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January 8, 2018

VIA PERSONAL DELIVERY

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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 January 9, 2018 Agenda Item Nos. A-21 & 6**
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 constitutes our preliminary objections to both Agenda Item Nos. A-21 and 6 related to the County's effort to take the subject property by eminent domain.

The County is not lawfully able to proceed at this time with the proposed Resolution of Necessity because:

(1) The notice of this Resolution of Necessity is defective because it provides contradictory and conflicting information about the property interests sought to be taken. At the top it refers to "acquir[ing] by eminent domain of the real property located at 324 Da [sic] La Vina Street," and at the bottom it refers to "acquisition of the easements." (See **Exhibit 1** hereto, annotated.)

By failing to identify the most basic information, i.e., the property “to be acquired by eminent domain” – a fee interest or an easement – the notice is facially defective in violation of Code Civ. Proc. § 1245.235. Thus, contrary to your Agenda Letter at p. 4 and the Resolution of Necessity at p. 2, a valid notice and of opportunity to be heard was not sent to the owner in accordance with Code Civ. Proc. § 1245.235. This matters because “[w]hen used with reference to property, ‘interest’ includes any right, title, or estate in property.” Code Civ. Proc. § 1235.125. “For purposes of just compensation, property includes ‘every sort of interest the citizen may possess.’” Ventura County Flood Control District v. Campbell (1999) 71 Cal.App.4th 211, 219. There is a major difference between a fee interest and an easement.

The adoption of a legally sufficient resolution of necessity is not a formality that can be brushed aside. Rather, it is a procedural requirement of constitutional significance. Thus, if the public entity “adopts a defective resolution, it may not condemn property.” Law Revision Commission Comment to Code Civ. Proc. § 1240.040. Because the Resolution of Necessity expressly incorporates the allegedly proper precondemnation notice (RON at p. 2), but because that notice fails by not actually stating which property interest is to be taken, the process is *void ab initio*, and the Board may not lawfully proceed.

(2) The mandatory Govt. Code § 7267.2 precondemnation offer is defective. As a result, approval of the Resolution of Necessity is illegal.

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.”

Just compensation for private property taken for a public use must be offered and paid. U.S. Const., 5th Amend.; Cal. Const., art I, § 19. The California Constitution quite plainly states: “Private property may be **taken** or **damaged for a public use and only when just compensation**, ascertained by a jury unless waived, has first been **paid to, or into court for, the owner.**” Cal. Const., art I, § 19(a) (emphasis added).

Despite this constitutional requirement, the County in this case amazingly has excluded 5,195 square feet of the subject property from any offer, and in fact, has offered precisely zero dollars for it. (See Exhibit 2.) This is what is called a naked

taking, and violates the fundamental premise of the takings clauses of the U.S. and California Constitutions.

The County blithely states in its "Appraisal Summary" that "the gross site area of the subject property is approximately 21,828 square feet. Approximately 5,195 square feet of this site is within the Mission Creek (below top of bank). Approximately 16,633 square feet are above top of bank. For valuation and comparison purposes, the 16,633 square feet have been used to reflect the subject site area." And that is it; the County then offered only based on the 16,633 that is west of the creek, but with no explanation, concluded that more than 5,200 square feet of my client's property that is east of the creek has no value. This makes no sense, and if approved, would be a taking of 5,000+ square feet without any offer of, or payment of, any just compensation for that portion of the property. As a result, it is a type of inverse condemnation that will also subject the County to payment of all of my client's litigation expenses pursuant to Code Civ. Proc. § 1036.

Just because that land is east of the stream does not render it valueless. The fallacy of the County's logic (if you can call it that, since no logic is actually employed or explanation provided – just a mere statement that it is "below top of bank") is evident. As just a few examples, if someone were to purchase the property as a home site, owning an additional 5,200 square feet of creek-front open space or "back yard" would add significant value. Or if the County were going to store equipment on that 5,200-square-foot portion of the property, it would have to pay a fair rental value. If it would have to pay some rental amount, why would it not have to pay fair market value for a full taking? The County could not just invade the property without payment of just compensation of some amount. Similarly, when a property owner seeks entitlements for a property, including maximizing building floor area ratio ("FAR"), the total square footage of the property counts in the calculation, and thus the 5,200 square feet has direct value independently, and to the whole of the property.

The provisions of Govt. Code § 7267.2 (duty to provide landowner with written summary establishing basis of just compensation for land to be acquired) are mandatory, rather than discretionary, guidelines that must be observed by a public entity before initiating an eminent domain proceeding by a Resolution of Necessity. "On its face, the language of Government Code section 7267.2 is mandatory. The statute states that prior to adopting a resolution of necessity . . . [the agency] 'shall provide the owner . . . with a written statement of, and summary of the basis for, the amount it established as just compensation.'" City of San Jose v. Great Oaks Water Co. (1987) 192 Cal.App.3d 1005, 1011-1012. Far from providing a summary of the basis for the value (even if it is a supposed zero "value") of the taking of the 5,200-square-foot portion of the subject

property, however, the County has omitted crucial information necessary for this determination.

The mandatory nature of Govt. Code § 7267.2 is supported by language in related statutes, including Code Civ. Proc. §§ 1245.220 (resolution of necessity) and 1245.230 (contents of resolution). Yet even if we were to infer (since it is nowhere actually expressed or supported) from the County's Appraisal Summary that in some Orwellian fashion the County values 5,200 square feet of land at zero dollars simply because it is on the other side of the creek, that still would violate the mandatory language of Govt. Code § 7267.2 because the Appraisal Summary fails to provide any summary of market data regarding land sales to support that zero valuation. In other words, the County's Appraisal Summary is silent on this issue. Nowhere is there a single comp to show that land on the other side of a creek or river had no value with regard to a similarly situated property and owner interacting with a prospective buyer.

If the holder of something as intangible and speculative as an unexercised option to purchase property has a compensable property right (see, e.g., County of San Diego v. Miller (1975) 13 Cal.3d 684), and if the physical taking of something as small as the width of a cable wire on a rooftop requires the payment of just compensation (Loretto v. Teleprompter Manhattan CATV Corp. (1982) 458 U.S. 419), then the owner of 5,200 square feet of real property in Downtown Santa Barbara that is being physically taken in fee certainly has a compensable property right. Moreover, to exclude any valuation in the Appraisal Summary for the taking of the stream, which itself is a valuable property attribute/natural resource, without any offer for that area is similarly improper. In sum, to engage in a taking as the County is doing, but offer nothing for those portions of the subject property, is a brazen theft of private property without offer or payment of just compensation. There could be few clearer examples of a violation of the U.S. Const., 5th Amend., and Cal. Const., art I, § 19.

Govt. Code § 7267.2(b) provides that "The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer . . ." (Emphasis added.) Again, there is no detail provided whatsoever as to how the County arrived at zero value for nearly 5,200 square feet of land.

Therefore, the written statement and summary of the basis for the amount offered are defective, which in turn renders the adoption of the resolution defective (Govt. Code § 7267.2), which thus renders the power to condemn invalid. Govt. Code § 7267.2; Code Civ. Proc. §§ 1240.040, 1250.360(h) and 1250.370(a).

The Eminent Domain Law at Code Civ. Proc. § 1245.230 provides: “In addition to other requirements imposed by law, the resolution of necessity shall contain all of the following: . . . (c)(4) That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.” As shown above, the County’s mandatory Govt. Code § 7267.2 offer is incomplete and defective.

(3) On a separate and independent ground, the County has violated other Govt. Code mandatory prerequisites to adoption of a valid Resolution of Necessity.

Govt. Code § 7267.2(b)(1) provides: “The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information: (1) The date of valuation, highest and best use, and applicable zoning of property.” (Emphasis added.)

Despite this crystal clear language, the County’s Appraisal Summary (contained within **Exhibit 2**) is missing *both* the mandatory statement of “highest and best use, and applicable zoning of the property.” Govt. Code § 7267.2(b)(1). As noted above, “On its face, the language of Government Code section 7267.2 is mandatory.” City of San Jose v. Great Oaks Water Co., *supra*, 192 Cal.App.3d at 1011-1012. Accordingly, adoption of a Resolution of Necessity in light of these defects and omissions is illegal.

(4) On a further separate and independent ground, the County has violated other Govt. Code mandatory prerequisites to adoption of a valid Resolution of Necessity.

Govt. Code § 7267 provides in pertinent part: “In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, be guided by the provisions of Sections 7267.1 to 7267.7, inclusive” In turn, Govt. Code § 7267.1(a) provides that “The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation.” (Emphasis added.) In furtherance of pursuing 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.” (See **Exhibit 3**.)

However, in response, the County has violated its duty to cooperate with the property owner, and has interposed numerous “requirements” that have no basis in the law, and that are highly improper. Code Civ. Proc. § 1263.025 provides in its entirety:

“(a) A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

“(b) For purposes of this section, an offer to purchase a property “under a threat of eminent domain” is an offer to purchase a property pursuant to any of the following:

“(1) Eminent domain.

“(2) Following adoption of a resolution of necessity for the property pursuant to Section 1240.040.

“(3) Following a statement that the public entity may take the property by eminent domain.” Code Civ. Proc. § 1263.025.

In the County’s response, it demands a copy of the appraisal report as a condition of complying with its reimbursement obligation. (**Exhibit 4.**) This is improper. Nothing in the statute allows such a condition. This can actually thwart the Govt. Code goal of negotiation because parties may not wish to exchange or turn over the appraisal, choosing instead to use it to educate themselves about valuation issues, for example, for use in a mediation. Indeed, the County has not provided its full appraisal report to my client. The County does not have to, and the property owner does not have to either.

Moreover, if an attorney such as myself retains the appraiser to assist in understanding the legal and valuation issues involved, and in turn to advise the attorney’s client, the appraisal would be work product protected information. Accordingly, we demand that the County comply with Code Civ. Proc. § 1263.025 by not seeking to impose requirements that are neither found in, nor supported by the purpose for, the applicable Govt. Code and Code of Civil Procedure provisions. Please provide the \$5,000 without the County’s improper strings attached so that an appraisal can be obtained and negotiations can occur before, and without the pressure of, the Resolution of

Necessity process looming over my client. Adoption of the Resolution of Necessity at this time would be illegal on this additional ground.

(5) Approval of the Resolution of Necessity would also constitute a gross abuse of discretion because its adoption is a predetermined, foregone conclusion. The County has committed itself to the taking before the hearing on the Resolution of Necessity. This is shown including through prior property acquisitions for the project surrounding the subject property and all along various reaches of the project, with the subject property being in the path of a “connect the dots” of prior acquisitions from both directions. (See Exhibit 5 [color aerial photos showing the subject property in relation to some of the surrounding properties that the County has already acquired].) Reach 2B, Phase 1, is on the other side of the 101 Freeway, and is completed or about to be completed. The County has also already built from the ocean side to the 101. All of that construction removes any discretion from the County to do anything but seek to acquire the subject property, as planned. In other words, the County has locked itself into this taking, thus demonstrating that adoption of the Resolution of Necessity is a sham, foregone conclusion, and a gross abuse of discretion because there really is no discretion left for the County to exercise. Indeed, the County at p. 2 of its Agenda Letter acknowledges several reaches of the project on either side of the subject property that have already been completed. (See also the County’s color aerial photos and maps at Attachments 2 and 3 to the Board’s Agenda Letter, incorporated herein by reference.)

As stated in Huntington Park Redevelopment Agency v. Norm’s Slauson (1985) 173 Cal.App.3d 1121, 1125 (“Norm’s Slauson”), “Implicit in this requirement of a hearing and the adoption of a resolution of necessity is the concept that, in arriving at its decision to take, the Agency engage in a good faith and judicious consideration of the pros and cons of the issue and that the decision to take be buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure, section 1240.030.” Id.

We object to the legality of the County’s adoption of the Resolution of Necessity. It is a foregone conclusion where the County has irrevocably precommitted to the taking, including because:

- (a) Prior to the Resolution of Necessity hearing for the subject property, the County had already approved plans and construction contracts that require the taking of the subject property;
- (b) Prior to the Resolution of Necessity hearing for the subject

property, the County had already secured funding and/or loans and/or or bond indebtedness as part of the project and/or contractual agreement that contemplate and/or require the taking of the subject property;

(c) Prior to the Resolution of Necessity hearing for the subject property, the County had already executed multiple purchase and sale agreements for other neighboring properties;

(d) Prior to the Resolution of Necessity hearing for the subject property, the County repeatedly obligated itself through environmental, contractual, financial, and other documents and agreements to take the subject property; and

(e) Prior to the Resolution of Necessity hearing for the subject property, the County entered into other agreements precommitting it to taking the subject property, including agreements regarding utility relocations.

Indeed, the County, through its Project Manager James Cleary, has admitted in writing that the County has no ability to do anything other than acquire the subject property (at that time referring to easements, but nonetheless, making clear that the subject property had to be taken) for the project. (**Exhibit 6.**) Among other things, he indicated “it is absolutely necessary to acquire” the subject property “based on the 60% level set of construction plans that had been started by the Corps.” (*Id.*) “[Y]our property and the adjoining ones are not only are [sic] necessary and are required to improve the conveyance capacity of the Lower Mission Creek . . . based on the 95% level set of construction plans for Reach 2B-2. (*Id.*) He further noted the “absolute current necessity of acquiring, not only easements on or your land, adjacent land, but lands for the continual construction, operation and maintenance for the Lower Mission Creek Project.” (*Id.*) (See also the exemplar July 12, 2010 email attached at **Exhibit 7**, showing County Flood Control’s vehement objections to the City of Santa Barbara Planning Commission “entertaining any changes to the Corps consensus project”)

In Norm’s Slauson, *supra*, 173 Cal.App.3d 1121, the Huntington Park Redevelopment Agency’s adoption of a resolution of necessity to allow the taking of property by eminent domain was invalidated when “The Agency’s attempt to take the four lots in question was preceded by an agreement between the Agency and a developer by which the Agency agreed to acquire the property for transfer to the developer and the

developer would build a condominium project thereon. . . . That agreement was followed by the issuance and sale of tax exempt bonds to pay for the acquisition.” Id. at 1125 (emphasis added.) The Norm’s Slauson Court held:

“In the instant case, it seems clear that the hearing which led to the adoption of the resolution of necessity was a sham and the Agency’s policy making board **simply ‘rubber stamped’ a predetermined result.** [¶] **By the time the Agency actually conducted a hearing to determine the ‘necessity’ for taking the property in question, it had,** by virtue of its contract with the developer and issuance of revenue bonds, **irrevocably committed itself to take the property in question,** regardless of any evidence that might be presented at that hearing.” Id. at 1127 (emphasis added).

(6) A Resolution of Necessity based on inadequate or illegal environmental review will be void. Failure to comply with CEQA prior to the adoption of a resolution of necessity precludes the acquisition of property by eminent domain. Burbank-Glendale-Pasadena Airport Authority v. Hensler (1991) 233 Cal.App.3d 577, 592-596. Here, the County has failed to comply with its obligations under CEQA and other relevant environmental laws and regulations, which constitute conditions precedent to conducting this Resolution of Necessity hearing and commencement of any action in eminent domain.

The County project has changed and evolved over time in ways that were never studied or mitigated via the 2001 EIR/EIS, and that are not reflected in the findings and mitigation monitoring adopted by the County in 2011. As a result, the proposed adoption of the Resolution of Necessity is premature and unauthorized. If the County adopts this Resolution of Necessity and commences eminent domain proceedings without current and updated CEQA approval for all new conditions of the Project and recognizing the surrounding environmental baseline conditions (CEQA Guidelines § 15162), its actions in doing so would constitute a gross abuse of discretion.

CEQA was intended to prevent government decision makers from misleading the public. Laurel Heights Improvement Assn’ v. Regents of the University of California (1988) 47 Cal.3d 376, at 392. The CEQA process must provide accurate information to the public to obtain a complete picture of the environmental context, as well as to provide government accountability. See Laurel Heights, and Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 935-936. Here, that current and accurate information is missing.

Further, my client has been denied full production of documents requested on December 20, 2017, and earlier, pursuant to the Public Records Act, including regarding all changes in the current project iteration versus what was last approved under CEQA. (See **Exhibit 3**, CPRA request No. 4.) Because the County has not fully complied with my client's prior CPRA requests, we reserve the right to augment the record with responsive documents on this and any other subject that have not yet been provided. Code Civ. Proc. § 1094.5(e).

The County's assertion in the Agenda Letter at pp. 1-2 and the Resolution of Necessity at pp. 1-2 that, pursuant to CEQA, no new effects will occur and no new mitigation measures would be required (citing CEQA Guidelines § 15162) is inaccurate. The baseline conditions have dramatically changed since the 2001 EIR/EIS approval and the County's approval of same in 2011 as a responsible agency. Among the most prominent changes is the massive fires that have raged in the area, and the impacts that has on increasing debris flows and increased run-off. (See, e.g., **Exhibit 8** [Jan. 7, 2018 LA Times article; study excerpts].)

