

CALIFORNIA COASTAL COMMISSION

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

W4

CENTRAL COAST DISTRICT (SANTA CRUZ) DEPUTY DIRECTOR'S REPORT

For the

March Meeting of the California Coastal Commission

MEMORANDUM

Date: March 14, 2007

TO: Commissioners and Interested Parties
FROM: Charles Lester, Central Coast District Deputy Director
SUBJECT: *Deputy Director's Report*

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the Central Coast District Office for the March 14, 2007 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast District.

EXTENSION - IMMATERIAL

1. A-3-MCO-04-012-E1 Sheldon Laube & Nancy Engel (Big Sur, Monterey County)

TOTAL OF 1 ITEM

DETAIL OF ATTACHED MATERIALS

REPORT OF EXTENSION - IMMATERIAL

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
A-3-MCO-04-012-E1 Sheldon Laube & Nancy Engel	Construct a 8,270 sq.ft. single family residence with an approx. 1,824 sq.ft. subterranean garage, including development within 100 feet of environmentally sensitive habitat (ESHA), approx. 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot line adjustment that will consolidate two adjacent two-acre parcels.	36240 Hwy. 1 (Kasler Point, approx. 0.5 mile south of Garrapata Creek), Big Sur (Monterey County)

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March 1, 2007

NOTICE OF EXTENSION REQUEST FOR COASTAL DEVELOPMENT PERMIT

Notice is hereby given that: **Sheldon Laube & Nancy Engel**
has applied for a one year extension of Permit No: **A-3-MCO-04-012**
granted by the California Coastal Commission on: **May 11, 2005**

for **Construct a 8,270 sq.ft. single family residence with an approx. 1,824 sq.ft. subterranean garage, including development within 100 feet of environmentally sensitive habitat (ESHA), approx. 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot line adjustment that will consolidate two adjacent two-acre parcels.**

at **36240 Hwy. 1 (Kasler Point, approx. 0.5 mile south of Garrapata Creek), Big Sur (Monterey County)**

Pursuant to Section 13169 of the Commission Regulations the Executive Director has determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. The Commission Regulations state that "if no objection is received at the Commission office within ten (10) working days of publishing notice, this determination of consistency shall be conclusive. . . and the Executive Director shall issue the extension." If an objection is received, the extension application shall be reported to the Commission for possible hearing.

Persons wishing to object or having questions concerning this extension application should contact the district office of the Commission at the above address or phone number.

Sincerely,
PETER M. DOUGLAS
Executive Director


By: STEVE MONOWITZ
District Manager

cc: Local Planning Dept.

Lombardo & Gilles, Attn: Miriam Scheckat

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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**Memorandum****March 13, 2007**

To: Commissioners and Interested Parties

From: Charles Lester, Deputy Director, Central Coast District

Re: **Additional Information for Commission Meeting Wednesday, March 14, 2007**

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
W3, Field Trip		Correspondence	1
W4, District Director's Report Permit Extension Request, A-3-MCO-04-012		Correspondence	5
W7b, A-3-PSB-06-001	HMW Group	Request for Postponement	43
W8b, A-3-SCCO-06-059	Collins	Correspondence	45
W8c, 3-06-069	CA Parks & Recreation	Staff Report Addendum Correspondence	57 61

Miscellaneous: Items not on March agenda.

Letter from Monterey Pine Forest Watch re: Measure A & Pebble Beach Company,
 Monterey County LCP Amendment. 67

Letter from Sierra Club, Ventana Chapter re: Measure A & Pebble Beach Company,
 Monterey County LCP Amendment 69

W3

Edward J. Davidson

200 Button Street #15
Santa Cruz, CA 95060
TEL/FAX 831 423-9294
March 2, 2007

Honorable Coastal Commissioners,

I note you plan a field trip to Terrace Point in anticipation of hearings on the LRDP for the UCSC Marine Sciences Campus. I have attached my letter responding to last year's Staff Report on the LRDP. This affords me the opportunity to present my issues separate from the extensive correspondence in the file.

I would like you to notice the two purported wetlands referenced in my letter. One is a shallow depression near the Discovery Center, the other is at a drop inlet along the Mobile Home Park's wall. Their approximate locations are shown on the attached aerials. These areas have no wetlands characteristics other than standing water following rainstorms and are not habitat for Marsh hawks. Mosquito abatement is not required.

Respectfully submitted,
Signature(s) on file.

Ed Davidson

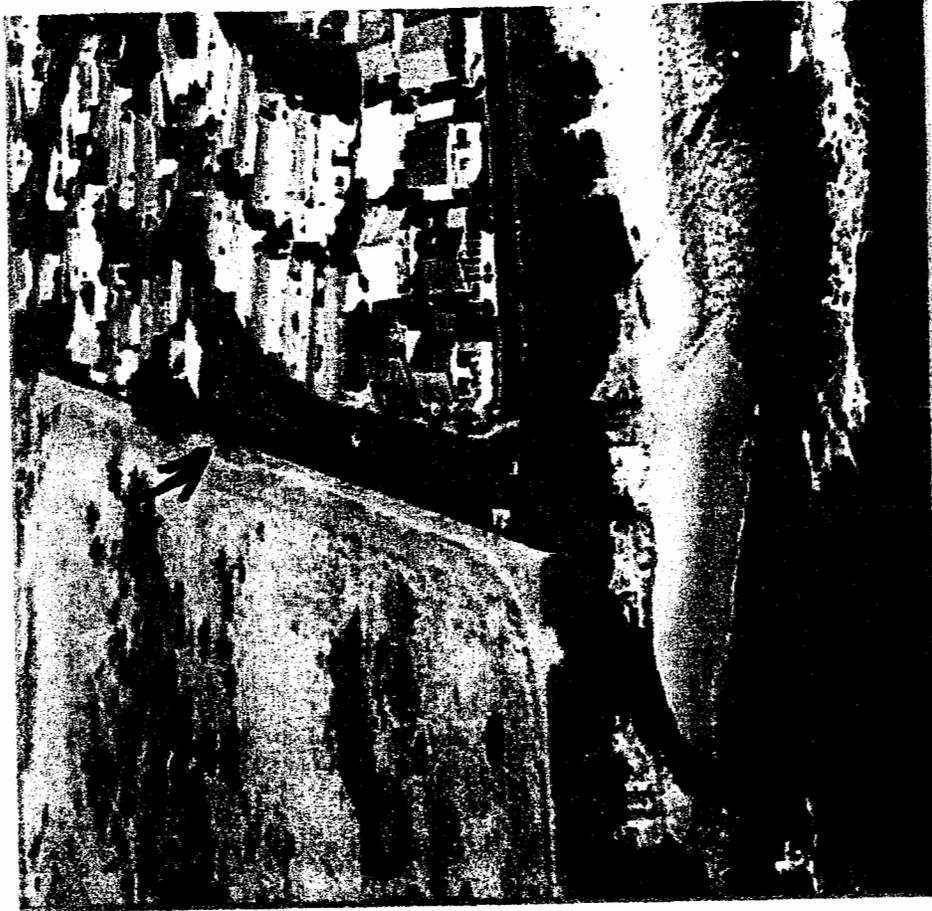
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Wetland (W5) Depression



N36 56.79 W122 03.84 Image 200506963
Nearest caption: Long Marine Lab (UCSC) (at |

Wetland (WA) Drop inlet



N36 56.80 W122 03.75 Image 200506965
Nearest caption: De Anza Trailer Park, Santa Cruz

Edward J. Davidson

200 Button Street #15
Santa Cruz, CA 95060
TEL/FAX 831 423-9294
October 7 2005

**Comments on UCSC Coastal Long Range Development Plan
Amended April 7 2006**

Honorable Coastal Commissioners:

I generally concur with Staff findings on the UCSC CRLDP but wish to add some comments on consistency analysis on Coastal Act policies. Since the applicant is likely to accept the findings, I would hope my comments would have relevance on future Coastal Permit applications.

By way of background, the site is a fine example of the urban/rural boundary at the City of Santa Cruz western limits. Downcoast are twelve miles of urbanized coastal development; upcoast are fifty miles of mostly undeveloped, open coast to Half Moon Bay.

Most of the property had been in agricultural use until discontinued in the late 1980's. Due to the soil's high salinity from perpetual salt spray, food and fiber crops are limited to artichokes and Brussels sprouts. While the latter crop was planted, the site was too small to be economically viable, particularly where a 200-foot buffer from residences was required for pesticide drift. It should be noted that the vegetation and "wetlands" followed the cessation of agricultural uses. No mention of the soil salinity is found in either the Staff Report (p 29) or CRLDP (Exh.E, p.40).

ESHA and Wetlands Designations. For the coastal terrace (excluding the Younger lagoon area), the Coastal Act definition of ESHA (Sec. 30107.5) has been stretched beyond recognition. There are no rare habitats nor especially valuable ecosystems between the urbanized east and agricultural west. The wetlands are mostly seasonal ponding from the former agricultural grading.

Wetland W5 is a shallow depression which may hold seasonal rainfall due to lack of an outlet. It is indistinguishable from the surrounding "buffer" and contains no characteristics of a wetland. Wetland W4 is the after-storm ponding at a drop inlet whose outlet has been plugged. The drop inlet and culvert had been installed prior to construction of the mobile home park's masonry wall. The drainage plan for Basin 4 (EXH.E, p.246) should require filtering and unplugging the outlet.

Rare and Endangered Species. Required foraging habitat for raptors is excessive for the northern harrier hawk. This is commonly known as marsh hawk, a common species from Maryland to California north to the Arctic Ocean. CDFG considers it a "Species of Special Concern" due to its inclusion on the list of species subject to the Migratory Bird Act.

The California Red-legged frog was listed as a threatened species due to its decline in the San Joaquin Valley. Conversion to agriculture and predation of eggs by the introduced American Bull-frog caused the decline. However, healthy populations of CRLF are found throughout the California coast as well as the Oregon and Washington coasts, including Puget Sound. At least one Federal court has overturned the listing.

Public Access. With very minor exceptions, I agree with Staff's analysis. There is no mention of tsunami evacuation from Younger's beach nor occasional high tide stranding at the tide pools. There needs to be a correction on Exh.E, p.21 concerning the bluff-top access at De Anza MHP. Although shown on the City's Trails Plan in the Parks and Recreation Element of the General Plan (and certified LCP), the trail does not exist. Installing the trail now would require bluff alteration and would surely face resistance from the neighbors. The trail had been a requirement of the Park's Use Permit (circa 1967) but never installed.

Scenic and Visual Quality. The extended Staff analysis overstates the Coastal Act policies involved. In the final analysis, the difference between 30' and 36' building height is not noticeable from Highway One, a mile distant, nor from on-site scenic views toward the ocean.

Respectfully submitted,

Edward J. Davidson

April 7, 2006 Amendment:

I continue to concur with the Coastal Staff recommendations for the UCSC LRDP at Terrace Point. The Plan has accommodated two questionable wetlands areas and protected sensitive plant and animal habitats. I trust that the appropriate balance will be attained between habitat protection and public access at Younger Lagoon.

During the public hearing process for the project, I noted most of the opposition came from the residents of the adjoining De Anza Mobilehome Park. My comments on scenic and visual quality are stated above and I would note the 200 foot bluff top set-back for public viewing.

The opposition to housing at the campus reflects the opposition to the earlier private development plan, which had included 190 residential units. The City's General Plan (and Certified LCP) called for 200 residential units on the property. That policy remains. The University will be providing housing for researchers and other staff on-site. Given a very tight housing market in Santa Cruz, this provision is necessary for the functioning campus. Along with dining facilities, the housing will reduce the number of trips per day from researchers and employees.

Thy

Anthony L. Lombardo
Jeffery R. Gilles
Derinda L. Messenger

Lombardo
& Gilles
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COASTAL COMMISSION
CENTRAL COAST AREA

File No. 01163.000

225 Sixth Street
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Jacqueline M. Zischke
of counsel

*Certified by the State Bar
of California Board of Legal
Specialization as a Specialist
in Estate Planning, Trust and
Probate Law.

March 8, 2007

VIA CALIFORNIA OVERNIGHT COURIER

A copy of this letter has been provided to each of the Commissioners and a copy has been sent to Mr. Peter Douglas at the State Coastal Commission Office in San Francisco.

Steve Blank
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: **Laube & Engel Residence A-3-MCO-04-012**

Dear Commissioner Blank:

We represent Sheldon Laube and Nancy Engel, the applicants for this home. The California Coastal Commission overwhelmingly approved this coastal development permit with a 9-2 vote on December 9, 2004. What is before you next week is an extension of that approved permit. The request for this extension has been necessitated by two lawsuits filed by a neighboring homeowner (McAllister) who is a resident of Texas that objected to the fact that the Laube-Engel's home would be visible from his home.

The first lawsuit was filed against Monterey County and the second against the California Coastal Commission. The trial court ruled against McAllister in both cases and he appealed the first decision. The Sixth District Court of Appeal ruled against McAllister. This decision has been published as McAllister v. County of Monterey (2007) 147 Cal.App.4th 253 . McAllister has now filed a notice of appeal in the second case against the California Coastal Commission.

Due to these lawsuits, our clients have not been able to proceed with the construction of their home. McAllister's strategy seems to be that if he could not stop the issuance of the permit, he is going to stop the construction by litigating the Laube-Engels to death.

In addition to pursuing litigation, McAllister has filed a Notice of Objection to our permit extension application. McAllister is alleging three changed circumstances affecting the proposed

Steve Blank
March 8, 2007
Page 2 of 3

project's consistency with the Coastal Act, and thereby McAllister is requesting the permit extension to be denied. There are no changed circumstances, only another attempt by McAllister to further delay the Laube-Engel home.

No Land Clearing has Occurred on the Laube-Engel Property.

The first allegation is that the applicant has conducted land clearing and preliminary grading/construction activities that may have included the removal of the environmentally sensitive habitat without a permit. This allegation is patently and maliciously false. As I am sure McAllister is aware, a neighbor of the Laube-Engels cleared their land to accommodate a horse pasture, the Laube-Engels have not done any work on their property.

