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**March 22, 2004**

Thom McCue  
Monterey County Planning and Building Inspection Department, Coastal Office  
2620 First Avenue  
Marina, CA 93933

**Subject: Draft Environmental Impact Report titled “Pebble Beach Company’s Del Monte Forest Preservation and Development Plan” (SCH # 2002021130)**

Dear Mr. McCue:

Thank you for forwarding the above-referenced Draft Environmental Impact Report (DEIR) to our office for review. We appreciate the information developed and presented in the DEIR, and the level of complexity and difficulty associated with an evaluation of a project of this magnitude. The Pebble Beach Company’s (PBC) project is one of the largest to be proposed in the Central Coast in recent years, it involves significant coastal resources, and it remains very controversial. As you know, it is important that any Local Coastal Program (LCP) and coastal development permit (CDP) decisions in this matter be well-supported with clear and comprehensive evidence and analysis, and the CEQA process plays a critical role in this regard.

In light of this, we are concerned that some of the fundamental coastal resource issues raised by the PBC project are not framed correctly thus far in the DEIR, and that this significantly compromises the utility of the document for purposes of LCP and coastal development permit decision-making. In particular, we don’t believe that the DEIR accurately frames the environmentally sensitive habitat area (ESHA) issues associated with the project and Measure A, and has mostly overlooked our previous comments in this regard. Because the EIR will be used by the County and the Commission for LCP and CDP decision making, we believe the process is better served by the County circulating a revised DEIR that is significantly changed as described below. Therefore, our comments here are brief, limited primarily to highlighting what we believe to be the significant DEIR problems in need of correction. For example, the DEIR continues to rely on mitigation for impacts as opposed to avoidance of ESHA as required by the Coastal Act. We have also attached our previous comments on PBC’s proposal for development within the forest and its relation to Monterey County LCP requirements (i.e., the PBC Lot Program (predecessor) project and Measure A) and on the protection of the forest’s Monterey pine habitat specifically (i.e., our periodic LCP review draft findings) that remain relevant inasmuch as they provide background information, draft discussion of Monterey pine forest habitat issues, and more detail with respect to the concerns summarized in this letter (see attached correspondence and our excerpted LCP periodic review findings). Please include these attachments within the CEQA record as a portion of our input on the DEIR.

Finally and more generally, we are concerned that the DEIR does not correctly identify the extent of ESHA within the forest and the proposed development areas, in part because it fails to

adequately address the Coastal Act ESHA issues raised by the potential LCP amendments (pursuant to Measure A) upon which the project is contingent. As we have previously communicated, inasmuch as the PBC project is contingent on the LCP amendments of Measure A, these amendments must be submitted to the Commission for review and action under the Coastal Act *before* the PBC project could be affirmatively and finally acted on by the County. Similarly, the project relies in part on CDP amendments that have not yet been applied for by PBC. In the interest of facilitating the public review and the decision-making process, therefore, we recommend that the DEIR be revised to address the comments of this letter and the Commission's previous comments (see attached) and be recirculated for public review, particularly with respect to ESHA issues, and that the County first submit the Measure A LCP amendment request to the Commission (and wait for a final action) before taking any further action on the project .

### **Process**

We recognize that PBC's proposed project and Measure A are entwined. We also recognize that PBC's project would require amendments to existing permits, including the Commission's Spanish Bay CDP. However, the DEIR is inadequate inasmuch as it relies on future Commission certification of Measure A and approval of permit amendments to address and mitigate various LCP inconsistencies and impacts due to the proposed project (see, for example, discussion in DEIR Chapter 3.1). Commission certification of Measure A and Commission and County CDP amendments should not be relied upon in this context,. Rather, these are separate processes where the outcome is both uncertain and critical to whether the proposed project can proceed, and in what form.

As such, we recommend that the County first submit the Measure A LCP amendment request, and wait until after the Commission has acted on it, before further considering or acting on the PBC project. The outcome of the LCP amendment will weigh heavily on whether a project is appropriate and in what form, and this broader planning context should proceed before further project level review. Moreover, if the County intends to use the DEIR to satisfy some of the LCP amendment submittal requirements (see also our November 21, 2000 and March 30, 2001 letters attached in this regard), then the DEIR should include an analysis of the LCP changes proposed as evaluated against the *Coastal Act* (which would be the primary standard of review for Measure A). It should also be modified to address the comments in this submittal.

