

CALIFORNIA COASTAL COMMISSION

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Staff:
Staff Report:
Hearing Date:

SMR-SF
June 20, 2003
July 11, 2003

**STAFF REPORT FOR
CEASE AND DESIST AND RESTORATION ORDERS**

**CEASE AND DESIST AND
RESTORATION ORDERS:**

CCC-03-CD-09 and CCC-03-RO-07

RELATED VIOLATION FILES:

V-3-02-038

PROPERTY LOCATION:

3145 17 Mile Drive,
Pebble Beach, Monterey County
APN 008-261-002 (Exhibit 1)

DESCRIPTION OF PROPERTY:

1.65-acre coastal property on 17 Mile Drive in
Pebble Beach, in the Asilomar Dunes area of
Monterey County.

PROPERTY RESPONDENTS:

Robert and Maureen Feduniak

AGENTS/REPRESENTATIVES:

Myron E. Etienne, Jr.
Noland, Hamerly, Etienne and Hoss
333 Salinas Street
Salinas, CA 93902

VIOLATION DESCRIPTION:

Unpermitted three-hole golf course within a
recorded open space easement and in conflict with
the terms and conditions of CDP No. 3-83-110.

SUBSTANTIVE FILE DOCUMENTS:

Cease and desist and restoration order file Nos.
CCC-03-CD-09 and CCC-03-RO-07
Background exhibits 1 through 15

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060 (c)(3)
and 15061 (b)(3)) and Categorically Exempt (CG
§§ 15061(b)(2), 15037, 15038 and 15321)

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) to remove unpermitted development at 3145 17 Mile Drive ("subject property") and to restore the impacted area with native dune vegetation as required by previously issued Coastal Development Permit (CDP) No. 3-83-110. The unpermitted development consists of a three-hole golf course (**Exhibit 2**) that occupies a dedicated open space easement, which encompasses all portions of the subject property outside of the permitted "building envelope".

The unpermitted development activity that has occurred on the subject property (construction and maintenance of a three-hole golf course) meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600, and in direct violation of both the previously issued CDP and recorded restrictions on the site, which specifically required that the subject property be restored with native dune vegetation and was preserved with a dedicated easement for the protection of scenic and natural habitat values. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

The development occurred without a coastal development permit and its ongoing maintenance is inconsistent with the California Coastal Act, including Sections 30240 (ESHA) and 30251 (Scenic Resources and Alteration of Landforms) of the Public Resources Code. The unpermitted development has impacted the habitat values of the subject property, which is located in the Asilomar Dunes area of Monterey County and is therefore considered ESHA. The 1983 CDP No. 3-83-110 found the site to be degraded ESHA and the conditions of CDP No. 3-83-110 specifically required the removal of all iceplant, and the restoration of native dune habitat on the subject property. The impacts from the unpermitted development remain at the subject property because the current owners are actively maintaining the golf course. Thus, the unpermitted development on the subject property is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations. Therefore, the Commission may issue a Restoration Order under Section 30811 of the Coastal Act.

The current owners have asked whether an off-site mitigation project would resolve the violation and if they could retain the golf course. Retention of the golf course would require abandonment of the dedicated open space easement, which staff does not recommend. Retention of the golf course would also require an amendment to the CDP. Under Section 13166(a) of the Commission's regulations:

"The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted."

An off-site mitigation project and/or a permit amendment allowing the retention of the golf course would clearly lessen or avoid the intended effect of CDP No. 3-83-110, which required restoration and landscaping of the site with native dune vegetation. The findings for CDP No. 3-83-110 stated that "As conditioned, to require an offer to dedicate an open space easement over the undeveloped portion of the lot, and to require restoration and landscaping on the site, the proposed development can be found consistent both with previous Commission action in this area and with Section 30240(b) of the Coastal Act, as an adjacent environmentally sensitive habitat area will be protected." Therefore, staff does not recommend any off-site mitigation project as an appropriate alternative resolution to the violation, and staff does not recommend amending CDP No. 3-83-110 to allow retention of the golf course.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the Commission's regulations. The Cease and Desist Order and Restoration Order hearing procedure are similar in most respects to the procedures that the Commission uses for permit and Local Coastal Program matters.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185, 13186, and 13195, incorporating by reference sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following two motions:

1.A. Motion

I move that the Commission issue Cease and Desist Order No. CCC-03-CD-09 pursuant to the staff recommendation.

1.B. Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

1.C. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order number CCC-03-CD-09, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and is inconsistent with previously issued CDP No. 3-83-110 for the subject property.

2.A. Motion

I move that the Commission issue Restoration Order No. CCC-03-RO-07 pursuant to the staff recommendation.

2.B. Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

2.C. Resolution to Issue Restoration Order

The Commission hereby issues Restoration Order number CCC-03-RO-07, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

**IV. RECOMMENDED FINDINGS FOR CEASE AND DESIST ORDER
CCC-03-CD-09 AND RESTORATION ORDER CCC-03-RO-07**

Staff recommends the Commission adopt the following findings of fact in support of its action.

A. History of Commission Actions on Subject Property

On July 15, 1983, the Commission granted to Bonanno, Miller and Griggs (the former owners of the subject property) CDP No. 3-83-110 to demolish an existing single-family residence, remove and replace approximately 2500 cubic yards of fill, and construct a new single-family dwelling. The staff report and findings for CDP No. 3-83-110 are included as **Exhibit 3**. Three special

conditions were approved by the Commission in granting CDP No. 3-83-110: “1) Permittee shall submit an offer to dedicate an easement for the protection of the scenic and natural habitat values on the site, and except for the “building envelope” area, the easement shall cover all of the subject parcel, 2) Permittee shall submit a restoration and landscape plan. The plan shall show the removal of all ice plant and other exotics on the site and revegetation of the lot with dune vegetation native to the Asilomar dunes, and 3) Unless waived by the Executive Director, a separate coastal permit shall be required for any additions to the permitted development.” The Commission found that as conditioned, the proposed project would be in conformity with the provisions of Chapter 3 of the Coastal Act.

The Commission approved landscaping plans for the subject site dated August 15, 1983. On October 14, 1983, Bonanno, Miller and Griggs recorded a document entitled “Irrevocable Offer to Dedicate Open Space Easement and Declaration of Restrictions” as Monterey County Instrument Number G 46457, Reel 1675, Pages 444-455 (**Exhibit 4**). The Commission issued CDP No. 3-83-110 on October 28, 1983. The Del Monte Forest Foundation recorded a Certificate of Acceptance for the open space easement offer on October 28, 1986, as Monterey County Instrument Number 56840, Reel 2017, Pages 653-654 (**Exhibit 5**).

B. History of Violation

Commission staff first learned of the alleged violation on the subject property in September 2002. Since that time, staff has attempted to administratively resolve this matter with Robert and Maureen Feduniak as an alternative to commencement of formal enforcement proceedings. On December 9, 2002 Commission staff sent a “Notice of Violation” letter to the Feduniaks regarding the violation on the subject property (**Exhibit 6**). The letter pointed out that the golf course on the subject property was inconsistent with CDP No. 3-83-110 and with the recorded open space easement, which covers all of the subject property except for the approved building envelope. The letter requested that the Feduniaks submit a plan for restoration of the site by January 6, 2003. The Feduniaks did not submit a restoration plan, but rather asked through their attorney whether they could keep the golf course. Staff responded that retention of the golf course was highly unlikely, given that it was in direct conflict with the conditions of CDP No. 3-83-110 and the recorded open space easement, and again urged them to come into compliance with the permit conditions for CDP No. 3-83-110.

On February 28, 2003, the Commission’s statewide enforcement unit sent a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) to Robert and Maureen Feduniak (**Exhibit 7**). The NOI stated the basis for issuance of the proposed cease and desist and restoration orders, stated that the matter was being placed on the Commission’s May hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

On March 17, 2003, Commission staff received the Statement of Defense and attached letter from Myron E. Etienne, Jr., representative of the Feduniaks (**Exhibit 8**). On March 24, 2003, Commission staff received a letter (dated March 21, 2003) from Mr. Etienne requesting that the public hearing for this matter be delayed because he could not attend and represent the Feduniaks at either the May or June Commission hearings (**Exhibit 9**). In response to this request, in a

letter dated March 28, 2003, staff postponed the matter to the July 2003 Commission hearing (**Exhibit 10**).

Commission staff received copies of letters dated April 30, 2003, June 12, 2003 and June 17, 2003, from the Del Monte Forest Foundation's attorney to Commission Chairman Reilly, proposing potential mitigation projects to resolve the violation on the subject property (**Exhibits 11, 12, and 13**). Commission staff responded to these letters in a letter to the Foundation dated June 18, 2003 (**Exhibit 14**), not on Chairman Reilly's behalf, but to state the Commission staff position on this matter. Staff noted that under the terms of the OTD that the Foundation accepted, the Foundation may not abandon the easement but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director (**Page 8 of Exhibit 4**).

C. Description of Unpermitted Development

The unpermitted development, which is the subject matter of this Cease and Desist and Restoration Order, consists of a three-hole golf course with sand traps and turf landscaping. The golf course occupies a dedicated open space easement area, which was required by CDP No. 3-83-110 for the preservation of habitat and scenic values on the subject property. The staff report for CDP No. 3-83-110 made a site-specific determination that the subject property, located within the Asilomar Dunes area of Monterey County, was ESHA. In permitting the residence on the property, which was in fact constructed, the Commission findings for CDP No. 3-83-110 included conditions that required restoration of the site through planting of native dune vegetation over all of the subject property except for the approved "building envelope".

D. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, which states, in relevant part:

If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.

The development activity that has occurred on the subject property (construction and maintenance of a three-hole golf course) meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600, and in direct violation of the previously issued CDP, which required that the subject property be restored with native dune vegetation and preserved with a dedicated easement for the protection of scenic and natural habitat values. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

E. Basis for Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission... [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

a. Development Has Occurred without a Coastal Development Permit

The unpermitted development activity that is the subject of this Restoration Order satisfies the definition of “development” contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, creation of sand traps and placement of turf fairways and golf holes are “development” as defined by Section 30106.

Pursuant to Section 30600(a) of the Coastal Act, “development” requires a coastal development permit. In this case, no coastal development permit has been applied for or issued for the subject unpermitted development.

b. Unpermitted Development is Inconsistent with the Coastal Act

The unpermitted development meets the definition of “development” which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. The unpermitted development is not consistent with the Sections 30240 and 30251 of the Coastal Act.

Environmentally Sensitive Habitat Area

Section 30107.5 of the Coastal Act states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat area (“ESHA”) as any “area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

The staff report for CDP No. 3-83-110 made a site-specific determination that the subject property, located within the Asilomar Dunes area of Monterey County, was ESHA. A unique native plant community has evolved on the Asilomar Dunes, which are comprised of white silica sands. The plant community provides stability for the dune sands. The Commission granted CDP No. 3-83-110 with conditions requiring restoration of the site with native vegetation and dedication of all portions of the site outside the building area as an open space/scenic easement. The unpermitted development is located within the dedicated easement, which was supposed to be restored with native dune vegetation. Therefore, the habitat values of the ESHA have been disrupted and the unpermitted golf course is found to be inconsistent with Section 30240 of the Coastal Act.

In addition to Section 30240 of the Coastal Act, the unpermitted development is also inconsistent with habitat policies in the Del Monte Forest Area Land Use Plan (LUP), which is part of the certified Monterey County Local Coastal Program.

Policy 16 of the Del Monte Forest Area LUP states:

“The remnant native sand dune habitat along the shore in the Spanish Bay planning area, on Signal Hill, and adjacent to 17-Mile Drive in the Spyglass Cypress planning area, shall be preserved through scenic easement or conservation.”

The subject property is located within the Spyglass Cypress planning area and the unpermitted golf course is not consistent with Policy 16 of the LUP.

Scenic Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas.

A unique native plant community has evolved on the Asilomar Dunes, which are comprised of white silica sands. The plant community provides stability for the dune sands. CDP No. 3-83-110 required the restoration of the degraded native dune vegetation on the subject property, and preservation of the area with an open space/scenic easement. The three-hole golf course consisting of sand traps, turf greens and golf holes is not consistent with the scenic qualities of the area's native dune vegetation. Therefore, the Commission finds that the unpermitted development is not consistent with Section 30251 of the Coastal Act.

c. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined by §13190 of the Commission's regulations.

Definition of Continuing Resource Damage

The term "continuing" is defined by Section 13190(c) of the Commission's regulations as follows:

'Continuing', when used to describe 'resource damage', means such damage, which continues to occur as of the date of issuance of the Restoration Order.

The unpermitted development remains on the subject property and is being maintained by the property owner. As described below, the unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission's regulations defines the term "resource" as it is used in Section 30811 of the Coastal Act as follows:

'Resource' means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

The term "damage" in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.'

In this case, the resource damage is the continuing degradation of environmentally sensitive habitat caused by the presence and maintenance of the golf course in an area intended for restoration with native dune vegetation. The unpermitted development is causing the ongoing adverse impacts to coastal resources that are described in subsection b above. As long as the landowner continues to maintain the golf course, these impacts will continue to occur. The

unpermitted development has taken place adjacent to and in an ESHA- the Asilomar Dunes area, Monterey County.

F. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a cease and desist and restoration order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Restoration Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

G. Allegations

1. Robert and Maureen Feduniak are the owners of 3145 17 Mile Drive (APN 008-261-002). The subject property is located within the Asilomar Dunes area of Monterey County.
2. An unpermitted three-hole golf course has been constructed on the subject property.
3. Robert and Maureen Feduniak continue to maintain the unpermitted development on the subject property.
4. The unpermitted development on the property is in conflict with the previously issued CDP No. 3-83-110, which required that all of the subject property outside of the approved building envelope be restored with native dune vegetation and preserved with a dedicated easement for the protection of scenic and natural habitat values.
5. The Offer to Dedicate open space easement was recorded on October 14, 1983 as Monterey County Instrument Number G 46457, Reel 1675, Pages 444-455.

H. Violators' Defenses and Commission's Response

Myron E. Etienne, Jr., submitted a Statement of Defense (SOD) with attached letter on behalf of the Feduniaks, which was received by the Commission staff on March 17, 2003, and is included as **Exhibit 8**. The following paragraphs describe the defenses contained in the Statement of Defense and set forth the Commission's response to each defense.

The Feduniaks' Defense:

1. Referring to the December 9, 2002 Notice of Violation letter, Mr. Etienne states "Contrary to the statement in your letter that prior to development native vegetation on the site was described in the original permit to contain native plants and low growing shrubs, that fact is that the June 8, 1983 report of biologist Bruce Cowan, on file with the Coastal Commission, states that the area in question was not native dune habitat and was thoroughly disturbed. In addition, the landscape plan approved with

the permit by the Coastal Commission anticipated that all existing fill would be removed and replaced on new grades, thereby eliminating all existing vegetation, none of which was endangered, rare or threatened.”

Commission’s Response:

Commission staff has never asserted that in 1983 the subject property consisted only of undisturbed native dune habitat or that the site was undisturbed. Rather, the 1983 staff report (**Exhibit 3**) clearly recognized the degraded nature of the vegetation on the site and specifically designed the permit conditions that required removal of all iceplant, restoration of the site with native dune vegetation, and preservation of the restored habitat values on the site through the dedication of the open space easement. The 1983 staff report acknowledged the results of the plant survey, and noted: “The native plants on-site as well as in the general area, are for the most part threatened by the spread of the aggressive iceplant. In order to protect the native plant community, the Commission has found it necessary to require native landscaping on new development projects, as well as require botanic easements to protect the undeveloped dune areas.” The 1983 staff report also noted: “Implementation of a native revegetation plan will restore the site. A scenic/botanic easement over the undeveloped portions of the lot is required to protect the restored resources on the site as well as prevent adverse impacts from occurring. *“As conditioned, to require an offer to dedicate an open space easement over the undeveloped portion of the lot, and to require restoration and landscaping on the site, the proposed development can be found consistent both with previous Commission action in this area and with Section 30240(b) of the Coastal Act, as an adjacent environmentally sensitive habitat area will be protected.”* (emphasis added)

The December 9, 2002 Notice of Violation letter (**Exhibit 6**) states “vegetation on the site was described in the original permit to *include* native plants” (emphasis added). The Notice of Violation letter did not state that the vegetation on the site consisted only of native plants. The one-page plant survey report dated May 8, 1983 and prepared by biologist Bruce Cowan is included in this staff report as **Exhibit 15**. This report does not state that the area was not native dune habitat and does not state that the area was thoroughly disturbed. Rather, the report lists the results of the plant survey, and notes the presence of both exotic (non-native) and native plant species on the subject site. The report notes that areas around the existing house were covered primarily with ice plant, ornamental pink mesembryanthemum, Holland dune grass, and weedy annual grasses (all exotic plant species). One coyote bush plant and several dozen native seaside daisies were observed near the existing house. Several other species of native plants occurring in smaller numbers (lupine, buckwheat, lizardtail, and dune dedge) were observed in locations away from the existing house on the subject property.