(7) * **This section is in objection to both Agenda item Nos. A-21 and 6:**

Although not disclosed in the agenda description for item A-21, but revealed in the Agenda Letter for that item (**Exhibit 9**), the County also intends to "conduct actual site sampling and analysis of the soil and ground water and to develop a Phase II Environmental Assessment. These are needed in order to 1.) Complete an appraisal of 324 De La Vina Street as part of the real property acquisition process for Lower Mission Creek Reach 2B, Phase 2, and Reach 3 and 2.) To further refine the project plans and specifications to adequately address the presence of contaminated material." Yet the County claims again, citing CEQA Guidelines § 15162, that no "substantial changes are proposed, there are no substantial changes in circumstances and no new information of substantial importance has come to light regarding environmental effects of the project or feasibility of mitigation measures" Changes in circumstances would warrant new CEQA review.¹

¹ The County's misleading agenda description for Item A-21, which contains no reference to the centrality to that item of the subject property at 324 De La Vina Street (which is only revealed in the Agenda Letter, and which we only inadvertently discovered) is also a **Brown Act violation**. As the Court held in Carlson v. Paradise Unified Sch. Dist. (1971) 18 Cal.App.3d 196, 200, "it is imperative that the agenda of the board's business be made public and in some detail so that the general public can ascertain the nature of such business." We demand that the County cure and correct this

As discussed above regarding the recent fires, the County's statement is at best erroneous, and at worst fallacious. Moreover, the Agenda Letter admits that the County is "further refin[ing] the project plans and specifications." This means those changes could not have been previously analyzed. Thus, this language from the County in its somewhat covert Agenda Item No. A-21 further supports the argument that the County may not proceed with its Resolution of Necessity because CEQA review of the current iteration of the project has not been completed. Burbank-Glendale-Pasadena Airport Authority v. Hensler, supra, 233 Cal.App.3d at 592-596 (Resolution of Necessity and complaint in eminent domain subject to dismissal based on noncompliance with CEQA).

The language by the County that it seeks this authorization, per Item A-21, in order to "[c]omplete an appraisal of 324 De La Vina Street as part of the real property acquisition process for Lower Mission Creek Reach 2B, Phase 2," also shows that, apparently, the so-called Govt. Code § 7267.2 offer that was made is further marred by illegalities. This is because it sounds like the offer made on November 21, 2017 was knowingly made by the County based upon an incomplete investigation. In turn, this suggests the County is improperly and prejudicially seeking to accelerate the instant Resolution of Necessity process when it knows, and quietly admits in an Agenda Letter on a different agenda item than item 6 regarding the Resolution of Necessity for the subject property, that a completely different, apparently lower and perhaps punitive offer might be made. In any event, how can the County proceed with a valid Govt. Code § 7267.2 offer and adoption of a Resolution of Necessity when it surreptitiously is hedging its bets and simultaneously seeking authorization to conduct site testing for the express purpose of "[c]omplet[ing] an appraisal of 324 De La Vina Street as part of the real property acquisition process for Lower Mission Creek" project?

It is also curious that the County would now claim the subject property may have contamination that could affect a valuation when Caltrans, the prior owner of the subject property, "performed a clean up of the top ten feet of soil (all soil above the groundwater table) and received closure from the County in 1991. Caltrans performed groundwater monitoring to the satisfaction of the CCRWQCB that allowed the monitoring wells to be removed in 2003" (**Exhibit 10**; emphasis added.)

The County is estopped from now asserting that contamination issues exist. Given its past closure approvals, this appears to be an attempt by the County to

agenda item by not holding the hearing on Item A-21, and by re-noticing it in accordance with the Brown Act's requirement that the agenda description adequately state the items of business to be discussed or transacted.

diminish the property's valuation and lower a revised precondemnation offer, which apparently is being planned. Although we strongly dispute the County's assertions with regard to alleged contamination issues following the County's own closure/approval letters, this whole scenario demonstrates that the ostensible Govt. Code § 7627.2 offer is illusory and cannot – on many separate grounds – form the basis of a proper and legal Resolution of Necessity.

Under Govt. Code §§ 7627, 7267.1(a) and 7267.2, a final precondemnation appraisal was already required to have been performed – not an interim or hybrid one – which is nowhere authorized under the Eminent Domain Law. On this additional ground, the County's proposed adoption of a Resolution of Necessity is improper and illegal.

(8) The adoption of the Resolution of Necessity would also violate Code Civ. Proc. § 1240.030(b) and (c). Section 1240.030 provides:

“The power of eminent domain may be exercised to acquire property for a proposed project **only if all** of the following are established:

- “(a) The public interest and necessity require the project.
- “(b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- “(c) The property sought to be acquired is necessary for the project.” Code Civ. Proc. § 1240.030 (emphasis added).

These violations would occur because, up until about November 21, 2017, the County always only referred to the acquisition of easements (including temporary and permanent) over the subject property. (See **Exhibit 11** [color easement map, showing none of the property taken in fee, and only about half the property subject to any permanent easements].) Indeed, multiple documents from the County always, until recently, referred only to the proposed taking of easements. (See, e.g., **Exhibit 12** [collectively, September 1, 2017 internal County email, and draft easement agreements provided to my client by the County].)

At p. 3 of the Agenda Letter for Agenda item No. 6, the County states that “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.”

This is an utterly unsupported and meaningless assertion. It provides no substantial evidence or argument to undergird it. The County offers empty words and *ipse dixit*.² As such, the County is entitled to no deference, as it does not provide its analytical route from words to action, or from evidence to decision. Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 517-518

Relying on the County’s historic pronouncements about why only easements (and at least half of the property subject to only a temporary easement) were necessary, combined with the lack of explanation or support for the mysterious, last-minute switch to claim a fee interest in the entire property is required, demonstrates that the County has not, and cannot, show it can satisfy the required showings that: (1) “The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury,” and (2) “The property sought to be acquired is necessary for the project.” Code Civ. Proc. § 1240.030(b) & (c). On this additional ground, the Resolution of Necessity cannot be approved.

(9) Finally, my client has made several requests for a continuance of this hearing until after receipt of all documents requested pursuant to a number of Public Records Act requests (including at **Exhibit 3**; see also Exhibit 13), but to no avail.

“[T]he whole purpose of the CPRA is to shed public light on the activities of our governmental entities. . . .” Fairley v. Superior Court (1998) 66 Cal.App.4th 1414, 1422. The County’s delays in producing responsive documents is particularly troubling with regard to constitutional protections concerning limitations on governmental power and the rights of people in their private property, pursuant to the Bill of Rights and the California Constitution, art. I, § 19. The California Supreme Court has emphasized that, “Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. . . .” CBS, Inc. v. Block (1986) 42 Cal.3d 646, 651. Those precepts fully apply to the County’s actions in connection with its project and the proposed use of eminent domain to seize my client’s property.

² *Ipse dixit* is a “bare assertion” (Black’s Law Dictionary (6th ed. 1990) p. 828); it refers to a dogmatic statement the speaker expects the listener to accept as valid merely because it was said. Cooper v. Swoap (1974) 11 Cal.3d 857, 872-873.

The County's actions are unreasonable, arbitrary, and an abuse of office. They also violate the Supreme Court's Decker rule. The Supreme Court in an eminent domain matter specifically held that "A government lawyer in a civil action . . . has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results." [Citation.]" City of Los Angeles v. Decker (1977) 18 Cal.3d 860, 871. The inability to marshal all evidence to attempt to meet and more meaningfully respond to the County's proposed actions also constitutes a denial of my client's due process and fair hearing rights. Objection to the adoption of the Resolution of Necessity is made on this additional ground.

For all the foregoing reasons, adoption of the Resolution of Necessity would violate the Eminent Domain Law, CEQA and my client's due process rights. Please reject consideration and approval of the Resolution of Necessity, at least until such time as all legal infirmities identified herein have been corrected. Thank you.

Very truly yours,



ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:aa
Encls.

EXHIBIT 1



Santa Barbara County Flood Control & Water Conservation District and Water Agency

NOTICE OF AN OPPORTUNITY TO APPEAR AND BE HEARD REGARDING THE ACQUISITION OF PROPERTY FOR PUBLIC USE

PARCEL NO. 037-245-018 ADDRESS: 324 Da La Vina, Santa Barbara DATE: December 15, 2017

PROJECT TITLE: The Lower Mission Creek Flood Control Project Reach 2B Phase II & 3

TO: Mostafa & Azam Mirtorabi
DE LA VINA HOLDINGS, LLC
29343 Whitley Collins Dr, Rancho Palos Verdes CA 90275

Please take notice that on **Tuesday, January 9, 2018, at 9:00 a.m.** or as soon thereafter as the matter may be heard, in the County Administration Building Board Hearing Room, on the Fourth Floor located at 105 East Anapamu Street, Santa Barbara, California 93101, the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District ("District") intends to consider the adoption of a Resolution of Necessity to acquire by eminent domain of the real property located at 324 Da La Vina Street, in Santa Barbara, California – Assessor Parcel No. 037-245-018, ("Subject Property") for flood control purposes.

You are entitled, if you so desire, to appear and be heard on the following four matters:

- (1) whether the public interest and necessity require the project;
- (2) whether the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- (3) whether the property sought to be acquired is necessary for the project;
- (4) whether the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

Your right to appear and be heard on these matters may be waived unless you file a written request on or before the matter is heard on **Tuesday, January 9, 2018**.

You may use page 2 of this notice as your written request to appear and be heard, by detaching it and filling it out, or preparing a written request independent of this notice and mailing it to:

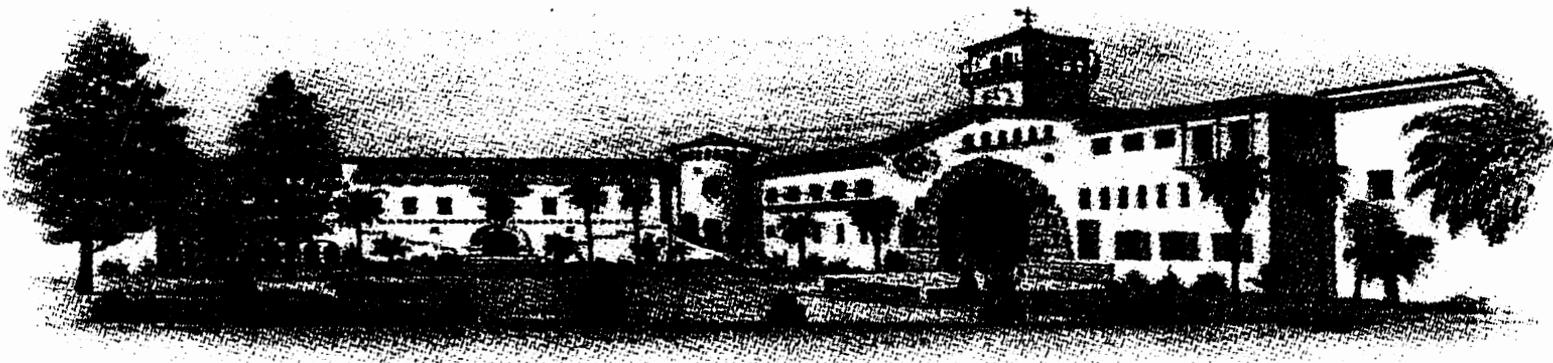
Clerk of the Board
Santa Barbara County Flood Control and Water Conservation District
105 East Anapamu Street
Santa Barbara, California 93101

Please file a written request to appear and address the issues set forth above before the time set for the hearing, **Tuesday, January 9, 2018, at 9:00 a.m.**, or as soon thereafter as the matter may be heard, before the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District, 105 East Anapamu Street, Fourth Floor, Santa Barbara, California 93101.

For further information regarding the design and proposed construction of the project, you may visit or contact the Santa Barbara County Flood Control and Water Conservation District at 130 E. Victoria Street, Suite 200, Santa Barbara, California 93101, (805) 568-3440. For further information regarding the acquisition of the easements you may visit or contact the Santa Barbara County General Services Department at 1105 Santa Barbara Street, Second Floor, Santa Barbara, California 93101, (805) 568-3070.

EXHIBIT 2

COUNTY OF SANTA BARBARA



GENERAL SERVICES DEPARTMENT
SUPPORT SERVICES DIVISION
1105 Santa Barbara Street
Santa Barbara, California 93101

November 21, 2017

FEDEx US AIRBILL 8117 7264 9299

Mostafa & Azam Mirtorabi
DE LA VINA HOLDINGS, LLC
29343 Whitley Collins Dr
Rancho Palos Verdes CA 90275

**RE: Lower Mission Creek Flood Control Project
Offer to Purchase-Assessor Parcel Number 037-245-018**

Dear Mr. and Mrs. Mirtorabi,

This letter is being forwarded to you as the owners of record for the vacant parcel located 324 De La Vina Street, Santa Barbara, California. The Santa Barbara County Flood Control and Water Conservation District (the "District") is interested in acquiring, and hereby offers to acquire, the fee interest in Assessor Parcel Number 037-245-018, in the City of Santa Barbara, County of Santa Barbara, State of California, which is more particularly described in Exhibit A of a Directors Deeds recorded as Instrument Number 2007-0081876, in the Official Records of the County of Santa Barbara on November 29, 2007, ("subject property"). The District seeks to acquire the subject property in connection with the Lower Mission Creek Project.

The appraisal of the Fair Market Value establishing just compensation for acquiring, the fair market value of the fee interest in the subject property for this public project has been completed. An Appraisal Summary establishing the just compensation for the subject property is attached for your reference

Based on the appraisal, the District offers to purchase your interest for the total purchase price of ONE MILLION SIX HUNDRED SIXTY THOUSAND DOLARS AND NO/100 DOLLARS (\$1,660,000.00) to be paid in cash into an escrow with Lawyers Title Company. This amount is for all interests, and division of the amount among other parties having an interest in the subject property is your responsibility.

De La Vina Holdings, LLC

November 21, 2017

Page 2

This offer is being made in compliance with Government Code Section 7267.2. The District has determined that the offer is not less than the amount of the approved appraisal report for the property fee interests being acquired and is based on the opinion of an independent licensed appraiser and that the subject property is free and clear of any and all hazardous materials and soil contamination.

This offer assumes the subject property is free and clear of all hazardous materials and contamination as determined by local, state and federal regulatory agencies having jurisdiction over such matters. In the event the subject property contains hazardous materials and soil contamination, the fair market value of the subject property may be affected. This offer is contingent upon acceptable soil conditions of the subject property and the absence from the subject property of toxic or hazardous substances and any other kind of soil or water contamination.

Pursuant to 14 California Code of Regulations 15004 (b)(2)(a) this offer is specifically conditioned upon compliance with the California Environmental Quality Act prior to acquisition. The County will be responsible for so complying and satisfying this condition.

Pursuant to Civil Code of Procedure Section 1263.025 should you elect to obtain an independent appraisal, the District will pay for the actual reasonable costs up to \$5,000, subject to the following conditions:

- a. You, not the District, must order the appraisal. Should you enter into a contract with the selected appraiser, the District will not be a party to the contract.
- b. The selected appraiser must be licensed with the Office of Real Estate Appraisers (OREA).
- c. Appraisal cost reimbursement requests must be made in writing, and submitted to the Santa Barbara County General Services Real Property Division within 90 days of the earliest of the following dates: (1) the date the selected appraiser requests payment from you for the appraisal; or, (2) the date upon which you, or someone on your behalf, remitted full payment to the selected appraiser for the appraisal. Copies of the contract (if a contract was made), appraisal report, and invoice for completed work by the appraiser must be provided to the General Services Real Property Division concurrent with submission of the appraisal cost reimbursement request. The costs must be reasonable and justifiable.

The government's power to condemn private property for a public use is known as eminent domain. It has been a law for centuries and is found in both the United States Constitution (Fifth Amendment) and the California Constitution (Section 19). The Eminent Domain Law is set forth in California Code of Civil Procedure section 1230.010, et seq. A summary of the eminent domain process is attached herein. In addition to the summary, an informative booklet titled "The Power of Eminent Domain should hopefully provide you with answers to questions owners frequently ask concerning land acquisition procedures, now that an offer of acquisition is being presented.

If this offer is acceptable, please have all owners of record sign below in the appropriate space and return it to County of Santa Barbara, General Services Department, Real Property Division, 1105 Santa Barbara Street, Second Floor, Santa Barbara, CA 93101. Upon receipt of the acceptance, a Purchase Contract Agreement will be drafted. Once a final Agreement has been executed by you, the Agreement will be presented to the Santa

De La Vina Holdings, LLC
November 21, 2017
Page 3

Barbara County Flood Control and Water Conservation District Board of Directors, which has final ratification authority.

If you wish to discuss this offer further, or if you have any questions or comments, please feel free to call me at 805.568.3072.

Sincerely,



James J. Cleary
Project Manager
Real Property Division

Enclosures Eminent Domain Process
 Appraisal Summary
 Eminent Domain Booklet

Booklet

THIS OFFER IS EXPRESSLY CONTINGENT UPON THE SUBJECT PROPERTY BEING FREE AND CLEAR OF ALL HAZARDOUS MATERIALS AND CONTAMINATION AS DETERMINED BY LOCAL, STATE AND FEDERAL REGULATORY AGENCIES HAVING JURISDICTION OVER SUCH MATTERS AND APPROVAL BY THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD OF DIRECTORS, THROUGH THE EXECUTION OF A PURCHASE CONTRACT BETWEEN YOU AS SELLER AND THE DISTRICT AS BUYER. IN THE EVENT THAT THE BOARD DECIDES NOT TO PROCEED WITH A PURCHASE CONTRACT, THIS OFFER IS NULL AND VOID.

