CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

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Prepared June 2, 2006 (for June 14, 2006 hearing)

To: Commissioners and Interested Persons

From: Charles Lester, Deputy Director
Rick Hyman, Central Coast Chief Planner
Dan Carl, Coastal Planner

Subject: **Staff Recommendation for Denial of Monterey County LCP Amendment 1-05 (Measure A in the Del Monte Forest)** to be presented for public hearing at the California Coastal Commission's June 14, 2006 meeting at the Fountain Grove Inn at 101 Fountain Grove Parkway in Santa Rosa.

SYNOPSIS

Monterey County proposes to amend the Del Monte Forest segment of its Local Coastal Program (LCP), including land use designation changes for two dozen distinct areas encompassing over 600 acres in the Forest. Known locally as Measure A, this voter-initiative LCP amendment was designed to facilitate various development projects proposed by the Pebble Beach Company's "Del Monte Forest Preservation and Development Plan," which could not go forward without amendments to the LCP. The development projects include a golf course, driving range, equestrian center, resort facility expansions, 160 overnight units, 60 multi-family employee units, subdivision for thirty-three residential lots, Highway 1/68 interchange redevelopment, and conservation easements over approximately 500 acres of coastal zone land. Monterey County has already approved this development, conditioned on the Commission approving Measure A as submitted. Twenty-two appeals of the County' decision were filed with the Commission, and are awaiting the outcome of the Commission's review of Measure A.

Measure A is Inconsistent with Coastal Act ESHA and Wetlands Policies

Most of the area directly affected by the proposed amendment (and the Pebble Beach Company's projects) is environmentally sensitive habitat area (or ESHA) as defined by both the Coastal Act and the Monterey County LCP. These ESHAs are dominated by native Monterey pine forest in association with a variety of sensitive species and habitats. Native Monterey pine is globally rare, and found in only five locations in the world, three along the California coast. Many of the other species and habitats found in the LCP amendment area are quite rare and are ESHAs individually in their own right. This includes the federally endangered Yadon's piperia, the federally threatened California red-legged frog, and significant areas of wetlands, dunes, and central maritime chaparral. That these species and habitats exist together as functioning ecosystems only underscores their significance as coastal resources under the Coastal Act and LCP.

Although Measure A proposes significant redesignation of ESHA areas from residential to resource

conservation (approximately 264 acres), Measure A also specifically contemplates intensive recreational land uses, such as a golf course, in locations that are inconsistent with the Coastal Act requirement to protect ESHA. For example, the contemplated golf course (already approved by Monterey County) that would be allowed under Measure A could be expected to result in the direct loss of 63 acres of native Monterey pine forest (and over 10,000 individual trees). It would also result in the loss of 36,000 individual piperia plants, or 21% of the known population of this listed endangered species. Such land use changes are not consistent with Coastal Act Section 30240, which does not allow for non-resource dependent use (like a golf course) and does not allow significant disruption of ESHA. Some areas affected by Measure A also contain significant wetlands habitat. Measure A could be expected to also result in significant impacts to these resources, which is inconsistent with Coastal Act Sections 30233 and 30231.

Other Coastal Act Concerns

Another significant problem with Measure A is that it would allow the development of an equestrian center in the Sawmill Gulch conservation easement area of the environmentally sensitive Huckleberry Hill Natural Habitat Area. The Coastal Commission previously required this former quarry area to be restored and protected in perpetuity as mitigation for the Pebble Beach Company's 1985 Spanish Bay Resort project. Sawmill Gulch is currently designated for Resource Conservation, which is the most appropriate designation for its protected conservation status. Despite various setbacks in restoration efforts, significant revegetation has occurred in the easement area and with continued efforts further success can occur. The Measure A proposal to allow intensive recreational development at Sawmill Gulch is not consistent with Coastal Act Section 30240. Approving this land use change for a protected conservation easement area would also set an extremely adverse precedent for the hundreds of conservation easements in the coastal zone.

Measure A raises inconsistencies with other Coastal Act policies, including that the LCP amendment could lead to negative impacts on public access and water quality. It also proposes land uses that are inconsistent with Coastal Act Section 30250, which requires that new development have adequate public services and not entail any significant adverse impacts on coastal resources. Measure A does not assure that new development allowed under the amendment would not have significant adverse impacts on the biological resources of the Carmel River and on the currently over-drafted Seaside aquifer.

Conclusion

Although it has some positive components, Measure A as a whole cannot be reconciled with the Coastal Act. **Staff recommends that the Commission deny Measure A as submitted.** Given that such fundamental changes proposed for Del Monte Forest would have to be packaged much differently to be found consistent with the Coastal Act, and given that Measure A comes to the Commission as one entire package that only can be revised through a popular vote, staff is not recommending modifications to the LCP amendment.

Staff does support the efforts to address coastal resource and planning issues in the Del Monte Forest in a comprehensive manner. The Del Monte Forest Land Use plan is over twenty years old and should be updated to reflect changed resource and other conditions. More certainty regarding appropriate development patterns in light of these change circumstances is needed. Staff has developed considerable information through its review of Measure A, particularly concerning biological resources, that could

support a revised comprehensive amendment submittal. Staff also transmitted the draft findings of its 2003 Monterey County LCP Periodic Review to the County that included recommendations for Del Monte Forest. Although not yet adopted by the Commission, this planning document could also support development of a revised amendment for the Del Monte Forest that would better meet Coastal Act objectives, perhaps in the context of the County's on-going General Plan Update process. Although staff supports the efforts to enhance visitor-serving land uses in Del Monte Forest, and some of the proposed expansion of visitor-serving facilities in existing developed areas appears generally consistent with the Coastal Act, other proposed recreational uses are not.

Note on the Certified LCP and Legal Entitlements

Measure A includes significant rezoning of some residentially zoned Monterey pine forest habitat areas to resource conservation. However, the certified LCP already protects these areas because they are ESHA. The LCP prohibits subdivision of ESHA, and new development in habitat areas is restricted to resource-dependent uses such as habitat restoration. The Pebble Beach Company has no legal entitlement to subdivide Monterey pine forest ESHA, let alone up to the theoretical maximum zoning densities of the LCP that have been cited as being significantly reduced by Measure A. Nor does the Coastal Act or the LCP otherwise require the approval of a golf course (it would be the ninth in Del Monte Forest) or other recreational uses that are not resource-dependent (or even coastal dependent) within an ESHA. Significantly, according to Monterey County, there are no more than 41 legal lots of record in the proposed project areas, and the actual legal entitlements could be much less. The denial of Measure A to protect coastal resources would not result in the taking of any private property. In distinct contrast, given the existing legal entitlements and current LCP requirements, the development facilitated by the approval of Measure A, which is specifically designed to implement the Company's project, would result in significantly more impacts to coastal resources than would implementation of the existing LCP without Measure A.

Procedural Issues and Public Participation

Measure A was approved by Monterey County voters on November 7, 2000. Subsequently, Monterey County prepared an EIR for the "Del Monte Forest Preservation and Development Plan" project that Measure A was designed to implement. The County held numerous public hearings on the project in 2004 and 2005. The Board of Supervisors subsequently approved the project on the same day they acted to transmit Measure A as an LCP amendment to the Commission. The Commission held a public information hearing on Measure A on March 9, 2006 in Monterey in order to maximize opportunities for public participation in the vicinity of Del Monte Forest.

The Commission's standard of review for the Land Use Plan changes proposed by Measure A is consistency with the Chapter 3 policies of the California Coastal Act. The review standard for the proposed Implementation Plan changes is conformance with and adequacy to carry out the certified Land Use Plan.

Additional Information

Further information on the Measure A submittal may be obtained from Dan Carl, Coastal Program Analyst, at the Central Coast District Office of the Coastal Commission at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

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Please note that the links for staff report figures 4 and 5 were incorrect prior to June 6, 2006 at 11:30 a.m. The correct links are now provided.

PART ONE: STAFF RECOMMENDATION – MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, deny the proposed LCP amendment. The Commission needs to make and act on two separate motions in order to implement this recommendation.

Motion 1: Denial of Land Use Plan Major Amendment Number 1-05

Staff recommends a **NO** vote on the motion below. Failure of this motion will result in denial of the LUP portion of the amendment and adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

> **Motion.** I move that the Commission **certify** Major Amendment Number 1-05 to the County of Monterey Local Coastal Program Land Use Plan as submitted by the County of Monterey.
>
> **Resolution to Deny.** The Commission hereby **denies** Major Amendment Number 1-05 to the County of Monterey Local Coastal Program Land Use Plan as submitted by the County of Monterey and adopts the findings set forth in this staff report on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Local Coastal Program Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Local Coastal Program Land Use Plan Amendment may have on the environment.

Motion 2: Denial of Implementation Plan Major Amendment Number 1-05

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the IP portion of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

> **Motion.** I move that the Commission **reject** Major Amendment Number 1-05 to the County of Monterey Local Coastal Program Implementation Plan as submitted by the County of Monterey.
>
> **Resolution to Deny.** The Commission hereby **denies** certification of Major Amendment Number 1-05 to the County of Monterey Local Coastal Program Implementation Plan as submitted by the County of Monterey and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

PART TWO: FINDINGS AND DECLARATIONS

1. FOREWORD

Monterey County proposes to amend the land use and implementation plans for 26 distinct areas encompassing over 600 acres in the Del Monte Forest segment of its Local Coastal Program (LCP). The directly affected land is almost exclusively owned by the Pebble Beach Company, which owns the Del Monte Forest roads, much of the land, and most of the undeveloped property within the Forest. The amendment is project-driven, having been developed to provide for the Pebble Beach Company's development plans in the Forest. It is also somewhat unique inasmuch as it was approved by the County electorate through an initiative process in 2000 (i.e., Measure A).

The proposed amendment and the related proposed projects have long been controversial and the subject of intense public interest. As of the date of this report, the Commission has received over 2,300 pieces of correspondence related to the amendment and/or the project since January 2004, approximately 98% of which was in opposition to one or both. Due to the volume of materials received, this correspondence is not reproduced as part of this report. These materials are, however, available for review at the Commission's Central Coast District Office and will be available in binders for review at the June 14, 2006 hearing on this matter.

In light of the degree of interest, and as a means to maximize public participation at a hearing venue near to the Del Monte Forest, the Commission toured the Del Monte Forest on March 8, 2006 and held a public hearing on this item on March 9, 2006 in Monterey. The hearing was a preliminary hearing with a preliminary staff analysis. No Commission action was taken. The Commission took public testimony from approximately 65 speakers/groups. One of the reasons that the March 9, 2006 hearing was considered preliminary was due to the fact that at that time the LCP amendment had not been deemed submitted (also more commonly referred to as "filed").[1] The proposed amendment was since filed on March 15, 2006, thus establishing a deadline for Commission action of June 13, 2006.[2] Because of the scope and complexity associated with the proposed amendment, the significant Coastal Act and LCP issues raised by it, and the continued substantial public interest, the Commission on April 12, 2006 extended the time frame for Commission action to June 13, 2007[3] to both allow adequate time for

[1] The Coastal Act allows local governments to propose amendments to certified LCPs provided such amendment proposals include "materials sufficient for a thorough and complete review" (Coastal Act Section 30510). When an amendment (and its supporting materials) is deemed by the Executive Director to be in proper order and adequate to meet that criteria, an amendment is "deemed submitted" (or "filed") and a submittal (or filing) date is thus determined.

[2] The Coastal Act requires the Coastal Commission to act on a Land Use Plan (LUP) amendment within 90 days of the filing date and on an Implementation Plan (IP) amendment within 60 days of the filing date; in cases where both LUP and IP changes are proposed (such as the subject case), the 90-day action deadline applies to the overall amendment (i.e., to both the LUP and IP parts of it). If the Commission does not act within the applicable time frame, then the amendment is deemed approved and certified by the Commission (Coastal Act Sections 30510, 30512, 30513, and 30514).

[3] Coastal Act Section 30517 allows the Commission to extend, for good cause, the time limits for Commission action on a proposed amendment for a period not to exceed one year.

Commission staff to complete their analysis and recommendation for action, and to maximize public participation by scheduling the hearing in a northern California location (the Commission does not meet any closer to Monterey until the December 2006 hearing currently scheduled to take place in San Francisco). In any case, the Commission is under no obligation nor requirement to act at the June 14, 2006 hearing.

2. LCP AMENDMENT BACKGROUND

The amendment proposes land use and implementation plan changes almost exclusively affecting over 600 acres of Pebble Beach Company-owned land in the Del Monte Forest. The amendment is project-driven, having been developed to provide for the Pebble Beach Company's development plans for the Forest. This section of the report provides contextual background on the Del Monte Forest and the Pebble Beach Company's project, including the genesis of the amendment itself as "Measure A," and the relationship of the project and the amendment to the Coastal Commission 's approval of the Company's Spanish Bay resort in 1985.

A. Del Monte Forest Area

The Del Monte Forest (DMF) area is located on the Monterey Peninsula (occupying much of the landform that is the peninsula itself) and is bounded roughly by the cities of Pacific Grove and Monterey to the north, and Carmel to the south; State Highway One skirts the Forest a couple of miles inland (see Exhibit 1). The Del Monte Forest has long been recognized for its natural beauty and is well known for its mostly craggy shoreline that extends through large areas of dunes up through and into a steep landform mantled by native Monterey pine forest and its related habitats. The Forest is home to a variety of plant and animal species, including some that are exceptionally rare. As the Del Monte Forest Land Use Plan (LUP) describes:

> *The spectacular meeting of forest, land, and sea in the Del Monte Forest Area is not only an important scenic attraction of the Monterey Peninsula, for both residents and visitors, but vital habitat for a variety of vegetation and wildlife, including several rare and endemic species dependent on the unique ecosystem. That so much of the Forest's natural and scenic resources remain unspoiled is also significant; it provides a sharp contrast to urban developments in the cities of Carmel, Pacific Grove, and Monterey.*

Perhaps the most compelling characteristic of the Del Monte Forest area is its awe-inspiring physical setting. Framed by the Asilomar Dunes in Pacific Grove upcoast and the sands of Carmel Beach downcoast, the DMF shoreline includes the incredible white sand dunes and beaches at Spanish Bay, Fan Shell Beach, and Signal Hill, the craggy shoreline from Cypress Point to Pescadero Point, and the striking calm waters and sandy beaches of Stillwater Cove – part of the larger Carmel Bay State Ecological Preserve and Area of Special Biological Significance (ASBS)[4] and the Monterey Bay National Marine Sanctuary. Inland of the shoreline, the Forest transitions through both developed and undeveloped areas with a variety of gurgling streams and creeks towards the peak of the Monterey Peninsula. Much of the inland portions of the Del Monte Forest – even residentially developed areas – remain substantially mantled by forest cover; predominantly native Monterey pine forest, but also native Monterey cypress, Gowen cypress, Bishop pine, and combinations of all of them. Several areas have

[4] ASBSs are now referred to as State Water Quality Protection Areas.

been formally set aside for preservation, such as the over 350 acre Huckleberry Hill Natural Habitat Area with its unique and valuable habitat ecosystems. At least 44 special-status plant species and 29 special-status wildlife species have the potential to occur in the Del Monte Forest and surrounding region.[5] Of these, 19 special-status plant species and 4 special-status wildlife species have been positively identified in the affected area; including the federally endangered Yadon's piperia that is found in the Del Monte Forest but almost nowhere else in the world, and including the federally threatened California red-legged frog. Similarly, the native Monterey pine forest itself here, the dominant biological community and the defining characteristic of the Del Monte Forest and specifically of the Measure A-affected land area, is one of only five such native pine forest occurrences in the world, and it is well known in this sense as part of the largest and most extensive of these worldwide.

Within this extraordinary physical setting, the Del Monte Forest has also over time seen substantial development such that it is now home to eight golf courses, two high-end resorts (the Inn at Spanish Bay and the Pebble Beach Lodge), one main commercial area (in Pebble Beach at and around the Lodge), mostly larger single-family homes on large lots, and a meandering interior road system. Even with the level of development to date, though, the Forest continues to appear as a well established natural area – dominated by Monterey pine forest – within which development has been melded, as opposed to an area of development surrounded by smaller patches of natural resources. This balancing has been achieved at least partly because there are significant natural areas that remain undeveloped, and in light of the spectacular natural physical setting overall. Overall, the Del Monte Forest is well known for its blend of natural resources and its large, often mansion-like, homes. It is also well known as a golf destination (including being home to one of the most famous golf courses in the world, the Pebble Beach Company's Pebble Beach Golf Links) through which winds the world-famous 17-Mile Drive, and in which lies Pebble Beach itself. The Del Monte Forest is often referred to as "Pebble Beach" more generically, particularly outside of the immediate Monterey Peninsula area even though Pebble Beach is just one area within the larger Del Monte Forest area.

The Del Monte Forest is a very large land area that extends inland some 15 miles in places that is located along roughly 7 miles of central California shoreline. A circuitous private road system winds through the DMF. The Pebble Beach Company owns the roads and almost all of the undeveloped land in the Forest. The Company also owns and operates the two high-end resorts in the Forest, much of the Pebble Beach Lodge-related commercial operations, as well as four of the eight DMF golf courses.[6] The Company owns almost all of the land directly affected by the proposed LCP amendment. In addition to its resort and recreational resources, the Company generally maintains the road and related infrastructure for Del Monte Forest. The Pebble Beach Company's predecessor, the Del Monte Properties Company, acquired all of the Del Monte Forest and much of the surrounding area in the early 1900s. Although the Company has obviously sold much of these original holdings, as evidenced by the other golf course properties and DMF's existing residential stock, it remains the predominant Forest landowner and land management entity.

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5 PDP EIR pages E-16 and E-26.

6 The Company's DMF golf courses are the Pebble Beach Golf Links, Spyglass Hill Golf Course, The Links at Spanish Bay, and the Peter Hay (9-hole) Golf Course. All of these courses are open to the public. The Company also owns and operates the Del Monte Golf Course located in Monterey outside of the Del Monte Forest. The other four DMF golf courses that are owned and operated by entities other than the Company are the private Cypress Point Golf Club, the private Monterey Peninsula Country Club (two courses), and the public Poppy Hills Golf Course; the latter owned and operated by the Northern California Golf Association.

Access into the Forest is controlled by the Pebble Beach Company through five gates for which an entrance fee of $8.75 is required for the general public to gain vehicular access;[7] bicyclists and pedestrians are allowed free entrance. Past the gates significant public access amenities have been developed in this private setting – including a series of public shoreline access points connected by miles of shoreline and interior pedestrian and equestrian trails supported by public parking areas. Many of these public access improvements were developed as part of the terms and conditions of the Commission's approval of the Spanish Bay Resort and Golf Course development in 1985, and are operated and maintained by the Company for the general public.

Almost all of the Del Monte Forest (and obviously all of the area affected by the proposed LCP amendment) is located within the California coastal zone.[8] Because the entire Del Monte Forest coastal zone area is seaward of the first through public road, all coastal development decisions by the County within the Forest are appealable to the Coastal Commission.

B. Measure A Context: Pebble Beach Company Project

Since its inception Measure A has been directly associated with a development plan being pursued by the Pebble Beach Company. Understanding the various pieces of this development plan is important context for evaluating the Measure A LCP amendment.

The Pebble Beach Company has been pursuing development on its remaining undeveloped land holdings in the Del Monte Forest (including on the land directly affected by this proposed LCP amendment) for many years. The most recent proposed project has its genesis in its predecessor known as the "Pebble Beach Lot Program" from the early 1990s. The Lot Program project included a 400-lot subdivision, an 18-hole golf course (first at Pescadero Canyon and then at the current proposed golf course site between Pebble Beach and the Signal Hill Dunes), and extensive related development throughout the Forest on almost 700 acres.[9] Although the County completed substantial CEQA and other analytic work on the Lot Program project during the 1990s, the project was never approved. Ultimately, the Pebble Beach Company was acquired by the current owners in 1999, and the Company developed the current project.

The proposed Pebble Beach Company project (hereafter "Project") is multifaceted and includes recreational, visitor-serving, residential, infrastructure, resource conservation, and related components

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7 The fee structure – including allowable fee increases over time – is written into the LCP as LUP Policy 96, where the terms of LUP Policy 96 were also made part of the terms and conditions of the Commission's approval of the Spanish Bay resort (CDP 3-84-226).

8 The majority of the Country Club planning area within the Del Monte Forest is not in the coastal zone (see Figure 1). This area includes the two Monterey Peninsula Country Club golf courses and related residential development downcoast from Spanish Bay and Pacific Grove and along the shoreline roughly from Point Joe to Bird Rock. The area was already substantially built-out when the coastal zone boundary was developed for this stretch of coastal and it was mostly excluded from the zone. Only that portion of the Country Club area seaward of and including 17-Mile Drive is located in the coastal zone.

9 References to the Lot Program include those to "refined alternative 2" which emanated from the never completed Lot Program CEQA analysis and, among other things, reduced the number of proposed residential units to 364 and moved the proposed golf course location from Pescadero Canyon to the current proposed location. The Lot Program application was withdrawn in 1999. (PDP EIR, including p. ES-3, 1.0-2, etc.)

spanning multiple locations throughout the Forest. The primary Project components include:

Golf Course

The Project golf course would be constructed within a mostly undeveloped area that includes almost all of Del Monte Forest planning units M, N, O, U, and V (commonly referred to as MNOUV), the existing Pebble Beach Equestrian Center, the existing Pebble Beach Driving Range, a portion of the Signal Hill Dunes, and a residential property adjacent to the Equestrian Center (see Figures 2 and 2); all told about 216 acres.[10] The golf course site is located northwest of the main Pebble Beach Lodge area, roughly between Fan Shell Beach/Signal Hill Dunes and the Lodge commercial area (and Peter Hay Golf Course). Adjacent to the golf course site are the Cypress Point Golf Club to the west, the Spyglass Hill Golf Course to the north, and residential and school (Robert Luis Stevenson School) areas further to the east. The golf course project includes demolition of the existing equestrian center and the adjacent residential structures,[11] removal and relocation of several existing roads and trails, removal of about 63-acres of native Monterey pine forest and related resources (see ESHA section of this report for specifics), and grading (approximately 700,000 cubic yards of grading) for an 18-hole golf course (and related cart paths, restrooms, and other amenities), a 29,000 square foot clubhouse with pro shop, restaurant, and lounge (roughly 14,000 square feet of which would be mostly underground), a 21,000 square foot underground maintenance building with a 15,000 square foot maintenance area atop it at ground level, expansion of the existing driving range to make it double headed and add 20 additional tees, a 138-space surface parking lot, and related infrastructure, landscaping, and other improvements; construction is estimated to take two years.[12] This portion of the Project also includes a conditional certificate of compliance (subdivision) to recognize the larger golf course Project area as a legal lot, and division of the resultant lot into four lots.[13] See Project golf course area plans in Exhibit 8.

Driving Range

The Project driving range would be constructed just inland of 17-Mile Drive and the Inn at Spanish Bay within Area 2 on about 29 undeveloped acres (see Figures 2, 3, and 7). The driving range project includes removal of approximately 17 acres of native Monterey pine forest and related resources (see ESHA section of this report for specifics) and grading (approximately 42,000 cubic yards of grading) for a double-sided golf driving range facility with 40 hitting stations (18 and 22 stations on each side) arranged across an open roughly 300-yard fairway, two putting greens, two surface parking lots with over 300 parking spaces, a teaching facility housed in an approximately 3,000 square foot 24-foot tall building, and related development (such as fences, paths, etc.).[14] This portion of the Project also includes a 5-lot subdivision to create the driving range parcel, a residential parcel across Congress Road (see Project employee housing units below), two open space parcels (see Project resource conservation component below), and a road parcel over Congress Road itself.[15] See Project driving range plans in

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10 This area is in and around Area 1, one of the 26 reference areas used for LCP amendment analysis (see Figure 1 and see LCP amendment description finding that follows).

11 A new equestrian center would be constructed at Sawmill Gulch as a replacement facility. See Project equestrian center component description.

12 PDP EIR; including pages 2.0-5, 3.7-8, and 3.7-11, and Tables 2.0-4, 3.3-1, 3.3-6, and F2-2; PDP plans pages GC-1 through GC-13.

13 PDP plans page GF-2.

14 PDP EIR; including page 2.0-8 and Tables 2.0-4, 3.3-1 and 3.3-6; PDP plans pages SB-17 through SB-20.

15 PDP plans page BC-2.

Exhibit 8.

Equestrian Center

The Project equestrian center would be constructed within the Sawmill Gulch restoration area[16] that is adjacent to and part of the Huckleberry Hill Natural Habitat Area in Area 3 (see Figures 2, 3, and 7). The equestrian center project includes removal of about 26 acres of restored Monterey pine forest and related resources (see ESHA section of this report for specifics) and grading (approximately 68,000 cubic yards of grading) for an equestrian facility including a clubhouse building, a two-story dormitory for overnight stays (for up to 36 children or 12 adults), a covered arena, several barn structures to accommodate 174 horses, hay barn, car storage facility, covered coral shelters, fenced training rings, two single family residences, one four-plex residential structure, and a temporary event area (in the lower Gulch) designed to accommodate outdoor equestrian events, other temporary events, overflow parking, and related activities, including a developed parking and turn-around for longer vehicles.[17] The project would also include routing utility lines to serve the new equestrian center through Huckleberry Hill Natural Habitat Area.[18] See Project equestrian center plans in Exhibit 8.

Inn at Spanish Bay Expansion

The Project includes expansion of facilities at the Inn at Spanish Bay located in the northern portion of the Del Monte Forest near the Pacific Grove gate (Area 6, see Figures 2, 3, and 7). The Spanish Bay expansion would take place in the existing parking and tennis court areas located inland of the resort facilities themselves and would include construction of: two, 38-foot tall, stand alone 3-story guest room buildings of about 45,000 square feet each (or about 90,000 square feet total) designed to accommodate a total of 86 units; a remodel of existing office space to provide an additional 5 units (i.e., a total of 91 new hotel units); a 45,000 square foot, 40-foot tall expansion of the main resort building to provide meeting space and related support facilities; an 1,800 square foot expansion to accommodate additional locker room and pool facilities; removal of the existing tennis courts to allow construction of a partially underground parking facility with 443 parking spaces; 8 new tennis courts, a basketball court, and a roughly 1,800 square foot, 26-foot tall tennis clubhouse facility on top of the new parking garage; and related road and parking area improvements, including a realigned entry to the resort itself separated from the adjacent condominium development located to the northeast directly adjacent to the resort.[19] All told, the Project includes additional parking square footage (partially underground) and some 140,000 square feet of expanded facilities at the Inn at Spanish Bay. See Project Spanish Bay plans in Exhibit 8.

Pebble Beach Lodge Expansion

The Project includes expansion of facilities at the Pebble Beach Lodge and in the Lodge commercial area located near Stillwater Cove in the southern portion of the Del Monte Forest in the heart of Pebble Beach (Area 7; see Figures 2, 3, and 7). The Pebble Beach Lodge expansion includes construction of a new building (the Colton building) that would be two-stories (about 30 feet tall) and approximately

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16 Restoration required by the Spanish Bay CDP; see Spanish Bay CDP findings that follow.

17 PDP EIR; including pages 2.0-6, 2.0-7, and 3.3-20, Tables 2.0-4, 3.3-1, and 3.3-6, and Figure 2.0-11.

18 PDP Plans EQ-14, and PDP EIR page 3.3-11 and 3.3-12.

19 PDP EIR pp. 2.0-7 and 2.0-8. PDP Plans pages SB-6, SB-7, SB-8, SB-9, and SB-10.

20,000 square feet in size to provide 20 additional guest units in the area between the existing Morse building and the Pebble Beach Golf Links; demolition of the existing Fairway One House (and its 5 existing guest rooms) and the adjacent cart barn located between 17-Mile Drive and the Pebble Beach Golf Links and construction of a new Fairway One Complex providing 43 guest units (on top of a 154-space underground parking garage) in a series of two-story, 28-foot tall buildings totaling about 50,000 square feet (thus in total, including the Colton building, an addition of 58 guest units at the Lodge); and about 4,000 square feet of new meeting support facilities on the second floor of the existing Lodge meeting facilities.[20] All in all, the Project Pebble Beach Lodge expansion includes additional parking square footage (partially underground) and approximately 75,000 square feet of expanded facilities at the Lodge proper. In addition, the expansion in the Lodge area includes demolition of portions of the existing main parking area for the commercial area (located opposite 17-Mile Drive from the Lodge proper) to add underground parking and to generally reconfigure this area to enhance vehicular and pedestrian circulation overall. See Project Pebble Beach Lodge area plans in Exhibit 8.

Golf Cottages

The Project includes the development of new visitor-serving units adjacent to the Project golf course near to the intersection of Stevenson Drive and Spyglass Hill Road opposite from the Spyglass Hill Golf Course (Area 5, see Figures 2, 3, and 7). The Project golf suites (to which these units are also referred in the proposed LCP amendment text) includes removal of an acre or so of Monterey pine forest and related resources (see ESHA section of this report for specifics) and grading for a series of eleven house-like golf suite units (ten that are one-story, 26-foot tall, and roughly 2,000 square foot, and one that is two-story, 30-foot tall, and roughly 3,000 square feet) with associated infrastructure and facilities (paths, fences, driveway access, parking, etc.).[21] See Project golf cottage plans in Exhibit 8.

Residential Development

The Project includes a series of residential lots and development located in eleven different areas, partially for single-family residential (nine areas; see Areas 8 through 16 on Figure 7) and partially for multi-family residential (employee) units (two areas; see Areas 17 and 18). With respect to the single-family residential component, in some cases, this Project residential development includes subdivisions to create residential lots and also includes road and related infrastructure development to serve the subdivision (five locations; Areas 12 through 16), in others it includes subdivision only (one location; Area 10), and in others it includes recognition of existing lots only (three locations; Areas 8, 9, and 11), but in all cases it ultimately includes building envelopes and other future development parameters for these areas, each of which (with limited exception[22]) is currently undeveloped.[23] The Project does not include development of the actual residential units. See Project residential plans in Exhibit 8.

With respect to the multi-family residential component, the Project includes development of a 12-unit complex in Area 17 (near Spanish Bay) and a 48-unit complex in Area 18 (at the Company's corporation yard in the LUPs Huckleberry Hill planning area – see Figures 2, 3, and 7). The 12-unit

[20] PDP EIR including pages 2.0-9 and 2.0-10. PDP Plans including pages PB-7, PB-9, PB-13, and PB-16.

[21] PDP EIR including p. 2.0-5; PDP Plans including p. GC-16.

[22] A small portion of Area 10 includes parking and related golf maintenance development on it.

[23] See ESHA finding for each area for further information.

component of the Project includes subdivision to create the residential lot,[24] removal of about 2 acres of native Monterey pine forest and related resources (see ESHA section of this report for specifics) and grading (approximately 8,500 cubic yards of grading) to make way four two-story buildings ranging from approximately 5,000 square feet to 10,000 square feet each with associated infrastructure and facilities (garages, parking areas, driveway access, paths, fences, etc.).[25] The 48-unit component of the Project includes subdivision to create the lot, grading (approximately 64,000 cubic yards of grading) to make way for eight, approximately 10,000 square foot, two-story, 26-foot tall buildings with associated infrastructure and facilities (carports, parking areas, driveway access, paths, fences, etc.); about 80,000 square feet total building square footage.[26] See Project multi-family residential plans in Exhibit 8.

The total expected number of residential units of the Project is 96 -- 36 single-family units and 60 multi-family units.

Highway 1/68/17-Mile Drive Interchange Improvements

The Project includes the improvements at the Highway 1/68/17-Mile Drive interchange. This portion of the Project includes: widening of the southbound Highway 1 off-ramp to Highway 68 to add a left-turn lane; a second eastbound land from Beverly Manor to Highway 1; redevelopment of the Highway 1 gate into the Del Monte Forest; a right-turn merge lane from the Highway 1 gate to the Highway 1 onramp; reconfiguring the Highway 1 on-ramp from Highway 68, including a signalized Pebble Beach entrance.[27] See Project Highway 1/68/17-Mile Drive interchange plans in Exhibit 8.

Resource Conservation and Management

The Project includes dedication of conservation easements and resource management over some 850 acres, about 500 of which is located within the coastal zone.[28] Of the 500 coastal zone acres, approximately 436 acres have been categorized as “preservation” areas and the remainder categorized as “conservation” areas, where preservation areas are those not within Project development site boundaries that are to be managed for natural resources, and conservation areas are areas within development site boundaries that are to be managed for natural resources (see locations of these areas in Exhibit 8).[29] Of the 436-acres that are direct preservation areas, 264 acres are located within areas directly affected by the proposed LCP amendment (Areas 19 through 24; see Figure 7).

C. Measure A

It is generally acknowledged that the Project cannot be found consistent with the existing certified

24 The same subdivision referenced in the Project driving range description.

25 PDP EIR; including page 2.0-8 and Tables 2.0-4, 3.3-1 and 3.3-6.

26 PDP EIR; including page 2.0-11 and Table 2.0-4.

27 PDP EIR page 3.7-50 and 3.7-51.

28 PDP EIR including Table F2-1 and mitigation measure BIO-B1-2(C) (as revised by final adopted Monterey County revisions to PDP EIR (Attachment E)). Roughly 852 total acres, of which 356 is located outside of the coastal zone at the Old Capitol site (73 acres), the Aguajito site (266 acres), and Area D (17 acres).

29 PDP EIR Tables 2.0-3, F2-1, and ES-1.

LCP.[30] Such inconsistencies include that: an equestrian center is not allowed in Sawmill Gulch in the Open Space Forest (RC) designation;[31] 149 new visitor-serving units exceed the limits on such units at the Inn at Spanish Bay and at the Pebble Beach Lodge; 11 new golf course cottages are not allowed within LUP planning units M and N; portions of the new golf course are not allowed within the existing Open Space Forest (RC) designation applicable to a portion of the proposed golf course site; and, more fundamentally, the Resource Constraint (B-8) overlay prohibits new development beyond a single residence on each legal lot (thus prohibiting much of the Project).

The Measure A initiative developed by the Pebble Beach Company was designed in part to address the inconsistencies of the Project with the certified LCP.[32] The Measure A changes were structured to directly affect the lands of one property owner (the Pebble Beach Company),[33] and were designed to facilitate development projects on some of those lands. As such, the proposed amendment is in large part a project-driven LCP amendment.[34] Measure A, though, also includes changes that would redesignate certain areas from residential land use to open space resource conservation. Specifically, in addition to facilitating certain developments, Measure A also represents a significant commitment to designating a large area of land to resource conservation.

Measure A was titled the "Del Monte Forest Plan: Forest Preservation and Development Limitations." The purpose of Measure A is as follows:[35]

> *<u>FINDINGS AND DECLARATIONS</u>*
> *The people of the County of Monterey hereby find and declare the following:*
>
> *a. Habitat for Monterey pine trees in Monterey County is diminishing and steps need to be taken to preserve additional natural stands of Monterey pine.*
>
> *b. Areas of the Del Monte Forest, including the Pescadero Canyon area, provide critical habitat for the preservation of the Monterey pine.*
>
> *c. The people of Monterey County desire a significant reduction in the amount of future residential development permitted in the Del Monte Forest area to reduce the impacts on*

30 See, for example, PDP EIR p.2-11 and 2-13, and Chapter 3.1; and Monterey County Adopted Staff Report p. 2-8 and 2-11 (March 2005). Note that the County and Company have considered such inconsistencies to be land use designation inconsistencies as opposed to ESHA/resource inconsistencies.

31 More broadly, such development is not allowed at Sawmill Gulch by virtue of the terms and conditions of the Spanish Bay CDP; see below.

32 Measure A represents the proposed LCP amendment (see LCP amendment description finding).

33 The LCP land use designation changes primarily directly affect Pebble Beach Company property, but they also directly affect land owned by others (e.g., LUP Areas X and Y). In addition, some of the changes affect all Del Monte Forest area land more broadly (e.g., the elimination of LUP Table A).

34 LCP amendments typically respond to a known subset of factors. Some of these are when a local government makes a change that responds to a very specific LCP problem that applies LCP-wide (e.g., grading parameters). Still others respond to a specific problem that affects a specific issue area or specific geographic region. Others respond to a specific topical issue (e.g., second units). Within this range of LCP amendments, a specific subset is referred to as "project driven." These project driven LCP amendments do not typically emanate from some broad LCP issue area or broadly identified LCP conflict, but rather are developed to facilitate a specific project at a specific location (e.g., changing a land use designation from visitor serving to residential to allow a residential project to proceed). In the case of Measure A and this proposed LCP amendment, it is clearly the latter that applies.

35 See Measure A attached as Exhibit 2.

Monterey pine habitat and a significant increase in open space to assist in the preservation of the Monterey pine.

d. Any future visitor-serving development should occur adjacent to existing visitor-serving or recreational facilities.

e. Any future development in the Del Monte Forest area must be consistent with the protections currently provided by the California Coastal Act.

f. Any future development in the Del Monte Forest area must be subject to full and complete environmental review as well as public participation through the holding of public hearings.

PURPOSE AND INTENT
The people of the County of Monterey hereby declare their purpose and intent in enacting the Initiative to be as follows:

a. To preserve additional Monterey pine trees and related habitat in the Del Monte Forest area of Monterey County.

b. To significantly reduce future residential development and increase open space in the Del Monte Forest area.

c. To encourage future visitor-serving development adjacent to existing visitor-serving or recreational facilities in the Del Monte Forest area.

d. To require that any future development in the Del Monte Forest area be consistent with the protections currently provided by the California Coastal Act.

e. To require that any future development in the Del Monte Forest area be subject to full and complete environmental review and include public participation through the holding of public hearings.

As a means to achieve these identified purposes, Measure A primarily relies on the LCP land use designation changes described in the LCP amendment description finding below. Thus, the core changes proposed by Measure A are the land use and zoning changes that are made through the amendment of LUP Figure 5 (the Del Monte Forest Land Use Map) and the corresponding IP zoning maps. Although the proposed changed LCP text, and specifically the LUP OSAC changes proposed, provide additional explicit direction for future land uses, it is really the mapped land use designation changes that form the basis of Measure A. The Measure A initiative was approved by Monterey County voters in November 2000.

D. Spanish Bay CDP

The proposed Pebble Beach Company project also requires amendments to the Commission's Spanish Bay coastal development permit (CDP 3-84-226). The Spanish Bay permit was approved by the Coastal Commission in 1985, and provided for the Spanish Bay Inn, golf course, and condominium development

located just inside of the entrance to the Forest from Pacific Grove adjacent to Asilomar State Beach (see Figure 2). The Spanish Bay project was a significant event with respect to the DMF LCP segment not only because it was the first large scale project to be approved following LUP certification, but also because it included a series of public access facility improvements along the shoreline throughout the Forest that formalized and enhanced the public's ability to access the shoreline.

As part of the Spanish Bay project, the Commission allowed the Company to reopen and mine the Sawmill Gulch site for sand to be used for the golf course and the associated dune restoration (see Area 3 on Figure 7). The mined sand was brought from Sawmill Gulch to the Spanish Bay shoreline by an extensive conveyor belt system. As partial mitigation for the impacts due to the project (including the construction of a fifth gate and access road into the Forest, and those associated with using the Sawmill Gulch site for sand mining and the related conveyor belt transport system), the Spanish Bay CDP required that all of Sawmill Gulch be restored following sand mining, placed under conservation easement, and protected in perpetuity; including the upper portion being made a part of the Huckleberry Hill Natural Habitat Area surrounding Sawmill Gulch.[36] In the years following, restoration at Sawmill Gulch commenced, and conservation easements were placed over the upper and lower portions of it. This restoration and preservation requirement was one of the mitigations designed to offset the significant coastal resource impacts associated with the development of the Spanish Bay resort, including the construction of a new access road through the designated forest ESHA of Huckleberry Hill Natural Habitat Area (see Exhibit 4 for excerpts of Spanish Bay CDP findings). But for these mitigation measures (which the Pebble Beach Company agreed to when it accepted the permit and has, in material respect, implemented) the Spanish Bay project CDP could not have been approved.

The Project seeks to develop the Sawmill Gulch site with a new equestrian center (to replace the existing equestrian center that would be demolished to make way for the Company's proposed golf course in and around Area 1).[37] In addition to the known LCP land use/zoning inconsistencies with such a proposed project at Sawmill Gulch (that require certification of Measure A changes as discussed above), such proposed development in Sawmill Gulch is in conflict with the terms and conditions of the Commission's Spanish Bay CDP and would require an amendment to it.[38]

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36 CDP 3-84-226 Special Conditions 5 (requiring scenic and conservation easement over parts of Sawmill Gulch); 6c (requiring rehabilitation and dedication of the upper Sawmill Gulch); 9g (requiring that all disturbed areas of Sawmill Gulch, including upper and lower Sawmill Gulch areas, be restored); and 28a (requiring rehabilitation of upper Sawmill Gulch). Also, by virtue of CDP 3-84-226 Special Condition 3, all relevant County conditions were incorporated as Coastal Commission CDP conditions. These incorporated conditions refer to the conditions of County permit PC-5040 as amended by PC-5405, including PC-5040 conditions 8, 9, and 10 providing for Sawmill restoration, and including PC-5405 conditions 13(s) and 13(t) providing for additional restoration and for scenic easement. Thus, the Commission's approval (including the requirements of it emanating from the incorporated County conditions) requires restoration of and easement over the entire Sawmill Gulch site. In addition, the upper portion of the restored and protected area was to be made part of the Huckleberry Hill Natural Habitat Area by virtue of the same cited conditions.

37 See also Area 3 (Sawmill Gulch) discussion in the ESHA finding.

38 There are other amendments to the Spanish Bay coastal permit that would also be required to allow for the Company's project to proceed, including eliminating the 270-room cap, and potentially others (such as the proposed rooms and other additions at Spanish Bay itself). In addition, the County's documents indicate that Haul Road may be used for construction access for the project (PDP EIR including pages 2-138 and 2.0-22; Monterey County Adopted Staff Report p. 2-4 (March 2005)). Haul Road was historically used for access through Huckleberry Hill Natural Habitat Area from Highway 68 to the Granite Construction quarry at the Company's corporation yard site. The Spanish Bay CDP required that Haul Road be abandoned and restored. Thus, any use of Haul Road in this manner would likewise require an amendment to the Spanish Bay CDP.

E. Processing Order

To go forward, the Project requires both that the Commission certify the proposed LCP changes as submitted, and that the Commission approve the Spanish Bay CDP changes to, at a minimum, allow the Sawmill Gulch restoration area to be developed. Because of this, the processing order of the Project and Measure A by the County has been an on-going issue. In particular, the Commission has been concerned about the County's decision to move forward with its Project review, which is dependent on the approval of Measure A by the Commission, before actually submitting Measure A for Commission review. Similarly, the Commission has raised concern about reviewing the Project before addressing the need to amend the Spanish Bay permit. Thus, Commission staff long recommended to the County and the Company that the proposed Measure A LCP changes and potential amendments to the Spanish Bay CDP be resolved before any final County deliberations on the Project; ultimately the Commission itself recommended the same thing in a letter to the County in late 2004.[39]

Ultimately in March 2005, prior to sending the proposed Measure A amendment to the Commission for consideration and prior to any proposed Spanish Bay CDP amendment, the County approved coastal permits for the Project.[40] Among other things, the County's coastal permit approval was premised on the Measure A changes taking effect verbatim, and was conditioned on the Commission's certification of Measure A as submitted and the Commission's approval of the required Spanish Bay CDP amendments.[41] On these points and others, 22 appellant groups appealed the County's coastal permit decisions to the Commission.[42] These appeals have not yet been heard, and the Commission does not intend to schedule them for a hearing until after Measure A has been decided.[43]

F. Conclusion

The proposed LCP amendment is best understood within a context that recognizes the relationship of the LCP amendment to the Project, and the relationship of the Project to the Spanish Bay CDP and the Measure A initiative itself. The Project is dependent upon both the Commission's certification of the Measure A changes as submitted, and on the Commission's approval of the required Spanish Bay coastal permit amendments. If the Commission does not act precisely in these ways, then the County's coastal permit approvals are essentially mooted.[44] These connections underscore the manner in which

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39 See Exhibit 3 for correspondence.

40 Monterey County coastal permits CDPs PLN010254 and PLN010341. The County also approved application PLN040160 at the same time, modifying conditions of approval that are part the Coastal Commission's Spanish Bay CDP. However, because the Commission must approve such CDP changes, the County's action on application PLN040160 was not a coastal development permit action for purposes of the Coastal Act and the LCP. See also Spanish Bay CDP description.

41 Monterey County conditions numbered 16 and 174.

42 Appeal Numbers A-3-MCO-05-044 and A-3-MCO-05-045 filed on June 27, 2005.

43 The Company waived their right to a hearing within 49-days of the appeals being filed (established by Public Resources Code Sections 30621 and 30625(a)), and the Commission is under no regulatory time constraint to hear the appeals.

44 On this point, County documents indicate that the Project approval itself would be voided. For example, the PDP EIR indicates that "if Measure A changes are not certified, then the project as a whole which had been approved by the County contingent on Measure A certification would be void" (PDP EIR 2-11). Likewise, the County's adopted staff report for the Project indicates that "the County recognizes that if Measure "A" is not certified by the CCC, then any project approval would be void and the applicant would need to

the Project and the proposed amendment are intertwined, and the manner in which this is clearly a Project-driven LCP amendment..

amend its application accordingly" (Monterey County Adopted Staff Report p. 2-8). County condition number 16 states as follows: "The applicant shall submit evidence that the Coastal Commission has certified the Local Coastal Program changes contained within Measure A, as it was approved by the voters on November 7, 2000. Without this certification all project approvals will have no force or effect, and the applicant may apply for a permit amendment for County consideration." It is not clear whether "void" in this sense means that the County's approval is no longer valid (and thus the appeals of it to the Commission no longer relevant), but that is the implication of the County's findings in this regard. County Counsel's office was asked for clarification on this point, but as of the date of this staff report had not yet provided their opinion to the Commission. In any event, it is clear that the Project could not move forward if Measure A were not certified as submitted.

3. LCP AMENDMENT

A. Existing LCP Provisions

Structure of the Monterey County LCP

The certified Monterey County LCP has four geographic segments – the Del Monte Forest area is one of these segments.[45] Each of these segments has its own LUP, which when considered together form the LCP's overall LUP. The Implementation Plan (IP) portion of the LCP is broken up into six sections that complement one another: the overall LCP component of the zoning code that applies to all of the segments (i.e., the coastal zone regulations in Title 20 of the County Code), four segment-specific IP sections that provide increasing detail for each of the four segments, and then a sixth part that includes other applicable County ordinances, the zoning district maps, and a series of other relevant appendices. The Coastal Commission certified the individual LCP LUP segments between 1982 and 1986; the Del Monte Forest LUP segment was certified in 1984. The complete LCP IP was effectively certified on January 12, 1988.[46] On February 4, 1988, Monterey County assumed authority for issuing most coastal development permits in the County. Since that time the LCP has been amended some two dozen times, including ten LCP amendments specific to the Del Monte Forest. The Commission conducted a periodic review of the certified LCP in 2002-3, and transmitted preliminary staff recommendations (not adopted by the Commission) to the County.[47]

Structure of the Del Monte Forest LCP Segment

Coastal development in the Del Monte Forest area is primarily governed by the DMF LUP and the DMF-specific IP segment (Chapter 20.147 of the County Code) and the zoning district maps that show the Forest (Sections 10 and 16 of the County Zoning Plan). The Del Monte Forest LUP is organized around eight planning areas: Spanish Bay, Country Club, Gowen Cypress, Spyglass Cypress, Middlefork, Huckleberry Hill, Pescadero, and Pebble Beach. Within portions of these eight planning areas, a series of planning units have been further delineated and identified alphabetically as Areas A through Y. The LCP amendment directly affects most of the alphabetically identified areas (see also below). See maps showing the alphabetical areas in Figure 3.

The DMF LUP has three primary land use designations: Residential, Commercial, and Open Space. Each of these designations are further broken down into sub-designations. For the Residential land use designation there are five sub-designations with densities ranging from a maximum of one unit per two

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45 The other three segments are North Monterey County, Carmel Area (excluding the City of Carmel), and Big Sur.

46 Portions of the Malpaso and Yankee Beach areas within the Carmel Area segment were not certified at that time and remain Areas of Deferred Certification (ADCs) within which the Commission still retains direct coastal permitting authority.

47 The periodic LCP review effort was timed (and requested by the County) to coincide with the County's General Plan update process; a process that remains ongoing as of the date of this staff report. The Commission delayed action on the recommendations of the Periodic Review to allow the County adequate time to complete its General Plan update.

acres up to a maximum of four units per acre.[48] The Commercial designation has three sub-designations: Visitor-Service Commercial, General Commercial, and Institutional. These commercial designations are exclusively applied to the existing Spanish Bay and Pebble Beach Lodge areas, and the Robert Luis Stevenson High School and Pebble Beach Company corporation yard areas (the latter two being non-visitor-serving). The Open Space designation includes three sub-designations as well: Open Space Recreational, Open Space Forest, and Open Space Shoreline. The Open Space Recreational designation applies exclusively to all existing golf courses and the Pebble Beach equestrian center. The Open Space Forest designation applies to resource protection areas, as does the Open Space Shoreline designation (with the additional shoreline locational criteria applied).[49]

Although similarly labeled, the LUP's Open Space Recreational land use category encompasses very different types of land use from the other LUP open space categories, and a different type of land use than the phrase "Open Space" typically connotes. The Open Space Forest and Open Space Shoreline designations are resource protection land use designations (applied to rare species habitat, dunes, riparian areas, tide pools, shoreline, beaches, reserves, etc.) within which only very low intensity development is even allowed (e.g., public access trails). These designations are meant to protect resources as natural open space. In contrast, the LUP's Open Space Recreational land use category is <u>not</u> a resource protection designation, but rather provides specifically and only for three development-intensive land uses: golf course, the Beach and Tennis Club, and the equestrian center. These three allowed land uses thus provide for significant development, including structural development (even more so in the case of the Beach and Tennis Club that is exclusively structural) and tended and intensively used areas (e.g., turfed golf course holes, horse corrals, riding rings, etc.). The Open Space Recreational designation is currently only found on existing golf courses and the equestrian center in the certified DMF LUP.[50] The point is important for understanding the Measure A amendment because it proposes to designate large undeveloped areas as Open Space Recreational (see description of proposed LCP amendment) specifically to allow intensive development in certain areas.

Finally, the LUP also includes several land use designation overlay categories. Chief among these is the Resource Constraint Area overlay that applies to the majority of the land involved in the proposed LCP amendment. See Exhibit 5 for an excerpt from the LUP further defining the three primary designation classifications, and for LUP Figure 5 showing land use designations as they are currently applied within the Forest.

With respect to zoning, the LCP IP zoning districts that apply to DMF essentially mimic the LUP land use designations. For those areas designated Residential in the LUP, the corresponding zoning districts

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48 The five designations are 1 unit/2 acres, 1 unit/1.5 acres, 1 unit/acre, 2 units per acre, and 4 units per acre. In addition, in a relatively few number cases in the Forest, density per unit differs from these five sub-designation categories and is explicitly identified on LUP maps. The proposed LCP amendment only involves properties with one of the five base designations.

49 Open space lands in DMF are also further governed by the open space management categories of the LUP's Management Plan for Open Space Property, also known as the OSAC Management Plan (or OSAC Plan) in reference to its initial preparation for the Del Monte Forest Open Space Advisory Committee (or OSAC) during the course of initial LUP development in the early 1980s. There are eleven DMF open space management categories and these are based on the type of open space resource being managed (e.g., natural reserve, open forest, etc.). See Exhibit 6 for excerpts from the OSAC Plan describing the open space management categories and depicting (on DMF maps) different areas in DMF to which various management categories and associated requirements apply.

50 The Beach and Tennis Club, the third use identified in the recreational designation, is actually designated Visitor Service Commercial.

are either Low Density Residential (LDR) or Medium Density Residential (MDR).[51] For those areas designated Commercial in the LUP, the zoning districts are Visitor Service Commercial (VSC), Coastal General Commercial (CGC), or Institutional Commercial (IC). For those areas designated Open Space in the LUP, and similar to the distinction drawn above, the zoning designations break down along two very different classifications. The Open Space Forest and Open Space Shoreline designations (i.e., the two resource protection-related open space designations) are implemented by the Resource Conservation (RC) zoning district. RC is generally considered the most resource protective of the County's LCP zoning designations. The Open Space Recreational land use category, on the other hand, is implemented by the Open Space Recreation (OR) zoning district; a district whose purpose is to provide for outdoor recreation (like golf courses), and not resource protection.[52]

With respect to secondary combining zoning designations, the Resource Constraint Area overlay that applies to the land use designations is implemented by the Building Site (B) combining zoning district which is further defined by eight variations, B-1 through B-8.[53] The B-8 district, often referred to as the resource constraint overlay, applies to the majority of the land involved in the proposed LCP amendment, including all of the alphabetically lettered planning units and the Spanish Bay Resort area. Lands with a B-8 overlay cannot be subdivided and development on them is almost entirely prohibited.[54] All DMF land is also combined with the Design Control (D) combining zoning designations, a district meant to guide development with respect to size, scale, layout, appearance and other such elements of design meant to ensure compatibility and protect public viewsheds, among other things. Finally, all County coastal zone land, including that within the Del Monte Forest, includes the "(CZ)" coastal zone identifier (e.g., "RC (CZ)" identifies the Resource Conservation zoning district in the coastal zone).[55]

B. Proposed LCP Amendment

The proposed LCP amendment includes some changes that would apply throughout the Del Monte Forest, but it primarily consists of specific changes that would apply to targeted areas within the Forest. In particular, the amendment includes a series of proposed changes to LUP and IP land use designations

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51 In some cases, the LDR and MDR zoning designations are further defined by maximum density notations (e.g., LDR/2 means an LDR district with a maximum density of 1 unit per 2 acres).

52 Throughout this report, land use designations are generally spelled out, followed by zoning districts in parentheses. For example "Open Space Forest (RC/B-8)" represents the Open Space Forest land use designation and the Resource Conservation zoning district to which the B-8 resource constraint overlay also applies. For cases where the "B-8" district is shown, the Resource Constraint Area LUP designation also applies. For ease of reference, the Resource Constraint Area LUP designation is not generally spelled out in this report, but it is understood to apply to the property in question.

53 B-1 through B-5 identify specific site area and setback standards, and B-6 through B-8 include restrictions on development more generally. The B-8 district is often referred to as the "Resource Constraint Overlay" because it restricts development where there are public facility constraints; the majority of property involved in the LCP amendment is zoned with the B-8 combining district in addition to its underlying base district.

54 The B-8 designation has been applied almost exclusively to undeveloped DMF lands lacking a resource conservation land use designation (e.g., those undeveloped lands not designated Open Space Forest (RC)), and essentially allows only the first single family home on a legal residential lot.

