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3/22/2004
#16

March 22, 2004

County of Monterey
Attn: Thom McCue, Senior Planner
Monterey County Planning and Building Inspection Department
Coastal Office
2620 First Avenue
Marina, CA 93933

VIA E-MAIL, FAX (831) 384-3261 AND OVERNIGHT COURIER

Re: Pebble Beach Company's Del Monte Forest Preservation & Development Plan -- County File No.: PLN010254/PLN010341; Environmental Impact Report Schedule No. 2002021130

Dear Mr. McCue:

Sierra Club has retained this office as its legal counsel in the environmental review proceedings concerning Pebble Beach Company's Del Monte Forest Preservation & Development Plan (project). This letter serves to provide comments on the draft environmental impact report (EIR) for the project. This office requests notice of all further proposed actions by the County of Monterey (county) at the above address.

Sierra Club, America's largest grassroots environmental organization with more than 700,000 members, is dedicated to environmental preservation and protection of environmental quality. Sierra Club's interest and objectives as a participating stakeholder in the review proceedings for the project are to vindicate the public's interests in rigorous enforcement of the environmental information disclosure requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et

seq.) and the state guidelines implementing CEQA (CEQA Guidelines) (Cal. Code Regs., tit. 14, § 15000 et seq.), as well as the substantive federal, state and local laws implicated by the project.[1] Sierra Club's comments are presented on behalf of its members and all citizens interested in proper environmental information disclosure and protection of the Del Monte Forest area's coastal-influenced forest resources. 1

The loss of Monterey pine and coastal live oak habitat caused by the project is staggering. Total deforestation of natural undeveloped Monterey pine will occur on 99 acres, with additional impacts to another 51 acres (including more than 20 acres on conservation easement areas supposed to be reforested); 15,391 Monterey pine trees and 1,700 coast live oak trees will be felled, including more than 11,000 pine trees and more than 1,000 oak trees on the proposed golf course and driving range alone (which would be built on middle-aged dunes and is part of a contiguous block of habitat, including the Rip van Winkle and Navajo open space tracts).[2] Anticipated cumulative losses of undeveloped Monterey pine forest are estimated to amount to 1,564 acres on the Monterey peninsula, which corresponds to at least 17% of the extant undeveloped forest in the county. Will it stop there? Of course, not.[3] 2 3

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[1] These laws include the California Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.) and the Del Monte Forest Area segment of the county's local coastal program (DMFLCP). The DMFLCP includes the Del Monte Forest Area Land Use Plan (DMFLUP) and its implementing ordinances, certified by the California Coastal Commission.

We emphasize that the county must comply not only with the certified DMFLCP, but also with the Coastal Act itself. (See Pub. Resources Code, § 30003.) The draft EIR fails to acknowledge this public duty of the county as it fails to assess project impacts under the public access and other coastal resources planning and management policies of the Coastal Act. (See Pub. Resources Code, § 30200 et seq.) 1 (cont.)

[2] Very little natural forest remains on this geomorphic surface -- a consideration that does not seem to have figured in the draft EIR's impact determinations. Also, the EIR does not disclose what percentage of undeveloped Monterey pine forest *in the Del Monte Forest coastal planning area*, the 150 acres of deforestation represents. 2 (cont.)

[3] Oddly enough, the draft EIR finds that proposed forest preserves and conservation areas will "offset" the significant direct and cumulatively 3 (cont.)

Protection of the Monterey pine forest in the Del Monte Forest area, with its ecological, scenic and passive recreational (lower-cost) public access benefits, is of far more than regional significance. Recognizing that "[t]he forest is more than an aggregate of trees," the DMFLUP states that "[t]he forest resource, in addition to its role in the area's natural environment, is a principal constituent of the scenic attractiveness of the area which should be *preserved* for the benefit of both residents and visitors"; and that "*long-term preservation of the Forest resource is a paramount concern*." (DMFLUP at 9, emphasis added.) We note these findings not merely to deplore the absence of a public preserve/parkland alternative in the draft EIR (in contrast to the preservation/development alternatives evaluated in the draft EIR), but also to impress on the county's decision makers the importance of the public's rights under the Coastal Act and CEQA in this particular case, including the public's right to "an interactive process of assessment of environmental impacts and responsive *project modification* which must be *genuine*." (*Concerned Citizens of Costa Mesa, Inc.* v. *32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936, emphasis added.)[4] 4

Our comments in this letter include requests for information that we find missing or incomplete in the draft and objections to the lack of adequacy in

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considerable adverse project impacts. How can this be? The preserves and conservation areas are not restoration areas. They are part of extant forest stands (baseline) and, as such, are already accounted for in the percentages indicating direct and cumulative forest loss. 3 (cont.)

