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P-30



November 10, 2004

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2620 First Avenue
Marina, CA 93933

Subject: **Partial Revision of the Draft Environmental Impact Report titled "Pebble Beach Company's Del Monte Forest Preservation and Development Plan" (SCH Number 2002021130)**

Dear Mr. McCue:

Thank you for forwarding the above-referenced Partial Revision of the Draft Environmental Impact Report (PRDEIR) to our office for review. In sum, please note that we continue to have serious reservations about the Local Coastal Program (LCP) amendment necessary for Pebble Beach Company's proposed project (Measure A), and the project itself (see also our previous correspondence to this effect, including our recent March 22, 2004 letter on the original DEIR). As has only become clearer with the PRDEIR, the proposed project would significantly and adversely affect coastal resources, including significant environmentally sensitive habitat area (ESHA) resources. This PRDEIR, like the DEIR before it, neglects to identify all ESHA as ESHA, and fails to account for the LCP and Coastal Act ESHA requirements in this regard, including continuing a reliance on mitigation as opposed to avoidance. The EIR's utility for LCP amendment and project review is compromised as a result. Nonetheless, we continue to provide comment here with the intent of helping the County in its preparation of the underlying information necessary for further project review and discussion. We hope that these comments prove helpful in this regard.

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CEQA Process

We were surprised to see a PRDEIR as opposed to a completely revised DEIR as we previously requested. We continue to believe that the CEQA evaluation process has been compromised by an incorrect evaluation foundation - most significantly in terms of the DEIR's identification of ESHA and its ESHA impact evaluation methodology (please see our March 22, 2004 letter on the original DEIR for specific reasons for this). In particular, the DEIR's evaluation has not been sufficiently inclusive of Del Monte Forest ESHA, and has not been clearly premised on Coastal Act and LCP requirements that impacts to ESHA be avoided. We continue to recommend that a complete revised DEIR would be the most appropriate means to rectify these problems. This is particularly the case if, as the County has indicated in the past, the CEQA document is being developed for both the proposed project and the Measure A LCP amendment supporting it. Moreover, due to degree to which the fundamental changes necessary would lead to a substantial increase in the severity of project environmental impacts, CEQA requires recirculation in this case (including but not limited to CEQA guidelines section 15088.5(2) and (4)). Please revise the

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DEIR (in response to previous comments received as well as information developed and comments received on this PRDEIR) and recirculate it for public review and comment.

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PRDEIR

We appreciate the depth of additional information developed in the PRDEIR. Other than our basic CEQA objection described above, we found the PRDEIR to be informative and helpful on the limited subset of issues that it evaluated. That said, other than our request for additional water data and our request for additional information regarding potential indirect impacts to Yadon's piperia (on page 5 of our March 22, 2004 letter), the PRDEIR does not otherwise respond to the questions and comments from our March 22, 2004 letter. Accordingly, any subsequent CEQA documents must respond to all other comments in our previous letter, and our comments here are limited accordingly. To the extent that there is any question in this regard, then we incorporate our March 22, 2004 letter in its entirety as a part of this letter by reference, and consider it to have been submitted on this PRDEIR as well. We have the following comments specific to the PRDEIR:

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1. The PRDEIR water impact evaluation appears to be premised at least partially on limiting annual Cal-Am Carmel River diversions from the Carmel River to 11,285 AFY per State Water Resource Control Board (SWRCB) Order WR 95-10, and on the effect of the project as related to current withdrawals from the River.

- (a) The PRDEIR omits a copy of SWRCB Order WR 95-10. Please ensure that any subsequent CEQA documents include a copy of SWRCB Order WR 95-10, and any relevant attachments, amendments, and/or other SWRCB documentation affecting the order.

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- (b) The PRDEIR appears to indicate that Cal-Am has not perfected a legal water right to 11,285 AFY from Carmel River. As the PRDEIR indicates, SWRCB has indicated that Cal-Am has legal rights to only 3,376 AFY (see also SWRCB March 17, 2004 letter commenting on the DEIR). Please provide a clear explanation of, and supporting documentation for, Cal-Am's existing legal water rights pertaining to Carmel River.

- (c) The PRDEIR does not explain how (including from what source) water will be provided to serve the proposed project in the event Cal-Am cannot perfect a legal right to its existing Carmel River diversions. This information is necessary for understanding water impacts due to the project. Please ensure that subsequent CEQA documents include this information.

