STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY ARNOLD SCHWARZENNEGER, *GOVERNOR*

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

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NORTH CENTRAL COAST DISTRICT (SAN FRANCISCO) DEPUTY DIRECTOR'S REPORT

For the

MAY Meeting of the California Coastal Commission

MEMORANDUM **May 7, 2009**

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

There were no waivers, emergency permits, immaterial amendments or extensions issued by the North Central Coast District Office for the May 7, 2009 Coastal Commission hearing.

This report contains additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the North Central Coast Area.

CALIFORNIA COASTAL COMMISSION
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45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

Memorandum **May 6, 2009**

To: Commissioners and Interested Parties

FROM: Charles Lester, Deputy Director
North Central Coast District

Re: ***Additional Information for Commission Meeting Thursday, May 7, 2009***

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

Memorandum **May 6, 2009**

To: Commissioners and Interested Parties

FROM: Charles Lester, Deputy Director
North Central Coast District

Re: ***Additional Information for Commission Meeting Thursday, May 7, 2009***

May 3, 2009 a second message

TO: PETER DOUGLAS, EXECUTIVE DIRECTOR @ fax 415-904-5400

I sent to you earlier today a fax referring to a matter which might possibly take place May 7, 2009 at your monthly meeting in San Francisco. This message is related and I ask you to please have your staff use that lengthy fax you have to please notify all commissioners of its full content.

In requesting this I'm attempting to be sure I comply with:

" No written materials should be sent to Coastal Commissioners unless the Commission staff receives copies of all of the same materials at the same time.

All materials transmitted to Commissioners should clearly indicate (e.g., on the cover page or envelope) that they have also been forwarded to the staff. Materials that do not show that copies have been provided to staff might not be accepted, opened or read by Commissioners. In these cases, no ex parte communication has occurred.

Messages of a non-procedural nature (e.g., substantive) should not be left for a Commissioner. These include telephone, FAX, telegraphic or other forms of message.

All oral or written communications of a non-procedural nature by an "interested person" that are not made according to the above procedures are ex parte communications which are prohibited unless publicly reported by the Commissioner. If the Commissioner does not report the communication, the Commission's action that was the subject of the communication may be revoked and penalties may result.

Coastal Commission decisions must be made on the basis of information available to all commissioners and the public. Therefore, copies of communications made to Commissioners that are forwarded to staff will be included in the public record. Public records are available for inspection at Commission meetings or in the Commission's office.

NOTE: The purpose of these legal requirements is to protect due process and fairness in the Commission's decision-making process. Failure to follow them could lead to fines, revocation of permits and substantial costs. If you have any questions, you can contact Commission legal staff at (415) 904-5220."

Additionally, I hope you will be kind and replace page 2 of the fax you received with its corrected copy I have attached attached here. The correction is made by hand so that a corrected error is very obvious. I left the word "not" out of a sentence thus reversing a point's statement.

Signature on File

01

MAY 3, 2009

TO: PETER DOUGLAS, EXECUTIVE DIRECTOR
CALIFORNIA COASTAL COMMISSION @ fax 415 904 5400

Executive Director Mr. Douglas,

a short while ago on this Sunday afternoon, I sent a message to Governor Schwarzenegger exactly as is shown on the 27 pages following this one. They constitute the courtesy copy to you referred in the Governor's original.

Sincerely,

Signature on File

May 3, 2009

TO: THE GOVERNOR OF THE STATE OF CALIFORNA
THE HONORABLE ARNOLD SCWARZENEGGER
@ fax 916-558-3160

CC: California Coastal Commission Commissioners
CC: California Coastal Commisson Executive Director Peter Douglas

Dear Governor Scwarzenegger,

At the Thursday, May 7,2009 meeting in San Francisco of the California Coastal Commission there may be a disturbing new event to upset our state. The CCC intends to overlook a Federal court summary decision and order from the United States District Court for the Northern District Court of California dated February 26, 2009. This decision and order still stand and I would like to, please, bring this important matter to your attention. Sometimes things escalate with press coverage wildly out of hand and in this case that is easy for you, probably acting through your capable staff, to prevent.

The last 17 pages of this message to you show the Court's study of the Montara Water & Sewer District's hostile filing against the United States Government, The Federal Aviation Administration at Half Moon Bay Airport; Case # C-08-2814 JF (RS). What I send to you, Governor, is only text I ordered withdrawn from the Court's formal pdf. type. So, the information is there, but very obviously not intended for more than just full information to you.

There are 7 marked upon "exhibit" pages for your or your staff's quick few moments attention to see the following facts clearly:

Exhibit page # 1 shows the case identified and summary judgment's beginning few lines.

Exhibit page # 2 shows the conclusion, the actual text of the summary judgment giving title of the disputed wells to the United States. This is alarming in that Coastal Commission is proceeding to grant construction rights to MW&D regarding wells they do not own which violates the Coastal Act and its implementations. That,in addition to federal law.

Exhibit page # 3 shows a clarification to the Summary Judgment showing that the "Plaintiff shall take nothing" which seems to include the equipment at each airport well.

Exhibit page # 4 is from the May 7,2009 CCC agenda and shows how strongly the Commission staff feels that this "certification" be granted upon the request by MW&S District.

Exhibit page # 5 consists its own pages 1 and 2 and ignores the fact that the MWSD does not own the wells, the United States does. The Federal Court may not like being casually ignored. I do know if contempt is possible, but the Governor probably does. Exhibit 5 is the staff report for this CCC meeting.

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Exhibit page # 6 is photographed from the Montara Water & Sewer District application and identifies that the airport wells are part of the application.

Exhibit page # 7 also had to be photographed and shows that the MWSD is already worried that future development may be caused by their well system rework. They inserted into their application a remark regarding traffic at highway and highway 92. My own marked up in ink comment on that exhibit page # 7 reads: "The intent of needless comment on future development, or lack there of, is inappropriate in an application. It may be legally confusing".
+++

We are all well aware Governor Schwarzenegger of your present workload and the things that worry you. We wish you well in your current efforts and do not wish to burden you more. If you or your staff would contact the Coastal Commission and just ask that agency to look with a bit more depth into this affair of ignoring a Federal District Court order, that might be all you need to do.

Thank you.

Larry Kay
997 East "J" St. Unit @2
Oakdale, California 95361
(209) 848-2014

Case No. C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT
(JFLC3)
E-Filed 2/26/09
DESIGNATED FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
MONTARA WATER AND SANITARY
DISTRICT,
Plaintiff,
v.
COUNTY OF SAN MATEO, a political
subdivision of the State of California,
Defendant.
THE UNITED STATES OF AMERICA
Intervenor.
Case Number C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT
RE: Docket Nos. 23, 25, 30
This action arises from a dispute over the ownership of three water wells located on the property of the Half Moon Bay Airport, a public facility owned since 1948 by the County of San Mateo, California ("the County"). Plaintiff Montara Water and Sanitary District ("Montara") seeks to take the wells by eminent domain. The United States, acting through the Federal
Case 5:08-cv-02814-JF Document 85 Filed 02/26/2009 Page 1 of 26

EXHIBIT PAGE #1 — TOP (BEGINNING) OF SUMMARY JUDGMENT MADE BY JUDGE FOGEL ON FEB. 26, 2009. UNDERLINES ADDED!

25
Case No. C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT
(JFLC3)
III. CONCLUSION
The airport deed, by its plain terms, in light of its statutory context, and read in accordance with settled federal rules of construction, permits the United States to retake airport property that is subjected to unauthorized condemnation proceedings. In addition, because Congress sought to provide the FAA with prospective oversight powers in furtherance of specific statutory purposes, Montara's attempt to condemn the wells against the FAA's wishes is hostile to the purposes of the controlling federal statutes. As a result, the condemnation is--and at all times has been--preempted. However, because the FAA properly exercised its reversionary interest when Montara obtained an order of early possession, the United States now owns the wells. Accordingly, the United States's motion for summary judgment will be granted, the County's motion will be denied as moot, and Montara's motion will be denied because federal property may not be taken without the consent of the sovereign.15
IT IS SO ORDERED.
DATED: 2/26/09
JEREMY FOGEL
United States District Judge
Case 5:08-cv-02814-JF Document 85 Filed 02/26/2009 Page 25 of 26

26
Case No. C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT
(JFLC3)
This Order has been served electronically upon the following persons:
Charles Michael O'Connor Charles.OConnor@usdoj.gov, charles.o'connor@usdoj.gov
Christine Carin Fitzgerald fitzgeraldlaw@sbcglobal.net
David A. Levy dlevy@co.sanmateo.ca.us, lcervantes@co.sanmateo.ca.us
David E. Schricker dschricker@schrickerlaw.com
Glenn Michael Levy glevy@co.sanmateo.ca.us, alhalakha@co.sanmateo.ca.us
Herman H. Fitzgerald fitzgeraldlaw@sbcglobal.net

This Order has been delivered by other means to the following persons:
Thomas F. Casey, III
County Counsel's Office
County of San Mateo
Hall of Justice & Records
400 County Center, 6th Floor
Redwood City, CA 94063
Case 5:08-cv-02814-JF Document 85 Filed 02/26/2009 Page 26 of 26
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//

EXHIBIT PAGE #2 — TEXT IN CONCLUSION SHOWING ACTUAL ORDER OF THE COURT

UNDERLINES ADDED:

Case No. C 08-2814 JF (RS)
JUDGMENT
(JFLC3)
E-Filed 2/26/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
MONTARA WATER AND SANITARY
DISTRICT,
Plaintiff,
v.
COUNTY OF SAN MATEO, a political
subdivision of the State of California,
Defendant.
THE UNITED STATES OF AMERICA
Intervenor.
Case Number C 08-2814 JF (RS)

JUDGMENT
Summary judgment in this matter having been entered in favor of Defendant-Intervenor the United States of America, IT IS ORDERED AND ADJUDGED that Plaintiff shall take nothing and that the action be dismissed on the merits.
Case 5:08-cv-02814-JF Document 86 Filed 02/26/2009 Page 1 of 3
Case No. C 08-2814 JF (RS)
JUDGMENT
(JFLC3)
DATED: 2/26/09
JEREMY FOGEL
United States District Judge
Case 5:08-cv-02814-JF Document 86 Filed 02/26/2009 Page 2 of 3

Case No. C 08-2814 JF (RS)
JUDGMENT
(JFLC3)
This Order has been served electronically upon the following persons:
Charles Michael O'Connor Charles.OConnor@usdoj.gov, charles.o'connor@usdoj.gov
Christine Carin Fitzgerald fitzgeraldlaw@sbcglobal.net
David A. Levy dlevy@co.sanmateo.ca.us, lcervantes@co.sanmateo.ca.us
David E. Schricker dschricker@schrickerlaw.com
Glenn Michael Levy glevy@co.sanmateo.ca.us, allhalakha@co.sanmateo.ca.us
Herman H. Fitzgerald fitzgeraldlaw@sbcglobal.net

This Order has been delivered by other means to the following persons:
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Case 5:08-cv-02814-JF Document 86 Filed 02/26/2009 Page 3 of 3

EXHIBIT PAGE #3 — THE SUMMARY JUDGMENT IS CLARIFIED SHOWING MONTARA OWNS NOTHING OF FEDERAL PROPERTY AT THE AIRPORT.

07

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ccc agenda item mwsd 507'09

9:00 A.M.
THURSDAY, MAY 7, 2009
1. CALL TO ORDER.

2. ROLL CALL.

NORTH CENTRAL COAST DISTRICT
3. DEPUTY DIRECTOR'S REPORT. Report by Deputy Director on permit waivers, emergency permits, immaterial amendments & extensions, LCP matters not requiring public hearings, and on comments from the public. For specific information contact the Commission's San Francisco office at (415) 904-5260.

4. CONSENT CALENDAR (removed from Regular Calendar). See AGENDA CATEGORIES.

5. LOCAL COASTAL PROGRAMS (LCPs). See AGENDA CATEGORIES.

a. Sonoma County LCP Amendment No. SON-MAJ-1-06 Certification Review. Concurrence with the Executive Director's determination that the action by Sonoma County, accepting certification of LCPA No. SON-MAJ-1-06 with suggested modifications is legally adequate. (DM-SF)

5.5 NEW APPEALS. See AGENDA CATEGORIES.

a. Appeal No. A-2-SMC-09-009 (Michael Tumrose and Carl Hoffman, San Mateo County) Appeal by Commissioners Steve Blank and Sara Wan of a decision of San Mateo County granting a permit to Michael Tumrose and Carl Hoffman for the creation of a 32-acre parcel and a 20.01-acre parcel through a Conditional Certification of Compliance (Type B) and drilling of three test wells, at 2600 Tunitas Creek Road, Unincorporated Half Moon Bay, San Mateo County. (RP-SF)

6. PUBLIC WORKS PLAN.

a. Montara Water and Sanitary District Public Works Plan No. 2-06-006 Certification Review. Concurrence with the Executive Director's determination that the action by the Montara Water and Sanitary District, accepting certification of PWP No. 2-06-006 with suggested modifications is legally adequate. (RP-SF)

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////////////////////

EXHIBIT PAGE 4 —

SHOWING COASTAL COMMISSION DOES NOT INTEND TO APPLY OR ACCEPT THE FEDERAL DISTRICT COURT SUMMARY JUDGMENT. THIS RAISES THE QUESTION OF COASTAL COMMISSIONERS ACTING ON AN APPLICATION WHERE APPLICANT PWP DOES NOT OWN THE LAND OR ITS INFRASTRUCTURE.

UNDERLINES ADDED;

08

X4

STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY ARNOLD SCHWARZENNEGER, GOVERNOR
CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400

DATE: April 17, 2009

TO: Commissioners and Interested Parties

FROM: Charles Lester, Senior Deputy Director
Ruby Pap, North Central Coast District Supervisor

SUBJECT: Montara Water and Sanitary District Public Works Plan No. 2-06-006 Certification Review. Concurrence with the Executive Director's determination that the action by the Montara Water and Sanitary District, accepting certification of PWP No. 2-06-006 with suggested modifications is legally adequate (for Commission review at the meeting of May 7, 2009).

