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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO**

BIG WAVE, LLC, BIG WAVE GROUP,
Petitioners and Plaintiffs,

vs.

CALIFORNIA COASTAL COMMISSION
and Does 1-50,

Respondents and Defendants.

Case No.:

**PETITION FOR WRIT OF
ADMINISTRATIVE
MANDAMUS AND
COMPLAINT FOR
DECLARATORY RELIEF
(CCP §§ 1094.5 AND 1060)**

Petitioners and Plaintiffs allege:

**First Cause of Action
Writ of Administrative Mandamus**

1. Petitioner and Plaintiff BIG WAVE, LLC is a limited liability company organized under the laws of the State of California and the owner of a legal parcel of real property located within

1 the unincorporated County of San Mateo designated as APN 047-311-060. It applied for
2 development permits on the this property and APN 047-312-040 on October 25, 2005.

3 2. Petitioner and Plaintiff BIG WAVE GROUP (collectively "BIG WAVE") is a non-
4 profit 26 U.S.C. § 503(c)(3) Corporation with the purpose of developing housing for
5 developmentally disabled adults on the legal parcel of real property it owns located within the
6 unincorporated County of San Mateo designated as APN 047-312-040.

7 3. Respondent and Defendant CALIFORNIA COASTAL COMMISSION ("CCC") is an
8 agency of the State of California which has certified the County of San Mateo's Local Coastal
9 Plan("LCP") and is to apply that LCP when a planning permit is appealed to the CCC. The CCC
10 may sue and be sued under Public Resources Code § 30334.

11 4. This action is brought pursuant to Code of Civil Procedure (CCP) §§ 1094.5 and 1060
12 and Public Resources Code §§ 30801 and 30804.

13 5. Petitioners and Plaintiffs are ignorant of the true names and capacities of Respondents
14 and Defendants sued herein as DOES 1-50, inclusive, and therefore sues these Respondents and
15 Defendants by such fictitious names. Petitioners and Plaintiffs will amend this Petition and
16 Complaint to allege their true names and capacities when ascertained.. Petitioners and Plaintiffs
17 are informed and believe and thereon allege that each of the fictitiously named Respondents and
18 Defendants are responsible in some manner for the occurrences alleged. Petitioners and Plaintiffs
19 also allege that some parties have engaged in actions to discriminate in the development of
20 housing for developmentally disabled adults in violation of the civil rights of those persons.
21 Petitioners and Plaintiffs may also seek leave of court to amend this Petition to have such further
22 claims addressed pursuant to Government Code § 12989.

23 6. On October 25, 2005, BIG WAVE, LLC applied for permits from the County of San
24 Mateo to build an environmentally sensitive, economically viable development to provide
25 necessary office space in San Mateo County to alleviate the jobs/ housing imbalance on the
26 coastside and to provide needed affordable housing for developmentally disabled adults. The
27 County of San Mateo General Plan has a goal that housing opportunities will be available for all
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1 members of the community. A significant group in the County of San Mateo without adequate
2 housing is developmentally disabled adults.

3 7. There are few opportunities for independent living offered to developmentally disabled
4 adults. To begin with, developmentally disabled adults traditionally do not obtain the high income
5 necessary to live in the County of San Mateo. Housing opportunities must be affordable for them.
6 The County of San Mateo has determined that there is a significant need for housing opportunities
7 for developmentally disabled adults. Both the federal Americans with Disabilities Act, 42 U.S.C.
8 § 12101 et seq. and the California Fair Employment and Housing Act, Government Code §§
9 12900 et seq. mandate that developmentally disabled adults cannot be victims of discrimination in
10 their efforts to secure housing.

11 8. In addition to the need for affordable housing for developmentally disabled adults, a
12 significant need for additional office space exists to correct the jobs/housing imbalance. In many
13 ways, the San Mateo County coastside is a bedroom community where residents must travel on
14 congested Highway 1 and 92 in order to obtain employment. The development of an office park
15 on the coastside would be beneficial to the residents by eliminating long commutes. Lately,
16 successful new businesses on the coastside have been forced to move because the shortage of
17 office space on the coastside.

