

Anthony E. Lombardo
Jeffery R. Gilles
Derinda L. Messenger
James W. Sullivan
Jacqueline M. Zischke
Todd D. Bessire
Steven D. Penrose
E. Soren Diaz
Sheri L. Damon
Virginia A. Hines
Patrick S.M. Cooley
Paul W. Manciel
Anthony W.E. Cresap
Bradley W. Sullivan



Attorneys At Law

318 Cayuga St.
P.O. Box 2119
Salinas, CA 93902-2119
(SALINAS) 831-754-2444
(MONTEREY) 888-757-2444
(FAX) 831-754-2011
(EMAIL) lomgli.com

File No. 00368.011

May 5, 2004

VIA FACSIMILE

The Honorable Mike Reilly
Chair, Coastal Commission
Supervisor, County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887

Re: **Monterey Pine**

Dear Chair Reilly:

At your March hearing in Monterey, biologist Michael Zander gave a presentation regarding Monterey pine trees and provided to you a synopsis of the current status of scientific research on the Monterey pine (a copy of which is enclosed for your review).

In addition to Mr. Zander's presentation, I have enclosed copies of two articles on this subject from the *Carmel Pine Cone*, a well respected local weekly newspaper which further discusses the Monterey pine issue.

Respectfully submitted,

Lombardo & Gilles, PC



Anthony L. Lombardo

ALL:ncs

Enclosures

cc: Mr. Clint Eastwood
Mr. Peter Ueberroth
Mr. William Perocchi

Similar letters sent to:
Mr. Patrick Kruer
Ms. Mary Nichols
Mr. Scott Peters
Mr. Dave Potter
Mr. John Woolley
Ms. Cynthia McClain-Hill
Ms. Toni Iseman

Coastal Commission Presentation

March 18, 2004

Coastal Commission staff recommend designation of the Monterey pine forest habitat in the Del Monte Forest as ESHA on the assumption of increased threats, better scientific understanding of pine forest habitat, and the pine's status as a special and limited species. Commission staff states that *"Science and resource conditions have evolved to the point that existing policies no longer anticipate, and are inadequate to address, the new resource circumstances."* Staff also recommends that the Commission require a comprehensive Monterey pine forest management plan prior to removal of the Resource Constraint overlay on any parcel in the DMF. We believe that the threat to the species and its habitat have been overstated, that the reported changes in the scientific understanding of the species have not been objectively assessed and that existing LCP and Monterey County policies have accomplished a great deal toward preserving and protecting this valuable resource.

Perhaps the most obvious misrepresentation of scientific fact is the assertion that a very large percentage of native pines on the Monterey Peninsula will be killed by pitch canker unless stringent measures are taken soon. Some staff documents submitted to the Commission suggest pine mortalities as high as 85% and use that figure as justification for increasing protection for the pine. In the early days of the disease, that 85% figure was reported as an infection rate--that is, the percentage of trees observed with some symptoms of pitch canker, but not the percentage of trees that would die because of the disease. But a myth developed around that percentage, showing up in documents prepared by certain advocacy groups and in the popular press and painting something of a doomsday scenario for the pine. The facts demonstrate a different scenario.

According to Dr. Tom Gordon, the principal investigator on the UC Davis research team leading the effort to study pitch canker, when pitch canker first took off in the DMF, the highly susceptible trees were hit hard and, indeed, many trees in some areas of the forest died. But, after this initial surge, disease severity has remained relatively unchanged since

1999, based on both forest-wide observations and data from systematic plot studies conducted by these researchers. Over time, the susceptibility to infection has been very patchy and severe pitch canker symptoms have not been found in many areas of the forest. Areas in closest proximity to the coast and highly urbanized areas have been the most severely affected while recent data indicate that disease severity is significantly lower in wildland areas and in more inland locations. A possible explanation for this geographic pattern of infection may be the greater persistence of a fog layer and associated condensation nearer the coast, allowing superficial wounds to remain wet long enough for fungal spores to germinate and gain entry into the host tissue. But again, infection does not mean mortality. The plot studies show a tendency for many trees in a stand to sustain a few infections before any of them become severely diseased. In addition to the natural resistance to infection of between 10% and 15% of the pine stock and generally low levels of infection in most parts of the forest, even some trees that become heavily infected later go into remission. In urban plots established as early as 1992, a percentage of the trees that were severely affected in 1996 were free of disease in 1999. The occurrence of genetic resistance and ability of severely infected trees to grow through the disease suggests that, through natural selection, the relative abundance of resistant trees in native stands will increase over time. While pitch canker is clearly a major pathogen with potential to severely affect Monterey pine, these studies demonstrate that the overall picture is not so dire as has been represented. *Preserving large tracts of native stands to promote natural regeneration of the forest and its ecosystem, perhaps combined with selection and planting of resistant stock in urban areas, offer clear hope for effectively managing this disease.*