- (d) The PRDEIR does not make a compelling case that existing withdrawals (nor the 11,285 AFY figure) are an appropriate baseline from which to measure project impacts. We note that the PRDEIR appears to acknowledge as much (though the analysis baseline isn't changed in light of this) when it indicates that existing withdrawals both exceed Cal-Am legal rights and have resulted in adverse biological impacts. Rather, we need to understand the effect of the project related to the estimated maximum amount of water

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that could be withdrawn from the River without affecting River resource values (fisheries and otherwise). Please provide this information, including any supporting assumptions and information as well as the most current recommendations in this regard from the resource agencies involved (including the California Department of Fish and Game (CDFG), NOAA Fisheries, United States Fish and Wildlife Service (USFWS), SWRCB, etc.).

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2. It is clear from the PRDEIR that Cal-Am's withdrawals from the Seaside Basin have increased in recent years, and it appears clear from the PRDEIR that this has had and is continuing to have an adverse impact on this groundwater resource.

(a) The PRDEIR briefly touches on the types of problems associated with overpumping of the Basin (such as saltwater intrusion), but does not provide a clear baseline description of the existing condition of the Basin in this regard. Please provide information on the Basin's water quality trends, including at a minimum a clear description/assessment of the effect of historical pumping levels on saltwater intrusion in the Basin, and potential responses being considered (i.e., limits in pumping, importation of water, etc.). Please provide any supporting documentation and maps as well.

(b) Similar to Carmel River resources, the PRDEIR does not make a compelling case that existing Seaside Basin withdrawals are an adequate baseline from which to measure project impacts. Rather, as with Carmel River, we need to understand the effect of the project related to the maximum amount of water that could be withdrawn from the Basin without affecting its resource value. If trends indicate this figure to be changing (as indicated in the PRDEIR where "safe yield" estimates have been lowered just this year), then please extrapolate such trends in this regard. Although it is not clear from the PRDEIR whether the Basin's estimated "safe yield" (currently estimated in the PRDEIR at 4,375 AFY) represents this maximum potential withdrawal amount, at a minimum, the project impacts as compared to the basin's safe yield should be evaluated. Please provide this information including any supporting assumptions and information as well as the most current recommendations in this regard from the resource agencies involved (again, CDFG, NOAA Fisheries, USFWS, SWRCB, etc.).

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3. The PRDEIR water impact evaluation also appears to be premised at least partially on the Pebble Beach Company's water entitlement agreement with the Monterey Peninsula Water Management District (MPWMD).

(a) The PRDEIR omits a copy of the agreement. Please ensure that any subsequent CEQA documents include a copy of the agreement, and any relevant attachments, amendments, and/or other documentation affecting it.

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(b) It is not clear from the PRDEIR how or why this agreement translates into a right to water; something that is governed by water law and not by agreements made between water management districts and private companies. Please provide clear explanation of how this entitlement translates into a water right.

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- (c) It is not clear from the PRDEIR how or why the agreement should be read to allow Pebble Beach Company to use water that is not actually physically available. We note that the agreement is based on two primary suppositions: that the Pebble Beach Company will use less Cal-Am water because it is using reclaimed water instead, and that the entitlement of 365 AFY of Cal-Am water is available. Pebble Beach Company has greatly reduced its reliance on Cal-Am water for irrigation purposes, but in only one year so far reached the target of 800 AFY saved, upon which the agreed upon entitlement was based. If reclamation efforts are not yielding expected water savings, commitments to reserve water based on reclamation may no longer be appropriate; particularly in light of resource impacts to Carmel River and the Seaside Basin due to existing (and proposed) withdrawals. It appears that the agreement needs to be updated to reflect the current impact (from withdrawals) and reclaimed water use realities. This is particularly the case given that the agreement's 365 AFY was apparently developed based on estimates of Del Monte Forest buildout that do not appear to have adequately accounted for the number of legal lots of record and resource constraints on them otherwise (see also March 22, 2004 comments in this regard), and was developed well before the agreement itself. Please provide a clear analysis of how and why the agreement helps demonstrate a long-term water supply to serve the project when even existing withdrawals of water are leading to resource degradation and have not themselves been legally perfected (see also above). Please also provide evidence of input from MPWMD in this regard.
- (d) PRDEIR Table G.2-6 indicates that the Company has used only 9.9 AFY out of an original agreement for 365 AFY. Please provide a breakdown for how the 9.9 AFY has been allocated, including underlying information documenting that amount of use for the projects to which the allotment has been directed.
4. The PRDEIR relies in large part upon Recycled Water Project (RWP) Phase II improvements to offset water use impacts due to the proposed project.
- (a) The PRDEIR omits an analysis of how project impacts will be offset if Phase II: (a) is not developed for whatever reason; or (b) is less successful than estimated. Given the track record with reclaimed water use in the Forest (where use of same has not generally achieved all of the potable water savings predicted, and the PRDEIR indicates that approximately 30% of the RWP water currently supplied is actually potable water), it seems unwise to rely so heavily on such a mitigation without some sort of mechanism for ensuring that expected savings are achieved, and if they aren't, a companion mechanism for offsetting shortfalls. Please perform an expanded analysis and mitigation assessment that is based upon a spectrum from complete success with Phase II in effect down to it not being developed at all (i.e., the current reclaimed water status quo). Such analysis should include rational demarcation points for scenarios in-between (e.g., using success rates of 25%, 50%, 75%, etc), perhaps based on the current track record of success with recycled water in the Forest.

