

HOPE - Helping Our Peninsula's Environment

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Thom McCue
Monterey County Planner
Salinas, CA

Thursday, February 19, 2004

DRAFT COMMENTS
Proposed Pebble Beach Golf Course and Mansions Draft Environmental Impact Report is Monstrously Defective

Hello Mr. McCue,

Some tiny portions of the Draft Environmental Impact Report on the Proposed Pebble Beach Golf Course, Lodge expansion and Mansion subdivisions and development may be marginally legally adequate and actually reflect mainstream science.

However, whatever adequate portions exist -- they are eclipsed and blotted out by the DEIR wrongly and unambiguously -

1. Ignoring and violating the primary and central provision of our Coastal Act --

"Protect, maintain, and where feasible enhance and restore the overall quality of the Coastal Zone environment and its natural and man-made resources." by

refusing to protect as Environmentally Sensitive Habitat Areas --

- Endangered Yadon's Rein Orchid habitat (which mostly depend on Monterey pine forest ecosystem),
- Threatened California red-legged frog habitat, and
- Imperiled Monterey Pine Forest ecosystems.

2. Refusing to recognize any destruction of Monterey Pine Forest ecosystems as irreversible and irreplaceable.

3. Depending heavily upon numerous reports wholly contracted and paid for by the highly discredited Pebble Beach Company.

"There is reason to doubt the authenticity of the Pebble Beach Company's version of any story."
- Jake Tapper, Salon, Jan 2003

4. Ignoring the loudest Noise Impacts from the forest destruction - chainsaws and chippers.

5. Improperly refuses to adequately evaluate offsite golf course alternatives.

1. Environmentally Sensitive Habitat Areas Ignored !

ESHA: The Draft Environmental Impact Report refuses to recognize or protect Environmentally Sensitive Habitat Areas as required by the Coastal Act for -

- **Yadon's Rein Orchid habitat (officially FESA Endangered), and**
- **California red-legged frog habitat (officially FESA Threatened).**
- **Monterey Pine Forest ecosystems (officially endangered by CNPS),**

• **Yadon's Rein Orchid or Yadon's Piperia (*Piperia yadonii*)**

This lovely and beautifully fragile Orchid was Federally listed as an Endangered species on September 11, 1998, some 14 years after the LUP was adopted. Its habitat is almost entirely native Monterey pine forest.

The Draft Environmental Impact Report admits that this species is federally protected by the Endangered Species Act, that it occurs on the project sites and that some 10,000 of the imperiled orchids would be killed by the project.

But the document actively ignores recognizing Yadon's Rein Orchid habitat as Environmentally Sensitive Habitat Areas.

- **Yadon's Piperia is unarguably officially listed as endangered. That makes their known locations and habitat Environmentally Sensitive Habitat Areas under the Coastal Act and The Del Monte Forest Local Coastal Plan.**

According to the Coastal Commission Environmentally Sensitive Habitat Area (ESHA) includes --

- **All Endangered Species Habitat, ******
- All Coastal Wetlands,
- All Coastal Lagoons,
- All Marine Life Haul-Out, Breeding And Nesting Areas,
- Wildlife Reserves,
- All Tideland Portions Of The California Sea Otter Refuge,
- Nearshore Reefs, Tidepools, Sea Caves, Kelp Beds, Islets And Offshore Rocks,
- Wilderness And Primitive Areas.

- **HOPE insists that all Yadon's Rein Orchid habitat (officially FESA Endangered) be explicitly recognized by the DEIR as Environmentally Sensitive Habitat Areas and**
- **fully protected as Environmentally Sensitive Habitat Areas.**

- **California Red-Legged Frog (*Rana aurora draytonii*)**

This frog, celebrated as the hero in Mark Twain's Jumping Frog story, became a Federally listed Threatened species on May 23 1996 (See 61 Federal Register 25813, not the date the DEIR described), 12 years after the LCP was adopted.

The Draft Environmental Impact Report admits that this species is federally protected by the Endangered Species Act, that it occurs on the project sites and would be harmed, and that many could be killed, by the project.