55 For the purpose of this report and for clarity in presentation, the "(D)" and "(CZ)" designations are not included where zoning designations are identified. In omitting this reference, it is acknowledged that each zoning designation in the DMF actually includes these identifiers; both in terms of the existing LCP and the proposed amendments to it.

for most of the aforementioned LUP alphabetical planning units as well as similar designation changes to a subset of areas that do not have an LCP alphabetical code, and including the 26 LCP amendment reference areas used by this report (see below). Overall, new land use designations are proposed for over 600 acres of property, the majority of which is currently undeveloped. All of this land, as well as the other areas most directly affected by the proposed amendment (such as the Inn at Spanish Bay and the Pebble Beach Lodge area), is owned by the Pebble Beach Company.[56]

1. LCP Amendment Reference Areas

The proposed LCP amendment is designed to facilitate the Pebble Beach Company's Project. As such, Project details can help to provide context for the LCP amendment – including providing a relevant example of what kinds of land use and resource impacts might result from the proposed amendment. Given that the County has already approved the Project, and that that approval was contingent upon approval of the Measure A changes as submitted, such an analytic tool is all the more relevant to the Commission's review of Measure A. Accordingly, the LCP amendment description that follows is organized around the 26 geographic areas most directly affected by the proposed amendment, where the 26 areas are organized by the broader categories that track the geographic and use categories of the LCP amendment (and by extension Project) components to the degree feasible and appropriate. The analysis is thus organized as follows:

- Recreational: Areas 1, 2, 3, and 4 corresponding to proposed Open Space Recreational areas (and corresponding to the Project golf course, driving range, and equestrian center).
- Visitor Serving: Areas 5, 6, and 7 corresponding to proposed visitor serving areas (and corresponding to the Project golf cottages, Inn at Spanish Bay and Pebble Beach Lodge area improvements).
- Residential: Areas 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 corresponding to proposed residential areas (and corresponding to the Project residential development sites).
- Resource Conservation: Areas 19, 20, 21, 22, 23, and 24 corresponding to proposed resource conservation areas (and corresponding to the Project conservation easement and resource management sites).
- Other: Areas 25 and 26 corresponding to LUP Planning Units X and Y.

In addition, there are broader proposed change categories that do not necessarily track a specific geographic area (e.g., changes affecting the overall DMF area), and these are also described. In all cases, the LCP amendment area reference is given followed by the land use category and the applicable Project component in parenthesis (e.g., "Area 1 (Recreational/Golf Course)").

2. LCP Amendment Description

For the description that follows, please refer to Figure 3 for LUP planning units and Figure 7 for LCP

[56] The LCP amendment includes modifications that do not affect land use designations relating to Area X in the Pebble Beach planning area and to Area Y in the Pescadero planning area. Areas X and Y are not owned by the Pebble Beach Company.

amendment reference areas. In addition, please refer to Figures 4 and 4 for the existing and proposed LCP land use and zoning designations. Finally, for the actual text of Measure A, please refer to Exhibit 2.

A. Recreational Areas (Areas 1 through 4)

Area 1 (Recreational/Golf Course)

Area 1 is made up of LUP planning units M, N, O, U, and V (MNOUV) and a roughly 4-acre residential area adjacent to the existing equestrian center. Altogether, Area 1 is approximately 146 acres of land that is currently made up of approximately 138 acres of land LUP designated Residential with maximum densities ranging from 1 to 4 units per acre and IP designated as either LDR or MDR,[57] and a roughly 8-acre area portion of Area O that is designated Open Space Forest (RC). With the exception of the 4-acre residential property and the 8 acres designated Open Space Forest, all of these areas are further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate all of Area 1 to Open Space Recreational (OR). The Resource Constraint Area (B-8) overlay would be removed for all of Area 1 to which it applies. All of the proposed land use designations would be reflected in LUP Figure 5 and the IP zoning maps.

In addition, the proposed amendment would also: modify LUP Figure 15 to include a note indicating that trails shown within LUP combined planning unit MNOUV on Figure 15 are illustrative, and to indicate that any final trail location and/or alignment is to be determined at the time of project approval in these areas; delete the reference to planning unit M in LUP Policy 116 (regarding affordable housing); and change the LUP's OSAC Plan to specify that areas designated OR in planning unit MNOUV are to be managed and maintained pursuant to LUP OSAC Plan management category VI applicable to golf course uses and development.

In terms of the related Project, Area 1 and the surrounding area together totaling some 216 acres (i.e., Area 1 as well as the existing Pebble Beach Equestrian Center and a portion of the dunes at Signal Hill outside of MNOUV) is the site of the proposed Project golf course and related facilities (see previous Project description).

Area 2 (Recreational/Driving Range)

Area 2 is made up of LUP planning unit C, and is a total of 29 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR) and Resource Constraint Area (B-8). The proposed LCP amendment would designate all 29 acres of Area 2 to Open Space Recreation (OR), and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designations would be reflected in LUP Figure 5 and the IP zoning maps.

In addition, the proposed amendment would also add text indicating: that a driving range and related facilities "are expected to be constructed" in planning unit C; that "parking will be provided in a portion of Area C to accommodate visitor-serving facilities in Spanish Bay" (in the LUP's land use section

[57] Area M is designated 4 units/acre (MDR/B-8), N is designated 1 unit per acre (LDR/B-8), O (residential portion) is designated 2 units per acre (MDR/B-8), U is designated 1 unit per acre (LDR/B-8), V is designated 2 units per acre (MDR/B-8), and the 4 acre residential property south of Area U (but not part of any lettered area) is currently designated residential, 1 unit per 1.5 acres, and zoned LDR/1.5.

applicable to Spanish Bay, and in the Planned Circulation Improvements section of LUP Chapter 4); and that all of planning unit C is to be managed and maintained pursuant to LUP OSAC Plan management category VI applicable to golf course uses and development.

In terms of the Project, Area 2 is the site of the proposed Project golf driving range and related facilities (see previous Project description).

Area 3 (Recreational/Equestrian Center)

Area 3 is made up of the Sawmill Gulch area, and is about 42 acres that is currently designated for resource conservation: Open Space Forest (RC).[58] The proposed LCP amendment would designate all of Sawmill Gulch to Open Space Recreation (OR), and this new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In addition, the proposed LUP text indicates that Sawmill Gulch would be managed and maintained pursuant to LUP OSAC Plan management category VII (Other), and specifically within Category VII as "equestrian center" (i.e., by OSAC definition, managed and maintained as an area that "do[es] not require specific open space management criteria," and that cites as a reference for what is meant by equestrian center management the "Collins Field Industrial Horse Trail."[59] Finally, the proposed amendment would also add text to the LUP's land use text relative to the LUP's Gowen Cypress planning area to indicate that existing mined areas can be used as an equestrian center.

In terms of the Project, Area 3 is the site of the proposed Project equestrian center and related facilities (see previous project description).

Area 4 (Recreational/Spyglass)

Area 4 is made up of the northern portion of LUP planning unit K, and is about 4 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate all of Area 4 to Open Space Recreational (OR) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In addition, the proposed amendment would also add text indicating that the portion of planning unit K designated "OR" would be managed and maintained pursuant to LUP OSAC Plan management category VI applicable to golf course uses and development.[60] In terms of the Project, no development is currently proposed at Area 4, and the project includes a conservation easement as opposed to recreational development (see previous Project description).[61]

B. Visitor Serving Areas (Areas 5 through 7)

Area 5 (Visitor Serving/Golf Cottages – 11 units)

Area 5 is made up of a 4-acre area straddling LUP planning units M and N near the intersection of

58 There is a mapping error in the Measure inasmuch as LUP Figure 5, which shows the Sawmill Gulch area as currently designated for Commercial-Institutional when it is actually currently designated Open Space Forest (see Exhibit 2). The proposed land use change of Measure A is otherwise clear, though.

59 LUP OSAC Plan page 12; see Exhibit 6.

60 Area 4 is not part of the Project golf course.

61 Tables 2.0-3, E-20b, and F2-1.

Stevenson Drive and Spyglass Hill Road. This area is currently designated Residential with a maximum density ranging from 1 unit to 4 units per acre[62] (LDR and MDR, respectively); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate all of Area 5 to Visitor Service Commercial (VSC) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In addition, the proposed amendment would also: add text to the LCP indicating that up to 24 golf suites would be located within the planning units M and N (where the text would be added in the LUP's commercial land use description and in IP Section 20.147.020(N)); modify LUP Figure 15 to include a note indicating that trails shown within combined planning unit MNOUV (and thus this portion of planning units M and N as well) on Figure 15 are illustrative, and to indicate that any final trail location and/or alignment is to be determined at the time of project approval in these areas; and delete the reference to planning unit M in LUP Policy 116 (regarding affordable housing).

In terms of the Project, Area 5 is the site of the 11 golf suite units and related development that would be constructed adjacent to the proposed Project golf course (see previous Project description).

Area 6 and 7 (Visitor Serving/Inn at Spanish Bay and Pebble Beach Lodge Expansions)

Area 6 refers to the Inn at Spanish Bay, and Area 7 refers to the Pebble Beach Lodge area. The LCP currently limits the number of units allowed at the Inn at Spanish Bay and Pebble Beach Lodge and: 161 maximum units at the Lodge and 270 maximum units at Spanish Bay. The proposed LCP amendment would modify LUP text applicable to the Spanish Bay and Pebble Beach LUP planning areas to eliminate the maximum unit references. In addition, the proposed LCP amendment would delete LUP Table A and all references to it (see also below); including the 270 units identified in LUP Table A for Spanish Bay planning unit A (i.e., for the Inn at Spanish Bay). Together, the proposed LCP amendment eliminates the requirement that the number of units at these two facilities be kept below 161 and 270 units respectively, and eliminates unit caps altogether for them (i.e., there would be no maximum number of units identified in the LCP). Other LCP land use designations applicable to the Lodge and Spanish Bay would not change.[63]

In terms of the Project, Area 6 is the site of the proposed facility expansion at the Inn at Spanish Bay (including 91 new units, and some 140,000 square feet of conference and other facility development, new underground parking facility, etc.) and Area 7 is the site of proposed facility expansion at the Lodge and in the Lodge area overall (including 58 new units, some 75,000 square feet of conference and other facility development, new underground parking facility, etc.) (see previous Project description).

C. Residential Areas (Areas 8 through 18)

Area 8 (Residential/1 unit)

Area 8 is made up of the northeast portion of LUP planning unit J, and is about 4 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further

[62] The portion in LUP planning unit M is designated 4 units per acre and the portion in LUP planning unit N is designated 1 unit per acre.

[63] The Pebble Beach Lodge and the Lodge area are currently designated Visitor Serving Commercial (VSC) and General Commercial (CGC) respectively, and the Inn at Spanish Bay is currently designated Visitor Serving Commercial (VSC) and Resource Constraint Area (but not B-8).

designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 8 as Residential with a maximum density of 1 unit per 4 acres (LDR/4)[64] and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 8 is the site of one future residential unit (see previous Project description).

Area 9 (Residential/1 unit)

Area 9 is made up of the southwest portion of LUP planning unit J, and is about 5 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 9 as Residential with a maximum density of 1 unit per 2 acres (LDR/2) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 9 is the site of one future residential unit (see previous Project description).

Area 10 (Residential/1 unit)

Area 10 is made up of the southern portion of LUP planning unit K, and is about 7 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 10 as Residential with a maximum density of 1 unit per 6 acres (LDR/6) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 10 is the site of a subdivision and one future residential unit (see previous Project description).

Area 11 (Residential/1 unit)

Area 11 is made up of the northern portion of LUP planning unit F (commonly referred to as F1),[65] and is about 8 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 11 as Residential with a maximum density of 1 unit per 4 acres (LDR/4) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. The proposed amendment would also add text to the LUP's land use text relative to the LUP's Gowen Cypress planning area to indicate that "16 residential dwellings is [sic] planned in Area F." In terms of the Project, Area 11 is the site of one future residential unit (see previous Project description).

Area 12 (Residential/10 units)

Area 12 is made up of the southwestern portion of LUP planning unit F (commonly referred to as F2),[66] and is about 20 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP

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64 Where the "4" indicates that the maximum allowed density would be 1 unit per 4 acres. In all LDR cases referred to after this, the number assigned (e.g., the "/4)" refers to the minimum number of acres required per one unit.

65 Although the LCP does not differentiate between the three areas that make up planning unit F, these areas are commonly referred to as planning units F1, F2, and F3.

66 Ibid; F1, F2, and F3.

amendment would designate Area 12 as Residential with a maximum density of 1 unit per 1.5 acres (LDR/1.5) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. Similar and related to Area 11, the proposed amendment would also add text to the LUP's land use text relative to the LUP's Gowen Cypress planning area to indicate that "16 residential dwellings is [sic] planned in Area F." In terms of the Project, Area 12 is the site of a subdivision, road and utility infrastructure to serve the subdivision, and ten future residential units (see previous Project description).

Area 13 (Residential/4 units)

Area 13 is made up of the eastern portion of LUP planning unit F (commonly referred to as F3),[67] and is about 17 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 13 as Residential with a maximum density of 1 unit per 4 acres (LDR/4) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. Again similar and related to Areas 11 and 12, the proposed amendment would also add text to the LUP's land use text relative to the LUP's Gowen Cypress planning area to indicate that "16 residential dwellings is [sic] planned in Area F." In terms of the Project, Area 13 is the site of a subdivision, road and utility infrastructure to serve the subdivision, and four future residential units (see previous Project description).

Area 14 (Residential/11 units)

Area 14 is made up of the southern portion of LUP planning unit I (commonly referred to as I2),[68] and is about 19 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 14 as Residential with a maximum density of 1 unit per 1.5 acres (LDR/1.5) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. The proposed amendment would also add text to the LUP's land use text relative to the LUP's Middlefork planning area to indicate that "open space and 11 lots for residential dwellings in Area are the principal proposed land uses" in LUP planning unit I. In terms of the Project, Area 14 is the site of a subdivision, road and utility infrastructure to serve the subdivision, and 11 future residential units (see previous Project description).

Area 15 (Residential/4 units)

Area 15 is made up of the northwest portion of LUP planning unit P and is about 5.5 acres that is currently designated Residential with a maximum density of 1 unit per acre (LDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 15 as Residential with a maximum density of 1 unit per acre (LDR/1) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. The proposed amendment would also add text to the LUP's land use text relative to the LUP's Pescadero planning area indicating that "there will be 7 lots located on approximately 15 acres" in LUP combined planning unit PQR. In terms of the Project, Area 15 is the

[67] Ibid; F1, F2, and F3.

[68] Similar to LUP planning unit F, although the LCP does not differentiate between the three areas that make up planning unit I, these areas are commonly referred to as planning units I1 and I2.

site of a subdivision, road and utility infrastructure to serve the subdivision, and 4 future residential units (see previous Project description).

Area 16 (Residential/3 units)

Area 16 includes the northern portions of LUP planning units P and R that is currently designated Residential with a maximum density of 1 unit per acre (LDR); all of which is further designated as Resource Constraint Area (B-8). Area 16 also includes a small portion of the adjacent area to the south of planning units P and R that is currently designated Open Space Forest (RC). Together, Area 16 is about 7.5 acres. The proposed LCP amendment would designate Area 16 as Residential with a maximum density of 1 unit per 2 acres (LDR/2) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. Similar to Area 15, the proposed amendment would also add text to the LUP's land use text relative to the LUP's Pescadero planning area indicating that "there will be 7 lots located on approximately 15 acres" in LUP combined planning unit PQR. In terms of the Project, Area 16 is the site of a subdivision and 3 future residential units (see previous Project description).

Area 17 (Residential/12 units (MFR))

Area 17 is made up of the westernmost portion of LUP planning unit B and is about 4 acres that is currently designated Residential with a maximum density of 4 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 17 as Residential with a maximum density of 4 units per acre (MDR/4)[69] and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In addition, the proposed amendment would also: add text in several LUP and IP locations explicitly identifying LUP planning unit B for employee housing, including proposing to replace LUP Policy 82 (identifying maximum unit counts in planning unit B premised on LUP Table A) with text indicating that "Area B may be used for up to 12 units of employee housing," and including modifying LUP Policy 116 to change its reference from providing senior housing to providing employee housing, and change the areas to which that applies from Areas M and G to planning unit B; include text in Spanish Bay planning area LUP land use text indicating that "employee housing may be proposed in Area B;" add text to IP Section 20.147.090(B) (Land Use and Development Standards; Specific Development Standards) stating that "additional employee housing is permitted consistent with all other plan policies," and that "up to 12 units of employee housing may be provided in a portion of Area B;" and, applicable to employee housing more generally, change LUP Policy 78a and IP Section 20.147.090(B) to remove explicit criteria limiting employee housing to be "in dormitory/bunkhouse or in temporary structures (i.e., former mobile homes)."

In terms of the Project, Area 17 is the site of a subdivision, road and utility infrastructure, twelve multi-family residential units in four buildings, and related residential development (garages, parking areas, driveway access, paths, fences, etc.) (see previous Project description).

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69 Unlike the IP LDR zoning district where the numerical identifier refers to the number of acres per unit (IP Section 20.14.060), the IP MDR zoning district numerical identifier refers to the number of units per acre (IP Section 20.12.060). Thus, in this case, the MDR/4 refers to 4 units per acre (or 1 unit per quarter acre). In all MDR cases referred to after this, the number assigned (e.g., the "/4)" refers to the maximum number of units allowed per one acre.

Area 18 (Residential/48 units (MFR))

Area 18 is made up of about 18 acres associated with the Pebble Beach Company's office and corporation yard at the southern base of Huckleberry Hill Natural Habitat Area. This area is currently designated in two commercial categories: about 9 acres designated General Commercial (CGC) and about 9 acres designated Institutional Commercial (IC); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would maintain these designations but would remove the Resource Constraint Area (B-8) overlay. This new land use designations would be reflected in LUP Figure 5 and the IP zoning maps.

The proposed amendment would also add text to the LUP's text relative to the LUP's Huckleberry Hill planning area to make the text changes applicable to employee housing previously noted above.

Also applicable to this area, LUP Table A identifies the maximum allowed number of units (residential and visitor serving) in the Del Monte Forest. The proposed LCP amendment would delete LUP Table A and all references to it (see also below). Currently, the corporation yard area is not ascribed any units by Table A. As a result, the LUP does not provide for residential units and development in that area. By eliminating Table A and related LUP text, the LUP limitation on residential units and development there is also eliminated. In other words, by proposing to delete Table A, the amendment proposes to allow residential units and development in the corporation yard commercial area.

In terms of the Project, Area 18 is the site of a subdivision, road and utility infrastructure, 48 multi-family residential units in eight buildings, and related residential development (carports, parking areas, driveway access, paths, fences, etc.) (see previous Project description).

D. Resource Conservation (6 Areas)

Area 19 (Resource Conservation/14 acres)

Area 19 is made up of the eastern portion of LUP planning unit B and is about 14 acres that is currently designated Residential with a maximum density of 4 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 19 as Open Space Forest (RC) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 19 would be managed for resource enhancement and would have a conservation easement placed over it (see previous Project description).

Area 20 (Resource Conservation/33 acres)

Area 20 is made up of LUP planning unit G and is about 33 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 20 as Open Space Forest (RC) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. The proposed amendment would also add text to the LUP's text relative to the LUP's Huckleberry Hill planning area to state that "Elimination of residential units in Area G will result in preservation of approximately 965 acres of contiguous open space forest between the Gowen Cypress, Huckleberry Hill, Middle Fork and Pescadero Canyon areas." In terms of the Project, Area 20 would be managed for resource enhancement and would have a conservation easement placed over it (see previous Project description).

Area 21 (Resource Conservation/24 acres)

Area 21 is made up of LUP planning unit H and is about 24 acres that is currently designated Residential with a maximum density of 2 units per acre (MDR); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 21 as Open Space Forest (RC) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 21 and the immediately surrounding area (currently designated Open Space Forest (RC)) would be managed for resource enhancement and would have a conservation easement placed over it (see previous Project description).

Area 22 (Resource Conservation/29 acres)

Area 22 is made up of the northern portion of LUP planning unit I (commonly referred to as I1),[70] and is about 29 acres that is currently designated Residential with a maximum density of 1 unit per acre (about 25 acres) and 2 units per acre (about 4 acres) (LDR and MDR, respectively); all of which is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 22 as Open Space Forest (RC) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 22 and the immediately surrounding area (currently designated Open Space Forest (RC)) would be managed for resource enhancement and would have a conservation easement placed over it (see previous Project description).

Area 23 (Resource Conservation/19 acres)

Area 23 is made up of LUP planning unit L (about 18 acres) and an adjacent 1-acre property located across Stevenson Drive to the east of planning unit L, a total of about 19 acres. Area 23 is currently designated Residential with a maximum density of 2 units per acre (MDR (for the 18-acre part) and MDR/2 (for the 1-acre part)), and is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 23 as Open Space Forest (RC) and would remove the Resource Constraint Area (B-8) overlay. The proposed new land use designation would be reflected in LUP Figure 5 and the IP zoning maps. In terms of the Project, Area 23 would be managed for resource enhancement and would have a conservation easement placed over it (see previous Project description).

Area 24 (Resource Conservation/145 acres)

Area 24 is made up of portions of LUP planning units P, Q, and R (commonly referred to as combined planning unit PQR), including the eastern portion of unit P, the southern portion of unit R, and all of unit Q. Area 24 is a total of 145 acres that is currently designated Residential with a maximum density of 1 unit per acre (LDR), and is further designated as Resource Constraint Area (B-8). The proposed LCP amendment would designate Area 24 to Open Space Forest (RC). In terms of the Project, Area 23 and the portion of the Pescadero Canyon area that is owned by the Company and currently designated Open Space Forest (RC) would be managed for resource enhancement and would have a conservation easement placed over it (see previous Project description).

E. Other Areas (2 Areas)

[70] Ibid; planning units I1 and I2.

Areas 25 and 26 (LUP Planning Units X and Y)

Area 25 refers to LUP planning unit X and Area 26 refers to LUP planning unit Y. Area 25 is about 23 acres and Area 26 is about 20 acres, both of which are currently designated Residential with a maximum density of 1 unit per acre (LDR), and further designated as Resource Constraint Area (B-8). As described above, the proposed LCP amendment proposes to eliminate Table A and associated LCP references to it. Because Table A and the associated text identify the maximum number of units that are allowed within each LUP planning unit in the Forest, its proposed elimination proposes to delete the maximum unit counts identified for planning units X and Y.[71] In addition, the proposed LCP amendment includes language that would be added to the LUP's land use text associated with the LUP's Pebble Beach and Pescadero planning units indicating that "20 additional residential dwellings are planned on land in Area Y," and "23 additional residential dwellings are planned for Area X." In other words, for planning units X and Y (not owned by the Pebble Beach Company), the proposed amendment would ascribe a unit count to these areas where the number of units has been taken from the maximum figures in existing Table A. This unit count would no longer be controlled by LUP language identifying these as maximums. The Project does not include Areas 25 and 26.

F. Other Amendment Components

Resource Constraints Eliminated – Additional LCP Text

In addition to the elimination of the Resource Constraint Area (B-8) overlay for each of the Areas as described above, the proposed LCP amendment would add text to the LUP and IP indicating that water, wastewater, and transportation constraints no longer apply for the above-described lettered areas (see Measure A in Exhibit 2).

Table A Deletion Eliminates Maximum Unit Thresholds

As described above, the amendment proposes to delete Table A and references to it. In addition to the ramifications detailed above, Table A and the references to it also currently identify the maximum number of units allowed per LUP planning area, per lettered LUP planning unit, and per the Del Monte Forest as a whole. Thus, its repeal is also a proposal to eliminate the cap on the number of units that are allowed within each planning area and unit, and within the Del Monte Forest overall. In other words, the amendment potentially allows additional units in LUP planning areas and/or LUP planning units where unit maximums either have already been reached, or would have been reached in the future under the existing Table A/LCP structure (including additional caretaker units, second units, etc.).

LUP's Land Use Designation Figures

The amendment proposes to change the way the LUP's land use designation figures are displayed. Currently, the LUP's land use designations are identified on LUP Figure 5, and Figure 5 is supplemented by LUP Figures 6a, 7a, 8a, 9a, 10a, 11a, 12a, and 13a. Figures 6a through 13a show the same information as LUP Figure 5, but each figure is "zoomed-in" to show each planning area at a finer scale. The proposed LCP amendment would delete the zoomed-in figures and references to them, and retain the modified (as described above) Figure 5. The proposed amendment would modify LUP text applicable to the each LUP planning area to reflect the deletion of the zoomed figures and to reflect the proposed reliance instead on the amended LUP Figure 5 alone.

[71] And other LUP planning units and larger LUP planning areas; see also below.

3. General Effect of Proposed Amendment

The primary component of the proposed amendment is to propose land use and zoning designations for approximately 604 acres of Del Monte Forest land, almost all of which (approximately 575 acres) is undeveloped at the current time.[72] Although there are other related and important components (as seen above), these land use changes are the focus of the proposed LCP amendment. The vast majority of the affected acreage, roughly 536 acres, is currently designated residential, with some 50 acres designated resource protection and 18 acres designated commercial. All but the 50 acres of resource protection (and 4 acres of the residential) is also designated with the resource constraint overlay. Under the proposed amendment, the resource constraint overlay would be removed and the land use designation composition for these properties would change. The result under the amendment would be roughly 264 acres resource protection, 221 acres recreational, 97 acres residential, 18 acres commercial, and 4 acres visitor serving.

Thus, the primary land use designation effect of the proposed amendment is to shift the DMF land use designation framework for the affected property from a mostly residential orientation to a mostly open space orientation. Towards this end, the County and Pebble Beach Company have argued that the proposed LCP amendment should be considered more protective of coastal resources because instead of the existing LCP potentially resulting in hundreds of single-family homes, the revised LCP would allow for a reduced number of such potential residential developments, increased open space/conservation zoning, along with a golf course, equestrian center, and visitor serving development.

A. Measuring Development Potential Under the Current LCP

The County has indicated that the current development potential for the properties that are directly affected by the proposed amendment is 849 potential residential lots through subdivision[73] (and presumably 849 associated single-family residential developments). The 849 lot figure is derived from LUP Table A, which shows the maximum number of potential residential dwellings allowed in the alphabetical planning unit areas of the Del Monte Forest, and is the latest figure in a series of such residential development potential figures that have been used by the County and the Pebble Beach Company for this purpose.[74] However, Table A is an inappropriate starting point for establishing an LCP "baseline" against which to evaluate the proposed amendment (and/or Project).[75]

LUP Table A

Among other things, LUP Table A identifies the maximum number of residential units that could be developed on any of the alphabetically lettered planning units of the Del Monte Forest (see LUP Table

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72 The 604 acre figure does not include Areas 25 and 26.

73 Monterey County Measure A Analysis (March 2005); see Exhibit 7. Not including Areas 25 and 26.

74 The numbers used in this respect have ranged from 849 to 1,067 residential units. These differences appear to be related to the way in which residential potential for areas outside of lettered areas (and outside of the area directly affected by the proposed amendment's new land use designations) are accounted for (e.g., within the existing equestrian center), and the way in which Table A residential numbers for each alphabetical area are either included or excluded from the Table A total because (a) they are already developed with residences, and/or (b) they are deemed to not be directly affected by the proposed LCP amendment land use changes.

75 Commission staff have consistently informed the County and the Pebble Beach Company for many years that the actual development potential of the Project area lands is likely much lower than a rote reliance on the theoretical maximums of Table A, particularly given the sensitive biological resources found in many of the areas in question (see below). See Commission staff selected correspondence to this effect in Exhibit 3.

A in Measure A in Exhibit 2). The LUP Table A unit maximums were derived from multiplying the maximum LUP residential densities shown in LUP Figure 5 by the acreage of each lettered planning unit area (for example, because planning unit C is 28 acres and it is shown as a maximum of 2-units per acre in LUP Figure 5, Table A identifies 56 units in planning unit C). In other words, the Table A numbers represent simple arithmetic, and are not premised on some sort of substantive evaluation of development potential. Toward this end, the LUP clearly states that the Table A unit counts are maximums:

> *The number of residential and visitor-serving units shown on Table A and the densities shown on Figure 5 and on the following land use plan maps for the various planning areas are maximum figures. The exact density is contingent upon natural resource constraints present and availability of public services as determined through project review.*

The Table A unit counts represent a theoretical multiplication exercise that holds all other applicable LCP policies constant, and thus is designed to show the absolute highest end of the potential development spectrum where the highest end could only be achieved on a property if there were no coastal resource constraints that would not allow the design of the theoretical maximum density on the site. The LCP makes clear that actual development potential is dependent on resource constraints. As such, the Table A numbers do not represent any sort of entitlement for subdivision and/or other development at the level indicated.[76] Table A is not a useful proxy for identifying the baseline amount of development that might be allowed under the current LCP.

Takings

As discussed in more detail below, the majority of the property for which land use designation changes are proposed are both undeveloped and occupied by significant biotic resources in association with one another (e.g., native Monterey pine forest, Yadon's piperia, central maritime chaparral, wetland, dunes, etc.).[77] As a result, the LCP amendment area is highly constrained in terms of both subdivision and other development potential. To the extent these resources might constitute ESHA, development potential would be even more strictly limited.[78] In light of such resources, it is more accurate to state that the development potential of the directly affected lands is much lower than the Table A maximum numbers. And, depending on the determination of existing resources (e.g., whether a property constitutes ESHA), the development potential may more accurately depend on a "takings" analysis.[79]

For example, within the context of Constitutional takings law and the LCP, the maximum development

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76 In fact, subdivision of the affected land is prohibited by virtue of the current resource constraint LUP overlay and the B-8 zoning.

77 See ESHA findings that follow.

78 The LCP's ESHA policies prohibit subdivision and are extremely protective of ESHA, mimicking the Coastal Act in that respect. See ESHA finding.

79 The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation." Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation…has first been paid to, or into court for, the owner." Similarly, Coastal Act Section 30010 addresses takings and states as follows: "The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States."

potential of a residentially zoned legal lot that is entirely ESHA is probably not more than a single house.[80] In other words, the LCP protects ESHA, only allowing resource-dependent use that is compatible with maintaining habitat values. If residential development were proposed on a legal lot determined to be entirely ESHA, then it could not meet these fundamental LCP ESHA tests and would need to be denied. When a project is so denied, though, a question may arise whether the denial results in an unconstitutional "taking" of the applicant's property without payment of just compensation. In order to avoid a takings, a single residential development that minimized ESHA impacts might be approved. In some cases, depending on the circumstances involved, it may be there is no potential for a takings in such a denial, and the development potential is less than a single residence.[81]

The actual development potential of the directly affected lands is thus more accurately a function of the number of legal lots and where and how they are located in relation to ESHA and other resources and constraints than anything else.[82] For example, with respect to the LUP planning unit C example from above, this area appears to be part of one larger legal lot recognized by the County and it is entirely occupied by significant biotic resources. If these resources were determined to be entirely ESHA, the maximum development potential here would likely be one single-family home, not the maximum 56 units identified in LUP Table A.

Legal Lots

The legal lot framework associated with both the Project area and the subset of the Project area directly affected by the proposed LCP amendment is somewhat unclear. Likewise, that framework cannot easily be broken down between the area directly affected by the proposed amendment and the area not directly affected but still a part of the proposed project area. According to the County, the Pebble Beach Company originally requested unconditional certificates of compliance (COCs)[83] for 77 lots that cover the Project area. The County ultimately issued 41 COCs for a part of the project area, where a portion or all of 18 of the 41 COC lots are located within the property area directly affected by the proposed LCP amendment. To account for the other property areas not recognized as legal lots by the County, both inside and outside of the proposed LCP amendment area, the County approved conditional certificates of compliance[84] as part of the Company's project that recognized three larger areas as legal lots, and approved subdivisions within the three areas to arrive at the a final number and configuration of lots within the project area necessary to satisfy the Company's project.[85] Thus, in terms of the area directly

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80 Each takings analysis is case specific, and the actual development potential of any particular property will depend on the transactional history of the parcel and surrounding parcels, applicable laws and regulations, development context, environmental constraints, etc. As a rule of thumb, land use regulation often relies on one residential unit per one legal lot as a point of reference. This analytic tool is generally appropriate within the LCP amendment/Project area because much of it is designated residential under the current LCP.

81 For example, a takings claim may not be "ripe" in that there may be something other than the proposed project that is approvable, the applicant may not have a reasonable investment-backed expectation to a residence, the lot may be aggregated with adjacent lots for to determine property against which the taking claim will be measured (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318)), etc..

82 Including the Resource Constraint Overlay and the B-8 zoning designation that applies to almost all of the directly affected lands, prohibiting subdivision and prohibiting most other development absent removal of these constraints (see Public Service findings).

83 An unconditional certificate of compliance recognizes a lot as having been legally created pursuant to all applicable laws in effect at the time of its creation.

84 A conditional certificate of compliance represents a new subdivision subject to currently applicable laws, including the LCP.

85 The conditional COCs/subdivisions are part of the County's coastal permit actions that have been appealed.

affected by the proposed LCP amendment, a portion or all of 18 lots have been recognized by the County, and the other area remains unresolved absent the Company's Project; within the Project area the County has recognized 41 legal lots. See Exhibit 15 for a graphic depiction of this described legal lot framework presented by the County.

B. Development Expected Under the Amended LCP

As evidenced by the County's action, the Project is the expected outcome under the amendment of the LCP. It would result in the aforementioned Project, including ultimately providing for 36 single-family residential units, 60 multi-family residential units, 160 guest units, a golf course, a driving range, an equestrian center, resort expansion, and other related development. As discussed below, given the significant biological resources in the various areas to which the amendment applies, the existing baseline of potential development under the current LCP is substantially less than what would be expected under Measure A (see ESHA finding that follows).

On a related point, some have argued that despite the amended LCP allowing for significantly more development and coastal resource impacts, a trade-off is appropriate in light of the significance of the resource conservation portion of the Project. It is true that the Project dedication and resource management elements are a significant commitment on the part of the Pebble Beach Company to protecting these resource areas. However, these dedications must also be understood in the context of the existing LCP. The Project dedication component includes dedication of resource area lands that are either already designated for resource protection (Open Space Forest (RC)) and thus protected by this resource conservation designation, or lands that are already significantly "protected" by virtue of the resources present there in light of the existing LCP policies. In fact, roughly a third of the Project dedication area in the Forest is already protected by the Open Space Forest (RC) designation.[86] To the extent the remaining two-thirds might constitute ESHA, they have very little development potential as well (see ESHA finding below). In addition, the 42-acre Sawmill Gulch area that was previously dedicated would be undedicated in the Project scenario. Although the resource management components of the Project would be expected to enhance resource value within these Project resource conservation and management areas, this benefit needs to be understood in the context of what the LCP might currently allow in each area.

C. Commission Decision Scenarios

With proposed LCP amendments, the Coastal Commission can either (1) approve the amendment as submitted; (2) deny the amendment as submitted; or (3) deny the amendment as submitted and then approve the amendment subject to the local government making changes to the amendment pursuant to Commission identified "suggested modifications" (sometimes referred to as a conditioned approval).[87] However, there are at least two issues related to this range of potential Commission actions that warrant additional discussion: the conditioned approval decision scenario and how it would have to be handled

[86] PDP EIR Table F2-1. An additional 320 acres outside of the coastal zone would also be dedicated.

[87] In other words, if not approved as submitted, an LCP amendment must be denied whether the Commission chooses outright denial or the Commission chooses to ultimately approve it in some different manner.

by the County; and the Measure's own Coastal Act consistency clause.

With respect to the latter, the proposed Measure A LCP amendment includes some noteworthy language related to finding Coastal Act consistency. Specifically, Section 13 of Measure A ("Compliance with California Coastal Act") states as follows:

> *It is the intent of the voters of the County of Monterey that this Initiative be consistent with the California Coastal Act. In the event any section, sub-section, sentence, clause, phrase, or part of this Initiative is determined to be inconsistent with the Coastal Act by a final judgment of a court of competent jurisdiction, this Initiative and the whole thereof shall be of no further force or effect.*

Section 13 establishes a type of "all or none" Coastal Act consistency rubric where <u>any</u> inconsistency undoes the rest of the initiative. In fact, it appears that the LCP amendment cannot be severed in terms of a Coastal Act analysis: if one part is determined to be inconsistent, then all of it is mooted.

A separate but related issue arises with respect to the conditioned approval decision scenario and how it would be legally implemented by the County.[88] Bracketing for a moment the issues regarding Section 13, when the Commission denies and then approves an LCP amendment with suggested modifications, the County must take legally adequate action within six months of Commission approval to make the changes required by the Commission's suggested modifications. Once the County has taken the appropriate actions in that respect, the Commission reviews the County's actions to determine if they are legally adequate to implement the suggested modifications. If so, the amended LCP is certified. Unlike the typical LCP amendment case where the County Board of Supervisors is charged with taking the appropriate actions, Measure A requires a vote of the people to allow any changes to it. Specifically, Section 11 of Measure A ("Amendments") states as follows:

1. *Except as expressly provided herein, this initiative may be amended or repealed only by the voters at a County election.*

2. *The County of Monterey Board of Supervisors is hereby authorized and directed to amend provisions of the General Plan and Zoning Code, and other ordinances and policies not amended by this Initiative and in the manner and time required by State Law, if such amendments are necessary to ensure consistency between this Initiative and other elements of the County's General Plan, Zoning Code, and other County ordinances and policies.*

Thus, if the Commission were to approve the LCP amendment subject to suggested modifications that amended the initiative in some way, then at a minimum County voters would have to approve the changes as part of the County's legally adequate actions.

D. Procedure/Standard of Review for LCP Amendments

[88] A straight up approval certifies the LCP as amended and a straight-up denial leaves the certified LCP unamended; neither action requires the County to take further LCP action.

Measure A was submitted as a single-part LCP amendment[89] for purposes of Commission action. It includes both LUP and IP amendments that are subject to different review criteria and procedures. The standard of review for the proposed changes to the LUP is consistency with the Coastal Act, and the standard of review for proposed changes to the IP is that they must be consistent with and adequate to carry out the LUP. Thus, the amendment's proposed LUP changes are subject to one set of criteria and a separate Commission vote, and the amendment's proposed IP changes another set of criteria and another separate Commission vote. Within these LUP and IP components, however, the same "whole" review applies. Thus, if any one component of the LUP changes proposed must be denied, then all of the LUP changes proposed must be denied (and similarly with the IP changes). The Commission may propose modifications to the amendment to correct any inconsistencies in the LUP and IP that may be identified.

As described earlier, a substantial portion of Measure A is designed to facilitate a specific project proposed by the Pebble Beach Company that has already been approved by the County. Thus, this Project represents a potential development outcome if Measure A is approved as submitted. The Pebble Beach Company's project is thus used in the findings below as an example of the type of development that might follow such LCP changes. To the extent the County has relied on the Project's EIR as support for this LCP amendment, the Project is also directly relevant in that sense.[90] That said, the Project is <u>not</u> before the Commission at this time. Although it can be used to help understand the implications of the amendment, and it obviously illuminates the coastal resource issues raised by Measure A, the Commission is charged at this time with reviewing the LCP amendment only. Consideration of the merits of the appeals filed on the County's approval of the Project would follow at a future Commission hearing.

[89] Partially because local governments are limited to proposing three LCP amendments in any one year, LCP amendments may be submitted in multiple parts. Oftentimes local governments will avail themselves of this option when an LCP amendment submittal packages disparate proposed changes to an LCP in one amendment (e.g., a single LCP amendment proposing changes to the design review chapter of an IP at the same time as proposing separate changes to the LUP's bluff setback requirements would likely be submitted as two parts of one LCP amendment). In this case, the proposed LCP amendment was not broken into parts.

[90] The County has indicated that the project EIR was and should be used for LCP amendment purposes.

PART 3: LCP AMENDMENT CONSISTENCY ANALYSIS

1. ENVIRONMENTALLY SENSITIVE HABITAT, WETLANDS, AND OTHER BIOLOGICAL RESOURCES

A. Applicable Policies and Definitions

1. Coastal Act Requirements

The proposed Land Use Plan changes of Measure A must be consistent with the Coastal Act policies that protect biological resources. Specifically, Coastal Act Section 30240 protects environmentally sensitive habitat areas (ESHAs):

> ***Section 30240.***
>
> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Coastal Act section 30107.5 defines environmentally sensitive area:

> ***Section 30107.5:*** *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The Coastal Act thus establishes a rigorous standard for protection of areas that are identified as environmentally sensitive. Only resource-dependent development, such as habitat restoration, is allowed within an ESHA, and all development within or adjacent to an ESHA must be sited and designed to prevent significant impacts to the ESHA. In contrast to environmental laws that may allow development in an environmentally sensitive area if the impacts can perhaps be mitigated to a less than significant

level through restoration or conservation of other habitat areas, the Coastal Act requires that new development avoid identified ESHAs and that ESHAs be appropriately buffered from potential development impacts. Providing mitigation for ESHA impacts to allow development in an ESHA is not allowed for avoidable impacts to ESHA.[91]

The Coastal Act also protects wetlands, which are defined by section 30121:

> ***Section 30121.*** *"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*[92]

Coastal Act Sections 30231 and 30233 protect wetland resources:

> ***Section 30231.*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*
>
> ***Section 30233(a).*** *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including*

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91 This was confirmed in the Bolsa Chica case, wherein the Court found: "Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA... ." *Bolsa Chica Land Trust v. Superior Court* 71 Cal.App.4th 493, 507.

92 The Coastal Act definition is augmented by the more specific and technical wetland definition in the Commission's regulations (California Code of Regulations, Title 14) (CCR); CCR Section 13577(b) that states in applicable part:

(1)…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, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;
(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or
(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

(2) For the purposes of this section, the term "wetland" shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

(A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and
(B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands.

commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. . . .

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

. . . .

Section 30233(c). *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. . . .…*

California courts have also upheld the high Coastal Act standards for protecting wetlands. Similar to the ESHA policies, the requirements of Section 30233 cannot be met through off-site mitigation or conservation of wetlands unless a proposed use in a wetland is one of the allowed enumerated uses, and if the policy is otherwise met.[93]

2. LUP Requirements

The standard of review for the IP portion of the proposed amendments is conformance with and adequacy to carry out the LUP. The LUP includes a wide range of policies that address ESHA, wetlands, and related habitat resources in one way or another. LUP ESHA policies most directly applicable to ESHA are found in the LUP's ESHA section within LUP Chapter 2, primarily in LUP Policies 8 through 30, including:

LUP ESHA Policy Guidance Statement: *The environmentally sensitive habitat areas of the Del Monte Forest Area are unique, limited, and fragile resources, which are important to the*

[93] Bolsa Chica Land Trust v. Superior Ct. (1999) 71 Cal.App.4th 493.

enrichment of residents and visitors alike. Accordingly, they shall be protected, maintained, and, where possible, enhanced and restored in accordance with the policies of this LUP and the associated policies and maintenance standards of the OSAC Plan. All categories of land uses, both public and private, shall be subordinate to the protection of these areas.

LUP Policy 8: *Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses immediately adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the resource; development shall be sited and designed to prevent impacts which would significantly degrade the protected habitat. In designated open space areas, conformance to the applicable OSAC Plan maintenance standards shall be considered the test of consistency with this policy.*

LUP Policy 9: *Improvements to facilitate recreational or visitor uses, including vegetation removal, excavation, grading, or filling in designated environmentally sensitive habitat areas shall be sited, designed and managed to avoid any significant disruption of the protected resources. Areas which are especially sensitive to recreational use include riparian, habitats, wetlands, and sites of known rare and endangered species of plants and animals. Bird rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified in Figure 2 of this LUP are generally appropriate only for off-site observation. Any uses of these areas shall be mitigated consistent with OSAC maintenance standards for the affected area and shall be required to demonstrate enhancement of the affected habitat as part of the use proposal.*

LUP Policy 10: *New subdivisions which create commitment to development immediately adjacent to environmentally sensitive habitat areas shall be allowed only at densities compatible with protection and maintenance of these resources. New subdivisions may be approved only where potential adverse impacts to environmentally sensitive habitats can be prevented. Conformance to the applicable OSAC maintenance standards shall be required wherever open space lands would be affected. No residential subdivision shall be allowed unless it is first demonstrated that, for each new residential lot, normal residential development, including driveway and utility connections, is feasible without damage to any environmentally sensitive habitat.*

LUP Policy 11: *Contiguous areas of undisturbed land in open space uses shall be maintained wherever possible to protect environmentally sensitive habitat areas and associated wildlife values. To this end, development of parcels immediately adjacent to designated environmentally sensitive habitat areas shall be planned to keep development intensity immediately adjacent to the sensitive habitats as low as possible, consistent with other planning criteria (e.g., drainage design, roadway design, and public safety). Conformance to applicable OSAC maintenance standards shall be the test of consistency with this policy.*

LUP Policy 12: *Where development of any type, including subdivision of land for development purposes, is proposed in or near documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals shall be required in order to determine precise locations and to recommend mitigating measures to ensure protection of any sensitive species or*

habitat(s) present. Where OSAC maintenance standards have been prepared, these shall be observed in the preparation of such recommendations.

LUP Policy 14: *Near environmentally sensitive habitat areas, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) shall be restricted to the minimum amount necessary to accommodate development. This policy shall not restrict the activities of the Del Monte Forest Foundation in implementing OSAC Plan maintenance standards.*

LUP Policy 18: *Uses of the remnant native sand dune habitat shall be limited to low-intensity scientific, educational, or recreational activities dependent on the resource…Particular attention shall be given to protection of rare and endangered plants from trampling. Conformance to the appropriate OSAC maintenance standards shall be the criteria for consistency with this policy. Such uses must be consistent with restoration and enhancement of the habitat.*

LUP Policy 22: *Land uses within or adjacent to the Gowen cypress/Bishop pine association shall be compatible with the objective of protection of the S.F.B. Morse Botanical Reserve. Residential and recreational development, such as golf courses, shall be carefully sited and restricted to a level consistent with the protection of these resources. Development proposed adjacent to the Gowen cypress habitat shall be planned in a manner to protect this rare species. Conformance to OSAC Plan maintenance standards shall be the test for consistency with this policy.*

LUP Policy 24: *Riparian plant communities shall be protected by establishing a setback of 100 feet from the centerline of the intermittent streams where such plant communities occur, or the outer edge of riparian vegetation, whichever is greater. The setback requirement may be reduced if it can be demonstrated that a narrower corridor is sufficient to protect riparian vegetation and associated wildlife values and enhancement is proposed. No significant disruption of the riparian habitat will be permitted in instances where projects propose the modification of existing riparian corridors. Where this criterion can be met, such projects may be approved, provided that they result in long-term habitat enhancement to offset the short-term loss. The long-term enhancement shall result in new habitat greater in value (qualitatively and quantitatively) than the existing habitat displaced. Examples of such cases include restoration of previously damaged riparian environments and replacement of fill by bridges.*

LUP Policy 27: *A setback of 100 feet from the landward edge of wetlands and from the mean high water line of the ocean shall be provided. No landscape alterations will be allowed in this setback area unless accomplished in conjunction with restoration and enhancement and unless it is demonstrated that no significant disruption of environmentally sensitive habitat will result.*

LUP Policy 28: *Previously subdivided land shall fall under the same development standards as new residential development or subdivision in areas A through X as shown on Figure 5 of this plan. Development, except as provided by Policy 74, shall be prohibited on any parcel which is entirely within an environmentally sensitive habitat area. Specific measures to preserve such parcels will be developed, as necessary, in the implementation plan. (Note that Policy 74 states: Environmentally sensitive habitat areas will remain undeveloped except for parking or similar*

access facilities. Access improvements shall be developed consistent with the site-specific recommendations of the LUP Access Maps (Appendix B).)

In addition to the LUP's forest policies are also relevant, including:

LUP Forest Resource Policy Guidance Statement: *The natural beauty of the Del Monte Forest is one of its chief assets. The forest resource, in addition to its role in the areas natural environment, is a principal constituent of the scenic attractiveness of the area which should be preserved for the benefit of both residents and visitors. The Forest is more than an aggregate of trees. It is home to the areas wildlife and serves to moderate climatic extremes. Therefore, long-term preservation of the forest resource is a paramount concern.*

LUP Policy 31: *The natural forested character of Del Monte Forest shall, to the maximum feasible degree, be retained, consistent with the uses allowed by this plan. Accordingly, all tree removal, land clearing for development and forest management activities within native forest areas covered by this plan shall conform to LUP policies regarding water and marine resources, environmentally sensitive habitat areas, and scenic visual resources.*

LUP Policy 32: *Where LUP objectives conflict, preference should be given to long-term protection of the forest resource. When reviewing requests for tree removal environmental considerations shall include review of forest plant associations, native soil cover, and aesthetic values, as well as maintenance of the overall health of the stand….*

LUP Policy 33: *In reviewing requests for tree removal, land clearing, and other development, preservation of scenic resources shall be a primary objective….*

LUP Policy 34: *In considering potential development projects, project designs shall be required to minimize to the extent feasible the removal of vegetative cover or damage to soil resources. Land use concepts which minimize removal will be preferred….*

LUP Policy 36: *New residential development, including driveways and parking areas, shall be sited and designed to minimize cutting of trees….*

Furthermore, the LUP's land use policies are also relevant, including:

LUP Land Use Goals: *Four basic goals of the California Coastal Act establish direction for land use planning proposals for the Del Monte Forest Area. They are:*

1) Protect, maintain, and, where feasible, enhance and restore the overall quality of the Coastal Zone environment and its natural and man-made resources.

2) Assure orderly, balanced utilization and conservation of Coastal Zone resources, taking into account the social and economic needs of the people of the state.

3) Maximize public access to and along the coast and maximize public recreation opportunities in the Coastal Zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

4) Assure priority for coastal-dependent and coastal- related development over other development on the coast.

In applying these goals, retention of the Del Monte Forest Areas unique natural character is paramount. The Del Monte Forest Area contains rich environmental resources. The long-term protection of these resources inevitably requires a cautious and thoughtful approach to planning decisions. The natural environment and its resources vary widely in their sensitivity to development. Environmentally sensitive areas such as the locations of rare and endangered species, wetlands, and riparian habitats need to be protected. Other areas, where potential constraints can be mitigated through careful site planning and development controls can be allowed to have appropriate levels of development.

LUP Land Use Policy Guidance Statement: *Open space designations in this LCP shall encompass environmentally sensitive habitat areas. Future development must clearly be consistent with protection of these environmentally sensitive areas and the use priorities of the California Coastal Act.*

LUP Policy 69: *Environmentally sensitive habitat areas shall be protected from both direct and indirect adverse impacts of development. Conformance with OSAC maintenance standards shall be the test of consistency with this policy, where appropriate.*

LUP Policy 74: *Environmentally sensitive habitat areas will remain undeveloped except for parking or similar access facilities. …*

LUP Policy 79: *Recreation in environmentally sensitive habitat areas such as residual dunes, wetlands, and areas with rare or endangered plants or animals shall be limited to passive, low-intensity recreation use dependent on and compatible with the sensitive resources. Conformance with the appropriate Site Specific Shoreline Public Access Design Criteria and OSAC maintenance standards shall be the test of consistency with this policy, where appropriate.*

Also, the LUP's OSAC Plan is also relevant. See selected excerpts in Exhibit 6.

3. Applying the ESHA Definition: What Constitutes ESHA?

ESHA, as defined in Section 30107.5 of the Coastal Act, is "…any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities." There are several important elements in this definition:

- An area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. A "habitat" is simply a place that has the physical and biological characteristics necessary to support a particular species population or a particular biological community and is often given the name of the community.

- An area can be designated ESHA because of rarity; it may support a rare species or constitute a rare community type or the area itself may constitute a physical habitat that is rare (e.g., sand dunes).

- An area can be designated ESHA because it is especially valuable due to its special nature (e.g., a research reserve).
- An area can be designated ESHA because it is especially valuable due to its role in the ecosystem (e.g., providing nesting sites for raptors or overwintering habitat for Monarch butterflies).
- Finally, the area must be easily disturbed or degraded by human activities.

What constitutes "rare?"

There are several types of rarity, but each of them poses a threat to the continued existence of species that naturally occur in larger or more widespread populations. Increasing numbers of species have become absolutely rare, having been reduced to a few hundreds or thousands of individuals. The prognosis for these species is very poor. Another common pattern is for species to be globally rare but locally abundant. Such species only occur at a few places either as a result of natural processes or human perturbations. The relict forests of Monterey pine, for example, appear to be constrained in their natural distribution as a result of long term climate change. Some species, such as Yadon's piperia and Hooker's manzanita, are characterized as "narrow endemics" because they have evolved adaptations to a very limited range of environmental variables (e.g., soil type, temperature, presence of fog, etc.), which restricts their spatial distribution. Many other species have restricted distributions as a result of human activities, especially agricultural and urban development that results in habitat loss. Many natural endemics have also suffered such habitat loss – compounding the risk to them. All these species may be abundant in the few areas where they still occur. However, regardless of the cause of their restricted distribution, the survival of these species is at elevated risk because localized impacts may affect a large proportion of the population with devastating effects. At the other end of the spectrum of rarity are species that are geographically widespread, but are everywhere in low abundance. Some species naturally occur in this pattern and have life-history characteristics that enable them to persist. However, naturally abundant species that have been reduced to low density throughout their range are at heightened risk of extinction, although their wide distribution may increase their opportunities for survival.

What constitutes "especially valuable?"

All native plants and animals and their habitats have significant intrinsic value. However, the language in the Coastal Act definition of ESHA makes clear that the intent is to protect those species and habitats that are out of the ordinary and special, even though they may not necessarily be rare. As in all ESHA determinations, this requires a case-by-case analysis. Common examples of habitats that are especially valuable due to their role in the ecosystem are those that support rare, threatened or endangered species and those that provide important breeding, feeding, resting or migrating grounds for some stage in the life cycle of animal species and are in short supply (e.g., estuaries provide nursery habitat for many marine fishes such as the California halibut). Habitats may also be especially valuable because of their special nature. Examples include those rare instances of communities that have somehow remained relatively pristine, areas with an unusual mix of species, and areas with particularly high biological diversity.

Are all examples of rare habitats or all areas supporting individuals of rare species ESHA?

The reason ESHA analyses are all site-specific is that there is no simple rule that is universally

applicable. For example, a plot of a rare habitat type that is small, isolated, fragmented and highly degraded by human activities would generally not meet the definition of ESHA because such highly impacted environments are so altered that they no longer fit the definition of their historical habitat type. Larger, less isolated, more intact areas that are close to or contiguous with other large expanses of natural habitat are more likely to have a special nature or role in an ecosystem and hence meet the ESHA definition, but "large," "isolated," "intact," and "close to" are all terms that are relative to the particular species or habitat under consideration. What is spatially large to a Pacific Pocket Mouse is small to a mountain lion or bald eagle. What is isolated for a dusky footed woodrat may not be for a California gnatcatcher. Similarly, an area supporting one or a few individuals of a rare species might not meet the definition of ESHA because scattered individuals might be common and not significant to the species. However, this is relative to the actual distribution and abundance of the species in question. If a few individuals of a species previously thought to be extinct were found, the area would clearly meet the definition. Whereas, if the same number of individuals of a species with a population of 25,000 were found in an isolated, degraded location, the area would probably not meet the definition. A conclusion of whether an area meets the definition of ESHA is thus based on a site- and species-specific analysis that generally includes a consideration of community role, life-history, dispersal ability, distribution, abundance, population dynamics, and the nature of natural and human-induced impacts. The results of such analysis can be expected to be vary for different species; for example, it will be different for pine trees than for understory orchids.