The Feduniaks’ Defense:

2. **“The then owner of the property, Mr. Bonanno, proceeded (in 1984) to obtain approval from the Pebble Beach Company for the existing private golf course as it appears today.”**

Commission's Response:

The Pebble Beach Company is a private firm that owns and operates several resorts and golf courses in Monterey County. This firm has no authority to issue development approval to a private property owner, has no authority to grant permits under the Coastal Act, and any such "approval" is not valid under the Coastal Act. In 1983-84, which was prior to the certification of the Monterey County Local Coastal Program, the Coastal Commission was the governmental body that issued coastal development permits in the coastal zone of Monterey County, as it did with its 1983 issuance of CDP No. 3-83-110 for the subject property.

The Feduniaks' Defense:

3. **"Mr. Bonanno's home was completed in February of 1985. A copy of the signoff by the Building Department is enclosed. Based on information we have discovered, we believe that the (golf) course was completed that year, or at the very latest, in early 1986."**

Commission's Response:

The Feduniaks point out that the previous property owner constructed the unpermitted golf course. Regardless of who performed the development, the persistence of the unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the current owners are liable for correcting. The Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal. App.3d 605, 618; *CREED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 318.) The Coastal Act is a "sensitizing of and refinement of nuisance law." (*CREED*, at 319.)

The Feduniaks are liable for actions of previous owners who may have created the public nuisances on the subject property based on Civil Code 3483, which states:

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

In addition, in *Leslie Salt* (p. 622), the court held that:

"whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question."

Thus, even if the prior owner constructed the unpermitted development, the Feduniaks' maintenance of that development without a permit constitutes a continuing violation of the Coastal Act and CDP 3-83-110. Coastal development permits run with the land, and the

Feduniaks purchased the property subject to both CDP No. 3-83-110, and all conditions attendant thereto.

The Feduniaks' Defense:

4. **“On November 21, 2000, our clients, Robert and Maureen Feduniak, purchased the property from Mr. Bonanno. Mr. Bonanno supplied our clients with a transfer disclosure statement, which is mandated pursuant to the applicable provision of the California Civil Code. A copy of that document is enclosed herewith. As you can see, no mention whatsoever was made of the scenic easement, which was the subject of the Offer, or the Certificate of Acceptance by the Del Monte Forest Society. Unfortunately, the title company insuring title to the property did not pick up the existence of the recorded Offer or the Certificate of Acceptance. Consequently, at the time Mr. and Mrs. Feduniak finalized the transaction, they were blissfully unaware of the existence of either the requirements of the Coastal Development Permit or the scenic easement.”**

Commission's Response:

Because the OTD and Certificate of Acceptance were properly recorded against title to the property, the Feduniaks are presumed to have constructive knowledge of the OTD. In *Ojavan Investors, Inc. v. Cal. Coastal Commission* (1997) 54 Cal.App.4th 373, 389, the Court of Appeal held that:

Because the restrictions were properly recorded prior to appellants' purchase of the lots, appellants (who are admittedly engaged in the land auction business and therefore are sophisticated in land transfer transactions) are deemed to have constructive notice of the deed restrictions.

The issue of constructive notice is also addressed in Section 1213 of the Civil Code, which states the following:

Every conveyance of real property or an estate for years therein acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees. . .

Civil Code § 1215 provides that, “as used in Section 1213, the term ‘conveyance’ embraces every instrument in writing...by which the title to any real property may be affected....” Thus, for purposes of Section 1213, the OTD and Certificate of Acceptance are a “conveyance of real property”, the recordation of which provides constructive notice of the contents of the OTD and Certificate of Acceptance to all future owners of the property including the Feduniaks.

In further support of the Feduniaks' constructive knowledge of the OTD and Certificate of Acceptance, the treatise, 5 Miller and Starr, *California Real Estate 3d*, “Recording and Priorities,” § 11:59 states the following:

When such an instrument is duly recorded, ... all persons who thereafter deal with the property described in the instrument are conclusively presumed to have constructive notice of the contents of the recorded document.

Since the OTD and the Certificate of Acceptance were recorded with the Monterey County Recorder's Office on October 14, 1983 and October 28, 1986, respectively, the Feduniaks, as subsequent owners, are conclusively presumed to be aware of their existence.

The Feduniaks' Defense:

5. **"It seems inconceivable that such a flagrant violation would have escaped the attention of the staff of the Coastal Commission for so many years. It seems to us there has been more than an unreasonable delay on the part of the Coastal Commission to enforce the violation."**

Commission's Response:

The Commission's enforcement program does not have the staff or budget to actively inspect the coast for violations of the Coastal Act, and responds to violations as they are brought to its attention. The Commission learned of this violation in September 2002 and sent formal notice to the Feduniaks in December 2002. This does not constitute unreasonable delay in initiating the process to resolve the violation. It is certainly not "inconceivable" that this violation escaped the attention of Commission staff until only recently. The violation is located within the gated portion of Seventeen Mile Drive, which requires a fee for non-residents to drive through, and therefore does not receive the same volume of casual car traffic as other areas of the coast. Commission staff does not regularly drive through this area, for example on their way to and from work, which is one way in which violations come to our attention.

Unfortunately, the Commission cannot monitor and follow up on all of the numerous permits that it issues to ensure compliance with permit conditions. It should be noted that compliance with all permit conditions is strictly required both by the permits themselves and explicitly by the Coastal Act. The majority of people receiving permits comply with the law and the Commission clearly expects this when it issues permits. Staff also notes that the Commission heard and approved CDP No. 3-83-110 for the subject property as a Consent Calendar item, which means that the applicant/permittee (Bonanno, *et al.*) agreed to all proposed permit conditions before the hearing. Thus, there was no reason to suspect that the permittee would not carry out the conditions of CDP No. 3-83-110 as approved.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

CEASE AND DESIST ORDER CCC-03-CD-09

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes Robert and Maureen Feduniak, their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to cease and desist from maintaining on the subject property the unpermitted golf course.

Accordingly, all persons subject to this order shall, within 60 days of its issuance, cease all maintenance of the unpermitted golf course, including watering and mowing of the grass turf.

Within 90 days of the issuance of this order, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the order.

RESTORATION ORDER CCC-03-RO-07

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes Robert and Maureen Feduniak, their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to restore the subject property as described below.

Accordingly, the Coastal Commission hereby authorizes and orders the following:

- A. Within 60 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration and Revegetation Plan. The Commission has on file the original approved building plans for the subject property, approved by the Commission on July 28, 1983, and approved Landscaping Plan for the subject property, dated August 15, 1983. These plans shall serve as the template for preparing an updated plan.
- B. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:
 1. Restore the topography as necessary according to the approved building plans for the subject property that the Commission approved on July 28, 1983.
 2. Submit to the Executive Director a report documenting the restoration of the topography. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible, as described in paragraph A.

3. Within 90 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, revegetate the disturbed areas with native plants, following the specifications of the Restoration Plan approved by the Executive Director, pursuant to paragraph A above.
4. Submit to the Executive Director a report documenting the restoration of the vegetation. This report shall include photographs that show the restored site.

I. Persons Subject to the Orders

Robert and Maureen Feduniak, and their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to the orders is described as follows:

An approximately 1.65 acre lot at 3145 17 Mile Drive, Pebble Beach, Monterey County, APN 008-261-002.

III. Description of Unpermitted Development

The development that is the subject of the Cease and Desist and Restoration Orders consists of an unpermitted three-hole golf course in a dedicated open space easement.

IV. Effective Date and Terms of the Orders

The effective date of the orders is the date the order is signed by the Executive Director after approval by the Commission. The orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

V. Findings

The orders are issued on the basis of the findings adopted by the Commission at the July 2003 hearing, as set forth in the attached document entitled "Recommended Findings for Cease and Desist Order CCC-03-CD-09 and Restoration Order CCC-03-RO-07".

VI. Compliance Obligation

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

VII. Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

VIII. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the orders are issued may file a petition with the Superior Court for a stay of this order.

Executed in _____ on _____, on behalf of the California Coastal Commission.

By: _____ Peter Douglas, Executive Director

Exhibits

1. Site Map and Location.
2. Site photograph.
3. Staff report and adopted findings for Coastal Development Permit No. 3-83-110.
4. Recorded document entitled "Irrevocable Offer to Dedicate Open Space Easement and Declaration of Restrictions" dated October 14, 1983.
5. Recorded "Certificate Acceptance" for the open space easement offer, dated October 28, 1986.
6. Notice of Violation letter dated December 9, 2002.
7. Notice of Intent to commence cease and desist and restoration order proceedings dated February 28, 2003.
8. Statement of Defense and attached letter dated March 14, 2003.
9. Letter dated March 21, 2003 requesting postponement of hearing.
10. Letter dated March 28, 2003 from staff to Feduniaks' representative.
11. Letter dated April 30, 2003 from Del Monte Forest Foundation to Commission Chairman Reilly.
12. Letter dated June 12, 2003 from Del Monte Forest Foundation to Commission Chairman Reilly.
13. Letter dated June 17, 2003 from Del Monte Forest Foundation to Commission Chairman Reilly.
14. Letter dated June 18, 2003 from Commission staff to Del Monte Forest Foundation regarding its letters to Commission Chairman Reilly.
15. Vegetation survey report dated May 8, 1983, prepared by biologist Bruce Cowan.

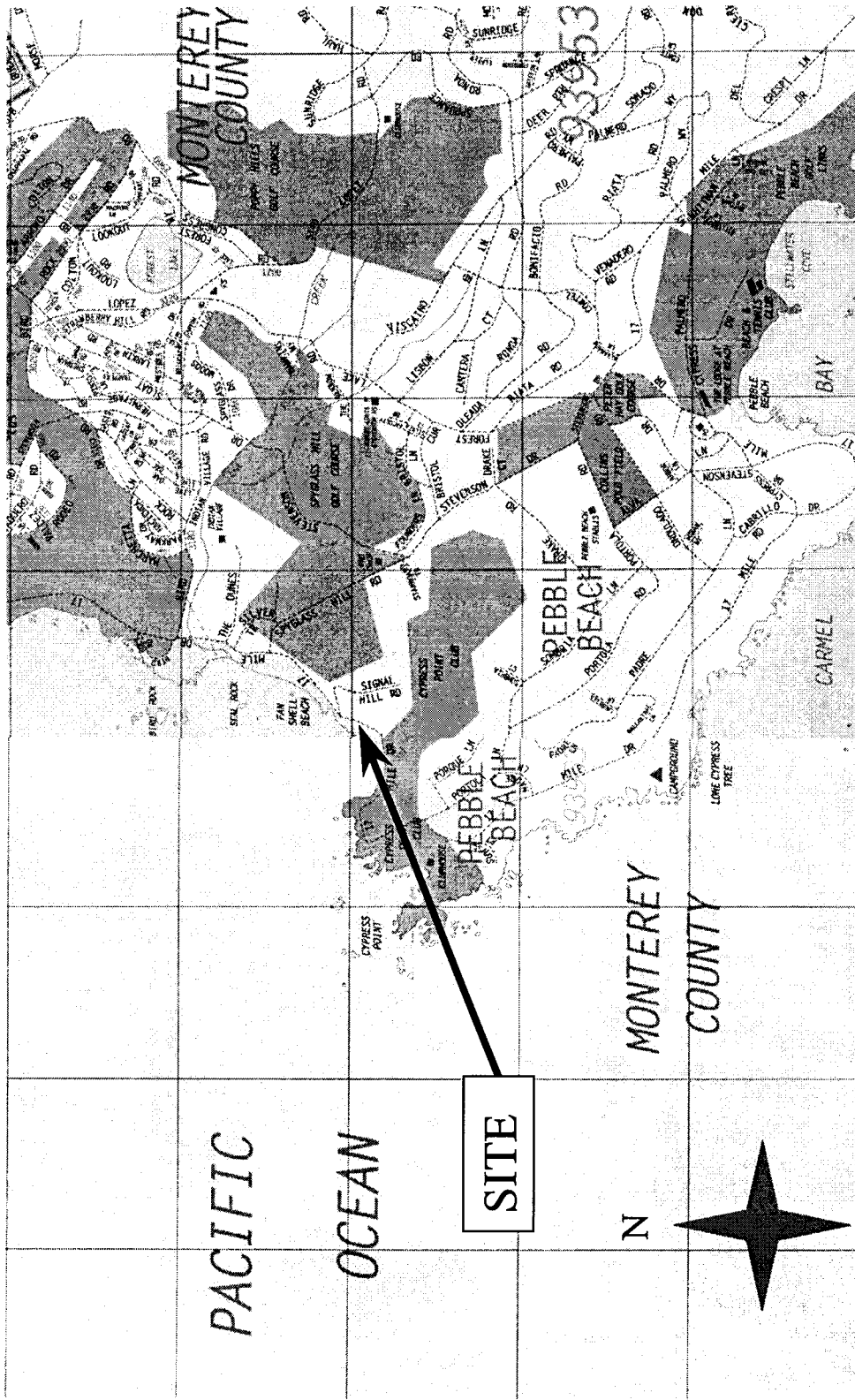


Exhibit 1
CCC-03-CD-09 and CCC-03-RO-07
(Feduniak)



Exhibit 2. Site photograph. Turf fairways and sand traps are visible in foreground.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT
701 OCEAN STREET, ROOM 310
SANTA CRUZ, CA 95060
(408) 426-7390 ATSS: 8-529-2304

6/24/83

FILED: 6/10/83
49th/180th DAY: 7/29/83
STAFF REPORT: 6/22/83
HEARING DATE: 7/13/83
STAFF: L. Locklin

STAFF REPORT: CONSENT CALENDAR

PROJECT DESCRIPTION

APPLICANT: Bonanno, Miller and Griggs

PERMIT NO: 3-83-110

PROJECT LOCATION: Inland of 17 Mile Drive, Asilomar area of Del Monte Forest, Monterey County, APN 8-261-02

PROJECT DESCRIPTION: Demolish existing single-family residence, remove and replace +2500 cubic yards of fill, construct new single-family dwelling

LOT AREA: <u>71,839 sq. ft.</u>	ZONING: <u>Residential</u>
BLDG. COVERAGE: <u>6076 sq. ft.</u>	PLAN DESIGNATION: <u>Approved LUP, valid modifications: ldu/1.5 acres</u>
PAVEMENT COVERAGE: <u>4176 sq. ft.</u>	PROJECT DENSITY: <u>+ldu/1.5 acre</u>
LANDSCAPE COVERAGE: <u>12,388 sq. ft.</u>	HEIGHT ABV. FIN. GRADE: <u>21 feet</u>

LOCAL APPROVALS RECEIVED: Monterey County zoning approval, design Review/ Categorical Exempt from CEQA.

PTI: 1

I. STAFF RECOMMENDATION

The Staff recommends that the Commission adopt the following Resolution:

Approval With Conditions

The Executive Director hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline, and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. RECOMMENDED CONDITIONS

1. Prior to transmittal of the permit, permittee shall submit to the Executive director for his review and approval:

a) An offer to dedicate an easement for the protection of the scenic and natural habitat values on the site. Except for a "building envelope" area not to exceed 14% of the lot, the offered easement shall cover all of the subject parcel. Such easement shall be granted to an appropriate public agency or conservation foundation, and shall include provisions to prohibit development; to prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with the approved landscape plan; and to specify conditions under which non-native species may be planted or removed, trespass prevented, and entry for scientific research secured.

The grantee for such easement and all provisions thereof, including designations of precise boundaries, shall be subject to advance written approval by the Executive Director in consultation with the Office of the Attorney General and the California Coastal Commission Legal Department. The request for such approval shall be accompanied by parcel map showing location of easement boundary. Such easement shall be free of prior liens.

The offer shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

b) Engineered plans showing final grading and house foundation plans.

2. Prior to construction of the house foundation, permittee shall submit, to the Executive Director for his review and approval, a restoration and landscape plan prepared in consultation with a professional botanist. The plan shall show the removal of all ice plant and other exotics on the site and revegetation of the lot with dune vegetation native to the Asilomar dunes. The ice plant shall be removed in stages and the dunes stabilized with native plantings to minimize erosion. A timetable for this work shall be submitted. Plant materials indicated on the approved plan shall be installed in accordance with the timetable and permanently maintained in good condition.

3. Unless waived by the Executive Director, a separate coastal permit shall be required for any additions to the permitted development.

III. FINDINGS & DECLARATIONS

The Commission finds and declares as follows:

PROJECT
DESCRIP-
TION

1. The proposed development is the demolition of a single-family dwelling, removal of 2100 cubic yards of fill and installation of 3000 cubic yards of fill and construction of a single-family dwelling. The site is located inland of 17 Mile Drive, in the Asilomar Dunes area of Monterey County. A level building pad with steep to moderately sloping sand dunes characterizes the lot. Vegetation consists mainly of a cover of ice plant and other exotics, plus a few scattered native plants. Surrounding land use is low density residential development along the Asilomar sand dunes.