No Smith's Blue Butterflies have been sited on the Laube-Engel Property.

The second alleged changed circumstance is the presence of the Smith's Blue butterfly. Neither McAllister nor his attorney produced any evidence to support this statement. Two surveys by biologist Jeff Norman have already been conducted on the property with a negative result for the Smith Blue butterflies. Additionally, this is not a new changed circumstance. The Coastal Commission was fully aware of this issue in 2004 and subsequently placed a biological monitoring prior to commencement of construction condition of approval on the permit. This condition 10 (attached) is to ensure that no Smith's Blue butterflies are present during the construction period.

No Change in the Status of the Water Supply has Occurred on the Laube-Engel Property.

The third alleged changed circumstance relates to the home's water supply and the Garrapata Water Company. This is not a new changed circumstance; the Coastal Commission was fully aware of this issue in 2004 and placed the following conditions of approval on the permit. Condition number 13 (attached) requires evidence from the Garrapata Water Company that there is sufficient water for the single family dwelling. Permit condition 14 (attached) requires verification from the Department of Environmental Health that the Garrapata Water Company has installed an approved chlorination water treatment system and that the water supply complies with the state safe drinking water standards.

McAllister has been reduced to outright misrepresentation and innuendo after being rebuked by both the Superior Court of Monterey County and the District Court of Appeals in his obvious attempt to preserve his private view.

Consequently, as has been found by Coastal Commission Staff, there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. This objection to the permit extension by McAllister is another delay tactic against the project.

Steve Blank
March 8, 2007
Page 3 of 3

We respectfully request that you follow Coastal Commission Staff recommendation and grant the permit extension so that our clients can have the additional time to construct their home after McAllister's lawsuit against the California Coastal Commission is resolved by the Sixth District Court of Appeal.

Respectfully submitted,

Lombardo & Gilles, LLP

Signature(s) on file.

Miriam Schakat

MS:bm

Enclosures

cc: Mr. Sheldon Laube
Dr. Nancy Engel

threatened with damage or destruction from waves, tidal currents, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- b. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including, but not limited to the residence, foundations, patio and deck areas, driveway, garage and guest parking area, retaining walls, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
8. **Future Development.** This permit is only for the development described in Coastal Development Permit (CDP) No. A-3-MCO-04-012. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. A-3-MCO-04-012 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. No future development that would be visible from public viewing areas is allowed.
9. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) has imposed the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
10. **Protection of Sensitive Wildlife.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall contract a biological consultant to conduct site visits to monitor for the following sensitive wildlife species, and take the necessary actions as described below. In order to avoid impacts to sensitive species listed below, grading, blasting and operation of heavy equipment shall



be restricted to the period April 15 to May 1, unless authorized by the Executive Director. Verification of monitoring actions shall be provided in letter format to be submitted for Executive Director review and approval before commencing construction:

- a. **Smith's blue butterflies.** Grading, blasting, and operation of heavy equipment shall be prohibited during Smith's blue butterfly flight and breeding period (June thru September).
- b. **Southern Sea Otters.** Grading, blasting, and operation of heavy equipment shall be prohibited during southern sea otter pupping season, (December thru March).
- c. **Black Swifts.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct a site visit during the breeding season in early May to determine presence or absence of nesting black swifts. If no nesting is observed, grading, blasting and operation of heavy equipment may continue. A second survey should be conducted during the first week of June and if no nests are observed, these activities may continue. However, if nesting activity is detected during either survey, grading, blasting, and operation of heavy equipment shall be delayed until fledging occurs by August.
- d. **Brown Pelicans.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct visual surveys of the headland and offshore rocks in the vicinity of the project site during the breeding season (April to mid-September) to determine presence or absence of nesting brown pelicans. If no nesting pelicans are observed, grading, blasting and operation of heavy equipment may continue. However, if nesting activity is detected, grading, blasting, and operation of heavy equipment shall be delayed until mitigation measures, developed in consultation with CDFG and USFWS, and reviewed and approved by the Executive Director are implemented.
- e. **Cormorants.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct visual surveys of the headland and offshore rocks in the vicinity of the project site to determine presence or absence of nesting during the breeding season (March to mid-September) of Double-crested, Pelagic, or Brandt's Cormorants. If no nesting of these three cormorant species are observed, blasting, grading and operation of heavy equipment may continue. However, if nesting activity is detected, grading, blasting, and operation of heavy equipment shall be delayed until mitigation measures, developed in consultation with CDFG and USFWS, and reviewed and approved by the Executive Director are implemented.

11. Construction Operations Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall submit for Executive Director review and approval, a Construction Operations Plan that specifies measures to be implemented during construction to avoid impacts to sensitive habitat areas, visual resources, and water quality outside of the Disturbance Envelope. Following review and approval of the plan by the Executive Director, permittee shall be responsible for implementing all elements of the approved plan. Such plan shall include the following:



shall inform construction workers that construction vehicles and work activities shall avoid sensitive habitat areas outside of the defined project area. Monitor shall also have the authority to delay construction activities if southern sea otters or nesting bird species are observed during their respective breeding/nesting seasons within 500 feet of the Disturbance Envelope. The environmental monitor shall consult with CDFG and USFWS to develop and implement mitigation measures that should be taken if these species are found nesting on the project site (i.e., in sea caves, on bluff face, and on nearshore rocks).

12. Archaeological Mitigation.

- a. In order to assure that grading activities do not impact cultural or archaeological resources, the applicant shall contract with a qualified professional archaeologist to monitor all earth disturbance work within 3 feet of identified cultural and/or archaeological resources on the project site. The contract shall specify implementation of the Archaeologist Reconnaissance of Donald Sorenson Property, Big Sur, prepared by Archaeological Resource Service, February 8, 1977. In addition, the contract will require the contracted archaeologist to be involved in regular consultation with the contracted geotechnical engineer, biologist and contractor during construction to assure protection of biological and archaeological resources at the site.
- b. Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

13. **Water Supply.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall provide evidence from Garrapata Water Company, or successor in interest for Executive Director review and approval, that serving the subject parcel with water for a single family dwelling will not result in the Company exceeding its permitted appropriation (currently 35 afy as allowed by State Water Resources Control Board Permit for Diversion and Use of Water Permit #21010).

14. **Water Treatment System.** PRIOR TO OCCUPANCY, the permittee shall provide verification from the Department of Environmental Health that the Garrapata Water Company or its successor in interest (e.g., a Garrapata Mutual Water Company) has installed an approved chlorination (or other approved) water treatment system on the existing Garrapata Creek water supply and that the water supply complies with state safe drinking water standards.

15. **Exterior Lighting.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit an exterior lighting plan which shall indicate the location, type and wattage of all



ATTACHMENT TO GARRAPATA WATER CO. ANNUAL PROGRESS REPORT

Remarks:

We had way more than our share of substantial leaks in 2000, including some 6 inch main breaks. We hope not to repeat that in 2001. In addition, in 2000, one of our new customers was attempting to irrigate about five acres of newly planted wildflowers by hooking a 4 inch fire hose to one of our fire hydrants to connect with her irrigation system. That practice was draining all our primary storage tanks. We finally discovered what was going on and that irrigation is now being done with tank trucks with water from a source other than our well and system.

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MAR 05 2007

Agenda Item #4; Wednesday, March 14, 2007
John S. Bridges, Representative for Dr. Hugh McAllister

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CHARLES R. KELLER
RONALD F. SCHOLL
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March 2, 2007

JOHN S. BRIDGES

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California Coastal Commission
Attn: Executive Director
c/o Charles Lester, Senior Deputy Director
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Notice of Objection to Permit Extension Request (Permit A-3-MCO-04-012; Laube/Engel)
Our File: 31485.28022

Dear Director:

We understand a request to extend the above referenced permit has been submitted by the applicant and will be reported to the Commission on March 14, 2007, as part of the Central Coast District Director's Report. As a person who participated in the previous permit hearing please ensure that our client, Dr. McAllister, receives formal notice of any consideration thereof pursuant to Coastal Commission regulation section 13169 as well as timely copies of all related materials (e.g., staff reports, etc.).

On behalf of Dr. McAllister we object to any extension of the permit based on the changed circumstances described below. These changed circumstances affect consistency of the development with the policies of Chapter 3 of the Coastal Act and with the Monterey County Certified Local Coastal Program. Accordingly, the extension request should be denied.

1. New violation. In violation of permit conditions, land clearing and preliminary grading/construction activities occurred on the site in 2006. We understand these activities included, without limitation, scraping and land clearing, including the removal of environmentally sensitive habitat coastal buckwheat plants in violation of permit Condition 1 and in violation of LCP sections 20.90.040, 20.90.050, 20.70.025, 20.145.040, and 20.145.140. The timing of this activity may also have conflicted with the prohibitions of permit Condition 10.a and may have involved illegal "take" of the endangered Smith's blue butterfly in violation of the Endangered Species Act.
2. New ESHA surveys are required. We believe sightings of the endangered Smith's blue butterfly may have occurred on or near the property since the last field reconnaissance in

2003. As the record reflects, that prior reconnaissance was not accepted by the U.S. Fish & Wildlife Service as proof of absence. Also, the record reflects that the project is in the middle of the Smith's blue butterfly range and that the butterfly was found as close as ½ mile north of the site on the day they were surveyed for in that location in 2003. We understand noted entomologist and Smith's blue butterfly expert, Dick Arnold, has stated that the site should be "presumed" occupied by Smith's blue butterfly. Zander Associates has recommended further site-specific protocol surveys for the Smith's blue butterfly prior to any permit extension (Attachment 1). Jacob Martin of the U.S. Fish & Wildlife Service has also advised that due to the passage of time a new protocol survey should be performed on the site during the appropriate season (May-August). U.S. Fish and Wildlife Service should also be consulted about the need for a take permit and/or a Habitat Conservation Plan pursuant to the Endangered Species Act.

3. Water source: Garrapata Creek overdraft/violation of SWRCB diversion limits and public health issues. The SWRCB diversion limit of 35 afy continues to be exceeded by "existing" development (36.29 afy in year 2000, 35.62 afy in 2001, 37 afy in 2004, 36 afy in 2005; Attachment 2). In addition, we understand the water purveyor, Garrapata Water Company, is intending to transfer its assets to a new mutual water company on condition that the service area be expanded and commitments be made to provide water for up to eight additional legal lots. Also, property within the water company's service area has recently been upzoned to facilitate additional development (Monterey County approval PLN 050722; Attachment 3). The continuing overdraft/exceedence of SWRCB diversion maximums, expanded water company service area and commitments, and upzoning within the service area, combined with the Laube project, will intensify water use which will significantly adversely impact the Garrapata Creek which is a steelhead stream in violation of LCP section 20.145.050.B. In addition, new information is available citing public health risks associated with the Garrapata Water Company water supply (Attachment 4). Proof of adequate water supply (quantity and quality) is required prior to permit extension approval per LCP section 20.145.050.A.

Very truly yours,

FENTON & KELLER
A Professional Corporation

Signature(s) on file.

John S. Bridges

JSB:kmc
Enclosures

cc: Dr. McAllister (w/encs.)	Commissioner Bonnie Neely (w/encs.)
Commissioner Steve Blank (w/encs.)	Commissioner Mike Reilly (w/encs.)
Commissioner Sara Wan (w/encs.)	Commissioner Dave Potter (w/encs.)
Commissioner Dr. William A. Burke (w/encs.)	Commissioner Khatchik Achadjian (w/encs.)
Commissioner Steven Kram (w/encs.)	Commissioner Larry Clark (w/encs.)
Commissioner Mary K. Shallenberger (w/encs.)	
Commissioner Patrick Kruer (w/encs.)	

ATTACHMENT 1

ZANDER ASSOCIATES

Environmental Consultants

February 26, 2007

John S. Bridges
Fenton & Keller, Attorneys at Law
PO Box 791
Monterey, CA 93942-7219

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CENTRAL COAST AREA

Smith's Blue Butterfly Surveys
Laube/Engel Property
Monterey County, California

Dear John:

I have reviewed various background materials pertaining to the potential presence of Smith's blue butterfly (*Euphilotes enoptes smithi*) on the Laube/Engel property along the Big Sur coastline in Monterey County. I have also spoken with Mr. Jacob Martin of the U.S. Fish & Wildlife Service, Ventura Field Office and Dr. Richard Arnold, a noted expert on the butterfly. Following are my comments.

The Smith's blue butterfly is listed as an endangered species under the federal Endangered Species Act of 1973 (ESA) (16 U.S.C. §§ 1531-1544) as amended. "Take" of the species is prohibited under Section 9 of the ESA without an "incidental take permit" pursuant to Section 10(a)(1)(B).¹ The U.S. Fish and Wildlife Service strongly recommends that current surveys be completed for Smith's blue butterflies in suitable habitat anywhere within the known range of the species prior to any activity that could result in take (Jacob Martin, telephone conversation, February 23, 2007).

The known range of the species extends from the mouth of the Salinas River in Monterey County south to San Carpoforo Creek in northern San Luis Obispo County. Smith's blue is completely dependent upon coast and seacliff buckwheat (*Eriogonum latifolium* and *E. parvifolium*) during all of its life stages; plant communities supporting either of these two buckwheat species constitute suitable habitat for the butterfly within its range. Within an individual adult butterfly's one-year lifespan, pupae emergence, mate location, copulation and oviposition all occur on the flowerheads of the buckwheat species during peak flowering season, June through September. Larvae feed on the flowers and seeds for several weeks

¹ "Take" and "Taking" mean to harass, harm, hunt, pursue, shoot, wound, kill, trap, catch, capture, or collect, or attempt to engage in any such conduct involving a Covered Species. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Incidental Take" means the take of any Covered Species where such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity as that term is defined under the ESA and its implementing regulations.

after the eggs hatch and then molt into pupae which remain dormant in association with the buckwheat during the winter and spring non-flowering period.