Identifying ESHA over time

Case-by-case analysis of ESHA necessarily occurs at discrete moments in time. However, ecological systems and the environment are inherently dynamic. One might expect, therefore, that the rarity or sensitivity of species and their habitats will change over time. For example, as species or habitats become more or less abundant due to changing environmental conditions, they may become more or less vulnerable to extinction. In addition, our scientific knowledge and understanding of ecosystems, specific species, habitat characteristics and so forth is always growing. We discover large numbers of new species every year.[94] The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California has grown from approximately 1400 listings in 1974 to over 2100 listings in 2006.[95] New legal requirements, such as the numerous environmental laws adopted in the 1970s, may be adopted that reflect changes in our values concerning the current conditions of natural resources. Consequently, ESHA evaluations may change over time. Areas that were once not considered ESHA may become ESHA. It is also possible that rare species might become less so, and their habitats may no longer be considered ESHA. Because of this inherent dynamism, the Commission must evaluate resource conditions as they exist at the time of the review, based on the best scientific information available.

4. Applicable ESHA Definition for Review of Measure A

Coastal Act Section 30240 and the Section 30107.5 definition of environmentally sensitive area are the relevant ESHA standards of review for evaluating the land use plan changes of Measure A. However, because Monterey County did not use the Coastal Act definition of ESHA to identify ESHAs in its

[94] See, generally, E.O. Wilson, The Diversity of Life (W.W. Norton, New York, 1992).

[95] http://www.cnps.org/programs/Rare_Plant/inventory/analyses.htm.

evaluation of Measure A, and because ESHA issues are central to an evaluation of Measure A for consistency with the Coastal Act, an extended discussion of the applicable ESHA definition for evaluating Measure A is necessary.

A. Monterey County did not use the correct legal definition of ESHA

In evaluating the ESHA issues of the Measure A LCP amendment, Monterey County relied heavily on Appendix A of the Del Monte Forest LUP (which was included in the LUP at certification in 1984) as the definitive list of what constitutes ESHA, regardless of what an ESHA evaluation of resource conditions at the time that Measure A was proposed might yield.[96] According to the County's analysis of Measure A, if a resource is not identified in Appendix A, or shown on the associated habitat mapping of LUP Figure 2, it cannot be ESHA:

> *ESHAs in the project area are defined in the DMF LUP: Figure 2 shows the location of areas in the Del Monte Forest that qualify as ESHAs and Appendix A of the LUP provides a complete list of ESHAs for the Del Monte Forest.*[97]

This approach to defining ESHA in Del Monte Forest is not adequate for purposes of evaluating Measure A. LUP Appendix A is not legally relevant to the Coastal Commission's statutorily prescribed review of the proposed Measure A land use changes under the Coastal Act. As discussed above, the standard of review for a land use plan amendment is the Coastal Act. In the case of ESHA, this includes the Coastal Act definition of ESHA (30107.5) and Coastal Act Section 30240. Land use plan amendments must be consistent with Coastal Act 30240 to be approved. If an LUP amendment would entail significant inconsistencies with this policy, based on a review of existing biological resources at the time of the amendment, it cannot be approved.[98] In this respect, the County's suggestion that Appendix A defines the only Del Monte Forest ESHA is not legally relevant.

B. Monterey County's Interpretation of the LCP ESHA Definition is Incorrect

Even if Appendix A of the LUP was legally relevant to the Coastal Act review of the Measure A Land Use Plan amendments, it cannot reasonably be concluded that it alone defines a complete and final list of all ESHA in the Del Monte Forest for all time.[99] The methodology employed by the LCP to identify ESHA is much more inclusive and comprehensive both in terms of what constitutes ESHA and the required procedures to identify and protect ESHA. Indeed, there is little material difference between the Coastal Act and LCP ESHA definitions. Like many the LCPs, the Del Monte Forest LUP and IP provides additional specificity and criteria concerning ESHA identification, including the examples of ESHA known at that the time of LUP certification that are listed in Appendix A.

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96 See LUP Appendix A in Exhibit 5.

97 Monterey County Measure A Analysis, March 2005, III-4.

98 The focus on the status of existing resources on the ground at the time of review of an amendment or proposed development is a critically important component of the Commission's approach to protecting ESHA given the inherent dynamic nature of the environment and constant changes in our scientific understanding of biological resources, processes, values, functions, and so forth. It becomes particularly important in planning contexts such as this one, where the last in-depth assessment by the Commission of ESHA resources in specific areas was over twenty years ago.

99 Commission staff advised Monterey County that limiting a definition of ESHA to only those species or habitats listed in Appendix A was not legally adequate as early as 1999. See Exhibit 3.

C. Coastal Act and LCP ESHA Definitions are Essentially the Same

Section 30107.5 of the Coastal Act defines environmentally sensitive areas as follows:

> *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The overarching Monterey County LCP definition for ESHA is essentially the same as the Coastal Act definition. IP Section 20.06.440 defines ESHA as follows:

> *Environmentally sensitive habitat means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. (See individual land use plan segments definitions for specific examples.)*

Within the DMF LCP segment, ESHA is further defined by IP Section 20.147.020(H) as follows:

> *Environmentally sensitive habitats: Environmentally sensitive habitat areas are those in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. These include rare, endangered, or threatened species and their habitats; other sensitive species and habitats such as species of restricted occurrence and unique or especially valuable examples of coastal habitats; riparian corridors; rocky intertidal areas; nearshore reefs; offshore rocks and islets; kelp beds; rookeries and haul-out sites; important roosting sites; and Areas of Special Biological Significance (ASBS).*

Notable in its absence in this definition is any reference to Appendix A or Figure 2. The DMF segment goes on to define "rare and endangered species" in IP Section 20.147.020(AA) as follows:

> *Rare and/or Endangered Species: Rare and Endangered Species 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.*

Thus, these LCP policies indicate that ESHA can apply to a wide range of habitat types and areas, mimicking the Coastal Act in that respect, and go on to provide explicit criteria applicable to the DMF segment for determining when a species is considered to be rare and/or endangered by the LCP, and thus by extension when the species or its habitat should be considered ESHA.

D. Appendix A is a List of Examples Identified at the time of LUP Certification

Within this definitional framework, DMF LUP Chapter 2 ("Resource Management Element") provides additional guidance within the DMF in the section entitled "Environmentally Sensitive Habitat Areas" as follows:

> *Environmentally sensitive habitat areas are those in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. These include rare,*

endangered, or threatened species and their habitats; other sensitive species and habitats such as species of restricted occurrence and unique or especially valuable examples of coastal habitats; riparian corridors; rocky intertidal areas; nearshore reefs; offshore rocks and islets; kelp beds; rookeries and haul-out sites; important roosting sites; and Areas of Special Biological Significance (ASBS). The California Coastal Act provides unprecedented protection for environmentally sensitive habitat areas and within such areas permits only resource-dependent uses (e.g., nature education and research, hunting, fishing, and aquaculture). The Act also requires that any development adjacent to environmentally sensitive habitat areas be properly sited and designed to avoid impacts which would degrade such habitat areas.

In the Del Monte Forest Area, examples of terrestrial, aquatic, and riparian habitats which have been determined to be entirely or in part environmentally sensitive include: the rare Monterey cypress and endangered Gowen cypress forest communities, the endemic Monterey pine/Bishop pine association, remnants of the indigenous coastal sand dunes, riparian corridors, wetlands, and sites of rare and endangered plants and animals associated with these and other habitats. A complete listing is included as Appendix A of this Plan. The locations of these are shown in Figure 2.

This LUP introduction to ESHA refers back to the "unprecedented protection" afforded ESHA by the Coastal Act, reiterates the broader Coastal Act definition of ESHA (that is certified in the LCP sections cited above), and concludes by introducing LUP Appendix A and LUP Figure 2 associated with it. The relevance of Appendix A and Figure 2 in this respect emanates from the above textual introduction to these LUP elements. Building upon the first paragraph that describes ESHA and its protection in DMF in Coastal Act terms, the second paragraph of the ESHA text clearly indicates that <u>examples</u> of habitats deemed to be ESHA in DMF <u>include</u> the series of habitats then described. The implication in this respect is that Appendix A identifies a subset of examples that were known at that point in time in 1984; this is further evidenced by the use of the word "includes" (implying the list of examples is a subset and not all of them). The paragraph then concludes by referring the reader to LUP Appendix A for a complete listing (and Figure 2 for mapping of same). The most reasonable way to understand the reference to Appendix A as "a complete listing" is as a listing of the examples referenced by the first sentence of the second paragraph. This is further evidenced by the reference in the above-cited IP Section 20.06.440 definition of ESHA that refers to the "land use plan segments definitions for specific examples" of ESHA. This interpretation is further supported by Appendix A itself, that again indicates in its introduction that "the environmentally sensitive habitats of the Del Monte Forest Area <u>include</u> the following" (emphasis added); again implying that the list of ESHA examples includes what is listed, but that there are others not listed that make up the remainder of things considered ESHA (as also indicated by IP Section IP Section 20.147.020(H)). In other words, Appendix A is meant as a list of <u>examples</u> of ESHA known in 1984, and not a static list meant to apply to all time.

Finally, the LUP specifically refers to the list of examples as a list of species "*which have been determined to be*" environmentally sensitive. The use of the past tense in this section is important as it shows that the list of ESHA examples was being determined at a discrete point in time, and that it was not being made prospectively. The Commission's findings and actions for the Del Monte Forest Land Use Plan also support this interpretation of the intent of Appendix A. First, Appendix A was actually recommended for addition to the LUP as a modification by the Commission to address the fact that the LUP as submitted by the County did not adequately identify specific habitats *known* to be ESHA at the

time. Thus, the Commission required Appendix A to assure that known ESHAs would be better protected, as required by Coastal Act section 30240. In findings discussing this problem, it is clear that the Commission's intent was to identify ESHAs known at that time, but not to preclude the future identification of additional areas as ESHA. The findings indicate that Appendix A was added in order to provide certainty "that every *presently-known* environmentally sensitive habitat will be protected [emphasis added]."[100] Similarly, the Commission's findings make clear that Figure 2 (the ESHA map) was intended to show, "to the maximum extent feasible . . . all *known* environmentally sensitive habitats [emphasis added]."[101] The intent was not to lock in a static universe of ESHAs for all time.

E. The LCP Requires Resources on the Ground to Dictate ESHA

The LCP also is clear that resources on the ground are meant to govern resource evaluations, and that continued re-evaluation in this regard is not only encouraged, it is required. For example, the LUP indicates that LUP maps are to be continually updated based upon new information. The LUP states as follows in Chapter 1:

> *RELATION OF MAPS TO PLAN*
>
> *In addition to the Del Monte Forest Land Use, Recreation Facilities and Public Access, and Circulation Maps, the Environmental Considerations and Environmentally Sensitive Habitat Areas maps are to be used as background resource material for decision-making.*
>
> *The intended use of the Resource Maps which are available at a reduced and 600 scale, is to generally illustrate the basis of policies for purposes of planning or reviewing development proposals in the Coastal Zone. The County, in incorporating these maps into the plan, acknowledges that they are not definitive and may contain errors or inaccuracies or may be incomplete. Thus, there is no substitute for careful field checking by qualified persons to verify the location of coastal resources or other information represented. Challenges to the accuracy of the maps are encouraged by the County in a continuing effort to maintain the best database possible. As new or more accurate information becomes available, the 600 scale maps will be revised and updated, and decisions will accordingly be based on the new data.*

Thus, LUP Figure 2: "generally illustrates" ESHA; it is acknowledged that it is "not definitive" and "may be incomplete;" requires "careful field checking by qualified persons to verify the location of coastal resources;" is meant to be continually updated "as new or more accurate information becomes available;" and decisions are to "be based on the new data" developed in that regard. Figure 2 represents the habitat examples in Appendix A and thus, by extension, the same qualifications and limitations apply to Appendix A in the same way.[102]

The LUP requirement to evaluate resources on the ground at the time of development review is further

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[100] California Coastal Commission, Del Monte Forest Land Use Plan, Determination of Substantial Issue and Preliminary Recommendation for the Meeting of December 1-3, 1982, November 15, 1982.

[101] Commission findings for Del Monte Forest Segment, Land Use Plan, September 24, 1984.

[102] It might be argued that this and other LUP sections discussing ESHA identification are intended only to apply in the development review context, not an LUP amendment context. To the extent this argument is valid, it undermines the County's use of Appendix A, which is also part of the LUP, for purposes of evaluating Measure A land use challenges. The point here is merely to illustrate that the LUP and IP clearly contemplate that new information might redefine known ESHAs.

embodied in specific policies. For example, LUP Policy 12 states:

> *Where development of any type, including subdivision of land for development purposes, is proposed in or near documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals shall be required in order to determine precise locations and to recommend mitigating measures to ensure protection of any sensitive species or habitat(s) present. Where OSAC maintenance standards have been prepared, these shall be observed in the preparation of such recommendations.*

This policy requires field evaluation for both documented (such as Appendix A/Figure 2 examples) or expected (for other reasons) ESHA. Similarly, LUP Figure 17 states:

> *Prior to approval of development on existing legal lots of record, protection of rare, endangered, and sensitive native plant and animal habitats which potentially occur in the area shall be ensured by the following means:*
>
> - *A site survey shall be conducted by a qualified botanist (or biologist in the case of animal habitat) for the purpose of determining the presence of rare, endangered, or unique plants and developing appropriate mitigation. This survey should be conducted in April or May, as it must be designed to detect the presence of any of the habitats listed in Appendix A of this Plan.*
> - *Performance standards covering building locations, lot setbacks, roadway and driveway width, grading, and landscaping shall be established as a means of carrying out the recommendations of the site survey. The purpose of this is to isolate building sites from identified locations of rare or endangered plants or other environmentally sensitive habitat.*
> - *Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by policy 13 above.*

IP Section 20.147.040(A)(2) likewise states (emphasis added):

> *ENVIRONMENTALLY SENSITIVE HABITAT DEVELOPMENT STANDARDS.*
>
> *Intent of Section: It is the intent of this section that the environmentally sensitive areas of the Del Monte Forest be protected, maintained, enhanced and restored in accordance with this implementation ordinance and the policies of the Del Monte Forest Area Land Use Plan. All categories of land uses, both public and private, shall be subordinate to the protection of environmentally sensitive areas.*
>
> *A. Biological Survey Requirements. …2. A biological survey shall be required for all proposed development which can be described using one or more of the following criteria: a. the development is located within an environmentally sensitive habitat,* ***as shown on Figure 2 "Environmentally Sensitive Habitat Areas" contained in the Del Monte Forest Land Use Plan or other current available resource information or through the planner's on-site investigation****; (b) the development is potentially located within an environmentally sensitive habitat,* ***according to available resource information and/or on-site investigation****; (c) the development is or may potentially be located within 100 feet of an environmentally sensitive habitat and/or has the*

potential to negatively impact the long-term maintenance of the habitat as determined through project review or; there is disagreement between staff and the applicant as to whether the proposed development meets one of the above criteria.

In other words, the LCP envisions Figure 2 and Appendix A as a subset of ESHA, and contemplates that additional ESHA areas may be identified based not only on Figure 2/Appendix A but on "other current available resource information or through the planner's on-site investigation."

In fact, both the condition of natural resources in the Forest and our understanding of them have changed significantly since 1984, and LUP Figure 2 and Appendix A have not been updated to reflect these changes. Since 1984, new sensitive species have been identified and listed (e.g., federally-listed endangered Yadon's piperia) and other species have become more threatened and have been listed or upgraded in their sensitivity ranking as a result (e.g., federally-listed threatened California red-legged frog; CNPS 1B species Hooker's manzanita and Monterey pine). Although listed species habitat is, almost by definition, typically considered to be ESHA (see ESHA determination findings below), species listed since 1984 are not necessarily listed in Appendix A. The fact that Federal and California Endangered Species Act "take" authorization would be required for species that would be displaced by the Company's Project but that are not listed in LUP Appendix A (like California red-legged frog) is a good indicator that relying on Appendix A as the sole definition of ESHA would be completely inadequate for actually identifying ESHA in the Forest based on our current knowledge about existing resources. In fact, evidence suggests that Appendix may have been inadequate even as a "complete" list of examples known at the time of LUP certification. In the Commission's November 1982 staff report concerning the County's submitted LUP, there is detailed discussion about the lack of specificity in the ESHA definition of the submitted LUP. This discussion includes specific mention of the "rare" Hooker's manzanita, the "endemic" shaggy-barked manzanita, the "rare" *Ceanothus rigidus*, and the seaside painted cup as being environmentally sensitive.[103] However, whether through an oversight or specific reconsideration, Hooker's manzanita does not make it into the certified Appendix A, whereas the other three species do. As discussed below, Hooker's manzanita remains a sensitive species found in Del Monte Forest.[104]

The Del Monte Forest in general, and the proposed amendment and project area specifically, are home to a large number of sensitive species and several rare habitat types. There are at least nineteen species of plants in the Project/LCP amendment area that are considered to be rare and/or endangered, and at least nine of these that are state or federally listed as endangered or threatened. Similarly there exists habitat for at least thirteen special-status wildlife species in the Project/LCP amendment area, and at least four listed species have been positively identified in these areas to date. The County acknowledges, and the EIR for the Pebble Beach Company project well-documents many of these resources. Whether or not they are ESHA should be determined by an application of the more general definitions of the Coastal Act (for LUP evaluation) and the LUP (for IP evaluations). To presume that only those habitats that are listed on Appendix A constitute ESHA lacks biological common sense.

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[103] Del Monte Forest LUP Staff Recommendation, November 15, 1982, p. 20.

[104] Since LUP certification, the concern for the rarity of Hooker's Manzanita has increased. In 1984 the 3rd edition of the CNPS Inventory of Rare and Endangered Vascular Plants identified Hooker's Manzanita as List 3, indicating that additional information was needed to ascertain its sensitivity. Its current CNPS status is 1B.2.

F. The conflict between the "Appendix A Only" position and other LCP ESHA policies must be resolved in favor of the Coastal Act

As suggested, the interpretation that Appendix A/LUP Figure 2 identifies all ESHA in DMF and that no other habitats can be considered ESHA conflicts with the larger body of ESHA policies and LCP text cited above. These cited policies, definitions, and other references are clearly premised on there being other habitats (than those listed by Appendix A) that could be considered ESHA, are clearly premised on resource evaluation for determining which of these habitats are ESHA, identify clear criteria for determining which species and habitats should be considered rare and endangered (and thus ESHA by LCP definition), and identify the Coastal Act's "unprecedented protection" of ESHA as the foundation for how ESHA is to be protected by the LCP. In sum, the LCP frames the question of what constitutes ESHA very broadly based on the resources themselves dictating what is ESHA, and this broader framing is not consistent with a narrow interpretation that Appendix A is the static list of all ESHA for all time. If that were to actually be the case, these conflicting LCP references would instead not be present and/or would be structured to indicate that Appendix A was the only list – they are clearly not structured in this manner.

A narrow reading of Appendix A also creates a conflict with other policies and ordinances of the LCP ESHA protection framework. In such cases, the LCP directs that such conflicts ultimately be resolved by the Coastal Act (IP section 20.02.050(D). Given that the LUP cites the Coastal Act in the framing its ESHA protection parameters, and the LCP's only ESHA definitions (i.e., IP Section 20.06.440 applying throughout the County's coastal zone, and IP Section 20.147.020(H) applying specifically to DMF) reflect the Coastal Act's broader definition in this respect, the more general approach to identifying ESHA that is inherent in the LCP and Coastal Act would prevail.

G. The "Appendix A Only" Argument Conflicts with Past County Actions

Finally, although a comprehensive analysis is not available, it appears that the Monterey County itself has not consistently applied its proposed "narrow interpretation" of Appendix A in other decisions under the LCP. As discussed in the Preliminary Periodic Review of the implementation of the LCP, the County generally requires biological studies at the time of development proposals where warranted to support its decisions. Presumably this is to assure that sensitive biological resources that may not have been identified previously are identified and adequately protected. A good example is LCP Major amendment 1-93 for a subdivision in Del Monte Forest. In approving this amendment, the County Board of Supervisors made findings that the specific boundaries of the subdivision were appropriate to provide protection of Hickman's onion habitat, relying directly on the findings of the certified EIR for the project. This EIR, which was certified by the Board, included specific findings that while the LUP did not identify an ESHA on the site, that there was an environmentally sensitive habitat present (Hickman's onion) that was identified in the biological review. The EIR thus notes that Hickman's onion was identified as a rare plant listed by the CNPS; it was not, and still is not, listed in Appendix A. Monterey County went on to apply the ESHA policies to the subdivision with respect to the Hickman's onion habitat, including designing the subdivision to avoid and buffer the habitat with a 100 foot setback.[105]

[105] See Monterey County Board of Supervisors resolution 93-45; and certified EIR for LCP Major Amendment 1-93., p.22; and section 2.4. Two other examples that appear to not follow the "Appendix A only" line of thinking are found in the County's actions on the recent Pebble Beach Community Services District expansion (protection of Yadon's Piperia (Endangered, CNPS 1B, Hooker's

F. Conclusion

LUP Appendix A does not identify the universe of all Del Monte Forest ESHA. Rather, it is but one tool of many that are applied to determine what is ESHA in the Del Monte Forest. In fact, there is little substantive or discernible difference between using the Coastal Act or the LCP to determine what is ESHA in the Del Monte Forest, other than that the LCP provides some additional examples and criteria that only serve to broaden the universe of what might be considered ESHA in a site-specific analysis.

B. Resource Setting and Context

1. Introduction

The Del Monte Forest is a rich and dynamic natural environment. A wide variety of species and their habitats – some of them "rare" and "especially valuable" – are found there. Some of these species are endemic and limited almost exclusively to the Monterey Peninsula, and in some cases to the Del Monte Forest itself. Oftentimes, these different species and related habitats are found within the same ecological area in association with one another (e.g., native Monterey pine forest with central maritime chaparral and Yadon's piperia). Thus, it is a bit of a misnomer to call certain areas affected by Measure A habitat of only one type or another because those areas are actually best understood as a combination of habitat types within a coherent ecosystem. Although each habitat type individually has its own distinct status and value that can be described, they also function and exist as ecological units in association together. It is this rich ecological diversity that truly frames the resource setting for each Project/LCP amendment area.

For the Project/LCP amendment area, the primary connecting biological thread is the native Monterey pine forest itself. The native *Pinus radiata* mantling the Monterey Peninsula is the defining characteristic of the Del Monte Forest. Majestic stands of pine forest as well as smaller groups of individual trees generally frame homes and other developed areas, and larger and more intact (and often more biodiverse) forest areas occupy most of the undeveloped remainder of the Forest. With limited exception (e.g., existing developed areas), the Project/LCP amendment area is almost entirely occupied by native Monterey pine forest.

Because the native Monterey pine forest is the dominant biological community in both the Forest overall and the Project/LCP amendment area, this section focuses on the native pine forest as the underlying and connecting biological resource setting for LCP amendment review. At the same time, the section provides detail on the other individual species, biological communities, and habitat types associated with the forest – and their ecological associations with each another. Ultimately, the ESHA determination criteria detailed above are applied to the habitats described, and thus general categories of ESHA are determined. The section that follows this one then applies the general ESHA determinations to the individual Project/LCP amendment areas to determine which portions of them should be considered ESHA.

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manzanita, 1B, and pine rose, 1B) and the construction of a single-family home (protection of pine rose, CNPS 1B.2). See 3-MCO-02-644 and 3-MCO-04-387 respectively. In the latter, the initial study indicates that because the pine rose is CNPS 1B, it is protected by the DMF LUP (p. 12).

2. Native Monterey Pine Forest and Associated Habitats

A. Rarity

Although locally abundant in the Del Monte Forest, native Monterey pine forest is extremely rare.[106] The world's remaining native Monterey pine forests are found in just five locations on the face of the globe: three in coastal California (Año Nuevo, Cambria, Monterey Peninsula) and two on Mexican islands off the coast of Baja California (Guadalupe and Cedros Islands). The Monterey Peninsula occurrence has always been and remains the largest of the native Monterey pine forests – it is also the native forest that has suffered the largest reduction over time, primarily due to residential and golf course development. Nearly 90% of the overall reduction in native Monterey pine forest acreage worldwide has been in the Monterey peninsula stand, and roughly half of the original Monterey forest remains today.

Table: Historic Versus Present Extent of Native Monterey Pine Forest Stands[107]

Forest Stand	Historic Acreage	Present Acreage	Reduction in Acreage
Monterey Peninsula	18,324	9,289	-9,035 (49%)
Cambria	3,500	2,300	-1,200 (34%)
Año Nuevo	1,500	1,500	0
Cedros Island	370	321	-49 (13%)
Guadalupe Island[108]	(400 trees)	(220 trees)	(-180 trees (45%))
All Forest Stands Total	**23,694**	**13,410**	**-10,284 (43%)**

There exist a variety of well-established and accepted reference tools that are often used to identify rare species. In California, these include the State and Federal Endangered Species Acts, California Department of Fish and Game Natural Diversity Database (CNDDB), and the California Native Plant Society (CNPS) species lists.[109] Although not the only arbiters, these tools are widely used and accepted by the scientific community as indicators of rarity. In the case of Monterey pine, it has not yet been listed formally under the State or Federal Endangered Species Acts.[110] However, it has been listed and

106 As distinguished from planted and cultivated Monterey pine plantation "forests" and pine trees worldwide; see also below.

107 Jones and Stokes 1996; PDP EIR 2005, Table 3.3-2; Rogers 2002. The PDP EIR estimated total present acreage for the Monterey Peninsula stand as 9,289 acres while Jones and Stokes estimated 9,405 acres. The table uses the more current estimate (i.e., 9,289 acres). Also, Rogers describes 321 present acres for the Cedros Island stand based on 1988 estimates, while the PDP EIR and Jones and Stokes estimate 370 acres based on 1968 estimates; the more current acreage estimate is used here (i.e., 321 acres).

108 Guadalupe Island estimates have been in relation to number of trees as opposed to acreage. Jones and Stokes estimated that historically the Guadalupe Island stand included some 400 trees in 1964. Present estimates for the Guadalupe stand range from 45 trees noted in 1988 (Jones and Stokes, 1996) to 220 trees noted in 2001 (Rogers 2002). The table uses the more current estimate (i.e., 220 trees from 2001), and does not attempt to quantify this stand in terms of acreage. In any event, it is clear that the Guadalupe stand is very small in relation to the other four locations, and the acreage near 1 acre (the PDP EIR estimates it as less than 1 acre; PDP EIR Table 3.3-2)

109 CNPS's Rare Plant Program operates under an MOU with CDFG designed to formalize cooperation on rare plant assessment and protection, data sharing, and information gathering in order to provide current, accurate information on the distribution, endangerment status, and ecology of California's rare flora. CNPS's Rare Plant Program is housed in CDFG's Natural Heritage Division.

110 CNPS submitted a petition to the State Fish and Game Commission in August 1999 to list Monterey pine as a Threatened Species under the California Endangered Species Act. The petition was withdrawn in part to address the large volume of comments received on it and has not yet been resubmitted.

described by other rare species references.

The CNDDB is a program that inventories the status and locations of rare plants and animals in California. The CNDDB uses a global and state ranking system for these species where the global rank is a reflection of the overall condition of a species throughout its global range, and the state rank applies in the same way but is specific to the species in California. The CNDDB classifies Monterey pine as a G1 global rank and an S1.1 state rank, indicating that both globally and within California there are fewer than 6 viable "element occurrences" (G1 and S1) and that the species is considered "very threatened" (S1.1).[111] There is no higher degree of rarity (or threat) in the CNDDB global or state rankings. In addition, the CNDDB designates Monterey Pine Forest as a rare community type.[112]

CNPS classifies Monterey pine as 1B.1.[113] "1B" indicates that the species is considered "rare, threatened, or endangered in California and elsewhere." The "0.1" modifier indicates that it is considered "seriously endangered in California (over 80% of occurrences threatened/high degree and immediacy of threat)" CNPS has no higher threat classification than 1B.1.[114] Until 2006, CNPS also used a system called the R-E-D code for sensitive species that indicates the overall level of conservation concern for any particular species, based on its rarity, endangerment, and distribution (i.e., R-E-D).[115] In the case of Monterey pine, the CNPS R-E-D code is 3-3-2 (with 3 indicating the highest level of concern).[116]

Finally the species is also listed on the International Union for Conservation of Nature and Natural Resources (IUCN) Red List of Threatened Species.

In conclusion, it is clear that there is scientific agreement that Monterey pine is a rare and threatened species. Native Monterey pine forest exists in only a handful of disjunct locations. It has declined significantly from its historic extent, with the brunt of the decline focused in the Monterey peninsula stand which is presently roughly half its historic extent. Native Monterey pine forest is rare as that term is understood in a Coastal Act context, and, because it is easily disturbed or degraded by human activities and development,[117] it generally meets the definition of ESHA under the Coastal Act.

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111 CNDDB Special Vascular Plants, Bryophytes, and Lichens List (January 2006).

112 CNDDB List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database (September 2003).

113 CNPS Inventory of Rare and Endangered Plants (2006).

114 With the exception of CNPS List 1A "Plants Presumed Extinct in California."

115 Where R = Rarity: 1 - Rare, but found in sufficient numbers and distributed widely enough that the potential for extinction is low at this time; 2 - Distributed in a limited number of occurrences, occasionally more if each occurrence is small; 3 - Distributed in one to several highly restricted occurrences, or present in such small numbers that it is seldom reported. E = Endangerment: 1 - Not endangered; 2 - Endangered in a portion of its range; 3 - Endangered throughout its range. D = Distribution: 1 - More or less widespread outside California; 2 - Rare outside California; 3 - Endemic to California. CNPS discontinued use of the RED code in their most recent rare and endangered plant inventory (7th edition in 2006). The RED code remains a valuable tool for classifying species, and thus the most recent RED codes (from September 2005) are also provided here and elsewhere in this report.

116 Because of its limited number of restricted occurrences (only 5 locations, 3 in California), serious endangerment in California, and its rarity outside of California (but for the small pine forest populations on Guadalupe and Cedros Islands off of Baja, the R-E-D code presumably would be 3-3-3, the highest possible R-E-D threat level).

117 Monterey pine forest is easily disturbed or degraded by human activities and development due to the fact that such activities and development result in both the direct loss of forested areas and the degradation of that which remains by virtue of residual indirect

B. Especially Valuable – Genetic Repository

In addition to their rarity, native stands of Monterey pine are also especially valuable because of their special nature as the genetic repositories of the species.[118] This is particularly significant in the context of the commercial importance of the species and in the context of the threat to the viability of both plantations and native populations posed by climate change and exotic disease. In terms of its commercial importance, Monterey pine is the most widely planted pine tree in the world and is of great economic importance as a plantation species, forming the basis for a lumber and paper industry of world importance (e.g., in New Zealand, Chile, Australia, Spain, South Africa, Argentina, Uruguay, and Kenya).[119] As a commercial species, Monterey pine trees can be found around the globe in great numbers; it has been estimated that there are some 10 million acres of plantation Monterey pine trees overall, primarily in the southern hemisphere.[120] Plantations are grown in many countries, but are especially significant in New Zealand, Australia, Chile, and South Africa. In 1998, it was reported that Monterey pine accounted for about 9% of New Zealand's gross domestic product and for over 12% of the value of that country's exports. In the United States, it is primarily used by the Christmas tree and landscape trades (a 1985 estimate of Monterey pines put the number of landscape trees in California at 50 million). These commercial enterprises are dependent on the native Monterey pine forests as a natural genetic repository that can provide genetic variability for the selection of desirable traits, including resistance to disease. The genetic resources found in the remaining native stands must be maintained if Monterey pine is to remain an important commercial species.

Genetic conservation is also critical to the continued existence of the native forests themselves. There are many stresses, such as the rapid climate change that is upon us, that must be met in place in developed environments where there is little room for populations to shift geographically in response to environmental trends. Widely distributed species may decline in some areas but persist or expand in others. However, local endemics like Monterey pine must generally evolve in place or perish. A more immediate threat to Monterey pine is pine pitch canker disease, which is caused by an exotic fungus (*Fusarium subglutinans*). This fungal disease spread rapidly after it was first observed in ornamental pines in 1986. By 1994, all three native Monterey pine forests in California were infected. Within an individual, each infection is localized and does not spread throughout the tree systemically. However, there are commonly multiple infections. Branches, shoots, cones, and exposed roots may all be infected and the infections result in die back of the tissues beyond the infected site. Infections reduce the fitness of the tree and severe infections may result in death. Based on observations of planted stands, it was initially predicted, and widely reported, that the pine pitch canker might result in 91% mortality of planted trees and up to 85% mortality in native forests. Later surveys have documented a lower mortality rate, particularly among trees in native forests. A small percentage of trees apparently never contract the disease. More importantly, about 27% of trees that were inoculated with the disease organism showed some level of resistance to the pathogen. It also appears that trees that are repeatedly inoculated may develop resistance, and some trees show signs of remission from the disease. The

impacts (e.g., fragmentation of forest and forest function, increased edge effects, etc.). For the purposes of the analysis that follows, this disturbance/degradation criteria is met in all cases, and is not further explicitly identified.

118 The existing natural populations of any species constitute its genetic repository. However, the emphasis is made here because the entire natural population occurs in only five small areas in the world and the natural populations are tiny compared to planted populations

119 Jones and Stokes 1996; Rogers 2002.

120 Rogers 2002.

epidemiology of the disease is still far from known and pine pitch canker is still a serious threat to native forests; however, there appears to be genetically based resistance among a portion of the population. There is also genetic variability within the pathogen and a real concern is that, in the future, one of the known more virulent strains of *F. subglutinans* may be accidentally introduced, as was the existing strain. Conservation of the genetic resources of Monterey pine within each native population is critical to its ability to withstand these various environmental challenges.

In conclusion, native Monterey pine forest is especially valuable for its role as the genetic repository of the species, both in relation to maintaining native Monterey pine forest ecosystems and to maintaining worldwide commercial viability. Thus, native Monterey pine forest is especially valuable as that term is understood in a Coastal Act context, and because it is easily disturbed or degraded by human activities and development, generally it meets the definition of ESHA under the Coastal Act.

C. Especially Valuable – Monterey Pine Ecosystem and Associated Habitats

Native stands of Monterey Pine are also especially valuable because of their role in the overall native forest ecosystem of which they are an integral and dominant part. Moreover, many of the plants and animals that are part of these pine forest ecosystems are themselves quite rare, and this habitat association intensifies the degree of sensitivity and value of these forest areas. In addition, some biological communities that are themselves categorically sensitive and/or protected in their own right (e.g., wetlands) also exist in tandem with Monterey pine forest, further distinguishing certain forest areas.

1. Ecosystem Diversity

In addition to being significant in its own right as a species, Monterey pine is also important as the defining member of Monterey pine forests, which provide habitat to approximately 200 species of plants and dozens of animal species. On the Monterey peninsula, there is significant natural variability in the physical habitat that is a function of proximity to the coast, elevation, and soil type (e.g., the marine terraces and dune formations of different ages). There is some debate about whether these physical habitats are disjunctive in character (an “ecological staircase”) or whether they are simply part of a cline or gradient of habitat change. In either case, the variability in the physical environment of the Del Monte Forest appears to be mirrored in differences in the local characteristics of the Monterey pine (some of which may have a genetic basis) and in differences in community makeup that contribute to overall biological diversity. In addition, some of the species making up these ecosystems are quite rare. With respect to Monterey pine forests, twenty special-status plant species and eighteen special-status wildlife species currently are known to occur within these forested areas in the Monterey region.

2. Special Status Species Associations

The Del Monte Forest area is home to a large number of rare species, some endemic only to the Forest area itself. At least 44 special-status plant species and 29 special-status wildlife species have the potential to occur in the Del Monte Forest and surrounding region.[121] Of these, 19 special-status plant species and 4 special-status wildlife species have been recently documented to in the Project/LCP

[121] PDP EIR pages E-16 and E-26.

amendment area; 17 of these in native Monterey pine forest.[122] These 23 species and their status are listed in the tables below.

Table: Special Status Plant Species in the Project/LCP amendment area[123]

Species	CNDDB Global	CNDDB State	CNPS List	CNPS R-E-D	State	Federal
Beach layia	G1	S1.1	1B.1	3-3-3	Endangered	Endangered
Eastwood's goldenbush	G2	S2.1	1B.1	3-3-3	None	None
Gowen cypress	G2T1	S1.2	1B.2	3-2-3	None	Threatened
Hickman's onion	G2	S2.2	1B.2	2-2-3	None	None
Hickman's potentilla[124]	G1	S1.1	1B.1	3-3-3	Endangered	Endangered
Hooker's manzanita	G3T2?	S2?	1B.2	2-2-3	None	None
Menzies' wallflower	G3?T2	S2.1	1B.1	3-3-3	Endangered	Endangered
Monterey ceanothus	G5T3	S3.2	4.2	1-2-3	None	None
Monterey clover	G1	S1.1	1B.1	3-3-3	Endangered	Endangered
Monterey cypress	G1	S1.2	1B.2	3-2-3	None	None
Monterey Indian paintbrush	G3	S3.3	4.3	1-1-3	None	None
Monterey pine	G1	S1.1	1B.1	3-3-2	None	None
Monterey spineflower	G2T2	S2.2	1B.2	2-2-3	None	Threatened
Pacific Grove clover	G1Q	S1.1	1B.1	3-3-3	Rare	None
Pine rose	G2Q	S2.2	1B.2	3-2-3	None	None
Sand gilia	G3G4T2	S2.2	1B.2	3-2-3	Threatened	Endangered
Sandmat manzanita	G2	S2.2	1B.2	3-2-3	None	None
Tidestrom's lupine	G2	S2.1	1B.1	3-3-3	Endangered	Endangered
Yadon's piperia	G1	S1.1	1B.1	3-3-3	None	Endangered

Endangered = Listed as Endangered under the Federal/State Endangered Species Acts
Threatened = Listed as Threatened under the Federal/State Endangered Species Acts
Rare = Listed as Rare under the California Native Plant Protection Act
1B.x = Listed as Rare, Threatened, or Endangered in California and Elsewhere by CNPS
4.x = Listed as Limited distribution (Watch List) by CNPS

Table: Special Status Wildlife Species in the Project/LCP amendment area[125]

Species	CNDDB Global	CNDDB State	State	Federal
California red-legged frog	G4T2T3	S2S3	SSC	Threatened
Monterey dusky-footed woodrat	G5T3?	S3	SSC	None

122 Of the 23 species, only the six positively identified coastal dune plant species (i.e., Beach layia, Menzies' wallflower, Monterey Indian paintbrush, Monterey spineflower, Sand gilia, and Tidestrom's lupine) do not occur in Monterey pine forest. A 24th species, Seacliff buckwheat (also known as Point Lobos buckwheat), is present in the Project/LCP amendment area. Seacliff buckwheat is a host plant for the federally endangered Smith's blue butterfly and is commonly considered special status as a result (it is also identified in the list of ESHA examples in LUP Appendix A).

123 EIR Table E-8; CNPS Inventory of Rare and Endangered Plants (2006); CNDDB Special Vascular Plants, Bryophytes, and Lichens List (January 2006).

124 Also known as Hickman's cinquefoil.

125 EIR Table E-11; CNDDB Special Animals List (February 2006).

Sharp-shinned hawk	G5	S3	SSC	None
White-tailed kite	G5	S3	SSC (FP)	SC

T = Listed as Threatened under the Federal Endangered Species Act
SC = State Listed as a Species of Concern
SSC = State Listed as Species of Special Concern
FP = Fully Protected The classification of Fully Protected was the State's initial effort in the 1960's to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, mammals. amphibians and reptiles, birds and mammals. Most fully protected species have also been listed as threatened or endangered species under the more recent endangered species laws and regulations.

As a general rule, the Commission considers federal, state, or CNPS 1B listing as evidence of rarity and special value, and considers these species and their habitats to be ESHA unless there is compelling biological and other substantial evidence to the contrary. Because of the species and their habitats listed above are easily disturbed and degraded by human activities and development, all areas in Del Monte Forest that contain them are presumed to be ESHA individually in their own right. That they exist in association with other rare and sensitive species only reinforces their special ecological value and provides additional support for their ESHA designation in Del Monte Forest. Yadon's piperia and the California red-legged frog, are listed as Endangered and Threatened, respectively, under the Federal Endangered Species Act, and because of their sensitivity and the significance of regional populations, additional detail is provided.

Yadon's Piperia

Piperia yadonii, variously known as Yadon's rein orchid or Yadon's piperia, is a slender perennial orchid endemic to Monterey County that grows in Monterey pine forest and maritime chaparral at three main areas within about 6 miles of the coast (see Exhibit 11). In many cases in the Project/LCP amendment area, piperia are found in a mixed Monterey pine/maritime chaparral setting.

The species that was to become known as Yadon's piperia was first collected from Monterey pine forest in Pacific Grove in 1925, but it wasn't until 1990 that it was taxonomically isolated as Yadon's piperia, and not until 1995-1996 that more systematic range-wide surveys of the species were conducted. The first estimated population size was about 83,000, of which about 70% were found in the Del Monte Forest. A 2004 census of potential development and mitigation areas in the Del Monte Forest documented the presence of about 130,000 individuals. The difference in the two surveys was mainly in density; the location of the major areas in which the plants were found were very similar.[126] Such year-to-year fluctuations in density are common among many plant species. However, the fact that major new habitat areas have not been found, underlines the importance of the small areas of habitat that remain undeveloped.

Within the Del Monte Forest area, Yadon's piperia is abundant in portions of the Project/LCP amendment area. Indeed about 80% of the total known population of Yadon's piperia is found within the

[126] Comparison of the results of the two surveys should be qualified due to the fact that they employed different methodologies and covered different areas. With respect to the area surveyed, the 1995/96 survey was range-wide, while the 2004 survey was limited to the Project/LCP amendment areas. Also, according to the PDP EIR, "the 2004 census methodology developed by EcoSystems West was more intensive for counting Yadon's piperia and is judged to have resulted in a more precise count of individuals" relative to the Project area.

Del Monte Forest.[127] Most of that is in the two largest known piperia populations, one at the proposed golf course area (Area 1 – see Exhibit 11; 57,150 individuals) and one along Pescadero Canyon (Areas 15, 16, and 24 – see Exhibit 11; 56,132 individuals). These two sites alone constitute approximately two-thirds of the total known population of the species.[128] Yadon's piperia is even more globally restricted and rare than the Monterey pine. CNPS has classified Yadon's piperia as list 1B.1, with a R-E-D code of 3-3-3.[129] This is the highest level of rarity and highest degree of threat in the CNPS ranking system. The CNDDB classifies Yadon's piperia as a G1 global rank and an S1.1 state rank, indicating that both globally and within California there are fewer than 6 viable "element occurrences" (G1 and S1) and that the species is considered "very threatened" (S1.1).[130] There is no higher degree of rarity (and degree of threat) possible in the CNDDB global and/or state rankings. Yadon's piperia was federally listed as an endangered species in 1998.

Yadon's piperia is rare as that term is understood in a Coastal Act context, and the species and its habitat is easily disturbed and degraded by human activities. Thus, the species and its habitat independently meet the definition of ESHA under the Coastal Act.

California red-legged frog

The California red-legged frog (*Rana aurora draytonii*) (CRLF) is the largest native frog in the western United States, ranging from 1.5 to 5 inches in length. It is commonly believed to have been the inspiration for the well-known Mark Twain story, "*The Celebrated Jumping Frog of Calaveras County*." In 1865 when the story was first published and extending into the early 1900s, California red-legged frogs were so plentiful that they were collected for food (i.e., frog legs) in great numbers – some 80,000 frogs per year. As their numbers declined in response to frog hunting and other environmental impacts, such as excess sedimentation in streams due to agricultural operations and other development, bullfrogs (*Rana catesbiana*) were introduced in the late 1800s to help satisfy the demand for frog legs. In yet another case of the human lack of forethought when manipulating the natural world, the much larger bullfrog became a major predator of the CRLF, leading to further CRLF decline, and is a threat to the frog's existence that continues today. Once common, the California red-legged frog has since been eliminated from 70% of its historic range and is now limited primarily to the coastal drainages of central California. CRLF require a variety of habitat elements, including aquatic breeding areas within a larger ecological matrix of riparian and upland dispersal habitats.[131] In terms of CRLF movements, evidence to date suggests CRLF tend to travel in straight lines between suitable locations; that is, they do not necessarily follow riparian corridors or other obvious wetland areas that may connect areas.[132]

Although identified by the USFWS as widespread in Monterey County, prior to 2002 the CNDDB did not identify any CRLF occurrences on the Monterey peninsula. However, more recent biological review as part of the Project indicates that there is a CRLF population in the Del Monte Forest that is apparently

[127] PDP EIR Table P2-2.

[128] PDP EIR Tables P2-1 and P2-2

[129] Ibid.

[130] Ibid.

[131] Source USFWS: (1) Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*), U.S. Fish and Wildlife Service, Portland, Oregon, (2002); USFWS California Red-legged Frog (*Rana aurora draytonii*) "Creature Feature" profile (January 2001).

[132] Bulger et al. Terrestrial activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands, Biological Conservation 110 (2003) 85-95.

centered on lower Seal Rock Creek; a creek that flows through the native Monterey pine forest (see Exhibit 11). In addition to Seal Rock Creek, CRLF have been found at two locations at the proposed Project golf course site (Area 1; LUP planning unit N – see Figures 3, 7, and 8).[133] Thus, there appears to be a mosaic of CRLF habitat in and around Seal Rock Creek that, at the least, extends to and includes at least the central portion of the Project golf course site in Area 1.

CRLF were listed as a threatened species under the Federal Endangered Species Act in 1996, and have been identified by CDFG as a state species of special concern. CRLF are rare as that term is understood in a Coastal Act context, and the species and its habitat is easily disturbed and degraded by human activities. Thus, its habitat independently meets the definition of ESHA under the Coastal Act.

3. Biological Community Associations

Wetlands

Wetlands and associated areas are highly regarded because they perform a variety of habitat and other functions. Wetlands provide important resting, feeding, breeding, refuge and related habitat for migratory, seasonal and resident wildlife, including many birds, amphibians, reptiles, and other animals. In addition, wetlands often are an integral part of larger habitat areas (e.g., the native Monterey pine forest in the Project/LCP amendment area), which increases their habitat value. Wetlands and associated uplands constitute some of most diverse ecosystems in the coastal zone. In addition to a huge variety of common species associated with wetlands (such as tree frogs, garter snakes, insects, birds, etc.), a variety of species protected by the Federal and State Endangered Species Acts are also often found in these areas (e.g., the federally threatened California red-legged frog in the Project/LCP amendment area – see also list above).

In addition to their well-known habitat value, wetlands provide important hydrological and water-quality functions. One of these is the conveyance of water. This function is generally associated with linear wetland systems where the wetland is really part of a longer stream or riparian system (e.g., a pond or marsh along a creek channel). However, in some cases the drainage itself exhibits wetland characteristics. Second, wetlands often serve as collection basins that capture and retain flows, thus helping both to reduce the velocity and the volume downstream and, hence, to reduce the potential for flooding lower in the watershed. The retained water may then contribute to groundwater recharge. Finally, wetlands are well known for their ability to help improve water quality by removing sediment and by enabling the chemical transformation and biological uptake of certain pollutants (e.g., nitrogen, phosphorous, etc.).[134]

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[133] PDP EIR Page E-27.

[134] In this respect, the water quality function can be a double-edged sword inasmuch as a wetland can provide this function but often to the detriment of the wetland itself. In other words, it enhances water quality downstream of it in the system or watershed, but the wetland can be degraded if it is overtaxed by the composition of inputs. In our modern world, unfortunately, runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics (such as pesticides and herbicides) that are known to alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. Accordingly, wetlands are not typically used for the water quality function per se (e.g., by purposefully directing runoff to them for this reason), rather constructed wetlands are often included in projects for this purpose, where the constructed wetland performs this water quality function – particularly when the ultimate receiving waterbody "downstream" is itself a wetland where the habitat function is more paramount. That said, many wetlands,

More than 90% of California's original wetlands have been lost over time – the largest percentage loss of any state in the nation.[135] Although wetlands once occupied about five million acres in California, recent estimates of wetland acreage are about 450,000 acres.[136] Environmental laws enacted in the 1970s – including the Coastal Act – have gone a long way towards preventing additional direct wetlands loss, as has the public's changing perception of wetlands as valuable resources (as opposed to muddy bogs to be eliminated), but wetland areas continued to be threatened by development. In recognition of the rarity of wetlands and their important ecosystem function, the Coastal Act provides wetlands with categorical protection, allowing only a few specific uses (Coastal Act Section 30233 identifies a total of eight permitted uses in open coastal waters or wetlands).

In the Project/LCP amendment area, many wetlands have been modified to some degree by human activities. For example, hydrology within the remaining native Monterey pine forest has been altered by surrounding development, increased runoff from impervious surfaces, fill of natural drainage courses, and creation of new drainages (e.g., downslope from culverts) that concentrate and direct runoff. These relatively permanent changes, including the new drainage courses, should be regarded as the new normal condition and are the basis under which Project/LCP amendment review occurs.[137] Most of the wetlands within Monterey pine forest are seasonally inundated or saturated near the ground surface for weeks or months during most years and support mostly herbaceous vegetation dominated by wetland grasses, rushes and sedges. A few areas support emergent marsh that remains inundated for much of the year. These existing wetlands generally provide most of the functions characteristics of wetlands in this region, including aquatic habitat for the California red-legged frog and most do not appear to be substantially degraded by human activities. Project/LCP amendment area wetlands are rare and especially valuable due to their important ecosystem functions, and are easily disturbed and degraded by human activities, and thus also meet the definition of ESHA.

Coastal Sand Dunes

Coastal sand dunes constitute one of the most geographically constrained habitats in California. Coastal dunes only form where sand supply and wind energy and direction are appropriate. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has found this important and vulnerable habitat to be ESHA due to its rarity and important ecosystem functions, including that of supporting sensitive species. In the Project/LCP amendment area, such species include Beach layia, Menzies' wallflower, Monterey Indian paintbrush, Monterey spineflower, Sand gilia, and Tidestrom's lupine (see previous table). In addition, another special status species, native Monterey

including at least some of those in the Project/LCP amendment area, have historically and continue to have untreated runoff directed to them and the water quality function ought not be dismissed in this sense.

135 Dahl, Thomas E. 1990. Wetlands losses in the United States 1780's to 1980's. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.

136 Ibid.

137 There is a distinction within such "new normal" conditions that bears explanation. To the extent development that altered wetlands – hydrology or otherwise – was not appropriately permitted, then the underlying analytic baseline may differ from the physical baseline. For example, if a wetland was filled without coastal permits, then the analytic baseline for project/LCP amendment review is not the filled area but rather the wetland that previously existed (because rectification of the unpermitted fill would be to at least restore the previous wetland function). In this sense, the "new normal" condition is that reflected on the ground today with the caveat that unpermitted development cannot be used to justify a "new normal" condition that includes reduced wetland area and function.

pine, is also found in areas of coastal dune. The Monterey pine/dune association is obvious at the intersection between sandy areas and forest, as at the Signal Hill Dunes. The dune substrate is less apparent where middle-aged and older dunes have been stabilized by native Monterey pine forest (e.g., near Spanish Bay). Areas of coastal dune vegetation and sandy openings within the Monterey Peninsula are both rare and especially valuable due to their important ecosystem functions (as those terms are understood in a Coastal Act context). Because they also are easily disturbed and degraded by human activities they meet the definition of ESHA under the Coastal Act.

Maritime Chaparral

Maritime chaparral habitats occur from San Diego to Sonoma County. The common features of these habitats are particular types of sandy soils within the coastal fog zone, and a suite of shrubs that includes one to several endemic species of the genera *Arctostaphylos* (manzanita), *Ceanothus* (mountain lilac), or *Quercus* (oak). The actual community composition of maritime chaparral changes with latitude and southern, central, and northern maritime chaparrals are generally recognized. Within a geographical region, community composition is also variable on a smaller spatial scale. These habitats or community types are rare, are generally defined by individual shrub species that are themselves rare, and often support rare herbaceous species.

Central maritime chaparral is patchily distributed from Monterey County to northern Santa Barbara County. Although many species of shrubs are common to most locations, local stands are usually distinguished by the presence of one to several endemic species of *Ceanothus* or *Arctostaphylos*. There are about 60 species of manzanita in the world. All of these species are found in California and most are found nowhere else. Within California, many are endemic to small geographic areas. Similarly, of the 55 species of mountain lilac, about 40 are endemic to California and many of these are also not widely distributed. The central maritime chaparral in the project area generally occurs as understory within Monterey pine forest and is typically characterized by the presence of shaggy-barked manzanita (*Arctostaphylos tomentosa ssp. tomentosa*), huckleberry (*Vaccinium ovatum*), blue blossom (*Ceanothus thrysiflorus*), and Hooker's manzanita (*Arctostaphylos hookeri* ssp. *hookeri*). Hooker's manzanita is a low growing, mound forming, evergreen shrub endemic primarily to Monterey County. CNPS lists this species as 1B.2 (rare, threatened, or endangered) and considers it "fairly endangered."[138] Likewise, CDFG lists central maritime chaparral as a rare habitat type in the CNDDB. Therefore, central maritime chaparral is rare and is especially valuable due to its important ecosystem function of providing habitat for individual rare species. Because it also is easily disturbed and degraded by human activities it meets the definition of ESHA under the Coastal Act.[139] Although not explicitly mapped, central maritime chaparral within the LCP amendment/Project area can be assumed to include, at a minimum, the mapped areas of Hooker's manzanita.[140]

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138 Where the 0.2 indicates "fairly endangered" status.

139 Both the North Monterey County LCP and the Big Sur LCP identify Maritime Chaparral as a sensitive plant community See, also, Periodic Review of Monterey County LCP, for discussion of Chaparral in North Monterey County.

140 The PDP EIR indicates that central maritime chaparral is one of the major biological communities within the LCP amendment/Project area, but central maritime chaparral was not independently mapped. The only chaparral species mapped was Hooker's manzanita, and it is used as a proxy in this report for identifying central maritime chaparral. In light of the other chaparral species present in the LCP amendment/Project area (including as indicated by the PDP EIR and Commission staff field work), it is likely that this proxy under-represents the extent of central maritime chaparral.

4. Conclusion (Monterey Pine Ecosystem and Associated Habitats)

The native Monterey pine forest is rare and it is especially valuable due to its central role in the Del Monte Forest ecosystem. Seventeen rare and sensitive special status species are found in association with the native Monterey pine forest in the Project/LCP amendment area, including most of the known population of the Federally endangered Yadon's piperia and a recently discovered population of California red-legged frogs. Native Monterey pine forest needs to be understood as a complex and dynamic habitat comprised of forest trees, understory vegetation, wildlife, soils, and climate and the interaction of all these elements. A forest is in fact a complex, interdependent web of living organisms and physical habitat, and not just a collective noun for a group of trees in the landscaping sense. The native Monterey pine forest here is a prime example of such an integrated ecosystem, that also includes and supports rare species and rare biological communities.