I/WE, THE UNDERSIGNED, CONSTITUTE ALL OWNERS OF RECORD AND AGREE TO ACCEPT THE ABOVE-REFERENCED OFFER AS PRESENTED:

Date: _____

Date: _____

Eminent Domain Process

On occasion, the Santa Barbara County Flood Control and Water Conservation District (the "District") takes possession of the property before the property owner actually has the compensation in hand. This can occur through agreement with the owner, or through a court process. In either case, the property owner is generally entitled to interest upon the final settlement. The interest paid and the process for calculating it is spelled out by statute and the District is responsible for making the interest rates available to interested parties.

When the District and a property owner are unable to agree on the purchase of the property, the condemnation process is begun. Although the prospect of dealing with an attorney and courts may seem intimidating, condemnation is not intended as a coercive process. It simply means that the parties have not been able to come to an agreement. Negotiation continues "right up to the courthouse steps". Ultimately, if no agreement is reached the court determines proper compensation.

The first step in the condemnation process is the agency securing a Resolution of Necessity from the District Board of Directors. The property owner will be sent a 10 day notice letter that the District will consider a Resolution at a future District Board of Directors meeting. The Board of Directors generally meets on most Tuesday's of each week, except for fifth Tuesdays. The only issues considered by the Board of Directors in a Resolution of Necessity are as follows:

1. The public interest and necessity require the project.
2. The project is planned to provide the greatest public good with the least injury.
3. This property is required for the proposed project.
4. An offer to purchase, in compliance with Government Code Section 7200 has been made to the owners of record.

The amount of compensation is specially excluded from consideration in the adoption of a Resolution of Necessity. If a Resolution is passed, court proceedings can begin to consider the remaining issue of compensation. If the property owner wishes to contest any of the four issues considered by the Board of Directors in a Resolution of Necessity, a request to appear should be sent in advance of the meeting to the Clerk of the Board of the County Santa Barbara.

A condemnation action is a lawsuit filed by the agency against the person(s) whose interest in the property condemned. Once the condemnation action has been filed, the agency can apply to the court for an order to take possession before the litigation is completed. In order to take possession, however, the agency must deposit its estimated value of the property and give adequate notice. The owner with an interest in the property may also apply to the court to withdraw all or a portion of the deposit without the right to claim greater compensation.

At the trial, the jury will determine the amount of just compensation to be awarded. The judge will decide all other issues, public use, public necessity and the interests of the parties in the property.

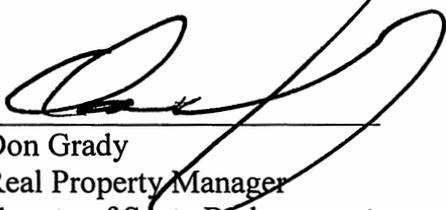
APPRAISAL SUMMARY STATEMENT

Acquisition in Fee
of
Assessor Parcel Number 037-245-018
De La Vina Street
County of Santa Barbara
State of California

This Appraisal Summary Statement provides the basis of the amount to be offered as Just Compensation for the Fee Acquisition of Assessor Parcel Number 037-245-018, for the Lower Mission Creek Project. This Appraisal Summary Statement is presented in compliance with Federal and State Law.

Approved for acquisition:

By: _____


Don Grady
Real Property Manager
County of Santa Barbara

Date: _____


11/21/17

Appraisal Summary
Lower Mission Creek Project- DE LA VINA HOLDINGS, LLC
Fair Market Value Estimate
(APN 037-245-018)

Market Data – Land Sales

Transaction Location: 835 E. Canon Perdido Street, Santa Barbara
Assessor Parcel No.: 029-312-006, -007 & -008
Date of Sale: January 6, 2017
Sale Price: \$2,000,000

Transaction Location: Calle Cesar Chavez at Quarantina Street, Santa Barbara
Assessor Parcel No.: 017-113-029, -030, -034 & -035
Date of Sale: August 2, 2017
Sale Price: \$6,000,000

Transaction Location: 308 W. Montecito Street, Santa Barbara
Assessor Parcel No.: 037-232-002
Date of Sale: December 23, 2014
Sale Price: \$865,000

Transaction Location: 301 & 303 S. Milpas Street, Santa Barbara
Assessor Parcel No.: 017-284-003
Date of Sale: July 10, 2014
Sale Price: \$4,000,000

Transaction Location: 517 Chapala Street, Santa Barbara
Assessor Parcel No.: 037-163-007 & -008
Date of Sale: May 3, 2016
Sale Price: \$2,100,000

Indicated Values

The gross site area of the subject property is approximately 21,828 square feet. Approximately 5,195 square feet of this site is within the Mission Creek (below top of bank). Approximately 16,633 square feet are above top of bank. For valuation and comparison purposes, the 16,633 square feet have been used to reflect the subject site area.

Indicated Value of Subject Property as of November 13, 2017, by the:

Sales Comparison Approach:	\$1,660,000
Cost Approach:	The Cost Approach is not considered applicable
Income Approach:	The Income Approach is not considered applicable

EXHIBIT 3



Azam Mirtorabi <mirtorabi.a@gmail.com>

RE: Reach 2B-2 & 3 De La Vina Parcel *FedEx-ed CD & Flash Drive*****

Azam Mirtorabi <mirtorabi.a@gmail.com>

Wed, Dec 20, 2017 at 2:15 PM

To: "Cleary, James" <jcleary@countyofsb.org>

Dear Mr. Cleary,

Please refer to the attached letter in response to your recent communications and your email dated December 18, 2017. Our request to appear and to be heard is also attached here.

Best,

Azam Mirtorabi

[Quoted text hidden]

2 attachments

 **Scan 27.pdf**
5798K

 **Scan 26.pdf**
787K

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, sweeping loop followed by a few sharp, downward strokes.

PROJECT TITLE: The Lower Mission Creek Flood Control Project Reach 2B Phase II & 3

(Cut Along Dash Line)

REQUEST TO APPEAR AND BE HEARD
REGARDING THE CONDEMNATION OF PROPERTY

TO: SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
AGENCY SECRETARY

DATE: January 9, 2018

PARCEL NOS: 037-245-018

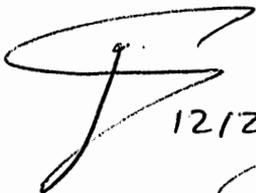
PROPERTY ADDRESSES: 324 De La Vina, Santa Barbara, California

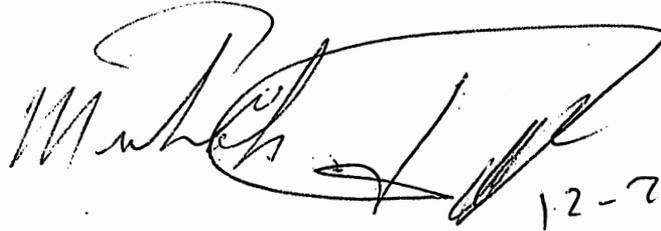
PROJECT TITLE: The Lower Mission Creek Flood Control Project Reach 2B Phase II & 3

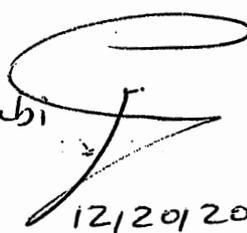
NAME: De la Vina Holdings LLC, Mostafa Azam Mirtorabi

ADDRESS: 29343 Whitley Collins Dr. Rancho Palos Verdes, CA 90275

SIGNATURE: _____

Azam Mirtorabi  12/20/2017

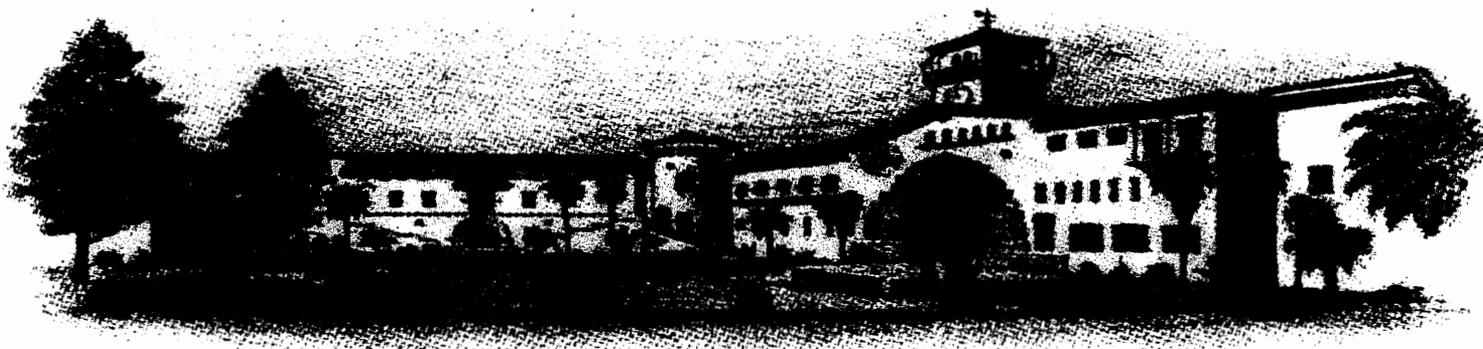
Mostafa Mirtorabi -  12-20-17

for:
De la Vina Holdings LLC Mirtorabi  12/20/2017

 12-20-17

EXHIBIT 4

COUNTY OF SANTA BARBARA



GENERAL SERVICES DEPARTMENT
SUPPORT SERVICES DIVISION
1105 Santa Barbara Street
Santa Barbara, California 93101

December 21, 2017

e-mail & U.S. POSTAL

Azam Mirtorabi
29343 Whitley Collins Dr
Rancho Palos Verdes CA 90275

**RE: Lower Mission Creek Flood Control Project
Appraisal for Assessor Parcel Number 037-245-018**

Dear Mrs. Mirtorabi,

Your request pursuant to Civil Code of Procedure Section 1263.025, regarding obtaining an independent appraisal, whereas the Santa Barbara County Flood Control & Water Conservation District will pay for the actual reasonable costs up to \$5,000, is subject to the following conditions:

- a. You, not the Santa Barbara County Flood Control & Water Conservation District, must order the appraisal. Should you enter into a contract with the selected appraiser, the Santa Barbara County Flood Control & Water Conservation District will not be a party to the contract.
- b. The selected appraiser must be licensed with the Office of Real Estate Appraisers (OREA).
- c. Appraisal cost reimbursement requests must be made in writing, and submitted to the Santa Barbara County General Services Real Property Division within 90 days of the earliest of the following dates: (1) the date

Mrs. Mirtorabi
December 21, 2017
Page 2

the selected appraiser requests payment from you for the appraisal; or,
(2) the date upon which you, or someone on your behalf, remitted full
payment to the selected appraiser for the appraisal. Copies of the
contract (if a contract was made), appraisal report, and invoice for
completed work by the appraiser full payment to the selected appraiser
for the appraisal. Copies of the contract (if a contract was made),
appraisal report, and invoice for completed work by the appraiser must
be provided to the General Services Real Property Division concurrent
with submission of the appraisal cost reimbursement request. The costs
must be reasonable and justifiable.

In addition to the above, Form W-9 of the Department of the Treasury Internal Revenue Service and State of California Withholding Exemption Certificate-Franchise Tax Board Form 590, are required to be completed, executed and dated. As of December 2017, below are the websites to these forms that may be subject to change.

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

https://www.ftb.ca.gov/forms/2017/17_590.pdf

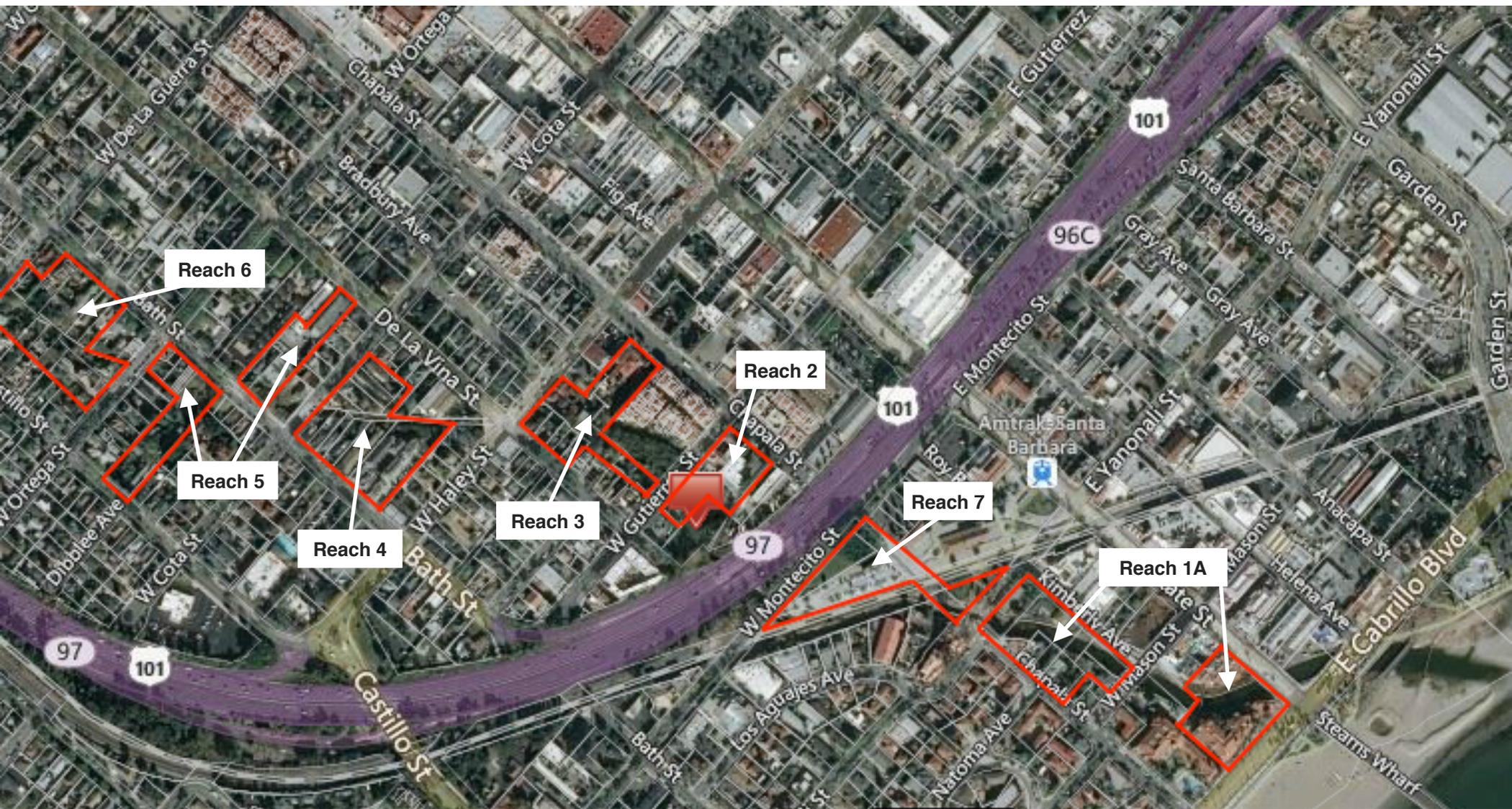
Reimbursed in accordance with the above is estimated to take approximately less than thirty days. If you have any questions, please feel free to contact me directly at (805) 568-3072, or by, e-mail at jcleary@countyofsb.org.

