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October 28, 1999

William L. Phillips, Director
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P.O. Box 1208
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Subject: *Pebble Beach Lot Program*

Dear Bill:

We appreciate your thoughtful letter of June 3, 1999, responding to various Local Coastal Program (LCP) issues raised by the Pebble Beach Company's application for the subject "Lot Program." Specifically, our reading of your response is that we have reached agreement on how to resolve several issues raised in our earlier correspondence. However, there remain at least four important topics where we have not reached closure: 1) the definition of environmentally sensitive habitat area (ESHA); 2) impact avoidance, rather than mitigation, as the appropriate response to development proposed in an ESHA; 3) adoption of a protocol for development projects that would impact native Monterey pine forest; and, 4) the need to delineate wetlands according to State and Federal standards, prior to the decision on the application. The purpose of this letter is to emphasize the Commission's continued focus on the need to rigorously protect all ESHAs, and to reiterate the recommendations in our May 19, 1999 letter.

Definition of ESHA. We cannot agree that the Appendix A list of ESHAs in the Del Monte Forest Land Use (LUP) can be relied upon as the sole criteria for whether or not an ESHA exists on a property where development is proposed. In fact, as we detailed in our May 19 letter, the LCP requires resources on the ground to dictate the presence or absence of ESHA; if biological analysis indicates that an area in which plant or animal life or their habitats are "rare or especially valuable" today, those habitats and species must be treated as ESHAs today. This ESHA determination is critical because it tells the County (or, upon appeal, the Coastal Commission) whether a development is (or is not) subject to the LCP policies that are designed to protect ESHAs.

We acknowledge the history of Land Use Plan (LUP) Appendix A as an effort to produce a list of ESHAs that could be relied upon for making land use decisions. However, circumstances have changed since the appendix was developed in the early 1980's. Obviously such mapping approaches can have utility only if they are frequently updated. In this case, changes since the Del Monte Forest Area LUP was certified include the listing of additional species' habitat, and a better understanding of forest resources. Again, the LCP requires that the ESHA protection policies must be applied to all environmentally sensitive habitat areas - whether explicitly listed in the LCP or not. The facts on the ground have priority over dated inventories.

Avoidance of ESHAs, rather than mitigation. We recognize that the County has considered impacts to non-LUP listed species within the context of CEQA. However, CEQA mitigation and LCP/Coastal Act avoidance requirements are not the same thing. The Coastal Act and LCP do not allow for mitigated "take." Rather, development must avoid ESHA unless it is both resource

dependent and does not significantly disrupt habitat values. We understand that these LCP requirements create difficulties with respect to the Lot Program (including Refined Alternative 2). For example, based on what we know to date, it appears that the proposed golf course and many (if not all) of the proposed subdivisions, are especially constrained by the presence of substantial areas of Yadon's piperia habitat. In any case, we believe the only LCP-consistent course is to pursue a strategy that begins with avoidance of impacts rather than mitigation of impacts.

Measures to protect Monterey Pine forest. We agree that the cornerstone of any effort to preserve native forest habitat is to set aside extensive tracts of intact natural forest and provide for active management that replicates the effects of natural processes. However, as noted in our correspondence of May 19, 1999, such habitat conservation measures need to be supplemented with genetic preservation measures. Otherwise, the saving of habitat could potentially become meaningless.

Therefore, as recommended in our May 19th letter, different areas of Monterey pine forest need to be distinguished according to their varying degrees of biologic importance and sensitivity. In particular, the importance of those large, intact tracts which lend themselves to active management and represent major reserves of genetic diversity, needs to be recognized and formally identified. The Del Monte Forest LUP already identifies two broad forest habitat areas as ESHAs: the Huckleberry Hill Natural Habitat Area, and the original range of the Monterey cypress. Accordingly, based on new information and better ecological insights, we would expect that additional ESHAs would be designated for the most sensitive portions of Monterey pine forest. Once identified, recognition of these areas as ESHAs, along with appropriate long term management policies, should be confirmed through the LCP amendment process.

There may also be smaller, more fragmented stands of native pine which qualify as ESHA. The sensitivity of these smaller Monterey Pine habitats should be determined on a case-by-case basis through the completion of biological/botanical reports as development is proposed. Examples of such smaller stands which might be identified as ESHA include naturally-occurring groves: that function as habitat for rare or endemic plant or animal species; that have special value for wildlife (e.g., due to the presence of snags suitable for cavity-dwelling species, or occurrence with Coast live oak, or native shrub understory); or that lend themselves to active management, including prescribed burning. Smaller tracts that so qualify as ESHA must likewise be avoided and buffered consistent with the LCP's ESHA protection policies.

A companion effort to protect the Monterey pine genetic resource should also be undertaken in those projects that impact Monterey pine not determined to be ESHA (as described above). This effort should reflect current understandings of Monterey pine forest biology and the pine pitch canker disease epidemic. The County should apply a site-specific avoidance and mitigation strategy as you have already begun to do for other sites in Del Monte Forest and the Carmel area containing Monterey pine.