Therefore, Monterey Pine Forest habitat is independently especially valuable as that term is understood in a Coastal Act context due to its ecosystem function. Because it is also easily disturbed or degraded by human activities and development, it meets the definition of ESHA under the Coastal Act for this reason as well.

D. Native Monterey Pine Forest as ESHA

Native Monterey pine forest is presumed ESHA because it is easily disturbed and degraded by human activities and development, and it is both rare and especially valuable because of its special nature as a genetic repository and its role in an ecosystem.[141] Within this context, though, it is possible that site-specific analysis would conclude that some areas where native Monterey pines grow or used to grow would not be considered ESHA because they have no special nature or role in an ecosystem (see discussion in finding above). Such cases might include, for example: isolated areas where individual trees grow; very small, relict stands of forest; and areas within the native range of Monterey pine that retain other requisite characteristics of the habitat type, such as soils and climate, but where significant occurrences of trees are no longer present. The following sections provide additional discussion of these circumstances.[142]

1. Tree vs. Forest – Unit of ESHA Measurement

Isolated or individual occurrences of Monterey pine may be determined not to be ESHA. There is, perhaps, an argument to be made that, since *Pinus radiata* is a CNPS 1B species, in fact any individual native Monterey pine (or small collection of individual pines) should be considered ESHA due to the rarity of the species itself. Even an individual native Monterey pine tree could still have special value as

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[141] That is not to say that both rarity and special value are required criteria for ESHA. Under the Coastal Act Section 30107.5 definition of ESHA definition only one or the other need be demonstrated to determine ESHA (for example, eucalyptus is not rare, but in certain circumstances it is especially valuable for its ecosystem function with respect to monarch butterflies and can be considered ESHA in those cases). The fact that both rarity and special value criteria apply to the native Monterey pine forest simply underscores its ESHA classification.

[142] This discussion is not intended to suggest that non-ESHA occurrences of Monterey pine forest are not important to protect otherwise under Coastal Act 30250. For example, the Monterey pine of the highly urbanized areas of Del Monte Forest still constitute native vegetation that may have some biological value (assuming they are not planted trees of non-native provenance) as a genetic resource, in aiding connectivity between ESHA forest areas, providing direct use by some species, etc. This is partly why the DMF LUP contains a comprehensive set of forest resource policies that require minimizing tree removal, mitigation of trees that are removed, preparation of a forest management plan for development in Monterey pine forest areas, etc. The LUP also underscores the aesthetic significance of Monterey pine forest.

a potential genetic repository. However, as discussed above, it is as native *forest*, not individual trees, that native Monterey pine may be rare or especially valuable. Thus, one relevant question in a Monterey pine ESHA determination is to what extent the Monterey pine trees at issue are part of a rare or especially valuable Monterey pine *forest* habitat area.

2. What Constitutes a Significant Pine Forest?

Recognizing that the relevant focus is on native Monterey pine forest, is there a minimum area of isolated forest patch that is of sufficiently high ecological value in and of itself that it is presumptively ESHA? Although the relationship between the area of an isolated forest stand and its ecosystem value is not well understood, biologists generally agree that larger, less fragmented or isolated areas, with lower perimeter to habitat area ratios, have higher relative ecological value. The Commission acknowledged this recently in its adoption of the Malibu LCP, which included a general recognition that the Santa Monica Mountains ecosystem was rare and especially valuable, in part because of it was large, relatively pristine, and mostly unfragmented.[143] With respect to forests, there is probably consensus that larger stands are more likely to maintain their natural ecosystem relationships and functions than small stands. For example, Jones & Stokes[144] assessed the conservation value of various Monterey pine forest stands based on the geomorphic setting (e.g., middle aged dunes), management potential, presence of rare species, and degree of fragmentation. Based on the distribution of stands on the Monterey Peninsula, they considered forest stands greater than 40 acres to be large and continuous. Smaller stands were considered relatively fragmented and isolated, but no data were presented nor recommendations made regarding the relationship of size to ecological value. In contrast, Huffman and Associates[145] defined natural forest stands as those at least 20 acres in size and concluded that such natural forests have significant intrinsic value for genetic conservation and the sustainability of each of the remaining three discrete forests in California (Año Nuevo, Cambria, and Monterey Peninsula). Wikler et al.[146] defined "wildland" as relatively undisturbed stands larger than 16 acres and compared them to stands of pine adjacent to golf fairways, in small (generally less than about 4 acres) semi-natural open space termed "light urban" areas, and in "heavy urban" areas located on landscaped home sites. Wildland areas had lower levels of pitch canker disease than the more urbanized plots and the authors suggested that there may be more conservation value in protecting areas at least 16 acres in size rather than smaller fragmented parcels. Based on these specific various observations concerning Monterey pine, and general principles of conservation biology, the Commission finds that relatively undisturbed stands of native Monterey pine forest 20 acres in size or larger are ESHA based on their rarity, their special nature as significant sources of genetic conservation, and on their especially valuable ecosystem function of providing the structural basis for a natural Monterey pine forest community.

Stands of native Monterey pine forest less than 20 acres require additional analysis. Most important, perhaps, those smaller stands that provide specific documented ecosystem functions, such as the

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143 See Malibu Local Coastal Program, Adopted LUP Findings, September 12, 2002, including cited literature in support of the general propositions.

144 Jones & Stokes Associates. December 1996. Monterey pine forest conservation strategy report. A report to the California Native Plant Society and the Natural Heritage Division of the California Department of Fish and Game.

145 Huffman and Associates. February 1994. An evaluation of California's native Monterey pine populations and the potential for sustainability. A report to the Pebble Beach Company.

146 Wikler, K., A.J. Storer, W. Newman, T.R. Gordon, and D.L. Wood. 2003. The dynamics of an introduced pathogen in a native Monterey pine (*Pinus radiata*) forest. Forest Ecology and Management 179:209-221.

provision of habitat for rare species (e.g., Yadon's piperia or Hooker's manzanita) or rare communities (e.g., central maritime chaparral), or that are very close to or connected to large areas of forest may also qualify as ESHA because of their especially valuable ecosystem functions. Other factors that might be considered include the relative degradation or health of the understory, association with wetland or riparian resources, or the relative uniqueness of the stand itself. For example, the Commission has long recognized the Monterey pine-coastal dune and the endemic Monterey pine-Bishop pine associations in Del Monte Forest as a particularly unique ecological occurrences that constitute ESHA. More generally, Monterey pine growing in different physical settings tend to have different morphological characteristics (some of which may have a genetic basis) and produce forest stands with different community compositions. One hypothesis is that this is a function of the "ecological staircase"; others think it represents some type of gradient that is not completely understood.[147] However, regardless of the causal basis, such diversity is important to conserve, and thus, the diversity value of a stand is another factor that needs to be assessed when conducting an ESHA analysis for smaller isolated MP stands.

3. Native Monterey Pine Forest as Habitat for Other Sensitive Species

In addition to defining both rare and/or especially valuable species as ESHA, Coastal Act Section 30107.5 also identifies the "habitat" for such species as ESHA. In one sense, habitat for such species is clear: at a minimum, it is the area in which they are found. However, there may also be areas suitable for the species (habitat) but where the species isn't necessary present at the time. For example, Yadon's piperia is not uniformly distributed throughout the forest stands that it occupies, but the nearby unoccupied areas also constitute appropriate habitat based on the various characteristics of these areas.

Therefore, the Commission finds that boundaries of the habitat for a given species are conterminous with the boundaries of the vegetation community or physical habitat that provides the requirements for the species to live and reproduce. For example, the Commission considers the boundaries of Yadon's piperia habitat to be conterminous with the boundaries of the chaparral and/or Monterey pine forest areas where this orchid has been documented to occur or where scientific studies (e.g., McGraw et al.[148]) demonstrate the presence of the habitat elements that are necessary to support the species.

E. The Commission's Monterey Pine Planning and Regulatory History

Apart from the general biological analysis just presented, it is instructive to understand generally the Commission's planning and regulatory history concerning native Monterey pine. The Coastal Commission has a long history of concern for native Monterey pine forest. Beginning with the *California Coastal Plan* of 1975 there are references to the pines of Del Monte Forest as a natural feature to be protected, and there is direction to preserve the Cambria and San Simeon pine occurrences as a "restricted natural community" and "one of the last native Monterey-pine forests found in the world."[149] As the Commission began to review and certify LCPs along the Central Coast, the three populations of Monterey pine were generally recognized and described as sensitive habitat. As

[147] The Monterey ecological staircase concept has its genesis in reports prepared for CDFG in the mid-1990s defining six terraces and a series of related geomorphic surfaces (e.g., young and old dunes, etc.) within the Monterey peninsula stand, each with differing Monterey pine forest characteristics, where it was suggested that the forest should be considered in terms of the sub-types (and representative stands of each preserved).

[148] McGraw, J., R. Buck, and W. Davilla (Eco Systems West). January 10, 2006. Habitat characterization for Yadon's piperia (Piperia yadonii) with (sic) the forested habitat of the Monterey peninsula. A report prepared for the County of Monterey.

[149] *California Coastal Plan*, California Coastal Zone Conservation Commissions, December, 1975, pp. 232, 360.

summarized in the table below, each of the seven LCPs that encompass areas of native Monterey pine forest specifically identify Monterey pine forest as a sensitive species or habitat that should be considered ESHA under certain circumstances. Four LCPs generally define Monterey pine forest as ESHA (San Mateo, Santa Cruz, San Luis Obispo Counties, and City of Carmel-by-the-Sea). Three jurisdictions identify Monterey pine in certain circumstances as being ESHA, such as the Monterey pine/sand dunes association in Pacific Grove, or the Monterey pine/Bishop pine association in the City of Monterey.

Table: Protection of Monterey Pine in Certified LCPs/LUPs

Jurisdiction & LUP/IP Date of Certification	Monterey Pine Population	Treatment of Monterey Pine (MP) in LCP
San Mateo County 1980	Año Nuevo	Identified as "unique" species and mapped on sensitive habitat maps. Specific MP policy (7.48)
Santa Cruz County 1982	Año Nuevo	"Indigenous MP" defined as sensitive habitat (Policy 5.1.2; IP 16.32.040b; Appendix B)
San Luis Obispo County 1988	Cambria	"Monterey pine forest" identified and mapped as a Sensitive Resource Area, "Terrestrial Habitat" (ESHA) in North Coast Area Plan (Cambria, San Simeon)
Monterey County *Carmel Area* 1983/88	Monterey	"Naturally occurring groves" identified as ESHA in Carmel Area where forest is associated with rare or endemic species; provides wildlife value, or high aesthetic value. (LUP 2.3.2; IP 20.146.40)
Monterey County *Del Monte Forest* 1984/88	Monterey	MP/Bishop Pine association listed as ESHA; MP/dune association, occurrences in Huckleberry Hill listed in Appendix A; other significant occurrences shown in Figure 2.
City of Pacific Grove 1990	Monterey	"Pine forest/sand dune association" identified as environmentally sensitive habitat and mapped (LUP 2.3.1).
City of Monterey 1992	Monterey	Significant stands of MP mapped in Skyline LUP segment; Bishop/MP association mapped as ESHA (Figure 4)
City of Carmel 2003	Monterey	Pescadero Canyon MP occurrence identified and mapped as ESHA (LUP Text; Figure 5.3; Appendix F)

In the Monterey County LCP, the Carmel Area LUP/IP defines naturally occurring groves of Monterey pine as ESHA if they are associated with rare or endemic species, or provide wildlife or aesthetic value. The Del Monte Forest LUP ESHA treatment of Monterey pine is more targeted, though, and specific categorical ESHA references are limited to the Monterey pine/Bishop pine association, and dunes association. In addition, Huckleberry Hill Natural Habitat Area, which includes Monterey pine, is mapped as ESHA. The DMF LUP also generally maps other occurrences of Monterey pine in LUP Figure 2. However, the DMF LUP also has an extensive set of forest protection policies designed to

protect the Del Monte Forest, whether or not particular areas are designated ESHA.[150]

Although generally identified as sensitive habitat in various LCPs, the Commission has still evaluated Monterey pine and ESHA issues in planning and regulatory matters case-by-case, based on an assessment of resources on the ground.[151] Early in its history, the Commission did not necessarily strictly protect Monterey pine forest areas impacted by development as ESHA. In at least one case this appears to be because Monterey pine was not determined to be ESHA.[152] In others, the Commission made findings that the forest areas in question would not be significantly disrupted, but did not focus specifically on the Coastal Act requirement to limit development in ESHAs to resource dependent developments. Notably, in the coastal development permit for the Spanish Bay Resort (CDP 3-84-226), the Commission found that the project would "undeniably and substantially impact a designated environmentally sensitive habitat" (Monterey pine forest in the Huckleberry Hill Natural Habitat Area designated as ESHA), but that this impact, as well as other impacts to biological resources, could be acceptably mitigated so that there would be a "net enhancement" in the ESHAs in Del Monte Forest (see Exhibit 4, for excerpted Monterey pine and other Spanish Bay CDP findings). Thus, the Commission found that the project as mitigated was consistent with Coastal Act Section 30240.[153]

More recently, the Commission generally has not permitted new development in Monterey pine forest determined to be ESHA, except where necessary to avoid a takings of private property. For example, in the Pelle decision in Cambria (A-3-SLO-02-074), the Commission approved a significantly reduced residential building envelope (12,458 sf) on a 4.7 acre parcel in Monterey pine forest determined to be ESHA, to avoid a takings, and required the remainder of the property, which included merger of several parcels, to be put into a conservation easement. Similarly, in the Seaberg permits (A-3-SLO-00-078; A-3-SLO-00-079) the Commission limited new residential development footprint to 10,000 square feet, on an approximate 2.5 acre parcel determined to be entirely Monterey pine forest ESHA. In San Mateo County, the Commission identified Monterey pine forest ESHA on an approximate 85 acre parcel, as well as other ESHA, and required that a new residential development avoid this forest area in order to

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150 In general these policies require maximum preservation of forest resources and the use of forest management plans for any developments that would significantly impact Monterey pine forest. For example, Monterey pine is defined as a native tree species of the Del Monte Forest. The native pine forest making up the Del Monte Forest was to be preserved as a matter of "paramount concern" (LUP Policy Guidance Statement). Although the removal of individual pine specimens is *allowed* by the plan, the natural forest is to be retained "to the maximum feasible degree" (LUP Policy 31); projects are *required* to minimize tree removal (IP Section 20.147.050(D)(3)) with preference for design concepts which pursue this goal (LUP Policy 34); and, perhaps most importantly, "where LUP objectives conflict, preference should be given to long-term protection of the forest resource" (LUP Policy 32), likewise evident in IP Section 20.147.050(D)(1): "when standards conflict, preference shall be given to those which provide the greatest long-term protection to the forest resource." Although these policies evince a clear intent to protect Monterey pine resources in Del Monte Forest, one of the preliminary staff recommendations of the Monterey County Periodic Review (not adopted by the Commission yet) was to strengthen the LCP by more clearly recognizing and protecting the habitat aspects of Monterey pine forest, as opposed to the "tree-centric" approach embedded in the current LUP emphasis on minimizing the removal of "significant trees" and mitigating through plantings of new trees.

151 In general, once identified as ESHA, each LCP – including Monterey County's within the DMF segment – limits new development within Monterey pine forest areas to resource dependent development, similar to Coastal Act Section 30240.

152 See, Poppy Hills Golf Course (3-84-120), wherein the Commission recognized the significance of Gowen Cypress and Bishop pine occurrences in association with Monterey pine, but did not require strict avoidance of all such occurrences or otherwise identify the larger Monterey pine forest impacted by the project as ESHA; also, see the MacComber (1-93) and Griffin (1-94) LCP amendments to allow residential subdivisions in Del Monte Forest; and the Leimert subdivision in Cambria approved by the County but not appealed to the Commission (3-SLO-97-130).

153 In light of the Bolsa Chica decision, this type of finding would probably no longer withstand judicial scrutiny.

comply with the San Mateo County LCP (Lee, A-2-SMC-99-066).

In planning decisions, such as the North Coast Area Plan LCP Update for San Luis Obispo County (1998), the adopted Periodic Review of SLO County LCP (2001), and SLO County Major LCP major amendment 1-04 Part 2 (2005), the Commission has continued to recognize Monterey pine as ESHA and adopted policies or recommendations to strengthen its protection under Coastal Act Section 30240. For example, in SLO County LCP major Amendment 1-04 Part 2, the Commission found that a 32 acre parcel was Monterey pine forest ESHA, and adopted modifications, accepted by the County, requiring that the ESHA be protected with an Open Space designation rather than the proposed Agricultural designation.

Most recently, the Commission has found that "[o]verall, within the native range of Monterey pine, forest habitat areas that have not been substantially developed and urbanized meet the definition of ESHA under the Coastal Act" but has also emphasized the site-specific factors that may support a Monterey pine forest ESHA determination or not, including the size, health, and biodiversity of the forest areas.[154] For example, in the Community Hospital of Monterey Peninsula decision (3-03-068), the Commission found that "native Monterey Pine forests are rare and play a special role in ecosystems by providing necessary habitat for other rare and unusual species," but also that in this case, the relatively small area of pine forest (0.75 acres) impacted by a necessary hospital facility expansion was not ESHA because of the relative disturbance and fragmentation and thus arguable lower biological value, of the forest in the project area. The impacted area also did not contain other sensitive species in the understory. In contrast, the Commission recently found that an even smaller area of pine forest (6,100 sf) that would be impacted by a necessary water tank project for the Cambria Community Services District was ESHA, because the forest was part of much larger contiguous block of healthy forest and associated with other sensitive species. There was also evidence of pine regeneration (seedlings) on the project site. Although the Commission recognized the public health and safety aspect of the project (providing adequate fire fighting flows and access), the Commission nonetheless reduced the size of the project and allowed only the minimum encroachment into the forest necessary to provide for the project, ultimately reducing the impact to 1600 square feet).[155]

F. Monterey Pine ESHA and Changed Circumstances

Although the Commission's consideration for the sensitivity of native Monterey pine dates back to the earliest days of the Coastal Act, its specific concern for Monterey pine forest as ESHA has also evolved over time, framed by various changed circumstances. First, the environmental conditions of native Monterey pine forest have changed significantly since certification of most of the LCP's that have protective policies for Monterey pine. For example, pine pitch canker has emerged as a serious threat to the remaining pine forest populations. By 1994, pitch canker had infected all three California populations. This change in the environment heightened the general concern for the species. In addition to this threat, in Cambria and the Del Monte Forest, the cumulative impacts to remaining Monterey pine forest have been significant, notwithstanding the general ESHA designation of Monterey pine in San Luis Obispo County, and the comprehensive forest protection policies of the Del Monte Forest

[154] See, for example, A-3-SLO-05-017 Pine Knolls Water Tanks De Novo ADOPTED 6.9.05.doc. p. 29. Also, A-3-MCO-05-033, Adopted April 12, 2006.

[155] *Id*. Approved Site Plans (2006). The forest area in question was also in a conservation easement held by the Nature Conservancy.

LUP/IP.[156] There have been significant impacts to and fragmentation of what once were much larger areas of contiguous forest. Due to this continued loss of native pine forest, concern for remaining habitat areas is increased. More generally, as with many other sensitive habitats, the prospect for long-term climate change injects new uncertainty into the habitat protection equation.

In addition to changing environmental conditions, our scientific knowledge of Monterey pine has continued to grow. This includes increased attention and study of Monterey pine ecology, such as the work sponsored by the Department of Fish and Game in the mid-1990s, or more recent focus on genetic conservation.[157] Significant new information and understanding of the sensitivity of Monterey pine forest since has been developed. Notably, Monterey pine was placed on the CNPS 1B list of rare and endangered species in 1994.[158] More generally, since 1980 when the background work for the DMF LUP was being conducted, the number of sensitive plants in DMF identified by the CNPS has grown from 10 to at least 19. Significant occurrences of sensitive species, such as the endangered Yadon's piperia, are now known to exist in DMF native Monterey pine forest. Thus, there is a greater appreciation of the biological diversity of native Monterey pine forests. The Commission's approach to identifying and evaluating sensitive species habitats has also changed, with increasing understanding and development of ecological concepts, such as application of the principles of conservation biology at the landscape level. For example, much of the Commission's early focus on Monterey pine emphasized significant tree avoidance, not necessarily pine forest habitat identification and avoidance.[159] More recently, the Commission has continued to refine its methods for identifying Monterey pine forest habitat areas that meet the Coastal Act ESHA definition.

The net effect of such changing circumstances has been an increased understanding and heightened concern for native Monterey pine forest habitats in the coastal zone. This, in turn, has necessarily entailed changes in how the Commission evaluates Monterey pine forest as ESHA under the Coastal Act.

Finally, it has been argued that the Commission shouldn't find native Monterey pine forest in the Del Monte Forest to be ESHA because the policies of the LCP (circa 1984) do not categorically list it as ESHA in the Del Monte Forest, and only identify a subset of the Del Monte Forest native pine forest area as open space. However, such an argument is not persuasive. First, categorical lists and related mapping are always subject to updating as new and better information is developed, and our understanding of species and habitats increases. In the Del Monte Forest LUP/IP, this is both implicit and explicit (see, for example, the LUP Appendix A discussion above). Moreover, in the case of the Del Monte Forest LCP segment LUP, the original list of ESHA examples in LUP Appendix A is over twenty years old and has not been updated. For example, Monterey pine was first listed by CNPS as rare, and endangered in 1994 – ten years after the LUP was certified. Second , the LCP contains direction for

156 As discussed in the Commission's Periodic Reviews of the San Luis Obispo and Monterey County LCPs (the Monterey County report is not yet adopted by the Commission), much of this impact has been due to the residential build-out of existing legal lots of record, although some significant impacts are attributable to subdivision and, in Del Monte Forest, also to the visitor-serving developments of the Spanish Bay Resort project and the Poppy Hills Golf Course.

157 For example, Rogers, In situ genetic conservation of Monterey pine (2002).

158 See Exhibit 14 (CNPS Monterey Pine Forest Policy Statement, 1995).

159 CCC, Draft Periodic Review of the Monterey County LCP, 2003.

determining what is ESHA,[160] and Monterey pine forest meets the established criteria – whether categorically listed in Appendix A as an example of ESHA in 1984 or not. In fact, whether or not it was listed as an example in 1984 is immaterial. The LCP (and Coastal Act) intent in this regard is not to be static but rather evolving, where evaluation is meant to be undertaken at the time of proposed development so as to respond to and reflect current biological evaluation and assessment, including our changing understanding of species, habitats, and biological communities. It is in this vein that the resource protective policies of the Act (and by extension the LCP) are to be understood (i.e., more protective rather than less; critical thinking and analysis rather than rote reliance on outdated maps or lists; resources on the ground as most relevant; current assessment as paramount; etc.). In that respect, the LCP already builds into itself the responsibility to find native Monterey pine forest to be ESHA.

In practice, however, the LCP has been applied inconsistently. Over five-hundred coastal permits have been approved by the County in the DMF in the time since the IP was certified in 1988, and a sampling of these shows that the broader question regarding the effect of such development on the native Monterey pine forest, including ascribing to it ESHA status, was essentially omitted.[161] The cumulative impact of each such development on the overall Monterey pine forest was also omitted. Rather, implementation in this respect has clearly been tree-centric; focused on tree counts and offsetting tree replanting as opposed to the forest. In sum, the LCP implementation history with respect to Monterey pine has clearly not been focused on the question of pine forest, pine forest habitat, and whether or not native Monterey pine forest and its habitat is ESHA.[162] The implementation history within the Del Monte Forest LCP segment is not binding nor indicative of what should happen under the law with respect to the remaining native Monterey pine. On the contrary, it provides context and background from which to learn and apply what is know today about the native Monterey pine forest. What is clear is that the native Monterey pine forest is rare and especially valuable, and that it meets the Coastal Act and LCP ESHA criteria.

C. LUP Amendment – Coastal Act Consistency Analysis

1. Introduction

Although it is one coherent whole of an amendment package, the LCP amendment must be evaluated in two parts given the different standards of review that apply to the LUP versus the IP components of it (as described earlier). Thus, the analysis is broken down into an LUP consistency analysis (as measured against the Coastal Act) and an IP consistency analysis (as measured again the LUP). This section provides the LUP analysis, and the section that follows provides the IP analysis.

In addition, as described earlier, the proposed LCP amendment is designed in part to facilitate the

[160] See preceding finding specific to the question of what defines ESHA in the DMF.

[161] Id; Draft Periodic Review.

[162] Indeed, it has become clear that on-going loss of Monterey pine forest since LCP certification is not consistent with the Coastal Act requirement to protect environmentally sensitive habitat areas. Although some of this loss can be attributed to natural causes, especially pine pitch canker, County coastal permits have authorized the removal of significant numbers of trees and habitat areas. Fragmentation of the forest has continued. The cumulative impact of this development on the forest has been significant.

Pebble Beach Company's Project. As such, Project details can help to provide context for the LCP amendment – including providing a relevant example of what the LCP, if amended, might engender. Given that the County has already approved the Project, such an analytic tool is all the more relevant. In fact, although by definition there exist a variety of development scenarios that might be facilitated by the proposed LCP changes, it would lack regulatory common sense to focus on other than the Project as if these alternative projects might be coming next; it is the Project that has already been approved and appealed to the Commission and that is awaiting the outcome of this LCP amendment. In addition, given that the Project represents the identified ultimate outcome of the proposed LCP amendment and the land use and other proposed designation changes generally run in parallel to it, it provides a useful organizational reference for analysis.

Accordingly, the analysis that follows is organized around the 26 directly affected geographic areas where the 26 areas are organized by the broader categories into which they fit as previously described, tracking the geographic and use categories of the relevant LCP amendment (and by extension Project) components to the degree feasible and appropriate. The analysis is thus organized as follows:

- Recreational: Areas 1, 2, 3, and 4 corresponding to proposed Open Space Recreational areas (and corresponding to the Project golf course, driving range, and equestrian center).
- Visitor Serving: Areas 5, 6, and 7 corresponding to proposed visitor serving areas (and corresponding to the Project golf cottages, Inn at Spanish Bay and Pebble Beach Lodge area improvements).
- Residential: Areas 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 corresponding to proposed residential areas (and corresponding to the Project residential development sites).
- Resource Conservation: Areas 19, 20, 21, 22, 23, and 24 corresponding to proposed resource conservation areas (and corresponding to the Project conservation easement sites).
- Other: Areas 25 and 26 corresponding to Areas X and Y.

In addition, broader changes affecting the overall DMF areas are analyzed in a section following the specific area analyses. Finally, it is noted here that issues associated with water, wastewater, and transportation public services (including the resource constraint overlay) are detailed in the subsequent public services finding. Although there is some obvious overlap between the public services finding and this one, perhaps most specifically with water supply as it relates to Carmel River resources, those issues are analyzed in the public services finding.

Finally, the proposed Project and the proposed LCP amendment provisions were described in some detail in previous sections of this report. Although they are referred to here, they are not explained again in detail. The reader is directed to these preceding sections for additional information in that respect.

2. Recreational Areas (Areas 1 through 4)

A. Area 1 (Golf Course)

1. Area 1 Resource Setting

Area 1 is made up of most of LUP planning units M, N, O, U, and V (MNOUV) and a roughly 4-acre residential area adjacent to the existing equestrian center (see Figures 3 and 7). Together, Area 1 is approximately 146 acres straddling the LUP's Spyglass Cypress and Pebble Beach planning areas. This area is located in the southwest of the Forest adjacent to the Cypress Point Golf Course, the dunes at Signal Hill rising up from Fan Shell Beach, the Spyglass Hill Golf Course, the Pebble Beach Equestrian Center, and existing developed residential properties. Most of Area 1 is undeveloped. The developed area is limited to the roughly 5-acre Pebble Beach Driving Range located on a portion of planning unit V, two portions (roughly 2 acres total) of the existing Pebble Beach Equestrian Center located on portions of planning units U and V, the developed residential property of approximately 4 acres south of planning unit U (opposite the equestrian center from the middle of planning unit U), and the Pebble Beach Company's roughly 5-acre fill/storage area at Signal Hill Dunes on a portion of planning unit M.[163] The undeveloped portion of Area 1 includes the remaining portions of planning units M, U, and V, and all of planning units N and O. In all, there are approximately 16 developed and 130 undeveloped acres in Area 1.[164] See annotated photos in Exhibit 9.

Coastal Dune ESHA

The undeveloped 130 acres of Area 1 is primarily coastal dunes on the northernmost tip of this area and native Monterey pine forest elsewhere.[165] The dune area here is part of the larger Signal Hill dune system rising from Fan Shell Beach to the west. These dunes are partially degraded having been impacted in some places by prior sand mining activities and on the edges by Pebble Beach Company fill/storage activities (see photos in Exhibit 9). Nonetheless, these dunes remain a valuable coastal dune system and are part of the larger Asilomar Dunes system that stretches from the Point Piños Lighthouse Reservation in Pacific Grove through to Cypress Point adjacent to Fan Shell Beach. The Commission has a long history of treating the coastal dunes of the Asilomar system as ESHA, even when the dune land form is significantly degraded.[166] As previously discussed in the preceding dune ESHA finding, the dunes in Area 1 support several listed endangered, threatened, and CNPS 1B plant species (including Tidestrom's lupine, Menzies' wallflower, sand gilia, beach layia, Monterey spine flower and others).

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[163] Based on available data, it appears that the fill/storage area was historically part of a larger coastal dune area (at least a portion of which still remains intact), and that this coastal dune was partially mined by the Company until 1965. It also appears, based on an analysis of aerial photos, that the site has been partially filled, and that the filled area has expanded over time. The site has been and continues to be used as a storage and materials disposal area. Other than CDP A-3- MCO-97-037 (for the Pebble Beach Company's Casa Palmero project) that acknowledged 26,000 cubic yards of excavated soils being placed at this location, no other coastal development permits have been authorized for this activity. However, research into reclamation of the former quarry, including the degree to which fill of it pre-dated coastal permit requirements, is inconclusive. As a result, it is difficult to determine with accuracy whether this area should be considered dunes (that were filled mostly without benefit of required coastal permits) or whether this area should be considered a fill area as a baseline for LCP amendment analysis. Likewise, the 1984 LUP provides inconclusive and conflicting guidance in this respect identifying this area as "sand or sand dunes" in LUP Figure 2a (Vegetation Cover), but not as a sensitive dune habitat on Figure 2 (Environmentally Sensitive Habitat Areas). The LUP also identifies this area as a "rehabilitation area due to prior mining" on LUP Figure 4 (Environmental Considerations) and LUP Figure 7 (Spyglass Cypress Planning Area Environmental Considerations), and includes policy direction that, in part, identifies former mines for more intensive development and in part for an intensive use that can also provide rehabilitation (LUP Policy 92). The LUP also identifies this area as being partially in the "Rare Plant" category and partially in the "Development" category (LUP OSAC Plan Figures 3 and 4). Given its status as a former quarry and absent compelling evidence to the contrary, the Commission has based this LCP amendment analysis on the elevated fill area being a fill area and not a dune.

[164] There are also about 6 acres of paved roads and various equestrian/hiking trails that cross through Area 1.

[165] There is also some overlap at the transition between the dunes and the forest where Monterey pine is also present in dune areas. This is an example of the previously discussed sensitive Monterey pine forest-dune habitat association.

[166] See, for example, recent CDPs A-3-MCO-02-058 (Smith) and 3-03-029 (Kwiatkowski).

Seacliff buckwheat, a known host plant for the endangered Smith's blue butterfly, is also present in this area (though butterflies were not detected in surveys in 2000).[167] The dunes provide other special status species habitat as well (including for special concern species such as black legless lizard, silvery legless lizard, California horned lizard, etc.).[168] The Commission finds that the dune area in Area 1 (mostly within planning unit M with a small portion of planning unit N) is ESHA pursuant to the Coastal Act and the LCP.[169] Figure 8 shows the dune area in Area 1[170] as well as the locations of various sensitive plant species identified there by the County.[171]

Monterey Pine Forest ESHA

The native Monterey pine forest area in Area 1 is a mostly contiguous block of native pine forest,[172] approximately 116 acres, in association with scattered Coast live oak and a variety of understory species (see photos in Exhibit 9).[173] The Area 1 pine forest is one of the largest mostly contiguous and unfragmented portions of the remaining native Monterey pine forest in the Del Monte Forest. This forest also is one of the largest areas of native pine forest within the area directly affected by the proposed LCP amendment, and is the largest area of native Monterey pine forest that would be impacted by the Project. Historically the native Monterey pine forest at Area 1 was part of a much larger native pine forest that covered most of the Del Monte Forest area, and most of the Monterey peninsula.[174] Over time, the native Monterey pine forest on the Monterey peninsula as a whole has been diminished in size until it is now about one-half of its estimated historic size (see Exhibit 11). This loss represents nearly 90% of the total loss of native Monterey pine forest worldwide.

As discussed earlier, Monterey pine forest functions as an ecosystem habitat in association with a variety of plant and wildlife species, including a significant number of special status species. In Area 1, these special status species include such sensitive CNPS 1B species as Hooker's manzanita (an approximately 2 acre patch), Hickman's onion, and pine rose, which the County did not specifically map

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167 PDP EIR p. 2-37.

168 PDP EIR Tables E-11 and E-13.

169 See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

170 Monterey County's dune delineation in this area is different from that identified based on fieldwork in February 2006 by the Commission's staff ecologist. The primary difference in dune area between the two is located along the eastern boundary of the dune delineation where the Commission's staff ecologist identified more area of dune than was mapped by the County in the area between the County's dune line and the aforementioned fill area (see Figure 8). Note that the County dune polygon on Figure 8 maps only those dune areas identified by the County within combined planning unit MNOUV, and doesn't show those areas outside of MNOUV that were also delineated by the County. The reason for this is that the dune delineation GIS data that was provided to the Commission in support of the LCP amendment clipped the dune delineation at the edge of planning units M and N, whereas the County's dune delineation with respect to the Pebble Beach Company's project extended to the west of planning units M and N. The County's dune delineation in and around planning units M and N that was developed as part of their review of the Project shows additional area to the west of planning units M and N as dune, and that this additional area to the west is similar to Commission staff's delineation shown on Figure 8 in this respect.

171 Locations of Seacliff buckwheat were not mapped.

172 Stevenson Drive and Drake Road, as well as a number of public access trails, cross the pine forest area. The forest canopy extends over the trails and parts of the roads. However, in terms of biological processes, such as providing connected habitat areas and maintaining ecological processes between various sub-areas, it remains intact as a coherent forest unit. The PDP EIR considers this area to be "undeveloped forest" that is "relatively intact as a forest patch" despite the existing roads and trails (see, for example, PDP EIR p. 2-54 and p. 3.3-19).

173 PDP EIR Table E-13

174 Ibid.

but did identify as being found here. As previously described, the area of Hooker's manzanita can be used as a proxy for central maritime chaparral habitat.[175] The forested area also provides habitat for a variety of other native animal species, including habitat suitable for several sensitive wildlife species (e.g., Cooper's hawk, ringtail, pallid bat, etc.); although these sensitive species have not been recently positively identified.[176] Area 1 also includes significant occurrences of the federally endangered Yadon's piperia (also CNPS 1B). In particular, the Yadon's piperia occurrence area in Area 1 is the largest known occurrence in the world, having been estimated to account for roughly one-third of the known worldwide population of the species: approximately 57,000 plants occurring over 54 acres spread throughout the heart of Area 1[177] (see Figure 11). Based on the fact that Yadon's piperia is found almost exclusively in native Monterey pine forest and chaparral areas, absent compelling evidence to the contrary the Commission considers the boundaries of Yadon's piperia habitat to be coterminous with the boundaries of the chaparral and/or Monterey pine forest areas where piperia has been documented. In this case, the Monterey pine forest boundaries at Area 1 (i.e., essentially all undeveloped area that is not coastal dune) are considered Yadon's piperia habitat for this reason.

Wetland Resources

In addition to the variety of special status species found in the Area 1 pine forest, this forest area also contains significant wetland resources. Monterey County identified some 4.4 wetland acres in Area 1.[178] Fieldwork by the Commission's staff ecologist indicates that there is additional wetland acreage in Area 1 that should have been delineated as well.[179] These Area 1 wetlands include several pond and watercourse areas among them, and portions of these areas provide documented habitat for California red-legged frog. With respect to CRLF in particular, recent reports indicate that the apparent center of the Del Monte Forest CRLF population is found in the lower Seal Rock Creek watershed, and that Area 1 includes both occupied foraging and dispersal habitat (i.e., CRLF having been documented in these wet areas in recent surveys) and suitable aquatic foraging and dispersal habitat for CRLF.[180] Given that CRLF have been known to make straight line movements between suitable sites, and may travel as far as 2 miles or so between suitable locations,[181] the area between lower Seal Rock Creek and the occupied

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175 The PDP EIR indicates that central maritime chaparral is one of the major biological communities within the LCP amendment/Project area, but central maritime chaparral was not independently mapped. At a minimum, central maritime chaparral within the project area is coextensive with the mapped areas of Hooker's manzanita.

176 PDP EIR Table E-11.

177 PDP EIR Table P2-1.

178 The County's wetland delineation was applied to the Project area. The Project area includes Area 1 and additional surrounding area. The additional surrounding area includes some area of wetland that were delineated by the County (see Exhibit 8). As a result, the County's wetland acreage totals would be slightly lower within Area 1 as compared to the Project area, but this difference has not to date been quantified.

179 See Figure 8. Note that the areas shown as "Potential Wetlands (Coastal Commission)" in Figure 8 indicate general areas where wetland indicators may occur outside delineated boundaries and are illustrative only. Commission staff fieldwork (in January 2005 and February 2006) was focused on spot-checking some of the margins of the County's wetland delineation and a subset of specific areas that appeared to have at least some of the requisite indicators of wetland plants, soils, or hydrology. The boundaries of the area shown as potential wetlands on Figure 8 are meant only to indicate that some non-delineated areas within those boundaries included wetland indicators, particularly standing water or a water table within 12 inches of the surface on January 21, 2005 and/or on February 15, 2006. "Potential Wetlands" simply indicates areas where additional fieldwork during the rainy season appears necessary.

180 PDP EIR Appendix E. The occupied CRLF sites in Area 1 are identified on Figure 8, and the locations where CRLF have been positively identified in the Project/LCP amendment area overall are shown on Exhibit 11.

181 U.S. Fish and Wildlife Service. 2002. Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon. viii + 173 pp.

habitat sites in Area 1 may be assumed to provide dispersal habitat in at least the central portion of Area 1 (and the area between Area 1 and Seal Rock Creek).

Area 1 is Predominantly ESHA

The Area 1 native Monterey pine forest area is ESHA pursuant to the Coastal Act and the LCP.[182] The native Monterey pine forest here is a good example of the type of intact native Monterey pine forest discussed earlier that is both independently rare and especially valuable, both as a genetic repository and as the dominant biological community fostering significant ecosystem habitat value. In the case of the latter specifically, the forest here supports a variety of sensitive species habitats, including other CNPS 1B species as well as significant areas occupied by the federally endangered piperia. It also supports significant wetland and other wet resource areas, including CRLF habitat. When combined with the dune ESHA area described above, the vast majority (about 125 acres) of Area 1 is ESHA (see biological resources mapped in exhibit 8). This ESHA area essentially represents all of the undeveloped portions of Area 1 (i.e., everything except for the driving range, the fill/storage area, the residential property, and the small portions of the equestrian center), with the exception of a roughly 4-acre undeveloped area that is a part of planning unit V located at the intersection of Stevenson Drive and Ondulado Road that is hemmed in by these roads and the Collins Field portion of the equestrian center, and a roughly one-acre narrow strip between Forest Lake Road and the existing driving range within about 500 feet of the intersection of Forest Lake and Stevenson Roads.

2. Area 1 LUP Amendment Consistency Analysis

As detailed in the LCP amendment description finding, the proposed LUP amendment would designate all of Area 1 as Open Space Recreational and would add complementary text to the LUP to indicate that this area is to be managed and maintained pursuant to the LUP's golf course management category.[183] Because the LUP's Open Space Recreational land use designation is limited to golf courses and two existing uses (the beach and tennis club and the equestrian center) and the LUP's OSAC golf course category is further specific to golf course rough management, the proposed LUP amendment would dictate a golf course use for Area 1.[184] In fact, the Open Space Recreational designation is only found on existing golf courses and the equestrian center in the certified DMF LUP.[185] The proposed land use changes are shown in Figures 4 and 5, and the proposed LUP text changes associated with Measure A are in Exhibit 2.

The proposed LUP changes cannot be found consistent with the Coastal Act. As described above, the majority of Area 1 is ESHA. Section 30240 prohibits all but resource-dependent use in ESHA, and only allows resource-dependent use if it does not significantly disrupt habitat values. Moreover, Section 30240 requires that development adjacent to ESHA not significantly degrade ESHA. Specific to wetlands, Section 30231 of the Act requires that their quality and productivity be maintained (and if feasible restored), and Section 30233 limits the allowed uses within wetlands to eight specific types of development, and only under very limited circumstances. The three allowed uses in the LUP Open

[182] See also previous ESHA criteria, including discussion of the LCP definition of ESHA in previous finding.

[183] The LUP's Resource Constraint overlay would also be removed (see Public Services finding).

[184] See LUP land use designation and OSAC management category text in this regard in Exhibit 5.

[185] The Beach and Tennis Club, the third use identified in the recreational designation, is actually designated Visitor Service Commercial.

Space Recreational category (including specifically the proposed golf course use) are not one of the eight allowed wetland uses and are not resource-dependent uses. Similarly, the proposed LUP OSAC management category does not protect natural resource areas (including ESHA)[186] and is not appropriate to ESHA management.[187] Thus, the proposed changes to the land uses allowed in Area 1 would allow for destruction of ESHA and wetland resources inconsistent with the Coastal Act.

As discussed above, the Project already approved by the Monterey County Board of Supervisors, concurrent with the Board's endorsement of Measure A, provides a good example of the type of development and land use impacts that could be expected to occur under the proposed LUP changes in Area 1. The Project includes an 18-hole golf course and related facilities that would be developed in and around Area 1 (see previous project description for details). It would result in the direct removal of much of the Area 1 ESHA and the fragmentation of any remaining ESHA area not removed for golf course use. Habitat values thus would be both significantly disrupted and ESHA significantly degraded (see proposed golf course and related facilities superimposed over underlying biological resources on Exhibit 8). In fact, it is estimated that the Project golf course and related facilities would directly remove about 63 acres of native Monterey pine forest (and over 10,000 individual trees) and related understory, including the special status species and their habitats present there (e.g., Yadon's piperia, Hookers manzanita/central maritime chaparral, Hickman's onion, etc.).[188] The remainder of the forest that would not be directly removed would be substantially fragmented into a series of smaller, fragmented, and less viable (as part of an ecosystems or as individual ecosystems) forest patches (e.g., in between fairways, along the fringes of the course, etc.), thus significantly degrading the remaining forest and related resource.[189] With respect to Yadon's piperia specifically, it is estimated that the Project golf course would directly remove roughly 36,000 individual plants, or 21% of the known population of this listed endangered species.[190] As discussed in the PDP EIR, the USFWS Recovery Plan for the species calls for this population to be "protected to the maximum extent feasible."[191] In any case, it is clear that a golf course, no matter how designed, could not be developed at this location without destroying ESHA due to the extent of ESHA in this area.

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186 Examples of OSAC classifications that would protect natural resources are: OSAC classifications II "Protected Natural Resources," IV "Open Forest," VIII "Riparian and Wetland," IX "Scenic Buffer or Easement," X "Sensitive Habitat," and XI "Rare and Endangered Species." See LUP OSAC text in Exhibit 5.

187 The proposed LUP OSAC Plan changes raise other issues as well, including that they would introduce internal LCP consistency problems (e.g., introduced organizational conflict with the OSAC Plan itself and references to IP land use designations as opposed to LUP designations), and specifically potential internal ESHA policy consistency problems (e.g., where the proposed OSAC standards are interpreted to allow golf course related development in ESHA). While these issues are a part of the overall Coastal Act consistency problem, they are secondary and are not further elaborated here.

188 PDP EIR Tables 3.3-1, 3.3-6, and F2-2.

189 These types of indirect impacts are difficult to quantify. Indirect impacts include those associated with edge effects where more forest "edge" areas are created (leading to microclimatic changes, increased potential for invasive species, loss of cover, increased predation potential for wildlife, etc.) and those more broadly (e.g., changes in soils and hydrology from adjacent development, disturbance of root zones, etc.) that are often a function of forest fragmentation. The most conservative approach to quantifying indirect impacts is to consider them direct impacts. For example, it is clear that the remaining Area 1 forest areas will be negatively impacted by these types of indirect/edge effects (e.g., see PDP EIR 3.3-18 and 2-58 through 2-65). In the case of a golf course where the remaining "forest" is primarily in between fairways and along its edge, such a conservative approach may make even more sense. In the case of the Project golf course, the remaining forest acreage in this respect is an additional 53 acres (i.e., 116 acres of forest minus the 63 acres directly removed); or rather a total potential impact of 116 acres of Monterey pine forest.

190 PDP EIR Tables P2-1 and P2-2.

191 PDP EIR p. 2-91.

Concerning wetlands, it is unclear that a championship caliber 18-hole golf course could be sited in Area 1 without filling wetlands.[192] Nor would the LCP-required 100-foot wetland setbacks be achievable, even for County-delineated wetlands (e.g., the current design and County approval reduces buffers down to 25 feet in some cases).[193] Other anticipated impacts include the removal of a pond area[194] that is documented aquatic habitat for the CRLF, requiring USFWS take authorization.[195] In short, based on the evidence of existing biological resources in Area 1, Measure A is inconsistent with the Coastal Act because it proposes a land use that not only is not resource-dependent, but that could be expected to result in direct removal of significant acreages of ESHA and the fragmentation of the remaining Area 1 ESHA such that habitat values would be significantly disrupted and the areas significantly degraded. It could also reasonably be expected to result in significant impacts to wetlands, including direct fill. Such land use impacts are not consistent with Coastal Act 30240, 30231, or 30233.

Comparison with Certified LUP

The County asserts that the proposed changes for Area 1 would be more protective of resources than the existing LUP. This argument boils down to a premise that the Project golf course would be preferable to residential development in Area 1. However, as discussed generally in the LCP amendment description finding, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that Area 1 could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP. As already shown, Area 1 is substantially ESHA. The LCP does not allow subdivision of ESHA, unless it can be demonstrated that normal residential development is feasible without damage to any ESHA.[196] The realistic development potential of Area 1, therefore, is significantly less than the 233 homes that have been cited by the County and the Pebble Beach Company as the development potential of the combined MNOUV area.[197] In fact, because of the extensive ESHA present here, the LCP would likely only allow the minimal amount of development necessary to avoid an unconstitutional takings of private property. For single legal parcels that are all ESHA, this generally equates to a single residential unit, although a case-specific taking analysis must always be conducted to determine actual development entitlements.[198] For Area 1, an area with nine lots recognized by COCs issued by the County (see Exhibit 15), the <u>maximum</u> development that might be expected in this scenario would be nine residential developments, sited and designed to provide maximum protection of ESHA. Given that seven of the nine COC lots in Area 1 are located outside of ESHA areas,[199] given that all of Area 1 is part of a Project conditional COC (see Exhibit 15), given that the Company already has developed portions of the conditional COC area (with a driving range, equestrian center, etc.), and given the nature of the property ownership and transaction history (and its effect on takings; see also previous

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192 The County's approval (and the PDP EIR) requires the project to be revised to avoid all wetlands. However, because there appear to be additional wetland areas that have yet to be delineated, and because the County's approval (and the EIR) do not require additional delineation, only those wetlands shown on the County's delineation would be avoided under the current land use approvals.

193 PDP EIR including p. ES-17.

194 Not delineated as wetland by the County.

195 PDP EIR p.3.3-51,52.

196 See, for example, LUP Policies 8 and 10, and IP 20.147.040 et seq.

197 For example, Monterey County's Measure A Analysis (p. IV-3).

198 See also previous takings discussion.

199 Six of these frame the equestrian center's Collins Field (4 near the intersection of Forest Lake, Ondulado, and Stevenson; and 2 where the existing residential development is located to the southeast of Collins Field), and one of these is located at the fill/storage area.

discussion), it is possible that less than nine residential developments may be possible for Area 1.

There is little doubt that nine (or less) residential developments (that are appropriately sited and designed to avoid ESHA to the maximum extent feasible) would have significantly less ESHA impacts than would the golf course provided for by the proposed LUP amendment (and the Project).[200] In other words, the existing LUP is far more protective of ESHA than the proposed LUP amendment.

In conclusion, the proposed LUP changes cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.[201]

3. Area 1 Land Use Planning

Measure A as submitted cannot be approved for Area 1. However, there is little question that the LUP needs to be amended to better reflect current resource conditions and Coastal Act requirements. The Commission has previously transmitted a draft Periodic Review to the County indicating some of the ways in which the LUP might be amended to better achieve consistency with the Coastal Act in light of changed circumstances.[202]As discussed in that document, with respect to ESHA areas, these areas would more appropriately be redesignated to Open Space Forest for the forested areas and to Open Space Shoreline for the dune areas.[203] These LUP open space classifications are consistent with the Coastal Act and the resources on the ground, and indicative of the appropriate types, scales, and intensities of use allowed there. For the non-ESHA areas, including existing developed areas, the Open Space Recreational designation could probably be found consistent with the Coastal Act in most cases, particularly the areas occupied by the existing driving range and equestrian center and the non-ESHA areas at their margins that might provide for some limited expansion.

The existing fill/storage area on the dunes at planning unit M differs in this respect because, unlike the driving range and equestrian center areas, this area is not currently developed and used as (or part of) an existing recreational facility, and it is essentially surrounded by ESHA. In fact, a variety of potential uses could probably be found appropriate at this location provided they accounted for the relation of the fill site to the adjacent dunes and forest ESHA area. For example, an Open Space Recreational designation might be appropriate under certain circumstances, though the site is not large enough on its

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200 More broadly speaking, the Project area is larger than the LCP amendment area at Area 1, as previously described, and the Project area includes the conditional COC area (part of the appealed coastal permit action of Monterey County). A total of 28 of the total 41 COCs issued by the County in the overall Project area are located in the larger Project area at and around Area 1 (again, see Exhibit 15). Twenty-one of these COC lots – or more than half of the COCs in the entire Project/LCP amendment area – are located at and adjacent to Collins Field, where it is not ESHA. In a Project takings scenario, the Applicant is applying for development on land (i.e., Project area) that is primarily ESHA that includes a total 28 COC lots, 21 of which are not ESHA. Thus, in that larger Project area takings scenario, it may be that up to 28 residential developments are possible. That said, and for similar reasons – not the least of which is the location of the majority of the COC lots in existing developed and/or non-ESHA areas – it is possible that fewer residential developments might be allowed. In any case, even in that broader context, residential development in a takings scenario would be expected to have significantly less ESHA impacts than would the golf course provided for by the proposed LUP amendment (and the Project).

201 Whether any other proposed LUP changes can be found consistent with the Coastal Act from this point on is immaterial. The fact that the LUP changes must be denied for this reason means that all of the LUP changes as a whole must be denied. See also previous discussion regarding LCP procedures and standard of review.

202 At staff's recommendation, the Commission did not yet formally adopt the Periodic Review that was transmitted to County, at the request of the County, so that the County's General Plan Update process could continue to unfold.

203 See Commission draft Periodic Review of the Monterey County LCP.

own to provide for a 18-hole (or even a 9-hole) golf course or even a golf driving range, and it isn't clear to what extent it could be useful to adjacent courses in that respect.[204] At the other end of the spectrum, an Open Space Shoreline designation might be appropriate for this area – particularly in light of its dune history and location surrounded by ESHA resources. Such a designation would account for the fact that this site is well suited for either restoration back to dune habitat and/or development of a public access destination point (both accommodated by the Shoreline designation).[205] Different from either of those options, a Visitor Service Commercial designation might even be appropriate at this fill area to allow for a small overnight resort facility of some type that is designed to take advantage of opportunities for integrating such a facility into a unique setting that offers a relatively more "remote" location than found at other visitor serving facilities in the Forest (one that is somewhat separated from the hustle and bustle of the commercial areas at the Lodge and Spanish Bay), including taking advantage of the surrounding forest and dune setting, the nearby golf courses, and the coastal views.

B. Area 2 (Driving Range)

1. Area 2 Setting

Area 2 is about 29 undeveloped acres of Monterey pine forest known as LUP planning unit C, located in the northernmost portion of the Del Monte Forest within the Spanish Bay planning area (see Figure 7). This area is located directly inland of the Spanish Bay Resort and 17-Mile Drive in the undeveloped and thickly forested Navajo Tract area, a portion of which is now maintained as a resource conservation area (including the eastern portion of planning unit B shown on LUP Figure 5 – see Exhibit 5[206]).[207] The Pacific Grove and Country Club gates into the Del Monte Forest frame this Navajo Tract area on the east, and Congress Road extends through the middle of it.[208]

Area 2 is made up of a dense stand of contiguous and unfragmented native Monterey pine forest in association with a variety of other species, including an abundant scattering of coast live oak (see photos in Exhibit 9). The pine here are very large, some of the largest in the LCP amendment/Project area. Both overstory and understory are well developed and extremely dense, with few major openings in either overhead canopy or understory species. In addition, the County delineated roughly an acre of wetlands in the southwest portion of the site.[209] Commission staff has also identified at least one additional area

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204 For example, although it is located near to the Spyglass Hill and Cypress Point golf courses, it is physically and functionally disconnected from these existing courses, including by ESHA, and it probably couldn't be used for an expansion of Spyglass Hill or Cypress Point golf holes. It is possible that golf course related support use of some sort could be made to work at this location, but that depends in part on what type of use and the degree to which it were necessary to support existing courses

205 In the latter case, the site is uniquely situated in and around significant resources for interpretation at a confluence of existing public trails, and it would appear an excellent location for a low-key trailhead facility with parking and related amenities that could be used as an internal jumping off point of sorts for the overall Del Monte Forest trails system. Such a facility could likely be successfully integrated into the surrounding ESHA, including through some restoration at its margins, and it could provide information for interpretation at the site an as well as to direct users to use of the trails. Such a trailhead facility is sorely lacking in the Del Monte Forest at this time.

206 The eastern portion of planning unit B has been dedicated to the Del Monte Forest Foundation as permanent open space.

207 The Area nearest Congress Road (and including a portion of Area B) is known as the Rip Van Winkle Open Space that is managed by the City of Pacific Grove and the Monterey Peninsula Regional Park District.

208 Originally an unimproved fire road, a new paved and improved road was cut through this forest area (new Congress Road) to provide direct access to the entrance to the Spanish Bay Resort opposite 17-Mile Drive as part of the Spanish Bay permit.

