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FACSIMILE TRANSMISSION
February 7, 2005

<p>TO: Mr. Roger W. Briggs REGIONAL WATER QUALITY CONTROL BOARD</p> <p>Ms. Donette Dunaway CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD</p> <p>Board Members STATE WATER RESOURCES CONTROL BOARD</p>	<p>Fax: 805-543-0397</p> <p>805-543-0397</p> <p>805-543-0397</p>	<p>Tel:</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------	-------------

From: Daniel Brunton

Re: Agenda Item 27: Monterey Regional Storm Water Management Plan; and
Agenda Item 28: Draft Cease and Desist Order Nos. R3-2005-0021, 0022

Original(s) to follow Number of pages, including cover: **6**

Please see attached.

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February 7, 2005

VIA FAX

Mr. Roger W. Briggs
Executive Officer

Board Members
California Regional Water Quality Control Board,
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401-7906

Ms. Donette Dunaway
California Regional Water Quality Control Board,
Central Coast Region
895 Acrovista Place, Suite 101
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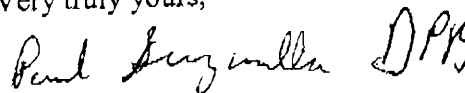
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Thank you for your consideration of the issues raised in the attached opposition brief and supporting documents and your acceptance of these materials into the administrative record.

Very truly yours,



Paul N. Singarella

Enclosures

005 AER...
SAN LUIS OBISPO, CALIF. 93401

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 Paul N. Singarella (Bar No. 155393)
 2 Kelly E. Richardson (Bar No. 210511)
 650 Town Center Drive, Suite 2000
 3 Costa Mesa, California 92626-1925
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5 Attorneys for Respondents
 The Pebble Beach Company, and
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11 In the matters of:

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**SUPPLEMENTAL OPPOSITION TO
 MONTEREY REGIONAL STORM WATER
 MANAGEMENT PLAN AND CEASE AND
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Hearing Date: February 11, 2005
 Time: 8:30 a.m.
 Place: Richard W. Nutter Agricultural
 Conference Center
 1432 Abbott Street
 Salinas, CA 93901

1 **I. ARGUMENT**

2 In accordance with long-standing common-law principles, Pebble Beach
3 Company ("PBC") and the City of Camel-by-the-Sea ("City" or "Carmel") have certain drainage
4 rights that the Regional Water Quality Control Board's ("Board") Cease and Desist Orders
5 ("CDOs") *completely eliminate*. PBC's and Carmel's uses of existing drains was pursuant to all
6 required governmental approvals. Nonetheless, the CDOs required the complete elimination of
7 such runoff.

8 The California Supreme Court has long recognized the owner of higher land to
9 have an easement or servitude over a lower parcel allowing him to drain runoff from his land.
10 *See, e.g., Ogburn v. Connor*, 46 Cal. 346 (1873). Use of such an easement is limited only by
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17 Pub. Res. Code § 36700(f). But the Board has made no showing that eliminating all discharges
18 is desirable or reasonable, and there is even reason to believe that the existing discharges have
19 some beneficial effects. Therefore, PBC's and the City's existing discharges are reasonable and
20 constitute a common-law easement or servitude.

21 California and federal takings jurisprudence is similar. A regulation constitutes a
22 taking if it goes "too far" in depriving a land owner of its property rights. *Penna. Coal Co. v.*
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27 legitimate interest in stopping all storm water flows to the ASBS before it shows that such flows
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1 City of all economically viable use of their common-law drainage easements. Therefore, the
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5 Given the unusual circumstances of this proceeding, and the Board's
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 11 Nos. R3-2005-0021 and R3-2005-0022.

12
 13 Dated: February 7, 2005

14 LATHAM & WATKINS LLP
 15 Paul N. Singarella
 16 Kelly E. Richardson

17 By Paul Singarella DPB
 18 Paul N. Singarella
 19 Attorneys for Respondents
 20 PEBBLE BEACH COMPANY, and
 21 CITY OF CARMEL

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West Broadway, Suite 1800, San Diego, CA 92101.

