

**COMBINED MEETING OF THE BOARDS OF DIRECTORS  
MONTEREY DUNES COLONY ASSOCIATION  
AND  
MONTEREY DUNES COLONY MUTUAL WATER ASSOCIATION**

September 17, 2011

**PRESENT**

George Maciag, President  
Bill Michaels, Vice President  
Jim McFeeters, Treasurer  
Jeff Schwartz, Director  
Tom Bugary, Secretary and General Manager

**ABSENT**

Ted Swanson, Director

**WELCOME**

George Maciag called the meeting to order at 10:00 AM, September 17, 2011 at the Monterey Dunes Colony Clubhouse and established that there was a quorum.

**MINUTES**

The Board reviewed the draft minutes of the September 17, 2011 directors meeting. It was M/S/C to approve the minutes as written.

**AUDIT REPORT**

Joelyn Carr-Fingerle, CPA, conducted the FY 2010-2011 annual audit for both the Monterey Dunes Colony and the Water Company. She had met with the Finance Committee the previous day and reviewed the audit report with the committee prior to the board meeting. Joelyn reported that she went through all of our files and systems to come up with an unqualified opinion where no deficiencies were noted. She told the board that the Colony ended the fiscal year (6/30/11) with a net income of \$315,202 and that the Water Company had a net loss of \$25,707 (due to \$35,184 in depreciation). She expressed her opinion that the reserve accounts for both entities appear to be in good shape and she applauded the Board's stated goal to raise the percent funded (Reserves) to 40% in 10 years.

**TREASURER'S REPORT**

Jim McFeeters, Treasurer, gave the Treasurer's Report for July and August 2011. Jim noted that the payments to the Capital Reserve Replacement Fund and to the Mutual Water Association were current. Additionally, Jim stated that all of our account balances could be seen in the written report, which has been attached to and made part of these minutes.

## **FINANCE COMMITTEE REPORT**

Bob Dickinson, Committee Chair, reported that the committee had met the previous day to review both the water company's and the colony's audited finances for FY 10-11. While there were no deficiencies noted, there were issues that sparked discussion:

1. Depreciation will be booked by the office manager at fiscal year-end versus having the auditor make the adjusting entry so it will not be an audit adjustment.
2. Tom and Jim (Board Treasurer and Committee member) will confirm that funds in our account that are over the \$250K FDIC threshold are insured in a manner compliant with our investment policy.
3. It was noted that the Water Company will be in a negative percent-funded when it is time to replace the water tank (in as little as 4 years or less). The Committee will discuss funding strategies and make a recommendation for improving the percent-funded of the Water Company, possibly by increasing the amount of monthly dues that are transferred from the Association to the Water Company each month..
4. The Association needs to add a section of boardwalk on the south end of the property where the existing boardwalk is blocked off due to snowy plover nesting activity. Upon rerouting the boardwalk, we plan to widen them for ADA access and in doing so, have a base for which to place the wave run-up barriers in the event we need to put them out this year. The cost for the additional material will be approximately \$10K. The Committee recommends to the Board that the existing Resolution to Borrow from the Reserve Fund (up to \$80K) for the purchase of barriers and related equipment be amended to include supporting structures (the boardwalks). Bob further stated that the soft tire carrier that was going to be purchased for transporting the barriers has been scrapped due to poor performance reviews (in sandy environments). Management has also determined that it is easier and less disruptive to the environment for two men to carry the empty barriers out and position them prior to filling them with water. After discussion, **the Board M/S/C to approve the Finance Committee's recommendation.**
5. The committee also revisited the issue of network security. Bob noted that the current type of network in the office is a WEP network, the least secure type, and that we change to a WPA or WPA2 network. The committee also recommends that management change their administrator password on a regular basis.

Bob was concerned that there were approximately 15 homeowners that knew the WEP key of the office network. The Board had previously authorized homeowners access to the office network so that they could have internet access in lieu of them having to pay for a monthly service when they are only here occasionally. Bob felt that the Association should not allow homeowners to logon to the office network, but instead the Association should consider acquiring a separate router and absorb the monthly fee in order to provide a network that homeowners can log on to; however, he did point out that he was the only one who felt this way. The rest of the committee members did not feel that the associated security risks with letting homeowners logon to the office network outweighed

the cost of an additional network. After discussion, the Board agreed with the rest of the committee and no action was taken.