18 9. On October 25, 2005 BIG WAVE, LLC submitted applications to the County of San
19 Mateo to construct housing for developmentally disabled adults and an office park on the property
20 it owned. BIG WAVE, LLC went through many designs with the County Planning Staff until the
21 project was an environmentally sensitive plan. As a result, the structures would be the “greenest”
22 buildings in the County of San Mateo. Moreover, the project would create wetlands on the
23 property and provide for job opportunities for the developmentally disabled adults with its
24 organic farm and native plant nursery.

25 10. The land is zoned for development purposes. This is infill land that borders the
26 industrial Princeton neighborhood and a residential mobile home park. Much of the land on the
27 coastside is zoned PAD– Planned Agricultural District which is protected for agricultural purposes
28 or RM-CZ–Resource Management Coastal Zone which allows very low densities. This land is

1 zoned W-Waterfront Commercial and M-1-Light Industrial. Both of these zoning designations
2 allow variety of uses.

3 11. After the applicant submitted plans for approval the project went through a lengthy
4 review process. The applicant spent \$589,753.71 on an Environmental Impact Report ("EIR") to
5 comply with the California Environmental Quality Act, Public Resources Code §§ 21000 et seq.
6 and other permit fees. The administrative record is over 5000 pages. The County of San Mateo
7 Planning Staff recommended that the Planning Commission approve the project. On November
8 23, 2010 the Planning Commission certified the EIR and approved the Wellness Center and office
9 park and recommended it for approval to the Board of Supervisors. On March 15, 2011, almost 6
10 years after the initial submittal, the Board of Supervisors of the County of San Mateo *unanimously*
11 approved the necessary permits to construct a Wellness Center of 57 units and an Office Park of
12 225,000 sq.ft. The Board of Supervisors made this decision after hearing both project proponents
13 and project opponents voice their views. In the end, the Board of Supervisors considered all the
14 evidence submitted by the speakers and *unanimously* approved the project. In doing so the Board
15 of Supervisors approved specific findings based on the evidence that the project complied with all
16 applicable laws. Specifically, the County of San Mateo Board of Supervisors found that the
17 project complied with the LCP.

18 12. There is a great need for affordable housing for developmentally disabled adults on the
19 San Mateo County coastside. Fortunately, the County of San Mateo has a use permit process to
20 allow this sort of housing in the Urban Area of the Coastal Zone when it is necessary for the public
21 health, safety, convenience or welfare.

22 13. The Board of Supervisors of the County of San Mateo has the primary responsibility to
23 interpret its own ordinances. After considerable review the Board of Supervisors determine that
24 the Wellness Center constituted a sanitarium within the meaning of Section 6500 of the County
25 Zoning Ordinance Code. If the Board of Supervisors had not made that determination, affordable
26 housing for developmentally disabled adults could not be constructed on the coastside which
27 would violate both federal and state law.

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1 14. The California Coastal Act, Public Resources Code §§ 30000 was passed by the
2 legislature after the voters approved Proposition 20 in 1972. It is a far reaching piece of
3 environmental legislation. It does not prevent development on lands designated for development
4 under an approved LCP. In fact the Legislature has found and declared that the CCC should
5 encourage new affordable housing opportunities for persons of low and moderate income in the
6 coastal zone. Government Code § 65590(d) requires that housing developments constructed in the
7 Coastal Zone provide housing units for persons of low and moderate income.

8 15. Instead of reviewing this project under the guidance of the legislature to promote the
9 development of affordable housing the CCC determined to erect regulatory hurdles to prevent any
10 development on the site and specifically to prevent the development of the Wellness Center in
11 contravention of Public Resources Code § 30604. The CCC staff refused to discuss with the
12 applicant proposed modifications to the project instead telling the applicant: "If you don't relocate
13 this project you will have to do so many studies that it will take years for you to get to the Coastal
14 Commission." By taking this action the CCC determined to prevent the development of affordable
15 housing and employment opportunities for the developmentally disabled in contravention of state
16 law.

