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Re: Committee for Green Foothills Dismissal

Dear Counsel & Mr. Holmes:

I am writing to inform you that the Committee for Green Foothills has decided to dismiss its lawsuit challenging the County's 2011 approval of the Big Wave project ("Project"). As you are all well aware, the Coastal Commission subsequently asserted jurisdiction over the matter and, in 2012, denied the Project as inconsistent with the County's Local Coastal Program ("LCP"). Although Big Wave has challenged this

decision in court, the Committee is confident that the decision, which addressed the Committee's concerns with the Project, will withstand judicial scrutiny. As a result, the Committee has decided that the minimal benefits and protections the Committee gains by maintaining its lawsuit over the original Project are not worth the costs.

Over the last year, the Committee has also spent a great deal of time in settlement discussions with the Big Wave parties working on an alternative project proposal ("North Parcel Alternative" or "NPA"). These settlement discussions were undertaken in good faith by both sides to achieve a "global" resolution of the lawsuits challenging the County's approval, Big Wave's cross-complaints against those petitioners, and Big Wave's suit against the Coastal Commission. In the Committee's view, the NPA as currently described by the Big Wave parties appears to satisfy the LCP requirements and address the concerns of the parties to the Coastal Commission appeal and pending lawsuits. Big Wave also offered, as part of a proposed settlement, to sell a portion of the southern parcel to a conservation purchaser if the Committee found one.

What Big Wave requested in turn was for the Committee to waive its right to comment on, appeal, or challenge the NPA. This concession would have been very significant for the Committee, which was concerned enough about the original project to file both a CEQA suit and a Coastal Commission appeal. In the end, the Committee decided it was not comfortable with this concession, given that there may be new information or additional project changes that come up during the administrative approval process for the NPA. Moreover, the benefits the Committee stood to receive from settlement were limited and potentially difficult and costly to enforce. As a result, the Committee simply does not wish to commit the resources, both in terms of staff time and attorneys' fees, necessary to continue negotiating and then implementing the proposed settlement.

I informed counsel for Big Wave of the possibility that the Committee would pursue this course of action last week. In response, Mr. Byers informed me that dismissal of the Committee's lawsuit was not acceptable to Big Wave and that, even if the Committee dismissed its lawsuit, Big Wave would not dismiss its cross-complaint against the Committee. This cross-complaint alleged that the Committee "cannot interpret the laws of the County of San Mateo" and that the original Big Wave project was consistent with County laws. The Committee has always believed this cross-complaint was frivolous and subject to strike under the state anti-SLAPP statute. If forced to defend against the cross-complaint, the Committee will have no choice but to file a motion to strike and seek attorneys' fees and other appropriate sanctions. Code Civ. Pro. §§ 128.7(c), 425.16(c).

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In sum, the Committee believes the North Parcel Alternative is far superior to the original Project in terms of LCP consistency and thus its decision not to move forward with the global settlement agreement should not be taken as an indication that the Committee will necessarily oppose the NPA in subsequent approval proceedings. However, the Committee does not want to be contractually obligated to remain silent during those proceedings. The Committee remains willing to consult with Big Wave on further refinements to the NPA project description and to work to find a conservation purchaser for some or all of the southern parcel. The Committee also welcomes further conversation with the County and the other parties on any revised project application and looks forward to participating in the NPA public review process.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

cc: Edmundo Larenas, Chair, Surfrider Foundation, San Mateo County Chapter  
Melissa Hippard, Chair, Sierra Club, Loma Prieta Chapter  
Lisa Ketchum, President, Pillar Ridge Homeowners Ass'n  
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