But the document actively ignores recognizing red-legged frog habitat as **Environmentally Sensitive Habitat Areas**.

- **California red-legged frogs are unarguably officially listed as endangered and threatened. That makes their known locations and habitat Environmentally Sensitive Habitat Areas under the Coastal Act and the Del Monte Forest Local Coastal Plan.**

- **HOPE insists that all California red-legged frog habitat (officially ESA Threatened) be explicitly recognized by the DEIR as Environmentally Sensitive Habitat Areas and**
- **fully protected as Environmentally Sensitive Habitat Areas.**

1 (cont.)

When new species are listed as imperiled or species already listed as imperiled are found after the LCP was certified - those habitats become **Environmentally Sensitive Habitat Areas**. What is actually on the ground and is known is ESHA - not what was written on paper 20 years ago with limited knowledge.

Contrary to the theme of the DEIR "Appendix A" of the DMF LUP list of species to be protected as Environmentally Sensitive Habitat Areas explicitly states that the species and places listed are to "include the following:" Nowhere does the Coastal Act, the LUP or the CIP "exclude" or "limit" any species or habitat, or any changing circumstances or new information that should properly recognize newly imperiled species.

In fact, the opposite is true. On page four of the Del Monte Forest Land Use Plan it states -- "the intended use of the resource maps (Explicitly naming the Environmentally Sensitive Habitat Area Map) ... is to generally illustrate the basis of policies for purposes of planning or reviewing development proposals in the coastal zone."

It continues --

"The County, in incorporating these maps into the plan, acknowledges that they are not definitive and may contain errors or inaccuracies or may be incomplete."

It concludes --

"as new or more accurate information becomes available, the 600 scale maps will be revised and updated, and decisions will accordingly be based on the new data."

- **HOPE insists that because Appendix A is now a powerfully out-of-date and incomplete list, and because it impliedly and improperly excludes the proper and legally mandated Coastal Act ESHA inclusion of Yaden's Rein Orchid habitat, California red-legged frogs and native Monterey Pine Forest ecosystems, that the phrases "as defined in Appendix A of the Del Monte Forest Land Use Plan" be removed from pages 3.3-5, 3.3-7, 3.3-71, 3.3-73.**

Contrary to the DEIR, Native Monterey pine forest, Yadon's Piperia habitat and California red-legged frog habitat all clearly meet the definition of Environmentally Sensitive Habitat Areas

Coastal Act Section 30107.5. "Environmentally sensitive area" means *any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

According to the Coastal Commission Environmentally Sensitive Habitat Area (ESHA) includes --

- **All Endangered Species Habitat, ******
- All Coastal Wetlands,
- All Coastal Lagoons,
- All Marine Life Haul-Out, Breeding And Nesting Areas,
- Wildlife Reserves,
- All Tideland Portions Of The California Sea Otter Refuge,
- Nearshore Reefs, Tidepools, Sea Caves, Kelp Beds, Islets And Offshore Rocks,
- Wilderness And Primitive Areas.

The Del Monte Forest Local Coastal Plan, which this project and DEIR should be evaluated under, is even more explicit:

ESHA includes "rare, endangered, or threatened species and their habitats; other sensitive species and habitats such as species of restricted occurrence and unique or especially valuable examples of coastal habitats."

"The act also requires that any development adjacent to Environmentally Sensitive Habitat Areas be properly cited and designed to avoid impacts which would degrade such Habitat areas." (page 14)

- **Monterey Pine Forest (Pinus Radiata)**

In 1986, 2 years after the LCP was adopted, **Monterey Pine**, was identified as an endangered tree species by the United Nations Food and Agriculture Department.

In 1994, unaware of the United Nations designation, the California Native Plant Society increased its concern for the Monterey Pine as a highly imperiled species rating it 1B. The only higher rating, 1A, means extinct - like the dinosaurs.

The Draft Environmental Impact Report admits that this species is environmentally sensitive, that it occurs on the project sites, that some 17,000 native trees and some 120 - 150 acres of untouched, genetically diverse Monterey pine forest would be irreversibly destroyed by the project.