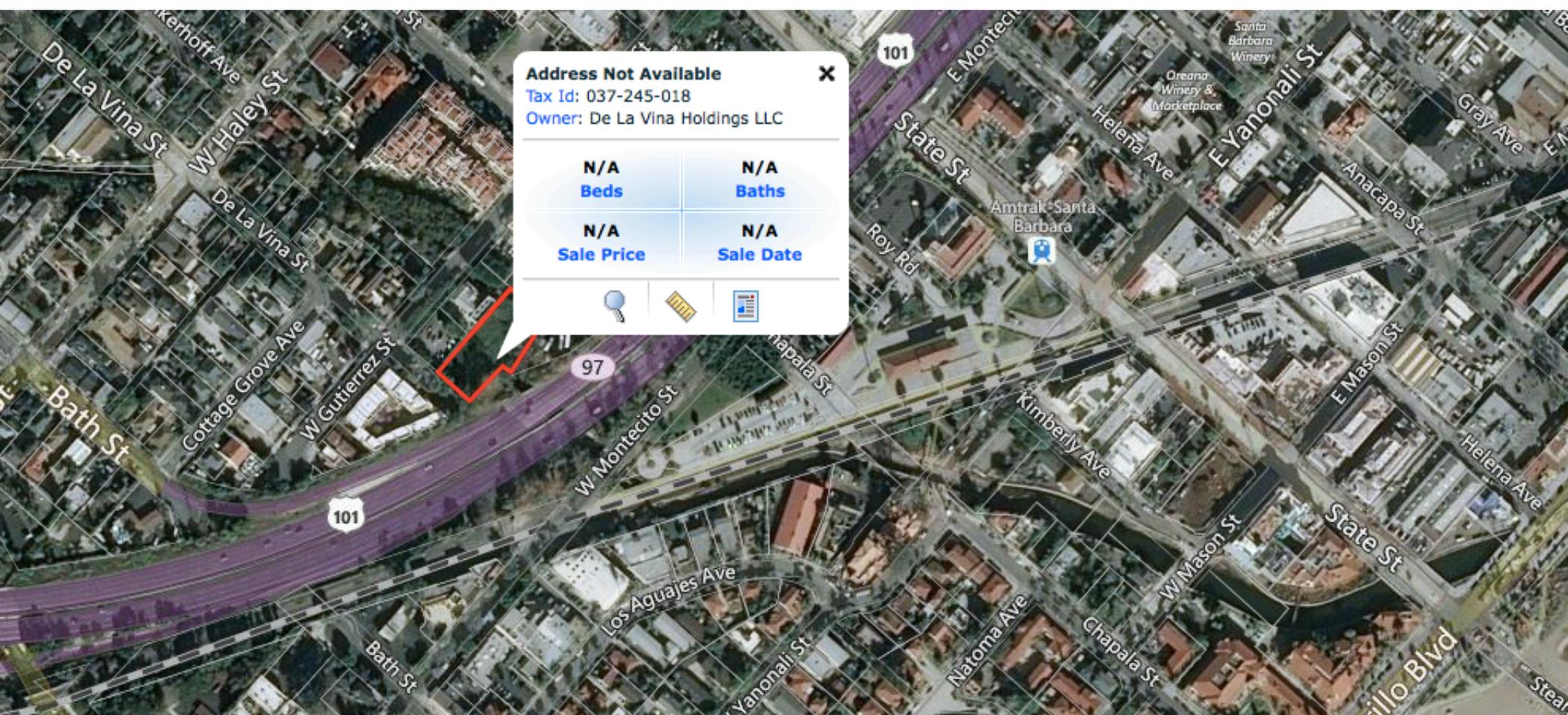
Sincerely,



James J. Cleary
Project Manager
Real Property Division

EXHIBIT 5



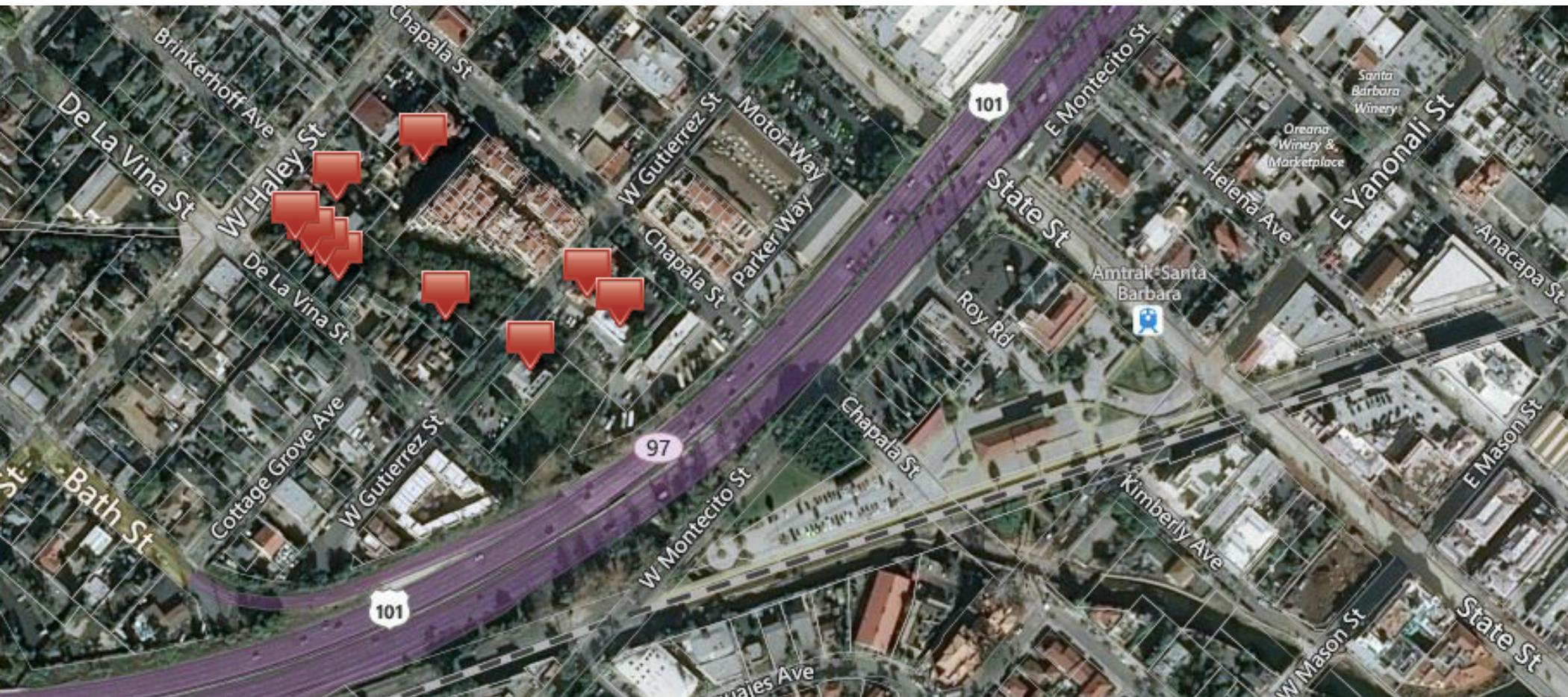


Address Not Available ✕

Tax Id: 037-245-018
Owner: De La Vina Holdings LLC

N/A Beds	N/A Baths
N/A Sale Price	N/A Sale Date



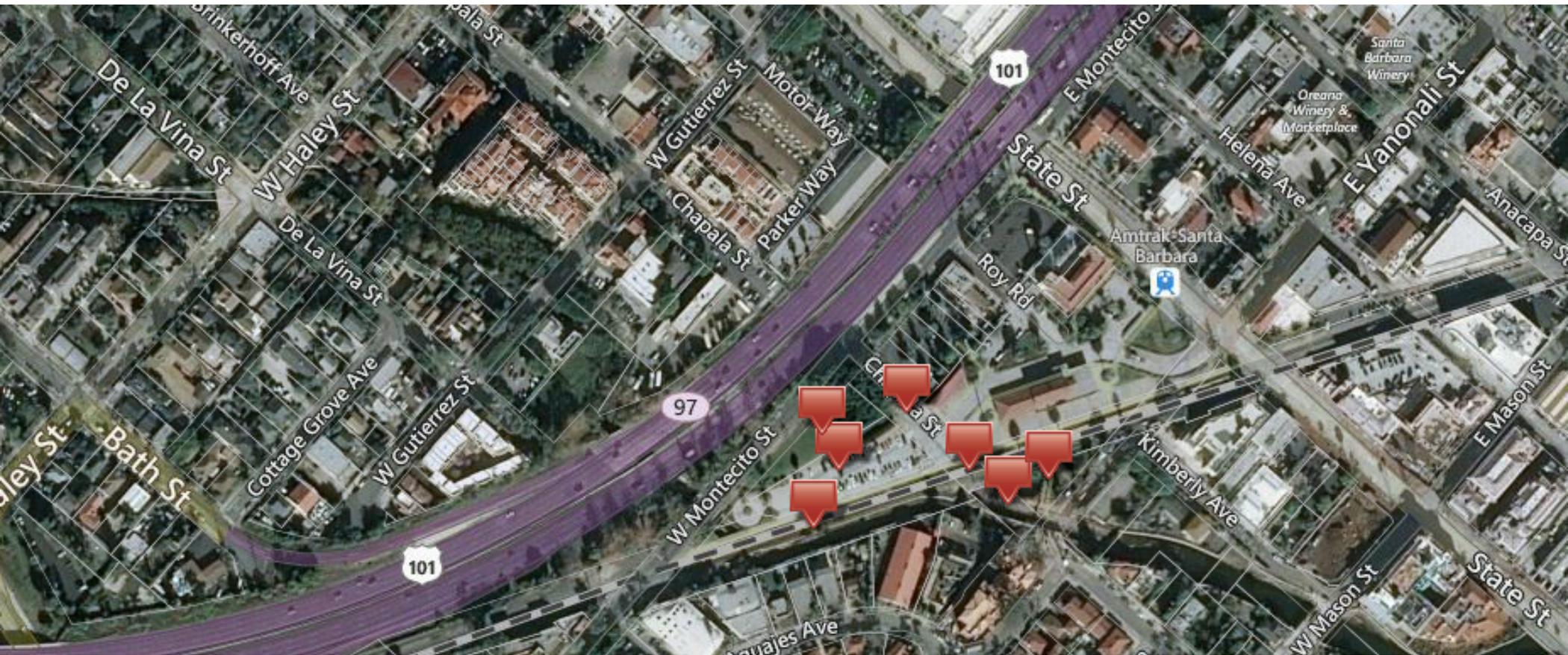


EXHIBIT 6

Azam Mirtorabi

On Thu, Apr 6, 2017 at 8:40 PM, Azam Mirtorabi <mirtorabi.a@gmail.com> wrote:

Hi Mr. Cleary,

As I mentioned in my previous email, when the plans were made in the year 2000, the land that we own now, belonged to a governmental entity, so basically it was up for the grab in the planer's mind and it made more sense at that time, because the plan required grab of more public land as oppose to taking of the private land.

If we assume that our land was inside a giant wall and the wall was indestructible, then what? Would the county stop the project or they would find another engineering and design solution?

I believe if that was the case, meaning if they hit the wall, the planners and engineers would find a way to make things work. They might need to consider a little re-routing and/or a little more digging in the dirt, but I believe it is doable. It might not be as convenient or as cost effective as the current plan, but I believe private property rights should override these elements of concern.

Has there been any suggestion, discussion, consideration, or any study as to an alternative design, in which our land would be spared ? If so, would you please send me the pertinent information and documentation.

Thank you,

Azam Mirtorabi

On Wed, Apr 5, 2017 at 1:03 PM, Cleary, James <jcleary@co.santa-barbara.ca.us> wrote:

Afternoon Azam ~ To answer you directly as you requested, yes it is absolutely necessary to acquire the permanent easements on your property. As in terms of evidence, the answer too is yes. The evidence is based on the 60% level set of construction plans that had been started by the Corps. As I believe you are aware and familiar with developing land, developments do not happen within days. Concepts and designs may occur in days for proposed private commercial and residential site developments, but government projects, especially transportation projects (Highways & Bridges) and flood control projects (Storm Drains, Channels and Creek Restoration) have requirements and processes that private developments do not have to take into consideration.

As for your property, the easements identified, in addition to the easements on the a jointing parcels, are crucial not only for the operation but the maintenance as well for Reaches 2B-2 & 3. Because your property and the adjoining ones are not only are necessary and are required to improve the conveyance

capacity of the Lower Mission Creek, but elements and improvements, such as the connection to existing inlet, construction of a new debris rack & wall and most importantly the access point into the Reaches that need to be constructed based on the 95% level set of construction plans for Reach 2B-2.

Again to answer you directly, yes, in addition to the 2000, feasibility study and 60% level set of construction plans completed by Corps, we currently have 95% level set of construction plans, for Reach 2B-2 signed and dated September 1, 2106, by a California Registered Civil Engineer of the design firm, that will be finalized upon the final review by Flood Control and in the next week or so, Flood Control will be receiving 75% level set of construction plans on Reach 3 for review; both of which support the decision to acquire the easements for construction, operation and maintenance of Reaches 2B-2 & 3.

In addition to above information, completion of Reaches 1A-1, 1A-2, 1B and 2B-1, with Reach 2A currently under construction and will be completed this year is clear and convincing evidence that supports the absolute current necessity of acquiring, not only easements on or your land, adjacent land, but lands for the continual construction, operation and maintenance for the Lower Mission Creek Project.

I hope this answers your questions. As previously mentioned, please feel free to contact me anytime if and when you have any additional questions, comments and/or concerns and I will try be best to address any such questions, comments and/or concerns. We wish you to be completely informed in making a decision in whether or not we proceed with acquiring easements on your property or a simply fee acquisition. Again, please do feel free to contact me anytime.

James Cleary

Project Manager

General Services Department

1105 Santa Barbara St

Second Floor

Santa Barbara California 93101

Direct 805.568.3072

Mobile 805.689.2226

jcleary@countyofsb.org

EXHIBIT 7

From: Kelly, Pat
To: Frye, Jon
Cc: Fayram, Tom; McGolpin, Scott; Griffin, Matthew; Gullett, Daniel P.
Subject: RE: 512 Bath Street
Date: Tuesday, July 20, 2010 10:19:15 AM

Jon,
FYI. The city PC approved the project last week w/o comments towards the shape of the channel or questions about the LMC design. They ask for some modifications to the project to accommodate a larger setback of site development from the creek. However, I don't see how this will affect the LMC project.
Pat

From: Frye, Jon [mailto:Jfrye@cosbpw.net]
Sent: Monday, July 12, 2010 3:11 PM
To: Community Development PC Secretary
Cc: Fayram, Tom; McGolpin, Scott; Griffin, Matthew; Kelly, Pat
Subject: 512 Bath Street

Dear City of Santa Barbara Planning Commission:

The Santa Barbara County Flood Control District would like to submit the following comments about this subject project that is before your Commission this Thursday, July 15, 2010.

Over the years, City planning staff has done a commendable job of forwarding along to both the City Public Works Department and the County Flood Control District those projects that apply for development permits and that are located along the Lower Mission Creek Flood Control Project corridor (the Corps project). City planning staff has implemented into each of these projects the requirements of the alignment and geometry of the Corps consensus project, a project that was approved by both the City and the County and upon which environmental documents have been based.

County Flood Control also has an excellent working relationship with the City Creeks Division, an example of which is the close cooperation and coordination employed by both in the pursuit of the proposed fish passage project along the "Caltrans" Mission Creek channel.

It has come to our attention that the certain considerations may be given by the Planning Commission to changing certain aspects of the design of the Lower Mission Creek Project as it traverses across the 512 Bath Street property. Namely, the Planning Commission may be asked to require the 512 Bath Street Project to change the design of the Lower Mission Creek Flood Control Project's creek cross-section (geometry).

Many months ago in the project planning process, City Public Works gave the 512 Bath Street project applicants the proposed alignment and top of bank locations. This information was based on the approved Corps project. The top of bank location is based in part on the channel geometry. It is that channel geometry that we hear may be now subject to change.

It is Flood Control's opinion that entertaining any changes to the Corps consensus project will lead to a number of adverse consequences.

- The Corps has already expended considerable resources towards producing the final plans and specifications of the Lower Mission Creek project based on the consensus project. It is this consensus project that was provided to the 512 Bath Street project applicant.
- Changes to the consensus project by the locals will have significant ripple effects in both time and money.
- Additional funding required of all consequences of the change would fall on the City of Santa Barbara to resolve and could be significant.
- Certain technical studies that are based on the consensus Corps project would have to be re-done if the channel geometry changes, for example, the project hydraulic models.
- Requiring changes to the 512 Bath Street project raises the question as to how other projects within the Lower Mission Creek corridor will be handled when they come along in the future. Is every project going to be evaluated on a case by case basis, when a consensus project has already been agreed upon?

County Flood Control believes that the creek alignment, channel geometry and top of bank location as

defined in the Corps consensus project and provided as design direction to the 512 Bath Street project needs to be honored on this project as well as those that come before you in the future.

Thank you,

Very Respectfully,

Jon Frye

Jon Frye, PE, CFM

Deputy Director, Water Resources, Interim

SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

123 East Anapamu Street

Santa Barbara, CA 93101

Main Phone: 805-568-3440 Direct Line: 805-568-3444

Fax: 805-568-3434

EXHIBIT 8

Evacuations ordered below Santa Barbara burn zones as area braces for rainstorm



The Thomas fire left behind vast swaths of charred landscape. Authorities ordered evacuations below burn areas in anticipation of a strong winter storm. (Hal Wells / Los Angeles Times)



By **Alene Tchekmedyian**

JANUARY 7, 2018, 10:30 PM

Ahead of a strong winter storm that could trigger flash flooding and mudslides, authorities have ordered evacuations of Santa Barbara County neighborhoods that sit below areas recently burned by wildfires.

Residents who live in the following areas were told to evacuate by noon Monday: north of Highway 192, east of Cold Springs Road, and west of Highway 150/the county line, as well as along Tecolote Canyon, Eagle Canyon, Dos Pueblos Canyon, Gato Canyon and in the Whittier fire burn areas near Goleta.

A voluntary evacuation warning was issued for all areas south of Highway 192 to the ocean and east of Hot Springs Road/Olive Mill Road to Highway 150/county line, Santa Barbara County officials said.

“People in these areas should stay alert to changing conditions and be prepared to leave immediately at your own discretion if the situation worsens,” the county said in a statement.

Almost 4 inches of rain is expected in Santa Barbara and Ventura counties — where the massive Thomas fire has scorched more than 281,000 acres — from Monday evening through Tuesday morning. Authorities warned of the potential for heavy rain, strong winds and “extremely dangerous” flash flooding and debris flows.

The nearly extinguished wildfire, which erupted Dec. 4, is the largest fire on record in California. Residents who live in areas burned by the Whittier, Sherpa and Rey fires are also affected by the evacuations.