### **ADHOC WAVE RUN-UP COMMITTEE**

This report will be covered in the General Manager's report.

### **ENVIRONMENTAL CONTROL COMMITTEE (ECC) REPORT**

Ellen Michaels, Committee Chair, reported that the ECC had two items for review. The first request was a wedding that was to be held here at the Colony; however, the homeowner has rescinded her original request. The second request came from the homeowner of unit #148 who wanted to add a gate to their landside patio fence so that when the gate was open, the homeowner could look out to the ocean. After input from the neighbors, the request was approved with stipulations.

### **GENERAL MANAGERS REPORT**

This report covers work completed this fiscal year, July 1, 2011 to date.

#### **Deck and Fence Replacements**

Association carpenters have replaced 4 decks this fiscal year. Decks replaced: Unit 134 Entry, 134 Landside Bedroom, Unit 176 Entry, and Unit 338 Entry.

Unit courtyard fences completed all or in part from July 1, 2011 to date were at units 176 and 338.

#### **Landside Boardwalk Replacement**

Landside boardwalks have been replaced near units 134, 336 and 338. Boardwalk is replaced as determined necessary and, at times, ahead of the current reserve schedule. Our landside boardwalk system is deteriorating in some places to a point where once reported, immediate replacement is required to avoid homeowner/guest accidents.

#### **Window and Entry Door Replacement**

There have been no window, sliding glass door, or entry doors replaced since July 1, 2011.

#### **Chimney Chase Covers**

The association has replaced 2 chimney chase covers since July 1, 2011. These are high-value components cost between \$600 and \$850 each. Chase Caps are made from a combination of a copper base-plate with soldered stainless steel risers to preclude electrolysis when contacting the galvanized outer shell of the flue pipe.

## **Bad Debt and Unit 242**

The association continues to rent unit 242 (month-to-month) for a reduced rate in order to realize some income rather than let the unit sit empty until it is foreclosed on. The lease stipulates that the tenants may have to vacate the unit in as little as 60 days after the unit sells.

The association is expensing all the rental income so that the bank cannot claim any of the rent after they finally foreclose on the unit. Part of the income over and beyond the dues owed the association is used to pay-down the accumulated debt which remains on the association's books.

## **Asphalt/Road Repair Project**

On August 23 and 24, 2011 Black Diamond Paving repaired the Association roads and parking areas at a cost of \$33,709. The Association was budgeted \$35,000, allocated in last years Reserve Budget.

## **Coastal Projects**

### **From last report:**

*On April 21, 2011, we received a preliminary report from Native Solutions, Joey Dorrell-Canepa (Dune Biologist), mapping out the proposed rerouting of the boardwalk between units 316 and 318, scheduled for October of this year. The final report was received on 6-30-2011 along with the route, identified on an existing map of the southern end of the property.*

*On June 28<sup>th</sup>, David Shonman sent a letter on behalf of the colony to Ms. Laura Lawrence, the Planning Services Officer for the Monterey County Planning Department. The letter provided background information concerning dune erosion, beach and dune maintenance and requested information concerning types of permits needed and/or possible waivers for ongoing annual soft fixes to our breached foredunes. Ms. Lawrence responded by assigning Liz Gonzalez to the project. Liz was the coastal planner who worked with us during the developmental stages of the geotube permitting process. She has scheduled a site visit for Friday July 15, 2011. David Shonman, Ted Swanson, and I will escort Liz and discuss how to replace acquired sand out in the breached areas.*

*On 7-20-2011, the colony will again host a meeting between Federal and State Government Agencies, local landowners and other interested parties at the Monterey Dunes Clubhouse. The meeting is scheduled to last for about 2 hours.*

### **Agenda items are:**

- *Update on Current lagoon conditions; breaching, river flows, protected species, stakeholder update, management concerns.*
- *Lagoon Management Recommendations Review; review of the 23 management and enhancement recommendations from the 1992 Salinas River Lagoon Management and Enhancement Plan.*
- *Development of a Task Force to carry-out highest priority/feasible recommendations.*

