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Attorney for Petitioners

**STATE OF CALIFORNIA SUPERIOR COURT**  
**IN AND FOR THE COUNTY OF MONTEREY**

HELPING OUR PENINSULA'S	)	Case No.: M74015
ENVIRONMENT,	)	PETITION FOR WRIT OF MANDATE
Petitioners,	)	
vs.	)	
SUPERVISORS OF MONTEREY COUNTY,	)	
Respondent	)	
_____	)	
PEBBLE BEACH COMPANY,	)	
DOES 1 THROUGH 99,	)	
Real Parties In Interest	)	
_____	)	

Comes Now Petitioner Helping Our Peninsula’s Environment to allege as follows:

**FIRST CAUSE OF ACTION**

**I**

This action challenges the approval of development rights granted in a Combined Development Permit by the County of Monterey Board of Supervisors to the Pebble Beach Company for the Pebble Beach Lot Program and the process it was based upon **due to**

PETITION FOR WRIT OF MANDATE

1 **violations of the California Environmental Quality Act, Public Resources Code**

2 **§21000 et seq.**

3 Petitioner Helping Our Peninsula's Environment ("HOPE") is a non-profit organization  
4 devoted to protecting Monterey Peninsula's natural land, air, and water ecosystems using science,  
5 education, news alerts, and advocacy. Its trustees, members and staff are residents of and voters  
6 and taxpayers in Monterey County. It has its principal place of business in Carmel, California.  
7 Plaintiffs' trustees, staff and members use and enjoy species habitat for recreational, scientific,  
8 aesthetic, cultural, and commercial purposes. Plaintiffs' members derive, or, but for the  
9 threatened and endangered status of listed species, would derive, recreational, scientific,  
10 aesthetic, and commercial benefits from the existence of listed species through wildlife  
11 observation, study, photography, and recreational and commercial fishing.  
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13 The past, present, and future enjoyment of threatened and endangered species by  
14 members of the plaintiff organizations has been and will continue to be irreparably harmed by  
15 the failure of Monterey County, to comply with their obligations under California's  
16 Environmental Quality Act ("CEQA") (Gov Code 21,000 et seq.) by adequately setting forth the  
17 true environmental impacts of the project before the court. HOPE is bringing this action as a  
18 private attorney general to ensure the laws concerning environmental protection and public  
19 participation are adequately enforced and carried out by Respondent. Petitioners appeared at the  
20 hearing concerning the approval at issue herein and wrote and sent their concerns prior to the  
21 hearing concerning the approval at issue herein, thereby exhausting their administrative  
22 remedies. Petitioner's interests will be irreparably injured if the project, its Environmental Impact  
23 Report (EIR), and Certificates of Compliance at issue herein are allowed to proceed based upon  
24 the illegal approvals contested herein. Petitioner thus has no speedy nor adequate remedy at law.  
25

1 Petitioner is beneficially interested in Respondent's faithful performance of its legal duties as  
2 referenced herein.

3 II

4 Respondent Monterey County Board of Supervisors is the governing body of Monterey  
5 County and as such is capable of suing or being sued. Respondent is sued herein for abusing its  
6 discretion in the approval for a Combined Development Permit given on March 15, 2005, to Real  
7 Party In Interest, and Does I through 99. Respondent abused its discretion when it granted the  
8 approval of a Combined Development Permit consisting of coastal development permits for new  
9 development at 13 locations within the Del Monte Forest including: construction of a new 18-  
10 hole golf course, a new Driving Range of the Spanish Bay resort, and 160 new visitor serving  
11 rooms; relocation of the existing equestrian center; creation of 33 residential lots within five  
12 subdivisions; construction of 60 employee housing units; and the preservation of 492 acres. The  
13 proposed project also includes: amending the existing Spanish Bay use permits (EC - 5202 and  
14 PC - 5405) that would allow relocating the equestrian center to the sawmill borrows site;  
15 approval of coastal development permits for conditional certificates of compliance for three sites  
16 planned for subdivision contested herein because it failed to follow the law and failed to have  
17 substantial evidence to support its decision.  
18

19 III

20 Real Parties In Interest Pebble Beach Company were the applicants for, and recipient of,  
21 the approvals for the "Pebble Beach Company's Del Monte Forest Preservation and Development  
22 Plan" Final Environmental Impact Report (FEIR), the project Combined Development Permit  
23 and certificates of compliance. Real Parties In Interest Does I through 99, it is believed claim  
24 some right, title or interest in the FEIR approval and project approvals contested herein. Upon  
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1 learning of the exact nature of such claimed interest Petitioners will amend this Petition to  
2 correctly identify the exact name and capacity of such fictitiously designated Real Parties in  
3 Interest.

