

# MILLER BARONDESS, LLP

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July 12, 2010

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*VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND FACSIMILE*

Office of the City Clerk  
Alameda City Hall  
2263 Santa Clara Avenue  
Room 380  
Alameda, CA 94501  
Fax (510) 747-4805

Re: *Public Records Act Request Regarding Development at Alameda Point*

Dear City Clerk:

This request is made pursuant to the California Public Records Act (Gov. Code Section 6250 et seq.) ("Public Records Act"). Our firm represents SCC Alameda Point, LLC ("SCC Alameda"). Please provide copies of the following from the City (as "City" is defined below), the CIC (as "CIC" is defined below) and the Alameda Reuse and Redevelopment Authority ("ARRA"; collectively with the City and the CIC, "Alameda").

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

1. "CIC" means the Community Improvement Commission of the City of Alameda and its offices, departments (including the City Attorney's office to the extent assigned to the CIC), officials, employees, consultants and agents.
2. "ENA" means the Alameda Point Exclusive Negotiating Agreement, dated July 18, 2007 by and between the City, the CIC and the ARRA and SCC Alameda, as amended.
3. "Alameda Staff" means any and all employees of the City of Alameda, the CIC and the ARRA, including, without limitation, the Interim City Manager, the City Manager and all staff who work or have worked in the City Manager's or Interim City Manager's office, the City Attorney's office, the Planning and Building Department, the Public Works Department, the Development Services Department, the Housing Department or the Finance Department, the CIC staff, the ARRA staff.

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4. "Alameda Officials/Board Members" means any and all members of the Alameda City Council, the CIC and/or the ARRA individually and collectively, or any other Alameda-related board or commission, including without limitation, the Planning Board and the Economic Development Commission.

5. "Project" means the proposed development of Alameda Point by SCC Alameda or any other individual or party.

6. "Records" means "public records" as the term is defined in the Public Records Act and includes, without limitation, any e-mails, electronically stored documents, hard copies of documents, handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic means 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. A "Record" includes the entire working files of every Alameda official, board member, employee, agent, or attorney related to the Project in any way.

7. "Communications" means every manner or means of disclosure, transfer, or exchange of information, whether orally or by document, or whether face-to-face, by telephone, radio, video, or any method of voice recording, mail, personal delivery, or otherwise. A "Communication" includes, but is not limited to, e-mails, letters, facsimiles, handwritten notes, and all other forms of electronic or written exchange of information.

8. "SCC Alameda" means SCC Alameda Point LLC including any names used to represent SCC Alameda, including without limitation "SunCal" or "Developer" and including, without limitation, Stephan Elieff, Bruce Elieff, Frank Faye, Stan Brown, Pat Keliher, Amy Freilich, Teresa Sousa, Nick Kosla, D.E. Shaw, its employees, owners, members, agents, consultants, attorneys and representatives.

9. "Relevant Time Period" means from January 1, 2006 through July 12, 2010.

We hereby request that Alameda promptly make available the following Records for inspection and copying:

1. Any and all Records constituting, concerning, referring or relating to proposals by SCC Alameda regarding the Project.

2. Any and all Records concerning, referring or relating to meetings between Alameda staff and/or with individuals, including, without limitation, developers, potential developers, constituents, lobbyists, Project opponents and others regarding the Project or development of Alameda Point or any portion thereof, with respect to development or proposed

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development of the Project by SCC Alameda or other individuals or entities currently existing or to be formed, including, without limitation, by a governmental agency to be formed by Alameda or any individual or entity thereof.

3. Any and all Records concerning, referring or relating to meetings between or among Alameda officials and Alameda staff regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

4. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

5. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and any other person, group, organization, or entity regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

6. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) regarding Stephan Elieff, Bruce Elieff, Frank Faye, Stan Brown, Pat Keliher, Amy Freilich, Teresa Sousa, Nick Kosla, D.E. Shaw, SCC Alameda, SunCal Companies or their respective employees, owners, members, agents, consultants, attorneys and representatives.

