

CHAPTER 4. COMMENTS AND RESPONSES ON DRAFT EIS/EIR AND HCP

4.1 INTRODUCTION

This section provides responses to the comments received on the Draft EIS/EIR. A list of the comment letters received during the public review period is presented in **Section 2.2**, and copies of each of the comment letters are included in this chapter with responses to each comment provided following each comment letter.

Each comment letter on the Draft EIS/EIR is included herein and assigned an alphabetic identifier (i.e., A through II). Within each comment letter, all individual comments are assigned numbers located in the right-hand margin of the comment letter. Responses to each comment are provided immediately following each comment letter. Where the same or similar related comments have been made more than once, a response may direct the reader to another numbered comment and response. Where a comment is addressed in the Master Response to Comments, a response will direct the reader to the master response in **Chapter 3**.

NEPA and CEQA regulations direct the lead agencies to make a “good faith, reasoned analysis” in response to “significant environmental issues raised” in comments on a Draft EIS/EIR (please see CEQA Guidelines § 15088(c); 40 CFR 1503.4). Some comments received do not raise substantive environmental issues or do not comment on the analysis in the Draft EIS/EIR, and, thus, do not require a response in this Final EIS/EIR. These comments generally express an opinion on whether or not the project should be approved. CEQA does not require a substantive response to comments on an EIR that do not specifically relate to environmental issues. When a comment states an agency position or opinion and does not comment on issues relevant to the environmental analysis presented in the Draft EIS/EIR, the response reads: “No response is required.” If the comment is directed at FORA Board, USFWS, or other decision-making body regarding the decision on the project, the response reads: “The comment is referred to the decision-makers for their consideration.” Typically, these comments do not raise issues relevant to the environmental analysis.

Where the response notes an addition or deletion to the text, tables, or figures in the Draft EIS/EIR or Draft HCP, the reader is directed to **Chapter 6, Changes to the Draft HCP** and **Chapter 7, Changes to the Draft EIS/EIR**. Proposed changes to the Draft HCP and Draft EIS/EIR were evaluated to determine whether they would result in any changes to the impact analysis or conclusions reached in the Draft EIS/EIR or otherwise trigger a need for recirculation under NEPA and/or CEQA. In particular, the evaluation examined whether the proposed changes to the Draft HCP would constitute substantial changes to the project that would result in new significant environmental effects not previously identified in the Draft EIS/EIR, or substantially increase the severity of significant effects previously identified in the Draft EIS/EIR (please see CEQA Guidelines § 15162).



DEPARTMENT OF THE ARMY
ARMY BASE REALIGNMENT AND CLOSURE, FORT ORD OFFICE
P.O. BOX 5008, BUILDING #4463 GIGLING ROAD
MONTEREY, CA 93944-5008

REPLY TO
ATTENTION OF:

DEC 09 2019

Base Realignment and Closure Office

Steven P. Henry
Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Dear Mr. Henry:

It is encouraging to see the Fort Ord Habitat Conservation Plan finalized as it will allow for cohesive regional management of natural resources, as well as provide necessary permits for the planned projects on the former Fort Ord. The Army has several comments on the plan which are listed below.

A-1

1. On page 3-45 it is written that Bureau of Land Management's (BLM) "weed abatement and herbicide treatment/mechanical removal is currently paid by the U.S. Army". The Army would like to point out that the money the Army pays BLM through the Service Agreement is only for weed abatement activities that occur on the current Army lands, or in areas affected by the Army's cleanup.
2. On page 5-41 Avoidance and Minimization Measure 45 calls for minimization of chemical herbicide use for controlling non-native invasive plant species. The Army suggests adding a statement that in some areas on the Former Fort Ord, there is a possibility of presence of Munitions and Explosives of Concern (MEC) below the surface. Ground-disturbing or intrusive activities in these areas require Land Use Controls (LUCs) including construction support by UXO-qualified personnel, and munitions recognition and safety training for people who conduct the ground-disturbing activities. The property parcel deeds identify the required LUCs.
3. On page 7-17 year 2023 is listed as the anticipated date by which all lands will be transferred from the Army. Given current schedule, the anticipated transfer completion date is 2028.
4. On page 7-21 section 7.7.3 identifies existing deed restrictions. The Army would also like to point out that Land Use Controls (LUCs) are also in effect for designated properties and the LUC requirements are listed in the deed for each property to manage the potential risk due to remaining MEC.

A-2

A-3

A-4

A-5

5. On page 9-45 year 2023 is listed as the anticipated transfer date. Please see comment # 3 above.

A-6

6. On page 9-45 it is written that the “Army will provide funding as identified in the Track 3 Impact Area Record of Decision, to allow BLM to implement its HMP requirements safety”. The Army would like to comment that the Army’s funds are regulated under the Federal Anti-Deficiency Act, and that the Army cannot commit a specific amount of money into the future. Thus, the amount of funding the Army provides to BLM may change in the future depending on the availability of Federal funds.

A-7

The Army appreciates the opportunity to comment on the Fort Ord Habitat Conservation Plan. A copy of this letter will be furnished to Mr. Eric Morgan of BLM. If you have any questions please don’t hesitate to contact me at by phone at 831-242-7920, or at william.k.collins.civ@mail.mil.

A-8

Sincerely,



William, K, Collins
Base Realignment and Closure
Environmental Coordinator

4.2 RESPONSE TO COMMENT LETTER A: U.S. DEPARTMENT OF THE ARMY, BASE REALIGNMENT AND CLOSURE OFFICE

- A-1** Comment is acknowledged. No response is required.
- A-2** Comment is acknowledged. No response is required.
- A-3** The comment suggests adding a statement to Avoidance and Minimization Measure (AMM) 45, which calls for minimizing the use of chemical herbicides for controlling non-native invasive plant species. Due the potential presence of Munitions and Explosives of Concern (MEC) below the surface, ground-disturbing activities, including non-native species control, may require various Land Use Controls (LUCs) for safety purposes. As such, a statement was added to AMM-45 to identify this safety issue. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- A-4** Comment is acknowledged. No response is required.
- A-5** Please refer to Response A-3. A statement has been added to this section of the Draft HCP to include discussion of LUCs that may be in effect for designated properties. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- A-6** Comment is acknowledged. No response is required.
- A-7** Comment is acknowledged. No response is required.
- A-8** Comment is acknowledged. No response is required.



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
 Central California District Office
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 El Dorado Hills, CA 95762
www.blm.gov/office/central-california-district-office

December 10, 2019

In Reply Refer To:

6200 (CA190.50)P

Stephen P. Henry, Field Supervisor
 Ventura Fish and Wildlife Office,
 U.S. Fish and Wildlife Service,
 2493 Portola Road, Suite B,
 Ventura, CA 93003

Michael A. Houlemard, Jr.
 Executive Officer Fort Ord Reuse Authority (FORA)
 920 2nd Ave,
 Marina, CA 93933

Regarding: Habitat Conservation Plan

Dear Gentlemen:

Thank you for the opportunity to review the Draft Fort Ord Habitat Conservation Plan (HCP). As you know, the Fort Ord Reuse Authority (FORA) has been coordinating with the Bureau of Land Management (BLM) and many others on the development of the HCP since 1997. The BLM is hopeful that this conservation strategy will be approved and funded to assist local government with their habitat management responsibilities on lands they administer adjacent to (or near) the Fort Ord National Monument (FONM), which is jointly managed by the BLM and the United States Army.

Active management of the Fort Ord open space areas by local jurisdictions has been limited due to funding deficiencies, resulting in habitat degradation in some cases. This includes open space parcels designated as habitat reserves or other open space areas immediately bordering the FONM with "borderland" habitat management requirements. If approved, the HCP provides a funding mechanism where development fees collected by FORA and its successor agency(s) would be used for open space management and protection of listed species. Although the HCP does not alter the conservation status of lands as prescribed by the Army's Installation-Wide Multispecies Habitat Management Plan for the Former Fort

Ord (1997 HMP, as amended), the HCP does provide financial backing to implement a habitat conservation strategy across open space areas.

B-2
(continued)

The conservation strategy described within the Draft HCP facilitates protection of four plant species and four animal species covered under Section 10(a)(2)(B)(ii) of the Federal Endangered Species Act (FESA-10) and/or the State of California Endangered Species Act (CESA). As you both are aware, the HCP itself does not govern how the Bureau of Land Management (BLM) administers land on the FONM. Rather, the HCP governs how non-federal jurisdictions manage non-federal Fort Ord land in the long-term for the purposes of permitting non-federal entities under FESA-10 and CESA.

B-3

The BLM manages the FONM under federal land management plans (i.e. Resource Management Plans) and various step-down plans (i.e. Activity-Level Plans) prepared pursuant to the Federal Land Policy and Management Act (FLPMA) and other federal law, regulation, and policies. These plans are subject to consultation with the U.S. Fish and Wildlife Service (USFWS) under the provisions of Section 7 of the Federal Endangered Species Act (FESA-7) and must be consistent with the FONM designation as a National Monument. When BLM periodically updates these plans, as required by FLPMA, it also reinitiates consultation with the USFWS under FESA-7. The BLM is not subject to permitting under CESA or FESA-10.

B-4

The BLM has been coordinating with FORA to ensure that the management program described within the Draft HCP is consistent with how the BLM manages the FONM under current federal plans and associated biological opinions. Similarly, we have repeatedly disclosed that those federal management plans are subject to periodic change under FLPMA and that this could be problematic for the purpose of issuing permits to non-federal entities pursuant to FESA-10 and CESA. Any change in management of the FONM is not expected to be substantial, however, due to the FONM designation and agreements in place between the Secretary of Interior and Secretary of Army in regards to the 1997 HMP.

B-5

In July of 2016, the USFWS identified an important FESA-10 issue in their comment letter to FORA on the administrative draft HCP. The USFWS letter was mindful of the United States District Court Ruling--often referred to the "Fruit Growers Supply Case" (*Klamath-Siskiyou Wildlands Ctr. V. Nat'l Oceanic & Atmospheric Admin.*, 99 F. Supp. 3d 1033 (N.D. Cal. 2015)). Plaintiffs in that case alleged that Fruit Growers wrongfully obtained an incidental take permit by piggybacking off the U.S. Forest Service's conservation efforts on neighboring lands as described within an HCP prepared under FESA-10. The court held:

B-6

"By relying on the minimization and mitigation efforts by the U.S. Forest Service, FWS improperly found that Fruit Growers satisfied the "minimize and mitigate" requirement in ESA § 10(a)(2)(B)(ii)."

To address that legal issue, FORA made some adjustments in the Draft HCP for the FESA-10 purposes and limited the BLM's role under the Draft HCP in regards to overall mitigation. FORA's strategy in the Draft HCP is to sever BLM's routine management of FONM under federal plans from the FESA-10 incidental permit process and instead is proposing seven mitigation measures to be considered by the BLM for approval on the FONM. These mitigation measures, if BLM approved, may be used by FESA-10 permittees as mitigation, subject to limitations provided by federal law.

B-7

The FESA listed animal species on FONM include California tiger salamander (known to occur on FONM) and Red-legged frog (suspected to occur on FONM). The other HCP animal species (Western snowy plover and Smith’s blue butterfly) do not occur on FONM. The FESA listed plant species known to occur on FONM include Sand gilia, Yadon’s piperia and Monterey spineflower. The other plant species, Seaside bird’s beak, also occurs on FONM, but is not a federally-listed species.

B-8

In the Draft HCP, applicants for FESA-10 permits are proposing to partially mitigate for these species through mitigation activities on FONM lands administered by the BLM. Recognizing the BLM’s continuing administrative jurisdiction over the FONM lands, the FWS has acknowledged that only those additional mitigation measures funded by FORA and approved by BLM to be implemented by FORA or successor agency(s), will be credited as mitigation for the non-federal FESA-10 permit purposes in a manner that complies with the “Fruit Growers Supply Case” ruling. The Draft HCP accurately describes this relationship in several places; however, there are a few places where the document is misleading.

B-9

For example, Mitigation Measure 22 in Table 5-5 suggests that rotational burning on the FONM by BLM is mitigation for loss of Yadon’s piperia, Monterey spineflower and Sand gilia. All of these plant species are listed under FESA and prescribed burning is not funded by the FORA endowment fund so the table should be modified to show that FESA-10 permitting for those species is not dependent upon that planned management activity of the BLM. Furthermore, habitat monitoring by the Army for over 20 years suggests that those three FESA species are open space and/or disturbance dependent and not necessarily fire dependent so that action should not be considered mandatory (as mitigation is generally considered mandatory and not discretionary under FESA-10) for those three listed species.

B-10

Other mitigation measures are shown in Table 5-5, Table 5-6 and elsewhere that are applicable to FESA species and require edits. For example, Mitigation Measure 33 in Table 5-6 that is attributed to the BLM at FONM is for the protection of Yadon’s piperia, a FESA species. In all cases, if an action is expected to be a mandatory FESA-10 management action to mitigate for non-federal take, then it would need to be described, funded and approved similarly to the seven actions listed and described in Table 9-9.

B-11

Permitting of the three CESA species is more problematic under the Draft HCP. The three CESA species located on the FONM include California tiger salamander, Sand gilia, and Seaside bird’s beak. The first two species are also FESA species so we would expect that the Draft HCP management program for those species under FESA-10 would be sufficient for CESA purposes. In other words, FORA or successor agency(s) and CDFW should not expect the BLM to implement additional management actions to protect those species other than what is proposed, funded and approved under the FESA-10 permit, or through the BLM’s internal FESA-7 requirements.

B-12

Seaside bird’s beak is the sole species covered only under CESA on the FONM. Like Sand gilia, Yadon’s piperia and Monterey spineflower, this annual plant is open space and/or disturbance dependent and not necessarily fire dependent. As such, we do not agree that it is appropriate for FORA to identify Mitigation Measure 22 as necessary mitigation attributable to the BLM under the CESA permit, or any other BLM management program that is not externally funded as mitigation for Seaside bird’s beak.

B-13

As we have explained previously, the BLM has no authority under federal law to obligate public land to perpetual or even long-term management since the management objectives and goals for public land may change over time. The 2012 designation of FONM is perhaps the strongest and most durable protection that can be afforded by the executive branch of federal government on the management of BLM-administered public lands. This is especially true for the HMP/HCP protected species that are among the "objects and values" of the Monument requiring protection. The CDFW should take into consideration whether the monument designation, the BLM governing land use and activity plans, the HMP, and the FWS biological opinions provide the assurances CDFW needs to satisfy CESA, and whether it may issue CESA incidental take permits based on BLM management of FONM for Seaside bird's beak, Sand gilia (also federally protected) and California tiger salamander (also federally protected).

B-14

Should you have any questions, please contact Eric Morgan, Fort Ord National Monument Manager, at (831)582-2212.

B-15

Sincerely,



Chris Heppe

Acting Central California District Manager

4.3 RESPONSE TO COMMENT LETTER B: BUREAU OF LAND MANAGEMENT

- B-1** The comment is referred to the decision-makers for their consideration.
- B-2** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- B-3** Consistent with this comment, the Draft EIS/EIR accurately describes the Bureau of Land Management's (BLM) role in the Draft HCP process, regulatory requirements, and responsibilities on the former Fort Ord in Section 1.3.2, *Role of the Bureau of Land Management*, on page 1-5.
- B-4** Please refer to Response B-3.
- B-5** Please refer to Response B-3.
- B-6** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- B-7** Consistent with this comment, the Draft HCP identifies impacts, AMMs, and Mitigation Measures (MMs) within Federal and Non-Federal lands; please refer to Chapters 4 and 5 of the Draft HCP.
- B-8** The species information presented in this comment is consistent with the species information presented in the Draft EIS/EIR and Draft HCP.
- B-9** Please refer to Responses B-7, B-10, and B-11.
- B-10** As the comment correctly notes, because the Permittees (nor FORA endowment) are not funding implementation of MM-22, this action does not provide mitigation for the impacts to the species with checkmarks for MM-22 in Table 5-5 of the Draft HCP. Table 5-5 was revised to indicate that checkmarks indicating that a species benefits from a mitigation measure, including MM-22, does not necessarily indicate that the specific mitigation measure is specifically intended to provide mitigation for unavoidable impacts to that species. Checkmarks were removed for Yadon's piperia, Monterey spineflower, and sand gilia. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- B-11** Please refer to Response B-10 for an explanation of how Table 5-5 of the Draft HCP was revised. Checkmarks were removed from Table 5-6 under the FONM column for mitigation measures that are not funded by the Permittees or the FORA endowment. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- B-12** Please refer to Response B-3.
- B-13** As the comment correctly notes, because the Permittees (nor FORA endowment) are not funding implementation of MM-22, this action does not provide mitigation for the impacts to the species with checkmarks for MM-22 in Table 5-5 of the Draft HCP. Table 5-5 was revised to indicate that checkmarks indicating that a species benefits from a mitigation measure, including MM-22, does not necessarily indicate that the specific mitigation measure is specifically intended to provide mitigation for unavoidable impacts to that species. Checkmarks were removed for seaside bird's beak. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- B-14** Please refer to Response B-3.
- B-15** Comment is acknowledged. No response is required.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

December 11, 2019

Mr. Stephen P. Henry
Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Draft Environmental Impact Statement for the Fort Ord Habitat Conservation Plan,
Monterey County, California (EIS No. 20190262)

Dear Mr. Henry:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

C-1

The EPA recognizes the years of planning, environmental review, and land conveyance decisions relative to the closure, disposal, and reuse of former Fort Ord. As part of this planning and environmental review process, the EPA supports the many thoughtful conservation and restoration actions included in the Fort Ord habitat conservation plan and evaluated in this Draft Environmental Impact Statement, including the provision that no development would occur in aquatic or wetland habitats in the habitat management areas (including known or potential breeding habitat for California tiger salamander and California red-legged frog) and the inclusion of a Construction Dust Mitigation Plan and Prescribed Burn Management Plan to address air quality impacts associated with proposed covered activities.

C-2

The DEIS describes that the development of the Fort Ord HCP was informed to a great extent by the habitat management plan (HMP) issued for Fort Ord by the U.S. Army Corps of Engineers on behalf of the U.S. Department of the Army in 1997. Indeed, the Fort Ord HCP includes many of the key components of the HMP, including the habitat reserve areas, development areas, and to a limited extent, the species included for incidental take permit coverage. The DEIS notes that since the HMP was finalized in 1997, changes have been made and additional details have become available with respect to land uses on certain parcels, including new habitat areas added to the original HMP reserve configuration, and that the proposed Multi-Modal Transportation Corridor through the UC's South Reserve has been relocated. The DEIS, however, provides only limited detail about these and other changes in the plan area in the more than 20 years since the HMP was implemented. We recommend the Fish and Wildlife Service include additional information in the Final EIS about how changes in the plan area since the HMP was first adopted – stemming from drought, human development, or other pressures – may have impacted integral plan components, such as the suitability of the habitat reserve areas. Additionally, because the proposed 50-year period of incidental take coverage will likely be a time of

C-3

C-4

C-5

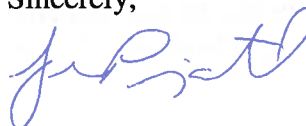
considerable change in the plan area, we recommend that the FEIS include a discussion of projected future changes that may affect the covered species and the habitats on which they depend, and how the HCP's adaptive management plan will address issues associated with these changes. For example, consider changes to the status of covered species, distribution of species throughout the plan area, the success of restoration efforts, and the potential need for new or expanded conservation lands.

C-5
(continued)

We note that effective October 22, 2018, the EPA no longer includes ratings in our comment letters. Information about this change and the EPA's continued roles and responsibilities in the review of federal actions can be found on our website at: <https://www.epa.gov/nepa/epa-review-process-under-section-309-clean-air-act>. The EPA appreciates the opportunity to review this DEIS, and we are available to discuss our comments. When the FEIS is released for public review, please send one hard copy and one CD to the address above (mail code: TIP-2). If you have any questions, please contact me at 415-947-4167, or contact Jason Gerdes, the lead reviewer for this project. Mr. Gerdes can be reached at 415-947-4221 or gerdes.jason@epa.gov.

C-6

Sincerely,



Jean Prijatel, Manager
Environmental Review Branch

4.4 RESPONSE TO COMMENT LETTER C: U.S. ENVIRONMENTAL PROTECTION AGENCY

C-1 Comment is acknowledged. No response is required.

C-2 Comment is acknowledged. No response is required.

C-3 Comment is acknowledged. No response is required.

C-4 As described in the Draft EIS/EIR, beginning on page 3.4-5, the HMP establishes guidelines for the conservation and management of species and habitats on former Fort Ord lands by identifying lands that are available for development, lands that have some restrictions concerning development, and habitat reserve areas. The intent of the HMP is to establish large, contiguous habitat conservation areas and corridors to compensate for future development in other areas of the former base. The HMP identifies what type of activities can occur on each parcel at former Fort Ord and parcels are designated as “development with no restrictions,” “habitat reserves with management guidelines,” or “habitat reserves with some development allowed.” The HMP sets the standards to assure the long-term viability of former Fort Ord's biological resources in the context of base reuse so that no further mitigation should be necessary for impacts to species and habitats considered in the HMP. This plan has been approved by the USFWS; the HMP, deed restrictions, and Memoranda of Agreement (MOA) between the Army and various land recipients provide the legal mechanism to assure HMP implementation. It is a legally binding document, and all recipients of former Fort Ord lands are required to abide by its management requirements and procedures.

Section 4.1.1, *Previous and Future Environmental Review*, of the Draft EIS/EIR describes the regional and local planning documents that apply to the Plan Area and FORA's the consistency determination requirements. The Reuse Plan effectively replaces all environmental policies of the individual, adopted general plans of the local jurisdictions, with the exception of those noted in Section 4.1.1, as they apply to former Fort Ord so that policy consistency is ensured. Since the approval and implementation of the Base Reuse Plan and HMP in 1997, amendments and updates have occurred to these overarching base-wide planning documents, as well as to local planning documents, such as general plans, master plans, and specific plans. However, amendments and updates are required to be consistent with the Reuse Plan in most cases, and in all cases, through deed restrictions and other legal mechanisms, land use activities must comply with the HMP. As a result, while not every amendment and update are detailed in the Draft EIS/EIR, these changes in the Plan Area have not adversely affected any integral components of the approved HMP or Draft HCP. Further, both the HMP and Draft HCP have requirements within development parcels adjacent to habitat reserve areas to reduce potential impacts from development activities on habitat reserve areas.

C-5 Chapter 6 of the Draft HCP extensively discusses the monitoring and adaptive management requirements. As stated on page 6-1 of the Draft HCP, monitoring and adaptive management measures are essential components of an HCP. They provide information on implementation of required AMMs and MMs, the effectiveness of those actions, as well as provide a foundation to make adjustments to these measures as needed. As such, the purpose of the monitoring and adaptive management program for the Draft HCP is to ensure that the conservation strategy is achieving the biological goals and objectives for HCP species and their habitats during the 50-year permit term and post-permit period.

Monitoring implementation of the Draft HCP include two components: compliance monitoring and effectiveness monitoring. Information obtained from these monitoring actions can be used to adjust AMM and MM implementation, as appropriate, based on specific HCP management decisions that will need to be made to ensure the success of the Draft HCP adaptive

management. In addition, Section 8.1.1.2, *Changed Circumstances*, discusses earthquakes, new species listings, global climate change, catastrophic fire, coastal erosion, invasion by non-native species or disease, and FONM management changes, and measures to mitigate the adverse effects of these circumstances. Please refer to Effectiveness Monitoring Measures 18 through 41, Adaptive Management Measures 1 through 14, and Changed Circumstances Measures 1 through 15, which consider changes in the plan area over the permit term, including but not limited to the examples provided in the comment: changes to the status of covered species, distribution of species throughout the plan area, the success of restoration efforts, and potential need for new or expanded conservation lands.

C-6 Comment is acknowledged. No response is required.

CALIFORNIA COASTAL COMMISSION

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December 16, 2019

Stephen P. Henry, Field Supervisor
 Ventura Fish and Wildlife Office
 U.S. Fish and Wildlife Service
 2493 Portola Road, Suite B
 Ventura, CA 93003

RE: Draft Habitat Conservation Plan for Eight Species; Draft Environmental Impact Statement for the Habitat Conservation Plan for Fort Ord, Monterey County, California

Mr. Henry:

On behalf of Coastal Commission [Commission] staff, thank you for the opportunity to comment on the *Draft Habitat Conservation Plan* [HCP] for Fort Ord and the associated EIS. As an agency, our role within the context of the HCP's covered area is one as a partner overseeing development in the Habitat Management Area [HMA] located at the Fort Ord Dunes State Park [FODSP], which falls within the Coastal Zone. The Coastal Act provides our regulatory authority to address development efforts, including those which may affect sensitive coastal resources, through planning and permit issuance. The Coastal Act definition of development is notably broad, and includes changes in use and/or intensity as well as restoration efforts among other activities.

D-1

In July 2017, the Commission conditionally-approved Coastal Development Permit [CDP] 3-14-1613, to allow for the California Department of Parks and Recreation [State Parks] to construct and operate a new campground facility at FODSP. At that time, the draft HCP was not yet available and though our staff report acknowledged the work in progress, the permit was structured to be independent of any uncertain timelines or particulars that the HCP might eventually resolve. As such, we required that pre-construction surveys and during construction monitoring account for several sensitive species at the site, including some of those addressed in the HCP, and that State Parks acquire our Executive Director's approval to proceed when such resources were encountered (or injured) only following consultation with partners at the Service and/or California Department of Fish and Wildlife [CDFW], as applicable. Finalization of the draft HCP should help to streamline our required consultation process for the relevant species, so long as State Parks' actions are consistent with the HCP, Incidental Take Permits [ITPs], and our CDP, but it will not eliminate the need obtain our approval to proceed under specified circumstances. Moreover, consultation with our partners will remain potentially necessary for other sensitive species and habitat resources, as recognized under Coastal Act.

D-2

Generally, the Avoidance and Minimization Measures, and Monitoring and Adaptive Management program, put forth in the draft appear to be well-conceived and we believe these will collectively advance conservation goals at FODSP for the HCP-species. Within the FODSP, two plants (sand gilia and Monterey spineflower) and two wildlife species (Smith's blue butterfly and western snowy plover) are relevant, including the associated critical

D-3

habitat areas for Monterey spineflower and western snowy plover. Accordingly, our abbreviated review of the EIS and HCP at this time has focused on these resources, at FODSP. We observe that we may need to address particular components more directly in the future, as issues often arise through the course of project review(s). For now, some specific comments:

D-3
(continued)

1. While we understand the rationale for setting the adjusted baseline to January 2017 for the draft, we note that more recent and relevant information is ever available for a number of resources and should be incorporated to management decisions going forward and as part of the Fort Ord Regional Habitat Cooperative's Adaptive Management program:
 - a. Monterey spineflower was observed many places throughout the region over Spring and Summer 2017, subsequent to a particularly wet winter following a sustained drought. These observations presumably represented an expression of previously-dormant seed banks responding to recent environmental conditions. We have directly observed blooming spineflower at FODSP in areas where it had not been previously mapped, though it falls within designated critical habitat and areas related to the proposed Cal-Am Water desalination conveyance. Observations of spineflower have been newly recorded elsewhere in the coastal, central Monterey Bay region as well over this period and so, we suggest that added caution may be warranted when determining the annual species' presence and potential spatial extent where it has not been documented previously.
 - b. In 2018, CDFW provided an important update to the 2010 Natural Communities List that was used for the HCP and though communities are not the subject of the HCP, they are relevant to jurisdictions such as ours. The update substantially refined the treatment of vegetation community alliances and associations as defined by the Manual of California Vegetation, Second Edition (Sawyer *et al* 2009) and has established community rarity rankings in a much more systematic way. Such rankings inform Commission staff determinations of environmentally sensitive habitat areas [ESHA] and more broadly, would seem germane to the management of sensitive vegetation communities throughout Fort Ord. Because these lists are being updated on an ongoing basis, and to the finer level of community associations, it is likely that mosaics of suitable habitat for HCP species may also become increasingly refined (e.g., buckwheat supporting Smith's blue butterfly or habitat suitable to buckwheat restoration). The Coastal Commission will always rely upon the most current version of this list and the cumulative record of observations in our review of permit applications and compliance.
 - c. In February 2018, CDFW released the third version of its Areas of Conservation Emphasis [ACE] tool, which leapt forward dramatically in terms of its spatial modeling for biodiversity, habitat connectivity, and climate change resiliency across California's landscape. FODSP is spread across three cells of the 2.5 sq mi-hexagonal grid and the models highlight the significant conservation value of the area in terms of biodiversity, irreplaceability, and climate resilience. We encourage the parties involved in the long-term management to explore this tool and consider how management actions such as invasive species removal (as prioritized in the HCP) and the reestablishment of habitat corridors (also a priority in the HCP), particularly for coastal species moving through FODSP to other restored dunes up-coast and down-coast, can advance conservation goals for HCP-species and more broadly, the State.

D-4

D-5

D-6

D-7

2. A potential issue concerning Western snowy plovers relates to our coastal access policies and requirements, which is something that is cited but warrants emphasis – State Parks and the Cooperative will need to coordinate with Commission staff about, to ensure that both access and natural resource protections as prescribed in the HCP *and as directed under the Coastal Act* can be achieved successfully. We strongly encourage early and frequent discussions on this topic with our Central Coast District office.

D-8

We recognize that the intent of the HCP is to support the long-term and Fort Ord-wide management of sensitive listed species under USFWS and CDFW authority, to provide a basis to issue ITPs, and to simplify requirements for consultation through a programmatic approach. The EIS rightly acknowledges that additional permits may be necessary for various actions, including those that would be issued by the Coastal Commission, and that such permits may impose additional restrictions since the ITPs would only pertain to compliance with the federal Endangered Species Act [ESA] and California Endangered Species Act [CESA], specifically. To this end, there are a few overarching interpretations regarding Coastal Act definitions and policies that warrant clarification. We draw your attention to the following:

D-9

3. On page 95, the draft EIS discusses environmentally sensitive habitat areas [ESHA], but the information here is neither complete nor accurate. In particular, we clarify that habitat need not necessarily be species-specific but may rather be applied in recognition of broader categories including *assemblages, communities, or ecosystems*. Particular ecosystems may be treated categorically (e.g., oak woodlands or dunes), and the Coastal Act definition includes language to protect ‘especially valuable’ habitat, which may be characterized, for example, by particular genetic types, structures (e.g., long-lived complex woodrat middens), or even non-native tree stands supporting nesting heron or raptor populations among other things. Otherwise unprotected host species supporting listed-species, such as the two buckwheats supporting Smith’s blue butterfly, are considered especially valuable habitat and recognized as ESHA within the butterfly’s range.

D-10

Later, in the same paragraph, there is reference to allowable development within ESHA and the text cites “unless the development is *coastal* dependent...” – this is inaccurate. The only allowable uses within ESHA are *ESHA*-dependent, meaning dependent on the specific protected resource that is present, such as an interpretive trail or restoration work, and only so long as it will not have a significant effect on the said resource(s). *ESHA*-dependent is, importantly, a narrower definition than coastal-dependent.

D-11

4. Also worth clarifying is that while a wetland may rise to the level of ESHA based upon the resources present, the Coastal Act also includes more specific policies that pertain to wetlands, including broader definitions of allowable activities therein. The courts have established that because wetland policies are more specific, even when a wetland rises to the level of ESHA, it is the wetland policies that are applicable.
5. Within the documents, wetlands are discussed in terms of the US Army Corps three-parameter definition that requires indicators of hydrophytic vegetation, hydric soils, and hydrology to *all* be present in order to recognize the presence of a wetland. However, under Coastal regulations, only *one* of these indicators need be present to meet the definition of a wetland and receive protection under Coastal Act policies. While FODSP is not particularly likely to have wetlands that even meet our more conservative definition given the drainage of sandy soils, it is possible that wetlands could occur within dune swales or as seasonal features, similar to those observed up-coast in Marina. We recognize that

D-12

D-13

the HCP is not specific to wetland resources apart from those inhabited by the sensitive amphibian species addressed but do advise that this difference in wetland definitions be recognized for the broader management considerations at the FODSP HMA.

D-13
(continued)

Finally, we note that the Commission has typically considered all dune habitat as ESHA, including at FODSP and as articulated in the aforementioned CDP's staff report. This determination has been independent of habitat condition and species occupation, meaning that even where dunes have been historically disturbed and/or are currently dominated by non-native vegetation, these areas are recognized by the presence of appropriate physical conditions (e.g., geophysical position, substrate, topography) and adapted vegetation (including non-native species), are protected under the Coastal Act, and are generally considered priorities for restoration and enhancement efforts. This has become even more the case in light of climate change impacts on our shores (i.e. sea level rise, increased erosion rates) and the nature-based protection services and adaptation opportunities that dune ecosystems provide for inshore communities as well as the preservation of species and habitat subject to coastal squeeze. Undoubtedly, the importance of these shoreward habitats is a shared priority between our respective mandates.

D-14

Thank you again for the opportunity to comment on the draft document. If you would like to discuss any of these comments with us directly or related issues, we welcome the opportunity. I can be reached at Lauren.Garske@coastal.ca.gov or (415) 904-5296.

D-15

Sincerely,

Lauren Garske-Garcia, Ph.D.

Technical Services Division | Ecology Group

4.5 RESPONSE TO COMMENT LETTER D: CALIFORNIA COASTAL COMMISSION

- D-1** The comment states that the Fort Ord Dunes State Park (FODSP) falls within the Coastal Zone and the California Coastal Commission (CCC) has regulatory authority within the Coastal Zone under the California Coastal Act (CCA). The Draft EIS/EIR describes the applicable CCA regulations in Section 3.2, *Aesthetics*, Section 3.4, *Biological Resources*, and Section 3.10, *Hydrology and Water Quality*.
- D-2** The comment states that the proposed campground project on FODSP will need to comply with the Coastal Development Permit (CDP) issued for the campground (CDP 3-14-1613), and that finalization of the HCP should help streamline CCC's required consultation process. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-3** The comment states that generally the AMMs and MMs put forth in the draft appear to be well-conceived, but particular components may need to be addressed in the future through the course of project review(s). The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-4** The comment expresses understanding of the rationale in using the adjusted environmental baseline of January 2017 for the Draft EIS/EIR; however, more recent and relevant information should be incorporate into management decisions going forward and as part of the Fort Ord Regional Habitat Cooperative's Adaptive Management program. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-5** The comment recommends updated survey results for Monterey spineflower should be considered when determining presence or absence on FODSP.
- As described in Section 6.3.1, *Baseline Studies of the Draft HCP*, baseline studies are required to establish the adjusted baseline for HCP species and habitat within the HMAs, including the FODSP HMA. The adjusted baseline will serve two functions: it will serve as a benchmark against which the effectiveness of the conservation actions is evaluated, and it will be the starting point from which status and trends will be measured. As a result, surveys for Monterey spineflower and other HCP plant species will be required upon approval of the HCP and populations will be monitored to document occurrences throughout the FODSP.
- D-6** The comment states that the CCC will always rely on the most current version of the Natural Communities List and the cumulative record of observations in their review of permit applications and compliance. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-7** The comment encourages the exploration and use of CDFW's Areas of Conservation Emphasis for management actions. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-8** The comment states the need to coordinate with California Department of Parks and Recreation (State Parks) to ensure both public access and natural resource protections and prescribed in the HCP and as directed under the CCA can be achieved successfully. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-9** The comment states that there are a few overarching interpretations regarding CCA definitions and policies that warrant clarification, as follows in the comments below. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-10** Comment acknowledged. For actions in the FODSP subject to the CCA, State Parks will need to consider this clarification when determining Environmentally Sensitive Habitat Areas (ESHA). The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

- D-11** The comment states that a reference to allowable development within ESHA on page 3.4-4 of the Draft EIS/EIR is inaccurate. A clarifying sentence was added to the sensitive habitats impact discussion in the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- D-12** Comment acknowledged. For actions in the FODSP subject to the CCA, State Parks will need to consider this clarification when determining presence of wetlands and ESHA. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-13** Comment acknowledged. For actions in the FODSP subject to the CCA, State Parks will need to consider this clarification when determining presence of wetlands and ESHA. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-14** Comment acknowledged. For actions in the FODSP subject to the CCA, State Parks will need to consider this clarification when determining presence of ESHA. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- D-15** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

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**Subject: Ford Ord Multi-Species Habitat Conservation Plan (Project)
 Draft Environmental Impact Statement (EIS)/Environmental Impact
 Report (EIR)
 SCH #2005061119**

Dear Messrs. Metz and Henry:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft EIR/EIS from the Fort Ord Reuse Authority for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

E-1

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

E-2

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for

E-3

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW's role is to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

E-3
(continued)

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related take authorization as provided by Fish and Game Code will be required.

E-4

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant(s) is/are responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes.

E-5

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under limited circumstances such as the provisions of a Natural Communities Conservation Plan (NCCP) or a Memorandum of Understanding for scientific purposes.

E-6

Rare Species: Species of plants and animals need not be listed as Endangered, Rare or Threatened (E, R or T) pursuant to CESA and/or the Federal Endangered Species Act (ESA) to be considered E, R or T under CEQA. If a species can be shown to meet

E-7

the criteria for a listing as E, R or T under CESA and/or ESA as specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15380; hereafter CEQA Guidelines), it should be fully considered in the environmental analysis for the Project.

E-7
(continued)

Lake and Streambed Alteration: CDFW has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* Section 1602(a) of the Fish and Game Code requires an entity to notify CDFW before engaging in activities that would substantially change the bed, channel, or bank of a stream or substantially divert or obstruct the natural flow of a stream.

E-8

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

E-9

PROJECT DESCRIPTION SUMMARY

Proponent: Fort Ord Reuse Authority (hereafter, the Authority)

Project Description: The Project consists of the Habitat Conservation Plan (HCP) and the issuance of Federal and State incidental take permits (ITPs) by the United States Fish and Wildlife Service (USFWS) under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, and by CDFW pursuant to Fish and Game Code Section 2081 in compliance with CESA. The issuance of the ITPs would authorize take of the State and Federally listed species identified in the HCP during the development and redevelopment of the former Fort Ord military base.

E-10

Location: The former Fort Ord military base is the entirety of the area covered by the HCP and is referred to here-in as the Plan Area. The Plan Area is located along the Pacific Ocean, approximately 100 miles south of San Francisco, California and is in the northern portion of the County of Monterey. Approximately seventy-two percent (72%) of the Plan Area is within unincorporated areas of the County of Monterey; approximately fifteen percent (15%) is within the City of Seaside; approximately twelve percent (12%) is within the City of Marina; approximately one percent (1%) is within the City of Del Rey Oaks; and less than half a percent (0.5%) is within the City of Monterey.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources so that the Authority can submit a complete application package to CDFW when an ITP is sought. Editorial comments or other suggestions may also be included to improve the Draft EIR/EIS.

E-11

Project Definition: In the Draft EIR/EIS the Authority describes the Project as the HCP and the issuance of State and Federal ITPs. However, under CEQA a Project is defined as: "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines, §§ 15378, subd. (a)). The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term "project" does not mean each separate "government approval" (CEQA Guidelines, §§ 15378, subd. (b)). Based on the definition of the term "Project" under CEQA, the Draft EIR/EIS would be more accurate to identify the Project as the development and the redevelopment of the former Fort Ord military base. Nevertheless, CDFW has structured this letter to use the term Project in reference to the development and redevelopment of the former Fort Ord military base and the term HCP to refer to the Draft Multi-Species Habitat Conservation Plan included as an Appendix to the Draft EIR/EIS.

E-12

Survey Methodologies and Project Baseline Conditions: The methodology discussion in the Draft EIR/EIS and HCP appears to be incomplete and as a result is likely to require supplementation for CDFW to issue an ITP. The methodology sections in the CEQA document and HCP do not fully describe the survey methodologies that were used to inventory special-status species that occur or have the potential to occur within the Plan Area. Instead the Draft EIR/EIS and HCP refer to the original studies; however, these studies were not included in either the CEQA document or its appendices and therefore were not readily available for CDFW review and/or comment. Since these surveys provide the baseline assessment of the Plan Area and the Draft EIR/EIS acknowledges limitations and assumptions exist within these survey methodologies (ex. potential overestimations of occupied habitat, studies conducted over a single floristic season, etc.), CDFW strongly recommends, that at a minimum, the original survey methodologies and results that were used to establish the CEQA baseline for the Project be provided to CDFW as part of any application for an ITP.

E-13

Based on the information provided, CDFW cannot determine if impacts to the Monterey gilia, one of the CESA listed species, are being minimized and mitigated by this approach since the habitat that is set aside as mitigation may be unoccupied, occupied at lower densities than habitat being impacted by the Project, or may be reduced in

E-14

quality from the habitat that is being impacted. CDFW recommend that it be contacted prior to preparing the ITP application submittal to ensure CDFW receives the information and analysis it needs.

E-14
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Avoidance and Minimization Measures (AMM) and Mitigation Measures (MM): The Draft EIR/EIS does not fully describe the extent of the development activities that will be allowed in the Habitat Mitigation Areas (HMA) and where they will occur within each parcel in contrast to where species populations occur within the Plan Area. Due to this lack of information, and the lack of species-specific population occurrences described within the entire Plan Area, CDFW cannot fully evaluate Project-related impacts to special-status species or provide thorough and robust comments on the proposed AMM and MM. Species-specific population occurrences and a discussion of the location of development activities within the HMAs in relation to these occurrences for the CESA-listed species would be useful for CDFW when it is reviewing an ITP application.

E-15

In addition, more information about the AMM and MM that are currently described in the Draft EIR/EIS would assist CDFW's review of an application. For example, the CEQA document describes the use of escape ramps and trench covers to minimize special-status species entrapment within excavations; however, design requirements for the escape ramps and trench covers and other requirements for their use are not described in the CEQA document or included as an AMM.

E-16

The Draft EIR/EIS also references AMM and MM in other plans, such as the Reuse Plan and Habitat Management Plan (HMP) that would reduce impacts to special-status species. Clear inclusion of AMM and MM from other plans or documents to mitigate impacts on the CESA listed species would also assist in CDFW's review. Currently, it is unclear how measures in other documents informed the lead agency's CEQA significance determination in the Draft EIR/EIS. Also, assuming the measures were used to inform the significance determination, it is also unclear how the measures would be enforceable or implemented to ensure the significance determination is accurate.

E-17

Project-Related Impacts: The Draft EIR/EIS and HCP state that impacts occurring within designated development areas that were previously developed as part of the Fort Ord military base would not require State and Federal ITPs. However, these areas have been mostly abandoned since the closure of the Fort Ord military base and have the potential to provide habitat for several special status animal species. While a more limited possibility, special status plants also have the potential to occur within these abandoned areas if recolonization or population expansion has occurred since the closure of the military base or previously unidentified populations remain within these areas. The assumption of the absence of special-status species within these developed areas in the Draft EIR/EIS and HCP may result in an underestimation of the Project's potential impacts on these species.

E-18

CDFW also disagrees with the Draft EIR/EIS definition of a temporary impact. For ITP purposes, CDFW generally considers temporary impacts to be impacts that occur only during the Project-related activity (e.g., temporary impacts occurring during the active installation of a bridge, etc.) as opposed to impacts that continue to occur after the activity has been completed for up to a period of five (5) years. Temporal impacts that extend beyond active construction and preclude use as foraging, denning, dispersal, reproduction, or movement corridors would be considered to be permanent impacts in an ITP. CDFW would also appreciate more information about several Project-related activities such as, but not limited to: beach species management activities; controlled burns; California tiger salamander (*Ambystoma californiense*; CTS) hybrid identification, removal, and potential habitat impacts; special status plant species seed collection and reseedling; CTS barriers; fencing design and location; and other described and undescribed Project-related activities. The CEQA document lacks sufficient detail and analysis for CDFW to fully assess any future ITP application.

E-19

Proposed Mitigation and Mitigation Lands: The Plan Area consists of a total of 27,832 acres, of which 10,069 acres will be impacted by the Project. The proposed mitigation lands for the Project will occur on a combination of Federal (14,645 acres) and non-Federal lands (3,895 acres), with the largest portion of the mitigation lands occurring on Bureau of Land Management (BLM) lands (i.e., federal lands) within the Fort Ord National Monument (FONM) (14,645 acres). The Draft EIR/EIS and HCP state that the use of Federal lands is critical to the HCP; however, BLM will not be a Permittee under the State ITP or a party to the HCP, nor otherwise subject to the requirements of the HCP. While the intention of the Draft EIR/EIS and HCP is for BLM to participate with the ITP Permittees to allow Project mitigation to take place on the FONM, and manage those lands in accordance with the HCP, “nothing in the HCP will or shall be interpreted as superseding BLM’s requirements under the Rangeland Management Plan, its step-down plans, national monument designation, Area of Critical Environmental Concern designation, HMP, or any requirements of BLM’s governing law and regulation” (Draft EIR/EIS 2019). “In addition, Congress may modify the FONM designation or other requirements of Federal land management. Nothing in the HCP may be interpreted as impacting the ability of the Department of the Interior, BLM or Congress in making these modifications” (Draft EIR/EIS 2019). The Draft EIR/EIS and the HCP also clearly state that the activities and MM described in all the aforementioned documents may change and are not permanent restrictions on use or obligations for use. This includes the two percent (2%) development restriction included in the HCP for development on BLM lands.

E-20

Since the majority of the mitigation lands occur on BLM lands and BLM will not be a permittee under the Federal or State permits, and as a result will not be bound to comply with any MM included in either the Draft EIR/EIS, HCP or State and Federal ITPs, and measures listed within the HCP may be changed either through an

E-21

amendment to the HCP or through adaptive management measures, the Project as proposed may not meet State ITP issuance criteria without additional information or analysis because currently: (1) there is no certainty that the impacts of the authorized take will be minimized and fully mitigated through a binding instrument in perpetuity, (2) there is no assurance that the measures required to minimize and fully mitigate the impacts of the authorized take will be roughly proportional in extent to the impact of the taking on the species, and (3) there is no assurance that impacts of the taking will not jeopardize the continued existence of a State listed species because there is no guarantee that the HMA lands within the BLM's jurisdiction will be permanently conserved and managed for the benefit of the species in perpetuity.

E-21
(continued)

Mitigation Credit: In several locations the Draft EIR/EIS states that BLM's current management activities and any additional MM would be credited to the Permittees by CDFW for its Section 2081 ITP. In order to satisfy ITP requirements, mitigation must result in the permanent protection and perpetual management of compensatory habitat and is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking on the Covered Species that will result with implementation of the Project.

E-22

CDFW is unclear if the amounts calculated for mitigation land acreages include some of the development areas as mitigation (ex. trails, disturbance areas, land above underground pipelines, etc.). For example, Wolf Hill and Look Out Ridge are limited to thirty (30) acres and one-hundred and ten (110) acres for habitat conversion activities, respectively. However, the HCP states that the specific requirement is that facilities do not extend beyond areas already disturbed by Army activities. The HCP does not define the current Army disturbance area and CDFW is unclear if the Army has disturbed more area than is restricted in the thirty (30) and one-hundred and ten (110) acre habitat conversion amounts listed above. The HCP also seems to include overflow parking areas in the amount of mitigation land acreages described in the HCP. If these activities occur on lands included in the amount of mitigation land described in the HCP, CDFW recommends these areas be removed from the total acreages of mitigation lands since these areas will be impacted by the Project on an ongoing basis and will not be consistently managed for the primary benefit of the species.

E-23

Adaptive Management: The Draft EIR/EIS and HCP incorporate adaptive management practices into the AMM and MM which will allow specific actions, monitoring protocols and other activities described in the HCP to be implemented or revised without needing to amend the HCP. CDFW would like to remind the Authority that if these measures are included in a State ITP, the Permittees will not be able to use adaptive management measures as a Covered Activity under the ITP unless they are fully described and incorporated into the ITP or the ITP is amended to include these measures and all potential impacts from these measures are fully mitigated prior to their

E-24

implementation. CDFW also recommends all potential adaptive management measures be fully described in any application for an ITP for CDFW to fully evaluate any potential impacts to CESA-listed species.

E-24
(continued)

Third Party State ITP Take Coverage: There is language in the Draft EIR/EIS and HCP that alludes to Permittees having the authority to convey State ITP take coverage to other developers that are not listed as a Permittee under a State ITP that would be completing a project within the Plan Area. There is also language that states that if a Permittee under a State ITP sells land within the Plan Area the new landowner may obtain take coverage under a Certification of Inclusion issued by the Permittee. CDFW would like to clarify that for a project or landowner to have State ITP take coverage, each project or landowner would be required to either obtain their own ITP or be added as a Permittee to an existing ITP that covers the project area.

E-25

The Draft EIR/EIS and HCP also includes language that defines the qualifications and duties that will be performed by a Designated Biologist and Biological Monitor. Please be advised that the ITP(s) will specifically define the qualifications and duties that will be required of the Designated Biologist and Biological Monitor and may not necessarily conform to those listed in the HCP.

E-26

Contrary to the language included in the HCP, CDFW has not received an application for an ITP and therefore, CDFW cannot at this time determine if the Project can meet ITP issuance criteria as described in Fish and Game Code section 2081. However, the Project does not currently appear to meet the requirements for ITP issuance as discussed in the Proposed Mitigation and Mitigation Lands section of this letter and additional information or analysis will likely be needed prior to ITP issuance. In addition, CDFW response times for ITP application review and ITP issuance will comply with statutory mandates. Please note that any subsequent changes to the HCP that will affect the Project description, impacts and/or Covered Activities will require an ITP amendment prior to the initiation of these changes if the changes will result in impacts not described and contemplated in the ITP.

E-27

Hybrid CTS Removal: The Draft EIR/EIS includes a discussion about the control and removal of hybrid CTS from the Plan Area. However, a detailed description of these methods and the criteria for determining if a CTS is a hybrid have been omitted from the Draft EIR/EIS and HCP. In addition, some of the suggested methods (e.g., reducing pool hydroperiods, removal of CTS, etc.) may harm, negatively impact, or result in take of native CTS or other special-status species, or their associated habitats. CDFW advises that these potential impacts be fully described, analyzed, and include quantified enforceable measures to reduce these impacts to less than significant in any application to CDFW for an ITP.

E-28

Please be advised that in order for CTS hybrids to be removed from the population or for habitat conditions to be altered to be inhospitable to CTS hybrids, the Project will first need to obtain a State ITP and will be required to include a CTS hybrid identification plan and impact analysis for CTS hybrid removal.

E-29

Monterey Gilia: The Plan Area has one of the largest known occurrences of Monterey gilia in the entire species range (USFWS 1998). Preliminary estimates indicate that as much as sixty percent (60%) of the total known individuals of this species occur within the Plan Area (USFWS 1998). While the Draft EIR/EIS and HCP do not provide a discussion of the Project's impacts to Monterey gilia based on impacts to population occurrences (instead impacts are focused on preserved versus impacted habitat) the *USFWS Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly* (USFWS Recovery Plan) and the *USFWS Monterey Gilia 5 Year Review* (USFWS 5 Year Review) specifically discuss the impact of the HCP on populations of Monterey gilia.

E-30

As described in the HCP and further discussed in the USFWS Recovery Plan, under the HCP several population occurrences of Monterey gilia on the former Fort Ord military base are designated for development and while these areas are relatively small in acreage they contain high quality habitat and a high density of individuals (USFWS 1998). "Development of these lands will constitute the loss of some of the most productive and high density occupied habitat known for this subspecies" (USFWS 2008). The majority of the remaining occurrences in the central and eastern portion of the Plan Area are intended to be managed for conservation by BLM; however, the density of Monterey gilia individuals within these occurrences appear to be low (USFWS 2008). "It has also been observed that in the more inland areas of its distribution, Monterey gilia has morphological characteristics that intergrade with *Gilia tenuiflora* ssp. *tenuiflora*" which is not endangered and is not a special-status species of any kind (USFWS 2008). According to the USFWS 5 Year Review, the baseline studies conducted on the former Fort Ord military base assumed that all plants observed were Monterey gilia due to the difficulty to identify the subspecies in the eastern portion of the former military base and later surveys conducted by BLM personnel also followed this protocol to simplify their procedures. Therefore, it "is important to understand the morphological and genetic variability in Monterey gilia in inland areas, because most of the future development on the former Fort Ord military base is planned for the western half of the base. Preservations of populations farther north and east, including where the taxonomy is in question, is intended as mitigation for the development-associated losses in the western areas" and additional surveys will be needed to clarify the taxonomic identities of *Gilia* subspecies within the Plan Area (USFWS 2008). Due to the extent of Project-related impacts on high density populations, the preservation of lower quality habitat with fewer individuals, the question of taxonomy in the eastern preserved areas and the uncertainty of BLM in regards to permanent protection and perpetual management for the benefit of the species on the mitigation lands (see

E-31

Proposed Mitigation and Mitigation Lands section above), additional information or analysis is likely to be needed in order to meet State ITP issuance criteria for take of Monterey gilia and ensure that permit issuance does not jeopardize the continued existence of this subspecies.

E-31
(continued)

Lake and Streambed Alteration: Project activities are proposed that may involve work within the bed, bank, or channel (which may include associated riparian resources) of rivers, streams, or lakes which could require notification to CDFW and an agreement under Section 1600 et seq. of the Fish and Game Code.

E-32

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams (including any floodplain) and wetlands within and adjacent to the Plan Area. Please note that, while there is overlap, State and Federal definitions of wetlands as well as what activities require Notification pursuant to Fish and Game Code Section 1602 differ. Therefore, it is advised that a wetland delineation be completed that identifies both State and Federal wetlands in the Plan Area as well as what activities may require Notification to comply with Fish and Game Code. Fish and Game Code Section 2785(g) defines wetlands; further, sections 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from the United States Army Corps of Engineers and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with a revised Draft EIR/EIS along with an analysis of potential Project-related impacts to CDFW jurisdictional features. Including this information in an EIR will facilitate CDFW's issuance of an agreement under Fish and Game Code Section 1603. The Project applicant must also submit a Lake and Streambed Alteration Notification to CDFW for any Project-related impacts to CDFW jurisdictional features.

E-33

HCP Implementation and Compliance: The HCP states that CDFW and USFWS are participants in the oversight of HCP implementation and compliance. CDFW would like to clarify that the HCP is for a federal approval and as a result CDFW has no authority to oversee its implementation or compliance. In contrast, CDFW will monitor a Project's State ITP for Permittee compliance and implementation. As a result, CDFW would participate in HCP implementation and compliance only to the extent there is overlap with the State ITP. Nevertheless, CDFW is available to provide input on resource issues that don't implicate the State ITP to the extent that CDFW staff are available. CDFW welcomes any questions related to CDFW's role during permit oversight and compliance.

E-34

Other State ITPs Within the Plan Area: In contrast to language included in the HCP, project-specific ITPs that are within the Plan Area that were issued prior to issuance of the Fort Ord ITP, will remain in effect and the Permittees of those ITPs will be required to complete all mitigation obligations required by the ITP unless the Permittees have not engaged in project-related activities covered under the ITP and notify CDFW that they would like to withdraw their ITP.

E-35

Trustee Agency Comments:

CDFW offers the following comments and recommendations below as a Trustee Agency to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife resources.

E-36

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under certain limited circumstances such as through an NCCP or a Memorandum of Understanding for scientific purposes which do not currently apply to the Project. The fully protected California brown pelican (*Pelecanus occidentalis californicus*), white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*) are known to occur within the Plan Area, and the American peregrine falcon (*Falco peregrinus anatum*), California black rail (*Laterallus jamaicensis coturniculus*), and Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) have the potential to occur within the Plan Area. This status, and the absence of an NCCP for the Project, precludes CDFW from authorizing any amount of incidental take for fully protected species. When projects show the potential to cause take of fully protected species, we advise on appropriate measures to avoid take. Given the legal status of fully protected animals, take avoidance measures must meet very high standards of effectiveness, substantially greater than the measures to minimize take required under ITPs. CDFW recommends that permittees prepare an analysis of potential project-related impacts to fully protected species and include appropriate AMM and MM to ensure full avoidance of the above-listed species. If full avoidance cannot be achieved, CDFW recommends the Project apply for an NCCP.

E-37

Rare Plants: A large number of rare plant species are known to occur or have the potential to occur within the Plan Area and may be impacted by Project-related activities. The following twenty-eight (28) plant species are listed as California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1B species, are known to occur within the Plan Area, and meet the aforementioned CEQA Guidelines for consideration under CEQA: *vernal pool bent grass (Agrostis lacuna-vernalis)*, *Hickman's onion (Allium hickmanii)*, *Hooker's manzanita (Arctostaphylos hookeri ssp.*

E-38

hookeri), Toro manzanita (*Arctostaphylos montereyensis*), Pajaro manzanita (*Arctostaphylos pajaroensis*), sandmat manzanita (*Arctostaphylos pumila*), pink Johnny-nip (*Castilleja ambigua* var. *insalutata*), Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), Fort Ord spineflower (*Chorizanthe minutiflora*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), robust spineflower (*Chorizanthe robusta* var. *robusta*), seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), Eastwood's goldenbush (*Ericameria fasciculata*), sand-loving wallflower (*Erysimum ammophilum*), Yadon's wallflower (*Erysimum menziesii* ssp. *yadonii*), Monterey (sand) gilia (*Gilia tenuiflora* ssp. *arenaria*), Monterey cypress (*Hesperocyparis macrocarpa*), Kellogg's horkelia (*Horkelia cuneata* var. *sericea*), Contra Costa goldfields (*Lasthenia conjugens*), legenere (*Legenere limosa*), Oregon meconella (*Meconella oregana*), marsh microseris (*Microseris paludosa*), northern curly-leaved monardella (*Monardella sinuata* ssp. *nigrescens*), Monterey pine (*Pinus radiata*), Yadon's rein orchid (*Piperia yadonii*), Choris' popcornflower (*Plagiobothrys chorisianus* var. *chorisianus*), Santa Cruz clover (*Trifolium buckwestiorum*), and Pacific Grove clover (*Trifolium polyodon*).

E-38
(continued)

An additional twenty-four (24) plant species may also occur within the Plan Area and are listed as CNPS CRPR 1B species that also meet the aforementioned CEQA Guidelines for consideration under CEQA: Little Sur manzanita (*Arctostaphylos edmundsii*), alkali milk-vetch (*Astragalus tener* var. *tener*), coastal dunes milk-vetch (*Astragalus tener* var. *titi*), round-leaved filaree (*California macrophylla*), Jolon clarkia (*Clarkia jolonensis*), San Francisco collinsia (*Collinsia multicolor*), Hospital Canyon larkspur (*Delphinium californicum* ssp. *interius*), Hutchinson's larkspur (*Delphinium hutchinsoniae*), Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*), fragrant fritillary (*Fritillaria liliacea*), Santa Cruz tarplant (*Holocarpha macradenia*), Point Reyes horkelia (*Point Reyes horkelia*), beach layia (*Layia carnosa*), Tidestrom's lupine (*Lupinus tidestromii*), Carmel Valley bush-mallow (*Malacothamnus palmeri* var. *involucratus*), Santa Lucia bush-mallow (*Malacothamnus palmeri* var. *palmeri*), Carmel Valley malacothrix (*Malacothrix saxatilis* var. *arachnoidea*), woodland woollythreads (*Monolopia gracilens*), San Francisco popcornflower (*Plagiobothrys diffusus*), Hickman's cinquefoil (*Potentilla hickmanii*), angel's hair lichen (*Ramalina thrausta*), Santa Cruz microseris (*Stebbinsoseris decipiens*), maple-leaved checkerbloom (*Sidalcea malachroides*), and California screw-moss (*Tortula californica*).

E-39

The Draft EIR/EIS notes that impact analysis for special-status plant species determined to have a low or unlikely potential to occur within the Plan Area is not necessary. The determination of low or unlikely potential for habitation appears to be based upon documented occurrences within the Plan Area, California Natural Diversity Database (CNDDDB) documented occurrences, and whether the species was planted or occurred naturally within the Plan Area.

E-40

As stated in the Draft EIR/EIS, the "most comprehensive surveys that took place in the Plan Area were the 1992 *Flora and Fauna Baseline Study of Fort Ord, California*"

E-41

conducted in 1992. The baseline studies were only conducted during one season, were outside of the floristic period for many of the rare plants listed above, did not focus on the documentation of specific plant population locations, or follow approved floristic survey methodologies which include the use of reference populations. As has been stated previously, while the baseline studies were updated to include resource agency database occurrences and results from surveys conducted for various projects in the Plan Area up through 2017, these surveys were project site-specific and did not cover the entire Plan Area and were not all plant focused. CDFW cautions that the CNDDDB is a voluntary database that is reliant on the *voluntary* submission of data from outside sources. Therefore, it is not a complete assessment of species presence; and absence of species data in the database should not be used to provide justification for absence. Furthermore, the planting of special-status plant species within the Plan Area does not remove their special status designation, and potential Project-related impacts to these species are advised to be analyzed under CEQA.

E-41
(continued)

The Draft EIR/EIS and HCP also failed to analyze potential Project-related impacts to the remainder of the rare plant species listed above. The Draft EIR/EIS referred to the HCP for the Project-related impact analysis, AMM, and MM that would benefit these species. However, the HCP only addresses four (4) plant species (i.e., Monterey spineflower, seaside bird's-beak, Monterey (sand) gilia and Yadon's rein orchid) and the impact analysis and associated AMM and MM are specific to these four (4) plant species. While a few AMM and MM may provide some incidental benefit to the rare plant species, they are not specific measures to reduce impacts to these species and the overall benefit and Project-related impacts to these species cannot be determined since an impact analysis was not provided in either the Draft EIR/EIS or the HCP. Therefore, CDFW recommends an AMM and MM be added to the Draft DEIR/DEIS that requires surveys to be conducted for special status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018) prior to initiation of any vegetation or ground disturbing activities in all areas that have potentially suitable habitat for special-status plant species. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then CDFW recommends providing greater detail regarding alternate minimization and compensatory mitigation measures, such as reduced buffers, describing the intent and anticipated success of transplanting, and specifying success criteria for transplanted plants and related long-term protection and management that would occur under a conservation easement.

E-42

Cumulative impacts: Due to the generalized way in which the Draft EIR/EIS has defined cumulative impacts, the CEQA document does not appear to contain a complete analysis of cumulative impacts. Therefore, CDFW recommends more information and analysis of cumulative impacts involving past, present and reasonably foreseeable probable future projects in and within the vicinity of the Plan Area including, but not limited to, the realignment of State Route 68 and the Fort Ord Regional and Greenway Project be included as part of any ITP application.

E-43

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

E-44

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

E-45

CONCLUSION

CDFW appreciates the opportunity to comment on the Draft EIR/EIS to assist the Authority in identifying and mitigating Project impacts on biological resources and for the Authority to prepare an application to CDFW for an ITP. Due to the issues presented in this letter, CDFW concludes that additional information and analysis is likely necessary in order for CDFW to issue a State ITP and fulfill its related CEQA obligations in its role as a Responsible Agency.

E-46

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to Lori Bono,

E-47

Josh Metz, Fort Ord Reuse Authority
Stephen Henry, United States Fish and Wildlife Service
December 13, 2019
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Senior Environmental Scientist (Specialist), at the address provided on this letterhead,
by telephone at (559) 243-4014, extension 350, or by electronic email at
Lori.Bono@wildlife.ca.gov.

E-47
(continued)

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie Vance", with a large, sweeping flourish at the end.

Julie A. Vance
Regional Manager

cc: Office of Planning and Research
State Clearinghouse
Post Office Box 3044
Sacramento, California 95812-3044

ec: Annee Ferranti, CDFW, Annee.Ferranti@wildlife.ca.gov
Lori Bono, CDFW, Lori.Bono@wildlife.ca.gov

Josh Metz, Fort Ord Reuse Authority
Stephen Henry, United States Fish and Wildlife Service
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REFERENCES

CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.

USFWS, September 1998. Seven Coastal Plants and the Myrtle's Silverspot Butterfly Recovery Plan.

USFWS, March 2008. Monterey Gilia Five-Year Review: Summary and Evaluation.

4.6 RESPONSE TO COMMENT LETTER E: CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

- E-1** Comment is acknowledged. No response is required.
- E-2** Comment is acknowledged. No response is required.
- E-3** The comment provides information on the CDFW’s CEQA role as a Trustee Agency and is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged. No response is required.
- E-4** The comment provides information on the CDFW’s CEQA role as a Responsible Agency and is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged. No response is required.
- E-5** The comment discusses CDFW jurisdiction over actions with potential to result in disturbance or destruction of active nest sites. CDFW’s CEQA role and their jurisdiction on active nests sites is discussed in the Draft EIS/EIR (Section 3.4.2.2). Comment is acknowledged. No response is required.
- E-6** The comment discusses CDFW jurisdiction over fully protected species. CDFW’s CEQA role and their jurisdiction over fully protected species is discussed in the Draft EIS/EIR (Section 3.4.2.2). Comment is acknowledged. No response is required.
- E-7** The comment discusses the criteria to be considered endangered, rare, or threatened under CEQA. These criteria are discussed in the Draft EIS/EIR (Sections 3.4.2.2 and 3.4.4.1). Comment is acknowledged. No response is required.
- E-8** The comment discusses CDFW’s regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. CDFW’s CEQA role and their jurisdiction over streams and/or lake are discussed in the Draft EIS/EIR (Section 3.4.2.2). Comment is acknowledged. No response is required.
- E-9** The comment discusses CDFW’s regulatory authority associated with depositing, or permitting to pass into, “waters of the state” any substance or material deleterious to fish, plant life, or bird life, including non-native species. It also notes that the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (ACOE) have jurisdiction regarding discharge and pollution to waters of the state. These regulations are discussed in the Draft EIS/EIR (Sections 3.4.2.1 and 3.4.2.2). Comment is acknowledged. No response is required.
- E-10** The comment accurately summarizes the project features; no response is necessary.
- E-11** The comment notes that purpose of the comments and recommendations within the letter is to support FORA in submitting a complete ITP application package. In addition, the comment notes that editorial comments or other suggestions are included in the letter to improve the Draft EIS/EIR. Comment is acknowledged. No response is required.
- E-12** The comment suggests that the Draft EIS/EIR describes the project as the HCP and the issuance of the Federal and State ITPs and the project should be defined as the “development and redevelopment of the former Fort Ord military base” to include the “whole of the action.”

As described in Chapter 1, *Introduction*, on page 1-1 of the Draft EIS/EIR, the EIS/EIR analyzes the potential impacts of the Proposed Action (the “project” under CEQA, as defined in the Draft EIS/EIR; please refer to Section 1.5.3, *Joint NEPA/CEQA Document*, for an overview of the terminology in the Draft EIS/EIR), which includes the issuance of the ITPs by the USFWS and CDFW and approval and implementation of the Draft HCP, and analyzes a reasonable range of alternatives. As described in Section 4.1.1.3, *Approach to Analysis of*

Resources Considered, the Proposed Action is clearly defined and summarized into two categories: Category 1 – Development activities, and Category 2 – Habitat management activities. This section specifies that development activities on the former Fort Ord are analyzed in the Draft EIS/EIR at a program level, and that habitat management activities are analyzed in the Draft EIS/EIR at a project level. Under the Proposed Action, the extent of development activities would occur consistent with the Reuse Plan and the applicable general plans of the affected land use jurisdictions.

As described on page 4.1-8 of the Draft EIS/EIR future development activities are not part of the “project” under CEQA that are subject to approval by the CEQA lead agency and Permittees, are not part of the “project” under CEQA that would be subject to permitting by the CDFW, and are not part of the “action” under NEPA that would be subject to permitting by the USFWS (please refer to Section 1.7, *Decisions to be Made*, of the Draft EIS/EIR). The EIS/EIR “project” under CEQA and “action” under NEPA consists of the approval and implementation of the Draft HCP and issuance of the associated take permits, but not the actual construction of or discretionary entitlements of future development activities. Thus, the environmental impacts of future development activities in the Plan Area would not directly result from the decisions to be made for the Proposed Action. However, since future development activities are covered activities for which the ITPs would address take, the potential environmental impacts of future development activities as well as all other covered activities proposed for coverage under the ITPs are addressed in the Draft EIS/EIR. Therefore, the Draft EIS/EIR does analyze the “whole of the action.”

- E-13** The comments states that the survey methodology discussion in the Draft EIS/EIR and Draft HCP appears to be incomplete and will likely require supplementation for CDFW to issue an ITP. CDFW recommends that the original survey methodologies and results be provided to CDFW as part of any application for an ITP. As requested, the Permittees will coordinate with CDFW prior to preparing and submitting an ITP application to ensure CDFW receives the information it needs to issue a permit. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- E-14** The comment requests to be contacted prior to preparing the ITP application submittal to ensure CDFW receives the information and analysis it needs to issue a permit. Please refer to Response E-13. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- E-15** The comment states that the Draft EIS/EIR does not fully describe the extent of development activities that will be allowed in the Habitat Management Areas (HMAs) and where they will occur within each parcel in contrast to where species populations occur in the Plan Area. As such, CDFW cannot fully evaluate project-related impacts to special-status species or provide thorough and robust comments on the proposed AMMs and MMs. CDFW states that this information would be useful for CDFW in reviewing an ITP application.

The allowed development acreages and uses are described in detail in Section 3.3.2, *Allowable Development in HMAs*, of the Draft EIS/EIR, and summarized in on page 2-23 of the Draft EIS/EIR. Table 2-10, HMA Allowable Development, Road Corridors and Infrastructure, and Preserved for Habitat Management, provides the estimated acreages of the covered activities within the HMAs.

As described in Section 4.1.1.3, *Approach to Analysis of Resources Considered*, of the Draft EIS/EIR, the Proposed Action is clearly defined and summarized into two categories: Category 1 – Development activities, and Category 2 – Habitat management activities. Category 1 – Development activities include, but are not limited to, allowable development within the HMAs and future road corridor and infrastructure projects within HMAs. Some of these development activities are more defined than others. However, as described in Section 4.1.1, *Previous and*

Future Environmental Review, because information about the precise amounts, specific locations, and actual timing of future development projects over the 50-year study period is incomplete, these future development activities are analyzed at a program level in the EIS/EIR. As described in Section 4.1.1, *Previous and Future Environmental Review*, it would be speculative to identify project-specific impacts and mitigation for future development activities.

As stated in Responses E-13 and E-14, CDFW will be contacted prior to preparing the ITP application submittal to ensure CDFW receives the information and analysis it needs to issue a permit.

E-16 The comment requests additional information regarding the AMMs and MMs to assist in CDFW's review of an ITP application, and as an example, request design requirements for escape ramps and trench covers be identified. As discussed in Responses E-13 and E-14, the Permittees will coordinate with CDFW on including more detail to assist CDFW's review of the ITP application when submitted.

E-17 The comment states that clear inclusion of AMMs and MMs referenced from other plans or documents to mitigate on the State listed species would also assist in CDFW's review. The comment further states that assuming the measures were used to inform the significance determination, it is unclear how the measures would be enforceable or implemented to ensure the significance determination is accurate.

As described on page 4.1-2 of the Draft EIS/EIR, assumes that all future development activities will be required to comply with all applicable Fort Ord Reuse Plan and/or applicable land use plan goals, policies, and implementation measures, as well as the applicable programmatic mitigation measures identified in each of the respective plan EIRs.

However, as stated on page 4.4-15, the Draft EIS/EIR determined that implementation of the AMMs and MMs identified in the Draft HCP would reduce potentially significant impacts that may result from covered activities to HCP species, including the covered State listed species, to a less-than-significant level. The significance determination does not rely on any other documents or plans to mitigate for State listed species.

E-18 The comment states that the assumption of the absence of special-status species within the developed areas in the Draft EIS/EIR and HCP may result in underestimation of the project's potential impacts on these species.

The Draft EIS/EIR analyzes the potential for impacts to special-status plant and wildlife species under the Proposed Action and alternatives. Please refer to Section 4.4.2, *Impacts and Mitigation Measures*, in the Draft EIS/EIR. As stated on page 2-3 of the Draft EIS/EIR, an assumption was made under the No Action Alternative that for the development activities proposed within the existing disturbed/developed areas, the likelihood of impacts to Federal or State listed species is low due to the negligible amount of suitable habitat within these parcels. Therefore, it is unlikely that take authorization from the USFWS or CDFW would be required for the majority of development activities within the 4,241 acres of development areas.

As described on page 4.1-8 of the Draft EIS/EIR, all covered activities, including development activities within the designated development areas and HMAs, are subject to the approval of the Permittees with jurisdiction over such projects. Approval of the proposed Draft HCP does not confer or imply approval to implement the covered activities. Rather, as part of the standard approval process, individual projects will be considered for further environmental analysis and generally will receive separate, project-level environmental analysis under CEQA and, in some cases, NEPA for those projects involving Federal agencies.

Under the No Action Alternative, the base-wide ITPs would not be issued by the Wildlife Agencies and the Draft Fort Ord HCP would not be approved or implemented by the Permittees. Instead, endangered species permitting would continue to occur on an individual, project-by-project basis.

The purpose of describing and analyzing a no action alternative is to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project conditions may include some reasonably foreseeable changes in the existing conditions and changes that would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. For the purposes of comparing the No Action Alternative to the Proposed Action, it is reasonable to assume that development activities could avoid impacts to Federal and State listed species within the majority of the 4,241 acres of primarily developed designated development areas.

It is acknowledged, as well as analyzed under the Proposed Action Alternative, that there are known occurrences of Federal and State listed species in the primarily developed designated development areas. However, for the purposes of establishing a reasonable comparison with no project conditions, it was important to emphasize the significant presence of resources within the 5,051 acres of vegetated designated development areas to demonstrate the reasonable implications of not obtaining base-wide ITPs and approving the HCP.

As such, the Draft EIS/EIR and Draft HCP do not assume absence of special-status species within the developed areas of the former Fort Ord. Rather, the analysis makes some assumptions of the conditions under the No Action Alternative to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.

- E-19** The comment states that for ITP purposes, CDFW generally considered temporary impacts to be impacts that occur only during the project-related activity (e.g., temporary impact occurring during the active installation of a bridge, etc.) as opposed to impacts that continue to occur after the activity has been completed for up to a period of five years.

The comment further requests more information about several project-related activities such as, but not limited to: beach species management activities; controlled burns; California tiger salamander (CTS) hybrid identification, removal and potential habitat impacts; special-status plant species seed collection and reseeded; CTS barriers; fencing design and location; and other described and undescribed project related activities. As such the CEQA document lacks sufficient detail and analysis for CDFW to fully assess any future ITP application.

This comment highlights again the differences between CEQA and the permitting process. As described in Response E-13, the Permittees will consult with CDFW prior to submitting an ITP application to ensure the level of detail and analysis is sufficient for permit issuance. The CDFW, as responsible agency, would then be able to evaluate the information in the ITP application to determine whether the EIR includes an adequate analysis of the potential impacts.

- E-20** The comment accurately reflects the proposed mitigation lands calculations and some of the discussion points related to BLM and its role and responsibility in relation to the Proposed Action. No response is required.

- E-21** The comment states that since the majority of the mitigation lands occur on BLM lands and BLM will not be a party to the Federal or State ITPs and is not bound to comply with the Draft HCP, Draft EIS/EIR, of Federal and State ITPs, and measures listed within the HCP may be changed either through an amendment to the HCP or through adaptive management measures, the project as proposed may not meet State ITP issuance criteria as there is not guarantee that

the mitigation lands within BLM’s jurisdiction will be permanently conserved and managed for the benefit of the species in perpetuity. As stated above, Permittees will coordinate with CDFW prior to preparing and submitting an ITP application to ensure CDFW receives the information it needs to issue a permit.

In addition, FORA and its consultants worked closely with the Permittees, CDFW, and USFWS to identify a Reduced/Phased HCP Alternative that would not rely on BLM lands for mitigation. Please refer to **Chapter 5** of this Final EIR.

- E-22** This is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged and no response is required.
- E-23** The comment states that CDFW is unclear whether mitigation land acreages include development areas as mitigation (e.g., trails, disturbance areas, land above underground pipelines, etc.). As an example, CDFW requests clarification on the amount of habitat disturbed by the Army and actual acreage of mitigation land for Wolf Hill and Lookout Ridge HMAs. CDFW recommends that if not done so already, the HCP should remove any development acreages from the total acreages of mitigation lands.
- To clarify the acreages of disturbance and mitigation within Wolf Hill and Lookout Ridge HMAs, as stated on page 3-33 of the Draft HCP, the maximum footprint for the amount of habitat to be converted for these HMAs would be limited to 30 acres of Wolf Hill and 110 acres of Lookout Ridge; the Army disturbance falls *within* these maximum footprints as shown as “expansion areas” in Figures 3-13 and 3-14 of the Draft HCP.
- As shown in Table 2-10 of the Draft EIS/EIR, the acreages of development activities within HMAs are not included in the total preserved habitat acreages by HMA.
- E-24** This is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged and no response is required.
- E-25** This is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged and no response is required.
- E-26** This is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged and no response is required.
- E-27** The comment accurately states that the CDFW has not received an application for an ITP and cannot determine if the project can meet permit issuance criteria as described in Section 2081 of the CFG Code. The comment also states that, as mentioned in Comment E-21, additional information or analysis will likely be needed prior to ITP issuance, and that ITP application review and issuance will comply with statutory mandates, including the potential need for amendments. This is not a comment on the environmental analysis in the Draft EIS/EIR. Comment is acknowledged and no response is required.
- E-28** The comment requests that a detailed description of the methods and criteria for controlling and removing hybrid CTS be described and analyzed in any application to CDFW for an ITP. As discussed in Response E-13, the Permittees will coordinate with CDFW on including more detail to assist CDFW’s review of the ITP application when submitted.
- E-29** The comment advises that a State ITP will be required in order to implement CTS hybrid control or removal. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- E-30** The comment provides estimates of Monterey gilia within the Plan Area and states that the Draft EIS/EIR and HCP do not provide a discussion of the project’s impacts to Monterey gilia based on impacts to population occurrences (instead impacts are focused on preserved versus impacted habitat). The comment suggests that the USFWS’s Recovery Plan for Seven Coastal

Plants and the Myrtle's Silverspot Butterfly (1998) and the Monterey Gilia 5 Year Review (2008) specifically address the impact of the HCP on populations of Monterey gilia.

Given the information provided in these documents and per the request of CDFW, the effects of sand gilia were evaluated for three geographic areas in the Plan Area, as illustrated on Figure A-1 of Appendix A and are summarized in Table 4-9 of the Draft HCP. Please also refer to Section 4.3.1.1, *California Department of Fish and Wildlife Area Analysis*, in the Draft HCP.

E-31 Please refer to Responses E-13, E-27, and E-30.

E-32 The comment states that project activities are proposed that may involve work within the bed, bank, or channel (which may include associated riparian resources) of rivers, streams, or lakes, which could require notification to CDFW and an agreement under Section 1600 et seq. of the CFG Code.

The Draft EIS/EIR summarizes the regulations pursuant to Sections 1600-1607 of the CFG Code in Section 3.4.2.2 on page 3.4-3. As discussed on page 4.4-2 of the Draft EIS/EIR, no development activities would occur in aquatic habitat within designated development areas or HMAs. As discussed on page 4.4-23 of the Draft EIS/EIR, impacts to sensitive natural communities, including aquatic and riparian resources) resulting from the construction and operation of future development activities would be evaluated on a project-by-project basis pursuant to NEPA and/or CEQA, and potentially significant impacts would be identified and mitigated pursuant to the requirements of appropriate laws and regulations, as described in Section 3.4.2.

E-33 The comment recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams and wetlands within and adjacent to the Plan Area and identify what activities may require notification to comply with CFG Code.

As described in Response E-32, no development activities are proposed within aquatic habitat; however, future development activities and habitat management activities are required to comply with all Federal and State regulations, including the CFG Code. A clarifying sentence was added to the sensitive habitats impact discussion in the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.

E-34 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

E-35 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

E-36 The comment identifies CDFW's role as a Trustee Agency under CEQA and states that CDFW is offering the comments and recommendations below to assist FORA in adequately identifying and/or mitigating the project's impacts on fish and wildlife resources.

E-37 The comment describes CDFW's jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, and that CDFW cannot authorize their take in association with a general project except limited circumstances such as through a Natural Community Conservation Plan (NCCP) or a Memorandum of Understanding for scientific purposes which do not currently apply to the project. The comment states that the fully protect California brown pelican (*Pelecanus occidentalis californicus*), white-tailed kite (*Elanus leucurus*), and golden eagle (*Aquila chrysaetos*) are known to occur in the Plan Area, and the American peregrine falcon (*Falco peregrinus anatum*), California black rail (*Laterallus jamaicensis coturniculus*), and Santa Cruz long-toed salamander (*Ambystoma macrodactylum coturniculus*) have the potential to occur in the Plan Area. CDFW recommends that the Permittees prepare an analysis of potential project-related impacts to fully protected species and include

appropriate AMMs and MMs to ensure full avoidance of these species. If fully avoidance cannot be achieved, CDFW recommends the project apply for an NCCP

Section 3.4.2.2 of the Draft EIS/EIR identifies the State regulations that may be applicable to the Proposed Action, including CFG Code related to fully protected species. Section 3.4.4 of the Draft EIS/EIR discusses the methodology used to describe the affected environment for biological resources in the Plan Area, including identifying data sources and defining special-status species and sensitive habitats. As identified on page 3.4-9, fully protected species are identified as special-status species and, therefore, included in the analysis in the Draft EIS/EIR. From the comprehensive list of resources identified in this section, a list of special-status plant and wildlife known or with the potential to occur within the Plan Area was created (please refer to Table B-1 in Appendix B of the Draft EIS/EIR). The list presents these species along with their legal status, habitat requirements, and a brief statement regarding the likelihood for the species to occur.

Of the species identified in the comment, the analysis concluded that California brown pelican, golden eagle, white-tailed kite are identified as known to occur within the Plan Area. The complete list of special-status wildlife species not covered by the Draft HCP that are known or have a moderate or high likelihood to occur within the Plan Area is provided on page 3.4-14 of the Draft EIS/EIR. The American peregrine falcon, California black rail, and California long-toed salamander were determined unlikely to occur given the distance of nearest occurrences (i.e., outside of its range) and/or lack of suitable nesting habitat within the Plan Area. In accordance with the methodology, those species identified as having a low or unlikely potential to occur with the Plan Area are not further analyzed in the Draft EIS/EIR.

The impact discussion, Impact BIO-1b: Impacts to Non-HCP Special-Status Species and Habitat under the Draft HCP, on page 4.4-19, analyzes the potential impacts to the three fully protected wildlife species, in addition to the other non-HCP special-status species. As noted, development and habitat management activities would be required to implement the AMMs and MMs identified in the Draft HCP.

Environmental impacts to non-HCP species and their habitat resulting from the construction and operation of future development activities under the Proposed Action would be evaluated on a project-by-project basis pursuant to NEPA and CEQA, as applicable, and potentially significant impacts would be identified and mitigated pursuant to the requirements of appropriate laws and regulations, including obtaining required permits from CDFW.

In evaluating potential impacts from implementing the habitat management requirements of the Draft HCP, due to the specific habitat requirements and the required implementation of AMMs and MMs, the analysis in the Draft EIS/EIR determined that impacts to the California brown pelican are less-than-significant. However, even with the implementation of the AMMs and MMs identified in the Draft HCP, the analysis in the Draft EIS/EIR determined that operation and management activities may result in direct and indirect adverse impacts to non-HCP species, including, but not limited to, special-status avian species (e.g., fully protected avian species). As a result, the Draft EIS/EIR identifies additional mitigation measures to reduce these potential impacts to a less-than-significant level.

Once the ITP is submitted to CDFW, the Permittees will consult with CDFW to determine if additional measures are needed to avoid take of the identified fully protected species. If additional measures are not sufficient to ensure avoidance, the project would apply for an NCCP, in accordance with State regulations.

E-38 The comment states that 28 plant species listed as California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1B species are known to occur within the Plan Area.

As discussed in Response E-37, Section 3.4.4 of the Draft EIS/EIR discusses the methodology used to describe the affected environment for biological resources in the Plan Area, including identifying data sources and defining special-status species and sensitive habitats. As identified on page 3.4-9, CNPS CRPR 1B species are identified as special-status species and, therefore, included in the analysis in the Draft EIS/EIR. From the comprehensive list of resources identified in this section, a list of special-status plant and wildlife known or with the potential to occur within the Plan Area was created (please refer to Table B-1 in Appendix B of the Draft EIS/EIR). The list presents these species along with their legal status, habitat requirements, and a brief statement regarding the likelihood for the species to occur.

The analysis in the Draft EIS/EIR determined that all but two species identified by CDFW were known to occur within the Plan Area: Monterey cypress (*Hesperocyparis macrocarpa*) and Monterey pine (*Pinus radiata*). In review of the data sources cited and historic planting of these species on the former Fort Ord, it was determined that native Monterey cypress and Monterey pine were unlikely to occur in the Plan Area.

- E-39** The comments states that in addition to the 28 plant species identified in Comment E-38, 24 plant species listed as CNPS CRPR 1B may occur within the Plan Area and meet the CEQA Guidelines for consideration under CEQA.

As discussed in Response E-38, CNPS CRPR 1B species are evaluated in the Draft EIS/EIR. The analysis in the Draft EIS/EIR determined that two of the 24 species listed in the comment had a high likelihood to occur in the Plan Area. The remaining 22 species were determined to have a low or unlikely potential to occur in the Plan Area for the reasons identified in Table B-1 in Appendix B of the Draft EIS/EIR.

- E-40** The comment states that the determination of low or unlikely potential to occur appears to be based upon documented occurrences within the Plan Area, California Natural Diversity Database (CNDDDB) occurrences, and whether the species was planted or occurred naturally within the Plan Area.

The data sources supporting the biological resources analysis in the Draft EIS/EIR are described in Section 3.4.4.1, *Data Sources*, on page 3.4-7 of the Draft EIS/EIR. As identified on pages 3.4-7 through 3.4-10, the data sources extend well beyond the three sources identified in the comment and include a comprehensive list of over 30 literature and data sources to support the analysis in the Draft EIS/EIR.

- E-41** The comment restates a comment in the Draft EIS/EIR that states “the most comprehensive surveys that took place in the Plan Area were the Army’s 1992 *Flora and Fauna Baseline Study of Fort Ord, California*” and identifies concerns CDFW has with the study. The comment further states while some studies have been updated, they did not cover the entire Plan Area and were not all plant focused. In addition, the comment cautions that the submission of occurrence to the CNDDDB is voluntary and should not be used to justify absence. The comment also states that due to reliance on this information, this is not a complete assessment of species presence. The comment continues by stating that the planting of special-status plant species within the Plan Area does not remove their special-status designation and that potential project-related impacts to these species should be analyzed under CEQA.

As discussed in Response E-40, the analysis in the Draft EIS/EIR considered these limitations and, as a result, relied on a comprehensive list of data sources, extending well beyond the Army’s 1992 Baseline Study and CNDDDB. The result is an adequate, comprehensive analysis of the potential for occurrence of special-status plant species. Please note that based on the review of literature cited, horticultural species of Monterey pine and Monterey cypress were extensively planted on the former Fort Ord and because their historical range and distribution does not include the former Fort Ord, Monterey pine and Monterey cypress are assumed to be

horticultural variants of the native species, and, therefore, are not considered special-status plants in this analysis.

- E-42** The comment states that the Draft EIS/EIR and HCP failed to analyze potential project-related impacts to the remainder of the rare plant species listed above. The comment recommends that an AMM and MM be added to the Draft EIS/EIR that requires surveys to be conducted for special-status plants by a qualified botanist following the required protocols prior to the initiation of any vegetation or ground disturbing activities in all areas that have potentially suitable habitat for special-status plant species.

An additional mitigation measure that incorporates this recommendation is already included in the Draft EIS/EIR. Please refer to MM BIO-8 on page 4.4-22 of the Draft EIS/EIR.

- E-43** The comment states that the Draft EIS/EIR does not appear to contain a complete analysis of cumulative impacts and recommends more information and analysis involving past, present, and reasonably foreseeable probable future projects in and within the vicinity of the Plan Area, including but not limited to, the realignment of State Route 68 and the Fort Ord Regional Trail and Greenway Project be included as part of any ITP application.

Section 4.1.3, *Cumulative Effects*, on page 4.1-10 of the Draft EIS/EIR, summarizes the NEPA and CEQA requirements related to the analysis of cumulative effects, approach and scope of the analysis, and the reasonably foreseeable future actions analyzed in the Draft EIS/EIR. As described on page 4.1-11, the Draft EIS/EIR relies on a combined approach for the cumulative analysis, considering local land use plans as well as other past, present, and reasonably foreseeable actions that have the potential, when combined with the project, to result in cumulative effects. To determine the cumulative actions, the EIS/EIR reviewed other large-scale projects and planning efforts in the region that would likely result in impact similar in kind or location as those included in the project and alternatives.

The Fort Ord Regional Trail and Greenway is a covered activity in the Draft HCP, and, as a result, is analyzed at a program level in the Draft EIS/EIR. At the time of analysis, the feasibility of realigning State Route 68 was being studied, but a proposed project was not available. As a result, the proposed realignment of State Route 68 was not included in the cumulative analysis.

Per the request of CDFW and as noted in previous responses, the Permittees will consult and coordinate with CDFW prior to submittal of an ITP application to ensure CDFW has the requisite information for permit issuance.

- E-44** The comment requests that in accordance with CEQA, any special-status species and natural communities detected during project surveys be reported to the CNDDDB. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

- E-45** The comment identifies the requirement to pay the CDFW filing fee upon filing of the Notice of Determination by the Lead Agency. The Lead Agency will pay the fee in accordance with the State Regulations.

- E-46** Please refer to Responses E-4 and E-13.

- E-47** Comment is acknowledged. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.



December 16, 2019

Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B,
Ventura, CA 93003

Re: Comment letter on the Fort Ord Multi-Species Habitat Conservation Plan Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR)

Dear Mr. Henry,

California State University Monterey Bay (CSUMB) has reviewed the Multi-Species Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIS) and offers the following comments:

F-1

Draft HCP, Vol 1

1. Page 289 -"Mitigation Measure-1. Adopt implementing ordinance or policy. Each Permittee will adopt an implementing ordinance or policy to implement the HCP on the local, agency, or institutional level. The ordinance or policy will incorporate the relevant components of the HCP for private applicants and clearly identify the requirements for development on former Fort Ord (see Section 7.4, Local Implementing Ordinances and Policies, for full requirement discussion)."

F-2

- The ultimate implementing ordinance language and adoption process will be determined by the California State University.

2. Page 551 – "Table 9-6. Cost and Funding Sources"

- CSUMB will fund its borderland costs through annual payments in accordance with the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and CSUMB, dated September 14, 2009.

F-3

3. Page 561 - "Table 9-11. Borderlands Costs and Funding - CSUMB will fund its borderland costs through annual payments in accordance with the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and CSUMB, dated September 14, 2009."

F-4

- CSUMB's HCP cost obligations are described above.

4. Page 563 - "The Board of Trustees of California State University (on behalf of CSUMB) has agreed to request money from the State Legislature to make certain negotiated payments to FORA to mitigate regional educational-related development impacts. As provided in the Stipulation to Discharge Peremptory Writ of Mandate Order among FORA, Marina, and CSUMB, dated September 14, 2009, CSUMB shall request legislative funding to pay FORA a

F-5

one-time payment of \$47,800.00 for HCP preparation costs plus \$4,784.91 annual payment to manage the CSUMB Borderland property. After FORA's dissolution, CSUMB shall make its \$4,784.91 annual payment to the Cooperative. CSUMB shall make its one-time payment of \$47,800 before June 30 of the first full fiscal year (July 1 to June 30) of the fifty (50) year Permit term. CSUMB shall make its annual payment of \$4,784.91 before June 30 of each fiscal year, commencing with the first full fiscal year of the Permit term. If the Legislature denies CSUMB's initial funding request, CSUMB shall: (a) resubmit, and exercise all reasonable efforts to diligently pursue, the request during the following CSUMB budget cycle, and (b) continue to resubmit, and exercise all reasonable efforts to diligently pursue, the request not less frequently than annually until the funding is appropriated or until the obligations of all Parties with respect to the HCP have been fully performed, whichever comes first. If the Legislature has not appropriated the funding at or before the time the HCP is executed by all other Parties, CSUMB shall seek, and exercise all reasonable efforts to diligently pursue, authority from the California State University Board of Trustees to engage in discussions with representatives of FORA and Marina regarding the availability of alternative funding sources, if any, for CSUMB's one-time payment of \$47,800.00 and its annual payments of \$4,784.91. To the extent funding is appropriated from the Legislature or provided through an agreed alternative funding source, FORA, and thereafter its successor agency, if any, shall allocate CSUMB's payments to reimburse HCP preparation costs and for management of CSUMB Borderlands property to the HCP Fund. With respect to the Federal Permit and the State Permit, CSUMB's payments to FORA will fulfill all of CSUMB's HCP funding obligations and Borderlands management obligations, pursuant to this HCP. CSUMB will not be subject to any additional fees including special assessments, taxes, or CFD Special Taxes. If the negotiated payments are not paid, then the take on CSUMB lands will not be allowed."

F-5
(continued)

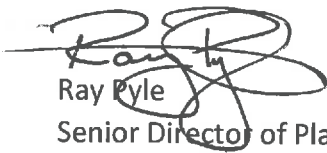
- CSUMB's HCP cost obligations are described above.

Draft HCP, Vol 2

5. Page 384 – "Policy Re: collection of CFD Special Tax & Implementation Procedures for the FO Multispecies HCP"
 - The ultimate implementing ordinance language and adoption process will be determined by the CSU.

F-6

Sincerely,



Ray Pyle

Senior Director of Planning Design and Construction
Campus Planning & Development

**4.7 RESPONSE TO COMMENT LETTER F: CALIFORNIA STATE UNIVERSITY
MONTEREY BAY**

- F-1** The comment introduces the comments in the letter. No response is required.
- F-2** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- F-3** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- F-4** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- F-5** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- F-6** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.



DEPARTMENT OF PARKS AND RECREATION
 Monterey District
 2211 Garden Road
 Monterey, CA 93940

Lisa Ann L. Mangat, Director

RE: FORT ORD
 MULTI-SPECIES HABITAT CONSERVATION PLAN
 PUBLIC DRAFT DEIS/EIR
 SCH #2005061119

FROM: California State Parks
 DEIS/EIR Comments
 (December 16, 2019)

Thank you for the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan Public Draft DEIS/EIR, SCH #2005061119. The comments below reflect State Park staff and Counsel Review.

G-1

**FORT ORD
 MULTI-SPECIES HABITAT CONSERVATION PLAN
 PUBLIC DRAFT DEIS/EIR
 SCH #2005061119**

AMM 27. Timing of Patrols. Does this include patrols by ranger staff in addition to State Park environmental scientist staff? Clarify. If so, there needs to be an allowance or provision made for ranger staff flexibility in meeting any established patrol frequencies as ranger staff frequently respond to public safety emergencies, lead interpretive walks, fill in shifts for ranger staff absent due to vacations, training, administrative leave, and or sick leave at nearby adjacent units. Text needs to be added here stating that patrols will occur as staff are available.

G-2

Page 3.11-4. Table 3.11-1. FORA Reuse Plan Land Use Designations. The Open/Space Recreation general land use designation fails to mention the Fort Ord Dunes State Park campground, multi-use facility – add these to this section.

G-3

5.5.3.2.2 Dune stabilization work will be dependent on available program and budgetary funding as well as staff availability. These constraints need to be mentioned. Many of the ocean facing dune escarpments exceed 30% slopes and stabilization would require heavy machinery work to terraform entire landscapes, which State Parks will not initiate. The ocean most facing dune faces will not be revegetated – this needs to be clearly called out in written text in the HCP. We have mentioned this previously in meetings and the clarification language remains absent from the HCP.

G-4

CH. 3. 3.2.2.1 Grading amounts for the coastal trail connecting the campground to the beach may exceed 100 cubic yards – 100 cubic yards is only an estimation. Add text noting this.

G-5

Table 2-11. Covered Activities by HMA. Under covered activities last vertical heading on the right margin should be changed to read as follows: Future Road and Trail Corridors and Infrastructure.

G-6

Page 2-25. Recreational and Educational Use. 6th line down. This should read as follows, “.....form of guided tours or educational and interpretive panels....”
Figure 3.11-2. To the best of our recollection the 1997 plan had identified the unrestricted areas of FODSP as a potential campground site. This should be listed in Figure 3.11-2?

G-7

Page 3.11-12 4th bullet should add the following: RV and tent camping, hike and bike camping

G-8

Page 3.13-6. California State Parks. Second line – Delete “new” this boardwalk is now old.

G-9

VOLUME 1: Habitat Conservation Plan (State Park Comments)

Section ES 9 FUNDING. Page ES-11. First paragraph, lines 7-10 state the following: With the exception of MPRPD and State Parks no permittee may be compelled to obligate its general fund to satisfy its financial obligations under the HCP.

RESPONSE: ES.9 FUNDING. Page ES-11. First Paragraph, lines 7-10. From 2012 to the present, State Parks has informed the HCP working group that the State of California will not obligate State budget general fund appropriations in advance of the budget cycle. This was stated at multiple meetings and in writing with FORA, USFWS, and CDFW staff present and in agreement. The statement on lines 7-10 need to be amended to mention that State Parks will meet its financial obligations under the HCP as budget appropriation funding is made available.

G-10

ES 9 FUNDING. Page ES-11, second paragraph lines 7-8 state the following: “HCP required actions ...on State Parks managed HMAs will be funded by annual budget allocations during the 50 year permit term and in perpetuity.”

RESPONSE: ES.9 FUNDING. Page ES-11. Second paragraph. Lines 7-8. HCP required actions will be met “As State budget appropriations are made available”. From 2012 to the present, State Parks has emphasized that no one annual budget allocation/appropriation is the same, that budgets fluctuate, can decrease due to economic downturns, reorganizations, etc. USFWS and CDFW openly acknowledged and recognized that annual State budget allocations fluctuate from year to year. This section needs added text that recognizes that State Park district budget allocations fluctuate considerably from year to year with no fiscal year allocation being the same,

G-11

and text should mention that HCP required actions will be met as funding is made available.

PGE 1-12. Section 1.9.2 Role of the Fort Ord Regional Habitat Cooperative. Lines 2-4 top of page. State Parks is not be in a position to allocate State funds to the Cooperative for cost sharing purposes. State Parks funds will be solely allocated to meet its HCP obligations under the HCP.

G-12

Page 3-25. 1st paragraph. Line one. Add the following, “.....signed agreements on future surface lead bullet cleanup...” The DTSC agreement is for removal of surface lead bullets only. 3rd line same paragraph; remove reference to lead Figures and remove Figures 3-6b through 3-6d. State Parks identifies all surface lead bullet removal areas in each DTSC annual report and this is a document that is publicly available. There are individuals who are entering these restricted areas without any approval or authorization of State and State Parks does not want to promote unauthorized access into ESHA. The maps may promote additional curiosity seekers within ESHA who seek military souvenirs. The 3rd line should read as follows: Concentrated areas of surface lead bullets are known and State Park staff continue to remove surface lead bullet concentrations pursuant to the MOU with DTSC.

G-13

Page 3-25. Section 3.3.2.2.1. Natural Resource Management Zone. Second to last line on the page. The coastal trail could include grading of 100 cubic yards but could be in excess of 100 cubic yards of surface sand to meet ADA gradients. This should be noted in this section.

G-14

Page 3-26. Section 3.3.2.2.2 - 8th Street Zone. Add public restroom facilities here. With full build out east of Highway 1 there may be a future need to add a fully functional restroom facility within this zone. Also, add entrance station in this zone. State Parks reserves the right to install an entrance station in the zone.

G-15

Page 3-27. Section 3.3.2.2.4 Storage Bunker Zone. 1st paragraph. Last line. Add the following to this section: Approximately 50 acres of grading, native dune restoration and symbolic fencing, trail fencing, RV dump station and lighting.

G-16

Page 3-39. Section 3.3.3.4 Beach Management. Add the following”.....law enforcement emergency response and patrol activities, removal of hazardous.....”

G-17

Page 3-41 Section 3.3.4.2.1 Marina Coast Water District Facilities. Figure 3-23. MCWD will be decommissioning the Ord village lift station; this should be noted here and as a covered activity. And the unused areas will be restored to native habitat.

MCWD has an easement at the former US Army Waste Water Treatment Plant, 3 acre site at FODSP. The HCP should contain language that is consistent with the deed for this 3 acre parcel and be consistent with the existing MOU between MCWD and State Parks. This 3 acre site area should also be mentioned as potentially being adaptively reused for building reuse and development for park support facilities that do not expand beyond the existing building footprints.

G-18

Page 4-5. Last sentence. Figure 3-6 is absent from the plan. Check this reference. Any beach access trail closure will have to be approved by the Coastal Commission as this would effectively restrict public access. It is unclear if closing off beach access could jeopardize existing or pending CDP approvals by the Coastal Commission and or result in potential action against State Parks by the Coastal Commission. This reference to closing off beach access needs added text stating that any beach access closure must be coordinated with the USFWS, Coastal Commission, and State Parks in advance of any closure implementation action.

G-19

Page 4-10 Section 4.2.4.2 MCWD Facilities. This section should mention and make note of a recent development that FORA intends to allocated \$1.8m in building removal bond funds for removing many of the US Army waste water treatment plant structures within the 3 acre site in FODSP. There should also be mention that State Parks may adaptively reuse some of these structures, and any reuse of structures in this zone will not exceed existing structure and appurtenance footprints.

G-20

Page 4-32 Section 4.3.5.1 Development. For impacts associated with State Park development the HCP should recognize and acknowledge the Campground Coastal Development Permit special condition that State Parks mitigate the development by restoring an additional 89 acres., which is in line and consistent with the HCP. This restored acreage will enhance Smith's blue butterfly (SBB) habitat to the west and east of the campground thereby enhancing the north – south habitat corridor for SBB.

G-21

Page 4-34. The HCP should acknowledge full build out across from Highway 1 and that the additional development has the potential to add pressure on the WSP. Text should be added that State Parks intends to develop a docent and volunteer program and once developed they will provide the public with interpretive tours that focus on education and interpretation of WSP's, their behavior and breeding sensitivities to humans and how to be a responsible beach goers during the WSP breeding season. These added measures can reduce impacts through education and interpretation.

G-22

Page 4-36 Section 4.3.6.2 Road and Trail Maintenance. See comment Page 4-5 above.

G-23

Page 4-41. Section 4.4.1.1 Monterey Bay Shores Resort (MBSR). 10th hollow bullet item. State Parks is not obligated to manage plovers on privately owned property as a result of development. Any monitoring using state resources on private property would have to be separately funded through developer related fees or Cooperative endowment monitoring funds. It is unclear as to why the MBSR is in the HCP as the property was not US Army property subject to BRAC. State Park staff can provide MBSR staff with Point Blue contact information for WSP monitoring on private property. If MBSR is not a permittee under this HCP this section should be removed from the plan. Same comment for the Collection at Monterey Bay Project.

G-24

Page 5-7 Section 5.3.2.2 Coastal Strand and Dunes. See comment "Page 4-5" above. There was agreement by USFWS and CDFW that State Parks would be given credit for the 230 acres of coastal sand dune and strand already restored. State Parks requests that this credit be referenced in the HCP.

G-25

Page 5-29. AMM – 22. To the maximum extent practical State Parks will conform to this AMM. However, placing sharp objects on interpretive panels presents a potential safety risk. Interpretive panels will be placed at angles thereby preventing a flat surface. Some tree rows are historic and coordination of their removal would include the State Park Historian, this consultation should be noted in this AMM.

G-26

Page 5-32 AMM - 27

Page 5-32. 3rd bullet item. State Park ranger staff can control hang gliding and parasail launching and landing within FODSP. Hang gliders/paragliders launch to the north and to the south of the FODSP, which are authorized launch areas at a different park unit. State Parks does not control air space. If the HCP is recommending there be a no fly zone over FODSP then it is unclear what agency would enforce this air space.

G-27

Line 6. Campfires on the beach will not be permitted. However, campfires in the campground will be allowed. Change the language here that specifies that campfires will be prohibited on the beach (coastal strand). The FODSP campground will be located in the sand dune environment and campsites will contain fire rings and the outdoor amphitheater will also contain a fire ring/campfire area.

G-28

Page 5-32. 3rd bullet item Lines 13 -14. See comment 4-5 above for any/all closures of FODSP. FODSP shall not be closed seasonally. State Parks will work with the Cooperative and USFWS staff in developing other adaptive management options to reduce impacts to plovers.

G-29

Page 5-32. 3rd bullet item. Lines 18-24. This issue of closing restrooms, trails and campgrounds has come up previously. To reiterate previous comments, State Parks will not close restrooms, campgrounds, beach access trails, and parking lots. If closure text will not be removed there needs to be text included that no closures shall be implemented without State Parks being part of thorough closure determination process that is inclusive at all levels of planning and that includes the USFWS, Coastal Commission, the Cooperative and CDFW. If closure text will not be eliminated from this section the HCP will need to contain specific text that gives the authority to the Cooperative to reimburse State Parks (through the endowment fund) for any/all lost revenue due to closing parking lots, trails, facilities and campgrounds. Limiting public access also needs to be coordinated with the California Coastal Commission (CCC) and text needs to be added to this section stating such consultation and coordination with CCC shall occur in consideration, and in advance, of any park closure actions taking place or being implemented. Add to line 16 the following text, “ ...but will only be employed only if fencing (including adding additional symbolic plover fencing), additional interpretive walks, ranger patrols, predator control, docent and volunteer patrols, other adaptive management actions and interpretive programs do not resolve impacts on.....”.

G-30

Page 5-32. 4th bullet item. Text needs to be added to this section, including: any/all Cooperative biologists (or their consultants) shall coordinate, in advance, with State Park Ranger and Environmental scientist staff for any/all illegal management actions or activities to be conducted at FODSP. Text needs to be added clarifying that for any/all Cooperative biologists who attempt to contact a member of the visiting public, who may

G-31

be engaged in a prohibited or illegal activity, shall make a good faith effort to contact the on duty State Park ranger. Text should be added noting that, Cooperative biologist staff shall have training in how to make public contacts and learn methods of non-confrontational contact techniques. Cooperative biologists shall sign and indemnify State Parks of any all liability of their actions/activities when within FODSP and when engaging with the public when attempting to notify the public of an illegal activity.

G-31
(continued)

Add language in this section including ranger vehicles allowed on beaches in addition to ATV quads. Text should be added that notes that, Ranger and natural resource vehicles shall not be prohibited from entering the FODSP beach zone when responding to human health and safety emergency response situations. Ranger patrols will not be postponed if low tide wet sand is not available, especially if responding to a human health and safety issue; this needs to be stricken from this section. Add text here that states that plover nesting areas shall be shared with patrol staff weekly, or as is available, to enhance awareness of active nest locations. This sharing of data may help avoid nesting areas when responding to emergencies. The following text needs to be removed, " If tides do not allow, the patrol will be postponed until the "low and slow" method can be employed." Add text to include, " State Parks is responsible for patrolling FODSP including, but not limited to, beach, bluffs, campground, days use areas and patrols will pay special attention to WSP habitat." For beach patrols, include the following text, "State Park employees with beach driver training will patrol the beach as necessary following department policy and guidelines."

G-32

Beach patrols, there is too much variability in a State Park rangers day to guarantee 7 day a week ranger patrols. Number of staffing varies due to vacations, training, administrative time off, sick leave, reassignments to other park units, etc. This section needs to recognize this. State Park patrols will occur 7 days a week during the WSP breeding season as ranger resources are available to do so.

G-33

Roads will not be seasonally closed and shall be open year round. Campsites shall be open year round. This section need to be rewritten placing much more emphasis on the variabilities listed above and emphasis on working with the CCC, USFWS and Cooperative in developing adaptive management measures to reduce impacts to plovers.

G-34

Page 5-33. 3rd bullet. Reference a page number or Figure number or attach a Figure denoting these parcels.

G-35

Page 5-36. Section 5.4.5 Avoidance and Minimization Measures for Road Corridors and Infrastructure Construction, Operations, and Maintenance in and adjacent to HMAs. First paragraph references Table 5-3 and mentions that the covered activities and associated AMM would typically be implemented by a permittee or third party applicant. See previous comments on the stay ahead provision.

G-36

Page 5-36. Section 5.4.6. Second paragraph. Change text to note that, vegetation trimming at FODSP may occur more frequently than on a 10 year rotational basis if vegetation presents tripping hazards within the active trail path or obstructs ADA safe trail passage. This should be noted.

G-37

Page 5-39. AMM-43. First bullet. Define what “occupied” means here. Occupied by what? Occupied by a % cover for native plants in a given area? 5th bullet item: This language should be changed as it is too vague as to what “schedule” means. Is this section stating that the Cooperative shall have sole discretion to schedule restoration activities in FODSP if they believe the activity has any potential to affect SBB or WSP? If so, this could be very restrictive to meet established habitat restoration obligations. Language needs to be inserted here that in the event the Cooperative delays restoration activities there shall be no determination made that State parks is out of compliance with meeting its habitat restoration obligations or that an adjustment to the obligation shall consider the action and no compliance violation determination shall be made without concurrence with State parks, the Cooperative, USFWS and CDFW. Also, the Cooperative should work and consult with State Park Environmental Scientist staff on restoration activities at FODSP so State Park staff are part of and included in the scheduling process; language should be added to this section stating this.

G-38

Page 5-40. First bullet item. State Parks only uses native seed collected at FODSP for FODSP revegetation/restoration projects. We do not use seed sources from outside the park unit. We would request that adjacent permittees only use locally collected genetic seed stock to reduce any chances of weed infestation and or hybridization of native species at FODSP.

G-39

Page 5-41. AMM-45. State Parks has used herbicides to eradicate non-native species since 1997 at FODSP, with great success. This section needs to have language mentioning that in the event the Cooperative restricts the use of herbicide use at FODSP(RoundUp) the subsequent consequence could be State Parks not meeting its restoration obligations and in the event this were to occur State Parks should not be in violation of not meeting this obligation, especially if the Cooperative mandates that State Parks implement IPM strategies that reduce the speed at which State Parks would normally reduce non-native species using herbicides such as RoundUp. Restoration of habitat requires we eradicate hundreds of acres of nonnative iceplant. Mitigation measure 10 on page 5-54 should be emphasized in this section as this is and will be the preferred method to eradicate iceplant at FODSP during the permit term.

G-40

Page 5-53. Last paragraph. There is reference to AMMs in Section 5.4.3 – this reference should be 5.4.4 and not 5.4.3. ??

G-41

Page 5-132. 13.2b Biological Goals & Objectives Again, public access restrictions must be coordinated with State Park, Coastal Commission, USFWS, CDFW and Cooperative staff. Any public closures resulting in a loss of park revenue (closing campsites, parking lots, beach access trails etc.) should be compensated through the Cooperative endowment fund. Rolling averages for chick fledgling rates need to be offset for any documented natural perturbations including tidal run-up events resulting in chick losses.

G-42

Page 5-136. Mitigation Measure -11. Prioritization of restoration sites at FODSP will not only consider SBB populations. Priority will also include and consider restoration required as part of campground coastal development permit special conditions; these will include planting buckwheat but restoration priority will not only be limited to areas where SBB populations have been documented. Text needs to be added reflecting this

G-43

priority method mentioned above in relation to the campground coastal development special condition.

G-43
(continued)

Page 5-148. Mitigation Measure 14. Management of the beach, bluffs and blowouts as undeveloped beach frontage will occur. The Campground project includes a beach access trail to the beach and is the third beach access point approved by the FODSP General Plan and the HCP.

Page 6-34. Demographic, Recreational, and Predator Monitoring. Figure 6.1. The figure fails to consider abiotic factors that could impact plover fledgling success at FODSP such as storm surge, dune face failure and wave run-up that destroy nests. For naturally occurring perturbations out of State Parks control there should not be a finding of non-compliance in meeting the 15 chick fledgling rate; but the perturbation should be documented and number of nest sites impacted documented including loss rates due to the event(s). Re-nesting attempts will be documented following a natural perturbation such as mentioned above.

G-44

Page 6-36. Section 6.6.6.3.2 Bullet list. Add bullet item to monitor/document natural perturbations that result in loss/take of nests/chicks e.g. wave run-up, storm surges. If such an event occurs it should be monitored and recorded into the WSP data set. Third paragraph. Endowment funds should be called out here to pay for this monitoring level.

G-45

PAGE 6-51. Adaptive management Measure – 12. Specifically call out and add “State Parks” to the list of agencies who will determine the best strategy for FODSP. There needs to be mention, or reference here, to the fact that FODSP has an approved general plan and that any/all strategies developed that are inconsistent with the general plan could require State Parks submit a general plan amendment to the State Park and Recreation Commission for review and approval.

G-46

Page 6-52. SLR is a global phenomenon. SLR will likely occur at other State Park units within Recovery Unit 4. State Parks should not be viewed as not meeting FODSP demographic thresholds due to SLR impacts for a global phenomenon beyond its control. Text here should place emphasis on working with State Parks at other Unit 4 recovery sites. The section should also note that the CEMEX sand plant will cease sand harvesting operations in 2020, and as a result up to 300,000 to 400,000 cubic yards of sand will reenter the coastal cell and could help offset SLR and augment FODSP coastal beach habitat. Text in this section needs to be added giving State Park manager’s opportunity to work with the USFWS on developing offsite mitigation, in working with the USFWS in mitigating recreational use affects, and in addressing SLR impacts through a well-defined adaptive management process. .

G-47

Page 6-53. Top of page. Lines 1-6. The section should mention that State Parks and the USFWS will work together to mutually identify and agree to any/all other State Beaches to restore to meet its obligation. There needs to be a limit to the amount of effort (staff and resources) State Parks must commit to in order to meet these obligations offsite given that all other State Park coastal units will be experiencing the same level of SLR impacts e.g. if the offsite areas experience similar, or worse, SLR impacts the loss at off site sites should be quantified and a limitation established (by all agencies) to set a limitation or benchmark on the amount of time and resources are allocated to these off site efforts within recovery 4 area. Again, this is a global

G-48

phenomenon that according to SLR H++ modeling will have significant coastal impacts throughout the world.

G-48
(continued)

Page 6-53. Adaptive management Measure-13. 9th line should read as follows, “.....State parks would work with USFWS to identify other mutually agreeable coastal dune areas...”

G-49

Page 6-54. Section 6.8.2 Structure of the Adaptive Management Process. Lines 7-9 top of page. There needs to be mention, or reference here, to the fact that FODSP has an approved general plan and that any/all adaptive management measures implemented by the Cooperative that may be inconsistent with the general plan may require State Parks to submit a general plan amendment to the State Park and Recreation Commission for review and approval.

G-50

Second paragraph. Lines 6-10. Since AMM-12 is solely specific to FODSP there needs to be text included here that includes State parks in the process of developing management changes to FODSP. Again, there needs to be mention, or reference here, to the fact that FODSP has an approved general plan and that for any/all management changes developed that are inconsistent, or in conflict, with the FODSP General Plan the change may require State Parks to submit a general plan amendment to the State Park and Recreation Commission for review and approval.

G-51

Page 6-62. FODSP has no maritime chaparral habitat. Remove check marks here.

G-52

Page 6-66. MM-37 to MM-41. FODSP has never had CTS or CRLF; these check marks should be removed from FODSP. As a result these MMs will not be implemented. Text could include State Parks with a footnote that in the event these species are located within FODSP that at that time State Parks would notify USFWS, CDFW and the Cooperative and at that time implement these MMs (MM-37 through MM 41). Remove check marks for these MMs 37-41.

G-53

Page 6-67. AMM-2. A footnote needs to be inserted here mentioning that avoidance measure adjustments shall not compromise public safety and access at FODSP. AMM-3 - FODSP has no CTS; remove check mark here.

G-54

Page 6-68. AMM-9. FODSP has never had presence of CTS.

G-55

Page 6-68. AMM – 11. A footnote needs to be added here noting that in the event State Parks is required to eliminate, or significantly reduce, the use of herbicide use at FODSP the USFWS and CDFW shall work with State Parks on any needs to adjust the habitat restoration timelines. Reducing or eliminating the use of herbicides may impact State Parks’ ability to meet habitat restoration obligations within the permit period.

G-56

Page 7-4. Section 7.3 Roles and Responsibilities. Top 6 lines on page. Text or a footnote needs to be added here referencing and acknowledging that for any Cooperative, USFWS, CDFW, Coastal Commission related park closure State Parks will need at least 2-3 months advance notice to cancel campsite reservations, to issue campsite reservation refunds, service contract cancellations etc. Text should be added that mentions (or refers to a process whereby) if State Parks has implemented all adaptive management measures and there is a determination that closure must still be

G-57

initiated, State Parks shall track revenue losses for the duration of the closure and submit quarterly revenue loss reports to the Cooperative for revenue reimbursement through the Endowment fund. A footnote should be inserted here noting that coastal campsites throughout the reservation system can often book up 1 year, or more, in advance. Text should be added here that specifies for any park closure action, whether partial or full, the Cooperative will reimburse State Parks for any closure incurred costs should any additional resources be needed to enforce a park closure; State Park personnel and resources would most likely be very limited to enforce a partial or full closure at the park unit FODSP has multiple access locations including, roads, trails, open beach areas, and many open boundary lines making closure enforcement very challenging. The costs of implementing the actual closure include costs such as the following: hiring additional park closure seasonal staff, enforcement personnel, installing additional signs, barricades, k-rail, gates, temporary fencing and related closure materials. In addition to closure related costs, reimbursement should include campsite reservation cancellations and loss of day use fees. State Parks will submit all park closure related costs and revenue loss figures to the Cooperative on a quarterly basis for reimbursement.

G-57
(continued)

Page 7-17, 3rd paragraph. Line 7. As of December 14, 2018 State Parks has successfully restored 230 acres of coastal dune habitat. Change 210 acres to read 230 acres.

G-58

Page 7-23 Section 7.9.1.2 Changes in Boundaries. A foot note should be added to State Parks mentioning that an exception will be considered for human and health safety related elements of a park general plan, general plan amendment, or management plan. Human health and safety should take precedent over the HCP for all warranted emergency response actions/activities.

G-59

Page 7-28. 1st paragraph. Line 3. The HCP permit term is 50 years. Change all restoration activities shall be initiated by year 50, especially since the Cooperative or successor agency will continue to monitor. This 5 year initiation extension can be critical given fluctuations in budgets, staff layoffs etc. should they occur during the term of the HCP. Initiation in year 50 would continue beyond the permit term.

G-60

Page 8-15. Section 8.1.2.1 Permit Suspension and Revocation Dialogue. 2nd paragraph. State Parks shall not be held liable for another permittee who does not meet its HCP terms, conditions and obligations of the ITP. The requirement that all permittees are found to be noncompliant if one permittee fails to comply with meeting their obligations needs to be rewritten to focus solely on the permittee(s) found to be in non-compliance, notify all other permittees, and require all permittees to the round table with the Cooperative, and regulatory agency staff, to strategize on ways to get the noncompliant permittee into compliance. State Park operations and facilities including roads and campgrounds, day use, beach access trails should not be held hostage if other permittees are found to be noncompliant with the terms, conditions and obligations of the ITP i.e. if another permittee is found to be noncompliant and State Park operations are shut down the endowment fund, through the Cooperative, should be required to compensate State Parks for any/all lost revenue incurred through such a closure triggered by a permittee other than State Parks. If a permittees ITP is revoked this revocation should not be extended to the other permittees but should extend only to

G-61

the permittee whose ITP has been suspended or revoked. Text here needs to reflect these suggested changes.

G-61
(continued)

Page 8-17 Section 8.3 Permittee Assurances. Since the inception of the HCP State Parks has reemphasized that it cannot provide funding assurances. We are unable to dedicate the state budget in this manner. State parks has reiterated this since 2012.

G-62

Page 9-10 and 9-11. Section 9.2.1.2 Program Administration. All State Park level staffing in this section are estimates only for the purposes of meeting the HCP obligations only. .

G-63

Page 9-11 Section 9.2.1.3 Habitat Restoration. First bullet item. With fluctuating budgets it is not safe to assume all habitat restoration will occur in the first 20 years of the HCP term. It is safe to say that all habitat restoration will most likely occur within the 50 year permit term. Strike this assumption of 20 years.

G-64

Page 9-2. 5th and 6th bullet items. These bullet items need to change as it is uncertain how many existing vs. new hires will actually be needed to meet all the HCP obligations. There should be a footnote to this effect noting that as the HCP obligations are implemented State Parks may find a need to hire additional seasonal and permanent staff and therefore these numbers are only estimates at this time.

Section 9.3. Page 9-15. Funding Sources and Assurances. See ES-9 Funding comments above.

G-65

Table 9-8. Under ANNUAL APPROPRIATIONS - All State Park figures should be footnoted and noted that these are estimates only and are subject to fluctuations in budget appropriations Allocations are influenced by economic conditions and fluctuations in annual State Park budget allocations.

G-66

Page 9-30 Section 9.3.3 State Parks Annual Appropriations. 1st paragraph. HMP requirements and HCP obligations are not “nearly equivalent” – strike this sentence. HMP funds may not be sufficient to implement all the HCP obligations as proved in the funding projections needed for HCP implementation that are identified in the HCP – this sentence needs to be stricken as it falsely makes the argument that there is essentially no difference between HMP and HCP implementation. It is not safe to assume that State Parks will receive sufficient funding throughout the entire 50 year term of the HCP, or in perpetuity. State Parks is not funded through a State legislative budget line item for the HCP; this is not how we are funded. While it is true that State Parks will ask for funding to meet the HCP requirements there is no "guarantee" that funding requested or allocated will fully meet HCP obligation needs. **2nd paragraph:** Remove “guarantee” from this sentence. While State Parks will be committed to HCP implementation and will continue to request funding, which could extend throughout the term of the HCP, State Parks has repeatedly informed the HCP working group that the HCP will not be funded through a separate budget line item through the legislature – this reference needs to be deleted.

G-67

4th paragraph. This paragraph is suggesting that lack of funding, determined by the USFWS and CDFW could result in take. State Parks has had little if no take at FODSP given limited HMP funding. This assumption on budget shortfalls resulting in take should be stricken. Monitoring will best determine whether take occurs or not. State Parks will

G-68

work with the USFWS, Cooperative and CDFW on any/all budget shortfalls. No one agency should arbitrarily assess funding figures and make a determination solely on a funding figure that the allocation itself will result in take. Delete “....provide sufficient funding and consequent nonperformance in....” from the last sentence in this paragraph. The sentence should read, “State Parks recognizes that failure to fulfill its HCP responsibilities could result in temporary permit suspension or permit revocation”.

G-68
(continued)

While it is true that State Parks will continue to search for grant opportunities it should be noted that the grants received thus far span a time period of 22 years. State Parks will continue to search and apply for grant funding to augment our HCP responsibilities as long as grant funds are available.

G-69

Page 9-35. 4th bullet item. While sharing State Park staff and materials is mentioned, State Parks cannot spend or allocate staff to other HMAs outside FODSP that have a development nexus. Our funding source prevents this from occurring. 6th Bullet: add, “as funding is made available.” to the last sentence.

G-70

Section 9.3.5.2 Funding Assurances for Uncertain State Budget Allocations. Page 9-36. Change 210 acres to 230 acres.

G-71

4.8 RESPONSE TO COMMENT LETTER G: CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

- G-1** Comment is acknowledged. No response is required.
- G-2** Security patrol staff could include State Park Rangers as well as State Park environmental staff, in addition to others as described in the HCP (e.g. lifeguards, visitor support staff, volunteers, Cooperative funded biologists). The HCP designates the responsibility for staffing, timing, and oversight of patrol frequency to the HMA Managers, which includes FODSP. The text in bulleted paragraph four of AMM-27 states that “Park rangers will patrol the beach as frequently as possible.”
- G-3** The comment requests adding the Fort Ord Dunes State Park (FODSP) campground, multi-use facility to Table 3.11-1 on page 3.11-3 of the Draft EIS/EIR. This table lists the land use designations as identified in the 1997 Reuse Plan. The Open Space/Recreation land use designation in the Reuse Plan includes active and public parks and a limited amount of convenience retail uses. In addition, the Visitor Serving and Public Facility/Institutional land use designations, which also fall within the FODSP, permit hotels, conference centers, restaurants, and golf courses, and youth camps, respectively. While the FODSP campground, multi-use facility generally falls within the Visitor Serving land use designation, because the 1997 Reuse Plan does not specifically identify the FODSP campground, multi-use facility and the purpose of the Draft EIS/EIR is not to amend the Reuse Plan, the requested revision was not made.
- G-4** The comment requests that clarifying language be added to the dune stabilization work discussed in Section 5.5.3.2.2 of the Draft HCP to reflect the program and budgetary constraints of State Parks as well as clarify that steep, ocean-facing dune escarpments will likely not be revegetated. A clarifying sentence has been added to this section. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-5** The comment states that the grading amounts for the coastal trail connecting the campground to the beach may exceed 100 cubic yards and requests that text noting this amount is an estimate be added page 3-25 of Section 3.3.2.2.1 of the Draft HCP. The text currently states that grading “would involve *approximately* 100 cubic yards,” (emphasis added) and, thus, currently provides text describing that the amount is an estimate. As such, the requested text was not added to the Draft HCP.
- G-6** The comment requests that the last vertical heading in Table 2-11, Covered Activities by HMA, be changed to read as follows: Future Road *and Trail* Corridors and Infrastructure (emphasis added), resulting in adding trails to this covered activity category. However, the suggested revision is not consistent with the categories as presented in the Draft EIS/EIR and Draft HCP, as trails are included as covered activities in the Road and Trail Maintenance category. Therefore, the suggested revision was not made to the Draft EIS/EIR.
- G-7** The comment requests replacing “educational” with “interpretive” in the sentence 6th line down under the Recreational and Educational Use heading on page 2-25 of the Draft EIS/EIR. The suggested clarification has been made to the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- The comment further requests that Figure 3.11-2 of the Draft EIS/EIR identify unrestricted areas of the FODSP as a potential campground site. Figure 3.11-2 depicts Figure 3.3-2 of the 1997 Reuse Plan. However, as discussed in Response G-3, the 1997 Reuse Plan does not identify a potential campground site in the land use designations for the FODSP and Figure 3.3-2 does not identify a potential campground site on FODSP. Figure 3.3-2 does, however,

depict a hotel opportunity site on FODSP. As a result, the requested revision was not made to the Draft EIS/EIR.

- G-8** The comment requests adding “RV and tent camping, hike and bike camping” to the 4th bullet on page 3.11-12 of the Draft EIS/EIR. Similar to the discussion of the Reuse Plan land use designations in the Draft EIS/EIR as described in Response G-3, the discussion on page 3.11-12 summarizes the approved FODSP General Plan and the described potential uses and activities that might occur in the various zones of the planning area. Because the General Plan does not include the requested language, the revision to the Draft EIS/EIR was not made.
- G-9** The comment requests that “new” be deleted on page 3.13-6 of the Draft EIR/EIR where discussing a boardwalk in FODSP as the boardwalk is now old. The requested revision has been made to the Draft EIS/EIR in addition to deleting the reference to the FODSP as being “recently opened.” Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- G-10** Section ES.9, *Funding*, of the Draft HCP was amended to remove State Parks from first paragraph, lines 7-10. Text was added to clarify that State Parks cannot obligate State budget general fund appropriations in advance of the budget cycle, and that it will meet financial obligations under the HCP as State budget appropriations are made available. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-11** Section ES.9, *Funding*, was amended with text inserted into second paragraph, lines 7-8 clarifying that HCP required actions on State Parks-managed HMAs will be funded by annual budget allocations as State budget appropriations are made available. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-12** The comment is acknowledged. The text of Section 1.9.2, *Role of the Fort Ord Regional Habitat Cooperative*, does not obligate State Parks to allocate State funds to the Cooperative for cost sharing purposes.
- G-13** Text was added to Section 3.3.2.2 of the Draft HCP, clarifying that signed agreements between State Parks, US Army, and the DTSC are for future lead remediation in the form of removal of surface lead bullets. Figures 3-6b through 3-6d were removed. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-14** Please refer to Response G-5.
- G-15** Text was added to Section 3.3.2.2.2 to include the potential for the development of public restroom facilities and an entrance station in this zone. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-16** Text was added to Section 3.3.2.2.4 to add additional project components in this zone consisting of approximately 50 acres of grading, RV dump station and lighting, trail fencing, symbolic fencing, and native dune restoration. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-17** Text was added to Section 3.3.3.4 to clarify law enforcement activities will include law enforcement emergency response and patrol activities. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-18** Construction and/or demolition of booster lift/stations by the Marina Coast Water District is a Capital Improvement Project category included as a covered activity under the HCP (Appendix D). Section 3.3.4.2.1 and Table 3-11 were revised to reflect this change from improvements to the Ord Village Lift Station to decommissioning the lift station. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-19** The 2nd to last sentence on page 4-5 has been corrected to reference the correct figure; Figure 3-6a.

- Section 5.4.4, AMM-27 provides full detail regarding the circumstances under which closing public beach access would occur. Coordination between the Cooperative Program Administrator, State Parks, USFWS and CCC would be required in such a situation. A cross-reference to this section was added. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-20** Section 3.3.2.2 adequately describes the covered activities within the FODSP, and as a result, the requested revision was not made to the Draft HCP.
- G-21** Text was updated in Section 4.3.5.1 with additional information related to the status of the State Park Campground project and CDP conditions related to mitigation for the project. Specifically, Special Condition 7 of the CDP requires the restoration of approximately 89 acres of coastal dune and dune scrub habitats in the vicinity of the campground. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-22** Text was added to Section 4.3.6.1 explaining that covered activities (i.e., development) east of Highway 1 within the Plan Area could also affect western snowy plover. Additional text was added to Section 4.3.6.1 to describe the docent and volunteer program to be developed by State Parks to provide additional mitigation for impacts to western snowy plover by providing education and interpretation focused on the species behavior and sensitivity to human disturbance. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-23** Please refer to Response G-19.
- G-24** Section 4.4.1.1 does not obligate State Parks to manage western snowy plovers on privately owned property. Brief descriptions of the Monterey Bay Shores Resort development and The Collection at Monterey Bay Point are included in the HCP as potential contributors to cumulative impacts to special status species in conjunction with implementation of the HCP. The analysis of the cumulative impacts of these projects is provided in the EIR/EIS for the HCP.
- G-25** It is unclear what the commenter is referring to with the statement “See comment ‘Page 4-5’ above” as the section of the HCP referred to in the comment does not contain a reference to Figure 3-6, nor does it contain any references to trail closures.
- Section 5.3.2.2 is concerned with describing the biological Goals and Objectives for coastal strand and dune management under the HCP, and, therefore, this section is not the appropriate location for a discussion of the habitat restoration that has been completed to date and will be credited to the total restoration acreage required on State Parks managed HMAs.
- Also note the last sentence in the first paragraph of Section 5.5.3.2.2, *Coastal Strand and Dunes*, that states “[the] base year for calculating restored acreage will be the 1995 baseline to ensure that State Parks receives credit for restoration completed to date.”
- State Parks credit for restoration of coastal strand and dune habitat to date is referenced in Section 5.5.1, *Mitigation Measure-2*, Footnote 7, Section 7.6, and Section 9.3.5.2, which were revised with the correct acres of restoration of coastal strand and dune habitat to date at the time of HCP finalization. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-26** Clarifying text was added to AMM-22 regarding the installation of anti-perch devices on interpretive signs to deter avian predators in western snowy plover habitat. In addition, text acknowledging the consulting role of the State Park Historian in any decision to implement tree removal as an adaptive management action to reduce avian predator impacts in western snowy plover habitat if the action would potentially affect an historic tree row was added. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-27** The HCP defines the prohibited activities as “hang gliding or paragliding launch sites.” No recommendation is made or suggested for a “no fly zone” over the FODSP.

- G-28** The HCP defines areas where campfires will be prohibited as “...beaches in dune and coastal strand habitat, areas targeted for habitat restoration, and western snowy plover nesting habitat...” Additional text was added to AMM-27, 3rd bullet point, to identify the developed campground as a location that will allow campfires. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-29** The HCP section referenced in the comment is not suggesting that FODSP should close seasonally as an adaptive management measure to prevent impacts to western snowy plovers. However, temporary public beach access route closure is an adaptive management strategy included in the HCP. Please refer to Response G-19.
- G-30** The Draft HCP includes avoidance and minimization measures that have been developed in consultation with USFWS over a period of many years. Removing the component of AMM-27 that could close trails, restrooms, and parking lots would require renegotiation with the USFWS to determine whether the AMM would still avoid and minimize adverse effects to western snowy plover. Similarly, the suggested revision would alter the HCP’s cost and funding plan, and, thus, would require renegotiation with the co-permittees before such a change could be instituted.
- As a result, if the suggested revision to AMM-27 is still desired, State Parks could consult with USFWS or the co-permittees to include the revisions in their ITP or request an amendment after permit issuance. Similarly, if AMM-27 remains in the HCP, State Parks could renegotiate the cost and funding strategy with the co-permittees.
- G-31** Text was added to AMM-27, 4th bullet point, regarding training, protocols for public contact, law enforcement coordination and notification requirements, and other requirements for Cooperative staff, consultants, or volunteers engaged in beach patrol activities on FODSP lands. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-32** The text of the section that describes limitations on vehicular patrols includes the qualifier “In all but emergency situations...” which acknowledges that access and driving practices in an emergency response situation may require deviation from normal best practices. As a result, the requested revisions were not made to the Draft HCP.
- G-33** The HCP provision for daily patrols during western snowy plover breeding season stipulates that Cooperative funded biologists will be available five days per week, State Park rangers will patrol as frequently as possible, and that volunteers may be employed to increase the frequency of patrols. There is no expectation or requirement stated in the HCP for State Park rangers exclusively to patrol seven days a week.
- G-34** The 7th bullet point from the end of the list was revised to remove limiting the seasonal use of roads and campsites. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-35** References to Figures 3-3 and 3-19 were added to the 3rd bullet on page 5-33. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-36** No other comment received from the commenter could be identified that referenced the stay ahead provision. Thus, it is unclear what question or issue the commenter has with Section 5.4.5 and the relationship between Table 5-3 and the implementation of covered activities and associated AMMs by a permittee or third-party applicant with the stay ahead provision of the HCP.
- G-37** AMM-34 describes vegetation trimming along minor roads and trails to reduce canopy closure. It is unlikely that vegetation identified for trimming to open the canopy cover would present a tripping hazard; however, lower-growing branches could potentially obstruct an active trail path. Additional text was added to AMM-34 to specify selective clipping and trimming of

vegetation to maintain open and safe minor road and trail access in addition to reducing canopy closure. Please refer to **Chapter 6, Revisions to the Draft HCP**.

- G-38** Text was added to Section 5.4.8, AMM-43, 1st bullet point, to clarify that areas that are disturbed and not already occupied by HCP species should be targeted for restoration projects. The 5th bullet point was revised to make clear that restoration activities will be planned to avoid affecting nesting western snowy plovers and Smith’s blue butterfly during the flight season. It is not the intent of AMM-43 that the Cooperative would delay the schedule of a planned restoration action, rather, that the nesting season for western snowy plovers and the flight season for Smith’s blue butterfly should be taken into account during the planning phase for any restoration activities that may affect the habitat of these species. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-39** The suggestion to only use locally collected native seed stock is acknowledged. However, the HCP provides for an alternative should a situation arise in which local stock is not available during a critical restoration period. Additional approval would be required before non-local plant materials could be used in the Plan Area, and post-use monitoring is required. Furthermore, the HCP prohibits the use of non-local propagules of the host species for Smith’s blue butterfly (coast and seacliff buckwheat) even in instances where restoration projects would be delayed due to the lack of available plant material.
- G-40** The comment is acknowledged. The goal of AMM-45, minimizing the use of chemical herbicides for controlling non-native invasive plant species during the permit term, is consistent with the continued use of chemical herbicides by State Parks as part of their non-native eradication program. AMM-46 provides additional measures to prevent impacts to HCP species resulting from the use of chemical herbicides. As the acreage of nonnative iceplant is reduced, it is expected that the annual use of chemical herbicides will be reduced as well. MM-10 includes provisions for manual and/or mechanical removal of iceplant should the use of chemical herbicide be contraindicated.
- G-41** Section 5.5.3.2.2, 3rd paragraph, the reference to *Avoidance and Minimization Measures for Public Use in HMAs and Property Ownership of Borderlands* was corrected with the appropriate section number, 5.4.4. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-42** Please refer to Response G-19, Response G-30, and Response H-1.
- G-43** The comment is acknowledged. MM-11 does not preclude consideration of additional habitat areas outside of Smith’s blue butterfly habitat as priority for restoration actions. MM-11 does not present a conflict with the fulfillment of Special Condition 7 of the CCC CDP for the campground and does not limit restoration priority only to areas where butterfly populations have been documented. Please refer to Response G-21.
- G-44** Please refer to Response G-45 and H-1.
- G-45** Section 6.6.6.3.2, the first bulleted item, requires the cause of all western snowy plover nest losses be determined. In addition, the first paragraph of the section states “...the reasons for nest failure will be documented for all nests...” Additional text to include abiotic events such as wave run-up or storm surges was added as reasons for nest failure that will be documented by the monitoring program.
- The funding for base-wide HCP species monitoring for all HMAs will be provided by the Cooperative through the HCP Endowment Fund, as discussed in Section 1.9.2, *Role of the Fort Ord Regional Habitat Cooperative*.

Effectiveness monitoring will be conducted by the Habitat Cooperative. Costs and funding associated with monitoring are discussed in Section 9.2.1.5, *Monitoring, Research, and Adaptive Management*. Please refer to **Chapter 6, Revisions to the Draft HCP**.

- G-46** Text was added to AMM-12 to include State Parks in addition to the Cooperative, USFWS, HMA managers, and western snowy plover monitors as the agencies that will determine the most effective management and recreational use strategies to increase western snowy plover nesting and fledgling success for FODSP. Please refer to **Chapter 6, Revisions to the Draft HCP**.

Section 6.8.2 details the general structure of the adaptive management process under the HCP. State Parks, as a Permittee, is not unique in having an approved General Plan that would apply in the Plan Area. As a result, the requested revision was not made to the Draft HCP.

- G-47** The HCP acknowledges that global climate change and subsequent sea level rise is likely to affect western snowy plover, and that a direct loss of all habitat for the western snowy plover at FODSP as a result of sea level rise is foreseeable during the permit term. Under the HCP, this is regarded as a changed circumstance, defined as a circumstance affecting a species or geographic area covered by a conservation plan or agreement that can be reasonably anticipated by the applicant(s) and the USFWS, and for which the parties can plan a response (50 CFR 17.3).

The planned response to sea level rise incorporated into the HCP is described by Changed Circumstance-5 as the relocation of western snowy plover management under the HCP to another area within Recovery Unit 4 if the impacts of sea level rise modify plover habitat at FODSP to the extent that demographic thresholds cannot be realized, and the USFWS concurs that all adaptive management options within the Plan Area have been exhausted. The expanded area will encompass all of Recovery Unit 4, but local management areas within Recovery Unit 4 will be chosen at the time expansion is implemented, in coordination with the Cooperative, USFWS, and State Parks, based on current site conditions and potential for nesting and fledgling success. State Parks is recognized as an integral partner and all management decisions related to FODSP would necessarily be made in consultation with State Parks staff.

- G-48** The final sentence of the HCP section referred to in the comment states: “If coastal erosion results in the loss of 420-restored acres, State Parks would work with the USFWS to identify other coastal dune areas to restore to meet its obligation of restoring 420 acres of coastal dune habitat within Monterey County.” Therefore, it is unclear what additional text the commenter is requesting to describe State Parks working together with USFWS.

Note that the HCP describes the avoidance and minimization measures, mitigation measures, monitoring measures, and adaptive management measures that the Permittees must implement under the HCP. The “No Surprises” rule (Section 8.1.1.1, *No Surprises Rule*) ensures that “non-Federal landowners participating in habitat conservation planning under the ESA will receive assurances that no additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources with regard to the HCP species or habitats beyond the levels and/or amounts provided for under this HCP—including the HCP’s planned responses to changed circumstances (see below), or protected within the HMAs—will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the Permittee(s).”

See Section 8.1.1.2, *Changed Circumstances*, for a definition of changed circumstances. Changed circumstances recognized and funded by the HCP, include global climate change (Section 8.1.1.2.3) and coastal erosion (Section 8.1.1.2.5).

In choosing offsite locations for habitat restoration to compensate for erosional loss of restored coastal dune acreage within FODSP, coordination between State Parks and USFWS would

presumably prevent the selection of a site experiencing similar, or worse, impacts from sea level rise than the onsite location. The selection of such an area would render its value and utility for habitat restoration impractical at best, and impossible at worst.

- G-49** The phrase “mutually agreeable” was inserted into the final sentence of AMM-13. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-50** Please refer to Response G-46.
- G-51** It is unclear what portion of the HCP the commenter is referring to in this comment. The second paragraph of Section 6.8.2 does not contain any reference to AMM-12, neither does the section as a whole. Please refer to Response G-46.
- G-52** Table 6-2, HCP Required Actions – Monitoring and Adaptive Management Measures by Location, was corrected. Under subheading “Effectiveness Monitoring – Baseline,” a check mark for Monitoring Measure-5 indicating that FODSP contains maritime chaparral habitat was removed. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-53** Table 6-2, HCP Required Actions – Monitoring and Adaptive Management Measures by Location, was corrected. Under subheading “Effectiveness Monitoring – HCP Species,” check marks for Monitoring Measures-37 through -41 related to requirements for California tiger salamander and California red-legged frog were removed. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-54** Table 6-2, HCP Required Actions – Monitoring and Adaptive Management Measures by Location, was modified. Under subheading “Adaptive Management,” a footnote was added to the check mark under FODSP for AMM-2 that states that avoidance measures for maintaining roads, trails, and fuelbreaks will not compromise public safety and/or access at FODSP.
- AMM-3 can be implemented in all HMAs regardless of current occupation status by California tiger salamander. It requires passive observation of more than two individuals of the species crushed in any one year before further actions are taken. Implementation of this measure in currently unoccupied HMAs could help detect a range-expansion or change in population distribution due to climate change or other environmental factors that could occur during the permit term. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-55** Table 6-2, HCP Required Actions – Monitoring and Adaptive Management Measures by Location, was corrected. Under subheading “Adaptive Management”, a check mark for AMM-9 indicating that FODSP must manage California tiger salamanders was removed. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-56** Please refer to Response G-40.
- G-57** The HCP section referenced in the comment is not suggesting that FODSP should close seasonally as an adaptive management measure to prevent impacts to western snowy plovers, and the text of the section was revised to clarify this point. However, temporary public beach access route closure is an adaptive management strategy included in the HCP. Please refer to Response G-19. Please also refer to Response G-29 as it relates to the reimbursement to State Parks of lost revenues that may occur as a result of a temporary closure due to an adaptive management action. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-58** Please refer to Response G-25.
- G-59** Any action that would alter or diminish a Permittee’s obligations under the HCP or the permits would require consultation with, and concurrence of, the Wildlife Agencies, and likely a plan amendment (Section 8.4.2, *Major Amendments*). Please refer to Response G-61 for additional discussion related to the nature of the ITPs requested by the Permittees.

- G-60** The initiation of all restoration actions by Year 45 of the permit term allows for the actions to be completed within the permit term. A restoration action that is initiated in Year 50 of the permit term may not be successfully completed in Year 50, and there are no provisions within the HCP for funding for restoration during the post-permit term, only funding for adaptive management and limited monitoring to ensure management actions are performing appropriately.
- G-61** As stated in Section 1.9.1, *Permittees*, the jurisdictions, organizations, and agencies identified as Permittees under this HCP are requesting one non-severable ESA Section 10(a)(1)(B) incidental take permit and one non-severable CESA Section 2081 permit that would provide authorization for take that occurs as a result of implementing covered activities within their respective jurisdictions.
- If the permit issued by USFWS or CDFW is suspended or revoked, take authorization provided to all Permittees and those under their jurisdiction would also be suspended or revoked. Such a suspension or revocation could occur for all or some of the species authorized by that permit.
- State Parks is a co-Permittee under the HCP with take coverage provided by a single non-severable federal permit, and single non-severable state permit. The non-severable nature of the permits means that all co-permittees are equally affected should either of the ITPs be suspended or revoked.
- The Draft HCP terms and conditions, including those of permit suspension and revocation dialogue have been developed in consultation with USFWS and CDFW over the last 23 years. The suggested revision would significantly alter the intent of the corresponding terms and conditions and would need to be renegotiated with the Wildlife Agencies. As a result, if the suggested revision is still desired, State Parks could consult with CDFW and USFWS to include the requested revisions in their ITP.
- G-62** Please refer to Responses G-10, G-11, and G-12.
- G-63** The comment related to State Park staffing estimates is acknowledged.
- G-64** The comment is concerned with the key assumptions used in the development of the cost model for the HCP. The purpose of the cost model is to provide an estimate of the costs of implementing the plan as well as costs in perpetuity. To that end, the model is dealing with unknown parameters, and must use assumptions in order to provide estimates. These assumptions should not be mistaken for absolute parameters. They are provided in the interests of transparency as a means of understanding the outputs of the cost model.
- Further discussion regarding the staffing assumptions for State Parks is provided in Section 9.2.1.1.1, *Staffing*, footnote 2.
- G-65** Please refer to Responses G-10, G-11, and G-12.
- G-66** Table 9-8, subheading “Annual Appropriations,” a footnote was added to State Parks to the effect that appropriation amounts are estimates due to fluctuations in annual budget appropriations. A cross reference to Section 9.3.3, *State Parks’ Annual Appropriations*, was included in the footnote. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-67** The sentence stating that HMP required activities are nearly equivalent to HCP required actions was removed from Section 9.3.3, *State Parks’ Annual Appropriations*. “Guarantee” was removed from the 2nd paragraph. The sentence was revised as follows: “State Parks is committed to successful implementation of this HCP and will annually request sufficient funding from the legislature to implement the HCP and fulfill the terms and commitments of the ITP.”

Note that paragraph two of the section includes an assurance that State Parks will annually request sufficient funding from the legislature to implement the HCP and fulfill the terms of the ITP as an expression of its commitment to successful implementation of the HCP. However, there is no consequent assumption that those funds are guaranteed to be allocated by the legislature.

Further discussion in the section explains the uncertainty surrounding future budget appropriations that may affect State Parks' ability to implement the HCP, and describes the role of the Implementation Assurances Fund that will be created, and will provide funding to State Parks in years when budget shortfalls may occur. Please refer to **Chapter 6, Revisions to the Draft HCP**.

- G-68** Section 9.3.3, 4th paragraph, does not state an assumption that a budget shortfall will result in take of a covered species. It acknowledges that there is potential for risk of take should the Permittee be unable to fulfill the permit requirements and fully implement the HCP. As an example, should a budget shortfall prevent implementation of required HCP mitigation measures, there is the risk of unmitigated take occurring. If monitoring is fully implemented, monitoring results may show that no take occurred; however, the lack of mitigation implementation still increases the risk of take. Thus, under a circumstance where a budget shortfall may prevent full implementation of all required HCP actions, consultation with the Wildlife Agencies would be needed to address alternative means of preventing risk of take. There is no mechanism for a single agency to determine that take has occurred solely based on a funding allocation. The final sentence of paragraph four was amended to remove the phrase "...provide sufficient funding and consequent nonperformance in..." Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-69** The comment related to State Parks' future actions in applying for grant funding to augment HCP responsibilities is acknowledged.
- G-70** Section 9.3.5.1, 4th bulleted item, was modified to include language acknowledging that State Parks cannot commit any resources to HMAs with a development nexus. The 6th bulleted item had the phrase "...as funding is made available" added to the last sentence. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- G-71** Please refer to Response G-25.



DEPARTMENT OF PARKS AND RECREATION
Monterey District
2211 Garden Road
Monterey, CA 93940

Lisa Ann L. Mangat, Director

RE: FORT ORD
MULTI-SPECIES HABITAT CONSERVATION PLAN
PUBLIC DRAFT DEIS/EIR
SCH #2005061119

FROM: California State Parks
DEIS/EIR Comments
(December 16, 2019)

Thank you for the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan Public Draft DEIS/EIR, SCH #2005061119. The comments below reflect State Park staff and Counsel Review.

H-1

**FORT ORD
MULTI-SPECIES HABITAT CONSERVATION PLAN
PUBLIC DRAFT DEIS/EIR
SCH #2005061119**

**VOLUME 1: Habitat Conservation Plan
(State Park Comments)**

Page 5-10 Section 5.3.3.2 Objective 13.2b

This objective needs to be deleted or modified so that it is achievable. FODSP experienced a fledging rate of 4 in 2019. This low fledging rate was not due to campground operations or increased public access and State Parks would be starting this HCP requirement off in a deficit with one more low year. The fledging rate should consider the regional population and not a few isolated individuals. Ecology is not restricted to artificial boundaries and individuals may move north or south for unknown reasons, even if provided prime habitat.

H-2

4.9 RESPONSE TO COMMENT LETTER H: CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

H-1 Comment is acknowledged. No response is required.

H-2 The request to delete or modify the objective would alter the western snowy plover-specific mitigation that has been developed in consultation with the USFWS over the last 23 years to offset the impacts of the take to western snowy plover. As a result, State Parks should renegotiate with USFWS to determine whether an alternative, proposed objective would be adequate to adequately offset the impacts of the take to the maximum extent practicable.

Also note that an important purpose of the monitoring and adaptive management strategy for western snowy plover (Section 6.5.9, *Western Snowy Plover*) is to determine whether the mitigation measures are achieving objectives. Information and data gathered through monitoring will help to identify causes for a fledge rate per male dipping below the target stated in the objective. Management actions will be adaptively adjusted based on the information and data gathered from monitoring. If monitoring indicates that fledge rate per male was affected by factors beyond the control of FODSP (e.g., extreme weather, wide-ranging disease) then mitigation measures may not necessarily need to be adjusted.

December 16, 2019

Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003
Email: fw8fortordhcp@fws.gov

SUBJECT: Fort Ord Multi-Species Habitat Conservation Plan DRAFT EIS/EIR

Dear Mr. Henry,

Thank you for providing the Monterey Bay Air Resources District (Air District) with the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan Draft EIS/EIR. The Air District has reviewed the EIS/EIR and has the following comments:

I-1

Air Quality:

- Construction Dust:

Fugitive dust from construction activities can be significant if not mitigated. The Air District appreciates that the U.S. Fish and Wildlife included a Construction Dust Mitigation Plan in the Mitigation Measures. Supporting information can be found in the Air District's 2008 CEQA Guidelines (Chapter 8). <https://www.mbard.org/ceqa>

I-2

- Construction Equipment:

The Air District suggests that when possible cleaner construction equipment be used for any construction project. This includes equipment that conforms to ARB's Tier 3 or Tier 4 emission standards. We further recommend that, whenever feasible, construction equipment use alternative fuels such as compressed natural gas, propane, electricity or biodiesel.

I-3

Permits Required:

- Prescribed Burning:

State and local laws apply for any open outdoor burning including prescribed burning. Please coordinate with the Air District for applicable permits.

I-4

- Portable Equipment:

The Air District permits to operate, or statewide portable equipment registration, may be required for portable equipment such as engine generator sets and compressors. Please make sure to contact the Air District's Engineering Division at (831) 647-9411 to discuss if a Portable Registration is necessary for any portable equipment planned to be utilized for this project.

I-5

- Building Demolition/Renovation and Trenching Activities:

If any asbestos piping or asbestos material are uncovered as part of building demolition, earth moving and/or trenching or during any project, Air District rules may apply. These include Rule 424, National Emissions Standards for Hazardous Air Pollutants and Rule 439, Building Removals. Rule 424 contains the investigation and reporting requirements for asbestos which includes surveys and advanced notification on structures being renovated or demolished. Notification to the Air District is required at least ten days prior to renovation or demolition activities. District Rule 439 prohibits the release of any visible emissions from building removals. Rules 424 and 439 can be found online at <https://www.arb.ca.gov/drdb/mbu/cur.htm>. Please contact Shawn Boyle or Cindy Searson at (831) 647-9411 for more information regarding these rules.

I-6

General:

- Section 3.13.2.2 Fire Services:

- The fire agency “Salinas Rural Fire Department” mentioned is an outdated name. This fire agency is known by Monterey County Regional Fire Protection District (MCRFPD).
- The Presidio of Monterey Fire Department (POMFD) is located on Fort Ord yet they are not included in the list fire services.
- The City of Seaside fire department is listed as “the closest fire station to the former Fort Ord area..” however, POMFD is actually located on Fort Ord and MCRFPD has a substation in the East Garrison housing.
- Figure 3.13-1 also lists the wrong name for MCRFPD and omits POMFD.

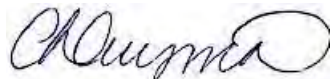
I-7

- Figure A-2e shows an aerial image of Darwin Road when it supposed to show Evolution Road.

Should you have any questions, please contact me at (831) 647-9411 or cduymich@mbard.org.

I-8

Best Regards,



Christine Duymich
Air Quality Planner II

cc: David Frisbey
Shawn Boyle
Cindy Searson

4.10 RESPONSE TO COMMENT LETTER I: MONTEREY BAY AIR RESOURCES DISTRICT

- I-1** The comment introduces the comments in the letter as follows. No response is required.
- I-2** The comment supports the Construction Dust Mitigation Plan identified in MM AQ-1 in the Draft EIS/EIR and provides supporting information for construction dust management. The comment is referred to the decision-makers for their consideration.
- I-3** The comment recommends using cleaner construction equipment be used when possible and, whenever feasible, construction equipment use alternative fuels. The comment is referred to the decision-makers for their consideration.
- I-4** The comment states that permits are required for prescribed burns and not on the environmental analysis in the Draft EIS/EIR. Implementing entities will contact the Air District to obtain a permit when required.
- I-5** The comment states that permits may be required for portable equipment. Implementing entities will contact the Air District to obtain a permit when required.
- I-6** The comment summarizes Rule 424 and Rule 439 and states that these rules may apply during building removal and earthmoving and/or trenching activities. Implementing entities will comply with these rules and notify the Air District when required.
- I-7** The comment provides some corrections in Section 3.13.2.2, *Fire Services*, of the Draft EIS/EIR. These corrections have made to the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**. In addition, the comment provides a correction to Figure A-2e of the Draft HCP. This correction has been made to the Draft HCP. Please refer to **Chapter 6, Changes to the Draft HCP**.
- I-8** Comment is acknowledged. No response is required.



[EXTERNAL] Fort Ord Multi-Species Habitat Conservation Plan DEIR/EIR Comment Letter

1 message

Vicki Nakamura <vnakamura@mpc.edu>

Mon, Dec 16, 2019 at 3:40 PM

To: fw8fortordhcp@fws.gov

Cc: David Martin <dmartin@mpc.edu>, Contact <vnakamura@mpc.edu>, Brian Finegan <brian@bfinegan.com>, Michael Harrington <michael@bfinegan.com>

December 16, 2019

Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Office
2493 Portola Road, Suite B

Ventura, CA 93003

Re: Fort Ord Multi-Species Habitat Conservation Plan Draft Environmental Impact Statement/Environmental Impact Report

Dear Mr. Henry:

This letter contains the comments of the Monterey Peninsula Community College District ("MPC") on the Fort Ord Multi-Species Habitat Conservation Plan Draft Environmental Impact Statement/Environmental Impact Report (DEIR/EIS). J-1

MPC controls lands within the former Fort Ord that are proposed for significant uses essential to the educational mission of MPC. The DEIR/EIS and draft Fort Ord Habitat Conservation Plan (HCP) will support MPC's proposed project and uses while at the same time providing a regional framework for ensuring conservation and enhancement of special status species and their habitat. J-2

Our comments on the DEIR/EIS and HCP are as follows:

DEIR/EIS, Section 3.11.1, Land Use and Planning Introduction, page 3.11-1 – The DEIR/EIS states: "Property transferred to the CSU or the UC that is used for educationally-related or research-oriented purposes ... are subject to the requirement of their applicable planning documents. These land use recipients are considered sovereign entities and are not subject to the requirements of the Reuse Plan, although they are encouraged to maintain consistency with the Reuse Plan to the extent feasible..." MPC is also considered a sovereign entity as a political subdivision of the state. MPC's development projects are included within its Five Year Capital Outlay Plan which is reviewed by the California Community Colleges Chancellor's Office. MPC educationally-related development projects are under the oversight of the Division of the State Architect and are not subject to local building code regulations. Thus, MPC should also be identified as a sovereign entity in this section to clarify its status. J-3

DEIR/EIS, Figure 3.11-3, Plan Area & Surrounding Area Land Use Map – The boundaries of the Military Operations in Urban Terrain Facility (MOUT) are visible on the map, but should be color-coded as blue and listed under #6 in the Notes section to indicate its land use classification as Public Facilities/Institutional. This facility is planned for transfer to the ownership of MPC for use in training public safety officers. J-4

DEIR/EIS, Figure 3.11-4, Ft. Ord – Major Development Projects – Under Identified Projects in the County of Monterey listing, the M.O.U.T. Facility should be identified as MPC M.O.U.T. Facility. The MOUT facility is planned for transfer to the ownership of MPC. J-5

DEIR/EIS, Section 3.11.2.2, General Plan(s), page 3.11-8 – Related to the discussion above under land use and planning, MPC should be identified as a sovereign entity along with BOT/CSUMB, UC, and State Parks. J-6

DEIR/EIS, page 4-4.24 and Figure 4.4-1, Reserves and Significant Natural Areas – Area 3 is identified as a CNPS Plant Reserve. This parcel is planned for transfer to MPC as a development parcel. J-7

DEIR/EIS, Mitigation Measure HAZ-4, page 4.9-11 – The measure states the POM, Directorate of Environmental and Natural Resources Management (DENR) shall be contacted to develop a safety program that specifies protocols relative to munitions and explosives of concern (MEC) in accordance with Cal-OSHA and Army regulations. In addition, this program must be approved before the start of any ground disturbing activities. As part of the Fort Ord Reuse Authority Environmental Services Cooperative Agreement Remediation Program (ESCA) MPC’s parcels have been evaluated for the probability of encountering MEC, land use restrictions applied specific to these probabilities, and a Land Use Control Implementation and Operation and Maintenance Program (LUCIP/OMP) developed to specifically address and minimize exposure to MEC. LUCIP/OMP measures include munitions recognition and safety training, construction support by UXO-qualified personnel, restrictions regarding residential use in non-residential development and habitat reserve areas, access management measures in habitat reserve areas, restrictions against inconsistent uses in habitat reserve areas, and adherence to local digging/excavation ordinances. The LUCIP/OMP has been signed off by the Army, the Environmental Protection Agency and the California Department of Toxic Substances Control. Is the safety program specified in the mitigation measure in addition to the LUCIP/OMP requirements? If so, this is another requirement on top of a rigorous program designed to minimize and respond to MEC exposure concerns. How will this safety program provide any additional assurance over and above the LUCIP/OMP? MPC is concerned about the additional time, delay, and cost associated with developing this safety program where the benefit is not clear, given the LUCIP/OMP requirements. MPC recommends the LUCIP/OMP serve in lieu of this additional safety program development.

J-8

HCP Table 3-5, Parcels Designated as Borderlands by Land Recipient, page 3-8 – Adjust spacing to clarify which parcels are owned by a particular land recipient. Currently, the line spacing between the parcels is all the same, making it difficult to line up the parcels with the land recipients.

J-9

HCP Section 5.3.2.6, Objective 10.1, page 5-9 - The Technical Advisory Committee is mentioned without any information defining who and what this committee is. MPC recommends providing a reference to section 7.2.3 where the Technical Advisory Committee is defined. This recommendation would apply to any other instances in the HCP where the Technical Advisory Committee is mentioned.

J-10

HCP, pages 5-52 through 5-68 – The mitigation measures on these pages state the Permittees will conduct the various activities. As the Cooperative will conduct these activities on the behalf of MPC and other jurisdictions, “permittees” should be changed to “the Cooperative and habitat managers” to clarify who will be performing these various actions.

J-11

HCP, Section 7.3.1, Permittees, page 7-4 – This section states “Aside from complying with the requirements of the HCP described herein, upon permit issuance, State government entities such as CSUMB do not have to seek authorization from the local jurisdictions to carry out their covered activities.” MPC should be added to this statement to clarify it has the same autonomy.

J-12

HCP, Table 7-3, Habitat Management Areas Currently Transferred and Under Army Jurisdiction, page 7-18 – The table lists the Range 45 Reserve as being owned by MPC. This reserve has yet to be transferred. MPC understands the transfer is in process and the deeds are expected to be received in the next few months.

J-13

HCP, Section 7.9.3.1, Annual Reports from Permittees and HMA Managers, page 7-24 – This section states HCP compliance monitoring results will be submitted by all permittees to the Cooperative for lands for which they are the recipient. The section later states HMA managers will generate HCP compliance for the lands which they have management responsibility. There is an overlap between these 2 categories of lands. It is confusing what results are to be submitted by the permittees.

J-14

HCP, Section 10.2, Alternative 1, page 10-3 – This section states the development activities of the permittees are pursuant to various planning documents, listed by jurisdiction and/or agency. “MPC Five Year Capital Outlay Plan” should be added to the list.

