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February 15, 2005

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Subject: Pillar Point Harbor Village

Dear Fred:

I have discussed your January 4, 2005, e-mail communication with the Director of the Environmental Services Agency. I offer the following comments on the information you have provided.

First, while we agree that the provisions of Section 15.E. (Force Majeure) of the Development Agreement are, in a sense, automatic in that no process is set forth for determining whether the conditions for an extension of the contract term exist, it is clear that the question of whether they do exist requires concurrence of the parties to the Agreement. For that reason, we have determined that the process we will follow will be to take the matter to the Board, with a recommendation from the Director of the Environmental Services Agency.

With regard to the substance of the information put forward to justify an extension, I have the following comments, which have been concurred in by the Director of Environmental Services:

1. Concerning the delay asserted as a result of difficulty in obtaining financing due to the events of September 11, 2001, we have no difficulty with the concept that, if established, such a delay could fall within the "other similar bases for excused performance", since a delay of this type can be seen as analogous to that caused by "war" or "insurrection". We will, however, need more specific information to establish how much delay this warranted, and any backup documentation you might have to support it. For example, you have indicated that the hospitality industry in general suffered from the aftermath of September 11, 2001, and intimate

that previously available financing had been withdrawn. Please provide any documentation that indicates when your client applied for such financing and any subsequent documentation showing that approval of financing was delayed as a result of those events. A more specific calculation of the amount of delay, and how specifically that impacted the implementation of the project, should be provided.

2. With regard to the delays attributed to your client's efforts to obtain sewer permits, we agree that, if in fact any delay beyond normal processing delays are established, such delays might be categorized as "governmental restrictions imposed or mandated by other governmental agencies". For this item of claimed delay, you have provided a more specific chronology of events. We would ask that you provide backup documentation to establish the events as described in the e-mail (e.g., letters from or on behalf of your client, and any responses from the District). Again, the information must establish that any delays were the result of causes other than that attributable to normal delays associated with permit processing. Also, some analysis should be presented to demonstrate how the inability to assure permits held up the project (i.e., why other aspects of the project could not move ahead while this matter was being resolved).

3. Similarly, with regard to the Half Moon Bay Fire approval issues, more information and analysis should be provided to indicate that the delays were due to more than the normal delays attendant to project approval, including any documents that would support it. The amount of delay attributed to this cause is somewhat vague (at one point it appears that the claim is of a delay of 7 months, while at another, it appears to be one year). Also, additional information is necessary to demonstrate in what way progress on the project was held up by this delay (e.g., what other aspects of project implementation were held up because of the lack of approval from fire).

We suggest that a chronological chart or graph be prepared (similar to a critical path analysis for a construction project) to help assess the actual delay associated with the matters outlined above. This should assist in a determination of the amount of time that should be added to the development agreement in the event that the County concurs that an extension is warranted.

Please provide the information requested directly to Marcia Raines. The sooner it is provided, the sooner an analysis and recommendation can be developed. The hope would be to get this matter to the Board in late March or early April.

Very truly yours,

THOMAS F. CASEY III, COUNTY COUNSEL

By


Michael P. Murphy, Chief Deputy