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April 7, 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 AND U.S. MAIL

*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:

I am enclosing for inclusion into the administrative record in this case a copy of a recent newspaper article revealing an increasing trend toward replacing grass on football and soccer fields with synthetic turf. (Sondheimer, *Sunny California Buys into Splendor in the Turf*, L.A. Times (March 29, 2004) p. A1, col. 4.)

While we do not advocate the use of synthetic turf over nonnative turf (or the opposite) in this case, Sierra Club does request that the EIR evaluate the environmental pros and cons of using artificial turf instead of exotic nonnative grasses on the proposed golf course and driving range. Use of synthetic turf has at least three advantages: (1) elimination of pesticide applications; (2) elimination of urban runoff polluted with pesticides, and with pathogens and other contaminants found in treated wastewater recycled for irrigation, and (3) in-stream preservation of significant amounts of stream (Carmel River) water which the project would divert for golf course irrigation.

We also note that while sewage treatment (even tertiary treatment) does not filter out many pathogens, toxic contaminants known as PPCPs

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(pharmaceuticals, such as antibiotics, and personal care products), and synthetic steroids and estrogenic drugs, found in wastewater, the draft EIR fails to review the adverse environmental and toxicological effects of spreading these contaminants through irrigation and how these effects may be effectively mitigated or eliminated.¹ These effects cannot be ignored in environmental impact analysis.

2 (cont.)

Draft EIR table 3.5-3 (at p. 3.5-13) states that the potable irrigation water the project would rely on in drier than normal years is 228.9 AFY. Is this an accurate figure? What is the average annual rainfall threshold assumed for distinguishing between what the draft EIR refers to as a "normal year" and a "drier than normal year"? Based on local historic rainfall data, how many "normal years" does the EIR anticipate for each "drier than normal year"? Also, do the direct and cumulative water demand analyses in the draft EIR account for prolonged drought periods? Do these analyses consider that a drought is a succession of *several* "drier than normal years"? It appears that the draft EIR understates direct, indirect and cumulative project impacts on the severely constrained Carmel River and Seaside aquifer water supply sources, among other things, by disregarding the cumulative or incremental effect of several drier than normal years *in a row*, and by providing scant baseline disclosure of the constraints affecting these two water supply sources.

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The draft EIR also should clearly disclose how many AFY of potable water would be used for irrigation on the proposed 18-hole golf course; how many AFY of potable water would be used for irrigation on the proposed driving range; how many AFY of reclaimed water would be used for irrigation on the proposed 18-hole golf course; and how many AFY of reclaimed water would be used for irrigation on the proposed driving range. Comparing tables 3.5-1, 3.5-2 and 3.5-3 in the draft EIR, it is impossible to obtain clear and consistent answers to these questions. Table 3.5-2 and the text accompanying it misleadingly suggest that all irrigation water for the golf course and the other project uses will be reclaimed water. This table indicates that the total *reclaimed* irrigation water demand of the project in drier than normal years is 243.3 AFY. But looking at table 3.5-3, doesn't the 243.3 AFY figure in reality consist of 228.9 AFY of potable

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¹ Recent scientific research shows that aquatic animals are vulnerable to extremely diluted hormone concentrations found in effluent -- in the parts per trillion range.

water, and far less reclaimed water -- 14.3 AFY? Similar discrepancies between tables 3.5-2 and 3.5-3 are apparent concerning irrigation water demands during so-called "normal years." Don't the figures set forth in table 3.5-2 in reality refer to *mixed* potable/reclaimed water, and not reclaimed water as the table and accompanying text claim?²

4 (cont.)