1. BACKGROUND:

The Commission acted on Montara Water and Sanitary District Public Works Plan No. 2-06-006 on November 12, 2008. The proposed Public Works Plan (Phase I) involved improvements to portions of the District's water system for the communities of Montara and Moss Beach in the urban midcoast of unincorporated San Mateo County.

The Commission rejected the Public Works Plan as submitted and then ultimately approved it with suggested modifications. These suggested modifications involved making technical corrections to the document and adding several development standards for each development project listed in the public works plan, including the Alta Vista Wells and Tank, the Schoolhouse Tank, and the Airport Wells Treatment Plant. At the hearing, the Commission also imposed additional suggested modifications requiring the District to (1) conduct hydrologic monitoring of individual private wells on Alta Vista Road, if granted permission by the property owners; and (2) not obstruct existing hiking trails to Montara Mountain on the Alta Vista ridge due development of the facilities contained in PWP 2-06-006.

2. EFFECTIVE CERTIFICATION:

On December 18, 2008, the Montara Water and Sanitary District held a public hearing and adopted Resolution No. 1443 which acknowledged receipt of the Commission's resolution of certification and accepts and agrees to the Coastal Commission's modifications, agrees to approve the Public Works Plan projects in conformance with the modified PWP, and formally approves the necessary changes to the District's Public Works Plan (see Exhibit No. 1).

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THESE ARE PAGES 1 AND 2 OF EXHIBIT #5 AND SHOW CCC STAFF INTENT TO ACCEPT.

EXHIBIT

MWSD PWP No. 2-06-006
Certification Review
Page 2 of 2
As provided in Sections 13544 and 13544.5 of the California Code of Regulations, for the Public Works Plan to become effective, the Executive Director must determine that the District's actions are legally adequate and report that determination to the Commission. Unless the Commission objects to the determination, the certification of the Montara Water and Sanitary District Public Works Plan No. 2-06-006 shall become effective upon the filing of a Notice of Certification for the Public Works Plan with the Secretary of Resources, as provided in Public Resources Code 21080.5(d)(2)(v).

3. STAFF RECOMMENDATION:

Staff recommends that the Commission concur with the determination of the Executive Director that the actions of the Montara Water and Sanitary District to accept the Commission's certification of Montara Water and Sanitary District Public Works Plan No. 2-06-006 and adopt the necessary changes to the Public Works Plan are legally adequate, as noted in the attached letter, Exhibit No. 3 (to be sent after Commission concurrence).

EXHIBITS

1. MWSD Resolution No. 1443
2. Modified Public Works Plan (Phase I) No. 2-06-006
3. Sample letter to MWSD

1. Introduction and Overview

The Montara Water and Sanitary District (District) provides water, sanitary sewer, and solid waste disposal services to the coastal communities of Montara, Moss Beach, and adjacent areas located north of Half Moon Bay and south of Pacifica, in San Mateo County, California (Figures 1-1 and 1-2). The District owns and operates water storage, treatment, and distribution facilities that provide domestic water to approximately 1,650 domestic water connections, most of which (approximately 90%) are single family and multi-family residential connections. The system currently includes a surface water source, a water treatment plant, ten groundwater wells (eight active and two standbys), three potable water storage tanks, and over 150,000 feet of distribution pipelines.

The 2004 Montara Water and Sanitary District Master Plan identified several areas of the District's water system that require immediate improvement. Several previous and concurrent studies and system valuation reports (performed during the District's acquisition of the water system in 2003) documented poor conditions of the existing facilities.

The District must address three major categories of immediate improvements required for the water system:

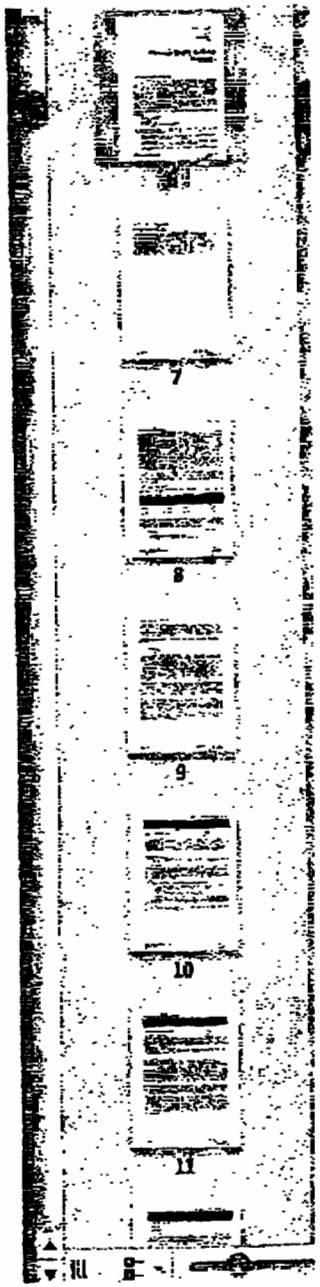
- Additional storage facilities
- New sources of supply
- New treatment system for the Airport Wells Facility

The Public Works Plan Phase I encompasses several components recommended in the 2004 Master Plan, including the following:

1) **Water Storage Facilities.** Construction of a new water storage tank at the Alta Vista site and at the Schoolhouse site and demolition of the old tank at the Schoolhouse site
2) **New Water Well Production.** Initiation of water production (150 gallons per minute) from the Alta Vista Well No.1 and construction of a new pipeline and electrical conduit
3) **Water Treatment Facility.** Construction of a water treatment facility to address water quality issues at the airport wells

EXHIBIT #6

UNDERLINE ADDED



MONTARA WATER AND SANITARY DISTRICT

Amendments to Public Works Plan

Any increase in water supply or distribution capacity, to provide additional service connections in excess of the limitations of this Public Works Plan Phase I, including any increase in the Alta Vista well pumping rate, any augmentation or reallocation of existing water supplies, or changes to the District service area shall require an amendment to this PWP. The application for such amendment shall include information concerning phasing of infrastructure capacity in conformity with the requirements of the San Mateo County LCP. The information provided shall be sufficiently detailed and complete to enable the Commission to evaluate whether the proposed increase in water supply and/or distribution capacity is in phase with the existing or probable future capacity of other area infrastructure, including but not limited to the need for an adequate level of service for Highways 1 and 92 as required by the local coastal program.

UNDERLINE ADDED:

THE INTENT OF NEEDLESS COMMENT ON FUTURE DEVELOPMENT, OR LACK THEREOF, IS INAPPROPRIATE IN AN APPLICATION. IT MAY BE LEGALLY CONFUSING.

EXHIBIT #7

mwsd: full copy summary judgment

Case No. C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT
(JFLC3)
E-Filed 2/26/09
DESIGNATED FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
MONTARA WATER AND SANITARY
DISTRICT,
Plaintiff,
v.
COUNTY OF SAN MATEO, a political
subdivision of the State of California,
Defendant.
THE UNITED STATES OF AMERICA
Intervenor.
Case Number C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT
RE: Docket Nos. 23, 25, 30
This action arises from a dispute over the ownership of three water wells located on the property of the Half Moon Bay Airport, a public facility owned since 1948 by the County of San Mateo, California ("the County"). Plaintiff Montara Water and Sanitary District ("Montara") seeks to take the wells by eminent domain. The United States, acting through the Federal
Case 5:08-cv-02814-JF Document 85 Filed 02/26/2009 Page 1 of 26

1 The County has filed a notice of non-opposition to the United States's motion, noting that whether the Court grants the United States's or the County's motion, "the result is the same." County's Statement of Non-Opposition to United States's Mot. for Summary Judgment, at 1.

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Case No. C 08-2814 JF (RS)
ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT
(JFLC3)
Aviation Administration ("the FAA"), has intervened to oppose Montara's efforts. Each party has filed a motion for summary judgment asserting ownership of the wells. The United States claims to have retaken the wells pursuant to a reversion clause contained in the deed by which the airport passed from the federal government to the County in 1948. The United States argues that the reversion was justified by Montara's success in obtaining an interlocutory state-court order authorizing the proposed condemnation and granting Montara current possessory rights over the wells. Montara disputes the existence of any condition justifying the reversion and asks this Court to uphold the state court's order. The County argues that Montara's complaint in eminent domain is preempted in the first instance by the original deed of transfer, federal statutes, FAA regulations, and other evidence of congressional intent to preclude dispositions of airport property that the federal government opposes.
The Court concludes that Montara's successful condemnation of the wells clearly would trigger the reversion clause contained in the airport deed. While Montara has not yet reduced the state court's order to a final judgment permanently divesting the County of its title to the wells, the Court holds that the order effected a transfer of rights sufficient to justify the United States's exercise of its reversionary interest. Because the United States properly exercised its reversionary interest, it now owns the wells. In the interest of completeness, the Court also addresses whether the proposed condemnation is preempted by federal law. In so doing, the Court concludes that even if the reversion clause could not have been triggered until Montara

obtained a final judgment and formally divested the County of title, Montara's complaint in eminent domain would be preempted, leaving the County with possession of the wells.1

I. BACKGROUND

The Half Moon Bay Airport was constructed in 1942 for the United States Army, which relinquished the property to the Navy at the end of World War II. The County acquired the airport from the United States, acting through the War Assets Administration and pursuant to

the Surplus Property Act of 1944, as amended, by way of a deed dated September 26, 1947 and recorded on May 25, 1948. The airport provides a variety of law enforcement, medical emergency, and sea-rescue services, and is capable of supporting emergency response operations in the event of a disaster preventing road travel. The airport also contains the three water wells that are the subject of the instant dispute. The wells are situated near the airport's eastern boundary; two of the well sites are in close proximity to aircraft parking areas, and one is within the airport's secured area.

Montara, which provides water and sanitary services to the unincorporated coastal communities of Montara and Moss Beach, obtains water from one surface source and several wells, including those located on the airport property. Water has been extracted from the airport wells since approximately 1948. Montara derives its extraction rights from a Revocable Encroachment Permit issued to its predecessor-in-interest in 2004. It pays a volume-based extraction fee which in recent years has yielded an annual payment of approximately $60,000. The fees are deposited in the airport's Enterprise Fund, which support's the facility's largely self-funded operation and maintenance.

Before instituting this action, Montara offered to purchase the airport wells from the County for approximately $5,000. The County refused, and on April 19, 2007, Montara's board adopted a resolution authorizing eminent domain proceedings to obtain title to the property comprising the wells. On May 17, 2007, Montara filed a complaint in eminent domain in the San Mateo Superior Court. The action was transferred to the Santa Clara Superior Court on June 12, 2007, and removed to this Court on June 15, 2007 pursuant to the Quiet Title Act, 28 U.S.C. § 2409a. On October 9, 2007, this Court granted Montara's motion to remand on the ground that the absence of the United States from the action deprived the Court of jurisdiction under the Quiet Title Act.

In November 2007, Montara filed a motion pursuant to § 1255.410 of the California Code of Civil Procedure for an order granting it early possession of the airport wells. On December 19, 2007, the Santa Clara Superior Court granted the motion and issued an Order of Possession giving Montara the right to possess and ultimately condemn the wells. The court established the

probable amount of compensation as approximately $6,000. On December 21, 2007, the FAA, which consistently had opposed the condemnation, issued a notice of its intent to revert the airport wells pursuant to the 1947 deed of transfer. The FAA executed and recorded the Notice of Reverter on March 21, 2008. On June 4, 2008, the Superior Court granted the United States's motion to intervene, and on June 5, 2008, the United States removed the action to this Court

pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2409a (Quiet Title Act). Because the United States now was present in the action and expressly claimed title to the wells, the Court denied Montara's second motion to remand. The parties then filed the instant motions for summary judgment.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there are no genuine and disputed issues of material fact and the moving party is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir. 1987). The Court must view the evidence in the light most favorably to the non-moving party, and all reasonable inferences must be drawn in favor of that party. Torres v. City of Los Angeles, 540 F.3d 1031, 1039-40 (9th Cir. 2008). The moving party bears the burden of showing that there is no material factual dispute. Therefore, the court must regard as true the opposing party's evidence, if supported by affidavits or other proper evidentiary material. Celotex, 477 U.S. at 324.

III. DISCUSSION

A determination that Montara's action is preempted by federal law might appear to resolve the instant dispute, requiring a declaration that the Superior Court issued the Order of Possession without jurisdiction to do so, and that the County therefore retains title to the wells. Such a result is precluded, however, if the United States validly has exercised its reversionary interest, thus irrevocably altering the parties' rights. Accordingly, the Court's first task is to determine whether Montara's actions triggered the reversion clause contained in the airport deed. Because the United States challenges this Court's jurisdiction to address this issue, the Court begins by confirming its jurisdiction.

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The United States also argues that the 2 Court should not entertain Montara's claims as a quiet title action because Montara has failed to plead a claim under the Quiet Title Act. The Court need not decide whether the United States's purported reversion of the wells, intervention, and removal of this action pursuant to the Quiet Title Act obligated Montara to plead facts giving rise to Quiet Title Act jurisdiction. As explained below, the requirements for jurisdiction under the Act clearly are satisfied in this case. Thus, even assuming the existence of a pleading defect, Montara easily could cure it by amendment. In light of the instant disposition, the Court declines to order such a pointless exercise.

3 The United States argues that its motion may be decided without recourse to the Quiet Title Act. Relying on a title report that reflects its purported re-acquisition of the airport wells by reversion, the United States contends that the only question raised by this lawsuit is whether a state-favored entity may condemn federal property–which under settled principles of constitutional law it may not. See, e.g., Armstrong v. United States, 364 U.S. 40, 43 (1960) (reaffirming that property owned by the United States "cannot be seized by authority of another sovereign against the consent of the Government"). This argument–and indeed, the United States's entire opening brief in support of its motion for summary judgment–rests on the erroneous contention that title reports adjudicate ownership of real property. Title reports and the recording system serve no such function; they are designed merely to alert those with an interest in property to the possibility of rival interests. Indeed, a county recorder is require by statute promptly to record any title documents that are submitted. See Cal. Gov. Code § 27320. The United States's mere recordation of its Notice of Reverter thus does not prove that a breach of the airport deed restrictions actually occurred. Rather, this is a factual issue that the Court must reach before confirming the United States's claim of ownership. See Guttman v. Howard Homes, Inc., 241 Cal. App. 2d 616, 619 (1966) ("It is well settled that a reversion of title for breach of a condition subsequent will not be decreed except upon clear and satisfactory evidence of a violation of the condition.") (quoting City of Palos Verdes Estates v. Willett, 75 Cal. App. 2d 394, 405 (1946)).

