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August 17, 2004

Fax & Mail: (650) 363-4034
Mary Raftery, Esq.
Deputy County Counsel
San Mateo County Government Center
Redwood City, CA 94063

Re: Harbor Village Building Permit (2000-01630)
And Development Agreement

Dear Ms. Raftery:

I represent Larry DeYoung, Don Johnson and their organization, Concerned Citizens of the Coastside, regarding the above-referenced matters.

Our clients believe it was improper and a violation of the Development Agreement to issue the above-referenced building permit for Phase II of the Harbor Village Project, because there has been no good faith progress towards completion of the project for more than 9 years, and there is no possibility, as a practical matter, that the construction of the entire integrated project will be completed by June 22, 2005, as required by the Development Agreement.

Additionally, under that Agreement, and as provided in Gov't. Code Sec. 65865.1, the owner was required to demonstrate good faith compliance with the terms of that Agreement at least every 12 months, and the County was required to make a periodic review and make a determination of such good faith compliance at least every 12 months. Neither has occurred, and those contractual and statutory requirements have been violated by both the owner and the County. The stated contractual purpose of such review was to confirm that the "Owner has in good faith complied with the terms of this Agreement." (paragraph 11, Development Agreement)

In this case, no real progress toward completion of construction during this 9(+) years has occurred. There is now no practical possibility of project completion by next June. Those facts mandate a finding that there has not been good faith compliance with the terms of the Agreement by the Owner, and no new building permits should have been issued under these circumstances.

By issuing this building permit for the retail space only at this eleventh hour, the County puts itself and our clients in an untenable position. First, this gives the owner the practical option

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of completing the retail space (which appears to be all he really wants), and then pass on constructing the hotel, when his construction deadline expires. This project was approved under CEQA by the Board of Supervisors only after a vote of overriding consideration based entirely on the economic benefits anticipated from full construction of the "entire" project. By issuing this permit, the County's dilemma next June will be a Hobson's choice between suing the owner to force him to tear down the very retail space recently permitted; or suing the owner to force him to complete the entire project; or passing on both and ending up with a retail only project which the Board never would have approved under CEQA. The losers in this will be the County and the community who were intended to be protected by the annual review process mandated by state law and the Agreement.

The proper course for the County to take now is to issue a stop work order under the permit and immediately invoke the annual periodic review to investigate the owner's good faith compliance with the Development Agreement, and thereafter to consider what should be done about the Development Agreement, e.g. termination, modification or nothing. If modification is required, then the owner should then apply for an amendment to the Agreement, either to extend its term, or delete the hotel, or whatever, so that the County has an opportunity to protect itself and the community from the Hobson's choice outlined above.

Please call me or Greg Klingsporn at our office at your earliest convenience. I will be leaving town Thursday morning and would like to discuss this with you to develop a way for this matter to be reviewed openly with the owner and all concerned residents.

Thank you for your prompt consideration of this request.

Very truly yours,



Kent Mitchell

KM:mm:encl.

Bc: clients

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