209 PDP EIR Table E-15.

that might delineate as wetland based on evidence of hydrology and wetland vegetation.[210] This additional wetland area is located within the southern portion of Area 2 roughly in the center of it (i.e., roughly half way between Majella Road and Congress Road).[211] Wildlife habitat of note in Area 2 includes suitable aquatic habitat for the federally threatened California red-legged frog as well as other sensitive species, including potential nesting raptor habitat and pallid bat habitat throughout the forest.[212]

Historically, the native Monterey pine forest and related habitat area at the Navajo Tract (including that at Area 2) was part of the much larger native pine forest area that mantled most all of the Del Monte Forest (and most all of the Monterey peninsula) that has been reduced to about one-half of its estimated historic size.[213] The Area 2 forest area is a large stand representing a relatively unfragmented portion of the remaining DMF forest cover that is functionally and physically connected with other large remaining forest areas, including that of the Rip Van Winkle Open Space and the remainder of the Navajo Tract and forested areas to the northeast. Area 2 has been identified in the past by CDFG as a high priority area for preservation.[214]

The Commission finds that all of Area 2 is ESHA pursuant to the Coastal Act and the LCP because it is both rare and especially valuable.[215] This area is a large intact native Monterey pine forest, greater than 20 acres, that is part of a much larger contiguous area of Monterey pine forest. It also includes wetlands and potentially sensitive species habitat, including for the CRLF (see biological resources mapped in Figure 9).

2. Area 2 LUP Amendment Consistency Analysis

As described previously, the proposed LUP amendment would designate all 29 acres of Area 2 as Open Space Recreational, and would also add LUP text indicating that a driving range and related facilities "are expected to be constructed," that "parking will be provided in a portion of Area C to accommodate visitor-serving facilities in Spanish Bay," and that this area is to be managed and maintained pursuant to the LUP's golf course management category.[216] See Figures 4 and 5, and Exhibit 2.

The proposed LUP changes for Area 2 cannot be found consistent with the Coastal Act for the same reasons presented for Area 1. In sum, the Coastal Act does not allow for the uses allowed by the Open Space Recreational land use designation within ESHA and wetland areas, and these uses would be expected to lead to development that would significantly disrupt habitat values and significantly degrade ESHA and wetlands in Area 2. Likewise, the proposed OSAC golf course management category cannot be found Coastal Act consistent for similar reasons as Area 1 as well. Finally, the proposed LUP text changes specifically identifying a driving range and parking for Area 2 cannot be found consistent with

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210 Field evaluation March 30, 2006 and April 20, 2006. Note that Commission staff did not systematically survey all of Area 2 for potential wetlands, and there may be additional areas as well. It appears likely that there are more wetland areas than have been delineated by the County to date.

211 The exact boundaries of this area would require more systematic delineation and it is not shown on Figure 8.

212 PDP EIR Tables E-11 and E-15.

213 Ibid; see graphic depiction in Exhibit 11.

214 Monterey Pine Forest Conservation Strategy Report (Jones & Stokes, 1996).

215 See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

216 Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

the Coastal Act because these uses and the development associated with them likewise don't meet the Section 30231, 30233, and 30240 use and protection requirements.

As with Area 1, the Project approved by the County provides a directly relevant example of the type of development fostered by the proposed LUP changes in Area 2 (and the type of impacts expected from it). At Area 2, the Project includes an extensive double-sided golf driving range facility with twenty hitting stations at each side and two parking lots with over 300-spaces occupying most all of Area B (see previous project description for details, and see Figure 9 for the Project driving range layout in relation to the underlying forest resource with areas of disturbance noted). Such a golf driving range facility is not resource-dependent. Other than fringe forest areas that would remain along the perimeter, the majority of the forested ESHA area would be directly removed to make way for the proposed project. The County-delineated wetland areas would be left alone and buffered, but the potential wetland area identified by Commission staff (as well as any other wetland areas yet to be identified within the proposed development footprint in Area 2), would be removed to make way for the driving range and related development. In sum, the proposed project would result in direct removal of most of the Area 2 ESHA area, and would result in the fragmentation of the remaining ESHA area (that was not otherwise directly removed) such that habitat values would be significantly disrupted and the areas significantly degraded.[217] All told, some 17 acres of forest and related habitat, including almost 2,000 individual trees, would be directly removed.[218] Remaining habitat values would be significantly degraded, particularly in relation to the larger Navajo Tract area including LUP planning unit B, and particularly in light of proposed changes and project elements associated with that area (see also Area 17 discussion later on in these findings below).

As with Area 1, notwithstanding the substantial resource impacts that would potentially result from the proposed LUP changes, it has been suggested that the proposed changes for Area 2 would be superior to implementation of the existing LUP. In short, this argument has been distilled down to the premise that the Project golf driving range course would be preferable to residential development in Area 2. However, as with Area 1, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that Area 2 could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP (the County and the Pebble Beach Company have attributed up to 56 potential units to this area).[219] Because Area 2 is ESHA, though it cannot be subdivided under the LCP and development of it would be strictly limited to what would be required to avoid a takings.

In fact, under the current LUP, Area 2 has very low development potential. There are any number of potential development scenarios that could occur, but the two most relevant to this LCP discussion given the proposed LCP amendment and the existing LCP are that associated with residential development and that associated with golf course development. In the latter case, and specific to the Company's proposed golf driving project, the potential for residential development is interwoven inasmuch as the LUP allows

[217] Including similar indirect impacts to the remaining forest as were identified for Area 1 (see previous Area 1 discussion). As with Area 1, the most conservative quantification of these indirect impacts would be to identify them as direct impacts. In that scenario, the total impact at Area 2 would be 29 forest acres. Because the impacts at Area 2 also indirectly impact surrounding forest areas, the indirect impacts from development at Area 2 would be even larger in this respect.

[218] DEIR Tables 3.3-1 and 3.3-6.

[219] For example, Monterey County's Measure A Analysis (p. IV-3).

golf course development in residentially designated areas within the DMF LCP segment.[220] Residential development and golf course development are not resource dependent uses, they would result in significant habitat disruption and degradation, and they could not be developed within ESHA per the LUP. A proposed residential or golf driving range project that involved all of Area 2 could not meet these fundamental LUP ESHA tests and would need to be denied. Such a denial might engender "takings" issues. In that respect, at most there appears to be one legal lot in and around Area 2 corresponding to the one unconditional COC issued by the County spanning reference Areas 2, 17, and 19 (and LUP Planning units B and C and the surrounding area – see Figure 15). In such a case, it may be that the most that could be approved on Areas 2, 17, and 19 together would be one residential unit sited and designed to minimize impacts (e.g., clustering such development immediately adjacent it existing residential development to avoid habitat fragmentation to the degree feasible).

There is little doubt that one (or less) residential development would have significantly less ESHA impacts than would the golf driving range provided for by the proposed LUP amendment (and the Project). In other words, the existing LUP is more protective of ESHA than would be an amended LUP.

In conclusion, the proposed LUP changes as they relate to the Area 2 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 2 Land Use Planning

As with Area 1, the proposed LUP changes for Area 2 cannot be found consistent with the Coastal Act and must be denied. In the larger LUP planning context, it appears that LUP designation changes relative to Areas 2 are warranted, but that such changes are different than have been proposed. Specifically, all of the Area 2 should be designated as Open Space Forest. This classification better reflects resources on the ground; is indicative of the appropriate types, scales, and intensities of use allowed there; and would be more in keeping with the surrounding area also designated Open Space Forest. Such a designation would protect a significant area of Monterey pine forest and related habitats and it would limit additional residential development in this area.

C. Area 3 (Equestrian Center)

1. Area 3 Setting

Area 3 is made up of the Sawmill Gulch area located in the northeastern part of the Del Monte Forest within the Gowen Cypress planning area (see Figure 7). The Gowen Cypress planning area is unique in the Del Monte Forest as it is the only LUP planning area that is almost entirely undeveloped.[221] That is due in part to the fact that it contains the majority of the Huckleberry Hill Natural Habitat Area (HHNHA), and the S.F.B. Morse Botanical Reserve that is a part of HHNHA. Sawmill Gulch itself is located along the northwestern part of Gowen Cypress at the edge of the HHNHA framed in by two arms of Sawmill Gulch Creek. The majority of Sawmill Gulch is in the coastal zone, but a small portion of it near the intersection of Congress Road and S.F.B Morse Drive (near the Del Monte Park neighborhood in Pacific Grove) is located outside the coastal zone (and thus is not a part of the proposed amendment).

[220] Ibid.

[221] Aside from S.F.B. Morse Drive extending from the Fifth Gate entrance to Del Monte Forest from Highway 68. S.F.B. Morse Drive (and the Fifth Gate) were approved as part of the Spanish Bay permit.

HHNHA is one of the most important ecological systems on the Monterey Peninsula and the Del Monte Forest. This habitat area, roughly 369 acres,[222] is home to such sensitive species as the planning area namesake "pygmy" Gowen Cypress forest (federally threatened, CNPS 1B.2), Eastwood's goldenbush (CNPS 1B.1), Hooker's manzanita (CNPS 1B.2), Sandmat manzanita (CNPS 1B.2), Pine rose (CNPS 1B.2), and Monterey ceanothus (chaparral) (CNPS 4.2 "Watch List"). It is also largely populated by native Monterey pine forest (CNPS 1B.1) in association with Bishop pine and Yadon's piperia (federally endangered, CNPS 1B.1). Significant wetland and creek areas are also found here in HHNHA, providing potential habitat for such protected species as California red-legged frog (state species of concern, federally threatened). The LCP categorically deems HHNHA as ESHA,[223] and it is within this HHNHA context that Area 3, Sawmill Gulch, must be understood.

Sawmill Gulch in the coastal zone is approximately 42 acres and is topographically divided into upper (roughly 18 acres) and lower (roughly 24 acres) segments (see photos in Exhibit 9). Historically, sand mining occurred in parts of both the upper and lower areas. Ultimately, though degraded by such past mining activities, the 1984 LUP identified this area as Open Space Forest (RC), and assigned it to LUP OSAC management classification IV "Open Forest." At the same time, the LUP indicated that this area could be used as a sand source for the then pending Spanish Bay project.[224] Ultimately, portions of the Sawmill Gulch area were allowed to be mined for sand to be used for the Spanish Bay golf course and the associated dune restoration, including both reopening previously mined areas and new mining in a forested area. The mined sand was brought from Sawmill Gulch to the Spanish Bay shoreline by an extensive conveyor belt system. As partial mitigation for the impacts due to the project, including those associated with using the Sawmill Gulch site for sand mining and the related conveyor belt transport system, and the development of a new entrance road through HHNHA into Del Monte Forest, the Spanish Bay CDP required that all of Sawmill Gulch be restored, placed under easement, and protected in perpetuity.[225] As part of these CDP requirements, the upper Sawmill Gulch area was explicitly made a part of the HHNHA.[226] Specifically, Condition 28(a)(1) of the CDP requires "rehabilitation of the Upper Sawmill Gulch quarry site, and its incorporation into the Huckleberry Hill Natural Habitat Area."[227]

In years following, restoration at Sawmill Gulch commenced, and conservation easements were placed over the upper and lower portions of it. The easements restrict development there to restoration and low-intensity outdoor activities. The required restoration has been implemented. It is estimated that roughly

222 PDP EIR pages 2.0-5 and 2-67.

223 LUP Appendix A; see Exhibit 5.

224 Including by note reference on LUP Figure 5.

225 CDP 3-84-226 Special Conditions 5 (requiring scenic and conservation easement over parts of Sawmill Gulch); 6c (requiring rehabilitation and dedication of the upper Sawmill Gulch); 9g (requiring that all disturbed areas of Sawmill Gulch, including upper and lower Sawmill Gulch areas, be restored); and 28a (requiring rehabilitation of upper Sawmill Gulch). Also, by virtue of CDP 3-84-226 Special Condition 3, all relevant County conditions were incorporated as Coastal Commission CDP conditions. These incorporated conditions refer to the conditions of County permit PC-5040 as amended by PC-5405, including PC-5040 conditions 8, 9, and 10 providing for Sawmill restoration, and including PC-5405 conditions 13(s) and 13(t) providing for additional restoration and for scenic easement. Thus, the Commission's approval (including the requirements of it emanating from the incorporated County conditions) requires restoration of and easement over the entire Sawmill Gulch site. In addition, the upper portion of the restored and protected area was to be made part of the Huckleberry Hill Natural Habitat Area by virtue of the same cited conditions (again, see Exhibit 4).

226 Ibid; same cited Spanish Bay CDP conditions.

227 See conditions of the Spanish Bay CDP in Exhibit 4.

16 acres of native Monterey pine forest has taken hold (with approximately 25 acres in various stages of growth).[228] In addition, wetlands have established themselves on the site (about one and a half wetland acres delineated by the County),[229] and the area provides potential habitat for horned lizard, nesting raptors, and pallid bats (and the Sawmill Gulch Creek tributaries surrounding it include suitable aquatic habitat for CRLF).[230] In addition, some special status species and species associations exist currently, including Gowen cypress that were planted as part of the restoration throughout Sawmill Gulch and the Monterey pine/Bishop pine association.[231] Pine rose, a CNPS 1B species, is also present. In addition, some areas of Yadon's piperia appear to exist at least along the margins of the area.[232] There may also be areas of Hooker's manzanita, which is indicative of central maritime chaparral habitat, but it is not clear that this species was mapped in Sawmill Gulch. Hooker's manzanita has been mapped immediately adjacent to the upper gulch area. See Figure 10.[233]

However, the required restoration to the required level (i.e., to HHNHA-level value) has not yet been fully achieved. This is partly due to the difficulties of restoring a formerly active mine area and the issues that arise from trying to re-create soil profiles and properties, it is partly due to restoration mistakes and setbacks (such as ongoing erosion wiping out upper soil horizons),[234] it is partly due to inadequate weed control (with such species as acacia and broom running rampant throughout the restoration area choking the forest and understory), and it is partly due to the fact that restoration of such areas is by its very nature a difficult undertaking. Perhaps better known now, such restoration is better thought of as a long-term <u>process</u> than something that can be assessed in the relatively short term. Along these lines, the restoration to date probably has suffered also due to the lack of adaptive management and coordination between the Permittee and the Commission in that respect. All that having been said, however, restoration has been initiated and is ongoing. Perhaps most importantly, the restoration clearly has resource and ecosystem value, and its status is not nearly as dire as suggested by the County's Measure A analysis.[235] On the contrary, the Sawmill Gulch area is on its own merit a significant resource. It is in need of aggressive weed and erosion control, but it is hardly a failure.[236]

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228 PDP EIR Table E-14.

229 Commission staff has not surveyed the Sawmill Gulch area for wetlands. As with Areas 1 and 2, it is possible that there are more wetland areas than have to date been delineated to date. In fact, given that Commission staff found more wetland that had yet to be delineated in other project areas, and that the same types of wetland delineation issues are likely to be similarly found through the LCP amendment/Project area, the need for updated delineation overall is persuasive – particularly at the margins of the County's delineation and particularly where similar conditions as those detailed elsewhere that are indicative of wetlands are found.

230 PDP EIR Table E-14.

231 PDP EIR pp. E-18 and 2-35.

232 See Figure 10. Note that it is not clear to what extent the mapping to date has captured the full extent of piperia found in the Sawmill Gulch area. The County and Company indicate that Yadon's piperia surveys prior to 2005 did not include the Sawmill Gulch area (and thus any piperia located there would not have been reflected in the January 2005 FEIR), but that the data layers transmitted to the Commission in support of the LCP amendment included 2005 surveys that did show piperia within Sawmill Gulch; presumably these piperia are those shown along the margin of the site shown in Figure 10.

233 Also, locations of Gowen cypress, Monterey pine/Bishop pine association, and pine rose are not shown on Figure 10; the data layers provided to the Commission did not include the location of these species in the Sawmill Gulch area, and the PDP EIR did not map their locations either.

234 And including the removal of planted trees that were the wrong species.

235 The County concludes that the restoration is not anticipated to meet the level of expected reforestation. Measure A Analysis, III-3.

236 The Pebble Beach Company has recently indicated that they have intensified their restoration efforts in recent years, including weed control, erosion control, and additional planting. Commission staff has not yet comprehensively evaluated the Company's recent

In any case, Sawmill Gulch was required to be restored to HHNHA-level value and preserved in perpetuity. This restoration and preservation requirement was one of the mitigations designed to offset the significant coastal resource impacts associated with the development of the Spanish Bay resort. These mitigation measures (which the Pebble Beach Company agreed to when it accepted the permit and has, in material respect, implemented) were and remain a fundamental part of the Spanish Bay project CDP that the Commission approved. The fact that restoration is not yet complete while the benefits of the Spanish Bay development have been realized means that Spanish Bay impacts remain unmitigated and is a call to re-double restoration efforts, and not, as the County has suggested, a reason to undo the previous mitigation and develop this restoration area.[237] In other words, the fact that portions of the site require more aggressive restoration measures, including aggressive weed and drainage control, is a reason for the Pebble Beach Company to focus anew on measures necessary to fulfill its original mitigation commitments.

Within the above context, the Commission finds that all of Sawmill Gulch is considered protected habitat, and ESHA, pursuant to the Coastal Act and the LCP.[238] The ESHA determination is in part dependent upon the current forest and related habitat resource rarity and value, including as large intact forest habitat with related sensitive species and habitats, albeit degraded, and in part dependent on the required restoration outcome.

2. Area 3 LUP Amendment Consistency Analysis

Area 3 (Sawmill Gulch), like all of the remainder of the larger HHNHA, is currently designated for resource conservation: the LUP designation is Open Space Forest and the IP designation is Resource Conservation (RC). The proposed LCP amendment would designate all of Area 3 to Open Space Recreational (see proposed LUP changes in Figures 4 and 5). In addition, the proposed LUP text indicates that Sawmill Gulch will be managed pursuant to the OSAC classification specific to OSAC management classification Category VII (Other), and specifically within Category VII as equestrian center (see proposed text changes associated with Measure A in exhibit 2).

The proposed LUP changes for Area 3 cannot be found consistent with the Coastal Act for similar reasons as were presented above for Areas 1 and 2. In sum, the Coastal Act does not allow for the uses proposed by the Open Space Recreational land use designation within ESHA and wetland areas, and these uses would be expected to lead to development that would significantly disrupt habitat values and significantly degrade ESHA and wetlands in Area 3. In fact, the proposed LUP OSAC standards further narrow the use to an equestrian center use which, by LUP OSAC definition is applicable to open space areas that "do not require specific open space management criteria" and that cites as a reference for what is meant by equestrian center management the "Collins Field Industrial Horse Trail."[239] Equestrian centers by their very nature are cleared areas for horses to be housed and ridden. This type of use and development is incompatible with habitat protection and restoration. As such, it does not adequately account for management of ESHA and the relationship of the Sawmill Gulch area to the larger HHNHA,

efforts in this regard, and, following Commission action on this LCP amendment, intends to follow up on this with the Pebble Beach Company to ensure that the Commission's Spanish Bay requirements with respect to restoration here are fully achieved.

237 Such development would also require that weakening amendments to the Spanish Bay CDP be approved by the Commission (see previous Spanish Bay CDP section for detail).

238 See also previous ESHA criteria and other discussion in preceding findings.

239 LUP OSAC Plan page 12; see Exhibit 6.

including any special management measures necessary.

In terms of the larger HHNHA surrounding Sawmill Gulch, the Coastal Act and LUP specifically protect HHNHA as ESHA, and the LCP clearly recognizes the resource value of this area and articulates a preservation commitment to it. In that context, it is inappropriate to designate a 42-acre area incursion into the heart of the HHNHA for recreational/equestrian center development. Not only would there be direct effects from removal of this habitat area for such development, but the edge effects on the habitat surrounding the recreational development would be expected to be severe, both in terms of increased development itself (and the fact that the "edge" in this respect has been maximized by its configuration), but also by virtue of the equestrian center use and the corresponding expected increase in trail and other use and activity within HHNHA itself, estimated at over 9,000 annual additional horse trips in and around the new facility per year.[240] In addition, the upper portion of Sawmill Gulch is, by virtue of the Commission's Spanish Bay CDP and the corresponding conservation easement, part of HHNHA (see HHNHA map in Exhibit 5 and Figure 6). A proposal to designate a portion of HHNHA itself for a recreational/equestrian center cannot be squared with the Coastal Act.

Finally, it is clear that the proposed amendments are designed to accommodate the Company's proposed equestrian center facilities at Sawmill Gulch, by virtue of the explicit OSAC changes in this respect. As witnessed by the County's approval of coastal development permits for the Pebble Beach Company's proposed project, such development is an example of the type of development that might be expected at Sawmill Gulch were the LCP to be amended as proposed. The Company's proposed project includes an extensive equestrian center facility including a clubhouse building, a two-story dormitory for overnight stays (for up to 36 children or 12 adults), a covered arena, several barn structures to accommodate 174 horses, hay barn, car storage facility, covered coral shelters, fenced training rings, two single family residences, and 1 four-plex residential structure; all of this development would be constructed in the upper Sawmill Gulch site. The proposed project also includes use of the lower Sawmill Gulch area for outdoor equestrian events, other temporary events, overflow parking, and related activities, including a developed parking and turn-around for longer vehicles. See Figures 10 and 10a for proposed project plans in relation to biological resources.

Although not entirely clear from the project materials presented to date (because of the way in which attempts have been made to distinguish between forest areas that were planted and those that weren't, as well a lack of clarity concerning potential impacts to restoration areas in progress), it is clear that the majority of upper Sawmill Gulch would be denuded and replaced with extensive development (see Figure 10). Similarly, the majority of the lower Sawmill Gulch site would be used and maintained as a turfed activity area, including for temporary structures and events (see Figure 10a). All told, it appears that the project would result in the direct removal of some 26 acres of forest, and some 3,200 individual trees, including Monterey pine, Gowen cypress, coast live oak and Bishop pine.[241] Given the area that would be given over to turf in the lower portion of the site, it appears that these numbers underestimate total disturbance. Remaining habitat values in Sawmill Gulch, including wetland areas that appear to have less than the required 100-foot buffers,[242] would be significantly degraded, particularly in relation

[240] PDP EIR 3.3-14.

[241] Including some 3.2 acres of "native" forest removed and some 23.2 acres removed that are not "native" (PDP EIR Table 3.3-1; and p. 3.3-20); tree removal totals from PDP EIR Table 3.3-6.

[242] See, for example, EIR Figure E-10.

to the larger HHNHA, and particularly in light of the incursion into that area.[243] Furthermore, utility line development to support the new equestrian center would pass through HHNHA resulting in additional impacts. HHNHA is categorically ESHA in DMF, as are Gowen cypress and Bishop pine.[244]

As with previous areas, notwithstanding the substantial anticipated resource impacts emanating from the proposed LUP changes and the Project they provide for, it has been suggested that the proposed changes for Area 3 would be superior to implementation of the existing LUP. For Area 3 this argument makes little sense inasmuch as this area is a mitigation restoration area that is protected by conservation easements and prior CDP requirements within which the current development potential under the existing LCP is nil.[245] Under the current LUP, the Sawmill Gulch area is limited to open space forest uses (see LUP land use text excerpts in Exhibit 5). Under this designation, it is possible that some minor recreational use, such as a trailhead facility, could be developed here.[246] Thus, only low-intensity development – if any at all – is possible. Such low-intensity development would be expected to have minor impacts that could be controlled through proper siting and design. By contrast, an equestrian center would entirely occupy the Sawmill Gulch site and directly remove most of the resources there, as well as significantly disrupt and degrade the habitat not directly removed both on site and in the remainder of the surrounding HHNHA. There is no question that there would be significantly less ESHA impacts under implementation of the current LUP than the equestrian center provided for by the proposed LUP amendment (and the Project). In short, the existing LUP is more protective of ESHA than would be an amended LUP.

It bears mentioning that although consistency with the Spanish Bay CDP is not the standard of review, the proposed LUP change is inconsistent with the requirements of that permit. The proposed LUP amendment proposes land use (and the Company's project proposes development) that is in conflict with the Commission's Spanish Bay coastal development permit (CDP) approval and that would require a CDP amendment to undo the restoration mitigation at Sawmill Gulch required by the Commission in 1985. The proposal to undo the mitigation, restoration, and associated conservation easements that were required to be in perpetuity is not only inappropriate at Sawmill, but to do so would set a dire precedent for the numerous similar restoration/easement situations throughout the coastal zone.

In conclusion, the proposed LUP changes as they relate to the Area 3 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 3 Land Use Planning

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243 Including similar indirect impacts to the remaining forest at Sawmill Gulch and HHNHA as were identified for Areas 1 and 2 (see previous discussion). The most conservative quantification of these indirect impacts would be to identify them as direct impacts. In that scenario, the total impact at Area 3 would be 42 acres. Because the impacts at Area 3 also indirectly impact the surrounding HHNHA, the indirect impacts from development at Area 3 would be even larger in this respect.

244 By virtue of LUP Appendix A.

245 More broadly with respect to the Project overall, this argument distills down to the premise that the replacement mitigation provided for by the conservation easement component of the Project is enough to make up for undoing the mitigation restoration at the Sawmill Gulch site. However, as described in these findings, the areas to which conservation easements would be applied pursuant to the Project is already "protected" by virtue of the ESHA present there. As a result, its mitigation value is not enough to make up for the significant loss of.

246 Of course, any such development would need to be consistent with the Commission's Spanish Bay CDP as well. A minor trailhead facility could probably be developed consistent with the CDP and the conservation easement that applies.

Unlike some other areas (e.g., Areas 1 and 2, etc.) where the proposed amendment provides an opportunity to appropriately plan for these coastal zone lands in a Coastal Act context for an LCP segment that is some two decades old, Sawmill Gulch is already designated Open Space Forest in recognition of its resource value and its location as part of and surrounded by the HHNHA. Likewise, this value has been recognized and preserved in perpetuity as mitigation for some of the impacts of the Spanish Bay resort development of some twenty years ago, and these requirements still apply. This area has little to no development potential as it has already been set aside as mitigation and appears to be part of one larger legal lot (corresponding to the one unconditional COC issued by the County – see Exhibit 15) encompassing much of the HHNHA as well as the Company's offices, corporation yard, and former quarry area. Given its ongoing use, including existing Company uses and development, and given that it is almost all ESHA outside of these developed areas, the development potential of this larger property has already been essentially realized, other than, perhaps, redevelopment of existing developed areas. In short, there is no need to amend the LUP for Sawmill Gulch as the current classification is consistent with the Coastal Act and the resources on the ground, its location relative to HHNHA, and is indicative of the appropriate types, scales, and intensities of use allowed there.

D. Area 4 (Spyglass)

1. Area 4 Setting

Area 4 is approximately 4 undeveloped acres made up of the northern portion of LUP planning unit K located in the Spyglass Cypress planning area (see Figure 7). This area is located between Stevenson Drive and the Spyglass Hill Golf Course. This area is densely forested with native Monterey pine with a variety of understory species, including areas of Yadon's piperia. The site is relatively sloped towards the golf course, and a tributary to Seal Rock Creek extends through the center of it. See Figure 1, and see site photos in Exhibit 9.

The native Monterey pine forest at Area 4 is part of a much larger mostly contiguous[247] block of native Monterey pine forest that includes LCP reference Areas 9, 10, and 23 and the Indian Village preservation area north of Area 23 through to the coastal zone boundary (see Figure 2). This larger pine forest area includes a dense and thriving understory and overstory, and includes some of the aforementioned special status species and habitat associations, including Yadon's piperia and including significant CRLF habitat areas along Seal Rock Creek and its tributaries. With respect to Yadon's piperia specifically, the native pine forest boundaries here are considered to be the Yadon's piperia habitat boundaries as well.[248] In addition, this portion of Seal Rock Creek has been identified as the apparent center of the CRLF population within the Del Monte Forest, and the site of "Occupied Breeding and Other presumed CRLF Habitat" including for Area 4.[249] Habitat for other sensitive species is also present in Area 4, including potential nesting raptor habitat and pallid bat habitat throughout the forest, and ringtail and Monterey shrew habitat in the wetter areas.[250]

The native Monterey pine forest and related habitat area at and around Indian Village including the

[247] Other than existing intervening roads, whose effect in this regard is somewhat mitigated by forest canopy that extends over them.

[248] See Area 1 finding above.

[249] PDP EIR Table E-12, and p. E-27.

[250] PDP EIR Table E-20b.

remaining mostly contiguous forest (and including Area 4) was part of a much larger native forest area that once mantled most all of the Del Monte Forest, and most all of the Monterey peninsula.[251] Over time, this forest area has been diminished in size until it is now about one-half of its estimated historic size. All of this larger forested area, other than some existing developed areas on the southern portion of LUP planning unit K, is ESHA pursuant to the Coastal Act and the LCP.[252] This area represents the type of large intact native Monterey pine forest that includes wetland, streams, and sensitive species habitat (including Yadon's piperia and habitat for CRLF) that is ESHA. As a result, the Commission finds that all of Area 4 is ESHA pursuant to the Coastal Act and the LCP.

2. Area 4 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 4 acres of Area 4 as Open Space Recreational, and would also add LUP text indicating that this area is to be managed and maintained pursuant to the LUP's golf course management category (see LCP amendment description finding for more detailed information).[253] See proposed LUP changes in Figures 4 and 5, and see proposed text changes associated with Measure A in exhibit 2.

The proposed LUP changes for Area 4 cannot be found consistent with the Coastal Act for the same reasons as were presented for Area 1. In sum, the Coastal Act does not allow for the uses allowed by the Open Space Recreational land use designation within Area 4 ESHA, and these uses would be expected to lead to development that would significantly disrupt habitat values and significantly degrade ESHA in Area 4. Likewise, the proposed OSAC golf course management category cannot be found Coastal Act consistent for similar reasons as Area 1 as well.

Unlike other Project components, though, the Project at Area 4 does not match to the proposed LUP designation and thus does not provide a good example of the type of development fostered by the proposed LUP changes in this respect. In fact, the Project at Area 4 includes a conservation easement as opposed to recreational development.[254] The objective in this respect is somewhat unclear. The uses proposed by the LUP amendment are still not allowed in ESHA, notwithstanding the Project conservation easement. Development associated with the Open Space Recreational land use designation would be expected to degrade and significantly disrupt ESHA, including at Area 4, and the indirect impacts of such development on the remainder of the forest resource (of which Area 4 is a part) were any of Area 4 ESHA to be removed would likewise significantly degrade and disrupt ESHA.

In terms of the comparison between what might be allowed under the current LUP versus an amended LUP, in both scenarios all of Area 4 is ESHA. Under the current LUP, any development proposed would not be consistent with the LCP and potentially trigger an analysis of whether a denial of the proposed development constituted a takings. In this case, Area 4 is part of a larger COC lot recognized by the County on which a portion of the Spyglass Hill Golf Course is situated (see Figure 15). As a result, it appears that the Company already has an economic use of the overall property and it is unlikely that any additional development of it (e.g., residential development, golf course expansion, etc.) would be

[251] See exhibit 11.

[252] See also previous ESHA criteria and other discussion in preceding findings.

[253] Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

[254] Tables 2.0-3, E-20b, and F2-1.

allowed. Thus, under the current LUP there likely is no development potential beyond resource-dependent uses.

Under the proposed amended LUP and the Project associated with it, the same development potential and outcome for Area 4 would apply. In other words, Area 4 would still constitute ESHA.[255] The Project's proposed conservation easement would be appropriate for this area. Other than the mismatch between the proposed designation and the project component, the difference in potential outcome between the existing and proposed amended LUP is minor.

In conclusion, the proposed LUP changes as they relate to the Area 4 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 4 Land Use Planning

As with Areas 1-3, the proposed LUP changes for Area 4 cannot be found consistent with the Coastal Act and must be denied. In the larger LUP planning context, it appears that LUP designation changes relative to Area 4 are warranted, but that such changes are different than have been proposed. Specifically, all of the Area 4 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use that should be allowed there. Such a designation would protect an area of Monterey pine forest and related habitats that is part of a much larger Monterey pine forest area, and it would essentially restrict any development in this area to resource-dependent development (such as an interpretive trail).

3. Visitor Serving Areas (Areas 5 through 7)

A. Area 5 (Golf Cottages – 11 units)

1. Area 5 Setting

Area 5 is made up of a 4-acre site spanning LUP planning units M and N near the intersection of Stevenson Drive and Spyglass Hill Road opposite Spyglass Hill Golf Course (see Figure 7). This area is immediately adjacent to Area 1, and is made up of portions of the same dune, fill, and native Monterey pine forest areas described there. For the same reasons as presented for Area 1, the Commission finds that the dune and forest areas on Area 5 are ESHA pursuant to the Coastal Act and the LCP, and the fill area is not.[256] About half of Area 5 is ESHA (i.e., the southern half) and half is not.

2. Area 5 LUP Amendment Consistency Analysis

As detailed previously, the proposed LUP amendment would designate all of Area 5 as Visitor Service Commercial, and would also add text to the LUP's description of the Visitor Service Commercial category indicating that up to 24 golf suites could be located at Area 5 (See Figures 4 and 5, and exhibit 2).

The proposed LUP changes for Area 5 cannot be found consistent with the Coastal Act. The Visitor Service Commercial land use designation (both the current designation and the designation as it is

[255] See previous section regarding applicable ESHA definition in the Del Monte Forest.

[256] See Area 1 finding.

proposed to be amended to add the "golf suite" language) provides for intensive, non resource-dependent uses where development associated with them would likewise be expected to significantly disrupt habitat values (e.g., major hotel and inn accommodations, which the LUP states are the principal uses in this land use designation category – see excerpted LUP text in Exhibit 5). More specifically, the proposed new LUP text specifically identifies up to 24 golf suites, where these are presumed to be similar to the hotel/inn accommodations identified in the existing LUP for this land use designation.[257] The Coastal Act does not allow for the uses allowed by the Visitor Service Commercial land use designation within ESHA areas, and these uses would be expected to lead to development that would significantly disrupt habitat values and significantly degrade ESHA in Area 4 and surrounding areas (i.e., Area 1 ESHA). In addition, the proposed LUP text changes specifically identifying 24 golf suites for Area 5 cannot be found consistent with the Coastal Act as well because these uses and the development associated with them likewise don't meet the Section 30240 use and protection requirements.

As with previous Area analyses, the Project provides a relevant example of the type of development and impacts that might be expected in Area 5 with the proposed LUP changes. The Project includes a series of eleven house-like golf suite units (ten that are one-story, 26-foot tall, and roughly 2,000 square foot, and one that is two-story, 30-foot tall, and roughly 3,000 square feet) with associated infrastructure and facilities (paths, fences, driveway access, etc.) in Area 5. These golf suites, which are not resource-dependent, would result in direct removal of ESHA such that habitat values would be significantly disrupted and the areas significantly degraded (see also Area 1 discussion that is also applicable to Area 4).[258]

In terms of the comparison between what might be allowed under the current LUP versus an amended LUP for Area 5, that analysis is basically subsumed within the analysis for Area 1 above. This is partially due to the fact that it appears that the there are no COC lots recognized by the County in Area 5, but rather that the Project conditional COC (that applies to Area 1 and 5 and vicinity – see Figure 15) takes into account Area 5. It is also partially due to the fact that the unit counts ascribed to combined planning units MNOUV include Area 5 within them. Nonetheless, it appears that roughly the northern half of Area 5 is not ESHA and could be developed under the current LUP (at the fill and entrance to it). Although there are any number of possible potential project permutations, there is little doubt that a residential project that occupied the northern half of Area 5 (the non-ESHA area) would have limited ESHA impacts, if any, whereas the 11 golf suites spread over all of Area 5 that are provided for by the proposed LUP amendment (and the Project) would have significant ESHA impacts. In other words, the existing LUP is more protective of ESHA than would be an amended LUP.

In conclusion, the proposed LUP changes as they relate to the Area 5 cannot be found consistent

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[257] The LCP does not define a "golf suite." The County has indicated in its proposed LCP amendment submittal that a golf suite is considered a visitor-serving unit intended for transient occupancy. The term "suite" implies that a golf suite includes multiple rooms, and the term golf implies that it is somehow associated with golf. Thus, and for purposes of this LCP analysis, a "golf suite" is presumed to be an overnight unit with multiple rooms similar to normal and typical hotel/inn accommodations that is located adjacent to and/or is functionally connected or associated with a golf use (e.g., located adjacent to a golf course).

[258] The LUP changes specify up to 24 units, but the Project includes 11 units. Thus, it is possible that an additional 13 units could be proposed in the future in Area 5 (for the up to 24 units described in the LUP). If such a future project were to proceed, then additional and similar impacts might be expected. That said, the area would be substantially developed by virtue of the Project and it is not clear that there would be adequate space within which to site additional units in Area 5.

with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 5 Land Use Planning

The proposed LUP changes for Area 4 cannot be found consistent with the Coastal Act and must be denied. In the larger LUP planning context, it appears that LUP designation changes relative to Area 5 are warranted, but that such changes are different than have been proposed. Appropriate changes under the Coastal Act at Area 5 would be similar to those associated with Area 1 as described above, and would include the same nuance with respect to the non-ESHA fill area as applied there. With respect to the ESHA area, it would more appropriately be designated to Open Space Forest/Shoreline. Such a designation would protect an area of Monterey pine forest, dune, and related habitats that is part of a much larger Monterey pine forest/dune area, and it would essentially restrict any development in this area to resource-dependent development (such as an interpretive trail). As to the fill area, it could probably be designated in a number of different LUP categories consistent with the Coastal Act (e.g., Open Space Recreational, Open Space Shoreline, Visitor Serving Commercial). However, these options are more appropriately developed in conjunction with the County and the Pebble Beach Company in a broader planning context.

B. Area 6 (Inn at Spanish Bay Expansion)

1. Area 6 Setting

Area 6 refers to the Inn at Spanish Bay located in the northernmost portion of the Del Monte Forest within the Spanish Bay planning area seaward of 17-Mile Drive near the Pacific Grove gate and inland of the Moss Beach component of the Asilomar Dunes complex (see Figure 7). The Inn, the golf course (The Links at Spanish Bay), the adjacent condominiums, and related development and infrastructure were all developed pursuant to the previously described Spanish Bay CDP approved in 1985. Area 6 is fully developed with a resort, parking lot, tennis court, and associated roads and other related development, and does not constitute ESHA pursuant to the Coastal Act or the LCP.

2. Area 6 LUP Amendment Consistency Analysis

The proposed LUP amendment would remove the limit, currently set at 270 units, on the maximum number of units that could be developed within the Spanish Bay planning area.[259]

The proposed LUP changes for Area 6 can probably be found consistent with the Coastal Act. The cap on the number of units was based more so on the number of units proposed by the Company as part of the initial Spanish Bay development as opposed to a comprehensive analysis of what number of units might be preferred or acceptable.[260] Currently, the number of units that can appropriately be accommodated at Spanish Bay is a function of what would be consistent with the LUP (e.g., with respect to ESHA, views, public services, etc.).[261] The LUP generally contains adequate policies (aside

[259] For Spanish Bay, the LUP's Resource Constraint overlay would not be removed with the proposed amendment. See Public Services finding for discussion related to the LUP Resource Constraint overlay.

[260] Any development in excess of 270 units at Spanish Bay would also require an amendment to the Commission's Spanish Bay CDP because it requires the hotel "not to exceed 270 rooms" (CDP 3-84-226 Special Condition 1; see Spanish Bay CDP excerpts in Exhibit 4).

[261] There have been concerns raised, mostly among Forest residents, that there needs to be a unit cap to protect the quality of life otherwise for residents within the Forest. Toward this end, the Company entered into an agreement with the Del Monte Forest

from the unit cap) applicable to resort expansion at Spanish Bay to ensure that development there does not negatively impact coastal resources, although as discussed later in this report, some policy areas, such as water quality protection, are in need of update. There also appears to be some space within the existing developed footprint to accommodate additional development provided it can meet all LUP tests. In addition, all things being equal, additional visitor serving units can increase opportunities for people to travel to and enjoy the coast; albeit at relatively higher-cost facilities in the case of Spanish Bay. Finally, areas designated visitor serving commercial in the Del Monte Forest, and areas that might be appropriately redesignated as visitor serving commercial, are extremely limited. Thus, areas where such relatively higher priority uses can be accommodated should be considered for additional development within the other planning constraints of the LUP.

In terms of a comparison between what might be allowed by the current LUP versus the amended LUP, it appears that the only real change would be with respect to the number of units allowed within an already developed area. In contrast to Area 1, for example, no land use change is proposed that would trigger ESHA or other Coastal Act concerns in light of existing conditions. Any development at Spanish Bay would need to be consistent with the LUP. Under the current LUP, no more units are allowed. Under the proposed amended LUP, additional units could be proposed and built, as long as they met the LUP requirements.

Nevertheless, because other aspects of the proposed LUP amendment must be denied for other reasons, the overall proposed LUP amendment must be denied as well – including this component of it.[262]

3. Area 6 Land Use Planning

It is likely that a Coastal Act consistent and approvable LUP amendment could be developed that included these types of unit cap changes applicable to Spanish Bay. However, these changes are not suggested here because the overall proposed LUP amendment must be denied in light of the fundamental Coastal Act consistency problems that have been described. A more appropriate vehicle for such changes would be a new LUP amendment accompanied by a permit amendment that is not integrally related to other more problematic changes, such as in Measure A. Such an amendment could be developed through County, Commission, and Company coordination. Preferably, such a new amendment package would be part of a more comprehensive update of the LUP overall given the current LUP is over twenty years old and does not in all cases reflect current LUP and resource conditions as they relate to the Del Monte Forest.

C. Area 7 (Pebble Beach Lodge Expansion)

1. Area 7 Setting

Area 7 refers to the Pebble Beach Lodge area located in the southwestern portion of the Del Monte Forest within the Pebble Beach planning area (see Figure 7). The Lodge area is the only commercial

Property Owners (DMFPO) to limit the maximum number of additional hotel rooms within the Del Monte Forest to an additional 210 units in return for the DMFPO publicly supporting and endorsing Measure A. This agreement is a private agreement and has no controlling status in an LCP context for project review. In other words, if the LUP unit cap is eliminated, then there is no specified maximum number of units that could be accommodated within the Forest, whether the 210 identified in the Company-DMFPO agreement or some other number of units.

262 See also LCP amendment standard of review findings.

enclave in the Forest and is a primary visitor destination. A variety of small-scale shops and services are readily available to public coastal visitors and it is a popular stopping location for snacks, sundries, and for viewing the general lodge environs. In addition, the Lodge area is the embarkation point for both the Pebble Beach Golf Links and the Peter Hay Golf Course. The Beach and Tennis Club and Casa Palmero facilities are located here. Stillwater Cove is located offshore, and public parking and public trails wind throughout the area. Although there remain some small undeveloped and vegetated areas (as well as more ornamentally landscaped areas), for the most part the Lodge area is fully developed and does not constitute ESHA pursuant to the Coastal Act or the LCP.

2. Area 7 LUP Amendment Consistency Analysis and Land Use Planning

As with Area 6, the proposed LUP amendment would remove the limit, currently set at 161, on the maximum number of units that could be developed at the Lodge.[263] As with Area 6, the proposed LUP changes for Area 7 can probably be found consistent with the Coastal Act for similar reasons. However, although approvable, they must be denied because they are part of a single integrated amendment that must be denied for other reasons.[264] The applicable coastal resource concern at the Lodge is not the unit cap per se, but rather that development otherwise be consistent with the LUP. A large part of this LUP consistency analysis at the Lodge area, and probably more so than for Spanish Bay which is somewhat more isolated, is the manner in which development – units or otherwise – affects public access and recreation opportunities at and around this primary visitor destination in the Forest.

4. Residential Areas (Areas 8 through 18)

A. Area 8 (1 unit)

1. Area 8 Setting

Area 8 is about 4 undeveloped acres that is made up of the northeast part of the area known as LUP planning unit J located near the center of the Del Monte Forest within the Spyglass Cypress planning area (see Figure 7). Area 8 is framed in by Spyglass Woods Drive to the east and two tributaries of lower Seal Rock Creek, where much of the area is steeply sloped towards each of the tributary streams. Area 8 consists of a relatively intact and thriving native Monterey pine forest in association with understory and overstory species, including a number of oaks and dense manzanita in places (see photos in Exhibit 9). The endangered Yadon's piperia is also scattered through Area 8, and riparian species are found further down the slopes and into the stream areas. This Monterey pine forest, riparian, and related habitat on Area 8 is a functional part of a larger swath of such habitat that extends to the west along the creek and towards the Indian Village preserve area (including Area 23). This portion of Seal Rock Creek has been identified as the apparent center of the CRLF population within the Del Monte Forest, and the area just downstream of the two tributaries has been identified as "Occupied Breeding and Other presumed CRLF Habitat"[265] and it is possible that CRLF are present on Area 8.[266] See Exhibit 11 for known distribution of CRLF in the area.

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263 The LUP's Resource Constraint overlay does not apply to the Lodge area.

264 Ibid; see also LCP amendment standard of review findings.

265 PDP EIR Table E-12, and p. E-27.

266 PDP EIR 4.4-23.

The Commission finds that all of Area 8 is ESHA pursuant to the Coastal Act and the LCP.[267] This area is part of the remaining native Monterey pine forest that once mantled the Monterey peninsula but has been reduced to half it former size, and is a good example of the type of Monterey pine forest and related ecosystem habitat that is rare and especially valuable, including by virtue of its special status species associations with Yadon's piperia and CRLF (and potentially other special status species given there is potential nesting raptor and pallid bat habitat in forested areas, and suitable ringtail and Monterey shrew habitat in the riparian areas),[268] and the riparian biological community framing the area. This area is also physically and functionally connected to much larger habitat areas to the west. With respect to Yadon's piperia specifically, the native pine forest boundaries here are considered to be the Yadon's piperia habitat boundaries as well, further emphasizing the ESHA value of Area 8.[269] See Figure 13.

2. Area 8 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 4 acres of Area 8 as Residential, 1 unit per 4 acres.[270] This proposed LUP designation cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent and would be expected to significantly disrupt and degrade ESHA contrary to the Act.

In terms of what might be expected to result from the proposed amendment, the Project provides a good example -- one residential unit for Area 8. Because Area 8 was issued a COC by the County, the Project does not propose subdivision of Area 8. Rather, the Pebble Beach Company requested to be allowed to develop a single-family residential residence at this location.[271] Ultimately, the Project EIR specifically identifies a building envelope and other future development parameters for this area.[272] In sum, the expected outcome from the Project would be one residential unit on a building envelop of a half an acre leading to direct removal of ESHA (up to one-half acre and any additional area necessary to gain access to the building envelope area from the adjacent street) and indirect degradation for ESHA not directly removed.[273] Such development, which is a distinct possibility under Measure A, would be expected to result in significant ESHA disruption and degradation. See biological resources mapped in relation to Area 8 and its building envelope in Figure 13.

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267 See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

268 PDP EIR Table E-26.

269 See, also, Area 1 finding above.

270 Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

271 Final adopted Monterey County revisions to PDP EIR (Attachment E, p. F-10). See also Company's future development plans cited on PDP EIR p. 6-3.

272 Including PDP EIR Mitigation Measures BIO-B1-2, BIO-B1-2(C), BIO-D1-3, and BIO-D5(C). Originally, the FEIR required dedication of Area 8 for preservation in light of its habitat sensitivity, particularly in relation to CRLF (e.g., PDP EIR p. 4.4-24), but the dedication requirement was modified by the County Board of Supervisors when they certified the PDP EIR in March 2005.

273 More broadly speaking, unlike the recreational and visitor serving components previously described, the Project does not actually include the development of individual residential units, but rather it establishes the conditions necessary for future development of such units. In some cases, that includes subdivision or subdivision and infrastructure improvements, and in some cases (like at Area 8), it does not. The end result, in any case, is to allow for a certain amount of residential development for the residentially designated lots that are the subject of the proposed amendment. In the case of Area 8, one residential unit would be expected.

With respect to a comparison between what might be expected under the current LUP versus an amended LUP, there would be little if any difference. The existing LUP designates this area for residential development at up to 2 units per acre. Because it is entirely ESHA, though, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed residential project. To avoid a takings potentially engendered by such a denial, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) likely would be allowed at Area 8.[274] Under the proposed amended LUP, the same outcome would be expected both for the same reason and pursuant to the Project.[275] In other words, the proposed designation is not better or worse than the existing LUP designation.

In conclusion, the proposed LUP changes as they relate to the Area 8 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 8 Land Use Planning

The proposed LUP changes for Area 8 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 8 are warranted, but that such changes are different than have been proposed. Specifically, all of the Area 8 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there. Such a designation would protect an area of Monterey pine forest and related habitats, including Yadon's piperia and CRLF, that is part of a larger habitat area extending off of Area 8, and it would essentially restrict any development in this area to resource-dependent development.

B. Area 9 (1 unit)

1. Area 9 Setting

Area 9 is about 5 undeveloped acres that is made up of the southwest part of the area known as LUP planning unit J located near the center of the Del Monte Forest within the Spyglass Cypress planning area (see Figure 7). This area is located adjacent to Stevenson Drive and Spyglass Woods Drive and the Spyglass Hill Golf Course. This area is densely forested with native Monterey pine with a variety of understory species, including areas of Yadon's piperia. The site is relatively sloped up towards the golf course, and Seal Rock Creek extends through the southern portion of it. See biological resources mapped in Figure 14, and see site photos in Exhibit 9.

The native Monterey pine forest at Area 9 is part of the much larger mostly contiguous block of native Monterey pine forest that includes LCP reference Areas 4, 10, and 23 and the Indian Village preservation area north of Area 23 through to the coastal zone boundary (see Figure 2). This larger pine forest area includes a dense and thriving understory and overstory, and includes some of the aforementioned special status species and habitat associations, including Yadon's piperia and including significant CRLF habitat areas along Seal Rock Creek and its tributaries. CRLF have been positively

[274] Pursuant to takings principals and related issues as previously described; including that site-specific facts might indicate that a denial does not result in a takings (and thus there may be zero units allowed on a particular site).

[275] It is not clear that the Project building envelope and related parameters associated with it would be indicative of the siting for a unit that might be allowed pursuant to a takings, but it is sufficient for this comparison purpose at the LUP analysis level.

identified in the pond just south of Area 9. With respect to Yadon's piperia specifically, the native pine forest boundaries here are considered to be the Yadon's piperia habitat boundaries as well.[276] In addition, this portion of Seal Rock Creek has been identified as the apparent center of the CRLF population within the Del Monte Forest, and the site of "Occupied Breeding and Other presumed CRLF Habitat" including the pond just south of Area 9.[277] Potential habitat for other sensitive species is also present in Area 9, including potential nesting raptor habitat and pallid bat habitat throughout the forest, and ringtail and Monterey shrew habitat in the wetter areas.[278]

The Commission finds that all of Area 9 is ESHA pursuant to the Coastal Act and the LCP.[279] This area is part of the remaining native Monterey pine forest that once mantled the Monterey peninsula but has been reduced to half it former size, and is a good example of the type of Monterey pine forest and related ecosystem habitat that is rare and especially valuable, including by virtue of its special status species associations with Yadon's piperia and CRLF (and potentially other special status species given there is potential nesting raptor and pallid bat habitat in forested areas, and suitable ringtail and Monterey shrew habitat in the riparian areas),[280] and the Seal Rock Creek habitat in the southwestern part of the site. Moreover, the larger area of which Area 9 is native Monterey pine forest habitat. All of this larger forested area, other than some existing developed areas on the southern portion of LUP planning unit K, is ESHA pursuant to the Coastal Act and the LCP.[281]

2. Area 9 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 5 acres of Area 9 as Residential, 1 unit per 2 acres.[282] This proposed LUP designation cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent and would be expected to significantly disrupt and degrade ESHA contrary to the Act.

In terms of what might be expected to result from the proposed amendment in terms of the related Project driving it, the Project would specify one residential unit for Area 9.[283] Such development would be expected to result in significant ESHA disruption and degradation. See biological resources mapped in relation to Area 9 and its building envelope in Figure 14.

With respect to a comparison between what might be expected under the current LUP versus an amended LUP, there would be little if any difference. The existing LUP designates this area for residential development at up to 2 units per acre. Because it is entirely ESHA, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP

[276] See, also Area 1 finding above.

[277] PDP EIR Table E-12, and p. E-27.

[278] PDP EIR Table E-11.

[279] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

[280] PDP EIR Table E-26.

[281] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

[282] Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

[283] In the same manner as it does for Area 8 (i.e., no subdivision, but a County COC lot with building envelope and related parameters identified for future development).

would require denial of a proposed residential project. To avoid a takings potentially engendered by such a denial, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would be allowed at Area 9.[284] Under the proposed amended LUP, the same outcome would be expected both for the same reason and pursuant to the Project.[285] Thus, the proposed designation is not better or worse than the existing LUP designation.

In conclusion, the proposed LUP changes as they relate to the Area 9 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 9 Land Use Planning

The proposed LUP changes for Area 9 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 9 are warranted, but that such changes are different than have been proposed. Specifically, all of Area 9 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there. In addition, such a designation would be better reflective of the larger ESHA area of which Area 9 is a part, and would protect a significant area of Monterey pine forest and related habitats, including Yadon's piperia and CRLF, including that extending off-site by essentially restricting any development in this area to resource-dependent development.

C. Area 10 (1 unit)

1. Area 10 Setting

Area 10 is about 7 undeveloped acres made up of the southern portion of LUP planning unit K located in the Spyglass Cypress planning area (see Figure 7). This area extends somewhat lengthwise about one-third of a mile between Stevenson Drive and the Spyglass Hill Golf Course. This area is densely forested with native Monterey pine with a variety of understory species, including areas of Yadon's piperia. The site is somewhat sloped towards the golf course though relatively flat above the road and riparian area, and a tributary to Seal Rock Creek extends through the center of it. Although not delineated to date by the County, an apparent wetland and associated watercourse area extends through the southwestern portion of this area, roughly through the building envelope identified for this area.[286] The only developed portion of Area 10 consists of a small parking/golf course maintenance area and associated road access located in the northern portion of the site. See biological resources mapped over air photo base in Figure 15,[287] and see site photos in Exhibit 9.

As with Area 9, the native Monterey pine forest at Area 10 is part of the much larger mostly contiguous block of native Monterey pine forest that includes LCP reference Areas 4, 9, and 23 and the Indian

[284] Pursuant to takings principals and related issues as previously described; including that site-specific facts might indicate that a denial does not result in a takings (and thus there may be zero units allowed on a particular site).

[285] With the caveat that the Project building envelope and related parameters associated might be different, but not enough to significantly change the comparison at the LUP analysis level.

[286] The wetland and watercourse area was identified by the Commission's staff ecologist during a March 30, 2006 site visit. This area is made up of several interconnected ponds and associated areas of saturated soils extending from the golf course through to Stevenson Drive where it is collected and directed to the Seal Rock Creek tributary to the northeast.

[287] The wetland and watercourse area are not shown on the biological resources figure.

