



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

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SUPPLEMENT TO 11/15/04 MPWMD BOARD PACKET

Attached are copies of letters received between October 7 and November 5, 2004. These letters are listed in the November 15, 2004 Board packet under item 13, Letters Received.

Author	Addressee	Date	Topic
Ron Chrislock	Michelle Knight	10/11/04	Advocate construction of a dam on the Carmel River
Michael W. Stamp	Alvin Edwards	10/18/04	October 18, 2004 Board meeting – Item 17 <i>10/23/04 Response from District Counsel Laredo attached.</i>
Ted R. Hunter	David Berger	10/23/04	Phase II CAWD/PBCSD Recycled Water Project
Michael Stamp	David Berger	10/25/04	CEQA Litigation
Derinda Messenger	David Berger	11/1/04	Carmel Valley Self-Storage Project (PLN 980301) <i>11/8/04 Response from General Manager Berger attached.</i>
Derinda Messenger	David Berger	11/5/04	Cañada Woods Non-Potable Water System
Michael W. Stamp	Alvin Edwards	11/5/04	Water Credit Transfers – Notice Requested

Ronald Chrislock
231 Wood Street
Pacific Grove, CA 93950
10/11/04

RECEIVED

OCT 13 2004

MPWMD

Michelle Knight
Monterey Peninsula Water Management District
P O Box 85
Monterey, Ca. 93942-0085

Dear Boardmember Knight


The purpose of this letter is to ask for your assistance with regards to the water situation on the Monterey Peninsula. The Monterey Peninsula Water Management District, whose vision statement is "to ensure a reliable water supply by the year 2005"; and whose number one goal "is to increase the water supply to meet community and environmental needs", has failed in their responsibility.

We are facing an emergency situation here and need your help. We currently have only two choices for additional water. One is to build a new and larger dam to replace the one we have been using, and the other is to build a desalination plant. The proposal for a new dam was brought before the voters about 10 years ago and failed because most people were trying to limit growth in the area. Now the desalination plant is gaining momentum. The problems with desalination are that it would greatly increase the cost of water, and it has been shown in other areas to have many problems such as the filters getting plugged up with algae.

We need your leadership to get the plan for a new dam back on track. It is the only logical solution to our problem. A great mistake is about to occur. A desalination plant would be a disaster. Everyone in the Monterey Peninsula area now knows that we definitely need a new water source. If the plan for a new dam was placed on the ballot now, I am confident it would pass. Please do what you can to get this before the voters as soon as possible. It is our only hope.

Anything you can do to accomplish this will be greatly appreciated by me, my family, and many residents of the Monterey area.

Sincerely,


Ron Chrislock

*Received at 10/18/04
Board Meeting*

LAW OFFICES OF
MICHAEL W. STAMP

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Monterey, California 93940

Telephone
(831) 373-1214

October 18, 2004

Hand Delivery

Alvin Edwards, Chair, and Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Re: October 18, 2004 Board meeting – Item 17

Dear Chair Edwards and Board Members:

My clients Patricia Bernardi, Save Our Carmel River, and The Open Monterey Project strongly urge the Board to deny Item 17, the proposed water credit transfer. This request is an attempt at an end run around the Water District's Rules and Regulations. Further, the environmental review is seriously flawed and entirely inadequate.

Neither the Board nor the public has been provided with the information and analysis essential to adequately evaluate this proposed transfer and its environmental impacts. In the current water situation, where every drop is precious, the Board should not open this loophole and establish dangerous precedent.

The internal MPWMD study and the outside consultant (DCI, Inc.) study on water credit transfers are included by reference in the record. I understand that the MPWMD has both studies in its files; if not, please advise me and I will provide copies for the record. Both studies concluded that the environmental impact of water credit transfers was unclear, and indicated that it was likely that the net result of transfers is to increase the overall water demand. The community concern about water credit transfers is significant, and has been a major political and environmental issue, affecting the outcome of political campaigns and raising sincere concerns about environmental justice. The Herald has editorialized against transfers. The community concern – shared by my clients – is that special interests and big developers get special treatment in the application of MPWMD rules. That special treatment is exactly what is being asked of you in this special transfer application.

The MPWMD does not know how many other on-site water credits could take advantage of a similar loophole, if the MPWMD Board creates it. The impact is significant. It is easily more than one hundred acre feet, and could well be several hundred or more. I attach the tracking of commercial water credits (which may be

incomplete) kept by the MPWMD Water Demand Division.¹ The MPWMD does not have any evidence as to the cumulative impact of some or all of those credits being extended in this unprecedented manner.

The MPWMD is the Lead Agency for a Water Credit Transfer

This project is a water credit transfer only. There is no other project element: no construction, no development, not even a conceptual idea of future structures. For such a project, the MPWMD is the lead agency under CEQA. The City of Monterey is not the lead agency, and does not have authority to issue the Notice of Exemption. Here, the City's approval is merely a required prerequisite to the MPWMD Board action, which is the primary action.

The Claimed CEQA Exemption is Not Applicable To this Project

The CEQA exemption claimed by the City applies only to reconstruction of existing structures. This project is not reconstruction of existing structures. There are no existing structures on the site. This project is for a paper water credit transfer only. The claimed exemption does not apply. The Notice of Exemption is fatally flawed. The MPWMD Board does not have a reliable or legal CEQA determination on which it can rely to approve this request.

The Water District's Rules Do Not Allow the Totality of the Action Proposed

Staff has stated that there has never been an extension granted to the expiration of on-site credits after the statutory ten-year period (the initial five years plus the single five-year extension, per MPWMD Rule 25.5). Item 17 is a de facto extension of the on-site credits, by transferring them into the city's allocation, with a deal by the City so that the water will be reserved for reallocation to the originating site. This is nothing more than a paper transfer of paper water to avoid the MPWMD rules. See MPWMD Rule 25.5-A.1 (after 10 years from date of issuance "any remaining unused Water Use Credit shall expire").

This request asks for a first-time-ever extension of credits for more than ten years. That is a significant and unidentified element of the project. There has been no environmental determination of that project element, of the cumulative impact, or of the growth-inducing impacts.

¹ On this chart, some of the credits may be shown twice: the original 60-month credit, and the 60-month extension in accordance with Rule 25.

Monterey Peninsula Water Management District
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The Water Situation and Environmental Setting has Changed Materially and Significantly Since the Credits Were Authorized in 1994

In 1995, the State Water Resources Control Board issued Order 95-10. That order requires very close and careful management of the water supply. We incorporate Order 95-10 by reference here.

