

# Attachment C

This page intentionally left blank.



# NOTICE OF APPEAL

MONTEREY COUNTY

MAY 10 AM 10:21

CLOCK OF THE BOARD

Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)  
Title 21 (Zoning)

*Pam Silkwood*

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before May 10, 2018 (10 days after written notice of the decision has been mailed to the applicant). Date of decision April 30, 2018.

1. Please provide the following information:
  - a) Your name List of Appellants included as Exhibit A - Represented by Pam H. Silkwood
  - b) Phone Number (831) 373-4131
  - c) Address 26385 Carmel Rancho Blvd. Ste. 200, Carmel CA 93923
  - d) Appellant's name (if different) List of Appellants included as Exhibit A

2. Indicate appellant's interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) \_\_\_\_\_

3. If you are not the applicant, please give the applicant's name:

\_\_\_\_\_

4. What is the file number of the application that is the subject to this appeal?

Indicate the file number of the application that is the subject of the appeal and the decision making body (i.e., Zoning Administrator, Director of Planning, Minor Subdivision Committee).

- a) File Number PLN150755, CDP + Variances, Del Monte Forest (CZ)
- b) Decision Making Body \_\_\_\_\_

5. What is the nature of the appeal?

- a) Is the appellant appealing the approval  or the denial  of an application? (Check appropriate box)
- b) If the appellant is appealing one or more conditions of approval, list the condition number and state the condition(s) being appealed. (Attach extra sheets if necessary).

---

---

---

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the appeal:

- There was a lack of fair or impartial hearing; or
- The findings or decision or conditions are not supported by the evidence; or
- The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Planning Commission will not accept an application for appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

**Basis for Appeal**

- 1) There was a lack of fair and impartial hearing - See Exhibit B.
- 2) The findings and decisions are not supported by the evidence - See Exhibit C.
- 3) The decision was contrary to law - See Exhibit D.

7. As part of the application approval or denial process, findings were made by the decision making body (Director of Planning, Zoning Administrator, or Minor Subdivision Committee). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

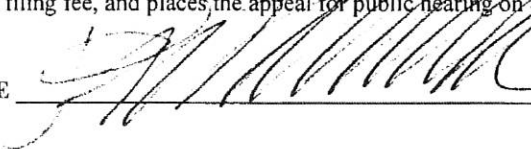
ZA's findings and decision are not supported by the evidence (See Exhibit C), and the decision was contrary to Law (See Exhibit D).

---

---

---

8. Your appeal is accepted when the Secretary of the Planning Commission accepts the appeal as complete on its face, receives the filing fee, and places the appeal for public hearing on the Planning Commission agenda.

APPELLANT SIGNATURE  DATE 5/10/18

ACCEPTED \_\_\_\_\_ DATE \_\_\_\_\_

SECRETARY OF THE PLANNING COMMISSION

## **Exhibit A**

### **List of Appellants**

- 1) Ted Muhs and Elizabeth McGinnis – 3215 Live Oak Meadow
- 2) Glen and Angela Charles – 3222 Whitman Lane
- 3) Richard and Kathleen Doerr – 3210 Whitman Lane
- 4) Charles & Helen Schwab – 3221 Live Oak Meadow
- 5) Sally Lucas - 3217 Live Oak Meadow

## Exhibit B

### There was a lack of fair and impartial hearing.

The applicant's representatives (collectively the "Applicant") misrepresented the facts before the Zoning Administrator ("ZA"), which prejudiced the ZA's decision. Accordingly, there was not a fair and impartial hearing before the ZA on the Raven Project. The misrepresentations are discussed below.

1. Alleging that the maintenance building was the same size or larger than the proposed project structure is misleading, particularly since the environmental baseline for the purpose of environmental review under CEQA is the current land as vacant open space. The Applicant takes the position that the prior maintenance building, demolished nine (9) years ago, is somewhat relevant to the discussion as to the environmental impacts of the proposed Project. Such statement is misleading and inaccurate. In looking at the totality of the proposed design, its height, size, and locations, it is clear the Raven Project would pose greater visual impacts from the protected views of 17-Mile Drive than the former maintenance building.

The former maintenance building was **one-story** and tucked away at the rear of the Project. The Applicant's **two-story** structure is centrally located, with a basement and a roof deck. The Project proposes a site coverage of 7,002 sq. ft. and the total square footage of the structure is 5,603 square feet as broken down below:

Total Building Area	Sq. Ft.
Basement Area	
Interior Habitable	1,690
Interior utility	65
First Floor	
Interior	920
Garage	298
Exterior Covered Patio	938
Second Floor	
Interior	1,386
Exterior Covered Patios	306
<b>Total</b>	<b>5,603</b>
Roof Deck	? <sup>1</sup>

---

<sup>1</sup> The size of the roof deck was never revealed.

The height, size and location of the two-story Project structure clearly show that the two structures are not comparable and any such comparison is misleading.

Furthermore, and more importantly, the environmental setting/baseline for the purpose of environmental review under CEQA is not the maintenance building or its operations which occurred nine (9) years ago, but rather the vacant land. When comparing the environmental impacts of the proposed Project against the current use of the property as vacant open space, it is clear that the Raven Project would pose significant environmental impacts to visual resources and to the adjacent environmentally sensitive habitat area ("ESHA"), which were inadequately analyzed in the initial study. The development-related impacts would be significant to the adjacent riparian, riverine and wetland habitats, which constitute a wildlife corridor for the Del Monte Forest, habitat for migratory birds, and has the essential habitat characteristics for red-legged frogs.

Because the applicant misled the ZA and the County staff failed to properly identify the environmental setting/baseline in the initial study, the hearing before the ZA was not impartial or fair.

2. The neighbors have repeatedly stated that they would support a Project design that is consistent with the zoning regulations. The Applicant misled the ZA by asserting that the neighbors would object to any structure on the Raven property because they have been enjoying the parcel as vacant open space. That statement is false.

The neighbors have consistently asked that the Applicant play by the same rules that were imposed on them and others in the Del Monte Forest. Instead, the applicant first proposed a 9,745-square foot structure with five (5) variances requested. Simply because the Applicant first presented an outrageously large structure for a small lot, which is not approvable and was rejected by staff, does not mean that the reduction in the size of the structure (now with two variances requested) should be considered a compromise to address the neighbor's concerns. Nor should that be a basis for the Project to be approved. As stated further below, the variance findings cannot be made for this Project and thus, the Project must be either redesigned or denied.

The Applicant's allegation before the ZA that the neighbors would object to any residential project because they currently enjoy the lot as vacant open space is without any basis, particularly when the neighbors have made clear that they would support a structure (minus the roof deck and fire pit) that is in full conformance with the zoning requirements. Such misrepresentation distracts from a fair and impartial hearing.

3. The Applicant misrepresented case law, which clearly requires proving of hardship before a variance can be granted -- It is clear the Applicant cannot prove hardship for a variance

approval. The Applicant misrepresented the law when they told the ZA that proving hardship is not required for a variance approval. It is likely that the Applicant is taking this position because they are unable to prove hardship. The Applicant cannot prove hardship because the Applicant intentionally and knowingly chose to purchase a small lot in an area surrounded by large lots, then demands to build a residential unit bigger than that allowed by the zoning ordinance. Self-imposed hardship is insufficient to claim hardship.

The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship; the burden of showing hardship is on the applicant. (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981), 128 Cal. App. 3d 724, 726.) That is, without demonstrating hardship, approving such a variance would constitute granting of a special privilege. In the *PMI Mortgage* case, although the Municipal Code of the City of Pacific Grove<sup>2</sup> (similar to Monterey County's) did not *expressly* require a finding of hardship, the *PMI Mortgage* court nonetheless ruled that the plaintiff failed to meet their burden of proving hardship for its variance request, and thus, the City's denial of a variance request was upheld.

Here, the Applicant not only failed to prove hardship, but dismissed it altogether. Accordingly, the requested variances should be denied.

---

<sup>2</sup> The City of Pacific Grove's findings required for a variance approval are as follows:

- (A) That there are exceptional or extraordinary circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, and/or uses in the same zoning district;
- (B) That the granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the petitioner; and
- (C) That the granting of such variance will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. (Pacific Grove City Code § 23.70.080(b).)

Monterey County's findings required for a variance approval are as follows:

- (A) That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; and
- (B) That the variance not constitute a grant of special privileges inconsistent with the limitations upon other property in the vicinity and zone in which such property is situated;
- (C) A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regularly governing the parcel of property.



4. An insignificant portion of a neighboring secondary structure(s) that is within the 100-foot setback of the riparian vegetation cannot be used to justify the proposed Project's direct, indirect and cumulatively significant development and human disturbance impacts to the adjacent riparian, riverine and wetland habitats, which is a wildlife corridor for the Del Monte Forest, habitat for migratory birds, and has the physical and biological features essential to the conservation of California red-legged frog, a federally listed species under the Endangered Species Act ("ESA"). ESA seeks to prevent endangered and threatened species from becoming extinct, and to increase populations of endangered and threatened species to levels that make it unnecessary to list and protect them under the Act. These habitats are protected under the Act because the survival of individual wild animals, as well as species of wildlife, is dependent upon their habitat.

The Applicant takes the position that a neighboring structure or structures are within the 100-foot setback of riparian vegetation, although the Applicant does not provide information as to what portion and which neighboring structure is located within the 100-foot setback of riparian vegetation. Rather, the Applicant makes such allegation to support the position that the Applicant's structure could also encroach onto the setback/buffer regardless of its impacts to ESHA.

The Applicant's allegation and rationale are contrary to CEQA. That is, if there are other structure(s) within the 100-foot setback, CEQA requires a cumulative impact analysis to determine if the project would result in cumulatively considerable impacts to ESHA. The initial study fails to adequately analyze the cumulative impacts resulting from the Raven Project.

Although an insignificant portion of a neighboring secondary structure or structures may be located within the setback, any impact of the secondary structure pales in comparison to the direct, indirect and cumulatively considerable impacts that would be caused by Raven Project to the adjacent riparian, riverine and wetland habitats. Such allegation is certainly an invalid basis to support the Project's encroachment into this important setback/buffer.

The Project plans propose to disturb 12,937 sq. ft., with cut and fill of 1,267 cubic yards of soils. The Project proposes to excavate and maintain a 1,755-square foot basement with living space by dewatering the shallow groundwater. The construction activities alone would cause significant direct, indirect and cumulatively considerable impacts to the adjacent ESHA.

The Project also proposes a roof deck with the potential for outdoor activities that could result in significant impacts to migratory birds visiting the riverine area, and noise that

would disturb the adjacent habitats and its inhabitants. An example of a potential use of the roof deck was used by the Applicant in an attempt to invalidate the neighbors' position. In reality, Monterey County does not have any control over the use of the roof deck and there are no limitations placed on furniture, temporary string lights, parties and other activities on the roof deck, which would not only significantly alter the neighborhood character, but cause significant human disturbance to the adjacent protected habitats, particularly to migratory birds.

These misleading statements by the Applicant have resulted in a prejudicial decision by the ZA.

5. The Applicant did not properly answer questions specific to the potential contamination resulting from the prior maintenance yard activities. Instead, the Applicant makes a reference to a 2003 *Updated Soil Sampling and Analysis Report* prepared by D&M Consulting Engineers, Inc. ("D&M"). M3 Environmental Consulting LLC reviewed the D&M's report and recommended additional assessment of "an apparent surface staining on the site." (See **Attachment 1**.) The prior sampling event performed by D&M did not include the sampling of this stained area and thus, further sampling is required to conclusively determine that the maintenance yard activities did not contaminate the property. Please see the Google Earth image of the stained area and the D&M sampling locations included as **Attachment 1**.

By misleading the ZA into believing that the entire Raven Property had been fully investigated, the ZA's decision was prejudiced.

6. The Applicant did not provide information on the potential impacts to adjoining neighbors' trees; and the potential flooding that could result from the construction and operation of the complex drainage system to be installed to continuously dewater the basement living space. The complex drainage system proposed by the Applicant is shown on **Attachment 2**. The Applicant does not address whether roots of adjoining neighbors' trees would be severed and would be subsequently harmed during the installation and operation of the complex drainage system. The Applicant's own document discusses that groundwater can fluctuate over time depending on a number of factors including seasonal rainfall, site elevation, groundwater withdrawal and other activities.

Finally, any failure of the drainage system pumps could result in flooding not only of the basement but of the surrounding area. The riverine has been known to flood over Whitman Lane and thus, flooding is a real concern.

There could not be a fair and impartial hearing when the Applicant is withholding key information specific to the Project's drainage system.

7. The Applicant cannot directly or indirectly discharge into the riverine, which is owned by one of the appellants. The Applicant's plans do not make clear the location of the potential discharge area for the release of water from the underslab subdrainage, nor do they show the eventual discharge from the stormdrain on Whitman Lane. If the direct or indirect discharge of stormwater and/or water from the underslab subdrainage is the riverine, the Applicant requires an easement from one of the appellants who owns that property prior to any such discharge. Since the Applicant does not have an easement for discharge of water to the riverine, the Applicant would need to discharge all runoff and drainage water elsewhere that does not involve direct or indirect discharge to the riverine.

There could not be a fair and impartial hearing when the Applicant is withholding key information specific to the Project's drainage system.

## Exhibit C – The Findings and Decision Are Not Supported by the Evidence

**Finding 1 – The Raven property is not suitable for the development proposed; the Project would pose significant health and safety impacts; and the Project is inconsistent with the Del Monte Forest Land Use Plan/Local Coastal Program (“LCP”).**

In order for the development to occur, 12,937 square feet of the property would be disturbed with cut/fill of 1,267.28 cubic yards. In order to construct a 1,755-square foot basement, with living space, shallow groundwater must be continuously pumped through a complex drainage system. Flooding of the basement and the surrounding area is a real concern should the pump systems fail. Additionally, the installation and operation of this complex underground drainage system could sever roots and harm trees, which would pose a hazard to the property and surrounding properties. The Applicant’s plans do not make clear the location of the potential discharge area for the release of water from the underslab subdrainage, nor do they show the eventual discharge from the stormdrain on Whitman Lane. If the direct or indirect discharge of stormwater and/or water from the underslab subdrainage is the riverine, the Applicant requires an easement from one of the appellants who owns that property prior to any such discharge. Since the Applicant does not have an easement for discharge of water to the riverine, the Applicant would need to discharge all runoff and drainage water elsewhere that does not involve direct or indirect discharge to the riverine. These health and safety issues were not addressed and thus, this finding is not supported by substantial evidence in the record. The property is clearly not suitable for the design since continuous dewatering and drainage releases are needed as part of the Project.

The finding that the Project is consistent with the LCP policies is also not supported by substantial evidence in the record. The Project is inconsistent with the following policies:

- *Policy 8: Environmentally sensitive habitat 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 and development adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the habitat area, and such land use and development shall be sited and designed to prevent impacts that would significantly degrade the habitat areas.*

The Project development is adjacent to ESHA, yet the Project’s impacts to ESHA is inadequately analyzed or mitigated to assure long-term maintenance of the habitat area. In fact, the Project proposes a fire pit next to the riparian vegetation, yet impacts of such development to this sensitive resource are not considered. The Project is clearly inconsistent with this policy.

- *Policy 25: In addition to environmentally sensitive habitat area policies that may also apply, a setback/buffer of at least 100 feet as measured from the 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/buffer area unless accomplished in conjunction with restoration and enhancement, and unless it is demonstrated that no significant disruption of environmentally sensitive habitat areas will result.*

The adjacent wetlands have not been fully delineated by the Applicant, nor is there any assurance of 100-foot setback/buffer to protect the adjacent wetlands. Since the Applicant did not provide sufficient biological reporting to protect the adjacent wetlands, the County must rely on Dr. Jeffery Froke's report entitled, *An Assessment of Resource Values Associated with Stillwater Creek & Adjoining Private Properties Above Stillwater Cove in Pebble Beach, Monterey County, California* ("Froke's Biological Report" included as **Attachment 3**) and the recommendations therein as mitigation measures to protect these sensitive resources.