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A. Reversion under the 1947 airport deed
1. Subject-matter jurisdiction
The Quiet Title Act provides the exclusive means by which a party may challenge federal ownership of property. Block v. North Dakota, 461 U.S. 273, 286 (1983) ("Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."). The United States argues that its re-acquisition of the wells by reversion prevents Montara from seeking title to the property without properly invoking the Quiet Title Act.2 Montara contends that the dispositive question is whether there has been a "breach" triggering the reversion clause, and submits that this question may be decided as a preliminary jurisdictional matter since a finding of no breach would eliminate the United States's claim to any property interest justifying its presence in the action. While Montara is correct that the ultimate question is whether the United States or some other party owns the wells, there is no question that the United States claims to own them. Because Montara also seeks a determination that it owns the wells, the instant case falls squarely within the exclusive grant of jurisdiction provided by the Quiet Title Act.3
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The Quiet Title Act provides for a limited waiver of federal sovereign immunity. See Gardner v. Stager, 103 F.3d 866, 868 (9th Cir. 1996). The Ninth Circuit has held that "two conditions must exist before a district court can exercise jurisdiction over an action under the Quiet Title Act: 1) the United States must claim an interest in the property at issue; and 2) there must be a disputed title to real property between interests of the plaintiff and the United States." Leisnoi, Inc. v. United States, 267 F.3d 1019, 1023 (9th Cir. 2001). Under the first requirement, the United States need only claim some interest in the subject property. See id. Under the second requirement, the plaintiff must "claim a property interest to which title may be quieted." Friends of Panamint Valley v. Kempthorne, 499 F. Supp. 2d 1165, 1174 (E.D. Cal. 2007) (quoting Long v. Area Manager, Bureau of Reclamation, 236 F.3d 910, 915 (8th Cir. 2001)). In the instant case, there is no dispute that the United States's claim of title to the airport wells satisfies the first jurisdictional requirement. With respect to the second requirement, while the state court's Order of Possession authorizes Montara to enter upon, possess, alter, and ultimately condemn the airport wells, the United States argues that Montara lacks the requisite interest in the wells because the order does not give rise to a present claim to title. This argument fundamentally misconstrues the requirements of the Quiet Title Act and interpretive case law. Consistent with the Act's reference to a putative claimant's "right, title, or interest" in property as the appropriate jurisdictional test, see 28 U.S.C. § 2409a(c), courts have held that a claimant is required to assert only "some interest in the title to the property." Kansas v. United States, 249 F.3d 1213, 1224 (10th Cir. 2001) (emphasis removed). This requirement serves to limit quiet title actions to those "disputes pertaining to the United States' ownership of real
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4 The Ninth Circuit has not addressed directly the question of whether the Quiet Title Act permits claims based on a public right or interest. See, e.g., Shultz v. Dep't of Army, 886 F.2d 1157, 1160 (9th Cir. 1989) (considering statute of limitations under Quiet Title Act in claim of access to public road); see also Friends of Panamint Valley, 499 F. Supp. 2d at 1177 (following Tenth Circuit case law in rejecting claim of public right-of-way over federally owned roadway as insufficient interest for purposes of Quiet Title Act).

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property." Id. (emphasis added). The requirement thus reflects certain well-founded jurisdictional constraints, for example, that members of the public may not assert an "interest in title" to public roads in order to pursue essentially regulatory objectives, see Sw. Four Wheel Drive Ass'n v. Bureau of Land Mgmt., 363 F.3d 1069, 1071 (10th Cir. 2004),4 or that disputes concerning the status or boundaries of land are not "title" disputes, see Kansas v. United States, 249 F.3d at 1225. It plainly does not mean that the plaintiff must have a present claim to title. Indeed, it is well-settled that a party's inability to claim "complete ownership . . . is inconsequential under § 2409a." Mafrige v. U.S., 893 F. Supp. 691, 698 (S.D. Tex. 1995). A mere equitable interest, such as that created by an easement of necessity, may suffice. See Werner v. United States, 9 F.3d 1514, 1516-18 (11th Cir. 1993).
Montara derives its "interest in title" to the airport wells from the Order of Possession. Orders of early possession represent a partial exception to the ordinary rule that a public agency "does not take possession and title [to condemned property] until after judgment and full payment has been made." Escondido Union Sch. Dist. v. Casa Sueños De Oro, Inc., 129 Cal. App. 4th 944, 960 (2005). The early possession procedures "give effect to the fact that . . . a landowner in California is permanently deprived of all of his rights in property sought by a public agency when the agency exercises its option to deposit estimated value and obtain early possession for the intended public use." Escondido Union School Dist., 129 Cal. App. 4th at 960 (citing Redevelopment Agency v. Gilmore, 38 Cal. 3d 790, 800-801 (1985)).
Because orders of early possession formerly could be granted on an ex parte basis, the deprivation of property rights was subject to "defenses to the exercise of eminent domain" that might be raised in later proceedings. Id. In 2006, however, the California legislature largely eliminated the ex parte procedure in favor of an exacting process requiring a noticed motion.
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5 Even the title report that purportedly demonstrates the United States's exclusive ownership of the airport wells identifies several "matters affecting title to the [United States's] estate or interest in the land," including the fact that Montara is a "current interest holder[] claiming some right, title[,] or interest" in the property. Half Moon Bay Airport Title Report, Herson-Jones Decl., Ex. 5, at 1, 7.

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See Cal. Code Civ. Proc. § 1255.410 (2006). Simultaneously, the legislature repealed certain provisions that afforded relief from the enforcement of orders of possession. See id. §§ 1255.420, 1255.430. With these changes, the legislature appears to have intended that any defenses to an eminent domain action be raised through the noticed motion required by revised § 1255.410. See NORMAN E. MATTEONI & HENRY VEIT, CONDEMNATION PRACTICE IN CALIFORNIA § 8.32 (3d ed. Supp. 2007). While the legislature did not repeal § 1255.440, which allows a court to vacate an order of possession where it determines subsequently that the requirements of § 1255.410 have not been satisfied, this provision now appears to be relevant only in the limited context of emergency utility service, where orders of possession still may be issued on an ex parte basis. See MATTEONI & VEIT, supra, § 8.32.
The Order of Possession issued to Montara was subject to the full rigors of revised § 1255.410, meaning that it effectively "deprived [the County] of all of [its] rights in [the] property." Escondido Union School Dist., 129 Cal. App. 4th at 960. As such, the order itself provides Montara with a "property interest to which title may be quieted." Friends of Panamint Valley, 499 F. Supp. 2d at 1174.5 The passage of actual title is irrelevant to the question of whether a party that has obtained such an order possesses the requisite property interest for

purposes of the Quiet Title Act. Of course, when a party bearing such an order takes actions demonstrating its physical possession of the property, title itself will be deemed to have passed. See People v. Joerger, 12 Cal. App. 2d 665, 671 (1936) ("Where there has been a prior physical 'taking,' the subsequent divestiture of title is merely a confirmation of the original 'taking.'"); see also People ex. rel. Dep't of Public Works v. Peninsula Title Guarantee Co., 47 Cal. 2d 29, 32-33 (1956)). This Court, however, need not decide whether Montara's actions resulted in an early divestiture of title–indeed, the doctrine of early divestiture need not be invoked at all. The Order of Possession provides Montara with a property interest that is more than sufficient to
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satisfy the Quiet Title Act's jurisdictional requirements. Accordingly, the Court turns to the merits.

2. Construction of federal land grants

It is well-settled that "the construction of a deed to which the United States is a party is a question of federal law." Mafrige v. United States, 893 F. Supp. 691, 698 (S.D. Tex. 1995); see also S. Utah Wilderness Alliance v. Bureau of Land Mgmt. (SUWA), 425 F.3d 735, 762 (10th Cir. 2005) ("The construction of grants by the United States is a federal not a state question." (quoting United States v. Oregon, 295 U.S. 1, 27-28 (1935))). While state law occasionally may "furnish[] an appropriate and convenient measure of the content of . . . federal law," Wilson v. Omaha Indian Tribe, 442 U.S. 653, 672 n.19 (1979) (quotation marks and citation omitted), "[i]n the specific context of federal land grant statutes, . . . courts may incorporate state law 'only in so far as it may be determined as a matter of federal law that the United States has impliedly adopted and assented to a state rule of construction,'" SUWA, 425 F.3d at 762-63 (quoting Oregon, 295 U.S. at 28). In addition, any such "borrowed" state law "must be in service of 'federal policy or functions,' and cannot derogate from the evident purposes of the federal statute." Id. (citing Wilson v. Omaha Indian Tribe, 442 U.S. 653, 672 (1979)). With these principles in mind, the Court examines the 1947 airport deed.

3. Deed language

The deed conveying the airport property to the County contains the following relevant provisions: First, the County, "for itself, its successors and assigns," agrees to abide by certain restrictions imposed by the Surplus Property Act of 1944 that run with the land. The first of two relevant restrictions provides that

> all of the property transferred hereby . . . shall be used for public airport purposes, and only for such purposes . . . . As used herein, "public airport purposes" shall be deemed to exclude use of the structures conveyed hereby, or any portion thereof, for manufacturing or industrial purposes. However, until in the opinion of [the] Civil Aeronautics Administration or its successor Government agency, it is needed for public airport purposes, any particular structure transferred hereby may be utilized for non-manufacturing or non-industrial purposes in such manner as the [County] deems advisable, provided that such use does not interfere with operation of the remainder of the airport as a public airport.

Airport Deed, Herson-Jones Decl., Ex. 1, at 4:27-5:9 (emphasis added). The second restriction
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provides that

> the property transferred hereby may be successively transferred only with the approval of the Civil Aeronautics Administration or the successor Government agency and with the proviso that any such subsequent transferee assumes all the obligations imposed upon the [County] by the provisions of this instrument.

Id. at 7:12-16 (emphasis added). Finally, to ensure enforcement of the foregoing provisions, the deed states that

upon a breach of any of the aforesaid reservations or restrictions by the [County] . . . , whether caused by the legal inability of [the County] to perform any of the obligations herein set out . . . or otherwise, the title, right of possession[,] and all other rights transferred to the [County], or any portion thereof, shall at the option of the [United States] revert to the [United States] *upon demand made in* writing by the War Assets Administration or its successor Government agency at least sixty (60) days prior to the date fixed for the reverting of such title . . . .
Id. at 7:19-29 (emphasis added).
4. Interpretation of the airport deed
It is clear that the grant language requires the occurrence of a "breach of the . . . reservations or restrictions by the [County]" before the United States may exercise its reversionary interest. The United States argues that Montara's condemnation proceeding constitutes such a breach because the transfer has not been authorized by the federal government–indeed the FAA, which succeeded to the reversionary interest, vigorously opposes Montara's efforts and expressly has withheld approval of any transfer. See, e.g., Letter dated April 19, 2007 from FAA to Half Moon Bay Airport Manager, Larson Decl. ¶ 11 & Ex. A at 1, 2 ("The Federal Aviation Administration (FAA) is the successor federal agency responsible for the federal oversight of the lands conveyed under the War Assets Administration (WAA) deed dated September 26, 1947 [and] . . . . is not in favor of a sale of the property for the well sites."); Email dated March 21, 2008 from FAA to San Mateo Director of Public Works, Levy Decl. Ex. H at 1, 3-4 (explaining that the agency considered Montara's decision to proceed without federal approval a breach of the deed restrictions, and disclosing the agency's intent to revert the airport wells). Undoubtedly, the County's voluntary alienation of airport property without the FAA's approval would place it in breach of the deed restrictions. The only question is whether legal actions taken by Montara can be said to place the County in breach. Montara observes that the

deed is silent as to the effect of an involuntary transfer by eminent domain, and contends that the deed is no more than a contract between the federal government and the County restricting the latter's ability voluntarily to transfer the property.
Where a covenant deems a property owner to have "breached" when the owner transfers or makes improper use of the property, common sense suggests that the owner's involuntary subjection to eminent domain proceedings will not qualify as a breach. Montara offers several cases supporting this inference. In Romero v. Department of Public Works, 17 Cal. 2d 189 (1941), for example, the court faced a reversionary interest triggered by the property owner's failure to use the property "for railroad purposes." Id. at 194. The court noted that when the property was condemned, "the condition that it should be used for railroad purposes became impossible of further performance by operation of law." Id. For this reason, the court held that "the owner of the possibility of a reverter prior to a breach of the condition is not entitled to compensation when the property is taken under the law of eminent domain." Id.
Similarly, in U.S. v. 263.5 Acres of Land, 54 F. Supp. 892, 893 (N.D. Cal. 1944), the court confronted a grant restriction on the "sale or mortgage" of a property by Marin County, California. The question was whether the United States's condemnation of the property violated the restriction, subjecting the property to forfeiture. The court reasoned that while condemnation "undoubtedly is a 'sale' in a certain sense[,] in that it is a compulsory parting with property whereby the condemnor stands towards the owner as buyer towards seller," the grant plainly referred to a "sale" in the ordinary sense of a voluntary act, and thus did not apply to condemnation. Id. Finally, the court in State v. Federal Square, 3 A.2d 109 (N.H. 1938), discussed the distinction between voluntary and involuntary actions with respect to a use-based grant restriction on property owned by a city. The court noted that although "[t]he city no longer has the use of the property, . . . this is because of the exercise of [a] superior authority to which it has been obliged to submit. The State has taken the property by eminent domain, and it is not suggested that the city has acted in any way to aid in bringing about the acquisition by the State. Thus the city has committed no breach of the conditions, and the reverting clause

therefore becomes inapplicable in determination of the controversy." Id. at 113 (emphasis
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6 Campbell v. Alger, 71 Cal. App. 4th 200 (1999), which held that an involuntary condemnation did not trigger a right of first refusal, is inapposite in that the contract at issue specified that the right "would arise only '[i]n the event ... [the Algers] ... determine[] to sell [their] . . . interest . . . to a third party after having received a bona fide and written offer for such purchase, or make [] a bona fide and written offer to sell [their] . . . interest to a third party . . . . '" Id. at 207 (amendments in original). The instrument itself therefore resolved the issue of whether an involuntary disposition could trigger the right in question.
7 Acknowledging the potential applicability of federal law, Montara relies heavily on 263.5 Acres of Land, a federal case. However, even if it is viewed as supportive of Montara's position, 263.5 Acres rested entirely on state-law decisions, including Federal Square. See 263.5 Acres of Land, 54 F. Supp. at 693-94 (citing exclusively to In re Wilkey's Estate, 337 Pa. 129, 10 A.2d 425 (1940), In re Board of Supervisors of Chenango County, 6 N.Y.S.2d 732 (N.Y. Co. Ct.