4 IV

5 On or about March 15, 2005, Respondent Monterey County Board of Supervisors  
6 approved a Combined Development Permit for Real Party in Interest. In doing so Respondent  
7 reviewed and approved as legally sufficient a Final Environmental Impact Report pursuant to  
8 Public Resources Code §21000. In fact said FEIR was legally defective in that it was required to  
9 identify all direct, indirect and cumulative potentially significant environmental impacts but did  
10 not. Specifically the FEIR was legally deficient in its discussion concerning the loss of  
11 endangered plants and animals caused by this project, as well as the loss of habitat. The EIR uses  
12 a definition of endangered species' habitat that ignores reality. As a result the EIR fails to discuss  
13 the impacts from bulldozing, logging and other land uses on lands for which there is substantial  
14 evidence in the record that such lands are habitat for rare and endangered plants and animals.  
15

16 Further, the FEIR is legally inadequate in its discussion of the mitigation of the project's  
17 effects on endangered plants and animals.

18 V

19 The FEIR is also legally deficient in its response to significant comments concerning  
20 traffic and noise and endangered species and their habitat.

21 Queing is a measure of traffic congestion used when traffic counts approach gridlock.  
22 The FEIR failed to respond to the comments concerning the utility of using traffic queing as a  
23 measure of traffic congestion. This is so, even though baseline traffic queues extending more  
24 than a mile from the major traffic entrance to this project were identified.  
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1 Even though it was brought to their attention by a world expert in acoustics, the FEIR  
2 failed to recognize short duration noises, "impulse" noises, may have a significant adverse  
3 environmental effect and only recognized noise levels averaged over working hours. Said  
4 impacts included direct physical harm to humans and wildlife from noise generated by the  
5 project's equipment including chainsaws, bulldozers, chippers and other heavy equipment.

6 Monterey County Noise Ordinance 10.60.030 prohibits operating any device producing  
7 a noise level exceeding 85 dBA at 50 feet. Exempted are Aircraft and when more than 2,500 feet  
8 from an occupied dwelling. This project will admittedly cause noise exceeding 85 dBA at 50 feet  
9 closer than 2,500 feet from occupied dwellings. However, the discussion in the FEIR as to the  
10 violation of this known standard is legally deficient in that the FEIR response does not respond  
11 to the substantial evidence presented.  
12

13 Said EIR was legally defective in that it did not include adequate analysis of the offsite golf  
14 course alternative, even though the project itself uses offsite mitigation, the applicant already  
15 uses offsite bussing for golf events, the Applicant already owns a nearby offsite golf course or  
16 could purchase another one to serve its project goal of providing golfing opportunities for the  
17 Applicant's customers.

18 Wherefore Petitioners pray for relief as set out below.

19 SECOND CAUSE OF ACTION

20 VI

21 Petitioner hereby incorporated by reference the allegations set out in Paragraphs I through  
22 V of the First Cause of Action.  
23  
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VII

1  
2 The findings adopted by Respondent are legally deficient under the California  
3 Environmental Quality Act because Respondent failed to make required findings of significant  
4 impact for the certain and likely deaths caused to **each individual** of the populations of **onsite**  
5 Federal Endangered Species Act (FESA) species.

6 The loss or death of every single individual of a protected species must have a Finding of  
7 Significant Impact as required by CEQA Section 15065(a).

8 **Yadon's rein Orchids** (*Piperia yadonii*) ("Orchids") were officially listed as protected by  
9 our Federal Endangered Species Act on August 12, 1998. As the EIR admitted: thousands of  
10 these Orchids will be killed "Project development will result in potential **loss** of 9,265 to 10,751  
11 individual Yadon's piperia plants..." Each death of an individual Orchid is a separate significant  
12 impact according to CEQA Guideline 15065. Even after mitigation, thousands of these rare and  
13 imperiled orchids will be killed.

14 **California Red-Legged Frogs** (*Rana aurora draytonii*) ("Frogs") were officially listed as  
15 a federal threatened species on May 23, 1996, and will likely be killed not merely by the project  
16 but even after mitigation - as the Draft EIR admitted "Project construction could result in direct  
17 mortality to California Red-Legged Frogs (CRLF) a federally listed threatened species..." Each  
18 death of an individual Frog is a separate significant impact.

