

EXHIBIT 17-F

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MPWMD

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Burlingame, CA 94011

March 25, 2011

Monterey Peninsula Water Management District  
5 Harris Court, Bldg. G  
Monterey, CA 93942-0085

**Re: Supplemental Materials Supporting Appeal of Decision of Non-Compliance  
upon Final Inspection for Permit 30234  
Property Address: 951 Coral Dr., Pebble Beach, CA 93953  
APN: 007-254-005-000**

Dear Monterey Peninsula Water Management District Board:

This letter is supplemental to the letter dated July 28, 2010, in which Richard and Sharlene Thum (collectively, "we," "us," or "our") respectfully requested this Board to review the facts and findings of the above-referenced matter and reverse a decision of non-compliance with Permit 30234 made by the Monterey Peninsula Water Management District (the "District"). A copy of the July 28, 2010 letter, and attachment, is attached hereto as Exhibit 1. All Exhibits, District rules, regulations, ordinances, documents provided as part of the California Public Records Request Act ("CPRA") request (see below), and correspondence with the District related to this appeal and the CPRA request are incorporated in this letter by reference.

**Facts**

The initial facts are as described in Exhibit 1. In addition to those facts, we add the following:

The permit fees we paid (\$1,290.03) included \$857.03 for connection fees. See Exhibit 2.

In addition, as part of the permit process we were required to amend the deed to the Property, which deed restriction is attached as Exhibit 3. The deed restriction was recorded on January 21, 2010, and the District issued its permit on January 26, 2010.

Monterey County issued a building permit for the bathroom on January 28, 2010 (Permit No. BP091600). A copy of the building permit is attached as Exhibit 4.

On or about July 28, 2010, we filed a timely appeal to the District's decision of non-compliance with Permit 30234, after the District concluded it would stand by its count of water fixtures from its Property inspection in August 2007 – three years prior.

On or about September 13, 2010, in response to the District's request, we supplied the District with the following: (i) picture of downstairs bathroom, (ii) picture of upstairs master bathroom, and (iii) copy of the approved plans for the bathroom constructed per Permit 30234.

On or about September 21, 2010, approximately three months after the District's final inspection for Permit 30234, Ms. Stevie Kister, the District's representative, contacted our agent, Margaret Thum ("Ms. Thum"), inquiring whether the shower stall constructed pursuant to Permit 30234 had one or two shower fixtures (it had one, but the plans showed two). We confirmed that only one shower fixture was installed.

On or about September 29, 2010, Ms. Kister called Ms. Thum asking if we were aware of our options in lieu of an appeal of the District's decision. Ms. Thum confirmed that we were aware of our options, however, each option required additional costs (approximately \$10,000 or more). This added expense was not included in our budget when we decided to construct the bathroom pursuant to the District's permission. Ms. Kister then replied that she believed we were aware of our options, but her supervisors wanted to see if there was a way to get us off the Board's calendar. We praise Ms. Kister for her honesty and transparency. We take great offense, however, with the District's attempt to dissuade us from pursuing our appeal by suggesting we should pay any more money, especially when we constructed the bathroom only after receiving the District's permission.

On or about October 8, 2010, we submitted to the District a California Public Records Act request ("CPRA request"). A copy of the letter is attached as Exhibit 5.

On or about October 18, 2010, the District objected, stating the CPRA request was overbroad. A copy of the objection letter is attached as Exhibit 6.

On or about November 15, 2010, we responded to the District's objections by indicating the CRPA request was not overbroad, but rather listed specific items in order to avoid being vague. At that time, we added one more CPRA request. This response is attached as Exhibit 7.

On or about December 6, 2010, Ms. Pintar called Ms. Thum and, in the spirit of cooperation, Ms. Thum agreed to prioritize information sought in the CPRA request. Based on this discussion, the District provided (i) a copy of the District's enabling legislation in response to the request to identify the authority to regulate residential and commercial water use and fixtures, and (ii) a list of appeals and variances to the District's rules regulating residential and commercial water use. See Exhibit 8.

On or about December 27, 2010, Ms. Thum phoned Ms. Pintar; however, her voicemail indicated that she was out of the office until after the New Year. Ms. Thum did not leave a message.

On or about January 13, 2011, Ms. Thum and Ms. Pintar spoke about the CPRA request. Later that day Ms. Pintar emailed Ms. Thum indicating a copy of all staff reports and minutes from all residential appeals and variances related to water permits from 1985-2010 would be mailed to Ms. Thum. In the phone conversation, Ms. Pintar indicated there were not any residential appeals and variances prior to 1993. See Exhibit 8.

On or about January 14, 2011 Ms. Thum emailed Ms. Pintar requesting Ms. Pintar confirm the District's rule of counting residential water fixtures was first enacted in March of 1985 and the fact there was not a predecessor rule. See Exhibit 8.

On or about January 19, 2011, Ms. Pintar responded the District was providing copies of residential appeals and variances processed from 1985-2011. She also indicated the use of fixture units to determine residential connection charges was enacted by Ordinance No. 21 on March 11, 1985, and there was a prior provision for using fixture units, but it was not the primary method for calculating connection charges. See Exhibit 8.

On or about January 20, 2011, Ms. Pintar emailed Ms. Thum stating that she was not familiar with the permit process prior to 1985; however, there were not any residential appeals or variances prior to 1993. See Exhibit 8.

### Legal Analysis

We now turn to the legal analysis of not only our appeal of the District's decision on Permit 30234, but also other very significant legal issues relating to the District's rules and practices.

#### **I. The District does not have the right to impose additional conditions after issuing Permit 30234, because of vested rights, equitable estoppel and prior Board precedent.**

We reconfirm our arguments based on vested rights and equitable estoppel set forth in our timely appeal dated July 28, 2010. See Exhibit 1.

In addition, by reversing the District's decision in this case, this Board will be acting consistent with its prior decision in May 2002 (Ken and Sharlene Virnig, Appellant; Murray Smith, Applicant). A key issue in that appeal was whether water fixtures were added to the property after Mr. Smith purchased the house from Mr. John Frederiksen. As part of the appeal documentation, Mr. Frederiksen confirmed the fixtures in the home were the same as when he sold the home to Mr. Smith. This Board agreed, and gave Mr. Smith credit for the fixtures in the house at the time it was purchased.

#### **II. The District does not have authority to restrict household water use.**

The District does not have authority to restrict household water use, because Section 118-332 of the enabling legislation expressly states that District may not restrict household uses of water. As a result, all District rules restricting household water use, including (without limitation) Rules 20, 24, 160-175 and associated ordinances, violate the authority granted by the Legislature, and such rules are void as a matter of law. *Agricultural Labor Relations Bd.* (1976) 16 Cal.3d 392, 419. See also *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 391 ("regulations that alter or amend the statute or enlarge or impair its scope are void.")

In our CPRA request, we asked the District where it was granted authority to regulate residential water use by counting water fixtures, and after multiple requests, we were eventually provided with a copy of the enabling legislation – approximately 60 pages. The District did not point us to a specific section of the law that granted it authority to regulate residential water use and fixtures. The difficulty in obtaining information from the District on its authority to restrict residential water use and count water fixtures, and the District's inability to point to a specific grant of this authority by the Legislature, raised significant doubts about the District's legal authority to enact the ordinances and rules in question.

District Rule 20-B, which was enacted in 1985 (seven years after the District was created), requires a water use permit in specific situations, including (without limitation) in the event of "[a]ny modification to, or relocation of, Residential water fixtures,...." The District defines "Residential" as "**water used for household purposes....**" (emphasis added).

Section 118-332 of the enabling legislation grants the District limited power to restrict the use of district water only during certain emergencies, such as a drought. It is not clear that we have been in an uninterrupted emergency for the past 26 years; however, it doesn't matter. In Section 118-332, the Legislature limited the District's power to "restrict the use of district water use" during emergencies "for any purpose **other than household uses.**" (emphasis added) The Legislature expressly stated the District was not granted authority to restrict residential water use - if not in an emergency, then not at all. This expressed intent agrees completely with the

Legislature's intent in Water Code Section 106 that states "[i]t is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water...." The District's rules that restrict residential water use directly violate the Legislature's delegation of power, and as such, the District's actions in restricting residential water and fixtures are performed *ultra vires*, and thus are void.

The District may argue it is only "estimating water use capacity" and not restricting household water use, but this argument is disingenuous at best. First, the deed restriction in our case that was prepared by the District is titled as follows (emphasis added):

Notice and Deed Restriction ***Regarding Limitation on Use of Water*** on a Property

The deed further states that "the maximum permitted ***water use*** at the Subject Property ***is limited to...***" (emphasis added) The deed then lists the number of water fixtures that are permitted in the house, and in some cases identifies which room such fixtures are permitted to be located. Merriam-Webster defines "limited" as "confined within limits: restricted." This "property" is a house. By its own admission in the deed restriction that it prepared, the District is restricting the use of household water. The District is restricting household water use in flagrant disregard of the Legislature's expressed intent in both Section 118-332 of the enabling legislation and Section 106 of the California Water Code.

Second, if the purpose is to estimate water use capacity, then the District would not need to impose limitations on the number and location of water fixtures in private homes. The District, like all government agencies, must select the course of action that is narrowly tailored to respect the rights of all citizens, especially when the sanctum of the home is involved. Yet, the District has chosen to enact regulations that require homeowners to allow them to search their homes under the pretense of developing estimates of residential water use. The District has chosen this intrusive tactic of entering homes, despite less intrusive means available to them. For example, the District is able to estimate residential water use capacity without entering private property to count outdoor fixtures, such as hose bibs or sinks. In addition, the District is apparently able to estimate residential water use capacity for homes that have not been snared in the District's rules, e.g., homes that have not been remodeled or sold since the District's enactment. These two examples illustrate that the District is able to estimate residential water use capacity without entering private property and imposing stringent deed conditions that restrict household water. The District, however, has disregarded choosing a narrowly tailored approach to estimating water use, and rather has elected to enforce its rule and regulations relating to residential water use by restricting how and where private households use water—in the bathroom, kitchen, laundry room, etc.—all in violation of the authority granted to it by the Legislature.

Third, Section 118-332 of the enabling legislation grants authority to restrict "district water" only - not water generally. This is the only section in the enabling legislation referring to water as "district water" – all other sections refer to water, ground water, etc. Section 118-333 mentions "district water," but it is referring to Section 118-332. This is key because the purpose of creating the District was to augment and develop new sources of water for the Monterey Peninsula. See Exhibit 9 (the third reading of AB 1329 to the Assembly stated that "[a] principal objective of the district would be to wholesale water supplies ***developed by*** the district to the existing private water purveyor." (emphasis added). This is consistent with Section 118-2 of the enabling legislation that states the purpose for creating the District was to address a need for "augmenting the supplies of water" on the Monterey Peninsula. It is this new, augmented supply

of water developed by the District that would be "district water," and eligible to be restricted in emergencies under Section 118-332. Our research has concluded that in the past 33 years since it was created, the District has not developed or otherwise augmented the water supply that would trigger the District's limited authority of restricting water use under Section 118-332.

The District's rules restricting residential water use contravene the authority granted in Section 118-332 of the enabling legislation, and government regulations that violate authority granted by the Legislature are void.

**III. The District does not have the authority to charge connection fees when it has not created a connection to water furnished by it.**

The District lacks legal authority to charge "connection fees" for water services it has not provided in 33 years. First, a "connection fee" is generally known as a fee to connect a property to the water main provided by the water utility company. This is generally charged by the water utility when a new or upgraded water meter is installed. Our water meter was not altered with permit 30234. Second, the Legislature was clear in Section 118-308 that the District may charge connection fees when it provides or makes available water services, or when it sells, leases or otherwise disposes of water that is a product of the District's works or operations. The Legislature did not grant authority to charge connection fees in the event of possibly providing or possibly making available additional water supplies or services at some time in the future. Section 118-326(b) makes this clear: "The district shall have the power...[t]o...collect rates and charges for the services, facilities, or **water furnished by it.**" (emphasis added) This follows the intent of Section 118 – the Legislature intended the District to find additional sources of water, and when it did, it would have the right to charge for the service of supplying such water.

The District's regulations, however, indicate the connection fees are for costs and expenses incurred in "planning for, acquiring, reserving and maintaining capacity in the water distribution facilities existing or to be constructed in the District." The District's seems to believe that the Legislature gave it the right to charge connection fees for providing water services sometime in the indefinite future, say 50 or 100 years, as it has been charging "connection fees" for over 26 years, although it has not provided a connection to a new a drop of water in 33 years. To permit the District to charge for items it has not delivered in 33 years makes the promise related to the charge totally illusory and eviscerates the Legislature's intent. If the District wants to charge connection fees legally, it should heed the directive given to it by the Legislature and develop new sources of water.

**IV. The District's permit rules that limit the number and location of water fixtures in a house for the purpose of estimating water use capacity and assessing connection fees constitute a taking in violation of the Fifth Amendment of the US Constitution and Article I, Section 19 of the California Constitution.**

The District's permit rules, including (without limitation) Rules 20-B, 24 and associated ordinances, that limit the number and location of residential water fixtures, including imposing deed restrictions, constitute a taking under the Fifth Amendment of the US Constitution and Article I, Section 19 of the California Constitution. The Fifth Amendment states "nor shall private property be taken for public use, without just compensation." California's constitutional takings provision is similar.

This matter is very similar to *Nollan v. California Coastal Commission* (1987) 483 US 825 that was decided by the US Supreme Court two years after the District's enactment of District Rule 20-B in 1985. In *Nollan*, Court held the California Coastal Commission's condition imposing a deed restriction granting a public easement across the Nollan's property before it would issue a building permit for the Nollan's to construct a beachfront home resulted in an unconstitutional taking under the Fifth Amendment of the US Constitution.