LAND
RESOURCES
30240 (a)&(b)
STRUCTURAL
INTEGRITY
30253

2. Coastal Act Section 30240 requires the protection of environmentally sensitive habitat areas from any significant disruption of habitat values. The project site is located on white silica sand which comprises the Asilomar Dune complex. On this dune complex, a unique, indigenous flora has evolved which provides stability for the dune environment. The dune vegetation includes both native and introduced iceplants, beach sagewort, sand verbenas, beach primrose, and an unusual concentration of rare and endangered plant species. Much of the Asilomar Dune complex is considered an environmentally sensitive habitat area.

A biological survey of the site has been prepared by Mr. Bruce Cowan, Environmental Consultant. The survey revealed that the site's vegetation is mainly iceplant and other exotics with a few randomly occurring native plants. The native plants on-site as well as in the general area, are for the most part threatened by the spread of the aggressive iceplant. In order to protect the native plant community, the Commission has found it necessary to require native landscaping on new development projects, as well as require botanic easements to protect the undeveloped dune areas. Additionally, site coverage has been limited in order to prevent adverse impacts to the habitat.

The proposed project will result in 14% site coverage; this amount of coverage is consistent with previous Commission approvals. As the site has been severely altered through previous home construction, the site requires restoration rather than preservation.

The submitted application papers indicate that a landscape plan will be submitted upon completion of the grading and installation of 3000 cubic yards of engineered fill. (The 2100 cubic yards of fill now on-site is proposed for removal. This existing fill was not installed correctly; inadequate drainage and fill material has resulted in severe damage to the home. Hence, the reason for the removal of the existing home and fill to be replaced by a new home and new engineered fill. It should also be noted that the applicants intend to submit final engineering plans prior to construction.)

As it will be difficult to design an appropriate landscape plan/maintenance program until the completion of the fill project due to the large amount of material to be placed, it is appropriate, in this case, to allow submittal of this plan after the fill has been installed. Implementation of a native revegetation program will restore the site. A scenic/botanic easement over the undeveloped portions of the lot (86%) is required to protect the restored resources on the site as well as prevent adverse impacts from occurring.

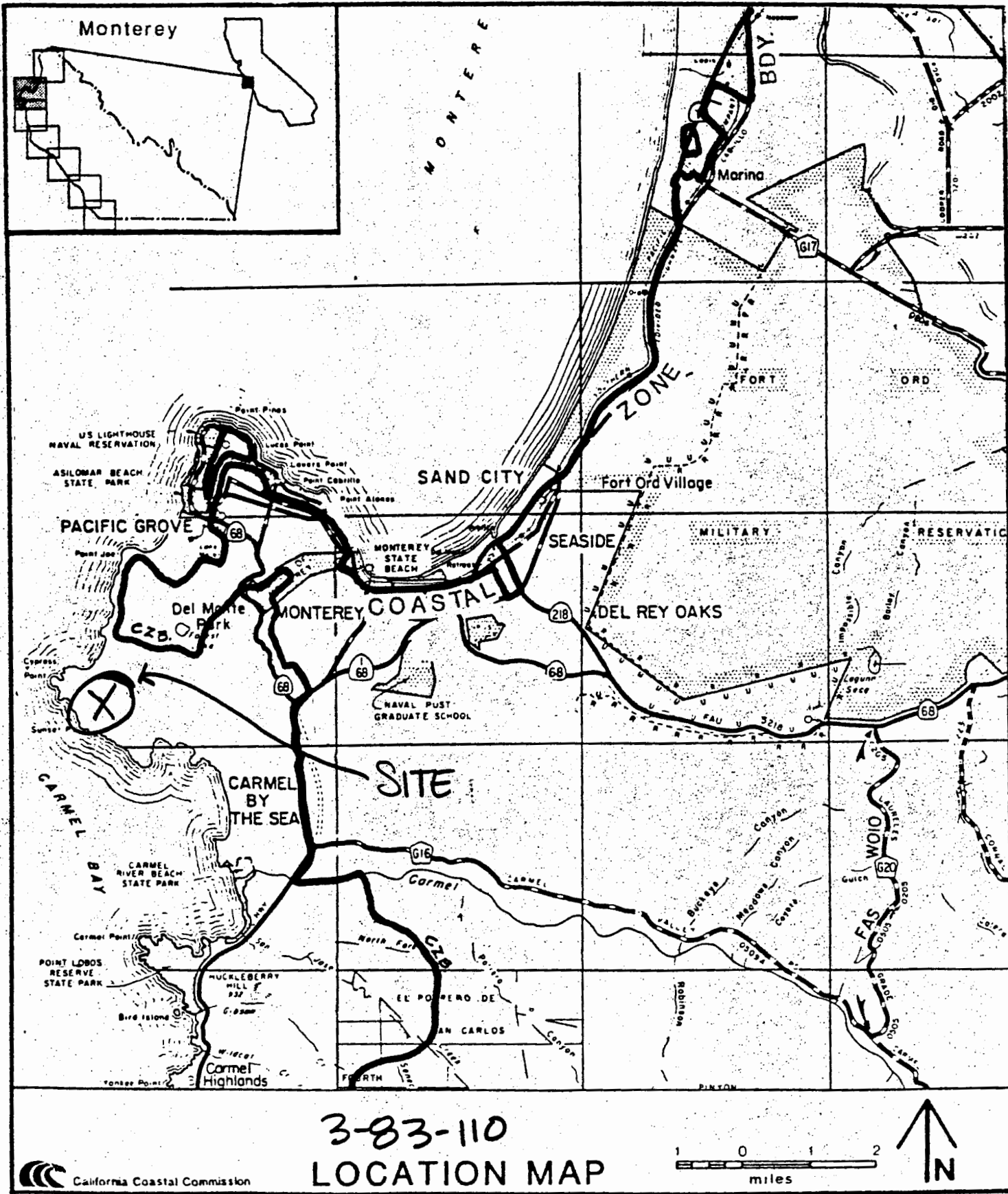
As conditioned, to require an offer to dedicate an open space easement over the undeveloped portion of the lot, and to require restoration and landscaping on the site, the proposed development can be found consistent both with previous Commission action in this area and with Section 30240(b) of the Coastal Act, as an adjacent environmentally sensitive habitat area will be protected.

Additionally, as conditioned to require submittal of final engineering plans, the project can be found consistent with Section 30253 of the Coastal Act as risks to life and property will be minimized.

CEQA/
LCP

4. Monterey County determined that the proposed project was categorically exempt from CEQA. As conditioned, the proposal will not have any significant adverse environmental impacts on the environment within the meaning of the California Environmental Quality Act.

The Del Monte Forest LUP requires protection of the remnant native sand dune habitat in the Asilomar area. Policies to protect the rare plants and preserve the dunes are included in the LUP. As conditioned, the project is consistent with the adopted LUP and will not prejudice preparation of a certifiable LCP.



County of Monterey

EXHIBIT-A

RECOMMENDED CONDITIONS

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXHIBIT NO. A

APPLICATION NO.

3-83-110

Exhibit 3

CCC-03-CD-09 and CCC-03-RO-07
(Feduniak) Page 6 of 6

FOUNDERS TITLE COM' 405022MH
Recording Requested by and
When Recorded Return to:
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105
Attention: Legal Department

A.P.# 008-261-02

405622MH

3-83-110
REEL 1675 PAGE 444
RECORDED AT REQUEST OF

FOUNDERS TITLE COMPANY

G 46457 OCT 14 10 08 AM '83

OFFICE OF RECORDER
COUNTY OF MONTEREY
SALINAS, CALIFORNIA

IRREVOCABLE OFFER TO DEDICATE OPEN-SPACE EASEMENT

AND

DECLARATIONS OF RESTRICTIONS

THIS IRREVOCABLE OFFER AND DEDICATION OF OPEN-SPACE EASEMENT AND

DECLARATIONS OF RESTRICTIONS (hereinafter "Offer") is made this

(1) August 18, , 19 83 , by (2) Bert Bonanno H. James Griggs
John Miller Gail I. Griggs
Marcie L. Miller (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain
real properties located in the County of (3) MONTEREY
State of California and described in the attached Exhibit A (hereinafter
referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal-zone
as defined in Section 30103 of the California Public Resources Code (which
code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter
referred to as the "Act") creates the California Coastal Commission
(hereinafter referred to as the "Commission") and requires that any
development approved by the Commission must be consistent with the policies
of the Act set forth in Chapter 3 of Division 20 of the Public Resources
Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
for a permit to undertake development as defined in the Act within the

1 coastal zone of (4) MONTEREY County (hereinafter the
2 "Permit"); and

3 WHEREAS, a coastal development permit, No. (5) 3-83-110 was
4 granted on (6) JULY 13, 19 83, by the Commission in
5 accordance with the provisions of the Staff Recommendations and Findings
6 (Exhibit E) attached hereto and hereby incorporated by reference, subject
7 to the following condition:(7)

8 Prior to the transmittal of the permit, the permittee shall submit to the
9 Executive Director for his review and approval: An offer to dedicate an
10 easement for the protection of the scenic and natural habitat values on the
11 site. Except for a "building envelope" area not to exceed 14% of the lot, the
12 offered easement shall cover all of the subject parcel. Such easement shall
13 be granted to an appropriate public agency or conservation foundation, and
14 shall include provisions to prohibit development; to prevent disturbance of
15 native groundcover and wildlife; to provide for maintenance and restoration
16 needs in accordance with the approved landscape plan; and to specific con-
17 ditions under which non-native species may be planted or removed, trespass
18 prevented, and entry for scientific research secured. The grantee for such
19 easement and all provisions thereof, including designations of precise
20 boundaries, shall be subject to advance written approval by the Executive
21 Director in consultation with the Office of the Attorney General and the
22 California Coastal Commission Legal Department. The request for such
23 approval shall be accompanied by parcel map showing location of easement
24 boundary. Such easement shall be free of prior liens. The offer shall run with
25 the land in favor of the People of the State of California, binding successors
26 and assigns of the applicant or landowner. The offer of dedication shall be
27 irrevocable for a period of 21 years such period running from the date of
recording.

21 WHEREAS, the Commission, acting on behalf of the People of the
22 State of California and pursuant to the Act, granted the Permit to the
23 Grantor upon condition (hereinafter the "Condition") requiring inter alia
24 that the Grantor record a deed restriction and irrevocable offer to
25 dedicate an open-space easement over the Property and agrees to restrict
26 development on and use of the Property so as to preserve the open-space and
27 scenic values present on the property and so as to prevent the adverse

1 direct and cumulative effects on coastal resources and public access to the
2 coast which could occur if the Property were not restricted in accordance
3 with this Offer; and

4 VII. WHEREAS, the Commission has placed the Condition on the permit
5 because a finding must be made under Public Resources Code Section 30604(a)
6 that the proposed development is in conformity with the provisions of
7 Chapter 3 of the Act and that in the absence of the protections provided by
8 the Condition said finding could not be made; and

9 VIII. WHEREAS, Grantor has elected to comply with the Condition
10 and execute this Offer so as to enable Grantor to undertake the development
11 authorized by the Permit; and

12 IX. WHEREAS, it is intended that this Offer is irrevocable and shall
13 constitute enforceable restrictions within the meaning of Article XIII,
14 Section 8 of the California Constitution and that said Offer when accepted
15 shall thereby qualify as an enforceable restriction under the provision of
16 the California Revenue and Taxation Code, Section 402.1;

17 NOW THEREFORE, in consideration of the above and the mutual
18 benefit and conditions set forth herein, the substantial public benefits
19 for the protection of coastal resources to be derived, the preservation of
20 the Property in open-space uses and the granting of the Permit to the owner
21 by the Commission, Grantor hereby irrevocably offers to dedicate to the
22 State of California, a political subdivision or a private association
23 acceptable to the Executive Director of the Commission (hereinafter, the
24 "Grantee"), an open-space easement in gross and in perpetuity for light,
25 air, view, and for the preservation of scenic qualities over that certain
26 portion of the Property specifically described in Exhibit B (hereinafter
27 the Protected Land); and

1 This Offer and Declaration of Restrictions subjects the Property to the
2 following terms, conditions, and restrictions which shall be effective from
3 the time of recordation of this instrument.

4 1. USE OF PROPERTY. The use of the Protected Land shall be limited to
5 natural open space for habitat protection, private recreation, and resource
6 conservation uses.

7 No development as defined in Public Resources Code, Section 30106, attached
8 hereto as Exhibit C and incorporated herein by this reference, including but
9 not limited to, removal of trees and other major or native vegetation distur-
10 bance of native wildlife, grading, paving, or installation of structures such
11 as signs, buildings, etc., shall occur or be allowed on the Protected Land with
12 the exception of the following subject to applicable governmental regulatory
13 requirements:

14 (a) the removal of hazardous substances or conditions or diseased plants
15 or trees, the removal and replacement of vegetation in accordance with a land-
16 scape plan approved by the Executive Director of the California Coastal
17 Commission or the grantee;

18 (b) the removal of any vegetation which constitutes or contributes to a
19 fire hazard to residential use of neighboring properties, and which vegetation
20 lies within 100 feet of existing or permitted residential development;
21 emergency fire access from Asilomar Avenue;

22 (c) the installation or repair of underground utilities lines and septic
23 systems;

24 2. RIGHT OF ENTRY. The Grantee or its agent may enter onto the Property
25 to ascertain whether the use restrictions set forth above are being observed
26 at times reasonably acceptable to the Grantor. The public may enter onto the
27 Property for scientific research purposes at times reasonably acceptable to

1 to the Grantor.

2 3. BENEFIT AND BURDEN. This offer shall run with and burden the
3 Property, and all obligations, terms, conditions, and restrictions hereby
4 imposed shall be deemed to be covenants and restrictions running with the

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1 land and shall be effective limitations on the use of the Property from the
2 date of recordation of this document and shall bind the Grantor and all
3 successors and assigns. This Offer shall benefit the State of California.

4 4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions
5 is held to be invalid or for any reason becomes unenforceable, no other
6 provision shall be thereby affected or impaired.

7 5. ENFORCEMENT. Any act or any conveyance, contract, or
8 authorization whether written or oral by the Grantor which uses or would
9 cause to be used or would permit use of the Protected Land contrary to the
10 terms of this Offer will be deemed a breach hereof. The Grantee may bring
11 any action in court necessary to enforce this Offer, including, but not
12 limited to, injunction to terminate a breaching activity and to force the
13 restoration of all damage done by such activity, or an action to enforce
14 the terms and provisions hereof by specific performance. It is understood
15 and agreed that the Grantee may pursue any appropriate legal and equitable
16 remedies. The Grantee shall have sole discretion to determine under what
17 circumstances an action to enforce the terms and conditions of this Offer
18 shall be brought in law or in equity. Any forbearance on the part of the
19 Grantee to enforce the terms and provisions hereof in the event of a breach
20 shall not be deemed a waiver of Grantee's rights regarding any subsequent
21 breach.

22 6. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid
23 all real property taxes and assessments levied or assessed against the
24 Property.

25 7. MAINTENANCE. The Grantee shall not be obligated to maintain,
26 improve, or otherwise expend any funds in connection with the Property or
27 any interest or easement created by this Offer. All costs and expenses for

1 such maintenance, improvement use, or possession shall be borne by the
2 Grantor, except for costs incurred by grantee for monitoring compliance
3 with the terms of this easement.

4 8. LIABILITY AND INDEMNIFICATION. This conveyance is made and
5 accepted upon the express condition that the Grantee, its agencies,
6 departments, officers, agents, and employees are to be free from all
7 liability and claim for damage by reason of any injury to any person or
8 persons, including Grantor, or property of any kind whatsoever and to
9 whomsoever belonging, including Grantor, from any cause or causes
10 whatsoever, except matters arising out of the sole negligence of the
11 Grantee, while in, upon, or in any way connected with the Property, Grantor
12 hereby covenanting and agreeing to indemnify and hold harmless the Grantee,
13 its agencies, departments, officer, agent, and employees from all
14 liability, loss, cost, and obligations on account of or arising out of such
15 injuries or losses however occurring. The Grantee shall have not right of
16 control over, nor duties and responsibilities with respect to the Property
17 which would subject the Grantee to any liability occurring upon the land by
18 virtue of the fact that the right of the Grantee to enter the land is
19 strictly limited to preventing uses inconsistent with the interest granted
20 and does not include the right to enter the land for the purposes of
21 correcting any dangerous condition as defined by California Government Code
22 Section 830.

23 9. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
24 exceptions, obligations, and reservations contained in this Offer shall be
25 binding upon and inure to the benefit of the successors and assigns of both
26 the Grantor and the Grantee, whether voluntary or involuntary.

27 10. TERM. This irrevocable offer of dedication shall be binding upon

1 the owner and the heirs, assigns, or successors in interest to the Property
 2 described above for a period of 21 years. Upon recordation of an
 3 acceptance of this offer by the grantee in the form attached hereto as
 4 Exhibit D, this offer and terms, conditions, and restrictions shall have
 5 the effect of a grant of open-space and scenic easement in gross and
 6 perpetuity for light, air, view and the preservation of scenic qualities
 7 over the open-space area that shall run with the land and be binding on the
 8 parties, heirs assigns, and successors.