Village preservation area north of Area 23 through to the coastal zone boundary (see Figure 2). This larger pine forest area includes a dense and thriving understory and overstory, and includes some of the aforementioned special status species and habitat associations, including Yadon's piperia and including significant CRLF habitat areas along Seal Rock Creek and its tributaries. With respect to Yadon's piperia specifically, the native pine forest boundaries here are considered to be the Yadon's piperia habitat boundaries as well.[288] In addition, this portion of Seal Rock Creek has been identified as the apparent center of the CRLF population within the Del Monte Forest, and the site of "Occupied Breeding and Other presumed CRLF Habitat."[289] Habitat for other sensitive species is also present in Area 10, including potential nesting raptor habitat and pallid bat habitat throughout the forest, and ringtail and Monterey shrew habitat in the wetter areas.[290]

With the exception of a small developed area, the Commission finds that all of Area 10 is ESHA pursuant to the Coastal Act and the LCP.[291] This area is part of the remaining native Monterey pine forest that is a good example of the type forest and related ecosystem habitat that is rare and especially valuable, including by virtue of its special status species associations with Yadon's piperia and CRLF (and potentially other special status species), the wetlands apparently present on the site, and its connection to Seal Rock Creek habitat both through the tributary stream running through Area 10 and its connection more broadly to the larger habitat area of which Area 10 is a part (where all of this larger area is ESHA; see previous findings).

2. Area 10 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 7 acres of Area 10 as Residential, 1 unit per 6 acres.[292] This proposed LUP designation cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. Similarly, Coastal Act Sections 30231 and 30233 protect Area 10 wetlands and do not allow residential use and development within them. The proposed residential land use is not resource-dependent, is not one of the allowed uses in wetland otherwise, and would be expected to significantly disrupt and degrade ESHA and wetlands contrary to the Act.

In terms of what might be expected to result from the proposed amendment as reflected in the related Project already approved, the Project includes a subdivision to create a lot on the southern 3 acres of Area 10.[293] It would specify one residential unit on a building envelope there and this is a relevant example of what could be expected were the LUP to be amended (see also previous Project description findings).[294] As with Areas 8 and 9 and for similar reasons, the development of a residential unit would

[288] See Area 1 finding above.

[289] PDP EIR Table E-12, and p. E-27.

[290] PDP EIR Table E-11 and E-20a.

[291] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

[292] Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

[293] The subdivision would be of the conditional COC area associated with Spyglass Hills Golf Course that is also part of the Project, and would result in the 3-acre lot and a 95-acre golf course lot (PDP Plans Sheet K-2).

[294] Technically, there would not be sufficient land area in the new lot to allow for residential development of it because the amended LUP would require 6 acres for one unit, and the lot would be 3-acres. That said, the adjacent 4-acre area would also be designated residential and it appears likely that both (a) 3 acres of this additional area could be added to the 3-acre lot to make up 6 acres (given

be expected to result in significant ESHA disruption and degradation. For example, the Project EIR indicates that such residential development of Area 10 would result in the direct removal of some 2 acres of Monterey pine forest and related habitat, including about a quarter acre of Yadon's piperia removal;[295] indirect impacts were not quantified.[296] In addition, residential development, particularly within the building envelope established, would potentially result in wetland loss and degradation as well on Area 10. These impact would be to Area 10 as well as to the larger ESHA area of which it is a part. See biological resources mapped in relation to Area 10 and its building envelope in Figure 15.[297]

With respect to a comparison between what might be expected under the current LUP versus an amended LUP, the current LUP would not likely allow for any development of Area 10. Area 10 is part of the larger property almost entirely occupied by the Spyglass Hill Golf Course (see Exhibit 7). Although the existing LUP designates Area 10 for residential development at up to 2 units per acre, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed residential project. In light of the fact that the larger golf course property of which Area 10 is a part is significantly developed, it is unlikely that a takings argument would be persuasive.

Under the amended LUP and the associated Project, a residential unit would be expected at Area 10. This is further the case because once subdivided and sold to another party, the same takings analysis would no longer apply and one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would be likely. One residential unit on a building envelop of a half an acre would lead to direct removal of ESHA (up to one-half acre and any additional area necessary to gain access to the building envelope area from the adjacent street) and indirect degradation for ESHA not directly removed, including the surrounding larger ESHA area of which Area 10 is a part. Such development would be expected to result in significant ESHA disruption and degradation.

In conclusion, the proposed LUP changes as they relate to the Area 10 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 10 Land Use Planning

The proposed LUP changes for Area 10 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 10 are warranted, but that such changes are different than have been proposed. Specifically, the small developed area of Area 10 should be designated to Open Space Recreational to account for its ongoing use related to golf course maintenance and support, and the larger undeveloped area of Area 10 should be designated as Open Space Forest. These classifications better reflect resources on the ground, and are indicative of the

the ownership is the same) or (b) the amended LUP would be argued to have established an expectation for the Project it emanates from for a residential unit at the 3-acre lot notwithstanding the LUP density requirements. In the case of the latter, oftentimes individual residential lots are allowed a single residential unit despite inadequate land area (per required minimum lot area). Typically, however, such allowance is provided in existing developed areas where resource concerns are not paramount. In a case like this where the entire lot is ESHA, the outcome could be different (because of a buyer's reasonable expectation for development, etc.). In any event, for the purposes of this analysis, it is presumed that the Project would result in a single residential unit at Area 10.

295 For example, PDP EIR Tables F2-2 and P2-1.

296 A conservative approach is to quantify such indirect impacts as direct impacts (e.g., all 7 acres of Area 10 might be considered the impact in that accounting).

297 The apparent wetland area is not mapped on Figure 15.

appropriate types, scales, and intensities of use allowed in these areas. In addition, the Open Space Forest designation would be better reflective of the larger ESHA area of which the Area 10 ESHA is a part, and would protect a significant area of Monterey pine forest and related habitats, including Yadon's piperia and CRLF, including that extending off-site by essentially restricting any development in this area to resource-dependent development.

D. Area 11 (1 unit)

1. Area 11 Setting

Area 11 is about 8 undeveloped acres that is made up of northern portion of LUP planning unit F (commonly referred to as F1)[298] located near the center of the Del Monte Forest within the Gowen cypress planning area. Forest Lake reservoir is located northwest of Area 11 across Congress Road, the Poppy Hills Golf Course is located adjacent to Area 11 on the south and southeast, and the S.F.B. Morse Botanical Preserve portion of the Huckleberry Hill Natural Habitat Area (HHNHA) is located directly adjacent to the north. Area 11 was one of the remainder parcels from the Poppy Hills coastal permit approved by the Commission in 1984 prior to certification of the LUP.[299]

Area 11 is densely forested with native Monterey pine with a variety of understory species, including significant areas of endangered Yadon's piperia and Hooker's manzanita (CNPS 1B), indicative of maritime chaparral, particularly in the southern portion of the site. In addition, the federally threatened Gowen cypress are also found interspersed in the pine forest on the northern portion of Area 11. See biological resources mapped in Figure 16, and see site photos in Exhibit 9.

The Commission finds that all of Area 11 is ESHA pursuant to the Coastal Act and the LCP.[300] This area is part of the remaining native Monterey pine forest, and is a good example of the type of forest and related ecosystem habitat that is rare and especially valuable, including by virtue of its special status species associations with Yadon's piperia, Hooker's manzanita, maritime chaparral, and Gowen cypress (and potentially other special status species such as potential nesting raptor habitat and pallid bat habitat).[301] Moreover, it is functionally and physically connected with surrounding habitat areas along Congress Road to the west and the significant biological resources of the S.F.B. Morse Botanical Preserve (and HHNHA) extending through to the north.

2. Area 11 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 8 acres of Area 11 as Residential, 1 unit per 4 acres, and would add text to the LUP's land use text relative to the Gowen Cypress planning area to indicate that "16 residential dwellings is [sic] planned in Area F".[302] This proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values

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298 Although the LCP does not differentiate between the three areas that make up planning unit F, these areas are commonly referred to as planning units F1, F2, and F3.

299 CDP 3-84-120.

300 See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

301 PDP EIR, including Figure E-24 and Table E-11.

302 Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent and would be expected to significantly disrupt and degrade ESHA contrary to the Act, particularly in light of its explicit recognition of a specific number of residential units for LUP planning unit F where this number of units cannot be allowed under the LUP's ESHA policies (see also Area 12 and 13 findings that follow).

In terms of what might be expected to result from the proposed amendment as reflected in the approved Project, the Project would specify one residential unit for Area 11.[303] Such residential development would be expected to result in significant ESHA disruption and degradation. In the case of Area 11, up to an acre of direct removal is expected,[304] and additional indirect impacts would be expected as well; particularly if the location of the identified building envelope directly in the middle of Area 11 is used because it appears sited in a manner that would maximize impacts to habitat surrounding it. In addition, such development would also indirectly impact HHNHA of which Area 11 is a functional part of this habitat area.

With respect to a comparison between what might be expected under the current LUP versus an amended LUP, as with Areas 8 and 9 there would be little if any difference. The existing LUP designates this area for residential development at up to 2 units per acre. Because it is entirely ESHA, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed residential project at Area 11. To avoid a takings potentially engendered by such a denial, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would be allowed at Area 11.[305] Under the proposed amended LUP, the same outcome would be expected both for the same reason and pursuant to the Project.[306] In other words, the proposed designation is not better or worse than the existing LUP designation.

In conclusion, the proposed LUP changes as they relate to the Area 11 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 11 Land Use Planning

As with previous ESHA areas, the proposed LUP changes for Area 11 cannot be found consistent with

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303 In the same manner as it does for Areas 8 and 9 (i.e., no subdivision, but a County COC lot with building envelope and related parameters identified for future development). Note that the proposed LUP text specifies 16 units for LUP planning unit F overall, and the Project specifies 15 (1 at Area 11(F1), 10 at Area 12 (F2), and 4 at Area 13 (F3)). It is not clear to what extent an additional residential unit (i.e., the 16th per the proposed LUP text) would be contemplated for planning unit F in the future. Presumably, given that the Project includes subdivision at Areas 12 and 13 that would define 14 developable lots, and doesn't include subdivision at Area 11, it is possible that future subdivision of Area 11 for a second lot could be pursued. The fact that the proposed LUP designation is 1 unit per 4 acres and Area 11 is 8 acres is informative in that regard. That said, the Company has indicated that it intends to pursue one residential lot at Area 11 (including PDP EIR p. P6-3). Although presumably subdivision might be pursued to allow the 16th lot and/or one or two units might be pursued on the one Area 11 lot, for the purposes of this analysis it is presumed that one residential unit is the proposed outcome overall for Area 11.

304 PDP EIR mitigation measures BIO-B1-2(C) specifies an area of up to an acre for residential development with a one-half acre building envelope for Area 11 (Final adopted Monterey County revisions to PDP EIR (Attachment E, p. F-10)).

305 Pursuant to takings principals and related issues as previously described; including that site-specific facts might indicate that a denial does not result in a takings (and thus there may be zero units allowed on a particular site).

306 With the caveat that the Project building envelope and related parameters associated might be different, but not enough to muddle the comparison at the LUP analysis level.

the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 11 are warranted, but that such changes are different than have been proposed. Specifically, all of Area 11 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there. In addition, such a designation would protect a significant area of Monterey pine forest and related habitats (including Yadon's piperia, Hooker's manzanita/maritime chaparral, Gowen cypress, etc.) and would be better reflective of the larger ESHA area, including HHNHA, of which Area 11 is a part – including mimicking the Open Space Forest of this surrounding area at HHNHA and the forested area along the northwest of the site.

E. Area 12 (10 units)

1. Area 12 Setting

Area 12 is about 20 undeveloped acres that is made up of southwestern portion of LUP planning unit F (commonly referred to as F2)[307] located near the center of the Del Monte Forest within the Gowen cypress planning area. Area 12 is accessed from Lopez Road and is opposite the Poppy Hills Golf Course clubhouse, and mostly surrounded by the golf course otherwise. This area is basically flat, although some small hillocks and depressions are present. As with Area 11, Area 12 was also one of the remainder parcels from the Commission's Poppy Hills coastal permit.

Portions of Area 12 have been cleared and graded along two road alignments extending through the pine forest, and this cleared and graded area is actively being used for storage of materials (e.g., large containers, metal railings, large potted plants, PVC piping, bricks, etc.) and an active nursery operation (see photos in Exhibit 9). This cleared and graded area appears to be functioning as a linear corporation/storage yard of sorts. The Commission's Poppy Hills CDP did not authorize such development in Area 12, and was premised on this area being managed as forest.[308] The Commission has not to date identified any coastal development permits (by the County or the Commission) authorizing the clearing, grading, and continued use of this linear corporation/storage yard area, and is currently monitoring this development as unpermitted and as a potential violation of the Poppy Hills CDP.[309] For purposes of LCP amendment analysis, the baseline resource setting applied in this sense is that this linear corporation/storage yard does not exist, and rather that the area remains undeveloped and managed according to the Poppy Hills CDP.[310]

Area 12 is densely forested (even despite the linear corporation/storage yard) by native Monterey pine in association with a variety of overstory and understory species and habitats, some of these sensitive and rare in their own right (see photos in Exhibit 9). In fact, the entire understory has been described as

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307 Ibid; F1, F2, and F3.

308 Pursuant to a forest management plan; CDP 3-84-120 Special Condition 1.

309 In light of the larger and intertwined issues associated with the proposed LCP amendment and the Project, and the manner in which Commission LCP amendment (and Project) decisions will affect the appropriate resolution relating to such development in Area 12, Commission staff and the Pebble Beach Company have agreed to wait to until after Commission action on the LCP amendment to pursue resolution of this matter.

310 This is a common analytic tool with respect to unpermitted development, and is essentially the same as the baseline used by the PDP EIR in this sense (e.g., PDP EIR p. E-40, Table E-17, etc.).

including Hooker's manzanita[311] (and also includes sandmat manzanita; CNPS 1B) and it also includes Yadon's piperia; as a result, all of Area 12 is considered central maritime chaparral and Yadon's piperia habitat.[312] In addition, other sensitive species are scattered throughout the site including the federally threatened Gowen cypress, and the CNPS 1B species pine rose. Further, Bishop pine is present here (both Gowen cypress and Bishop pine are categorically ESHA under the LUP). Potential habitat for nesting raptors and pallid bat is found in this area as well. In sum, Area 12 is a good example of a large and especially valuable native Monterey pine forest ecosystem that supports endangered and other sensitive species habitat in association with it, including maritime chaparral and piperia. The Commission finds that it is entirely ESHA pursuant to the Coastal Act and the LCP.[313] See biological resources mapped for Area 12 in Figure 16.

2. Area 12 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 20 acres of Area 12 as Residential, 1 unit per 1.5 acres, and would add text to the LUP's land use text relative to the Gowen Cypress planning area to indicate that "16 residential dwellings is [sic] planned in Area F".[314] As with Area 11, this proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent and would be expected to significantly disrupt and degrade ESHA contrary to the Act, particularly in light of its explicit recognition of a specific number of residential units for LUP planning unit F where this number of units cannot be allowed under the LUP's ESHA policies (see also Area 11 and 13 findings).

In terms of what might be expected to result from the proposed amendment as reflected in the approved County Project driving it (i.e., a relevant example of what could be expected were the LUP to be amended), the Project includes a subdivision to take the one COC lot recognized by the County (all of Area 12) and create 13 lots (10 residential lots and 3 other parcels), and includes construction of an access road and related infrastructure in support of the lots created; 10 residential building envelopes would be established to result in 10 residential units (see previous Project description findings).[315] As with previous Project residential development and for similar reasons, the development of ten residential units would be expected to result in significant ESHA disruption and degradation at Area 12. For example, the Project EIR indicates that such residential development of Area 12 would result in the direct removal of some 12.4 acres of Monterey pine forest and related habitat (including maritime

311 PDP EIR Figure E-13.

312 See also previous ESHA criteria and other discussion, including that regarding the Monterey pine forest-chaparral connection to Yadon's piperia habitat, in preceding findings.

313 Ibid; See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA. In fact, even if the linear corporation/storage yard were to be considered existing permitted development (which it is not) the remaining area would still be ESHA.

314 Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

315 Of the three non-building envelope lots, one is allotted to the Project road/infrastructure development, and two have been called "open space" lots (PDP EIR p. 2.0-10). It is not clear how the "open space" is intended be implemented for these lots, but for purposes of this analysis, it is presumed that residential development would not be pursued on these remainders in the future, and ten residential units is the expected outcome for Area 12.

chaparral and Yadon's piperia habitat).[316] Thus, the majority of Area 12 ESHA potentially would be removed, and the ESHA that was left would be expected to be significantly degraded by the direct losses as well as the indirect effects, including by virtue of being located in a residential subdivision not conducive to ESHA. See project subdivision and lot layout in relation to underlying biological resources in Figure 17.

Notwithstanding the substantial anticipated resource impacts emanating from the proposed LUP changes and the Project they provide for, it has been suggested that the proposed changes for Area 12 would be superior to implementation of the existing LUP. In short, this argument has been distilled down to the premise that the Project residential development would be preferable to the allowable residential development under the current LUP. However, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that Area 12 could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP (the County and Company have attributed some 86 potential units to planning unit F overall; roughly 40 of which are attributable to Area 12 (F2)).[317] Although the existing LUP designates Area 12 for residential development at up to 2 units per acre, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed subdivision and/or residential project. To avoid a takings potentially engendered by such a denial, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would be allowed on the legal lot at Area 12. In comparison, under the amended LUP and the associated Project, 10 residential units (and the above-described significant ESHA disruption and degradation impacts) would be expected at Area 12. The one residential development allowed under the current LUP is more protective of ESHA than would be the amended LUP and associated Project.

In conclusion, the proposed LUP changes as they relate to the Area 12 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 12 Land Use Planning

The proposed LUP changes for Area 12 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 12 are warranted, but that such changes are different than have been proposed. Specifically, all of Area 12 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there.

F. Area 13 (4 units)

1. Area 13 Setting

Area 13 is about 17 undeveloped acres that is made up of eastern portion of LUP planning unit F (commonly referred to as F3)[318] located near the center of the Del Monte Forest within the Gowen cypress planning area. Area 13 is framed in by Lopez and Sunridge Roads to the south and southwest, Poppy Hills Golf Course to the west, and HHNHA (and S.F.B. Morse Botanical Preserve) to the north

316 For example, PDP EIR Table F2-2.

317 For example, Monterey County's Measure A Analysis (p. IV-3).

318 Ibid; F1, F2, and F3.

and northeast. As with Areas 11 and 12, Area 13 was also one of the remainder parcels from the Commission's Poppy Hills coastal permit.

Area 13 slopes downward from Sunridge Road and toward the golf course and HHNHA, and is part of a dense area of native Monterey pine forest that covers all of it and extends into the Botanical Preserve and HHNHA. Although Monterey pine forest predominates, the forest area also includes a variety of sensitive species and habitats. In fact, the entire understory has been described as including Hooker's manzanita[319] (and also includes sandmat manzanita (CNPS 1B) and shaggy-bark manzanita) and it also includes Yadon's piperia. Therefore, all of Area 13 is considered central maritime chaparral and Yadon's piperia habitat. In addition, other sensitive species are scattered throughout the site including the threatened Gowen cypress, the CNPS 1B species pine rose and Hickman's onion, and the Bishop pine forest (both Gowen cypress and Bishop pine are categorically ESHA per the LUP). Potential habitat for nesting raptors and pallid bat is found in this area as well. Area 13 is a prime example of a large and especially valuable native Monterey pine forest ecosystem that supports endangered and other sensitive species habitat in association with it, including maritime chaparral and Yadon's piperia, that is functionally and physically an integral part of a much larger forest ecosystem (the Biological Preserve and HHNHA). The Commission finds that Area 13 is entirely ESHA pursuant to the Coastal Act and the LCP.[320] See biological resources mapped over an air photo for Area 13 in Figure 18, and see photos of Area 13 in Exhibit 9.

2. Area 13 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 17 acres of Area 13 as Residential, 1 unit per 4 acres, and would add text to the LUP's land use text relative to the Gowen Cypress planning area to indicate that "16 residential dwellings is [sic] planned in Area F" (see LCP amendment description finding for more detailed information).[321] As with Areas 11 and 12, this proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent and would be expected to significantly disrupt and degrade ESHA contrary to the Act, particularly in light of its explicit recognition of a specific number of residential units for LUP planning unit F where this number of units cannot be allowed under the LUP's ESHA policies (see also Area 11 and 12 findings).

In terms of what might be expected to result from the proposed amendment, the approved Project for Area 13 is similar to that for Area 12 except that for Area 13 there would be a 7 lot subdivision of one COC lot (where 4 of the lots would accommodate residential development, 2 would be "open space,"[322] one allotted to the road right-of-way) resulting in 4 residential building envelopes to result in 4 residential units (see previous Project description findings). Unlike Area 12 as well, the Project at Area 13 includes a conservation easement over 9 of the open space acres. As with previous Project residential development and for similar reasons, the development of 4 residential units would be expected to result

[319] PDP EIR Figure E-14.

[320] Ibid; See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

[321] Ibid; see Public Services finding for discussion related to the LUP Resource Constraint overlay.

[322] Ibid.

in significant ESHA disruption and degradation at Area 13. For example, the Project EIR indicates that such residential development of Area 13 would result in the direct removal of some 5 acres of Monterey pine forest and related habitat (including maritime chaparral and Yadon's piperia habitat).[323] In other words much of Area 13 ESHA would be directly removed, and the ESHA that was left would be expected to be significantly degraded by the direct losses as well as the indirect effects, including by virtue of being located in a residential subdivision not conducive to ESHA otherwise. See project subdivision and lot layout in relation to underlying biological resources in Figure 18.

Despite these substantial anticipated ESHA impacts emanating from the proposed LUP changes, it has been suggested that the proposed changes for Area 13 would be superior to implementation of the existing LUP. In short, this argument has been distilled down to the premise that the Project residential development would be preferable to the allowable residential development under the current LUP. As with previous areas, however, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that Area 13 could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP (the County and Company have attributed some 86 potential units to planning unit F overall; roughly 34 of which are attributable to Area 13 (F3)).[324] Although the existing LUP designates Area 13 for residential development at up to 2 units per acre, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed subdivision and/or residential project. To avoid a takings potentially engendered by such a denial, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would be allowed on the legal lot at Area 13.[325] In comparison, under the amended LUP and the associated Project, 4 residential units (and the above-described significant ESHA disruption and degradation impacts) would be expected at Area 13. The one residential development allowed under the current LUP is more protective of ESHA than would be the amended LUP and associated Project.

In conclusion, the proposed LUP changes as they relate to the Area 13 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 13 Land Use Planning

The proposed LUP changes for Area 13 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 13 are warranted, but that such changes are different than have been proposed. Specifically, all of Area 13 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there, and even more appropriate given the functional and physical relationship of Area 13 to the larger HHNHA, including the S.F.B. Morse Botanical Preserve.

G. Area 14 (11 units)

[323] For example, PDP EIR Table F2-2.

[324] For example, Monterey County's Measure A Analysis (p. IV-3).

[325] Ibid; takings principals and related issues also apply, including the effect of ownership and use of surrounding property with respect to the appropriate unit of analysis for takings purposes.

1. Area 14 Setting

Area 14 is about 19 undeveloped acres that is made up of the southern portion of LUP planning unit I (commonly referred to as I2),[326] located near the center of the Del Monte Forest within the LUP's Middlefork planning area. Area 14 extends along Viscaino and Ronda Roads and is located between the roads and Poppy Hills Golf Course. As with Areas 11, 12, and 13, Area 14 was also one of the remainder parcels from the Commission's Poppy Hills coastal permit.

As with Area 13, Area 14 is a part of a dense area of native Monterey pine forest that covers all of it and extends into adjacent habitat areas. In the case of Area 14, this forest area exists as a linear "finger" of a larger contiguous area that extends from HHNHA and encompasses Area 14 as well as Areas 13, 20, and 21 and surrounding habitat areas, and that is broken only by roadways (see figure 2). Also present in this area are similar sensitive species as were located in previous areas; namely, Hooker's manzanita extending throughout the majority of the site,[327] and a few scattered Yadon's piperia. Therefore, Area 13 is considered central maritime chaparral and Yadon's piperia habitat is present. Also present is the pine rose (CNPS 1B), and potential habitat exists for nesting raptors and pallid bats as well.[328] In addition, portions of Area 14 exhibit wetland characteristics, including ponding, algal mats, and wetland indicator species (e.g., juncus), and it is possible that areas of wetland are present at Area 14 (none were delineated by the County).[329] In sum, and as is a common theme with the LCP amendment/Project areas, Area 14 is another example of relatively large and intact native Monterey pine forest ecosystem that supports endangered and other sensitive species habitat in association with it and that is functionally and physically part of a much larger forest ecosystem. The Commission finds that Area 14 is ESHA pursuant to the Coastal Act and the LCP.[330] See biological resources mapped over an air photo for Area 13 in Figure 19, and see photos of Area 13 in Exhibit 9.

2. Area 14 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 19 acres of Area 14 as Residential, 1 unit per 1.5 acres, and would add text to the LUP's land use text relative to the LUP's Middlefork planning area to indicate that "open space and 11 lots for residential dwellings in Area I are the principal proposed land uses" in Area 14. This proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. Similarly, Coastal Act Sections 30231 and 30233 protect any wetland areas and do not allow

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326 Similar to LUP planning unit F, although the LCP does not differentiate between the three areas that make up planning unit I, these areas are commonly referred to as planning units I1 and I2.

327 The Commission's staff ecologist identified additional areas of Hooker's manzanita in the northwest portion of the site that had not been delineated by the County to date during field work April 21, 2006. These areas are not mapped on Figure 19 as Figure 19 represents the biological data layers forward by the County.

328 PDP EIR Table E-19.

329 The Commission's staff ecologist identified potential wetland areas during fieldwork on March 30, 2006. These areas included a linear watercourse/pond system on the western portion of Area 14 extending somewhat parallel to the road nearest the golf course that would require additional more systematic delineation to confirm its status. In addition, a watercourse system runs roughly parallel and near the road in the eastern portion of the site as well. This eastern watercourse appears to be a deep erosional feature mostly lacking vegetation that is deeply incised in some places (extending from 5 to 10 feet below grade), but that includes some ponding and other features as part of it and extends offsite to the south. Again, additional more systematic delineation would be needed to confirm its status. In any case, these areas are not mapped on Figure 19 as Figure 19 represents the biological data layers forward by the County.

330 Ibid; See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

residential use and development within them. The proposed residential land use is not resource-dependent (and is not one of the allowed uses in wetland if they are present), and would be expected to significantly disrupt and degrade ESHA (and wetlands) contrary to the Act, particularly in light of the LUP amendment's explicit recognition of a specific number of residential units for LUP planning unit I where this number of units cannot be allowed under the LUP's ESHA policies.[331]

In terms of what might be expected to result from the proposed amendment the directly-relevant example of the Project for Area 14 is similar to that for Areas 12 and 13, except that Area 14 provides for a 15-lot subdivision of one COC lot (where 11 of the lots would accommodate residential development and 4 would be "open space"[332] with a road easement across two of the open space lots) resulting in 11 residential building envelopes to result in 11 residential units (see previous Project description findings). As with previous Project residential development and for similar reasons, the development of 11 residential units would be expected to result in significant ESHA disruption and degradation at Area 14. For example, the Project EIR indicates that such residential development of Area 14 would result in the direct removal of some 10 acres of Monterey pine forest and related habitat (including maritime chaparral and Yadon's piperia habitat).[333] In other words most of Area 14 ESHA would be directly removed, and the ESHA that was left would be expected to be significantly degraded by the direct losses as well as the indirect effects, including by virtue of being located in a residential subdivision not conducive to ESHA otherwise. See project subdivision and lot layout in relation to underlying biological resources in Figure 19.

As with previous areas, it has been suggested that the proposed changes for Area 14 would be superior to implementation of the existing LUP. In short, this argument has been distilled down to the premise that the Project residential development would be preferable to the allowable residential development under the current LUP. As with previous areas, however, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that Area 14 could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP (the County and Company have attributed some 83 potential units to planning unit I overall; roughly 38 of which are attributable to Area 14 (I2)).[334] Although the existing LUP designates Area 14 for residential development at up to 2 units per acre, neither subdivision nor residential development could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed subdivision and/or residential project. To avoid a takings potentially engendered by such a denial, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would be allowed on the lot at Area 14 under the current LUP.[335] In comparison, under the amended LUP and the associated Project, 11 residential units (and the above-described significant ESHA disruption and degradation impacts) would be expected at Area 14. The one residential development allowed under the current LUP is more protective of ESHA than would be the amended

[331] The remainder of Area 22 is also ESHA, and would be designated for resource conservation as part of the proposed amendment (see Area 22 findings below), and thus the explicit LUP text reference to 11 units in planning unit I would imply that all 11 would be in Area 14.

[332] Ibid.

[333] For example, PDP EIR Table F2-2.

[334] For example, Monterey County's Measure A Analysis (p. IV-3).

[335] Ibid; takings principals and related issues also apply, including the effect of ownership and use of surrounding property with respect to the appropriate unit of analysis for takings purposes.

LUP and associated Project.

In conclusion, the proposed LUP changes as they relate to the Area 14 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 14 Land Use Planning

The proposed LUP changes for Area 14 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 14 are warranted, but that such changes are different than have been proposed. Specifically, all of Area 14 should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there, and even more appropriate given the functional and physical relationship of Area 14 to the larger ecosystem of which it is part that extend through into HHNHA.

H. Area 15 (4 units)

1. Area 15 Setting

Area 15 is about 5.5 undeveloped acres that is made up of the northwest portion of LUP planning unit P located in the LUP's Pescadero planning area that is located in the southeast portion of the Del Monte Forest. Area 15 is located at the end of Griffin Road and is a small portion of the much larger area made up of LUP planning units P, Q, and R; a larger area that is commonly referred to as combined planning unit PQR (see Figure 7). Area 15 and the larger PQR area are themselves part of the still larger, mostly steeply sloped and undeveloped, Pescadero Canyon area that extends on both sides of Pescadero Creek (see Figure 2). Area 15 is best understood in this larger context.

The larger PQR area (and the forested area of Pescadero Canyon surrounding it) includes one of the largest areas of unfragmented native Monterey pine forest (in association with other sensitive species) within Del Monte Forest; this area is several hundred acres (or about the size of the HHNHA) of which approximately 158 acres are located within PQR. This area also includes wetlands (1.7 acres), tributaries to Pescadero Creek, riparian corridors, and an array of sensitive species including 29 acres of Hooker's manzanita, almost 6 acres of Hickman's onion (CNPS 1B), and sandmat manzanita (CNPS 1B).[336] In addition, it includes some 43 acres of the federally endangered Yadon's piperia and some 56,000 individuals.[337] This PQR-area piperia occurrence is the second largest in the world (second only to that at the PDP golf course site at Area 1) and constitutes about one-third of the total known worldwide population.[338] Thus, the forested area that includes PQR (and thus all of PQR) is Yadon's piperia habitat. Similarly, the Hooker's manzanita area is central maritime chaparral habitat. This area provides suitable habitat for other sensitive wildlife species, including potential nesting raptor and pallid bat habitat throughout the area, suitable Monterey shrew and ringtail habitat in riparian areas, and six active Monterey dusky-footed woodrat nests;[339] areas containing suitable aquatic and breeding habitat for the

[336] PDP EIR Tables, E-21 and E-28.

[337] PDP EIR Table P2-1.

[338] PDP EIR Tables P2-1 and P2-2.

[339] All of these species are State and/or Federal Species of Special Concern or Fully Protected Species (i.e., ringtail).

federally threatened California red-legged frog are also present.[340] Finally, the Pescadero Canyon/PQR forested area is functionally and physically connected to HHNHA through a forested habitat corridor extending between Area 16 and Area 20 (where Area 20 extends to HHNHA proper).[341] Thus, PQR is perhaps the most obvious example in the LCP amendment/Project area of a very large and intact native Monterey pine forest ecosystem that supports endangered and other sensitive species habitat in association with it and that is functionally and physically part of a much larger forest ecosystem – of which connected portions are biologically significant in their own right (HHNHA). The Commission finds that all of this Pescadero Canyon forested area, including reference Areas 15, 16, 24, and 26, is ESHA pursuant to the Coastal Act and the LCP.[342]

Area 15 is indicative of this larger habitat context, and includes significant areas of central maritime chaparral (where Hooker's manzanita is used as a proxy to identify the minimum boundary of this area) and some scattered Yadon's piperia. This area is flatter than the rest of Pescadero Canyon, but its still slightly sloped. It is densely forested, a mostly even-aged stand, where the understory is somewhat less developed than more central parts of Pescadero Canyon, but still provides associative habitat. Evidence of Monterey pine sapling recruitment in this area is significant. In addition, the southern portions of Area 15 may exhibit wetland characteristics, and it is possible that areas of wetland are present at Area 15 (none were delineated by the County).[343] See biological resources mapped over an air photo for Area 15 in Figure 20, and see photos of Area 15 in Exhibit 9.

2. Area 15 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 5.5 acres of Area 15 as Residential, 1 unit per acre, and would add text to the LUP's land use text relative to the LUP's Pescadero planning area indicating that "there will be 7 lots located on approximately 15 acres" in combined planning unit PQR. As with previous areas, this proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. Similarly, Coastal Act Sections 30231 and 30233 protect any wetland areas and do not allow residential use and development within them. The proposed residential land use is not resource-dependent (and is not one of the allowed uses in wetland if they are present on Area 15), and would be expected to significantly disrupt and degrade ESHA (and wetlands) contrary to the Act, particularly in light of the LUP amendment's explicit recognition of a specific number of residential units for LUP combined planning unit PQR where this number of units cannot be allowed under the LUP's ESHA policies.

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340 EIR Appendix E; EIR Tables E-21, E-28, P2-1 and P2-2.

341 This connection between HHNHA and Pescadero Canyon is acknowledged by proposed LUP text stating that the designation of LUP planning unit G (Area 20) to Open Space Forest (see findings that follows) "will result in preservation of approximately 965 acres of contiguous open space forest between the Gowen Cypress, Huckleberry Hill, Middle Fork and Pescadero Canyon areas."

342 Ibid; See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA. In fact, even if the linear corporation/storage yard were to be considered existing permitted development (which it is not) the remaining area would still be ESHA.

343 The Commission's staff ecologist identified potential wetland areas during fieldwork on April 19, 2006. Given field work limitations however, it was not possible to verify the location of the wetlands relative to Area 15, including whether the wetlands were within Area 24 and not Area 15. In any case, these additional areas are not mapped on Figure 20 as Figure 20 represents the biological data layers forward by the County.

In terms of what might be expected to result from the proposed amendment as reflected in the directly relevant approved Project, the Project for Area 15 would provide for a 5 lot subdivision (where 4 of the lots would accommodate residential development and 1 would be allotted to road/infrastructure improvements at the end of Griffin) and road/ infrastructure construction extending from Griffin Road into the subdivided area; ultimately, the result would be 4 residential building envelopes to result in 4 residential units (see previous Project description findings). As with previous Project residential development and for similar reasons, the development of 4 residential units would be expected to result in significant ESHA disruption and degradation at Area 15. For example, the Project EIR indicates that such residential development of Areas 15 and 16 (see also below) would result in the direct removal of some 10 acres of Monterey pine forest and related habitat overall (including Yadon's piperia habitat) including some 4 acres of maritime chaparral habitat.[344] In other words most of Area 15 ESHA would be directly removed, and the ESHA that was left would be expected to be significantly degraded by the direct losses as well as the indirect effects, including by virtue of being located in a residential subdivision not conducive to ESHA otherwise. See project subdivision and lot layout in relation to underlying biological resources in Figure 20.

As with previous areas, it has been suggested that the proposed changes for PQR would be superior to implementation of the existing LUP. In short, this argument has been distilled down to the premise that the Project residential development and conservation easements would be preferable to the allowable residential development under the current LUP. As with previous areas, however, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that PQR could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP (the County and Company have attributed some 154 potential units to PQR overall; 5 of which are attributable to Area 15).[345] Although the existing LUP designates PQR for residential development at up to 1 unit per acre, neither subdivision nor residential development within PQR could be found consistent with the LUP's ESHA policies. As a result, the LUP would require denial of a proposed subdivision and/or residential project. At that point, it would need to be determined whether a takings was potentially engendered by such a denial, and whether some approval was necessary. That portion of the larger Pescadero Canyon area owned by the Company (including all of PQR, and including Area 15) is part of a single conditional COC approved by the County (as part of the overall PDP project). In fact, only one unconditional COC was issued by the County within this larger area (see Figure 15). Accordingly, to avoid a takings potentially engendered by such a denial, based on the County's review of legal lots, at the most one residential unit (sited and designed to minimize ESHA impacts to the maximum degree possible) would appear to be allowed at PQR under the current LUP, and the remainder could not be developed.[346]

In comparison, under the amended LUP and the associated Project, 7 residential units (and the above-described significant ESHA disruption and degradation impacts) would be expected at Areas 15 and 16.

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344 For example, PDP EIR Table F2-2 and Revised Table 3.3-4. The PDP EIR did not break down the disturbance area between the PDP subdivision at Area 15 and that at Area 16, thus the estimated disturbance area together is provided. That said, it is presumed that most all of Area 15 ESHA would be removed to make way for the project (see Figure 20). In addition, Area 15 includes all of the Hooker's manzanita/maritime chaparral loss identified.

345 For example, Monterey County's Measure A Analysis (p. IV-3).

346 Ibid; takings principals and related issues also apply, including the effect of ownership and use of surrounding property with respect to the appropriate unit of analysis for takings purposes.

The Project would also dedicate conservation easements over the remainder of PQR (i.e., area 24 – see related finding below) and an adjacent forested area in Pescadero Canyon already designated Open Space Forest. However, the one residential development allowed under the current LUP is more protective of ESHA than would be the amended LUP and associated Project.

In conclusion, the proposed LUP changes as they relate to the Area 15 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 15 Land Use Planning

The proposed LUP changes for Area 15 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to Area 15 are warranted, but that such changes are different than have been proposed. Specifically, all of Area 15 and all of area PQR should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there. In addition, such a designation would protect a significant area of Monterey pine forest and related habitats (including Yadon's piperia, Hooker's manzanita/maritime chaparral, etc.) and would be better reflective of the larger ESHA area, including the forested area of Pescadero Canyon and extending into HHNHA, of which Area 15 is a part – including mimicking the Open Space Forest of this area surrounding PQR.

I. Area 16 (3 units)

1. Area 16 Setting

Area 16 is about 7.5 undeveloped acres that is made up of the northern portions of LUP planning units P and R located in the LUP's Pescadero planning area that is located in the southeast portion of the Del Monte Forest. Area 16 is located south of Sunridge Road and, like Area 14, is a small portion of the much larger ESHA area made up of PQR and the remainder of the undeveloped Pescadero Canyon area that is best understood in this larger resource context (see previous finding and see Figure 2).

Area 16 is very densely forested with very tall native Monterey pine sloping down away from Sunridge Road. This area has a dense and vigorous understory as well, including a significant area of Yadon's piperia in the eastern two-thirds of it, and areas of significant pine recruitment. Not mapped by the County to date, there are also two watercourses extending through Area 16 down the slope; one in the western third of the area and a second roughly in the center of the area.[347] There has been significant forest canopy damage in the west of this area, but not so significant as to undo the forest resource value overall.[348] The Commission finds that all of Area 16 and the larger forested area of which it is a part is

[347] These areas were identified by Commission staff during field visits on April 19, 2006. The second watercourse area (to the east) appears to be the more significant of the two, and appears to be an extension of the watercourse mapped by the County to date that extends through to Sunridge Road through Area 16.

[348] A portion of the pine forest in Area 16 has apparently had the tops of the forest canopy removed (or "topped"), and it appears that this topping has been going on for some time as the trees in this area have responded with very dense lower branch growth atypical of taller pine. This topped area is limited to the westernmost portion of Area 16, and appears to partially be associated with trimming for overhead utility lines (located along the western edge of Area 16) and partially associated with a private view corridor. Commission staff is unaware of any CDPs authorizing the topping in this area, and is pursuing this as a violation. The Company has indicated that they have not been involved with the topping of trees at this location. In any event, the topping has no bearing on the overall ESHA determination – both by virtue of the baseline for LUP analysis being the pre-violation forest condition, and by virtue of the habitat value that remains despite the violation.

ESHA pursuant to the Coastal Act and the LCP.[349]

2. Area 16 LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all 7.5 acres of Area 16 as Residential, 1 unit per 2 acres, and would add text to the LUP's land use text relative to the LUP's Pescadero planning area indicating that "there will be 7 lots located on approximately 15 acres" in combined planning unit PQR. As with Area 15, this proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent, and would be expected to significantly disrupt and degrade ESHA contrary to the Act, particularly in light of the LUP amendment's explicit recognition of a specific number of residential units for LUP combined planning unit PQR where this number of units cannot be allowed under the LUP's ESHA policies.

As described in the Area 15 finding above, in terms of what might be expected to result from the proposed amendment, the approved Project for Area 16 would provide for a 3 lot subdivision expected to result in 3 residential building envelopes to accommodate 3 residential units (see previous Project description findings). As described for Area 15 above and for similar reasons, the development of 3 residential units would be expected to result in significant ESHA disruption and degradation at Area 16. In sum, most of Area 16 ESHA would be directly removed, and the ESHA that was left would be expected to be significantly degraded by the direct losses as well as the indirect effects, including by virtue of being located in a residential subdivision not conducive to ESHA otherwise. See project subdivision and lot layout in relation to underlying biological resources in Figure 21.

In terms of a comparison of the what would be expected under the current LUP as compared to the proposed amended LUP and Project, the existing LUP would allow for one residential development within the larger forested Pescadero Canyon area owned by the Company (of which Area 16 is a part) that is sited and designed to minimize ESHA impacts, whereas the amended LUP would provide an expectation for 7 residential units with significant ESHA impacts (see preceding finding for detail). In sum, the one residential development allowed under the current LUP is more protective of ESHA than would be the amended LUP and associated Project.

In conclusion, the proposed LUP changes as they relate to the Area 16 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. Area 16 Land Use Planning

The proposed LUP changes for Area 15 cannot be found consistent with the Coastal Act and must be denied. However, it appears that LUP designation changes relative to the non-Open Space Forest portion of Area 16 are warranted,[350] but that such changes are different than have been proposed. Specifically, all of Area 16 and all of area PQR should be designated as Open Space Forest. This classification better reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use

[349] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA

[350] The portion of Area 16 currently designated Open Space Forest is a small part of Area 16 located at the southern portion of it roughly surrounding the central watercourse feature; this area appears to be less than an acre.

allowed there. In addition, such a designation would protect a significant area of Monterey pine forest and related habitats (including Yadon's piperia, Hooker's manzanita/maritime chaparral, etc.) and would be better reflective of the larger ESHA area, including the forested area of Pescadero Canyon and extending into HHNHA, of which Area 16 is a part – including mimicking the Open Space Forest of this area surrounding PQR.

J. Area 17 (12 units (MFR))

1. Area 17 Setting

Area 17 is about 4 undeveloped acres that makes up the westernmost portion of the area referred to by the LUP as planning unit B that is located in the northernmost portion of the Del Monte Forest within the Spanish Bay planning area (see Figure 7). This area is located directly inland of the Spanish Bay Resort and 17-Mile Drive in the undeveloped and thickly forested Navajo Tract area, a portion of which is now maintained as a resource conservation area (including the eastern portion of planning unit B shown on LUP Figure 5 – see Exhibit 5). The Pacific Grove and Country Club gates into the Del Monte Forest frame this Navajo Tract area on the east, and Congress Road extends through the middle of it.[351]

Area 17 is primarily made up of a dense stand of contiguous and unfragmented native Monterey pine forest in association with a variety of other species, including Yadon's piperia, that is part of a much larger densely forested area surrounding Area 17. The forest is bisected by a fire road extending between 17-Mile Drive and Congress Road adjacent to which is a small (+-10,000 square foot) clearing that appears to be an historic fill area of sorts.[352] Wetlands delineated by the County are found in the northwestern portion of Area 17. Wildlife habitat of note in Area 2 includes potential nesting raptor habitat and pallid bat habitat throughout the forest.[353] See biological resources mapped in Figure 22.

Historically, the native Monterey pine forest and related habitat area at the Navajo Tract (including that at Area 17) was part of the much larger native pine forest area previously described that has been reduced to about one-half of its estimated historic size. The Area 17 forest area is part of a large stand representing a relatively unfragmented portion of the remaining DMF forest cover that is functionally and physically connected with other large remaining forest areas, including that of the Rip Van Winkle Open Space and the remainder of the Navajo Tract and forested areas to the northeast southwest, including Area 2 (i.e., PDP driving range site). Area 17 is part of a larger area (including Area 2 as well) that has been identified in the past by CDFG as a high priority area for preservation.[354] The Commission finds that Area 17 is ESHA pursuant to the Coastal Act and the LCP.[355] Thus, most of Area 17 is part of a larger forest area that represents the type of large intact native Monterey pine forest described earlier that includes wetlands and sensitive species habitat, including Yadon's piperia, that is ESHA.

2. Area 17 LUP Amendment Consistency Analysis

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351 Ibid; this section of Congress Road was developed as part of the Spanish Bay permit.

352 Commission staff is unaware of an CDPs for fill at this location, and it is unclear at what time the fill occurred.

353 PDP EIR Tables E-11 and E-16.

354 Monterey Pine Forest Conservation Strategy Report (Jones & Stokes, 1996).

355 The edge of Area 17 to the west at the fire road is degraded. More detailed analysis would be required here at the time of proposed development.

The proposed LUP amendment would designate all 4 acres of Area 17 as Residential, 4 units per acre, and would add LUP text specifying employee housing for Area 17, including that this area "may be used for up to 12 units of employee housing" (see LCP amendment description in preceding findings). This proposed LUP designation and text cannot be found consistent with the Coastal Act. Specifically, Coastal Act Section 30240 only allows resource-dependent uses and associated development that will not significantly disrupt habitat values and will not significantly degrade ESHA otherwise. The proposed residential land use is not resource-dependent, and would be expected to significantly disrupt and degrade ESHA contrary to the Act, particularly in light of the LUP amendment's explicit recognition of a specific number of residential units for this area where this number of units cannot be allowed under the LUP's ESHA policies.

In terms of what might be expected to result from the proposed amendment, as reflected in the already-approved Project driving it, the Project for Area 17 includes 12 units of employee housing[356] in four two-story buildings ranging from approximately 5,000 square feet to 10,000 square feet each with associated infrastructure and facilities (garages, parking areas, driveway access, paths, fences, etc.) (see Project layout with respect to underlying biological resources in Figure 22). Although the delineated wetland area within the 4-acre site would be left alone and buffered, the proposed project would result in direct removal of over 2-acres of forest ESHA habitat (and some 264 individual trees).[357] By cutting a hole out of the larger contiguous forest ESHA of which it is a part, habitat values of adjacent areas would be significantly degraded, including Area 2.

It has been suggested that the amended LUP and the Project would be more protective of coastal resources than would be the existing LUP. However, as with other areas, this argument assumes a baseline condition for comparison purposes that is unlikely; namely, that Area 17 could be subdivided to provide up to the maximum number of residential developments theoretically possible under the LUP (the County and Company have attributed some 21 potential units to LUP planning unit B, 16 of which are attributable to Area 17).[358] Because Area 17 is ESHA, it cannot be subdivided and development of it would be strictly limited to what would be required to avoid a takings. Such a denial might engender "takings" issues. In that respect, at most there appears to be one legal lot in and around Area 17 corresponding to the one unconditional COC issued by the County spanning reference Areas 2, 17, and 19 (and LUP Planning units B and C and the surrounding area – see Figure 15). In such a case, it may be that the most that could be approved on Areas 2, 17, and 19 <u>together</u> would be one residential unit sited and designed to minimize impacts (e.g., clustering such development immediately adjacent to existing residential development to avoid habitat fragmentation to the degree feasible). There is little doubt that one (or less) residential development would have significantly less ESHA impacts than would the 12 units of employee housing provided for by the proposed LUP amendment (and the Project). In other words, the existing LUP is more protective of ESHA than would be an amended LUP.

In conclusion, the proposed LUP changes as they relate to the Area 17 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

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356 It is not clear by what means such housing might be restricted to employees and not allowed to enter into the open housing market.

357 PDP EIR Tables 2.0-4, 3.3-1 and 3.3-6.

358 For example, Monterey County's Measure A Analysis (p. IV-3).

3. Area 17 Land Use Planning

The proposed LUP changes for Area 17 cannot be found consistent with the Coastal Act and must be denied. In the larger LUP planning context, it appears that LUP designation changes relative to Areas 17 are warranted, but that such changes are different than have been proposed. Specifically, all of the Area 17 should be designated as Open Space Forest. This classification better reflects resources on the ground; is indicative of the appropriate types, scales, and intensities of use allowed there; and would be more in keeping with the surrounding area larger ESHA area including the forested area of which Area 17 is a part.[359]

K. Area 18 (48 units (MFR))

1. Area 18 Setting

Area 18 is made up of about 18 acres associated with the Pebble Beach Company's office and corporation yard tucked into the southern base of Huckleberry Hill Natural Habitat Area in the eastern portion of the Del Monte Forest within the LUPs Huckleberry Hill planning area (see Figure 7). The southern half of Area 18 is occupied by the Pebble Beach Company's offices and related facilities (e.g., garage, nursery, etc.). The other half is made up of two parts: the first part is the more western portion that is currently used by the Company as a materials storage and processing area (for vegetative debris, etc.), a portion of which occurs atop an elevated fill slope.[360] The second part is the portion north and east of the Company's offices and this area is the site of the former Granite Construction quarry operation that recently ceased operations. The flatter portion of this former quarry is fill and is essentially devoid of vegetation, while the slope has been terraced and is in the midst of Monterey pine forest restoration as part of the quarry reclamation. The Haul Road restoration area extends from the northern corner of Area 18 to Highway 68.[361] See photos of this area in Exhibit 9 and see an air photo of it in Figure 23.

For the most part, Area 18 is either developed or filled due to previous quarry operations. Forest areas on Area 18 are primarily limited to two pine forest areas that are functionally and physically part of the surrounding native forest areas extending into HHNHA (i.e., west of the access road from Sunridge Road into the corporation yard/offices, and south of the Company's facilities), and the ongoing forest slope restoration along the edge of Area 18 adjacent to Area 20 (LUP planning unit G). The existing native Monterey pine forest in these areas is ESHA as part of its functional and physical connection to these larger habitat areas. The reforested quarry slope may eventually become part of this larger ESHA, but at the moment is mostly an undevelopable (i.e., steep slopes, pine forest restoration area, etc.) buffer to it. A detention pond in the quarry fill area has been deemed to contain suitable aquatic habitat for CRLF, but frogs have not been identified there to date.[362]

2. Area 18 LUP Amendment Consistency Analysis

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[359] Including that the areas between Area 17 and Congress Road and 17-Mile Drive area already designated Open Space Forest, and the area adjacent to it (Area 19) is proposed to be designated Open Space Forest in recognition of its habitat value in this respect.

[360] It a appears that some portion of this fill slope actually extends into HHNHA.

[361] As earlier described, Haul Road was historically used for access through HHNHA from Highway 68 to the Granite Construction quarry. The Spanish Bay CDP required that Haul Road be abandoned and restored. The restoration is actively underway.

[362] PDP EIR Table E-12.

The proposed LUP amendment would delete LUP Table A and references to it, and would remove the resource constraint area designation for Area 18 (see LCP amendment description finding for more detailed information).[363] As is more broadly the case with the proposed elimination of LUP Table A, the effect relative to Area 18 would be to remove the residential unit cap that applies to this area. In particular, because Table A does not assign any units to this area, its elimination would mean that the LUP does not restrict residential development here per se.[364]

In both cases (the existing LUP and the amended LUP), any residential units would need to be consistent with the LUP's commercial land use designation. In that respect, residential units could only be found consistent with the LUP if they were compatible with this designation. It may be that certain types of residential, including perhaps employee housing that supports the provision of community services, could be found consistent.

Other than ESHA and restorations areas for which the designated commercial use is inappropriate, mostly the proposed LUP changes for Area 18 can probably be found consistent with the Coastal Act. Other than the aforementioned ESHA and restoration areas that cannot be developed consistent with the Act, the remainder of Area 18 is a former quarry area that is not ESHA. The Table A restriction on the number of units appears to have been based on the fact that none were contemplated at the time of LUP certification, as opposed to a comprehensive analysis of what number of units might be LUP preferred or acceptable. Provided there is an adequate amount of commercially designated land in the Forest such that commercial operations are not forced to move into areas not so designated (and not able to accommodate them), Really, the number of units that can appropriately be accommodated at Area 18 is probably more a function of what otherwise would be consistent with the (e.g., with respect to ESHA, views, public services, etc. In that context, the more important resource question is the manner in which such units might be integrated into the site (including in relation to the Company's facilities) and the surrounding habitat area to ensure these areas are not significantly degraded.

In terms of what might be expected to result from the proposed amendment, the Project that implements Measure A for Area 18 includes 48 units of employee housing[365] in eight approximately 10,000 square foot two-story buildings with associated infrastructure and facilities (carports, parking areas, driveway access, paths, fences, etc.) (see Project layout with respect to underlying biological resources in Figure 23). With the exception of the quarry detention pond (and its potential for providing CRLF habitat), the employee housing area would have negligible direct habitat impacts, and indirect impacts could probably be effectively mitigated by project design (e.g., controlling lighting to avoid impacts into ESHA).[366]

In terms of a comparison between what might be allowed by the current LUP versus the amended LUP, the current LUP would allow for some amount of commercial development that met the LUP tests in Area 18. Similarly, under the amended LUP, a similar scale and intensity of development would be

363 See Public Services finding.

364 Other than the fact the area is designated for commercial as opposed to residential use.

365 It is not clear by what means such housing might be restricted to employees and not allowed to enter into the open housing market.

366 There is the question of the Open Space Forest land use inconsistency at the northwest portion of the proposed units inasmuch as this area is not designated by the LUP for residential development. This area is also not a part of the proposed amendment, and is not a part of Area 18 (see Figure 7).

allowed, but residential units that met the LUP's commercial land use designation tests could also be part of the land use mix. Thus, there is little material coastal resource difference between the current LUP and the proposed amendment LUP with respect the amount of development possible at the corporation yard.

Similar to the potentially approvable LUP changes discussed above, because other aspects of the proposed LUP amendment must be denied for other reasons, the overall proposed LUP amendment must be denied as well – including this component of it.[367]

3. Area 18 Land Use Planning

It is likely that an approvable LUP amendment could be developed that applied to Area 18, but it is probably more tailored than that proposed to date. For example, all of the ESHA and forest restoration areas should be designated as Open Space Forest to reflect their resource function and connection to surrounding habitat areas. In addition, if the intent is to provide for a specific type of use that is not clearly commercial, then the area meant to accommodate that use should be designated to that use, or the commercial land use designation explicitly adjusted to account for it. Also, complementary changes to the area underlying the fill slope that extends to the northwest (and outside of) Area 18 would probably be appropriate. Specifically, this area is currently designated Open Space Forest and is located in the HHNHA. However, this area clearly lacks the type of resource value applicable to these designations and would more appropriately be designated to account for the specific type of issue anticipated; whether residential or otherwise.