J-15

HCP, Section 10.4, Alternative 3, page 10-6 – This section states the development activities of the permittees are pursuant to various planning documents, listed by jurisdiction and/or agency. “MPC Five Year Capital Outlay Plan” should be added to the list.

J-16

Thank you for the opportunity to comment on this significant plan. If you have any questions, please contact Vicki Nakamura at 831-920-9244, email: vnakamura@mpc.edu. We look forward to your responses to our comments and to a Final EIR that will provide a comprehensive regional approach to species and habitat conservation on the former Fort Ord while also supporting planned development of benefit to the region, including MPC’s Public Safety Training Center Project.

J-17

Sincerely,

Mr. David Martin
Interim Superintendent/President

Monterey Peninsula College
980 Fremont Street
Monterey, CA 93940
Phone: 831-646-4060

4.11 RESPONSE TO COMMENT LETTER J: MONTEREY PENINSULA COLLEGE

- J-1** The comment introduces the comments in the letter as follows. No response is required.
- J-2** The comment expresses the support of the Draft EIS/EIR and Draft HCP. The comment is referred to the decision-makers for their consideration.
- J-3** The comment requests a revision to Section 3.11.1, *Land Use and Planning Introduction*, on page 3.11-1 of the Draft EIS/EIR to identify Monterey Peninsula College (MPC) as a sovereign entity. This revision has been made to the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- J-4** The comment requests that the Military Operations in Urban Terrain (MOUT) Facility should be color-coded as blue and listed under #6 in the Notes in Figure 3.11-3 of the Draft EIS/EIR to indicate its land use classification as Public Facilities/Institutional. This revision has been made to the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- J-5** The comment requests that the MOUT Facility be identified as the “MPC M.O.U.T. Facility” in Figure 3.11-4 of the Draft EIS/EIR. This revision has been made to the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- J-6** The comment requests a revision to Section 3.11.2.2, *General Plans*, on page 3.11-8 of the Draft EIS/EIR to identify MPC as a sovereign entity. This revision has been made to the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- J-7** The comment accurately states that Area 3 is identified as a CNPS Plant Reserve on page 4.4-24 and in Figure 4.4-1 of the Draft EIS/EIR is planned for transfer as a development parcel. However, while the HMP designates parcels within the former Fort Ord as “development” and other land use categories, general plan land use designations, zoning, Memoranda of Agreements, deed restrictions, land use covenants, and other planning considerations may apply to parcels within the former Fort Ord. It is the responsibility of the land recipient to comply with the requirements associated with each parcel.
- J-8** The comment expresses concern with MM HAZ-4 on page 4.9-11 of the Draft EIS/EIR. The commenter is concerned that this mitigation requirement would be on top of the rigorous Land Use Control Implementation and Operation and Maintenance Program (LUCIP/OMP) designed to minimize and respond to MEC exposure concerns adding additional time, delay, and cost, and recommends that the LUCIP/OMP requirements serve in lieu of this additional safety program requirement.
- Because all parcels are not subject to the LUCIP/OMP, the intent of this mitigation measure was developed to reduce impacts associated with MEC on the entirety of the former Fort Ord. The implementation of the LUCIP/OMP would adequately mitigate for impacts related to MEC and meet the intent of this measure, and, thus, MM HAZ-4 has been revised to clarify the implementation of these safety programs. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- J-9** Adjustments to the spacing of the text in Table 3-5, Parcels Designated as Borderlands by Land Recipient, in Section 3.2.2, were made to increase readability of the table. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- J-10** Information regarding the role of the Technical Advisory Committee (TAC) and the location of further information regarding the TAC within the HCP document are provided in the Executive Summary and Introduction of the HCP. In addition, the Table of Contents guides the reader to specific Sections 7.2.3 and 7.3.3 for information relating to the TAC.

The TAC is referenced approximately 100 times within the HCP document, so it is not practical to add a cross-reference to the sections providing in-detail descriptions of the composition and role of this group in every instance.

- J-11** The term “permittees” rather than the “Cooperative and habitat managers” was used in the pages mentioned in the comment to distinguish all of the permittees from the BLM. BLM is a habitat manager and important partner with the permittees in implementing the HCP, but BLM is not a permittee. Ultimately, the primary responsibility for implementation of the HCP ultimately rests with the Permittees.
- Chapter 7 of the Draft HCP provides extensive detail regarding the roles and responsibilities of all Permittees, including the Habitat Cooperative. In addition, Table 1-2, Roles of HCP Participants, and Table 5-3, HCP Required Actions – Covered Activity Locations that Require AMM Implementation, provide the information that the Cooperative will have responsibility for implementation of all HCP required actions on the HMA parcels of County of Monterey, City of Marina, MPC, and Monterey Peninsula Regional Park District.
- The HCP retains the use of the term “Permittees” when describing various activities that must be performed for implementation of the HCP when it is clear that the obligation rests with all Permittees. In instances where the identification of the specific party performing the action is necessary for clarity within the document, a change in wording was made to address the issue.
- J-12** Text was modified within the HCP to identify MPC as a State government sovereign entity. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- J-13** Table 7-3, Habitat Management Areas Currently Transferred and under Army Jurisdiction, in Section 7.6 was corrected to reflect that the Range 45 Reserve acreage is currently under Army jurisdiction and is not owned by MPC. A footnote to Table 7-3 was added stating that transfer is in progress and expected to be complete by mid-2020. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- J-14** All Permittees are responsible for submitting compliance monitoring results to the Cooperative annually, and it is also the responsibility of the HMA managers to generate reports on those results for lands which are under their management authority. The Cooperative has the ultimate responsibility for compiling all compliance monitoring results into the annual report submitted to the Wildlife Agencies.
- Clarifying text was added to Section 7.9.3.1, *Annual Reports from Permittees and HMA Managers*, to indicate that HMA managers have responsibility for generation of compliance monitoring reports in addition to the compliance monitoring results submitted by the Permittees. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- J-15** Text in the 2nd paragraph of Section 10.2, *Alternative 1: Redevelopment of Existing Developed Areas and HMA Management Activities*, was revised to add the MPC Five Year Capital Outlay Plan to the list of planning documents provided. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- J-16** Text in paragraph three of Section 10.4, *Alternative 3: No Action*, was revised to add the MPC Five Year Capital Outlay Plan to the list of planning documents provided. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- J-17** Comment acknowledged. No response is required.



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

[EXTERNAL] Ft. Ord, CA Public Comments for Draft Plan

1 message

Jacqueline Fobes [REDACTED]
To: fw8fortordhcp@fws.gov

Sun, Nov 3, 2019 at 8:20 AM

Dear Sir or Ms,

My only comment would be to leave Ft. Ord in it's natural state. Please do not build any more shopping centers, tacky fast food places, or housing. Once you allow building there you will never get the land back. Leave the area alone for wildlife and keep it open space for walkers, hikers, and bikers. Leave nature be.

| K-1

Clean up the mess, the old housing units, and the decrepit army barracks that FORA did not do. The majority of people here on the Monterey Peninsula believe that all FORA did was charge everyone an exorbitant amount of money and hold multiple meetings that went no where.

| K-2

| K-3

Thank you.

Jacqueline Fobes, Ph.D.

4.12 RESPONSE TO COMMENT LETTER K: JACQUELINE FOBES

- K-1** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- K-2** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- K-3** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.



November 4, 2019

Mr. Stephen P. Henry
Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Via Email: fw8fortordhcp@fws.gov

RE: Public comments concerning the Habitat Conservation Plan

Dear Mr. Henry:

This letter is my public comment regarding the Habitat Conservation Plan on the “Fort Ord” property on the Central Coast of California. L-1

As a life-long Central California resident, I recall the promises made when the base closed in 1994. The economic development progress and opportunities since the base closure have been minimal and extraordinarily slow in coming. L-2

Habitat and wildlife conservation is extremely important in our world of heavy resource usage and overall high living standards. This goal must be balanced by fair opportunities for the dignity for reasonable housing and jobs for our current and future residents. We were promised a strong emphasis on economic recovery opportunities on a significant portion of the base. The portion of the land dedicated to these promises continues to be reduced. L-3

I respectfully request that your office balance the needs of all parties and focus on the promises made twenty-five years ago.

Respectfully,

Chris Steinbruner, CPA

4.13 RESPONSE TO COMMENT LETTER L: CHRIS STEINBRUNER

- L-1** The comment introduces the comments in the letter as follows. No response is required.
- L-2** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- L-3** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

[EXTERNAL] Stephen P. Henry/Fort Ord Road

1 message

Dalila Epperson <[REDACTED]>
To: "fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Thu, Nov 7, 2019 at 9:29 AM

Dear Mr Henry,


The residents HOA of East Garrison unanimously agreed and signed a letter letting FORA know our community is fully against any road through Fort Ord's lands. | M-1

The impact would destroy the quality of life here. The estimate is about 16k cars per day through and near our community. Have you visited East Garrison? Please do and see for yourself. | M-2

Please do not allow any roads through Fort Ord. We and so many other groups use these trails daily. Plus the environmental factor. | M-3

Find alternatives and preserve this land wholly. | M-4

Thank you,
Dalila & Steve Epperson
[REDACTED]

--

Jesus Christ Loves You!
Repent, Believe, & Follow Jesus!

4.14 RESPONSE TO COMMENT LETTER M: DALILA AND STEVE EPPERSON

- M-1** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- M-2** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- M-3** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- M-4** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

[EXTERNAL] Fort Ord Development Comment

1 message

Cynthia Hickey [REDACTED]
To: fw8fortordhcp@fws.gov

Mon, Nov 11, 2019 at 7:51 PM

I'm writing this letter in opposition to any development on the former Fort Ord that will result in a take of any federally endangered or threatened species. Urban sprawl of any kind is irresponsible in a time when global extinction rates are rising for many plant and animal species. The Monterey Peninsula has many vacant homes that are used as vacation homes or investments. Any new homes will not have a meaningful impact on affordable housing needs, and new recreation or tourism developments are not sustainable. Please protect these endangered or threatened species by denying applications for takes.

Thank you,
Cindy Hickey
Del Rey Oaks

N-1

4.15 RESPONSE TO COMMENT LETTER N: CINDY HICKEY

N-1 The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.

Virgil M. Piper
3010 Eddy St., Marina, CA. 93933
(831) 384-9595 (fax 384-6059)
pipersvc@sbcglobal.net

November 4, 2019

Mr. Stephen P. Ventura
U.S. Fish & Wildlife Service
2493 Portola Road, Suite B
Ventura, CA. 93003
Fw8fortordhcp@fws.gov
FAX: (805) 644-3958

Dear Mr. Ventura,

The November 2, 2019 issue of the Monterey Herald carried an article concerning some sort of draft of a *Habitat Conservation Plan* in which you folks are proposing to require a "Take" permit on Fort Ord property (as well as other Monterey County properties) in an effort to protect endangered species.

O-1

This article offers this definition: **"A take is defined under the Endangered Species Act as 'to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'"** - one has to wonder why a Habitat Conservation Plan is being proposed at all since all cities involved in a so-called "take" have their own requirements, planning commissions and must submit and get approved an EIR prior to development which would include meeting the standards of the Endangered Species Act.

O-2

The Herald article does not indicate whether your proposal includes some sort of fee or tax – and, in fact, does not offer any reasonable explanation why any organization (not part of state, county or local government) should be drumming up one more impediment to prevent what might have been affordable land development.

O-3

There are endless requirements to be overcome by prospective builders like environmental impact reports justifying water use, air quality, additional traffic solutions, protection of unknown animal species "ad infinitum."

O-4

And if a project somehow gets past all this, there are impact fees, architectural reviews, permit fees and then, of course, the ultimate confrontation with planning commissions and city councils or county board of supervisors. But none of this covers the potential litigation put forth by the "smart growth" or "no growth" contingent . . . **and now you folks are proposing to "Draft a Habitat Conservation Plan" to be added to that list of requirements!**

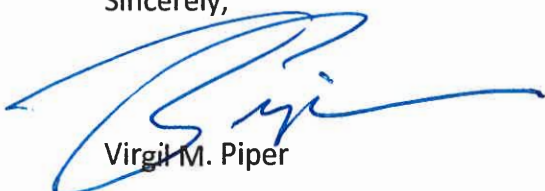
O-5

O-6

Possibly, you folks could take the time to explain why your habitat conservation plan does not duplicate EIR requirements already in place?

O-7

Sincerely,



Virgil M. Piper

US FISH AND WILDLIFE
SERVICE

NOV 12 2019

RECEIVED
VENTURA, CA

FORT ORD

Public Comment Sought on plan

**Fish and Wildlife
Service habitat
conservation document
available until Dec. 16**

By James Herrera

*jherrera@montereyherald.com
@jammerral on Twitter*

MONTEREY » The detailed proposal to conserve and protect the flora and fauna at the former Army base at Fort Ord is available for public scrutiny and opinion for the next 45 days.

The Draft Habitat Conservation Plan and associated environmental impact statement for Fort Ord is available for public comment until Dec. 16 and the U.S. Fish and Wildlife Service is seeking community input.

The draft plan aims to balance the need for local economic growth through residential, commercial and recreational development on the former Army base while ensuring the long-term survival of rare plants and animals and their habitat.

According to Pam Bierce, a U.S. Fish and Wildlife Service spokesperson, the agency is working with local governments and land managers represented by the Fort Ord Reuse Authority to streamline the permitting process for future development projects and to ensure threatened and endangered species are conserved.

The authority represents 13 entities jointly applying for an incidental take permit, which requires a habitat conservation plan. A take is defined under the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

Incidental take is defined as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity.

The draft plan finds a balance between economic growth through residential, commercial and recreational development and habitat management that avoids and minimizes effects to listed species and contribute to their recovery, including the federally threatened California tiger salamander, California red-legged frog, western snowy plover, Monterey spinyflower, the federally endangered Smith's blue but-

terfly, Monterey gilia, Yaden's piperia and the state-endangered seaside bird's beak.

The requested permit term under the habitat conservation plan is 50 years after the plan becomes effective. The applicants for the incidental take permit include the Fort Ord Reuse Authority, California Department of Parks and Recreation, regents of the University of California, Monterey County, the cities of Marina, Seaside, Del Rey Oaks and Monterey, the board of trustees of California State University, Monterey Peninsula College, Monterey Peninsula Regional Park District, Marina Coast Water District and Fort Ord Regional Habitat Cooperative.

The former Army base at Fort Ord sits on about 28,000 acres. Permitted activities would occur on those portions of the base that have been or will be transferred out of federal ownership, totaling about 13,000 acres. The rest of the former Army base remains in federal ownership with the majority of the conserved lands being held by the Bureau of Land Management. Fort Ord was shuttered in 1994 as a result of Base Realignment and Closure by the federal government.

The Fish and Wildlife Service will consider and address public comments con-

cerning the Habitat Conservation Plan as it prepares a final environmental impact statement.

Submit comments by U.S. mail to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003, or fax comments to 805-644-3958 or via email at fw8fortordhcp@fws.gov.

Contact reporter James Herrera at 831-726-4344.

4.16 RESPONSE TO COMMENT LETTER O: VIRGIL M. PIPER

O-1 The comment references an article in the Monterey Herald, which is attached to the comment letter. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

O-2 The comment requests clarification on the purpose of the proposed Draft HCP and Draft EIR/EIS. Section 1.6, *Purpose & Need and Goals and Objectives*, on page 1-9 of the Draft EIS/EIR provides the purpose and goals of the proposed Draft HCP. As described on page 4.1-8 of the Draft EIS/EIR, the EIS/EIR “project” under CEQA and “action” under NEPA consists of the approval and implementation of the Draft HCP and issuance of the associated take permits, but not the actual construction of or discretionary entitlements of future development activities. Thus, the environmental impacts of future development activities in the Plan Area would not directly result from the decisions to be made for the Proposed Action. However, since future development activities are covered activities for which the ITPs would address take, the potential environmental impacts of future development activities as well as all other covered activities proposed for coverage under the ITPs are addressed in the Draft EIS/EIR.

As such, the issuance of the ITPs would provide take authorization of Federal and State listed species, which would facilitate the covered activities (including development activities) by addressing certain various statutory and regulatory requirements tied to project authorization (i.e., Federal Endangered Species Act and California Endangered Species Act).

Section 1.7, *Decisions to be Made*, describes how the EIS/EIR and ITPs would be utilized by the Permittees. Page 1-13 of the Draft EIS/EIR describes how all the Permittees (including cities) would adopt the HCP and implementing ordinances and utilize the EIS/EIR to make the required findings under CEQA. The adoption of the HCP, issuance of the base-wide ITPs by the regulatory agencies, and certification of the EIS/EIR are meant to streamline the permitting process for the Permittees, including the cities, reducing cost and time associated with obtaining individual permits and preparing individual EIRs.

O-3 The comment requests clarification on whether the Proposed Action includes a fee or tax. Chapter 9, *Cost and Funding*, of the Draft HCP provides a planning-level cost estimate for HCP implementation and identifies all the necessary funds to pay for implementation. The funding sources are presented in Section 9.3, *Funding Sources and Assurances*, on page 9-15 of the Draft HCP. In summary, funding for HCP required actions will be provided from three primary sources: the CFD Special Tax and/or equivalent replacement funding mechanism, annual state budget appropriations, and federal budget appropriations. Other funding sources (e.g., grants) could also be available. Please refer to this chapter of the Draft HCP for more details.

The comment also questions the introduction of one more impediment to prevent affordable land development. Please refer to Response O-2.

O-4 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

O-5 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

O-6 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

O-7 The comment requests explanation regarding why the Draft HCP does not duplicate EIR requirements already in place. Please refer to Response O-2.



Santa Ynez Band of Chumash Indians
Tribal Elders' Council

P.O. Box 517 ♦ Santa Ynez ♦ CA ♦ 93460

Phone: (805)688-7997 ♦ Fax: (805)688-9578 ♦ Email: elders@santaynezchuhmash.org

December 5, 2019

United States Department of the Interior
 Fish and Wildlife Service
 Ventura Field Station
 2493 Portola Road, Suite B
 Ventura, CA 93003
 Att: Stephen P. Henry, Field Supervisor

Re: 08EVEN00-2020-B0011 Monterey – Fort Ord Military Base Habitat Conservation

Dear Mr. Henry:

Thank you for contacting the Tribal Elders' Council for the Santa Ynez Band of Chumash Indians in regards to the above mentioned project.

P-1

At this time, the Elders Council requests no further consultation on this project; however, if supplementary literature reveals additional information, or if the scope of the work changes, we kindly ask to be notified.

P-2

If you decide to have the presence of a Native American monitor in place during ground disturbance to assure that any cultural items unearthed be identified as quickly as possible, please contact our office or Chumash of the project area.

P-3

Thank you for remembering that at one time our ancestors walked this sacred land.

P-4

Sincerely Yours,

The Tribal Elders' Council Governing Board

4.17 RESPONSE TO COMMENT LETTER P: THE TRIBAL ELDERS' COUNCIL GOVERNING BOARD, SANTA YNEZ BAND OF CHUMASH INDIANS

- P-1** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- P-2** The comment requests no further consultation on this project at this time; however, if the scope changes or if supplementary literature reveals additional information, the commenter requests notification. Comment is acknowledged. The Tribal Elder's Council will be notified as requested.
- P-3** The comment states that if a monitor is requested, please contact the office or Chumash of the project area. Comment is acknowledged.
- P-4** Comment is acknowledged. No response is required.



[EXTERNAL] Draft EIS for Fort Ord, Monterey, CA

1 message

ANNE GREENE [REDACTED]
Reply-To: ANNE GREENE [REDACTED]
To: fw8fortordhcp@fws.gov

Fri, Dec 6, 2019 at 9:55 AM

To whom this may concern,
I am writing to ask that you not allow "take" of any endangered creatures in our unique habitat areas of Fort Ord.
No Action Alternative should be applied here and not the Proposed Alternative which allows 'unrestricted development of some of the undisturbed habitat areas.'

Q-1

No one cannot mitigate these precious endangered species and their habitat, no matter what the developer promises.

Q-2

I sincerely doubt that mitigation would work to really preserve these species and their habitats, which are confined to our little part of the world and nowhere else on the planet.?

Monterey County holds some of the rarest species on earth. The Monarch butterfly for one, which is now plummeting to extinction thanks to our inability to preserve them, our ocean sanctuary which is the largest feeding ground in the world for sea life (Source Blue Planet part two Green Seas) and equally threatened by cruise ships, Purse seine fishing and pollution.

Q-3

There can be no amount of money or mitigation that justifies the destruction of these habitats. There are too many unknowns about these habitats that made them special to these forms of life so they could survive in a world where their survival is so threatened. Mitigation by a development entity has no interest in these areas and their rare unique life forms or they wouldn't develop there in the first place!

Q-4

In a world facing extinction on all levels we must preserve these rare places.

Q-5

Thank you,
Anne Greene

4.18 RESPONSE TO COMMENT LETTER Q: ANNE GREENE

- Q-1** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- Q-2** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- Q-3** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- Q-4** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- Q-5** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.



[EXTERNAL] Document Number: 2019-23972

1 message

Lorna Moffat

Fri, Dec 6, 2019 at 1:40 PM

To: Lorna Moffat [REDACTED], Carrie [REDACTED], Brent Allen [REDACTED], "fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Draft Habitat Conservation Plan for Eight Species; Draft Environmental Impact Statement for the Habitat Conservation Plan for Fort Ord, Monterey County, California

My comments.
submitted by Lorna Moffat

[REDACTED]

No Action Alternative should be applied here and not the Proposed Alternative which allows 'unrestricted development of some of the undisturbed habitat areas.'

R-1

No one cannot mitigate these precious endangered species and their habitat no matter what the developer promises .There can be no real cost evaluation that allows the uprooting of these species and their habitats which are confined to our little part of the world and no where else on the planet or if so, just as threatened.

For some un-explainable reason creation chose our Monterey County as a seat of creation for many forms of life both in the sea and on land.

R-2

The Monarch butterfly for one, which is now plummeting to extinction thanks to our inability to preserve them, our ocean sanctuary which is the largest feeding ground in the world for sea life (Source Blue Planet part two Green Seas) and equally threatened by cruise ships, Purse seine fishing and pollution.

We are not good stewards of this progeny entrusted to us and this Draft EIS?EIR is just another example of exploiting species and environment for money, greed and profit and admits it so in its proposed Alternative which allows' unrestricted development.'

R-3

There can be no amount of money or mitigation that justifies the destruction of these habitats. There are too many unknowns about these habitats that made them special to these forms of life so they could survive in a world where their survival is so threatened.

Mitigation by a development entity cannot possibly have a real interest in these areas and their rare unique life forms because if they did they wouldn't build there. It is contrary to their well being.

R-4

In a world facing extinction on all levels we must preserve these rare places.
The audacity and egotism in the statement below taken from the Draft EIS is just an example of the lack of understanding both spiritually and scientifically of what these species habitat really are. Their significance is reduced to "a less than significant level with implementation of mitigation levels. No wonder our planet is plummeting towards extinction. Humans can't and don't mitigate. We can only take and pretend to retrieve what we once had. And all the money in the world can't replace it.

SIGNIFICANT ENVIRONMENTAL EFFECTS: The Draft EIS/EIR did not identify any significant and unavoidable impacts. All potentially significant impacts can be reduced to a less-than-significant level with implementation of the Draft HCP and identified mitigation measures. This direct quote from the Draft EIS/EIR supplies no cost analysis , what and how they plan to mitigate these species and their environments that took millions of years to form. Please address this in the Final EIS?EIR

R-5

Thank you,
Sincerely,
Lorna Moffat

4.19 RESPONSE TO COMMENT LETTER R: LORNA MOFFAT

- R-1** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- R-2** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- R-3** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- R-4** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- R-5** The comment accurately states that the Draft EIS/EIR did not identify any significant unavoidable impacts and that all potentially significant impacts can be reduced to a less-than-significant level with implementation of the Draft HCP and identified mitigation measures. The comment further states that the Draft EIS/EIR does not supply a cost analysis and what and how mitigation is planned, and requests that this be addressed in the Final EIS/EIR.

Chapter 9, *Funding and Assurances*, of the Draft HCP provides a planning-level cost estimate for HCP implementation and identifies all the necessary funds to pay for implementation. Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP. As accurately stated in the comment, implementation of the Draft HCP and identified mitigation measures would reduce potentially significant impacts to a less-than-significant level.



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

[EXTERNAL] Habitat Conservation Plan for Fort Ord

1 message

Nancy Parsons [REDACTED]

Sat, Dec 7, 2019 at 2:10 PM

To: fw8fortordhcp@fws.gov

I applaud the Fort Ord Reuse Authority's (FORA) mandated desire to create a plan for the protection of wildlife and threatened species. Since the 36 square mile boundary includes housing and business development I would like to bring to your attention a possible threat to the wildlife you are trying to protect. A recent front page article in the Carmel Pine Cone warned of the dire effect of anticoagulants used for the abatement of rats and mice. These pesticides along with others have a deadly effect on non-target wildlife. Rats or mice that trundle off and experience a slow and painful death after eating the pesticide are often then caught by raptors, bob cats, coyotes, etc. I see the black boxes that hold this poison in many developments that are still more wild than urban such as Ryan Ranch, the storage units at Spanish Bay and many other places where owls, hawks, coyotes and other wild animals prey upon infected rodents. Any business, restaurant, or house has access to these poisons at Home Depot as well as other hardware stores. So I would like to suggest to you the banning of any pesticides on former Fort Ord land. Otherwise what is the purpose of creating a safe habitat for these animals? Assembly Bill 1788 will be put before the legislators in 2020 addressing this grave problem of non-target wildlife deaths. Please do the right thing and ban pesticides from use on Fort Ord property otherwise what is the purpose of trying to create safe habitat for our dwindling wild animals?

S-1

4.20 RESPONSE TO COMMENT LETTER S: NANCY PARSONS

S-1 The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.

The comment further requests banning pesticide use on Fort Ord property. As described on page 4-12 of the Draft HCP, pesticide use would be implemented under the HCP only to achieve biological goals and objectives (e.g., invasive species control), in accordance with label instructions, and in compliance with State and local laws. AMM-38 limits herbicide and pesticide use in HCP implementation.



[EXTERNAL] Habitat Conservation Plan for Fort Ord

1 message

Bruce Stenman [REDACTED]

Tue, Dec 10, 2019 at 9:33 AM

Reply-To: [REDACTED]

To: fw8fortordhcp@fws.gov

Dear FWS

Any habitat plan to protect the snowy plover needs to protect them from cats. At Moss Landing State Beach I frequently see people's pet cats patrolling in the early morning hours and these are indiscriminate killers of birds. A single pet cat can wipe out a breeding area in a few weeks and there should be multiple approaches taken to preventing their entry and dealing with the ones that make it into the breeding area, including trapping. Putting up wires and signage to keep people and their dogs out of the breeding areas while ignoring the cats that freely roam across the area is incredibly foolish. T-1

A second concern I have is with any prescribed burning which needs to be done intelligently and planned by people who truly understand the native plant community dynamics. I know this is breaking new ground but there have to be people in the USA that can provide advice. There is also a lack of awareness that it is the non-native plants that are the fire hazard and that compete with the native plants that are critical to the habitat for all manner of organisms and animals. T-2

It is unfortunate that the last dune area in an undisturbed state was destroyed to put in a golf course at Spanish Bay but there is need to find any that remain in the state to have a restoration target for any plan that is created. T-3

Best regards,

Bruce Stenman

Prunedale, CA

4.21 RESPONSE TO COMMENT LETTER T: BRUCE STENMAN

- T-1** The comment requests that the HCP protect snowy plovers from cats. AMM-27 includes a requirement for predator control implementation if predators are facilitated by human use and impairing plover nesting success. Please refer to page 5-33 of the Draft HCP.
- T-2** The comment states that prescribed burning needs to be done intelligently and planned by people who truly understand the native plant community dynamics. Section 5.4.9, *Avoidance and Minimization Measures for Prescribed Burns and Alternative Vegetative Management*, on page 5-40 of the Draft HCP identifies the AMMs required for prescribed burns developed from an understanding of the natural communities on the former Fort Ord.
- T-3** The comment identifies the need to have a restoration target for any plan that is created. As described in Section 5.5.3.1, *Site Restoration Plans*, on page 5-51 of the Draft HCP, site restoration plans are required to include restoration goals.



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

[EXTERNAL] Habitat Conservation Plan comment

1 message

Christian Sousa [REDACTED]
To: "fw8fortordhcp@fws.gov" <fw8fortordhcp@fws.gov>

Tue, Dec 10, 2019 at 10:12 PM

Hello,
Please make it a priority to remove invasive species. Invasive flora and fauna play a major role in species conservation. Setting aside large swaths of wild areas for species is the only way to preserve their wellbeing. Habitat fragmentation destroys the livelihood of many species. We must provide useable space for the threatened and endangered species of Fort Ord, and surrounding areas, before it is all developed.
Thank you,
Christian Sousa

U-1

4.22 RESPONSE TO COMMENT LETTER U: CHRISTIAN SOUSA

- U-1** The comment requests that removal of invasive species be a priority. The Draft HCP identifies invasive species control as a high priority, as described in Goal 10 on page 5-9: Control non-native plant species, non-native fish and wildlife, and diseases that could threaten HCP species and/or degrade habitat quality. As identified in Table 5-1, Relationship between Biological Goals and AMMs, on page 5-92 of the Draft HCP, seven AMMs (AMM-17, AMM-46, AMM-47, AMM-42, AMM-50, AMM-51, and AMM-52) are identified to meet this goal. Additionally, as identified in Table 5-4, Relationship between Biological Goals and MMs, on page 5-125 of the Draft HCP, two MMs (MM-29 and MM-26) are identified to meet this goal.

December 10, 2019

Via E-mail

Stephen P. Henry
 Field Supervisor
 Ventura Fish and Wildlife Office
 U.S. Fish and Wildlife Service
 2493 Portola Road, Suite B,
 Ventura, CA 93003
fw8fortordhcp@fws.gov

Board of Directors
 c/o Michael Houlemard
 Fort Ord Reuse Authority
 920 2nd Ave. Suite A, Marina, CA 93933
Michael@fora.org
Board@fora.org

Re: Draft Fort Ord Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR)

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

We offer the following comments on the Fort Ord Multispecies Habitat Conservation Plan (“HCP” or “proposed HCP”) and the Draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”).

Summary of key issues

FORA has not demonstrated that the proposed HCP is needed for ESA/CESA compliance, or that it is the best alternative, or even a viable alternative. FORA has not shown that the proposed HCP is financially feasible or that there is, or can be, a committed, enforceable, and adequate funding plan. The wildlife agencies cannot approve the HCP without this funding assurance. The 12 agencies expected to assume liability for the HCP should insist on an adequate legal and financial analysis of both the proposed HCP *and* of the no-action alternative.

The HCP proposed by FORA in the final hours of its 25-year existence would require formation of a new regional governance structure through a Joint Powers Agreement (“JPA”) that would bind five Fort Ord land use jurisdictions and seven other agencies for 50+ years as the Permittees obligated to fund and fulfill habitat management activities for two Incidental Take Permits (“ITPs”).¹ Under this proposal, these 12 agencies and their JPA, and not the project developers, would be primarily liable as the ITP Permittees under the Federal and California Endangered Species Acts for all future Fort Ord development (the “covered activities”).

The HCP and EIR/EIS do not provide the 12 agencies with the information they need to make such a commitment. Critically, the documents do not compare the liability and cost of the

¹ The agencies bound by the JPA would be the County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, UC, CSUMB, MPC, MPRPD, MCWD, and BLM.

proposed HCP to the no-action alternative. In the no-action alternative, the future developers, not the local agencies, would be liable for ESA/CESA compliance, would obtain their own project-specific ITPs, and would be directly responsible for the cost of compliance. Fort Ord development has proceeded for the past 23 years with such project-specific ITPs.

The proposed HCP is at bottom a vehicle to enable development that destroys habitat by imposing the direct cost and risk of ESA compliance on the agencies instead of the developer. The proposed HCP would also discourage redevelopment of previously developed land by taxing redevelopment to subsidize mitigation costs for habitat destruction on natural lands.

The EIR/EIS acknowledges that 4,241 acres, or 46% of the 9,292 acres of land designated for development in Fort Ord has been previously developed and can be redeveloped without an ITP because there are no covered species or habitat at risk. Twenty-five years after FORA's formation, vast areas of the former Fort Ord remains blighted with vacant buildings, empty asphalt parking lots, and disturbed lands. Before the land use agencies assume the cost to mitigate the destruction of the adjacent 5,051 acres of natural, vegetated lands designated as developable, they should determine whether they really need to permit development of these natural lands, and, if so, whether the land use agencies or the developers should assume the cost and risk of mitigation.

FORA has not answered basic questions about the no-action alternative. If the proposed HCP is not adopted, what is the continuing obligation to maintain the Habitat Management Areas ("HMAs") designated in the 1997 Habitat Management Plan ("HMP")? If there is an ongoing HMP obligation, who bears it and what is the cost? Can the HMP obligation be reduced by partnering with developers who need habitat mitigation land? By conveying the HMP HMA land to a resource agency? By negotiating revisions of the HMP? By simply making new findings under CEQA as to the availability of substitute mitigation for the HMP (e.g., project-specific ITPs) and/or new findings as to the infeasibility of a basewide HMP as mitigation?

Instead of answering these questions, the EIS/EIR stacks the deck in favor of the proposed HCP. The EIS/EIR assumes without any analysis that, unless the agencies adopt the proposed HCP, the agencies that hold the HMP's HMA lands would be obligated to manage those lands forever, *without any credit for ITP mitigation or funding from development activity*. The EIR/EIS assumes that unless the proposed HCP is adopted, only 25% of the 5,051 acres of the vegetated, natural land designated for development would be developable, because, the EIS/EIR assumes, without the availability of the HMP HMA areas for ITP mitigation, the developers would have to set aside the remaining 75% of the vegetated, natural land as ITP mitigation, even though these lands have been designated for development in the Base Reuse Plan. These assumptions cannot be consistent with the goal of the HMP, because the HMP's HMA areas have always been intended to support ITP mitigation for the developable areas of Fort Ord. Either the EIS/EIR is double counting the benefits of the HMP HMA land in its analysis of the proposed HCP, or it is ignoring those benefits in its analysis of the no-action alternative.



The HCP states that its program would require annual spending of \$2.6 million for the next 50 years, of which \$2.2 million is assumed to come from a \$38 million endowment fund. That endowment fund is assumed to be accumulated *in the next eight years* by taxes or fees generated by payments of the FORA Community Facilities District (“CFD”) tax or an unspecified “replacement funding mechanism” to be adopted by the five land use jurisdictions. Rapid accumulation of the endowment is critical to the financial viability of the HCP, because the funding analysis assumes that a long period of 4.5% annual investment returns on the accumulated endowment fund will pay for the ongoing HCP costs. To make this happen, *the HCP’s financial analysis assumes the complete buildout of Fort Ord by 2030 – a buildout at the rate of 443 houses per year, 6.9 times faster than the historic rate of buildout of 64 units per year.*

FORA’s estimates of the needed endowment continue to grow. A separate financial analysis prepared by the HCP consultant EPS in November, 2019 demonstrates that if buildout proceeds at a mere 4.3 times the historic rate, the endowment would have to be \$43 million, not the \$37 million assumed in the HCP, which would require higher fees and taxes, or recourse to the agencies’ general funds. Contradicting both the HCP and the November, 2019 EPS memo, a December 13, 2019 FORA staff report admits that the “Endowments *were originally projected to be \$9 million but are now expected to cost \$48 to \$66 million.*”² In short, the actual funding obligation is unknown. The only certainty appears to be that FORA consistently underestimates the cost.

Critically, there is no analysis of the required endowment if development proceeds at a pace consistent with historical development activity, although such a pace would require a substantially larger endowment and correspondingly higher fees or taxes. The financial analyses also ignore the need to fund startup, capital, and restoration costs in the early years, which would further retard the endowment accumulation and require higher fees or taxes. There is also no acknowledgement of the risk of assuming 4.5% annual returns from inception of the endowment fund when money market funds today barely return 2%.

Funding the HCP is critical for two reasons. First, the agencies have to reach agreement on the cost-apportionment method and the financing mechanisms to replace the FORA CFD, which will not be collectible after 2020. Incredibly, the proposed JPA Agreement would simply defer the determination of cost apportionment and financing mechanisms until *after* the 12 agencies bind themselves to 50 years of liability for the HCP costs. Postponement of a cost-apportionment agreement would be fiscally imprudent. For example, even the incomplete EPS analysis provided in November demonstrates that the cost to some agencies could be 2.5 times higher depending on the apportionment method selected.

Second, HCP funding is critical because the ESA and CESA require that the applicants demonstrate that funding is assured. CEQA and NEPA do not permit reliance on mitigation to be funded by impact fees unless the funding is committed and enforceable. Good intentions

² FORA staff report, Habitat Conservation Plan Update, Dec. 13, 2019, emphasis added, available at <https://fora.org/Board/2019/Packet/121319BrdPacket.pdf>.

without an adopted, enforceable impact fee program are insufficient. Thus, neither FORA nor USFWS, as lead agencies under CEQA and NEPA, could make the requisite findings that mitigation is sufficient, because there is no a committed, enforceable funding mechanism.

The HCP and the EIS/EIR do not disclose the unresolved difficulties of implementing a committed, enforceable funding mechanism. More than half of the future development of Fort Ord expected to fund the HCP is represented by six previously entitled development projects. Because these projects' entitlements are vested, these projects are subject only to the exactions in place when they were approved; they cannot legally be subjected to newly enacted fees or taxes once the FORA CFD becomes uncollectible in 2020. *Thus, there is no apparent legal means to collect funds for over half of the HCP cost.*

Even if this funding problem is resolved, there are others. If the agencies elect to use impact fees as a "replacement funding mechanism," they will need to support them with an analysis to show that those fees have nexus and proportionality. Nexus and proportionality would require that the HCP costs be apportioned to the projects that actually cause the incidental take that triggers the need for the HCP. But it is not clear that the HCP program would be viable without the subsidies from other development. Of course, this problem would not occur in the no-action alternative, because development project that cause incidental take would have to pay for the required mitigation, without depending on subsidies from other projects or the land use agencies.

Nor is it clear that the proposed funding would be viable if it relied on incremental assessment of development fees or taxes as building permits are pulled. The HCP's "stay-ahead" provision requires that the actively managed percentage of the total planned conservation acreage stay 5 or 20 percentage points ahead of the percentage of total baseline incidental take acreage. The HCP provides no analysis of the feasibility of meeting this stay-ahead provision; but there are several reasons why, and scenarios in which, it would not be feasible. For example, unless fees or taxes are directly related to a project's incidental take, there can be no assurance that the project would generate sufficient mitigation funding; but none of the proposed cost apportionment approaches do in fact relate fees or taxes to incidental take. Furthermore, the proposed endowment funding assumes that HCP costs would be incurred on a level basis from year to year, but that is not accurate. The lumpy startup, capital, and restoration costs essential to the stay-ahead goal would be incurred before sufficient funding were available.

Finally, the HCP does not provide an honest discussion of funding assurances in the event that Fort Ord is not built out by 2030. Even though the HCP assures the land use agencies that there would be no recourse to general funds, the HCP later proposes that the agencies that happen to own the habitat lands should incur the management cost for that land in the event of funding shortfalls. This arbitrary and inconsistent assignment of risk should not be palatable to those agencies. Nor are the proposals realistic that call for relying on volunteers or "prison crews" to manage HCP lands in the event of funding shortfalls. Like the financial assumptions, these operational proposals reveal magical thinking.

Our detailed comments follow.

A. The USFWS and FORA cannot certify the EIS/EIR and the USFWS and CDFG cannot issue ITPs without a committed, enforceable funding plan.

1. Federal and state regulations require that HCP funding be assured, which requires a decision about, and a commitment to, cost-apportionment and funding mechanisms.

The ESA requires that Permittees submit a conservation plan that specifies “the funding that *will* be available to implement” the plan. (16 USC, § 10(a)(2)(A) [emphasis added]; see also 17 CFR §§ 17.22(a)(2)(vi), (b)(2)(C), 17.32(a)(2)(vi), (b)(2)(C).) The ESA requires that the “the applicant *will* ensure that adequate funding for the plan will be provided.” (16 USC, § 10(a)(2)(B) [emphasis added].) The USFWS explains:

There must be funding for the implementation to be successful, *so the applicant must demonstrate how funding will be assured* before we can issue an incidental take permit. The applicant must develop a funding plan early in the planning process that will adequately cover all aspects (financial needs) of HCP implementation and *provide proof of the secured funding sources* before the plan is approved.

(USFWS, Habitat Conservation Plan Handbook, Dec. 6, 2018, p. 11-1, emphasis added.)

State regulations also require that CESA compliance funding be described and assured. (14 CCR §§ 783.2(a)(10), 783.4(a)(4).)

Here, the USFWS has previously warned FORA that an adequate HCP must actually set out the substance of the local ordinances that would be used to implement the HCP:

Ordinances that will be used to implement the HCP's requirements should be enacted before permit issuance to allow public comment on them during the permitting process. If this is not feasible, then the essential required elements of the ordinances should be described in the HCP and take of listed species under the permit should be deferred until the ordinances are in place.

(USFWS, letter to Houlemard, July 29, 2016.)

As a practical matter, the choice of funding mechanism is critical because it is inextricably linked to the apportionment of costs among the Permittees.

Choice of funding mechanism will also be constrained by the HCP's stay ahead provision (HCP, section 7.6), a provision that can only be met if funding is *timely*. As discussed below, timely funding requires that there be a close relation between the development activity that causes incidental take and the funding.

2. CEQA requires that there be a committed, enforceable funding mechanism for the HCP.

The HCP proposes that the FORA “CFD [Mello-Roos Act Community Facilities District] Special Tax and/or a replacement funding mechanism” be levied on future development to provide funding assurances; and it states that this “will be sufficient to create the endowments given the expected pace of development (i.e., as development occurs the CFD Tax payments are collected.)” (HCP, section 9.3, p. 9-19.) The HCP provides that, other than the State Parks Department and Monterey Peninsula Regional Parks Department “no Permittee may be compelled to obligate its General Fund to satisfy its financial obligations under the HCP.” (HCP, p. 9-15.) Thus, the HCP relies on the CFD Tax or some replacement funding mechanism that does not obligate the Permittees general funds. The EIS/EIR concludes that impacts to protected species and their habitat will be less than significant because the HCP will avoid and mitigate the impact. (EIR/EIS, section 4.4.)

When a mitigation system relies on payment of impact fees, the record must demonstrate that the necessary mitigation will actually be provided. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728.) “A commitment to pay fees without any evidence that mitigation will actually occur is inadequate.” (*Save Our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140.) Impact fee mitigation is acceptable only if fees will demonstrably be used to implement a “reasonable, enforceable plan or program that the relevant agency commits itself to implementing.” (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188.) In *Anderson First*, conditions required a project to pay 16.87% of the cost of Phase I improvements to an interchange and “to participate in the program” to provide Phase II improvements to that interchange. (*Id.* at 1188.) Even though the agency stated that “it is preparing an update to the Traffic Impact Fee Program to include the I-5 interchange” and “condition 16 requires payment of the impact fee,” the court found that this provision was too vague and speculative to constitute a “reasonable, enforceable plan or program.” (*Id.* at 1189.) The court rejected the agency’s argument that it planned to update its fee program in the future to include the needed improvements. (*Id.* at 1188-1189.) The Court emphasized that actual construction of the improvements must be “fully enforceable,” i.e., part of a fee program that has actually been adopted. (*Id.*)

In *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, the court rejected a mitigation scheme as legally inadequate because neither the agency nor Caltrans had adopted a specific plan for necessary improvements – even though the agency had announced an intent to complete some form of improvements and had a clear methodology for collecting impact fees. (*Gray, supra*, 167 Cal.App.4th at 1122.) The mitigation was deficient because the EIR did not discuss how or when the fees would be collected and spent or whether the agency could ensure funding for necessary improvements.

Regardless of the reasonableness of a developer’s contribution, payment into a fee program is insufficient mitigation where the agency will not have sufficient funds to construct the improvements the program is intended to implement. (*Napa Citizens for Honest Government*

v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 364; *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 785.)

The failure to identify the relevant improvements and impact fee programs violates CEQA: cumulative impacts are not mitigated by “paying an unspecified amount of money at an unspecified time in compliance with an as yet unenforced or unspecified transit funding mechanism.” (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) Case law specifically rejects the notion that “any fee program is necessarily or presumptively ‘full’ mitigation.” (*California Native Plant Society v. County of Eldorado* (2009) 170 Cal.App.4th 1026, 1055.) Good intentions and “recommendations” for improvements do not count: impact fee mitigation must be part of a committed, funded program when the project is approved. (*Anderson First, supra*, 130 Cal.App.4th 1188; *Gray, supra*, 167 Cal.App.4th at 1121-1122.)

V-2
(continued)

Mitigation fees paid must actually constitute a fair share of all needed projects; if the impact fee program does not actually include a fair share of all of the necessary facilities to mitigate cumulative impacts, even the fact that the agency may plan to increase the impact fee to cover them is not sufficient. (*Anderson First, supra*, 130 Cal.App.4th 1173, 1188.) Where, as here, the impact fee has not even been calculated or mandated, the deficiency is greater. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 197–198.)

3. NEPA requires funding assurances if the agency finds impacts would be mitigated under an environmentally preferred alternative.

Unlike CEQA, NEPA does not contain a substantive mandate that an agency adopt all feasible mitigation. However, NEPA does require that an EIS include mitigation measures among the alternatives compared. (40 CFR, §§ 1502.14(f), 1508.25((b)(3).)

And NEPA requires that when an agency relies on mitigation to identify the environmentally preferable alternative, as it has done here, that mitigation must be legally feasible and there must be sufficient resources to implement it:

V-3

When a Federal agency identifies a mitigation alternative in an EA or an EIS, it may commit to implement that mitigation to achieve an environmentally-preferable outcome. Agencies should not commit to mitigation measures considered and analyzed in an EIS or EA if there are insufficient legal authorities, or it is not reasonable to foresee the availability of sufficient resources, to perform or ensure the performance of the mitigation.³

³ Nancy Sutley, Chair, Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact; Jan. 14, 2011, p. 6, available at https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.

B. The HCP’s proposed funding, which relies on the FORA CFD and an unspecified “replacement funding mechanism,” does not amount to a committed, enforceable plan because (1) the current CFD is not collectible after 2020, (2) there is no legal authority to collect replacement fees from the already-entitled development projects, and (3) no replacement funding mechanism is identified, committed, or enforceable for other future projects.

1. The FORA CFD will not be collectible after 2020 by FORA or by any other entity.

The current FORA CFD does not amount to a committed, enforceable plan for funding the HCP because it will not be collectible from already entitled development projects when FORA sunsets in June 2020 and will not be applicable to newly entitled development after that point.

The HCP relies on the collection of the current FORA CFD or an unspecified “replacement funding mechanism” to fund the endowment:

FORA will collect the CFD Special Tax to fund the HCP until its sunset. FORA is expected to sunset during the permit term. If the endowments are not fully funded by FORA’s sunset, FORA’s underlying jurisdictions[], County of Monterey, City of Marina, City of Seaside, City of Del Rey Oaks, and City of Monterey will collect the FORA CFD Special Tax or a replacement funding mechanism, meaning an alternative assessment or assessments, after FORA’s sunset (June 30, 2020) to complete full funding of the HCP endowments.

(HCP, p. 9-19, footnote omitted.) FORA has relied on Mello-Roos Community Facilities District (CFD) taxes to raise revenues for transportation, habitat, and water supply projects. The one-time FORA CFD tax becomes due when a project is issued a building permit.

The Mello-Roos Act requires that there be a sponsoring legislative body with governance authority. (Gov. Code, §§ 53311 *et seq.*) When FORA sunsets, there will be no such body. When FORA sunsets, there will no longer be any agency with the power to levy or collect the FORA CFD tax from either the development projects already entitled but not yet built or from development projects entitled in the future. As FORA acknowledges, the FORA CFD will not be collectible after FORA sunsets without legislation to extend FORA.⁴ Proposed legislation that some thought might address this problem, SB 189, did not pass.⁵ So the HCP’s conclusion

⁴ See, e.g., FORA Board Report, April 12, 2019, Attachment #2 to Item 5b, FORA Workshop, 5/18/19, p. 2 [FORA CFD “requires legislation to extend beyond June 30, 2020”], available at https://www.fora.org/Board/2019/Packet/050819BrdPacket_Special.pdf.

⁵ Monterey Herald, “Fort Ord Reuse Authority extension legislation held in committee, Sept. 4, 2019, available at <https://www.montereyherald.com/2019/09/04/fort-ord-reuse-authority-extension-legislation-held-in-committee/>; SB189 available at

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that FORA's underlying jurisdictions could collect the FORA CFD tax after FORA sunsets is erroneous.

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2. There is no funding mechanism that *could* collect the CFD or a “replacement funding mechanism” from already entitled development projects, and revenues from this entitled development represents the majority of the needed HCP funding.

While a land use jurisdiction could impose a “replacement funding mechanism” on a *future* project that does not yet have vested entitlements, it would not be possible to impose a “replacement funding mechanism” on those projects that *already have vested entitlements* but for which a building permit has not yet been issued. The very point of vested entitlements is that they are not subject to exactions adopted after the vested entitlement is granted.

As FORA has repeatedly acknowledged in its transition planning, the *ability to raise revenues from projects that already have development entitlements will terminate when FORA sunsets, because no new taxes or impact fees can be imposed on entitled development projects with vested rights.*⁶

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FORA has projected that post-2020 CFD taxes on the six already-entitled development projects would have totaled \$72.2 million.⁷ FORA staff projects post-2020 CFD taxes would have been \$14 million for the County's single project; \$55 million for Marina's three projects; \$2.6 million for Seaside's single project; and \$42,370 for Del Rey Oaks' single project.⁸ While FORA projected \$72.2 million in CFD taxes from these six entitled projects, it projected only \$55.2 million in CFD taxes from the future projects for which no entitlements have been issued.

<https://legiscan.com/CA/votes/SB189/2019>. Proposed section 67700(d) of SB189 would have permitted the County to distribute previously *accumulated* CFD revenues upon dissolution of FORA, but it would not have permitted the County to collect or distribute the FORA CFD taxes *after* dissolution.

⁶ See, e.g., FORA Resolution No. 18-11, Dec. 19, 2018, Recital M [“Collecting taxes or fees on developments that have already been entitled will require each jurisdiction to obtain agreements from each developer of an entitled project to pay development fees that the developer would not otherwise be obligated to pay. Those fees are estimated to be \$72 million for entitled projects, if all entitled developments are fully completed”], available at https://www.fora.org/Board/2019/Packet/050819BrdPacket_Special.pdf, pdf page 6.

⁷ These six projects are identified by FORA staff as The Dunes, Seahaven, and Cypress Knolls in Marina; East Garrison in the County; Seaside Resort in Seaside; and the RV Resort in Del Rey Oaks. (See Draft Transition Plan Study Session, presentation to FORA Board, page 12, June 8, 2018, available at http://fora.org/Board/2018/Presentations/06/TAC-Board_StudySession_060818.pdf.)

⁸ *Id.* at 13.

The assumed 30% share of that \$72.2 million allocable to the HCP would come to \$21.7 million, more than half of the proposed HCP endowment fund. (HCP, pp. 9-18 [Table 9-7], 9-33 [Table 9-12].) There is no committed, enforceable mechanism to replace this CFD tax revenue.

Remarkably, although FORA knew that it was statutorily mandated to sunset when it adopted the CFD tax, FORA made no provision to collect or replace CFD taxes for entitled projects after it sunsets.

Some land use jurisdictions may be in discussion with entitled developers seeking some voluntary agreement to replace the CFD taxes that cannot be collected after FORA sunsets. However, unless and until there are such legally binding agreements in place, the HCP cannot rely on future payments from these projects as a source of funding.

3. There are no committed, enforceable funding mechanisms for future projects that do not yet have entitlements.

Where there are no vested entitlements in place yet, the land use jurisdictions do have the power to replace the expected CFD tax revenues from unentitled future projects by creating their own funding mechanisms. These mechanisms might include nexus-based development impact fees, new CFDs, or ad hoc impact fees negotiated through development agreements. However, as discussed below, since there are no currently committed or enforceable fee or tax programs in place for future projects, or even any concrete proposals for such “replacement funding mechanism,” neither the HCP nor the EIS/EIR identifies any assured funding.

Furthermore, there are fundamental issues of equity and efficacy that should be negotiated and that must be resolved before the agencies adopt new funding mechanisms. These issues are also discussed below.

C. Permittee agencies should not agree to a JPA without a committed, enforceable funding plan. Permittees should understand the cost of the HCP and its alternatives, reach agreement on cost-apportionment, and commit to enforceable funding mechanisms before joining a JPA.

Even if the CFD funding problems could be resolved and the agencies were free to impose taxes or fees on all development projects, the agencies should not agree to join a JPA unless and until there is agreement that apportions costs and that ensures enforceable, committed funding mechanisms.

1. As a matter of prudent fiscal management, the Permittees should know their future costs for the proposed HCP and for alternative compliance before they make a 50-year commitment to the proposed HCP by joining a JPA.

The proposed HCP would require the 12 agencies to form a JPA that would be liable for the implementation and funding of the HCP/ITP conditions for 50+ years. As a Permittee under

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the ITP, each agency would be jointly liable for the ITP costs incurred as a result of development decisions made by the other Permittees, and would also be liable for the permitted and unpermitted actions of developers in Fort Ord, both within and outside their own land use jurisdictions. (See, e.g., JPA Agreement sections 6.2 [Responsibility to Wildlife Agencies], 8.0 [Funding of Endowments]; 3.2 [Withdrawal]; HCP section 9.3.5 [Funding Adequacy].) Incentives to minimize overall costs and liability are weakened when those costs and liability can be shifted to other parties, a situation referred to as “moral hazard.”

By contrast, under the no-project alternative, the developers, not the agencies, would be the permittees and would directly bear the costs and liabilities for ESA compliance. Developers would have incentives to avoid development of greenfield land, to minimize incidental take, and to minimize overall HCP compliance cost.

FORA has suggested that there are economies of scale in the joint-HCP approach. However, FORA has not quantified those scale economies or provided a comparison of the habitat management and ESA compliance costs for the project and no-project alternatives. *Before making a decision to join the HCP JPA and to assume liability for 50 years of Permittee costs, the agencies should know the costs and benefits of both alternatives.*

For the proposed HCP: the agencies should know the total cost and their own shares of the total costs. As discussed below, each agency's cost for the proposed HCP would depend on a number of factors, including the total cost of the HCP; the cost-apportionment method; the sites and pace of development that determines the cost to meet the stay-ahead provision; the funding mechanisms that would provide an endowment; and the rate of return on that endowment. As discussed below, the HCP and the analysis provides by FORA to date are not sufficient to provide this information.

For the no-action alternative, agencies should know the following:

About the agency's own costs and obligations for the no-action alternative, the agencies should know:

- What liability would the agency retain for fulfilling obligations under the existing HMP?
- What is, and who bears, the obligation for ongoing management activity for HMP's HMA acres (e.g., controlled burns, access limitation, any mandated restoration or enhancement)?
 - Note that HMP's HMA acreage is held as follows: State Parks (979 acres), UC/NRS (606 acres), County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres).
- What is the cost for that management activity if it is mandatory?
- Will the ongoing management activity for its portion of the HMP's HMA acres require the agency itself to obtain individual HCP/ITP? If so, at what cost?
- Could the agency reduce or offset its management costs for its portion of the HMP's HMA acres by partnering with a private developer or group of developers who need mitigation land and will pay for its management?

- Could the agency reduce or offset its management costs for its portion of the HMP's HMA acres by conveying the HMA land to another agency with a habitat/recreation mission, e.g., BLM, State Parks, UC/NRS?
- Could the agency reduce or avoid its management costs for its portion of the HMP's HMA acres by obtaining revisions to the HMP based on changes in land use plans or other conditions?
 - Note that the HMP indicates that changes may be negotiated with the USFWS. (HMP, p. 1-14.)
 - Agencies have negotiated changes to the HMP in the past, e.g., by swapping mitigation and development land designations.
 - Whose permission would be required to revise the HMP?
- The HMP is apparently not sufficient to provide ESA compliance for ITPs without more actions.⁹ It appears that the HMP adoption has been relied on only to fulfill mitigation obligations under CEQA and NEPA, with the understanding that the HMP may *facilitate* later ESA compliance.¹⁰ If the HMP is mandatory only as a form of CEQA/NEPA mitigation, *can the agencies alter the HMP obligation if they make findings of adequate substitute mitigation and/or infeasibility?* (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359 [mitigation may be modified or deleted with stated rationale supported with substantial evidence]; see also *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508; *Katzeff v. Department of Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 614.)

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About the agency's developers' costs and obligations for the no-action alternative, the agencies should know:

- For the development areas within an agency's jurisdiction, what would be the approximate cost of future ESA/CESA compliance that would be born directly by developer-permittees in their project-specific HCPs/ITPs? How would that cost compare to the jurisdiction's share of the cost of the proposed HCP?
- Assuming that developers bear the cost of ESA compliance directly, how much less greenfield development would occur under the no-project alternative than under the proposed HCP?
 - Note that the proposed cost apportionment in the HCP document call for assessing costs based on CFD replacement revenues. This cost apportionment would not create *any* incentive for a private developer to avoid take and minimize ESA compliance costs by developing on unvegetated, previously developed land rather than on vegetated land providing habitat, because CFD taxes would be the same either way.

⁹ See Base Reuse Plan EIR, p. 4-164.

¹⁰ *Ibid*; see Robert Walker, Assistant Secretary of the Army, Fort Ord, California, Disposal and Reuse, Supplemental Environmental Impact Statement, Record of Decision, June 18, 1997, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1790/bw-1790.pdf.

For the no-action alternative, it is particularly important that the agencies clarify the continuing obligations under the HMP *and* the ability to coordinate the management of the HMP’s habitat management areas with project-specific ITPs. As discussed below, the EIS/EIR assumes for the no-action alternative that HMP obligations cannot be coordinated with project-specific ITPs; but this assumption is not supported with any actual analysis.

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2. Formation of JPA should not occur until the HCP is finalized and there is agreement on, and commitment to, enforceable cost-apportionment and funding mechanisms.

The HCP contemplates that the JPA will be formed prior to the implementation of the HCP and permit issuance. (HCP, pp. ES-10, 7-1.) This is apparently required by the USFWS. (Stephen Henry, USFWS, letter to Michael Houlemard, FORA, July 29, 2016, p. 5, point # 6.) The draft JPA Agreement provides that the “final HCP” is incorporated by reference and that conflicting provisions in the HCP will supersede the JPA Agreement. It is unclear how many changes need to be made to the HCP to make it “final” or whether future changes to the HCP would be binding on each JPA member.¹¹

The cost apportionment and the funding mechanisms are critical questions that remain unresolved in the JPA Agreement. Section 8 of the JPA Agreement mentions an array of *possible* alternative funding mechanisms (e.g., CFD Taxes, developer impact fees, lump sum or annual payments by Permittees, state and federal grants and appropriations) and *possible* alternative cost-apportionment methods (e.g., apportionment based on acreage, developable acreage, market value of acreage, habitat value of acreage, previous funding commitments). Section 8 provides that *after* the JPA is formed, the parties will “cooperatively develop” both the “funding mechanisms” and the “methods of apportioning funding responsibility among the Parties.” Even if it were not dictated by the ESA, CESA, CEQA, and NEPA, it would be prudent for the agencies to reach agreement on cost-apportionment and funding mechanisms *before* committing themselves to a 50-year liability.

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In contrast to the JPA Agreement, the draft HCP appears to have settled that the funding mechanism and cost apportionment *will be* based on the CFD Tax and some replacement funding mechanism that is equivalent to the current CFD tax, to be developed by the land use jurisdictions, without any use of the General Funds of the land use jurisdictions. (HCP, section 9-3.)

Despite the HCP’s apparent commitment to this approach, a November 13, 2019 EPS memo refers to the CFD-based cost apportionment method assumed in the HCP as the “baseline analysis” and then discusses several alternative cost and funding scenarios.

¹¹ If substantial changes are made to the proposed HCP circulated for public review and comment, the revised HCP and a revised EIS/EIR should be recirculated for additional review and comment.

In short, the cost-apportionment method and funding mechanism are neither adopted, nor even agreed. Accordingly, the HCP does not meet the federal or state requirements for assured funding or the CEQA and NEPA requirements for committed, enforceable mitigation financing.

In light of the JPA's provision that the final HCP is controlling over the JPA (JPA, section 4.0) and the fact that the HCP assumes a cost-apportionment and funding mechanism but the JPA does not, each jurisdiction should require that the HCP be in "final" form at the time that the JPA Agreement is signed and that funding mechanisms and cost-apportionment be agreed, committed, and consistently spelled out in both the HCP and the JPA. The JPA Agreement should also provide an acceptable mechanism to negotiate future changes to the final HCP document.

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D. Permittees should evaluate a range of cost-apportionment methods and funding mechanisms if they intend to pursue the proposed HCP.

1. The September 2019 HCP assumes that endowment funding will come from the FORA CFD or an equivalent but unspecified "replacement funding mechanism" after FORA sunsets.

The JPA Agreement leaves the choice of cost apportionment as a matter to be decided after the jurisdictions join the JPA and after the HCP is adopted. (JPA Agreement, section 8 [cost apportionment method to be determined], section 4 [HCP to be incorporated by reference; its provisions supersede the JPA Agreement].)

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However, the HCP states that HCP endowment funding will come from the CFD Special Tax and from state and federal budget appropriations and that no Permittees other than State Parks and MPRPD would be required to obligate its General Fund to satisfy its financial obligations. (HCP, p. 9-15.) Since budget appropriations are uncertain and outside the control of the Permittees, and since the proposed endowment funds would provide essentially all of the HCP funding, financial assurances will rely on Permittees' ability to raise revenues through the FORA CFD or an unspecified "replacement funding mechanism" that would generate the same revenue stream as the existing CFD tax. Thus, the HCP assumes that the HCP endowment will be funded by a CFD Special Tax revenue stream and will be apportioned among the Permittees based on their collection of CFD tax revenues. (HCP, section 9.3.1.)

2. The November 2019 EPS memo discusses alternative funding-mechanisms.

Although the information is not in the HCP, the HCP consultant EPS modeled cost-apportionment based on several different funding mechanisms in a memorandum captioned "Financial Model Sensitivity Analysis and Cost Allocation Alternatives." (EPS, letter to FORA Administrative Committee, Nov. 13, 2019 ("EPS2").) These included apportioning cost based on CFD Replacement Revenues, on short and long-term developable acres, and on water allocations. Allocation Alternative 1 in the EPS Sensitivity Analysis, which is based on "CFD Replacement Revenues," is the cost allocation method used in the HCP document.

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3. The agencies should consider appropriate criteria and options for adequate cost-apportionment methods and funding mechanisms.

Criteria for adequate cost-apportionment methods and funding mechanisms might include the following:

- Funding should be sufficiently proportionate to incidental take that the stay-ahead provision can be met.
- Funding should be feasible, committed, and enforceable.
- Funding should be equitable among the Permittees and among the types of development (e.g., residential, office, commercial, industrial, retail)

Options for cost-apportionment methods and funding mechanisms might include:

- The FORA CFD tax, as long as it can legally be collected,
- A new CFD tax enacted and levied by the JPA, applicable to all development within the HCP,
- A local CFD tax enacted and levied by an individual Permittee that is a land use jurisdiction, applicable only to development within that jurisdiction,
- A development impact fee enacted and levied by the JPA, applicable to all development within the HCP,
- A local development impact fee enacted and levied by an individual Permittee that is a land use jurisdiction, applicable only to development within that jurisdiction,
- Ad hoc fees imposed through development agreements,
- General fund revenues of the Permittees,
- Grants and appropriations.

4. The choice of funding mechanisms should matter to agency/Permittees because it is likely to determine the cost-apportionment of the HCP. There are *substantial* differences in each Permittee's funding obligations depending on the choice of cost-apportionment and funding mechanism.

The choice of funding mechanism would likely be allowed to determine the cost-apportionment among the Permittees. For example, if development impact fees or CFD taxes are the primary funding mechanism, cost would likely be apportioned among Permittees in proportion to the fees or taxes raised in each Permittee's jurisdiction. The HCP and the EPS Sensitivity Analysis memorandum (EPS2) assume this to be the case under normal conditions. Uncoupling the funding mechanism from the cost-apportionment could be accomplished, e.g., through side-payments among Permittees, but this would introduce complexities that should be avoided absent good reason.

Note, however, that the HCP does propose that funding and cost apportionment be at least temporarily uncoupled in the event that CFD payments were insufficient to pay for HCP required actions on all HMAs: in that event the HCP proposes that the owner of the HMA land

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incur the cost and seek reimbursement from the other Permittees later. (HCP, section 9.3.5.1, p. 9-35.)

Impact fees, CFD taxes, and development agreement fees can be levied on various bases. The current CFD levies fees based on type of development and number of units. Impact fees can do the same. But CFD taxes and impact fees could also be based on the developed acres, or the vegetated developed acres, or based on the amount of incidental take caused by development.

The choice of the fee or tax basis can make a large difference in cost apportionment. EPS's Sensitivity Analysis memorandum modeled cost-apportionment based on the existing CFD taxes, on short and long-term developable acres, and on water allocations. Allocation Alternatives 2a and 2b in the EPS Sensitivity Analysis are based on developable acres. Alternative 2a is based on short-term development in the planning pipeline and Alternative 2B is based on the total buildout acres over the 50-year HCP permit term. (EPS2, Tables 6 and 7, D-1 [long-term developable acres by jurisdiction].)

EPS's modelling demonstrates that costs could be 2.5 times higher for some land use jurisdictions, depending on the basis of apportionment. (EPS2, Table 7 [Marina Alt. 1 cost of \$18.7m vs. Alt 2B cost of \$10.1m; DRO Alt. 1 cost of \$4.2m vs. Alt. 2B cost of \$5.6m; County Alt. 1 cost of \$4.5m vs. Alt 2B cost of \$1.8m].) Given the amounts at issue, the land use jurisdictions should resolve the basis of cost apportionment before entering into a JPA that binds them to an unfavorable or inequitable cost-apportionment method, not to mention the joint and several liability. (JPA Agreement, sections 8.0, 6.2, 3.2.)

E. Even if a funding mechanism identical in the amount and apportionment to the current CFD tax could somehow be imposed, it would not demonstrably assure adequate funding for the HCP because there is no assurance that this revenue stream could meet the stay-ahead provision and because such a cost-apportionment is likely to be rejected as inequitable.

The HCP provides no actual analysis to demonstrate the feasibility of the "stay ahead" provision and there are reasons to doubt it will be feasible.

- 1. The HCP does not actually match the schedule of habitat maintenance, enhancement, and restoration to the build-out assumed to occur in order to show that the HCP can in fact stay ahead.**

HCP Section 7.6 provides a stay-ahead rule, but without an analysis to demonstrate that it will work within the funding constraints.

The HCP defines "take percentage" as the impact on each species in acres of take divided by baseline acres. The HCP defines "conservation percentage" as the acreage actively managed and commensurately funded divided by total protected acreage for each species habitat required by the HCP. The stay-ahead rule requires that the conservation percentage must be 5 percentage points greater than the take percentage for most fauna habitat. For the CTS and CRLF, the

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conservation percentage must be 20 percentage points greater than the take percentage until successful completion of aquatic restoration projects, which would require that the HCP incur the front-loaded costs of restoration. Similarly, for HCP plant species, the conservation percentage must be 20 percentage points greater than the take percentage until successful completion of restoration and seeding projects, which must occur “as early as possible in the permit term.” (HCP, p. 7-17.)

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The HCP presents two examples of the calculation.¹² But the examples of the *application* of the stay-ahead rule does not constitute any evidence that *attaining* the stay-ahead provision would be feasible.

2. The HCP does not actually match the schedule of habitat maintenance, enhancement, and restoration to the build-out assumed to occur in order to show that the HCP can in fact stay ahead.

The HCP acknowledges that a slower pace of development than it assumes is a critical risk to meeting the stay-ahead provision. However, HCP section 9.3.5 provides only a qualitative discussion of that risk, a discussion that does not demonstrate that conservation will in fact stay ahead of incidental take in the event that full Fort Ord buildout does not occur by 2030 as the HCP assumes:

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Annual HCP required action costs and CFD Special Tax revenues are both triggered by FORA’s land use development. If the pace of development slows, annual CFD Special Tax revenues would be generated at a slower rate. However, the timing of HCP required actions would also be delayed, consequently reducing annual HCP required action costs. This relation between annual endowment costs and revenues reduces the possibility of inordinate funding shortfalls being experienced during the permit and post-permit periods. Section 7.6, Stay-Ahead Provision, describes in further detail how HMA funding is an integral part of how preserved acres are counted toward the stay-ahead provision.”

(HCP, p. 9-33.) While this relation between endowment revenues collection and the pace at which costs are incurred might, under some circumstances, “reduce” the possibility of a funding mismatch, it does not eliminate it.

¹² Example: if a developer seeks development that impacts 50% of Sand Gilia (756 acres of 1511 acres baseline acres) then 55% of conservation goal would have to be met before take was allowed (839 acres of the required 1,525 acres). This example assumes that required Gilia restoration and seeding has already occurred so that the stay ahead percentage is only 5%, not the 20% required before restoration is deemed successful.

3. Mismatches in conservation funding and incidental take are likely to prevent meeting the stay-ahead provision.

The HCP's cost and funding analysis simply assumes that the incidental take caused by development projects and the funding contributed by those projects toward the HCP would remain proportionate and that this proportionality would ensure that the stay-ahead provision could be met. However, the CFD-based cost-apportionment method assumed in the HCP does not actually ensure that funding would be generated in proportion to incidental take from development. Thus, it cannot assure that the HCP would be adequately funded to meet the stay-ahead provision.

There are a number of reasons that attaining the stay-ahead provision may not be feasible.

a. A CFD-like tax collection does not materially precede incidental take.

First, the CFD payments are not due until a building permit is issued, at which time the developer may immediately begin causing take. Conservation funding could therefore lag behind take. Conservation funding should be required sufficiently before construction to ensure that the required stay-ahead habitat acreage is maintained, enhanced, and restored.

b. A CFD-like tax may not cover fixed initial costs for startup, capital, and restoration.

Second, the cash flow analysis assumes constant annual costs of \$2.2 million will be paid for through the endowment. (HCP, App. O, Tables 8 and 13.) The constant cost assumption does not provide for the needed front-loading of costs for start-up, capital, and habitat restoration. (See HCP, Table 9-1a.)

The 20% stay ahead for plants and the CTS and CRLF will be particularly difficult to attain because the 20% stay-ahead mandate applies until the front-loaded costs are incurred for successful habitat restoration and enhancement.

c. CFD-like taxes may be insufficient if early projects occur disproportionately in incidental take areas.

Third, early projects may be in sensitive areas and therefore make larger contributions to take percentage than the conservation percentage that their CFD payments can fund.

EPS's Sensitivity Analysis memorandum identifies development projects that are in the "short-term planning pipeline" that reflects "a market and resource constrained scenario whereby only portions of the total developable areas are anticipated to develop." (EPS2, pp. 7-8.) EPS sets out the projects expected to develop in the short-term in Tables C1 through C6. (EPS2, Appendix C, "Projected Replacement CFD Special Tax Revenue".) Many of these short term projects will result in substantial incidental take because they are located in natural, vegetated land on which the HCP identifies the presence of multiple protected species.



For example:

- Table C-1 identifies 148.5 acres of short-term development in Del Rey Oaks. (EPS2, Table C-1.) According to the HCP, the developable Del Rey Oaks land contains Seaside Bird's Beak, Monterey Spineflower, Yadon's Pioperia, and habitat for the California Red Legged Frog ("CRLF") and the California Tiger Salamander ("CTF"). (HCP, Appendix A, Figures A-8, A-7, A-4, A-3a, A-2a.)
- Table C-3 identifies 59.7 acres of short-term development in the City of Monterey. (EPS2, Table C-3.) According to the HCP, the developable City of Monterey land contains Seaside Bird's Beak, Monterey Spineflower, Yadon's Pioperia, and habitat for the California Red Legged Frog ("CRLF") and the California Tiger Salamander ("CTF"). (HCP, Appendix A, Figures A-8, A-7, A-4, A-3a, A-2a.)

Other early development projects in EPS's Sensitivity Analysis memorandum would occur on natural, vegetated land on which protected species are located. The disproportionate need for mitigation funding may prevent attainment of the stay-ahead provision if early development projects occur on lands rich in protected species and habitat, rather than on the already developed land on which no protected species or habitat are present.

d. CFD-like taxes may not be sufficient if early projects are disproportionately non-residential.

Fourth, the relative underfunding of mitigation by non-residential projects may preclude meeting the stay-ahead provision. Allocation Alternative 1 in the EPS Sensitivity Analysis, based on CFD Replacement Revenues, is used in the HCP document. This allocation method skews the lion's share of total HCP cost to residential units and away from non-residential development. For example, the CFD cost for residential development in the County would be \$152,000 per acre, compared to \$3,327 per acre for office or industrial development acre. (EPS2, Table C-4.)

Again, a CFD-like cost apportionment method cannot assure funding of the stay-ahead provision if funding is not sufficiently related to incidental take impact. For example, funding would not match stay-ahead costs if substantial development of office or industrial projects occurred before residential development, especially if that development were sited on vegetated development land with HCP habitat so as to result in incidental take.

An historical example of such development was the MST/Whispering Oaks project. Although the project approvals were ultimately rescinded in the face of fierce community opposition, this 115-acre project would have removed 3,400 oak trees to construct a bus maintenance project and a business park. CFD fees from the project based on the CFD tax rate for industrial and office use would have been minimal. The HCP indicates that the site contains Monterey Spineflower and upland habitat for CRLF and CTS. (HCP, Appendix A, Figures A-3a, A7, A-8.)

The general plans of the land use jurisdictions identify a number of areas designated for office and industrial uses that are located in areas that the HCP identifies as rich in protected species. For example:

- The City of Marina has designated a number of parcels south and southeast of the Marina Municipal Airport as “Office/Research.”¹³ The HCP indicates that this area contains Sand Gilia, Monterey Spineflower, Seaside Bird’s Beak, and Smith’s Blue Butterfly. (HCP, Appendix A, Figures A-1, A-3a, A-4, A05e.)
- The County of Monterey has designated land east of Gigling and Eighth as Business Park/Light Industrial Office/R & D.¹⁴ The HCP indicates that the site contains Monterey Spineflower and upland habitat for CRLF and CTS. (HCP, Appendix A, Figures A-3a, A7, A-8.)
- The Fort Ord Reuse Plan designates most of the parcels within the jurisdiction of the City of Monterey and Del Rey Oaks as “Business Park/Light Industrial Office/R & D.” (Fort Ord Reuse Plan, Figure 3.2-1 [Proposed Project Land Use Concept].) The City of Monterey has designated this land as “Industrial” in its General Plan land use map.¹⁵ Del Rey Oaks has designated portions of this land a “General Commercial/Office-Professional.”¹⁶ As noted above, the HCP indicates that this land contains Seaside Bird’s Beak, Monterey Spineflower, Yadon’s Pioperia, and habitat for the California Red Legged Frog (“CRLF”) and the California Tiger Salamander (“CTF”). (HCP, Appendix A, Figures A-8, A-7, A-4, A-3a, A-2a.)

In addition, other parcels designated as “Commercial” or “Mixed Use” within the Fort Ord land use jurisdictions could be developed with office or industrial uses and be subject to the low CFD tax rate for those uses.

¹³ City of Marina, General Plan Land Use Map, updated May 27, 2011, available at <https://cityofmarina.org/DocumentCenter/View/1421/Figure-2-2---5-27-2011?bidId=>.

¹⁴ 2010 Monterey County General Plan, Figure LU6a, Monterey County Land Use Plan, Fort Ord Master Plan, Oct. 24, 2006, available at <https://www.co.monterey.ca.us/home/showdocument?id=45966>.

¹⁵ City of Monterey, General Plan, Map 3, Nov. 2, 2010, available at <https://monterey.org/Portals/0/Policies-Procedures/Planning/GeneralPlan/3-Land-Use.pdf>.

¹⁶ City of Del Rey Oaks, General Plan Update, January 1997, p. 30, Figure 2, Land Use Map, available at https://www.delreyoaks.org/sites/default/files/fileattachments/city_manager/page/1506/1997_generalplanupdate.pdf.

Relying disproportionately on residential development for HCP funding would also make the stay-ahead provision much more difficult to attain even under the alternative, slower development scenario modeled in the EPS Sensitivity Analysis memorandum. EPS provides two development scenarios. The “baseline” scenario, based on the FORA CIP, assumes complete buildout of the Base Reuse Plan by 2030 at 433 residential units per year, which is completely inconsistent with historic buildout rates. (EPS2, Table 2.) This is the scenario assumed in the HCP document. The slightly slower paced “Delayed Revenues and Costs” scenario spreads residential development over 16 years at 300 units per year, but still assumes that *non*-residential buildout is largely complete by 2030. (EPS2, Table 3.) Under this “Delayed Revenues and Costs” scenario, the non-residential development occurs earlier than the residential development and pays much less per acre toward the HCP. Thus, there would be less funding available per developed acre, rendering the stay-ahead provision more difficult to attain.

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Although EPS acknowledges its scenarios are hypothetical, the earlier development of the lower taxed non-residential uses is likely because land use jurisdictions tend to favor non-residential development in order to obtain its higher local property and sales tax revenues. Indeed, that is why the CFD taxes for non-residential uses are lower.

4. The CFD-based cost-apportionment is likely to be viewed as inequitable because it is not based on incidental take impact.

In addition to the risk that the CFD-based cost-apportionment method would fail to assure the stay-ahead provision, it is unlikely that this system would be viewed as an equitable apportionment by Permittees or developers. There appears to be no principled rationale for assessing residential development at a rate of \$152,000 per acre and office development at \$3,327 per acres. And jurisdictions that have planned relatively more residential than non-residential development would likely object to being required to provide disproportionate funding.

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5. The CFD-based cost-apportionment is likely to be viewed as inequitable because it would exact habitat fees from previously permitted projects that have already funded independent ITPs.

The CFD-based cost allocation (EPS 2, Alternative 1) is also likely to be viewed as inequitable because it assumes that the already-entitled development *that has obtained an independent HCP/ITP* will still have to make contributions to the new HCP. (EPS2, Table C-2 [counting \$23m in total CFD revenues from 920 units at Seahaven, of which 30% or \$7m would be used to fund the new HCP].)

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Furthermore, as discussed, there is no legal way to compel new exactions from projects like Seahaven that have vested entitlements.

F. FORA has not provided sufficient analysis of the efficacy of alternative cost-apportionment methods in the HCP or elsewhere.

As explained, the proposed CFD-based cost-apportionment cannot *assure* funding sufficient for the stay-ahead provision and would not likely be viewed as equitable. Equity and the stay-ahead provision dictate a closer relation between incidental take and funding.

Allocation Alternatives 2a and 2b in the EPS Sensitivity Analysis are based on “developable acres.” Alternative 2a is based on short-term development in the planning pipeline and Alternative 2B is based on the total buildout acres over the 50-year HCP permit term. (EPS2, Tables 6 and 7, D-1 [long-term developable acres by jurisdiction].) These allocations are somewhat more equitable than the Alternative 1, CFD-based allocation, and they may be less risky with respect to meeting the stay ahead provision. *However, the use of “developable acres” does not assure an adequate relation between funding and incidental take because not all developable acres would result in similar incidental take and thus trigger similar stay-ahead cost obligations.*

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The EIS/EIR explains that the 9,292 developable areas consist of 4,242 acres of previously developed land and 5,051 acres of natural or vegetated land. (EIS/EIR, p. 2-12.) The EIS/EIR states that an HCP/ITP is not required in order to develop those 4,241 acres of designated development areas within Fort Ord that were previously developed, because that land is devoid of vegetation and habitat for listed species. (EIS/EIR, p. 2-3.) The only incidental take that would occur on land designated for development is on the 5,051 acres of natural, vegetated land. The development of this vegetated acreage, not the redevelopment of previously developed land, should bear the cost of the HCP so that the cost apportionment is based on the actual incidental take impact.

If funding were based on developable acres regardless whether those acres contain habitat, there could be no assurance that funding would match stay-ahead costs. Stay-ahead cost would not be met if substantial development occurred on vegetated or natural lands *before* redevelopment occurred on previously developed land. If the development on vegetated land were not paying the full cost of incidental take mitigation (because part of that cost was apportioned to disturbed land), incidental take would occur sooner than the collection of funds needed to mitigate it, and it would be more difficult to meet the stay-ahead provision.

It is foreseeable that development may in fact occur earlier on vegetated land rather than disturbed land. As discussed above, the EPS Sensitivity Analysis identifies substantial acreage of short-term development in the planning pipeline that is located on parcels containing protected species and habitat.

It is also foreseeable that development will occur disproportionately on vegetated land that is subject to incidental take rather than on previously developed land in which take would not occur. Indeed, the EIS/EIR establishes that the vegetated, natural land in which development is permitted and take will occur comprise 5,051 acres. (EIS/EIR, p. ES-2.) This compares to

only 4,241 acres of previously developed land in which redevelopment will occur and in which there would be no take. (*Ibid.*)

In short, there can be no adequate assurance that funding would be sufficient to meet the stay-ahead provision unless the source of funding is closely tied to incidental take impacts. Ideally, the funding exacted from development projects would be directly proportionate to take impacts. *This is the system that would in fact be used in the event that the proposed HCP were not adopted and each development project were required to fund its own ITP.*

At minimum, FORA should be required to demonstrate that the HCP funding mechanism would in fact generate sufficient funds in time to meet the stay-ahead provision.

Unfortunately, neither EPS nor FORA have discussed or modeled apportionment of HCP costs based on vegetated acreage much less on actual incidental take impacts. FORA should, at minimum, prepare an analysis of the allocation of HCP cost based on each jurisdiction's share of vegetated development acres. The wildlife agencies must be satisfied that the proposed cost-apportionment will in fact assure that the stay-ahead provision can be met before FORA and USFWS certify the EIS/EIR and the wildlife agencies issue ITPs. Each Permittee should also want to be satisfied that the proposed cost-apportionment would be equitable to the Permittees and equitable to the future redevelopers of the previously disturbed areas whose projects would not cause any incidental take.

In sum, take-based cost-apportionment would be likely to be viewed as more equitable because it would match the benefits and costs of the proposed HCP. Take-based cost-apportionment would also be more efficient because it would tend to discourage greenfield development that causes take and incurs additional costs for take mitigation. To the extent that the cost-apportionment diverges from a take-based approach, it would penalize development that does not cause take, subsidize development that does cause take, and thereby increase the overall cost of HCP compliance. Divergence from a take-based cost apportionment also increases the risk that the Permittees could not attain the stay-ahead provision.

G. FORA cannot demonstrate that CFD “replacement funding mechanisms” are committed, enforceable, or even feasible.

As noted, the HCP relies on the FORA CFD tax and/or an unspecified “replacement funding mechanism” after FORA sunsets. (HCP, p. 9-19.) None of these mechanisms are committed or enforceable, or even described in the HCP. Accordingly, they do not meet the requirements of the ESA, the CESA, CEQA, or NEPA that an HCP application and its environmental review demonstrate an assured funding source.

The USFWS explained that an adequate HCP must set out the substance of the local ordinances that would be used to implement the HCP. (USFWS, letter to Houlemard, July 29, 2016.) Instead, the HCP states that the Permittees would develop implementing ordinances within 120 days of permit issuance, and merely includes a "model" ordinance. (HCP, section 7.4, p. 7-10; HCP, App. J.) The model ordinance provides that, after FORA sunsets, the

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Permittee will somehow “ensure collection of the Special Tax,” i.e., the 2002 FORA CFD tax, and then disburse it to the JPA. (HCP, App. J, Section VII.A.4.) As discussed, FORA has previously acknowledged that the CFD will not be collectible from any project when FORA sunsets and there is no legal authority to collect and disburse the new exactions from development entitled in the past.

Adequate new mechanisms for fees or taxes to replace the FORA CFD tax may be infeasible. As discussed above, no new fees can be imposed on development that is already entitled. Even if that problem could be solved, for the reasons discussed below there is no assurance that other funding mechanisms are committed, enforceable, or feasible, as required for an adequate HCP and its environmental review.

1. Impact fees may not be feasible because the nexus and proportionality requirements may preclude adequate funding, and there has been no analysis of nexus and proportionality. In addition, they are not committed and enforceable.

Development impact fees must meet the nexus and proportionality mandates under case law and the Mitigation Fee Act. (Gov. Code, §§ 66000 et seq.) If development impact fees are proposed, they may not be legally imposed on the 4,241 acres of previously developed areas that do not actually require an ITP because there would be no nexus or proportionality. If the entire cost of the HCP were to be borne by the 5,051 vegetated acres, or the subset of those acres with actual incidental take impacts, the cost per acre for the HCP endowment would be 185% higher, based on the ratio of vegetated to total developable acreage. This exaction might inhibit development of the vegetated acres, and result in a much smaller HCP requirement. It is not clear that a smaller HCP could feasibly cover the scale of the proposed costs for startup, capital, and restoration.

If the JPA were to impose a development impact fee, it would need to prepare an analysis to justify nexus and proportionality. This has not been done.

The HCP implies that each Permittee might be free to select its own funding mechanism. If some local jurisdictions were to impose their own development impact fees, each would need to prepare an analysis that demonstrates nexus and proportionality for the land to be assessed within that jurisdiction. This has not been done.

Demonstrating nexus and proportionality would require a realistic appraisal of both the fixed and variable costs of the likely scope of the HCP needed to cover foreseeable development. Despite the HCP’s implication, the HCP is not fully scalable. (HCP, section 9.7.) The HCP cost analysis assumes that the entire Base Reuse Plan will be developed within the 50-year permit period. The overall scale of the HCP has been designed and negotiated to provide an ITP that would cover this ultimate level of development. If this level of development is not certain to occur, it would be unreasonable to exact the fixed costs of an HCP designed to accommodate it.

Although certain variable costs might be scalable, and would not be incurred unless and until development occurs, the capital and habitat restoration costs are based on full buildout and

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would be incurred regardless of the level of ultimate development. HCP Table 9-1a indicates that 50% of capital costs would be incurred in years 1-10 and 75% by year 20. Essentially all of the habitat restoration costs would be incurred in years 1-20, with 78% incurred in years 1-10. These spending commitments would have to be incurred in the early years of the HCP, before the total scope of covered activities would be known. Imposing almost \$10 million in fixed costs on development before the scale of these costs has been justified by actual development applications would not meet nexus and proportionality requirements. The HCP has not considered this issue or provided any analysis to support a nexus and proportionality determination.

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2. Replacement CFD taxes are not committed or enforceable, and there is no analysis to assure that they could meet the stay-ahead provision.

Permittees might consider a new CFD, sponsored by the JPA, or separate CFDs, sponsored by each Permittee that is a land use jurisdiction as the “replacement funding mechanism” mentioned in the HCP. (HCP, p. 9-19.)

A CFD tax need not have nexus and proportionality. Indeed, this opportunity to impose subsidization of non-residential development through a skewed tax assessment was a key reason that FORA chose CFD taxes rather than development impact fees to finance the Base Reuse Plan infrastructure. However, unless a replacement CFD tax did in fact have nexus and proportionality, i.e., a close relation between the tax on a development project and the incidental take caused by that project, there would be no assurance that the CFD tax could meet the stay-ahead provision. Again, as discussed above, FORA simply has not done the analysis to propose such a tax and to show that it feasibly meets the stay-ahead provision.

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And, again, a replacement CFD tax is currently neither committed nor enforceable.

3. Ad hoc funding via development agreement exactions are not committed or enforceable, and there is no analysis to assure that they could meet the stay-ahead provision.

Like CFD taxes, exactions via development agreements are not required to have nexus and proportionality. However, as for hypothetical replacement CFD taxes, there is no analysis to propose such exactions and to show that they would feasibly meet the stay-ahead provision. And since development agreement exactions must be negotiated project-by-project, they are intrinsically speculative, and there could be no present assurance that they are committed or enforceable.

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4. Grants and appropriations are not committed or enforceable.

The HCP suggests that grants, appropriations, and/or volunteer labor might be used as partial funding. (HCP, pp. 9-29 to 9-9-32.) The amounts of the appropriations would be limited to the relatively small portion of the overall HCP funding represented by the assumed obligations of MPC, CSUMP, and State Parks. There is no suggestion that appropriations would be

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available to fund the HCP activities related to private development. Furthermore, the HCP does not demonstrate that appropriations, grants, or volunteer labor is part of a committed enforceable plan.

A “plan” to seek funding from other government agencies in the future is not sufficient mitigation. (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 103-104.) An agency may not simply assume that grants or appropriations will be available. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 364 [“there simply was no reason to assume that funding was or would be available”].)

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5. The HCP equivocates on use of Permittee general funds; Permittees should insist that this equivocation be resolved and that there be a cost-apportionment agreement.

The HCP states: “no Permittee may be compelled to obligate its General Fund to satisfy its financial obligations under the HCP.” (HCP, section 9.3, p. 9-15.) However, the HCP’s discussion of funding assurances equivocates on this principal because it proposes to “[h]ave Permittees pay for HCP required actions on HMAs under their ownership” in the event that funding is insufficient to meet the stay-ahead provision. (HCP, section 9.3.5.1, p. 9-35.) This provision would obligate the Permittees that happen to own HMA land to bear the cost of HCP implementation, subject to possible reimbursement from the JPA at some point in the future.¹⁷

Furthermore, the JPA Agreement unequivocally imposes the funding obligation on the Permittees. (JPA Agreement sections 6.2 [Responsibility to Wildlife Agencies], 8.0 [Funding of Endowments]; 3.2 [Withdrawal].) If the Permittees were unable to collect funds from third party developers, they would have no alternative but recourse to their general funds.

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However, it is unclear that Permittees are willing to fund the HCP from general fund revenue. At any rate, the HCP cannot provide adequate funding assurances as long as this remains unresolved.

Even if Permittees are willing to encumber their general funds, the HCP or the JPA Agreement should specify how the cost would be apportioned. The default cost-apportionment assumption in the HCP is that costs would be apportioned in proportion to FORA CFD-like tax revenues collected by each jurisdiction. If the funding mechanism does not in fact use the CFD tax rates or if those revenues are insufficient, the HCP should set out the actual cost-apportionment (and funding mechanisms) that would be in place after 2020, particularly the apportionment of revenue shortfalls.

¹⁷ HMA lands under the HMP include: BLM (14,645 acres), State Parks (979 acres), UC/NRS (606 acres), County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres)

H. The HCP's assumptions for endowment accumulation and for endowment funded costs are unrealistic.

1. The HCP makes specific assumptions about buildout, tax revenues, the timing of costs, and endowment fund accumulation.

The HCP assumes that the cost to implement the HCP on non-federal land (i.e., the cost exclusive of BLM costs to fulfill its FONM obligations) would be \$2.6 million per year during the 50-year permit term and a \$1.4 million per year thereafter. (HCP, Table 9-1a, p. 9-4.) The HCP proposes that this be funded through endowment funds created from CFD taxes (and small one-time payments from MPC, CSUMB, and MPRPD) and from an annual \$518,000 allocation of state budget appropriations for State Parks. (HCP, pp. 9-15 to 9-31.) Thus, about 80% of the non-federal funding would come from CFD taxes and about 20% from the state budget.

The HCP assumes that all of the Fort Ord development for the next 50 years will occur by 2030, i.e., the complete build-out of the Fort Ord Reuse Plan including:

- 4,878 new residential units
- 47 existing unit replacements
- 177.1 acres of office
- 81.3 acres of industrial
- 69.7 acres of retail
- 1,342 hotel rooms
-

(HCP, App. O, Table 6.) The HCP assumes that this projected development will generate \$137 million in CFD taxes with \$41 million (30.2%) going to HCP funding. (HCP, Table 9-7, page 9-18.) The HCP assumes that these CFD taxes will be sufficient to fund the annually required HCP actions for the first 7 years of the HCP and to fund two endowment funds that will be sufficient to fund \$2.2 million of the \$2.6 million annual cost to manage the non-federal HMA areas. (See HCP, Tables 9-6 and 9-7, pp. 9-17, 9-18.) The HCP assumes that the endowment will be fully funded by the end of year 8, and that endowment funds will earn returns of 4.2% and 4.5%. (HCP, Table 9-6, p. 9-17; HCP, p. 9-20.)

There are several fundamental flaws in the HCP's case flow assumptions.

1. The assumption of level annual costs makes no provision for front-loaded startup, capital, and restoration costs.

The HCP's cash flow performance analysis assumes that the HCP costs to be funded by the endowment would be incurred on an absolutely level basis, at the rate of \$2.2 million per year. (HCP, App. O, p. 6 and Tables 8 and 13 [showing no variation in annual costs incurred by the endowment funds] .) However, the HCP itself shows that significant capital and restoration costs would be incurred in early years:

- \$6.2 million of the total \$10.4m capital costs would be incurred in years 1-20

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- \$1.8 million in habitat restoration would be incurred in years 1-20, with none in later years.
- \$1.4 million in “start-up costs” would be incurred in years 1 and 2.

(HCP, Table 9.1a, pp. 9-9-3 to 9-4.) Early implementation of these fixed costs is critical to the success of the stay-ahead provision. For example, the stay-ahead discussion emphasizes that Permittees will implement restoration and seeding as early as possible during the permit term. (HCP, p. 7-17.) Only by successful seeding and restoration can the requirement of a 20% stay-ahead for plants and the CRLF be reduced to 5%.

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However, the cash flow analysis fails to reflect that a larger share of costs would be incurred in early years, and, thus, a larger endowment than assumed would be required to compensate for reduced long-term earnings on the endowment funds.

2. The HCP analysis is critically dependent on a wildly optimistic pace of development – full buildout by 2030.

The assumption that all remaining Fort Ord development will occur by 2030 is completely inconsistent with the historic rate of development in Fort Ord. The HCP admits that this rate of development is “uncertain.” (HCP, p. 9-34.) In fact, it is wildly optimistic. The HCP projects 4,878 new residential units by 2030, built at a rate of 443 units per year. However, from 1997 to April 30, 2019, only 1,457 new residential units were constructed in Fort Ord, a rate of 64 units per year.¹⁸ The HCP presents no evidence to support the assumption of such a substantial and sustained increase in market demand.

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However, the unsupported assumption of an early, rapid, and complete build-out – *6.9 times faster than the historic rate of development* – is critical to the cash-flow analysis. Unless there is a rapid development to support rapid accumulation of the endowment fund, the earnings on the endowment fund over time will be substantially lessened, and a larger endowment fund would be required. The proposed current level of CFD taxes would not then be sufficient to fund the endowment.

3. Alternative scenarios evaluated by EPS show that the required endowment would increase substantially if buildout did not occur by 2030, but even these scenarios are remain problematic.

Although the HCP discusses the possibility that development might occur more slowly, the HCP does not analyze this scenario. The November 13, 2019 EPS Sensitivity Analysis does purport to analyze a slower development scenario, “Scenario 2: Delayed Revenues and Costs,” which would increase the required endowment from \$37.8 million to \$43.6 million. But this scenario still assumes a build-out rate of 300 residential units per year, which is still *4.7 times*

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¹⁸ FORA, Annual Report, Fiscal Year 2018-2019, p. 6, available at <https://www.fora.org/Reports/AR/AnnualReport2019-Full.pdf>.

faster than the historic rate of 64 units per year. (EPS2, Table 3.) In short, EPS’s analysis shows that the size of the required endowment is very sensitive to the assumed residential buildout rate, but EPS has still not evaluated a realistic buildout rate.

Furthermore, EPS’s Delayed Revenues and Costs scenario does not materially slow the pace of *non-residential* development; it continues to assume that all of the non-residential development is essentially complete by 2030.

In addition, the Delayed Revenues and Costs scenario arbitrarily assumes 5%, 10%, and 20% reductions in early year costs. (EPS2, p. 5.) EPS admits that these arbitrary cost reductions “are not based on an analysis of the habitat management costs relative to anticipated development and are instead based on hypothetical cost reduction scenarios to illustrate the associated financial modeling dynamics.” (EPS2, p. 7.) EPS admits that “[f]urther analysis on the part of the HCP consultants would be necessary to relate anticipated development timing to projected habitat management costs.” (*Ibid.*) The HCP does not provide the further analysis.

However, there is reason to doubt that, even if development were to occur at a rate of 300 residential units per year instead of 443 units per year, the early year costs borne by the endowment funds would be materially reduced from assumed level cost of \$2.2 million per year. (HCP, App. O, p. 6 and Table 8.) A material cost reduction is unlikely because, as discussed above, the \$2.2 million level annual draw-down of the endowment fails to reflect the need for higher than average early year spending to cover capital and restoration costs.

Finally, even with its unsupported assumption that development would occur 4.7 times faster than historic rates, that early year HCP costs would be 5%, 10%, or even 15% less, and that costs would remain level from year to year, the Delayed Revenues and Costs scenario *still* projects that the level of required HCP endowment funding would increase. (EPS2, p. 5.)

In sum, unless the most wildly optimistic development scenario occurs with development at 6.9 times the historic development rate, the Permittees would have to assess fees or taxes greater than the current CFD tax.

4. Endowment funding estimates are all over the map: FORA staff now reports that the endowment may need to be \$48 to \$66 million, not the \$37 or \$43 million reported in the HCP and the November EPS memorandum, much less the \$9 million originally projected.

The most recent FORA staff report on HCP funding acknowledges that FORA has consistently and substantially underestimated HCP funding needs, and that the HCP funding projections have grown astronomically over time. FORA’s December 2019 estimates are now much higher than the \$37 million and \$43 million estimates in the HCP document and the November EPS Sensitivity Analysis:

The required Endowments *were originally projected to be \$9 million but are now*

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expected to cost \$48 to \$66 million. By FORA sunset, about \$17 million is expected to be collected for this use. FORA has set 30% of CFO [sic, CFD] funds aside for HCP funding. Given the June 30, 2020 FORA sunset, permittees/jurisdictions must determine how to generate the remaining \$27 to \$45 million required to demonstrate to USFWS/CDFW ("Wildlife Agencies") [sic, sentence fragment].¹⁹

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The agencies should insist that FORA provide a credible and stable projection of required HCP funding.

5. The HCP’s analysis fails to assess the inhibition of development caused by higher fees and taxes.

At a certain point, the cost of HCP fees will inhibit development. Lower long-term development would not require, and may not be able to fund, the HCP’s initial fixed costs for capital and restoration that assume that full buildout will occur. Even though the EPS Sensitivity Analysis shows that higher fees or taxes would be necessary under slower development, the HCP does not consider the possible permanent reduction in Fort Ord development caused by higher development fees or taxes.

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6. The HCP’s analysis fails to assess the effect of variation in assumed rates of return.

The cash-flow analysis is critically dependent on the assumptions that the smaller endowment fund (the FONR Endowment Fund) would earn 4.2% annually and that the larger endowment fund (the Cooperative Endowment Fund) would earn 4.5% annually. (HCP, p. 9-20.) The analysis assumes these rates of return would occur constantly, year after year. Even if similar funds have had average long-term returns of that order of magnitude, there is a considerable risk to the endowment strategy if the rate of return is not constant. For example, even if a fund were able to attain a 4.5% return over a 50-year period, a lower rate of return in the early years would require the accumulation of a much larger endowment – and correspondingly higher fees or taxes – to cover all HCP costs. The HCP fails to assess the sensitivity of its funding strategy to variations in rates of return over time. It is relevant that current long-term interest rates on federal obligations are now below 2%.

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7. The EPS memorandum’s scenario for lower overall HCP costs is purely speculative and therefore misleading.

The EPS Sensitivity Analysis, which is not part of the HCP, evaluates a third scenario, “Delayed Revenues and Reduced Costs.” (EPS2, p. 7.) In this scenario, EPS arbitrarily reduces the cost of HCP compliance by 15% and 25% overall, not just in the early years. As with Scenario 2, “Delayed Revenues and Costs,” EPS admits that the Delayed Revenues and Reduced Costs scenario is “based on hypothetical cost reduction scenarios.” (*Ibid.*)

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¹⁹ FORA staff report, Habitat Conservation Plan Update, Dec. 13, 2019, emphasis added, available at <https://fora.org/Board/2019/Packet/121319BrdPacket.pdf>.

This scenario is entirely misleading. The HCP claims that its analysis of the cost of HCP compliance is based on a “detailed, custom cost model.” (HCP, p. 9-8.) That model, set out in Appendix M, purports to provide realistic cost estimates for every aspect of the HCP implementation from office supplies to feral pig eradication. The cost model is the *only* available analysis of the HCP plan cost that contains any level of detail. The notion that this budget might magically be reduced by 15% or 25% is simply without any foundation.

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I. The funding assurances in the event of “early implementation and uncertain timing in CFD tax payments” are inadequate.

The HCP contains a discussion captioned “Funding Assurances for Early Implementation and Uncertain Timing in CFD Special Tax Payments.” (HCP, section 9.3.5.1, pp. 9-34 to 9-35.) As discussed above, there are a number of reasons that funding would not match the need for early implementation. These include the need for early spending for start-up, capital, and restoration and the potential that early development would have disproportionately large incidental take or small CFD taxes in light of the HCP’s failure to match the incidental take from development to the funding actually provided by that development. The HCP’s discussion of funding assurances to address these risks is inadequate for the reasons set out below.

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1. The suggestion in HCP that funding may be adequate even if there is early implementation and/or shortfalls in CFD taxes is misleading because it fails to acknowledge that funding must be permanently endowed.

The HCP claims that the existing \$15.9 million in seed money would fund 3 *years* of the required actions under the HCP for which the JPA would be obligated. (HCP, p. 9-34.) The HCP also claims that “funding is available for management of 3,702 out of 3,895 total non-federal HMA acres, or conservation percentage of 95%, *for 8 years* without collection of additional taxes.” (HCP, p. 9-35.) The HCP argues that “[d]uring this time, Permittees’ development impacts would be limited to an approximate take percentage of 75% to 90% depending on individual species distribution to maintain stay-ahead provision compliance.” (HCP, p. 9-35.)

These claims ignore the need for *permanent* endowment of HCP activities. To get stay-ahead credit, the funding must be available for management and maintenance of the conservation area *through the permit period and post-permit period*, not just for 3 or 8 years.

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The necessary funding that is used to determine the maximum allowed take percentage in the stay-ahead determination must be permanently endowed. The HCP states that for an HMA area to be counted in the conservation percentage, “an HMA manager must have sufficient funding to implement the conservation strategy.” (HCP, p. 7-16.) The conservation strategy can only be implemented if funding is available in perpetuity, i.e., endowed. If existing funds, e.g., the \$15.9 million from FORA’s account, are used to fund the first 8 years of HCP activity, those funds could not be used to fund the endowment for HCP activity after those 8 years. The cash flow analysis in HCP Appendix O assumes that the entire endowment will be created in the first



7 years. Any departure from that development pace would require a larger endowment fund, generated by higher fees or taxes.

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(continued)

2. The discussion of fallback funding assurances if there is early implementation and/or shortfalls in CFD taxes is not realistic.

The HCP identifies a number of “courses of action” to ensure that the stay-ahead provision is met even if there is early implementation and/or shortfalls in CFD taxes. (HCP, p. 9-35.) The discussion does not identify realistic options.

First, “[l]imiting implementation of flexible capital costs such as habitat restoration” is not feasible. The timing of these costs is not flexible. As discussed, the stay-ahead provision requires that restoration and seeding occur “as early as possible during the permit term,” particularly because without restoration, the stay-ahead differential between the take and conservation percentages must be 20 rather than 5 percentage points. (HCP, p. 7-17.)

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Second, the use of volunteers or other inexpensive labor is on its face unrealistic, especially given the prevailing wage rules in Fort Ord.

Third, the “temporary” use of State Parks staff or FORA staff is unrealistic. FORA will sunset in 2020. And State Parks has no authority to loan its resources.

Fourth, grant funding is uncertain.

Fifth, requiring that “Permittees pay for HCP costs on HMAs under their ownership” with some unspecified reimbursement agreement from the Cooperative would require those Permittees with HMA acreage to bankroll the HCP for the other Permittees. The major owners of non-federal HMA land are the County, State Parks, and UC/NRS, and Marina.²⁰ (HCP, Table 7-3, p. 7-19.) It is unlikely that these entities would be authorized or willing to pay for continued HCP management in the event of a funding shortfall. Furthermore, this provision directly conflicts with the HCP provision that “no Permittee may be compelled to obligate its General Fund to satisfy financial obligations under the HCP.” (HCP, p. 9-15.)

Note that the provisions for assuring funding in the event that management or monitoring costs exceed projections also includes these unrealistic suggestions, including the use of volunteer labor or “prison crews,” some form of ad hoc temporary increase in CFD tax rates or allocations to HCP endowments, or “other fees or fee appropriations available to the Permittees.” (HCP, p. 9-36.) The discussion fails to establish the necessary funding assurances because the proposals are facially unrealistic, unquantified, inconsistent with other HCP provisions (no General Fund obligation), and because there is nothing about the proposals that is committed or enforceable.

²⁰ HMA lands under the HMP include: BLM (14,645 acres), State Parks (979 acres), UC/NRS (606 acres), the County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres).

3. The proposal that CDFG and USFWS could suspend the permits if the HCP is not a funding assurance.

In its section 9.3.5 discussion of funding assurances, the HCP notes that the Wildlife Agencies could suspend the ITPs in the event that funding constraints preclude meeting the HCP terms. (HCP, section 9.3.5.4, p. 9-36.) Suspension of the ITPs is not a funding assurance; it is an acknowledgement and consequence of the failure to fund the HCP. Once the development has occurred, the take will have occurred, and Permittees will find themselves liable for remedies that may be sought by the wildlife agencies or under the ESA's citizen suit provisions.

V-36

J. Permittees could not avoid future funding obligations through withdrawal from the JPA.

The option to withdraw from the JPA would not afford a Permittee protection from ongoing liability for the ITP. Section 3.2 of the JPA Agreement would obligate withdrawing agencies to contribute money to pay debts, liabilities, and obligations incurred by, arising from, or related to actions taken by the JPA while the withdrawing party was a member. The proposed HCP would result in one joint application of a federal ITP and one joint application for a state ITP. (HCP, section 1.9.) Once those two permits are issued, obligations would arise to fund permit activities triggered by development projects, including avoidance and minimization measures, mitigation measures, monitoring measures, program administration measures, reporting measures, and changed circumstances measures. (HCP, section 1.9.)

V-37

Because most of these activities are perpetual obligations undertaken and funded from a common set of endowments, it is not clear whether and how the costs could be allocated to permit activities triggered by covered activities approved "before withdrawal" and permit activities triggered by covered activities approved "after withdrawal" activities. It appears that under the JPA itself the withdrawing party would remain obligated to pay a share of the costs of the ongoing permit activities that had been necessitated by covered activities undertaken while the withdrawing member was a party. The obligation to undertake many of those covered activities would be incurred as soon as the Permits are issued because the covered activities are not dependent on particular development project approvals (e.g., management activities within HMA areas, resource management actions – see JPA Agreement, section 1.20.) It is unclear how, under the terms of the JPA, a withdrawing agency's share of that perpetual obligation would be determined or met in the event of withdrawal.

Furthermore, even if the JPA language were clear, the JPA would only govern the mutual obligations of the Permittees to each other. The liability to the Wildlife Agencies and the liability under the ESA's citizen suit provisions that a Permittee assumed by becoming a party to an ITP would remain, and this liability may not be avoided by withdrawal from the JPA.

K. The EIS/EIR's analysis and comparison of the no-action alternative is fundamentally flawed.

The analysis of the no-action alternative in the HCP's EIS/EIR unaccountably assumes that development in the no-action alternative would be limited to 25% of the 5,051 acres of vegetated development areas because of the need for a 3:1 mitigation – even though mitigation land is available in the HMP's Habitat Management Areas.

While the extent and number of individual ITPs the USFWS and/or CDFW would approve is unknown, for the purpose of this analysis, it is assumed that approximately 25% of the vegetated development areas (1,263 acres) could be developed during the 50-year period and the remaining vegetated development areas (3,788 acres) would be suitable, available, and provide the mitigation lands required by ITPs, if needed.

(EIS/EIR, p. 2-6; *see also* EIS/EIR, p. 4.4-4). The EIS/EIR ignores the fact that development projects can mitigate and conserve off-site and outside the vegetated developable areas, e.g., in the existing areas designated as Habitat Management Areas under the HMP. HMA lands under the HMP are or will be owned by BLM (14,645 acres), State Parks (979 acres), UC/NRS (606 acres), the County (1,849 acres), Marina (236 acres), MPC (206 acres), and MPRPD (19 acres).

V-38

There are no reasons in principle that ITPs for individual projects in the no-action alternative could not rely on the same HMP HMA mitigation lands using the same management actions (conservation, restoration, enhancement, maintenance) that would be used in the proposed HCP. That land has been intended since 1997 to be managed as mitigation land to facilitate ITPs for future development.

Denying the use of that land in the event that the proposed base-wide HCP were not adopted would in effect mandate that the previously planned mitigation land set-aside be doubled. Under the EIS/EIR's analysis of the no-action alternative, the HMP management obligations, which are just short of ITP requirements, would presumably continue in the HMP's HMA areas. The purpose of that HMA land set-aside was to mitigate development impacts in the vegetated areas designated for development. However, under the EIS/EIR's analysis of the no-action alternative, the future ITP permittees would *also* be obligated to set aside *additional* mitigation land at a 3:1 mitigation ratio and therefore not to develop 75% of the vegetated land that was previously intended for development.

The EIS/EIR's assumption that the HMP's HMNA land would not be available to mitigate incidental take in development areas under the no-action alternative is inconsistent with past practice. The obligation to manage portions of the HMP's HMA land has already been identified as the basis of an individual ITP, the CDFW ITP for CTS for the East Garrison project. At its January 27, 2015 meeting, the Board of Supervisors considered the grant of a conservation easement deed to the CDFW over a 134-acre parcel in Parker Flats that had been designated as HMA land (Habitat Reserve) in the HMP. The purpose of the easement was to provide mitigation for an ITP for CTS through management activities paid for by the developer on an HMA parcel. Although the agreement provided that the management obligation for this



mitigation land could be assigned in the event a base-wide HCP were adopted, nothing in the agreement precludes the continued management of the mitigation land by the County or its designee as the basis for the CTS ITP if a basewide HCP is not adopted.

The EIS/EIR provides no explanation for its assumption that the full extent of the vegetated land designated for development could not be developed. The assumption that 75% of the vegetated development land could not be developed skews the analysis of impacts from the no-action alternative by understating the permitted extent of development. More problematically, the assumption that 75% of the vegetated development land could not be developed skews the analysis of the *feasibility* of the no-action alternative by implying that this alternative could not meet the project objective to enable the agencies to implement their development plans.

V-38
(continued)

2. The analysis of the no-action alternative unaccountably assumes that no ITPs would be issued for “HMP-required habitat management activities” in the HMA areas.

The EIS/EIR states that, under the no-action alternative, the wildlife agencies would not issue ITPs for “HMP-required habitat management activities within the habitat reserve areas.” (EIS/EIR, p. 4.4-4.) The rationale is that there is “limited availability of mitigation land in the area.” (Ibid.)

As discussed, this assumption inexplicably rules out using the land the HMP has designated for ITP mitigation since 1997 for that very purpose. While using the HMP’s HMA land for *development* might require additional mitigation land, there appears to be no principled or legal reason why the wildlife agencies could not count the enhancement, restoration, conservation, and maintenance of the HMP’s HMA land as mitigation for development in the areas designated for development, as was always intended – without the enhancement, restoration, conservation, and maintenance of some *additional* “mitigation land in the area.” Again, it appears that the EIS/EIR is somehow putting its thumb on the scale by doubling the required conservation land set-aside in the event that the agencies reject the proposed HCP.

V-39

In the event that the a project-specific ITP for development of a parcel in the vegetated development area relies on enhancement, restoration, conservation, and maintenance of some mitigation land in the HMP’s HMA, there appears to be no reason why that ITP would require *additional* mitigation land just to mitigate incidental take on the mitigation land. This would amount to an infinite regress of mitigation land set-asides.

Most perplexing is the Catch-22 suggestion that the wildlife agencies would not permit the owners of HMA land to continue their “*HMP-required* habitat management activities within the habitat reserve areas.” (EIS/EIR, p. 4.4-4, emphasis added.) The implications of this statement are that (1) there are a set of mandatory HMP-required habitat management activities; (2) those activities themselves require an ITP – even if they are not being performed to support an ITP for development elsewhere; and (3) there is no way that the owners of these lands can obtain that ITP because that would require set-aside of additional mitigation land that is not



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available. In effect the EIS/EIR implies that the owners of HMA land would inevitably have to violate the ESA and CESA unless the proposed HCP is adopted. This cannot be true.

V-39
(continued)

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

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4.23 RESPONSE TO COMMENT LETTER V: JOHN FARROW

Overview Comment

The comment letter is from counsel for LandWatch and this overview comment provides a summary of the key issues detailed in the comment letter. Responses to these key issues are provided below.

V-1 The comment accurately cites Federal and State regulations and references that require HCP and CESA funding be assured, which requires a decision about, and a commitment to, cost-apportionment and funding mechanisms. The comment also states the choice of funding mechanism is critical because it is inextricably linked to the apportionment of costs among the Permittees. Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

The comment also accurately cites the USFWS’s letter to FORA that the HCP include ordinances be described in the HCP to allow for public comment during the permit process. The commenter is direct to Appendix J of the Draft HCP, which contain a Model HCP Ordinance and Model HCP Institutional Policy.

V-2 The comment states that CEQA requires that there be a committed, enforceable funding mechanism for the HCP. The comment summarizes the funding discussion in Chapter 9, *Funding and Assurances*, in the Draft HCP, and summarizes court decisions related to mitigation fees. Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

The comment further states that the EIS/EIR determined impacts to “protected species and their habitat” to be less-than-significant because the HCP will avoid and mitigate the impacts. It should be noted that impacts to other protected species and habitat (non-HCP species and habitat) were determined to be potentially significant and would require implementation of Mitigation Measures BIO-1 through BIO-9, as stated on page 4.4-20 of the Draft EIS/EIR, to reduce impacts to a less-than-significant level.

V-3 The comment summarizes NEPA requirements related to mitigation and committing to mitigation. The Draft EIS/EIR includes mitigation among the alternatives to be compared. Please refer to the comparison of alternatives summarized in Table ES-1, Summary of Impacts and Mitigation Measures, on page ES-5, and Chapter 4, *Environmental Consequences*, for the detailed analysis of impacts associated with the Proposed Action and alternatives. As described in Master Response #1: Funding and Cost of Implementing the Draft HCP, the mitigation is legally feasible and sufficient resources have been identified to implement the mitigation.

Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-4 Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-5 Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-6 Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-7 The comment states that the Permittees should not agree to a JPA without a committed, enforceable funding plan. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration. Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

The comment further states that the agencies should know the total cost of the HCP and their own shares of the total cost. The estimated cost of the Draft HCP is presented in Chapter 9, *Cost and Funding*; please refer to Master Response #1: Funding and Cost of Implementing the

Draft HCP. The funding program is fee-based and there is not a set cost for each Permittee. Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

The comment also states that the agencies should know their own costs and obligations for the no-action alternative and identifies a bullet list of questions. Responses to each are provided below.

- The HMP has been approved by the USFWS; the HMP, deed restrictions, and Memoranda of Agreement (MOA) between the Army and various land recipients provide the legal mechanism to assure HMP implementation. It is a legally binding document, and all recipients of former Fort Ord lands are required to abide by its management requirements and procedures. These obligations under the No Action Alternative are detailed in Section 2.3.3.2, *Habitat Management Activities*, beginning on page 2-4 of the Draft EIS/EIR and the discussion under the Fort Ord Habitat Management Plan heading beginning on page 3.4-5 of the Draft EIS/EIR. Please also refer to Response C-4.
- All recipients of former Fort Ord lands are obligated by the requirements of the HMP. As stated on page 2-7 of the Draft EIS/EIR, funding to implement the habitat management requirements under the HMP will be the responsibility of the entities receiving properties. In addition, all future regulatory compliance (e.g., CEQA, NEPA, ESA, CESA, Clean Water Act, etc.) will be the responsibility of the land recipients.
- As described in the first bullet above, compliance with the HMP is mandatory. Please also refer to Response Y-1.
- As described on page 2-6 of the Draft EIS/EIR, the land recipient with habitat management and Borderland obligations may need to obtain ITPs from the USFWS and/or CDFW if take of listed species would occur as a result of these activities. As described on page 2-5 of the Draft EIS/EIR and Response to Comment Y-1, the HMP requires that land recipients of habitat reserves and development parcels with restrictions or reserves prepare and implement a Resource Management Plan (RMP). RMPs are planning documents that provide the basis of what habitat management activities will be conducted, periodicity of the activities, and monitoring of HMP species and their habitats, and reporting requirements. The HMP requires that approval of the RMPs be obtained from the USFWS. The land recipients will be responsible for the cost of preparing the RMPs, obtaining all necessary permits, and complying with all regulatory requirements associated with implementing the RMPs. Please also refer to Responses Y-1 and Y-3.
- The land recipients are responsible for funding the obligations under the HMP. As stated on page 4-21 of the HMP, each land recipient will fund the implementation of the HMP and implement conservation and/or management guidelines specific to the parcels it received. The HMP does not preclude other sources of funding for HMP implementation or preclude these agencies from securing funding from other sources to support their implementation of the HMP.
- The HMP does not prohibit the transfer or conveyance of properties. As stated in the first bullet above, all recipients of former Fort Ord lands are required to abide by the HMP's management requirements and procedures. Any transfer or conveyance of property would also transfer habitat management responsibilities. The specific land use covenants requiring compliance with HMP are permanently part of the deeds to the land. In the case of a sale, transfer, or other type of conveyance, any future owner would be required to participate in the HMP in perpetuity. The deed restrictions and

conservation easements applicable to the land will ensure the continuance of mitigation under any ownership if the land is conveyed.

- The HMP has flexibility in that it allows for post-transfer modifications to the HMP, such as changes in boundaries or land uses within their parcels. These changes may be made if the affected landowners and the USFWS can agree that the overall goals and objectives of the HMP will not be compromised (page 1-14 of the Draft HMP).
- The preparation and implementation of the HMP is a requirement of the Army's Final SEIS under NEPA and the Biological Opinion issued by the USFWS under Section 7 of the Federal ESA. As such, the comment incorrectly states that the HMP is mandatory only as a form of CEQA/NEPA mitigation. As stated on page 4-9 of the HMP, the HMP would be considered suitable mitigation for impacts to HMP species and would facilitate the USFWS procedures to authorize incidental take by participating entities as required under Section 10 of the Federal ESA. The HMP does not authorize incidental take by entities acquiring land at former Fort Ord of any species listed as threatened or endangered under the Federal ESA; hence, the purpose of the Draft HCP. While the land recipients may request post-transfer modifications to the HMP (see bullet above), the HMP cannot be revised by the land recipients through making findings of adequate substitute mitigation and/or infeasibility. The HMP fulfills the Army and USFWS's obligations under Section 7 of the Federal ESA and is required by the Army's Record of Decision (ROD). The land recipients do not have the legal authority or standing to modify the HMP required by NEPA and ESA.
- Please refer to Responses Y-1 and Y-3.
- The No Action Alternative assumes that approximately 75% less development would occur in the vegetated designated development areas (i.e., greenfield development per the comment) compared to development assumptions under the Draft HCP. Please refer to the discussion under Section 2.3.3.1, *Development Activities*, beginning on page 2-3 of the Draft EIS/EIR.
- The comment states that the cost apportionment in the Draft HCP would not create any incentive for a private developer to avoid developing in greenfield because the CFD taxes would be the same. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.

V-8 Please refer to Response V-7 and Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-9 Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-10 Comment acknowledged. The referenced letter is included in **Appendix C**. Please refer to Appendix C and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis.

V-11 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.

V-12 Please refer to **Appendix C** and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.

V-13 Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-14 Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

- V-15** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP. Please refer to **Appendix C** and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis.
- V-16** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.
- V-17** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.
- V-18** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP. Please refer to **Appendix C** and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis. Please also refer to Response E-18.
- The comment also discusses options regarding equitable take-base cost-apportionment. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.
- V-19** Please refer to Response V-1 and Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-20** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-21** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-22** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-23** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-24** Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.
- V-25** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP. Additionally, in response to concerns expressed by the Permittees and comments received from CDFW and the public, a reduced/phased HCP alternative was developed based on reduced development projections. Please refer to **Chapter 5** and **Appendix E** of this Final EIR.
- V-26** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-27** Please refer to Master Response #1: Funding and Cost of Implementing the Draft HCP and Response V-25.
- V-28** Please refer to **Appendix C** and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.
- V-29** The Draft HCP provides detailed estimates of costs for five general categories of HCP implementation – program administration, habitat restoration, habitat management and maintenance, monitoring, and unexpected costs – to estimate the proposed 50-year permit term, management entity, start-up, and post permit term costs. Estimated costs to fund the HCP have evolved over time to reflect changes to the numerous drafts of the HCP and to HCP required actions, refinements and improvements in cost estimates, new information, and to reflect inflation. Furthermore, these estimates were comprehensively updated in 2014, resulting in a revised estimated cost to implement the HCP. As such, it is not expected that the estimated costs to implement the HCP would remain constant throughout HCP development.
- Endowment costs associated with funding the HCP were estimated as part of a biennial process used to calibrate the FORA Developer Fee and Special Tax, in accordance with a formula

established as part of implementation agreement amendments with individual jurisdictions. The formula accounts for remaining Capital Improvement Program (CIP) costs (including habitat management) as well as available and projected revenues (including habitat management fund balances). Projected revenues include the FORA Developer Fee and Special Tax revenues, which are driven by FORA jurisdictions' development projections. As part of the biennial fee update process, FORA and the FORA jurisdictions worked to calibrate all of the attendant assumptions to calibrate the required Developer Fee and Special Tax rate. Through this process, estimates relating to the endowment funding requirement were refined based on the latest available information. FORA also worked to calibrate habitat management contingencies included in the CIP, which resulted in refinements over time.

As stated repeatedly in the memorandum, the EPS Sensitivity Analysis (included as **Appendix C**) was intended to illustrate how adjustments in certain variables (costs, revenues, timing of costs or revenues) affected the financial modeling dynamics. The EPS Sensitivity Analysis should not be construed as offering an alternative estimate of endowment requirements, as the sensitivity analysis was based on hypothetical cost and revenue scenarios.

Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-30 Please refer to **Appendix C** and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.

V-31 The funding strategy for the HCP includes establishing two endowment funds: the FONR Endowment Fund and Cooperative Endowment Fund (HCP, IAF and Borderlands).

The FONR Endowment Fund will be held by the Regents of UC in the General Endowment Pool (GEP). As of this writing, CDFW has certified UC's GEP to hold endowment funds such as the FONR Endowment Fund. The GEP provides diversification and economies of scale with a balanced portfolio containing equities, fixed-income securities, and alternative investments. Within the GEP, each endowment will be assigned a unique funding number to ensure the principal and annual pay-outs are tracked separately. The GEP has had an annualized net total return of 6.54% for the 10 years prior to June 30, 2008. The annual pay-out is based on the 3-year average market value of the GEP. The resulting annual pay-out is 4.2% of the principal. The pay-out is lower than the total return in order to prevent erosion of the principal due to inflation.

The Cooperative Endowment Fund will have a target pay-out rate of 4.5% a year. The Cooperative Endowment Fund would be invested with a higher cap rate than the FONR Endowment because, in this case, the Cooperative would select an institutional investor with a track record of achieving a cap rate of at least 4.5%. To obtain this pay-out rate, the Cooperative will follow CDFW/State law procedures to review/certify a third-party endowment manager/investment institution that can obtain this targeted higher rate of return.

In addition, the CFD Special Tax calculation includes a habitat management contingency that calculates the additional funds that would be needed should the HCP Endowment Fund return a lower than targeted pay-out rate. This contingency is therefore included in the calculation of the FORA CFD rates used to fund the endowment.

Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.

V-32 Please refer to **Appendix C** and Responses V-29 and Y-4 for more detail regarding the sensitivity analysis. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration.

- V-33** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration. Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-34** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration. Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-35** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration. Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-36** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration. Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-37** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required. The comment is referred to the decision-makers for their consideration. Please also refer to Master Response #1: Funding and Cost of Implementing the Draft HCP.
- V-38** As state on page 4-9 of the HMP, the HMP is intended to support binding legal agreements among receiving entities, the Army, and the USFWS that would establish plans to manage lands designated for natural resource conservation. The HMP is further intended to provide the *foundation* (emphasis added) for a habitat conservation plan to support issuance of a Section 10(a)(1)(B) incidental take permit for Federally listed species. However, as stated in Response V-7, the HMP does not authorize take under Section 10 of the Federal ESA or Section 2081 of CESA. As stated on page 1-1 of the Draft EIS/EIR and discussed in Response V-7, while the HMP provides a framework for species and habitat conservation on former Fort Ord, it does not meet USFWS or CDFW standards or requirements for an application soliciting the issuance of ITPs. The Draft Fort Ord HCP is intended to fulfill those requirements by combining key components of the HMP with additional elements to assure compliance with the ESA (16 U.S.C. §§ 1531–1544) as amended and the CESA (CFG Code §§ 2050 et seq.) as amended; thereby serving as a basis for issuance of base-wide ITPs by USFWS and CDFW.

As discussed in detail in Section 2.3.3.3, *Mitigation Strategy*, for the No Action Alternative, the majority of the future proposed development activities within the 5,051 acres that is primarily vegetated would likely be subject to CEQA review and would likely be required to comply with ESA (primarily through the Section 10 process), CESA, NEPA, and other environmental regulations, which may require protections for species and their habitats and consideration of environmental effects on a project-by-project basis. The specific type, number, timing, and extent of development projects within the 5,051 acres is unknown; and therefore, the number of individual ITPs the USFWS and CDFW would approve within a 50-year period is unknown. As described in Section 4.1.1, *Previous and Future Environmental Review*, it would be speculative to identify project-specific impacts and mitigation.

The issuance of individual ITPs from the USFWS and/or CDFW would require a project-by-project mitigation strategy. Mitigation strategies are highly variable and highly dependent on the species and extent and intensity of the impact. Based on a review of current and expected future regulatory requirements, as well as the ESA and CESA mitigation that has been previously required for individual projects within the former Fort Ord, a typical permit would include mitigating impacts to Federal and State listed species at a 3:1 ratio, on- or off-site (i.e., within the project site or outside the project site within suitable habitat). In addition, in consultation with the USFWS and CDFW, it is reasonable to assume that mitigation lands for future development activities may consist of the following options to offset unavoidable impacts:

- Avoidance and preservation on-site with a management plan and endowment to maintain the preservation site;
- Preserve and/or restore suitable habitat off-site with a management plan and endowment to maintain the preservation site (within or outside the Plan Area);
- Purchase credits at a USFWS/CDFW-approved habitat conservation bank; or
- A combination of some or all of the above.

In addition, as part of the individual ITPs for any of the future proposed development activities, the USFWS and CDFW would likely require projects to implement project-specific AMMs. AMMs for individual projects are expected to be similar to those required under the Proposed Action, and may include, but are not limited to: species surveys; construction timing restrictions, training, monitoring; implementing buffers; species salvage; and erosion, access, and non-native species control measures.

The amount of resource avoidance and preservation required by the expected regulatory setting could restrict the amount of development within the vegetated designated development areas. For example, applying a 3:1 mitigation ratio for impacts to Federal and State listed species within the vegetated designated development areas, future development activities may be confined to 1,263 acres within the vegetated designated development areas to allow for 3,788 acres of mitigation lands to be set aside within the former Fort Ord. Mitigation lands could also be preserved outside the former Fort Ord.

The EIS/EIR acknowledges that this assumption does not guarantee individual ITPs would be issued by the USFWS and/or CDFW for future development of 1,263 acres, and rather uses this reasonable assumption to provide meaningful analysis and comparison of alternatives in the EIS/EIR.

However, it is not reasonable to assume that individual projects in the No Action Alternative could rely on the same HMA lands using the same management actions identified in the Draft HCP. As stated on page 2-7, in the absence of a Draft Fort Ord HCP, there would be no base-wide, comprehensive mitigation strategy and, therefore, formulating adequate mitigation for future projects and activities may become more complicated and constrained as redevelopment of the former Fort Ord occurs on a project-by-project basis. Each project proponent would be required to negotiate with landowners and consult with the regulatory agencies, which requires extensive time and effort on the part of the agency, landowner, and project proponent. Therefore, it cannot be reasonably assumed that same development scenario under the Proposed Action Alternative would occur under the No Action Alternative.

The purpose of describing and analyzing a no action alternative is to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project conditions may include some reasonably foreseeable changes in the existing conditions and changes that would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. For the purposes of comparing the No Action Alternative to the Proposed Action, it is reasonable to assume that development activities would occur under a constrained development scenario as described under the No Action Alternative.

The comment references an individual project ITP issued by CDFW that established an easement on 134 acres to provide take authorization for the California tiger salamander for the East Garrison project. The comment accurately states that the management obligation for this mitigation land could be assigned in the event a base-wide HCP were adopted, and the agreement does not preclude the continued management by the County or its designee if a base-wide HCP is not adopted. This ITP exemplifies the conditions assumed under the No Action Alternative. As future projects obtain ITPs for their individual take, using HMA or other land

as mitigation, that land would not be available for other future projects, thus, constraining future development activities.

Please also refer to Response E-18.

V-39

The comment misconstrues the analysis of habitat management activities under the No Action Alternative stating that the Wildlife Agencies would not issue ITPs for habitat management activities within the HMAs. As described on page 4.4-4, under the No Action Alternative, ITPs would not be issued by the Wildlife Agencies for *development activities* (emphasis added) or HMP-required habitat management activities within the habitat reserve areas. The HMP contains allowances for specified conditions, acreages, and parcels where limited development could occur. However, under the No Action Alternative, given the limited availability of mitigation land in the area and for the purpose of this analysis, it is reasonably assumed that any development activities within the non-Federal HMP-designated habitat reserve areas would not be feasible and would not occur. Most of the HMP-required habitat management activities require ground disturbance, which could result in take of Federal and/or State listed species. Therefore, only a subset or limited HMP-required habitat management activities (i.e., preservation, research, and some restoration activities) could be implemented in the habitat reserve areas without ITPs.

The basis of the No Action Alternative is that no base-wide ITPs would be issued and the Draft HCP would not be approved. Development and habitat management activities would be required to obtain individual ITPs on a project-by-project basis. The No Action Alternative analysis does not suggest that ITPs would be required for the mitigation requirements associated with future project-specific development. Rather, the analysis states that ITPs may be required for habitat management activities required under the HMP and assumes land recipients would be required to obtain ITPs on a project-by-project basis. ITPs issued for future development projects would address take coverage that may be needed to implement the mitigation required under the permit.

Without a base-wide ITPs and an approved HCP, the Wildlife Agencies, specifically the USFWS, most certainly would require the owners of HMA land to implement their obligations under the HMP (please refer to Response V-7). However, if their required activities would result in take, the owners of the HMA lands would need to obtain ITPs to carry out those activities (please refer to page 2-5 of the Draft EIS/EIR).

Please also refer to Response V-38.

December 12, 2019

Monterey Peninsula Properties, LLC.
Sean Kranyak
General Manager
200 Clocktower Place, Suite D208
Carmel, CA 93923

To Whom It May Concern:

As former Fort Ord Property owners in the City of Del Rey Oaks, we appreciate the opportunity to comment on the Fort Ord HCP Draft EIS/EIR.

W-1

The Plan Area & Surrounding Area Land Use Map (Figure 3.11-3) has incorrectly identified the southeastern most portion of Del Rey Oaks' former Fort Ord property as being classified/designated for Office/Professional development per the City of Del Rey Oaks' General Plan. The 1997 Del Rey Oaks General Plan was amended in 2016 via the Monument RV Resort Initiative Measure (Resolution No. 2016-08), in which the amendment replaced the Office/Professional classification/designation on the subject portion of property with the classification/designation of General Commercial-Visitor.

W-2

The Monument RV Resort Initiative Measure's resulting land use designation and zoning may also be worthy of mention in Section 3.11.3.4 of the Draft EIS/EIR. The Initiative Measure not only amended the City's General Plan, but also amended the City's Zoning Code, which incorporated Recreational Vehicle parks and other recreational related activities as being principally permitted uses (among other amendments). While the Initiative Measure did not alter the Fort Ord Reuse Plan Land Use Designation in the City of Del Rey Oaks, the Initiative Measure was deemed consistent with the Fort Ord Reuse Plan (Resolution No. 16-18) by virtue of the fact that the Initiative Measure's resulting land use designation and zoning would not establish a land use more intense than the uses permitted in the Base Reuse Plan. The aforementioned General Plan, Zoning Code amendments, and associated Base Reuse Plan consistency determination are important with respect to the City of Del Rey Oaks' former Fort Ord land use context.

W-3

Monterey Peninsula Properties looks forward to reviewing the Final EIS/EIR. If you have any questions regarding this response, please call me at 831-574-3330 or contact me by email at seankranyak@yahoo.com.

W-4

Sincerely,



Sean Kranyak
General Manager

4.24 RESPONSE TO COMMENT LETTER W: SEAN KRANYAK

- W-1** The comment introduces the comments in the letter as follows. No response is required.
- W-2** The comment requests a correction to Figure 3.11-3 of the Draft EIS/EIR to reflect an amendment to the land use designation for the Monument RV Resort property from Office/Professional to General Commercial-Visitor. This correction has been made to Figure 3.11-3 in the Draft EIS/EIR. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.
- W-3** The comment requests text be added to Section 3.11.3.4 of the Draft EIS/EIR. The requested text would provide information regarding the Monument RV Resort Initiative Measure. While the text is accurate, it is not essential information required to complete the environmental analysis in the Draft EIS/EIR and does not affect the adequacy of the analysis. Comment is acknowledged and available to the decision-makers; however, the revision was not made to the Draft EIR/EIR.
- W-4** Comment is acknowledged. No response is required.

December 13, 2019

Via E-mail

Stephen P. Henry
 Field Supervisor
 Ventura Fish and Wildlife Office
 U.S. Fish and Wildlife Service
 2493 Portola Road, Suite B,
 Ventura, CA 93003
fw8fortordhcp@fws.gov

Board of Directors
 c/o Michael Houlemard
 Fort Ord Reuse Authority
 920 2nd Ave. Suite A, Marina, CA 93933
Michael@fora.org
Board@fora.org

Re: Draft Fort Ord Habitat Conservation Plan and
 Draft Environmental Impact Statement/Environmental Impact Report

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

We offer the following comments on the Draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) for the Fort Ord Multispecies Habitat Conservation Plan (“HCP” or “proposed HCP”). These comments are in addition to separate comments we submitted on December 10, 2019 regarding the funding for, and alternatives to, the HCP.

The HCP EIS/EIR fail to provide an adequate discussion of groundwater impacts associated with the HCP and the development that it enables. In light of changes to the Base Reuse Plan, significant new information, and changed circumstances, the Fort Ord Reuse Authority (“FORA”) and the United States Fish and Wildlife Agency (“USFWS”) must prepare a subsequent EIR and subsequent EIS before approving the HCP.

A. The EIS/EIR discussion of water supply impacts fails to provide an adequate discussion of the groundwater setting or of the impacts to the aquifer from the groundwater pumping that will occur to support the Fort Ord development enabled by the HCP.

The EIS/EIR references but does not tier from the Army’s 1993 EIS and FORA’s 1996 EIR. The EIS/EIR acknowledges that the HCP would result in more development and development at a faster pace than if the HCP is not adopted. In particular, the EIS/EIR discussion of environmental consequences to hydrology and water quality acknowledges that “the extent and pace of future development activities” would be

Overview
 Comment

X-1

greater under the HCP alternative than under the no-action alternative.” (EIS/EIR, p. 4.10-1.)

X-1
(continued)

1. The EIS/EIR Utilities discussion does not address the effects of the project on aquifer depletion or seawater intrusion.

The EIS/EIR setting description for utilities states that that the Base Reuse Plan limits development based on the suballocation of the 6,600 AFY “retained” by the Army for its use. It references the 1993 Annexation Agreement between the Army and Monterey County Water Resources Agency (“MCWRA”), but does not discuss its terms, including its temporary nature, its provisions for a replacement potable water supply, and its requirement for the cessation of all pumping on Fort Ord. (EIS/EIR, p. 3.16-1.)

The EIS/EIR’s discussion of environmental consequences of utility systems considers only the availability of a water *supply*. The discussion assumes that there will be a 6,600 AFY supply of groundwater to support the development made possible by the HCP. (EIS/EIR, p. 4.16-3.) Neither the thresholds of significance nor the discussion itself consider the impacts to the groundwater resource of *using* that purported supply, such as aquifer depletion and seawater intrusion.

X-2

Furthermore, the discussion of supply availability is itself inadequate, because there is no consideration that the supplier’s wells may become inoperable due to seawater intrusion, even though seawater intrusion has advanced very close to the Marina Coast Water District (“MCWD”) wells supplying Fort Ord. Nor is there any discussion of the uncertainty of the supply in light of the temporary nature of the permission to pump groundwater under the 1993 Annexation Agreement. Nor is there any discussion of the uncertainty of the supply in light of the pending dissolution of FORA and the lack of any agreement that would entitled land use jurisdictions to a water supply from MCWD.

2. Nor does the EIS/EIR Hydrology and Water Supply discussion address the effects of the project on aquifer depletion or seawater intrusion.

The EIS/EIR setting description for hydrology and water supply states that that the discussion is based in part on the 1996 Reuse Plan EIR, and references the Army’s 1993 FEIS and 1996 FSEIS “for more information.” (EIS/EIR, p. 3.10-1) The discussion acknowledges the seawater intrusion of the 180-foot and 400-foot aquifers and states that “the 900-foot Aquifer, has experienced little development except near the coast where it is pumped to provide a replacement source of groundwater for the seawater intruded areas of the 180- and 400-Foot Aquifers.” (EIS/EIR, p. 3.10-7; see also EIS/EIR, p. 3.10-9 [acknowledging overdraft causing seawater intrusion in the upper aquifers].) The discussion is inaccurate because pumping from the 900-Foot Aquifer, now known as the Deep Aquifers, has in fact experienced *rapid* development, with pumping increasing since 1991 from 2,500 AFY to over 8,000 AFY; and this increase in

X-3

pumping is now understood to aggravate seawater intrusion in the upper aquifers. Indeed, the County has recently enacted a moratorium on new wells in the Deep Aquifer.

The EIS/EIR discussion of environmental consequences to hydrology and water quality states that it is “based on currently available information.” (EIS/EIR, p. 4.10-1.) As discussed below, the EIR/EIS does not in fact consider currently available information that indicates that seawater intrusion in the upper aquifers is worsening; that the Deep Aquifers do not provide a sustainable supply source; and that pumping the Deep Aquifers aggravates seawater intrusion.

X-3
(continued)

Although the hydrology and water quality discussion identifies the degradation of groundwater quality as a significance criterion, there is no consideration of aquifer depletion or seawater intrusion caused by groundwater pumping for the Fort Ord development. (EIS/EIR, pp. 4.10-1 to 4.10-5.)

B. A subsequent EIS and Subsequent EIR are required due to changed circumstances, new information, and changes to the Base Reuse Plan.

Both the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”) require subsequent environmental review when the project is changed or there is significant new information or changed circumstances.

NEPA requires that an agency “shall prepare supplements to either draft or final environmental impact statements if (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR § 1502.9(c).)

X-4

CEQA requires a subsequent EIR if “(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.” (Public Resources Code, § 21166.)

The EIS/EIR’s discussions of water supply, hydrology, and water quality fail to disclose that existing and planned groundwater pumping to support Fort Ord development exceeds the levels assumed and evaluated in the prior environmental reviews; that the overdraft and seawater intrusion impacts are substantially worse than assumed in prior reviews; that the expected replacement water supply has not been implemented; that policies and programs of the Base Reuse Plan intended to avoid or minimize overdraft and seawater intrusion have not been implemented; and that new

information about the Deep Aquifers indicates that they do not provide a sustainable water supply and that pumping the Deep Aquifers also causes seawater intrusion.

As discussed below, and as documented in previous comments by LandWatch and hydrologist Timothy Parker on other Fort Ord projects, changed circumstances, new information, and changes to the Base Reuse Plan require an SEIS and an SEIR before lead agencies make discretionary approvals regarding Fort Ord development that may affect groundwater pumping.

X-4
(continued)

1. Incorporation of previous comments on Fort Ord projects by LandWatch and by hydrologist Timothy Parker.

LandWatch and hydrologist Timothy Parker have repeatedly commented to land use agencies, Marina Coast Water District, and the US Army that the environmental reviews of groundwater impacts from pumping to support Fort Ord projects has been flawed and that subsequent environmental review is required. A recurring theme in these previous comments is that the environmental reviews for Fort Ord projects have uncritically and incorrectly assumed that there would be no significant impacts to the Salinas Valley Groundwater Basin as long as pumping to support Fort Ord development does not exceed the 6,600 AFY that, in the 1993 Annexation Agreement, the Monterey County Water Resources Agency temporarily permitted the Army to pump pending implementation of a 6,600 AFY replacement water supply, at which point all Fort Ord groundwater pumping was to cease. Twenty six years later, that replacement supply has not been implemented, overdrafting continues, and seawater intrusion advances, destroying the aquifers, now as far as seven miles inland.

X-5

The HCP EIS/EIR makes the same error as the reviews to which LandWatch and hydrologist Parker have objected. It uncritically assumes that as long as pumping does not exceed 6,600 AFY, there would be no significant impact or considerable contribution to a significant cumulative impact caused by the groundwater pumping for the development projects enabled by the HCP. This is incorrect. FORA and USFWS as lead agencies must prepare a subsequent environmental review that actually evaluates the groundwater impacts in light of changes to the Base Reuse Plan project, changed circumstances, and new information.

LandWatch incorporates its comments and Timothy Parker's comments by reference and provides copies with this letter. These comments include the following letters:

- John Farrow, letter to Kim Carvahlo, City of Del Rey Oaks, Nov. 14, 2019, re Initial Study/Negative Declaration – Del Rey Oaks Housing Element.



- Timothy Parker, letter to John Farrow, Nov. 14, 2019, re Groundwater impacts from increased pumping to support Del Rey Oaks housing development in the Ord Community.
- John Farrow, letter to Kurt Overmeyer, City of Seaside, August 21, 2019, re Campus Town Specific Plan Draft EIR.
- John Farrow, letter to Colonel Gregory Ford, February 26, 2019, re Subsequent Environmental Impact Statement Required for Disposal of Army Interest in Fort Ord Groundwater.
- John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).
- Timothy K. Parker, letter to John H. Farrow, February 15, 2018, re Groundwater Impacts from Increased Pumping to Support Ord Community Development.
- Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).
- John H. Farrow, letter to City of Seaside City Council, October 12, 2016, re Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056).
- Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016, re Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR).

X-5
(continued)

As discussed in these letters, and in the additional comments below, both CEQA and NEPA require a subsequent environmental review of the impacts of groundwater pumping associated with projects requiring discretionary review.

2. Baseline pumping for Fort Ord from the upper aquifers at the time of the base closure decision was not 6,600 AFY, and it did not include any pumping from the Deep Aquifers. Any existing or projected pumping from the Deep Aquifers for Fort Ord development may cause significant impacts; and any pumping in excess of the Army pumping from the upper aquifers in the year it decided to close Fort Ord base may cause significant impacts.

Previous environmental reviews of projects in the former Fort Ord have argued that baseline pumping when the Army decided to close the Fort Ord base was 6,600 AFY and that as long as pumping does not exceed 6,600 AFY there are no new impacts. This is not true.

Because the existing and projected groundwater pumping for the base reuse exceeds the baseline Fort Ord pumping, the base reuse causes new significant impacts in the form of aquifer depletion and seawater intrusion; and it makes a considerable contribution to significant cumulative impacts in the form of aquifer depletion and seawater intrusion.

In particular, the 1993 Army EIS and the 1996 BRP EIR identify baseline pumping to support Fort Ord from the 180-foot and 400-foot aquifers of at most 5,200 AFY, not the 6,600 AFY that the HCP EIS/EIR assumes to be available, and that the Fort Ord water supplier MCWD and land use jurisdictions assume that the planned future development will require.

Furthermore, the 1993 Army EIS and the 1996 BRP EIR identify *no* baseline pumping to support Fort Ord from the Deep Aquifers, and identify only 2,500 AFY of cumulative pumping from the Deep Aquifers. That Deep Aquifer pumping was for the City of Marina, not Fort Ord.

This baseline information is evident from LandWatch's previous comments on other Fort Ord projects and also from the following:

- The 1992 USACE baseline document for the Army EIS states that baseline groundwater pumping from the Deep Aquifers was only 2,500 AFY, pumped to support the City of Marina, and there were no plans by any jurisdiction to take additional water from this aquifer.¹

¹ US Army Corps of Engineers, Other Physical Attributes Baseline Study of Fort Ord, California, April 1992, pp. 1-3, 1-15, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf.)

- Annual potable pumping to support Fort Ord from 1986-1989 was 5,083 AFY and the average from 1986-1990 was 5,126 AFY.² Water use declined from 1980 to 1990, except for the single year 1984.³
- As of 1991, MCWD had drilled 14 wells since 1956 but abandoned most of them due to seawater intrusion. MCWD addressed seawater intrusion in the short term by tapping the Deep Aquifer for Marina supply, but planned to secure a long-term alternative water supply via the Salinas Valley Seawater Intrusion Project.⁴
- The EIR/EIS for the Salinas Valley Seawater Intrusion Project proposed to deliver 6,600 AFY of potable water to Fort Ord, an amount based on the single year historic peak demand that occurred in 1984, years before the Army decided to close Fort Ord.⁵
- The 1993 Army EIS states that pumping for Fort Ord declined from a one-year peak of 6,600 AFY in 1984 to an average of 5,100 AFY during 1986-1989. (Army 1993 EIS, p. 4-57.)
- The 1996 Base Reuse Plan EIR references the Army baseline documents that purport to describe baseline conditions as of 1991. (BRP EIR, p. 4-46.)
- The 1996 Base Reuse Plan EIR acknowledges that water demand in 1991 was 4,700 AFY. (BRP EIR, p. 4-53.)

In sum, the 6,600 AFY figure is not the baseline pumping when the Army decided to close the base that should be used to measure physical impacts of water supply pumping.

The 6,600 AFY figure is merely a reference to the amount of pumping that the Monterey County Water Resources Agency agreed to permit the Army to pump without penalty on a temporary basis, pending the expected implementation of a 6,600 AFY replacement water supply project to serve Fort Ord, and provided that this pumping did not aggravate seawater intrusion.⁶ And indeed, the 1996 Base Reuse Plan EIR states that

² *Id.* at 1-6.

³ *Id.* at 1-6, 1-14.

⁴ *Id.* at 1-15

⁵ *Id.* at 1-7 to 1-8.

⁶ Agreement Between the United States of America and the Monterey County Water Resources Agency Concerning Annexation of Fort Ord Into Zones 2 and

“[t]hrough an agreement between the Army and MCWRA, 6,600 acre feet per year (afy) of water is available from the Salinas Valley groundwater basin for former Fort Ord land uses, provided that such provisions do not aggravate or accelerate the existing seawater intrusion.” (BRP EIR, p. 4-49.)

X-6
(continued)

3. The Army EIS and the BRP EIR were predicated on the assumption that existing pumping from the 180-foot aquifer and the 400-foot aquifer could continue temporarily, but not if that pumping aggravated seawater intrusion and only until MCWRA provided the expected replacement water supply to support reuse of Fort Ord. Because the replacement water supply project has not been implemented 26 years after the 1993 Agreement, and because existing and proposed groundwater pumping for Fort Ord aggravates seawater intrusion, there has been a change in circumstances, a change in the Base Reuse Plan, and new information that warrant an SEIS and SEIR.

Groundwater pumping for Fort Ord was to cease when an expected replacement water supply was implemented.⁷ And there was never any expectation that Fort Ord development would be supported by pumping from the Deep Aquifer.

X-7

Despite the expectation that the impacts of the Base Reuse Plan would be mitigated by a new water supply project that would replace groundwater pumping for Fort Ord, this never occurred. This is evident from previous comments by LandWatch and hydrologist Timothy Parker on other Fort Ord projects. Consider the following:

- The 1993 Annexation Agreement between the Army and MCWRA assumed that MCWRA would provide a 6,600 AFY replacement potable water supply project for Fort Ord, at which point all groundwater pumping for Fort Ord would cease.
- The 1993 Army EIS and the 1996 BRP EIR acknowledge that the existing pumping is not sustainable because it is causing seawater intrusion. The 1993 Army EIS states that MCWD plans to obtain a potable water supply from the Salinas Valley Seawater Intrusion Project. The 1996 BRP EIR conditions continued pumping for Fort Ord development on not causing further seawater intrusion and identifies policies and programs that are intended to identify sustainable yield, to ensure that pumping does not exceed sustainable yield, to ensure that development does not exceed available supply, and that an alternative water supply is obtained.

2A of the Monterey County Water Resource Agency, Sept 21, 1993.
(Agreement No. A-06404).

⁷ See e.g., John Farrow, letter to Colonel Gregory Ford, Feb. 26, 2019, pp. 3-7.

- The 1996 Base Reuse Plan EIR states that by the terms of the 1993 Army/MCWRA agreement “a potable water supply of 6,600 afy is assumed to be assured from well water *until a replacement is made available by the MCWRA (provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer).*” (BRP EIR, p. 4-53, emphasis added.)
- The 1996 Base Reuse Plan EIR states that “given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to ‘assure’ even 6,600 afy.” (*Id.*). It then identifies policies and programs that must be adopted by cities and the County “to ensure the water supply issue is resolved and the proposed project does not aggravate or increase the seawater intrusion problem.” (*Id.*, p. 4-54.) These are the Hydrology and Water Quality Policies and Programs that mandate ensuring additional water supply, conditioning development on assures water supply, cooperation to mitigate further seawater intrusion.
- The 1996 Base Reuse Plan EIR identifies the options for obtaining additional water supplies.
- In 1998, MCWRA released an EIR for the Salinas Valley Water Project, which recounts the history of planning through the 1990s for a project that would halt seawater intrusion and provide potable water supplies to various urban users including Fort Ord, consistent with the 1993 Annexation Agreement, the discussion in the Army’s EIS, and the discussion in the Base Reuse Plan EIR.⁸
- However, by 2001, in response to public concerns about cost and other issues, the Salinas Valley Water Project was revised to exclude urban deliveries.⁹ No replacement potable water supply project has been provided for Fort Ord.

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(continued)

Because the expected replacement water supply project has not been implemented 26 years after the 1993 Agreement, and because existing and proposed groundwater pumping for Fort Ord aggravates seawater intrusion, there has been a change in circumstances, a change in the Base Reuse Plan, and new information that warrant an SEIS and SEIR.

⁸ MCWRA, Salinas Valley Water Project Draft Master EIR, SCH# 97-121020, Oct. 1998, pp. 1-3 to 1-5 [history], 3-36 [project description includes delivery of water supplies to Fort Ord].

⁹ MCWRA and USACE, Salinas Valley Water Project Draft EIR/EIS, SCH# 200034007, June 2001, p. 1-9.

4. The agencies have not implemented the Base Reuse Plan policies to mitigate seawater intrusion. This too is a change in the project, new information, and changed circumstances that warrant subsequent environmental review.

The agencies have not honored the Base Reuse Plan’s requirements that continued pumping be contingent on not aggravating seawater intrusion, that the agencies determine safe yield, that pumping not exceed safe yield, that the agencies ensure provision of an additional water supply, and that development not be approved without an assured long-term water supply.

For example, as Timothy Parker explained:

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members “shall ensure additional water supply.” Policy B-2 requires conditioning project approval on verification of an “assured long-term water supply.” Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD “to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan.” Program C-3.1 requires the member agencies to work with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies.” MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.¹⁰ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” (BRP PEIR p. 4-63.) The BRP PEIR states that the “conditions of the 900-foot aquifer are uncertain”, including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies.” (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to

¹⁰ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies “to mitigate further seawater intrusion” by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR’s cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: “existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3).” (BRP PEIR p. 5-5 (emphasis added).)

X-8
(continued)

(Timothy Parker, letter to John Farrow, Oct. 8, 2016, pp. 8-9.)

The failure of the agencies to implement the Base Reuse Plan policies to mitigate seawater intrusion constitutes a change in the project, new information, and changed circumstances that warrant subsequent environmental review.

5. Overdraft and seawater intrusion into the 180-foot and 400-foot aquifers have continued and accelerated due to cumulative groundwater pumping in excess of sustainable yield, especially in coastal areas such as Fort Ord. This, too, is a change in circumstances and new information that warrant an SEIS and SEIR.

LandWatch’s and hydrologist Timothy Parker’s previous comments on other Fort Ord projects document the continued and increasing cumulative pumping of the 180-foot and 400-foot aquifers, including the existing and planned pumping to support the Fort Ord Base reuse. This pumping causes and will cause significant cumulative impacts in the form of continued overdraft and advancing seawater intrusion. The existing and foreseeable future pumping of the 180-foot and 400-foot aquifers to support Fort Ord reuse makes a considerable contribution to these cumulative impacts.

X-9

The continuing and accelerating advance of seawater intrusion since the 1996 Base Reuse Plan EIR is a substantially more severe significant effect than shown in the Base Reuse Plan EIR. (See CEQA Guidelines § 15162(a)(3)(B) [SEIR required if “significant effects previously examined will be substantially more severe than shown in the previous EIR”].) The continuing and more severe seawater intrusion is new information and changed circumstances that warrant subsequent environmental review.

6. Cumulative pumping in the Deep Aquifers has rapidly increased and Deep Aquifer pumping is now being used to support Fort Ord reuse. Deep Aquifer pumping at current rates induces seawater intrusion into the upper aquifers and depletes the Deep Aquifers. This, too, is a change in circumstances and new information that warrant an SEIS and SEIR.

LandWatch's and hydrologist Timothy Parker's previous comments on other Fort Ord projects document the increased pumping of the Deep Aquifers to support Fort Ord reuse and the increased cumulative pumping of the Deep Aquifers.

Fort Ord development is now relying on pumping from the Deep Aquifers, which were only being pumped to support the City of Marina at the rate of 2,500 AFY in 1991. New analysis and data reveal that the Deep Aquifers are not being recharged except through incidental percolation from the 180-foot and 400-foot aquifers; that cumulative pumping, including pumping to support Fort Ord development, has increased from around 2,500 AFY in 1991 to in excess of 8,000 AFY; and that pumping in excess of 8,000 AFY will induce additional seawater intrusion into those upper aquifers.

X-10

This cumulative pumping causes significant impacts in the form of depletion of the Deep Aquifers and inducement of seawater intrusion into the overlying 180-foot and 400-foot aquifers. The existing and foreseeable future pumping of the Deep Aquifers to support Fort Ord makes a considerable contribution to these cumulative impacts.

The substantial increase in cumulative pumping from the Deep Aquifers, the use of Deep Aquifer pumping to support Fort Ord development, and the consequent aquifer depletion and seawater intrusion constitute a change in the project, new information, and changes to circumstances that warrants subsequent environmental review.

7. The availability of a water supply for Fort Ord development and the HCP can no longer be assured. This too is a change in circumstances and new information that warrant an SEIS and SEIR.

The HCP EIS/EIR assumes that a 6,600 AFY water supply will be available to support Fort Ord development. While this assumption may have been valid in 1996 based on Monterey County Water Resources Agency's permission for temporary groundwater use pending the expected water supply project, this assumption is no longer valid.

X-11

First, the groundwater supply itself is threatened by advancing seawater intrusion. As hydrologist Parker explains:

MCWRA's most recent mapping of the seawater intrusion front in 400-Foot Aquifer shows rapid advance of that front along Reservation Road in the vicinity



of MCWD's only remaining upper aquifer wells, wells number 29, 30, 31 and 35. [footnote omitted] There is no assurance that MCWD's remaining wells in the 400-Foot Aquifer will remain viable in the face of this rapid seawater intrusion.¹¹

Second, 6,600 AFY is not a permanent right to pump groundwater regardless of the impacts to the aquifer. Neither the 1993 agreement between the Army and MCWRA, nor any subsequent assignment of the Army's interest in that agreement, created a "water right," much less a permanent right to pump groundwater to support Fort Ord development regardless of impact on the aquifer.¹²

Third, when FORA sunsets in 2020, the land use jurisdictions will no longer have any entitlement to an "allocation" of a portion of the 6,600 AFY. MCWD would have unfettered responsibility and authority to establish rules and regulations for water distribution.¹³ (Gov. Code, § 31024.) MCWD would also have unfettered responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. (Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350.) MCWD can and should exercise its authority to deny new groundwater pumping for future development in order to protect existing groundwater users until a replacement supply is implemented.

8. HCP funding analysis fails to evaluate delay and reduced scope of development caused by lack of sustainable water supply.

Finally, as discussed in LandWatch's December 10, 2019 comments regarding the funding and alternatives to the HCP, the financial viability of the HCP itself is critically dependent on the HCP's assumption that all of the remaining planned development in the Base Reuse plan will be built out by 2030. The HCP's discussion of funding assurances and the EIS/EIR's assumption that funding is assured fails to consider the uncertainty of a water supply to support that development.

As discussed, the agencies should act responsibly, and in accordance with adopted policies, to protect existing groundwater users by refusing to support new development without a sustainable water supply, to prohibit reliance on groundwater for new development, and to finally seek to implement the replacement water supply. This responsible action may postpone full buildout well after 2030 if a replacement supply

¹¹ Timothy Parker, letter to John Farrow, Nov. 14, 2019, p. 9.

¹² See John Farrow, letter to Colonel Gregory Ford, Feb. 26, 2019.

¹³ See John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018; John Farrow, letter to Kim Carvalho, City of Del Rey Oaks, Nov. 14, 2019.

X-11
(continued)

X-12

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were not available immediately, even assuming there were market demand for that full buildout.

X-12
(continued)

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

Attachments

1. John Farrow, letter to Kim Carvahlo, City of Del Rey Oaks, Nov. 14, 2019, re Initial Study/Negative Declaration – Del Rey Oaks Housing Element.
2. Timothy Parker, letter to John Farrow, Nov. 14, 2019, re Groundwater impacts from increased pumping to support Del Rey Oaks housing development in the Ord Community.
3. John Farrow, letter to Kurt Overmeyer, City of Seaside, August 21, 2019, re Campus Town Specific Plan Draft EIR.
4. John Farrow, letter to Colonel Gregory Ford, February 26, 2019, re Subsequent Environmental Impact Statement Required for Disposal of Army Interest in Fort Ord Groundwater.
5. John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).
6. Timothy K. Parker, letter to John H. Farrow, February 15, 2018, re Groundwater Impacts from Increased Pumping to Support Ord Community Development.
7. Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017, re Negative Declaration and Initial Study for Ord Community

Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).

8. John H. Farrow, letter to City of Seaside City Council, October 12, 2016, re Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056).
9. Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016, re Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR).



November 14, 2019

Kim Carvalho
 Assistant to the City Manager and Deputy City Clerk
 City of Del Rey Oaks
 650 Canyon Del Rey Blvd.
 Del Rey Oaks, CA 93940
kcarvalho@delreyoaks.org

Re: Initial Study/Negative Declaration – Del Rey Oaks Housing Element

Dear Ms. Carvalho:

I write on behalf of LandWatch Monterey County to comment on the Initial Study/Negative Declaration for the proposed Del Rey Oaks Housing Element. LandWatch supports the efforts by Del Rey Oaks (“City”) to comply with the requirement to update its Housing Element and to accommodate its share of the Regional Housing Needs Allocation (“RHNA”).

However, LandWatch cannot support the proposal to locate that housing in the former Fort Ord. The proposal relies on the purported availability of a supply of groundwater through the Marina Coast Water District. Contrary to the Negative Declaration, use of that water supply would in fact cause, or make a considerable contribution to, significant impacts to water resources. Thus, CEQA requires that the City prepare an Environmental Impact Report before adopting the Housing Element.

In addition, the City has no enforceable claim on any water supply to serve Fort Ord development after the Fort Ord Reuse Authority sunsets in less than eight months.

Furthermore, the proposal to locate housing within Sites 1 and 1a in the former Fort Ord is inconsistent with the City’s General Plan and the Fort Ord Reuse Plan, both of which call for commercial land use on these sites, not residential land use.

The City should instead locate its share of the RHNA in the other available sites identified in the Housing Element. Contrary to the Housing Element, a water supply for new development within the City will become available by 2021 through the Monterey Peninsula Water Supply Project, well within the 2015-2023 planning period for which this Housing element has been prepared. In fact, the Monterey Peninsula Water Management District is now developing plans to supply water for new housing, with an emphasis on affordable housing, *before* 2021.

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I. If the City permits residential development within the former Fort Ord using groundwater, it must prepare an Environmental Impact Report.