But the document actively and wrongly refuses to recognize Monterey Pine Forest habitat as Environmentally Sensitive Habitat Areas.

Under Del Monte Forest Coastal Implementation Plan Definitions 20.147.020 --
Page DMF-8, Definition AA. States:

Founded in 1998, **H.O.P.E.** is a non-profit, tax deductible, public interest group protecting our Monterey Peninsula's natural land, air, and water ecosystems and public participation in government, using science, law, education, news alerts and advocacy.

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1 (cont.)

"Rare and/or Endangered Species:

Rare and Endangered Species are those identified as rare, endangered and / or threatened by the State Department of Fish and Game, United States Department of the Interior Fish and Wildlife Service, the California Native Plant Society and/or pursuant to the 1973 convention on international trade in endangered species of wild flora and fauna."

The key portion is - "Rare and Endangered Specandies are those identified as rare, endangered and / or threatened by ... the California Native Plant Society."

There is no dispute that in 1994 the California Native Plant Society listed the Monterey Pine as a highly imperiled species by increasing its imperiled rating to 1B.

This means that the native Monterey Pine is officially and legally designated by Monterey County as a rare and endangered species by its 1988 Coastal Implementation Plan.

This "rare and endangered species" recognition by CNPS gives Native Monterey Pine protection as Environmentally Sensitive Habitat Area under the Coastal Act and the Del Monte Forest LUP. That makes their known locations and habitat Environmentally Sensitive Habitat Areas under the Coastal Act and the Del Monte Forest Local Coastal Plan.

- **HOPE insists that all Native Monterey Pine be explicitly recognized by the DEIR as Environmentally Sensitive Habitat Areas and be**
- **fully protected as Environmentally Sensitive Habitat Areas.**

1 (cont.)

Fully independently, even without the official California Native Plant Society designation, Native Monterey Pine Forest meets the definition of Environmentally Sensitive Habitat Areas in two other ways --

First, Native Monterey pine forest is rare. The Jepson Manual is a set of books considered the definitive encyclopedia for California plants and trees, states that Monterey pine is "Rare."

Second --

- a) **Native Monterey pine forest is especially valuable because of its special role in the Monterey pine forest ecosystem. Among other things it provides the habitat, the insulation from human impact, the cooling shade and all other needed, natural protection for the officially Endangered Species Act listed Yadon's Rein Orchid and 29 other officially imperiled plant species.**
- b) **Native Monterey pine forest is easily disturbed and degraded by human activities and development. The Del Monte Forest Land Use Plan page 23 states - "alteration of the forest through tree removal or excavation could impact the soils, the natural drainage system, and plant and animal habitats."**

Now compare those to the Coastal Act Section 30107.5. "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare (that's two) or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Providing essential habitat for 30 imperiled flowers and plants while "alteration of the forest through tree removal or excavation could impact the soils, the natural drainage system, and plant and animal habitats" makes it ESHA in a third way.

- ◆ That makes native Monterey pine forest ESHA - three different ways.

1 (cont.)

For years, because of Pebble Beach Company pressure, Monterey County has wrongly insisted that unless a species is included in the 1984 DMF-LUP Appendix A it is not ESHA. They insist that the ESHA list in Appendix A cannot be updated and improved from a list adopted in 1984 (which was manipulated by the Supervisors at that time to exclude native Monterey pine forest).

This anti-science, anti-environmental, unprofessional, and illegally limited definition of ESHA is simply false. There is no basis in science or law to exclude species and habitat that is clearly included by the Coastal Act.

CALIFORNIA NATIVE PLANT SOCIETY RARE AND ENDANGERED PLANT LISTS

"CNPS maintains an inventory of the plants known to be native to California. The four lists of plants cover only those plants thought to be at risk, and rank the plants in regard to their degree of endangerment today and in the likely future. If species are not considered to be at risk, they are not included on any of the lists."