*We are working on the letter to Congressman Farr (action item), seeking his support for our response to the USDFW concerning the proposed rule change of classifying the beach westward of the colony as critical habitat for the Western Snowy Plover. I should have the letter finished and for board review sometime next week.*

After coordinating the permit documents with Ted Swanson, (Wave Run-up Committee Chair) at an impromptu meeting on Friday August 26, 2011, David Shonman met with Monterey County planners to submit the final version of Monterey Dunes Foredune Repair Proposal on Tuesday, August 30, 2011. Liz Gonzalez, (the planner who has worked extensively on previous versions

of the amended plan), processed the application and has been assigned as the senior planner of the project. After discussing the project in detail with her, we now feel that there is a very good chance that we will receive an “administrative approval” for the project in lieu of a one-time permit, but this has not been confirmed as of this date.

After we receive county approval to dump our sand out in the voids, we will then coordinate with the State Park officials for access to the beach during the winter months, working around the snowy plover nesting season.

## **MONTEREY DUNES COLONY MUTUAL WATER ASSOCIATION**

### **Water Tank**

The 212,000 gallon water tank was recently moved up on the Reserve Schedule and identified as a component for early replacement due to leaks caused by deterioration in many of the bolted seams of the tank. As of the date of this report, we have discovered another section of the tank, (the 4<sup>th</sup> area) that has started to leak and we have again solicited the services of LiquiVision Technology to inspect and repair the leaking seams. The finance committee continues to evaluate options on replacing the tank in the next few years.

### **Water Conservation – Oriented Billing**

During the July billing period, there were 31 units that exceeded the Tier 1 conservation zone, 6 were under the \$5.00 billing limit and therefore not billed. Eleven units exceeded Tier 2 and were billed for excess water use.

During the August billing period, there were 14 units that exceeded the Tier 1 conservation zone, 3 were under the \$5.00 billing limit and therefore not billed. Four units exceeded Tier 2 and were billed for excess water use.

Owners who exceeded Tier 1, or are in Tier 2 or 3 water use zone are billed for their usage in accordance with Association Policy. All homeowners are notified of their monthly and gallon-per-day consumption rates.

## **OLD BUSINESS**

### **Election Update**

As of Friday, 9/16/11, 81 votes have been submitted to our outside election agency, The Inspectors of Election (TIE).

## **OWNER’S STATEMENTS**

1. George Maciag expressed a concern that each year the fenced off areas identifying sensitive area for plover nesting has increased to where the fenced areas now cover all the beach, except for narrow access ways. George felt that the next move by State Parks may very well be to close our beaches during plover season. After considerable discussion on how, or even if the Association should contact the State Parks or other regulatory agency and express our

concerns over this encroachment. Tom Nolan, unit #148, volunteered to check and see if the State closes the beach/park, do they have the authority to close access to the ocean.

2. George next stated that he had investigated alternatives to our current high-speed internet service. The only viable option that he could find that might work in this area is a Hughes satellite system (Wild Blue, whose highest speed is the beginning DSL speed and their costs variable, \$40 to \$80 range); however, at the present time the service is not available in our area, but may be in the future.
3. MaryAnn Hoisington, unit #200 brought up the fact that somewhere in Monterey County, an oil company is starting the fracking process and was concerned that this type of drilling might damage our water source. Fracking, or hydraulic fracturing, is a controversial process of extracting oil from a site by injecting water, sand, and a cocktail of chemicals at high pressure into rock formations thousands of feet below the surface. The Board asked Tom to investigate the location where the fracking is to occur and the possible ramifications.
4. Parm Williams, unit #190 stated that she would like to see a homeowner's corner in the website where information regarding vendors, restaurants, etc. can be shared. Susie Heavin, office manager, pointed out that there is a message board in the website where homeowners can post things. After discussion the board asked Susie to post a notice in the next Dunescape (quarterly newsletter) asking homeowners that if they have any information to share with other homeowners, they could post it on the bulletin board of our website.
5. Tom Nolan, unit #148 brought up a concern that in his opinion, the action of the board, meeting to develop their rebuttal to his campaign letter was illegal. Mr. Nolan stated that the meeting was not noticed, there was no agenda and no minutes taken. Mr. Nolan also stated that he wanted the Board to acknowledge that this was an illegal board meeting and wanted the board to be more sensitive when they take future board actions at any meeting that has not been properly noticed. Director George Maciag stated that there was no secret meeting and that the actions of the directors writing the rebuttal letter were as candidates and that the letter was not from the Board. Mr. Nolan said that unless the Board acknowledged that the meeting was an illegal Board meeting and the resulting action (the rebuttal letter) was an illegal action, he was afraid that these meetings and resulting actions would happen in the future and that he would have to take (one or more of the following) actions to seek a remedy:
  - a. Go to the Attorney General's office saying that this Board does not understand that what they did was illegal, hand the Attorney General the rebuttal letter, and ask for a letter to be sent to all homeowners rescinding it, or
  - b. Send a letter to the Association's attorneys saying that he thinks this was an illegal meeting and an illegal action.

