

**COMBINED MEETING OF THE BOARDS OF DIRECTORS
MONTEREY DUNES COLONY ASSOCIATION
AND
MONTEREY DUNES COLONY MUTUAL WATER ASSOCIATION**
March 20, 2010

PRESENT

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

ABSENT

None

WELCOME

George Maciag, President, called the meeting to order at 10:00 AM, March 20, 2010 at the Monterey Dunes Colony Clubhouse.

MINUTES

The Board reviewed the draft minutes of the January 16, 2010, Board meeting. It was M/S/C to approve the minutes as written.

TREASURER'S REPORT

Jim McFeeters, Board Treasurer, gave the Treasurer's Report for January and February 2010. Jim noted that the payments to the Capital Replacement Fund of \$16,320.00 per month and \$3,750.00 per month to the Mutual Water Association were current. Additionally, Jim stated that account balances could be seen in the written report, which has been attached to and made part of these minutes.

FINANCE COMMITTEE REPORT

Jim McFeeters gave the Finance Committee report for John Gentry, Chair. Jim reported that the committee had met the previous day in a 4-hour long meeting in which they discussed the Colony's financial reports for the first eight months (July-Feb) of the fiscal year, as well as the proposed FY 2010-2011 operating budget.

Jim noted that there were two issues discussed, but not resolved at the finance meeting:

(1) Outstanding bad debt expense of \$28K because of two delinquent accounts. One unit has already been taken over by the bank and the other pending foreclosure by the association. After

we have completed this foreclosure action, we do not expect to accrue any more bad debt expense in the foreseeable future.

(2) Wave Run-up Project which will be discussed later this meeting.

Jim reported that the Finance Committee was recommending to the board an increase in monthly homeowner (operating) dues for the 2010-2011 fiscal year from \$795 to \$825 per unit per month. This is an overall increase in the operating budget of 3.77% over last year's budget. The Board M/S/C to accept the recommendation of the Finance Committee and to adopt the 2010-2011 operating budget.

The committee also discussed ways to increase the percent funded of our reserve account. The percent funded refers to the amount of reserve funds we have on hand as compared to the total reserve funds necessary and on hand to be fully funded at any given point. Our current percent funded is somewhere near the single digits and should be closer to 50 percent. With that as a goal, the Finance Committee is going to make future recommendations to the Board on how to increase the cash in the reserve account. Jim stated that the committee discussed continuing the annual reserve assessments at the \$5,000 level and even to increase those assessments 5% per year in the future. Jim also reported that it could take several years for the association to reach the goal of funding the reserves at the 50% level.

Jim also noted that management had transferred \$250,000 of reserve funds from a Union Bank money market account to a Mutual of Omaha money market account. This was due to operating changes at Union Bank which decreased the amount of our funds that were insured (through FDIC and private insurance). The \$250,000 transferred to the Mutual of Omaha account will earn interest at an introductory rate of 1.75% for the first six months and at 1% thereafter. By the next Board meeting, the Finance Committee will make a recommendation to the Board concerning the associations banking relationship with Union Bank.

GENERAL MANAGERS REPORT

Deck and Fence Replacements

This report covers work completed in this fiscal year 2009-2010, July 1, 2009 through June 30, 2010.

Association carpenters have completed 6 of the 15 scheduled decks this fiscal year, and 2 partial decks as "charge to owner" projects. Decks were replaced at units 236, 220, 178 and 160, (2 ea) at 168, and partial replacements at units 210 and 318.

Unit courtyard fences completed, all or in part since July 1, 2009 were at units; 110, 124, 164, 168, 220, 248, 268, 266, 264, 276, 146, 144, 316 and 328. Also completed were fences at the 172 refuse area and the fence along the walkway between 174 and 176.

Association carpenters replaced cul-de-sac signage at the entrance for units 102 – 130 and 300 – 316.

Window and Entry Door Replacement

The association has replaced 45 of a scheduled 95 window replacements this fiscal year. We continue to identify and replace defective vinyl block frame windows as necessary and have identified over 20 of these defective windows as of the date of this report.