In addition, we recommend that PBC first pursue the required amendments to the Spanish Bay permits (and related easements), and wait until after the County and the Commission have acted on them, before the County further considers or acts on the PBC project. Like Measure A, the decision rendered on any such amendment applications will necessarily inform whether portions of the proposed project are appropriate and in what form (see also our previous correspondence attached on these required amendments). On this point we note that because the County conditions of approval were incorporated into the Commission's Spanish Bay CDP, any changes to County conditions are also necessarily changes to Commission conditions and thus must go

through the Commission. In addition, the DEIR should be corrected to indicate that such amendments are required, and not that they “may” be required.

### **ESHA and Avoidance**

The DEIR continues to use the interpretation that the LCP’s Del Monte Forest Land Use Plan (LUP) Figure 2 and Appendix A define *all* ESHAs within the forest. We continue to disagree with this methodology, and don’t believe that it is the correct interpretation of how to identify ESHA within the forest under the certified LCP (please see our previous comments attached in this regard). The Del Monte Forest in general, and the proposed development area specifically, are home to a high number of sensitive species and/or significant habitat resources. Much of this habitat is inter-related understory and overstory (like the Monterey pine-Yadon’s piperia association). We do not agree with the DEIR categorization that some of these resources are ESHA and some not based strictly on LUP Figure 2 and Appendix A. There are at least nineteen species of plants in the project area that are considered to be rare or endangered for the purposes of CEQA, and at least seven of these that are state and/or federally listed. Similarly there exists habitat for at least thirteen special-status wildlife species in the project area, and at least four listed species have been documented in the project area. The DEIR clearly shows that severe impacts to these resources would be expected with the proposed project. We cannot agree that only that portion of these species shown on LUP Figure 2 and Appendix A (circa 1984) are ESHA as defined by the LCP and the Coastal Act, and are the only habitats, therefore, to which ESHA protections apply. To take this approach lacks biological common sense. For example, Yadon’s piperia, a federally-listed endangered species found almost exclusively on the Monterey peninsula and in the Del Monte Forest, had not yet even been discovered in 1984, and thus is not represented in the 1984 LUP references. Yet, listed endangered species habitat is, almost by definition, typically considered to be ESHA by the Commission. The fact that Federal and California Endangered Species Act “take” authorization would be required for species that would be displaced by the project but that are not listed in LUP Appendix A (like California red-legged frog) is a good indicator that there is more ESHA present than only that in the 1984 LUP references.

We recommend that the DEIR be modified to assess impacts to LCP and CEQA-recognized rare or endangered species habitat, including all listed species habitat, and all wetlands, particularly where associations of various sensitive species exist, as ESHA. This includes undeveloped areas of indigenous Monterey pine forest (identified by the California Native Plant Society as a List 1B species; see also attached letters, and attached LCP periodic review findings on Monterey pine in this regard). Please note that the LCP defines “rare and/or endangered species” in the Del Monte Forest as “those identified as rare, endangered, and/or threatened by the State Department of Fish and Game, United States Department of Interior Fish and Wildlife Service, the California Native Plant Society and/or pursuant to the 1973 convention on International Trade in Endangered Species of Wild Flora and Fauna” (LCP Section 20.147.020(AA)). This LCP definition is clear, and is an appropriate method for defining which species’ habitats in the forest are considered ESHA.