[4] The California Supreme Court thus stated the principles that must govern the county's project review process and action:

"CEQA's fundamental objective is 'to ensure "that environmental considerations play a significant role in governmental decision-making." ' [Citation.] To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. This requirement enables the decision-makers and the public to make an 'independent, reasoned judgment' about a proposed project. (*Santiago County Water Dist.* v. *County of Orange* (1981) 118 Cal.App.3d 818, 831; *People* v. *County of Kern* (1974) 39 Cal.App.3d 830, 841 (requirement of detail in EIR " 'helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.' "); see also Cal. Admin. Code, tit. 14, § 15151.)" (*Id.* at 935.)

the draft EIR's environmental information disclosure.[5] Our first comment raises an issue that implicates both CEQA and fundamental coastal planning requirements.

1. The Measure A Certification Process Must Precede the EIR Review Process for the Project.

The draft EIR describes and reviews a project that *admittedly* is inconsistent with the Coastal Commission-certified DMFLCP. The EIR drafters assume, without any evidence to support their assumption, that some day Measure A, which purports to amend the DMFLCP, will be certified by the Coastal Commission (as opposed to a denial of certification, or certification of a modified Measure A through the Commission's process of suggested modifications under Public Resources Code section 30512, subdivision (b).)[6] In fact, to this day the county has 5

[5] CEQA "is an integral part of any public agency's decisionmaking process." (Pub. Resources Code, § 21006.) So much so that "a legally sufficient EIR is a precondition to legality of the public agency's approval resolution. [Citations.]" (*County of Inyo* v. *City of Los Angeles* (1977) 71 Cal.App.3d 185, 204.) In other words, development permits based on an EIR that is inadequate as an information disclosure document will be a nullity. (See *Joaquin Raptor/Wildlife Rescue Center* v. *County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722, 741-743.)

> "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. [Citation.]"

(*Galante Vineyards* v. *Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117.) When an EIR fails as an information disclosure document, therefore, the decision makers may not approve the project under review, regardless of their personal views about the project or its revenue-generating capacity.

[6] An LUP can only be certified by the Coastal Commission if it meets the requirements of the coastal resource planning and management policies of the Coastal Act. (See Pub. Resources Code, §§ 30200, subd. (a), 30512,

not even lodged an application for certification with the Coastal Commission. Importantly, because Measure A was never certified by the Coastal Commission, it has no legal effect. (See Pub. Resources Code, § 30514, subds. (a), (e); *Big Creek Lumber Co.*, 115 Cal.App.4th 952, 974; Cal. Code Regs., tit. 14, § 13537, subd. (b).) Therefore, all land use designations, policies and zoning requirements applicable to Pebble Beach Company's properties under the Commission-certified DMFLCP remain in effect.

As noted, there are substantial inconsistencies between the project and the DMFLCP, which preclude approval of the project as proposed. By way of example, they include the following project elements:

- The project proposes development of an equestrian center on the 45-acre Sawmill Gulch site in the Gowan Cypress planning area. Most of that site is designated for Open Space Forest (OSF) uses, which, admittedly (unlike the Open Space Recreation (OSR) designation), do not allow an equestrian center development. (Draft EIR at 3.1-7, 3.1-12.) 5

- The proposed championship golf course would encroach on the entire portion of area O in the DMFLCP's Spyglass Cypress planning area that is designated OSF. Admittedly, golf course uses in this area, which is almost entirely covered with Monterey pine forest, the federally endangered Yadon's piperia and Hooker's manzanita, are inconsistent with the OSF land use designation. (Draft EIR at 3.1-11.)[7]

- The proposed championship golf course would eliminate the trails shown on DMFLUP Figure 15 that provide access to and through

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subd. (c), 30514, subd. (b); *Big Creek Lumber Co.* v. *County of Santa Cruz* (2004) 115 Cal.App.4th 952, 974 [2004 Cal. App. Lexis 179; 04 C.D.O.S. 1365] mod. on den. rehg. ___ Cal.App.4th ___ [04 C.D.O.S. 2156].)

[7] We were unable to find information in the draft EIR specifying the acreage of the portion of area O designated OSF. What is it, and what specific golf course development and uses are sited on this portion of area O?

the interior forest.[8] As such, it is flat out inconsistent with DMFLUP Policy 124. Under this policy, development is supposed to be sited and designed to *avoid* encroachment on any trails shown on Figure 15, except only if this is infeasible due to habitat or safety constraints. Evidently, this exception does not apply, since no habitat or safety constraints in areas unoccupied by trails forced relocation of any fairways onto the trails. Championship golf course space constraints are not habitat or safety constraints.

5 (cont.)

- The proposed eleven golf suites on four acres at the golf course, in areas M and N of the Spyglass Cypress planning area, admittedly, are visitor-serving commercial land uses. (Draft EIR at 3.1-11 – 3.1-12), and, as such, are inconsistent with the residential land use designation applicable to their site. (*Id.*)

Given these and other inconsistencies between the project and both the Coastal Act and the DMFLCP, including inconsistencies with ESHA and wetlands protection requirements, the project may not be approved as proposed. The project must be consistent with the certified DMFLCP.[9]

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[8] The draft EIR neither discloses this inconsistency nor evaluates the public access impacts of losing existing trails and the scenic/recreational experience they provide. Furthermore, its drafters seem to posit, improperly, that in an area saturated with golf courses, a perimeter trail abutting another golfscape offers the same recreational and public access benefits as forest trails. (Draft EIR at 2.0-14, 3.1-8.)