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added).6
In contrast to the "use"- or "sale"-based restrictions at issue in the foregoing cases, the airport deed's use of the word "transfer" does potentially broaden the scope of the grant restriction and weaken the inference that a disposition must be voluntary to constitute a breach. Yet the logic of each case at least suggests that a condemnation proceeding will not trigger a reversionary interest based on the owner's "breach" because the owner has taken no action to violate the relevant restriction. In addition, as Montara notes, reversion clauses generally are disfavored and therefore are interpreted strictly to prevent their exercise. See, e.g., Springmeyer v. City of S. Lake Tahoe, 132 Cal. App. 3d 375, 380-82 (1982).
Nonetheless, several countervailing factors compel a different interpretation in the instant case. First, the airport deed explicitly broadens the definition of "breach" to include not only conditions of the County's own making, but those "caused by the legal inability of [the County]." Airport Deed, at 7:19-29 (emphasis added). This language indicates that the County may "breach" the deed restrictions where it becomes legally unable to prevent their violation, as upon "the exercise of [a] superior authority to which [the County] has been obliged to submit." Cf. Federal Square, 3 A.2d at 113. The "legal inability" clause alone suggests that an involuntary sale or transfer may justify reversion.
Second, to the extent that Montara's state-law authorities would produce a result hostile to federal interests, the Court must eschew state law in favor of federal law.7 In the instant case,
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28 1938), and State v. Federal Square Corporation, 88 N.H. 538, 3 A.2d 109 (1938)).

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the relevant federal law consists of the Surplus Property Act of 1944 and its 1947 amendments, which imposed the applicable deed terms, and the well-established canon that federal land grants are to be construed in favor of the government, with any doubts resolved in the government's favor. See United States v. Union Pacific R.R. Co., 353 U.S. 112, 115-16 (1957) (interpreting land grant to railroad consistent with congressional intent and holding that all doubts must be resolved in the government's favor); see also Watt v. Western Nuclear, Inc., 462 U.S. 36, 47-60 (1983) (holding that interpretation of terms in federal land grant is controlled by purposes of federal authorizing statute, and resolving doubt in government's favor); United States v. Union Oil Co. of Cal., 549 F.2d 1271, 1273 n.5 (9th Cir. 1977) ("To the extent that the argument rests on the meaning of the word itself, . . . the government is entitled to have the

ambiguity resolved in its favor under [Union Pacific]."); Occidental Geothermal, Inc. v. Simmons, 543 F. Supp. 870, 877 (N.D. Cal. 1982) (interpreting federal land grant in light of authorizing statute's purposes, and applying Union Pacific canon to resolve any remaining doubt).

The Surplus Property Act of 1944, as amended in 1947, not only authorized but prescribed the terms of the deed by which the federal government transferred the airport to the County. See Airport Deed at 1:4-8 (stating that the transfer was occasioned by the "UNITED STATES OF AMERICA, acting by and through the War Assets Administration, under and pursuant to . . . the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, and applicable rules, regulations[,] and orders . . . "). The 1947 Amendments to the Act established the following two preconditions for transfer of property to a local government for use as a public airport: the transfer had to be "subject to the terms, conditions, reservations, and restrictions" contained in the Act; and the property interest conveyed had to be "essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport . . . [,] or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development,

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improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue . . . . " Act of July 30, 1947, Pub. L. No. 80-289, § 13(g)(1), as reprinted in 1947 U.S. Congressional Code Service 673, 673-75 [hereinafter Surplus Property Act Amendments]. Having thus provided that only property suitable for airport use could be granted in the first instance, Congress declared that

[n]o property disposed of under the authority of this subsection shall be used, leased, sold, salvaged, or disposed of by the grantee or transferee for other than airport purposes without the written consent of the Administrator of Civil Aeronautics, which consent shall be granted only if the Administrator of Civil Aeronautics determines that the property can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which such property is located . . . .

Id. § 13(g)(2)(A). To enforce these restrictions, Congress required the inclusion of a reversion clause, providing that "[i]n the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property disposed of is not met, observed, or complied with, all the property so disposed of or any portion thereof, shall, at the option of the United States, revert to the United States in its then existing condition." Id. § 13(g)(2)(H).

The desire of Congress to regulate the successive disposition of airport property stemmed from its acute concern that the transferred airports remain financially self-sustaining. That concern was among the principal reasons for passage of the 1947 amendments to the Surplus Property Act. The Senate Report accompanying the 1947 amendments noted that "[n]one of the[] airports can be self-sustaining unless, in addition to [the core aviation facilities whose transfer was permissible under the 1944 Act], they can secure the nonaviation facilities in the vicinity of the airport which may be used for revenue-producing purposes." Government Surplus Airports–Disposition, Senate Committee on Armed Services, S. Rep. No. 359, June 26, 1947, as reprinted in 1947 U.S. Congressional Code Service 1519, 1520. Congress's solution was to authorize the transfer of "property needed to develop sources of revenue." Surplus Property Act Amendments, § 13(g)(1). The strict set of limitations on the use and disposal of such property reveals Congress's expectation that the appropriate federal agency would serve as

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The Department of Transportation ("DOT"), 8 through the FAA, has effectuated these congressional goals by promulgating regulations that condition the receipt of federal funds on compliance with certain fiscal requirements. One such requirement is that "[e]ach federally

assisted airport owner/operator . . . have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues." 64 Fed. Reg. 7696, 7710 (Feb. 16, 1999). To this end, FAA Grant Assurances require that the airport "not take or permit any action which would operate to deprive [the Airport] of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary [of Transportation]." FAA Airport Grant Assurances (3/2005), at 4. An airport therefore may "not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property [referenced by the] application." Id. (emphasis added).

a final check on actions potentially harmful to the airports, wielding an effective veto power.8 The restrictions of the amended 1944 Act now are codified in substantially the same form in 49 U.S.C. §§ 47151-47153, which sets forth the purposes for which federal property may be transferred and the limitations that must accompany any such transfer. Section 47151 provides that federal agencies may transfer surplus federal property to local governments for airport use only where the Secretary of Transportation determines that one of the following conditions is present: (1) the property to be transferred is "desirable for developing, improving, operating, or maintaining a public airport"; (2) the transfer is "reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport"; or (3) the transfer is "needed for developing sources of revenue from nonaviation businesses at a public airport." 49 U.S.C. § 47151(a)(1)(A)-(C). Critically, § 47152(1) provides that an airport owner "may . . . dispose of the [property] for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used, leased, salvaged or disposed of without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which the property is located." Id. § 47152(1).

Federal regulations provide further evidence of congressional intent to give the FAA final authority over the use and disposal of property transferred pursuant to the Surplus Property Act. For example, Part 155 of Title 14 of the Code of Federal Regulations, titled "Release of

Airport Property from Surplus Property Disposal Restrictions," requires submission to the FAA of a formal request for release from any deed restrictions. Specifically, "[a] request for the release of surplus airport property from a term, condition, reservation, or restriction in an instrument of disposal ... must be in writing and signed by an authorized official of the public agency that owns the airport." 14 C.F.R. § 155.11(a). "Each request for a release must include . . . [t]he purpose for which the property was transferred, such as for use as a part of, or in connection with, operating the airport or for producing revenues from nonaviation business," as well as "[a] statement of the circumstances justifying the release on the basis" either that the property "no longer serves the purpose for which it was made subject to the terms, conditions, reservations, or restrictions concerned," or that the requested release from those conditions "will not prevent accomplishing the purpose for which the property was made subject to [those conditions]...." 14 C.F.R. § 155.11(c)(4), (c)(7); 14 C.F.R. § 155.3(a)(1)-(2) (emphasis added). The foregoing provisions evince a clear legislative intent to prohibit any "transfer" of airport lands absent the FAA's determination that such transfer will compromise neither the airport's current operations nor its future ability to sustain itself. The provisions confirm that

the airport deed restrictions at issue in the instant case encompass involuntary transfers of airport property. This reading is supported by the Ninth Circuit's holding in Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc., 618 F.2d 601, 602 (9th Cir. 1980), where the court addressed whether a state-favored entity could condemn electric facilities financed by the federal government pursuant to the Rural Electrification Act ("REA"). Section 907 of the REA provides that

[n]o borrower of funds under [the Act] shall, without the approval of the Administrator, sell or dispose of its property . . . acquired under the provisions of this chapter, until any loan obtained from the Rural Electrification Administration, including all interest and charges, shall have been repaid.

7 U.S.C. § 907 (emphasis added). While § 907 is silent as to the REA's authority to block an involuntary "s[ale] or disposal of . . . property" effected by eminent domain, the Ninth Circuit construed § 907 as conditioning any "transfers" upon REA approval–including those accomplished by eminent domain. Big Bend, 618 F.2d at 602. The Surplus Property Act

9 Even if Springmeyer, 132 Cal. App. at 380-82, which requires strict construction of reversion clauses, supported Montara's position and engaged Union Pacific in a "duel of competing canons," National Rifle Ass'n v. Bentsen, 999 F.2d 772, 773 (4th Cir. 1993), the federal Union Pacific canon undoubtedly would prevail under the Supremacy Clause.

contains nearly identical provisions, declaring that

[n]o [airport] property . . . shall be . . . disposed of by the grantee or transferee for other than airport purposes without the written consent of the Administrator of Civil Aeronautics, which consent shall be granted only if the Administrator of Civil Aeronautics determines that the property can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which such property is located . . . .

Surplus Property Act Amendments, § 13(g)(2)(A); see also 49 U.S.C. § 47152(1) (codifying § 13(g)(2)(A) of the Surplus Property Act, as amended). There is a compelling argument that under Big Bend, the Surplus Property Act vests the FAA with authority to block a proposed condemnation of airport property in the first instance, without recourse to the reversionary interest. Without deciding whether the Surplus Property Act by its terms confers authority upon the FAA to withhold approval of an involuntary disposition, Big Bend at a minimum supports the conclusion that the "transfer" restrictions in the airport deed must be read to include involuntary dispositions for purposes of the reversion clause.

Even if there remained some doubt as to the proper construction of the airport deed, "[i]t has long been established that, when grants to federal land are at issue, any doubts 'are resolved for the Government, not against it.'" Andrus v. Charlestone Stone Products Co., Inc., 436 U.S. 604, 617 (1978) (quoting Union Pacific, 353 U.S. at 116).9 Here, the airport deed explicitly broadens the term "breach" to encompass situations in which the County's "legal inability" prevents compliance with the deed's transfer restrictions, and the relevant body of federal law requires expressly that the FAA be permitted to exercise its reversionary interest in response to unauthorized condemnations of airport land. "A fortiori, the Government must prevail in a case such as this, when the relevant statutory provisions, their historical context, [and] consistent administrative . . . decisions . . . all weigh in its favor." Andrus, 436 U.S. at 617.

4. Timing of breach

Having determined that an involuntary transfer of airport property without the FAA's approval permits the United States to exercise the reversionary interest contained in the airport deed, the only remaining question in the present case is whether the Order of Possession constituted a transfer of rights sufficient to trigger the interest or, conversely, whether the United States was required to await a final judgment in Montara's favor. The Order of Possession issued by the state court on December 19, 2007 "authorized and empowered" Montara to "enter upon[,] . . . take possession [of] [,] and use the subject property . . .[,] [and] to remove therefrom any and all persons, obstacles, improvements or structures of every kind or nature thereon situated." Order of Possession, Fitzgerald Decl., Ex. E, at 2:20-25. Over the FAA's strenuous objection to any transfer of airport property, the order caused the County to be "permanently deprived of all of [its] rights" in the airport wells. Escondido Union School Dist., 129 Cal. App. 4th at 960; see also supra Section III.A.1. This transfer of rights was sufficient to justify the United States's exercise of its reversionary interest. Accordingly, the United States was correct to conclude that "San Mateo County continues to be in default of its obligations under the [airport deed] in that the property is subject to a condemnation action and thus . . . compliance with covenants of the deed regarding [FAA] approval of any conveyance is . . . impossible." Notice of Reverter, Herson-Jones Decl., Ex. 3, at 4.