9 Acceptance of the Offer is subject to a covenant which runs with the
 10 land, providing that any offeree to accept the easement may not abandon it
 11 but must instead offer the easement to other public agencies or private
 12 associations acceptable to the Executive Director of the Commission for the
 13 duration of the term of the original Offer to Dedicate.

14 Executed on this _____ day of _____, at _____
 15 _____, California. DATED: _____
 16 John J. Nible

(General)

STATE OF CALIFORNIA
 COUNTY OF Monterey } SS.

On August 23, 1983 before me, the undersigned, a Notary Public in and for said
 State, personally appeared Bert Bonanno and Bonnie Bonanno*****

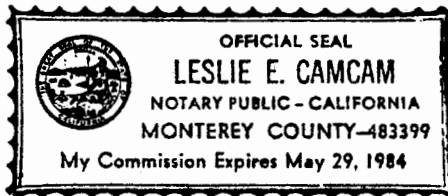
proved to me on the basis of satisfactory evidence

to be the person s whose name s are _____ subscribed
 to the within instrument and acknowledged that they
 executed the same.

WITNESS my hand and official seal.

Signature Leslie E. Camcam

 Name (Typed or Printed)



year One
Betsy
 for the
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 and sworn,
Gail I. Griggs
 ame is
 and
 the same.

OFC-2056

(This area for official notarial seal)

Betsy A. Wee

Exhibit 4

Betsy A. Wee CCC-03-CD-09 and CCC-03-RO-07
 (Feduniak) Page 8 of 12

the owner and the

REEL 1675 PAGE 452

the Property

neral)

STATE OF CALIFORNIA
COUNTY OF Monterey

SS.

On August 23, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared Bert Bonanno and Bonnie Bonanno*****

to as

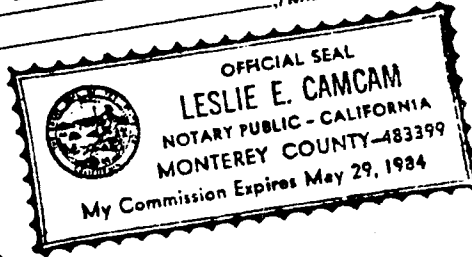
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on the

proved to me on the basis of satisfactory evidence
to be the person S whose name s are subscribed they
to the within instrument and acknowledged that they
executed the same.



Notary Seal

(This area for official notarial seal)

WITNESS my hand and official seal.

S
Leslie E. Camcam
Name (Typed or Printed)

the

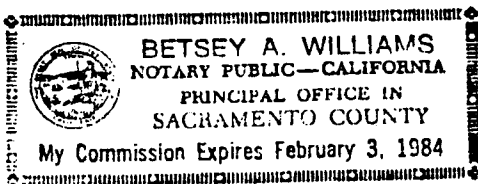
may not abandon it

document to other public agencies or private

66

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

ON THIS 18th day of August in the year One Thousand Nine Hundred 83 before me Betsey A. Williams a Notary Public in and for the County of Sacramento, State of California, residing therein, duly commissioned and sworn, personally appeared H. James Griggs & Gail I. Griggs known to me to be the persons whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

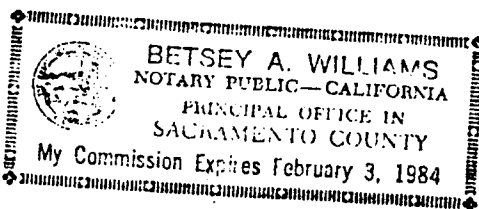


WITNESS my hand and official seal.

Betsey A. Williams

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

ON THIS 19th day of August in the year One Thousand Nine Hundred 83 before me Betsey A. Williams a Notary Public in and for the County of Sacramento, State of California, residing therein, duly commissioned and sworn, personally appeared John Miller & Marcia L. Miller known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



WITNESS my hand and of

Betsey A. Williams Exhibit 4

1 This is to certify that the offer of dedication set forth above is
 2 hereby acknowledged by the undersigned officer on behalf of the California
 3 Coastal Commission pursuant to authority conferred by the California
 4 Coastal Commission when it granted Coastal Development No. 3-83-110
 5 on 7-13-83, and the California Coastal Commission consents
 6 to recordation thereof by its duly authorized officer.

7 Dated: October 4, 1983

Walter Lee
Staff Counsel

California Coastal Commission

10 STATE OF California
 11)ss

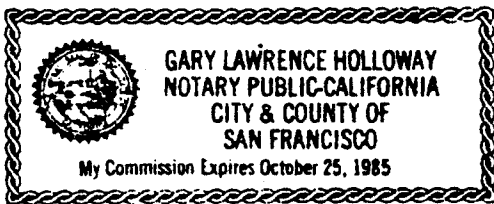
12 COUNTY OF San Francisco

13 On 4 October 1983, before me Gary Lawrence Holloway, a
 14 Notary Public, personally appeared Evelyn Ching Lee,
 15 personally known to me to be (or proved to me on the basis of satisfactory
 16 evidence) to be the person who executed this instrument as the

17 Staff Counsel, and authorized representative of the
 18 TITLE

19 California Coastal Commission and acknowledged to me that the California
 20 Coastal Commission executed it.

21 Witness my hand and official seal.



Gary Lawrence Holloway
 Notary Public in and for said
 County and State

EXHIBIT A

Property

REEL 1675 PAGE 454

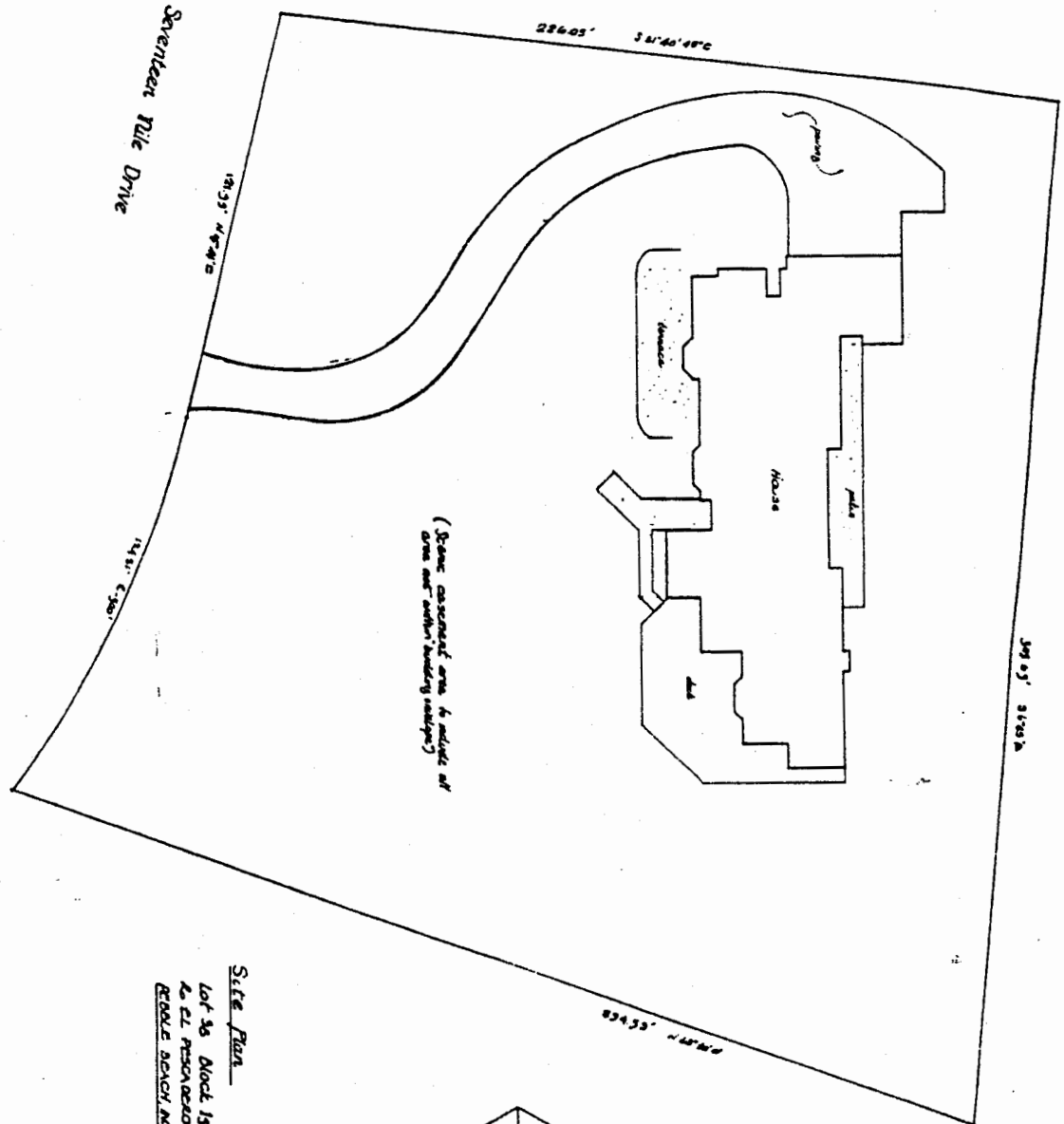
Legal Description:

Lot 38, Block 151-A, Rancho El Pescadero, Del Monte
Forest, Pebble BEach, Monterey County, Ca.

EXHIBIT B
Protected Land

REEL 1675 PAGE 455

The deeded scenic easement shall all area within the property lines not covered by structure, terrace, deck, and driveway, as proposed in original application. This area approximates 86% of lot area.



Site Plan
Lot 36 Block 151-A AP 08-24-8
Co. El. RESUBDIVISION, DEL ANORTE FOREST
REDUCE BEACH ADJUTELY COUNTY, CA.

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DONANNO, ORIGOS, & MILLER

Roger Poole, designer · 705·
(408) 649-3566 P.O. Box 5324, Carmel, Ca.

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REEL 2017 PAGE 653

OFFICE OF THE RECORDER
STATE OF CALIFORNIA

CALIFORNIA COASTAL COMMISSION Oct 28 3 02 PM '86
631 Howard Street, San Francisco 94105 — (415) 543-3555

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
ATTENTION: LEGAL DEPARTMENT

56840

OFFICE OF RECORDER
COUNTY OF MONTEREY
SALINAS, CALIFORNIA

R	4
M	1
RF	2
T	7

CERTIFICATE OF ACCEPTANCE

This is to certify that Del Monte Forest Foundation, Inc. hereby accepts
the Offer to Dedicate executed by Bert Bonanno, Bonnie Bonanno, H. James Griggs, Gail
Miller
I. Griggs, John Miller, Marcia L. Miller on August 18, 1983 and
recorded on October 14, 1983, as Instrument

No. 646857, of the Official Records in the Office of the Recorder
of Monterey County.

DATED: September 5, 1986

BY: Marshall Steel Jr.

FOR: Del Monte Forest Foundation

STATE OF CALIFORNIA)
COUNTY OF Monterey)

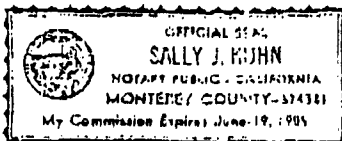
On September 5, 1986, before the undersigned, a Notary Public in
and for said County and State, personally appeared Marshall Steel Jr.

11 personally known to me

11 proved to me on the basis of satisfactory evidence

to be the person(s) who executed the within instrument as President

of the corporation/agency therein named and acknowledged to me that the
corporation/agency executed it.



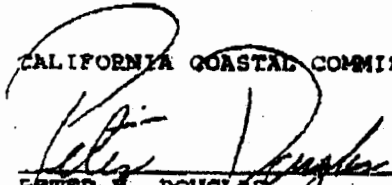
Sally J. Kuhn
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

REEL 2017 PAGE 654

ACKNOWLEDGEMENT BY CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF OFFER TO DEDICATE

This is to certify that the Del Monte Forest Foundation, Inc.
is a public agency/private association acceptable to the Executive
Director of the California Coastal Commission to be Grantee under the
Offer to Dedicate executed by Bert Bonanno, Bonnie Bonanno, H. James Griggs,
Gail I. Griggs, John Miller, Marcia L. Miller
on August 18, 1983 and recorded on October 14, 1983
in the office of the County Recorder of Monterey County
as Instrument No. G46457, Reel 1675 Page 444

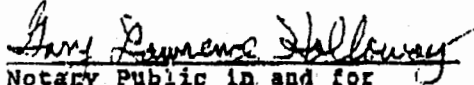
DATED: October 24, 1986

CALIFORNIA COASTAL COMMISSION

PETER M. DOUGLAS
EXECUTIVE DIRECTOR

State of California)
(County of San Francisco)

On 24 October 1986, before the undersigned Notary Public,
personally appeared Peter M. Douglas, personally known to me to be (or
proved to me on the basis of satisfactory evidence) the person who
executed this instrument as the Executive Director and authorized
representative of the California Coastal Commission and acknowledged to
me that the California Coastal Commission executed it.




Notary Public in and for
Said State and County

END OF DOCUMENT

CALIFORNIA COASTAL COMMISSION

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



Sent via Regular and Certified Mail (7000 1530 0003 5913 9811)

December 9, 2002

Mr. Mark A. Blum
Horan, Lloyd, Karachale, Dyer, Schwarz, Law & Cook
P.O. Box 3350
Carmel, CA 93942-3350

Property Location: 3145 Seventeen Mile Drive, Pebble Beach, CA (APN 008-261-022)

Subject Activity: Unpermitted grading and removal of native vegetation and development of a golf course in an open-space easement area inconsistent with the requirements of Coastal Development Permit Number 3-83-110.

Violation File: V-3-02-038

Dear Mr. Blum,

It has been brought to the attention of California Coastal Commission (Commission) Enforcement staff that grading and removal of native vegetation and development of a private golf course, complete with sand traps, has taken place within an recorded open-space easement area inconsistent with the requirements of Coastal Development Permit (CDP) Number 3-83-110, which is a violation of the permit and the Coastal Act. The current owner of this property is your client, Ms. Feduniak. The installation of a golf course conflicts with the terms and conditions of an existing open-space easement, recorded October 14, 1983, over eighty six percent (86%) of the property. The Commission considers the maintenance of scenic and native habitat values in the coastal zone to be a very high priority.

The subject parcel is located in the Asilomar Dunes Complex, which extends from Point Pinos to Fanshell Beach. This is an area that has historically been characteristic of native dune habitat. Therefore, special care has been undertaken by the Commission to avoid approving new development, which could negatively impact native dune habitat. The Commission therefore conditioned development on this site to retain native dune vegetation and to protect scenic values, requiring an irrevocable offer-to-dedicate (OTD) an open-space and scenic easement.

Prior to development, native vegetation on the site was described in the original permit to include native plants and low-growing shrubs. Photographs of the site prior to development of the golf course document the existence of the native dune vegetation. Also, the site plan for CDP No. 3-83-110 dated August 15, 1983, which was approved by Commission staff, shows native plants/shrubs, including Monterey cypress, Monterey manzanita, tree lupine, California poppy and other native plants/shrubs that

were to be planted on the site. Therefore, it is our goal to have your client restore the site to native dune habitat in accordance with the terms of the CDP 3-83-110.

Toward resolution of this matter, please submit the following:

- (1) A restoration plan for our review and approval showing removal of all unpermitted development, including the golf course and sand traps, as well as elimination of non-native plants/shrubs. The plan should conform to the approved site plan dated August 15, 1983. The plan must include an implementation schedule for removal and planting of the site. The plan must also include a proposal for monitoring the success of your restorative planting and willingness to replant if initial plantings are unsuccessful. The plan shall be submitted by **January 13, 2003**.

The cited unpermitted development, the development of a golf course and non-native landscaping installed inconsistent with the approved plan for CDP No. 3-83-110, is a violation of the terms of CDP No. 3-83-110. Therefore, in order to expedite resolution of this violation and to avoid the possibility of monetary penalties and fines, I recommend that your client submit the restoration plan by the **January 6, 2003** date. If your client does not, we may pursue additional enforcement action. You should be aware that the Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. In addition, to such penalty, Section 30820(b) states that any person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

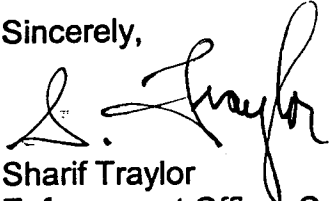
Coastal Act sections 30809 and 30810 state that if the Executive Director or the Commission determine that any person has undertaken development activity that may be inconsistent with any permit previously issued by the Commission, either can issue an order directing that person to cease and desist. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. In addition section 30811 states that the Commission may, after a public hearing, order restoration of a site if it finds that the development occurred without a CDP from the Commission, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage. Violations of either type of order –cease and desist or restoration –can result in civil fines of up to \$6,000 for each day in which the violation persists.

We hope that your client will choose to cooperate in resolving this violation by submitting a restoration plan by **January 6, 2003**. If your client fails to do this, we may pursue additional enforcement action to resolve this matter.

Mr. Mark A. Blum, A
Feduniak Violation V-3-02-038
12/09/02
Page 3

Thank you for your attention to this matter. Should you have any questions regarding this letter or the pending enforcement case, please contact me at the phone number or address above immediately.

