

Appendix K.3

**MPWMD 2004 CEQA Findings for Ordinance
No. 109 Regarding RWP Phase II Financing**

Appendix K.3

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT MAY 27, 2004 BOARD MEETING

ITEMS 3. CONSIDER ADOPTION OF SECOND READING OF ORDINANCE NO. 109

EXHIBIT 3-B **[DRAFT] FINDINGS RELATING TO ENACTMENT OF MPWMD ORDINANCE NO. 109 TO FACILITATE FINANCING AND EXPANSION OF THE CAWD/PBCSD RECYCLED WATER PROJECT AND DETERMINING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Board of Directors of the Monterey Peninsula Water Management District (MPWMD) makes the following findings in support of its determination to enact Ordinance No. 109 to facilitate financing and expansion of the CAWD/PBCSD Recycled Water Project. By adopting these findings, the Board determines that it has complied with requirements of the California Environmental Quality Act (CEQA) pursuant to California Public Resources Code section 21000, et seq.

I. Background.

1. The CAWD/PBCSD Wastewater Reclamation Project as originally proposed was approved in 1989 (the "Original Project"). The Original Project consisted of several discrete components, including: (a) new tertiary treatment facilities at the Carmel Area Wastewater District ("CAWD," formerly known as the Carmel Sanitary District "CSD"), (b) a distribution system and a storage tank to deliver and store the recycled water to and in Del Monte Forest, (c) irrigation systems on the golf courses and other vegetated areas in Del Monte Forest, and (d) financing of all costs of the project pursuant to MPWMD Ordinance No. 39 (the "Financing Plan"). The wastewater treatment plant was designed to produce a minimum of 800 acre feet annually ("AF") of recycled water suitable for golf course irrigation, which in turn freed up potable water that had previously been used for irrigation purposes. The Financing Plan was based on the grant and dedication, by MPWMD, of 380 AF of potable water (the "Water Entitlement") that could be used to develop specific lands in the Del Monte Forest area of Monterey County. The grant and dedication of the Water Entitlement was in return for the guarantee of the selected Fiscal Sponsor (Pebble Beach Company ("PBC")) to pay the costs of the Original Project.

2. Prior to approval of the Original Project, a Final Environmental Impact Report (consisting of the CSD/PBCSD Wastewater Reclamation Project Draft EIR dated March 1989, the CSD/PBCSD Wastewater Reclamation Project Final EIR dated June 1989, and the supplemental materials provided thereto (the "Project EIR")), was certified under the California Environmental Quality Act ("CEQA") by CAWD, as the lead agency, on September 21, 1989. The Project EIR was subsequently certified by the

MPWMD, as a responsible agency, on October 3, 1989, in MPWMD Resolution No. 89-21 (the “Resolution”), as to the matters within MPWMD’s responsibility and jurisdiction. The matters within the responsibility and jurisdiction of MPWMD were the consistency of the Original Project with the goals and objectives of MPWMD for the management and conservation of the water resources of the Monterey Peninsula, and the approval and implementation of the Financing Plan.

3. The Project EIR analyzed the growth inducing effects, and the resulting environmental effects from such induced growth, of the Financing Plan (i.e., from the granting of the Water Entitlement to PBC), which would allow new development in Del Monte Forest, where the constraint of water availability would otherwise inhibit such development. The environmental effects, both site-specific within Del Monte Forest and on a cumulative basis, of building 900-1000 new residential units in Del Monte Forest and an incremental amount of commercial development, were evaluated in the Project EIR.

II. Present Status.

4. The facilities comprising the Original Project were constructed and completed as of the Fall of 1994, and recycled water has been delivered for irrigation to the golf courses and other vegetated areas in Del Monte Forest since then. In accordance with the Financing Plan, the Water Entitlement was granted by MPWMD to PBC, J. Lohr Properties, Inc. (“Lohr”), and the Hester Hyde Griffin Trust (“Griffin”) in the respective amounts of 365 AF to PBC, 10 AF to Lohr, and 5 AF to Griffin for use on and development of specific lands owned by them (referred to as the “Benefitted Properties”), pursuant to the Wastewater Reclamation Project Fiscal Sponsorship Agreement between MPWMD and PBC dated as of October 3, 1989.^[1] Water Use Permits pursuant to MPWMD Rule 23.5 to evidence and memorialize the Water Entitlement were issued by MPWMD to PBC, Lohr, and Griffin in 1992. Thus, the Water Entitlement has been fully dedicated and is presently available for use on and development of lands in Del Monte Forest as contemplated by the Project EIR. The remainder of the potable water freed up by the Original Project has not been allocated by MPWMD for reuse of any kind.