A. Federal preemption

While concluding that the reversion of the wells did cause an immediate transfer of ownership, the Court also addresses the County's thoroughly briefed preemption argument, which relies largely upon the same material that supports the Court's interpretation of the airport deed, and which would have dispositive effect were it not for the valid prior exercise by the United States of its reversionary interest. As the Court now explains, Montara's action is and at all times has been preempted by federal law. Thus, even if it were the case that the reversion clause could not have been triggered prior to a final judgment and divestiture of the County's

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As noted previously, the interests of the County and the United States are aligned to such an extent that the County would consider a judgment in either party's favor to produce the same result. See supra note 1.

title, Montara would be unable to obtain the wells by eminent domain.10

1. General principles and relation to eminent domain

Preemption is a question of congressional intent and may be express or implied. Fidelity Fed. Sav. & Loan Ass'n v. Cuesta, 458 U.S. 141, 152-53 (1982). Implied preemption occurs when state law or an action authorized by state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Id. at 153 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)), such as by "injur[ing] the objectives of [a] federal program," Topa Equities, Ltd. v. City of Los Angeles, 342 F.3d 1065, 1071 (9th Cir. 2003) (quoting Hisquierdo v. Hisquierdo, 439 U.S. 572, 583, (1979)), or by "interfer[ing] with the 'methods by which [a] federal statute was designed to reach [its] goal,'" Ting v. AT&T, 319 F.3d 1126, 1137 (9th Cir. 2003) (quoting Int'l Paper Co. v. Ouellette, 479 U.S. 481, 494 (1987)). Federal regulations have the same preemptive force as statutes. Fidelity, 458 U.S. at 153-54. While the power of eminent domain is a core attribute of state sovereignty, State of Georgia v. City of Chattanooga, 264 U.S. 472, 480 (1924), it is well-settled that a state's power of eminent domain must yield where its exercise would frustrate the purposes of a federal statute. See, e.g., City of Morgan v. S. La. Elec. Coop. Ass'n, 31 F.3d 319, 323 (5th Cir. 1994), reh'g and reh'g en banc denied, 49 F.3d 1074 (5th Cir. 1995) (prohibiting exercise of state eminent domain power that would interfere with federal purposes); see also Fidelity, 458 U.S. at 153 (holding that preemption principles "are not inapplicable . . . simply because real property law is a matter of special concern to the States"). The Ninth and Fifth Circuits have held consistently that a state entity's eminent domain power is preempted under these circumstances.

See Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc., 618 F.2d 601, 603 (9th Cir.1980); Public Utility Dist. No. 1 of Pend Oreille County v. United States, 417 F.2d 200, 202 (9th Cir. 1969); see also City of Morgan, 31 F.3d at 323; City of Madison v. Bear Creek Water Ass'n, 816 F.2d 1057 (1987).
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In Public Utility Dist. No. 1 of Pend Oreille County v. United States, the Ninth Circuit held that a state-favored entity's attempt to condemn electric facilities receiving federal subsidies pursuant to the Rural Electrification Act was preempted because it would interfere at a broad level with the REA's purpose of promoting rural electrification. 417 F.2d at 202. Reaffirming this rule in Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc., the Ninth Circuit held once again that "under the Supremacy Clause of the Constitution[,] a state municipal public utility [cannot] condemn property owned by a federally subsidized public utility where the condemnation would interfere with [a] federal purpose." 618 F.2d at 603. More recently, the Fifth Circuit twice has applied Pend Oreille and Big Bend. See Bear Creek, 816 F.2d at 1060 (citing Big Bend, 618 F.2d 601, in holding that attempted condemnation of water facilities owned by association indebted to federal Farmer's Home Administration was preempted because it would "adverse[ly] effect . . . the remaining customers of Bear Creek[,] . . . [and] undermine Congress's purpose of facilitating inexpensive water supplies for farmers"); City of Morgan, 31 F.3d at 323-24 (citing Pend Oreille, 417 F.2d at 201-02, in holding that state entity's attempt to condemn federally subsidized electric facility was preempted by the REA because it "would 'stand as an obstacle' to the repayment of federal loans, to the financial viability of federally financed electricity cooperatives, and ultimately, to the maintenance of electricity service to rural areas").
In cases where the existence of an "obstacle" for preemption purposes turns on the resolution of disputed facts, a court must defer to the reasoned opinions of the agency responsible for administering the relevant statute. Big Bend, 618 F.2d at 603. In Big Bend, the Ninth Circuit rejected the prospective condemnor's argument that summary judgment based on Pend Oreille was inappropriate in light of factual disputes concerning "the wisdom of the taking." Id. The court observed that the agency charged with administering the statute had "determined that the [utility's] proposed condemnation would decrease the ability of the [agency] to serve [the congressional] purpose." Id. Because the agency in question was "intended by Congress to determine the appropriate course of conduct to accomplish the legislative purpose," it was to be "give[n] wide latitude . . . in [its] area of expertise." Id.; see
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11 Montara fails even to address the preemptive effect of the Surplus Property Act of 1944, as amended, or subsequent enactments re-codifying the Act. Instead, Montara points to a deed from the federal government to Montara's alleged predecessor-in-interest, the Montara Elementary School District ("District"), as evidence of the federal government's intent to permit alienation of the wells. That deed is dated October 15, 1948, several months after the County accepted the primary deed transferring the airport property in fee simple subject only to a reserved access easement for the airport wells. By the second deed, the federal government conveyed the reserved easement to the District, an act to which Montara now attributes some intent to allow condemnation of the wells. However, when a dispute arose some thirty years later over whether the County or the District's successor-in-interest held the extraction rights to the underlying water, the California Court of Appeal held that the second deed conveyed no more than an access easement to the District, and that the County had exclusive rights to the water. See County of San Mateo v. Citizens Utilities Company of California, No. C 40393, at *3-6 (Cal. App. 1st Dist. Mar. 21, 1978). With respect to the federal government's intent as to both transfers, the court specifically noted that in reserving only an access easement, as opposed to the wells themselves and associated water rights, the government may well have wanted the airport owner "to charge the user of the easement for the water from the wells." Id. at 6 n.4. In fact, as

the legislative history of the Surplus Property Act indicates, it is quite likely that this was precisely the United States's intent.

also City of Cookville v. Upper Cumberland Elec. Membership Corp., 256 F. Supp. 2d 754, 767 & n.9 (M.D. Tenn. 2003) (noting that the "Ninth and Fifth Circuits correctly give deference to the [agency's] determination in th[e] area of [its] expertise," and declining to apply Pend Oreille only because the relevant federal agency had "not actually [appeared in the case] or otherwise taken a stance on the issue of frustration of the" federal statute).

2. Preemptive effect of the deed, statutes, and regulations

As explained earlier, see supra Section III.A.4, the text and legislative history of the Surplus Property Act, as well as subsequent congressional enactments and federal regulations, leave no doubt that Congress intended the FAA to exercise permanent authority over any proposed alienation of airport property. Congress provided the FAA with such authority in order to ensure that the airports (1) continue to be self-sustaining, particularly through the use of revenue-generating nonaviation facilities, and (2) remain operationally viable.11 It required that any transfer of surplus property by a federal agency be preceded by a determination that the property was suitable for immediate or future airport use, including for nonaviation, revenuegenerating purposes. See Surplus Property Act Amendments, § 13(g)(1). Correspondingly, each

11 This conclusion closely parallels that reached by the Fifth Circuit in City of Morgan. As already noted, the REA and the Surplus Property Act of 1944, as amended, contain very similar provisions requiring agency approval prior to disposal of land or facilities in which the federal government retains an interest. Both provisions condition approval on the putative transferor's satisfaction of certain terms deemed essential to the integrity of the respective federal programs. Neither provision, however, speaks to the relevant agency's authority over involuntary transfers.

In the panel opinion in City of Morgan, the court recognized the position–adopted by the Ninth Circuit in Big Bend–that § 907 of the REA gives the implementing agency the authority to block even involuntary transfers. See supra Section III.A.4; see also City of Morgan, 31 F.3d at 322. The panel nonetheless "elect[ed] to . . . . save for another day the issue of whether 7 U.S.C. § 907 by its terms confers authority on the Administrator to withhold approval of an involuntary disposition." City of Morgan, 31 F.3d 319, 322 (5th Cir. 1994). Instead, the panel "consider[ed]

airport grantee was made subject to conditions governing the use and disposal of the property, including a strict prohibition on the transfer or disposal of any airport property without FAA approval. Id. § 13(g)(2)(A). Finally, to enforce these provisions, Congress empowered the federal government to retake the property should it deem any subsequent transfer or disposal of airport property harmful to the airport's short- or long-term interests. Id. § 13(g)(2)(H).

It is extremely unlikely that Congress would have established such a firm set of limitations on the use and the disposal of airport property, enabling the FAA to ensure the airports' continued viability over time, only to allow state-favored entities to condemn parts of the granted properties with "no requirement that an underlying federal purpose be considered." Pend Oreille, 417 F.2d at 201-02. By the FAA's own reading of the Surplus Property Act, the covenants burdening the deeds of transfer ensure that "every acre of a surplus airport is held in trust for a specific purpose and usage." FAA Order 5190.6A, Airport Compliance Requirements, dated Oct. 2, 1989, ¶ 4-18(b). A state or state-favored entity may not violate that

trust consistent with the Supremacy Clause. Montara's successful condemnation of the airport wells would "interfer[e] with the 'methods by which [the Surplus Property Act] . . . was designed to reach [its] goal.'" Ting v. AT&T, 319 F.3d 1126, 1137 (9th Cir. 2003) (quoting Int'l Paper Co. v. Ouellette, 479 U.S. 481, 494 (1987)). It would undermine the FAA's ability to accomplish its prospective supervisory function with respect to the granted properties, and therefore would stand as an obstacle to implementation of the Act's careful procedural design.12

only whether a conflict exists because the proposed state-law expropriation would frustrate a federal purpose." Id.

In a second opinion denying panel rehearing and rehearing en banc, the court again "declined to decide whether § 907 should be interpreted broadly enough to allow the REA to prevent a proposed expropriation." 49 F.3d 1074, 1075 (5th Cir. 1995). However, the court held that "at the very least, the provision reflects a general federal policy of protecting the integrity of the REA's security interests. Thus, even a narrow interpretation of § 907 supports the panel's preemption analysis." Id. In the instant case, the Surplus Property Act's agency approval requirement, which was designed to ensure the continued integrity, viability, and self-sustenance of the transferred airports, similarly confirms that an unauthorized transfer is precluded by the obstacle preemption doctrine. Indeed, the instant case is similar not only to City of Morgan, but to Big Bend, in which substantially the same considerations supported both a finding of direct federal control and indirect federal authority via obstacle preemption. See Big Bend, 618 F.2d at 601-03.

Even if preemption were limited in this case to a finding of conflict between the proposed condemnation and the substantive goals of the Surplus Property Act, deference to the FAA's reasoned position would produce the same result. Montara disputes whether its condemnation of the wells might impede the airport's operations or development, or deprive it of necessary operating funds. Montara contends that prior use of the wells under several revocable encroachment permits demonstrates the absence of a conflict. This contention ignores the impact of the loss of recurrent airport revenue from water sales, the airport's future development needs, and obvious operational differences between permissive use and fee simple ownership of the wells. However, even if a genuine dispute of fact existed, no further evidence would be required to resolve it. The FAA, by its prior statements, intervention in this action, and exercise of its reversionary interest, has demonstrated its strenuous opposition to Montara's efforts and has articulated a coherent set of reasons for that opposition.

Specifically, the FAA has explained that it is

> not in favor of a sale of the property for the wells sites [because] . . . . the sale . . . would encumber the County's ability to provide for future aviation development should the demand for leasehold occur in the future. The property in question is suitable for aircraft storage . . . , a fixed based operator (FBO) aviation business, or other aviation compatible non-aeronautical business development. Additional airport property would be lost due to the need to install perimeter fencing of the well sites and three separate access right-of-ways [sic] . . . . [,] [since] [t]he County must restrict access to the airfield to authorized users/tenants of HAF [Half Moon Bay Airport] to remain in compliance with the grant agreement Assurances.

13 The FAA, through the declaration of the Half Moon Bay Airport's manager, also has provided evidence of past security incidents caused by Montara's presence on the airport property. See Larson Decl., ¶ 5 & Ex. 5 (containing report detailing dangerous airplane take-off and landing conditions created by agents of Montara within the airport's runway safety area); ¶ 6 & Ex. 6 (providing file memo by airport manager recording unauthorized construction activities by agents of Montara outside the fenced well sites, in violation of Montara's Revocable Encroachment Permit). While the Court sustains Montara's objections to those portions of the

Larson Declaration that lack foundation or are hearsay, see Larson Decl., ¶¶ 4, 7, & 8, the documented incidents amply support the FAA's views and make the FAA's concerns regarding operational safety and security anything but "hypothetical." Cf. Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 130-31 (1978) (finding hypothetical conflict insufficient to warrant preemption).

14 Big Bend requires deference to an agency's predominantly factual determinations in its area of expertise. See 618 F.2d at 603 (citing § 706 of the Administrative Procedure Act). This standard is distinct from the less deferential treatment given to an agency's legal determinations as to whether a particular state law would "stand an obstacle" to federal purposes. In Geier v. American Honda Motor Co., 529 U.S. 861, 883-86 (2000), the Supreme Court discussed the level of deference due to an agency's informal views on the objectives of a regulation it had

Letter dated April 19, 2007 from FAA to Mark Larson, Half Moon Bay Airport Manager, at 1-2.13 The FAA accordingly reiterated that it is

> not in agreement that the land is no longer needed for an airport purpose. The wells can be capped and relocated to another area. The surface area may be then returned for airport development as identified above. Therefore, the land is not considered surplus property and the FAA San Francisco Airports District Office would not recommend a release of the federal agreement obligations to permit the sale of the property. . . . The FAA has included HAF in the National Plan of Integrated Airport Systems (NPIAS) as a general aviation reliever airport. The airport is a valuable transportation link for interstate and intrastate air transportation. . . . We are of the opinion that the federal interest in the land for air transportation purposes continues to be the primary need for the use of the property.

Id. (emphasis added). As the successor to the Civil Aeronautics Administration, the FAA is vested with "the sole responsibility for determining and enforcing compliance with the terms, conditions, reservations, and restrictions upon or subject to which surplus property is disposed of pursuant to" the Surplus Property Act. Surplus Property Act Amendments, § 13(g)(4). The FAA therefore is the agency "intended by Congress to determine the appropriate course of conduct to accomplish the [Act's] legislative purpose," and its reasonable views must prevail. Big Bend, 618 F.2d at 603.14

promulgated and its position that a state lawsuit would "stand as an obstacle" to those objectives. The Court "place[d] some weight" on the agency's primarily legal views–an approach which the Third Circuit analogized to Skidmore deference. See Fellner v. Tri-Union Seafoods, L.L.C., 539 F.3d 237, 249-50 (3d Cir. 2008) (citing Skidmore v. Swift & Co., 323 U.S. 134 (1944)). Geier is inapplicable in the instant case, where the FAA's views pertain solely to whether the proposed condemnation would interfere with certain key aspects of the airport's long-term viability and operational integrity.