Sincerely,



Sharif Traylor
Enforcement Officer Central Coast District

cc: Scott Hennessy, Director, Monterey County Planning and Building Inspection
Department.
Steve Monowitz, Permit Supervisor, Central Coast District Office.
Nancy Cave, Supervisor, California Coastal Commission Enforcement Program.
Stephanie Matraw, Coastal Planner, Central Coast District Office.

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CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



VIA CERTIFIED and REGULAR MAIL

February 28, 2003

Robert and Maureen Feduniak
54 Sawgrass Court
Las Vegas, NV 89113-1325

Subject: Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings

Violation No.: V-3-02-038

Location: 3145 17 Mile Drive, Pebble Beach, Monterey County
(APN 008-261-002)

Violation Description: Unpermitted three-hole golf course within open space easement

Dear Mr. and Mrs. Feduniak:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development consists of a three-hole golf course within an open space easement. This development is located at 3145 17 Mile Drive in Pebble Beach, Monterey County, APN 008-261-002 ("subject property"). The subject property is located within the Asilomar Dunes Complex across from Fanshell Beach. Robert and Maureen Feduniak own the subject property.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from maintaining any unpermitted development that is inconsistent with the terms of previously issued Coastal Development Permit (CDP) No. 3-83-110 and will compel the removal of unpermitted development and restoration of the areas impacted by the unpermitted development. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

History of the Violation Investigation

On July 15, 1983, the Coastal Commission granted to Bonanno, Miller and Griggs (the former property owners) Coastal Development Permit No. 3-83-110. The permit (issued on October 28, 1983) authorized the demolition of an existing single-family residence, removal and replacement of approximately 2,500 cubic yards of fill, and construction of a new single-family residence.

CDP No. 3-83-110 included a condition requiring the dedication of an easement for the protection of the scenic and natural habitat values on the site. The site is located on the white silica sand of the Asilomar Dune complex, which is considered an environmentally sensitive habitat area. Except for a "building envelope" area covering approximately 14% of the lot, the easement was to cover all of the subject property. On October 14, 1983, Bonanno, Miller and Griggs recorded a document entitled "Irrevocable Offer to Dedicate Open Space Easement and Declaration of Restrictions" as Monterey County Instrument Number G 46457, Reel 1675, Pages 444-455. On October 28, 1986, the Del Monte Forest Foundation, Inc. recorded an acceptance of this Offer to Dedicate for the subject property. CDP No. 3-83-110 also required the submission and approval of a restoration and landscape plan showing the removal of all ice plant and other exotics on the site and revegetation of the lot with native dune vegetation. Approved landscape plans dated August 15, 1983 include the approved plant list for the site.

Some time after the permitted construction of the house, the unpermitted golf course was installed. The Commission staff first learned of the alleged violation on the subject property in late September of 2002. Such development, which is inconsistent with the conditions of the previously issued CDP, is a violation of the Coastal Act. Since that time, staff has attempted to resolve this matter with you as an alternative to commencement of formal enforcement proceedings. On December 9, 2002 a "Notice of Violation" letter was sent to you regarding the unpermitted development on the subject property. Because the golf course is clearly inconsistent with the terms and conditions of CDP No. 3-83-110, the letter requested that you submit by January 6, 2003, a complete permit application for removal of the unpermitted development and restoration of the site. You have not submitted a CDP application for restoration of the site.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since unpermitted development inconsistent with the previously issued CDP has occurred at the subject property. This unpermitted development consists of a three-hole golf course comprised of turf fairways and sand traps. The development is located within the open space easement required as a condition of CDP No. 3-83-110, which encompasses all parts of the property not covered by the building envelope. The turf fairways are inconsistent with permit conditions requiring vegetation of the lot with native dune plantings. CDP No. 3-83-110 also included the condition that "unless waived by the Executive Director, a separate coastal permit shall be required for any additions to the permitted development." No CDP was applied for nor obtained for the construction of the golf course on the subject property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.

I have determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of the removal of sensitive habitat and the construction of a three-hole golf course has occurred on the subject property. The unpermitted development is inconsistent with previously issued CDP No. 3-83-110, which required the dedication of an open space easement over all portions of the parcel not covered by the approved building envelope.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including Section 30240 (environmentally sensitive habitat areas or ESHA) and Section 30251 (scenic and visual qualities). The approved staff report for CDP 3-83-110 required "an offer to dedicate an easement for the protection of the scenic and natural habitat values on the site."
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted environmentally sensitive habitat area through the removal of native dune vegetation. Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The native vegetation within the open space easement has been removed and replaced with turf fairways and sand traps and continues to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

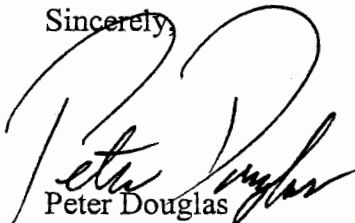
Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than March 21, 2003.**

The Commission staff intends to schedule the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for May 6-9, 2003 in Monterey. If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,



Peter Douglas
Executive Director

cc: Sheila Ryan, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
John Bowers, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor
Sharif Traylor, Central Coast District Enforcement Officer
Charles Lester, Central Coast District Deputy Director

cc with Encl.: Myron Etienne, Jr., Attorney for Robert and Maureen Feduniak

Encl.: Statement of Defense Form for Cease and Desist Order and Restoration Order

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than **March 21, 2003** to the Commission's enforcement staff at the following address:

Sheila Ryan
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

- 1. **Facts or allegations contained in the cease and desist order and restoration order or the notice of intent that you admit (with specific reference to the paragraph number in the order):**

The Feduniaks admit paragraphs 1 and 2 of the Restoration Order.

2. **Facts or allegations contained in the cease and desist order and restoration order or notice of intent that you deny (with specific reference to paragraph number in the order):**

The Feduniaks deny paragraph 3 of the Restoration Order.

3. **Facts or allegations contained in the cease and desist order and restoration order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the order):**

In response to paragraphs 3, 4, 5 and 6 of the Restoration Order, please see attached letter.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

5. **Any other information, statement, etc. that you want to offer or make:**

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

HARRY L. NOLAND
(1904-1991)
PAUL M. HAMERLY
(1920-2000)
MYRON E. ETIENNE, JR.
JAMES D. SCHWEFEL, JR.
STEPHEN W. PEARSON
LLOYD W. LOWREY, JR.
ANNE SECKER
RANDY MEYENBERG
MICHAEL MASUDA
CHRISTINE P. GIANASCOL
JO MARIE OMETER
LISA NAKATA OMORI
LAURA A. DAVIS
DALE E. GRINDROD
JOHN E. KESECKER
LESLIE E. FINNEGAN
KIRK R. WAGNER
TIMOTHY J. BALDWIN

OF COUNSEL
PETER T. HOSS
MARTIN J. MAY
BLANCA E. ZARAZUA

NOLAND, HAMERLY, ETIENNE & HOSS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
333 SALINAS STREET
POST OFFICE BOX 2510
SALINAS, CALIFORNIA 93902-2510

AREA CODE 831
SALINAS 424-1414
(FROM MONTEREY) 372-7525
MONTEREY 373-3622
KING CITY 386-1080
SALINAS FAX 424-1975
WWW.NHEH.COM

E-MAIL DETIENNE@NHEH.COM

OUR FILE NO. 17898.000

March 14, 2003

California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Notice of Intent to Commence Cease and Desist
Order and Restoration Order Proceedings
Violation No. V-3-02-038
Location: 3145 17 Mile Drive, Pebble Beach
APN: 008-261-002
Violation Description: Unpermitted 3-hole golf course
within open space easement

Dear Gentlepersons:

I am responding in part to the letter written by Sharif Traylor pertaining to the above violation, dated December 9, 2002, addressed to Mark A. Blum, and the communication from the California Coastal Commission dated February 28, 2003.

Subsequent to the date of Mr. Traylor's letter, Robert and Maureen Feduniak retained the undersigned with reference to the subject matter in that communication. The delay in responding is due to the fact that it was necessary for me to obtain the file from the law firm of Horan, Lloyd, Karachale, Dyer, Schwarz, Law & Cook, review it, and then proceed to investigate the matter. The following was disclosed by that investigation:

On July 13, 1983, Bert and Bonnie Bonanno were issued the coastal permit for the construction of a residence at the above noted location. The permit carried with it certain conditions, which were articulated in an Irrevocable Offer to Dedicate Open-Space Easement and Declaration of Restrictions ("Offer"), which was recorded October 14, 1983. Contrary to the statement in your letter that prior to development native vegetation on the site was described in the original permit to include native plants and low growing shrubs, the fact is that the June 8, 1983 report of biologist Bruce Cowan, on file with the Coastal Commission, states that the area in question was not native dune habitat and was thoroughly disturbed (copy enclosed). In addition, the

landscape plan approved with the permit by the Coastal Commission anticipated that all existing fill would be removed and replaced on new grades, thereby eliminating all existing vegetation, none of which was endangered, rare or threatened.

That having been said, however, the then owner of the property, Mr. Bonanno, proceeded to obtain approval from the Pebble Beach Company for the existing private golf course as it appears today. The plan as one sees it today was approved in 1984 (exact date uncertain) by the Pebble Beach Company. No County or Coastal Commission permission, however, was obtained as far as we can determine at this time.

Mr. Bonanno's home was completed in February of 1985. A copy of the signoff by the Building Department is enclosed. Based on information we have discovered, we believe that the course was completed that year, or at the very latest, in early 1986. A Certificate of Acceptance by the Del Monte Forest Foundation of the Offer was recorded on October 28, 1986 (copy enclosed).

From and after the time of construction of the course, as far as we know, its existence was never questioned by any representative of the Coastal Commission or the County of Monterey.

On November 21, 2000, our clients, Robert and Maureen Feduniak, purchased the property from Mr. Bonanno. Mr. Bonanno supplied our clients with a transfer disclosure statement, which is mandated pursuant to the applicable provision of the California Civil Code. A copy of that document is enclosed herewith. As you can see, no mention whatsoever was made of the scenic easement, which was the subject of the Offer, or the Certificate of Acceptance by the Del Monte Forest Foundation.

Unfortunately, the title company insuring title to the property did not pick up the existence of the recorded Offer or the Certificate of Acceptance. Consequently, at the time Mr. and Mrs. Feduniak finalized the transaction, they were blissfully unaware of the existence of either the requirements of the Coastal Development permit or the scenic easement. The first knowledge they had of any problem with the property was in the form of a letter, dated August 31, 2001, from the Del Monte Forest Foundation stating that they would be arranging a site visit to view the property (copy enclosed). While the letter referenced an easement, it contained no information whatsoever as to the extent of the easement. That knowledge did not come until some time in the spring of 2002. The Feduniaks were stunned. They actually did not learn of the dimensions of the problem with which they were suddenly faced until July 8, 2002, in the form of a letter from Steve Staub (copy enclosed). Although Mr. Staub's letter refers to a landscape plan prepared by Gary Girard dated August 15, 1983, we have been unable to locate such a plan in the files pertaining to this matter.

Based on the research this office has made, we do not believe that the penalties and fines referenced in Mr. Traylor's letter can be enforced against the Feduniaks. Under the applicable provisions of the Coastal Act, it is clear that they were not the individuals who committed the violation, but were good faith innocent buyers for value. They paid \$13,000,000.00 for the property, based on a clear understanding that the property was unaffected by any obligation of the nature referenced in your letter. In view of the fact that their purchase was consummated on

March 14, 2003

Page 3

November 21, 2000, and from all we can determine the golf course was installed in late 1984 or early 1985, over fifteen years had transpired since the construction of the course. It must be said that the violation referenced is as flagrant as it could possibly be. The course is situated in front of the residence and has been a noteworthy development since its original installation.

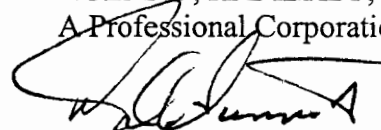
While Mr. and Mrs. Feduniak may have a variety of causes of action against the Bonannos, obviously, that does not resolve the problem. They paid \$13,000,000.00 for the property, and the purchase was primarily motivated by the existence of the three hole golf course. We are continuing to investigate this matter to determine a proper and appropriate course of action. It is our intent to defend any action which the Coastal Commission may initiate. It seems inconceivable that such a flagrant violation would have escaped the attention of the staff of the Coastal Commission for so many years. It is equally inconceivable that a Certificate of Acceptance by the Del Monte Forest Foundation was recorded on October 28, 1986, long after completion of the golf course.

It seems to us there has been more than an unreasonable delay on the part of the Coastal Commission to enforce this violation, and it is our hope that we will be able to resolve this issue in some way other than depriving the Feduniaks, who were by any measure good faith purchasers, fully justified in believing that there were no problems with the Coastal Commission, or any other permitting authority, with reference to the property.

We would like to discuss the issues raised by this matter at a time convenient with you, in the hope that we can work something out which will function to resolve the issues raised by the Notice of Intent to Commence a Cease and Desist Order and Restoration Proceeding.

Very truly yours,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation



Myron E. Etienne, Jr.

MEE:ng

Enclosures

cc: Robert Feduniak (without encls.)
Dave Robertson (without encls.)

BRUCE COWAN, ENVIRONMENTAL CONSULTANT
P.O. Box 671
Pacific Grove, CA 93950
Survey May 8, 1983

Mr. Roger Poole, Designer
P.O. Box 5324
Carmel, CA 93921

Re: Endangered plant survey, Bonanno, Griggs & Miller residence, 17-Mile Drive,
Pebble Beach. Lot 38 Block 151 A, A.P. 08-261-2

GENERAL DESCRIPTION

The existing house is situated midway up a steep dune, though flooding and poor drainage in the back yard indicate that a relatively shallow layer of sand overlies landforms of bedrock. A steep bank below (west of) the house is covered with Hottentot fig ice plant and ornamental pink mesembryanthemum. A steep bank behind (east of) the house contains ice plant and Holland dune grass. The flat area within the immediate vicinity of the house is paved, or landscaped with a lawn (mostly converted to weeds), and various rocks and ornamental shrubs. This landscape includes a solitary native coyote bush and several dozen native seaside daisies--probably volunteers, -- the only natives in close proximity to the house. Several other species of native plants occur in small numbers in locations well below the house.

ENDANGERED SPECIES

No rare or endangered native plants were seen near the existing house or the proposed extension, or elsewhere on the property.

PLANT LIST

Ice plant-- Carpobrotus edulis (exotic)
Pink mesembryanthemum--Drosanthemum floribundum (exotic)
Holland dune grass--Ammophila arenaria (exotic)
Pampas grass--1 large clump--Cortaderia jubata (exotic)
Weedy annual grasses in lawn--mostly Bromus (exotic)
Seaside daisy--Erigeron glauca
Coyote bush--Baccharis pilularis var. consanguineum
Bush lupine--Lupinus arboreus
Sky lupine--Lupinus nanus
Buckwheat--Eriogonum parvifolium
Lizardtail--Eriophyllum staechadifolium
Dune dedge--Carex pansa

RECEIVED

JUN 08 1983

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT

Bruce Cowan

Bruce Cowan
Consultant

Exhibit 8
CCC-03-CD-09 and CCC-03-RO-07
(Feduniak) Page 7 of 20

9-21-83

85-520

PROPERTY LOCATION:
 LOT 38 BLOCK 151A TRACT/SUBD El Pescadero
 STREET (ADDRESS) 3145 ASSESSOR'S PARCEL NO
 17 Mile Drive 8-261-02
 NEAREST CROSS STREET Signal Hill Road POST OFFICE Pebble Beach
 OWNER Bonanno, Griggs, Miller PHONE
 MAILING ADDRESS 2045 Hallmark Drive, Suite 4 Sacramento CITY
 ARCHITECT OR ENGINEER Roger Poole PHONE 649-3566
 CONTRACTOR WARMINGTON CONST. PHONE

DATE ISSUED 1/13/84 PERMIT NO. 14200 AREA PB CODE 101
 SET BACKS (IN FEET)
 FRONT 20 SIDE 20 SIDE 20 REAR 20 VALUATION 450,000
 FEES
 PLAN CHECK 1022.15
 RESIDENTIAL 1572.50
 COMMERCIAL
 GRADING
 PLUMBING
 ELECTRICAL
 MECHANICAL
 STRONG MOTION FEE 30.10
 PLAN MAINT. FEE
 TOTAL \$ 2624.75
 RECEIPT NO. 52455
 ZONE R-1-B-5 (RHS) BLDG. TYPE 1.5Ac.
 CATEGORICALLY EXEMPT
 ASSESSMENT REQ'D
 NEG. DEG. ADOPTED
 CERTIFIED EIR REV.
 APPLICATION APPROVED BY [Signature] FOR BUILDING INSPECTOR

USE OF STRUCTURE SFD/GAR
 TYPE OF IMPROVEMENT: SOLAR
 PLUMBING ELEC. MECH. GRADING CU. YDS.
 BUILD REMODEL ADD TO REPAIR MOVE CONVERT DEMOLISH
 SIZE: 5316/896 SQ. FT. NO. OF STORIES 1 NO. OF FAMILIES 1