A. CEQA mandates preparation of an EIR if a project may have a significant effect on the environment.

Under CEQA, a full EIR is required for any project that a public agency proposes to approve that may have a significant effect on the environment. (Public Resources Code, §§ 21100(a), 21151(a); 14 CCR, § 15064(a)(1).) An EIR must describe the proposed project and its environmental setting, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify alternatives to the project, among other requirements. (Public Resources Code, §§ 21100(b), 21151; 14 CCR §§ 15124, 15125.)

“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized; and to indicate alternatives to such a project.” (Public Resources Code, § 21061.)

Courts have “repeatedly recognized that the EIR is the ‘heart of CEQA.’ [Citations.] ‘Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” (*Laurel Heights Improvement Assn. v Regents of University of California* (1993) 6 Cal.4th 1112, 1123.) By contrast, a “negative declaration” is a statement that briefly explains why a project will have no significant environmental impact and therefore will not require an EIR. (Public Resources Code, § 21064.) A negative declaration is proper only if the agency determines based on an initial study that there is no substantial evidence whatsoever that the project may have a significant effect on the environment. (Public Resources Code, § 21080(c)(1), (d); 14 CCR §§ 15063(b)(2), 15070(a).)

B. An EIR is required if there is a “fair argument” that the project may have a significant effect.

Based on the above Legislatively-declared principals, a strong presumption in favor of requiring preparation of an EIR rather than relying on a negative declaration is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (*Quail Botanical Gardens Found., Inc. v City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of “B” St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) “Substantial evidence” under CEQA includes “facts, reasonable assumptions

predicated upon facts, and expert opinion supported by facts.” (14 CCR, § 15384(b).) “Significant effect upon the environment” is defined as “a substantial or potentially substantial adverse change in the environment.” (Public Resources Code, § 21068; Guidelines, § 15382. A project “may” have a significant effect on the environment if there is a “reasonable probability” that it will result in a significant impact. (*No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 83 n16; *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 309.) If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. (14 CCR, §15063(b)(1); see *County Sanitation Dist. No. 2 v County of Kern* (2005) 127 Cal.App.4th 1544, 1580.)

In effect, the fair argument standard precludes agencies, as well as courts, from weighing conflicting evidence. If substantial evidence supports a fair argument that a project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. (See *Brentwood Ass'n for No Drilling, Inc. v City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St, supra*, 106 Cal.App.3d 988; 14 CCR, §15064(f)(1).) Thus, the fair argument standard essentially bars agencies from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. (*Rominger v County of Colusa* (2014) 229 Cal.App.4th 690, 713; *Friends of "B" St., supra*; *Architectural Heritage Ass'n v County of Monterey* (2004) 122 Cal.App.4th 1095, 1109.)

Even in marginal cases where it is unclear whether substantial evidence exists that a project may have a significant effect on the environment, and/or when experts disagree over the significance of an impact, the lead agency must still treat the effect as significant and prepare an EIR. (14 CCR, §15064(g).) Thus, if qualified experts disagree about either the likelihood or magnitude of a project’s environmental impact, the agency must assume that a significant impact may occur and must prepare an EIR. (*City of Carmel-by-the-Sea v Board of Supervisors* (1986) 183 Cal.App.3d 229, 249.) Stated otherwise if qualified experts present an agency with conflicting evidence on the nature or extent of a project’s impacts, the agency must accept the evidence tending to show that the impact might occur. Evidence to the contrary, even when presented by qualified experts or the agency’s own staff, is irrelevant since the agency may not weigh competing evidence. (See *Rominger v County of Colusa* (2014) 229 Cal.App.4th 690; *City of Carmel-by-the-Sea, supra*, at p. 249 [conflicting opinions by multiple experts on definition and extent of wetlands]; *Brentwood Ass'n for No Drilling, supra*, 134 Cal.App.3d at p. 504 [conflicting expert testimony about impacts of exploratory oil well project].)

C. The Negative Declaration fails to assess groundwater impacts caused by permitting residential development within the former Fort Ord.

The discussion of water supply in Section 5.19 of the Negative Declaration states that the City has “negligible” water to allocate to new uses in the City within the MPWMD allocation in the Cal-Am service area. (Neg. Dec, p. 52.) The discussion states that the City has “an allocation of water assigned for redevelopment of the former Fort Ord area of the City within the MCWD [Marina Coast Water District] jurisdiction.” (*Id.*)

The discussion of hydrology and water quality in Section 5.10 of the Negative Declaration concludes that the Housing Element would have “no impact” on hydrology and water quality because it is “strictly a policy document” that identifies “potential sites for development and establishes policies and programs to meet the RHNA.” (Neg. Dec., p. 40.) The discussion also argues that the Housing Element would have no impacts because future development proposals would be environmentally reviewed. (*Ibid.*)

The discussion of land use and planning in Section 5.11 references the 1998 adoption of the Fort Ord Reuse Authority Development Resource Management Plan (DRMP) to ensure that development of Fort Ord would be restrained to “available resources and service constraints, including water and transportation.” (Neg. Dec., p. 41.) Section 5.11 mentions that FORA anticipated that development would use a maximum of 6,600 afy. The checklist for section 5.11 cites, but does not discuss, the 1997 Fort Ord Reuse Plan and EIR.

The discussion of cumulative impacts in Section 5.21 makes no reference to cumulative water supply impacts.

In fact, nothing in sections 5.19, 5.10, 5.11, or 5.21 provides any discussion of the impacts of using any portion of the 6,600 afy of water that FORA has allocated to the Fort Ord land use jurisdictions. Although Section 5.19 alludes to supply *entitlements*, the question whether a project has an entitlement is distinct from the question whether using that entitlement will cause significant *impacts*. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 [“The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project”], emphasis in original.) The Negative Declaration is devoid of any discussion of the *impacts* of supplying groundwater, which must be evaluated.

D. The City must consider the environmental impacts of water use before adopting the Housing Element.

The contention in Sections 5.10 and 5.21 that the City may defer the consideration of the environmental impacts which the City's adoption of the Housing Element causes, or to which it contributes, is incorrect. General Plans and their elements represent critical decisions as to future land use, and an agency must assess the foreseeable consequences of these decisions. When an agency adopts a plan that will permit growth and development, it must actually evaluate the impacts that can be anticipated at that time, regardless of future tiers of review. (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 39-40; *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283.) An agency may not evade its responsibility to provide meaningful information and analysis simply because it is undertaking a first tier of environmental review and may conduct future review at the project level. (*Vineyard Area Citizens for Responsible Growth, Inc., supra*, 40 Cal.4th at 431.)

Furthermore, if housing is subsequently approved through ministerial review, e.g., as Accessory Dwelling Units under AB 2299, there would be no future CEQA review. (Gov. Code, § 65852.6 [mandating ministerial review of certain ADUs]; Public Resources Code, § 21080(b)(1) [CEQA does not apply to ministerial projects].)

Indeed, a substantive review of resource impacts is essential at the first tier of review because that is when the cumulative effects are most likely to be evident. Here, the adoption of the Housing Element as proposed would result in a commitment to the use of a purported allocation of a groundwater supply from the Monterey Subbasin of the Salinas Valley Groundwater Basin instead of the use of other water supplies, such as the supplies that are planned to be available in the MPWMD/Cal-Am service area in the near future. The commitment to that purported groundwater supply requires environmental review of the use of that supply. The Negative Declaration does not provide this review.

E. An EIR is required because permitting residential development within the former Fort Ord would cause significant impacts to groundwater resources and would make a considerable contribution to significant cumulative impacts to groundwater resources.

The Housing Element and the Negative Declaration are both premised on the assumption that water is available to support residential development in the former Fort Ord but not in the Cal-Am/MPWMD service area. As discussed below, it is not true that there is or will be no water supply in the Cal-Am/MPWMD service area during the RHNA Cycle. Furthermore, as discussed in the next section below, it is not true that there will necessarily be a water supply entitlement for Del Rey Oaks development within the former Fort Ord after FORA sunsets in 2020.

However, regardless of the status or the certainty of the water supply entitlements inside and outside Fort Ord, the attached letters from hydrologist Timothy Parker provide substantial evidence that the use of the purported groundwater entitlement inside Fort Ord would cause significant impacts to groundwater resources and would make a considerable contribution to significant cumulative impacts to groundwater resources.

The proposed Housing Element would require the City to re-designate and rezone land in order to permit 86 units of residential development that would require a water supply of 23 acre-feet/year. Mr. Parker explains that the use of this water would cause or contribute to significant impacts to the groundwater resource, including significant cumulative impacts caused by the combined over-pumping from past, present, and foreseeable future projects. These significant impacts include the ongoing overdraft of the 180-Foot and 400-Foot Aquifers, the depletion of the Deep Aquifers, the inducement of additional seawater intrusion in the 180-Foot and 400-Foot Aquifers, and the possible inducement of seawater intrusion into the Deep Aquifers.

Mr. Parker is Professional Geologist, a Certified Engineering Geologist, and a Certified Hydrogeologist, with over 28 years of geologic and hydrologic professional experience. He is familiar with the Monterey County groundwater conditions and his opinion is supported by facts from his review of current and past studies of the local conditions. Accordingly, his expert opinion with regard to significant impacts is substantial evidence. (14 CCR, § 15384(b).)

In sum, the City must prepare an EIR for the proposed Housing Element because there is substantial evidence that the project would cause significant impacts to groundwater resources and would make a considerable contribution to significant cumulative impacts to groundwater resources.

F. The City may not rely on the 6,600 acre-feet/year paper water that FORA, MCWD, and the land use jurisdictions have mistakenly assumed is a permanent supply.

Not only does the Negative Declaration fail to discuss or disclose the impacts from using groundwater to support residential uses in the former Fort Ord, it also misrepresents the availability of a long-term, reliable groundwater supply for Fort Ord development.

The Negative Declaration alludes to an allocation to Fort Ord member jurisdictions of portions of a 6,600 acre-feet/year ("afy") water supply. The Housing Element and the Negative Declaration apparently assume that the City will be entitled to rely indefinitely on its allocation of a portion of the 6,600 afy supply. However, for the reasons set out in LandWatch's February 26, 2019 letter to the Army, neither the 1993

agreement between the Army and MCWRA, nor any subsequent assignment of the Army's interest in that agreement, created a "water right," much less a permanent right to pump groundwater to support Fort Ord development regardless of impact on the aquifer.¹

In summary, the facts are as follows. In a 1993 agreement, the Monterey County Water Resources Agency ("MCWRA") agreed to permit the Army to pump up to 6,600 acre-feet/year ("afy") of groundwater from Fort Ord wells in exchange for the Army's \$7.4 million payment toward a replacement water supply project of at least 6,600 afy. In 2001, the Army assigned its interest in Fort Ord groundwater production to FORA and MCWD, reserving 1,749 afy for its own use. Since then, based on that assignment, the Fort Ord Reuse Authority ("FORA"), Marina Coast Water District, and the local land use jurisdictions that are members of FORA have assumed that they may pump up to 6,600 afy from the former Fort Ord indefinitely to support Army operations and civilian reuse, regardless of the environmental impact of this pumping. However, this assumption is contradicted by the clear evidence that the right to pump groundwater for Fort Ord was limited in time and that a replacement water supply was required to support civilian reuse of Fort Ord.

Recognizing that existing pumping was contributing to seawater intrusion, the 1993 agreement provides that MCWRA would develop that replacement water supply and that all groundwater pumping in Fort Ord must cease when the replacement water supply project is completed. The 1993 agreement expressly anticipates completion of the replacement water supply by 1999. Twenty-five years later, no agency has provided the replacement supply.

The Army's 1993 and 1996 environmental reviews of Fort Ord disposal and reuse expressly assume that MCWRA's agreement to permit the Army to pump up to 6,600 afy was a "short-term" agreement and that no pumping would be permitted if seawater intrusion continued. The Army's environmental reviews provide that civilian reuse of Fort Ord would require a replacement water supply. The 1993 EIS and the 1996 SEIS identified a number of replacement water supply projects then under discussion, including desalination and various surface water transfers. Provision of one of these replacement water supplies was identified as "non-Army responsibility" mitigation, to which the local agencies comprising the Fort Ord Working Group had committed themselves. Again, the 6,600 afy replacement water supply has not been implemented.

¹ John Farrow, letter to Colonel Gregory Ford, February 26, 2019.

G. Even if the City's allocation of a portion of the 6,600 afy paper water supply had created some right to pump groundwater when FORA exists, the City may not assume that it would remain entitled to some portion of that paper water supply after FORA sunsets in 2020.

Not only is the indefinite-term 6,600 afy paper water supply illusory, so too is the City's continuing right to some portion of it. As LandWatch has previously explained in comments on a proposal by Marina Coast Water District to annex portions of Fort Ord, the water supply allocations made by FORA will expire when FORA sunsets on June 30, 2020.² FORA is required to dissolve itself by June 30, 2020. (Gov. Code, § 67700(a).)

MCWD is currently subordinate to FORA in critical decision-making regarding water supply under the Water/Wastewater Facilities Agreement between FORA and MCWD.³ Thus, FORA, not MCWD, is authorized to obtain water extraction capacity rights.⁴ And FORA, not MCWD, has decided to sub-allocate 6,600 afy of its presumed capacity rights to its member agencies.⁵ And, FORA, not MCWD, has primary responsibility to implement the policies and mitigation contained in the Fort Ord Reuse Plan.

The 1998 Water/Wastewater Facilities Agreement will no longer be in effect after FORA sunsets.⁶ Thus, after FORA is dissolved, and in the absence of another binding plan addressing water supply issues, MCWD, as a County Water District, would assume plenary authority over the water use and allocation that is currently constrained by FORA. For example, MCWD would have essentially unfettered responsibility and authority to establish rules and regulations for water distribution. (Gov. Code, § 31024.) MCWD would have also have unfettered responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. (Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350.) In short, MCWD need not honor any prior "allocation."

FORA has adopted a Transition Plan, which purports to "assign" to MCWD, effective on dissolution of FORA, "FORA's rights of enforcement under the original Implementation Agreements, to the extent they survive post-dissolution, regarding water

² John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018.

³ MCWD/FORA Water/Wastewater Facilities Agreement, March 13, 1998, Articles 4.1, 5.1.1, 5.2.

⁴ *Id.*, Article 3.4.1.

⁵ FORA, Development Resources Management Plan (DRMP), section 3.11.5.4 and Table 3.11-2, available at <http://www.fora.org/Reports/DevResourcePlan.pdf>.

⁶ Water/Wastewater Facilities Agreement, March 13, 1998, Article 9.

allocations.”⁷ However, the original Implementation Agreements between the land use jurisdictions and FORA will not survive post-dissolution, which is in part why the Transition Plan calls for the land use jurisdictions to negotiate “Transition Plan Implementing Agreements” to address such matters as the allocation of water supply. FORA’s Transition Plan has not been implemented either by binding directives by LAFCO or by the proposed Transition Plan Implementing Agreements, which have yet to be adopted. Thus, after June 30, 2020, the City will have no enforceable claim on any water supply to serve development in the former Fort Ord.

In sum, the City’s allocation of a portion of the 6,600 afy was always just paper water. But with the dissolution of FORA, that allocation is even more illusory, because there is no longer any actual agreement that would bind MCWD to supply a particular amount of water to the City.

II. The proposed Housing Element is inconsistent with the General Plan and with the Fort Ord Reuse Plan.

A. The proposed Housing Element is inconsistent with the General Plan.

The claim in the Housing Element that it is consistent with the General Plan is not correct. (Housing Element, p. 1-2.) The Housing Element is inconsistent with the existing General Plan because it would commit the City to permit residential use in Sites 1 and 1a, even though those Sites are currently designated for commercial use in the General Plan’s Land Use Element. The Del Rey Oaks General Plan designates both Site 1 and 1a as GC(C-1-V), “General Commercial-Visitor.” (General Plan, Figure 2, Land Use Map.) The General Plan identifies the land uses for these two parcels as Conference Center, Golf Course, Retail (Specialty Shops), Fitness Center, Office Park, and Corporate Office Center. (General Plan, Figure 2A and Table 1.) *No residential uses are designated for Sites 1 and 1a.*

Furthermore, Land Use Element Goal 6 requires the City to “[a]nnex the properties on Fort Ord to provide additional sites for economic development with potential revenue generating land uses.” (General Plan, p. 31.) Residential use is neither economic development nor a revenue generating land use, and it is therefore inconsistent with Goal 6.

Because a General Plan must be internally consistent, the City cannot legally adopt the Housing Element committing the City to permit residential uses in Sites 1 and 1a without also amending the Land Use Element in the General Plan. (Gov. Code, § 65300.5; *Denham, LLC v. City of Richmond* (Cal. Ct. App., Oct. 25, 2019, No. A154759)

⁷ FORA, Resolution No. 18-11, Dec. 19, 2018, available at <https://fora.org/Reports/Resolutions/2018/18-11.pdf>.

2019 WL 5493479, at *3 [general plan is internally inconsistent when “different elements of the general plan describe incompatible uses for the same property”].) However, the City does not propose to amend the Land Use Element at the same time that it adopts the Housing Element, because it claims incorrectly that the Housing element is consistent with the Land Use Element. (Housing Element, p. 1-2.)

B. The proposed Housing Element is inconsistent with the Fort Ord Reuse Plan.

The claim in the Housing Element that it is consistent with the Fort Ord Reuse Plan is not correct. (Housing Element, p. 1-2.) That claim is based on the arguments that (1) the Fort Ord Reuse Authority found the General Plan to be consistent with the Fort Ord Reuse Plan, and (2) the Housing Element is consistent with the General Plan. The second premise is false, because, as explained above, the Housing Element’s commitment to residential land use on Sites 1 and 1a is inconsistent with the General Plan Land Use Element land use designations and its Policy 6.

Furthermore, the Fort Ord Reuse plan itself does not provide for any residential development in Sites 1 and 1a. Sites 1 and 1a are located in the “South Gate Planning Area” for the Fort Ord Reuse Plan.⁸ The designated land uses in the South Gate Planning Area include Visitor-Serving/Commercial Recreational Land Use (hotel and golf course), Retail and Services, an Office Park/R&D District, and augmentation of the Regional Park District. The South Gate Planning Area land uses are consistent with the Del Rey Oaks General Plan. However, just like the General Plan, the South Gate Planning Area land uses do *not* include any residential use.

The City is required to submit General Plan amendments to the Fort Ord Reuse Agency for a consistency determination. (Gov. Code, §§ 67675.2, 67675.3.) The Fort Ord Reuse Agency could not find the proposed Housing Element consistent with the Fort Ord Reuse Plan.

III. The City can and should consider alternative locations for RHNA residential development in Sites 2, 3, and 4, which are not in the former Fort Ord.

In preparing an EIR, the City will have to consider a “reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” (14 CCR, § 15126.6(a).) Fortunately, there are such alternatives. Indeed, it is possible that the adoption of one or more of these alternatives would obviate

⁸ Fort Ord Reuse Authority, Fort Ord Reuse Plan, pp. 182-183, available at https://www.fora.org/Reports/BRP/BRP_v1_ContextAndFramework_1997.pdf.

the need for an EIR because it may not cause or contribute to any significant environmental impacts.

A. Acreage sufficient to site RHNA units is available within the City without using sites within the former Fort Ord.

Sites 2 and 3 described in Chapter 3 of the Housing Element would provide 40.5 acres of development space, which would be more than enough to develop the 86 RHNA units. For example, the multifamily units suitable for the 70 Low Income and Very Low Income units could be sited on as little as 4.6 acres if they were developed at the intensity of 15 units per acre. The remaining 16 moderate and above moderate income units could be developed on another 4 acres at a density of 4 units per acre.

In addition, the Housing element acknowledges that Site 4 would accommodate 185 Accessory Dwelling Units, which would be more than enough to accommodate the 70 Low Income and Very Low Income unit portion of the RHNA.

Furthermore, the conclusion that there are only 185 sites that could accommodate ADUs assumes that the City would not relax its current zoning requirement that a lot be at least 8,000 square feet to support an ADU. However, the City can and should relax this requirement, particularly in light of state legislation encouraging cities to rely on ADUs to meet RHNA mandates. (*See, e.g.*, SB 1069 (Chapter 720, Stats. 2016) [reducing parking requirements, fees, fire sprinkler requirements; requiring ministerial approval for ADUs within existing space; prohibiting ordinances that ban ADUs]; AB 2299 (Chapter 735, Stats. 2016) [requiring ministerial approval under specified conditions]; AB 2406 (Chapter 755, Stats. 2016) [flexibility for junior ADUs]). For example, AB 2406 specifically permits a city to count “junior ADUs” (ADUs under 500 sq. ft.) toward meeting its RHNA.

Indeed, the City should examine recent legislation regarding ADUs to determine whether the City’s ordinances remain compliant with state law that now prohibits certain conditions and approval processes for ADUs. For example, it is not clear that a use permit can legally be required for all ADU units in an R-1 or R-2 zone in light of new law requiring ministerial approvals of ADUs meeting certain conditions. (*Compare* DRO Code, §§ 17.08.100, 17.12.20(1) to Gov. Code § 65852.6 [AB 2299, Chap. 735, Stats. 2016].).

B. Water will be available by 2021, or sooner, for residential development within the Cal-Am service area, outside Fort Ord, e.g., for Sites 2, 2, and 4.

The only apparent constraint identified in the Housing Element for use of Sites 2, 3, and 4 rather than Sites 1 and 1a to meet RHNA zoning requirements is the claimed

lack of water supplies. However, water would in fact be available for residential development in Sites 2, 3, and 4.

Water supplies for future development will be available when the Monterey Peninsula Water Supply Project is completed, which is currently committed for 2021. The California Public Utilities Commission approved a Certificate of Public Convenience and Necessity for California-American Water Company’s (“Cal-Am’s”) Monterey Peninsula Water Supply Project in Decision D.18-09-17 and denied a rehearing of that decision in an order issued February 5, 2019.⁹ That decision authorizes and commits Cal-Am to develop a water supply by year-end 2021, in time to meet the requirements of the SWRCB’s Cease and Desist Order 2009-0060 (“CDO”).¹⁰ The moratorium on new water connections required by the CDO and authorized by the CPUC decision D.11-03-048, issued in A.10-05-020, will then end, and new hookups will be permitted.¹¹

Although certain parties have challenged the issuance of the Coastal Development Permit needed for the MPWSP before the California Coastal Commission, that challenge is premised on the assumption that the Coastal Commission will find that an alternative project will be available to meet foreseeable demand by 2021.¹² There is no reasonable expectation that the Coastal Commission would deny the needed Coastal Development Permit without the availability of an alternative water supply available by 2021.

In short, the City can expect to see the current moratorium on new hookups within the Cal-Am service area end by December 2021.

Furthermore, the Monterey Peninsula Water Management District is currently seeking to make residential water supplies available within the Cal-Am service area *prior* to 2021, despite the moratorium. At its August 2019 meeting, the Board of MPWMD discussed actions it might take to make available water to the jurisdictions for their housing needs during the remaining years the Cease and Desist Order and then directed

⁹ CPUC, Order Modifying Decision (D.) 18-09-017, And Denying Rehearing Of Decision, As Modified, Issued Feb. 5, 2019, available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M262/K004/262004679.PDF>.

¹⁰CPUC, Decision D12-04-019, Findings of Fact, 24, 25, p. 169, available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M229/K424/229424336.PDF>.

¹¹ CPUC, Decision D.11-03-040, p. 50, available at http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/134272.PDF.

¹² California Coastal Commission, Staff Report: Recommendation on Appeal, Appeal Bo. A-3-19-0034, pp. 2-3, 80 [“PWM Expansion has a projected construction schedule similar to Cal-Am’s, in that both anticipate being online and able to provide water at or near December 2021, which is the date by which Cal-Am is required to end its overpumping of the Carmel River], available at https://documents.coastal.ca.gov/reports/2019/11/Th8a_9a/Th8a_9a-11-2019%20staff%20report.pdf.

its staff to develop detailed proposals.¹³ The MPWMD has identified several proposals that could provide water for housing prior to 2021. For example:

- The District currently has 9 af in the District Reserve that it could allocate to housing at the discretion of the District Board.
- The District could create new water Allocation for housing from accumulated conservation savings. The District has attained approximately 3,000 af of demand reductions since the CDO was enacted, and it could recognize those savings as a Public Water Credit allocable to the Jurisdictions for use.
- The District could modify its Rules and Regulations to provide that Water Use Credits could be placed in the District Reserve for reallocation to Jurisdictions.
- The District could seek voluntary forfeiture of existing Water Use Credits that are outstanding and would expire between 2020 and 2029.
- The District could ease the transfer of Water Use Credits from Non-Residential use to Residential use, with or without financial incentives.
- The District could develop a conservation offset program, as already envisioned in District Rule 24(E)(6)(k), which would allow a developer to obtain water for a project by implementing conservation measures elsewhere in the District.

Furthermore, the MPWMD staff report proposes that the Water Demand Committee determine how to ensure that any additional water supply be used specifically for *affordable* housing rather than just for housing in general.

Although the Board has not yet acted on these proposals, its direction to staff to develop these detailed proposals indicates its intention to make water available for housing, especially affordable housing, before 2021.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

¹³ MPWMD Water Demand Committee, Discussion Items, Oct. 31, 2019.

Exhibits:

Documents referenced above without URLs:

1. Timothy Parker, letter to John Farrow, Nov. 14, 2019.
2. John Farrow, letter to Colonel Gregory Ford, February 26, 2019.
3. John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018.
4. MCWD/FORA Water/Wastewater Facilities Agreement, March 13, 1998
5. MPWMD Water Demand Committee, Discussion Items, Oct. 31, 2019.

Documents referenced in Timothy Parker, letter to John Farrow, Nov. 15, 2019 without URLs.

6. WRIME, Deep Aquifer Investigative Study, May 2003
7. MCWD, 2018 Well Production Summary
8. Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016
9. Timothy K. Parker, letter to John H. Farrow, February 15, 2018.
10. MCWD v. County of Monterey (Bill Armstrong et al., Real Parties in Interest), Petition for Writ of Mandate and Complaint for Injunctive Relief, March 5, 2018.

EXHIBIT 1

Technical Memorandum

November 14, 2019

To: John Farrow
M.R. Wolfe & Associates, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102

From: Timothy K. Parker, PG, CEG, CHG, Parker Groundwater

Subject: Groundwater impacts from increased pumping to support Del Rey Oaks housing development in the Ord Community

At your request, I have reviewed the Draft Initial Study/Negative Declaration for the City of Del Rey Oaks Housing Element (DRO Negative Declaration) together with the documents cited below. Del Rey Oaks is proposing to adopt a housing program that would call for rezoning of land in the former Fort Ord to be used for up to 86 housing units.

This letter reiterates and updates the conclusions set out in my October 8, 2016 memorandum regarding the proposal to increase groundwater pumping to support the Monterey Downs project in the Fort Ord community and in my February 15, 2018 letter regarding the proposal to increase groundwater pumping through annexation of additional areas within Fort Ord into the service area for Marina Coast Water District (MCWD). Consistent with my earlier conclusions and as updated in the discussion below, increased pumping to support the Del Rey Oaks housing development in the Ord Community would aggravate existing seawater intrusion and further deplete the Deep Aquifers.

I am a California Professional Geologist (License #5584), Certified Engineering Geologist (License # EG 1926), and Certified Hydrogeologist (License #HG 12), with over 28 years of geologic and hydrologic professional experience. I served as a member of the Technical Advisory Committee to the Monterey County Water Resources Agency (MCWRA) in connection with its study of the Salinas Valley Groundwater Basin that is mandated by Policy PS 3.1 of the 2010 Monterey County General Plan. The purpose of that study is to evaluate historic data and trends in seawater intrusion and groundwater levels in the Salinas Valley Groundwater Basin, to evaluate the likely future groundwater demand, to determine whether groundwater level declines and seawater intrusion are likely to continue through 2030, and to make recommendations for action. This study has not been concluded, but a preliminary report was released in January 2015 by the prime consultant for the PS-3.1 study.¹ My Resume and Project Experience are attached.

¹ MCWRA, State of the Salinas River Groundwater Basin, January, 2015, available at

1.1 The affected subbasins and management subarea

The water system that MCWD uses to supply groundwater for Marina and Fort Ord development relies on an intertidal set of wells in the 400-Foot Aquifer and the Deep Aquifers within what is now termed the Monterey Subbasin.² The California DWR's Bulletin 118, which defines basin and subbasin boundaries, was updated in 2018 to divide the areas previously identified as the Seaside Subbasin into two separate subbasins, the Seaside Subbasin and the Monterey Subbasin.³ The reasons for this revision is that hydrologic studies of the Marina and Seaside areas have shown that the northern portion of the area formerly designated as the Seaside Subbasin and now designated as the Monterey Subbasin is connected to the 180/400 Foot Aquifer Subbasin, while the southern portion is separate from the Salinas Valley due to a ridge in the water-bearing formations.⁴

Monterey County Water Resources Agency (MCWRA) designates management subareas in the Salinas Valley Groundwater Basin, the boundaries of which are not identical to the DWR subbasin boundaries. The MCWRA-designated Pressure Subarea includes the DWR-defined 180/400-Foot Aquifer Subbasin and most of the DWR-defined Monterey Subbasin and includes part of the DWR-defined Seaside Subbasin.⁵

https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1020&context=hornbeck_gb_6_a.

² Marina Coast Water District, 2015 Urban Water Management Plan, June 6, 2016 (MCWD, 2015 UWMP), pp. 31-38,75 available at https://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf; City of Seaside, Campus Town Specific Plan DEIR, p. 4.9-5, available at <https://www.ci.seaside.ca.us/DocumentCenter/View/9742/Seaside-Campus-Town-Specific-Plan-DEIR-July-2019>.

³ Department of Water Resources, Basin Boundary Description, 3-004.10 Salinas Valley – Monterey, February 5, 2018, available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/B118-Basin-Boundary-Descriptions-2016/B118-Basin-Boundary-Description-2016--3_004_10.pdf; see also Department of Water Resources, California's Groundwater Bulletin 118 – Interim Update 2016, available at http://www.water.ca.gov/groundwater/bulletin118/docs/Bulletin_118_Interim_Update_2016.pdf.

⁴ MCWD, 2015 UWMP, p. 34.

⁵ Salinas Valley Groundwater Basin Groundwater Sustainability Agency (SVGBGSA), Draft 180/400-Foot Aquifer Subbasin GSP, October 1, 2019, pp. 5-15 and 5-28, available at <https://svbgsa.org/wp-content/uploads/2019/10/4-Updated-Volume-2.pdf>; see also MCWD, 2015 UWMP, p. 35; WRIME, Deep Aquifer Investigative Study, May 2003, p. 3-13.

MCWRA's 2016 State of the Salinas Valley Groundwater Basin reports basin hydrogeology, aquifer interactions, groundwater level trends and groundwater balance for the aquifers in the management subareas, including the 180-Foot Aquifer, the 400-Foot Aquifer, and the Deep Aquifers in the Pressure Subarea.⁶ Because the 180-Foot Aquifer, the 400-Foot Aquifer, and the Deep Aquifers in the Pressure Subarea are shared by both the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin, reported statistics for the Pressure Subarea are relevant to both Subbasins. In some instances, the aggregate data for the Pressure Subarea can be disaggregated as between the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin. For example, the annual volume of seawater intrusion can be allocated between the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin based on the relative length of their coastlines that are subject to seawater intrusion:

The State of the Salinas River Groundwater Basin report estimated that approximately 11,000 acre-feet of seawater flows into the Pressure subarea every year. Previous estimates have ranged between 14,000 and 18,000 acre-feet per year (AF/yr.) of seawater intrusion (Brown and Caldwell, 2016). These seawater inflow estimates include portions of the Monterey Subbasin. The length of coastline subject to seawater intrusion is approximately 75% in the 180/400-Foot Aquifer Subbasin and therefore we estimate the flow into the 180/400-Foot Aquifer Subbasin is approximately 8,250 to 13,500 AF/yr.⁷

However, disaggregation of these statistics should not obscure the fact that the 180-Foot Aquifer, the 400-Foot Aquifer, and the Deep Aquifers are common to the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin.

The previously designated "900-Foot Aquifer" or "Deep Aquifer," from which most of the pumping to support Fort Ord development is taken, is now understood to include at least two distinct aquifers:

Taken together, the overall conclusion that can be derived from the collected data and the preliminary analysis is that the deep aquifers from which MCWD extracts its water supply is actually two separate aquifer systems. Existing geologic and water chemistry data suggest that MCWD Well Nos. 10 and 11 produce primarily from the Paso Robles Formation, whereas MCWD Well No. 12 produces from the Purisima Formation.⁸

⁶ MCWRA, State of the Salinas Valley Groundwater Basin.

⁷ SVGBGSA, Draft 180/400-Foot Aquifer Subbasin GSP, October 1, 2019, p. 5-40.

⁸ WRIME, Deep Aquifer Investigative Study, May 2013, p. 2-31; see also WRIME, p. 3-13; MCWD, 2015 UWMP, pp. 35, 37; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp. 45-46, available at <https://www.co.monterey.ca.us/home/showdocument?id=57394>.

Accordingly the deeper aquifer system underlying the upper aquifers (the 180-Foot and 400-Foot aquifers) is now sometimes referred to as the Deep Aquifers.⁹

2.5 Increased pumping for new development in the Ord community would aggravate seawater intrusion in the upper aquifers and further deplete the Deep Aquifers.

The proposal to add up to 86 units of additional housing to the Ord Community is based on the premise that MCWD would supply water to support that housing. According to the Negative Declaration, the revised Program 1A of the Housing element calls for 16 units of moderate and above-moderate income housing and 70 units of low and very-low income housing in Fort Ord “where water is available for development.”¹⁰

Assuming that the moderate and above-moderate housing units are single family units, and that the low and very-low income units are multi-family units, the units would require 0.33 afy and 0.25 afy per housing unit respectively.¹¹ Based on these demand factors, the 86 units of housing would require an additional 23 afy of water supply from MCWD. Residential development on a per-acre basis is significantly more water-intensive than commercial or industrial development.

As noted, MCWD’s groundwater pumping to service Fort Ord and Marina comes from its wells in the Deep Aquifer and the 400-Foot Aquifer.¹² Wells 10, 11, 12, and 34 draw from the Deep Aquifers. Wells 29, 30, 31, and “WG” (the Watkins Gate well, aka well 35) draw from the upper aquifers. In 2018, MCWD pumped 2,508 af from the Deep Aquifer wells and 895 af from the upper aquifer wells.¹³ Thus, about 74% of MCWD pumping comes from the Deep Aquifers and about 26% comes from the upper aquifers.

The impact of groundwater pumping on the aquifers includes cumulative effects from past, present and foreseeable future pumping. MCWRA has documented that Deep Aquifer

⁹ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp. 45-46.

¹⁰ DRO Negative Declaration, Appendix A, Attachment, revised Chapter 7.0, available at https://www.delreyoaks.org/sites/default/files/fileattachments/city_hall/page/2692/city_of_del_rey_oaks_housing_element_10_23_2019.pdf

¹¹ MCWD, 2015 UWMP, p. 18.

¹² MCWD, 2015 UWMP, pp. 9 [Figure 2.2], 45.

¹³ MCWD, 2018 Well Production Summary.

pumping by all users, including MCWD, was 8,901 afy in 2016.¹⁴ As discussed below, this pumping directly depletes the Deep Aquifers because there is no known recharge source other than leakage from the upper aquifers. Cumulative pumping from the Pressure Subarea, primarily from the 400-Foot Aquifer and 180-Foot Aquifer, averages 110,000 afy, which results in an ongoing annual overdraft of 2,000 afy.¹⁵ Cumulative pumping is projected to increase. MCWD projects that its water demand for Marina and Fort Ord will increase from 4,174 afy in 2015 to 12,197 afy in 2035.¹⁶ As discussed below, despite the 2018 moratorium on new wells in the Deep Aquifers, it is foreseeable that increased Deep Aquifer pumping will occur from wells that have been permitted prior to 2018 and from future “replacement wells” that may be permitted under the moratorium ordinance. Any increases in groundwater pumping must be assessed with reference to its contribution to this cumulative groundwater pumping to the Deep Aquifers and to the upper aquifers of the Pressure Subarea.

In summary, the conclusions in my October 8, 2016 memorandum and in my February 15, 2018 letter regarding proposals to increase groundwater pumping to support Ord Community development remain valid.¹⁷ First, seawater intrusion into the 180-Foot and 400-Foot aquifers continues in the Pressure Subarea due to overdraft conditions, despite the groundwater management projects that are intended to halt it. Additional pumping of either the 180-Foot Aquifer or the 400-Foot Aquifer will directly induce additional seawater intrusion.

Second, additional pumping of the Deep Aquifers will deplete them and contribute to seawater intrusion of the 180-Foot and 400-Foot aquifers. This is because the Deep Aquifers have no known source of recharge other than induced leakage from the upper aquifers, and that leakage induces seawater intrusion into the upper aquifers. The leakage from the upper aquifers also threatens to salinate the Deep Aquifers themselves.

Consistent with the conclusions in my earlier letters, the incremental water demand for 86 units of additional housing would contribute considerably to the cumulative seawater intrusion of the upper aquifers and the depletion of the Deep Aquifers. The discussion

¹⁴ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 52.

¹⁵ MCWRA, State of the Salinas Valley Groundwater Basin, p. ES-11.

¹⁶ MCWD, 2015 UWMP, p. 22.

¹⁷ Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016; Timothy K. Parker, letter to John H. Farrow, February 15, 2018.

below summarizes these conclusions and notes additional information that has become available since my previous letters.

a. Additional pumping from the Deep Aquifers would further deplete the Deep Aquifers and induce additional seawater intrusion.

According to MCWD's 2015 Urban Water Management Plan, "[o]ther than MCWD, only a small number of wells tap the deep aquifer . . ."¹⁸ MCWD's 2015 UWMP claims that as of 2015 "MCWD is currently the only significant user of the Deep Aquifer . . ."¹⁹ However, contrary to MCWD's UWMP, there are in fact other users of the Deep Aquifers and there has been a substantial increase in pumping from the Deep Aquifers as new wells have been installed to replace the seawater intruded wells in the upper aquifers.²⁰ Since 1995, new wells in the Deep Aquifer have been drilled at the rate of more than one per year, and there are now more than 40 wells in the Deep Aquifers.²¹ Deep Aquifer extractions increased from 2,151 afy in 1999 to 8,901 afy in 2016.²²

Well drilling in the Deep Aquifers continues. For example, MCWD brought a lawsuit against the County of Monterey in March 2018 challenging the September 2017 drilling permit for a Deep Aquifer well with the capacity to pump another 4,000 afy.²³ And although the County enacted a moratorium on new wells in the Deep Aquifers in May 2018, that moratorium exempts both municipal supply wells and so-called "replacement wells," i.e., wells drilled to replace the water supply previously obtained from wells in the upper aquifers that have failed due to seawater intrusion.²⁴

The Deep Aquifers are not a sustainable water source. MCWD acknowledges that the Deep Aquifer water "is not of recent origin" and that carbon dating reveals it to be "between 22,000 and 31,000 years old."²⁵ In fact, the only known source of recharge to the Deep

¹⁸ MCWD, 2015 UWMP, p. 31.

¹⁹ Ibid.

²⁰ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 48.

²¹ Ibid.

²² Id., p. 52.

²³ MCWD v. County of Monterey (Bill Armstrong et al., Real Parties in Interest), Petition for Writ of Mandate and Complaint for Injunctive Relief, March 5, 2018, paragraph 2.

²⁴ Monterey County Urgency Ordinance # 5302, available at <https://www.co.monterey.ca.us/government/departments-a-h/health/environmental-health/wells/interim-urgency-ordinance-5302>.

²⁵ MCWD, 2015 UWMP, p. 37.

Aquifers is "leakage from the overlying aquifer system, i.e. the Pressure 180-Foot Aquifer and Pressure 400-Foot Aquifer."²⁶

The leakage from the upper aquifers caused by increased pumping from the Deep Aquifers induces seawater intrusion in the upper aquifers. The MCWD UWMP acknowledges this impact:

Another concern is that the Deep Aquifer may be connected to, and affect seawater intrusion in, the upper aquifers. Preliminary findings regarding the Deep Aquifer in the Ord Community area indicate that there is some vertical connectivity between the Deep Aquifer and the overlying aquifers. According to the Deep Aquifer Investigative Study, WRIME, May 2003, increased pumping of the Deep Aquifer would be expected to increase the rate of seawater intrusion in the middle and upper aquifers, but to a lesser extent than if the increased pumping occurred in the middle or upper aquifers. In that report, WRIME modeled the effect of increasing groundwater pumping from the Deep Aquifer by two to five times the baseline rate of 4,800 afy. The model predicted that, in the absence of other actions to control seawater intrusion, the landward flow of groundwater would increase as a result.²⁷

The 2003 WRIME study cited by MCWD concluded that increasing the baseline rate of extraction would induce seawater intrusion. The 2003 WRIME study concluded that annual MCWD production from Deep Aquifer wells had averaged about 2,000 afy since 1990.²⁸ The WRIME analysis of the effects of increased pumping over baseline conditions assumed that baseline pumping was 2,400 afy.^{29,30}

Using the Salinas Valley Integrated Groundwater and Surface water Model (SVGISM) modified to reflect the best understanding of the structure of the Deep Aquifers, WRIME evaluated the effects of increased pumping of the Deep Aquifers on the 180-Foot Aquifer,

²⁶ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 52.

²⁷ MCWD, 2015 UWMP, p. 50.

²⁸ WRIME, Deep Aquifer Investigative Study, May 2013, pp. 2-14, 2-15.

²⁹ Id., pp. 3-60, 4-1; 4-11.

³⁰ MCWD's 2015 UWMP misstates the baseline conditions in the WRIME analysis as follows: "In that report, WRIME modeled the effect of increasing groundwater pumping from the Deep Aquifer by two to five times the baseline rate of 4,800 afy." (MCWD, 2015 UWMP, p. 50.) As noted, the baseline rate in the WRIME study was 2,400 afy.

the 400-Foot Aquifer, the upper aquifer of the Deep Aquifers, and the lower aquifer of the Deep Aquifers, which WRIME termed Aquifers 1, 2, 3, and 4.

WRIME concluded that increasing Deep Aquifer pumping from 2,400 afy to 8,000 afy (the Alternative 2 analysis) would reduce groundwater levels at coastal monitoring locations in all four aquifers by 4 to 7 feet and would induce additional seawater intrusion (coastal groundwater flows).³¹ WRIME found that increasing Deep Aquifer pumping from 2,400 to 8,000 afy would induce additional vertical flows between the aquifers, including an additional flow of 4,152 afy from the 400-Foot Aquifer to the upper Deep Aquifer.³²

As noted, the level of Deep Aquifer pumping at 8,901 afy, now exceeds the 8,000 afy level modeled by WRIME.³³ Thus, the available analysis indicates that the current level of Deep Aquifer pumping is contributing to seawater intrusion. Any further increase in Deep Aquifer Pumping will further induce seawater intrusion.

Because the Deep Aquifer is not known to be a sustainable aquifer with ongoing natural recharge, the Monterey County Water Resources Agency imposed a moratorium in 2018 on new wells in the Deep Aquifer pending a study to determine whether the Deep Aquifer has any sustainable yield.³⁴ Although the moratorium exempts municipal supply wells and certain “replacement wells,” such wells have the same effect on aquifer depletion and seawater intrusion as other wells.

In sum, the available evidence indicates that use of the Deep Aquifers amounts to mining an ancient and non-sustainable resource, which will deplete that resource. Furthermore, increased pumping from the Deep Aquifers will also induce further seawater intrusion in the upper aquifers and will increase the risk that the Deep Aquifers will themselves become saline due to induced vertical leakage from the upper aquifers. Under the circumstances, the Del Rey Oaks Housing Element Negative Declaration should acknowledge that additional pumping from the Deep Aquifers to support 86 residential units would make a considerable contribution to the ongoing significant cumulative impacts from Deep Aquifer pumping.

b. Additional pumping from the upper aquifers would threaten existing MCWD wells, add to overdraft conditions, and induce additional seawater intrusion.

³¹ WRIME, Deep Aquifer Investigative Study, May 2013, p. 4-11, Tables 4.2 and 4.3.

³²Id., Table 4.4 [Alternative 2, change in flow from Aquifer 2 to Aquifer 3].

³³ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 52.

³⁴ Monterey County Urgency Ordinance # 5302.

As noted, about 24% of current MCWD pumping for Marina and Fort Ord comes from the aquifers above the Deep Aquifers. Any additional pumping for new development from these upper aquifers is problematic.

First, additional pumping to support Fort Ord development may not remain viable. MCWD’s continued pumping from the 400-Foot Aquifer on Fort Ord is threatened by the rapid advance of seawater intrusion. MCWD and the Army have frequently had to replace wells in the 180-Foot and 400-Foot aquifers that have become unusably saline since 1960, drilling new wells farther inland or to the Deep Aquifers as the seawater intrusion front advances.³⁵ MCWRA’s most recent mapping of the seawater intrusion front in 400-Foot Aquifer shows rapid advance of that front along Reservation Road in the vicinity of MCWD’s only remaining upper aquifer wells, wells number 29, 30, 31 and 35.³⁶ There is no assurance that MCWD’s remaining wells in the 400-Foot Aquifer will remain viable in the face of this rapid seawater intrusion.

Furthermore, any additional pumping from the upper aquifers will add to the existing overdraft conditions in the Pressure Subarea. MCWRA reports that overdraft in the Pressure Subarea has averaged 2,000 afy from 1944 to 2013.³⁷ This cumulative overdraft condition results in declining groundwater levels, which in turn cause seawater intrusion. Groundwater levels in the Pressure Subarea 400-Foot Aquifer continue to decline, especially along the coast.³⁸

Coastal pumping, such as MCWD’s pumping for Fort Ord and Marina, induces seawater intrusion more than the same amount of pumping from further inland. Thus, to halt the advance of seawater intrusion, the most recent hydrological studies have recommended that pumping be reduced in the coastal aquifers or that pumping be shifted further away from the coast.³⁹

³⁵ MCWD, 2015 UWMP, p. 45.

³⁶ Compare MCWD, 2015 UWMP, p. 9, Figure 2.2 [well maps] to MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017 [seawater intrusion front], available at <http://www.co.monterey.ca.us/home/showdocument?id=19378>.

³⁷ MCWRA, State of the Salinas River Groundwater Basin, 2017, p. ES-11.

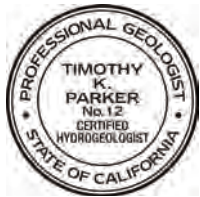
³⁸ MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=31294>.

³⁹ MCWRA, State of the Salinas River Groundwater Basin, 2017, pg. ES-16; Geoscience, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, Nov. 19, 2013, pp. 1, 11, available at <https://www.co.monterey.ca.us/home/showdocument?id=19014>.

In sum, any additional pumping from MCWD's wells in the upper aquifers will exacerbate the existing overdraft, falling coastal groundwater levels, and seawater intrusion.

Finally, I understand that MCWRA agreed in 1993 that the Army could pump 6,600 afy to support Fort Ord use pending a new 6,600 afy potable water supply for Fort Ord. I understand that this 6,600 afy allocation has been sub-allocated to Fort Ord land use jurisdictions and to individual development projects, but that no new potable water supply for Fort Ord has been implemented. As I explained in my earlier letters, the real-world physical impacts to the aquifers is occurring, and will be aggravated by increased pumping, regardless of the availability of any portion of the 6,600 afy allocation. The right to pump groundwater is a distinct issue from the impacts from that pumping.

EXHIBIT 2





February 26, 2019

By E-mail

Colonel Gregory Ford
Garrison Commander, Presidio of Monterey
United States Army
1759 Lewis Rd
Monterey, CA 93944
gregory.j.ford6.mil@mail.mil

Re: **Subsequent Environmental Impact Statement Required for Disposal of Army Interest in Fort Ord Groundwater**

Dear Colonel Ford:

On behalf of LandWatch Monterey County, I write to request that you ensure that the Army prepare a subsequent environmental impact statement ("SEIS") under the National Environmental Policy Act ("NEPA") before considering the disposal of any remaining Army interest in groundwater in the former Fort Ord area.

LandWatch understands that the Army has been asked to convey a portion of its purported interest in Fort Ord area groundwater to local agencies to facilitate civilian reuse of the base. NEPA mandates that the Army prepare an SEIS before taking such an action. Any additional pumping groundwater in the Fort Ord area would contribute to cumulative overdraft conditions and would induce seawater intrusion, which is clearly a significant impact.

In a 1993 agreement, the Monterey County Water Resources Agency ("MCWRA") agreed to permit the Army to pump up to 6,600 afy of groundwater from Fort Ord wells in exchange for the Army's \$7.4 million payment toward a replacement water supply project of at least 6,600 afy. Recognizing that existing pumping was contributing to seawater intrusion, the 1993 agreement provides that MCWRA would develop that replacement water supply and that all groundwater pumping in Fort Ord must cease when the replacement water supply project is completed. The 1993 agreement expressly anticipates completion of the replacement water supply by 1999. Twenty-five years later, no agency has provided the replacement supply.

The Army's 1993 and 1996 environmental reviews of Fort Ord disposal and reuse expressly assume that MCWRA's agreement to permit the Army to pump up to 6,600 afy was a "short-term" agreement and that no pumping would be permitted if seawater intrusion continued. The Army's environmental reviews provide that civilian reuse of Fort Ord would require a replacement water supply. The 1993 EIS and the 1996 SEIS

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identified a number of replacement water supply projects then under discussion, including desalination and various surface water transfers. Provision of one of these replacement water supplies was identified as "non-Army responsibility" mitigation, to which the local agencies comprising the Fort Ord Working Group had committed themselves. Again, the 6,600 afy replacement water supply has not been implemented.

In 2001, the Army assigned its interest in Fort Ord groundwater production to FORA and MCWD, reserving 1,749 afy for its own use. Since then, based on that assignment, the Fort Ord Reuse Authority ("FORA"), Marina Coast Water District ("MCWD"), and the local land use jurisdictions that are members of FORA have assumed that they may pump up to 6,600 afy from the former Fort Ord indefinitely to support Army operations and civilian reuse, regardless of the environmental impact of this pumping. Indeed, these agencies have assumed that their only obligation to provide a water supply is to build *additional* capacity when groundwater pumping for Fort Ord reaches the assumed indefinite supply level of 6,600 afy.

LandWatch does not believe that the 1993 agreement between the Army and MCWRA, or any subsequent assignment of the Army's interest in that agreement, created a "water right," much less a permanent right to pump groundwater regardless of impact on the aquifer. However, the purpose of this letter is not to address that question. The purpose of this letter is to advise the Army that it must prepare an SEIS before it takes any action that induces, or purports to permit, local agencies to increase their groundwater pumping, including any further assignment of its interests in the 1993 agreement.

An SEIS is required due to significant new circumstances and information, including

- the substantial and accelerating increase in seawater intrusion;
- the unforeseen failure of local agencies to implement the assumed replacement water supply;
- the unforeseen decision by local agencies to treat MCWRA's agreement to permit the short-term use of 6,600 afy as a permanent "water right;" and
- the imminent termination of FORA, which will end its management and allocation of groundwater, leaving MCWD with unfettered discretion as to groundwater pumping.

An SEIS is also required because any Army decision to assign an interest in groundwater pumping to support and induce long-term civilian development is a substantial change to the action the Army evaluated in its 1993 EIS and 1996 SEIS.

We discuss these points in more detail below.

I. Background

A. The 1993 Army/MCWRA Annexation Agreement permitted the Army to continue groundwater pumping pending completion of a replacement water supply that was expected by 1999.

In 1993, the United States Army, planning to dispose of property in Fort Ord, entered into the Agreement Between the United States of America and the Monterey County Water Resources Agency Concerning Annexation of Fort Ord Into Zones 2 and 2A of the Monterey County Water Resource Agency. (Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993 [“1993 Army/MCWRA Annexation Agreement”].) In that agreement, the Army sought annexation of Fort Ord into MCWRA Zones 2 and 2A, the benefit assessment areas for the Nacimiento and San Antonio reservoirs. The agreement required that the Army pay MCWRA \$7,400,000 and that MCWRA develop a project to provide at least 6,600 afy of long-term potable water supply because “stopping all pumping from the Salinas Basin on Fort Ord lands is necessary to mitigate seawater intrusion.” Until that project was implemented, MCWRA agreed that the Army or its successors in interest could withdraw 6,600 afy with a maximum of 5,200 afy from the 180-foot and 400-foot Aquifers.

The 1993 Army/MCWRA Annexation Agreement contemplated a 6,600 afy potable water supply replacement project by 2000. Thus, it provided that the Army could terminate the agreement if MCWRA had not made reasonable progress by December 31, 1999 on that project. Although MCWRA has not developed the 6,600 afy potable water project, the Army did not terminate the agreement.

B. In 2001, the Army assigned a portion of its groundwater interest to MCWD, reserving 1,729 afy for its own use.

In 1998, FORA and MCWD entered into the Water/Wastewater Facilities Agreement, in which FORA agreed to permit MCWD to acquire the Fort Ord water distribution system from the Army and MCWD agreed to provide water under FORA’s supervision and oversight. In the 1998 Water/Wastewater Facilities Agreement, FORA retained primary authority over the Ord community water supply management, including authority to administer groundwater supply capacity rights consistent with the 1993 Army/MCWRA Annexation Agreement, to determine what additional facilities are necessary, to approve capital spending budgets, and to oversee MCWD’s operations through a FORA staff Water/Wastewater Oversight Committee. The 1998 Facilities Agreement reaffirms MCWD’s earlier commitment not to pump more than 1,400 afy from the Deep Aquifer for use on Fort Ord.

In June 2000, the Army and FORA entered a Memorandum of Agreement for disposal of the Army’s interests in Fort Ord. In 2001, consistent with that agreement and

the provisions of the FORA/MCWD 1998 Water/Wastewater Facilities Agreement, the Army through FORA granted the Fort Ord waters supply infrastructure facilities to MCWD in the Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey, And Quitclaim Deed For Water And Wastewater Systems. This Assignment requires MCWD to assume and comply with the terms and conditions of the 2001 conveyance of the water systems from the Army to FORA in the Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord, including the obligation “to cooperate and coordinate with parcel recipients, MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will continue to be provided an equitable supply of water at equitable rates.” The meaning of “equitable supply” is not defined. Critically, there is no assurance that the equitable considerations will take into account the environmental impacts of providing that supply.

When the Army conveyed its interest in the Fort Ord property, it assigned its interest in groundwater under the 1993 Army/MCWRA Annexation Agreement to MCWD, reserving 1,729 afy of water exclusively for the Federal Government use. (MOA between Army and FORA, June 20, 2000, Article 5.) The Army has apparently subsequently conveyed some portion of this reserved interest to others, because the Fort Ord Reuse Authority reports that the Army now retains an interest of only 1,577 afy. (FORA, Annual Report, Fiscal Year 2017-2018, p. 12, available at <https://www.fora.org/Reports/AR/AnnualReport2018-Full.pdf>.) FORA reports that the Army consumed 460.45 afy in 2017, and that it has a remaining 1,116.55 afy “allocation.” (*Ibid.*) It is this unused “allocation” that LandWatch has been advised that the Army may seek to convey to local agencies.

C. Prior Army environmental review of Fort Ord reuse acknowledges that the right to pump groundwater for Fort Ord is limited in time and that a replacement water supply is required to support civilian reuse of Fort Ord.

To evaluate the impacts, mitigation, and alternatives for the disposal and likely civilian reuse of Fort Ord, the Army prepared an Environmental Impact Statement (EIS) in 1993 and a Supplemental EIS (SEIS) in 1996.

1. 1993 EIS assumes mitigation for civilian reuse will include a replacement water supply.

The 1993 EIS acknowledges that water demand for civilian reuse will exceed existing water use, “which already exceeds safe yield of the groundwater system in the vicinity of Fort Ord.” (1993 SEIS, p. 6-56.) The EIS concludes that “[i]f the increase were supplied by local wells, seawater intrusion would be accelerated.” (*Ibid.*) The EIS recommends as non-Army responsibility mitigation for the reuse scenarios in the 1993 EIS that the local civilian agencies “Increase Water Supply or Decrease Total Water Demand to Achieve a Balance.” (1993 ROD, pp. 8, 10; 1993 EIS, pp. 6-57 to 6-59.) The 1993 EIR identifies several proposed water projects to supply potable water for reuse,

including the Salinas Valley Water Transfer project, which would have piped well-water from the Arroyo Seco cone to coastal areas; desalination of brackish water; a new dam on the Arroyo Seco; and new reservoirs on the Fort Ord site. (1993 EIR, pp. 6-57 to 6-58.) None of these projects has been completed or are now being planned.

Reflecting the analysis in the 1993 EIS, the 1993 Record of Decision states that “implementation of the Fort Ord Base Reuse Plan will be contingent upon the provision of a long-term, reliable potable water system.” (1993 ROD, p. 15.) The 1993 ROD identifies under the heading “Local Commitment to Mitigation Measures” those mitigation measures that the “community has indicated it will implement.” (1993 ROD, p. 14.) The community commitment to water supply mitigation recited in the Record of Decision includes provision of a replacement water supply through a 9,000 afy desalination project and/or the 11,000 afy Salinas Valley Water Transfer Project:

Water Supply Mitigation Measures

The implementation of the Fort Ord Base Reuse Plan will be contingent upon the provision of a long-term, reliable potable water system. All development will be phased based upon the following framework for water availability that was approved in a memorandum of understanding between the Army and the Monterey County Water Resources Agency. The initial phases of the plan will have approximately 6,600 acre-feet available for the POM annex, the Army Reserve Center, McKinney Act users, the California State University, and other uses, based on water availability and approved by the Fort Ord reuse group (FORG). Later stages of development will make use of desalination, approximately 9,000 acre-feet and water recycling, approximately 9,000 acre-feet. Water supplies beyond the year 2000 could be augmented by additional development or substitute for those above based on the availability of 11,000 acre-feet of water from the Salinas Valley Water Transfer Project, which is part of the Sea Water Intrusion Program.

(1993 ROD, p. 15.) Again, twenty five years later, neither the desalination project for the Fort Ord area nor the Salinas Valley Water Transfer Project has been implemented.

2. The 1996 SEIS acknowledges that there is no right to pump the 6,600 afy of groundwater if it causes seawater intrusion and that civilian reuse requires a replacement water supply.

The Record of Decision for the 1996 SEIS explains that supplemental environmental review was intended to evaluate changed conditions, which then included the conveyance of additional assets in excess of the Army’s needs and the completion of the Base Reuse Plan. (1996 ROD, p. 1.)

The 1996 SEIS acknowledges that “[t]he water demand for Alternative 7 (with or without the newly excessed lands and revised use areas) would be large enough to result

in seawater intrusion if it is supplied by local wells.” (SEIS, p. 5-20.) Alternative 7 is the alternative that reflects reuse according to the Base Reuse Plan.

The 1996 SEIS acknowledges that its 1993 agreement with MCWRA allows it to “pump up to 6,600 af/yr from its existing wells to meet Army water demands, *provided the pumping does not result in seawater intrusion.*” (SEIS, p. 5-20, emphasis added.) In short, the 1996 SEIS assumed that any continued use of the 6,600 afy interest in groundwater pumping was contingent on halting seawater intrusion.

The 1996 SEIS states that the water supply for reuse must come from *new* water supply projects:

The great majority of the water demand for Alternative 7 derives from civilian reuse of former Fort Ord lands. These users will need to cooperate with MCWRA in developing new water supply projects or develop their own water supplies from other sources (e.g., desalination).

(1996 SEIR, p. 5-20.) The 1996 SEIS states that the member agencies of the Fort Ord Reuse Group had entered into a Mitigation Agreement in 1994 that provides that “[t]he reuse of former Fort Ord lands will be planned and implemented in coordination with the Monterey County Water Resources Agency (MCWRA) and other appropriate agencies to ensure adequate water supplies for all reuse areas.” (SEIS, p. 3-11.)

In its discussion of cumulative water supply impacts, the 1996 SEIS again states that the 1994 Mitigation Agreement requires the civilian agencies to develop alternative water supplies to support phased future development, *because the 1993 Agreement between the Army and MCWRA requires that groundwater pumping cease:*

Alternative 7 includes a provision that development will be in phases subject to the availability of adequate water supplies as coordinated with the MCWRA (see the "Mitigation Agreement" portion of Section 3.2.2). The initial phase will use existing supplies that are in excess of Army needs. However, these resources will not be available after the MCWRA project is completed. Under the terms of agreement between the Army and MCWRA, pumping from the Fort Ord wells in the Salinas aquifer will cease unless environmental and national defense requirements like the project are met. Later phases will be contingent on development of new water sources. Some combination of new water supplies, wastewater reclamation, and aggressive water conservation would be needed to implement Alternative 7 without substantially increasing the rate of seawater intrusion. The FORA Final Base Reuse Plan (December 1994) suggests that all these water supply alternatives will be considered in the early phases of reuse but that desalination will be the likely water source for long-term development of former Fort Ord (Fort Ord Reuse Authority 1994).

(1996 SEIS, p. 5-54.)

3. The Army's 1996 Record of Decision recognizes the MCWD water supply allocations are based only on the "short-term" use of groundwater.

After quoting the SEIS language regarding the 1994 Mitigation Agreement by the Fort Ord Working Group, the 1996 Record of Decision acknowledges that the FORA water supply allocation is based only on the *short-term* water supply available under the 1993 Annexation Agreement.

FORA has developed and coordinated a water allocation plan for reuse based on the short-term water supply available as a result of the Army/MCWRA agreement.

(1996 ROD, Table 3, p. 1.)

D. Overdraft and seawater intrusion have continued and accelerated in the 180-foot and 400-foot Aquifer Subbasin, and the Deep Aquifer is being depleted.

LandWatch engaged hydrologist Timothy Parker to evaluate water supply impact analyses for two recent projects proposed in the Ord Community. Parker is a Certified Engineering Geologist and Certified Hydrogeologist, with over 25 years of geologic and hydrologic professional experience. Parker served as a member of the Technical Advisory Committee to MCWRA in its study of the Salinas Valley Groundwater Basin mandated by Policy PS-3.1 of the 2010 Monterey County General Plan.

In 2016, Parker evaluated the water supply analysis for the proposed Monterey Downs development project.¹ (Exhibit 1, Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016; *see also* Exhibit 2, John H. Farrow, letter to City of Seaside City Council, October 12, 2016 [forwarding and discussing Parker memorandum].)

In 2018 Parker evaluated the proposed annexation of portions of the former Fort Ord to the MCWD service area.² (Exhibit 3, Timothy K. Parker, letter to John H. Farrow, February 15, 2018; *see also* Exhibit 4, John H. Farrow, letter to MCWD Board of Directors, February 19, 2018 [forwarding and discussion Parker letter]; Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017 [challenging annexation without environmental impact report].)

¹ In response to legal challenges to the sufficiency of the Monterey Downs water supply analysis, which assumed that 6,600 afy could be pumped without significant impact, the City of Seaside reversed its approval of that project.

² In response to legal challenges to the sufficiency of the environmental review for the MCWD annexation, which assumed that 6,600 afy can be pumped without significant impact, MCWD agreed to eliminate undeveloped sites from the annexation.

Parker explains and documents that overdraft conditions in the 180-foot and 400-foot Aquifer Subbasin have persisted since the time of the Army's 1993 EIS and 1997 SEIS. The Salinas Valley Groundwater Basin still remains out of hydrological balance by 17,000 to 24,000 afy. (Parker 2016, p. 2.) As Parker explains, efforts to halt seawater intrusion have not succeeded; and, by 2016, seawater intrusion had advanced more than five miles further inland compared to conditions in the 1990s. (*Id.*, pp. 2-4.) The most recent mapping of seawater intrusion from 2017 shows even more dramatic acceleration of seawater intruded areas, which have occurred despite reductions in MCWD pumping during the 2006-2015 period. (Parker 2018, p. 1.)

Parker also explains that since 2003, as seawater has intruded the 180-foot and 400-foot aquifers in the coastal area, pumping has been substantially shifted to the Deep Aquifer, upsetting any potential equilibrium in the Deep Aquifer. (Parker 2016, pp. 15-16.) Thus, increased pumping of the Deep Aquifer to supply water for Fort Ord development will deplete that aquifer and may induce further seawater intrusion. (*Ibid.*) In light of the continuing advance of seawater intrusion, MCWRA staff have recommended a moratorium on new wells in the Pressure 400-Foot Aquifer within an "Area of Impact" proximate to the 500 mg/l Chloride front. MCWRA also recommended a moratorium on new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin pending investigation of its viability as a source of water. Under these circumstances, Parker concludes that any increase in pumping from the MCWD production wells serving the Ord Community would aggravate seawater intrusion. (Parker 2018, p. 2.)

II. The Army must prepare a supplemental EIS before conveying any portion of its reserved interest in groundwater that might be used to support further development.

Before the Army considers assigning or allocating any additional portion of its reserved interest in groundwater to FORA, MCWD, local land use agencies, or particular development projects, the Army must complete a supplemental environmental impact statement.

The National Environmental Policy Act (NEPA) requires that an agency "shall prepare supplements to either draft or final environmental impact statements if (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR § 1502.9(c).) The Army's own regulations for implementing NEPA provide that "Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions." (32 C.F.R. § 651.5(g).)

A. An SEIS is mandated by significant new circumstances and information.

Here, an SEIS is mandated by significant new circumstances and information relevant to groundwater impacts from pumping to support reuse of the former Fort Ord.

First, seawater intrusion has accelerated as Fort Ord pumping and other cumulative pumping from the Salinas Valley Groundwater Basin has continued. (Parker 2016, pp. 2-5; Parker 2018 pp. 1-2.) The Army's 1996 SEIS acknowledges that its 1993 agreement with MCWRA allows it to "pump up to 6,600 af/yr from its existing wells to meet Army water demands, *provided the pumping does not result in seawater intrusion.*" (1996 SEIS, p. 5-20, emphasis added.) Clearly, the prior environmental reviews did not assume that the 6,600 afy of groundwater pumping would occur in the face of continued seawater intrusion.

Second, neither MCWRA nor local agencies have developed the replacement water supply called for in the 1993 MCWRA/Army agreement. MCWRA now acknowledges that its efforts to halt seawater intrusion have not yet been successful, and that additional groundwater management projects would be required. (Parker 2016, pp. 4-5, 21-27.) The Army's 1993 EIS and 1996 SEIS are predicated on the assumption that local agencies had committed themselves to avoid aggravating seawater intrusion and would do so by developing a replacement water supply before permitting new development. (1993 EIS, pp. 6-57 to 6-58; 1993 ROD, pp. 14-15; 1996 SEIR, pp. 3-11, 5-54.)

Third, because FORA and MCWD have treated the short-term supply of 6,600 afy of groundwater as a permanent supply, local land use agencies have permitted development without making that development contingent on provision of a replacement water supply. MCWD acknowledges that its sole potable water supply source is the Salinas Valley Groundwater Basin and that to serve Fort Ord development it relies entirely on the purported 6,600 afy "allocated groundwater pumping rights" that MCWRA granted to the Army in 1993. (MCWD, 2015 Urban Water Management Plan, June 2016, p. 30, available at https://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.) MCWD claims that "[u]nder that 1993 Agreement, 6,600 afy of Salinas Basin groundwater is available for use on Ord Community lands." (*Id.*, p. 16.) MCWD projects that by 2035, water demand to support Fort Ord development will total 8,292 afy. (*Id.*, pg. 21, Table 3.5.) However, MCWD claims that it will not have to find additional water supplies until it has exhausted the 6,600 afy "existing groundwater pumping rights." (*Id.*, p. 16.) In effect, MCWD and FORA now assume that the "short-term" 6,600 afy interest in groundwater pumping MCWRA granted to the Army in 1993 represents a permanently available supply that can be relied on to support indefinitely the permanent civilian residential and commercial development projects. As discussed above, the Army's prior environmental reviews assumed that a replacement water supply would be implemented and that all groundwater pumping would cease.

Fourth, FORA is now required to sunset by 2020 (Gov. Code, § 67700(a)), and there is no committed plan in place to limit future groundwater pumping to support civilian reuse. (See Exhibit 3, John Farrow, letter to MCWD Board of Directors re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD), February 19, 2018, pp. 4-8.) When FORA's oversight of groundwater resources ends and 1998 Water/Wastewater Facilities Agreement terminates, MCWD will have no constraint on its groundwater pumping other than the obligation to provide an "equitable supply of water at equitable rates." (*Id.*, p. 6.) As discussed, the Army's prior environmental review assumed that FORA would allocate only the "short-term" use of groundwater. (1996 ROD, Table 3, p. 1.)

B. An SEIS is mandated by substantial change to the previously proposed action.

The Army's future allocation of any additional portions of its reserved interest in groundwater to support and induce long-term development in the former Fort Ord would be a substantial change to the Army's proposed 1993 and 1996 actions to dispose of and permit reuse of Fort Ord. That action contemplated that the 6,600 afy would not be used indefinitely and permanently to support civilian reuse, but instead would be a short-term arrangement pending provision of a replacement supply.

C. The Army committed itself to supplemental environmental review in its 1993 EIS and 1996 SEIS.

The 1993 Record of Decision commits the Army to "develop additional environmental analysis following this record of decision (ROD) to address impacts of those uses in the community's reuse plan not already addressed in the EIS." (1993 ROD, p. 3.) Neither the 1993 EISW nor the 1996 SEIS evaluated the impact of the permanent commitment of 6,600 afy to support civilian reuse. To the contrary, the prior reviews assumed that groundwater pumping on the former Fort Ord would cease when a replacement water supply was developed.

The Army also committed itself not to dispose of property before evaluating the reuse impacts:

The Army will not dispose of property for reuse not covered by this EIS until the environmental evaluation is complete. The additional evaluation will be used to determine if adequate planning changes or mitigation measures have been developed or included through the local planning process.

(1993 ROD, p. 3.) Accordingly, the Army should not dispose of its remaining interest in water supply without an SEIS because it is now clear that "adequate planning changes or mitigation measures" have *not* been "developed or included through the local planning process."

The 1996 ROD acknowledges that an SEIS is required for changed conditions, e.g., completion of Base Reuse Plan and the conveyance of additional assets in excess of Army's needs. (1996 ROD, p. 1.) The sunseting of FORA, the termination of the 1998 Water/Wastewater Facilities Agreement governing water supply, and the end of the Base Reuse Plan are at least as significant changes in conditions as the initial completion of the Base Reuse Plan. Furthermore, the conveyance of an additional interest in groundwater in excess of the Army's needs is property disposition that would also demand an SEIS.

III. Request for notice

Pursuant to 40CFR § 1506.6(b)(1), LandWatch requests mailed and e-mailed notice of NEPA-related hearings, public meetings, and the availability of environmental documents related to any action by the Army concerning groundwater in the former Fort Ord, including, but not limited to, any proposed disposal of the Army's interest in groundwater in the former Fort Ord. (See also 32 CFR §§651.22, 651.23, 651.25, 651.36, 651.47 [public involvement required for Army NEPA compliance].) Notice should be provided as follows:

Michael Delapa
Executive Director
LandWatch Monterey County
306 Capitol Street, Suite 101
Salinas, CA 93901
execdir@landwatch.org

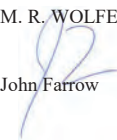
John Farrow
M. R. Wolfe & Associates, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102
jfarrow@mrwolfeassociates.com

IV. Offer to meet

LandWatch encourages the Army to consider the issues raised in this letter before it takes any action affecting groundwater in the former Fort Ord. LandWatch is willing to meet with you or other Army representatives to discuss these issues and to attempt to resolve LandWatch's concerns about groundwater use in the Fort Ord area.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.


John Farrow

JHF:hs

cc:

Fort Ord Reuse Agency
Marina Coast Water District

County of Monterey Board of Supervisors and Chief Administrative Officer
City of Seaside City Council and City Manager
City of Marina City Council and City Manager
City of Monterey City Council and City Manager
City of Del Rey Oaks City Council and City Manager
California State University at Monterey Bay, Office of the President

Exhibits

1. Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016.
2. John H. Farrow, letter to City of Seaside City Council, October 12, 2016.
3. Timothy K. Parker, letter to John H. Farrow, February 15, 2018.
4. John H. Farrow, letter to MCWD Board of Directors, February 19, 2018.
5. Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017.

EXHIBIT 3



February 19, 2018

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
11 Reservation Road,
Marina, CA 93933
priso@mcwd.org

Re: Negative Declaration and Initial Study for Ord Community Sphere of
Influence Amendment and Annexation for the Marine Coast Water
District (MCWD)

Dear Member of the Board:

I write on behalf of LandWatch Monterey County to object to the inadequate environmental review of Marina Coast Water District's proposed Sphere of Influence Amendment and Annexation.

As LandWatch explained in its January 18, 2018 comments to the Board, the proposed annexation would allow and facilitate increased pumping of the Salinas Valley Groundwater Basin to provide additional water for projected development in the Ord Community, which is projected to require an additional 2,492 afy by 2035. This increased pumping would make a considerable contribution to significant cumulative impacts, including seawater intrusion and overdraft and depletion of the affected aquifers.

The Initial Study does not provide an adequate environmental analysis of the impacts of increased pumping to support future Ord community development, an analysis that is required to support annexation. FORA, the agency with overall authority and responsibility to manage water resources for the Ord community, will terminate in 2020. MCWD proposes the annexation in contemplation of that termination. Because there is no assurance that the present water management policies and mitigation measures will continue, and because these policies and mitigation measures have been ineffective, MCWD must evaluate the impacts that may occur after FORA is dissolved. If MCWD does not evaluate the impacts and is allowed to annex the land as it proposes, the significant water problems that the Army transferred to FOR A will in turn be transferred to MCWD – without assessment and without a commitment to avoid further harm.

If MCWD's proposed annexation is allowed to proceed prior to approval of a FORA transition plan and some new commitment to manage the water resource impacts from the Ord community, then it should be limited to just those parcels to which MCWD is currently providing service, e.g., parcels with a water meter that are currently being served. Without an adequate environmental review of the impacts of providing additional water for new development, MCWD should not act to commit itself in any way to serve these areas with water in the future.

At MCWD's January 20, 2018 meeting, the Board considered a proposed negative declaration. MCWD now proposes to adopt a negative declaration and to find the project exempt from CEQA. The record does not support either a negative declaration or an exemption.

A. Increased groundwater pumping to support future development of the Ord Community would be a considerable contribution to significant cumulative impacts in the form of seawater intrusion and depletion of the Deep Aquifer, but MCWD and the Initial Study fail to acknowledge this.

LandWatch's January 18 letter to MCWD and its attachments demonstrate that additional pumping to support Ord Community development will aggravate seawater intrusion and deplete the Deep Aquifer. Comments by hydrologist Timothy Parker in his February 15, 2018 letter, attached to this letter, further amplify this concern.

Comments by LandWatch and Parker demonstrate that seawater intrusion has continued *despite* the Fort Ord Reuse Plan policies and mitigation that were supposed to ensure that new development not use groundwater if seawater intrusion was not halted.

A key reason for this continuing harm has been the practices by FORA, MCWD, and FORA member agencies of (1) misinterpreting the 6,600 afy allocation of water rights to Fort Ord as an amount that can be pumped without harm, (2) ignoring the Fort Ord Reuse Plan policies that mandate the development of an additional water supply if seawater intrusion continues instead of pumping right up to the 6,600 afy allocation, and (3) failing to determine and respect the safe yield of the aquifers that are used to supply the ORD community. As Timothy Parker explained:

The BRP PEIR [Base Reuse Plan Program EIR] provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members "shall ensure additional water supply." Policy B-2 requires conditioning project approval on verification of an "assured long-term water supply." Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD "to mitigate further seawater intrusion based on the Salinas Valley Basin

Management Plan." Program C-3.1 requires the member agencies to work with the water agencies "to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies." MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.¹ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had "exceeded safe yield, as indicated by seawater intrusion and water levels below sea level." (BRP PEIR p. 4-63.) The BRP PEIR states that the "conditions of the 900-foot aquifer are uncertain", including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to "affirm the local jurisdictions' commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies." (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies "to mitigate further seawater intrusion" by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR's cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: "existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3)." (BRP PEIR p. 5-5 (emphasis added).)

Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 8-9.

In light of the historic failure to honor the Fort Ord Reuse Plan policies and mitigation, the contention in the Annexation Initial Study that these measures "have been incorporated in local jurisdiction planning documents" is either untrue or irrelevant to the issue of water supply impacts. Annexation Initial Study, p. 52.

MCWD's Annexation Initial Study is inadequate because it fails to acknowledge that increased pumping to support Ord community development will cause impacts. The Annexation Initial Study fails to acknowledge that it is no longer possible to rely on the

¹ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

1997 Fort Ord Reuse Plan EIR due to changes in circumstances, new information, and failure to implement the Fort Ord Reuse Plan itself. These include

- The significant advance in the seawater intrusion front since 1997, which should have precluded any reliance on the presumption that there is 6,600 afy of water to use without impact and should have triggered the obligation under the Fort Ord Reuse Plan to accelerate the provision of alternative supplies for any new development;
- The failure of MCWRA and MPWMD to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan, as provided by the Fort Ord Reuse Plan;
- The failure of member agencies to prevent harm to the affected aquifers by limiting development in accordance with the availability of secure water supplies, as provided by the Fort Ord Reuse Plan;
- The failure of FORA, MCWD, MCWRA, and member agencies to determine and abide by the safe yield, including the safe yield of the Salinas Valley Groundwater Basin and its Deep Aquifer, as required by the Fort Ord Reuse Plan;
- Significant new information regarding the Deep Aquifer. As explained by Parker and the 2018 MCWRA report recommending a moratorium on new wells in the Deep Aquifer, there is no evidence of significant recharge to the Deep Aquifer, and increased pumping will result in its depletion and will induce seawater intrusion in the overlying aquifers.

Furthermore, as discussed below, even if the Fort Ord Reuse Plan policies and mitigation were effective in avoiding impacts, there is no assurance that MCWD would be subject to these policies and mitigation after FORA is dissolved in 2020.

B. MCWD's proposed annexation is a project subject to CEQA because (1) MCWD acts in the expectation that FORA will be dissolved and that MCWD will assume authority for provision of water for new development unconstrained by FORA or Fort Ord Reuse Plan policies and (2) MCWD would serve new development with additional groundwater pumping.

MCWD's claim that its proposed annexation would have no physical impacts is based on two unfounded assumptions: that there have been no changes to the environmental setting that would warrant new analyses and that MCWD would continue to provide the same amounts of water that have been previously *planned* and in accordance with the existing management regime. Annexation Initial Study, pp. 11, 18, 23. As discussed above, the first assumption is incorrect because there have been

substantial changes to the environmental setting, significant new information, and changes to the Fort Ord Reuse Plan.

The second assumption, that MCWD would simply implement existing plans for water supply is legally irrelevant and factually incorrect. The assumption is legally irrelevant with respect to the duty to provide an adequate analysis because CEQA requires an agency to compare its action to a baseline consisting of existing conditions, not a baseline consisting of a plan or a hypothetical future condition. Thus, it is not sufficient for the Initial Study to claim there would be no change to previous *plans* for groundwater pumping because the salient question is whether there would be changes to *existing* groundwater pumping.

The second assumption is factually incorrect because, as discussed below, the existing management regime for the Ord community water supply will be terminated in 2020, and MCWD is proposing to act based on that expectation, but without proposing a replacement plan.

1. MCWD acts in the expectation that FORA will be dissolved; and MCWD may assume authority for provision of water for new development unconstrained by FORA or Fort Ord Reuse Plan policies.

FORA is required to dissolve itself by June 30, 2020. Gov. Code, § 67700(a). Indeed, MCWD proposes the annexation with the expectation that the FORA will be dissolved by 2020, and MCWD expressly rejects the no-project alternative for just that reason. Annexation Initial Study, Appendix D.

Currently, MCWD is subordinate to FORA in critical decision-making regarding water supply under the Water/Wastewater Facilities Agreement between FORA and MCWD. Water/Wastewater Facilities Agreement, March 13, 1998, Articles 4.1, 5.1.1, 5.2. Thus, FORA, not MCWD, is authorized to obtain water extraction capacity rights. *Id.*, Article 3.4.1. And FORA, not MCWD, has decided to sub-allocate 6,600 afy of its presumed capacity rights to its member agencies. FORA, Development Resources Management Plan (DRMP), section 3.11.5.4 and Table 3.11-2, available at <http://www.fora.org/Reports/DevResourcePlan.pdf>. And, FORA, not MCWD, has primary responsibility to implement the policies and mitigation contained in the Fort Ord Reuse Plan.

The 1998 Water/Wastewater Facilities Agreement will no longer be in effect after FORA sunsets. Water/Wastewater Facilities Agreement, March 13, 1998, Article 9. Thus, after FORA is dissolved, and in the absence of another binding plan addressing water supply issues, MCWD, as a County Water District, would assume plenary authority over the water use and allocation that is currently constrained by FORA. For example, MCWD would have essentially unfettered responsibility and authority to establish rules

and regulations for water distribution. Gov. Code, § 31024. MCWD would have also have unfettered responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350.

After FORA is dissolved, and in the absence of the 1998 Water/Wastewater Facilities Agreement or a binding transition plan addressing water supply issues, MCWD's provision of water supply might be constrained only by the October 2001 "Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey, And Quitclaim Deed For Water And Wastewater Systems." This Assignment would purport to constrain MCWD to assume and comply with the terms and conditions of the October 24, 2001 "Federal Instruments" that conveyed the water systems from the Army to FORA. These Federal Instruments include, as consideration for the transfer, the assumption of the Army's obligation "to cooperate and coordinate with parcel recipients, MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will continue to be provided an *equitable supply of water* at equitable rates." Department of the Army, Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord," paragraph 2, emphasis added. However, the meaning of "equitable supply" is not defined. Critically, there is no assurance that the equitable considerations will take into account the environmental impacts of providing that supply. It is possible that MCWD would interpret "equitable" by simply reaffirming its stubborn and unsustainable commitment to provide up to 6,600 afy of groundwater regardless of environmental impacts.

Although FORA is now considering a transition plan, no plan has yet been adopted or approved by LAFCO. It is not yet clear whether there will be a successor agency to FORA, or, if there is, what powers and responsibilities that successor agency may have to manage water resources. In its transition planning, FORA has raised, but not yet answered, the critical questions as to the continuing effect of the Fort Ord Reuse Plan policies and mitigation provisions and the meaning of the obligation to provide a "fair and equitable" water supply. Consider this excerpt from FORA's most recent transition planning update:

"MCWD ANNEXATION: All infrastructure and water rights were provided to MCWD to provide for a fair and equitable water allocation. Can MCWD later only annex a portion of the former Fort Ord? Is this consistent? Does LAFCO need to consider and abide by the Fort Ord Reuse Plan when considering MCWD annexation?"

"In the event of a water shortage how will MCWD provide a "fair and equitable" water supply to the former Fort Ord? Will only entitled projects receive water? Only projects with a water supply assessment?"

FORA Board Report, Transition Planning Update, January 12, 2018, Attachment A1, Transition Planning/Summary Chart, Water Wastewater.

As discussed, the Fort Ord Reuse Plan policies and mitigation have not been effective in preventing further seawater intrusion or depletion of the Deep Aquifer. More fundamentally, as FORA acknowledges, MCWD may not even have to *abide* by these ineffective policies and mitigation after 2020. Certainly LAFCO cannot approve MCWD's proposed annexation without resolving this question.

In response to LandWatch's comments, the Final Initial Study/Negative Declaration (FIS/ND) claims that FORA allocates water supply. FIS/ND, p. 43. The Final Initial Study/Negative Declaration also claims that the annexation would not change the Fort Ord Reuse Plan policies. FIS/ND, p. 49. MCWD has failed to acknowledge that FORA will no longer manage this process, the Reuse Plan Policies will no longer govern the resource, and that MCWD will have the primary authority to do so.

To support LAFCO in its determination whether to approve annexation, and before MCWD is assigned any additional authority over the water resources, MCWD must provide an adequate analysis of water supply impacts and an *effective* plan to avoid or mitigate significant impacts – a plan that will supersede the ineffective Fort Ord Reuse Plan. The Annexation Initial Study does not provide such an analysis or plan. Instead, it states that addressing the Fort Ord Reuse Plan policies is "beyond the scope of the IS/ND." FIS/ND, p. 47.

As FORA also acknowledges, there is no understanding of MCWD's future obligation to provide an "equitable" water supply in the context of a water shortage. Indeed, MCWD fails to recognize that a significant water shortage *already* exists, and that this requires hard decisions about supplies for future development, because MCWD's Annexation Initial Study fails to come to terms with continuing seawater intrusion and aquifer depletion. Absent an adequate CEQA document that takes into account current conditions, and without a binding and continuing commitment to avoid or mitigate impacts, there is no assurance that MCWD would interpret "equitable" to ensure protection of the groundwater resources.

And as FORA points out, there are other water supply-related issues that must be clarified before FORA sunsets. For example, FORA admits that it has not yet met the Fort Ord Reuse Plan FEIR's mitigation requirement to develop a 2,400 afy water augmentation plan because MCWD's RUWAP project at 1,427 afy does not provide sufficient capacity. FORA Administrative Committee, Memorandum, January 27, 2016, p. 2, available at <http://www.fora.org/TTF/Additional/Transition-SunsetPlanMemo.pdf>. And FORA admits that oversight over Fort Ord water allocations must be assigned to another entity before its dissolution. *Id.*, p. 4.

MCWD's Agenda Transmittal, its proposed findings, and its response to comments all claim incorrectly that there would be no change to water service after the annexation because MCWD is contractually obliged to supply water. Agenda Transmittal, pp. 1, 3; FIS/ND, p. 49; Proposed Findings, p. 1. This claim fails to acknowledge that the annexation is being undertaken in express contemplation of the expiration of the primary contract that governs MCWD, the 1998 Facilities Agreement, which would end FORA's authority to allocate water and manage the resource. As a County Water District for the annexed areas, MCWD would have the authority to allocate water and to respond to water shortages, without any oversight by FORA, and subject only to the undefined obligation as a FORA successor to provide "equitable" service under the Army easement. Department of the Army, Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord," paragraph 2.

In light of MCWD's assumption that it can pump up to 6,600 afy without further aggravation of seawater intrusion or depletion of the Deep Aquifer, MCWD is poorly positioned to accept the responsibility to manage the water resource. Thus, it is critical that MCWD provide an adequate environmental review before it annexes undeveloped portions of Fort Ord. CEQA requires an adequate review as a document of public accountability that protects informed self-government.

2. Annexation will allow and lead to additional groundwater pumping.

The response to comments states that the annexation is of "developed areas," and the proposed findings reference "annexation of developed areas already served by MCWD" and "all customers currently served." FIS/ND, p. 40; Proposed Findings, p. 2. The response to comments repeatedly claims that the annexation "will not allow for [] any increase in groundwater pumping. FIS/ND, pp. 46, 47.

This claim is not true. First, elsewhere in its response to comments, MCWD claims only that the "majority of the areas to be annexed are currently served." FIS/ND, p. 49, emphasis added. Second, the list of areas to be annexed in the Initial Study clearly includes undeveloped areas for which future development may occur and that are not currently being served. Annexation Initial Study, pp. 16-17. Indeed, the list of annexation areas includes a number of areas for which there are no development entitlements or for which there is not even an approved specific plan. Nothing in the proposed annexation would prohibit service based on increased groundwater pumping to parcels or development projects that are not currently served. As discussed below, the refinement to the project description in the Final Initial Study/ Negative Declaration to reduce the scope of the annexation does not exclude all undeveloped areas. See FIS/ND, pp. 60-61.

Contrary to the response to comments (FIS/ND, p. 41), the current Urban Water Management Plan and Annexation Initial Study do provide evidence of planned increases

in service for new development in the Ord community. MCWD's current UWMP projects an increased demand of 2,492 afy to serve Fort Ord development between 2020 and 2035. MCWD, 2015 UWMP, p. 21. The Annexation Initial Study repeats this projection and identifies it as the "total expected growth in demands from all currently expected development projects and population growth through 2035. Annexation Initial Study, p. 51.

And contrary to the response to comments (FIS/ND, p. 46), MCWD's plans do allow and assume the full use of the 6,600 afy groundwater allocation. For example, in calculating the Ord community groundwater shortfall through 2035, the UWMP assumes the full use of the 6,600 afy groundwater allocation. MCWD, 2015 UWMP, p. 57 (Table 4.3). MCWD's calculated need for an additional 2,901 afy to meet its groundwater shortfall is based on the difference between the 8,293 afy 2035 demand and the 6,600 afy allocation. *Id.* The Annexation Initial Study also assumes that the 6,600 afy allocation will be used to meet Ord community demand. See, e.g., Annexation Initial Study, pp. 50-51, Tables 5 and 6, notes 4 (comparison of demand growth to supply assumes use of 6,600 afy allocation plus 300 afy of existing desalination capacity).

Contrary to the response to comments (FIS/ND, p. 44-45), the fact that MCWD has plans to obtain recycled or desalinated water does not mean that it does not intend to exhaust the 6,600 afy groundwater allocation, regardless of the impacts of any increased pumping. MCWD's plans to develop additional water supplies are based on fulfilling its incorrect interpretation of the Fort Ord Reuse Plan requirement for augmented water supplies, which would be to require additional water supplies only after the 6,600 afy is exhausted. As set out in previous comments by Parker and LandWatch, MCWD and FORA have misinterpreted the Fort Ord Reuse Plan to permit the full use of the 6,600 afy groundwater allocation regardless whether increased pumping aggravates seawater intrusion and regardless of whether it has been determined to represent a safe yield. Significantly, MCWD's response to comments admits that the 6,600 afy allocation is neither the baseline use nor a sustained yield. FIS/ND, pp. 46-47.

Furthermore, MCWD has offered to furnish 600 afy of its entitlement to PWM/GWR recycled water and up to 700 afy of groundwater for use, directly or indirectly, on the Monterey Peninsula, for a ten-year term with options for renewal.² This offer is not identified as a potential use of MCWD's water resources in its 2015 UWMP. MCWD's willingness to commit its recycled water and groundwater supplies to this venture is further evidence that MCWD expects to be able to use the entire 6,600 afy allocation for Ord community demand.

² California Public Utilities Commission, Proceeding A1204019, In the Matter of the Application of California-American Water Company (U210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Monterey Peninsula Water Supply Project and to Recover All Present and Future Costs in Connection Therewith in Rates, Direct Testimony Of Keith Van Der Maaten, Submitted On Behalf Of Marina Coast Water District -Supplemental Phase 1 Testimony, Sept. 29, 2001, pp. 10-14.

Finally, MCWD's *approved and funded* plans for additional water supplies will not even make up the 2,901 afy Ord community shortfall in 2035. MCWD, 2015 UWMP, p. 57 (Table 4.3 - shortfall); FIS/ND, p. 45 (outlining approved plans). And as noted, FORA and MCWD have not yet met the Fort Ord Reuse Plan FEIR's mitigation requirement to develop a 2,400 afy water augmentation plan because MCWD's RUWAP project at 1,427 afy does not provide sufficient capacity. FORA Administrative Committee, Memorandum, January 27, 2016, p. 2.

C. MCWD's negative declaration is inadequate and an EIR is required.

As discussed above and in previous comments, the proposed negative declaration is inadequate because it fails to disclose impacts to groundwater due to increased pumping. Those comments, supported by expert opinion and by substantial scientific evidence, constitute a fair argument that the annexation may result in significant impacts. Accordingly, an EIR is required if MCWD intends to pursue the proposed annexation.

In addition to its failure to disclose significant impacts, the Initial Study is flawed in other respects, and its flaws are not cured by the Final Initial Study/Negative Declaration.

Revisions to the project description are offered in the Final Initial Study/Negative Declaration in order to make the project "more environmentally benign." FIS/ND, pp. 60-61. Revisions to a project to mitigate potentially significant effects must be included in the negative declaration that is circulated for public review. Public Resources Code §21080(c)(2); 14 CCR §§ 15070(b), 15071(e). Given the change to the project description, MCWD must recirculate the negative declaration. 14 CCR §15073.5.

Furthermore, the last-minute revisions render the project description unclear. First, the inclusion of the refinements in the Appendix D for alternatives renders it unclear whether the revisions are part of the project or merely an alternative project that may or may not be approved. The proposed findings do not clarify this. Second, the revisions are made with reference to large scale maps and parcel descriptions. No explanation is provided as to which part of the future development identified in the Annexation Initial Study in Table 2 would be included or omitted from the proposed annexation, although it is apparent that the revisions do not restrict the annexation area to parcels that are currently served by MCWD. In sum, the revision is insufficient because the public has no way to determine what the scope of the actual annexation project would be and because the annexation would still include undeveloped parcels expected to be developed. This must be rectified before MCWD acts to certify a CEQA document, whether a negative declaration, an exemption, or an EIR.

Purporting to buttress the claim that it provides an adequate impact analysis, the Final Initial Study/Negative Declaration "references" a number of additional CEQA documents as "background documentation." FIS/ND, pp. 46, 52-53, 59-60. The Final Initial Study/Negative Declaration also incorporate by reference three of these documents: the RUWAP EIR and Addenda, the PWM/GWR EIR and Addenda, and the Fort Ord Reuse Plan EIR. FIS/ND, pp. 52-53. These documents do not cure the failure of the Annexation Initial Study to provide an adequate analysis.

First, the Final Initial Study/Negative Declaration disavows any actual reliance on these documents: "the IS/ND does not tier from the previous documents or rely on the conclusions in the previous documents for its conclusions regarding potential environmental impacts of the project." FIS/ND, p. 53.

Second, the Annexation Initial Study fails to summarize, explain, or provide a roadmap to these referenced documents. The bare fact that CEQA review of prior development and alternative water supply projects has occurred does not address the concerns LandWatch has raised regarding the effects of supplying additional groundwater to future development.

Third, as previous comments have explained, reliance on the analysis in the 1997 Base Reuse Plan EIR is misplaced due to changed circumstances and the failure to implement its policies and mitigation.

Fourth, the Annexation Initial Study discusses the RUWAP and PMW/GWR projects to support its claim that additional water supplies are planned; however, it does not summarize or discuss any findings in these documents that would be relevant to the impacts of increased groundwater pumping. Indeed, it is unlikely that an EIR for these projects, which are intended to supply water in lieu of groundwater, would provide an analysis of the effects of increased groundwater pumping, including the effects of MCWD exhausting the 6,600 afy allocation.

Fifth, none of these prior CEQA documents reflect the significant new information relevant to the impacts of increased pumping, such as the most recent seawater intrusion mapping or the MCWRA recommendations for pumping moratorium in the Deep Aquifer and the 400-foot aquifer proximate to the seawater intrusion front.

Contrary to the response to comments (FIS/ND, pp. 42-43), the Initial Study does not present an adequate cumulative analysis. The fundamental flaw is that the Initial Study fails to acknowledge the severity of the existing cumulative impact or to assess whether any increase in groundwater pumping would be a considerable contribution in light of the serious problem.

The cumulative analysis is deficient in other respects. For example, the Initial Study provides no justification, and there is none, for the claim made in the Final Initial Study/Negative Declaration that the proper geographic scope of cumulative analysis can be confined to the former Fort Ord area. FIS/ND, p. 58. Seawater intrusion and aquifer depletion impacts are due to pumping throughout the Salinas Valley Groundwater Basin. As Mr. Parker explains, the area that would be affected by increased groundwater pumping includes the Pressure Subbasin and the Salinas Valley Groundwater Basin as a whole since these areas are hydraulically interconnected. Furthermore, CEQA does not define the geographic scope of cumulative analysis based on the area *affected* but based on the location of the cumulative projects that *cause effects* in the same area that the project causes effects. The Guidelines require identification of projects “producing related or cumulative impacts” or projections of conditions “contributing to the cumulative effect.” Guidelines §15130(b)(1). Case law is clear that it is improper to omit relevant past, present, and future projects that create related impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430-432; *San Joaquin Raptor Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739-741; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724. As Mr. Parker explains, it is indisputable that past, present and future projects and pumping outside the Ord community affect the aquifer depletion and seawater intrusion to which addition pumping for the Ord community would contribute. This is acknowledged by the Reuse Plan EIR (at p. 5-5, acknowledging that regional growth could cumulatively affect aquifers and cause further overdraft and seawater intrusion), the MCWD 2010 UWMP (at p. 29, acknowledging that basin-wide pumping causes declining water levels in Pressure Subarea), and the Army’s 1993 FEIS (at p. 4-57, acknowledging that the available yield without seawater intrusion depends on the amount of pumping throughout the basin). The Annexation Initial Study simply fails to provide any justification for limiting the scope of cumulative analysis to the Ord community.

Nor does the Annexation Initial Study provide other essential information for cumulative analysis. An adequate analysis must provide either (1) a list of past, present, and future projects producing related impacts, including projects outside the control of the agency, of (2) a summary of projections of regional conditions contributing to the cumulative impact. 14 CCR § 15130(b)(1). There is no information about projected groundwater pumping in the Salinas Basin or its Pressure Subbasin.

In fact, the Annexation Initial Study does not provide any actual analysis of cumulative impacts other than vague references to the discussion in the Reuse Plan EIR. FIS/ND, p. 58. Not only is that prior analysis out of date, but, as noted, the Annexation Initial Study states that it “does not tier from the previous documents or rely on the conclusions in the previous documents for its conclusions regarding potential environmental impacts of the project.” FIS/ND, p. 53.

D. The project is not exempt.

Although MCWD did not include a proposed finding that the annexation would be exempt on the agenda for its January 20, 2018 meeting, staff has now proposed a finding of exemption to be considered at the February 20, 2018 meeting. Staff proposed that the Board find the annexation exempt under 14 CCR §§ 15301, 15319, or 15061(b)(3).

The exemption for existing facilities under 14 CCR § 15301 is inapplicable because that exemption precludes any expansion of previous use beyond that existing at the time of the lead agency’s determination. Because the annexation will allow, and is intended to facilitate, the provision of water supply to currently undeveloped parcels there would be an expansion of previous use.

The exemption for annexations of existing facilities and lots for exempt facilities under 14 CCR § 15319 is inapplicable because that exemption is not allowed if it is foreseeable that utility services would extend into the annexed parcels and have the potential to serve a greater capacity than existing uses. Again, the annexation will allow, and is intended to facilitate, the provision of water supply to currently undeveloped parcels. Thus, there is an obvious potential to serve a greater capacity than existing uses.

Even if the annexation otherwise qualified for a categorical exemption, an exemption would be prohibited here due to the presence of unusual circumstances and the possibility of a significant impact. 14 CCR § 15300.2(c). One unusual circumstance is the fact that the annexation is being undertaken with the expectation that the existing governance structure to protect the resource will be terminated, leaving MCWD free to manage the resource without constraints of the current governance structure. Another unusual circumstance is that the existing governance structure has not in fact protected the resource because it has allowed ground water pumping to induce further seawater intrusion and to exceed sustainable yield, and MCWD has not committed itself to avoid additional groundwater pumping.

A categorical exemption would also be barred because the cumulative effect of successive projects of the same type in the same place over time would be significant. 14 CCR § 15300.2(b). MCWD has identified the remainder of the developable areas of the Ord community as future study areas for annexation and seeks to include them in its sphere of influence. Thus, MCWD contemplates successive annexations in the Fort Ord area, which would result in provision of additional groundwater, resulting in a significant cumulative impact.

The common sense exemption under 14 CCR § 15061(b)(3) does not apply because MCWD cannot find with certainty that there is no possibility of a significant effect. MCWD’s claim in this regard is based on the incorrect assertion that there would

be no change to existing conditions after the annexation. In fact, the annexation would allow, and is intended to facilitate, increased groundwater pumping to support new development in the Ord community. This increased pumping would result in significant impacts. Furthermore, the annexation is proposed with the expectation that the current governance structure intended to protect the water resource will terminate and without any commitment to a governance structure that would in fact protect the resource.

E. Annexation should be deferred until approval of a FORA transition plan or some other plan to manage water for future development; or, if annexation is not deferred, it should be limited to developed parcels already served by MCWD.

MCWD's proposed annexation puts the cart before the horse; it should await approval of a FORA transition plan that will address provision of water for future development in the Ord community. Alternatively, it must be accompanied with the adoption of policies, regulations, and mitigation that would ensure that provision of water supply for future development in the Ord community will not cause significant impacts.

LAFCO staff explain that the FORA transition plan must provide "clear direction on all projects, obligations and other pending matters in the transition plan." Kate McKenna, Report of the Fort Ord Reuse Authority (FOR A) Dissolution Process, January 22, 2018, p. 4. LAFCO staff explain that the transition plan is required in order to "lay the foundation for future LAFCO actions such as annexations by local agencies to ensure the provision of municipal services (i.e. water, sewer fire, etc.)" *Id.*, emphasis added.

The Initial Study suggests that the rationale for the annexation is to give existing customers a vote. Annexation Initial Study, p. 9. LandWatch has also been advised that MCWD seeks annexation to further its objective to qualify as a Groundwater Sustainability Agency under the Sustainable Groundwater Management Act. If MCWD intends to pursue the annexation for these reasons, and since it has seen fit to defer annexation of other developable portions of the Ord Community, there is no reason that it needs to annex *any* area that is not currently developed and currently being served with water. The Initial Study indicates that the annexation would include parcels in which hundreds of addition water service hook-ups would be required or that are not currently receiving water service. Annexation Initial Study, pp. 16-17, Table 2. LandWatch's concern that MCWD not assume plenary authority over provision of water for future development without a commitment to avoid or mitigate impacts would be addressed in part if the annexation were limited to just those parcels for which MCWD is now actually providing service.

In a telephone conversation on February 16, 2018 between LandWatch and Keith Van Der Maaten, Mr. Van Der Maaten indicated that restricting the area of annexation to parcels with current service may be problematic. He suggested that MCWD may feel an

obligation to provide service to areas without current water service but for which building permits or vesting subdivision maps had been issued, or even for areas without such entitlements but for which a specific plan had been approved, or even merely initiated, or even for areas for which MCWD had only provided a Water Supply Assessment. He also suggested that denial of water service to these areas might be considered a taking.

There are several response to this concern. First, MCWD's authority to deny hookups in the event of a water shortage, which clearly exists today, includes authority to deny service to proposed development for which there is an existing subdivision map. *Building Industry Assn. v. Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641; *see also Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal.App.3d 512; *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2004) 117 Cal.App.4th 13. Second, MCWD already plans to consider annexation of the Ord Community in phases, so there is no reason not to postpone annexation of currently undeveloped parcels until MCWD has provided adequate environmental review. Again, we note that MCWD's interests in the annexation – providing governance participation to the existing customers and facilitation of MCWD's SGMA role – can be met without annexing undeveloped parcels.

Finally, to the extent that the annexation of any of the Ord Community will provide bureaucratic momentum for MCWD to annex the rest, LandWatch opposes that annexation unless and until MCWD provides adequate environmental review of any increase in groundwater pumping to support the Ord community. At a minimum that review must include the evaluate the impacts of providing water for all of the foreseeable Ord community development as well as other cumulative projects affecting the Deep Aquifer or contributing to seawater intrusion.

LandWatch joins in the objections to the proposed annexation made by other members of the public and by public agencies. LandWatch remains willing to continue its discussions with MCWD staff to resolve its concerns with the proposed annexation. Please let us know if you would like to confer further toward that end. In the meantime, LandWatch asks that the MCWD Board not certify an inadequate CEQA document or act on the annexation at its February 20 meeting.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

Attachment:

Timothy Parker, letter to John Farrow, re Groundwater Impacts from Increased Pumping to Support Ord Community Development, February 15, 2018

References: to be provided electronically via thumb drive

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23. MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=57394>.
24. MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017
25. MCWRA, Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer, June 7, 2017.
26. MCWD, 2015 Urban Water Management Plan.
27. MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017.
28. Curtis Hopkins, North Marina Area Groundwater Data and Conditions, May 26, 2015.
29. Ian Gottschalk and Rosemary Knight , Preliminary Interpretation of SkyTEM Data Acquired in the Marina Coast Water District, June 16, 2017.
30. Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018.

31. MCWD, Response to Timothy Parker Technical Memorandum Dated October 8, 2016.
32. FORA-MCWD, Water/Wastewater Facilities Agreement, March 13, 1998.
33. FORA Board Report, Transition Planning Update, January 12, 2018.
34. FORA Administrative Committee, Memorandum, January 27, 2016.
35. Kate McKenna, Report of the Fort Ord Reuse Authority (FOR A) Dissolution Process, January 22, 2018.
36. Timothy Parker, letter to John Farrow, re Groundwater Impacts from Increased Pumping to Support Ord Community Development, February 15, 2018.
37. California Public Utilities Commission, Proceeding A1204019, In the Matter of the Application of California-American Water Company (U210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Monterey Peninsula Water Supply Project and to Recover All Present and Future Costs in Connection Therewith in Rates, Direct Testimony Of Keith Van Der Maaten, Submitted On Behalf Of Marina Coast Water District -Supplemental Phase 1 Testimony, Sept. 29, 2001.

EXHIBIT 4

AMENDMENT TO WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Amendment to Water/Wastewater Facilities Agreement ("Amendment") are the FORT ORD REUSE AUTHORITY ("FORA") and the MARINA COAST WATER DISTRICT ("MCWD"), which agree as follows:

1. Agreed Facts. The parties entered into an agreement dated March 13, 1998 and entitled "Water/Wastewater Facilities Agreement" ("Agreement"). Subsequent changes in applicable law and circumstances make it mutually beneficial for the parties to amend the Agreement to add the option of effecting the conveyance of the subject water and wastewater facilities to MCWD either through a no-cost economic development conveyance through FORA or through a public benefit conveyance through the US Department of Health and Human Services. Such an amendment will benefit both parties by potentially expediting the conveyance and providing greater flexibility in operating the facilities with greater public and economic benefit to the communities served by the parties.

2. Amendment Procedure. Paragraph 10.7 of the Agreement requires consent of the governing Boards of both parties to amend the Agreement. As with the Agreement, FORA will adopt this Amendment by ordinance and MCWD will adopt this Agreement by resolution. FORA is the lead agency for adoption of this Amendment.

3. Definitions. The definitions of words and terms in the Agreement shall control the meaning of the same words and terms used in this Amendment.

4. Amendments. The Agreement is amended as follows:

4.1 Paragraph 1.4 is amended as follows:

"EXISTING FACILITIES. The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by either a "public benefit conveyance" or a "no-cost economic development conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by either a public benefit conveyance or a no-cost economic development conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries."

4.2 Paragraph 1.5 is amended as follows:

"CONTEXT. The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA

Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by either a public benefit conveyance or a no-cost economic development conveyance pursuant to this Agreement."

4.3 The heading of Paragraph 3.1 is amended as follows:

"APPLICATION FOR PUBLIC BENEFIT CONVEYANCE OR NO-COST ECONOMIC DEVELOPMENT CONVEYANCE; PERMITS TO OPERATE."

4.4 Paragraph 3.1.1 is amended as follows:

"MCWD Responsibilities. MCWD, as lead agency, will diligently either prosecute an application to the USA for a public benefit conveyance to MCWD, or through FORA prosecute a no-cost economic development conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities."

4.5 Paragraph 3.1.2 is amended as follows:

"FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for conveyance of the facilities and incidental rights to MCWD through either a public benefit conveyance or a no-cost economic development conveyance.

4.6 Paragraph 7.1.4 is amended as follows:

"Payments to FORA. Upon the effective date of either a public benefit conveyance or a no-cost economic development conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3."

4.7 Paragraph 9.3 is amended as follows:

"TERM. This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance or MCWD's application through FORA for a no-cost economic development conveyance. If the USA denies MCWD's application for a public benefit conveyance or for a no-cost economic development conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement."

5. Incorporation of Terms. This Amendment is incorporated into the Agreement by this reference, and all the provisions of the Agreement as specifically amended by this Amendment, including but not limited to execution in counterparts are incorporated in and apply to this Amendment.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

FORT ORD REUSE AUTHORITY

By [Signature]
Executive Officer

MARINA COAST WATER DISTRICT

By [Signature]
President, Board of Directors

ATTEST

By [Signature]
Secretary

Dated: 3-2-01

WATER/WASTEWATER FACILITIES AGREEMENT

The parties to this Water/Wastewater Facilities Agreement ("Agreement") are the FORT ORD REUSE AUTHORITY and the MARINA COAST WATER DISTRICT, which agree as follows:

ARTICLE 1. AGREED FACTS

1.1. **CAPACITY OF THE PARTIES.** FORA is a local governmental entity and is defined as a public corporation of the State of California established by the FORA Act. MCWD is a County Water District and political subdivision of the State of California, organized under Division 12, sections 30000 and following, of the California Water Code.

1.2. **AUTHORITY.** FORA has authority under the FORA Act, and particularly under Government Code section 67679(a)(1), to plan for and arrange the provision of those base wide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, sewage and water conveyance and treatment facilities to assure a reasonable transition from military ownership and operation to civilian ownership and operation, and to further the integrated future use of Fort Ord. MCWD has authority, under Water Code sections 30000 and following, and under Article 11, Section 9 of the California Constitution, to acquire, construct, operate, and furnish water and sewer facilities outside its boundaries and within the jurisdictional boundaries of a local governmental entity by agreement with the local governmental entity.

1.3. **PURPOSE.** The parties intend by this Agreement to establish the terms and conditions for FORA to plan and arrange for the provision of the facilities, and for MCWD to acquire, construct, operate, and furnish the facilities, to benefit mutually the service area and the area within MCWD's jurisdictional boundaries. This Agreement will govern MCWD's ownership and operation of the facilities.

1.4. **EXISTING FACILITIES.** The USA presently owns all existing facilities. The USA has determined to divest itself of the existing facilities. Federal law authorizes such divestiture by a "public benefit conveyance" to a local governmental entity satisfying certain criteria, which criteria are satisfied by MCWD. FORA and MCWD have formally determined that MCWD's acquisition of the existing facilities for the service area by a public benefit conveyance will benefit mutually the service area and the area within MCWD's jurisdictional boundaries.

1.5. **CONTEXT.** The public health, safety and welfare of the present population of the Ft. Ord reuse area and all future population require continued operation of a water distribution system and a wastewater collection system. The

U.S. Army has agreed to convey the systems pursuant to federal law and regulations. Following organization of FORA, discussions commenced with the USA regarding transfer of ownership and operation of the facilities, and FORA evolved a process to assure continuity of management and operation. FORA has been given a limited statutory life and must find reliable utility providers to assume the responsibility for system operation. The FORA Board appointed a select committee from technical staff of its members to design a set of minimum requirements for water system operators and invited statements of qualifications from those interested. Three statements were received and referred to the same select committee for evaluation, analysis, and recommendation. After receiving the select committee's analysis and recommendation, and after providing opportunity for public input, at its meeting of October 11, 1996, the FORA Board authorized staff to commence negotiations with MCWD for the purpose of negotiating an agreement with MCWD whereby MCWD would assume the responsibility of the operation, maintenance, and ownership of the existing water (and wastewater collection) systems on the former Fort Ord. The same select committee was authorized to oversee the negotiations that were undertaken by FORA staff. Negotiations included detailed financial analyses by FORA staff/consultants and by Stone & Youngberg LLC. These analyses are very comprehensive and demonstrate MCWD's fiscal capacity. The Stone & Youngberg Financial Analysis includes provision for possible payments to FORA and various land use agencies in accordance with law. On May 9, 1997, the FORA Board authorized the staff to work with MCWD to develop an agreement regarding the systems and to prepare an application for Public Benefit Conveyance (PBC) to be filed after the FORA/MCWD agreement is authorized for execution by the FORA Board. Effective June 2, 1997, MCWD has been selected by the USA to be the interim operator of the facilities pending a full transfer. The parties anticipate that such full transfer will be by public benefit conveyance pursuant to this Agreement.

1.6. WATER SUPPLY CAPACITY RIGHTS. The FORA Board has previously adopted a comprehensive plan for the administration of groundwater extraction rights consistent with the Agreement between the USA and the Monterey County Water Resources Agency dated September 1993. It is anticipated this plan may be amended from time to time at the sole discretion of the FORA Board. The total volume of groundwater available for this plan is 6,600 acre feet per year.

1.7. LEAD AGENCY. FORA is the lead agency for the adoption of this Agreement.

ARTICLE 2. DEFINITIONS AND ATTACHMENTS

2.1. "Committee" means the Water/Wastewater Oversight Committee appointed by the FORA Board to oversee the provision of water and wastewater collection services by MCWD under this Agreement.

2.2. "Facilities" means the public capital facilities used to provide water and wastewater collection services on the service area, including appurtenances and incidental rights of access, extraction, discharge, and use. Sewage (herein also called "sewer" and "wastewater") and water public capital facilities existing as of the date of this Agreement are generally shown on Exhibits A and B to this Agreement. Public capital facilities are those on MCWD's side of the service connection, including the meter for water service. For sewer facilities, the service connection is at the tap into the main collection system, wherever located, as determined by MCWD.

2.3. "FORA" means Fort Ord Reuse Authority.

2.4. "FORA Act" means the Fort Ord Reuse Authority Act codified in Title 7.85, sections 67650 and following, of the California Government Code, as may be amended from time to time.

2.5. "MCWD" means Marina Coast Water District.

2.6. "Service Area" means the former Fort Ord Army base in northwestern Monterey County, California. The service area is shown generally on the diagram attached to this Agreement as Exhibit A.

2.7. "USA" means the United States of America represented by the Department of the Army.

2.8. Attachments to this Agreement:

EXHIBIT "A":	Diagram of Fort Ord Water System/Service Area, Schaaf & Wheeler, April 1994
EXHIBIT "B":	Diagram of Fort Ord Wastewater System/Service Area, FORIS, undated
EXHIBIT "C":	Mediators
EXHIBIT "D":	Gov. Code §§ 54980-54983, 67679(a)(1)
EXHIBIT "E":	Pub. Util. Code §§ 10101, 10102, 10103, 10104 and 10105

ARTICLE 3. FACILITIES ACQUISITION AND OWNERSHIP

3.1. APPLICATION FOR PUBLIC BENEFIT CONVEYANCE: PERMITS TO OPERATE.

3.1.1. MCWD Responsibilities. MCWD, as lead agency, will diligently prosecute an application to the USA for a public benefit conveyance to MCWD of all of the USA's existing sewer and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use for the service area. MCWD will also act diligently to obtain and maintain in good standing all permits needed to operate all such facilities.

3.1.2. FORA Responsibilities. FORA will forego and forebear its rights to acquire the facilities through negotiated sale, economic development conveyance, or any other procedure permitted under law, and FORA hereby nominates and designates MCWD as the appropriate local governmental entity to acquire the facilities for the benefit of FORA, its member agencies, and the general public. FORA will support MCWD's application for a public benefit conveyance.

3.1.3. Joint Responsibilities. MCWD and FORA will diligently take such actions and execute such documents as either considers necessary for MCWD to obtain and confirm all rights in and to the existing wastewater and water facilities and appurtenances and incidental rights of access, extraction, discharge, and use.

3.2. ADDITIONAL FACILITIES.

3.2.1. MCWD Responsibilities. MCWD will cause to be planned, designed and constructed such additional water and sewer facilities as FORA, in consultation with MCWD, reasonably determines are necessary for the service area. MCWD may cause to be planned, designed and constructed any other facilities as MCWD reasonably determines will carry out the purpose of this agreement as expressed in section 1.3 of this Agreement.

3.2.2. FORA Responsibilities. FORA will determine in consultation with MCWD, based on recommendations from the Committee, what additional facilities are necessary for the service area.

3.3. TRANSFER, OBLIGATION, AND ENCUMBRANCE OF FACILITIES. Any transfer, obligation, or encumbrance of any interest in the facilities shall require the prior written approval of both parties.

3.4. ESTABLISHMENT OF WATER AND SEWER CAPACITY RIGHTS.

3.4.1. MCWD Responsibilities. MCWD shall have no responsibility for establishment and administration of water extraction capacity rights and

wastewater discharge and treatment capacity rights, except to compensate FORA for such administration.

3.4.2. FORA Responsibilities. The FORA Board will administer all extraction and discharge rights which may be obtained from the USA, pursuant to the comprehensive plan previously adopted by FORA and such changes as may be made to the plan from time to time by the FORA Board.

3.5. GRANT LOCAL SHARE. MCWD shall assume and pay the local share of any federal or state grant made to improve, maintain or add to the facilities. Any such obligation shall be a reimbursable cost under section 7.1.2 of this Agreement.

ARTICLE 4. OVERSIGHT

4.1. MCWD RESPONSIBILITIES. MCWD shall own and operate the facilities under the oversight and with the approvals and authorizations of FORA and the Committee as provided in this Agreement. MCWD shall cooperate with FORA and the Committee, and shall provide such information to the Committee as reasonably requested by the Committee, including but not limited to the reports enumerated in section 4.2.3 of this Agreement.

4.2. FORA RESPONSIBILITIES.

4.2.1. Committee Appointment. A Water/Wastewater Oversight Committee will be appointed by the FORA Board from appropriate agency staff members who will serve at the pleasure of the Board. The Committee will include representatives from the future land use jurisdictions and the two Universities (Cities of Marina, Seaside, Monterey, Del Rey Oaks, the County of Monterey, CSUMB and UCMBEST), for a total of seven members (see attachment).

4.2.2. Committee Role. The Committee shall be advisory to the FORA Board and shall have the following functions:

- 4.2.2.1. Receive recommendations regarding operation of the facilities.
- 4.2.2.2. Advise the FORA Board and staff on appropriate action regarding such recommendations.
- 4.2.2.3. Review and recommend on operating and capital improvement budgets.
- 4.2.2.4. Periodically review and recommend a master plan of public sewer and water facilities.

- 4.2.2.5. Make recommendations pursuant to Article 7 of this Agreement, including recommendations regarding allocation of costs over benefitted properties.
- 4.2.2.6. Confirm adequacy of services provided.
- 4.2.2.7. Review the annual financial statement and MCWD audit to affirm that results achieved comport with expectations of FORA.
- 4.2.2.8. Evaluate annually the performance of MCWD in accordance with this Agreement.
- 4.2.2.9. Advise on short and long term financial planning and fiscal management.
- 4.2.2.10. Assure that the facilities are complimenting implementation of the reuse plan.

4.2.3. Evaluation Criteria. The Committee will use the following criteria in evaluating MCWD's performance under this Agreement:

- 4.2.3.1. Timely development annually of operation and capital budgets.
- 4.2.3.2. Timely and accurate quarterly and annual financial reports.
- 4.2.3.3. Timely and accurate quarterly and annual operational reports.
- 4.2.3.4. Customer service orientation and MCWD's responsiveness to customer concerns, as shown in quarterly and annual reports of customer communications and responses.

ARTICLE 5. FACILITIES OPERATION

5.1. MCWD RESPONSIBILITIES.

5.1.1. Operation. MCWD will operate the facilities in accordance with applicable laws, rules and regulations, and policies established by the MCWD Board and the FORA Board, and procedures adopted by MCWD staff after

consultation with the Committee. Unless this Agreement or any policy or procedure established pursuant to this Agreement provides otherwise, MCWD will operate the facilities in the same manner as MCWD operates similar facilities for other areas served by MCWD.

5.1.2. Communication and Reports. MCWD will communicate regularly with the Committee about the operation of the facilities, and will respond promptly to communications from FORA and the Committee. MCWD will deliver quarterly and annual operational reports to the Committee.

5.1.3. Complaints. Complaints about MCWD's operation of the facilities will be dealt with in the first instance by MCWD's General Manager or designee. Decisions of the General Manager or designee may be appealed to the FORA Board in the same manner that decisions within the boundaries of MCWD are appealed to MCWD's Board. The decision of the FORA Board on complaints will be final and will exhaust all administrative remedies.

5.1.4. Interconnection With MCWD Facilities. Interconnections currently exist between the facilities and MCWD's facilities. MCWD may improve interconnections between MCWD's facilities and the facilities, to provide for enhanced, conjunctive and concurrent use of all system facilities to serve the service area and other areas served by MCWD.

5.2. FORA RESPONSIBILITIES. FORA will cooperate with MCWD to establish policies for the operation and administration of the facilities and to facilitate operation and administration of the facilities to achieve the purpose of this Agreement as stated in section 2.3 of this Agreement. FORA will respond promptly to communications from MCWD about operation of the facilities. The FORA Board will deal promptly with appeals of complaints about MCWD's operation of the facilities.

5.3. JOINT RESPONSIBILITIES.

5.3.1. Groundwater Use. The parties will cooperate on MCWD's increased withdrawal of potable groundwater from MCWD's existing wells in the 900-foot aquifer by up to 1,400 acre-feet per year (afy), in compliance with law, to enable the increased withdrawals from 5,200 afy to 6,600 afy for use in the service area, as stipulated in paragraph 4.c. of the September 1993 Agreement between The United States of America and the Monterey County Water Resources Agency, and in paragraph 5.1.1.1 of the "Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands," recorded August 7, 1996, in Reel 3404 Page 749, in the Office of the Monterey County Recorder.

5.3.2. Groundwater Management. The parties will cooperate to further the conservation, management and protection of groundwater underlying the service area and groundwater used on the service area.

5.3.3. Recycled Water. The parties will cooperate to further the use of recycled, reused and reclaimed water and stormwater.

5.4. AGREEMENT ADMINISTRATION. The following persons or their designated representatives shall be the contact persons for the parties and shall administer this Agreement:

Executive Officer of FORA
FORA
100 12th Street, Bldg 2880
Marina, CA 93933

General Manager of MCWD
MCWD
200 12th Street, Bldg. 2788
Marina, CA 93933

ARTICLE 6. EX OFFICIO MEMBERSHIP

6.1. MCWD Responsibilities. Close cooperation and communication between FORA and MCWD being vital to the successful implementation of this Agreement, upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, MCWD will become an ex officio member of FORA under applicable provisions of the FORA Act, with all of the rights and obligations of an ex officio member.

6.2. FORA Responsibilities. Upon execution of this Agreement and payment of the membership fees described in Article 7 of this Agreement, FORA will enroll MCWD as an ex officio member of FORA pursuant to the FORA Act, with all of the rights and obligations of an ex officio member.

ARTICLE 7. FINANCIAL PROVISIONS

7.1. MCWD RESPONSIBILITIES

7.1.1. Separate Fund Accounting. MCWD will account for its operations for the service area as a separate fund within the general MCWD operation. The service area fund will have its own line items and account numbers, and will give MCWD the ability to report on revenues and expenses for the service area. Rules for allocating overhead between the service area fund and other MCWD operations will be determined based on the principles set forth in Circular A-87, Cost Principles for State and Local Governments, of the federal Office of Management and Budget.

7.1.2. MCWD Will Recover Costs. MCWD will recover all of its direct and indirect, short term and long term costs of furnishing the facilities to the service area. MCWD shall not be required to take any action in connection with furnishing the facilities to the service area unless and until a source of funds is secured from the service area to pay in full in a reasonable manner consistent with normal accounting practices all of MCWD's direct and indirect, short term and long term costs of the action to be taken by MCWD, including costs of administration, operation, maintenance and capital improvements to provide adequate system capacity to meet existing and anticipated service demands.

7.1.3. Budgets and Compensation Plans

7.1.3.1. Proposed Budgets. MCWD's General Manager shall submit a proposed budget to the Committee within four months after conveyance of the existing facilities from the USA to MCWD, and shall submit subsequent proposed budgets by March 30 of each year. Each budget shall contain an action budget for one year, from July 1 through June 30, and an operational planning budget for an additional year, and a five-year capital improvement planning budget, updated annually. Each budget shall provide for sufficient revenues to pay MCWD's direct and indirect, short-term and long-term costs to furnish the facilities to the service area for the two years covered by the action budget and the planning budget.

7.1.3.2. Request for Change. MCWD may at any time submit a written request to FORA for recommended changes in compensation. The request shall state in detail the reasons for the request and the amount of change requested.

7.1.3.3. MCWD Board Action. Not less than two weeks nor more than four weeks after receiving FORA's response pursuant to section 7.2, MCWD's governing Board shall act on the response. MCWD's Board may adopt the proposal with FORA's recommended changes, or may refer the matter to mediation as provided in section 10.1 of this Agreement.

7.1.3.4. Term of Adopted Plan. Each adopted compensation plan shall remain in effect until a new plan is adopted.

7.1.4. Payments to FORA. Upon the effective date of a public benefit conveyance of the facilities to MCWD, when MCWD has the ability to levy and collect rates for service through the facilities within the Service Area, MCWD will commence to pay to FORA monies determined to be due as provided in this section. The amount of MCWD's payments to FORA under this section will be included in each budget and request for change presented to FORA under section 7.1.3.

7.1.4.1. MCWD will pay for FORA's administrative and liaison services incurred by FORA in the management and operation of the facilities and the administration of this Agreement.

7.1.4.2. MCWD will pay to FORA an amount equal to five percent (5%) of all revenues derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water, within the Service Area, to partially compensate FORA for its forbearance pursuant to section 3.1.2 of this Agreement.

7.1.4.3. MCWD will pay any sum due to FORA under any agreement with FORA which may be required under the provisions of sections 10101 and following of the California Public Utilities Code, and sections 54980 and following of the California Government Code.

7.1.4.4. MCWD will pay the fair market value of any interest in property purchased from FORA.

7.1.4.5. MCWD will pay an annual fee for membership on the FORA Board of Directors as an ex-officio member in an amount as the FORA Board may establish by resolution. MCWD acknowledges that MCWD's annual fee for such ex-officio membership may exceed the amount paid by other ex-officio members. The annual fee to be paid by MCWD will not exceed one percent (1%) of all revenues, derived, earned, or paid to MCWD for any purpose from customers of MCWD or users of water within the service area.

7.1.4.6. In the event FORA enters into an agreement with Monterey County or any city which has jurisdiction over a portion of the service area, for the division of revenues derived from the sales of water by MCWD within the jurisdiction of the County or city, the amounts specified in Section 7.1.4.2 of this Agreement shall be reduced by the amount FORA receives pursuant to such agreements for the division of revenues.

7.1.5. MCWD's Financial Authority. MCWD may exercise any authority available to MCWD under law and this Agreement to finance MCWD's operations for the service area.

7.1.6. Defense of Financial Plans. MCWD, at MCWD's cost, shall defend all financial plans adopted and financial actions taken by MCWD and FORA by or pursuant to this Agreement. MCWD may file and prosecute a validating action if authorized by law for any such plan.

7.2. FORA RESPONSIBILITIES.

7.2.1. FORA shall respond to MCWD within three months after receiving a proposed budget or a written request or a referral for further response pursuant to section 7.1.3. FORA's response shall state whether FORA agrees with the proposed budget or written request. If FORA does not agree, FORA's response shall identify each disputed element, shall state detailed reasons for the dispute, and shall specify a resolution acceptable to FORA. If FORA does not respond within three

months, the compensation plan contained in the latest submittal from MCWD shall be deemed adopted.

7.2.2. Nothing in this Agreement shall limit or impair FORA's ability to contract or arrange financing for construction of capital facilities.

7.3. JOINT RESPONSIBILITIES.

7.3.1. MCWD's Board shall adopt by resolution and FORA's Board shall adopt by ordinance, as a supplement to this Agreement, each compensation plan for MCWD determined pursuant to sections 7.1.3 and 7.2.1 of this Agreement.

7.3.2. MCWD and FORA will cooperate in reviewing and working with communications and proposals from other municipal corporations pursuant to sections 10100 and following of the Public Utilities Code and any other provisions of law dealing with water and sewer utility franchises, with the use of the public streets, ways, alleys, and places within the other municipal corporations for the provision of water and sewer services, or with compensation to a municipal corporation for services performed for another municipal or public corporation.

7.3.3. If MCWD makes any payments to another municipal corporation the amount of such payments shall reduce any sums which such municipal corporation would otherwise receive from sales pursuant to Title 7.85 of the Government Code.

ARTICLE 8. RISK MANAGEMENT

8.1. RISK OF LOSS. Except as otherwise provided in this Agreement, MCWD shall bear the risk of loss from its provision of services to the service area, to the same extent and in the same manner and subject to the same limitations as with MCWD's activities within the area from which MCWD's Directors are elected. This Agreement is not intended and shall not be construed to remove any protection from liability or any procedures for claiming liability under state and federal law. Allocation of the risk from defective or inadequate facilities shall be determined in the conveyance of the facilities from the USA. To the fullest extent permitted by law, MCWD's facilities and other assets for providing water and sewer services within its jurisdictional boundaries shall not be at risk from claims based on MCWD's owning, operating, and furnishing the facilities within the service area. MCWD's risk and liability for MCWD's activities for the service area shall be limited to the value of any facilities within or for the service area, the assets in any service area accounts, and the value of insurance carried by MCWD for providing services within the service area. MCWD, with FORA's assistance, shall diligently apply for and attempt to obtain any all state and federal assistance that is available in the event of catastrophic losses to the facilities.

8.2. **INSURANCE.** Throughout the term of this Agreement MCWD shall maintain insurance with coverage and limits equivalent to that maintained for MCWD's operations within its jurisdictional boundaries. The insurance shall cover the members of the Committee and shall name FORA as an additional insured.

8.3. **COST OF RISK.** Each compensation plan adopted for MCWD pursuant to Article 7 of this Agreement shall be adequate to pay MCWD's cost of insurance for acquiring, constructing, operating and furnishing the facilities for the service area, and to establish a prudent risk reserve for uninsured risks.

ARTICLE 9. EFFECTIVE DATE AND TERM

9.1. **EFFECTIVE DATE.** This Agreement shall become effective when FORA and MCWD have each executed this Agreement.

9.2. **FORMAL ADOPTION.** FORA will adopt this Agreement by ordinance. MCWD will adopt this Agreement by resolution.

9.3. **TERM.** This Agreement shall have a term coincident with the legal existence of FORA, unless the USA denies MCWD's application for a public benefit conveyance. If the USA denies MCWD's application for a public benefit conveyance, the parties shall meet and confer in good faith during the 120 days immediately following the final denial to discuss possible change in terms for MCWD to acquire, construct, operate and/or furnish the facilities. If FORA and MCWD cannot agree on new terms within the 120 days, or such other additional time as may be agreed by FORA and MCWD, this Agreement shall terminate and have no further effect, and the parties thereafter shall have no further rights or obligations under this Agreement.

9.4. **EFFECT OF TERMINATION.** Upon termination of this Agreement, unless otherwise provided by this Agreement or by law or by further agreement of FORA and MCWD or their successors, MCWD shall own the facilities free and clear of the terms and conditions of this Agreement.

ARTICLE 10. GENERAL PROVISIONS

10.1. **DISPUTE RESOLUTION PROCEDURE.**

10.1.1. **Meet and Confer; Mediation.** This section shall apply to all disputes arising under this Agreement. The Agreement Administrators designated under section 5.4 of this Agreement shall first meet and confer to resolve any dispute. Each party shall make all reasonable efforts to provide to the other party all information relevant to the dispute. If the Agreement Administrators cannot resolve the dispute within ten working days from the date of the dispute, they shall meet and

confer together with the Committee. If the dispute is not resolved within another ten working days from the date of the dispute, the Agreement Administrators shall meet and confer together with a voting member of the FORA Board and a member of the MCWD Board. If the dispute is not resolved within another ten days from the date of the dispute, the parties shall mediate the dispute at the earliest possible date, with one of the persons named on Exhibit "C" to this Agreement serving as mediator. If the dispute is still not resolved, the parties may pursue any and all remedies available to them at law and equity, including declaratory relief which shall be binding on the parties.

10.1.2. **Provisional Relief Available.** The requirement to use the procedure specified in section 10.1.1 of this Agreement shall not prevent a party from seeking provisional relief from a court if necessary to protect the public health or safety.

10.1.3. **Mediator List.** Exhibit "C" to this Agreement is a list of persons both parties will accept as mediators for any dispute arising under this Agreement. If a dispute requires mediation, the parties will choose a mediator from the list by some random method, and will continue to do so until a mediator is selected who can mediate the particular dispute without delay. As a last resort, if no person named on Exhibit "C" can mediate a particular dispute without delay, the parties will ask the Presiding Judge of the Monterey County Superior Court to appoint a mediator.

10.2. **WAIVER OF RIGHTS.** None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

10.3. **SEVERABILITY.** If any one or more of the covenants or agreements set forth in this Agreement on the part of the parties, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement.

10.4. **EXHIBITS.** All exhibits referred to in this Agreement and attached to this agreement are incorporated in this Agreement by reference.

10.5. **COUNTERPARTS.** This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

10.6. **NOTICES.** All notices, requests, consents, approvals, authorizations, agreements, or appointments hereunder shall be given in writing and addressed to the principal office of each party.

10.7. AMENDMENTS. This Agreement integrates and supersedes all prior and contemporaneous agreements and understandings about MCWD's provision of the services to the Service Areas. This Agreement may not be amended without consent of the governing Boards of both parties.

10.8. SUCCESSORS. This Agreement shall bind and benefit the successors of the parties hereto.

10.9. ADDITIONAL DOCUMENTS. The parties hereto agree, upon request, to execute, acknowledge, and deliver all additional documents necessary to carry out the intent of this Agreement.

10.10. CAPTIONS. Captions of the Articles, Sections, and Paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective, duly authorized representatives, have executed this Agreement on the dates indicated.

FORT ORD REUSE AUTHORITY

By [Signature]
Chairperson, Board of Directors

ATTEST:
By [Signature]
Secretary

MARINA COAST WATER DISTRICT

By [Signature]
President, Board of Directors

ATTEST:
By [Signature]
Secretary

Dated: 3/13/98

Dated: 3/13/98

ORDINANCE NO. 98-01

AN ORDINANCE OF BOARD OF DIRECTORS OF THE FORT ORD REUSE AUTHORITY APPROVING AN AGREEMENT BETWEEN MARINA COAST WATER DISTRICT AND THE FORT ORD REUSE AUTHORITY

The Board of Directors of the Fort Ord Reuse Authority ordains as follows:

SECTION 1. The Board of Directors of the Fort Ord Reuse Authority approves an Agreement between Marina Coast Water District and the Fort Ord Reuse Authority for the operation of water and wastewater collection systems on the former Fort Ord military reservation.

SECTION 2. This ordinance shall become effective on its adoption.

PASSED AND ADOPTED this 13th day of February, 1998 by the following vote:

AYES: Barlich, Albert, Voceika, Potter, Perkins, Johnsen, Jordan, Mancini, Pendergrass, Styles, Koffman, White

NOES: Perrine

ABSENT: None

[Signature]
Chair of the Board of Directors

ATTEST:

Michael Houlemard
Clerk of the Board

By [Signature]
Deputy

EXHIBIT A

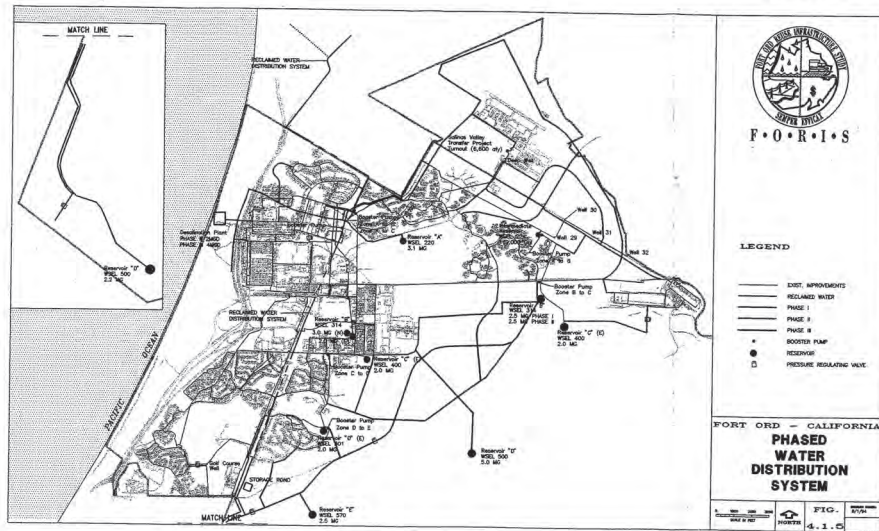


EXHIBIT B

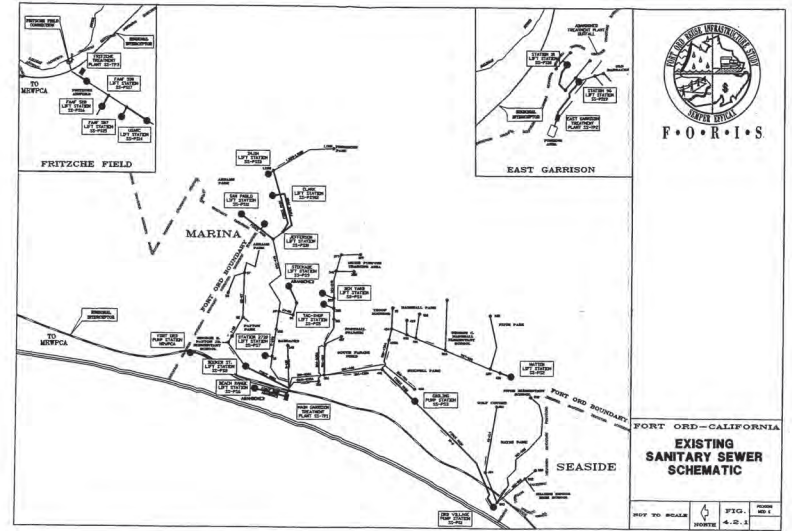


EXHIBIT C
MEDIATORS

Dick Milbrodt
Leon Panetta
Lt. Gen. Ret. James Moore
Don Owen
Frank Dimick
John Gregg
Anne Schneider

124001019FORA190-FO11.018.010898/11

CITIES, COUNTIES, & OTHER AGENCIES
Title 5

Chapter 12, added as Chapter 11, *Municipal Services and Functions*, by Stats.1978, c. 960, p. 2961, § 1, was renumbered Chapter 12 and amended by Stats.1980, c. 676, § 131.

§ 54980. Definitions

As used in this chapter:

(a) "Legislative body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a district.

(b) "Local agency" means any county, city, city and county, or public district which provides or has authority to provide or perform municipal services or functions.

(c) "Municipal services or functions" includes, but is not limited to, firefighting, police, ambulance, utility services, and the improvement, maintenance, repair, and operation of streets and highways.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54980, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et seq. 1382, p. 2716, § 1, relating to district boundaries, was repealed by Stats.1965, c. 2043, p. 1.

Forms

See West's California Code Forms, Government.

Law Review and Journal Commentaries

Decline of emergency medical services coordination in California: Why cities are at war with counties over illusory ambulance monopolies. Byron K. Toma, 23 Sw.U.L.Rev. 285 (1994).

Library References

Municipal Corporations § 226.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations § 976 et seq.

Notes of Decisions

Paramedics 1

I. Paramedics

For purposes of determining whether county's program of certifying paramedics for ambulance services was immune from antitrust liability under the state action doctrine, provision of emergency service is a traditional municipal function. *Mercy-Peninsula Ambulance, Inc. v. San Mateo County*, N.D.Cal.1984, 592 F.Supp. 956, affirmed 791 F.2d 755.

§ 54981. Contracts for municipal services

The legislative body of any local agency may contract with any other local agency for the performance by the latter of municipal services or functions within the territory of the former.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

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MUNICIPAL SERVICES
Div. 2

Former § 54981, added by 1382, p. 2716, § 1, relating to districts, was repealed by Stats.1965, c. 2043, p. 1.

§ 54981.7. Indian tribe
tion servi

A city or county may enter into a contract with an Indian tribe to provide fire protection services for the Indian tribe lands and territory adjacent to the city or county, which shall be construed to alter or extend jurisdiction in Indian land.

§ 54982. Consideration

Any agreement entered into for consideration shall be enforceable.

Former § 54982, added by 1382, p. 2716, § 1, relating to districts, was repealed by Stats.1965, c. 2043, p. 1.

§ 54983. Construction

Authority for entering into a contract shall be construed as supplemental to the authority of a local agency to enter into a contract with a local agency to enter into a contract which it is authorized to enter into and for which an account limit is applicable.

The amendments to this section shall not apply to any agreement entered into prior to the effective date of this act.

Former § 54983, added by 1382, p. 2716, § 1, relating to districts, was repealed by Stats.1965, c. 2043, p. 1.

ES, & OTHER AGENCIES
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Services and Functions,
Numbered Chapter 12 and

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d county, or public district
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N.D.Cal.1984, 592 F.Supp.
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l with any other local
services or functions.

MUNICIPAL SERVICES AND FUNCTIONS § 54983
Div. 2

Historical and Statutory Notes

Former § 54981, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et 1382, p. 2716, § 1, relating to district bound- seq.
aries, was repealed by Stats.1965, c. 2043, p.

§ 54981.7. Indian tribes; fire protection services; police or sheriff protection services

A city or county may enter into a contract with an Indian tribe for the city or county to provide fire protection services and police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. Nothing in this section shall be construed to alter or affect federal Public Law 280, relating to state jurisdiction in Indian lands.

(Added by Stats.1996, c. 1085 (A.B.1762), § 1.)

§ 54982. Consideration

Any agreement entered into pursuant to this chapter shall be for valuable consideration.

(Added by Stats.1978, c. 960, p. 2121, § 1.)

Historical and Statutory Notes

Former § 54982, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et 1382, p. 2716, § 1, relating to district bound- seq.
aries, was repealed by Stats.1965, c. 2043, p.

§ 54983. Construction of authority granted

Authority for entering into agreements pursuant to this chapter shall be construed as supplementing existing authority for legislative bodies of local agencies to enter into agreements for the providing of municipal services and functions and shall not be construed as authorizing the legislative body of any local agency to enter into an agreement for the providing of municipal services or functions which it is prohibited to provide by law or which exceeds the force account limit applicable to the local agency contracting to receive services.

The amendments to this section which became effective January 1, 1981, shall not apply to any agreement which was made prior to that date nor to the current term of any self-renewing or renewable agreement which had been entered into prior to that date.

(Added by Stats.1978, c. 960, p. 2121, § 1. Amended by Stats.1980, c. 398, p. 781, § 1.)

Historical and Statutory Notes

Former § 54983, added by Stats.1957, c. 4736, § 34. See Government Code § 56000 et 1382, p. 2716, § 1, relating to district bound- seq.
aries, was repealed by Stats.1965, c. 2043, p.

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§ 67679

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of the proceeds shall be retained by the board to help finance its responsibilities for the reuse of Fort Ord, unless otherwise agreed upon by the city or county with jurisdiction over the property and the board.

(3) The board shall transfer or lease all real or personal property received pursuant to this section and which is intended for public utility use within a reasonable period of time, consistent with the orderly and economical provision of utility services to the area of Fort Ord, under terms and conditions the board may determine.

(4) Notwithstanding any other paragraph of this subdivision, the board may retain real or personal property received pursuant to this section as long as both of the following occur:

(i) The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.

(ii) The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

(c) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes or other uses.

(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any * * * utility or provider of federally owned distribution systems and related facilities serving Fort Ord.

* * *(e) This title shall not be construed to limit the rights of the California State University or the University of California to acquire, hold, and use real property at Fort Ord, including locating or developing educationally related or research oriented facilities on this property.

(f) Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 2.)

Historical and Statutory Notes

1994 Legislation

The 1994 amendment of this section by c. 1169 (S.B. 1600) explicitly amended the 1994 addition of this section by c. 64 (S.B.899).

§ 67679. Basewide public capital facilities; identification; financing and construction; identification of significant local public capital facilities; construction or improvement; exceptions; assessments; financing districts; development fees

(a)(1) The board shall identify those basewide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeway ramps, air transportation facilities, and freight hauling and handling facilities; sewage and water conveyance and treatment facilities; school, library, and other educational facilities; and recreational facilities, that serve residents or will serve future residents of the base territory and could most efficiently or conveniently be planned, negotiated, financed, * * * constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction or repair, remodeling, or replacement. The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate any of those powers to one or more member agencies. Notwithstanding any other provision of law, no permit or permission of any kind from any city or county shall be required for any project undertaken by the board pursuant to this section.

(2) The board shall identify significant local public capital facilities, as distinguished from the basewide public capital facilities identified in the paragraph (1) which are described in the Fort Ord Reuse Plan. Local public capital facilities shall be the responsibility of the city or county with land use jurisdiction or the redevelopment agency if the facilities are located within an established project area and the board of the redevelopment agency determines that it will assume responsibility.

(3) The board may construct or otherwise get to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located.

Additions or changes indicated by underline; deletions by asterisks * * *

A city or county or a local redevelopment agency may construct or otherwise act to improve a basewide public capital facility only with the consent of the board.

(b) If all or any portion of the Fritzsche Army Air Field is transferred to the City of Marina, the board shall not consider those portions of the air field that continue to be used as an airport to be basewide capital facilities, except with the consent of the legislative body of the city. If all or any portion of the two Army golf courses within the territory of Seaside are transferred to the City of Seaside, the board shall not consider those portions of the golf courses that continue in use as golf courses to be basewide capital facilities, except with the consent of the legislative body of the city.

(c) The board may seek state and federal grants and loans or other assistance to help fund public facilities.

(d) The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance these basewide public facilities in accordance with, and pursuant to, any of the following:

- (1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).
- (2) The Improvement Bond Act of 1916 (Division 10 (commencing with Section 6500) of the Streets and Highways Code).
- (3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).
- (4) The Benefit Assessment Act of 1982 (Chapter 5.4 (commencing with Section 54703)).
- (5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).
- (6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).
- (7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).
- (8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).
- (9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).
- (10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).
- (11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.
- (12) The Habitat Maintenance Funding Act (Chapter 11 (commencing with Section 2900) of Division 3 of the Fish and Game Code).

Notwithstanding any other provision of law, the board may create any of these financing districts within the area of Fort Ord to finance basewide public facilities without the consent of any city or county. In addition, until January 1, 2000, the board may, but is not obligated to create, within the area of Fort Ord, any of these financing districts which authorize financing for public services and may levy authorized assessments or special taxes in order to pass through funding for these services to the local agencies. Notwithstanding any other provision of law, no city or county with jurisdiction over any area of the base, whether now or in the future, shall create any land-based financing district or levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board, except that the city or county may create these financing districts for the purposes and subject to any financing limitations that may be specified in the capital improvement program prepared pursuant to Section 67675.

(e) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of Fort Ord until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

(Added by Stats.1994, c. 64 (S.B.899), § 1, eff. May 9, 1994. Amended by Stats.1994, c. 1169 (S.B.1600), § 3.)

Additions or changes indicated by underline; deletions by asterisks * * *

EXHIBIT "E"

CALIFORNIA PUBLIC UTILITIES CODE
SELECTED SECTIONS

§ 10101. Powers of municipality

There is granted to every municipal corporation of the State the right to construct, operate, and maintain water and gas pipes, mains and conduits, electric light and power lines, telephone and telegraph lines, sewers and sewer mains, all with the necessary appurtenances, across, along, in, under, over, or upon any road, street, alley, avenue or highway, and across, under, or over any railway, canal, ditch, or flume which the route of such works intersects, crosses, or runs along, in such manner as to afford security for life and property.

§ 10102. Restoration

A municipal corporation exercising its rights under this article shall restore the road, street, alley, avenue, highway, canal, ditch, or flume so used to its former state of usefulness as nearly as may be, and shall locate its use so as to interfere as little as possible, with other existing uses of a road, street, alley, avenue, highway, canal, ditch, or flume.

§ 10103. Agreement of other municipality

Before any municipal corporation uses any street, alley, avenue, or highway within any other municipal corporation, it shall request the municipal corporation in which the street, alley, avenue, or highway is situated to agree with it upon the location of the use and the terms and conditions to which the use shall be subject.

§ 10104. Action to establish terms and conditions of use

If the two municipal corporations are unable to agree on the terms and conditions and location of a use within three months after a proposal to do so, the municipal corporation proposing to use a street, alley, avenue, or highway may bring an action in the superior court of the county in which the street, alley, avenue, or highway is situated against the other municipal corporation to have the terms and conditions and location determined. The superior court may determine and adjudicate the terms and conditions to which the use of the street, avenue, alley, or highway shall be subject, and the location thereof, and upon the making of the final judgment the municipal corporation desiring to do so may enter and use

the street, alley, avenue, or highway upon the terms and conditions and at the location specified in the judgment.

§ 10105. Unincorporated territory

A grant of authority from or agreement with another municipality is not necessary in any case where the street, alley, avenue, or highway, or portion thereof, proposed to be used is a necessary or convenient part of the route of the proposed works and at the time construction was commenced or the plans adopted was located in unincorporated territory. This section is not applicable if the street, alley, avenue, or highway, or portion thereof, was located in incorporated territory prior to May 5, 1933.

EXHIBIT 5

000071

WATER DEMAND COMMITTEE

DISCUSSION ITEMS

2. DISCUSS PROPOSALS – WATER FOR AFFORDABLE/WORKFORCE HOUSING

Meeting Date: October 31, 2019 Budgeted: N/A

From: David J. Stoldt Program/
General Manager Line Item No.: N/A

Prepared By: David J. Stoldt Cost Estimate: N/A

General Counsel Approval: N/A

Committee Recommendation:

CEQA Compliance: Action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378.

SUMMARY: At its August 2019 meeting, the Board discussed actions it might take to make available water to the jurisdictions for their housing needs during the remaining years the Cease and Desist Order remains in effect, presently estimated at two to three years. Staff was instructed to bring detailed proposals to the Water Demand Committee and then to bring that Committee's recommendations to the Technical Advisory Committee (TAC).

The concepts presented at that meeting included the following:

- Create new Allocation from accumulated conservation savings (e.g. District Ordinance 87 for CHOMP in 1997)
- Reclaim recently expired Water Use Credits
- Seek voluntary forfeiture of existing Water Use Credits
- Ease transfers between Non-Residential and Residential Water Use Credit holders
- Consider allowing financial incentives for Water Use Credit transfers
- Develop a conservation offset program
- Allow Entitlements to be designated for a general place of use, freeing up potable supply elsewhere

As a result of Ordinance 168, the District currently has nine acre-feet (AF) in the District Reserve that could be allocated at the discretion of the District Board. The concepts above would result in additional water to the District Reserve, primarily targeted to housing. Before discussing the concepts in greater detail, there are a few key policy questions that should be answered:

1. How much water is needed in the next two to three year window for housing?
2. The District should not make land use decisions, so how do we allocate water to Jurisdictions for a stated purpose, without restricting a Jurisdiction's right to make its own decisions?
3. How do we address the "bang-for-the-buck" issue of water for 100% Affordable

Housing, versus market-rate housing with a 20% or 25% affordable set-aside, versus moderate income housing, versus need for simply more housing in general?

4. If the District adopts rules to facilitate housing, the same rules may also facilitate additional Non-Residential development in some instances (as discussed in the descriptions below) – is that a desired outcome?

5. What, if any, might be the response of the State Water Resources Control Board as it relates to Condition 2 of the CDO?

The Committee should discuss these key questions.

RECOMMENDATION: Provide direction to staff on which proposals to pursue further and to convene a TAC meeting to discuss proposals and secure estimates of need.

DISCUSSION: Below, each proposal is discussed in greater detail and background provided.

1) Create new Allocation from accumulated conservation savings: Through District programs and Cal-Am rate structures the community has achieved approximately 3,000 AF of annual reductions in water demand since the CDO was enacted in 2009. The Board has the option to simply recognize these savings, in part, as a Public Water Credit allocable to the Jurisdictions for their use. There is precedent for this approach in District Ordinance 87 in 1997 (attached as **Exhibit 2-A**).

In this proposal, the District would convene the TAC, request statements of interest regarding the Jurisdictions' perceived water Allocation needs for the next 2 to 3 years, and an indication of how they may choose to use the water, if and when developed by the District. The District would develop findings that there is urgent need for the Allocation, the conservation savings are significant, the proposed Allocation is a minimal portion of the savings, that reallocation of the savings will not significantly deplete water resources or exceed legal limits on water production, and develop CEQA findings that support the determination.

2) Reclaim recently expired water credits: Water Use Credits documented for property owners who have made retrofits or other forms of permanent abandonment of Cal-Am water usage inure to the property, yet expire in 10 years. The District could slightly modify its Rules and Regulations to state that upon expiration the District may place the credits in the District Reserve for reallocation to the Jurisdictions within one to two years. To assist with the CEQA analysis, the District could consider permanent retirement of 15% of the credits to benefit environmental flows on the Carmel River. As an example, at the end of 2019, 13.47 AF of credit will expire from 146 different properties. In 2020, it is only 4.132 AF over 62 properties. This approach, in effect, says a homeowner or business owner did not utilize its right to use a credit for previously utilized water, so the District will do so.

3) Seek voluntary forfeiture of existing Water Use Credits: There are 5,092 documented Water Use Credits comprising 224.4 AF outstanding within the District that expire between 2020 and 2029. The average credit is just under 0.045 AF. Most will go unused. This concept envisions a mass mailing to credit holders with a request that they waive or forego their rights to the credit. The positively responding credits would be added to the District Reserve for reallocation.

4) *Ease transfers between Non-Residential and Residential Water Use Credit holders:* Presently District Rule 28 is relatively restrictive regarding transferring a Water Use Credit. The current rule allows:

- A transfer from one property to another for Commercial and Industrial users between each other, but not from Non-Residential users to Residential or vice versa.
- Non-Residential Water Use Credits may be transferred back into a Jurisdictional allocation (However, there was litigation that has slowed this process, see below.)
- Residential credits cannot be transferred.
- Each land use Jurisdiction shall act as the lead agency under CEQA for such transfers.
- Transfers may only occur within a single Jurisdiction.
- Transfers must have the approval of the local Jurisdiction.
- The District shall not approve any transfer where money or other valuable consideration has been given (and violation is a misdemeanor).

The District was sued twice in 2006 on Water Use Credit transfers in Seaside and Monterey (2.166 AF and 0.789 AF, respectively), and those amounts were even reduced by 15% for a set-aside for environmental flows on the Carmel River, as a mitigation. The District initially prevailed in Superior Court, but lost on appeal. Basically, the Court of Appeals found that the California Environmental Quality Act (CEQA) findings must show that the cumulative impact of the transfer and future other transfers must not affect the environment. As a result, the District put the onus of CEQA review on the local jurisdictions.

The proposal would eliminate most of the restrictions cited above, allowing more free exchange. At this time, we may not be ready to allow a price-based transfer to happen, but it should be discussed. The District would need to modify its Rules & Regulations to take back responsibility for the CEQA findings and study the cumulative impacts, perhaps finding the likelihood of 5,092 Water Use Credit holders (at 0.045 AF per individual average credit, see above) joining together is minimal and the likely cumulative impacts have been mitigated. The District would also need to make a decision as to whether it would allow Residential and Non-Residential property-to-property transactions, property-to-Jurisdiction transactions, or instead should have all Water Use Credit transfers return back to the District Reserve.

Of note is that this approach could also facilitate commercial development through the use of transfers.

5) *Consider allowing financial incentives for Water Use Credit transfers:* See above. It is not staff's recommendation to pursue this proposal at this time. However, the District's Entitlement ordinances have created local markets for access to water at \$240,000 to \$250,000 per AF, hence it not a stretch to consider allowing arm's-length negotiated sale transactions of Water Use Credits.

6) *Develop a conservation offset program:* In 2018, the Water Demand Committee directed staff

to begin to determine basic provisions of a water conservation offset program. An offset program would allow a developer of a proposed project in a Jurisdiction where an Allocation of water is unavailable to invest in conservation savings elsewhere and use the credit created to "offset" the required water for the proposed development. At the meeting, the Committee stated its preference for a program where actual savings will occur, rather than paying into a mitigation bank to help pay for programs by the District to occur sometime in the future.

Several communities have water conservation offset policies. In fact, the District has envisioned such a program in its Rule 24. Section E of Rule 24 covers "Special Circumstances" and subsection 6.k. states what is expected of a developer if a project fails to stay under its calculated Water Use Capacity limit: "*Water use will be reviewed annually after occupancy. If actual water use exceeds the preliminary Water Use Capacity estimate during any annual review, the District will debit the Jurisdiction's Allocation for the difference. At the end of the monitoring period, if the average annual water use exceeds the preliminary Water Use Capacity estimate, the District will determine whether the Jurisdiction shall transfer some of its Allocation to the Project, or whether the Applicant shall pay the cost of District-approved water conservation projects within the District or on the Project Site to establish Water Use Credits to offset the increased increment of water needed by the Project.*" (emphasis added) To date, the District has not formalized a process for how it would approve such projects.

It is not staff's recommendation to pursue this proposal at this time.

7) *Allow Entitlements to be designated for a general place of use, freeing up Potable supply elsewhere:* Presently, all District approved Entitlement programs allow locally created water supplies to offset and "free-up" Cal-Am water to be used on new development. Examples include the Pebble Beach Reclamation Project, Sand City desalination, and the Pacific Grove Local Water Project, among others. This proposal would be to allow the District to separate the water entitlement from a particular Parcel within the Entitlement's place of use and allow the District to simply designate that the purchased Entitlement is being used to meet general customer demand within the designated place of use, with no Parcel designation. The District would also declare a like amount of water is therefore "freed-up" within the Cal-Am system and could be made available to a Jurisdiction.

This approach would likely require a developer to become a buyer of an Entitlement, which may not be economically viable for Affordable Housing, but could foster market rate housing proposals and/or downtown revitalization projects.

EXHIBITS:

Exhibit 2-A: Ordinance No. 87 (1997)


EXHIBIT 6
[provided in separate file]



Marina Coast Water District

Deep Aquifer Investigative Study



 **WRIME** Water Resources & Information
Management Engineering, Inc.

May 2003



WRIME Water Resources & Information
Management Engineering, Inc.

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May 15, 2003

Marina Coast Water District
11 Reservation Road
Marina, CA 93933

Attn: Mr. Dave Meza

Subject: Deep Aquifer Investigative Study

Dear Mr. Meza:

WRIME, Inc. is pleased to submit the final report on "Deep Aquifer Investigative Study" to the Marina Coast Water District (MCWD).

WRIME, Inc. appreciates having this opportunity to work with the MCWD staff, the Technical Advisory Committee members and the DWR, to evaluate the feasibility of the Deep Aquifer as a short-term and long-term source of water supply to the MCWD.

Should you have any questions, please do not hesitate to contact us about this report.

Sincerely,

*Water Resources &
Information Management Engineering, Inc.*

Ali Taghavi, Ph.D., P.E.
Vice President

DISCLAIMER

This report was prepared for the Marina Coast Water District under a grant from the California Department of Water Resources. The in-progress findings were shared on two occasions with a Technical Advisory Committee (TAC) consisting of agency personnel (MPWMD, USGS, PVWMA, MCWRA, Santa Cruz County Public Works, DWR) and selected consultants. At the TAC meetings, input was solicited and the subsequent suggestions were incorporated, as appropriate, into the project. Scheduling of TAC meetings was difficult and consequently some TAC members had less-than-adequate time to fully review and evaluate the work performed. As such, the findings of this report are not necessarily endorsed by all members of the TAC. The findings provide new insights into the water resources of the area, insights that are in some ways contradictory with previous beliefs. The findings are considered preliminary and subject to further refinement, and are in no sense final.

Deep Aquifer Investigative Study

May 2003

Prepared For:

Marina Coast Water District

List of Preparers:

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SECTION 1

INTRODUCTION

The Marina Coast Water District (MCWD) in cooperation with the California Department of Water Resources (DWR) initiated an investigative study of the Salinas groundwater basin deep aquifer system.

The potable groundwater supplies in the coastal areas of Salinas Valley Groundwater Basin have been contaminated by intrusion of seawater from the Monterey Bay. The seawater has extended to approximately 8 miles inland in the upper (180-foot) aquifer, and to approximately 2 miles inland in the middle (400-foot) aquifer. Although there are no direct indications of seawater intrusion in the deep aquifer, there are concerns that continued and increased groundwater pumping may cause intrusion of seawater there as well.

Because MCWD relies on the deep aquifer for approximately 85 percent of its water supply, a long-term water management plan is of paramount importance to the District. As such, the District and DWR initiated investigating the reliability of the deep aquifer as a long-term water supply source.