On February 7, 2005, I served the following document described as:

**SUPPLEMENTAL OPPOSITION TO MONTEREY REGIONAL STORM WATER
MANAGEMENT PLAN AND CEASE AND DESIST ORDERS**

by serving a true copy of the above-described document in the following manner:

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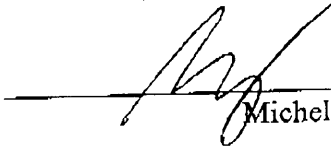
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California Regional Water Quality Control
Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906**

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California Regional Water Quality Control
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**Board Members
California Regional Water Quality Control
Board, Central Coast Region
895 Aerovista Place, Suite 101
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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2005, at San Diego, California.


Michelle Wright

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TO: Mr. Roger W. Briggs
REGIONAL WATER
QUALITY CONTROL
BOARD

Fax: 805-543-0397

Tel:

Ms. Donette Dunaway
CALIFORNIA REGIONAL
WATER QUALITY
CONTROL BOARD

805-543-0397

Board Members
STATE WATER
RESOURCES CONTROL
BOARD

805-543-0397

From: Daniel Brunton

Re: Agenda Item 27: Monterey Regional Storm Water Management Plan; and
Agenda Item 28: Draft Cease and Desist Order Nos. R3-2005-0021, 0022

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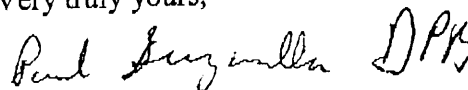
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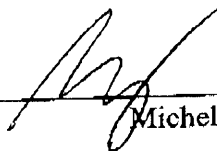
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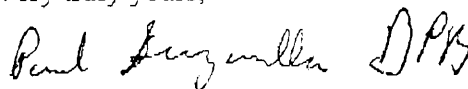
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14 drainage right, and is being stripped in violation of the federal and state constitutions without just
15 compensation. Here, the lower property is an Area of Special Biological Significance ("ASBS")
16 where discharges must not result in an "undesirable alteration in natural water quality." Cal.
17 Pub. Res. Code § 36700(f). But the Board has made no showing that eliminating all discharges
18 is desirable or reasonable, and there is even reason to believe that the existing discharges have
19 some beneficial effects. Therefore, PBC's and the City's existing discharges are reasonable and
20 constitute a common-law easement or servitude.

21 California and federal takings jurisprudence is similar. A regulation constitutes a
22 taking if it goes "too far" in depriving a land owner of its property rights. *Penna. Coal Co. v.*
23 *Mahon* (1922) 260 U.S. 393, 415; *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal. 4th
24 1006. A regulation goes too far if it "does not substantially advance legitimate state interests" or
25 "denies an owner economically viable use of his land." *Agins v. City of Tiburon* (1980) 447 U.S.
26 255, 260. The CDOs clearly meet both of these alternative requirements: (1) the Board has no
27 legitimate interest in stopping all storm water flows to the ASBS before it shows that such flows
28 cause an "undesirable alteration in natural water quality"; and (2) the CDOs deprive PBC and the

1 City of all economically viable use of their common-law drainage easements. Therefore, the
 2 CDOs constitute an unreasonable taking of property without just compensation under California
 3 and Federal law. Even attempting to comply with the CDOs could cost PBC and the City
 4 millions, if not billions, of dollars—and these costs would constitute damages.

5 Given the unusual circumstances of this proceeding, and the Board's
 6 extraordinary action, PBC and the City reserve the right to submit further comments and
 7 evidence to the Board as the nature of the Board's action unfolds.

8 **II. CONCLUSION**

9 For the foregoing reasons, respondents respectfully request that the California
 10 Regional Water Quality Control Board, Central Coast Region, withdraw Cease and Desist Order
 11 Nos. R3-2005-0021 and R3-2005-0022.

12
 13 Dated: February 7, 2005

14 LATHAM & WATKINS LLP
 15 Paul N. Singarella
 16 Kelly E. Richardson

17 By Paul N. Singarella *DPB*
 18 Paul N. Singarella
 19 Attorneys for Respondents
 20 PEBBLE BEACH COMPANY, and
 21 CITY OF CARMEL

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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West Broadway, Suite 1800, San Diego, CA 92101.

On February 7, 2005, I served the following document described as:

SUPPLEMENTAL OPPOSITION TO MONTEREY REGIONAL STORM WATER MANAGEMENT PLAN AND CEASE AND DESIST ORDERS

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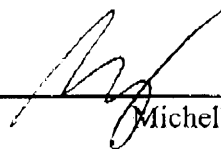
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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **February 7, 2005**, at San Diego, California.



Michelle Wright