17 16. On August 8, 2012 a hearing was held in Santa Cruz regarding the project. In such a
18 hearing the CCC is to act in a quasi-judicial manner, review the evidence, and make findings
19 consistent with state law. In spite of the evidence, the clear legal mandates under state law
20 regarding providing affordable housing for developmentally disabled adults and overwhelming
21 public support the CCC denied the project. No specific findings such as those required by
22 *Topanga v. County of Los Angeles* were issued. To the extent "findings" are identified in the
23 material developed by the CCC staff, the "findings" are not supported by substantial evidence as is
24 required by law.

25 17. Under the Public Resources Code Respondent is required to hold a hearing and to take
26 evidence to enable it to exercise its discretion.

27 18. Respondent's decision is invalid for any and all of the following reasons.

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1 19. Respondent did not grant Petitioners a fair hearing in that it relied on “evidence”
2 received outside of the hearing to make its decision.

3 20. Respondent committed a prejudicial abuse of discretion by failing to proceed in the
4 manner required by law, as follows:

5 (a) Lot Legality. The CCC must follow the Coastal Act in reviewing permit
6 applications. In this matter the CCC deliberately misinterpreted the law to deny the permit.
7 The two parcels that are the subject of this permit application were created by the County of San
8 Mateo when it purchased the Pillar Point Marsh for public recreational use. Under Public
9 Resources Code § 30106 such a land division is specifically exempted from the requirements of a
10 coastal development permit. There is no limitation in the statute regarding the number of parcels
11 created or the configuration of the parcels. The County of San Mateo issued Certificates of
12 Compliance pursuant to the Subdivision Map Act, Government Code §§ 66410 et seq. to confirm
13 the legality of the parcels. Yet the CCC opined that these parcels were illegal because a CDP had
14 not been issued at the time of their creation.

15 (b) Agriculture. Under the LCP any parcel of prime agricultural land is designated
16 as Agricultural on the LCP and subject to certain protections. This land is not designated as
17 Agricultural but rather zoned for development. Yet the CCC applied restrictions to development
18 that would be as if the property were designated as Agricultural.

19 21. Respondent committed a prejudicial abuse of discretion because its decision was
20 arbitrary and irrational and failed to serve a legitimate objective of the CCC as its authority is
21 circumscribed by the state statutes creating and empowering it. For one, it arbitrarily rejected each
22 considered finding made by the County of San Mateo. For another, its staff was biased against the
23 project from an early date as evidenced by correspondence regarding the project and oral
24 statements regarding relocating the project. For another, the California Fair Employment Housing
25 Act, Government Code §§ 12900 et seq. mandates that public land use practices do not
26 discriminate against the disabled and yet the CCC ignored those directives. Finally, Public
27 Resources Code § 30604 encourages the development of affordable housing which was completely
28 ignored by the CCC.

22. Respondent committed a prejudicial abuse of discretion, in that the decision does not contain statutorily mandated findings and any findings are not supported by substantial evidence as follows:

(a) It appears that the CCC actually expressed no specific findings in this case as is mandated by *Topanga*. Whereas the County of San Mateo elaborately tailored findings reflecting the evidence before it, the CCC casually labeled its entire staff report as findings but never tied the findings to the evidence to allow necessary judicial review of the decision.

(b) The project is a housing development for persons of low and moderate income as defined by Government Code § 65589.5. Under Public Resources Code § 30604 the CCC cannot reduce the densities proposed by the appellant unless it makes a specific finding that the site cannot reasonably accommodate the project. Totally absent from the CCC's denial is any finding or even mention of this requirement in its staff report. Respondent's staff report ignores state law which requires that an affordable housing project be reviewed in light of state law encouraging the development of such housing.