[To read the article in Spanish, click here](#)

alene.tchekmedyian@latimes.com

Twitter: [@AleneTchek](#)

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This article is related to: [Floods and Flooding](#), [Wildfires](#)



Bren School of Environmental Science & Management
University of California, Santa Barbara

Post-Fire Sedimentation and Flood Risk Potential in the Mission Creek Watershed of Santa Barbara

A Group Project submitted in partial satisfaction of the requirements for the degree of
Master's in Environmental Science and Management

By

Leslie Abramson
Milli Chennell
Erica Eisch
Alicia Glassco
Thomas Holley

Faculty Advisor:
Thomas Dunne

1. EXECUTIVE SUMMARY

Wildfires pose a complex management problem, especially in fire-prone areas such as southern California. Flood, sedimentation, and debris flow hazards increase in the years following fire when precipitation falls on bare hillslopes and unprotected, sometimes hydrophobic soils. Communities downstream of burned areas are at higher risk when storm runoff and erosion are intensified.

Mission Creek watershed, a small coastal watershed in southern California, has high wildfire potential indicated by regional fire history and current fuel accumulation. Mission Creek begins in steep, chaparral-covered mountain slopes and flows to the Pacific Ocean after winding through flood-prone downtown Santa Barbara. Fire in the upper watershed would greatly increase water and sediment supplies to the channel, increasing flood risk to downstream urban areas.

This project uses spatially and temporally explicit data and watershed modeling programs to quantify increases in runoff, sedimentation, and risk of debris flows in Mission Creek watershed following a potential wildfire. Current observations of post-fire hydrologic and sedimentary response in the nearby Gap Fire burn area contributed to the analysis. Fine-scale analysis allows for early planning and pre-emptive mitigation, which can supplement the typical post-fire response planned in emergency circumstances.

Approach

Three modeling programs were used to calculate post-fire changes in hydrology, erosion, and debris flow risk:

1. The ***Hydrologic Modeling System*** (HEC-HMS, U.S Army Corps of Engineers) was used to estimate post-fire storm runoff to Mission Creek.
2. The ***Erosion Risk Management Tool*** (ERMiT, U.S. Forest Service) was used to predict post-fire sediment delivery rates from surface erosion.
3. The ***Shallow Landslide Stability Model*** (SHALSTAB, UC Berkeley) was used to identify areas of the watershed where sediment supply from landsliding could increase, enhancing the risk of debris flows.

Increased flood risk from sediment accumulation in lower Mission Creek was analyzed by combining estimates of post-fire sediment delivery (from ERMiT) and discharge predictions (from HEC-HMS) with calculated sediment transport capacities for the creek.

Scenarios

Small and large fire scenarios were developed, simulating a fire in 25 and 50 percent of the upper watershed. Precipitation scenarios were developed for rainstorms with 2-, 5-, 10-, 25-, 50-, and 100-year recurrence intervals to represent a range of storm sizes. The effect of dry and wet antecedent soil moisture conditions on runoff was also examined.

2. INTRODUCTION

Flooding and debris flows in urban areas damage property and endanger human lives. Wildfires increase the magnitude of runoff and erosion, creating a risk to downstream communities that lasts for 1-3 years after a fire (DeBano 2000, Loaiciga 2001). As development in southern California encroaches upon wildland areas, the threat of fire and post-fire impacts to lives and property continues to increase. Post-wildfire debris flows killed 16 people and caused tens of millions of dollars of property damage in Southern California in 2003 (Cannon *et al.* 2007). To aid in the management of these risks, it is imperative to understand the controlling factors behind post-fire changes in hydrologic and sedimentary processes, as well as the magnitude of change. Predictions of runoff and sedimentation after fires are important both for long-term planning of risks to infrastructure and for short-term emergency planning for public safety and hazard mitigation. It is standard procedure for local and federal agencies to conduct rapid assessments of potential hydrologic and sedimentary changes in response to a wildfire. However, making advance predictions of these phenomena in high-risk areas aids disaster planning and mitigation, flood control infrastructure upgrades (which can require decades to complete), and public awareness of possible environmental hazards.

Mission Creek watershed has a high wildfire potential based on regional fire history and fuel accumulation since the last major fire in 1964. Mission Creek floods overbank in the low-gradient reaches sporadically, with recurrence periods ranging from two to forty years, but the risks of floods and debris flows increase significantly after fire in the upper watershed (FEMA 2005a). Since the magnitude of increase in risk depends on local factors and watershed characteristics, studies of recently burned analogous watersheds can be used to inform estimations of local post-fire erosion and flooding risk.

The July 2008 Gap Fire burned approximately 9,500 acres of vegetation on steep hillslopes above Goleta, California, nine miles west of the Mission Creek watershed. Areas of the Los Padres National Forest and private lands were affected by the fire (BAER, 2008). The Burnt Area Emergency Response (BAER) Team responded by conducting a rapid assessment of the burn area and suggesting management actions to mitigate risks to the City of Goleta. As many of the burned watersheds empty through the city to the subjacent Goleta Slough near the Santa Barbara Airport, city and county implemented mitigation programs to deal with the increased sedimentation and flood risk in winter of 2008-9. The City removed debris from the channel and sediment basins, constructed racks to catch debris, and treated the land surface of burnt areas to reduce potential hazards. Early estimation of the magnitude and spatial extent of post-fire effects can improve the efficiency and timing of management decisions. These predictions can be aided by watershed analysis, field observations, and calculations of the hydrologic and sedimentary changes in the basins.

EXHIBIT 9



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Flood Control
Department No.: 054
For Agenda Of: January 9, 2018
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Directors, Flood Control and Water Conservation District

FROM: Department Scott D. McGolpin, Public Works Director, 568-3010
Director(s)
Contact Info: Thomas D. Fayram, Deputy Public Works Director, 568-3436

SUBJECT: Lower Mission Creek Flood Control Project Reaches 3 & 4, First Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to Form: Yes

Recommended Actions:

That the Board of Directors:

- a) Approve and authorize the Chair to execute Amendment No. 1 to the Agreement for Services of Independent Contractor with Bengal Engineering (a local vendor) to provide engineering design services for the Lower Mission Creek Flood Control Project, Reaches 3 and 4 (BC 17-117), increasing the contract amount of \$362,575 to a not-to-exceed amount of \$434,545, an increase of \$71,970; and
- b) Authorize an increase of \$7,197 to the contingency amount of \$36,257.50 to a total contingency amount to \$43,454.50 with Bengal Engineering for additional work that may be needed to complete work for the project; and
- c) Find that pursuant to the California Environmental Quality Act Guidelines section 15162, no substantial changes are proposed, there are no substantial changes in circumstances and no new information of substantial importance has come to light regarding environmental effects of the project or feasibility of mitigation measures and, therefore, this action is within the scope of the project covered by the Environmental Impact Report/Environmental Impact Statement for the Lower Mission Creek Flood Control Project as well as the Findings, and Statement of Overriding Considerations approved and adopted by the Board on May 10, 2011, and therefore, no subsequent environmental document is required. The Findings, Statement of Overriding Considerations,

Environmental Impact Report/Environmental Impact Statement, and associated information can be found at: <http://santabarbara.legistar.com/LegislationDetail.aspx?ID=874496&GUID=D14C4C9B-DEDF-48CB-AB30-D52A228FB5A2>.

Summary Text:

This item is on the agenda in order to authorize an amendment to the agreement with Bengal Engineering for engineering design services for work necessary to complete the Lower Mission Creek Flood Control Project, Reaches 3 and 4 (Attachment A).

On August 23, 2016, the Board entered into an agreement with Bengal Engineering to perform engineering design services for the Lower Mission Creek Flood Control Project, Reaches 3 & 4, in the amount of \$362,575. The Board also authorized the Public Works Director to approve changes up to an additional amount of \$36,257.50 for a total contract amount of \$398,832.50. This amendment amount exceeds that authority; therefore, the Board’s approval is required.

Bengal Engineering is currently developing detailed plans and specifications for the Lower Mission Creek Flood Control Project, Reaches 3 & 4. As part of their original scope of work, Bengal Engineering developed a Contaminated Materials Management Plan (CMMP) based upon available records of previously known site contamination. Additional engineering design services are required to conduct actual site sampling and analysis of the soil and ground water and to develop a Phase II Environmental Assessment. These are needed in order to 1.) Complete an appraisal of 324 De La Vina Street as part of the real property acquisition process for Lower Mission Creek Reach 2B, Phase 2, and Reach 3 and 2.) To further refine the project plans and specifications to adequately address the presence of contaminated material.

Background:

The Lower Mission Creek Flood Control Project is a federal, U.S. Army Corps of Engineers project and has been under development since the 1960s. The City of Santa Barbara (City) and the District, acting as local sponsors for the federal project, worked with the community in the 1990s to develop the current project that addresses the flood control concerns and environmental issues.

In 2001, the City certified the EIR/EIS and approved the project for Lower Mission Creek as did the U.S Army Corps of Engineers subsequent to the City’s approval. Since that time, federal funding for construction has not come forward and the City and the Flood Control District have been working on finding opportunities to construct elements of the project as funding options arise. To date, the following project elements have been completed:

Flood Control District Work

Union Pacific Railroad Culvert work
Reach 1A-1
Reach 1A-2
Reach 2B-1
Reach 1B
Reach 2A

City Work

Haley – De La Vina Bridge
Ortega Street Bridge
Cota Street Bridge
Mason Street Bridge

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
South Coast FZ State Federal Fees Other:			\$ 79,167.00
Total	\$ -	\$ -	\$ 79,167.00

Narrative:

This project was included in the adopted FY 2017-18 budget in the Water Resources Division of the Public Works Department as shown on page D-325 in the budget book. No General Fund monies will be utilized by this project.

This project is also included in the County Capital Improvement Program on page D-152.

Key Contract Risks:

The key risk factors for this agreement are low.

Special Instructions:

Direct the Clerk of the Board to send two originals of Amendment No. 1 and minute order of these actions to the Flood Control District Office, Attn: Christina Lopez.

Attachments:

- Attachment A - Amendment No. 1 to the Agreement with Bengal Engineering (3 originals) w/ Contract Summary
- Attachment B - Agreement for Services of Independent Contractor with Bengal Engineering (copy of original contract)

Authored by:

Matt Griffin, Civil Engineer Specialist, 884-8074.

Exhibit 1



Department of Public Works
 County of Santa Barbara

LEGEND

- REACHES:**
- Other Reaches
 - Reach 3
 - Reach 4
 - Exist. Open Channel

**EXHIBIT 1:
 PROJECT LOCATION MAP**

**LOWER MISSION CREEK
 FLOOD CONTROL AND
 RESTORATION PROJECT
 REACHES 3 AND 4**

This map is for reference only. Although every effort has been made to ensure the accuracy of information, errors and conditions originating from physical causes used to develop the database may be reflected on this map. Santa Barbara County shall not be liable for any errors, omissions, or damages that result from inappropriate use of this document. No level of accuracy is claimed for the boundary lines shown hereon and lines should not be used to obtain coordinate values, bearings, or distances.



0 25 50 100 150 200
 Feet

Coordinate System: State Plane California Zone 12 NAD 1983



Santa Barbara County, California
 Prepared By
 PW FCD

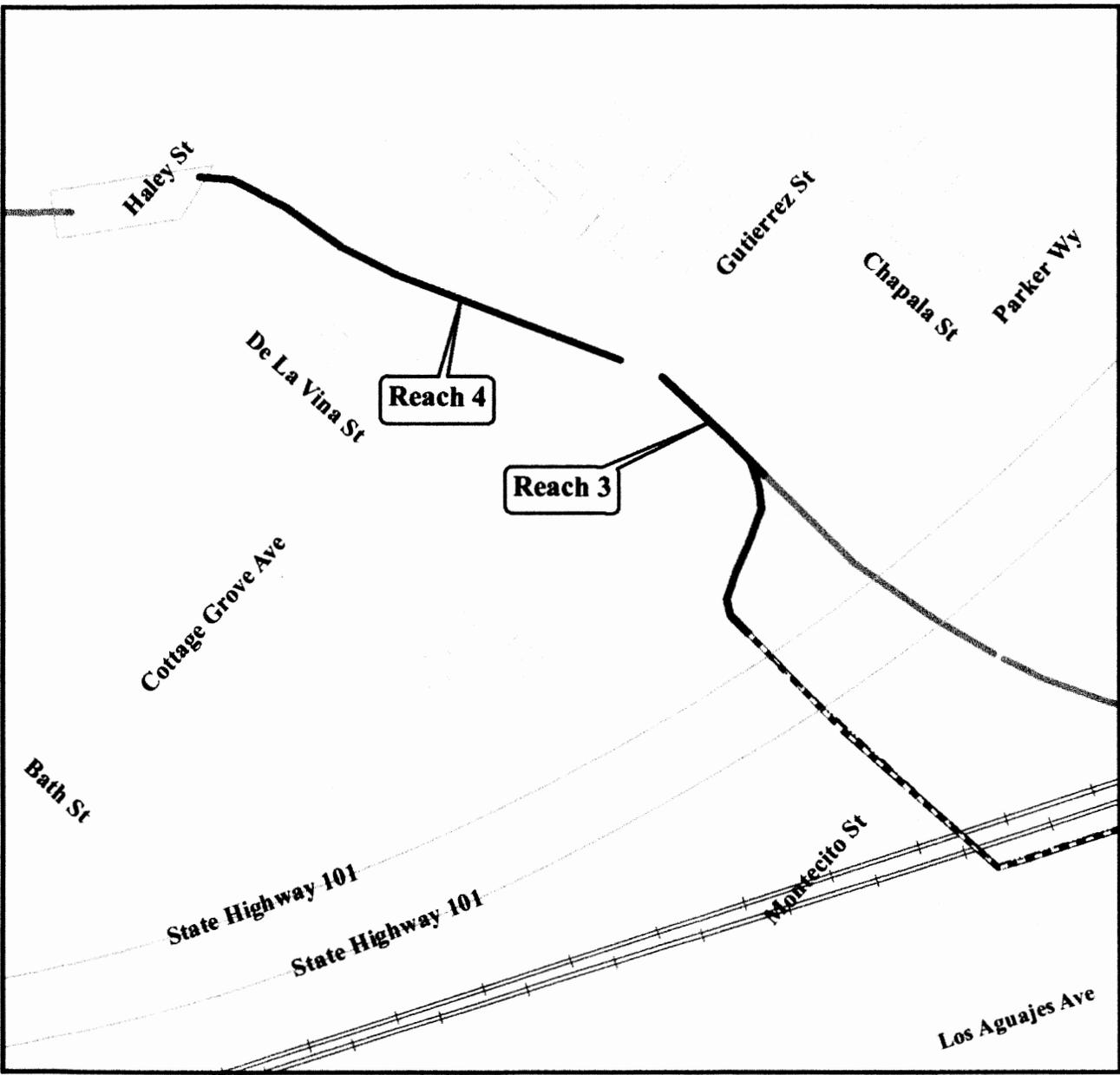


EXHIBIT 10

DEPARTMENT OF TRANSPORTATION

50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3101
AX (805) 549-3329
TDD (805) 549-3259
<http://www.dot.ca.gov/dist05/>



*Flex your power!
Be energy efficient!*

April 10, 2007

Mr. Paul McCaw
Senior Hazardous Materials Specialist
Santa Barbara County Fire
Protection Services Division
4410 Cathedral Oaks Road
Santa Barbara, CA 93110-1042

Dear Mr. McCaw:

IN RE: September 20, 2006 Fire Department Letter Regarding the Caltrans Lot at 324 De La Vina Street, Santa Barbara and subsequent invoices.

This letter is in response to the September 20, 2006 letter from Santa Barbara County Fire Protection Services Division (hereinafter "the County") regarding the Caltrans Lot at 324 De La Vina Street in Santa Barbara. Caltrans disputes the need for the County to reopen this property as a Site Mitigation Unit (SMU) site because no new activity has occurred since the site was closed as a SMU site by the County 1991 and the groundwater monitoring wells were removed in 2003. The County makes several claims in this letter that Caltrans felt required a response. The specific claims are:

The County states in the first line of the letter that it has "reviewed information that illustrates the following: (1) *Historic use of the subject property indicates the potential for an on-site source of chlorinated volatile organic compounds (VOCs) in the soil and groundwater.*" Caltrans has done extensive historical research on this parcel and found that single-family residences occupied the site prior to purchase of the property by Caltrans in the late 1950's. These residences remained on the property until the last one was removed in the early 1980's. A separate and independent historical evaluation of the property performed by West Coast Environmental and Engineering in November 2004 also documented that residential dwellings occupied the site. Caltrans understands that the County received a single report in 1989 that alleged that there may have been illegal dumping "into the street in front of the property" at 324 De La Vina Street. This report was never confirmed or followed up on by the County. Caltrans does not concur that this is a "use" of the property, certainly not a legal one, if this is what the County is referring to as a use of the property. If the County has information that there was a historic use of the property that could have caused the contamination, then please forward evidence of this use to this office, as it does not seem to appear anywhere else in the historical record.