5. With respect to PBC’s Water Entitlement, the Water Entitlement was granted and dedicated to various PBC-owned Benefitted Properties in defined quantities and connections (initially as set forth in Exhibit A to the Resolution and now as provided by the Fiscal Sponsorship Agreement). The Benefitted Properties consist primarily of undeveloped tracts of land designated and zoned “Residential” in the Monterey County Del Monte Forest Area Local Coastal Program (the “Del Monte Forest LCP,” certified by the California Coastal Commission under the California Coastal Act in 1985) and the Greater Monterey Peninsula Area Plan portion of the Monterey County General Plan and applicable zoning (“GMPAP”), and other property designated “Commercial” (Visitor Service, General, and Institutional) and “Open Space” (Recreational) under the Del Monte Forest LCP. The majority of the quantities and connections of the Water Entitlement are presently dedicated to the Benefitted Properties designated and zoned Residential. However, under Ordinance No. 39 and the Fiscal Sponsorship Agreement, PBC has the right to reallocate its Water Entitlement among its Benefitted Properties and to use the Water Entitlement on any of its Benefitted Properties consistent with “planned uses.” “Planned Uses” are considered to be those uses and development that are allowed under the applicable zoning regulations (including those of the Del Monte Forest LCP). This is an existing right of PBC, and is not subject to modification without PBC’s consent.

6. Since approval of the Original Project in 1989, PBC has presented several proposals for development of its Benefitted Properties. With the support of PBC, an amendment to the Del Monte Forest LCP was approved by Monterey County voters in Measure A in 2000. This amendment reduces significantly the residential development at the densities allowed by the certified Del Monte Forest LCP from 890 to 38 units (with an additional 60 units of employee housing), reduces substantially the area to be developed

(primarily by avoiding large tracts of presently undeveloped Monterey pine forest), and increases hotel rooms and resort and recreation facilities at existing and new facilities. PBC has the right, as stated above, to reallocate its Water Entitlement to accomplish its current proposed plan (all of which proposed development would occur on PBC's Benefitted Properties). The proposed amendments to the Del Monte Forest LCP have not, however, been certified yet by the California Coastal Commission.

III. Changes to the Original Project.

7. The Original Project has supplied substantial quantities of recycled water for irrigation, but it has not satisfied the Original Project objective because supplemental potable water beyond that contemplated by the Original Project has been needed to adequately supply the irrigation needs of the golf courses. The performance of the Original Project has not met the expectations, either with regard to quantity or quality, due to a number of factors beyond the consideration or control of any of the parties participating in the Original Project. Prominent among these factors are the salt-sensitivity of the dominant grass species planted in the greens of many of the golf courses, inadequacy of the drainage facilities to conduct accumulated salts away from the greens, smaller than anticipated amounts of secondary effluent due to decreased flows of influent to the CAWD wastewater plant (resulting in part from consumers' water conservation efforts), increased amount of salinity in the recycled water due to reduced influent flows caused by water conservation efforts, increased salinity added by water softening units (the demand for which increased as the source water became more saline), internal wastewater plant processes contributing additional salinity loading, the lack of sufficient data concerning the composition of the secondary effluent produced by the CAWD Wastewater Treatment Plant or concerning the water quality and water quantity requirements for golf course irrigation, and the absence of any seasonal storage of recycled water. Improvements are now proposed to the Original Project that will (a) provide advanced treatment facilities at the CAWD tertiary treatment plant to reduce the salinity of the recycled water; (b) provide 420 acre feet of additional storage of recycled water at the Forest Lake Reservoir in Del Monte Forest; and (c) provide a plan to finance the foregoing improvements to the Original Project. The proposed financing plan allows PBC to sell and convey a portion of its Water Entitlement for use on other lands in Del Monte Forest, and to dedicate the consideration received from the sale and conveyance of that portion of the PBC Water Entitlement to the costs of the proposed improvements to the Original Project and, secondarily, to the costs of the Original Project. The physical components of the improvements to the Original Project described above are referred to herein as the "Project Expansion," and the plan to finance the Project Expansion described above is referred to herein as the "Supplemental Financing Plan." The Project Expansion is implemented through Ordinance No. 109, the proposed Supplemental Financing Agreement, the Agreement for Sale of Recycled Water, and the Supplemental Construction and Operation Agreement.