Subpopulations of Smith's blue butterfly exhibit high interannual variability due to climate, disease, and predation, among other factors; numbers of individuals can vary substantially in any given area over time. Consequently, if butterflies are known in close proximity to a site, current season presence/absence surveys should be conducted to definitively determine whether suitable habitat (i.e. buckwheat) is occupied in any given year.

The most recent seasonal surveys for Smith's blue butterflies on the Laube/Engel property appear to have been conducted over 3½ years ago, between June 25 and August 25 in 2003 (Norman, 2003). Although no butterflies were observed on the site during those surveys, butterflies were observed at a control station (referred to as the Garrapata Creek control station) approximately ½ mile to the north. In addition, there are historic records of Smith's blue butterflies occurring on a patch of buckwheat directly across Highway 1 from the Laube/Engel property.

According to Dr. Richard Arnold (telephone conversation, February 26, 2007), habitat on the Laube/Engel property is suitable to support the butterfly in spite of conditions (e.g. fog and wind) that could discourage regular use. Dr. Arnold believes that Smith's blue butterflies could be found on the site under the right circumstances, especially with known occurrences in such close proximity. Given the site's habitat suitability and records for the butterfly from areas very nearby, its temporal presence on the site cannot be dismissed without current season surveys.

Please call me if you have any questions.

Sincerely,

Signature(s) on file.

Michael Zander
Principal

Copies provided: Jacob Martin
 Dr. Richard Arnold

State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
901 P Street • Sacramento, California 95814 • (916) 657-0765
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Gray Davis
Governor

11/4/99

In Reply Refer
to:331:YM:29664

RECEIVED

MAR 05 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Garrapata Water Company
c/o Donald M. Layne
36652 Highway 1, Coast Route
Monterey, CA 93940

APPLICATION 29664 PERMIT *21010

Your WATER RIGHT PERMIT is enclosed. The State Water Resources Control Board requires that you submit annual reports showing the progress you have made in the construction of your project and the use of water made under this permit that will qualify for licensing purposes. We will mail the forms to you when the reports are due.

Please note that, with respect to other water rights attaching to this source, the priority of your right is identified by the filing date of your application. Therefore, in times of water shortage, those diverters with water rights senior to yours can take their water first. Additional limitations on your diversion and use of water are specified by the terms of this permit. Please read the terms and conditions of your permit carefully so that you are familiar with your responsibilities as an appropriator of water.

In about 10 years, an inspection will be made to determine the amount of water that has been placed to beneficial use within the terms of the permit. A license will then be issued confirming a right to that amount of water. Please keep sufficient records of your diversion and use of water to facilitate this process.

Please inform us of any changes in address or ownership.

Ed Dito
Program Manager
Application and Petition Section

Enclosure

Ymooring:ym/pminer:9-30-99 u:\ym\29664 per-transs

JRNAME <small>FR 540 REV. 1/86</small> PER-TRANSS (5-99)	Ymooring:ym/pminer:9-30-99 <i>ym 9/30/99</i>	u:\ym\29664 per-transs <i>Atkinson</i> <i>9-30-99</i>		8/ 3910
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**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21010

Application 29664 of **Garrapata Water Company, A California Corporation**
c/o Donald M. Layne
36652 Highway 1, Coast Route
Monterey, CA 93940

filed on **February 21, 1990**, has been approved by the State Water Resources Control Board (SWRCB)
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source Garrapata Creek	Tributary to Pacific Ocean

within the **County of Monterey**

2. Location of point of diversion

By California Coordinate System in Zone 4	40-acre subdivision of public land survey or projection thereof	Projected Section	Township	Range	Base and Meridian
North 406,750 feet and East 1,143,600 feet	NE ¼ of NE ¼	36	17S	1W	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Municipal	NW ¼	31	17S	1W	MD	
	SW ¼	31	17S	1W	MD	
	NE ¼	36	17S	1W	MD	
	SE ¼	36	17S	1W	MD	

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 35 acre-feet per annum to be diverted from January 1 to December 31 of each year. The rate of the diversion shall not exceed 0.11 cubic foot per second.

(000005A)

6. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

(0000022)

7. Permittee shall install and properly maintain a meter, satisfactory to the Chief of the Division of Water Rights, which is capable of measuring the instantaneous rate of diversion in gallons per minute and the cumulative quantity of water diverted in gallons. The meter shall be conveniently located so as to be accessible for reading by the SWRCB or its designated representative.

Permittee shall record the cumulative meter readings approximately the first of each month. Meter readings shall be supplied to the SWRCB with the annual progress report submitted to the SWRCB by permittee.

(0070047) (0100047)

8. For the protection of public trust resources of Lower Garrapata Creek, the permittee shall allow visible flow in Garrapata Creek downstream of the point of diversion. If visible flow does not exist in Garrapata Creek, downstream of the point of diversion, the permittee shall cease diversions or augment the stream flows to ensure a visible flow exists. This term does not apply if the permittee can document that 100 yards upstream of the point of diversion there is no visible flow.

(0350900)

9. The permittee shall maintain written records regarding the observations of visible flow both upstream and downstream of the point of diversion. Observations shall be made on a weekly basis during the period June 1 to October 30 and made available to the Division upon request. If visible flow does not exist at any time, the frequency of observations shall be on a daily basis until visible

surface flow exists for at least 14 consecutive days. In the event of a violation of this term, the permittee shall immediately notify the Chief of the Division of Water Rights.

(0090400)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- (A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- (B) The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- (D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- (E) Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(G) This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water

Application 29664

Permit 21010

Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: November 4, 1999

STATE WATER RESOURCES CONTROL BOARD

**ORIGINAL SIGNED BY
HARRY M. SCHUELLER**

Chief, Division of Water Rights



PROGRESS REPORT BY PERMITTEE FOR

Owner of Record:
 GARRAPATA WATER COMPANY, A CA CORP ; [REDACTED]

DONALD LAYNE
 36652 HWY 1 COAST RTE
 MONTEREY, CA 93940

Application No.: A029664
 Password: 04190110023220
 Permit: 021010
 Phone Number: (408) 624-8877

*If the information above is wrong or missing, please correct.

Source Name (Display up to the first four sources) County Name (First POD)
 GARRAPATA CREEK UNDERFLOW Monterey

Purpose (Display up to the first four uses)	Diversion Season (MM/DD - MM/DD)	Storage Season (MM/DD - MM/DD)	Acres (AC)
Municipal	1 / 1 - 12 / 31	0 / 0 - 0 / 0	0
Max DD Appl: .11 CFS	Max Storage: 0	AC-FT	

IMPORTANT! EVERY permit is issued subject to the conditions therein expressed. I have currently reviewed my permit: YES NO .
 I am complying with the conditions under which my permit has been issued: YES NO . Identify any noncompliance by permit term number under "Remarks" on reverse side. This report is important in providing the record of use needed in establishing your water right. It should be filled out carefully and returned promptly to the above address.

THE PROJECT HAS BEEN ABANDONED AND I REQUEST REVOCATION OF THIS PERMIT: YES .

CONSTRUCTION WORK

- Has construction work commenced? YES NO . Is construction completed? YES NO . *Not applicable*
- If incomplete, describe briefly the work done, including cost: _____
- If not completed, give estimated date of completion: _____
- What percent of construction work remains to be done? _____ Explain: _____

USE OF WATER

- Has use of water commenced? YES NO . Check appropriate box(es) below and explain how water was used.

(a) <input type="checkbox"/> Irrigation _____	(e) <input checked="" type="checkbox"/> Municipal <u>41 Homes + Restaurant</u> Approximate population
(b) <input type="checkbox"/> Stockwatering _____ Number of animals	(f) <input type="checkbox"/> Recreational _____ Boating, fishing, water contract sports
(c) <input type="checkbox"/> Industrial _____ Nature of use	(g) <input type="checkbox"/> Power generation _____ Installed horsepower capacity
(d) <input type="checkbox"/> Domestic _____ Number of persons, area of garden, lawn, etc.	(h) <input type="checkbox"/> Other _____

6. Amount of water used each month under this permit in gallons or acre-feet. (If not known, check months water was used.)

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
												See Attached

Boxes not big enough - see attached.

GARRAPATA WATER CO., INC.

36652 HIGHWAY 1, COAST ROUTE

MONTEREY, CA 93940

831 624 8877

METER READINGS SHOWING TOTAL PRODUCTION OF WATER BY GARRAPATA WATER CO., INC. FOR CALENDAR YEAR 2000

DATE	METER TOTAL	MONTHLY GALLONS	GALLONS YTD
January 4, 2000	64800700	N/A	N/A
February 1, 2000	65462200	661500	661500
March 2, 2000	66027000	1564800	2226300
April 2, 2000	66654400	627400	2853700
May 2, 2000	67587500	933100	3786800
June 5, 2000	68589800	1002300	4789100
July 6, 2000	69888900	1299100	6088200
August 1, 2000	70847500	958600	7046800
Sept. 6, 2000	72534500	1687000	8733800
October 2, 2000	73531500	997000	9730800
November 5, 2000	74423200	891700	10622500
December 4, 2000	74967500	544300	11166800
Jan. 6, 2001	75629600	662100	11828900

11828900 gallons / 325900 gallons per acre foot = 36.29 acre feet.

METREA

Return completed Report to: STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
P.O. Box 2000
SACRAMENTO, CA 95812-2000



For assistance completing this Report, call: (916) 341-5300 FAX (916) 341-5400

PROGRESS REPORT BY PERMITTEE FOR

2001

OWNER(S) OF RECORD: If the owner information below is wrong or missing, please correct.
GARRAPATA WATER COMPANY, A CA CORP.

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:
DONALD LAYNE
36652 HWY 1 COAST RTE
MONTEREY, CA 93940

APPLICATION NO.: A029664
PERMIT NO.: 021010
CONTACT PHONE NO.: (408)624-8877
FOR ONLINE REPORTING AT:
www.waterrights.ca.gov
USER NAME: A029664
PASSWORD: C23220

PERMIT SUMMARY

NAME(S) OF SOURCES OF WATER (Up to first 4 sources listed) PARCEL NO COUNTY LOCATION
GARRAPATA CREEK UNDERFLOW Monterey

MAX DIRECT DIVERSION RATE: .11 CFS MAX COLLECTION TO STORAGE AMOUNT: 0 AC-FT
(Cubic feet per second (CFS) or Gallons per day (GPD)) (Total reservoir(s) storage volume in acre-feet (AC-FT))

PERMITTED USE(S) OF WATER (First 4 uses displayed below)	ACRES (AC)	DIRECT DIVERSION SEASON (month/day to month/day)	COLLECTION TO STORAGE SEASON (month/day to month/day)
Municipal	0 AC	01/01 - 12/31	

DATE BY WHICH PERMITTEE SHALL COMPLETE THE AUTHORIZED PROJECT, INCLUDING COMPLIANCE WITH ALL PERMIT TERMS AND CONDITIONS, AND MAKE FULL BENEFICIAL USE OF WATER: 11/04/2008

COMPLIANCE WITH PERMIT TERMS AND CONDITIONS: This Report is important in providing the record of your actual water use necessary to establish your water right as well as your compliance with the terms and conditions of your water right permit. The information requested below should be filled out carefully. This Report should be promptly returned to the above address.

- YES NO I have currently reviewed my water right permit.
- YES NO I am complying with all terms and conditions listed in the permit. Identify any noncompliance under "Remarks" on the reverse side.
- YES NO I have changed the intake location, type(s) of use, and/or place of use authorized by the permit. If YES, explain under "Remarks" on reverse side. Note: A Change Petition & associated fees may be required for any significant changes to the permitted project.

PERMITTED PROJECT STATUS: California Water Code sections 1396 and 1397 require that permittee(s) exercise due diligence developing an appropriate water right project so that the project is completed within the time period specified in the permit. Time extensions may be authorized when there is good cause.

CHECK ONE OF THE FOLLOWING CONCERNING YOUR WATER RIGHT PROJECT STATUS:

- REVOCATION - The project has been abandoned and I request revocation of the permit.
- PROJECT COMPLETE - The project has been completed. I have made full beneficial use as to diversion rate, amount, and season anticipated under the permit and have complied with all terms and conditions. I am ready for (or have had) a licensing inspection by Division of Water Rights staff and request that a water right license be issued.
- PROJECT HAS NOT BEEN COMPLETED
If the project has not been completed, please answer the following:
 - YES NO Has construction work commenced?
 - YES NO Is construction completed?
 - YES NO Have the permitted beneficial uses of water commenced?
 - YES NO Will the project be completed within the time period specified in the permit?

e. Explain what work remains to be done: We have several un-built lots within our service area.

f. Give the estimated date of completion of the project, including maximizing beneficial use of water: Several years
Note: A time extension petition and associated fees may be required if the project is not completed within the time period specified in the permit.

GARRAPATA WATER CO., INC.