The County continues, "(2) *The potential exists for related residual soil contamination to remain in place following previous site remediation efforts.*" In 1991 when Caltrans did the remediation of the soil on site, Caltrans submitted a work plan to the County Environmental Health Department and the Air Pollution Control District. Both these agencies approved the work plan. The workplan designated that the soil across the entire site would be excavated to the top of the water table or approximately to 10 feet deep. The soil was screened to remove unsuitable material and then stockpiled. The stockpiles were rotated to aerate the soil and allow the contaminants to volatilize into the atmosphere. In accordance with the approved workplan, once the stockpile soil samples demonstrated that the soil contained concentrations below 400 micrograms per kilogram of perchloroethene (PCE), the soil was placed back in the excavation and compacted. Verification sampling of the stockpiled soil demonstrated that 22 out of 23 soil samples had PCE concentrations below 400 micrograms per kilogram with most below 200 micrograms per kilogram. One sample had a concentration of 520 micrograms per kilogram. It is highly likely that the soil, once placed back into the excavation, actually had much lower concentrations due to the additional aeration that would have occurred while moving the soil from the stockpiles and back into the excavation. So Caltrans concurs that the potential exists for some minimal residual soil contamination to remain in place since those were the criteria allowed and approved by the County when clean up was performed.

The County continues: "(3) *There is a documented presence of chlorinated VOC's in the groundwater beneath the site that may originate from an offsite source.*" Caltrans directs the County's attention to the former dry cleaner business operated by Goss-Jewett & Company Inc. that was located at 220 West Gutierrez Street and is known as the Goldberg property. Based on the groundwater monitoring data compiled regarding the large PCE release from the Goldberg site, it is clear from looking at the PCE concentration gradients, that this site is very likely responsible for the VOC's in the groundwater beneath the Caltrans property and all the other properties in between these two sites. This fact was clear enough that the Central Coast Regional Water Quality Control Board (CCRWQCB) required the Goldberg estate to perform and pay for groundwater sampling and analysis from the wells on the Caltrans site.

The County continues: "(4) *There is a significant potential for chlorinated VOC's in on-site soil and/or shallow groundwater to pose an elevated risk due to vapor intrusion into future on-site building. Since Cal-Trans is apparently ready to divest this property, any buyer is likely to submit applications for redevelopment which likely result in construction of an on-site building. Based on this information, FPD has opened this site for investigation under the SMU Program.*"

Mr. Paul McCaw

April 10, 2007

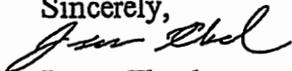
Page 3.

Caltrans performed a clean up of the top ten feet of soil (all soil above the groundwater table) and received closure from the County in 1991. Caltrans performed groundwater monitoring to the satisfaction of the CCRWQCB that allowed the monitoring wells to be removed in 2003, after many years of not being used. Caltrans has spent over \$100,000.00 on these remediation and monitoring efforts. Caltrans does not dispute that there is residual minimal soil contamination and some contamination of the shallow groundwater under the site. Caltrans has documented this fact in a disclosure document that was prepared for distribution to prospective interested parties that may bid on the parcel when it is offered for sale. It is purely conjecture on the part of the County that sale of the property will result in re-development of the property which will result in construction of a building. The property may just be paved and used for parking or used as a site for equipment or vehicle storage. It is unknown at this time what the property may be used for.

It is not the responsibility of Caltrans to perform a site investigation to determine what the ultimate use of the property may be or what the restrictions on development may be. That is for the buyer and ultimate developer of the property to determine. Caltrans cannot spend taxpayer money to investigate development options or restrictions for a prospective buyer. Caltrans intends to sell the property in its current condition with a disclosure document detailing what is known about the property. This disclosure will include the September 20, 2006 letter from the County and this response to the County.

Since Caltrans received the letter referenced above, the County has sent two invoices totaling \$836.00 for oversight of this property. There has not been any activity on the property since the groundwater monitoring wells were removed in April 2003 so it is unclear to Caltrans what activity the County could possibly be overseeing and thus billing for. Caltrans is unwilling to pay the invoices for oversight because there has been no activity at this site. Caltrans will not pay for County staff time to write the September 20, 2006 letter which indicates that the County was re-opening the site based on the assumption that a building might be constructed on the property once it is sold; or for the subsequent staff time for oversight of a property where there has been no activity. The potential sale of the property does not warrant oversight by the County Fire Protection Services Division. In addition, the County Fire Protection Services Division has not provided Caltrans with any documentation that CalEPA has authorized the County to conduct SMU activities pursuant to Chapter 6.8 of the Health and Safety Code. If the County is so authorized, please forward a copy of that authorization to this office. Please contact me at (805) 549-3196 if you have any questions.

Sincerely,



James Tkach

Environmental Engineer

Mr. Paul McCaw

April 10, 2007

Page 4.

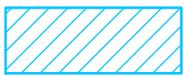
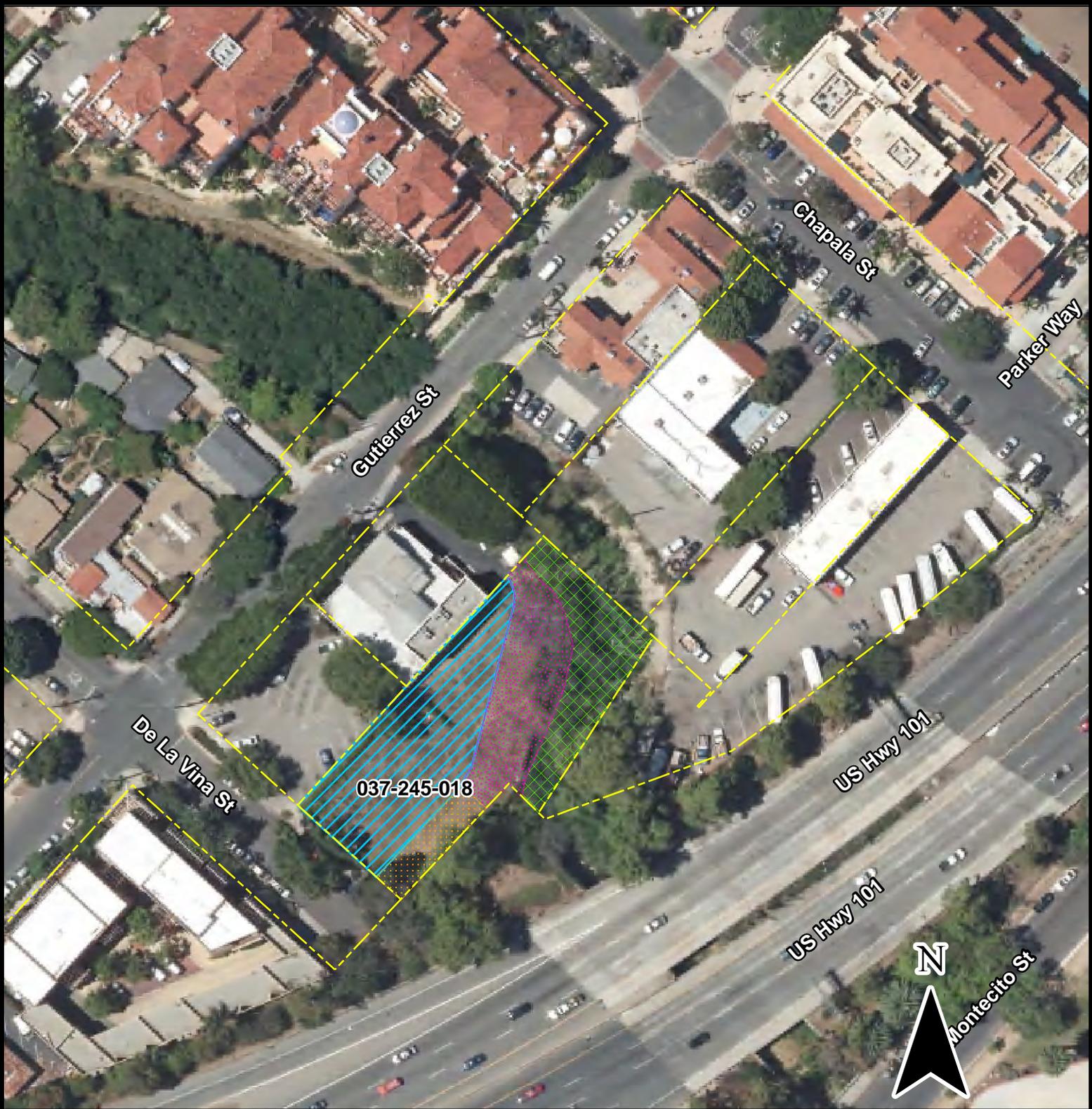
bc:

HW File ✓

Patrick Pittarelli – Right of Way

Daniel Weingarten – SF legal

EXHIBIT 11



TEMPORARY CONSTRUCTION EASEMENT
APPROX. EASEMENT AREA = 9,695 sq. ft.



PERMANENT ACCESS EASEMENT
APPROX. EASEMENT AREA = 1,629 sq. ft.



PERMANENT EASEMENT BEYOND
TOP OF BANK
APPROX. EASEMENT AREA = 5,290 sq. ft.



PERMANENT EASEMENT WITHIN
TOP OF BANK
APPROX. EASEMENT AREA = 5,175 sq. ft.

0 25 50 100 Feet

COUNTY OF SANTA BARBARA DEPARTMENT OF PUBLIC WORKS
FLOOD CONTROL AND WATER CONSERVATION DISTRICT

**LOWER MISSION CREEK PROJECT
REACH 3 EASEMENTS
SANTA BARBARA COUNTY
FLOOD CONTROL DISTRICT
APN: 037-245-018
SANTA BARBARA COUNTY, CALIFORNIA**

EXHIBIT 12

From: [Griffin, Matthew](#)
To: [Cleary, James](#)
Cc: [Tromp-Martyniuk, Joyce](#); [Frye, Jon](#)
Subject: FW: LMC 3 Easement Exhibits
Date: Friday, September 1, 2017 3:35:25 PM
Attachments: [037-245-018 Esmnt Exhibit - Mod.pdf](#)
[037-245-018 Esmnt Exhibit.pdf](#)

James, as discussed, please find attached two revised easement exhibits for 324 De La Vina Street (037-245-018). Both exhibits have been revised to show a new permanent easement boundary that has been pushed farther into the parcel, so as to contain the new top of slope (grading daylight line above the proposed ramp) recently developed Bengal as part of their upcoming 95% plan submittal. The exhibit labeled as '-Mod' also increases the permanent access easement area at the De La Vina Street entrance so as to avoid the utility and tree obstructions located near the southerly property corner, and assumes access would be taken from about the same location as the existing driveway instead. Due to the unknowns at this time regarding the cost/feasibility of removing/relocating the obstructions to access at the corner, we talked about having both of these proposed easement exhibits appraised separately. [Jon, FYI, James thinks this might be an extra cost to the appraiser; unfortunately I don't think we have enough info right now to avoid that]. If you need anything additional on these exhibits in order to proceed with the appraisals and/or legal descriptions please let us know.

Thanks!

*Matthew Griffin, P.E.
Civil Engineer Specialist
Santa Barbara County Flood Control &
Water Conservation District
130 E. Victoria St., Suite 200
Santa Barbara, CA 93101
(Office) 805-884-8074
(Fax) 805-568-3434*

From: Tromp-Martyniuk, Joyce
Sent: Friday, September 01, 2017 2:39 PM
To: Griffin, Matthew
Subject: LMC 3 Easement Exhibits

Matt,

Here are the two exhibits for APN: 037-245-018.

Joyce

Joyce Martyniuk
*Santa Barbara County Flood Control
130 E. Victoria Street, Suite 200
Santa Barbara, CA 93101
805.568.3455*

District Project: Lower Mission
Creek Reach
2B-2
District Project #: SC8042
APN: 037-245-018
Real Prop. File: 003784

TEMPORARY CONSTRUCTION EASEMENT & AGREEMENT
(NOT FOR RECORDATION)

DE LA VINA HOLDINGS, LLC, a California Limited Liability Company, owner of all that real property in the City of Santa Barbara, County of Santa Barbara, State of California, situated on De La Vina Street, Santa Barbara, California, and more particularly described as County Assessor's Parcel Number 037-245-018, (the "Subject Property"), as OWNER herein, on behalf of themselves, their successors and assigns,

FOR A VALUABLE CONSIDERATION; DOES HEREBY GRANT TO

The SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a dependent special district of the County of Santa Barbara, a political subdivision of the State of California, its successors and assigns (hereinafter referred to as "DISTRICT"), a temporary construction easement and right of way, including the right to enter, store materials and equipment, move workers, equipment, and materials over, with and upon a portion of the Subject Property (hereinafter referred to as the "Temporary Construction Easement" or "TCE").

The Temporary Construction Easement Area shall include approximately 8,105 square feet of the Subject Property, which is more particularly described in Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated by this reference (hereinafter the "TCE Area"). The Temporary Construction Easement shall be used for the specified period of time set forth below in connection with the construction, installation, replacement, repair and use of facilities as part of the Lower Mission Creek Flood Control Improvement and Restoration Project, Reach 2B-2, District Project #SC8042 designed to reduce the risk of potential flooding during major storm and rainfall events ("Project"). The TCE includes, but is not limited to, the right of entry, the right to store materials and equipment, the right to conduct construction staging and such other necessary incidental purposes required for the implementation and construction of the Project.

1. As consideration for the granting of the above temporary rights, DISTRICT shall compensate OWNER in the amount of _____ and 00/100 Dollars (\$00.00), a one-time payment, within ten (10) working days upon execution by DISTRICT.

2. The Temporary Construction Easement shall be for a period of nine (9) consecutive months, which shall commence on April 2, 2018. The Temporary Construction Easement shall terminate on or before January 2, 2019, upon the filing of a "Notice of Completion" by the contractor performing the above-mentioned work, or upon DISTRICT notifying OWNER of termination of said Temporary Construction Easement, whichever is earlier. The DISTRICT will make every effort to complete construction within said nine (9) month period. However, the forgoing notwithstanding, in the event that construction is not completed within said nine (9) month period, the term of this TCE may be extended by DISTRICT for up to three (3) months at one (1) month intervals. If extensions are required DISTRICT shall notify OWNER of the extension(s) no less than fourteen (14) calendar days in advance of the then current termination date.

3. In the event DISTRICT extends the term of this TCE, the DISTRICT shall pay OWNER _____ and 00/100 Dollars (\$0.00) for each monthly extension. Payment shall be made within thirty (30) days of delivery of the extension notice to OWNER:

4. The OWNER agrees to keep the TCE Area free of personnel, materials or objects that may obstruct construction during the term of this TCE.

5. The DISTRICT, its authorized agents, employees and contractors shall exercise reasonable precautions necessary to prevent damage to and protect the Property during COUNTY'S entry thereon.

6. DISTRICT, its authorized agents, employees and contractors shall replace and/or repair any improvements to OWNER's property, destroyed, damaged, or relocated as a result of the DISTRICT'S negligence under this TCE. If any OWNER's improvements are damaged or removed by DISTRICT, its authorized agents, employees and contractors, they shall be restored or replaced by DISTRICT to as near the condition and location at the time it was damaged as is practicable.

7. By DISTRICT'S exercise of this TCE, OWNER assumes no liability for loss or damage to DISTRICT'S property, or injury to or death of any agent, employee, or contractor of DISTRICT, unless said loss, damage, injury, or death is as a result, in part or wholly, of the OWNER'S negligence or other wrongful act.

8. DISTRICT agrees to defend, indemnify and hold harmless OWNER from any claims or damages resulting from DISTRICT's negligent use of the Portion, unless said claims or damages are as a result, in part or wholly of the OWNER'S negligence or other wrongful act.

10. Notwithstanding the indemnification obligations under no circumstances will the DISTRICT be obligated to indemnify the OWNER for any pollutants preexisting this TCE including but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal pollutants and all other irritants or contaminations.

11. Signatory for the OWNER does hereby certify that they, the sole owners of the Property; represents and warrants that they are authorized to sign on behalf of the OWNER, have communicated the contents, rights and duties of this TCE to all parties having an interest in the Property, and that no additional signatures are required to grant the interest and perform the obligations specified herein.