No Evidence that .789 Acre Feet Credit was Accurate

There is no evidence that documentation of actual water use was required in 1994 prior to issuing the credit for .789 acre feet. There is no evidence in the record before the Board and the public tonight that the actual water use by the demolished buildings was .789 acre feet, or even close to that figure. The actual use may have been much lower. The Board is being asked to transfer and extend a paper credit for which there was no evidentiary basis for the public to review. There is no guarantee by the City or the applicant that actual use would not exceed .671 acre feet, the net credit. It is possible that future uses on site would exceed the .671 acre feet. This is another reason why the MPWMD Board cannot make the required finding that "the transfer will not have an adverse impact on the water supply." See MPWMD Rule 28-B.1.

In recent years, the MPWMD instituted a requirement that recipient transfer sites have a deed restriction that ensures public accountability for actual use and that the actual use will not exceed the transferred amount. That accountability mechanism is entirely lacking here. Because the proposal is for the site to receive its "reserved" water from the City's allocation in the future, there is no opportunity for requiring a deed restriction. For all these reasons, the proposal fails to meet MPWMD Rule 28-B.1, because the applicant has not proved to the Board that the overall water use will not increase.

No Banking of Credits Allowed

The MPWMD transfer rules do not envision the possibility that an on-site credit would last longer than 10 years. Further, Rule 28-B.7 expressly forbids the banking of transferred water credits. The proposed transfer violates the intent and spirit of that rule. No analysis has been made of the policy that would permit these water credits to be banked.

Transfers Intended to be Irrevocable, Contrary to Proposed Transfer

MPWMD Rule 28-B.10 states that all transfer donor sites shall acknowledge in writing that the transfer is irrevocable. Rule 28-B.15 states that the effect of the transfer shall be the irrevocable extinction of any right or entitlement to the transferred water

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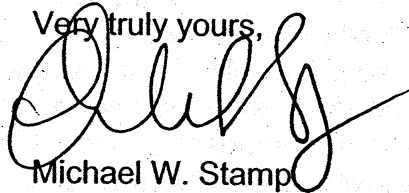
credit. This application promises that the water will be reallocated to the very site from which it originated, thereby violating the rule. It is more of a negotiated deal with the City than an irrevocable transfer.

Summary

My clients are prepared to consider prompt legal action to enforce the public interest in the integrity of the Water District's rules, to protect the water supply, and to ensure adequate environmental review of water credit transfers. They urge the Water Board to follow its rules and deny the request outright. The Water Board would be placing itself in a very tenuous legal position if it approves this request. Neither the City nor the applicant has indemnified the Water District; all the risk lies with the Water District. Several years ago, Patricia Bernardi and Save Our Carmel River sued the MPWMD on a similar issue and won. The cost to the taxpayers is significant.

I received the staff report Friday, October 15, the first day it was available. Prior to that date, no information on this item was available from the MPWMD. This letter is being submitted to you the business day immediately following. Please provide my clients, in care of my office, with written notice of all MPWMD actions in this matter, and on all water credit transfer matters including individual applications and program changes.

Very truly yours,



Michael W. Stamp

Enclosures

COMMERCIAL CREDITS THROUGH YEAR 2000
CARMEL-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT-AF	YEAR	EXPIRES
LARSON FIELD AT CARMEL MISSION		0.74	05/31/2000	05/31/2005
27300 RANCHO RD.		2.267	11/10/1998	11/10/2003
SW CNR LINCOLN & 7TH, NIELSEN BLDG.		0.23	2/10/2000	2/10/2005
SE CNR 5TH 7 MISSION, PINE RIDGE		0.451	09/30/1999	9/23/2004
NE CNR DOLORES & 7TH, EL PASEO		0.161	12/21/1996	12/21/2001
DOLORES BTWN 7TH & 8TH, GLM ASSOC.		0.349	03/16/1999	03/16/2004
SW CAMINO & 7TH, HOLIDAY HOUSE		0.424	04/12/2000	04/12/2005
26340 CARMEL RANCHO BLVD.		0.026	02/1997	02/2002
CARMEL VALLEY RANCH	416-522-010	5.953	12/6/1995	12/6/2000
		10.601		

MONTEREY-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
1 UNIVERSITY CIRCLE		1.559		11/12/2005
1 UNIVERSITY CIRCLE	020-401-005	1.292	10/1/2000	4/1/2003
700 CANNERY ROW		1.503	12/18/1995	12/18/2005
1500 MARK THOMAS DRIVE	013-202-009	0.01239	10/31/2000	04/31/2003
MONTEREY PENINSULA AIRPORT DISTRICT		0.772	3/10/2000	3/10/2000
270 & 280 CANNERY ROW		2.26	60 months	
738/790 FOAM STREET		0.789	11/1/1994	11/1/2004
400 FREMONT STREET	001-731-014	0.976	12/29/1998	12/29/2003
TYNAN LUMBER PROPERTY		1.291	10/1/1998	10/1/2003
2500 GARDEN ROAD		1.385	1/5/1998	1/5/2003
400 JEFFERSON STREET	001-532-018	0.088	4/25/1997	4/25/2002
DOUBLETREE HOTEL		0.48	3/25/1997	3/25/2002
44 PORTA VISTA		0.4	11/22/1994	11/22/2004
469 WASHINGTON STREET AKA 300 BONAFAC	001-695-002	0.16	02/1998	02/2003
		12.96739		

*updated
12/6/01

*updated
11/6/01

PACIFIC GROVE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
542 LIGHTHOUSE AVENUE		1.307	6/22/1998	6/22/2003
1146 FOREST HILL BLVD		3.528	11/16/2000	11/16/2005
1120 FOREST AVENUE		0.423	10/19/1993	10/19/1998
557 OCEAN VIEW BLVD.		0.535	60 months	
		5.793		

PEBBLE BEACH - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
3152 FOREST LAKE ROAD		2.512	6/15/1999	6/15/2004
		2.512		

SAND CITY - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
709 CALIFORNIA		1.123	03/15/2000	03/15/2005
		1.123		

SEASIDE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS

1201 LA SALLE

APN

CREDIT

YEAR

EXPIRES

0.979 60 MONTHS
0.979

TOTAL ACRE FEET PER CITY	AF
CARMEL	10.601
MONTEREY	13.28739
PACIFIC GROVE	5.793
PEBBLE BEACH	2.512
SAND CITY	1.123
SEASIDE	0.979
TOTAL	34.29539

COMMERCIAL CREDITS YEAR 2001
CARMEL-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT-AF	YEAR	EXPIRES
NWCNR Ocean & Mission	010-133-001	0.094	05/01/2001	05/01/2006

0.094

MONTEREY-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
1280 DEL MONTE	001-824-010	0.302	6/15/1998	6/15/2003

0.302

PACIFIC GROVE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
161 DEL MONTE BLVD.	006-094-009	0.094	5/1/2001	5/1/2006

0.094

PEBBLE BEACH - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
		0		

0

SAND CITY - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
		0		

0

SEASIDE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
1893 FREMONT BLVD	011-526-001	0.5	8/22/1995	8/22/2005

