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DEPARTMENT OF JUSTICE



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March 17, 2010

Board of Supervisors
County of San Bernardino
385 N. Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0110

RE: Colonies Settlement---Waiver of the Attorney-Client Privilege

Dear Members of the Board of Supervisors:

I am writing to you on behalf of the California Attorney General's Office and the San Bernardino County District Attorney's Office. As you are aware, on February 10, 2010, our offices filed a criminal complaint in the superior court charging former board chairperson William Postmus and James Erwin with a wide ranging criminal conspiracy, involving bribery, extortion, conflict of interest and forgery, which centered on the \$102 million settlement of the Colonies property easement litigation, approved by a 3-2 vote of the board on November 28, 2006. (*People v. William Postmus, et al.*, Case No. FSB 1000523.) As the Attorney General and District Attorney stated that day, with this filing, our investigation continues.

Relevant to the charge that the settlement was a product of corruption is the fact that the settlement amount was neither justified nor properly and thoroughly vetted before it was voted on and approved. Obviously, proving this will require that we secure evidence concerning the Colonies litigation, itself, and what information from the County's attorneys, including the County Counsel's Office and the County's retained attorneys, as well as their experts and consultants, served as a basis for the settlement. On multiple occasions during our investigation, appropriate investigative questions have been met with an assertion of the attorney-client privilege. This has hampered our ability to complete our investigation and to obtain and be able to present the truth surrounding this matter of paramount interest to the public and the integrity of county government.

By this letter, I am requesting that the County of San Bernardino waive the attorney-client (and mediation) privilege with respect to the Colonies litigation (including the mediation efforts) and settlement, so that we can continue and complete our corruption investigation into the settlement and have available all the evidence to present in a court of law, so that the truth will be known and all wrongdoers brought to justice.

After the joint filing of the conspiracy complaint by our offices on February 10, 2010, the chairperson of the board was quoted in the press as stating in part, "My decision to support the Colonies settlement was based entirely on my own analysis of the facts presented by the county's attorneys." Those same facts that were presented to the chairperson, and presumably the other four members of the Board who voted on the settlement, are precisely what we seek. As you may be aware, in an earlier corruption investigation involving Supervisor Jerry Eaves the board did take action to waive the attorney-client privilege so as to allow that investigation to proceed unfettered. We seek the same here.

Accordingly, I request that the Board of Supervisors take action to waive the attorney-client and mediation privilege as to any and all litigation with, or connected with, the Colonies Partners lawsuit that was filed in March 2002 against the County of San Bernardino and continues to this date with the indemnity action filed by the County against SANBAG, CalTrans, and the City of Upland in 2004. This will permit us to interview witnesses and obtain documents and to more expeditiously discover the truth in the matters we are currently investigating and prosecuting. We firmly commit to maintain the integrity and confidentiality of these documents, materials and interviews within the requirements of the criminal justice process.

Your cooperation in this matter is appreciated.

Very truly yours,

GARY W. SCHONS
Senior Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

GWS: clh
cc: Ruth Stringer, County Counsel