"List 1B. Rare or Endangered in California and Elsewhere"

"The 857 plants on this list are rare throughout their range, and all but a few are endemic to California. All are considered vulnerable due to either small numbers, threatened habitat, or both. There were 675 plants in this category in the 1988 4th edition of the Inventory. All of these plants meet the definitions of Sec.1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code and are eligible for state listing. It is mandatory that they be fully considered during preparation of environmental documents relating to the California Environmental Quality Act."

Neither the Coastal Act or the Local Coastal Plan allows any exclusion of species or habitat just because they are not on a list prepared 20 years ago when the Local Coastal Plan was adopted (as desired by Pebble Beach Company).

The Coastal Act creates and requires strong protection for ESHA. The Local Coastal Plan is even stronger.

Recognizing native Monterey pine forest ecosystems, Yadon's Piperia habitat or California red-legged frog habitat as ESHA would make the project impossible.

So it is no surprise the Pebble Beach Company, Monterey County who wrote the contract for the Draft EIR authors insist that the orchid's and the frog's new official protection designations is meaningless; the Monterey pine forest's newly imperiled condition is meaningless, and newly recognized threats to all of them are meaningless.

1 (cont.)

- HOPE insists that all Native Monterey Pine be explicitly recognized by the DEIR as Environmentally Sensitive Habitat Areas and be
- fully protected as Environmentally Sensitive Habitat Areas.

4. The Draft EIR Refuses to recognize any destruction of Monterey Pine Forest ecosystems as irreplaceable.

In 1984 the California Coastal Commission wrote and approved the recognition that -

"The approximately 9 acres of native Monterey pine forest to be cleared for the golf course represents a substantial long-term impact." - Spanish Bay Project Final approval 1984 pg 25.

For Monterey Pine (Pinus Radiata) Forest ecosystems the loss of only nine (9) acres is a

Substantial ...

Long-Term

Impact...

2 (cont.)

Monterey County contains the largest healthy forests of native Monterey pine (pinus Radiata). It lies directly in the center of the natural range of the tree. The tree grows up to five miles inland from the coast roughly to the limit of summer fog.

- HOPE insists that the irreplaceable loss of anything approaching or exceeding Nine (9) acres of Native Monterey Pine be explicitly recognized by the DEIR as a significant and unmitigateable long-term impact.

5. The Draft EIR Depends heavily upon numerous reports wholly contracted and paid for by the on the highly discredited Pebble Beach Company.

"There is reason to doubt the authenticity of the Pebble Beach Company's version of any story."
- Jake Tapper, Salon, Jan 2003

3 (cont.)

Critique of the Huffman report attached.

3 (cont.)

6. The Draft EIR Improperly refuses to adequately evaluate offsite golf course Alternatives even though -

"The Coastal Act does not permit destruction of an environmentally sensitive habitat area [ESHA] simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act."

5 (cont.)

Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County, 4/16/99

7. Water - Changing Baselines and Physical vs Paper Water

The Draft Environmental Impact Report admits the project will use "320 acre feet of water in drier than normal years." DEIR Pg ES-16

6

CEQA cases make clear that the legally correct water use baseline that the DEIR must use is water use today, or when the application was filed in 2001. Not 1990 when the water deal was made.

This project will increase the pumping from that level by 320 acre feet of water in drier than normal years.

8. Noise

County Noise ordinance 2450, Section 3 (Chapter 10.60.030) prohibits operating any device producing a noise level exceeding 85 dBA at 50 feet in the unincorporated county.

This means any the operation of the devices listed in the DEIR as equal to or exceeding 85 dBA (Crane, Paver, Scraper, Loader, Bulldozer, Jackhammer, and Trucks) would be illegal. The County cannot approve a project that violates a health or safety law.

4 (cont.)

Equipment which is listed as only reaching the 85 dBA illegal level can easily generate more noise during normal but strained operation, or when equipment is not tuned or during any mechanical problem.

Mitigation for the use of illegal equipment must be, but is not provided.

This is significant new information requiring a re-write and recirculation of this DEIR.