More broadly, of all of the land that is part of the proposed LCP amendment and Project, the level fill and developed area at Area 18 (and extending to the northwest of it) is probably the most appropriate for development. This area is highly disturbed and is already highly developed with the Company's facilities. The true test for the appropriate level of development here probably has less to do with ESHA impacts (other than compatibility with the adjacent forest areas) than it does with the Company's existing developed facilities. Thus, from a coastal resource standpoint, fairly intensive development could probably be accommodated here assuming public services and other LUP requirements were adequately addressed. It may be that the need is for an expansion of corporation yard/storage area, particularly if changes are made that identify a higher priority use for the Signal Hill dunes fill/storage area and these facilities need to accommodated elsewhere, and particularly in light of the need to eliminate storage facilities present in Area 12. It may also be that the identified need is for some sort of recreational facility, such as the Company's more recent suggestion that an equestrian center might best be accommodated at Area 18. In any event, it is clear that such an evaluation includes a wide variety of permutations that are better understood in relation to the Company's needs as a whole in light of the outcome of this LCP amendment. The main point for Area 18 is that this area can accommodate intensive development while most of the other LCP Amendment/Project areas cannot.

5. Resource Conservation (Areas 19 through 24)

A. Resource Conservation Areas Resource Setting

[367] See also LCP amendment standard of review findings.

1. Area 19 (14 Acres)

Area 19 is about 14 undeveloped acres that makes up the central portion of the area referred to by the LUP as planning unit B that is located in the northernmost portion of the Del Monte Forest within the Spanish Bay planning area (see Figure 7). This area is located directly inland of the Spanish Bay Resort and 17-Mile Drive in the undeveloped and thickly forested Navajo Tract area, a portion of which is now maintained as a resource conservation area (including the eastern portion of planning unit B shown on LUP Figure 5 – see Exhibit 5). The Pacific Grove and Country Club gates into the Del Monte Forest frame this Navajo Tract area on the east, and Congress Road extends through the middle of it.[368]

Area 19 is made up of a dense stand of contiguous and unfragmented native Monterey pine forest in association with a variety of other species, including Yadon's piperia. It is part of a much larger densely forested area surrounding Area 19. A well-defined riparian creek corridor (sometimes referred to as Majella Creek) extends along long its northeastern boundary; ponds in Majella Creek have been designated as providing suitable aquatic and breeding habitat for the threatened CRLF.[369] Suitable habitat for other sensitive species is also provided, including potential nesting raptor habitat (including sharp-shinned hawk having been observed nesting in this area) and pallid bat habitat throughout the forest, and Monterey shrew and ringtail habitat in the riparian/creek area. All of these species are State and/or Federal Species of Special Concern or Fully Protected Species (i.e., ringtail).[370] See photos of Area 19 in Exhibit 9, and see an air photo with biological resource identified in Figure 24.

Historically, the native Monterey pine forest and related habitat area at the Navajo Tract (including that at Area 19) was part of the much larger native pine forest area that has been reduced to about one-half of its estimated historic size. The Area 19 forest area is part of a large stand representing a relatively unfragmented portion of the remaining DMF forest cover that is functionally and physically connected with other large remaining forest areas, including that of the Rip Van Winkle Open Space and the remainder of the Navajo Tract and forested areas to the northeast southwest, including Area 2 (i.e., PDP driving range site) and Area 17. Area 19 is part of a larger area (including Areas 2 and 17 as well) that has been identified in the past by CDFG as a high priority area for preservation.[371]

The Commission finds that Area 19 is ESHA pursuant to the Coastal Act and the LCP.[372] Area 19 is part of a larger forest area that represents the type of large intact native Monterey pine forest described earlier that includes a creek and sensitive species habitat, including Yadon's piperia, that is ESHA.

2. Area 20 (33 Acres) Resource Setting

Area 20 is about 33 undeveloped acres that makes up the area referred to by the LUP as planning unit G that is located in the LUP's Huckleberry Hill planning area (see Figure 7). This area is located east and above the slope of the corporation yard area (Area 18).

Area 20 is made up of a dense stand of contiguous and unfragmented native Monterey pine forest in association with a variety of other species that is part of a much larger densely forested area including

368 Ibid; this section of Congress Road was developed as part of the Spanish Bay permit.

369 PDP EIR Table

370 PDP EIR Tables E-11 and E-16.

371 Monterey Pine Forest Conservation Strategy Report (Jones & Stokes, 1996).

372 See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA.

the adjacent HHNHA to the north. It too is part of the historic range and current remainder of the Monterey stand of the native Monterey pine forest. The northern third of this area (near HHNHA) was burned in the 1987 fire, and a relatively even aged and extremely dense stand of pine are now present in that area.[373] Also present in this northern portion is a large area, approximately 8 acres, of the federal and state-listed endangered Monterey clover.[374] Central maritime chaparral is extensive in Area 20, as mapped by the Hooker's manzanita occupying most of the area. Endangered Yadon's piperia is also spread throughout the area, and thus Area 20 is piperia habitat as well. Other special status species present include pine rose and Hickman's onion. Suitable habitat for sensitive wildlife species is also provided, including potential nesting raptor habitat and pallid bat habitat. In sum, Area 20 is extremely biologically rich, and it is physically and functionally part of the larger HHNHA to the north as well as adjacent forested areas at and around Area 21 to the west and Pescadero Canyon to the southeast. In sum, the Commission finds that Area 20 is a prime example of a native Monterey pine forest ecosystem that is rare and especially valuable and that is ESHA pursuant to the Coastal Act and the LCP. See photos of Area 20 in Exhibit 9, and see an air photo with biological resource identified in Figure 25.

3. Area 21 (24 Acres) Resource Setting

Area 21 is about 24 undeveloped acres in four pieces that make up the area referred to by the LUP as planning unit H located in the LUP's Middlefork planning area (see Figure 7). These four portions of Area 21 are roughly arranged around a fire road and are located east of Poppy Hills Golf Course, west of the southern portion of Area 20, and south of Area 13.

Area 21 is part of a larger pine forested area that extends from HHNHA through Areas 13 and 20 and into Area 14 that is also connected to the larger Pescadero Canyon area. Although the pine is dominant, Area 21 also includes a large area of central maritime chaparral (by the Hooker's manzanita proxy) and Yadon's piperia (and thus piperia habitat throughout). Other special status species present include sandmat manzanita, pine rose and Hickman's onion, and suitable habitat for sensitive wildlife species is also provided, including potential nesting raptor habitat and pallid bat habitat.[375] In addition, there is delineated wetland and at least two creek areas in Area 20. As with Area 20, the Commission finds that Area 21 is also an excellent example of a native Monterey pine forest ecosystem that is rare and especially valuable and that is ESHA pursuant to the Coastal Act and the LCP.[376] See photos of Area 21 in Exhibit 9, and see an air photo with biological resource identified in Figure 26.

4. Area 22 (29 Acres) Resource Setting

Area 22 is about 29 undeveloped acres in two pieces that make up the northern portion of the area referred to by the LUP as planning unit I (commonly referred to as I1).[377] Area 22 is located in the center of the Del Monte Forest in the LUP's Middlefork planning area. Located nearby are the Pebble Beach Community Services District station and offices and Forest Lake reservoir to the north, Spyglass Hills Golf Course and Robert Luis Stevenson School facilities to the west and southwest, and Poppy

[373] Monterey pine being a species that responds well to fire inasmuch as competitors are burned and soils prepared for the carpet of seeds that are dispersed when the cones burst open in response to the heat.

[374] PDP EIR Table 23.

[375] PDP EIR Table E-24.

[376] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA

[377] Ibid; planning units I1 and I2.

Hills Golf Course to the east. See Figures 7 and 2.

Area 22 is densely forested in Monterey pine along with substantial areas of central maritime chaparral and Yadon's piperia habitats Other special status species present include Hooker's manzanita, sandmat manzanita, pine rose and Hickman's onion. This area is sloped in the southern portion of the site in two areas where the northern and southern arms of Seal Rock Creek extend through the area. Seal Rock Creek is the apparent center of the CRLF population in the Forest, and this area has been deemed to be suitable CRLF aquatic and breeding habitat in the in-stream ponds.[378] Suitable habitat for sensitive wildlife species is also provided, including potential nesting raptor habitat and pallid bat habitat in forested areas and Monterey shrew and ringtail habitat in the creeks.[379] In sum, the Commission finds that Area 22 is large and intact native Monterey pine forest area that is rare and especially valuable and that is ESHA pursuant to the Coastal Act and the LCP.[380] See photos of Area 22 in Exhibit 9, and see an air photo with biological resource identified in Figure 27.

5. Area 23 (19 Acres) Resource Setting

Area 23 is about 19 undeveloped acres in two pieces that is made up of LUP planning unit L (about 18 acres) and an unlettered 1-acre area opposite Stevenson Drive from planning unit L. Area 23 is located in the center-west of the Del Monte Forest in the LUP's Spyglass Cypress planning unit, and extends from near the shoreline along Spyglass Hill Golf Course (to the south) and the Indian Village Preserve area (to the north). See Figure 7.

Area 23 is a primarily native Monterey pine forest with a small area of dunes in the westernmost portion of it nearer the shoreline. This area is part of a much larger mostly contiguous[381] block of native Monterey pine forest and related habitat that also includes LCP amendment reference Areas 4, 9, and 10 and the Indian Village preservation area north of Area 23 through to the coastal zone boundary (see Figure 2). This larger pine forest area has a dense and thriving understory and overstory, and includes a number of special status species. There is also significant CRLF habitat areas along Seal Rock Creek and its tributaries. This portion of Seal Rock Creek has been identified as the apparent center of the CRLF population within the Del Monte Forest, and the site of "Occupied Breeding and Other presumed CRLF Habitat" including for Area 23 where CRLF have been documented in recent surveys.[382] Delineated wetlands are found at the 1-acre piece of Area 23 (where the two creek areas extending from Area 8 meet). In addition to CRLF, white-tailed kite (a California Fully Protected Species) have been observed nesting in this area, and habitat for other sensitive wildlife species is also present, including suitable Smith's blue butterfly habitat in the dune areas, potential nesting raptor habitat and pallid bat habitat throughout the forest, and ringtail and Monterey shrew habitat in the wetter areas.[383] Other special status plants identified in Area 23 include pine rose and, in the dune areas, Monterey spineflower and Monterey Indian paintbrush.

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[378] PDP EIR Table E-12.

[379] PDP EIR Table E-25.

[380] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA

[381] Other than existing intervening roads, whose effect in this regard is somewhat mitigated by forest canopy that extends over them.

[382] PDP EIR Table E-12, and p. E-27.

[383] PDP EIR Table E-27.

Area 23 is another example of a native Monterey pine forest that is part of a larger intact and thriving native Monterey pine forest ecosystem that is rare and especially valuable and that is ESHA pursuant to the Coastal Act and the LCP.[384] See photos of Area 23 in Exhibit 9, and see an air photo with biological resource identified in Figure 28.

6. Area 24 (145 Acres) Resource Setting

Area 24 is about 145 undeveloped acres that is made up of portions of LUP planning units P and R, and all of planning unit Q that area a part of the LUP's Pescadero planning area that is located in the southeast portion of the Del Monte Forest (see Figure 7). Area 24 is part of a larger native Monterey pine forest and related habitat areas in and around Pescadero Canyon that is one of the largest and most significant remaining within the Del Monte Forest (see findings for Areas 15 and 16 that are incorporated herein by reference). The Commission finds that this entire area, including Area 24, is ESHA pursuant to the Coastal Act and the LCP. See photos of Area 24 in Exhibit 9, and see an air photo with biological resource identified in Figure 29.

B. Resource Conservation Areas LUP Amendment Consistency Analysis

The proposed LUP amendment would designate all of Areas 19, 20, 21, 22, 23, and 24 to Open Space Forest (RC).[385] See proposed LUP designation in Figure 5. The Coastal Act protects ESHA areas, including requires that uses in them be resource-dependent, and that development not significantly disrupt habitat values. The Coastal Act also protects wetlands against all but eight uses and requires that unavoidable impacts are minimized. The LUP's Open Space Forest land use designation is appropriate for the above-described areas.[386] This land use designation reflects resources on the ground, and is indicative of the appropriate types, scales, and intensities of use allowed there. Because other aspects of the proposed LUP amendment must be denied for other reasons, the overall proposed LUP amendment must be denied as well – including this component of it.[387]

C. Resource Conservation Areas Land Use Planning

Although the current LUP amendment overall cannot be found consistent with the Coastal Act, the portion of it that includes designating ESHA areas to Open Space Forest (and Open Space Shoreline for the shoreline/dune areas) would be approvable. In fact, it would be appropriate for any subsequent LUP amendment package to include such designations for Areas 19 through 24. This LUP designation provides substantial resource protection,[388] and could likely be found consistent with the Coastal Act for this reason.

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[384] See also previous ESHA criteria finding, including discussion of the LCP definition of ESHA

[385] It would also remove the Resource Constraint Area designation (discussed in Public Services finding), and it would add LUP text relative to the LUP's Huckleberry Hill planning area to state that "Elimination of residential units in Area G will result in preservation of approximately 965 acres of contiguous open space forest between the Gowen Cypress, Huckleberry Hill, Middle Fork and Pescadero Canyon areas."

[386] Although the Open Space Shoreline designation is probably more appropriate for the dune area on Area 23, the Open Space Forest designation provides a similar level of resource protection and can be found approvable for this reason.

[387] See also LCP amendment standard of review findings.

[388] On this point it is noted that the Project includes dedication of conservation easements over these Area 19-24 areas as well as other areas already designated Open Space Forest. In fact, roughly one third of the acreage proposed for such easements are already designated Open Space Forest and already protected in this manner.

6. Other Areas (Areas 25 and 26)

A. Areas 25 and 26 Resource Setting

1. Area 25 (LUP Planning Unit X)

Area 25 is about 23 acres referred to by the LUP as planning unit X that is located just inland of Pescadero Point and 17-Mile Drive in the LUP's Pebble Beach planning area (see Figure 7). At least a portion of this property is developed with a residential development, but it is unclear to what extent.[389] The southern half of this area is within the mapped extent of the native Monterey cypress (CNPS List 1B.2) habitat that is designated ESHA by the LUP.[390] The PDP EIR indicates that pallid bat may be present in this area, and that other sensitive resources may also be present.[391] However, this area has not been surveyed in a manner similar to the previous areas for the purposes of LCP amendment and/or Project analysis to date. It is unclear to what extent portions of this area may be ESHA, although the LUP resource mapping is presumptive with respect to the potential presence of at least Monterey cypress. See photos of this area in Exhibit 9.

2. Area 26 (LUP Planning Unit X)

Area 26 is about 20 acres referred to by the LUP as planning unit Y that is located within the Pescadero Canyon area within the LUP's Pescadero planning area (see Figure 7). As with Area 25, this area was also not surveyed in a manner similar to the previous areas for the purposes of LCP amendment and/or Project analysis to date.[392] Area 26 is functionally and physically connected to the larger native Monterey pine forest area that makes up the Pescadero Canyon forested area which is ESHA (see previous findings relative to Areas 15, 16, and 24). In addition, unlike Area 25, the PDP EIR includes relevant observations regarding Area 26 indicating that it as covered by native Monterey pine forest, it may have a sizeable Yadon's piperia population, and Hooker's manzanita and a significant occurrence of sandmat manzanita are likely present.[393] The manzanita are indicative of central maritime chaparral, and the Yadon's piperia is indicative of piperia habitat in the pine forest and chaparral areas. Given the resources identified in the surrounding area, including immediately adjacent to Area 26, and the observations regarding Area 26 to date, it is likely that all of Area 26 is a part of the larger Pescadero Canyon ESHA area. See photos of this area in Exhibit 9.

B. Other Areas LUP Amendment Consistency Analysis

The proposed LUP amendment would eliminate Table A and associated LUP references to it. Because Table A and the associated text identify the maximum number of units that are allowed within each LUP planning unit in the Forest, its proposed elimination proposes to delete the maximum unit counts identified for planning units X and Y.[394] In addition, the proposed LCP amendment includes language that would be added to the LUP's land use text associated with the LUP's Pebble Beach and Pescadero

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389 LUP planning unit X was not considered by the County to be directly affected by the proposed amendment, and there is limited information in the file regarding its resource setting.

390 LUP Figure 2.

391 PDP EIR pp. 4.4-10 and 4.4-26.

392 LUP planning unit Y was similarly not considered by the County to be directly affected by the proposed amendment.

393 PDP EIR including pp. 2-85, 4.4-10, P6-7, and P7-8.

394 And other LUP planning units and larger LUP planning areas; see also separate Table A finding below.

planning units indicating that "20 additional residential dwellings are planned on land in Area Y," and "23 additional residential dwellings are planned for Area X." In other words, for planning units X and Y (not owned by the Pebble Beach Company), the proposed amendment would ascribe a unit count to these areas where the number of units has been taken from the maximum figures in existing Table A. This unit count would no longer be controlled by LUP language identifying these as maximums.

At a minimum, it is not appropriate for the LUP to identify a specific unit count as proposed for these areas absent more comprehensive analysis of their capacity to provide for that amount of development in light of resource conditions on the ground. More importantly, as seen above, Area 25 may be at least partially ESHA, and Area 26 is likely to be completely ESHA. The proposed LUP language may establish an expectation for the number of units specified, when in fact the number of units that might be appropriate is probably less than that, and more likely to be based on a takings analysis. For Area 26, it appears likely that at most one unit (and not 23) would be allowed to avoid a takings if it were determined to be entirely ESHA.[395] For Area 25, the outcome of an ESHA (and potential takings cases) is less clear, but at a minimum it is clear that 23 units (based on the LUP's 1 unit per acre designation that applies here) already is more than the LUP allows in light of the existing residential development. It appears likely that residential development in the amount specified by the proposed amendment would significantly degrade and disrupt ESHA contrary to the Act.

In conclusion, the proposed LUP changes as they relate to the Areas 25 and 26 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

7. Conclusion: LUP Amendment Inconsistent with the Coastal Act

The proposed LUP amendment is inconsistent with the Coastal Act's ESHA and wetland policies, and thus the proposed LUP amendment must be denied. The amendment is fundamentally flawed in that it does not adequately recognize and respond to the underlying ESHA resources present in the majority of the LCP amendment areas. Although there are some portions of the amendment that are probably approvable (for example, the proposed Open Space Forest land use designations), the majority of the proposed land uses cannot be found consistent with the Coastal Act. This is well-illustrated by the specific Project approved by Monterey County that implements Measure A. This Project is indicative of what might be expected to follow the LCP amendment (including inasmuch as it has already been approved by Monterey County contingent upon Commission approval of the proposed LCP amendment), and its direct and indirect ESHA and wetland impacts, which are substantial, provide a directly-relevant example of why the LUP amendment is inconsistent with the Coastal Act.

In addition, as compared to the maximum of 21 (or even 41) units in the LCP amendment area,[396] the Project is the expected outcome under the amendment LCP. It would result in the aforementioned Project, including ultimately providing for 36 single-family residential units, 60 multi-family residential

[395] And possibly less dependent on the fact set that applies at the time of such analysis. As far as the Commission understands at current time, all of Area 26 is owned by a single entity , as is all of Area 25.

[396] The 21 units is the sum of the maximum potential number of units under the existing LUP scenario and potential takings for all of the areas as described in the preceding part of this finding (and including an additional 4 units for the resource conservation areas). The 41 units is the number of COCs issued by the County in the Project area.

units, 160 guest units, a golf course, a driving range, an equestrian center, resort expansion, and other related development. It is clear that the amended LCP would allow for significantly more development than would the existing LCP.

On this point some might argue that despite the amended LCP allowing for significantly more development (and development that would significantly and adversely affect ESHA), a trade-off is appropriate in light of the significance of the resource conservation portion of the Project. It is true that the Project dedication and resource management elements are a significant commitment on the part of the Company to protecting these resource areas. However, these dedications must also be understood in the context of the existing LCP. The Project dedication component includes dedication of resource area lands that are either already designated for resource protection (Open Space Forest (RC)) and thus protected by this resource conservation designation, or lands that are already significantly "protected" by virtue of the resources present there in light of the existing LCP policies. In fact, roughly a third of the Project dedication area in the Forest is already protected by the Open Space Forest (RC) designation.[397] The remaining two-thirds has very little development potential (some 21 to 41 units or less, most likely). In addition, the 42-acre Sawmill Gulch area that was previously dedicated would be undedicated in the Project scenario. Although the resource management components of the Project would be expected to enhance resource value within these Project resource conservation and management areas, that benefit (and the dedications otherwise) would not offset the Project impacts otherwise.[398]

In sum, overall the existing LCP is more protective of coastal resources than is the amended LCP, the Project would result in far more resource impacts than would development under the existing LCP, and the Project resource dedications are not enough to overcome these resource impacts.

When the Commission denies an LUP amendment, it often approves a substitute version of it subject to modifications designed to bring it into Coastal Act conformance. In this case, the Coastal Act ESHA inconsistencies are so pervasive in the LUP amendment, and the gap so great between what has been proposed by the County and what might be consistent with the Coastal Act, that developing specific modifications does not make sense. Although there are some obvious ways to divide the amendment into approvable versus not approvable parts (for example, the resource conservation designations could probably be approved as submitted), and some obvious ways to address some of the other inconsistencies (such as designating all of the ESHA areas for resource conservation), there are other issues raised that are more difficult (including what use is appropriate for the non-ESHA areas). Thus, a revised amendment that would better address Coastal Act requirements in light of existing conditions in Del Monte Forest is more appropriately developed in tandem with the County (and the Pebble Beach Company). Moreover, Measure A has been submitted as an integrated whole, for the purpose of facilitating a specific set of development projects already approved by the County. This project-driven

[397] PDP EIR Table F2-1. An additional 320 acres outside of the coastal zone would also be dedicated.

[398] Bracketing for a moment that the Coastal Act does not allow for that type of trade-off in the first place. This was confirmed in the Bolsa Chica case, wherein the Court found: "Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA... ." *Bolsa Chica Land Trust v. Superior Court* 71 Cal.App.4th 493, 507.

element of the submittal, and the project itself, raises fundamental conflicts with the Coastal Act and the LCP, which also councils against investing Commission time on specific modifications to Measure A. Finally, given that Measure A comes to the Commission as one entire integrated package, that only can be revised through a popular vote, it also does not make sense to propose specific modifications.

The Commission supports the efforts to address coastal resource and planning issues in the Del Monte Forest in a comprehensive manner. The Del Monte Forest Land Use plan is over twenty years old and should be updated to reflect changed resource and other conditions. More certainty regarding appropriate development patterns in light of these change circumstances is needed. The Commission has developed considerable information through its review of Measure A, particularly concerning extant biological resources, that could support a revised comprehensive amendment submittal. The Commission also transmitted the staff's draft findings of the 2003 Monterey County LCP Periodic Review to the County that included recommendations for Del Monte Forest. Although not yet adopted by the Commission, this planning document could also support development of a revised amendment for the Del Monte Forest that would better meet Coastal Act objectives, perhaps in the context of the County's on-going General Plan Update process. Finally, although the Commission supports the efforts to enhance visitor-serving land uses in Del Monte Forest, such land uses must be consistent with the Coastal Act. Measure A as a whole does not achieve this goal.

D. IP Amendment – LUP Consistency Analysis

The standard of review for the proposed IP portion of the proposed amendment is that it must be consistent with and adequate to carry out the LUP. In particular, because the proposed LUP changes must be denied (as described above), the standard of review is the current, un-amended, LUP. With respect to ESHA, wetlands, and related biological resources, the current LUP protects these areas against inappropriate development in a similar manner as does the Coastal Act, and all of the ESHA identified above pursuant to the Coastal Act definition of ESHA is also ESHA under the LUP.

1. Because LUP Changes Denied, IP Changes Must Be Denied

On a broad level, the proposed IP changes simply mirror the proposed LUP changes (e.g., where an Open Space Recreational LUP designation is proposed, an "OR" Open Space Recreation IP designation is also proposed). In other words, the IP changes are designed to follow the LCP's land use organizational methodology whereby the Open Space Recreational LUP designation is implemented by the OR (Open Space Recreation) IP designation, the Residential designation by the LDR/MDR (Low/Medium Density Residential) designation, the Visitor Serving Commercial by the VSC (Visitor Serving Commercial) designation, and the Open Space Forest designation by the RC (Resource Conservation) designation. These one-to-one relationships reflect the manner in which the LUP is implemented in the Del Monte Forest LCP segment.

Because the proposed LUP amendment must be denied (and thus the LUP remains unchanged), and because the proposed IP changes directly correspond to and are designed to implement the proposed

LUP changes, the proposed IP changes must be denied as well.[399] The proposed IP changes cannot be found consistent with and adequate to carry out the LUP for similar reasons as are described in the LUP finding above (incorporated herein by reference). In sum, the proposed IP changes must be denied because they propose land use zoning changes that would facilitate development that is not consistent with the certified LUP's ESHA policies and thus, they cannot adequately implement the LUP with respect to the LUP requirements to protect ESHA.[400]

2. IP Designations Not Compatible With LUP Designations and ESHA Standards

Notwithstanding the broader level of inconsistency identified above, it is it is possible to parse out and evaluate the IP changes against the current LUP. However, to do so is somewhat artificial both because the IP changes are part of the current whole Measure A package,[401]and because of the previously described one-to-one organizational scheme associated with the LCP's land use designations that applies more generally in the Del Monte Forest.

IP's OR and LDR Designations Not Compatible With LUP's Open Space Forest Designation and ESHA Standards

Perhaps the most obvious example of this organizational disconnect and LUP/IP inconsistency involves ESHA land currently designated by the LUP as Open Space Forest at Area 1 and Area 3, and a small portion of Area 16 (see Figure 4 and previous findings regarding Areas 1, 3, and 16). With respect to Areas 1 and 3, although the proposed OR IP designation in these areas would allow for some development that could probably be found consistent within an ESHA and within the Open Space Forest land use designation (e.g., the development of an interpretive hiking trail), for the most part the uses allowed within the proposed OR designation are much broader than the RC (Resource Conservation) designation that generally implements the Open Space Forest LUP designation (and currently applies in these cases). Expanding the types of uses that might be allowed in this area via the proposed OR designation would add a range of uses that are not resource dependent and that would be expected to significantly disrupt habitat values in these areas (e.g., athletic fields, golf courses, etc.). To do so could also establish a false expectation that this additional range of uses could be found consistent with the LCP in an area designated Open Space Forest that is ESHA – they cannot. The Open Space Forest LUP designation is a resource conservation designation and the OR IP designation is specifically for outdoor recreation (see also previous description of the LCP); there is simply a mismatch. In sum, the OR designation is neither consistent with nor adequate to carry out the LUP's Open Space Forest designation.

Likewise, with respect to the small portion of Area 16 currently designated Open Space Forest, the proposed LDR IP designation is totally incompatible with the LUP's Open Space Forest designation. It would provide for incompatible and non-resource dependent uses, and potential impacts from them, that do not recognize the ESHA resources present there. In sum, the LDR designation is neither consistent

399 In addition, the proposed IP changes are part of the single Measure A amendment package that itself does not appear severable in this manner; see also preceding Measure A findings.

400 See also Public Services finding with respect to the proposed elimination of the IP's B-8 resource constraint combining district.

401 Ibid; Measure A severability.

with nor adequate to carry out the LUP's Open Space Forest designation.

Further, as seen above, the Project that would be fostered by the proposed IP changes (including the expectation of its LCP consistency by virtue of approval of IP changes required to allow it) would result in significant disruption and degradation to ESHA, including direct and indirect impacts that would be inconsistent with the previously cited LUP sections and policies (see also Area 1, 3, and 16 findings above). Likewise, the current IP designation for these areas (RC, resource conservation) would be far more protective than would be the proposed OR designation.

Thus, these proposed IP changes cannot be found consistent with nor adequate to carry out the certified LUP and thus the proposed IP amendment must be denied.[402]

OR Designation Not Compatible With LUP's Residential Designation and ESHA Standards

With respect to other LUP-IP mismatches, the primary issue concerns existing residential designations that would be proposed to be implemented by a variety of IP land use designations (i.e., OR, RC, VSC, etc.). This analysis is also somewhat artificial inasmuch as the current LUP designation does not adequately reflect the existing ESHA resource conditions in various areas. In that respect, it is not possible to find an IP zoning district that would be reflective of both the current resource value and the residential LUP designation.

In terms of the residentially designated areas proposed for an OR IP designation (i.e., Areas 1, 2, and 4), the OR district cannot be found consistent with nor adequate to carry out the LUP for residentially designated ESHA areas. Two things are noted with respect to this finding. First, it could be argued that the OR zoning designation could implement the residential LUP designation inasmuch as the OR designation allows employee housing as a conditional use in certain circumstances.[403] However, employee housing is the only type of residential use that is allowed by the IP in the OR category, and thus this designation is rather limiting for areas designated by the LUP for residential development. More importantly, applying the OR designation as a proxy for identifying employee housing as the specific use is inappropriate because employee housing is not resource dependent and would be expected to significantly disrupt and degrade ESHA inconsistent with the LUP.

Second, although not identified in the LUP's residential land use designation discussion (see LUP text in Exhibit 5), the LUP indicates that "golf course development may be permissible in areas shown for residential development."[404] As such, the LUP could allow golf course development in an area designated by the LUP as residential. By extension, it might be argued that the OR designation could implement the LUP in that respect for Areas 1, 2, and 4. Were the OR designation to be approved (and the existing residential LUP designation to remain), at a minimum, one might argue that it was the golf course use specifically that was approved given that it forms one of the only logical links between the mismatched residential LUP designation and OR IP designation. In other words, it could establish an expectation that a golf course could be found appropriate here even though it didn't follow the

402 Whether any other proposed IP changes can be found consistent with the Coastal Act from this point on is immaterial. The fact that the IP changes must be denied for this reason means that all of the IP changes as a whole must be denied. See also previous discussion regarding LCP procedures and standard of review.

403 IP Section 20.38.050(O).

404 LUP Policy 86.

appropriate LCP structure.[405] However, as described above and for similar reasons (see also Area 1, 2, and 4 findings above), a golf course is not a resource-dependent use, and would be expected to result in significant disruption and degradation to ESHA, including direct and indirect impacts that would be inconsistent with the previously cited LUP sections and policies; and the current residential IP designation for these areas would be more protective than would be the proposed OR designation.

Thus, these proposed IP changes cannot be found consistent with nor adequate to carry out the certified LUP and thus the proposed IP amendment must be denied.

VSC Designation Not Compatible With LUP's Residential Designation and ESHA Standards

In terms of the residentially designated areas proposed for a VSC IP designation (i.e., Area 5), the OR district cannot be found consistent with nor adequate to carry out the LUP for residentially designated ESHA areas. First, there is a fundamental mismatch between the purpose and intent of the VSC district and the residential LUP designation. These two are not compatible on a broader LCP planning level. At a finer level, although both single family residential and employee housing are allowed in the VSC district, these proposed uses are not resource-dependent and cannot be found consistent otherwise with the LUP's ESHA policies. More specifically, as described above and for similar reasons (see also Area 5 findings above), the Project that would be fostered by the proposed IP changes (including the expectation of its LCP consistency by virtue of approval of IP changes required to allow it) would result in significant disruption and degradation to ESHA, including direct and indirect impacts that would be inconsistent with the previously cited LUP sections and policies. Likewise, the current residential IP designation for this areas would be more protective than would be the proposed OR designation (see Area 5 finding).

Thus, these proposed IP changes cannot be found consistent with nor adequate to carry out the certified LUP and thus the proposed IP amendment must be denied.

LDR/MDR Designation Not Compatible With LUP's ESHA Standards

In terms of the residentially designated areas proposed for an LDR or MDR designation (i.e., Areas 8 through 18), the proposed LDR/MDR designations are adequate to implement the residential LUP designation, but cannot be found consistent with the LUP's ESHA policies. These areas are almost entirely ESHA, and the residential use is not resource-dependent and cannot be found consistent otherwise with the LUP's ESHA policies. Furthermore, as described above and for similar reasons (see also previous Area findings above), the Project that would be fostered by the proposed IP changes (including the expectation of its LCP consistency by virtue of approval of IP changes required to allow it) would result in significant disruption and degradation to ESHA, including direct and indirect impacts

[405] The LCP's land use designation system is clearly premised on a structure whereby golf course areas are designated by the LUP as recreational (hence the aforementioned specific identification of golf courses under the LUP's open space recreational land use designation and nowhere else in the LUP land use designations), and zoned OR; all existing DMF golf courses are so designated by the LCP currently. Likewise and conversely, residential properties are designated and zoned residential. A narrow interpretation that LUP Policy 86 alone means that an OR zoning designation is appropriate is not compelling because it ignores the rest of the LUP in this respect, and it ignores the fact that LUP Policy 86 is not definitive in this respect (i.e., golf courses may be permissible, but then again may not). In fact, under both the existing LCP and the proposed LCP amendment, golf courses and related facilities are not principally permitted anywhere within the DMF, but rather are only allowed in certain circumstances as conditional uses. In sum, it is clear within a broader LUP and LCP context that residentially designated land is meant to be implemented by residential zoning, and recreational by recreational, and so on.

that would be inconsistent with the previously cited LUP sections and policies.

Thus, these proposed IP changes cannot be found consistent with nor adequate to carry out the certified LUP and thus the proposed IP amendment must be denied.

Proposed RC Designation

In terms of the residentially designated areas proposed for a RC IP designation (i.e., Areas 19 through 24), the RC IP designation more accurately reflects the resources on the ground and might be approvable (see also Area 19 through 24 findings above). However, it too creates an internal inconsistency between the LUP designation and the IP zoning that could result in confusion and false expectations.[406] Regardless, the IP must be denied for other reasons, and this part of the proposed IP changes must be denied as well.[407]

3. Conclusion: IP Amendment Inconsistent with the LUP

The proposed IP amendment is inconsistent with and inadequate to carry out the certified LUP because it does not adequately implement the LUP's land use designations, and it cannot be found consistent with the LUP's ESHA, wetland, and related habitat resource protection policies (see previously cited policies). In addition, the proposed IP changes directly correspond to and are designed to implement the proposed LUP changes that themselves must be denied because they are inconsistent with the Coastal Act. As a result, the proposed IP amendment must be denied. The amendment is fundamentally flawed in that is does not adequately recognize and respond to the underlying ESHA resources present in the majority of the LCP amendment areas. Although there are some portions of the IP amendment that are probably approvable (for example, the proposed RC, resource conservation, land use designations), it also includes many aspects that cannot be found consistent with the LUP. In addition, the Project approved by the County contingent upon Commission approval of the proposed LCP amendment provides a directly-relevant example of the substantial direct and indirect ESHA and wetland impacts that could be expected from the proposed changes, well-illustrating why the IP amendment cannot be found consistent with nor adequate to carry out the certified LUP.

In terms of land use planning for the Del Monte Forest, and as previously described in terms of the LUP, it is clear that the IP too is in need of update, but that the update would be significantly different from that that has been proposed, and that such an effort is more appropriately undertaken separate from the current proposed LCP amendment. Although the Commission is supportive of IP changes relative to the Del Monte Forest, such changes must be adequately reflective of the resources present in the proposed LCP amendment area, and be consistent with and adequate to carry out the LUP, to be approvable.

E. Conclusion – Denial

The Commission finds the proposed LUP portion of the amendment is inconsistent with the Coastal Act,

[406] As previously described, these areas are better designated in the LUP as Open Space Forest.

[407] See also LCP amendment standard of review and procedural findings.

and finds the proposed IP portion of the amendment is inconsistent with and inadequate to carry out the certified LUP. Accordingly, the Commission denies the proposed LCP amendment. In taking this action the Commission notes that the preceding analysis indicates that changes relative to the areas directly affected by the proposed land use designation changes are warranted in light of existing resource conditions, and that these should be pursued in a new amendment by the County that better protects the substantial ESHA resources known to exist in the Forest at this time.

2. PUBLIC SERVICES

Measure A proposes to remove Del Monte Forest Land Use Plan "Resource Constraint Area" (RCA) overlays and corresponding zoning restrictions. These were originally certified by the Commission due to inadequate public water, wastewater, and transportation capacity to support intensified new development in the locations affected by Measure A. Removal of the RCA's must be consistent with the Coastal Act. Removal of the zoning restrictions must be in conformance with and adequate to carry out the Land Use Plan. As discussed below, Measure A must be denied as submitted because the Land Use Plan amendment is not fully consistent with Coastal Act sections 30250 and 30231. Because the LUP amendments must be denied, the proposed Implementation Plan amendments are not adequate to carry out or in conformance with the certified Land Use Plan and thus must be denied as well. These inconsistencies, though, are not insurmountable, and could be addressed through a revised future amendment of the DMF Land Use Plan.

A. Regulatory Setting

1. Coastal Act Requirements

The Coastal Act requires that new development be concentrated in areas with adequate public services and where it will not have significant adverse effects on coastal resources:

> ***Section 30250(a):*** *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources….*

> ***Section 30254:*** *. . . . Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

As detailed below, public service providers in Del Monte Forest have a direct impact on both Carmel Bay (wastewater is discharged there) and the Carmel River and Seaside groundwater basin (water is withdrawn from these resources). Therefore, Coastal Act requirements to protect these resources is also relevant:

> ***Section 30231:*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through,*

among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

2. LUP Requirements

The standard of review for the IP portion of the proposed amendments is conformance with and adequacy to carry out the LUP. The most directly relevant LUP policies are the RCA's themselves, and Policy 113, detailed below, which establishes the basic RCA mechanism of the LUP. Other relevant LUP policies are cited the discussion below as well.

B. Background

1. Water Supply

Del Monte Forest is within the California American Water Company (Cal-Am) service area. The distribution and use of Cal-Am water is regulated by the Monterey Peninsula Water Management District (MPWMD), which allocates water among various cities and the County, who in turn decide how to distribute their allocations. Cal-Am's water is drawn from the Carmel River and the Seaside Coastal groundwater basin (see Exhibit 12 showing the locations of these sources in relation to DMF).

At the time of LUP certification, the Commission found that existing Cal-Am water supplies could support only a limited amount of new development in Del Monte Forest. The LUP thus contains policies that require the reservation of available water for single-family homes on existing vacant legal lots of record and certain uses that were determined to be of higher priority.[408] Any remaining water could be used as a source for new subdivisions.[409] Given the lack of sewage capacity (see below), the LUP also required that all remaining areas that were not then developed and not designated for resource conservation be shown on the Land Use Map with a Resource Constraint Area (RCA) overlay that prohibited all development other than on existing legal lots of record. The RCA could be removed through an LCP amendment only after sufficient water and sewer capacity became available to serve new development, and after transportation capacity solutions had been adopted.[410] Notably, it was also thought at the time that Cal-Am would have an "assured" water supply of 22,000 acre-feet per year with the full development of the Cal-Am supply. Demand for Cal-Am water on the Monterey Peninsula in 1980 was estimated at 16,000 acre-feet.[411]

[408] These included the Spanish Bay hotel complex, condominiums, and golf facilities, and the NCGA golf course (Poppy Hills). See LUP Policies 109, 112, and 113

[409] LUP Policy 112.

[410] LUP Policy 113.

[411] Monterey County LUP p. 92.

Water supply conditions for the Del Monte Forest have changed significantly since LUP certification. Current Cal-Am water withdrawals have significant adverse impacts on the Carmel River.[412] The river, which lies within the approximate 250 square mile Carmel River watershed, flows 35 miles northwest from the Ventana wilderness in Big Sur to the Ocean (see Exhibit 12). Surface diversions and withdrawals from the river's alluvial aquifer have had significant impacts on riparian habitat and associated species, particularly in the lower reaches.[413] This includes adverse impacts to the two threatened species, the California red-legged frog (*Rana aurora draytonii*), listed in 1996, and the Steelhead (*Oncorhynchus mykiss*), listed in 1997. In particular, water diversions and withdrawals reduce the stream flows that support steelhead habitat and the production of juvenile fish, especially during dry seasons.

In 1995 the State Water Board issued Order 95-10, in response to complaints alleging that Cal-Am did not have a legal right to divert water from the river and that the diversions were having an adverse affect on the public trust resources of the river. The Board found that Cal-Am has a legal right only to withdraw about 3,376 af/yr, and that the Cal-Am diversions were having an adverse effect on the lower riparian corridor of the river, the wildlife that depend on this habitat, and the steelhead and other fish inhabiting the river. The Board thus ordered Cal-Am to extract no more than 11,285 acre-feet a year from the river, and to implement measures to minimize harm to public trust resources and to reduce its withdrawals. Although Cal-Am withdrawals in recent years have stabilized (see Exhibit 13), existing withdrawals continue to have adverse effects on the coastal resources of the river. Unfortunately, it has not been determined what the "safe yield" of the Carmel River might be so as to assure protection of the River's habitat resources.[414] Various agencies and stakeholders are actively pursuing alternative water supply projects, including several desalination project options for the Monterey peninsula, so that withdrawals from the Carmel River could be reduced or perhaps even be eliminated.

Cal-Am water withdrawals are also adversely impacting the Seaside Coastal groundwater basin. A recent technical report completed for the MPWMD shows consistently declining water levels and deficit water budgets over an 8-year period, indicating that the Basin is in a state of overdraft since groundwater extractions exceed the sustainable yield (see Exhibit 13). Because it is being overdrafted, the basin is at risk for causing seawater intrusion, as well as other negative outcomes such as basin subsidence, chronically declining groundwater levels, and water quality degradation.[415] According to the MPWMD-sponsored report, in the event of a prolonged drought, storage in the Seaside Basin could not be relied upon to sustain current levels of production for very many years in row.[416] Most recently, existing and potential withdrawals from the basin have been adjudicated in the Superior Court of Monterey County.[417] The Court concluded that the "natural safe yield" of the Seaside basin is between 2,581 to 2,913 acre-feet a year, but that total groundwater production withdrawals over the last five

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412 This is recognized by the PDP EIR that states that "existing development has already resulted in a level of withdrawal by Cal-Am that adversely affects biological resources in the Carmel River" (PDP EIR p. 2-111)

413 See, for example, Instream Flow needs for Steelhead in the Carmel River: Bypass flow recommendations for water supply projects using Carmel River Waters, National Marine Fisheries Service, June 3, 2002.

414 Neither Cal-Am's legal right (3,376 af/yr) nor the Order 95-10 maximum (11,285 af/yr) is meant to imply safe yield.

415 Yates, Eugene, Martin Feeney & Lewis Rosenberg, *Seaside Groundwater Basin: Update on Water Resources Conditions* April 2005 for MPWMD. Estimated sustainable yield is about 2,880 af/yr while average extractions are about 5,600 af/yr.

416 *Id*. p. 28.

417 *California American Water v. City of Seaside*, Monterey County Superior Court Case M66343.

years ranged between approximately 5,100 and 6,100 acre-feet a year, or roughly twice the safe yield of the basin. The Court concludes that while there is some uncertainty, all parties were in agreement that continued production from the basin beyond the safe yield will ultimately result in seawater intrusion and deleterious effects to the basin in the foreseeable future. The Court also appointed a special water master to implement a long-term management program to reduce production from the basin over time to the natural safe yield. Under the general schedule set out by the Court, withdrawals from the basin would have to be reduced 10% every three years after the first three years. All things being equal, at this rate of reduction, the basin would reach equilibrium in approximately 20 years.

Given the state of both the Carmel River and the Seaside basin, there is little water to allocate for new development. Consequently, Monterey County (as well as the cities) maintains a waiting list for new water hookups. There is an exception, though, for properties in Del Monte Forest either owned by the Pebble Beach Company, or owned by others who may have bought a water allocation from the Pebble Beach Company. This exception derives from a wastewater recycled water project constructed in 1994 with financing mostly from the Pebble Beach Company. Since 1994 the Carmel Area Wastewater District (CAWD) and the Pebble Beach Community Service District (PBCSD) have provided recycled water for use in irrigating golf courses and open spaces in the Del Monte Forest area. Under an agreement with the MPWMD, the Pebble Beach Company was granted a water entitlement of 365 acre-feet per year of additional potable water for use on its properties because of its financial participation in helping to fund the recycled water project.[418] The total projected offset of potable water use with recycled water was intended to be at least 800 acre-feet per year in a dry year, with at least 400 af/yr of saved potable water benefiting the public.[419] In practice, this production number has rarely been reached due to lack of adequate storage and unanticipated water quality issues with the original project design. According to the CAWD, on average, 670 af/yr of recycled water has been applied to golf courses that previously would have been irrigated with potable water from Cal-Am.[420]

To address the shortcomings in terms of the expected capacity of the original recycled water project, recommended improvements to it were identified, and these are collectively known as the ”Phase II” improvements. The purpose of Phase II is to augment the recycled water project so as to achieve its original objectives. Phase II improvements include upgrading the Forest Lake Reservoir to enhance storage capacity for recycled water and to provide treatment of it prior to it being placed back into the distribution system, as well as the construction of a de-salting component at the Carmel Wastewater Treatment Plant so that more recycled water could be used for irrigation.[421] The reservoir component has been completed and is now providing recycled water to various golf courses in the Forest. The de-salting component is expected to be operational in 2007. When fully implemented, the design

[418] See MPWMD Ordinance 39, February 13, 1989; and Wastewater Reclamation Project Fiscal Sponsorship Agreement between the MPWMD and Pebble Beach Company, October 3, 1989. Two other parties participated in the agreement as well: J. Lohr Properties Inc. received 10 af/yr and the Hester Hyde Griffin Trust received 5 af/yr, for a total of 380 afy of entitlements granted.

[419] That is, 400 af/yr of entitlements were offered in exchange for funding participation in the recycled water project. If the 400 af/yr were used, and the 800 af/yr in potable savings were realized, a net benefit to the public of 400 af/yr would apply.

[420] This represents approximately 70% of all irrigation use, leaving an average of 280 af/yr of potable water still supplied by Cal-Am for use on public and private golf courses and other open spaces, such as recreational playing fields. See, Final Mitigated Negative Declaration, Salinity Management Project, CAWD, January, 2006.

[421] Due to high salt content in the reclaimed water currently produced, the water quality is not sufficient to irrigate golf courses 100% of time. Thus, the courses need to be periodically “flushed” with potable water.

production capacity of the upgraded project is expected to be approximately 1.8 mgd or over 2000 af/yr of recycled water to DMF.

As of 2004, the Pebble Beach Company had used only approximately 10 acre-feet of its original entitlement, leaving a balance of 355 af/yr. However, under a 2004 amended agreement with the MPWMD, the Pebble Company now is allowed to sell up to 175 acre feet of its entitlement to non-residential properties in the Forest that are not owned by the Pebble Beach Company.[422] This provides a mechanism for the Pebble Beach Company to recoup the costs of the Phase II improvements to the recycled water project that it has agreed to finance.[423] According to the Pebble Beach Company, the Company thus far has transferred 110 acre-feet of the entitlement to other Del Monte Forest property holders, leaving the Company with approximately 245 acre-feet in its entitlement.[424]

2. Wastewater Treatment and Disposal

Wastewater treatment and disposal for the Del Monte Forest is provided by the PBCSD through a contract with the CAWD. The CAWD wastewater treatment plant is located south of Carmel on the Carmel River Lagoon. The plant has a total treatment capacity of approximately 3 million gallons per day (mgd) with existing flows ranging between approximately 1.5 and 1.9 mgd. Of the total capacity, 1.0 mgd is allocated to the PBCSD for service in the Del Monte Forest. Currently, PBCSD is using about 500,000-600,000 gallons per day or approximately one half of its allotted capacity.[425]

The plant treats wastewater to secondary and tertiary levels. As discussed above, some of the treated water is reclaimed and piped to Del Monte Forest for irrigation use. The remainder is discharged into Carmel Bay, pursuant to a permit from the State Water Resources Control Board. Carmel Bay is a State Ecological Reserve and a State Water Quality Protection Area (formerly termed an Area of Biological Significance, or ASBS). Although wastewater discharges are prohibited into ASBSs, State law includes a specific exemption for Carmel Bay to continue receiving treated effluent. There is little published information about the Bay's water quality and whether the objectives of its special designations are being met.

At the time of LUP certification, the Commission found that existing wastewater capacity was severely limited, and could support only a certain amount of new development in Del Monte Forest. The LUP thus required that all remaining developable areas be shown on the Land Use Map with a Resource Constraint Area (RCA) overlay that prohibited all development other than on existing legal lots of record. The RCA could be removed only after sufficient water and sewer capacity became available to serve new development, and after transportation capacity solutions had been adopted.[426]

3. Transportation Facilities

Del Monte Forest is served by a private internal road system, including the world-famous 17-Mile

[422] Monterey Peninsula Water Management District, Ordinance 109, 2004.

[423] And that it is required to finance pursuant to PDP EIR mitigation measure PSU-D1.

[424] E-mail communication, M.Stilwell, Pebble Beach Company, to Charles Lester, Coastal Commission staff, May 25, 2006.

[425] Monterey County Planning and Building Department, 2005.

[426] LUP Policy 113.

Drive. Access to the Forest area is provided by five gates: the Pacific Grove and Country Club gates from Pacific Grove, S.F.B. Morse Gate from Highway 68, Highway One Gate from the Highway One/68 interchange, and the Carmel Gate from the City of Carmel. Major roads leading to these gates include Highway One, Highway 68, Sunset Drive and 17-Mile Drive in Pacific Grove, and Ocean Avenue to North San Antonio Avenue/Carmel Way in Carmel-by-the Sea.

Roads within the Forest and the gates all operate at acceptable Levels of Service ("C" or better).[427] Some intersections in the vicinity of Del Monte Forest operate at lower levels of service in peak times, most notably Highways 68/1 southbound off ramp, Highway 68/Skyline Forest Drive, Highway 68/Beverly Manor, Highway 68/Aguajito Road, and Highway One Southbound on-ramp/17-Mile Drive which operate at Level of Service F (over-capacity) at some times. The Land Use Plan's target service level is at least "D" (Policy 106).

At the time of LUP certification, the Commission found that existing transportation facilities could support only a certain amount of new development in Del Monte Forest. The LUP required that all remaining developable areas be shown on the Land Use Map with a Resource Constraint Area (RCA) overlay that prohibited all development other than on existing legal lots of record. The RCA could be removed only after sufficient water and sewer capacity became available to serve new development, and after transportation capacity solutions had been adopted.[428]

C. LUP Amendment – Coastal Act Consistency Analysis

1. LUP Amendment Description

The proposed LUP amendment would remove the LUP's "Resource Constraint Area" (RCA) overlay from LCP reference Areas 1, 2, 4, 5, and 8 – 24.[429] Measure A also proposes adding text to the LUP explaining why water supply, wastewater, and transportation are no longer constraints to additional development allowed by the land use plan, including the development that is contemplated by the proposed amendment.

As discussed above, the existing RCA overlay (and its corresponding B-8 zoning overlay in the Implementation Plan) does not allow intensified development such as residential subdivision or other development that would require additional services, other than development of single home on existing legal lots of record. Removal of the RCA's would allow intensified development to proceed, assuming other LCP policies could be met. The question for the Commission under Coastal Act 30250 is whether there is sufficient factual and legal basis to support a finding that there is adequate water supply,

[427] Levels of Service range from "A" (the best) to "F" (the worst)

[428] LUP Policy 113.

[429] Although the Project approved by Monterey County includes 91 new visitor units and related development at the Spanish Bay Lodge, the proposed amendment does not propose removing the RCA for this area. Unlike other RCA areas, though, Spanish Bay is not designated B-8 in the existing (or proposed amended) IP.

wastewater capacity, and transportation infrastructure to support new development in Del Monte Forest at the proposed sites and thus, that the RCA's could be removed.

2. Water Supply

With regard to water supply, the proposed Measure A LUP text that would be used to justify the removal of the Resource Constraint Area overlay states,

> *Water Supply. At the time of adoption of the DMF LUP, Monterey County's allocation of water from the California-American Water Company system, allocated by the Monterey Peninsula Water Management District, was insufficient to permit water service to all development planned in Del Monte Forest based on the priorities established by Monterey County. Subsequently, the owner of the Properties received a dedicated water entitlement of 365 acre feet annually, independent of Monterey County's allocation under the Monterey Peninsula Water Management District (MPWMD) jurisdictional water allocation program. As a result of the owner's financial guarantee of the cost of the CAWD/PBCSD Wastewater Reclamation Project, there is sufficient water for the land uses allowed by this Plan on the Properties so this constraint has been removed.*

Measure A thus relies on the Pebble Beach Company water entitlement as a basis for concluding that there is sufficient water to serve the development that would be facilitated by removing the Resource Constraint Area overlays.

Monterey County has provided a similar rationale for removing the overlays in its Measure A analysis (see Exhibit xx):

> *Given the redesignation of over 400 acres from residential to open space fore* [sic] *and recreational open space uses, the overall effect of Measure "A" is a reduction in potential potable water demand for new development. Estimated water demand would be within the water entitlement granted to the Pebble Beach Company by the Monterey Peninsula Water Management District. Thus, the analysis provides evidence that the resource constraint overlay can be removed regarding water capacity.*[430]

The County thus concludes that Measure A is consistent with the Coastal Act because the Pebble Beach Company's water entitlement exceeds the estimated water demand of the anticipated land uses under Measure A.

It is true that at the time Measure A was adopted by the voters in 2000 that the remaining Pebble Beach Company legal water entitlement was greater than current estimates of potable demand of the various Measure A land uses. As summarized in the PDP EIR, the total potable Cal-Am water demand of the Project, which implements Measure A, ranges from 164 to 346 acre-feet/year, assuming continued use of the recycled water historically available:

Table P1-4. Summary of Project Water Demand (AFY)[431]

[430] Monterey County, DMF LCP Amendment Measure "A" Analysis, IV-18.
[431] PDP EIR p. P1-11.

Scenario	*Total Water Demand*	*Recycled Water*	*Potable Water*
Wet Year	*+232*	*+68*	***+164***
Average Year	*+273*	*+82*	***+191***
Dry Year	*+302*	*+15*	***+287***
Very Dry Year	*+379*	*+34*	***+346***

It is also true that both the Company's entitlement and existing water supply conditions have changed since Measure A was approved by the voters and since it was submitted to the Commission in 2005. As mentioned, the Pebble Beach Company has now transferred 110 acre-feet of its entitlement to other residential properties in the Forest to help fund Phase II of the Recycled Water Project (leaving the Company with 265 af/yr). In addition, the Forest Lake reservoir component of the Phase II improvements is complete, and the enhanced treatment of wastewater at the Carmel Wastewater Treatment Plant (desalting) is expected to be operational in 2007. When 100% complete, the Phase II project is expected to provide approximately 1.8 mgd or over 2,000 afy of reclaimed non-potable water that can replace irrigation demand for potable water.