36652 HIGHWAY 1, COAST ROUTE

MONTEREY, CA 93940

831 624 8877

METER READINGS SHOWING TOTAL PRODUCTION OF WATER BY GARRAPATA WATER CO., INC. FOR CALENDAR YEAR 2001

DATE	METER TOTAL	MONTHLY GALLONS	GALLONS YTD
Jan. 6, 2001	75629600	n/a	0
Feb. 1, 2001	76056000	426400	426400
March 1, 2001	76477200	421200	847600
April 2, 2001	77042200	565000	1412600
May 8, 2001	78020200	978000	2390600
June 6, 2001	79130300	1110100	3500700
No July readings- we were away on vacation and I forgot to ask someone else to do it.			
August 2, 2001	81792200	2661900	6162600
September 5, 2001	83268700	1476500	7639100
October 1, 2001	84436800	1168100	8807200
November 6, 2001	85975200	1538400	10345600
December 8, 2001	86775800	800600	11146200
December 31, 2001	87238900	463100	11609300

11609300 gallons / 325900 gallons per acre foot = 35.62 acre feet



A029664%P%2004

STATE WATER RESOURCES CONTROL BOARD

2005 MAR 28 PM 3:26

DIV OF WATER RIGHTS SACRAMENTO

APPLICATION NO.: A029664 PERMIT NO.: 021010 CONTACT PHONE NO.: (408)624-8877

PROGRESS REPORT BY PERMITTEE FOR

OWNER(S) OF RECORD: If the owner information below is wrong or missing, please correct. GARRAPATA WATER COMPANY, A CA CORP;

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:

DONALD LAYNE 36652 HWY 1 COAST RTE MONTEREY, CA 93940

PERMIT SUMMARY

NAME(S) OF SOURCES OF WATER (Up to first 4 sources listed) GARRAPATA CREEK UNDERFLOW PARCEL NO COUNTY LOCATION Monterey

MAX DIRECT DIVERSION RATE: 11 CFS [Cubic feet per second (CFS) or Gallons per day (GPD)] MAX COLLECTION TO STORAGE AMOUNT: 0 AC-FT [Total reservoir(s) storage volume in acre-feet (AC-FT)]

PERMITTED USE(S) OF WATER (First 4 uses displayed below) Municipal ACRES 0 AC DIRECT DIVERSION SEASON 01/01 - 12/31 COLLECTION TO STORAGE SEASON (month/day to month/day)

DATE BY WHICH PERMITTEE SHALL COMPLETE THE AUTHORIZED PROJECT, INCLUDING COMPLIANCE WITH ALL PERMIT TERMS AND CONDITIONS, AND MAKE FULL BENEFICIAL USE OF WATER: 11/04/2008

COMPLIANCE WITH PERMIT TERMS AND CONDITIONS: This Report is important since it provides a record of your actual water use necessary to establish your water right as well as your compliance with the terms and conditions of your water right permit. The information requested below should be filled out carefully. This Report should be promptly returned to the above address.

- 1. [X] YES [] NO I have currently reviewed my water right permit.
2. [X] YES [] NO I am complying with all terms and conditions listed in the permit.
3. [X] YES [] NO I have changed the intake location, type(s) of use, and/or place of use authorized by the permit.

PERMITTED PROJECT STATUS: California Water Code sections 1396 and 1397 requires a permittee(s) to exercise due diligence in developing an appropriate water right project so that the project is completed within the time period specified in the permit.

CHECK ONE OF THE FOLLOWING CONCERNING YOUR WATER RIGHT PROJECT STATUS:

- 4. [] REVOCATION - The project has been abandoned and I request revocation of the permit.
5. [X] PROJECT COMPLETE - The project has been completed. I have made full beneficial use of water as to the diversion rate, amount, and season specified in the permit and have complied with all terms and conditions.

6. [] PROJECT HAS NOT BEEN COMPLETED

- If the project has not been completed, please answer the following:
a. [] YES [] NO Has construction work commenced?
b. [] YES [] NO Is construction completed?
c. [] YES [] NO Have the permitted beneficial uses of water commenced?
d. [] YES [] NO Will the project be completed within the time period specified in the permit?
e. Explain what work remains to be done:

f. Give the estimated date of completion of the project, including maximizing beneficial use of water. Note: A time extension petition and associated fees may be required if the project is not completed within the time period specified in the permit.

27

GARRAPATA WATER CO., INC.

36652 HIGHWAY 1, COAST ROUTE
MONTEREY, CA 93940
831 624 8877

2004 MAR 20 11:00 AM

STATE WATER RESOURCES

METER READINGS SHOWING TOTAL PRODUCTION OF WATER BY GARRAPATA WATER CO., INC. FOR CALENDAR YEAR 2004

DATE	METER TOTAL	MONTHLY GALLONS	GALLONS YTD
12/31/03	11790700	na	0
2/2/04	12422200	631500	631500
3/1/04	12980100	557900	1189400
4/3/04	13743400	763300	1952700
May no readings taken			
6/2/04	16111800	2368400	4321100
11/3/04	22375000	6263200	10584300
12/31/04	23854200	1479200	12063500

12063500/325900 gal per acre foot = 37 acre feet 2004



For assistance completing this Report, call: (916) 341-5300 FAX (916) 341-5400

PROGRESS REPORT BY PERMITTEE FOR 2005

INFORM(S) OF RECORD: If the owner information below is wrong or missing, please correct.
 RRA WATER COMPANY, A CA CORP;

APPLICATION NO.: A029664
 PERMIT NO.: 021010
 CONTACT PHONE NO.: (408) 624-8877

2006 MAR 15 PM 12:40
 DIVISION OF WATER RIGHTS
 SACRAMENTO

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:
DONALD LAYNE
 36652 HWY 1 COAST RTE
 MONTEREY, CA 93940

PERMIT SUMMARY

NAME(S) OF SOURCES OF WATER (Up to first 4 sources listed)	PARCEL NO	COUNTY LOCATION
RRAPATA CREEK UNDERFLOW		Monterey

X DIRECT DIVERSION RATE: .11 CFS
(cubic feet per second (CFS) or Gallons per day(GPD))

MAX COLLECTION TO STORAGE AMOUNT: 0 AC-FT
[Total reservoir(s) storage volume in acre-feet (AC-FT)]

PERMITTED USE(S) OF WATER <small>(list 4 uses displayed below)</small>	ACRES (AC)	DIRECT DIVERSION SEASON <small>(month/day to month/day)</small>	COLLECTION TO STORAGE SEASON <small>(month/day to month/day)</small>
municipal	0 AC	01/01 - 12/31	

DATE BY WHICH PERMITTEE SHALL COMPLETE THE AUTHORIZED PROJECT, INCLUDING COMPLIANCE WITH ALL PERMIT TERMS AND CONDITIONS, AND MAKE FULL BENEFICIAL USE OF WATER: 11/04/2008

COMPLIANCE WITH PERMIT TERMS AND CONDITIONS: This Report is important since it provides a record of your actual water use necessary to establish your water right as well as your compliance with the terms and conditions of your water right permit. The information requested below should be filled out carefully. This Report should be promptly returned to the above address.

1. YES NO I have currently reviewed my water right permit.
2. YES NO I am complying with all terms and conditions listed in the permit. Identify any noncompliance under "Remarks" on the reverse side.
3. YES NO I have changed the intake location, type(s) of use, and/or place of use authorized by the permit. If YES, explain under "Remarks" on reverse side. *Note: A Change Petition & associated fees may be required for any significant changes to the permitted project.*

PERMITTED PROJECT STATUS: California Water Code sections 1396 and 1397 requires a permittee(s) to exercise due diligence in developing an appropriate water right project so that the project is completed within the time period specified in the permit.

CHECK ONE OF THE FOLLOWING CONCERNING YOUR WATER RIGHT PROJECT STATUS:

4. **REVOCACTION** - The project has been abandoned and I request revocation of the permit.
5. **PROJECT COMPLETE** - The project has been completed. I have made full beneficial use of water as to the diversion rate, amount, and season specified in the permit and have complied with all terms and conditions. I am ready for (or have had) a licensing inspection by Division of Water Rights staff and request that a water right license be issued.
6. **PROJECT HAS NOT BEEN COMPLETED**
 If the project has not been completed, please answer the following:
 - a. YES NO Has construction work commenced?
 - b. YES NO Is construction completed?
 - c. YES NO Have the permitted beneficial uses of water commenced?
 - d. YES NO Will the project be completed within the time period specified in the permit?
- e. Explain what work remains to be done: _____

- f. Give the estimated date of completion of the project, including maximizing beneficial use of water:
Note: A time extension petition and associated fees may be required if the project is not completed within the time period specified in the permit.

UNBENEFICIAL USE(S) OF WATER: (Note: See reverse side for a summary of the beneficial uses of water authorized under your permit.)

If your use of water has commenced, check the appropriate boxes below and explain how the water was used:

<input type="checkbox"/> Irrigation	_____ Acres	f. <input type="checkbox"/> Municipal	<u>100 est.</u> Approximate population
<input type="checkbox"/> Frost Protection	_____ Acres	g. <input type="checkbox"/> Domestic	_____ No. of persons, lawn/garden area, etc.
<input type="checkbox"/> Heat Control	_____ Acres	h. <input type="checkbox"/> Power Generation	_____ Installed capacity in kW, MW, or hp
<input type="checkbox"/> Industrial	_____ Specify	i. <input type="checkbox"/> Recreational	_____ Boating, fishing, water contact sports
<input type="checkbox"/> Stockwatering	_____ No. & type of animals	j. <input type="checkbox"/> Other	_____ Specify

AMOUNT OF WATER USED: Please report only the amounts diverted and beneficially used under this permit.

Amount of water used each month under this permit in: [] gallons or [] acre-feet:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total Annual

See attached schedule

ORAGE PROJECTS ONLY: (Note: Up to 5 reservoirs may be covered under a single permit. Refer to your permit for the actual number covered.)

Complete for long-term storage projects only:

a. YES NO Did your reservoir(s) spill this year?
If No, how many feet below the spillway vertically was the water level(s) at maximum storage? _____

b. YES NO Have you emptied the reservoir(s)?
If No, how many feet below the spillway vertically was the water level (s) at minimum storage? _____

PLEASE ANSWER ONLY THOSE QUESTIONS BELOW WHICH ARE APPLICABLE TO YOUR WATER RIGHT PROJECT.
(Please note that future amendments to the claims below will not be accepted.)

appropriate water right can be reduced or revoked through five continuous years of nonuse. However, the California Water Code specifies that under certain conditions no reduction or loss of the appropriate water right shall occur due to: (a) water conservation efforts; (b) use of recycled, salinated, or polluted water; and/or (c) conjunctive use of groundwater and surface water. You must report the extent and amount of water claimed for credit below. Failure to report the amounts will deprive you of the benefits allowed under the Water Code sections.

CONSERVATION OF WATER: (Water Code section 1011)

YES NO During the period covered by this Report, were you implementing any water conservation efforts? If YES, please describe: _____

_____ and you want to claim credit for the amount of water conserved towards the water use authorized under your permit as allowed under Water Code section 1011, please show the amount of water conserved below:
_____ (specify the amount in acre-feet or million gallons) Future amendments to this claim will not be accepted.

WATER QUALITY AND WASTEWATER RECLAMATION: (Water Code section 1010)

YES NO During the period covered by this Report, did you use reclaimed water from a wastewater treatment facility, water from a desalination facility, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses?

If YES and you want to claim credit for the substitution of this reclaimed, desalinated, or polluted water in lieu of the surface water authorized under your permit as allowed by Water Code section 1010, please show the amount of reclaimed, desalinated, or polluted water used below:
_____ (specify the amount in acre-feet or million gallons) Future amendments to this claim will not be accepted.

CONJUNCTIVE USE OF GROUNDWATER AND SURFACE WATER: (Water Code section 1011.5)

YES NO During the period covered by this Report, were you using groundwater in lieu of the surface water authorized under your permit?

If YES and you want to claim credit for the groundwater used in lieu of the surface water authorized under your permit as allowed under Water Code section 1011.5, please show the amount of groundwater used below:
_____ (specify the amount in acre-feet or million gallons) Future amendments to this claim will not be accepted.

REMARKS: (Identify the item you are explaining; additional pages may be attached.)

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

Signature: Donald W. Kays V.P. Date: 3/11/06 Phone No: (931) 624-1213
 PERMITTEE (OR AGENT / DESIGNEE)
 Garapata Water Co. Inc.
 PF PRESS REPORT BY PERMITTEE - PAGE 2

GARRAPATA WATER CO., INC.

36652 HIGHWAY 1, COAST ROUTE

MONTEREY, CA 93940

831 624 8877

METER READINGS SHOWING TOTAL PRODUCTION OF WATER BY GARRAPATA WATER CO., INC. FOR CALENDAR YEAR 2005

DATE	METER TOTAL	MONTHLY GALLONS	GALLONS YTD
12/31/04	23854200		0
2/1/05			
3/1/05			
4/1/05			
5/1/05			
5/30/05	27248200	5 mo. 3394000	3394000
7/1/05	28500700	1252500	4646500
7/31/05	29810200	1309500	5966000
8/31/05	31078700	1268500	7234500
10/1/05	32402300	1323600	8558100
10/29/05	33596800	1194500	9752600
12/1/05	34819900	1223100	10975700
1/1/06	35607900	788000	11763700

11763700/325900 gallons per acre foot= 36 acre feet

5. On April 10, 1986 the California Coastal Commission acknowledged certification of the Big Sur Coast Land Use Plan ("Land Use Plan") as part of Monterey County's Local Coastal Program.
6. On December 10, 1987, the Coastal Implementation Plan (CIP) was certified by the California Coastal Commission. The CIP includes Part 1 (Zoning Ordinance, Title 20), Part 2 (Regulations for Development in the North County Land Use Plan, Chapter 20.144), Part 3 (Regulations for Development in the Big Sur Coast Land Use Plan, Chapter 20.145), Part 4 (Regulations for Development in the Carmel Area Land Use Plan, Chapter 20.146), Part 5 (Regulations for Development in the Del Monte Forest Land Use Plan, Chapter 20.147), and Part 6 (Appendices-Applicable County Ordinances).
7. On January 5, 1988, Monterey County Board of Supervisors adopted the Local Coastal Program consistent with Section 30512.1 of the Public Resources Code.
8. Pursuant to Section 30514 of the Public Resources Code and the County Coastal Implementation Plan, the County may amend the Local Coastal Program if the County follows certain procedures and the Coastal Commission certifies the amendment. A maximum of three amendments to the Local Coastal Program may be submitted in one calendar year. This would be part of the first amendment to the Local Coastal Program submitted to the Coastal Commission in 2007.
9. On June 8, 2005, the Planning Commission recommended approval of the amendment to the Land Use Plan and Coastal Implementation Plan. The Planning Commission voted to approve the reclassification based on facts indicating that this property would have been designated as WSC if it had not been anticipated to be part of the Garapatta State Beach property. Once the Board has adopted a Resolution of Intent, the proposed amendment must be submitted to the Coastal Commission for certification and returned to the Board for formal adoption before the change in land use designation and rezoning can be effective.
10. Section 20.08.060 of the Coastal Implementation Plan-Part I (CIP) references sectional district maps that show the Zoning Plan. Sheet 20-22 of the Monterey County Zoning Map Index provides a graphic representation of the zoning designations in this planning area. The proposed amendment would amend Sheet 20-22 of Section 20.08.060 of the Monterey County Zoning Code.
11. Pursuant to Government Code Section 65850 et seq., the County Planning Commission must hold a noticed public hearing and make a written recommendation to the Board of Supervisors on proposed land use designations and zoning amendments. A hearing was held before the Planning Commission on June 8, 2005, and the Planning Commission recommended approval of the amendment to the Land Use Plan and Coastal Implementation Plan. The Planning

Commission written recommendation (Resolution 05025) was provided to the Board as part of the staff report.