We are encouraging the formal adoption of such a strategy, including a consistent set of tree removal criteria, by each City and County having native stands of Monterey pine forest. This

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standardized protocol could be written into the County's Forest Maintenance Standards and Forest Management Plan requirements. Although the details are still evolving, the following general measures summarize what we believe at this time to be an appropriate protocol. These steps would apply for any new development that would require removal of non-ESHA native pines within the indigenous range of the Monterey pine forest:

1. Each affected tree would be identified and evaluated for possible resistance or tolerance to pitch canker, by a qualified licensed arborist or Registered Professional Forester; within infected groves, only a relatively small number of trees are expected to so qualify.
2. Based on this evaluation, the project would be modified as necessary (including consideration of feasible project alternatives) to avoid impacting those trees that are healthy and/or disease tolerant specimens.
3. Where such avoidance is infeasible, the lot-specific Forest Management Plan (already required by the LCP) would identify appropriate mitigation measures to insure that the genetic characteristics of all resistant and disease tolerant trees flagged for removal are perpetuated (all healthy and disease tolerant trees would be so treated unless through inoculum testing they were demonstrated to be susceptible to pitch canker). Such measures may include transplanting resistant young trees, salvage of cones/seeds/tip cuttings from other resistant trees, support for genetic conservatorship programs, legal preservation for retained on-site and/or off-site habitat, and care and maintenance of transplanted or regenerated resistant stock.
4. Removed trees would be subject to handling and disposal requirements that would not exacerbate the spread of pine pitch canker disease.
5. Replacement trees (LCP-required) should be of transplanted natural stock, from within the original Monterey pine range (possibly limited to the particular lot or adjacent lots) and showing no evidence of pitch canker infection. Disease resistant nursery stock could be used if no suitable transplants are available.

Wetland delineation standards. We are encouraged that County staff recognizes the need to perform wetland delineation prior to consideration by decision makers. And, we especially applaud the recognition of the need to develop more specific criteria to refine the definition of wetlands in the Del Monte Forest area.

We note that Coastal Act and LCP wetland definitions are quite broad. Further detail is found in Section 13577(b)(1) of the Commission's regulations. Namely, that "[a] wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...." We interpret this to mean that if the site is wet enough long enough to support a preponderance of wetland plants, or to result in the formation of hydric soils, it is a wetland. Although hydrology is obviously important, soils or hydrophytes are sufficient indicators. In general, we rely on the federal procedures as contained in the Corps of Engineers 1987 Wetland Delineation Manual to make the determinations regarding soils and wetland vegetation. However, we note that we will consider all relevant data that are available to delineate wetlands.

Accordingly, we are concerned about the County's reliance on Federal wetland standards, without mention of State standards, for the Lot Program wetland delineations. According to the California Department of Fish and Game (CDFG), wetlands can be delineated in terms of standing water, hydric soils, or the presence of obligate and facultative vegetation. As described above and based on this CDFG methodology, only one of the three criteria is necessary to qualify an area as a wetland. As such, the lack of one or more of these factors does not rule out a particular feature being protected as a wetland; the strict application of the Federal rules alone may have this undesirable result.

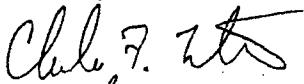
Therefore, we recommend that the County require that the delineations be done in a manner that reflects both Federal and State standards. And, these delineations need to be completed prior to any decision on a project's design, layout, or configuration that could affect the wetland.

Contrary to the indication in your letter, the most recent draft Lot Program wetland mapping that we have seen to date would appear to require more than "minor changes to project design" in order to avoid and buffer wetland resources consistent with the LCP. In fact, it appears that the refined Alternative 2 golf course site is home to a number of wetland sites that, in tandem with the Yadon's piperia habitat, would appear to require major project reevaluation of this component. We are particularly interested in reviewing any additional wetland delineation materials that have been developed for the development areas.

In closing, we would like to re-emphasize that avoidance of impacts to ESHAs (including wetlands) is required by the LCP. This includes provision of sufficient buffers to assure protection of wetland and other ESHA resources. Allowing impacts and then mitigating for them is not consistent with the LCP. Any variances that may be pursued to the LCP's 100-ft. ESHA setback standard will need to be very carefully justified, on a case-by-case basis, so that the decision makers can be certain that development will in fact meet the LCP standard (i.e., "will not adversely affect the long term maintenance of the environmentally-sensitive habitat" (Zoning Code Section 20.147.040(B)(1))).

With this letter, I would like to invite you to call or meet with me personally in order to insure that we have not missed signals. Similarly, I am asking my staff to be available to you for any necessary clarifications, and to assist in shaping the anticipated LCP amendments.

Sincerely,



Tami Grove
Deputy Director

cc: Dave Potter, District 5 Supervisor, Monterey County Board of Supervisors
Brian Hunter, Central Coast Regional Manager, California Department of Fish & Game
Ed Brown, Vice President, Planning, Pebble Beach Company
John Dixon, Senior Biologist, California Coastal Commission

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