- *Policy 23. In addition to environmentally sensitive habitat area policies that may also apply, riparian plant communities shall be protected by establishing a setback/buffer of at least 100 feet as measured from the outer edge of riparian vegetation. The setback/buffer requirement may be reduced only if it is clearly demonstrated that a narrower setback/buffer is sufficient to protect riparian vegetation and associated wildlife values and other ecological functions, and that riparian enhancement is included in a project. No significant disruption of riparian habitat will be permitted, and all allowable use/development dependent on the riparian resource, including bridges, shall result in long-term habitat enhancement (i.e., new habitat value greater (qualitatively and quantitatively) than existing habitat value). Examples of such cases include restoration of previously damaged riparian environments and replacement of fill and culverts by bridges.*

The Raven Project residence encroaches onto the buffer/setback necessary to protect the sensitive riparian habitat. There lacks substantial evidence in the record to demonstrate how the riparian habitat would be protected without the 100-foot buffer/setback. Froke's Biological Report makes clear the buffer/setback is necessary "to provide a transition zone between the sensitive and special resource and human activities, and are [sic] intended to reduce the impacts of development on natural resources and protect the beneficial services that the resources provide." The Project is clearly inconsistent with this policy.

- *Policy 47: Views from designated public access areas and vista points, from Highway 68 and 17-Mile Drive corridors, and of ridgelines as seen from the public viewing areas identified on Figure 3, shall be protected as resources of public importance, and development that could adversely impact such views shall only be allowed where it protects, preserves, and if feasible enhances, such scenic resources. Conservation and scenic easements shall be required as one means of protecting such views in perpetuity.*

The massive residential dwelling unit, with two variances for lot coverage and floor area ratio, on a small lot would be highly visible from 17-Mile Drive and the open golf course space. Although the Applicant may attempt to screen the development from views from

this important public viewing area, the development (with the variances) certainly does not protect, preserve or enhance the public view resources as required in this policy. For example, the Project's roof top deck would be prominent and negatively impact the views from this important public viewing area. In fact, the cumulative loss of the public visual resource should be considered considerable requiring further analysis and mitigation measures. The Project is clearly inconsistent with this Policy.

- *Policy 48: Development within visually prominent settings, including those identified on Figure 3, shall be sited and designed to avoid blocking or having a significant adverse impact on significant public views, including by situating lots, access roads, and/or buildings to maximize the effectiveness of screening vegetation and related viewshed mitigation. Lots, access roads, and/or buildings should also be sited to minimize tree removal and visually obtrusive grading.*

Please see the comments to Policy 47, which comments are also applicable to this policy. Additionally, the Project proposes significant visually obstructive grading (disturbance of 12,937 square feet and cut/fill of 1,267.28 cubic yards) in order to construct a basement and its associated complex drainage system. Accordingly, the Project is inconsistent with this policy.

- *Policy 52. Development within the viewshed of visually prominent settings, including those identified on Figure 3, shall include adequate structural setbacks (generally a minimum of 50 feet) from such settings and shall require siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be sited and designed to harmonize with the natural setting and not be visually intrusive.*

Instead of proposing a smaller residence that is least visually intrusive to harmonize with the natural setting, the Applicant asks for two variances to increase the building coverage and building floor area ratio. Moreover, the Applicant proposes a rooftop deck, which would make the residential structure prominently featured rather than allowing it to be subservient to the natural setting. This Project is clearly in direct conflict with this policy.

The evidence to support Finding 1 does not address the health and safety impacts and inconsistencies with the aforementioned LCP policies. Accordingly, this finding is not supported by substantial evidence in the record.

**Finding 2 – The Project design does not assure protection of public viewshed and is inconsistent with neighborhood character.**

The massive residential dwelling unit, with variances for lot coverage and floor area ratio, on a small lot would be highly visible from 17-Mile Drive and the open golf course space. Although the Applicant may attempt to screen the development from views from this important public viewing area, the development (with the variances) certainly does not protect, preserve or enhance the public view resources as required under Policy 47 of the LCP. For example, the

Project's roof top deck would be prominent and negatively impact the views from this important public viewing area. In fact, the cumulative loss of the public visual resource should be considered considerable requiring further analysis and mitigation measures.

The residential structures of all surrounding properties are subordinated to the natural environment by affording open space in a forested setting surrounding the structures. Instead of proposing a smaller residence that is least visually intrusive to harmonize with the natural setting, the Applicant asks for two variances from the required building coverage and building floor area ratio set forth in the zoning ordinance. Moreover, the Applicant proposes a rooftop deck, which would make the residential structure prominently featured rather than allowing it to be subservient to the natural setting.

Accordingly, this finding cannot be made, nor can it be supported by substantial evidence in the record.

**Finding 3 – The Project will have a significant effect on the environment.**

As discussed above, the Project is inconsistent with LCP policies. A clear and direct conflict with a mandatory provision of a general plan usually amounts to an inconsistency that will preclude project approval. Overall consistency with general plan policies is not sufficient to excuse a project's inconsistency with plan standards that are specific, mandatory, and fundamental. (*Spring Valley Lake Ass'n v City of Victorville* (2016) 248 CA4th 91, 101; See also *California Native Plant Soc'y v City of Rancho Cordova* (2009) 172 CA4th 603, 641.)

That is, any inconsistency with the general plan must first need to be cured before the project can be approved. The inconsistency is also evidence that the inconsistent project feature will result in a significant environmental effect. An inconsistency indicates a likelihood of environmental harm and thus requires a careful review of any potential impacts. An inconsistency also supports the conclusion that the underlying physical impact is significant.

The Project's inconsistencies with the LCP policies constitute significant effect on the environment, which were not addressed in the initial study/negative declaration. Thus, the finding is not supported by substantial evidence in the record.

1. The Initial Study also fails to adequately describe the adjacent complex habitats of freshwater wetlands, riparian woodland, and riverine within the Pescadero and unnamed watersheds. The habitats are served by Stillwater Creek which flows to Carmel Bay Area of Special Biological Significance ("ASBS"). The habitats provide a key wildlife corridor for the abundant wildlife resources that reside or frequent the area. The habitats also have the physical and biological *features* essential to the conservation of California red-legged frog, a federally listed species under the Endangered Species Act ("ESA"). This complex biological system is discussed in Froke's Biological Report. Contrary to Froke's Biological Report, the Initial Study is absent sufficient description of this complex system.

Without a doubt, the habitats are environmentally sensitive habitat areas (“ESHA”) requiring protection under the California Coastal Act, the LCP and the Del Monte Forest Coastal Implementation Plan (“CIP”). ESHA is defined in the CIP as follows:

Environmentally sensitive habitat 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 development. In the Del Monte Forest, examples of habitat areas which have historically been determined to meet the definition of ESHA include: the rare Monterey cypress and Gowen cypress forest communities, portions of the native Monterey pine forest, the endemic Monterey pine/Bishop pine association, central maritime chaparral, coastal sand dunes, streams and riparian corridors, wetlands, and sites in which sensitive plants and animals associated with these and other habitats are located.

Not only does the Initial Study fail to fully describe ESHA, it also fails to adequately analyze the Project’s potential to significantly impact ESHA. In fact, the Initial Study is conclusory without any thorough analyses of the Project’s potential to impact ESHA due to artificial lighting, human disturbances, and point and non-point discharges which directly or indirectly flows to the ASBS. An initial study that is materially deficient may not be sufficient to support a negative declaration. (See *Christward Ministry v Superior Court (1986) 184 CA3d 180, 197.*) Simply put, the County’s assertion it could find no “fair argument” there would be any potentially significant environment impacts rests in its failure to undertake an adequate environmental analysis. (See, *ibid.*)

The Initial Study utterly ignores the LCP policies that protects ESHA. For example, LCP Policy 23 requires a setback/buffer of *at least* 100 feet as measured from the outer edge of riparian vegetation as follows:

In addition to environmentally sensitive habitat area policies that may also apply, riparian plant communities shall be protected by establishing a setback/buffer of at least 100 feet as measured from the outer edge of riparian vegetation. The setback/buffer requirement may be reduced only if it is clearly demonstrated that a narrower setback/buffer is sufficient to protect riparian vegetation and associated wildlife values and other ecological functions, and that riparian enhancement is included in a project. No significant disruption of riparian habitat will be permitted, and all allowable use/development dependent on the riparian resource, including bridges, shall result in long-term habitat enhancement (i.e., new habitat value greater (qualitatively and quantitatively) than existing habitat value). Examples of such cases include restoration of previously damaged riparian environments and replacement of fill and culverts by bridges.

Yet, the proposed residence is allowed to encroach into the setback/buffer, without any demonstration that a narrower setback/buffer would sufficiently protect the sensitive habitats.



Nor is there any attempt to impose riparian enhancement measures in the Initial Study. To the contrary, the ZA's decision to adopt the negative declaration seems to support development (i.e., proposed fire pit) immediately next to ESHA with utter disregard for the required buffer/setback necessary to protect ESHA.

ESHA does not recognize property boundaries and the requirements set forth to protect ESHA are not limited to only those ESHAs on the project property. The Coastal Act does not limit development adjacent to ESHA only to those ESHAs within the project property. The Coastal Act simply states development adjacent to ESHA "shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat ... areas." (Coastal Act § 30240, subd. (b).)

Regardless of ESHA being located immediately adjacent to, but outside the boundaries of, the Raven Property, impacts to ESHA must be properly described and analyzed and mitigation measures, including setback/buffer, need to be included in the Initial Study to protect ESHA. This is particularly important since the 100-foot setback/buffer extends onto a significant portion of the Raven Property. The Project's impacts to ESHA cannot be ignored by the County.

Specific to ESHA, the CIP imposes requirement for specific "biological reporting including field surveys and impact analysis, to precisely determine habitat area, including ESHA, and to recommend siting, design, and related mitigating measures to ensure protection of any sensitive species or habitat areas present." Since the Applicant did not provide sufficient biological reporting to protect the adjacent ESHA, the Initial Study should have relied on Froke's Biological Report and the recommendations therein as mitigation measures to protect the adjacent ESHA.

It is clear the negative declaration was improperly adopted since substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (*Quail Botanical Gardens Found., Inc. v City of Encinitas* (1994) 29 CA4th 1597, 1602; *Friends of "B" St. v City of Hayward* (1980) 106 CA3d 988, 1002.) The CEQA finding in the resolution is not supported by substantial evidence in the record.

**Findings 5, 6 and 7 – Variance approval is not supported by the findings and the findings are not supported by substantial evidence in the record.**

As stated previously in Exhibit B, finding of hardship is required under case law to demonstrate that by approving a variance, special privileges would not be granted. The Applicant intentionally chose to purchase a small lot in an area surrounded by large lots, then claim hardship to build a residential unit bigger than that allowed by the zoning ordinance. Self-imposed hardship is insufficient to claim hardship.

The Del Monte Forest comprises both large and small lots. Rather than adhering to the strict requirements of zoning, the Applicant is requesting variances for lot coverage and floor area ratio to build a large structure on a smaller lot, without providing sufficient evidence to demonstrate that there is in fact hardship that would prohibit them from constructing a residential dwelling

unit consistent with the zoning requirements. The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship; the burden of showing hardship is on the applicant. (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981) 128 Cal.App.3d 724, 731.) Here, the Applicant is not prohibited from building a residential unit that is consistent with zoning and thus, there is no hardship.

The purpose of zoning regulations is to implement the LCP's broad objectives, goals, and policies into requirements to carry out the planning vision expressed in the LCP. To avoid diminishing the effect of the zoning regulations, which in turn would diminish the effect of the planning vision of the LCP, a variance should only be granted when it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. (Monterey County Code section 20.78.040.B.) Because a single family residential unit can be built on the Raven Property without a variance and other residential units within the Pascadero Watershed are built consistent with lot coverage and floor area ratio requirements, allowing variances to build a much bigger residential unit in proportion to the small nonconforming lot size would constitute granting a special privilege to the owner of the Raven Property, which is expressly prohibited under Monterey County Code section 20.78.040.B.

Monterey County has rightfully required projects to strictly adhere to the zoning requirements in order to avoid the grant of special privileges. Accordingly, the last variance approved by Monterey County for the Del Monte Forest was about thirteen (13) years ago. In fact, according to the Planning Staff<sup>1</sup>, only five (5) similar (but NOT the same) variances have been approved in the Del Monte Forest in the past forty (40) years; only four (4) of which are in the Coastal Zone. This clearly demonstrates Monterey County's rightful intent to strictly adhere to the requirements set forth in the zoning ordinance, not only because they are the legal requirements, but also to honor and protect the policies set forth the LCP. Please see the table included as **Attachment 4** which summarizes these prior variance approvals.

The four (4) projects in the Coastal Zone that received variance approvals did not request an increase in site coverage or in floor area ratio as part of the project design; are in all cases factually different from the Project and thus, cannot be used to support the variances requested as part of this Project. Moreover, the fact that variances may have been granted to some owners and denied to others does not establish unreasonable discrimination. (*McDonald v. Pasadena* (1961) 195 Cal.App.2d. 662.)

The applicant attempts to justify the variance requests by alleging that the Raven Property is unusually shaped and small. The ZA made clear that the Raven Property is not unusually shaped to qualify for a variance. That is because there are numerous properties in the Del Monte Forest that are supposedly "unusually shaped" and thus, the "unusually shaped" lots are not in fact that unusual and should not be used as a basis to support the requested variances.

The 0.26-acre parcel is not also "small" for the Del Monte Forest, including the Pascadero Watershed neighborhoods, where there are many "small" lots.

---

<sup>1</sup> The information on the prior variance approvals was provided by Anna Quenga of the Monterey County Planning Department.

The required findings for a variance approval cannot be made for the Project, nor can such findings be supported by substantial evidence in the record.

1. The variance approval would not deprive the Raven Property of privileges enjoyed by other properties in the vicinity and under identical zone classification – The Applicant intentionally purchased the small lot, knowing (or should have known) the limitation on development of the same pursuant to the zoning ordinance. Instead, the Applicant claims hardship to construct a much larger residential unit than that allowed under the zoning ordinance. Self-induced hardship is not sufficient basis to grant variances. The Applicant can, and has the right to, construct a single family residential dwelling unit consistent with the zoning requirements and enjoy the privileges afforded to others in the vicinity and under identical zone classification. There is no reason to grant the Applicant variances when the Applicant can enjoy the property similar to all others in the Coastal Zone of the Del Monte Forest by meeting the zoning requirements.
2. The granting of the variances would grant the Applicant special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. The residential development of the surrounding properties conforms to zoning -- So have most development projects in the Coastal Zone of the Del Monte Forest since the Planning staff identified only four similar (but factually different) variance (4) approvals in the past forty (40) years. Approving the variances to construct a large residential unit on a small lot would grant the Applicant special privileges inconsistent with the limitations upon other properties in the vicinity. That is prohibited. The residential structures of all surrounding properties are subordinated to the natural environment by affording open space in a forested setting surrounding the structures. Without granting special privileges, the Applicant can accomplish the same by building a smaller home that is consistent with the zoning requirements.

The variance approval is not supported by the required findings and the findings are not supported by substantial evidence in the record.