Another representation consistently made by Coastal Commission staff in its background documents is that significant new scientific information about Monterey pine and the high sensitivity of this species and its habitat has been developed since certification of the LCP in 1988. Specifically, staff cites to a series of studies conducted by Jones and Stokes Associates in the early and mid 1990's that hypothesize an ecological staircase in the Del Monte Forest based on geomorphic surfaces or marine terraces. Those studies are used to emphasize the need for forest preservation (through ESHA designation) on a terrace by terrace basis. But staff fails to include references to more recent studies and reports that

question the conclusions of the ecological staircase or terrace concept. For example, the County of Monterey, in its review of the Pebble Beach Lot Program proposal, concluded that available scientific information, derived from the published literature, from more intensive field observation, and from discussions with recognized experts on Monterey pine did not support the central points of the marine terrace hypothesis. The County cited genetic principles, the weak correlation of soils with terrace mapping, and the unsupportable ecological differentiation of vegetation between adjacent terraces as reasons for its findings. While it acknowledged some trends in vegetation associated with Monterey pine are clearly exhibited in the Del Monte Forest, it concluded that the fine ecological differentiation described between adjacent terraces was not supported by the data presented.

The County's Final EIR on the earlier PBC Lot Program stated that the marine terrace mapping appeared not to be a useful method for identifying areas of apparent ecological differences that are likely to be important in planning for the conservation of Monterey pine and Monterey pine forest habitat. Rather, the County's EIR concluded that forest habitat subtypes described in the assessment conducted for the Lot Program were better indicators of forest diversity and therefore more important from the perspective of conservation planning.

The County's current DEIR on the Del Monte Forest Plan (authored by Jones and Stokes Associates, by the way) reviews several ecological characterizations of the Monterey pine forest habitat in the DMF, including the Jones & Stokes terrace concept and a forestry and vegetation field sampling program conducted by Zander Associates in 2001. The DEIR notes that boundaries of natural communities are defined on the basis of human constructs for the purpose of distinguishing different parts of the landscape; there are different approaches to defining and mapping Monterey pine forest. While Zander Associates found trends in the distribution of forest subtypes that appear to follow an elevation and moisture gradient, we concluded that forest subtypes do not follow mapable boundaries and that several different subtypes can occur in the same general area where there are no obvious distinctions in the forest structure or physical characteristics such as soils or geomorphic

surface mapping. Jones and Stokes earlier reports used geomorphic surfaces as a composite unit, a kind of short-hand for elevation, moisture, landscape position and soil type variation but Jones and Stokes current assessment prepared for the DEIR concurs that "Monterey pine forest and its subtypes do not have definite boundaries."

Finally, a recent "common garden" study conducted by UC Davis researchers to determine if distinctive groupings or ecotypes occur in the Monterey population of Monterey pine found that the geomorphic surface on which parent trees occurred did not have a significant influence on observed variation in seedling height, needle length, diameter at breast height, stem length and a range of other variables measured.

The results of this study document variation within the Monterey population of Monterey pine, but do not show a significant association between this variation and geomorphic surfaces.

In the face of this new scientific information, coupled with substantial criticism by many prominent practitioners in the scientific community, the California Native Plant Society not only withdrew its petition to list Monterey pine as a threatened species, but, to date, has not resubmitted the petition. In March 2002, the Monterey Bay Chapter of CNPS issued a "Monterey Pine Update" stating that the chapter had delayed resubmitting the petition for a number of reasons. Among the reasons cited were a potential reduction in impacts on the pine from Pebble Beach Company's DMF/PDP, increased efforts to set aside other important areas of Monterey pine¹, and information from ongoing studies that provides a better understanding of the pine's recovery from and resistance to pitch canker. CNPS acknowledged that these and other factors indicate that Monterey pine is receiving more attention by decision-makers and therefore may be less threatened by disease and development.