IV. CEQA Requirements.

8. California Public Resources Code section 21166, California Code of Regulations section 15000 et seq. (the "CEQA Guidelines"), specifically section 15162, and applicable case law provide that, where a subsequent discretionary approval is required for a project which has been approved and for which a final EIR has been certified as complete, no subsequent or supplemental EIR (or Negative Declaration) shall be required unless there are substantial changes in the project, or substantial changes occur with respect to the circumstances under which the project is being undertaken, or new information becomes available that was not known or could not have been known at the time the final EIR was certified, which indicate that the project will have new or substantially more severe significant environmental effects requiring major revisions to the previous EIR that were not considered in the previous EIR or in the case of new information, mitigation measures or alternatives previously found not to be feasible or which are considerably different from those analyzed in the previous EIR are feasible and would substantially

reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.

9. The present proposal to provide improvements to the Original Project through the Project Expansion requires a discretionary approval by MPWMD under CEQA, but only with respect to the changes in the Original Project which are within the responsibility and jurisdiction of MPWMD. The only change to the Original Project within the responsibility and jurisdiction of MPWMD is the Supplemental Financing Plan authorized by Ordinance No. 109.

V. Description of the Supplemental Financing Plan.

10. Under the Financing Plan, PBC was granted a dedication of 365 AF of potable water as the Water Entitlement, which is evidenced by a Water Use Permit, authorizing use on specific PBC-owned lands in Del Monte Forest and four lots immediately adjacent thereto. Approximately 355 AF of the Water Entitlement remains unused. Under the Financing Plan, PBC's Water Entitlement can be transferred only among the Benefitted Properties owned by PBC, Lohr, and Griffin.

11. The Supplemental Financing Plan would authorize PBC to separately sell and convey, for consideration, up to 175 AF of PBC's existing Water Entitlement for dedication to property within the Del Monte Forest that is not owned by PBC as of the date that Ordinance No. 109 is adopted. Any portion of the Water Entitlement thus conveyed may be used only on the specific property to which it is first dedicated following the conveyance, and the water must be put solely to Residential use (as defined in MPWMD Rule 11) and cannot be used unless and until completion of the Project Expansion is guaranteed. All of the proceeds from each of these separate conveyances will be applied exclusively to the costs of the Project Expansion and the Original Project as more specifically described in Ordinance No. 109.

12. The Supplemental Financing Plan does not affect the right and ability of PBC to use and apply, on Benefitted Properties owned by PBC, the amount of PBC's Water Entitlement that is not separately sold and conveyed by PBC. PBC will continue to have the right and ability to utilize its remaining Water Entitlement on any or all Benefitted Properties owned by PBC as of the time that Ordinance No. 109 is adopted for any lawful use as determined by the appropriate jurisdiction with land use authority thereover, and to sell and convey a parcel of land that it owns together with a portion of PBC's Water Entitlement.

VI. CEQA Analysis.

13. The effect of the Supplemental Financing Plan is to expand the locations in Del Monte Forest where residential development may occur using a portion of the Water Entitlement. Primarily, it would allow vacant residential lots of record to be developed, and residential remodels on existing residential lots to occur. This development is presently restricted because there is no water available from the California American Water Company (Cal-Am) system to serve such development.

14. The Project EIR analyzed the growth inducing effects, and the resulting environmental effects from such induced growth, from the granting of the Water Entitlement to PBC, which would remove the constraint of water unavailability for new development in Del Monte Forest. This analysis is set forth in the Growth Inducement Section, commencing on page 112 of the Project Draft EIR, as modified beginning at page 30 of the Project Final EIR.

15. The Project EIR analyzed the potential growth inducing effects of the freed up water (420 AF) not dedicated to the Fiscal Sponsor on a general level, but none of that water has been allocated for reuse by

MPWMD. The Project Final EIR at page 47 noted that reuse of less than all of the freed potable water would have “beneficial effects on the Carmel River riparian and fishery habitat as less water would be withdrawn from the Carmel River aquifer,” and that has been the case.

16. Growth inducing environmental effects were evaluated by the Project EIR on the basis of building 1000 new residential units in Del Monte Forest on then undeveloped land owned by PBC and others, and an incremental amount of commercial development on land owned by PBC. Approximately 890 of these residential units were in the coastal zone, and an additional 40 outside the coastal zone, on undeveloped land owned by PBC. An additional 96 units were on undeveloped land owned by others in Del Monte Forest as referenced in Table 10 of Project Draft EIR, supplemented by pp. 30-33 of Project Final EIR.

17. The Project Draft EIR, at page 117, noted that “the 987 unit buildout does not include approximately 220 existing lots of record that are entitled to water from existing sources which could each accommodate a single-family residence. As a part of the Del Monte Forest LCP, these lots are given priority use under the County’s existing water allocation program. Therefore, potential buildout of existing lots of record are not included in this analysis.” It is noted, however, that the Project EIR states that analysis of the Traffic Impacts includes the lots of record.