* The Draft Environmental Impact Report (DEIR) Noise Impact Criteria B - Fails to recognize EPA threshold of any noise exceeding 55 dBA as significant.

* The Draft Environmental Impact Report (DEIR) Entirely Fails to analyze chainsaw noise cutting 15,000 trees.

A chainsaw can cause noise as loud as 130 dbA (LEAGUE FOR THE HARD OF HEARING - March 14, 2000)

A chainsaw can cause noise as loud as 115 dbA. Effects of Noise on People, Eldred & von Gerike, Noise/News International, Vol 1, No. 2, 1993 June

Chainsaw noise is not merely loud, many people find its particular noise especially annoying. This noise is often even worse as they are often used in quiet places.

This is significant new information requiring a re-write and recirculation of this DEIR.

Chainsaws also generate large amounts of unregulated air pollution.

*** Mitigation - Hand-Saw**

Compared with chainsaws - handsaws in normal use generate noise no louder than 52 dbA - allowing conversation, they emit no air pollution and generate a fraction of the amount of sawdust.

*** Mitigation - Axe**

A Hatchet and an Axe are alternatives to chainsaws. Compared with chainsaws - they are rarely louder than 52 dbA - allowing conversation, they emit no air pollution and generate a fraction of the amount of sawdust.

*** Wood Chipper**

The Draft Environmental Impact Report (DEIR) Entirely Fails to analyze wood chipper noise for 15,000 trees. Wood chippers can exceed 110 dbA. When gas powered they generate unregulated air pollution.

A wood chipper generated 96 dbA on Feb 20, 2004 measured in Pebble Beach, California.

The threshold of significance should be whether an objectionable noise can be heard beyond the limits of the minimum land area of its origin.

County Noise ordinance 2450, Section 3 (Chapter 10.60.030) prohibits operating any device producing a noise level exceeding 85 dbA at 50 feet in the unincorporated county. Exempted are Aircraft and when more than 2,500 feet from an occupied dwelling. Misdemeanor, \$500 fine, 6 months in jail.

*** The Draft Environmental Impact Report (DEIR) Entirely Fails to recognize impacts of noise on wildlife, particularly mammals and birds.**

"Effects [of noise] on animals have not been studied extensively. These are analagous to those in humans. There is auditory loss which deprives the animal of signals of danger or the presence of prey. Animals depend on hearing in territorial stakeouts, courtship, mating. Noise which masks natural sounds can be detrimental to survival. Impulse noises produce startle, violent escape efforts, and panic. Noise around construction work, factories, and airports disrupt habitats. Such responses have caused

injuries to domestic cattle and horses in stalls. Animals migrate from such conditions when an alternate area can be found." (Environmental Protection, Emil Chanlett 1979), citing "Effect of Noise on Wildlife and other Animals," EPA-NTID 300.5, J. Fletcher, 1971

This is significant new information requiring a re-write and recirculation of this DEIR.

* The Draft Environmental Impact Report (DEIR) improperly cites "typical" rather than potential noise of construction equipment. In every case cited the DEIR purported "typical" noise is lower than that we found in studies where the noise was actually measured.

In the case of pneumatic equipment the difference was astounding - as much as 50 decibels, or 75 decibels louder than that noise level which barely allows conversation.

4 (cont.)

The DEIR claims no sound will exceed 85 dBA for pneumatic equipment, yet

According to the LEAGUE FOR THE HARD OF HEARING (March 14, 2000) - Measured noise levels of Pneumatic drills can reach 120 dBA, and a Jackhammer can cause 130 dBA.

The lowest noise level reference we could find for Pneumatic Tools was how they can generate 85 dBA at 50 feet according to "Environmental Noise Pollution" 1977, P. Cuniff.

This tells us that the Noise analysis was not conducted to find the worst possible noise impacts as CEQA requires. The reverse appears to be true - that the analysis was written to minimize or hide the worst possible noise impacts.

- This is abundant significant new information requiring a re-write and recirculation of this DEIR.

Sincerely, 
 David Dilworth, Executive Director