¹ Several properties supporting native stands of Monterey pine, including Hatton Canyon and Palo Corona Ranch have been dedicated as permanent open space since the CNPS petition was filed.

There is general consensus that the priority areas for conservation in the Del Monte Forest are the remaining unfragmented, larger-sized native Monterey pine stands with relatively undisturbed understory along with adequate area supporting representative populations of special-status-species and unique habitats. Sufficient area to allow natural ecological processes is important for long-term genetic and habitat sustainability of Monterey pine and its associated species.

The preservation component of the DMF/PDP will set aside nearly 500 acres of areas that meet these qualifications and provide assurances for the long term sustainability of the Monterey pine forest and its associated species and habitats in the Del Monte Forest. The DMF/PDP limits and consolidates its development components to existing disturbed areas or already fragmented forest areas and preserves large, intact, functioning ecosystems. It conserves diverse areas of the forest and conserves species or groups of species of special interest. It establishes habitat linkages and connectivity between and among remaining undeveloped areas of the forest. Finally, the DMF/PDP is accompanied by a commitment to manage the preserve and other open space areas of the forest in an ecologically sound manner.

We believe that the need to designate the entire Monterey pine forest habitat as ESHA in order to save it from imminent threat is not only unsubstantiated, but it would be counterproductive to the public mandate, through Measure A, for active preservation and management of the forest.



The Carmel Pine Cone

YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

Scientists: 85 percent pitch canker mortality rate 'isn't true and never was'

By PAUL MILLER

Published: March 12, 2004

A KEY assertion of the California Coastal Commission staff's campaign to stop the Pebble Beach Company from building a new golf course — that drastic steps are needed to protect the Monterey pine from extinction because most of the trees will be killed by the pine pitch canker epidemic — is not supported by scientific research, according to the state's foremost experts on the disease.

Instead, the latest research shows that more than two-thirds of the trees will fend off the fungal infection on their own, ensuring survival of the prolific species.

However, in documents submitted to commissioners last month in San Diego, the coastal commission staff continued to assert that a very large percentage of native pines on the Monterey Peninsula will be killed by the disease that first appeared locally in 1992.

"Most estimates describe a mortality rate [from pitch canker] of up to 85 percent," said a report written to support a permit for a new wing at Community Hospital of the Monterey Peninsula — but which was clearly aimed at the P.B. Co. golf course proposal. "The survival of the species ... requires that each population [of native Monterey pine], and especially the Monterey Peninsula population, be protected," the coastal commission report continued. Similar language appears in another report recommending changes to the Monterey County General Plan, to be considered by the commission next Thursday.

The P.B. Co. wants to clear about 100 acres of Monterey pine forest to build a new golf course, while putting 492 acres of the forest into a preserve — a tradeoff which was approved by county voters in 2000 but which the coastal commission staff is apparently trying to stop in its tracks.

Tom Gordon, a plant pathologist at U.C. Davis who has studied pitch canker in Monterey and Santa Cruz counties for more than a decade, said the commission had its facts wrong.

"The 85 percent mortality figure is not true and never was true," he told The Pine Cone, adding that he was surprised the myth has "persisted this long."

It apparently started, Gordon said, after his early studies of pitch canker among planted Monterey pines

in Santa Cruz County found that "up to 85 percent of trees showed signs of infection — which meant at least one branch was affected." Later, the probable infection rate was put even higher — at 98 percent, Gordon said.

Initially, pitch canker was seen as invariably fatal, and Gordon's alarming infection rate estimates were hyped far beyond their true significance.

In 1998, for example, Carmel City Forester Gary Kelly told the Monterey County Board of Supervisors that "only 15 percent" of the city's pines would survive the pitch canker epidemic.

"But we never equated the infection rate with mortality," said Gordon, whose papers from the 1990s are cited in coastal commission footnotes, purportedly underpinning the 85 percent prediction of pine deaths from pitch canker. Later research has put the mortality rate at "no more than 30 percent — and that's at the high end," Gordon said.

