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March 18, 2010

Ruth E. Stringer  
County Counsel  
County of San Bernardino  
385 North Arrowhead Avenue  
San Bernardino, CA 92415-0140

Todd C. Theodora  
Theodora Oringer Miller & Richman  
535 Anton Boulevard, Ninth Floor  
Costa Mesa, CA 92626

Re: Colonies/SBCFCD Settlement: Mediation Confidentiality

Dear Ms. Stringer and Mr. Theodora:

This office represents The Colonies Partners with respect to the settlement between Colonies Partners and the San Bernardino County Flood Control District. We have received a copy of the March 17, 2010 letter from the California Attorney General requesting, among other things, that the County of San Bernardino waive the so-called mediation privilege with respect to mediation efforts which were ongoing with The Colonies Partners from 2002 through and after 2006. I enclose a copy of that letter. We believe the Attorney General's request is inappropriate, and that neither the County, nor the Flood Control District, have the authority to unilaterally waive the confidentiality which is accorded to mediation communications and documents.

Evidence Code §1115 et seq. provides that all communications, negotiations and settlement discussions by and between participants in the course of a mediation are and shall remain confidential. Anything said, orally or in writing, during or as part of a mediation retains its confidential character, and is protected from disclosure to other parties both during and after the conclusion of the mediation. The confidentiality of the mediation process may not be waived unless all parties who participated in that process, or were participants in any related communications, provide their consent.

Although The Colonies Partners is open to discussion of a waiver of the mediation privilege, as counsel for Colonies in those matters I am notifying you by this letter that until such discussion occurs and The Colonies Partners and other necessary parties reach some agreement on a waiver, it specifically objects to disclosure by the County or the Flood Control District, of any communications made or documents or other materials generated, during or related to the series of mediation sessions which took place between The Colonies Partners and San Bernardino County Flood Control District and/or County of San Bernardino. This specifically includes, but is not limited to, the mediations and related settlement efforts presided over by Justice

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Edward Panelli (Ret.), Justice James Ward of the Fourth District Court of Appeal, and San Bernardino County Superior Court Judges Christopher Warner and Peter Norell. No such communications may be disclosed, and such communications, documents and materials would be inadmissible in any subsequent proceeding. Further, I have been asked to advise you that Messrs. Burum and Richards, who were participants in the mediations, join in that objection.

In addition, we believe that the knowing and intentional disclosure of confidential mediation communications, documents or materials without the consent of all parties, by a member of the Bar, including any attorney with County Counsel's office or the Theodora Oringer Miller & Richman firm, would constitute a violation of the ethical obligations owed by such attorney, and could subject such attorney to discipline by the State Bar. Indeed, knowingly receiving such obviously confidential communications by a member of the Bar would, in my view, be violative of an attorney's ethical obligations.

In connection with this issue, if you have any questions or wish to discuss the matter, you should be in contact with counsel retained by The Colonies Partners in connection with the investigation to which the enclosed letter pertains. That counsel is Bert Deixler, at Proskauer Rose in Los Angeles, whom I have copied on this letter. I have also copied counsel for Mr. Burum and Mr. Richards, and Justice Panelli, who as the mediator has a critical interest in this issue.

In addition I have copied the prosecutors I understand are involved in the investigation, but would appreciate it if you would let Mr. Deixler and me know if others need to be apprised so that the appropriate parties are all on notice.

Very truly yours,



George B. Speir

GBS:mlj

Enclosure

cc: Gary W. Schons, Senior Assistant Attorney General (w/encl. via fax and U.S. mail)  
~~Michael A. Berger, Deputy Attorney General (w/encl. via fax and U.S. mail)~~  
Melissa Mandel, Deputy Attorney General (w/encl. via fax and U.S. mail)  
~~Lewis Cops, Deputy District Attorney (w/encl. via fax and U.S. mail)~~  
Bert Deixler (w/encl. via email only)  
Steve Harmon (w/encl. via email only)  
John Vandavelde (w/encl. via email only)  
Hon. Edward Panelli (Ret.) (w/encl. via email only)