Association Carpenters have replaced four entry doors since July 1st with three more scheduled this year.

Contractors replaced one unit garage door at unit 246.

Built-up Roofs

Unit's 124 and 184, 270, 274, 330 and 304 have either been re-roofed or being completed as of the date of this report by Carl Black Construction. These roofs are the most recent of the 50 built-up roofs scheduled for replacement in our reserve schedule. We will continue to replace these roofs on a case by case basis as they fail over the next few years.

The association replaced 28 flat-roof skylights this year, four on unit 190, four each on the flat built-up roofs that were replaced in this year's schedule. The Association also replaced one owner installed skylight on a charge-to-owner ticket.

Mailbox Clusters

The mailbox cluster servicing units 176 to 194 was replaced during this reporting period. This project was deferred from last years reserve plan and completed this year in the reserve schedule as an unbudgeted expense.

Bad Debt and Foreclosures

There is one Association unit in foreclosure, another has defaulted and now taken over by the bank to accumulate a total of \$28K in bad debt expense to the association. We are currently seeking to recover some of this money through a collections attorney, as well as foreclose on the remaining unit. The process is lockstep and slow but collections agents feel good about the associations chances to collect a good portion of what is owed.

Re-siding

Since the budget cycle started on July 1st, association carpenters have replaced sidewall shingles all, or in part at units: 110, 112, 138, 146, 160, 178, 196, 198, 236, 238 and 284.

Fumigations

Units 236-238-240 were fumigated in February under our warranty with Terminix.
Units 196-198-200 are pending refumigation under the same warranty.

Smoke Alarm Inspection

The 2010 CY Smoke Alarm and Battery Replacement Project will start this month and is scheduled to be completed in early May. Management will coordinate with homeowners as to times/dates for access to their units.

The Board asked Tom to research ways to make smoke alarms audible to neighbors.

Coastal Projects

From last report:

The Board met in an executive session on November 21, 2009 and reviewed additional contractor data, along with other information concerning the project and elected to enter into a contract agreement with Sunstone Construction Company to complete the Wave Run-up Project. Tom was instructed to work with the Association's attorney to ensure the contract was correctly formulated and to give proper notice to the members. Tom was also asked to work with the Finance Committee and provide options to the board as to how the association would finance the project.

I notified our attorney on 12-7-09 of the board's decision and asked that he draft the contract documents. I received the initial "first cut" of the contract from our attorney on 12-21-09, forwarded the documents and discussed the project with the contractor on 12-23-09. The contract was returned by the contractor on 1-7-10 and is currently being ironed out by the attorneys for both parties. The completed contract should be ready for signature in the next week to 10 days.

Upon a recommendation of a board member, and a general concern of the Board as to what type of pipe was used in the construction of the leaching fields in the early 1970's, John Kasunich and Mark Foxx recommended that the association excavate a section of the leaching fields and ascertain the condition of the lines after over 30 years of use and determine if they could withstand the combined weight of the new artificial dunes. I had Mark Foxx research with an engineer in Watsonville who worked on the northern leaching field of septic system #9 when, in the early 1990's, the northern field was operationally reduced by 50% to eliminate the possibility of foredune erosion uncovering the two most westward leaching lines. After contacting Mike Freitas, the engineer who did the work to modify the leach field in 1991, he remembered the composition of the pipe as an "Orangeburg style" pipe, but any official records documenting this had been purged several years ago. Current codes do not permit use of Orangeburg pipe which is essentially made of coal tar impregnated with wood fibers. Research shows this pipe is subject to softening and deformation with age, and is not compatible with some modern-day cleaning practices. Proper installation of the Orangeburg pipe was essential to support the pipe, in the form of "bedding", with specific compacted soils or gravel. As a general gauge from our engineers, the pipe is said to have a crushing resistance of approximately 2100 lbs/lineal foot. This is for "new Orangeburg type pipe" as opposed to the earlier, thinner pipe produced in the early 1900's. After excavating a section of leaching field #9, on 12-4-09, and inspecting the pipe as well as the "bedding" of the pipe, our engineers have estimated that the weight of the proposed artificial dunes should not effect the operation of the leaching field. As an additional precaution, the Board directed that Tom work with our engineers and determine what the impact would be if the project was adjusted to stop short of the Septic Tank, and the southern leaching field, eliminating approximately 50 feet of artificial dune at the southern end of the project. This would allow for the southern leaching field of septic system #9 to remain intact and not subject it to any additional weight. John Kasunich is drafting the adjustments for board review. According to the preliminary calculations of our engineers, the existing sand with the proposed artificial dunes would impose a load of 1250 lbs/lineal foot on the existing septic leaching lines.