On November 12, 2008, Montara filed an ex pa 15 rte motion once again seeking early possession of the wells. In light of the instant disposition, that motion also must be denied.

III. CONCLUSION

The airport deed, by its plain terms, in light of its statutory context, and read in accordance with settled federal rules of construction, permits the United States to retake airport

property that is subjected to unauthorized condemnation proceedings. In addition, because Congress sought to provide the FAA with prospective oversight powers in furtherance of specific statutory purposes, Montara's attempt to condemn the wells against the FAA's wishes is hostile to the purposes of the controlling federal statutes. As a result, the condemnation is–and at all times has been–preempted. However, because the FAA properly exercised its reversionary interest when Montara obtained an order of early possession, the United States now owns the wells. Accordingly, the United States's motion for summary judgment will be granted, the County's motion will be denied as moot, and Montara's motion will be denied because federal property may not be taken without the consent of the sovereign.15

IT IS SO ORDERED.

DATED: 2/26/09

JEREMY FOGEL

United States District Judge

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Case No. C 08-2814 JF (RS)

ORDER RE CROSS-MOTIONS FOR SUMMARY JUDGMENT

(JFLC3)

This Order has been served electronically upon the following persons:

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This Order has been delivered by other means to the following persons:

Thomas F. Casey, III

County Counsel's Office

County of San Mateo

Hall of Justice & Records

400 County Center, 6th Floor

Redwood City, CA 94063

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May 4, 2009

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Via Facsimile (415) 904-5400) and U.S. Mail

Bonnie Neely, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Montara Water & Sanitary District Public Works Plan no. 2-06-006 Certification Review
Agenda Item no. Th6a

Dear Chair and Commissioners:

Our office represents the County of San Mateo in litigation arising from an eminent domain lawsuit brought by Montara Water & Sanitary District (MWSD) in an attempt to seize three well-sites at the Half Moon Bay Airport. A portion of MWSD's Public Works Plan relates to a request to build a water treatment plant at the Airport, on land adjacent to one of the existing well-sites. MWSD does not own the land on which the treatment facility would be built, and does not have any rights to use airport property other than to use and access the three well sites.

I addressed the Commission on November 12, 2008 in Long Beach, and urged the Commission to table the approval of the Public Works Plan in relation to the water treatment plant, at least until after the Federal Court ruled on motions to dismiss by the Federal government (Federal Aviation Administration) and the County of San Mateo. However, the Commission approved the application to build the water treatment plant.

On February 26, 2009, the Federal Court did, in fact, dismiss the eminent domain action brought by MWSD, because the Federal government maintained the right to prevent appropriation of Airport land by eminent domain. MWSD has filed a notice of appeal, but that is not expected to change the result adverse to MWSD.

As the property on which the proposed treatment plant would be built was not part of MWSD's previous and unsuccessful eminent domain action, presumably MWSD would intend to acquire the land for that treatment plant by initiating yet another eminent domain action. However, in light of MWSD's lack of success in the recent eminent domain action in which it sought to condemn the airport well sites, it is safe to assume that a subsequent effort to condemn airport property would also be unsuccessful. We believe it is improvident and unnecessary for the Coastal Commission to continue to permit MWSD to pursue this project, especially where there is pending litigation, and further where the decision regarding its ability to even acquire the County's airport land has been adversely decided against MWSD.

Thank you for your attention to this matter.

Very truly yours,

MICHAEL P. MURPHY, COUNTY COUNSEL

Signature on File

By: _____
David A. Levy, Deputy

MPM:DAL/SC

cc: Peter Douglas, Executive Director
Ruby Pap, North Central Coast District Supervisor
Charles O'Connor, Assistant United States Attorney
Lorraine Herson-Jones, Esq. (counsel for Federal Aviation Administration)
Herman Fitzgerald, Esq. (counsel for MWSD)
David Schricker, Esq. (counsel for MWSD)

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Pacific Skies Estates (Th 7a)

Date and time of receipt of communication: 5/1/09

Location of communication: La Jolla

Type of communication (letter, facsimile, etc.): telephone

Person(s) initiating communication: Stephanie Dahl
Receiving " " Patrick Kruer

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Ms. Dahl says the applicant is in tentative agreement with the Staff with the exception of a couple of twrks of which she believes will be resolved. She was very thankful for the hard work on a complex project by Dr. Lester and Ann Cheddar. She believes that this is good for the Low-Income People, Good for Coastal Resources and a Great addition for Public Access.

5/1/09
Date

Patrick Kruer
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

DALL & ASSOCIATES
6700 Freeport Boulevard, Suite 206, Sacramento, California 95822 Phone: ++916.392.0283
Fax: ++916.392.0462

May 5, 2005

TO: Ruby Pap, California Coastal Commission (415)904-5400

FROM: Stevie Dall

RE: Pacific Skies Estates/Th 7a

Attached please find correspondence, as listed below, in support of approval for the above-referenced permit to be included in tomorrow's addendum.

Thanks to you and your colleagues for your assistance.

Support Letters Attached From:

- Arthur P. Herring, Pacific Skies Estates/Palmetto 1300 LLC (2 pages)
- signed by 47 residents (4 pages)
- 20-year resident Jackie Sowle
- 11-year resident-manager Rudy Betancourt
- 47-year resident Barbara Watson
- 27-year resident Janis Herbert

PACIFIC SKIES MOBILE ESTATES
1300 Palmetto Avenue • Pacifica, California 94044(650) 355-4001 Fax (650) 355-3815

Th 7a

May 4, 2009

RECEIVED
MAY 05 2009
CALIFORNIA
COASTAL COMMISSION

The Hon. Bonnie Neely, Chair
and Members
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

RE: Application No. 1-97-020/3-83-172-A3 (Pacific Skies Estates)

Dear Commissioners:

As the applicant for Application No. 1-97-020/3-83-172-A3, I respectfully urge you to support your staff recommendation for approval of Agenda Item Th 7a on Thursday, May 7. As proposed and conditioned, this permit will provide enhanced beach and bluff top public access opportunities, while allowing the ongoing repair and maintenance of the pre-coastal program revetment that has protected this valuable affordable housing resource – and Pacifica's only mobile home park – for over forty years.

I would like to express my appreciation to staff analyst Tiffany Tauber, as well as Senior Deputy Director Charles Lester, legal counsel Ann Cheddar, Executive Director Peter Douglas, and other members of your staff for their extraordinary efforts to bring this before you at your May meeting in San Francisco.

It has been twelve long years since I submitted Coastal Development Permit Application No. 1-97-020 (now referenced as Permit Amendment No. 3-83-172-A3) to your San Francisco office as a followup to storm damage repair pursuant to Emergency Permit No. 1-96-05G.[1] The reduced footprint design compromise that now awaits your approval achieves, as a result of your staff's guidance and oversight, full conformity with both the Coastal Act and the Commission's prior actions. In addition, when the conditions for approval are satisfied, this permit will also resolve outstanding alleged violations – one caused by a previous owner 25 years ago, and the other by a stalemate over design that until recently blocked my *submitted* application from being *filed*.

Pacific Skies Mobile Estates is subject to intense ongoing regulation by the City of Pacifica and the California Department of Housing and Community Development, and we take pride in our commitment to comply with all applicable regulations, including

those required by the Coastal Act and the City's Local Coastal Program. There was never any intention on our part to avoid or circumvent these requirements, and we welcome the removal of these inadvertent violations through implementation of this permit.

Thank you in advance for your favorable consideration.

Sincerely,

Arthur P. Herring
Pacific Skies Estates/Palmetto 1300 LLC

cc: Peter M. Douglas
Charles Lester
Ann Cheddar
Tiffany Tauber
Dail & Associates
GeoSoils, Inc.
Steven H. Kaufmann, Esq.

[1] The previous history serves to underscore what has now been accomplished. In 1996 San Francisco staff came to the site prior to issuance of an emergency permit, and later guided my engineers in submitting the application for the regular permit in March, 1997. A month later when notified of the permit fee amount I immediately sent a check that was promptly deposited and cashed by the State. I then heard *nothing further* until my engineer contacted the Commission for a status update in 2005, only to learn that , far from approved, the application was still incomplete. Despite my clear commitment to rectify the situation, almost immediately after we reinitiated contact, enforcement staff apparently commenced a violation file, alleging that since the application submitted in 1997 was not yet "filed", the rocks placed pursuant to the 1996 emergency permit were now unpermitted development in violation of the Coastal Act. After two *more* years of unsuccessfully working to get the application filed, I brought in a new coastal engineer in 2007 who responded with all documentation and analysis requested by staff in a cooperative and collegial atmosphere. Instead of filing the application, however, staff then advised that, because of a newly discovered unrecorded offer to dedicate lateral beach access (required by a permit granted to the *original* property owner in 1984), repairs to the pre-1972 rock revetment proposed in our application were not acceptable. Despite continued cooperative communications, in mid-July, 2007, I received notification that I was now in violation of the Coastal Act, not only for the original offense of failing to persuade staff to file my application, but now also for the original owner's failure to record an OTD 23 years earlier, as well. Two short weeks later I received a "Notification of Intent to Record a Notice of Violation of the Coastal Act" within 20 days.When I sought additional time to respond, enforcement staff called in a very cordial manner on August 15, 2007, informing me that (1) if I did not agree to the recordation they would simply obtain a much more onerous cease-and-desist order, (2) recordation would not cloud title (unfortunately, it turns out this is <u>not</u> the case), and (3) recordation would foster a spirit of cooperation with staff. Based on their representations, and in the ongoing spirit of cooperation, I did not object to the recordation. My coastal engineer and subsequently retained coastal consultants have continued to work with your staff, redesigning the project over the intervening 21 months to arrive at the Coastal Act-consistent solution that is now before you.

SUPPORT - TH 7a

RECEIVED
MAY 05 2009
CALIFORNIA
COASTAL COMMISSION

To: California Coastal Commission

From: Residents, Pacific Skies Mobile Home Park

Subject: SUPPORT: Application No. 3-83-172-A3/1-97-020

We, the undersigned residents of Pacific Skies Mobile Estates, support the recommendation of your staff to approve ongoing shoreline protection for our residential community, and hope that you will approve it on May 7 in San Francisco.

Your staff report summarizes the legal basis for this approval well. In addition, you should know that Pacific Skies is the only mobile home park in Pacifica. It provides rent-controlled affordable housing for owners and renters that we believe your Commission is also mandated to encourage.

We need your approval for the repair and maintenance of he rocks that protect our homes now, to assure that we will be safe when the next storms strike because most of us simply could not find replacement housing within our budgets if anything were to happen to Pacific Skies.

We represent a spectrum of races, ethnicities and nationalities, as well as a wide range of generations, family lifestyles, and occupations with households ranging from one to five members. Along with our senior citizens (our oldest resident has lived here over forty years), we have several families with children who attend local schools, and our youngest resident is under one year old.

Many of us are public employees who work nearby or in San Francisco as police officers, nurses and resident doctors, K-12 teachers and SFSU professors, social workers, cable car conductors, airport Skycaps and baggage handlers and shuttle drivers, and in the military. Others are artists, bakers, bookkeepers, care-givers, construction workers and executives, contractors, food service workers, gym owners, house cleaners, house painters, insurance brokers, IT experts, laborers, mechanics, musicians, on-line sales reps, nonprofit operators/employees, party planners, sales clerks, secretaries, security guards, trainers, union workers, and veterinary techs.

About a third of us are retirees (many former public employees) or no longer work because of disabilities. Some of us can only work part time. Some of us work multiple jobs. Some of us are recently unemployed.

Although most of us will not be able to attend your hearing during the work and school day, we want you to know that we support the solution that your staff is recommending to protect our homes and urge you to vote "Yes" at your hearing on Thursday.