2-23-84 Ret wall. 1/10
 2-23-84 Ret wall Foot (N/E) 1/10
 2-23-84 SFD Foot (N/E) 1/10
 E.G. GAR Foot
 2-6-84 Stair railing Downhill 1/10

OTHER PERMITS	PERMIT NUMBER	FEE
POWER POLE		2/1/85 Need ties on MULT. wire circuit / approved plus
GRADING		2/21/85
PLUMBING		
ELECTRICAL		
MECHANICAL		
SOLAR		

See 34282 (Filed 2-23-84 Ret.) OFFICE RECORD OF INSPECTIONS

BUILDING	ELECTRICAL	PLUMBING	PLASTERING
FOUNDATION FORMS 5-22-84 1/10	TEMPORARY SERVICE 1-17-84 1/10	ROUGH PLUMBING 3-14-84 1/10	LATH-EXTERIOR * 6-26-84 1/10
GARAGE FORMS 3-14-84 1/10	UNDERGROUND OR UNDER CONCRETE	ROUGH HEATING 6-9-84 1/10	LATH-INTERIOR * 6-26-84 1/10
CONCRETE SLAB FLOOR 3-14-84 1/10	ROUGH ELECTRIC 6-9-84 1/10	GAS PRESSURE SFD 4-30-84 1/10	LATH SHOWER & TUB 11/18/84
CONCRETE BLOCKS	ELECT. SERVICE	underground 10/14/84	SHEET ROCK NAILING 6-26-84 1/10
Footing + Po. Elec 8-22-84 1/10	FINAL ELECTRIC	SEWER	FIRE SEPARATION
ROOF SHEATHING 6-7-84 1/10	ELECTRIC METER AUTH. 1-17-84 1/10	FINAL PLUMBING	SCRATCH 8-22-84 1/10
UNDERFLOOR FRAMING 3-14-84 1/10	PG & E CALLED 1-17-84 1/10	FINAL HEATING	OTHER
FRAMING 6-7-84 1/10		FINAL GAS	ALTER
INSULATION 6-8-84 1/10		SEPTIC TANK	REPAIR
ROOFING		GAS METER AUTH.	MOVE
FIREPLACE FOUNDATION 3-14-84 1/10		PG & E CALLED	GRADING
THROAT/DAMPER 3-14-84 1/10			
COMBUSTION AIR			
CHIMNEY 6-7-84 1/10			
ENCROACHMENT			

OK TO OCCUPY DATE [Signature] FINAL INSPECTION DATE 2/10/85
 OWNER Bonanno, Griggs, Miller GENERAL CONTRACTOR WARMINGTON CONST. PROPERTY FILE NO. SFD/GAR PERMIT NO. 14200

REEL 2017 PAGE 653

OFFICE OF THE CLERK OF THE SUPERIOR COURT
STATE OF CALIFORNIA

CALIFORNIA COASTAL COMMISSION Oct 28 3 02 PM '86
631 Howard Street, San Francisco 94105 — (415) 543-2855

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
ATTENTION: LEGAL DEPARTMENT

56540

OFFICE OF RECORDER
COUNTY OF MONTEREY
SALINAS, CALIFORNIA

R	7
M	1
RF	2
T	7

CERTIFICATE OF ACCEPTANCE

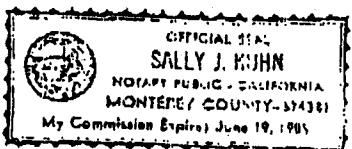
This is to certify that Del Monte Forest Foundation, Inc. hereby accepts
the Offer to Dedicate executed by Bert Bonanno, Bonnie Bonanno, H. James Griggs, Earl
Miller
I. Griggs, John Miller, Marcia L. on August 18, 1983 and
revised on October 14, 1983, as Instrument
No. 646457 of the Official Records in the Office of the Recorder
of Monterey County.

DATED: September 8, 1986

BY: Marshall Steel Jr.
FOR: Del Monte Forest Foundation

STATE OF CALIFORNIA)
COUNTY OF Monterey)

On September 8, 1986, before the undersigned, a Notary Public in
and for said County and State, personally appeared Marshall Steel Jr.
11 personally known to me
11 proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as President
of the corporation/agency therein named and acknowledged to me that the
corporation/agency executed it.



Sally J. Kuhn
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

JUL 11-02 13:28

REEL 2017 PAGE 654

ACKNOWLEDGEMENT BY CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF OFFER TO DEDICATE

This is to certify that the Del Monte Forest Foundation, Inc.
is a public agency/private association acceptable to the Executive
Director of the California Coastal Commission to be Grantee under the
Offer to Dedicate executed by Bert Bonanno, Bonnie Bonanno, H. James Griggs,
Gail I. Griggs, John Miller, Marcia L. Miller
on Augu.: 18, 1983 and recorded on October 14, 1983
in the office of the County Recorder of Monterey County
as Instrument No. G46457, Reel 1675 Page 444
DATED: October 24, 1986

CALIFORNIA COASTAL COMMISSION
Peter M. Douglas
PETER M. DOUGLAS
EXECUTIVE DIRECTOR

State of California)
County of San Francisco)
On 24 October, 1986, before the undersigned Notary Public,
personally appeared Peter M. Douglas, personally known to me to be (or
proved to me on the basis of satisfactory evidence) the person who
executed this instrument as the Executive Director and authorized
representative of the California Coastal Commission and acknowledged to
me that the California Coastal Commission executed it.



Gary Lawrence Holloway
Notary Public in and for
Said State and County

END OF DOCUMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Redondo Beach, COUNTY OF Los Angeles, STATE OF CALIFORNIA

DESCRIBED AS 3145145 17 Mille Drive, Pacific Beach

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) June 15th, 2000. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures: _____

II

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller is is not occupying the property.

A. The subject property has the items checked below (read across):

- Range Oven Microwave
- Dishwasher Trash Compactor Garbage Disposal
- Washer/Dryer Hookups Smoke Detector(s) Rain Gutters
- Burglar Alarms Satellite Dish Fire Alarm
- T.V. Antenna Central Air Conditioning Intercom
- Central Heating Sprinklers Evaporator Cooler(s)
- Wall/Window Air Conditioning Sump Pump Public Sewer System
- Septic Tank Built-in Barbecue Water Softener
- Patio/Decking Pool Child Resistant Barrier* Gazebo
- Sauna Hot Tub Locking Safety Cover* Spa Locking Safety Cover*
- Security Gate(s) Automatic Garage Door Opener(s)* Number Remote Controls 5
- Garage: Attached Not Attached Carport
- Pool/Spa Heater: Gas Solar Electric
- Water Heater: Gas Water Heater Anchored, Braced, or Strapped*
- Water Supply: City Private Utility or Other Repair
- Gas Supply: Utility Bottled
- Window Screens Window Security Bars Quick Release Mechanism on Bedroom Windows*

(Continued on page 2) (*see footnote on page 2)

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 1 of 3 Pages.

Buyer's Initials (DIT) Seller's Initials (BIB)

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATIONS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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REVISED 4/99

OFFICE USE ONLY Reviewed by Broker



BUYER'S COPY

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS-11 P)

Exhibit 8

CCC-03-CD-09 and CCC-03-RO-07 (Feduniak) Page 11 of 20

Subject Property Address: 3145 17 Mile Dr, Pebble Beach Date: 6-15-00

Exist Fan(s) in K. F. CHAN & BA No. Volt Wiring in LAUNDRY RM place(s) in FAMILY RM
 Gas Starter No Roof(s): Type: WOOD SHAKE 14 YR (approx) 1/2" R
 Other: _____

Pebble Beach

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? Yes No. If yes, then describe. (Attach additional sheets if necessary): _____

June 15th, 2000

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? Yes No. If yes, check appropriate space(s) below.

- Interior Walls Ceilings Floors Exterior Walls Insulation Roof(s) Windows Doors Foundation Slab(s)
- Driveways Sidewalks Walls/Fences Electrical Systems Plumbing/Sewers/Septics Other Structural Components

(Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

*This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:


- 1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property Yes No
- 2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property Yes No
- 3. Any encroachments, easements or similar matters that may affect your interest in the subject property Yes No
- 4. Room additions, structural modifications, or other alterations or repairs made without necessary permits Yes No
- 5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes Yes No
- 6. Fill (compacted or otherwise) on the property or any portion thereof Yes No
- 7. Any settling from any cause, or slippage, sliding, or other soil problems Yes No
- 8. Flooding, drainage or grading problems Yes No
- 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides Yes No
- 10. Any zoning violations, nonconforming uses, violations of "setback" requirements Yes No
- 11. Neighborhood noise problems or other nuisances Yes No
- 12. CC&R's or other deed restrictions or obligations Yes No
- 13. Homeowners' Association which has any authority over the subject property Yes No
- 14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) Yes No
- 15. Any notices of abatement or citations against the property Yes No
- 16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas, co-owned in undivided interest with others) Yes No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary): Item # 2 FENCE, # 3 FENCE ENCROACHMENT, FRONT YARD, 12 CC&R'S

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller Bert Bonanno Date 11-1-00
Seller Lois Bonanno Date 11-1-00

Buyer and Seller acknowledge receipt of copy of this page, which constitutes Page 3 Pages.
Buyer's Initials (RBS) Seller's Initials (BFB) **REVISED 4/99**

OFFICE USE ONLY
Reviewed by Broker or Designee _____


PRINT DATE
R SEP 99

Subject Property Address: 3145 17 Mile Dr, Pebble Beach Date: 6-15-00

AGENT'S INSPECTION DISCLOSURE

Pebble Beach

(To be completed only if the Seller is represented by an agent in this transaction.)
THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

Agent notes no items for disclosure.
 Agent notes the following items: The South side of the property encroaches onto the adjoining parcel. See Consumer Home Inspection Report and A.I.M. Home Inspection Report

Agent (Broker Representing Seller) Caldwell Baker By Tom Bruce Date 11/11/00
(Please Print) (Associate-License or Broker Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)
THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

Agent notes no items for disclosure.
 Agent notes the following items: See Home inspection - minor items noted. Encroachment issue on South Boundary is being corrected prior to closing.

Agent (Broker Obtaining the Offer) John Saar Prop By [Signature] Date 11/1/00
(Please Print) (Associate-License or Broker Signature)

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller [Signature] Date 11-1-00 Buyer Robert B. Feduniak Date 11/18/00

Seller [Signature] Date 11-1-00 Buyer [Signature] Date _____

Agent (Broker Representing Seller) Tom Bruce By Caldwell Baker Date 11/11/00
(Associate-License or Broker Signature)

Agent (Broker Obtaining the Offer) John Saar Prop By [Signature] Date 11/1/00
(Associate-License or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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REVISED 4/99

OFFICE USE ONLY
Reviewed by Broker or Designee _____
Date _____



PRINT DATE
R SEP 99



DEL MONTE FOREST FOUNDATION, INC.

Forest Lake and Lopez Roads, Pebble Beach, CA 93953

(831) 373-1293 Fax (831) 373-2357

August 31, 2001

Mr. & Mrs. Robert Feduniak
54 Sawgrass Ct
Las Vegas, Nevada 89113

Dear Mr. & Mrs. Feduniak:

As I hope you already know, the Del Monte Forest Foundation (DMFF) holds an easement affecting your property. The Del Monte Forest Foundation is the non-profit conservation organization designated to hold and maintain open space in the Del Monte Forest Area of Monterey County's Land Use Plan. As the Professional Forester for DMFF, I am contacting you to reacquaint you with the provisions of our easement by enclosing a copy of the recorded easement. The principal purpose of most of our easements is to conserve and protect scenic and biological resources unique to the Del Monte Forest that occur on your parcel. One provision of the easement is permission to make periodic on-site reviews of current conditions within the easement area.

Within the next 60 days, we will be arranging a time to visit your parcel when you or a representative familiar with your property could join us to review the conditions in the easement. As a cooperative effort, we hope you might be able to give us details about property and easement boundaries and other items relating to your use that we might miss if we were unaccompanied. We in turn might be able to answer questions you may have about various easement provisions and how they apply in your case.

We hope to complete this year's easements review within the next couple months. Please contact us by phone, FAX, mail or email as given below at your earliest convenience to let us know what timing and arrangement will work best for you, and whom you would like us to contact if you will not be involved personally. We look forward to hearing from you.

Sincerely,

Stephen R. Staub
Consulting Forester for the Del Monte Forest Foundation

Direct Contact: Phone: (831) 335-1452
FAX: (831) 335-1462
Email: staubtre@pacbell.net

CC: Paul D. Gullion, Legal Counsel



DEL MONTE FOREST FOUNDATION, INC.

Forest Lake and Lopez Roads, Pebble Beach, CA 93953

(831) 373-1293 Fax (831) 373-2357

July 8, 2002

Mr. & Mrs. Robert Feduniak
54 Sawgrass Ct
Las Vegas, Nevada 89113

Dear Mr. & Mrs. Feduniak:

Based on our site review in December 2001 of your property located at 3145 17 Mile Drive, Pebble Beach, California, we have found that it is not in compliance with the provisions of the open space easement the Del Monte Forest Foundation (DMFF) holds on your property. We are aware that at the time of purchase, you were unaware of the existence of an open space easement on your property, and that the previous owners installed the current landscaping. To determine whether or not current landscaping may have been approved as part of permit processing, we recently obtained from Coastal Commission files copies of the approved landscape plan prepared by Gary Girard, dated August 15, 1983 that was prepared for the original owners; Bonanno, Griggs and Miller (see enclosed copy). This landscape plan will be a valuable reference and starting point for bringing your property into compliance. Also included as background information are other pertinent file materials related to permit approval and landscaping within the easement area.

The purpose of your easement is to conserve and protect scenic and biological resources unique to the Del Monte Forest that occur on your parcel. The resources on your particular parcel include dunes habitat that support unique vegetation and wildlife. Through a cooperative effort we would like to work with you in bringing your property into compliance. One approach is to restore the easement area to native dunes vegetation through phasing over a set period of time. We are currently working with very experienced restoration consultants that work with private residences to create functional and aesthetically pleasing native landscapes.

We would like to arrange a meeting in which we could discuss a plan for bringing your property into compliance and also address any questions or concerns you may have. Being that your primary residence is in Nevada, we can work with you to schedule a time when you are in Pebble Beach or meet with a representative familiar with your property.

Sincerely,

Stephen R. Staub
Forestry Consultant for the Del Monte Forest Foundation

Direct Contact: Phone: (831) 335-1452, FAX: (831) 335-1462, Email: staubtre@pacbell.net

Attachments: Landscape Plan (24"X36"), Coastal Commission staff report, Botanist Letter, Building Designer letter

CC: Paul D. Gullion, DMFF Legal Counsel, Stephen W. Dyer, Esq.

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT
701 OCEAN STREET, ROOM 310
SANTA CRUZ, CA 95060
(408) 426-7390 ATSS: 8-529-2304

FILED: 6/10/83
49th/180th DAY: 7/29/83
STAFF REPORT: 6/22/83
HEARING DATE: 7/13/83
STAFF: L. Locklin

ADOPTED

RECEIVED
SEP 18 1983
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT

STAFF REPORT: CONSENT CALENDAR

PROJECT DESCRIPTION

APPLICANT: Bonanno, Miller and Griggs

PERMIT NO: 3-83-110

PROJECT LOCATION: Inland of 17 Mile Drive, Asilomar area of Del Monte Forest, Monterey County, APN 8-261-02

PROJECT DESCRIPTION: Demolish existing single-family residence, remove and replace +2500 cubic yards of fill, construct new single-family dwelling

LOT AREA: 71,839 sq. ft. ZONING: Residential

BLDG. COVERAGE: 6076 sq. ft. PLAN DESIGNATION: Approved LUP, valid modifications: ldu/1.5 acres

PAVEMENT COVERAGE: 4176 sq. ft. PROJECT DENSITY: +ldu/1.5 acre

LANDSCAPE COVERAGE: 12,388 sq. ft. HEIGHT ABV. FIN. GRADE: 21 feet

LOCAL APPROVALS RECEIVED: Monterey County zoning approval, design Review/ Categorically Exempt from CEQA.

31.5% }
14%

PTI: 1

I. STAFF RECOMMENDATION

The Staff recommends that the Commission adopt the following Resolution:

Approval With Conditions

The Executive Director hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline, and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. RECOMMENDED CONDITIONS

1. Prior to transmittal of the permit, permittee shall submit to the Executive director for his review and approval:

a) An offer to dedicate an easement for the protection of the scenic and natural habitat values on the site. Except for a "building envelope" area not to exceed 14% of the lot, the offered easement shall cover all of the subject parcel. Such easement shall be granted to an appropriate public agency or conservation foundation, and shall include provisions to prohibit development; to prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with the approved landscape plan; and to specify conditions under which non-native species may be planted or removed, trespass prevented, and entry for scientific research secured.

The grantee for such easement and all provisions thereof, including designations of precise boundaries, shall be subject to advance written approval by the Executive Director in consultation with the Office of the Attorney General and the California Coastal Commission Legal Department. The request for such approval shall be accompanied by parcel map showing location of easement boundary. Such easement shall be free of prior liens.

