

Lenzi, Chelsea

From: Cleary, James
Sent: Thursday, January 4, 2018 5:41 PM
To: sbcob
Cc: Van Mullem, Rachel; 'jdm@osmlawyers.com'; Martin, Steven G.; Montez, Michelle; Fayram, Tom
Subject: RE: Attorney-Client Privilege: Reach 2B-2 & 3 De La Vina Parcel ***Script & Notice to Appear***
Attachments: 12-20-17 De La Vina PRA.pdf; Thursday December 21 2017 10_49 PM e-mail.pdf; Thursday January 4 2018 9_55 AM e-mail.pdf

The owner has requested the attached letter and e-mails be made part of the record for Agenda Item #6 on the January 9th 2018, Hearing Date. Thanks. jamEs

From: Cleary, James
Sent: Wednesday, January 3, 2018 10:34 AM
To: Martin, Steven G. <sgmartin@co.santa-barbara.ca.us>; Allen, Michael (COB) <allen@co.santa-barbara.ca.us>; Alexander, Jacquelyne <jralexander@co.santa-barbara.ca.us>
Cc: Van Mullem, Rachel <Rvanmull@co.santa-barbara.ca.us>; jdm@osmlawyers.com; Pell, Janette <jpell@countyofsb.org>; Fayram, Tom <Tfayram@cosbpw.net>; Lopez, Christina <Clopez@cosbpw.net>; Morgantini, Richard <rmorgan@co.santa-barbara.ca.us>
Subject: Attorney-Client Privilege: Reach 2B-2 & 3 De La Vina Parcel ***Script & Notice to Appear***

Attached is the Script for the Resolution of Necessity (WORD & pdf Versions). Not sure if County Counsel needs to revise the scripted and what the COB needs to read into the record.

Attached too are the e-mails with attachments from the property owner regarding the hearing. The script provides for the COB to read any letters, but the owner has requested the e-mails be made part of the record. Richard Morgantini has been working with County Counsel on the PRA info, but not sure what the COB will be reading during the hearing, after Tom Fayram's presentation to the Board which I believe Tom will have one slide showing the project area for Reach 2B-Phase II and Reach 3. Thanks for reviewing the script and making any revisions. jamEs

Dear Mr. Cleary,

We would consider selling at fair market value, but intend to accept the County's payment of up to \$5,000, pursuant to Code of Civil Procedure Section 1263.025, towards an independent appraisal. Please advise regarding timing for our receipt of that payment. Given the holidays, we expect that we cannot get an appraisal completed for our review and consideration in responding to the County's offer for about 60 days. As a result, we request that the County confirm that the currently-scheduled January 9, 2018 resolution of necessity hearing be continued for approximately 60 days.

In addition, I have been trying to obtain documents for many months from the County pursuant to the Public Records Act, but the County has been largely unresponsive. We have been frustrated by the County's actions. We renew those requests, and respectfully remind you that under Government Code Sections 6253 and 6255, the County must clearly state if it is withholding or redacting documents, and the alleged bases for withholding or redacting. The County's responses have been deficient in this regard as well.

This letter will also serve as a further Public Records Act request under the California Public Records Act. Please provide copies of the following from the County of Santa Barbara, as defined below.

For ease of reference in this document, please refer to the following defined terms:

"County"

Shall refer to the County of Santa Barbara, its General Services Dept., the Santa Barbara County Flood Control and Water Conservation District, the Board of Supervisors, all members of the Board of Supervisors, all County commissions, boards, offices, departments and agencies, and all officers, officials, employees, consultants, and agents thereof, including in-house counsel and any and all outside counsel.

"Project"

Shall refer to what is referred to by the County as the "Lower Mission Creek Flood Control Project," and any versions, or phases, or iterations thereof, including but not limited to Reach 2B Phase II & 3.

"Document,"

As defined in Govt. Code Section 6252(g), shall mean any handwriting, typewriting, printing, Photostatting, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Please note that Documents and Emails includes, but is not limited to, correspondence to or from any email account through which any public business is conducted, including but not limited to personal or otherwise private email accounts belonging to government

officials, employees or consultants, pursuant to the California Supreme Court's recent decision in City of San Jose v. Superior Court (2017) 2 Cal.5th 608. This also includes text messages on any public or private device on which discussions about the Project and other public matters occurred. Please ensure that you have secured and produced all such personal or otherwise private emails and texts. Therefore, we are also requesting that all relevant officials, employees and agents preserve intact under a litigation hold all such "personal" and official emails and text messages, and not to destroy, delete, allow to be automatically purged, or otherwise to engage in or permit spoliation of such evidence. To the extent that such emails or texts have been deleted, purged or otherwise spoliated, we demand that the holders of these devices immediately be informed that they must take all efforts to retrieve any deleted or otherwise purged emails and texts, and make all efforts to retrieve and preserve them. Please confirm that you will do so.