Another expert on the Monterey pine, Stephen Staub, head of the statewide pitch canker task force, said the 85 percent figure was "a bad extrapolation from an early result 10 years ago." He said even the 30 percent mortality figure cited by Gordon was probably too high.

"The disease is creeping out through the native stands, and it has increased its range," Staub said. "But the severity and the mortality are not anywhere close to what we thought they would be." Many trees infected more than a decade ago are still thriving, while young trees are showing increasing signs of immunity, he said.

"The mortality from storms is higher than anything related to pitch canker," Staub concluded.

In a series of interviews with other experts on pitch canker and the Monterey pine, none would attest to the figures used by the coastal commission.

"The situation isn't as dire as was initially thought," said Deborah L. Rogers, a research geneticist with U.C. Davis. "There is resistance in the forest that we didn't see initially" — a happy conclusion that resulted from the forest's genetic diversity, she said.

Her 2002 paper, "In Situ Genetic Conservation of the Monterey Pine," called for maximum protection of native pine in Monterey County and outlined 18 steps for preservation of the remaining forest. "The healthier the forest is, and the more diverse it is, the better it will be able to withstand pitch canker, and future pitch cankers," she said.

Local pine activist Joyce Stevens also said the 85 percent figure wasn't valid.

"It definitely is not what has been observed on the ground," she said, making a statement that is probably obvious to anyone who lives on the Monterey Peninsula, where vibrant pine forests remain a ubiquitous backdrop more than 12 years after the pitch canker alarm was sounded. "People are encouraged by what's going on. I'm not sure the 85 percent was valid to begin with," Stevens said.

Dead, except they're alive

Pacific Grove City Forester Frank Ono said a very large percentage of that city's pines would be dead from pitch canker if not for the acquired resistance many older trees are showing and the apparent immunity of numerous young trees. "With the resistance we're seeing, [the death rate] is not even close

to 85 percent," Ono said.

And Carmel's current city forester, Mike Branson, said some of the city's infected older trees have "put on more growth than they've lost to pitch canker." But, despite that improving trend, quite a few younger and middle-aged trees have been lost to pitch canker, a loss he called "tragic for the city's forest."

Gordon noted there has been a substantial change in the pitch canker outlook since 1999, when it was first noticed that some trees long infected had gone into remission.

"The disease severity seems to have leveled off," Gordon said. "We saw pretty dramatic increases from 1996 to 2000, but it has apparently plateaued, especially in the last two years."

He said the pattern seems to be: A stand of trees is hit pretty hard when the pitch canker pathogen, a fungus called *Fusarium circinatum*, is introduced, and the most susceptible trees quickly succumb. But, as is usually the case with the process of natural selection, others are lightly impacted or not at all, and these come to dominate the forest, Gordon said.

That seems to be happening on Huckleberry Hill in Del Monte Forest, where a 160-acre pine forest was destroyed in a May 1987 fire.

The thick forest that has grown over the last decade, "looks like someone planted a whole bunch of seeds, but it's all natural regeneration," Ono said. "Monterey pines are prolific, and quite a few of those new trees are resistant to pitch canker."

"Rates of infection, especially over the last three years, have declined significantly," Staub said.

Petition to call pine threatened

The 85 percent mortality figure was headlined in a 1999 petition from the California Native Plant Society to list the Monterey pine as a threatened species. That petition was withdrawn in the face of withering criticism from scientists who pointed out that the tree is among the most common in the world, having been extensively planted in Argentina, New Zealand and other countries.

"There is hardly any chance that the Monterey pine will become extinct — in fact I don't think it would be possible to eradicate it if somebody wanted to," declared Andrew Storer, Ph.D., an assistant professor at the University of California at Berkeley, in January 2000, when the pitch canker epidemic was raging.

At that time, David Wood, Ph.D., a U.C. Berkeley professor of entomology who specializes in tree diseases spread by bark beetles, said, "The Monterey pine isn't in danger of going extinct in California or anywhere else."

There are more than 2.75 million Monterey pines in Monterey County and about 4 billion worldwide, experts say.