In addition, the proposed project and the DEIR rely overwhelmingly on mitigation for impacts to ESHA (and for impacts to “non-ESHA” (per the DEIR) sensitive habitat). In fact, the DEIR indicates that *all* project impacts can be mitigated to a less than significant level. This includes, for example, the impact from the project of removing over 27 acres of Yadon’s piperia habitat (or about 20% of the entire Del Monte Forest population and about 12% of the known population). We do not agree with this treatment of rare and/or endangered species habitat impacts, including Yadon’s piperia habitat impacts. The LCP requires habitat avoidance and buffering, not mitigation for habitat loss (again, see attached). Non-resource dependent development within ESHA is not allowed by the LCP, and 100-foot ESHA buffers are required. The DEIR’s impact assessment should be modified so that it is premised on these avoidance and buffering principles. Furthermore, based on the Coastal Act and applicable LCP sections, we consider each of the following to be significant effects within the meaning of CEQA: any non resource-dependent development and/or use in ESHA; any resource-dependent development and/or use in ESHA that would result in a significant disruption of ESHA habitat values; and any development adjacent to ESHA that would result in impacts which would significantly degrade ESHA. For these, and at a minimum, we consider significant effects attributable to non resource-dependent development and/or use in ESHA to be unmitigatable. We recommend that the DEIR be modified to categorize and assess any such impacts according to this methodology.

### **Alternatives**

Based on our current understanding, it appears that the proposed project raises serious Coastal Act and LCP issues in light of the significant resources that would be displaced by it (see also our previous comments attached in this regard). We recommend that an alternative project be evaluated and pursued (in the DEIR and otherwise) that is purely based on resource and constraint identification and avoidance. In other words, constraints should first be mapped (including, ESHA, other resources, steep slopes, etc.), LCP-required buffers should then be applied (including the 100-foot ESHA buffers), and then a project should be shaped based on the non-constraint and non-buffer area, where ESHA areas and buffers specifically are spared from anything but resource-dependent development that won’t significantly disrupt the resources. In this regard, the project may take the shape of using existing developed areas more intensively (such as through the use of underground parking with other uses above, as is proposed in some parts of the project), and concentrating impacts in existing developed areas and where they will have the least impact on resources. We note that such a project would be much more consistent with the project objectives identified in DEIR Chapter 2 than is the proposed project.

### **Other DEIR issues**

We are primarily concerned with the larger issues described above, but have a series of comments on individual portions of the DEIR as follows:

- The Coastal Act definition of ESHA shown on pages 3.3-71 and E-12 is incorrect. The definition in the DEIR implies there are a subset of rare or especially valuable habitats that are considered ESHA, but that is not what the definition actually indicates. The DEIR needs to be

corrected in this regard (see our attached correspondence, particularly the letter dated May 19, 1999 for the correct Coastal Act and LCP definitions for ESHA).

- The DEIR does not appear to explicitly quantify indirect impacts to resources, such as to Monterey pine and Yadon's piperia (see, for example, DEIR pages 3.3-22 and 3.3-33). These indirect resource impacts should be explicitly identified in any DEIR impact assessment and tabular counts. The most conservative DEIR approach would be to analyze indirect impacts as direct impacts if it is not clear whether indirectly impacted resources will continue to provide habitat/resource value due to the project. Please supplement the DEIR in this regard.
- The precise number and current legal status of the underlying PBC properties is not totally clear from the DEIR or otherwise (see also our attached comments, and specifically the October 23, 2000 letter on this point). We recommend that the DEIR be supplemented to include a clear description of the individual properties involved, including any chain of title and other information necessary to determine the number and configuration of legal lots. This information is important for understanding the basis from which project evaluation can proceed.
- The DEIR mapping of the Huckleberry Hill Nature Preserve is from the 1984 LUP, and does not include an updated map that includes the Sawmill Gulch restoration areas added to the Preserve by the Spanish Bay permits (see also our attached comments, and specifically the May 19, 1999 letter). The DEIR should include a clear map of the current boundaries of the Preserve.
- We appreciate the complexity of the water supply and demand issues as they relate to PBC's entitlement. This is clearly a complicated issue area, and we appreciate the information and analysis in the DEIR. That said, it is not clear to us from the DEIR information presented that the Carmel River would not be adversely affected by water use due to the proposed project. It is our understanding that existing river withdrawals have already resulted in significant resource degradation. We believe that additional information is necessary to understand the relation of the project to the withdrawals from the Carmel River and the health of the River as a result. Please supplement the DEIR to provide information and analysis regarding the health of the Carmel River, including an analysis of the effect of current withdrawals on listed and other species habitat there, the optimum River levels necessary to support these species' needs, and the effect of additional withdrawals on Carmel River health due to project-related demand. We would suggest that NOAA Fisheries, United States Fish and Wildlife Service, and California Department of Fish and Game (at a minimum) be consulted in this process.
- A portion of the proposed golf course is located on what was apparently historically the Spyglass Quarry. The DEIR does not provide adequate information on the history of the quarry and subsequent development that has resulted in fill and use as a PBC corporation yard/landfill of sorts. Please supplement the DEIR with a history of this portion of the project area that includes, at a minimum, a description of (including dates associated with) past quarrying activities, all subsequent development (including the apparent fill that has created the level portion of this area), and all permits for any development.