The association was directed on 12-23-2009 to post a "Notice of Public Hearing" on three locations near or close to the project. This requirement was completed and documented. We also were instructed to fill out the "Affidavit of Posting" and return the document to the Monterey County Planning Department. Subsequently, we were advised of a public hearing scheduled by the Monterey County Zoning Administrator to approve/disapprove the Wave Run-up Project to be held on January 14, 2010, at 1:30 PM, at the County Supervisor's Meeting Room.

Paralleling the Wave Run-up Project, members of the Water Resources Agency, NOAA Fisheries, and I met out at the river mouth on 12-13-09 to stake the proposed river channel for breaching the river to the ocean. This channel was based on predetermined setbacks and the work was supervised by NOAA Fisheries biologist Bill Stevens. Bill

Stevens introduced his replacement as the new head biologist for the Steelhead project, Devin Best, and notified all he was being transferred. After considerable time and discussion, the project was staked and excavating was set to start around December 16. After waiting a week, I called my Water Resources Agency contact Brent Buche to find out why the project had not yet started and found that the "other" federal agency, Fish and Wildlife Services, (representing the Plover, among other endangered species) had issued a stop to the excavating. For the next few weeks NMFS and DFWS were in collaboration as to which agency would trump the other. and as of last Monday 1-11-10, I was informed that the Resources Agency would cut a 50' wide x 900' long channel, in a north by northwest direction from a point at the lagoon out to the crest of the foredune sometime in the next week ahead of the rains. The two agencies had come to the decision that the channel would be a test this year and any needed modifications from lessons learned would be made to the breaching protocols for the 2010-2011 winter season. We are still monitoring the river mouth, expecting this mechanical breaching to start in the next few days. The Water Resources Agency has agreed to accommodate the association's request to pile any excavated sand on the eastern side of the length of the excavated channel, creating a large artificial dune, adding some protection against the channel migrating further north or to the east into the low pond area near the south end of the colony.

On January 14, 2010 the Monterey County Zoning Administrator heard PLN090261, (our Wave Run-up Project) in the County Supervisors Meeting Room in Salinas. Representing MDCA were George Maciag, Board President, Ted Swanson, Director, and myself as Managing Agent. Elizabeth Gonzales, Coastal Planner, briefed the Zoning Administrator, Mike Novo on the project. Mr. Novo then questioned responsible agencies as to different aspects of the plan and then directed questions to the Association as to the purpose of the artificial dunes. The Zoning Administrator made two minor changes to the plan concerning the timetable for work being restricted to September 30th through March 1st, (around the Snowy Plover season) and eliminating a reference to State Parks and Recreation as being part of the reviewing process of the plan.

As of this date, the contract for the Wave Run-up Project continues to be negotiated between the attorneys for MDCA and Sunstone Construction Company.

As an agenda item at the January 16, 2010 director's meeting, the board discussed both the physical aspects of the Wave Run-up Project as well as funding options/issues. With input from the floor, the Finance Committee, the association attorney, and given limitation concerning time, (because of permit restrictions), the board voted on a resolution imposing an emergency special assessment, charged equally among the homeowners for the total amount of the contract price of the Wave Run-up Project. The resolution was M/S/C by a vote of 4 yeas and 1 abstention. Since the emergency resolution was necessary to immediately fund the project scheduled to start on February 4, 2010 and complete no-later-than March 1, 2010, at the recommendation of Bill Hoisington, the resolution would contain an addendum that if, for any reason, work on the project does not commence as anticipated, any assessments already collected will be returned to the homeowner(s) until such time that work on the project would begin in the fall at the amended cost of the project at that time. Bill Michaels was appointed to coordinate all assessment issues including present and if necessary future assessments concerning this project in accordance with our governing documents. The notice for the emergency special assessment in the amount of \$3,000 per unit was sent out to the members on January 22, 2010.