0.5

TOTAL ACRE FEET PER CITY

CARMEL	0.094
MONTEREY	0.302
PACIFIC GROVE	0.094
PEBBLE BEACH	
SAND CITY	
SEASIDE	0.5
TOTAL	0.99

COMMERCIAL CREDITS YEAR 2002**CARMEL-VERIFIED COMMERCIAL CREDITS**

PROPERTY ADDRESS	APN	CREDIT-AF	YEAR	EXPIRES
245 Crossroads Blvd.	218 seat restaurant/3,269 sq	4.58883	11/1/2002	11/1/2007
Carmel Hill Fire Station	008-132-006	1.258	4/1/1995	4/1/2005
Total		5.84683		

extension

MONTEREY-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
270 & 284 Cannery Row	001-031-004 & 001-031-005	2.260	3/18/2002	3/18/2007
794 Lighthouse Avenue	001-072-020	0.855	4/18/2002	4/18/2007
Naval Post Graduate School	45,079 sq office/warehouse	2.682	1/1/2001	1/1/2006
Naval Post Graduate School	26,215 sq office/warehouse	1.559	11/10/1997	11/10/2002
Naval Post Graduate School	275 -one bath units	14.799	8/12/1998	8/12/2003
Presidio of Monterey	SOMAT waste systems two dining facilities	5.587		
191 Lighthouse Avenue	six gas pumps 1419 sq ft bldg	0.548 0.09933	11/20/2002 11/20/2002	11/20/2007 11/20/2007
Total		28.389		

PACIFIC GROVE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
Total				

PEBBLE BEACH - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
Total				

SAND CITY - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
625 Elder Avenue	011-233-001, 002, 013 011-232-023, 028 011-326-006, 007-010, 024	4.199	3/18/2002	3/18/2007
Total		4.199		

SEASIDE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	CREDIT	YEAR	EXPIRES
1763 DEL MONTE	011-533-001	1.100	8/1/1999	8/1/2004
Total		1.100		

TOTAL ACRE FEET PER CITY

CARMEL	5.84683
MONTEREY	27.7420
PACIFIC GROVE	
PEBBLE BEACH	
SAND CITY	4.1990
SEASIDE	1.1000
TOTAL	38.8878

COMMERCIAL CREDITS YEAR 2003

CARMEL-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN		CREDIT-AF	YEAR	EXPIRES
Total			0		

MONTEREY-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN		CREDIT	YEAR	EXPIRES
256 FIGUEROA	001-702-013		0.382	10/15/2002	10/15/2007
2434 Del Monte Blvd	013-056-007				
	Demo Motel	12 rooms	1.2	3/25/2002	3/25/2007
	Office	1,862 SF	(0.13034)		
731 Munras Ave., Unit D	001-682-009	8 beauty stations to retail	0.34160		
884 Abrego Street	001-682-001	3 beauty stations converted to retail 460 sq. ft.	0.13800		
554 Lighthouse	001-062-018	49 bar seats to 940 sq ft of group I	0.0322		
Monterey Peninsula Airport		retrofit toilets	1.224		
Santa Catalina School					
1500 Mark Thomas Drive	013-202-009	turf removal 4,030 sq ft	0.19		
1244 Munras		58 seats fast food to full serve rest.	1.044		
Total			4.422		

PACIFIC GROVE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN		CREDIT	YEAR	EXPIRES
1146 Forest Avenue	007-651-014	xfer of credit	0.312		
Total			0.312		

PEBBLE BEACH - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN		CREDIT	YEAR	EXPIRES
Robert Louis	008-002-003	reclaimed	2.512	6/15/2004	6/15/2009
Stevenson School		water on baseball field			
Total			2.512		

SAND CITY - VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN		CREDIT	YEAR	EXPIRES
Total			0		

SEASIDE-VERIFIED COMMERCIAL CREDITS

PROPERTY ADDRESS	APN	DESCRIPTION	AF CREDIT	YEAR	EXPIRES
866-890 Broadway	011-293-002				
890 Broadway Ave	Del Rey Theater	826 Seats	0.9912		
868 Broadway Ave	rothy's House of Beauty	3 stations	0.1701		
1579 Santa Barbara St	Lee's Beauty Salon	2 stations	0.1134		
866 Broadway	herican Appliance Sales	600 sq. ft.	0.0420		

COMMERCIAL CREDITS YEAR 2003

880 Broadway	Amore (retail)	400 sq. ft.	0.0280		
1591 Sana Barbara St	30 Minute Photo	300 sq. ft.	0.0210		
870 Broadway	Zoraida's Restaurant	40 seats	0.8000		
353 Olympia Avenue	011-254-010	88 sq. ft.	0.0610		
1567 Santa Barbara St	011-293-003	28 seat restaurant	0.5600	6/2/2003	
		1600 sq. ft.	0.1120		
1645 Del Monte Blvd	011-551-004	1227 sq ft	0.0860	6/23/2003	
1667 Del Monte Blvd	011-551-007	786 sq ft	0.0550	6/23/2003	
1893 Fremont	011-526-001	5 motel rooms	0.5000		
2081 Fremont BLvd	011-026-001	4 gas pumps	0.3652	11/18/2003	
(letter resent-not listed in 2001)		1268 sq ft grp I	0.0888	9/28/2001	
1400 Del Monte	011-401-025	66 seat restaurant			
reflects remaining credit		replaced with			
		5462 sq ft grp I	0.9377	11/18/2003	
Total			4.9313		

TOTAL ACRE FEET PER CITY		
CARMEL		0.0000
MONTEREY		4.4216
PACIFIC GROVE		0.3120
PEBBLE BEACH		0.0000
SAND CITY		0.0000
SEASIDE		4.9313
TOTAL		9.6649