The offer shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

b) Engineered plans showing final grading and house foundation plans.

2. Prior to construction of the house foundation, permittee shall submit, to the Executive Director for his review and approval, a restoration and landscape plan prepared in consultation with a professional botanist. The plan shall show the removal of all ice plant and other exotics on the site and revegetation of the lot with dune vegetation native to the Asilomr dunes. The ice plant shall be removed in stages and the dunes stabilized with native plantings to minimize erosion. A timetable for this work shall be submitted. Plant materials indicated on the approved plan shall be installed in accordance with the timetable and permanently maintained in good condition.

3. Unless waived by the Executive Director, a separate coastal

BRUCE COWAN, ENVIRONMENTAL CONSULTANT
P.O. Box 671
Pacific Grove, CA 93950
Survey May 8, 1983

Mr. Roger Poole, Designer
P.O. Box 5324
Carmel, CA 93921

Re: Endangered plant survey, Bonanno, Griggs & Miller residence, 17-Mile Drive,
Pebble Beach. Lot 38 Block 151 A, A.P. 08-261-2

GENERAL DESCRIPTION

The existing house is situated midway up a steep dune, though flooding and poor drainage in the back yard indicate that a relatively shallow layer of sand overlies landforms of bedrock. A steep bank below (west of) the house is covered with Hottentot fig ice plant and ornamental pink mesembryanthemum. A steep bank behind (east of) the house contains ice plant and Holland dune grass. The flat area within the immediate vicinity of the house is paved, or landscaped with a lawn (mostly converted to weeds), and various rocks and ornamental shrubs. This landscape includes a solitary native coyote bush and several dozen native seaside daisies--probably volunteers, the only natives in close proximity to the house. Several other species of native plants occur in small numbers in locations well below the house.

ENDANGERED SPECIES

No rare or endangered native plants were seen near the existing house or the proposed extension, or elsewhere on the property.

PLANT LIST

Ice plant-- Carpobrotus edulis (exotic)
Pink mesembryanthemum--Drosanthemum floribundum (exotic)
Holland dune grass--Ammophila arenaria (exotic)
Pampas grass--1 large clump--Cortaderia jubata (exotic)
Weedy annual grasses in lawn--mostly Bromus (exotic)
Seaside daisy--Erigeron glauca
Coyote bush--Baccharis pilularis var. consanguineum
Bush lupine--Lupinus arboreus
Sky lupine--Lupinus nanus
Buckwheat--Eriogonum parvifolium
Lizardtail--Eriophyllum staechadifolium
Dune dedge--Carex pansa

RECEIVED

JUN 08 1983

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT

Bruce Cowan

Bruce Cowan
Consultant

Exhibit 8

CCC-03-CD-09 and CCC-03-RO-07
(Feduniak) Page 18 of 20

COPY

Bonnam
Huggs Miller

RECEIVED
SEP 27 1983
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT
MISSION
310

Roger Poole

registered building designer

September 23, 1983

Jeri Sheel
California Coastal Commission
701 Ocean Street, Room 310
Santa Cruz, Ca. 95060

Re: Permit 3-83-110

Dear Jeri:

In reference to your concern about the time schedule for the stages of landscaping, perhaps the following will be sufficient clarification:

During the preliminary lot preparation, the iceplant and non-native growth to the west of the building site shall be removed, as well as the carpobrotus to the southeast.

Upon completion of the preliminary lot preparation and final grades are established in the areas above, areas indicated as "Mixes A, B, & D" will be hydosedded, as specified. Also, the most westerly two areas, adjacent to "Mixes A & B", will be planted.

Upon completion of the retaining walls and the driveway, the areas adjacent to the north and south property lines

(408) 649-3566

p.o. box 5324 carmel, ca. 93921

will be planted with the remaining material, as specified, and including the area south of the parking area.

Upon completion of the exterior of the structure, the balance of the planting will be placed.

Prior to these stages, a sprinkler/irrigation system will be installed.

The estimated total period time for construction is five months, subject to rain conditions.

Please call me if any additional information is desired.

Sincerely,



Roger Poole

P.S. Please address any further communications to:
1141 Ocean View Blvd, Pacific Grove, Ca. 93950

HARRY L. NOLAND
(1904-1991)
PAUL M. HAMERLY
(1920-2000)
MYRON E. ETIENNE, JR.
JAMES D. SCHWEFEL, JR.
STEPHEN W. PEARSON
LLOYD W. LOWREY, JR.
ANNE SECKER
RANDY MEYENBERG
MICHAEL MASUDA
CHRISTINE P. GIANASCOL
JO MARIE OMIETER
LISA NAKATA OMORI
LAURA A. DAVIS
DALE E. GRINDROD
JOHN E. KESECKER
LESLIE E. FINNEGAN
KIRK R. WAGNER
TIMOTHY J. BALDWIN

NOLAND, HAMERLY, ETIENNE & HOSS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
333 SALINAS STREET
POST OFFICE BOX 2510
SALINAS, CALIFORNIA 93902-2510

AREA CODE 831
SALINAS 424-1414
(FROM MONTEREY) 372-7525
MONTEREY 373-3622
KING CITY 386-1080
SALINAS FAX 424-1975
WWW.NHEH.COM

E-MAIL DETIENNE@NHEH.COM

OUR FILE NO. 17898.000

March 21, 2003

OF COUNSEL
PETER T. HOSS
MARTIN J. MAY
BLANCA E. ZARAZUA

VIA FACSIMILE - 415-904-5400
AND UNITED STATES MAIL

Sheila Ryan
Headquarters Enforcement Officer
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: 3145 17 Mile Drive, Pebble Beach
Robert & Maureen Feduniak
Violation No. V-3-02-038

Dear Ms. Ryan:

Thanks very much for your courteous discussion of today.

As I mentioned, I am not going to be available during the week of May 5th. Due to a long standing commitment, I am scheduled to be out of the office from May 2nd through the 9th. In addition, there is an out of state business trip which I mentioned during our conversation, which is from June 11th through the 13th. Consequently, please regard this letter as a formal request to continue the hearing at least until July.

Given the fact that this violation has been ongoing for fifteen years, I do not see that there should be a rush to judgment on this matter. I believe that some time ought to be given to attempting to resolve the issue short of a hearing on the violation, which I will be pursuing, as indicated in our conversation today.

Even though Section 13064 of the Coastal Commission regulations pertain to a hearing on a permit matter, that section states that "...the matter shall be conducted in a manner deemed most suitable to insure fundamental fairness to all parties concerned, with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay." This

Sheila Ryan
March 21, 2003
Page 2

request for a postponement certainly falls in line with that section. I respectfully request that you set the matter for hearing in July, as a matter of fundamental fairness.

Respectfully,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation



Myron E. Etienne, Jr.

MEE:ng

cc: Robert Feduniak
- Dave Robertson

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



VIA FACSIMILE and REGULAR MAIL

March 28, 2003

Myron E. Etienne, Jr.
Noland, Hamerly, Etienne & Hoss
P.O. Box 2510
Salinas, CA 93902-2510

Subject: **Request for Continuance of Hearing for Cease and Desist
Order and Restoration Order Proceedings**

Violation No.: V-3-02-038

Property Location: 3145 17 Mile Drive, Pebble Beach, Monterey County
(APN 008-261-002)

Violation Description: Unpermitted three-hole golf course within open space easement

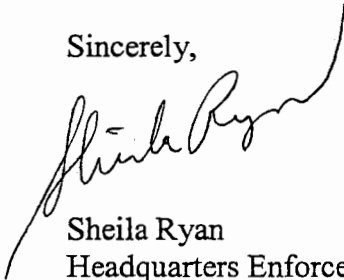
Dear Mr. Etienne:

I am writing to respond to your written request dated March 21 2003 for a continuance of the hearing on the above-referenced matter. Staff understands that long-standing previous commitments prevent your representation of the Feduniaks at the May or June Commission hearings. While continuances are not automatically granted for enforcement matters, we had not yet publicly noticed or formally placed this item on the agenda and we are able to grant your request for a continuance. We intend to schedule the hearing for the proposed Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for July 8-11, 2003 in Petaluma.

Staff understands that you wish to propose possible off-site mitigation projects as potential alternatives to a formal enforcement action to resolve the violation. Staff reiterates, however, as Lisa Haage and I discussed with you last Friday that retention of the unpermitted three-hole golf course is not to be expected. The golf course is not in compliance with the terms and conditions of Coastal Development Permit (CDP) No. 3-83-110 and is inconsistent with the recorded open space easement on the subject property. The terms and conditions of CDP No. 3-83-110 run with the land, and bind all future owners and possessors of the subject property. I would note that under the Coastal Act regulations Section 13166(a), "The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect or an approved or conditionally approved permit." Therefore, staff cannot recommend an action that would lessen or avoid the intended effect of CDP No. 3-83-110. In addition, since the open space easement has been recorded and accepted, the Commission is constrained in its ability to do anything that would impinge on this recorded property interest, or serve to eliminate the native dune vegetation requirements of the recorded open space easement.

If you have any questions regarding this letter or the pending enforcement case, please do not hesitate to call me at (415) 597-5894.

Sincerely,



Sheila Ryan
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement
Charles Lester, Central Coast District Deputy Director
Robert and Maureen Feduniak, property owners

PAUL D. GULLION
Attorney at Law
GROWER SHIPPER BUILDING
512 PAJARO STREET, SUITE 12
P O BOX 1687
SALINAS CA 93902

TELEPHONE (831) 758-1083

FAX (831) 758-1408
Email: pauldgullion@aol.com

April 30, 2003

Mike Reilly, Chairperson
California Coastal Commission
County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887

RE: 3145 17 Mile Drive, Pebble Beach/Feduniak

Dear Mr. Reilly:

I am writing to you on behalf of the Del Monte Forest Foundation concerning the above property. It has come to the attention of the Foundation that the Coastal Commission has filed a Notice of Violation against the owners of this property, Mr. and Mrs. Robert Feduniak, based upon a violation of the open space easement that was granted to the Foundation by the original owner of the property. Specifically, we understand that the landscaping installed by the prior owner does not conform to the approved plans for the property, and thus violates the provisions of the open space easement. It should be noted that the Foundation has not been provided with a copy of the Notice of Violation even though the Foundation holds the open space easement in question.

A review of the Foundation's file materials concerning the property in this matter indicates that the current residence replaced an older residence located on more or less the same site, and that at the time of the permit application for the current residence, the site was in a degraded condition with little native vegetation, did not contain any threatened or endangered species or any environmentally sensitive habitat or wetlands. It appears that when the prior owners of the property undertook the permit process leading to the building of the current residence, a landscaping plan using native plants was required and approved by the Commission. However, when the prior owner built the residence either the approved landscaping plan was not used, or the current landscaping plan was installed subsequently.

In December of 2001, the Foundation, through its Forestry Consultant Steve Staub, in the course of inspecting a number of properties on which the Foundation holds easements, conducted a site review of the Feduniak property. Based upon that review, the Foundation concluded that the Feduniak property was not in compliance with the approved landscaping plan and the provisions of the open space easement.

Mike Reilly
California Coastal Commission
April 30, 2003
Page Two

The Foundation then notified the current owners of the property about the issue, and was advised by them that they were not aware of the easement held by the Foundation. Apparently, the title company that insured the Feduniak's title when they purchased the property did not either locate or disclose the recorded easement held by the Foundation. Thereafter, the Foundation was contacted by an attorney representing the Feduniaks who advised the Foundation that his clients had filed a claim with the title company, and that the claim was being processed through proper channels with the title company's legal counsel. The Foundation, through its legal counsel, periodically contacted the Feduniak's legal counsel for updates on the claim that had been filed. On March 28, 2003, the Foundation was contacted by the Feduniak's new legal counsel who inquired into whether the Foundation would be agreeable, as the easement holder, to resolving the violation by the payment by the Feduniaks to the Foundation of compensation that could be used in enhancing environmental conditions on other sites under the jurisdiction of the Foundation. Under the proposal advanced, the current landscaping could remain in place. The Foundation indicated that it would review the concept and advise the attorney of its position.

The Foundation takes seriously its role in the environmental management of properties under its jurisdiction in the Del Monte Forest, and the Foundation takes action based upon what is in the best interests of the Forest and its residents and habitat. The Foundation understands that any decision concerning mitigation of the violation in this matter rests with the Commission, and the Foundation will certainly work with the Commission if it believes that a proposal such as that advanced by the Feduniaks is proper under the circumstances. As part of the Foundation's effort in this regard, it has identified two possible uses of any compensation that might be paid by the Feduniaks to resolve this matter.

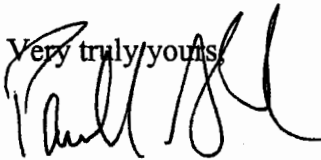
1. The removal of the foundation of the Lemos house (owned by the Foundation and located adjacent to the Gingerbread House and Indian Village, a short distance north of the Feduniak property), and the restoration of the stabilized dune soils in this area with native dune species. The Foundation had previously been considering this because the Lemos house foundation is becoming unstable and a potential safety hazard, but had not yet proceeded because a funding source had not been identified. Additionally, the area immediately north and east of the Gingerbread House (west end of Indian Village, also owned by the Foundation) has been adversely impacted in recent years both by extensive tree mortality from pitch canker, and by increased runoff from Spyglass Hill that follows the natural swale in this area into the mouth of Seal Creek. The installation of a designed runoff retention structure, biostabilized with native plants accompanied by exotics eradication, and a comprehensive rehabilitation treatment for the native pines at the west edge of Indian Village, would be a great benefit to the area in that it would provide a significant improvement to the environment of the Indian Village area and would advance the purposes of the Foundation.

Mike Reilly
California Coastal Commission
April 30, 2003
Page Three

2. The stabilization and installation of native plantings along the main side stream channels of Pescadero Canyon. Once again, this area could really benefit from such work, and when completed the habitat and environment in this area would be greatly enhanced.

With further review, other possible sites could be identified for use in this type of mitigation project.

As noted above, the Foundation views any violations seriously, and the Foundation wishes to work with the Commission to obtain a proper result in this matter. The Foundation believes that, if the Commission is so inclined, highly beneficial remedial areas can be identified and restored through the use of monetary mitigation measures. We would be happy to meet with you to discuss this matter.

Very truly yours,


PAUL D. GULLION

pdg

cc: G. F. Craig, Jr., President, Del Monte Forest Foundation
Steve Staub, Consulting Forester, Del Monte Forest Foundation
Sheila Ryan, California Coastal Commission
Myron E. Etienne, Jr., Attorney for Mr. and Mrs. Feduniak

PAUL D. GULLION
Attorney at Law
GROWER SHIPPER BUILDING
512 PAJARO STREET, SUITE 12
P O BOX 1687
SALINAS CA 93902

TELEPHONE (831) 758-1083

FAX (831) 758-1408
Email: pauldgullion@aol.com

June 12, 2003

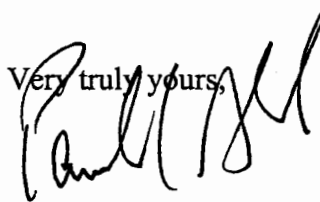
Mike Reilly, Chairperson
California Coastal Commission
County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887

RE: 3145 17 Mile Drive, Pebble Beach/Feduniak

Dear Mr. Reilly:

I am writing to you as a follow-up to my prior letter sent on behalf of the Del Monte Forest Foundation and concerning the above property. I am enclosing herewith maps indicating areas within the Del Monte Forest for possible mitigation if the Coastal Commission is inclined toward such a resolution of the violation. Please feel free to contact me with any questions you may have concerning the enclosed.

Very truly yours,



PAUL D. GULLION

pdg
enclosures

cc: G. F. Craig, Jr., President, Del Monte Forest Foundation (w/enclosures)
Steve Staub, Consulting Forester, Del Monte Forest Foundation (w/enclosures)
Sheila Ryan, California Coastal Commission (w/enclosures)
Myron E. Etienne, Jr., Attorney for Mr. and Mrs. Feduniak (w/enclosures)

RECENTLY BURNT FOREST

NOTE: Where this map differs from earlier background maps, the changes are indicated on this map for the Del Monte Forest Land Use Plan document.