18. The Project EIR analyzed the variety of environmental effects that would or could occur from development of 1,000 new units in Del Monte Forest. Included in the analysis were site-specific physical impacts, traffic, public service demands, and others. The vast majority of the land scheduled for development and included in the analysis was land owned by PBC in the coastal zone in largely undeveloped tracts.

19. The Project EIR also included an analysis of the cumulative impacts associated with such development. The cumulative impacts analysis addressed the impacts of 1000 new residential units in Del Monte Forest when added to specific proposed projects, and future development generally, in the Monterey Peninsula region.

20. The Supplemental Financing Plan will allow a portion of the residential development to take place at different locations in Del Monte Forest than were analyzed in the Project EIR. By allowing separate conveyance of a portion of PBC’s existing Water Entitlement for residential use, the Supplemental Financing Plan will allow development for residential purposes of existing vacant lots of record (i.e., previously subdivided lots), and allow reconstruction or remodel of lots presently developed and put to residential use.

21. The map attached as Exhibit B to Ordinance No. 109 and these Findings (the “Del Monte Forest Map”) shows Del Monte Forest with the vacant residential lots of record highlighted in orange and the Benefitted Properties owned by PBC to which the Water Entitlement is presently dedicated highlighted in blue. The remaining lots shown consist of existing developed residential, commercial, recreational, and institutional parcels, and undeveloped and restricted open space parcels. There are presently 133 vacant residential lots of record and approximately 2,800 existing developed residential lots in Del Monte Forest. Specifically, according to the records of Pebble Beach Company (which regularly tracks and maintains such information because PBC Architectural Review Board approval is required for all new or expanded residential construction in Del Monte Forest), there are 81 vacant residential lots of record in the coastal zone, and 52 vacant residential lots of record not in the coastal zone. This count includes 8 existing homes built on two existing legal lots (i.e., one residence on two lots), and one home built on three existing legal lots. In the latter situations, a total of 10 “vacant” lots of record has been attributed since the one existing residence could be demolished and residences built in replacement on each of the legal lots, or lot line

adjustments among the legal lots could be approved to accommodate another residence. However, the existing residential lots of record with no development presently number 123.

22. The overall effect of the Supplemental Financing Plan is to reduce both the residential densities and the area of land to be developed in Del Monte Forest. This is a consequence of several factors. First, the vacant residential lots of record, as legally subdivided lots, already carry an entitlement to develop. The only constraint to their development is the lack of presently available water. It must be assumed that, at some future time, additional potable water supplies will become available and (as provided in the Del Monte Forest LCP and Monterey County policy generally), such vacant lots will have a priority for such water over new subdivisions for their development. Thus, their density as a component of the overall buildout of Del Monte Forest is assured, and to the extent that a portion of PBC's Water Entitlement is transferred to such lots the overall buildout density is not increased. The potential residential density of PBC's land is decreased, however, to the extent the Water Entitlement is transferred because it reduces PBC's ability to newly subdivide and develop residential lots on PBC land that currently could be developed using a portion of the Water Entitlement.

23. Second, to the extent PBC's Water Entitlement is transferred to existing developed residential lots for remodels or reconstruction, there will be no increase in residential density in Del Monte Forest because these existing developed residential lots are already included in Del Monte Forest's residential density. Again, however, such transfers will reduce PBC's ability to newly subdivide and develop residential lots on PBC land, thereby decreasing the overall density of PBC's land that currently could be developed using a portion of the Water Entitlement.

24. Third, the buildout of all of PBC's Benefited Properties at the maximum densities of the Del Monte Forest LCP (as analyzed in the Project EIR) necessarily means and includes development of all of such PBC land. As clearly illustrated on the Del Monte Forest Map, the land area of PBC's Benefited Properties for which residential development is allowed substantially exceeds the land area of the other vacant residential lots of record.

25. The Supplemental Financing Plan will not result in an increase in present diversions from the Carmel River system. Presently, an average of 275 AF of potable water is being used for golf course irrigation. The Project Expansion will eliminate this use and the consequent diversions from the Carmel River System. The Supplemental Financing Plan limits the conveyances of PBC's Water Entitlement to 175 AF, and the water conveyed under the Water Entitlement cannot be used unless and until completion of the Project Expansion is guaranteed. Thus, the diversions necessary to satisfy the 175 AF (or less) of conveyed Water Entitlement will be 100 AF less than the present 275 AF of diversions for golf course irrigation that will be eliminated by the Project Expansion.

VII. Assessment of the Environmental Effects of the Supplemental Financing Plan Compared to the Environmental Effects Analyzed in the Project EIR.

26. The Project EIR stated, at page 118, that "construction of new residential units in the Del Monte Forest will result in site specific physical impacts, as well as increased traffic and public service demands." The Project EIR evaluated these impacts at a level appropriate for the Original Project. The analysis of the Project EIR, and an assessment of that analysis as it applies to the changes to the Original Project through the Supplemental Financing Plan, are set forth in the following paragraphs.

27. With respect to Physical and Resource Impacts, the Project EIR stated, at page 120, "Resources within the Del Monte Forest that are considered important include water quality, protection of trees and the existing forest, environmentally sensitive habitats, and scenic and visual resources. Future development

may impact these resources depending on location and density. Alteration of the forest through tree removal or excavation could impact the soils, natural drainage system, and plant and animal habitats. Sensitive habitats include the rare Monterey cypress and endangered Gowen cypress forest communities, the endemic Monterey pine/Bishop pine association, remnants of the indigenous coastal sand dunes, riparian corridors, wetlands, and sites of rare and endangered plants and animals associated with these habitats.”

28. The Project EIR further addressed Physical and Resource Impacts, stating that “site specific development impacts . . . are difficult to predict in the absence of development plans.” (Project EIR at page 120.) It pointed out, however, that the Del Monte Forest LCP (itself a plan complying with and certified under CEQA by the California Coastal Commission, as a certified regulatory agency under CEQA), the GMPAP, and other Monterey County policies (including CEQA review for specific developments) require compliance with policies for “maximum protection of natural resources, especially water quality, environmentally sensitive habitat areas, forest resources, and scenic and visual resources.”

29. The Project EIR analysis thus identified the potential significant environmental effects, and the mitigation measures to reduce those effects, of building 1000 residential units on 732 acres of vacant PBC land. Although not included in the analysis in the Project EIR of potential buildout of Del Monte Forest, the Project EIR assumed buildout of vacant lots of record upon the conclusion that they “are entitled to water from existing sources” and “are given priority use under the County’s existing water allocation program.” (Project Draft EIR, p. 117). That assumption has proven to be true, since the number of the vacant, undeveloped lots of record stated in the Project EIR (220) has been reduced to 133 at present, without development of any residential lots on PBC-owned land. Development of the vacant lots of record has been slowed to limitations on Cal-Am water service.

30. As noted above, the Supplemental Financing Plan results in both a reduction of the “buildout” density, and the actual land area that is susceptible of development, as each was analyzed in the Project EIR. Further, the vacant residential lots of record and existing developed residential lots that may acquire a portion of PBC’s Water Entitlement are pocketed in existing developed neighborhoods where the Monterey pine forest and its habitat (or other resources) are already fragmented and isolated due to the immediately adjacent development, and to which roads, utilities, and drainage systems have already been extended. By comparison, the PBC lands to which PBC’s Water Entitlement may currently be applied are primarily larger undeveloped tracts of Monterey pine forest and associated habitat (as is apparent from the Del Monte Forest LUP) without roads, utilities, and drainage systems. Transfer of a portion of PBC’s Water Entitlement, which is now available for development of these tracts of PBC land, to vacant and existing developed residential lots will lessen the level of, and impacts from, development in Del Monte Forest analyzed in the Project EIR. In particular, given the resources of the undeveloped PBC land compared to the lots of record, the reduction of the potential density of development on PBC’s land through transfer of a portion of PBC’s Water Entitlement will benefit the environment by shifting development to “infill” areas of lower resource value than the corresponding value that exists on PBC’s undeveloped land.

31. With respect to Traffic Impacts, the Project EIR analyzed impacts from development of Del Monte Forest based on the Goodrich Traffic Group Study of 1984 and an updated study by Barton Aschman Associates in 1989. Studies were based on maximum development (including all lots of record) under the Del Monte Forest LCP, and cumulative conditions.

32. The conditions forecast by these traffic studies remain valid. Development of the lots of record through the Supplemental Financing Plan does not change the analysis of Traffic Impacts in the Project EIR.

33. With respect to Public Services, the Project EIR analyzed the impact on Sewer Service, Fire Protection, Police Services, and Schools based on the 1000 new units of residential development that would potentially be induced by the Project. All services were found to be capable of being adequately provided.

34. Transfer of the Water Entitlement to allow development of existing vacant residential lots of record and existing developed residential lots does not affect the Project EIR analysis concerning Public Services. As existing residential lots with an entitlement to develop, these lots already have the right to Public Services at any time, a demand that must be satisfied. Neither of these two types of lots can reasonably be placed in the category of “new” lots placing demand on these public services. Therefore, there will be no additional service demands beyond those analyzed in the Project EIR.