RULE 25.5

WATER USE CREDITS

- A. Except where a permit has been cancelled, returned or revoked under these Rules, a Person may receive a Water Use Credit for the permanent abandonment of some or all of the prior water use on that Site by one of the methods set forth in this Rule. A Water Use Credit shall enable the later use of that water on that same Site.
1. A Person may apply to the District for a Water Use Credit in advance of the abandonment of capacity for water use which that Person may cause on that Site. In such a circumstance, District staff (1) shall verify that the Reduction is one which is permanent, (2) shall quantify the capacity for water use which remains, (3) shall quantify the reduced water use (the abandoned capacity), (4) shall quantify the increment of reduction which exceeds the District's target of 15% conservation based upon the criteria used for the Water Allocation EIR, and (5) shall provide written confirmation of the Water Use Credit based upon the quantity set forth in element (4) above. Credit shall not be given for any reduction which occurs by reason of a District mandated or sponsored program (e.g. retrofit-on-resale). A Water Use Credit obtained pursuant to this method may be applied to, and shall allow future water use on that Site at any time within a period of 60 months. After the 60th month, renewal of this Water Use Credit shall be allowed only upon proof by the applicant that some or all water savings represented by that Credit are current. If all savings are not current, a pro-rata reduction shall occur. A single renewal period of 60 months shall be allowed; thereafter any remaining unused Water Use Credit shall expire. Water Use Credits shall not be transferrable to any other Site.
 2. A Person who has not applied in advance to the District for a Water Use Credit (in advance of the abandonment of the capacity for water use) may still request that a Credit be given based on prior reductions in water use capacity which occurred on that Site within the preceding eighteen (18) months. In such a circumstance the applicant shall have the burden to quantify and verify both the reduction of water use capacity, and the date such reduction occurred. District staff shall determine the increment of reduction which exceeds the District's target of 15% conservation as set forth in the Allocation EIR and shall determine the effective date for that reduction in capacity for water use. Credit shall not be given for any reduction which occurs by reason of a District mandated or sponsored program (e.g. retrofit-on-resale); credit shall not be given for any reduction which was completed more than eighteen (18) months prior to the date of the application for the Water Use Credit. The quantity of water determined by staff to be available for a Water Use Credit under this method, once the Water Use Credit has been granted, may be applied to, and shall allow future water use on that Site within thirty (30) months from the date the reduction first occurred, and upon proof by the applicant that those water savings are still current. After the 30th month, renewal of this Water Use Credit shall be allowed only upon proof by the applicant that some or all water savings represented by that Credit are current. If all savings are not current, a pro-rata reduction shall occur. A single renewal period of thirty (30) months shall be allowed; thereafter any remaining Water Use Credit shall expire. ~~Water Use Credits shall not be transferrable to any other Site. Residential Water Use Credits shall not be transferrable to any other Site.~~
 3. A Water Use Credit shall provide the basis for issuance of a permit for an Intensified Water Use on that Site provided (1) the credit is current (has not expired), and (2) provided the abandoned capacity (saved water) forming the basis for the Water Use Credit is determined not yet to have been used on that Site. There shall be no connection charge assessed for the capacity for water used pursuant to any Water Use Credit. Connection charges, however,

shall apply to the capacity for water use which exceeds the Water Use Credit, or for any expansion of use following the expiration of the Water Use Credit. No refund shall accrue by reason of water use reduction, or abandonment of capacity, whether or not reflected by a Water Use Credit. Issuance of a Water Use Credit shall not result in any change to a Jurisdiction's Allocation. Use of any Water Use Credit shall similarly not cause a change to a Jurisdiction's Allocation.

(Added by Ordinance No. 60 (6/15/92); amended by Ordinance No. 64 (10/05/92); amended by Ordinance No. 71 (12/20/93)

De LAY & LAREDO

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Fran Farina, of Counsel

October 23, 2004

RECEIVED

OCT 26 2004

MPWMD

Michael W. Stamp
479 Pacific Street, Suite 1
Monterey, CA 93940

Dear Mr. Stamp:

As General Counsel to the Monterey Peninsula Water Management District, I have been asked to respond to your October 18, 2004, letter referring to the water credit transfer then pending before the District.

Your letter contends that the City of Monterey should not be considered the lead agency under CEQA for the project located at 784 Foam Street, Monterey. The Board of Directors took a close look at your contention, and based upon the criteria set forth in section 15051 of the CEQA Guidelines, did not agree. In fact, the Board determined that each and every one of the criteria in section 15051 favored a determination that the City of Monterey was the proper lead agency.

The water transfer for this site is proposed as a property-to-jurisdiction transfer. This means the transfer was carried out by the City of Monterey as a public agency, as contemplated by section 15051 (a). As such, the City of Monterey is the appropriate lead agency.

Even assuming the transfer was not to the City of Monterey, the City has a much broader role in the review of the 784 Foam Street project as a whole. The Water Management District has responsibility only for water use for the project. All other aspects relating to land use, zoning, building standards and related conditions are the sole prerogative of the City. Viewed in this perspective, section 15051 (b) again directs that the City of Monterey is the appropriate lead agency. Section 15051 (b) (1) explicitly states, "The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as... a district which will provide a public service or public utility to the project."

Examination of the remaining CEQA Guideline criteria addressing lead agency determinations does not provide a basis to alter the designation of the City of Monterey as the lead agency for this project. You may recall that District Rule 28 B 4 provides, "Water use credit transfers shall only occur with the prior approval of the city, county or airport district." Section 15051 (c) of the CEQA Guidelines provides that where more than one public agency equally meet the lead agency criteria, the agency which will act first on the project shall be the lead agency. For this project, the City of Monterey did act first to approve the property-to-jurisdiction transfer, and did assess its action pursuant to CEQA. Again, the City of Monterey satisfies this element and is the appropriate lead agency.

October 23, 2004

Page 2

Finally, section 15051 (d) of the CEQA Guidelines provides that where more than one agency has a substantial claim to be the lead agency, the public agencies may designate, by agreement, the CEQA lead agency. The Board of Directors of the Water Management District did in fact meet with representatives of all the local land use planning jurisdictions at a joint Board / PAC / TAC meeting to discuss this point. The meeting took place at the Pacific Grove Community Center on August 26, 2004. It session convened as a noticed, public meeting, and was televised and rebroadcast on the local public access television channel. The discussion at the meeting focused on the meaning and processes surrounding water credit transfer rules, and whether or not those rules were to be amended. The unanimous consensus reached by all present was that the water credit rules should not be changed at this time. The consensus was also reached that each land use jurisdiction (i.e. the city, county or airport district) would ordinarily act as CEQA lead agency for transfers located within that jurisdiction. You are invited to review the minutes and tape made of that meeting. The common understanding reached at this meeting appears to fall squarely within the contemplation of section 15051 (d), and constitute an agreement among public agencies as to which should be designated the lead agency for water credit transfers.

For these reasons, Board did not agree with your contention that the City of Monterey was not the proper lead agency under CEQA for the project located at 784 Foam Street, Monterey.

Sincerely,

De LAY & LAREDO

David C. Laredo

DCL:wg

cc: MPWMD

u/MPWMD/gen-04/Stamp Reply ltr.doc



CONCERNED RESIDENTS OF PEBBLE BEACH and Monterey County

a Non-profit California Corporation

Dedicated to Preserving the Natural Environment and Quality of Life in Del Monte Forest and Peninsula Communities

RECEIVED

October 23, 2004

OCT 26 2004

David Berger, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

MPWMD

Dear Dave,

Carl Nielsen and I want to thank you for taking time last week to discuss the water issues in the Del Monte Forest with us. We learned more about the Districts responsibilities and that you are not involved with the Pebble Beach Company's current program of selling their "entitled" water rights to property owners in Del Monte Forest. Your overview of Ordinance 109 and associated agreements was very helpful.

Since our meeting I have obtained the enclosed information that I thought you may be interested in having. Mike Bowhay, Manager, at our Country Club wrote the "Water Update" story that provides a good summary of the current action being taken to improve the Wastewater Reclamation System.