After a lengthy discussion, and with input from several homeowners, the Board members responded that they did not have a Board meeting and were not acting as a Board when they formed the rebuttal letter that was sent to all the homeowners and no association funds were used. The Board feels that they made this clear to all the homeowners when they stated that no association funds were used in the preparation or mailing of the letters. The directors told Mr. Nolan that it was unfortunate that he had interpreted the letter the way he had and that he

had definitely raised their level of consciousness and that they would be more sensitive in the future about their wording and how it might be interpreted.

**At the executive session immediately following the meeting, the Board discussed Mr. Nolan's assertions and felt it necessary to notify the Association's counsel of the possibility of litigation. The Association's attorney, not previously involved in the candidate rebuttal letter, would now make recommendations to the board on the matter, one of which would be if he felt the Association needed to notify the Colony's insurance carrier. The board directed Tom to supply Mr. Steve Weil, (Berding & Weil) with all supporting documents and audio of the meeting so that he could evaluate the Board's actions and formulate an opinion.**

**After analysis, Mr. Weil felt that there had been no meeting as defined under the applicable laws and that the letter, not being on official letterhead, was not intended nor likely to be perceived as being "from the board, was not improper and that the directors were justified acting as candidates in answering Mr. Nolan's Candidate Statement.**

### **NEW BUSINESS**

#### **Change Post Offices from Castroville to Moss Landing**

A homeowner recommended that the Board consider changing Post Office locations from Castroville to Moss Landing. George informed the membership that he went to investigate this with the Post Office who advised him on a higher level that the decision is made by the County and not the Federal Post Office. After discussing the pros and cons of the proposal, the agenda item was tabled until the homeowner's annual meeting where, at that time, the homeowner making the recommendation could be present and provide his reasoning. The Board also acknowledges that this topic could possibly be a question for an upcoming online survey.

### **WATER COMPANY BUSINESS**

Addressed in the managers report.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 12:25 p.m. The next meeting will be at the Annual Meeting of the Members on October 15, 2011 at 10:00 a.m. The meeting will be followed by our annual barbeque at 12:00 p.m. The following Director's Meeting will be held at the clubhouse on November 19, 2011 at 10:00 AM.

FOR THE BOARD OF DIRECTORS:

//s//

Thomas J. Bugary, CMCA, CCAM  
General Manager and Secretary

**EXECUTIVE SESSION**

- There were two homeowner requests for water waivers. Both requests were approved.
- The Board discussed the possibility of litigation from a homeowner over the circumstances surrounding the development of a rebuttal letter by standing board members.

### **Treasurer's Report July and August 2011**

This report covers our fiscal year budget status through August 31, 2011.

Account Balances as of July 31 and August 31, 2011 are:

	<u>July</u>	<u>August</u>
Comm Assoc Banc (CAB) Reserve	\$ 584,850.98	\$ 539,370.34
CDARS (CD Placement)	\$1,000,520.69	\$1,000,988.18
CAB Operating	\$ 65,935.11	\$ 88,596.63
RABOBANK Petty Cash	\$ 713.06	\$ 228.83
CAB Water Operating	\$ 29,320.82	\$ 31,610.95
CAB Water Reserve	\$ 101,121.29	\$ 102,484.79

Payments to the Capital Replacement Fund (\$16,320.00 per month) are current.

Payments to the Mutual Water Association (\$3,750.00 per month) are current.

Respectfully Submitted,

*Jim McFeeters*

Jim McFeeters, Treasurer