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From: John S. Bridges <jbridges@fentonkeller.com>
Sent: Thursday, August 13, 2015 9:13 AM
To: Kim, Andrew@Coastal; Craig, Susan@Coastal
Subject: Read ESHA protection project (A-3-MCO-08-008) (Agenda item F11a)

REQUEST TO TESTIFY REGARDING SUBSTANTIAL ISSUE

Applicant requests an opportunity to testify before the Commission on the substantial issue question.

Thank you.

JOHN

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F11a

Appeal Filed:	1/23/08
49th Day:	Waived
Staff:	Andrew Kim - SC
Staff Report:	7/24/2015
Hearing Date:	8/14/2015

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal Number: A-3-MCO-08-008

Applicants: James Peter Read, Jr.

Appellants: Commissioners Steve Blank and Mary Shallenberger

Local Decision: Approved by the Monterey County Planning Commission on December 12, 2007 (County application number PLN060059).

Project Location: In the Del Monte Forest at 3158 Seventeen Mile Drive, Pebble Beach, Monterey County (APN 008-491-013).

Project Description: Construction of a 5-foot-high and 50-foot-long seawall along the coastal bluff to protect a Monterey cypress tree.

Staff Recommendation: Substantial Issue Exists; **Denial**

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

On December 12, 2007, Monterey County approved a coastal development permit (CDP) for the construction of a 5-foot-tall and 50-foot-long seawall located on the edge of a 5-foot coastal bluff. The project site is in the Del Monte Forest Area on the northwest corner of the property located at 3158 Seventeen-Mile Drive, Pebble Beach. The purpose of the seawall is to protect a Monterey cypress tree from erosion caused by future episodic storm events. Since the Monterey cypress tree is considered an environmentally sensitive habitat area in the Del Monte Forest Area LCP, the proposed seawall is located within and adjacent to an ESHA. Furthermore the project is directly between the Cypress Point overlook and a beach known to be a harbor seal-pupping area. The Commission appealed the County's CDP decision and raised questions of Local Coastal Program (LCP) consistency with respect to the County approval of a shoreline protection device, the protection of environmentally sensitive habitat areas (ESHAs), and the preservation of visual and scenic resources.

Staff recommends that the Commission find that the appeal raises a substantial issue and that the Commission take jurisdiction over the CDP application. Staff further recommends that the Commission deny a CDP for the proposed seawall at the site.

The LCP Hazards Policies provide guidance for shoreline armoring and only permit shoreline protection devices when required to serve coastal-dependent uses or to protect existing structures. The purpose of the proposed seawall is to protect a landmark Monterey cypress tree from falling over due to erosion at its roots. However, this seawall is inconsistent with the LCP policies because a tree does not constitute an "existing structure" and a seawall does not serve a coastal-dependent use. In addition, as explained by the Applicant's representative, a primary cause of the bluff side erosion was due to the poorly designed drainage system located on the adjacent Cypress Point parking lot, which has since been corrected.

The Del Monte Forest Area LCP strongly protects the Monterey cypress tree habitats and micro-habitats and distinguishes individual Monterey cypress trees as ESHAs. The proposed seawall is located directly under and adjacent to a Monterey cypress tree and is subject to the ESHA policies of the LCP. The LCP requires new developments in ESHA to serve resource-dependent uses. While the project is ostensibly proposed to protect the tree, and development needed to protect or restore ESHA could be seen as resource-dependent, the proposed project is actually more likely to harm the tree than to protect it, given that it requires development within the dripline of the tree, which is prohibited under the LCP. In addition, there may be other less environmentally damaging alternatives to protect the tree, such as supporting the tree with cables or other such supports. Finally, the ESHA policies of the LCP do not intend for developments to protect ESHAs from natural processes, such as wave run-up. Therefore, the proposed seawall is inconsistent with the LCP because it is under the dripline of the cypress tree and is threatened by natural processes rather than artificial causes.

Lastly, the LCP protects the visual and scenic resources of the Del Monte Forest Region. The project site is located directly adjacent to the Cypress Point parking lot and overlook. The proposed seawall is within the restricted setback and would detract from the scenic value of the shoreline and viewshed. The seawall would be designed to blend into the scenery, but it will still be noticeable to the visitors of the Cypress Point overlook. The Applicant contends that the tree

serves as a highly valuable visual resource and also screens the existing residence. However, the tree is located away from the main portion of the overlook and there is already a large wooden fence in front of the tree on the parking lot side that obscures the viewshed. Thus, the proposed seawall is inconsistent with the visual and scenic resource policies of the LCP.

For these reasons, staff recommends that the Commission deny a CDP for the proposed project. **The motion is found on page 5 below.**

If the Coastal Development Permit is denied, it could result in a potential violation of Monterey County's LCP on the subject property. On December 8, 2005, the Monterey County Planning Commission approved an Emergency CDP to place temporary sand bags around the base of the cypress tree. These sand bags are still in place. A condition of the Emergency CDP required the Applicant to apply for and obtain a Monterey County CDP approval within one year of the application, which the Applicant met by obtaining the permit that is now on appeal to the Commission. However, denial of this application pursuant to the staff recommendation will result in the sandbags no longer being permitted, thus staff would refer this case to the Commission's enforcement division.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Regional Location Maps

Exhibit 2 – Project Site Photographs

Exhibit 3 – County’s Emergency CDP

Exhibit 4 – County’s Final Local Action Notice

Exhibit 5 – Project Plans

Exhibit 6 – Appeal of County CDP Action

Exhibit 7 – Applicable and Cited Monterey County LCP Policies/Standards (SI Only)

Exhibit 8 – Applicant’s Correspondence

Exhibit 9 – LCP Figure 2a (Indigenous Monterey Cypress Habitat) and Figure 3 (Visual Resources)

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MCO-08-008 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-MCO-08-008 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-MCO-08-008 pursuant to the staff recommendation, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-MCO-08-008 and adopts the findings set forth below on grounds that the development will not be in conformity with the policies of the Monterey County Local Coastal Program.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION AND DESCRIPTION

The project area is located on a residentially-developed parcel at 3158 17-Mile Drive, Pebble Beach, in the Del Monte Forest Region of Monterey County (APN 008-491-013). The County approved project is a 5-foot-high and 50-foot-long seawall on a section of a low bluff backing Otter Cove on the northwest corner of the property. The seawall would be located between the Cypress point parking lot and the beach, which is an important harbor seal pupping area. The seawall would be located above the mean high tide line, on the edge of a coastal bluff, on slopes of 30% or greater, and within 750 feet of a known archaeological resource. The project site is located within the Monterey cypress forest, which is considered an environmentally sensitive habitat area (ESHA) under the Del Monte Forest LCP.

The Applicant's stated purpose for the seawall is to provide a permanent measure to protect a 54-inch-diameter Monterey cypress tree from future episodic storm events. The seawall would be tied to existing low granite outcrops in front of the tree on the back beach and would extend approximately 15-20 feet past the tree along the beach. The seawall would include rock fascia designed to blend with the surrounding bluff.

See **Exhibit 1** for project location maps and **Exhibit 2** for site photos. See **Exhibit 5** for project plans.

B. PROJECT BACKGROUND

On October 17, 2005, the Applicant requested an emergency permit from Monterey County to construct a seawall for the purpose of protecting the aforementioned Monterey cypress tree from storm surges. The County suggested that the Applicant apply for a less permanent means to protect the Monterey cypress tree under the emergency permit. The Applicant changed the emergency permit application to include the use of sandbags to protect the Monterey cypress tree. On December 8, 2005, the County approved an Emergency CDP (PLN050605, **Exhibit 3**) to allow the temporary placement of 35 linear feet of sandbags on the seaward side of the landmark¹ Monterey cypress tree. The emergency permit was conditioned to require the Applicant to apply for a follow-up regular CDP for a permanent protection measure, which is the subject of this appeal. The sandbags remain in place as of the date of this staff report (see **Exhibit 2** for photos).

¹ Landmark trees are defined as native trees which are 24 inches or more in diameter when measured at breast height, or a tree which is visually significant, historically significant, exemplary of its species or more than 1000 years old (Del Monte Forest IP Section 20.147.020.O).

C. MONTEREY COUNTY APPROVAL

On December 12, 2007, Monterey County approved a CDP that allowed the development of a permanent 5 foot high and 50 foot long seawall on the Applicant's property (see **Exhibit 4**). The Coastal Commission received notice of the County's approval on January 8, 2008. The Commission's ten-working-day appeal period for this action began on January 9, 2008 and concluded at 5 p.m. on January 23, 2008. Commissioners Steve Blank and Mary Shallenberger filed a timely appeal on January 23, 2008 (**Exhibit 6**). The Applicant signed a 49-day waiver and informed Commission staff that he intended to propose alternative solutions. Since then, no other alternative solutions were presented other than the approved seawall or the sandbags approved under the County's emergency permit.

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea and is not designated as a principally permitted use under the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants (or their representatives), persons who opposed the project and made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any

person may testify during the de novo CDP determination stage of an appeal.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County-approved project raises LCP consistency issues with respect to allowances for shoreline protection devices, environmentally sensitive habitat areas (ESHA), and visual and scenic resources. The Appellants contend that a Monterey cypress tree does not constitute an existing structure and thus, does not qualify for a shoreline protection device. The Appellants also contend that the seawall would be disruptive to the Monterey cypress forest community, which is an ESHA. Lastly, the Appellants contend that the project is inconsistent with the LCP's visual resource protection policies because the project is a large unnatural structure located adjacent to and visible from the Cypress Point scenic overlook. See **Exhibit 6** for the appeal document.

F. SUBSTANTIAL ISSUE DETERMINATION

1. Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a substantial issue.

2. Substantial Issue Analysis²

Shoreline Armoring

The Appellants contend that the project is inconsistent with LCP allowances for shoreline protection devices. The Monterey County LCP's Del Monte Forest Area (DMF) Land Use Plan (LUP) prohibits alteration of shoreline processes except to protect existing structures or public beaches in danger from erosion (*DMF LCP Land Use Plan (LUP) Policy 47 and Implementation*

² In June 2012, the Del Monte Forest Area LUP was extensively amended. For the substantial issue analysis, the LUP policies and IP standards that were certified at the time of the County's approval of the project will be used, although the policies of the LUP and IP as they were amended raise the same substantial issues as the older policies. See **Exhibit 7** for these policies and standards.

Plan (IP) Section 20.147.060.E.2 – see Exhibit 7). For purposes of the application of LUP Policy 47, existing structures mean existing substantial structures, such as a primary residence, a major road, or a significant facility or access way used by the public. Additionally, the LCP allows alterations of shorelines for the purpose of restoring and enhancing shoreline habitat and to protect coastal-dependent uses (*LUP Policy 29*).

The Appellants contend that the Monterey cypress tree does not constitute an existing structure for the purposes of LUP Policy 47, because a tree is not a “structure,” which is defined as a primary residence, a major road, or a significant facility or access way used by the public (see **Exhibit 6** for the Appellants’ contentions). The project also does not meet the requirements of LUP Policy 29 because the seawall would not serve a coastal-dependent “use.” A coastal dependent “use” is generally a facility or development that requires a site on or adjacent to the sea in order to be able to function at all. The seawall is intended to protect a tree, which is a natural organism that is not considered a “use.” In addition, although the seawall is intended to protect the tree, the seawall is more likely to harm the tree because it would be located within the tree’s dripline. Thus, the project does not consist of enhancement of habitat nor would it restore habitat, even if it did protect the tree from erosion. Therefore, the project raises a substantial issue regarding LCP consistency because the seawall does not serve a coastal-dependent use, does not include habitat restoration or enhancement, and the purpose of the seawall is to protect a Monterey cypress tree, which is not considered an existing structure under the LCP.

Environmentally Sensitive Habitat Area (ESHA)

The Appellants contend that the project is inconsistent with the LCP’s ESHA policies and standards. The project is located in the Del Monte Forest LUP Area and within the Monterey cypress forest, which is native only at Point Lobos Reserve State Park and along 17-Mile Drive between Cypress Point and Pescadero Point. The DMF Area LUP provides that the rare Monterey cypress habitat area has historically been determined to meet the definition of an ESHA. The proposed seawall is also located on the edge of a sandy beach known to be an important harbor seal pupping site and considered ESHA by the LCP (see **Exhibit 7** for applicable LCP ESHA policies, standards, and background language; see **Exhibit 9** for the applicable ESHA map).

The Appellants cite to LCP ESHA policies and standards that regulate development in ESHA in several ways. First, the LCP requires that ESHAs be protected against any significant disruption of habitat values and any new land uses shall be limited to those that are dependent on the resources therein (*LUP Policy 8 and IP Section 20.147.040.B.4*). Second, land uses and development adjacent to ESHAs must be compatible with long-term maintenance of the habitat area, and such land use and development must be sited and designed to prevent impacts that would significantly degrade the Monterey cypress habitat, including the microhabitat of individual cypress trees, and must be located within existing hardscaped areas and outside of the dripline of individual cypress trees (*LUP Policy 21 and IP Section 20.147.040.C.1.e*).

The Appellants contend that the seawall raises a substantial LCP conformance issue with respect to the afore-mentioned ESHA policies for several reasons. First, the seawall is not dependent on the ESHA resources. While arguably development intended to provide protection for ESHA could be found to be resource-dependent, in this case the development is likely to adversely impact the ESHA, i.e. placement of a 5-foot-high and 50-foot-long seawall at the base of largely

intact, healthy, and stable Monterey cypress tree and extending approximately 15-20 feet along the beach beyond the tree would disturb the special nature or role the cypress tree has in its surrounding ecosystem. Second, the approved project is inconsistent with the applicable LCP ESHA policies because the seawall would have a negative long-term impact to the Monterey cypress tree and its microhabitat due to the seawall being located within the dripline of the tree. In effect, the seawall will damage the microhabitat of the tree because the structure will cover the Monterey cypress tree's roots and will significantly cover the seedling regeneration zone. Lastly, the Appellants state that the tree is located on a low bluff area and its eventual failure from future episodic storm events does not constitute a situation warranting shoreline alteration because a tree is not considered a "substantial existing structure."

For the above reasons, the approved project raises substantial LCP conformance issues with respect to the LCP's ESHA provisions cited above.

Visual and Scenic Resources

The Appellants contend that the project is inconsistent with the LCP's visual resource protection policies (see **Exhibit 6**). Specifically, the Del Monte Forest Area LUP requires that incompatible development be avoided to protect the visual resources of the Del Monte Forest and that new development must not injure the visual integrity of the area (*See Exhibit 7 for applicable LCP Scenic and Visual Resources policies, standards, and background language*). The LCP also calls for protection of views to and along the ocean, preservation of natural landforms, protection of special communities, and visually compatible development that is sensitive to the character and scenic assets of the area. The LCP specifically states that structures in public views of scenic areas should not detract from scenic values of the shoreline (*LUP Policy 56*). Furthermore, the LCP states that development within the viewshed of visually prominent settings shall include adequate structural setbacks (generally a minimum of 50 feet) from such settings and shall require siting and design of structures to minimize the need for alterations to natural landforms (*LUP Policy 55*).

The Appellants contend that the County-approved seawall would be located directly adjacent to the Cypress Point scenic overlook and would be visible in the public viewshed. They argue that the project would introduce a large unnatural structural element into the immediate viewshed of the Cypress Point parking lot and overlook that would be incompatible with the undeveloped nature of the beach and bluff. In addition, the Appellants state that the seawall would cumulatively contribute to already existing structural development in the viewshed in this area and further detract from the high scenic values along this stretch of coast.

For these reasons, the approved project raises a substantial LCP conformance issue with respect to the visual and scenic resources policies of the Monterey County LCP.

3. Substantial Issue Conclusion

The County-approved project raises several LCP conformance issues with respect to allowances for shoreline protection devices and the approved project's impact on ESHA and the scenic resources at the Cypress Point overlook. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the certified

Monterey County LCP, and specifically with the policies of the Del Monte Forest LUP and associated IP, and takes jurisdiction over the CDP application for the proposed project.

G. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the Monterey County LCP, specifically the Del Monte Forest Area certified LUP and applicable Implementation Plan sections.³ All Substantial Issue Determination findings above are incorporated herein by reference.

1. ESHA

Applicable Policies

The Monterey County LCP includes strong protections for environmentally sensitive habitat areas (ESHAs) in the Del Monte Forest Area and designates the Monterey cypress community as an ESHA. Any new development within ESHA must serve resource dependent uses and must satisfy several other ESHA policies and standards. Applicable LCP provisions include:

Del Monte Forest Area ESHA Background (in relevant part)

...The California Coastal Act provides unprecedented protection for environmentally sensitive habitat areas and within such areas permits only resource-dependent uses (e.g. nature education and research, hunting, fishing, and aquaculture).

*...In the Del Monte Forest, examples of habitat areas that have historically been determined to meet the definition of ESHA include: **the rare Monterey cypress and Gowen cypress forest communities**, portions of the native Monterey pine forest, the endemic Monterey pine/Bishop pine association, central maritime chaparral, coastal sand dunes, streams and riparian corridors, wetlands, rocky intertidal areas, near-shore reefs, offshore rocks and inlets, the Carmel Bay ASBS, kelp beds, **rookeries and haul-out sites**, important roosting sites, and sites in which sensitive plants and animals associated with these and other habitats are located.*

...Possible threats to the Del Monte Forest's environmentally sensitive species and habitats vary in type and degree of severity. Unrestricted recreational use is probably the greatest single threat to sensitive habitats along the immediate shoreline. Trampling, collecting, and off-road automobile parking have damaged or degraded certain habitats. Alterations to the surface hydrology and removal of natural vegetation are the two most serious threats to the continued viability of forest habitats.