OWNER

COUNTY

Mostafa Mirtorabi, Manager

Scott McElpin, Director

Date

Date

Azam Mirtorabi, Manager

Public Works Santa Barbara County
Flood Control & Water Conservation District
Naomi Schwartz Building
130 East Victoria Street
Santa Barbara CA 93102

Date

De La Vina Holdings, LLC
29343 WHEELBY COLLINS DR
RANCHO PALOS VERDES CA 90275

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: _____

Scott Greenwood
Deputy County Counsel

EXHIBIT "A"

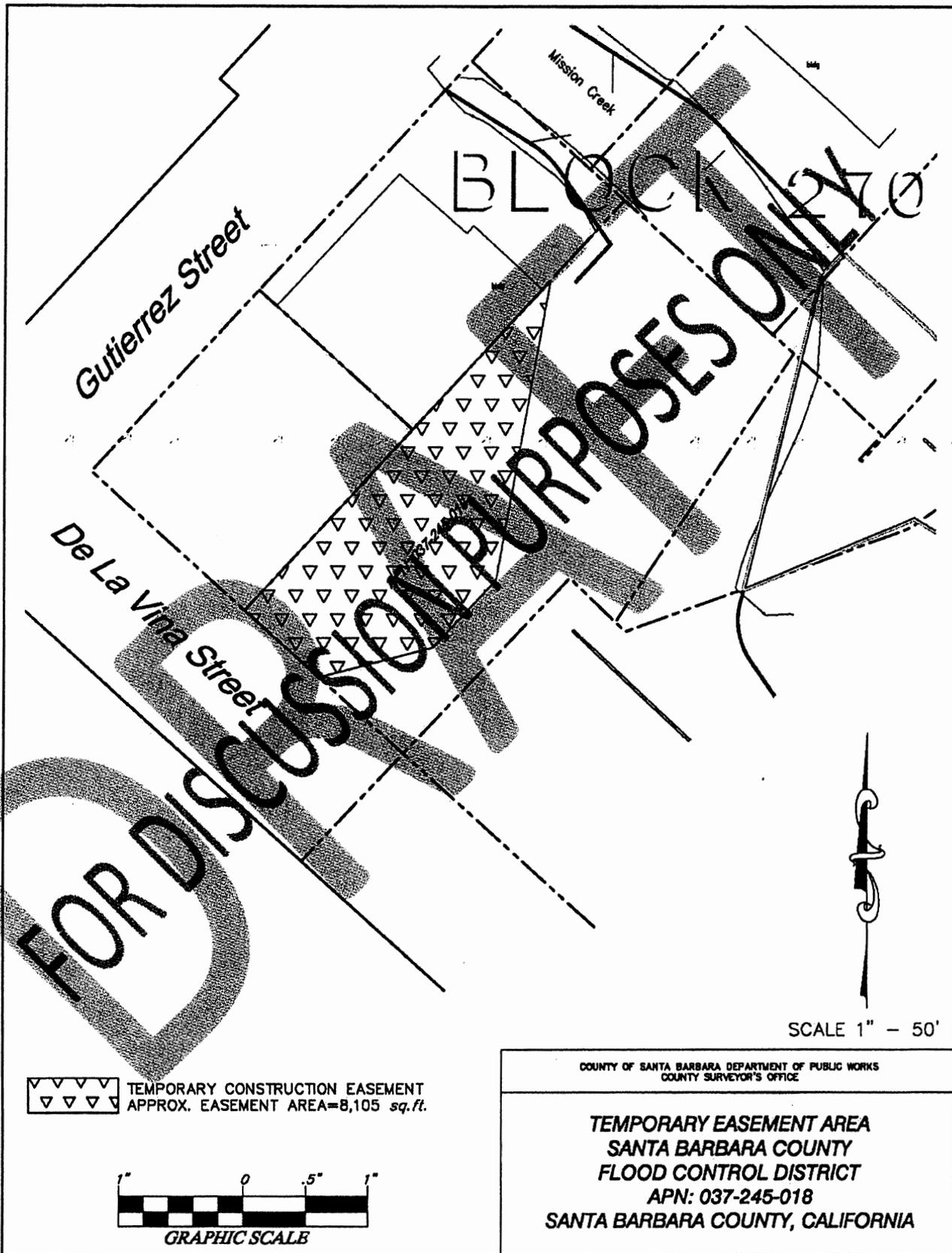
Legal Description
Temporary Construction Easement

To Be Inserted

DRAFT
FOR DISCUSSION PURPOSES ONLY

Exhibit "B"

Map Depiction
Temporary Construction Easement



SCALE 1" = 50'

▽▽▽▽ TEMPORARY CONSTRUCTION EASEMENT
▽▽▽ APPROX. EASEMENT AREA=8,105 sq.ft.



COUNTY OF SANTA BARBARA DEPARTMENT OF PUBLIC WORKS
COUNTY SURVEYOR'S OFFICE

TEMPORARY EASEMENT AREA
SANTA BARBARA COUNTY
FLOOD CONTROL DISTRICT
APN: 037-245-018
SANTA BARBARA COUNTY, CALIFORNIA

Recorded at request by
and to be returned to:
County of Santa Barbara
General Services Department
Real Property Division
Will Call
1105 Santa Barbara St 2nd Flr
Santa Barbara CA 93101
COUNTY OF SANTA BARBARA
OFFICIAL BUSINESS

No fee pursuant to
Government Code §6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE
A.P.N. 037-245-017 (portion of)
District Project #SC8042
General Service #003784

EASEMENT DEED
(PERMANENT EASEMENT)

DE LA VINA HOLDINGS, LLC, a California Limited Liability Company, owner of all that real property in the City of Santa Barbara, County of Santa Barbara, State of California, referenced as De La Vina Street, Santa Barbara, California, and more particularly described as County Assessor's Parcel Number 037-245-018, (the "Subject Property"), as OWNER herein.

FOR A VALUABLE CONSIDERATION, OWNER DOES HEREBY GRANT TO

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a dependent special district, its successors and assigns, as DISTRICT herein, a permanent easement and right-of-way in perpetuity for flood control purposes, over, under and across a portion of the Property for access, excavation, removal, demolition, and alteration of improvements, vegetation and topography, and for the construction, reconstruction, replacement, repair, use and maintenance of various improvements as required for the Lower Mission Creek Flood Control Improvement and Restoration Project, Reaches 2B & 3, District Project # SC8042, and subsequently for water flowage, flood control and all related purposes ("Facilities"). The permanent easement area containing approximately 11,549 sq.ft., granted hereby is more particularly described in Exhibit "A" and depicted on Exhibit "B" ("Permanent Easement") attached hereto and incorporated herein by this reference.

OWNER and their successors in interest retain the right to use the Permanent Easement except that within the Permanent Easement area, no permanent improvements, fences, vegetation or permanent encroachments of any kind can be erected or other use made which would interfere with the present or future surface and subsurface operations, uses of and access rights granted herein.

Notwithstanding the foregoing, OWNER shall have the right to use and maintain the Permanent Easement area that is not encumbered by the DISTRICT's Facilities for ingress and egress, temporary parking, hardscape and landscape. DISTRICT's rights to the Permanent Easement used and maintained by the OWNER are not diminished by this acknowledgement.

OWNER shall not disturb or damage DISTRICT's Facilities on the Property. In the event said Facilities are disturbed or damaged by OWNER, their successors, assigns, designees, employees, or contractors, then OWNER shall immediately contact DISTRICT and shall repair or replace said Facilities to DISTRICT'S satisfaction.

DISTRICT shall have the right to clear or keep clear from the Permanent Easement all buildings, structures and improvements that interfere with the use of the Permanent Easement at the expense of whoever is responsible for the installation of same. DISTRICT its successors, assigns, contractors and employees shall have the right, but not the obligation, to maintain, trim and cut trees, shrubs, vegetation and roots, if any, as may endanger or interfere with the operation or use of or access to the DISTRICT's Facilities within and above Permanent Easement, provided however that DISTRICT shall make the least injury and damage to the surface of the ground and vegetation as is reasonably practical and restore the surface of the ground and vegetation to as near the same condition as it was prior to the above referenced work as is practicable.

In the event the indemnity hereunder exceeds that permitted by applicable law, such indemnity shall be construed as the maximum permitted by law. This indemnity shall not apply to any contamination, which may occur on the easement property as a result of the operations of DISTRICT subsequent to the recordation of this easement.

OWNER agrees to indemnify, defend and hold harmless DISTRICT and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Permanent Easement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by DISTRICT on account of any claim except where such indemnification is prohibited by law. OWNER'S indemnification obligation does not apply to DISTRICT'S sole negligence or willful misconduct.

Notwithstanding the indemnification obligations under no circumstances will the DISTRICT be obligated to indemnify the OWNER for any preexisting pollutants including but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal pollutants and all other irritants or contaminations.

DATE: *Month Day Year*

"OWNER"

Mostafa Mirtorabi, Manager

Azam Mirtorabi, Manager

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____ Notary Public, personally appeared Mostafa Mirtorabi and Azam Mirtorabi., who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

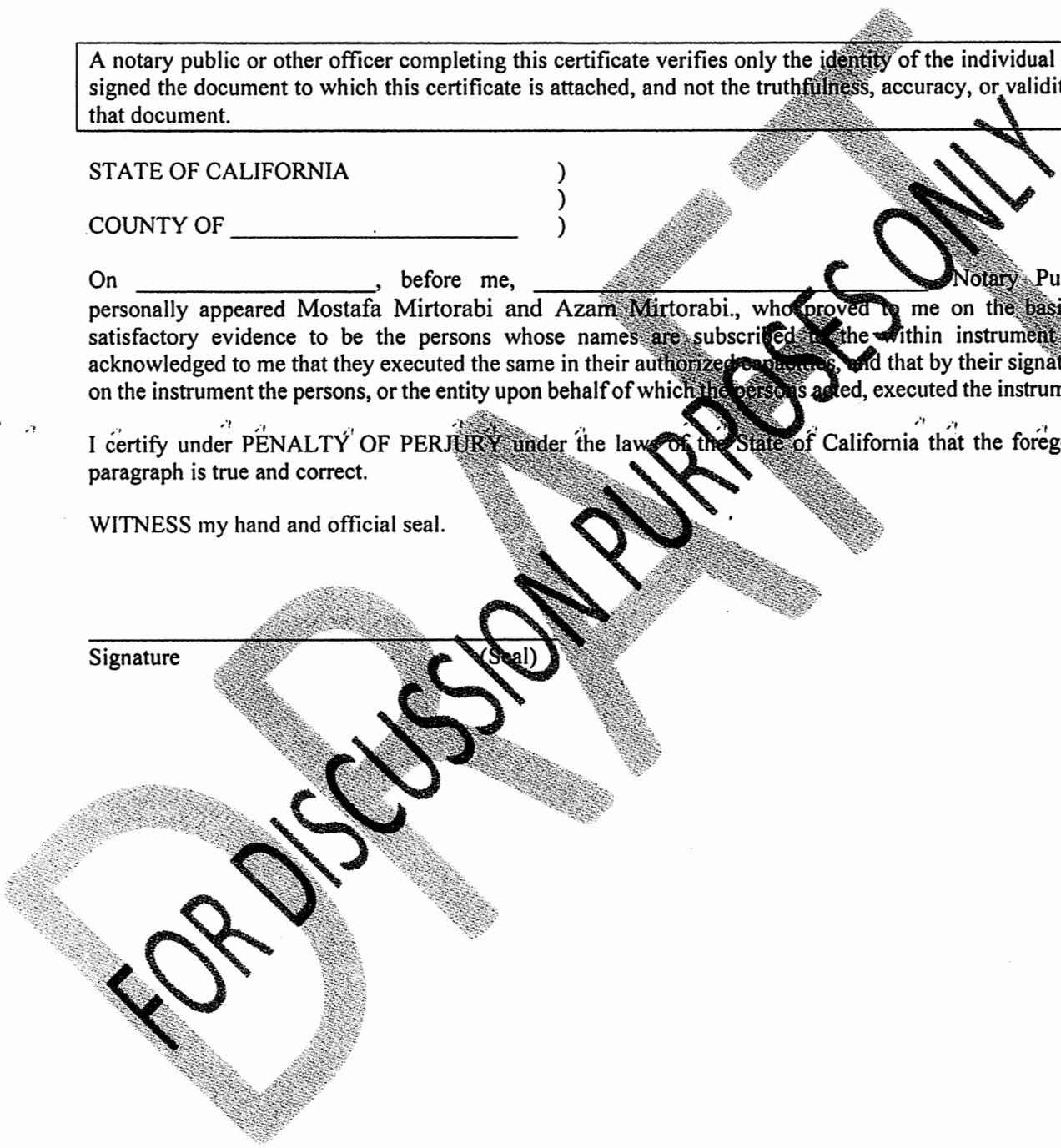


EXHIBIT "A"

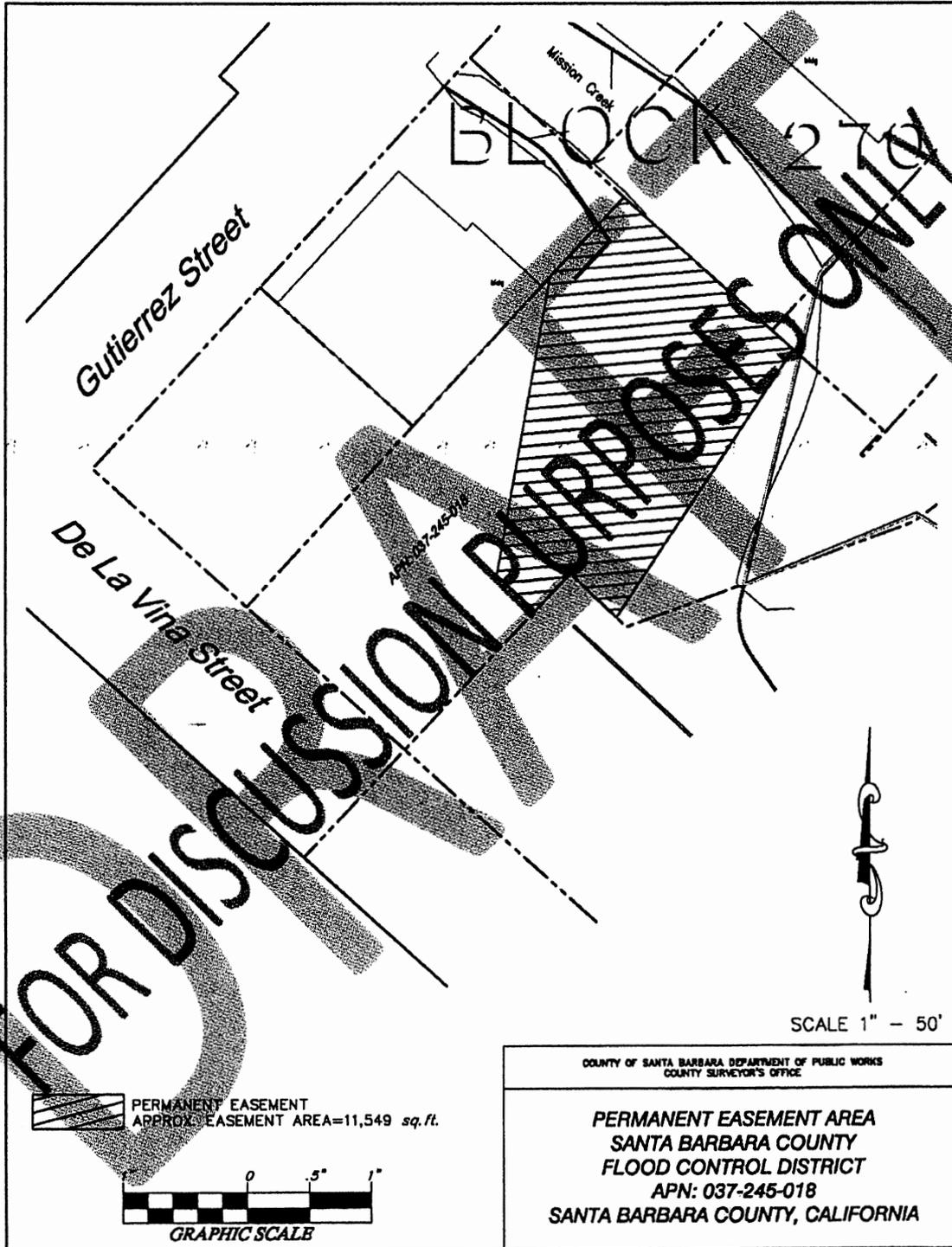
Legal Description
Permanent Easement

To Be Inserted

DRAFT
FOR DISCUSSION PURPOSES ONLY

Exhibit "B"

Map Depiction
Permanent Easement



CERTIFICATE OF ACCEPTANCE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA: SS. §27281

THIS IS TO CERTIFY that the interest in real property conveyed by the Permanent Easement dated *MONTH DAY, YEAR*, from DE LA VINA HOLDINGS, LLC, a California Limited Liability Company, as OWNER, to SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a dependent special district, its successors or assigns, as DISTRICT, is hereby accepted by Order of the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District on *MONTH DAY, YEAR*, and DISTRICT, consents to recordation thereof by its duly authorized officer.

WITNESS my hand and official seal this _____ day of _____, 2017

CLERK

CLERK OF THE BOARD and Ex Officio Clerk of the Board of the Directors of the Santa Barbara County Flood Control and Water Conservation District

By: _____
Deputy

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: _____
Scott Greenwood
Deputy County Counsel

Recorded at request by
and to be returned to:
County of Santa Barbara
General Services Department
Real Property Division
Will Call
1105 Santa Barbara St 2nd Flr
Santa Barbara CA 93101
COUNTY OF SANTA BARBARA
OFFICIAL BUSINESS

No fee pursuant to
Government Code §6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE
A.P.N. 037-245-018 (portion of)
District Project #SC8042
General Service #003784

EASEMENT DEED
(PERMANENT ACCESS EASEMENT)

DE LA VINA HOLDINGS, LLC, a California Limited Liability Company, owner of all that real property in the City of Santa Barbara, County of Santa Barbara, State of California, referenced as De La Vina Street, Santa Barbara, California, and more particularly described as County Assessor's Parcel Number 037-245-018, (the "Subject Property") as OWNER herein.

FOR A VALUABLE CONSIDERATION, OWNER DOES HEREBY GRANT TO

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a dependent special district, its successors and assigns, as DISTRICT herein, a permanent access easement and right-of-way in perpetuity for flood control purposes, over, and across a portion of the Property for accessing the improvements, maintenance and repair as required for the Lower Mission Area Flood Control Improvement and Restoration Project Reaches 2B & 3 District Project # SC8042, and subsequently for water flowage, flood control and all related purposes ("Facilities"). The permanent access easement area containing approximately 2,135 sq.ft., granted hereby is more particularly described in Exhibit "A" and depicted on Exhibit "B" ("Access Easement Area") attached hereto and incorporated herein by this reference.

