

# James Mortensen

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**TO (via email only):**

David Gibson  
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**FROM:**

James Dean Mortensen, Counsel for Vista Pacific and David Epstein

**DATE:** July 5, 2023

**SUBJECT: DEFENSE COUNSEL'S PREHEARING 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 makes this statement relating to rebuttal evidence.

Defendants opposition as noted previously has two main parts, first, the issues pertaining to the excess drainage from an upper development, and insufficient drainage below – as approved by the city and board process. This caused such a excess drainage and accumulation of water that moving efficiently off the site was impractical. Photos have been submitted and evidence is intended to come mainly from oral testimony from the witness list submitted.

Second, the analysis of the penalty calculation in the multi factor process described by the prosecution. As is unavoidable in multi factor test, there is a fair amount of subjectivity where small changes in multipliers work out to many thousands of dollars at the end. In this case, a settlement was originally proposed by board representatives of approximately \$60,000. The personnel changed, and the

demanded penalty became approximately ten times the amount. Oral testimony and argument based on that testimony will consist of the response.

Thus, no additional rebuttal evidence is being submitted by defendants.

Thank you,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

James Mortensen