- The DEIR appears to significantly overestimate the amount of development that would be “allowed” in the Del Monte Forest at build out by the LCP. Because of this, the baseline against which the project is compared in this respect is not correct, and the impact assessment is thus skewed in this regard. It is inaccurate to take the acreage of the affected area and apply the maximum allowed zoning density to derive a total of potentially developable units. To do so ignores other policies of the LCP that also come into play (such as ESHA and other constraints, as discussed above), doesn’t account for the number of legally developable lots, and seriously compromises the validity of the comparison of the project’s effects in this regard. The DEIR should be modified to calculate an accurate representation of current build-out development potential by identifying the number of existing legal lots of record in the forest (see comment above), mapping out the environmental constraints for the affected properties (including necessary buffers, see also above comment on alternatives), and then identifying the remaining potential building envelopes (see also our attached comments, and specifically the October 23, 2000 letter on this point). To the extent that such an exercise raises Fifth Amendment “takings” questions, information on the investment-backed expectation for development should be presented in enough detail to allow at least preliminary conclusions to be drawn.
- If “Resource Management Plans” (RMPs) are to be used as the basis for mitigating project impacts, then the DEIR needs to include the completed RMPs to allow assessment of the level of impact mitigation provided. Please supplement the DEIR accordingly.
- We note that preservation of undeveloped resource areas (through legal instruments of some sort) does not necessarily mitigate for resources lost. Rather, such a scheme simply ensures that future development doesn’t inappropriately result in future resource damage. Because resource areas being “preserved” are already “protected” by LCP resource-protective policies, it is not clear to us that preservation can be relied on as a mitigation tool in this respect. Rather, mitigation needs to offset resource damage; for example, by creating new resource areas where none currently exist. DEIR mitigation “value” should be adjusted to reflect this methodology, and any “preservation” mitigation be valued according to the amount of potential resource damage (due to LCP-allowed development, including any “takings” development) that would be eliminated by preservation.

In sum, we continue to believe that the proposed project area comprises a significant coastal resource area that includes an amazing variety and preponderance of interrelated rare and endangered species. Much of the area should be identified and evaluated as ESHA. The project as proposed would displace and otherwise damage these resources, and it raises significant concerns with respect to the resource protection policies of the LCP. We recommend that the DEIR be modified to acknowledge the sensitivity of project area resources as ESHA, that its evaluation of impacts be based on LCP-prescribed avoidance principles, that an alternative project that avoids ESHA be evaluated and pursued, and that, because of the magnitude of underlying ESHA assumptions that should be changed, a revised DEIR be recirculated for

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review. In terms of process, we recommend that Measure A be submitted and acted on, and that the required CDP amendments be applied for and acted on, before the County further considers or acts on the proposed project.

We hope that these comments help to frame the LCP and CDP context for this project and future development within the Del Monte Forest. In the interest of facilitating the decision processes of the County and the Commission to the maximum degree feasible, we would welcome and invite you to engage in more direct consultation with our planning staff with respect to the various biological and ESHA issues raised by the project. Although the project will no doubt remain controversial, it is important that the County and the Commission maximize the extent to which we are working from a common knowledge base, including biologic expertise, concerning the basic facts and science underlying the various resources at issue. We continue to be available to the County and PBC, within the restrictions of our limited staffing, for such consultation.

Sincerely,

Diane Landry  
District Manager

Attachments: Letters dated May 19, 1999, October 28, 1999, October 23, 2000, November 21, 2000, March 30, 2001, and April 3, 2002; Draft Periodic LCP Review Findings for "Protection of Monterey Pine Forest Habitat"

cc: State Clearinghouse