³ As amended in LCP amendment certified by the California Coastal Commission on May 9, 2012 and effective on June 22, 2012.

Del Monte Forest Area LUP Policy 8. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses and development adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the habitat area, and such land use and development shall be sited and designed to prevent impacts that would significantly degrade the habitat areas.

Del Monte Forest Area LUP Policy 20. Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within the area mapped in Figure 2a. All proposed development in this area shall be accompanied by the biological reports described in Policies 12 and 16. All use and development in or adjacent to indigenous Monterey cypress habitat areas shall be compatible with the objective of protecting this environmentally sensitive coastal resource. All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, and must be located within existing hardscaped areas and outside of the dripline of individual cypress trees. Within the perimeter of the identified habitat area for a site, including at a minimum as defined by the driplines of the outermost indigenous Monterey cypress trees on the site, removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering shall be prohibited. On the inland side of 17-Mile Drive, driveways shall be allowed in this area where the driveway does not come within the dripline of individual Cypress trees. Underground residential utilities and fences shall be allowed in this area on the inland side of 17-Mile Drive. Open space conservation and scenic easements are required for all undeveloped areas of a parcel within the Monterey cypress habitat area, and such easements shall be secured consistent with Policy 13.

Del Monte Forest Area LUP Policy 71. Environmentally sensitive habitat areas shall remain undeveloped except for resource-dependent development that will not significantly disrupt habitat values.

Del Monte Forest Area LUP Policy 72. Within their indigenous range, Monterey cypress trees shall be protected to the maximum extent possible. All development that would impact Monterey cypress trees and/or Monterey cypress habitat in this area shall be sited and designed to avoid adverse impacts to individual cypress trees and cypress habitat.

Del Monte Forest Area IP Section 20.147.040.A. (in relevant part)

*... In the Del Monte Forest, examples of habitat areas that have historically been determined to meet the definition of ESHA include: **the rare Monterey cypress and Gowen cypress forest communities**, portions of the native Monterey pine forest, the endemic Monterey pine/Bishop*

*pine association, central maritime chaparral, coastal sand dunes, streams and riparian corridors, wetlands, rocky intertidal areas, near-shore reefs, offshore rocks and inlets, the Carmel Bay ASBS, kelp beds, **rookeries and haul-out sites**, important roosting sites, and sites in which sensitive plants and animals associated with these and other habitats are located.*

Del Monte Forest Area IP Section 20.147.040.C. Development Standards

(1) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, land uses shall be limited to those that are dependent on the resources therein.

(2) Land uses and development adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the habitat area, and such land use and development shall be sited and designed to prevent impacts that would significantly degrade habitat areas. All land use and development shall be set back a minimum of 100 feet from environmentally sensitive habitat areas. Within this setback area, only uses and development that are consistent with the above long-term area maintenance and impact prevention criteria are allowed (e.g., habitat maintenance activities, limited passive recreational access, etc.)

Del Monte Forest Area IP Section 20.147.040.D.2. Monterey Cypress Habitat

(a) Indigenous Monterey cypress habitat is an environmentally sensitive habitat area within the Del Monte Forest, and is presumed present within the area mapped in LUP Figure 2a. All proposed development in this area shall be accompanied by a biological report pursuant to Section 20.147.040.A.

(b) Within their indigenous range (see LUP Figure 2a), Monterey cypress trees shall be protected to the maximum extent possible. All development that would impact Monterey cypress trees and/or Monterey cypress habitat in this area shall be sited and designed to avoid adverse impacts to individual cypress and cypress habitat.

(c) All use and development in or adjacent to indigenous Monterey cypress habitat area shall be compatible with the objective of protecting this environmentally sensitive coastal resource

(d) All improvements (such as structures and driveways, etc.) shall be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the micro-habitat of individual trees, and must be located within existing hardscaped areas and outside of the dripline of individual cypress trees.

Del Monte Forest Area IP Section 20.147.040.D.5(c)(d) Wetland, Shoreline, and Marine Habitats

(c) Development at Cypress Point is restricted to that associated with existing uses (e.g., golf course and golf clubhouse at The Cypress Point Club). Such proposed development at Cypress Point shall be accompanied by the biological report required pursuant to

Section 20.147.040.A. The report shall establish the boundaries of any affected pupping areas, and provide mitigation measures to protect such areas during pupping season, including setbacks, easements, or other restrictions. Such measures shall be made conditions of project approval as needed to protect the pupping area.

(d) Shoreline areas used by harbor seals shall be managed to protect seals during the pupping period from April 1 to June 1, including through limitations on public access to such areas.

Analysis

The project site is located along the bluff, directly adjacent to a Monterey cypress tree in a mapped ESHA⁴ known as the Monterey cypress tree community. Therefore, the project is subject to the relevant ESHA policies of the Del Monte Forest Land Use Plan and associated Implementation Plan. See **Exhibit 2** for project site photos, **Exhibit 5** for project plans, and **Exhibit 9** for a map of the indigenous Monterey cypress habitat.

The Del Monte Forest Area LUP and IP contain several policies regarding new developments adjacent to or within environmentally sensitive habitat areas (ESHAs). First, the policies state that ESHAs shall be protected against any significant disruption of habitat values and that new land uses within ESHAs shall be limited to those that are dependent on the resources therein (*LUP Policy 8 and IP Section 20.147.040.C.1*). Second, development adjacent to ESHAs shall be compatible with long-term maintenance of the habitat area, and such land uses and development shall be sited and designed to prevent impacts that would significantly degrade the habitat area (*LUP Policy 8 and IP Section 20.147.040.C.2*). Third, the indigenous Monterey cypress habitat area is recognized as an environmentally sensitive habitat area within the Del Monte Forest and all proposed development in this area shall be compatible with the objective of protecting this environmentally sensitive coastal resource (*LUP Policy 20 and IP Section 20.147.040.D.2.a*). Fourth, all improvements must be carefully sited and designed to avoid potential damage or degradation of Monterey cypress habitat, including the microhabitat of individual cypress trees, and must be located within existing hardscaped areas and outside of the dripline of individual cypress trees (*LUP Policy 20 and IP Section 20.147.040.D.2.d*). Fifth, no landscape alterations are allowed within a 100-foot ESHA setback/buffer area, unless the alteration is accomplished in conjunction with restoration and enhancement, and no significant disruption of ESHAs will result (*LUP Policy 25 and IP Section 20.147.040.D.5.a*).

The proposed seawall raises several inconsistencies with the ESHA policies of the Monterey County LCP. In this case, the tree is located at the edge of a coastal bluff that is subject to tidal erosion, which is a natural process that might eventually undermine the tree. Even if this natural process results in the tree toppling over and dying, the Applicant's urban forestry consultant acknowledges that dead trees are of great value for wildlife, particularly as nesting sites for birds (see page 8 of **Exhibit 8**). The LCP protects ESHA from development that would adversely affect the resource, but it does not allow LCP-inconsistent structural armoring (see "Shoreline Armoring" section below) of the coast to protect ESHA from natural processes, especially when those processes might enhance other adjacent ESHA, as is the case here. For example, the Del

⁴ See **Exhibit 9**.

Monte Forest ESHA Background Section states that the Monterey cypress habitat is at risk from unrestricted recreational use, trampling, collecting, off-road automobile parking, alterations to the surface hydrology, and removal of natural vegetation, i.e. all manmade impacts. However, erosion from tidal influence that may affect a tree is a natural process that does not qualify as a type of development to which the ESHA protection policies and standards would apply. In other words, the above-cited LCP policies and IP standards are intended to protect Monterey cypress habitat from manmade development that would cause adverse impacts to individual Monterey cypress trees and cypress habitat. Tidal erosion forces are natural processes that do not constitute development and thus the LCP does not require protection of an individual tree from this natural process. Thus, the LCP does not allow for the proposed seawall.

The proposed project is inconsistent with the ESHA protection policies of the Monterey County LCP for several other reasons. First, the seawall (and the sandbags) is not a resource-dependent use and is thus inconsistent with LUP Policy 8 and IP Section 20.147.040.C.1, which only allow resource-dependent uses within ESHA. LUP Policy 8 states that "...new land uses shall be limited to those that are dependent on the resources therein..." The LCP considers "resource dependent uses" to be activities and uses such as "nature education and research, hunting, fishing, and aquaculture" (*LUP ESHA Background*). A seawall is a structure that protects development from shoreline hazards, but does not depend on ESHA for its functionality; it therefore cannot be considered a resource-dependent use, and thus is inconsistent with the LCP.

Second, although the purpose of the seawall is ostensibly to protect a Monterey cypress tree, as proposed it is more likely to adversely impact the tree. The proposed seawall (and the sandbags) would be located over the roots and under the dripline of the Monterey cypress tree, which is expressly not allowed by the Del Monte Forest Area LCP because such the development will degrade and disrupt the microhabitat of the individual cypress tree (*LUP Policy 20 and IP Section 20.147.040.D.2.d*).

The Applicant states that the proposed seawall or the sandbags are necessary to protect ESHA because the Monterey cypress tree buffers noise from humans and vehicles during harbor seal pupping season. Although the beach on the Applicant's property is considered an ESHA because it is a haul-out site for harbor seals during pupping season, the presence of the tree is not necessary to protect this ESHA because the parking lot is closed to public use during seal-pupping season to ensure that the seal pups are not harassed or disturbed by human-generated noise. There is also existing fencing between the overlook's parking lot and the tree and beach that limits noise and disturbance from the overlook and parking lot to the beach, regardless of the presence of the tree.

ESHA Conclusion

The LCP does not allow for development within ESHA for the purpose of protecting a Monterey cypress tree from natural processes. Furthermore, the LCP requires developments within ESHA to be resource-dependent and to avoid degrading the habitat or micro-habitats of the Monterey cypress tree habitat. The proposed seawall (and the existing sandbags) is inconsistent with the above-cited LCP Policies because the LCP does not allow development to protect a Monterey cypress tree from natural processes, the seawall will not serve a resource-dependent use, and it

will degrade and disrupt the microhabitat of the Monterey cypress tree. Thus, the proposed armoring must be denied.

2. Visual and Scenic Resource Protection

Applicable LCP Policies and Standards

The LCP includes a number of protections for visual and scenic resources within the viewsheds of the Del Monte Forest Area. The LCP also provides enhanced protection for LCP-designated visually prominent settings, including the Cypress Point overlook. Applicable LCP policies and IP standards include:

Del Monte Forest Area LUP Policy 47 and IP Section 20.147.070.B.1. Views from designated public access areas and vista points, from Highway 68 and 17-Mile Drive corridors, and of ridgelines as seen from the public viewing areas identified on Figure 3, shall be protected as resources of public importance, and development that could adversely impact such views shall only be allowed where it protects, preserves, and if feasible enhances, such scenic resources. Conservation and scenic easements shall be required as one means of protecting such views in perpetuity.

Del Monte Forest Area LUP Policy 52. Development within the viewshed of visually prominent settings, including those identified on Figure 3, shall include adequate structural setbacks (generally a minimum of 50 feet) from such settings and shall require siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be sited and designed to harmonize with the natural setting and not be visually intrusive.

Del Monte Forest Area LUP Policy 53. Design and siting of structures in public views of scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, including by using appropriate materials that will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening to protect such public views.

Del Monte Forest Area IP Section 20.147.070.B.3. Development within the viewshed of visually prominent settings, including those identified on LUP Figure 3, shall include adequate structural setbacks (generally a minimum of 50 feet) from such settings and shall require siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be sited and designed to harmonize with the natural setting and not be visually intrusive. Design and siting of structures in public views of scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. All structures, including fences, shall be subordinate to and blended into the environment, including by using appropriate construction and materials to achieve

that effect. Where necessary to meet LCP requirements, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening to protect such public views.

Del Monte Forest Area IP Section 20.147.070.B.10. *A minimum setback of 50 feet as measured from the setting shall be maintained for all structures located in all visually prominent settings, including those identified on the Del Monte Forest Land Use Plan Figure 3. Siting and design of structures shall be such that tree removal and alteration to natural landforms is minimized. New structures shall be designed to harmonize with the natural setting and not be visually intrusive.*

Analysis

The Del Monte Forest Area LUP and IP require developments within the viewshed of visually prominent settings to minimize alterations to natural landforms (*LUP Policy 52 and IP Section 20.147.070.B.3*). The Del Monte Forest LUP and IP also require structures to be designed to harmonize with the natural setting, not be visually intrusive, and not detract from scenic values of the forest or shoreline (*LUP Policy 52 and 53 and IP Section 20.147.070.B.3*). The LCP also requires that views from designated public access areas and vista points, such as the Cypress Point overlook (see **Exhibit 9**) be protected as resources of public importance, and development that could adversely impact such views shall only be allowed where it protects, preserves, and if feasible enhances, such scenic resources (*LUP Policy 47 and IP Section 20.147.070.B.1*).

The Applicant states that the Monterey cypress tree is a visual resource and allowing the tree to eventually fail would be a detriment to the viewshed from the Cypress Point overlook. Additionally, the Applicant states that the tree screens the residence on the Applicant's property from the overlook. See **Exhibit 2** for photographs of the tree and project site as seen from the Cypress Point overlook.

The primary view from the Cypress Point overlook is of the rocky shoreline and the ocean. Although the tree can be seen from the overlook, it is located in a more landward location and is not in the primary view of the rocky shoreline and the ocean (see page 2 of **Exhibit 2**). Thus, if the tree fails in the future, the prominent viewshed from the overlook to the ocean will not be greatly affected. It is also true that if the tree fails, the house on the property will become more visible, but again, the house is not in the primary viewshed as seen from the overlook.

The Applicant states that the proposed seawall would be located on a private beach with no public access and would not be visible from the Cypress Point overlook because the tree's branches would screen the seawall. Although the Applicant's proposal minimizes the visual impacts of the seawall by using an artificial rock fascia design that would be colored and texturized to match adjacent bluff color, texture, it would nevertheless be visible from the overlook. The primary view from the overlook is out to the ocean, but the existing sandbags are visible from the overlook (see page 1 of **Exhibit 2**; and Page 2 of **Exhibit 8**), and the proposed seawall would introduce a 5-foot-tall and 50-foot-long man-made structure into this same viewshed. Thus, even as designed to minimize its visual impacts it would still adversely impact the overlook's scenic value, inconsistent with the LCP.

As an alternative to the seawall, the Applicant proposes to leave the existing sandbags in place. However, the sandbags are clearly visible from the Cypress Point overlook (see page 2 of **Exhibit 2**). Thus, this alternative is also inconsistent with the visual and scenic resources of the Del Monte Forest Area LUP and IP because the sandbags are located in a visually prominent setting, are visually intrusive, do not harmonize with the natural setting, and detract from the scenic values of the Del Monte Forest shoreline.

Visual and Scenic Resource Protection Conclusion

The proposed seawall is inconsistent with the Del Monte Forest Area LCP because it would introduce an artificial structure into an important scenic overlook area, diminishing the scenic values of this area. The proposed alternative of leaving the existing sandbags is also inconsistent with the LCP's visual and scenic resource policies because they detract from the scenic values of the shoreline and do not harmonize with the natural setting. Thus, the proposed project must be denied.

3. Shoreline Armoring

Applicable Policies

The policies of the Monterey County Del Monte Forest Area LUP and the associated IP provide guidance for developments in areas of coastal hazards to minimize risks to life and property, and damage to the natural environment.

Del Monte Forest Area LUP Policy 44 and IP Section 20.147.060.B.7. Revetments, seawalls, retaining walls, groins, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. For the purposes of application of this policy, existing structures shall mean existing substantial structures (such as a primary residence, a major road, or a significant facility or access area used by the public). Shoreline armoring and/or other such shoreline altering development shall be allowed to protect existing structures if they are in danger from erosion, and if:

- a) less-environmentally damaging alternatives to such armoring/development are not feasible (including relocation of endangered structures); and*
- b) the armoring/development has been sited, designed, and accompanied by measures to proportionately mitigate any unavoidable negative coastal resource impacts (on views, sand supply, public access, etc.). Development, including land divisions, that would require shoreline armoring and/or other such shoreline alteration over the lifetime of the development shall be prohibited.*

Del Monte Forest Area LUP Policy 26. Alteration of the shoreline shall be prohibited except when required to serve coastal-dependent uses, to protect existing structures and public beaches in danger from erosion, and/or to restore and enhance shoreline habitat.

Analysis

The Applicant states that a seawall is needed to protect the Monterey cypress tree from surface runoff and occasional wave run-up that is exposing the tree's roots (see **Exhibit 2** for photos of

the tree). However, the surface runoff appears to no longer be adversely impacting the tree. According to the Applicant's representative, Dr. Gary Griggs, uncontrolled runoff from the parking lot had contributed significantly to the undercutting of the roots of the Monterey cypress tree (see page 2 of **Exhibit 8**), but this surface runoff issue has been addressed (see page 1 of **Exhibit 8**). However, the tree is still impacted by occasional wave run-up.

