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TELECOPY TRANSMISSION

TO: Shirley Concolino

FAX NUMBER: (916) 808-7672

FROM: Sabrina Teller

DATE TRANSMITTED: November 17, 2005 TIME TRANSMITTED: 4:17 pm

WE ARE SENDING 6 PAGES, INCLUDING COVER SHEET.

CASE NO. 13 CASE NAME: Riverlake

MATERIAL SENT: Letter dated November 17, 2005, re: Public Records Act Request

<p>COMMENTS</p> <p>Please see attached.</p>

ORIGINAL WILL FOLLOW BY GUARANTEED OVERNIGHT MAIL NO YES

ORIGINAL WILL FOLLOW BY REGULAR MAIL NO YES

**** WARNING TO RECIPIENT ****

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November 17, 2005

Susan Brandt-Hawley
Brandt-Hawley Law Group
Chauvet House
P.O. Box 1659
Glen Ellen, California 95442

Re: *Pocket Protectors v. City of Sacramento*; Pocket Protectors' November 9,
2005, Public Records Act Request

Dear Ms. Brandt-Hawley:

We are in receipt of a copy of the November 9, 2005, letter you sent to Ms. Lezley Buford regarding your additional demands to the City for the production of documents containing communications between City staff, Regis Homes, Sycamore Environmental Consultants, and the attorneys of Remy, Thomas, Moose and Manley (collectively, "RTMM"). Based on your descriptions in that letter regarding the scope of your request, we view your request as requiring disclosure of communications that are protected by the attorney-client and work product privileges, and on that basis, we decline to release any documents that fall under those privileges.

We will not release any communications between RTMM, Regis and Sycamore, that were not also shared with City staff or other third parties, as doing so would violate the attorney-client and work product privileges. The contract executed between Sycamore and Regis in 2003, which we supplied to you as a courtesy pursuant to your earlier request, clearly shows that Sycamore was the sole agent of Regis. As you can see from the copy of the executed contract we provided to you, the City is not a party to the contract, although the copies we provided you also show that City staff reviewed and commented on a draft of the contract to ensure that any documents ultimately produced for the City's review pursuant to the contract would meet the City's minimum standards

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for CEQA compliance. Because Sycamore was not under contract to the City, however, Sycamore was not acting as the City's agent in this process, but rather, as Regis's agent. This process is expressly sanctioned under CEQA, and it was followed here. (Pub. Resources Code, § 21082.1; CEQA Guidelines, § 15084; *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452-1457.) Therefore, in light of these facts, to the extent that your request seeks documents and communications exchanged between Sycamore, Regis and RTMM, these are privileged communications between attorneys, our client, and our client's agents that are not subject to disclosure under the Code of Civil Procedure, the Public Records Act, or CEQA.

As you are aware, the attorney-client and work product privileges are designed to protect confidential communications and documents from disclosure. The work product privilege is held by the attorney and does not require production of such documents unless a court determines that denial of production would unfairly prejudice the party seeking discovery. (Cal. Code Civ. Proc., § 2018, subd. (b).) Under this privilege, "any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." (*Ibid.*) Documents exchanged between RTMM, Sycamore and Regis during the drafting of the administrative draft DEIR and FEIR prior to releasing them for the City's review are clearly protected under this doctrine. These communications are not subject to public review. These communications qualify as preliminary "impressions, conclusions, opinions, or legal research or theories" and thus are "not discoverable under any circumstances." Such communications are protected through a long history of case law to ensure that attorneys may give unfettered advice to their clients.

Similarly, these confidential communications between lawyer, client, and client's agent are also protected by the attorney-client privilege. The attorney-client privilege is defined as:

information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons **other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted**, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Cal. Evid. Code, § 952 (emphasis added).)

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Under this definition the communications exchanged between RTMM, Regis and Sycamore at issue here clearly are protected by the attorney-client privilege. To interpret the phrase "all internal agency communications" to extend to private communications between a client and his agents and lawyers prior to any disclosure of later drafts of those documents to the City would obliterate the long-recognized attorney-client privilege. These particular materials were never made available to the City and as such, are not discoverable.

Even if Sycamore could be construed as an "agent" of the City, Government Code Section 6254, subdivision (a), further provides that agencies need not disclose "[p]reliminary drafts, notes, or interagency or intra-agency memoranda." If the Legislature did not intend for public agencies to have to disclose these internal communications pursuant to the Public Records Act, there certainly is no precedent or legislative imperative for private applicants to disclose their own communications with their agents and attorneys. These communications occurred between necessary parties to ensure that the documents prepared would comply with CEQA and the Court of Appeal's ruling. Here, all of the parties to these communications reasonably expected that these communications were to remain confidential.