OWNER and their successors in interest retain the right to use the Access Easement Area except that within the Access Easement Area, no permanent improvements, fences, vegetation or permanent encroachments of any kind can be erected or other use made which would interfere with the present or future surface access rights granted herein.

DISTRICT shall have the right to clear or keep clear from the Access Easement Area all buildings, structures and improvements which interfere with the use of the Access Easement Area at the expense of whoever is responsible for the installation of same. DISTRICT its successors, assigns, contractors and employees shall have the right, but not the obligation to maintain, trim and cut trees, shrubs, vegetation and roots, if any, as may endanger or interfere with the operation or use or access to the DISTRICT's Facilities within and above the Access Easement Area, provided however that

DISTRICT shall make the least injury and damage to the surface of the ground and vegetation as is reasonably practical and restore the surface of the ground and vegetation to as near the same condition as it was prior to the above referenced work as is practicable.

DISTRICT shall provide OWNER fourteen (14) calendar days prior notice in writing, except in cases of emergency maintenance, repairs or other unforeseen emergency conditions, which require immediate use of the Access Easement Area.

In the event the indemnity hereunder exceeds that permitted by applicable law, such indemnity shall be construed as the maximum permitted by law. This indemnity shall not apply to any contamination, which may occur on the easement property as a result of the operations of DISTRICT subsequent to the recordation of this easement.

OWNER agrees to indemnify, defend and hold harmless DISTRICT and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Permanent Access Easement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by DISTRICT on account of any claim except where such indemnification is prohibited by law. OWNER'S indemnification obligation does not apply to DISTRICT'S sole negligence or willful misconduct.

Notwithstanding the indemnification obligations under no circumstances will the DISTRICT be obligated to indemnify the OWNER for any preexisting pollutants including but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal pollutants and all other irritants or contaminations.

DATE: *Month Day, Year*

"OWNER"

Mostafa Mirtorabi, Manager

Azam Mirtorabi, Manager

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____ Notary Public, personally appeared Mostafa Mirtorabi and Azam Mirtorabi., who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PÉNALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

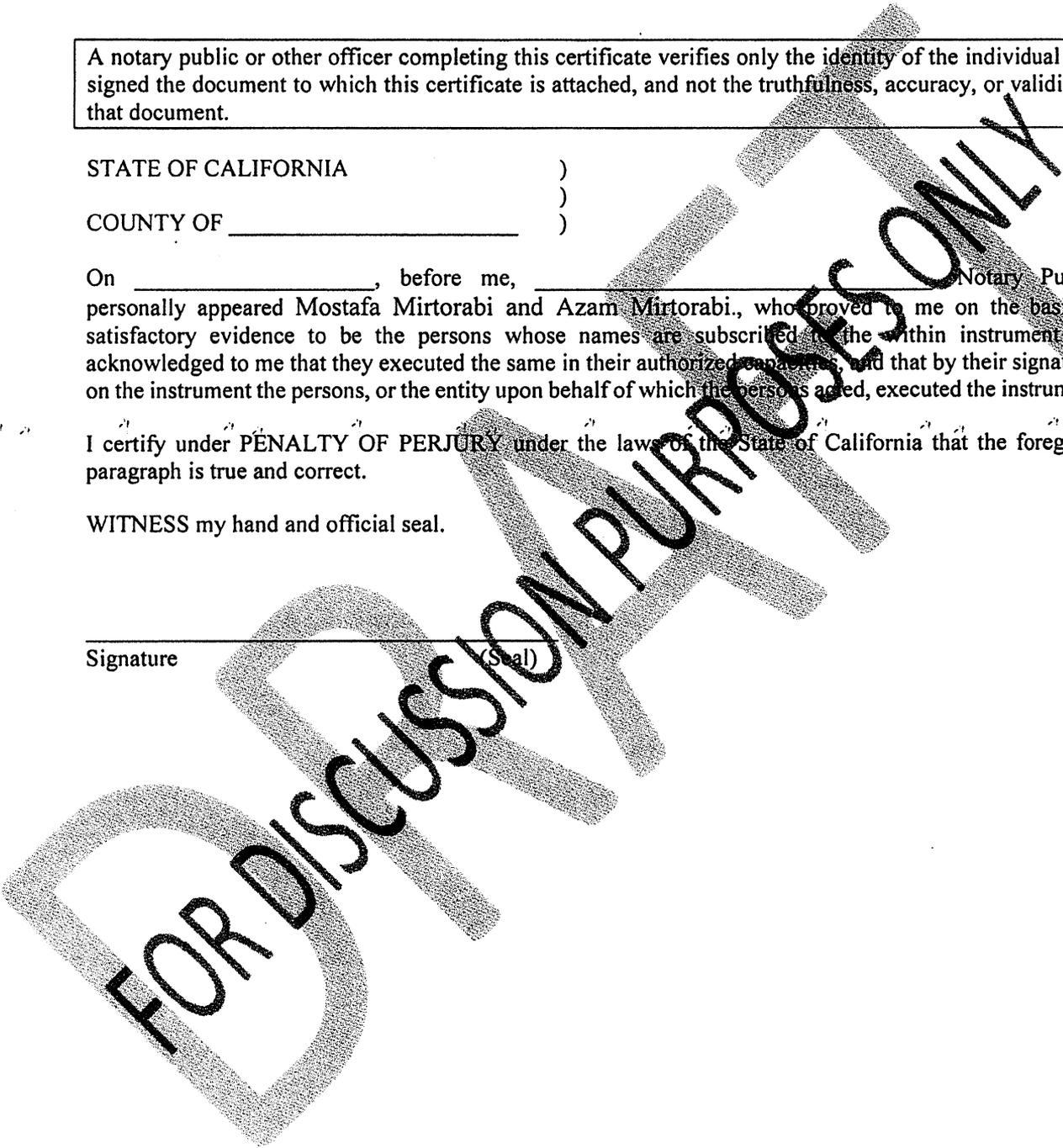


EXHIBIT "A"

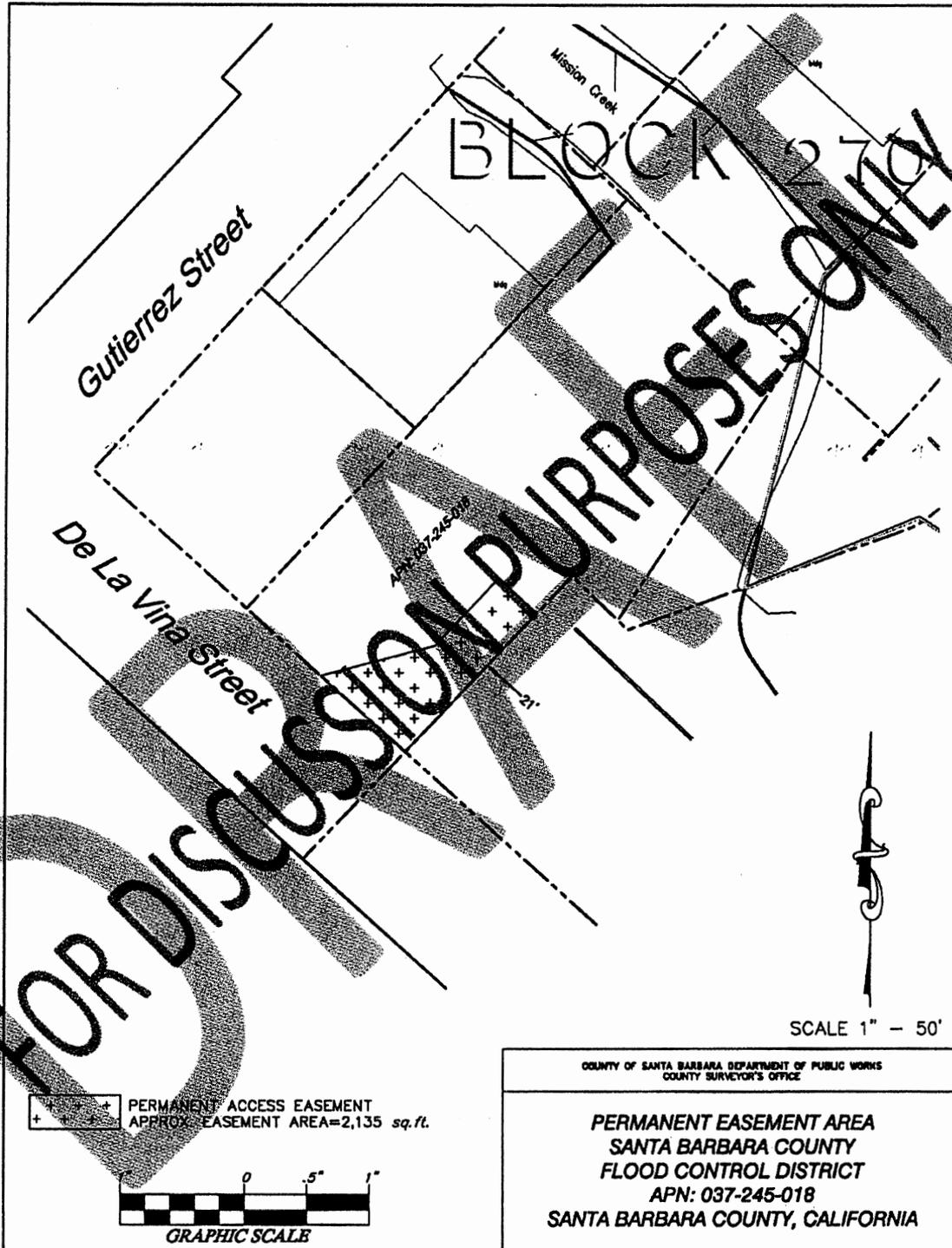
Legal Description
Permanent Access Easement

To Be Inserted

DRAFT
FOR DISCUSSION PURPOSES ONLY

Exhibit "B"

Map Depiction
Permanent Access Easement



CERTIFICATE OF ACCEPTANCE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA: SS. §27281

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WITNESS my hand and official seal this _____ day of _____, 2017

CLERK

CLERK OF THE BOARD and Ex Officio Clerk of the Board of the Directors of the Santa Barbara County Flood Control and Water Conservation District

By: _____
Deputy

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: _____
Scott Greenwood
Deputy County Counsel

EXHIBIT 13

**Robert Silverstein - Reach 2B-2 & 3 De La Vina Parcel, January 9, 2018 Hearing;
Agenda item No. 6,**

From: Robert Silverstein
To: jcleary@countyofsb.org; rmorgan@co.santa-barbara.ca.us
Date: 1/7/2018 6:27 PM
Subject: Reach 2B-2 & 3 De La Vina Parcel, January 9, 2018 Hearing; Agenda item No. 6,
CC: EK - Kornfeld, Esther; Mirtorabi, Azam; VL - Veronica Lebron
BC: Robert Silverstein

Dear Mr. Cleary and Mr. Morgantini:

De La Vina Holdings, LLC, through Azam and Mo Mirtorabi, have retained me to assist them with regard to the resolution of necessity hearing currently scheduled for Jan. 9, 2018 related to the property located at 324 De La Vina St., Santa Barbara. I am aware that they have requested a continuance of the Jan. 9 hearing date, but the County has declined to grant a continuance.

Because I am just getting up to speed in this matter, I would respectfully request that the hearing be postponed by at least two weeks, and preferably a month, to enable me to familiarize myself with the issues and underlying documents. I also understand that there are several outstanding document requests that the County is still working to fulfill. It would of course be critical to have all of those documents prior to a hearing. Not having those documents significantly impairs my clients' due process and fair hearing rights.

Accordingly, please advise if the County will postpone the hearing date, and if you are unable to make that decision, please forward this email to whomever is for response.

Also because of the timing involved and prior commitments, I am not able to personally attend the hearing in Santa Barbara on Jan. 9. Reserving all rights and objections, to the extent that the County refuses to extend us a continuance, then please advise if I can call in (or if the County can call me) when the item is called so that I may testify telephonically on behalf of my clients.

Kindly forward this to the Board members and also include this in the administrative record for this matter. Thank you for your courtesy and prompt attention to these requests.

Robert P. Silverstein, Esq.
The Silverstein Law Firm, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504
Telephone: (626) 449-4200
Facsimile: (626) 449-4205
Email: Robert@RobertSilversteinLaw.com
Website: www.RobertSilversteinLaw.com

=====
The information contained in this electronic mail message is confidential information intended only for the use of the individual or entity named above,

James Cleary

Project Manager

General Services Department

1105 Santa Barbara St

Second Floor

Santa Barbara California 93101

Direct 805.568.3072

Mobile 805.689.2226

jcleary@countyofsb.org



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From: Azam Mirtorabi [mailto:mirtorabi.a@gmail.com]

Sent: Thursday, January 4, 2018 1:39 AM

To: Cleary, James <jcleary@countyofsb.org>; Cleary, James <jcleary@countyofsb.org>

Subject: Fwd: Reach 2B-2 & 3 De La Vina Parcel ***FedEx-ed CD & Flash Drive***

Dear Mr. Cleary,

I hope you have had a great holiday! On 12/ 20/ 2017, I sent you the attached letter. My request for the continuation of the hearing is appropriate and justified as it is reflected in my letter. Please clearly state your position as I need to plan accordingly.

Very best,

Azam Mirtorabi

From: Azam Mirtorabi [mailto:mirtorabi.a@gmail.com]
Sent: Thursday, January 4, 2018 9:55 AM
To: Cleary, James <jcleary@countyofsb.org>
Subject: Re: Reach 2B-2 & 3 De La Vina Parcel ***FedEx-ed CD & Flash Drive***

3

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

On Thu, Jan 4, 2018 at 8:11 AM, Cleary, James <jcleary@countyofsb.org> wrote:

2

Morning Azam ~ Your request to appear and be heard has been received and sent to the Clerk of the Board who will call you and your husband to address the District. In addition your e-mails and letter have too been forward to the Clerk of the Board. Your letter for request of documents is being handled by Mr. Richard Morgantini.



Azam Mirtorabi <mirtorabi.a@gmail.com>

RE: Reach 2B-2 & 3 De La Vina Parcel *January 9, 2018 Hearing Confirmed*****

11 messages

Cleary, James <jcleary@countyofsb.org>
To: Azam Mirtorabi <mirtorabi.a@gmail.com>

Thu, Jan 4, 2018 at 5:46 PM

(4)

Azam ~ Thank you for your correspondence. It is confirmed with County Flood Control and General Services the hearing on the condemnation resolution is going to proceed as calendared on January 9, 2018. County Flood Control has received your request to appear at the hearing so you and your husband will be able to address the factual issues being considered by the Board at that time.

For your information, you can access the agenda item on-line at " www.countyofsb.org ". On that Home page, right-hand-side under Board of Supervisors click on "Agenda and Minutes" to view corresponding documents pertaining to hearing. The letter and e-mails you requested may not be on-line but they have been submitted to the Clerk of the Board and be presented to the Board prior to the hearing.

James Cleary

Project Manager

General Services Department

1105 Santa Barbara St

Second Floor

Santa Barbara California 93101

Direct 805.568.3072

Mobile 805.689.2226

jcleary@countyofsb.org



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Azam Mirtorabi <mirtorabi.a@gmail.com>

Reach 2B-2 & 3 De La Vina Parcel *FedEx-ed CD & Flash Drive*****

Azam Mirtorabi <mirtorabi.a@gmail.com>

Thu, Dec 21, 2017 at 10:49 PM

To: "Cleary, James" <jcleary@countyofsb.org>, "Cleary, James" <jcleary@co.santa-barbara.ca.us>

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>

[Quoted text hidden]

 **12-20-17 De La Vina PRA.pdf**
5791K

Mobile 805.689.2226

jcleary@countyofsb.org



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From: Azam Mirtorabi [mailto:mirtorabi.a@gmail.com]
Sent: Monday, December 18, 2017 4:01 PM
To: Cleary, James <jcleary@countyofsb.org>
Subject: Re: Reach 2B-2 & 3 De La Vina Parcel ***FedEx-ed CD & Flash Drive***

Dear Mr. Cleary,

Dear Mr. Cleary,

I hope this email finds you well. I received a notice of hearing in the mail today. The hearing is set for January 9, 2018. I previously sent you an email explaining that we needed more time to respond to your 'offer to purchase' our property. I am currently immersed in filing for entitlement with the City of Los Angeles in connection with another property before the end of the year. It is imperative that I file for this entitlement before year end to secure a 2017 filing date as failing to do so would result in suffering financial detriment and other adverse consequences due to laws and regulations going into effect in 2018.

Thank you for sending another copy of the CD., It works. However, due to being overwhelmed with work ahead of the above mentioned filing deadline, I have not had a chance to review the documents you have provided. Moreover, I will also need time to prepare for the hearing and to respond to your requests.

Would you be amenable to agreeing to extend the hearing to and through the next scheduled board meeting in late January or early February? If so, please let me know what I need to do to properly postpone the hearing.

Wishing you happy holidays.

Kindly,

Azam Mirtorabi