23. Respondent committed a prejudicial abuse of discretion, in that the findings are not supported by the evidence.

(a) The CCC is acting in a quasi-judicial capacity in reviewing the application for a CDP. In its denial of the CDP its findings are not supported by substantial evidence.

(b) Water Supply. The language employed in the CCC staff report is not supported by the evidence. BIG WAVE possess a well that was permitted by the County of San Mateo on February 25, 1987 and can be used for the proposed uses on the site. BIG WAVE also designed a state of the art water recycling system to minimize the necessity of using additional water. The County of San Mateo conditioned the approval of Big Wave on the use of the well and also pursuing the connection to Coastside County Water District. Additionally before this matter was heard by the CCC, BIG WAVE had obtained a "will serve" letter from Montara Water and Sanitary District. So three separate water sources have already been identified yet the CCC chose to ignore this in its review. The CCC apparently believes that it can impose utility restrictions on other local agencies to prevent any development on this property. CCC contends the well can only

1 be used for agricultural purposes which is inconsistent with the permit itself. Moreover, such a
2 requirement is traditionally a condition of approval and not a requirement that must be satisfied to
3 gain discretionary approval.

4 (c) Wastewater. The language employed in the CCC staff report is not supported by
5 the evidence. Recognizing the environmental problems with treating wastewater and the enormous
6 energy and other costs associated with treating wastewater BIG WAVE designed a water recycling
7 system to use treat wastewater so that it can be reused for non-potable purposes. Additionally, the
8 landowners have been paying assessments on the property through the years to Granada Sanitary
9 District ("GSD") that financed the expansion of the Sewer-Authority Midcoastside plant which
10 would provide capacity for the project. There is more than sufficient capacity to treat the
11 wastewater that will be generated from the project. CCC opined that since BIG WAVE did not
12 have a "will-serve" letter from GSD it could not approve the project but GSD doesn't issue such
13 letters. There is more than sufficient sewer capacity to serve the project even without the
14 innovative water recycling review proposed by BIG WAVE. Moreover, such a requirement is
15 traditionally a condition of approval and not a requirement that must be satisfied to gain
16 discretionary approval.

17 (d) Traffic and Public Access. In approving the project the County of San Mateo
18 performed four independent traffic analyses. These analyses demonstrated that the peak traffic
19 occurred during commute hours on local roads and on Highway 1 and 92. The primary flow of
20 morning peak traffic is away from the site, south on Highway 1 and east on Highway 92. Evening
21 traffic is the reverse. The traffic analyses indicated that the Big Wave Project generated reverse
22 traffic flow on local streets and major highways. The traffic analyses indicated that the project has
23 a positive impact on traffic congestion on Highway 1 and 92 due to its location. The Wellness
24 Center does not generate traffic because the future residents are non drivers and the Center
25 employees live on site. The CCC rejected the traffic analyses because it was not based on peak
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1 recreational traffic patterns that occur primarily on summer weekends. The project does not
2 generate weekend traffic during peak recreation periods.