## Exhibit D – The Decision was Contrary to Law

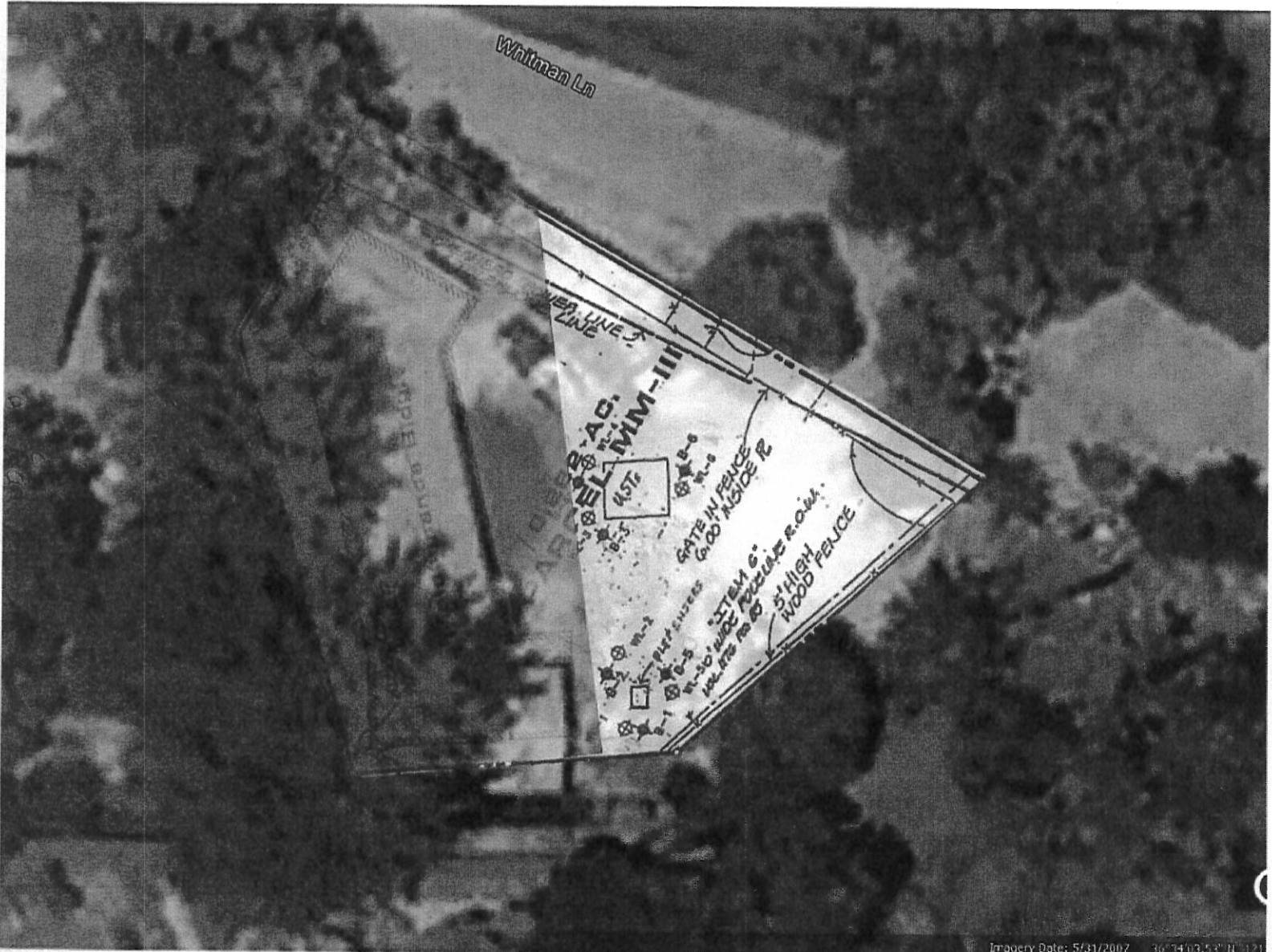
The Zoning Administrator (“ZA”) abused its discretion by failing to proceed in the manner required by law and failing to support its decision to adopt the Negative Declaration with substantial evidence in the record. The Project’s Initial Study fails to adequately describe the environmental setting, analyze environmental impacts and mitigate significant impacts, yet the ZA adopted Negative Declaration for the Raven Project.

Of particular importance is the utter failure of the Initial Study to describe the adjacent complex habitats of freshwater wetlands, riparian woodland, and riverine within the Pescadero and unnamed watersheds. The habitats are served by Stillwater Creek which flows to Carmel Bay Area of Special Biological Significance (“ASBS”). The habitats provide a key wildlife corridor for the abundant wildlife (including for migratory birds) that reside or frequent the area. The habitats also have the physical and biological features essential to the conservation of California red-legged frog, a federally listed species under the Endangered Species Act (“ESA”). ESA seeks to prevent endangered and threatened species from becoming extinct, and to increase populations of endangered and threatened species to levels that make it unnecessary to list and protect them under the Act. These habitats are protected under the Act because the survival of individual wild animals, as well as species of wildlife, is dependent upon their habitat.

This complex ecological system is not adequately described in the Initial Study. For example, the adjacent freshwater wetlands were not delineated and Project’s potential to encroach into their associated buffer/setback was not addressed. The Project’s Initial Study and Negative Declaration are not supported by substantial evidence in the record, but rather based on speculation, unsubstantiated opinion and narrative, evidence that is clearly inaccurate and erroneous, and evidence that is not credible. Accordingly, the Project, as approved by the ZA, violates CEQA.

The ZA abused its discretion by failing to proceed in the manner required by law and failing to support its decision to grant Applicant variances with substantial evidence in the record. Instead of denying the variances based clearly on the inability to make the required findings and support the findings with substantial evidence in the record, the ZA granted special privileges to the Applicant by approving the variances, which is prohibited. Almost all development projects in the Coastal Zone of the Del Monte Forest have conformed with the zoning requirements as to lot coverage and floor area ratio, with only four factually dissimilar variances (4) granted in the Coastal Zone of the Del Monte Forest in the past forty (40) years as identified by the Planning staff. There is no reason to grant the Applicant special privileges by approving the variances when the Applicant can enjoy the property similar to most all others in the Coastal Zone of the Del Monte Forest by meeting the zoning requirements.

# Attachment 1





ENVIRONMENTAL  
CONSULTING LLC

December 5, 2017

Ms. Pamela Silkwood  
Horan Lloyd  
A Professional Corporation  
26385 Carmel Rancho Blvd., Suite 200  
Carmel, CA 95076  
831.373.4131 (t)

via e-mail only  
[psilkwood@horanlegal.com](mailto:psilkwood@horanlegal.com)

Subject: Soil Sampling at 3213 Whitman Lane in Pebble Beach, California  
Project No. 17727.0

Dear Ms. Silkwood:

M<sup>3</sup> was retained to assess the conditions of the above referenced site. M<sup>3</sup> was presented with the enclosed aerial photograph of the site from Google Earth dated May 13, 2007. The photograph shows the site with the former maintenance building that occupied the western portion of the property. Based on a review of the photograph, there is an apparent surface staining of the site which emanates from the eastern side of the central portion of the maintenance building. The surface appears to be unpaved or gravel-covered.

The source of the staining is not known; however, due the proximity to the building and the "semi-circle" nature of the staining, the stained area may be a low spot or collection area for runoff from exterior or interior of the building, including runoff from possible golf cart washing or other maintenance operations at the site. Without further information, M<sup>3</sup> would consider the staining a recognized environmental concern and recommend additional assessment in this area of the property to evaluate subsurface impact.

If you have any questions, please call me at 831.649.4623.

Sincerely,  
M<sup>3</sup> Environmental Consulting LLC.

A handwritten signature in black ink, appearing to read "Chris G. Gatward".

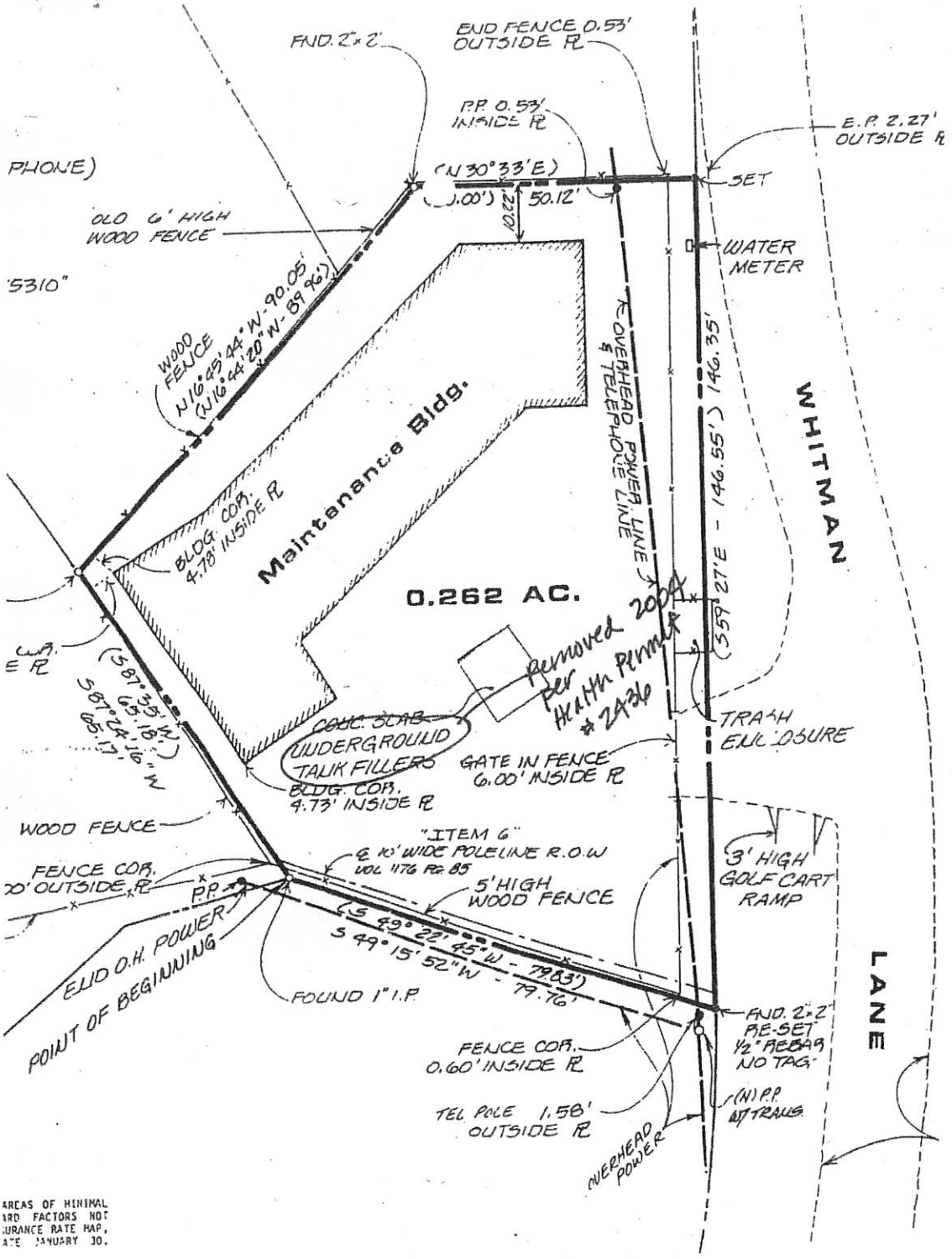
Chris G. Gatward  
Principal

CGG/

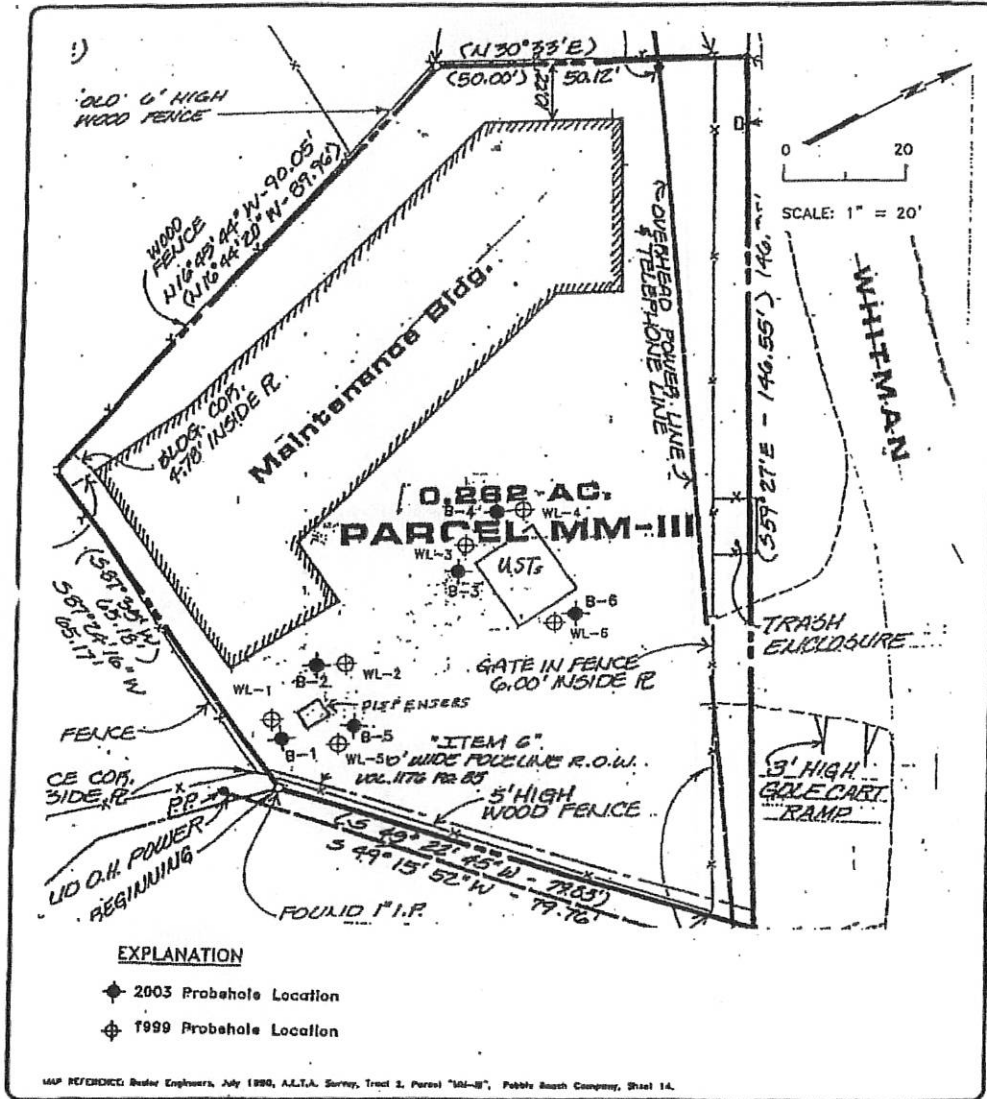


– Site Photograph





AREAS OF MINIMAL  
 1RD FACTORS NOT  
 SURANCE RATE MAP,  
 A/E JANUARY 30.