The Public Records Act requests include:

1. All documents from January 1, 2015 through the date of compliance with this request that refer or relate to the Project, including but not limited to emails and text messages, and further including but not limited to all documents that refer or relate to Mostafa or Azam Mirtorabi, De La Vina Holdings, LLC, and/or APN 037-245-018, also known as 324 De La Vina Street, Santa Barbara.
2. All documents from January 1, 2002 through the date of compliance with this request that refer, relate to, or are communications between the County on the one hand and any other governmental agency, whether federal, state or local, regarding the Project, including but not limited to any and all staff reports, working files, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, attachments to emails, notes, photos, and audio and/or video recordings.
3. All documents from January 1, 2002 through the date of compliance with this request that refer, relate to, or are communications between the County on the one hand and all other property and/or business owners related to properties that the County has acquired or seeks to acquire for the Project, and further including but not limited to all documents that show which and how many properties sought by the County for the Project have already been acquired by the County.
4. All CEQA documents from January 1, 2015 through the date of compliance with this request that refer or relate to the Project and any earlier iteration(s) of the Project, including but not limited to all EIRs, supplemental or subsequent EIRs, MNDs, addenda and notices of exemption, and further including but not limited to all documents which refer or relate to any changes in the Project as approved in the 2001 EIR for the Project, as compared with the Project that the County is in the process of completing.
5. All documents that refer or relate to the proposed, actual and/or budgeted funding for planning and/or acquisition and/or construction of the Project, and any prior iteration(s) of the Project, including but not limited to any and all

staff reports, working files, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, attachments to emails, notes, photos, and audio and/or video recordings.

6. All documents that refer, relate to or are any construction contracts, contractual obligations, and/or financial, grant, loan and/or bond obligations of any type related to or in furtherance of the Project and/or construction of the Project, including but not limited to all federal, state, county and/or local sources of funding for the Project, and any and all staff reports, working files, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, attachments to emails, notes, photos, and audio and/or video recordings.

I draw the County's attention to Government Code Section 6253.1, which requires a public agency to assist the public in making a focused and effective request by: (1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the County determines that any information is exempt from disclosure, I ask that it reconsider that determination in view of Proposition 59 which amended the State Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the County has relied in the past.

If the County determines that any requested records are subject to a still-valid exemption, I request that the County exercise its discretion to disclose some or all of the records notwithstanding the exemption and with respect to records containing both exempt and non-exempt content, the County redact the exempt content and disclose the rest. Should the County deny any part of this request, the County is required to provide a written response describing the legal authority on which the County relies.

Please be advised that Government Code Section 6253(c) states in pertinent part that the agency "shall promptly notify the person making the request of the determination and the reasons therefore." (Emphasis added.) Section 6253(d) further states that nothing in this chapter "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial." (Emphasis added.)

Additionally, Government Code Section 6255(a) states that the "agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest is served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Emphasis added.) This provision makes clear that the

agency is required to justify withholding any record with particularity as to “the record in question.” (Emphasis added.)

Please clearly state in writing pursuant to Section 6255(b): (1) if the County is withholding any documents; (2) if the County is redacting any documents; (3) what documents the County is so withholding and/or redacting; and (4) the alleged legal bases for withholding and/or redacting as to the particular documents. It should also be noted that to the extent documents are being withheld, should those documents also contain material that is not subject to any applicable exemption to disclosure, then the disclosable portions of the documents must be segregated and produced.

We request that you preserve intact all documents and computer communications and attachments thereto, including but not limited to all emails and computer files, wherever originated, received or copied, regarding the subject matter of the above-referenced requests, including archives thereof preserved on tape, hard drive, disc, or any other archival medium, and including also any printouts, blowbacks, or other reproduction of any such computer communications.

If the copy costs for these requests do not exceed \$500, please make the copies and bill this office. If the copy costs exceed \$500, please contact me in advance to arrange a time and place where I can inspect the records. As required by Government Code Section 6253, please respond to this request within ten days. Because I am faxing or emailing this request on December 20, 2017, please ensure that your response is provided to me by no later than **December 30, 2017**.

Finally, I note that in recent conversations, you have “offered” to continue the current Resolution of Necessity hearing date if, in exchange, we granted the County a right to enter and conduct various tests. (At first, you stated that the County wanted to come in to trim trees.) The idea that you would attempt to extract a waiver of our rights in exchange for the County not penalizing or prejudicing us in terms of the timing of the proposed hearing is quite concerning. The County should refrain from unreasonable pre-condemnation conduct. We should not need to “trade” our rights for what the County is required to do in any event. That is to operate with us in good faith, including, as we have now stated, to facilitate our obtaining an appraisal to more intelligently be able to respond to the County’s offer, and to obtain and review the above-requested documents.