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- (b) Except in very dry years, the PRDEIR indicates that all water supplied for irrigation in the Forest would be from recycled water (PRDEIR Table P1-6), and refers to Appendix G for details and assumptions supporting this. It is not clear to us from the PRDEIR discussion how and/or why such irrigation use quantities would be achieved, and we couldn't find a clear explanation of this in Appendix G. Please provide a clear explanation (including maps and figures) as to what constitutes the irrigation use within the Forest to which Table P1-6 corresponds, and please also clarify the Appendix G explanation for why this would be the case. Please also explain and provide a description of the implementing mechanisms that would be used to ensure that only recycled water is used in this regard.
5. Please modify the EIR's overall water supply impact assessment (and mitigation framework), including that relative to cumulative impacts, to address the above comments.
6. We appreciate the PRDEIR's improved information regarding indirect impacts to Yadon's piperia due to the project, but we continue to disagree with the ESHA identification and impact assessment methodology applied to this federally-listed endangered species. The PRDEIR does not identify Yadon's piperia and its habitat as ESHA. As we have previously indicated, most recently in our March 22, 2004 letter, Yadon's piperia must be evaluated as ESHA and impacts to this species avoided (we note here that all comments regarding ESHA in our March 22, 2004 letter are included in their entirety in this comment by reference). Toward this end we cannot agree that project impacts on piperia can be mitigated to a less than significant level. According to the PRDEIR, the project would directly remove 36 acres of occupied Yadon's piperia habitat (and over 36,000 individual plants). Such project direct impact includes removal of the world's largest known occurrence of piperia at the site of the proposed golf course; an occurrence appropriately recognized by the PRDEIR as "considered important to the recovery of the species." Project direct impacts in this regard represent destruction of over a quarter of the known Yadon's piperia population in the Forest and 21% of the known population in the world. In addition, the PRDEIR indicates that the project would result in indirect adverse impacts to 24 acres of occupied piperia habitat (some 17,000 individual plants), and to 63 acres of other potential piperia habitat. Accordingly, future CEQA documents must be modified: to identify this species and its habitat (see also below) as ESHA; must be premised on avoidance of impacts to it; and must consider impacts to Yadon's piperia to be significant and unmitigatable (please also refer to our March 22, 2004 letter).
7. The PRDEIR begins to discuss the habitat conditions for Yadon's piperia, including identifying Monterey pine forest areas as potentially suitable habitat, but stops short of providing conclusions or a useable methodology in this regard. Rather, the PRDEIR relies on a methodology that uses a 50-foot "occurrence buffer" around piperia plants and clusters to determine an "occurrence area" for piperia. Although the 50-foot buffer can be used to acknowledge some "habitat" surrounding individuals found above ground, we don't believe it can be used to meaningfully estimate Yadon's piperia habitat areas. Rather, based on the sensitivity of the species, it is incumbent upon the EIR documents to clearly explain its

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habitat characteristics, and to delineate the acreage of the area within which such characteristics are present in order to quantify the area of piperia habitat. In this respect, the PRDEIR appears to support applying at least a conservative approach where areas of Monterey pine forest are deemed to provide habitat for piperia. Given the endangered status of the species, and the fact that its known population is almost entirely limited to the Del Monte Forest, such a cautious approach seems appropriate here. Please provide an analysis of Yadon's piperia habitat characteristics, and an evaluation of the Forest areas containing such characteristics, including updated maps and acreage tables. For any Monterey pine forest areas deemed not to exhibit such characteristics, please provide an explanation as to why this is the case.