In *Nollan*, the Court noted that the most important right of a property owner is to exclude others, including the government, from his or her private property. *Id.* at 831. The Court further noted that an unconstitutional taking occurs when the government or others permanently physically occupy the property regardless of whether the government action "achieves an important public benefit or has only minimal economic impact on the owner." *Id.* at 831-32.

The Court in *Nollan* concluded with a two-part test for determining if a building permit regulation constitutes a taking:

1. Is the purpose of the permit requirement a legitimate government purpose?
2. Do the means used substantially advance the intended legitimate government purpose?

The US Supreme Court in *Nollan* indicated if any of the above answers is "no," then the government action is an unconstitutional taking, unless the property owner receives just compensation. In fact, the Court stated that a permit restriction which does not substantially advance a legitimate government interest is not a valid government regulation but "***an out-and-out plan of extortion.***" *Id.* at 14-15 (citing *J.E.D. Associates, Inc. v. Atkinson* (1981) 121 N.H. 581, 584, 432 A.2d 12, 14-15) (emphasis added).

**1. The District's purpose of estimating residential water use capacity and assessing connection charges is not a legitimate government interest.**

We repeatedly requested the District to inform us of its purpose for counting residential water fixtures, and identify how counting residential water fixtures serves that purpose. (See CPRA request dated October 8, 2011 (Exhibit 5), emails to Ms. Pintar on March 1, 2011, and March 9, 2011 (Exhibit 8)). The District finally responded to our request on March 10, 2011 with the following (Exhibit 10):

"MPWMD counts Residential water fixtures as part of its permit process pursuant to Rule 24. MPWMD manages water resources through its Rules and Regulations; it uses the fixture unit methodology to estimate Residential water use capacity and to assess Connection Charges."

According to this response, the District indicates its purpose is "to estimate residential water use capacity and assess connection charges." As mentioned extensively in the prior sections, the District's actions are *ultra vires*, and therefore the District's purpose does not rise to the level of a legitimate government interest.

**2. The District's restriction on the number and location of residential water fixtures does not substantially advance a legitimate government purpose.**

Even if – for argument's sake - estimating residential water use capacity and assessing connection charges are legitimate interests of the District, the District's practice fails the second prong of the *Nollan* test. This part of the test requires that the nexus between the permit requirement and the legitimate government interest is such that the permit requirement substantially advances the legitimate government interest. To determine if this is in fact the case, the US Supreme Court in *Nollan* set forth a two-part test: (1) the permit condition must be the same type as that caused by the development, and (2) the permit condition must be proportional to the burden created by the development.

**A. The permit condition is not the same type caused by the new development.**

The Court in *Nollan* stated that the type of the condition imposed must be the same type caused by the new development. For example, government may exercise its police power to prohibit development in order to preserve views of the beach (albeit a taking). If government permits development, however, any permit condition must substantially advance the government interest in preserving views of the beach. If the permit condition serves another purpose, then it is not the same type of condition caused by the development, and is unconstitutional. The Court in *Nollan* found that the permit condition imposing a deed restriction granting a lateral easement along the shorefront did not serve the government purpose of preserving views. This was because the permit condition did not aid viewing of the beach by people on the street, and therefore, struck down the permit condition as an unconstitutional taking. *Nollan* at 836-42.

In another example, the Court stated that California law could prohibit shouting "fire" in a crowded theater for the purpose of protecting public safety. If a citizen were granted permission to shout "fire" in a crowded theater with a \$100 payment to the state, then the permit condition (\$100) would not be the same type as the purpose (to protect public safety), and would be unconstitutional. *Id.* at 837.

There is no nexus – substantial or otherwise – between the District's permit conditions (imposing deed restrictions limiting the number and location of water fixtures) and the District's purported purpose (estimating water use capacity and assessing connection charges). In Ordinance 98, the District stated that it "is mindful that people, not fixtures, use water," when it concluded that adding a second bathroom is a matter of convenience and does not impact estimated water use capacity calculations. See also *Rule 24-A-3-g* (a jurisdiction's allocation will not be debited for the installation of water fixtures in a second bathroom). If adding a second bathroom is a matter of convenience and does not impact estimated water use capacity, clearly adding a third or fourth bathroom to an already existing house, especially when there is not an increase in the number of bedrooms, is also just a matter of convenience. If a legitimate government purpose is being served by the District's bathroom permit requirements, such permit requirements would apply uniformly whenever a bathroom is being added to an already existing house. The District's disparate permit practices of adding a second bathroom versus adding more than two bathrooms, however, is a clear indication that a legitimate government purpose is not being served – this is no different than a ban of shouting of "fire" in a crowded theater, unless someone is willing to pay the government \$100.

It is also extremely telling that the District's colleagues in California and other states have chosen not to go down the path of counting water fixtures as a proxy for estimating water use. To confirm this fact, on March 15, 2011, we checked with several of these water districts and asked if they had residential permit requirements that count and impose deed restrictions on the number and location of water fixtures in the event of a bathroom or kitchen remodel. Not one government agency we contacted had such permit requirements. It is notable that the Monterey Peninsula area did not rank in the top 100 US locations at most risk of drought. Our findings are outlined in Exhibit 11.

The District's residential permit rules fail this first part of the second-prong of the *Nollan* test, because the type of permit requirement (imposing deed restrictions on the number and location of water fixtures) is not the same type as the assumed legitimate government interest (estimating water use capacity and assessing connection charges).

**B. The permit condition is not proportional to the burden created by the development.**

Even if the District passed each of the tests outlined above, the District fails the next prong of the *Nollan* test, because the permit condition is not roughly proportional to the burden created by the development.

In *Nollan* the Court stated that a permit condition "may constitute a 'taking' if not reasonably necessary to effectuat[e] a substantial government purpose." *Id.* at 834, quoting *Penn Central Transp. Co v. New York City* (1978) 438 U.S. 104, 127. The Court clarified this statement by holding there should be "rough proportionality" between the permit condition and the burdens created by the development for the government action to pass constitutional muster. *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391. Before it may impose permit conditions, the government must provide a determination in each individualized case that the permit condition "is related both in nature and extent to the impact of the proposed development." *Id.*

In our case, the District has not provided us a determination that the permit condition (imposing deed restrictions limiting the number and location of water fixtures) relates both in nature and impact – or is roughly proportional – to the burden our additional bath has on the District's ability to estimate water use capacity and assess connection fees. If the District has a document evidencing such determination, we respectfully request it be provided to us before the hearing date on April 18, 2011. Regardless, we believe there is not a rough proportionality between the two, especially in light of Ordinance 98 in which the District stated that it "is mindful that people, not fixtures, use water." As a result, the District concluded that adding a second bathroom is a matter of convenience and does not impact estimated water use capacity calculations.

First, the District's counting of water fixtures and imposing deed restrictions on the number and location of water fixtures does not relate in nature to estimating water use capacity as a result of adding a bathroom. The bathroom remodel constructed pursuant to permit 30234 resulted in more water fixtures in the Property. Because there are more water fixtures in the home, does not mean that there will be a change in water use for purposes of estimating water use capacity. Also, if one has to get up in the middle of the night to use the bathroom, he is not going to use more water if he uses one bathroom over another – he will use the same amount of water. And, if one is taking a shower, she will not use more water if she is using one shower over another. As the District stated in Ordinance 98, it is not the fixtures that use water, but rather the people in the homes who use the water. This can be illustrated by assuming if there was a natural disaster on the Monterey Peninsula that resulted in all citizens leaving the area, the estimated



water usage would go to zero, despite no change in the number of water fixtures. Conversely, if the population of the area doubled, even without changing the number of water fixtures, the water usage would significantly increase. Empirical evidence shows this - we had the two highest months of water usage at the Property before the bathroom remodel was begun. For example, the highest water usage month was 15,750 gallons in September 2009 and the second highest water usage month was 10,500 gallons in October 2009 (both months when we were at the Property for extended periods of time). We had the lowest water usage month in February 2010 (1,275 gallons), a month after construction commenced on the bathroom remodel, during which time we limited our visits to the Property. Since the bathroom was completed in June 2010 to February 2011, there has not been a water usage month that exceeded 10,000 gallons.

To propose that counting residential water fixtures and imposing deed restrictions lightens the District's burden of estimating water use capacity with the addition of a bathroom, would be to say that counting electrical plugs makes it easier for PG&E to estimate home electrical use, and that counting telephones in a home makes it easier for AT&T estimate home telephone use. Counting water fixtures as a measure of actual or estimated water use is arbitrary at best. Thus, counting water fixtures and limiting the number and location of water fixtures does not relate in nature to the burden, if any, on District's ability to estimate water use capacity or assess connection charges.

Second, the District's counting of water fixtures and imposing deed restrictions that limit the number and location of water fixtures does not relate in extent to the burden, if any, on the District's ability to estimate of water use after the addition of a bathroom. The District had a means to estimate water use capacity for the Property before the bathroom was added under Permit 30234. In fact, the District was and still is able to estimate residential water use capacity for homes that have never been snared in the District's rules, e.g., homes that have not been remodeled or sold since the District's enactment. If the District was able to estimate water use capacity for the Property before the addition of the bathroom and is able to estimate water use capacity for homes for which it has not imposed deed restrictions on the number and location of water fixtures, we cannot see how imposing such deed restrictions are roughly proportional to the additional burden, if any, on the District's ability to estimate water use capacity after the addition of the bathroom.

As mentioned earlier, the most important right of a property owner is to exclude others, including the government, from his or her private property. *Nollan* at 831. The District's permit requirements of imposing deed restrictions have resulted in the government permanently implanting itself in our house and placing us in a "water fixture" straight jacket - it has taken our right to decide where and how many water fixtures we have in our house, and it has instructed us to remove two water fixtures it finds offending or incur more expenses, all for the purpose of estimating water use capacity and connection charges. The District's practice of counting water fixtures and imposing deed restrictions on the number and location of water fixtures does not substantially advance the District's interest (albeit not legitimate) in estimating water use capacity and assess connection charges for the above-mentioned reasons. As a result, these actions constitute a taking in violation of the Fifth Amendment of the US Constitution.

**V. The District's rules that count and limit the number and location of residential water fixtures violates substantive due process under the Fifth and Fourteenth Amendments to the US Constitution and Article 1, Section 7 of the California Constitution.**

The District's rules that count and limit the number and location of residential water fixtures, including (without limitation) Rule 24 and associated ordinances, are arbitrary, irrational, and do not substantially advance a legitimate government interest, and as such they violate substantive due process protections afforded under the Fifth and Fourteenth Amendments to the US Constitution and Article 1, Section 7, of the California Constitution.

Municipal ordinances violate substantive due process if they do not substantially advance legitimate government interests. *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 540. "[A] regulation that fails to serve any legitimate government objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause." *Id.* at 542, (citing *County of Sacramento v. Lewis* (1998) 523 U.S. 833, 846)

The District's purpose of estimating water use and assessing connection fees are not legitimate District interests. See *Arguments I and II*, supra. In addition, the District rules of imposing deed restrictions that limit the number and location of water fixtures are arbitrary and irrational, and do not substantially advance the interest of estimating water use capacity and connection charges. See *Argument IV*, supra.

The District states in Ordinance 98 that it "is mindful that people, not fixtures, use water", however, it arbitrarily uses fixtures as a means to estimate water use. This is evident by the fact the District is able to estimate water use capacity for homes that have not become snared in its rules – all this despite the District not fully knowing what fixtures are installed inside these homes. In addition, the District has decided that adding a second bathroom is a matter of convenience and does not impact estimating water use capacity; however, it has arbitrarily decided that adding a third or fourth bathroom is not a matter of convenience, and thus impacts estimating water use capacity (the only rational purpose of this rule seems to be limiting population growth). In our case, we added a bathroom as a matter of convenience. Our home had one bathroom upstairs, and it was inconveniently located down a small hallway inside the master bedroom. Before we added the upstairs bathroom with Permit 30234, a person sleeping in the bedroom across the hall from the master had two choices when they had to go to the bathroom in the middle of the night – they could either (i) invade the privacy of the persons in the master bedroom to get to the only upstairs bathroom or (ii) crawl down the stairs at night, at risk of falling, and find a bathroom downstairs. We did not add any bedrooms. Because the District is able to estimate water use capacity for homes for which it has never counted the water fixtures, and has concluded that adding a second bath does not impact its estimates of water use capacity, but adding a third or fourth bathroom does impact water use estimates, the District's rules counting and limiting the number and location of water fixtures as a proxy to estimate water use capacity are arbitrary, unreasonable and irrational.

For the reasons mentioned above, the District's ordinances that count water fixtures to estimate water use capacity and connection charges do not substantially advance a legitimate government purpose and thus violate fundamental substantive due process rights granted under the US and California Constitutions.

**VI. The District's imposition of deed restrictions on residential property constitutes an unreasonable restraint on alienation.**

The District's imposition of deed restrictions that limit the number and location of water fixtures constitutes an unreasonable restraint on alienation that violates California Civil Code Section 711 ("Section 711").

Section 711 provides unreasonable restraints on alienation are void. "In determining whether a restraint on alienation is unreasonable, the court must balance the justification for the restriction against the quantum of the restraint. The greater the restraint, the stronger the justification must be to support it." *City of Oceanside v. McKenna* (1989) 215 Cal.App.3d 1420, 1427).

The District asserts it must impose deed restrictions that run in perpetuity on the Property, which have the effect of restricting the use and enjoyment of the Property by future owners, in order to be able to estimate water use capacity and assess connection charges. However, the District was able to estimate water use capacity and assess connection fees before it imposed deed restrictions on the Property. So, it is unreasonable that the District must impose deed restrictions that last forever for the one-time input the District claims it needs to estimate water use capacity and assess connection fees. Accordingly, the District's actions imposing such deed restrictions are an unreasonable restraint on alienation that violates Section 711.