19 Mitigation Measure BIO-D5-1 admits that at least one frog will die even with the  
20 Mitigation Measures offered because the EIR requires the applicant to obtain Frog killing  
21 authorization from the Federal Fish & Wildlife Service -- "Obtain take authorization from  
22 USFWS." Since the loss of a single CRLF is by definition a significant impact, the significant  
23 impact remains after mitigation.  
24  
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1           Gowen cypress trees (*Cupressus govenia* ssp. *govenia*) were officially listed as a federal  
2 threatened species on September 11, 1998. At least 20 could be killed as the Draft EIR admitted  
3 "Project development could result in potential loss or disturbance of up to 20 Gowen Cypress  
4 trees..." Each death of an individual cypress is a separate significant impact.

5           Monterey County could have made the legally required findings for each of these impacts  
6 and adopted overriding considerations, but that was not done here.

7           CEQA Guideline 15065 requires "A lead agency *shall* find that a project may have a  
8 significant effect on the environment" ... when a project has the potential to ... restrict the range  
9 of an endangered, rare or threatened species..." The range remains restricted even after  
10 mitigation.

11           Respondent failed to make findings of significant impact required by CEQA Guideline  
12 15065 for the certain and likely loss of more than a quarter acre of habitat of the several  
13 populations of species protected under our Federal Endangered Species Act including potentially  
14 150 acres of Frog habitat, some 27 to 150 acres of Orchid habitat and potentially 150 acres of  
15 Gowen Cypress habitat. Each potential loss of a quarter acre of habitat for an endangered species  
16 is a separate significant impact under Guideline Section 15065.

17           The entire 150 acres of project area is potential CRLF habitat area since California Red-  
18 legged frogs (CRLF) have been documented as moving as much as two miles (3.2 km) from  
19 aquatic sites "without regard for topography." All 150 acres of the proposed project area is  
20 within two miles of the identified CRLF habitat.

21           Cypresses - Dozens of Gowen cypresses are within adopted building envelopes at the  
22 Equestrian Center site.

1 The FEIR and the finding adopted by Respondent failed to recognize Coastal Act defined  
2 Environmentally Sensitive Habitat Areas (ESHA) for Frogs, Gowen cypress trees, and Orchids.  
3 The FEIR failed to recognize the rare and declining Monterey Pine forest (*Pinus radiata*) as  
4 ESHA in the face of overwhelming evidence, including the warning that an earlier version of the  
5 proposed project could cause "extinction of the species itself." The FEIR failed to adequately  
6 identify and delineate wetlands, marshes and a vernal pool in the proposed driving range area.  
7 Because of the failure to recognize statutorily defined ESHA, the mitigations failed to require  
8 avoidance for huge areas of endangered species habitat. This problem was compounded when  
9 Respondent's findings failed to acknowledge there would be significant adverse environmental  
10 impacts after mitigation measures were imposed concerning endangered species and their  
11 habitat. The findings are legally inadequate inasmuch as the findings do not acknowledge that  
12 the loss of a single individual of an endangered species or the loss of ¼ acre of habitat is a  
13 significant adverse environmental impact.  
14

15 Wherefore Petitioners pray for relief as follows:

- 16 1. For Alternative and Peremptory Writs of Mandate to compel Respondent to set aside its  
17 March 15, 2005 approvals of the Pebble Beach Lot Program pending proper preparation and  
18 consideration of a legally adequate Environmental Impact Report as required by CEQA, and  
19 unless and until Respondent adopts legally adequate findings under CEQA concerning the  
20 project's impacts upon endangered plants and animals and their habitat.  
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- 22 2. For costs of suit including reasonable attorneys fees pursuant to Code of Civil Procedure  
23 §1021.5.  
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- 25 3. For such other and further relief as the Court deems just and reasonable.



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Dated this 12<sup>th</sup> day of April, 2005

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Alexander T. Henson

VERIFICATION

I, David Dilworth, am Executive Director of the Plaintiff. I have read the foregoing amended complaint and am familiar with the contents thereof, which are true except as to those matters, alleged upon information and belief, and as to those matters, I am informed and believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of April, 2005, at Carmel, California.

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David Dilworth,  
Executive Director, HOPE