The minutes of the Pebble Beach Community Services District's Sept 24th meeting also provide an update on the progress Pebble Beach Company is making in getting Forest property owners to subscribe to their program which will allow them to purchase some of the Company's "entitled" water rights.

We are very interested in future development projects in the Forest and when water, both potable and improved reclaimed, will be available for the many proposed projects.

Thanks again for spending time with us.

Best regards,

Ted R. Hunter 831-624-3734
enclosures

MICHAEL J. BOWHAY

Water Update

The topic of water is not just an issue for Monterey County residents, but for the Club as well.

The Monterey Peninsula Water Management District (MPWMD) is planning to review and approve agreements at a Board meeting in November to implement Ordinance 109, relating to the financing and expansion of the Recycled Water Project owned and operated by the Carmel Area Wastewater District (CAWD) and the Pebble Beach Community Services District (PBCSD). Approval of the agreements will be a significant step in achieving a major objective of Cypress Point Golf Club, Monterey Peninsula Country Club and Poppy Hills Golf Course. We have all been associated together since 1995, as the "Independent Reclaimed Water Users Group" (IRWUG).

Some history behind the Project: Monterey Peninsula Water Management District initially approved the Recycled Water Project in 1989. Agreements for the sale of reclaimed water were executed in 1992, primarily with IRWUG members and the Pebble Beach Company. The Project began to deliver reclaimed water during the 1994-95 irrigation year; however, the Project did not meet the contractual obligations with regard to quantity or quality. High salt content in the recycled water has been particularly troubling and damaging to the golf courses. In addition, the inconsistent supply has caused great concern.

Discussions of ways to improve the performance of the Project have been ongoing since the inception of the original project.

Ordinance 109 was adopted by the MPWMD Board in final form on May 27, 2004, after significant effort and input by the Independent Reclaimed Water Users Group and the Pebble Beach Company. Ordinance 109 authorizes the sale of water entitlements by the Pebble Beach Company to fund improvements to the Project, with restated supplemental agreements to support the improvements. The major components of the project improvements are the addition of a state-of-the-art, micro filtration and reverse osmosis system, at the Carmel Area Waste Water District. In addition, the Forest Lake Reservoir located off Lopez Road will be utilized as storage for 425 acre feet of treated water for use by the golf courses.

The IRWUG representatives have

worked with the Pebble Beach Company, Carmel Area Water District, Pebble Beach Community Services District and the Monterey Peninsula Water Management District staff to draft an amended and restated agreement for the sale of recycled water that meets the requirements of Ordinance 109. The discussions have also included review of supplemental agreements for construction and operation of the Project and a supplemental financing agreement between Monterey Peninsula Water Management District and the Pebble Beach Company. Contract users of recycled water will be third party beneficiaries under the construction and operation agreement, with the right to enforce operation standards for the Project.

The following is an outline of other key elements in our agreement:

- Our current contract with Monterey Peninsula Water Management District remains in effect until the New Phase of the project is completed and irrigation water is delivered to our golf courses that is of a suitable quality and sufficient quantity.

- Until the Certificates of Participation are paid off in 2022, we will pay the same price for our water as similarly situated Cal Am customers.

- After the certificates are paid, then the price of the irrigation water will be at a rate sufficient to cover the operating, maintenance and capital costs of the project.

- Potable water only will be available for use in irrigation in the event of a significant interruption in the supply of recycled water.

It has taken nearly 10 years of negotiation to arrive where we are today. All of our efforts are justified with the end result. The improvements to our existing system will be a significant benefit to the health of our golf courses. The benefits we will receive will serve the members of the Club well into the future.

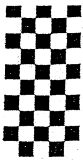
There are an infinite amount of complex details surrounding this water agreement, far too many to explain in this article. If I can answer any questions that you may have, please do not hesitate to contact me at any time at 333-2200 or at generalmanager@mpccpb.org.

Bergon

BOARD OF DIRECTORS
Regular Meeting of September 24, 2004
MINUTES

Reclamation Management Committee Meeting / Expanded Project Financing

Mr. Andrews reported orally on the Reclamation Management Committee meeting held on September 10, 2004. The major topic was the expanded reclamation project financing. Mr. Stillwell also commented on the meeting, indicating that he had reported to the Committee that letters and subscription information concerning the sale of water rights to finance the expanded project had been mailed to residents. He said the mailing company inadvertently omitted sending along the checklist for completing the subscription form; however in Mr. Stillwell's opinion the letter and summary included was descriptive enough for most of the recipients to understand the subscription procedure. As of September 10th, he stated that \$5.0 million in acre-feet ("AF") of water rights had been subscribed and that he is receiving approximately 30 inquiry calls per day. He expressed the belief that more property owners would subscribe later, as some interested parties indicated they had retained counsel to look into subscribing. Monterey Peninsula Water Management District ("MPWMD") is receiving calls as well. To put the acre-footage in perspective, Mr. Andrews pointed out that 1/10 AF provides water for 2 standard bathrooms or one very large bathroom. Mr. Stillwell stated that PBCo is cautiously optimistic regarding the water sales, as they are 25% to the goal. When 100 AF of subscriptions have been secured, the escrow phase will begin and subscribers will then have 30 days to pay. Then, PBCo will respond to the MPWMD with a formal financing commitment.



LAW OFFICES OF
MICHAEL W. STAMP

479 Pacific Street, Suite 1
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Telephone
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October 25, 2004

Bonnie Gawf
City Clerk
City of Monterey
Monterey, CA 93940

David Berger
General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

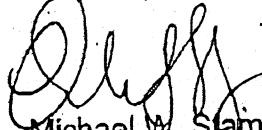
Re: CEQA litigation

Dear Ms. Gawf and Mr. Berger:

This letter is to advise the City of Monterey and the Monterey Peninsula Water Management District that Save Our Carmel River, Patricia Bernardi, and The Open Monterey Project intend to commence litigation under the California Environmental Quality Act (CEQA) in regard to the agencies' actions and approvals of the 784 Foam Street water credit transfer.

If you have any questions, please feel free to contact me.

Very truly yours,



Michael W. Stamp

RECEIVED

OCT 25 2004

MPWMD

Anthony L. Lombardo
Jeffery R. Gilles
Derinda L. Messenger
James W. Sullivan
Jacqueline M. Zischke
Steven D. Penrose*
E. Soren Diaz
Sheri L. Damon
Virginia A. Hines
Patrick S.M. Casey
Paul W. Moncrief
Anthony W.E. Cresap
Bradley W. Sullivan
Miriam Schakat

Lombardo
& Gilles
PROFESSIONAL CORPORATION
Attorneys At Law

318 Cayuga Street²³
P.O. Box 2119
Salinas, CA 93902-2119
831-754-2444 (SALINAS)
888-757-2444 (MONTEREY)
831-754-201 (FAX)

225 Sixth Street
Hollister, CA 95023
831-630-9444

File No. 584.000

November 1, 2004

*Certified by the State Bar
of California Board of Legal
Specialization as a
Specialist in Estate Planning,
Trust and Probate Law.