**VII. The District's rules that permit inspections of private residential property violate protections from government searches provided by the Fourth Amendment to the US Constitution and Article I, Section 13 of the California Constitution?**

District rules permitting inspections of private property, including (without limitation) Rules 23, Rule 144 and associated ordinances, for the purpose of counting water fixtures do not satisfy the eligibility requirements for issuance of an administrative inspection warrant under California Code of Civil Procedure Section 1822.50. Because of this and the consequences suffered by the property owner if he/she does not consent to the District inspection, any such consent is given involuntarily. Therefore, District rules granting the District permission to inspect private property violate the protections from unreasonable government searches and seizures granted under the Fourth Amendment of the US Constitution and Article 1, Section 13 of the California Constitution.

Government searches of homes must be performed pursuant to a warrant or with voluntary consent of the property owner, in order to satisfy the protections against unreasonable government searches set forth in the Fourth Amendment to the US Constitution and Article I, Section 13 of the California Constitution. See *Camara v. Municipal Court of the City & County of San Francisco* (1967) 387 U.S. 523, 528-29.

California Code of Civil Procedure Section 1822.50 et seq ("Section 1822.50") authorizes the issuance of administrative inspection warrants if the search of property – commercial or residential – is "authorized by state or local law or regulation relating to **building, fire, safety, plumbing, electrical, health, labor, or zoning.**" (emphasis added) The California Attorney General has stated explicitly that not all government searches of homes are eligible to receive an administrative inspection warrant. 61 Ops. Cal. Atty. Gen 524 (1978) (an inspection warrant may not be issued to a county tax assessor to appraise property for purposes of determining value for tax assessment). Searches eligible for an administrative inspection warrant under Section 1822.50 are made to determine if property meets certain legislated standards. *Id.*

Searches that are performed to estimate and assess property are "inquisitorial" and not for the purpose of determining if the property meets certain legislated standards, and therefore are outside the subject matter of administrative inspection warrants under Section 1822.50. *Id.*

A property owner's voluntary consent can waive the warrant requirement. See *U.S. v. Prescott* (1978) 581 F.2d 1343, 1352; *Camara v. Municipal Court of the City & County of San Francisco* (1967) 387 U.S. 523, 528-29. Involuntary consent, however, does not rise to the level required to turn a warrantless search constitutional. See *Currier v. City of Pasadena* (1975) 48 Cal.App.3d 810. A government ordinance that compels a property owner to consent to a warrantless inspection of his/her private residence or suffer criminal or civil sanctions results in involuntary consent to a search, and is thus unconstitutional. *Currier* at 815.

In *Currier*, the court struck down as unconstitutional a city ordinance that permitted warrantless inspections of residential property in the event of certain changes in occupancy, e.g., a sale, new tenant, etc., in order for the City to enforce its zoning, health and building codes. *Id.* at 813. The City argued that the ordinance involved mainly consensual entries into private properties, but if a property owner refused the inspection, the ordinance would be subject to the administrative warrant requirements of Section 1822.50. *Id.* at 814. In striking down the ordinance as unconstitutional, the court focused on the element of consent and stated "to prohibit [a property owner] from selling [his property], unless he 'consents' to a warrantless search is to require an involuntary consent. The owner's basic right to use and enjoy the fruits of his property cannot be conditioned on his waiving his constitutional rights under the Fourth Amendment and under article I, section 13, of the California Constitution." *Id.*

Rule 110 states the District may obtain an inspection warrant pursuant to Section 1822.50 et seq, to inspect property pursuant to its rules. The District assumes it would be able to obtain an administrative inspection warrant. According to the California Attorney General, the District would not be able to obtain such a warrant, because the District's purpose of entering private homes to count water fixtures is outside of the scope of Section 1822.50 – the District's purpose is inquisitorial and not for purposes in Section 1822.50 of determining if the property meets certain legislated construction standards. Evidence that the District's purpose falls outside the scope of Section 1822.50 is that the County of Monterey Construction Permit and Inspection Card, which is used to determine if construction on a property has met legislated building, fire, safety, plumbing, and electrical, etc. standards, does not contain a check box requiring sign-off by the District. Moreover, in our case, the Monterey County Building Department determined that the construction on our bathroom met the required building standards and issued the "OK to occupy" on June 25, 2010. See Exhibit 4.

Because the District is not eligible to obtain an administrative search warrant to count water fixtures, any inspection of private residential property must be based on the voluntary consent of the property owner. However, any such consent, including ours, would be involuntary, because the property owner has no choice but to consent to the District's inspection. The District's rules contain severe penalties – criminal and financial – if the property owner does not follow District permit rules, which require inspection of residential property. See, e.g., *District Rule 23-A-1-d* (District shall not issue a water permit where District did not conduct inspection for prior permit); *Rule 23-A-1-o* ("[f]ollowing Project completion, a final inspection of the Project shall be conducted by the District"); *Rule 23-B-1-c* (Mandatory conditions for permit approval state that "[t]he Applicant shall arrange for a final inspection by the District upon Project completion"); *Rule 24-A-1-c* ("Pre-Project Estimated Annual Water Use shall be verified by inspection"); *Rule 110* (non-compliance with the District's permit rules "is a misdemeanor punishable as an infraction

as provided by Section 256 of the Monterey Peninsula Water Management District Law, Statutes of 1981, Chapter 986. The District may seek criminal prosecution and/or civil enforcement of its rules.”) Rule 110-E (violation of rules may carry a \$250 penalty for each offense); Rule 110-F (violations of the District’s rules are a public nuisance and each day the violation continues “shall be regarded as a new and separate offense. The remedies provided in this regulation shall be cumulative and not exclusive.”); 144-D (requires an inspection or District certified-inspection report in the event of changes in ownership or use of residential property. “It shall be a violation of [the District’s rules] for any buyer or seller to instruct an escrow agent to close escrow for any sale of property in the District that does not comply with [Rule 144-D].”).

Our case is similar *Currier* – we were compelled to permit the District to inspect our home, or suffer severe criminal and financial penalties for not doing so. We obtained a permit from the District to construct a new bathroom on our property, although the District did not follow its own Rule 24 that requires an inspection before commencing construction on the property. We completed construction, obtained the “OK to occupy” the property from Monterey County’s Building Department, and were compelled to consent to the District’s inspection to obtain its final approval for Permit 30234. Without obtaining the District’s final approval, we would accrue monetary penalties and be subject to criminal prosecution under Rule 110. In addition, under District Rule 144, we are precluded from selling our property, and will have to consent to an inspection when we sell our property in the future.

#### **VIII. The District’s rules and practice of entering private residential homes to count water fixtures violate the right of privacy granted under the California Constitution.**

The District’s practice of entering private homes to count water fixtures violates the right of privacy granted under the California Constitution by the voters of this State in 1972.

The ballot pamphlet, which was given to voters prior to the election on the issue of amending the California Constitution to add the right of privacy, stated:

“The right to privacy is the right to be left alone. It is a fundamental and compelling interest. It protects **our homes**, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose.... [¶].... The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is compelling public need.”

(emphasis added, Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen.Elec. (Nov. 7, 1972) p. 27.) *Robbins v. Superior Court* (1985) 38 Cal.3d 199.

The District’s practice of entering homes for the sole purpose of counting water fixtures is not a compelling government interest, and therefore, such practice violates the fundamental right of privacy granted by the California Constitution.

**Conclusion**


For the reasons stated above, we respectfully request this Board to:

1. Reverse the District's decision and grant final approval in compliance with Permit 30234.
2. Stop the unauthorized practice of restricting household water use, and remove all deed restrictions that currently limit household use, including ours.
3. Stop the unauthorized practice of charging connection fees. In addition, refund any connection fees previously paid, including the \$857.03 in connection fees we paid.
4. Stop the unconstitutional practice limiting the number and location of residential water fixtures, and permit us to keep all water fixtures currently in our home. In addition, remove all deed restrictions imposed by the District that limited the number and location of residential water fixtures, including ours.
5. Stop counting and limiting the number and location of residential water fixtures as a means to estimate water use capacity. Use a more narrowly tailored, rational, and reasonable method to estimate water use capacity.
6. Remove all deed restrictions imposed by the District that limit residential water use capacity by limiting the number and location of residential water fixtures.
7. Stop entering residential property to count residential water fixtures, regardless of the situation (e.g., permit to build, change of use or occupancy, etc.).
8. Honor the right to privacy in one's home, and stop entering private homes to count water fixtures.

If the District Board has any questions, please feel free to contact me at the above address, or at 650-218-1937.

Please note that this letter is written without prejudice to our rights, all of which are hereby expressly reserved.

Very truly yours,



Margaret L. Thum, Esq.

Attachments: Exhibits 1-11

### **List of Exhibits**

- Exhibit 1            Appeal letter, with attachment, dated July 28, 2010
- Exhibit 2            Copy of permit fees paid
- Exhibit 3            Deed restriction recorded January 21, 2010
- Exhibit 4            Monterey County Building Permit
- Exhibit 5            California Public Records Act Request ("CPRA request")
- Exhibit 6            District's objections to CPRA request
- Exhibit 7            Response to District's objection to the CPRA request
- Exhibit 8            Correspondence with the District regarding the CPRA request
- Exhibit 9            Third Reading of AB 1329 to the California Assembly
- Exhibit 10           Email from District identifying its purpose for counting residential water fixtures
- Exhibit 11           Summary of inquiries made to water districts of top 100 US areas at risk of drought

Richard and Sharlene Thum  
9606 Huebner Road  
San Antonio, TX 78240

July 28, 2010

Monterey Peninsula Water Management District  
5 Harris Court, Bldg. G  
Monterey, CA 93942-0085

**Re: Application to Appeal Decision of Non-Compliance upon Final Inspection  
for Permit 30234  
Property Address: 951 Coral Dr., Pebble Beach, CA 93953  
APN: 007-254-005-000**

Dear Monterey Peninsula Water Management District Board:

On July 9, 2010, we received a notice of non-compliance with permit 30234 based on a final inspection of 951 Coral Drive, Pebble Beach, CA 93953 (the "Property") performed by Ms. Stevie Kister of the Monterey Peninsula Water Management District (the "District"). We respectfully disagree with the District's decision and kindly request that you, the District Board, review the facts and findings in this case and reverse the District's decision.

**Facts**

We purchased the Property on June 23, 2009 from Mr. and Mrs. Paul Filice. Because the Property had been substantially rebuilt only a few years before the purchase date, our due diligence for the purchase included confirming that all permits issued in connection with construction of the Property had received their final inspection and approval by each applicable government agency. Through our due diligence, we received confirmation that the District had performed a final inspection and granted approval of the permit issued by the District for this construction, namely permit 24754. Our due diligence also concluded that the Property had sufficient water credits to add another bathroom without purchasing more water credits. In reliance on the District's final approval of permit 24754, we purchased the Property and, at the time of purchase, intended to add another bathroom to the Property without purchasing more water credits.

The final inspection for permit 24754 was performed on August 15, 2007, at which time the District found the permit to be in non-compliance, requiring only that the permit be amended "to reflect bar sink not installed, and 1 additional wash basin installed." The permit was subsequently amended, and the District granted final approval for permit 24754 on January 7, 2008.

Mr. and Mrs. Filice have confirmed that there were no modifications to the water fixtures at the Property from August 15, 2007 (the date the District performed a final inspection for permit 24754) to June 23, 2009 (the date we purchased the Property). Please see the attached letter from Mr. Paul Filice.

On January 26, 2010 and in compliance with the District's Rule 20-B, the District issued permit 30234 that granted permission to add another bathroom to the Property after we paid permit fees of \$1,290.03 and amended the deed to the Property pursuant to the District's demand. At



the time it issued permit 30234, the District did not indicate or otherwise notify us that we did not have sufficient water credits to add the bathroom.

In reliance on the District's issuance of permit 30234, we commenced and have subsequently completed construction of the additional bathroom at the Property. Other than the water fixtures installed in the new bathroom constructed in reliance on the issuance of permit 30234, we have not made any modifications to the water fixtures at the Property.

In July 2010, the District performed a final inspection of the Property for permit 30234 that went beyond the scope of permit 30234 and included checking the water fixtures installed pursuant to permit 24754 that the District had previously inspected in 2007. The District representative noticed that two of the showers – one is a standalone shower stall and the other is above a normal-sized bathtub – had both a showerhead and hand held faucet. The representative discovered that both the showerhead and hand held faucet worked at the same time. Because of this, the District has decided that more water credits are now required than available at the time of issuing permit 30234 in order for us to receive the District's final approval for 30234.

#### **Legal Support**

We believe the District's decision was in error and should be reversed in light of the principle of vested rights set forth in the California Supreme Court's decision in *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785 (Avco)). In *Avco*, the California Supreme Court stated that "[i]t has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. [Citations.]. Once a landowner has secured a vested right the government may not, by virtue of a change [...], prohibit construction authorized by the permit upon which he relied. (*Avco* p. 791)

This principle of vested rights is a special expression of the doctrine of equitable estoppel. (*Blue Chip Properties v. Permanent Rent Control Bd.* (1985) 170 Cal. App.3d 648, 659; *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal. App.3d 965, 977.) "The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.) "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell*, 3 Cal.3d 462, 496-497.)

#### **Conclusion**

We obtained a vested right to add the bathroom without additional fees or other requirements once the District issued permit 30234. Before it issued permit 30234, the District required that we pay the permit fee and amend the deed to the Property – both of which requirements we satisfied. When it issued permit 30234, the District did not notify us or otherwise indicate that we would have to purchase more water credits in order to obtain final approval for permit 30234.