The notice of approval for our Coastal Permit was received on January 20th via fax and followed up in hardcopy on February 1, 2010. The County Planners established a start date of February 4, 2010, after allowing for a 10 (work-day) moratorium for comment to the Coastal Commission. While waiting for this period to end, I set up an appointment with the County Health Department as per instructions in the coastal permit and met with Pat Treffry, an Environmental Health Specialist to discuss the project and pull the health permit for the work over septic number 9. The permit cost \$282.00 and is good for one year. I then recorded the Coastal Permit on January 26, 2010 as document 2011004739 at the county courthouse. This permit is good for three years at a cost to the association of \$8,054.

On February 24th, MDCA hosted a meeting concerning the future management of the Salinas River, Lagoon, and more specifically, to discuss breaching methodologies with the different agencies. In attendance were; Jim McFeeters and George Maciag, Directors, MDCA, myself as the colony's managing agent, US Fish and Wildlife Service – (Plovers), The Coastal Conservatory – (Endangered Species, Property South of the Lagoon), Monterey County Water Resources Agency – (Responsible for the physical management of the river, lakes and dams), California State Parks – (Beach Property and Plover advocates), Tim Martin, Doug and Greg Scattini, Ron Lundquist, Tony Leonardini – (all surrounding farmers and property owners), NOAA Fisheries – (Steelhead), David Shonman – (Consulting Biologist), John Kasunich and Mark Foxx – (Consulting Geotechnical Engineers), and members of independent conservatory groups, (several). Topics discussed were:

- Impacts of breaching the Salinas River, (when, how, affected entities/species)
- How can the river and lagoon area be better managed to help all concerned.
- Natural Breaching and Management vs. Levee Improvements, or other improvements.
- Funding.
- Establish project lead and executive committee for regular meetings, coordination/distribution of information to all participants.

I volunteered to be part of the executive committee in order to keep the board informed of issues concerning the Salinas River management protocols and was accepted as one of the 5 members.

A homeowner in the audience asked why in late January there was heavy equipment at the river mouth and it looked like they were partially cutting a channel. Tom responded that they were trying to slow the flow of the river when they breached it to the ocean by cutting this long channel so that the water would drain the lagoon slowly allowing any steelhead near the river mouth to come up the channel and then be re-introduced into the area. Bottom line, it didn't work. After four days spent cutting this channel in the sand, the river went straight out to the ocean and bypassed the cut channel.

The Board met in executive session on January 29, 2009 to discuss the Sunstone Wave Run-up contract, and to evaluate the contractor-proposed schedule of work. It was recommended by our Engineers that the timeline of February 4, 2010 through February 28, 2010 was not sufficient to complete even a significant portion of the project before the Snowy Plover Season begins on March 1st. Our engineers felt with the current elevation of the beach and the positive weather outlook, rushing the project at this point was counter productive, and if conditions hold, we might get by this storm season with little or no damage. The board instructed me to ask the county to allow MDCA to sandbag in front of the houses in the event we encounter high waves and debris for the duration of this years storm season. Liz Gonzales, Monterey County Coastal Planner agreed with this request and allowed us to sandbag in front of units 318, 320, 322, and 324 and 326 without permits, but did so with stipulations. A notice explaining these actions and postponing the Wave Run-up Project and emergency assessment was sent out to the members on January 29, 2010.

On February 8 and 9, 2010, I received email notices from a homeowner challenging the legality of the emergency assessment asking the board for a "meet and confer" to discuss the assessment. The request was such that the board decided to have the associations counsel interact with the member. Steve Weil, the associations attorney made contact with the member and discussed the assessment. Steve has also sent the board an opinion letter regarding the board's options in dealing with the member's challenge.