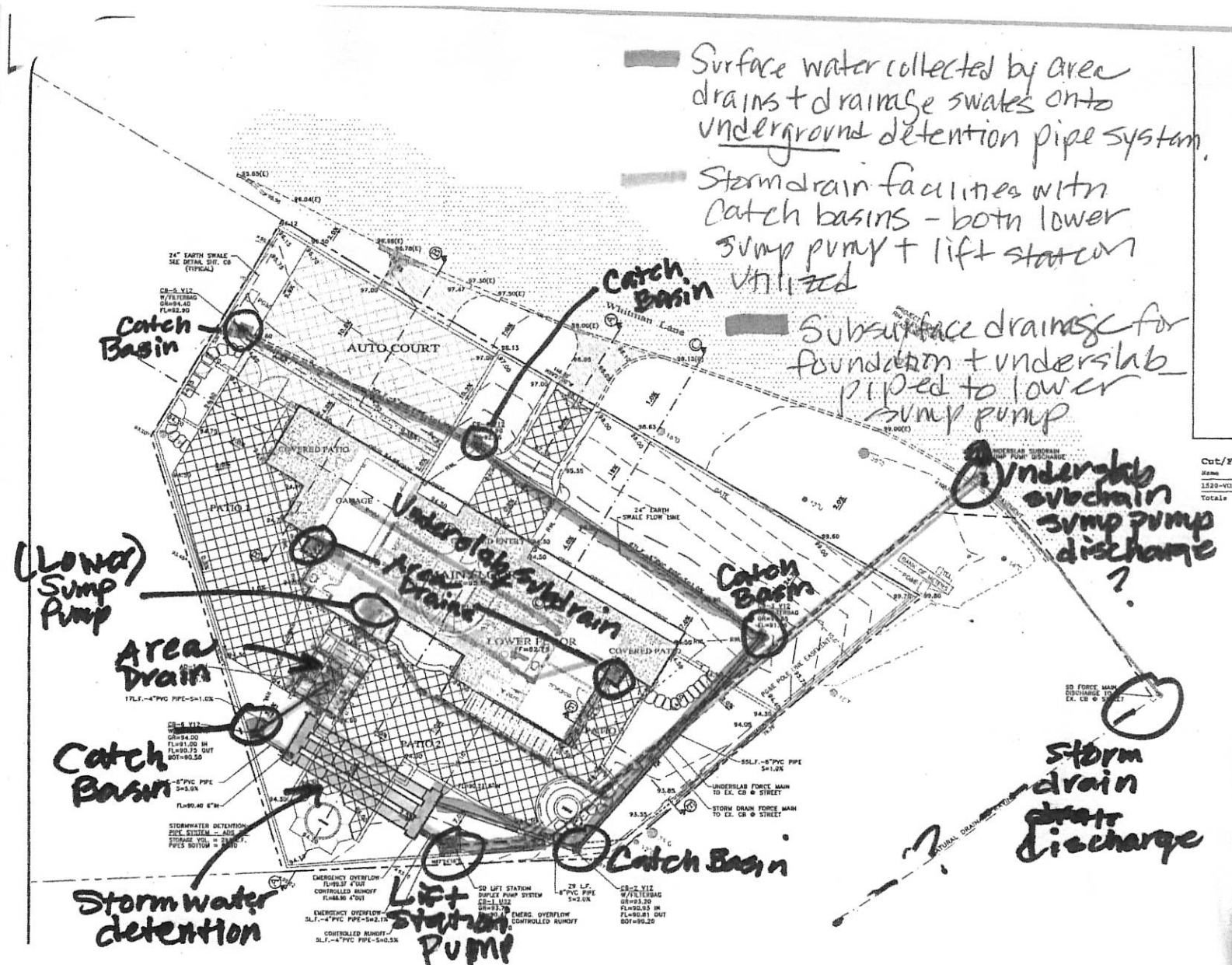
OCTOBER 2003

D&M CONSULTING ENGINEERS, INC.  
A URS CORPORATION COMPANY

**SITE PLAN**  
FORMER GOLF COURSE MAINTENANCE FACILITY  
PEBBLE BEACH COMPANY  
PEBBLE BEACH, CALIFORNIA

**FIGURE 1**  
**PROJECT**  
3089

## Attachment 2



Surface water collected by area drains + drainage swales onto underground detention pipe system.

Storm drain facilities with catch basins - both lower sump pump + lift station utilized

Subsurface drainage for foundation + underslab piped to lower sump pump

Under slab subchain sump pump discharge ?

Storm drain discharge

(Lower) Sump Pump

Area Drain

Catch Basin

Storm water detention

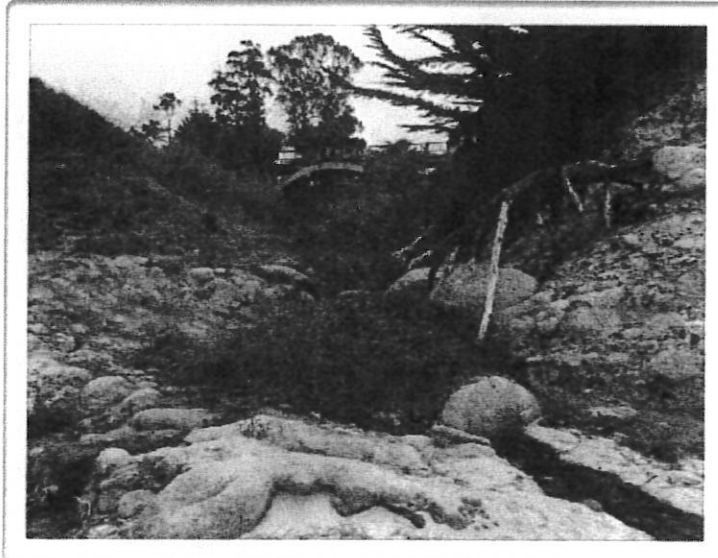
Lift Station Pump

Catch Basin

Cut/Flt  
Name  
1520-VOL 1  
Totals

## Attachment 3

**AN ASSESSMENT OF RESOURCE VALUES  
ASSOCIATED WITH STILLWATER CREEK  
&  
ADJOINING PRIVATE PROPERTIES  
ABOVE STILLWATER COVE  
IN PEBBLE BEACH, MONTEREY COUNTY, CALIFORNIA**



*Prepared for* Pamela H. Silkwood, Esq.  
HORAN|LLOYD, Carmel CA

*Prepared by* Jeffrey B. Froke, Ph.D.  
Consulting Ecologist  
CALIFAUNA, Pebble Beach CA

12 April 2018

AN ASSESSMENT OF RESOURCE VALUES ASSOCIATED WITH STILLWATER CREEK AND ADJOINING PRIVATE PROPERTIES ABOVE STILLWATER COVE IN PEBBLE BEACH, MONTEREY COUNTY, CA

**INTRODUCTION**

This report presents an assessment of biological constituents and ecological conditions present within a residential environment and adjacent complex of riparian, riverine, freshwater wetland, and nearshore marine resources that are associated with Stillwater Creek in Pebble Beach, Monterey County, CA. Stillwater Creek, which is a perennial blue-line stream<sup>1</sup>, is a direct and vital tributary to the Pacific Ocean at Carmel Bay. In turn, Carmel Bay is designated a California Area of Special Biological Significance (Carmel Bay ASBS)<sup>2</sup>. Stillwater Creek encompasses a riparian woodland with locally uncommon freshwater wetlands (perennial in-channel pools and bogs) and related habitat that are occupied by a diverse brace of wildlife species, some of which are classified as *special* or *sensitive*. Bank-to-bank, Stillwater Creek thoroughly qualifies as an environmentally sensitive habitat area (ESHA) in the sense of the California Coastal Act and Monterey County's Local Coastal Plan for Pebble Beach, specifically the *Del Monte Forest Area Land Use Plan*.

**Residential Context & Proposed New Residence (Raven)**

Several homes are situated on large landscaped and wooded lots that are sparsely intermingled above Stillwater Creek. The average lot size among the four (4) existing residences is 1.70 acres (range 1.04 - 2.50 ac); the average total [all floors] living area is 6,103 ft<sup>2</sup> (range 2,851 - 9,575 ft<sup>2</sup>); thereby, the average area ratio of lot per house (living area) is 12:1 (range 6.6 - 21.5 :1). By contrast, the new 7,398 ft<sup>2</sup> residence that the Ravens are proposing for their 0.26-ac lot -- also in the Whitman Lane - Stillwater Creek neighborhood and situated directly above the riverine resource -- would by the same token result in a lot area per living area ratio of 1.5:1, which significantly contrasts and is incongruous to the established neighborhood development pattern. In sum,

- ◆ Average ratio of existing lot area per house living area = 12 to 1 (ft<sup>2</sup>)
- ◆ Ratio for the proposed new residence (lot area per living area) = 1.5 to 1 (ft<sup>2</sup>)

In view of special ecological circumstances and biological resources that are associated with Stillwater Creek, this assessment aims to improve appreciation of the potential for the new residential project that is slated for a relatively small and vacated industrial site (a former golf course maintenance facility) to affect existing ecological resources within the adjacent Stillwater Creek environment. In particular, this report queries the potential effects of site development as proposed on special-status and protected biological constituents of the local riverine, riparian, wetland, and downstream marine environments.

**STUDY AREA**

This study refers to a developed coastal neighborhood in Pebble Beach, an unincorporated community of Monterey County, California (zip 93953). The reported locality is distinguished by the relationship of a small group or enclave of residential properties, an adjoining golf course, an ecologically significant streamcourse and its canyon, and a small and environmentally sensitive embayment of the Pacific Ocean.

**Description of the Stillwater Creek - Whitman Lane Neighborhood**

In addition to focusing on a singular parcel for which new construction is proposed (3213 Whitman Lane), this report refers to a group of four (4) residential properties and a portion of the Pebble Beach Golf Links that also are either contiguous or adjacent to Stillwater Creek, below Whitman Lane. The study reach of the streamcourse traverses two of the private residential parcels and a portion of Pebble Beach Company's golf links. The Raven property is contiguous with the Stillwater Creek resource area. The present and potential relationship of the private parcels to Stillwater Creek, that is to say how the density and layout of residential structures already or would interface with biological resources of the stream and woodland environments is a subject of this study.

Neighborhood Geographic Data:

- ◆ Map Coordinates: 36.587578° lat | -121.938015° lon @ Whitman Lane x Stillwater Creek.
- ◆ Elevation Range: 112 ft (~18-130 ft, asl)
- ◆ Areal Coverage: 10 acres
- ◆ Topographic Map: USGS 7.5-minute quadrangle, Monterey CA

APNs and Addresses:

- ◆ 008-401-009-000 3210 Whitman Lane
- ◆ 008-401-010-000 3213 Whitman Lane < RAVEN
- ◆ 008-401-011-000 3215 Live Oak Meadow
- ◆ 008-403-001-000 3217 Live Oak Meadow
- ◆ 008-401-015-000 3222 Whitman Place
- ◆ 008-401-022-000 PB Golf Links

Physical Description of Stillwater Creek — Stillwater Creek runs for approximately 6,200 ft (1.20 mi), starting just south of Spruance Meadow and the southern boundary of Pebble Beach Company's Area PQR open space, adjacent to the three-way intersection of Sonado, Midwood and Spruance roads. That reach, above the study area, runs approximately 4,900 ft, ranging in elevation from 570 ft - 130 ft, asl. The study reach, which runs from 17-Mile Drive to its ocean outlet at Stillwater Cove, extends in length approximately 1,300 ft. The overall width of the study



reach including its full channel ranges from approximately 50 to 100 ft at top-of-bank (TB). The depth of the channel averages approximately 35 ft from TB. The approximate total watershed area of Stillwater Creek is 193 acres.

Geographic Profile — The study area is located at the SE quadrant of Monterey Peninsula and adjacent to the Pacific Ocean at Stillwater Cove, a natural embayment between Arrowhead Point (S) and Pescadero Point (N) that comprises the northern cusp of Carmel Bay. Flowing into Stillwater Cove, Stillwater Creek is the second-most westerly coastal stream in southern California. Also in Pebble Beach, Fanshell Creek, 1.90 mi NW of Stillwater Creek, is the westernmost stream along California's south coast.

Waters offshore of Pebble Beach, including Stillwater Cove, are part of the Monterey Bay National Marine Sanctuary that is administered by the National Oceanic and Atmospheric Administration (NOAA, US Department of Commerce). The supra-tidal rocks, islets, and shoals of Pebble Beach, including the Pescadero Rocks of Stillwater Cove, are part of the California Coastal National Monument, which is managed by the Bureau of Land Management (US Department of Interior).

Geomorphology Notation — The matter of depth-to-groundwater is a vital in Pebble Beach and particularly with respect to adjacent riparian, riverine and coastal resources. Specific to the Raven property, the following geomorphological description is from the Soil Engineering Evaluation prepared by Landset for the Raven project: *'The earth materials underlying the Raven property consist of a thin veneer of highly-erodible sandy topsoil over granitic bedrock. Groundwater can fluctuate over time depending on a number of factors including seasonal rainfall, site elevation, groundwater withdrawal and other activities.'*

Ecological Profile — The study area and the larger Stillwater Creek-Whitman Lane neighborhood comprise a quiet (low-traffic) residential setting that is surrounded by the Pebble Beach Golf Links on three sides and the Pacific Ocean at Stillwater Cove on the fourth side. In a landscape context, the golf course represents the principal matrix in this part of Pebble Beach, and the local residential and habitat structures are consistent with that of the larger, overall community that faces the coast from Pescadero Point (N) to Pescadero Canyon (S). Adjoining the golf course, the settled environment is mostly wooded with a mixed canopy of Coast Live Oak, Blue Gum, Monterey Pine, and Monterey Cypress. Underneath the tree canopy, the occupied properties are landscaped with well-maintained ornamental gardens consisting of both native and nonnative plant materials. Throughout, the vegetation structure of Stillwater Creek is the predominant and cohesive landscape feature of the neighborhood.

The tree cover of the residential properties that run alongside Stillwater Creek inter-branches with the tall and mature canopy of Stillwater Creek. The study channel is covered with riparian vegetation that is floristically diverse with both native and nonnative species, the former predominating. Pursuant to the US Fish and Wildlife Service's Wetland Mapping System, Stillwater Creek is classified a perennial riverine wetland system (intermediate during periods of extended drought), and its dense streambed and channel cover consists of riparian and aquatic vegetation<sup>4</sup>.

Altogether, the existing residential development in the Stillwater Creek - Whitman Lane neighborhood is effectively subservient to the natural environment, with large open spaces that provide extensive landscaping and mixed native cover that transition into the more environmentally sensitive habitat areas that is associated with Stillwater Creek.

**Raven's Site Information**

◆ APN	008-401-010-000
◆ MoCo ID	PLN150155
◆ Address	3213 Whitman Lane, Pebble Beach CA 93953
◆ Coordinates	36.567618° lat / -121.938514° lon
◆ Elevation Range	8 ft (102-110 ft, asl)
◆ Areal Coverage	0.25 ac

This report calls out the Raven property on Whitman Lane because the owners currently are seeking approvals and permits for construction of a single-family residence that would be contiguous with the riparian and arboreal habitat of Stillwater Creek and, by extension, Stillwater Cove. Normally, a biological assessment would not focus on the decision of an owner/applicant to purchase a property; however, the present scrutiny of the Raven's project is justified because the large and vertically expressed residence (2-stories with a roof-top deck) that would be placed on the inordinately small lot would result in relatively *de minimis* open area and incongruous and unsupportive relationship to the adjoining creek and ESHA environment. The Raven's decision to purchase the relatively small lot and there to build a disproportionately large house would have potentially serious adverse effects on the local environment, particularly the adjoining ESHA and therefore is the subject of this review.

- ◆ A separate biological assessment of the Raven's site was prepared for the owners by Mr. Mike Zander (Zander Associates, San Rafael CA).

Ecological and Historical Profile — The relatively small vacant lot at 3213 Whitman Lane is a former industrial site employed for decades by Pebble Beach Company as its golf course maintenance and materials storage facility that served the Company's Pebble Beach Golf Links and Peter Hay Golf Course. Onsite uses then included a greenskeeper's office and crew areas, power tool and heavy equipment workshop and garage, storage and processing spaces for seeds and turf chemicals including herbicides and fertilizers, and equipment wash-racks and underground storage tanks for holding contaminated rinsate. The maintenance site was decommissioned approximately 10 years ago, and was next used as a golf and construction materials depot and storage yard through at least 2012. Later, approximately upon sale to the current owners, most of the facility was deconstructed and removed; present leftovers include stretches of plastic (PVC) pipe and a dilapidated fence and utility gate.