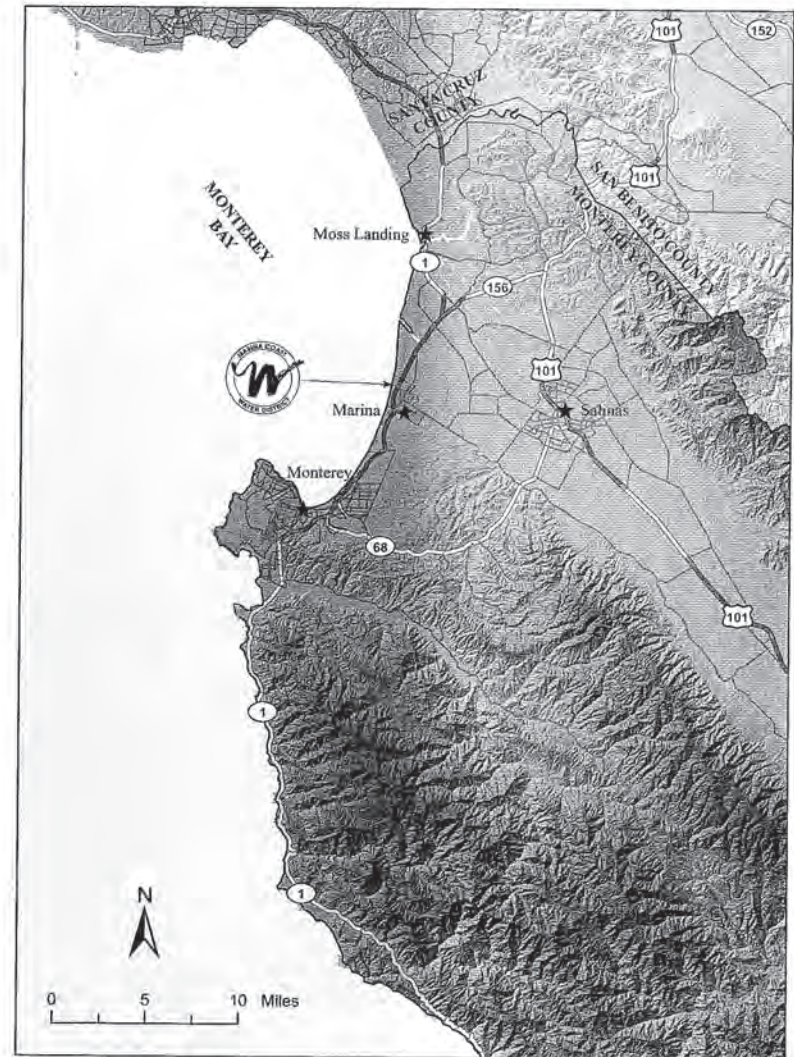
STUDY AREA

The study area is centered on the MCWD service area (Figure 1.1). Because of MCWD's geographical location relative to the advancing seawater in the 180- and 400-foot aquifers, the District was one of the first groundwater users forced to use the deep aquifers. Some agricultural users in the Castroville area also were forced to drill into the deeper sediments to provide water for agricultural purposes. The construction and operation of the Castroville Seawater Intrusion Project (CSIP) in 1998 allowed these agricultural users to abandon the use of their deep wells. As such, MCWD remains today the only significant user of the deep aquifer.

The study area is also defined by the availability of data. Relevant water well data are only available in those areas where deeper wells have been constructed and operated. Understandably, deeper wells have only been drilled in the intruded areas. Therefore, the available data are limited to this area. For this reason, the primary study area becomes those areas with, or threatened by, seawater intrusion in both the 180- and 400-foot aquifers.

DEEP AQUIFER DEFINITION

The term "deep aquifer" or "deep zone" has been part of the groundwater lexicon of the Salinas Valley for more than 25 years. Other alternative terms have included the "900-foot" and "1500-



Base: USGS 30-meter National Elevation Dataset (2001)

Figure 1.1 Vicinity map showing Marina Coast Water District

foot” aquifers. However, these terms are defined vaguely and the “deep aquifer” is not necessarily located at these arbitrary depths. The use of the deep aquifer has been driven by the need to drill deeper to avoid seawater intrusion. Initially, wells were drilled to the next deeper elevation that had fresh-water-bearing materials. Subsequently, wells were drilled to greater depths further extending the bottom of the deep aquifer. As such, the term “deep aquifer” became defined primarily by depth of well. Little effort was expended to understand the geologic nature and origin of the sediments that make up the deep aquifer.

Accordingly, the current use of the term “deep aquifer” essentially aggregates all sediments below the 400-foot aquifer without respect to geology. This report attempts to provide geologic assignments for the sediments encountered in these deeper wells such that a hydrogeologic framework can be developed to assist the understanding of these aquifer systems.

Throughout this document, the term “deep aquifers” will be utilized in place of “deep aquifer” because available data strongly suggest a multiple-aquifer system.

STUDY OBJECTIVES

There have been many geologic and hydrogeologic data in the Coastal areas of Monterey Bay that have not been evaluated in the past. In addition, the basin-wide hydrologic model, the Salinas Valley Integrated Ground and Surface water Model (SVIGSM), has been used for analysis of impacts in many studies, including the Salinas Valley Water Project. However, SVIGSM does not include all the latest geologic and hydrogeologic data representing the deep aquifer system.

The objectives of this study, as laid out in the MCWD’s request for proposals, are as follows:

- Identify all users and their use rates of the Salinas Basin deep aquifer.
- More fully characterize the deep aquifer.
- Identify the safe yield of the deep aquifer including more accurate characterization of recharge rates, transmissivity, and connectivity to the middle and upper aquifers.
- Update the Salinas Valley Integrated Ground and Surface Water Model (SVIGSM) to be able to address yield and seawater intrusion questions related to aquifer use.
- Develop a deep aquifer groundwater management component to the Salinas Valley Water Plan through a consensus building, stakeholder process.

To achieve such goals, the following scope of work was developed:

Task 1 - Establish project management methods;

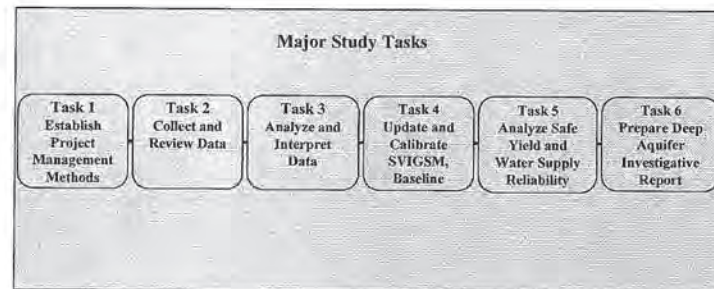
Task 2 - Collect and review data about the Deep Aquifer;

Task 3 - Analyze and interpret data about the Deep Aquifer;

Task 4 - Update the SVIGSM;

Task 5 - Estimate safe yield and analyze water supply reliability; and

Task 6 - Prepare Report and Presentation of Findings.



REPORT ORGANIZATION

This report provides documentation of the work performed and the findings of the study. The report is organized into the following sections:

Section 1: Introduction - Describes the purpose, project background, study area, scope of project, and organization of this report.

Section 2: Data Analysis and Synthesis - Describes the data collected, analysis of the time series data and its incorporation in the model, and estimation of missing data.

Section 3: SVIGSM Update - Describes the background of the model, impacts of updating the code and of updating the model database, and the efforts to mitigate those impacts.

Section 4: Water Supply Reliability and Safe Yield Analysis - Describes the definition of safe yield, the criteria developed and used to analyze safe yield, and impacts of several potential groundwater supply alternatives.

Section 5: Summary of Findings - Presents summary of study findings.

SECTION 2

DATA ANALYSIS AND SYNTHESIS

This section tabulates and analyzes the available hydrogeologic data from the coastal portion of the deep aquifers system of Monterey County. The deep aquifer designation derives from the history of water resource development in Monterey County. Advancing seawater intrusion, first in the 180-foot aquifer, then in the 400-foot aquifer, forced groundwater users to progressively drill deeper to find fresh water. The first deep aquifer water well was drilled in 1976; approximately nine more water wells have since been drilled into this aquifer system in the coastal area.

This section attempts to integrate all available data on the aquifer systems underlying the 180- and 400-foot aquifers of the Salinas Valley to develop an improved understanding of the groundwater resource. This refined understanding is then used to update the representation of the deep aquifer the SVIGSM. Several local-scale investigations into the hydrogeology of the deep aquifers have been performed over the last 20 years and provided useful insight into the understanding of the deep aquifers. However, this evaluation represents the first attempt to bring together all the data that have been developed since the preparation of the Deep Aquifer Report prepared in 1976 by Richard Thorup (unpublished draft report).

The available data set for the deep aquifers is scanty. These data are presented in this report with preliminary conclusions. Conclusions should be considered provisional and are subject to revision when more data become available. Much of the available data raises questions that cannot be adequately answered, or even speculated upon, within the existing framework of understanding. The data, corresponding interpretation, and conceptual understanding have been incorporated into the SVIGSM so that additional insight can be gained by evaluating the results of modeling analyses.

PREVIOUS REPORTS

The hydrogeology of the northern Salinas Valley has been the subject of many studies, such as the landmark 1946 Salinas Basin Investigation (DWR, 1946), and, more recently, the 1994 Salinas River Basin Water Resources Management Plan (Montgomery Watson, 1994). However, these studies focused on the shallow aquifers, commonly referred to as the 180-foot and the 400-foot aquifers, and not on the deep aquifers. Only several studies specifically focus on the deep aquifers and provide significant insight into its hydrogeology. The most significant are summarized below:

Thorup (1976, 1983)—In 1976, Richard Thorup issued a draft report discussing the results of a 1,718-foot-deep test well (Fontes well) for the proposed Castroville Irrigation Project (CIP). This well is significant because it was the first water well to test the deep aquifers. Based on his analysis of the test well and other oil and water wells, Thorup estimated that the “900-foot aquifer” extended from the mouth of the Salinas River southward to Greenfield and contained nearly 11 million acre-feet of fresh water. Thorup concluded that the Fontes well would not produce enough water for the CIP and recommended an alternate location at the Marihart Ranch, south of Spreckels. Thorup updated this report in 1983 to include the information from three additional wells subsequently perforated into what he considered the deep aquifer—the Monterey County Mulligan Hill well (14S/02E-06L01), Leonardini #3 (13S/02E-19Q03), and Monterey Dunes #1 (13S/01E-36J01). Accompanying the 1983 report were a series of geologic maps and cross sections that depicted the extent and geometry of the deep aquifers. Based on more refined data, Thorup calculated that the deep aquifers contained approximately 4.6 million acre-feet of usable groundwater and estimated a recharge rate of 65,500 acre-feet per year.

Grasty (1988)—As part of his M.S. thesis research, James Grasty performed and interpreted gravity and magnetic surveys across the Armstrong Ranch in the city of Marina. Grasty observed a northwest-trending gravity low and magnetic anomaly, which he interpreted as a shear zone related to the “King City fault” (Reliz fault). More germane to the present study of the deep aquifers is his hypothesis of “the presence of an anomalous area (bedrock depression) where a thick sequence of Quaternary sediment accumulated” between the Marina No. 10 and 11 wells (Grasty, 1988, p. 24–25). This is the first depiction of the “Marina trough.”

Geoconsultants (1999)—At the American Association of Petroleum Geologists, Pacific Section, meeting in the city of Monterey, Jeremy Wire and his associates presented a paper showing a feature called the Marina trough, which is located between the Mulligan Hill well and the Reliz fault. Geoconsultants postulated the existence of the Marina trough based on the presence of an extremely thick section of sediments, which were identified as Pleistocene age, based on microfossil analysis by Dr. James Ingle of Stanford University.

Hanson and others (2002)—As part of a U.S. Geological Survey (USGS) research project, a 2,000-foot-deep monitoring well cluster was drilled in Marina. This report provides valuable information on stratigraphy, water levels, and water chemistry of the deep aquifers, in addition to the well construction. Of particular interest is the documentation of Pliocene-aged sediments from the depths of 950 to 2000 feet.

Montgomery Watson (1993) – This report presented, in draft form, the first version of the SVIGSM. The model was developed as a hydrologic model that integrates the groundwater and surface water flow systems, along with a water quality model. The model also simulates the

operation of the Nacimineto and San Antonio reservoirs, regulating the flows to the Salinas River system. This report focuses on the development and calibration of the groundwater flow and quality models.

Montgomery Watson (1997) – This report presents the update of SVIGSM calibration. The model underwent substantial review and analysis as part of this effort.

Montgomery Watson (1998) – This report presents the update and applications of the SVIGSM. The SVIGSM was used to evaluate the historical hydrologic benefits of operation of Nacimineto and San Antonio reservoirs on the groundwater basin, as well as the Salinas River flows. The report also presents the analysis of flood control and economic benefits of historical operation of the reservoirs.

GROUNDWATER LEVEL DATA

Water level data are available for wells in the deep aquifers in the Castroville area from the Monterey County Water Resources Agency (MCWRA). Intermittent water level data are also available from MCWD for their three production wells. Continuous water level data since June 2001 are available for the USGS Monitoring well cluster.

MARINA COAST WATER DISTRICT WELLS

A static water level history of MCWD wells can be assembled from various sources. MCWD has collected static water level data from these wells on an irregular schedule, creating several long data gaps. Other sources include data collected at the time of well construction and spot measurements collected by contractors as part of pump servicing. The most apparent data gap is the period from early 1998 until early 2002 for which no static water level data are available. Since beginning this investigation, static water level data have been collected on an almost continuous basis. The available water level data are presented on Figures 2.1 to 2.4b.

Although the record in Figure 2.1 is incomplete, the static water level history of all the wells shows a general pattern. Water levels at the time of well completion are close to sea level. During the first several years of operation, static water levels fall relatively rapidly. Then static water levels appear to level off and maintain a narrow range of fluctuation. All three of MCWD’s wells have maintained water levels significantly below sea level since initiation of extractions. Well Nos. 10 and 11 display water levels averaging 40 feet below mean sea level. Well No. 12 displays average water surface elevation of approximately 15 feet below msl. Of interest are the strong vertical gradients maintained between these wells and the increasing head with increasing well depths.

Figure 2.1
Marina Coast Water District Deep Aquifer Wells Water Level Data

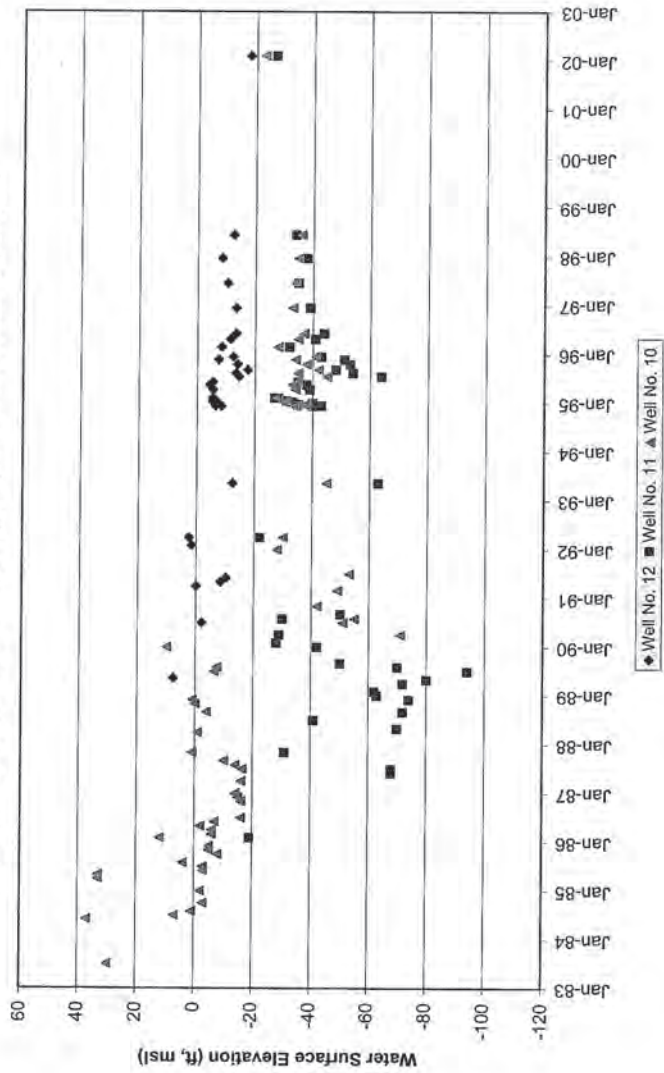


Figure Fig2.1-WL

Figure 2.2a MCWD Annual Production from Well 10

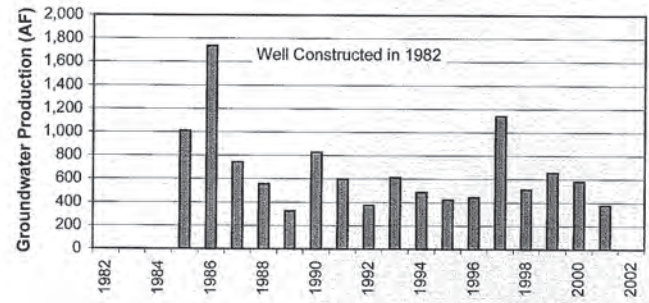


Figure 2.2b MCWD Groundwater Levels for Well 10

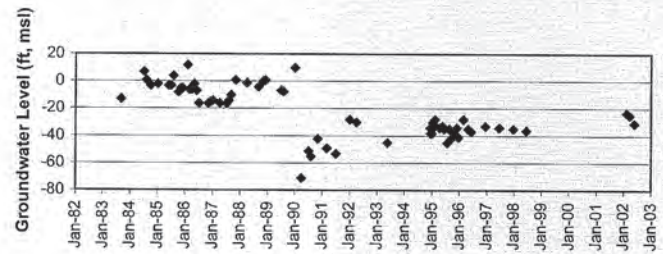


Figure Fig2.2a-b-WLvQyr #10

Figure 2.3a MCWD Annual Groundwater Production from Well 11

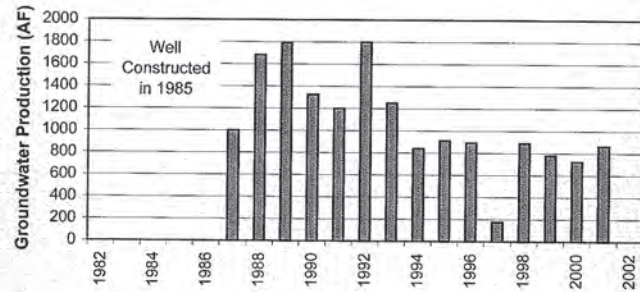


Figure 2.3b MCWD Groundwater Levels from Well 11

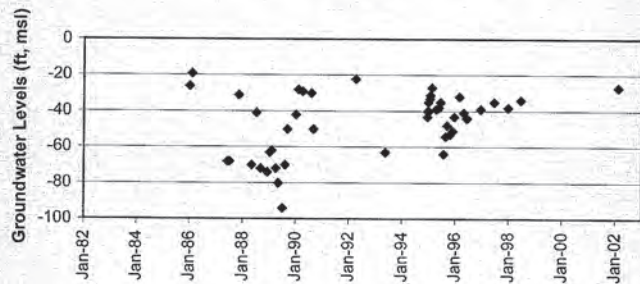


Figure 2.4a MCWD Groundwater Production from Well 12

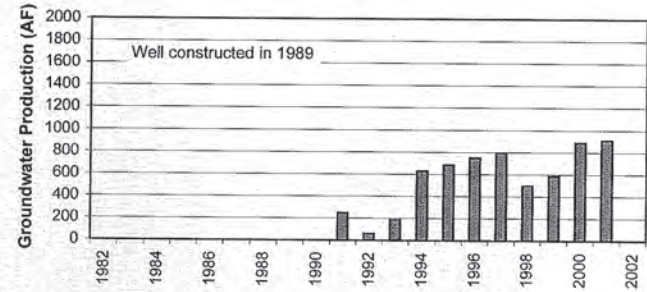
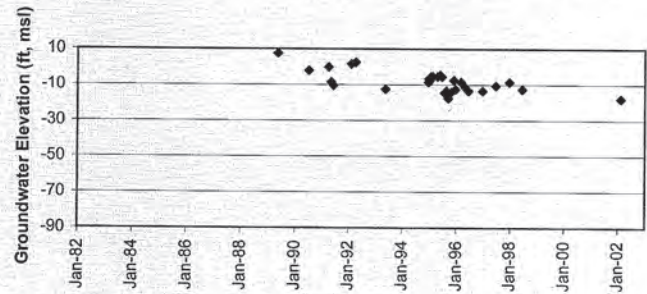


Figure 2.4b MCWD Groundwater Levels from Well 12



Figures 2.2a through 2.4b present annual production and static water level history for each of MCWD's wells. Water level data are generally too sparse to discern a strong linkage between extractions at Well Nos. 10 and 11. The record for Well No. 12 is clearer and shows a general decline in water level with increasing extractions. Taken together, the records from all the wells allow an understanding of how the overall operation of the well field impacts water levels at each well site. The water level record from Well No. 10 shows a large shift in average water level in 1989 (approximately). This is the period when production from Well No. 11 was coming on-line. As is discussed below, Well Nos. 10 and 11 display significant mutual interference effects. Beginning in 1987, water level records in Well Nos. 10 and 11 reflect the aggregate pumping from these wells. As discussed below, the hydraulic linkage between Well Nos. 10 and 11 and Well No. 12 is poor.

Figures 2.5a and b present monthly production and water levels from MCWD wells during the period from January 1995 to December 1997—the period with the most water level data. Figure 2.6 shows the seasonal fluctuations in water levels in response to demand variations. While the magnitude of the response differs, generally the observed fluctuation in water level is proportional to the variation in monthly production from a given well.

CASTROVILLE AREA WELLS

The MCWRA collects monthly data from five of the wells completed in the Castroville area deep aquifers. Monthly water level data extends back to approximately October 1986. These data are presented in Figure 2.7. The water level records display a strikingly similar response. The annual irrigation cycle is apparent in the records of all the wells, with all the wells displaying approximately 40 feet of annual water level fluctuation. Of interest is that the record from Well No. 13N/2E-32E05, an observation well, is essentially identical to the records of the surrounding production wells, suggesting a highly connected, confined system. The regional response of the aquifer system to the cessation of pumpage in 1998, with the onset of CSIP water deliveries, is also striking. Water levels in all wells recovered to above sea level elevations by 2000, again indicative of a connected, confined aquifer system.

Figure 2.8 presents the water level records from selected Castroville wells with the MCWD wells record. The cessation of pumpage due to CSIP water deliveries has provided for a significant relaxation of the aquifer in the Castroville area; however, the water level record from the MCWD's wells, although sparse, shows no apparent response to this regional relaxation.

Figure 2.5a MCWD Total Groundwater Production

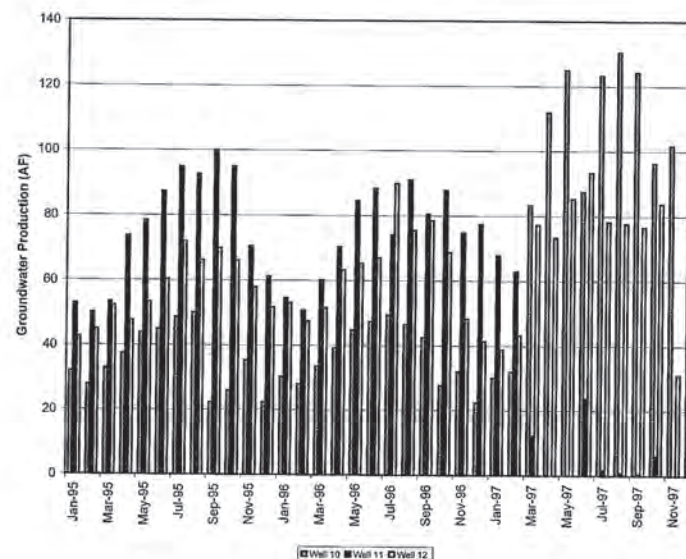
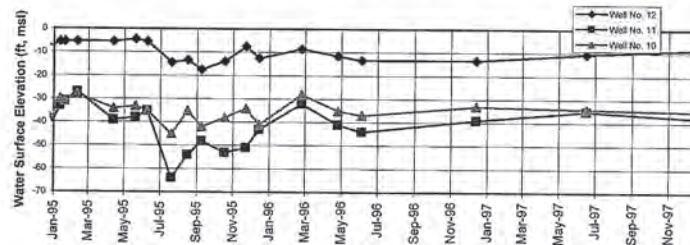


Figure 2.5b MCWD Groundwater Levels



Figures 2.5a-b-W1 vs. Production

Figure 2.6
Water Level History Castroville and Marina Area Deep Zone Wells

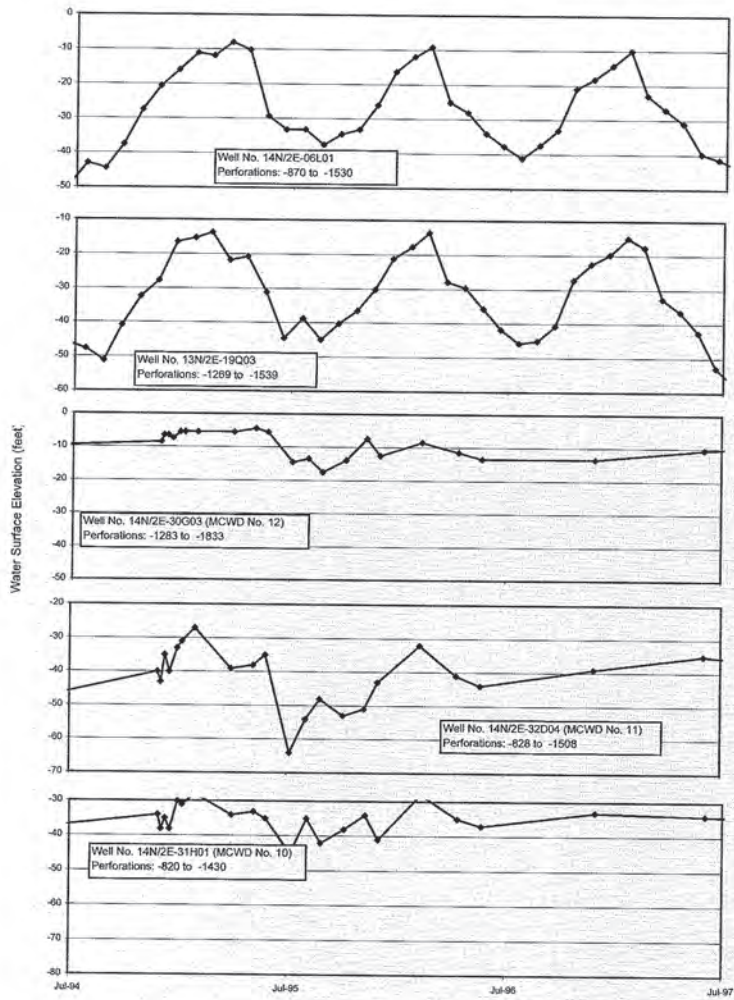


Figure 2.7
Water Level History
Castroville Area Deep Zone Wells

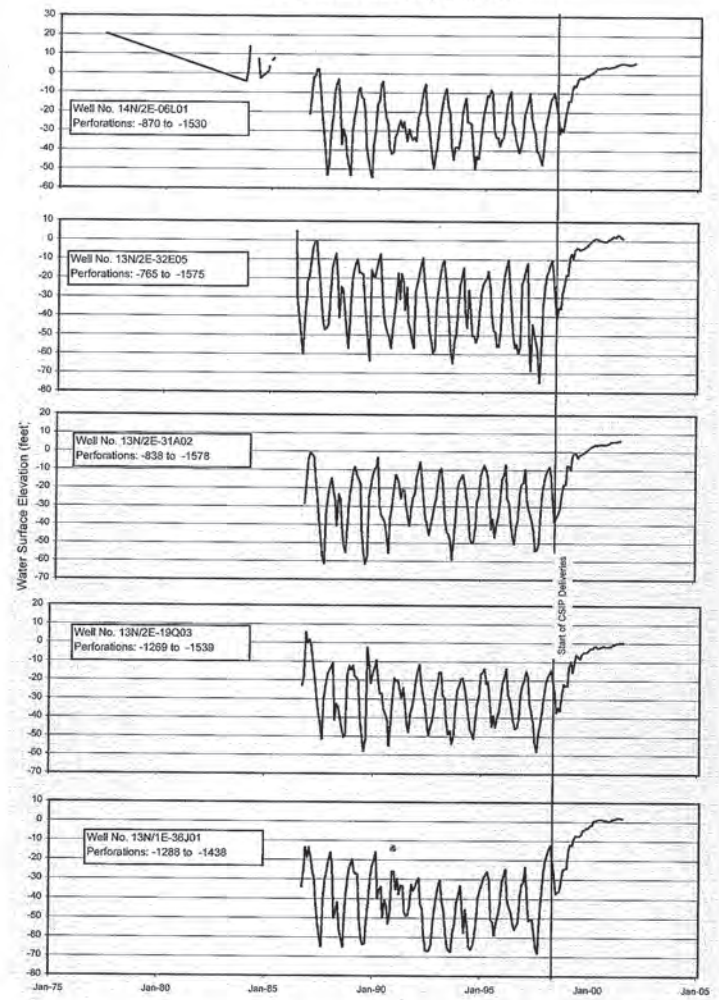
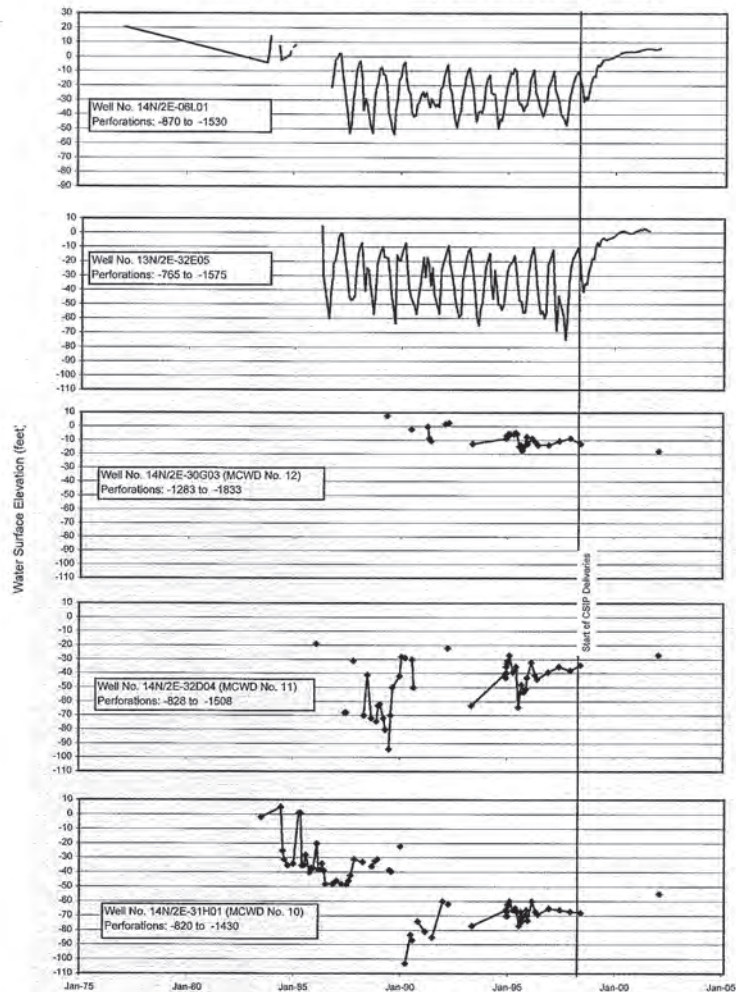


Figure 2.8
Water Level History
Castroville and Marina Area Deep Zone Wells - CSIP Deliveries



Figures/Fig 2.8 Marina-Castro Wells

USGS MONITORING WELL

Working for MCWD and MCWRA, the USGS completed a well designed to monitor groundwater conditions in the deep aquifers. The well is located at MCWD's headquarters and consists of four separate wells completed in the same borehole. The wells were designed to monitor groundwater conditions at specific depths selected based on review of the borehole data and the consideration of construction of proximal wells. The well monitors four discrete zones ranging in thickness from 20 to 40 feet. After completing the monitoring well cluster, MCWRA equipped the monitoring wells with continuous water level recording devices. Water level data has been collected since June 2001. The average water level for each monitoring well, as well as for MCWD's production wells, is summarized in Table 2.1 below.

Table 2.1 Average Groundwater Levels for USGS Monitoring and MCWD Production Wells

Well	Elevation of Perforations (feet)	Average Water Surface Elevation (feet)
DMW-1-1	-1754 to -1804	-2.7
DMW-1-2	-1334 to -1354	2.3
DMW-1-3	-984 to -1004	-17
DMW-1-4	-874 to -894	-16.2
MCWD No. 10	-788 to -1398	-38
MCWD No. 11	-828 to -1508	-40
MCWD No. 12	-1283 to -1833	-12

Drawing conclusions from comparison of the groundwater elevation data in the USGS well with that of the production wells is difficult. The USGS wells are completed in thin, discrete zones while the production wells are completed across multiple zones. For example, the intervals within which DMW-1 and DMW-1-2 are completed are included in a single perforated interval of Well No. 12. The water surface in DMW-1-2 is substantially above that of Well No. 12 while DMW-1-1 is below it. The water level in Well No.12 is likely a composite head of several smaller zones of differing heads from which it produces.

GROUNDWATER PRODUCTION

Ten water wells have been installed in Monterey County to produce from the deep aquifers. MCWD operates three wells: MCWD Well Nos. 10, 11, and 12. Monthly production data from these wells are available from MCWD. The remaining seven wells are agricultural supply wells. Production data from these wells are reported to MCWRA, so are confidential and not available. However, because these wells are now idle due to construction and operation of

CSIP, the data from these wells are less important. Data from MCWD are summarized in Figure 2.8.

Figure 2.9a reveals annual production from the deep aquifers to have been relatively constant since the completion of Well No. 12 in 1990. Total production has averaged approximately 2000 acre-feet/year over this period. Figure 2.9b also shows monthly production for the period. The seasonal distribution of demand is apparent, with winter extractions as low as approximately 100 acre-feet/month (AF/M) and summer extractions exceeding 250 AF/M.

GEOLOGIC AND HYDROGEOLOGIC DATA

Geology: This section describes the geologic characteristics of the deep aquifers based on stratigraphic and structural information.

STRATIGRAPHY

Granitic basement— The oldest unit in the study area consists primarily of granitic rocks, secondarily of metamorphic rocks. These rocks form the Sierra de Salinas and Gabilan Range that border the Salinas Valley. In the subsurface, the granitic rocks underlie the Tertiary and Quaternary sedimentary rocks. Several of the wildcat oil wells drilled along the coast reached the granitic basement.

Lower to Middle Miocene sedimentary rocks— Overlying the granitic basement are a series of marine sedimentary rocks which include an unnamed arkosic sandstone formation and the Monterey Formation. These rocks crop out in the hills near Monterey, Corral de Tierra, and Carmel Valley. Because these formations have been uplifted, folded, and eroded, their total thickness is unknown. However, within the area of Cross Sections A and B, these sedimentary rocks are approximately 1,000 to 2,000 feet thick. One possible exception is the area beneath the Elba Capurro and Bayside Development Vierra wells where a thick section of sandstone indicates a possible buried canyon (Starke and Howard, 1968).

Upper Miocene to Pliocene marine sequence— As described by Clark (1981, p. 24), this sequence consists of a shallow-water transgressive sandstone unit (the Santa Margarita Sandstone), a deeper water, siliceous, organic mudstone unit (the Santa Cruz Mudstone) and a shallow-water unit (the Purisima Formation). In Monterey County, only the Santa Margarita Sandstone is exposed on land, whereas the Santa Cruz Mudstone and the Purisima Formation crop out offshore in Monterey Bay. Interpretation of drill hole data suggests that the thickness of the Purisima Formation ranges from 500 to 1,000 feet in the area of Cross Sections A, B, and

Figure 2.9a MCWD Annual Groundwater Production

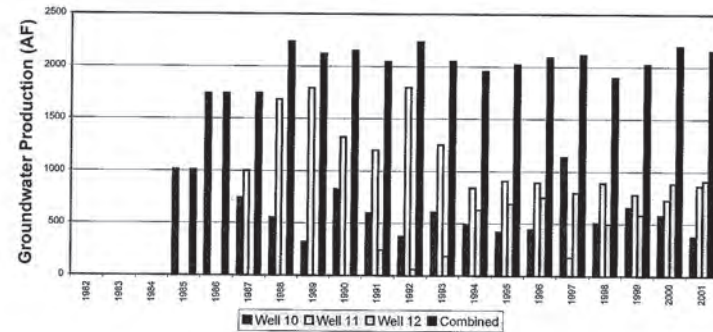
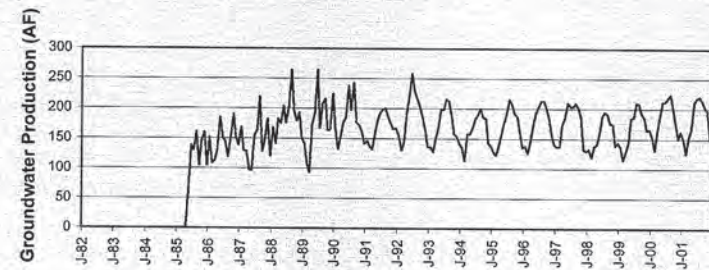


Figure 2.9b MCWD Monthly Groundwater Production



C. In the Gabilan Range and in the subsurface Salinas Valley, the Pliocene age Pancho Rico Formation is present. Although it was deposited in a different basin than the Purisima Formation, the Pancho Rico Formation contains fauna similar to and is lithologically identical to the Purisima Formation (Gribi, 1963). The thickness of the Pancho Rico Formation in the Marihart-Luckey well is about 1,000 feet.

Pliocene and Quaternary nonmarine— This group includes three units — the Pliocene-Pleistocene Paso Robles Formation, the Pleistocene Aromas Sand, and undivided Quaternary surficial deposits. These sediments form most of the outcrops in the lower Salinas Valley and are widespread in the subsurface. Although aquifer recharge occurs through the Quaternary sediments, they do not constitute a major water supply sources. The surficial Quaternary sediments include floodplain deposits, alluvial fans, eolian deposits, fluvial and marine terraces, and basin deposits. The Paso Robles Formation and the Aromas Sand are important water sources for the Salinas Valley and include the 180-foot and the 400-foot aquifers.

STRUCTURE

Faults— The Salinas Valley is a tectonic depression between two structural highs, the Gabilan Range to the northeast and the Santa Lucia Range to the southwest (Dupré, 1991). Uplift of the Gabilan Range is largely due to transpressional forces from the San Andreas fault (Dohrenwend, 1975). One of the principal faults associated with uplift of the Santa Lucia Range is the San Gregorio fault; it is the primary fault west of the San Andreas Fault in central California, and extends northward from Big Sur across Monterey Bay to join the San Andreas Fault north of San Francisco. Some right-slip from the San Gregorio fault has been distributed eastward to intra-Salinian faults, including the Monterey Bay/Navy/Tularcitos fault zone. The Monterey Bay fault zone is a 6- to 9-mile-wide zone of short en echelon northwest-striking faults that are the offshore extension of the northwest-striking faults in the Salinas Valley and Sierra de Salinas (Greene and others, 1973). As shown on Cross Section B-B', the Monterey Bay fault zone offsets Purisima Formation against Monterey Formation, with the southwest side upthrown. Another important strike-slip fault is the Rinconada fault that trends northwestward along the western side of the Salinas Valley. The Rinconada fault extends from Santa Margarita to Arroyo Seco. Near Arroyo Seco, the Rinconada fault dies out, steps east, and continues the Reliz fault. The Reliz fault extends at least as far north as Spreckels and likely joins the offshore Monterey Bay fault.

Gravity— A compilation map of isostatic gravity contours shows a prominent gravity low with a value of about -46 mGal near the western boundary of the former Fort Ord. This low extends as a northwest-southeast direction beneath the USGS DMW-1, Marina No. 11, Marina No. 12, and Fort Ord D wells (Langenheim and others, 2002). We interpret this gravity low as a

concealed sedimentary basin with the deepest part near Marina and the former Fort Ord. This deep basin could partly explain the unusually thick section of Purisima Formation penetrated by the USGS DMW-1 well. The gravity low continues southeastward, forming a trough parallel to the axis of the Salinas Valley.

Monterey Formation subcrop— We contoured the top of the Monterey Formation and the bottom of the Upper Miocene to Pliocene marine sequence, which consists of the Purisima Formation near the coast and the Pancho Rico Formation in the central Salinas Valley. Picks were compiled from several sources. Sources included interpretation of well logs and gravity data in the coastal area (this study), previous work in the Seaside and Laguna Seco area (Rosenberg and Clark, 1994; Yates and others, 2002), and cross sections of the Salinas Valley (Thorup, 1983). The data from these sources were reconciled to develop a map encompassing the region from the coast southeastward to King City. The density of well control is greatest near the coast and decreases farther southeast. Likewise, the accuracy of the picks follows the same pattern.

The resulting structural contours were digitized and saved as ESRI shapefiles. Figure 2.10 shows the structural of the top of the Monterey Formation. To create a three-dimensional surface of the structure, the shapefiles were converted into ESRI grid format. The area between the contours was interpolated with the tension spline method using ArcView 8.2 Spatial Analyst software. The altitude of the structural contours was then joined to existing nodes of the Salinas Valley Integrated Groundwater and Surface Water Model for use in modeling flow in the Deep Zone.

SOURCES OF INFORMATION

As part of modeling the deep aquifers, we developed three geologic cross sections. To construct the cross sections, a variety of sources were used. These include published geologic map compilations by Wagner and others (2002) and Rosenberg (2001), unpublished oil well records (on file at the California Division of Oil and Gas Resources (CDOGR), Santa Maria, California), unpublished scout reports (Gribi, E.A., and Thorup, R.R., unpublished notes), unpublished micro-paleontology reports (Chevron, undated; Ingle, 1989), and unpublished water well records (on file at the MCWRA, the MCWD, and the Monterey Peninsula Water Management District [MPWMD]). Information from these sources was integrated to form a coherent, internally consistent model of the subsurface geology extending from Moss Landing southward to Seaside, and from the offshore Monterey Bay southeastward to near Spreckels.

Figure 2.11 shows a cross section location map. Cross Section A-A' (Figure 2.12a) is parallel to the coast and extends from Seaside northward to the Elkhorn area. Cross Section B-B' (Figure 2.12b) is perpendicular to the coast and extends from approximately 9 miles offshore

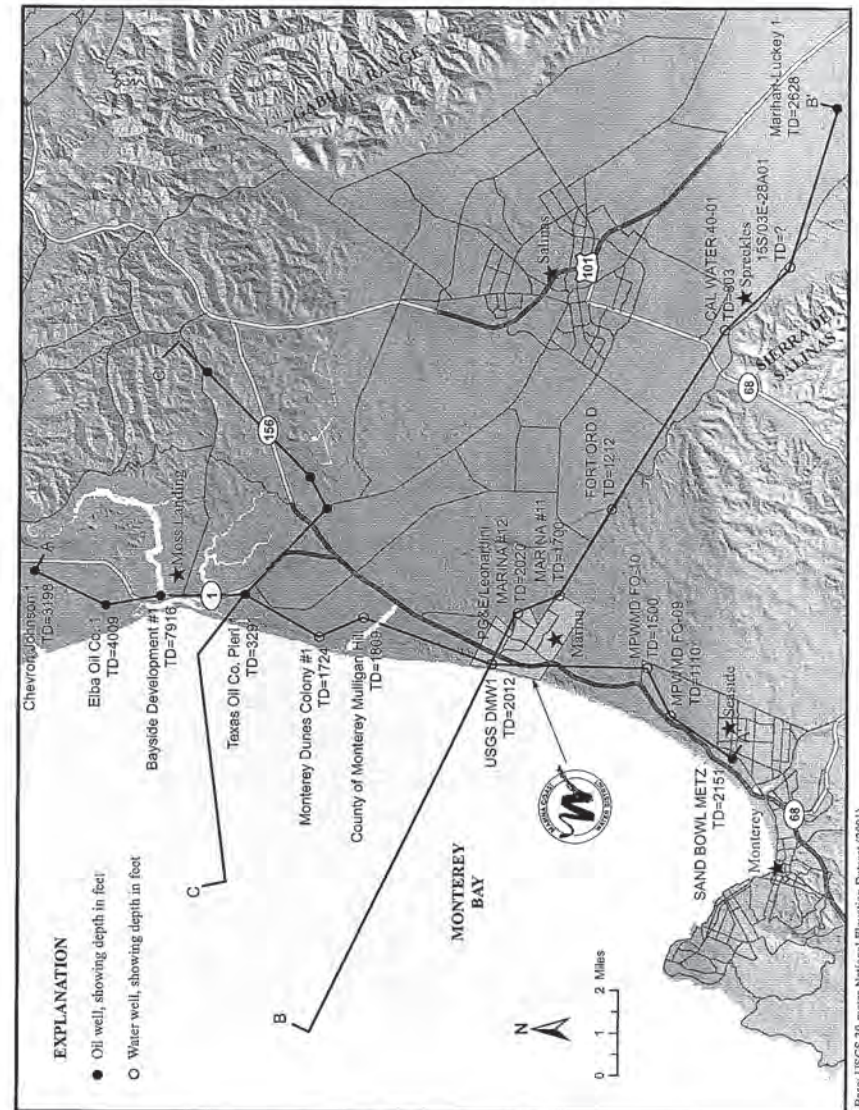
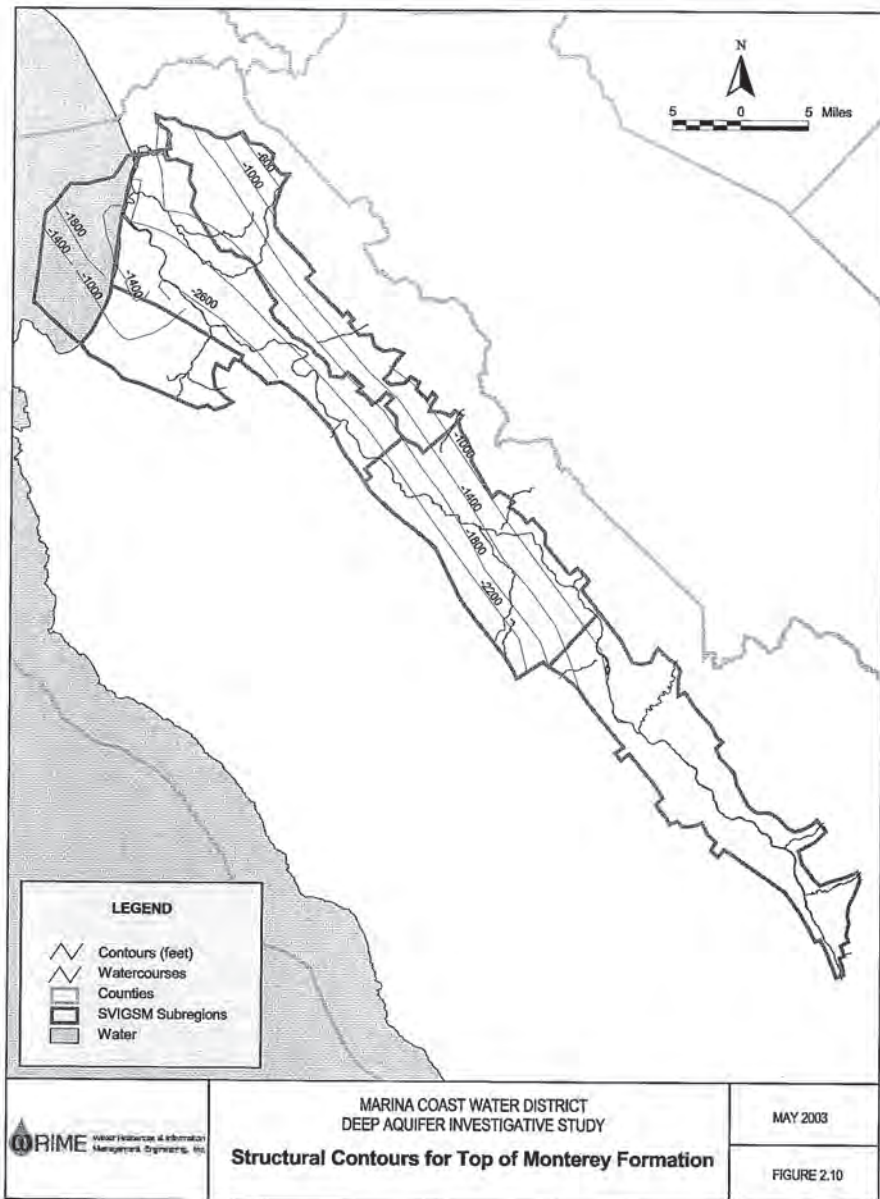
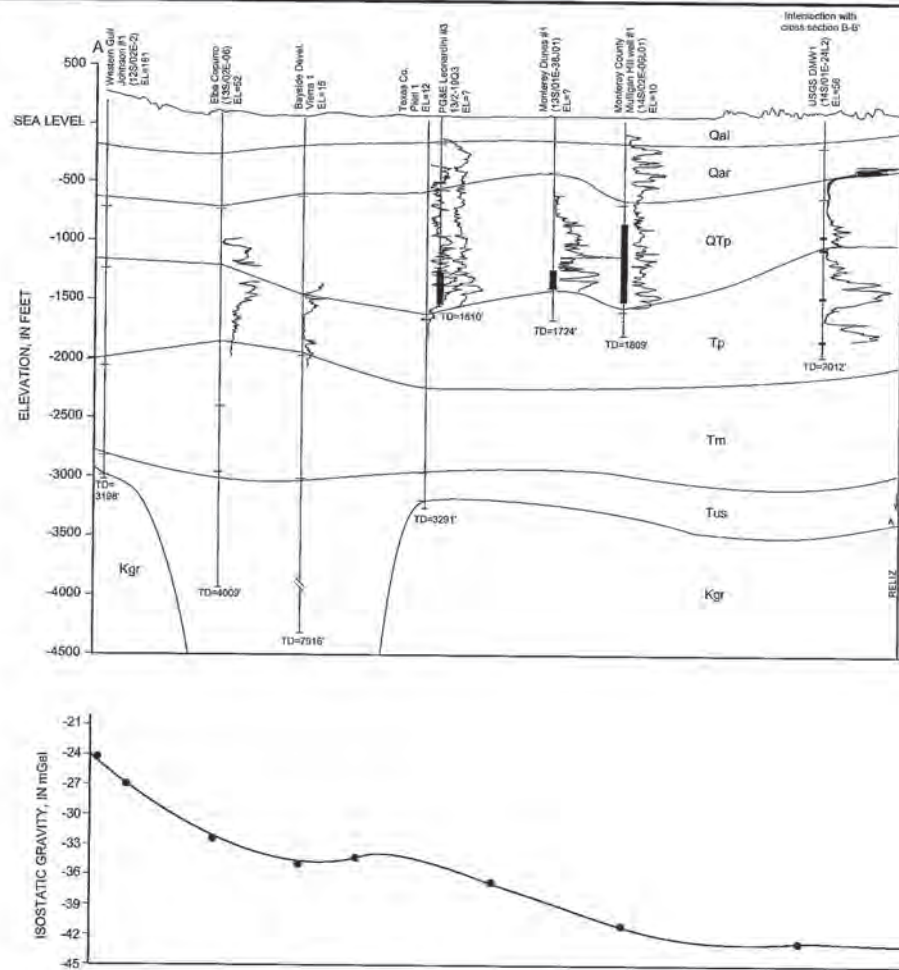


Figure 2.11 Cross Section Location Map



SOURCES OF DATA

Geologic data compiled from published mapping (Hanson and others, 2002; Wagner and others, 2002; Rosenberg, 2001), oil well logs (CDOG files), unpublished scout reports (Gribi, E.A., Thorup, R.R.), unpublished micro-paleontology reports (Chevron, undated; Ingle, J.C., 1989; McDougall, K., 2001), water well logs (MCWRA, MCWD, and MPWMD files).

Gravity data from USGS published mapping (Langenheim and others, 2002).

Topography from USGS National Elevation Dataset (30-m resolution). Bathymetry from Degnan and others, 2001 (30-m resolution).

southeastward to near Spreckels. Cross Section C-C' (Figure 2.12c) is a modified version of a cross section by Geoconsultants (1996), with the area extended approximately 7 miles offshore and 4 miles northeastward to include the Fred Ash No. 2 wildcat oil well. The following descriptions discuss data for key wells used to constrain the cross sections.

Bayside Development Vierra 1— According to CDOGR records, General Petroleum spudded this well in November 1944, drilling it to a depth of 5,739 feet. At that point Bayside Development took over the drilling, deepening the well to 7,818 feet, then abandoned it in February 1945. Lithologic picks are from e-logs, scout notes, Starke and Howard (1968), an unpublished correlation sheet by G.L. Harrington (1945), and unpublished data from the California Division of Mines and Geology (written communication to J.C. Clark, dated December 1967). The well never reached basement to its drilled depth.

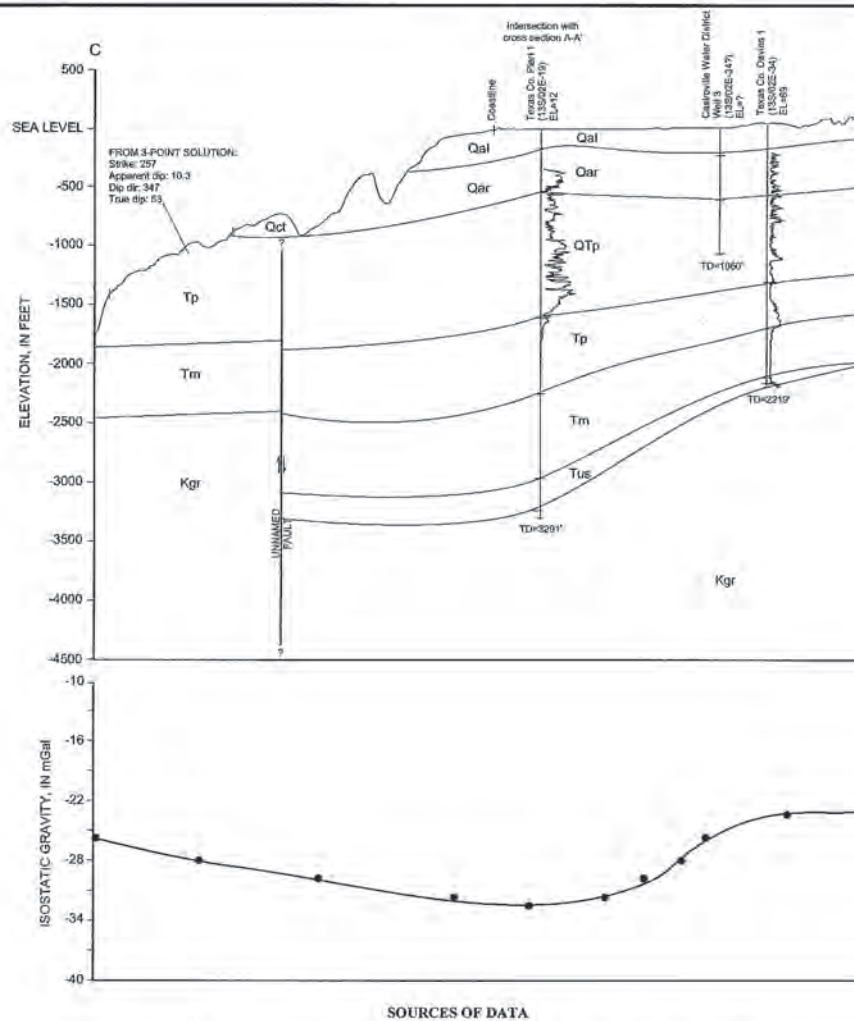
California Water Service 40-01— This well was drilled in November 1983 to a depth of 912 feet. Picks are based on the DWR drillers log and an e-log. This well bottomed in the Paso Robles Formation.

Castroville Water District 3— No drillers log was available for Castroville Water District Well 3. Picks were from an e-log contained in a report by Geoconsultants (1996). The well is 1,060 feet deep and bottoms in the Paso Robles Formation.

Elba Capurro— The Elba No. 1 well was drilled to a depth of 3,970 feet in April 1937 and abandoned in February 1939. There are no driller or geophysical logs of this well in CDOGR files. Picks were from a scout report (Gribi, E.A., and unpublished notes), a micropaleontology report (Goudkoff, P.P., 1937), an unpublished e-log (which shows a total depth of 4,009 feet, and unpublished paleontology records (Brabb, E.E., written communication, 2002). Of interest is a letter in the CDOGR files from the Deputy Supervisor of the Division of Oil and Gas, dated November 22, 1938, which reports fresh water to a depth of 1,280 feet, below which is brackish to salt water. The well never reached basement to its drilled depth.

Fort Ord D— The Fort Ord D well was drilled by Geotechnical Consultants to a depth of 1,162 feet in January–February 1995. Lithologic picks are from the geologic log and e-log. The well bottomed in the Paso Robles Formation.

Fred Ash & Sons 2— Local water well driller Fred Ash drilled this well as a wildcat oil play in September 1966. The well was drilled to 1,959 feet and bottomed in “sticky blue green shale” which we interpret as the Monterey Formation. CDOGR records state that no oil shows were observed and the well was capped with the intent of converting it into a water well. Stratigraphic picks are based on driller’s log and an e-log annotated by R.R. Thorup.



Geologic data compiled from published mapping (Hanson and others, 2002; Wagner and others, 2002; Rosenberg, 2001), oil well logs (CDOG files), unpublished scout reports (Gribi, E.A., Thorup, R.R.), unpublished micro-paleontology reports (Chevron, undated; Ingle, J.C., 1989; McDougall, R., 2001), water well logs (MCWRA, MCWD, and MPWMD files).

Gravity data from USGS published mapping (Langenheim and others, 2002).

Topography from USGS National Elevation Dataset (30-m resolution), Bathymetry from Degnan and others, 2001 (30-m resolution)

Marihart-Luckey 1— The Marihart-Luckey well was drilled by R.R. Thorup as a wildcat oil well to a depth of 2,628 feet in November 1958. No oil shows were noted according to CDOGR records so the well was abandoned. The CDOGR Report on Proposed Operations notes that non-marine strata were encountered from surface to total depth, and that the age of the bottom was Pliocene. Based on regional geologic mapping, we interpret these rocks as belonging to the Pancho Rico Formation.

Marina Well Nos. 11 and 12— Well No. 11 was drilled in November–December 1985 to a depth of 1,700 feet. Well 12 was drilled in November 1988 to a depth of 2,020 feet. Geologic reports by Geoconsultants (1986, 1989) and a paleontology report by Ingle (1989) were used for the picks. However, one important difference in interpretations is that Ingle interprets Well Nos. 11 and 12 as bottoming in Pleistocene sediments, whereas we interpret them as bottoming in the Purisima Formation. Our interpretation is based on correlating e-log markers from the USGS DMW-1 well and the statement by Ingle (1989, p. 5) that “many of the species have a broad Pliocene-to-Recent age range” which allowed us to relax the interpretation that these wells were strictly in Pleistocene sediments.

Monterey County Mulligan Hill #1— This well was drilled as a test well to a depth of 1,809 feet in September–December 1976. Based on paleontologic analysis of ditch and bit samples, Thorup reported that the well bottomed in Monterey Formation (1983, plate 10).

Monterey Dunes #1— This well was originally drilled March–May 1972 to a depth of 687 feet. Subsequently, in late January 1977, it was deepened to 1,724 feet. Picks are from drillers logs and e-logs. The well bottomed in what we interpret as Purisima Formation.

MPWMD FO-09 and FO-10— Well FO-09 was drilled in August 1994 to a depth of 1,100 feet and Well FO-10 was drilled in September 1996 to a depth of 1,500 feet. Picks were from MPWMD Technical Memorandums 94-07 and 97-04 (Oliver, 1994, 1997). Although these reports show the wells bottoming in the Santa Margarita Sandstone, we interpret them as reaching the Purisima Formation based on review of preliminary cross sections by the logging geologist J.W. Oliver (MPWMD).

PG&E Leonardini #3— This well is near the Pieri well and was used to refine the upper stratigraphy. The well was drilled February–May 1980 to a depth of 1,610 feet. Picks are from the DWR driller’s report and an e-log.

Sand Bowl Metz— The driller log in the CDOGR records is scanty (0–565’: surface sand, 565–1,160’: shale, 1,160–1,430’: sand, 1,430–1,890’: sandy shale, and 1,890–2,151’: basement rock). The CDOGR files also contain an e-log for this well. To supplement these data, we used the

driller's log and e-log from the nearby Monterey Sand Company water well (15S/01E-15P02) shown on Cross Section B-B' of Staal, Gardner & Dunne (1990).

Texas Co. Davies— Scout records reveal that the Davies well was drilled as a play based on geophysical methods (E.E. Gribi, unpublished data). The Davies well was drilled and abandoned in August 1949. The well reached a depth of 2,219 feet and bottomed in granitic basement. Picks were from an e-log annotated by R.R. Thorup; ditch, sidewall, and core sample logs; and scout records by Gribi. Only the sidewall and core sample data are in the CDOGR files. Thorup's e-log notes show "Purisima" extending from 1,320 to 1,680 feet. Also of interest is a note on the CDOGR Well Summary Report, which lists the fresh water/salt water contact at 1,690 feet depth.

Texas Co. Pieri— The Pieri well was drilled and abandoned in August 1949 to a depth of 3,291 feet. Picks are from CDOGR records and an e-log. The well reached basement.

Western Gulf Johnson 1— The Johnson 1 well was drilled in November–December 1932 to a depth of 3,198 feet. No records for this well were available from CDOGR. The picks were made from the Western Gulf Oil Company oil well log (dated February 17, 1933) and a Standard Oil Company of California paleolog (dated January 27, 1953). The well bottomed in granitic rock.

USGS DMW-1— The USGS well is the most recent (2000) and most detailed well in the deep aquifer. Core samples, geophysical logs, and paleontologic analysis show that this well encountered a thick section of Purisima Formation. Picks are from Hansen and others (2002).

AQUIFER PARAMETER AND HYDRAULIC RELATIONSHIPS

Aquifer parameter data are limited. Transmissivity values are available from a few wells where formal aquifer tests were performed at the time of well completion. Additional transmissivity data can be estimated from specific capacity data utilizing the Logan approximation (Logan, 1964). Hydraulic conductivity data from slug testing are available for the four separate completions of the USGS monitoring well. Hydraulic conductivity tests are also available for a few sidewall cores from MCWD Well 10. No formal estimates of storativity have been advanced. The available aquifer parameter data are presented in Table 2.2.

Table 2.2 Aquifer Parameter Data

State Well No.	Name	Method	Screen Length (feet)	Transmissivity (gpd/ft) tested	Hydraulic Conductivity (ft/day)
T13N/R2E-19Q03	PG&E/Leonardini	SC	270	12,755	6.3
T13N/R2E-32M02	Sea Mist	SC	810	23,789	3.9
T14N/R2E-06L01	Co. of Monterey	SC	660	32,606	6.6
T14N/R2E-24L05	DMW-1-4	slug	20	359	2.4
T14N/R2E-24L04	DMW-1-3	slug	20	2086	13.8
T14N/R2E-24L03	DMW-1-2	slug	20	1137	7.6
T14N/R2E-24L02	DMW-1-1	slug	40	4338	14.5
T14N/R2E-30G03	MCWD No. 12	Pumping	240	29,700	16.5
T14N/R2E-32D04	MCWD No. 11	Pumping	200	24,300	16.4
T14N/R2E-31H01	MCWD No. 10	Pumping	210	40,000	25.4
T14N/R2E-31H01	MCWD No. 10 @ 842	lab	--	--	4.6
T14N/R2E-31H01	MCWD No. 10 @ 1460	lab	--	--	0.6
T13N/R1E-25R01	Mty Dunes Colony #3	SC	60	9,091	20.2

Methods: SC – Logan Approximation
Slug – Slug test

Pumping – Pumping test
Lab – sidewall sample in laboratory

WELL INTERFERENCE TESTS

MCWD Well Nos. 10, 11, and 12. In order to supplement the available aquifer parameter data and to better understand the interactions between MCWD wells for modeling purposes, a well interference test was performed. Each MCWD well was equipped with a water level data logger. Each of the wells was shut down for a week while the other two wells met system demand. The results of the test are presented in Figure 2.13.

Well No. 12 was shut down for the first week followed by Well 10 for the second week and Well No. 11 for the third week. During Week One, the Well No. 12 water level record displayed a conventional recovery response. The recovery curve was undisturbed by interference with other wells although the operational cycles of Well Nos. 10 and 11 during this period are obvious in their records. Well No. 10 was off for Week Two. Well No. 10 also showed a recovery curve; however, this curve was disturbed with a classic interference signature, corresponding to the operations of Well No. 11. During the third week and part of the fourth, Well No. 11 was off. Again, the recovery curve of this well was disturbed with the interference signature from Well No. 10, demonstrating the mutual interference between Well Nos. 10 and 11.

The interference between Well Nos. 10 and 11 is relatively consistent with the expected theoretical response utilizing the available aquifer parameters. The lack of measurable response in Well No. 12 suggests that this well is not in hydraulic communication with Well Nos. 10 and 11. The observed and predicted responses are presented in Table 2.3.

Figure 2.13 Well Interference Testing for MCWD Wells Nos. 10, 11, and 12

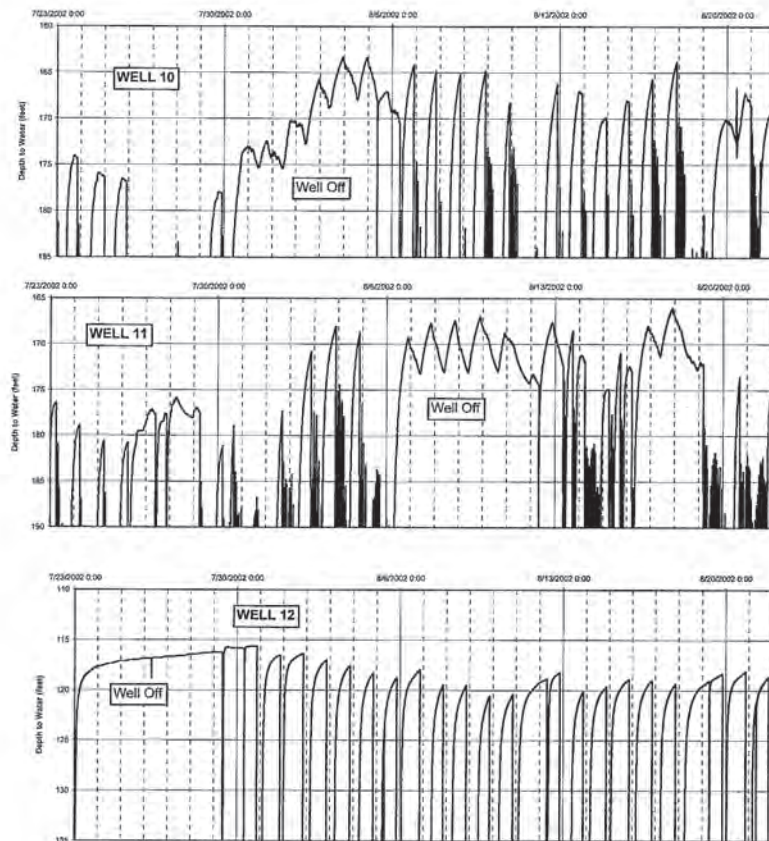


Table 2.3 The Observed and Theoretical Response from MCWD Wells

Wells	Distance (feet)	Discharge Rate (gpm)	Observed Drawdown Response (feet)	Theoretical Drawdown Response (feet)
Well 10 on 11	2,850	1,500	3	8.1
Well 11 on 10	2,850	1,800	5	9.7
Well 10 on 12	5,650	1,500	0	2.7
Well 11 on 12	3,950	1,800	0	6.1

Assumptions: Convention Theis Analysis, Transmissivity 31,000 gpd/ft, Storativity 0.0001, 0.25 days
 Note: Storativity is assumed and regional leakage could not be determined due to insufficient data

The difference between observed and theoretical responses likely derives from the fact that each aquifer from which these wells produce is more accurately an aggregation of smaller aquifers, making invalid some of the assumptions required for theoretical prediction. Still, the magnitude of the observed interference in Well Nos. 10 and 11 is consistent with predicted responses. The lack of any interference response to the combined pumping of Well Nos. 10 and 11 on Well 12 is significant, suggesting hydraulic isolation of this well relative to the other two. This finding is consistent with the geologic interpretation that places Well No. 12 in the Purisima Formation, whereas Well Nos. 10 and 11 are largely in the Paso Robles Formation.

Close inspection of the recovery record of Well No. 12 shows minor variations in water levels superimposed on the recovery curve. Closer inspection of these data (Figure 2.14) the variations are a tidal signature that correlate directly with the tides in Monterey Bay.

USGS Monitoring Well versus MCWD Well No. 12. Three of the four wells at the USGS Monitoring Well are completed in the Purisima Formation (USGS, 2002). Geologic interpretation and the well interference data indicate that MCWD Well No. 12 is also completed in the Purisima Formation. Figure 2.15 compares water level data collected at the four USGS monitoring wells with data collected from Well No. 12 during the Well Interference exercise described above. Most evident in Figure 2.14 are the strong tidal signature in all of the USGS wells, and the strong correlation and lack of lag time with tides in Monterey Bay. Comparison of the pumping schedule of Well No. 12 and the water level records of the four monitors suggests a response in the deepest monitor (DMW-1-1), corresponding to the shut down and start-up of Well No. 12. There is a similar, although more subdued, response in the next deepest well (DMW-1-2). No evidence of response is apparent in the other two monitors (DMW-1-3 and -4). These results appear consistent with the perforated elevations of the monitoring wells and Well No.12. The latter is perforated between elevations -1283 to -1833

Figure 2.14 MCWD Well No. 12 -- Idle Period Record

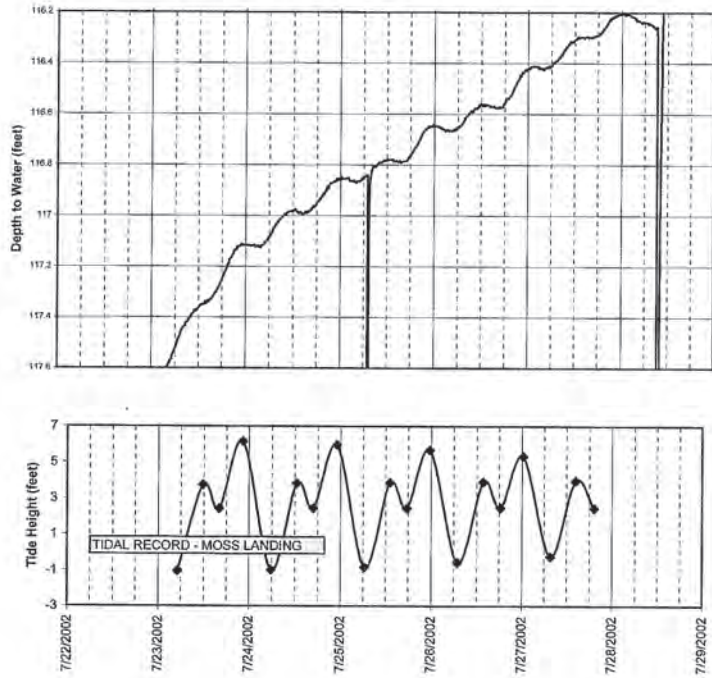


Figure 2.14 - 12Tidal

Figure 2.15. USGS Monitoring Well vs. MCWD Well No. 12

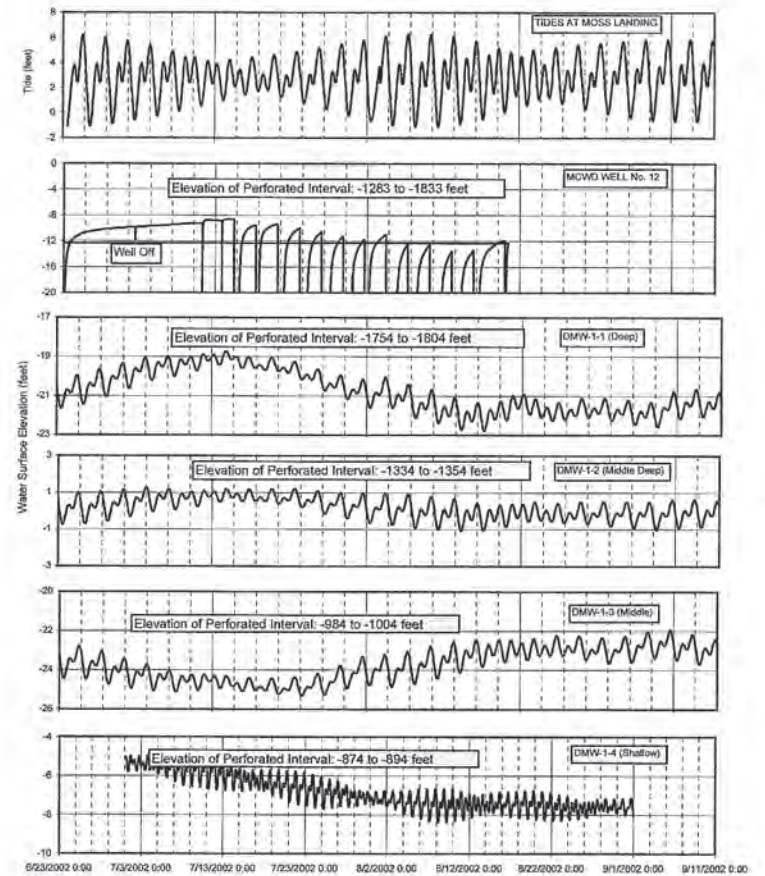


Figure 2.15-USGS_12I

feet, whereas DMW-1-1 and DMW-1-2 are perforated at elevations -1754 to -1804 feet and -1334 to -1354 feet, respectively.

TIDAL FLUCTUATIONS

As noted above, the USGS monitoring wells, as well as other wells, all show a strong tidal signature. The water level data reveals no evidence of a significant time lag between the ocean and aquifer response. Because of the lack of lag time, it is speculated that the response is the result of cyclic loading of the aquifer, rather than hydraulic fluctuations at a possible outcrop.

Assuming cyclic loading, the tidal response data can be utilized to calculate a storage coefficient for these aquifer units. The ratio of aquifer water level change to tidal change is the tidal efficiency of the aquifer. In all four wells, the aquifer response is approximately 2 feet of change in response to 6 feet of tidal fluctuation, or a ratio of 0.33. Tidal efficiency can be related to storage coefficient utilizing the following equation (Lohman, 1972):

$$S = \theta \rho b \beta (1/1-TE)$$

Where:	θ = porosity	= 0.3
	ρ = specific weight of water	= 0.434 lbs/in ² ft
	b = aquifer thickness	= 20 feet
	β = Inverse of water elasticity	= 3.3×10^{-6} in ² /lb
	TE = tidal efficiency	= 0.33

Utilizing these values, a specific storage coefficient of 1.3×10^{-5} (dimensionless) can be calculated, a value considered very appropriate for confined conditions. This value is lower than that estimated from the well interference analysis. However, this value is not influenced by leakage effects that may be moderating drawdown at the production wells. For this reason the value derived from the tidal data may be more appropriate for the aquifer system as a whole.

IMPLICATIONS OF HYDROGEOLOGIC FINDINGS

Taken together, the overall conclusion that can be derived from the collected data and the preliminary analysis is that the deep aquifers from which MCWD extracts its water supply is actually two separate aquifer systems. Existing geologic and water chemistry data suggest that MCWD Well Nos. 10 and 11 produce primarily from the Paso Robles Formation, whereas MCWD Well No. 12 produces from the Purisima Formation. In contrast, the deep aquifer wells in the Castroville area are interpreted to produce from the Paso Robles Formation. Aquifer response data suggests these two aquifer systems are hydraulically isolated from each other.

RECHARGE CONSIDERATIONS

The hydrogeologic interpretation of the deep aquifers raises questions regarding the nature and magnitude of recharge to these aquifers. Well No. 12 is completed in and produces primarily from the Purisima Formation. The Purisima Formation is not exposed on land in Monterey County. The closest land exposure is in Soquel where the Formation is the primary source of water for the Soquel Creek Water District. Therefore, recharge for the Purisima Formation (Well 12) is primarily leakage from overlying aquifers. Some portions of extractions may be supported by depletion of groundwater storage. However, the low estimates for storage coefficients for this aquifer system suggest that the volume of groundwater that can be removed from storage is not large.

The Paso Robles Formation crops out extensively throughout the Salinas Valley region. However, in most locations, the Formation underlies the Salinas Valley alluvium and Aromas Sands that comprise the 180-foot aquifer and upper portion of the 400-foot aquifer. The alluvium receives recharge primarily from the river and irrigation return flows. In areas where Paso Robles is overlain by alluvium, recharge is from leakage from overlying aquifers.

There are 37,500 acres of Paso Robles Formation exposed in Monterey County. Of this area, 33 percent (or 12,400 acres) is exposed in the El Toro-Laguna Seca Area where the Formation constitutes as recharge area for these areas. The remaining acreage of Paso Robles Formation is exposed on the west side of the Salinas Valley. However, much of this area is in the rain shadow of the Santa Lucia Range. Annual rainfall on the outcrop areas is less than 12 inches. With this limited rainfall, direct recharge to the outcrops of Paso Robles Formation from precipitation is minimal, if any. Given the hydrogeologic setting, extractions from the Paso Robles Formation also appear to be primarily supported by leakage from the overlying shallow aquifer system.

The implications regarding recharge mechanisms are generally supported by the water level history of MCWD wells. All three of MCWD wells show a similar water level history: a rapid decline as local storage is depleted, then a stabilization as extractions equilibrate with leakage. This interpretation is best evaluated by modeling.

SECTION 3 SALINAS VALLEY INTEGRATED GROUND AND SURFACE WATER MODEL (SVIGSM) UPDATE

The purpose of this section is to describe the development of the SVIGSM, its applications in various studies, the modifications made to the deep aquifer layer of the model and any related changes to the hydrogeologic parameters, and the summary results of recalibrating the model.

The section is divided as follows:

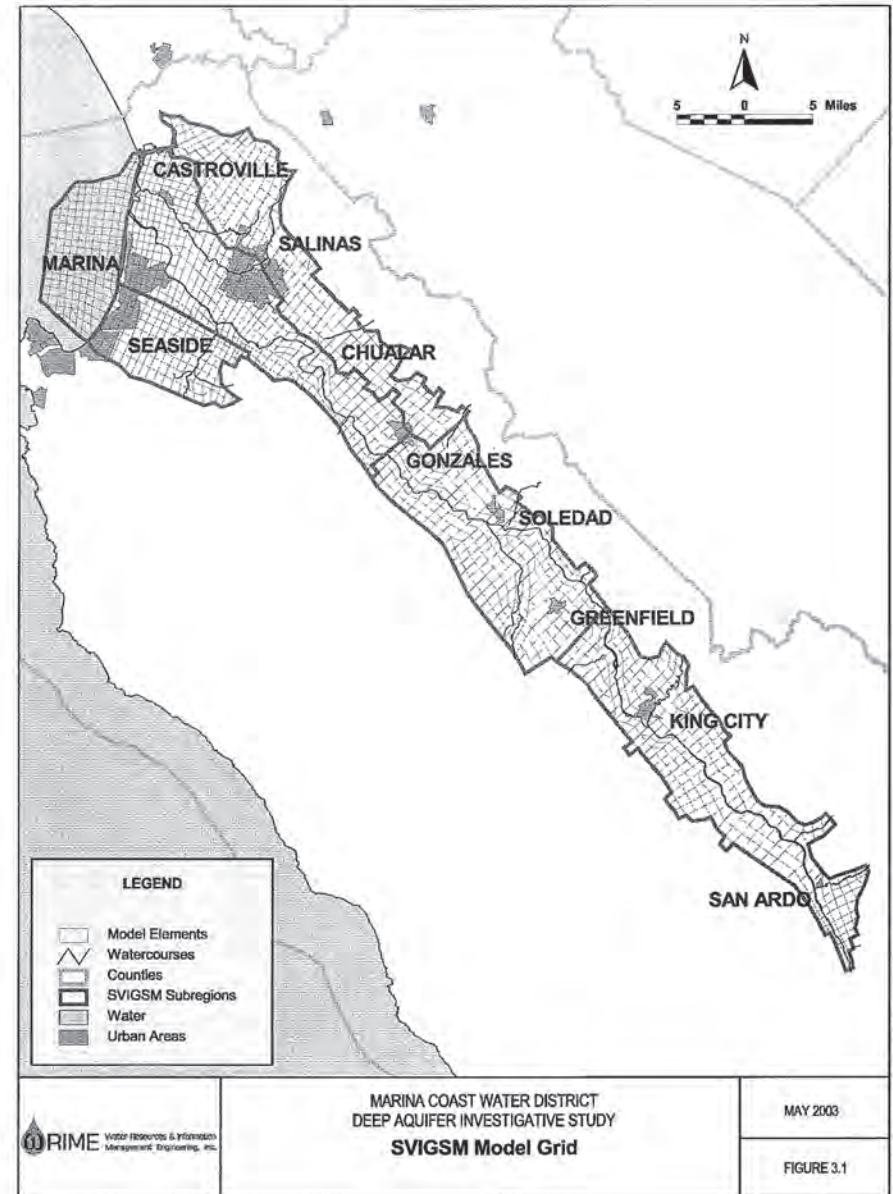
- SVIGSM Background provides information about the development of the model, updates and modifications to the model in the last 5 years, capabilities of the model, and applications of the model;
- Code Update provides information about older and recently released IGSM codes and the impacts of the code update on model results;
- Data Update provides information about the impacts on the model simulation due changes in model stratigraphy and the efforts to mitigate those impacts.

Model results presented in Section 3 are associated with historical water years 1959 through 1994, representing the historical record of when the Salinas River was regulated.

SVIGSM BACKGROUND

The SVIGSM is the most recent analytical tool that analyzes the hydrologic conditions in the Salinas Valley groundwater basin. Prior to the development of SVIGSM, there were two significant modeling efforts at a basin-wide level. The first model was developed in 1978 by the USGS and the second model was developed in 1986, based on the predecessor to IGSM, the FEGW14. Both models focused on the groundwater flow in the basin, and had limited interaction with the surface processes. The previous modeling efforts did not consider the special importance of the hydrologic processes of the Salinas Valley groundwater system with respect to land and water use processes and daily rainfall and runoff in the main watershed and tributary watersheds, and to the regulation of Salinas River flows by Nacimiento and San Antonio Reservoirs.

The SVIGSM, developed in 1993, utilized the databases from the previous modeling efforts with significantly additional data developed as part of the Salinas River Basin Management Plan (BMP). The model development is documented in the report on BMP Task 1.09 (Montgomery Watson, 1995). The SVIGSM model network is shown in Figure 3.1.



The SVIGSM has gone through substantial updates and revisions since its initial development. These updates are reported in the *Salinas Valley Integrated Ground Water and Surface [water] Model Update* (Montgomery Watson, 1997), *Salinas Valley Historical Benefits Analysis (HBA)* (Montgomery Watson, April 1998), and *Update of the Historical Benefits Analysis (HBA) Hydrologic Investigation in the Arroyo Seco Cone Area: Monterey County Water Resources Agency* (Ali Taghavi and Associates, February 2000). The following summarizes the data and model revisions performed as a result of these studies. The reader is referred to the individual reports for additional discussion.

The following was specifically revised as a result of the 1997 work:

1. 1989/1991 land use and irrigated crop acreages were included;
2. assumptions associated with the Truck crop acreages that remain idle during crop rotation were finalized and included in the model;
3. the vegetation corridor along the Salinas River was coded as riparian as opposed to native vegetation;
4. distribution of hydraulic conductivity was modified; and
5. aquifer parameters were revised to ensure the proper calibration of model results to the historical groundwater conditions for the period from October 1969 to September 1994.

The following was specifically revised as a result of the April 1998 work:

1. the October 1969 to September 1994 simulation period was extended to October 1949 to September 1994;
2. land use and irrigated crop acreages were updated to reflect the lengthened simulation period;
3. crop evapotranspiration and irrigation efficiencies were changed from a static data set to a transient data set to allow for changes in agricultural technology and techniques over the 50-year simulation period;
4. urban water demand and surface water diversions were updated to reflect the lengthened simulation period;
5. groundwater pumping distribution was updated to reflect the lengthened simulation period and to reflect changes in land development over that time;
6. specific capacities and hydraulic conductivities in the Arroyo Seco Cone area were updated based on studies conducted by others;

7. soil parameters were adjusted to provide better consistency and to improve the overall water balance of the valley; and
8. model simulation results were verified with observed data.

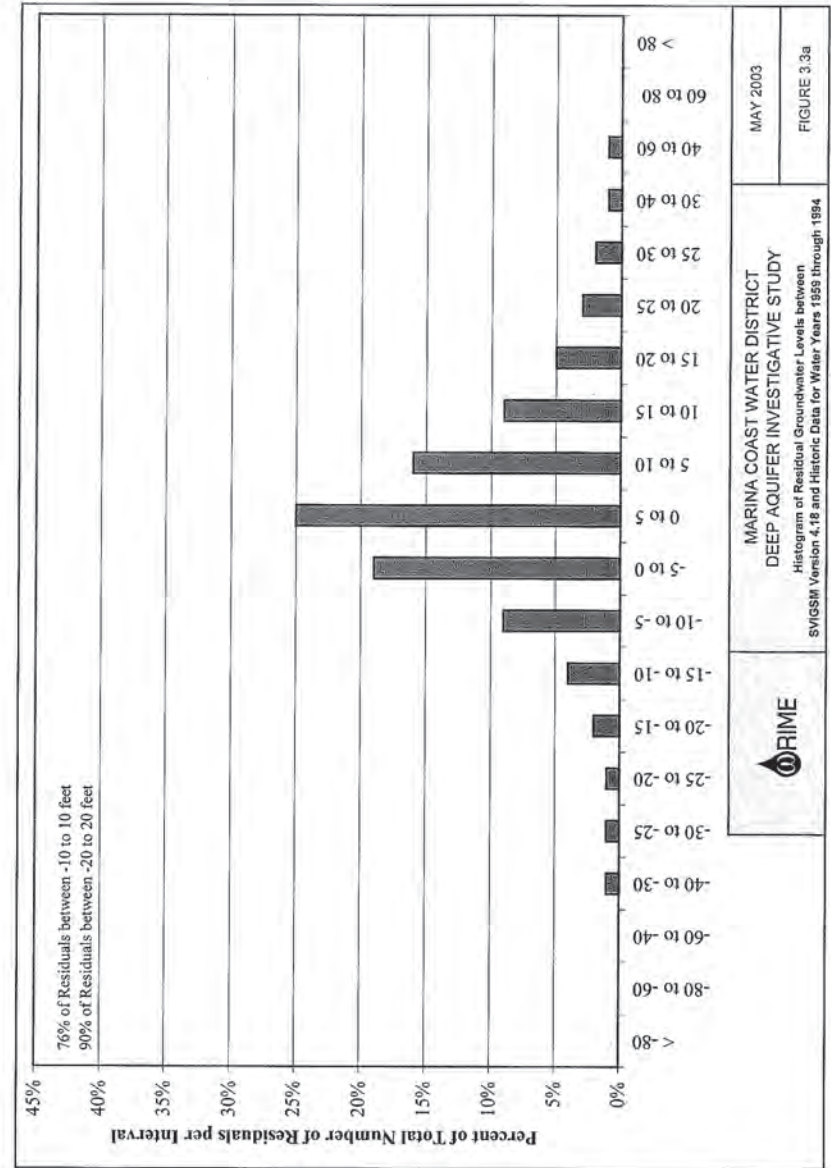
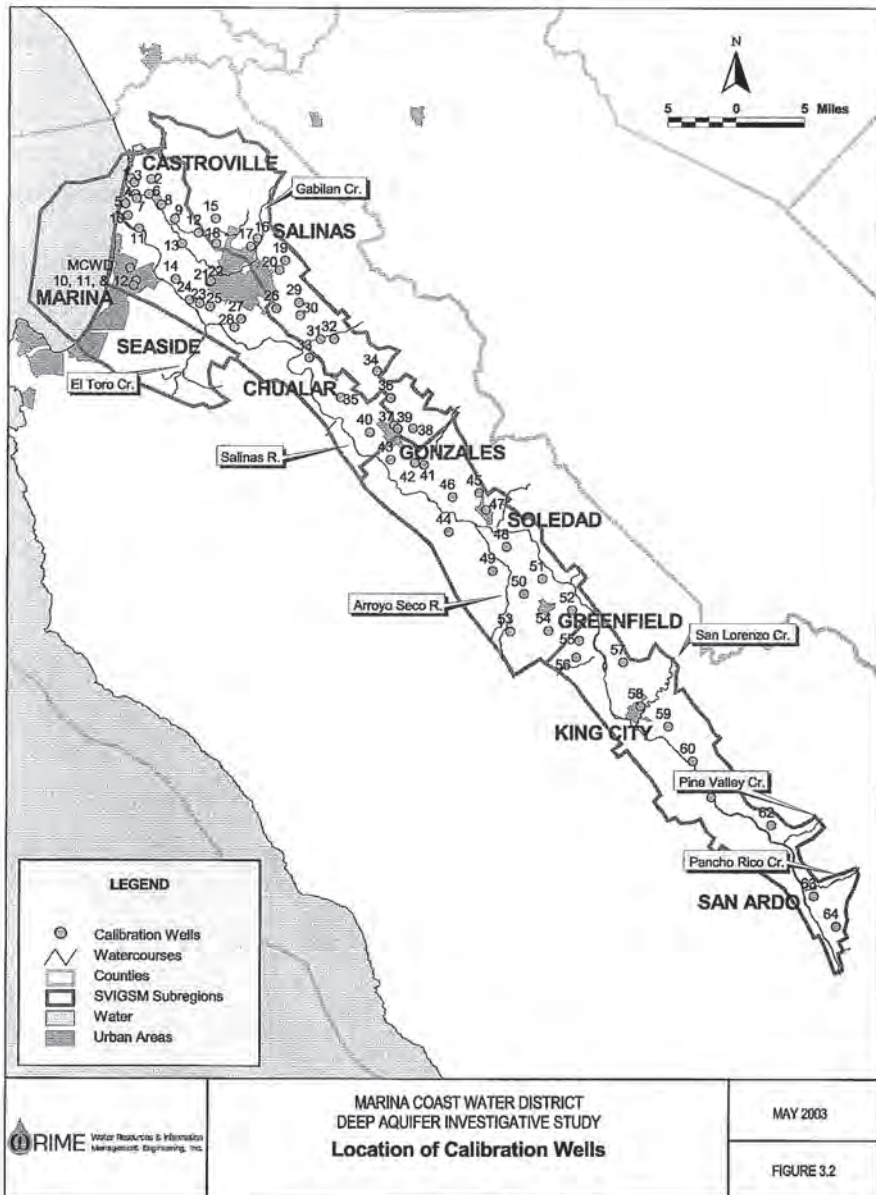
Figure 3.2 shows the location of calibration wells used in the 1998 work. Figures 3.3a through 3.3e show a statistical evaluation of the SVIGSM (v. 4.18, 1998) calibration performance associated with the 1998 work.

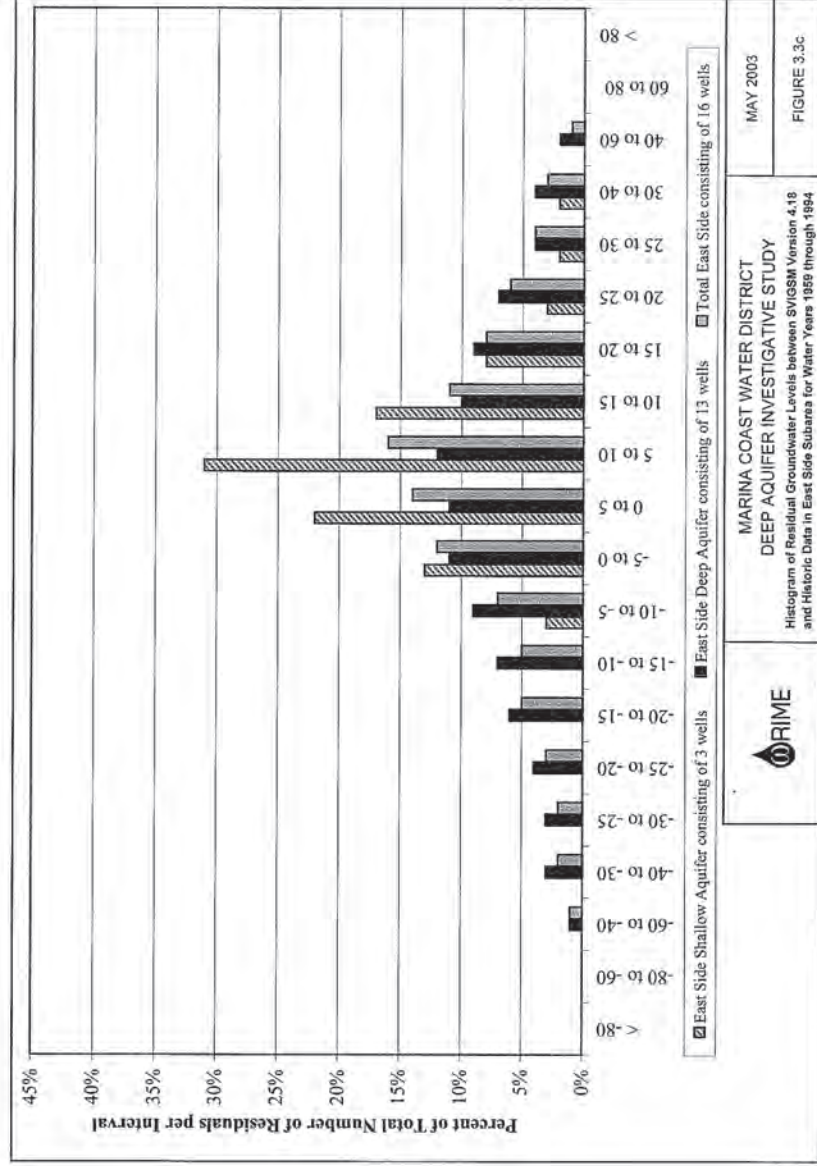
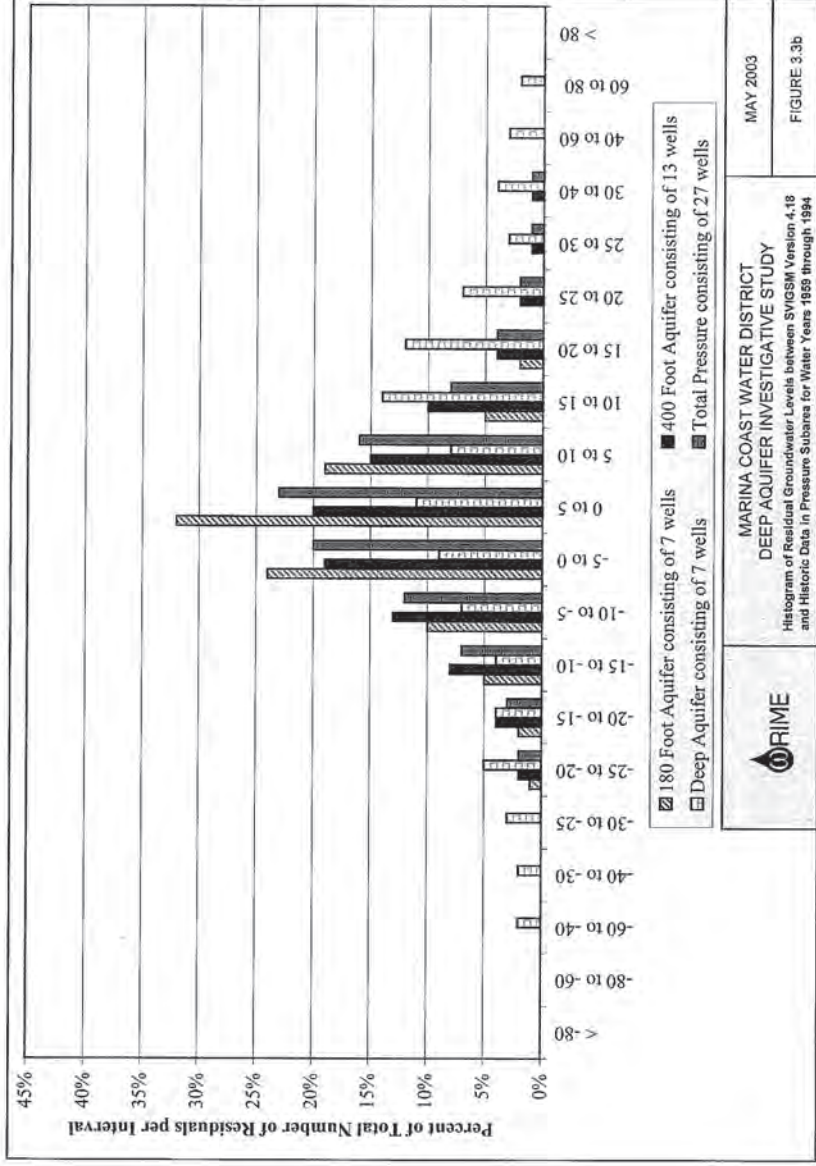
The following was specifically revised as a result of the February 2000 work:

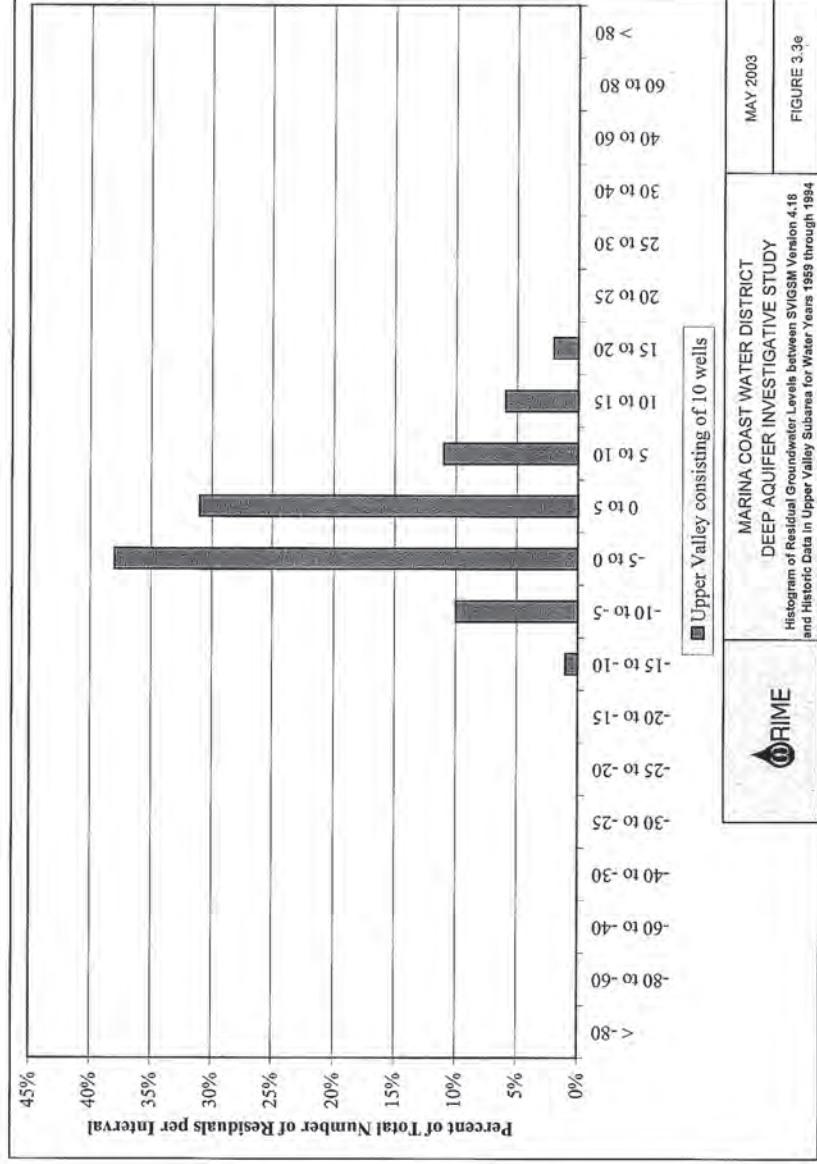
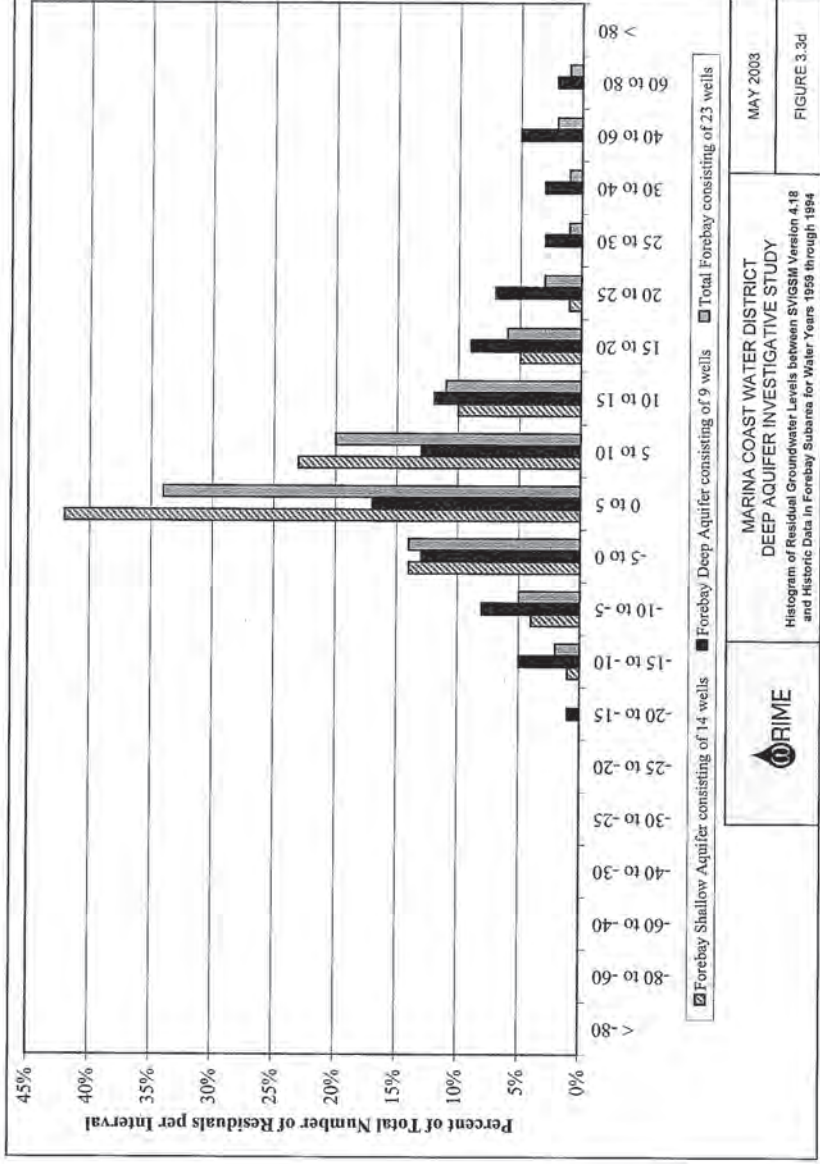
1. the SVIGSM calibration in the Arroyo Seco Cone area was refined to include the latest streamflow and hydrogeologic data available, and
2. reservoir operation routine was revised to more appropriately simulate the potential diversions of the water from the Nacimiento reservoir by San Luis Obispo County, under the baseline and alternative scenario analyses.

The SVIGSM contained the following features as a result of these updates:

- Simulation of the vertical and horizontal groundwater flow in the Salinas Valley through water-bearing formations in the valley:
 - The 180-foot, 400-foot, and the Deep Aquifer in the Pressure subregion;
 - The East Side Shallow, East Side Deep, and the Deep Aquifer in the East Side subregion;
 - The Shallow and Deep Aquifers in the Forebay subregion; and
 - The unconfined aquifer in the Upper Valley
- Simulation of the Salinas River and its major tributaries from Nacimiento and San Antonio Reservoirs to the Monterey Bay;
- Simulation of the interaction of the Salinas River, and its tributaries, with the groundwater system;
- Simulation of Nacimiento and San Antonio Reservoirs based on specific operational rules for water supply and flood control;
- Simulation of reservoir operations that can satisfy those diversion requirements that derive from water rights and environmental flow requirements;
- Simulation of the rate and extent of seawater intrusion;







- Simulation of the agricultural water use requirements based on crop irrigated acreage, crop potential evapotranspiration, minimum soil moisture requirements, and crop efficiency; and
- Simulation of direct runoff and deep percolation from rainfall and irrigation applied water.

The SVIGSM model was developed to address basin-wide hydrologic and water supply operational issues. As such, the SVIGSM has been applied to many studies since its initial development:

- Evaluating the impacts of the Castroville Seawater Intrusion Projects;
- Providing a better understanding of the nature of the physical and hydrologic processes in the Salinas River Basin. This includes natural and operational factors that influence seawater intrusion and coastal groundwater flow from Monterey Bay;
- Analyzing the hydrologic impacts of the Salinas River Basin Management Plan so that sufficient information was provided for alternatives screening and preferred alternative selection;
- Conducting a Historical Benefits Analysis to identify and quantify the hydrologic, flood control, and economic benefits of Nacimiento and San Antonio Reservoirs;
- Analyzing the effects reservoir re-operation scenarios and
- Analyzing impacts of the Salinas Valley Water Project, a proposed project currently undergoing the final stages of environmental permitting process.

CODE UPDATES

IGSM was initially released in 1990 as part of the Central Valley Groundwater and Surface Water Model (CVGSM). It has been modified over the years for different project applications; this resulted in different versions of IGSM as related to specific projects. In 2000, DWR initiated a study to combine into a single IGSM version all features from various versions used in local and statewide applications. This effort resulted in IGSM version 5.0, which is currently used in several modeling efforts throughout California. DWR initiated a review process of the IGSM 5.0 code and its application to California's Central Valley. This process resulted in refinement of several major modules of IGSM, including the groundwater simulation daily time-step, simulation of the stream-aquifer interaction based on non-linear methodology, and refined non-linear soil moisture accounting routine. These code refinements were released as a new version of the code: IGSM2 version 1.0 (December 2002). Currently IGSM2 does not provide simulation

capabilities for reservoir operations and multiple models. Also, it is not backwards compatible for datasets of earlier versions of IGSM. Due to the release schedule of IGSM2, as well as its limitations on simulation of reservoir operations and multi-model integration, the results of the DWR review were incorporated into a revised version of the original IGSM. This new version is released as beta version of IGSM version 6.0, which is being developed to meet specific project requirements for the conjunctive use projects under study by DWR, Alameda County Water District (ACWD), and East Bay Municipal Utility District (EBMUD) (WRIME, Inc. 2003). IGSM 6.0 simulates the groundwater and surface water flows and their interaction on a daily and/or monthly time-step; and has the option to simulate stream-aquifer hydraulic interaction using both linear and non-linear methods; and simulate general head boundary condition using both linear and non-linear methods. The program is also backward compatible with IGSM 3.2 and later versions. This version of IGSM is currently under final review and will be official released in June, 2003 then the project application for Stony Creek Fan Conjunctive Use project is complete. Therefore, IGSM 5.0 was selected for use in the Marina Coast study since it is the most recent, officially released version of IGSM possessing all the features needed to properly simulate hydrologic conditions in the Salinas Valley groundwater basin. It is anticipated that with the official release of IGSM 6.0, the conversion to IGSM 6.0 would be straightforward, requiring limited time to evaluate the calibration and make necessary refinements. Formal documentation of IGSM 6.0 and its application in Northern Sacramento Valley, California will be available in June 2003. Documentation regarding the application of IGSM 6.0 in Alameda County, California will be available by September 2003.

IGSM 5.0 is backwards compatible with IGSM 4.18, meaning that the data files developed for SVIGSM 4.18 are compatible with SVIGSM 5.0. As such, no modifications of the data file structure were necessary to use SVIGSM 5.0.

Several comparisons were made to measure the impacts of changing the IGSM code, without changing the geologic database of the model. These comparisons are:

1. change in groundwater levels between SVIGSM versions 4.18 and 5.0;
2. change in groundwater levels between observed groundwater levels and SVIGSM 5.0;
3. change in average annual coastal flow rate between the SVIGSM versions; and
4. change in average annual stream depletion rate between the SVIGSM.

In general changing the code did not result in any significant changes to the performance of the calibrated model.

SVIGSM DATABASE UPDATES

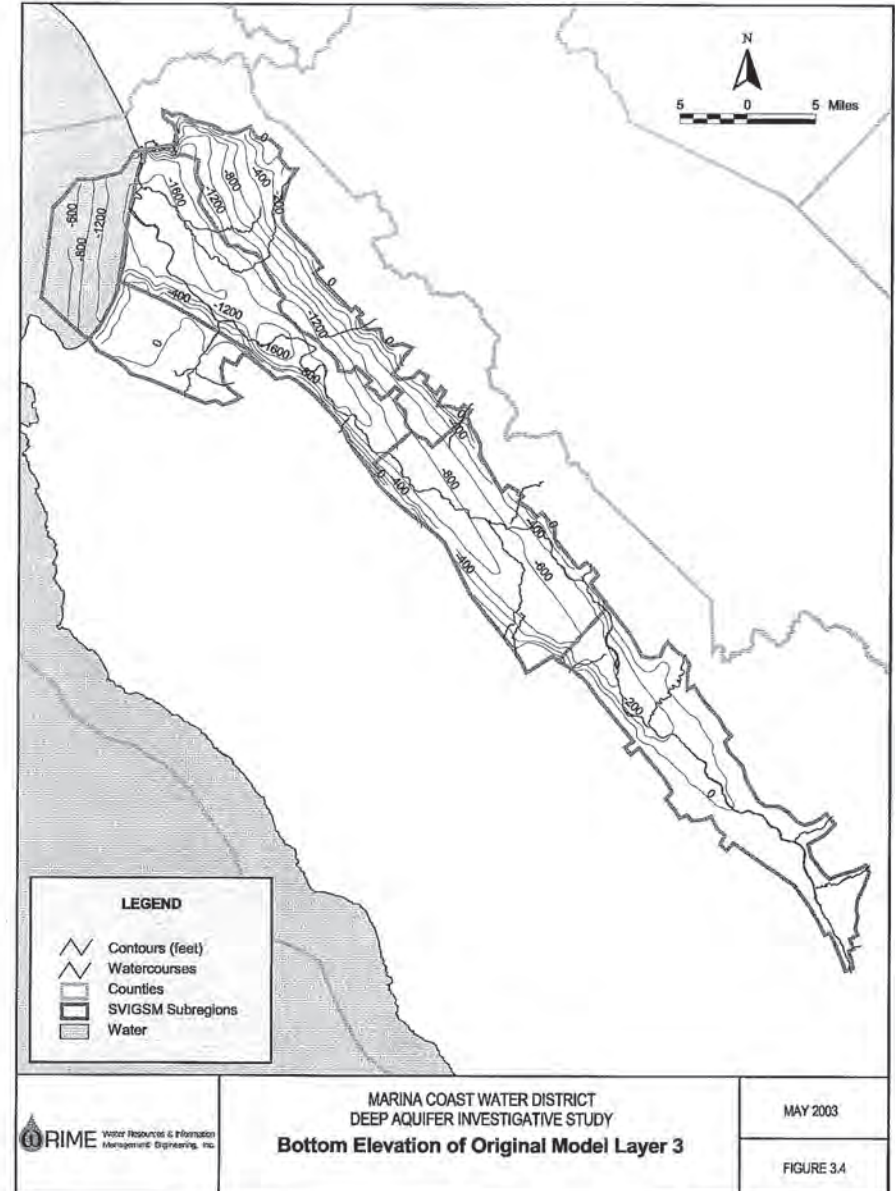
There were two major changes made to the SVIGSM database due to recently conducted studies. These changes, discussed in detail below, are in regard to the new interpretation of the deep aquifers and the capability of the Reliz Fault to inhibit groundwater flow.

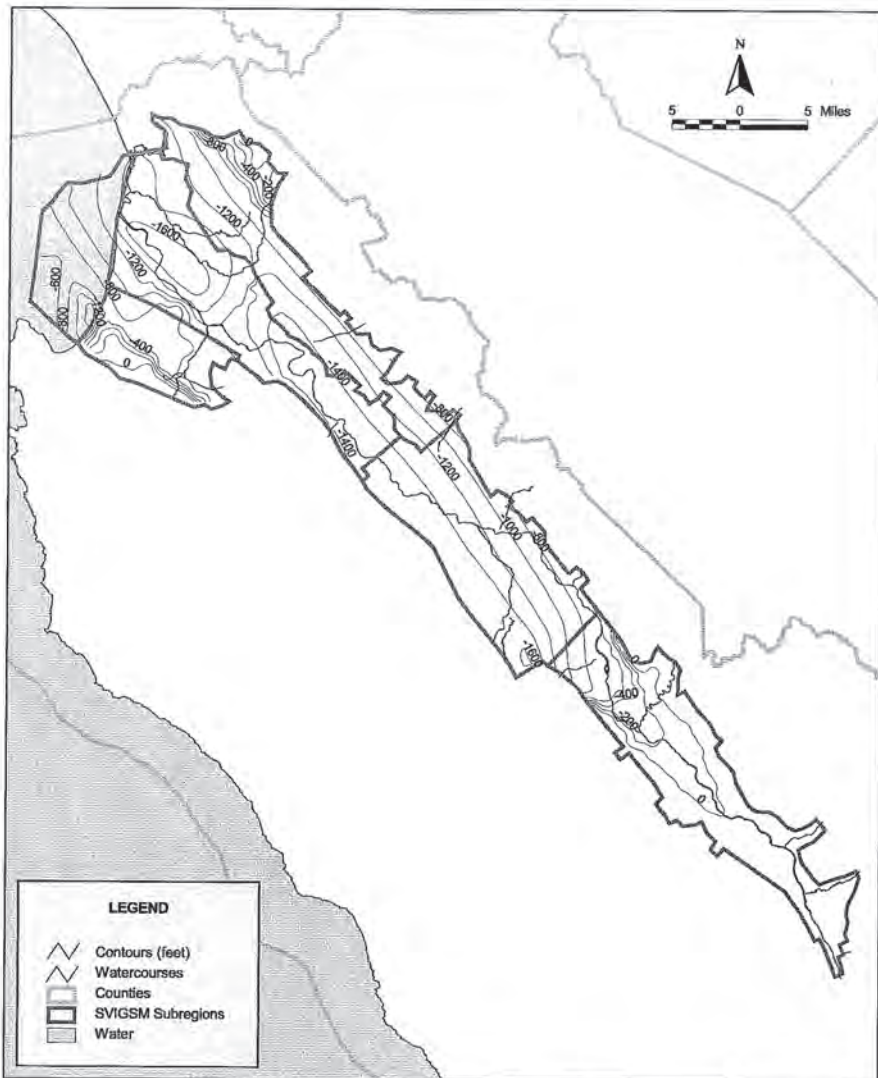
DEEP AQUIFER MODIFICATIONS

As discussed previously, the Salinas River groundwater system was conceptually viewed as a three-layer aquifer system in the Pressure Subarea, a two-aquifer system in the East Side and Forebay Subareas, and a single aquifer in the Upper Valley. The deep aquifers or its hydrogeologic extensions were present in all subareas except for the Upper Valley. All data regarding the deep aquifers has been reviewed, analyzed, and incorporated into a new interpretation of the deep aquifers. Based on this new interpretation, the deep aquifers are better represented as two distinct aquifers. The new interpretation was included in the SVIGSM stratigraphy database. The SVIGSM revised stratigraphy data was developed using a Geographic Information Systems (GIS) process of contouring thickness and bottom elevation data, then attributing those contoured values to specific SVIGSM nodes; this process was discussed in Section 2 of this report.

Figures 3.4 through 3.8 illustrate the changes that have been made to the deep aquifers' geology and hydrogeology. Figure 3.4 shows the bottom elevation contours of deep aquifers prior to the recent study. Figure 3.5 shows the bottom elevation contours of upper deep aquifer (the Paso Robles Formation) as a result of this study's findings. Figure 3.6 shows the bottom elevation contours of the lower deep aquifer (the Purisima Formation). In order to properly simulate the hydraulic connection and leakage between the upper and lower deep aquifers, a 10-Ft aquitard is assumed between these layers. The thickness of this aquitard is not based on geologic data and information; rather it is for modeling purposes to provide better control in model calibration and simulation. Figures 3.7 and 3.8 show the total aquifer system for old stratigraphy interpretation and the new stratigraphy interpretation, respectively. Note that the total thickness of the revised deep aquifers is approximately 500 to 1,000 feet greater than the original thickness in the model. Without proper changes to the hydraulic conductivity distribution in the model, this additional thickness would impact the transmissivity of the aquifer system; this impact will be discussed in the next section.

Several stratigraphic cross-sections were developed for the revised model aquifer system. Figure 3.9 shows the location of geologic cross-sections developed as part of this effort; Figures 3.10a through 3.10h are the geologic cross-sections themselves.

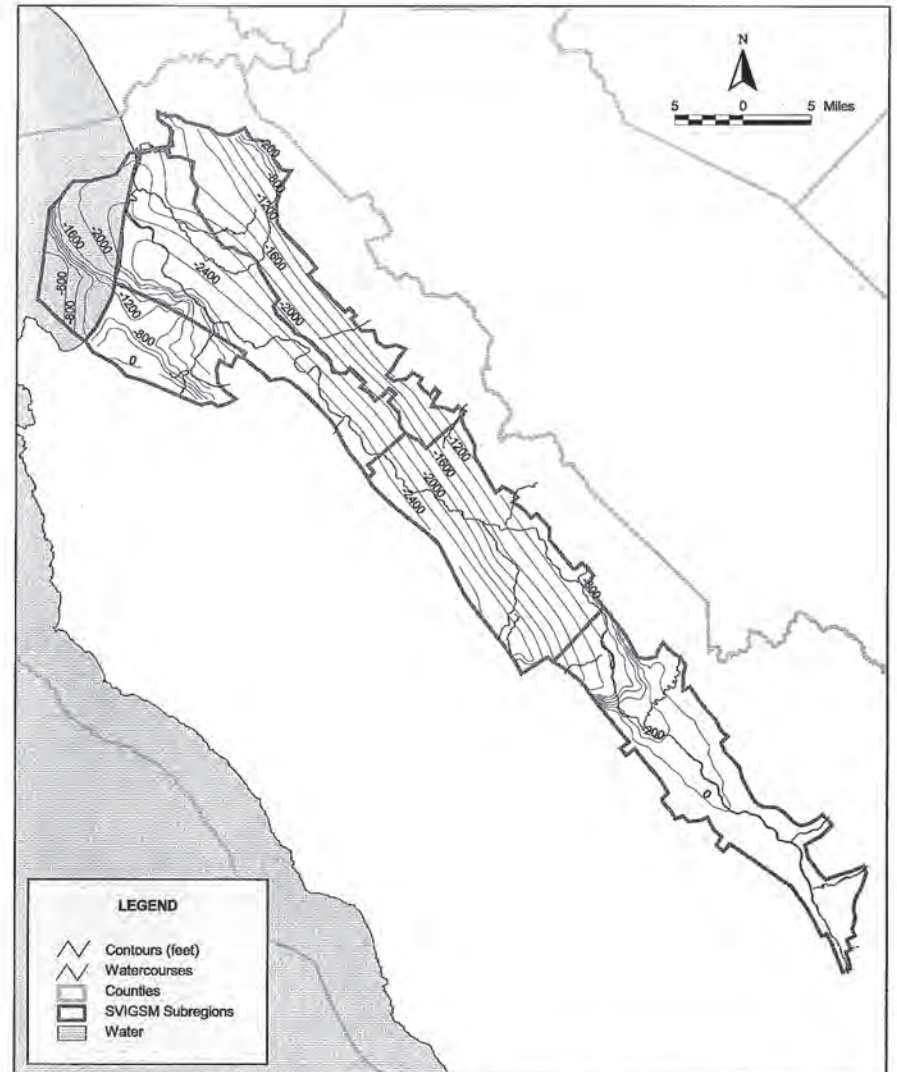




MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
Bottom Elevation of Revised Model Layer 3

MAY 2003

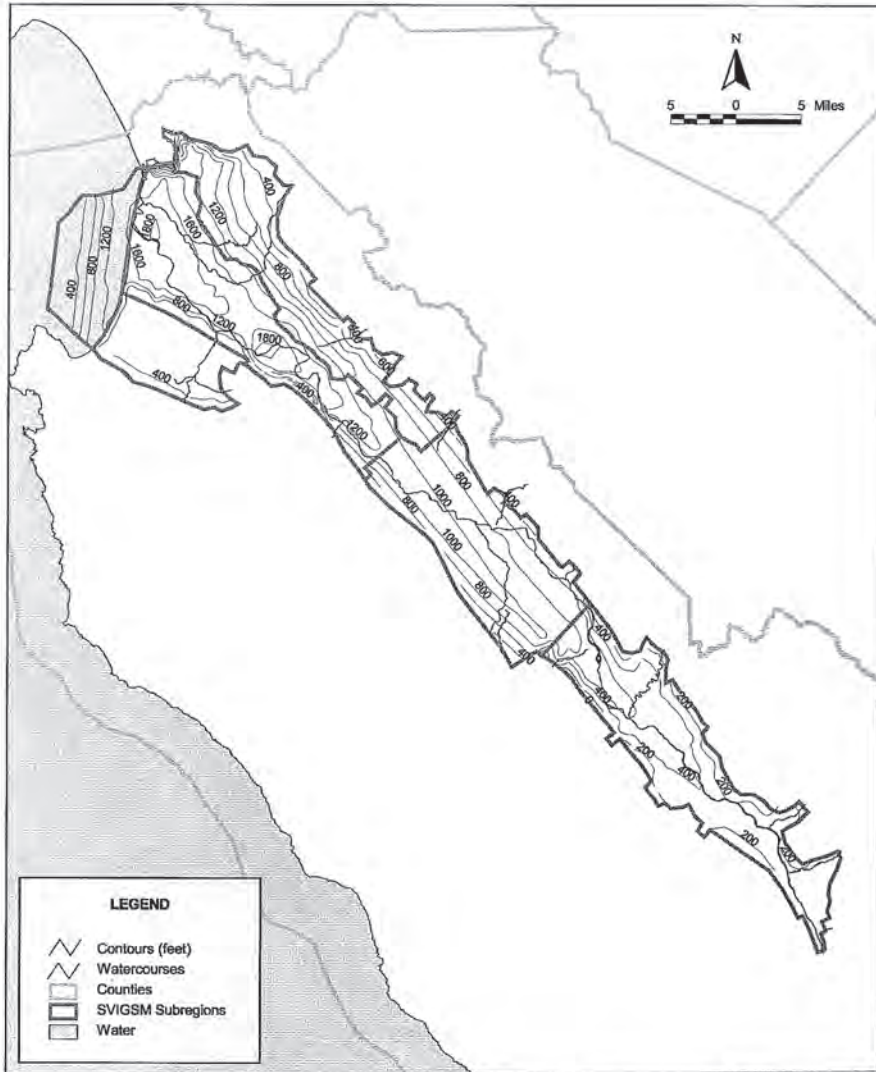
FIGURE 3.5



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
Bottom Elevation of Model Layer 4

MAY 2003

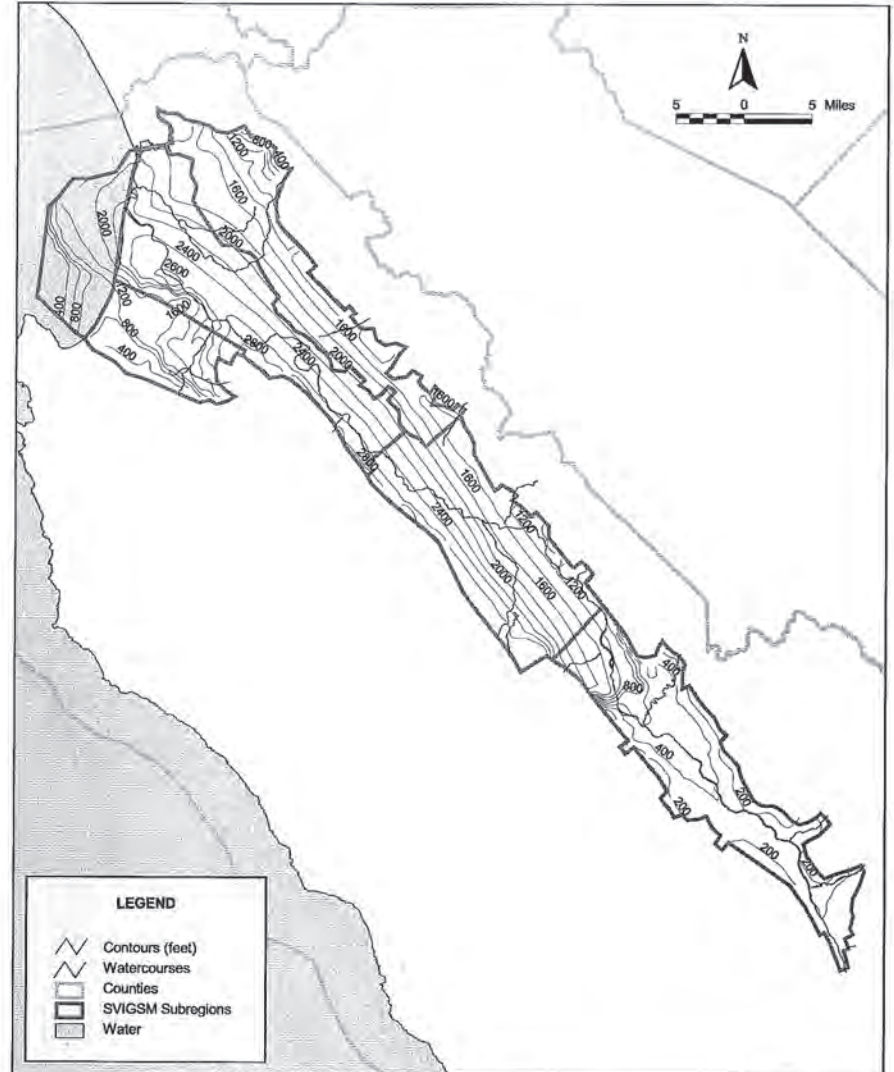
FIGURE 3.6



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
Aquifer System Thicknesses for Original Model

MAY 2003

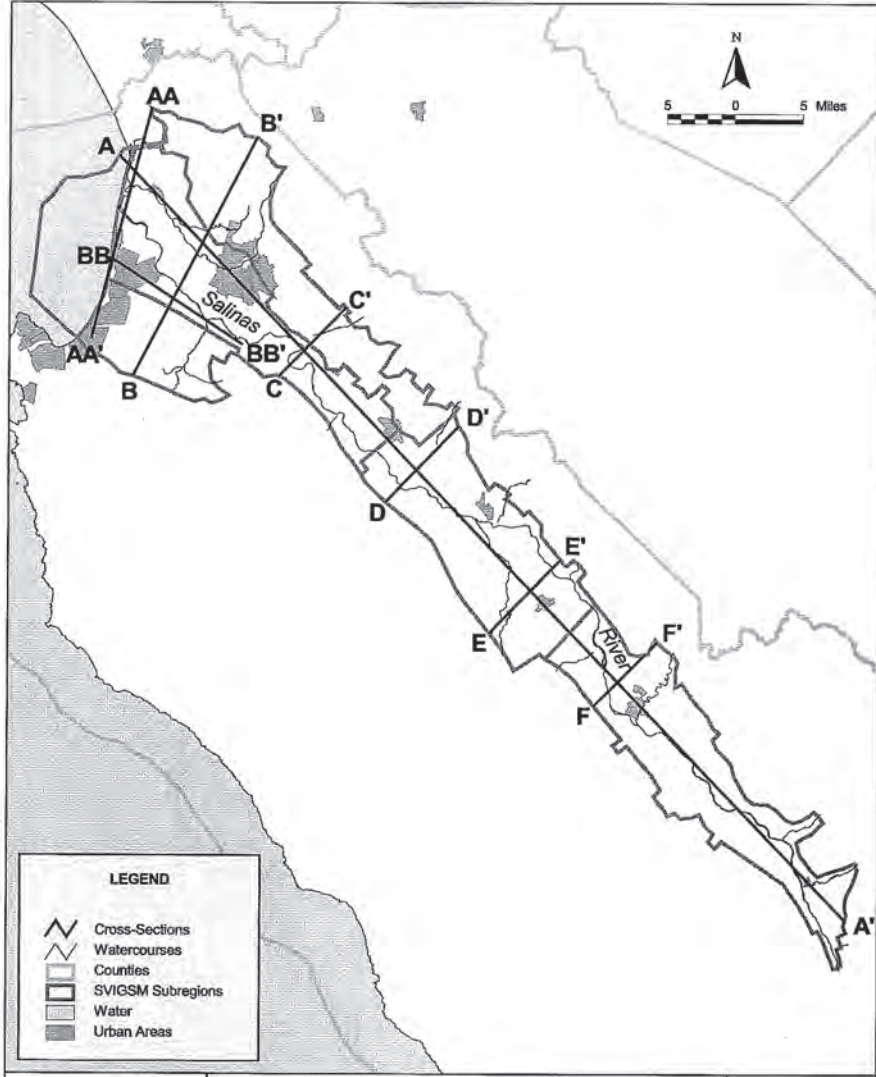
FIGURE 3.7



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
Aquifer System Thicknesses for Revised Model

MAY 2003

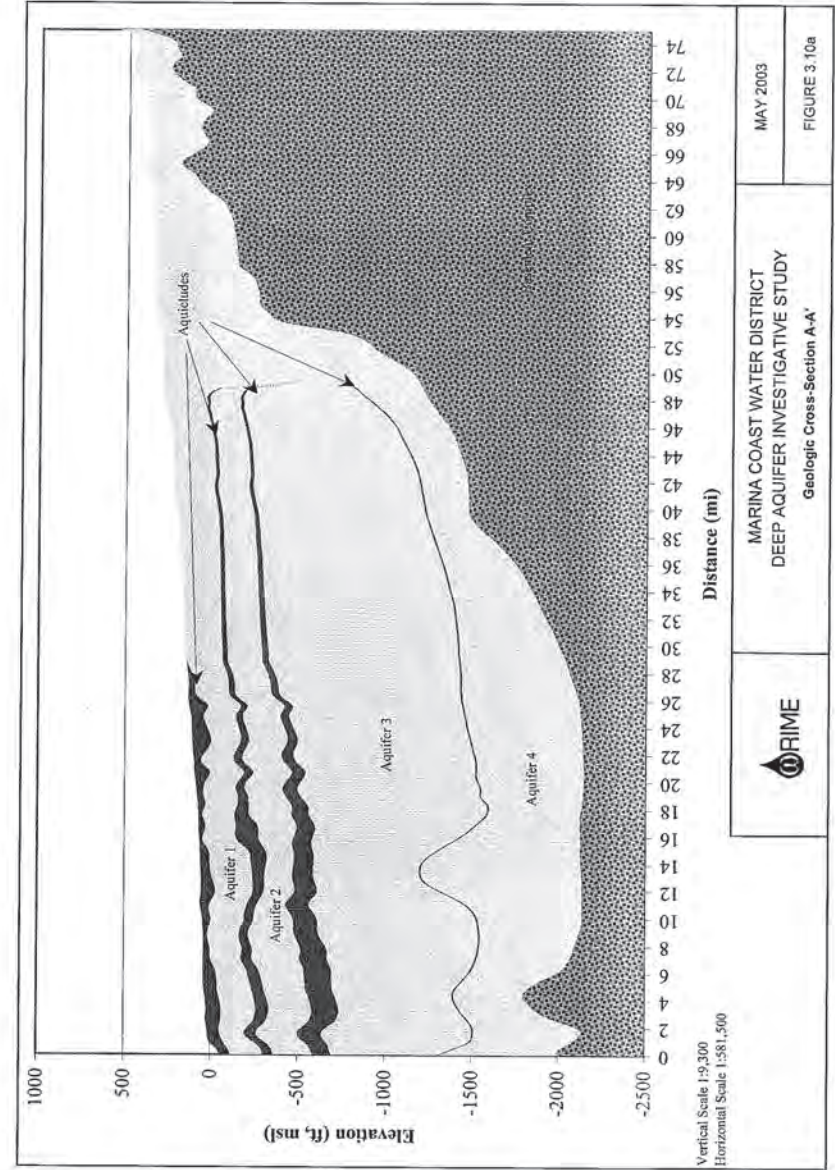
FIGURE 3.8

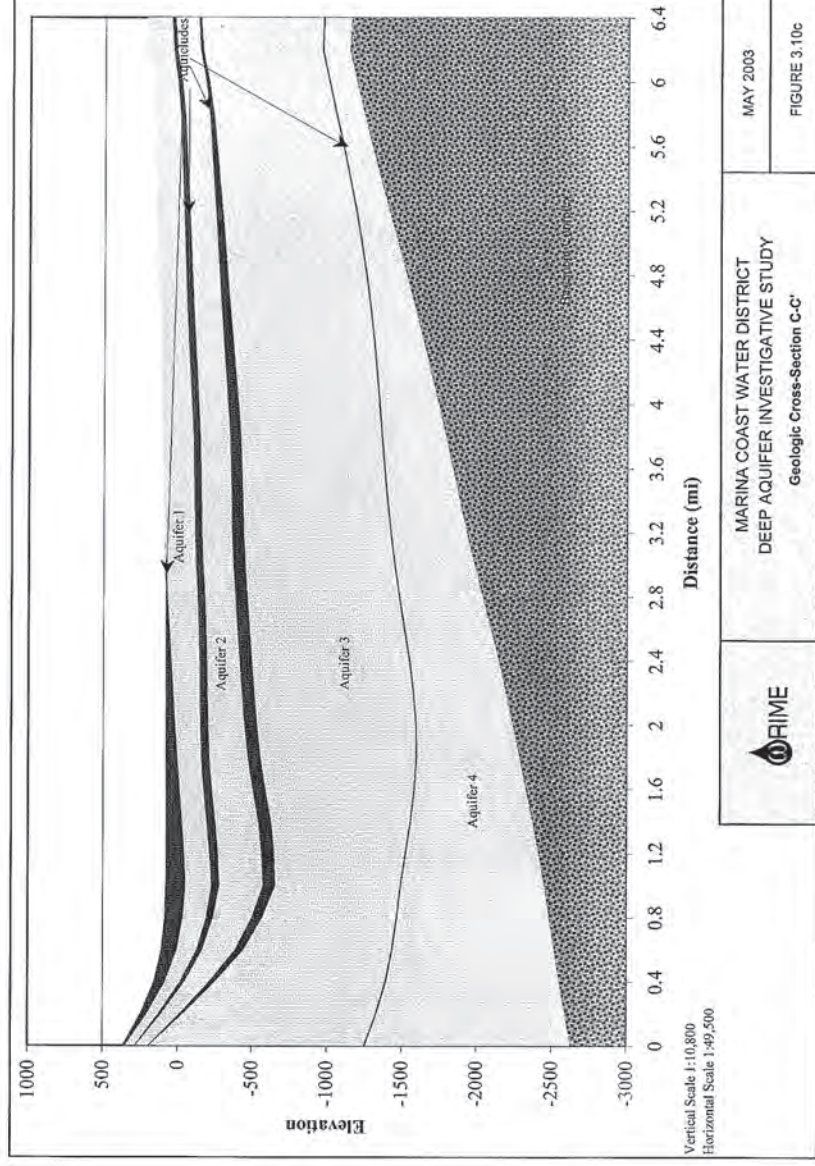
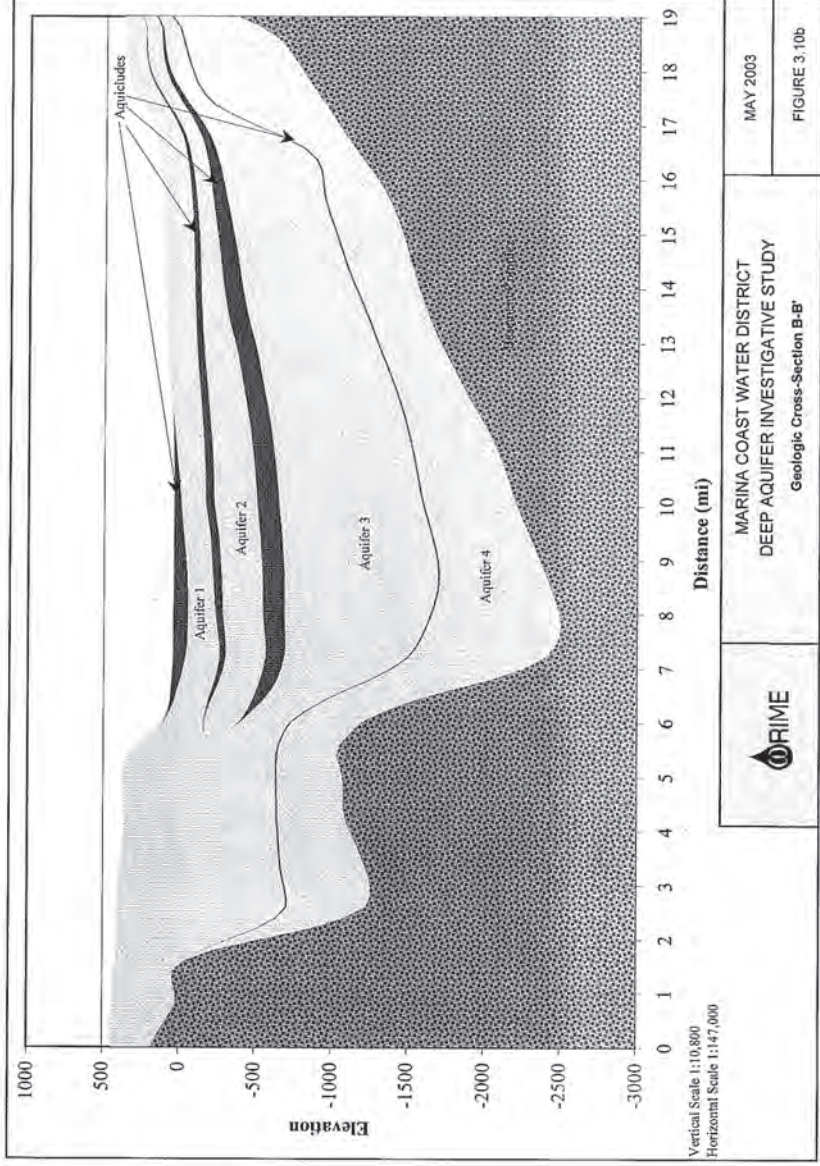


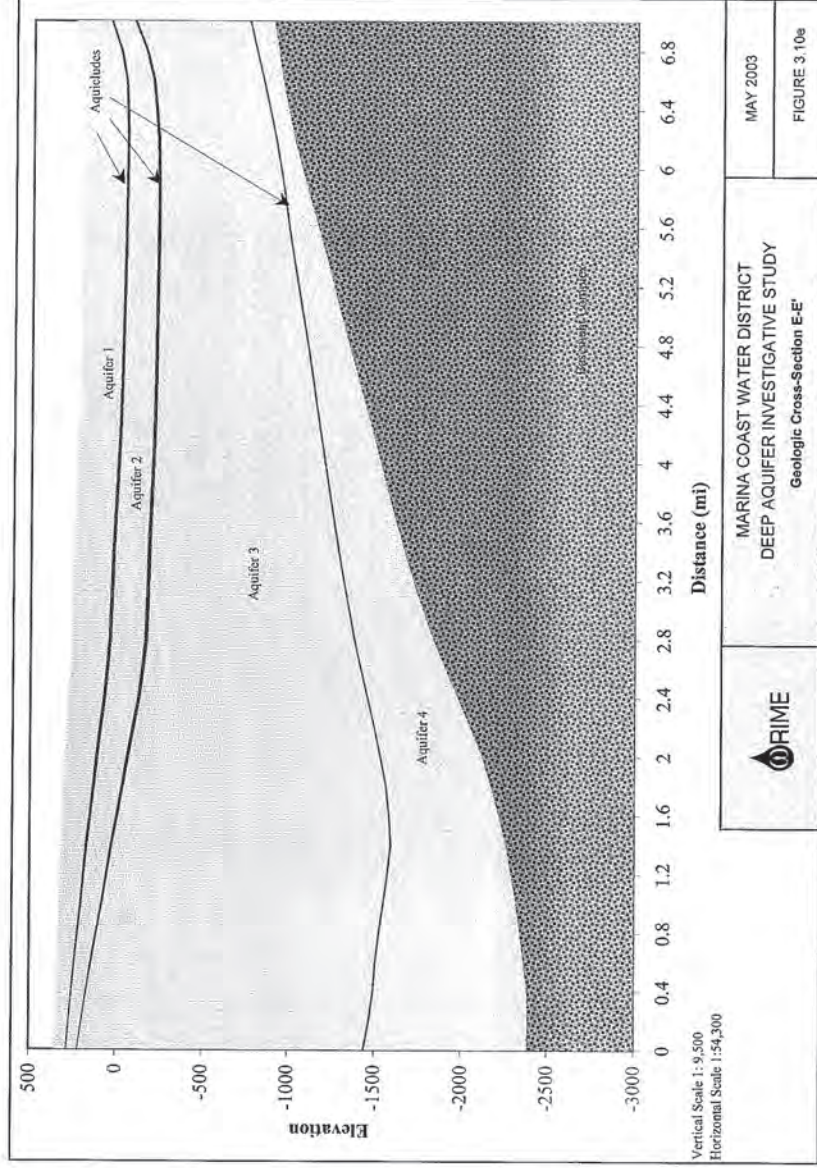
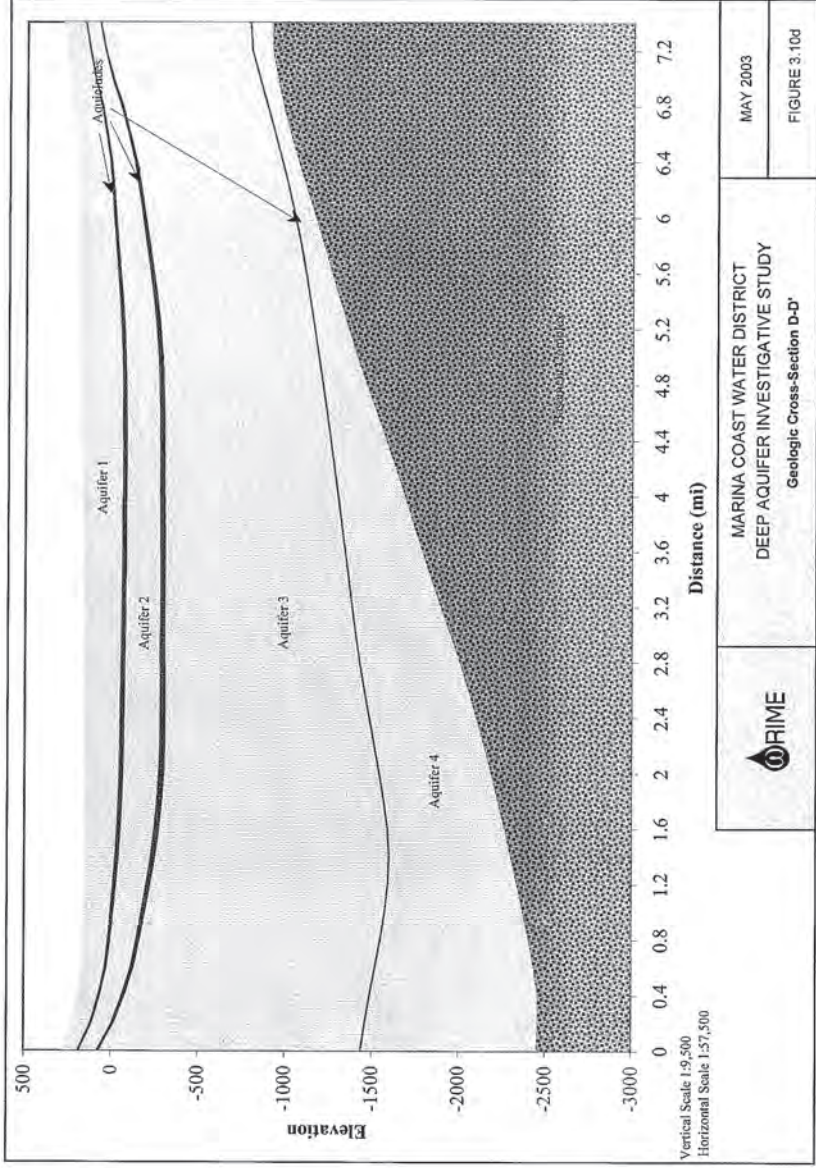
MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
SVIGSM Geologic Cross-Section Location Map

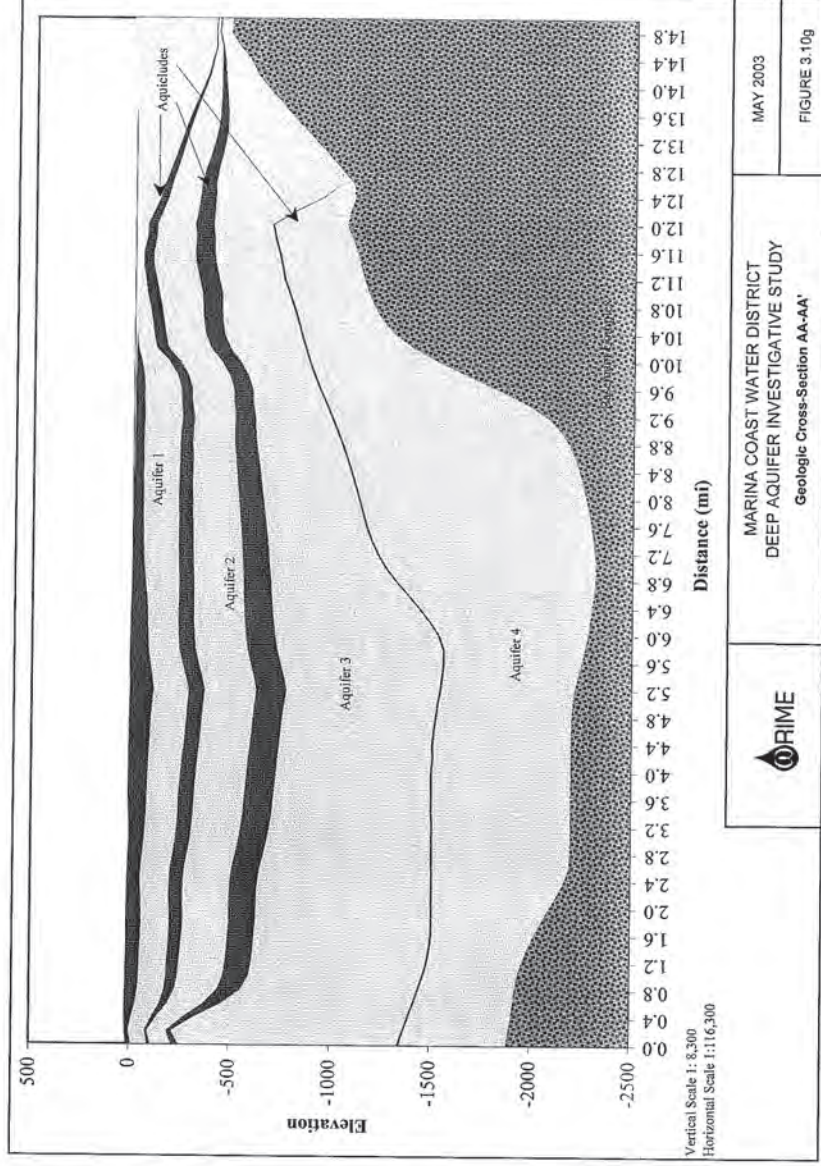
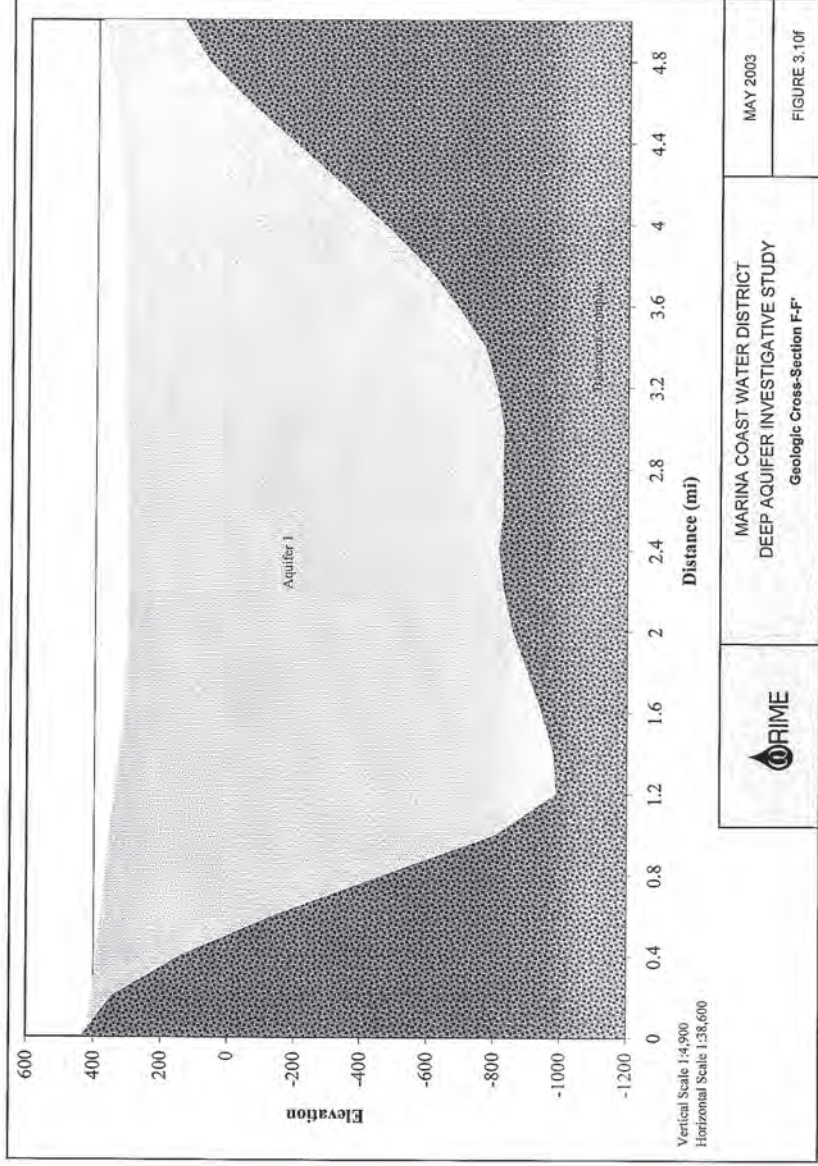
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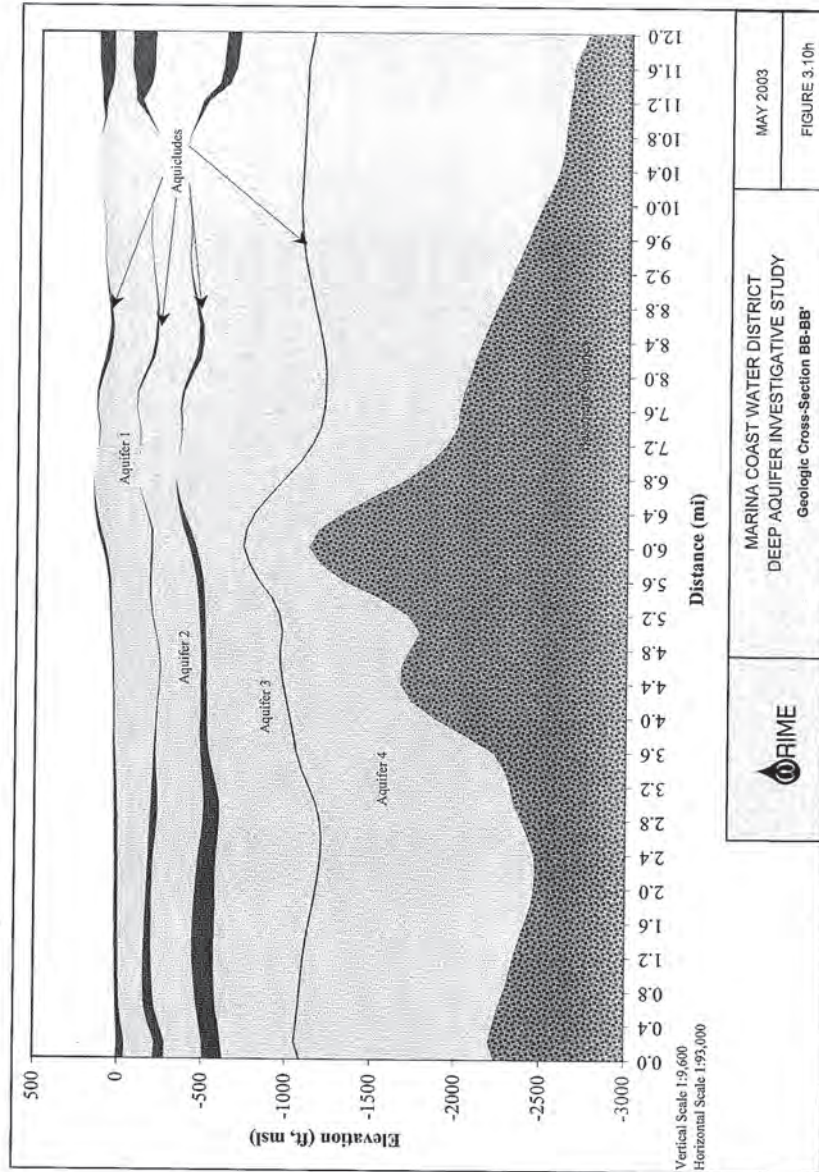
FIGURE 3.9











Based on Figures 3.4 and 3.5, the lowest elevation of the deep aquifers and upper deep aquifer is approximately 1,600 feet below mean sea level (msl). It can be concluded that the two aquifers have a similar lowest elevation. The shape of the aquifers has changed substantially, though. The deep aquifers originally pinched out at the sides of the valley. In comparison, the upper deep aquifer does not pinch out and has a bottom elevation of over 1,500 feet msl along the western boundary of the SVIGSM. In addition, the location and degree of outcrops of the upper and lower deep aquifer in the Monterey Bay is now different enough that the rate of simulated subsurface flow across the coastline in the deep aquifers is also now different. This change in the outcrop condition and its associated hydraulic effects in the deep aquifers also affects the hydraulic conditions in the 400-foot and 180-foot aquifers along the coastline, such that the simulated subsurface flow rates are expected to be different in these aquifers, because the aquifer system geometry, corresponding volume, and aquifer parameters have substantially changed. From Figure 3.7, the lower deep aquifer has a similar shape to the upper deep aquifer and their lowest bottom elevation is in excess of 2,400 feet below msl. Figures 3.8 and 3.9 show that the aquifer system thickness has increased by over 2,400 feet in some areas. However, due to low storage coefficients in the lower deep aquifer, the added thickness in the lower deep aquifer does not necessarily equate to larger storage volume and higher yield from this formation.

RELIZ FAULT MODIFICATIONS

At the time of developing the original SVIGSM, the King City (Reliz) fault was understood to impede groundwater flow between the Pressure subarea and Fort Ord. As such, a row of finite elements between the Pressure subarea and Fort Ord were assigned a low hydraulic conductivity. Review of hydrogeologic data and groundwater levels across the fault, conducted as part of this study, suggests that although the Reliz fault has deformed units as young as the Paso Robles Formation, the fault itself does not appear to affect groundwater flow. Based on this work, the fault conditions (low hydraulic conductivities, approximately 1.1×10^{-2} ft/day) were removed from the SVIGSM database, and hydraulic conductivities comparable to ones in the neighboring elements were assigned to the fault elements (ranging from 5 to 30 ft/day).

COASTAL BOUNDARY CONDITIONS

The SVIGSM finite element network includes the portion of the Monterey that overlies the Salinas basin aquifer systems. The grid nodes in this part of the model network are assigned as general head boundary condition such that proper hydraulic gradient at the coastline is simulated. This hydraulic gradient was adjusted during model calibration so that the simulated groundwater heads at the coastal wells in the 180-foot, 400-foot, and the deep aquifer wells (in the Castroville area) are reasonably close to the observed groundwater heads in these wells.

This general head boundary condition accounts for changes in hydraulic head due to seawater density relative to fresh water. As a result of changes in the stratigraphy of deep aquifers in this study, the sensitivity of simulated groundwater levels to this boundary condition was evaluated, and as a result no changes to this boundary condition was necessary.

SVIGSM RECALIBRATION

Due to changes in the stratigraphic conditions of the deep aquifers, the following is a list of parameters that were changed as part of the recalibration effort.