Apart from these changed conditions, the relevant question for the Commission to address under the Coastal Act is whether there is adequate water supply to support the anticipated land uses of the proposed amendment and thus, sufficient justification to remove the RCAs of the certified LCP. First, as discussed above, there is little dispute that both of the Cal-Am water sources – the Carmel River and the Seaside Coastal groundwater basin – are being adversely affected by current water withdrawals. From a coastal resource protection standpoint both water sources are over-drafted. The effects of this over-drafting include significant impacts to riparian habitat in the river, especially for the sensitive Steelhead species, and potential seawater intrusion and continued degradation of the Seaside basin. Any new water withdrawals from these over-drafted sources thus will adversely affect coastal resources. More to the point, given what we now know about conditions in the Carmel River and the Seaside groundwater basin, the water supply situation for the Del Monte Forest is significantly worse than in 1984 when the LUP was certified with the RCAs. The evidence shows that not only should there not be any new withdrawals from these resources, existing withdrawals should be significantly reduced. Effectively, there is no water available for new development that would be consistent with Coastal Act sections 30250 and 30231.[432]

In situations where water supplies are limited, or so over-taxed that they are essentially not available for new development, the Commission has adopted LCP policies or recommendations that set clear limits on new development, or that otherwise require certain performance standards to be met before additional water withdrawals can be made from the source. In the case of Del Monte Forest, such restrictions originally took the form of the RCAs on remaining non-resource protection, undeveloped and unsubdivided lands, although at that time the RCAs were driven more perhaps by the lack of wastewater capacity than by the limited water supplies. In the case of North Monterey County, though, where there was acknowledged overdraft situation, the Commission certified LUP policies that, among other things, recognized the existing groundwater overdraft situation, put a cap on future development,

[432] Notably, the PDP EIR concludes that the projects anticipated under Measure A would result in significant impacts to the Carmel River and Seaside groundwater basin water supplies. PDP EIR, P1-14.

and required that a long-term sustainable water supply be identified before allowing any development beyond the cap. The overdrafted supply in North Monterey County has also become a much greater concern in recent years as new information has only shown the problem to be getting worse.[433] In Big Sur, where coastal streams are the main supply of water to development, the LUP requires that the County insure that adequate water is retained in the stream system to provide for the maintenance of the natural community of fish, wildlife, and vegetation during the driest expected year.[434]

The Commission has taken a similar approach to water policy in other counties. In Sonoma County, for example, the LCP includes policies that prohibit new connections to groundwater supply systems that are not meeting certain baseline conditions.[435] In San Luis Obispo County, the LCP's *North Coast Area Plan* contains specific requirements to assure that instream flows for anadromous fisheries in the Arroyo de la Cruz and San Carpoforo watersheds are protected before new visitor-serving development on the Hearst Ranch.[436] Most recently, the Commission has closely examined the use of Santa Rosa and San Simeon Creeks, which provide both Cambria's water supply, but that are also important coastal riparian habitats. In its review of the North Coast Area Plan Update and the Periodic Review, the Commission adopted policy recommendations that would require the completion of instream flow studies to establish basic riparian habitat requirements, prior to allowing any more significant development in Cambria.[437] Since these LCP actions, the Commission also has worked with the Cambria Community Services District and the County through the review of individual coastal permits to both effectively limit any new development beyond the finite number of projects that were "in the pipeline" and to establish a "no-net increase" in water use policy for these pipeline projects. This policy has resulted in the required retro-fitting of existing development to offset the projected water use of the new "pipeline" projects.

In the case of the Del Monte Forest LCP there are no specific policy requirements to assure that water withdrawals will not have adverse impacts on the Carmel River or the Seaside Basin, such as the policies certified for Big Sur, or the North Coast of San Luis Obispo County. This is partly the case because at the time the LCP was certified, the impacts of the Cal-Am withdrawals were not understood as they are now. But in addition, the Commission does not have regulatory jurisdiction either over the entire geographic scope of the water supplies, or over the entire area being served by these supplies, as it does in these other cases. So, in contrast to a location such as Cambria, here the Commission does not have the ability to comprehensively manage the water supply problem and the impacts on coastal resources. For example, when the Commission was addressing a new groundwater well proposed for outdoor irrigation at the Carmel River Inn, while the project was designed to replace potable Cal-Am water with non-potable well water, the Commission had no ability to guarantee that this new well would actually result in a decreased withdrawal from the Carmel River.[438] Rather, the Commission relies on the MPWMD, which has the necessary regulatory jurisdiction for directly managing the use and distribution of Cal-Am water, to assure that water savings that may result from new projects will be

[433] See A-3-MCO-04-054, Sunridge Views Subdivision, adopted April, 2006, for recent Commission findings and action concerning the groundwater overdraft problem in North Monterey County.

[434] Big Sur LUP Key Policy 3.4.1. See also Policy 3.4.2.B.7

[435] Sonoma County LUP Policy VII-31 6.

[436] North Coast Area Plan, Hearst Ranch Area Standard 10, 8-11.

[437] For example, San Luis Obispo County LCP Periodic Review, Recommendation 2.13.

[438] A-3-MCO-01-100, Adopted July 12, 2002.

allocated to benefit the River (such as water savings accruing from the recycled water project). According to the MPWMD, any water freed up from the use of recycled water is, in fact, reserved for environmental purposes. And, since 1995, other agencies have taken lead roles in assuring the protection of the public trust resources of the Carmel River, including the State Water Resources Control Board, the Department of Fish and Game, the National Marine Fisheries Service, and the USFWS. The Commission still plays an important role, and it has been actively involved in various aspects of managing the coastal resources of the Carmel River, particularly at the Lagoon where it retains coastal development permitting authority. But it does not have the regulatory basis for including comprehensive water supply policies in the DMF LUP that might prohibit withdrawals from the Carmel River or Seaside basin until the resource problems were addressed, such has been certified in certain other jurisdictions.

Having acknowledged this, the Commission does have the ability and responsibility to assure that new water withdrawals in the coastal zone do not result in a worsening of the existing over-drafted conditions of the Carmel River and the Seaside groundwater basin. In fact, the DMF LUP currently has three policies that move in this direction. LUP Policy 110 requires any reclaimed water that becomes available to be used on golf courses in order to conserve potable water for domestic use. Policy 111 requires the County to consult with the MPWMD to determine that water connections are available for new development. Policy 114 requires new development to use water conservation to the greatest possible extent, including retaining native plants and using drought-tolerant landscaping. However, there is no policy requirement in the LUP nor in the amendment to assure that new development does not result in an increased withdrawal on the Carmel River or the Seaside basin or at the very least, that there will be no net increase in Cal-Am supply to the Del Monte Forest due to new development. In light of this fact, and given that there currently is no water available for new development that would not result in adverse impacts to coastal resources, the proposed removal of the RCA's in the DMF LUP is not consistent with Coastal Act sections 30250 and 30231. Removal of the constraint overlays could result in significant new development with substantial demands on the Cal-Am system, including on the already over-drafted Carmel River and the Seaside groundwater basin.

At the same time the Commission acknowledges the efforts made by the Pebble Beach Company to address not only its existing Cal-Am water use but also the estimated demand from the various developments that would occur under the proposed amendment. Although Phase I of the reclaimed water project has not performed as originally planned, it has delivered an average of 670 acre-feet a year since 1994 while at the same time Pebble Beach has used very little of its entitlement. Thus, the public water system has been receiving a beneficial offset for a decade or more.[439] More recently, the Company has been leveraging its water entitlement by selling portions of it to other uses in the Forest in order to finance Phase II of the reclamation project. As discussed, by 2007 it is projected that there will be approximately xx af of reclaimed water available for irrigating golf courses and other open spaces. According to the PDP EIR, implementation of the Phase II project, which is a required mitigation measure of the County's approval, should completely offset the projected demand of the PDP except for

[439] The Commission presumes that this reduction in Cal-Am potable water use has been allocated to the benefit of the River, although given the complexity of the water management system it is difficult to establish a direct correlation between reduced demand from Cal-Am and reduced withdrawals from the river.

in very dry years and in the summer season of wet years.[440] That is, assuming that reduced Cal-Am water use due to Phase II coming on-line results in less water being withdrawn from the Carmel River, the Project facilitated by Measure A should not result in increased impacts on the river except in a few scenarios.

Still, were significant new development such as that contemplated by the proposed amendment to go forward, the LUP does not assure that the water demand from such development would be completely offset. Such an assurance is necessary under Coastal Act 30250 and 30231. First, the reclaimed water project is not yet complete. Nor are the offsets from this project guaranteed. As Phase I has illustrated, projected supplies are not necessarily achieved due to unanticipated factors. The LUP's RCA's should not be removed without a corresponding policy that requires a finding to be made at the time of new development approval that there is, in fact, adequate water available at the time of development approval that would not result in new withdrawals from the over-drafted sources. Second, as illustrated by the County's efforts to fully mitigate the Project, there is some uncertainty as to how, exactly, new potable water demand will be offset in conditions where the Phase II project is not sufficient. Thus, the final adopted mitigations of the PDP EIR provide for three different options that might offset increased water withdrawals, including providing tertiary water from the CAWD wastewater treatment plant into Carmel Lagoon, reducing consumption of potable water in DMF through such measures as retrofitting existing water devices or temporary suspension of potable water using activities such as swimming pools, and by extending additional reclaimed water pipelines to other DMF locations to replace current potable irrigation water.[441] Each one of these options is yet to be fully developed, feasibility analyzed, impacts understood, etc. Again, in order to remove the RCA's, the LUP should contain policies that require new development to show how new potable water demand will be offset prior to permit issuance. Third, existing LUP policies do not fully mandate the use of reclaimed water on the recreational projects facilitated by Measure A.[442] Again, in order to remove the RCA's, the LUP itself needs stronger assurances that reclaimed wastewater will be available and will always be used for irrigation. Fourth, as discussed there is gap between the current limit on Carmel River water withdrawals (11,285 af/yr) and the amount of water that Cal Am has legal rights to withdraw (only 3,376 af/yr). In addition, withdrawing 11,285 af/yr or even less still results in adverse impacts to coastal resources, and "safe yield" for the River has not been determined. Various programmatic responses are being considered to address this gap, such as a regional desalination plant to substitute ocean water for River water as Cal Am's supply source. Whether any such responses would entail involving existing water customers is unknown at this time. But the possibility should not be precluded that additional water savings/water reuse measures would be required of new users of substantial amounts of water. This type of policy imperative for such measures is not currently in the land use plan nor in the proposed amendment. Finally, there is some uncertainty that pervades the water supply and impact issue, including concerning the analysis of projected demand in various scenarios and the resource conditions of the Carmel River and the Seaside basin. To the extent that this uncertainty makes actual water

[440] While it seems counterintuitive, the water supply impacts of the PDP include the increased potable water demand of the Phase II residential 'investors" which cannot be completely offset by irrigation use of recycled water in wet year, when less irrigation water is needed. See PDP EIR, P1-15-18.

[441] Monterey County, PDP, Conditions of Approval and Mitigation Monitoring and Reporting Program, March 2005, p, III-95; and PDP FEIR, F-26 et seq.

[442] Although the PDP EIR requires that the Project golf course, driving range, and equestrian center use recycled water for irrigation (PDP EIR p. P1-18).

demand impacts of potential new development unknown, the LUP should contain policies to guarantee no net increase in water withdrawals in order to justify the removal of the RCA's.

3. Wastewater Treatment and Disposal

With regard to wastewater treatment and disposal, the textual justification for the removal of the Resource Constraint Area overlay states,

> *Sewer. At the time of adoption of the DMF LUP, the Carmel Sanitary District (now Carmel Area Wastewater District or CAWD) sewage treatment plant had an authorized capacity of 2.4 million gallons per day (MGD). One third of the CAWD Treatment Plant capacity (800,000 MGD at the time) is owned by the Pebble Beach Community Services District (PBCSD), which is responsible for sewage collection in Del Monte Forest. Based on the then-existing flows, the remaining PBCSD capacity at the CAWD Plant was insufficient to serve all of the development planned for Del Monte Forest.*
>
> *Subsequent improvements to the CAWD treatment plant have raised its authorized capacity to 3.0 MGD, of which the PBCSD share is 1.0 MGD. With this increased capacity, there is sufficient capacity to handle the additional sewage generated by the land uses contemplated in this Plan on the Properties so this constraint has been removed.*

This proposed added text is true and thus its inclusion (minus the last phrase) in the land use plan is acceptable. County staff has indicated,

> *Using per capita wastewater generation figures provided by CAWD and future potential land use intensity under Measure A, potential development under the post-Measure A is expected to result in wastewater generation of approximately 0.056 mgd which is within the remaining PBCSD allotted capacity of 0.4 - 0.5 mgd. Cumulative development in Del Monte Forest on properties not affected by Measure A (approximately 191 residential units) is estimated to generate an additional 0.060 mgd for a total of 0.116 mgd which is within remaining wastewater treatment capacities and allotments. The fact that the plant has adequate capacity to serve Del Monte Forest was also confirmed by CAWD in a letter to the Monterey County Planning and Building Inspection Department.*

The County thus concludes in its Measure A analysis:

> *Given the redesignation of over 400 acres from residential to open space forest and recreational open space uses, the overall effect of Measure"A" is a reduction in potential potable water demand for new development. The overall effect of Measure "A" is a reduction in potential wastewater generated by new development. Estimated wastewater generation demand would be within the wastewater treatment plant capacity that is allocated to Pebble Beach Community Services District. Thus, the analysis provides evidence that the resource constraint overlay can be removed regarding sewer capacity.*

Reliance on these facts to remove the Resource Constraint Area overlay is also acceptable, but removal of the Resource Constraint Area overlay absent other policy language to guide wastewater disposal is not fully consistent with the Coastal Act. As noted, the wastewater treatment plant discharges into

sensitive Carmel Bay. Although the discharge is allowed by the State's Waste Discharge permit (and by Coastal Commission permits), it is not fully consistent with the objectives of these designations and hence may not be fully consistent with the portion of Coastal Act Section 30230 that states, "Special protection shall be given to areas and species of special biological or economic significance." The discharge could increase by about 10% (i.e., an estimated 56,000 gpd) from new development facilitated by the proposed amendment. As noted, little comprehensive data is available on the specific water quality impacts that the wastewater and other discharges may have on the protected Bay waters. Thus, at this point in time, the next logical step is to develop a better understanding of the Bay and its watersheds, and from that better knowledge derive any new or revised protective policies and determine responsibilities. Although all Del Monte Forest sewage is sent to the Carmel Area plant, the policy imperative for such measures is not currently in the land use plan nor in the proposed amendment.

Paralleling this thread, reclaiming more wastewater is a necessary component of allowing any new major water-using development in Del Monte Forest, as noted above in the water supply analysis. Reclaiming wastewater for irrigation use has the potential benefit of reducing wastewater discharges into Carmel Bay, provided the reclaimed water treatment process does not result in unacceptable Bay discharges (an issue currently being studied by the Wastewater District) and the reclaimed water application onto golf courses does not result in unacceptable non-point source runoff into the Bay. Current Land Use Plan policy is supportive of reclamation (policy 115) and requires use of available reclaimed water to irrigate golf courses (policy 110), but lacks more updated, explicit policy mandates for increasing reclamation.

4. Transportation Facilities

With regard to transportation facilities, the textual justification for the removal of the Resource Constraint Area overlay states,

> *Traffic and Circulation. Policies 98 and 99 of the DMF LUP govern the traffic and circulation improvement requirements of new development. Policy 99 requires an independent engineering study to establish an arterial system, changes to Highway 68 and access gates in order to provide for the increased traffic and traffic controls. These requirements were satisfied by the County's acceptance of the Transportation Engineering Study for the Del Monte Forest, prepared by Burton N. Crowell and the Goodrich Traffic Group (commonly referred to as the "Crowell Report"), which established all of the indicated requirements.*
>
> *Under Policy 99, new development must either bear the incremental costs of necessary improvements to Highway 68 and Highway 1 required as a result of traffic generated by the development, or pay into a fund that will be administered by the County for the incremental costs of the necessary improvements.*
>
> *The highway capacity and circulation improvements identified in the Crowell Report under Policy 99, and the funding mechanisms established by Policy 98, have been agreed upon and adopted as required by Policy 113 in the Del Monte Forest Transportation Policy Agreement between Monterey County and the owner of the Properties. The traffic elements of Policy 113 have therefore been satisfied with respect to the Properties so this constraint has been removed.*

In its Measure A analysis the County concludes:

> *The overall effect of Measure "A" is to reduce development potential and traffic generation. As described above, the requirements for highway capacity and circulation improvements have been agreed to and adopted. Thus the analysis provides evidence that the resource constraint overlay can be removed regarding traffic.*

Reliance on these facts to remove the Resource Constraint Area overlay is also acceptable, but removal of the Resource Constraint Area overlay absent revised policy language to guide transportation mitigation is not fully consistent with the Coastal Act. There is some, but not completely adequate, policy base in the land use plan to ensure that studies are updated and appropriate mitigation measures are required for new residential and hotel development's traffic impacts, as explained by County staff:

> *The traffic engineering report ("Crowell Report") was completed in 1984 and sets forth a list of road improvements within Del Monte Forest, a new gate into the forest (which has been completed), and a series of localized improvements along Highway 68, all of which would be funded by the Pebble Beach Company. The Crowell Report also addressed the future longer-range widening of Highway 68 between Highway 1 and Community Hospital of Monterey Peninsula (CHOMP), but indicated that this improvement and financing should be shared with City of Monterey and Caltrans.*
>
> *The October 1987 "Del Monte Forest Transportation Policy Agreement" between Monterey County and the Pebble Beach Company specifies that the Pebble Beach Company will finance the specified improvements in the Crowell Report and contribute to the longer-range improvement of Highway 68. Pursuant to this Transportation Agreement, each development project in the Del Monte Forest would be conditioned to contribute a pro-rata share of the cost of necessary traffic and circulation improvements in accordance with this agreement. As a matter of note, the Pebble Beach Company has already contributed toward the Highway 68 improvement costs with the development of The Spanish Bay Resort.*
>
> *Furthermore, Caltrans has adopted a planning study for the longer range Highway 68 improvements which are undergoing environmental review by the City of Monterey. Subsequent development projects considered under the post-Measure A LCP would be required to contribute fair share funding to the cost of these improvements. …*
>
> *Furthermore, pursuant to Policy 106, which is not changed by Measure A, all future development proposals would be subject to project-specific traffic analyses in which additional improvements may be required and a project contribution to the improvements warranted for cumulative conditions would be required. Currently, the County has set up accounts and collected impact fees for the addition of a lane on Highway 1 south of Carmel (completed) and for improvements along the Monterey-Salinas segment of Highway 68. The Transportation Agency for Monterey County (TAMC) has been working with local jurisdictions to develop and implement a regional traffic impact fee for specified regional roadway improvements, including the Holman Highway segment of Highway 68[443] (see discussion below).*

[443] DKS Associates, May 14, 2004. "Final Report Nexus Study for a Regional Development Impact Fee." Prepared for Transportation Agency for Monterey County.

With regards to existing traffic conditions, recent traffic analyses indicate that all of the existing five gates into Del Monte Forest and internal Del Monte Forest roads and intersections operate at acceptable traffic levels of service.[444] *Some road segments and intersections along Highway 68 between Highway 1 and CHOMP do currently operate at unacceptable levels. Caltrans completed and approved a "project study report" (PSR) for this segment of Highway 68 in 2000. This study identified a number of improvements including several Highway 1 on- and off-ramp improvements, providing a second eastbound lane on Highway 68 from Beverly Manor to the intersection with Highway 1, and redesign of the Highway 1/Del Monte Forest gate access. Currently the City of Monterey is preparing an environmental document that addresses these improvements and others, including widening this segment of Highway 68 to either a 3 or 4-lane road.*

Thus, the City of Monterey, in cooperation with Caltrans, and the County public works Department is currently studying options for the Highway 68 improvement project, and environmental review is underway. The improvement is projected to be complete in the year 2012.[445] *The currently proposed Pebble Beach Company development project, which includes Measure A sites, includes development of the Phase 1B improvements of the overall improvement program for the affected segment of Highway 68. The applicant's fair share cost of these improvements for this element of the planned improvements and the fair-share cost requirements adopted for any previous project for Highway 68 improvements consistent with the 1987 Del Monte Forest Transportation Policy Agreement between the applicant and Monterey County (1987) will be taken into account.*

However, the cited policy 99 does not apply to golf course, equestrian center, or other open space recreational uses that might generate substantial traffic. Also, the cited policy 106 refers to funding for new traffic facilities, as opposed to also specifying funding for improvements to existing facilities. In summary these are incomplete transportation mitigation requirements in the LUP commensurate with the level of new development facilitated by the proposed amendment.

Perhaps more importantly, and akin to the water supply issue, the Coastal Act question is whether there currently exists adequate transportation capacity to accommodate the range of development that might be fostered by the proposed amendment. As before, the Project is a relevant example of what would be expected were the amendment to be approved. According to the PDP EIR, and even with the Highway 68/Highway 1/17-Mile Drive (Phase 1b) improvement component of the Project, there are over a dozen significant impacts requiring mitigation and fair share fees. The fact that the Project requires additional transportation capacity mitigation measures is evidence that there is not currently adequate capacity to serve the amount of development contemplated by the proposed amendment.

5. Conclusion

[444] Monterey County Planning and Building Inspection Department, February 2004. Draft Environmental Impact Report Pebble Beach Company's Del Monte Forest Preservation and Development Plan.

[445] Transportation Agency for Monterey County (TAMC), 2004. "Route 68 Holman Highway (Access to CHOMP);" http://www.tamcmonterey.org/prog_hwyproj/hwy68-holman.html.

In conclusion, the proposed land use plan amendment is not fully consistent with the Coastal Act. While the proposed amendment includes a factual update to the current plan, it fails to completely ensure that new development and its attendant service requirements will be consistent with all Coastal Act policies. The current LCP's RCA overlay ensures that no major new development will occur absent adequate services. If that construct is to be eliminated, as proposed, then it must be replaced with guarantees of adequate services consistent with resource protection. With regard to water, the amendment fails to ensure that the Carmel River habitat will be protected. With regard to wastewater, it fails to completely ensure that the Carmel Bay ASBS will be protected. With regard to transportation services, it fails to completely ensure that traffic-generating recreational facilities will be required to adequately mitigate traffic impacts. In sum, it is not clear that there currently exists adequate water, sewer, and transportation capacity to serve the amount of development that would be allowed by the amended LUP, and the amendment does not include adequate measures to ensure that adequate capacity is in place prior to any development project approval (or at least construction). The proposed amendment cannot be found consistent with Coastal Act Sections 30250, 30254, and 30231.

In conclusion, the proposed LUP changes as they relate to the public services cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

If certain new water-utilizing/wastewater-generating/traffic-generating developments could be built in the Forest consistent with other ESHA protection, then policy revisions and additions to the current land use plan could also allow some such developments to go forward in a manner that would be consistent with River and Bay ESHA and water quality protection and with adequate traffic mitigation as well. But, as described in the previous finding such is not the case and, therefore, no modifications are appropriate to suggest at this time in conjunction with the public service components of the subject amendment.

D. IP Amendment – LUP Consistency Analysis

1. Applicable Policies

The standard of review for the proposed IP amendment is that it be consistent with and adequate to carry out the land use plan. Of most relevance in this respect are the LUP's RCA overlays discussed above. In addition to these being mapped on Figure 5, there is also text in the LUP describing them, their justification, and criteria for their removal (Policy 113). There is also a series of other policies (e.g., LUP Policies 96 through 115) addressing the various public services, some of which are cited in the above part of the finding. In general these policies seek to ensure that there will be adequate public services available in Del Monte Forest.

2. IP Amendment Description

The proposed Implementation Plan amendment includes (1) corresponding text indicating that the Resource Constraint Area designation has been removed over the said properties and (2) removal of the B-8 overlay zoning designation over the said properties. The "B-8" zone implements the Resource Constraint designation and LUP policy 113. Implementation regulations restrict subdivision of

properties through the "B-8" combined zoning district and allow removal of the Open Space/Resource Constraint overlay for further subdivision only when the applicant demonstrates that he/she has met minimum requirements in respect to a number of public service capacity factors. Reclassification can be considered when all resource constraints are alleviated (IP 20.42.030.H.4).

3. Analysis and Conclusion

Because the LUP amendment must be denied, the existing un-amended LUP remains in effect. In that scheme, the existing RCAs likewise remain in effect. Thus, the IP amendment proposes to remove the B-8 IP designation on land that is designated by the LUP as Resource Constraint. To do so would eliminate the additional specificity brought to bear with respect to land use designations by the provisions of the B-8 district. Although on one level the LUP RCAs would still govern, the lack of the B-8 would, at a minimum, introduce confusion and potentially an expectation (e.g., a residentially designated RCA property zoned MDR without the B-8 might be considered developable past a single units on a single legal lot). On a second level, because it would provide no implementations of it, the IP would no longer adequately carry out the LUP's RCA designation. On a broader level, because the proposed LUP amendment must be denied (and thus the LUP remains unchanged in this respect), and because the proposed IP changes directly correspond to and are designed to implement the proposed LUP changes, the proposed IP changes must be denied as well.[446] In other words, the proposed IP changes cannot be found consistent with and adequate to carry out the LUP for similar reasons as are described in the LUP finding above (incorporated herein by reference). In sum, the proposed IP changes must be denied because they are not consistent with the certified LUP's public services policies and cannot adequately implement the LUP with respect to public services otherwise.

Thus, these proposed IP changes cannot be found consistent with nor adequate to carry out the certified LUP and thus the proposed IP amendment must be denied.

As suggested above, it would be possible to approve an LCP amendment that replaced the RCAs and hence the B-8 zoning with an alternative construct that ensured adequate public services consistent with resource protection. This would require some revisions or additions to the current IP that would have to be addressed in any subsequent discussion with the County (and the Company) as to what might constitute an approvable LCP amendment.

[446] In addition, the proposed IP changes are part of the single Measure A amendment package that itself does not appear severable in this manner; see also preceding Measure A findings.

3. OTHER COASTAL ACT ISSUES

It is clear from the previous finding that the proposed LCP amendment is fundamentally inconsistent with the Coastal Act and, for the IP component, the certified LUP. These inconsistencies are not minor. Rather, the proposed amendment is significantly out of balance with the Coastal Act and LUP ESHA and wetland policies. The amendment does raise other coastal resource issues, but they are secondary to the ESHA and wetland inconsistencies that require denial of the amendment. Consequently, this section only briefly evaluates these other coastal resource issues. Were the proposed amendment otherwise approvable, additional analysis beyond that provided here might be appropriate.

A. Regulatory Setting

1. Coastal Act Requirements

The standard of review for the LUP portion of the amendment is the Coastal Act. Almost all other Coastal Act policy groups are relevant to the amendment. These include Coastal Act:

Sections 30210-14 that protect and promote maximum public access;

Sections 30220-30223 that protect and promote maximum recreational opportunities;

Section 30230-30232 that promote and protect marine and coastal water quality;

Section 30244 that protects archaeological resources;

Section 30250 that directs growth to areas with adequate public services;

Section 32051 that protects visual resources;

Section 30253 that minimizes risks in hazard areas; and

Section 30253 that also promotes energy conservation.

2. LUP Requirements

The standard of review for the IP portion of the proposed amendments is conformance with and adequacy to carry out the LUP. The LUP includes a wide range of policies that address all of the above Coastal Act requirements; in fact almost all of the LUP policies – including those specifically quoted above – would help carry out one or more of the above-cited Coastal Act policies. The DMF LUP broadly summarizes these policies, with respect to land use in the coastal zone, as follows:

LUP Land Use Goals: *Four basic goals of the California Coastal Act establish direction for land use planning proposals for the Del Monte Forest Area. They are:*

1) *Protect, maintain, and, where feasible, enhance and restore the overall quality of the Coastal Zone environment and its natural and man-made resources.*

2) *Assure orderly, balanced utilization and conservation of Coastal Zone resources, taking into account the social and economic needs of the people of the state.*

3) *Maximize public access to and along the coast and maximize public recreation opportunities in the Coastal Zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.*

4) *Assure priority for coastal-dependent and coastal-related development over other development on the coast.*

B. Resource Setting and Context

As described in the Background finding above, the Del Monte Forest has significant scenic beauty, borders the Carmel Bay State Water Quality Protection Area, and provides substantial public access opportunities. The subject area lies entirely seaward of the nearest public road paralleling the sea. Del Monte Forest is also archaeologically sensitive.

C. LUP Amendment – Coastal Act Consistency Analysis

Many existing Del Monte Forest Land Use Plan policies are adequate to address the potential resource impacts (other than impacts to ESHA and wetlands) that could result from the Measure A land use changes. The Project EIR and subsequent approval by Monterey County provide an example of how these policies might be applied and result in conditions of approval of a series of projects. There are, however, some discrete components of Measure A that amend the LUP in a manner that it may no longer be consistent with the Coastal Act, at least without some modification. Examples concerning public access, water quality, and development limitations are presented herein:

1. Public Access and Recreation

A. Public Access Not Adequately Protected in Area 1

LUP Figure 15 depicts a series of trails that wind throughout the Forest like an intricate maze (see Exhibit 2). According to the LUP, this trail system has been and is available for general public access use, and remains one of the most significant public access facilities within the Forest. It allows its users to navigate through the Forest almost exclusively separated from vehicular roads and along alignments that dip into and out of significant natural resource areas. It offers a more natural trail experience as well as opportunities to enjoy Forest resources first hand. Use is limited to hikers and equestrians, who, using a good trail map, can find their circuitous way from Asilomar Dunes in Pacific Grove through to Carmel Beach in Carmel in an afternoon. In fact, this trail system is the *de facto* California Coastal Trail (CCT)

connection between Asilomar Dunes State Beach and Carmel Beach, and the CCT requires and is dependent upon the trails through the Forest in this respect.

Although Figure 15's depiction of the trails would not be altered, the LCP amendment proposes to add the following text to LUP Figure 15:

> *Trails shown within Areas M, N, O, U, and V of the Spyglass Cypress planning area are illustrative. Location and alignment will be determined at the time of development project approval.*[447]

The public trails within combined planning unit MNOUV (i.e., LCP amendment reference Area 1) are highly used, particularly by equestrians; at least in part because the equestrian center is immediately adjacent to this area and a main riding trail emanates from the equestrian center through the heart of the Monterey pine forest. These trails provide significant public access and recreation opportunities, particularly for forest and other habitat interpretation.

The proposed LUP Figure 15 note seems somewhat innocuous at first glance, particularly when considered in relation to LUP Policy 124 (the only LUP Policy to specifically reference LUP Figure 15) that protects these designated trail routes. LUP Figure Policy 124 states:

> *New development should be sited and designed to avoid encroachment on to designated trail routes (see Figure 15). Trail dedications consistent with LUP policies and site specific access recommendations shall be required as a condition of development approval. If, due to habitat or safety constraints, development entirely outside the trail route is not feasible, the route shall be realigned. Approved realignments shall be generally equivalent to the original route.*

However, the proposed note raises Coastal Act concerns. First, the note attempts to identify the trails shown on LUP Figure 15 as "illustrative" when in fact these trails are existing and currently used for public access. The implication is that if the trails shown on LUP Figure 15 are only illustrative, then they could be considered to not be present in a development review context, and thus offered a lesser level of protection as a result.

Second, although it is possible that these public access trails could be protected if the note were added to LUP Figure 15, particularly when considered in context with LUP Policy 124, it is more likely that these trails would be re-routed, and that the resultant re-routed trails might provide a degraded public access and recreation experience over what exists currently. This prospect is illustrated by the context of the overall LCP amendment (and the project driving it). The LCP amendment is geared towards accommodating an 18-hole golf course and related amenities on and around Area 1. The proposed golf course would displace the trails within this area, and the re-routed trails, except for one trail segment

[447] The proposed text is confusing inasmuch as it refers to planning units M, N, O, U, and V within the Spyglass Cypress planning area, but only planning units M, N, and O are located within that planning area; planning units U and V are located within the Pebble Beach planning area. One interpretation is that the note is meant to refer to only those portions of MNOUV in Spyglass Cypress, but that conflicts with reference to all of MNOUV. Another interpretation is that the note applies to all of MNOUV, but that conflicts with the reference only to the Spyglass Cypress planning areas. In either case, the proposed text includes a technical flaw in this respect that would need correction if the amendment were to be approved. It is presumed here that the County meant for the note to apply to all of combined planning unit MNOUV because the LCP amendment is driven by a project that would displace trails within all of MNOUV to allow golf course construction.

running from the Signal Hill dunes to Stevenson Drive near the Project golf cottages, would be re-routed around the new course. The result would be a diminished public access amenity inasmuch as the trails would no longer extend through natural areas but would rather skirt a developed golf course, mostly along vehicular roadways. This potential impact to existing public access and recreational trails is inconsistent with the Coastal Acts Public Access and Recreation Policies, including Sections 30210, 30211, and 30213.

In conclusion, the proposed LUP changes as they relate to the Area 1 cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

B. Public Access and Recreation Land Use Planning

More generally, the proposed amendment may also have profound changes on the nature of the land uses and the resultant travel patterns and visitor uses. From one perspective, proposed land use redesignations to recreational uses can be seen as positively contributing to fulfilling Coastal Act access and recreational policies. However, from another Coastal Act perspective, it would be prudent to examine the types, locations, and adequacies of public access in light of the new development facilitated by the proposed LUP amendment, given that the bulk of public access provisions in the LUP were conceived of and implemented two decades ago. A proposed LUP amendment that provided for a significant intensification of use within the Forest (e.g., accommodating additional development at Spanish Bay and the Pebble Beach Lodge, allowing for Coastal Act priority use of existing fill areas at Signal Hill Dunes and the former Granite Construction Quarry at the Company's corp. yard, etc.), may also result in significant changes to the nature of the land uses and the resultant travel patterns and visitor uses within the Forest. The Commission is aware through staff's draft Periodic Review Report of Monterey County Local Coastal Program that there remain some inadequacies in the public access system established by the LUP.[448] It may be that the LUP needs to provide specificity on the types of compensatory public access measures that may be necessary to ensure that public access and recreational opportunities overall are not diminished by bringing additional persons into the Forest and thus impacting existing supply. In the Del Monte Forest, this is particularly relevant in terms of ensuring that adequate low-cost visitor serving facilities and opportunities are provided along with any intensification of high-end resort or other facilities. Thus, commensurate consideration for public access and recreational facilities and enhancements, and specifically low-cost facilities, would be appropriate in any such LUP amendment.

2. Water Quality

A. Water Quality at Risk from New Equestrian Center and Golf Course

Runoff from storm events is part of the natural hydrologic process: rain water that does not infiltrate into the ground will flow by the force of gravity into water bodies such as lakes, streams, rivers, and oceans. In a developed setting, natural drainage patterns have been altered and this storm water runoff, as well as non-storm discharge (e.g., irrigation water, accidental spills, washdown water, etc.), picks up sediments and contaminants from land surfaces, and transports these pollutants into surface and groundwater. This type of runoff is known as polluted runoff which, because it does not originate from a

[448] Staff Report, November 2003, pp. 61 –67; Draft Findings, December 2003, pp. 289-290, 307; Appendix B, Table PA-10c; Appendix C, Table PA-11b. Available at http://www.coastal.ca.gov/recap/rctop.html

distinct "point" source (e.g., an industrial discharge pipe), is also described as nonpoint source pollution.

Increased development, as would be allowed by the proposed amendment, could negatively impact water quality by contributing additional urban contaminants to the coastal waters, streams, wetlands, and ultimately the Carmel Bay and the Monterey Bay National Marine Sanctuary (MBNMS). Such increased polluted runoff can result in significant adverse impacts to aquatic ecosystems, public use, and human health including ground and surface water contamination, damage to and destruction of wildlife habitat, decline in fisheries, and loss of recreational opportunities. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics such as pesticides. Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms.[449]

The LUP's approach to nonpoint source pollution prevention is generally a coverage limitation approach, supplemented by policies to reduce runoff and maintain vegetation. For example:

> ***LUP Water and Marine Resource Policy Guidance Statement.*** *The water quality of the Del Monte Forest Areas coastal streams, open coastal waters, Carmel Bay State Ecological Reserve, and Carmel Bay Area of Special Biological Significance shall be protected and maintained. This requires adherence to comprehensive management practices, including appropriate combinations of stream setbacks, stream flow maintenance, protection of riparian vegetation, and careful control of grading to minimize erosion and sedimentation.*
>
> ***LUP Policy 1.*** *New development in the Pescadero watershed, and the smaller unnamed watersheds of the Pebble Beach planning area which drain into the Carmel Bay Area of Special Biological Significance (ASBS), as well as the watersheds of Seal Rock Creek and Sawmill Gulch, shall be sited and designed to minimize runoff, site disturbance, erosion, and sedimentation. All new development shall be designed to conform to site topography. New residential driveways and other road surfaces shall be kept to the minimum length and width to provide simple, direct access. Other paved areas shall be limited to the minimum required to meet daily (not occasional) parking needs. This policy shall not be read to preclude safe bicycle lanes nor adequate parking for commercial visitor-serving development and access points.*
>
> ***LUP Policy 2.*** *Non-point sources of pollution to the Carmel Bay ASBS, rocky intertidal areas, and wetlands shall be minimized through careful attention to drainage and runoff control systems. The criteria of the AMBAG 208 Water Quality Management Plan shall apply in watersheds affecting these resources.*[450]

As is often typical of older LUPs with respect to water quality, the DMF LUP does not provide specific prescriptions or specific requirements to ensure that coastal water quality is assured. In many cases, this

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449 Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen).

450 The most relevant criterion is, "6. In sensitive water quality impacting areas, institute provisions in local zoning ordinances which control site coverage and limitations of impervious surface."

lack of specificity may not prove problematic as oftentimes water quality can be maintained – and even enhanced – through the application of an appropriate range of BMPs targeted to specific project elements. However, absent specificity in the LUP, the possibility always exists that the more general policies may not prove adequate to ensure that adequate water quality measures are made part of development projects.

In the case of the proposed amendment and the Project it facilitates, this possibility is present. This is particularly the case given that the explicitly identified land uses, in particular the golf course and equestrian center uses, are both known to be associated with specific adverse water quality impacts. The LUP is not specifically targeted towards golf course or equestrian projects thus rendering policy application challenging. The fact that the Carmel Bay ASBS and the MBNMS are offshore only heightens this sensitivity.[451]

The Project approved by the County that implements Measure A includes a range of water quality BMPs. At a broad scale, these include directing golf course runoff away from the ASBS. At a more micro level, these include a series of project-specific BMPs designed to protect water quality (including vegetated swales and filter strips, wet and dry detention basins, equipment washdown areas, street sweeping, manure management, fertilizer and nutrient management, integrated pest management, monitoring to meet Ocean Plan and Basin Plan standards, etc.). The Commission has not evaluated these project-level water quality measures because the amendment must be denied for other reasons.

The Commission notes, though, that much has been learned about nonpoint source pollution since the LUP was written, with resultant new and improved policy directives at all levels of government. Specific BMPs are available for horse stables, for example.[452] The Commission is also aware through staff's draft Periodic Review Report of Monterey County LCP that Pebble Beach Company has voluntarily partnered with the U.S. EPA to reduce pesticide risk from golf course applications.[453] However, actual requirements to do so are lacking in the LUP.

Thus, although the Commission is not making a finding regarding the adequacy of the Project water quality provisions, it is clear that an LUP amendment that facilitates golf course and equestrian center development should include complementary LUP policies directed at those two known sources of nonpoint source pollution.[454] Lacking these types of provisions, and on a broader LUP planning level, the proposed LUP amendment cannot be found consistent with Coastal Act Sections 30230 and 30231 with respect to water quality. Of course, such policies could easily be amended to the LUP were the Commission otherwise recommending modifications to the Amendment.

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451 Carmel Bay was designated an ASBS in 1975. Pursuant to 2001 Ocean Plan amendments, waste discharge to an ASBS is prohibited (SWRCB Order No. WQ 2001-08 clarified that stormwater disagree were subject to this ASBS discharge prohibition as well). In early 2005, the RWQCB considered draft Cease and Desist Orders, including with respect to the Pebble Beach Company, regarding discharge to the Carmel Bay ASBS. Pursuant to the draft Cease and Desist Order, the Company would be required to file for an exception to the ASBS discharge prohibition or cease all wet weather discharges no later than January 1, 2008 (Draft CDO R3-2005-021). The Company has indicated that it intends to pursue an exception. (source PDP EIR pp. F-38 through F-40). The status of the exception is not clear as of the date of this staff report.

452 U.S. Environmental Protection Agency, Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, 1993, pp. 2-43- 2-52.

453 Draft Findings, December 2003, p. 257. Available at http://www.coastal.ca.gov/recap/rctop.html

454 See, for example, Recommendation WQ-9.5 in the draft Periodic Review: Staff Report, November 2003, p. 61. Available at http://www.coastal.ca.gov/recap/rctop.html

In conclusion, the proposed LUP changes as they relate to the water quality cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

3. LUP Table A - Development Limitations Deleted

LUP Table A currently summarizes the maximum development potential in areas of the Forest that are the subject of this LCP amendment. Table A also, by extension, provides a maximum unit cap within each planning unit, each planning area, and the Del Monte Forest.[455] The amendment proposes to delete Table A and LUP references to it. As a result, the maximum unit caps would no longer apply and additional residential development that exceeded the caps that either have already been reached, or would have been reached in the future under the existing Table A/LCP structure could be pursued.

In addition, corresponding references in the IP with regard to caretaker units are not deleted. The current Land Use Plan has the following caretaker and other second unit provisions under Residential Land Use Designations on page 42):

> *…Caretakers units, servants quarters, and other separate houses, but not senior citizen units, are considered units of residential development for the purpose of calculating density. The County shall not approve such units in excess of the density allocated by this plan for each planning area.*

The proposed LUP amendment repeals Table A. Since CIP Section 20.64.180.E provides that caretakers units in the Del Monte Forest are subject to overall buildout, LUP Table A, the table's repeal could affect future approval of caretaker units. A reading of this provision could imply that any limit on caretaker units is lifted under the proposed LUP amendment. This would be an inaccurate reading of what Measure A does, because, as shown above, Table A does not provide complete buildout numbers. However, Measure A could be read to mean that within planning units, there is no limit on the number of caretaker units (short of one per parcel). This would mean that Measure A represents an increased intensity of development over the current LCP for those planning units still slated for subdivision after Measure A.

The proposed LUP amendment raises similar issues with respect to senior citizen units. The LCP treats senior citizen units in somewhat the same manner as it does caretaker units in some respects and differently in other respects.[456] As noted, Table A only gives buildout numbers for unsubdivided areas. It is unclear how the reference to Table A would apply. Currently, these areas are zoned with a B-8 overlay that prohibits senior citizen units. Since Measure A lifts the B-8 and deletes Table A, it could lead to more senior units and attendant concerns with resource protection and public service capacity.

At a minimum, the deletion of LUP Table A without a clarification with respect to the appropriate unit caps within the Forest (and sub-units of it) and the manner in which the LCP will thereafter treat caretaker and senior citizen units would result in internal confusion, and may more broadly result in the development of additional units in areas with resource constraints (such as ESHA, visual resources,

[455] Because it identifies the maximum amount of potential development by planning unit and by existing (at the time of certification) lots of record. In other words, a tally of the two for any particular LUP planning unit identifies a maximum unit count.

[456] The current LCP is actually more ambiguous for senior units; saying both that they do not count when calculating density, but also referring to Table A.

public services, etc) contrary to the LCP otherwise leading to cumulative impacts inconsistent with Coastal Act Section 30250.

In conclusion, the proposed LUP changes as they relate to the Table A cannot be found consistent with the Coastal Act and thus the proposed LUP amendment must be denied.

More generally, the concept of having a buildout calculation, such as Table A, in the LCP, is helpful, although not mandatory. Presumably, the LUP's residential density designations could be used for this purpose on their own (i.e., without an accounting akin to Table A), but to do so would require it to be clear that all units qualify as units for the purposes of density calculation, and would require that the densities applied were Coastal Act consistent otherwise (see, for example, previous ESHA finding). In that way, provided an Applicant had adequate land area, and the proposed additional unit could otherwise be found consistent with all other LUP policies (including ESHA, public services, visual resources, etc), then the LUP densities would govern buildout for that site.[457] Any future LUP update should include clarification on this unit point, whether that includes deletion of Table A as part of it or not.

4. Visual Resources

The Del Monte Forest represents an important scenic resource for the Monterey Peninsula. As described in the LUP, "ridgeline vistas, coastline panoramas, tree-lined corridors, and unique trees and rock formations are all appreciated by the regions many visitors." The LUP specifically encourages improvements which complement the natural scenic attributes of the area and enhance the public's enjoyment of them.

The proposed amendment and the Project it facilitates have the potential to result in degradation of public views. In fact, golf course, driving range, and equestrian center development by its nature requires large clearings that have the potential to negatively impact views. However, the LUP includes substantial visual resource protection policies, including by extension the manner in which the LUP's Forest and ESHA policies interact with these visual policies by protecting natural resources that are inherent to the visual landscape within the Forest. These existing LUP policies appear to be adequately protective of visual resources as required by the Coastal Act. As a result, although the Commission has not evaluated Project-level visual impacts because the amendment must be denied for other reasons, it does not appear that the proposed LUP amendment raises significant Coastal Act concerns relative to visual resources.

5. Cultural Resources

Background[458]

The Del Monte Forest area is located within the territory of the Ohlone Indians (also known as Costanoan Indians. The Onlone are believed to have inhabited the Del Monte Forest area since A.D. 500

[457] For example, on a 2-acre property that was designated one unit per acre and that was developed with a single unit, a second unit could be accommodated (provided it met all other LCP tests) because the property retained additional density by virtue of its designation.

[458] Source PDP EIR pp. 3.10-6 though 3.10-9.

or earlier. In the Project/LCP amendment area specifically, the Rumsen group of Ohlone lived. The Rumsen were hunter-gathers who relied heavily on the native flora and fauna for survival. Some forms of resource management akin to agriculture were used by the Ohlone, including pruning and re-seeding plants. Controlled burns were also carried out to promote seed growth and to increase grazing area for deer, elk, and antelope.

Monterey Bay was also the focus of several Spanish expeditions after it was first discovered by Juan Cabrillo in 1542. The Franciscans founded three missions in Monterey County that became the hub of local activity, as did the Presidio when it was established in the mate 1700. By the early 1800s, an agrarian economy had emerged in Monterey County, with Monterey as a central focus of trade and commerce. This was further emphasized by the California gold rush of the 1850s. By the late nineteenth century, Monterey County had become a tourist area, and by the early 1900s, the Pebble Beach area had become a popular resort destination. Residential and resort development soon followed and during the 1910s and 1920s the Del Monte Lodge, the Pebble Beach Golf Links, and a series of luxury residences had been developed, setting the stage for the current Del Monte Forest built environment.

No Archaeological Resources Present

All of the LCP amendment/Project area was investigated for the presence of archeological resources and these investigations found that although there are numerous recorded sites in the Del Monte Forest, none are found in the affected area.[459]

No Historical Resources Present

Potential historic resources present in the LCP amendment/Project area are limited to the equestrian center and Pebble Beach Lodge area. With respect to the equestrian center, there are three building in excess of 50 years old (the Collins Cottage, the Collins Studio, and Building Number 9, but none of these have been deemed to be historically significant by the PDP EIR. Likewise at the Lodge, the Fairway One House and the Lodge Annex (the areas affected by the Project) are over 50 years old, but they too are not considered historically significant by the PDP EIR.[460]

In conclusion, it does not appear that the proposed LUP amendment raises Coastal Act concerns relative to cultural resources.

6. Conclusion: LUP Amendment Inconsistent with the Coastal Act

As noted above, the proposed LUP amendment is inconsistent with the Coastal Act's ESHA and wetland policies, and thus the proposed LUP amendment must be denied. The amendment is presented as an integral whole, and as discussed above, is not amenable to approval with modifications beyond the necessary denial of the LUP Amendments. In addition, the above analysis indicates that the proposed amendment raises Coastal Act consistency issues with respect to public access and recreation, water quality, and cumulative development. As a result, these represent additional Coastal Act inconsistencies and reasons for denial of the LUP amendment

[459] PDP EIR p. 3.10-9.

[460] PDP EIR pp. 3.10-10 and 3.10-11.

D. IP Amendment – LUP Consistency Analysis

1. Conclusion: IP Amendment Inconsistent with the LUP

As previously described, the standard of review for the proposed IP portion of the proposed amendment is that it must be consistent with and adequate to carry out the LUP. In particular, because the proposed LUP changes must be denied (as described above), the standard of review is the current, un-amended, LUP. With respect to the noted Coastal Act topics, the current IP generally ensures that corresponding LUP policies are carried out.

The proposed IP changes generally mimic the proposed LUP changes. Implementation provides an opportunity to more precisely guide development based on LUP policies. In that sense, because the proposed LUP amendment in total must be denied (and thus the LUP remains unchanged in this respect), and because the proposed IP changes in total directly correspond to and are designed to implement the proposed LUP changes, the proposed IP changes must be denied as well.[461] However, in terms of the three issue area described above, there are actually no corresponding IP changes. Thus, these do not contribute additional reasons for denial on these three points explicitly. They do suggest that any future LCP amendment account for them in an IP context

[461] In addition, the proposed IP changes are part of the single Measure A amendment package that itself does not appear severable in this manner; see also preceding Measure A findings.

4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Sections 21080.9 and 21080(b)(5), and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

> ***Public Resources Code (CEQA) Section 21080.9. Local coastal programs or long-range land use development; university or governmental activities and approvals; application of division.*** *[Relevant Portion.]…certification of a local coastal program…by the…Commission…shall be subject to the requirements of this division.*
>
> ***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.*** *…(b) This division does not apply to any of the following activities: …(5) Projects which a public agency rejects or disapproves.*
>
> ***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.*** *[Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*
>
> ***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved.*** *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 21080.9 of CEQA provides that actions to certify LCPs (and LCP amendments) are subject to CEQA. This report has discussed the relevant LCP consistency issues with the proposal. All above LCP consistency findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed LCP amendment would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

REFERENCES

Although the entire administrative file associated with this LCP amendment is relevant to, and was used in the preparation of, this report, there are a subset of documents that are cited more than others. References to these documents are explained below.

PDP EIR: Unless otherwise described, references to "PDP EIR" are references to the final Environmental Impact Report (EIR) titled "Pebble Beach Company's Del Monte Forest Preservation and Development Plan" (SCH# 2002021130). This final EIR is made up of three main documents in multiple volumes: the February 2004 draft EIR, the September 2004 partial revision of the draft EIR, and the January 2005 final EIR. Together these documents constitute the EIR for the Pebble Beach Company's project, and have been submitted by the County as supporting documents and analysis for the proposed LCP amendment.

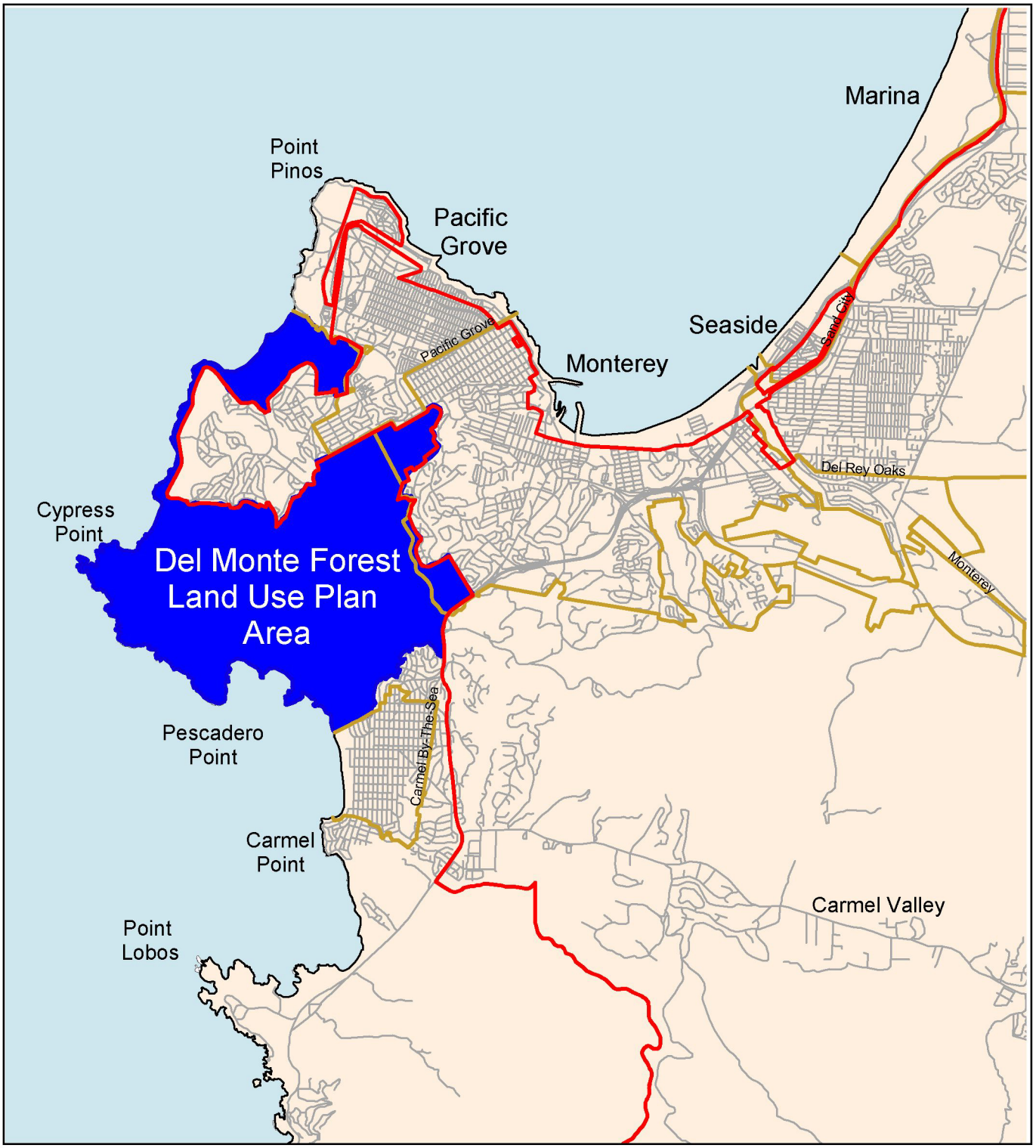
MAA: Unless otherwise described, references to "MAA" are references to Monterey County's Measure A analysis dated March 2005.

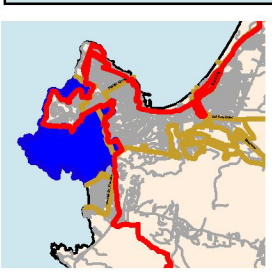
MSR: Unless otherwise described, references to "MSR" are references to Monterey County's Staff Report analysis dated March 2005.

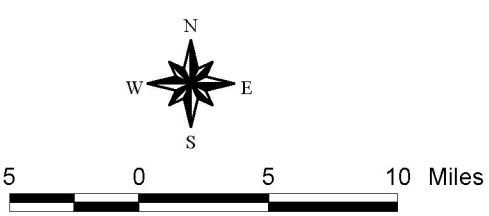
PDP Plans: Pebble Beach Company's proposed "Preservation and Development Plan" (PDP) project plans dated July 4, 2002 (and stamped printed by WWD Corporation January 12, 2005).

Jones and Stokes 1996. Jones and Stokes Associates, Inc. 1996. Monterey pine forest conservation strategy report. Final. December. (JSA 96-041) Sacramento, CA. Prepared for California Native Plant Society, Sacramento CA, and California Department of Fish and Game, Sacramento CA.

Location Map - Del Monte Forest Land Use Plan Area







Del Monte Forest Planning Area

Roads

City Limits

Coastal Zone Boundary

Monterey County
LCP Major Amendment #1-05
Measure A - Del Monte Forest

Figure 1