Ravens' Project Description —

The Ravens are requesting from the County... "a discretionary permit (Permit Number PLN150755): The Combined Development Permit would consist of a 1) Coastal Administrative Permit to allow the construction a 7,398 square foot single family dwelling; 2) Coastal Development Permit to allow development within 750 feet of an archaeological resource; 3) Variance to exceed lot coverage by 14.7% (totaling 24.6%) and FAR by 17.3% (totaling 34.9%); and 4) Design Approval."

The project proposes a basement a living space for recreational purposes. The basement is designed at ~10 ft below natural grade, which would require significant excavation, and may require a pumping system to eliminate water from entering the living space. How, or where infiltrated water would be pumped and disposed is not clear at this writing.

**ENVIRONMENTAL & REGULATORY CONTEXT**

Among others, two (2) specific regulatory areas were reviewed in making the present assessment of the Stillwater - Whitman Lane neighborhood environment: (1) the Carmel Area ASBS (CA State Water Board); and (2) Del Monte Forest Area Land Use Plan (CA Coastal Commission and County of Monterey).

1) **Carmel Bay ASBS**

Stillwater Creek is a perennial 'blue-line' stream that drains directly to Stillwater Cove at the northern cusp of Carmel Bay, a marine resource designated the Carmel Bay Area of Special Biological Significance (Carmel Bay ASBS) by the State of California (c. 1975).

Background of ASBS — In 1972, the State Water Board adopted the California Ocean Plan as the State's water quality control plan for ocean waters. The Ocean Plan provides the basis for regulating waste discharges to coastal waters and applies to both point- and non-point source discharges. The Ocean Plan is implemented by the State Water Board and the six coastal Regional Water Quality Control Boards (Regional Water Boards). The Central Coast Regional Water Quality Control Board (Regional Water Board) is the lead agency for Ocean Plan with respect to the Carmel Bay ASBS.

Altogether, the water quality of 34 ocean areas is monitored and managed by the State Water Resources Control Board. The ASBS units cover most of the length of California's coastal waters. These areas support significant biotic diversity and represent basic building blocks for sustainable and ecologically resilient coastal environments.

Local Program: The Carmel Bay ASBS (1,584 ac) fronts 6.7 miles of coastline alongside the City of Carmel By-the-Sea and Pebble Beach Golf Links in Monterey County. The ASBS lies entirely within the Monterey Bay National Marine Sanctuary, and contains the Carmel Bay State Marine Conservation Area.

As of January 2005, ASBS areas including Carmel Bay ASBS were re-designated as a subset of "State Water Quality Protection Areas" that require special protection. Section 36700(f) of the Public Resources Code defines a state water quality protection area as "*a non-terrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration of natural water quality, including but not limited to, areas of special biological significance that have been designated by the State Water Board through its water quality control planning process.*" The section further states "*In a state water quality protection area, point-source waste and thermal discharges shall be prohibited or limited by special conditions. Non-point source pollution shall be controlled to the extent practicable.*" (ref: County of Monterey, 2014, ASBS Draft Compliance Plan [20 September]).

According to State Water Resources Control Board, key pollution threats include heavy urban runoff from storm drains in the City of Carmel, and treated sewage as well as road and landscape runoff from homes and numerous golf courses. Currently, in collaboration with regulators, Pebble Beach Company, which is a member organization of the Central Coast Regional ASBS Dischargers Monitoring Program, is actively working to mitigate realized and potential adverse water quality effects of dry-season runoff at the 4th hole of the PBGL into Stillwater Cove.

Details of the apparently successful pilot project notwithstanding, current efforts by the company — and Pebble Beach Community Services District and Carmel Area Wastewater District — signify a direct approach to reduce marine pollution related to golf course management on-shore of Carmel Bay as was identified by monitoring over the course of several years. A second key and driving objective of the 4th Fairway project is to recover dry season flows as augmentation of wastewater reuse for golf course irrigation by the several golf course owners in Pebble Beach. Current estimates of dry-season recapture during 2016 equal 18,000 gallon per day.

- ◆ A document summary of ongoing work to monitor and manage selective marine resource values associated with the Carmel Bay ASBS is provided by Monterey Regional Water Pollution Control Agency's Central California ASBS Management Committee (2015), *Central California Regional Monitoring Program Stormwater Discharges into Areas of Special Biological Significance*, Interim Report, 2013–2014, prepared on contract by Applied Marine Sciences (Santa Cruz).

2) **Monterey County Local Coastal Program - Del Monte Forest Area Land Use Plan**

The Stillwater Creek - Whitman Lane study area is situated in the California Coastal Zone, encompassed by the County's Local Coastal Program, specifically its *Del Monte Forest Area Land Use Plan* (LUP). The LUP and accompanying Coastal Implementation Plan (CIP) contain governing policies and regulations for stormwater management and development that would affect freshwater and nearshore marine resources within the project area. Additionally, LUP policies to assure protection of environmentally sensitive habitat areas (ESHA) directly apply to resource development and protection in the study areas. As such, most development actions or land use changes, i.e., actions inside the Whitman-Stillwater Creek study neighborhood, are subject to policies and regulations of the amended LUP that was certified by the Coastal Commission and adopted by the County Board of Supervisors in 2012.

Policies that address (1) freshwater and marine resources and (2) environmentally sensitive habitat areas (ESHA) are evaluated in this report with respect to protected resources of Stillwater Creek, particularly as regards the Ravens' proposed construction of a new residence on their parcel that is adjacent to Stillwater Creek and upstream of Stillwater Cove. Selected policy introductions are excerpted below:

- ◆ The Freshwater and Marine Resources section of the LUP requires implementation "... of appropriate management practices as necessary, including stream setbacks, stream flow maintenance, riparian vegetation protection, and careful grading to prevent erosion and

sedimentation. In turn, the CIP require stormwater be collected and conveyed in an approved drainage system that is designed by a registered civil engineer. The policy requires that drainage systems be designed for the ultimate buildout condition and ensure that adjacent properties are protected from adverse effects of increased run-off."

- ◆ The Environmentally Sensitive Habitat Area section of the LUP defines ESHA "... as those areas in which plant or animal life or their habitats are either rare or especially valuable due to their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The Coastal Act provides strong protection for environmentally sensitive habitat areas and within such areas permits only resource-dependent uses (e.g., nature education and research) that do not result in any significant disruption of habitat values. The Act also requires that any development adjacent to environmentally sensitive habitat areas be properly sited and designed to avoid impacts that would significantly degrade such habitat areas."

Specifically, and here emphatically, LCP ESHA Policy 23 requires the following: "Riparian plant communities shall be protected by establishing a setback/buffer of at least 100 feet as measured from the outer edge of riparian vegetation."

- ◆ The Forest Resources section of the LUP underscores the natural beauty of the Del Monte Forest to be "... one of its chief assets, and forest resources, in addition to their fundamental role in supporting the area's natural environment, are a principal constituent of the scenic attractiveness of the area that must be preserved for the benefit of both residents and visitors alike. These forest resources are best understood as complex and dynamic habitats comprising forest trees, understory vegetation, wildlife, soils, and climate, and the interaction of all these elements. These forests are complex, interdependent webs of living organisms and physical habitat, and are much more than simply an aggregate of trees. They are also home to the area's wildlife and serve to moderate climatic extremes. Long-term preservation of forest resources is a paramount concern and objective of the LUP."

#### **METHODS AND APPROACH**

To start with, I conducted five (5) onsite work sessions during April through October 2016, then another 12 visits during all seasons of 2017-2018, particularly during the present (2018) springtime. This field study involved repeatedly walking over and photographing the study reach from 17-Mile Drive to the stream outfall at Stillwater Cove, along the way observing the overall structure and ecology dynamic of Stillwater Creek, including its riparian cover and biota. Viewing the habitat, and particularly the middle-story and canopy levels of the taller trees was best achieved from the top-of-bank and from Whitman Lane where it veers seaward. Then, I spent a

considerable amount of time walking along the creek and into the deeper pools and bogs, access to which is best possible from the upper and lower ends of the reach, versus traversing down the steep channel banks.

Early on, on 11 May 2016, I met with Mr. Mike Zander (Zander Associates), whom the Ravens had recently hired to evaluate biotic resources of their vacant property at 3213 Whitman Lane. Together, Mike and I briefly reviewed both his client's property and that of my own clients along Stillwater Creek. Subsequently and to avoid trespass, I took limited notes on the Raven parcel, always from off-site and by taking advantage of an unobstructed view where Ravens' dilapidated wood fence facing Stillwater Creek had fallen to the ground.

## PRESENT FINDINGS

### Biota of Stillwater Creek

As I have observed for nearly three decades, Stillwater Creek is a perennial stream that often flows continuously and year-round from its upper reach near Spruance Meadow to its beach outfall at Stillwater Cove. Even in summer and fall (e.g., 2016 - 2018), the stream runs over bedrock and onto beach sand amidst a well-developed mat of sedges (*Carex* spp.) and aquatic moss. Presently (April 2018), it is running full-length and feeds a significant series of deep in-stream pools that are shielded and shaded by densely overhanging vine tangles and emergent aquatic vegetation.

### Vegetation and Aquatic Resources

Stillwater Creek is a riverine system that bears an evergreen riparian cover the full length of the study reach. The overarching cover inside and surrounding the channel, and throughout the Whitman Lane - Live Oak Meadow neighborhood is Coast Live Oak - Monterey Pine Woodland. Inside the channel (TB-TB), and roughly in order of abundance, the arboreal flora consists of Coast Live Oak (*Quercus agrifolia*), Monterey Pine (*Pinus radiata*), Coast Redwood (*Sequoia sempervirens*), Monterey Cypress (*Hesperocyparis macrocarpa*), and Blue Gum (*Eucalyptus globulus*).

Although neither the cypress nor gum trees are native to the site, each contributes enormously to the attraction and ecology of local birdlife, all but one species of which is native and several species of which are strongly associated with the gum trees, as is true throughout Pebble Beach and much of coastal California, e.g., Red-shouldered Hawk, Bullock's Oriole, Anna's Hummingbird, and Great Horned Owl (Table 1 includes the binomials for birds).

Prominent shrubs, small trees, and woody vines growing inside the channel are California Buckeye (*Aesculus californica*), California Coffeeberry (*Frangula californica*), Western Poison Oak (*Toxicodendron diversilobum*), Pacific Blackberry (*Rubus ursinus*), English Ivy (*Hedera helix*), Golden Wattle (*Acacia pycnantha*), and Myoporum (*Myoporum laetum*), as well as smaller forms of the named tree species.

Dense stands of herbaceous riparian and semiaquatic plants, including several graminoids cover the channel bottom and banks for the full length of the study reach: Therein, dominant taxa include Giant Horsetail (*Equisetum telmateia*), Giant Wildrye (*Elymus condensatus*), California Manroot (*Marah fabaceus*), and California Honeysuckle (*Lonicera hispidula*). Weedier plants are Poison Hemlock (*Conium maculatum*), Kikuyugrass (*Pennisetum clandestinum*), French Broom (*Genista monspessulana*), Fennel (*Foeniculum vulgare*), and Cape Ivy (*Delairea odorata*).

#### Freshwater Wetland

There is a series of deep in-stream pools and associated horsetail bogs along Stillwater Creek, at deeper and steeper sections of the canyon, and at least two sites have been continuously filled throughout 2017 and to the present, in April 2018. The pools range in depth from 18-30 inches and are heavily shaded by, e.g., blackberry tangles, overhanging buckeyes, and horsetails. The linked pool and bog habitats appear to properly constitute a freshwater wetland, thusly adding to the known locally uncommon and rich character of Stillwater Creek as Coastal ESHA and a federally classified riverine resource.

#### Wildlife Resources

**Birds** – Birdlife found within the study reach of Stillwater Creek is diverse and seasonally varied, with a preponderance of year-round residents as is characteristic of coastal riparian woodlands. That said, one would be hard-pressed to find a comparably diverse avifauna anywhere in Pebble Beach, save perhaps for Pescadero Canyon. Fifty-six species that I closely observed onsite, including during the local nesting seasons (01 January<sup>6</sup> through August, 2016 - 2018) are included in the following table (Table 1). The 4th column identifies birds that were observed on the Raven's property, albeit commonly in the overhanging oaks and cypress tree, and fly-catching over the open part of the site. Other species are suspected to occur seasonally in the study area, but only those confirmed are presented below.



STILLWATER CREEK - WHITMAN LANE, PEBBLE BEACH CA

Table 1. Bird species observed in the Stillwater Creek - Whitman Lane study area in Pebble Beach, CA during 2016-2018. Species are listed alphabetically per their binomials.

BINOMIAL	ENGLISH NAME	NESTING?	RAVEN	SPECIAL?
<i>Accipiter cooperi</i>	Cooper's Hawk	?	-	WL / nesting
<i>Accipiter striatus</i>	Sharp-shinned Hawk	-	-	WL / nesting
<i>Aphelocoma californica</i>	Western Scrub Jay	+	+	
<i>Baeolophus inornatus</i>	Oak Titmouse	+	+	BCC, WL / nesting
<i>Bombycilla cedrorum</i>	Cedar Waxwing	-	-	
<i>Bubo virginianus</i>	Great Horned Owl	?	+	
<i>Buteo jamaicensis</i>	Red-tailed Hawk	-	-	
<i>Buteo lineatus</i>	Red-shouldered Hawk	+	+	
<i>Butorides virescens</i>	Green Heron	-	-	
<i>Callipepla californica</i>	California Quail	+	+	
<i>Calypte anna</i>	Anna's Hummingbird	+	+	
<i>Cathartes aura</i>	Turkey Vulture	-	-	
<i>Catharus guttatus</i>	Hermit Thrush	-	-	
<i>Certhia americana</i>	Brown Creeper	?	-	
<i>Colaptes auratus</i>	Northern Flicker	+	-	
<i>Contopus cooperi</i>	Olive-sided Flycatcher	?	-	SSC, BCC / nesting
<i>Contopus sordidulus</i>	Western Wood-Pewee	?	-	
<i>Corvus brachyrhynchos</i>	American Crow	+	+	
<i>Cyanocitta stelleri</i>	Steller's Jay	+	-	
<i>Empidonax difficilis</i>	Pacific-slope Flycatcher	+	-	
<i>Euphagus cyanocephalus</i>	Brewer's Blackbird	?	+	
<i>Falco sparverius</i>	American Kestrel	?	-	
<i>Geothlypis trichas</i>	Common Yellowthroat	-	-	
<i>Haemorhous mexicanus</i>	House Finch	+	+	
<i>Haemorhous purpureus</i>	Purple Finch	-	-	
<i>Hirundo rustica</i>	Barn Swallow	-	-	

STILLWATER CREEK - WHITMAN LANE, PEBBLE BEACH CA

BINOMIAL	ENGLISH NAME	NESTING?	RAVEN	SPECIAL?
<i>Icterus bullockii</i>	Bullock's Oriole	+	-	
<i>Junco hyemalis</i>	Dark-eyed Junco	+	+	
<i>Leiothlypis ruficapilla</i>	Nashville Warbler	-	-	
<i>Melanerpes formicivora</i>	Acorn Woodpecker	+	+	
<i>Melospiza melodia</i>	Song Sparrow	+	+	
<i>Melospiza crissalis</i>	California Towhee	+	+	
<i>Mimus polyglottos</i>	Northern Mockingbird	-	-	
<i>Molothrus ater</i>	Brown-headed Cowbird	?	-	
<i>Patagionas fasciata</i>	Band-tailed Pigeon	+	-	
<i>Pheucticus melanocephalus</i>	Black-headed Grosbeak	?	-	
<i>Picoides nuttallii</i>	Nuttall's Woodpecker	+	-	
<i>Picoides pubescens</i>	Downy Woodpecker	-	-	
<i>Pipilo maculatus</i>	Spotted Towhee	+	-	
<i>Poecile rufescens</i>	Chestnut-backed Chickadee	+	+	
<i>Polioptila caerulea</i>	Blue-gray Gnatcatcher	-	-	
<i>Psaltriparus minimus</i>	Bushtit	+	+	
<i>Sayornis nigricans</i>	Black Phoebe	+	+	
<i>Selasphorus sasin</i>	Allen's Hummingbird	+	-	
<i>Setophaga townsendi</i>	Townsend's Warbler	-	+	
<i>Siala mexicana</i>	Western Bluebird	-	-	
<i>Sitta canadensis</i>	Red-breasted Nuthatch	-	-	
<i>Sitta pygmaea</i>	Pygmy Nuthatch	+	-	
<i>Tachycineta bicolor</i>	Tree Swallow	?	-	
<i>Tachycineta thalassina</i>	Violet-green Swallow	?	-	
<i>Thryomanes bewickii</i>	Bewick's Wren	+	+	
<i>Turdus migratorius</i>	American Robin	+	+	
<i>Vermivora celata</i>	Orange-crowned Warbler	?	-	
<i>Zenaida macroura</i>	Mourning Dove	+	+	

STILLWATER CREEK - WHITMAN LANE, PEBBLE BEACH CA

BINOMIAL	ENGLISH NAME	NESTING?	RAVEN	SPECIAL?
<i>Zonotrichia atricapilla</i>	Golden-crowned Sparrow	-	-	
<i>Zonotrichia leucophrys</i>	White-crowned Sparrow	-	-	

**SPECIAL STATUS - NOTES**

CALIFORNIA DEPARTMENT OF FISH AND GAME annually updates its lists of Special Animals including all species that are currently classified, whether by state and/or federal governments or partner-nongovernment authorities, as deserving special-status, typically for conservation purposes. Designations for birds listed in this report include: CDFW Species of Special Concern (SSC), USFWS Birds of Conservation Concern (BCC), and NABCI - Watch-listed (WL). All designations indicate consideration by planning agencies and applicants with respect to CEQA guidelines. See below for project descriptions.