The coastal commission will discuss measures to protect the Monterey pine at its meeting Thursday in Monterey. According to the documents produced by their staff at past meetings, commissioners' discussions will largely be based on pitch canker research from the 1990s.

"I think it would be a mistake to rely on information that is that old," Gordon said.

The California Coastal Commission will meet at The Hyatt Regency Monterey on Old Golf Course Road March 17-19. Monterey County issues, including possible changes to the general plan, are on Thursday's agenda.



The Carmel Pine Cone

YOUR SOURCE FOR LOCAL NEWS, ARTS AND OPINION SINCE 1915

Editorial: Not just a mistake

Published: March 19, 2004

THE COASTAL commission staff's grossly exaggerated prediction that almost all Monterey pines would die from pitch canker wasn't just an innocent mistake.

Rather, the phony prognostication, which was denounced by scientists as soon as they were asked about it, was part of a campaign launched by a few bureaucrats in Santa Cruz and San Francisco to stop the Pebble Beach Company from putting in a new golf course — a campaign they knew stood a much greater chance of success if they could find a crisis that threatened the existence of the Monterey pine. And this "crisis" had to have arisen since 1988.

That's because 16 years ago most of the land where the P.B. Co. wants to build its new golf course, along with hundreds of acres promised by the company for a Monterey pine preserve, was zoned by the coastal commission for homes — almost 1,000 of them. At the time, the zoning was seen as a major victory for the environment because it was much more restrictive than the county's pre-Coastal Act land use designations in Pebble Beach.

Thus, the 1988 zoning triumphantly became the law of the land — not only for the P.B. Co., but for Monterey County and the coastal commission. They are all obligated to abide by it.

But the coastal commission staff has long ago forgotten the pride they once took in the adoption of the Del Monte Forest LCP. They now see it, essentially, as a gift to developers. Even the P.B. Co.'s greatly reduced ambitions — a golf course, 150 new hotel rooms, just 38 homes and hundreds of acres of forest preserve — gain them no credit. If the LCP allows even a small amount of new development it must be changed, the coastal commission staff evidently believes. But how to do it?

That's where pitch canker, unknown in Monterey County in 1988, comes in. The LCP is no longer acceptable, the coastal commission staff claims, not because their opinions about development in Pebble Beach have changed, but because *circumstances* are radically different. A deadly disease now threatens the forest, they say. The zoning adopted in 1988, if implemented on the ground, might cause the extinction of the Monterey pine, coastal commissioners were told last month in San Diego.

Otherwise, coastal commission staff members obviously fear, their rush to have nearly all remaining native pine forest declared "Environmentally Sensitive Habitat Area" — putting it off limits to development — will come to a grinding halt. "If the forest wasn't ESHA in 1988, why is it ESHA now?" is the question that will stop it. And without a dire pitch canker threat the answer will be: "It wasn't, and it isn't."

That's why the world was told the tall, tall tale that 85 percent of Monterey pines might succumb to pitch canker.

DEPARTMENT OF TRANSPORTATION

50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3111
FAX (805) 549-3329
TDD (805) 549-3259
<http://www.dot.gov/dist05>

RECEIVED

SEP 09 2004

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



September 3, 2004

Mike Reilly, Chairman
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

MONTEREY COUNTY LOCAL COASTAL PROGRAM PERIODIC REVIEW

Dear Mr. Reilly:

Thank you for the opportunity to consider Coastal Commission staff's response to our comments on the periodic review of the Monterey County's Local Coastal Program (LCP). We understand that we must direct our energy to working with staff of Monterey County as the agency responsible for revising the LCP as part of the General Plan Update.

Our organizations stand by our originally submitted comments. However, given the apparent disagreement on a number of key transportation issues with Coastal Commission staff opinion, the Transportation Agency for Monterey County (TAMC) and the California Department of Transportation (Department) are resolute in stating our objections for the record.

Transportation Planning for the Moss Landing Corridor

The LCP needs to allow a sound transportation planning process to be undertaken that would consider the full range of reasonable alternatives to address the growing needs for congestion relief and safety improvements for this corridor. As certified by the Coastal Commission in 1988, the existing LCP acknowledges the potential for widening to four lanes between Castroville and the Santa Cruz County line. The rural and urban characteristics of the geographic area and growth trends relative to the functional utility of the highway through this corridor are central to this discussion.