12. The Board finds that the amendment to change the land use designation in the Big Sur Land Use Plan (LUP) from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and amend Sheet 20-22 of Section 20.08.060 of Title 20 of the Monterey County Code (Monterey County Coastal Implementation Plan) from Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC/40) on a 2.5-acre vacant parcel is consistent with the Local Coastal Program (LCP) provisions and requirements for removal of the OR designation.
13. All policies of the General Plan and the Local Coastal Program have been reviewed to ensure that the proposed amendments maintain the compatibility and internal consistency of the General Plan and the Local Coastal Program. The Board of Supervisors find that:
 - a. The rezoning would be compatible with surrounding privately owned designations and densities. No development is proposed at this time.
 - b. Any future development on the site would require compliance with applicable LCP policies, CIP standards, Coastal Act provisions, and conditions developed through coastal development permit and CEQA processes.
14. An environmental analysis has been prepared for the proposed land use designation change and rezone at the request of the CCC. The report concluded that, as an LCP amendment without a physical project, the Doud parcel land use designation change and rezone would not result in direct physical impacts at this time.
15. On November 7 and 14, 2006, the Monterey County Board of Supervisors held a duly noticed public hearing to consider and approve a Resolution of Intent to adopt proposed amendment to the land use designation and zoning in the LCP. At least 10 days before the first public hearing date, notices of the hearing before the Board of Supervisors were published in both the Monterey County Herald and were also posted on and near the property and mailed to property owners within 300 feet of the subject property.

DECISION

The Board of Supervisors of the County of Monterey, State of California, hereby resolves as follows:

1. Subject to certification by the Coastal Commission and having considered the environmental assessment, the Board of Supervisors intends to:
 - a. Amend the Big Sur Land Use Plan land use designation on the 2.5 acre flag lot located north of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean (APN: 243-212-016-000/Doud)

Resolution No.: 06-334
November 14, 2006

- from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC); and
- b. Adopt an ordinance (attached hereto as Attachment 1) amending Sheet 20-22 of the Sectional District (Zoning) Maps of Section 20.08.060 of Title 20 (zoning) of the Monterey County Code and the Coastal Implementation Plan. Said ordinance reclassifies a 2.5 acre flag lot located north of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean (APN: 243-212-016-000/Doud) from Open Space Recreation, Coastal Zone [OR(CZ)] to Watershed and Scenic Conservation, Coastal Zone [WSC/40(CZ)].
2. This amendment is intended to be carried out in a manner fully in conformity with the California Coastal Act and the County's Local Coastal Program.
 3. This resolution is submitted with materials sufficient for a thorough and complete review by the Coastal Commission.
 4. Staff is directed to submit this proposed amendment of the Local Coastal Program to the Coastal Commission for certification, together with materials for review of the amendment by the Coastal Commission.
 5. This amendment will not take effect until after certification by the Coastal Commission and subsequent formal adoption by the Board of Supervisors.

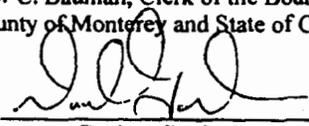
PASSED AND ADOPTED on this 14th day of November 2006, upon motion of Supervisor Potter, seconded by Supervisor Lindley, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Lindley, Potter, and Smith
NOES: None
ABSENT: None

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73, on November 14, 2006.

Dated: November 17, 2006

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey and State of California.

By 

Darlene Drain, Deputy

MONTEREY COUNTY

MAR 05 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST



DEPARTMENT OF HEALTH LEN FOSTER, Director

FAMILY & COMMUNITY HEALTH
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH
BEHAVIORAL HEALTH

HEALTH PROMOTION
ADMINISTRATION

November 7, 2006

Rocky Point Restaurant
Attn: Horst Mieth, General Manager
P.O. Box 223281
Carmel, CA 93922

ENVIRONMENTAL HEALTH
NOV 08 2006
HEALTH DEPARTMENT

RECEIVED
NOV 08 2006
DWP / EHR

RE: Potable Drinking Water Requirements for Rocky Point Restaurant

Dear Mr. Mieth:

On October 24, 2006, Monterey County Health Department (MCHD) staff met with the restaurant's manager regarding drinking water requirements. Specifically, the manager was notified of potential public health risks from using its current water supply. In addition, the following requirements were addressed:

Health and Safety Code Requirements

Section 114095 of the California Uniform Retail Food Facilities Law (CURFFL) requires all food facilities to obtain its water supply from a source that meets HSC standards.

Currently, the Garrapata Water Company Inc. serves the restaurant. Records, obtained from the MCHD indicate that the water company's water source does not comply with the HSC's Surface Water Treatment Rule. As a result, the Rocky Point restaurant is required to amend its water source.

Please provide a proposal to the MCHD by **February 7, 2007**, for approval. The proposal must indicate the restaurant's specific action plan(s), outlining well construction and/or installing onsite multi-barrier filtration and disinfection.

The proposal application must include well construction permits and/or engineered blueprints for treatment. At a minimum, the restaurant is required to have the filtration and disinfection of the water on line by **May 7, 2007**.

Note that failure to comply with the February 7, 2007 proposal deadline will not excuse the facility from required compliance with the May 7, 2007 deadline.

Restaurant's Operation Requirements

As previously discussed during the October 24, 2006, meeting, the restaurant must supply potable drinking water from an approved source for drinking and ice. The restaurant must be in compliance with this requirement, until on-site treatment is placed on-line.

If the restaurant does not comply by **May 7, 2007**, deadline, further enforcement action, including enforcement fees, based on \$114 per hour to recover the costs of inspection, monitoring and enforcement activities will be implemented.

If the restaurant complies within the time specified, the facility will not be charged for the cost of enforcement. If you believe this notification to be in error or if you have any questions regarding this matter, please contact me at (831) 647-8967.

Sincerely,



Ismael Chavira, R.E.H.S.
Environmental Health Specialist

Cc: John Rameriz, Assistant Director of Environmental Health
Susan Rimando, Supervising Environmental Health Specialist
Cheryl Sandoval, Supervising Environmental Health Specialist

MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

FAMILY & COMMUNITY HEALTH
EMERGENCY MEDICAL SERVICES

ENVIRONMENTAL HEALTH
BEHAVIORAL HEALTH

HEALTH PROMOTION
ADMINISTRATION

January 8, 2007
ENVIRONMENTAL HEALTH

JAN 09 2007
HEALTH DEPARTMENT

RECEIVED

JAN 09 2007

DWP / EHR

Rocky Point Restaurant
Attn: Horst Mieth, General Manager
P.O. Box 223281
Carmel, CA 93922

RE: Potable Drinking Water Requirements for Rocky Point Restaurant

Dear Mr. Mieth:

On January 5, 2007, the Monterey County Health Department (MCHD) conducted an inspection on the above referenced restaurant. The inspection was a result of a food borne illness complaint. During the inspection, MCHD staff observed several violations that may cause food borne illness. Corrections were made, however, a follow up inspection will be conducted. Note that MCHD staff has determined that there was insufficient evidence of a food borne illness case.

During the inspection, MCHD staff observed that the restaurant was not in compliance with the requirements outlined in the MCHD's November 7, 2006, correspondence. Specifically, it was observed that the restaurant was obtaining its drinking water supply from Garrapata Water Company. As a result, the restaurant was creating a potential public health risk by exposing its customers to water borne pathogens.

Please be aware that a restaurant is required to provide safe drinking water to its customers. This requirement is one of the conditions for maintaining a public health permit. If the restaurant continues to violate these requirements, MCHD will schedule a permit revocation hearing, along with referring this case to the District Attorney's office.

Within the next week, MCHD staff will be conducting a complaint re-inspection. Ensure that all violations, outlined on the January 5, 2007, inspection report are corrected. Continuing violations will result in additional re-inspections, further enforcement action, including enforcement fees, based on \$114 per hour to recover the costs of inspection, monitoring and enforcement activities.

If the restaurant complies within the time specified, the facility will not be charged for the cost of enforcement. If you believe this notification to be in error or if you have any questions regarding this matter, please contact me at (831) 647-8967.

Sincerely,


Ismael Chavira, R.E.H.S.
Environmental Health Specialist

Enclosure: November 7, 2006 MCHD Correspondence

Cc: John Rameriz, Assistant Director of Environmental Health
Susan Rimando, Supervising Environmental Health Specialist
Cheryl Sandoval, Supervising Environmental Health Specialist
Steve Holett, District Attorney

MONTEREY COUNTY



DEPARTMENT OF HEALTH LEN FOSTER, Director

ADMINISTRATION	EMERGENCY MEDICAL SERVICES	HEALTH PROMOTION
ANIMAL SERVICES	ENVIRONMENTAL HEALTH	PRIMARY CARE
BEHAVIORAL HEALTH	FAMILY & COMMUNITY HEALTH	PUBLIC GUARDIAN

January 25, 2007

Rocky Point Restaurant
 Attn: Horst Mieth, General Manager
 P.O. Box 223281
 Carmel, CA 93922

ENVIRONMENTAL HEALTH

JAN 26 2007

HEALTH DEPARTMENT

RECEIVED

JAN 26 2007

DWP / EHR

RE: Potable Drinking Water Requirements for Rocky Point Restaurant

Dear Mr. Mieth:

On January 24, 2007, the Monterey County Environmental Health Division (MCEHD) management/ staff met with you regarding the restaurant's drinking water. The concerns were in reference to potential public health risk of water borne pathogens. To ensure that potable drinking water is provided to the restaurant's customers, the MCEHD is requiring the restaurant to implement the following:

Treatment Unit Installation Requirements:

As mentioned during the meeting and in the November 7, 2006, MCEHD correspondence, a treatment proposal must be submitted to MCEHD by February 7, 2007, for approval by MCEHD's water section. The treatment unit must include an onsite multi-barrier filtration and disinfection. Note that the treatment proposal must meet the Health and Safety Code (HSC) standards and designed by a certified engineer.

The approved treatment system must be on line by May 7, 2007. (Failure to comply with the February 7, 2007, deadline will not excuse the facility from the required compliance deadline of May 7, 2007). In addition, failure to comply with the above deadlines will result in the restaurant's closure, along with referring the case to the District Attorney.

If you have any questions regarding treatment unit requirements, please contact MCEHD's water section supervisor, Cheryl Sandoval at 755-4552.

Restaurant's Operation Requirements:

As mentioned in the meeting and in the November 7, 2006, correspondence, the facility is required to supply drinking water from an approved source to its customers. Therefore, customers may consume no water from the facility's faucets. Until an approved treatment unit is on-line, the following must be implemented:

- Implement the use of bottled water. Bottled water must be used for all food cooking/prepping activities. Exceptions to this requirement may be made for

foods that require boiling for a minimum of one minute. In addition, implement bottled water procedures for prepping all raw produce.

- Ensure that bottled water is used for beverages. This would include beverages such as tea and coffee. Sodas must be from a canned or bottled source.
- Continue the use of bagged ice for all ice related operations.

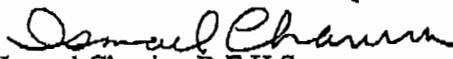
Note that MCEHD staff will be conducting periodic site visits to verify that the above operations are being implemented. Please ensure that all bottled water/ bagged ice receipts are available for review. Note that failure to implement any of the above procedures will lead to closure.

During the meeting, the sale of the restaurant was addressed. As discussed, if the restaurant does not install a treatment unit, a health permit will not be re-issued to the new owners.

Any additional site visits and correspondence that results from failure to implement the above operations and or treatment unit will result in enforcement action(s), including enforcement fees, based on \$114 per hour to recover the costs of inspection, monitoring and enforcement activities.

If the restaurant complies within the time specified, the facility will not be charged for the cost of enforcement. If you have any questions regarding this matter, please contact me at (831) 647-7867.

Sincerely,


Ismael Chavira, R.E.H.S.
Environmental Health Specialist

Enclosure:

Cc: Allen Stroh, Director of Environmental Health
John Rameriz, Assistant Director of Environmental Health
Susan Rimando, Supervising Environmental Health Specialist
Cheryl Sandoval, Supervising Environmental Health Specialist

W8b

TO: Members of the California Coastal Commission
RE: Agenda Item W8b for hearing date March 14, 2007

Points for consideration regarding Appeal A-3-SCO-06-059

Attached you will find three documents for your consideration.

The first document is a memo submitted by Britt Haselton, Esq., the attorney for Mr. Albert Schreck and Mr. Rob Forsland. The memo points out ongoing issues of concern regarding the proposed development that is agenda item W8b at the March 14, 2007 California Coastal Commission hearing.

The second document is excerpted information (the entire packet consists of over 100 pages) from the December 5, 2006 meeting of the Santa Cruz County Board of Supervisors. At that meeting the Board of Supervisors adopted language to amend the definition of "Site Area, Net" found in the Santa Cruz County Code Section 13.10.700-S.