**CDFW - SSC**

It is the goal and responsibility of the Department of Fish and Wildlife to maintain viable populations of all native species. To this end, the Department has designated certain vertebrate species as Species of Special Concern because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction. The goal of designating species as "Species of Special Concern" is to halt or reverse their decline by calling attention to their plight and addressing the issues of concern early enough to secure their long term viability. Not all "Species of Special Concern" have declined equally; some species may be just starting to decline, while others may have already reached the point where they meet the criteria for listing as a "Threatened" or "Endangered" species under the State and/or Federal Endangered Species Acts. More information is available at: <https://www.wildlife.ca.gov/Conservation/SSC>.

**USFWS - BCC**

The goal of the Birds of Conservation Concern 2008 report is to accurately identify the migratory and non-migratory bird species (beyond those already designated as Federally Threatened or Endangered) that represent our highest conservation priorities and draw attention to species in need of conservation action. This report is available at: <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>.

**NABCI - WL**

North American Bird Conservation Initiative (NABCI): The North American Bird Conservation Initiative is a coalition of government agencies and private organizations that works to ensure the long-term health North America's native bird populations. They publish an annual State of the Birds report which includes a watch list of bird species in need of conservation help. Species on the list are assigned to either the Red Watch List for species with extremely high vulnerability, or Yellow Watch List for species that may be range restricted or may be more widespread but with declines and high threats. More information is available at: <http://stateofthebirds.org>.

**Mammals** -- Mammals confirmed onsite during the study period (2016-2018), or in its immediate vicinity in comparable habitat, include Botta's Pocket Gopher (*Thomomys bottae*), California Meadow Vole (*Microtus californica*), Bryant's Fox Squirrel (*Sciurus niger*), Raccoon (*Procyon lotor*), Striped Skunk (*Mephitis mephitis*), Virginia Opossum (*Didelphis virginiana*), Coyote (*Canis latrans*), Gray Fox (*Urocyon cinereoargenteus*), and Black-tailed Mule Deer (*Odocoileus hemionus columbianus*). Bobcat (*Lynx rufus*) occur as residents across Pebble Beach, but none were observed onsite, whether by tracking or sighting. The bat population was not surveyed for this study,

although several species are suspected or confirmed in the neighborhood, particularly where hollow trees and snags are available for roosting and denning.

The riparian cover of the study reach of Stillwater Creek provides a well-used corridor for ground-borne wildlife, particularly trail-following mammals. A well-beaten path follows the channel bottom from above the study reach (above 17-Mile Drive) to the beach at Stillwater Cove. Blacktail Deer and hunting Coyotes regularly travel along the local beach and apparently follow the creek path to move from interior habitats to the shoreline. In constant use, several lateral trails cross the channel, as well. Doe have been confirmed to fawn in the heavily glades at near the channel bottom, at the upper portion of the study reach.

Reptiles and Amphibians -- The site is occupied by at least two species, the Northwestern Ring-necked Snake (*Diadophis punctatus occidentalis*) and Sierran Treefrog (*Pseudacris sierra*).

In addition to the observed species, reptile species that inhabit wooded open spaces and residential habitats abutting Pebble Beach Golf Links can be expected to occupy appropriate sites within the study reach. These include Coast Garter Snake (*Thamnophis elegans terrestris*), Northern Rubber Boa (*Charina bottae*; not confirmed), Western Yellow-bellied Racer (*Coluber constrictor mormon*; not confirmed), Western Fence Lizard (*Sceloporus occidentalis*), and Western Skink (*Plestiodon skiltonianus*).

In addition to the Sierra Treefrog, there are several likely occurring amphibians that otherwise are known to reside in Pebble Beach, in appropriate comparable habitat. These include: Santa Lucia Mountains Slender Salamander (*Batrachoseps luciae*), California Red-legged Frog (*Rana draytonii*), Coast Range Newt (*Taricha torosa torosa*), Arboreal Salamander (*Aneides lugubris*), and Western Toad (*Bufo boreas*).

Based on the extent of suitable habitat present within the Stillwater Creek - Whitman Lane study area, in particular the deep pools and shady overhanging vines and shrubs, and the presence of nearby populations, likelihood is reasonable for the California Red-legged Frog, including breeding animals (CRLF is a federally threatened species), and Coast Range Newt (CDFW species of special concern).

## Biota of the Raven Property

### Adjacent Tree Cover

The eastern boundary of Ravens' property runs parallel to Stillwater Creek, and is situated just 8-10 ft from the top-of-bank of the stream channel and from the riparian vegetation, altogether which establish an environmentally sensitive habitat area (ESHA). A portion of the upland canopy (oak, cypress and pine) that rims the channel hangs over the vacant site, as does the canopy and lower branches from an adjacent (WSW) residential property and the (N) golf course. See Figures 4.

### Onsite Cover

The recovered and almost bare site is void of woody vegetation, but for a single Coast Live Oak. There are sparse and scattered stands of herbaceous plants including two natives — California Everlasting (*Gnaphalium californicum*) and Toad Rush (*Juncus bufonius*), along with more numerous nonnatives including Riggut (*Bromus diandrus*), Kikuyugrass (*Pennisetum clandestinum*), Burclover (*Medicago polymorpha*), Poison Hemlock (*Conium maculatum*), Velvetgrass (*Holcus lanatus*), Brass Buttons (*Cotula coronopifolia*), and Rabbitsfoot Grass (*Polypogon monspeliensis*).

### Pattern of Flooding and Nuisance Flows

There remain several indicators of persistent flooding, inundation and nuisance flows on the Raven parcel that suggest past problems with drainage. The generally level site also is centrally concave and shows a pattern of in-wash and puddling. The source of flooding would be *in situ* rainfall and maybe in-wash from Whitman Lane, as well. Also, there is a remnant PVC drain line that runs from inside the eastern periphery of the parcel and across flat ground on the creek side of the parcel border, thence downslope to the bottom of the stream channel. The line, which is buried in deep grass and duff, is more than a few years old, and evidences an *ad hoc* conveyance that apparently was intended to drain the golf maintenance site into Stillwater Creek.

## EVALUATION

- ◆ The entire study reach of Stillwater Creek, from 17-Mile Drive to Stillwater Cove, constitutes a freshwater riverine and wooded riparian resource and, thereby and for other qualities, signifies ESHA.

Local Marine Resources — Stillwater Creek, even with its mixed cover of native and nonnative plantlife, bears a structurally sound, biologically diverse and ecologically vital habitat that contributes substantially to the positive ecological values of the surrounding terrestrial landscape and to the seascape of Stillwater Cove and Carmel Bay ASBS.

With respect to the ASBS and in response to monitoring that has confirmed significant pollution of the ASBS waters inside Stillwater Cove, at least in part from unregulated releases of golf course herbicides and end-products, Pebble Beach Company and regulators have collaboratively engaged in a program of enhanced water quality measurement and management. Progress is being made by virtue of a successful pilot and planned permanent mitigation works to capture and remediate affected flows to the ASBS from, e.g., the 4th Fairway near at Stillwater Cove. Altogether, the take-home message is that the streamshed and associated marine resources are vulnerable to environmental degradation, in part from historic offshore runoff, and that careful onshore planning, development and stewardship are crucial. To that end, there are specific regulations that prohibit point- and non-point source discharges to ASBS, including the Carmel Bay ASBS.

The Raven's project should be reviewed against those regulations in order to protect the ASBS from degradation, i.e., from errant flowage that would exceed the property boundaries and run into Stillwater Creek. Indeed, the project plans indicate specific provisions for gathering and discharging stormwater via the collector system along Whitman Lane, which then outfalls to Stillwater Creek; however, the chemical constituents of the onsite soils and potential groundwater should be confirmed prior to final permitting and construction, thereafter by sampling during grading and excavation. In sum, the concern is with the undetermined presence or absence of soil and water contamination related to past industrial uses of the site.

Terrestrial and Riparian Resources — In terms of the habitat resources associated with Stillwater Creek and its surroundings, it is paramount to maintain and enhance the ecological integrity of the local, community-scale habitats that include residential and golf course properties as well as the open space corridor of the creek and its channel. To this end, thoughtful planning and stewardship are needed in two areas. First, to bolster existing resource values and avoid

diminishing the overall habitat composition of the Whitman Lane - Stillwater Creek environment as could occur by introducing a contrary development pattern. Specifically, planning and design should maintain adequate house-to-fence setbacks; limit height of structures relative to the proximity of property boundaries and adjoining habitats. Second, to absolutely prevent contamination of the creek waters from the intentional or accidental release of nuisance flows.

Upholding ESHA -- The LCP requires of new development and construction a buffer or setback of at least 100 ft from the outer edge of riparian vegetation, i.e., at the top-of-bank of the Stillwater Creek channel. The buffer is required to provide a transition zone between the sensitive and special resources (which are present) and human activities, and are intended to reduce the impacts of development on natural resources and protect the beneficial services that the resources provide. An effective riparian buffer is called for and would allow the riparian area to remain undisturbed for use as foraging, watering, refuge and breeding cover for native birds, mammals, reptiles and amphibians (a substantial diversity of which is present). In view of the wildlife identified in this habitat, the 100-ft buffer required in the LCP ESHA Policy 23 is essential for the continued protection of the sensitive habitat, i.e., to avoid its disturbance and degradation.

*Item 1* — There are doable options to reduce the risk of adversely affecting the stream environment and overall quality of the neighborhood habitat.

- ◆ First, loosen the 'compression' or crowding of the proposed construction footprint and incorporate setbacks that are comparable to those existing throughout the neighborhood and that are required pursuant to LCP Policy 23 (above).
- ◆ Second, in view of the limited available lot-size, redouble the use of native trees, and particularly Coast Live Oaks in the landscape palette while reducing certain others that would otherwise contrast with or stand out from the ambient flora. This recommendation is made while also recognizing that the neighborhood palette is itself not exclusively comprised of native taxa; however, the difference is that the proposed large house on the small lot would have the effect of compressing nonnatives against the property boundary and the adjacent Stillwater Creek ESHA area.

Reference: LUP Policies, ESHA No. 15, *The use of non-invasive Del Monte Forest-appropriate native plant species shall be required in landscape materials used in projects and invasive plant species shall be prohibited, especially in developments adjoining environmentally*

sensitive habitat areas. Non-native and/or invasive plant species should be removed, and such removal is encouraged.

- ◆ Third, remove the proposed roof-top deck the use of which would introduce light, noise and activity at a tree-top elevation, closer to the property border and ESHA environment than would a comparable feature on a smaller residence or larger lot. Without an appropriate setback, i.e., the 100-ft distance that is prescribed by the LCP, the adverse effect of the construction would be exacerbated by the elevated deck.

*Item 2* — This item calls for ensuring compliance with County and State regulations and policies regarding retention of stormwater and nuisance flows, during construction and occupancy phases of the Raven project. Whether the soil is today contaminated from past onsite storage and disposal of golf/turf materials should be determined unequivocally, and design and construction measures to preclude releases of subsequent flows to the creek channel should be ensured as part of the County's approval process.

Again, there are specific regulations that prohibit point and non-point source discharges to ASBS. The project must be reviewed against those regulations in order to protect the ASBS from degradation.

Question of Onsite and Offsite Contamination — As planned and proposed, the development of the Raven parcel, i.e., the former golf course maintenance yard, raises concerns about a possibly unresolved question of leftover or latent soil and groundwater contamination, and by extension the potential for offsite leaching or releases of contaminated soil and/or water from the site to Stillwater Creek. There is physical evidence of onsite flooding and measures once taken to remove nuisance flows to Stillwater Creek, the top-of-bank of which is removed only eight (8) feet from the Raven property line. In addition, the relatively small size of the Raven property may constrain practical options for managing runoff and infiltration while increasing the overall ratio of impervious surfaces to the total ground area.

As part of the County's permit approval process, every effort should be made to resolve the question of contamination and ultimately to prevent unregulated and unlawful releases to the stream environment.

Biological Considerations — The current biotic potential for the Raven property is limited to browsing and foraging by common birds and mammals, and burrowing by pocket-gophers. Individual deer have been observed milling on the property and coming and going over the



fallen fence and through the front gate that is commonly left-open by visiting caddies and golfers. The superior value of the site as bird habitat is attributed to the overhanging branches and canopies of offsite trees, particularly the tall cypresses that front the parcel along its SW border, and the bank-top oaks along the E side.

The wooded character of the surrounding residential parcels benefits the habitat value of the intervening landscape and bordering trees, effectively creating a broader open space that approximately centers on the Raven's vacant site. Specifically, the LCP requires a buffer or setback of at least 100 ft from the outer edge of riparian vegetation, here the top of bank of the Stillwater Creek channel. The buffer is to provide a transition zone between the sensitive and special resource and human activities, and are intended to reduce the impacts of development on natural resources and protect the beneficial services that the resources provide.

A good and effective riparian buffer as is presently required by the LCP will allow the riparian area as ESHA to remain undisturbed and available for use as foraging, watering, refuge and breeding cover for birds, mammals, reptiles and amphibians. In view of the substantial diversity of wildlife identified in this habitat — and more species than are identified can be expected, over time — the 100-ft buffer required in the LCP ESHA Policy 23 is essential for continued protection of the sensitive habitats, i.e., to avoid or minimize its disturbance and degradation.

**Regarding the Biological Report for the Raven Project as Prepared by Mike Zander**

Here, I take issue with two topics as discussed by Mr. Zander in his report to the Ravens (June 2016). These are summed below:

- ◆ *Zander's Assessment, Page 4* -- While wildlife that occupy the perimeter of the Stillwater Creek environment, i.e., that which faces the quiet roadway and golf course, may be adjusted to the regular play and business of managing the golf course, it is a leap to state or otherwise assume that animals that inhabit interior parts of the environment, or tree top strata of the woodland would be well-adapted to "regular disturbance" adjacent to the creek.

