Item No. 14 & 15 File No. 11005

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: March 17, 2011

*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET Deputy City Attorney DIRECT DIAL: (415) 554-3914 E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

March 18, 2011

MARY MILES v. PLANNING DEPARTMENT & COMMISSION (11005)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Mary Mile alleges that the San Francisco Planning Commission ("Commission") failed to adequately respond to her Immediate Disclosure Request ("IDR") for the draft minutes of the February 10, 2011 meeting of the Commission and the transcript of the Commission hearing on the Park Merced project from that same meeting.

COMPLAINANT FILES COMPLAINT:

On February 25, 2011, Ms. Miles filed a complaint against the Commission.

JURISDICTION

The Planning Commission is a policy body of the City; therefore this committee generally has jurisdiction to determine whether there was a violation, as alleged. Jurisdiction has not been contested by the Planning.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.16 governs requirements for minutes for public meetings.
- Section 67.21 governs the process for gaining access to public records.
- Section 67.22 governs release of oral public information.
- Section 67.25 governs the immediacy of response.

Section 6250 et seq. of the Cal. Gov't Code

• Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

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ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that on February 23, 2011, she made an IDR to the Commission, through John Rahaim, Linda Avery, and Brian Smith, for two items: 1) the draft minutes of the February 10, 2011 meeting of the Commission; and 2) the transcript of the Commission hearing on the Park Merced project from that same meeting, or the date on which it will become available, along with the contact information for the court reporter who transcribed the meeting. Ms. Miles also appears to complain that the draft meeting minutes of the February 10, 2011 Commission meeting were not completed and made available to the public within the time period required by the Ordinance. She further alleges that she had received no response to her request by the time of her complaint, February 25, 2011.

While the Commission did not directly respond to the complaint, it did respond to complainant's IDR, as is evident from the emails provided to support her complaint. In those emails, Commission secretary informed Ms. Miles on February 23, 2011 that the draft minutes of the Commission meeting had not yet been completed, nor did she have any indication when the transcript of the hearing would be available from the court reporter.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did the Commission timely respond to the initial IDR?
- Since the time of the complaint, has the Commission provided any records or additional information in response to the IDR?
- If so, what was provided and when was it provided?

LEGAL ISSUES/LEGAL DETERMINATIONS:

• Has the Commission complied with the requirements of the Ordinance and the Public Records Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

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ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

SEC. 67.16. MINUTES.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be

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available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size.

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

. . .

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are

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appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

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(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)

SECTION 6253

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

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(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



<complaints@sfgov.org> 03/02/2011 09:34 AM To <sotf@sfgov.org> cc bcc

Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Planning Commission CONTACTED: John Rahaim, Brian Smith, Linda Avery PUBLIC_RECORDS_VIOLATION:Yes PUBLIC_MEETING_VIOLATION:No MEETING_DATE: SECTIONS VIOLATED: DESCRIPTION: Failure to respond to an Immediate Disclosure Request. HEARING:Yes PRE-HEARING:No DATE:3/2/2011 NAME:Mary Miles ADDRESS:364 Page St., #36 CITY:San Francisco ZIP:CA 94102 PHONE:863-2310 CONTACT EMAIL:page364@earthlink.net ANONYMOUS: CONFIDENTIALITY_REQUESTED:No



>>

"Mary Miles" <page364@earthlink.net> 02/25/2011 06:27 PM To <sotf@sfgov.org>

cc bcc

Subject Fw: Fw: IMMEDIATE DISCLOSURE REQUEST

I HAVE RECEIVED NO RESPONSE TO THIS REQUEST FOR MINUTES AND THE TRANSCRIPT OF THE FEBRUARY 10, 2011 PLANNING COMMISSION HEARING.

PLEASE CONSIDER THIS A COMPLAINT.