There should not be an attempt to prematurely remove alternatives from consideration in revising the LCP or require a higher burden to "exhaust alternatives" than would be conducted under a comprehensive California Environmental Quality Act (CEQA) / National Environmental Policy Act (NEPA) mandated decision-making process. Commission staff should expect that this established solid process would evaluate the range of alternatives to meet the transportation need. Our organizations would need to understand that "exhausting alternatives" refers to a proper analysis and not to an expectation that the list of alternatives identified by Commission staff be implemented first. Staff response indicates that regardless of proven effectiveness, other modes might need to be provided because they would be desirable and supported by the Coastal Act.

Appropriate Level of Detail for the LCP

As a guiding policy document, we disagree with the level of detail that Commission staff believes is necessary to ensure conformance with the Coastal Act. Regardless of an individual project's stage of development, "memorializing" design-level details in the LCP is inappropriate. The citation of 8-foot shoulders at the Salinas Road interchange is a good example. While the standard for 8-foot paved shoulders is correct for a conventional 2-lane highway, the configuration of the Salinas Road interchange must account for the transition from the existing 4-lane facility to the 2-lane facility south of the future interchange. The current design for this project calls for 10-foot paved shoulders on the mainline to a point south of the ramps where it fully conforms to the 2-lane facility. This type of minor discrepancy should not be stipulated such that a future LCP amendment would be required to resolve the item.

Big Sur Coast

Department staff appreciates the support for streamlined review of Coastal Development Permits. However, we object to the suggestion that detailed design guidelines should be prepared beyond the *Guidelines for Corridor Aesthetics* that were recently completed as part of the Big Sur Coast Highway Management Plan. Further details would be developed for individual projects that are sensitive to their context and consistent with the existing guidelines.

With regard to stream crossings and future Public Works Plan development, some suggestions for project features are still problematic. While we support the concept of the California Coastal Trail, it is inappropriate to suggest its implementation within State right-of-way as part of the County's regulatory program. There are numerous unresolved issues at a statewide level about locating a future trail in the right-of-way. Major unresolved elements include responsibilities for cost sharing, design and maintenance. Suggesting for example, that fill is widened to accommodate a pedestrian pathway without this issue resolved is inappropriate.

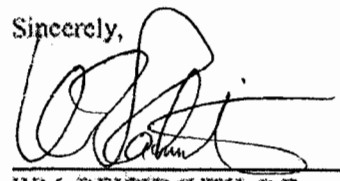
If you have any questions, please contact Aileen Loe at (805) 549-3103 or email at Aileen_Loe@dot.ca.gov or Andy Cook at (831) 775-4411 or andy@tamcmonterey.org.

Sincerely,


R. GREGG ALBRIGHT
District Director

California Department of Transportation

Sincerely,


WM. REICHMUTH, P.E.
Executive Director

Transportation Agency of Monterey County

c: Honorable Lou Calcagno
District One Supervisor
County of Monterey Board of Supervisors
10681 Mc Cougall Street
Castroville, CA 95012

Jared Ikeda
Monterey County Redevelopment Agency
29 Bishop Street, Suite 203
Pajaro, CA 95076

Nicolas Papadakis
Association of Monterey Bay Area Governments (AMBAG)
445 Preservation Road, Suite G
P.O. Box 809
Marina, CA 93933

Douglas Quetin
Monterey Bay Unified Air Pollution Control District
24580 Silver Cloud Court
Monterey, CA 93940

Kathy Paul
TAMC County Counsel
230 Church Street, Building 1
Salinas, CA 93901

✓

LAW OFFICES OF
**HORAN, LLOYD, KARACHALE, DYER, SCHWARTZ,
LAW & COOK
INCORPORATED**

P.O. BOX 3350, MONTEREY, CALIFORNIA 93942-3350

LAURENCE P. HORAN
FRANCIS P. LLOYD
ANTHONY T. KARACHALE
STEPHEN W. DYER
GARY D. SCHWARTZ
MARK A. BLUM
MARK A. O'CONNOR
ROBERT E. ARNOLD III
ELIZABETH C. GIANOLA
AENGUS L. JEFFERS
MOLLY STEELE
DEBORAH S. HOWARD