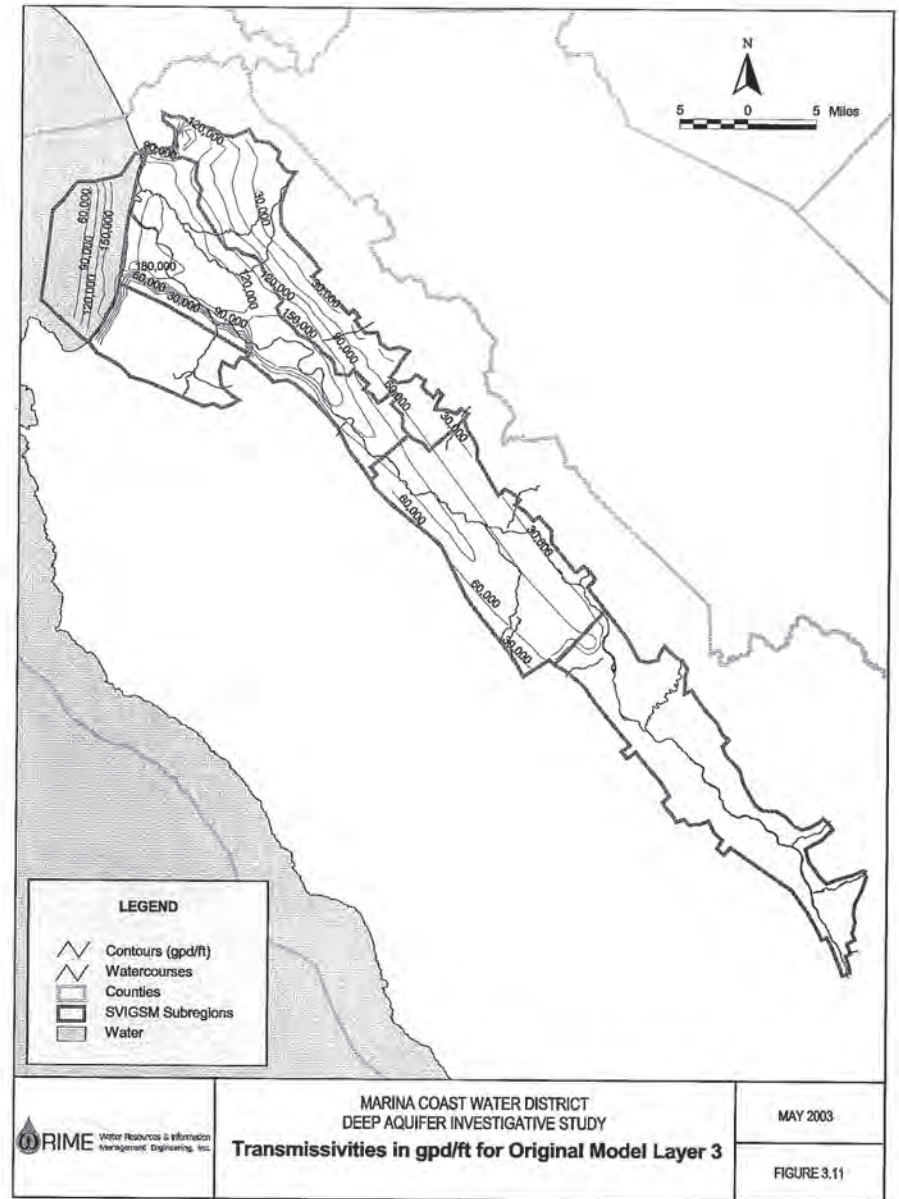
1. Horizontal hydraulic conductivity,
2. Storativity of the deep aquifers,
3. Vertical hydraulic conductivity of the aquitard above upper deep aquifer, and between the upper and lower deep aquifers; and
4. Streambed Parameters

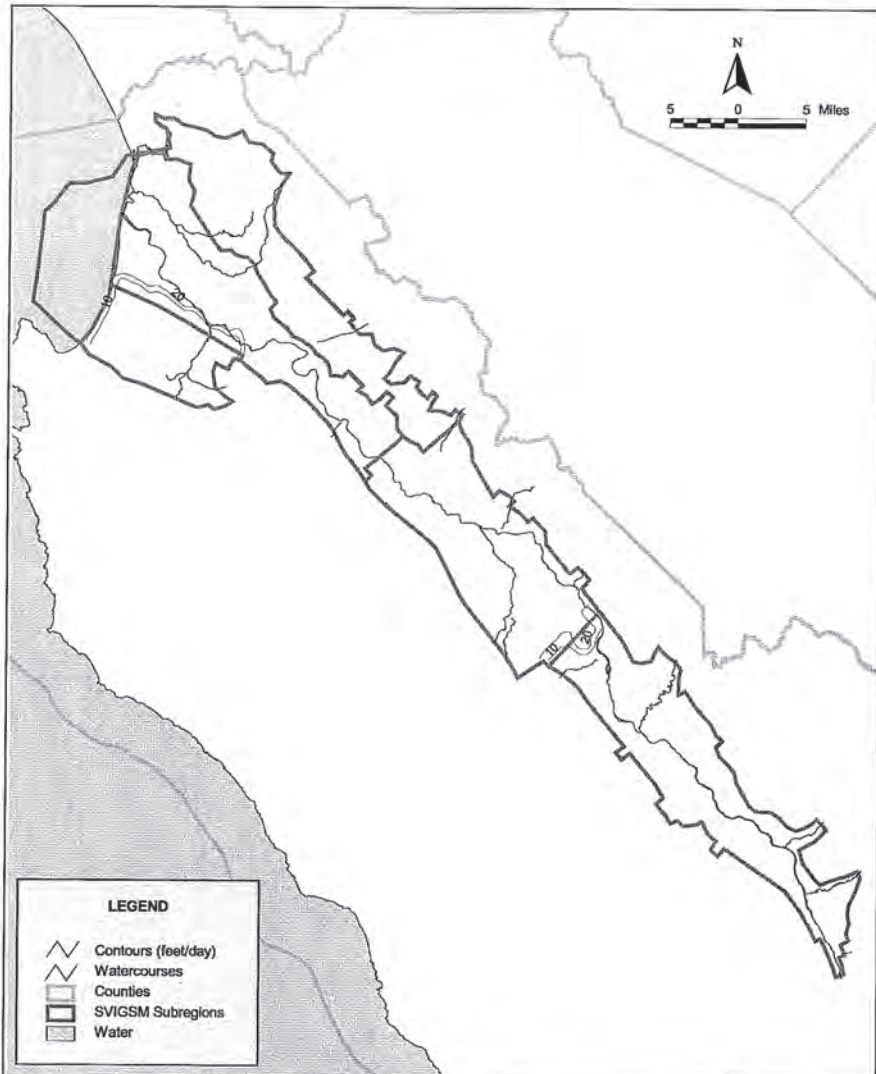
Following is a brief discussion of the modifications:

Horizontal Hydraulic Conductivity

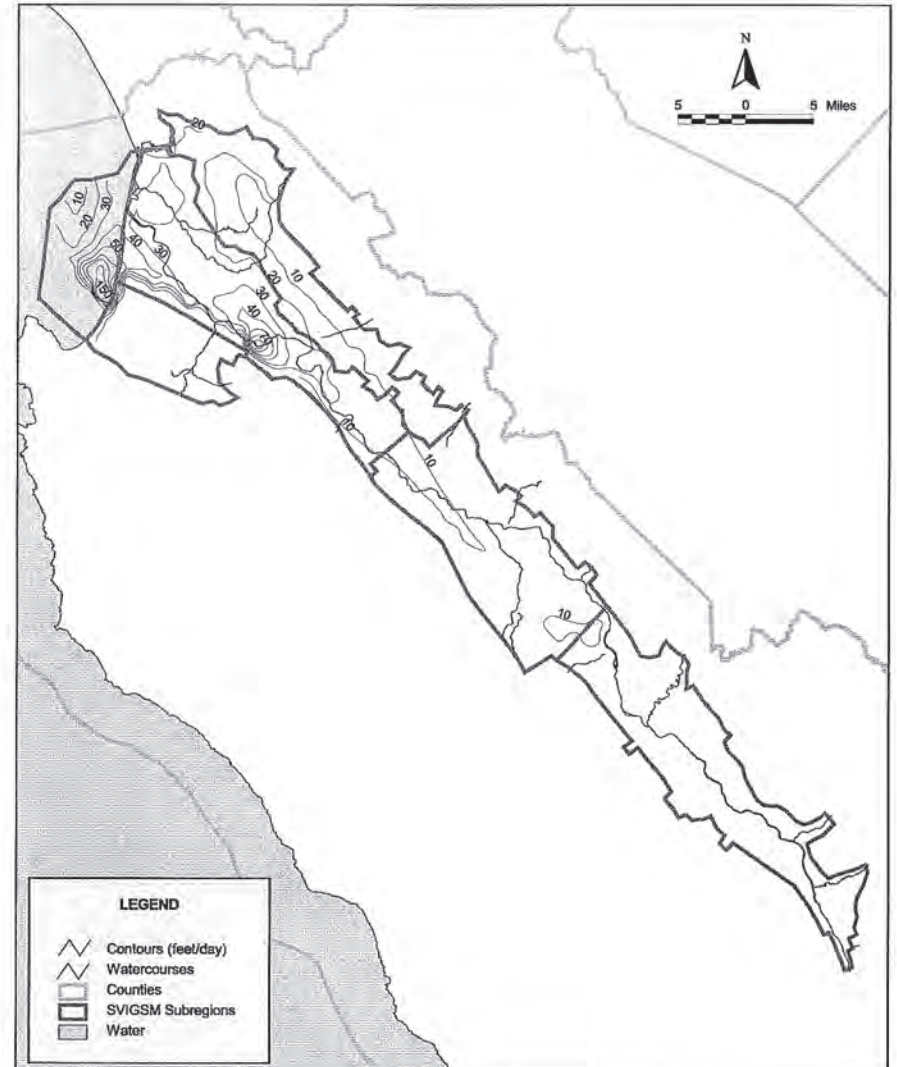
The model hydraulic conductivity parameters are adjusted to bring the model into calibration. Because the transmissivity values for the deep aquifers in the original model was based on model calibration with observed groundwater heads, the goal of this recalibration effort was to preserve the range of original transmissivity values. In addition, Table 2.2 provides additional set of data for model recalibration. Therefore, the changes to the model hydraulic conductivity values were first achieved by replacing the original parameters with equivalent ones, so that the total transmissivity of each model layer remained about the same as in the three-layer model. It was assumed that the transmissivity of model layer 3 (upper deep aquifer) and layer 4 (lower deep aquifer) are similar. Figure 3.11 shows the transmissivity for Layer 3 in the original model. Figures 3.12 and 3.13 show the hydraulic conductivity for Layer 3 in the original and revised models, respectively. Figure 3.14 shows the hydraulic conductivity for Layer 4 in the revised model. Subsequently, additional localized refinements were made to incorporate information from Table 2.2 into the model.

Based on the contour maps of saturated thickness from Thorup, and as discussed in Section 2 of this report, the total saturated thickness of the aquifer system in the Upper Valley area is more in the revised model than in the original model. As such, an equivalent hydraulic conductivity for the one-layer aquifer system in the Upper Valley was also developed based on the same





	MARINA COAST WATER DISTRICT DEEP AQUIFER INVESTIGATIVE STUDY Hydraulic Conductivities for Original Model Layer 3	MAY 2003
		FIGURE 3.12



	MARINA COAST WATER DISTRICT DEEP AQUIFER INVESTIGATIVE STUDY Hydraulic Conductivities for Revised Model Layer 3	MAY 2003
		FIGURE 3.13

method as used in the deep aquifers system. Figures 3.15 and 3.16 show the hydraulic conductivities of the original model and the revised model layer 1.

Storativity of Deep Aquifers

The changes in the thickness of the deep aquifers from the original model require modifications to the storativity parameters so that seasonal responses of the simulated groundwater levels are similar to those in the observed groundwater level data. The storage coefficient in the 3-Layer SVIGSM was 5×10^{-5} . The storage coefficient of the deep aquifers was reduced by approximately one order of magnitude, such that the resulting Storage coefficient ranges from 1×10^{-6} to 5×10^{-6} . These changes were focused on the northwestern area of the model.

Vertical Hydraulic Conductivity of Aquitards

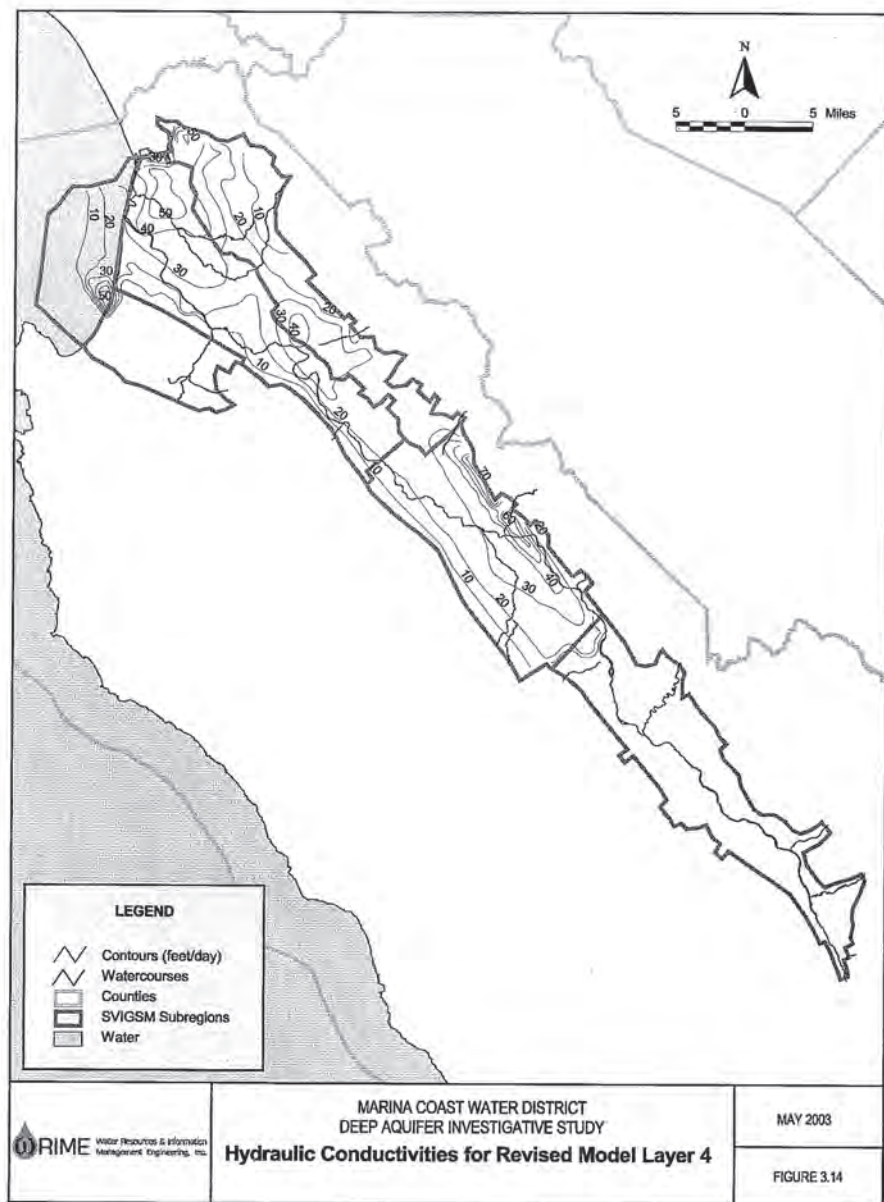
As a result of changes to the thickness of the upper deep aquifer, the hydraulic connection between the upper deep and the 400-foot aquifers need to be revised. The vertical hydraulic conductivity for the aquitard above the upper deep aquifer is modified to ensure that the model leakage between the 400-foot and the upper deep aquifer remains approximately the same as the original model. The vertical hydraulic conductivity in the MCWD area is 3.6×10^{-3} ft/day and the aquitard thickness ranges from about 50 to 150 feet in and around MCWD.

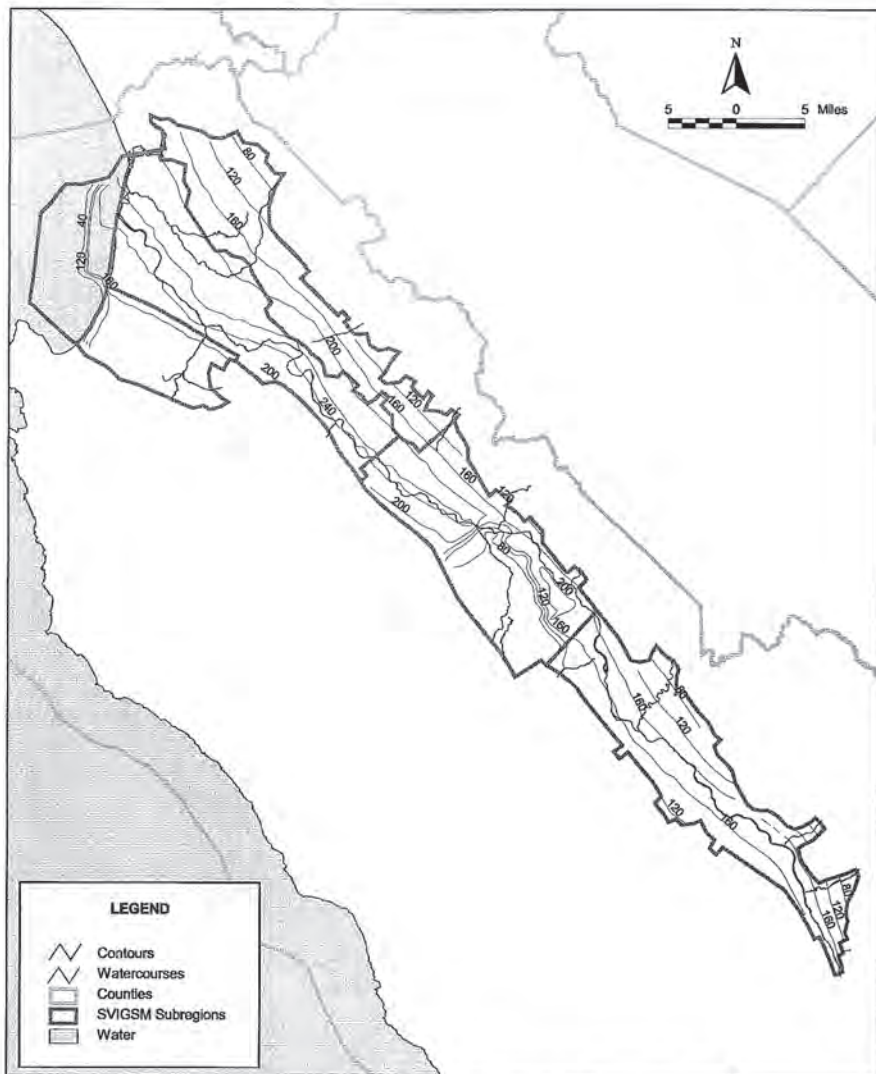
As discussed in Section 2 of this report, the observed groundwater heads in wells 10, 11, and 12 indicate that there may be a separation in hydraulic connection between the upper and lower deep aquifers. In order to simulate this condition, as well as calibrate the model to the observed groundwater heads at these wells, a 10-Ft aquitard is assumed between the upper and lower deep aquifers. This aquitard thickness is merely to add calibration control for modeling purposes, and is not based on any hydrogeologic information. The vertical hydraulic conductivity between the upper and lower deep aquifers, in the MCWD area, is 3.6×10^{-4} ft/day


Streambed Parameters

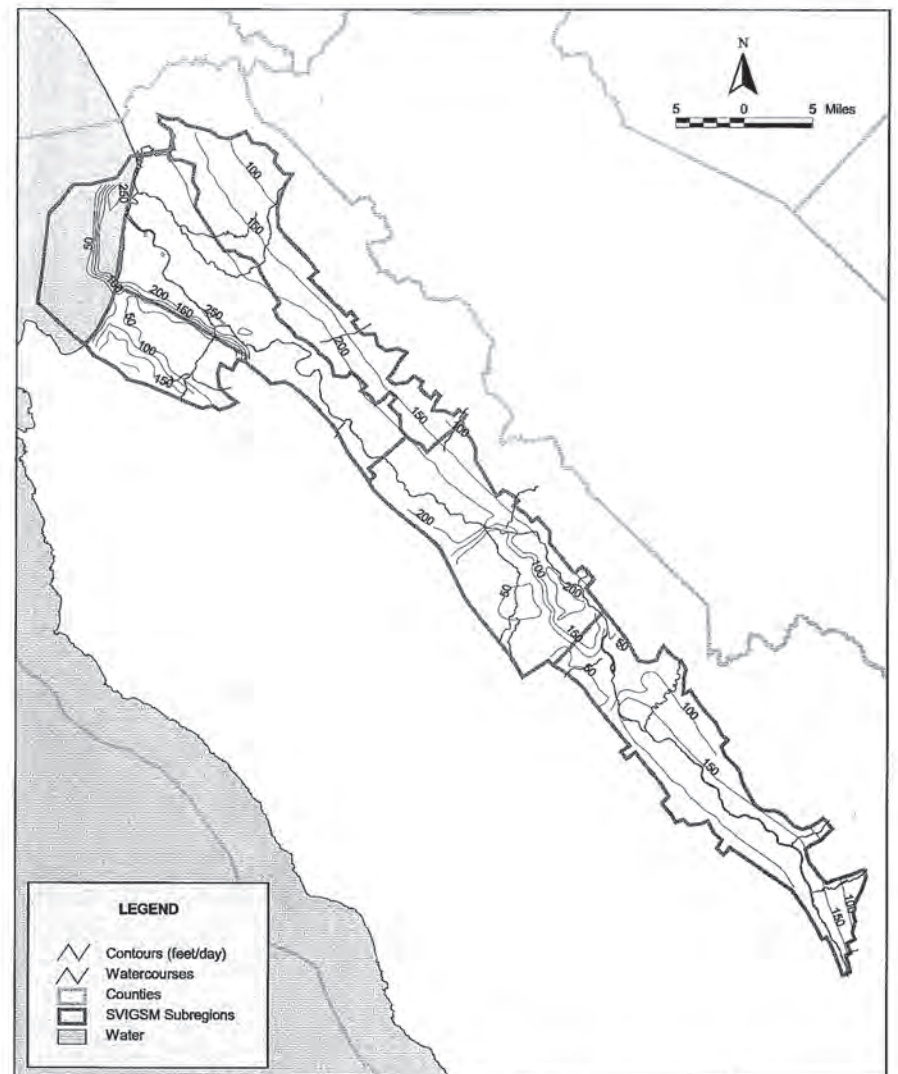
Average annual streamflow depletions in the previous version of the SVIGSM were compared with the updated version of SVIGSM. Due to changes in hydraulic conductivity of model layer 1, the streamflow depletions of the two model versions did not match. Hydraulic conductivity values of the streambed were modified so that a better match of simulation streamflow depletion values was achieved. The following represents the changes made to the streambed hydraulic conductivities from the original model:


1. Salinas River conductivities were increased in the Upper Valley subarea;





	MARINA COAST WATER DISTRICT DEEP AQUIFER INVESTIGATIVE STUDY		MAY 2003
	Hydraulic Conductivities for Original Model Layer 1		FIGURE 3.15



	MARINA COAST WATER DISTRICT DEEP AQUIFER INVESTIGATIVE STUDY		MAY 2003
	Hydraulic Conductivities for Revised Model Layer 1		FIGURE 3.16

2. Arroyo Seco River conductivities were slightly reduced in the Forebay Subarea; and
3. Salinas River conductivities in the Pressure Subarea above El Toro Creek were increased.

As a result of the recalibration efforts, there was a better match of simulated groundwater levels with the previously simulated groundwater levels and with observed groundwater levels. Figures 3.17a through 3.17d show the distribution of residuals for each subarea over the simulation period. Figures 3.18a through 3.18e show the distribution of errors in the simulated and historic groundwater levels in the entire model area as well as in each subarea. The distributions of residual groundwater levels show the percentage of residuals within the specified ranges. Again, a higher percentage of residuals near zero and one that is more centered on zero indicate a better simulation of historical conditions. Model performances for the entire model area and each subarea are summarized below based on these statistical evaluations. A comparison of Figures 3.2a–3.2d and 3.18a–3.18e indicates that quality of model calibration in the revised version of SVIGSM is as good as or better than the original version.

Model Area. Nearly all simulated groundwater levels (approximately 91%) for the entire model area are within 20 feet of observed groundwater levels. Approximately 80% of simulated groundwater levels are within 10 feet of observed groundwater levels. These are better statistical results than what was determined in the previous version of SVIGSM.

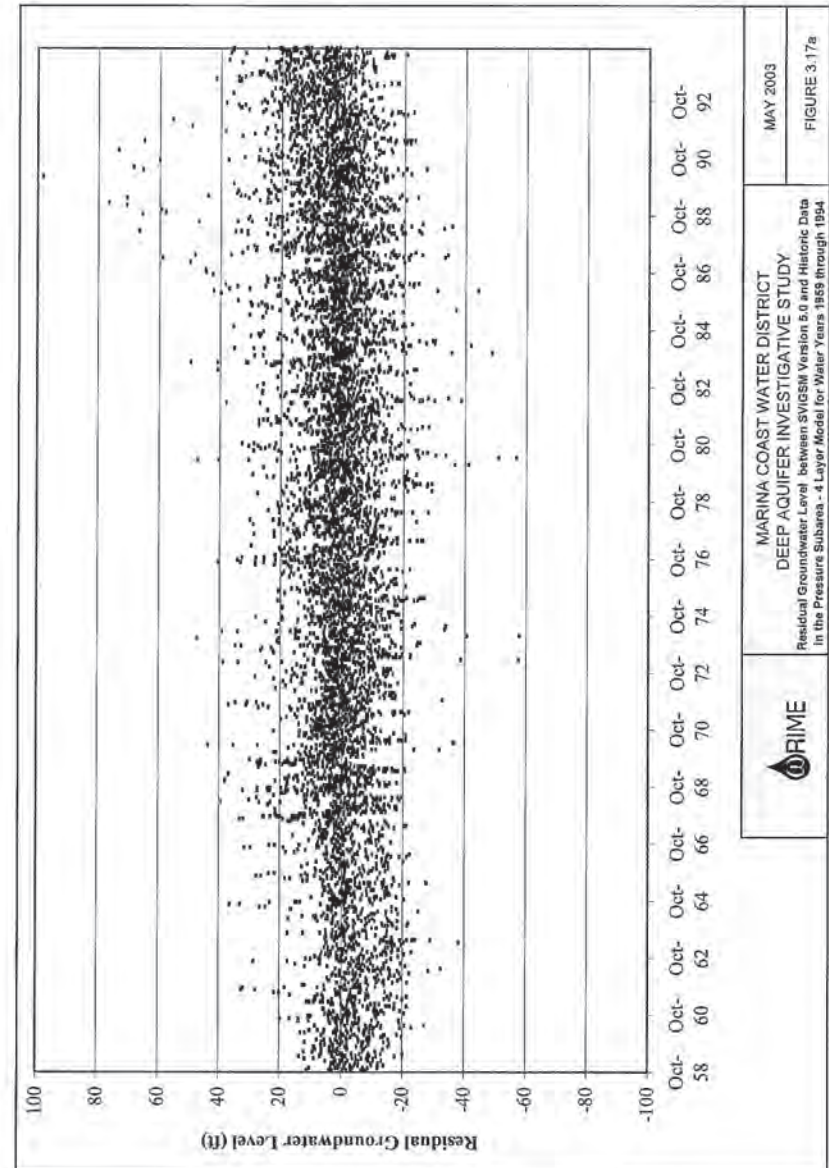
Pressure Subarea. The majority of the simulated groundwater levels (approximately 80%) lie within 10 feet of observed groundwater levels.

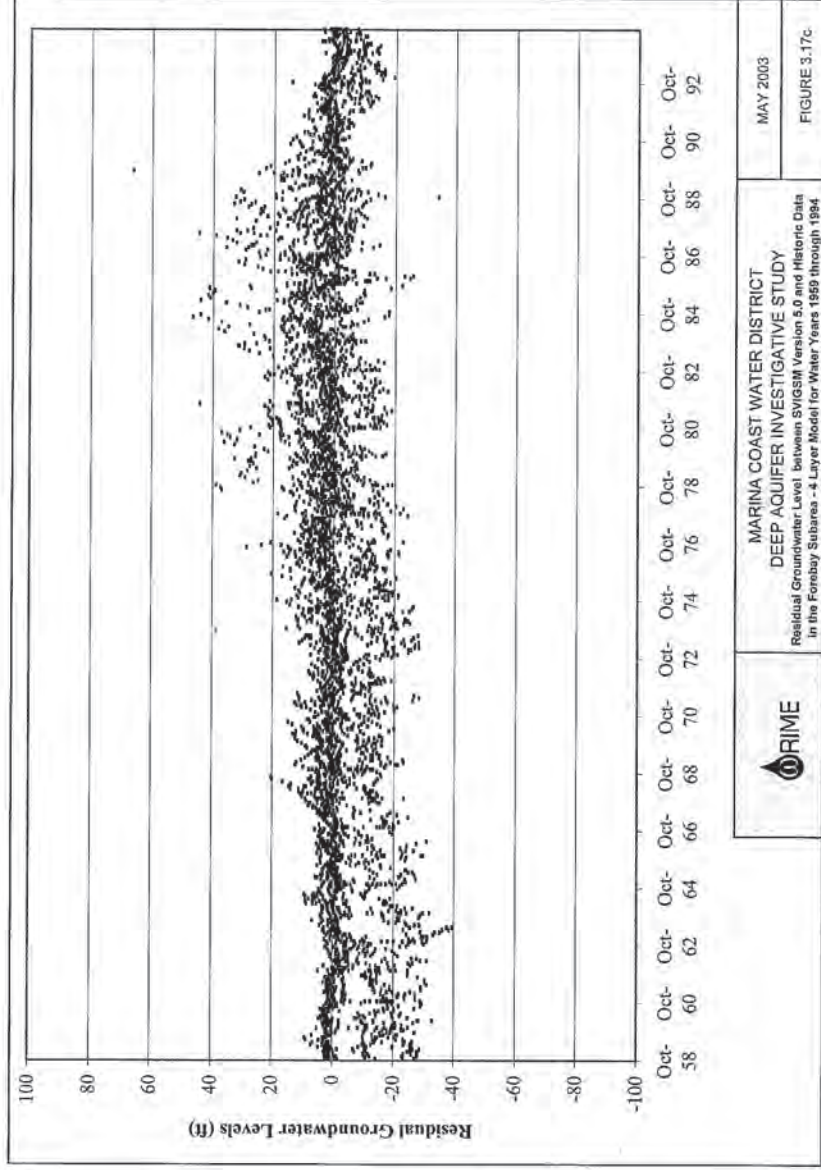
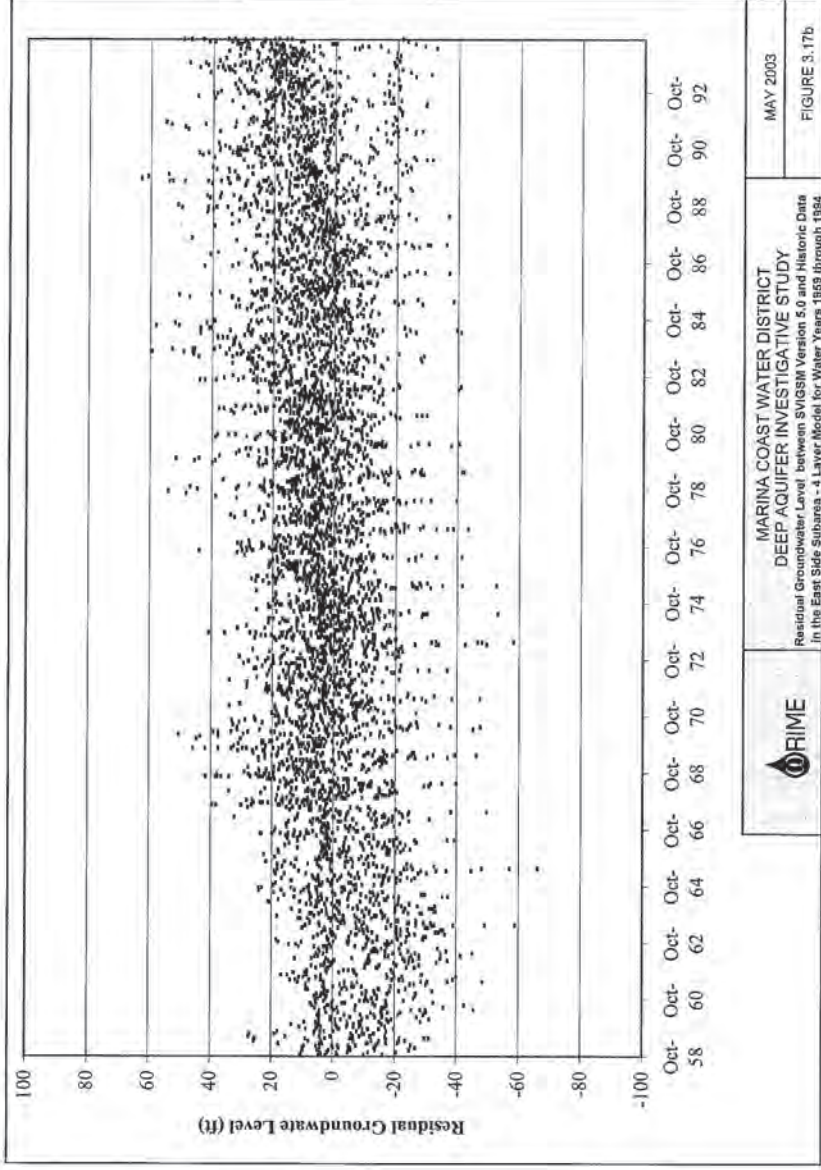
East Side Subarea. Distributions of the residuals show that approximately 55% of simulated groundwater levels are within 10 feet of observed groundwater levels. This is consistent with the previous SVIGSM version.

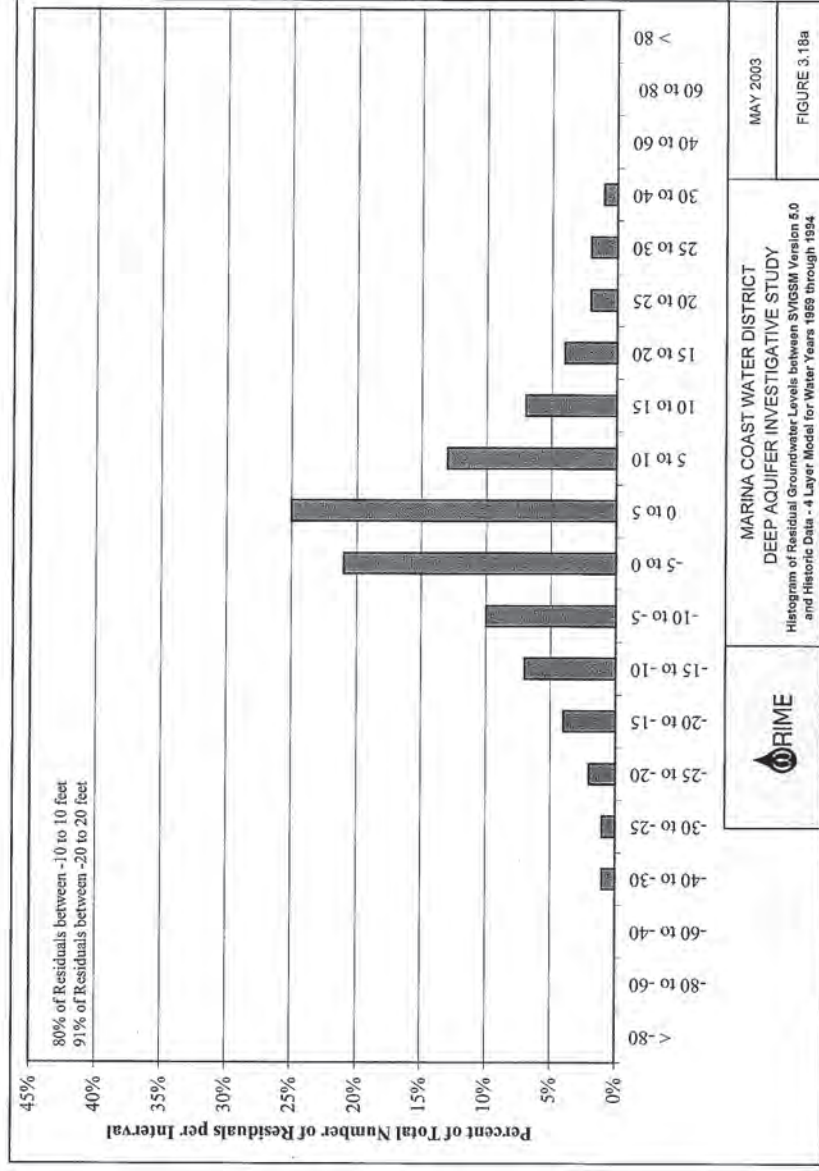
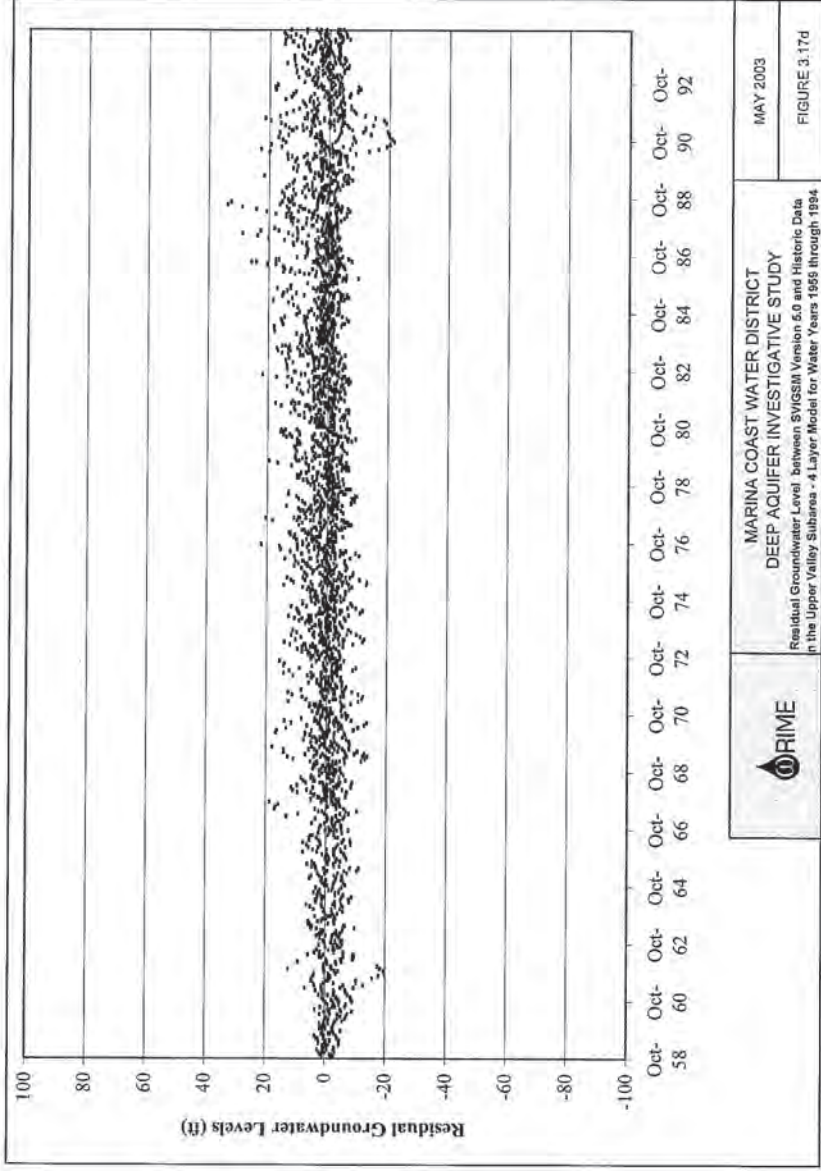
Forebay Subarea. The distribution of residuals shows good calibration between simulated and observed groundwater levels. Overall, 75% percent are within 10 feet of each other. The distributions appear to be normally shaped except for the Forebay deep aquifers that show a bias of the model in underestimating groundwater levels. These results are not as good as the statistical results from the previous SVIGSM version.

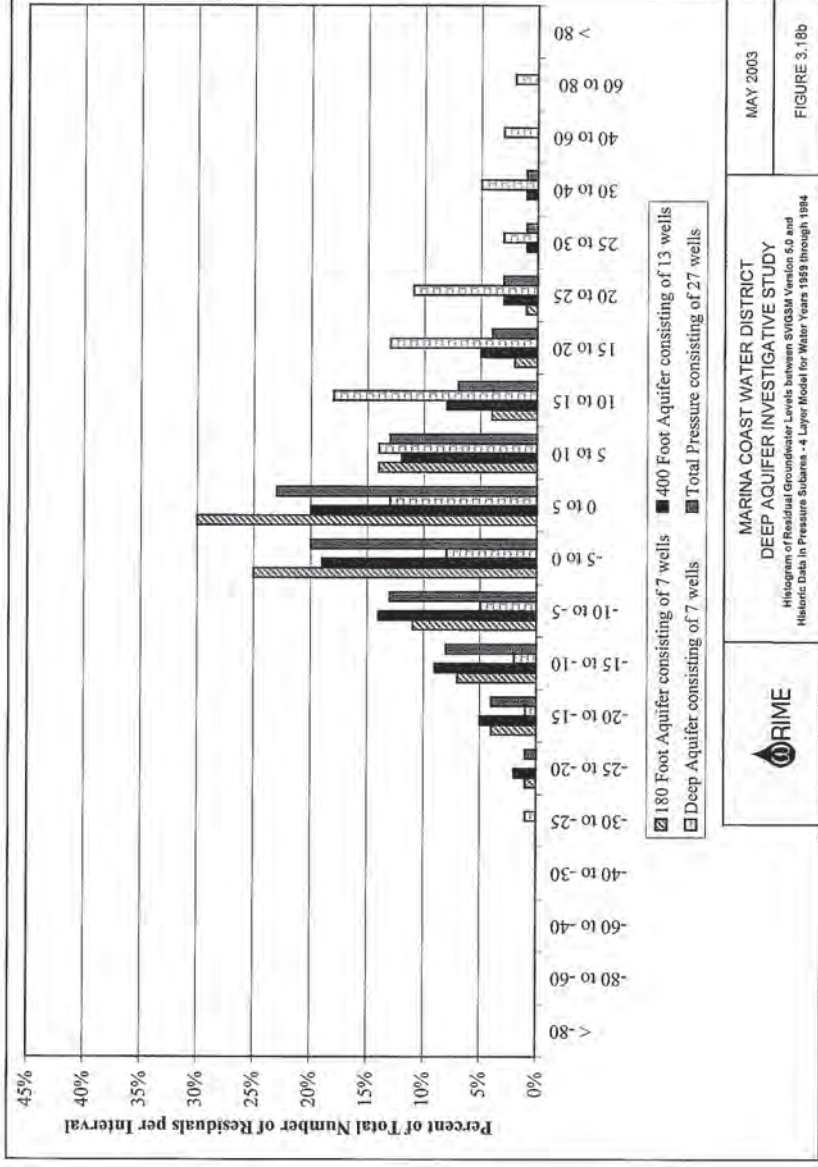
Upper Valley Subarea. Simulated groundwater levels tend to match observed groundwater levels. All simulated values are within 20 feet of observed groundwater levels.

Figure 3.2 shows the location of the calibration wells, including the MCWD production wells. Figures 3.19 through 3.21 show the hydrographs for each of the wells. These Figures indicate



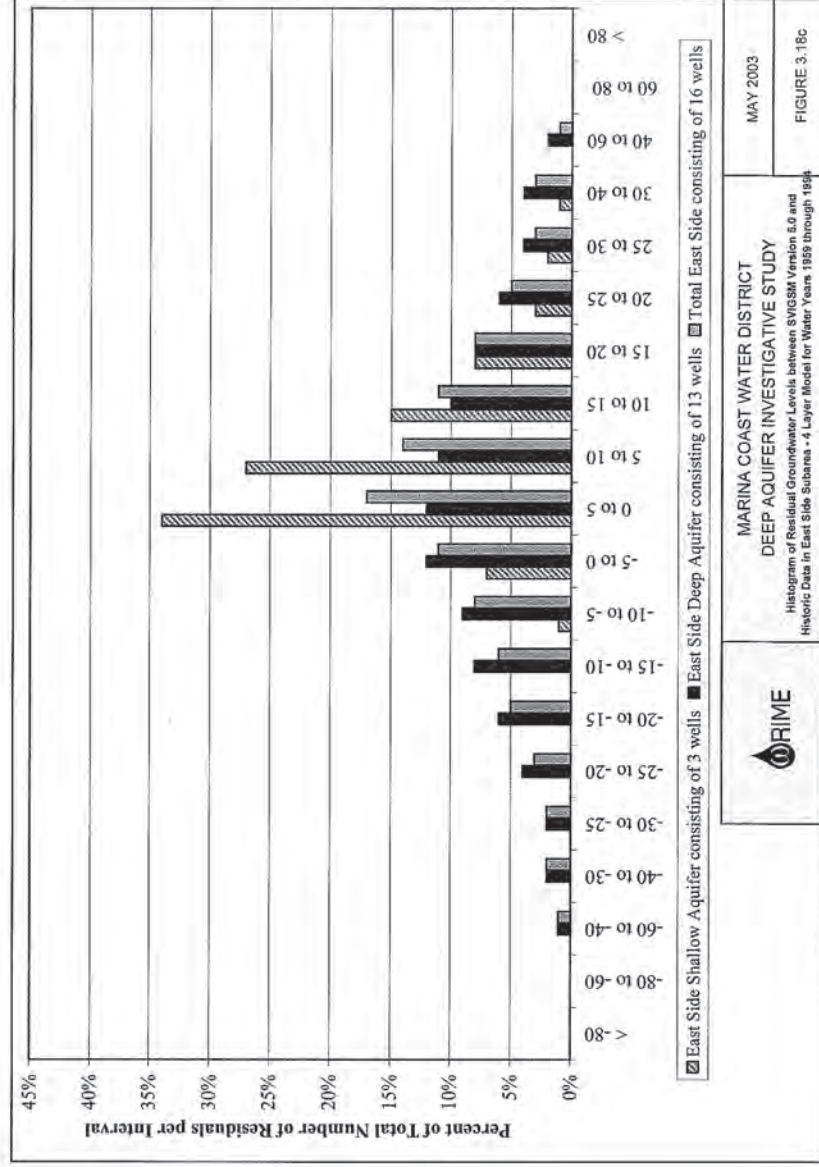






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FIGURE 3.18b

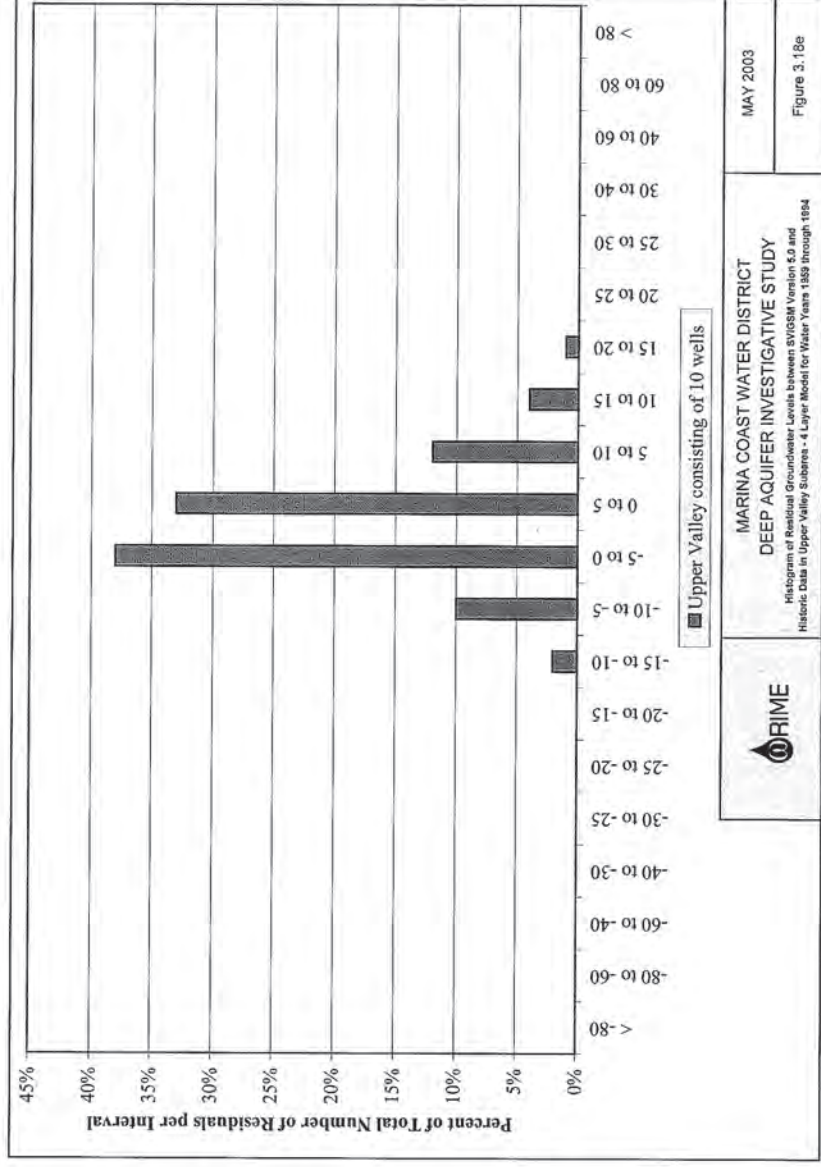
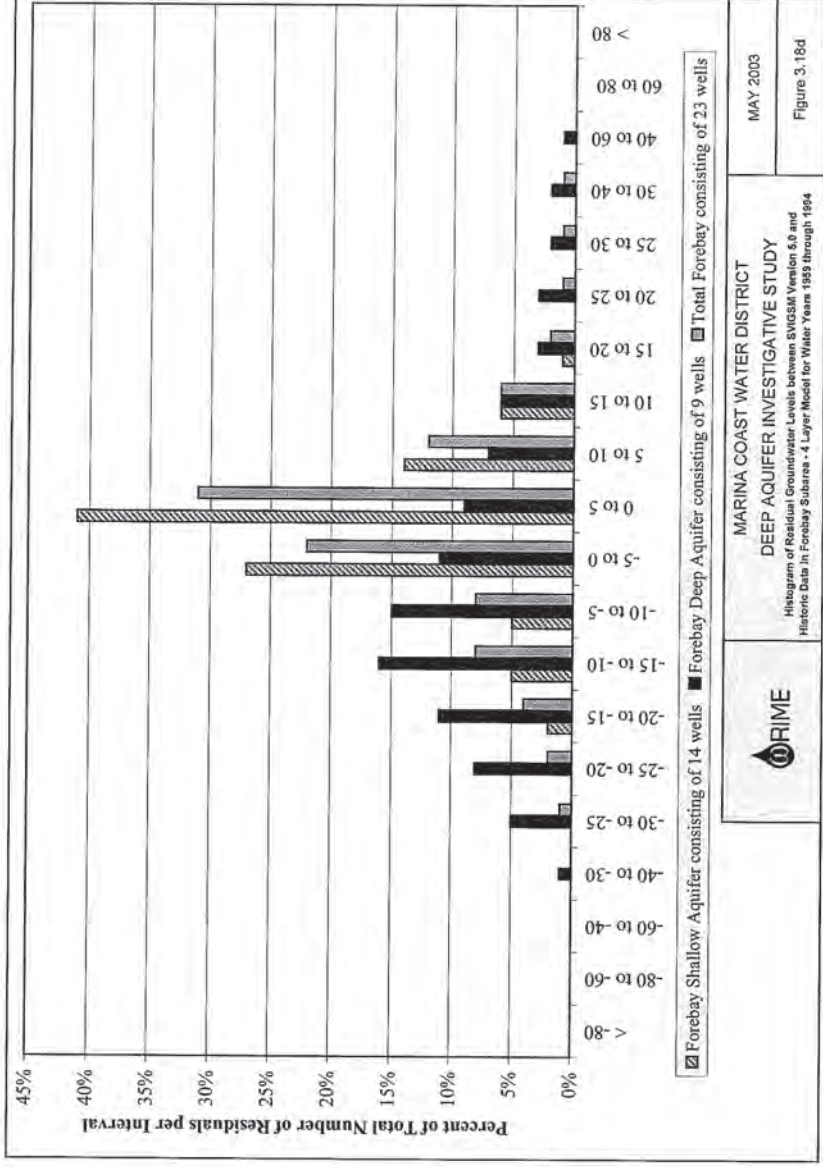
MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
Histogram of Residual Groundwater Levels between SVGSM Version 5.0 and
Historic Data in Pressure Subarea - 4 Layer Model for Water Years 1959 through 1984

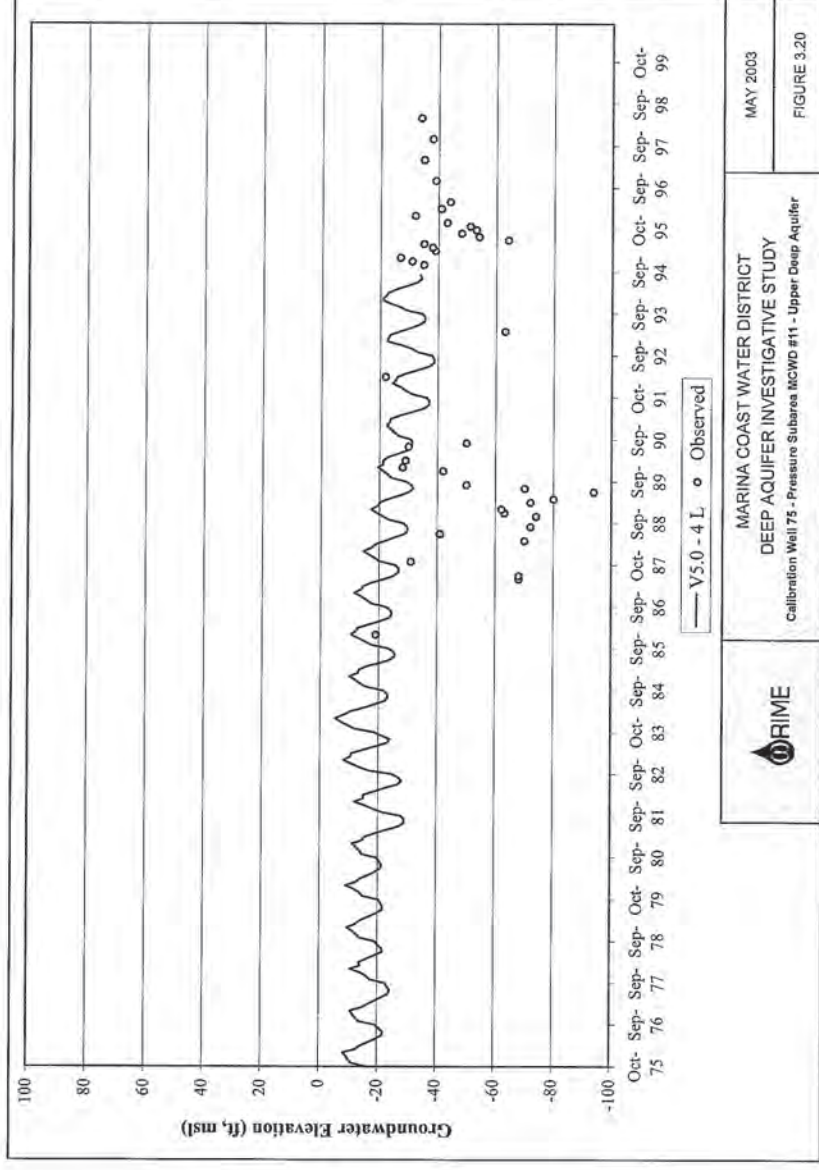
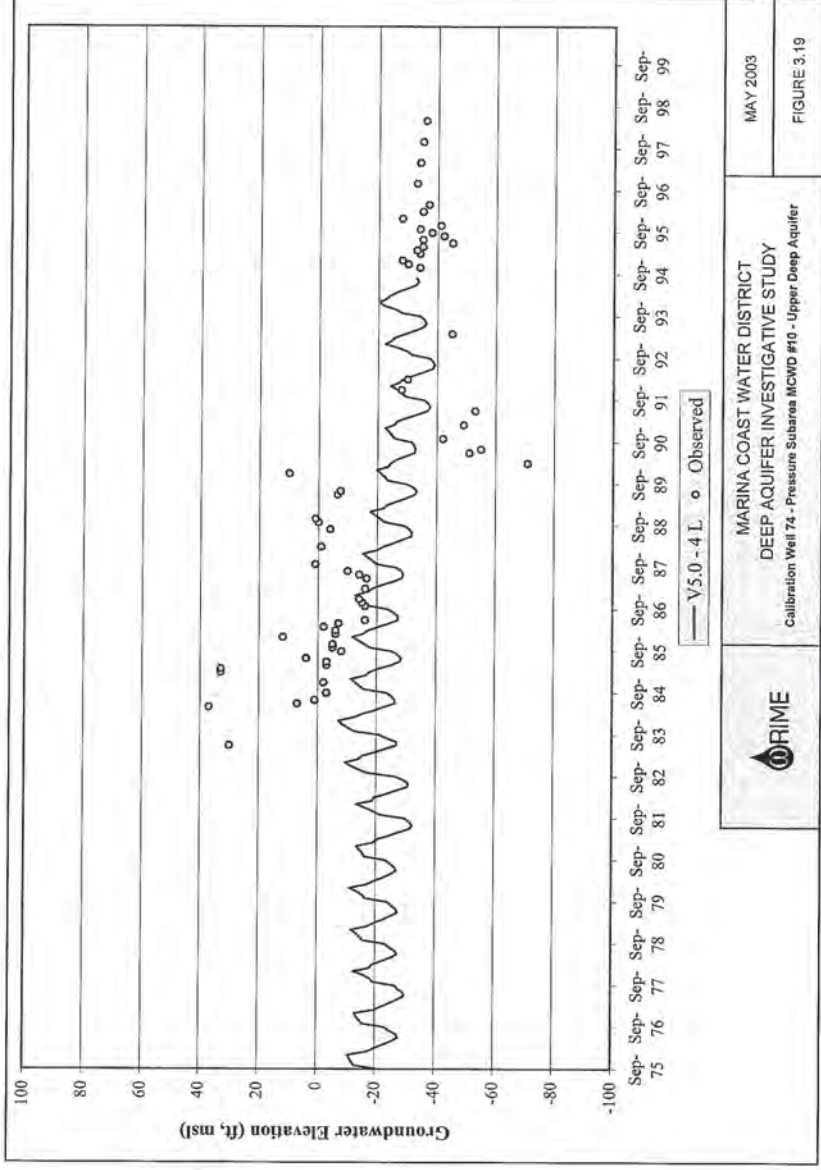


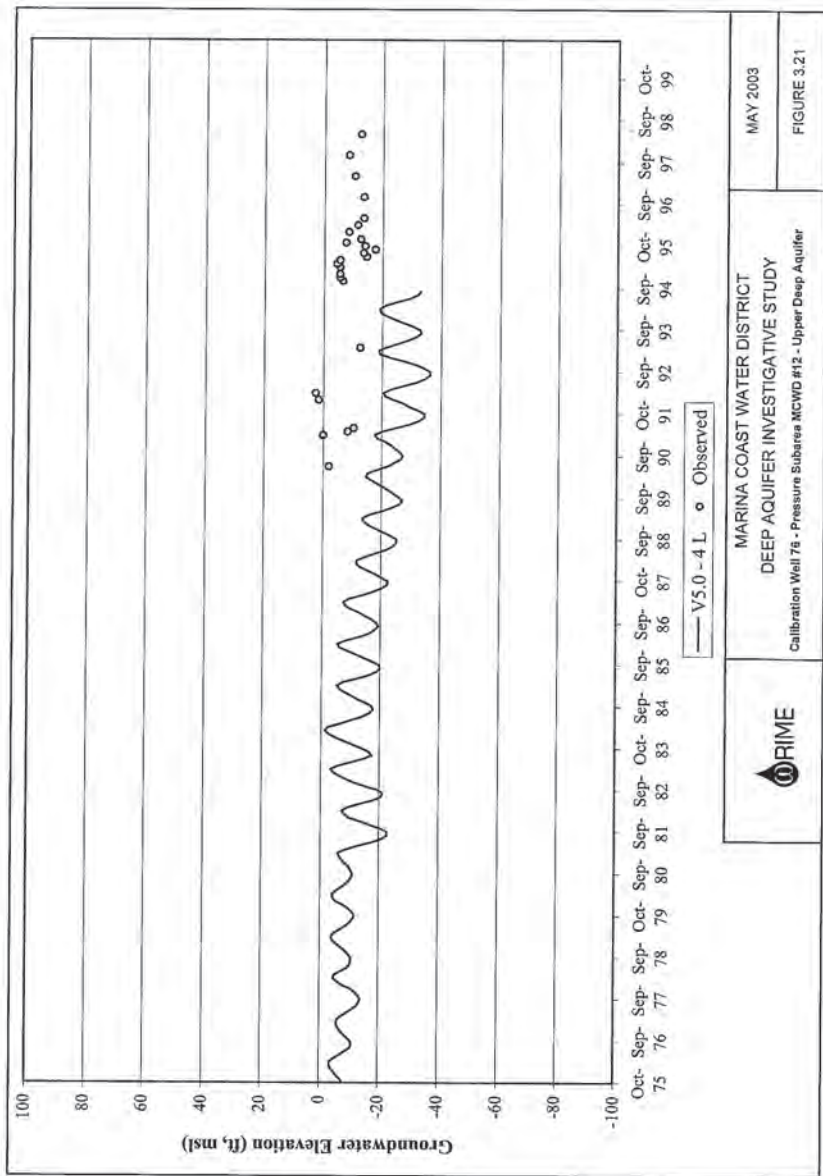
MAY 2003
FIGURE 3.18c

MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
Histogram of Residual Groundwater Levels between SVGSM Version 5.0 and
Historic Data in East Side Subarea - 4 Layer Model for Water Years 1959 through 1984









that the model is reasonably simulating the annual trends as well as the seasonal fluctuations in the MCWD wells although the levels may not match. It is noteworthy that these wells are currently assigned as pumping wells in the model. As such, the simulated groundwater heads potentially represent dynamic heads.

BASELINE CONDITION

The baseline conditions developed for the Salinas Valley Water Project were adopted for this effort. The following are changes made to the baseline conditions scenario:

1. Updated stratigraphy data were included;
2. Updated groundwater pumping for MCWD was simulated using MCWD wells at a rate of approximately 2,400 AFY;
3. MCWD wells 10 and 11 pump from Layer 3 and accounts for 73% of groundwater production and Well 12 pumps from Layer 4 and accounts for 27% of groundwater production; and
4. Updated aquifer and streambed parameters were included.

The baseline conditions were simulated and used in the Water Supply Reliability and Safe Yield analysis.

SECTION 4

WATER SUPPLY RELIABILITY AND SAFE YIELD ANALYSIS

DEFINITION

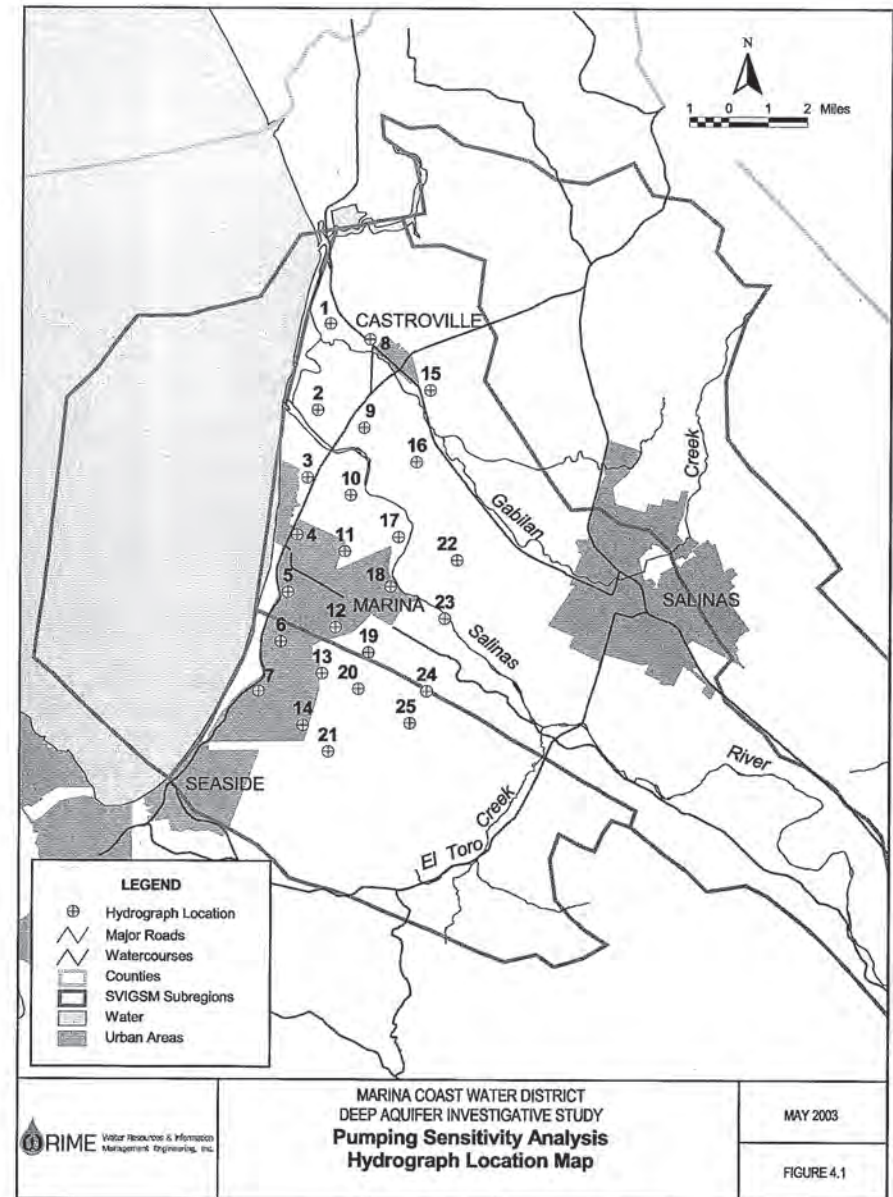
The textbook definition of "safe or sustainable yield" of an aquifer system is the average annual withdrawal that can be taken from the groundwater system without causing a long-term degrading effect in the quantity or quality of the groundwater. This limited definition assumes that the groundwater system is an isolated system without interaction with the surface water processes, such as a stream system. Moreover, the definition is not applicable to an integrated and multi-layered groundwater system in which the operation of one layer affects the groundwater levels in the adjacent layers. In general, safe or sustainable yield may depend on the following factors:

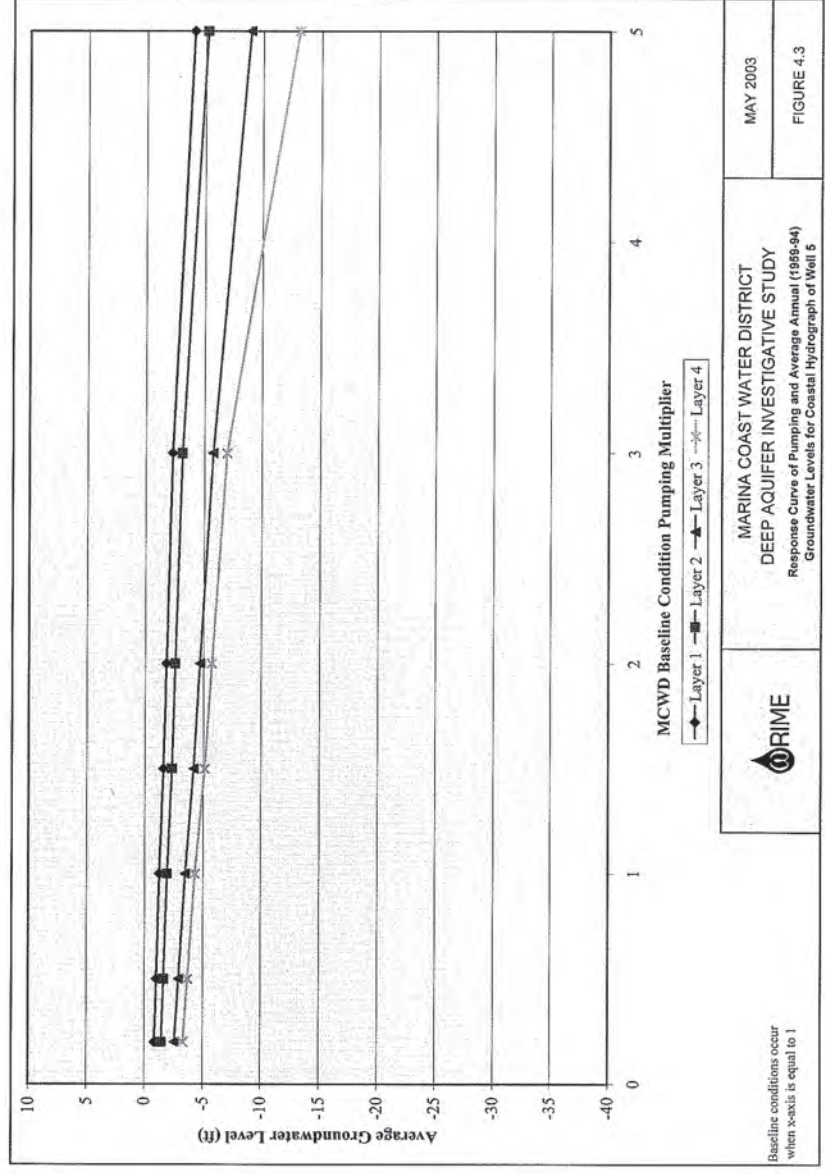
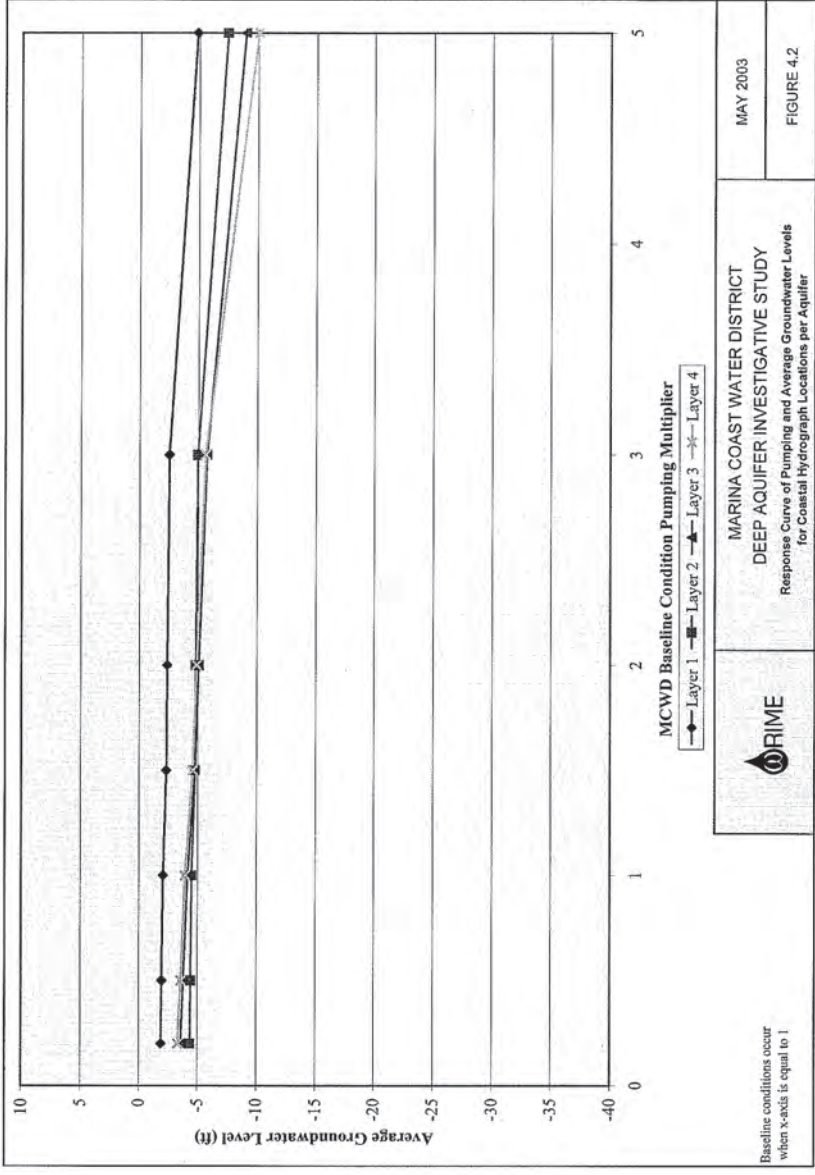
1. The hydrologic period considered to estimate the safe yield;
2. The importance of the groundwater system as a source of supply, compared to other potential sources; and
3. The degree of tolerance in the degradation of quality or decline in quantity of groundwater.

Therefore, a more practical definition for the safe or sustainable yield of a multi-layered and integrated aquifer system is the average annual withdrawal from the aquifer layer or the aquifer system, such that the long-term quantity and quality of the aquifer system as a whole is not degraded.

SAFE YIELD ANALYSIS

To evaluate the safe or sustainable yield of the deep aquifers, a set of response curves are developed to represent the impacts of changing groundwater pumping in MCWD wells. The baseline groundwater pumping at the three MCWD wells is 2,400 AFY; 1,750 AFY from layer 3, and 650 AFY from layer 4. These curves relate changes in MCWD baseline groundwater pumping in the following: 1) average groundwater levels in each layer; 2) groundwater flow across the coast; and 3) vertical groundwater flow between the aquifer layers. In order to monitor the changing groundwater levels in the coastal areas, a set of monitoring locations were assigned in the model. Figure 4.1 shows the locations of 25 points used to monitor changing groundwater levels over time. Figures 4.2 through 4.5 show the response of average groundwater levels to changes in MCWD baseline groundwater pumping.





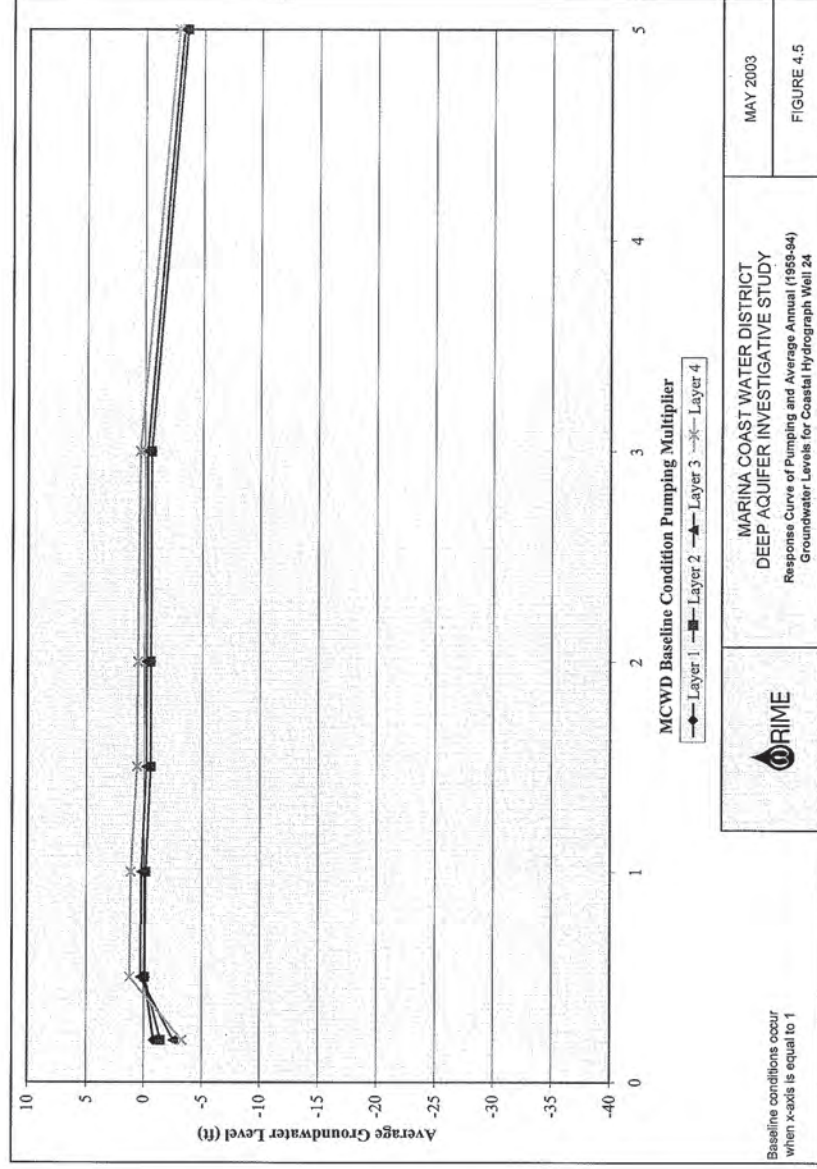
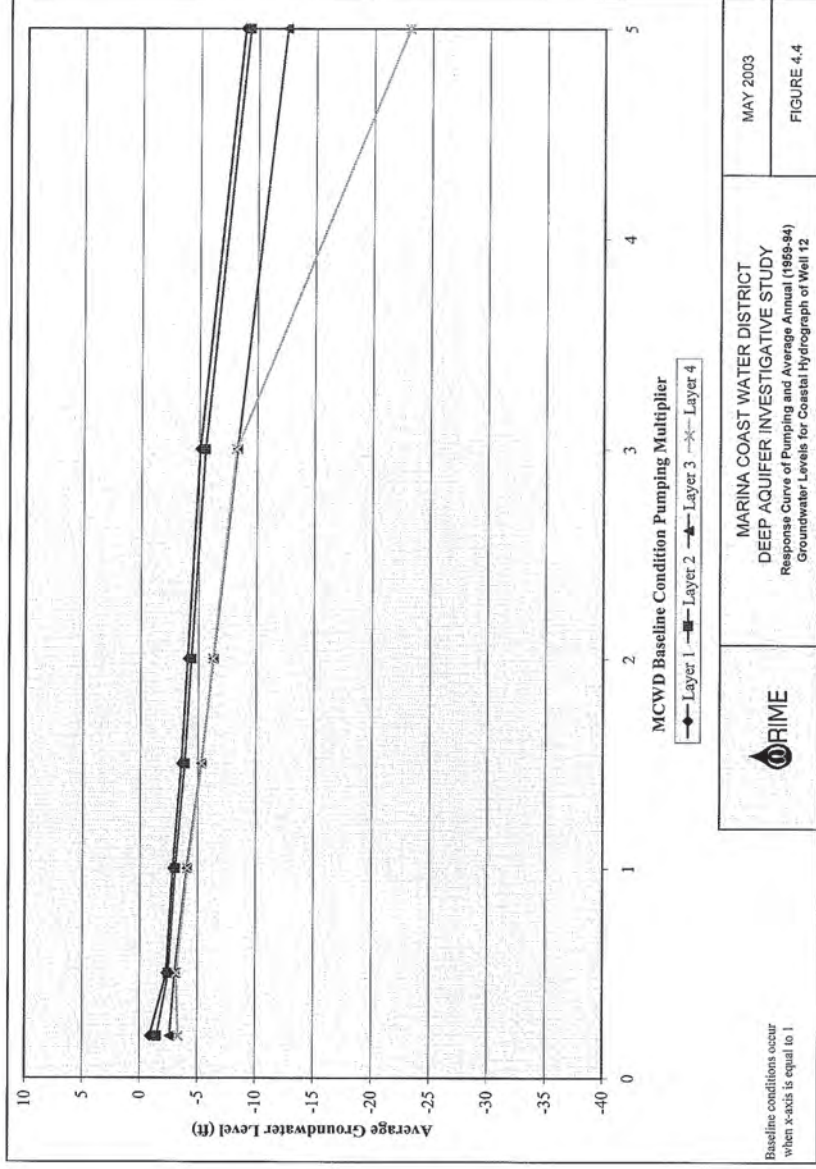


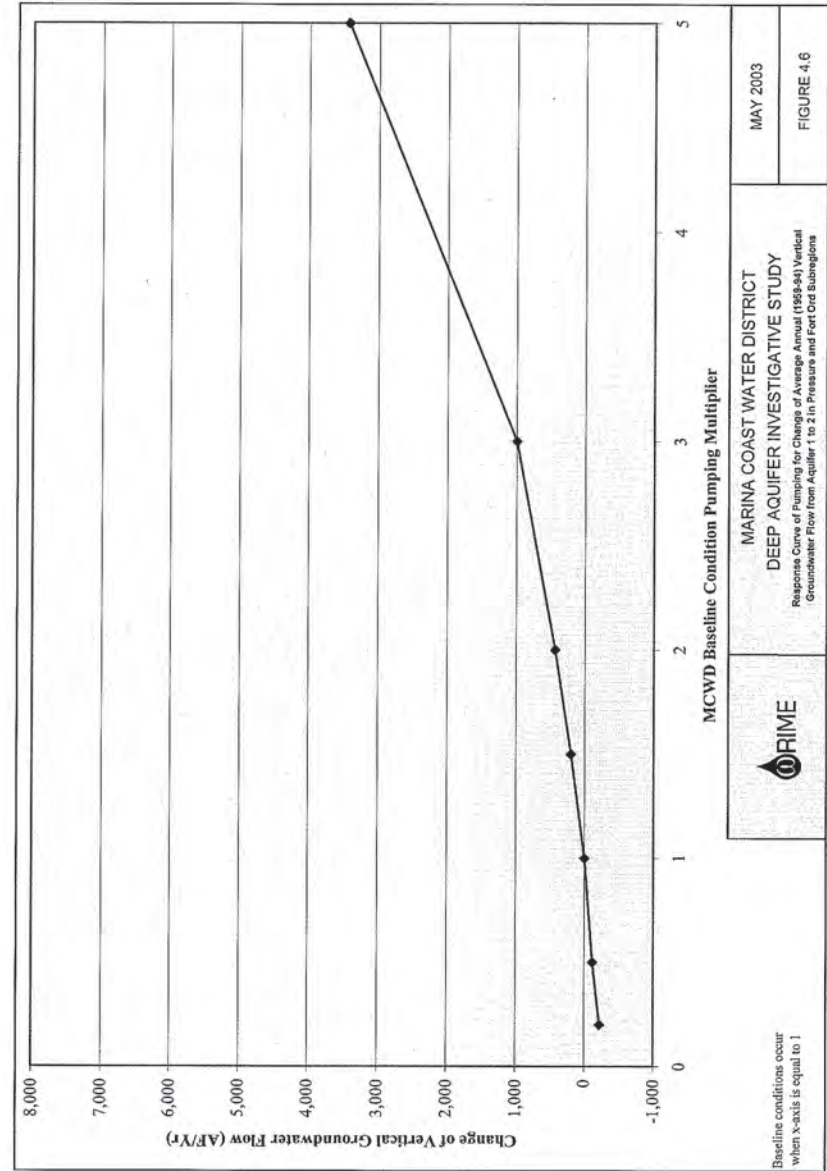
Figure 4.2 shows the response of the groundwater system as an average of all 25 hydrograph locations for each layer. Figures 4.3 through 4.5 show average groundwater levels, per layer, for three selected locations. All the figures indicate that groundwater heads will continue to decline in almost all aquifer layers if groundwater production from the deep aquifers is increased significantly from baseline levels.

Figure 4.6 shows the response of vertical groundwater flow to changes in baseline pumping. In general, as pumping increases there is an increase in vertical flow from Aquifer 1 to Aquifer 2.

Figure 4.7 shows the change in coastal groundwater flow from the baseline conditions because of changes in baseline groundwater pumping. In this case, the coastal subsurface flows are used as a surrogate for rate of seawater intrusion. In general, the inland groundwater flow towards the coast increases with groundwater pumping increases. It should be noted that increases in the coastal flows in the 180-foot aquifer and the deep aquifers are larger than those in the 400-foot aquifer. This may be due to the fact that increases in deep aquifers groundwater pumping induce more inland subsurface flux in the deep aquifers, as well as more downward flow of groundwater from the 400-foot aquifer. However, the 400-foot aquifer is also rapidly replenished by leakage from the 180-foot aquifer. Therefore, the net change in the 400-foot aquifer may not be as significant, even though the 180-foot aquifer appears to take a greater toll in seawater intrusion because of its substantially higher transmissivities.

POTENTIAL WATER SUPPLY ALTERNATIVES

In light of the varying range of safe or sustainable yield from the deep aquifers, and in order to analyze a set of realistic water supply options for the interim and/or long-term needs of MCWD, three alternative scenarios have been developed and analyzed. The focus of this analysis is to evaluate the impacts of these alternatives on the groundwater levels and inland subsurface flow across the coastline. Table 4.1 defines the three potential water supply scenarios that are analyzed. These scenarios are defined in coordination with the water supply master plan project, currently ongoing. These alternative groundwater supply options focus on maintaining the current groundwater production from MCWD Well Nos. 10, 11, and 12. Further, the additional supplies to meet the future needs of Marina and/or Fort Ord may come from a combination of the upper deep aquifer or 400-foot aquifer from a possible well further south along Reservation Road (in the vicinity of Well 32). Figure 4.8 shows the existing and proposed MCWD groundwater production wells. Increased pumping from Layer 4 is not considered a viable alternative given the lack of potential yield. These alternatives are presented to show the range of alternatives that can be evaluated using the updated SVIGSM. They do not necessarily represent the actual water supply scenarios that the MCWD may be considering in their water supply master plan.



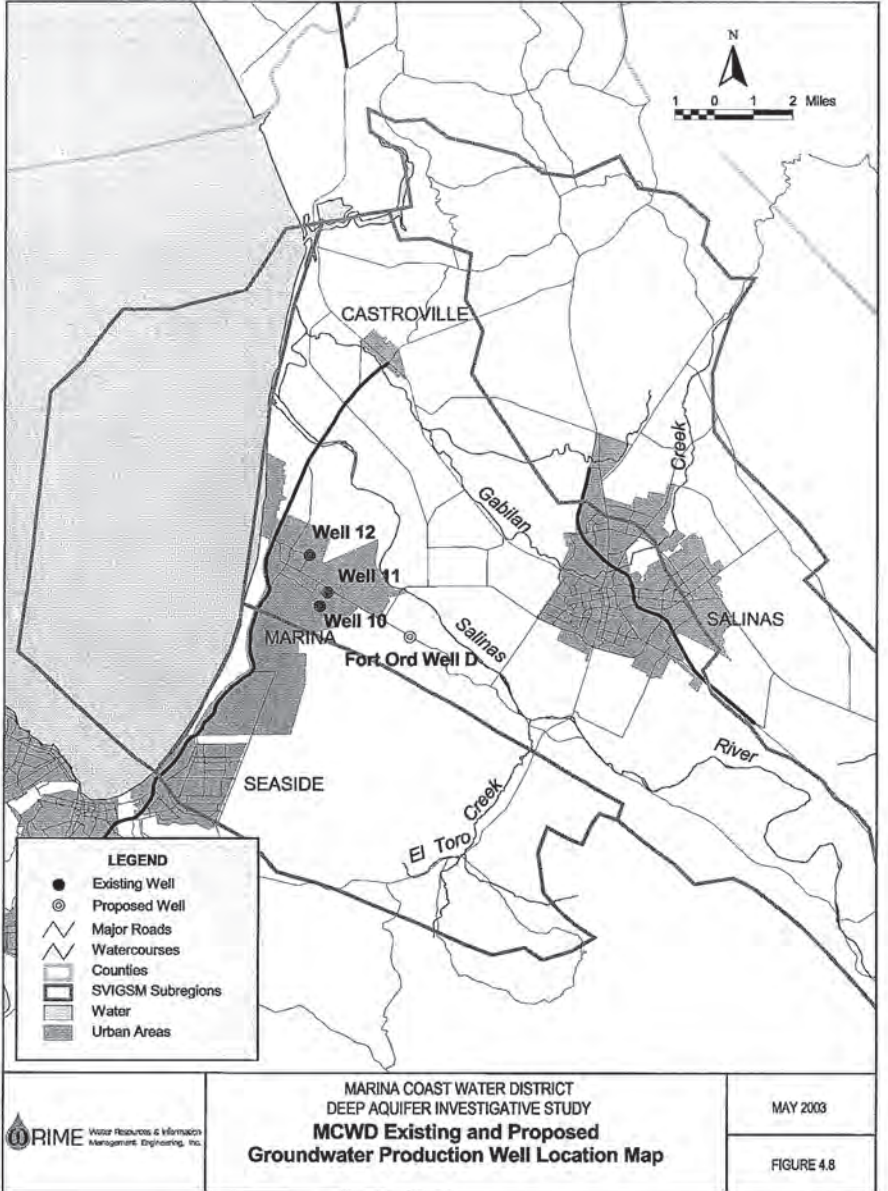
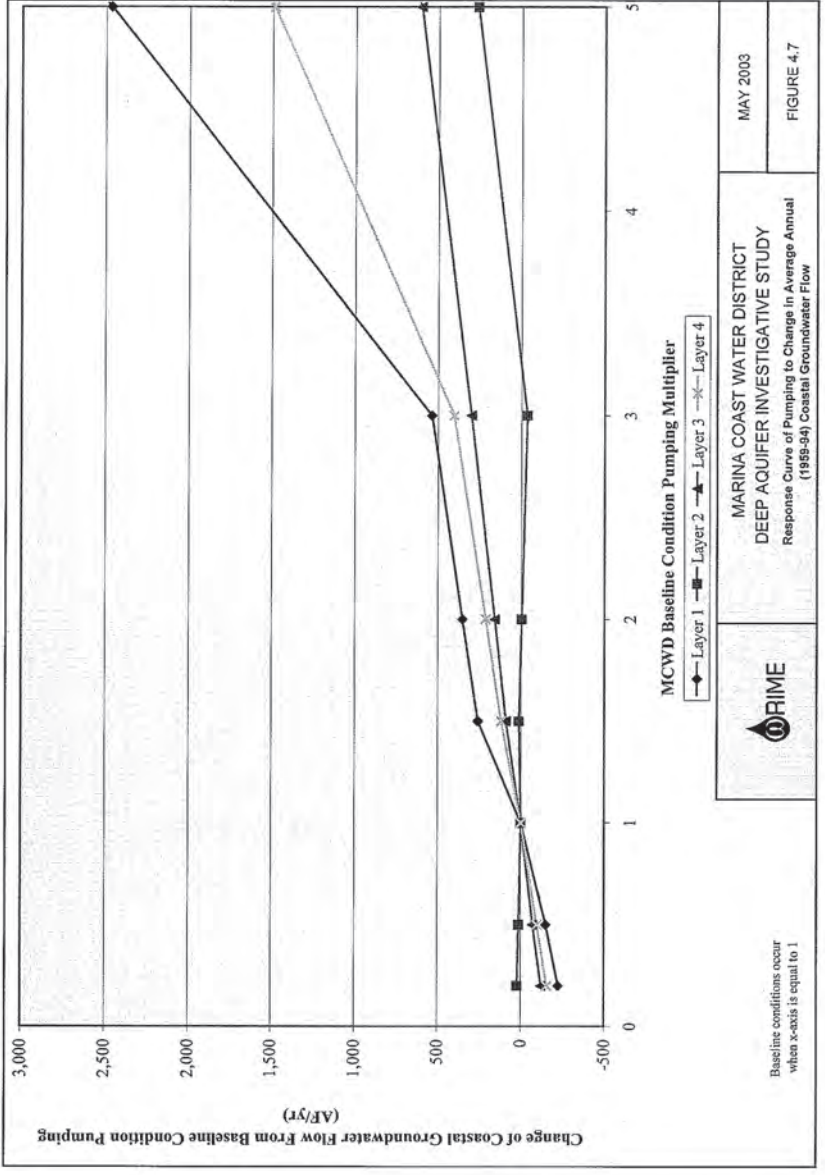


Table 4.1 Baseline Condition and Potential Water Supply Alternatives

Alternative	Description
Baseline	SVWP Baseline assumptions consisting of: 1995 land and water use; Castroville Seawater Intrusion Project is operational; 17,500 AFY of future deliveries to San Luis Obispo County from Nacimiento Reservoir; and MCWD present level of groundwater pumping (2,400 AFY) from existing wells
Alternative 1	MCWD Baseline condition pumping 2,400 AFY from deep aquifers + 1,400 AFY from MCWD upper deep aquifer wells (no change in lower deep well)
Alternative 2	2,400 AFY from deep aquifers + 1,400 AFY from MCWD upper deep aquifer wells (no change in lower deep well) 4,200 AFY from upper deep aquifer at Well 32
Alternative 3	2,400 AFY from deep aquifers + 1,400 AFY from MCWD upper deep aquifer wells (no change in lower deep well) 4,200 AFY from 400-foot aquifer at Well 32

Table 4.2 compares the average groundwater levels, per aquifer, for the 25 coastal monitoring locations.

Table 4.2 Comparison of Average Groundwater Levels (ft, MSL) per Aquifer for Coastal Monitoring Locations

	Aquifer 1	Aquifer 2	Aquifer 3	Aquifer 4
Baseline	-2.1	-4.5	-4.1	-3.9
Alternative 1	-2.5	-4.9	-4.9	-4.7
Alternative 2	-4.1	-6.7	-7.5	-7.1
Alternative 3	-4.2	-6.9	-6.8	-6.5

Table 4.3 compares the relative impact of the alternatives to the baseline conditions in terms of average annual coastal flux.

Table 4.3 Difference in Average Annual Coastal Groundwater Flow (AFY) Between Supply Alternative and Baseline Conditions for Each Aquifer

	Layer 1	Layer 2	Layer 3	Layer 4
Alternative 1	455	61	137	103
Alternative 2	1,663	273	367	390
Alternative 3	1,620	305	349	323

Table 4.4 shows a comparison of average annual vertical groundwater flow between Aquifers 1 and 2 in the Pressure and Fort Ord subareas.

Table 4.4 Comparison of Average Annual Vertical Groundwater Flow (AFY) between Aquifers 1 and 2 in the Pressure and Fort Ord Subareas

Scenario	Aquifers 1 and 2 (AF)	Aquifers 2 and 3 (AF)	Aquifers 3 and 4 (AF)	Difference in Vertical Flow Change from Baseline Condition		
				Aquifers 1 and 2 (AF)	Aquifers 2 and 3 (AF)	Aquifers 3 and 4 (AF)
Baseline	-60,114	167	2,601	0	0	0
Alternative 1	-61,044	-885	2,733	-929	-1,052	132
Alternative 2	-63,760	-3,984	3,216	-3,646	-4,152	614
Alternative 3	-64,558	-163	3,009	-4,443	-331	407

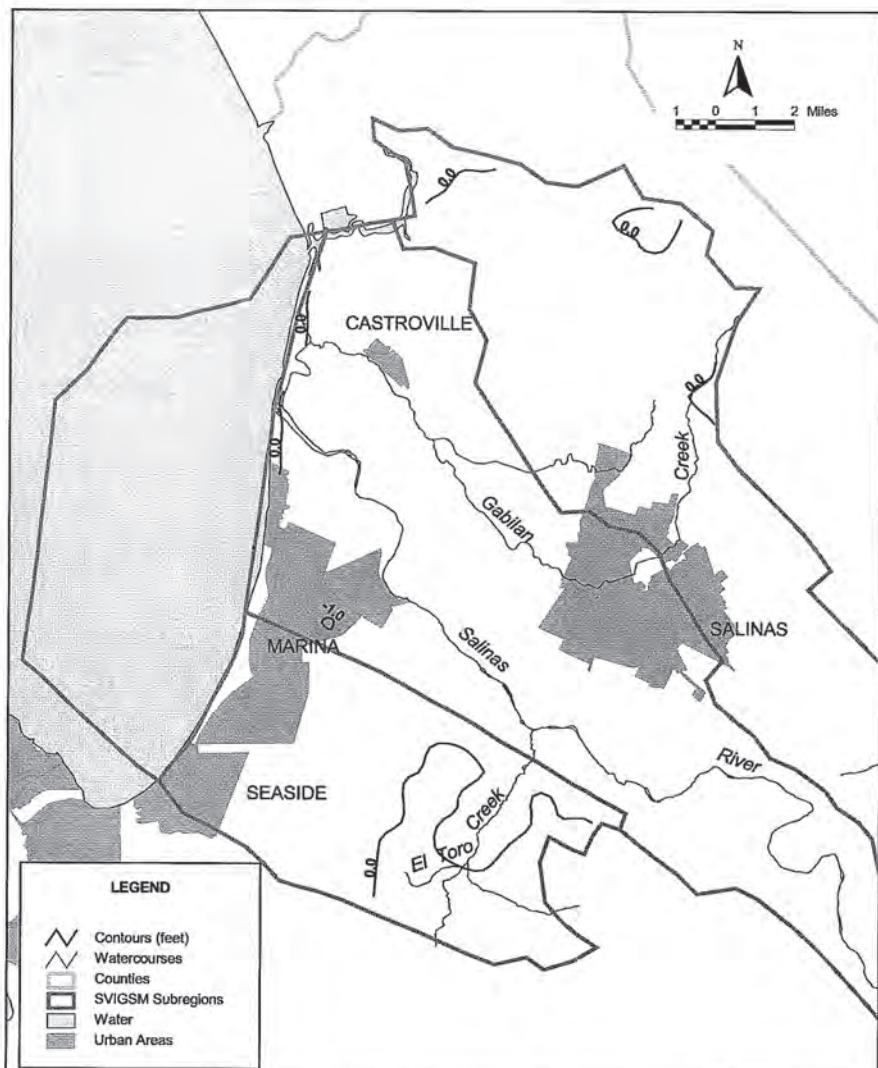
*Positive Values Indicate Upward Flow

Figures 4.9 through 4.20 show September 1994 drawdowns in groundwater heads in various aquifer layers as a result of each alternative groundwater pumping scenario.

Figures 4.9 through 4.12 show the results of long-term pumping under Alternative 1. These figures indicate that the increased long-term MCWD pumping rate in the deep aquifers would cause approximately a 2-foot drawdown in the upper deep aquifer, with much lesser impacts on the other aquifers

Figures 4.13 through 4.16 show the results of long-term pumping under Alternative 2. This alternative is designed to evaluate the effects of additional groundwater production in the upper deep aquifer from the existing MCWD wells, as well as a potential new well further inland, drilled in the upper deep aquifer along Reservation Road. The figures indicate that the additional MCWD pumping from existing wells plus the new well cause approximately 9 feet of decline in the upper deep aquifer groundwater head levels with up to 4 feet and 2 feet of additional decline in groundwater heads in the 400-foot and 180-foot aquifers, respectively.

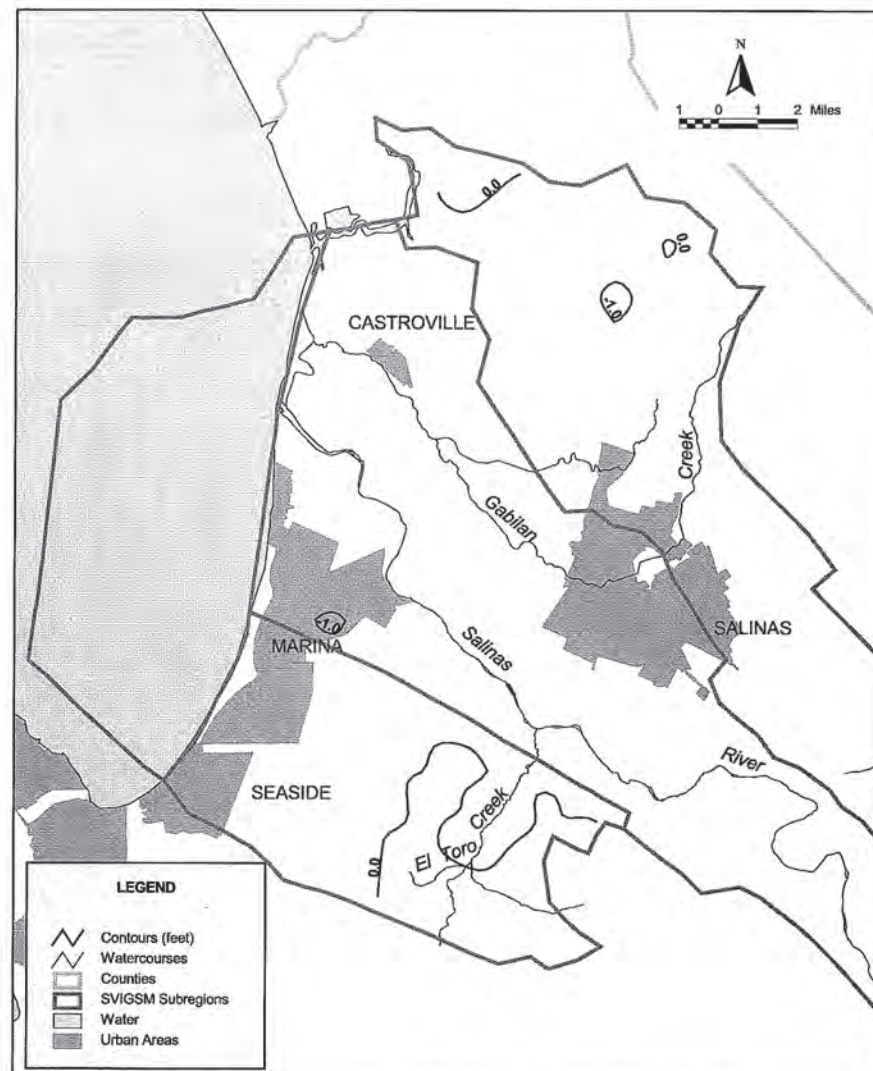
Figures 4.17 through 4.20 show the results of long-term pumping under Alternative 3. This alternative is designed to evaluate the effects of additional groundwater production in the upper deep aquifer from the existing MCWD wells, as well as a potential new well further inland, drilled in the 400-foot aquifer along Reservation Road. The figures indicate that the additional MCWD pumping from existing wells plus the new well cause approximately 4 feet of decline in the upper deep aquifer groundwater head levels with up to 6 feet and 5 feet of additional decline in groundwater heads in the 400-foot and 180-foot aquifers, respectively.



MARINA COAST WATER DISTRICT
 DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 1 Groundwater Level Difference
 for Layer 1, September 1994**

MAY 2003

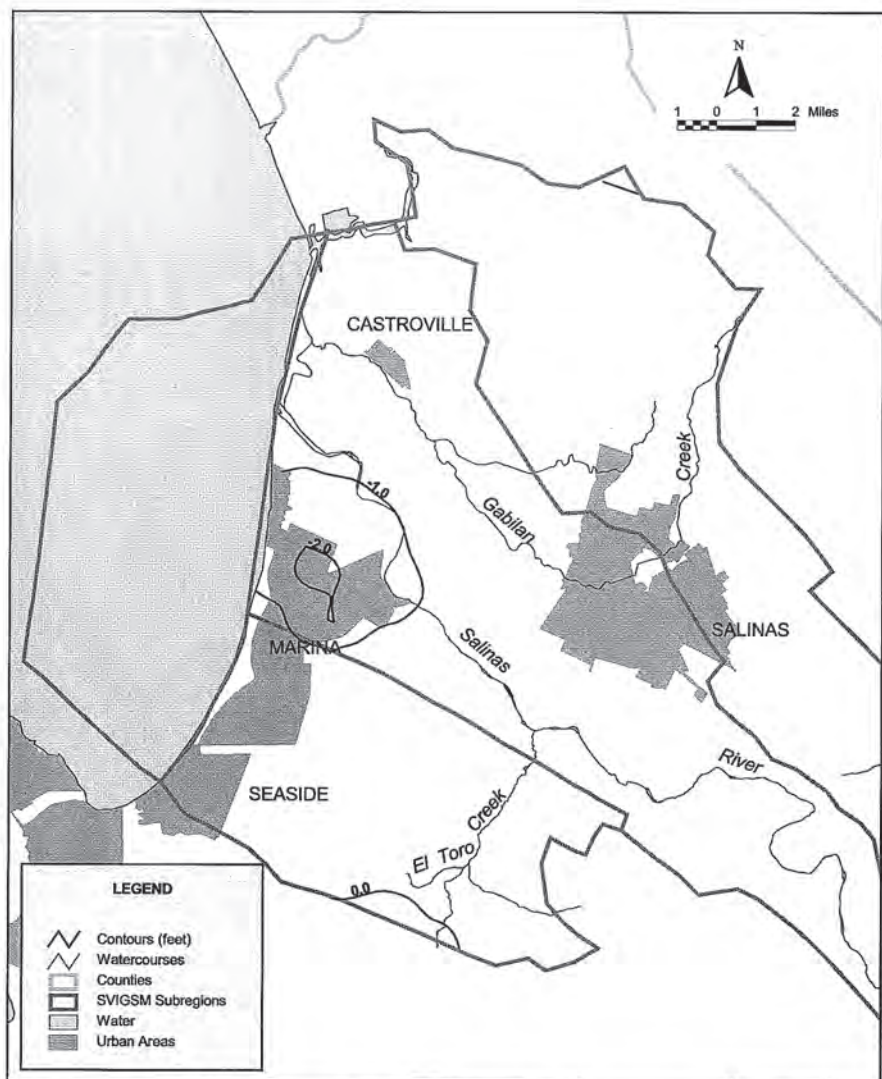
FIGURE 4.9



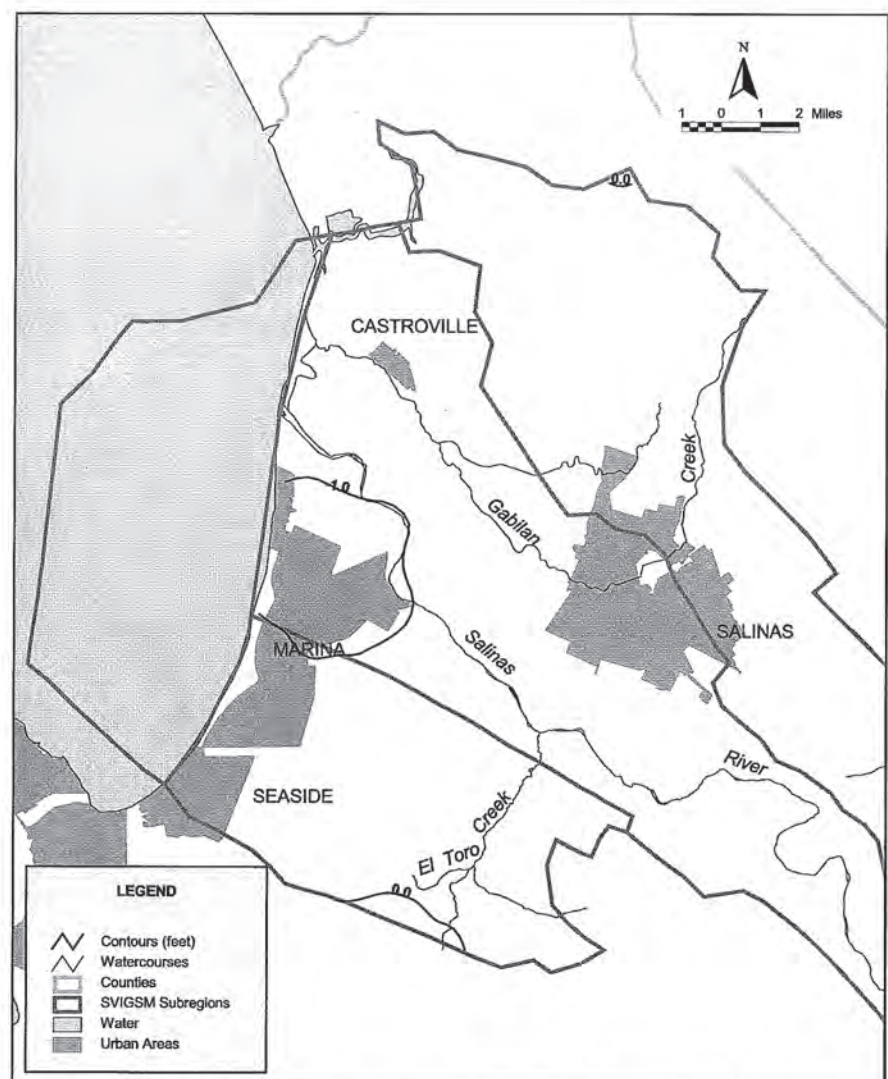
MARINA COAST WATER DISTRICT
 DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 1 Groundwater Level Difference
 for Layer 2, September 1994**

MAY 2003

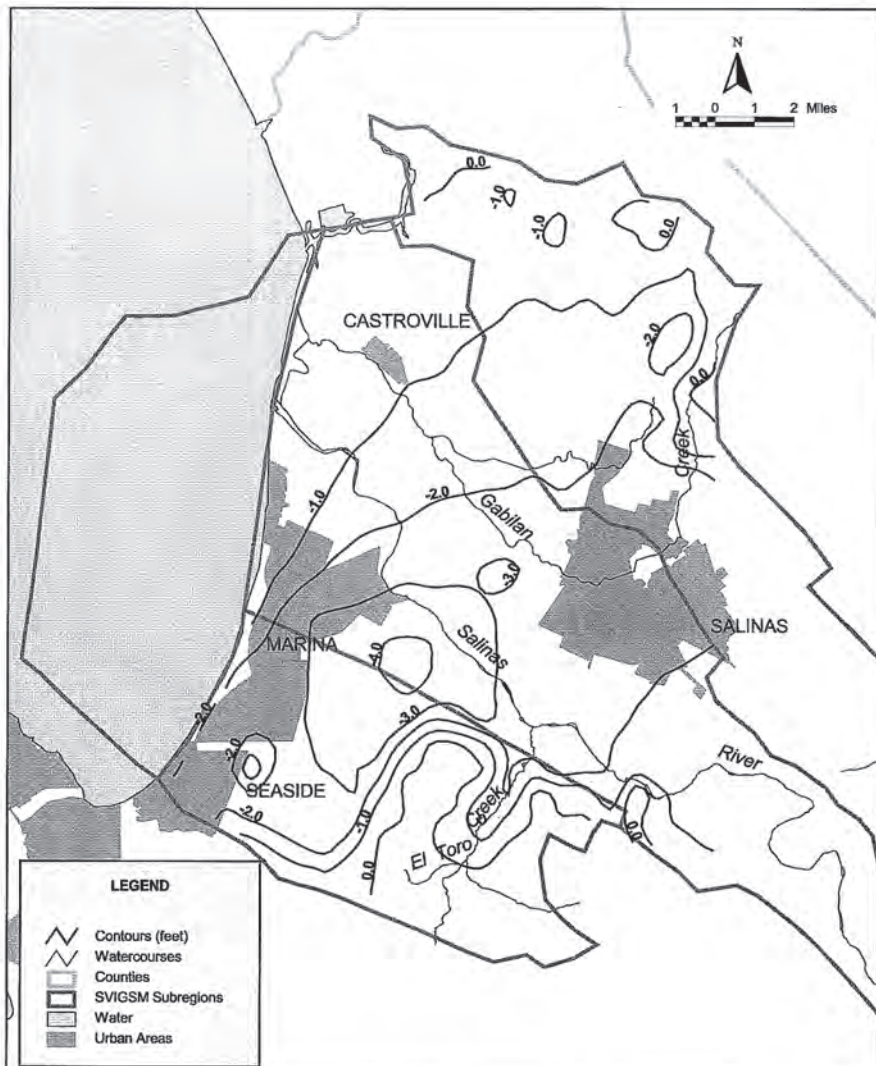
FIGURE 4.10



PRIME Water Resources & Information Management Engineering, Inc.	MARINA COAST WATER DISTRICT DEEP AQUIFER INVESTIGATIVE STUDY Alternative 1 Groundwater Level Difference for Layer 3, September 1994	MAY 2003
	FIGURE 4.11	



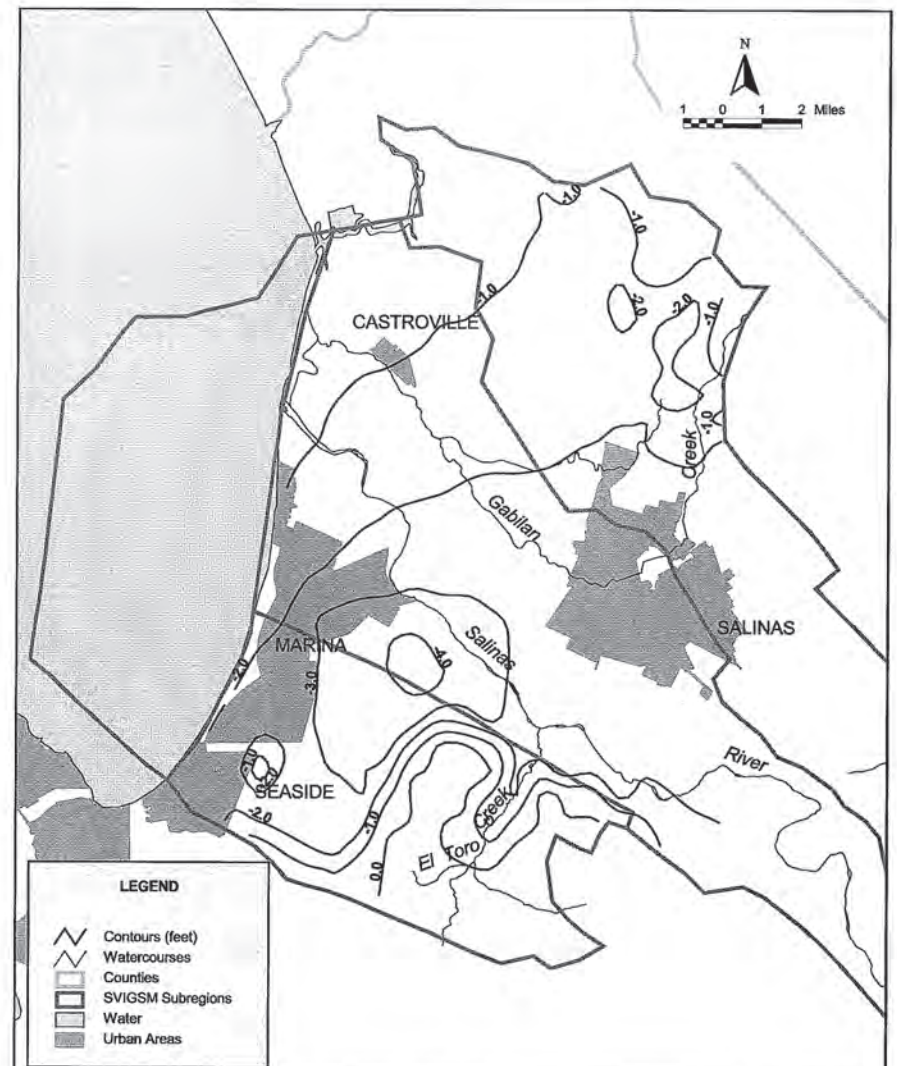
PRIME Water Resources & Information Management Engineering, Inc.	MARINA COAST WATER DISTRICT DEEP AQUIFER INVESTIGATIVE STUDY Alternative 1 Groundwater Level Difference for Layer 4, September 1994	MAY 2003
	FIGURE 4.12	



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 2 Groundwater Level Difference
for Layer 1, September 1994**

MAY 2003

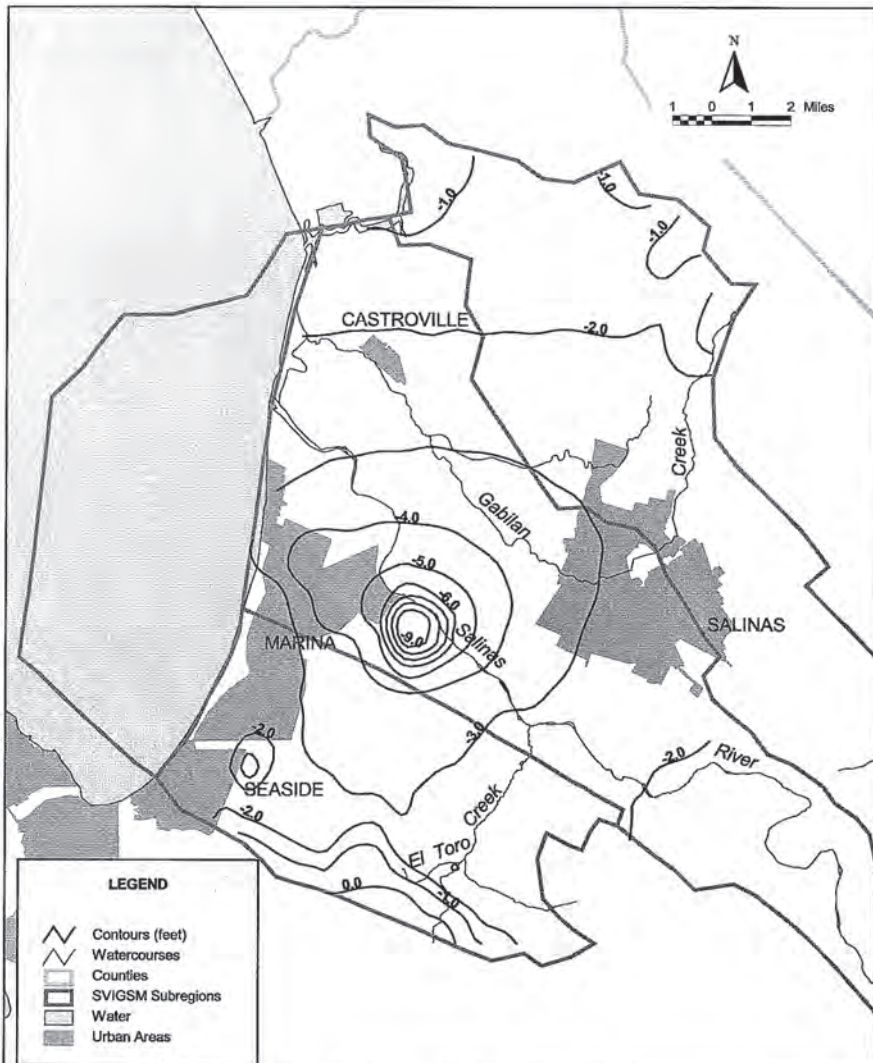
FIGURE 4.13



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 2 Groundwater Level Difference
for Layer 2, September 1994**

MAY 2003

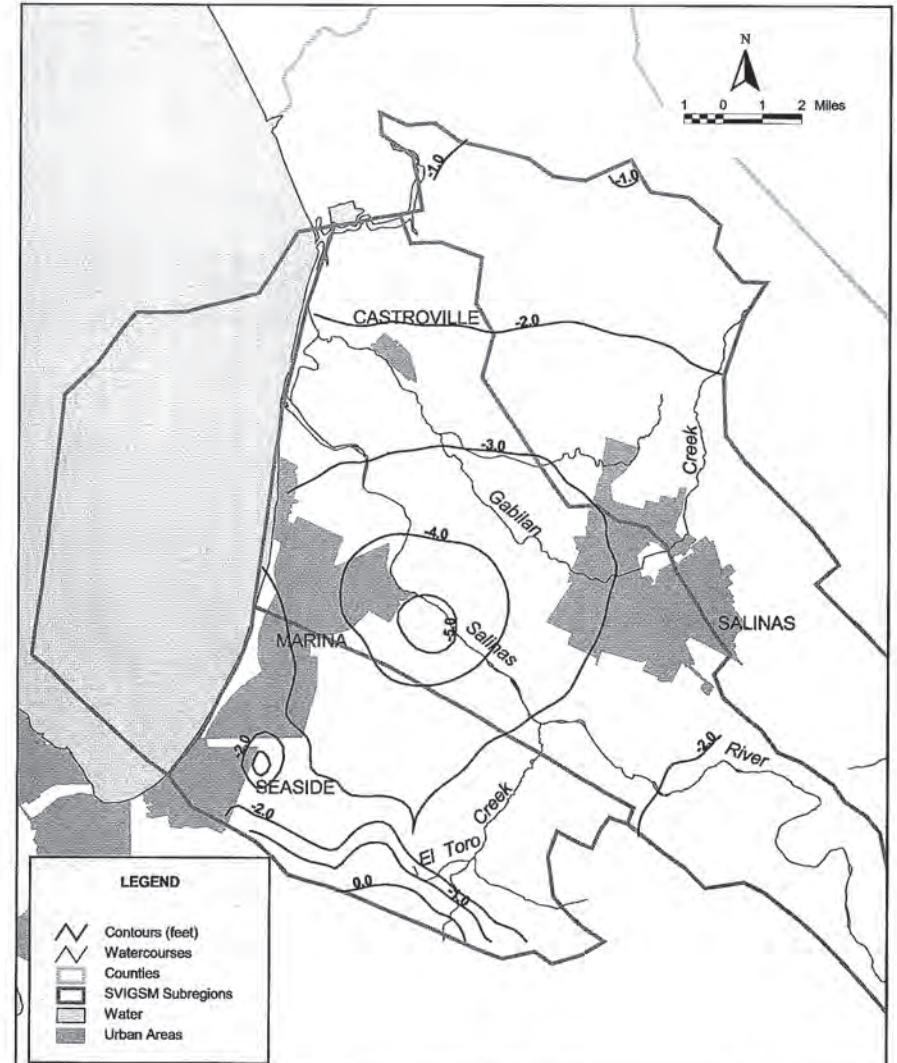
FIGURE 4.14



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 2 Groundwater Level Difference
for Layer 3, September 1994**

MAY 2003

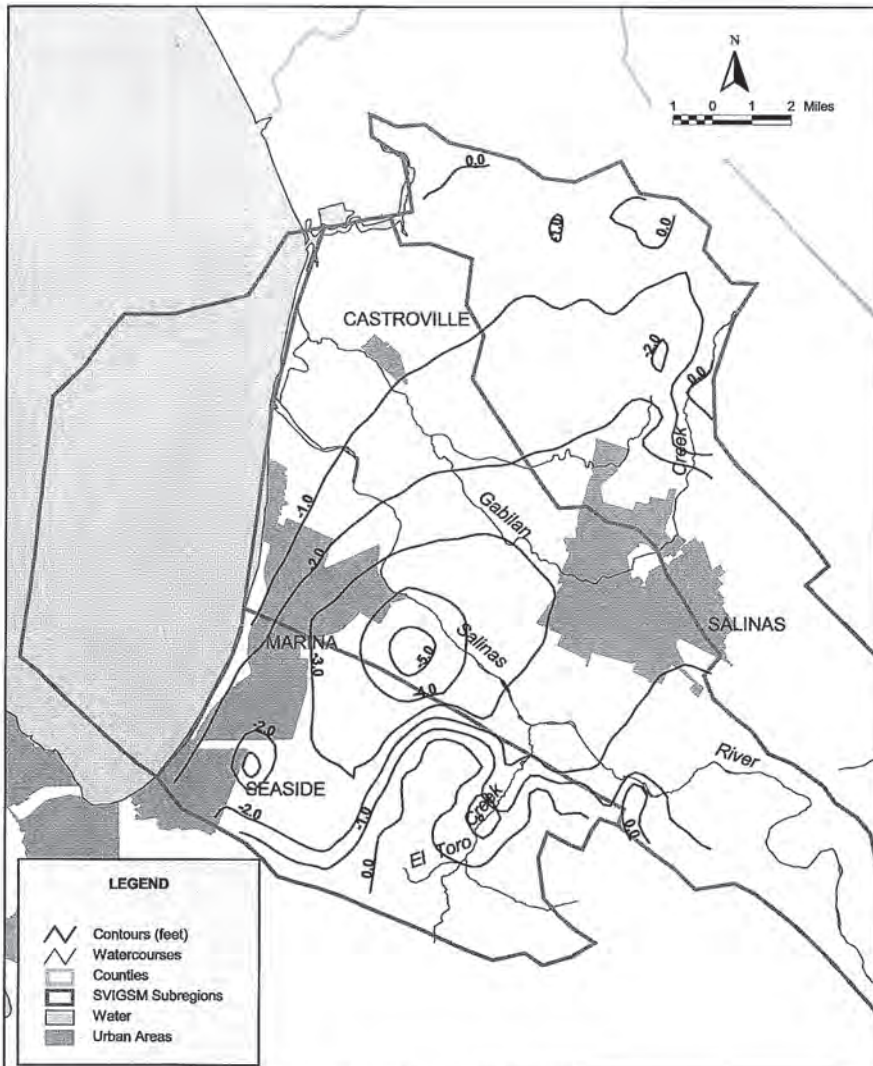
FIGURE 4.15



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 2 Groundwater Level Difference
for Layer 4, September 1994**

MAY 2003

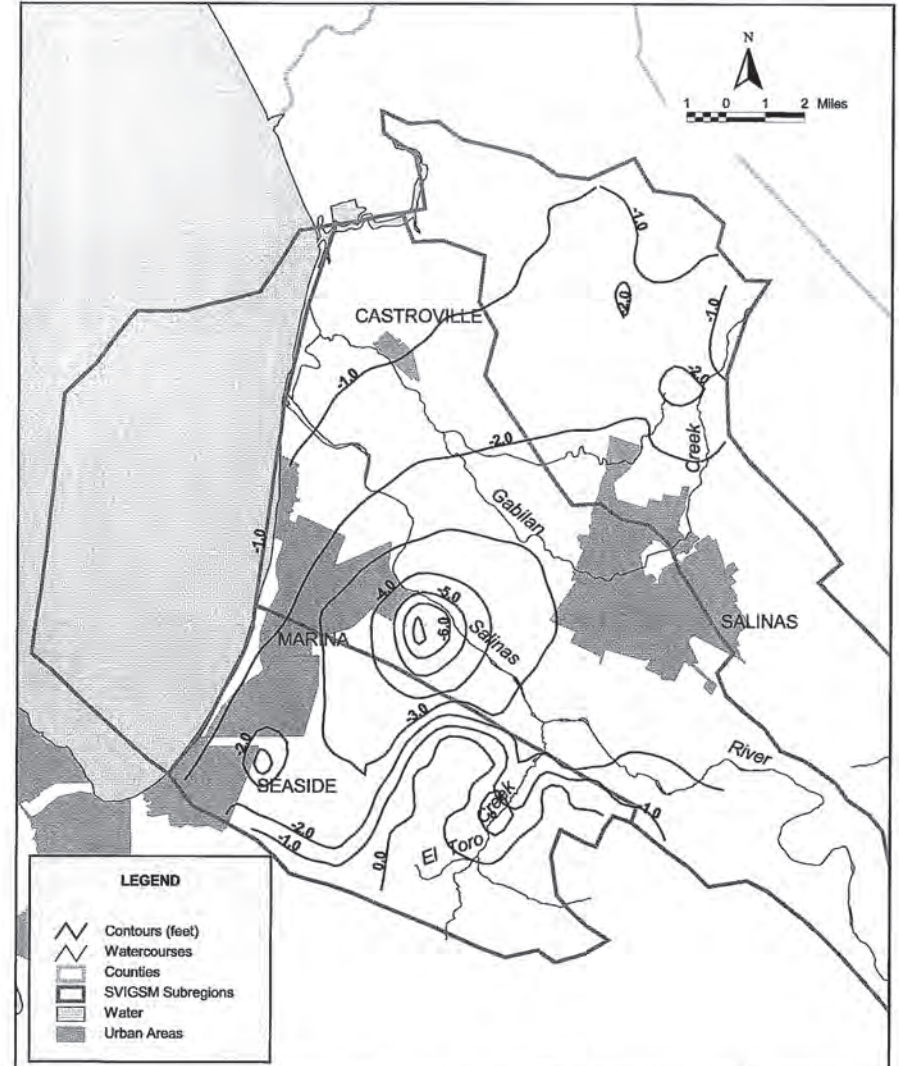
FIGURE 4.16



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 3 Groundwater Level Difference
for Layer 1, September 1994**

MAY 2003

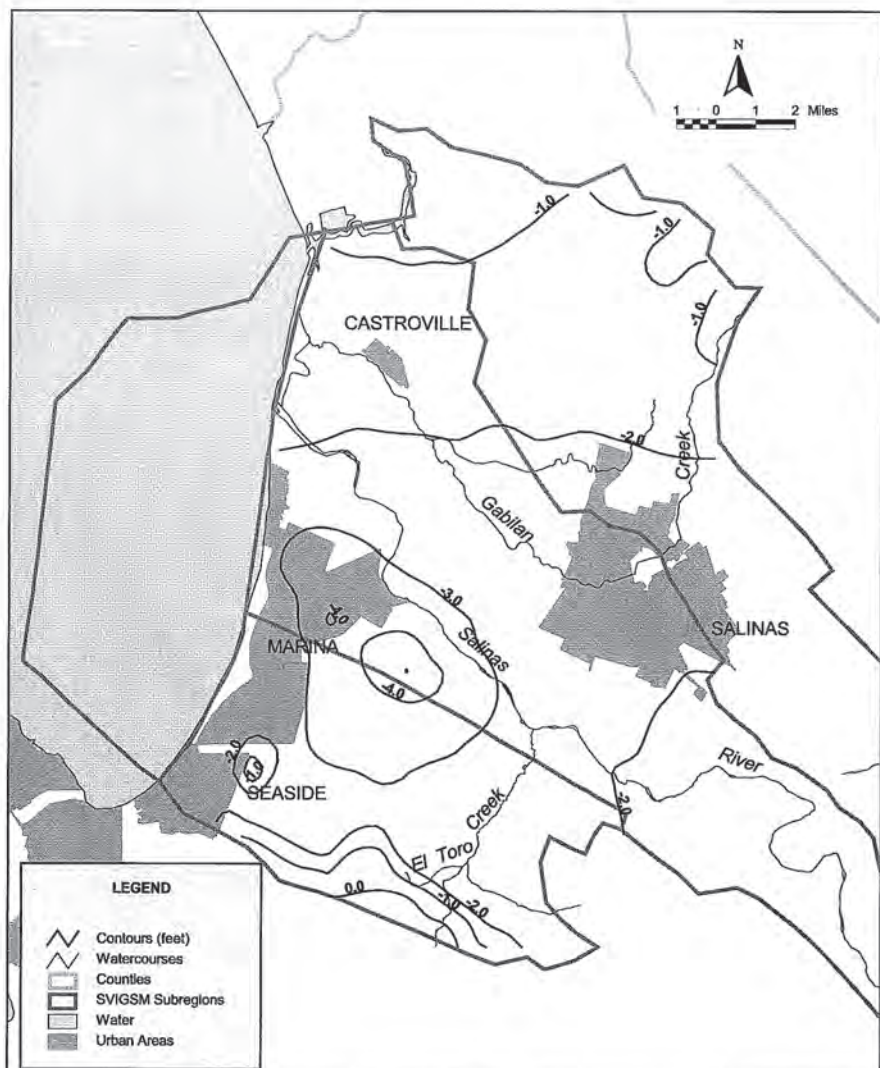
FIGURE 4.17



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 3 Groundwater Level Difference
for Layer 2, September 1994**

MAY 2003

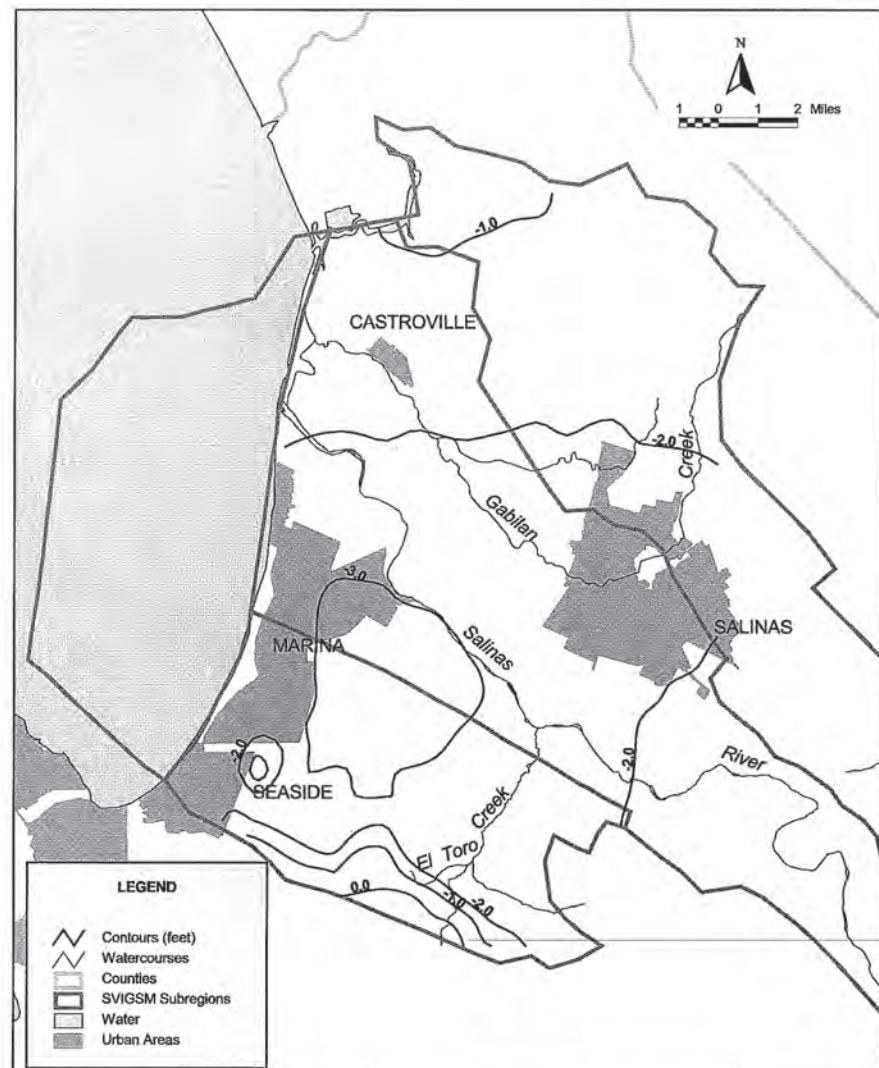
FIGURE 4.18



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 3 Groundwater Level Difference
for Layer 3, September 1994**

MAY 2003

FIGURE 4.19



MARINA COAST WATER DISTRICT
DEEP AQUIFER INVESTIGATIVE STUDY
**Alternative 3 Groundwater Level Difference
for Layer 4, September 1994**

MAY 2003

FIGURE 4.20

SECTION 5**SUMMARY OF FINDINGS**

The findings of this study can be divided in to three categories:

- Data assessment and analysis,
- Hydrologic modeling and analysis, and
- Water supply reliability.

DATA ASSESSMENT AND ANALYSIS

- Geologic, hydraulic, and geochemical data all suggest the “deep aquifer” to be two distinct aquifers.
- The uppermost aquifer of the “deep aquifer” is comprised of continental deposits assigned to the Paso Robles Formation. The lowermost aquifer is assigned to the marine Purisima Formation.
- MCWD’s Well Nos. 10 and 11 produce from the Paso Robles Formation while Well No. 12 produces from the Purisima Formation. The “deep aquifer” wells in the Castroville area are completed in the Paso Robles Formation.
- Water levels in the Marina area deep aquifers have been substantially below mean sea level since the initiation of extractions.
- The areal distribution and stratigraphic location of the Paso Robles and Purisima Formations limit recharge to leakage from overlying aquifers. Water level records from MCWD’s wells support this conclusion. Static water level curves from all of the MCWD wells appear to be stabilized, suggestive of equilibrium with recharge.
- Piezometric head in the Purisima Formation is higher than in the overlying Paso Robles Formation. Extractions from Paso Robles may be supported by leakage from both overlying and underlying sediments.
- Although water levels are chronically below mean sea level, there is no evidence of water quality degradation.
- The geologic setting may provide a buffer against seawater intrusion, allowing for the maintenance of water levels below mean sea level. However, storage coefficients suggest that the volume of groundwater in storage in the lower aquifers is small. Increased production would likely come from increased leakage.

- The Purisima Formation is relatively isolated hydraulically from the overlying Paso Robles Formation near the coast.
- As currently configured, the hydrogeologic model incorporated into SVIGSM is not consistent with a two-layer deep aquifer system. Adding a fourth layer and incorporating the current understanding could possibly improve the model.

HYDROLOGIC MODELING AND ANALYSIS

- The SVIGSM was updated to IGSM version 5.0.
- The SVIGSM deep aquifers system is divided into two distinct aquifers, an upper deep aquifer representing the Paso Robles formation, and the lower deep aquifer representing the Purisima formation. The revised SVIGSM, therefore, has four hydrostratigraphic units, among them the 180-foot and the 400-foot aquifer systems.
- The SVIGSM groundwater pumping data in the Marina Coast area is revised to represent the historical groundwater production records of the MCWD at their well sites.
- The SVIGSM is recalibrated so that the aquifer hydraulic conductivities in the deep aquifers, as well as the single aquifer layer in the Upper Valley area, represent an equivalent hydraulic conductivity with similar transmissivity values as in the original SVIGSM 4.18.
- The revised model depicts the observed groundwater levels equal to or better than the original model, and produces water budget estimates similar to the original model.

WATER SUPPLY RELIABILITY

- The updated SVIGSM was used to develop response curves on the sensitivity of groundwater heads and subsurface flows across the coastline to changes in MCWD groundwater pumping.
- The response curves indicate that additional increases in the deep aquifers groundwater pumping in the coastal areas may induce additional reduction in the groundwater heads, and subsequently additional landward subsurface flows across the coastline. The results also indicate that the increase in coastal subsurface flows occurs at a much more rapid pace in the 180-foot aquifer than in the 400-foot aquifer, due to substantially higher transmissivities.
- The results of alternative potential groundwater supply alternatives indicate that the increase in inland groundwater pumping (in the vicinity of Reservation

Road) has a much lesser impact on the groundwater level declines, as well as a lesser effect on the coastal subsurface flows.

SECTION 6

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EXHIBIT 7

**MARINA COAST WATER DISTRICT
2008 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10				10.7	27.5	28.9	67.1	205.92
11	26.2	30.3	6.8	23.6	24.9	24.8	136.6	419.21
12	4.2	6.2	37.8	4.6	5.7	7.3	65.8	201.93
29	7.3	3.9	8.2	16.3	20.1	17.1	72.9	223.72
30	23.7	18.1	23.2	30.7	22.4	30.2	148.3	455.12
31	20.0	17.8	19.6	29.9	33.6	26.3	147.2	451.74

TOTAL m/gal	81.4	76.3	95.6	115.8	134.2	134.6	637.9	
ac / ft	249.81	234.16	293.39	355.38	411.84	413.07	1,957.64	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	23.6	27.9	29.2	25.5	21.8	16.7	144.7	444.07
11	32.4	29.4	24.0	23.5	19.2	20.0	148.5	455.73
12	6.1	6.4	5.6	5.0	5.7	5.9	34.7	106.49
29	17.2	13.8	15.7	14.6	10.6	5.7	77.6	238.15
30	24.1	28.6	26.5	25.0	19.9	19.7	143.8	441.31
31	31.3	26.1	27.5	25.8	21.7	17.1	149.5	458.80

TOTAL m/gal	134.7	132.2	128.5	119.4	98.9	85.1	699	
ac / ft	413.38	405.71	394.35	366.43	303.51	261.16	2,144.54	

WELL	m/gal	ac / ft	%
10	211.8	649.99	16%
11	285.1	874.94	21%
12	100.5	308.42	8%
29	150.5	461.87	11%
30	292.1	896.42	22%
31	296.7	910.54	22%

2008 TOTAL	m/gal	1,336.7
	ac / ft	4,102.18

**MARINA COAST WATER DISTRICT
2009 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	19.9	13.9	28.6	21.7	27.7	25.9	137.7	422.59
11	18.5	15.2	11.7	29.0	30.2	28.0	132.6	406.93
12	6.1	5.6	5.9	6.8	6.1	9.1	39.6	121.53
29	11.3	5.0	6.5	9.9	12.5	14.9	60.1	184.44
30	29.0	20.1	20.7	27.0	27.7	23.3	147.8	453.58
31	25.7	11.5	17.0	19.4	19.4	24.4	117.4	360.29

TOTAL m/gal	110.5	71.3	90.4	113.8	123.6	125.6	635.2	
ac / ft	339.11	218.81	277.43	349.24	379.31	385.45	1,949.36	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	27.0	22.8	25.3	23.1	21.0	17.2	136.4	418.60
11	32.9	31.5	24.2	21.5	20.9	19.7	150.7	462.48
12	8.1	6.6	7.2	6.3	7.1	6.9	42.2	129.51
29	15.5	15.9	11.3	10.4	9.1	6.0	68.2	209.30
30	25.4	27.2	27.9	21.8	21.6	18.8	142.7	437.93
31	26.6	24.8	25.0	23.4	20.9	19.6	140.3	430.56

TOTAL m/gal	135.5	128.8	120.9	106.5	100.6	88.2	681	
ac / ft	415.83	395.27	371.03	326.84	308.73	270.68	2,088.38	

WELL	m/gal	ac / ft	%
10	274.1	841.18	21%
11	283.3	869.42	22%
12	81.8	251.03	6%
29	128.3	393.74	10%
30	290.5	891.51	22%
31	257.7	790.85	20%

2009 TOTAL	m/gal	1,315.7
	ac / ft	4,037.74

**MARINA COAST WATER DISTRICT
2010 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	17.4	15.9	16.3	17.4	23.3	24.7	115.0	352.92
11	18.7	13.0	25.1	22.0	29.3	34.7	142.8	438.24
12	4.3	5.8	6.4	6.4	6.7	5.0	34.6	106.18
29	3.3	3.8	3.4	6.0	19.2	25.0	60.7	186.28
30	14.2	15.6	14.4	16.4	28.1	41.2	129.9	398.65
31	16.6	15.0	19.9	21.0	29.6	26.7	128.8	395.27

TOTAL m/gal	74.5	69.1	85.5	89.2	136.2	157.3	611.8	
ac / ft	228.63	212.06	262.39	273.74	417.98	482.74	1,877.55	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	22.4	20.4	18.5	18.4	14.5	14.5	108.7	333.59
11	24.8	23.3	25.0	21.8	20.5	17.0	132.4	406.32
12	5.0	6.0	6.7	6.5	5.3	5.2	34.7	106.49
29	28.2	27.3	20.8	20.6	14.1	9.0	120.0	368.27
30	35.9	20.6	41.4	28.5	19.1	11.9	157.4	483.04
31	39.6	49.4	32.1	23.0	20.2	17.4	181.7	557.62

TOTAL m/gal	155.9	147.0	144.5	118.8	93.7	75.0	735	
ac / ft	478.44	451.13	443.45	364.58	287.55	230.17	2,255.33	

WELL	m/gal	ac / ft	%
10	223.7	686.51	17%
11	275.2	844.56	20%
12	69.3	212.67	5%
29	180.7	554.55	13%
30	287.3	881.69	21%
31	310.5	952.89	23%

2010 TOTAL	m/gal	1,346.7
	ac / ft	4,132.87

**MARINA COAST WATER DISTRICT
2011 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	13.7	17.4	13.0	16.1	24.1	19.7	104.0	319.16
11	16.7	23.4	18.8	21.7	18.9	23.7	123.2	378.09
12	4.4	3.4	4.3	4.8	5.9	4.1	26.9	82.55
29	10.5	5.5	10.8	18.9	25.0	18.4	89.1	273.44
30	18.7	13.9	17.8	20.8	39.8	33.4	144.4	443.15
31	17.3	15.1	15.8	30.6	22.5	33.9	135.2	414.91

TOTAL m/gal	81.3	78.7	80.5	112.9	136.2	133.2	622.8	
ac / ft	249.50	241.52	247.05	346.48	417.98	408.78	1,911.30	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	24.7	21.0	22.1	22.0	16.0	17.9	123.7	379.62
11	25.8	27.6	29.7	23.9	24.0	27.3	158.3	485.80
12	2.2	4.5	2.3	3.9	3.8	0.6	17.3	53.09
29	25.1	22.8	19.8	12.1	6.1	5.6	91.5	280.80
30	31.1	29.3	37.6	20.7	19.3	10.3	148.3	455.12
31	39.4	33.6	20.8	26.1	11.7	25.1	156.7	480.89

TOTAL m/gal	148.3	138.8	132.3	108.7	80.9	86.8	695.8	
ac / ft	455.12	425.96	406.01	333.59	248.27	266.38	2,135.33	

WELL	m/gal	ac / ft	%
10	227.7	698.79	17%
11	281.5	863.89	21%
12	44.2	135.64	3%
29	180.6	554.24	14%
30	292.7	898.26	22%
31	291.9	895.81	22%

2011 TOTAL	m/gal	1,318.6
	ac / ft	4,046.63

MARINA COAST WATER DISTRICT
2012 WELL PRODUCTION SUMMARY

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	18.8	17.8	18.9	22.3	25.6	25.6	129.0	395.89
11	28.1	25.9	27.4	22.8	32.7	28.2	165.1	506.67
12	0.8	0.2	0.2	0.3	0.4	0.1	2.0	6.05
29	8.3	7.1	7.7	10.5	18.7	19.4	71.7	220.04
30	19.6	17.4	23.8	25.0	35.3	35.3	156.4	479.97
31	21.5	19.0	15.9	17.6	25.9	30.9	130.8	401.41

TOTAL m/gal	97.1	87.4	93.9	98.5	138.6	139.5	655.0	
ac / ft	297.99	268.22	288.08	302.29	425.35	428.11	2,010.03	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	29.8	28.1	25.8	25.0	26.3	27.0	162.0	497.16
11	31.2	32.6	29.1	27.1	11.0	-	131.0	402.02
12	1.2	0.2	0.3	0.3	-	-	2.0	6.11
29	23.8	21.4	16.9	16.7	15.8	12.5	107.1	328.68
30	32.2	-	-	-	-	-	32.2	98.82
31	29.9	55.7	58.9	55.4	38.2	27.4	265.5	814.79
34						4.8	4.8	14.73
WG						0.4	0.4	1.28

TOTAL m/gal	148.1	138.0	131.0	124.5	91.3	72.1	705.0	
ac / ft	454.50	423.48	402.02	382.08	280.19	221.32	2,163.58	

WELL	m/gal	ac / ft	%
10	291.0	893.05	21.4%
11	296.1	908.70	21.8%
12	4.0	12.15	0.3%
29	178.8	548.72	13.1%
30	188.6	578.79	13.9%
31	396.3	1,216.20	29.1%
34	4.8	14.73	0.1%
WG	0.4	1.23	0.0%

2012 TOTAL	m/gal	1,360.0
	ac / ft	4,173.56

MARINA COAST WATER DISTRICT
2013 WELL PRODUCTION SUMMARY

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	30.5	24.6	24.7	32.9	38.4	20.3	171.4	526.01
11	-	-	-	-	-	-	-	-
12	1.3	0.2	0.2	0.7	0.3	0.5	3.2	9.94
29	11.1	19.2	23.1	27.7	33.5	37.5	152.1	466.78
30	-	-	-	-	-	-	-	-
31	31.3	29.5	25.8	11.6	11.9	23.2	133.3	409.08
34	3.5	6.1	5.2	1.7	0.9	15.8	33.2	101.89
WG	1.5	11.3	28.3	51.6	62.1	42.2	197.0	604.57

TOTAL m/gal	79.2	90.9	107.3	126.2	147.1	139.5	690.2	
ac / ft	243.06	279.08	329.29	387.29	451.43	428.11	2,118.27	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	22.6	31.5	29.2	0.2	8.4	7.3	99.2	304.39
11	21.3	20.3	31.1	51.8	34.0	43.7	202.2	620.53
12	0.5	0.3	0.3	0.3	0.4	0.3	2.1	6.44
29	22.1	20.0	6.7	8.7	7.6	1.6	66.7	204.69
30	-	-	-	-	-	-	-	-
31	29.0	6.9	14.3	18.2	10.3	29.0	107.7	330.52
34	35.8	30.1	27.7	19.9	22.2	8.3	144.0	441.92
WG	10.2	33.8	27.7	30.0	24.7	5.4	131.8	404.48

TOTAL m/gal	141.5	143.0	137.0	129.1	107.6	95.6	753.7	
ac / ft	434.25	438.85	420.44	396.27	330.21	293.26	2,312.98	

WELL	m/gal	ac / ft	%
10	270.6	830.40	18.7%
11	202.2	620.53	14.0%
12	5.3	16.39	0.4%
29	218.8	671.47	15.2%
30	-	-	0.0%
31	241.0	739.60	16.7%
34	177.2	543.81	12.3%
WG	328.8	1,009.05	22.8%

2013 TOTAL	m/gal	1,443.9
	ac / ft	4,431.25

MARINA COAST WATER DISTRICT
2014 WELL PRODUCTION SUMMARY

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	23.2	14.2	18.5	16.4	22.7	25.0	120.0	368.27
11	26.1	26.7	27.1	25.5	27.2	17.5	150.1	460.64
12	0.2	0.2	0.2	0.4	0.1	0.2	1.3	3.99
29	1.5	3.4	6.1	10.0	19.0	18.0	58.0	178.00
30	-	-	-	-	-	-	-	-
31	11.6	4.1	5.8	8.5	12.6	17.7	60.3	185.05
34	25.1	8.3	15.8	22.3	29.7	27.4	128.6	394.66
WG	18.9	19.4	21.0	25.5	27.5	28.0	140.3	430.56

TOTAL m/gal	106.6	76.3	94.5	108.6	138.8	133.8	658.6	
ac / ft	327.14	234.16	290.01	333.28	425.96	410.62	2,021.17	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	19.8	20.7	22.1	21.5	16.8	12.7	113.6	348.63
11	21.6	27.0	24.7	22.5	21.4	24.0	141.2	433.33
12	0.2	0.2	0.3	0.2	0.2	0.2	1.3	3.84
29	14.4	14.4	14.2	14.6	3.6	8.0	69.2	212.37
30	-	-	-	-	-	-	-	-
31	23.3	16.9	11.1	9.6	10.7	2.0	73.6	225.87
34	26.8	21.9	22.3	23.5	13.4	7.8	115.7	355.07
WG	32.9	33.4	24.3	21.3	14.1	12.7	138.7	425.65

TOTAL m/gal	139.0	134.5	119.0	113.2	80.2	67.4	653.3	
ac / ft	426.58	412.77	365.20	347.40	246.12	206.69	2,004.75	

WELL	m/gal	ac / ft	%
10	233.6	716.89	17.8%
11	291.3	893.97	22.2%
12	2.6	7.83	0.2%
29	127.2	390.36	9.7%
30	-	-	0.0%
31	133.9	410.92	10.2%
34	244.3	749.73	18.6%
WG	279.0	856.22	21.3%

2014 TOTAL	m/gal	1,311.9
	ac / ft	4,025.92

MARINA COAST WATER DISTRICT
2015 WELL PRODUCTION SUMMARY

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	21.3	16.2	12.9	16.2	14.3	16.6	97.5	299.22
11	13.7	17.3	25.2	21.2	28.4	22.7	128.5	394.35
12	0.2	0.1	0.2	0.2	0.2	0.2	1.1	3.50
29	6.9	5.2	7.3	6.0	0.3	1.0	26.7	81.94
30	-	-	-	-	-	-	-	-
31	8.2	11.2	12.6	15.7	14.5	15.3	77.5	237.84
34	11.6	13.3	17.2	16.1	15.0	20.3	93.5	286.94
WG	18.8	15.3	19.8	23.7	18.2	12.7	108.5	332.97

TOTAL m/gal	80.7	78.6	95.2	99.1	90.9	88.8	533.3	
ac / ft	247.66	241.34	292.16	304.13	278.96	272.52	1,636.76	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	14.8	16.3	14.5	15.5	15.2	3.4	79.7	244.59
11	23.9	22.4	28.8	21.9	20.0	37.6	154.6	474.45
12	0.5	0.1	0.2	0.2	0.1	0.1	1.2	3.59
29	0.2	0.1	8.8	8.1	5.8	2.3	25.3	77.49
30	-	-	-	-	-	-	-	-
31	22.6	22.3	6.8	9.8	6.4	4.8	72.7	223.11
34	16.9	17.7	13.8	14.1	11.3	11.9	85.7	263.00
WG	18.6	17.8	20.4	19.3	12.2	11.1	99.4	305.05

TOTAL m/gal	97.5	96.7	93.3	88.9	71.0	71.2	518.5	
ac / ft	299.06	296.76	286.33	272.82	217.89	218.41	1,591.28	

WELL	m/gal	ac / ft	%
10	177.2	543.81	16.8%
11	283.1	868.80	26.9%
12	2.3	7.09	0.2%
29	52.0	159.43	4.9%
30	-	-	0.0%
31	150.2	460.95	14.3%
34	179.2	549.94	17.0%
WG	207.9	638.02	19.8%

2015 TOTAL	m/gal	1,051.9
	ac / ft	3,228.04

**MARINA COAST WATER DISTRICT
2016 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	-		20.0	15.9	14.0	13.9	63.8	195.80
11	42.8	32.2	3.5	18.4	19.7	16.5	133.1	408.47
12	0.1						0.1	0.31
29	1.0	3.9	8.9	8.2	7.4	9.2	38.6	118.46
30	-						-	-
31	2.4	4.9	5.5	8.1	11.7	12.9	45.5	139.63
34	7.5	10.4	19.6	15.6	16.3	16.3	85.7	263.00
WG	15.4	17.0	11.7	15.1	17.5	21.3	98.0	300.75

TOTAL m/gal	69.2	68.4	69.2	81.3	86.6	90.1	464.8
ac / ft	212.37	209.91	212.37	249.50	265.77	276.51	1,426.42

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	11.0	18.5	16.7	17.8	27.5	37.8	129.3	396.81
11	27.3	15.6	19.0	23.5	12.8		98.2	301.36
12							-	-
29	8.1	5.5	7.8	0.1	0.1	0.1	21.7	66.59
30			0.8	12.7	5.6	4.6	23.7	72.73
31	11.6	18.7	15.3	3.2	7.8	4.9	61.5	188.74
34	13.5	18.8	18.3	15.4	10.3	9.9	86.2	264.54
WG	21.1	16.1	16.1	16.1	18.8	12.1	100.3	307.81

TOTAL m/gal	92.6	93.2	94.0	88.8	82.9	69.4	520.9
ac / ft	284.18	286.02	288.48	272.52	254.41	212.98	1,598.58

WELL	m/gal	ac / ft	%
10	193.1	592.60	19.6%
11	231.3	709.83	23.5%
12	0.1	0.31	0.0%
29	60.3	185.05	6.1%
30	23.7	72.73	2.4%
31	107.0	328.37	10.9%
34	171.9	527.54	17.4%
WG	198.3	608.56	20.1%

2016 TOTAL	m/gal	885.7
	ac / ft	3,025.00

**MARINA COAST WATER DISTRICT
2017 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	23.2	17.5	17.4	19.3	21.3	22.8	121.5	372.87
11	17.4	20.6	25.1	25.9	17.3	28.7	135.0	414.30
12							-	-
29	5.4	7.0	4.1	0.9	9.6	0.4	27.4	84.09
30	10.9	11.8	8.6	1.9	10.0	8.6	51.8	158.97
31	5.6	4.5	5.6	3.6	7.0	9.7	36.0	110.48
34	0.9	0.1	5.0	12.6	14.7	14.9	48.2	147.92
WG	4.0	0.9	5.9	11.9	14.9	12.0	49.6	152.22

TOTAL m/gal	67.4	62.4	71.7	76.1	94.8	97.1	469.5
ac / ft	206.84	191.50	220.04	233.54	290.93	297.99	1,440.84

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	24.1	24.6	22.1	14.4	6.4	21.8	113.4	348.01
11	27.7	12.9	21.5	39.0	26.3	19.9	147.3	452.05
12							-	-
29	3.6	8.9	4.8	7.9	0.5	0.7	26.4	81.02
30	8.3	14.5	13.1	12.4	16.9	14.8	80.0	245.51
31	5.6	19.2	14.4	15.7	10.1	6.5	71.5	219.43
34	16.5	11.1	22.0	20.3	22.9	19.3	112.1	344.02
WG	16.1	12.4	6.6	-			35.1	107.72

TOTAL m/gal	101.9	103.6	104.5	109.7	83.1	83.0	585.8
ac / ft	312.72	317.94	320.70	336.66	255.02	254.72	1,797.75

WELL	m/gal	ac / ft	%
10	234.9	720.88	22.3%
11	282.3	866.35	26.8%
12	-	-	0.0%
29	53.8	165.11	5.1%
30	131.8	404.48	12.5%
31	107.5	329.91	10.2%
34	160.3	491.94	15.2%
WG	84.7	259.93	8.0%

2017 TOTAL	m/gal	1,055.3
	ac / ft	3,238.60

**MARINA COAST WATER DISTRICT
2018 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	19.8	18.6	18.0	20.7	23.4	21.4	121.9	374.10
11	21.9	21.7	22.1	26.5	30.5	30.3	153.0	469.54
12							-	-
29	1.8	1.0	5.2	10.8	8.8	6.4	34.0	104.34
30	8.1	7.6	3.8	9.8	9.2	12.6	51.1	156.82
31	10.3	12.9	16.8	0.6	14.7	16.5	71.8	220.35
34	16.2	15.8	3.3	17.5	13.3	16.2	82.3	252.57
WG			10.3				10.3	31.61

TOTAL m/gal	78.1	77.6	79.5	85.9	99.9	103.4	524.4	
ac / ft	239.68	238.15	243.98	263.62	306.58	317.32	1,609.32	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10	25.4	23.5	22.7	14.8	22.3	20.1	128.8	395.27
11	28.0	31.6	31.1	28.4	27.0	18.4	164.5	504.83
12							-	-
29	12.0	8.2	10.9	5.2	2.9	2.7	41.9	128.59
30	12.7	13.0	8.4	12.5	10.9	7.8	65.3	200.40
31	16.6	16.6	12.1	16.7	14.3	17.3	93.6	287.25
34	13.2	14.4	15.6	24.2	11.0	12.6	91.0	279.27
WG							-	-

TOTAL m/gal	107.9	107.3	100.8	101.8	88.4	78.9	585.1	
ac / ft	331.13	329.29	309.34	312.41	271.29	242.14	1,795.61	

WELL	m/gal	ac / ft	%
10	250.7	769.37	22.6%
11	317.5	974.37	28.6%
12	-	-	0.0%
29	75.9	232.93	6.8%
30	116.4	357.22	10.5%
31	165.4	507.59	14.9%
34	173.3	531.84	15.6%
WG	10.3	31.61	0.9%

2018 TOTAL	m/gal	1,109.5	
	ac / ft	3,404.93	

**MARINA COAST WATER DISTRICT
2019 WELL PRODUCTION SUMMARY**

WELLS	JAN	FEB	MAR	APR	MAY	JUN	TOTAL m/gal	ac / ft
10	17.9	17.4	21.3				56.6	173.70
11	23.8	22.1	19.7				65.6	201.32
12							-	-
29	3.5	3.4	3.8				10.7	32.84
30	3.5	2.7	4.5				10.7	32.84
31	14.7	8.3	8.6				31.6	96.98
34	4.3	10.8	13.0				28.1	86.24
WG							-	-

TOTAL m/gal	67.7	64.7	70.9	-	-	-	203.3	
ac / ft	207.76	198.56	217.58	-	-	-	623.90	

WELLS	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL m/gal	ac / ft
10							-	-
11							-	-
12							-	-
29							-	-
30							-	-
31							-	-
34							-	-
WG							-	-

TOTAL m/gal	-	-	-	-	-	-	-	
ac / ft	-	-	-	-	-	-	-	

WELL	m/gal	ac / ft	%
10	56.6	173.70	27.8%
11	65.6	201.32	32.3%
12	-	-	0.0%
29	10.7	32.84	5.3%
30	10.7	32.84	5.3%
31	31.6	96.98	15.5%
34	28.1	86.24	13.8%
WG	-	-	0.0%

2019 TOTAL	m/gal	203.3	
	ac / ft	623.90	

EXHIBIT 8

Technical Memorandum

October 8, 2016

To: John H. Farrow, M.R. Wolfe Associates, P.C., Attorneys-at-Law

From: Timothy K. Parker, PG, CEG, CHG, Parker Groundwater

Subject: Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR)

At your request, I have reviewed the Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (FSEIR) together with the documents cited in the discussion below. My conclusions are set out below.

I am a California Professional Geologist (License #5584), Certified Engineering Geologist (License # EG 1926), and Certified Hydrogeologist (License #HG 12), with over 25 years of geologic and hydrologic professional experience. I serve as a member of the Technical Advisory Committee to the Monterey County Water Resources Agency in connection with its ongoing study of the Salinas Valley Groundwater Basin that is mandated by Policy PS 3.1 of the 2010 Monterey County General Plan. The purpose of that study is to evaluate historic data and trends in seawater intrusion and groundwater levels in the Salinas Valley Groundwater Basin, to evaluate the likely future groundwater demand, to determine whether groundwater level declines and seawater intrusion are likely to continue through 2030, and to make recommendations for action. This study has not been concluded, but a preliminary report was released in January 2015 by the prime consultant for the PS-3.1 study.¹ My Resume and Project Experience are attached.

A. Cumulative pumping in the Salinas Valley Groundwater Basin (SVGB) and its Pressure Subarea has resulted in aquifer depletion and associated seawater intrusion, and current groundwater management efforts are not sufficient to avoid this significant cumulative impact.

1. Overdraft and seawater intrusion in the Salinas Valley Groundwater Basin

The project will obtain its water supply from wells in the 180/400-Foot Aquifer Subbasin ("180/400-Foot Aquifer" or "Pressure Subarea") at the northwest end of the Salinas Valley

¹ MCWRA, State of the Salinas River Groundwater Basin, January, 2015, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

Groundwater Basin. DSEIR p. 4.19-2 to 4.19-3. The Pressure Subarea is one of the eight subbasins making up the Salinas Valley Groundwater Basin (SVGB).² Overdraft in the Pressure Subarea has averaged about 2,000 acre-feet per year (“afy”) from 1944 to 2014, and the Basin as a whole is “currently out of hydrologic balance by approximately 17,000 to 24,000 afy.”³ Pumping from the Basin has exceeded recharge since the 1930s, causing seawater intrusion as inland groundwater elevations dropped below sea level, permitting the hydraulically connected seawater to flow inland.⁴ Seawater intrusion has advanced more than 5 miles inland, rendering significant groundwater unusable for irrigation or domestic uses.⁵

The rate of seawater intrusion is variable, increasing and decreasing with changes in precipitation, but the long-term trend has been a progressive advance in both the 180-foot and 400-foot aquifers.⁶ The current prognosis for the Pressure Subarea is for further seawater intrusion due to continued groundwater elevations below sea-level including the latent effects of the recent drought:

The fact that groundwater elevations are well below the documented protective elevations indicates that the P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that this situation will be reversed in the coming years, particularly if the current drought conditions continue. Based on the observed time lag (latency) between the end of the historic drought (WY 1991) and the end of the resulting chloride concentration increase (around 1999), one can predict that the 2013 chloride levels reported for coastal wells could show upward concentration trends over the coming years as the SWI front advances, even if wetter climate conditions return. The study area has had three straight years of severe drought

² MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley (“Protective Elevations”), 2013, p. 2, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/documents/ProtectiveElevationsTechnicalMemorandum.pdf; MCWRA, State of the Salinas River Groundwater Basin, 2015, Section 3.

³ MCWRA, State of the Salinas River Groundwater Basin, pp. 6-3.

⁴ MCWRA, Protective Elevations, pp. 4–5; MCWRA, State of the Basin, pp. 2-4, 5-2; MCWRA, Salinas Valley Water Project Draft EIR (“SVWP DEIR”), 2001, pp. 1-2 to 1-8, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/documents/DEIR_EIS_2001/2001%20SVWP_DEIR_2001.pdf.

⁵ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-2 to 5-6; *see also* California Department of Water Resources, Bulletin 118, Salinas Valley Groundwater Basin, 180/400 Foot Aquifer Subbasin, available at <http://www.water.ca.gov/groundwater/bulletin118/basindescriptions/3-04.01.pdf>.

⁶ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-2 to 5-9.

conditions, and continued drought conditions are projected to cause substantial declines in both groundwater head (Section 3.4) and storage (Section 4.4).⁷

The California Department of Water Resources (DWR) is required by the Sustainable Groundwater Management Act to designate as “critically overdrafted” those groundwater basins for which “continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.”⁸ DWR identified the 180/400-Foot Aquifer of the Salinas Valley Groundwater Basin as critically overdrafted in January 2016.⁹

2. Efforts to control seawater intrusion

The Monterey County Water Resources Agency (“MCWRA”) and predecessor agencies have implemented several projects to address seawater intrusion by storing surface water, increasing recharge, and reducing groundwater pumping along the coast.¹⁰ These include the Nacimiento and San Antonio Reservoirs, water recycling to support the Castroville Seawater Intrusion Project, and the Salinas Valley Water Project (SVWP). The SVWP is the most recent of these projects, completed in 2010.

The EIR for the SVWP explains that seawater intrusion is determined by the amount and location of pumping, and varies in response to annual patterns of precipitation. Because coastal pumping causes greater intrusion impacts, the most effective mitigation for seawater intrusion is a reduction of pumping in coastal areas.¹¹ However, total pumping in the hydraulically connected SVGB also matters:

[P]umping in the coastal area closest to the seawater intrusion front has a greater influence on seawater intrusion than pumping in a valley area more distant from the front. Nevertheless, pumping in each area affects seawater intrusion because each subarea draws water from the same Basin.¹²

⁷ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-7 to 5-8, see Tables 3-2 and 4-6 in Sections 3.4 and 4.4.

