Attachment C

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NOTICE OF APPEAL

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

RECEIVED
MONTEREY COUNTY
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CLERK OF THE BOARD
dh DEPUTY

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before June 20, 2016 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: June 8, 2016

1. Appellant Name: Del Monte Neighbors United (DMNU)

   Address: DMNU c/o Wittwer Parkin, 147 S. River Street, Ste. 221, Santa Cruz, 95060

   Telephone: 831 429 4055

2. Indicate your interest in the decision by placing a check mark below:

   Applicant _____

   Neighbor _____

   Other (please state) Interested Party

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

   Pebble Beach Company

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area
a) Planning Commission: PC-	16-015	[PLN 130447 - Pebble Beach Company Inclusionary Housing Project]
b) Zoning Administrator: ZA-		
c) Minor Subdivision: MS-		
d) Administrative Permit: AP-		

Notice of Appeal

5. What is the nature of your appeal?

   a) Are you appealing the approval or denial of an application? Approval

cc: Original to Clerk to the Board; RMA Planning
Monterey County Land Use Fees approved on 03-24-15

Effective 07-01-15

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

Please see attached appeal letter.

6. Place a check mark beside the reason(s) for your appeal:

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

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

Please see attached appeal letter.

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

Appellant's disagreement with the findings include without limitation: Finding #5: "The final Environmental Impact Report on the Pebble Beach Company Inclusionary Housing Project has been completed in compliance with the California Environmental Quality Act (CEQA)"; Finding #6: Potentially Significant Environmental Impacts Reduced to a Less than Significant Level by the Mitigation Measures Identified; Finding #7: Significant Unavoidable Adverse Impacts; Finding #8: Alternatives to the Proposed Project; and, Finding #9: Statement of Overriding Considerations as to unavoidable impacts. Please see attached appeal letter for full discussion.

9. You are required to submit **stamped-addressed envelopes** for use in providing notice of the public hearing on the appeal to all interested persons and all property owners within **300 feet** of the subject property. You may obtain the mailing list from the RMA Planning.

10. You must pay the required filing fee of $1,728.07 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

11. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee and the stamped-addressed envelopes. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal, filing fee, and envelopes must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal, filing fee, and envelopes are mailed and postmarked by the deadline.

APPELLANT SIGNATURE _____ Date: June 20, 2016

ACCEPTED _____ Date: _____

cc: Original to Clerk to the Board; RMA Planning
Monterey County Land Use Fees approved on 03-24-15

wittwer / parkin

June 20, 2016

VIA HAND DELIVERY

Gail T. Borkowski
Clerk of the Board of Supervisors
County of Monterey
168 West Alisal St., 1st Floor
Salinas CA 93901

Re: Appeal of the Planning Commission's Decision to Certify EIR and Approve the Pebble Beach Company's Inclusionary Housing Project (PLN130447)

Dear Ms. Borkoski:

We are submitting this appeal of the above referenced Project on behalf of **Del Monte Neighbors United (DMNU)**, along with the required appeal fee. Pursuant to Monterey County Code Section 21.80.040(D), DMNU appeals the decision by the Planning Commission on June 8, 2016 to certify the Environmental Impact Report (EIR) and to approve the Combined Development Permit consisting of a Use Permit and Design Approval to allow the construction of 24 inclusionary housing units and a manager's office, a Use Permit to allow the removal of approximately 725 mature trees, and associated grading.

DMNU is an unincorporated association of area residents who are concerned with the impacts of the Project, and is aggrieved by this decision by the Planning Commission. DMNU appeals the decision of the Planning Commission to certify the EIR and to approve the Project. The decision by the Planning Commission was not supported by the evidence and was contrary to the requirements of law set forth under the California Environmental Quality Act (CEQA). DMNU is concerned about the decision to approve this development despite demonstration of the significant environmental impacts of the development. ***We incorporate by reference our comments made on the Draft EIR.***

DMNU supports inclusionary housing in the area. In fact, there is an alternative to the Project in the general vicinity of the proposed Project that DMNU would support (e.g., Sunset Drive/17-Mile Drive alternative). DMNU would also support other alternatives that do not remove 725 mature trees. Thus, this appeal is not about blocking inclusionary housing. This is about the removal of 725 mature trees in the Monterey pine forest, which has been fragmented and harmed by years of incremental development, and there are alternative projects that would still provide much needed inclusionary housing without the commensurate environmental

impacts. While DMNU supports inclusionary housing, it objects to the County's approval of development at this particular site. DMNU would appeal this Project regardless of whether the Project was a market rate project or an inclusionary housing project. The layout and impacts of the Project are what is objectionable, not the type of housing or the vicinity of the Project.