Mr. David Berger
General Manager
Monterey Peninsula Water Management District
P. O. Box 85
Monterey, CA 93942-0085

RECEIVED

NOV - 2 2004

MPWMD

Re: Carmel Valley Self-Storage Project (PLN 980301)

Dear Mr. Berger:

This letter serves to request that Steve Mirabito's application for a water permit for Phases 1 and 2 of the self-storage facility in Carmel Valley be processed pursuant to District Rule 24 (G) for Special Circumstances. This project was approved by Monterey County Board of Supervisors in January, 2004 and consists of 975 square feet of office space and 61,925 square feet of storage area.

Special Circumstances exist with respect to the anticipated water use resulting from this permit. The anticipated water use for the facility equals 0.23FY, as set forth below:

Storage Area	:	0.00 AFY (0 gpd)
Office (975 sq. ft.)	:	0.08 AFY (72 gpd)
Landscaping (6,382 sq. ft.)	:	0.15 AFY (134 gpd)
Total		0.23 AFY

The proposed storage facility is replacing an existing three bedroom single family dwelling and a pottery art studio. Collectively the two buildings contain six sinks, three showers, four toilets, and one washing machine, along with lawn and landscaping around the structures. The storage facility will only have one toilet, two sinks (one in restroom and one for making coffee in the office) and for use by an employee for 9 hours per day. Two sinks and one toilet in an office could not possibly use as much water as the existing home and studio.

A copy of the landscape plans prepared by Gates & Associates is attached hereto, together with a set of plans for the storage facility. The landscape architect prepared a detailed and thorough analysis of the on-site irrigation demand that is based on industry standards. The water demand for the office space represents that which would be required for making coffee and restroom use

Mr. David Berger
Monterey Peninsula Water Management District
November 1, 2004
Page 2

by the storage facility employee. Assuming that an ultra low flow toilet is used, and up to one-half gallon of water is used for hand washing, the figures set forth above would allow for use of the restroom 72 times per day.

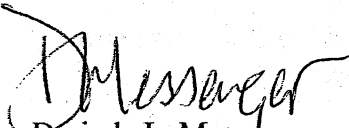
If the District's water demand figure from Table 2 were used, the office space would have 0.49 AFY available for use (0.64 total – 0.15 for landscape per architects plans), which equals 438 gallons per day. Again, assuming installation of a one-half gallon per flush toilet and that one-half gallon of water is used for hand washing, the storage facility employee would have to use the restroom 438 times per day to use that much water.

Clearly, the District's demand figure for storage facilities is outdated and based on high flow fixtures and non-drought tolerant landscaping. Given the current regulations requiring use of water conserving fixtures and landscaping, it would be impossible for this project to use the volume of water set forth in District's Table 2.

On behalf of Steve Mirabito, I respectfully request that you administratively grant the project's water permit based on Special Circumstances as set forth in District Rule 24 (G).

Sincerely,

LOMBARDO & GILLES, PLC



Derinda L. Messenger

DLM:js

Enclosures

Anthony L. Lombardo
 Jeffery R. Gilles
 Derinda L. Messenger
 James W. Sullivan
 Jacqueline M. Zischke
 Steven D. Penrose
 E. Soren Diaz
 Sheri L. Damon
 Virginia A. Hines
 Patrick S.M. Cosey
 Paul W. Moncrief
 Anthony W.E. Cresap
 Bradley W. Sullivan
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 888-757-2444 (MONTEREY)
 831-754-201 (FAX)

225 Sixth Street
 Hollister, CA 95023
 831-630-9444

File No. 00368.016

November 5, 2004

**Certified by the State Bar
 of California Board of Legal
 Specialization as a
 Specialist in Estate Planning,
 Trust and Probate Law.*

Mr. David Berger
 General Manager
 Monterey Peninsula Water Management District
 P. O. Box 85
 Monterey, CA 93942-0085

Re: **Cañada Woods Non-Potable Water System**

Dear Mr. Berger:

This letter is written in response to your letter dated October 29, 2004 regarding the non-potable water system for Tehama and also serves to confirm my clients attendance at the November 9th meeting. Following is a summary of non-potable water sources, date placed in service, location of source, and the service area for each source.

Dam Well

Placed in Service: September 14, 1996
 Location (APN): 169-011-004
 Service Area: Table A, attached hereto
 Intended Purpose: Non-potable uses

Water Tower Well

Placed in Service: December 27, 1990
 Location (APN): 169-011-005
 Service Area: Table A, attached hereto
 Intended Purpose: Non-potable uses

N Well

Placed in Service: July 15, 1995
 Location (APN): 169-011-004
 Service Area: Table A, attached hereto
 Intended Purpose: Non-potable uses

Mr. David Berger
General Manager
Monterey Peninsula Water Management District
November 5, 2004
Page 2

N-1 Well

Placed in Service:
Location (APN): 259-092-047
Service Area: Table A, attached hereto
Intended Purpose: Non-potable uses

High Well 1

Placed in Service: June 5, 1998
Location (APN): 259-092-018 (Easement)
Service Area: Table A, attached hereto
Intended Purpose: Non-potable uses

High Well 2

Placed in Service: April 6, 2001
Location (APN): 259-092-018
Service Area: Table A, attached hereto
Intended Purpose: Non-potable uses

Reclaimed Water Facility

Placed in Service: November 15, 1997
Location (APN): 169-011-004
Service Area: Table A, attached hereto
Intended Purpose: Non-potable uses

You have also asked my client for the intended purpose, location, and service area of each of the wells shown on the map submitted by Mr. Williams with his letter dated September 30, 2004. In addition to the wells described above, Mr. Williams's map depicts the location of the following wells:

High Well 1

Location (APN): 259-092-018 (Easement)
Service Area: Integrated CWWC WDS Service Area
Intended Purpose: Potable and non-potable use

High Well 2

Location (APN): 259-092-018
Service Area: Integrated CWWC WDS Service Area
Intended Purpose: Potable and non-potable use

Mr. David Berger
 General Manager
 Monterey Peninsula Water Management District
 November 5, 2004
 Page 3

High Well 3

Location (APN): 259-092-045
 Service Area: Integrated CWWC WDS Service Area
 Intended Purpose: Potable water system

Future High Well 4

Location (APN): 259-092-047
 Service Area: Integrated CWWC WDS Service Area
 Intended Purpose: Potable water system

Future Well

Location (APN): 259-092-047
 Service Area: Integrated CWWC WDS Service Area
 Intended Purpose: Potable water system

Replacement Shallow Well N-2

Location (APN): 169-011-004
 Service area: See Table A, attached hereto
 Intended Purpose: Non-potable replacement well for Well N (collapsed).