⁸ DWR, Critically Overdrafted Basins, available at <http://www.water.ca.gov/groundwater/sgm/cod.cfm>.

⁹ DWR, Critically Overdrafted Basins (1/2016), available at http://www.water.ca.gov/groundwater/sgm/pdfs/COD_BasinsTable.pdf.

¹⁰ Marina Coast Water District (MCWD), Urban Water Management Plan (UWMP), 2010, pp. 30-31.

¹¹ MCWRA, SVWP Final EIR, p. 2-36, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/documents/Final%20EIR-EIS%20SVWP_RTC-Vol%201.pdf.

¹² MCWRA, SVWP Final EIR, p. 2-35 to 2-36 (emphasis in original).

The 2002 SVWP EIR predicted that the SVWP could halt seawater based on the amount and location of 1995 demand.¹³ However, it could not assure that the SVWP would halt seawater intrusion in 2030, even though total demand was estimated to decline, because of projected urban growth and associated higher demand in the northern end of the Basin, e.g., the Fort Ord area.¹⁴

As noted in Section 3.2.4, overall water demand in the Basin is anticipated to decline by 2030, but total urban needs are projected to increase from 45,000 acre-feet per year (AFY) in 1995 to 85,000 AFY (a 90% increase) based on projected growth, a large part of which is expected to occur in the northern end of the valley. The modeling shows that with projected 2030 demands, seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term.¹⁵

The SVWP EIR also cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.”¹⁶

3. Seawater intrusion will not be controlled by current management efforts because demand has exceeded projections.

Attachment 1 presents a discussion of the SVWP modeling assumptions compared to subsequent conditions and a discussion of MCWRA’s current acknowledgement and scientific documentation that the existing groundwater management projects are not sufficient to halt seawater intrusion in the SVGB. Attachment 1 demonstrates that:

- The SVWP EIR assumed that Basin groundwater pumping would decline substantially from 1995 to 2030, from 463,000 afy to 443,000 afy, based on large expected reductions in agricultural pumping, which dominates Basin water demand. However, groundwater pumping in the 20 years since 1995 substantially exceeded 1995 levels, averaging well over 500,000 afy.
- Modeling for the SVWP understated the level of post-1995 pumping that has actually occurred and that, in any event, the SVWP EIR only claimed the SVWP would halt seawater intrusion based on 1995 land use.
- The existing groundwater management projects have only been able to slow seawater intrusion. While reports show that the rate of seawater intrusion has

¹³ MCWRA, SVWP DEIR, pp. 3-23 to 3-24.

¹⁴ Id.

¹⁵ MCWRA, SVWP Final EIR, p. 91.

¹⁶ MCWRA, SVWP Draft EIR, p. 7-7.

declined since the last drought-induced spike in intrusion during 1997-1999, intrusion continues. Furthermore, a new drought-induced spike, which typically follows a drought after a lag period of some years, is now likely to occur due to the latent effects recent drought.¹⁷

- Thus, MCWRA has concluded that a new project or projects supplying an additional 48,000 afy of groundwater recharge, over and above that supplied by the SVWP, would be required in order to maintain protective groundwater elevations sufficient to control seawater intrusion.

B. The Monterey Downs SEIR’s discussion of water supply impacts focuses on water supply allocation and reliability of pumping systems and assumes that the Salinas Valley Water Project will halt seawater intrusion.

The DSEIR reports that, pursuant to a 1993 agreement annexing the Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency, Marina Coast Water District (MCWD) may withdraw up to 6,600 afy from the SVGB for use in the Ord Community. (DSEIR p. 4.8-9.) The DSEIR reports that the Fort Ord Reuse Authority (FORA) has sub-allocated this 6,600 afy to the member agencies that have local land use jurisdiction in the Ord Community; that those member agencies have in turn allocated some of their sub-allocations to approved development projects; and that Seaside and Monterey County still retain 412.9 afy of their respective sub-allocations that have not yet been committed to approved projects. (DSEIR p. 4.19-2 to 4.19-5.) The DSEIR concludes that this unallocated water would be sufficient to support Phases 1-3 of the project, but that additional water supplies would be required for Phases 4-6. (DEIR p. 4.19-24, 4.8-34.)

The Monterey Downs DSEIR concludes that Phases 1-3 of the project will not have a significant impact on groundwater because (1) those phases “would only use groundwater that is within MCWD’s existing 6,600 AFY allocation” and (2) “MCWD’s groundwater supply is considered reliable on a quantity and quality basis.” (DSEIR p. 4.8-34; see DSEIR p. 4.19-32.) As discussed in the next two sections, neither of these two reasons for concluding the impact is not significant are justified.

The conclusion that “MCWD’s groundwater supply is considered reliable on a quantity and quality basis” (DSEIR p. 4.8-34) is taken from the Water Supply Assessment (WSA).¹⁸ The WSA information is taken in turn from the MCWD 2010 Urban Water Management Plan (UWMP).¹⁹ In support of the claim that the water supply is “reliable” the FSEIR also cites studies estimating project water demand and evaluating stormwater runoff and recharge; however these additional documents are concerned with project demand estimates, sewer

¹⁷ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-7 to 5-8.

¹⁸ MCWD, Water Supply Assessment and Written Verification of Supply for Monterey Downs Specific Plan, 2012, pp. 22-23.

¹⁹ MCWD, Urban Water Management Plan (UWMP), 2010, p. 53.

usage estimates, and stormwater runoff, and do not provide any discussion of groundwater impacts to the SVGB due to increased pumping that is not contained in the WSA and UWMP.²⁰

The UWMP's discussion of water supply "reliability" cited by the WSA is expressly based on the claims that the SVWP will in fact eliminate overdrafting and prevent saline contamination and that pumping will respect "long-term safe yields:"

5.1 Water Supply Reliability - Single and Multiple Dry Year and Demand Comparison

The Urban Water Management Planning Act requires a description of a water provider's supply reliability and vulnerability to shortage for an average water year, a single dry year or multiple dry years. Such analysis is most clearly relevant to water systems that are supplied by surface water. Since the bulk of MCWD's supply is groundwater and the remainder is from desalinated supply, short- and medium-term hydrologic events over a period of less than five years usually have little bearing on water availability. Groundwater systems tend to have large recharge areas. The Salinas Basin is aided by two large storage reservoirs, Nacimiento and San Antonio, providing about 700,000 ac-ft of storage. These reservoirs regulate surface water inflow to the basin shifting winter flows into spring and summer releases for consumptive use, which also allows for increased basin recharge. The Salinas Valley Water Project is expected to increase the average level of groundwater storage, moving the basin from a situation where average storage is declining to a net increase in storage of about 6,000 ac-ft annually. Provided groundwater is protected from contamination and long-term safe yields in the basin are respected, water is available annually without regard to short-term droughts. This is due to the large storage volume of the basin that can be utilized to offset annual variations in surface runoff. Therefore, MCWD's groundwater supply is fully available in annual average, single dry year and multiple dry years.²¹

The 2010 UWMP discusses previous groundwater management efforts including the Nacimiento and San Antonio reservoirs and the Castroville Seawater Intrusion Project (CSIP).²² The UWMP then states that the SVWP was developed to "fully eliminate basin

²⁰ See e.g., DSEIR pp. 4.8-48 to 4.8-49, FSEIR, pp. 11.4-1623, 11.4-1628 to 11.4-1629, 11.4-1611, 11.4-1569, 11.4-1574, 11.4-1575, 11.4-1585, citing Monterey Horse Park Project Water Demand and Sewage Generation (Horse Park Water Sewer) (Whitson Engineers, August 16, 2012); Water Supply Assessment and Written Verification of Supply for the Monterey Downs Specific Plan (Schaaf & Wheeler Consulting Engineers, November 6, 2012); Water Supply Assessment for the Monterey Downs Specific Plan Update to Table 5-2 (Marina Coast Water District, November 28, 2012); City of Seaside - Monterey Downs WSA Supplement (Diamond West Incorporated, February 21, 2014); and Monterey Downs Water and Sewer Demand Study (WSDS) (Diamond West Incorporated, September 24, 2012).

²¹ MCWD, 2010 UWMP, p. 53.

²² MCWD, 2010 UWMP, pp. 30-31.

overdraft and seawater intrusion," and claims that "MCWRA modeling concludes that this component will eliminate basin overdraft and intrusion."²³ The 2010 UWMP reports that the SVWP assumes that there will be a 20,000 afy reduction in SVGB demand by 2030, consistent with the SVWP EIR's modeling assumptions.²⁴ The 2014 WSA Supplement prepared by Diamond West on behalf of the applicant reports these UWMP claims that the SVWP will reverse the overdraft condition (result in a "net increase in storage of about 6,000 ac-ft annually"), avoid saline contamination, and that SVGB demand is projected to decline 20,000 afy by 2030.²⁵

However, the DSEIR, the WSA, and the WSA Supplement all fail to report that the UWMP acknowledges that the seawater intrusion front continues to advance in the vicinity of the Marina and Ord Community, and threatens the wells supplying the Ord Community.²⁶ They also fail to report that the UWMP states that the SVWP is expected to halt seawater intrusion only based on a 1995 pumping baseline, that "it is uncertain whether this outcome will be borne out at currently expected levels of pumping increases in the coastal margins of the Pressure subarea," and that MCWRA has also documented that the SVWP "may not halt intrusion in the long run and that additional surface water delivers into the coastal region" may be needed.²⁷ Neither the SEIR, the WSA, or the WSA Supplement discuss MCWRA's current reports and documentation, discussed in Attachment 1, that (1) SVGB demand has exceeded the demand projections used by the SVWP modeling, (2) actual pumping in the SVGB is unsustainable without adverse impacts because it exceeds the long-term safe yield, and (3) additional groundwater management projects, which are neither committed nor funded, are needed to halt seawater intrusion caused by current pumping because the SVWP will not do so.

C. The Monterey Downs SEIR analysis is based on the unfounded assumption that there would be no significant impact as long as total Fort Ord pumping is less than 6,600 afy; however, any additional pumping will further aggravate existing seawater intrusion regardless of whether portions of the 6,600 afy remain unallocated.

As noted, a major premise of the SEIR's conclusion that water supply impacts for Phases 1-3 are not significant is that the project "would only use groundwater that is within MCWD's existing 6,600 AFY allocation." (DSEIR p. 4.8-34.) However, the existence of a water supply

²³ MCWD, 2010 UWMP, p. 31.

²⁴ MCWD, 2010 UWMP, p. 41.

²⁵ Diamond West, WSA Supplement, 2014, p. 13.

²⁶ See MCWD, 2010 UWMP, p. 36.

²⁷ MCWD, 2010 UWMP, p. 42.

entitlement does not imply that there are no impacts from using that water. The relevant question for CEQA impact analysis is whether increased pumping to support the project will cause physical impacts, regardless of any entitlement to use that water. As discussed below, additional pumping in the SVGB, especially in the coastal areas, will in fact aggravate seawater intrusion, but the DSEIR does not acknowledge this as a relevant basis for impact analysis.

The SEIR purports to tier from the Program EIR prepared for the Base Reuse Plan in 1997 (the BRP PEIR). However, the BRP PEIR did not assume that there would be no significant groundwater impacts unless and until Ord Community pumping reaches 6,600 afy. The BRP PEIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from beneath Fort Ord without causing further seawater intrusion, and its mitigation does not permit the agencies to delay a solution if intrusion persists.

The BRP PEIR impact analysis qualifies any reliance on the 6,600 afy allocation by stating that a potable water supply is “assumed to be assured from well water until a replacement is made available by the MCWRA,” but only “provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer.” (BRP PEIR p. 4-53 (emphasis added)). It states that the 6,600 afy “could” support the first phase of Ord community development through 2015 and then notes “given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to ‘assure’ even the 6,600 afy.” (BRP PEIR p. 4-53.) Thus, the BRP EIR evaluates the impacts of the BRP through 2015 in two distinct analyses, one of which assumes that 6,600 afy can be supplied without impacts and the other of which assumes that it cannot. In particular, it provides that “[a]ssuming groundwater wells on former Fort Ord were able to supply 6,600 afy,” an additional 7,932 afy of supply would be required by 2015. (BRP PEIR, p. 4-53.) However, it then provides in the alternative that “[i]f groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley Aquifer,” additional supplies would have to be developed sooner, and even further recommends “that an alternate water supply source, such as on-site storage facilities, be considered.” (BRP PEIR, p. 4-54.)

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members “shall ensure additional water supply.” Policy B-2 requires conditioning project approval on verification of an “assured long-term water supply.” Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD “to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan.” Program C-3.1 requires the member agencies to work with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water

supplies.” MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.²⁸ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” (BRP PEIR p. 4-63.) The BRP PEIR states that the “conditions of the 900-foot aquifer are uncertain”, including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies.” (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies “to mitigate further seawater intrusion” by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR’s cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: “existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3).” (BRP PEIR p. 5-5 (emphasis added).)

In sum, unlike the Monterey Downs DSEIR, the BRP PEIR does not assume that the 6,600 afy entitlement is a sufficient basis to determine whether there will be a significant water supply impact from continued groundwater pumping.

As discussed above, the problem of seawater intrusion continues its march inland, requiring deeper replacement wells as the volume of usable groundwater declines, and has not been solved in the 19 years since the certification of the 1997 BRP PEIR. In fact, since the certification of the 1997 BRP PEIR, seawater intrusion maps and tables demonstrate an advance of over 2 miles in the seawater intrusion front in the 180-foot aquifer in the Fort Ord area and substantial advances elsewhere in both the 180-foot and 400-foot aquifers have occurred.²⁹ As the UWMP discloses, as wells have become contaminated, it has been necessary to drill new wells farther inland and to increase pumping from the as-yet uncontaminated 900-foot aquifer.³⁰ And there are no currently committed, funded projects that are expected to solve the problem. As discussed below, the SEIR presents no evidence that pumping from the 900-foot aquifer will avoid aggravation of seawater intrusion, and

²⁸ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

²⁹ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, pp. 5-2 to 5-5.

³⁰ MCWD, 2010 UWMP, pp. 33-37.

there is clear evidence to the contrary. In light of this, the SEIR should disclose that increased pumping to support Phases 1-3 of the project would have a potentially significant impact or could make a considerable contribution to a significant cumulative impact on the groundwater aquifer from which the project would be supplied.

The most recent comprehensive study to the SVGB demonstrates that there is a direct connection between any additional groundwater pumping in the Pressure Subarea and increased seawater intrusion. The 2015 State of the Salinas Valley Groundwater Basin Report indicates that the Pressure Subarea remains in overdraft and that groundwater elevations are well below documented protective elevations.³¹ Thus, it concludes that the “P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that this situation will be reversed in the coming years, particularly if the drought conditions continue.”³² The report also states that “groundwater elevations well below the protective elevations indicate that the P-400 Aquifer continues to be susceptible to SWI, particularly if the current drought conditions continue into the coming years.”³³ The report recommends reducing existing pumping in the Pressure Subarea because “the current distribution of groundwater extractions is not sustainable.”³⁴ The report explain that over the period of analysis, from 1953 to 2013, there has been an average loss of storage for the entire SVGB of from 17,000 afy to 24,000 afy.³⁵ “Seawater intrusion can account for 18,000 afy of the total storage loss of 24,000 afy.”³⁶ In short, each additional acre-foot of pumping in the Pressure Subarea induces an additional 0.75 acre-foot of seawater intrusion.

D. The Monterey Downs SEIR analysis is based on the unfounded assumption that there would be no significant impact as long as supply is “reliable.”

As noted above, the other major premise of the SEIR’s conclusion that water supply impacts for Phases 1-3 would not be significant is that “MCWD’s groundwater supply is considered reliable on a quantity and quality basis.” (DSEIR p. 4.8-34.) Here, “reliability” as the term is used in the DSEIR, WSA, and UWMP, does not imply that there would be no significant groundwater impact from using the supply.

First, a UWMP and a WSA are required to address “reliability” of a water supply, by which the law simply requires analysis of whether water will be available during normal, single

³¹ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-7.

³² MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-7.

³³ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-8.

³⁴ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 6-3.

³⁵ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. ES-16.

³⁶ MCWRA, State of the Salinas Valley Groundwater Basin, 2015,, p. ES-16.

dry, and multiple dry years.³⁷ A groundwater water supply may be reliable, in the sense that water would remain available even during a multi-year drought, even though the use of that water causes significant impacts to the aquifer. For example, notwithstanding the ongoing seawater intrusion caused by continuing overdraft conditions, MCWD and other users have thus far been able to move pumping inland and to tap deeper aquifers to secure groundwater supplies. However, the ability to pump from an underground reservoir of stored groundwater that is large enough to smooth out climatic variation simply does not imply that this pumping is without impacts, such as groundwater depletion, mining and further aggravation of seawater intrusion.

Second, the WSA and 2010 UWMP cite the purported efficacy of the SVWP as the basis for claiming that the water supply is “reliable.” However, the claims these documents make for the SVWP are overstated, since the SVWP EIR did not indicate that seawater intrusion would be halted with any certainty by 2030, and these documents are now outdated since the MCWRA now has documented that the SVWP will not in fact prevent continuing seawater intrusion. As discussed in Attachment 1, the future demand assumptions made by the SVWP EIR and used for modeling the efficacy of the SVWP projected declining water usage in the SVGB, from 463,000 afy in 1995 to 443,000 afy in 2030. Reported pumping in the 20 years since 1995 has not declined but has in fact averaged 502,161 afy (and adjusted to include an estimate for non-reporting wells in these zones, the average is 529,024 afy). Thus, MCWRA reports document that the SVWP will not halt seawater intrusion. To halt seawater intrusion, the County must reduce coastal pumping by 48,000 afy, which would require securing additional surface water supplies to be used to replace that groundwater pumping in coastal areas.³⁸

Third, the WSA cites the fact that the 900-foot aquifer has not yet shown signs of seawater intrusion as evidence of a “reliable” supply.³⁹ The fact that MCWD has so far been able to relocate wells, deeper or farther inland, to find a water supply not yet subject to intrusion does not mean that increased pumping does not cause additional impacts. Furthermore, as discussed below neither the WSA nor the SEIR provide an adequate discussion of the potential impacts from increased pumping of the 900-foot Aquifer (the Deep Aquifer), which include impacts to the overlying 180-foot and 400-foot aquifers of the Pressure Subarea and impacts to the 900-foot aquifer itself. As discussed below, increased pumping of the 900-foot aquifer may induce increased seawater intrusion into the overlying 180-foot

³⁷ Water Code §§ 10631(c) (UWMP must assess reliability for average, single dry, and multiple dry years), 10910(c)(3) (WSA must discuss water availability during normal, single dry, and multiple dry water years); see MCWD, 2010 UWMP p. 53 (reliability discussion); MCWD, WSA, pp. 3, 22-23 (reliability discussion).

³⁸ MCWRA, Protective Elevations, pp.1, 11.

³⁹ MCWD, WSA, p. 23.

and 400-foot aquifers, will deplete the 900-foot aquifer itself, and it may in fact result ultimately in seawater intrusion into the 900-foot aquifer.

E. Increased pumping of the 900-foot aquifer will deplete the 900-foot aquifer, may induce additional seawater intrusion, and neither the DSEIR nor FSEIR provide an adequate discussion of this.

LandWatch's Comments PO 208-5 to 208-14 request information about the specific aquifers from which water will be pumped because (1) the DSEIR implies that water can be supplied safely from the 900-foot aquifer even if the 180-foot and 400-foot aquifers are contaminated by seawater, but (2) it also states that there is a hydraulic connection and recharge relation between the 180-foot, 400-foot, and 900-foot aquifers. LandWatch's comments reflect the concern that increased pumping from the 900-foot aquifer could further intrude the 180-foot and 400-foot aquifers and may also intrude the 900-foot aquifer itself. The FSEIR does not supply the requested information and improperly dismisses its relevance because it fails to acknowledge that increased pumping from the 900-foot (Deep) aquifer may induce increased seawater intrusion in the hydraulically connected upper aquifers and fails to discuss risks to the 900-foot aquifer.

1. The FSEIR fails to address LandWatch's comments and requests for information.

LandWatch asked how much is pumped from each of the 180-foot, 400-foot, and 900-foot aquifers under baseline conditions and how much will be pumped in the future. (Comment PO 208-5.) In response the FSEIR states that the DSEIR's analysis is "based on the adopted MCWD 2010 UWMP, and the details concerning aquifer operations do not affect the DSEIR's analyses." (FSEIR, p. 14-4-1022.) However, the UWMP does not provide the requested information regarding existing and projected pumping by aquifer. (Note that Table 4.8-1 in the DSEIR provides pumping capacity by well and by aquifer, but it does not provide baseline or projected pumping volumes. (DSEIR, p. 4.8-10.))

LandWatch asked that the SEIR identify studies cited by the DSEIR, in particular the "recent stratigraphic analyses" that "have indicated" a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers. (Comment PO 208-5.) The FSEIR repeated the DSEIR's claim and cited the MCWD 2010 UWMP (FSEIR, p. 11.4-1020), but it did not identify the recent stratigraphic analyses. The MCWD UWMP does not provide stratigraphic analysis. The UWMP does cite WRIME's 2003 "Deep Aquifer Investigative Study," which may possibly be one of the stratigraphic analyses referenced by the DSEIR, although this is unclear because it is not recent.⁴⁰ However, as discussed below, WRIME 2003 indicates that increased pumping of the 900-foot aquifer will not be without impacts.

LandWatch asked that the SEIR explain the DSEIR's claims that 1) evidence now shows a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers and 2) the 900-

⁴⁰ MCWD 2010 UWMP, p. 36.

foot aquifer is a series of aquifers not all of which are hydraulically connected. (PO 208-5.) LandWatch asked whether this implied that only portions of the 900-foot aquifer are connected to and recharged by the 180-foot and 400-foot aquifers. (PO 208-5.) LandWatch asked if there is in fact any recharge other than from the 180-foot and 400-foot aquifers. (PO 208-5.) However, the FSEIR simply repeated the DSEIR's discussion (FSEIR p. 11.4-1020) without addressing these questions.

LandWatch asked if the wells in the 900-foot aquifer that would support the project are in an area of that aquifer that is recharged by the 180-foot and 400-foot aquifers. (PO 208-6.) The FSEIR again simply repeated the DSEIR's claims that 1) evidence now shows a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers and 2) the 900-foot aquifer is a series of aquifers not all of which are hydraulically connected and then stated that "it would be speculative to state exactly which aquifer would supply the Project, since they are connected hydraulically." (FSEIR p. 11.4-1022.) As discussed below, a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers means that all pumping will continue to aggravate depletion of the upper aquifers and increase seawater intrusion, and where the deeper 900-foot aquifer is isolated it will cause significant depletion of the 900-foot deeper aquifer, which the SEIR fails to disclose.

The DSEIR's statement that portions of the 900-foot aquifer are not hydraulically connected to other portions of the 900-foot aquifer would allow for the possibility that those unconnected portions are also isolated from the 180-foot and 400-foot aquifers, which would be highly relevant to whether pumping those areas would affect seawater intrusion in the 180-foot and 400-foot aquifers. The FSEIR fails to address this possibility. However, as discussed below, even though there are two distinct aquifers of the Deep Aquifer system,⁴¹ increased pumping from the deeper of these two aquifers is not viable due to the lack of yield.⁴² Furthermore, evidence from WRIME's 2003 Deep Aquifer Investigative Study indicates that increased pumping from the upper Deep Aquifer will increase the ongoing depletion of the upper aquifers and has the associated potential to increase seawater intrusion.⁴³

LandWatch requested that the SEIR explain whether recharge to the 900-foot aquifer from the seawater-intruded 180-foot and 400-foot aquifers could contaminate the 900-foot aquifer, whether increased pumping in the 900-foot aquifer would increase this risk, and how much pumping from the 900-foot aquifer is sustainable. (PO 208-7 through 208-11.) The FSEIR states that "the 900-foot aquifer is not expected to be contaminated by saltwater through recharge from the 180-foot and 400-foot aquifer, as the MCWD wells are outside of the area currently affected by seawater intrusion." (FSEIR p. 11.4-1022 (emphasis added).)

⁴¹ WRIME, Deep Aquifer Investigative Study, 2003, p. 5-1.

⁴² WRIME, Deep Aquifer Investigative Study, 2003, p. 4-7.

⁴³ WRIME, Deep Aquifer Investigative Study, 2003, pp. 5-1 to 5-2.

The response misses the point that there is a significant potential for future contamination of the 900-foot aquifer as seawater intrusion advances to the areas where there is vertical connectivity between all of the aquifers. The response simply fails to make any assessment of this potential as requested by comments. As discussed above and in the attachment, current studies confirm that the seawater intrusion front does in fact continue to advance due to groundwater pumping in excess of recharge. As discussed immediately below, studies confirm that there is vertical connectivity between the 180-, 400-, and 900-foot aquifers. That connectivity, and the induced leakage from the upper aquifers as the Deep Aquifer system is pumped, provides a preferential pathway for seawater intrusion into the Deep Aquifer system.

The FSEIR's responses also miss the point that increased pumping from the 900-foot aquifer further contributes to the existing intrusion of the 180-foot and 400-foot aquifers. The UWMP cites WRIME's 2003 "Deep Aquifer Investigative Study" as evidence that pumping from the Deep Aquifer will in fact induce increased seawater intrusion to the upper aquifers due to vertical connectivity between the three aquifers.⁴⁴ However, neither the WSA nor the SEIR, which cite other portions of the UWMP, report this conclusion from the UWMP.

2. Increased pumping from the Deep Aquifer system will deplete the 900-foot aquifer and may induce additional seawater intrusion.

Analysis in WRIME 2003 supports the conclusion that increased pumping from the 900-foot aquifer would induce additional intrusion into the 180-foot and 400-foot aquifers:

The response curves indicate that additional increases in the deep aquifer groundwater pumping in the coastal areas may induce additional reduction in the groundwater heads, and subsequently additional landward subsurface flows from across the coastline.⁴⁵

Modeling in WRIME 2003 indicates that increasing pumping of the deep aquifer by 1,400 afy over the 2,400 afy baseline 2003 pumping level would lower groundwater levels in the 180-foot, 400-foot, and Deep Aquifers, would induce vertical flows from the upper to the lower aquifers, and would induce substantial coastal groundwater flow, i.e., seawater intrusion.⁴⁶ In short, increased pumping from the Deep Aquifer systems appears likely to induce seawater intrusion in the upper aquifers (the 180-foot and 400-foot aquifers) even if

⁴⁴ MCWD, 2010 UWMP, p. 36.

⁴⁵ WRIME, Deep Aquifer Investigative Study, 2003, p. 5-2, attached.

⁴⁶ WRIME, Deep Aquifer Investigative Study, 2003, pp. 4-11 to 4-12.

the Deep Aquifers are not yet intruded. The SEIR fails to discuss or disclose this, even in response to LandWatch's questions.

WRIME 2003 provides further evidence that there are two distinct 900-foot aquifers. In particular, it concludes that the uppermost deep aquifer is in the Paso Robles Formation and the lowermost is in the Purisima Formation and that the "Purisima Formation is relatively isolated hydraulically from the overlying Paso Robles Formation near the coast."⁴⁷ However, the lack of hydraulic connection between the two distinct aquifers of the Deep Aquifer system does not matter with respect analysis of induced seawater intrusion. This is because WRIME 2003 concludes that recharge to both the Paso Robles and Purisima portions of the deep aquifer come from the overlying aquifers: "[t]he areal distribution and stratigraphic location of the Paso Robles and Purisima Formations limit recharge to leakage from overlying aquifers," i.e., the 180-foot and 400-foot aquifers.⁴⁸ Furthermore, as noted, increased pumping from the lower Deep Aquifer is not viable due to lack of potential yield.⁴⁹

WRIME 2003 concludes that there was an equilibrium between pumping from the 900-foot aquifer and its recharge from the overlying aquifers back in 2003.⁵⁰ It also concludes that "the volume of groundwater in storage in the lower aquifers is small" and that "[i]ncreased production would likely come from increased leakage."⁵¹ Thus, it concludes that increases in pumping of the 900-foot aquifer may induce additional intrusion in the upper aquifers.⁵² Only a small portion of coastal pumping came from the Deep Aquifer in 2003. The SVWP EIR reports that 90% of groundwater pumping north of Salinas came from the 400-foot aquifer and only 5% from deep aquifer as of 2003.⁵³ Thus, the shift from the 400-foot to the 900-foot aquifer to support increased pumping for the Ord Community since 2003 will likely upset that equilibrium noted by WRIME and will have a potentially substantial effect on the 900-foot and overlying aquifers, either by depleting the 900-foot aquifer, by increasing the induced seawater intrusion in the upper aquifers, or both.

⁴⁷ WRIME 2003, pp. 5-1 to 5-2.

⁴⁸ WRIME 2003, p. 5-1.

⁴⁹ WRIME, Deep Aquifer Investigative Study, 2003, p. 4-7.

⁵⁰ WRIME 2003, p. 5-1.

⁵¹ WRIME 2003, p. 5-1.

⁵² WRIME 2003, p. 5-2.

⁵³ SVWP DEIR, pp. 5.3-1 to 5.3-3.

In sum, the implications from WRIME 2003 are, first, that pumping from the 900-foot aquifer may continue to induce seawater intrusion to the aquifers above it because those aquifers will be induced to leak downward to provide recharge.⁵⁴

Second, if increased leakage from the upper aquifers were less than the increased pumping rate, the 2003 equilibrium between recharge and pumping would be upset and the 900-foot aquifer would be depleted because the only source of recharge is the overlying aquifers and the "volume of groundwater in storage in the lower aquifers is small."⁵⁵ Thus, increased pumping of the 900-foot aquifer must either deplete the 900-foot aquifer via mining or induce seawater intrusion in the upper aquifers by increasing their leakage, neither of which are acknowledged by the SEIR.

Third, if and when the seawater intrusion front of the 180-foot and 400-foot aquifers moves inland over the areas of vertical connectivity between the 180-foot, 400-foot, and 900-foot aquifers, increased pumping of the 900-foot aquifer may result in its recharge with saline contaminated water from the 180-foot and 400-foot aquifers. Interaquifer flow from a contaminated upper aquifer to a lower aquifer as a source of salinity contamination of the lower aquifer has already been documented between the 180-foot and 400-foot aquifers in the Fort Ord area due to thin or missing aquitard, direct hydraulic connection, or wells that act as conduits between aquifers.⁵⁶ The agricultural wells that also tap the Deep Aquifer system⁵⁷ typically have long screened intervals to maximize production; and this cross connection of multiple aquifers increases the potential for downward vertical migration of contamination.⁵⁸ Interaquifer flow from well bores is common. For example, in the Santa Clara Valley, USGS estimated that the majority of recharge to deeper zone aquifers was from well bores.

There is already possible evidence of potential seawater intrusion into the Deep Aquifer system provided in the State of the Salinas River Groundwater Basin Report. Two Deep Aquifer hydrographs in the Pressure Subarea show increasing Chloride indices; one of which more than doubled between 1980 and 2013; the other showed an increasing trend

⁵⁴ WRIME 2003, p. 5-1 ("increased production would likely come from increased leakage").

⁵⁵ WRIME 2003, p. 5-1.

⁵⁶ MCWRA, State of the Salinas River Groundwater Basin, p. 5-8.

⁵⁷ MCWD, 2015 draft UWMP, p. 38, available at http://www.mcwd.org/docs/agenda_minutes/2016-06-06_board/Item%2011-A%20-%20MCWD%20Draft%202015%20UWMP%20v20160520.pdf.

⁵⁸ Hanson, et al., Comparison of groundwater flow in Southern California coastal aquifers, Geological Society of America, Special Paper 454, 2009, pp. 6-7, 11, 13, 14, 19, 26, available at https://www.researchgate.net/publication/279335540_Comparison_of_groundwater_flow_in_Southern_California_coastal_aquifers.

until sampling stopped in about 2000.⁵⁹ The Report does not address this trend in Chloride concentration in the Deep Aquifer in the narrative. However it does note that the groundwater levels "exhibit an overall steady decline since approximately 2003."⁶⁰ The Report states that of 580 measurement points used in the study, only 12 are screened with the Deep Aquifer in the Pressure Subarea,⁶¹ underscoring the dearth of groundwater level and groundwater quality data available for the Deep Aquifer in the Pressure Subarea, and associated higher uncertainty for predicting the potential for significant impacts from the pumping deeper in the basin.

Finally, the SEIR also fails to disclose and discuss the fact that the 900-foot aquifer itself may be open to Monterey Bay, providing a direct route for seawater intrusion to that aquifer without mediation by the upper aquifers. The BRP PEIR states that "there is no evidence that the Deep Zone is not connected to the ocean." (BRP PEIR, p. 4-57.) The recent State of the Basin report also states that "[u]nlike the P-180 and P-400 Aquifers, it is not known whether the or not the Pressure Deep Aquifer is hydraulically connected to the ocean."⁶² If it is connected, there is an additional path to intrusion into the 900-foot aquifer that could be induced by increased pumping.

F. The Monterey Downs SEIR fails to provide an adequate cumulative analysis because the relevant scope of cumulative analysis is the hydraulically connected SVGB, not merely the BRP area, and because there is no basis to deem an additional 250 afy of pumping to be less than a considerable contribution to a significant cumulative impact merely because it represents a small percentage of total SVGB pumping.

LandWatch objected that the DSEIR limits the geographic scope of the cumulative analysis of groundwater supply impacts to Fort Ord projects. (DEIR 4.8-47, 4.19-30 to 4.19-32.) Thus, the DSEIR does not provide baseline or projected future demand for the Pressure Subarea or the SVGB as a whole, or identify either the projects that would contribute to the cumulative impacts or a summary of projections of the water demand of those projects. As discussed, it is well understood that, while coastal pumping has the greatest effect, seawater intrusion is a result of cumulative overpumping from all areas of the SVGB, because these areas are hydraulically connected.⁶³ The fact that actual current baseline pumping for the SVGB as a whole is well in excess of the pumping assumed in the SVWP EIR, and that this pumping is projected to substantially exceed the level assumed by the SVWP EIR, is highly

⁵⁹ MCWRA, State of the Salinas River Groundwater Basin, Figure 3-8.

⁶⁰ MCWRA, State of the Salinas River Groundwater Basin, p. 3-16.

⁶¹ MCWRA, State of the Salinas River Groundwater Basin, p. 3-16.

⁶² MCWRA, State of the Salinas River Groundwater Basin, p. 6-4.

⁶³ MCWRA, SVWP Final EIR, p. 2-35 to 2-36.

relevant to the analysis of the extent of cumulative impacts in the form of seawater intrusion.

As LandWatch pointed out, the BRP PEIR did assess cumulative impacts of Fort Ord groundwater pumping in the regional context of total demands on the SVGB and, indeed, concluded that the cumulative impact of the BRP was significant and unavoidable. (BRP PEIR p. 5-5.) The Monterey Downs SEIR does not report this analysis or conclusion.

The FSEIR acknowledges that the geographic scope of the SEIR's cumulative analysis does not coincide with the geography in the BRP PEIRs' cumulative impact analysis because it is limited to the BRP area, unlike the BRP PEIR's regional analysis. (FSEIR p. 11.4-1024.) The FSEIR argues that the DSEIR has simply made the choice to rely on a summary of projections and has chosen the summary of projections of the BRP area's future water demand, which does not include demand outside of the Ord Community. (FSEIR p. 11.4-1024.) However, the fact that CEQA may permit an agency to use a summary of projections to identify relevant cumulative impact sources cannot justify the arbitrary choice of a summary of projections for a geographic area that is too limited to support a meaningful cumulative analysis.

Although the DSEIR lacks any SVGB baseline data, the FSEIR provides a belated estimate of total current pumping in the SVGB. (FSEIR p. 11.4-1023 to 1024.) However, the FSEIR does not use this baseline data in any way, e.g., by relating it to an analysis of groundwater impacts or to the modeling for the Salinas Valley Water Project that was uncritically cited by the 2010 MCWD UWMP and the Diamond West WSA Supplement.⁶⁴ Nor do the FSEIR or DSEIR provide any assessment of future total pumping in the SVGB, despite LandWatch's objection that this data is needed for an adequate analysis.

Instead, the FSEIR argues that the DSEIR relied on the MCWD 2010 UWMP analysis of seawater intrusion, and that its "impact analysis is based on the 2010 UWMP, which encompasses the MCWD service area." (FSEIR pp. 11.4-1023, 11.4-1025.) The FSEIR then recites a section of the UWMP that relies on the future efficacy of the Salinas Valley Water Project to control seawater intrusion and maintain groundwater elevations, including the out-of-date and incorrect claim that the SVWP will result in a 6,000 afy surplus in the SVGB. (FSEIR p. 11.4-1025, quoting MCWD 2010 UWMP, p. 53.) The FSEIR's response fails to provide the requested information regarding existing and future groundwater pumping in the SVGB and fails to relate that information to a sustainable level of pumping that does not cause depletion or seawater intrusion. The response also fails to explain why limiting the scope of the cumulative analysis to the BRP area is justified in light of the hydraulic connection of the SVGB as a whole to the BRP area.

Most significantly, the FSEIR's responses fail to disclose the fact that there is an existing significant cumulative impact that is not projected to be mitigated by existing groundwater

⁶⁴ See MCWD, 2010 UWMP, pp. 31, 41; Diamond West, WSA Supplement, 2014, p. 13.

management projects and that any additional pumping, including the pumping of the unallocated portion of the 6,600 afy entitlement, will aggravate this condition.

The FSEIR claims that its response to LandWatch's comment PO 208-5 explains why the geographic scope of the cumulative analysis is limited to the BRP area. (FSEIR pp. 11.4-1020, response to PO 208-4, and p. 11.4-1023, response to PO 208-15.) The response to PO 208-5 does not justify the limitation of the geographic scope to the Fort Ord area. That response purports to address LandWatch's objections that the DSEIR inadequately identifies and characterizes the pumping source aquifer(s) within Fort Ord, fails to identify other wells and cumulative pumping in the 900-foot aquifer, and fails to discuss recharge, saline contamination and sustained yield of the 900-foot aquifer. (FSEIR, pp. 11.4-1020 to 11.4-1022.) To the extent that the response addresses the SRGB outside the Fort Ord area at all, it is only to repeat the DSEIR's claims that its analysis is based on the UWMP and that the UWMP discusses seawater intrusion in the SVGB. Like the DSEIR, the FSEIR does not actually report or evaluate the 2010 UWMP's conclusions about the SVGB or address the post-2010 information indicating that seawater intrusion is not under control.

The FSEIR argues that agricultural water use consumes the majority of SVGB water and that the MCWD pumping is only 1% of total SVGB pumping. (FSEIR p. 11.4-1024.) This argument fails to recognize that coastal pumping like MCWD's particularly aggravates seawater intrusion, that this coastal pumping must be reduced and replaced now to halt seawater intrusion.⁶⁵ It also fails to recognize that it is simply irrelevant how the pumped groundwater is used:

... the ability to halt seawater intrusion, now and in the future, is not based on whether it is delivered to agricultural uses or urban uses. Both of these uses draw the same water from the same groundwater basin. Reducing withdrawal of groundwater in the northern Salinas Valley, whether through replacement of agricultural or urban pumping, has the same effect.⁶⁶

If the implication of the FSEIR's claim that MCWD pumping amounts to only 1% of total SVGB pumping is that this pumping, or the increased pumping for the Monterey Downs project, does not constitute a considerable contribution to seawater intrusion, neither the FSEIR nor the DSEIR actually state this as the basis of the cumulative impact analysis. However, if the claim were made, it would not be accurate. CEQA does not permit an agency simply to dismiss a project's impact as less than a considerable contribution because it is relatively small. The potential significance must be evaluated in the context of the severity of the cumulative impact, which the SEIR fails to do.

⁶⁵ MCWRA, SVWP DEIR, p. 3-23; MCWRA, Protective Elevations, pp. 1, 11.

⁶⁶ MCWRA, SVWP DEIR, p. 7-8.

Here, the magnitude of the annual storage change in the Pressure Subarea that has caused seawater intrusion is from about -200 afy to about -1,600 afy over the period from 1944 to 2013.⁶⁷ From 1959 to 2013, the average change in storage was from -50 afy to -500 afy.⁶⁸ The estimated safe or sustainable yield for the Pressure Subarea, i.e., the level of pumping that could be sustained without seawater intrusion, is from 110,000 to 117,000 afy, but groundwater pumping exceeds this yield by about 12,000 to 19,000 afy.⁶⁹ The significance of the proposed increase in pumping to support Phases 1-3 of the project, which would be at least 250.6 afy, and which may come to 396.3 afy if the currently unavailable recycled water does not materialize (DSEIR, p. 4.19-23), should be assessed in relation to these figures, not in relation to the entire 500,000+ afy pumping from the SVGB, because seawater intrusion is caused by marginal effects, i.e., storage changes (aquifer depletion) and pumping in excess of sustainable yield, not by total pumping. The SEIR does not provide this comparison. In view of the recognition that coastal pumping must be reduced to address seawater intrusion,⁷⁰ there is no longer any cushion for increased pumping and any additional pumping at the margin should be deemed a considerable contribution.

⁶⁷ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-12 (average storage change, depending on the storage coefficient value).

⁶⁸ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-25.

⁶⁹ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-25.

⁷⁰ MCWRA, Protective Elevations, pp. 1, 11; MCWRA, State of the Salinas Valley Groundwater Basin, p. 6-3.

Attachment 1 – Modeling assumptions and outcomes for the SVWP; MCWRA’s acknowledgment that the SVWP will not halt seawater intrusion

1. The SVWP EIR did not project that the SVWP would halt long-term seawater intrusion.

MCWRA prepared and certified an EIR for the SVWP in 2001 and 2002. (MCWRA, SVWP EIR, 2002.) Based on specific assumptions about future demand and safe yield (discussed below), the SVWP EIR projected that the proposed SVWP “would reverse the annual reduction in groundwater storage to an approximately 2,500 AFY increase in groundwater storage.” (SVWP FEIR 3-30.) Thus, it projected that seawater intrusion could be halted. However, the SVWP EIR qualified this conclusion in two critical respects.

First, the SVWP EIR cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.” (SVWP EIR, p. 7-7.) So the conclusion was tied to specific assumptions regarding water use. As discussed below, future water use is projected to exceed the levels projected in the SVWP EIR. Indeed, MCWRA’s Rob Johnson acknowledged to the Monterey County Planning Commission that the SVWP EIR demand projections were not accurate and that pumping was more than projected. (Transcript of Monterey County Planning Commission, Oct. 29, 2014, p. AR005187; available in video file at http://monterey.granicus.com/MediaPlayer.php?view_id=14&clip_id=2745.)

Second, the SVWP EIR acknowledged that the proposed project would only halt seawater intrusion based on 1995 levels of demand:

While the SVIGSM indicates that seawater intrusion will be halted by the project (in conjunction with the CSIP deliveries) based on current (1995) demands, with a projected increase in water demands (primarily associated with urban development) in the north valley area in the future, seawater intrusion may not be fully halted based on year 2030 projections. For the year 2030, modeling indicates seawater intrusion may be 2,200 AFY with surface water deliveries only to the CSIP area. (SVWP DEIR, p. 3-23.)

The Department of the Interior pointed out that the SVWP EIR contradicts itself in stating that “the proposed action would halt seawater intrusion” and also that “hydrologic modeling shows that the project may not halt seawater intrusion in the long-term future” and asked for clarification. (SVWP FEIR, p. 2-82, comment 2-12.) In response, the SVWP FEIR again acknowledged that its modeling only showed that the SVWP would “halt seawater intrusion in the near term” based on 1995 water demand. (SVWP FEIR, p. 2-91.) However, with anticipated 2030 demand, that modeling showed that “seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term.” (SVWP FEIR, p. 2-91.) The 2010 Monterey County General Plan EIR itself acknowledges

that the SVWP may only halt seawater intrusion in the short term. (2010 General Plan EIR, p. 4.3-38.)

Questioned about this at the October 29, 2014 Monterey County Planning Commission hearing, MCWRA’s Rob Johnson acknowledged that the SVWP would only halt seawater intrusion based on 1995 land use. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014, p. AR005188.) As discussed below, Mr. Johnson also acknowledged that groundwater pumping is higher than anticipated by the SVWP EIR and that an additional 58,000 af/y of groundwater, beyond that provided by the current suite of water supply projects, is still needed to halt seawater intrusion. (*Id.*, pp. AR005178-005179, 005189-005190.)

2. As MCWRA acknowledges, groundwater pumping has exceeded the level assumed in the SVWP EIR, and this vitiates its analysis, which was expressly based on the assumption that groundwater pumping would decline over time.

MCWRA reports show that pumping is much higher than predicted by the SVWP EIR. To determine the extent of overdrafting and seawater intrusion, the SVWP EIR relied on modeling provided by the Salinas Valley Integrated Ground and Surface Water Model (“SVGISM”), which in turn was based on assumptions regarding land use, population, and water use. (SVWP EIR, pp. 5-1 (identifying baseline and future conditions), 5.3-10 to 5.3-11 (overview of SVGISM), 7-4 to 7-5 (detailing major assumptions used in the SVGISM regarding population and irrigated acreage).)

As set out in the table below, the SVWP EIR reported its assumptions and modeling results for two scenarios: 1995 baseline conditions and 2030 future conditions:

SVWP EIR: population and land use assumptions with baseline and projected water use	1995	2030
Population	188,949 persons	355,829 persons
Urban water pumping	45,000 afy	85,000 afy
Farmland	196,357 acres	194,508 acres
Agricultural water pumping	418,000 afy	358,000 afy

Source: SVWP EIR, pp. 1-7 (Table 1-2, “Estimated Existing and Future Water Conditions”); pp. 5-1, 6-3, 7-3, 7-10 (identifying baseline and future conditions).

The SVWP EIR assumed that agricultural water use would decline by 60,000 afy from 1995 to 2030 due to a 5% increase in water conservation, changes in crop uses, and a 1,849 acre

decrease in irrigated agricultural acreage. (SVWP EIR pp. 1-7, 7-5, 7-10.) The SVWP EIR assumed that urban water use would increase by 40,000 afy between 1995 and 2030 based on population growth and an assumed 5% per capita reduction in water demand due to conservation. (SVWP EIR, pp. 1-7, 7-5.)

In sum, the SVWP EIR assumed that groundwater pumping in Zone 2C would decline 20,000 afy over a 35 year period, from a total of 463,000 afy in 1995 to 443,000 afy in 2030.

In fact, in the first 20 years since 1995 pumping has greatly exceeded the SVWP EIR projection. Reported groundwater pumping in Zones 2, 2A, and 2B has averaged 502,161 afy. Adjusted to include an estimate for non-reporting wells in these zones, the average is 529,024. These data are based on the annual Ground Water Summary Reports published by MCWRA in 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php. The data are summarized in the table below.

Year	Ag	Urban	Total	Percent of wells not reporting	Total divided by percent of wells reporting to adjust for non-reporting wells
1995	462,268	41,884	504,512	2%	514,808
1996	520,804	42,634	563,438	4%	586,915
1997	551,900	46,238	598,139	7%	643,160
1998	399,521	41,527	441,048	7%	474,245
1999	464,008	40,559	504,567	9%	554,469
2000	442,061	42,293	484,354	11%	544,218
2001	403,583	37,693	441,276	18%	538,141
2002	473,246	46,956	520,202	7%	559,357
2003	450,864	50,472	501,336	3%	516,841
2004	471,052	53,062	524,114	3%	540,324
2005	443,567	50,479	494,046	2%	504,129
2006	421,634	49,606	471,240	4%	490,875
2007	475,155	50,440	525,595	3%	541,851
2008	477,124	50,047	527,171	3%	543,475
2009	465,707	45,517	511,224	3%	527,035

2010	416,421	44,022	460,443	3%	474,684
2011	404,110	44,474	448,584	3%	462,458
2012	446,620	42,621	489,241	3%	504,372
2013	462,873	45,332	508,205	3%	523,923
2014	480,160	44,327	524,487	2%	535,191
20 year average			502,161 afy		529,024 afy

Source: Ground Water Summary Reports published by MCWRA, 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php.

The reported pumping data does not include any pumping from the portion of Zone 2C that is located outside of Zones 2, 2A, and 2B. (See Monterey County 2010 General Plan FEIR, pp. S-13, S-127.) The County estimated that this pumping amounted to at least 4,574 afy in 2005. (Monterey County 2010 General Plan FEIR, p. S-136.) Adding this to the adjusted average pumping total for Zones 2, 2A, and 2B, average pumping has been 533,598. This is 70,598 afy higher than the SVWP EIR's 1995 baseline and 90,598 afy higher than its projected 2030 demand.

As noted, the SVWP EIR analysis was based on specific assumptions about future water demand, and it cautioned that "any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion." (SVWP DEIR, p. 7-7.)

In sum, for more than half of the planning period covered by the SVWP EIR's 1995-2030 projections, groundwater pumping has greatly exceeded its assumed demand levels. The amount by which actual demand exceeds assumed demand is two to three times greater than the amount of water that the SVWP was expected to provide.⁷¹

MCWRA's Rob Johnson acknowledged that actual demand has exceeded the SVWP EIR's projections. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014,

⁷¹ The SVWP was intended retain up to an additional 30,000 afy of water in dams and then provide about 9,700 afy of that water to the Castroville Seawater Intrusion Project ("CSIP") to replace groundwater pumping, about 10,000 afy to increase basin recharge, and another 10,000 afy for instream flow augmentation. Monterey County 2010 General Plan DEIR, pp. 4.3-36 to 4.3-38; Monterey County 2010 General Plan FEIR 2-68 to 2-71. The Monterey County General Plan DEIR, FEIR Supplemental materials, and FEIR are available at <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/draft-environmental-impact-report-deir>, <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/supplemental-material-to-final-environmental>, <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/final-environmental-impact-report-feir>.

p. AR005187.) Mr. Johnson acknowledged that additional water supply projects delivering at least 58,000 afy will be required to halt seawater intrusion. (*Id.* pp. AR005178-005179, 005189-005190)

The growth in pumping is associated with increases in agricultural land use. As noted, the SVWP EIR assumed that irrigated agricultural acreage would decrease from 196,357 acres in 1995 to 194,508 acres in 2030. (SVWP EIR, p. 7-10.) However, agricultural acreage has actually increased since 1995.

- The SVWP Engineers Report reports that there were 212,003 acres of irrigated farmland in Zone 2C as of 2003. (SVWP Engineers Report, pp. 3-10, 3-15 (Tables 3-5 and 3-9 providing acreage totals for "Irrigated Agriculture"), available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/salinas_valley_water_project_1.php.) This is substantially more irrigated acreage than the 196,357 acres that the SVWP EIR reported for 1995. (SVWP EIR, p. 7-10.) The SVWP Engineers Report data were based on "parcel information, including land use, acreage, zone and other data" developed by MCWRA. (Engineers Report, p. 3-10.)
- The 2010 Monterey County General Plan EIR reported Department of Conservation farmland mapping data showing an increase of 8,209 acres of habitat converted to new farmland from 1996-2006 but only 2,837 acres of existing agricultural land lost to urban use. Monterey County 2010 General Plan DEIR, pp. 4.9-46 and 4.2-7 (showing farmland gains and losses 1996-2006 based on FMMP data). This represents a net gain of farmland of 5,372 acres, and does not account for additional water demands from multiple crops (2-4) per acre per season.

Furthermore, there is every reason to believe that the increase in irrigated acreage will continue and that the decrease in irrigated agricultural land between 1995 and 2030 projected in the SVWP EIR will not occur. Based on the past data related to conversion of habitat to farmland, the 2010 Monterey County General Plan DEIR projected that future agricultural acreage would increase from 2008 to 2030, and the General Plan FEIR admitted that the large future net increase in farmland would create additional water demand not anticipated by the SVWP EIR: 17,537 afy of water. (Monterey County 2010 General Plan DEIR, p. 4.9-64 (Table 4.9-8); Monterey County 2010 General Plan FEIR, pp. 2-38, 4-129 (revised table 4.9-8), S-19 to S-20, S-137 to S-138 (revised Table 4.3-9(c), note 7)).

3. MCWRA also acknowledges that the existing SVWP will not halt seawater intrusion and that additional water supply projects are required.

The MCWRA has acknowledged that the SVWP will not in fact be sufficient to halt seawater intrusion. In testimony to the Monterey County Planning Commission, MCWRA's Rob Johnson stated that the SVWP is not the final water project needed to halt seawater intrusion and that it will in fact be necessary to find additional water supplies totaling at least 58,000 afy to achieve this. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014, AR005164, 005178-005179, 005189-005190) The 58,000 afy figure

is based on modeling performed by MCWRA in connection with its efforts to secure surface water rights on the Salinas River in order to mitigate seawater intrusion.

The MCWRA now seeks, under a settlement agreement with the State Water Resources Control Board, to perfect surface water rights to 135,000 afy of Salinas River water in order to construct an additional Salinas Valley water project to attempt to halt seawater intrusion. (See MCWRA, Salinas Valley Water Project Phase II, Overview, Background, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.) MCWRA seeks to retain the right to the surface water entitlement by asserting the need for another project to halt seawater intrusion. Modeling undertaken for the MCWRA in 2013, establishes that an additional 135,000 afy of surface water flows will be needed in order to supply the additional 60,000 afy of groundwater that is now projected to be required to maintain groundwater elevations and a protective gradient to prevent further seawater intrusion. (Geoscience, Protective Elevations to Control Seawater Intrusion, Nov. 13, 2013, p. 11, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php (link to "Technical Memorandum.")) The MCWRA has not yet conducted environmental review for a new project to supply the needed water. (See MCWRA, Salinas Valley Water Project Phase II, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.) There is no assured funding source for it.

Although the MCWRA website refers to the currently proposed new project as "SVWP Phase II," it is not the same project that was identified as a potential second phase of the SVWP in the 2001/2002 SVWP EIR. The second phase of the SVWP envisioned in the 2001/2002 SVWP EIR would have consisted of only an additional 8,600 afy of Salinas river diversion, increased use of recycled water, supplemental pumping in the CSIP area, and a pipeline and delivery to an area adjacent to the CSIP area. (SVWP EIR, p. 3-23 to 3-24.) The currently proposed project is much larger in scope and would include different and more extensive infrastructure: it would divert an additional 135,000 afy at two new diversion facilities and would deliver that water through injection wells, percolation ponds, direct supply of raw water, or a treatment system. (MCWRA, SVWP Phase II website, Project Description, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php)

To my knowledge, neither the SVWP Phase II project identified at the conceptual level in the 2001/2002 SVWP EIR nor the newly proposed SVWP Phase II has been planned at any level of significant detail or environmentally reviewed. The SVWP EIR and the Monterey County 2010 General Plan EIR both acknowledge that impacts related to the initially conceived second phase project have not been evaluated, and the Monterey County 2010 General Plan EIR treated these impacts as significant and unavoidable because they remain largely unknown. (SVWP FEIR, pp. 2-92, 2-243; Monterey County 2010 General Plan, p. 4.3-146.)

The phase two project now being discussed has not had any environmental review, but it would likely result in significant potential environmental impacts, based on MCWRA's determination that an EIR is required. (MCWRA Notice of Preparation of EIR, Salinas Valley Water Project Phase II, June 2014, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.)

Finally, the 2015 MCWRA State of the Salinas Valley Groundwater Basin report establishes that the SVGB as a whole and the Pressure Subarea are both being pumped unsustainably in excess of safe yield.⁷² This overdraft condition has caused, is causing, and will continue to cause seawater intrusion, particularly in the 180-foot and 400-foot aquifers of the Pressure Subarea.⁷³

In sum, the water supply provided by the SVWP is well documented to be insufficient to prevent cumulative groundwater pumping from further aggravating seawater intrusion. Major additional water supply projects with currently unknown potential environmental impacts will be required to address this significant cumulative impact.



⁷² MCWRA, State of the Salinas River Groundwater Basin, pp. 4-25 to 4-26.

⁷³ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-1 to 5-8, 6-1 to 6-4.

RESUME

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WORK EXPERIENCE

2009 – Present: Parker Groundwater, President/Principal. Sacramento, California. Privately owned business, specializing in strategic groundwater planning, groundwater monitoring, groundwater modeling, groundwater recharge and aquifer storage recovery projects, program implementation, stakeholder facilitation, groundwater monitoring, policy and regulatory analysis, environmental document review and litigation support. Provides strategic planning, policy consulting and groundwater technical expertise to public and private sector clients to develop effective, sustainable solutions to complex problems in the water and evolving environmental and energy industries.

2005 – 2009: Schlumberger Water Services, Principal Hydrogeologist. Sacramento, California. Provided hydrogeologic expertise and project management on groundwater recharge and aquifer storage recovery projects, groundwater monitoring, groundwater resources management, and groundwater contaminant projects for public and private sector clientele. Application of advanced oilfield tools and technologies to groundwater projects. Integration of groundwater quality monitoring and protection on CO2 sequestration projects; liaison to Schlumberger Carbon Services, including planning, scope development, technical implementation, facilitation, and oversight. **Business Development** activities included strategic planning, prospect assessments, sales presentations, targeted workshops, client development and exploitation. Mentored and provided direction to staff; developed, tracked and controlled projects; worked closely with clients and other public and private organizations to implement projects on schedule, on budget with high level of quality.

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on local groundwater monitoring and subsidence programs; technical support on Bulletin 118; Proposition 13 groundwater grant applications screening and ranking process for Central District geographic area. Supervised and provided direction to staff; developed, tracked and controlled program budgets; worked closely with other DWR groups, agencies and outside organizations to develop additional local assistance opportunities for DWR.

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investigations and removal actions, and negotiating with state regulators on three Beale Air Force projects totaling more than \$15 million.

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PROFESSIONAL REGISTRATION

California Professional Geologist No. 5594
California Certified Engineering Geologist No. 1926
California Certified Hydrogeologist No. 0012

PROFESSIONAL AFFILIATIONS

California Department of Water Resources, Public Advisory Committee, Water Plan Update 2013

2010-2013: Appointed to participate on PAC and to lead new Groundwater Caucus

Department of Interior, Advisory Committee on Water Information, Subcommittee on Ground Water

2010-Present: Member – Work Group for Pilot Project Implementation, Nationwide Groundwater Monitoring Network
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1996-1997 Secretary
1995-1996 President Sacramento Branch
1993-1994 Member-at-Large Sacramento Branch

ACADEMIC BACKGROUND

BS 1983, Geology, University of California, Davis

Graduate studies in hydrogeology, hydrology, engineering geology, waste management engineering

Selected Publications

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Sustainability From The Ground Up – Groundwater Management In California – A Framework, Association of California Water Agencies, principal author, 2011.

ISMAR9 Call to Action: Sustainable Groundwater Management Policy Directives, Principal Author, 2016.

EXHIBIT 9

February 15, 2018

John Farrow
M.R. Wolfe & Associates, P.C
555 Sutter Street, Suite 405
San Francisco, CA 94102

Re: Groundwater Impacts from Increased Pumping to Support Ord Community Development

Dear Mr. Farrow:

At your request, I have reviewed the Draft Initial Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation together with the documents cited below. As set out in the discussion below, increased pumping to support new development in the Ord Community would aggravate existing seawater intrusion and further deplete the Deep Aquifer. The reported existence of an area of relatively fresher water in what Marina Coast Water District terms the North Marina Area does not change this conclusion. My resume is attached.

1. Increased pumping for new development in the Ord community would aggravate seawater intrusion and further deplete the Deep Aquifer.

As explained in my October 8, 2016 memorandum regarding the proposal to increase groundwater pumping to support the Monterey Downs project in the Ord community, seawater intrusion continues in the Salinas Valley Groundwater Basin (SVGB) due to overdraft conditions, despite various groundwater management projects.¹ The situation has not improved since my 2016 memorandum. The most recent MCWRA mapping shows continued substantial increase in seawater intruded areas, which have occurred *despite* reductions in MCWD pumping during the 2006-2015 period.² Groundwater levels continue

¹ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016.
² MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=19378>; MCWRA, Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer, June 7, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=19376>; MCWD, 2015 Urban Water Management Plan (UWMP), Table 4.1 (reporting total MCWD pumping declined from 4,295 afy to 3,228 afy in that period), available at http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.

to decline, especially in the 400-foot aquifer.³ MCWRA reports that acreage within the 500 mg/l or greater Chloride contour in the 400-foot aquifer has increased from 11,882 acres in 2005 to 17,125 acres in 2015.⁴ Furthermore, because increases in intrusion may lag periods of drought, there may be substantial increases in intrusion still to come in response to the recent 4-year drought.⁵

In light of the continuing advance of seawater intrusion, MCWRA staff have recommended a moratorium on new wells in the Pressure 400-Foot Aquifer within an "Area of Impact" proximate to the 500 mg/l Chloride front.⁶ MCWRA also recommends a moratorium on new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin pending investigation of its viability as a source of water ("Deep Aquifer" has been called variously including the 900-foot Aquifer, and herein is used to refer to multiple water-bearing units underlying the Pressure 400-Foot Aquifer).⁷

In sum, as set out in my 2016 memorandum and confirmed by subsequent investigations, future increased groundwater pumping above existing levels, particularly from the areas proximate to the seawater intrusion front, will contribute to seawater intrusion. Because MCWD's current production wells serving the Ord community are located just inland of the seawater intrusion front in the 400-foot and Deep aquifers, increased pumping would aggravate seawater intrusion.⁸

MCWD has reported that its total pumping is a small fraction of total SVGB pumping.⁹ As I explained in my 2016 memorandum, the relevant question for assessing the cumulative impact of additional pumping is not whether that amount is large compared to total SVGB pumping, but whether it represents a considerable increase in the magnitude of annual overdraft.¹⁰ An increase of 2,492 afy to meet the projected increase in Ord community

³ MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=31294>.

⁴ *Id.*

⁵ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 2-3.

⁶ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, pp. 2-9, available at <http://www.co.monterey.ca.us/home/showdocument?id=57394>.

⁷ *Id.*

⁸ MCWD, 2015 Urban Water Management Plan (UWMP), pp. 35, 45, available at http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.

⁹ MCWD, 2015 UWMP, p. 38; MCWD, Draft Initial Study/Negative Declaration, Ord Community Sphere of Influence Amendment and Annexation (Annexation Initial Study), p. 49.

¹⁰ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 19-20.

demand from 2020 to 2035¹¹ would be a considerable increase in the existing 12,000 afy to 19,000 afy overdraft of the Pressure Subarea. And that pumping would make a considerable contribution to the existing seawater intrusion problem.

The Deep Aquifer contains ancient water and there is no evidence that it is recharged except incidentally by leakage from overlying aquifers and via well-perforations completed in both the Deep and shallower aquifers, so any pumping from the Deep aquifer is groundwater mining.¹² In addition, any increase in pumping from the Deep Aquifer will likely induce increased seawater intrusion in the overlying 180- and 400-foot aquifers through leakage.¹³ Any increase in pumping would simply lead to further depletion of this resource. As noted, MCWRA has recently recommended a moratorium on new pumping from the Deep Aquifer.

2. The reported existence of an area of relatively fresh water behind the seawater intrusion front does not alter the conclusion that increased pumping will contribute to seawater intrusion.

In connection with its opposition to the proposed location of the source water wells for the proposed California-America Water Company desalination plant, MCWD has engaged hydrologist Curtis Hopkins to evaluate water quality data from the test well for that project.¹⁴ MCWD has also recently arranged for the collection and analysis of airborne electromagnetic (AEM) data to characterize the aquifer in an area that MCWD identifies as the North Marina Area of the Salinas Valley Groundwater Basin.¹⁵ These analyses disclose the presence of some areas of relatively fresher water located north of, i.e. behind, the seawater intrusion front.¹⁶

¹¹ MCWD, Annexation Initial Study, p. 50

¹² Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-17; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

¹³ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-14; MCWD, 2015 UWMP, p. 50, citing WRIME, Deep Aquifer Investigative Study, 2003; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

¹⁴ Curtis Hopkins, North Marina Area Groundwater Data and Conditions, May 26, 2015, provided as Appendix E, pp. E-15 to E-50, of the MCWD, 2015 UWMP, available at http://www.mcwd.org/docs/engr_files/MCWD%202015%20UWMP%20Appendix%20E_Final.pdf.

¹⁵ Ian Gottschalk and Rosemary Knight, Preliminary Interpretation of SkyTEM Data Acquired in the Marina Coast Water District, June 16, 2017.

¹⁶ That water is not freshwater in the sense of being potable, because it does not meet the 500 mg/l chloride drinking water standards. MCWD's consultants characterize it as freshwater because it meets a 3,000 mg/l TDS threshold, but its

In its response to my 2016 memorandum submitted by LandWatch in connection with the Monterey Downs project EIR, MCWD has previously argued that Curtis Hopkins' analysis indicates that "beneficial conditions have developed (or have always existed) in the North Marina Area of the 180-400 Foot Aquifer Subbasin and may be contrary to information published by the Monterey County Water Resources Agency (MCWRA)."¹⁷ MCWD states that, because of this new information about "favorable groundwater conditions within the North Marina Area," its 2015 Urban Water Management Plan (UWMP) reflects a much different understanding of groundwater conditions than its 2010 UWMP.¹⁸

As noted, seawater intrusion will continue to occur in the SVGB for the foreseeable future because continued overdraft conditions preclude protective elevations. However, MCWD argues that findings by its consultant Hopkins contained in the 2015 UWMP contradict my conclusion with respect to seawater intrusion "at least as applied to the North Marina Area."¹⁹

But MCWD does not pump groundwater from the North Marina Area behind the MCWRA-mapped seawater intrusion front; its wells are located inland of the seawater intrusion front.²⁰ Furthermore, the reported area of fresher water in the North Marina Area is not in fact potable.²¹ The UWMP admits with respect to the fresher water area behind the seawater intrusion front in the North Marina Area, "[f]uture use of this area for a potable groundwater supply may be unlikely; however, these conditions do show a retardation of seawater intrusion in these shallower aquifer zones in this coastal portion of the Salinas Valley Groundwater Basin, which provides some protection for inland uses of the 180-ft Aquifer."²²

Despite the UWMP claim that the fresher water area in the North Marina Area provides some protection for inland uses of the 180-ft Aquifer, the 2015 UWMP does not dispute that seawater intrusion is a continuing problem caused by overdraft of the SVGB.²³ The UWMP acknowledges that the seawater intrusion front continues to advance inland, that this has required the historic relocation and deepening of MCWD wells, and that it continues to

chloride levels exceed 1,000 mg/l in the study area. See Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, pp. 3-4.

¹⁷ MCWD, Response to Timothy Parker Technical Memorandum Dated October 8, 2016, p. 5.

¹⁸ *Id.*

¹⁹ *Id.*, p. 6, emphasis added

²⁰ MCWD, 2015 UWMP, pp. 35, 45.

²¹ Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, pp. 3-4.

²² MCWD, 2015 UWMP, p. 48.

²³ *Id.*, pp. 38, 43-45, 54-55

threaten its existing wells.²⁴ Consistent with my 2016 memorandum, the UWMP acknowledges that the reductions in agricultural pumping that were projected to occur in the analysis of the Salinas Valley Water Project have not in fact occurred.²⁵ And as I previously explained, the UWMP acknowledges that additional groundwater management projects may be required to halt seawater intrusion;²⁶ those projects are not currently committed or funded.²⁷

With respect to the North Marina Area, the UWMP discloses that the recent data “may just reveal the groundwater conditions in an area previously lacking in data.”²⁸ If so, it is evident that the existence of an area of relatively fresher water in the North Marina Area has not in fact retarded the historic advance of seawater intrusion, which has occurred *despite* groundwater conditions in the North Marina Area.²⁹ In this connection, it is important to understand that the MCWRA seawater intrusion mapping is based on sampling of production wells and represents an advance of the area in which groundwater exceeds the 500 mg/l chloride drinking water standard that can no longer be used for potable water. As the 2015 UWMP reports, MCWD has had to relocate its production wells due to the continuing advance of this seawater intrusion front, and its existing wells remain threatened.³⁰

In addition, there is no evidence that the relatively fresher water in the North Marina Area provides any recharge to the Deep Aquifer, from which MCWD pumps groundwater for the Ord community. The Deep Aquifer is increasingly recognized as geologically isolated water without any substantial recharge source.³¹ As the 2003 WRIME report and my 2016 memorandum explain, portions of the Deep Aquifer may be recharged through leakage in small amounts by water from the overlying aquifers.³² To the extent that the Deep Aquifer

²⁴ *Id.*, p. 44.

²⁵ *Id.*, p. 55.

²⁶ *Id.*

²⁷ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 7, 26-27.

²⁸ *Id.*, p. 48.

²⁹ Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, p. 7 (“It is questionable how protective these groundwater levels are given the historic extent of seawater intrusion in the project area”).

³⁰ *Id.*, p. 45.

³¹ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-17; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

³² Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-16, citing WRIME, Deep Aquifer Investigative Study, 2003.

is recharged by overlying aquifers, increased pumping of the Deep Aquifer has the potential to induce seawater intrusion in those overlying aquifers.³³

Sincerely,



Timothy K. Parker, PG, CEG, CHG
Principal Hydrogeologist

³³ *Id.*

RESUME

Timothy K. Parker, PG, CEG, CHG
Principal

WORK EXPERIENCE

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ISMAR9 Call to Action: Sustainable Groundwater Management Policy Directives, Principal Author, 2016.

EXHIBIT 10

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 3/5/2018 3:05 PM
By: Janet Nicholson, Deputy

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12 Attorneys for Petitioner and Plaintiff
13 MARINA COAST WATER DISTRICT

EXEMPT FROM FILING FEES
(GOVERNMENT CODE § 6103)

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF MONTEREY

16 MARINA COAST WATER DISTRICT, AND
17 DOES 1-100,

18 Petitioner and Plaintiff,

19 v.

20 COUNTY OF MONTEREY, COUNTY OF
21 MONTEREY HEALTH DEPARTMENT
22 ENVIRONMENTAL HEALTH BUREAU, AND
23 DOES 101-110,

24 Respondents and Defendants,

25 BILL ARMSTRONG, ARMSTRONG SANDHILL
26 RANCH, LLC, AND RAMCO ENTERPRISES,
27 L.P. AND DOES 111-120.

28 Real Parties in Interest.

Case No.: 18CV000816

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
RELIEF**

[California Environmental Quality Act, Public
Resources Code, § 21000 et seq.; California
Code of Civil Procedure, § 1094.5]

Dept.:

Judge assigned for all purposes:
Hon.

Filing Date of Action:

PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF

1 Petitioner and Plaintiff Marina Coast Water District ("Petitioner," "MCWD," or the "District")
2 alleges as follows:

3 **INTRODUCTION**

4 1. This action challenges the decisions of the Respondent COUNTY OF MONTEREY
5 ("County") by and through its HEALTH DEPARTMENT ENVIRONMENTAL HEALTH BUREAU
6 ("EHB") (collectively "Respondents") to approve a Well Permit Application (Well Permit 17-12898 for
7 Well ETS-20) on September 8, 2017, for construction and operation of a high-capacity agricultural well
8 (the "Project") for Real Parties in Interest BILL ARMSTRONG, ARMSTRONG SANDHILL RANCH,
9 LLC, and RAMCO ENTERPRISES, L.P. (collectively "Real Parties") without performance of
10 environmental review as required by the California Environmental Quality Act ("CEQA"), Public
11 Resources Code sections 21000 et seq., and the CEQA Guidelines, Title 14, California Code of
12 Regulations section 15000 et seq.

13 2. The Project, as approved, will pump up to 2,500 gallons per minute ("gpm"), potentially
14 more than 4,000 acre-feet per year ("AFY"), from the 900-foot aquifer of the critically overdrafted
15 180/400 Foot Aquifer Subbasin ("180/400 Subbasin") of the Salinas Valley Groundwater Basin
16 ("SVGB"). The Monterey County Water Resources Agency ("MCWRA") has recommended a
17 moratorium on pumping from the "900-foot" aquifer—the same aquifer the Project will pump from—
18 due to concerns regarding the potential adverse groundwater impacts of increased pumping.

19 3. MCWD relies on groundwater from the 180/400 Subbasin and the adjoining Monterey
20 Subbasin to supply municipal water service for over 33,000 residents in the Marina/Ord community. The
21 Project will potentially pump more groundwater than MCWD uses to supply the entire Marina/Ord
22 community.

23 4. MCWRA, MCWD, and others have made a concerted effort to reduce pumping from the
24 180/400 Subbasin and the Monterey Subbasin of the SVGB for the purpose of restoring water quality
25 and protecting groundwater. MCWD and MCWRA have also expressly committed to work together on
26 measures to protect the "900-foot" aquifer of 180/400 Subbasin and the Monterey Subbasin of the
27 SVGB.

PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF

1 5. Despite these efforts and commitments, MCWD never received notice that the County
2 was considering approval of the Project and was surprised to learn of the County's approval without
3 compliance with CEQA.

4 6. Upon learning of the approval of the Project, MCWD consulted with its experts and
5 submitted a letter to the County explaining that the County's approval of the Project—without
6 mitigation and monitoring requirements—has the potential to adversely impact groundwater supplies
7 and quality in the "900-foot" aquifer of the 180/400 Subbasin and the Monterey Subbasin of the SVGB.
8 MCWD attached a letter from its expert hydrogeologist confirming these adverse environmental impacts
9 and explaining the need to consider mitigation and monitoring prior to approving the Project. The letter
10 requested that the County rescind its approval of the Project and work with MCWD on mitigation or
11 alternatives to ensure groundwater resources are protected.

12 7. In approving the Project without conducting environmental review as required by CEQA,
13 Respondents prejudicially abused their discretion and failed to proceed in the manner required by law, in
14 violation of CEQA and the CEQA Guidelines. As a result of EHB's failure to conduct environmental
15 review, Respondents made a decision without all of the information that they, responsible and trustee
16 agencies, and the public needed to properly weigh the consequences of the County's approval of the
17 Project. As a result of these failures, Respondents, responsible and trustee agencies, and the public were
18 deprived of the opportunity to consider mitigation and alternatives that could have addressed the
19 Project's adverse impacts.

20 8. MCWD seeks a writ of mandate and injunctive relief, vacating and setting aside the
21 Project approval, and enjoining Real Parties from proceeding with the Project, on the grounds that
22 Respondents violated CEQA and prejudicially abused their discretion when they approved the Project.

23 **PARTIES**

24 9. MCWD is a publicly owned county water district formed by the voters in 1960 to provide
25 potable water service to all residential, commercial, industrial, environmental, and fire protection uses in
26 the then unincorporated community of Marina. The City of Marina ("City") incorporated in 1975, but
27 MCWD has remained a separate public agency. The District also provides potable water delivery and
28

1 wastewater conveyance services within the boundaries of the former Fort Ord Army Base, known as the
2 Ord Community. MCWD is the sole provider of municipal water service for the over 33,000 residents in
3 its Marina and Ord Community service areas, who rely on MCWD for their domestic drinking water.
4 The District, as well as its residential and commercial customers, would be materially injured by the
5 activities that were approved in the Project.

6 10. MCWD is unaware of the true names and capacities of Petitioners and Plaintiffs
7 fictitiously named herein as Does 1 through 100, inclusive. MCWD is informed and believe, and thereon
8 allege, that such fictitiously named Petitioners and Plaintiffs are beneficially interested in Respondents'
9 compliance with its mandatory duties under CEQA and State law before approving the Project, and that
10 such Petitioners and Plaintiffs have standing to be joined as Petitioners and Plaintiffs in this proceeding.
11 MCWD will amend this Petition, with leave of the court if necessary, to allege the fictitiously named
12 Petitioners' and Plaintiffs' true names and capacities when ascertained.

13 11. Respondent MONTEREY COUNTY is, and at all times mentioned herein was, a political
14 subdivision of the State of California. The County with EHB is, and at all relevant times was,
15 responsible for administering and carrying out its laws and all applicable federal and State laws,
16 including CEQA, in considering well permit applications within the County.

17 12. MCWD is unaware of the true names and capacities of Respondents DOES 101 through
18 110, and sues such respondents by fictitious names. Petitioner is informed and believes, and on the basis
19 of such information and belief, that the fictitiously named respondents are responsible for actions
20 described in this Petition. When the true identities and capacities of these respondents have been
21 determined, Petitioner will amend this Petition, with leave of the court, if necessary, to insert such
22 identities and capacities.

23 13. The following entities are named as Real Parties in Interest pursuant to Section
24 21167.6.5, subdivision (a) of the Public Resources Code.

25 14. MCWD is informed and believes, and thereon alleges, that Real Party in Interest
26 ARMSTRONG SANDHILL RANCH, LLC is, and at all times herein mentioned was, the applicant
27 and/or agent for the Project.
28

1 15. MCWD is informed and believes, and thereon alleges, that Real Party in Interest BILL
2 ARMSTRONG is, and at all times herein mentioned was, the property owner of the Project site.

3 16. MCWD is informed and believes, and thereon alleges, that Real Party in Interest and
4 RAMCO ENTERPRISES, L.P. has an interest in the Project.

5 17. MCWD is unaware of the true names and capacities of Real Parties in Interest/
6 Respondents DOES 111 through 120, and sues such respondents by fictitious names. MCWD is
7 informed and believes, and based on such information and belief, alleges that the fictitiously named real
8 parties in interest are directly and materially affected by the actions described in this Petition. When the
9 true identities and capacities of these real parties in interest have been determined, MCWD will amend
10 this Petition, with leave of the court if necessary, to insert such identities and capacities.

11 **JURISDICTION AND VENUE**

12 18. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
13 entirety.

14 19. This court has jurisdiction over the matters alleged in this Petition pursuant to Code of
15 Civil Procedure section 1094.5 and Public Resources Code section 21168 and 21168.5. Alternatively,
16 this Court has jurisdiction under Code of Civil Procedure section 1080 and Public Resources Code
17 section 21168.5.

18 20. Venue for this action properly lies in the Superior Court for the State of California in and
19 for the County of Monterey pursuant to section 349 of the Code of Civil Procedure. The Project is
20 located within Monterey County.

21 **STANDING**

22 21. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
23 entirety.

24 22. The County had mandatory duties to comply with CEQA before approving the Project.

25 23. MCWD is beneficially interested in the County's full compliance with CEQA before the
26 County approves the Project.

27 24. MCWD has the right to enforce the mandatory duties imposed upon the County by law.

1 25. MCWD is a public agency charged with providing safe and reliable water service for
2 residential, commercial, industrial, environmental, and fire protection uses. MCWD serves
3 approximately 33,000 residents in its Marina and Ord Community service areas, who rely on MCWD
4 for their domestic drinking water. The District currently pumps all of its water supply from groundwater
5 wells in the SVGB including the aquifer the Project will pump from.

6 26. MCWD has a substantial interest in ensuring the Project's impacts are fully mitigated.
7 Among other reasons, operation of this Project will adversely affect water supplies and water quality in
8 the SVGB, impairing MCWD's water rights, contracts, and ability to provide essential public services.

9 27. MCWD entered into a recorded annexation agreement with the Monterey County Water
10 Resources Agency, the City of Marina, the J.G. Armstrong Family, and RMC Lonestar: the Annexation
11 Agreement and Groundwater Mitigation Framework for Marina Area Lands dated March 1996. The
12 Annexation Agreement protects the groundwater resources of the SVGB. MCWD's rights under the
13 Annexation Agreement would be materially impaired and harmed by the Project, which is located within
14 the Marina Area Lands.

15 28. MCWD has standing to assert the claims alleged in this Petition because it is beneficially
16 interested in this matter, as required by Code of Civil Procedure section 1086. MCWD has a direct and
17 beneficial interest in the County's full compliance with CEQA and all other applicable laws with respect
18 to this Project.

19 29. MCWD has no other plain, speedy, and adequate remedy in the ordinary course of law,
20 and MCWD will suffer irreparable injury unless this Court issues the relief requested in this Petition.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 30. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
23 entirety.

24 31. MCWD received no notice that the County intended to approve the Project. MCWD is
25 informed and believes that no public notice was issued for either the County's CEQA determination or
26 for its decision to issue the well permit. The County provided no opportunity for MCWD or the public to
27 comment on the Project. MCWD and the public, therefore, are excused from CEQA's exhaustion

1 requirements for lack of notice. (Pub. Resources Code, § 21177, subd. (e); see also *Defend Our*
2 *Waterfront v. California State Lands Commission* (2015) 240 Cal.App.4th 570, 582–584.)

3 32. MCWD has exhausted all available administrative remedies.

4 **STATUTE OF LIMITATIONS**

5 33. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
6 entirety.

7 34. On September 8, 2017, EHB issued a permit for the Project.

8 35. When an agency approves a project without first complying with CEQA, a petition
9 challenging this determination must be filed 180 days after the agency's decision to carry out or approve
10 the project, unless the agency has filed a notice of exemption with the State Clearinghouse or the County
11 Clerk, which would trigger a 35-day statute of limitations. (Pub. Resources Code, § 21167; CEQA
12 Guidelines, § 15112.) MCWD is informed and believes that the County did not post a notice of
13 exemption for the Project or, alternatively, that any such notice was defective and did not meet the
14 requirements of CEQA. Thus, this Petition is timely filed within the 180-day time frame set forth under
15 CEQA.

16 **NOTICE OF CEQA SUIT**

17 36. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
18 entirety.

19 37. On March 2, 2018, MCWD e-mailed and federal expressed a letter to the Monterey
20 County Clerk, giving notice to Respondents of MCWD's intent to file this lawsuit on or before March 5,
21 2018, seeking to invalidate the County's approval of the Project. This letter satisfied Petitioner's duty
22 under Public Resources Code section 21167.5.

23 **FACTUAL ALLEGATIONS**

24 38. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
25 entirety.

26 **A. Factual Background**

27 39. MCWD relies on groundwater from the "900-foot" aquifer of the 180/400 Subbasin and
28 the adjoining Monterey Subbasin of the SVGB to provide municipal water service to the Marina/Ord

1 community—which is dependent on MCWD to provide safe and reliable domestic water. As the sole
2 provider of municipal water service for over 33,000 residents, MCWD extracts groundwater from the
3 "900-foot" aquifer from several wells. MCWD pumps water from these wells and then delivers this
4 water to MCWD's customers. The Project will pump groundwater from the same "900-foot" aquifer
5 that MCWD's groundwater wells pump water to supply water to the Marina/Ord community.

6 40. The 180/400 Subbasin of the SVGB is not adjudicated, and it supplies water to a number
7 of existing municipal, industrial, and agricultural users, including MCWD's 33,000 plus customers that
8 depend on this Subbasin and adjoining Monterey Subbasin for their domestic water. MCWD and others
9 have been taking steps to eliminate the long term overdraft condition of the SVGB.

10 41. As part of an effort to protect the groundwater for its 33,000 residents, the District
11 entered into a recorded annexation agreement with MCWRA, the City of Marina, the J.G. Armstrong
12 Family, and RMC Lonestar: the Annexation Agreement and Groundwater Mitigation Framework for
13 Marina Area Lands dated March 1996. The Annexation Agreement protects the groundwater resources
14 of the 180/400 Subbasin and the Monterey Subbasin of the SVGB.

15 42. As a party to the Annexation Agreement, the County committed to managing the 900-
16 foot aquifer to "provide safe, sustained use of the water resource, and to preserve to MCWD the
17 continued availability of water from the 900-foot aquifer." MCWD and the County also committed to
18 work together on measures to protect the "900-foot aquifer."

19 **B. County's Approval of Project Two Days after Receiving Well Permit Application Without
20 Notice or CEQA Review**

21 43. On September 6, 2017, the County received a well permit application for the Project.

22 44. The Project proposed the drilling and operation of a high-capacity well on property
23 located at 14995 Del Monte Boulevard in Marina, California (APN 175-011-050-000) agricultural
24 irrigation. The Project will draw water from the "900-foot" aquifer of the SVGB at a rate of up to 2,500
25 gallons per minute, which amounts to more than 4,000 AFY.

26 45. As part of the well application review, MCWRA's hydrologist made a conclusory finding
27 without citation to any facts or analysis that the well did not "indicate potential for significant adverse
28 impact to existing domestic wells, water system wells, or in-stream flows based on an assessment using

1 regional aquifer parameters.”

2 46. On September 8, 2017, two days after receiving the application for the Project, the
3 County approved the Project without any public notice, notice to MCWD, or performance of
4 environmental review as required by CEQA. The County’s approval did not include any mitigation or
5 monitoring requirements.

6 **C. CEQA Applies to the County’s Approval of the Project**

7 47. As a first step in the CEQA process, agencies must conduct a preliminary review in order
8 to determine whether CEQA applies to a proposed activity. As part of this review, the agency is to
9 determine whether the activity is a “project” for purposes of CEQA, and if it is, whether it falls under an
10 exemption. (See e.g., *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 19.)

11 48. CEQA applies to “discretionary projects proposed to be carried out or approved by public
12 agencies.” (Pub. Resources Code, § 21080, subd. (a).) A permit is “discretionary,” and thus subject to
13 CEQA, if the decision-maker has discretion to modify (or deny) the project or impose conditions on the
14 permit that would mitigate any potential environmental impacts in a meaningful way. (See *Mountain
15 Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117; *Central Basin Municipal Water
16 Dist. v. Water Replenishment Dist. of Southern California* (2012) 211 Cal.App.4th 943, 949.)

17 49. Monterey County’s “well program” codified in Chapter 15.08 of the Monterey County
18 Code provides the County’s Health Officer with ample discretion to deny or modify a well permit to
19 address environmental concerns. Nothing in the ordinance requires that permits be approved, if any
20 specified conditions or standards are satisfied. (See Section 15.08.060 – Permit—Issuance or denial.)
21 The ordinance specifically provides the Health Officer with discretion to “condition the permit in any
22 manner he or she deems necessary to carry out the purposes of this Chapter.” (*Ibid.*) The ordinance
23 further states that the Health Officer “shall deny an application for a permit if, in his or her judgment, its
24 issuance would tend to defeat the purposes of this Chapter,” which as stated is to ensure “that the
25 groundwater of this County will not be polluted or contaminated and that water obtained from such
26 wells will be suitable for the purpose for which used and will not jeopardize the health, safety or welfare
27 of the people of this County.” (Section 15.08.010 – Purpose, italics added.) Thus, the ordinance allows

1 the Health Officer to use his or her judgment to determine whether a permit should be conditioned or
2 even denied if there is environmental harm (e.g., groundwater pollution, water supply issues), and what
3 type of conditions to impose in a particular circumstance, if any.

4 50. As part of the well application review, a MCWRA hydrologist made a conclusory finding
5 without citation to any facts or analysis that the well did not “indicate potential for significant adverse
6 impact to existing domestic wells, water system wells, or in-stream flows based on an assessment using
7 regional aquifer parameters.” While this assessment conflicts with the County’s conclusions in
8 MCWRA’s own “Recommendations to Address the Expansion of Seawater Intrusion in the Salinas
9 Valley Groundwater Basin,” the assessment lends further support to the conclusion that issuance of Well
10 Permit 17-12898 is a discretionary action.

11 51. Furthermore, numerous other ordinances, regulations, and statutes provide the County
12 with discretion and authority to regulate this well, including but not limited to Monterey County Water
13 Resources Agency Act; the 2010 Monterey County General Plan Agency, Policy PS-3.5; and
14 Sustainable Groundwater Management Act. The County was required to consider these authorities
15 during the County’s environmental review of the Project.

16 52. The County provided no notice or information to MCWD or the public related to its
17 consideration or approval of the Project.

18 53. Upon learning of the County’s approval of the Project, MCWD submitted a letter to the
19 County alerting the County that its approval of the Project was discretionary and therefore
20 environmental review must be performed. The letter explained that the Project has the potential to
21 significantly impact water quality and water supplies in the SVGB and MCWD’s wells. The letter
22 further noted that the County’s own reports provide ample evidence that the Project has the potential to
23 significantly impact water quality and water supplies in the SVGB and MCWD’s wells.

24 54. Specifically, the letter noted that MCWRA’s recent publication “Recommendations to
25 Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin” determined the
26 need for an “immediate moratorium on groundwater extractions from new wells within the entirety of
27 the Deep Aquifers of the 180/400 Foot Aquifer and Monterey Subbasins” based on its concerns that

1 additional pumping from the "900-foot" aquifer has the potential to induce additional leakage from
2 overlying aquifers and the potential to exacerbate seawater intrusion.

3 55. MCWD also explained the County was in possession of ample information prior to its
4 approval of the Project demonstrating that the approval of the well could significantly impact
5 groundwater supplies and quality in the SVGB. Specifically, the County was aware that California
6 Department of Water Resources identified the 180/400 Subbasin as critically overdrafted in January of
7 2016. The County was also aware that MCWRA's "State of the Salinas River Groundwater Basin,"
8 determined that existing pumping from the SVGB was not sustainable and recommended pumping
9 reductions. Additionally, the County was aware that MCWRA's Report entitled "Protective Elevations
10 to Control Seawater Intrusion in the Salinas Valley," explained the need for additional groundwater
11 management projects to reduce coastal area pumping. MCWD's letter noted that this substantial
12 evidence demonstrated the County was required to perform environmental review pursuant to CEQA
13 prior to approving the Project.

14 56. MCWD's letter was accompanied by expert evidence from MCWD's hydrogeologist
15 explaining that the Project had the potential to adversely impact groundwater in the 180/400 Subbasin
16 and the adjoining Monterey Subbasin and MCWD's wells, both directly and cumulatively, unless
17 enforceable mitigation measures are made conditions of the County's approval.

18 57. MCWD's letter then requested the County rescind its approval of Well Permit 17-12898
19 until such time as the County has performed adequate CEQA analysis of the significant environmental
20 effects that may result from the construction and operation of Project—including, at a minimum, the
21 potential degradation of groundwater quality and water supply issues in the "900-foot" aquifer.

22 58. Respondents' approval of the Project is a discretionary approval subject to CEQA. No
23 CEQA exemptions apply to the Project.

24 **FIRST CAUSE OF ACTION**

25 **Violations of CEQA (Public Resources Code, § 21000 et seq.)**

26 59. MCWD re-alleges and incorporates by reference the preceding paragraphs in their
27 entirety.

28 60. CEQA applies to discretionary projects that are undertaken, funded, or approved by

1 public agencies.

2 61. Respondents prejudicially abused their discretion and failed to act in the manner required
3 by law in failing to conduct any environmental review prior to approving the Project.

4 62. Respondents prejudicially abused their discretion and failed to act in the manner required
5 by law by failing to support its conclusion that the Project did not "indicate potential for significant
6 adverse impact to existing domestic wells, water system wells, or in-stream flows based on an
7 assessment using regional aquifer parameters" with substantial evidence.

8 63. Respondents prejudicially abused their discretion in approving the Project because
9 Respondents' approval of the Project may result in one or more significant effects on the environment.
10 Substantial evidence demonstrates that, at a minimum, Respondents failed to adequately disclose,
11 evaluate, or mitigate the Project's direct, indirect, and cumulative impacts on groundwater.

12 64. Respondents prejudicially abused their discretion and failed to act in the manner required
13 by law in failing to make the findings required by CEQA prior to the approval of the Project.

14 65. Respondents prejudicially abused their discretion and failed to act in the manner required
15 by law by approving a Project in a manner that does not comply with the requirements of CEQA.

16 66. As a result of the foregoing defects, Respondents' approval of the Project is contrary to
17 law, invalid, and must be set aside.

18 67. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless
19 this court grants the requested writ of mandate to require the County to set aside their approval of the
20 Project. In the absence of such remedies, Respondents' decision will remain in effect in violation of
21 State law and Petitioner will be irreparably harmed. No money damages or legal remedy could
22 adequately compensate Petitioner for that harm.

23 **PRAYER FOR RELIEF**

24 Wherefore, Petitioner prays for judgment against Respondents as follows:

25 1. For a temporary stay, temporary restraining order, and preliminary and permanent
26 injunctions restraining the County and its agents, employees, officers and representatives from taking
27 other actions in furtherance of the Project pending full compliance with the requirements of CEQA, the
28

1 CEQA Guidelines, and all other applicable laws.

2 2. For a peremptory writ of mandate commanding the County to vacate and set aside in its
3 entirety the decision to approve the permit allowing the construction and operation of the Project.

4 3. For a peremptory writ of mandate directing the County to comply with the requirements
5 of CEQA, the CEQA Guidelines, and all other applicable laws and regulations before taking any further
6 action in furtherance of the Project.

7 4. For a temporary stay, temporary restraining order, and preliminary and permanent
8 injunctions restraining the Real Parties in Interest and the County and its agents, servants, and
9 employees, and all others acting in concert with Real Parties or on their behalf, from taking any action to
10 further implement the Project, pending full compliance with the requirements of CEQA, the CEQA
11 Guidelines, and all other applicable laws.

12 5. For an award of reasonable attorneys' fees and costs in this action.

13 6. For such other and further relief that the Court deems just and proper.

14
15 Dated: March 5, 2018

REMY MOOSE MANLEY, LLP

16
17 By: 

Howard F. Wilkins III

18
19 Attorneys for Petitioner
MARINA COAST WATER DISTRICT

EXHIBIT 1

Technical Memorandum

November 14, 2019

To: John Farrow
M.R. Wolfe & Associates, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102

From: Timothy K. Parker, PG, CEG, CHG, Parker Groundwater

Subject: Groundwater impacts from increased pumping to support Del Rey Oaks housing development in the Ord Community

At your request, I have reviewed the Draft Initial Study/Negative Declaration for the City of Del Rey Oaks Housing Element (DRO Negative Declaration) together with the documents cited below. Del Rey Oaks is proposing to adopt a housing program that would call for rezoning of land in the former Fort Ord to be used for up to 86 housing units.

This letter reiterates and updates the conclusions set out in my October 8, 2016 memorandum regarding the proposal to increase groundwater pumping to support the Monterey Downs project in the Fort Ord community and in my February 15, 2018 letter regarding the proposal to increase groundwater pumping through annexation of additional areas within Fort Ord into the service area for Marina Coast Water District (MCWD). Consistent with my earlier conclusions and as updated in the discussion below, increased pumping to support the Del Rey Oaks housing development in the Ord Community would aggravate existing seawater intrusion and further deplete the Deep Aquifers.

I am a California Professional Geologist (License #5584), Certified Engineering Geologist (License # EG 1926), and Certified Hydrogeologist (License #HG 12), with over 28 years of geologic and hydrologic professional experience. I served as a member of the Technical Advisory Committee to the Monterey County Water Resources Agency (MCWRA) in connection with its study of the Salinas Valley Groundwater Basin that is mandated by Policy PS 3.1 of the 2010 Monterey County General Plan. The purpose of that study is to evaluate historic data and trends in seawater intrusion and groundwater levels in the Salinas Valley Groundwater Basin, to evaluate the likely future groundwater demand, to determine whether groundwater level declines and seawater intrusion are likely to continue through 2030, and to make recommendations for action. This study has not been concluded, but a preliminary report was released in January 2015 by the prime consultant for the PS-3.1 study.¹ My Resume and Project Experience are attached.

¹ MCWRA, State of the Salinas River Groundwater Basin, January, 2015, available at

1.1 The affected subbasins and management subarea

The water system that MCWD uses to supply groundwater for Marina and Fort Ord development relies on an intertidal set of wells in the 400-Foot Aquifer and the Deep Aquifers within what is now termed the Monterey Subbasin.² The California DWR's Bulletin 118, which defines basin and subbasin boundaries, was updated in 2018 to divide the areas previously identified as the Seaside Subbasin into two separate subbasins, the Seaside Subbasin and the Monterey Subbasin.³ The reasons for this revision is that hydrologic studies of the Marina and Seaside areas have shown that the northern portion of the area formerly designated as the Seaside Subbasin and now designated as the Monterey Subbasin is connected to the 180/400 Foot Aquifer Subbasin, while the southern portion is separate from the Salinas Valley due to a ridge in the water-bearing formations.⁴

Monterey County Water Resources Agency (MCWRA) designates management subareas in the Salinas Valley Groundwater Basin, the boundaries of which are not identical to the DWR subbasin boundaries. The MCWRA-designated Pressure Subarea includes the DWR-defined 180/400-Foot Aquifer Subbasin and most of the DWR-defined Monterey Subbasin and includes part of the DWR-defined Seaside Subbasin.⁵

https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1020&context=hornbeck_gb_6_a.

² Marina Coast Water District, 2015 Urban Water Management Plan, June 6, 2016 (MCWD, 2015 UWMP), pp. 31-38,75 available at https://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf; City of Seaside, Campus Town Specific Plan DEIR, p. 4.9-5, available at <https://www.ci.seaside.ca.us/DocumentCenter/View/9742/Seaside-Campus-Town-Specific-Plan-DEIR-July-2019>.

³ Department of Water Resources, Basin Boundary Description, 3-004.10 Salinas Valley – Monterey, February 5, 2018, available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/B118-Basin-Boundary-Descriptions-2016/B118-Basin-Boundary-Description-2016--3_004_10.pdf; see also Department of Water Resources, California's Groundwater Bulletin 118 – Interim Update 2016, available at http://www.water.ca.gov/groundwater/bulletin118/docs/Bulletin_118_Interim_Update_2016.pdf.

⁴ MCWD, 2015 UWMP, p. 34.

⁵ Salinas Valley Groundwater Basin Groundwater Sustainability Agency (SVGBGSA), Draft 180/400-Foot Aquifer Subbasin GSP, October 1, 2019, pp. 5-15 and 5-28, available at <https://svbgsa.org/wp-content/uploads/2019/10/4-Updated-Volume-2.pdf>; see also MCWD, 2015 UWMP, p. 35; WRIME, Deep Aquifer Investigative Study, May 2003, p. 3-13.

MCWRA's 2016 State of the Salinas Valley Groundwater Basin reports basin hydrogeology, aquifer interactions, groundwater level trends and groundwater balance for the aquifers in the management subareas, including the 180-Foot Aquifer, the 400-Foot Aquifer, and the Deep Aquifers in the Pressure Subarea.⁶ Because the 180-Foot Aquifer, the 400-Foot Aquifer, and the Deep Aquifers in the Pressure Subarea are shared by both the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin, reported statistics for the Pressure Subarea are relevant to both Subbasins. In some instances, the aggregate data for the Pressure Subarea can be disaggregated as between the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin. For example, the annual volume of seawater intrusion can be allocated between the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin based on the relative length of their coastlines that are subject to seawater intrusion:

The State of the Salinas River Groundwater Basin report estimated that approximately 11,000 acre-feet of seawater flows into the Pressure subarea every year. Previous estimates have ranged between 14,000 and 18,000 acre-feet per year (AF/yr.) of seawater intrusion (Brown and Caldwell, 2016). These seawater inflow estimates include portions of the Monterey Subbasin. The length of coastline subject to seawater intrusion is approximately 75% in the 180/400-Foot Aquifer Subbasin and therefore we estimate the flow into the 180/400-Foot Aquifer Subbasin is approximately 8,250 to 13,500 AF/yr.⁷

However, disaggregation of these statistics should not obscure the fact that the 180-Foot Aquifer, the 400-Foot Aquifer, and the Deep Aquifers are common to the Monterey Subbasin and the 180/400-Foot Aquifer Subbasin.

The previously designated "900-Foot Aquifer" or "Deep Aquifer," from which most of the pumping to support Fort Ord development is taken, is now understood to include at least two distinct aquifers:

Taken together, the overall conclusion that can be derived from the collected data and the preliminary analysis is that the deep aquifers from which MCWD extracts its water supply is actually two separate aquifer systems. Existing geologic and water chemistry data suggest that MCWD Well Nos. 10 and 11 produce primarily from the Paso Robles Formation, whereas MCWD Well No. 12 produces from the Purisima Formation.⁸

⁶ MCWRA, State of the Salinas Valley Groundwater Basin.

⁷ SVGBGSA, Draft 180/400-Foot Aquifer Subbasin GSP, October 1, 2019, p. 5-40.

⁸ WRIME, Deep Aquifer Investigative Study, May 2013, p. 2-31; see also WRIME, p. 3-13; MCWD, 2015 UWMP, pp. 35, 37; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp. 45-46, available at <https://www.co.monterey.ca.us/home/showdocument?id=57394>.

Accordingly the deeper aquifer system underlying the upper aquifers (the 180-Foot and 400-Foot aquifers) is now sometimes referred to as the Deep Aquifers.⁹

2.5 Increased pumping for new development in the Ord community would aggravate seawater intrusion in the upper aquifers and further deplete the Deep Aquifers.

The proposal to add up to 86 units of additional housing to the Ord Community is based on the premise that MCWD would supply water to support that housing. According to the Negative Declaration, the revised Program 1A of the Housing element calls for 16 units of moderate and above-moderate income housing and 70 units of low and very-low income housing in Fort Ord “where water is available for development.”¹⁰

Assuming that the moderate and above-moderate housing units are single family units, and that the low and very-low income units are multi-family units, the units would require 0.33 afy and 0.25 afy per housing unit respectively.¹¹ Based on these demand factors, the 86 units of housing would require an additional 23 afy of water supply from MCWD. Residential development on a per-acre basis is significantly more water-intensive than commercial or industrial development.

As noted, MCWD’s groundwater pumping to service Fort Ord and Marina comes from its wells in the Deep Aquifer and the 400-Foot Aquifer.¹² Wells 10, 11, 12, and 34 draw from the Deep Aquifers. Wells 29, 30, 31, and “WG” (the Watkins Gate well, aka well 35) draw from the upper aquifers. In 2018, MCWD pumped 2,508 af from the Deep Aquifer wells and 895 af from the upper aquifer wells.¹³ Thus, about 74% of MCWD pumping comes from the Deep Aquifers and about 26% comes from the upper aquifers.

The impact of groundwater pumping on the aquifers includes cumulative effects from past, present and foreseeable future pumping. MCWRA has documented that Deep Aquifer

⁹ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp. 45-46.

¹⁰ DRO Negative Declaration, Appendix A, Attachment, revised Chapter 7.0, available at https://www.delreyoaks.org/sites/default/files/fileattachments/city_hall/page/2692/city_of_del_rey_oaks_housing_element_10_23_2019.pdf

¹¹ MCWD, 2015 UWMP, p. 18.

¹² MCWD, 2015 UWMP, pp. 9 [Figure 2.2], 45.

¹³ MCWD, 2018 Well Production Summary.

pumping by all users, including MCWD, was 8,901 afy in 2016.¹⁴ As discussed below, this pumping directly depletes the Deep Aquifers because there is no known recharge source other than leakage from the upper aquifers. Cumulative pumping from the Pressure Subarea, primarily from the 400-Foot Aquifer and 180-Foot Aquifer, averages 110,000 afy, which results in an ongoing annual overdraft of 2,000 afy.¹⁵ Cumulative pumping is projected to increase. MCWD projects that its water demand for Marina and Fort Ord will increase from 4,174 afy in 2015 to 12,197 afy in 2035.¹⁶ As discussed below, despite the 2018 moratorium on new wells in the Deep Aquifers, it is foreseeable that increased Deep Aquifer pumping will occur from wells that have been permitted prior to 2018 and from future “replacement wells” that may be permitted under the moratorium ordinance. Any increases in groundwater pumping must be assessed with reference to its contribution to this cumulative groundwater pumping to the Deep Aquifers and to the upper aquifers of the Pressure Subarea.

In summary, the conclusions in my October 8, 2016 memorandum and in my February 15, 2018 letter regarding proposals to increase groundwater pumping to support Ord Community development remain valid.¹⁷ First, seawater intrusion into the 180-Foot and 400-Foot aquifers continues in the Pressure Subarea due to overdraft conditions, despite the groundwater management projects that are intended to halt it. Additional pumping of either the 180-Foot Aquifer or the 400-Foot Aquifer will directly induce additional seawater intrusion.

Second, additional pumping of the Deep Aquifers will deplete them and contribute to seawater intrusion of the 180-Foot and 400-Foot aquifers. This is because the Deep Aquifers have no known source of recharge other than induced leakage from the upper aquifers, and that leakage induces seawater intrusion into the upper aquifers. The leakage from the upper aquifers also threatens to salinate the Deep Aquifers themselves.

Consistent with the conclusions in my earlier letters, the incremental water demand for 86 units of additional housing would contribute considerably to the cumulative seawater intrusion of the upper aquifers and the depletion of the Deep Aquifers. The discussion

¹⁴ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 52.

¹⁵ MCWRA, State of the Salinas Valley Groundwater Basin, p. ES-11.

¹⁶ MCWD, 2015 UWMP, p. 22.

¹⁷ Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016; Timothy K. Parker, letter to John H. Farrow, February 15, 2018.

below summarizes these conclusions and notes additional information that has become available since my previous letters.

a. Additional pumping from the Deep Aquifers would further deplete the Deep Aquifers and induce additional seawater intrusion.

According to MCWD's 2015 Urban Water Management Plan, "[o]ther than MCWD, only a small number of wells tap the deep aquifer . . ."¹⁸ MCWD's 2015 UWMP claims that as of 2015 "MCWD is currently the only significant user of the Deep Aquifer . . ."¹⁹ However, contrary to MCWD's UWMP, there are in fact other users of the Deep Aquifers and there has been a substantial increase in pumping from the Deep Aquifers as new wells have been installed to replace the seawater intruded wells in the upper aquifers.²⁰ Since 1995, new wells in the Deep Aquifer have been drilled at the rate of more than one per year, and there are now more than 40 wells in the Deep Aquifers.²¹ Deep Aquifer extractions increased from 2,151 afy in 1999 to 8,901 afy in 2016.²²

Well drilling in the Deep Aquifers continues. For example, MCWD brought a lawsuit against the County of Monterey in March 2018 challenging the September 2017 drilling permit for a Deep Aquifer well with the capacity to pump another 4,000 afy.²³ And although the County enacted a moratorium on new wells in the Deep Aquifers in May 2018, that moratorium exempts both municipal supply wells and so-called "replacement wells," i.e., wells drilled to replace the water supply previously obtained from wells in the upper aquifers that have failed due to seawater intrusion.²⁴

The Deep Aquifers are not a sustainable water source. MCWD acknowledges that the Deep Aquifer water "is not of recent origin" and that carbon dating reveals it to be "between 22,000 and 31,000 years old."²⁵ In fact, the only known source of recharge to the Deep

¹⁸ MCWD, 2015 UWMP, p. 31.

¹⁹ Ibid.

²⁰ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 48.

²¹ Ibid.

²² Id., p. 52.

²³ MCWD v. County of Monterey (Bill Armstrong et al., Real Parties in Interest), Petition for Writ of Mandate and Complaint for Injunctive Relief, March 5, 2018, paragraph 2.

²⁴ Monterey County Urgency Ordinance # 5302, available at <https://www.co.monterey.ca.us/government/departments-a-h/health/environmental-health/wells/interim-urgency-ordinance-5302>.

²⁵ MCWD, 2015 UWMP, p. 37.

Aquifers is "leakage from the overlying aquifer system, i.e. the Pressure 180-Foot Aquifer and Pressure 400-Foot Aquifer."²⁶

The leakage from the upper aquifers caused by increased pumping from the Deep Aquifers induces seawater intrusion in the upper aquifers. The MCWD UWMP acknowledges this impact:

Another concern is that the Deep Aquifer may be connected to, and affect seawater intrusion in, the upper aquifers. Preliminary findings regarding the Deep Aquifer in the Ord Community area indicate that there is some vertical connectivity between the Deep Aquifer and the overlying aquifers. According to the Deep Aquifer Investigative Study, WRIME, May 2003, increased pumping of the Deep Aquifer would be expected to increase the rate of seawater intrusion in the middle and upper aquifers, but to a lesser extent than if the increased pumping occurred in the middle or upper aquifers. In that report, WRIME modeled the effect of increasing groundwater pumping from the Deep Aquifer by two to five times the baseline rate of 4,800 afy. The model predicted that, in the absence of other actions to control seawater intrusion, the landward flow of groundwater would increase as a result.²⁷

The 2003 WRIME study cited by MCWD concluded that increasing the baseline rate of extraction would induce seawater intrusion. The 2003 WRIME study concluded that annual MCWD production from Deep Aquifer wells had averaged about 2,000 afy since 1990.²⁸ The WRIME analysis of the effects of increased pumping over baseline conditions assumed that baseline pumping was 2,400 afy.^{29,30}

Using the Salinas Valley Integrated Groundwater and Surface water Model (SVGISM) modified to reflect the best understanding of the structure of the Deep Aquifers, WRIME evaluated the effects of increased pumping of the Deep Aquifers on the 180-Foot Aquifer,

²⁶ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 52.

²⁷ MCWD, 2015 UWMP, p. 50.

²⁸ WRIME, Deep Aquifer Investigative Study, May 2013, pp. 2-14, 2-15.

²⁹ Id., pp. 3-60, 4-1; 4-11.

³⁰ MCWD's 2015 UWMP misstates the baseline conditions in the WRIME analysis as follows: "In that report, WRIME modeled the effect of increasing groundwater pumping from the Deep Aquifer by two to five times the baseline rate of 4,800 afy." (MCWD, 2015 UWMP, p. 50.) As noted, the baseline rate in the WRIME study was 2,400 afy.

the 400-Foot Aquifer, the upper aquifer of the Deep Aquifers, and the lower aquifer of the Deep Aquifers, which WRIME termed Aquifers 1, 2, 3, and 4.

WRIME concluded that increasing Deep Aquifer pumping from 2,400 afy to 8,000 afy (the Alternative 2 analysis) would reduce groundwater levels at coastal monitoring locations in all four aquifers by 4 to 7 feet and would induce additional seawater intrusion (coastal groundwater flows).³¹ WRIME found that increasing Deep Aquifer pumping from 2,400 to 8,000 afy would induce additional vertical flows between the aquifers, including an additional flow of 4,152 afy from the 400-Foot Aquifer to the upper Deep Aquifer.³²

As noted, the level of Deep Aquifer pumping at 8,901 afy, now exceeds the 8,000 afy level modeled by WRIME.³³ Thus, the available analysis indicates that the current level of Deep Aquifer pumping is contributing to seawater intrusion. Any further increase in Deep Aquifer Pumping will further induce seawater intrusion.

Because the Deep Aquifer is not known to be a sustainable aquifer with ongoing natural recharge, the Monterey County Water Resources Agency imposed a moratorium in 2018 on new wells in the Deep Aquifer pending a study to determine whether the Deep Aquifer has any sustainable yield.³⁴ Although the moratorium exempts municipal supply wells and certain “replacement wells,” such wells have the same effect on aquifer depletion and seawater intrusion as other wells.

In sum, the available evidence indicates that use of the Deep Aquifers amounts to mining an ancient and non-sustainable resource, which will deplete that resource. Furthermore, increased pumping from the Deep Aquifers will also induce further seawater intrusion in the upper aquifers and will increase the risk that the Deep Aquifers will themselves become saline due to induced vertical leakage from the upper aquifers. Under the circumstances, the Del Rey Oaks Housing Element Negative Declaration should acknowledge that additional pumping from the Deep Aquifers to support 86 residential units would make a considerable contribution to the ongoing significant cumulative impacts from Deep Aquifer pumping.

b. Additional pumping from the upper aquifers would threaten existing MCWD wells, add to overdraft conditions, and induce additional seawater intrusion.

³¹ WRIME, Deep Aquifer Investigative Study, May 2013, p. 4-11, Tables 4.2 and 4.3.

³²Id., Table 4.4 [Alternative 2, change in flow from Aquifer 2 to Aquifer 3].

³³ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, p. 52.

³⁴ Monterey County Urgency Ordinance # 5302.

As noted, about 24% of current MCWD pumping for Marina and Fort Ord comes from the aquifers above the Deep Aquifers. Any additional pumping for new development from these upper aquifers is problematic.

First, additional pumping to support Fort Ord development may not remain viable. MCWD's continued pumping from the 400-Foot Aquifer on Fort Ord is threatened by the rapid advance of seawater intrusion. MCWD and the Army have frequently had to replace wells in the 180-Foot and 400-Foot aquifers that have become unusably saline since 1960, drilling new wells farther inland or to the Deep Aquifers as the seawater intrusion front advances.³⁵ MCWRA's most recent mapping of the seawater intrusion front in 400-Foot Aquifer shows rapid advance of that front along Reservation Road in the vicinity of MCWD's only remaining upper aquifer wells, wells number 29, 30, 31 and 35.³⁶ There is no assurance that MCWD's remaining wells in the 400-Foot Aquifer will remain viable in the face of this rapid seawater intrusion.

Furthermore, any additional pumping from the upper aquifers will add to the existing overdraft conditions in the Pressure Subarea. MCWRA reports that overdraft in the Pressure Subarea has averaged 2,000 afy from 1944 to 2013.³⁷ This cumulative overdraft condition results in declining groundwater levels, which in turn cause seawater intrusion. Groundwater levels in the Pressure Subarea 400-Foot Aquifer continue to decline, especially along the coast.³⁸

Coastal pumping, such as MCWD's pumping for Fort Ord and Marina, induces seawater intrusion more than the same amount of pumping from further inland. Thus, to halt the advance of seawater intrusion, the most recent hydrological studies have recommended that pumping be reduced in the coastal aquifers or that pumping be shifted further away from the coast.³⁹

³⁵ MCWD, 2015 UWMP, p. 45.

³⁶ Compare MCWD, 2015 UWMP, p. 9, Figure 2.2 [well maps] to MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017 [seawater intrusion front], available at <http://www.co.monterey.ca.us/home/showdocument?id=19378>.

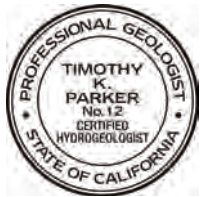
³⁷ MCWRA, State of the Salinas River Groundwater Basin, 2017, p. ES-11.

³⁸ MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=31294>.

³⁹ MCWRA, State of the Salinas River Groundwater Basin, 2017, pg. ES-16; Geoscience, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, Nov. 19, 2013, pp. 1, 11, available at <https://www.co.monterey.ca.us/home/showdocument?id=19014>.

In sum, any additional pumping from MCWD's wells in the upper aquifers will exacerbate the existing overdraft, falling coastal groundwater levels, and seawater intrusion.

Finally, I understand that MCWRA agreed in 1993 that the Army could pump 6,600 afy to support Fort Ord use pending a new 6,600 afy potable water supply for Fort Ord. I understand that this 6,600 afy allocation has been sub-allocated to Fort Ord land use jurisdictions and to individual development projects, but that no new potable water supply for Fort Ord has been implemented. As I explained in my earlier letters, the real-world physical impacts to the aquifers is occurring, and will be aggravated by increased pumping, regardless of the availability of any portion of the 6,600 afy allocation. The right to pump groundwater is a distinct issue from the impacts from that pumping.





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#8\$State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process...
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#9\$State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate-income housing, and economic continuity which support selection of the baseline physical conditions...
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February 26, 2019

By E-mail

Colonel Gregory Ford
Garrison Commander, Presidio of Monterey
United States Army
1759 Lewis Rd
Monterey, CA 93944
gregory.j.ford6.mil@mail.mil

Re: **Subsequent Environmental Impact Statement Required for Disposal of Army Interest in Fort Ord Groundwater**

Dear Colonel Ford:

On behalf of LandWatch Monterey County, I write to request that you ensure that the Army prepare a subsequent environmental impact statement ("SEIS") under the National Environmental Policy Act ("NEPA") before considering the disposal of any remaining Army interest in groundwater in the former Fort Ord area.

LandWatch understands that the Army has been asked to convey a portion of its purported interest in Fort Ord area groundwater to local agencies to facilitate civilian reuse of the base. NEPA mandates that the Army prepare an SEIS before taking such an action. Any additional pumping groundwater in the Fort Ord area would contribute to cumulative overdraft conditions and would induce seawater intrusion, which is clearly a significant impact.

In a 1993 agreement, the Monterey County Water Resources Agency ("MCWRA") agreed to permit the Army to pump up to 6,600 afy of groundwater from Fort Ord wells in exchange for the Army's \$7.4 million payment toward a replacement water supply project of at least 6,600 afy. Recognizing that existing pumping was contributing to seawater intrusion, the 1993 agreement provides that MCWRA would develop that replacement water supply and that all groundwater pumping in Fort Ord must cease when the replacement water supply project is completed. The 1993 agreement expressly anticipates completion of the replacement water supply by 1999. Twenty-five years later, no agency has provided the replacement supply.

The Army's 1993 and 1996 environmental reviews of Fort Ord disposal and reuse expressly assume that MCWRA's agreement to permit the Army to pump up to 6,600 afy was a "short-term" agreement and that no pumping would be permitted if seawater intrusion continued. The Army's environmental reviews provide that civilian reuse of Fort Ord would require a replacement water supply. The 1993 EIS and the 1996 SEIS

February 26, 2019

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identified a number of replacement water supply projects then under discussion, including desalination and various surface water transfers. Provision of one of these replacement water supplies was identified as "non-Army responsibility" mitigation, to which the local agencies comprising the Fort Ord Working Group had committed themselves. Again, the 6,600 afy replacement water supply has not been implemented.

In 2001, the Army assigned its interest in Fort Ord groundwater production to FORA and MCWD, reserving 1,749 afy for its own use. Since then, based on that assignment, the Fort Ord Reuse Authority ("FORA"), Marina Coast Water District ("MCWD"), and the local land use jurisdictions that are members of FORA have assumed that they may pump up to 6,600 afy from the former Fort Ord indefinitely to support Army operations and civilian reuse, regardless of the environmental impact of this pumping. Indeed, these agencies have assumed that their only obligation to provide a water supply is to build *additional* capacity when groundwater pumping for Fort Ord reaches the assumed indefinite supply level of 6,600 afy.

LandWatch does not believe that the 1993 agreement between the Army and MCWRA, or any subsequent assignment of the Army's interest in that agreement, created a "water right," much less a permanent right to pump groundwater regardless of impact on the aquifer. However, the purpose of this letter is not to address that question. The purpose of this letter is to advise the Army that it must prepare an SEIS before it takes any action that induces, or purports to permit, local agencies to increase their groundwater pumping, including any further assignment of its interests in the 1993 agreement.

An SEIS is required due to significant new circumstances and information, including

- the substantial and accelerating increase in seawater intrusion;
- the unforeseen failure of local agencies to implement the assumed replacement water supply;
- the unforeseen decision by local agencies to treat MCWRA's agreement to permit the short-term use of 6,600 afy as a permanent "water right;" and
- the imminent termination of FORA, which will end its management and allocation of groundwater, leaving MCWD with unfettered discretion as to groundwater pumping.

An SEIS is also required because any Army decision to assign an interest in groundwater pumping to support and induce long-term civilian development is a substantial change to the action the Army evaluated in its 1993 EIS and 1996 SEIS.

We discuss these points in more detail below.

I. Background

A. The 1993 Army/MCWRA Annexation Agreement permitted the Army to continue groundwater pumping pending completion of a replacement water supply that was expected by 1999.

In 1993, the United States Army, planning to dispose of property in Fort Ord, entered into the Agreement Between the United States of America and the Monterey County Water Resources Agency Concerning Annexation of Fort Ord Into Zones 2 and 2A of the Monterey County Water Resource Agency. (Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993 [“1993 Army/MCWRA Annexation Agreement”].) In that agreement, the Army sought annexation of Fort Ord into MCWRA Zones 2 and 2A, the benefit assessment areas for the Nacimiento and San Antonio reservoirs. The agreement required that the Army pay MCWRA \$7,400,000 and that MCWRA develop a project to provide at least 6,600 afy of long-term potable water supply because “stopping all pumping from the Salinas Basin on Fort Ord lands is necessary to mitigate seawater intrusion.” Until that project was implemented, MCWRA agreed that the Army or its successors in interest could withdraw 6,600 afy with a maximum of 5,200 afy from the 180-foot and 400-foot Aquifers.

The 1993 Army/MCWRA Annexation Agreement contemplated a 6,600 afy potable water supply replacement project by 2000. Thus, it provided that the Army could terminate the agreement if MCWRA had not made reasonable progress by December 31, 1999 on that project. Although MCWRA has not developed the 6,600 afy potable water project, the Army did not terminate the agreement.

B. In 2001, the Army assigned a portion of its groundwater interest to MCWD, reserving 1,729 afy for its own use.

In 1998, FORA and MCWD entered into the Water/Wastewater Facilities Agreement, in which FORA agreed to permit MCWD to acquire the Fort Ord water distribution system from the Army and MCWD agreed to provide water under FORA’s supervision and oversight. In the 1998 Water/Wastewater Facilities Agreement, FORA retained primary authority over the Ord community water supply management, including authority to administer groundwater supply capacity rights consistent with the 1993 Army/MCWRA Annexation Agreement, to determine what additional facilities are necessary, to approve capital spending budgets, and to oversee MCWD’s operations through a FORA staff Water/Wastewater Oversight Committee. The 1998 Facilities Agreement reaffirms MCWD’s earlier commitment not to pump more than 1,400 afy from the Deep Aquifer for use on Fort Ord.

In June 2000, the Army and FORA entered a Memorandum of Agreement for disposal of the Army’s interests in Fort Ord. In 2001, consistent with that agreement and

the provisions of the FORA/MCWD 1998 Water/Wastewater Facilities Agreement, the Army through FORA granted the Fort Ord waters supply infrastructure facilities to MCWD in the Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey, And Quitclaim Deed For Water And Wastewater Systems. This Assignment requires MCWD to assume and comply with the terms and conditions of the 2001 conveyance of the water systems from the Army to FORA in the Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord, including the obligation “to cooperate and coordinate with parcel recipients, MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will continue to be provided an equitable supply of water at equitable rates.” The meaning of “equitable supply” is not defined. Critically, there is no assurance that the equitable considerations will take into account the environmental impacts of providing that supply.

When the Army conveyed its interest in the Fort Ord property, it assigned its interest in groundwater under the 1993 Army/MCWRA Annexation Agreement to MCWD, reserving 1,729 afy of water exclusively for the Federal Government use. (MOA between Army and FORA, June 20, 2000, Article 5.) The Army has apparently subsequently conveyed some portion of this reserved interest to others, because the Fort Ord Reuse Authority reports that the Army now retains an interest of only 1,577 afy. (FORA, Annual Report, Fiscal Year 2017-2018, p. 12, available at <https://www.fora.org/Reports/AR/AnnualReport2018-Full.pdf>.) FORA reports that the Army consumed 460.45 afy in 2017, and that it has a remaining 1,116.55 afy “allocation.” (*Ibid.*) It is this unused “allocation” that LandWatch has been advised that the Army may seek to convey to local agencies.

C. Prior Army environmental review of Fort Ord reuse acknowledges that the right to pump groundwater for Fort Ord is limited in time and that a replacement water supply is required to support civilian reuse of Fort Ord.

To evaluate the impacts, mitigation, and alternatives for the disposal and likely civilian reuse of Fort Ord, the Army prepared an Environmental Impact Statement (EIS) in 1993 and a Supplemental EIS (SEIS) in 1996.

1. 1993 EIS assumes mitigation for civilian reuse will include a replacement water supply.

The 1993 EIS acknowledges that water demand for civilian reuse will exceed existing water use, “which already exceeds safe yield of the groundwater system in the vicinity of Fort Ord.” (1993 SEIS, p. 6-56.) The EIS concludes that “[i]f the increase were supplied by local wells, seawater intrusion would be accelerated.” (*Ibid.*) The EIS recommends as non-Army responsibility mitigation for the reuse scenarios in the 1993 EIS that the local civilian agencies “Increase Water Supply or Decrease Total Water Demand to Achieve a Balance.” (1993 ROD, pp. 8, 10; 1993 EIS, pp. 6-57 to 6-59.) The 1993 EIR identifies several proposed water projects to supply potable water for reuse,

including the Salinas Valley Water Transfer project, which would have piped well-water from the Arroyo Seco cone to coastal areas; desalination of brackish water; a new dam on the Arroyo Seco; and new reservoirs on the Fort Ord site. (1993 EIR, pp. 6-57 to 6-58.) None of these projects has been completed or are now being planned.

Reflecting the analysis in the 1993 EIS, the 1993 Record of Decision states that “implementation of the Fort Ord Base Reuse Plan will be contingent upon the provision of a long-term, reliable potable water system.” (1993 ROD, p. 15.) The 1993 ROD identifies under the heading “Local Commitment to Mitigation Measures” those mitigation measures that the “community has indicated it will implement.” (1993 ROD, p. 14.) The community commitment to water supply mitigation recited in the Record of Decision includes provision of a replacement water supply through a 9,000 afy desalination project and/or the 11,000 afy Salinas Valley Water Transfer Project:

Water Supply Mitigation Measures

The implementation of the Fort Ord Base Reuse Plan will be contingent upon the provision of a long-term, reliable potable water system. All development will be phased based upon the following framework for water availability that was approved in a memorandum of understanding between the Army and the Monterey County Water Resources Agency. The initial phases of the plan will have approximately 6,600 acre-feet available for the POM annex, the Army Reserve Center, McKinney Act users, the California State University, and other uses, based on water availability and approved by the Fort Ord reuse group (FORG). Latter stages of development will make use of desalination, approximately 9,000 acre-feet and water recycling, approximately 9,000 acre-feet. Water supplies beyond the year 2000 could be augmented by additional development or substitute for those above based on the availability of 11,000 acre-feet of water from the Salinas Valley Water Transfer Project, which is part of the Sea Water Intrusion Program.

(1993 ROD, p. 15.) Again, twenty five years later, neither the desalination project for the Fort Ord area nor the Salinas Valley Water Transfer Project has been implemented.

2. The 1996 SEIS acknowledges that there is no right to pump the 6,600 afy of groundwater if it causes seawater intrusion and that civilian reuse requires a replacement water supply.

The Record of Decision for the 1996 SEIS explains that supplemental environmental review was intended to evaluate changed conditions, which then included the conveyance of additional assets in excess of the Army’s needs and the completion of the Base Reuse Plan. (1996 ROD, p. 1.)

The 1996 SEIS acknowledges that “[t]he water demand for Alternative 7 (with or without the newly excessed lands and revised use areas) would be large enough to result

in seawater intrusion if it is supplied by local wells.” (SEIS, p. 5-20.) Alternative 7 is the alternative that reflects reuse according to the Base Reuse Plan.

The 1996 SEIS acknowledges that its 1993 agreement with MCWRA allows it to “pump up to 6,600 af/yr from its existing wells to meet Army water demands, *provided the pumping does not result in seawater intrusion.*” (SEIS, p. 5-20, emphasis added.) In short, the 1996 SEIS assumed that any continued use of the 6,600 afy interest in groundwater pumping was contingent on halting seawater intrusion.

The 1996 SEIS states that the water supply for reuse must come from *new* water supply projects:

The great majority of the water demand for Alternative 7 derives from civilian reuse of former Fort Ord lands. These users will need to cooperate with MCWRA in developing new water supply projects or develop their own water supplies from other sources (e.g., desalination).

(1996 SEIR, p. 5-20.) The 1996 SEIS states that the member agencies of the Fort Ord Reuse Group had entered into a Mitigation Agreement in 1994 that provides that “[t]he reuse of former Fort Ord lands will be planned and implemented in coordination with the Monterey County Water Resources Agency (MCWRA) and other appropriate agencies to ensure adequate water supplies for all reuse areas.” (SEIS, p. 3-11.)

In its discussion of cumulative water supply impacts, the 1996 SEIS again states that the 1994 Mitigation Agreement requires the civilian agencies to develop alternative water supplies to support phased future development, *because the 1993 Agreement between the Army and MCWRA requires that groundwater pumping cease:*

Alternative 7 includes a provision that development will be in phases subject to the availability of adequate water supplies as coordinated with the MCWRA (see the "Mitigation Agreement" portion of Section 3.2.2). The initial phase will use existing supplies that are in excess of Army needs. However, these resources will not be available after the MCWRA project is completed. Under the terms of agreement between the Army and MCWRA, pumping from the Fort Ord wells in the Salinas aquifer will cease unless environmental and national defense requirements like the project are met. Later phases will be contingent on development of new water sources. Some combination of new water supplies, wastewater reclamation, and aggressive water conservation would be needed to implement Alternative 7 without substantially increasing the rate of seawater intrusion. The FORA Final Base Reuse Plan (December 1994) suggests that all these water supply alternatives will be considered in the early phases of reuse but that desalination will be the likely water source for long-term development of former Fort Ord (Fort Ord Reuse Authority 1994).

(1996 SEIS, p. 5-54.)

3. The Army's 1996 Record of Decision recognizes the MCWD water supply allocations are based only on the "short-term" use of groundwater.

After quoting the SEIS language regarding the 1994 Mitigation Agreement by the Fort Ord Working Group, the 1996 Record of Decision acknowledges that the FORA water supply allocation is based only on the *short-term* water supply available under the 1993 Annexation Agreement.

FORA has developed and coordinated a water allocation plan for reuse based on the short-term water supply available as a result of the Army/MCWRA agreement.

(1996 ROD, Table 3, p. 1.)

D. Overdraft and seawater intrusion have continued and accelerated in the 180-foot and 400-foot Aquifer Subbasin, and the Deep Aquifer is being depleted.

LandWatch engaged hydrologist Timothy Parker to evaluate water supply impact analyses for two recent projects proposed in the Ord Community. Parker is a Certified Engineering Geologist and Certified Hydrogeologist, with over 25 years of geologic and hydrologic professional experience. Parker served as a member of the Technical Advisory Committee to MCWRA in its study of the Salinas Valley Groundwater Basin mandated by Policy PS-3.1 of the 2010 Monterey County General Plan.

In 2016, Parker evaluated the water supply analysis for the proposed Monterey Downs development project.¹ (Exhibit 1, Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016; *see also* Exhibit 2, John H. Farrow, letter to City of Seaside City Council, October 12, 2016 [forwarding and discussing Parker memorandum].)

In 2018 Parker evaluated the proposed annexation of portions of the former Fort Ord to the MCWD service area.² (Exhibit 3, Timothy K. Parker, letter to John H. Farrow, February 15, 2018; *see also* Exhibit 4, John H. Farrow, letter to MCWD Board of Directors, February 19, 2018 [forwarding and discussion Parker letter]; Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017 [challenging annexation without environmental impact report].)

¹ In response to legal challenges to the sufficiency of the Monterey Downs water supply analysis, which assumed that 6,600 afy could be pumped without significant impact, the City of Seaside reversed its approval of that project.

² In response to legal challenges to the sufficiency of the environmental review for the MCWD annexation, which assumed that 6,600 afy can be pumped without significant impact, MCWD agreed to eliminate undeveloped sites from the annexation.

Parker explains and documents that overdraft conditions in the 180-foot and 400-foot Aquifer Subbasin have persisted since the time of the Army's 1993 EIS and 1997 SEIS. The Salinas Valley Groundwater Basin still remains out of hydrological balance by 17,000 to 24,000 afy. (Parker 2016, p. 2.) As Parker explains, efforts to halt seawater intrusion have not succeeded; and, by 2016, seawater intrusion had advanced more than five miles further inland compared to conditions in the 1990s. (*Id.*, pp. 2-4.) The most recent mapping of seawater intrusion from 2017 shows even more dramatic acceleration of seawater intruded areas, which have occurred despite reductions in MCWD pumping during the 2006-2015 period. (Parker 2018, p. 1.)

Parker also explains that since 2003, as seawater has intruded the 180-foot and 400-foot aquifers in the coastal area, pumping has been substantially shifted to the Deep Aquifer, upsetting any potential equilibrium in the Deep Aquifer. (Parker 2016, pp. 15-16.) Thus, increased pumping of the Deep Aquifer to supply water for Fort Ord development will deplete that aquifer and may induce further seawater intrusion. (*Ibid.*) In light of the continuing advance of seawater intrusion, MCWRA staff have recommended a moratorium on new wells in the Pressure 400-Foot Aquifer within an "Area of Impact" proximate to the 500 mg/l Chloride front. MCWRA also recommended a moratorium on new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin pending investigation of its viability as a source of water. Under these circumstances, Parker concludes that any increase in pumping from the MCWD production wells serving the Ord Community would aggravate seawater intrusion. (Parker 2018, p. 2.)

II. The Army must prepare a supplemental EIS before conveying any portion of its reserved interest in groundwater that might be used to support further development.

Before the Army considers assigning or allocating any additional portion of its reserved interest in groundwater to FORA, MCWD, local land use agencies, or particular development projects, the Army must complete a supplemental environmental impact statement.

The National Environmental Policy Act (NEPA) requires that an agency "shall prepare supplements to either draft or final environmental impact statements if (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR § 1502.9(c).) The Army's own regulations for implementing NEPA provide that "Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions." (32 C.F.R. § 651.5(g).)

A. An SEIS is mandated by significant new circumstances and information.

Here, an SEIS is mandated by significant new circumstances and information relevant to groundwater impacts from pumping to support reuse of the former Fort Ord.

First, seawater intrusion has accelerated as Fort Ord pumping and other cumulative pumping from the Salinas Valley Groundwater Basin has continued. (Parker 2016, pp. 2-5; Parker 2018 pp. 1-2.) The Army's 1996 SEIS acknowledges that its 1993 agreement with MCWRA allows it to "pump up to 6,600 af/yr from its existing wells to meet Army water demands, *provided the pumping does not result in seawater intrusion.*" (1996 SEIS, p. 5-20, emphasis added.) Clearly, the prior environmental reviews did not assume that the 6,600 afy of groundwater pumping would occur in the face of continued seawater intrusion.

Second, neither MCWRA nor local agencies have developed the replacement water supply called for in the 1993 MCWRA/Army agreement. MCWRA now acknowledges that its efforts to halt seawater intrusion have not yet been successful, and that additional groundwater management projects would be required. (Parker 2016, pp. 4-5, 21-27.) The Army's 1993 EIS and 1996 SEIS are predicated on the assumption that local agencies had committed themselves to avoid aggravating seawater intrusion and would do so by developing a replacement water supply before permitting new development. (1993 EIS, pp. 6-57 to 6-58; 1993 ROD, pp. 14-15; 1996 SEIR, pp. 3-11, 5-54.)

Third, because FORA and MCWD have treated the short-term supply of 6,600 afy of groundwater as a permanent supply, local land use agencies have permitted development without making that development contingent on provision of a replacement water supply. MCWD acknowledges that its sole potable water supply source is the Salinas Valley Groundwater Basin and that to serve Fort Ord development it relies entirely on the purported 6,600 afy "allocated groundwater pumping rights" that MCWRA granted to the Army in 1993. (MCWD, 2015 Urban Water Management Plan, June 2016, p. 30, available at https://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.) MCWD claims that "[u]nder that 1993 Agreement, 6,600 afy of Salinas Basin groundwater is available for use on Ord Community lands." (*Id.*, p. 16.) MCWD projects that by 2035, water demand to support Fort Ord development will total 8,292 afy. (*Id.*, pg. 21, Table 3.5.) However, MCWD claims that it will not have to find additional water supplies until it has exhausted the 6,600 afy "existing groundwater pumping rights." (*Id.*, p. 16.) In effect, MCWD and FORA now assume that the "short-term" 6,600 afy interest in groundwater pumping MCWRA granted to the Army in 1993 represents a permanently available supply that can be relied on to support indefinitely the permanent civilian residential and commercial development projects. As discussed above, the Army's prior environmental reviews assumed that a replacement water supply would be implemented and that all groundwater pumping would cease.

Fourth, FORA is now required to sunset by 2020 (Gov. Code, § 67700(a)), and there is no committed plan in place to limit future groundwater pumping to support civilian reuse. (See Exhibit 3, John Farrow, letter to MCWD Board of Directors re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD), February 19, 2018, pp. 4-8.) When FORA's oversight of groundwater resources ends and 1998 Water/Wastewater Facilities Agreement terminates, MCWD will have no constraint on its groundwater pumping other than the obligation to provide an "equitable supply of water at equitable rates." (*Id.*, p. 6.) As discussed, the Army's prior environmental review assumed that FORA would allocate only the "short-term" use of groundwater. (1996 ROD, Table 3, p. 1.)

B. An SEIS is mandated by substantial change to the previously proposed action.

The Army's future allocation of any additional portions of its reserved interest in groundwater to support and induce long-term development in the former Fort Ord would be a substantial change to the Army's proposed 1993 and 1996 actions to dispose of and permit reuse of Fort Ord. That action contemplated that the 6,600 afy would not be used indefinitely and permanently to support civilian reuse, but instead would be a short-term arrangement pending provision of a replacement supply.

C. The Army committed itself to supplemental environmental review in its 1993 EIS and 1996 SEIS.

The 1993 Record of Decision commits the Army to "develop additional environmental analysis following this record of decision (ROD) to address impacts of those uses in the community's reuse plan not already addressed in the EIS." (1993 ROD, p. 3.) Neither the 1993 EISW nor the 1996 SEIS evaluated the impact of the permanent commitment of 6,600 afy to support civilian reuse. To the contrary, the prior reviews assumed that groundwater pumping on the former Fort Ord would cease when a replacement water supply was developed.

The Army also committed itself not to dispose of property before evaluating the reuse impacts:

The Army will not dispose of property for reuse not covered by this EIS until the environmental evaluation is complete. The additional evaluation will be used to determine if adequate planning changes or mitigation measures have been developed or included through the local planning process.

(1993 ROD, p. 3.) Accordingly, the Army should not dispose of its remaining interest in water supply without an SEIS because it is now clear that "adequate planning changes or mitigation measures" have *not* been "developed or included through the local planning process."

The 1996 ROD acknowledges that an SEIS is required for changed conditions, e.g., completion of Base Reuse Plan and the conveyance of additional assets in excess of Army's needs. (1996 ROD, p. 1.) The sunseting of FORA, the termination of the 1998 Water/Wastewater Facilities Agreement governing water supply, and the end of the Base Reuse Plan are at least as significant changes in conditions as the initial completion of the Base Reuse Plan. Furthermore, the conveyance of an additional interest in groundwater in excess of the Army's needs is property disposition that would also demand an SEIS.

III. Request for notice

Pursuant to 40CFR § 1506.6(b)(1), LandWatch requests mailed and e-mailed notice of NEPA-related hearings, public meetings, and the availability of environmental documents related to any action by the Army concerning groundwater in the former Fort Ord, including, but not limited to, any proposed disposal of the Army's interest in groundwater in the former Fort Ord. (See also 32 CFR §§651.22, 651.23, 651.25, 651.36, 651.47 [public involvement required for Army NEPA compliance].) Notice should be provided as follows:

Michael Delapa
Executive Director
LandWatch Monterey County
306 Capitol Street, Suite 101
Salinas, CA 93901
execdir@landwatch.org

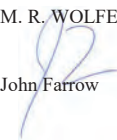
John Farrow
M. R. Wolfe & Associates, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102
jfarrow@mrwolfeassociates.com

IV. Offer to meet

LandWatch encourages the Army to consider the issues raised in this letter before it takes any action affecting groundwater in the former Fort Ord. LandWatch is willing to meet with you or other Army representatives to discuss these issues and to attempt to resolve LandWatch's concerns about groundwater use in the Fort Ord area.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.


John Farrow

JHF:hs

cc:

Fort Ord Reuse Agency
Marina Coast Water District

County of Monterey Board of Supervisors and Chief Administrative Officer
City of Seaside City Council and City Manager
City of Marina City Council and City Manager
City of Monterey City Council and City Manager
City of Del Rey Oaks City Council and City Manager
California State University at Monterey Bay, Office of the President

Exhibits

1. Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016.
2. John H. Farrow, letter to City of Seaside City Council, October 12, 2016.
3. Timothy K. Parker, letter to John H. Farrow, February 15, 2018.
4. John H. Farrow, letter to MCWD Board of Directors, February 19, 2018.
5. Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017.

EXHIBIT 1

Technical Memorandum

October 8, 2016

To: John H. Farrow, M.R. Wolfe Associates, P.C., Attorneys-at-Law

From: Timothy K. Parker, PG, CEG, CHG, Parker Groundwater

Subject: Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR)

At your request, I have reviewed the Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (FSEIR) together with the documents cited in the discussion below. My conclusions are set out below.

I am a California Professional Geologist (License #5584), Certified Engineering Geologist (License # EG 1926), and Certified Hydrogeologist (License #HG 12), with over 25 years of geologic and hydrologic professional experience. I serve as a member of the Technical Advisory Committee to the Monterey County Water Resources Agency in connection with its ongoing study of the Salinas Valley Groundwater Basin that is mandated by Policy PS 3.1 of the 2010 Monterey County General Plan. The purpose of that study is to evaluate historic data and trends in seawater intrusion and groundwater levels in the Salinas Valley Groundwater Basin, to evaluate the likely future groundwater demand, to determine whether groundwater level declines and seawater intrusion are likely to continue through 2030, and to make recommendations for action. This study has not been concluded, but a preliminary report was released in January 2015 by the prime consultant for the PS-3.1 study.¹ My Resume and Project Experience are attached.

A. Cumulative pumping in the Salinas Valley Groundwater Basin (SVGB) and its Pressure Subarea has resulted in aquifer depletion and associated seawater intrusion, and current groundwater management efforts are not sufficient to avoid this significant cumulative impact.

1. Overdraft and seawater intrusion in the Salinas Valley Groundwater Basin

The project will obtain its water supply from wells in the 180/400-Foot Aquifer Subbasin ("180/400-Foot Aquifer" or "Pressure Subarea") at the northwest end of the Salinas Valley

¹ MCWRA, State of the Salinas River Groundwater Basin, January, 2015, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

Groundwater Basin. DSEIR p. 4.19-2 to 4.19-3. The Pressure Subarea is one of the eight subbasins making up the Salinas Valley Groundwater Basin (SVGB).² Overdraft in the Pressure Subarea has averaged about 2,000 acre-feet per year (“afy”) from 1944 to 2014, and the Basin as a whole is “currently out of hydrologic balance by approximately 17,000 to 24,000 afy.”³ Pumping from the Basin has exceeded recharge since the 1930s, causing seawater intrusion as inland groundwater elevations dropped below sea level, permitting the hydraulically connected seawater to flow inland.⁴ Seawater intrusion has advanced more than 5 miles inland, rendering significant groundwater unusable for irrigation or domestic uses.⁵

The rate of seawater intrusion is variable, increasing and decreasing with changes in precipitation, but the long-term trend has been a progressive advance in both the 180-foot and 400-foot aquifers.⁶ The current prognosis for the Pressure Subarea is for further seawater intrusion due to continued groundwater elevations below sea-level including the latent effects of the recent drought:

The fact that groundwater elevations are well below the documented protective elevations indicates that the P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that this situation will be reversed in the coming years, particularly if the current drought conditions continue. Based on the observed time lag (latency) between the end of the historic drought (WY 1991) and the end of the resulting chloride concentration increase (around 1999), one can predict that the 2013 chloride levels reported for coastal wells could show upward concentration trends over the coming years as the SWI front advances, even if wetter climate conditions return. The study area has had three straight years of severe drought

² MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley (“Protective Elevations”), 2013, p. 2, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/documents/ProtectiveElevationsTechnicalMemorandum.pdf; MCWRA, State of the Salinas River Groundwater Basin, 2015, Section 3.

³ MCWRA, State of the Salinas River Groundwater Basin, pp. 6-3.

⁴ MCWRA, Protective Elevations, pp. 4–5; MCWRA, State of the Basin, pp. 2-4, 5-2; MCWRA, Salinas Valley Water Project Draft EIR (“SVWP DEIR”), 2001, pp. 1-2 to 1-8, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/documents/DEIR_EIS_2001/2001%20SVWP_DEIR_2001.pdf.

⁵ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-2 to 5-6; *see also* California Department of Water Resources, Bulletin 118, Salinas Valley Groundwater Basin, 180/400 Foot Aquifer Subbasin, available at <http://www.water.ca.gov/groundwater/bulletin118/basindescriptions/3-04.01.pdf>.

⁶ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-2 to 5-9.

conditions, and continued drought conditions are projected to cause substantial declines in both groundwater head (Section 3.4) and storage (Section 4.4).⁷

The California Department of Water Resources (DWR) is required by the Sustainable Groundwater Management Act to designate as “critically overdrafted” those groundwater basins for which “continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.”⁸ DWR identified the 180/400-Foot Aquifer of the Salinas Valley Groundwater Basin as critically overdrafted in January 2016.⁹

2. Efforts to control seawater intrusion

The Monterey County Water Resources Agency (“MCWRA”) and predecessor agencies have implemented several projects to address seawater intrusion by storing surface water, increasing recharge, and reducing groundwater pumping along the coast.¹⁰ These include the Nacimiento and San Antonio Reservoirs, water recycling to support the Castroville Seawater Intrusion Project, and the Salinas Valley Water Project (SVWP). The SVWP is the most recent of these projects, completed in 2010.

The EIR for the SVWP explains that seawater intrusion is determined by the amount and location of pumping, and varies in response to annual patterns of precipitation. Because coastal pumping causes greater intrusion impacts, the most effective mitigation for seawater intrusion is a reduction of pumping in coastal areas.¹¹ However, total pumping in the hydraulically connected SVGB also matters:

[P]umping in the coastal area closest to the seawater intrusion front has a greater influence on seawater intrusion than pumping in a valley area more distant from the front. Nevertheless, pumping in each area affects seawater intrusion because each subarea draws water from the same Basin.¹²

⁷ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-7 to 5-8, see Tables 3-2 and 4-6 in Sections 3.4 and 4.4.

⁸ DWR, Critically Overdrafted Basins, available at <http://www.water.ca.gov/groundwater/sgm/cod.cfm>.

⁹ DWR, Critically Overdrafted Basins (1/2016), available at http://www.water.ca.gov/groundwater/sgm/pdfs/COD_BasinsTable.pdf.

¹⁰ Marina Coast Water District (MCWD), Urban Water Management Plan (UWMP), 2010, pp. 30-31.

¹¹ MCWRA, SVWP Final EIR, p. 2-36, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/documents/Final%20EIR-EIS%20SVWP_RTC-Vol%201.pdf.

¹² MCWRA, SVWP Final EIR, p. 2-35 to 2-36 (emphasis in original).

The 2002 SVWP EIR predicted that the SVWP could halt seawater based on the amount and location of 1995 demand.¹³ However, it could not assure that the SVWP would halt seawater intrusion in 2030, even though total demand was estimated to decline, because of projected urban growth and associated higher demand in the northern end of the Basin, e.g., the Fort Ord area.¹⁴

As noted in Section 3.2.4, overall water demand in the Basin is anticipated to decline by 2030, but total urban needs are projected to increase from 45,000 acre-feet per year (AFY) in 1995 to 85,000 AFY (a 90% increase) based on projected growth, a large part of which is expected to occur in the northern end of the valley. The modeling shows that with projected 2030 demands, seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term.¹⁵

The SVWP EIR also cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.”¹⁶

3. Seawater intrusion will not be controlled by current management efforts because demand has exceeded projections.

Attachment 1 presents a discussion of the SVWP modeling assumptions compared to subsequent conditions and a discussion of MCWRA’s current acknowledgement and scientific documentation that the existing groundwater management projects are not sufficient to halt seawater intrusion in the SVGB. Attachment 1 demonstrates that:

- The SVWP EIR assumed that Basin groundwater pumping would decline substantially from 1995 to 2030, from 463,000 afy to 443,000 afy, based on large expected reductions in agricultural pumping, which dominates Basin water demand. However, groundwater pumping in the 20 years since 1995 substantially exceeded 1995 levels, averaging well over 500,000 afy.
- Modeling for the SVWP understated the level of post-1995 pumping that has actually occurred and that, in any event, the SVWP EIR only claimed the SVWP would halt seawater intrusion based on 1995 land use.
- The existing groundwater management projects have only been able to slow seawater intrusion. While reports show that the rate of seawater intrusion has

¹³ MCWRA, SVWP DEIR, pp. 3-23 to 3-24.

¹⁴ Id.

¹⁵ MCWRA, SVWP Final EIR, p. 91.

¹⁶ MCWRA, SVWP Draft EIR, p. 7-7.

declined since the last drought-induced spike in intrusion during 1997-1999, intrusion continues. Furthermore, a new drought-induced spike, which typically follows a drought after a lag period of some years, is now likely to occur due to the latent effects recent drought.¹⁷

- Thus, MCWRA has concluded that a new project or projects supplying an additional 48,000 afy of groundwater recharge, over and above that supplied by the SVWP, would be required in order to maintain protective groundwater elevations sufficient to control seawater intrusion.

B. The Monterey Downs SEIR’s discussion of water supply impacts focuses on water supply allocation and reliability of pumping systems and assumes that the Salinas Valley Water Project will halt seawater intrusion.

The DSEIR reports that, pursuant to a 1993 agreement annexing the Fort Ord area into Zones 2 and 2A of the Monterey County Water Resources Agency, Marina Coast Water District (MCWD) may withdraw up to 6,600 afy from the SVGB for use in the Ord Community. (DSEIR p. 4.8-9.) The DSEIR reports that the Fort Ord Reuse Authority (FORA) has sub-allocated this 6,600 afy to the member agencies that have local land use jurisdiction in the Ord Community; that those member agencies have in turn allocated some of their sub-allocations to approved development projects; and that Seaside and Monterey County still retain 412.9 afy of their respective sub-allocations that have not yet been committed to approved projects. (DSEIR p. 4.19-2 to 4.19-5.) The DSEIR concludes that this unallocated water would be sufficient to support Phases 1-3 of the project, but that additional water supplies would be required for Phases 4-6. (DEIR p. 4.19-24, 4.8-34.)

The Monterey Downs DSEIR concludes that Phases 1-3 of the project will not have a significant impact on groundwater because (1) those phases “would only use groundwater that is within MCWD’s existing 6,600 AFY allocation” and (2) “MCWD’s groundwater supply is considered reliable on a quantity and quality basis.” (DSEIR p. 4.8-34; see DSEIR p. 4.19-32.) As discussed in the next two sections, neither of these two reasons for concluding the impact is not significant are justified.

The conclusion that “MCWD’s groundwater supply is considered reliable on a quantity and quality basis” (DSEIR p. 4.8-34) is taken from the Water Supply Assessment (WSA).¹⁸ The WSA information is taken in turn from the MCWD 2010 Urban Water Management Plan (UWMP).¹⁹ In support of the claim that the water supply is “reliable” the FSEIR also cites studies estimating project water demand and evaluating stormwater runoff and recharge; however these additional documents are concerned with project demand estimates, sewer

¹⁷ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-7 to 5-8.

¹⁸ MCWD, Water Supply Assessment and Written Verification of Supply for Monterey Downs Specific Plan, 2012, pp. 22-23.

¹⁹ MCWD, Urban Water Management Plan (UWMP), 2010, p. 53.

usage estimates, and stormwater runoff, and do not provide any discussion of groundwater impacts to the SVGB due to increased pumping that is not contained in the WSA and UWMP.²⁰

The UWMP's discussion of water supply "reliability" cited by the WSA is expressly based on the claims that the SVWP will in fact eliminate overdrafting and prevent saline contamination and that pumping will respect "long-term safe yields:"

5.1 Water Supply Reliability - Single and Multiple Dry Year and Demand Comparison

The Urban Water Management Planning Act requires a description of a water provider's supply reliability and vulnerability to shortage for an average water year, a single dry year or multiple dry years. Such analysis is most clearly relevant to water systems that are supplied by surface water. Since the bulk of MCWD's supply is groundwater and the remainder is from desalinated supply, short- and medium-term hydrologic events over a period of less than five years usually have little bearing on water availability. Groundwater systems tend to have large recharge areas. The Salinas Basin is aided by two large storage reservoirs, Nacimiento and San Antonio, providing about 700,000 ac-ft of storage. These reservoirs regulate surface water inflow to the basin shifting winter flows into spring and summer releases for consumptive use, which also allows for increased basin recharge. The Salinas Valley Water Project is expected to increase the average level of groundwater storage, moving the basin from a situation where average storage is declining to a net increase in storage of about 6,000 ac-ft annually. Provided groundwater is protected from contamination and long-term safe yields in the basin are respected, water is available annually without regard to short-term droughts. This is due to the large storage volume of the basin that can be utilized to offset annual variations in surface runoff. Therefore, MCWD's groundwater supply is fully available in annual average, single dry year and multiple dry years.²¹

The 2010 UWMP discusses previous groundwater management efforts including the Nacimiento and San Antonio reservoirs and the Castroville Seawater Intrusion Project (CSIP).²² The UWMP then states that the SVWP was developed to "fully eliminate basin

²⁰ See e.g., DSEIR pp. 4.8-48 to 4.8-49, FSEIR, pp. 11.4-1623, 11.4-1628 to 11.4-1629, 11.4-1611, 11.4-1569, 11.4-1574, 11.4-1575, 11.4-1585, citing Monterey Horse Park Project Water Demand and Sewage Generation (Horse Park Water Sewer) (Whitson Engineers, August 16, 2012); Water Supply Assessment and Written Verification of Supply for the Monterey Downs Specific Plan (Schaaf & Wheeler Consulting Engineers, November 6, 2012); Water Supply Assessment for the Monterey Downs Specific Plan Update to Table 5-2 (Marina Coast Water District, November 28, 2012); City of Seaside - Monterey Downs WSA Supplement (Diamond West Incorporated, February 21, 2014); and Monterey Downs Water and Sewer Demand Study (WSDS) (Diamond West Incorporated, September 24, 2012).

²¹ MCWD, 2010 UWMP, p. 53.

²² MCWD, 2010 UWMP, pp. 30-31.

overdraft and seawater intrusion," and claims that "MCWRA modeling concludes that this component will eliminate basin overdraft and intrusion."²³ The 2010 UWMP reports that the SVWP assumes that there will be a 20,000 afy reduction in SVGB demand by 2030, consistent with the SVWP EIR's modeling assumptions.²⁴ The 2014 WSA Supplement prepared by Diamond West on behalf of the applicant reports these UWMP claims that the SVWP will reverse the overdraft condition (result in a "net increase in storage of about 6,000 ac-ft annually"), avoid saline contamination, and that SVGB demand is projected to decline 20,000 afy by 2030.²⁵

However, the DSEIR, the WSA, and the WSA Supplement all fail to report that the UWMP acknowledges that the seawater intrusion front continues to advance in the vicinity of the Marina and Ord Community, and threatens the wells supplying the Ord Community.²⁶ They also fail to report that the UWMP states that the SVWP is expected to halt seawater intrusion only based on a 1995 pumping baseline, that "it is uncertain whether this outcome will be borne out at currently expected levels of pumping increases in the coastal margins of the Pressure subarea," and that MCWRA has also documented that the SVWP "may not halt intrusion in the long run and that additional surface water delivers into the coastal region" may be needed.²⁷ Neither the SEIR, the WSA, or the WSA Supplement discuss MCWRA's current reports and documentation, discussed in Attachment 1, that (1) SVGB demand has exceeded the demand projections used by the SVWP modeling, (2) actual pumping in the SVGB is unsustainable without adverse impacts because it exceeds the long-term safe yield, and (3) additional groundwater management projects, which are neither committed nor funded, are needed to halt seawater intrusion caused by current pumping because the SVWP will not do so.

C. The Monterey Downs SEIR analysis is based on the unfounded assumption that there would be no significant impact as long as total Fort Ord pumping is less than 6,600 afy; however, any additional pumping will further aggravate existing seawater intrusion regardless of whether portions of the 6,600 afy remain unallocated.

As noted, a major premise of the SEIR's conclusion that water supply impacts for Phases 1-3 are not significant is that the project "would only use groundwater that is within MCWD's existing 6,600 AFY allocation." (DSEIR p. 4.8-34.) However, the existence of a water supply

²³ MCWD, 2010 UWMP, p. 31.

²⁴ MCWD, 2010 UWMP, p. 41.

²⁵ Diamond West, WSA Supplement, 2014, p. 13.

²⁶ See MCWD, 2010 UWMP, p. 36.

²⁷ MCWD, 2010 UWMP, p. 42.

entitlement does not imply that there are no impacts from using that water. The relevant question for CEQA impact analysis is whether increased pumping to support the project will cause physical impacts, regardless of any entitlement to use that water. As discussed below, additional pumping in the SVGB, especially in the coastal areas, will in fact aggravate seawater intrusion, but the DSEIR does not acknowledge this as a relevant basis for impact analysis.

The SEIR purports to tier from the Program EIR prepared for the Base Reuse Plan in 1997 (the BRP PEIR). However, the BRP PEIR did not assume that there would be no significant groundwater impacts unless and until Ord Community pumping reaches 6,600 afy. The BRP PEIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from beneath Fort Ord without causing further seawater intrusion, and its mitigation does not permit the agencies to delay a solution if intrusion persists.

The BRP PEIR impact analysis qualifies any reliance on the 6,600 afy allocation by stating that a potable water supply is “assumed to be assured from well water until a replacement is made available by the MCWRA,” but only “provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer.” (BRP PEIR p. 4-53 (emphasis added)). It states that the 6,600 afy “could” support the first phase of Ord community development through 2015 and then notes “given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to ‘assure’ even the 6,600 afy.” (BRP PEIR p. 4-53.) Thus, the BRP EIR evaluates the impacts of the BRP through 2015 in two distinct analyses, one of which assumes that 6,600 afy can be supplied without impacts and the other of which assumes that it cannot. In particular, it provides that “[a]ssuming groundwater wells on former Fort Ord were able to supply 6,600 afy,” an additional 7,932 afy of supply would be required by 2015. (BRP PEIR, p. 4-53.) However, it then provides in the alternative that “[i]f groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley Aquifer,” additional supplies would have to be developed sooner, and even further recommends “that an alternate water supply source, such as on-site storage facilities, be considered.” (BRP PEIR, p. 4-54.)

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members “shall ensure additional water supply.” Policy B-2 requires conditioning project approval on verification of an “assured long-term water supply.” Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD “to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan.” Program C-3.1 requires the member agencies to work with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water

supplies.” MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.²⁸ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” (BRP PEIR p. 4-63.) The BRP PEIR states that the “conditions of the 900-foot aquifer are uncertain”, including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies.” (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies “to mitigate further seawater intrusion” by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR’s cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: “existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3).” (BRP PEIR p. 5-5 (emphasis added).)

In sum, unlike the Monterey Downs DSEIR, the BRP PEIR does not assume that the 6,600 afy entitlement is a sufficient basis to determine whether there will be a significant water supply impact from continued groundwater pumping.

As discussed above, the problem of seawater intrusion continues its march inland, requiring deeper replacement wells as the volume of usable groundwater declines, and has not been solved in the 19 years since the certification of the 1997 BRP PEIR. In fact, since the certification of the 1997 BRP PEIR, seawater intrusion maps and tables demonstrate an advance of over 2 miles in the seawater intrusion front in the 180-foot aquifer in the Fort Ord area and substantial advances elsewhere in both the 180-foot and 400-foot aquifers have occurred.²⁹ As the UWMP discloses, as wells have become contaminated, it has been necessary to drill new wells farther inland and to increase pumping from the as-yet uncontaminated 900-foot aquifer.³⁰ And there are no currently committed, funded projects that are expected to solve the problem. As discussed below, the SEIR presents no evidence that pumping from the 900-foot aquifer will avoid aggravation of seawater intrusion, and

²⁸ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

²⁹ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, pp. 5-2 to 5-5.

³⁰ MCWD, 2010 UWMP, pp. 33-37.

there is clear evidence to the contrary. In light of this, the SEIR should disclose that increased pumping to support Phases 1-3 of the project would have a potentially significant impact or could make a considerable contribution to a significant cumulative impact on the groundwater aquifer from which the project would be supplied.

The most recent comprehensive study to the SVGB demonstrates that there is a direct connection between any additional groundwater pumping in the Pressure Subarea and increased seawater intrusion. The 2015 State of the Salinas Valley Groundwater Basin Report indicates that the Pressure Subarea remains in overdraft and that groundwater elevations are well below documented protective elevations.³¹ Thus, it concludes that the “P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that this situation will be reversed in the coming years, particularly if the drought conditions continue.”³² The report also states that “groundwater elevations well below the protective elevations indicate that the P-400 Aquifer continues to be susceptible to SWI, particularly if the current drought conditions continue into the coming years.”³³ The report recommends reducing existing pumping in the Pressure Subarea because “the current distribution of groundwater extractions is not sustainable.”³⁴ The report explain that over the period of analysis, from 1953 to 2013, there has been an average loss of storage for the entire SVGB of from 17,000 afy to 24,000 afy.³⁵ “Seawater intrusion can account for 18,000 afy of the total storage loss of 24,000 afy.”³⁶ In short, each additional acre-foot of pumping in the Pressure Subarea induces an additional 0.75 acre-foot of seawater intrusion.

D. The Monterey Downs SEIR analysis is based on the unfounded assumption that there would be no significant impact as long as supply is “reliable.”

As noted above, the other major premise of the SEIR’s conclusion that water supply impacts for Phases 1-3 would not be significant is that “MCWD’s groundwater supply is considered reliable on a quantity and quality basis.” (DSEIR p. 4.8-34.) Here, “reliability” as the term is used in the DSEIR, WSA, and UWMP, does not imply that there would be no significant groundwater impact from using the supply.

First, a UWMP and a WSA are required to address “reliability” of a water supply, by which the law simply requires analysis of whether water will be available during normal, single

³¹ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-7.

³² MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-7.

³³ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-8.

³⁴ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 6-3.

³⁵ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. ES-16.

³⁶ MCWRA, State of the Salinas Valley Groundwater Basin, 2015,, p. ES-16.

dry, and multiple dry years.³⁷ A groundwater water supply may be reliable, in the sense that water would remain available even during a multi-year drought, even though the use of that water causes significant impacts to the aquifer. For example, notwithstanding the ongoing seawater intrusion caused by continuing overdraft conditions, MCWD and other users have thus far been able to move pumping inland and to tap deeper aquifers to secure groundwater supplies. However, the ability to pump from an underground reservoir of stored groundwater that is large enough to smooth out climatic variation simply does not imply that this pumping is without impacts, such as groundwater depletion, mining and further aggravation of seawater intrusion.