In addition, in good faith reliance on the District's issuance of permit 30234, we commenced and completed construction of the bathroom at great expense. According to the California Supreme Court in *Avco*, the District cannot now impose additional requirements not in permit 30234, as we have complied with the permit requirements and were not notified of any additional requirements before we performed the work and incurred substantial costs in adding the new bathroom.

Furthermore, equitable estoppel bars the District from finding that the Property is in non-compliance with the District's rules. First, the District is aware of the facts – that is, the District inspected the Property in 2007 and counted the water fixtures before giving final approval for permit 24754, no changes were made to the water fixtures in the interim before permit 30234 was issued, the District granted permit 30234 in January 2010, and the bathroom construction was performed according to permit 30234. Second, the District understood that we intended to commence construction on the new bathroom once we received permit 30234. Third, we were unaware at anytime before July 9, 2010 (the date of final inspection for permit 30234) that there was an issue with the District's counting of water credits for the Property. That is, we were unaware that the District either incorrectly counted the water fixtures in 2007 or changed its method of counting water fixtures after issuing permit 24754. Furthermore, we would have no experience or background to understand how to count water fixtures pursuant to the District's rules. We have resided in Texas for the past 30 years, do not have water fixture restrictions and rules similar to the District's and were not aware how to count water fixtures pursuant to the District's rules (to be honest, we are still not clear how to count them). We relied on the District's inspection and final approval of permit 24754 that all fixtures had been correctly counted by the District before it issued its final approval. Fourth, we relied on the District's issuance of permit 30234 and have incurred significant expense in constructing the new bathroom.

For the reasons stated above, we respectfully request this Board to reverse the District's decision and determine that we are in compliance with its rules and grant final approval in compliance with permit 30234.

If the District Board has any questions, please feel free to contact us at the above address, or our Agent, Ms. Margaret Thum Miles at 650-218-1937.

Please note that this letter is written without prejudice to our rights, all of which are hereby expressly reserved.

Respectfully,



Richard and Sharlene Thum

Attachments: Letter from Mr. Paul Filice dated July 26, 2010

Mr. Paul Filice  
PO Box 1844  
Pebble Beach CA 93953

July 26, 2010

Monterey Peninsula Water Management District  
5 Harris court, Bldg. G  
PO Box 85  
Monterey, CA 93942

**Re: Permit Number 24754 (951 Coral Dr., Pebble Beach)**

Dear Sirs/Mesdames:

On August 15, 2007, Mr. Michael Boles of the Monterey Peninsula Water Management District (the "MPWMD") performed a final inspection of water fixtures at 951 Coral Drive, Pebble Beach (the "Property") in connection with permit 24754. At that time, the MPWMD determined that there were two paperwork changes that needed to be made to the permit before the MPWMD would agree that the Property was in compliance with permit 24754. These paperwork changes were made and finalized on January 7, 2008.

The Property was sold to Mr. and Ms. Thum in June 2009.

This letter is to confirm that there were not any modifications to the water fixtures at the Property from August 15, 2007 (date of final inspection related to permit 24754) to the date the Property was sold in June 2009.

If you have any questions, I may be reached at the address listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Filice", with a long horizontal line extending to the right.

Paul Filice

**MONTEREY  PENINSULA  
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G - POST OFFICE BOX 85  
MONTEREY, CA 93942-0085  
PHONE (831)658-5601 - FAX (831)644-9558



**MPWMD WATER PERMIT NO. 30234 ASSESSOR PARCEL NUMBER: 007-254-005-000**

ISSUE DATE: 01/26/2010 EXPIRES: 01/26/2012 OR UPON EXPIRATION OF THE BUILDING PERMIT.

**FINAL INSPECTION REQUIRED BY MPWMD**

APPLICANT: THUM, RICHARD EVANS & SHARLENE PHONE: [REDACTED]

AGENT: IDG / JIM PHONE: (831)-902-0224

APPLICANT MAILING ADDRESS: [REDACTED]

PROPERTY ADDRESS: 951 CORAL DR, PEBBLE BEACH, CA 93953 JURISDICTION: ENTITLEMENT

APPLIED RULE: ORD # 60 / 80 / Rule 142 **DEED RESTRICTION REQUIRED**

WATER DISTRIBUTION SYSTEM: CAL-AM ALLOCATION DEBITED: 0.000

PERMIT TYPE: Addition (Residential)

NUMBER OF PROPOSED CONNECTIONS: 0

EXISTING LAND USE: SFD PROPOSED LAND USE: ADD BATHROOM

**REMARKS:** All 1.6 GPF Toilets, 2.2 GPM Faucets & 2.0 GPM Showerheads, HE Clothes Washer with a Water Factor of 5.0 or less and Instant Hot Water Required; Automatic irrigation systems shall be retrofit to include a Rain Sensor; Remodels that involve hot water shall be encouraged to install an Instant-Access Hot Water System and Insulate all new hot water pipes.

<u>Fixtures</u>	<u>No of Existing Fixtures</u>	<u>No of Post Project Fixtures</u>	<u>Fixture Unit Value</u>	<u>Existing Capacity</u>	<u>Post Project Capacity</u>
Master Bathroom: 1st Washbasin of Two	1.000	1.000 x	1.00000 =	1.000	1.000
Master Bathroom: 2nd Washbasin of Two	1.000	1.000 x	0.00000 =	0.000	0.000
Washbasin (lavatory sink)	3.000	4.000 x	1.00000 =	3.000	4.000
Toilet, Ultra Low Flush (1.6 gallons-per-flush)	3.000	4.000 x	1.70000 =	5.100	6.800
Master Bathroom (One per Dwelling): Bathtub: May be Large & Separate Shower.	1.000	1.000 x	3.00000 =	3.000	3.000
Standard Bathtub (may have Showerhead above)	1.000	1.000 x	2.00000 =	2.000	2.000


**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G - POST OFFICE BOX 85  
 MONTEREY, CA 93942-0085  
 PHONE (831)658-5601 - FAX (831)644-9558



MPWMD WATER PERMIT NO. 30234 ASSESSOR PARCEL NUMBER: 007-254-005-000

ISSUE DATE: 01/26/2010 EXPIRES: 01/26/2012 OR UPON EXPIRATION OF THE BUILDING PERMIT.

Shower, Separate Stall (One Showerhead)	1.000	2.000 x	2.00000 =	2.000	4.000
Kitchen Sink (including optional adjacent Dishwasher)	2.000	2.000 x	2.00000 =	4.000	4.000
Washing Machine	1.000	0.000 x	2.00000 =	2.000	0.000
Washing Machine, Ultra- Low Consumption (18 gals. max per cycle)	0.000	1.000 x	1.00000 =	0.000	1.000
Laundry Sink/Utility Sink (one per site)	1.000	1.000 x	2.00000 =	2.000	2.000
			<b>Total (AF)</b>	<b>0.241</b>	<b>0.278</b>
			Total Available (AF):	0.241	0.278
			Applicable Total WUP (AF):	0.037	
			<b>Proposed Water Usage (AF):</b>	<b>0.037</b>	

<u>Fee Description</u>	<u>Fixture Rate</u>	<u>Quantity</u>	<u>Fees</u>
Legal Review Fee (per Deed Restriction)			53.00
Connection Fee	23163.00	0.037	857.03
Processing Fee (Residential per Dwelling)			210.00
Deed Restriction/Recording Fee (First Pages)			10.00
Deed Restriction/Recording (Additional Pages)			6.00
Deed Restriction Notary Page			3.00
Deed Restriction Prep.			105.00
Recording Copy Page			2.00
Document Image Fee			6.00
Courier Fees			38.00
		<b>Total</b>	<b>1290.03</b>

MONTEREY  PENINSULA  
WATER MANAGEMENT DISTRICT

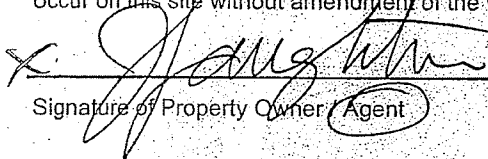
5 HARRIS COURT, BLDG. G - POST OFFICE BOX 85  
MONTEREY, CA 93942-0085  
PHONE (831)658-5601 - FAX (831)644-9558

COPY

MPWMD WATER PERMIT NO. 30234 ASSESSOR PARCEL NUMBER: 007-254-005-000

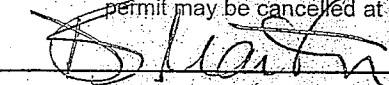
ISSUE DATE: 01/26/2010 EXPIRES: 01/26/2012 OR UPON EXPIRATION OF THE BUILDING PERMIT.

The Monterey Peninsula Water Management District issues this permit for the above project. This permit constitutes your receipt for the total fees shown. This permit may be revoked or other penalties imposed upon discovery of any substantial inaccuracy with respect to the referenced application or if water fixtures are added or changes in water use occur on this site without amendment of the water permit.

  
\_\_\_\_\_  
Signature of Property Owner (Agent)

1.26.10.  
Date

Note: This permit does not guarantee service by any water company, public utility, or municipal water agency. This permit may be cancelled at the request of the jurisdiction following notice to the property owner.

  
\_\_\_\_\_  
MPWMD Delegated Agent

1/26/2010  
Date

RECEIVED  
JAN 28 2010  
MONTEREY COUNTY  
PLANNING & BUILDING  
INSPECTION DEPT.



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831)-658-5601  
FAX (831) 644-9560 • http://www.mpwmd.dst.cc.us

**Recording Requested by:**  
Monterey Peninsula Water Management District

**And When Recorded Mail To:**  
Monterey Peninsula Water Management District  
Post Office Box 85  
Monterey, California 93942-0085

**NOTICE AND DEED RESTRICTION  
REGARDING LIMITATION ON USE  
OF WATER ON A PROPERTY**

**NOTICE IS GIVEN** that the Monterey Peninsula Water Management District (hereinafter referred to as the Water Management District), duly formed as a water district and public entity pursuant to the provisions of law found at Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901), has approved water service to the real property referenced below as "Subject Property."

**NOTICE IS FURTHER GIVEN** that the real property affected by this document is situated in the **County of Monterey:**

**951 CORAL DR, PEBBLE BEACH CA 93953-2540  
{MONTEREY PENINSULA COUNTRY CLUB 1 LOT 3 BLK 24}  
ASSESSOR'S PARCEL NUMBER 007-254-005-000**

This real property is hereinafter referred to as the "Subject Property." The Subject Property is located within the jurisdiction of the Water Management District. **Richard Evans Thum & Sharlene Thum**, (hereinafter referred to as "Owner(s)"), are record Owner(s) of the Subject Property.

Owner(s) and the Water Management District each acknowledge and agree that the installation and maintenance of **one High Efficiency Clothes Washer with a Water Factor of 5.0 or less and an Instant-Access Hot Water System capable of supplying hot water at any access point throughout the structure within ten seconds** are permanent requirements of the Subject Property. Owner(s) and the Water Management District further agree that the maximum permitted water use at the Subject Property is limited to supply the Potable water requirements for **single-family dwelling** consisting of:

- **2 Washbasins in Master Bathroom**
- **4 Washbasins (lavatory sink)**
- **4 Toilets, Ultra Low Flush (1.6 gallons-per-flush)**
- **1 Bathtub: May be Large & Separate Shower in Master Bathroom**



- 1 Standard Bathtub (may have Showerhead above)
- 2 Showers, Separate Stall (One Showerhead)
- 2 Kitchen Sinks (including optional adjacent Dishwasher)
- 1 Clothes Washer, High Efficiency with a Water Factor of 5.0 or less
- 1 Laundry Sink/Utility Sink (one per site)
- Reasonable outdoor water use as needed and as allowed by District rules

No water use fixtures other than those listed above have been approved or authorized for use on the Subject Property.

Owner(s) acknowledges that the installation and maintenance of the Low Water Use Plumbing Fixtures and the limitation on the water use fixtures referenced above have been voluntarily accepted as a condition of Water Permit No. 30234, and acknowledges that this restriction is permanent and irrevocable, unless amended by the filing of a less restrictive deed restriction.

**NOTICE IS FURTHER GIVEN** that this agreement is binding and has been voluntarily entered into by Owner(s), and each of them, and constitutes a mandatory condition precedent to receipt of regulatory approval from the Water Management District relating to the Subject Property. This agreement attaches to the land and shall bind any tenant, successor or assignee of Owner(s).

**NOTICE IS FURTHER GIVEN** that present and/or future use of water at the Subject Property site is restricted by Water Management District Rules and Regulations to the water use requirements referenced above. Any Intensification of Use on the Subject Property, as defined by Water Management District Rule 11, or any change in the quantity or type of water fixtures listed above, will require prior written authorization and Permit from the Water Management District. Approval may be withheld by the Water Management District, in accord with then applicable provisions of law. Present or future Allocations of water may not be available to grant any Permit to Intensify Water Use at this site. If any request to Intensify Water Use on the Subject Property is approved, Connection Charges and other administrative fees may be required as a condition of approval.

**NOTICE IS FURTHER GIVEN** that modification or Intensification of Water Use on the Subject Property that occurs without the advance written approval of the Water Management District is a violation of Water Management District Rules and may result in a monetary penalty for each offense as allowed by Water Management District Rules. Each separate day, or portion thereof, during which any violation occurs or continues without a good faith effort by the Responsible Party to correct the violation shall be deemed to constitute a separate offense. All Water Users within the jurisdiction of the Water Management District are subject to the Water Management District Rules, including Rules 11, 20, 21, 23, 24, and 148.

The Owner(s) and the Water Management District each intend that this Notice and Deed Restriction act as a deed restriction upon the Subject Property, and that it shall be irrevocable under its terms. This document shall be enforceable by the Water Management District or any public entity that is a successor to the Water Management District.

The Owner(s) elects and irrevocably covenants with the Water Management District to abide by the conditions of this Notice and Deed Restriction to enable issuance of Water Permit No. 30234. But for the limitations and notices set forth herein, approval of this Water Permit would otherwise be withheld and found to be inconsistent with the Water Management District Rules and Regulations.

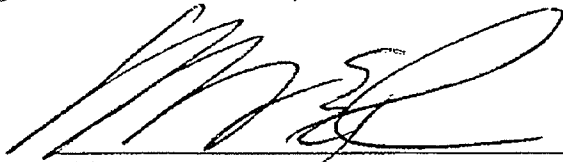
This Notice and Deed Restriction is placed upon the Subject Property. Any transfer of this property, or an interest therein, is subject to this deed restriction. This Notice and Deed Restriction shall have no termination date unless amended by the filing of a less restrictive deed restriction.

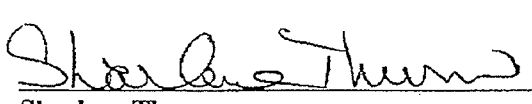
If any provision of this Notice and Deed Restriction is held to be invalid, or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.

The undersigned Owner(s) agrees with and accepts all terms of this document stated above, and requests and consents to recordation of this Notice and Deed Restriction Regarding Limitation on Use of Water on a Property. The Owner(s) further agrees to notify any present and future tenant of the Subject Property of the terms and conditions of this document.

**OWNER(S) agrees to recordation of this Notice and Deed Restriction in the Recorder's Office for the County of Monterey. Owner(s) further unconditionally accepts the terms and conditions stated above.**

*(Signatures must be notarized)*

  
Richard Evans Thum Dated: 1/14/10

  
Sharlene Thum Dated: 1/13/10

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Gabriela Ayala, Conservation Representative  
Monterey Peninsula Water Management District



*Mary Chevront*  
1-14-10

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

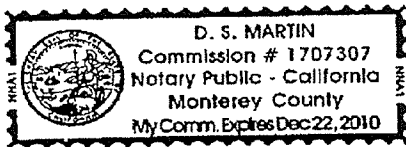
County of Monterey

On January 13, 2010, before me, D. S. Martin, Notary Public, personally appeared Sharonne Thum

who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/~~her~~/~~their~~ signature~~s~~ on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]  
(Signature of Notary Public)

Place Notary Seal Here

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Notice and Deed Restriction Regarding Limitation of Use of Water on a Property.

Document Date: 1/13/2010 Number of Pages: 3

Signer(s) Other Than Named Above: Jubriela Ayala



**CONSTRUCTION PERMIT**  
**MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY**  
**BUILDING SERVICES DEPARTMENT**

<b>PERMIT NO.</b>
BP091600

**THIS PERMIT SHALL EXPIRE IF WORK AUTHORIZED BY THIS PERMIT IS NOT COMMENCED WITHIN 180 DAYS FROM DATE OF ISSUANCE OR IF WORK IS SUSPENDED AT ANY TIME FOR MORE THAN 180 DAYS**

SITE ADDRESS: 951 CORAL DR, PEBBLE BEACH, CA	CROSS STREET: LAKE RD	ISSUE DATE: 01/28/2010
USE: Residential Alteration or Addition	APN: 007-254-005-000	OCCUPANCY: R-3
PERMIT TYPE: Combination	ZONING:	CONSTRUCTION TYPE: V-B
OWNER: THUM RICHARD EVANS & SHARLEN	ENGINEER:	MAX. OCC. LOAD:
PHONE:	PHONE: LIC NO.:	# STORIES:
EMAIL:	ARCHITECT:	EXIST'G FLR AREA: 0
APPLICANT: SILLANO JUN A.	PHONE: LIC NO.:	NEW FLOOR AREA: 0
PHONE: (831) 646-1261	CONTRACTOR: JIM LAUGHTON CO	HEIGHT:
EMAIL: anatoly@jemidg.com	PHONE: (831) 902-0224 LIC NO.: 565451	PARKING REQ'D:

SCOPE OF WORK: REMODEL OF EXISTING 85 SQUARE FOOT BATHROOM; REMODEL OF EXISTING 581 SQUARE FOOT COURTYARD; NEW FENCE AND GATE 87 LINEAL FEET TO AN EXISTING SINGLE FAMILY DWELLING. CROSS ST: LAKE ROAD	PARKING PROV: VALUATION: \$20,000.00 AMOUNT PAID: 0.00 FIRE SPKLS: No CODE EDITION: 2007 CBC
--	--

**LICENSED CONTRACTORS DECLARATION**

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

LIC. CLASS: LIC. NO. 565451 SIGNATURE: *[Signature]* PRINT: JIM LAUGHTON DATE: 1-28-10

**OWNER/BUILDER DECLARATION**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the following reason(s) indicated below by the checkmark(s) I have placed next to the applicable item(s) (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractor' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500):

I, as owner of the property, or my employees with wages as their sole compensation, will do  all of or  portions of the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who, through employees' or personal effort, builds or improves the property, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner-BUILDER will have the burden of proving that it was not built or improved for the purpose of sale.

I, as owner of the property, am exclusively contracting with licensed Contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves there on, and who contracts for the projects with a licensed Contractor pursuant to the Contractors' State License Law.)

I am exempt from licensure under the Contractor's State License Law for the following reason:

By my signature below I acknowledge that, except for my personal residence in which I must have resided for at least one year prior to completion of the improvements covered by this permit, I cannot legally sell a structure that I have built as an owner-builder if it has not been constructed in its entirety by licensed contractors. I understand that a copy of the applicable law, Section 7044 of the Business and Professions Code, is available upon request when this application is submitted or at the following Web site: <http://www.leginfo.ca.gov/calaw.html>.

SIGNATURE (Property Owner / Authorized Agent): *[Signature]* PRINT: JIM LAUGHTON DATE: \_\_\_\_\_

**WORKERS' COMPENSATION DECLARATION**

WARNING: FAILURE TO SECURE WORKER'S COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. POLICY #: 713-0030674

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are: CARRIER: STATE COMP. POLICY #: 713-0030674 EXP. DATE: 03-01-10 NAME OF AGENT: SAJ CARRBOTT

I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

SIGNATURE: *[Signature]* PRINT: JIM LAUGHTON DATE: 1-28-10

**DECLARATION REGARDING CONSTRUCTION LENDING AGENCY**

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work which this permit is issued (Section 3097, Civil Code).

Lender's Name \_\_\_\_\_

Yes  
 No Lender's Address \_\_\_\_\_

**ASBESTOS NOTIFICATION**

Notification in accordance with Section 19827.5 of California Health & Safety Code is not applicable to the scheduled demolition of this project.

Attached are copies of the required E.P.A. notification forms.

(INIT) I agree that any hazardous materials that may originate from this project, including asbestos containing material, will be managed in accordance with state regulations, and that no hazardous materials will be disposed with solid waste or recyclable material and hereby certify that the use of this facility shall comply with Sections 25505, 25533, and 25534 of the Health and Safety Code, which regulate the storage, handling and use of hazardous materials.

(INIT) I hereby certify that no building or structure will be constructed over an easement controlled by others.

By my signature below, I certify to each of the following: I am the property owner or authorized agent to act on the property owner's behalf. I have read this application and the information I have provided is correct. I agree to comply with all applicable county ordinances and state laws relating to building construction. I authorize representative of the County of Monterey to enter the above identified property for inspection purposes.

SIGNATURE (applicant/agent): *[Signature]* PRINT: JIM LAUGHTON ID: \_\_\_\_\_ DATE: 1-28-10

# County of Monterey Building Services Department Inspection Card



Office #: (831) 755-5025 (SALINAS) Office #: (831) 883-7500 (MARINA) Visit our website at: [www.co.monterey.ca.us/building](http://www.co.monterey.ca.us/building)  
 Inspection #: (831) 755-5027 (SALINAS) Inspection #: (831) 883-7501 (MARINA)

## ALL PLAN REVISIONS MUST BE APPROVED BY THE COUNTY BEFORE PROCEEDING WITH THE CHANGE

POUR NO CONCRETE UNTIL ALL GROUND WORK IS SIGNED OFF			DO NOT COVER INTERIOR UNTIL ALL ITEMS ARE SIGNED OFF BELOW			DO NOT COVER WORK UNTIL INSPECTED AND SIGNED OFF		
Type	Insp.	Date	Type	Insp.	Date	Type	Insp.	Date
Ground work			Framing			Masonry		
Setbacks			Rough Framing			Fireplaces		
Foundation / Figs			Rough Plumbing	2-24-10		Foundation	210	
Hold downs			Rough Mechanical			Throat/Damper	211	
Sterwalls			Rough Electrical			Fire Box	212	
Caissons			Rough Gas			1st Lift	213	
Slab			T-Bar Ceiling			2nd Lift	214	
Slab - Garage			Hydronic Tubing			Chimney/Flue	215	
Piers			Insulation			Final Lift	218	
Grade Beams			Wall Insulation			Seismic Straps	219	
Concrete Encased Electrode Ground			Ceiling Insulation			Hearth	221	
Blocks CMU			Roof Insulation			GRADING	242	
1st Lift			Insulation Cert.	2-24-10		Pre-Con. Mtg	410	
2nd Lift			Wall Covering			Site Prep	420	
3rd Lift			Sheet Rock	3-2-10		Excavation	421	
Final Lift			Fire Separation			Grading Setback		
			Ext. Lath			Keyway Excavat'n		
			Shower/Tub Lath	2-26-10		Footing Excavation		
Under Floor/Slab			Final			1		
Framing	50	2-19-10	Plumbing Final			2		
Shear Transfer	AA	2-19-10	Mechanical Final			3		
Plumbing			Electrical Final			Fills	422	
Mechanical			Final Gas Test			Drainage	423	
Insulation			Propane Tank			Erosion Control	424	
Gas Test			Swimming Pool			Retaining Walls	425	
Roof			Setbacks			Rough Excavation		
Roof Sheathing			Pool Steel			Sub-Drain System		
Shear Transfer			Electrical Bonding			Driveway/Road	426	
Shear			Pre-deck			Miscellaneous	428	
Interior Shear			Plumbing			Grading Final	430	
Exterior Shear			Electrical					
			Gas Test					

THE INSPECTION CARD AND APPROVED PLANS MUST BE AVAILABLE ON JOB SITE FOR EACH INSPECTION

AA OK 2-24-10  
 A BATH room remodel

Date: 2-25-10  
 OK to occupy: [Signature]  
 Date: 2-25-10

Margaret Thum Miles, Esq.  
PO Box 117683  
Burlingame, CA 94011

October 8, 2010

**VIA FACSIMILE (831) 644-9558 AND U.S. MAIL**

Ms. Stevie Kister  
Conservation Representative  
Monterey Peninsula Water Management District  
5 Harris Court, Bldg. G  
P.O. Box 85  
Monterey, CA 93940

Re: California Public Records Act Requests & Continuance of Hearing  
Property Address: 951 Coral Drive, Pebble Beach, CA (APN: 007-254-005)

Dear Ms. Kister:

This request is made under the California Public Records Act pursuant to Government Code Section 6250 *et seq.* Please provide copies of the items listed below from the Monterey Peninsula Water Management District (as "District" is defined below).

As required by Government Code Section 6253, please respond to this request within ten days. Because I am faxing this request on October 8, 2010, please ensure that your response is ready to provide to me by no later than **October 18, 2010**. I will arrange to have your response picked up from your office on October 18, 2010.

In addition, I request that the District continue the hearing currently scheduled for October 18, 2010, to a date that is at minimum two weeks following the District's full compliance with the Public Records Act and production of all documents requested herein. If the District does not produce all documents sufficiently prior to October 18, 2010, or does not continue the hearing date as requested, then we reserve all rights, including under Code of Civil Procedure § 1094.5(e), to augment the administrative record after the close of the administrative process because of the District's actions.

For ease of reference in this document, please refer to the following **defined terms**:

"Area Served" shall refer to the area served by the District, which includes Carmel-by-the-Sea, Del-Rey Oaks, Monterey, Pacific Grove, Seaside, Sand City,

Ms. Stevie Kister  
Monterey Peninsula Water Management District  
October 8, 2010  
Page 2

Monterey Peninsula Airport District and portions of unincorporated Monterey County including Pebble Beach and Carmel Valley.

“Board” shall refer to the Board of Directors of the District.

“District” shall refer to the Monterey Peninsula Water Management District, all of its commissions, boards, offices, departments (including the general counsel’s office and outside special attorneys), officials, employees, consultants, and agents.

- (1) All documents through the date of your compliance with this request which refer or relate to the authority and/or power granted to the District for the regulation of residential water permits at properties in the Area Served, including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings. This request, and all subsequent requests herein, include but are not limited to all internal agency communications, including staff notes and memoranda related to the requests herein, and all communication, including but not limited to emails, within the District and/or between or among the District and any and all other parties related to the requests herein.
- (2) All documents through the date of your compliance with this request which refer or relate to the enactment of the District’s rules and regulations pertaining to the regulation of residential water use and/or fixtures in the Area Served, including but not limited to the calculation of fixture units and fees in the Area Served, further including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.
- (3) All documents through the date of your compliance with this request which refer or relate to the enactment of the District’s rules and regulations pertaining to the regulation of commercial water use in the Area Served, including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether

draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.

- (4) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of all alternatives to the District's enacted rules and regulations pertaining to the regulation of residential water use and/or fixtures at properties in the Area Served, and further including but not limited to the investigation, consideration and/or analyses of the burden on residential property owners in the Area Served for each such alternative, and further including but not limited to all investigation, consideration and/or analyses of why potential or actual alternatives for obtaining the District's goals allegedly are not feasible, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings.
- (5) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of all alternatives to the District's enacted rules and regulations pertaining to the regulation of commercial water use at properties in the Area Served, and further including but not limited to the investigation, consideration and/or analyses of the burden on commercial property owners in the Area Served for each such alternative, and further including but not limited to all investigation, consideration and/or analyses of why potential or actual alternatives for obtaining the District's goals allegedly are not feasible, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings.
- (6) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of the potential and/or actual impacts towards, on or involving water conservation resulting from implementation of the District's rules and regulations pertaining to the regulation of residential water use and/or fixtures in the Area Served, and further including but not limited to documents (whether draft or final), staff reports, studies, photographs,



memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.

- (7) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of the potential and/or actual impacts towards, on or involving water conservation resulting from implementation of the District's rules and regulations pertaining to the regulation of commercial water use in the Area Served, and further including but not limited to all investigation, consideration and/or analyses of why potential or actual alternatives for obtaining the District's goals allegedly are not feasible, and further including but not limited to documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.
- (8) All documents through the date of your compliance with this request which refer or relate to the District's purpose and/or objective of regulating residential water use and/or fixtures at properties in the Area Served and the District's purpose and/or objective of regulating commercial water use in the Area Served, including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings.
- (9) All documents through the date of your compliance with this request which refer or relate to any alleged nexus between the District's regulation of residential water use and/or fixtures in the Area Served and the actual results achieved toward or by such purpose and/or objective identified in item (8) above, including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings.

- (10) All documents through the date of your compliance with this request which refer or relate to any alleged nexus between the District's regulation of commercial water use in the Area Served and the actual results achieved toward or by such purpose and/or objective identified in item (8) above, including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings.
- (11) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of the potential and actual impacts towards, on or involving water conservation of or from the District's regulations pertaining to residential properties in the Area Served, and further including but not limited to all investigation, consideration and/or analyses of why potential or actual alternatives for obtaining the District's goals allegedly are not feasible, and further including but not limited to documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.
- (12) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of the potential and actual impacts towards, on or involving water conservation of or from the District's regulations pertaining to commercial properties in the Area Served, and further including but not limited to all investigation, consideration and/or analyses of why potential or actual alternatives for obtaining the District's goals allegedly are not feasible, and further including but not limited to documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.
- (13) All documents through the date of your compliance with this request which refer or relate to any and all investigation, consideration and/or analyses of the potential and actual impacts towards, on or involving water conservation of or from the District's regulations pertaining to residential properties in the Area Served versus commercial properties in the Area

Served, and further including but not limited to all investigation, consideration and/or analyses of why potential or actual alternatives for obtaining the District's goals allegedly are not feasible, and further including but not limited to documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.

- (14) All documents through the date of your compliance with this request which refer or relate to the District's regulation of water use at residential properties in the Area Served versus regulating use by any and all other methods, such as without limitation charging higher fees by California American Water for actual water use and/or by providing fee reductions or other benefits to residential water users for lower actual water use, including but not limited to any and all documents (whether draft or final), staff reports, studies, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, diagrams, schematics, and audio and/or video recordings.
- (15) All documents from January 1, 2000 through the date of your compliance with this request which refer or relate to administrative and/or legal challenges to the District's decisions pertaining to decisions of non-compliance with residential permits granted in the Area Served, including but not limited to the entire printed record and computer files, and further including but not limited to any and all documents (whether draft or final), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, diagrams, schematics, and audio and/or video recordings.
- (16) All documents through the date of your compliance with this request which refer or relate to waivers or exemptions granted by the District when a residential permit is determined to be non-compliant with the District's rules and regulations, including but not limited to all summaries of such decision(s), staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, and audio and/or video recordings, which refer or relate to such waivers or exemptions.

Ms. Stevie Kister  
Monterey Peninsula Water Management District  
October 8, 2010  
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- (17) All documents through the date of your compliance with this request which refer or relate to any communications between the District on the one hand, and property owners in the Area Served on the other hand, who have contested or appealed any and all District decisions relating to non-compliance with the District's rules, including but not limited to any and all District decisions and/or rulings, staff reports, studies, photographs, memoranda and internal memoranda, agenda items, agenda statements, correspondence, emails, notes, photos, and audio and/or video recordings.
- (18) An itemization of sources of revenue by each city or location in the Area Served for the District for the past 20 years in the following categories: property tax, user fees, water connection charges, investments, grants, permit fees, project reimbursements, and other.

I draw the District's attention to Government Code Section 6253.1, which requires a public agency to assist the public in making a focused and effective request by:

(1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the District determines that any information is exempt from disclosure, I ask that the District reconsider that determination in view of Proposition 59 which amended the State Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the District has relied in the past.

If the District determines that any requested records are subject to a still-valid exemption, I request that the District exercise its discretion to disclose some or all of the records notwithstanding the exemption and with respect to records containing both exempt and non-exempt content, the District redact the exempt content and disclose the rest. Should the District deny any part of this request, the District is required to provide a written response describing the legal authority on which the District relies.

Please be advised that Government Code Section 6253(c) states in pertinent part that the agency "shall promptly notify the person making the request of the determination **and the reasons therefore.**" (Emphasis added.) Section 6253(d) further states that nothing in this chapter "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The **notification of denial** of any request for

Ms. Stevie Kister  
Monterey Peninsula Water Management District  
October 8, 2010  
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records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.”

Additionally, Government Code Section 6255(a) states that the “agency shall justify withholding any record by demonstrating that the record in question is exempt under expressed provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Emphasis added.) This provision makes clear that the agency is required to justify withholding any record with particularity as to “the record in question.” (Emphasis added.)

Please clearly state in writing pursuant to Section 6255(b): (1) if the District is withholding any documents; (2) if the District is redacting any documents; (3) what documents the District is so withholding and/or redacting; and (4) the alleged legal bases for withholding and/or redacting as to the particular documents. It should also be noted that to the extent documents are being withheld, should those documents also contain material that is not subject to any applicable exemption to disclosure, then the disclosable portions of the documents must be segregated and produced.

We request that you preserve intact all documents and computer communications and attachments thereto, including but not limited to all emails and computer files, wherever originated, received or copied, regarding the subject matter of the above-referenced requests, including archives thereof preserved on tape, hard drive, disc, or any other archival medium, and including also any printouts, blowbacks, or other reproduction of any such computer communications.

If the copy costs for these requests do not exceed \$500, please make the copies and bill me. If the copy costs exceed \$500, please contact me in advance to arrange a time and place where I can inspect the records. As required by Government Code Section 6253, please respond to this request within ten days. Because I am faxing this request on October 8, 2010, please ensure that your response is ready to provide to me by no later than **October 18, 2010**. I will arrange to have your response picked up from your office on October 18, 2010. Thank you.

Very truly yours,



Margaret Thum Miles



October 18, 2010

*Via Facsimile and U.S. Mail*

Margaret Thum Miles, Esq.  
P.O. Box 117683  
Burlingame, CA 94011

Re: *California Public Records Act Request*  
*Property Address: 951 Coral Drive, Pebble Beach, CA (APN: 007-254-005)*

Dear Ms. Miles:

This letter responds to your correspondence dated Friday, October 8, 2010, setting forth a Public Records Act Request for 18 separate categories of documents.

The Monterey Peninsula Water Management District ("MPWMD" or "District") objects to the numerous Requests as they are overbroad.

With the exception of Request No. 15, which seeks documents over a period of ten years, the Requests are not time-limited and seek records spanning a period of 36 years. Further, the Requests, as currently drafted, constitute a substantial burden and would produce a huge volume of material.

Access to government records is governed by statute. The general statute governing access to such government records is the Public Records Act ("Act"), set forth at Government Code section 6250 et. seq. The District is required to make a reasonable effort to search for and locate the record or records requested. However, the District is not compelled to undergo a search that will produce a huge volume of material. *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4<sup>th</sup> 159. A request which compels the production of a huge volume of material may be objectionable as unduly burdensome. *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

Please specify time parameters for the Requests.

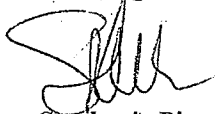
In addition, the District is not able to determine or identify records responsive to Request Nos. 6 through 14, and Nos. 17. Pursuant to Government Code section 6253.1, the District must provide assistance to identify records and information that are responsive to the request or to the purpose of the request. Accordingly, the District seeks clarification of these Requests.

Margaret Thum Miles  
October 18, 2010  
Page 2 of 2

The District anticipates that copy costs for documents responsive to your numerous Requests will exceed \$500. Responsive documents, once identified and collected, may be examined during the regular office hours of the District.

Please contact me at your earliest convenience to discuss these Requests. I can be reached by phone at 831-658-5630 or by email at [Steph@mpwmd.dst.ca.us](mailto:Steph@mpwmd.dst.ca.us). I will be out of the office on Tuesday, October 19, 2010, but will be checking email periodically. I look forward to hearing from you.

Best Regards,



Stephanie Pintar  
Water Demand Manager

cc: Darby Fuerst, General Manager  
David Laredo, District Counsel

U:\demand\Work\Letters\Public Records Requests\Thum Miles Response\_18Oct10\_Pintar.doc

Ms. Margaret Thum Miles, Esq.  
PO Box 117683  
Burlingame, CA 94011

November 15, 2010

**VIA FACSIMILE (831) 644-9558 AND U.S. MAIL**

Ms. Stephanie Pintar  
Monterey Peninsula Water Management District  
5 Harris Court  
Monterey, CA 93940

**Re: Response to Letter Dated October 18, 2010 (APN: 007-254-005) And  
Additional CPRA Request**

Dear Ms. Pintar:

This is in response to your letter dated October 18, 2010, objecting to our Public Records Act requests submitted on October 8, 2010. For purposes of this letter, "District" shall refer to the Monterey Peninsula Water Management District, all of its commissions, boards, offices, departments (including the County Counsel's office and outside special attorneys), officials, employees, consultants, and agents, and any predecessor entities or agencies. "CPRA" shall refer to the California Public Records Act.

First, our request is not overbroad. The District asserts that our request is overbroad because we have listed 18 individual items in our CPRA request. Had we listed just one request in an attempt to obtain the documents we seek, our request would have been too ambiguous. We do not know what files the District has relating to the documents we seek. Therefore, in order avoid ambiguity, we have itemized 18 specific and focused requests for documents relating to the District's authority to enact, the enactment of and amendments to, and challenges to rules/regulations pertaining to residential and commercial water fixtures. (See *Cal. First Amend. Coalition v. Superior Court* (1998) 67, Cal.App.4th 159, 165-66).

Furthermore, in response to the District's suggestion that our CPRA requests are overbroad and constitute a substantial burden, please note that the Court in *Cal. First Amend. Coalition* stated that "[r]equests inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." (*Id.*, citing to *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186.)

Our requests are comprehensive, but that is no defense to the District's compliance with the CPRA. Further, without more information from the District, we cannot agree to limit our enumerated requests to a specific time period (other than requests 15 and 18, which we voluntarily offer to limit). We do not have access to the District's records and do not



Ms. Stephanie Pintar  
Monterey Peninsula Water Management District  
November 15, 2010  
Page 2

have information related to the history of the District's enactment of rules/regulations pertaining to commercial water use and residential water use by counting fixtures. For example, if we limited all document requests to the ten-year period from 2000-2010, we may be under-inclusive if the District enacted its rules/regulations pertaining to residential and commercial water fixtures before the year 2000.

To assist us in determining whether we are able to limit the time period of any of the enumerated items in our October 8, 2010 letter, we further request that the District provide us with the following:

- The date of original enactment and any amendments to the ostensible legal basis (e.g., ordinance, resolution, policy) for the District's regulation of residential and commercial water use and/or fixtures.
- Documents showing and/or relating to all challenges to the District's rules and regulations pertaining to regulating residential and commercial water use and/or fixtures. If a list is available, we would accept that provided that it show: (1) The date of the challenge, (2) the rule/regulation being challenged, (3) the city or unincorporated county area where the property at issue in the challenge is located, (4) indication if the challenge related to regulation of residential or commercial water fixtures, and (5) outcome of the challenge.

In addition, following are further clarification of the enumerated requests in our October 8, 2010 letter. For ease of reference, the words "residential" and "commercial" are highlighted. These items shall be intended only for the purpose of clarifying, and not limiting, the request for documents listed in our original CPRA request:

- | <u>Request</u> | <u>Clarification</u>   |
|----------------|--|
| (6)            | We are seeking documents created by or for the District, and/or maintained or possessed by the District, relating to water conservation anticipated to result or resulting from the District's regulation of <b>residential</b> water use by counting fixtures.  |
| (7)            | We are seeking documents created by or for the District, and/or maintained or possessed by the District, relating to water conservation anticipated to result or resulting from the District's regulation of <b>commercial</b> water use.  |
| (8)            | We are seeking documents relating to the District's purpose(s) for regulating <b>residential and commercial</b> water. In the event the District does not have a purpose for its regulation of residential and commercial water, please note that in Government Code Section 11340 the Legislature made it clear that it |

"inten[ded] ... that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process."

- (9) We are seeking documents created for or by the District, and/or maintained or possessed by the District, showing how the performance standard(s) identified in item 8 above is or are achieved by the District's regulation of **residential** water use by counting fixtures.
- (10) We are seeking documents created for or by the District, and/or maintained or possessed by the District, showing how the performance standard(s) identified in item 8 above is or are achieved by the District's regulation of **commercial** water use.
- (11) We are seeking documents created for or by the District, and/or maintained or possessed by the District, that refer or relate to the potential and actual impact on water conservation resulting from the District's regulation of **residential** water use by counting fixtures, including but not limited to any documents that refer or relate to the alternative methods discussed, and ultimately rejected, at the time the District enacted its rules.
- (12) We are seeking documents created for or by the District, and/or maintained or possessed by the District, that refer or relate to the potential and actual impact on water conservation resulting from the District's regulation of **commercial** water use, and any documents that discuss the alternative methods discussed, and ultimately rejected, at the time the District enacted its rules.
- (13) We are seeking documents created for or by the District, and/or maintained or possessed by the District, that show the water conservation achieved from the District's different methodologies of regulating **residential and commercial** water use.
- (14) We are seeking documents which refer or relate to all other methods the District discussed, considered, analyzed and/or pursued in finalizing its decision to regulate residential water use by counting fixtures.

Ms. Stephanie Pintar  
Monterey Peninsula Water Management District  
November 15, 2010  
Page 4

- (17) We are interested in all documents regarding informal or formal challenges to any District decisions or determinations of non-compliance related to regulation of water use, including but not limited to correspondence and emails between the District and property owners or their representatives who have challenged any District decisions or determinations of non-compliance related to water use and/or regulation of water use.

In addition, we add the following CPRA request, and seek the District's full compliance, including pursuant to Govt. Code §§ 6253 and 6255:

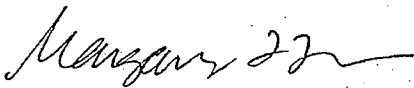
- (19) All documents through the date of the District's compliance with this request that refer to or relate to the District's alleged authority to enter private residential property for the purpose of counting water fixtures.

Lastly, and for the record, we would like to clarify that the District's letter was incorrect in stating that the records we request span 36 years, unless you are referring to a predecessor agency of which we are not aware. The Water District was not formed until 1978. Please clarify.

Please note that this letter is written without prejudice to our rights, all of which are hereby expressly reserved.

If you have any questions, please feel free to contact me at 650-218-1937 (cell) or miles.margaret@att.net.

Sincerely,



Margaret Thum Miles, Esq.



December 6, 2010

*Via Email and U.S. Mail*

Ms. Margaret Thum Miles, Esq.  
P.O. Box 117683  
Burlingame, CA 94011

**Subject: Public Records Act Request Dated October 8, 2010 (APN: 007-254-005)**

Dear Ms. Thum Miles:

Thank you for contacting Stephanie Pintar by telephone today regarding your Public Records Act request.

Per your discussion, Ms. Pintar indicated that the priority requests relate to: (1) the Monterey Peninsula Water Management District's (MPWMD or District) authority to regulate residential and commercial water use and fixtures; and (2) challenges to the District's Rules and Regulations related to this authority.

In response, the District provides the following:

- The District's Enabling Legislation (West's California Water Code, Appendix Chapters 118-1 to 118-901 (enclosed).
- The District's Rules and Regulations can be found on the District's website at <http://www.mpwmd.dst.ca.us/rules/2010/Sept/TOC.htm>.
- Ordinances adopted by the District, along with their titles, can be found at <http://www.mpwmd.dst.ca.us/ordinances/ordinances.htm>.
- A list of appeals and variances from 1993-2010 (enclosed).

Please let us know if you would like to receive copies of the Rules and Regulations and/or the Ordinances, or if you would like to review these documents at our offices during regular business hours.

On November 24, 2010, the District forwarded to you two lists of records pertaining to commercial and residential water use and/or fixtures; potential and/or actual impacts of water conservation; results achieved through regulation of residential and commercial water use; and enactment of the District's Rules and Regulations regarding regulation of residential water use and/or fixtures and commercial water use. The District also requested a 14-day extension of time to continue to search for, identify and collect other records that might be responsive to your requests.

As Ms. Pintar indicated to you today, the District continues to have difficulty identifying which records are responsive to the remaining items you requested. The District interprets these requests to include potentially all records of the District, numbering in the thousands, and including individual property files, staff reports, correspondence emails and other files. You indicated that based upon the District's responses to the two priority requests, you may be able to refine and focus the remaining requests. Accordingly, per your conversation, the District will hold these remaining requests in abeyance until we receive your response to this letter, including further direction. In the alternative, if you still seek the

Margaret Thum Miles, Esq.  
Page 2 of 2  
December 6, 2010

items previously requested, the District reiterates its request for a meeting with you to assist it in identifying responsive records.

If this letter does not comport with your understanding, please notify us immediately. If you would like to come to the District office to review any of the records that have been identified, or if you would like copies of specific records, please contact me at 831-658-5652 or [arlene@mpwmd.dst.ca.us](mailto:arlene@mpwmd.dst.ca.us). Please contact me should you have any questions or concerns.

Sincerely,

Arlene M. Tavani  
Executive Assistant

Attachments

pc: Stephanie Pintar  
Heidi Quinn

U:\Arlene\word\2010\PublicRecordsAct\Thum20101008\20101206Rspns\20101206Response.doc

## APPEALS

802 17 Mile Drive, PG, September 18, 2008, Item 9  
905 Ocean View, PG, February 22 2007, Item  
RLSS, January 26, 2006, Item 11  
RLSS, February 23, 2006, Item 13  
Storage Pro Self Storage Facility, October 27, 2005, Item 11  
Storage Pro Self Storage Facility, August 15, 2005, Item 6  
Las Villas Nogales Home Owner's Association, February 24, 2005, Item 10  
902 Via Verde, Del Rey Oaks, February 24, 2005, Item 11  
Las Villas Nogales Home Owner's Association, December 13, 2004, Item 10  
410 Alvarado Street, Monterey, November 15, 2004, Item 10  
116 13<sup>th</sup> Street, Pacific Grove, May 27, 2004, Item 1  
116 13<sup>th</sup> Street, Pacific Grove, May 3, 2004, Item 12  
1050 Marchetta Lane, Pebble Beach, May 3, 2004, Item 3  
672 Van Buren Circle, Monterey, December 15, 2003, Item 17 B-1  
3105 17 Mile Drive, Pebble Beach, May 20, 2002, Item VIA  
3105 17 Mile Drive, Pebble Beach, April 15, 2002, Item VIA  
435 Cannery Row, Monterey, October 16, 2000, Item VIA  
1511 Bonifacio Road, Pebble Beach, May 15, 2000, Item C  
1511 Bonifacio Road, Pebble Beach, April 27, 2000, Item B  
982 Coral Drive, Pebble Beach, March 16, 1998, Item VIA  
982 Coral Drive, Pebble Beach, January 22, 1998, Item VIIA  
Water Entitlements to Macomber Estates, May 15, 1995, Item VIC  
Wilder, January 31, 1994, Item VIA  
Rudativ Trading Corp., December 20, 1993, Item VIA  
Rudativ Trading Corp., November 15, 1993, Item VIA  
Chavatine Oaks, July 19, 1993, Item VIA  
Neal Owen Kruse Design, June 21, 1993, Item VIB  
Kennedy, April 19, 1993, VIB  
Lexus-Monterey Peninsula, January 28, 1993, Item VIIB(1)  
Thomas Gamboa, January 28, 1993, Item VIIB(2)  
Chavatine Oaks, July 20, 1992, Item VC

## VARIANCES

8 Mescal Place, Seaside, May 16, 2005, Item 10  
South County Housing Corporation, 650 Jewell Ave, Pacific Grove, August 18, 2003,  
Item 3  
69 Via Cimarron, Monterey, June 16, 2003, Item 19  
26183 Scenic Drive, Carmel, October 16, 2000, Item VIB  
Harmony Home Preschool, September 19, 1994, Item IVN  
Carmel Valley Manor, September 19, 1997, Item VC  
King Laundries, September 19, 1997, Item VC  
Saunders, May 17, 1993, Item VIA  
Del Rey Oaks Driving Range, April 19, 1993, Item VIA  
Peninsula Outreach, April 19, 1993, Item VIA  
Monterey Plaza Hotel, March 15, 1993, Item IVA  
Department of Navy, November 16, 1993, Item VIB(1)  
Larson, November 16, 1993, Item VIB(2)  
Saxton, November 16, 1993, Item VIB(3)  
Isshi, September 21, 1992, Item VIA(1)  
National Oceanographic & Atmospheric Association, September 21, 1992, Item VIA(2)  
Carmel Overview, July 20, 1992, Item VA(1)  
A.K. Nilson, July 20, 1992, Item VA(2)  
Boys & Girls Club, July 20, 1992, Item VA(3)  
Dilorenzo, July 20, 1992, Item VA(4)

**From:** "Stephanie Pintar" <Steph@mpwmd.dst.ca.us>  
**Subject:** RE: Water Permit Public Records Act Request  
**Date:** January 20, 2011 11:17:23 AM PST  
**To:** "Margaret Miles" <miles.margaret@att.net>  
**Cc:** "Heidi Quinn" <heidi@laredolaw.net>, "Arlene Tavani" <Arlene@mpwmd.dst.ca.us>, "Gabby Ayala" <Gabby@mpwmd.dst.ca.us>  
▶ 1 Attachment, 13.9 KB

Margaret:

Ordinance No. 21 is no longer current, due to many amending ordinances throughout the years. A link to all District ordinances was provided in my last email and in a previous response to your requests. Rule 24 (Calculation of Water Use Capacity and Connection Charges) lists the ordinances that amended the rule. The following are links to the list:

Rule added by Ordinance No. 8 (1/14/81); amended by Ordinance No. 9 (2/14/83); Ordinance No. 17 (9/24/84); Ordinance No. 18 (11/12/84); Ordinance No. 20 (12/10/84); Ordinance No. 21 (3/11/85); Ordinance No. 26 (9/8/86); Ordinance No. 33 (3/14/88); Ordinance No. 34 (5/9/88); Ordinance No. 40 (4/10/89); Ordinance No. 60 (6/15/92); Ordinance No. 71 (12/20/93); Ordinance No. 76 (5/15/95); Ordinance No. 80 (11/20/95); Ordinance No. 98 (4/16/2001); Ordinance No. 111 (1/29/2004); Ordinance No. 114 (5/17/2004); Ordinance No. 125 (9/18/2006); Ordinance No. 145 (September 20, 2010)

I am not familiar with the permit process that occurred prior to Ordinance No. 21, however we have reviewed the agendas from Board meetings back to 1979 to identify Residential appeals. There were no Residential appeals prior to 1993. Is your request limited to appeals?

The documents referenced in yesterday's email will be mailed to:

Ms. Margaret Thum Miles, Esq.  
P.O. Box 117683  
Burlingame, CA 94011

A check can be written to: MPWMD and mailed to PO Box 85, Monterey, CA 93942-0085.

Regards,

Stephanie Pintar  
Water Demand Manager  
Monterey Peninsula Water Management  
District  
5 Harris Ct., Bldg. G  
Monterey, CA 93940  
831.658.5630  
[www.mpwmd.dst.ca.us](http://www.mpwmd.dst.ca.us)  
[www.montereywaterinfo.org](http://www.montereywaterinfo.org)



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**From:** Margaret Miles [<mailto:miles.margaret@att.net>]  
**Sent:** Thursday, January 20, 2011 6:50 AM  
**To:** Stephanie Pintar  
**Cc:** Gabby Ayala; Arlene Tavani; Heidi Quinn  
**Subject:** Re: Water Permit Public Records Act Request  
**Importance:** High

Stephanie,

Thanks for the update.

I also need to see copies of the predecessor rule to the current Ordinance 21, and a copy of any appeals to that rule - this was in my original request.

Could you please confirm the address that the printed copies were being sent? Also, could you please confirm the name that should be on the check? I will then send a check for \$13.60.

Thanks,



Margaret

On Jan 19, 2011, at 4:42 PM, Stephanie Pintar wrote:

Margaret:

Attached is a list of links to Residential Appeal and Variances processed between 2003 and 2011, in response to the emails below. Hard copies of Residential Appeals/Variances from 1985-2003 are being sent to you under separate cover. MPWMD copied 136 pages at a cost of \$0.10 per page, due upon receipt.

The use of fixture units to determine Residential Connection Charges was enacted by Ordinance No. 21 on March 11, 1985 (<http://www.mpwmd.dst.ca.us/ordinances/final/pdf/Ordinance%20021.pdf>). There was a provision for using fixture units before that time, but it was not the primary method for calculating Connection Charges. Links to all District ordinances can be found at <http://www.mpwmd.dst.ca.us/ordinances/ordinances.htm>.

Please let me know how you would like to proceed.

Regards,

**Stephanie Pintar**  
<color logo\_partner.jpg>  
Water Demand Manager  
Monterey Peninsula Water Management District  
5 Harris Ct., Bldg. G  
Monterey, CA 93940  
831.658.5630  
[www.mpwmd.dst.ca.us](http://www.mpwmd.dst.ca.us)  
[www.montereywaterinfo.org](http://www.montereywaterinfo.org)

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**From:** Margaret Miles [<mailto:miles.margaret@att.net>]  
**Sent:** Friday, January 14, 2011 12:56 AM  
**To:** Stephanie Pintar  
**Cc:** Arlene Tavani; Gabby Ayala; Sara Reyes  
**Subject:** Re: Water Permit Public Records Act Request  
**Importance:** High

Stephanie,

I want to confirm your comment today that the District's rules pertaining to counting residential water fixtures was first enacted in March 1985, and that no predecessor rule was in place at the time of first enactment.

If so, then the time period 1985-2010 is correct.

Also, as mentioned, I will review the Staff reports to determine if they sufficiently answer my questions. If not, then I will request the full files for the residential appeals and variances.

Regards,

Margaret

On Jan 13, 2011, at 4:13 PM, Stephanie Pintar wrote:

Dear Ms. Miles:

This email is to document our telephone conversation this afternoon (January 13, 2011). You have requested the following documents related to the District's December 6, 2010, response to your October 8, 2010, Public Records Act request:

- Copies of staff reports (and minutes) from all Residential appeals and variances related to Water Permits from 1985-2010.