Table A reflects the configuration of the property as of April 17, 2001, as do the Assessor Parcel Numbers set forth above. The following descriptions of the source locations and the service area set forth in Table B reflect the property configuration as of today's date. Please note that the property configuration on the map enclosed with Mr. Williams' letter of September 30, 2004, also includes future parcel boundaries that will result from the filing of all of the final maps for Tehama.

<u>Source</u>	<u>Location</u>
Dam Well	169-421-044
Water Tower Well	169-421-040
N Well	169-421-044
N-1 Well	259-092-063
N-2 Well	169-421-044
High Well 1	259-092-018 (easement)
High Well 2	259-092-018 (easement)
High Well 3	259-092-062
High Well 4 (future)	259-092-063
Future Well	259-092-063

Mr. David Berger
General Manager
Monterey Peninsula Water Management District
November 5, 2004
Page 4

I believe the above responds to all of the outstanding questions contained in your letter of October 29, 2004. If you find that you need additional information regarding the non-potable system, please call me.

Sincerely,

Lombardo & Gilles, PC



Derinda L. Messenger

DLM:ncs/js

Enclosures

- cc: Mr. Alan Williams
- Mr. Michael Waxer
- Ms. Henrietta Stern
- Mr. Andy Bell

TABLE A

<u>APN</u>	<u>OWNER (4/17/01)</u>
259-090-014	Cañada Woods, LLC
259-090-015	Cañada Woods, LLC
259-090-016	Cañada Woods, LLC
259-090-017	Cañada Woods, LLC
259-090-018 (Easement)	Cañada Woods, LLC
259-090-019	Cañada Woods, LLC
259-090-020	Cañada Woods, LLC
259-090-021	Cañada Woods, LLC
259-090-022	Cañada Woods, LLC
259-090-023	Cañada Woods, LLC
259-090-024	Cañada Woods, LLC
259-090-025	Cañada Woods, LLC
259-090-026	Cañada Woods, LLC
259-090-027	Cañada Woods, LLC
259-090-028	Cañada Woods, LLC
259-090-029	Cañada Woods, LLC
259-090-030	Cañada Woods, LLC
259-090-031	Cañada Woods, LLC
259-090-032	Cañada Woods, LLC
259-090-033	Cañada Woods, LLC
259-090-034	Cañada Woods, LLC
259-090-035	Cañada Woods, LLC
259-090-036	Cañada Woods, LLC
259-090-037	Cañada Woods, LLC
259-090-038	Cañada Woods, LLC
259-090-039	Cañada Woods, LLC
259-090-040	Cañada Woods, LLC
259-090-041	Cañada Woods, LLC
259-090-042	Cañada Woods, LLC
259-090-043	Cañada Woods, LLC
259-090-044	Cañada Woods, LLC
259-090-045	Cañada Woods, LLC
259-090-046	Cañada Woods, LLC
259-090-047	Cañada Woods, LLC
169-011-004	Cañada Woods, LLC
169-011-005	Cañada Woods, LLC
169-011-011	Cañada Woods, LLC
169-011-017	Cañada Woods, LLC

TABLE B

<u>APN</u>	<u>OWNER (11/2/04)</u>
169-421-024	Cañada Woods, LLC
169-421-030	Cañada Woods, LLC
169-421-039	Cañada Woods, LLC
169-421-040	Cañada Woods, LLC
169-421-042	Cañada Woods, LLC
169-421-043	Cañada Woods, LLC
169-421-044	Cañada Woods, LLC
259-092-018	Cañada Woods, LLC
259-092-037	Cañada Woods, LLC
259-092-039	Cañada Woods, LLC
259-092-040	Cañada Woods, LLC
259-092-041	Cañada Woods, LLC
259-092-043	Cañada Woods, LLC
259-092-045	Cañada Woods, LLC
259-092-046	Cañada Woods, LLC
259-092-060	Cañada Woods, LLC
259-092-061	Cañada Woods, LLC
259-092-062	Cañada Woods, LLC
259-092-063	Cañada Woods, LLC
259-092-067	Cañada Woods, LLC