Second, the WSA and 2010 UWMP cite the purported efficacy of the SVWP as the basis for claiming that the water supply is “reliable.” However, the claims these documents make for the SVWP are overstated, since the SVWP EIR did not indicate that seawater intrusion would be halted with any certainty by 2030, and these documents are now outdated since the MCWRA now has documented that the SVWP will not in fact prevent continuing seawater intrusion. As discussed in Attachment 1, the future demand assumptions made by the SVWP EIR and used for modeling the efficacy of the SVWP projected declining water usage in the SVGB, from 463,000 afy in 1995 to 443,000 afy in 2030. Reported pumping in the 20 years since 1995 has not declined but has in fact averaged 502,161 afy (and adjusted to include an estimate for non-reporting wells in these zones, the average is 529,024 afy). Thus, MCWRA reports document that the SVWP will not halt seawater intrusion. To halt seawater intrusion, the County must reduce coastal pumping by 48,000 afy, which would require securing additional surface water supplies to be used to replace that groundwater pumping in coastal areas.³⁸

Third, the WSA cites the fact that the 900-foot aquifer has not yet shown signs of seawater intrusion as evidence of a “reliable” supply.³⁹ The fact that MCWD has so far been able to relocate wells, deeper or farther inland, to find a water supply not yet subject to intrusion does not mean that increased pumping does not cause additional impacts. Furthermore, as discussed below neither the WSA nor the SEIR provide an adequate discussion of the potential impacts from increased pumping of the 900-foot Aquifer (the Deep Aquifer), which include impacts to the overlying 180-foot and 400-foot aquifers of the Pressure Subarea and impacts to the 900-foot aquifer itself. As discussed below, increased pumping of the 900-foot aquifer may induce increased seawater intrusion into the overlying 180-foot

³⁷ Water Code §§ 10631(c) (UWMP must assess reliability for average, single dry, and multiple dry years), 10910(c)(3) (WSA must discuss water availability during normal, single dry, and multiple dry water years); see MCWD, 2010 UWMP p. 53 (reliability discussion); MCWD, WSA, pp. 3, 22-23 (reliability discussion).

³⁸ MCWRA, Protective Elevations, pp.1, 11.

³⁹ MCWD, WSA, p. 23.

and 400-foot aquifers, will deplete the 900-foot aquifer itself, and it may in fact result ultimately in seawater intrusion into the 900-foot aquifer.

E. Increased pumping of the 900-foot aquifer will deplete the 900-foot aquifer, may induce additional seawater intrusion, and neither the DSEIR nor FSEIR provide an adequate discussion of this.

LandWatch's Comments PO 208-5 to 208-14 request information about the specific aquifers from which water will be pumped because (1) the DSEIR implies that water can be supplied safely from the 900-foot aquifer even if the 180-foot and 400-foot aquifers are contaminated by seawater, but (2) it also states that there is a hydraulic connection and recharge relation between the 180-foot, 400-foot, and 900-foot aquifers. LandWatch's comments reflect the concern that increased pumping from the 900-foot aquifer could further intrude the 180-foot and 400-foot aquifers and may also intrude the 900-foot aquifer itself. The FSEIR does not supply the requested information and improperly dismisses its relevance because it fails to acknowledge that increased pumping from the 900-foot (Deep) aquifer may induce increased seawater intrusion in the hydraulically connected upper aquifers and fails to discuss risks to the 900-foot aquifer.

1. The FSEIR fails to address LandWatch's comments and requests for information.

LandWatch asked how much is pumped from each of the 180-foot, 400-foot, and 900-foot aquifers under baseline conditions and how much will be pumped in the future. (Comment PO 208-5.) In response the FSEIR states that the DSEIR's analysis is "based on the adopted MCWD 2010 UWMP, and the details concerning aquifer operations do not affect the DSEIR's analyses." (FSEIR, p. 14-4-1022.) However, the UWMP does not provide the requested information regarding existing and projected pumping by aquifer. (Note that Table 4.8-1 in the DSEIR provides pumping capacity by well and by aquifer, but it does not provide baseline or projected pumping volumes. (DSEIR, p. 4.8-10.))

LandWatch asked that the SEIR identify studies cited by the DSEIR, in particular the "recent stratigraphic analyses" that "have indicated" a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers. (Comment PO 208-5.) The FSEIR repeated the DSEIR's claim and cited the MCWD 2010 UWMP (FSEIR, p. 11.4-1020), but it did not identify the recent stratigraphic analyses. The MCWD UWMP does not provide stratigraphic analysis. The UWMP does cite WRIME's 2003 "Deep Aquifer Investigative Study," which may possibly be one of the stratigraphic analyses referenced by the DSEIR, although this is unclear because it is not recent.⁴⁰ However, as discussed below, WRIME 2003 indicates that increased pumping of the 900-foot aquifer will not be without impacts.

LandWatch asked that the SEIR explain the DSEIR's claims that 1) evidence now shows a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers and 2) the 900-

⁴⁰ MCWD 2010 UWMP, p. 36.

foot aquifer is a series of aquifers not all of which are hydraulically connected. (PO 208-5.) LandWatch asked whether this implied that only portions of the 900-foot aquifer are connected to and recharged by the 180-foot and 400-foot aquifers. (PO 208-5.) LandWatch asked if there is in fact any recharge other than from the 180-foot and 400-foot aquifers. (PO 208-5.) However, the FSEIR simply repeated the DSEIR's discussion (FSEIR p. 11.4-1020) without addressing these questions.

LandWatch asked if the wells in the 900-foot aquifer that would support the project are in an area of that aquifer that is recharged by the 180-foot and 400-foot aquifers. (PO 208-6.) The FSEIR again simply repeated the DSEIR's claims that 1) evidence now shows a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers and 2) the 900-foot aquifer is a series of aquifers not all of which are hydraulically connected and then stated that "it would be speculative to state exactly which aquifer would supply the Project, since they are connected hydraulically." (FSEIR p. 11.4-1022.) As discussed below, a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers means that all pumping will continue to aggravate depletion of the upper aquifers and increase seawater intrusion, and where the deeper 900-foot aquifer is isolated it will cause significant depletion of the 900-foot deeper aquifer, which the SEIR fails to disclose.

The DSEIR's statement that portions of the 900-foot aquifer are not hydraulically connected to other portions of the 900-foot aquifer would allow for the possibility that those unconnected portions are also isolated from the 180-foot and 400-foot aquifers, which would be highly relevant to whether pumping those areas would affect seawater intrusion in the 180-foot and 400-foot aquifers. The FSEIR fails to address this possibility. However, as discussed below, even though there are two distinct aquifers of the Deep Aquifer system,⁴¹ increased pumping from the deeper of these two aquifers is not viable due to the lack of yield.⁴² Furthermore, evidence from WRIME's 2003 Deep Aquifer Investigative Study indicates that increased pumping from the upper Deep Aquifer will increase the ongoing depletion of the upper aquifers and has the associated potential to increase seawater intrusion.⁴³

LandWatch requested that the SEIR explain whether recharge to the 900-foot aquifer from the seawater-intruded 180-foot and 400-foot aquifers could contaminate the 900-foot aquifer, whether increased pumping in the 900-foot aquifer would increase this risk, and how much pumping from the 900-foot aquifer is sustainable. (PO 208-7 through 208-11.) The FSEIR states that "the 900-foot aquifer is not expected to be contaminated by saltwater through recharge from the 180-foot and 400-foot aquifer, as the MCWD wells are outside of the area currently affected by seawater intrusion." (FSEIR p. 11.4-1022 (emphasis added).)

⁴¹ WRIME, Deep Aquifer Investigative Study, 2003, p. 5-1.

⁴² WRIME, Deep Aquifer Investigative Study, 2003, p. 4-7.

⁴³ WRIME, Deep Aquifer Investigative Study, 2003, pp. 5-1 to 5-2.

The response misses the point that there is a significant potential for future contamination of the 900-foot aquifer as seawater intrusion advances to the areas where there is vertical connectivity between all of the aquifers. The response simply fails to make any assessment of this potential as requested by comments. As discussed above and in the attachment, current studies confirm that the seawater intrusion front does in fact continue to advance due to groundwater pumping in excess of recharge. As discussed immediately below, studies confirm that there is vertical connectivity between the 180-, 400-, and 900-foot aquifers. That connectivity, and the induced leakage from the upper aquifers as the Deep Aquifer system is pumped, provides a preferential pathway for seawater intrusion into the Deep Aquifer system.

The FSEIR's responses also miss the point that increased pumping from the 900-foot aquifer further contributes to the existing intrusion of the 180-foot and 400-foot aquifers. The UWMP cites WRIME's 2003 "Deep Aquifer Investigative Study" as evidence that pumping from the Deep Aquifer will in fact induce increased seawater intrusion to the upper aquifers due to vertical connectivity between the three aquifers.⁴⁴ However, neither the WSA nor the SEIR, which cite other portions of the UWMP, report this conclusion from the UWMP.

2. Increased pumping from the Deep Aquifer system will deplete the 900-foot aquifer and may induce additional seawater intrusion.

Analysis in WRIME 2003 supports the conclusion that increased pumping from the 900-foot aquifer would induce additional intrusion into the 180-foot and 400-foot aquifers:

The response curves indicate that additional increases in the deep aquifer groundwater pumping in the coastal areas may induce additional reduction in the groundwater heads, and subsequently additional landward subsurface flows from across the coastline.⁴⁵

Modeling in WRIME 2003 indicates that increasing pumping of the deep aquifer by 1,400 afy over the 2,400 afy baseline 2003 pumping level would lower groundwater levels in the 180-foot, 400-foot, and Deep Aquifers, would induce vertical flows from the upper to the lower aquifers, and would induce substantial coastal groundwater flow, i.e., seawater intrusion.⁴⁶ In short, increased pumping from the Deep Aquifer systems appears likely to induce seawater intrusion in the upper aquifers (the 180-foot and 400-foot aquifers) even if

⁴⁴ MCWD, 2010 UWMP, p. 36.

⁴⁵ WRIME, Deep Aquifer Investigative Study, 2003, p. 5-2, attached.

⁴⁶ WRIME, Deep Aquifer Investigative Study, 2003, pp. 4-11 to 4-12.

the Deep Aquifers are not yet intruded. The SEIR fails to discuss or disclose this, even in response to LandWatch's questions.

WRIME 2003 provides further evidence that there are two distinct 900-foot aquifers. In particular, it concludes that the uppermost deep aquifer is in the Paso Robles Formation and the lowermost is in the Purisima Formation and that the "Purisima Formation is relatively isolated hydraulically from the overlying Paso Robles Formation near the coast."⁴⁷ However, the lack of hydraulic connection between the two distinct aquifers of the Deep Aquifer system does not matter with respect analysis of induced seawater intrusion. This is because WRIME 2003 concludes that recharge to both the Paso Robles and Purisima portions of the deep aquifer come from the overlying aquifers: "[t]he areal distribution and stratigraphic location of the Paso Robles and Purisima Formations limit recharge to leakage from overlying aquifers," i.e., the 180-foot and 400-foot aquifers.⁴⁸ Furthermore, as noted, increased pumping from the lower Deep Aquifer is not viable due to lack of potential yield.⁴⁹

WRIME 2003 concludes that there was an equilibrium between pumping from the 900-foot aquifer and its recharge from the overlying aquifers back in 2003.⁵⁰ It also concludes that "the volume of groundwater in storage in the lower aquifers is small" and that "[i]ncreased production would likely come from increased leakage."⁵¹ Thus, it concludes that increases in pumping of the 900-foot aquifer may induce additional intrusion in the upper aquifers.⁵² Only a small portion of coastal pumping came from the Deep Aquifer in 2003. The SVWP EIR reports that 90% of groundwater pumping north of Salinas came from the 400-foot aquifer and only 5% from deep aquifer as of 2003.⁵³ Thus, the shift from the 400-foot to the 900-foot aquifer to support increased pumping for the Ord Community since 2003 will likely upset that equilibrium noted by WRIME and will have a potentially substantial effect on the 900-foot and overlying aquifers, either by depleting the 900-foot aquifer, by increasing the induced seawater intrusion in the upper aquifers, or both.

⁴⁷ WRIME 2003, pp. 5-1 to 5-2.

⁴⁸ WRIME 2003, p. 5-1.

⁴⁹ WRIME, Deep Aquifer Investigative Study, 2003, p. 4-7.

⁵⁰ WRIME 2003, p. 5-1.

⁵¹ WRIME 2003, p. 5-1.

⁵² WRIME 2003, p. 5-2.

⁵³ SVWP DEIR, pp. 5.3-1 to 5.3-3.

In sum, the implications from WRIME 2003 are, first, that pumping from the 900-foot aquifer may continue to induce seawater intrusion to the aquifers above it because those aquifers will be induced to leak downward to provide recharge.⁵⁴

Second, if increased leakage from the upper aquifers were less than the increased pumping rate, the 2003 equilibrium between recharge and pumping would be upset and the 900-foot aquifer would be depleted because the only source of recharge is the overlying aquifers and the "volume of groundwater in storage in the lower aquifers is small."⁵⁵ Thus, increased pumping of the 900-foot aquifer must either deplete the 900-foot aquifer via mining or induce seawater intrusion in the upper aquifers by increasing their leakage, neither of which are acknowledged by the SEIR.

Third, if and when the seawater intrusion front of the 180-foot and 400-foot aquifers moves inland over the areas of vertical connectivity between the 180-foot, 400-foot, and 900-foot aquifers, increased pumping of the 900-foot aquifer may result in its recharge with saline contaminated water from the 180-foot and 400-foot aquifers. Interaquifer flow from a contaminated upper aquifer to a lower aquifer as a source of salinity contamination of the lower aquifer has already been documented between the 180-foot and 400-foot aquifers in the Fort Ord area due to thin or missing aquitard, direct hydraulic connection, or wells that act as conduits between aquifers.⁵⁶ The agricultural wells that also tap the Deep Aquifer system⁵⁷ typically have long screened intervals to maximize production; and this cross connection of multiple aquifers increases the potential for downward vertical migration of contamination.⁵⁸ Interaquifer flow from well bores is common. For example, in the Santa Clara Valley, USGS estimated that the majority of recharge to deeper zone aquifers was from well bores.

There is already possible evidence of potential seawater intrusion into the Deep Aquifer system provided in the State of the Salinas River Groundwater Basin Report. Two Deep Aquifer hydrographs in the Pressure Subarea show increasing Chloride indices; one of which more than doubled between 1980 and 2013; the other showed an increasing trend

⁵⁴ WRIME 2003, p. 5-1 ("increased production would likely come from increased leakage").

⁵⁵ WRIME 2003, p. 5-1.

⁵⁶ MCWRA, State of the Salinas River Groundwater Basin, p. 5-8.

⁵⁷ MCWD, 2015 draft UWMP, p. 38, available at http://www.mcwd.org/docs/agenda_minutes/2016-06-06_board/Item%2011-A%20-%20MCWD%20Draft%202015%20UWMP%20v20160520.pdf.

⁵⁸ Hanson, et al., Comparison of groundwater flow in Southern California coastal aquifers, Geological Society of America, Special Paper 454, 2009, pp. 6-7, 11, 13, 14, 19, 26, available at https://www.researchgate.net/publication/279335540_Comparison_of_groundwater_flow_in_Southern_California_coastal_aquifers.

until sampling stopped in about 2000.⁵⁹ The Report does not address this trend in Chloride concentration in the Deep Aquifer in the narrative. However it does note that the groundwater levels "exhibit an overall steady decline since approximately 2003."⁶⁰ The Report states that of 580 measurement points used in the study, only 12 are screened with the Deep Aquifer in the Pressure Subarea,⁶¹ underscoring the dearth of groundwater level and groundwater quality data available for the Deep Aquifer in the Pressure Subarea, and associated higher uncertainty for predicting the potential for significant impacts from the pumping deeper in the basin.

Finally, the SEIR also fails to disclose and discuss the fact that the 900-foot aquifer itself may be open to Monterey Bay, providing a direct route for seawater intrusion to that aquifer without mediation by the upper aquifers. The BRP PEIR states that "there is no evidence that the Deep Zone is not connected to the ocean." (BRP PEIR, p. 4-57.) The recent State of the Basin report also states that "[u]nlike the P-180 and P-400 Aquifers, it is not known whether the or not the Pressure Deep Aquifer is hydraulically connected to the ocean."⁶² If it is connected, there is an additional path to intrusion into the 900-foot aquifer that could be induced by increased pumping.

F. The Monterey Downs SEIR fails to provide an adequate cumulative analysis because the relevant scope of cumulative analysis is the hydraulically connected SVGB, not merely the BRP area, and because there is no basis to deem an additional 250 afy of pumping to be less than a considerable contribution to a significant cumulative impact merely because it represents a small percentage of total SVGB pumping.

LandWatch objected that the DSEIR limits the geographic scope of the cumulative analysis of groundwater supply impacts to Fort Ord projects. (DEIR 4.8-47, 4.19-30 to 4.19-32.) Thus, the DSEIR does not provide baseline or projected future demand for the Pressure Subarea or the SVGB as a whole, or identify either the projects that would contribute to the cumulative impacts or a summary of projections of the water demand of those projects. As discussed, it is well understood that, while coastal pumping has the greatest effect, seawater intrusion is a result of cumulative overpumping from all areas of the SVGB, because these areas are hydraulically connected.⁶³ The fact that actual current baseline pumping for the SVGB as a whole is well in excess of the pumping assumed in the SVWP EIR, and that this pumping is projected to substantially exceed the level assumed by the SVWP EIR, is highly

⁵⁹ MCWRA, State of the Salinas River Groundwater Basin, Figure 3-8.

⁶⁰ MCWRA, State of the Salinas River Groundwater Basin, p. 3-16.

⁶¹ MCWRA, State of the Salinas River Groundwater Basin, p. 3-16.

⁶² MCWRA, State of the Salinas River Groundwater Basin, p. 6-4.

⁶³ MCWRA, SVWP Final EIR, p. 2-35 to 2-36.

relevant to the analysis of the extent of cumulative impacts in the form of seawater intrusion.

As LandWatch pointed out, the BRP PEIR did assess cumulative impacts of Fort Ord groundwater pumping in the regional context of total demands on the SVGB and, indeed, concluded that the cumulative impact of the BRP was significant and unavoidable. (BRP PEIR p. 5-5.) The Monterey Downs SEIR does not report this analysis or conclusion.

The FSEIR acknowledges that the geographic scope of the SEIR's cumulative analysis does not coincide with the geography in the BRP PEIRs' cumulative impact analysis because it is limited to the BRP area, unlike the BRP PEIR's regional analysis. (FSEIR p. 11.4-1024.) The FSEIR argues that the DSEIR has simply made the choice to rely on a summary of projections and has chosen the summary of projections of the BRP area's future water demand, which does not include demand outside of the Ord Community. (FSEIR p. 11.4-1024.) However, the fact that CEQA may permit an agency to use a summary of projections to identify relevant cumulative impact sources cannot justify the arbitrary choice of a summary of projections for a geographic area that is too limited to support a meaningful cumulative analysis.

Although the DSEIR lacks any SVGB baseline data, the FSEIR provides a belated estimate of total current pumping in the SVGB. (FSEIR p. 11.4-1023 to 1024.) However, the FSEIR does not use this baseline data in any way, e.g., by relating it to an analysis of groundwater impacts or to the modeling for the Salinas Valley Water Project that was uncritically cited by the 2010 MCWD UWMP and the Diamond West WSA Supplement.⁶⁴ Nor do the FSEIR or DSEIR provide any assessment of future total pumping in the SVGB, despite LandWatch's objection that this data is needed for an adequate analysis.

Instead, the FSEIR argues that the DSEIR relied on the MCWD 2010 UWMP analysis of seawater intrusion, and that its "impact analysis is based on the 2010 UWMP, which encompasses the MCWD service area." (FSEIR pp. 11.4-1023, 11.4-1025.) The FSEIR then recites a section of the UWMP that relies on the future efficacy of the Salinas Valley Water Project to control seawater intrusion and maintain groundwater elevations, including the out-of-date and incorrect claim that the SVWP will result in a 6,000 afy surplus in the SVGB. (FSEIR p. 11.4-1025, quoting MCWD 2010 UWMP, p. 53.) The FSEIR's response fails to provide the requested information regarding existing and future groundwater pumping in the SVGB and fails to relate that information to a sustainable level of pumping that does not cause depletion or seawater intrusion. The response also fails to explain why limiting the scope of the cumulative analysis to the BRP area is justified in light of the hydraulic connection of the SVGB as a whole to the BRP area.

Most significantly, the FSEIR's responses fail to disclose the fact that there is an existing significant cumulative impact that is not projected to be mitigated by existing groundwater

⁶⁴ See MCWD, 2010 UWMP, pp. 31, 41; Diamond West, WSA Supplement, 2014, p. 13.

management projects and that any additional pumping, including the pumping of the unallocated portion of the 6,600 afy entitlement, will aggravate this condition.

The FSEIR claims that its response to LandWatch's comment PO 208-5 explains why the geographic scope of the cumulative analysis is limited to the BRP area. (FSEIR pp. 11.4-1020, response to PO 208-4, and p. 11.4-1023, response to PO 208-15.) The response to PO 208-5 does not justify the limitation of the geographic scope to the Fort Ord area. That response purports to address LandWatch's objections that the DSEIR inadequately identifies and characterizes the pumping source aquifer(s) within Fort Ord, fails to identify other wells and cumulative pumping in the 900-foot aquifer, and fails to discuss recharge, saline contamination and sustained yield of the 900-foot aquifer. (FSEIR, pp. 11.4-1020 to 11.4-1022.) To the extent that the response addresses the SRGB outside the Fort Ord area at all, it is only to repeat the DSEIR's claims that its analysis is based on the UWMP and that the UWMP discusses seawater intrusion in the SVGB. Like the DSEIR, the FSEIR does not actually report or evaluate the 2010 UWMP's conclusions about the SVGB or address the post-2010 information indicating that seawater intrusion is not under control.

The FSEIR argues that agricultural water use consumes the majority of SVGB water and that the MCWD pumping is only 1% of total SVGB pumping. (FSEIR p. 11.4-1024.) This argument fails to recognize that coastal pumping like MCWD's particularly aggravates seawater intrusion, that this coastal pumping must be reduced and replaced now to halt seawater intrusion.⁶⁵ It also fails to recognize that it is simply irrelevant how the pumped groundwater is used:

... the ability to halt seawater intrusion, now and in the future, is not based on whether it is delivered to agricultural uses or urban uses. Both of these uses draw the same water from the same groundwater basin. Reducing withdrawal of groundwater in the northern Salinas Valley, whether through replacement of agricultural or urban pumping, has the same effect.⁶⁶

If the implication of the FSEIR's claim that MCWD pumping amounts to only 1% of total SVGB pumping is that this pumping, or the increased pumping for the Monterey Downs project, does not constitute a considerable contribution to seawater intrusion, neither the FSEIR nor the DSEIR actually state this as the basis of the cumulative impact analysis. However, if the claim were made, it would not be accurate. CEQA does not permit an agency simply to dismiss a project's impact as less than a considerable contribution because it is relatively small. The potential significance must be evaluated in the context of the severity of the cumulative impact, which the SEIR fails to do.

⁶⁵ MCWRA, SVWP DEIR, p. 3-23; MCWRA, Protective Elevations, pp. 1, 11.

⁶⁶ MCWRA, SVWP DEIR, p. 7-8.

Here, the magnitude of the annual storage change in the Pressure Subarea that has caused seawater intrusion is from about -200 afy to about -1,600 afy over the period from 1944 to 2013.⁶⁷ From 1959 to 2013, the average change in storage was from -50 afy to -500 afy.⁶⁸ The estimated safe or sustainable yield for the Pressure Subarea, i.e., the level of pumping that could be sustained without seawater intrusion, is from 110,000 to 117,000 afy, but groundwater pumping exceeds this yield by about 12,000 to 19,000 afy.⁶⁹ The significance of the proposed increase in pumping to support Phases 1-3 of the project, which would be at least 250.6 afy, and which may come to 396.3 afy if the currently unavailable recycled water does not materialize (DSEIR, p. 4.19-23), should be assessed in relation to these figures, not in relation to the entire 500,000+ afy pumping from the SVGB, because seawater intrusion is caused by marginal effects, i.e., storage changes (aquifer depletion) and pumping in excess of sustainable yield, not by total pumping. The SEIR does not provide this comparison. In view of the recognition that coastal pumping must be reduced to address seawater intrusion,⁷⁰ there is no longer any cushion for increased pumping and any additional pumping at the margin should be deemed a considerable contribution.

⁶⁷ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-12 (average storage change, depending on the storage coefficient value).

⁶⁸ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-25.

⁶⁹ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-25.

⁷⁰ MCWRA, Protective Elevations, pp. 1, 11; MCWRA, State of the Salinas Valley Groundwater Basin, p. 6-3.

Attachment 1 – Modeling assumptions and outcomes for the SVWP; MCWRA’s acknowledgment that the SVWP will not halt seawater intrusion

1. The SVWP EIR did not project that the SVWP would halt long-term seawater intrusion.

MCWRA prepared and certified an EIR for the SVWP in 2001 and 2002. (MCWRA, SVWP EIR, 2002.) Based on specific assumptions about future demand and safe yield (discussed below), the SVWP EIR projected that the proposed SVWP “would reverse the annual reduction in groundwater storage to an approximately 2,500 AFY increase in groundwater storage.” (SVWP FEIR 3-30.) Thus, it projected that seawater intrusion could be halted. However, the SVWP EIR qualified this conclusion in two critical respects.

First, the SVWP EIR cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.” (SVWP EIR, p. 7-7.) So the conclusion was tied to specific assumptions regarding water use. As discussed below, future water use is projected to exceed the levels projected in the SVWP EIR. Indeed, MCWRA’s Rob Johnson acknowledged to the Monterey County Planning Commission that the SVWP EIR demand projections were not accurate and that pumping was more than projected. (Transcript of Monterey County Planning Commission, Oct. 29, 2014, p. AR005187; available in video file at http://monterey.granicus.com/MediaPlayer.php?view_id=14&clip_id=2745.)

Second, the SVWP EIR acknowledged that the proposed project would only halt seawater intrusion based on 1995 levels of demand:

While the SVIGSM indicates that seawater intrusion will be halted by the project (in conjunction with the CSIP deliveries) based on current (1995) demands, with a projected increase in water demands (primarily associated with urban development) in the north valley area in the future, seawater intrusion may not be fully halted based on year 2030 projections. For the year 2030, modeling indicates seawater intrusion may be 2,200 AFY with surface water deliveries only to the CSIP area. (SVWP DEIR, p. 3-23.)

The Department of the Interior pointed out that the SVWP EIR contradicts itself in stating that “the proposed action would halt seawater intrusion” and also that “hydrologic modeling shows that the project may not halt seawater intrusion in the long-term future” and asked for clarification. (SVWP FEIR, p. 2-82, comment 2-12.) In response, the SVWP FEIR again acknowledged that its modeling only showed that the SVWP would “halt seawater intrusion in the near term” based on 1995 water demand. (SVWP FEIR, p. 2-91.) However, with anticipated 2030 demand, that modeling showed that “seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term.” (SVWP FEIR, p. 2-91.) The 2010 Monterey County General Plan EIR itself acknowledges

that the SVWP may only halt seawater intrusion in the short term. (2010 General Plan EIR, p. 4.3-38.)

Questioned about this at the October 29, 2014 Monterey County Planning Commission hearing, MCWRA’s Rob Johnson acknowledged that the SVWP would only halt seawater intrusion based on 1995 land use. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014, p. AR005188.) As discussed below, Mr. Johnson also acknowledged that groundwater pumping is higher than anticipated by the SVWP EIR and that an additional 58,000 af/y of groundwater, beyond that provided by the current suite of water supply projects, is still needed to halt seawater intrusion. (*Id.*, pp. AR005178-005179, 005189-005190.)

2. As MCWRA acknowledges, groundwater pumping has exceeded the level assumed in the SVWP EIR, and this vitiates its analysis, which was expressly based on the assumption that groundwater pumping would decline over time.

MCWRA reports show that pumping is much higher than predicted by the SVWP EIR. To determine the extent of overdrafting and seawater intrusion, the SVWP EIR relied on modeling provided by the Salinas Valley Integrated Ground and Surface Water Model (“SVGISM”), which in turn was based on assumptions regarding land use, population, and water use. (SVWP EIR, pp. 5-1 (identifying baseline and future conditions), 5.3-10 to 5.3-11 (overview of SVGISM), 7-4 to 7-5 (detailing major assumptions used in the SVGISM regarding population and irrigated acreage).)

As set out in the table below, the SVWP EIR reported its assumptions and modeling results for two scenarios: 1995 baseline conditions and 2030 future conditions:

SVWP EIR: population and land use assumptions with baseline and projected water use	1995	2030
Population	188,949 persons	355,829 persons
Urban water pumping	45,000 afy	85,000 afy
Farmland	196,357 acres	194,508 acres
Agricultural water pumping	418,000 afy	358,000 afy

Source: SVWP EIR, pp. 1-7 (Table 1-2, “Estimated Existing and Future Water Conditions”); pp. 5-1, 6-3, 7-3, 7-10 (identifying baseline and future conditions).

The SVWP EIR assumed that agricultural water use would decline by 60,000 afy from 1995 to 2030 due to a 5% increase in water conservation, changes in crop uses, and a 1,849 acre

decrease in irrigated agricultural acreage. (SVWP EIR pp. 1-7, 7-5, 7-10.) The SVWP EIR assumed that urban water use would increase by 40,000 afy between 1995 and 2030 based on population growth and an assumed 5% per capita reduction in water demand due to conservation. (SVWP EIR, pp. 1-7, 7-5.)

In sum, the SVWP EIR assumed that groundwater pumping in Zone 2C would decline 20,000 afy over a 35 year period, from a total of 463,000 afy in 1995 to 443,000 afy in 2030.

In fact, in the first 20 years since 1995 pumping has greatly exceeded the SVWP EIR projection. Reported groundwater pumping in Zones 2, 2A, and 2B has averaged 502,161 afy. Adjusted to include an estimate for non-reporting wells in these zones, the average is 529,024. These data are based on the annual Ground Water Summary Reports published by MCWRA in 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php. The data are summarized in the table below.

Year	Ag	Urban	Total	Percent of wells not reporting	Total divided by percent of wells reporting to adjust for non-reporting wells
1995	462,268	41,884	504,512	2%	514,808
1996	520,804	42,634	563,438	4%	586,915
1997	551,900	46,238	598,139	7%	643,160
1998	399,521	41,527	441,048	7%	474,245
1999	464,008	40,559	504,567	9%	554,469
2000	442,061	42,293	484,354	11%	544,218
2001	403,583	37,693	441,276	18%	538,141
2002	473,246	46,956	520,202	7%	559,357
2003	450,864	50,472	501,336	3%	516,841
2004	471,052	53,062	524,114	3%	540,324
2005	443,567	50,479	494,046	2%	504,129
2006	421,634	49,606	471,240	4%	490,875
2007	475,155	50,440	525,595	3%	541,851
2008	477,124	50,047	527,171	3%	543,475
2009	465,707	45,517	511,224	3%	527,035

2010	416,421	44,022	460,443	3%	474,684
2011	404,110	44,474	448,584	3%	462,458
2012	446,620	42,621	489,241	3%	504,372
2013	462,873	45,332	508,205	3%	523,923
2014	480,160	44,327	524,487	2%	535,191
20 year average			502,161 afy		529,024 afy

Source: Ground Water Summary Reports published by MCWRA, 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php.

The reported pumping data does not include any pumping from the portion of Zone 2C that is located outside of Zones 2, 2A, and 2B. (See Monterey County 2010 General Plan FEIR, pp. S-13, S-127.) The County estimated that this pumping amounted to at least 4,574 afy in 2005. (Monterey County 2010 General Plan FEIR, p. S-136.) Adding this to the adjusted average pumping total for Zones 2, 2A, and 2B, average pumping has been 533,598. This is 70,598 afy higher than the SVWP EIR's 1995 baseline and 90,598 afy higher than its projected 2030 demand.

As noted, the SVWP EIR analysis was based on specific assumptions about future water demand, and it cautioned that "any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion." (SVWP DEIR, p. 7-7.)

In sum, for more than half of the planning period covered by the SVWP EIR's 1995-2030 projections, groundwater pumping has greatly exceeded its assumed demand levels. The amount by which actual demand exceeds assumed demand is two to three times greater than the amount of water that the SVWP was expected to provide.⁷¹

MCWRA's Rob Johnson acknowledged that actual demand has exceeded the SVWP EIR's projections. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014,

⁷¹ The SVWP was intended retain up to an additional 30,000 afy of water in dams and then provide about 9,700 afy of that water to the Castroville Seawater Intrusion Project ("CSIP") to replace groundwater pumping, about 10,000 afy to increase basin recharge, and another 10,000 afy for instream flow augmentation. Monterey County 2010 General Plan DEIR, pp. 4.3-36 to 4.3-38; Monterey County 2010 General Plan FEIR 2-68 to 2-71. The Monterey County General Plan DEIR, FEIR Supplemental materials, and FEIR are available at <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/draft-environmental-impact-report-deir>, <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/supplemental-material-to-final-environmental>, <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/final-environmental-impact-report-feir>.

p. AR005187.) Mr. Johnson acknowledged that additional water supply projects delivering at least 58,000 afy will be required to halt seawater intrusion. (*Id.* pp. AR005178-005179, 005189-005190)

The growth in pumping is associated with increases in agricultural land use. As noted, the SVWP EIR assumed that irrigated agricultural acreage would decrease from 196,357 acres in 1995 to 194,508 acres in 2030. (SVWP EIR, p. 7-10.) However, agricultural acreage has actually increased since 1995.

- The SVWP Engineers Report reports that there were 212,003 acres of irrigated farmland in Zone 2C as of 2003. (SVWP Engineers Report, pp. 3-10, 3-15 (Tables 3-5 and 3-9 providing acreage totals for "Irrigated Agriculture"), available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/salinas_valley_water_project_1.php.) This is substantially more irrigated acreage than the 196,357 acres that the SVWP EIR reported for 1995. (SVWP EIR, p. 7-10.) The SVWP Engineers Report data were based on "parcel information, including land use, acreage, zone and other data" developed by MCWRA. (Engineers Report, p. 3-10.)
- The 2010 Monterey County General Plan EIR reported Department of Conservation farmland mapping data showing an increase of 8,209 acres of habitat converted to new farmland from 1996-2006 but only 2,837 acres of existing agricultural land lost to urban use. Monterey County 2010 General Plan DEIR, pp. 4.9-46 and 4.2-7 (showing farmland gains and losses 1996-2006 based on FMMP data). This represents a net gain of farmland of 5,372 acres, and does not account for additional water demands from multiple crops (2-4) per acre per season.

Furthermore, there is every reason to believe that the increase in irrigated acreage will continue and that the decrease in irrigated agricultural land between 1995 and 2030 projected in the SVWP EIR will not occur. Based on the past data related to conversion of habitat to farmland, the 2010 Monterey County General Plan DEIR projected that future agricultural acreage would increase from 2008 to 2030, and the General Plan FEIR admitted that the large future net increase in farmland would create additional water demand not anticipated by the SVWP EIR: 17,537 afy of water. (Monterey County 2010 General Plan DEIR, p. 4.9-64 (Table 4.9-8); Monterey County 2010 General Plan FEIR, pp. 2-38, 4-129 (revised table 4.9-8), S-19 to S-20, S-137 to S-138 (revised Table 4.3-9(c), note 7)).

3. MCWRA also acknowledges that the existing SVWP will not halt seawater intrusion and that additional water supply projects are required.

The MCWRA has acknowledged that the SVWP will not in fact be sufficient to halt seawater intrusion. In testimony to the Monterey County Planning Commission, MCWRA's Rob Johnson stated that the SVWP is not the final water project needed to halt seawater intrusion and that it will in fact be necessary to find additional water supplies totaling at least 58,000 afy to achieve this. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014, AR005164, 005178-005179, 005189-005190) The 58,000 afy figure

is based on modeling performed by MCWRA in connection with its efforts to secure surface water rights on the Salinas River in order to mitigate seawater intrusion.

The MCWRA now seeks, under a settlement agreement with the State Water Resources Control Board, to perfect surface water rights to 135,000 afy of Salinas River water in order to construct an additional Salinas Valley water project to attempt to halt seawater intrusion. (See MCWRA, Salinas Valley Water Project Phase II, Overview, Background, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.) MCWRA seeks to retain the right to the surface water entitlement by asserting the need for another project to halt seawater intrusion. Modeling undertaken for the MCWRA in 2013, establishes that an additional 135,000 afy of surface water flows will be needed in order to supply the additional 60,000 afy of groundwater that is now projected to be required to maintain groundwater elevations and a protective gradient to prevent further seawater intrusion. (Geoscience, Protective Elevations to Control Seawater Intrusion, Nov. 13, 2013, p. 11, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php (link to "Technical Memorandum.")) The MCWRA has not yet conducted environmental review for a new project to supply the needed water. (See MCWRA, Salinas Valley Water Project Phase II, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.) There is no assured funding source for it.

Although the MCWRA website refers to the currently proposed new project as "SVWP Phase II," it is not the same project that was identified as a potential second phase of the SVWP in the 2001/2002 SVWP EIR. The second phase of the SVWP envisioned in the 2001/2002 SVWP EIR would have consisted of only an additional 8,600 afy of Salinas river diversion, increased use of recycled water, supplemental pumping in the CSIP area, and a pipeline and delivery to an area adjacent to the CSIP area. (SVWP EIR, p. 3-23 to 3-24.) The currently proposed project is much larger in scope and would include different and more extensive infrastructure: it would divert an additional 135,000 afy at two new diversion facilities and would deliver that water through injection wells, percolation ponds, direct supply of raw water, or a treatment system. (MCWRA, SVWP Phase II website, Project Description, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php)

To my knowledge, neither the SVWP Phase II project identified at the conceptual level in the 2001/2002 SVWP EIR nor the newly proposed SVWP Phase II has been planned at any level of significant detail or environmentally reviewed. The SVWP EIR and the Monterey County 2010 General Plan EIR both acknowledge that impacts related to the initially conceived second phase project have not been evaluated, and the Monterey County 2010 General Plan EIR treated these impacts as significant and unavoidable because they remain largely unknown. (SVWP FEIR, pp. 2-92, 2-243; Monterey County 2010 General Plan, p. 4.3-146.)

The phase two project now being discussed has not had any environmental review, but it would likely result in significant potential environmental impacts, based on MCWRA's determination that an EIR is required. (MCWRA Notice of Preparation of EIR, Salinas Valley Water Project Phase II, June 2014, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.)

Finally, the 2015 MCWRA State of the Salinas Valley Groundwater Basin report establishes that the SVGB as a whole and the Pressure Subarea are both being pumped unsustainably in excess of safe yield.⁷² This overdraft condition has caused, is causing, and will continue to cause seawater intrusion, particularly in the 180-foot and 400-foot aquifers of the Pressure Subarea.⁷³

In sum, the water supply provided by the SVWP is well documented to be insufficient to prevent cumulative groundwater pumping from further aggravating seawater intrusion. Major additional water supply projects with currently unknown potential environmental impacts will be required to address this significant cumulative impact.



⁷² MCWRA, State of the Salinas River Groundwater Basin, pp. 4-25 to 4-26.

⁷³ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-1 to 5-8, 6-1 to 6-4.

RESUME

Timothy K. Parker, PG, CEG, CHG
Principal

WORK EXPERIENCE

2009 – Present: Parker Groundwater, President/Principal. Sacramento, California. Privately owned business, specializing in strategic groundwater planning, groundwater monitoring, groundwater modeling, groundwater recharge and aquifer storage recovery projects, program implementation, stakeholder facilitation, groundwater monitoring, policy and regulatory analysis, environmental document review and litigation support. Provides strategic planning, policy consulting and groundwater technical expertise to public and private sector clients to develop effective, sustainable solutions to complex problems in the water and evolving environmental and energy industries.

2005 – 2009: Schlumberger Water Services, Principal Hydrogeologist. Sacramento, California. Provided hydrogeologic expertise and project management on groundwater recharge and aquifer storage recovery projects, groundwater monitoring, groundwater resources management, and groundwater contaminant projects for public and private sector clientele. Application of advanced oilfield tools and technologies to groundwater projects. Integration of groundwater quality monitoring and protection on CO2 sequestration projects; liaison to Schlumberger Carbon Services, including planning, scope development, technical implementation, facilitation, and oversight. **Business Development** activities included strategic planning, prospect assessments, sales presentations, targeted workshops, client development and exploitation. Mentored and provided direction to staff; developed, tracked and controlled projects; worked closely with clients and other public and private organizations to implement projects on schedule, on budget with high level of quality.

2001 – 2005: California Department of Water Resources, Division of Planning and Local Assistance, Conjunctive Water Management Branch, Senior Engineering Geologist. Provided local technical and economic assistance to Sacramento and San Joaquin Valley groundwater authorities and water districts planning, developing, and implementing conjunctive water projects, groundwater recharge and aquifer storage recovery projects, and local and regional groundwater monitoring programs. Elements include developing technical scope, implementing work, providing geologic and groundwater technical expertise, attending and speaking at public meetings. **Central District, Groundwater Planning Section**, Sacramento, California (early 2001 prior to joining CWMB). **Senior Engineering Geologist, Groundwater Planning Section**. Elements included: Integrated Storage Investigations Program conjunctive use project technical support, coordination, and project management; technical support

on local groundwater monitoring and subsidence programs; technical support on Bulletin 118; Proposition 13 groundwater grant applications screening and ranking process for Central District geographic area. Supervised and provided direction to staff; developed, tracked and controlled program budgets; worked closely with other DWR groups, agencies and outside organizations to develop additional local assistance opportunities for DWR.

2000-2001: California Department of Conservation, Division of Mines and Geology, Sacramento, California. **Associate Engineering Geologist**. Responsible for: multi-year aerial photograph review, identification of landslides and potentially unstable areas, field reconnaissance and confirmation, preparation of maps and images using MapInfo, Vertical Mapper, ArcView, Spatial Analyst, Model Builder, and ArcInfo working closely with GIS specialists; assisting in development of GIS methodologies and database for Northern California watersheds assessment/restoration project; review of timber harvest plans and pre-harvest inspections; review of regional CEQA documents as related to engineering geologic issues; watershed assessment; technical presentations at multi-agency meetings and landslide/mass wasting public workshops.

1997-2000: CalEPA Department of Toxic Substances Control, Stringfellow Branch, Sacramento, California. **Hazardous Substances Engineering Geologist**. Responsible for: groundwater monitoring and analysis; developing approach and preparing a work plan for a Stringfellow site revised hydrogeologic conceptual model; researching, providing, and maintaining a comprehensive environmental data management system; assembling and contracting with an expert panel for consultation on the site; evaluating an existing MODFLOW porous media groundwater flow model; providing direction on the strategy and approach for the development of a revised groundwater flow and fate & transport model for the Stringfellow site; providing input on an as needed basis in support of the litigation and community relations elements of the project.

1993 - 1997: Law Engineering & Environmental Services, Inc., Sacramento, California. **Manager Project Management**. Responsible for supervising and providing direction to senior project managers; maintaining appropriate tracking system and controls for assurance of successful execution of scope, schedule and budget of major projects; maintaining quality assurance and controls on projects. Responsibilities included development/implementation of group budget spending plan, establishing performance standards and evaluating program progress and quality, staff recruiting, mentoring, maintaining utilization, business development, proposal preparation, commercial and government project marketing, client maintenance. **Project Manager and Senior Hydrogeologist** on hydrogeologic evaluations, site and regional groundwater quality monitoring programs, hazardous substance site investigations and remediation. Responsibilities included technical direction of projects, project scoping, schedule, budget, supervision of field activities, preparation of documents, developing cost-effective strategies for follow-on

investigations and removal actions, and negotiating with state regulators on three Beale Air Force projects totaling more than \$15 million.

1988 - 1993: Dames & Moore, Sacramento and Los Angeles, California. **Senior Geologist**. Provided hydrogeologic technical support, project management, regulatory compliance, technical/regulatory strategy, and on a variety of commercial and industrial DTSC- and RWQCB-lead hazardous substance sites. Responsibilities included project technical direction, scope implementation, budgetary control, groundwater quality monitoring and analysis, supervision of field investigations, document preparation, client interface, negotiation with regulatory agencies on projects totaling approximately \$5 million.

1986 - 1988: California Department of Health Services, Toxic Substances Control Division, Southern California Region, Assessment and Mitigation Unit, Los Angeles, California. **Project Manager** in the Assessment and Mitigation Unit. Responsibilities included development and implementation of work plans and reports for, and regulatory oversight of, State Superfund preliminary site assessments, groundwater quality monitoring and analysis, remedial investigations, feasibility studies, remedial action, and interim remedial measures. **Engineering Geologist**. Provided technical support to Permitting, Enforcement, and Site Mitigation Unit staff, including evaluation of hydrogeologic assessments, groundwater quality monitoring programs, work plans, and reports on federal and state Superfund sites and active facilities; assistance in budget preparation; assistance in zone drilling contract review.

1983-86: Independent Consultant, Sacramento, California. Provided technical assistance on variety of geologic and geophysics projects to other independent consultants in local area.

1982: Gasch & Associates, Sacramento, California. Geologic assistant conducting shallow seismic reflection surveys in the Sierra Nevada for buried gold-bearing stream deposits.

1981 - 1982: Geologic Assistant, Coast Ranges, Avawatz Mountains, White Mountains, and Kinston Peak Range. Geologic Assistant on various geological field studies, including gravity surveys, magnetic surveys, landslide and geologic mapping projects.

PROFESSIONAL REGISTRATION

California Professional Geologist No. 5594
California Certified Engineering Geologist No. 1926
California Certified Hydrogeologist No. 0012

PROFESSIONAL AFFILIATIONS

California Department of Water Resources, Public Advisory Committee, Water Plan Update 2013

2010-2013: Appointed to participate on PAC and to lead new Groundwater Caucus

Department of Interior, Advisory Committee on Water Information, Subcommittee on Ground Water

2010-Present: Member – Work Group for Pilot Project Implementation, Nationwide Groundwater Monitoring Network
2007-2010: Co-Chair - Work Group on Implementation for development of the Framework for a Nationwide Ground Water Monitoring Network
2007-2010: Member - Work Group on Network Design for development of the Framework for a Nationwide Ground Water Monitoring Network

National Ground Water Association

2014-Present: Director - Scientists and Engineers Division
2007 - 2010: Director - Scientists and Engineers Division
2007 - 2009: Member - Government Affairs Committee
2007 - Present: Chair - Groundwater Protection and Management Subcommittee
2005 – Present: Chair - Regional Groundwater Management Task Force, Government Affairs Committee
2004 – 2005, 2007, 2009-10: Chair – Theis Conference Committee
2002 – Present: Member – Theis Conference Committee
2002 – Present: Member - Regional Groundwater Management Task Force, Government Affairs Committee
2003 – Present: Member – Groundwater Protection and Management Subcommittee
2009 – Present: Member - ASR Task Force
2009 – Present: Member - Hydraulic Fracturing Task Force
2008 – 2009: Member – CO2 Sequestration Task Force

American Ground Water Trust

2009 – 2012: Chair
2005 - 2013: Director

California Groundwater Coalition

2007-Present: Director

Groundwater Resources Association of California

2000 – Present: Director
2000 – 2001: President State Organization
2001 – Present: Legislative Committee Chair
1998-1999 Vice President
1996-1997 Secretary
1995-1996 President Sacramento Branch
1993-1994 Member-at-Large Sacramento Branch

ACADEMIC BACKGROUND

BS 1983, Geology, University of California, Davis

Graduate studies in hydrogeology, hydrology, engineering geology, waste management engineering

Selected Publications

California Groundwater Management, Second Edition, Groundwater Resources Association of California, co-author and project manager, 2005.

Water Contamination by Low Level Organic Waste Compounds in the Hydrologic System, in Water Encyclopedia, Wiley, 2004.

Potential Groundwater Quality Impacts Resulting from Geologic Carbon Sequestration, Water Research Foundation, co-author, 2009.

Aquifer Storage and Recovery in the US, ASR 9, American Ground Water Trust, Orlando Florida, September 2009 – a compilation of key ASR issues on DVD, contributing editor and speaker, 2010.

Sustainability From The Ground Up – Groundwater Management In California – A Framework, Association of California Water Agencies, principal author, 2011.

ISMAR9 Call to Action: Sustainable Groundwater Management Policy Directives, Principal Author, 2016.

EXHIBIT 2



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Via Hand Delivery and E-mail

City of Seaside City Council
c/o City Clerk
440 Harcourt Avenue
Seaside, CA 93955
e-mail: CityClerk@ci.seaside.ca.us

Re: Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056)

Dear Members of the City Council:

On behalf of LandWatch Monterey County (“LandWatch”) we write regarding the Final Supplemental Environmental Impact Report (“FSEIR”) and the Draft Supplemental Environmental Impact Report (“DSEIR”) (together, the “SEIR”) for the Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (“Project”) and regarding the proposed approval of Project entitlements.

The FSEIR fails adequately to address the issues raised by public comments on the DSEIR made by LandWatch and others. In addition, approval of those project entitlements is inconsistent with the Fort Ord Reuse Plan (also known as the Base Reuse plan or “BRP”).

LandWatch reiterates its request that the City revise and recirculate the SEIR to address the defects set out in its comments.

A. Summary of comments

WATER ANALYSIS INADEQUATE: The SEIR fails to meet CEQA’s requirements for an adequate analysis of water supply impacts because it assumes uncritically that there would be no significant impacts to the Salinas Valley Groundwater Basin as long as pumping to support Fort Ord demand does not exceed the 6,600 afy that MCWRA “allocated” to the Army in 1993. Thus, it concludes that there would be no significant impact for Phases 1-3 of the project because water for those phases could be supplied from uncommitted portions of the 6,600 afy allocation. The SEIR does not support this conclusion with any actual analysis of impacts to the basin from increased pumping; it simply assumes that 6,600 afy can be pumped without impact. As the comments below and the attached letter from hydrologist Timothy Parker explains that assumption is completely unfounded:

- 6,600 afy does not represent a baseline or “no new impact” pumping level for Fort Ord. In fact, the SEIR identifies baseline pumping as the currently existing level of pumping – variously reported by the SEIR as from 1,650 afy to 2,311 afy.
- 6,600 afy does not represent a safe yield for Fort Ord pumping. Safe yield cannot be determined for the Fort Ord area by itself because it must be determined for the hydrologically interconnected Salinas Valley Groundwater Basin as a whole. MCWRA’s 2016 State of the Salinas Valley Groundwater Basin report explains that the existing level of groundwater pumping is well beyond the Basin’s safe yield. The California Department of Water Resource’s identification of the Salinas Valley Groundwater Basin as critically overdrafted confirms this. So does Mr. Parker’s attached technical memorandum.
- Contrary to the out-of-date 2010 MCWD Urban Water Management Report relied upon by the SEIR, the Salinas Valley Water Project will not halt seawater intrusion and balance the Basin hydrologically. MCWRA now acknowledges that the existing groundwater management projects, including the Salinas Valley Water project, are insufficient to accomplish this, and that additional groundwater management projects would be needed. These projects are not approved, environmentally reviewed, or funded. The SEIR simply ignores this information, despite Seaside’s obligation under the BRP to cooperate with MCWRA in addressing seawater intrusion and determining the safe yield.
- The SEIR fails to provide a discussion and analysis of actual physical impacts from increased pumping as CEQA requires. The SEIR improperly assumes that as long as a water supply has been allocated on paper, there is no need to discuss the physical impacts from using that supply. The SEIR gets this entirely wrong: as the California Supreme Court has explained, the “ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 (emphasis in original).
- The SEIR fails to provide an adequate discussion of cumulative water supply impacts. The DSEIR purports to “tier” from the program EIR for the Base Reuse Plan, but then does not even summarize that document’s conclusion. The Base Reuse plan PEIR concludes that cumulative impacts, viewed at the relevant geographic scale of the Salinas Valley Groundwater Basin, are significant and unavoidable. The Monterey Downs SEIR looks only at Fort Ord demand, improperly conflating its project-specific and cumulative analyses, and then claims that there would be no significant cumulative impact as long as total Fort Ord demand remains within the 6,600 afy allocation. This ostrich-like approach ignores

the fact that there is already a significant cumulative impact and that additional pumping will aggravate overdraft and seawater intrusion.

PARTIAL PROJECT NOT ANALYZED: The SEIR admits that a water supply for Phases 4-6 is uncertain and so proposes simply not building Phases 4-6 as a mitigation measure for water supply impacts. Despite LandWatch's request and CEQA's mandate, the SEIR fails to assess the impact of not building these phases. Not building Phases 4-6 would render the project primarily residential and eliminate most of the commercial and jobs-creating uses. This would render the project inconsistent with Seaside and BRP policies mandating a strong jobs to housing ratio. It would also force residents to travel farther for jobs and shopping, increasing vehicle trips per capita and aggravating GHG impacts, which are based on per capita CO2 emissions. And not building the hotels, commercial space, and racetrack would render the fiscal effects of the project negative.

GHG ANALYSIS INADEQUATE: The FSEIR violates CEQA because it fails to disclose the actual basis of the numerous mitigation credits taken for GHG reduction measures. The DSEIR takes 25 distinct credits for project features to reduce the projected GHG emissions. When LandWatch asked for the specific assumptions that would justify these credits, the FSEIR simply referred LandWatch to documentation that confirms that project-specific assumptions are required, but does not provide those assumptions for this project. Thus, there is no evidence in the record that the claimed GHG reductions are warranted, and the FSEIR violates CEQA because it fails to provide good-faith reasoned responses to comments.

GHG MITIGATION INADEQUATE: The SEIR admits that GHG impacts will remain significant and unavoidable even after implementation of proposed mitigation. CEQA requires that the City adopt all feasible mitigation as long as impacts remain significant. CEQA also requires that the City respond to each mitigation measure proposed by the public and either adopt it or explain why it would not be effective or feasible. The FSEIR fails to respond at all to numerous feasible GHG mitigation proposed by the Monterey Bay Unified Air Pollution Control Agency and by LandWatch. The FSEIR rejects other mitigation, such as mandated solar electrical and water heating systems, without any showing that it is infeasible or ineffective. This violates CEQA.

FSEIR TAKES UNJUSTIFIED VEHICLE TRIP REDUCTION CREDIT AND REFUSES TO EXPLAIN IT: The traffic analysis assumes that 28% of vehicle trips will remain within the project site. Caltrans, TAMC, and LandWatch objected that this so-called "internal capture" rate is unjustified and unjustifiable. The FSEIR claimed that it provided documentation to Caltrans in response to its objection and that Caltrans had made no further objection. Not true. Caltrans has continued to object. Regardless, giving documentation to Caltrans does not answer the objections and questions raised by TAMC and LandWatch. The FSEIR also claims that the trip capture data is in the

DSEIR. This is not true. Indeed, if it were, it would not have been necessary to furnish the information privately to Caltrans.

TRAFFIC ANALYSIS AND MITIGATION IS INADEQUATE: The traffic analysis contains a number of additional flaws.

- The proposed mitigation for special event traffic, events which could occur as frequently as 125 times per year, is a to-be-determined-later "Events Management Plan." This mitigation is entirely ad hoc with no standards for what level of congestion will be permitted. This violates CEQA's requirement for specific performance standards when formulation of mitigation is deferred until after project approval.
- As Caltrans objected, the FSEIR fails to apply Caltrans' level of service standard in its analysis of the significance of impacts, even though it applies the adopted service standards for other jurisdictions (e.g., Marina, the County). Caltrans' goal is to maintain service at the cusp of LOS C and D. The FSEIR ignores impacts unless service degrades to LOS D, and thus fails to disclose additional significant impacts to Caltrans' facilities.
- The SEIR admits dozens of significant impacts to roads and intersections that will not be mitigated. LandWatch proposes that impacts to freeway ramps could be addressed with ramp metering and that the project should make fair share payments for this. The FSEIR responds that ramp metering is not planned by Caltrans so is infeasible. This is not true. Caltrans' current plan for the SR 1 corridor in the project vicinity expressly plans ramp metering. Again, the FSEIR's comment responses fail to evince good-faith.

NOISE ANALYSIS IS DEEPLY FLAWED: Noise from recreational areas of the project, including the Sports Arena, horse track, swimming center, and other equestrian facilities, noise from project construction, and noise from project traffic will exceed noise standards adopted by the Fort Ord Reuse Plan and the City of Seaside. Despite LandWatch's objections, the SEIR fails to acknowledge this and to provide a legally adequate noise analysis:

- The SEIR ignores one whole category of noise standards from the Base Reuse Plan, which are specifically intended to protect sensitive uses from loud short-term noise from activities like construction, sports events, and musical concerts. Unlike the 24-hour average noise standards, these so-called "statistical" noise standards regulate peak noise events and cumulative noise for intervals of 1, 5, 15, and 30 minutes in an hour. Without these standards, highly annoying short-term noise would be permitted, such as crowd cheering, PA systems, musical events, and swimming pool timing horns. Seaside has failed to adopt the BRP's statistical

noise standards even though the BRP mandates that it do so and in fact bars it from approving any projects in Fort Ord until it does so.

- The SEIR's analysis and mitigation of construction noise contains no quantitative analysis to determine if the project would exceed applicable standards, despite express requirements in the Seaside noise ordinance and BRP policies for quantitative assessment. Mitigation does not require the construction noise to meet any noise standard. Noise engineer Derek Watry demonstrates that construction noise would exceed applicable standards and that mitigation to meet applicable standards is infeasible.
- The SEIR's analysis of stationary noise impacts, e.g., noise from recreational facilities, fails to identify a consistent threshold of significance so it is unclear how the SEIR determines significance. Furthermore, the only noise standard mentioned in the proposed mitigation differs from the noise standards discussed in the qualitative assessment of the significance of impacts. And again, the SEIR fails to provide the required quantitative assessment of noise levels with and without mitigation.
- The SEIR fails to assess and mitigate noise impacts to open space users. BRP policies mandate strict standards to protect passively used open space, and information in the FSEIR indicates that this standard is not met. Passive open space use will be directly adjacent to the noisiest portions of the project. Numerous comments have objected to the imposition of the project's noise on this use.
- The traffic noise analysis is flawed because the analysis fails to protect outdoor uses by failing to measure impacts at the property line as required by both the City's noise ordinance and the BRP. Furthermore, the FSEIR refused to provide essential information to understand the traffic noise analysis requested by LandWatch: the identification of the land use and applicable noise standards on the road segments affected by the project. As Mr. Watry explains, for at least one segment, this omission obscures the fact that the project will contribute considerably to a significant cumulative noise impact.

THE PROJECT IS INCONSISTENT WITH THE BASE REUSE PLAN: The project conflicts with numerous noise policies in the BRP. Seaside has failed to adopt required BRP noise standards and has failed to undertake noise analysis required by BRP policies. Project noise will exceed standards in several BRP noise policies. The SEIR admits that the project is inconsistent with BRP water policies requiring additional water supplies and prohibiting approval of a development project without an assured long-term water supply. If water supply limitations result in a predominately residential project and

a failure to build out the commercial and recreational uses, the project will conflict with BRP (and Seaside) policies mandating a balanced jobs/housing ratio.

BELATED ELIMINATION OF RACING RENDERS ANALYSIS INVALID: The last-minute elimination of horse-racing from the list of allowed uses does not actually ensure that racing will not be permitted by a subsequent interpretation or revision of the specific plan, particularly if regulation of racing is found to be preempted by state law. If Seaside were serious about the racing ban, it could and should make the ban enforceable by identifying it as CEQA mitigation and by banning horseracing by ordinance.

Horseracing is an integral part of the economic justification for the project, representing 40% of the jobs and the primary attraction that would generate hotel taxes, without which the Wildan Report indicates that the project would be a fiscal loss for Seaside. There is no analysis that would suggest that other uses will replace these equestrian jobs and revenues.

And even if Seaside is not concerned about fiscal consequences of the bait-and-switch strategy saddling it with unbalanced residential construction, Seaside is still accountable for the inadequate environmental analysis. Without the commercial and jobs uses assumed in the SEIR, the assumed jobs/housing balance will not materialize. This would result in inconsistencies with Seaside and BRP policies, including policies intended to minimize transportation and air pollution impacts and conserve water supplies to support balanced growth.

For all of these reasons, LandWatch urges the Seaside City Council to decline to certify the inadequate SEIR and to decline to approve project entitlements.

Detailed comments are set out below and in the attached letters from hydrologist Timothy Parker and noise engineer Derek Watry.

B. The SEIR fails as an informational document because its discussion of groundwater impacts is incomplete and inadequate.

Because the FSEIR fails to provide adequate responses to the issues LandWatch raised in its DSEIR comments, LandWatch asked hydrogeologist Timothy Parker to review the SEIR and relevant documentation. Mr. Parker's comments are attached and incorporated by reference in the discussion below.

1. The FSEIR fails to respond adequately to comments objecting to reliance on the 6,600 afy allocation as the basis to find impacts less than significant.

LandWatch objected that the DSEIR improperly concludes that project-specific and cumulative impacts would be less than significant in Phases 1-3 based on the fact that

a portion of the 6,600 afy allocation to Fort Ord from the 1993 annexation agreement remains unallocated and thus available to the Project. Comment PO 208-22.

The SEIR consistently implies or states that impacts would be less than significant as long as the 6,600 afy “allocation” to Fort Ord, or the “sub-allocation” to the City of Seaside and/or the County of Monterey that remains available to the project, is not exceeded. See DSEIR at 4.8-34 to 35 (project-specific groundwater supply impact less than significant through Phase 3 because “Project would only use groundwater that is within MCWD’s existing 6,600 AFY allocation”), 4.8-46 (same for cumulative water quality impact), 4.19-22 to 25 (project specific water supply impact less than significant through phase 3 and “potentially significant” for Phases 4-6), 4.19-32 (“project-related cumulatively considerable water supply impacts” are “significant and unavoidably cumulatively-considerable” for Phases 4-6).¹

Thus, the DSEIR’s clear implication is that as long as total pumping for Fort Ord does not exceed the 6,600 afy allocation, there would be no significant impact.

LandWatch objected that this conclusion is unwarranted because the 6,600 afy does not represent either a baseline usage or a safe yield determination. The FSEIR admits that the 6,600 afy is neither a baseline nor a safe yield. FSEIR, p. 11.4-1027. However, the FSEIR response fails to provide the required good-faith reasoned analysis

¹ DSEIR section 4.19 outlines the allocation of the 6,600 afy to the various jurisdiction within the Ord Community in Table 4.19-2, Groundwater Allocation by Jurisdiction. DSEIR, p. 4.19-4. Section 4.19 then identifies the sub-allocations to projects within the City of Seaside and the County of Monterey in Table 4.19-4, Groundwater Sub-Allocations, concluding that there is 412.9 afy of “City/County Unallocated” water supply. DSEIR, p. 4.19-5. DSEIR section 4.19 explains that the project’s potable demand for Phases 1-4 would be 410.8 afy, which is within the “existing unallocated water supply of 412.9 AFY” and therefore “a less than significant impact concerning potable water demand” is concluded for Project Phases I through IV.” DSEIR, p. 4.19-23. Section 4.19 then explains that there is only sufficient “unallocated non-potable water supply” for Phases 1-3 and that therefore a “potentially significant impact is identified for Project Phases IV through VI.” DSEIR, p. 4.19-24. Section 4.19 proposes Mitigation Measure W-1, which would require “proof of an adequate water supply” that ensures “current unused water supply is allocated” before future development is permitted. Section 4.19 then concludes that “given the uncertainties involving the water supply options, sufficient water supplies would not be endured to Phases IV through VI. Therefore impacts concerning water supply availability would remain significant and unavoidable.” DSEIR, p. 4.19-26.

Section 4.19 uses the same arithmetic to conclude that the “project-related cumulatively considerable water supply impacts” are less than significant for phases 1-3 but significant and unavoidable for phases 4-6 due to “the uncertainties involving the water supply options.” DSEIR, p. 4.19-32.

DSEIR section 4.8 references the discussion in section 4.19 and states that impacts from Phases 4-6 would be “potentially significant” because “additional groundwater would be needed to be acquired to meet the remainder of the Project’s groundwater demand for Phases IV through VI.” DSEIR, p. 4.8-34. Section 4.8 goes on to explain that because of “uncertainties involving the water supply options, sufficient water supplies would not be ensured to Phases IV through VI. Therefore impacts in this regard would be significant and unavoidable.” DSEIR, pp. 4.8-34 to 4.8-35.

Section 4.8 draws the same conclusions regarding cumulative impacts as section 4.19.

because 1) it mischaracterizes LandWatch’s comments and 2) it implies that there is no connection between the 6,600 afy allocation and the remaining unclaimed portions of the sub-allocations to the City and County:

The commenter’s following assertions are incorrect: (1) SEIR does not conclude that water supply impacts would be less than significant if total water demand for Project buildout is below 6,600 AFY; and (2) SEIR does not conclude that water supply impacts would be less than significant if total water demand for Phases I-III is below 6,600 AFY. Rather, DSEIR page 4.19-30 states that under the 1993 Agreement, 6,600 AFY of the Salinas Basin groundwater is available for use on Ord Community Service Area lands, not limited only to the Project. As stated in MR 11.3.9 (Water) and Response PO 208-5, DSEIR page 4.19-23 concludes that Phases I-IV would have a less than significant impact concerning potable water demand because the existing unallocated potable water supply of 412.9 AFY (from the 1,722 AFY of groundwater FORA allocated to the City and County) would be sufficient to meet the total potable water demand of approximately 410.8 AFY for these phases combined. Furthermore, as stated in MR 11.3.9 (Water) and Response PO 208-5, DSEIR page 4.19-26 concludes that sufficient water supplies cannot be assured to Phases IV-VI at this time, despite implementation of feasible mitigation (Mitigation Measure W-1); therefore, impacts concerning water supply availability would remain significant and unavoidable. As can be seen from these statements, the above conclusions are not premised on the assumption that the 6,600 AFY allocation from the Agreement either represents the baseline condition or the safe yield from the affected aquifers, on which to base the Project’s water supply analysis, as falsely asserted by commenter.”

FSEIR p. 11.4-1027, emphasis added.

First, LandWatch did not suggest, as the FSEIR states, that the DSEIR finds impacts less than significant as long as the Project itself does not use 6,600 afy. LandWatch objected that “the DEIR assumes that as long as the Project does not exceed its allocation of a portion of the 6,600 ‘entitlement’ there will be no significant water supply impacts.” PO 208-22.

Second, the response simply ignores the fact that the sub-allocations to the City and the County that will not be exceeded until Phase 4 represent portions of the 6,600 afy allocation and that the DSEIR clearly identifies exceeding the 6,600 afy allocation as the basis for a significant impact. For example, in discussing the rationale for its conclusion that project-specific impacts are less than significant through Phase 3 but not after that, the DSEIR explains that “the Ord Community is allocated 6,600 AFY of groundwater” and that “[t]he project would only use groundwater that is within the MCWD’s existing allocation.” DSEIR, p. 4.8-34; *see* DSEIR, p. 4.9-9 (identifying the 1993 Annexation Agreement as the source of this allocation); 4.19-4 to 5 (explaining that the groundwater allocation by jurisdiction is based on FORA’s sub-allocation of the 6,600 afy allocation

to the Ord Community); *see also* FSEIR, p. 11.4-1027 (“sufficient water supplies cannot be assured to Phases IV-VI at this time, despite implementation of feasible mitigation (Mitigation Measure W-1); therefore, impacts concerning water supply availability would remain significant and unavoidable”)

Indeed, if exceeding the 6,600 afy allocation is not the basis on which the SEIR identifies a significant cumulative impact, then the SEIR fails to provide any clear threshold for that conclusion. The FSEIR itself confirms that “groundwater supply is determined by the allocations and sub-allocations shown in DSEIR Tables 4.19-3 and 4.19-4.” FSEIR p. 11.4-1027. These tables clearly indicate that the groundwater supply to the Ord Community is 6,600 afy. DSEIR, p. 4.19-4.

2. The SEIR’s assumption that the project’s Phase 1-3 impact is less than significant because it is within the 6,600 afy allocation is not supported by analysis in the SEIR and is not accurate.

It is clear that the SEIR assumes that 1) there will be no significant cumulative impact from all BRP projects taken together as long as their combined water use is less than 6,600 afy, and 2) the Project itself will not make a considerable contribution to a significant cumulative impact as long as its water use does not exceed the portion of that 6,600 afy that has not been allocated to other projects.

Because the SEIR assumes that there would be no significant cumulative impact (and no considerable contribution to a significant cumulative impact) as long as Fort Ord projects stay within the 6,600 afy entitlement, it fails to consider the possibilities that, even if the 6,600 afy threshold is not crossed, 1) there is already a significant cumulative impact from existing pumping, 2) that increased pumping from all projects including Monterey Downs in the future may result in a significant cumulative impact, and 3) increased pumping for the Monterey Downs project may be a considerable contribution to a significant cumulative impact.

In fact, the SEIR’s conclusions that there is no significant cumulative impact as long as total Fort Ord pumping stays within 6,600 afy and that there is no considerable contribution to such an impact if the project does not exceed its sub-allocation of that 6,600 afy are legally flawed and factually unsupported.

As the California Supreme Court has explained, the “ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (“*Vineyard*”) (2007) 40 Cal.4th 412, 434 (emphasis in original). The SEIR gets this exactly wrong, focusing on whether there is a water source (i.e., a portion of the 6,600 afy allocation) for the project instead of discussing the impact of using that water source.

As Mr. Parker explains, the existence of the 6,600 afy allocation to Fort Ord does not establish that additional pumping within that 6,600 afy would have not significant impact. Mr. Parker demonstrates the following:

- The BRP Program Environmental Impact Report (“PEIR”) did not assume that 6,600 afy could be pumped without impact. That document expressly provided that pumping within this allocation might in fact cause additional seawater intrusion, and it required specific mitigation that was intended to avoid this outcome. This includes the duty to determine safe yield and to accelerate the provision of additional water supply if groundwater pumping were unable to supply 6,600 afy without causing further seawater intrusion. BRP PEIR, pp. 4-49, 4-53 to 4-54.
- In fact, even though the allocated 6,600 afy has not yet been pumped, seawater intrusion has been exacerbated by cumulative pumping since the BRP PEIR was certified (e.g., another 2 miles advance of the seawater intrusion front) and will be exacerbated in the future by any additional pumping, including pumping to support the Project, whether from the 180-foot, 400-foot, or 900-foot aquifers.

Nor does the purported “reliability” of the water supply demonstrate that its use is without significant impacts. Mr. Parker demonstrates the following:

- The fact that the capacity of the Salinas Valley Groundwater Basin (“SVGB”) is large enough to smooth out year-to-year climatic variations does not mean that this pumping does not deplete the aquifer over time. In fact, an ongoing annual average rate of depletion of the Salinas Valley Groundwater Basin since the 1930’s has caused more than 5 miles of seawater intrusion. Thus, the groundwater supply may be “reliable” only in the sense that there would be available water in normal, single, and multiple dry years, the analytic periods required by the Water Code for an urban water management plan. But using that water exacerbates an overdraft condition and exacerbates seawater intrusion.
- The claim in MCWD’s WSA and 2010 UWMP that the Salinas Valley Water Project (“SVWP”) ensures a “reliable supply” in the sense of a “no impact” supply is not accurate. The Salinas Valley Water Project’s 2002 modeling assumptions for cumulative demand have not proved accurate. Demand substantially exceeds the levels at which the Salinas Valley Water Project modeling assumed seawater intrusion would be controlled. The Monterey County Water Resources Agency (“MCWRA”) now admits that the Salinas Valley Water Project will not halt seawater intrusion and that additional projects are needed. The most recent comprehensive report on the state of the Salinas Valley Groundwater Basin indicates that existing pumping from the basin as a whole is not sustainable. The report documents that the safe or sustainable yield of the Pressure Subarea, the subarea from which the project would draw its

water, is only 110,000 to 117,000 afy, but groundwater pumping exceeds this yield by about 12,000 to 19,000 afy.

- The fact that seawater intrusion has not been detected yet in the 900-foot aquifer does not mean that pumping the 900-foot aquifer is without impact. Existing stratigraphy and modeling show that pumping the 900-foot aquifer will induce seawater intrusion in the upper aquifers, i.e., the 180-foot and 400-foot aquifers. And pumping the 900-foot aquifer may lead to seawater intrusion in the 900-foot aquifer through either of two routes: a direct hydraulic connection with the bay or through inter-aquifer transfer. The SEIR fails to address this, despite LandWatch comments asking for just this information.

3. 6,600 afy does not constitute baseline use.

It is clear that the 6,600 afy allocation does not represent baseline pumping. Thus, the City may not simply assume that pumping within the 6,600 allocation is not a new impact.

First, in response to LandWatch's comments, the FSEIR denies that 6,600 afy is intended to represent either a baseline or safe yield. FSEIR, p. p. 11.4-1027.

Second, in response to LandWatch's request that the SEIR actually identify baseline use (PO 208-10, 208-14), the FSEIR references Master Response 11.3.9 and the discussions in the DSEIR sections 4.8 and 4.19. FSEIR, pp. 11.4-1022-1023. The FSEIR's Master Response 11.3.9 identifies baseline conditions for MCWD's Fort Ord area as the 2015 consumption of 1,650 afy (of which total the City was using 505 afy and the County 55 afy). FSEIR, p. 11.3-9. Section 4.19 of the DSEIR reports baseline pumping in the Ord Community Service Area from 2001 to 2010 as 2,311 afy, based on the MCWD Water Supply Assessment. DSEIR, p. 4.19-1 to 4.19-2. (Section 4.8 of the DSEIR reports pumping capacity and planned future pumping, but not baseline pumping. DSEIR, pp. 4.8-8 to 4.8-10, 4.8-33 to 4.8-35.) Regardless whether baseline pumping is assumed to be the 1,650 pumped in 2015 or the 2,311 afy average from 2001 to 2010, it is clear that the baseline is not 6,600 afy.

Third, the average pumping at the time that Fort Ord was in use by the Army was never 6,600 afy. That amount represents a single peak year pumping in 1984. The 1993 Army/MCWRA agreement reports that average pumping from 1988-1992, the period that brackets the 1991 closure decision, was about 5,200 afy. Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c.

Fourth, the BRP PEIR does not identify 6,600 afy as the baseline use. The discussion of water supply in the section captioned "environmental setting" references the Army/MCWRA agreement that "6,600 acre feet per year (afy) of water is available from the Salinas Valley groundwater basin for Former Fort Ord land uses, provided that

such provisions do not aggravate or accelerate the existing seawater intrusion." BRP PEIR, p. 4-49. However, the discussion in this section does not identify any prior pumping amounts, and a reference to an agreement regarding future pumping does not even purport to identify historic baseline pumping. As Mr. Parker explains, the BRP PEIR provides that mitigation would be required for any pumping that would lead to an increase in seawater intrusion, even if this occurs before the 6,600 afy allocation is pumped. The BRP PEIR's discussion of the environmental setting with respect to water supplies identifies the 6,600 afy figure as the allocation in the MCWRA/Army agreement, not as baseline use. The discussion expressly provides that this allocation is available only "provided that such provisions do not aggravate or accelerate the existing seawater intrusion." BRP PEIR, p. 4-49.

Fifth, if the BRP PEIR adopts any baseline figure for Salinas Valley Groundwater Basin pumping on the Former Fort Ord, that figure is not 6,600 afy. The figure may be the 5,100 afy average pumping for the 4 to 5 years immediately prior to 1991, based on the Army's NEPA documents. In Section 1.2.2, Baseline Determination, the BRP PEIR expressly adopts the Army's NEPA document baseline: "As with the Army's FEIS and DSEIS, this EIR determines whether the proposed project may have a significant effect on the environment based on physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." BRP PEIR, p. 1-3. The BRP PEIR states that this approach "complies with Section 21083.8.1 of the Public Resources Code and utilizes the extensive research already conducted for the Army's NEPA documents, which use the same baseline year." *Id.* Section 21083.8.1 permits a reuse plan EIR or EIS to rely on conditions at the time of the closure decision as a baseline provided that certain procedures are followed.²

The BRP PEIR then identifies the specific NEPA documents that were used to determine the Environmental Setting for water supply analysis. BRP PEIR, pp. 1-3, 1-10 (Table 1.9-1). These include the Army's December 1995 Draft SEIS, the Army's June 1993 Final EIS Volume 1, and the Army's April 1992 "*Other Physical Attributes Baseline Study of Fort Ord, California*." These documents identify the baseline water use from the Salinas Valley Groundwater Basin as 5,100 afy, not as 6,600 afy, as follows:

² These procedures include circulation of proposed baseline conditions to affected agencies "prior to circulating a draft EIR" followed by a public hearing at which "the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions." Guidelines, § 15229(a)(1), (2). Although the BRP PEIR states that it availed itself of the Public Resources Code § 21083.8.1 baseline provisions and that baseline conditions are as of the September 1991 closure decision (BRP PEIR p. 1-3), there is no evidence that FORA actually followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify baseline water use conditions in a document circulated before the PEIR and to state an intent to adopt that as the baseline. See FORA, Resolution 97-6, June 13, 1997 (Certifying BRP PEIR and discussing proceedings and hearings). CEQA does not authorize FORA to rely on the Army's prior compliance with these procedures, if in fact the Army did comply.

- The 1996 Final SEIS states that “[a]s reported in the final EIS (Volume 1, page 4-56), average water demand on Fort Ord was 5,100 acre-feet (af) during 1986-1989. Water use has declined in recent years with the decrease in the number of personnel living on and occupying the base. Annual water use was 5,634 af in water year 1992, 3,971 af in 1993, and 3,235 af in 1994.”³
- The June 1993 Final EIS states that “[a]nnual water consumption decreased from a high of 6,600 acre-feet in 1984 to an average of 5,100 acre-feet during 1986-1989.”⁴ Table 4.5-2 identifies 5,100 afy as the average pumpage for Fort Ord.⁵
- The April 1992 *Other Physical Attributes Baseline Study of Fort Ord, California*, provides a table of annual pumping, from which it is apparent that average annual pumping from 1986-1989 is 5,083 afy and the average from 1986-1990 is 5,126 afy.⁶ That 1992 report identified declining water use from 1980 to 1990, except for the single year 1984.⁷

In sum, if the Army actually followed the procedures of Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to adopt a baseline figure and if FORA also complied with those procedures, then the baseline water use was not 6,600 afy but only 5,100 afy. The outlier 6,600 afy figure from 1984 could not have been used as a baseline because it does not represent the “physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991).” BRP PEIR, p. 1-3; see Public Resources Code § 21083.8.1(c).

Sixth, even if FORA or the Army had followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify a baseline condition for water, they were required to “state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process.” Public Resources Code, § 21083.8.1(c)(C). The BRP PEIR does explain how the 6,600 afy figure is to be integrated into its analysis and mitigation of water supply impacts. BRP PEIR, pp. 4-49, 4-53 to 4-54. And that discussion does not indicate an intent to treat 6,600 afy as a baseline condition within which there is no significant impact, because it requires mitigation even if the 6,600 afy allocation is not pumped in

³ Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, p. 4-11, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538/Section_4.pdf. The quote from the Final SEIS is of the unchanged text of the 1995 Draft SEIS.

⁴ Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348/Section_4/section_4.5.pdf.

⁵ *Id.* at 4-59.

⁶ US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California*, April 1992, p. 1-6, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202/Section_1.pdf.

⁷ *Id.* at 1-6, 1-14.

full. CEQA does not permit the imposition of mitigation unless there are significant impacts. Guidelines, § 15126.4(a)(3). Thus, treating 6,600 afy as a baseline “no impact” level is inconsistent with the fact that BRP PEIR repeatedly states that use of the 6,600 afy allocation is only to be permitted if it does not contribute to seawater intrusion and that mitigation may be required even if water use does not rise to 6,600 afy. See BRP PEIR, pp. 4-49, 4-53 to 4-54.

And the Army’s EIS also makes clear that 1) there is no categorical right to pump 6,600 afy, and 2) even the right to pump up to 5,200 afy is subject to a no-harm condition:

MCWRA will not object to Fort Ord/POM Annex withdrawal from the basin of up to 6,600 af/yr, provided that no more than 5,200 af/yr are withdrawn from the 180-foot aquifer and 400-foot aquifer and that such withdrawals do not threaten to aggravate or accelerate the existing seawater intrusion problem.⁸

Seventh, Public Resources Code, § 21083.8.1(c)(A) provides that “[p]rior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement.” The BRP PEIR does in fact require further analysis of physical conditions than the analysis provided in the EIR. For example, Program C-3.1 requires determination of the safe yield of the portion of Fort Ord overlying the Salinas Valley Groundwater Basin “to determine available water supplies.” BRP PEIR, p. 4-55. Program C-3.2 require further investigation of seawater intrusion in the context of the Salinas Valley Basin Management Plan and measures to prevent further intrusion. Again, these provisions are simply inconsistent with treating 6,600 afy as a permissible baseline use that would not constitute a significant impact.

4. 6,600 afy is not a safe yield.

Safe yield or sustainable yield is defined as “the amount of groundwater that can be pumped annually on a long-term basis without causing undesirable results.”⁹ The FSEIR admits that 6,600 afy does not represent a safe yield figure for pumping to support Fort Ord reuse. FSEIR, p. 11.4-1027.

⁸ Dept. of the Army, Final Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse, June 1996, p. 4-11, emphasis added, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538/Section_4.pdf.

⁹ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348/Section_4/section_4.5.pdf.

The Final EIS for the Fort Ord base closure and reuse also acknowledges that 1) safe yield must be determined for the entire groundwater basin and 2) pumping for Fort Ord already exceeded safe yield as of 1993:

The concept of safe yield is meaningful only when applied to an entire groundwater basin. The amount of yield available to individual users within the basin depends of the amounts and locations of pumping by other users. In the Salinas Valley groundwater basin, present pumping in and near Fort Ord exceeds safe yield in the 180-foot and 400-foot aquifers, as indicated by continuing seawater intrusion and water levels below sea level in those aquifers. This indicates that the yield from the 180-foot and 400-foot aquifers for Fort Ord is less than its present pumpage, assuming that pumping by other users remains unchanged.¹⁰

Base Reuse Plan Hydrology and Water Quality Program C 3-1 requires that Seaside work with MCWRA to determine safe yield to determine available water supplies:

The City shall continue to work with the MCWRA and the MPWMD to estimate the safe yield in the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and the Seaside groundwater basins to determine available water supplies.

BRP PEIR, p. 4-55. There is no evidence in the record that Seaside has in fact worked with MCWRA to determine safe yield for the Fort Ord area. LandWatch's DSEIR comments specifically requested a water balance analysis showing sustainable yields for the 180, 400, and 900 foot aquifers, i.e., the amounts that could be pumped without mining or depleting the aquifers. PO 208-10, 208-14. The FSEIR did not provide this information. FSEIR, pp. 11.4-1023, 11.3-7 to 11.3-11.3-17.

Furthermore, as the Final EIS for the Fort Ord base closure and reuse indicates, the concept of safe yield only makes sense for a basin as whole, not just the Fort Ord area. MCWRA's most recent determination of the sustainable or safe yield for the Salinas Valley Groundwater Basin and the Pressure Subarea indicates that pumping has been and remains in excess of safe yield. In particular, the 2016 State of the Salinas Valley Groundwater Basin report indicates that the safe yield of the Pressure Subarea is about 110,000 to 117, 000 afy and that existing pumping already exceeds this yield by about 12,000 to 19,000 afy.¹¹ The safe yield for the Salinas Valley Groundwater Basin as a whole (the four subareas constituting Zone 2C, the assessment area for the Salinas

¹⁰ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57.

¹¹ MCWRA, State of the Salinas Valley Groundwater Basin, 2016, p. 4-25, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

Valley Water Project) is from 499,000 to 506,000 afy, and existing pumping already exceeds this yield by 17,000 to 24,000 afy.¹²

Instead of providing current information about safe yield for the basin, the FSEIR recites the out-of-date claim in the MCWD 2010 UWMP that the Salinas Valley Water Project is expected to balance the basin by resulting in a "net increase in storage of about 6,000 ac-ft annually." FSEIR, p. 11.4-1025. As Mr. Parker demonstrates, this claim is simply unsupported in light of current information:

- The Salinas Valley Water Project EIR's modeling analysis claimed only that the Salinas Valley Water Project would balance the basin on the basis of 1995 demand levels, of about 473,000 afy.
- The Salinas Valley Water Project modeling projected that basin-wide demand would decline from 1995 to 2030 from 473,000 afy to 443,000 afy; however demand has averaged over 500,000 afy since 1995.
- MCWRA has acknowledged that the demand assumptions used for the Salinas Valley Water Project modeling did in fact understate basin-wide demand.
- MCWRA now acknowledges that additional future groundwater management projects, in addition to the existing projects such as the Salinas Valley Water Project, are required to mitigate and avoid future seawater intrusion.
- MCWRA's current analysis, based on 2013 modeling by Geoscience, calls for using 130,000 afy of surface water from the Salinas River to deliver additional water for coastal use, above and beyond the amount that can be provided by the Salinas Valley Water Project, in order to reduce coastal pumping and to establish the necessary groundwater elevations to prevent seawater intrusion.
- There is no certainty that seawater intrusion will be mitigated or avoided because the projects that are required to deliver this additional water are not committed, funded, or environmentally reviewed.

The FSEIR's continued reliance on the out-of-date claims for the Salinas Valley Water Project made in the MCWD 2010 UWMP are unaccountable in light of the MCWRA's open and public work on the continuing problem of seawater intrusion since 2010. The City of Seaside is required by BRP Hydrology and Water Quality Policy C-3 to "work with" MCWRA "to estimate the current safe yield" and to "participate in implementing measures to prevent future intrusion." DSEIR, p. 4.8-20. It is difficult to believe that the City has honored this policy obligation if it remains ignorant of MCWRA's current analysis of the seawater intrusion problem.

¹² *Id.* at 4-26.

Regardless, the City cannot claim that additional pumping in the Fort Ord area up to 6,600 afy would be without impact on the grounds that 6,600 afy represents a safe yield level for Fort Ord pumping.

5. The SEIR must provide an adequate and independent cumulative analysis of water supply impacts because it may not rely on tiering from the BRP PEIR.

Changed circumstances, new information, and changes in the BRP itself that have occurred since the BRP PEIR require reexamination of the cumulative analysis and preclude tiering. Accordingly, the City is obliged to prepare a new water supply analysis and not to tier from the water supply analysis in the BRP PEIR.

As LandWatch has objected, the SEIR may not tier from the BRP PEIR, at least with respect to the water supply discussion. Public Resources Code § 21094(b) bars tiering if the Project is not consistent with the plan for which the first tier EIR was prepared. The SEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policies B-1 and B-2, which policies require additional water supplies and prohibit approval of a development project without an assured long-term water supply. DSEIR, p. 4.9-10; FSEIR 14.4-1020.

Public Resources Code § 21094(b) also bars tiering if the project is not consistent with the applicable General Plan. The project is inconsistent with Seaside's General Plan, as is evident from the need for substantial amendments to that General Plan. The FSEIR's argument that the Project would be consistent with the General Plan after amendment would simply read this section of Public Resources Code § 21094(b) out of the statute because the State Planning and Zoning law bars approval of projects that are inconsistent with the General Plan. Furthermore, if the Project is inconsistent with the General Plan, there can be no assurance that its impacts were adequately assessed by the General Plan EIR.

Most problematically, Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, there are changed circumstances and new information that bar reliance on the out-of-date cumulative analysis.

First, seawater intrusion has advanced significantly since the 1997 BRP PEIR, constituting a substantially more severe significant effect than shown in the BRP PEIR. See Guidelines § 15162(a)(3)(B) ("Significant effects previously examined will be substantially more severe than shown in the previous EIR"). Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[. . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and could not have been known" at the time of the BRP PEIR.

Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by BRP policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the BRP project itself. Public Resources Code § 21166(a). Indeed, the FSEIR admits that there have been substantial changes within the meaning of Public Resources Code § 21166. FSEIR at 14.4-1017 (acknowledging that the "various changes in the environmental and/or regulatory setting over the years" requires an SEIR). One of the admitted change in circumstances or changes in the BRP project is the "uncertainty" regarding "previously identified long-term water supply options," i.e., the options identified by the BRP PEIR as the purported basis for finding impacts less than significant. DSEIR p. 4.8-47. The DSEIR acknowledges that, in light of this uncertainty, it is no longer possible to find, as the BRP PEIR found, that the project's "adherence to the BRP policies and programs (as outlined below) and additional mitigation measures" would adequately mitigate impacts for all phases of the project.

The FSEIR admits that "MCWD has not implemented their long-term water supplies options to date" but apparently offers the excuse that this is "because the reuse of the former Army base slowed down considerably during the economic downturn beginning in 2008." FSEIR p. 11.4-1026. This misinterprets the BRP PEIR's water supply policies and mitigation requirements by implying that there is no obligation to provide any additional supply until 6,600 afy has been allocated to approved development projects. As discussed above and in Mr. Parker's comments, the BRP PEIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from the Salinas Valley Groundwater Basin to support uses on Fort Ord without causing further seawater intrusion, and its policies and mitigation do not permit the agencies to delay a solution if seawater intrusion persists. BRP PEIR, pp. 4-49, 4-53 to 4-54. As Mr. Parker demonstrates, seawater intrusion has advanced another two miles since the BRP PEIR was certified.

Case law is clear that additional analysis of water supply impacts is required under section 21166 when new information shows more severe impacts or the planned water sources are not implemented timely:

To the extent that a subsequent subdivision proposal relies on different water sources than were proposed in the specific plan it implements, or the likely availability of the intended water sources has changed between the time of the specific plan and the subdivision application (or more has been learned about the effects of exploiting those sources), changes in the project, the surrounding circumstances or the available information would exist within the meaning of section 21166, requiring additional CEQA analysis under that section . . .

Vineyard, supra, 40 Cal.4th at 438; see also *id.* at 431, n. 7. Here, the new information about the severity of cumulative impacts, changes to circumstances, and to the project

itself with regard to water supply are subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 and therefore tiering, at least for the water supply analysis, is not permitted. The SEIR erred by not providing a new analysis of water supply impacts, in particular, a new cumulative analysis.

6. Even if tiering were proper, the City must assess whether the project makes a considerable contribution to a significant cumulative effect.

Finally, even if tiering were permitted, the City must still assess whether the incremental effects of the Project would be considerable when viewed in the context of past, present, and probable future projects.” Guidelines, § 15152(f)(2). We note that the California Supreme Court has clarified that additional review of a subsequent project may be required in a tiering context even where 21166 does not apply:

The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR’s.” (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then “CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.” (*Ibid.* citing Pub. Resources Code, § 21094, subs. (a), (c).)

Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist. (2016) 207 Cal. Rptr. 3d 314, slip op. at p. 11 (emphasis added).

The determination whether a project’s effects are a considerable contribution to a significant cumulative impact requires an acknowledgement of the existence of that cumulative impact and assessment of its severity because “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” *Communities for a Better Environment v. California Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 120. Here, as discussed below, the SEIR simply fails to provide this assessment because it fails to provide an adequate cumulative analysis.

7. The SEIR fails to provide an adequate cumulative analysis of water supply impacts because it fails to acknowledge the existence of a significant regional cumulative impact and improperly limits the scope of cumulative analysis to the BRP area.

The DSEIR’s cumulative analysis of water supply impacts is inadequate because 1) it is limited to the area subject to the BRP PEIR, i.e., former Fort Ord, and 2) it fails to consider in the first instance whether there is a significant cumulative impact from cumulative regional groundwater pumping. DSEIR 4.8-47, 4.19-30 to 4.19-32. Furthermore, to the extent that the FSEIR implies that cumulative impacts may be ignored because the project’s contribution is a relatively small part of basin-wide pumping, the FSEIR is legally and factually in error.

By way of background, cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project’s own effect is a considerable contribution. Guidelines, § 15130(a); see Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be “individually minor but collectively significant.” *Communities for a Better Environment v. California Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- “define the scope of the area affected by the cumulative effect,”
- explain “the geographic limitation used,”
- identify the past, present, and future projects “producing related or cumulative impacts” or provide projections of the conditions “contributing to the cumulative effect,”
- provide a “summary of the expected environmental effects to be produced by those projects.” Guidelines, § 15130(b)(3), (4).

In step two, if there a significant cumulative effect, the agency must determine whether the project’s contribution is “considerable,” i.e., “whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect.” *CBE v. CRA, supra*, 103 Cal.App.4th at 119.

- a. The DSEIR errs by purporting to tier from the BRP PEIR but failing to summarize its cumulative groundwater analysis and conclusions.

Notably, the geographic scope of the BRP PEIR’s cumulative analysis was regional, including the Salinas Valley Groundwater Basin as a whole, and it found significant unavoidable cumulative impacts. BRP PEIR, p. 5-5. The DSEIR does not acknowledge this; indeed, despite its claim that it tiers from the BRP PEIR, the DSEIR fails even to summarize the regional cumulative analysis from the BRP PEIR. As

discussed above, tiering is not appropriate here. However, if it were proper, then the DSEIR would be inadequate because it fails to summarize the discussion.

b. The cumulative analysis is inadequate because it fails to justify limiting the geographic scope of analysis to the BRP area.

There is no justification for limiting the geographic scope of the cumulative analysis to the BRP area (former Fort Ord) because the seawater intrusion and aquifer depletion impacts are due to pumping throughout the Salinas Valley Groundwater Basin.

The FSEIR claims that “[t]he geographic scope of the area affected by the Project’s cumulative effect is the former Fort Ord (BRP boundaries).” FEIR 11.4-1024. This is not true. Nor is the FSEIR’s claim true that the area affected by the Project’s impact limited to the MCWD service area. *Id.* As Mr. Parker explains, the area that would be affected by project pumping includes the Pressure Subbasin and the Salinas Valley Groundwater Basin as a whole since these areas are hydraulically interconnected.

More importantly, CEQA does not define the geographic scope of cumulative analysis based on the area affected but based on the location of the cumulative projects that cause effects in the same area that the project causes effects. The Guidelines require identification of projects “producing related or cumulative impacts” or projections of conditions “contributing to the cumulative effect.” Guidelines §15130(b)(1). Case law is clear that it is improper to omit relevant past, present, and future projects that create related impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214 (failure to consider all relevant projects in its cumulative impact analysis is an “overarching legal flaw”); *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430-432 (failure to justify omission of offshore emissions is failure to comply with CEQA’s legal mandates); *San Joaquin Raptor Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739-741 (omission of other known development projects).

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724 the court invalidated an EIR’s cumulative air quality impact analysis not because its conclusions were unsupported by substantial evidence, but because the agency there – as here – had failed to conduct the analysis in the legally required manner by omitting consideration of all “past, present, and reasonably foreseeable probable future projects.” *Id.* at 720, 724. The court rejected the agency’s argument that it must defer to any substantial evidence within an EIR to support to support of the scope of cumulative analysis. *Id.* at 721-724. The court held that when an EIR’s analysis fails to consider required factual information, the error is one of law, not fact, because the exclusion of relevant information improperly burdens the public to provide the relevant analysis. *Id.* at 724.

Again, as Mr. Parker explains, it is indisputable that projects and pumping outside the BRP area affect aquifer depletion and seawater intrusion within the BRP area. For

example, this is acknowledged by the BRP PEIR (at p. 5-5, acknowledging that regional growth could cumulatively affect aquifers and cause further overdraft and seawater intrusion), the MCWD 2010 UWMP (at p. 29, acknowledging that basin-wide pumping causes declining water levels in Pressure Subarea), and the Army’s 1993 FEIS (at p. 4-57, acknowledging that the available yield without seawater intrusion depends on the amount of pumping throughout the basin).

Responding to Comment PO 208-16 objecting to the truncated scope of cumulative analysis, the FSEIR asserts that it has simply made the choice to rely on a summary of projections and has chosen the BRP as the source of that summary. FSEIR p. 11.4-1024. However, reliance on a summary of projections in an adopted plan is impermissible if there is evidence that the geographic scope is drawn too narrowly. *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1216-1217.

The FSEIR claims that its response PO 208-5 explains why the geographic scope was limited to the BRP. FSEIR pp. 11.4-1020, response PO 208-4, and p. 11.4-1023, response PO 208-15. However, response 208-5 does not justify the limitation of the geographic scope. That response purports to address objections that the DSEIR inadequately identifies and characterizes the pumping source aquifer(s), fails to identify other wells and cumulative pumping in the 900-foot aquifer, and fails to discuss recharge, saline contamination and sustained yield of the 900-foot aquifer. Response 208-5 makes the following points, which do not even purport to justify the geographic limitation:

- It claims it is speculative to state whether the 180-foot, 400-foot, or the 900-foot aquifer would supply Project water since they are connected hydraulically and the 180-foot and 400-foot aquifers are recharging the 900-foot aquifer. FSEIR 11.4-1020. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the 900-foot aquifer is “in reality a series of aquifers, not all of which are hydraulically connected.” FSEIR p. 11.4-1020. This claim, which on its face contradicts the claim that all of the aquifers are hydraulically connected, does not explain why the scope of cumulative analysis is limited to the BRP area.
- It claims that the deep aquifer (the 900-foot aquifer) is not experiencing seawater intrusion. FSEIR p. 11.4-1021. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It reiterates that the threshold of significance is substantial depletion of groundwater supplies or interference with recharge such that there would be a net deficit in aquifer volume or lowering of groundwater table level. FSEIR p. 11.4-1020. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It states that mitigation will be required, that the impact will be significant and unavoidable for phases 4-6, and that a statement of overriding considerations will be required. FSEIR p. 11.4-1020 to 1021. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the DSEIR relied on the MCWD UWMP, which discussed the Salinas Valley Groundwater Basin. This claim admits that the relevant geographic scope of cumulative analysis should be the Salinas Valley Groundwater Basin.
- It claims that there is adequate pumping capacity, that the project would be required to submit proof of adequate water supply before development is allowed, that the project does not overlay areas subject to seawater intrusion, and that all of this means that it will not cause any increase in seawater intrusion. FSEIR p. 11.4-1021. This claim, which on its face is inconsistent with the well-established fact that all Salinas Valley Groundwater Basin pumping, and especially coastal pumping, is causing an increase in seawater intrusion, does not in any event explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the Project will not interfere with recharge. FSEIR p. 11.4-1021 to 1022. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the Ord area is limited to 6,600 afy from the Salinas Valley Groundwater Basin and that not all of this has been allocated. FSEIR p. 11.4-1022. This claim admits that the relevant geographic scope of cumulative analysis should be the Salinas Valley Groundwater Basin.
- It claims that the DSEIR's analysis is based on the 2010 UWMP and that therefore "the details concerning aquifer operations do not affect the DSEIR's analysis," which is "considered sufficient to allow decision-makers to make an informed decision concerning the project's impacts." FSEIR p. 11.4-22. Again, this claim does not address the relevant geographic scope of cumulative analysis.

In sum, the SEIR is inadequate because it fails to justify the geographic limitation of its cumulative analysis to the BRP area. And the SEIR's cumulative analysis is inadequate because it fails to list projects "producing related or cumulative impacts" or to provide a

summary of projections of conditions "contributing to the cumulative effect." Guidelines §15130(b)(1).

- c. Failure to consider whether there is a significant cumulative impact from cumulative regional groundwater pumping is legally erroneous; failure to identify such an impact is a critical factual omission.

As noted, cumulative analysis may require two distinct determinations: whether there is a significant cumulative impact from all relevant projects and, if so, whether the project under review makes a considerable contribution to that impact.

Nowhere in a step-one analysis does the DSEIR consider whether, much less acknowledge that, there is a significant cumulative impact caused by groundwater pumping from regional projects or, alternatively, conclude that there is no significant cumulative impact from regional projects. Indeed, the DSEIR erroneously fails to distinguish between the single-step analysis required for a project-specific significance determination and the two-step analysis required for cumulative significance determinations. Instead, the DSEIR offers essentially the same analysis and conclusions for both its project-specific and cumulative analyses of groundwater supply impacts. It finds both the project specific impacts and the cumulative impacts to be less than significant for Phases 1-3, because an unallocated portion of the 6,600 afy allocation is available, and unavoidably significant for Phases 4-6, because additional sources of water are not certain. DSEIR, pp. 4.8-34 to 4.8-35 (project-specific groundwater impact), 4.8-47 to 4.8-48 (cumulative groundwater impact), 4.19-31 to 4.19-32 (project-specific water supply impact), 4.19-24 to 4.19-26 (cumulative water supply impact). The cumulative analysis does not even purport to provide the required two-step analysis that would include a step-one determination whether there is a significant cumulative impact and a step-two determination whether the project makes a considerable contribution to it.

Again, this error reflects the fundamental confusion of the question as to whether there is an available water supply with the question of whether there will be impacts from using that supply.

Here, there is overwhelming evidence that a step-one determination must conclude that there is a significant regional cumulative impact from groundwater pumping by past, present, and reasonably foreseeable future projects, including the Monterey Downs project. The evidence, including Mr. Parker's comments, shows that

- there has been and still is an ongoing significant cumulative impact to groundwater resources in the form of declining groundwater levels and seawater intrusion due to over-pumping of groundwater;
- this impact is due to basin-wide pumping, not just pumping within the BRP area;
- this impact has not been avoided by existing groundwater management projects;

- there are no committed, funded groundwater management projects that will avoid this impact in the foreseeable future; and
- the impact will be aggravated by increases in pumping to support future development, including projected increases in agricultural pumping and new urban development such as the Monterey Downs project.

Given this evidence, and the complete lack of analysis of relevant cumulative conditions in the Monterey Downs SEIR, the omission of an adequate cumulative analysis is prejudicial to informed decision making and public participation.

Furthermore, the SEIR presents no contrary evidence to support a step-one finding that there is no significant cumulative impact from cumulative groundwater pumping – an issue that the DSEIR simply fails to address. The lack of analysis precludes any step-one conclusion or finding that there is not a significant cumulative impact.

The lack of analysis also precludes any step-two conclusion that project's water demand does not constitute a considerable contribution to a significant cumulative impact. And, as discussed below, any implied approach to a step-two conclusion based on the relatively small percentage of basin pumping undertaken by MCWD or the fact that the pumping may be from the 900-foot aquifer would be based on a legally and factually erroneous approach to cumulative analysis.

- d. Any implication that pumping by MCWD is less than significant, or less than cumulatively considerable would be legally and factually flawed.

Responding to LandWatch's objections to the DSEIR's cumulative analysis, the FSEIR argues that agricultural water use consumes 95% of Salinas Valley Groundwater Basin water and that urban use consumes only 5%, and that the MCWD pumping is only 1% of total Salinas Valley Groundwater Basin pumping, apparently implying some kind of support for the DSEIR's conclusion that cumulative impacts for Phases 1-3 would be less than significant. FSEIR p. 11.4-1024 ("these details provide further clarification of the cumulative impacts associated with groundwater demand and supply . . ."). If the implication of this discussion is that the project does not make a considerable contribution to a significant cumulative impact, it is wrong as a matter of law and fact.

An EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* ("LAUSD") (1997) 58 Cal.App.4th 1019, 1025-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 117-118, 121. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,718, the Court rejected the agency's "ratio" theory that found impacts not to be a

considerable contribution merely because they were a relatively small percent of the total impact. *Id.* at 720. Because the relevant question was "whether any additional amount" of incremental impact "should be considered significant in light of the serious nature" of the problem (*id.* at 718), a valid determination whether a project's contribution is considerable must reflect the severity of the cumulative problem. "[T]he greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE v. CRA, supra*, 103 Cal.App.4th at 120. Thus, even an "individually minor" impact may be "cumulatively considerable." *Id.*; *see also* Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.

As Mr. Parker explains, it is irrelevant whether groundwater is used for agriculture or urban uses – it depletes the same basin. And the magnitude of existing pumping by MCWD or others is also irrelevant. What is relevant is whether marginal increases in pumping will be a considerable contribution in light of the severity of the overdraft and seawater intrusion problem. Because seawater intrusion is caused by the problem of overdraft, not by total pumping, the severity of the cumulative problem should be measured in terms of the size of the overdraft or the amount of induced seawater intrusion. Here, the basin as a whole and the Pressure Subarea are in overdraft and, as Mr. Parker explains, any additional pumping will induce seawater intrusion equal to about 75% of the volume pumped. Furthermore, coastal pumping is more problematic than inland pumping. Thus, as Mr. Parker explains, the project's 250 afy increase in pumping demand should be evaluated in light of the annual Pressure Subarea overdraft of 12,000 to 19,000 afy, not in relation to the 500,000 afy of total pumping in the Salinas Valley Groundwater Basin. Viewed in this light, and viewed in the light of the current recommendations by MCWRA that existing pumping be reduced in the Pressure Subarea, the project's marginal pumping demand is a considerable contribution.

And, in any event, the Monterey Downs SEIR does not address the legally relevant questions because it fails in the first instance to identify the severity of the cumulative problem and fails in the second instance to consider the project's impact in light of that severity.

Any implication that the project's pumping is not a considerable contribution because it is small in comparison to total basin-wide pumping would make the same error as made in *Kings County* by focusing on the ratio of the project's pumping to the overall aquifer pumping or capacity and using these comparisons to "trivialize the project's impact" without putting Project demand in the context of the serious nature of the cumulative problem. *Kings County, supra*, 221 Cal.App.3d at 718. An EIR is legally inadequate if it is "focused upon the individual project's relative effects and omit[s] facts relevant to an analysis of the collective effect." *Id.* at 721.

Furthermore, it is clear that the FSEIR bases its significance conclusions solely on the availability of water supply, not the effects of using that supply or the relative magnitude of pumping. For example, despite the fact that the demand for Phases 1-3 is

approximately equal to the demand for Phases 4-6, the SEIR finds Phase 1-3 demand to have a less than significant impact and phase 4-6 demand to have an unavoidably significant impact.

Finally, the SEIR cannot be used to argue that project pumping would be less than a considerable contribution to significant groundwater impacts because some portion of that pumping would come from the 900-foot Aquifer, also known as the Deep Aquifer. Mr. Parker demonstrates, based on available stratigraphic analysis and modeling, that increased pumping from the Deep Aquifer will also cause depletion of the 180-Foot and 400-Foot Aquifers because those aquifers are the source of recharge to the Deep Aquifer. Mr. Parker also demonstrates that increased pumping from the Deep Aquifer will aggravate seawater intrusion to the 180-Foot and 400-Foot Aquifers. Increased pumping from the Deep Aquifer may deplete that aquifer and it may also induce seawater intrusion into the Deep Aquifer itself. Because the SEIR declined to discuss the relation of the 180-Foot, 400-Foot, and Deep Aquifers or to provide any assessment of impacts to the three aquifers in response to LandWatch's comments and questions, the SEIR provides no evidence to the contrary.

8. The SEIR's conclusion regarding phases 4-6 are not based on adequate analysis and the SEIR fails to discuss impacts from alternative water supplies.

As discussed, the SEIR errs by concluding without adequate analysis that water supply impacts for Phases 1-3 of the project would be less than significant and would not make a considerable contribution to a significant cumulative impact. The SEIR does acknowledge that supplying water for Phases 4-6 would be a significant unavoidable impact. However, the SEIR bases this conclusion solely on the fact that the Phase 4-6 water supply cannot be made available from the unallocated portion of the 6,600 afy allocation and that additional water supplies are uncertain, not based on any analysis of physical impacts on the environment from the water that is likely to be used by Phases 4-6.

Where a water supply is uncertain, an agency must identify alternative supplies and discuss the environmental impacts of tapping those sources. *Vineyard, supra*, 40 Cal.4th at 430, 431, 434. As LandWatch objected, the SEIR fails to provide any discussion of the environmental impacts of developing and providing alternative water supplies, such as the proposed desalinated or recycled water supplies. For example, the SEIR identifies the Regional Urban Water Augmentation Project ("RUWAP") and desalination as possible future water supply. DSEIR, pp. 4.19-7 to 4.19-9, 4.19-25 to 4.19-26; FSEIR pp. 11.3-13 to 11.3-15. However, despite LandWatch's request for a discussion of the environmental impacts of alternative supplies (PO 208-25), neither the DSEIR nor the FSEIR provide any information about these environmental impacts.

The FSEIR admits that "[s]ome of these water supply options were evaluated in past agency documents, as discussed in the DSEIR Section 4.9 [sic, 4.19], Water." However, nothing in the discussion of future water supplies in Section 4.19 even

mentions the potential environmental impacts of those water supply projects. DSEIR, pp. 4.19-7 to 4.19-9, 4.19-25 to 4.19-26.

Instead of making good-faith efforts to investigate and provide the available information about the environmental effects of alternative water supplies, the FSEIR states that "[b]ecause it is unknown at this time what those environmental impacts would be, the DSEIR concluded that the impact with the provision of water for phases IV through VI could be significant and unavoidable." FSEIR, p. 11.4-1028. The contention that the environmental impacts of the RUWAP project "are unknown at this time" is not true. MCWD has certified four separate environmental reviews of the RUWAP project from 2004 to 2016, including the September 2004 Final EIR, the October 2006 Addendum No. 1, the February 2007, Addendum No. 2, and the April 2016 Addendum No. 3.¹³ The SEIR could and should have discussed this available information, which it could have done by tiering and incorporation by reference. Furthermore, an agency may not simply label an impact unavoidably significant in order to dispense with analysis. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.

9. Significant new information since the DSEIR was released requires recirculation.

An agency must recirculate a draft EIR for public comments and responses when there is significant new information after the draft EIR is released but prior to certification. Guidelines, § 15088.5(a). Recirculation of a draft EIR for public comment and response is required where the record shows that a potentially significant impact, or the efficacy of mitigation, was not evaluated in the draft EIR. *Vineyard, supra*, 40 Cal.4th at 447-448 (potential impact to salmon); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 (water supply mitigation). The new information triggering the obligation to recirculate may appear in the FEIR or in post-FEIR material. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95; *Save our Peninsula Committee v. Monterey County Board of Supervisors* ("Save Our Peninsula") (2001) 87 Cal.App.4th 99, 131. The purpose of recirculation is to provide the public the same opportunity to evaluate the new information and the validity of the EIR's conclusions as it had for information in the draft EIR. *Save Our Peninsula, supra*, 87 Cal.App.4th at 131; *Sutter Sensible Planning v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* ("Laurel Heights II") (1993) 6 Cal.4th 1112, 1132.

¹³ Marina Coast Water District ("MCWD"), Notice of Determination, Regional Urban Water Augmentation Project, June 2, 2005; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 1, December 18, 2006; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 2, Feb. 24, 2009; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 3, April 19, 2016.

Here, significant new information includes (1) new information showing a new or more severe significant impact resulting from the project (Guidelines, § 15088.5(a)(1), (2); *Laurel Heights II*, *supra*, 6 Cal.4th at 1130) and (2) new information showing that the draft EIR was “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded” (CEQA Guidelines, § 15088.5(a)(4); *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052).

As discussed by Mr. Parker, the DSEIR relies on the MCWD Water Supply Assessment contention that the groundwater supply is “reliable,” which in turn relies on the contention in the MCWD 2010 UWMP that the Salinas Valley Water Project will result in an average annual basin-wide water surplus of 6,000 acre feet instead of an average annual water deficit.¹⁴ However, the contention that the Salinas Valley Water Project will balance the basin and prevent seawater intrusion is no longer tenable in light of significant new information that does not appear in the draft EIR. In addition to Mr. Parker’s comments this information also includes DWR findings, MCWRA groundwater studies, and MCWRA testimony cited by Mr. Parker, including for example:

- DWR, Critically Overdrafted Basins, January 2016 – identifying the Salinas Valley Groundwater Basin as critically overdrafted and therefore requiring an accelerated Groundwater Sustainability Plan under the Sustainable Groundwater Management Act.
- MCWRA, State of the Salinas River Groundwater Basin, January, 2015 – identifying existing pumping from the Basin as unsustainable and recommending pumping reductions in the Pressure Subarea from which this project proposes to increase pumping.
- MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013 – acknowledging the need for additional groundwater management projects to deliver water to replace coastal area pumping.
- Testimony of Robert Johnson, MCWRA, to Monterey County Planning Commission, Oct. 29, 2014 – acknowledging that the demand projections used for the Salinas Valley Water Project understated actual demand, that the Salinas Valley Water project would not be sufficient to halt seawater intrusion, and that additional groundwater management projects are needed.

This information demonstrates, contrary to the out-of-date 2010 UWMP relied upon by the DSEIR, that the Salinas Valley Water Project will not balance the basin hydrologically and will not halt seawater intrusion. Thus, the information demonstrates a new or more severe impact than disclosed by the DSEIR and demonstrates that the

¹⁴ See DSEIR, p. 4.8-34; MCWD, Water Supply Assessment and Written Verification of Supply for Monterey Downs Specific Plan, 2012, pp. 22-23; MCWD, 2010 UWMP, p. 53.

DSEIR was so fundamentally inadequate as to deny the public a meaningful opportunity for comment and response.

10. The SEIR fails to respond adequately to comments regarding water supply issues.

Responses in a final EIR to substantive comments on a DEIR must contain fact-based analysis. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (duty to provide “good faith, reasoned analysis in response”); Guidelines, § 15088(c) (“Conclusory statements unsupported by factual information will not suffice”). For example, in *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, an agency violated CEQA by providing only conclusory responses to comments. The court held the agency had a duty to address comments “in detail,” providing “specific factual information” as had been requested by the commenter. *Id.* at 359. Where comments seek omitted facts or analysis essential to a draft EIR’s conclusions, the failure to correct those omissions “renders the EIR defective as an informational document.” *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244 (failure to provide reasoned analysis in response to comments pointing out uncertainty of water supply).

An agency must provide specific information to support its conclusions as to the adequacy of water supplies. *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772 (insufficient to claim that “all available data” showed there was sufficient water supply without providing the data). In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (“SCOPE”) (2003) 106 Cal.App.4th 715, 722, responses to comments questioning a water supply analysis were inadequate because they failed to provide any facts, data, or estimates from the Department of Water Resources, the agency that would supply the water. Citing *Cleary*, *supra*, 118 Cal.App.3d at 357, the court explained:

Problems raised by the public and responsible experts require a good faith reasoned analysis in response. [Citation.] The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not “swept under the rug.”

Id. at 723.

As Mr. Parker explains, the FSEIR fails to provide good-faith reasoned analysis in response to LandWatch’s comments and questions regarding pumping from the 180-foot, 400-foot, and 900-foot aquifers under baseline and future conditions. See comment PO 208-5. The FSEIR fails to identify the studies cited by the DSEIR including the “recent stratigraphic analyses” that “have indicated” a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers. See comment PO 208-5. The FSEIR fails to respond adequately to LandWatch’s comments asking for an explanation of the DSEIR’s claims regarding the hydraulic connections between the 180-foot, 400-foot, and 900-foot

aquifers. See comment PO 208-6. The FSEIR fails to provide adequate responses to LandWatch's comments asking whether recharge to the 900-foot aquifer from the seawater-intruded 180-foot and 400-foot aquifers could contaminate the 900-foot aquifer, whether increased pumping in the 900-foot aquifer would increase this risk, and how much pumping from the 900-foot aquifer is sustainable. See PO 208-7 through 208-11.

As discussed above, the FSEIR fails to respond adequately to comments objecting to reliance on the 6,600 afy allocation as the basis to find impacts less than significant. See, e.g., comment PO 208-22. The FSEIR also fails to respond adequately to LandWatch's request for a discussion of the environmental impacts of alternative water supplies. See comment PO 208-25.

11. The SEIR fails to provide an adequate discussion of the effect of not building Phases 4-6.

Where mitigation includes the possibility of not building later phases of a project due to lack of water, an agency must discuss "the environmental impacts of curtailing the project before completion." *Vineyard Citizens, supra*, 40 Cal.4th at 444. Here, buildout of only part of the project has the potential to aggravate certain environmental impacts, but the SEIR fails to disclose this.

The FSEIR confirms that phases 1-3 are in fact disproportionately residential compared to full buildout of the project: building only phases 1-3 would yield 47% of the residential plan but only 26% of the jobs-generating commercial uses. FSEIR, p. 11.3-2.

An unbalanced jobs/housing ratio for the project would result in greater per capita impacts from transportation and transportation-related air pollutants and GHG emissions as residents would be required to travel to more distant jobs. It would also frustrate BRP and City policies related to jobs/housing balance and economic development. Evidence for this is as follows:

First, the BRP relies on maintenance of a strong jobs/housing balance to manage travel demand and to minimize transportation-related impacts:

3.5.5 Demand Management

The proposed roadway network addresses many of the key issues raised and much of the increased transportation demand that will result from the reuse of the former Fort Ord. To supplement the roadway improvements, there are a number of strategies that can be pursued to reduce the demand for vehicle trips. Taking steps to reduce the number of vehicle trips can also lead to reduced infrastructure costs. Land use and transportation strategies are incorporated into the Reuse Plan to reduce vehicle demand and encourage walking and bicycle use.

Jobs/Housing Balance

Providing a jobs/housing balance is intended to encourage employers to locate in areas where there are significantly more residents than jobs and to add housing development near employment centers. Efforts to create a jobs/housing balance should ensure that the jobs provided are compatible with the skill-levels and income expectations of nearby residents. Developing jobs and housing in proximity to each other provides an opportunity to reduce the travel demands on key regional facilities by reducing the length of the trip and/or shifting a vehicle trip to an alternative mode. The Reuse Plan seeks to achieve a better job/housing balance within the former Fort Ord. The desired result of this balance is the reduced demand on those regional roadways connecting employees living off-base with employment centers on-base.

BRP, p. 120. The BRP seeks to generate 45,000 to 46,000 jobs and 17,000 dwelling units to ensure that there are 2.67 jobs per household (2.06 counting the student population). BRP, p. 92. The BRP also counts on mixed use development to reduce transportation demand. BRP, p. 121.

Second, the DSEIR relies on jobs generated by the project and a mix of office, retail, commercial and residential uses from full buildout of the project to project a reduction of trips by 28% compared to development of just residential or just commercial uses. DSEIR, p. 4.16-63. The FSEIR also argues that this 28% "internal capture" is justified based on the fact that the project would include a mix of jobs and housing. FSEIR, p. 11.4-17. This internal capture would significantly reduce per capita transportation and GHG impacts through reduced vehicle trips compared to a primarily residential development project in which residents had to commute longer distances and to travel longer distances to shop. However, the internal capture rate would be reduced if the project did not provide a robust mix of land use types, including commercial, retail, residential, and recreation and/or if it did not provide as many jobs per unit of housing.

Third, the SEIR assesses the significance of the GHG impact based on a per capita basis. DSEIR, p. 4.6-13 to 4.6-14. Mobile source emissions amount to 29,062 tons of the project's total 49,174 tons of CO₂ – about 59% of the total. If internal capture were reduced because the mix of land uses were not as diverse and the jobs/housing ratio were not as high as assumed, then the per capita vehicle trips would increase (even if total trips did not increase), resulting in higher per capita GHG impacts. The DSEIR already finds GHG impacts to be unavoidably significant because GHG emissions exceed the per capita threshold of significance. An unbalanced jobs/housing ratio resulting from failure to build out Phases 4-6 would further aggravate an already significant GHG impact.

Fourth, the SEIR also identifies an unbalanced jobs/housing ratio as a potential inconsistency with the Seaside General Plan and a source of potential impacts in its analysis of population and housing impacts, impacts that are avoided only because the full project is projected to provide many jobs in proportion to its housing units. DSEIR,

pp. 4.9-20, 4.11-15. Seaside identifies a jobs/housing ratio target of 1.5:1. DSEIR, p. 4.9-20.

Fifth, the BRP also contains goals and policies intended to ensure a strong jobs/housing balance. As noted, the BRP jobs/housing goal is a ratio of 2.67. BRP, p. 92. The BRP’s Development and Resource Management Plan (“DRMP”) is intended to ensure that development goals are met within resource constraints. The DRMC sets an objective of replacing the 18,000 jobs lost by the base closure by 2015. BRP, p. 199. Critical to meeting that goal are the coordinated Residential Development Program (DRMP § 3.11.5.4(b)) and Industrial and Job Creation Program (DRMC, § 3.11.5.4(c)), which limit residential development until the 18,000 jobs goal is met in order to prevent using up the limited water supply to support unbalanced residential development. BRP, pp. 197-199. A large development project that consumes water supply without doing its fair share to create jobs is inconsistent with the BRP jobs/housing policies.

Because the FSEIR declined to address the issue in response to LandWatch’s questions (FSEIR, p. 11.4-1028), we examined the effect of not building the relatively jobs-rich Phases 4-6, which contain the lion’s share of the commercial and recreational facilities.

We note that the DSEIR is equivocal as to the actual volumes of jobs and the effect on the jobs/housing ratio. The DSEIR provides two widely varying claims regarding the numbers of jobs, although both claims are advanced to support the contention that buildout of the project would improve Seaside’s existing jobs/housing ratio, which is currently housing-rich and jobs-poor. In particular, the DSEIR states the project would create 1,743 new jobs in its analysis of the project’s consistency with Seaside General Plan Policy LU 1.2, a policy that requiring the City to encourage development that is job intensive:

As concluded in Section 4.11, *Population and Housing*, the Project would generate approximately 1,743 new jobs, which would beneficially impact the City’s jobs-to-housing ratio, increasing it from 0.67 to 0.75. The Project would be in furtherance of the City meeting its jobs/housing ratio of 1.5:1.

DSEIR, p. 4.9-20, emphasis added. However, Section 4.11 actually states that the project would generate 2,758 new jobs:

“Finally, the Project would generate approximately 2,758 new jobs, which would beneficially impact the City’s jobs-to-housing ratio, increasing it from 0.67 to 0.83.”

DSEIR, p. 4.11-15, emphasis added.

The difference in the DSEIR’s two jobs estimate is equal to the 1,015 projected “equestrian” jobs identified in the fiscal analysis of the project.¹⁵ Of the equestrian jobs, 976 are tied to Phases 4-6 and would not be generated if these Phases were not constructed, especially the Phase 6 Sports Arena and race track which, by itself, is projected to create 950 of the equestrian jobs.¹⁶ Most of the non-equestrian jobs are also tied to Phases 4-6.

In fact, only 620 total jobs, equestrian and non-equestrian, would be generated by phases 1-3; the remaining 1,771 jobs depend on phases 4-6 and would not occur if these phases were not constructed due to a lack of water supply.¹⁷

Phases 1-3 would include 473 dwelling units from RES-1 and 124 dwelling units from RES-2, for a total of 597 dwelling units.¹⁸ Phases 4-6 would include 426 units from RM and 256 units from RES-3, for a total of 683 units.¹⁹ Thus, the jobs/housing ratio for Phases 1-3 would be 620 jobs/597 housing units, a ratio of 1.04. The jobs/housing ratio for Phases 4-6 would be 1771 jobs/ 683 housing units, a ratio of 2.59. At full buildout, the jobs/housing ratio would be 2,391 on-site jobs/1280 housing units, a ratio of 1.87.

	Phases 1-3	Phases 4-6	Full Buildout
On site jobs	620	1,771	2,391
Housing units	597	683	1,280
Jobs/housing ratio	1.04	2.59	1.87

Including the 297 jobs generated by the project’s economic effects in Seaside rather than on the project site itself (*see* Wildan, Table 28) the jobs/housing ratio at buildout would be 2,658 jobs/1280 housing units, a ratio of 2.08. (Modeling for these off-site jobs assumes that they would be driven by overall economic activity attributed to the project, not to specific activities; and therefore these off-site jobs would presumably be spread among the six phases.)

¹⁵ Willdan, Monterey Downs Fiscal and Economic Analysis, Aug. 2015, p. iv.

¹⁶ *Id.* at 17.

¹⁷ *Id.*, Table 8. Table 8 reports only on-site employees. Thus, its 2,391 total jobs do not include the 290 jobs from ongoing operations generated in Seaside that are identified in Table 28. These 290 Table 28 jobs in Seaside plus the 2,391 Table 8 jobs within the project account for 2,681 of the 2,758 total jobs reported by the DSEIR at page 4.11-15. It is unclear what accounts for additional 77 jobs reported by the DSEIR.

¹⁸ MDSP, Figure 8-1 (phasing plan); DSEIR, Table 2-2 (land use summary).

¹⁹ *Id.*

Notably, the BRP sets a goal for the jobs/housing ratio of 2.67, based on 45,000 to 46,000 jobs and 17,000 housing units. BRP, p. 92. Omitting the CSUMB students, the BRP goal is 2.06. Thus, full buildout of the project, including the 950 equestrian jobs created in phase 6 and the off-site jobs created in Seaside, would be required to meet the BRP goal of 2.06 jobs per housing unit.

In sum, if Phases 4-6 were not build due to a lack of water:

- The project would not meet the BRP jobs/housing goal intended to minimize transportation and other impacts because the 1.04:1 jobs/housing ratio for Phases 1-3 is well below the BRP's target jobs/housing ratio of at least 2.06:1.
- The project would not contribute as projected in the DSEIR in meeting Seaside's jobs/housing policies. A project with a jobs/housing ratio below the City's 1.5:1 target, e.g., the 1.04:1 ratio in Phases 1-3, cannot contribute to attainment of the 1.5:1 ratio called for by Seaside General Plan Policy ED-8.1. Approving a project with a jobs/housing ratio below the 1.5:1 target, especially a project that will account for the lion's share of future growth in Seaside, effectively frustrates attainment of that target ratio. The draft general plan consistency findings for the City Council meeting state that the full project would add 1,280 housing units to Seaside's existing 11,335 units and add 2,758 jobs to Seaside's existing 7,790 jobs, thereby improving the jobs/housing ratio from 0.69:1 to 0.84:1. However, if only phases 1-3 are build, the resulting 8,410 jobs and 11,937 housing units would provide a jobs housing ratio of only 0.70. The post-project jobs/housing ratio would be essentially unchanged if only Phases 1-3 were built.
- Permitting top-heavy residential development would also be inconsistent with Seaside General Plan Policy LU-1 to encourage regional commercial and visitor serving use and its Policies ED-1.1 and ED 5.1 to establish a diverse mix of businesses and tax sources, because the city would have consumed a major portion of its water-constrained development capacity without advancing those policies.
- Failure to meet the BRP jobs/housing goal would be inconsistent with the BRP's DRMP § 3.11.5.4(b), (c) provisions to balance residential and job-creating development to ensure that water remains available for job-creating development.
- And failure to fulfill the DSEIR's own assumptions regarding the mix of development types and the jobs/housing ratio would increase the per capita GHG emissions over the level projected by the DSEIR, aggravating an already significant GHG impact.

The SEIR should have provided an analysis of these entirely foreseeable outcomes.

Furthermore, because there are significant unmitigated impacts, CEQA requires that the City adopt a statement of overriding considerations to approve the project. An analysis of the fiscal effect of building only the first three phases is clearly relevant to any findings regarding fiscal and job impacts since fiscal and job benefits are cited as overriding considerations. However, as discussed, the jobs benefits would be greatly reduced if only phases 1-3 were built. And the economic benefits of the project are critically dependent on building Phases 4-6. For example, without the hotel uses in Phase 4 there would be at most half of the projected transient occupancy taxes and the net impact of the project on Seaside's general fund may be negative instead of positive.²⁰

In response to LandWatch's request for an analysis of the effect of building only Phases 1-3, the FSEIR claims that any such analysis would be "speculative" since 1) the project phasing plan is subject to change and 2) the DSEIR conservatively assumes full buildout of all phases. FSEIR, pp. 11.3-1, 11.4-1028. The claim that the phasing plan is subject to change is a red herring. The Specific Plan calls for developing certain specific residential and commercial areas in Phases 1-3. Specific Plan, p. 8-1 and Figure 8.1. This is how the project is described and it is how it should be evaluated in the EIR; otherwise the EIR simply fails to provide an adequate and stable project description as CEQA requires. Guidelines, §15124. Indeed, the EIR's water supply analysis is in fact predicated on the specific phasing plan set out in section 8.2 of the Specific Plan, with demand calculated separately for these phases. Because the DDSEIR treats the phasing plan as adequately settled for some of its analyses, it is unreasonable to characterize the phasing plan as "speculative" when the public asks for additional analysis predicated on that same phasing plan.

The FSEIR's argument that the phasing does not matter because the overall analysis conservatively assumes buildout of all phases simply ignores the question LandWatch posed, which is whether there would be different or more intense impacts in some environmental areas if less than the full project were built. As discussed, a predominately residential project would aggravate the jobs/housing balance and increase the per capita transportation, air pollution, and GHG impacts. These are different and potentially more intense impacts.

The FSEIR states that the city could require changes to the phasing plan if it later concludes that "a different land use mix is required to address environmental issues/constraints including available water supply limits." FSEIR, p. 11.4-1029. If this contention is that the City might later decide to adopt mitigation intended to address impacts from unbalanced development and a poor jobs/housing mix, then it is entirely unsupported by analysis of these impacts in this EIR and constitutes improper deferral of both analysis and mitigation. The FSEIR simply fails to provide any answer to the

²⁰ *Id.*, Table 25.

questions raised by LandWatch as to the effects of not building part of the project due to lack of water.

12. The SEIR relies on inadequate fair share payments to mitigate water supply impacts.

Impact fees are permissible mitigation for cumulative impacts as long as a project pays a fair share of a committed project that has been environmentally reviewed and found adequate. However, a mitigation measure calling for payment of unspecified mitigation fees for project that may not be built is not adequate mitigation. LandWatch requested that the SEIR identify the mitigation projects and fair shares that would be required of the project under mitigation Measure W-3. Comment PO 208-30. The DSEIR and FSEIR refer only to the “appropriate FORA fees, a portion of which is allocated for water supply augmentation improvements.” DSEIR, p. 4.19-28; FSEIR, p. 11.4-1030. Despite LandWatch’s request, the SEIR fails to identify the amount of the fee or the projects for which it will pay.

C. The FSEIR fails to provide good-faith reasoned responses to comments seeking the basis of the DSEIR’s GHG mitigation claims.

As LandWatch objected (comments 208-71 to 208-80), the DSEIR’s analysis of GHG emissions fails to clarify the specific measures for which mitigation credit is taken and fails to specify the assumptions behind that mitigation credit. LandWatch objected that the reductions were taken through the CalEEMod emissions modeling software, but that the DSEIR fails adequately to describe, specify, quantify, or justify each GHG emission reduction feature for which credit was taken. In response, the FSEIR directs the public to pages 38-39 of CaEEMod 2013 User’s Guide and unspecified pages of CAPCOA’s 2010 546-page report, Quantifying Greenhouse Gas Mitigation Measures. Here is the FSEIR’s response:

The GHG emission reduction features used in CalEEMod for the Project are specifically listed in DSEIR Appendix 10.2 for each of the Project operations modeling scenario (pages 234-265 of the PDF), and are based on CAPCOA’s Quantifying Greenhouse Gas Mitigation Measures document (refer to pages 38 and 39 of the CalEEMod User’s Guide Version 2013.2, <http://www.aqmd.gov/docs/default-source/caleemod/usersguide.pdf?sfvrsn=2>). Definitions of the mitigation measures and terms used in CalEEMod (and in quantifying the mitigated Project GHG emissions) can be found at <http://www.capcoa.org/wpcontent/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.

CalEEMod conservatively programs the reductions from the CAPCOA research and guidance, and prevents double counting. The CalEEMod outputs for mitigated GHG emissions do not provide a breakdown by specific mitigation measures. Rather, the mitigated emissions outputs are displayed by emission

source (i.e., area, mobile, energy). For example, in the “mobile” category of the modeling outputs, all programmed vehicle trips, VMT and mobile-source GHG emissions reductions from the CAPCOA mitigation measures which are applicable to the Project are clearly listed, and a review of those pages shows that the specific model inputs are the same as those listed in the comment. This methodology discloses the particular GHG emissions reductions claimed for each applicable CAPCOA mitigation measure by emission source, which represents the justification for the modeled reductions which commenter falsely asserts is missing in the DSEIR.

In response to the full paragraph below the bulleted list in this comment, the calculated GHG reduction credits are already built into CalEEMod for each applicable CAPCOA mitigation measure selected. The empirical basis behind the underlying assumptions, parameters or values for these measures and reductions are detailed in the above-referenced CAPCOA document. Therefore, it is inappropriate for this DSEIR to cite such empirical evidence or to “justify” the conclusions already documented in the CAPCOA document that such features “will in fact reduce VMT”, vehicle trips or mobile-source GHG emissions, as incorrectly asserted by commenter. This same logic applies to commenter’s incorrect assertions in the next paragraph regarding non-mobile-source GHG emissions reductions (i.e., area, energy) for each applicable CAPCOA mitigation measure selected.

In conclusion, commenter fails to provide evidence that any applicable CAPCOA mitigation measure to reduce GHG emissions for the Project is missing from the CalEEMod runs in DSEIR Appendix 10.2. Therefore, since the DSEIR clearly discloses this information, recirculation of the document as suggested by commenter is not warranted.

FSEIR, pp. 11.4-1048 to 11.4-1049.

Preliminarily, we note that neither the DSEIR’s discussion of GHG impacts (Section 4.6) nor its Appendix 10.2 analyzing GHG impacts makes any reference whatsoever to the CAPCOA guidance document, Quantifying Greenhouse Gas Mitigation Measures, that the FSEIR identifies for the first time as the source of information justifying the GHG mitigation credits.

The CalEEMod User’s Guide does provide at pages 38-39 that the mitigation is based on mitigation measures specified in the CAPCOA report and that the CalEEMod user is supposed to follow the instructions in the CalEEMod “mitigation module” to enter the various data required by the mitigation measures specified in CAPCOA’s report. However, neither CalEEMod nor the CAPCOA report provide the information LandWatch requested, which is necessarily specific to this project.

Fact Sheets in Chapter 7 of the CAPCOA report identify a number of specific mitigation measures. The CAPCOA Fact Sheets provide formulae for calculating GHG reductions that are dependent on provision of project-specific assumptions and that result in greatly varying ranges of emission reductions depending on those assumptions. For example, CAPCOA indicates that the GHG reduction credit for the measure identified as “increased density” (CAPCOA mitigation measure “LUT-1”) can range from 0.8% to 30% because it depends on three project-specific variables: housing units per acre, jobs per acre, and the selection of one of two different assumptions about the elasticity of VMT with respect to density.

The FSEIR claims that “the emission reduction features used in CalEEMod for the Project are specifically listed in DSEIR Appendix 10.2 for each of the Project operations modeling scenario (pages 234-265 of the PDF).” FSEIR, pp. 11.4-1048. However, the cited pages simply identify the category of emission reduction but fail to set out the critical project-specific assumptions that were used in the analysis. These are the data that LandWatch specifically requested (comment PO 208-79), explaining that the range of effectiveness of the GHG mitigation measures is dependent on accurate assumptions. The CalEEMod user was required to enter these project-specific assumptions, but the CalEEMod output in the DSEIR Appendix 10.2 does not report these assumptions.

MOBILE SOURCE GHG MITIGATION: The table below lists the data required by CAPCOA for the seven mobile source (transportation) mitigation measures that were presumably provided by the air quality analyst pursuant to the data requirements of CalEEMod. See CalEEMod user’s Guide, p. 41. The missing information is the data that LandWatch requested and that the FSEIR simply refused to provide:

Mobile source mitigation feature identified in Appendix 10.2	CAPCOA measure	Project-specific data required by CAPCOA and/or CalEEMod, <u>but not provided in DSEIR or FSEIR despite LandWatch’s request</u>	Project-specific range of effectiveness in reducing GHG emissions
Increase density	LUT-1	-housing units per acre; -jobs per acre; -elasticity of VMT with respect to density Note: two possible elasticity values from the literature are identified.	0.8% to 30%
Increase diversity	LUT-3	-percentage of each land use type in the project (land use types include residential, retail, park, open space, or office)	9% to 30%
Improve walkability design	LUT-8	-intersections per square mile; -elasticity of VMT with respect to percentage of intersections (Note: two possible elasticity approaches from the literature are identified.)	3% to 21.3%
Increase transit accessibility	LUT-5	-distance to transit station in project; -transit mode share for typical ITE development (Note: this project contains numerous ITE categories so it is unclear which “typical mode share” was assumed, or whether a blended mode share was determined)	0.5% to 24.6%
Integrate below market rate housing	LUT-6	-percentage of units in project that are deed-restricted BMR housing	0.04% to 1.2%
Improve pedestrian network	SDT-1	-information regarding extent of pedestrian accommodation	0% to 2%
Expand transit network	TST-3	-percent increase in transit network coverage; -existing transit mode share; -project location: urban center, urban, or suburban	0.1 to 8.2%

As is evident, the range of effectiveness of the above mobile source measures is critically dependent on the specific assumptions describing the project. The public has no way to evaluate the accuracy of the analysis or to challenge the applicability of the assumptions. Contrary to the FSEIR, the citations to the CalEEMod User's Guide and CAPCOA do not provide the information that LandWatch requested, and it is not provided in Section 4.6 or Appendix 10.2 of the DSEIR..

AREA SOURCE GHG MITIGATION: The picture for the five mitigation credits taken for area sources is even more opaque. The DSEIR identifies four categories of credit for use of low VOC paints and another credit for requiring natural gas hearths as measures for which operational emission reduction credits were taken. The FSEIR states that the CalEEMod credits are based on CAPCOA mitigation measures. However, CAPCOA does not mention low VOC paints, and the CalEEMod User's Guide does not identify a CAPCOA mitigation measure related to low VOC paints. Instead CalEEMod identifies a credit based on unspecified SCAQMD (South Coast Air Quality Management District) assumptions and apparently requiring assumptions regarding paint reapplication rates and VOC contents. CalEEMod User's Guide, p. 32. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

CalEEMod's discussion of its credit for all natural gas hearths states only that the use of natural gas hearths is "consistent with the mitigation number A-1 in the CAPCOA Quantifying GHG mitigation document."²¹ CalEEMod User's Guide, p. 42. However, Mitigation number A-1 is for prohibition of gas powered landscaping equipment and CAPCOA does not mention a credit for requiring natural gas hearths. CAPCOA, p. 69. There is no apparent connection between CAPCOA's credit for prohibiting gas powered landscaping equipment and CalEEMod's credit for requiring gas-powered hearths. If there is, neither CAPCOA, the CalEEMod User's Guide, nor the SEIR explain that connection.

Furthermore, neither the SEIR nor CalEEMod nor CAPCOA identify the GHG reduction percentage claimed for these low VOC paints and natural gas hearths.

WATER SUPPLY GHG MITIGATION: The DSEIR claims four credits for low flow bathroom faucets, kitchen faucets, toilets, and showers, which CalEEMod indicates are based on CAPCOA measure WUW-1. This measure has a range of effectiveness of 17-31% and requires specification of the percent flow reduction. CalEEMod User's Guide, p. 43; CAPCOA, p. 348. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

The DSEIR claims another GHG mitigation credit for reclaimed water use. CalEEMod requires specification of the percent of indoor water use and the percent of

²¹ The CalEEMod User's Guide provides data entry screens to specify hearths and woodstoves and to override regulatory limits on these, but these screens do not appear to relate to emission credits for requiring all natural gas hearths. CalEEMod User's Guide, pp. 31-32.

outdoor water use. CalEEMod User's Guide, p. 43. This information is not provided in the DSEIR or FSEIR. CAPCOA requires specification of reclaimed water use and total non-potable water use and identifies a range of effectiveness of up to 40%. CAPCOA, p. 332. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

Furthermore, the actual commitment to use recycled water for the project is unclear because the SEIR acknowledges that provision of recycled water is uncertain. DSEIR, pp. 4.19-26, 4.19-32, 4.19-33. If a credit is taken for recycled water use in the GHG mitigation analysis, the public has no way to understand how much recycled water is assumed to be used, where it is assumed to be used, and the consistency of those assumptions with the discussions of recycled water elsewhere in the SEIR.

SOLID WASTE GHG MITIGATION: The DSEIR claims a credit for solid waste recycling and composting services. CalEEMod does not indicate what data must be supplied, but states that this credit corresponds to CAPCOA's measure SW-1. CalEEMod User's Guide, p. 43. CAPCOA indicates that this measure requires an estimate of the number of residents, building square footage for office and retail uses, visitors to public venues, employees for other commercial buildings, waste disposal methods, and amount of waste diverted to recycling or composting. CAPCOA, p. 393. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request. It is unclear how CalEEMod determines the credit because the CalEEMod User's Guide referenced by the FSEIR as the source of the information LandWatch requested does not in fact explain the basis of the credit.

CONSTRUCTION GHG MITIGATION: The DSEIR Appendix 10.2 claims a mitigation credit for seven construction measures including:

- Use Cleaner Engines for Construction Equipment
- Use DPF for Construction Equipment
- Replace Ground Cover
- Water Exposed Area
- Water Unpaved Roads
- Reduce Vehicle Speed on Unpaved Roads
- Clean Paved Roads

The CalEEMod User's Guide discussion of construction assumptions does not identify the source of these measures and does not illustrate input screens with mitigation options. See CalEEMod User's Guide, pp. 24-27. None of the seven measures listed in Appendix 10.2 appear to correspond to items in CAPCOA's list of five construction mitigation measures, C-1 to C-5. See CAPCOA, pp. 409-432. In short, the FSEIR's contention that all of the GHG mitigation credits "are based on CAPCOA's Quantifying Greenhouse Gas Mitigation Measures document" is apparently not true. FSEIR, p. 11.4-1048. If there is some relation between the CAPCOA construction mitigation measures and the

CalEEMod construction measures for which credit is taken in Appendix 10.2, it remains unclear.

As with the other CAPCOA mitigation measures, the CAPCOA construction mitigation measures have a wide range of effectiveness depending on the specific assumptions provide, e.g., assumptions about specific carbon-based fuels used, about use of electric or hybrid equipment, idling limitations beyond regulatory requirements, the use of a heavy duty off road vehicle plan, and the use of a construction vehicle inventory tracking system. CAPCOA, pp. 409-432. It is clear that the effectiveness of construction GHG mitigation depends on these specific assumptions. However, the SEIR does not provide this information, despite LandWatch's request.

In sum, the SEIR relies on a study of unmitigated and mitigated GHG impacts to assess the extent of the GHG impact. That study uses a software tool, CalEEMod, that requires specific assumptions about what mitigation will actually be undertaken by the Project in 25 specific contexts related to mobile sources, area sources, water, solid waste, and construction. The effectiveness of the GHG mitigation varies widely based on these specific assumptions. Because the assumptions are not in the DSEIR Appendix 10.2, LandWatch requested them. However, the FSEIR simply failed to provide the requested information.

D. The FSEIR fails to respond adequately to comments proposing additional mitigation for GHG impacts.

The DSEIR concludes that, despite the mitigation measures proposed in the DSEIR, GHG impacts will be significant and unavoidable. DSEIR, p. 4.6-22. Accordingly, LandWatch and the Monterey Bay Unified Air Pollution Control District ("MBUAPCD") proposed a number of additional mitigation measures. While the FSEIR does indicate that some of the measures proposed by LandWatch will be implemented as project features or as a result of Title 24 compliance, the FSEIR fails to respond adequately to other proposed mitigation measures. The FSEIR states that the lead agency need only "focus on mitigation measures that are feasible, practical, and effective." FSEIR, p. 11.4-1051. However, the FSEIR does not demonstrate that the proposed measures that it did not discuss are not feasible, practical, and effective.

For each of the following proposed mitigation measures the FSEIR fails to provide any discussion, much less to demonstrate that the proposed measure is not feasible, practical, and effective:

- Use passive solar design and provide shade on at least 30% of onsite impervious surfaces, including parking areas, driveways, walkways, plazas, patios, etc. (excluding roofs).
- Use light colored "cool" roofs with high-albedo materials (reflectance of at least 0.3) for 30% of the Project's non-roof impervious surfaces.

- Use thermal pool covers and efficient pumps and motors for apartments, commercial pools and spa uses.
- Educate residents, customers and tenants on energy efficiency.
- Design outdoor water features for low flow pumps and places where shading can be provided.
- Use low-impact development practices.
- Provide educational information about water conservation.
- Provide educational information about reducing waste and available recycling services.
- Incorporate public transit into the Project design.
- Provide free or low-cost monthly transit passes for students, employees, residents, and customers.²²
- Provide secured bicycle parking for all apartments, flats, and commercial uses.
- Provide a low- or zero-emission trolley at the County Walk.
- Provide convenient locations accessible by public transportation for car sharing and car pools for all events.
- Provide housing units for all track workers within walking distance of work.
- Use alternative-fueled (e.g., bio-diesel, electric) construction vehicles/equipment for at least 15% of the fleet.
- Use local building materials where reasonably available (i.e., within the general Monterey Bay area defined as Monterey County, Santa Cruz County, and San Benito County)
- Recycle at least 50% of construction waste or demolition materials.
- Exceed Title 24 building envelope energy efficiency standards (applicable at the time of the building permit issuance) by 20%.
- Install programmable thermostat timers and smart meters.
- Obtain third-party heating, ventilation, and air conditioning commissioning and verification of energy savings.
- Install green roofs.
- Install tankless water heaters.
- HVAC duct sealing.
- Increase roof/ceiling insulation.
- Install high-efficiency area lighting.
- Maximize interior day light.
- Install rainwater collection systems.
- Restrict the use of water for cleaning outdoor surfaces and prohibit systems that apply water to non-vegetated surfaces.

²² The FSEIR admits that its voluntary approach to transit subsidy is less effective, but does not claim that, or explain why, the more effective mitigation proposed by LandWatch is infeasible.

- Use only electric-powered landscaping equipment (not gas powered).
- Require off-site mitigation including:
 - Paying for energy-efficiency upgrades of existing homes and business.
 - Installing off-site renewable energy.
 - Paying for off-site waste reduction.
 - Off-site mitigation must be maintained in perpetuity to match the length of Project operations to provide ongoing annual emission reductions.
- Carbon Offsets - Purchase offsets from a validated source to offset annual GHG emissions

In addition to ignoring the above proposals, the FSEIR makes no response to MBUAPCD's proposal to require a hotel shuttle to local destinations.

The FSEIR sole response to MBUAPCD's proposal for a three-year funding commitment for a new transit route to serve the Gigling Road transit stop is that the proposal "has been noted." FSEIR, p. 11.4-379. This is not an adequate response. It certainly does not demonstrate that the proposal is not feasible, practical, and effective.

LandWatch and MBUAPCD proposed requiring onsite solar power generation and solar water heating. Responding to MBUAPCD, the FSEIR stated that this mitigation would be "speculative" because the "exact location, size, height, building orientation, etc. of the new buildings on the Project site are unknown at the time." FSEIR, p. 11.4-379. Calling the mitigation "speculative" for this reason is incoherent. In fact, the Specific Plan locates and orients major buildings and lays out illustrative residential lots and building sites in section 2. More fundamentally, the architectural guidelines in section 5 and development guidelines in section 6 of the Specific Plan specify numerous building and site layout features, and could be modified to require accommodation and inclusion of solar electrical and solar water heating panels unless specific, enumerated considerations (e.g., the presence of a heritage tree shading all available roof) made such an accommodation infeasible.

The FSEIR's response improperly assumes that mitigation through solar energy capture must take a back seat to all other considerations and that no mitigation vial solar energy can be required for any building unless that mitigation is feasible for all buildings. This misreads CEQA's mitigation requirements because CEQA requires modification of a proposed project in order to address significant environmental impacts unless the mitigation is in fact infeasible or the mitigation is not required to render impacts less than significant:

A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

Guidelines, § 15021(a)(2). In determining that mitigation is infeasible, an agency must identify "specific economic, environmental, legal, social, and technological factors." Guidelines, § 15021(a)(3) (emphasis added). The FSEIR has not done so.

E. The analysis and mitigation of transportation impacts is inadequate.

1. The SEIR fails to provide the analysis of claimed internal trips despite LandWatch's request for this information.

An EIR "must contain facts and analysis, not just the agency's bare conclusions or opinions." *Laurel Heights Improvement Assn. v. Regents of University of California* ("Laurel Heights I") (1988) 47 Cal.3d 376, 404. Even if an agency's conclusions or opinions are ultimately proven correct, statements unsupported by facts and meaningful analysis are not sufficient: "*the critical point [is] that the public must be equally informed.*" *Id.* (emphasis in original). The requisite facts and analysis supporting an agency's conclusions must be in an EIR, not scattered elsewhere throughout an administrative record. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706 ("whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report"); *Vineyard, supra*, 40 Cal.4th at 442 ("To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA").

As LandWatch objected in its DSEIR comments (PO 208-34), the DSEIR fails to provide the basis for its claim that 28% of vehicle trips would be internal to the project site. Since the 28% reduction in external trips would substantially reduce transportation impacts to facilities outside the project area and would substantially reduce both criteria pollutants (NOx, PM-10, etc) and GHG emissions, the 28% assumption is a critical parameter. LandWatch asked whether this internal trip rate was based on the standard traffic analysis methodology (ITE's Trip Generation Handbook) or some other methodology. And LandWatch asked that the City show its work by providing the facts and analysis behind this 28% internal trip rate assumption.

In response, the FSEIR refers LandWatch to its response to PA 3-1, a comment in which Caltrans also objected that the 28% internal trip rate was unsupported by analysis and appears to be inconsistent with the standard ITE methodology. In response to Caltrans, the FSEIR states that "[t]he requested documentation was provided to the commenter shortly after the request was received by the City, and no further comments were received from Caltrans." But provision of the documentation to Caltrans does not address LandWatch's concerns. Thus, the response to LandWatch that simply references response PA-3 is entirely inadequate, violating CEQA's requirement for good-faith reasoned analysis in response to comments. Guidelines, §15088.

And the FSEIR's claim that Caltrans has accepted the internal capture analysis is not true. Caltrans wrote on August 30, 2016 to reiterate its objection to the "exaggerated internal capture rate" and the use of an unjustified method to determine internal capture.

And even if Caltrans had been persuaded that 28% was justified, based on privately shared data or analysis, it is not sufficient to tell the public only that there is some expert opinion that supports or acquiesces in an EIR's conclusion. Substantial evidence requires an EIR to present the facts and analysis, not just raw opinion.

The FSEIR claims that "the data supporting this traffic impact analysis, including trip capture rates, is included in DSEIR Appendix 10.8, *Traffic Impact Analysis Data*." FSEIR, p. 11.4-1031. This is not true. Appendix 10.8 contains 723 pages of computer output sheets for the Level of Service Computation Reports for the affected intersections under the no-project, with-project, and with-mitigation scenarios under existing, 2018, and 2035 conditions. Nothing in that output for intersection LOS would enable the public to reconstruct the basis of the 28% internal capture analysis. Indeed, if the 28% internal trip claim could have been validated with reference to the materials in the DSEIR, then Caltrans would not have needed to ask for the analysis and the City would not have needed to supply the "requested documentation" to Caltrans in response to its comment.

The FSEIR's response to Caltrans indicates that the trip distribution patterns were developed through customization of the AMBAG travel demand model. This information is clearly not supplied in Appendix 10.8, which provides no information about the AMBAG model.

The FSEIR claims that the ITE methodology would understate internal capture because it omits "site interaction" for the equestrian facilities, the hotels, the tennis club, warehousing, and cemetery land uses. Site interactions must be determined through empirical analyses of similar mixed-use development projects. Thus, ITE's handbook provides internal capture data for various mixed use combinations based on empirical studies that compare stand-alone development trip rates to mixed use trip rates.²³ Additional empirical studies are available that supplement the ITE data sets and that include site interactions for additional uses such as hotels. For example, a 2014 analysis by the Center for Urban Transportation Research ("CUTR") reports data sets that do include hotel uses.²⁴ But the analysis of capture is based on a number of factors, none of which were revealed to the public here. For example, the CUTR report indicates that site interactions decrease as proximity decreases, so a sprawling 711-acre suburban-style project would have a lower capture rate than a smaller, denser urban mixed-use project,

²³ Institute of Transportation Engineers, *Trip Generation Handbook*, 2nd Ed.

²⁴ Center for Urban Transportation Research, *Trip Internalization in Multi-use Developments*, April 2014, available at http://www.dot.state.fl.us/research-center/Completed_Proj/Summary_PL/FDOT-BDK84-977-10-rpt.pdf.

all other factors being equal.²⁵ CUTR indicates that proximity factors should be used in the analysis for any development bigger than 55 acres.²⁶ However, here the public has no way to evaluate whether or how this was done. What is missing in the Monterey Downs SEIR is any evidence that the internal capture rate is based on empirical data, or, any disclosure of that empirical data.

The FSEIR states that after assigning trips to the roadway network using the AMBAG model "it was determined that approximately 28 percent of the total trips generated by the proposed Specific Plan land uses would travel to another zone within the Specific plan." FSEIR, p. 11.4-17. However, the SEIR does not explain how "it was determined." The FSEIR provides no empirical analysis to the public that would support the validity of the internal capture.

2. The SEIR fails to provide adequate performance standards for Mitigation measure TRA-8.

Mitigation Measure TRA-8 provides for an entirely ad hoc response to special event traffic, including events that may attract thousands of vehicles to the Sports Arena. The requirement to prepare an Events Management Plan does not include any performance standard for acceptable levels of congestion. The FSEIR fails to respond adequately to LandWatch's concern that the measure improperly delegates mitigation to an unelected official without providing a meaningful performance standard. The FSEIR also fails to respond adequately to LandWatch's concern that the traffic control measures all remain optional under the phrasing of Mitigation Measure TRA-8. DSEIR, p. 4.17-85 (the "measures may include. . ."). There is no assurance that any effective or reasonable traffic control measures will be implemented since there is neither a congestion relief performance standard nor a requirement to use any particular traffic control measure.

The FSEIR claims that an Events Management Plan cannot be prepared in advance, but the DSEIR states that the applicant will in fact be required to prepare an "annual special events traffic and emergency services management plan." DSEIR, p. 4.17-83. If such a plan can be prepared a year in advance for the 125 or more days of special events, then it is unreasonable to claim that the SEIR could not provide even the sample plan requested by LandWatch.

3. Recirculation is required because the FSEIR identifies a new significant impact at intersection 49, SR-1 NB Ramps at Reservation Road.

The FSEIR acknowledges that impacts to intersection 49, SR-1 NB Ramps at Reservation Road, will remain significant and unmitigated. FSEIR, p. 11.4-1040 to 11.4-1043. This was not disclosed in the DSEIR. The FSEIR's acknowledgement constitutes

²⁵ *Id.* at 82.

²⁶ *Id.* at 84-85.

significant new information that requires recirculation because it discloses a new significant impact. Guidelines §15088.5(a)(1).

4. The SEIR fails to identify a significant impact at intersection 38, SR 1 SB Ramps at Imjin Parkway.

Recirculation is required because the DSEIR fails to disclose a significant unmitigated impact at intersection 38, SR 1 SB Ramps at Imjin Parkway, under 2018 conditions. The LOS calculations in DSEIR Appendix 10.2 for mitigated conditions under both the existing and 2018 scenarios assume that a signal has been installed at this location pursuant to Mitigation Measure TRA-5. App. 10.2, pdf pages 689, 706. Under existing AM conditions with mitigation, the average delay is 52.6 seconds yielding a LOS D, which the DSEIR treats as a less than significant impact. App. 10.2, pdf page 689; DSEIR, p. 4.17-75 (Table 4.17-14). Under 2018 AM conditions, the average delay is degraded to 62.4 seconds, yielding LOS E. App. 10.2, pdf page 706. Thus, despite the traffic signal mitigation, there would be a significant impact because the LOS E is below the acceptable LOS for Caltrans facilities. Additional mitigation improvements should be proposed for this facility; or, if that is infeasible, the impact should be identified as unavoidable.²⁷

The DSEIR unaccountably and erroneously indicates in Table 4.17-20 that the mitigated AM LOS at intersection 38 would be LOS B, based on an average delay of 14.1 seconds. DSEIR, p. 4.17-93. This is an error because it is unsupported by the technical appendix.

5. The SEIR fails to apply the Caltrans LOS standard for determining significance.

As Caltrans objected, the SEIR fails to acknowledge that Caltrans requires maintenance of a Level of Service at the cusp of LOS C and LOS D on SR1 facilities. Comment PA 3-2. The FSEIR claims that a 2006 planning document would justify this approach, but Caltrans has pointed out that this document does not apply to traffic management or operations.²⁸

The DSEIR states in the section identifying thresholds of significance for each jurisdiction that an impact to a Caltrans facility would be significant if the project would “result in a LOS lower than the transition between LOC C and LOS D” or if the project

²⁷ While the DSEIR identifies the impact under existing conditions as unavoidably significant, it fails to do so under 2018 conditions. DSEIR, pp. 4.17-130 to 4.17-131. Furthermore, the only basis for characterizing the impact as unavoidably significant under existing conditions is the fact that the required mitigation improvements, widening the intersection and installing a traffic signal, are not under the lead agency’s jurisdiction. DSEIR, p. 4.17-84.

²⁸ John Olejnic, Caltrans, to Rick Medina, Seaside, Aug. 30, 2016.

would add a trip to “an existing state highway facility [that] is operating at less than the appropriate target LOS.” DSEIR, pp. 4.17-47 to 4.17-48. The DSEIR identifies the “LOS Std.” for every intersection or ramp, roadway segment, or freeway segment that is under Caltrans jurisdiction as “C/D,” not as “D.” DSEIR, Tables 4.17-13, 4.17-14, 4.17-19, 4.17-21, 4.17-25. Despite stating that the threshold of significance is the C/D transition and designating it in the tables, the DSEIR unaccountably fails to acknowledge impacts are significant where the project causes degradation of service to below the C/D transition or where it adds trips to a facility that operates below the C/D transition. Instead, the DSEIR only treats impacts to Caltrans’ facilities as significant if they operate below LOS D. For example, for existing plus project conditions the DSEIR fails to identify a significant impact despite LOS below the C/D transition at intersection 42 in Table 4.17-13, at intersection 38 in Table 4.17-15, at six SR 1 segments in Table 4.17-16, and at ten ramps in Table 4.17-17. The DSEIR similarly fails to identify significant impacts with reference to the stated LOS C/D threshold of significance under interim 2018 and cumulative conditions.

In sum, the SEIR’s failure to honor Caltrans’ LOS standard in determining significance is unaccountable since 1) it honors and applies the adopted LOS standards of other agencies, including the County of Monterey and the City of Marina, in assessing impacts to their facilities, 2) it expressly identifies the LOS C/D transition as the threshold for significant impacts, and 3) Caltrans has repeatedly and specifically advised Seaside that its standards requires LOS C/D, ever since the scoping meeting for this project.²⁹ The contradiction in the stated significance thresholds and the threshold actually applied and the failure to approach significance determination consistently among the various jurisdictions vitiates substantial evidence for the SEIR’s conclusions. It also demonstrates a results-driven approach to analysis. The SEIR should be revised and recirculated to assess and mitigate impacts with reference to the actual Caltrans standards, as identified in the DSEIR.

6. The FSEIR fails to respond adequately to proposed mitigation in the form of ramp metering.

LandWatch requested that ramp metering be proposed by the SEIR to address significant and unmitigated impacts to freeway ramps. In response, the FSEIR simply refers LandWatch to the discussion in the DSEIR at page 4.17-80, which the FSEIR claims establishes the infeasibility of this mitigation. FSEIR, p. 11.4-1043. However the DSEIR’s discussion states only that ramp metering is not currently planned and is not within the jurisdiction of the lead agency to implement. DSEIR, p. 4.17-80.

In fact, contrary to the DSEIR, ramp metering is part of Caltrans planning for SR 1 segment 14, which includes the portions of SR 1 evaluated in the SEIR. Caltrans’ Transportation Concept Report for State Route 1 in District 5 identifies ramp metering as

²⁹ *Id.*

an important part of the Intelligent Transportation Systems (“ITS”) strategy to optimize traffic flow that will be managed by Caltrans Traffic Management Center.³⁰ Caltrans specifically identifies ramp metering as part of the measures it plans to implement to maintain acceptable LOS on SR 1 segment 14:

a combination of widening, operational improvements, and enhanced alternatives to travel by single occupant vehicles will be required. ITS elements such as loop detection and ramp metering will be a major component of operational improvements.³¹

Caltrans states that Ramp metering is planned specifically for SR 1 “between SR 68 West and Reservation Road,” which would include all of the ramps evaluated in the SEIR:

Intelligent Transportation Systems (ITS) – ITS will play a critical role in managing operations on State Route 1 in Monterey County. ITS projects have been implemented in the County and additional projects have a high priority. When the Central Coast ITS Strategic Plan is fully implemented, the following elements will be available on Route 1 in Monterey County:

- Smart call boxes from San Luis Obispo/Monterey County line to Monterey/Santa Cruz County line
- Traffic surveillance stations (loop detectors) through Segments 14 (freeway portion) and 15
- CCTV camera installation *and freeway control ramp metering between SR 68 West and Reservation Road* . . .³²

The DSEIR and FSEIR offer no evidence that ramp metering would not be effective at reducing or avoiding impacts, and it is clear that Caltrans believes that ramp metering would be effective at the ramps under review. The DSEIR and FSEIR provide no evidence that Caltrans would not accept fair share payments toward ramp metering and consider implementing ramp metering if it were proposed in the SEIR; and the fact that Caltrans actually plans to implement metering indicates that Caltrans would be receptive.

