



January 27, 2009

Kristi Markey, Chair  
MPWMD Board of Directors  
P.O. Box 85  
Monterey, CA 93942

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MPWMD

Subject: 341 Unit Monterey Bay Shores Resort

Dear Chair and Members of the Board of Directors:

LandWatch Monterey County has reviewed the staff report and Addendum for the Monterey Bay Shores Resort. Based on our evaluation, a Subsequent Environmental Impact must be prepared in accordance with the California Environmental Quality Act (CEQA). Requiring additional environmental review of water supply, water quality and hydrology issues is within the purview of the Monterey Peninsula Water Management District which must rely on an adequate environmental document to take discretionary action on the proposed project. Our specific comments follow:

Role of MPWMD as a Responsible Agency

CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible (CEQA Guidelines §15021). The Guidelines require a responsible agency to consider the environmental documents prepared by the lead agency and to reach its own conclusions on whether and how to approve the project (CEQA Guidelines §15096). Responsible agencies may refuse to approve a project to avoid direct or indirect effects of that part of the project which the Responsible Agency is required to act upon (CEQA Guidelines, §15042).

CEQA requires that each responsible agency certify that its decision making body reviews and considers the information contained in the EIR [CEQA Guidelines §15050(b)]. Further, the Guidelines require a responsible agency to consider an addendum with the final EIR prior to making a decision on the project [CEQA Guidelines §15164 (d)]. To our knowledge, only a Revised Draft Addendum has been provided to the District Board, and the Board has not considered the FEIR.

Subsequent EIR is Required

CEQA (CEQA §21166) requires the preparation of a Subsequent EIR if:

- (a) *Substantial changes are proposed in the project which will require major revisions of the environmental impact report.*

*(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.*

*(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.*

### Substantial Changes to Circumstances Under Which the Project is Being Undertaken and New Information Available

The FEIR for the project was certified in 1998, more than 10 years ago. Since that time, substantial changes to the circumstances of the project have arisen and new information is available making the analysis of the Addendum insufficient and requiring a subsequent EIR in order to comply with CEQA. The following circumstances and new information require new analysis:

1. State Water Resources Control Board (SWRCB) Order 95-10 required reduced pumping from the Carmel River. Because efforts by Cal-Am and MPWD have failed to achieve any significant reduction of unlawful diversions from the Carmel River since 1998, SWRCB has issued a Draft Cease and Desist Order (CDO) with a final order expected later this year. **The issuance of the Draft CDO alone is a new circumstance requiring a new EIR and project impacts on the environment and existing water users must be considered in a Subsequent EIR in light of a final CDO.**
2. Since the project was approved, the Seaside Groundwater Basin was adjudicated, and it was determined that the Basin is in overdraft. The court also determined that the project applicant (Security National) is entitled to 149 AFY from the basin. The DEIR states that water demand for the revised project is estimated at 63.8 AFY, and CalAm would provide water service (p. 69). Because the revised project would use less water than the approved project, the Addendum finds the project's impact on groundwater to be less than that of the approved project. **CEQA requires that the project's impact be evaluated against existing conditions, not another project.** Clearly, additional withdrawal from the basin would have a significant adverse impact on groundwater supplies and water quality. **Further, the impact on other water users could be significant if they would be required to reduce their water extractions so that this project could be served. This potential impact requires a Subsequent EIR.**
3. **Finding #21 of the staff report (p. 217) states, "A key change (since the original application) is water service by CAW via SNG's adjudicated water rights rather than service by onsite shallow wells." This is a significant change that should be analyzed in a Subsequent EIR.**
4. **A new water supply from the pending Sand City desalination project is a feasible mitigation measure that should be considered. This is clearly new information**

**that must be addressed in a Subsequent EIR.**

5. The project would use graywater and stormwater runoff to supplement its water supply (p. 69). **Graywater is currently not permitted to be used in Monterey County. This is new information that must be addressed in a Subsequent EIR.**

In conclusion, MPWMD should take no action on the Monterey Bay shores Resort water permit until a Subsequent EIR has been prepared, re-circulated, and MPWMD has had and opportunity to review the new EIR and the public comments on that new document.

Thank you for the opportunity to review the document.

Sincerely,



Chris Fitz, Executive Director  
LandWatch Monterey County

cc: City of Sand City