DEL MONTE FOREST FOUNDATION POTENTIAL HABITAT RESTORATION SITES

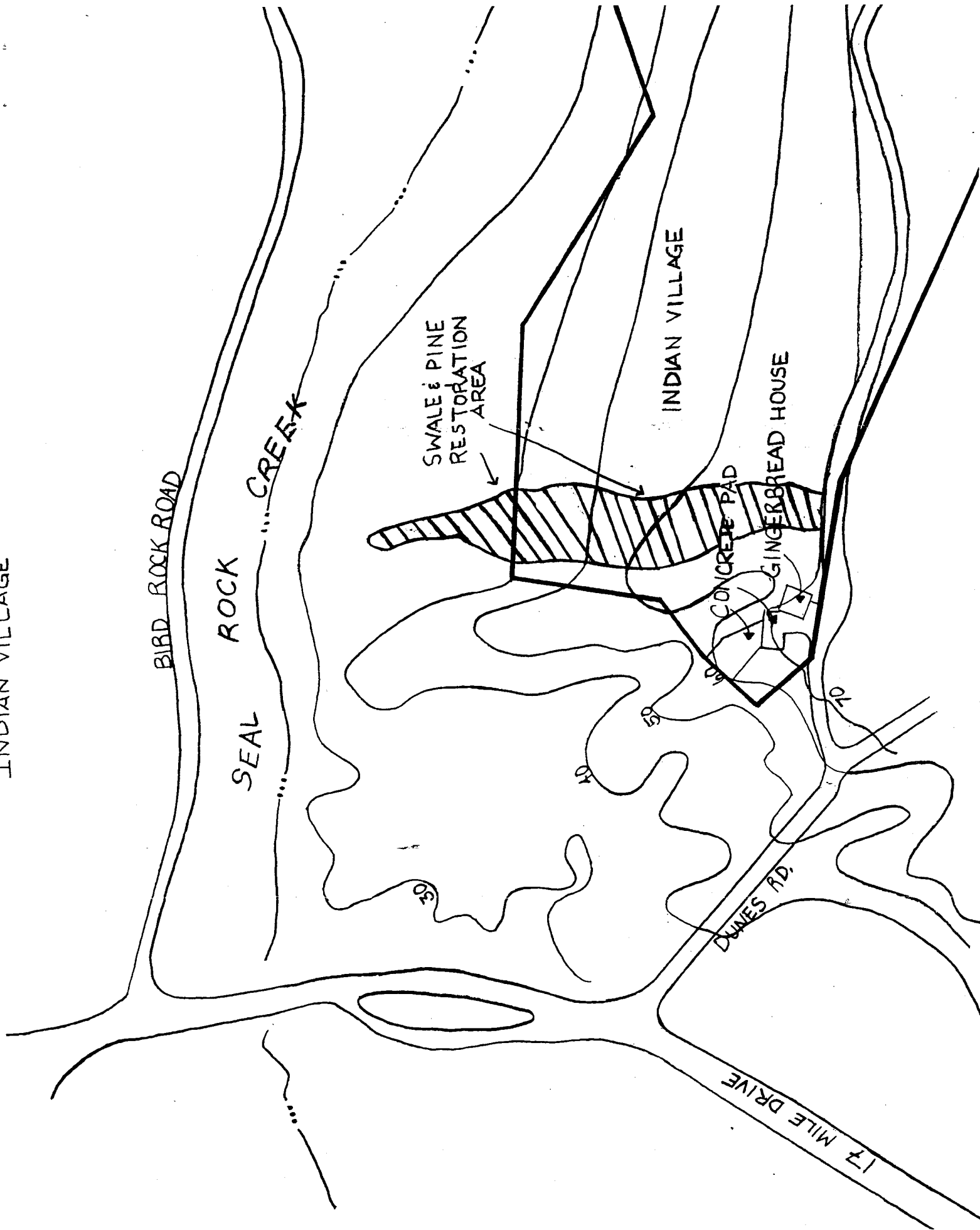
GINGERBREAD HOUSE DUNES, SWALE & PINES

PESCADERO CANYON RIPARIAN

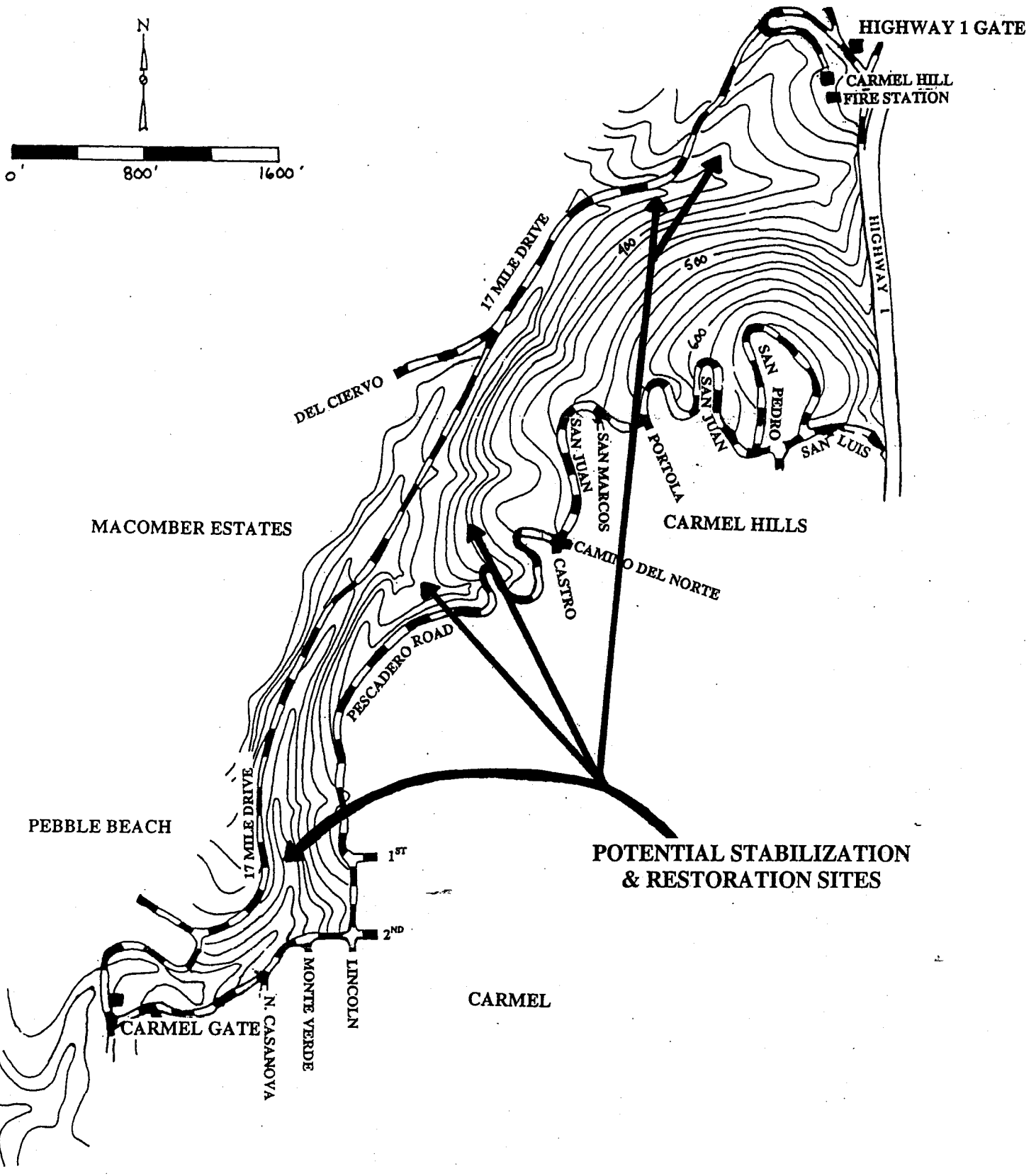
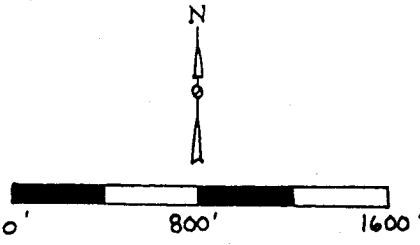


AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE & THE CANNON, BAY ECOLOGICAL RESERVE

INDIAN VILLAGE



DEL MONTE FOREST FOUNDATION
PESCADERO CANYON TRACT



PAUL D. GULLION

Attorney at Law
GROWER SHIPPER BUILDING
512 PAJARO STREET, SUITE 12
P O BOX 1687
SALINAS CA 93902

TELEPHONE (831) 758-1083

FAX (831) 758-1408
Email: pauldgullion@aol.com

June 17, 2003

Mike Reilly, Chairperson
California Coastal Commission
County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887

RE: 3145 17 Mile Drive, Pebble Beach/Feduniak

Dear Mr. Reilly:

My client, the Del Monte Forest Foundation, has had the opportunity to review the possible costs involved in implementing mitigation measures relating to the violation at the above property. I am thus forwarding this letter to you for your information should the Coastal Commission be inclined toward this type of resolution of this matter. Initially, it must be noted that specific figures cannot be developed at this point without conducting thorough mitigation studies. The cost figures set forth in this letter therefore represent estimates which would be subject to change when and if such studies were conducted.

In order to provide some context for the estimates provided in this letter, it appears that the removal of the existing golf course on the subject property, and the installation of native plantings, would cost between \$50,000.00 and \$100,000.00. The mitigation work in the Pescadero Canyon area noted on the map I previously sent to you would cost between \$125,000.00 and \$300,000.00. The mitigation work in the Indian Village/Lemos House Foundation/Gingerbread House areas noted on the maps sent to you would cost between \$100,000.00 and \$250,000.00. Thus, it would appear that the mitigation measures in the areas set forth on the maps provided to you would be in the range of \$225,000.00 to \$550,000.00. Any of these alternatives is thus likely to cost as much or more than replacing the existing golf course landscaping with native vegetation around the Feduniak residence. Please feel free to contact me with any questions you may have concerning the enclosed.

Very truly yours,



PAUL D. GULLION

pdg

cc: G. F. Craig, Jr., President, Del Monte Forest Foundation
Steve Staub, Consulting Forester, Del Monte Forest Foundation
Sheila Ryan, California Coastal Commission
Myron E. Etienne, Jr., Attorney for Mr. and Mrs. Feduniak

Exhibit 13
CCC-03-CD-09 and CCC-03-RO-07
(Feduniak)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**VIA FACSIMILE and REGULAR MAIL**

June 18, 2003

Paul D. Gullion, Attorney at Law
P.O. Box 1687
Salinas, CA 93902

Subject: 3145 17 Mile Drive, Pebble Beach, Monterey County (APN 008-261-002)

Dear Mr. Gullion:

I am in receipt of a copy of your June 12 and June 17, 2003 letters, addressed to Commission Chairman Reilly, regarding the Coastal Act violation on the above-referenced property. I also received a copy of your April 30, 2003 letter, also addressed to Chairman Reilly and regarding the same matter. I am responding not on behalf of Chairman Reilly, but to state the Commission staff position on this matter. As you are aware, the existing unpermitted golf course is in direct conflict with the terms and conditions of the Commission-approved coastal development permit for the subject property, which specifically required restoration of the site with native dune vegetation and preservation of the site through an Offer To Dedicate (OTD) open space easement. Your client, the Del Monte Forest Foundation, accepted the OTD in 1986 and is the current holder of the easement.

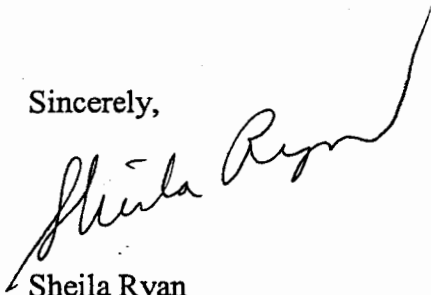
Staff understands from your recent letters that the Del Monte Forest Foundation is interested in possible off-site mitigation projects as potential alternatives to a formal enforcement action to resolve the violation regarding the open space easement on the subject property. We appreciate your input and thoughts on this matter, but there are a number of legal and factual issues that recommend against off-site mitigation, of which you may not be aware. Staff is not

recommending any off-site mitigation as an appropriate resolution to this violation, because allowing the golf course to remain on the subject property would require both an amendment to the original permit and the Foundation's abandonment of the easement. Under CCR § 13166(a), staff cannot recommend such an amendment, as it would lessen the intended effect of the approved permit, and staff is certainly not recommending that the Forest Foundation abandon the easement. In fact, staff notes that two previous letters from the Foundation's forestry consultant to the property owners, dated August 31, 2001 and July 8, 2002, respectively, urged the property owners to bring the site into compliance with the provisions of the open space easement. Staff agrees with these earlier communications and would expect the Foundation to fulfill its responsibilities as the accepting entity and holder of the easement. Moreover, as to the Foundation's administration of the easement, staff notes that under the terms of the OTD that the Foundation accepted (copy enclosed), "Acceptance of the Offer is subject to a covenant which runs with the land, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original Offer to Dedicate."

Staff has placed this matter on the Commission's July hearing agenda and is recommending that the Commission issue a Cease and Desist and Restoration Order to compel restoration of the site according to the approved permit. We are currently completing the staff report and will send you a copy of the staff report and the hearing notice next week.

Thank you for your continuing interest in this matter. If you have any questions regarding this letter or the pending enforcement case, please do not hesitate to call me at (415) 597-5894.

Sincerely,



Sheila Ryan
Headquarters Enforcement Officer

- cc: Mike Reilly, Chairman, Coastal Commission
Peter Douglas, Executive Director, Coastal Commission
Lisa Haage, Chief of Enforcement
Charles Lester, Central Coast District Deputy Director
G.F. Craig, Jr., President, Del Monte Forest Foundation
Steve Staub, Consulting Forester, Del Monte Forest Foundation
Robert and Maureen Feduniak, property owners
Myron E. Etienne, Jr., Attorney for Mr. and Mrs. Feduniak

1 the owner and the heirs, assigns, or successors in interest to the Property
 2 described above for a period of 21 years. Upon recordation of an
 3 acceptance of this offer by the grantee in the form attached hereto as
 4 Exhibit D, this offer and terms, conditions, and restrictions shall have
 5 the effect of a grant of open-space and scenic easement in gross and
 6 perpetuity for light, air, view and the preservation of scenic qualities
 7 over the open-space area that shall run with the land and be binding on the
 8 parties, heirs assigns, and successors.

9 Acceptance of the Offer is subject to a covenant which runs with the
 10 land, providing that any offeree to accept the easement may not abandon it
 11 but must instead offer the easement to other public agencies or private
 12 associations acceptable to the Executive Director of the Commission for the
 13 duration of the term of the original Offer to Dedicate.

14 Executed on this _____ day of _____, at _____
 15 _____, California. DATED: _____
 16 Alan J. Nille

(General)

STATE OF CALIFORNIA }
 COUNTY OF Monterey } SS.

On August 23, 1983 before me, the undersigned, a Notary Public in and for said
 State, personally appeared Bert Bonanno and Bonnie Bonanno*****

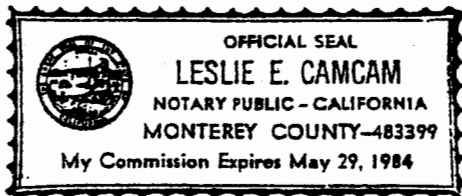
proved to me on the basis of satisfactory evidence

to be the person s whose name s are they subscribed
 to the within instrument and acknowledged that they
 executed the same.

WITNESS my hand and official seal.

Signature Leslie E. Camcam

 Name (Typed or Printed)



year One
Betsy
 for the
 ornia,
 and sworn,
Gail I. Griggs
 me is
 and
 the same.

OFC-2058

(This area for official notarial seal)

Betsy A. Will

Betsy A. Will

BRUCE COWAN, ENVIRONMENTAL CONSULTANT
P.O. Box 671
Pacific Grove, CA 93950
Survey May 8, 1983

Mr. Roger Poole, Designer
P.O. Box 5324
Carmel, CA 93921

Re: Endangered plant survey, Bonanno, Griggs & Miller residence, 17-Mile Drive,
Pebble Beach. Lot 38 Block 151 A, A.P. 08-261-2

GENERAL DESCRIPTION

The existing house is situated midway up a steep dune, though flooding and poor drainage in the back yard indicate that a relatively shallow layer of sand overlies landforms of bedrock. A steep bank below (west of) the house is covered with Hottentot fig ice plant and ornamental pink mesembryanthemum. A steep bank behind (east of) the house contains ice plant and Holland dune grass. The flat area within the immediate vicinity of the house is paved, or landscaped with a lawn (mostly converted to weeds), and various rocks and ornamental shrubs. This landscape includes a solitary native coyote bush and several dozen native seaside daisies--probably volunteers, and the only natives in close proximity to the house. Several other species of native plants occur in small numbers in locations well below the house.

ENDANGERED SPECIES

No rare or endangered native plants were seen near the existing house or the proposed extension, or elsewhere on the property.

PLANT LIST

Ice plant-- Carpobrotus edulis (exotic)
Pink mesembryanthemum--Drosanthemum floribundum (exotic)
Holland dune grass--Ammophila arenaria (exotic)
Pampas grass--1 large clump--Cortaderia jubata (exotic)
Weedy annual grasses in lawn--mostly Bromus (exotic)
Seaside daisy--Erigeron glauca
Coyote bush--Baccharis pilularis var. consanguineum
Bush lupine--Lupinus arboreus
Sky lupine--Lupinus nanus
Buckwheat--Eriogonum parvifolium
Lizardtail--Eriophyllum staechadifolium
Dune dedge--Carex pansa

RECEIVED

JUN 08 1983

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT

Bruce Cowan

Bruce Cowan
Consultant

Exhibit 15
CCC-03-CD-09 and CCC-03-RO-07
(Feduniak)