The goal of revising the language is to clarify the area that can be included in lot size when calculating maximum allowable lot coverage and floor area for residential development within the Urban Services Line. **The revised language specifically excludes coastal bluffs as developable land.**

In approving the proposed development, the Santa Cruz County Board of Supervisors relied heavily on precedence. This proposed development proved to be the impetus to review and revise the language regarding "Site Area, Net". We believe that the message is clear; this development as presented is a threat to health and safety and a concern for prudent coastal development.

The third document is a reprint of a San Francisco Chronicle newspaper article by David Perlman, Chronicle Science Editor. The article is entitled "Hill's Slippery Slopes are Long-standing Threat" and covers the recent landslide in San Francisco. John Wallace, principal engineering geologist at Cotton, Shires & Associates is interviewed and quoted in the article. Mr. Wallace is an expert in his field and in his written opinion regarding the proposed development he states that the risks of flooding and landslides are high and have not been properly addressed.

Additionally, Frank L. Rollo, Sr., a prominent geo-technical expert of the San Francisco firm Treadwell and Rollo spoke in support of Mr. Wallace's professional opinion at the California Coastal Commission hearing held on December 13, 2006.

RECEIVED

MAR 09 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

45

MEMO

Re: California Coastal Commission Hearing

Appeal #A-3-SCO-06-059

Date: March 14, 2007

- **Issue:** The project is inconsistent with the policies of the certified LCP regarding geologic hazards and it poses a significant threat of harm to the public, the neighboring properties and rescue service crews involved in the event of a major earth movement from landslide or earthquake. The project is also a potential nuisance. After investigation, appellants' certified, prominent geologists have concluded that the project will result in unsafe conditions. Most importantly, applicants have not avoided or mitigated the hazard; rather they have tried to design the structure to resist the hazard. That is an unacceptable risk. Further, the basis for that design is in serious question because three of the geologists questioned cannot agree on the geologic formation at the site. This is of vital importance because it affects the strength data. That data is admittedly from other sites in the area and not from the subject site therefore it is unreliable and irrelevant in forming the basis for calculating the strength data for this project.
- **Health and Safety Concerns:** June, 2006 Planning Commission rightly denied the application because of overriding concerns for public safety. They recognized that this toe of the coastal bluff area is subject to geological hazards and thus inappropriate for large scale excavation and construction. There is hazard posed to the neighbors both above this property on the bluff and below it on the beach. As the applicants' lot is one of the largest remaining lots, a major landslide would result in a significant quantity of earth movement. Further, there is only one two lane road serving this community and that road is below the 100 year flood stage. For evacuation and emergency service access purposes, it would be impossible to access Beach Drive if there was a large scale catastrophe.
- **History:** There is a long history of landslides which has plagued this area and destroyed homes. **The threat is continuing.**
- **Staff Report:** The staff report recognizes that the site is "extremely steep" with the entire area ranging from 50% to over 70% slope. Staff Report, p.1. Most significantly, the Staff Geologist recognizes "the slope on the site is unstable" and "subject to an unusually high number of geologic and other hazards." P. 8. The Staff Engineer did not do a site visit but relied on photos which she admits, "do not substitute for a site visit." Engineer's Report, P. 1. She notes that applicants' Geotechnical Report is misleading because the project design requires attention to **significant landslide hazards** and those hazards have a high probability of occurrence during the time the structures are occupied. Engineer Report, p.3. She notes Dr. Johnsson's memo wherein he expresses his concern, "I agree that the excavation of the backcut into the marginally stable coastal bluff for the retaining wall(s) and for the sidecuts will be a dangerous operation." Engineer's report 2/13/07, p. 1. Additionally, neither report addresses the landslide graphic prepared and based on approved calculations or any threat of harm to the residents of Bay View Drive which sit above the site. Lastly, the staff reports refer to similar structures of this type which have been approved but it should be noted that none of these structures has been tested by a major earth movement.
- **Additional Questions Raised by Wallace Memo:** Regarding acceptable levels of risk, appellants' geologist notes that applicants' geotechnical consultant cites an outdated 1974 document to define these levels. He questions that premise since we now have a wealth of empirical data to rely on because of the monumental events such as the El Nino '82, '98 Storms, '82 Love Creek Landslide, the '89 Loma Prieta earthquake, etc., Current thinking is that a development with an acceptable level of risk is identified when

the unacceptable levels of risk are eliminated. In this case, this has not occurred because the risks of flooding and landslides are high and have not been properly addressed. Nor has there been secondary access provided for this development. Furthermore, there has been no proof that these bunker structures will survive a major disaster as they all post date Loma Prieta earthquake of 1989. And finally, there has been no provision for shoring the steep bluff face which rises above the applicant's property to their upslope neighbors. This area has experienced much significant erosion because of the drainage from the development on Bay View Drive above the applicant's home site and the voluminous natural runoff which the bluffs are exposed to.

- **Large Scale Home Ordinance:** December 5, 2006 Santa Cruz County Board of Supervisors pass ordinance which will limit the size of new and remodeled construction. Currently, owners include coastal bluffs, beach and even submerged ocean when calculating maximum allowable lot coverage and floor area ration. The new ordinance, applicable to vacant lots, remodels and replacement construction, would exclude counting those areas thereby reducing the square footage of the home to be built. The ordinance would also attempt to curtail "monster homes" in that it increases the maximum lot coverage for smaller lots in an attempt to decrease the size of the second storey. This has been a recognized problem with neighboring residents who complain that large second storeys block their light and views.

This measure is important because it shows recognition that the Collins home is being built on what is now recognized as unbuildable area, the steep bluff face and it also involves the issue of compatibility.

- **Regional and Statewide Significance:** Geologic hazards pose ongoing threat to public safety in coastal developments and this case poses a significant concern which should be further investigated. The recent landslide at Telegraph Hill in San Francisco illustrates how fragile our coastal slopes are, especially after heavy rainfall.
- **Conclusions:**
 - 1. All the consultants agree that the bluff at this site is characterized as unstable and capable of generating a large massive landslide.
 - 2. The development does not avoid or mitigate the landslide hazards. Rather, it attempts to design a structure to resist the impact forces from the potential massive movement.
 - 3. The three geologists who have been involved cannot agree on geologic formation nor has there been any strength data developed that properly characterized the weak, loose sand deposits. The data is from a nearby site that may not be representative of the materials on site. There is a question whether this is a Purisima or Aromas formation.
 - 4. If the data is questionable, then the design may not be adequate; if the design is deficient, then the risk is unacceptable.
 - 5. Requiring families to live and sleep beneath a high risk area that may pose a risk to life and safety is unacceptable.
 - 6. Building a development below a hazard cannot make the site safer: it is simply putting others in harms way.
 - 7. When a slide occurs, closure of the roadway would occur which would prevent emergency vehicles from accessing other homes along Beach Drive.



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
 TOM BURNS, PLANNING DIRECTOR

November 14, 2006

AGENDA DATE: December 5, 2006

Board of Supervisors
 County of Santa Cruz
 701 Ocean Street
 Santa Cruz, CA 95060

SUBJECT: UPDATE ON NEIGHBORHOOD COMPATIBILITY POLICY ISSUES

Members of the Board:

Since late 2005 staff has presented a number of reports to your Board with regard to the issue of compatibility of proposed new homes in coastal neighborhoods. Through those discussions a range of policy approaches have been discussed. Ultimately, the Board approved pursuing the issue on two levels. The first, a package of basic policy changes, is the matter before you today. The second will result from additional discussions scheduled for next Spring.

Background

Board members may recall that late last year, after considering two appeals of coastal permits related to the issue of compatibility of new home design with the surrounding neighborhood, you directed staff to bring forward proposals to improve the clarity of a number of County regulations and to more closely review pending applications for a period of time to determine if further modifications to the standards for compatibility should be explored.

The first phase of regulatory changes was initially proposed to address a number of key issues, including:

- Amending Chapter 13.11 (Design Review), establishing a hierarchy of site and building standards with primary elements (e.g. bulk, massing and scale) and secondary elements (e.g. architectural style and detail).
- Amending the Coastal regulations (Chapter 13.20) to cross-reference to the proposed hierarchy of standards in Chapter 13.11.
- Add a definition of "Neighborhood" to Chapter 13.11.
- Amending the Residential site regulations to:
 - Increase the maximum lot coverage allowed on lots of 5,000 to 15,000 square feet from 30% to 40% to make it possible to reduce the scale of second story additions.
 - Amend the site regulations to once again allow front yard averaging.

- o Revise the definition of "Net Site Area" for residential properties to exclude certain areas not available for development – such as coastal bluffs, arroyos, riparian areas, lakes or the ocean – from being included in the lot size when calculating maximum allowable lot coverage and floor area ratio within the Urban Services Line.

As you are aware, changes to the Net Site Area definition became more complex as staff spent more time developing the regulations and interacting with the public to better understand the consequences of the changes. In particular, we received public comments at a Planning Commission meeting and at a public meeting organized by concerned architects. The focus of the discussions was on the definition of "arroyo" in the General Plan and County Code and the implications of excluding arroyos from Net Site Area. As a result, staff brought this issue back to your Board this past September to clarify the purpose of the proposed policy.

In addition to the Net Site Area issue, in the September report staff recommended that two additional issues that were part of the initial proposal be deferred for consideration as part of the next phase of this effort – currently scheduled for the Spring of 2007. Those two items included establishing a hierarchy of design standards and a definition for "neighborhood", both in Chapter 13.11.

As a result of the September Board discussion, the components of the initial phase of changes to address compatibility issues were reduced to:

- Cross-referencing definitions between Chapters 13.11 and 13.20;
- Expanding allowed lot coverage on larger parcels;
- Re-establishing front yard averaging; and
- Revising the definition of Net Site Area.

Planning Commission Review

Pursuant to your Board's direction, staff returned to the Planning Commission with a proposed amendment to the Net Site Area definition that addressed only properties containing coastal bluffs, beaches, and submerged Monterey Bay areas.

The issue of what is a beach and public versus private ownership of submerged lands was raised by a number of local architects at the Planning Commission. As a result, the Commission directed staff to modify the proposed Net Site Area language regarding "beaches" and "submerged Monterey Bay areas." The modified language is in the proposed definition as shown in Exhibit A to Attachment 1. Instead of using "beaches" and "submerged Monterey Bay areas"; the proposed definition states "the area from the top of a coastal bluff to the bayward property line, not including coastal arroyos." We believe that this definition adds considerable clarity to this issue.

In addition to comments on the Net Site Area issue, the Commission also reviewed the other proposed changes. While the Planning Commission recommended approving the proposed changes to increase the allowed lot coverage on parcels of certain sizes in the R-1 and RM zone districts from 30 percent to 40 percent, they did raise some concerns with the front yard averaging proposal. In particular, the Planning Commission was concerned that the amendment would result in two story front facades as close as 10 feet from the front property

line. As a result, the Planning Commission recommended including language that would only allow single story building elements to take advantage of the front yard averaging, requiring that second stories would be required to abide by the standard setback for the respective zone district. Staff believes that this change too provides a significant improvement to the original proposal.

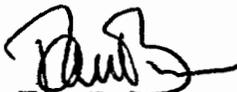
Conclusion and Recommendation

Staff believes that the packet of regulatory changes proposed, and especially the revised Net Site Area definition, will appropriately focus attention on the area of most concern—the coastline. As well, as previously directed by your Board, staff will return early next year with additional observations and suggestions for amendments to the design review section of the County Code. Deferring those parts of the neighborhood compatibility ordinance revisions concerning the definition of “Neighborhood” and the hierarchy of standards to early in 2007 will give staff the additional time needed to bring informed recommendations to your Board.

It is, therefore, RECOMMENDED that your Board take the following actions:

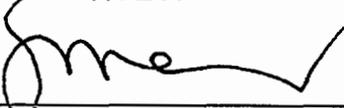
1. Hold a public hearing on this item;
2. Certify the CEQA Notice of Exemption;
3. Adopt the attached Resolution and ordinance approving the proposed amendments to County Code Chapter 13.10 regarding neighborhood compatibility issues, as shown in Exhibit A to Attachment 1; and
4. Direct the Planning Director to submit the amendments to the Coastal Commission as part of the final Coastal Rounds of the year.

Sincerely,



Tom Burns
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

ORDINANCE NO. 4841

0326

ORDINANCE AMENDING SECTIONS 13.10.323 and 13.10.700-S OF THE SANTA CRUZ COUNTY CODE AND ADDING SUBSECTION (e) (7) TO SECTION 13.10.323 OF THE SANTA CRUZ COUNTY CODE ALL RELATING TO NEIGHBORHOOD COMPATIBILITY

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The Site and Structural Dimensions Charts for the R-1 Single Family Residential Zone Districts and RM Multi-Family Residential Zone Districts in Subdivision (b) of Section 13.10.323 of the Santa Cruz County Code are hereby amended to read as follows:

1. In the "R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Condition of "Parcels >5,000 sq. ft." within the Zone District of "R-1-3.5 to R-1-4.9 0 to <5,000 sq. ft." is revised to read "40%" instead of the current "30%".
2. In the "R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Conditions of "General Requirements" and "Corner lots" within the Zone District of "R-1-5 to R-1-5.9 5,000 to <6,000 sq. ft." are each revised to read "40%" instead of the current "30%".
3. In the "R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Conditions of "General Requirements", "Corner lots", and "Parcels >4,000 to <5,000 sq. ft." within the Zone District of "R-1-6 to R-1-9.9 6,000 to <10,000 sq. ft." are each revised to read "40%" instead of the current "30%".
4. In the "R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "PARCEL SPECIFIC CONDITION" described as "Parcels >4,000 to <5,000 sq. ft." within the Zone District of "R-1-6 to R-1-9.9 6,000 to <10,000 sq. ft." is revised to read "Parcels >4,800 to <5,999 sq.ft." instead of the current "Parcels >4,000 to < 5,000 sq. Ft."
5. In the "R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Conditions of "General Requirements" and "Corner lots" within the Zone District of "R-1-10 to R-1-15.9 10,000 to <16,000 sq. ft." are each revised to read "40%" instead of the current "30%".