35. With respect to Cumulative Impacts, the Project EIR addressed the cumulative impacts of development of 900-1000 units in Del Monte Forest when added to other potential development projects in nearby areas, and development planned in the Monterey Peninsula region generally. Specifically, the Project EIR addressed cumulative impacts in the areas of Loss of Open Space/Agricultural Land, Traffic and Circulation, Air Quality, Erosion and Runoff, Public Services, and Energy. Development of the vacant residential lots of record and additional development on existing residential lots does not affect the analysis of the Project EIR. In fact, the reduction in residential densities from the Supplemental Financing Plan as found above lessens cumulative impacts.

36. The Project EIR analysis notes that reuse of less than all of the potable water freed up by the Original Project will have beneficial effects on the Carmel River system due to reduced diversions. The same analysis applies here to the Project Expansion. The Project Expansion will free up 275 AF of potable water presently being used for golf course irrigation, whereas only a maximum of 175 AF can be used through the conveyed Water Entitlement allowed by the Supplemental Financing Plan. Thus, there will be a net decrease of diversions of 100 AF, which will benefit the Carmel River system.

VIII. Conclusions Concerning Changes to the Project.

37. The change to the Project within the responsibility and jurisdiction of MPWMD is the authorization of the Supplemental Financing Plan, which will allow the existing dedicated Water Entitlement of PBC to be dedicated to and used in Del Monte Forest, for residential purposes, on land which exceeds that initially authorized by the Financing Plan. This is a “change” to the project previously approved by MPWMD.

38. With respect to such change, the Board of Directors of the Monterey Peninsula Water Management District finds that:

(a) The change to the project is not “substantial” (as defined by CEQA), because it does not alter the fundamental objective of the Financing Plan to finance and support the Original Project through private funds (without the contribution of public funds) to conserve and reduce the demand for potable water for irrigation. It provides an additional financing vehicle to support the Original Project objectives, and allows residential development in Del Monte Forest as already contemplated by the Original Project approval. It is consistent with and in furtherance of the goals and objectives of MPWMD for the management and conservation of the water resources of the Monterey Peninsula.

(b) Irrespective of subparagraph (a) above, the change (1) will not involve new or substantially more severe significant environmental effects; that (2) require major revisions to the previous EIR (the Project

EIR) due to any new or substantially more severe environmental effects; (3) which effects were not already considered in the Project EIR, based on the findings set forth above.

IX. Analysis and Conclusions Concerning Changes in Circumstances and New Information.

39. There have been changes in the circumstances surrounding the implementation of the Original Project since it was approved in 1989, and there has been new information that was not known at the time the Project EIR was certified, as would be expected over time. The relevant changes in circumstances and new information are as follows:

- (a) The Original Project has not performed in the manner and to the extent contemplated in the Project EIR.
- (b) Cal-Am has been limited in its ability to deliver potable water through California State Water Resources Control Board (SWRCB) Order No. 95-10, dated July 6, 1995, upon a finding by SWRCB that Cal-Am does not possess the legal right to divert from the Carmel River system the amount of water historically (and presently) being diverted by Cal-Am, and that such diversions are causing damage to the Carmel River environment.
- (c) In the Seaside Groundwater Basin (a separate water supply source from the Carmel River system from which Cal-Am extracts a portion of its water to supply the Monterey Peninsula region), current extractions appear to exceed the estimated annual yield of the Seaside Groundwater Basin based on its estimated annual recharge. Over-pumping of the Seaside Groundwater Basin over time can cause groundwater levels to drop, resulting in seawater intrusion, thereby threatening the water supply.
- (d) Two animal species that exist in the Carmel River watershed and for which the Carmel River watershed provides habitat have been listed as “threatened” species under the Federal Endangered Species Act (“ESA”). These animals are the Red Legged Frog and the Steelhead.
- (e) PBC’s plans for development on PBC’s land in Del Monte Forest have changed and
- (f) Development on the Monterey Peninsula has proceeded.

40. The Board of Directors of the Monterey Peninsula Water Management District finds that:

- (a) The changes in circumstances described in these CEQA Findings are not substantial as they relate to the Supplemental Financing Plan, or Ordinance No. 109; or any other matter within the responsibility of the Monterey Peninsula Water Management District, and
- (b) Neither those changed circumstances, nor the new information, involve new or substantially more severe significant environmental effects as they relate to the Supplemental Financing Plan, or Ordinance No. 109, and thus do not require revisions to the Project EIR.