JAMES J. COOK
DENNIS M. LAW

September 3, 2004

RECEIVED

SEP 07 2004

TELEPHONE: (831) 373-4131
FROM SALINAS: (831) 757-4131
FACSIMILE: (831) 373-8302
aengusj@horanlegal.com

OUR FILE NO. 17.02

VIA FACSIMILE & REGULAR MAIL

ATTN: Rick Hyman
Central Coast District Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

RECEIVED
CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA

Re: Comment on the Monterey County Local Coastal Plan Review

Dear Chairperson Reilly and Members of the Commission:

This letter submits comments on the California Coastal Commission Staff's memorandum, dated August 19, 2004, to the Commissioners and interested persons regarding "Further Comments and Responses to the Periodic Review of the Monterey County Local Coastal Program" ("Memo").

Ocean-based Viewshed Regulation:

The Memo notes that "[s]everal people disagreed with the recommendation to consider views from the ocean in coastal permitting decisions." (See Memo, pages 26 to 28). The record should properly reflect that six individuals testified at the March 2004 Commission Meeting against the imposition of ocean-based viewshed regulations and that there was unanimous opposition to these regulations at the well attended March 2004 Big Sur town hall meeting.

The continued pursuit of these regulations expresses a high degree of indifference to the sacrifices of the Big Sur community to maintain the rural and rustic character of this area for the benefit of the public. The cornerstone of the Big Sur LUP is the Critical Viewshed Prohibition which prevents any amount of new development visible from Highway One and public beaches. The Critical Viewshed Prohibition is one of the strictest land use regulations in the nation. It was adopted by the Big Sur community in acknowledgment that strict protection of this viewshed was warranted because of the great number of visitors who experience Big Sur from the perspective of Highway One.

The proposed ocean-based viewshed policy imposes a significant and difficult to administer layer of regulation which will yield negligible value to the public at large, including boaters. The

Rick Hyman
September 3, 2004
Page 2

only documented private support which Commission Staff has presented are two verbatim letters from the Fairwind Yacht Club (Marina del Rey) and OCSC (San Francisco). If anything, the content of these form letters (dated simultaneously) demonstrates the need for the Coastal Commission to foster bilateral discussions between the parties for and against these regulations before making a decision on these policies.

Both letters refer to a debate being raised over a development along the Big Sur Coast ("There is substantial evidence that the Big Sur development will adversely impact on boaters' views from the sea looking toward the shoreline."). (See Memo, pages 26 to 28). I am unaware of any development fueling this debate. Executive Director Peter Douglas's memo of May 3, 2004 regarding Protecting Views from the Ocean under the Coastal Act cites several projects which brought up the issue of ocean-based viewsheds but no Big Sur or Monterey County development projects are mentioned. From my perspective the source of this debate is Commission Staff's sudden desire to impose these regulations without first initiating public discussion.

These letters also refer to the concern that Big Sur's pristine beauty is vulnerable to "the blight of unrestrained development". I would recommend that anyone who fears for Big Sur's pristine beauty review the Big Sur LUP which already puts a premium on viewshed protection to avoid any risk of blight.

Environmentally Sensitive Habitat Areas:

The Memo frames public concern about proposed ESHA regulations in terms of the impact to Big Sur if central maritime chaparral is classified as ESHA. However, comments personally communicated to Coastal Commission Staff also addressed concerns about proposed policies to regulate as ESHA lands which do not contain any form of ESHA. For example, SH-28.4 proposes ESHA regulation on "[v]acant or developed parcels that are partially or devoid of ESHA, or so degraded as to not constitute ESHA, located within the larger ESHA habitat area, and that have significant ESHA restoration potential."

This policy is so vague that it provides no direction to project planners and decisionmakers as to what parcels should be subject to ESHA regulation. Given the intention of project planners and decisionmakers to avoid any action which could be construed in conflict with the Big Sur LUP, SH-28.4 would effectively make all land in Big Sur subject to ESHA regulation.

Moreover, the imposition of ESHA regulations on lands which do not constitute ESHA is a vast departure from the current regulatory paradigm of protecting existing resources as opposed to existing potential resources.