The regular activity associated with the golf course is sufficiently separated from the core of the Stillwater Creek resources: In fact, the golf course is setback from the stream reach -- below the road crossing -- by distances ranging from 100 to 300 ft. "Adjustment" of birds that otherwise are used to the passings of golfers, altogether a daytime passage, cannot be presumed for birds and other wildlife that inhabit the canyon and treetops less than 50 ft

from the proposed residence, especially in view (or hearing) of its planned second-story and roof top deck that would overlook Stillwater Creek. Also, see the following discussion of the proposed fire-pit and retractable boundary fence that would face the canyon and tree tops of Stillwater Creek. The noise and activity, whether during daytime or nighttime, are not comparable to that produced by the more distant golf course.

- ◆ *Zander's Recommendations, Page 4* – Agreed, the project may – and likely would – adversely affect nesting birds in habitats adjacent to the Raven property in the event construction – especially in second-story stages – would start during the nesting period. However, the period stated by Mr. Zander falls short one month because local birds of prey and some woodpeckers begin nesting as early as the beginning of January. Mitigation measures described by Mr. Zander, including surveying for and defending nests in habitat areas as far as 200 ft from the project site are appropriate, again provided a correction of the nesting timeline. Furthermore, as suggested in the preceding paragraphs, disturbance of nesting birds by the residence (and deck and fire-pit) as planned would extend beyond the construction stages and into the ongoing occupancy of the residence. *The constraints of the small lot and large house would detrimentally force disturbance onto the protected birdlife of the protected area.*

#### ASSESSMENT AND RECOMMENDATIONS

##### Siting and Scale of the Ravens' Project

The property owner purchased a small lot for development which is intended to be subservient to the natural surroundings in accordance with the LCP. Accordingly, the design should conform to, rather than encroach upon, the setback necessary to protect the adjacent riparian, wetland, arboreal, and other habitats of significant value. That can be accomplished through reducing the size of the development. As currently proposed, the designed structure would be prominent rather than subservient to the special resources encompassed by Stillwater Creek and would adversely affect the natural habitats and the wildlife that occupy the habitats.

##### Planting Palette for Raven

The Raven parcel, now almost entirely bare and vacant, presents a *de facto* clean slate for new landscaping. As such, there is a clear opportunity for the owners and their designers to create a landscape palette and pattern that would integrate with *versus* stand out from the existing and ambient cover patterns of the Whitman Lane - Stillwater Creek neighborhood. On both the adjacent golf course and surrounding residential sites, the predominant and thematic cover is a

Coast Live Oak woodland that includes an attractive array of native and ornamental plant taxa. The predominance of Coast Live Oak lends to the habitat values of the residential neighborhood which both benefits and derives benefit from the adjacent and encompassing Stillwater Creek woodland.

In view of the foregoing, the *Landscape Plan* prepared for the Ravens by Michelle Comeau (Michelle Comeau Landscape Design & Installation [Carmel CA]) would establish a landscape and particularly a tree cover that would diverge from present surroundings. While neighborhood synchrony and local blending are not constant objectives in local landscape architecture and garden design, the compressed development of the small site as proposed would accentuate a different or disparate vegetation pattern and density in the Whitman Lane - Stillwater Creek neighborhood. Alternatively, it seems that a modest shift in the planting plan, specifically outside of the property wall or fence-line, would benefit the habitat potential of the project parcel and uphold that of its surroundings. For example, and notwithstanding structural characteristics of the proposed residential structure, a shift of the proposed plant palette to emphasize local natives, particularly Coast Live Oaks, would help to step-down the proposed development. Certainly, Coast Live Oaks are included in the plan – which is professionally and attractively executed – but improvements could be made that would reference the surrounding environment.

In addition to promoting Coast Live Oak, an increased use of "Leatherleaf" Coffeeberry, an attractive variety of the native *Frangula californica* -- and other natives -- coupled with removal of Yellowwood (*Podocarpus latifolius*) would be considerate, ecologically. The beneficial effect of simplifying the tree/shrub palette by emphasizing natives is important because the small size of the lot that was purchased by the applicant would result in placement of new plants – especially tall trees – closer to the creek (ESHA) habitats. Where the property on the E (Stillwater Creek) and N facing sides is surrounded and visually characterized by Coast Live Oak, the plan to prominently install ornamental Strawberry Trees along Whitman Lane is incongruous.

In general, the landscape plan for the Raven property would be entirely appropriate for a larger lot and/or smaller residence; however, it is problematic for the stated reasons, and particularly because of the small size of the lot that was purchased by the applicant and its adjacency to Stillwater Creek.

#### Fire-pit and Opening Fence

The Raven's plan to construct a fire-pit on the E side of the property is both startling and highly disconcerting given the presence of overhanging oaks at that location: Unless cut-back, the tree foliage would hang directly over the fire-pit. The two features -- the overhanging tree (which is growing from the Stillwater Creek channel bank) and the fire-pit are incompatible. Whether cut-back from overhanging the fence line, which may be the Raven's prerogative, the tree itself is invaluable and should not be disturbed on the E side of the fence.

- ◆ *Fire-pits (gas or wood-burning) underneath oaks and other tree varieties, particularly that are not always covered when not in use, collect fallen leaves (and acorns) that when ignited will send sparks and ash into the overhead vegetation.*

More inadvisable and egregious than proposing the fire-pit under the overhanging oaks is the linked proposal to construct a fence with a sliding or retracting gate on the Stillwater Creek side of the project. The opening would be sited immediately between the fire-pit and the canyon, ostensibly to expand the view and openness of the fire-pit experience at the expense of the ESHA resource and the serenity of my client's private property. Additionally, the opening would add the risk of inviting trespass from the Ravens' property onto the private properties that encompass all of the Stillwater Creek-Whitman Lane reach of the stream and its canyon.

A solid fence would be advisable from the standpoint of screening the effect of the residence, with or without the fire-pit, on the ESHA environment, particularly for its wildlife cover values, but the possibility of opening the fence opposite the fire-pit is not tenable as it would undermine and diminish those same values. Simply, the opening fence would represent an ecological affront on the natural environment and the ESHA qualities of Stillwater Creek. If the Raven's were permitted to build the opening-fence as proposed, I would then advise the owners of the Stillwater Creek parcel to effectively shield or block the opening for the benefit of canyon and creek wildlife with an opaque visual, light- and sound-attenuating barrier.

#### Protect Nesting Birds

Following on Mr. Zander's biological assessment for the Ravens (Zander's page 4, see above at page 19), and regardless of the design and construction features of the residence and its landscape, it is vital that site work and construction be preceded by a professional survey and contingency plan for protecting nesting birds in, for example, the adjacent Stillwater Creek riparian woodland or the oak and cypress trees that flank the property. This necessary action would apply when site

work and/or construction would start or expand during the general nesting period in Pebble Beach (1 January through August or any year). These actions are necessary for the project to remain lawful in conformance with the federal Migratory Bird Treaty Act and the California Fish and Game Code (§§ 3503 and 3503.5). The language from Mr. Zander's letter to the Ravens, added to these and previous statements should be folded into a approval condition and as a mitigation and monitoring measure(s) for the subject project.

#### LUP Policies In Review

Without exclusion, certain policies of the Del Monte Forest Area LUP are pertinent to the present matter of permitting the Ravens' project while safeguarding the environmental values of Stillwater Creek (and Stillwater Cove), and these are identified below. Italics are used to emphasize policy features. Several are annotated to point out where specific recommendation of this report were made to underscore compliance of the Raven project LUP policy.

◆ ESHA Policy No. 23 is brought to the front of this discussion for emphasis:

ESHA 23. *In addition to environmentally sensitive habitat area policies that may also apply, riparian plant communities shall be protected by establishing a setback/buffer of at least 100 feet as measured from the outer edge of riparian vegetation. The setback/buffer requirement may be reduced only if it is clearly demonstrated that a narrower setback/buffer is sufficient to protect riparian vegetation and associated wildlife values and other ecological functions, and that riparian enhancement is included in a project. No significant disruption of riparian habitat will be permitted, and all allowable use/development dependent on the riparian resource, including bridges, shall result in long-term habitat enhancement (i.e., new habitat value greater (qualitatively and quantitatively) than existing habitat value). Examples of such cases include restoration of previously damaged riparian environments and replacement of fill and culverts by bridges.*

The LCP requires a buffer or setback of at least 100 ft from the outer edge of riparian vegetation, here the top of bank of the Stillwater Creek channel. The buffer is to provide a transition zone between the sensitive and special resource and human activities, and are intended to reduce the impacts of development on natural resources and protect the beneficial services that the resources provide. A good and effective riparian buffer as presently called for will allow the riparian area to remain undisturbed for use as foraging, watering, refuge and breeding cover by birds, mammals, reptiles and amphibians. In view of the substantial diversity of wildlife identified in this habitat — and more species than identified can be reasonably anticipated — the

100-ft buffer required in the LCP ESHA Policy 23 is indicated for the continued protection of the sensitive habitat, i.e., to avoid its disturbance and degradation.

Policy Related to Freshwater and Marine Resources —

1. *New development shall be sited and designed to minimize runoff, site disturbance, erosion, and sedimentation. All new development shall be designed to conform to site topography as much as possible. New residential driveways and other vehicular surfaces shall be kept to the minimum length and width to provide simple, direct access, and surfaces shall be designed to minimize runoff (including through use permeable materials, filtration strips, and use of engineered collection/treatment units). Other impervious vehicular surfaces 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 or adequate parking for commercial visitor-serving development and access points.*
  
4. *All development shall employ adequate erosion/sediment control and water quality construction best management practices (BMPs) during construction, and all such BMPs shall be in place prior to the commencement of construction and shall be maintained in good operating condition through the construction period.*
  
6. *Provisions shall be made to collect and conduct runoff to drainage areas/devices capable of polluted runoff filtration/treatment (e.g., vegetated filtration strips, detention/retention basins, storm drains, etc.) to ensure maximum on-site filtration/treatment. Permanent onsite drainage areas/devices shall be designed to accommodate increased runoff resulting from site modification. Where necessitated by good drainage design considerations, on-site retention of storm water may be considered to reduce the size requirements for drainage structures, consistent with resource protection policies.*

Policy Related to Environmentally Sensitive Habitat Areas —

8. *Environmentally sensitive habitat 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 and development adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the habitat area, and such land use and development shall be sited and designed to prevent impacts that would significantly degrade the habitat areas.*

- ◆ This report includes a recommendation that the siting and scale of the Ravens' residence be reformulated to promote a residential design that is subordinate to and protective of the surrounding natural environment. This would alleviate the adverse effect of pushing the proposed structural development and certain outdoor elements (the fire pit with opening fence) against the boundary of the riverine and riparian resource.
  
- 11. Contiguous areas of 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 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).
  
- 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 habitat areas, biological reports, including field surveys and impact analysis, by qualified individuals shall be required to precisely determine such habitat area locations and to recommend siting, design, and related mitigating measures to ensure protection of any sensitive species or habitat areas present.
  
- 14. Near environmentally sensitive habitat areas, native vegetation removal and land disturbance (grading, excavation, paving, etc.) shall be restricted to the minimum amount necessary to accommodate reasonable development. Development shall be sited and designed to prevent impacts that would significantly degrade those nearby areas, and shall be compatible with the continuance of those habitat areas.
  
- 23. In addition to environmentally sensitive habitat area policies that may also apply, riparian plant communities shall be protected by establishing a setback/buffer of at least 100 feet as measured from the outer edge of riparian vegetation. The setback/buffer requirement may be reduced only if it is clearly demonstrated that a narrower setback/buffer is sufficient to protect riparian vegetation and associated wildlife values and other ecological functions, and that riparian enhancement is included in a project. No significant disruption of riparian habitat will be permitted, and all allowable use/development dependent on the riparian resource, including bridges, shall result in long-term habitat enhancement (i.e., new habitat value greater (qualitatively and quantitatively) than existing habitat value). Examples of such cases include restoration of previously damaged riparian environments and replacement of fill and culverts by bridges.

- ◆ This report includes a recommendation that the selection of locally native plant species be emphasized for the Ravens' landscape palette; this is most important for tree installations closer to Stillwater Creek and on the street-side of the property wall or fence.

## CONCLUSION

From this study, I have observed and can attest that the Stillwater Creek riverine and riparian resources are healthy and vital elements of the Pebble Beach natural landscape. The resource area is definitively ESHA: Stillwater Creek fundamentally contributes to the overall ecological integrity of the greater Del Monte Forest and Stillwater Cove, the latter to which it is immediately and absolutely linked.

Stillwater Creek shows substantial resilience to ongoing ecological pressures, such as the presence of invasive nonnative vegetation; however, such issues can (and should be) managed given appropriate financial resources and a commitment by the respective property owners. Nevertheless, native biotic resources are predominant and define the study area, as well as upstream to the upper reaches of the streamcourse.

Furthermore, the study area as a neighborhood includes both residential and golf course attributes that have been developed over time in a fashion that has both bolstered the indigenous oak woodland cover and complemented it with additional varieties of landscaping materials and designs that have not been overbearing on the stream course and its riparian ecology. The relationship of the cultural and natural values of the neighborhood is workable and affirmative because of a congruence in the scale and impress of the residential properties on the central and binding landscape feature, which is the streamcourse and its wooded channel.

Finally, as an ecologist with a 44-year career (28 years in Pebble Beach) emphasizing integrative landscape design and a determination to reconcile and enhance nature's interests in settled environments, it is my opinion that the matter of the Ravens' residential project could be successfully achieved provided design concessions that would better respect prevailing forms of development and habitat protection in this very attractive and environmentally wholesome enclave neighborhood.

Recapping -- However redundant, the following list recaps the major considerations with respect to modifying the project with respect to the surrounding neighborhood and Stillwater Creek natural environment:



- ◆ *Increase the development (structural) setback away from the Stillwater Creek riverine and riparian to 100 ft, per ESHA. If, as is likely, this cannot be achieved, adjust the siting and massing of the residence to reduce the second story, drawing it away from Stillwater Creek and its ESHA.*
- ◆ *Positively ensure the absence of soil and potential groundwater contamination leftover from the former golf course maintenance and material storage facility;*
- ◆ *Delete the roof-top deck or move it away from Stillwater Creek so that its use does not encroach on the tree-level habitat values of the ESHA environment.*
- ◆ *Adjust the landscape plan to more emphasize locally native varieties, especially where planting outside of the property wall or fence, especially on the streetside; planting will not be allowed outside the property fence where facing Stillwater Creek.*
- ◆ *Eliminate the fire-pit and opening-fence; at minimum and absolutely delete the opening fence. (If the fire-pit is approved, against these recommendations, mitigate the risk of fire escaping and burning into the overhanging oak canopy. Fire-pits underneath oaks, particularly that are not always covered when not in use, collect fallen leaves and acorn that when ignited can and do send sparks and ash into the overhead vegetation.*
- ◆ *Ensure lawful compliance with federal and state regulation regarding searching for and protecting nesting birds from disturbance in the course of site preparation, tree work, construction and landscaping.*

Finally and in sum, the single-best resolution to the potential and likely adverse effects of the project on the riverine, riparian and wildlife values of the Stillwater Creek ESHA is to revise the design of the residence to achieve an effective setback distance between the residences and the E property boundary (100-ft is prescribed by the LCP). Then, if the ground-level setback cannot be accommodated on the small lot that the applicants purchased, to achieve a greater effective setback from the arboreal cover of the contiguous open space, i.e., at the level of the second floor, by eliminating or reducing its coverage and eliminating the roof-top deck.

Signed,

A handwritten signature in black ink, appearing to read 'J. Froke', with a long horizontal line extending to the right.