The Monterey County LCP, and specifically the Del Monte Forest Area LUP Policy 44 and associated IP Section 20.147.060.B.7, require seawalls to be approved, even if they are otherwise inconsistent with the LCP (as this seawall is - see ESHA and Visual and Scenic Resources sections above), when they serve coastal-dependent uses or protect an existing substantial structure, such as a primary residence, a major road, or a significant facility or access area used by the public. The proposed project meets neither of these criteria.

Although the Monterey cypress tree is a landmark⁵ tree, it is still a tree, not a "structure." Thus it does not meet the first criteria for approving a seawall. Even if one were to consider a tree a structure, a single tree is not equivalent to a substantial existing structure, such as a primary residence or a road. In addition, the proposed seawall does not serve a coastal-dependent use. A tree is not a "use," and even if it were, while Monterey cypress trees grow in the coastal zone, they do not solely grow immediately adjacent to the ocean, so the tree is not coastal dependent. Thus, the Commission is not required under the LCP policies defining when shoreline protection must be allowed, to approve this seawall. And as explained above, it is inconsistent with both ESHA and visual policies of the LCP.

Finally, the seawall consists of alteration of the shoreline which is prohibited under LUP Policy 26 unless it is required to serve a coastal-dependent use, protects an existing structure or public beach or restores or enhances shoreline habitat. The first two criteria are the same as LUP Policy 44 and IP Section 20.147.060.B.7 and are not met here. As discussed in the ESHA section, although the proposed purpose of the project is to protect a tree, the project is expected to have an adverse impact on this tree because the development would be located within the dripline of the tree, so it cannot be viewed as either a habitat restoration or enhancement project. The seawall is also not designed to protect a public beach. Therefore, the proposed development, which would alter the shoreline, is inconsistent with LUP Policy 26.

The Applicant has recently also suggested leaving the existing sandbags in place and foregoing development of the structural seawall (see page 1 of **Exhibit 8**).⁶ However, the existing sandbags also constitute shoreline armoring, which the LCP does not allow to protect a tree, and the sandbags also have visual impacts (see "Visual and Scenic Resource Protection" section above). Thus, this alternative is similarly inconsistent with the LCP.

⁵ Landmark trees are native trees that are 24 inches or more in diameter when measured at breast height, or trees that are visually significant, historically significant, exemplary of their species, and/or more than 1000 years old. (*Del Monte Forest IP Section 20.147.020.H*)

⁶ In correspondence dated March 21, 2008 (**Exhibit 8**), the Applicant stated that he would provide a project alternatives analysis to protect the tree. The Applicant, however, has not provided any other alternatives to the proposed structural seawall except to retain the existing sandbags.

Shoreline Armoring Conclusion

The proposed project is inconsistent with the Monterey County LCP because a tree is not an existing structure that qualifies for a shoreline protection device and the proposed seawall would not serve a coastal-dependent use. The project also does not consist of a habitat enhancement or restoration project, so the proposed shoreline alteration is prohibited by the LCP. Furthermore, the surface runoff causing a significant amount of erosion has been addressed. The Applicant's alternative to the seawall is to leave the existing sandbags in place, but they are still a form of shoreline armoring, which is prohibited due to its impacts on ESHA and visual resources and is not required to be allowed under the LCP shoreline protection policies. Thus to the extent that the Applicant is alternatively proposing retention of the sandbags as part of this project, this, too, must be denied.

H. VIOLATION

On December 8, 2005, the Monterey County Planning Commission approved the Applicant's emergency CDP application (PLN050605) to place temporary sandbags around the Monterey cypress tree in order to protect it from future episodic storm events. The approval was conditioned upon the Applicant applying to the County for a follow-up permanent CDP, diligently pursuing that application by providing necessary information to the County, and receiving County approval within one year of the application's submittal date. Failure to do so would require removal of the sandbags within thirty days of this deadline, unless extended by good cause by the Director of Planning and Building Inspection. The Applicant applied to the County for a follow-up CDP for a permanent seawall on November 28, 2006⁷. The Monterey County Planning Commission approved the CDP application for a seawall on December 12, 2007. However, the Coastal Commission appealed the local decision on January 23, 2008.

Denial of this CDP application pursuant to the staff recommendation will result in the sandbags becoming unpermitted development in this location because they will no longer be permitted pursuant to the County's emergency CDP and are not otherwise authorized. Thus, the Applicant should remove the sandbags. Should the Applicant not remove the sandbags, the County could enforce its LCP to require removal and Commission staff could refer this action to its enforcement unit for possible action pursuant to Chapter 9 of the Coastal Act.

Although development has taken place prior to the Commission's action on this permit application, consideration of this application by the Commission has been based solely upon the policies of the Monterey County LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal development permit.

⁷ It appears that a deadline extension was granted by the Monterey County Planning Commission. However, no indication of an extension is present in the County files.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

1. Final Local Action Notice for Monterey County Emergency CDP PLN050605 (Coastal Commission reference number 3-MCO-05-489).
2. Final Local Action Notice for Monterey County CDP PLN060059 (Coastal Commission reference number 3-MCO-08-003).



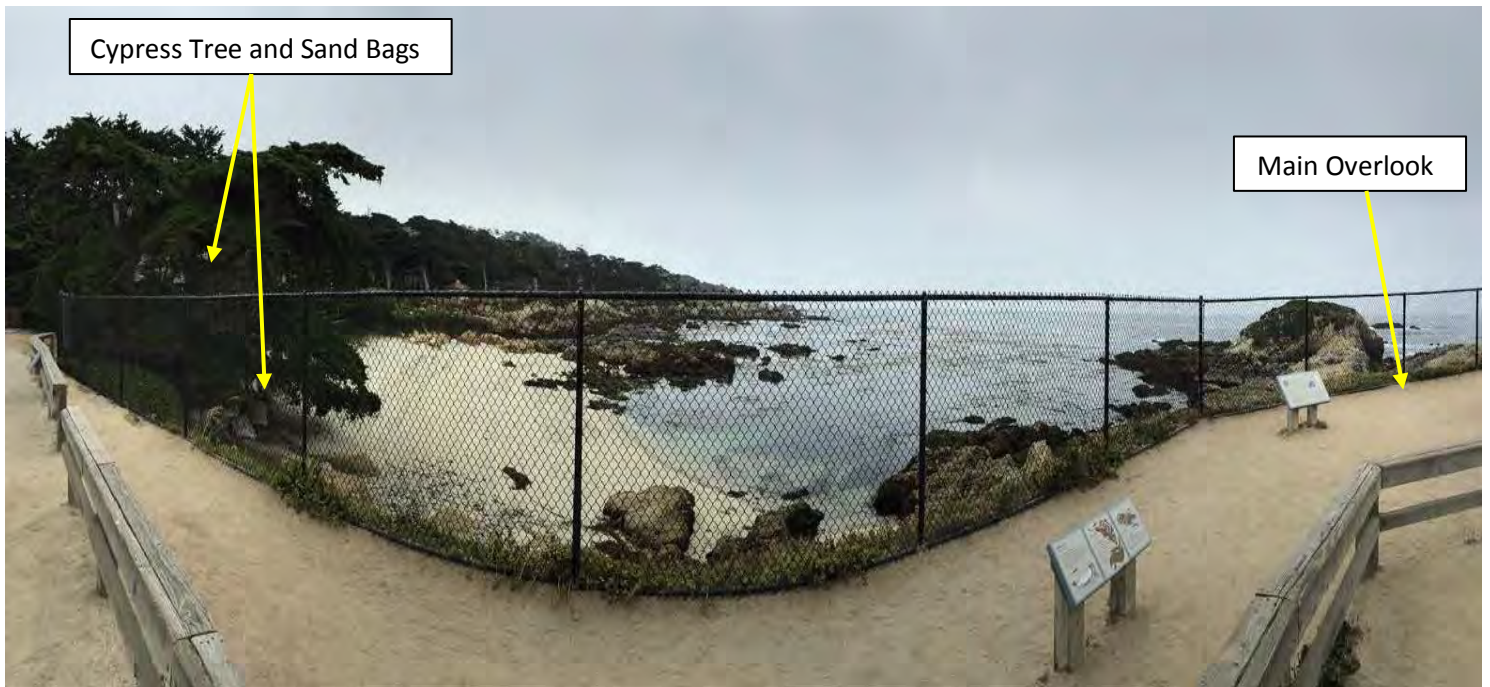
DEL MONTE FOREST



Cypress Tree



Existing Sand Bags



Cypress Tree and Sand Bags

Main Overlook



View from beach, facing north



Facing North





View towards residence, facing South East







MONTEREY COUNTY

PLANNING & BUILDING INSPECTION DEPARTMENT

2620 1st AVENUE MARINA, CA 93933

(831) 883-7500 FAX: (831) 384-3261

DEC 12 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-MCO-05-489

APPEAL PERIOD N/A



NOTICE OF ISSUANCE OF AN EMERGENCY COASTAL DEVELOPMENT PERMIT

PROPERTY OWNER: Peter Read

REPRESENTATIVE: Bud Carney, California Land Planning

PROJECT: Emergency permit to allow the temporary placement of not more than 35 linear feet of sand bags on the seaward side of a landmark Monterey cypress (54" diameter at breast height) for the purpose of protecting the tree from storm surges. The property is located at 3158 Seventeen Mile Drive, Pebble Beach (APN 008-491-013-000), Del Monte Forest Land Use Area, Coastal Zone.

PROJECT ADDRESS: 3158 Seventeen Mile Drive, Pebble Beach

APN: 008-491-013-000

ISSUANCE DATE: December 8, 2005

FILE #: PLN050605

NOTICE AND CAUSE OF EMERGENCY: Pursuant to Chapter 20.79 of the Monterey County Coastal Implementation Plan (Part 1) Peter Read has requested an Emergency Permit to place not more than 35 linear feet of sand bags on the seaward side of a landmark Monterey cypress (54" diameter at breast height) for the purpose of protecting the tree from storm surges.

Summary: The emergency permit would allow for a temporary placement of sand bags to protect the landmark Monterey cypress where it is highly probable that the tree will be lost because of beach erosion. A condition of approval will require that the applicant apply for permanent measures to protect this tree within sixty days of the approval of this emergency application, and that all improvements authorized through this emergency permit be removed if the permanent application is not approved. The improvements allowed through this emergency permit would not constitute a permanent, or long-lasting, alteration of the coast and their installation and removal will not negatively impact the environment. The placement of temporary protection measures will allow the County adequate time to weigh the value of proposed measures for preserving this landmark Monterey cypress versus the potential negative

impacts of allowing a permanent shoreline alteration which is frequently found to be inconsistent with County policy.

According to a September 8, 2005 letter from Stephen Staub, of Staub Forestry & Environmental Consulting, "the stability and health of the [landmark cypress] tree are threatened by exposure of its roots on its seaward side due to erosion of the native soil bank... The health and stability of this significant tree, thought still largely intact, are at great risk if there is any further erosion of the existing soil bank. Since such erosion normally occurs during the winter storm season, I strongly recommend immediate action to protect the exposed rooting zones ..."

This emergency situation was verified by a November 2, 2005 site visit by staff of the Planning & Building Inspection Department.

The Monterey cypress forest community in its indigenous range is considered environmentally sensitive habitat (ESHA) [Del Monte Forest LUP Appendix A and Figure 2]. The tree that is the subject of this permit is a Monterey cypress in a forested area within the native range of Monterey cypress. DMF LUP Policy 8 states: "*Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values.*"

The Del Monte Forest Land Use Plan includes cypress trees in the Cypress Point/Pescadero Point area as landmark trees [DMF LUP Policy 37]. The Del Monte Forest Coastal Implementation Plan additionally defines native trees which are 24 inches or more in diameter and visually significant trees as landmark trees. [DMF CIP §20.147.020.O] The tree that is the subject of this permit is a native Monterey cypress just south of Cypress point (toward Pescadero Point) which has been measured at 54 inches in diameter. It is immediately adjacent to, and visible from, a "17 Mile Drive vista point and designated coastal access location" [DMF LUP Figures 2C and 16] DMF LUP Policy 37 states: "*Landmark trees defined as visually, historically, or botanically significant specimens shall be protected as representative of the Del Monte Forests natural heritage.*"

In general the DMF LUP puts an emphasis on forest resources, and in particular Monterey cypress trees. DMF LUP Policy 32 states: "*Where LUP objectives conflict, preference should be given to long-term protection of the forest resource. ... Forest-wide specific criteria for removal of Del Monte Forests native tree species are as follows: Monterey cypress: within its indigenous range, removal of any size tree will ordinarily be allowed only in cases where life, property, or existing access is immediately threatened, or where a diseased tree is determined by a qualified professional forester to represent a severe and serious infection hazard to the rest of the forest.*" Additionally DMF LUP Policy 75 states: "*Within their indigenous range, Monterey cypress trees shall be protected to the maximum extent possible.*"

Monterey cypress is a California Native Plant Society List 1B species. The plants of List 1B are rare throughout their range. All but a few are endemic to California. All of them are judged to be vulnerable under present circumstances or to have a high potential for becoming so because of their limited or vulnerable habitat, their low numbers of individuals per population (even though

they may be wide ranging), or their limited number of populations. Most of the plants of List 1B have declined significantly over the last century.

While many policies in the land use plan encourage the preservation of Monterey cypress other policies discourage shoreline alterations. DMF LUP Policy 47 states, in its entirety: *"Alteration of the shoreline, including diking, dredging, and filling, and placement or erection of shoreline protection devices (seawalls, riprap etc.) shall not be permitted unless necessary to protect existing development or recreational facilities and beaches accessible to the public. For the purposes of application of this policy, existing development shall mean substantial structures such as a primary residence, road, or other facility usable by the public."*

DMF LUP Policy 29 states that *"Alteration of the shoreline shall not be permitted except when required to serve coastal-dependent uses, to protect existing structures, or to restore and enhance the habitat."*

A biological assessment survey prepared by Dale Hameister Biological Consulting dated December 1, 2005 found that the temporary installation of sand bags will not significantly impact native vegetation or wildlife. Mr. Hameister found that the vegetation around the tree contains mostly non-native species and that the two plant species primarily disturbed are the non-natives searocket and hottentot fig. The survey noted that the small cove near the project area is a known pupping beach for harbor seals and suggested a condition requiring that no work be done on site while there are seals on the beach. Regarding the sand used in the bags, Mr. Hameister recommended that the sand used be free of vegetative material to insure that no invasive non-natives species be introduced. The recommendations contained in this survey have been made conditions of project approval.

1. **FINDING:** An emergency situation exists which requires more expeditious action than the normal discretionary permit procedure.

EVIDENCE:

- a. September 8, 2005 letter from Stephen Staub, of Staub Forestry & Environmental Consulting,
- b. Site visit and photographs by Planning and Building Inspection Department staff on November 2, 2005, and
- c. Plans, materials, and photographs contained in project File No. PLN 050180.

2. **FINDING:** The work authorized by the Emergency Permit is the minimum amount of work required to mitigate the emergency situation.

EVIDENCE:

- a. While the applicant had originally proposed this project they proposed a retaining wall which would have permanent features,
- b. The "sand bags" can be easily put in place and removed,
- c. The alternative of cabling the trees to protect it was rejected as impractical due to the size of the tree, and
- d. The sand which will be placed in the bags will be from either the Lapis Sand Quarry, located on the Marina beach or Grantierock's Aromas quarry. These

Exhibit 3

A-3-MCO-08-008

3 of 21

sands have been examined by Dale Hameister, biologist, and it has been determined that the release of these sands on the beach will not be a negative impact on the environment.

3. **FINDING:** The work authorized by the Emergency Permit (PLN050605) is consistent with the provisions of the Monterey County Local Coastal Program.

EVIDENCE:

- a. The site is located in the Del Monte Forest Land Use Plan.
- b. Del Monte Forest LUP Policy 8 states: "*Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values.*" This tree is a part of a stand of Monterey cypress within its native stand, which is classified as an environmentally sensitive habitat. This emergency permit is consistent with this policy.
- c. Del Monte Forest LUP Policy 37 states: "*Landmark trees defined as visually, historically, or botanically significant specimens shall be protected as representative of the Del Monte Forest's natural heritage.*" This tree meets the definition of a landmark tree. This emergency permit is consistent with this policy.
- d. Del Monte Forest LUP Policy 32 states: "*Where LUP objectives conflict, preference should be given to long-term protection of the forest resource.*" This emergency permit is consistent with this policy.
- e. Del Monte Forest LUP Policy 75 states: "*Within their indigenous range, Monterey cypress trees shall be protected to the maximum extent possible.*" This tree is within the indigenous range." This emergency permit is therefore consistent with this policy.
- f. Del Monte Forest LUP Policy 47 states, in its entirety: "*Alteration of the shoreline, including diking, dredging, and filling, and placement or erection of shoreline protection devices (seawalls, riprap etc.) shall not be permitted unless necessary to protect existing development or recreational facilities and beaches accessible to the public. For the purposes of application of this policy, existing development shall mean substantial structures such as a primary residence, road, or other facility usable by the public.*" The emergency permit will allow only temporary improvements which will not constitute a permanent, or long-term, alteration. The granting of the emergency permit will allow the County time to adequately review the application of this policy relative to other applicable land use plan policies.
- g. Del Monte Forest LUP Policy 29 states, "Alteration of the shoreline shall not be permitted except when required to serve coastal-dependent uses, to protect existing structures, or to restore and enhance the habitat." The emergency permit will allow only temporary improvements which will not constitute a permanent, or long-term, alteration. The granting of the emergency permit will allow the County time to adequately review the application of this policy relative to other applicable land use plan policies.
- h. A Biological Assessment Survey was prepared by Dale Hameister Biological Consulting on December 1, 2005. This report concluded that "the project will

have no significant impacts to biological resources.” Hameister’s recommendations related to harbor seals and the source of the sand to be used in the sand bags have been made conditions of project approval.