7. Any and all Records constituting, concerning, referring or relating to Communications by and between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant, staff of the City Manager's office, City Attorney Teresa Highsmith, and staff of the City Attorney's office) and the law offices of Colantuono & Levin, PC (including, without limitation, any Communications between Alameda officials and Michael Colantuono) during the Relevant Time Period.

8. Any and all Records constituting, concerning, referring or relating to any retention agreement (or any other agreement) by and between Alameda and the law offices of Colantuono & Levin, PC and/or Michael Colantuono during the Relevant Time Period.

9. Any and all Records constituting, concerning, referring or relating to invoices, bills, and fees charged to Alameda by the law offices of Colantuono & Levin, PC and/or Michael Colantuono during the Relevant Time Period.

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10. Any and all Records constituting, concerning, referring or relating to any payments made by Alameda to the law offices of Colantuono & Levin, PC and/or Michael Colantuono during the Relevant Time Period.

11. Any and all Records constituting, concerning, referring or relating to the employment application of Interim City Manager Ann Marie Gallant (including, without limitation, any documents submitted by Ann Marie Gallant or considered by Alameda when Ms. Gallant was retained as Interim City Manager or any other position).

12. Any and all Records constituting, concerning, referring or relating to any disciplinary actions taken by Alameda against Interim City Manager Ann Marie Gallant or City Attorney Teresa Highsmith.

13. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and David Howard (including, without limitation, any emails sent to or from mowster@sbcglobal.net) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

14. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and Aiden Barry (including his employees, agents, attorneys, representatives, companies and consultants) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

15. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and Ron Cowan (including his employees, agents, attorneys, representatives, companies and consultants) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

16. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and the Alameda Chamber of Commerce (including its respective employees, officers, agents, consultants, attorneys and representatives) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

17. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and Melody Marr

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(including, without limitation, any emails sent to or from melody@alamedachamber.com) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

18. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and Blake Bryden (including, without limitation, any emails sent to or from blake@alamedachamber.com) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

19. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and Action Alameda (including, without limitation, its respective board members, employees, officers, agents, consultants, attorneys and representatives) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

20. Any and all Records constituting, concerning, referring or relating to Communications by and/or between Alameda officials (including, without limitation, Interim City Manager Ann Marie Gallant and staff of the City Manager's office) and the United States Department of the Navy (including its respective employees, officers, agents, consultants, attorneys and representatives) regarding Alameda Point, the Project and/or SCC Alameda during the Relevant Time Period.

I draw Alameda'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 you believe that any portion or portions of the Records requested above are exempt from disclosure, please (1) reconsider that determination in view of Proposition 59 which amended the State Constitution to required that all exemptions be "narrowly construed" and (2) Government Code Section 6253 which requires segregation and deletion of only the exempted material and the disclosure of the remainder of the information.

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 expressed provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Government Code Section 6255(a) (emphasis added).) This provision makes clear that the agency is required to justify withholding any record with particularity as to the "record in question."

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Please clearly state in writing pursuant to Government Code Section 62559(b): (1) if Alameda is withholding any documents (2) what documents are being withheld or redacted, and (3) the alleged legal bases for withholding and/or redacting as to the particular documents.

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, 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.

As required by Government Code Section 6253 please respond to this request within ten days.

Thank you for your courtesy and attention to this matter. Please contact me with any questions or concerns.

Sincerely,

  
Louis R. Miller

LRM:cc

cc (via Certified mail Return Receipt Requested and e-mail):

Mayor Beverly Johnson  
Vice Mayor Doug deHaan  
Councilmember Marie Gilmore  
Councilmember Frank Matarrese  
Councilmember Lena Tam  
Interim City Manager Ann Marie Gallant  
City Attorney Teresa L. Highsmith  
Michael G. Colantuono, Esq.