LANDWATCH
MONTEREY COUNTY

September 17, 2026

Michael F. Rodriquez, City Attorney for Soledad
*By email only: mrodriquez@Jarvisfay.com*

Re: Failure to Produce Documents in Response to Public Records Act Request

Dear City Attorney Rodriquez,

Upon review of the documents the City produced in response to LandWatch's April 15, 2026 Public Records Act (PRA) request regarding the Miramonte development agreement negotiations, we believe additional responsive documents exist and have not been produced. We draw this conclusion from the business transactions described in the produced documents, and from public staff reports indicating that agreements for the Parks Plan and the Fire Station/Police Substation are essentially complete. Yet the production contains no draft of either agreement. Nor does it include the studies Kimley-Horn and Associates prepared on the citywide impact fee, or the developer's proposed changes to traffic mitigation measures.

Your May 20, 2026 letter to Laura Davis cited four legal grounds for withholding unidentified documents, none of which are applicable.

The attorney-client privilege and the attorney work-product doctrine do not protect the draft agreements, because they are being shared with, and in some instances negotiated jointly with, a third party — the developer — whose interests diverge from the City's. Disclosure to an outside party defeats both privileges, and California courts have specifically rejected the argument that a city and a private developer share a "common interest" sufficient to preserve privilege over documents exchanged during negotiations that precede project approval. (Citizens for Ceres v. Superior Court (2013) 217 Cal.App.4th 889, 899–903 [rejecting common-interest privilege for city-developer communications preceding project approval, because the developer has no interest in an outcome that does not serve its own proposal].) That reasoning applies with equal or greater force to a negotiated development agreement, where the developer's institutional interest — securing the most favorable terms it can — is by definition adverse to the City's obligation to negotiate on behalf of the public.

As for the deliberative process privilege, it does not apply either. That privilege shields the candid exchange of opinions and recommendations among agency personnel in the run-up to a decision — not the substantive terms of a contract being negotiated with, and shared with, an outside party. Sharing draft agreement language with the developer defeats the confidentiality rationale the privilege depends on, whatever internal staff discussion may separately exist about which terms to accept. And to the extent a draft is far enough along to be presented to the Council for adoption, it

is no longer predecisional deliberation at all — it is the proposed public transaction itself, awaiting a public vote.

Finally, the "preliminary drafts" exemption does not apply. That exemption requires the City to show both that a record is not retained in the ordinary course of business and that the public interest in withholding it clearly outweighs the public interest in disclosure; the burden of proof on both elements rests with the City. (Citizens for a Better Environment v. Department of Food & Agriculture (1985) 171 Cal.App.3d 704, 712–715 [an agency's own retention practice and custom controls whether a draft qualifies for the exemption].) Draft development agreements are routinely retained by cities as the record of what was offered and accepted during negotiation, so that the City has a reference if a dispute over deal terms arises later; the City cannot claim otherwise without producing evidence of an actual practice of discarding such drafts. Nor does the balance of public interest favor withholding here: staff continue to negotiate with the developer outside of any public Council meeting and without Council authorization of specific deal terms, even though the Council has repeatedly asked to be more involved in decisions about this project. And any draft complete enough to go to the Council for adoption is, by definition, no longer preliminary.

To the extent the City has shared any of these drafts with an outside agency such as CalFire, that disclosure may itself have waived the exemptions the City is claiming. Government Code section 7921.505(b) provides that an agency's voluntary disclosure of an otherwise-exempt record waives the exemption claimed for it, subject to limited exceptions — including, under subsection (c)(5), a disclosure made to another governmental agency that has agreed to maintain confidentiality. We ask the City to confirm whether CalFIRE received a copy of the Draft Agreement on the Fire Station/Police substation, or to any other outside agency, and if so, was that disclosure made subject to a confidentiality agreement.

In sum, we request: (1) the draft agreement for the Fire Station/Police Substation; (2) the draft agreement for the Parks Plan; (3) the Kimley-Horn and Associates studies described above; (4) the draft proposed changes to traffic mitigation requirements referenced in an April 13, 2026 email from City staff and in prior correspondence dating back to 2024; and (5) any other documents erroneously withheld under the exemptions cited in the City's response to LandWatch's Public Records Act request.

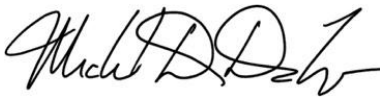
We note that your previous responses to our PRAs have not identified the records withheld and linked those to the exemptions you are relying upon to withhold those documents.

Where an agency withholds responsive records on the basis of a statutory exemption, "the agency . . . must disclose that fact." *Haynie v. Super. Ct.* (2001) 26 Cal.4th 1061, 1072 (citing § 7922.000). *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 789–792 holds that an agency must provide specific reasons for withholding identified documents, not just restate the general policy in support of any deliberative privilege. (see excerpt below). (See also Getz v. Superior Court (App. 3 Dist. 2021) 287 Cal.Rptr.3d 722, review denied. [Agency failed to justify withholding emails between developer and agency or to demonstrate common interest doctrine applies].)

Please be advised that the City's continued withholding of these records may expose it to a petition for writ of mandate to compel disclosure under the Public Records Act. If LandWatch prevails in that action, the court is required to award LandWatch its costs and reasonable attorney's fees. (Gov. Code, § 7923.115.)

We would prefer not to litigate this. If City staff instead bring these items to the Council for discussion within the next six weeks, and before any further negotiation with the developer, that would satisfy LandWatch's central concern: that the City's elected officials, not staff alone, are the ones deciding the terms that will bind the City, and that the public has a genuine opportunity to weigh in before those terms are set.

Regards,



Michael DeLapa
Executive Director