Mary Miles (#230395) Attorney at Law 364 Page St., #36 San Francisco, CA 94102 (415) 863-2310

----- Original Message -----From: "Mary Miles" <page364@earthlink.net> To: <sotf@sfgov.org> Sent: Friday, February 25, 2011 6:24 PM Subject: Fw: Fw: IMMEDIATE DISCLOSURE REQUEST

> ----- Original Message -----> From: "Mary Miles" <page364@earthlink.net> > To: "John Rahaim" <john.rahaim@sfgov.org>; "Brian Smith" > <Brian.Smith@sfgov.org>; "Linda Avery" <Linda.Avery@sfgov.org> > Sent: Wednesday, February 23, 2011 4:33 PM > Subject: Re: Fw: IMMEDIATE DISCLOSURE REQUEST >

>> Dear Mr. Rahaim, Mr. Smith, and Ms. Avery:
>>

>> This is an IMMEDIATE DISCLOSURE REQUEST, pursuant to the Public Records
>> Act (Gov. Code secs. 6250 et seq.) and the Sunshine Ordinance (SF Admin.
>> Code, secs. 67 et seq.), which you are requred to answer within 24 hours,
>> or by close of business tomorrow, February 24, 2011. I do not regard Ms.
>> Avery's response as a legally adequate response to this Request and
>> therefore re-submit this Request and ask for a proper response. I
>> request access to and the opportunity to make or get copies of the
>> following documents:

>> 1. Draft Minutes of the Planning Commission hearing of February 10, >> 2011. You are required to make these draft Minutes avaiable no later >> than ten working days after the meeting. You will need to make them >> avaiable by no later than February 25, 2011 to comply with section 67.16 >> of the San Francisco Administrative Code. If I do not receive the >> document by that date, I shall deem this Request deliberately denied. >>

>> 2. Transcript of the Planning Commission hearing of February 10, 2011, >> on all Items on the Parkmerced Project. If the Transcript is not >> avaialble, please give me the date when it will be available and the full >> name, business address, telephone number, and e-mail contact information

>> of the transcriber. >> >> If the total cost of copies of any of these record will exceed \$10, >> please so advise me before making copies. >> >> If I have not received a response to this Request by close of business >> tomorrow, February 24, 2011, I shall deem this entire Request >> deliberately denied. >> >> Sincerely, >> Mary Miles >> (415) 863-2310 >> >> >> >> >> ----- Original Message ----->> From: <Linda.Avery@sfgov.org> >> To: "Mary Miles" <page364@earthlink.net> >> Sent: Wednesday, February 23, 2011 4:17 PM >> Subject: Re: Fw: IMMEDIATE DISCLOSURE REQUEST >> >> >>> Ms. Miles, >>> The draft minutes for 2/10/11 have not been done yet and I don't have >>> any >>> indication of when the transcript for the Park Merced item will be >>> completed and submitted to the Department. >>> >>> Linda D. Avery-Herbert >>> Director of Commission Affairs >>> SAN FRANCISCO PLANNING COMMISSION & >>> SAN FRANCISCO HISTORIC PRESERVATION COMMISSION >>> 1650 MISSION STREET - SUITE 400 >>> SAN FRANCISCO, CA 94103-2414. >>> TEL: 415.558.6407 - FAX: 415.558.6409 >>> WEBSITE: www.sfgov.org/planning >>> >>> >>> >>> >>> "Mary Miles" >>> >>> <page364@earthlin k.net> >>> >>> To >>> "Linda Avery" 02/23/2011 03:31 >>> <Linda.Avery@sfgov.org> >>> PM >>> CC >>> >>> >>> Subject >>> Fw: IMMEDIATE DISCLOSURE REQUEST >>> >>> >>> >>> >>> >>>