7/2004 15-18 FAX 6245834

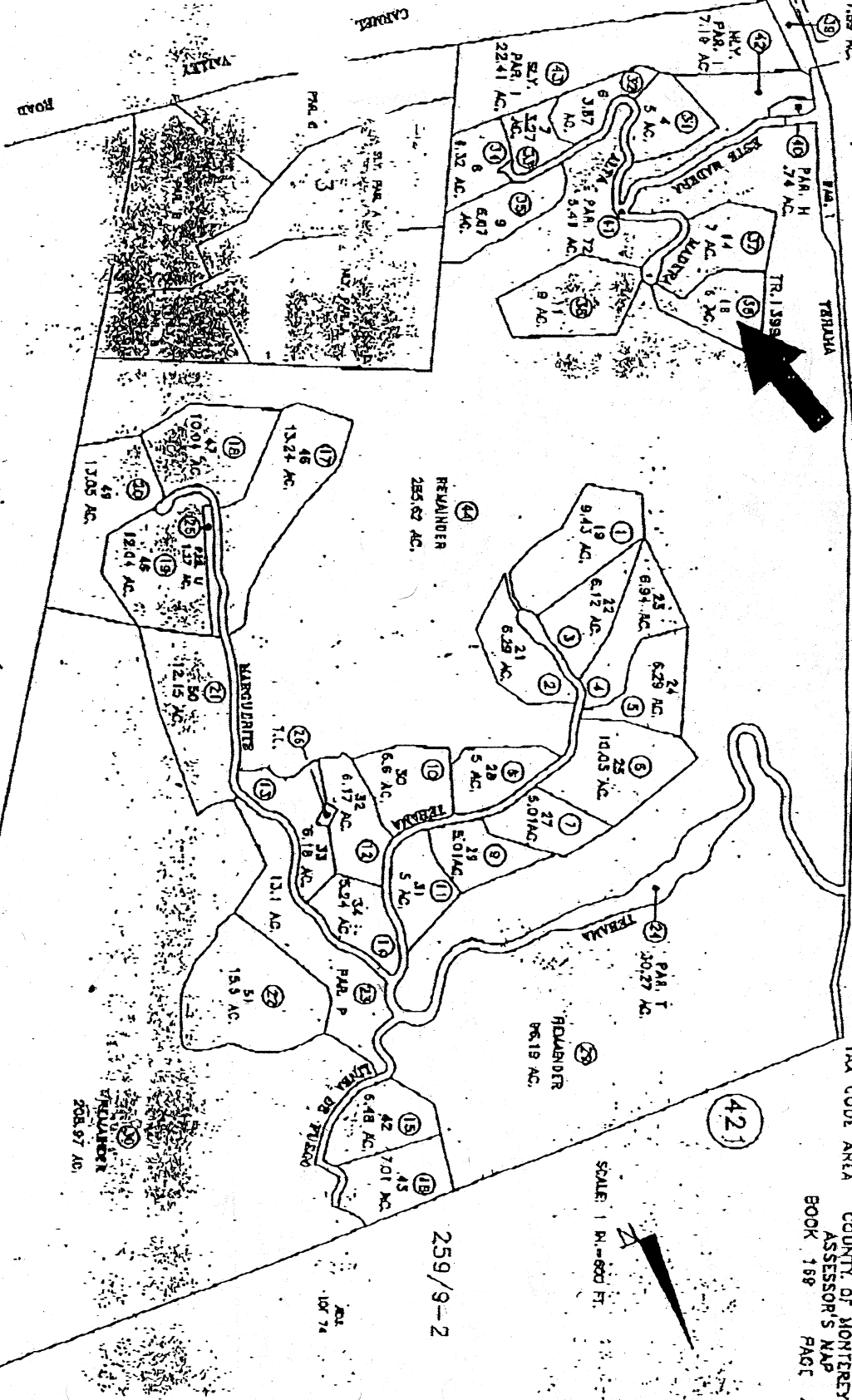
Chicago Title Co

0023

15/36

THIS MAP IS INTENDED TO BE USED FOR
PROPERTY TAX ASSESSMENT PURPOSES ONLY

TRACT NO. 1399
TEHAMA PHASE 2
RECORDED 9-9-03

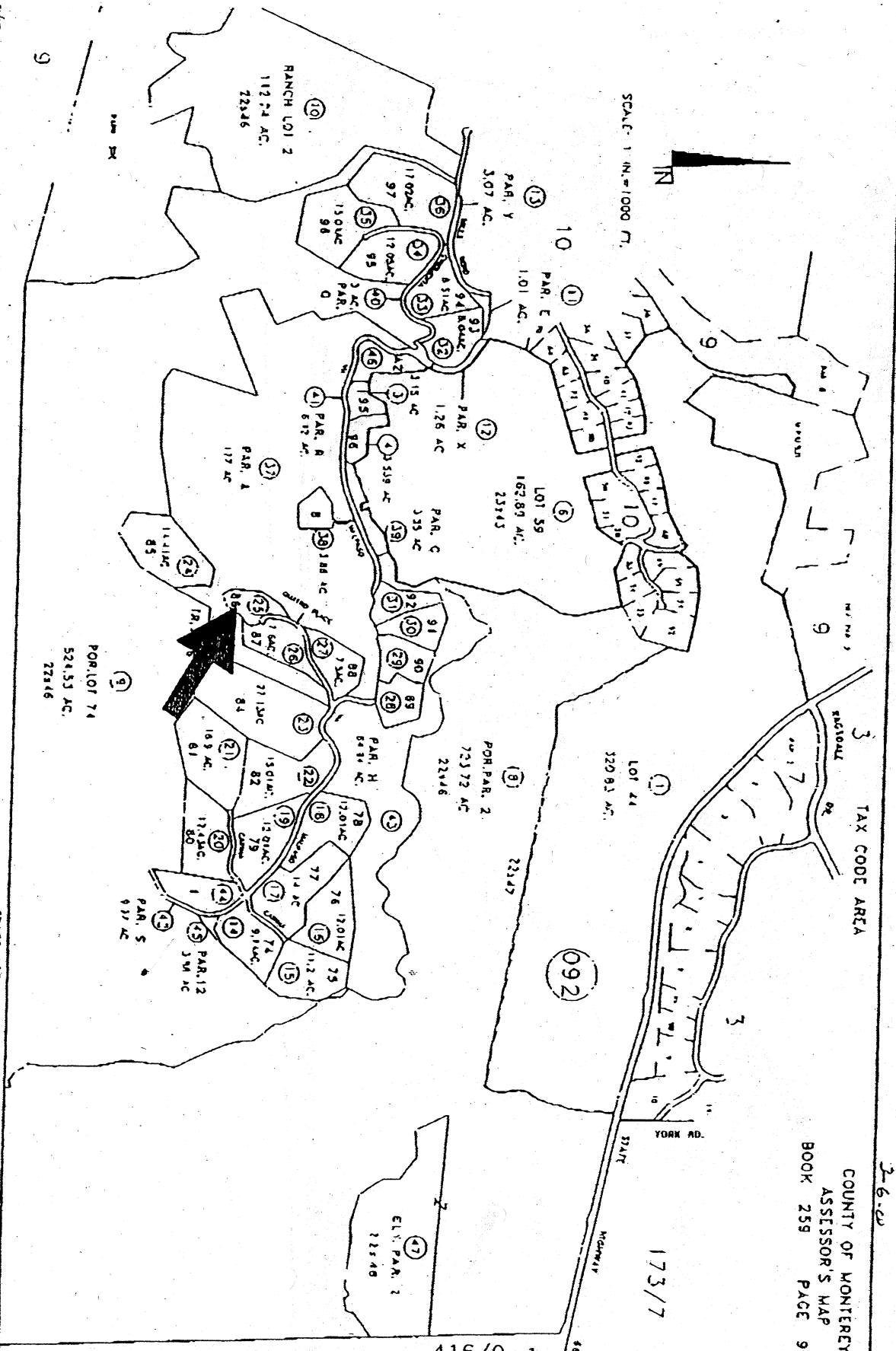


TAX CODE AREA COUNTY OF MONTEREY
BOOK 188 PAGE 42

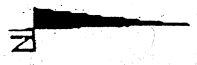
259/9-2

423

THIS MAP IS INTENDED TO BE USED FOR PROPERTY TAX ASSESSMENT PURPOSES ONLY.



SCALE: 1 IN. = 1000 FT.



TAX CODE AREA

3

COUNTY OF MONTEREY
ASSESSOR'S MAP
BOOK 259 PAGE 9-

26.0

173/7

416/9-1

LAW OFFICES OF
MICHAEL W. STAMP

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(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

November 5, 2004

Via Facsimile 644-9560

Alvin Edwards, Chair, and Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

RECEIVED

NOV - 5 2004

MPWMD

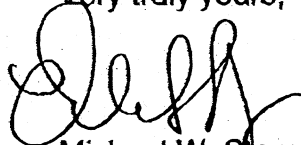
Re: Water Credit Transfers - notice requested

Dear Chair Edwards and Board Members:

My clients Save Our Carmel River and The Open Monterey Project request advance notice of all water credit transfer items in care of my office. It is not possible to identify the proposed transfers, because we do not know their names. It is not reasonable to ask my clients to send a separate request for each and every transfer by name, because they do not know them in advance.

Apparently there are at least one or more pending water credit transfer applications at the Water District. Thank you.

Very truly yours,



Michael W. Stamp