[9] Project consistency with Measure A is irrelevant since Measure A has no legal effect. The draft EIR recognizes this, and, therefore, purports to utilize the pre-Measure A certified DMFLCP as the baseline for assessing the project. (Draft EIR at 3.1-27.) In fact, however, for purposes of finding the project's DMFLCP plan/policy consistency impacts insignificant, the draft EIR uses Measure A as a baseline. (Draft EIR at 3.1-10 – 3.1-12.) As such, it not only relies on uncertain "mitigation" (hope that Measure A will be certified by the Coastal Commission without change), but also violates its professed standard for finding land use impacts significant. That standard is "[c]onflict with any *applicable* land use plan, policy, or regulation of an agency with jurisdiction over the project ...." (Draft EIR at 3.1-5 – 3.1-6.) Again, Measure A has no legal effect, and so it is not an "applicable" plan. Because it is inapplicable, and because there is no evidence that the Coastal Commission will or must certify Measure A

(Pub. Resources Code, § 30604, subd. (b); Monterey County Code, § 20.70.050 (B) (3); see *Citizens of Goleta Valley* v. *Board of Supervisors* (1990) 52 Cal. 3d 553, 572-573; *Getz* v. *Pebble Beach Community Services Dist.* (1990) 219 Cal.App.3d 229, 232-233 (denial of sewer connection permit upheld because it was inconsistent with treatment capacity allocation of the DMFLCP; *Del Mar* v. *California Coastal Com.* (1984) 152 Cal.App.3d 49, passim (denial of coastal permit for lot split upheld because it was inconsistent with minimum lot size requirement of LUP).)[10]

Project approval prior to the completion of the Measure A certification process will be invalid even if the draft EIR's unsupported assumption turns out to be correct and Measure A is certified without change. This is so because the project must be consistent with the certified LCP *when* it is being approved; it cannot retroactively be validated by certification of the DMFLCP amendments represented by Measure A. Such purported validation of the project approvals would fly in the face of the rule of *Lesher Communications, Inc.* v. *City of Walnut Creek* (1990) 52 Cal.3d 531, which held that a zoning ordinance in conflict with a general plan is invalid when the ordinance is passed. (*Id.* at 540-541, 544.) If the general plan is the charter to which an ordinance must conform, as it is (*id.*, 52 Cal.3d at 541), then, surely, a certified LUP is the charter to which derivative project entitlements (coastal permits, use permits etc.) must conform. Future Coastal Commission certification of Measure A thus does not cure the invalidity of project permits that are inconsistent with the DMFLCP when they are approved. "The tail does not wag the dog." (*Id.*, 52 Cal.3d at 541; see also *County of Amador* v. *El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 948 ("another entity's subsequent determinations are irrelevant when considering whether the lead agency complied with CEQA mandates.").) **5 (cont.)**

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without change, the draft EIR's findings that the project's plan/policy impacts are less-than-significant have no evidentiary support.

[10] "The requirement of consistency is the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." (*deBottari* v. *City Council* (1985) 171 Cal. App.3d 1204, 1213.)

Sierra Club submits that it is totally inappropriate to proceed with the EIR review and certification based on the premise that certification of Measure A is a *fait accompli*. "By their very nature, both the general plan and the LCP embody fundamental policy decisions that guide future growth and development." (*Citizens of Goleta Valley*, 52 Cal. 3d 553, 571.) The LCP planning process thus compels consideration of alternative land-use goals, policies and implementation measures. (*Id.*) The effect of the county's cart-before-the-horse review process is to allow the project design to drive the Measure A certification debate and the Coastal Commission's decision. This will foreclose land use alternatives or Commission modifications to Measure A that are incompatible with the project. Under the county's topsy-turvy environmental review process, the project will shape the Coastal Commission's debate and action on the LCP amendment, like the tail wagging the dog.

The county's exorbitant delay in seeking certification of Measure A and cart-before-the-horse manner of proceeding also stands CEQA on its head, given the propensity of the county's manner of proceeding to foreclose meaningful consideration of environmentally superior alternatives or Commission changes to Measure A, such as land use designations or coastal resource overlay zones more protective of the Monterey pine forest than Measure A. (See *County of Amador*, 76 Cal. App. 4th 931, 949-951.)[11] The county's delay in proceeding with the Measure A certification process improperly prevents environmental considerations from influencing

5 (cont.)

[11] *County of Amador* is a case in point. There, the court held that a water agency's certification of an EIR for a water project had to be set aside because the project was predicated on a general plan amendment which had yet to be adopted by another agency. For the court, the water agency's manner of proceeding compromised review of growth issues to be weighed in the general plan process. (*Id.*) The court wrote:

> "By proceeding without the benefit of the general plan in place, and by developing projects predicated on needs described in an unadopted plan, the CEQA process is stood on its head. Instead of proceeding from a more general project to more specific ones, as is commonplace in tiering (see Guidelines, § 15152), the exact opposite occurs: a specific water project drives the general plan process."

(*Id.* at 950.)

the project's scale and design, and lets bureaucratic and financial momentum build up behind the project before Measure A comes up for certification. Environmental review must be timed to prevent that outcome. (See *Laurel Heights Improvement Assn.* v. *Regents of University of California* (1988) 47 Cal.3d 376, 395 (*Laurel Heights I*).)

5 (cont.)

The only project the county can approve is a project that is consistent with the certified DMFLCP. Since the project is inconsistent with the DMFLCP and is predicated on Measure A, which the county has failed to submit for Coastal Commission certification, for the reasons just shown, approval of the project will be a prejudicial abuse of discretion under the Coastal Act, the certified DMFLCP and CEQA.

2. <u>The Draft EIR Inadequately Reviews the Impact of Spanish Bay Resort Permit Conditions, Associated Sawmill Gulch Site Use Permit Conditions and Associated Conservation Easements.</u>

The high-intensity equestrian center uses on the lower and the upper Sawmill Gulch quarry sites are fundamentally incompatible with scenic and conservation easements that were required by the county and the Coastal Commission *as conditions of approval of the Spanish Bay Resort project*, to mitigate the adverse impacts of that project, including sand extraction for the Spanish Bay resort project, and to integrate 17 acres of the 45-acre Sawmill Gulch site into the Huckleberry Hill Natural Area. According to the draft EIR, this admittedly "significant [land use] impact can be mitigated to a less-than-significant level provided the County and the Coastal Commission are able to amend the relevant permit conditions and either amend the related easements or make findings that the proposed [equestrian center] use is consistent with these easements." (Draft EIR at 3.1-8.)

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This finding is frivolous -- and appalling. It advocates abolishment and circumvention of required mitigation for one project (the Spanish Bay resort) as mitigation for another (the project) -- mere paper mitigation at that. What the draft EIR's treatment of the conservation easement issue fails to account for is that the easements (1) were intended to be *permanent and site-specific*; and (2) were *mitigations* for a separate prior project (the Spanish Bay resort), and were required and relied on by the county and the Coastal Commission to find approval and development of that project consistent with the DMFLCP.

By their own terms, the easements were intended to be in perpetuity. By the DMFLUP, such easements are expressly intended to be in perpetuity -- supposedly being "powerful tools in ensuring long-term protection of natural resource values ...." (DMFLUP at 113-114.) Moreover, the easement conditions were accepted by Pebble Beach Company. Therefore, they can no longer be challenged (directly or indirectly). (See *Rossco Holdings, Inc.* v. *State of California* (1989) 212 Cal.App.3d 642, 654, 660; accord, *Ojavan Investors, Inc.* v. *California Coastal Com.* (1994) 26 Cal. App. 4th 516, 525.)[12]

We urge the county not to embark on the slippery path of approving projects that would obliterate conservation easements because they stand in the way of development they were intended to prevent in the first instance. If mitigation based on which a project was found consistent with the Coastal Act or the DMFLCP, allowing that project to go forward in the first instance, can be removed after the project has been built -- and, worse yet, while it is being planned for further expansion, as here -- that mitigation turns out to be a sham. Mitigations offered and accepted to support approval of projects are public rights. They are not up for grabs to suit the needs of new development. **6 (cont.)**

The draft EIR raises troubling questions about the county's long-term commitment to enforce the many open-space habitat protections that are now being touted as mitigation to reduce the project's significant ecosystem impacts to less-than-significant levels. If important dedications approved as part of the Spanish Bay resort project can somehow be removed via amendments to the permits that required them, what assurances does the public have that similar types of mitigations now

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[12] The Coastal Act provides for severe civil penalties for violations of approved coastal permit conditions, including deed restrictions. (Pub. Resources Code, §30820; see *Ojavan Investors, Inc.* v. *California Coastal Com.* (1997) 54 Cal.App.3d 372, *passim* (judgment imposing civil fines and a permanent injunction against a group of investors for violations of deed restrictions entered into by prior landowners as a condition of the Coastal Commission's approval of coastal development permits upheld; cf. also *Bolsa Chica Land Trust* v. *Superior Court* (1999) 71 Cal.App.4th 493, 507 (ESHA values may not be treated as intangibles which can be moved from place to place to suit the needs of development).)

offered to justify approval of the project will not suffer the same fate after the project has been developed? 6 (cont.)

3. The Draft EIR Inadequately Describes Golf Course and Driving Range Pesticide and Fertilizer Uses and Their Direct and Cumulative Effects on Ecosystem Resources.