It is clear that there are multiple Pebble Beach Company sites that may be considered with dispersal of housing including the Corporation Yard, Sunset Drive/17-Mile Drive, the Collins residential Area, Area V, Area U, and the Parking Lot at Spanish Bay. Providing housing at varying sites throughout Pebble Beach, or an alternative site, may enhance the community and provide workers even greater access to where they might work at Pebble Beach Company and Del Monte Forest facilities. In conjunction with other development at these sites, the development could also be cost effective.

The Board of Supervisors must reverse the decision of the Planning Commission to certify the EIR and approve the Project, because it is legally inadequate for numerous reasons, including, but not limited to, the reasons set forth below.

A. The Planning Commission's Findings Regarding Alternatives is Fatally Flawed

To prove DMNU's point regarding available alternatives to the Project, the findings of the Planning Commission are erroneous and contrary to the Final Environmental Impact Report (FEIR). The FEIR found that the Sunset Drive/17-Mile Drive and Collins Residential Area to be both feasible. *See*, FEIR, pp. 5-5 and 5-6. While the Draft EIR found that both alternatives were the Environmentally Superior Alternatives, the FEIR determined that the Collins Residential Area alternative edged out the Sunset Drive/17-Mile Drive alternative as the Environmentally Superior Alternative.

The findings of the Planning Commission directly contradict the conclusions of the FEIR. While the FEIR found that both alternatives were feasible, the Planning Commission's findings state that the Sunset Drive/17-Mile Drive alternative "would require a rezoning by the City of Pacific Grove. The County does not and cannot control the city's decision whether to rezone the property, a discretionary decision. ***Accordingly this alternative is legally infeasible.***" (Resolution No. 16-014, p. 19). For the Collins Residential Area alternative, the Planning Commission's findings conclude that "This alternative is infeasible because it would require a Local Coastal Program (LCP) amendment; current zoning only accommodates 7 units of affordable housing... . This alternative sites is also infeasible because it is inconsistent with the Inclusionary Housing Agreement requirement that the affordable housing units be constructed in the GMPAP area... ." (Resolution No. 16-104, p. 20; *see also* p. 21).

The findings are squarely at odds with the FEIR. Moreover, because an alternative needs an LCP or zoning amendment does not mean it is infeasible. After all, the Pebble Beach project as a whole is the result of an LCP amendment. And if the Inclusionary Housing Project must be constructed in the GMPAP area, then the Sunset Drive/17-Mile Drive alternative is superior to the Collins Residential Area alternative and is the Environmentally Superior Alternative. On the other hand, if these alternatives are infeasible as the Planning Commission determined, then the FEIR is fatally flawed because its assertion of feasibility is completely erroneous. Moreover, it means that the FEIR failed to consider a reasonable range of ***feasible*** alternatives. The CEQA Guidelines make clear that: "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." 14 Cal. Code Regs § 15126.6(a).

> "Even as to alternatives that are rejected, however, the 'EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages[,] or cannot be accomplished.' " ([Citation]; see Cal. Code Regs., tit. 14, § 15091, subd. (c) [when agency finds alternatives are infeasible it must "describe the specific reasons for rejecting" them].)"

Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal. App. 4th 866, 883; *Preservation Action Council v. City of San Jose* (2006) 141 Cal. App. 4th 1336, 1354. Here, the County has created an artificial construct and in the end rejected alternatives simply because they did not like them, not because they were **truly infeasible**. *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal. 4th 341, 368-369. The Sixth District Court of Appeal echoed this sentiment:

> The purpose of an EIR is not to identify alleged alternatives that meet few if any of the project's objectives so that these alleged alternatives may be readily eliminated. Since the purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts.

Watsonville Pilots Assn. v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1089.

It is noteworthy that the FEIR admits that the EIR for the Pebble Beach build-out project only analyzed one alternative to the payment of an in-lieu fee, which was to "include 18 inclusionary housing units at the Pebble Beach Corporation Yard and payment of an in-lieu fee

for the remaining 6+ unit requirement." (FEIR, p. 3-1). It is clear that the Alternative 3, the Corporation Yard, has substantial merit because it was contemplated and assessed at the time that the Pebble Beach build-out EIR was approved, and furthermore, it still is a viable alternative because it would have significantly less environmental impacts because the site already contains development and is planned for further development, while still satisfying the inclusionary housing requirements under County Code. DMNU also assets that the number of units in this alternative could be increased as an alternative to partial payment of in-lieu fees. Yet, the Planning Commission's findings commit grave error with respect to this alternative:

> This alternative is legally infeasible because it would be a reduction of affordable housing as compared to the project, and there is no substantial evidence to support the findings County would be required to make under the Housing Accountability Act for the reduction... . In addition, the Board of Supervisors in the approval of the Pebble Beach Company Project ... previously found "...the Corporation Yard is neither desirable or suitable for inclusionary housing..." This alternative site is also infeasible because it would not fulfill owner's obligations under the Inclusionary Housing Agreement which requires that the affordable housing units be constructed in the GMPAP area.