³⁰ Caltrans, Transportation Concept Report for State Route 1 in District 5, April 2006, p. 10-11, available at http://www.dot.ca.gov/dist05/planning/sys_plan_docs/ctr_factsheet_combo/mon_sr1_ctrfs.pdf. Ramp metering is a “traffic management strategy that utilizes a system of traffic signals on freeway entrance and connector ramps to regulate the volume of traffic entering a freeway corridor. This is to maximize the efficiency of the freeway and thereby minimize the total delay in the transportation corridor.” *Id.*, Appendix A.

³¹ *Id.* at 46, emphasis added

³² *Id.* at 44, underlining in original, italics and bolding added.

CEQA does not permit an agency to dismiss mitigation suggestions from the public without good-faith reasoned analysis. The fact that the mitigation is within another agency’s jurisdiction is not a sufficient basis to decline to consider it. CEQA specifically requires an agency to make findings as to whether mitigation is “within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.” Public Resources Code, §21081(a)(2). And indeed the DSEIR proposes numerous other traffic improvements that are not within the jurisdiction of the lead agency (e.g., mitigation Measures TRA-2, 4, 5, 6, and 7).

Seaside may require fair share payments toward effective mitigation measures, including ramp metering, and may even provide that if Caltrans declines to implement the measure the fair share funds can be returned. Seaside may also conclude that the impacts for which these mitigation measures are proposed will remain significant and unavoidable due to its lack of jurisdiction to require implementation. But Seaside cannot simply decline to consider mitigation proposed by the public on the grounds that it lacks legal authority to compel that mitigation be implemented or based on the false claim that this mitigation is not currently planned by Caltrans.

F. The analysis and mitigation of noise impact is inadequate.

LandWatch engaged noise consultant Derek Watry to review the discussion of noise in the DSEIR, LandWatch’s comments, and the FSEIR’s response. His comments are attached and incorporated by reference.

1. The analysis of noise is inadequate under CEQA because it fails to recognize that non-compliance with statistical noise standards may be a significant impact.

Statistical noise standards (“Ln” standards or “Exceedence Level” standards) are standards for the noise levels that may not be exceeded for various periods of time. See DSEIR, p. 4.10-3, Table 4.10-2, Noise Descriptors. For example, BRP Noise Policies B-1, B-2, B-3, and B-5 apply the statistical noise standards from BRP Table 4.5-3, which is reproduced in the DSEIR as Table 4.10-7. See DSEIR, pp. 4.10-9 (Table 4.10-7) and 4.10-10 (BRP noise policies). Under the BRP’s statistical noise standards applicable from 7 am to 10 pm, noise may not ever exceed 65 dBA, may not exceed 60 dBA for more than 1 minute, may not exceed 55 dBA for more than 5 minutes, may not exceed 50 dBA for more than 15 minutes, and may not exceed 45 dBA for more than 30 minutes. e.g., for one minute, five minutes, ten minutes, 15 minutes, or 30 minutes. Permissible noise levels are dBA less from 10 pm to 7am. The BRP applies these statistical noise standards at the property line.

As Mr. Watry explains, BRP Noise Policies and programs expressly require compliance with the BRP statistical noise standards. This SEIR identifies exceeding applicable noise standards as a significant impact. DSEIR, p. 4.10-12. The BRP PEIR specifically identifies the expectation that construction noise and stationary noise, including noise from a proposed amphitheater, would be required to comply with the

BRP's statistical noise standards as a basis to conclude that these noise sources would be less than significant. BRP PEIR, pp. 4-139 to 4-140, 4-146, 4-149.

Statistical noise standards may be applied in addition to and independent of 24-hour average noise standards ("CNEL" or "Ldn" standards). See DSEIR, p. 4.10-3, Table 4.10-2, "Community Noise Equivalent level (CNEL)" noise descriptor. The BRP Noise Policies B-1, B-2, B-3, and B-5 do in fact also and independently apply the 24-hour average CNEL noise standards from BRP Table 4.5-3, which is reproduced in the DSEIR as Table 4.10-6. See DSEIR, pp. 4.10-9 (Table 4.10-6) and 4.10-10 (BRP noise policies).

LandWatch's DSEIR comments objected that the DSEIR fails to apply statistical noise standards from the BRP or from any source to determine the significance of noise impacts. The FSEIR responded that these standards are not relevant. FSEIR, p. 11.4-1053. As Mr. Watry explains, that claim is not true.

Statistical noise standards are in fact highly relevant to determining annoyance from noise, particularly when a noise source is not continuous over a 24-hour period but instead consists of short-term, episodic and/or irregular loud noise such as noise from the recreational events at the project. The rationale for applying statistical noise standards in addition to 24-hour noise standards is that irritation can be caused by short periods of relatively loud noise, even if the average noise level complies with standards for longer periods, e.g., a 24-hour average CNEL standards. The BRP includes both 24-hour standards and statistical noise standards for just this reason.

Mr. Watry explains that stationary noise and construction noise from the Project will exceed the BRP's statistical noise standards and that this will substantially adversely affect sensitive receptors adjacent to the project. For example, maximum noise from cheering crowds at the Sports Arena would exceed the BRP allowable maximum noise level at the Oak Oval. Cheering noise that continues for as little as one minute per hour would exceed the BRP statistical noise limits at the Oak Oval and at the nearest residential receptor. Grandstand noise and the swimming pool timing system noise would exceed the BRP's statistical limit for maximum noise levels. Construction noise would exceed the BRP statistical limits.

The SEIR errs by uncritically relying only on 24-hour noise standards to determine significance despite evidence that episodic loud noise events will in fact result in substantial irritation to noise receptors and without any analysis of the effects of shorter-duration noise events on the ambient conditions.³³ *Berkeley Keep Jets Over the*

³³ Although the DSEIR references the City's 65 dBA maximum noise standard in its discussion of the mitigation of stationary noise impacts (DSEIR, p. 4.10-24), that reference is insufficient because (1) the City's maximum noise standard is not the same as the BRP's statistical noise standards, which include a more restrictive 0-minute (maximum) standard and which include standards for intervals greater than 0 minutes (compare DSEIR Table 4.10-4 to Table 4.10-7), (2) the 65 dBA maximum noise standard was not apparently used to determine the significance of impacts (DSEIR, pp. 4.10-18 to 4.10-24).

Bay Comm. v. Bd. of Port Comm'rs (2001) 91 Cal. App. 4th 1344, 1381-82; *see also Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant"). The SEIR also errs by failing to acknowledge that the project is inconsistent with the BRP policies that mandate compliance with the BRP's statistical noise standards. Guidelines, §15125(d).

2. Analysis of construction noise is inadequate.

The DSEIR announces that that construction impacts would be significant if any of the standards in the City's General Plan or noise ordinance or other applicable plans (e.g., the BRP) were exceeded. DSEIR p. 4.10-12. However, the DSEIR provides no actual quantitative assessment of whether construction activities would exceed any of the applicable standards (i.e., the 24-hour average, maximum, or statistical standards promulgated by either the City or the BRP), despite the express requirement in Seaside's Municipal Code §17.30.060(G)(6) for a quantitative analysis of noise levels post-mitigation. The DSEIR also ignores the effects of construction noise on open space users even though these users are sensitive receptors and will be located immediately adjacent to the project site.

Thus there is no substantial evidence to support a conclusion that construction noise would not exceed applicable standards. However, there is evidence that construction noise would exceed applicable standards.

As Mr. Watry explains, the BRP statistical noise standards are clearly relevant to the significance of construction noise impacts. As explained above, the BRP PEIR specifically referenced the expectation that projects would meet the BRP statistical noise standards as one basis for finding construction noise impact to be less than significant. However the SEIR fails to apply these standards and improperly dismisses their relevance. Mr. Watry demonstrates that construction noise would exceed the BRP statistical noise standards.

Construction noise would also exceed the 65 dBA maximum allowable noise level for residential uses in the City's noise ordinance.

3. Mitigation of construction noise is inadequate.

CEQA requires that mitigation address the significant impacts identified in the EIR and do so with adequate certainty. Guidelines 15126.4(a)(2) (measures must be "fully enforceable"). A threshold of significance is a criterion "non-compliance with which" means the effect is significant and "compliance with which" means it is less than significant, e.g., adequately mitigated. Guidelines, § 15064.7(a). Mitigation must address the significant impact that is "identified in the EIR," and "as identified in the EIR." Guidelines, §§ 15126.4(a)(1)(A), 15091(a)(1). *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-658 holds that an EIR must clearly state

its significance threshold; in particular, it must do so to inform discussion of proposed mitigation measures.

Here, although the DSEIR identifies the noise standards in the City's General Plan, noise ordinance, and/or the BRP as the significance thresholds, Mitigation NOI-1 for construction noise impacts lacks any performance standard that would ensure that the purported significance thresholds are met. As Mr. Watry explains, the provisions of Mitigation NOI-1 simply do not require that construction noise meet any adopted standards, much less the standards that the DSEIR purports to apply to determine significance of impacts. The actual provisions in NOI-1 – notice, complaint resolution, siting stationary equipment, and limiting work to daylight hours – would not ensure that applicable standards are met.

Furthermore, Mr. Watry explains that it is unlikely that construction noise could meet the adopted standards, particularly the statistical noise standards. The nature of the noise sources, e.g. diesel equipment with elevated exhaust stacks, and the area extent of construction activity renders mitigation by noise barrier infeasible. The SEIR itself provides no evidence that mitigation could feasibly meet adopted standards, despite the Seaside noise ordinance that requires a quantitative demonstration of the efficacy of mitigation. Because mitigation is not demonstrably feasible, its formulation cannot be deferred. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-96. The SEIR must be revised to formulate mitigation that would meet the applicable Seaside and BRP noise standards.

4. The SEIR improperly concludes that impacts are less than significant if mitigation is not feasible.

The FSEIR improperly injects a consideration of feasibility into the determination of significance by implying that construction noise would be less than significant because the proposed mitigation “would minimize construction noise to the maximum extent feasible.” FSEIR, p. 11.4-1056. CEQA neither requires nor allows lead agencies to consider costs or feasibility in determining the significance of impacts. Guidelines, §§15064, 15064.4, 15064.5, 15065, 15126.2, 15130, 15355, 15382. Under CEQA, feasibility considerations arise only in the context of determining if feasible mitigation measure are available after significance is determined (Public Resources Code, §21081(a)(3), Guidelines, §§15091(a)(3), 15364), and the determination of “acceptable” environmental harm arises only in the final step of the CEQA analysis in the context of a statement of overriding considerations. *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368-369; Public Resources Code, §21081(b).

The FSEIR also improperly injects the issue of feasibility into its determination of the significance of stationary noise impacts. The FSEIR argues that BRP Noise Policy B-1 requires that BRP's 24-hour and statistical noise standards be met only “where feasible and practical.” FSEIR, p. 11.4-1056. The FSEIR then argues that application of the

BRP's “statistical noise Ln standards are not practicable for use in the Project's context.” FSEIR, p. 11.4-1056. It would be error to reject use of the BRP's statistical noise standards to determine significance based on a determination that the project cannot feasibly meet those standards.

The FSEIR also improperly injects the issue of infeasibility into the determination of the significance of noise from the City Corporation Yard and fire station. Siren and horn noise from fire trucks (at least 101 dBA Lmax at 50 feet – see DSEIR, p. 4.10-20) would exceed the City's 65 dBA maximum exterior noise standard (DSEIR, Table 4.10-7). Low speed truck maneuvering in the City Corporation Yard would generate 75 dBA Lmax at 50 feet, which would also exceed the City's 65 dBA Lmax standard. DSEIR, p. 4.10-20. The FSEIR argues that “such noise sources are exempt from the City's Noise Ordinance (pursuant to SMC Section 9.12.040) and therefore by extension, CEQA significance thresholds do not apply.” FSEIR, p. 11.4-1057, emphasis added. While legal considerations may justify a conclusion that mitigation is legally infeasible (Guidelines, § 15364), the significance of the unmitigated impact cannot be denied on the basis that mitigation is infeasible.

In sum, if the project cannot meet applicable noise standards, the City should identify the impact as significant and unmitigated. CEQA does not permit the City to conclude that noise is less than significant simply because mitigation is infeasible.

5. Analysis of stationary noise impact is inadequate because it fails to employ a consistent threshold of significance, fails to compare projected noise to any of these thresholds, and fails to consider relevant noise events.

There are three fundamental flaws in the SEIR's evaluation of stationary noise sources.

First, the SEIR fails to set out significance thresholds for stationary noise sources coherently. Determining significance of impacts requires “careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.” Guidelines, §15064(b). An EIR must clearly identify and apply standards of significance. *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655. As Mr. Watry documents, the DSEIR identifies several completely different thresholds:

- The threshold identification at DSEIR p. 4.10-12 says stationary noise (i.e., noise discussed in Impact Statement 4.10-3) is a significant impact only if the project causes a substantial permanent increase in ambient noise.
- The discussion of threshold of significance at DSEIR p.4.10-13 to 4.10-14 states that stationary noise would be significant if it cause an exceedance

of Seaside's Municipal Code standards at Tables 3-2 and 3-3.³⁴ These tables provide absolute noise standards, not noise standards expressed as an allowable increase. For example, these noise standards permit a maximum exterior noise level of 65 dBA for residential uses and a normally acceptable 24-hour average exterior residential noise level of 55 dB CNEL.

- The discussion of stationary source impacts actually purports to determine significance of noise from residential uses, non-residential mechanical equipment, equestrian event noise, swim center, and swim event center and pool activity based on whether it exceeds the BRP absolute standards of 50 to 55 dBA for residential uses, not, as stated earlier, based on whether it exceeds Seaside's absolute standards. See DSEIR pp. 4.10-19 to 4.10-24. The BRP standard referenced is apparently from DSEIR Table 4.10-6, BRP's land use compatibility matrix, which specifies normally acceptable noise for single family residential use at 50-55 CNEL or Ldn. The confusion as to whether significance is determined by using Seaside's standards or the BRP standards is consequential because those standards differ. For example, the BRP has a 50 CNEL normally acceptable standard for passively used open space but the City has no standard for that use. And the BRP has a less restrictive standard than the City for multi-family residential use.

In short, the SEIR errs because it is impossible for the public to understand what threshold the SEIR applies to determine significance of stationary sources.

Second, the SEIR fails to provide any actual analysis that would support the determination of significance using the 24-hour average thresholds of significance identified as applicable standards. The SEIR identifies various 24-hour noise standards as applicable; however, for a number of critical noise sources (e.g., crowd noise, musical events), the SEIR does not actually determine the 24-hour average noise that the project would produce. For example, there is no analysis of the projected 24-hour average noise produced by events in Planning Areas REC-2, C-1, or REC-1. Instead, the DSEIR's discussion of significance repeatedly and erroneously compares peak or short term noise generated by the project to 24-hours standards.

In fact, the project description is not sufficient to enable the determination of 24-hour average noise impacts. Planning Areas REC-2, C-1, and REC-1 would permit noise from many different sources, such as musical events, equestrian events, swim meets, dog shows, and other sporting events. As Mr. Watry explains, the SEIR lacks an adequate description of the average noise generated by, or the duration of, the events in these areas

³⁴ In the Municipal Code at §17.030.060(E) these are currently identified as Tables 3-3 and 3-4. They are reproduced in the DSEIR as Tables 4.10-4 and 4.10-5.

to support determination of 24-hour average noise levels.³⁵ The FSEIR admits that "the exact activities associated with these potential uses is not known at this time" FSEIR, pp. 11.4-1057 to 11.4-1058. Thus, the EIR is inadequate because it fails to provide a project description that is sufficient to enable analysis of impacts (Guidelines, §15024) and fails to provide an adequate determination of the significance of impacts (Guidelines, §§ 15064, 15126.2). Furthermore, as Mr. Watry explains, the analysis also confusingly compares peak noise levels to noise standards measured by a 24-hour average noise level.

Third, the discussion fails to apply statistical noise standards from the BRP or any standard that would determine significance of annoyance from high volume, transient noise events. Mr. Watry explains that short duration noise, e.g., crowd noise, would in fact exceed the BRP's statistical noise standards and would be a substantial source of irritation to sensitive receptors, including open space users. Thus, the SEIR errs by uncritically relying only on 24-hour noise standards to determine significance despite evidence that episodic loud noise events will in fact result in substantial irritation to noise receptors and without any analysis of the effects of shorter-duration noise events on the ambient conditions. *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1381-82; *see also Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant").

The SEIR's errors are prejudicial because the public has no clear picture of the SEIR's thresholds and no clear description of the project's actual noise generation and because it is clear that applicable noise standards would be exceeded.

6. Mitigation of stationary noise impacts is inadequate.

CEQA requires an EIR to describe "feasible measures which could minimize significant adverse impacts." Guidelines, § 15126.4(a)(1). Mitigation must be fully enforceable and certain. Guidelines, § 15126.4(a)(2). Here, the SEIR fails to discuss or propose effective, enforceable mitigation for stationary source noise.

First, the mitigation in NOI-2 calls for meeting "the 65 dBA standard in the Fort Ord Reuse Plan, and Seaside Municipal Code Sections 9.12 (Noise Regulations) and 17.30.060 (Noise Standards)." DSEIR, p. 4.10-24. As Mr. Watry explains, this reference to "the 65 dBA standard" is entirely ambiguous and therefore not enforceable with any certainty. NOI-2 fails to specify whether the standard is a 24-hour average standard (i.e., a CNEL or Ldn metric) or a standard for the maximum noise level in an instant (e.g., the BRP statistical noise standard for zero minutes in Table 4.10-7). If it is a 24-hour CNEL

³⁵ The project description also fails to provide information sufficient to determine noise using statistical noise standards, e.g., to determine if crowd noise would exceed the 1 minute, 5 minute, 15 minute or 30 minute standards.

standard, then NOI-2 fails to explain how it is related to or derived from the actual standards in the Seaside noise regulations and the BRP. These standards include Seaside's "Noise/Land Use Compatibility Matrix" (DSEIR Table 4.10-5), Seaside's "Maximum Interior and Exterior Noise Standards" (DSEIR Table 4.10-4) or BRP's "Land Use Compatibility Criteria for Exterior Community Noise" (DSEIR, Table 4.10-6). NOI-2 implies that the project must meet both Seaside and BRP standards; however, the Seaside and BRP CNEL standards are not uniform with respect to allowable noise levels or even with respect to classification of land uses. It is simply unclear what standard must be met.

Second, the "65 dBA standard" referenced in NOI-2 is not the standard that the DSEIR used to determine the significance of impacts. The entire discussion of the significance of stationary noise was based on a determination whether project noise would exceed the BRP's 24-hour standard of 50-55 CNEL, which was repeatedly referenced in that discussion. DSEIR, pp. 4.10-19 (claiming non-residential stationary noise is "below the BRP's noise standards," referencing Table 4.10-6, and "therefore impacts would be less than significant"), 4.10-21 (referencing BRP's residential noise standard of 50 to 55 dBA in discussing significance of REC-2 Planning Area noise), 4.10-22 (claiming swim center noise is less than significant because it is within "BRP's standard of 50 to 55 dBA (exterior) for residential uses.") Indeed, the BRP's normally acceptable CNEL noise standard was also used to assess the significance of traffic noise impacts. FSEIR, p. 11.4-1054 (referencing the BRP's normally acceptable noise limit for multi-family housing of 60 CNEL). Using a different standard to determine the significance of impacts than is used to determine the efficacy of mitigation violates both common sense and CEQA because mitigation must address the significant impact that is "identified in the EIR," and "as identified in the EIR." Guidelines, §§ 15126.4(a)(1)(A), 15091(a)(1).

Third, NOI-2 fails to specify that compliance is required with BRP's 50 dBA CNEL standard for open space uses, not just its standard for residential uses. See DSEIR, p. 4.10-9 (Table 4.10-6, BRP noise standards). As Mr. Watry explains, compliance may not be possible, especially if the FSEIR is correct that this standard is already exceeded in open space areas.

Fourth, NOI-2 fails to specify that compliance with the mitigation must be determined at the property line, as is required by both the BRP standards and the Seaside Municipal Code. DSEIR, p. 4.10-9; BRP, pp. 411-412; Seaside Municipal Code, § 17.30.060(H).

Fifth, NOI-2 fails to specify that, even if the project meets 24-hour average noise standards, it must also mitigate short-term loud noise events by complying with the BRP's statistical noise standards. See DSEIR, p. 4.10-p. Table 4.10-7.

Sixth, as Mr. Watry explains, effective mitigation is uncertain, e.g., mitigation for crowd noise. Mr. Watry explains that mitigation of via a barrier or berm is not described

and that obtaining the necessary noise attenuation by barrier for the noise sources at REC-2 and C-1 is simply implausible. Indeed, the FSEIR admits that the effectiveness of mitigation is unknown:

The DSEIR identifies Mitigation Measures NOI-2 and NOI-3 that require noise management and attenuation associated with the sports arena and swim center that is proportional to the noise generated at these facilities. As the exact activities associated with these potential uses is not known at this time, it is not possible for the DSEIR to quantify the measurable extent to which implementation of such performance standards would reduce noise events to less than significant levels. The mitigation measures include performance standards to ensure that exceedances of noise standards would not occur. The listed performance standards are comprehensive but are not intended to be exhaustive, nor does CEQA require such standards.

FSEIR, pp. 11.4-1057 to 11.4-1058, emphasis added. Where mitigation is not known to be feasible, CEQA does not permit deferral of its formulation, regardless whether performance standards are proposed. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-96. Accordingly, it is improper to defer the formulation of the Noise Management Plan called for by NOI-2. The Noise Management Program must be specified now and the SEIR must demonstrate that it would be effective with reference to unambiguously identified performance standards.

Furthermore, the FSEIR's statement that post-mitigation noise levels cannot be determined is an admission that the City is failing to comply with the City noise ordinance at SMC § 17.30.060(G)(5), (6) and BRP Noise Policy B-3, both of which mandate that he City identify mitigation and assess post-mitigation noise levels.

Seventh, the mitigation proposed for the swim center under NOI-3 is inadequate because it does not address the admittedly significant impact from the Time System.

7. The analysis and mitigation of impacts to open space use is inadequate.

The BRP FEIR acknowledges that open space, park, and recreation areas are noise-sensitive areas. BRP PEIR, p. 4-132. It is clear that the open space in the project vicinity is in fact extensively used for passive recreation by numerous members of the public, many of whom have objected to the project's impacts, including the noise impacts. See comment letters by Elizabeth Murray, Fort Ord Recreation Trails Friends, Suzanne Worcester, Eric Petersen, Monterey Off-road Cycling Association, Susan Schiavone, Robert McGinley, Cameron Binkley, Tim Townsend, Cosma Bua.

The BRP requires protection of open spaces via a 50 dBA CNEL/Ldn noise standard specifically applicable to passively used open space; via statistical noise standards applicable at the property line of noise-generating uses; and via Policy B-8, barring a 3 dB Ldn/CNEL increase where noise levels are already over the 50 dBA

standard. See DSEIR, pp. 4.10-8 to 4.10-11. Inconsistency with these policies should be identified as a significant environmental impact and as, discussed below, as a reason that the project should not be approved based on inconsistency with the Fort Ord Reuse Act.

First, the proposed mitigation of stationary noise in NOI-2 that identifies only a “65 dBA standard” clearly fails to mandate compliance with the BRP’s 50 dBA CNEL/Ldn open space noise standard.

Second, as Mr. Watry explains, responding to LandWatch’s request for baseline open space noise levels, the FSEIR states that the baseline CNEL noise level for passively used open space is within a decibel of the 52.3 dBA Leq noise level measured at the baseline measurement location #2.³⁶ FSEIR, p. 11.4-1052. Thus, according to the SEIR, the noise level for open space already exceeds the BRP’s 50 Ldn/CNEL standard.³⁷ Thus, BRP Policy B-8 would come into play, and would bar any noise increase over 3 dBA Ldn/CNEL. The SEIR fails to provide any assessment to determine whether project noise would increase noise by 3 dBA at the property line; thus, there is no substantial evidence that the project would comply with BRP Noise Policy B-8. Non-compliance with a policy intended to protect noise-sensitive open space uses would be a significant impact.

Third, the analysis of stationary noise impacts fails to disclose that the project will cause noise in excess of the BRP’s statistical noise standards in the open space areas

³⁶ Baseline information must be presented in the draft EIR, not later in the EIR process. Guidelines, § 15120(c) (draft EIR must contain information required by Guidelines, § 15125); *Save Our Peninsula v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 120-124, 128; *Communities for a Better Env’t v. City of Richmond* (“CBE v. Richmond”)(2010) 184 Cal. App. 4th 70, 89. However, here, the DSEIR fails to provide any assessment of the existing noise levels in open space areas that would be affected by the project. This information was not provided until the FSEIR, responding to LandWatch’s objection, claimed that noise levels measured on a roadway at 8th and Gigling was representative of open space noise levels. FSEIR, p. 11.4-1052.

³⁷ There is reason to doubt the FSEIR’s claim that the measurement of noise at location # 2 is in fact typical of open space noise levels. DSEIR Appendix A-7 indicates and demonstrates by photograph that the noise measurement was taken on the shoulder of 8th Avenue over a ten minute period and that the dominant noise source was passing cars. The open space adjacent to REC-2 and REC-1 would not be proximate to existing vehicle traffic.

If the baseline measurement is not accurate, then the SEIR violates CEQA because an EIR must describe the existing environmental setting so that it considers impacts “in the full environmental context.” Guidelines, § 15125(a), (c). An accurate baseline is critical because impact assessment must be based on “changes in the existing physical conditions in the affected area.” Guidelines, § 15126.2(a); see *Neighbors For Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

Without accurate baseline noise levels for open space areas, it is impossible to determine whether and to what extent the project would cause noise increases, which may be significant impacts under CEQA. Nor is it possible to determine if the project would be consistent with BRP Noise Policy B-8, which bars a 3 dB increase in noise to open space areas that are already over the normally acceptable level of 50 dBA CNEL. DSEIR, pp. 4.10-9, 4.10-11.

adjacent to REC-2, as Mr. Watry demonstrates. The proposed mitigation in NOI-2 fails to mandate compliance with statistical noise standards.

Fourth, even if the mitigation were revised to require compliance with the BRP’s open space noise standards, there is no evidence that mitigation is feasible and substantial evidence to the contrary. Again, the deferral of the formulation of the Noise Management Program called for by NOI-2 in the face of uncertainty violates CEQA.

8. The SEIR fails to identify a substantial increase in traffic noise as a significant impact.

The DSEIR’s significance thresholds for both project-specific and cumulative impacts depend on a determination of the project-caused traffic noise increase and a determination whether the resulting combined noise from the Project and other development would exceed noise standards for the receiving property use. In particular, the DSEIR finds project-specific impacts to be significant only if total noise (existing traffic noise plus project traffic noise) exceeds “the applicable exterior standard at a noise sensitive land use” and the Project itself contributes 3 dB to that noise level. DSEIR p. 4.10-13. The DSEIR’s two-step cumulative analysis first determines whether all future projects combined with the Monterey Downs project will cause a 3 dB increase and result in a noise level over the applicable standard. If so, the second step determines whether the Monterey Downs project contributes at least 1 dB to the future noise level. DSEIR p. 4.10-13.

Thus, in both analyses, it is necessary to determine whether traffic noise levels at the receiving property will exceed the applicable absolute noise thresholds for the receiving property’s land use.

This approach to significance determination is inadequate because it fails to acknowledge that there may be a significant impact due to a substantial noise increase even if the resulting absolute noise does not exceed the applicable standard. An agency may not take refuge in a project’s compliance with some regulatory standard when there is evidence that, notwithstanding that compliance, impacts are significant. *Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant”). The possibility that a noise increase may be significant even if the absolute regulatory standard is not exceeded is expressly recognized in the CEQA Guidelines, quoted by the DSEIR, which identify a significant impact if a project either causes a substantial increase in ambient noise or causes noise in excess of applicable standards. DSEIR, p. 4.10-12. The possibility is also recognized by

BRP Noise Policy B-6, which bars a noise increase over 5 dBA Ldn/CNEL even where noise is within the normally acceptable range.³⁸ DSEIR, p. 4.10-10.

As Mr. Watry explains, and as LandWatch objected in comment PO 208-91, the project will cause a significant impact and a violation of BRP Policy B-6 by increasing noise by more than 5 dBA at 7th Avenue between Gigling and Colonel Durham and at 8th Street between Inter Garrison and 6th. DSEIR, pp. 4.10-25, 4.10-26 to 4.10-27 (Table 4.10-11).

The FSEIR's response to LandWatch's objection is disingenuous. It claims that existing noise barriers would attenuate the traffic noise. FSEIR, p. 11.4-1054. As Mr. Watry explains, the presence of barriers does not affect the analysis: the increase in noise with and without the project would be the same regardless of the presence of barriers.

The FSEIR response is also disingenuous in claiming that interior noise levels would be maintained in residences on these road segments. FSEIR, p. 11.4-1054. The absolute level of interior noise levels is simply not relevant to the issue LandWatch raised, which is the increase in exterior noise levels. Impacts to exterior noise levels are an independent issue, as is evident from the fact that both Seaside and the BRP provide distinct standards for exterior and interior noise levels.

Finally, the FSEIR's observation that noise was modeled at 100 feet from the roadway centerline instead of the property line is also not relevant to this issue. As discussed below, both the Seaside noise ordinance and the BRP mandate noise analysis be at the property line. Regardless, even if it were correct to assess noise impacts at 100 feet instead of at the property line, here the noise increases modeled at 100 feet do exceed 5 dBA CNEL/Ldn in violation of BRP Policy B-6.

9. The SEIR's failures to measure noise impacts at the property line as mandated by the BRP and Seaside noise ordinance results in a failure to disclose a significant impact and a violation of BRP Policy B-6.

The traffic noise analysis assesses noise at 100 feet from the roadway centerline rather than at the property line of the receiving use. Thus, as LandWatch objected (PO 208-106) and Mr. Watry explains, the DSEIR errs by failing to honor the explicit requirements in both the Seaside noise ordinance and the BRP policies that noise be measured and controlled at the property line. SMC, § 17.30.060(E)(1)(a), (H); BRP Noise Policies B-6, B-7, B-8. The express purpose of the requirement to determine impacts at the property line is to protect outdoor uses. SMC, § 17.30.060(F) (obligation

³⁸ The policy bars an increase over 3 dBA Ldn/CNEL if noise is over the normally acceptable range.

to mitigate transportation noise impacts in order to "maintain outdoor and indoor noise levels" in compliance with standards).

As Mr. Watry explains, the error results in a failure to disclose a significant impact. The DSEIR's criteria for a project-specific impact is a 3 dBA CNEL increase where noise would exceed the applicable standard. On Gigling Road between 6th and 7th Avenues, noise would exceed the 60 dBA CNEL standard at the receiving residential use property line, even though it would not exceed the 60 dBA CNEL at standard at 100 feet from the roadway centerline, and the project would cause more than a 3 dBA CNEL increase. This should be identified as a significant impact. It should also be identified as an inconsistency with BRP Policy B-6, which bars a 3 dBA increase where noise exceeds the BRP's normally acceptable residential use standard "measured at the property line." DSEIR, p. 4.10-10.

10. The SEIR is informationally inadequate because it fails to identify land use noise thresholds and applicable standards for roadway segments affected by project; and because of this the SEIR fails to disclose considerable contribution to a significant cumulative impact on 2nd Avenue.

As LandWatch objected, the traffic noise analysis fails to identify the type of receiving land use (e.g., single family residential, multi-family residential, commercial) at each affected roadway segment, and this matters because the analysis purports to apply a different noise standard based on the type of land use. Comment PO 208-107. Nothing in DSEIR Tables 4.10-11, 4.10-12, or 4.10-13 listing noise levels and determining significance of impacts for various roadway segments identifies the adjacent land uses for these segments or the applicable noise standard. It is thus impossible for the public to see what noise impacts would occur at each type of land use or what noise standard the DSEIR actually applies.

The FSEIR claims that the DSEIR "considers the specific noise standards to each relevant land use" and that "the analysis reviewed the distance of the receivers to the roadway and the location of existing barriers to determine if an impact would actually occur." FSEIR p. 11.4-1058. If this level of analysis was actually undertaken, it does not appear anywhere in the DSEIR.

For example, the FSEIR claims that the DSEIR applies a 55 dBA standard for single family residential uses and a 60 dBA standard for multi-family residential use. FSEIR p. 11.4-1058 (Response PO 208-108.) However, Tables 4.10-11, 4.10-12, and 4.10-13 do not provide any indication of the actual uses for the affected segments that would allow the public to verify this claim.

The FSEIR failed to provide the requested information even though it claims that this information was developed in the noise analysis. The FSEIR claims that that the

noise analysis “considers the specific noise standards to each relevant land use” and that it “reviewed the distance of the receivers to the roadway and the location of existing barriers to determine if an impact would actually occur.” FSEIR p. 11.4-1058. If the specific land uses and applicable noise standards were in fact determined in the noise analysis, then there was no reason for the FSEIR to have failed to provide this available information in response to LandWatch’s request. Instead of providing the information for each roadway segment, the FSEIR provides only two cursory examples, claiming that residential uses on two segments have barriers; the FSEIR then claims that other sensitive receptors are “generally” located more than 100 feet from the centerline. FSEIR p. 11.4-1054. This is not responsive to the request for specific land uses and applicable standards.³⁹

Mr. Watry explains that there is at least one roadway segment where the SEIR’s lack of care in analysis and its failure to respond to comments with available information is prejudicial, because the SEIR fails to disclose that the project would make a considerable contribution to a significant cumulative impact based on the SEIR’s own criteria. Noise levels on 2nd Avenue between Inter Garrison Road and 8th Street would meet the DSEIR’s criteria for a considerable contribution to a significant cumulative impact because 1) the cumulative noise level would exceed the applicable 60 dBA CNEL standard for multi-family residential use and educational use; 2) the cumulative increase is greater than 3 dBA; and 3) the project adds more than 1 dBA. This is just one example of a prejudicial failure to provide adequate disclosure. Because the SEIR fails to identify receiving land uses and applicable standards for each affected segment, the public cannot determine if there are more.

11. Seaside may not approve the Project because it is inconsistent with Base Reuse Plan noise policies.

Under the Fort Ord Reuse Act, Seaside may not approve a development project that is not consistent with the BRP. Gov. Code, § 67675.8(b)(1). The project is not consistent with BRP noise policies as discussed above and detailed below.

The determinations of consistency with the BRP is not the same determination as the determination of significance under CEQA. Where a plan calls for the use of a particular method of analysis and compliance with particular standards, an agency must actually use the required analysis and standards in determining consistency. *Endangered Habitats League, Inc. v. Cty. of Orange* (2005) 131 Cal. App. 4th 777, 783 (agency may not substitute VC method for determining traffic impacts where plan calls for use of the HCM method). The EIR does not provide this analysis.

³⁹ Furthermore, it appears that the FSEIR may be claiming that applicable noise standards are met because residential structures are “generally” located more than 100 feet from the centerline. As discussed, this would not demonstrate that the exterior standard is met at the property line and that outdoor uses are protected. And even if it were appropriate to evaluate impacts at 100 feet from the centerline, the FSEIR’s assertion that the protected use (presumably the residence itself) is “generally” more than 100 feet from the centerline suggests that either (1) there are exceptions or (2) the analysis did not in fact verify this claim.

- a. The project is inconsistent with BRP noise policies requiring projects to evaluate and to meet statistical noise standards; and unless and until Seaside adopts the required BRP Noise Programs it may not approve this project.

The project is inconsistent with the BRP because 1) it does not comply with the BRP’s statistical noise standards and 2) the City has failed to adopt those standards.

Mr. Watry has explained that construction noise and stationary noise from the project will violate the statistical noise standards, and that proposed mitigation will not ensure that the project will meet the statistical noise standards. Compliance with these standards is unambiguously required by BRP Noise Policy A-1 and Noise Program A-1.2, which specifically require Seaside to enact the BRP’s statistical noise standards (the standards shown in Table 4.5-4) into its noise ordinance and to apply those standards in the Former Fort Ord area.⁴⁰ BRP, pp. 412-413. Seaside has not enacted these standards; the only standards in Seaside’s noise ordinance are 24-hour CNEL or Ldn standards. Seaside Municipal Code, § 17.30.060(E), Tables 3-3 and 3-4.

Furthermore, FORA bars approval of development entitlements for this project unless and until Seaside actually adopts the Noise Programs as specified in the BRP, i.e., adopts a noise ordinance that contains the statistical noise standards mandated by the BRP:

No development entitlement shall be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken appropriate action, in the discretion of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

Fort Ord Reuse Authority Master Resolution, § 8.02.040.

Contrary to the FSEIR, these standards are clearly relevant to determining significant impacts under CEQA. And, regardless of CEQA’s provisions, the Fort Ord Reuse Act makes adoption and application of these standards in the Fort Ord area mandatory as provided by the BRP provisions.

In addition to Noise Policy A-1 and Noise Program A-1.2, Noise Policy B-1 mandates compliance with the statistical noise standards in Table 4.5-4 for existing residences and other existing noise-sensitive uses where feasible and practical. BRP, p. 414. Noise Policy B-2 mandates that new development not adversely affect any existing or proposed uses by complying with the statistical noise standards in Table 4.5-4 for all

⁴⁰ The BRP adopts identical standards and policies for Seaside and the County of Monterey, so the entire project areas is subject to the same requirements. BRP, pp. 413-417.

new development. BRP, p. 414. This means that new development may not adversely affect existing uses and that it may not generate noise levels that would adversely affect other portions of the new development. Noise Policy B-5 requires that if it is not feasible or practical to meet the statistical noise standards, the City must either provide noise barriers for new development or ensure that interior standards are met.

The SEIR has not evaluated impacts in terms of statistical noise standards and has not determined feasibility of compliance with these standards. This violates Noise Policy B-3, which requires analysis of impacts and mitigation with reference to statistical noise standards before accepting development applications as complete. The project is not in compliance with the analysis requirements in Noise Policy B-3, and the City cannot conclude that it is in compliance with Noise Policies B-1 and B-2, until the City completes the required analysis and considers feasible mitigation and alternatives.

- b. Seaside has failed to adopt the BRP's 24-hour noise standards in its noise ordinance as mandated by BRP Noise Policy A-1 and may not approve the project until it has done so.

BRP Noise Policy A-1 and Programs A-1.1 and A-1.2 mandate that Seaside adopt by ordinance and apply the 24-hour noise standards set out in BRP Table 4.5-3. *See* BRP, pp. 411, 413. Seaside has not done so because the 24-hour noise standards in its ordinance differ from the BRP's standards. *Compare* Seaside Municipal Code, §17.30.060(E), Table 3-4 to BRP Table 4.5-3 (or *compare* DSEIR, Table 4.10-5 to Table 4.10-6, which contain these differing noise standards). For example, Seaside's noise ordinance lacks any standard for passively used open space, whereas the BRP provides that at most a 50 dBA noise level is "normally acceptable." Seaside's ordinance provides that 65 dBA is "conditionally acceptable" for single family residential use, whereas the BRP provides that at most 60 dBA is "conditionally acceptable" for that use.

As discussed, the SEIR is unclear as to the noise standards it uses to determine the significance of project noise impacts and to require mitigation under CEQA, referencing both the Seaside General Plan and noise ordinance standards and the BRP noise standards.⁴¹ DSEIR, pp. 4.10-13 to 4.10-14, 4.10-19 to 4.10-24. Thus, it is impossible to determine to what standards the project would be held or even whether proposed mitigation is feasible. Not only does this violate CEQA, but there can be no substantial evidence that the project would be consistent with the BRP Noise Policy A-1 and Program A-1.1, which require application of the BRP noise standards.

Again, FORA bars approval of development entitlements for this project unless and until Seaside actually adopts the Noise Programs as specified in the BRP, i.e., adopts a noise ordinance that contains the 24-hour noise standards mandated by the BRP. Fort Ord Reuse Authority Master Resolution, § 8.02.040.

⁴¹ The Seaside General Plan Noise standards are substantially similar to the standards in its noise ordinance. *See* Seaside 2004 General Plan, p. N-5.

- c. The project is inconsistent with the BRP policies requiring protection of open space uses from noise.

The BRP contains several policies that mandate evaluation of noise impacts to open space uses and compliance with noise standards for open space receptors. BRP Noise Policies A-1, B-1, B-2, and B-5 require compliance with the 24-hour average noise standards for open space specified in BRP Table 4.5-3 (reproduced in DSEIR as Table 4.10-6). *See* BRP, pp. 411, 413-414.

As discussed, Seaside has failed to comply with BRP Noise Policy A-1 and Programs A-1.1 and A-1.2 mandating inclusion of the BRP's 24-hour noise standards in the Seaside noise ordinance and application of that standard to projects in Fort Ord. As a result, the Seaside noise ordinance omits the BRP's 50 dBA CNEL standard for passively used open space.

Furthermore, as Mr. Watry explains, the SEIR fails to provide an adequate assessment of the project's compliance with BRP open space noise standards by 1) failing to assess compliance with BRP statistical noise standards, 2) failing to determine 24-hour average noise levels at affected open space proximate to the project and failing to assess compliance with the BRP's 50 CNEL normally acceptable noise standard for open space use, and 3) failing to specify that mitigation must meet relevant noise standards for open space, e.g., the BRP 24-hour average and statistical noise standards. The failure of assessment and mitigation is not only a violation of CEQA, but also of BRP Policy B-3, which requires that an acoustical study be submitted prior to accepting a development application as complete that evaluates a project's compliance with Table 4.5-3 and Table 4.5-4 noise standards and proposes necessary mitigation.

Mr. Watry has explained that construction noise and stationary noise from the project will in fact exceed the statistical noise standards in BRP Table 4.5-4, and that there is no assurance that proposed mitigation will ensure that the project will meet these statistical noise standards or even meet applicable 24-hour average standards. In light of the City's failure to evaluate open space noise impacts and the evidence that the project will not meet open space noise standards, there can be no substantial evidence that the project is consistent with BRP Policies A-1, B-1, B-2, and B-5.

Finally, BRP Noise Policy B-8 bars any noise increase of 3 dBA Ldn or more at the property line where ambient noise already exceeds the normally acceptable open space standard of 50 dBA. BRP, p. 415. The FSEIR indicates that open space noise already exceeds that standard, by claiming that monitored noise at Site 2 represents existing ambient open space noise levels. FSEIR, p. 11.4-1052. As Mr. Watry explains, the SEIR fails to make any determination whether noise levels would increase by 3 dBA at open space locations adjacent to the project or to impose mitigation that would ensure compliance. Thus, there can be no substantial evidence that the project complies with BRP Noise Policy B-8.

d. The project is inconsistent with BRP Policy B-6.

BRP Noise Policy B-6 bars a 5 dBA Ldn noise increase to residential uses caused by new development where ambient noise levels for those residential uses are not above the normally acceptable level in BRP Table 4.4-3. BRP, p. 414. BRP Table 4.4-3 provides that the normally acceptable noise level for single family residential uses is 50-55 dBA Ldn and for multi-family residential use it is 50 to 60 Ldn. BRP, p. 411.

Traffic noise from the project will increase noise by more than 5 dBA at a number of locations, even though the SEIR does not conclude that noise will exceed the 60 dBA Ldn standard. For example:

- noise on 7th Avenue between Gigling Road and Colonel Durham Street will increase by 6.3 dBA under existing with project conditions (DSEIR, Table 4.10-11);
- noise on 8th Street between Inter Garison Road and 6th Avenue will increase by 5.1 dBA under existing with project conditions (DSEIR, Table 4.10-11);
- noise on 7th Avenue between Gigling Road and Colonel Durham Street will increase by 6.4 dBA under 2035 with project conditions (DSEIR, Table 4.10-12).

These noise increases violate BRP Policy B-6.

As Mr. Watry explains, the FSEIR's argument that the noise determination in the DSEIR is 100 feet from the roadway and that there are intervening structures is simply irrelevant. BRP Noise Policy B-6 requires measurement at the property line, and if the noise increase exceeds 5 dBA at 100 feet, the increase will exceed 5 dBA at locations closer to the source. Furthermore, the effect of intervening structures on total noise levels would be the same for both pre-and post-project noise, so the increase in noise would still be 5 dBA regardless of intervening structures.

The FSEIR's argument that provision of interior noise mitigation as required by BRP Noise Policy B-5 would somehow ensure compliance with Policy Noise B-6 is also irrelevant. The two BRP policies are distinct and independent requirements, and are intended to attain different standards. Provision of interior noise mitigation would do nothing to ensure that exterior noise standards are met at the property line.

- e. The project is inconsistent with both BRP policies and the Seaside Municipal Code provisions that require noise to be assessed and standards to be met at the property line.

Compliance with exterior noise standards must be determined based on noise levels "measured at the property line of the noise-sensitive land use receiving the noise" under SMC, § 17.30.060(H); *see also* SMC, § 17.30.060E(1)(a) (no use may generate noise in excess of standards "as the noise is measured at the property line of a noise sensitive land use identified in Tables 3-3 and 3-4"). BRP's statistical noise standards and its 24-hour average noise standards, compliance with which is mandated by BRP Noise Policies A-1, B-1, B-2, B-3, and B-5, are expressly "applicable at the property line." BRP PEIR, pp. 411-412, Tables 4.5-3 and 4.5-4. BRP Noise Policies B-6, B-7, and B-8, which bar certain noise increases depending on ambient conditions, are all enforceable as "measured at the property line." BRP, pp. 414-415.

As Mr. Watry explains, the purpose of determining compliance at the property line is in part to protect noise-sensitive outdoor land uses that cannot be protected by building insulation or HVAC systems. Despite this, the SEIR fails to determine traffic noise impacts at the property line of the receiving land uses.

12. The SEIR fails to acknowledge that it would be inconsistent with Municipal Code section 17.30.060(F) to site new noise-sensitive uses where traffic noise causes an exceedance of City standards.

LandWatch objected that the DSEIR fails to acknowledge that Seaside Municipal Code section 17.30.060(F) bars any new noise-sensitive uses in areas where the standards in Table 3-4 (reprinted as DSEIR Table 4.10-5) are or would be exceeded unless mitigation ensures meeting both indoor and outdoor standards, as determined at the property line. Comments PO 208-92, 208-110. Portions of the project would be sited in areas that exceed or will exceed the Table 3-4 standards at the property line. For example, the project would include residential uses on Gigling Road between 8th Avenue and 7th Avenue. DSEIR, Figure 2-16. Traffic noise at 57.9 CNEL at 100 feet from the roadway centerline would exceed the City's 55 CNEL normally acceptable residential standard on that segment. DSEIR, Table 4.10-12; SMC §17.30.060(E) (Table 3-4). Regardless whether this is deemed a significant impact under CEQA, the City must acknowledge that it is an inconsistency with its noise ordinance.

The FSEIR responds by arguing that the noise levels are determined at 100 feet and that there are intervening barriers and that sensitive uses are "generally" located more than 100 feet from the centerline. FSEIR, p. 11.4-1054. This misreads the ordinance, which clearly states that "exterior noise levels shall be measured at the property line of the noise-sensitive land use receiving the noise" in order to "maintain outdoor and indoor noise levels on the receptor site in compliance with Tables 3-3 and 3-4." SMC, § 17.30.060(H), (F).

G. The elimination of references to horse racing as an allowed use in the specific plan does not ensure that horse racing will not be permitted.

At the eleventh hour, staff now proposes to eliminate horse-racing as an allowed use from the specific plan. The specific plan would still permit construction of horse-racing facilities, including the track (now termed a “training track”) and the grandstand. Nothing in the proposed conditions of approval would actually ban horse-racing or preclude identifying it as an allowed use in a future interpretation or revision of the specific plan. The applicant would remain free to condition sales of residential properties on acceptance of this potential future use.

The City has prepared an SEIR that assumes that horse-racing would be an allowed use. If horse-racing were identified as an allowed use in a future interpretation or revision of the specific plan, the applicant would likely argue that certification of the SEIR would obviate the need for additional environmental review.

Not only could the City easily identify horse-racing as an allowed use in a future interpretation or revision of the specific plan, regulation of horse-racing could be found to be preempted by statute and state regulation and not subject to a municipal veto. Indeed, a city official has acknowledged as much:

Malin acknowledged, the racing enterprise could be re-inserted into the plan at some point.

“...In both a conceptual and practical sense, horse racing is a legal business. Conceptually, cities can’t generally prohibit legal businesses from operating in a community, particularly those that are as much creatures of state regulation as horse racing is. Conceptually, horse racing could come to almost any city with infrastructure that exists (or may be constructed) to support it. Practically speaking, should the project move forward, it would be very difficult to add horse racing back into the project if homes are sold without that use allowed within the first approvals.

Monterey Bay Partisan, [Seaside officials want to remove horse racing from Monterey Downs venture, at least for now](http://www.montereybaypartisan.com/2016/09/05/seaside-officials-want-to-remove-horse-racing-from-monterey-downs-venture-at-least-for-now), Sept. 5, 2016, available at <http://www.montereybaypartisan.com/2016/09/05/seaside-officials-want-to-remove-horse-racing-from-monterey-downs-venture-at-least-for-now>.

If the City is serious about precluding horse-racing at the site, it should take steps that would inhibit or effectively ban the use. For example, the City could disallow the construction of a “training-track” and grandstand. The City could acknowledge that the horse-racing use would contribute to substantial adverse environmental impacts to traffic and noise and, accordingly, identify a ban on horse-racing as required mitigation. The City could simply ban horse-racing by ordinance.

If the City does not believe it has the authority to ban horse-racing under state law and does not take the other actions that could inhibit horse-racing, then its elimination of references to horse-racing in the specific plan is a hollow and cynical exercise intended to assuage horse-racing opponents without actually addressing their concerns.

H. The elimination of references to horse racing as an allowed use in the specific plan renders the SEIR’s project description unstable.

An adequate project description must be stable and accurate in order to support public participation and informed decision making. Guidelines, § 15124; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197-198. An inaccurate project description vitiates the EIR’s analysis; that is, a failure of description causes a failure of analysis. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396-397. An inconsistent project description also vitiates adequate analysis. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654-657, 672. A curtailed and shifting project description that precludes informed public participation and decision making is a prejudicial failure to proceed as required by law. *San Joaquin Raptor v. Merced, supra*, 149 Cal.App.4th at 655, 672.

The last-minute elimination of horse-racing from the specific plan renders the project description prejudicially unstable. The analysis of impacts was expressly predicated on the assumption that horse-racing would occur, and, without that use, the SEIR’s analyses are no longer justified. For example, as discussed above, 950 of the project’s projected 2,391 on-site jobs are identified as equestrian jobs associated with the Phase 6 construction of the horse-racing facilities. There is no analysis that would support a finding that other uses would replace those jobs. Without those jobs, there would only be 1,441 jobs at buildout, resulting in a jobs/housing ratio of 1,441 jobs/1,280 housing units, a ratio of 1.13. SEIR’s analyses that are dependent on a strong jobs/housing ratio are invalid. As discussed above, the project would not meet the BRP jobs/housing goal or contribute to meeting the Seaside goal. A reduction in the jobs/housing ratio would result in increased per capita off-site vehicle trips and aggravate the significant per-capita GHG impact.

The elimination of the horse-racing use, if it is in fact eliminated, is significant new information that requires recirculation of a draft EIR to re-assess impacts that are dependent on the DSEIR’s assumptions about race track jobs and land uses. Guidelines, § 15088.5(a).

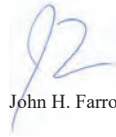
I. The project is inconsistent with the Base Reuse Plan.

Under the Fort Ord Reuse Act, Seaside may not approve a development project that is not consistent with the BRP. Gov. Code, § 67675.8(b)(1). As discussed above, the project is inconsistent with a number BRP noise policies and programs. In addition,

the SEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policies B-1 and B-2, which policies require additional water supplies and prohibit approval of a development project without an assured long-term water supply. DSEIR, p. 4.9-10; FSEIR 14.4-1020. As discussed above, approval of the project with mitigation that may compel construction of only Phases 1-3 is inconsistent with BRP policies mandating a balanced jobs/housing ratio, including DRMP § 3.11.5.4(b), (c).

Yours sincerely,

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22. Monterey County General Plan DEIR, available at <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma/planning/resources-documents/2010-general-plan/draft-environmental-impact-report-deir>.
23. MCWRA, Salinas Valley Water Project Phase II, Overview, Background, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.
24. MCWRA, Salinas Valley Water Project Phase II, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.
25. MCWRA, Salinas Valley Water Project Phase II website, Project Description, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.
26. MCWRA Notice of Preparation of EIR, Salinas Valley Water Project Phase II, June 2014, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/documents/NOP%20Salinas%20Valley%20Water%20Project%20Phase%20II.pdf.
27. Monterey Bay Partisan, Seaside officials want to remove horse racing from Monterey Downs venture, at least for now, Sept. 5, 2016, available at

October 12, 2016
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<http://www.montereybaypartisan.com/2016/09/05/seaside-officials-want-to-remove-horse-racing-from-monterey-downs-venture-at-least-for-now>.

October 12, 2016
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Attachment – Timothy Parker to John Farrow, October 8, 2016,
Technical Memorandum

EXHIBIT 3

February 15, 2018

John Farrow
M.R. Wolfe & Associates, P.C
555 Sutter Street, Suite 405
San Francisco, CA 94102

Re: Groundwater Impacts from Increased Pumping to Support Ord Community Development

Dear Mr. Farrow:

At your request, I have reviewed the Draft Initial Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation together with the documents cited below. As set out in the discussion below, increased pumping to support new development in the Ord Community would aggravate existing seawater intrusion and further deplete the Deep Aquifer. The reported existence of an area of relatively fresher water in what Marina Coast Water District terms the North Marina Area does not change this conclusion. My resume is attached.

1. Increased pumping for new development in the Ord community would aggravate seawater intrusion and further deplete the Deep Aquifer.

As explained in my October 8, 2016 memorandum regarding the proposal to increase groundwater pumping to support the Monterey Downs project in the Ord community, seawater intrusion continues in the Salinas Valley Groundwater Basin (SVGB) due to overdraft conditions, despite various groundwater management projects.¹ The situation has not improved since my 2016 memorandum. The most recent MCWRA mapping shows continued substantial increase in seawater intruded areas, which have occurred *despite* reductions in MCWD pumping during the 2006-2015 period.² Groundwater levels continue

¹ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016.

² MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=19378>; MCWRA, Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer, June 7, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=19376>; MCWD, 2015 Urban Water Management Plan (UWMP), Table 4.1 (reporting total MCWD pumping declined from 4,295 afy to 3,228 afy in that period), available at http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.

to decline, especially in the 400-foot aquifer.³ MCWRA reports that acreage within the 500 mg/l or greater Chloride contour in the 400-foot aquifer has increased from 11,882 acres in 2005 to 17,125 acres in 2015.⁴ Furthermore, because increases in intrusion may lag periods of drought, there may be substantial increases in intrusion still to come in response to the recent 4-year drought.⁵

In light of the continuing advance of seawater intrusion, MCWRA staff have recommended a moratorium on new wells in the Pressure 400-Foot Aquifer within an "Area of Impact" proximate to the 500 mg/l Chloride front.⁶ MCWRA also recommends a moratorium on new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin pending investigation of its viability as a source of water ("Deep Aquifer" has been called variously including the 900-foot Aquifer, and herein is used to refer to multiple water-bearing units underlying the Pressure 400-Foot Aquifer).⁷

In sum, as set out in my 2016 memorandum and confirmed by subsequent investigations, future increased groundwater pumping above existing levels, particularly from the areas proximate to the seawater intrusion front, will contribute to seawater intrusion. Because MCWD's current production wells serving the Ord community are located just inland of the seawater intrusion front in the 400-foot and Deep aquifers, increased pumping would aggravate seawater intrusion.⁸

MCWD has reported that its total pumping is a small fraction of total SVGB pumping.⁹ As I explained in my 2016 memorandum, the relevant question for assessing the cumulative impact of additional pumping is not whether that amount is large compared to total SVGB pumping, but whether it represents a considerable increase in the magnitude of annual overdraft.¹⁰ An increase of 2,492 afy to meet the projected increase in Ord community

³ MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=31294>.

⁴ *Id.*

⁵ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 2-3.

⁶ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, pp. 2-9, available at <http://www.co.monterey.ca.us/home/showdocument?id=57394>.

⁷ *Id.*

⁸ MCWD, 2015 Urban Water Management Plan (UWMP), pp. 35, 45, available at http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.

⁹ MCWD, 2015 UWMP, p. 38; MCWD, Draft Initial Study/Negative Declaration, Ord Community Sphere of Influence Amendment and Annexation (Annexation Initial Study), p. 49.

¹⁰ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 19-20.

demand from 2020 to 2035¹¹ would be a considerable increase in the existing 12,000 afy to 19,000 afy overdraft of the Pressure Subarea. And that pumping would make a considerable contribution to the existing seawater intrusion problem.

The Deep Aquifer contains ancient water and there is no evidence that it is recharged except incidentally by leakage from overlying aquifers and via well-perforations completed in both the Deep and shallower aquifers, so any pumping from the Deep aquifer is groundwater mining.¹² In addition, any increase in pumping from the Deep Aquifer will likely induce increased seawater intrusion in the overlying 180- and 400-foot aquifers through leakage.¹³ Any increase in pumping would simply lead to further depletion of this resource. As noted, MCWRA has recently recommended a moratorium on new pumping from the Deep Aquifer.

2. The reported existence of an area of relatively fresh water behind the seawater intrusion front does not alter the conclusion that increased pumping will contribute to seawater intrusion.

In connection with its opposition to the proposed location of the source water wells for the proposed California-America Water Company desalination plant, MCWD has engaged hydrologist Curtis Hopkins to evaluate water quality data from the test well for that project.¹⁴ MCWD has also recently arranged for the collection and analysis of airborne electromagnetic (AEM) data to characterize the aquifer in an area that MCWD identifies as the North Marina Area of the Salinas Valley Groundwater Basin.¹⁵ These analyses disclose the presence of some areas of relatively fresher water located north of, i.e. behind, the seawater intrusion front.¹⁶

¹¹ MCWD, Annexation Initial Study, p. 50

¹² Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-17; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

¹³ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-14; MCWD, 2015 UWMP, p. 50, citing WRIME, Deep Aquifer Investigative Study, 2003; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

¹⁴ Curtis Hopkins, North Marina Area Groundwater Data and Conditions, May 26, 2015, provided as Appendix E, pp. E-15 to E-50, of the MCWD, 2015 UWMP, available at http://www.mcwd.org/docs/engr_files/MCWD%202015%20UWMP%20Appendices_Final.pdf.

¹⁵ Ian Gottschalk and Rosemary Knight, Preliminary Interpretation of SkyTEM Data Acquired in the Marina Coast Water District, June 16, 2017.

¹⁶ That water is not freshwater in the sense of being potable, because it does not meet the 500 mg/l chloride drinking water standards. MCWD's consultants characterize it as freshwater because it meets a 3,000 mg/l TDS threshold, but its

In its response to my 2016 memorandum submitted by LandWatch in connection with the Monterey Downs project EIR, MCWD has previously argued that Curtis Hopkins' analysis indicates that "beneficial conditions have developed (or have always existed) in the North Marina Area of the 180-400 Foot Aquifer Subbasin and may be contrary to information published by the Monterey County Water Resources Agency (MCWRA)."¹⁷ MCWD states that, because of this new information about "favorable groundwater conditions within the North Marina Area," its 2015 Urban Water Management Plan (UWMP) reflects a much different understanding of groundwater conditions than its 2010 UWMP.¹⁸

As noted, seawater intrusion will continue to occur in the SVGB for the foreseeable future because continued overdraft conditions preclude protective elevations. However, MCWD argues that findings by its consultant Hopkins contained in the 2015 UWMP contradict my conclusion with respect to seawater intrusion "at least as applied to the North Marina Area."¹⁹

But MCWD does not pump groundwater from the North Marina Area behind the MCWRA-mapped seawater intrusion front; its wells are located inland of the seawater intrusion front.²⁰ Furthermore, the reported area of fresher water in the North Marina Area is not in fact potable.²¹ The UWMP admits with respect to the fresher water area behind the seawater intrusion front in the North Marina Area, "[f]uture use of this area for a potable groundwater supply may be unlikely; however, these conditions do show a retardation of seawater intrusion in these shallower aquifer zones in this coastal portion of the Salinas Valley Groundwater Basin, which provides some protection for inland uses of the 180-ft Aquifer."²²

Despite the UWMP claim that the fresher water area in the North Marina Area provides some protection for inland uses of the 180-ft Aquifer, the 2015 UWMP does not dispute that seawater intrusion is a continuing problem caused by overdraft of the SVGB.²³ The UWMP acknowledges that the seawater intrusion front continues to advance inland, that this has required the historic relocation and deepening of MCWD wells, and that it continues to

chloride levels exceed 1,000 mg/l in the study area. See Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, pp. 3-4.

¹⁷ MCWD, Response to Timothy Parker Technical Memorandum Dated October 8, 2016, p. 5.

¹⁸ *Id.*

¹⁹ *Id.*, p. 6, emphasis added

²⁰ MCWD, 2015 UWMP, pp. 35, 45.

²¹ Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, pp. 3-4.

²² MCWD, 2015 UWMP, p. 48.

²³ *Id.*, pp. 38, 43-45, 54-55

threaten its existing wells.²⁴ Consistent with my 2016 memorandum, the UWMP acknowledges that the reductions in agricultural pumping that were projected to occur in the analysis of the Salinas Valley Water Project have not in fact occurred.²⁵ And as I previously explained, the UWMP acknowledges that additional groundwater management projects may be required to halt seawater intrusion;²⁶ those projects are not currently committed or funded.²⁷

With respect to the North Marina Area, the UWMP discloses that the recent data "may just reveal the groundwater conditions in an area previously lacking in data."²⁸ If so, it is evident that the existence of an area of relatively fresher water in the North Marina Area has not in fact retarded the historic advance of seawater intrusion, which has occurred *despite* groundwater conditions in the North Marina Area.²⁹ In this connection, it is important to understand that the MCWRA seawater intrusion mapping is based on sampling of production wells and represents an advance of the area in which groundwater exceeds the 500 mg/l chloride drinking water standard that can no longer be used for potable water. As the 2015 UWMP reports, MCWD has had to relocate its production wells due to the continuing advance of this seawater intrusion front, and its existing wells remain threatened.³⁰

In addition, there is no evidence that the relatively fresher water in the North Marina Area provides any recharge to the Deep Aquifer, from which MCWD pumps groundwater for the Ord community. The Deep Aquifer is increasingly recognized as geologically isolated water without any substantial recharge source.³¹ As the 2003 WRIME report and my 2016 memorandum explain, portions of the Deep Aquifer may be recharged through leakage in small amounts by water from the overlying aquifers.³² To the extent that the Deep Aquifer

²⁴ *Id.*, p. 44.

²⁵ *Id.*, p. 55.

²⁶ *Id.*

²⁷ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 7, 26-27.

²⁸ *Id.*, p. 48.

²⁹ Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, p. 7 ("It is questionable how protective these groundwater levels are given the historic extent of seawater intrusion in the project area").

³⁰ *Id.*, p. 45.

³¹ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-17; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

³² Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp.

14-16, citing WRIME, Deep Aquifer Investigative Study, 2003.

is recharged by overlying aquifers, increased pumping of the Deep Aquifer has the potential to induce seawater intrusion in those overlying aquifers.³³

Sincerely,



Timothy K. Parker, PG, CEG, CHG
Principal Hydrogeologist

³³ *Id.*

RESUME

Timothy K. Parker, PG, CEG, CHG
Principal

WORK EXPERIENCE

2009 – Present: Parker Groundwater, President/Principal. Sacramento, California. Privately owned business, specializing in strategic groundwater planning, groundwater monitoring, groundwater modeling, groundwater recharge and aquifer storage recovery projects, program implementation, stakeholder facilitation, groundwater monitoring, policy and regulatory analysis, environmental document review and litigation support. Provides strategic planning, policy consulting and groundwater technical expertise to public and private sector clients to develop effective, sustainable solutions to complex problems in the water and evolving environmental and energy industries.

2005 – 2009: Schlumberger Water Services, Principal Hydrogeologist. Sacramento, California. Provided hydrogeologic expertise and project management on groundwater recharge and aquifer storage recovery projects, groundwater monitoring, groundwater resources management, and groundwater contaminant projects for public and private sector clientele. Application of advanced oilfield tools and technologies to groundwater projects. Integration of groundwater quality monitoring and protection on CO2 sequestration projects; liaison to Schlumberger Carbon Services, including planning, scope development, technical implementation, facilitation, and oversight. **Business Development** activities included strategic planning, prospect assessments, sales presentations, targeted workshops, client development and exploitation. Mentored and provided direction to staff; developed, tracked and controlled projects; worked closely with clients and other public and private organizations to implement projects on schedule, on budget with high level of quality.

2001 – 2005: California Department of Water Resources, Division of Planning and Local Assistance, Conjunctive Water Management Branch, Senior Engineering Geologist. Provided local technical and economic assistance to Sacramento and San Joaquin Valley groundwater authorities and water districts planning, developing, and implementing conjunctive water projects, groundwater recharge and aquifer storage recovery projects, and local and regional groundwater monitoring programs. Elements include developing technical scope, implementing work, providing geologic and groundwater technical expertise, attending and speaking at public meetings. **Central District, Groundwater Planning Section, Sacramento, California (early 2001 prior to joining CWMB). Senior Engineering Geologist, Groundwater Planning Section.** Elements included: Integrated Storage Investigations Program conjunctive use project technical support, coordination, and project management; technical support

on local groundwater monitoring and subsidence programs; technical support on Bulletin 118; Proposition 13 groundwater grant applications screening and ranking process for Central District geographic area. Supervised and provided direction to staff; developed, tracked and controlled program budgets; worked closely with other DWR groups, agencies and outside organizations to develop additional local assistance opportunities for DWR.

2000-2001: California Department of Conservation, Division of Mines and Geology, Sacramento, California. Associate Engineering Geologist. Responsible for: multi-year aerial photograph review, identification of landslides and potentially unstable areas, field reconnaissance and confirmation, preparation of maps and images using MapInfo, Vertical Mapper, ArcView, Spatial Analyst, Model Builder, and ArcInfo working closely with GIS specialists; assisting in development of GIS methodologies and database for Northern California watersheds assessment/restoration project; review of timber harvest plans and pre-harvest inspections; review of regional CEQA documents as related to engineering geologic issues; watershed assessment; technical presentations at multi-agency meetings and landslide/mass wasting public workshops.

1997-2000: CalEPA Department of Toxic Substances Control, Stringfellow Branch, Sacramento, California. Hazardous Substances Engineering Geologist. Responsible for: groundwater monitoring and analysis; developing approach and preparing a work plan for a Stringfellow site revised hydrogeologic conceptual model; researching, providing, and maintaining a comprehensive environmental data management system; assembling and contracting with an expert panel for consultation on the site; evaluating an existing MODFLOW porous media groundwater flow model; providing direction on the strategy and approach for the development of a revised groundwater flow and fate & transport model for the Stringfellow site; providing input on an as needed basis in support of the litigation and community relations elements of the project.

1993 - 1997: Law Engineering & Environmental Services, Inc., Sacramento, California. Manager Project Management. Responsible for supervising and providing direction to senior project managers; maintaining appropriate tracking system and controls for assurance of successful execution of scope, schedule and budget of major projects; maintaining quality assurance and controls on projects. Responsibilities included development/implementation of group budget spending plan, establishing performance standards and evaluating program progress and quality, staff recruiting, mentoring, maintaining utilization, business development, proposal preparation, commercial and government project marketing, client maintenance. **Project Manager and Senior Hydrogeologist** on hydrogeologic evaluations, site and regional groundwater quality monitoring programs, hazardous substance site investigations and remediation. Responsibilities included technical direction of projects, project scoping, schedule, budget, supervision of field activities, preparation of documents, developing cost-effective strategies for follow-on

investigations and removal actions, and negotiating with state regulators on three Beale Air Force projects totaling more than \$15 million.

1988 - 1993: Dames & Moore, Sacramento and Los Angeles, California. Senior Geologist. Provided hydrogeologic technical support, project management, regulatory compliance, technical/regulatory strategy, and on a variety of commercial and industrial DTSC- and RWQCB-lead hazardous substance sites. Responsibilities included project technical direction, scope implementation, budgetary control, groundwater quality monitoring and analysis, supervision of field investigations, document preparation, client interface, negotiation with regulatory agencies on projects totaling approximately \$5 million.

1986 - 1988: California Department of Health Services, Toxic Substances Control Division, Southern California Region, Assessment and Mitigation Unit, Los Angeles, California. Project Manager in the Assessment and Mitigation Unit. Responsibilities included development and implementation of work plans and reports for, and regulatory oversight of, State Superfund preliminary site assessments, groundwater quality monitoring and analysis, remedial investigations, feasibility studies, remedial action, and interim remedial measures. **Engineering Geologist.** Provided technical support to Permitting, Enforcement, and Site Mitigation Unit staff, including evaluation of hydrogeologic assessments, groundwater quality monitoring programs, work plans, and reports on federal and state Superfund sites and active facilities; assistance in budget preparation; assistance in zone drilling contract review.

1983-86: Independent Consultant, Sacramento, California. Provided technical assistance on variety of geologic and geophysics projects to other independent consultants in local area.

1982: Gasch & Associates, Sacramento, California. Geologic assistant conducting shallow seismic reflection surveys in the Sierra Nevada for buried gold-bearing stream deposits.

1981 - 1982: Geologic Assistant, Coast Ranges, Avawatz Mountains, White Mountains, and Kinston Peak Range. Geologic Assistant on various geological field studies, including gravity surveys, magnetic surveys, landslide and geologic mapping projects.

PROFESSIONAL REGISTRATION

California Professional Geologist No. 5594
California Certified Engineering Geologist No. 1926
California Certified Hydrogeologist No. 0012

PROFESSIONAL AFFILIATIONS

California Department of Water Resources, Public Advisory Committee,
Water Plan Update 2013

2010-2013: Appointed to participate on PAC and to lead new Groundwater Caucus

Department of Interior, Advisory Committee on Water Information, Subcommittee on Ground Water

2010-Present: Member – Work Group for Pilot Project Implementation, Nationwide Groundwater Monitoring Network

2007-2010: Co-Chair - Work Group on Implementation for development of the Framework for a Nationwide Ground Water Monitoring Network

2007-2010: Member - Work Group on Network Design for development of the Framework for a Nationwide Ground Water Monitoring Network

National Ground Water Association

2014-Present: Director - Scientists and Engineers Division

2007- 2010: Director - Scientists and Engineers Division

2007 - 2009: Member - Government Affairs Committee

2007 - Present: Chair - Groundwater Protection and Management Subcommittee

2005 – Present: Chair - Regional Groundwater Management Task Force, Government Affairs Committee

2004 – 2005, 2007,2009-10: Chair – Theis Conference Committee

2002 – Present: Member – Theis Conference Committee

2002 – Present: Member - Regional Groundwater Management Task Force, Government Affairs Committee

2003 – Present: Member – Groundwater Protection and Management Subcommittee

2009 – Present: Member - ASR Task Force

2009 – Present: Member - Hydraulic Fracturing Task Force

2008 – 2009: Member – CO2 Sequestration Task Force

American Ground Water Trust

2009 – 2012: Chair

2005 - 2013: Director

California Groundwater Coalition

2007-Present: Director

Groundwater Resources Association of California

2000 – Present: Director

2000 – 2001: President State Organization

2001 – Present: Legislative Committee Chair

1998-1999 Vice President

1996-1997 Secretary

1995-1996 President Sacramento Branch

1993-1994 Member-at-Large Sacramento Branch

ACADEMIC BACKGROUND

BS 1983, Geology, University of California, Davis

Graduate studies in hydrogeology, hydrology, engineering geology, waste management engineering

Selected Publications

California Groundwater Management, Second Edition, Groundwater Resources Association of California, co-author and project manager, 2005.

Water Contamination by Low Level Organic Waste Compounds in the Hydrologic System, in Water Encyclopedia, Wiley, 2004.

Potential Groundwater Quality Impacts Resulting from Geologic Carbon Sequestration, Water Research Foundation, co-author, 2009.

Aquifer Storage and Recovery in the US, ASR 9, American Ground Water Trust, Orlando Florida, September 2009 – a compilation of key ASR issues on DVD, contributing editor and speaker, 2010.

Sustainability From The Ground Up – Groundwater Management In California – A Framework, Association of California Water Agencies, principal author, 2011.

ISMAR9 Call to Action: Sustainable Groundwater Management Policy Directives, Principal Author, 2016.

EXHIBIT 4



February 19, 2018

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
11 Reservation Road,
Marina, CA 93933
priso@mcwd.org

Re: Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD)

Dear Member of the Board:

I write on behalf of LandWatch Monterey County to object to the inadequate environmental review of Marina Coast Water District's proposed Sphere of Influence Amendment and Annexation.

As LandWatch explained in its January 18, 2018 comments to the Board, the proposed annexation would allow and facilitate increased pumping of the Salinas Valley Groundwater Basin to provide additional water for projected development in the Ord Community, which is projected to require an additional 2,492 afy by 2035. This increased pumping would make a considerable contribution to significant cumulative impacts, including seawater intrusion and overdraft and depletion of the affected aquifers.

The Initial Study does not provide an adequate environmental analysis of the impacts of increased pumping to support future Ord community development, an analysis that is required to support annexation. FORA, the agency with overall authority and responsibility to manage water resources for the Ord community, will terminate in 2020. MCWD proposes the annexation in contemplation of that termination. Because there is no assurance that the present water management policies and mitigation measures will continue, and because these policies and mitigation measures have been ineffective, MCWD must evaluate the impacts that may occur after FORA is dissolved. If MCWD does not evaluate the impacts and is allowed to annex the land as it proposes, the significant water problems that the Army transferred to FOR A will in turn be transferred to MCWD – without assessment and without a commitment to avoid further harm.

If MCWD's proposed annexation is allowed to proceed prior to approval of a FORA transition plan and some new commitment to manage the water resource impacts from the Ord community, then it should be limited to just those parcels to which MCWD is currently providing service, e.g., parcels with a water meter that are currently being served. Without an adequate environmental review of the impacts of providing additional water for new development, MCWD should not act to commit itself in any way to serve these areas with water in the future.

At MCWD's January 20, 2018 meeting, the Board considered a proposed negative declaration. MCWD now proposes to adopt a negative declaration and to find the project exempt from CEQA. The record does not support either a negative declaration or an exemption.

A. Increased groundwater pumping to support future development of the Ord Community would be a considerable contribution to significant cumulative impacts in the form of seawater intrusion and depletion of the Deep Aquifer, but MCWD and the Initial Study fail to acknowledge this.

LandWatch's January 18 letter to MCWD and its attachments demonstrate that additional pumping to support Ord Community development will aggravate seawater intrusion and deplete the Deep Aquifer. Comments by hydrologist Timothy Parker in his February 15, 2018 letter, attached to this letter, further amplify this concern.

Comments by LandWatch and Parker demonstrate that seawater intrusion has continued *despite* the Fort Ord Reuse Plan policies and mitigation that were supposed to ensure that new development not use groundwater if seawater intrusion was not halted.

A key reason for this continuing harm has been the practices by FORA, MCWD, and FORA member agencies of (1) misinterpreting the 6,600 afy allocation of water rights to Fort Ord as an amount that can be pumped without harm, (2) ignoring the Fort Ord Reuse Plan policies that mandate the development of an additional water supply if seawater intrusion continues instead of pumping right up to the 6,600 afy allocation, and (3) failing to determine and respect the safe yield of the aquifers that are used to supply the ORD community. As Timothy Parker explained:

The BRP PEIR [Base Reuse Plan Program EIR] provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members "shall ensure additional water supply." Policy B-2 requires conditioning project approval on verification of an "assured long-term water supply." Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD "to mitigate further seawater intrusion based on the Salinas Valley Basin

Management Plan." Program C-3.1 requires the member agencies to work with the water agencies "to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies." MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.¹ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had "exceeded safe yield, as indicated by seawater intrusion and water levels below sea level." (BRP PEIR p. 4-63.) The BRP PEIR states that the "conditions of the 900-foot aquifer are uncertain", including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to "affirm the local jurisdictions' commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies." (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies "to mitigate further seawater intrusion" by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR's cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: "existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3)." (BRP PEIR p. 5-5 (emphasis added).)

Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 8-9.

In light of the historic failure to honor the Fort Ord Reuse Plan policies and mitigation, the contention in the Annexation Initial Study that these measures "have been incorporated in local jurisdiction planning documents" is either untrue or irrelevant to the issue of water supply impacts. Annexation Initial Study, p. 52.

MCWD's Annexation Initial Study is inadequate because it fails to acknowledge that increased pumping to support Ord community development will cause impacts. The Annexation Initial Study fails to acknowledge that it is no longer possible to rely on the

¹ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

1997 Fort Ord Reuse Plan EIR due to changes in circumstances, new information, and failure to implement the Fort Ord Reuse Plan itself. These include

- The significant advance in the seawater intrusion front since 1997, which should have precluded any reliance on the presumption that there is 6,600 afy of water to use without impact and should have triggered the obligation under the Fort Ord Reuse Plan to accelerate the provision of alternative supplies for any new development;
- The failure of MCWRA and MPWMD to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan, as provided by the Fort Ord Reuse Plan;
- The failure of member agencies to prevent harm to the affected aquifers by limiting development in accordance with the availability of secure water supplies, as provided by the Fort Ord Reuse Plan;
- The failure of FORA, MCWD, MCWRA, and member agencies to determine and abide by the safe yield, including the safe yield of the Salinas Valley Groundwater Basin and its Deep Aquifer, as required by the Fort Ord Reuse Plan;
- Significant new information regarding the Deep Aquifer. As explained by Parker and the 2018 MCWRA report recommending a moratorium on new wells in the Deep Aquifer, there is no evidence of significant recharge to the Deep Aquifer, and increased pumping will result in its depletion and will induce seawater intrusion in the overlying aquifers.

Furthermore, as discussed below, even if the Fort Ord Reuse Plan policies and mitigation were effective in avoiding impacts, there is no assurance that MCWD would be subject to these policies and mitigation after FORA is dissolved in 2020.

B. MCWD's proposed annexation is a project subject to CEQA because (1) MCWD acts in the expectation that FORA will be dissolved and that MCWD will assume authority for provision of water for new development unconstrained by FORA or Fort Ord Reuse Plan policies and (2) MCWD would serve new development with additional groundwater pumping.

MCWD's claim that its proposed annexation would have no physical impacts is based on two unfounded assumptions: that there have been no changes to the environmental setting that would warrant new analyses and that MCWD would continue to provide the same amounts of water that have been previously *planned* and in accordance with the existing management regime. Annexation Initial Study, pp. 11, 18, 23. As discussed above, the first assumption is incorrect because there have been

substantial changes to the environmental setting, significant new information, and changes to the Fort Ord Reuse Plan.

The second assumption, that MCWD would simply implement existing plans for water supply is legally irrelevant and factually incorrect. The assumption is legally irrelevant with respect to the duty to provide an adequate analysis because CEQA requires an agency to compare its action to a baseline consisting of existing conditions, not a baseline consisting of a plan or a hypothetical future condition. Thus, it is not sufficient for the Initial Study to claim there would be no change to previous *plans* for groundwater pumping because the salient question is whether there would be changes to *existing* groundwater pumping.

The second assumption is factually incorrect because, as discussed below, the existing management regime for the Ord community water supply will be terminated in 2020, and MCWD is proposing to act based on that expectation, but without proposing a replacement plan.

1. MCWD acts in the expectation that FORA will be dissolved; and MCWD may assume authority for provision of water for new development unconstrained by FORA or Fort Ord Reuse Plan policies.

FORA is required to dissolve itself by June 30, 2020. Gov. Code, § 67700(a). Indeed, MCWD proposes the annexation with the expectation that the FORA will be dissolved by 2020, and MCWD expressly rejects the no-project alternative for just that reason. Annexation Initial Study, Appendix D.

Currently, MCWD is subordinate to FORA in critical decision-making regarding water supply under the Water/Wastewater Facilities Agreement between FORA and MCWD. Water/Wastewater Facilities Agreement, March 13, 1998, Articles 4.1, 5.1.1, 5.2. Thus, FORA, not MCWD, is authorized to obtain water extraction capacity rights. *Id.*, Article 3.4.1. And FORA, not MCWD, has decided to sub-allocate 6,600 afy of its presumed capacity rights to its member agencies. FORA, Development Resources Management Plan (DRMP), section 3.11.5.4 and Table 3.11-2, available at <http://www.fora.org/Reports/DevResourcePlan.pdf>. And, FORA, not MCWD, has primary responsibility to implement the policies and mitigation contained in the Fort Ord Reuse Plan.

The 1998 Water/Wastewater Facilities Agreement will no longer be in effect after FORA sunsets. Water/Wastewater Facilities Agreement, March 13, 1998, Article 9. Thus, after FORA is dissolved, and in the absence of another binding plan addressing water supply issues, MCWD, as a County Water District, would assume plenary authority over the water use and allocation that is currently constrained by FORA. For example, MCWD would have essentially unfettered responsibility and authority to establish rules

and regulations for water distribution. Gov. Code, § 31024. MCWD would have also have unfettered responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350.

After FORA is dissolved, and in the absence of the 1998 Water/Wastewater Facilities Agreement or a binding transition plan addressing water supply issues, MCWD's provision of water supply might be constrained only by the October 2001 "Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey, And Quitclaim Deed For Water And Wastewater Systems." This Assignment would purport to constrain MCWD to assume and comply with the terms and conditions of the October 24, 2001 "Federal Instruments" that conveyed the water systems from the Army to FORA. These Federal Instruments include, as consideration for the transfer, the assumption of the Army's obligation "to cooperate and coordinate with parcel recipients, MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will continue to be provided an *equitable supply of water* at equitable rates." Department of the Army, Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord," paragraph 2, emphasis added. However, the meaning of "equitable supply" is not defined. Critically, there is no assurance that the equitable considerations will take into account the environmental impacts of providing that supply. It is possible that MCWD would interpret "equitable" by simply reaffirming its stubborn and unsustainable commitment to provide up to 6,600 afy of groundwater regardless of environmental impacts.

Although FORA is now considering a transition plan, no plan has yet been adopted or approved by LAFCO. It is not yet clear whether there will be a successor agency to FORA, or, if there is, what powers and responsibilities that successor agency may have to manage water resources. In its transition planning, FORA has raised, but not yet answered, the critical questions as to the continuing effect of the Fort Ord Reuse Plan policies and mitigation provisions and the meaning of the obligation to provide a "fair and equitable" water supply. Consider this excerpt from FORA's most recent transition planning update:

"MCWD ANNEXATION: All infrastructure and water rights were provided to MCWD to provide for a fair and equitable water allocation. Can MCWD later only annex a portion of the former Fort Ord? Is this consistent? Does LAFCO need to consider and abide by the Fort Ord Reuse Plan when considering MCWD annexation?"

"In the event of a water shortage how will MCWD provide a "fair and equitable" water supply to the former Fort Ord? Will only entitled projects receive water? Only projects with a water supply assessment?"

FORA Board Report, Transition Planning Update, January 12, 2018, Attachment A1, Transition Planning/Summary Chart, Water Wastewater.

As discussed, the Fort Ord Reuse Plan policies and mitigation have not been effective in preventing further seawater intrusion or depletion of the Deep Aquifer. More fundamentally, as FORA acknowledges, MCWD may not even have to *abide* by these ineffective policies and mitigation after 2020. Certainly LAFCO cannot approve MCWD's proposed annexation without resolving this question.

In response to LandWatch's comments, the Final Initial Study/Negative Declaration (FIS/ND) claims that FORA allocates water supply. FIS/ND, p. 43. The Final Initial Study/Negative Declaration also claims that the annexation would not change the Fort Ord Reuse Plan policies. FIS/ND, p. 49. MCWD has failed to acknowledge that FORA will no longer manage this process, the Reuse Plan Policies will no longer govern the resource, and that MCWD will have the primary authority to do so.

To support LAFCO in its determination whether to approve annexation, and before MCWD is assigned any additional authority over the water resources, MCWD must provide an adequate analysis of water supply impacts and an *effective* plan to avoid or mitigate significant impacts – a plan that will supersede the ineffective Fort Ord Reuse Plan. The Annexation Initial Study does not provide such an analysis or plan. Instead, it states that addressing the Fort Ord Reuse Plan policies is "beyond the scope of the IS/ND." FIS/ND, p. 47.

As FORA also acknowledges, there is no understanding of MCWD's future obligation to provide an "equitable" water supply in the context of a water shortage. Indeed, MCWD fails to recognize that a significant water shortage *already* exists, and that this requires hard decisions about supplies for future development, because MCWD's Annexation Initial Study fails to come to terms with continuing seawater intrusion and aquifer depletion. Absent an adequate CEQA document that takes into account current conditions, and without a binding and continuing commitment to avoid or mitigate impacts, there is no assurance that MCWD would interpret "equitable" to ensure protection of the groundwater resources.

And as FORA points out, there are other water supply-related issues that must be clarified before FORA sunsets. For example, FORA admits that it has not yet met the Fort Ord Reuse Plan FEIR's mitigation requirement to develop a 2,400 afy water augmentation plan because MCWD's RUWAP project at 1,427 afy does not provide sufficient capacity. FORA Administrative Committee, Memorandum, January 27, 2016, p. 2, available at <http://www.fora.org/TTF/Additional/Transition-SunsetPlanMemo.pdf>. And FORA admits that oversight over Fort Ord water allocations must be assigned to another entity before its dissolution. *Id.*, p. 4.

MCWD's Agenda Transmittal, its proposed findings, and its response to comments all claim incorrectly that there would be no change to water service after the annexation because MCWD is contractually obliged to supply water. Agenda Transmittal, pp. 1, 3; FIS/ND, p. 49; Proposed Findings, p. 1. This claim fails to acknowledge that the annexation is being undertaken in express contemplation of the expiration of the primary contract that governs MCWD, the 1998 Facilities Agreement, which would end FORA's authority to allocate water and manage the resource. As a County Water District for the annexed areas, MCWD would have the authority to allocate water and to respond to water shortages, without any oversight by FORA, and subject only to the undefined obligation as a FORA successor to provide "equitable" service under the Army easement. Department of the Army, Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord," paragraph 2.

In light of MCWD's assumption that it can pump up to 6,600 afy without further aggravation of seawater intrusion or depletion of the Deep Aquifer, MCWD is poorly positioned to accept the responsibility to manage the water resource. Thus, it is critical that MCWD provide an adequate environmental review before it annexes undeveloped portions of Fort Ord. CEQA requires an adequate review as a document of public accountability that protects informed self-government.

2. Annexation will allow and lead to additional groundwater pumping.

The response to comments states that the annexation is of "developed areas," and the proposed findings reference "annexation of developed areas already served by MCWD" and "all customers currently served." FIS/ND, p. 40; Proposed Findings, p. 2. The response to comments repeatedly claims that the annexation "will not allow for [] any increase in groundwater pumping. FIS/ND, pp. 46, 47.

This claim is not true. First, elsewhere in its response to comments, MCWD claims only that the "majority of the areas to be annexed are currently served." FIS/ND, p. 49, emphasis added. Second, the list of areas to be annexed in the Initial Study clearly includes undeveloped areas for which future development may occur and that are not currently being served. Annexation Initial Study, pp. 16-17. Indeed, the list of annexation areas includes a number of areas for which there are no development entitlements or for which there is not even an approved specific plan. Nothing in the proposed annexation would prohibit service based on increased groundwater pumping to parcels or development projects that are not currently served. As discussed below, the refinement to the project description in the Final Initial Study/ Negative Declaration to reduce the scope of the annexation does not exclude all undeveloped areas. See FIS/ND, pp. 60-61.

Contrary to the response to comments (FIS/ND, p. 41), the current Urban Water Management Plan and Annexation Initial Study do provide evidence of planned increases

in service for new development in the Ord community. MCWD's current UWMP projects an increased demand of 2,492 afy to serve Fort Ord development between 2020 and 2035. MCWD, 2015 UWMP, p. 21. The Annexation Initial Study repeats this projection and identifies it as the "total expected growth in demands from all currently expected development projects and population growth through 2035. Annexation Initial Study, p. 51.

And contrary to the response to comments (FIS/ND, p. 46), MCWD's plans do allow and assume the full use of the 6,600 afy groundwater allocation. For example, in calculating the Ord community groundwater shortfall through 2035, the UWMP assumes the full use of the 6,600 afy groundwater allocation. MCWD, 2015 UWMP, p. 57 (Table 4.3). MCWD's calculated need for an additional 2,901 afy to meet its groundwater shortfall is based on the difference between the 8,293 afy 2035 demand and the 6,600 afy allocation. *Id.* The Annexation Initial Study also assumes that the 6,600 afy allocation will be used to meet Ord community demand. See, e.g., Annexation Initial Study, pp. 50-51, Tables 5 and 6, notes 4 (comparison of demand growth to supply assumes use of 6,600 afy allocation plus 300 afy of existing desalination capacity).

Contrary to the response to comments (FIS/ND, p. 44-45), the fact that MCWD has plans to obtain recycled or desalinated water does not mean that it does not intend to exhaust the 6,600 afy groundwater allocation, regardless of the impacts of any increased pumping. MCWD's plans to develop additional water supplies are based on fulfilling its incorrect interpretation of the Fort Ord Reuse Plan requirement for augmented water supplies, which would be to require additional water supplies only after the 6,600 afy is exhausted. As set out in previous comments by Parker and LandWatch, MCWD and FORA have misinterpreted the Fort Ord Reuse Plan to permit the full use of the 6,600 afy groundwater allocation regardless whether increased pumping aggravates seawater intrusion and regardless of whether it has been determined to represent a safe yield. Significantly, MCWD's response to comments admits that the 6,600 afy allocation is neither the baseline use nor a sustained yield. FIS/ND, pp. 46-47.

Furthermore, MCWD has offered to furnish 600 afy of its entitlement to PWM/GWR recycled water and up to 700 afy of groundwater for use, directly or indirectly, on the Monterey Peninsula, for a ten-year term with options for renewal.² This offer is not identified as a potential use of MCWD's water resources in its 2015 UWMP. MCWD's willingness to commit its recycled water and groundwater supplies to this venture is further evidence that MCWD expects to be able to use the entire 6,600 afy allocation for Ord community demand.

² California Public Utilities Commission, Proceeding A1204019, In the Matter of the Application of California-American Water Company (U210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Monterey Peninsula Water Supply Project and to Recover All Present and Future Costs in Connection Therewith in Rates, Direct Testimony Of Keith Van Der Maaten, Submitted On Behalf Of Marina Coast Water District -Supplemental Phase 1 Testimony, Sept. 29, 2001, pp. 10-14.

Finally, MCWD's *approved and funded* plans for additional water supplies will not even make up the 2,901 afy Ord community shortfall in 2035. MCWD, 2015 UWMP, p. 57 (Table 4.3 - shortfall); FIS/ND, p. 45 (outlining approved plans). And as noted, FORA and MCWD have not yet met the Fort Ord Reuse Plan FEIR's mitigation requirement to develop a 2,400 afy water augmentation plan because MCWD's RUWAP project at 1,427 afy does not provide sufficient capacity. FORA Administrative Committee, Memorandum, January 27, 2016, p. 2.

C. MCWD's negative declaration is inadequate and an EIR is required.

As discussed above and in previous comments, the proposed negative declaration is inadequate because it fails to disclose impacts to groundwater due to increased pumping. Those comments, supported by expert opinion and by substantial scientific evidence, constitute a fair argument that the annexation may result in significant impacts. Accordingly, an EIR is required if MCWD intends to pursue the proposed annexation.

In addition to its failure to disclose significant impacts, the Initial Study is flawed in other respects, and its flaws are not cured by the Final Initial Study/Negative Declaration.

Revisions to the project description are offered in the Final Initial Study/Negative Declaration in order to make the project "more environmentally benign." FIS/ND, pp. 60-61. Revisions to a project to mitigate potentially significant effects must be included in the negative declaration that is circulated for public review. Public Resources Code §21080(c)(2); 14 CCR §§ 15070(b), 15071(e). Given the change to the project description, MCWD must recirculate the negative declaration. 14 CCR §15073.5.

Furthermore, the last-minute revisions render the project description unclear. First, the inclusion of the refinements in the Appendix D for alternatives renders it unclear whether the revisions are part of the project or merely an alternative project that may or may not be approved. The proposed findings do not clarify this. Second, the revisions are made with reference to large scale maps and parcel descriptions. No explanation is provided as to which part of the future development identified in the Annexation Initial Study in Table 2 would be included or omitted from the proposed annexation, although it is apparent that the revisions do not restrict the annexation area to parcels that are currently served by MCWD. In sum, the revision is insufficient because the public has no way to determine what the scope of the actual annexation project would be and because the annexation would still include undeveloped parcels expected to be developed. This must be rectified before MCWD acts to certify a CEQA document, whether a negative declaration, an exemption, or an EIR.

Purporting to buttress the claim that it provides an adequate impact analysis, the Final Initial Study/Negative Declaration "references" a number of additional CEQA documents as "background documentation." FIS/ND, pp. 46, 52-53, 59-60. The Final Initial Study/Negative Declaration also incorporate by reference three of these documents: the RUWAP EIR and Addenda, the PWM/GWR EIR and Addenda, and the Fort Ord Reuse Plan EIR. FIS/ND, pp. 52-53. These documents do not cure the failure of the Annexation Initial Study to provide an adequate analysis.

First, the Final Initial Study/Negative Declaration disavows any actual reliance on these documents: "the IS/ND does not tier from the previous documents or rely on the conclusions in the previous documents for its conclusions regarding potential environmental impacts of the project." FIS/ND, p. 53.

Second, the Annexation Initial Study fails to summarize, explain, or provide a roadmap to these referenced documents. The bare fact that CEQA review of prior development and alternative water supply projects has occurred does not address the concerns LandWatch has raised regarding the effects of supplying additional groundwater to future development.

Third, as previous comments have explained, reliance on the analysis in the 1997 Base Reuse Plan EIR is misplaced due to changed circumstances and the failure to implement its policies and mitigation.

Fourth, the Annexation Initial Study discusses the RUWAP and PMW/GWR projects to support its claim that additional water supplies are planned; however, it does not summarize or discuss any findings in these documents that would be relevant to the impacts of increased groundwater pumping. Indeed, it is unlikely that an EIR for these projects, which are intended to supply water in lieu of groundwater, would provide an analysis of the effects of increased groundwater pumping, including the effects of MCWD exhausting the 6,600 afy allocation.

Fifth, none of these prior CEQA documents reflect the significant new information relevant to the impacts of increased pumping, such as the most recent seawater intrusion mapping or the MCWRA recommendations for pumping moratorium in the Deep Aquifer and the 400-foot aquifer proximate to the seawater intrusion front.

Contrary to the response to comments (FIS/ND, pp. 42-43), the Initial Study does not present an adequate cumulative analysis. The fundamental flaw is that the Initial Study fails to acknowledge the severity of the existing cumulative impact or to assess whether any increase in groundwater pumping would be a considerable contribution in light of the serious problem.

The cumulative analysis is deficient in other respects. For example, the Initial Study provides no justification, and there is none, for the claim made in the Final Initial Study/Negative Declaration that the proper geographic scope of cumulative analysis can be confined to the former Fort Ord area. FIS/ND, p. 58. Seawater intrusion and aquifer depletion impacts are due to pumping throughout the Salinas Valley Groundwater Basin. As Mr. Parker explains, the area that would be affected by increased groundwater pumping includes the Pressure Subbasin and the Salinas Valley Groundwater Basin as a whole since these areas are hydraulically interconnected. Furthermore, CEQA does not define the geographic scope of cumulative analysis based on the area *affected* but based on the location of the cumulative projects that *cause effects* in the same area that the project causes effects. The Guidelines require identification of projects “producing related or cumulative impacts” or projections of conditions “contributing to the cumulative effect.” Guidelines §15130(b)(1). Case law is clear that it is improper to omit relevant past, present, and future projects that create related impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430-432; *San Joaquin Raptor Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739-741; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724. As Mr. Parker explains, it is indisputable that past, present and future projects and pumping outside the Ord community affect the aquifer depletion and seawater intrusion to which addition pumping for the Ord community would contribute. This is acknowledged by the Reuse Plan EIR (at p. 5-5, acknowledging that regional growth could cumulatively affect aquifers and cause further overdraft and seawater intrusion), the MCWD 2010 UWMP (at p. 29, acknowledging that basin-wide pumping causes declining water levels in Pressure Subarea), and the Army’s 1993 FEIS (at p. 4-57, acknowledging that the available yield without seawater intrusion depends on the amount of pumping throughout the basin). The Annexation Initial Study simply fails to provide any justification for limiting the scope of cumulative analysis to the Ord community.

Nor does the Annexation Initial Study provide other essential information for cumulative analysis. An adequate analysis must provide either (1) a list of past, present, and future projects producing related impacts, including projects outside the control of the agency, of (2) a summary of projections of regional conditions contributing to the cumulative impact. 14 CCR § 15130(b)(1). There is no information about projected groundwater pumping in the Salinas Basin or its Pressure Subbasin.

In fact, the Annexation Initial Study does not provide any actual analysis of cumulative impacts other than vague references to the discussion in the Reuse Plan EIR. FIS/ND, p. 58. Not only is that prior analysis out of date, but, as noted, the Annexation Initial Study states that it “does not tier from the previous documents or rely on the conclusions in the previous documents for its conclusions regarding potential environmental impacts of the project.” FIS/ND, p. 53.

D. The project is not exempt.

Although MCWD did not include a proposed finding that the annexation would be exempt on the agenda for its January 20, 2018 meeting, staff has now proposed a finding of exemption to be considered at the February 20, 2018 meeting. Staff proposed that the Board find the annexation exempt under 14 CCR §§ 15301, 15319, or 15061(b)(3).

The exemption for existing facilities under 14 CCR § 15301 is inapplicable because that exemption precludes any expansion of previous use beyond that existing at the time of the lead agency’s determination. Because the annexation will allow, and is intended to facilitate, the provision of water supply to currently undeveloped parcels there would be an expansion of previous use.

The exemption for annexations of existing facilities and lots for exempt facilities under 14 CCR § 15319 is inapplicable because that exemption is not allowed if it is foreseeable that utility services would extend into the annexed parcels and have the potential to serve a greater capacity than existing uses. Again, the annexation will allow, and is intended to facilitate, the provision of water supply to currently undeveloped parcels. Thus, there is an obvious potential to serve a greater capacity than existing uses.

Even if the annexation otherwise qualified for a categorical exemption, an exemption would be prohibited here due to the presence of unusual circumstances and the possibility of a significant impact. 14 CCR § 15300.2(c). One unusual circumstance is the fact that the annexation is being undertaken with the expectation that the existing governance structure to protect the resource will be terminated, leaving MCWD free to manage the resource without constraints of the current governance structure. Another unusual circumstance is that the existing governance structure has not in fact protected the resource because it has allowed ground water pumping to induce further seawater intrusion and to exceed sustainable yield, and MCWD has not committed itself to avoid additional groundwater pumping.

A categorical exemption would also be barred because the cumulative effect of successive projects of the same type in the same place over time would be significant. 14 CCR § 15300.2(b). MCWD has identified the remainder of the developable areas of the Ord community as future study areas for annexation and seeks to include them in its sphere of influence. Thus, MCWD contemplates successive annexations in the Fort Ord area, which would result in provision of additional groundwater, resulting in a significant cumulative impact.

The common sense exemption under 14 CCR § 15061(b)(3) does not apply because MCWD cannot find with certainty that there is no possibility of a significant effect. MCWD’s claim in this regard is based on the incorrect assertion that there would

be no change to existing conditions after the annexation. In fact, the annexation would allow, and is intended to facilitate, increased groundwater pumping to support new development in the Ord community. This increased pumping would result in significant impacts. Furthermore, the annexation is proposed with the expectation that the current governance structure intended to protect the water resource will terminate and without any commitment to a governance structure that would in fact protect the resource.

E. Annexation should be deferred until approval of a FORA transition plan or some other plan to manage water for future development; or, if annexation is not deferred, it should be limited to developed parcels already served by MCWD.

MCWD's proposed annexation puts the cart before the horse; it should await approval of a FORA transition plan that will address provision of water for future development in the Ord community. Alternatively, it must be accompanied with the adoption of policies, regulations, and mitigation that would ensure that provision of water supply for future development in the Ord community will not cause significant impacts.

LAFCO staff explain that the FORA transition plan must provide "clear direction on all projects, obligations and other pending matters in the transition plan." Kate McKenna, Report of the Fort Ord Reuse Authority (FOR A) Dissolution Process, January 22, 2018, p. 4. LAFCO staff explain that the transition plan is required in order to "lay the foundation for future LAFCO actions such as annexations by local agencies to ensure the provision of municipal services (i.e. water, sewer fire, etc.)" *Id.*, emphasis added.

The Initial Study suggests that the rationale for the annexation is to give existing customers a vote. Annexation Initial Study, p. 9. LandWatch has also been advised that MCWD seeks annexation to further its objective to qualify as a Groundwater Sustainability Agency under the Sustainable Groundwater Management Act. If MCWD intends to pursue the annexation for these reasons, and since it has seen fit to defer annexation of other developable portions of the Ord Community, there is no reason that it needs to annex *any* area that is not currently developed and currently being served with water. The Initial Study indicates that the annexation would include parcels in which hundreds of addition water service hook-ups would be required or that are not currently receiving water service. Annexation Initial Study, pp. 16-17, Table 2. LandWatch's concern that MCWD not assume plenary authority over provision of water for future development without a commitment to avoid or mitigate impacts would be addressed in part if the annexation were limited to just those parcels for which MCWD is now actually providing service.

In a telephone conversation on February 16, 2018 between LandWatch and Keith Van Der Maaten, Mr. Van Der Maaten indicated that restricting the area of annexation to parcels with current service may be problematic. He suggested that MCWD may feel an

obligation to provide service to areas without current water service but for which building permits or vesting subdivision maps had been issued, or even for areas without such entitlements but for which a specific plan had been approved, or even merely initiated, or even for areas for which MCWD had only provided a Water Supply Assessment. He also suggested that denial of water service to these areas might be considered a taking.

There are several response to this concern. First, MCWD's authority to deny hookups in the event of a water shortage, which clearly exists today, includes authority to deny service to proposed development for which there is an existing subdivision map. *Building Industry Assn. v. Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641; *see also Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal.App.3d 512; *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2004) 117 Cal.App.4th 13. Second, MCWD already plans to consider annexation of the Ord Community in phases, so there is no reason not to postpone annexation of currently undeveloped parcels until MCWD has provided adequate environmental review. Again, we note that MCWD's interests in the annexation – providing governance participation to the existing customers and facilitation of MCWD's SGMA role – can be met without annexing undeveloped parcels.

Finally, to the extent that the annexation of any of the Ord Community will provide bureaucratic momentum for MCWD to annex the rest, LandWatch opposes that annexation unless and until MCWD provides adequate environmental review of any increase in groundwater pumping to support the Ord community. At a minimum that review must include the evaluate the impacts of providing water for all of the foreseeable Ord community development as well as other cumulative projects affecting the Deep Aquifer or contributing to seawater intrusion.

LandWatch joins in the objections to the proposed annexation made by other members of the public and by public agencies. LandWatch remains willing to continue its discussions with MCWD staff to resolve its concerns with the proposed annexation. Please let us know if you would like to confer further toward that end. In the meantime, LandWatch asks that the MCWD Board not certify an inadequate CEQA document or act on the annexation at its February 20 meeting.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

Attachment:

Timothy Parker, letter to John Farrow, re Groundwater Impacts from Increased Pumping to Support Ord Community Development, February 15, 2018

References: to be provided electronically via thumb drive

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24. MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017
25. MCWRA, Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer, June 7, 2017.
26. MCWD, 2015 Urban Water Management Plan.
27. MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017.
28. Curtis Hopkins, North Marina Area Groundwater Data and Conditions, May 26, 2015.
29. Ian Gottschalk and Rosemary Knight , Preliminary Interpretation of SkyTEM Data Acquired in the Marina Coast Water District, June 16, 2017.
30. Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018.

31. MCWD, Response to Timothy Parker Technical Memorandum Dated October 8, 2016.
32. FORA-MCWD, Water/Wastewater Facilities Agreement, March 13, 1998.
33. FORA Board Report, Transition Planning Update, January 12, 2018.
34. FORA Administrative Committee, Memorandum, January 27, 2016.
35. Kate McKenna, Report of the Fort Ord Reuse Authority (FOR A) Dissolution Process, January 22, 2018.
36. Timothy Parker, letter to John Farrow, re Groundwater Impacts from Increased Pumping to Support Ord Community Development, February 15, 2018.
37. California Public Utilities Commission, Proceeding A1204019, In the Matter of the Application of California-American Water Company (U210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Monterey Peninsula Water Supply Project and to Recover All Present and Future Costs in Connection Therewith in Rates, Direct Testimony Of Keith Van Der Maaten, Submitted On Behalf Of Marina Coast Water District -Supplemental Phase 1 Testimony, Sept. 29, 2001.

ATTACHMENT - Timothy Parker, letter to John Farrow,
re Groundwater Impacts from Increased Pumping to
Support Ord Community Development, February 15, 2018



January 18, 2017

Via e-mail and hand delivery

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
11 Reservation Road,
Marina, CA 93933
priso@mcwd.org

Subject: Negative Declaration and Initial Study for Ord Community Sphere of Influence
Amendment and Annexation for the Marine Coast Water District (MCWD)

Dear Members of the Board of Directors:

LandWatch Monterey County has reviewed the [Initial Study and Negative Declaration](#) for the proposed project. The Salinas Valley Groundwater Basin (SVGB) is [critically overdrafted](#) and has been so identified by the [Department of Water Resources](#); and, because of that cumulative overdraft, seawater intrusion continues to advance inland, rendering large portions of the aquifer unusable. Any action that furthers and facilitates increased pumping from the aquifer, including the proposed annexation of the Ord Community to MCWD's service area, will make a considerable contribution to the existing significant cumulative impact.

Because MCWD must acknowledge the existence of a significant cumulative impact to which the annexation will make a considerable contribution, MCWD may not approve the annexation without preparing an environmental impact report in which MCWD should propose mitigation to address significant impacts. Pending preparation of an environmental impact report, LandWatch asks that MCWD decline to certify the proposed negative declaration or to approve the annexation.

1. The project will cause physical impacts on the environment by facilitating increased pumping from the SVGB.

The Initial Study repeatedly claims that the project will have no physical effect on the environment because, it claims, MCWD already intends to provide service to the Ord community. However, regardless of its prior intentions, MCWD is not legally obligated to provide a water supply that it cannot provide without causing harm to the aquifer. That is, MCWD need not commit itself to serve the Ord Community with water that it cannot

safely and sustainably produce. MCWD's decision to annex the Ord Community would constitute a commitment to serve this community with increasing amounts of water, a significant portion of which MCWD intends to provide through increased groundwater pumping. For example, the Initial Study projects that MCWD will increase its water service to the Ord Community by over 2,492 acre-feet/year (afy) between 2020 and 2035. Initial Study, p. 50. The reason for this increase in demand is the expectation that currently undeveloped parcels will become developed in accordance with the Fort Ord Reuse Plan and the General Plans of the FORA member agencies. This proposed increase in water supplied by MCWD, partially provided by increased groundwater pumping, would clearly have physical impacts on the environment.

2. Overdraft and seawater intrusion in the SVGB continues and existing groundwater management efforts are not sufficient to mitigate or halt it.

In connection with the [Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan \(SCH201291056\) dated October 12, 2016](#), LandWatch and its hydrologist Timothy Parker submitted extensive comments. We incorporate those comments by reference and provide copies herewith. We note that provision of water for the proposed development of the Monterey Downs project is precisely the kind of future water supply commitment that the MCWD annexation would facilitate because the Monterey Downs project purported to be consistent with the Fort Ord Reuse Plan and with the General Plans of the City of Seaside and Monterey County.

As Mr. Parker substantiates, cumulative pumping in the Salinas Valley Groundwater Basin and its Pressure Subarea has resulted in aquifer depletion and associated seawater intrusion, and current groundwater management efforts are not sufficient to avoid this significant cumulative impact. This conclusion is not controversial and is well documented by the technical reports cited by Mr. Parker, which we also incorporate by reference.

3. The Initial Study fails to evaluate the effects of increased pumping, instead relying on the outdated Fort Ord Reuse Plan EIR.

The Initial Study purports to rely on and incorporate by reference the 1997 Fort Ord Reuse Plan Program EIR. The Initial Study claims incorrectly that "there have been no substantial changes in the environmental setting of the proposed area that would warrant new analyses." Initial Study, p. 23. The Initial Study claims that policies, programs and mitigation measures in the Fort Ord Reuse plan reduced impacts to a less than significant level. Initial Study, pp. 23, 52.

In fact, there is significant new information since 1997 that demonstrates that the analysis in the Reuse Plan EIR is outdated and that new analysis is warranted. This information includes, for example,

- DWR, Critically Overdrafted Basins, January 2016 – identifying the Salinas Valley Groundwater Basin as critically overdrafted and therefore requiring an accelerated Groundwater Sustainability Plan under the Sustainable Groundwater Management Act.
- MCWRA, State of the Salinas River Groundwater Basin, January, 2015 – identifying existing pumping from the Basin as unsustainable and

recommending pumping reductions in the Pressure Subarea from which this project proposes to increase pumping.

- MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013 – acknowledging the need for additional groundwater management projects to deliver water to replace coastal area pumping.
- Testimony of Robert Johnson, MCWRA, to Monterey County Planning Commission, Oct. 29, 2014 – acknowledging that the demand projections used for the Salinas Valley Water Project understated actual demand, that the Salinas Valley Water project would not be sufficient to halt seawater intrusion, and that additional groundwater management projects are needed.
- MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017 – acknowledging that seawater intrusion has leapfrogged forward through 2015 and recommending that pumping cease in the areas of impact, recommending a moratorium on extractions from new wells in the 900-foot Deep Aquifer,

This and other information cited by Mr. Parker demonstrates that there have in fact been substantial changes in the environmental setting of the proposed area over the past 20 years that would warrant new analyses. First, seawater intrusion has advanced another two miles inland since the 1997 Reuse Plan EIR, constituting a substantially more severe significant effect than shown in the Reuse Plan EIR. Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and could not have been known" at the time of the Reuse Plan EIR. Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by Reuse Plan policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the Reuse Plan itself.

4. The Initial Study assumes without evidence that there would be no significant impacts as long as pumping stays within the 6,600 afy allocation.

The Initial Study projects that MCWD may pump up to its 6,600 afy allocation of SVGB groundwater to meet projected demand through 2035. Initial Study, pp. 50-51. The Initial Study does not provide any discussion of the impacts of increased pumping, but it implies that there would be no significant impact as long as groundwater pumping stays within the 6,600 afy allocation of SVGB groundwater that was assigned to MCWD and then sub-assigned to the FORA member agencies. This same assumption was made in the Monterey Downs EIR, and Mr. Parker's comments establish that it is fundamentally flawed.

Mr. Parker establishes that the Base Reuse Plan EIR does not assume that 6,600 afy can be pumped without significant impacts. Instead, it expressly provides that additional water supplies will have to be obtained instead of relying on the 6,600 afy allocation if seawater intrusion continues. Mr. Parker writes:

The BRP PEIR impact analysis qualifies any reliance on the 6,600 afy allocation by stating that a potable water supply is "assumed to be assured from well water until a replacement is made available by the MCWRA, but only 'provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer.'" (BRP PEIR p. 4-53 (emphasis added)). It states that the 6,600 afy "could" support the first phase of Ord community development through 2015 and then notes "given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to 'assure' even the 6,600 afy." (BRP PEIR p. 4-53.) Thus, the BRP EIR evaluates the impacts of the BRP through 2015 in two distinct analyses, one of which assumes that 6,600 afy can be supplied without impacts and the other of which assumes that it cannot. In particular, it provides that "[a]ssuming groundwater wells on former Fort Ord were able to supply 6,600 afy," an additional 7,932 afy of supply would be required by 2015. (BRP PEIR, p. 4-53.) However, it then provides in the alternative that "[i]f groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley Aquifer," additional supplies would have to be developed sooner, and even further recommends "that an alternate water supply source, such as on-site storage facilities, be considered." (BRP PEIR, p. 4-54.)

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members "shall ensure additional water supply." Policy B-2 requires conditioning project approval on verification of an "assured long-term water supply." Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD "to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan." Program C-3.1 requires the member agencies to work with the water agencies "to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies." MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.¹ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had "exceeded safe yield, as indicated by seawater intrusion and water levels below sea level." (BRP PEIR p. 4-63.) The BRP PEIR states that the "conditions of the 900-foot aquifer are uncertain", including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to "affirm the local jurisdictions' commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies." (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to

¹ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies "to mitigate further seawater intrusion" by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR's cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: "existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3)." (BRP PEIR p. 5-5 (emphasis added).)

In sum, unlike the Monterey Downs DSEIR, the BRP PEIR does not assume that the 6,600 afy entitlement is a sufficient basis to determine whether there will be a significant water supply impact from continued groundwater pumping.²

Here, the Annexation Initial Study makes precisely the same unfounded assumption that was made in the Monterey Downs EIR that pumping may be increased up to the 6,600 afy allocation without significant impacts. The assumption is belied by both the Reuse Plan EIR and the fact of 20 more years of continued seawater intrusion.

5. 6,600 afy does not constitute baseline use.

The 6,600 afy allocation does not represent baseline pumping. Thus, MCWD may not simply assume that pumping within the 6,600 allocation is not a new impact.

First, the average pumping at the time that Fort Ord was in use by the Army was never 6,600 afy. That amount represents a single peak year pumping in 1984. The 1993 Army/MCWRA agreement reports that average pumping from 1988-1992, the period that brackets the 1991 closure decision, was about 5,200 afy. Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c.

Second, the Reuse Plan EIR does not identify 6,600 afy as the baseline use. The discussion of water supply in the section captioned "environmental setting" references the Army/MCWRA agreement that "6,600 acre feet per year (afy) of water is available from the Salinas Valley groundwater basin for Former Fort Ord land uses, provided that such provisions do not aggravate or accelerate the existing seawater intrusion." Reuse Plan EIR, p. 4-49. However, the discussion in this section does not identify any prior pumping amounts, and a reference to an agreement regarding future pumping does not even purport to identify historic baseline pumping. As Mr. Parker explains, the Reuse Plan EIR provides that mitigation would be required for any pumping that would lead to an increase in seawater intrusion, even if this occurs before the 6,600 afy allocation is pumped. The Reuse Plan EIR's discussion of the environmental setting with respect to water supplies identifies the 6,600 afy figure as the allocation in the MCWRA/Army agreement, not as baseline use. The discussion expressly provides that this allocation is available only "provided that such provisions do not aggravate or accelerate the existing seawater intrusion." Reuse Plan EIR, p. 4-49.

Third, if the Reuse Plan EIR adopts any baseline figure for Salinas Valley Groundwater Basin pumping on the Former Fort Ord, that figure is not 6,600 afy. The figure may be the 5,100 afy average pumping for the 4 to 5 years immediately prior to 1991, based on

² Timothy Parker, Technical Memorandum to John Farrow, Oct. 8, 2016, pp. 8-9.

the Army's NEPA documents. In Section 1.2.2, Baseline Determination, the Reuse Plan EIR expressly adopts the Army's NEPA document baseline: "As with the Army's FEIS and DSEIS, this EIR determines whether the proposed project may have a significant effect on the environment based on physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." Reuse Plan EIR, p. 1-3. The Reuse Plan EIR states that this approach "complies with Section 21083.8.1 of the Public Resources Code and utilizes the extensive research already conducted for the Army's NEPA documents, which use the same baseline year." *Id.* Section 21083.8.1 permits a reuse plan EIR or EIS to rely on conditions at the time of the closure decision as a baseline provided that certain procedures are followed.³

The Reuse Plan EIR then identifies the specific NEPA documents that were used to determine the Environmental Setting for water supply analysis. Reuse Plan EIR, pp. 1-3, 1-10 (Table 1.9-1). These include the Army's December 1995 Draft SEIS, the Army's June 1993 Final EIS Volume 1, and the Army's April 1992 "Other Physical Attributes Baseline Study of Fort Ord, California." These documents identify the baseline water use from the Salinas Valley Groundwater Basin as 5,100 afy, not as 6,600 afy, as follows:

- The 1996 Final SEIS states that "[a]s reported in the final EIS (Volume 1, page 4-56), average water demand on Fort Ord was 5,100 acre-feet (af) during 1986-1989. Water use has declined in recent years with the decrease in the number of personnel living on and occupying the base. Annual water use was 5,634 af in water year 1992, 3,971 af in 1993, and 3,235 af in 1994."⁴
- The June 1993 Final EIS states that "[a]nnual water consumption decreased from a high of 6,600 acre-feet in 1984 to an average of 5,100 acre-feet during

³ These procedures include circulation of proposed baseline conditions to affected agencies "prior to circulating a draft EIR" followed by a public hearing at which "the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions." Guidelines, § 15229(a)(1), (2). Although the BRP PEIR states that it availed itself of the Public Resources Code § 21083.8.1 baseline provisions and that baseline conditions are as of the September 1991 closure decision (Reuse Plan EIR, p. 1-3), there is no evidence that FORA actually followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify baseline water use conditions in a document circulated before the PEIR and to state an intent to adopt that as the baseline. See FORA, Resolution 97-6, June 13, 1997 (Certifying BRP PEIR and discussing proceedings and hearings). CEQA does not authorize FORA to rely on the Army's prior compliance with these procedures, if in fact the Army did comply.

⁴ Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, p. 4-11, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538/Section_4.pdf. The quote from the Final SEIS is of the unchanged text of the 1995 Draft SEIS.

1986-1989.”⁵ Table 4.5-2 identifies 5,100 afy as the average pumpage for Fort Ord.⁶

- The April 1992 *Other Physical Attributes Baseline Study of Fort Ord, California*, provides a table of annual pumping, from which it is apparent that average annual pumping from 1986-1989 is 5,083 afy and the average from 1986-1990 is 5,126 afy.⁷ That 1992 report identified declining water use from 1980 to 1990, except for the single year 1984.⁸

In sum, if the Army actually followed the procedures of Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to adopt a baseline figure and if FORA also complied with those procedures, then the baseline water use was not 6,600 afy but only 5,100 afy. The outlier 6,600 afy figure from 1984 could not have been used as a baseline because it does not represent the “physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991).” Reuse Plan EIR, p. 1-3; see Public Resources Code § 21083.8.1(c).

Fourth, even if FORA or the Army had followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify a baseline condition for water, they were required to “state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process.” Public Resources Code, § 21083.8.1(c)(C). The Reuse Plan EIR does explain how the 6,600 afy figure is to be integrated into its analysis and mitigation of water supply impacts. Reuse Plan EIR, pp. 4-49, 4-53 to 4-54. And that discussion does not indicate an intent to treat 6,600 afy as a baseline condition within which there is no significant impact, because it requires mitigation even if the 6,600 afy allocation is not pumped in full. CEQA does not permit the imposition of mitigation unless there are significant impacts. Guidelines, § 15126.4(a)(3). Thus, treating 6,600 afy as a baseline “no impact” level is inconsistent with the fact that Reuse Plan EIR repeatedly states that use of the 6,600 afy allocation is only to be permitted if it does not contribute to seawater intrusion and that mitigation may be required even if water use does not rise to 6,600 afy. See Reuse Plan EIR, pp. 4-49, 4-53 to 4-54.

And the Army’s EIS also makes clear that 1) there is no categorical right to pump 6,600 afy, and 2) even the right to pump up to 5,200 afy is subject to a no-harm condition:

MCWRA will not object to Fort Ord/POM Annex withdrawal from the basin of up to 6,600 af/yr, provided that no more than 5,200 af/yr are withdrawn from the

⁵ Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

⁶ *Id.* at 4-59.

⁷ US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California*, April 1992, p. 1-6, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf.

⁸ *Id.* at 1-6, 1-14.

180-foot aquifer and 400-foot aquifer and that such withdrawals do not threaten to aggravate or accelerate the existing seawater intrusion problem.⁹

Fifth, Public Resources Code, § 21083.8.1(c)(A) provides that “[p]rior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement.” The Reuse Plan EIR does in fact require further analysis of physical conditions than the analysis provided in the EIR. For example, Program C-3.1 requires determination of the safe yield of the portion of Fort Ord overlying the Salinas Valley Groundwater Basin “to determine available water supplies.” Reuse Plan EIR, p. 4-55. Program C-3.2 require further investigation of seawater intrusion in the context of the Salinas Valley Basin Management Plan and measures to prevent further intrusion. Again, these provisions are simply inconsistent with treating 6,600 afy as a permissible baseline use that would not constitute a significant impact.

6. 6,600 afy is not a safe yield.

MCWD cannot argue that 6,600 afy represents its share of the safe yield for the SVGB, i.e., an amount that MCWD can pump without significant impact. Safe yield or sustainable yield is defined as “the amount of groundwater that can be pumped annually on a long-term basis without causing undesirable results.”¹⁰ The Final EIS for the Fort Ord base closure and reuse also acknowledges that 1) safe yield must be determined for the entire groundwater basin and 2) pumping for Fort Ord already exceeded safe yield as of 1993:

The concept of safe yield is meaningful only when applied to an entire groundwater basin. The amount of yield available to individual users within the basin depends of the amounts and locations of pumping by other users. In the Salinas Valley groundwater basin, present pumping in and near Fort Ord exceeds safe yield in the 180-foot and 400-foot aquifers, as indicated by continuing seawater intrusion and water levels below sea level in those aquifers. This indicates that the yield from the 180-foot and 400-foot aquifers for Fort Ord is less than its present pumpage, assuming that pumping by other users remains unchanged.¹¹

Base Reuse Plan Hydrology and Water Quality Program C 3-1 requires that member agencies work with MCWRA to determine safe yield to determine available water supplies. For example, the Reuse Plan EIR provides for the City of Seaside:

⁹ Dept. of the Army, Final Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse, June 1996, p. 4-11, emphasis added, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538//Section_4.pdf.

¹⁰ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

¹¹ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57.

The City shall continue to work with the MCWRA and the MPWMD to estimate the safe yield in the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and the Seaside groundwater basins to determine available water supplies.

Reuse Plan EIR, p. 4-55. Similar provisions apply to the other member agencies. There is no evidence that the member agencies or MCWD have worked with MCWRA to determine safe yield for the Fort Ord area.

Furthermore, as the Final EIS for the Fort Ord base closure and reuse indicates, the concept of safe yield only makes sense for a basin as whole, not just the Fort Ord area. MCWRA's most recent determination of the sustainable or safe yield for the Salinas Valley Groundwater Basin and the Pressure Subarea indicates that pumping has been and remains in excess of safe yield. In particular, the 2016 State of the Salinas Valley Groundwater Basin report indicates that the safe yield of the Pressure Subarea is about 110,000 to 117, 000 afy and that existing pumping already exceeds this yield by about 12,000 to 19,000 afy.¹² The safe yield for the Salinas Valley Groundwater Basin as a whole (the four subareas constituting Zone 2C, the assessment area for the Salinas Valley Water Project) is from 499,000 to 506,000 afy, and existing pumping already exceeds this yield by 17,000 to 24,000 afy.¹³

7. The Initial Study fails to provide an adequate cumulative analysis and it may not tier from the Reuse Plan EIR.

The Initial Study claims that cumulative impacts were adequately evaluated in prior environmental documents, presumably the Reuse Plan EIR. Initial Study, p. 82. However, changed circumstances, new information, and changes in the Reuse Plan itself that have occurred since the Reuse Plan EIR require reexamination of the cumulative analysis and preclude tiering. Accordingly, MCWD is obliged to prepare a new water supply analysis and not to tier from the water supply analysis in the Reuse Plan EIR.

Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, there are changed circumstances and new information that bar reliance on the out-of-date cumulative analysis. As discussed above, information cited by Mr. Parker demonstrates that there have in fact been substantial changes in the environmental setting of the proposed area that would warrant new analyses. First, seawater intrusion has advanced another two miles inland since the 1997 Reuse Plan EIR, constituting a substantially more severe significant effect than shown in the Reuse Plan EIR. Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and

¹² MCWRA, State of the Salinas Valley Groundwater Basin, 2016, p. 4-25, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

¹³ *Id.* at 4-26.

could not have been known" at the time of the Reuse Plan EIR. Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by Reuse Plan policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the Reuse Plan itself. Most significantly, MCWD has not yet implemented the long-term water supply replacement projects that are mandated by the Reuse Plan and its EIR in the event that seawater intrusion continues.

Case law is clear that additional analysis of water supply impacts is required under section 21166 when new information shows more severe impacts or the planned water sources are not implemented timely:

To the extent that a subsequent subdivision proposal relies on different water sources than were proposed in the specific plan it implements, or the likely availability of the intended water sources has changed between the time of the specific plan and the subdivision application (or more has been learned about the effects of exploiting those sources), changes in the project, the surrounding circumstances or the available information would exist within the meaning of section 21166, requiring additional CEQA analysis under that section . . .

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412,438; see also *id.* at 431, n. 7. Here, the new information about the severity of cumulative impacts, changes to circumstances, and to the project itself with regard to water supply are subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 and therefore tiering, at least for the water supply analysis, is not permitted. The Initial Study erred by not providing a new analysis of water supply impacts, in particular, a new cumulative analysis.

Finally, even if tiering were permitted, MCWD must still assess whether the incremental effects of the Project would be considerable when viewed in the context of past, present, and probable future projects. Guidelines, § 15152(f)(2). We note that the California Supreme Court has clarified that additional review of a subsequent project may be required in a tiering context even where 21166 does not apply:

The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR's." (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then "CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." (*Ibid.* citing Pub. Resources Code, § 21094, subs. (a), (c).)

Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist. (2016) 207 Cal. Rptr. 3d 314, slip op. at p. 11 (emphasis added).

8. The Initial Study fails to disclose that increased pumping by MCWD to supply the Ord community through 2035 would make a considerable contribution to a significant cumulative impact.

By way of background, cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project's own effect is a considerable contribution. Guidelines, § 15130(a); see Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be "individually minor but collectively significant." *Communities for a Better Environment v. California Resources Agency* ("CBE v. CRA") (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- "define the scope of the area affected by the cumulative effect,"
- explain "the geographic limitation used,"
- identify the past, present, and future projects "producing related or cumulative impacts" or provide projections of the conditions "contributing to the cumulative effect,"
- provide a "summary of the expected environmental effects to be produced by those projects." Guidelines, § 15130(b)(3), (4).

In step two, if there is a significant cumulative effect, the agency must determine whether the project's contribution is "considerable," i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." *CBE v. CRA, supra*, 103 Cal.App.4th at 119. The determination whether a project's effects are a considerable contribution to a significant cumulative impact requires an acknowledgement of the existence of that cumulative impact and assessment of its severity because "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *Communities for a Better Environment v. California Resources Agency* ("CBE v. CRA") (2002) 103 Cal.App.4th 98, 120.

Here, there is overwhelming evidence that a step-one determination must conclude that there is a significant regional cumulative impact from groundwater pumping by past, present, and reasonably foreseeable future projects, including the Monterey Downs project. The evidence, including Mr. Parker's comments, shows that

- there has been and still is an ongoing significant cumulative impact to groundwater resources in the form of declining groundwater levels and seawater intrusion due to over-pumping of groundwater;
- this impact is due to basin-wide pumping, not just pumping within the Reuse Plan area;
- this impact has not been avoided by existing groundwater management projects;

- there are no committed, funded groundwater management projects that will avoid this impact in the foreseeable future; and
- the impact will be aggravated by increases in pumping to support future development, including projected increases in agricultural pumping and new urban development such as the Ord community buildout.

Given this evidence, and the complete lack of analysis of relevant cumulative conditions in the Initial Study, the omission of an adequate cumulative analysis is prejudicial to informed decision making and public participation.

Furthermore, the Initial Study presents no contrary evidence to support a step-one finding that there is no significant cumulative impact from cumulative groundwater pumping – an issue that the Initial Study simply fails to address. The lack of analysis precludes any step-one conclusion or finding that there is not a significant cumulative impact.

The lack of analysis also precludes any step-two conclusion that increased water demand for the Ord buildout does not constitute a considerable contribution to a significant cumulative impact. Any implied approach to a step-two conclusion based on the relatively small percentage of basin pumping undertaken by MCWD or the fact that the pumping may be from the 900-foot aquifer would be based on a legally and factually erroneous approach to cumulative analysis. Indeed, the Initial Study argues that the MCWD pumping is only 1% of total Salinas Valley Groundwater Basin pumping. Initial Study, p. 49. Any implication that this means that pumping to support the Ord buildout it is not a considerable contribution to a significant cumulative impact is wrong as a matter of law and fact.

An EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* ("LAUSD") (1997) 58 Cal.App.4th 1019, 1025-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 117-118, 121. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,718, the Court rejected the agency's "ratio" theory that found impacts not to be a considerable contribution merely because they were a relatively small percent of the total impact. *Id.* at 720. Because the relevant question was "whether any additional amount" of incremental impact "should be considered significant in light of the serious nature" of the problem (*id.* at 718), a valid determination whether a project's contribution is considerable must reflect the severity of the cumulative problem. "[T]he greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE v. CRA, supra*, 103 Cal.App.4th at 120. Thus, even an "individually minor" impact may be "cumulatively considerable." *Id.*; see also Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.

As Mr. Parker explains, what is relevant is whether marginal increases in pumping will be a considerable contribution in light of the severity of the overdraft and seawater intrusion problem. Because seawater intrusion is caused by the problem of overdraft, not by total pumping, the severity of the cumulative problem should be measured in terms of

the size of the overdraft or the amount of induced seawater intrusion. Here, the basin as a whole and the Pressure Subarea are in overdraft and, as Mr. Parker explains, any additional pumping will induce seawater intrusion equal to about 75% of the volume pumped. Furthermore, coastal pumping is more problematic than inland pumping. Thus, as Mr. Parker explains, the increase in pumping demand should be evaluated in light of the annual Pressure Subarea overdraft of 12,000 to 19,000 afy, not in relation to the 500,000 afy of total pumping in the Salinas Valley Groundwater Basin. Viewed in this light, and viewed in the light of the current recommendations by MCWRA that existing pumping be reduced in the Pressure Subarea, the marginal increase in pumping of 2,492 afy to support future Ord community buildout is a considerable contribution.

Finally, MCWD cannot argue that pumping to support the Ord buildout would be less than a considerable contribution to significant groundwater impacts because some portion of that pumping would come from the 900-foot Aquifer, also known as the Deep Aquifer. Based on available stratigraphic analysis and modeling, Mr. Parker demonstrates that increased pumping from the Deep Aquifer will also cause depletion of the 180-Foot and 400-Foot Aquifers because those aquifers are the source of recharge to the Deep Aquifer. Mr. Parker also demonstrates that increased pumping from the Deep Aquifer will aggravate seawater intrusion to the 180-Foot and 400-Foot Aquifers. Increased pumping from the Deep Aquifer may deplete that aquifer and it may also induce seawater intrusion into the Deep Aquifer itself. Finally, MCWRA has now recommended a moratorium new pumping from the 900-foot Aquifer.¹⁴

9. Other matters

In addition, many of LandWatch's 2011 comments on the previous project and environmental document have never been addressed. We have the following additional comments on the revised project and environmental document:

- a. **Project Description.** Marina Coast Water District (MCWD) currently is working with the Salinas Valley Basin Groundwater Sustainability Agency to address requirements of the Groundwater Sustainability Act. Under the proposed project, MCWD would be able to more effectively address the Act's requirements because it would have the authority to levy fees and/or taxes to fund needed projects. The Initial Study should identify this as a project outcome.
- b. **General Plan Consistency with Base Reuse Plan.** The document finds that all General Plans and/or project EIRs are consistent with the Reuse Plan EIR (p. 18) The germane consistency determination is consistency of General Plans, etc. with the FORA Reuse Plan, not the FORA Reuse Plan EIR. Please identify those general plans that have not had a consistency determination, e.g., 2010 Monterey County General Plan. Revise the following statement as needed:
- c. **Table 3.** The table identifies Water and Wastewater Service providers. It shows MCWD as providing water service to the City of Seaside. The

¹⁴ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp 2-3, available at <http://www.co.monterey.ca.us/home/showdocument?id=57394>

referenced 2003 City of Seaside General Plan identifies MCWD as working on the Regional Urban Water Augmentation Project for the former Fort Ord; however, the table should be augmented to identify the California American Water as the primary water provider. Table 3 also identifies MCWD as providing water service to the City of Monterey. MCWD's service would only apply to the City of Monterey projects on the former Fort Ord. The table should be augmented to identify the California American Water as the primary water provider and MPWMD as the agency charged with overseeing the water resources in the non-Fort Ord areas.

Thank you for the opportunity to review the document.

Sincerely,



Michael DeLapa
Executive Director

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17. MCWRA, Salinas Valley Water Project Engineers Report, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/documents/SVWP%20final_engineers_report.pdf.
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February 19, 2018

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
11 Reservation Road,
Marina, CA 93933
priso@mcwd.org

Re: Negative Declaration and Initial Study for Ord Community Sphere of
Influence Amendment and Annexation for the Marine Coast Water
District (MCWD)

Dear Member of the Board:

I write on behalf of LandWatch Monterey County to object to the inadequate environmental review of Marina Coast Water District's proposed Sphere of Influence Amendment and Annexation.

As LandWatch explained in its January 18, 2018 comments to the Board, the proposed annexation would allow and facilitate increased pumping of the Salinas Valley Groundwater Basin to provide additional water for projected development in the Ord Community, which is projected to require an additional 2,492 afy by 2035. This increased pumping would make a considerable contribution to significant cumulative impacts, including seawater intrusion and overdraft and depletion of the affected aquifers.

The Initial Study does not provide an adequate environmental analysis of the impacts of increased pumping to support future Ord community development, an analysis that is required to support annexation. FORA, the agency with overall authority and responsibility to manage water resources for the Ord community, will terminate in 2020. MCWD proposes the annexation in contemplation of that termination. Because there is no assurance that the present water management policies and mitigation measures will continue, and because these policies and mitigation measures have been ineffective, MCWD must evaluate the impacts that may occur after FORA is dissolved. If MCWD does not evaluate the impacts and is allowed to annex the land as it proposes, the significant water problems that the Army transferred to FORA will in turn be transferred to MCWD – without assessment and without a commitment to avoid further harm.

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If MCWD's proposed annexation is allowed to proceed prior to approval of a FORA transition plan and some new commitment to manage the water resource impacts from the Ord community, then it should be limited to just those parcels to which MCWD is currently providing service, e.g., parcels with a water meter that are currently being served. Without an adequate environmental review of the impacts of providing additional water for new development, MCWD should not act to commit itself in any way to serve these areas with water in the future.

At MCWD's January 20, 2018 meeting, the Board considered a proposed negative declaration. MCWD now proposes to adopt a negative declaration and to find the project exempt from CEQA. The record does not support either a negative declaration or an exemption.

A. Increased groundwater pumping to support future development of the Ord Community would be a considerable contribution to significant cumulative impacts in the form of seawater intrusion and depletion of the Deep Aquifer, but MCWD and the Initial Study fail to acknowledge this.

LandWatch's January 18 letter to MCWD and its attachments demonstrate that additional pumping to support Ord Community development will aggravate seawater intrusion and deplete the Deep Aquifer. Comments by hydrologist Timothy Parker in his February 15, 2018 letter, attached to this letter, further amplify this concern.

Comments by LandWatch and Parker demonstrate that seawater intrusion has continued *despite* the Fort Ord Reuse Plan policies and mitigation that were supposed to ensure that new development not use groundwater if seawater intrusion was not halted.

A key reason for this continuing harm has been the practices by FORA, MCWD, and FORA member agencies of (1) misinterpreting the 6,600 afy allocation of water rights to Fort Ord as an amount that can be pumped without harm, (2) ignoring the Fort Ord Reuse Plan policies that mandate the development of an additional water supply if seawater intrusion continues instead of pumping right up to the 6,600 afy allocation, and (3) failing to determine and respect the safe yield of the aquifers that are used to supply the ORD community. As Timothy Parker explained:

The BRP PEIR [Base Reuse Plan Program EIR] provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members "shall ensure additional water supply." Policy B-2 requires conditioning project approval on verification of an "assured long-term water supply." Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD "to mitigate further seawater intrusion based on the Salinas Valley Basin

Management Plan.” Program C-3.1 requires the member agencies to work with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies.” MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.¹ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” (BRP PEIR p. 4-63.) The BRP PEIR states that the “conditions of the 900-foot aquifer are uncertain”, including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies.” (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies “to mitigate further seawater intrusion” by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR’s cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: “existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3).” (BRP PEIR p. 5-5 (emphasis added).)

Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 8-9.

In light of the historic failure to honor the Fort Ord Reuse Plan policies and mitigation, the contention in the Annexation Initial Study that these measures “have been incorporated in local jurisdiction planning documents” is either untrue or irrelevant to the issue of water supply impacts. Annexation Initial Study, p. 52.

MCWD’s Annexation Initial Study is inadequate because it fails to acknowledge that increased pumping to support Ord community development will cause impacts. The Annexation Initial Study fails to acknowledge that it is no longer possible to rely on the

¹ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

1997 Fort Ord Reuse Plan EIR due to changes in circumstances, new information, and failure to implement the Fort Ord Reuse Plan itself. These include

- The significant advance in the seawater intrusion front since 1997, which should have precluded any reliance on the presumption that there is 6,600 afy of water to use without impact and should have triggered the obligation under the Fort Ord Reuse Plan to accelerate the provision of alternative supplies for any new development;
- The failure of MCWRA and MPWMD to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan, as provided by the Fort Ord Reuse Plan;
- The failure of member agencies to prevent harm to the affected aquifers by limiting development in accordance with the availability of secure water supplies, as provided by the Fort Ord Reuse Plan;
- The failure of FORA, MCWD, MCWRA, and member agencies to determine and abide by the safe yield, including the safe yield of the Salinas Valley Groundwater Basin and its Deep Aquifer, as required by the Fort Ord Reuse Plan;
- Significant new information regarding the Deep Aquifer. As explained by Parker and the 2018 MCWRA report recommending a moratorium on new wells in the Deep Aquifer, there is no evidence of significant recharge to the Deep Aquifer, and increased pumping will result in its depletion and will induce seawater intrusion in the overlying aquifers.

Furthermore, as discussed below, even if the Fort Ord Reuse Plan policies and mitigation were effective in avoiding impacts, there is no assurance that MCWD would be subject to these policies and mitigation after FORA is dissolved in 2020.

B. MCWD’s proposed annexation is a project subject to CEQA because (1) MCWD acts in the expectation that FORA will be dissolved and that MCWD will assume authority for provision of water for new development unconstrained by FORA or Fort Ord Reuse Plan policies and (2) MCWD would serve new development with additional groundwater pumping.

MCWD’s claim that its proposed annexation would have no physical impacts is based on two unfounded assumptions: that there have been no changes to the environmental setting that would warrant new analyses and that MCWD would continue to provide the same amounts of water that have been previously *planned* and in accordance with the existing management regime. Annexation Initial Study, pp. 11, 18, 23. As discussed above, the first assumption is incorrect because there have been

substantial changes to the environmental setting, significant new information, and changes to the Fort Ord Reuse Plan.

The second assumption, that MCWD would simply implement existing plans for water supply is legally irrelevant and factually incorrect. The assumption is legally irrelevant with respect to the duty to provide an adequate analysis because CEQA requires an agency to compare its action to a baseline consisting of existing conditions, not a baseline consisting of a plan or a hypothetical future condition. Thus, it is not sufficient for the Initial Study to claim there would be no change to previous *plans* for groundwater pumping because the salient question is whether there would be changes to *existing* groundwater pumping.

The second assumption is factually incorrect because, as discussed below, the existing management regime for the Ord community water supply will be terminated in 2020, and MCWD is proposing to act based on that expectation, but without proposing a replacement plan.

1. MCWD acts in the expectation that FORA will be dissolved; and MCWD may assume authority for provision of water for new development unconstrained by FORA or Fort Ord Reuse Plan policies.

FORA is required to dissolve itself by June 30, 2020. Gov. Code, § 67700(a). Indeed, MCWD proposes the annexation with the expectation that the FORA will be dissolved by 2020, and MCWD expressly rejects the no-project alternative for just that reason. Annexation Initial Study, Appendix D.

Currently, MCWD is subordinate to FORA in critical decision-making regarding water supply under the Water/Wastewater Facilities Agreement between FORA and MCWD. Water/Wastewater Facilities Agreement, March 13, 1998, Articles 4.1, 5.1.1, 5.2. Thus, FORA, not MCWD, is authorized to obtain water extraction capacity rights. *Id.*, Article 3.4.1. And FORA, not MCWD, has decided to sub-allocate 6,600 afy of its presumed capacity rights to its member agencies. FORA, Development Resources Management Plan (DRMP), section 3.11.5.4 and Table 3.11-2, available at <http://www.fora.org/Reports/DevResourcePlan.pdf>. And, FORA, not MCWD, has primary responsibility to implement the policies and mitigation contained in the Fort Ord Reuse Plan.

The 1998 Water/Wastewater Facilities Agreement will no longer be in effect after FORA sunsets. Water/Wastewater Facilities Agreement, March 13, 1998, Article 9. Thus, after FORA is dissolved, and in the absence of another binding plan addressing water supply issues, MCWD, as a County Water District, would assume plenary authority over the water use and allocation that is currently constrained by FORA. For example, MCWD would have essentially unfettered responsibility and authority to establish rules

and regulations for water distribution. Gov. Code, § 31024. MCWD would have also have unfettered responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350.

After FORA is dissolved, and in the absence of the 1998 Water/Wastewater Facilities Agreement or a binding transition plan addressing water supply issues, MCWD's provision of water supply might be constrained only by the October 2001 "Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey, And Quitclaim Deed For Water And Wastewater Systems." This Assignment would purport to constrain MCWD to assume and comply with the terms and conditions of the October 24, 2001 "Federal Instruments" that conveyed the water systems from the Army to FORA. These Federal Instruments include, as consideration for the transfer, the assumption of the Army's obligation "to cooperate and coordinate with parcel recipients, MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will continue to be provided an *equitable supply of water* at equitable rates." Department of the Army, Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord," paragraph 2, emphasis added. However, the meaning of "equitable supply" is not defined. Critically, there is no assurance that the equitable considerations will take into account the environmental impacts of providing that supply. It is possible that MCWD would interpret "equitable" by simply reaffirming its stubborn and unsustainable commitment to provide up to 6,600 afy of groundwater regardless of environmental impacts.

Although FORA is now considering a transition plan, no plan has yet been adopted or approved by LAFCO. It is not yet clear whether there will be a successor agency to FORA, or, if there is, what powers and responsibilities that successor agency may have to manage water resources. In its transition planning, FORA has raised, but not yet answered, the critical questions as to the continuing effect of the Fort Ord Reuse Plan policies and mitigation provisions and the meaning of the obligation to provide a "fair and equitable" water supply. Consider this excerpt from FORA's most recent transition planning update:

"MCWD ANNEXATION: All infrastructure and water rights were provided to MCWD to provide for a fair and equitable water allocation. Can MCWD later only annex a portion of the former Fort Ord? Is this consistent? Does LAFCO need to consider and abide by the Fort Ord Reuse Plan when considering MCWD annexation?"

"In the event of a water shortage how will MCWD provide a "fair and equitable" water supply to the former Fort Ord? Will only entitled projects receive water? Only projects with a water supply assessment?"

FORA Board Report, Transition Planning Update, January 12, 2018, Attachment A1, Transition Planning/Summary Chart, Water Wastewater.

As discussed, the Fort Ord Reuse Plan policies and mitigation have not been effective in preventing further seawater intrusion or depletion of the Deep Aquifer. More fundamentally, as FORA acknowledges, MCWD may not even have to *abide by* these ineffective policies and mitigation after 2020. Certainly LAFCO cannot approve MCWD's proposed annexation without resolving this question.

In response to LandWatch's comments, the Final Initial Study/Negative Declaration (FIS/ND) claims that FORA allocates water supply. FIS/ND, p. 43. The Final Initial Study/Negative Declaration also claims that the annexation would not change the Fort Ord Reuse Plan policies. FIS/ND, p. 49. MCWD has failed to acknowledge that FORA will no longer manage this process, the Reuse Plan Policies will no longer govern the resource, and that MCWD will have the primary authority to do so.

To support LAFCO in its determination whether to approve annexation, and before MCWD is assigned any additional authority over the water resources, MCWD must provide an adequate analysis of water supply impacts and an *effective* plan to avoid or mitigate significant impacts – a plan that will supersede the ineffective Fort Ord Reuse Plan. The Annexation Initial Study does not provide such an analysis or plan. Instead, it states that addressing the Fort Ord Reuse Plan policies is “beyond the scope of the IS/ND.” FIS/ND, p. 47.

As FORA also acknowledges, there is no understanding of MCWD's future obligation to provide an “equitable” water supply in the context of a water shortage. Indeed, MCWD fails to recognize that a significant water shortage *already* exists, and that this requires hard decisions about supplies for future development, because MCWD's Annexation Initial Study fails to come to terms with continuing seawater intrusion and aquifer depletion. Absent an adequate CEQA document that takes into account current conditions, and without a binding and continuing commitment to avoid or mitigate impacts, there is no assurance that MCWD would interpret “equitable” to ensure protection of the groundwater resources.

And as FORA points out, there are other water supply-related issues that must be clarified before FORA sunsets. For example, FORA admits that it has not yet met the Fort Ord Reuse Plan FEIR's mitigation requirement to develop a 2,400 afy water augmentation plan because MCWD's RUWAP project at 1,427 afy does not provide sufficient capacity. FORA Administrative Committee, Memorandum, January 27, 2016, p. 2, available at <http://www.fora.org/TTF/Additional/Transition-SunsetPlanMemo.pdf>. And FORA admits that oversight over Fort Ord water allocations must be assigned to another entity before its dissolution. *Id.*, p. 4.

MCWD's Agenda Transmittal, its proposed findings, and its response to comments all claim incorrectly that there would be no change to water service after the annexation because MCWD is contractually obliged to supply water. Agenda Transmittal, pp. 1, 3; FIS/ND, p. 49; Proposed Findings, p. 1. This claim fails to acknowledge that the annexation is being undertaken in express contemplation of the expiration of the primary contract that governs MCWD, the 1998 Facilities Agreement, which would end FORA's authority to allocate water and manage the resource. As a County Water District for the annexed areas, MCWD would have the authority to allocate water and to respond to water shortages, without any oversight by FORA, and subject only to the undefined obligation as a FORA successor to provide “equitable” service under the Army easement. Department of the Army, Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord,” paragraph 2.

In light of MCWD's assumption that it can pump up to 6,600 afy without further aggravation of seawater intrusion or depletion of the Deep Aquifer, MCWD is poorly positioned to accept the responsibility to manage the water resource. Thus, it is critical that MCWD provide an adequate environmental review before it annexes undeveloped portions of Fort Ord. CEQA requires an adequate review as a document of public accountability that protects informed self-government.

2. Annexation will allow and lead to additional groundwater pumping.

The response to comments states that the annexation is of “developed areas,” and the proposed findings reference “annexation of developed areas already served by MCWD” and “all customers currently served.” FIS/ND, p. 40; Proposed Findings, p. 2. The response to comments repeatedly claims that the annexation “will not allow for [] any increase in groundwater pumping. FIS/ND, pp. 46, 47.

This claim is not true. First, elsewhere in its response to comments, MCWD claims only that the “*majority* of the areas to be annexed are currently served.” FIS/ND, p. 49, emphasis added. Second, the list of areas to be annexed in the Initial Study clearly includes undeveloped areas for which future development may occur and that are not currently being served. Annexation Initial Study, pp. 16-17. Indeed, the list of annexation areas includes a number of areas for which there are no development entitlements or for which there is not even an approved specific plan. Nothing in the proposed annexation would prohibit service based on increased groundwater pumping to parcels or development projects that are not currently served. As discussed below, the refinement to the project description in the Final Initial Study/ Negative Declaration to reduce the scope of the annexation does not exclude all undeveloped areas. See FIS/ND, pp. 60-61.

Contrary to the response to comments (FIS/ND, p. 41), the current Urban Water Management Plan and Annexation Initial Study do provide evidence of planned increases

in service for new development in the Ord community. MCWD's current UWMP projects an increased demand of 2,492 afy to serve Fort Ord development between 2020 and 2035. MCWD, 2015 UWMP, p. 21. The Annexation Initial Study repeats this projection and identifies it as the "total expected growth in demands from all currently expected development projects and population growth through 2035. Annexation Initial Study, p. 51.

And contrary to the response to comments (FIS/ND, p. 46), MCWD's plans do allow and assume the full use of the 6,600 afy groundwater allocation. For example, in calculating the Ord community groundwater shortfall through 2035, the UWMP assumes the full use of the 6,600 afy groundwater allocation. MCWD, 2015 UWMP, p. 57 (Table 4.3). MCWD's calculated need for an additional 2,901 afy to meet its groundwater shortfall is based on the difference between the 8,293 afy 2035 demand and the 6,600 afy allocation. *Id.* The Annexation Initial Study also assumes that the 6,600 afy allocation will be used to meet Ord community demand. See, e.g., Annexation Initial Study, pp. 50-51, Tables 5 and 6, notes 4 (comparison of demand growth to supply assumes use of 6,600 afy allocation plus 300 afy of existing desalination capacity).

Contrary to the response to comments (FIS/ND, p. 44-45), the fact that MCWD has plans to obtain recycled or desalinated water does not mean that it does not intend to exhaust the 6,600 afy groundwater allocation, regardless of the impacts of any increased pumping. MCWD's plans to develop additional water supplies are based on fulfilling its incorrect interpretation of the Fort Ord Reuse Plan requirement for augmented water supplies, which would be to require additional water supplies only after the 6,600 afy is exhausted. As set out in previous comments by Parker and LandWatch, MCWD and FORA have misinterpreted the Fort Ord Reuse Plan to permit the full use of the 6,600 afy groundwater allocation regardless whether increased pumping aggravates seawater intrusion and regardless of whether it has been determined to represent a safe yield. Significantly, MCWD's response to comments admits that the 6,600 afy allocation is neither the baseline use nor a sustained yield. FIS/ND, pp. 46-47.

Furthermore, MCWD has offered to furnish 600 afy of its entitlement to PWM/GWR recycled water and up to 700 afy of groundwater for use, directly or indirectly, on the Monterey Peninsula, for a ten-year term with options for renewal.² This offer is not identified as a potential use of MCWD's water resources in its 2015 UWMP. MCWD's willingness to commit its recycled water and groundwater supplies to this venture is further evidence that MCWD expects to be able to use the entire 6,600 afy allocation for Ord community demand.

² California Public Utilities Commission, Proceeding A1204019, In the Matter of the Application of California-American Water Company (U210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Monterey Peninsula Water Supply Project and to Recover All Present and Future Costs in Connection Therewith in Rates, Direct Testimony Of Keith Van Der Maaten, Submitted On Behalf Of Marina Coast Water District -Supplemental Phase 1 Testimony, Sept. 29, 2001, pp. 10-14.

Finally, MCWD's *approved and funded* plans for additional water supplies will not even make up the 2,901 afy Ord community shortfall in 2035. MCWD, 2015 UWMP, p. 57 (Table 4.3 - shortfall); FIS/ND, p. 45 (outlining approved plans). And as noted, FORA and MCWD have not yet met the Fort Ord Reuse Plan FEIR's mitigation requirement to develop a 2,400 afy water augmentation plan because MCWD's RUWAP project at 1,427 afy does not provide sufficient capacity. FORA Administrative Committee, Memorandum, January 27, 2016, p. 2.

C. MCWD's negative declaration is inadequate and an EIR is required.

As discussed above and in previous comments, the proposed negative declaration is inadequate because it fails to disclose impacts to groundwater due to increased pumping. Those comments, supported by expert opinion and by substantial scientific evidence, constitute a fair argument that the annexation may result in significant impacts. Accordingly, an EIR is required if MCWD intends to pursue the proposed annexation.

In addition to its failure to disclose significant impacts, the Initial Study is flawed in other respects, and its flaws are not cured by the Final Initial Study/Negative Declaration.

Revisions to the project description are offered in the Final Initial Study/Negative Declaration in order to make the project "more environmentally benign." FIS/ND, pp. 60-61. Revisions to a project to mitigate potentially significant effects must be included in the negative declaration that is circulated for public review. Public Resources Code §21080(c)(2); 14 CCR §§ 15070(b), 15071(e). Given the change to the project description, MCWD must recirculate the negative declaration. 14 CCR §15073.5.

Furthermore, the last-minute revisions render the project description unclear. First, the inclusion of the refinements in the Appendix D for alternatives renders it unclear whether the revisions are part of the project or merely an alternative project that may or may not be approved. The proposed findings do not clarify this. Second, the revisions are made with reference to large scale maps and parcel descriptions. No explanation is provided as to which part of the future development identified in the Annexation Initial Study in Table 2 would be included or omitted from the proposed annexation, although it is apparent that the revisions do not restrict the annexation area to parcels that are currently served by MCWD. In sum, the revision is insufficient because the public has no way to determine what the scope of the actual annexation project would be and because the annexation would still include undeveloped parcels expected to be developed. This must be rectified before MCWD acts to certify a CEQA document, whether a negative declaration, an exemption, or an EIR.

Purporting to buttress the claim that it provides an adequate impact analysis, the Final Initial Study/Negative Declaration “references” a number of additional CEQA documents as “background documentation.” FIS/ND, pp. 46, 52-53, 59-60. The Final Initial Study/Negative Declaration also incorporate by reference three of these documents: the RUWAP EIR and Addenda, the PWM/GWR EIR and Addenda, and the Fort Ord Reuse Plan EIR. FIS/ND, pp. 52-53. These documents do not cure the failure of the Annexation Initial Study to provide an adequate analysis.

First, the Final Initial Study/Negative Declaration disavows any actual reliance on these documents: “the IS/ND does not tier from the previous documents or rely on the conclusions in the previous documents for its conclusions regarding potential environmental impacts of the project.” FIS/ND, p. 53.

Second, the Annexation Initial Study fails to summarize, explain, or provide a roadmap to these referenced documents. The bare fact that CEQA review of prior development and alternative water supply projects has occurred does not address the concerns LandWatch has raised regarding the effects of supplying additional groundwater to future development.

Third, as previous comments have explained, reliance on the analysis in the 1997 Base Reuse Plan EIR is misplaced due to changed circumstances and the failure to implement its policies and mitigation.

Fourth, the Annexation Initial Study discusses the RUWAP and PMW/GWR projects to support its claim that additional water supplies are planned; however, it does not summarize or discuss any findings in these documents that would be relevant to the impacts of increased groundwater pumping. Indeed, it is unlikely that an EIR for these projects, which are intended to supply water in lieu of groundwater, would provide an analysis of the effects of increased groundwater pumping, including the effects of MCWD exhausting the 6,600 afy allocation.

Fifth, none of these prior CEQA documents reflect the significant new information relevant to the impacts of increased pumping, such as the most recent seawater intrusion mapping or the MCWRA recommendations for pumping moratorium in the Deep Aquifer and the 400-foot aquifer proximate to the seawater intrusion front.

Contrary to the response to comments (FIS/ND, pp. 42-43), the Initial Study does not present an adequate cumulative analysis. The fundamental flaw is that the Initial Study fails to acknowledge the severity of the existing cumulative impact or to assess whether any increase in groundwater pumping would be a considerable contribution in light of the serious problem.

The cumulative analysis is deficient in other respects. For example, the Initial Study provides no justification, and there is none, for the claim made in the Final Initial Study/Negative Declaration that the proper geographic scope of cumulative analysis can be confined to the former Fort Ord area. FIS/ND, p. 58. Seawater intrusion and aquifer depletion impacts are due to pumping throughout the Salinas Valley Groundwater Basin. As Mr. Parker explains, the area that would be affected by increased groundwater pumping includes the Pressure Subbasin and the Salinas Valley Groundwater Basin as a whole since these areas are hydraulically interconnected. Furthermore, CEQA does not define the geographic scope of cumulative analysis based on the area *affected* but based on the location of the cumulative projects that *cause effects* in the same area that the project causes effects. The Guidelines require identification of projects “producing related or cumulative impacts” or projections of conditions “contributing to the cumulative effect.” Guidelines §15130(b)(1). Case law is clear that it is improper to omit relevant past, present, and future projects that create related impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430-432; *San Joaquin Raptor Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739-741; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724. As Mr. Parker explains, it is indisputable that past, present and future projects and pumping outside the Ord community affect the aquifer depletion and seawater intrusion to which addition pumping for the Ord community would contribute. This is acknowledged by the Reuse Plan EIR (at p. 5-5, acknowledging that regional growth could cumulatively affect aquifers and cause further overdraft and seawater intrusion), the MCWD 2010 UWMP (at p. 29, acknowledging that basin-wide pumping causes declining water levels in Pressure Subarea), and the Army’s 1993 FEIS (at p. 4-57, acknowledging that the available yield without seawater intrusion depends on the amount of pumping throughout the basin). The Annexation Initial Study simply fails to provide any justification for limiting the scope of cumulative analysis to the Ord community.

Nor does the Annexation Initial Study provide other essential information for cumulative analysis. An adequate analysis must provide either (1) a list of past, present, and future projects producing related impacts, including projects outside the control of the agency, or (2) a summary of projections of regional conditions contributing to the cumulative impact. 14 CCR § 15130(b)(1). There is no information about projected groundwater pumping in the Salinas Basin or its Pressure Subbasin.

In fact, the Annexation Initial Study does not provide any actual analysis of cumulative impacts other than vague references to the discussion in the Reuse Plan EIR. FIS/ND, p. 58. Not only is that prior analysis out of date, but, as noted, the Annexation Initial Study states that it “does not tier from the previous documents or rely on the conclusions in the previous documents for its conclusions regarding potential environmental impacts of the project.” FIS/ND, p. 53.

D. The project is not exempt.

Although MCWD did not include a proposed finding that the annexation would be exempt on the agenda for its January 20, 2018 meeting, staff has now proposed a finding of exemption to be considered at the February 20, 2018 meeting. Staff proposed that the Board find the annexation exempt under 14 CCR §§ 15301, 15319, or 15061(b)(3).

The exemption for existing facilities under 14 CCR § 15301 is inapplicable because that exemption precludes any expansion of previous use beyond that existing at the time of the lead agency's determination. Because the annexation will allow, and is intended to facilitate, the provision of water supply to currently undeveloped parcels there would be an expansion of previous use.

The exemption for annexations of existing facilities and lots for exempt facilities under 14 CCR § 15319 is inapplicable because that exemption is not allowed if it is foreseeable that utility services would extend into the annexed parcels and have the potential to serve a greater capacity than existing uses. Again, the annexation will allow, and is intended to facilitate, the provision of water supply to currently undeveloped parcels. Thus, there is an obvious potential to serve a greater capacity than existing uses.

Even if the annexation otherwise qualified for a categorical exemption, an exemption would be prohibited here due to the presence of unusual circumstances and the possibility of a significant impact. 14 CCR § 15300.2(c). One unusual circumstance is the fact that the annexation is being undertaken with the expectation that the existing governance structure to protect the resource will be terminated, leaving MCWD free to manage the resource without constraints of the current governance structure. Another unusual circumstance is that the existing governance structure has not in fact protected the resource because it has allowed ground water pumping to induce further seawater intrusion and to exceed sustainable yield, and MCWD has not committed itself to avoid additional groundwater pumping.

A categorical exemption would also be barred because the cumulative effect of successive projects of the same type in the same place over time would be significant. 14 CCR § 15300.2(b). MCWD has identified the remainder of the developable areas of the Ord community as future study areas for annexation and seeks to include them in its sphere of influence. Thus, MCWD contemplates successive annexations in the Fort Ord area, which would result in provision of additional groundwater, resulting in a significant cumulative impact.

The common sense exemption under 14 CCR § 15061(b)(3) does not apply because MCWD cannot find with certainty that there is no possibility of a significant effect. MCWD's claim in this regard is based on the incorrect assertion that there would

be no change to existing conditions after the annexation. In fact, the annexation would allow, and is intended to facilitate, increased groundwater pumping to support new development in the Ord community. This increased pumping would result in significant impacts. Furthermore, the annexation is proposed with the expectation that the current governance structure intended to protect the water resource will terminate and without any commitment to a governance structure that would in fact protect the resource.

E. Annexation should be deferred until approval of a FORA transition plan or some other plan to manage water for future development; or, if annexation is not deferred, it should be limited to developed parcels already served by MCWD.

MCWD's proposed annexation puts the cart before the horse; it should await approval of a FORA transition plan that will address provision of water for future development in the Ord community. Alternatively, it must be accompanied with the adoption of policies, regulations, and mitigation that would ensure that provision of water supply for future development in the Ord community will not cause significant impacts.

LAFCO staff explain that the FORA transition plan must provide "clear direction on all projects, obligations and other pending matters in the transition plan." