete channel wall design and locally steepening walls) and indicates (page 10) that the parcel owned by Caltrans (now owned by our client) "is not available for expansion and has been eliminated from further consideration." However, the access ramp through the site (apparently requiring a permanent easement across the Subject Property) from De La Vina remains.

The Design Documentation Report (page 23, section 4.51) acknowledges that Caltrans sold the site and remediated it and that the site no longer shows up on Geotracker as a contaminated site.

Current County Plan

The County now says that the entire parcel is needed permanently for “operation and maintenance.” Neither the 2000 Final EIR/EIS nor the 2011 Design Documentation Report indicates, much less analyzes, the need for a permanent operations and maintenance location/facility, let alone that such a location/facility would be located at the Subject Property, i.e., our client’s site. A permanent operations and maintenance location/facility could entail any number of structures and/or activities, none of which were identified or analyzed in any of the environmental documents – but which must be disclosed, analyzed and fully mitigated as part of a public CEQA review process, most likely through an EIR, but at a minimum, an MND, **prior** to the County being able to proceed with its proposed use of eminent domain to take our client’s entire property. See also CEQA Guidelines § 15162.

Changed Conditions

The recent flooding and debris flows have resulted in extensive impacts in the area. We are inquiring whether these events have resulted in the need for any changes to the proposed plan. Have the flooding/debris flows changed the creek? Is new hydrological modeling needed to identify the changed conditions and identify corrections, changes or refinements to the project design? See also the County’s recognition regarding this issue in **Exh. 2** hereto. The massively changed conditions are also judicially noticeable.

Since publication of the 2000 Final EIR/EIS and even the 2011 Design Documentation Report, we now have more information as to potential impacts in the Santa Barbara area that could result from climate change. We can expect (and have in fact experienced recently) more intense storms. We can also expect more fires because of hotter and longer summers leading to higher stream flows including greater debris flows as a result of increased runoff from denuded areas.

These changed baseline conditions must be factored into the new CEQA disclosure and analysis of the changed project description (expanded “maintenance and operations uses for the entire project; full taking of entire property) concerning the Subject Property. Obviously, changed baseline environmental conditions may result in changed environmental analysis. “[T]he impacts of a proposed project are ordinarily to

be compared to the actual environmental conditions existing at the time of CEQA analysis.” Communities For A Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 321-322. See also Woodward Park Homeowners Ass’n, Inc. v. City of Fresno (2007) 150 Cal.App.4th 683, 710 (referring to “the usual rule requiring the baseline to be the existing physical environment”). This is even more imperative in light of the dramatically altered baseline conditions now present.

A subsequent EIR or at least mitigated negative declaration, is required in light of the Thomas Fire and subsequent massive debris flow, along with the further discretionary approvals required for the Project related to the expanded (but to date undefined and unjustified) use of my client’s entire property, via proposed fee taking. Guidelines Section 15162 provides in pertinent part that such subsequent CEQA review must occur, and the County cannot proceed with consideration let alone adoption of its Resolution of Necessity at least until it does, because:

“(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

“(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

“(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

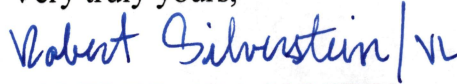
“(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

“(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR”.

Santa Barbara County Flood Control
July 16, 2018
Page 6

Please ensure that this letter is included in the record for this matter. Thank you for your courtesy and prompt attention to these issues.

Very truly yours,

A handwritten signature in blue ink that reads "Robert Silverstein/vl". The signature is written in a cursive style.

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:vl

Encls.

cc: Das Williams (via email dwilliams@countyofsb.org)
Janet Wolf (via email jwolf@countyofsb.org)
Joan Hartmann (via email hartmann@countyofsb.org)
Peter Adam (via email peter.adam@countyofsb.org)
Steve Lavagnino (via email steve.lavagnino@countyofsb.org)
Clerk of the Board (via email sbcob@co.santa-barbara.ca.us)

ATTACHMENT 5

From: [Azam Mirtorabi](#)
To: [Cleary, James](#); [Cleary, James](#)
Cc: [Allen, Michael \(COB\)](#); [Williams, Das](#); [Wolf, Janet](#); [Hartmann, Joan](#); [Adam, Peter](#); [Lavaqino, Steve](#)
Subject: Request for postponement of the July 17, 2018 hearing
Date: Friday, June 22, 2018 9:08:45 AM
Attachments: [Scan 42.pdf](#)

Dear Mr Cleary,

I hope all is well with you. We are having difficult times these days because a young very dear and close relative has been diagnosed with a stage 4 lung cancer a few days ago. The cancer has metastasized into her brain with 12 scattered tumors. We feel awful.

We have an upcoming overseas trip starting on July 18 , we will be back on Aug 4, a copy of our itinerary is attached here.

We are not in a mental state to properly prepare and deal with the issue at hand. Additionally, we are going to be super busy before taking our trip, and traveling to Santa Barbara a day before our scheduled flight is going to be a great burden for us. Therefore we request for a postponement of the hearing to a date after our return.

Sincerely,

Azam Mirtorabi

COUNTY OF SANTA BARBARA

Michael C. Ghizzoni
County Counsel



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Santa Barbara, CA 93101
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COUNTY COUNSEL

February 26, 2018

VIA EMAIL ONLY

Robert P. Silverstein
The Silverstein Law Firm, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, California 91101-1504
robert@robertsilversteinlaw.com

Re: Response to Letters Dated February 7 and 8, 2018/Public Records Act (PRA) Request

Dear Mr. Silverstein,

Your letters to the County Flood Control and Office of County Counsel have been forwarded to me for response related to the PRA. All other substantive questions about the project will be addressed in a separate response. In your correspondence, you requested a status of the production of the documents requested in your January 19, 2018 letter.

As a preliminary matter, the County interprets all references to the "Project" to mean Reach 2B Phase II and Reach 3. If you desire public records related to all aspects of the various Reach projects (over a 40 year period), we will need to set up a time to discuss and clarify what you seek as this definition of the "Project" would be overbroad and the potentially responsive materials too voluminous to produce.

Mr. Morgantini corresponded with either your client or your firm on the following dates: 12/22/17, 1/5/18, 1/12/18, 1/22/18, and 1/23/18. Prior to Mr. Morgantini's involvement with the PRA requests, Mr. Cleary was in regular communication with your client and provided responsive public records as requested as demonstrated in the email correspondence located in the dropbox. In sum, even though the County, and especially Flood Control, have been dealing with the recent devastating Thomas Fire and subsequent massive debris flow in Montecito, the County has been diligent in responding to you and your client's PRA requests.

All responsive documents are now accessible in one place, the dropbox, which may be accessed at: <https://cosantabarbara.box.com/s/85acbfh7u83pdgfgg9zgg6e01m4rsu55>. If you encounter any problems or issues accessing this link, please let me know.

Your requests are set forth below in bold followed by the County's response. Any exemptions to the PRA previously asserted by the County are re-asserted and incorporated into this letter.

EXHIBIT 2