At the board's direction, I have contacted sources from the Water Resources Agency and private land owners to solicit any excess sand these agencies might have. If we can obtain any excess sand from our coastal neighbors, the plan is to store it on association property and use it for the project in hopes of cost savings. As of this date I have several leads but no solid commitment on acquiring the 1500+ yards of sand we will need to complete the project.

MONTEREY DUNES COLONY MUTUAL WATER ASSOCIATION

Water Conservation – Oriented Billing

During the January billing period, there were 3 units that exceeded the Tier 1 conservation zone, two of which were under the \$5.00 billing limit and not billed. No units were noted to be in the Tier 3 billing zone. Unit owners were notified of their monthly and gallon-per-day consumption.

During the February billing period, there were two units that exceeded the Tier 1 conservation zone, both of which were under the \$5.00 billing limit and not billed. No units were noted to be in the Tier 3 billing zone. Unit owners were notified of their monthly and gallon-per-day consumption.

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

Board Postponement of Wave Run-Up Project Due to Snowy Plover Restrictions

Due to a restriction in our Wave Run-up Project permit, the association is prohibited to perform any type of construction out near the beach from March 1 to September 30 due to the Western Snowy Plover. Because we did not receive approval from the coastal commission to proceed with the wave run-up project until late January, The board, acting on the advice of our coastal engineers, and contractor, postponed the project until after September 30, 2010. While the Board continues to view this as an emergency situation, they will be researching ways to improve, as well as to reduce the cost of the project. In the meantime, board has instructed management to try and locate fill sand from neighboring properties and if possible, acquire it at a reduced cost which could provide cost savings.

Board Emergency Assessment Options for Deferred Wave Run-Up Project

David Shonman, our contracted Coastal Biologist, gave a short presentation regarding the coastal foredunes on the southern end of the property and the Wave Run-up Project. He stated that any group of houses, anywhere on the property, could be exposed to erosion and wave run-up at anytime and that over the years, several different areas have been affected by wave run-up similar to what the south end of the property is experiencing. Currently, the houses at the southern shoreline are closer to the ocean than at any other place in the Colony and most vulnerable to waves causing run-up over the washed out dunes and bringing in driftwood. When carried in the waves, the driftwood can smash into the dunes and with the foredunes not armored

in any way, can break through and get thrown up in places where people could get hurt. There have been reports of residents on the beach being hit by waves and carried into the water. David also pointed out that when the Colony was built, the developers built a septic system seaward of the houses. In his opinion, it is likely that waves could damage the septic system before they damage the houses. If that happens, coliform bacteria could be released on the property, (and beaches), and Monterey County Environmental Health would become involved.

Several options were researched (feasibility, costs, acceptability, etc.) regarding possible solutions to the wave run-up problem such as building seawalls, bringing in rocks and sheet pilings; however, the most cost-effective and feasible idea, developed by the engineers we were working with, was making 10' long sandbags out of a polyethylene material that were woven together, leaving spaces that were small enough to capture the sand, but large enough to allow water to leach out. These bags would be laid down in tiers, covered with sand, and landscaped. Over time, they would look like the normal dunes here, but inside would be a bulwark of these sandbags made of material that is tough enough that they could actually drive over them with bulldozers, tough enough that if driftwood and drift logs smashed into them, they would be caught and it would provide some protection.

In conclusion, David stated that the global climate is changing and the number and intensity of storms that hit this area will probably increase. If you decide that you want to take steps to protect yourselves, one of the most reasonable things is to put more things between you and the ocean. A previous Board president once asked David if it wasn't true that no matter how high you build the dunes, can't a wave come that is even higher and still damage the houses? David responded by asking this president why does he wear his seatbelt in his car – can't a truck come along and crash into him or some horrible thing? The point is, even though there's always a possibility of something happening, you still take reasonable steps to protect yourself.