In many regards, the draft EIR's description of the project uses a brush so broad as to lose sight of the fact that the entire project is a site-specific project -- it is *exclusively* composed of site-specific subparts. In such a case, CEQA Guidelines section 15146 calls for *detailed descriptions* of site-specific impact-generating activities and detailed disclosure of the individual effects of all underlying project activities.[13] To allow future decision makers and the public to accurately see the full environmental picture of the adverse impacts to coastal resources attributable to the project, the EIR should provide detailed, clearly legible, color-coded *overlay* maps accurately scaling and depicting all development and project activities (including retention basins and all other storm drain facilities, and water, sewer and reclaimed water lines) for the construction and operation phases, in relation to all on-site and off-site sensitive coastal resources eliminated or affected by the project (including all Monterey pine habitat, and without excluding habitat set aside in the proposed open-space categories affected by edge effects).[14] Detailed, clearly legible overlay 7

[13] According to CEQA Guidelines section 15146, the degree of specificity required in an EIR is supposed to be commensurate with the degree of specificity involved in the underlying project activities, and an EIR on a construction project, or, as here, a series of construction projects, "will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." (*Id.*, subd. (a).)

[14] For purposes of this mapping, impacted trails also must be mapped. They are a sensitive coastal access resource. (See Pub. Resources Code, § 30116.) According to the DMFLUP, the Del Monte Forest area has an "outstanding and extensive system of trails," which "[o]verall ... provide good access to and through the forested interior, to the shore, and to various residential neighborhoods." (*Id.* at 95.) Hikers and joggers commonly use these trails. (*Id.*) Are there any implied trail dedications affected by fairways or other project elements? (See *Gion* v. *City of Santa*

maps showing all proposed uses that conflict with the certified DMFLCP land use designations also should be prepared.

While the project proposes an 18-hole championship golf course and a driving range in natural undeveloped Monterey pine forest, the draft EIR discloses virtually no information on the application -- release in the environment -- of pesticides, including restricted use pesticides (RUPs), and of fertilizers, used in golf course and driving range turf management. Pesticides in use on golf courses include herbicides, fungicides, insecticides, nematicides and rodenticides. They target species that are in the food chain of nontarget species. They end up in the ground, in golf course water features and in the air. The EIR should disclose all toxic products used, rates, times and frequency of applications and mode of applications.[15] How many pounds of pesticides per treated acre per year is the project expected to use? What is the total grassed area? What turf species has or have been selected? What are the baseline figures (same data) for the seven existing 18-hole golf courses and the nine-hole executive course? What are direct and cumulative impacts of pesticide use on local wildlife populations?[16] When entire project activities are given scant attention in an EIR, a major CEQA compliance problem arises -- it is a major problem because it cuts across the board of the EIR's areas of environmental inquiry. Nondisclosure of the project's releases of toxic pollutants leads to understatements of impacts not only on local flora and fauna (takes of target wildlife species, risks of adverse effects on ground mammals, bird kills, bioaccumulation of toxic substances etc.), but also on ground and surface water, air quality, and by necessary implication, the public health.[17]

7 (cont.)

Cruz (1970) 2 Cal.3d 29.) To ensure compliance with the public access policies of the Coastal Act (see Pub. Resources Code, § 30211) and the DMFLCP, implied trail dedications must be disclosed in the EIR.

[15] Once relevant agencies and the public know what products are being used, they can verify active ingredients being released.

[16] Impacts occur through consumption of granular formulations or solutions from standing water, ingestion of poisoned insects or other contaminated prey, residues on treated vegetation or seeds, and dermal absorption and inhalation.

[17] See, e.g., Condor, *Killer Courses*, Golf (Dec. 1986), at 56 et seq., discussing cases of illness and one case of death due to severe allergic

As Professor Dennis D. Murphy, Ph.D., formerly director of Stanford University's Center for Conservation Biology, wrote in comments on a draft EIR for another 18-hole championship course (the Malibu Country Club, which was withdrawn after Sierra Club had obtained a preliminary injunction in a court challenge):

> "In simple terms, golf courses are more disruptive to functioning biological systems than are similar expanses of concrete. They are sources of alien species, insecticides, herbicides, and rodenticides nearly all of which target native species that attempt to colonize former natural habitat."[18]

7 (cont.)

We request an objective, scientifically rigorous assessment of the direct, cumulative and long-term incremental impacts of the pesticide spraying and accidental spills from ultimately nine golf courses plus associated driving ranges on the land, marine and ground water of the Del Monte Forest area's coastal zone environment.

4. <u>The Draft EIR's Position That the Project Site's Natural Stands of Undeveloped Montery Pine Forest Are not Environmentally Sensitive Habitat Areas Within the Meaning of the Coastal Act is Scientifically Indefensible.</u>

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A glaring shortfall in the draft EIR is the environmental document's failure to inquire into whether the Monterey pine forest eliminated by the project meets the Coastal Act's definition of environmentally sensitive habitat area (ESHA). By the Coastal Act, an ESHA is "any area in which plant or animal life or their habitats are either rare or especially valuable because

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reaction associated with a common fungicide (Daconil 2787) that was sprayed weekly on the Army Navy Country Club golf course near Arlington, Virginia. According to an environmental toxicology expert at the University of Illinois Medical Center, "[g]olfers are greatly exposed to pesticides. Direct contact encourages absorption of toxic materials through the skin and sometimes ingestion. Recently sprayed pesticides do volatilize on hot days, leading to additional risk of inhalation." (*Id.*)

[18/] Letter from Dennis D. Murphy, Ph.D., to Board of Supervisors of County of Los Angeles, submitted on December 7, 1989. A copy of this letter is being provided with our comment letter.

of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities or developments." (§ 30107.5.)

Is the Monterey pine forest not a natural community with plant life or animal life that is rare or especially valuable due to its ecosystem functions? The *global* range of this vascular plant community is severely limited: today, after decades of incremental losses and disturbance due to urban and golf course development, it remains in existence on less than 40 square kilometers (that is, less than 10,000 acres). (See < http://www.biogeog.ucsb.edu/projects/gap/report/gap_rep_ch2.html > [as of March 9, 2004].) In contrast, Venturan coastal sage scrub, which has gained ESHA status in the 2002 Malibu LCP has a far greater total distribution -- over 2,102 square kilometers (i.e., 519,416 acres). (*Id.*)[19] 8 (cont.)

Unsurprisingly, the California Department of Fish and Game (DFG) in its official list of special vascular plants, bryophytes, and lichens (Jan. 2004), ranks Monterey pine forest as "very threatened" throughout its remaining, very limited global range (G1/S1.1 ranking). The evidence in the record of the county's proceeding also conclusively proves that the areas of Monterey pine stands affected by the project are an integral part of the peninsula's forest ecosystem and "could be easily disturbed or degraded by human activities or developments." (§ 30107.5.) As the EIR drafters know, just between 1994 and 2002, development in the county has claimed *1,100 acres* of undeveloped Monterey pine forest, as it has shrunken from approximately 9,400 to approximately 8,290 acres over this eight-year time period. (See < http://206.46.164.32:81/agent/mobmain/Undeveloped_Monterey_Pine_Forest,_1994_to_2002.jpg?fold=INBOX&msgvw=INBOXMN382DELIM4168&part=2&FileName=Undeveloped_Monterey_Pine_Forest,_1994_to_2002.jpg >.)[20] 9

It is dumbfounding that in the face of these and other relevant data, the draft EIR simply adheres, without discussion, to the static view that what was not ESHA in 1984 is not ESHA today. In fact, this view is based on 8 (cont.)

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[19] Coastal sage scrub did not have ESHA status in the older LUP for the Malibu/Santa Monica Mountains, which was certified around the same time as the DMFLCP.

[20] Sierra Club requests inclusion of this overlay picture in the administrative record.

misinterpretation of Appendix A to the DMFLUP. Appendix A does not even purport to provide an exhaustive list of ESHAs in the Del Monte Forest area.

As we emphasized earlier (see fn. 1, *ante*), the county must comply not only with the certified DMFLCP, but also with the Coastal Act itself. Therefore, *all* ESHAs that presently exist within project boundaries and that adjoin these boundaries are subject to the act's strict ESHA protections (set forth in Public Resources Code section 30240), *regardless of whether they are mapped as such in the 1984 DMFLUP.* This goes to say that in evaluating the project, the EIR must identify all on-site and adjacent off-site ESHAs that are affected by the project, *using and applying the definitional criteria of section 30107.5.* The draft EIR here failed to make the relevant determinations under section 30107.5. **8 (cont.)**

We have several additional questions at this juncture. Have wildlife population viability analyses (PVAs) been performed for purposes of determining project impacts on listed and rare species? What nexus does the location of the conservation and resource management areas have to wildlife metapopulation dynamics, especially source-sink dynamics, species dispersal behavior etc., i.e., factors that figure in PVAs? Shouldn't resource management planning (key mitigation proposed as part of the project) be based on PVA, and shouldn't reserve design be a product of resource management planning (as opposed to preceding the preparation of resource management plans)? **10**

Is the proposed native vegetation buffer around wetland habitat associated with the seasonal pond drainage I 40 feet or 25 feet wide? (Compare Draft EIR at 3.3-12 – 3.3-13 with *id.* at 3.3-52.) **11**

What empirical data and scientific analyses support the conclusion that minimum 25-foot or 40-foot buffers are sufficient for foraging and dispersal habitat for the threatened California red-legged frog (CRLF)? Are these buffers commensurate with CRLF buffers recommended for golf course projects elsewhere? Is the rough included in the buffer setback width? Where native vegetation must be planted to create the minimum 25-foot width, will site preparation and rough grading await full establishment of the buffers? What "herbicides and pesticides" are deemed "compatible with aquatic systems" for the CRLF. (*Id.* at ES-15.) **12**

Is the list of impacted "rare" wildlife species complete? (*Id.* at 3.56 – 3.3.-58) complete? Which "common" wildlife species are affected by the **13, 14**

project? The draft EIR does not identify any. (*Id.* at 3.3-58 – 3.3-59.) Are wind-protected groves of Monterey pine and Monterey cypress with nearby nectar and water sources not Monarch butterfly roosts? If so, does the project impact the roosting sites? 15

5. The Draft EIR is Unsupported by any Evidence that the Environmental Impacts From the Project's Potable Water Demands are Insignificant.