6. In the "RM MULTI-FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Condition of "Parcels >5,000 sq. ft." within the Zone District "RM-1.5 to RM-4.9 0 to <5,000 sq. ft." is revised to read "40%" instead of the current "30%".
7. In the "RM MULTI-FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Conditions of "General Requirements and for all parcels >6,000 sq. ft." and "Corner lots" within the Zone District of "RM-5 to RM-5.9 5,000 to <6,000 sq. ft." are each revised to read "40%" instead of the current "30%".
8. In the "RM MULTI-FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the Zone District described as "RM-6 to RM-9.9 5,000 to <6,000 sq. ft." is revised to read "RM-6 to RM-9.9 6,000 to < 10,000 sq.ft." instead of the current "RM-6 to RM-9.9 5,000 to < 6,000 sq. ft."
9. In the "RM MULTI-FAMILY RESIDENTIAL ZONE DISTRICTS SITE AND STRUCTURAL DIMENSIONS CHART", the "MAXIMUM PARCEL COVERAGE****" percentage designated for the Parcel Specific Conditions of "General Requirements" and "Corner lots" within the Zone District of "RM-6 to RM-9.9 6,000 to <10,000 sq. ft." are each revised to read "40%" instead of the current "30%".

SECTION II

The Santa Cruz County Code is hereby amended by adding Subsection (e) (7) to Section 13.10.323 to read as follows:

- (7) Front Yard Averaging
- (A) On a site situated between sites improved with buildings, the minimum front yard for the first floor of structures other than garages or carports may be the average depth of the front yards on the improved sites adjoining the side lines of the site but in no case shall be less than 10 feet.
- (B) Where a site is not situated between sites improved with buildings and where sites comprising forty percent (40%) of the frontage on a block are improved with buildings, the minimum front yard for the first floor of structures other than garages or carports may be the average of the existing front yard depths on the block but in no case shall be less than 10 feet.
- (C) In computing average front yard depths, the figure thirty (30) feet shall be used in lieu of any front yard depth greater than thirty (30) feet.
- (D) Proposed garages or carports shall meet the minimum front yard setbacks shown in Section 13.10.323 Site and Structure Dimensions Charts or as allowed by Section 13.10.323(d)(5) Parcel with Steep Slopes. The required front yard setback for other accessory structures may be reduced as allowed by Section 13.10.323(e)(6).

SECTION III

The definition of "Site Area, Net" found in Santa Cruz County Code Section 13.10.700-S is hereby amended to read as follows:

Site Area, Net. Outside the Urban Services Line the total site area less all public or private rights-of-way designated for vehicle access. Inside the Urban Services Line, the total site area less:

- a. All public or private rights-of-way designated for vehicle access, and
- b. Coastal bluffs, beaches, and Monterey Bay submerged lands, including all the area from the top of a coastal bluff to the bayward property line, but not including coastal arroyos.

SECTION IV

This ordinance shall become effective outside of the coastal zone on the 31st day following adoption and inside the coastal zone upon certification by the California Coastal Commission.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this 5th day of December, 2006, by the following vote:

AYES: SUPERVISORS	Wormhoudt, Beautz, Pirie and Stone
NOES: SUPERVISORS	Campos
ABSENT: SUPERVISORS	None
ABSTAIN: SUPERVISORS	None

MARK W. STONE

CHAIR OF THE BOARD OF SUPERVISORS

ATTEST: GAIL T. BORKOWSKI
Clerk of the Board

APPROVED AS TO FORM:

[Signature]
County Counsel

Copies to: Planning
County Counsel

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE ATTEST BY HAND AND SEAL THIS 17th DAY OF December 2006
 SUSAN A. MAURIELLO, COUNTY ADMINISTRATIVE OFFICER AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA
 BY [Signature] DEPUTY

Hill's slippery slopes are long-standing threat

David Perlman, Chronicle Science Editor

Wednesday, February 28, 2007

A geologist who knows Telegraph Hill calls its cliff sides "a recipe for trouble."

For nearly a century and a half, ever since a scofflaw quarry company began blasting the sheer slopes for rocks to fill San Francisco's mud-saturated waterfront, the landmark hill has been plagued by slides again and again.

"A lot of rain in a short time, and the hill's susceptibility to slides goes way up," said Richard Pike, a geologist and terrain analyst at the U.S. Geological Survey in Menlo Park. "And after three days of rain, what happened was a slam dunk."

The hill's vertical face above Broadway, where old wooden buildings at the base were battered and evacuated Tuesday morning, is studded with the relics of the quarrying damage from long ago: Rock bolts some time back were thrust deep into the soft bedrock, with each bolt holding a thick steel plate roughly a foot square that is designed to buttress the fractured rock against falling.

"Sometimes they work, and sometimes they don't," Pike said, "but the whole face is a recipe for trouble."

Most of the hill where Coit Tower stands at the 287-foot summit is sedimentary rock, up-tilted from an ancient seabed 70 million years ago or more and part of California's widespread Franciscan Formation. It is composed of sandstone geologists call greywacke -- pronounced "graywacky" -- mixed with laminated shale, and its cliff faces are highly unstable.

The hill's sheer south side above Broadway, where the flat land below is largely clay, has slid less frequently than the eastern cliff above Sansome Street. On that side, the Gray Brothers Quarry Co. first began decades of blasting in 1867, using 90 kegs of dynamite for the first big explosion, according to Gladys Hansen, San Francisco's retired city archivist.

Recalling old Chronicle columns by the late Robert O'Brien, Hansen said that after the 1906 earthquake, George Gray ignored angry mass meetings called by residents along Sansome and Montgomery streets. Instead, he continued quarrying, dynamiting tons of rock from both cliff faces to supply workers who were building a seawall on the Embarcadero.

Popular rage against the quarry company heightened when adults and children were injured by falling rock, and although the Gray brothers faced lawsuit after lawsuit, they kept quarrying until 1909, when Carolyn Bush, George Gray's secretary, was slain, and a court-ordered permanent injunction ended the blasting on Telegraph Hill.

It is not known whether the slaying and the blasting were connected, but the quarry company found other places to dynamite -- including Diamond Heights -- until five years later, when George Gray, by then a millionaire, was slain by a 26-year-old former worker whom Gray refused to pay back wages. That was the end of quarrying, and the end of the company.

Ever since, landslides at Telegraph Hill have closed streets, wrecked houses and forced scores of people to evacuate. Few injuries have been recorded, however, and no deaths. Tuesday's rock fall, as Pike said, was "just your garden-variety landslide," causing no deaths or injuries.

John Wallace, principal engineering geologist at the Los Gatos firm of Cotton, Shires & Associates, has worked for several clients on Telegraph Hill and surveyed the slide area briefly Tuesday morning.

He called the yellow-brown ruptured face "deceptively good rock" that had been badly weakened by the decades of quarrying, and particularly by the most recent episodes of hard rain.

"The quarrying left those faces in an over-steepened condition," Wallace said, "so the rock simply seeks its natural angle of repose. And after it's been exposed to the elements for a long time -- to the water, air and wind -- it's weathered and fractured and weakened. They're all factors in the rock's progressive deformation.

"So it's going to fail, and it's not a matter of if, but when," he said.

The rock bolts thrust into the cliff and the steel plates they anchor against the face above Broadway can be useful in deflecting the threat of landslides, Wallace said, and they are commonly used by engineers elsewhere to shore up unstable rock faces. Those bolts are at least 25 feet long, thrust deep into more solid bedrock beyond the weakened surface, and can be a well-accepted method of "mitigating the danger in some cases," he said.

But they certainly didn't stop the landslide this time.

E-mail David Perlman at dperlman@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/02/28/MNG1ROCI1B1.DTL>

This article appeared on page **A - 10** of the San Francisco Chronicle

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877

W8c

**Staff Report Addendum**

Date: March 13, 2007
To: Commissioners and Interested Parties
From: Steve Monowitz, District Manager *fm 3/13/07*
Katie Morange, Coastal Planner
Subject: Addendum to 2/28/07 Staff Report Prepared for the 3/14/07 Hearing (Agenda Item W8c) Regarding the Fort Ord Dunes State Park Initial Public Use Project (Application No. 3-06-069)

This addendum modifies the staff report dated 2/28/07 regarding the Fort Ord Dunes State Park Initial Public Use Project (Application No. 3-06-069). Staff continues to recommend approval of the project subject to the following clarifications to the staff report. Deleted text is shown in ~~strikethrough~~, and new text is shown in underline.

- I. In order to ensure long-term protection of ESHA, a new special condition has been added that limits the permit to a five year period. In the event that State Parks does not receive a permit for the next phase of park development in five years, thereby providing the Commission with the ability to review ongoing ESHA protection provisions, this condition will allow the Commission to review any new information or changed circumstances that may require the need for alternative ESHA protection in the future. This new condition has been added as Special Condition 1, and subsequent conditions will be renumbered accordingly. The following changes will be made to the staff report as a result of the new condition:

1. Permit Term. This permit expires within five years from the date of issuance. A one year extension may be approved by the Executive Director, provided that a written request for extension is received prior to the expiration date, and includes an explanation of the reasons why such an extension is needed.

4. 3. Public Use and Habitat Monitoring Reports. WITHIN ONE (1) YEAR OF THE INITIAL PUBLIC OPENING, AND THEN EVERY TWO (2) YEARS YEAR until State Parks receives a coastal development permit for the next phase of park development or this permit expires, the applicant shall submit, for Executive Director review and approval, a monitoring report that describes and evaluates public use patterns, the environmental impacts of such use patterns, and the ongoing and adaptive management measures employed by State Parks in response to such impacts. Adaptive management measures that change the location or intensity of public use or involve other development activities may necessitate an amendment to this permit and must be coordinated with the Commission's Executive Director prior to implementation.

5. 4. Long-Term Park Development Status Reports. WITHIN ONE (1) YEAR OF THE INITIAL PUBLIC OPENING, AND THEN EVERY TWO ~~(2) YEARS~~ YEAR until State Parks receives a subsequent coastal development permit for the next phase of park development or this permit expires, the applicant shall submit, for Executive Director review and approval, status reports that detail the status of, and expected timeline for submittal of, future park development permit applications. This shall include, but not be limited to the status of plans to install Highway 1 signage, expand trails, and construct other day use facilities.

Page 18:

With specific respect to snowy plovers, the project includes management and protection provisions (described above under Section 3c, Project Description) to ensure that no take of this species occurs as a result of opening the beaches to public use. Special Condition ~~6~~ 5 requires a concurrence letter from the U.S. Fish and Wildlife Service that confirms State Parks' conclusion that the initial public use project will not result in take of the federally listed, threatened western snowy plover or any other species covered by the Endangered Species Act. Also, although the beach area will be open to increased human activity, the project does not include any physical elements that could adversely affect the marine environment or the sustainability of the biological productivity of coastal waters. Therefore, the introduction of regular public use into this area is not expected to be incompatible with the continuation of the habitat values that State Parks intends to restore and protect in the park, and the initial public use can be found consistent with the Coastal Act. Special Condition ~~4~~ 3 requires State Parks to prepare monitoring reports that will report on public use patterns and the ongoing measures being employed to ensure protection of sensitive habitat areas from public use. Although levels of habitat monitoring and enhancement included with the initial park opening are expected to be adequate to protect ESHA consistent with Section 30240 in the short-term, new information or changed circumstances may necessitate alternative approaches in the future. To ensure that such needs are appropriately addressed, the Special Condition 1 limits the permit's lifespan to five years, with a provision that allows the Executive Director to extend this timeframe for an additional year for good cause.

c. ESHA Conclusion

The initial use project has been designed to balance public access with habitat protection in a manner consistent with the Coastal Act. State Parks will rely primarily on existing paved and disturbed areas of the site to develop public access features, and will not introduce any new dune coverage. The project also includes ESHA protection provisions, such as fencing to keep the public in designated areas and out of snowy plover nesting sites, beach closures (if necessary) to protect snowy plover nesting sites, interpretive and regulatory signage to educate the public about the sensitive nature of the dunes, and a prohibition against dogs and campfires on the beach that will ensure that the habitat values of the site are maintained and protected from disruption and degradation. Special Condition 3 requires regular reports that update the Executive Director on ongoing habitat protection and management measures, and

Special Condition 5 requires evidence of USFWS and DFG concurrence that the initial public use project will not result in take of endangered species. Furthermore, Special Condition 1 limits the permit's lifespan to five years to provide the Commission with the ability to review any new information or changed circumstances that may require the need for alternative ESHA protection in the future. As designed and conditioned, the project is consistent with Sections 30210, 30212, 30230, 30231, and 30240 of the Coastal Act.

II. Special Condition 2, Construction Management Measures, has been augmented as follows to ensure that revegetation, if necessary, will occur with native plants of local stock.

- Any construction activities that result in inadvertent disturbance of dune vegetation must be replanted with native vegetation of local stock appropriate to the site immediately following construction.

III. In order to provide the Commission with more detail regarding the CEQA determination for the project, the following additional details have been added to the second paragraph of the CEQA de novo findings of the staff report on pages 22-23.

State Parks is the lead agency for the project. Because of the limited scope of work proposed in this project, the local State Parks staff has determined that it is Categorical Exempt from CEQA, using two exemptions: Class 1 for existing facilities and Class 3 for new structures, facilities, and signage. Pursuant to State Parks protocol, they have completed a Project Evaluation Form (PEF) (prepared for potentially exempt projects) which is in the process of being reviewed by State Parks headquarters. It is anticipated that a Notice of Exemption will be prepared and filed with the State Clearinghouse.