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4 (e) Geologic Hazards. The Big Wave Project supplied three geotechnical reports
5 describing the site and surrounding conditions in detail. The County of San Mateo provided a
6 detailed peer review report. The geotechnical reports stated that all hazards could be addressed
7 with less than a significant impact. The CCC rejected the geotechnical reports because they did not
8 include utilizing trenching to locate the movements of the San Gregorio Fault. As per the State
9 Building Permit process and the Alquist Priolo legislation, trenching for fault location is only
10 required if proposed buildings are within 500 feet of the fault as located by the State Geologist.
11 There are no buildings proposed within 500 feet of the location of the last movement of the San
12 Gregorio fault. Moreover, such a requirement is traditionally a condition of approval and not a
13 requirement that must be satisfied to gain discretionary approval.
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16 (f) Tsunami Issues. In reviewing the project the CCC staff applied standards
17 regarding elevations to avoid tsunami hazards that have never been applied in San Mateo County.
18 There are no adopted standards for safe building elevations. According to County Ordinance, the
19 applicant would obtain the services of an ocean engineering expert to determine safe building
20 elevations. The applicant hired such an expert who determined the maximum wave runup in a 500
21 year interval included the estimated 100 year sea level rise. The applicant added an additional
22 seven feet of elevation to establish the first floor elevation. The project is 3/4 of a mile from the
23 Princeton breakwater. To date there is no evidence that tsunami waves have inundated the project
24 site. The CCC staff rejected the evaluation by the expert hired by the applicant and stated that they
25 would only accept the calculations for model for the CalFEMA emergency evacuation map. The
26 County of San Mateo approved the expert evaluation and the elevations in the project as consistent
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1 with the adopted tsunami hazard ordinances. The application of this standard as interpreted by the
2 CCC would prevent residential development on the southern parcel. The first time the CCC
3 evaluation of the first floor elevations was made public was in the CCC August 8th, 2012 staff
4 report even though the applicant had requested this information in November 2011.
5

6 (g) Biological Resources. The primary objective of the biological resources
7 evaluation is the protection of the native habitat. The applicant provided a biological resource
8 evaluation. This evaluation stated that the project site did not provide habitat for threatened and
9 endangered species. The CCC disagreed with this evaluation because they claim the site provides
10 foraging habitat for the Red Legged Frog. No Red Legged Frogs have been found on the site and
11 only three have been found within three miles of the site. The project has provided a design for the
12 restoration of the wetlands within the buffer areas of the site. The CCC staff's only requests after
13 reviewing the design report was to provide additional monitoring requirements in the design. The
14 applicant included the recommendations of CCC staff and submitted the final design report. The
15 final design report states that in all four major criteria for evaluating wetlands habitat (including
16 that for the Red Legged Frog) the function of the surrounding wetlands is improved by the project.
17 The CCC staff ignored the findings of this report and arbitrarily stated that the project decreases
18 the function of the surrounding wetlands and therefore is in violation of the LCP.
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22 (h) Visual Resources. The project meets all height, density and siteline
23 requirements in the LCP. From the scenic corridors, the project does not pierce the ridgelines. The
24 project is the lowest density development in Princeton in terms of site coverage. The building
25 coverage is approximately 15%, total lot coverage is less than 50%, landscaped coverage is over
26 50%. Most of Princeton has no landscaping and lot coverage exceeds 75%. The proposed building
27 are consistent with the existing structures in Princeton in terms of height. The CCC staff rejected
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1 the project because they stated that the project penetrated the ridgeline views, was too dense and
2 too tall. No substantive evidence supports this position.

3
4 (i) Locating New Development. The project is proposed on land that is zoned for
5 development purposes. The County of San Mateo has determined that the project is consistent
6 with the zoning. Agriculture is not even an express use permitted by the zoning. The substance of
7 the evidence received at the hearing demonstrated that the project complies with all relevant laws
8 and meets definitions of affordable housing such that the CCC can only deny the project for
9 specific grounds. Instead of reviewing the evidence in light of the law, the CCC creatively
10 employed regulatory hurdles never before used to prevent development to stop the building of
11 housing for the developmentally disabled adult community. A simple contrast between the
12 reasoned specific findings approved by the County of San Mateo and the single sentence adopted
13 by the CCC illustrates the difference. The evidence does not support the findings in that this
14 project is an environmentally green project meeting all the requirements of the Coastal Act, other
15 state laws and the LCP.
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18 24. Respondent committed a prejudicial abuse of discretion in that it did not proceed
19 according to law by the procedure it employed in hearing the appeal of the permit. The CCC did
20 not conduct a de novo appeal based on the administrative record developed before the County of
21 San Mateo. Instead, the CCC considered new evidence developed by its staff. The County of San
22 Mateo was not given an opportunity to review that new evidence. Had it been given that
23 opportunity, the County of San Mateo could have tailored its approval to ensure that no substantial
24 issue existed between the proposed project and the LCP. The CCC's decision to take new
25 evidence deprived the County of San Mateo of that opportunity and should be considered an abuse
26 of discretion.
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1 25. Petitioners have exhausted the available administrative remedies.