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8. The PRDEIR is equivocal in terms of quantifying indirect impacts to Yadon's piperia. As previously indicated, we believe the most conservative approach would be to analyze such indirect impacts as direct impacts if it is not clear whether indirectly impacted resources will continue to provide habitat/resource value due to the project. In this case, the PRDEIR makes a compelling case that indirect impacts will result in adverse impacts. This is particularly obvious where large areas of habitat would be fragmented by the project (e.g., as is perhaps most obvious with the proposed golf course fragmentation as shown in Appendix E Figure E-9-YP). As such, the more conservative approach is even more compelling in this case. Please supplement the piperia impact analysis with tables (modeled on PRDEIR Tables P2-1, P2-2, and P2-3) that quantify indirect piperia impacts in this regard and that can be used in to an additive manner (avoiding overlap with direct impacts).
9. The PRDEIR indicates that the 2004 Yadon's piperia survey methodology differed from that done in 1996, and that this has resulted in a 2004 estimated acreage of occupied habitat that is roughly 1/10 the size of that estimated in 1996. Please provide documentation indicating that the California Department of Fish and Game and the United States Fish and Wildlife Service concur with the methodology and conclusions documenting Yadon's piperia habitat, including that based upon the requested habitat characterization method above.
10. The PRDEIR identifies two new areas – the Company's Old Capitol and Aguajito (Jack's Peak) sites – where conservation easements would be applied to offset project impacts. The PRDEIR indicates that Yadon's piperia surveys would be done to identify that portion of these sites that would be subject to such easement. Please ensure that any such delineation process also be based upon habitat characterization (as discussed above), and that it be clear in any final documents what portion of these sites would be subject to easement. For example, the PRDEIR indicates that only one acre of the much larger Aguajito site would have such an easement applied to it, though this seems counterintuitive to us given that this area is covered in Monterey pine forest that appears otherwise conducive to Yadon's piperia. Please supplement any subsequent CEQA documents with this information.
11. For any subsequent CEQA documents, please include clear maps, acreage figures, and narrative description of all of the areas to which protective legal instruments (e.g.,

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conservation easements, property restrictions, outright dedications, etc.) would be applied, accompanied by the relevant controlling text of any such instruments.

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Final CEQA Documents

The utility of final CEQA documents (for use by decision makers and the interested public) is often compromised by the use of a final EIR document that isn't actually "final" but rather represents acknowledgement of a suite of changes in response to comments received on a draft. Such a "final" EIR necessitates painstaking and difficult cross-referencing between documents to be able to understand a project and its expected impacts. These difficulties are only exacerbated when there are multiple and/or atypical CEQA documents and substantial comments (such as in this case with a DEIR in two parts, a PRDEIR so far, and a significant amount of comments). The value of final CEQA documents for informing public debate on projects is decreased in such cases.

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As you know, the proposed project is one of the largest to be proposed in the Central Coast in recent years, it involves significant coastal resources, and it remains very controversial. Because of this, and to provide for the most open and informed public discussion and debate on its merits, we recommend that any final CEQA documents be prepared in such a way that reference back to drafts is not necessary. In other words, the final CEQA document would include the final text and figures within which all changes (in response to comments or otherwise) are reflected. Comments and responses on drafts could be in a companion final appendix document of some sort, but would not require cross-referencing. The revised and recirculated DEIR requested offers an opportunity to begin organizing the document to be finalized in this way.

Thank you for the opportunity to comment. As with our prior DEIR comments, we hope that these comments help to frame the LCP and coastal permit context for this project and future development within the Del Monte Forest. We continue to be available for consultation in this regard. Although the project will no doubt remain controversial, we continue to believe it is important that the County and the Commission maximize the extent to which we are working from a common understanding of the environmental baseline, and potential project impacts, in our reviews. Good planning and public policy require as much, and informed public debate on the merits of LCP amendments and coastal permits is better accomplished when this is the case. As always, feel free to contact me if you'd like to discuss this matter further.

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Sincerely,



Dan Carl
Coastal Planner

cc: Pebble Beach Company
State Clearinghouse (SCH # 2002021130)