41. The Board of Directors of the Monterey Peninsula Water Management District finds that:

- (a) Original Project Performance. As detailed in Finding No. 7 above, while the Original Project has supplied substantial amounts of recycled water for irrigation, it has not met the Original Project objectives either in quality (primarily due to salinity of the recycled water) or quantity (primarily due to the lack of storage for the recycled water to satisfy peak irrigation demand) to meet the irrigation demands contemplated by the Original Project. As a consequence, an average of approximately 275 AF per year of

potable water from the Cal-Am system has been required to supplement the recycled water to adequately serve the irrigation needs of the recycled water users under existing contracts.

The Project Expansion is intended to remedy these shortcomings of the Original Project by providing advanced treatment facilities and increased storage to meet all of the irrigation needs of the recycled water users except in the case of an interruption of recycled water deliveries due to extraordinary circumstances or events.

(b) Effect of SWRCB Order No. 95-10, Status of the Seaside Groundwater Basin, and Listing of Threatened Species Under the ESA. The SWRCB found in Order No. 95-10 that Cal-Am had legal rights to only 3,376 AF in the Carmel River system, whereas Cal-Am was diverting 14,106 AF, and that such diversions were having an adverse impact on the instream beneficial uses of the Carmel River, including the riparian corridor and riparian habitat, wildlife resources, and fishery resources (especially the Steelhead). The Carmel River provides important habitat and recreational opportunities for the area. As a consequence, the SWRCB in Order No. 95-10 limited production by Cal-Am to 11,285 AF (currently) from the Carmel River system, and ordered Cal-Am to implement actions to terminate its unlawful diversions from the Carmel River, and in the interim to maximize its production from the Seaside Groundwater Basin. Subsequently, it has been estimated that production from the Seaside Groundwater Basin (the large majority of which is Cal-Am production) is exceeding on an annual basis the annual recharge, and thus exceeding the “safe yield” of the Seaside Groundwater Basin. In addition, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have, respectively, listed the Red Legged Frog and Steelhead as “threatened” species under the ESA. The Carmel River system provides habitat for both the Red Legged Frog and Steelhead.

The adverse environmental effects to the Carmel River system associated with the foregoing are the result of the amount of water being drawn from the Carmel River system by Cal-Am and the consequent effects on the Carmel River system and its watershed. Efforts to mitigate the effects described above have concentrated on reducing Cal-Am withdrawals from the Carmel River system and reducing consumption of Cal-Am water by consumers throughout its service area. The Original Project’s effects of reducing irrigation demand have occurred subsequent to Order No. 95-10. The Original Project has thus contributed to reducing this consumption and the consequent effects, and the Project Expansion will contribute even further.

The SWRCB has found that diversions by Cal-Am from the Carmel River to satisfy the Water Entitlement of 380 AF above the current limit of 11,285 AF will not violate SWRCB Order No. 95-10 to the extent that it supports an equal or greater amount of recycled water use for irrigation that otherwise would have to be satisfied from the Cal-Am system. (Footnote No. 2 of Order No. 95-10; letters dated March 27, 1998, and October 18, 2001 to MPWMD from SWRCB.) This criterion has clearly been met to date. The SWRCB action is based on the fact that the Original Project is a water conservation project which benefits the Carmel River environment by substituting recycled water for potable water that would otherwise be drawn from the Cal-Am system. The Project Expansion, as supported by the Supplemental Financing Plan, will further reduce the potable water from the Cal-Am system used for irrigation and thus further reduce the diversions and extractions from the Carmel River system and/or the Seaside Groundwater Basin.

(c) Changes in PBC Plans. An amendment to the Del Monte Forest LCP was approved by Monterey County voters in Measure A in 2000. The development plan submitted by PBC pursuant to Measure A includes the following components: 58 additional lodging units at The Lodge at Pebble Beach, with approximately 500 square feet of additional meeting space; 91 additional lodging units at The Inn at Spanish Bay, with approximately 14,000 square feet of additional meeting space; a golf practice range adjacent to The Links at Spanish Bay in Del Monte Forest LCP Area “C”; a golf course and

approximately 15,000 square foot golf clubhouse in the combined areas of Collins Field, the Equestrian Center, the present Pebble Beach Golf Driving Range (Area “V” in the Del Monte Forest LCP), and Del Monte Forest LCP Areas “M,” “N,” “O” and “U”; 24 golf “suites” in Del Monte Forest LCP Area “M”; a relocated Equestrian Center to a portion of a former quarry; 33 new residential lots in Del Monte Forest LCP Areas “F” (14 total), “I,” and “K” (12 total), and “P,” “Q,” and “R” (7 total); 60 units of employee housing in Del Monte Forest LCP Area “B” (12 total) and an area adjacent to the PBC offices and corporation yard (48 total); and the dedication to open space of areas designated for residential subdivision and development in the Del Monte Forest LCP in Areas “D,” “G,” “H,” “I,” “J,” “K,” “L,” “P,” “Q,” and “R” totaling 265 acres of additional forest open space than contemplated by the Del Monte Forest LCP.