If there are deficiencies in the protection of ESHA in Monterey County these concerns should be publicly discussed so the knowledge base of an entire community can be utilized in the

Rick Hyman
September 3, 2004
Page 3

development of a prudent solution. Consistent with Commission Staff's recommendation to conduct a forum to assess the sensitive nature of maritime chaparral, I recommend that the proposed changes to the general regulation of ESHA also be opened for discussion.

California Coastal Trail:

I support the comments of CalTrans regarding opposition to the project specific proposed LCP policies for implementation of the California Coastal Trail. It would be imprudent to adopt affirmative policies in the LCP promoting a California Coastal Trail before decisionmakers and stakeholders have an opportunity to evaluate how the alignment and use of such a trail would impact other policies contained in the Monterey County LCP (for example, protection of the Critical Viewshed from development and maintaining Highway One's operation capacity). Naturally, this evaluation requires identification of a trail alignment.

Coast Highway Management Plan:

I support the comments of CalTrans that Part C of proposed LU 13.1 should reference only applications which involve the Highway One right of way because the CHMP is not a regulatory document.

The CHMP is a collaborative document drafted by stakeholders, including representatives of local communities, non-governmental organizations and government agencies who share interests within the Big Sur Highway One corridor. The need for such a document was recognized during the 1982 and 1998 el nino storms which brought numerous landslides and related highway closures. During these time critical emergencies there emerged a need to develop a management plan to coordinate the actions of stakeholders consistent with every parties' own rules, regulations and interests. From the beginning, it was agreed among CHMP participants that the CHMP would not be regulatory document. The following is a carefully crafted official description of the CHMP:

The CHMP is not a regulatory document, nor intended for use by regulatory agencies for regulatory purposes. The FHWA provided clarification about the nature of CMPs when the San Luis Obispo Council of Governments was developing a plan to support a nomination of Highway 1 south of the Monterey County line. There is no intent, either implied or explicit, to change existing lines of authority or the jurisdiction or responsibility of any entity or organization over land use decisions or activities conducted on private or public property. The certified Local Coastal Programs for Monterey and San Luis Obispo Counties provide the standard for review of development actions where authority has been delegated under the California Coastal Act. (See CHMP, Corridor Management Plan, page 16).

To go ahead and require that private projects be reviewed for consistency with the CHMP

Rick Hyman
September 3, 2004
Page 4

would be contrary to and threaten the future of this collaborative effort. Any new policies related to private development adjacent to Highway One must be reviewed on their individual merits and not as a function of the omnibus CHMP.

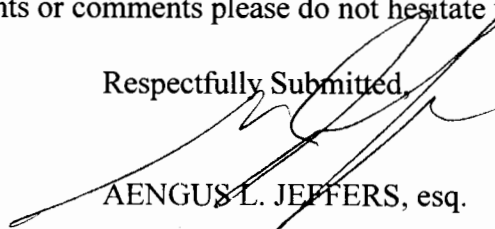
Castroville Railway Station:

The Transportation Agency of Monterey County's ("TAMC") comments regarding proposed LU-14.5 (Allow rail improvements with mitigations) require further consideration by the Coastal Commission. Both TAMC's comments and those of Commission Staff address a potential future decision regarding the location of a railway station to serve the City of Castroville. At issue is whether it is best to (1) locate the railway station in the Coastal Zone on agricultural lands in order to increase the railway line's economic viability, efficiency and walkability by Castroville residents and employees or (2) locate the railway stations beyond the Coastal Zone even though this location would require greater land disturbance, reduce the railway's economic viability, efficiency and pedestrian accessibility.

In the event that TAMC pursues a railway station in the Coastal Zone, the balancing of coastal priorities involved in this project deserves to be reviewed as an independent project. Consistent with TAMC's comments, it would be imprudent to bias either of these options as part of the broad review of the Monterey County LCP. Moreover, as any proposal to build a railway station in the Coastal Zone will require approval from the Coastal Commissioners there is no harm postponing a decision on this issue when and if TAMC decides to pursue a railway station in the Coastal Zone.

Should you have any comments or comments please do not hesitate to contact me.

Respectfully Submitted,



AENGUS L. JEFFERS, esq.

ALJ:mb