NAME	ADDRESS	LENGTH OF RESIDENCE
[illegible]	426 4th Ave. Pacifica	9 months
[illegible]	240 2nd Ave	1 1/2 yrs
Andrea Taylor	332 3rd Ave	5 yrs

SUPPORT - TH 7a

NAME	ADDRESS	LENGTH OF RESIDENCE
[illegible]	57 [illegible]	19 yrs
[illegible]	257 [illegible]	20 yrs
Mr + Mrs [illegible]	121 First Ave	4 yrs
[illegible]	560 5th Ave	3 yrs
Lydia + Bob [illegible]	352 - 3rd Ave	21 yrs
Anna van Ekelenburg	568 5th Ave	1 year
[illegible]	249 - 2nd Ave	1 ½ years
Mr + Mrs. Carlos J. Lopez	245 2ND AVE	6 yrs
[illegible]		11 + years
[illegible]	400 - 1th Ave.	21 yrs.
[illegible]	428 4th Ave	3 years
Mike Carl	444 4th Ave	14 years
Joanne A. Cook	353 3RD AVE	21 years
D Martel	352 3rd Ave	8 years
Josette [illegible]	249 - 2nd Ave	14 yrs
Mr + Mrs. L.C. Moore	356 3rd Ave	7 yrs.
[illegible]	349 3rd Ave.	24 yrs.
Barbara J Watson	344 3rd Av Pacifica Calif	58
[illegible]	325 3rd Ave Pacifica	1.2 years
Judy Wright	404 4th AVE, Pacifica	3 yrs

SUPPORT - TH 7a

NAME	ADDRESS	LENGTH OF RESIDENCE
Donald B. Pr[illegible]	6-14 674 AU	3 yr.
Sylvia Wattle-Wright	614 C Th[illegible]	3 yrs.
Patricia Umberty	630, 6th AVE	
Emil [illegible]	88 Dahlberg Dr.	2 yrs
James [illegible]	88 Dahlberg Dr.	2 yrs
[illegible]	200 2ND AVE PACIFICA CA 94044	
Victoria Lavell	232 2nd Ave Pacifica 94044	10 yrs.
Linda Voeller	241 2nd Ave Pacifica, CA 94404	
Manuel Martinez	253 2nd AVE Pacifica, CA. 94044	9 YRS
Frances [illegible]	157 1st Ave Pacifica	8 yrs
Talia Lau	105 1st Ave, Pacifica	1 yr.
LANCE DAVIES	348 3rd AVE PACIFICA	9 [illegible]
[illegible]	216 2nd Pacifica Ca 94044	

SUPPORT - TH 7a

NAME	ADDRESS	LENGTH OF RESIDENCE
Donna Walker / DONNA WALKER	66 DAHLBERG	23 YEARS
Albert Bol3 / Meadow	352 - 3rd Ave	21 years
C Gallagher	416 4th Ave.	3 yrs
LOGAN M. GALLAGHER	416 4th AVE	4 yrs
Richard Grant	228 2nd Avenue	1 1/2 years
Bill ORTH	[illegible] 4th Ave	11 yrs
Nancy Cooper	220 3rd Ave.	10 yrs
[illegible]	3[illegible] 3rd Ave	[illegible] yrs
SYLVIA WHITTLE WRIGHT / Donald A. Gray	214 6th AVD	3 YR.
Frances Payne	157 1st Ave	8 yrs
Alice Sowdal	248 2nd Ave	4 years

RECEIVED
MAY 05 2009
CALIFORNIA
COASTAL COMMISSION

Th 7a

Coastal Commission
45 Freemont Street , 20th Floor
San Francisco, Ca 94105

Dear Commissioners:

On May 7, please approve Pacific Skies Mobile Home Park's application to repair the seawall that protects my neighbors and me.

In the 20 years since I bought my home, I have observed how well the rock revetment deflects storm waves from our bluff face, but it needs repair and ongoing maintenance to do its job well. Without that work, more of us are sure to lose our homes, as happened back in 1983.

I am a life-long resident of Pacifica, where my parents still reside, but after 26 years in the automotive industry (Mechanics Local #1414/#1101), I have been unemployed for the past two months. do not know when I will be back at work and as a homeowner, I doubt that I would could afford to relocate if more damage occurs.

I do want to set one thing straight. I have fished from the beach in front of Pacific Skies since 1989 and have not had a problem with rocks interfering with my access to the beach and ocean, or that of other beach goers. Removing these rocks from the beach is a good idea, but sand usually covers them and they do not keep anyone from using the beach.

I strongly urge you to approve this application because, in my opinion, it is so important to the safety of the park and our homes and us. Thank you.

Sincerely,

Jackie Sowle
257 2nd Avenue
Pacifica, Ca 94044

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COASTAL COMMISSION

TH 7a

May 3, 2009, 2009

Rudy Betancourt, Manager
Pacific Skies Mobile Estates
301 3rd Avenue
Pacifica, Ca 94044

Members, California Coastal Commission
45 Freemont Street #2000
San Francisco, Ca 94105

RE: Application No. 1-97-020/ 3-83-172-A3 Pacific Skies Mobile Estates - SUPPORT

Dear Commissioners:

On behalf of the residents of Pacific Skies Mobile Estates, I urge you to approve Permit Application No. 1-97-020/ 3-83-172-A3 when it comes before your Commission on Thursday, May 7.

I have owned my home in Pacific Skies for 11 years and have been the Park Manager for nine years. Over these years we have worked very hard to obey and comply with every law and regulation concerning the beach and the seawall protection for the Park. We take our stewardship of this beautiful property and the beach very seriously.

To be able to protect the homes in the Park with this seawall is important and with your help will allow many of our residents to no longer feel threatened. The solution now recommended by your staff will assure continued protection of both coastal resources and affordable housing, as well as enhanced public access opportunities.

Thank you,

Rudy Betancourt
Manager, Pacific Skies Mobile Estates

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CALIFORNIA
COASTAL COMMISSION

TH 7a

Barbara Watson
344 3rd Avenue
Pacifica, Ca 94044

California Coastal commission
45 Fremont Street, Suite 2000
San Francisco, Ca 94105

Re: Application No. 1-97-020 Pacific Skies Estates

Dear Commissioners:

I have lived in Pacific Skies Mobile Home Park since 1962 in the same mobile as my Mother and I moved in to the Park.

It is very important to me that Mr. Herring be approved by you to repair the Park's seawall because I feel it is a safety issue for us living here.

Please approve this important application to your commission so we can continue to live here safely.

Sincerely, Barbara J. Watson

Barbara Watson

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MAY 0 5 2009
CALIFORNIA
COASTAL COMMISSION

TH 7a

May 4, 2009

California Coastal Commission
45 Fremont Street
San Francisco, Ca 94105-2219

Permit Application: 1-97-020 Pacific Skies Estates, May 9, 2009

Dear Commissioners:

The approval of the permit to repair our seawall is very important to me and everyone living in this mobile home park.

I have owned my home and lived for 27 years in Pacific Skies and wish to see this continue. My father also owned a home in this park for over 20 years until his death.

We have looked for this approval to repair and fix the seawall for quite a few years now and I want you to know this is something we feel is vital. Thank you.

Yours very truly,

Janis Herbert

Janis Herbert
224 2nd Avenue
Pacifica, Ca 94044

LAW OFFICES OF
DAVID E. SCHRICKER
A PROFESSIONAL CORPORATION
20370 Town Center Lane, Suite 100
CUPERTINO, CALIFORNIA 95014

TELEPHONE (408) 517-9923
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E-MAIL: dschricker@schrickerlaw.com
schrickerlaw@aol.com
www.schrickerlaw.com

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MAY 06 2009
CALIFORNIA
COASTAL COMMISSION

Via Facsimile (415) 904-5400, e-mail and U.S. Mail

May 5, 2009

Hon. Bonnie Neely, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Montara Water & Sanitary District Public Works Plan No. 2-06-006
Certification Review

Agenda Item No. Th6a

Dear Chair and Commission Members:

This office represents the Montara Water and Sanitary District ("MWSD") and hereby responds to letter dated May 4, 2009 from the Office of County Counsel, County of San Mateo ("CSM Letter"), regarding the above agenda item. Briefly stated, the CSM Letter purports to raise irrelevant and speculative issues regarding current litigation between MWSD and the County that have no bearing upon the certification of MWSD's Public Works Plan No. 2-06-006 ("PWP"), the matter before your Honorable Commission.

As noted in your Staff Report dated April 17, 2009, the Commission rejected the PWP as submitted and then approved it with suggested modifications to which MWSD agreed pursuant to MWSD Board's Resolution No. 1443, adopted December 18, 2008. The Executive Director has determined that MWSD's actions, evidenced by adoption of its Resolution 1443 and by revisions to the PWP, are legally adequate, i.e., that they conform to the PWP as conditionally approved by the Commission on November 12, 2008. Under Agenda Item No. Th6a, the Executive Director is reporting his determination to the Commission (14 CCR §13544; [applicable under Pub. Res. C. §30605]). The sole question before your Honorable Commission is whether to object or not to object to the Executive Director's determination (14 CCR §13544(c)). Commission staff recommends that the Commission concur with that determination (Staff Report, §3.). Since the actions taken by MWSD and the revisions to the PWP conform to the Commission's conditional approval, there is no basis for objection.

The CSM Letter refers to a decision rendered by the United States District Court, N.D., California, from which MWSD has filed a notice of appeal, thereby effectively staying the decision. The case involves three well sites located at the Half Moon Bay Airport which provide approximately sixty percent (60%) of MWSD's community water supply. In order to obtain a reliable supply assurance and security for financing water system improvements, MWSD is seeking title to the small areas of land upon which its wells are located. Due to the intervention of the United States government (Federal Aviation Administration), the court has (erroneously, in MWSD's view) ruled that the wells are owned by the federal government. As noted, MWSD has appealed the decision. The property involved in the lawsuit, as admitted in the CSM letter, is not included in the PWP. Thus, the case has no bearing upon, and is not related to, your Agenda Item No. Th6a.

With regard to the Airport Treatment Plant, which is a component of the PWP, the CSM Letter speculates groundlessly that MWSD will file an eminent domain action to acquire property for its construction and disingenuously argues that the Commission should refrain from permitting MWSD to pursue the project via PWP certification. First, that is mere speculation. Second, as discussed above, the matter before the Commission has nothing to do with project approval. Third, under the PWP procedures (PWP Ch. 5.1), MWSD must prepare a project report and give Notice of Impending Development to the Executive Director, affected property owners, the public and interested parties before constructing any of the PWP's components (PWP §5.1.2). Obviously, no such notice will be given if MWSD does not have property interest(s) necessary for construction.

Notably, the County's current objection is the same as it raised at the hearing on the PWP in November 2008, which your Honorable Commission properly rejected. As discussed above, and as determined by the Commission in November, there is no merit to the County's attempt to obstruct badly needed improvements to MWSD's community water system.

Respectfully,

Signature on File

David E. Schricker, Attorney

cc: Hon. President and Board, MWSD
Clemens Heldmaier, General Manager, MWSD
Peter Douglas, Executive Director
Ruby Pap, North Central Coast District Supervisor
Charles O'Connor, Assistant United States Attorney
Herman Fitzgerald, Attorney
David A. Levy, Deputy County Counsel

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *GOVERNOR*

CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904- 5400

Th 7a

MEMORANDUM

Date: May 6, 2009

To: Commissioners and Interested Parties

From: Charles Lester, Deputy Director
Ruby Pap, North Central Coast District Supervisor
Tiffany S. Tauber, Coastal Program Analyst

Subject: **Addendum to Commission Meeting for Thursday, May 7, 2009, North Central District Item Th 7a, Application No. 3-83-172-A3 (Pacific Skies Estates)**

STAFF NOTE

This addendum makes certain changes, additions, and clarifications to the special conditions and findings contained in the staff recommendation dated April 24, 2009 in response to comments received from the applicant following publication of the staff report. The addendum also makes a correction to the permit amendment number, which was inadvertently numbered as 3-83-172-A3; the correct number should be 3-83-172-A7.

Specifically, the addendum makes changes to five of the thirteen special conditions, including Special Condition Nos. 2, 3, 4, 6 and 12 to: (1) allow repair and/or maintenance of existing roads and drainage facilities within the blufftop public access easement areas consistent with Section 30610 of the Coastal Act and Section 13252 of Title 14 of the California Code of Regulations; (2) clarify that the repair and maintenance provisions of Special Condition No. 4 apply to the existing revetment as modified by the subject amendment (3-83-172-A7); (3) clarify that all of the rock proposed to be removed within the area shown in yellow hatching on Exhibit No. 3 is required to be removed within 180 days of Commission approval and following issuance of the coastal development permit amendment; and (4) revise the requirements of the public access plan to (a) limit availability of public access to between 8:00 a.m. to sunset, rather than one hour

after sunset; (b) change the width of the portion of the wall required to be removed for installation of a pedestrian access gate from 8 feet to a minimum of 5 feet wide; and (c) clarify that removal of all visitor parking signs refers to only those located within the required easement area.

Text to be deleted is shown in ~~strikethrough~~ and text to be added appears in **bold double-underline.**

---

1. CHANGES TO SPECIAL CONDITIONS OF THE STAFF RECOMMENDATION

- *(Pg. 7) Revise the Note to reflect the correct amendment numbers as follows:*

III. SPECIAL CONDITIONS:

Note: Special Conditions 1, 2, 3, 4, 5 of the original permit (3-83-172-A2) are deleted. Special Condition No. 6 of the original permit 3-83-172-A2 is deleted and replaced by a new Special Condition 2. Special Condition Nos. 1 through 13 are added as new conditions of Permit Amendment No. 3-83-172-~~A3~~7. **CDP Amendment Nos. 3-83-172-A1, -A3, -A4, -A5, and -A6 relate to different geographic areas. Thus, the special conditions of CDP Amendment Nos. 3-83-172-A1, -A3, -A4, -A5, and -A6 are unaffected by the subject amendment and remain in full force and effect.** The text of the original permit conditions is included in Exhibit No. 4.

- *Special Condition No. 2(B)&(C) shall be revised as follows:*

2. Blufftop Public Access OTD

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the landowner shall submit a current preliminary report for the subject property, and execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public entity or a private association acceptable to the Executive Director, an easement for blufftop public access and passive recreational use of the blufftop public access area generally depicted on Exhibit No. 3 consisting of: (1) an 8 ft. wide strip of land along the bluff edge from the northern boundary of the property and continuing along the bluff to the southern boundary of the property; and (2) an 8 ft. wide strip of land from Palmetto Avenue to the bluff edge along Sixth Avenue.

B. No development, as defined in section 30106 of the Coastal Act, shall occur within the blufftop public access easement area except for: (1) any development, including landscaping, authorized by the Public Access Improvement Plan required by Special Condition 12**, and (2) repair and maintenance of existing road and/or drainage facilities within the blufftop public access easement areas consistent with Section**

30610 of the Coastal Act and Section 13252 of Title 14 of the California Code of Regulations.

C. The blufftop easement shall be open to the public daily between 8:00 AM and ~~one hour after~~ sunset.

D. The recorded document shall include a formal legal description of the entire property, and a metes and bounds legal description and corresponding graphic depiction drawn to scale, prepared by a licensed surveyor, of the public access easement area. The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- *Special Condition No. 3(B)&(C) shall be revised as follows:*

3. Fifth Avenue Public Access OTD

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the landowner shall submit a current preliminary report for the subject property, and execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public entity or a private association acceptable to the Executive Director, an easement for public access and passive recreational use of the public access area generally depicted on Exhibit No. 3 consisting of an 8 ft. wide strip of land from Palmetto Avenue to the bluff edge along Fifth Avenue.