Nothing in the actions taken by Regis, Sycamore, or RTMM demonstrates any intent to waive the applicable privileges for the documents you seek. "Waiver of the attorney client privilege, as well as other recognized privileges, occurs when any holder of the privilege has disclosed a *significant* part of the communication or has consented to such disclosure made by anyone." (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591.) In particular, "work product protection is not waived except by a disclosure wholly inconsistent with the purpose of the privilege." (*Oxy Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 891.) Determinations of waiver of privilege require an item-by-item review. (See *Travelers Ins. Companies v. Superior Court* (1983) 143 Cal.App.3d 436.) In this case, waiver of these privileges was specific to the City-reviewed contract, administrative draft DEIR and administrative draft FEIR, copies of which we have already provided pursuant to your earlier request. Waiver does not extend to any preparatory communications between Regis, Sycamore or our office that preceded the release of any administrative draft documents to the City. These communications remain privileged because there were no significant disclosures that would have abrogated the privilege and neither will we or Regis consent to such disclosure.

California case law does not support abrogating attorney-client privilege, in fact it does quite the opposite. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the

Susan Brandt-Hawley
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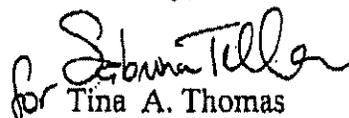
California Supreme Court recognized the Public Records Act's goal of increasing the public's right to freedom of information. In so doing, however, the Court also emphasized that the Evidence Code still protects written communication between counsel and their clients as privileged. Here, your request under the Public Records Act simply cannot be construed to extend to private communications between Regis, Regis's agent, Sycamore, and RTMM. Third parties are not privy to such communications as such disclosure would violate attorney-client privilege. We will not now undermine "full and frank communication between attorneys and their clients" which has such "a strong basis in public policy and the administration of justice." (*Id.* at p. 380.)

Even CEQA recognizes similar limitations on the public disclosure of such documents. The phrase "all internal agency communications" (Pub. Resources Code, § 21167.6 (e)) is limited by subdivision (e)(1) of that section, which states that even the respondent agency is required to include in the record only those documents, or portions thereof, "that have been released for public review." (Pub. Resources Code, § 21167.6 (e)(10).) The communications in question were never released, and never intended to be released, for public review. The words "have been released" support our contention that the City does not have to release internal administrative draft documents, much less the preliminary communications exchanged between Sycamore, Regis and RTMM in the preparation of the administrative draft DEIR and FEIR. These communications contain confidential attorney advice and opinions provided to Regis, including and through Sycamore, Regis's agent in this matter, and if disclosed would seriously compromise the attorney-client privilege.

We have made every reasonable effort to cooperate with your requests for documents up to this point but we cannot acquiesce to this latest request. If we did, we would violate the attorney-client and work product privileges that long-standing jurisprudence and legislative intent have established to ensure that attorneys are able to zealously represent their clients.

By copying this letter and its attachments to the City Clerk, we are also hereby requesting that this letter be included in the official administrative record of proceedings for this project.

Sincerely,


for Tina A. Thomas

Susan Brandt-Hawley
November 17, 2005
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cc: Lezley Buford, City Environmental Planning Services
Joseph P. Cerullo, Deputy City Attorney
Shirley Concolino, Sacramento City Clerk
Sabina Gilbert, Deputy City Attorney
Bill Heartman, Regis Homes of Northern California, Inc.
Kimberly Kaufmann-Brisby, Associate City Planner
Jeff Little, Sycamore Environmental Consultants, Inc.

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MEGHAN M HABERSACK
ANGELA M WHATLEY
AMY R HIGUERA
HOWARD F WILKINS III

November 10, 2005

Via hand-delivery

Ms. Shirley Concolino, City Clerk
City of Sacramento
915 I Street, Historic Building
Sacramento, CA 95814

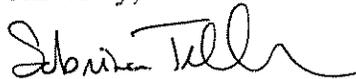
Re: Islands at Riverlake project (P05-004); Pocket Protectors' Request for
Continuance of November 15, 2005, City Council Hearing

Dear Ms. Concolino:

On behalf of the project applicant, Regis Homes of Northern California, Inc., and William F. Heartman, we do not oppose the request of the Pocket Protectors to continue the City Council hearing scheduled for November 15, 2005. Please advise us at your earliest convenience of the next available date for this matter to be considered by the City Council.

Thank you for your assistance in these matters.

Sincerely,



Sabrina V. Teller

cc: Susan Brandt-Hawley, for Pocket Protectors
Bill Heartman, Regis Homes of Northern California
Joe Cerullo, Senior Deputy City Attorney
Kimberly Kaufmann-Brisby, Associate City Planner

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