- i. Following a review of project plans and a November 2, 2005 staff site visit staff has determined that the location of the sand bags will not be visually intrusive to people viewing the site from the adjacent Seventeen Mile Drive vista point due to the partial cover provided to the location of the sand bags by the tree and provided that the sand bags are painted to match the color of the adjacent sand. The color of the sand bags is assured by a condition of project approval.
- j. Staff has reviewed the project design and has incorporated appropriate conditions of approval that provide resource and environmental protection measures consistent with Coastal Zone policies contained in the Del Monte Forest Land Use Plan and Del Monte Forest Coastal Implementation Plan

4. **FINDING:** The establishment, maintenance or operation of the use or structures approved by the Emergency Permit will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such approved use, or, be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.

EVIDENCE:

- a. The work authorized by the Emergency Permit involves the placement of sand bags on the seaward side of a threatened landmark Monterey cypress.
- b. Evidence is based on the above findings, conditions of approval for this Emergency Permit, and the application materials in File No. PLN050605.

5. **FINDING:** This emergency activity is exempt from the requirements of the California Environmental Quality Act (CEQA).

EVIDENCE:

- a. Section 15269(c) is a Statutory Exemption for specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term. The work authorized by the Emergency Permit is necessary to protect the landmark Monterey cypress located at 3158 Seventeen Mile Drive, Pebble Beach.
- b. The work authorized by the Emergency Permit is a temporary protection measure required to protect a landmark Monterey cypress, which is a portion of environmentally sensitive habitat.
- c. Permanent protection measures would only be authorized following application and approval of a coastal development permit for such work.
- d. Finding and Evidence No. 1; File No. PLN050605.

6. **FINDING:** **APPEALABILITY** - The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE:

- a. Section 20.86.030 of the Monterey County Coastal Implementation Plan.

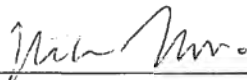
Exhibit 3

A-3-MCO-08-008

5 of 21

b. Section 20.86.080.A.1 of the Monterey County Coastal Implementation Plan.

DETERMINATION: Based on these facts, the Zoning Administrator, as authorized by the Director of Planning and Building Inspection, grants an Emergency Coastal Development Permit subject to the nine (9) conditions shown on the attached matrix:



Mike Novo
Zoning Administrator
December 8, 2005

cc: California Coastal Commission; Planning Commission; State Lands Commission; Scott Hennessey; U.S. Army Corp. of Engineers; Monterey County Water Resources Agency; California Department of Fish & Game; U.S. Fish and Wildlife Services; Monterey Bay National Marine Sanctuary; Owner/Applicant, Project Engineer.

Exhibits:

- A. Conditions of Approval (Matrix)
- B. Project Plans
- C. Emergency Permit Letter of Application

Exhibit A
Monterey County Planning and Building Inspection
Conditions of Approval

Project Name: *Read*
File No: PLN050605
APNs: 008-491-013-000
Approval by: *Zoning Administrator* **Date:** *December 8, 2005*

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
---------------------------	------------------	--	--	--	--------	--

1		PBDM29 - SPECIFIC USES ONLY This Emergency Permit (PLN050605) allows the temporary placement of not more than 35 linear feet of sand bags on the seaward side of a landmark Monterey cypress (54" diameter at breast height) for the purpose of protecting the tree from storm surges. The property is located at 3158 Seventeen Mile Drive, Pebble Beach (APN 008-491-013-000), Del Monte Forest Land Use Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (PBI)	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	
---	--	--	--	---------------------	--	--

2		<p>PBD025 - NOTICE-PERMIT APPROVAL</p> <p>The applicant shall record a notice which states: "A permit (Resolution PLN050605) was approved by the Monterey County Zoning Administrator for Assessor's Parcel Number 008-491-013-000 on December 8, 2005. The permit was granted subject to nine (9) conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (PBI)</p>	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to Start of Work	
3		<p>CONSTRUCTION PLAN (NonStandard)</p> <p>Prior to start of construction, the applicant shall submit revisions to the 11/22/2005 "Seawall Plan" and "Seawall Cross Sections" (Haro, Kasunich and Associates) and a construction plan for the project, for the review and approval of the Planning & Building Inspection Director. The plan and section revisions should reflect the extent of the sand bags which will not exceed 35 linear feet and the dimensions of the sandbags to be used. The construction plan shall describe the construction methodology (staging area, turning, access, etc.) and contains measures to ensure that the impacts to the shoreline and habitat adjacent to the project site in general are minimized.</p> <p>2. The staging area for the construction equipment shall be sited on the adjacent parking lot or other disturbed areas away from natural vegetation.</p> <p>b. Access to the construction area shall be as shown in the plans. (PBI)</p>	The permittee shall submit weekly activity reports, including photographs and activity logs where applicable, that document how all construction practices and recommended mitigations measures were followed during project construction and these conditions. Said reports shall be submitted to the Director of Planning and Building Inspection each Monday.	Owner/ Applicant	Submittal of Plan prior to start of construc- tion	Activity reports during construc- tion

4		CONSTRUCTION SITE (NonStandard) The construction site shall be maintained in good condition during construction (clean up spills immediately, keep materials covered, dispose of all debris/waste materials appropriately, etc.). (PBI)	The permittee shall submit weekly activity reports, including photographs and activity logs where applicable, that document how all construction Best Management Practices and conditions were followed during project construction. Said reports shall be submitted to the Director of Planning and Building Inspection each Monday.	Owner/ Applicant	During construction	
5		SEAL PROTECTION (NonStandard) In order to protect seals during pupping season, typically from April through July, no work shall be done on site while there are seals on the beach. (PBI)	Certification from the contractor shall be made that this condition has been implemented. If any work is to be conducted between April and July certification must come from a biologist on the County's list of biologists.	Owner/ Applicant/ Contractor/ Biologist	Prior to completion of work	
6		COLOR OF SAND BAGS (NonStandard) The sand bags will be colored to match the stration of the beach and bank upon which they are located. (PBI)	Photographic evidence shall be provided for the review and approval of the Director of Planning and Building Inspection.	Owner/ Applicant	Prior to completion of work	
7		CONTENT OF SAND BAGS (Non-Standard) The sand to be used in the sand bags shall be free of vegetative material. (PBI)	Certification from the supplier of the sand shall be made that the sand used in the sand bags is free of vegetative material.	Owner/ Applicant/ Supplier	Prior to Start of Work	
8		COMPLETION WITHIN 30 DAYS (NonStandard) All work is to be completed within 30 days of the issuance of this permit. This permit shall expire within 30 days from the date of issuance of this emergency permit. (PBI)	Evidence that the work has been completed must be provided.	Applicant/ owner	Noncompliance subject to stop work order	

9	<p>PERMANENT COMBINED DEVELOPMENT PERMIT (NonStandard)</p> <p>The applicant shall apply for, and obtain, a Monterey County Coastal Development Permit and Design Approval for permanent protection measures within sixty (60) days of the approval of this application and will diligently pursue this application in providing information requested to process this application. If this permanent permit is not approved within one year of application the applicant shall remove the emergency work authorized by such permit in its entirety within thirty (30) days of said date, unless extended for good cause by the Director of Planning and Building Inspection. (PBI)</p> <p>END OF CONDITIONS</p>	Submit application materials to Department	Applicant/ Owner	Noncompliance subject to permit revocation	

MONTEREY COUNTY

PLANNING & BUILDING INSPECTION DEPARTMENT

2620 1st AVENUE MARINA, CA 93933

(831) 883-7500 FAX: (831)384-3261



EMERGENCY PERMIT ACCEPTANCE FORM

TO: County of Monterey
Planning and Building Inspection Department
168 West Alisal Street, 2nd Floor
Salinas, CA 93901

RE: Emergency Coastal Development Permit (PLN050605)

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return it to the County Planning and Building Inspection Department prior to the issuance of the grading permit.

I/We, the undersigned, hereby understand all of the conditions of the emergency permit (PLN050605) being issued to me and agree to abide by them.

I/We further understand that the emergency work is TEMPORARY and that a regular Coastal Development Permit is necessary to make it a permanent installation. I/We agree to apply for a regular Coastal Development Permit by December 31, 2006. If this permanent permit is not approved within one year of application the applicant shall remove the emergency work authorized by such permit in its entirety within six (6) months of said date, unless extended for good cause by the Director of Planning and Building Inspection. If the application is not submitted by December 31, 2006 the improvements authorized by this permit shall be removed no later than March 2007.

In exercising this emergency permit, the permittee agrees to hold the County of Monterey harmless from any liabilities for damage to public or private properties or personal injury that may result from this project.

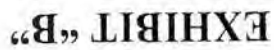
We acknowledge that the issuance of this permit is subject to appeal pursuant to Chapter 20.86 of the Zoning Ordinance, pursuant to Section 20.79.050.

Signature of property owner or
Authorized representative

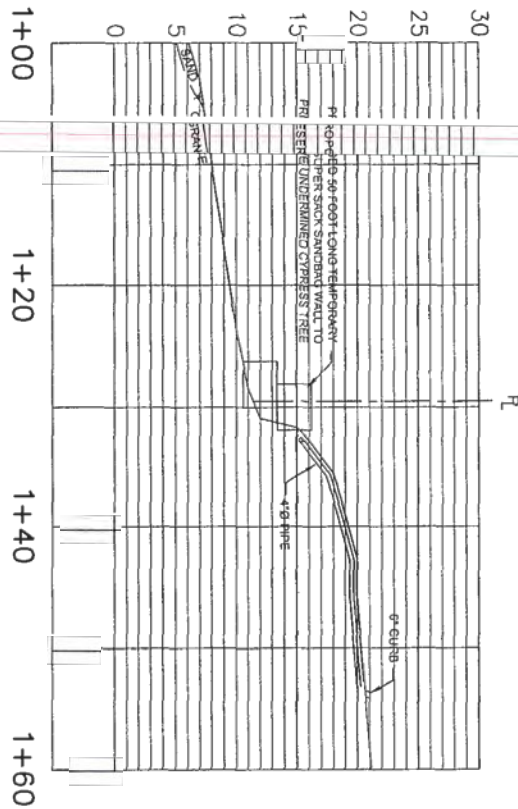
Name

Address

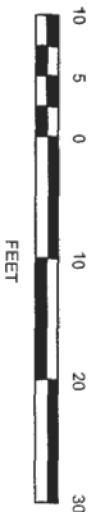
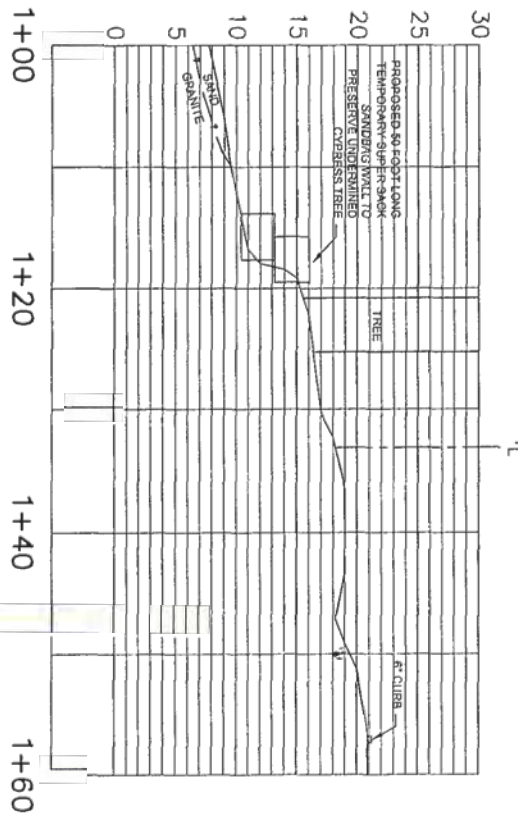
Date



SECTION 1



SECTION 2



SCALE: 1 INCH = 10 FEET H=V

HARO, KASUNICH AND ASSOCIATES, INC.
CONSULTING CIVIL, GEOTECHNICAL & COASTAL ENGINEERS
118 EAST LAKE AVE., WATSONVILLE, CA 95076 (831) 722-4175

**EMERGENCY CYPRESS TREE PRESERVATION
SUPER SACK SANDBAG SEAWALL CROSS SECTIONS**
3158 SEVENTEEN MILE DRIVE, PEBBLE BEACH, CA
MONTEREY COUNTY A.P.N. 008-491-13

Exhibit 3

EXHIBIT "C"

CALIFORNIA LAND PLANNING

Anthony J. "Bud" Carney, AICP
347 Arthur Ave.
Aptos, CA 95003
831-688-3168

RECEIVED

October 17, 2005

OCT 21 2005

Jeff Main, Supervising Planner
Planning & Building Inspection Department
168 West Alisal St., 2nd Floor
Salinas, Ca 93901

MONTEREY COUNTY
PLANNING & BUILDING
INSPECTION DEPT.

RE: CYPRESS TREE EMERGENCY COASTAL DEVELOPMENT PERMIT

Dear Mr. Main:

Please accept this letter as an application for an Emergency Coastal Development Permit, which if approved will save a significant Environmentally Sensitive Habitat Area - Cypress Tree located on property immediately adjacent to the Cypress Point overlook, at 3158 17-Mile Drive, APN 008-491-13, Pebble Beach, Monterey County, California. This Cypress Tree is about 100 years old, is more than 4 feet in diameter, and is facing eminent threat of falling over because a significant area of the root system has been badly damaged from erosion caused by a combination of poorly designed drainage on the adjacent Cypress Point overlook parking area, and winter storm activity.

The purpose of the permit is to allow the property owner to construct a retaining wall at the base of the Cypress Tree (See Plans, Attachment 1), which when completed will prevent further erosion of tree's root system (See Attachment 2 - Photos), and will allow the tree to continue to live. If a retaining wall is not constructed as soon as possible the Cypress Tree may not make it through this winter (See Attachment 3 - Steve Staub Letter & Attachment 4 - Haro & Kasunich letter).

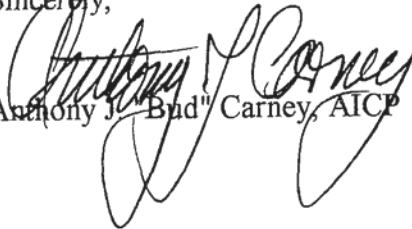
This significant Cypress Tree acts as a public amenity that contributes towards screening of the residential unit on the Read property from the Cypress Point overlook. Lose of this very old, and well-defined significant Cypress Tree would adversely impact the scenic beauty that the Cypress Point overlook was designed to provide.

If you have any questions please call me at 818-8914.

Jeff Main

P.2

Sincerely,




Anthony J. "Bud" Carney, AICP

ENC ATTACHMENT 1 - Plans
ATTACHMENT 2 - PHOTOS
ATTACHMENT 3 - STEVE STAUB LETTER
ATTACHMENT 4 - HARO, KASUNICH AND ASSOCIATES LETTER

Cover Page

1. Biological Assessment Survey for the Emergency Permit on Peter Read Property

2. The report was prepared by Dale Hameister.


12/01/2005

Dale Hameister Biological Consulting
P.O. Box 108
Monterey, CA 93940

Phone: (831) 238-0676

3. The survey was conducted on November 30, 2005.

4. The report was prepared for: Peter Read
P.O. Box 999
Pebble Beach, CA 93953

in care of: Anthony "Bud" Carney
California Land Planning
347 Arthur Ave
Aptos, CA 95003

Phone: (831) 422-9619

Monterey County File Number: PLN050180

5. Location: 3158 17 Mile Drive
Pebble Beach, CA

APN: 008-491-013

6. Summary

The proposed project consists of the instillation of a temporary sand bag wall to protect a large cypress tree (more than 4' in diameter) growing on the Read Property immediately below the Cypress Point Scenic Stop on 17 Mile Drive. The purpose of my survey to insure that the project would not negatively impact any sensitive biological resources. There were no sensitive species found in the vicinity of project site. The project will have no significant impacts to biological resources.

I. Introduction

This biological assessment report was prepared to document and assess existing biological resources within area of the proposed temporary sandbag wall (APN 008-491-013). The survey was adequate to assess the potential impact to any sensitive habitat.

Location: The project site is located at 3158 17 Mile Drive in Pebble Beach, CA.

II. Regional Setting

The project area is located at the short coastal bluffs on the far western point of the Read Property. To the north of the project site is the parking lot for the Cypress Point Lookout. South and to the west is a cove and beach sand. To the east is the Read residence.



III. Methods

The *California Natural Diversity Database* (CDFG 2002) and the *California Native Plant Society's Inventory of Rare and Endangered Plants of California* (CNPS 2001) were used to identify known or potential populations of sensitive plant and animal species in the vicinity of the project site prior to surveys.