Relying on table 3.5-3 and the accompanying text, we note with dismay that the ratio of potable irrigation water demand by the project in a so-called "drier than normal year" to reclaimed irrigation water demand in such year is 16 to 1 (228.9 AFY/14.3 AFY), while the ratio for existing potable irrigation water demand to existing reclaimed irrigation water demand is 3.39 (1109.1 AFY/326.9 AFY), i.e., less than four times lower. How does the county explain this extraordinarily high demand for potable irrigation water the project would generate? (We assume existing uses in table 3.5-3 account for the other golf courses that exist in the Del Monte Forest, and that reclaimed water salinity and other turf management constraints factor into the potable water demands of these other golf courses as well.) What has been the total annual potable water demand for each of the past ten years of each of the eight golf courses (including the nine-hole Peter Hay executive par-3 course) presently in operation in the Del Monte Forest? What has been the total annual potable water demand for each golf course existing in the Del Monte Forest during the last prolonged drought (1987-92)? What has been the total annual reclaimed water demand for each of the past ten years of each of the eight golf courses (including the executive par-3 course) presently in operation in the Del Monte Forest? What is the total grassed (irrigated) acreage for each of the nine existing golf courses? What is the total grassed (irrigated) acreage for each existing driving range in the Del Monte Forest? What is the total grassed (irrigated) acreage for the proposed 18-hole golf course? What is the total grassed (irrigated) acreage for the proposed driving range? What are the percentage increases of potable irrigation water and of reclaimed irrigation water, respectively, when adding the golf course component of the project to Del Monte Forest baseline golf course irrigation water demands? What are the actual physical cumulative

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² Also, what exactly does the 10.8 AFY of potable golf course water demand disclosed in table 3.5-1 represent? Does table 3.5-1 exclude potable *irrigation* water? The explanatory text for this table would have the reader believe that 10.8 AFY is the full extent of the golf course's direct impact on potable water supply.

4 (cont.)

environmental and land use impacts of these increases considering existing and reasonably foreseeable limits on Carmel River and Seaside aquifer withdrawals? We are not asking for review of private impacts on Pebble Beach Company's remaining 355 AFY contractual "entitlement" to potable water. The real environmental issue here goes beyond paper (contractual) water "entitlement." What we are asking for is what is missing in the draft EIR: an examination of actual, physical water demand impacts on the environment as defined in CEQA. (See Pub. Resources Code, § 21060.5.) The EIR may not pretend these impacts don't exist or are somehow less than significant because Pebble Beach Company might have a right to cause them under a 1992 contract.

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There are severe constraints, including resource constraints arising under federal law (the Endangered Species Act of 1973) and legal constraints imposed by the State Water Resources Control Board (which the draft EIR should have fully disclosed and evaluated) that affect the sources of potable water supply for the Del Monte Forest area. Considering these constraints, anticipated increases in domestic water demands due to future population growth in the geographic area that depends on the Carmel River and the Seaside aquifer for potable water, and the fact that the Del Monte Forest area already uses disproportionately high amounts of potable water for golf course irrigation, to divert additional potable water for irrigation of yet another golf course (the ninth in a relatively small coastal planning area) does not put state water resources "to beneficial use to the fullest extent of which they are capable," and is an impermissible "waste or unreasonable use or unreasonable method of use of water." (See Cal. Const., art. 10, § 2; Wat. Code, § 100.) Waste, unreasonable use or unreasonable methods of use of water must be prevented. (See *id.*) All uses of water must conform to reasonable use standards. (See *National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419, 443.) California law protects navigable state waters from harm caused by diversion of water, including diversion from nonnavigable tributaries to navigable waters, as these waters and the soils under them are impressed with a public trust for ecosystem protection (e.g., enhancement of fish and wildlife) and other purposes, and diverting waters in material quantities from navigable streams or their nonnavigable tributaries may be enjoined as a public nuisance. (See *id.* at 430-437.)³ And, whether or not Pebble

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³ In the words of the California Supreme Court:

Beach Company claims a vested right to 355 AFY of its as yet untapped "entitlement" to Carmel River water, it can assert no vested right to use water in quantities or in a manner harmful to the public trust. (See *id.* at 445.) Put simply, there is no such thing as a vested right to waste or unreasonably use water. (See *id.* at 443, fn. 23; accord *Imperial Irrigation Dist. v. State Water Resources Control Board* (1990) 225 Cal.App.3d 548, 563-564.) This rule certainly obtains here. Today, use of potable water for golf course irrigation cannot be considered an efficient or reasonable use of California's limited water resources, considering present and anticipated future competing water demands, including demands for species protection and for domestic purposes (which have higher priority than golf course irrigation). Moreover, the contemplated irrigation use here is for an as yet *undeveloped and unentitled, ninth* golf course, and so enforcement of the public trust principles protecting against environmentally harmful uses of water would not disrupt "the economy and population centers of this state [which] have developed in reliance on appropriated water" (*National Audubon Society*, 33 Cal. 3d 419, 445-447.)

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Sincerely,

LAW OFFICES OF FRANK P. ANGEL

Frank P. Angel

Enc.: 1

"[T]he public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust."

(*Id.* at 441.)