(Resolution No. 16-104, p. 19-20). This is a classic bait and switch, calling into question the efficacy of alternatives analysis, and highlights the unlawful segmentation of the Project.

B. The Project EIR Unlawfully Segmented the Inclusionary Housing Project from the Larger Pebble Beach Project

As we stated in comments on the Draft EIR, it is clear that the County has segmented this Project from the larger Pebble Beach market rate housing project. Indeed, the Project is a direct requirement of the market rate housing project and the FEIR examines the inclusionary component in a vacuum without consideration of the other effects of the larger project. For example, the removal of Monterey pine habitat is examined on this site separately from the actual entirety of the Pebble Beach development. In the Response to Comments, the FEIR states: "The Pebble Beach Company proposed to comply with the County's inclusionary housing ordinance requirements through the payment of an in-lieu fee. Thus, the prior project did not include a proposal from [the Pebble Beach Company] to actually build any inclusionary housing and did not include any proposal to build inclusionary housing in Area D." (FEIR, p. 3-1). In addition, the FEIR admits that the EIR for the Pebble Beach Company build-out project analyzed an alternative to the payment of an in-lieu fee, which was to "include 18 inclusionary housing units at the [Pebble Beach Company] Corporation Yard and payment of an in-lieu fee for the

remaining 6+ unit requirement." (FEIR, p. 3-1). To now consider a whole different inclusionary housing proposal at a different site, that was not contemplated at the time that the EIR for the Pebble Beach build-out was approved, wildly departs from what the public understood to be the whole of the Pebble Beach project, including the significant environmental impacts that would result.

The CEQA Guidelines state that "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [including] [a]n activity directly undertaken by any public agency." 14 Cal. Code Regs. § 15378(a). Precedent has long established that the environmental impacts of a project cannot be submerged by chopping a larger project into smaller pieces. *See Burbank-Glendale-Pasadena Airport Authority v. Hensler (1991)*233 Cal.App.3d 577, 592. "A project may not be divided into smaller projects to qualify for one or more exemptions" to avoid the responsibility of considering the environmental impact of the project as a whole. 14 Cal. Code Regs §21159.27.

> A public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project as a whole. "The requirements of CEQA, 'cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.' [Citation.]" [Citation] "[The] term 'project,' . . . means the *whole of an action* which has a potential for physical impact on the environment, and . . . '[the] term "*project*" *refers to the underlying activity and not the governmental approval process*.' [Citation.]" [Citation.] "It is, of course, too late to argue for a grudging, miserly reading of CEQA . . . . [The] Legislature intended CEQA 'to be interpreted in such manner as to afford the *fullest possible protection* to the environment within the reasonable scope of the statutory language.' (Italics added.) . . . [para.] One . . . overwhelming consideration which militates against deferring the preparation and consideration of an EIR . . . is the mandate of CEQA that environmental considerations do not become submerged by chopping a large project into many little ones–each with a minimal potential impact on the environment–which cumulatively may have disastrous consequences." (*Bozung* v. *Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274, 283-284... .)

Orinda Ass'n v. Board of Supervisors (1986) 182 Cal.App.3d 1145, 1171. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones — each with a . . . potential impact on the environment — which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Comm., supra,* 13 Cal.3d at 283-284.

When evaluating environmental impacts under CEQA, it is key to properly define the scope of the project. A project is required to be defined broadly. "A public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project as a whole." *Orinda Ass'n v. Board of Supervisors*, *supra*, 182 Cal.App.3d at 1171; *City of Santee v. County of San Diego (Santee)* (1989) 214 Cal.App.3d 1438, 1452. "An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *Burbank-Glendale-Pasadena Airport Authority v. Hensler, supra,* 233 Cal.App.3d at 592, *citing McQueen v. Bd. of Directors* (1988) 202 Cal. App. 3d 1136, 1143. "A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole." *Id.*

The County's conduct here is similar to that in *Santee*, where the court held that the county violated CEQA by segmenting a project. The EIR in that case was inadequate because temporary facilities were only one small part of a county plan to ease jail crowding in the entire county. *Santee, supra,*. 214 Cal.App.3d at 1455. It was clear that a larger project was contemplated and the County was chopping it up into small projects rather than dealing with it as a complete program. *Id.* at 1454. As in *Santee*, the County in the case at bar is segmenting a larger and expressly contemplated housing development. Moreover, the County is failing to adequately assess the environmental impacts that the projects will have individually and as a whole.

> Keeping in mind that only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives, we conclude that the project here did not contain "an accurate, stable and finite project description" which is the "*sine qua non* of an informative and legally sufficient EIR."