Dale Hameister conducted a biological survey on November 30, 2005. The area around the tree where the sandbag wall is to be installed was inspected for sensitive species or communities and a lists of plant species observed was compiled. Plant identification was validated using *The Jepson Manual* (Hickman 1993) and *An Illustrated Guide to the Flowering Plants of Monterey County* (Matthews 1997).

IV. Vegetation

The vegetation around the tree contains mostly non-native species. The majority of the area to be impacted contains no vegetation, consisting of eroded slope, beach sand, and driftwood. The plant species that will be disturbed by the project are European searocket (*Cakile maritima*) and hottentot fig (*Carpobrotus edulis*) which are both non-native. The tree to be protected is a Monterey cypress, a California Native Plant Society (CNPS) List 1B plant which is a watch list of potentially rare plants. There will be no significant impact to sensitive species or habitat by the proposed sand bag wall.

Table 1:

Vascular Plants found in the vicinity of the proposed sand bag area on the Read Property November 30, 2005. All the plants on this list will not be impacted as there were very few plants in the area to be disturbed.

Scientific Name	Common Name
<i>Bromus diandrus</i> *	Rip-gut Brome
<i>Cakile maritima</i> *	European Searocket
<i>Carpobrotus edulis</i> *	Hottentot Fig, Ice plant
<i>Cupressus macrocarpa</i> 1b	Monterey Cypress
<i>Distichlis spicata</i>	Salt Grass
<i>Erigeron glaucus</i>	Seaside Daisy
<i>Plantago coronopus</i> *	Cut-leaf Plantain
<i>Tetragonia tetragonioides</i> *	New Zealand Spinach

* Non-native species

1B - California Native Plant Society (CNPS) List 1B

V. Wildlife

There is no impact expected by the installation of the sand bag wall. No vertebrate wildlife species were found in the area to be impacted. Areas under fallen logs and driftwood near the tree were investigated to determine if there were any potential habitat for salamanders or other amphibians. It was found that because of the occasional inundation of the area with storm waves, the soil and beach sand was too salty to provide habitat for any amphibians seeking refuge.

The small cove near the project area is a know pupping beach for harbor seals (*Phoca vitulina*). To ensure that there is no disturbance to the seal mothers and their pups, no work shall be done on site while there are seals on the beach.

Table 2:

Wildlife observed in the vicinity of the proposed sand bag area on the Read Property November 30, 2005.

Birds

Scientific Name	Common Name
<i>Ardea alba</i>	Great Egret
<i>Junco hyemalis</i>	Dark-eyed Junco
<i>Larus californicus</i>	California Gull
<i>Phalacrocorax auritus</i>	Double-crested Cormorant
<i>Sayornis nigricans</i>	Black Phoebe

Mammals

Scientific Name	Common Name
<i>Phoca vitulina</i>	Harbor Seal

VI. Sand Source

It has been proposed that the sand to be used in the sand bag wall will be emptied onto the beach after the winter and spring storms. The sand to be used should be free of vegetative material. This will ensure that no invasive non-native species such as European dune grass (*Ammophila arenaria*) gets introduced to the site.

VII. Conclusion

There were no sensitive species found in the vicinity of project site. The project will have no significant impacts to biological resources.

*Staub Forestry &
Environmental Consulting*



December 1, 2005

Mr. Anthony J. "Bud" Carney
347 Arthur Avenue
Aptos, CA 95003

**MEMORANDUM ON ADEQUACY OF CABLING
AS EMERGENCY PROTECTION FOR LARGE CYPRESS
ON THE READ PROPERTY IN PEBBLE BEACH**

You forwarded to me a request from County Planner Thom McCue for an explanation as to why the tree can not be "cabled" in order to protect it, as an alternative to the sand bags.

As described in my earlier letter, the imminent threat to the tree's health and stability is loss of soil and roots on its seaward side. Cabling would do nothing to decrease that threat and so I consider it an inappropriate treatment. Cabling is generally used to mitigate structural defects in a tree's trunk or scaffold limbs or to provide support for newly planted larger trees with limited rootballs that have yet to grow into surrounding native soil. Neither of these conditions obtains in this case. Furthermore, there is no appropriate location to cable from on the southeast to southwest sides where the strongest storm winds come from.

Pruning to promote healing of some broken limbs was suggested in my earlier letter to promote healing and tree health. Since some low and broken limbs will need to be removed to facilitate placement of emergency sandbag protection, I also recommend having a qualified arborist evaluate the desirability of modest additional pruning to reduce windsail and so enhance the tree's stability.

Please let me know if I can be of further assistance in this matter.

Sincerely,

Stephen R. Staub
Registered Professional Forester #1911
ISA Certified Arborist #WE-6739A

Exhibit 3

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901



**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-MCO-08-003

APPEAL PERIOD 1/9 - 1/23/2008

(831) 755-5025

FAX (831) 757-9516

FINAL LOCAL ACTION NOTICE

Date: January 4, 2007
To: California Coastal Commission, Central Coast District Office
Applicant/Representative: Bud Carney
From: Monterey County Planning and Building Inspection Department
Subject: Final Local Action on Coastal Permit
JAMES PETER READ JR. TR ET AL

RECEIVED

JAN 08 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please note the following **Final Monterey County Action** for the following coastal development permit type:

- ☒ CDP/CAP ☐ CDP Amendment ☐ Extension ☐ Emergency CDP
☐ Exemption ☐ Exclusion ☐ Other:
☐ all local appeals processes have been exhausted for this matter
☐ The project includes an amendment to the LCP

Project Information

Application #: PLN060059
Project Applicant: James Peter Read Jr. Tr Et Al
Applicant's Rep: Bud Carney, Agent
347 Arthur Avenue
Aptos, CA 95003

Project Location: 3158 17 Mile Drive, Pebble Beach

Assessor's Parcel Number: 008-491-013-000

Project Description: The project consist of:

COMBINED DEVELOPMENT PERMIT CONSISTING OF: 1) A COASTAL DEVELOPMENT PERMIT FOR THE DEVELOPMENT AND PERMANENT INSTALLATION OF A SEA WALL WITHIN 50 FEET OF THE EDGE OF A COASTAL BLUFF; 2) A COASTAL DEVELOPMENT PERMIT TO ALLOW DEVELOPMENT WITHIN 100 FEET OF AN AREA CONTAINING SENSITIVE HABITAT; 3) A COASTAL DEVELOPMENT PERMIT TO ALLOW DEVELOPMENT ON SLOPES GREATER THAN 30%; 4) A COASTAL DEVELOPMENT PERMIT FOR DEVELOPMENT WITHIN 750 FEET OF A KNOWN ARCHAEOLOGICAL RESOURCE. THE PROPERTY IS LOCATED AT 3158 17 MILE DRIVE PEBBLE BEACH (ASSESSOR'S PARCEL NUMBER 008-491-013-000), WEST OF 17 MILE DRIVE, DEL MONTE FOREST AREA, COASTAL ZONE.

Exhibit 4

A-3-MCO-08-008

1 of 18

Final Action Information

Final Action Date:

Final Action: ☒ Approved w/conditions ☐ Approved w/o conditions ☐ Denied

Final Action Body: ☐ Zoning Administrator ☒ Planning Commission ☐ Board of Supervisors ☐ Staff (ministerial)

For Coastal Commission Use Only

MCO

Reference #:

FLAN received:

Appeal period:

Final Local Action Notice Attachments Included

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Adopted Staff Report	√		
Adopted Findings	√		
Adopted Conditions	√		
Site Plans	√		
Elevations	√		
Location/Vicinity Map	√		
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
CEQA Document(s)			(exempt) There is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment.
Geotechnical Report(s)	√		Geological Report, dated March 2004
Biotic Report(s)	√		Biological Report, dated Jan. 21, 1997
Forest Management Plan(s)	√		Forest Management Plan, date April 1, 1993
Other: Archaeological	√		Archaeological Report, dated May 8, 1987 Archaeological Report, dated July 27, 1987

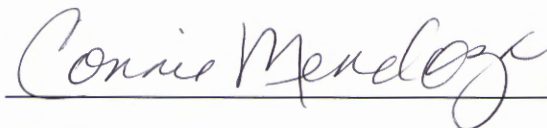
Coastal Commission Appeal Information

Monterey County has determined that this Final Local Action is:

- ☐ **NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.
- ✓ **APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

Submitted by

Signature:



Name: Connie Mendoza
Title: Land Use Technician
Phone/Fax: 831-755-5184 / 831-757-9516 (fax)
email: mendozac@co.monterey.ca.us

Planner: Ramon Montano
Title: Associate Planner
Phone/Fax: 831-755-5169 / 831-757-9516 (fax)
Email: montanor@co.monterey.ca.us

PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RECEIVED

JAN 08 2008

RESOLUTION NO. 07056

A. P. # 008-491-013-000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FINDINGS AND DECISION

In the matter of the application of
JAMES PETER READ JR ET AL (PLN060059)

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Combined Development Permit, consisting of: 1) a Coastal Development Permit for the development and permanent installation of a sea wall within 50 feet of the edge of a coastal bluff; 2) a Coastal Development Permit to allow development within 100 feet of an area containing sensitive habitat; 3) a Coastal Development Permit to allow development on slopes greater than 30%; 4) a Coastal Development Permit for development within 750 feet of a known archaeological resource. The property is located at 3158 17 Mile Drive Pebble Beach (Assessor's Parcel Number 008-491-013-000), West of 17 Mile Drive, Del Monte Forest area, Coastal Zone, came on regularly for hearing before the Planning Commission on December 12, 2007.

WHEREAS: Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING: CONSISTENCY** – The project as described in Condition No.1 and as conditioned, is consistent with policies, requirements, and standards of the Monterey County General Plan, certified Monterey County Local Coastal Program (LCP). The LCP for this site consists of the Del Monte Forest Land Use Plan, Coastal Implementation Plan (Part 3), and the Coastal Implementation Plan Appendices (Part 6); Monterey County Coastal Implementation Plan (Part 1) or Zoning Ordinance (Title 20), which designates this area as appropriate for the proposed development.

- EVIDENCE:** (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of the application. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.
- (b) The property is located at 3158 Seventeen Mile Drive (Assessor's Parcel Number 008-491-013-000) in Pebble Beach, Del Monte Forest Land Use Plan, Coastal Zone. Low Density Residential/ two (2) acres per unit with Design Control Overlay, in the Coastal Zone ("LDR/2-D (CZ)"). The project for the development of a 50 foot long, rock faced retaining wall (Sea Wall) is a conditionally allowed use in accordance with Section 20.14.030 (E). & 20.66.020. The proposed sea wall will require a small portion of the sea wall to cross over slopes in excess of 30%. The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 20 and is therefore suitable for the proposed development.
- (c) On January 8, 2007, the owner submitted an application requesting to allow the development of a 50 foot long, rock faced retaining wall (Sea Wall) for the purpose of preventing the loss of a 54 inch land mark Monterey Cypress pursuant

to Section 20.14.030 (E) & 20.66.020. this development proposal is considered non exempt and requires a Coastal Development Permit (CDP) to allow development within 100 feet of environmentally sensitive habitat (Monterey Cypress & shore line area used by harbor seals); and to allow the proposed sea wall to traverse a small portion of slopes in excess of thirty percent. Additionally a CDP is required in order to develop within 750 feet of a known archeological site, the subject property is identified as having a potential remains however the Archaeological report indicated no significant remains were found on the site.

- (d) The project is consistent with the Coastal Act as enumerated in the Section 30001.5 of the Coastal Act and as set forth in the Del Monte Forest Land Use Plan to establish a policy context. Goals 1) to protect, maintain, and, where feasible, enhance and restore the overall quality of the Coastal Zone environment and its natural manmade resources.
- (e) The project is consistent with the following development standards as required by Section 20.14.060 of the Monterey County Zoning Ordinance (Title 20) for those areas designated Low Density Residential, 2 acres per unit.
 - Height Allowed height measured from the average natural grade for accessory structure is 15 feet. The proposed retaining wall (Sea Wall) measures approximately 5 feet at the highest point.
 - Setbacks The proposed retaining wall (Sea Wall) is above mean high tide, development less than six feet in height is not required to maintain setback under the site development standards established in Section 20.14.060.
 - Building Site Coverage Maximum allowed building site coverage within the LDR zoning designation is 15%, the subject property maintains site coverage of 7.6 percent. The proposed retaining wall (Sea Wall) will increase the site coverage by 300 square feet.
- (f) The project planner conducted a site inspection in January, 2007 to verify that the project on the subject parcels conforms to the plans listed above.
- (g) The project was referred to the Del Monte Forest Land Use Advisory Committee recommended approval of the project by a vote of 5-0. LUAC meeting minutes dated January 4, 2007 with one comment see (Exhibit "D")
- (h) The application, project plans, and related support materials submitted by the applicant to the Monterey County RMA - Planning Department for the proposed development, found in Project File PLN060059.
- (i) The project is necessary to protect the long term life of the tree from future episodic storm events and wave run-up.

2. FINDING: SITE SUITABILITY – The site is physically suitable for the use proposed.

- EVIDENCE:**
- (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Carmel Highlands Fire Protection District, Public Works, Environmental Health Division, and the Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
 - (b) Technical reports by outside archaeological, geological, and Biological consultants indicated that there are not physical or environmental constraints that would indicate that the site is not suitable for the use proposed.

- (c) Technical reports by outside archaeological, geological, and Biological consultants were created for the project as proposed. The reports indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff concurs. The following reports have been prepared:
 - I. *"Preliminary Cultural Resources Reconnaissance" (LIB070604) prepared by Archaeological Consulting, Salinas, CA, May 8, 1987 and follow up report dated July 27, 1987.*
 - II. *"Biological Assessment" (LIB070607) prepared by Dale Hameister Biological Consulting Salinas, CA, dated December 1, 2005.*
 - III. *"Foresters assessment" (LIB070608) prepared by Staub Forestry and Environmental Consulting, Felton California. The report is dated November 1, 2006.*
 - IV. *"Geological Analysis" (LIB070603) prepared by Gary B. Griggs, Bluff stabilization and sand loss, Santa Cruz CA, dated September 14, 2007.*
- (e) Staff conducted a site inspection in January, 2007 to verify that the site is suitable for this use.
- (f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN060059.

3. **FINDING: DEVELOPMENT ON SLOPES EXCEEDING 30%:** There is no feasible alternative which would allow development to occur on slopes of 30% or less. The project better meets the policies specific to preserve Marine Habitats, Monterey Cypress & shore line area used by harbor seals.

- EVIDENCE:**
- (a) The purpose of the project is to prevent soil erosion on two coastal bluff slopes that are in excess of 30%. The project is designed to provide permanent stabilization of the slopes only.
 - (b) The project site is a 2.36-acre parcel within the Pebble Beach area adjacent to the Cypress Point overlook. This property is zoned Low Density Residential, 2 acres per unit with Design Control, Coastal Zone ("LDR/2-D"). The site of the critical erosion of the tree roots and the location of the retaining wall (Sea Wall) is approximately 15 feet from the property line. The area where the erosion occurred exposing the tree roots created an average bluff height of six feet. The proposed development will provide protection from further erosion of the trees root system. The six foot bluff will be armored by the proposed retaining wall to restore the area immediately around the Cypress tree and to protect it from further erosion. For that reason the project as proposed better meets the policies specific to Marine Habitats by preserving the existing Cypress habitat.
 - (c) Project description and project plans contained in File No. PLN060059.

4. **FINDING: CEQA:** On the basis of the whole record before the Planning Commission there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

- EVIDENCE:**
- (a) The Monterey County Planning Department prepared an Initial Study pursuant to CEQA. The Initial Study identified several potentially significant effects, but the applicant has agreed to proposed mitigation measures that avoid the effects or

mitigate the effects to a point where clearly no significant affect would occur. The Initial Study is on file in the office of the Resource Management Agency (RMA)-Planning Department and is hereby incorporated by reference (PLN060059). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

- (b) A Condition Compliance and Mitigation Monitoring and Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. The applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval (Condition #5)
- (c) Evidence that has been received and considered includes:
 - I. *The application materials and plans; Initial Study for Read Retaining Walls (Sea Wall), Monterey County – SCH #2007101008.*
 - II. *"Preliminary Cultural Resources Reconnaissance" (LIB070604) prepared by Archaeological Consulting, Salinas, CA, May 8, 1987 and follow up report dated July 27, 1987.*
 - III. *"Biological Assessment" (LIB070607) prepared by Dale Hameister Biological Consulting Salinas, CA, dated December 1, 2005.*
 - IV. *"Foresters assessment" (LIB070608) prepared by Staub Forestry and Environmental Consulting, Felton California. The report is dated November 1, 2006.*
 - V. *"Geological Analysis" (LIB070603) prepared by Gary B. Griggs, Bluff stabilization and sand loss, Santa Cruz CA, dated September 14, 2007.*
- (d) The mitigated negative declaration was circulated for public review from October 2, 2007 to November 1, 2007.
- (e) No comments from the public were received.
- (f) The Monterey County Resource Management Agency (RMA)-Planning Department, located at 168 West Alisal, second floor, Salinas CA, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the mitigated negative declaration is based.
- (g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN060059.

5. FINDING: PUBLIC ACCESS: The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights. No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE:

- (a) The subject property is not described as an area where the Local Coastal Program requires access.
- (b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figure 15, the Recreational Facilities Map, and Figure 16, the Shoreline Access Map, of the Del Monte Forest Area Land Use Plan.

- (c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- (d) Staff site visit in January of 2007.

6. **FINDING: NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff reviewed RMA- Planning Department and (RMA)-Building Services records and is not aware of any violations existing on subject property.

7. **FINDING: HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

8. **FINDING: APPEALABILITY** - The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: (a) Sections 20.86.020 and 20.86.030 of the Monterey County Zoning Ordinance (Title 20).


- (b) In accordance with Section 20.86.080 of the Monterey County Zoning Ordinance (Title 20) the project may be appealed to the California Coastal Commission because the project is located between the sea and the first through public road paralleling the sea and includes the granting of a conditional use.

DECISION

THEREFORE, it is the decision of the Planning Commission of the County of Monterey that the Mitigated Negative Declaration and Program for Monitoring and/or Reporting on Conditions of Approval be adopted and said application for a Combined Development Permit be granted as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 12th day of December, by the following vote:

AYES: Errea, Brown, Salazar, Vandever, Padilla, Sanchez, Diehl, Rochester, Ottone
NOES: None
ABSENT: Isakson
ABSTAIN: None


MIKE NOVO, SECRETARY

A COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON December 27, 2007.

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE January 6, 2008.

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires two years after the above date of granting thereof unless construction or use if started within this period.

**Monterey County Resource Management Agency
Planning Department
Condition Compliance and/or Mitigation Monitoring
Reporting Plan**

PROJECT NAME: PETER READ
FILE NO: PLN060059 **APN: 008-491-013-000**
APPROVED BY: PLANNING COMMISSION
DATE: DECEMBER 12, 2007

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
1.		<p>PBD029 - SPECIFIC USES ONLY</p> <p>This Combined Development Permit consists of: 1) a Coastal Development Permit for development and for the permanent installation of a sea wall within 50 feet of the edge of a coastal bluff; 2) A Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat; 3) a Coastal Development permit to allow development on slopes of 30% or greater; 4) a Coastal Development Permit for development within 750 feet of a known archaeological resource. The property is located at 3158 17 Mile Drive, Pebble Beach (Assessor's Parcel Number 008-491-013-000) west of 17 Mile Drive Del Monte Forest Area of the Coastal Zone This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless the appropriate authorities approve additional permits.</p> <p>[Resource Management Agency (RMA) - Planning Department]</p>	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
2.		PBD025 - NOTICE-PERMIT APPROVAL The applicant shall record a notice, which states: "A permit (Resolution No. 07056) was approved by the Planning Commission for Assessor's Parcel Number 008-491-013-000 on December 12, 2007. The permit was granted subject to 10 conditions of approval including 3 mitigations and monitoring actions, which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to RMA - PD	Owner/ Applicant	Prior to Issuance of grading and building permits or start of use.	
3.		PBD030 - STOP WORK - RESOURCES FOUND If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (RMA - Planning Department)	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical, or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.	Owner/ Applicant/ Archaeologist	Ongoing	
4.		PD005 - FISH AND GAME FEE-NEG DEC/EIR Pursuant to the State Public Resources Code § 735.5, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee, to be collected by the County, within five (5) working days of project approval. This fee	The applicant shall submit a check, payable to the County of Monterey, to the Director of the RMA - Planning Department.	Owner/ Applicant	Within 5 working days of project approval.	

Exhibit 4

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		shall be paid before the Notice of Determination is filed. If the fee is not paid within five (5) working days, the project shall not be operative, vested or final until the filing fees are paid. (RMA - Planning Department)	If the fee is not paid within five (5) working days, the applicant shall submit a check, payable to the County of Monterey, to the Director of the RMA - Planning Department.	Owner/ Applicant	Prior to the recording of the final map, the start of use or the issuance of building or grading permits	
5		PD006 - MITIGATION MONITORING PROGRAM The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. (RMA - Planning Department)	1) Enter into agreement with the County to implement a Mitigation Monitoring Program. 2) Fees shall be submitted at the time the property owner submits the signed mitigation monitoring agreement.	Owner/ Applicant	Within 60 days after project approval or prior to the issuance of grading and building permits, which ever occurs first.	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
6		<p>PD004 - INDEMNIFICATION AGREEMENT</p> <p>The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (RMA - Planning Department)</p>	<p>Submit signed and notarized Indemnification Agreement to the Director of RMA - Planning Department for review and signature by the County.</p> <p>Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA - Planning Department.</p>	Owner/Applicant	Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, which ever occurs first and as applicable	

Exhibit 4

A-3-MCO-08-008

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
7	1	Mitigation Measure BIO-1 (Pupping): Mitigation Measure BIO-1 (Pupping): In order to avoid impacts to harbor seals during the pupping season and other marine mammals, the applicant shall conduct all construction activities outside of the peak breeding season (February 15 to June 15). (RMA - Planning Department)	Include as a note on all plans: The applicant shall conduct all construction activities outside of the peak breeding season (February 15 to June 15).	Owner/ Applicant	Prior to the issuance of grading and building permits, which ever occurs first.	
8	2	Mitigation Measure BIO-2 (Nesting): In order to avoid impacts to nesting raptors and other avian species, which could result in take that is prohibited under California Department of Fish and Game Code 3503 and 3503.5 and the federal Migratory Bird Treaty Act, a pre-construction survey shall be conducted for nesting avian species (including raptors) within 300 feet of proposed construction activities if construction or demolition is to be initiated between February 15 and August 1. If nesting raptors (or any other nesting birds) are identified during pre-construction surveys, an appropriate buffer; to be determined by a County-approved biologist in coordination with the California Department of Fish and Game, shall be imposed within which no construction activities or disturbance shall take place. If nests are identified, work may only proceed prior to August 1 st if a County-approved biologist conducts periodic nest checks and confirms that the nest is no longer active (i.e. the young have fledged) and work re-initiation has been specifically authorized by the appropriate regulatory agency. (RMA - Planning Department)	Include as a note on all plans: If construction is to be initiated between February 15 and August 1, then prior to the issuance of a grading or building permit, the applicant shall submit a pre-construction raptor survey to the Planning and Building Inspection Department for review and approval.	Owner/ Applicant	Prior to the issuance of grading and building permits, which ever occurs first.	

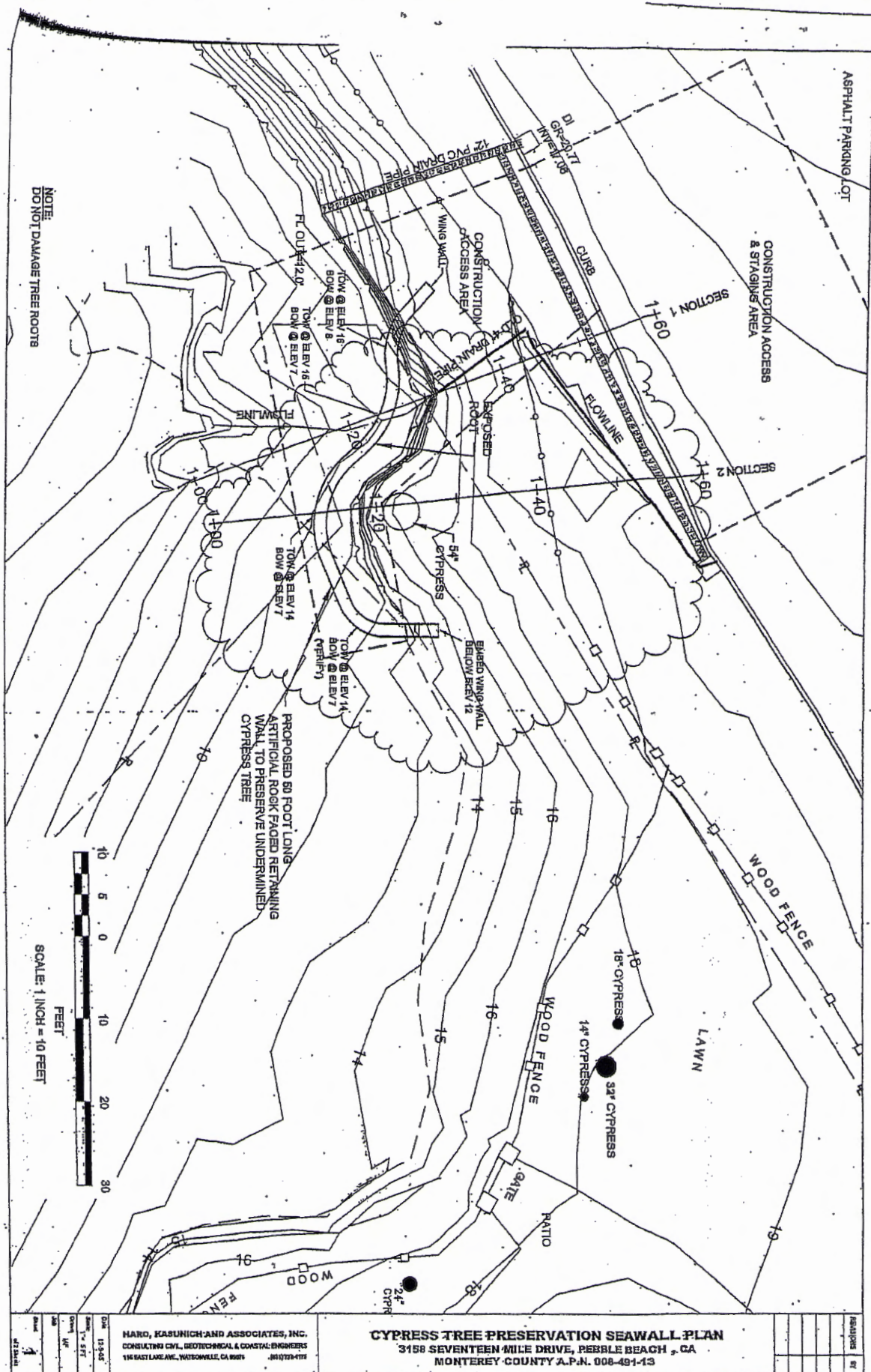
Exhibit 4

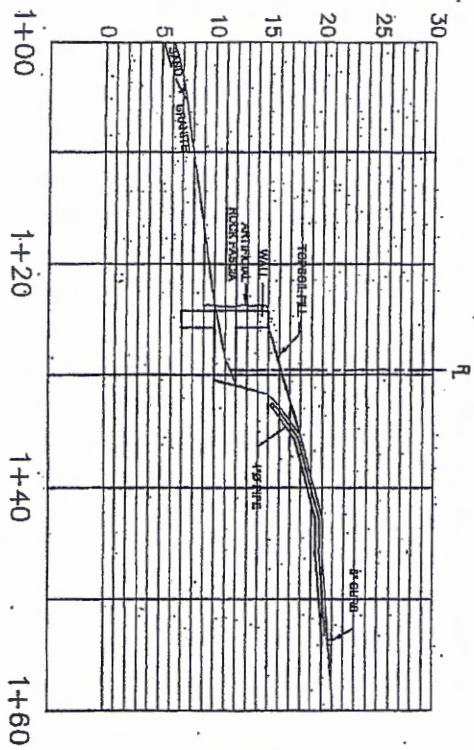
Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
9	3	<p>Mitigation Measure HYDRO-1 (Construction Waste Control Plan). A Construction Waste Control Plan shall be prepared for project activities, and incorporated into contract specifications. The plan shall include, but not be limited to, the following measures to reduce waste and pollutants from the construction of the seawall into the Monterey Bay National Marine Sanctuary:</p> <ol style="list-style-type: none"> (1) Ground-disturbing activities shall be performed during dry weather to reduce water erosion. Activities shall cease within two (2) days of forecasted rain events. (2) Areas used to stockpile fill shall be graded to disperse water. (3) Silt fences and/or hay bales shall be placed at the toe of fill slopes to contain sediments prior to stabilization. (4) During and after construction, inspection and maintenance shall be performed to identify and repair areas of concentrated runoff and sediment transport. (RMA - Planning Department) 	<p>Prior to the issuance of grading or building permits, the applicant shall submit the Construction Waste Control Plan to the Planning and Building Inspection Department for review and approval. Prior to final building inspection, the applicant shall submit a letter prepared by a civil engineer which certifies that the measures contained in the approved Construction Waste Control Plan have been fully implemented.</p>	Owner/ Applicant		
10		<p>SPW001 NON-STANDARD - CONSTRUCTION MANAGEMENT PLAN</p> <p>Prior to issuance of Grading Permits or Building Permits, applicant shall submit a Construction Management Plan (CMP) to the RMA-Planning Department and the Department of Public Works for review and approval. The CMP shall include measures to minimize traffic impacts during the construction/grading phase of the project and shall provide the following information: Duration of the construction, hours of operation, an estimate of the number of truck trips that will be generated, truck routes, number of construction workers, parking areas for both equipment and workers, and locations of truck staging areas. Approved measures included in the CMP shall be implemented by the applicant during the construction/grading phase of the project. (Public Works)</p>	<p>Applicant shall prepare a CMP and shall implement approved measures during the construction/grading phase of the project.</p>	Applicant	Prior to issuance of the Grading Permit or Building Permit.	

Exhibit 4

A-3-MCO-08-008

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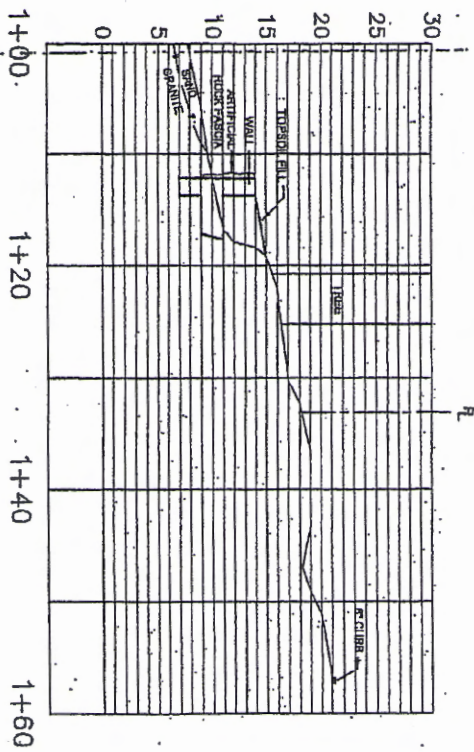




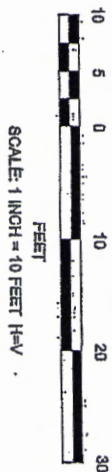
SECTION 1

NOTE:
EXCAVATE SOIL AS DIRECTED BY
ENGINEER WITHIN
FOUNDATION ZONE. ENGINEER TO
INSPECT EXCAVATION PRIOR TO
PLACING CONCRETE

NOTE:
DO NOT DAMAGE TREE ROOTS

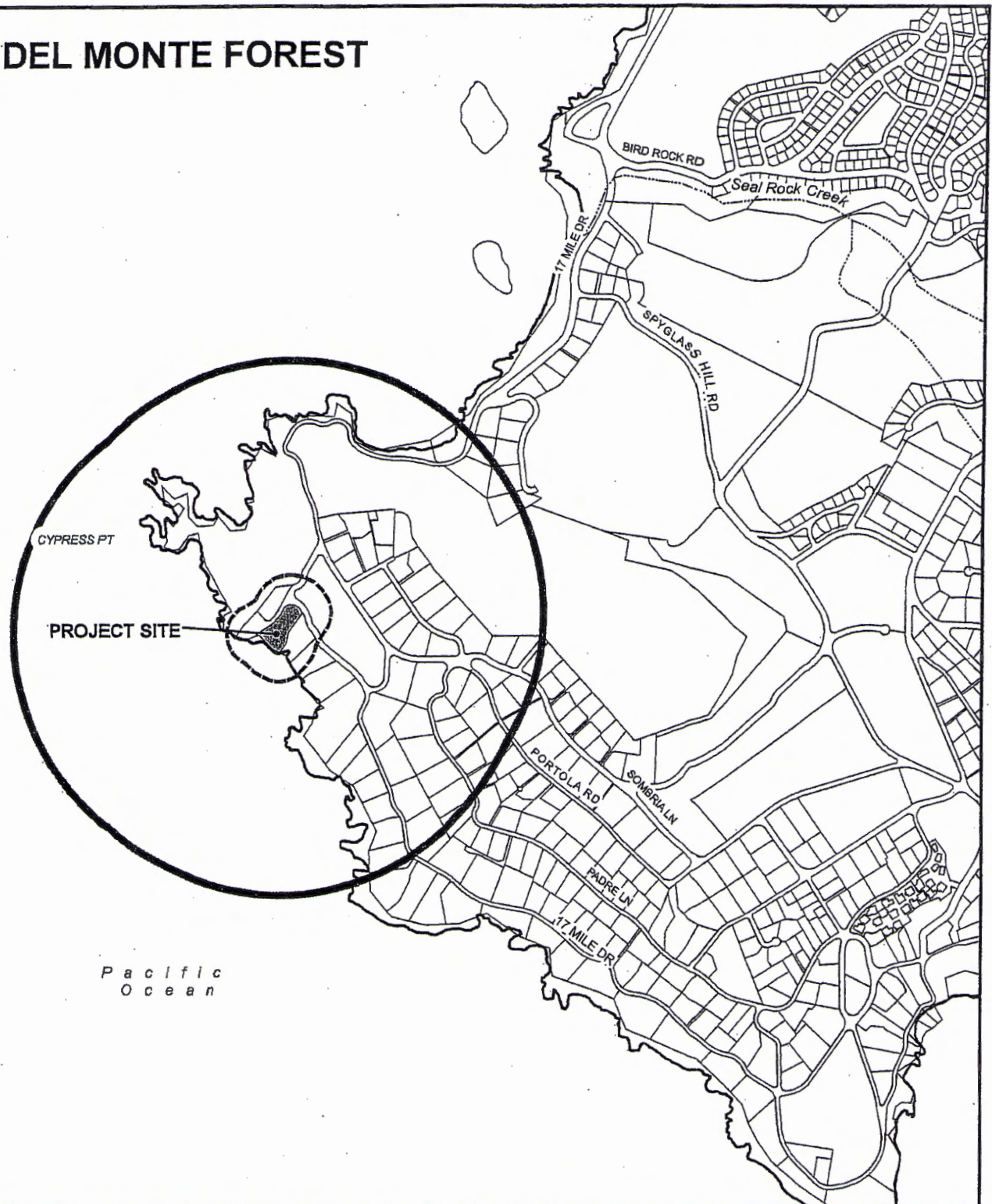


SECTION 2



HARD, KASUNICH AND ASSOCIATES, INC. CONSULTING CIVIL, GEOTECHNICAL & COASTAL ENGINEERS 150 EAST LAKE AVENUE, TAYLORVILLE, CALIFORNIA 95168		CYPRESS TREE PRESERVATION SEAWALL CROSS SECTIONS 3158 SEVENTEEN MILE DRIVE, PEBBLE BEACH, CA MONTEREY COUNTY A.P.N. 008-491-13		REVISION 1 2
Date: 12-28-03 Drawn by: J. B. HAV Check by: J. B. HAV Job No: 03-001	Sheet: 2 of 2	Exhibit 4		