Monterey County has prepared a Draft Environmental Impact Report (“Draft EIR”) under CEQA for PBC’s current development plan (Draft Environmental Impact Report, Pebble Beach Company’s Del Monte Forest Preservation and Development Plan, dated February 2004). The Draft EIR has been circulated for public review and comment. A Final EIR has not yet been completed.

PBC’s current development plan is relevant only to the extent that it would involve new or substantially more severe significant environmental effects of development that may occur as a result of the Supplemental Financing Plan that were not considered in the Project EIR. The mere change in development plans alone is not in itself a relevant factor, nor is the Draft EIR currently underway. It is the level of effects from such a change compared to the level of effects analyzed in the Project EIR that is the pertinent consideration.

All of the parcels proposed for development in PBC’s current plan are existing Benefitted Properties under the existing Financing Plan, and PBC is thus entitled to use its existing Water Entitlement for all such development. The Supplemental Financing Plan does not change this existing right of PBC.

(d) Development on the Monterey Peninsula. The cumulative development that has occurred in the Monterey Peninsula region is consistent with that forecast in the Project EIR.

X. Ultimate Findings and Conclusions.

42. The MPWMD Board of Directors therefore finds that:

(a) The Supplemental Financing Plan and Ordinance No. 109 are consistent with the goals and objectives of MPWMD for the management and conservation of the water resources of the Monterey Peninsula.

(b) No subsequent or supplemental EIR is required under CEQA for MPWMD’s discretionary approval of the Supplemental Financing Plan and Ordinance No. 109, because:

(1) The changes within the responsibility and jurisdiction of MPWMD are not substantial, and the Supplemental Financing Plan will not require major revisions to the Project EIR due to the involvement of any new significant environmental effects or a substantial increase in the severity of previously identified significant effects that were not considered in the Project EIR.

(2) There are no changes in circumstances under which the project is being undertaken that are substantial in relation to the Supplemental Financing Plan or Ordinance No. 109, and any changes in circumstances will not require major revisions to the Project EIR due to the involvement of any new significant environmental effects or a substantial increase in the severity of previously identified significant effects in

relation to the Supplemental Financing Plan or Ordinance No. 109 that were not covered in the Project EIR.

(3) No new information has become available since certification of the Project EIR, that was not known or could not have been known at the time the Project EIR was certified, that shows with respect to the effect of the Financing Plan and the Supplemental Financing Plan within the responsibility and jurisdiction of MPWMD, that the project will have one or more significant effects not discussed in the Project EIR; or that significant effects examined will be substantially more severe than shown in the Project EIR; or that mitigation measures previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects but the project proponents decline to adopt the mitigation measures or alternatives; or that mitigation measures that are considerably different from those analyzed in the Project EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternatives as they relate to the Supplemental Financing Plan, or Ordinance No. 109.

(c) MPWMD has considered the information in the Project EIR prior to approving the Supplemental Financing Plan and Ordinance No. 109.

XI. Other Approvals for the Project Expansion.

43. MPWMD is not the lead agency for the physical improvements to the CAWD plant and the Forest Lake Reservoir comprising the Project Expansion. It is noted, however, that PBCSD has already approved a Negative Declaration under CEQA for the Forest Lake Reservoir component (Final Expanded Initial Study, Phase II – CAWD/PBCSD Wastewater Reclamation Project, dated February 23, 1996 and Negative Declaration adopted in PBCSD Resolution No. 96-04 adopted February 23, 1996, with Addendum dated May 2001 and the Negative Declaration adopted July 27, 2001 by PBCSD). The Initial Study and Negative Declaration confirmed that the Forest Lake component of the Project Expansion will not have a significant effect on the environment, and that the project as expanded would have no significant growth-inducing or cumulative impacts not already considered.

2nd Reading Draft – May 27, 2004

U:\staff\word\boardpacket\2004\2004boardpacket\20040527\PublicHrgs\03\item3_exh3b.doc

[\[1\]](#) This agreement has been amended by several Technical Amendments to designate additional properties as “Benefitted Properties” defined in the agreement, and as so amended, is referred to in these Findings as the “Fiscal Sponsorship Agreement.”