

*Bringing you HOPE -*  
**Helping Our Peninsula's Environment**  
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Pacific Grove Council

September 21, 2005

**Logging 30 Large Monterey Pines in Washington Park  
is Not Exempt from CEQA**

Dear Council members,

Your new arborist is recommending you **cut down 30 Large Monterey Pines in Washington Park AND that no CEQA** (California's Environmental Quality Act) review is necessary. **This must be sent back for proper environmental review.**

This is wrong.

1. It ignores the extremely rare and vital ecological values of the trees,
2. It falsely avoids legally required CEQA review, and
3. It ignores the community's love for our forests.

**HOPE and I are experts in Monterey pine forest ecosystems. We have read virtually all the leading research written many articles, held public education forums in addition to leading more than 1,000 people on Monterey pine forest ecosystem education walks, including dozens of the world's leading experts in many of the facets of Monterey pine forest, participated in dozens of forums on the health of our imperiled Monterey Pine forest ecosystems. HOPE's website has 97 web pages mentioning Monterey pines.**

**Monterey Pine Forests Are Imperiled**

- In 1986, before Pitch canker was found in California, the United Nations Department of Food and Agriculture, which sets international policy for forest protection, recognized the situation on a global scale and **declared Monterey pine an Endangered Species.**
- Independently, and without knowing of the United Nation's declaration, the **California Native Plants Society** strengthened its concern of **Monterey Pine by rating it "1B". Their only stronger rating is "1A" which means extinct - gone forever - like the Mammoth.**
- In 1993 The California Department of Fish and Game put Monterey Pine on its "Special Plants List."

**As recently as 1830 more than 16,000 acres of healthy, native Monterey pine forest lived. Today in 2005 only a skeleton of that once magnificent forest remains. Though estimates vary, we find less than 1,100 healthy, native, protected acres of Monterey pine remain - possibly less than 800 acres. Most of the loss so far (pre-Pine pitch canker) is due to development and the**

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expansion of Monterey, Pacific Grove and Carmel. As you've read the fungus called pitch canker threatens to destroy an overwhelming amount of what little native forest remains.

Washington Park contains most likely the healthiest Monterey pine forest within the city of Pacific Grove. Every tree is important to its ecosystem. Dead standing Monterey pines are vital to protecting Washington Park from the deadly fungus Pitch canker.

Here's how that works. The deadly Pitch canker fungus (*Fusarium circinatum*) is carried around by flying beetles. Woodpeckers eat these beetles. Woodpeckers need dead trees to live in primarily because they prefer to cut homes from soft dead wood rather than hammer their beaks against the much harder live tree trunks. When dead standing trees are removed the wood peckers leave and the Pitch canker carrying bark beetles thrive killing trees rapidly.

### **Can a Dangerous Condition Override CEQA?**

Staff is advising the Council that cutting down 30 plus mature Monterey pine trees is exempt from California's Environmental Quality Act because somehow it is a health and safety emergency.

### **Emergency is an Event - Not a Condition**

In sharp contrast, California's legislature and courts have solidly established that an emergency is an event ("a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action."), not merely an ongoing condition requiring management such as at Washington Park.

In *Western Municipal Water District vs. Superior Court* (4th district 1986) 187 Cal. App. 3rd 1104, the court of appeal insisted that *in order not to "create a hole in CEQA of fathomless depth and spectacular breadth," the concept of 'emergency' should be interpreted narrowly.*

### **Exemptions Do Not Withstand a Environmental Impact Fair Argument**

Exemptions to California's Environmental Quality Act dissolve when faced with a "fair argument" of any potentially (not probable) significant environmental impact.

### **EXEMPTION USES FAIR ARGUMENT**

A Categorical Exemption is Legally Impermissible Here because a "Fair Argument" is the standard of evidence.

### **CEQA Guidelines Sec 15308. Discussion**

"The court followed the ruling in *Wildlife Alive v. Chickering*, (1976) 18 Cal. 3d 190 that provided that where there is a reasonable possibility that a project or activity may have a significant effect on the environment, an exemption is improper."

### **FAIR ARGUMENT - EASIEST SUIT TO WIN**

As you know - for a Fair Argument - the Courts are required to disregard all evidence an Agency presents. Because of this many CEQA attorneys consider a suit using the Fair Argument standard the easiest lawsuit to win (plus they win attorney's fees). A suit like this on an

Exemption is far easier to win than an EIR suit on September Ranch which uses the much higher standard of Substantial Evidence.

"... if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68).

#### BETTER THAN FAIR ARGUMENT IF FAILURE TO LOOK

"[t]he agency should not be allowed to hide behind its failure to gather relevant data," because "CEQA places the burden of environmental investigation on government rather than on the public." Where the agency has failed to produce crucial information, "deficiencies in the record may actually enlarge the scope of fair argument by lending a plausibility to a wider range of inferences." Sundstrom v. Mendocino County (1988) 202 Cal.App.3d 296

- The reasoning presented above is just that - a fair argument" that removing the large dead or dying trees could cause a significant increase in further deaths of Monterey pine trees due to the loss of woodpecker habitat, and perhaps even threaten that immediate forest ecosystem of Washington Park.
- An additional and separate significant environmental impact is the complete removal of tens of thousands of pounds of living biomass, maybe hundreds of thousands of pounds. According to the PG&E Forester for the Monterey Peninsula area, Stuart Craig, a mature Monterey pine typically weighs about 5 tons (ten thousand pounds). This proposal is for 30 plus trees - potentially some 300,000 pounds of lost living biomass.
- Even further, this is admittedly in our Monarch Sanctuary! Is there any doubt that this will remove the rare and cherished Monarch habitat?

When a potentially significant environmental impact occurs the law requires more detailed analysis of the harms proposed, and then clear public disclosure of those harms - before the Council takes action.

**HOPE advises that this proposal undergo an Initial Study to see if whether a Negative Declaration or an EIR is required before any trees are cut.**

For more information please see HOPE's website for the article we gave the Council in August.

[www.1hope.org/ceqaovr.htm](http://www.1hope.org/ceqaovr.htm)

with all due respect,

David Dilworth, Executive Director, HOPE, Helping Our Peninsula's Environment

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