The draft EIR states (at p. 3.5-14):

> "While the project would increase withdrawals by Cal-Am from the Carmel River aquifer and/or [sic] the Seaside aquifer relative to a current (2002) baseline, the County has determined that the applicant has offset this increase by its prior participation in guaranteeing financing of the existing Recycled Water Project. Without the Recycled Water Project, potable water use and Carmel River and Seaside aquifer withdrawals would be 550 to 780 AFY greater than at present, based on the amount of reclaimed water used for irrigation in the Del Monte Forest. This amount of reduced potable water use is greater than the amount of project-related increase in potable water use. Thus, net withdrawals from the Carmel River and/or the Seaside basin would not increase when the reductions in use resultant from the Recycled Water Project are taken into account (see Figure 3.5-1). 16
>
> "The County's determination is consistent with the prior determination of other regulatory agencies that have examined the applicant's entitlement. The MPWMD has identified that use of up to 365 AFY would not result in any increase in diversions from the Carmel River because the water entitlement was derived from the applicant's financial involvement with the Recycled Water Project, which has lowered Del Monte Forest potable use by at least 500 AF (MPWMD 1998). The Monterey County Water Resources Agency has determined that the project will result in a 'net increase of zero AFY due to its being within the jurisdiction of the exempt Pebble Beach Company – Benefited Properties' and because such use 'is consistent with MPWMD Ordinance

> #70 and Board of Supervisors action dated October 11, 1994' (Logsdon 2001).
>
> "Because the project's potable water demand can be legally provided pursuant to the applicant's entitlement and because the potable water demand has been offset by the potable water saved by the Recycled Water Project, this is considered a *less-than-significant* impact."

This reasoning is deeply flawed. First, the applicant's dedicated potable water entitlement of 365 acre-feet per year (AFY) does nothing to prove that actual physical project impacts in terms of water diversions from the Carmel River (habitat for the federally threatened west coast steelhead) and the Seaside Basin (which does not have a sustainable yield) are insignificant. The 365-AFY entitlement cannot be to avoid assessment of the direct, indirect and cumulative impacts of potable water diversions from the Carmel River and the Seaside Basin, attributable to the project's high potable water demand -- 182 AFY in a normal rainfall year, and 320 AFY in a drier than normal year. 16 (cont.)

Secondly, neither the project applicant's 1992 financing guarantees for the Recycled Water Project – Phase I, which since 1994 has been a source of recycled water for the Del Monte Forest area, nor the reduction in the pumping of potable water from the Carmel River and the Seaside Basin attributable to that project, reducing water withdrawals from the river and the basin by annual amounts exceeding the direct annual potable water demand generated by the project, are mitigation for the impacts of this water demand or created any mitigation bank for future Pebble Beach Company projects. What the company got in return for guaranteeing the financing for the Recycled Water Project was the 365 AFY entitlement. (Draft EIR at 3.5-25.) That deal does not alter the rule that the environmental impacts from the project-generated potable water demand must be assessed in relation to the physical conditions as they existed when the notice of draft EIR preparation was published (2002). (CEQA Guidelines, §§ 15125, subd. (a), 15126.2, subd. (a).)

* * *

There can be no question that the project has become the battle ground for a clash of competing visions for the future of the entire Del Monte Forest 17

coastal zone area: retention of what is left of the natural, endemic forest landscape vs. significant expansion of the exotic golfscape. The draft EIR's endless repetitions of "less-than-significant impact" findings to the contrary notwithstanding, the fate of the Monterey pine forest in the county's unincorporated coastal zone hangs in the balance with the project.

Sierra Club notes the following inscription in the DMFLUP (at p. ii):

> "TO SAMUEL F. B. MORSE AND COLONEL ALLEN GRIFFIN, WHO THROUGH PERSONAL DEDICATION AND BY THE EXERCISE OF RESTRAINT AND FINE TASTE, PRESERVED THE DEL MONTE FOREST FOR US ALL. MAY THEIR EXAMPLE OF LEADERSHIP, COOPERATION, RESPECT FOR THE FOREST, AND DEDICATION TO QUALITY, INSPIRE THOSE RESPONSIBLE FOR THE IMPLEMENTATION OF THIS LAND USE PLAN."

17 (cont.)