For all of the above reasons, it would be both premature and improper for the County to proceed with the resolution of necessity hearing on January 9, 2018. We ask that that date be continued by approximately 60 days to allow for the appraisal and Public Records Act issues discussed in this letter to occur. Please respond by no later than **December 27, 2017** to this requested continuance.

In an abundance of caution, and reserving all rights and objections, if the County nonetheless refuses to continue the date for the resolution of necessity so that we can potentially obviate the need for that hearing by being able to meaningfully respond to the County’s offer, and for us to receive documents we have been requesting for months and

which we have expanded upon via this letter, then we request to appear and oppose the County's proposed January 9, 2018 adoption of a resolution of necessity, including based on violation of our due process and civil rights.

Thank you for your courtesy and prompt attention to these issues.

Very Best,
Azam Mirtorabi

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a diagonal stroke.

From: [Azam Mirtorabi](#)
To: [Cleary, James](#); [Cleary, James](#)
Subject: Fwd: Reach 2B-2 & 3 De La Vina Parcel ***FedEx-ed CD & Flash Drive***
Date: Thursday, December 21, 2017 10:49:48 PM
Attachments: [12-20-17 De La Vina PBS.pdf](#)

Dear Mr. Cleary:

On Dec. 21, 2017, I received the below email from Mr. Morgantini stating that the County would not be producing any documents responsive to my Dec. 20, 2017 Public Records Act requests until January 13, 2018 (which is a Saturday, so I presume in reality at the earliest, Jan. 15, but that is Martin Luther King Day, so I presume in actual reality, at the earliest Jan. 16, 2018). That is a full week *after* the currently-scheduled resolution of necessity hearing.

For the reasons stated in my Dec. 20, 2017 letter to you, and even more so now, we respectfully renew our request for a continuance of the Jan. 9, 2018 resolution of necessity hearing.

Thank you for your courtesy and prompt response (please advise by no later than next Wednesday, Dec. 27) to our request, now reinforced by Mr. Morgantini's communication, for a continuance of the resolution of necessity hearing to a reasonable date after we have received and been able to review the documents to which we are entitled. Please also include these emails in the record for this matter.

Best,
Azam Mirtorabi

----- Forwarded message -----

From: **Morgantini, Richard** <rmorgan@co.santa-barbara.ca.us>
Date: Thu, Dec 21, 2017 at 3:39 PM
Subject: Reach 2B-2 & 3 De La Vina Parcel ***FedEx-ed CD & Flash Drive***
To: "mirtorabi.a@gmail.com" <mirtorabi.a@gmail.com>

Ms. Mirtorabi: I am responding to your request for records in your letter to Mr. Cleary (attached). I am coordinating the County's response to your request. Due to several factors (the current declared State of Emergency due to the Thomas Fire and the planned County Offices Winter closure) we are extending the time for our response to January 13th as allowed under the Act.

Richard Morgantini, MPA
Fiscal & Policy Analyst
County Executive Office
105 East Anapamu St.
Santa Barbara CA 93101
[805-568-3551](tel:805-568-3551)
[805-568-3414](tel:805-568-3414) FAX

From: [Azam Mirtorabi](#)
To: [Cleary, James](#)
Subject: Re: Reach 2B-2 & 3 De La Vina Parcel ***FedEx-ed CD & Flash Drive***
Date: Thursday, January 4, 2018 9:54:52 AM
Attachments: [image001.png](#)

Dear Mr. Cleary:

My email below, and my December 20, 2017 request, pertains specifically to my request that the January 9, 2018 resolution of necessity hearing date be continued to a date after I have received the documents which I have sought under the Public Records Act, and after we have been able to secure our own appraisal for purposes of attempting to negotiate with the County,

Your email is unresponsive to that very specific question.

Has my request for a continuance of the Resolution of Necessity hearing been received, by whom, and what is the County's response? We need to know the County's position on this specific question immediately.

If you cannot answer, please ASAP copy this email string to the person(s) that can, and kindly cc me so that I have their names and contact information.

We have avoided involving an attorney to deal with the County. But the handling of this matter, and the County's apparent refusal to agree to continue the hearing date for at least a few weeks until after the County has provided us with all the documents requested, leaves us no choice other than to incur substantial expense to engage an attorney to represent us. We will hold the County responsible for attorney fees and other damages if the hearing goes forward on January 9, 2018.

Please ensure that this email is included in the record for this matter. I await your response today.

Thank you,

Azam Mirtorabi