DEL MONTE FOREST



APPLICANT: READ

APN: 008-491-013-000

FILE # PLN060059

300' Limit

2500' Limit

City Limits



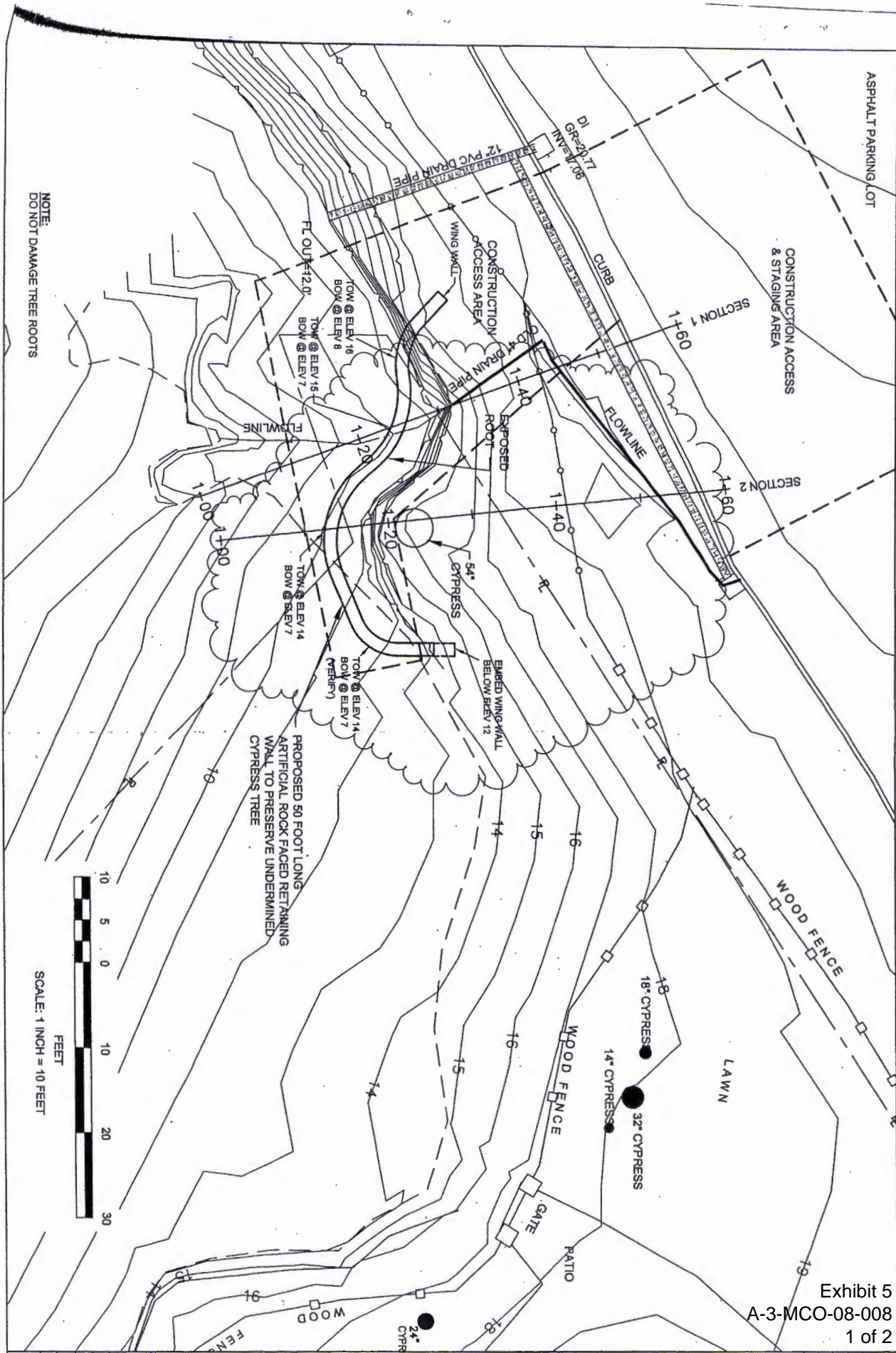
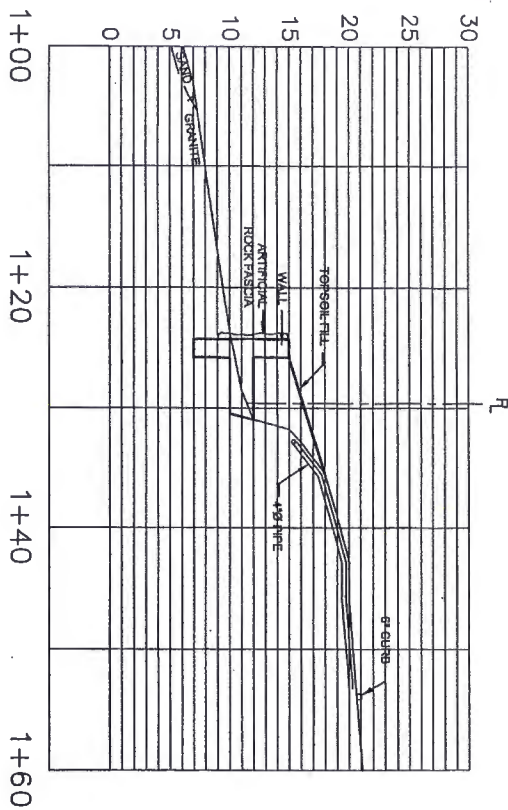
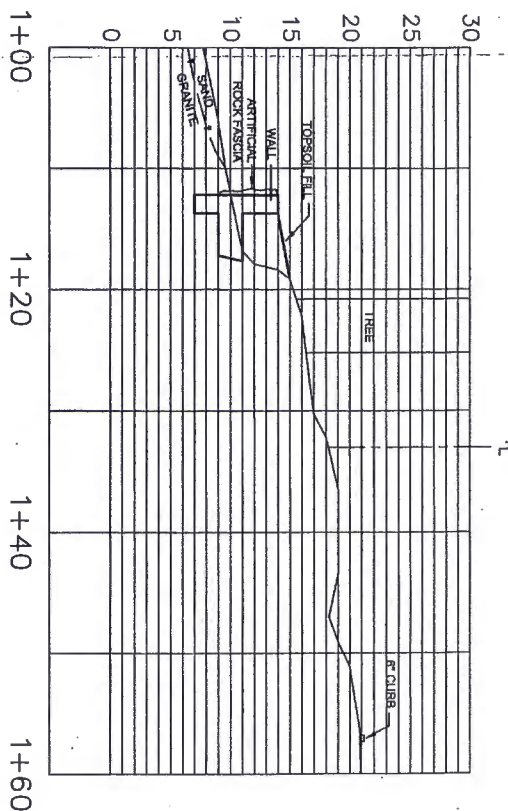


Exhibit 5
A-3-MCO-08-008
1 of 2

SECTION 1

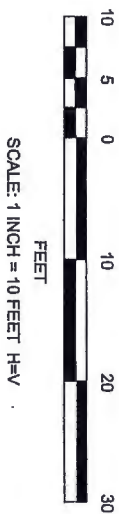


SECTION 2



NOTE:
EXCAVATE SOILS AS DIRECTED BY
ENGINEER WITHIN
FOUNDATION ZONE. ENGINEER TO
INSPECT EXCAVATION PRIOR TO
PLACING CONCRETE

NOTE:
DO NOT DAMAGE TREE ROOTS



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: January 24, 2008

TO: Carl Holm, Assistant Director
County of Monterey, Planning Department
168 West Alisal St., 2nd Flr.
Salinas, CA 93901

FROM: Dan Carl, District Manager

RE: **Commission Appeal No. A-3-MCO-08-008**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLN060059

Applicant(s): James Peter Read Jr. Trust, Et Al

Description: Development and permanent installation of a seawall within 50 feet of the edge of a coastal bluff; within 100 feet of ESHA; on slopes greater than 30%; and within 750 feet of a known archaeological resource.

Location: 3158 - 17 Mile Drive (Del Monte Forest), Pebble Beach (Monterey County) (APN(s) 008-491-13)

Local Decision: Approved w/ Conditions

Appellant(s): California Coastal Commission, Attn: Commissioner Steve Blank;
Commissioner Mary Shallenberger

Date Appeal Filed: 1/23/2008

The Commission appeal number assigned to this appeal is A-3-MCO-08-008. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Monterey's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Katie Morange at the Central Coast District office.

cc: James Peter Read Jr. Trust, Et Al

California Land Planning, Attn: Anthony J. "Bud" Carney

Ramon Montano, Monterey County

Exhibit 6

A-3-MCO-08-008

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Blank	Commissioner Shallenberger
California Coastal Commission	California Coastal Commission
45 Fremont Street, Suite 2000	45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219	San Francisco, CA 94105-2219
(415) 904-5200	(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Monterey County

2. Brief description of development being appealed:

PLN060059 – Development and permanent installation of a seawall within 50 feet of the
edge of a coastal bluff; within 100 feet of ESHA; on slopes greater than 30%; and within 750
feet of a known archaeological resource.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

APN 008-491-013, located at 3158 17-Mile Drive, in the Del Monte Forest Area of Monterey
County.

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
b. Approval with special conditions: x
c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-08-008
DATE FILED: 1/23/08
DISTRICT: Central Coast

RECEIVED

JAN 23 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Exhibit 6
A-3-MCO-08-008

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. ☐ Planning Director/Zoning
Administrator

c. ☒ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☐ Other: _____

6. Date of local government's decision: December 12, 2007

7. Local government's file number: PLN060059 (Resolution No. 07056)

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

James Peter Read Jr. TR
P.O. Box 999

Pebble Beach, CA 93953

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Ramon Montano

Monterey County Planning & Building Inspection

168 West Alisal Street, 2nd Floor, Salinas, CA 93902

(2) Bud Carney (Representative)

347 Arthur Avenue

Aptos, CA 95003

(3) _____

SECTION IV. Reasons Supporting This Appeal

See attached "Reasons for Appeal"

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

Reasons for Appeal of Monterey County Coastal Development Permit PLN060059 (Read Seawall)

Monterey County Coastal Development Permit PLN060059 authorizes the construction of a five-foot high and 50-foot long seawall at 3158 17-Mile Drive, Pebble Beach, Monterey County. According to the County's approval, the purpose of the seawall is to protect a landmark (54-inch diameter) Monterey cypress tree from failure due to future episodic storm events, and involves development within 50 feet of the edge of a coastal bluff, within 100 feet of ESHA, on slopes of 30% or greater, and within 750 feet of a known archaeological resource.

The locally approved project is inconsistent with the Monterey County certified Local Coastal Program (LCP) for the following reasons:

1. The project is inconsistent with LCP allowances for shoreline protection devices.

The County-approved seawall is intended to protect a 54-inch diameter Monterey cypress tree located at the edge of a low bluff on a residential parcel adjacent to the Cypress Point lookout. The Monterey County (Del Monte Forest Area) LCP prohibits alteration of the shoreline (including diking, dredging, and filling, and placement or erection of shoreline protection devices such as seawalls and rip-rap) unless it is necessary to protect existing development or recreational facilities and beaches accessible to the public (LUP Policy 47 and IP Section 20.147.060.E.2). Existing development is defined as substantial structures such as a primary residence, road, or other facility usable by the public. The seawall would not protect any existing structural development or public recreational facilities or beach area. A Monterey cypress tree does not meet the test for what is allowed a shoreline protection device, and the project is therefore inconsistent with these LCP provisions.

The LCP also includes a policy specific to marine habitat environmentally sensitive habitat areas (ESHA) that allows alteration of the shoreline when required to serve coastal-dependent uses, to protect existing structures, or to restore and enhance the habitat (LUP Policy 29). The County approval states that the root system of the tree has experienced significant erosion, but that the tree is otherwise in good health, and contends that the seawall would protect the tree from failure from future episodic storm events. The seawall raises inconsistencies with LUP Policy 29 because the tree appears to be in a healthy, natural state on a low bluff/backbeach area and its eventual failure due to regular and episodic wave action does not constitute a situation warranting restoration or enhancement. Moreover, neither restoration nor enhancement are part of the project. Therefore, in addition to the LCP shoreline alteration provisions cited above, the project is also not allowable under LUP Policy 29.

2. The project is inconsistent with LCP ESHA policies.

The project is located within the Monterey cypress forest, native only at Point Lobos Reserve State Park and along 17-Mile Drive between Cypress Point and Pescadero Point. The Monterey County (Del Monte Forest Area) LCP notes the rarity of this habitat and lists the Monterey cypress forest community as an environmentally sensitive habitat area (ESHA). The project is also located on the edge of a sandy beach known to be an important harbor seal pupping site and considered ESHA by the LCP.

The LCP prohibits non-resource dependent uses in ESHA and requires that ESHA be protected against any significant disruption of habitat values, and that all land uses be compatible with the long-term maintenance of the resource (LUP Policy 8 and IP Section 20.147.040.B.4). A seawall is not only not dependent on the ESHA at the site, but placement of a 50-foot long seawall at the base of a healthy, functioning Monterey cypress tree would disrupt the natural state of the tree and interfere with regular coastal processes that the tree has evolved to endure, constituting a disruption in habitat values. New structural coverage in this ESHA is in direct conflict with the LCP intent to allow the habitat to flourish and thrive in a natural state. Any new site coverage in Monterey cypress ESHA adds to the cumulative, long-term impacts associated with structural development in this fragile and highly restricted habitat.

LCP ESHA provisions also prohibit development in the dripline of native Monterey cypress trees (LUP Policy 21 and IP Section 20.147.040.C.1); prohibit development within 100 feet of the landward edge of the mean high tide line (LUP Policy 27); require that ESHA remain undeveloped except for parking or other access facilities (LUP Policy 74); and require land uses to be compatible with the protection of Monterey cypress habitat, among other means by requiring structures to be carefully sited and designed to avoid potential damage or degradation of the micro-habitat of these trees (LUP Policy 21). The County-approved project is inconsistent with these provisions because it locates a seawall almost entirely under the dripline of a healthy Monterey cypress tree which is approximately 5-10 feet inland of the mean high tide line and immediately adjacent to a seal pupping area and intertidal zone. Not only is a seawall not allowed by the LCP for the purpose of protecting a tree (see appeal contention #1), but it has not been designed to avoid potential damage to the micro-habitat of the tree since it would be located over its roots, under the dripline, and within the zone of seedling regeneration. Furthermore, the seawall is inconsistent with LCP policies that require Monterey cypress habitat to be protected because it would result in excessive and unnecessary disturbance to and site coverage in the cypress habitat (as well as the adjacent sandy beach and intertidal ESHA).