Sierra Club hopes that respect for the forest will indeed inspire county's decision makers before they determine whether to give the project the go-ahead. If respect for the forest and the laws that protect it means anything, it means the project cannot be approved as proposed. It means the county's public officials must order very substantial reductions in the irretrievable loss of 150 acres of undeveloped Monterey pine forest habitat. To that end, changes in project design, site planning and proposed land uses cannot be avoided, including changes legally necessary to uphold the public's rights in previously promised, approved, final and unchallenged open-space dedications.

Sierra Club looks forward to continuing to participate in the administrative review proceedings for the project.

Sincerely,

LAW OFFICES OF FRANK P. ANGEL

Frank P. Angel

STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305-5020

DEPARTMENT OF BIOLOGICAL SCIENCES

Board of Supervisors
County of Los Angeles
383 Hall of Administration
Los Angeles, CA 90012

Dear Board Members:

I appreciated the opportunity to address you last week concerning the proposed Corral Canyon development. As an introduction I noted that I am Director of the Center for Conservation Biology at Stanford University and add here that I am author of more than 90 scientific papers on endangered species, reserve design and management, and conflict resolution. My institute at Stanford specializes in methodologies that allow economic and resource deveopment while preserving biotic values in urban, rural, and wilderness areas. I received a 1988 Chevron conservation award for the conception and design of the Kirby Canyon Conservation Agreement which preserved rare grassland plants and animals in the face of the largest landfill permitted in North America in the past decade. I noted that I have served as consultant to cities, developers, and federal agencies on the San Bruno Mountain Habitat Conservation Plan, identified by Congress as the model for the resolution of conflict between development and preservation of biological diversity.

I called your attention to my role on San Bruno Mountain because the applicants identify that very project on pages 6 and 7 of their Summary statement of issues and responses dated 7 July 1989 as one of, I quote,"numerous examples of developments that have resulted in dramatic increases of wetland habitat." I want you to know that no wetland habitat has been disturbed, restored, or created on San Bruno Mountain. The 50 acres of revegetation of coastal sage scrub claimed is also fabrication. All revegetation work to date has focussed on grassland habitat. The successes (and for that matter the failures) of the San Bruno Mountain Habitat Conservation Plan have no pertinence in these proceedings. This lack of veracity concerning biological issues can be found throughout documents associated with this project.

The San Bruno Mountain project is one in particular for which I know the finer details, but the other model projects

on page 7 appear to be similarly misrepresented. Not all of them can be discussed here, but the Board of Supervisors might want to ask what bearing stablization of coastal sand dunes at Spanish Bay in Monterey County by the outplanting of dune grass has to do with this project. Or, better, the Board could follow up the Big Canyon Country Club "model." Far short of resulting in the "creation of large freshwater wetlands," Big Canyon is well documented as a major source of nutrient pollution of Newport Beach's coastal lagoon areas. A developer associate of mine describes Big Canyon as "one of the key reasons that California's Clean Water Act was implemented in the first place; it is inconceivable that that sort of project would be permitted today."

I don't have to underscore the importance of biological issues in these proceedings--the applicant has done that in the EIR. Only geotechnical hazards grace as many as 6 pages; biological issues are discussed across 10 pages. I take issue with virtually every statement across those 10 pages. A number of the points have been addressed by others at other stages in this hearing process. But several additional points should be considered or reconsidered.

The data presented in the EIR concerning acreage of natural habitat to be disturbed or destroyed are wholly unsupportable. Under discussions of biota, the applicants contend that just 16 of 339 acres of natural habitat will be lost. From the perspective of biological diversity, this is absurd. A forthright assay of habitats that will be permanently lost are not only those replaced by housing, roadways, and parking areas, but also that area replaced by the golf course, its rough, disturbed areas with greater than 30% slope, and undisturbed habitat areas that are isolated within the development or are linear in configuration. Such areas constitute, not 5%, but more than 70% of the site from which biological resources will be lost.

The applicant has responded to this charge by assuring Los Angeles County that restoration activities will mitigate impacts. As author of a chapter in the soon to be published book, Restoring the Earth, I assure you that the technical expertise to restore the slopes and canyon walls to be disturbed by this project does not exist. The San Bruno Mountain Habitat Conservation Plan cited by the applicant, identified scopes of Malibu magnitude as those not suitable for development. Limited to available methodologies, the cut and filled slopes required in this project will remain as unstable and barren of native species as the roadcuts along the Pacific Coast Highway.

In simple terms, golf courses are more disruptive to functioning biological systems than are similar expanses of concrete. They are sources of alien species, insecticides, herbicides, and rodenticides nearly all of which target native species that attempt to colonize former natural habitat.

I do not expect you to share my level of concern about ecosystem integrity.

But, I want you to recognize that the biological mitigations promised by the applicant are not feasible. A more truthful assessment of the impacts of this project on biodiversity could have been summarized a single page, like that for archaeological resources--a salvage operation then a write off.

A large portion of the biological diversity of the Corral Canyon area is likely to be exterminated by this proposed project.

Sincerely,

Dennis D. Murphy, Ph.D.
Director
Center for Conservation Biology