W 8c

COMMITTEES
CHAIR, BUDGET
JUDICIARY
LABOR & EMPLOYMENT
NATURAL RESOURCES

Assembly California Legislature

JOHN LAIRD
ASSEMBLYMEMBER, TWENTY-SEVENTH DISTRICT



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RECEIVED

MAR 09 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 9, 2007

Patrick Krueger, Chair
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Chairperson Krueger,

I am writing in support of application number 3-06-069, the proposed Fort Ord Dunes State Park (FODSP) Initial Public Use project. Since the completion of the Base Reuse Plan for the former Fort Ord in 1997, this property has been slated for transfer to the California Department of Parks and Recreation for public recreation and access. After ten years, this addition to the State Parks system is most welcome to the residents and visitors who will utilize this gem.

The FODSP Initial Public Use plan allows State Parks to open this property up to public use as soon as possible, while allowing for larger improvements over time as resources become available. With the expected conveyance of the property from the federal government to State Parks due in the next few months, approval by the Coastal Commission will allow this plan to move forward expeditiously. With the conditions for monitoring and reporting recommended by your staff, compliance with the Coastal Act will continue to be assessed.

By opening these 979 acres to public use and allowing the history of the former Fort Ord to be preserved, Fort Ord Dunes State Park will be a major acquisition for our State Parks system and for the people of California. I therefore recommend the California Coastal Commission approve Coastal Development Permit Application Number 3-06-069, and I thank you for your consideration.

Sincerely,

JOHN LAIRD, Assemblymember
27th District

CC: Mat Fuzie, CA Dept. of Parks and Recreation

JL:co

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W8C



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Porola Road, Suite B
Ventura, California 93003



IN REPLY REFER TO:
PAS. 201 4846 6785

March 6, 2007

Kenneth Gray
Monterey District
California Department of Parks and Recreation
2211 Garden Road
Monterey, California 93940

Subject: 2007 Fort Ord Dunes State Park Initial Public Use Access Management
Plan, Monterey County, California

Dear Mr. Gray:

We are responding to your letter, dated December 21, 2006, and received in our office on December 26, 2006, requesting our concurrence with your determination that implementation of the subject plan would not result in take of the federally threatened western snowy plover (*Charadrius alexandrinus nivosus*) or other species covered by the Endangered Species Act. With your initial request, you provided a copy of the Fort Ord Dunes State Park Initial Public Use Access Management Plan (initial public use plan). On January 4, 2007, you also provided a map showing snowy plover nesting locations in 2005 and 2006 along the Fort Ord Dunes State Park coastline. In an electronic mail dated January 31, 2007, you provided additional information on how the proposed action would avoid take of the federally endangered Smith's blue butterfly (*Euphilotes cnoptus smithi*).

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any endangered or threatened animal species. Section 3(18) of the Act defines "take" to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

The proposed project involves allowing initial public use of a 979-acre property consisting of the coastal dunes and beaches of former Fort Ord. This property, which will become Fort Ord Dunes State Park (Park), is anticipated to be transferred from the Department of the Army (Army) to the State of California in spring 2007. The California Department of Parks and Recreation (State Parks) and the Service have been part of the planning process for the reuse of former Fort Ord for many years. The Service is currently reviewing a draft habitat conservation plan, which addresses all of former Fort Ord, including the Park. The Army has consulted with the Service under Section 7 of the Act on the transfer of the property out of Federal ownership and the Service concluded that the transfer action would not jeopardize the western snowy plover, Smith's blue butterfly, or listed plants that occur on the site. State Parks has an approved General Plan for the Park.

Following land transfer, detailed planning, design, and construction of permanent public access facilities at the Park are expected to occur over several years. The interim public use plan describes the public access facilities that State Parks will provide initially and the monitoring and conservation measures that State Parks will implement for the western snowy plover in 2007. The interim public use plan summarizes the four major components of site improvement for 2007: (1) Adaptation of an existing asphalt parking lot for visitor parking at the site of the former Stilwell Hall; (2) use of an existing unsurfaced road near this parking area as a pedestrian trail to allow beach access from the parking lot; (3) creation of a temporary public observation area west of the parking area; and, (4) installation of interpretive, directional, and regulatory signs, gates and other minor improvements.

The Park environment includes 4 miles of relatively narrow ocean beaches that are backed by bluffs and associated coastal dunes. Western snowy plovers are known to nest on the Park's beaches. In 2006 in the Park, biologists documented 21 western snowy plover nests that fledged 29 young. This is the greatest number of nests recorded since annual monitoring began in 1988.

Smith's blue butterflies live in the coastal dunes of the Park in close proximity to their host plants, two members of the buckwheat (*Eriogonum*) genus. Much of the Park's coastal dune habitat has been covered by nonnative iceplant (*Carpobrotus edulis*). Currently, the buckwheat species are patchily distributed along the length of the dunes.

State Parks has designed its initial public use plan to avoid take of the western snowy plover and the Smith's blue butterfly, by limiting the types of activities that may occur on the beaches and the locations where the public may access the beach and dunes. The plan indicates that it is State Parks' intent to manage the Park's beaches to avoid take of the western snowy plover. Avoidance measures in the plan include the following:

1. Only one beach access point will be established. Beach access will be via an existing unsurfaced road which will be designated as a pedestrian trail, cabled, and signed. State Parks will install a snowy plover interpretive display near the beach access route.
2. On the coastal dunes, visitor travel will be restricted to existing roads and trails. The butterfly's host plant does not occur in areas where State Parks is proposing to improve the Stilwell Hall beach access area and create the observation point.
3. Only pedestrian use will be allowed on the beach. No dogs or campfires will be permitted on the beach.

Kenneth Gray

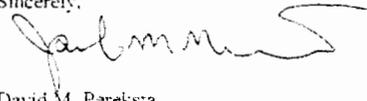
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4. Trained biologists will inspect and monitor the Park's beaches for western snowy plovers at least once each week during the nesting season and once each month during the remainder of the year.
5. Symbolic fencing and signage will be constructed to prohibit public use on the portions of the beach where western snowy plover nesting is most likely to occur. Additional areas will also be fenced and closed, as needed to avoid take of western snowy plovers.
6. State Parks will fund a predator management program at the Park.
7. No mechanical raking will occur on the Park's beaches. Vehicle use on the beaches will be limited to trained State Park's personnel who have been informed of western snowy plover nesting activities by the monitoring staff.

Based upon the information provided, we concur with your determination that implementation of the initial public use plan is not likely to result in take of the western snowy plover or the Smith's blue butterfly. This concurrence is based on the expected effects of the proposed activities and your proposed avoidance measures.

We look forward to continuing to work with you on natural resource issues at the former Fort Ord. If you have any questions about this letter, please contact Diane Steeck of my staff at (805) 644-1766, extension 318.

Sincerely,



Fol

David M. Pereksta
Assistant Field Supervisor
North Coast Division



RECEIVED

Monterey Pine Forest Watch
P. O. Box 505
Carmel, California 93921

March 6, 2007

MAR 08 2007

Charles Lester
Deputy Director
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

SUBJECT: Proposed Pebble Beach Company Amendment to the Local Coastal Program, "Measure A".

Dear Mr. Lester:

The Monterey Pine Forest Watch (MPFW) is a 501(c)3 non-profit organization that has worked since 1992 to promote the conservation of Monterey Pine Forest habitat on California's Central Coast. The MPFW has previously submitted comments to the Coastal Commission regarding the periodic review of the Monterey County Local Coastal Program (2/10/04) and the proposed LCP Amendment pertaining to Measure A in the Del Monte Forest (5/11/2006). Our comments consistently note that Monterey Pine Forest habitat and its associated unique plant and animal species are deserving of greater protective measures.

The MPFW met on Tuesday February 27, 2007 and would like to take this opportunity to update our position regarding the proposed Pebble Beach Company Amendment to the Local Coastal Program, "Measure A". The MPFW voted to endorse the Coastal Commission staff recommendations submitted to the California Coastal Commission on June 14, 2006 for denial of the proposed LCP amendment (Measure A) pertaining to Del Monte Forest in Pebble Beach.

ESHA: The Coastal Act specifically protects Environmentally Sensitive Habitat Areas and the MPFW concurs with the Coastal Commission staff that Monterey Pine Forest habitat in Del Monte Forest is ESHA. Although portions of the unique Monterey Pine Forest are not mapped as ESHA in the outdated LCP, these forest habitats exist on the ground and thrive in association with a complex of special and noteworthy natural communities, plants and animals, including Central Maritime Chaparral, Coastal Prairie, Dune and Wetland communities. The entire forest complex should be considered ESHA, as this habitat mosaic collectively supports numerous Federally Endangered, Federally Threatened and California Species of Concern. At least 19 special status plant species and 4 special status wildlife species have been documented in the Pebble Beach area.

In addition to the extraordinary ecological values associated with the forest habitat, the stands of Monterey pine in Del Monte Forest also constitute a significant visual resource and provide the backdrop that distinguishes the natural character of the Monterey Peninsula.

EASEMENT JEOPARDY: The MPFW is concerned about the precedent for extinguishing conservation easements placed on portions of the Del Monte Forest as mitigation for past projects approved by the Coastal Commission. It is our understanding that as a condition of the 1985 Spanish Bay development, the quarry in Sawmill Gulch was specified as a restoration

Charles Lester
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area and protected in perpetuity with a conservation easement. Rezoning the Sawmill Gulch area to support the relocated equestrian center would extinguish the easement and void the Spanish Bay agreement. This proposed action sets a precedent and clouds the long-term protection offered to other portions of Del Monte Forest proposed in Measure A and the associated Pebble Beach Company development proposal.

We urge the California Coastal Commission to uphold policies in the California Coastal Act that require the preservation of Environmentally Sensitive Habitat Areas and the maintenance of conservation easements that were set aside as conditions of past development projects.

The Measure A proposal to rezone portions of Del Monte Forest would provide for golf course, residential and commercial development that is not appropriate in Environmentally Sensitive Habitat Areas protected in the Coastal Zone.

Thank you for the opportunity to comment on this project.

Sincerely,

Signature(s) on file.

Nicole Neder
Secretary

cc: Peter Douglas, Executive Director



SIERRA CLUB VENTANA CHAPTER

P.O. BOX 5667, CARMEL, CALIFORNIA 93921

CHAPTER OFFICE • ENVIRONMENTAL CENTER (831) 624-8032

MAR 08 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please direct any response to: Rita Dalessio
16 Via Las Encinas, Carmel Valley, CA 93924

March 7, 2007

Charles Lester
Deputy Director
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Mr. Lester,

The Sierra Club is recommending denial of the certification of Measure A and the Pebble Beach Company project when/if it comes before the Coastal Commission again. We support the June 14, 2006 Coastal Commission staff report and have submitted our own comments through our attorney, Thomas N. Lippe.

The Pebble Beach Company's Del Monte Forest Preservation and Development Plan (the "Project"), violates significant areas of the certified Monterey County Local Coastal Program (the "LCP"), as well as a Measure A amended LCP, specifically, environmentally sensitive habitat area (the "ESHA") policies, including requirements for wetland protection and dune protection. Further, the Project violates the Coastal Commission's Spanish Bay coastal development permit (the "CDP"), since it conflicts with the CDP forest restoration requirements and irrevocable conservation easements.

Under the current certified LCP, the following proposed elements of the Project violate the LCP: the new Equestrian Center at Sawmill Gulch, which is not allowed in the Open Space Forest ("OF") land use designation and Resource Conservation ("RC") zoning at this location; 149 new visitor-serving units at Spanish Bay and the Pebble Beach Lodge, which are not allowed under Table A of Chapter 3 of the LCP Land Use Plan ("LUP"); 11 new golf course cottages, which are not allowed under Table A or current zoning; portions of the new golf course that conflict with the OF designation and RC zoning; and all new development proposed beyond a single residence on each legal lot (i.e., new golf course, driving range, residential subdivisions, and visitor-serving units) due to the B-8 resource constraint zoning that prohibits new development.

Even if Measure A were certified by the Commission, the Project would still violate the amended LCP because undeveloped portions of the Project area are primarily ESHA.

ESHA includes Federal and State listed species and California Native Plant Society ("CNPS") List 1b species (see Monterey County LCP Zoning or CIP 20.147.020(H); 20.147.020(AA), and is mostly made up of large areas of native Monterey pine forest (CNPS List 1b), as well as such sensitive plants as the federally-listed endangered Yadon's piperia and animals such as the federally-listed threatened California red-legged frog, in addition to large areas of wetlands, dunes and riparian areas.

Much of the proposed Project is inconsistent with ESHA protection requirements of the LCP. For example:

- The Project violates LUP Chapter 2 and CIP 20.147.040, which require that ESHAs be identified, avoided, and buffered. The County has not adequately identified ESHA within the Project area, including significant areas of wetland and dune habitat.
- The Project violates LUP Policy 8 and CIP 20.147.040(B), which allow the approval only for resource-dependent uses. None of the proposed development is resource-dependent (with the exception, perhaps, of new trails).
- The Project violates LUP Policy 10 and CIP 20.147.040(A)(1), which prohibit subdivisions within ESHA. Project applicants suggest that the development potential of undeveloped Project area lands is 850 units, whereas the number of legal lots is probably closer to 41 lots due to ESHA constraints.
- The Project also does not properly buffer ESHA, including wetlands (under CIP 20.147.040(B), a minimum buffer of 100 feet is required).

Aside from ESHA inconsistencies, the Project further violates the LCP because it is inconsistent with the Coastal Commission's Spanish Bay CDP. The Project applicants seek to revoke their restoration and conservation commitments under the CDP by proposing to develop a new equestrian center on the Sawmill Gulch site, which was designated under the CDP as open space forest and zoned resource conservation, designed to protect, preserve, enhance and restore sensitive resource areas in the County of Monterey (IP 20.36.010). Because an amendment to the CDP permitting development of a new equestrian center in the Sawmill Gulch restoration area would be a weakening amendment, any such amendment must be prohibited under 14 CCR Section 13166(a).

Thank you and your staff again for your excellent report on Measure A and the PBC project and for your consideration of our comments.

Very truly yours,

Signature(s) on file.

Rita Dalessio (RD/GI)
Chapter Chair