2 26. Petitioners do not have a plain, speedy, and adequate remedy in the ordinary course of
3 law.
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5 27. Petitioners will prepare the administrative record and will lodge it with the court.

6 28. Venue is proper in the County of San Mateo Superior Court pursuant to Section 393(b)
7 of the Code of Civil Procedure.
8

9 29. As an incident of bringing and maintaining this proceeding, Petitioners have become
10 obligated to pay to attorney's fees and will seek recovery pursuant to Government Code § 800 in
11 that the action of Respondents was arbitrary and capricious.
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14 **Second Cause of Action**
15 **Declaratory Relief**
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17 30. Plaintiffs incorporate by reference paragraphs 1 through 29 above.

18 31. An actual controversy has risen between Plaintiffs and Defendants concerning their
19 respective rights and duties. Plaintiffs complain that Defendants have misinterpreted laws
20 regarding the requirements of a coastal development permit for a land division exempted by Public
21 Resources Code § 30106, restricted the potential development of land explicitly zoned for
22 development as agricultural even though the LCP does not designate it as agricultural, denied a
23 CDP for development when it was clear that sufficient utilities would serve the property and
24 applied tsunami standards never before used on coastside development to prevent residential
25 development. Defendants dispute these contentions.
26

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28 32. Plaintiffs request a determination that its proposed development project is consistent

1 and permitted by the Coastal Act, County Zoning Ordinances, Local Coastal Program, the General
2 Plan and any other relevant law regarding issuing of permits for the project.

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4 33. A judicial declaration is necessary and appropriate at this time under the circumstances
5 in order that Plaintiffs may ascertain its rights and duties. It is important to build affordable
6 housing for the developmentally disabled community. Unfortunately, the regulatory process and
7 litigation can erect many obstacles to prevent reaching that goal. It is important to have a judicial
8 resolution regarding the right of Plaintiffs to obtain a permit to build both the Wellness Center and
9 the office park as approved by the Board of Supervisors.
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12 **PRAYER FOR RELIEF**

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14 WHEREFORE, Petitioners and Plaintiffs pray the Court for Judgment as follows:

15 1. For a Peremptory Writ of Administrative Mandamus directing Respondent CCC to set
16 aside its decision dated August 8, 2012 denying the Coastal Development Permit A-2-SMC-11-021
17 and to grant the Coastal Development Permit consistent with the findings issues by the County of
18 San Mateo, or such other relief as the Court may fashion.
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20 2. For Declaratory Relief that nothing at law prevents the issuance of all necessary permits
21 for the approval or development of the project.
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23 3. For reasonable attorney's fees in addition to any other relief granted or costs awarded;

24 4. For all costs of suit incurred in this proceeding; and


25 5. For such other and further relief as the Court deems proper.
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BYERS / RICHARDSON

Dated: September 27, 2012


DAVID J. BYERS, ESQ.
Attorneys for Petitioner and Plaintiffs

VERIFICATION

I, Jeff Peck, am the Manager of BIG WAVE, LLC, Petitioner in the above-entitled proceeding. I have read the foregoing petition and know its contents. I declare under penalty of perjury under the laws of the State of California that the same is true and correct to my own knowledge.

Executed on 9/27/2012, at El Granada, CA.


Jeff Peck

Manager, Big Wave, LLC.

VERIFICATION

I, Stephen St. Marie, am the Chairman of BIG WAVE GROUP, Petitioner in the above-entitled proceeding. I have read the foregoing petition and know its contents. I declare under penalty of perjury under the laws of the State of California that the same is true and correct to my own knowledge.

Executed on Sept. 27, 2012, at San Francisco.

Stephen St Marie

Stephen St. Marie

Chairman, Big Wave Group