The District will respond to you within ten days as to when these documents will be available or if there are reports that are no longer retained by the District. Staff anticipates having the documents copied within this time, if possible. Documents that are available on the District's website will be identified with the link to the web page. Records not available on the website will be copied and mailed to you at the cost of \$0.10/page, billed to you pursuant to your October 8, 2010, request.

If my understanding of our conversation and your requests is in any way inaccurate, please notify me immediately with clarification.

Regards,

Stephanie Pintar  
<atf78d0.jpg>  
Water Demand Manager  
Monterey Peninsula Water Management District  
5 Harris Ct., Bldg. G  
Monterey, CA 93940  
831.658.5630  
[www.mpwmd.dst.ca.us](http://www.mpwmd.dst.ca.us)  
[www.montereywaterinfo.org](http://www.montereywaterinfo.org)

<20110118\_Web\_links\_board.doc>

**From:** Margaret Miles <miles.margaret@att.net>  
**Subject:** Re: Appeal Hearing Date for 951 Coral, Pebble Beach  
**Date:** February 17, 2011 6:53:16 AM PST  
**To:** Stephanie Pintar <Steph@mpwmd.net>

Stephanie,

I would prefer not to extend the hearing date, and will do my best to get our response to you earlier. I will be out of the country on the 7th. Would you accept submission as a Microsoft Word document attached to an email? The letter will likely reference attachments, and those attachments may not be able to be included until I return on March 9th.

Thanks,

Margaret

On Feb 17, 2011, at 6:34 AM, Stephanie Pintar wrote:

Margaret:

Staff reports for the March meeting are due to the General Manager for review on the 7th. Information submitted on the 14th will not be included in the staff report and could delay the hearing. Would you please submit the information before the 7th so that I can review it and prepare a response?

Thanks!

Stephanie

---

**From:** Margaret Miles [<mailto:miles.margaret@att.net>]  
**Sent:** Thursday, February 17, 2011 6:30 AM  
**To:** Stephanie Pintar  
**Subject:** Re: Appeal Hearing Date for 951 Coral, Pebble Beach

Stephanie,

Thanks for your email message. I will let Sharlene and Richard know that the final date is March 21st - I know she'll appreciate the opportunity to attend.

I will provide you my supplemental information by March 14th (most likely before then). I would like Richard and Sharlene to read it before I send it to you, and when they get back to the US, I am heading overseas for a week - I get back March 9th.

Thanks,

Margaret

On Feb 17, 2011, at 6:07 AM, Stephanie Pintar wrote:

Good morning Margaret,

Thank you for the voice message. The hearing has been continued to March 21st at your request.

I'll review the title of the appeal before the posting notice is prepared.. When can I expect your supplemental information?

Kind regards,

Stephanie

---

**From:** Margaret Miles [<mailto:miles.margaret@att.net>]  
**Sent:** Wednesday, February 16, 2011 4:08 PM  
**To:** Stephanie Pintar  
**Cc:** Stephanie Pintar

**Subject:** Re: Appeal Hearing Date for 951 Coral, Pebble Beach

Stephanie,

I just wanted to follow-up on my voicemail:

-Could you please confirm that the hearing has been continued until March?

-The notice of the hearing is incorrect and intentionally misleading by stating that there is no permit. Your department did issue us a permit.

-I will be providing supplemental information, but will obviously not be able to provide it today.

Please reply at your earliest convenience.

Thanks,

Margaret  
650-218-1937

---

**From:** Margaret Miles <[miles.margaret@att.net](mailto:miles.margaret@att.net)>  
**To:** Stephanie Pintar <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>  
**Cc:** Stephanie Pintar <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>  
**Sent:** Fri, February 11, 2011 4:30:18 PM  
**Subject:** Re: Appeal Hearing Date for 951 Coral, Pebble Beach

Stephanie,

Richard and Sharlene are out of the country - in Anartica - until the end of the month.

I am unable to reach them, but I know that Sharlene wanted to attend. Could we please continue this until March when they are back in the country?

Thanks,

Margaret

---

**From:** Stephanie Pintar <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>  
**To:** Margaret Miles <[miles.margaret@att.net](mailto:miles.margaret@att.net)>  
**Cc:** Stephanie Pintar <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>  
**Sent:** Wed, February 9, 2011 2:10:53 PM  
**Subject:** Appeal Hearing Date for 951 Coral, Pebble Beach

Dear Margaret:

Attached is a letter informing you and Richard and Sharlene Thum that a hearing date has been set for the appeal of the General Manager's decision regarding showerheads at 951 Coral in Pebble Beach. The hearing is scheduled for February 24, 2011.

I will provide you with a copy of the final staff report as soon as it is available.

Regards,

Stephanie

Stephanie Pintar  
<[color.jpeg](#)>  
Water Demand Manager  
Monterey Peninsula Water Management District  
5 Harris Ct., Bldg. G

**From:** Margaret Miles <miles.margaret@att.net>  
**Subject:** Re: Water Permit Public Records Act Request  
**Date:** March 1, 2011 7:45:11 PM PST  
**To:** "Stephanie Pintar" <Steph@mpwmd.net>  
**Cc:** Margaret Miles <miles.margaret@att.net>

---

Stephanie,

I need to check with Richard and Sharlene on how much time they need to review my draft of their responses - I will let you know as soon as I hear back from them. I had hoped to send you an email with our response and follow up with attachments next week.

Regardless of that answer, I did want to confirm two items that were in my original public records request:

- What is the purpose of counting residential water fixtures under the District's rules?
- How is that purpose served by counting residential water fixtures?

The sooner I get your response on this, the more likely I may be able to get our response in by Friday.

Thanks,

Margaret

On Mar 1, 2011, at 2:16 PM, Stephanie Pintar wrote:

Hi Margaret,

The appeal for Coral Drive is currently (tentatively) scheduled for March 21<sup>st</sup>. As I mentioned in my previous email, draft staff reports are due to the General Manager next Monday, March 7. While I may have an extra day or two to submit my report, I will need to have all of your supplemental information (including attachments/exhibits) before the end of this week (March 4, 2011).

If you are unable to submit your supplemental letter and attachments by Friday afternoon, please let me know and I will agendize the appeal for April 18<sup>th</sup>.

Regards,

Stephanie Pintar

**From:** Margaret Miles <miles.margaret@att.net>  
**Subject:** Re: Schedule of Appeal Hearing for Coral Drive  
**Date:** March 9, 2011 10:39:38 PM PST  
**To:** Stephanie Pintar <Steph@mpwmd.net>  
**Cc:** "Arlene Tavani" <Arlene@mpwmd.net>, "Stephanie Kister" <skister@mpwmd.net>

---

Stephanie,

I am still waiting your response on the answers to the questions in my last email dated March 1, 2011, which were also included in my original public records request dated October 8, 2010:

- What is the purpose of counting residential water fixtures under the District's rules?
- How is that purpose served by counting residential water fixtures?

I need an answer on these asap to finalize my response. Also, notwithstanding your arbitrary, unilaterally-set deadline of March 25th, we reserve the right to submit comments up to and during the hearing of the matter.

Margaret

On Mar 8, 2011, at 2:21 PM, Stephanie Pintar wrote:

Margaret:

The appeal on the showerhead permitting at Coral Drive has been rescheduled to the April 18, 2011, Board meeting. Any supplemental information must be submitted by March 25, 2011 for consideration.

Regards,

Stephanie

<image003.jpg>

FILE COPY

AB 1329

## ASSEMBLY THIRD READING

AB 1329 ( Mello ) As Amended: 18 May 1977

## ASSEMBLY ACTIONS:

COMMITTEE WATER VOTE 6-0 COMMITTEE W. &amp; M. VOTE 11-1

Ayes:

Ayes: Berman, Dixon, Fazio, Hart, Hughes,  
McVittie, Mori, Robinson, Torres,  
Vasconcellos, Boatwright

Nays:

Nays: Lanterman

DIGEST

Currently, water service on the Monterey Peninsula is principally provided by a privately owned water supply.

This bill creates the Monterey Peninsula Water Management District and defines its boundaries, powers, duties and organization. The district would be entirely within Monterey County. It would have the power to levy taxes and assessments on real property of up to \$0.20 per \$100 of assessed valuation. The district could fix standby and use charges for services it provides, establish charges for groundwater extraction, issue bonds and receive loans and grants.

The bill provides that violation of its provisions is punishable by fines and imprisonment. This bill requires a special election in March or April of 1978, to determine whether the district will become operational.

FISCAL EFFECT

No state costs. Estimated minimum cost to local government of less than \$15,000 to a maximum cost of \$45,000 for a special election. Unknown cost for operation of a new water district. Minor costs to local agencies for enforcement. Local costs not reimbursed.

No state revenue. Provides for local fees, taxes and assessments on real property, and authority to sell bonds. Minor revenue from fines.

COMMENTS

According to the Assembly Ways and Means Committee analysis, the purpose for the formation of this water district is to obtain substantial advantages under law that are not available to private water purveyors. As a public agency the district would:

- 1) Be able to contract for water from any federal water project constructed in or delivering water to the region,
- 2) The district would be able to issue bonds backed by property taxes, levy property taxes, and levy groundwater replenishment charges in order to pay for water replenishment works constructed by the district, and

-continued-

- 3) Be able to receive state and federal grants for sewage treatment and wastewater reclamation.

A principal objective of the district would be to wholesale water supplies developed by the district to the existing private water purveyor.

The district would be authorized to obtain, store, distribute and sell water. The bill specifically states that it shall be the policy of the district to develop water sources within the district before importing water from other areas.

The district would be authorized to establish groundwater recharge zones and to collect costs of the replenishment through groundwater extraction replenishment taxes.

The bill also 1) permits the establishment of improvement zones, 2) permits the issuance of bonds upon approval by the electorate, 3) authorizes the issuance of promissory notes, revenue bonds, and bond anticipation notes, and 4) authorizes standby charges not greater than \$10 per acre, and not greater than \$10 for each parcel of land less than one acre (standby charges may not be applied to parcels used for commercial agriculture).



**Exhibit 10**

**From:** "Stephanie Pintar" <Steph@mpwmd.net>  
**Subject:** RE: Schedule of Appeal Hearing for Coral Drive  
**Date:** March 11, 2011 1:23:25 PM PST  
**To:** "Margaret Miles" <miles.margaret@att.net>  
**Cc:** "Arlene Tavani" <Arlene@mpwmd.net>, "Stephanie Kister" <skister@mpwmd.net>

Margaret:

MPWMD counts Residential water fixtures as part of its permit process pursuant to Rule 24. MPWMD manages water resources through its Rules and Regulations; it uses the fixture unit methodology to estimate Residential water use capacity and to assess Connection Charges.

I've asked you to provide any supplemental information to the appeal by March 25th to allow time for review. Information received after that date may not be included in the staff report and may delay the appeal hearing if extensive staff time is required to review the information. The date is not arbitrary: Staff reports are due to the General Manager for review on April 4th and staff will need time to review the information.

Regards,

Stephanie

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**From:** Margaret Miles [<mailto:miles.margaret@att.net>]  
**Sent:** Wed 3/9/2011 10:39 PM  
**To:** Stephanie Pintar  
**Cc:** Arlene Tavani; Stephanie Kister  
**Subject:** Re: Schedule of Appeal Hearing for Coral Drive

Stephanie,

I am still waiting your response on the answers to the questions in my last email dated March 1, 2011, which were also included in my original public records request dated October 8, 2010:

- What is the purpose of counting residential water fixtures under the District's rules?
- How is that purpose served by counting residential water fixtures?

I need an answer on these asap to finalize my response. Also, notwithstanding your arbitrary, unilaterally-set deadline of March 25th, we reserve the right to submit comments up to and during the hearing of the matter.

Margaret

On Mar 8, 2011, at 2:21 PM, Stephanie Pintar wrote:

Margaret:

The appeal on the showerhead permitting at Coral Drive has been rescheduled to the April 18, 2011, Board meeting. Any supplemental information must be submitted by March 25, 2011 for consideration.

Regards,

Stephanie

<image003.jpg>

**Exhibit 11**

This is a summary of from our limited investigation on the Top 100 US Metro Areas at most risk for drought (rank order listed in parentheses (in descending order of drought risk)).

See <http://www.bestplaces.net/docs/studies/drought.aspx>:

- Los Angeles, CA: (#1-Metropolitan Water District): Spoke with Bob M., who said that they do not require permits for remodels of residential bathrooms or kitchens, and they do not count water fixtures. He was not aware of any agency that requires such permits.
- San Diego, CA: (#2-Water Department) Carol said that they do not have any permit requirements limiting the number and location of residential water fixtures as part of a bathroom or kitchen remodel.
- Oxnard, CA: (#3-Utilities Services Branch) Representative in the Development Services Department was not aware of any permit requirements that counted residential water fixtures when remodeling a bathroom or kitchen.
- Salt Lake City, UT: (#5-Metropolitan Water District) Peggy said that they do not have a permit requirement that limits residential water fixtures when remodeling a bathroom or kitchen. She said they do have a \$27 permit fee per added fixture. She responded with "that is crazy" when explained that the District imposes deed restrictions limiting the number and location of water fixtures as part of the permit process to remodel a bathroom.
- Nashville, TN: (#6-Metro Water Services): Sonia Harvat stated that they do not require a permit when a resident constructs a bathroom or kitchen. They do not count residential water fixtures. They estimate water use capacity by assuming a single family dwelling uses 350 gallons of water per day.
- Albuquerque, NM: (#92-Bernalillo Water Utility Authority): Representative said she was not familiar with any such permit rules that counted residential water fixtures when adding a bathroom or kitchen.