3. The project is inconsistent with LCP visual resource protection policies.

The County-approved seawall would be located adjacent to the Cypress Point scenic overlook, and visible in the public viewshed. The LUP visual resources policy guidance statement requires that incompatible development be avoided in order to protect the magnificent scenic and visual resources of the Del Monte Forest. The LCP also states that structures located in scenic areas should not detract from scenic values of the forest or shoreline (LUP Policy 56). The project would introduce a large unnatural structural element into the immediate viewshed of the Cypress Point parking lot and overlook that would be incompatible with the undeveloped nature of the beach and bluff. The seawall would cumulatively contribute to existing structural development in the viewshed in this area, further degrading the landscape and detracting from the high scenic values along this stretch of coast.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3


State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 1/18/2008

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary Shallenbarger
Appellant or Agent

Date: 1/18/2008

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Applicable Del Monte Forest Local Coastal Program Policies (Pre-LCP Amendment No. MCO-1-12 Part 1)

I. Applicable Del Monte Forest Land Use Plan (LUP) Policies and Background Information

Del Monte Forest LUP ESHA Background:

*In the Del Monte Forest Area, examples of terrestrial, aquatic, and riparian habitats which have been determined to be entirely or in part environmentally sensitive 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 and other habitats. A complete listing is included as Appendix A (see attached) of this Plan. The locations of these are shown in Figure 2. [emphasis added]*

Del Monte Forest LUP ESHA Policy 8:

Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses immediately adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the resource; development shall be sited and designed to prevent impacts which would significantly degrade the protected habitat. In designated open space areas, conformance to the applicable OSAC Plan maintenance standards shall be considered the test of consistency with this policy.

Del Monte Forest LUP ESHA Policy 21:

Land uses on existing legal lots of record supporting indigenous Monterey Cypress habitat shall be compatible with the objective of protecting this environmentally sensitive coastal resource. Improvements such as structures and driveways shall be carefully sited and designed to avoid potential damage or degradation of the microhabitat of these trees. Within the perimeter of the habitat area as defined by the driplines of the outermost indigenous Monterey Cypress trees on the site, removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering shall be prohibited. On the inland side of 17-Mile Drive, driveways shall be allowed in this area where the driveway does not come within the dripline of individual Cypress trees, or where driveways are consolidated to service more than one lot. Underground residential utilities and fences shall be allowed in this area on the inland side of 17-Mile Drive. Scenic or conservation easements shall be secured prior to transmittal of coastal development permits in order to assure the protection of the Monterey Cypress habitat.

Del Monte Forest LUP ESHA Policy 27:

A setback of 100 feet from the landward edge of wetlands and from the mean high water line of the ocean shall be provided. No landscape alterations will be allowed in this setback area unless accomplished in conjunction with restoration and enhancement and unless it is demonstrated that no significant disruption of environmentally sensitive habitat will result.

Del Monte Forest LUP ESHA Policy 29:

Alteration of the shoreline shall not be permitted except when required to serve coastal dependent uses, to protect existing structures, or to restore and enhance the habitat.

Del Monte Forest LUP ESHA Policy 30 (in relevant part):

...the shoreline areas used by harbor seals must be protected during the pupping period from April through July.

Del Monte Forest LUP Hazardous Areas Policy 47:

Alteration of the shoreline, including diking, dredging, and filling, and placement or erection of shoreline protection devices (seawalls, riprap etc.) shall not be permitted unless necessary to protect existing development or recreational facilities and beaches accessible to the public. For the purposes of application of this policy, existing development shall mean substantial structures such as a primary residence, road, or other facility usable by the public.

Del Monte Forest LUP Scenic and Visual Resources Background:

The remarkable mingling of ocean, land, and forest found in the Del Monte Forest Area provides scenic resources for the entire Monterey Peninsula. Ridgeline vistas, coastline panoramas, tree-lined corridors, and unique trees and rock formations are all appreciated by the region's many visitors. Placement and design of new development must not injure the visual integrity of the area. The Coastal Act calls for protection of views to and along the ocean, preservation of natural landforms, protection of special communities, and development which is sensitive to the character and scenic assets of the area.

Del Monte Forest LUP Scenic and Visual Resources Policy 55:

Areas within the viewshed of scenic corridors identified on the LUP Visual Resources Map shall be zoned with a district, which requires adequate structural setbacks (generally a minimum of 50 [feet]), the siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be designed to harmonize with the natural setting and not be visually intrusive.

Del Monte Forest LUP Scenic and Visual Resources Policy 56:

Design and siting of structures in scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, using appropriate materials, which will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening.

II. Applicable Del Monte Forest Implementation Plan (IP) Sections

Del Monte Forest IP Section 20.147.020.O

Landmark trees: Those native trees which are 24 inches or more in diameter when measured at breast height or a tree which is visually significant, historically significant, exemplary of its' species or more than 1000 years old.

Del Monte Forest IP Section 20.147.060.E.2

Alteration of the shoreline, including diking, dredging, and filling, and placement or erection of shoreline protection devices (seawalls, rip-rap etc.) shall not be permitted unless proven necessary by a qualified civil engineer versed in shoreline protection to protect existing development or recreational facilities and beaches accessible to the public. For the purposes of this standard, "existing development" shall mean substantial structures such as a primary residence, road, or other facility usable by the public. All alteration of the shoreline as described in this development standard shall require the preparation of a geologic report with emphasis placed on Section 20.147.060.A.9.j #1-10. Proof of an engineer's qualifications shall be based on documents relating to past shoreline protection projects completed by the engineer, as outlined in project reports furnished to the Planning Department (Ref. Policy #47 Del Monte Forest Area Land Use Plan).

Del Monte Forest IP Section 20.147.040.B.4

Environmentally sensitive habitat areas designated as rehabilitation areas shall be protected against disruption of habitat values. New land uses within environmentally sensitive habitat shall be limited to resource-dependent uses, including education, research, fish and wildlife management activities, trails where no adverse impact will result, and (where there is no feasible alternative) pipelines, and repair or maintenance of roads, road crossing, or bridges. Land uses immediately adjoining environmentally sensitive habitat areas shall be compatible with long-term maintenance of the resource: development shall be sited and designed to prevent impacts having the potential to significantly degrade the protected habitat. As stated in Section 20.147.040.B.1, a minimum 100 foot setback shall be maintained between any proposed development and the environmentally sensitive habitat. In designated

open space areas, conformance to the applicable Open Space Advisory Committee Plan maintenance standards shall determine the consistency of the proposal with development standards contained in this Ordinance (Ref. Policy #8 Del Monte Forest Area Land Use Plan).

Del Monte Forest IP Section 20.147.040.C.1.e

Removal of native trees or other indigenous vegetation, grading, paving, building construction activity, landscape alterations and summer watering is prohibited within the perimeter of the Cypress habitat area as defined by the driplines of the outermost indigenous Monterey Cypress trees on a site.

Gary B. Griggs

Consulting Coastal Geologist
Registered Geologist & Certified Engineering Geologist
321 Alta Avenue-Santa Cruz, California 95060
(831) 332-9318; fax (831) 459-4882; email: griggs@ucsc.edu

June 21, 2015

Susan Craig
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

SUBJECT: Appeal of Coastal Development Permit (CDP) A-3-MCO-08-008

Dear Susan,

I have worked with Peter Read off and on for the past eight plus years on various coastal erosion issues affecting his property at 3158 Seventeen Mile Drive in Pebble Beach, and was asked by his attorney, John Bridges, to respond to your letter of June 8, 2015, regarding the above listed CDP Appeal.

As you know, the original emergency solution to stop the erosion that was undermining the large ESHA Monterey Cypress tree was to place large sand bags around the exposed roots of the tree. These were emplaced in 2006 (photograph below was taken January 2007, on my first visit to the site). The erosion was occurring due to runoff from the parking lot as well as wave run-up. The uncontrolled runoff from the parking lot was resolved and the sand bags have worked effectively to protect the roots of the tree from wave run-up for nearly nine years. The bags are probably approaching their useful life, but are still providing effective protection, and are not easily visible from the parking area. Following placement of the emergency protection, Monterey County approved a CDP for a permanent protective solution for this important resource.

I have visited the site many times since 2007, and can state unequivocally that the sand bags have had no adverse effects on the beach and no impacts on the harbor seals, which haul out regularly on the beach (Photograph below was taken in January 2011). In addition to being ESHA itself, the tree provides a visual barrier between the public parking area and Peter Read's home as well as some buffer to the beach, which benefits the seals.

Peter Read doesn't wish to proceed with the appeal but would like to continue to provide some protection to the roots of the significant landmark cypress tree. Given the fact that the sand bags have had no detrimental impact for the nine years they have been in place, perhaps a reasonable solution would be to allow them to remain in place in lieu of the more permanent structure approved by Monterey County. I believe Mr. Read would be amenable to such a compromise solution.

Sincerely,



Gary Griggs
Registered Geologist
Certified Engineering Geologist

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JUL 14 2015

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COASTAL COMMISSION

Exhibit 8

A-3-MCO-08-008

1 of 8



Sand bags protecting the exposed roots of the Monterey Cypress, shortly after emplacement in January 2007.



View from the parking area at Otter Cove on January 2011, showing sand bags at the base of the tree and a group of harbor seals on the beach.

JPR

DC → KM

→ km 4/7/08

RECEIVED

March 21, 2008

MAR 24 2008

Mr. Dan Carl
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Dan,

Thank you on behalf of all concerned for your time and consideration during our recent meeting in Santa Cruz, allowing us to better appreciate your position. We still believe that protection of this ESHA is consistent with the letter and spirit of the Del Monte Forest Local Coastal Program (as does Monterey County), and appreciate your willingness to discuss this matter again with senior staff based on our recent discussion.

We remain willing and determined to work with you in order to find a solution to saving this ancient cypress and protecting the harbor seals' habitat, while at the same time preserving the public's natural view experience from Cypress Point. We recognize that it would be in our best interest to go to the Commission "together" with a mutually satisfactory solution, rather than in disagreement. We will continue to look for a solution that results in the withdrawal of the appeal or that would allow us to get this matter to the Commission within a reasonable time frame.

I can be reached on my cell (510-376-7469) or through my assistant, Emmie Cox (510-704-2806), between now and March 28. After that I will be out of touch until April 8.

With sincere regards,



Peter Read

Cc: Gary Griggs
John Bridges

*Staub Forestry &
Environmental Consulting*



March 12, 2008

Mr. Anthony J. "Bud" Carney
347 Arthur Avenue
Aptos, CA 95003

**RE: SEAWALL WITHIN DRIPLINE OF MATURE CYPRESS TREE
ON THE READ PROPERTY, 3128 17 MILE DRIVE, PEBBLE BEACH
ADJACENT TO PUBLIC ACCESS SCENIC OVERLOOK AT CYPRESS POINT**

You have asked me to address the issue of placement of the proposed seawall within the dripline of the mature (more than 4' in diameter) Monterey cypress tree growing on the Read Property immediately below the Cypress Point Scenic Stop on 17 Mile Drive. I have examined the seawall design (dated 12/0/05 by Haro, Kasunich & Associates, Inc.) and discussed its construction with their office. Installation of this seawall as designed and described is suitable to protect this significant tree from failure due to ongoing erosion bank erosion as described in my letter dated September 8, 2005 and discussed in greater detail in my letter dated November 1, 2006.

The wall is to be constructed within the dripline of the Monterey cypress being protected because it is at the boundary of the terrestrial soil that bears cypress roots and salt laden sand subject to wave inundation and unavailable for cypress utilization. Wall placement at the recommended location between these two environments minimizes its impacts on both while providing meaningful protection to a highly valuable tree which is both a significant ecological and visual resource as noted in my earlier letters. The seawall should be installed with the same care as the interim protections have and will provide invaluable long-term protection for the tree's roots as well as enhanced growth of natives such as sea rocket at the site.

Please let me know if I can be of further assistance in this matter.

Sincerely,

Stephen R. Staub
Registered Professional Forester #1911, ISA Certified Arborist #WE-6739A

*Staub Forestry &
Environmental Consulting*



December 1, 2005

Mr. Anthony J. "Bud" Carney
347 Arthur Avenue
Aptos, CA 95003

**MEMORANDUM ON ADEQUACY OF CABLING
AS EMERGENCY PROTECTION FOR LARGE CYPRESS
ON THE READ PROPERTY IN PEBBLE BEACH**

You forwarded to me a request from County Planner Thom McCue for an explanation as to why the tree can not be "cabled" in order to protect it, as an alternative to the sand bags.

As described in my earlier letter, the imminent threat to the tree's health and stability is loss of soil and roots on its seaward side. Cabling would do nothing to decrease that threat and so I consider it an inappropriate treatment. Cabling is generally used to mitigate structural defects in a tree's trunk or scaffold limbs or to provide support for newly planted larger trees with limited rootballs that have yet to grow into surrounding native soil. Neither of these conditions obtains in this case. Furthermore, there is no appropriate location to cable from on the southeast to southwest sides where the strongest storm winds come from.

Pruning to promote healing of some broken limbs was suggested in my earlier letter to promote healing and tree health. Since some low and broken limbs will need to be removed to facilitate placement of emergency sandbag protection, I also recommend having a qualified arborist evaluate the desirability of modest additional pruning to reduce windsail and so enhance the tree's stability.

Please let me know if I can be of further assistance in this matter.

Sincerely,

Stephen R. Staub
Registered Professional Forester #1911
ISA Certified Arborist #WE-6739A

Exhibit 8

A-3-MCO-08-008

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*Staub Forestry &
Environmental Consulting*



ATTACHMENT 3

September 8, 2005

Mr. Anthony J. "Bud" Carney
347 Arthur Avenue
Aptos, CA 95003

**RE: ENDANGERED MATURE CYPRESS TREE
ON THE READ PROPERTY, 3128 17 MILE DRIVE, PEBBLE BEACH
ADJACENT TO PUBLIC ACCESS SCENIC OVERLOOK AT CYPRESS POINT**

At your request, I inspected with you on August 30, 2005, the large cypress tree (more than 4' in diameter) growing on the Read Property immediately below the Cypress Point Scenic Stop on 17 Mile Drive. The stability and health of the tree are threatened by exposure of its roots on its seaward side due to erosion of the native soil bank that rises quickly from the rock and sand beach below. The purpose of my inspection was to evaluate the condition of this tree and to recommend measures to protect its roots, health and stability.

As shown on the attached site schematic, soil bank erosion has exposed nearly all roots on the seaward side of the tree. A number of large conducting roots on the west side of the tree are now hanging in the air at distances up to and exceeding 3' from the current eroded bank edge. Soil erosion in this area appears to have been significantly exacerbated by drainage carried by a small flex pipe from the public access parking area. Remarkably, some ends of most of these exposed roots are still embedded in intact soil areas and are at least partially functional. As a result, the tree still has good foliage color and density and appears to be in good health. Some broken limbs were observed, as are typical of our native Monterey cypresses, but they are not a significant health problem and can be pruned out to improve both appearance and promote healing.

The health and stability of this significant tree, though still largely intact, are at great risk if there is any further erosion of the existing soil bank. Since such erosion normally occurs during the winter storm season, I strongly recommend immediate action to protect the exposed rooting zones by constructing a low seawall about 4 feet beyond the edge of existing exposed roots and backfilling with viable rooting medium to the existing soil bank on more or less a natural slope. See notes on the attached schematic.

Please let me know if I can be of further assistance in this matter.

Sincerely,

Stephen R. Staub
Registered Professional Forester #1911, ISA Certified Arborist #WE-6739A

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JAN 08 2008

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CENTRAL COAST AREA

Exhibit 8



HUGH E. SMITH
Forester
Urban Forestry Consulting
PO Box 22638
Carmel, CA 93922

624-3339

FOREST MANAGEMENT PLAN
FOR RESIDENTIAL PARCELS

For

Mr. and Mrs. Peter Read
West Side of The 17-Mile Drive
Just South of The Cypress Point View Parking Area
Lot 22, Block 146
Pebble Beach

A.P. #008-491-013

April 1, 1993

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CENTRAL COAST AREA

C. Waiver of Permit Requirements:

It is understood that the Executive Director of the Monterey County Planning Department may waive the requirement to obtain a County Development Permit in the following instances:

- 1) removal of diseased tree(s) which threaten to spread contagion to nearby healthy trees;
- 2) removal of dangerous tree(s) which present a clear and imminent threat to human life or property;
- 3) outside the FMA, removal of tree(s) where needed to allow construction of structures or roads.

D. Landmark Trees:

All landmark trees will be protected from damage if not required to be removed under the above instances.

E. Dead Trees:

Because of their great value for wildlife habitat (particularly as nesting sites for birds), large dead trees beyond the greenbelt will normally be left in place. Smaller dead trees will normally be removed in order to reduce fire hazard. Because no County Development Permit is needed for their removal, dead trees may be removed at the convenience of the owner, provided such removal is otherwise in conformance with this plan and designated by a qualified forester.

F. Thinning:

Nonsignificant trees, where weak, diseased or overcrowded, may be thinned to promote the growth of neighboring trees. Subject to the above permit requirements, significant trees may be removed for the same purpose.

G. Replacement Trees:

Wherever a significant gap develops between trees (i.e., 30 feet or more between trunks), a seedling Monterey cypress will be planted in the clearing, except where clearings presently exist. Exceptions will be made where a suitable seedling already exists, and in unforested garden and lawn areas. Every effort will be made to secure seedlings from the nearby forest rather than nursery stock of unknown origin.

PLEASE NOTE:

This section must include a specific number of tree type, to be replanted. Where a less than

Exhibit 8

A-3-MCO-08-008

8 of 8



DEL MONTE FOREST

Indigenous Monterey Cypress Habitat



 Area of Indigenous Monterey Cypress Habitat*

 Parcel

See LUP text for map sources.

0 1,000 Feet


Cypress Point

Sunset Point

Pacific
Ocean

Midway Point

Pescadero Point

*Precise determination of the extent of Indigenous Monterey Cypress habitat shall depend on site specific biologic survey.

Figure 2a

Exhibit 9
A-3-MCO-08-008