Jeffrey B. Froke, Ph.D.  
Consulting Ecologist  
Pebble Beach CA 93953  
jbfroke@mac.com  
831-224-8595

STILLWATER CREEK - WHITMAN LANE, PEBBLE BEACH CA

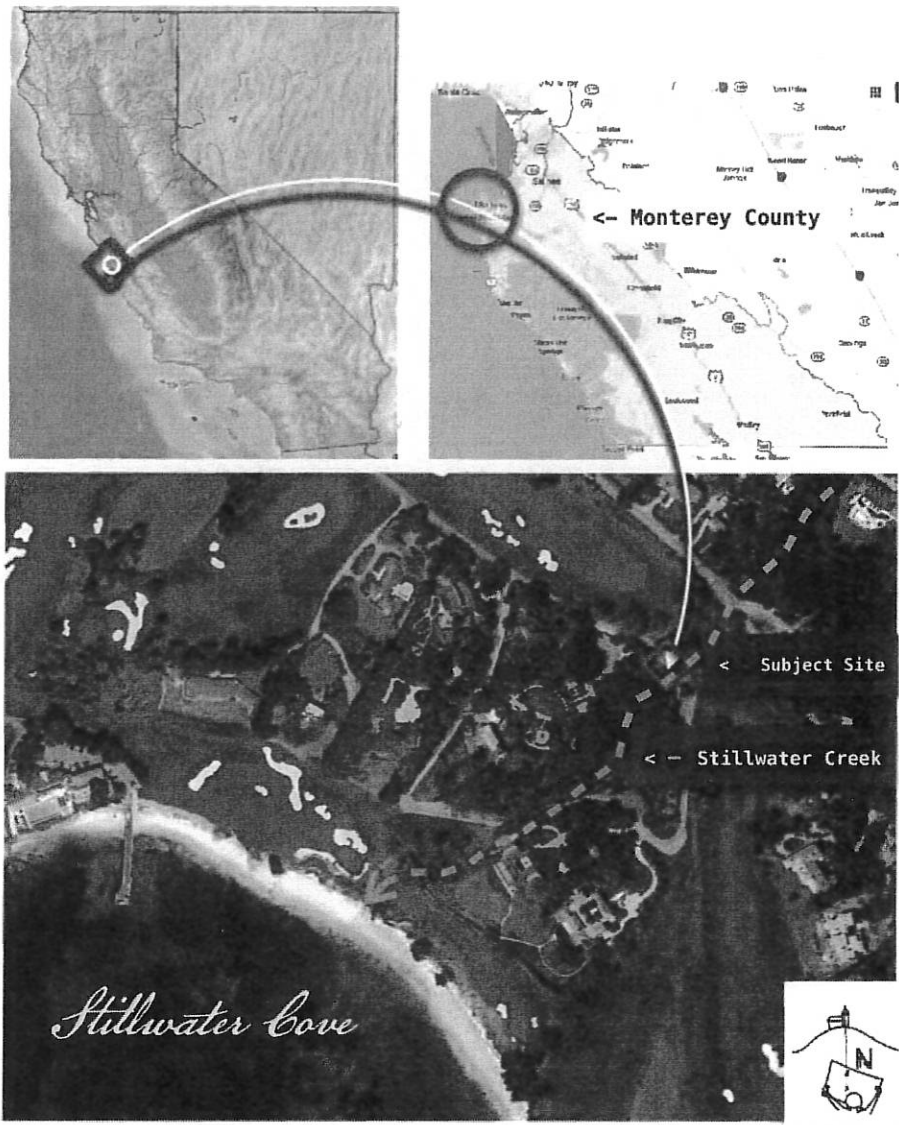
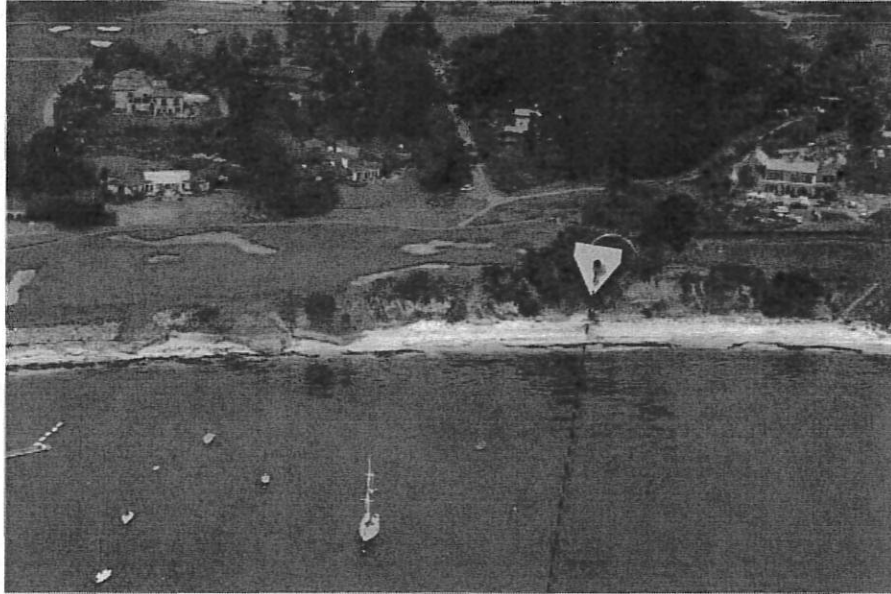
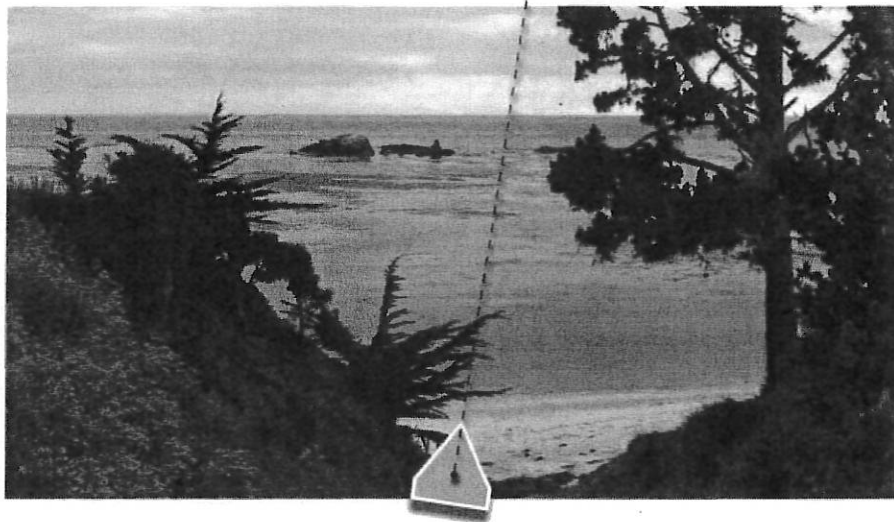


Figure 1 - State, county and local geographic context of Whitman Lane / Stillwater Creek study area and subject site (3213 Whitman Lane) in Pebble Beach, Monterey County, CA. Subject site: 36.587578° lat | -121.938015° lon.



**Figure 2 - Above -** Aerial image of shoreline outfall from Stillwater Creek to Stillwater Cove at Pebble Beach, Monterey County, CA. Photo credit/copyright: Kenneth and Gabrielle Adelman, California Coastal Records Project (ID: Image 1169, Thu Aug 29 13:20:10 2002). **Below -** Reverse view, seaward from golf course bridge over Stillwater Creek.





USGS Map Title: Monterey, CA  
 USGS Map MRC: 36121E8  
 DRG (GeoTIFF) Download: [036121e8.tif](https://www.fgdl.org/arcgis/rest/services/USGS75M/MapServer/036121e8.tif)

Neighboring USGS Topographic Map Quads:

L	L	L
L	Monterey, CA 36121E8	Seaside, CA 36121E7
L	Soberanes Point, CA 36121D8	Mount Carmel, CA 36121D7

Map MRC Location:

N37°												N37°			
W122°		H8	H7	H6	H5	H4	H3	H2	H1					W121°	
		G8	G7	G6	G5	G4	G3	G2	G1						
		F8	F7	F6	F5	F4	F3	F2	F1						
		E8	E7	E6	E5	E4	E3	E2	E1						
		D8	D7	D6	D5	D4	D3	D2	D1						
		C8	C7	C6	C5	C4	C3	C2	C1						
		B8	B7	B6	B5	B4	B3	B2	B1						
N36°		A8	A7	A6	A5	A4	A3	A2	A1					N36°	
W122°												W121°			

Figure 3 - Location and topographic context of the Stillwater Creek - Whitman Lane study area in Pebble Beach, CA. The USGS 7.5-Min quadrangle, Monterey CA, is shown in part.

1 BLUE-LINE STREAM - Any stream shown as a solid or broken blue line on 7.5 Minute Series quadrangle maps prepared by the U.S. Department of the Interior Geological Survey (USGS). A blue line stream may be any creek, stream or other flowing water feature, perennial or ephemeral, indicated on USGS quadrangle maps, with the exception of man-made watercourses. The United States Army Corps of Engineers uses USGS blue line stream markings as a preliminary indicator of "Waters of the United States". Streams identified on USGS maps in such a manner are therefore generally subject to federal environmental regulations.

2 AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS) - These are 34 ocean areas monitored and maintained for water quality by the State Water Resources Control Board. ASBS cover much of the length of California's coastal waters. They support an unusual variety of aquatic life, and often host unique individual species. ASBS are basic building blocks for a sustainable, resilient coastal environment and economy.

Designated by the State of California in 1975, the Carmel Bay Area of Special Biological Significance (ASBS No. 34) has 6.7 miles of coastline bordering on the City of Carmel and Pebble Beach Golf Course in Monterey County. This ASBS lies entirely within the Monterey Bay National Marine Sanctuary, and contains the Carmel Bay State Marine Conservation Area. The Point Lobos Ecological Reserve ASBS is adjacent to the south of this ASBS.

According to State Water Resources Control Board, key pollution threats include heavy urban runoff from storm drains in the City of Carmel, and treated sewage as well as road and landscape runoff from homes and numerous golf courses. A deep undersea canyon provides a large ocean upwelling of plankton and other basics in the ocean food chain here, which draws an unusually diverse variety of marine life.

3 GEOGRAPHY -- The center-point of the California coastline is located in Pebble Beach at Cypress Point: 36.583713° lat / -121.978901° lon.

4 Riverine System -- 3.1.3: Definition. The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is "an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water." (USFWS: FGDC-STD-004-2013).

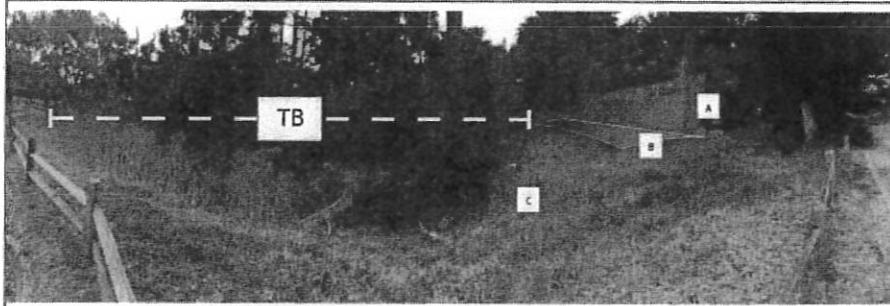
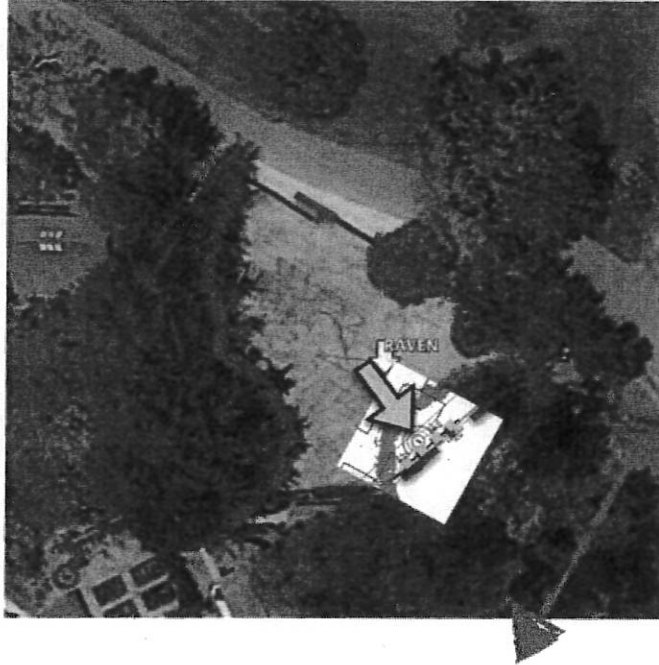


Figure 4 - Downstream view of the Stillwater Creek channel from its crossing at Whitman Lane. The Raven property is on the right and diagrammed features are (A) the position of the property fence, (B) an 8-ft level band that separates the Raven site from the top-of-bank of the creek channel, (C) the adjacent slope of the channel bank, and (D) the channel top-of-bank (TB); the streamcourse is illustrated as a blue arrow.

Figure 5 - Overlay of Raven site and proposed fire-pit, outlined woodland overhang, and adjoining portion of the ESHA environment.



- <sup>6</sup> NESTING BIRDS — In Monterey County, the nesting season is often and always erroneously given as mid-February through July or August. However, most birds of prey (hawks, kites and owls) start as early as the first of the year, and depending on ecological variables to do with the preceding winter, woodpeckers also may start before February. Always, and to stay lawful with respect to state and federal legislation, the administrative or dateline should give way to the actual season.



## Attachment 4

Raven Project -

Table of Past Variance Approvals in Pebble Beach

Location	Date of Approval	Description of Special Circumstances for Variance Approval	Compared to Raven Project
Raven Project – 3213 Whitman Lane	Not yet approved 2017	Requesting a variance to allow a larger residence on a small nonconforming lot	
3361 17 Mile Drive– NOT IN THE COASTAL ZONE	February 14, 2003 – 15 years ago	Had a legal nonconforming impervious lot coverage; Variance allowed reduction of this legal nonconforming impervious lot coverage, including a reduction of structural coverage from 4,176 to 4,026 sq. ft. (variance is for the 26 sq. ft. beyond the required 4,000 sq. ft. building coverage)	Not applicable
1475 Alva Lane	January 30, 2003 – 15 years ago	Variance to reduce side yard setback to convert detached shed to habitable space	Not applicable
3361 17 Mile Drive	September 9, 2004 – 13 years ago	Legalized nonconformity of Floor Area Ratio, which was discovered during construction due to a drafting error	Not applicable
Palmero Dr.	March 27, 1981 – 37 years ago	Variance for rear yard setback	Not applicable
3359 17 Mile Drive	January 25, 1981 – 37 years ago	Variance to reduce the side setback requirement to allow new addition to align with existing building	Not applicable

Attachment 5

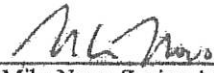
involves development between the sea and the first through public road paralleling the sea (State Route 1), and development that is permitted in the underlying zone as a conditional use (i.e.; development within an area of known archaeological resources).

#### DECISION

**NOW, THEREFORE**, based on the above findings and evidence, the Zoning Administrator does hereby:

- A. Adopt a Negative Declaration; and
- B. Approve a Combined Development Permit consisting of a
  - Coastal Administrative Permit and Design Approval to allow the construction of a single family dwelling consisting of 2,306 square foot two story, 1,690 square foot basement and a 298 square foot garage;
  - 2) Coastal Development Permit to allow development within 750 feet of an archaeological resource; and
  - 3) Variance to exceed lot coverage by 3.9% (totaling 18.9%); and
  - 4) Variance to exceed floor area ratio (FAR) by 5.3% (totaling 22.8%); in general conformance with the attached plans and conditions of approval, both being attached hereto and incorporated herein by reference.

**PASSED AND ADOPTED** this 26th day of April, 2018.

  
\_\_\_\_\_  
Mike Novo, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON APR 30 2018.

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE MAY 10 2018

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA.

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

#### NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.