

James Mortensen

SoCal Law Group, PC
2855 Michelle Drive Suite 120
Irvine, CA 92606

James@SoCalLawGroup.com

Phone (213) 387-7414

Fax (213) 387-8414

May 31, 2023

TO (via email only):

David Gibson
California Regional Water Quality Control Board, San Diego Region
David.Gibson@waterboards.ca.gov

Vincent Vu, Senior Staff Counsel
Office of Chief Counsel
Vincent.Vu@waterboards.ca.gov

FROM:

James Dean Mortensen, Counsel for Vista Pacific and David Epstein

DATE: May 31, 2023

SUBJECT: DEFENSE COUNSEL'S PREHEARING EVIDENCE AND ARGUMENT SUBMITTALS (EXCLUDING REBUTTAL EVIDENCE) RE ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2023-0013

In accordance with the Pre Hearing Procedure for Administrative Civil Liability Complaint No. R9-2023-0013 (Complaint), Counsel for Defendants submits all materials required under the pre hearing plan to this point. As explained below, the Defense prehearing evidence and argument submittals (excluding rebuttal evidence) are provided as an attachment to the email transmitting this letter and/or were uploaded to an FTP site. Instructions for accessing and downloading electronic files from the FTP site are provided below. Please let me know if there are any technical difficulties accessing or downloading from the FTP site.

Defense Prehearing Evidence

1. Exhibit List and Exhibits – Defense Exhibit List is uploaded to the FTP site. The Exhibit List identifies all prehearing exhibits (excluding rebuttal evidence) and provides an exhibit number, a brief description, and a date for each exhibit where applicable.

2. Witness List – The Defense Witness List is uploaded to the FTP site. The Witness List provides the name of each witness the Defense intends to call at the hearing on August 9, 2023 or as otherwise set by the board, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. The Defense reserves its right to call one or more expert witnesses through its rebuttal evidence submission in response to the Prosecution's arguments and evidence, if necessary, and the qualifications of each expert witness will be provided at that time.

3. Legal and Technical Arguments or Analysis – The Defense legal and technical arguments or analysis are presented below in summary. The Defense reserves its right to submit additional legal and technical arguments or analysis through its rebuttal evidence submission in response to the Prosecution's arguments and evidence, if necessary.

Summary of Argument :

The city and regulatory agencies relevant to the planning and approvals of the site and adjacent developments approved and executed plans that included a high volume drain pipe from a higher elevation adjacent property which propelled water at high volume and velocity when heavy rains came, washing out fill from the property and overwhelming the approved drainage plans, scouring the graded site to bedrock in some areas. The city and agents of the Water Board were aware of the problem because they had requested in plans the enlargement of a drain pipe of the property from 3 feet to 4 feet diameter, allowing a cross sectional flow of water increase from about 7 square feet to 12 square feet, a 71% increase in capacity, for the drainage of the property. Officials had approved the higher elevation development and had experience with the result of heavy rains that could not be anticipated by Respondents when their plans were prepared and approved.

Instructions for FTP site

1. Go to the following website:

https://app.sugarsync.com/iris/wf/D7048482_09265680_1867503

2. Download per instructions on the site.

cc: (see transmittal email for full distribution list)

Thank you,



James Mortensen