Dick Matthews, unit #110 homeowner, questioned David why three different options would not work to build up the dunes:

- 1) Why not use the driftwood nature deposits on our beach to building up the dunes?
- 2) Why can't we use snow fencing to catch the sand?
- 3) Why can't we have an aggressive policy of just planting in the affected area and put in a lot of sprinklers so it grows well and catches the sand?

David pointed out that in the 1980's, he worked with management to build sand dunes by using snow fencing and it worked well; however, that was before the Snowy Plover was a federally protected species. Now, the State will not allow us to put up snow fencing to catch the sand to build up our sand dunes.

As to the second question, David stated that we cannot pile up the wood that is thrown up on our beach so that sand can cover it and form a sand dune. The reasoning for this is that the Coastal Commission wants to present the Colony from loading the driftwood so thickly that the plovers can't get into the dunes for protection.

As for the third question, David agreed that replanting the area is important and will be done. Replanting would definitely help accumulate sand; however, it's not as helpful as a big project like bringing in sand.

There was a lengthy discussion among the homeowners and with the Board regarding the options available to provide protection and how much protection could really be provided. Although the cost of this project is a large factor, it was pointed out that if the septic system gets damaged the costs will skyrocket and the cost of this project will look like “pocket change”.

Mr. Tom Nolan, a homeowner who identified himself as the person who sent the “meet and confer” request to the Board, stated that we live on the ocean where things are going to happen and he questions our ability to change nature a lot through physically doing things. He stated that he wasn’t sure he wanted to pay for people to feel safer even though they might not actually be safer. An emergency special assessment can be levied against the homeowners without homeowner approval; however, a regular special assessment requires a majority vote of homeowners. Mr. Nolan said he does not believe that the legal definition of “emergency” has been met and that an assessment to pay for the wave run-up project should be sent to the membership for a vote of homeowners. He does not want to set the precedent that this is an emergency because the next time there will be no control on the amount of money that can be assessed. In any event, Mr. Nolan would like the Board to explore funding options such as budgeting mechanisms. However, Tom pointed out that the overall budget cannot be increased more than 5% from the previous year without a vote of the membership.

The homeowner, unit 322 stated that he does not know if the legal definition of “emergency” has been met but as he sits in his unit and watched the waves fling driftwood within 50 feet of his house it “certainly feels like an emergency” to him. Since the alternatives that were available to other homeowners in the past (such as snow fencing) are not available to him, he feels that the artificial dunes project is an essential upgrade.

At this point, Bill Michaels, Board Vice-President, stated that all of these concerns will be discussed in an executive session immediately following the Board meeting and that there will be another finding presented at the next Board meeting on May 15, 2010.

NEW BUSINESS

Reaffirm Workers Compensation and Earthquake Insurance Renewals

The Workers Compensation and Earthquake insurance renewals had previously been approved by the Board in a teleconference. Those approvals were affirmed in this meeting.

Propose Access Gate to Well #3

It was M/S/C to construct a gate to allow easy access for contractors that are repairing the wellhead at Well#3. The current design is of a retaining wall which has failed and now threatens the well head itself. Construction will be the same design as our other fences and will not stand out.

WATER COMPANY BUSINESS

Addressed in Manager’s Report.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:40 p.m. The next meeting date will be May 15, 2010 at 10:00 AM.

EXECUTIVE SESSION

The Board discussed a 3/19/10 attorney recommendation concerning a homeowner challenge to Board authority to impose an emergency assessment for the Wave Run-up Project.

FOR THE BOARD OF DIRECTORS:

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

Treasurer's Report January and February

This report covers our fiscal year budget status through February 28, 2010.

Account Balances as of January 31 and February 28, 2010 are:

	<u>Jan</u>	<u>Feb</u>
Union Bank Reserve	\$ 902,997.71	\$907,943.93
Union Bank Operating	\$ 123,621.76	\$ 23,386.29
Union Bank Investment Acct	\$ 8,003.02	\$ 8,003.61
Community Bank Petty Cash	\$ 339.93	\$ 876.88
Union Bank Water Operating	\$ 26,760.02	\$ 28,277.63
Union Bank Water Reserve	\$ 98,132.24	\$ 99,473.28

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