B. No development, as defined in section 30106 of the Coastal Act, shall occur within the public access easement area except for: (1) a pedestrian gate near the intersection of First and Fifth Avenues consistent with the Public Access Improvement Plan required by Special Condition No. 12; (2) any other development authorized by the Public Access Improvement Plan required by Special Condition No. 12~~.~~ **and (2) repair and maintenance of existing road facilities within the blufftop public access easement area consistent with Section 30610 of the Coastal Act and Section 13252 of Title 14 of the California Code of Regulations.**

C. The blufftop easement shall be open to the public daily between 8:00 AM and ~~one hour after~~ sunset.

D. The recorded document shall include a formal legal description of the entire property, and a metes and bounds legal description and corresponding graphic depiction drawn to scale, prepared by a licensed surveyor, of the public access easement area. The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- *Special Condition No. 4(B)&(C) shall be revised as follows:*

4. Repair and Maintenance

A. The permittee shall maintain the existing revetment **as modified by CDP No. 3-183-172-A7** for the life of the structure.

B. This coastal development permit authorizes repair and maintenance activities for a period of 5 years from the date of this approval only if carried out in accordance with all of the following conditions:

1. Maintenance and repairs shall be undertaken using only necessary equipment and shall be limited to removal, repositioning, or replacement of rock within the footprint of the existing approved structure. The permittee shall remove or redeposit any debris, rock, or material that becomes dislodged from the revetment as soon as possible after such detection of displacement occurs.

2. No expansion or enlargement of the existing revetment **as modified by CDP No. 3-183-172-A7** is permitted.

3. Repair and maintenance shall occur consistent with requirements of Special Condition No. 5 below.

C. The Executive Director may extend the 5-year authorization specified in Subsection B for the approved repair and maintenance activities for a period not to exceed 5 years, or 10 total years from the date of this approval. The applicant shall make a request for such extension no later than 30 days before the end of the initial 5-year period.

D. Repair and maintenance activities identified in Subsection B(1) shall be completed as soon as possible, but no later than 30 days after the discovery of the need for the repair and maintenance activity.

E. Repair and maintenance activities other than those identified in Subsection B(1) shall require an amendment to this permit or a new coastal development permit.

- *Special Condition No. 6 shall be revised as follows:*

6. Removal of Existing Rocks and Debris

WITHIN ~~90~~ 180 DAYS OF COMMISSION APPROVAL AND FOLLOWING ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, or within such additional time as the Executive Director may grant for good cause, the permittee shall remove all rocks, broken pilings, and other debris from the area of the beach seaward of the **landward boundary of the approximately 10-foot-wide subsurface rock keyway area** ~~toe of the above-ground portion of the revetment~~ as approved by CDP Amendment No. 3-83-172-A3~~2~~7 and shown **as the yellow hatched area** on Exhibit No. **3** ~~2~~.

- *Special Condition No. 12 shall be revised as follows:*

12. Public Access Improvement Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, a Public Access Improvement Plan for the offers to dedicate required by Special Condition Nos. 2 and 3. The public access improvement plan shall provide for the implementation of the following access requirements upon acceptance of either of the offers to dedicate required by Special Condition Nos. 2 and 3: (1) the installation of Public Access signage (both free standing and signs installed on permitted fencing and gates); (2) other methods of identifying the location of the bluff top easement such as stenciling the Coastal Access logo on the existing asphalt; (3) the availability of public access, at a minimum, between 8:00 a.m. and ~~one hour after~~ sunset, 7 days a week; (4) removal of any existing "Private Property/No Beach Access" signs; (5) removal of **a minimum 5-foot-wide** ~~an 8 ft. wide~~ portion of the existing wall near the intersection of Fifth Avenue and Palmetto Avenue and installation of a pedestrian gate at this location, (6) limitations applicable to the use of the pedestrian gate to be installed near the intersection of Fifth Avenue and Palmetto Avenue; (7) the removal of all visitor parking signs **within the public access easement areas required by Special Condition Nos. 2 and 3**; and (8) provisions for landscaping the blufftop public access offer to dedicate area.

2. CHANGES TO THE FINDINGS OF THE STAFF RECOMMENDATION

- *Change all references to* 3-83-172-A3 *throughout the special conditions and findings* to 3-83-172-**A7.**

- *Change all references to "*10-foot-wide subsurface keyway*" throughout the findings to* **approximately** 10-foot wide subsurface keyway.

- *(Pg. 2) Add the following document to the list of Substantive File Documents:*

  Emergency Permit No. 1-96-05G

- *(Pg. 2) Revise the last paragraph as follows:*

The original permit (CDP No. 3-83-172-A2, City of Pacifica/Pacific Skies Estates) was approved by the Commission in 1984 as part of a master plan to provide shoreline protection along a designated portion of the Pacifica coastline and to protect the Pacific Skies Estates mobile home park, which was developed in 1957. **The revetment was approved and constructed in 1984 to protect the existing mobile home park after winter storms in 1983 caused the loss of up to 80 feet of bluff and damaged a former revetment that pre-dated the Coastal Act.** In early 1996, extreme erosion at the site exposed the base of the vertical soldier piles that were acting to contain riprap backfill that supported the near vertical coastal bluff and caused the revetment to fail. Failure of the revetment undermined the access road along the blufftop and threatened the homes located directly behind the road. The Commission approved Emergency Permit No. 1-96-05G to repair the collapsed revetment by, in part, placing approximately 20,000 tons of 4 to 8-

ton riprap to buttress the base of the revetment. Condition No. 4 of Emergency Permit No. 1-96-05G required the permittee to submit a regular Coastal Development Permit application within 60 days of the date of the permit to have the emergency work permanently authorized. The **applicant submitted CDP Application No. 1-97-020, but this** required follow-up application was not received within 60 days, and the Commission has not otherwise **permanently** authorized the development performed under the emergency permit; as a result, since the Emergency Permit has expired, the riprap that was temporarily authorized now constitutes unpermitted development, and is the subject of a pending violation case. Therefore, this subject CDP amendment application (CDP No. 3-83-172-A3) includes, in part, after-the-fact authorization of the emergency repairs performed in 1996. **and originally applied for pursuant to Coastal Development Permit application No. 1-97-020. Since CDP application No. 1-97-020 included development that would affect the public access easement area required by 3-83-172-A2, CDP application No. 1-97-020 is now being processed as CDP Amendment No. 3-83-172-A7. This CDP amendment application (3-83-172-A7) has been revised since it was originally submitted as 1-97-020 to include public access provisions.**

- *(Pg. 14) Revise the 1st paragraph as follows:*

...proposed **approximately** 10-foot-wide subsurface rock keyway would be installed within a portion of the public access easement area in a manner that would not preclude the public from accessing the sandy beach on top of the proposed keyway. **The proposed keyway is slightly wider than 10-feet along an area of the bluff that contours inland; however, the additional width of the keyway extends landward, rather than seaward.** The applicant also proposes to remove rocks that have shifted seaward of the mean high tide line and broken piles that are currently littering the beach.

- *(Pg. 17) Revise the 3rd full paragraph as follows:*

Following discussions with Commission staff and the Commission's engineer regarding alternatives that would minimize impacts to shoreline processes and public access, the applicant's engineer proposed the "*Reduced Footprint Alternative,*" which would avoid seaward encroachment of the revetment. The proposed design involves placing approximately 1,500 tons of 10-ton rock along the bluff at a slope varying from 1:1 to 1:1.5. To improve the structural integrity and stability of the revetment, a**n approximately** 10-foot wide subsurface rock keyway is proposed to be installed at the base of the rock revetment. **The proposed keyway is slightly wider than 10-feet along an area of the bluff that contours inland; however, the additional width of the keyway extends landward, rather than seaward.** The proposed project also involves removing approximately 2,000 tons of rock that are less than 1 ton in size...

- *(Pg. 21-22) Revise the 2nd and 3rd paragraphs as follows:*

As noted previously, Special Condition No. 6 of the original permit that authorized construction of the existing shoreline revetment (CDP No. 3-83-172-A2), required recordation of a lateral access easement for public access and recreation to and along the shoreline to mitigate adverse impacts to public access resulting from the construction of the revetment. The easement was required to extend laterally from the toe of the revetment to the mean high tide along the width of the property (approximately 800 feet). According to the original findings for approval , the

Commission found that construction of **seawalls, such as** the **subject** shoreline revetment, ~~at the site would result~~ **have the potential to result in** adverse impacts to public access by: (1) altering the useable area of the beach under public ownership due to changes in the shoreline profile, (2) the progressive loss of sand, as shore material would no longer be available to nourish the offshore sandbar, (3) increasing erosion on adjacent public beaches, and (4) directly interfering with public access when materials erode from the revetment and litter the sandy beach, thus presenting physical obstacles to access. The lateral access easement intended to mitigate such adverse impacts to public access was never recorded as required by Special Condition No. 6 of CDP No. 3-83-172-A2 and has been the subject of an on-going violation case pending at the subject site.

Since construction of the shoreline revetment in 1984, ~~the~~ public ~~has lost~~ use of the beach area fronting the development **has been constrained** for the reasons described above. In addition, the **potential** public access losses that were identified in the 1984 permit and that provided the basis for the lateral access easement condition have been compounded by encroachment of additional rock temporarily placed in the 1996 emergency repair efforts. The placement of this additional rock ~~caused losses that have~~ further **constrained potential** ~~reduced~~ public access and recreational opportunities in the required easement area.

- *(pg. 23) Revise the last sentence of the first paragraph as follows:*

Currently, there is no public access to or along the blufftop at the subject site. The closest vertical access location providing public access to the beach is located approximately 375 feet subject site. Further north is Lands End, which includes a bluff top trail and a stairway to the beach (currently closed for repairs). In discussions between the applicant and Commission staff regarding the proposed improvements to the existing shoreline revetment and potential adverse impacts to public access, the applicant has proposed to provide blufftop access in the form of an offer to dedicate an 8-foot-wide public access loop through the mobile home park connecting to any future blufftop access on the property to the north (see Exhibit No. 3). Special Condition Nos. 2 and 3 require the applicant to record an offer to dedicate a blufftop access easement to ensure that these proposed public access provisions are properly executed and implemented. Although as proposed, the blufftop public access OTD easement would provide one continuous access loop through the mobile home park and along the blufftop, Special Condition Nos. 2 and 3 allow for the OTD along Sixth and Fourth Avenues and the OTD along Fifth Avenue to be recorded and accepted separately. This would allow the portion of the blufftop access OTD along Sixth and Fourth Avenues to be potentially accepted before, and separate from, the portion of the blufftop OTD along Fifth Avenue (shown as a dashed line on Exhibit No. 3.) Special Condition Nos. 2 and 3 also prohibit all development in the easement areas except for **(1)** development authorized by the coastal development permit amendment; **(2)** ~~and~~ development authorized by the Public Access Management Plan required by Special Condition No. 12**; and (3) repair and maintenance of existing road and/or drainage facilities within the blufftop public access easement areas required by Special Condition Nos. 2 and 3 consistent with Section 30610 of the Coastal Act and Section 13252 of Title 14 of the California Code of Regulations.**

- *(pg. 23) Revise the second paragraph as follows:*

To ensure that various improvements are implemented at the site to accommodate the proposed blufftop public access once the offers to dedicate are accepted, Special Condition No. 12 requires the applicant, prior to issuance of the coastal development permit amendment and for the review and approval of the Executive Director, a Public Access Improvement Plan. The required Public Access Improvement Plan would provide for the implementation of the following public access improvements upon acceptance of either of the offers to dedicate required by Special Condition Nos. 2 and 3: (1) the installation of Public Access signage (both free standing and signs installed on permitted fencing and gates); (2) other methods of identifying the location of the bluff top easement such as stenciling the Coastal Access logo on the existing asphalt; (3) the availability of public access, at a minimum, between 8:00 a.m. and ~~one hour after~~ sunset, 7 days a week; (4) removal of any existing "Private Property/No Beach Access" signs; (5) removal of **a minimum 5-foot-wide** ~~an 8 ft. wide~~ portion of the existing wall near the intersection of Fifth Avenue and Palmetto Avenue and installation of a pedestrian gate at this location, (6) limitations applicable to the use of the pedestrian gate to be installed near the intersection of Fifth Avenue and Palmetto Avenue; (7) the removal of all visitor parking signs **within the public access easement areas required by Special Condition Nos. 2 and 3**; and (8) provisions for landscaping the blufftop public access offer to dedicate area.

- *(pg. 24) Revise Finding #6 as follows:*

6. State Lands Commission Approval

The project site is located in **and/or adjacent to** an area subject to the public trust. Therefore, to ensure that the applicant has the necessary authority to undertake all aspects of the project on these public lands, the Commission attaches Special Condition No. 11, which requires that the project be reviewed, and where necessary approved, by the State Lands Commission prior to the commencement of construction.

- *(pg. 24) Revise Finding #7 as follows:*

7. Alleged Violations

The ~~applicant~~ **original owner** did not comply with all the terms and conditions of the original permit for a shoreline revetment at the site; the required offer to dedicate (OTD) a public access easement was not recorded, ~~and a portion of the revetment was constructed in such a way that it encroaches into the designated easement area~~. Further, the applicant received an emergency permit to conduct repairs to the existing shoreline revetment~~,~~ **which involved placing rock within the designated public access easement area. The applicant subsequently applied for,** but did not obtain a follow-up coastal development permit within the timeframe required by the emergency permit, and the emergency permit expired. Therefore, development **temporarily authorized under the emergency permit** has **remained in** ~~taken~~ place without benefit of a coastal development permit **to permanently authorize the development**. Although development has taken place prior to submission of this permit amendment application, consideration of the application by the Commission has been based solely upon the policies of the Coastal Act. Commission review and action on this permit amendment does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied

statement of the Commission's position regarding the legality of any development undertaken on the subject site without a coastal development permit, or that all aspects of the violation have been fully resolved. In fact, approval of this permit is possible only because of the conditions included herein, and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action for the continuing violation just as it would have been in the absence of this permit amendment approval for engaging in unpermitted development, unless and until the conditions of approval included in this permit amendment are satisfied and implemented.