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>>> FROM:
>>> Mary Miles (#230395)
>>> Attorney at Law
>>> 364 Page St., #36
>>> San Francisco, CA 94102
>>> (415) 863-2310
>>>
>>> Linda Avery
>>> Secretary, Planning Commission
>>> 1650 Mission, Suite 400
>>> San Francisco, CA 94102
>>>
>>> IMMEDIATE DISCLOSURE REQUEST
>>>
>>> Dear Ms. Avery:
>>>
>>> Pursuant to the Sunshine Ordinance (SF Admin. Code sec. 67 et seq.),
>>> please
>>> provide the draft Minutes of the Planning Commission hearing of February
>>> 10,
>>> 2011. As you know, the draft minutes must be provided by ten days after
>>> a'
>>> Commission hearing.
>>>
>>> Also, please let me know when you anticipate that the transcript may be
>>> finished.
>>>
>>> If I do not receive a reply to this Request by 5:00 p.m. on February 24,
>>> 2011, I shall deem this Request denied.
>>>
>>> Thank you ..
>>>
>>> Mary Miles
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>>> ----- Original Message -----
>>> From: <Elizabeth.Watty@sfgov.org>
>>> To: "Mary Miles" <page364@earthlink.net>
>>> Sent: Wednesday, February 23, 2011 1:53 PM
>>> Subject: Fw: IMMEDIATE DISCLOSURE REQUEST
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>>>>
>>>> Ms. Miles,
>>>>
>>>> Per Linda Avery's email below, our Department has not received anything
>>>> from the Court Reported regarding the Parkmerced transcript. Please
>>>> contact
>>>> Commission Secretary, Linda Avery, directly, if you have any follow-up
>>>> questions about the transcript.
>>>>
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>>>> Elizabeth Watty, LEED AP >>>> Neighborhood Planning, Southwest Quadrant >>>> San Francisco Planning Department >>>> 1650 Mission Street, Suite 400 >>>> San Francisco, CA 94103 >>>> (t) 415.558.6620 >>>> (f) 415.558.6409 >>>> www.sfgov.org/planning >>>> >>>> ----- Forwarded by Elizabeth Watty/CTYPLN/SFGOV on 02/23/2011 01:50 PM >>>> ----->>>> >>>> Linda Avery/CTYPLN/SFGO >>>> >>>> V To Elizabeth >>>> >>>> Watty/CTYPLN/SFGOV@SFGOV >>>> 02/23/2011 01:47 cc >>>> ΡM Brian Smith/CTYPLN/SFGOV@SFGOV, >>>> Lulu Hwang/CTYPLN/SFGOV@SFGOV >>>> >>>> Subject >>>> Re: Fw: IMMEDIATE DISCLOSURE >>>> REQUEST (Document link: Elizabeth >>>> Watty) >>>> >>>> >>>> >>>> >>>> >>>> >>>>> >>>> >>>> >>>> As yet, I have not received anything from the Court Reporter regarding >>>> a >>>> transcript. >>>> >>>> Linda D. Avery-Herbert >>>> Director of Commission Affairs >>>> SAN FRANCISCO PLANNING COMMISSION & >>>> SAN FRANCISCO HISTORIC PRESERVATION COMMISSION >>>> 1650 MISSION STREET - SUITE 400 >>>> SAN FRANCISCO, CA 94103-2414 >>>> TEL: 415.558.6407 - FAX: 415.558.6409 >>>> WEBSITE: www.sfgov.org/planning >>>> >>>> >>>> >>>> >>>> Elizabeth >>>> >>>> Watty/CTYPLN/SFGO V To >>>> . >>>> Brian Smith/CTYPLN/SFGOV@SFGOV, >>>> 02/23/2011 12:40 Lulu Hwang/CTYPLN/SFGOV@SFGOV, >>>> PM Linda Avery/CTYPLN/SFGOV@SFGOV >>>> >>>> CC >>>>

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>>>> Subject
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                                             Fw: IMMEDIATE DISCLOSURE REQUEST
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>>>> Could one of you advise?
>>>>
>>>> Thank you.
>>>>
>>>> Elizabeth Watty, LEED AP
>>>> Neighborhood Planning, Southwest Quadrant
>>>> San Francisco Planning Department
>>>> 1650 Mission Street, Suite 400
>>>> San Francisco, CA 94103
>>>> (t) 415.558.6620
>>>> (f) 415.558.6409
>>>> www.sfgov.org/planning
>>>>
'>>>> ---- Forwarded by Elizabeth Watty/CTYPLN/SFGOV on 02/23/2011 12:27 PM
>>>> -----
>>>>
                 "Mary Miles"
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                 <page364@earthlin
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                 k.net> To
>>>>
                                             <Elizabeth.Watty@sfgov.org>
>>>>
                 02/23/2011 10:59 cc
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                 ΜA
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>>>> Subject
                                            IMMEDIATE DISCLOSURE REQUEST
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>>>> Ms. Watty:
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>>>> Could you please advise me of how to get a copy of the transcript that
>>> was
>>>> being made by the court reporter at the February 10, 2011 Planning
>>>> Commission hearing on Parkmerced?
>>>>
>>>> We would like to get a copy but we need to know if there is a cost and
>>>> where to get it. Please consider this an IMMEDIATE DISCLOSURE REQUEST
>>>> under the Sunshine Ordinance.
>>>>
>>>> Thank you.
>>>>
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>>> Mary Miles
>>>> Attorney at Law
>>>> 364 Page St., #36
>>>> San Francisco, CA 94102
>>>> (415) 863-2310
>>>>
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>>>
>>>