Santee, supra, 214 Cal. App. 3d at 1454, *quoting County of Inyo v. City of Los Angeles* (1985) 71 Cal.App.3d 185, 192–193. CEQA requires the County to consider subsequent elements of a project that are already in the planning process. *McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District, supra,* 202 Cal.App.3d at 1143, 1146 (disapproved on other grounds).

There exists a real danger in the filing of separate environmental documents for the same project because consideration of the full impact on the environment may never occur. *Santee, supra,* 214 Cal. App. 3d at 1452, *citing Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 166. Here, the County is "separately

focusing on isolated parts of the whole" and evading adequate and comprehensive environmental review. *Burbank-Glendale-Pasadena Airport Authority v. Hensler, supra* 233 Cal.App.3d at 592.

Segmentation is present when a project is part of a much larger project. *Arviv Enterprises, Inc v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333 (where a developer sought approval of a project through a series of numerous applications for categorical exemptions, mitigated Negative Declarations and variances, an EIR was required for the entire project.) An EIR must analyze two actions together when they are steps to achieve the same objective. *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214 (an agency engaged in unlawful segmentation of its environmental review of a proposed home improvement center because the Negative Declaration did not identify and analyze the impacts of constructing improvements to adjacent roadways which were a required condition of approving the center); *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252 (mining company's proposed mining operations and reclamation plan together constituted a single project because both aspects were integrally related and constituted the whole of the action or the entire activity for which approvals were being sought).

The County's review here clearly violates this standard. Separating the Inclusionary Housing Project from the market rate housing project masks the true environmental impacts of the entire project. ***At minimum, the County was required to prepare a Supplemental Environmental Impact Report to the entire Pebble Beach project so that the impacts of the Inclusionary Housing Project could be considered together with the impacts of the entire action.*** Instead, the County piecemealed the entire project by preparing two separate EIRs that look at each component in a vacuum.

C. Unavoidable Significant Impacts to Monterey Pine Forest

The FEIR concludes that the impact to Monterey pine is sufficiently mitigated due to the dedication of the conservation easement and compliance with the County tree ordinance. However, the fact remains that this species will be removed on the site. Preserving other areas from development does not result in mitigation for loss of the species elsewhere. The Project would result in removal of 725 Monterey pine trees and a loss of 2.7 acres of Monterey pine forest. The FEIR's determination that the Project complies with Greater Monterey Peninsula Area Plan Policy GMP-3.5, which discourages removal of Monterey pine and native oak, is simply incorrect. Half of the native oak and Monterey pine will be removed as part of this development. Thus, the Project does not comply with this policy.

The Final EIR dismisses the cumulative impact to Monterey pine forest by simply adding a section defining fragmentation, instead of addressing the issue. Monterey pine have suffered greatly from fragmentation due to development and pitch canker. It is a rare species. This development will continue the fragmentation of the pine forest. The dire status of this species means that even greater care and attention is needed to analyze the direct and cumulative impacts of this Project. Indeed, in an analogous case,

> the significance of an activity depends upon the setting. (Guidelines § 15064, subd. (b)). The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.

Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355.

The Final EIR did employ further analysis and noted that of the undeveloped Monterey pine forest in the Monterey Region there was 9,368 acres as of 1993. It further notes that Monterey pine forest loss cumulatively, including the Project contribution, to be 1,342 acres. The FEIR does in fact conclude that:

> Based on these assumptions, cumulative development (including the project) could result in a loss of 1,342 acres or about 14% of the extant undeveloped native forest in Monterey County as of 1993 (see **Table 4-4**). Within the significance framework used in this document, this is a significant cumulative impact that would result in an uncertain future for the conservation of Monterey pine forest in the region.

(FEIR, p. 4-11). Due to the acknowledgment that development is causing an uncertain future for the Monterey pine forest in the region, this underscores the urgency to select an environmental viable alternative that will not lead to further degradation of this natural resource.

Furthermore, the FEIR continues to make the argument that the areas of the Project site that are not developed will be placed in a conservation easement and serve as mitigation for the Project. Conserving the balance of the property does not result in compensation for the loss of habitat or species. It is simply land that remains undeveloped. Moreover, preserving other areas from development does not result in mitigation for loss of the species elsewhere. The species removal at the Project site contributes to the species cumulative loss.

For the foregoing reasons, the Board of Supervisors must reverse the decision of the Planning Commission to approve the Project and deny certification of the EIR. DMNU requests that the Board of Supervisors seriously consider one of the listed alternatives that can be a win-win for inclusionary housing, and Monterey pine. These are not mutually exclusive goals.

Thank you for your consideration.

Very truly yours,
WITTWER PARKIN LLP

William P. Parkin

cc: Client

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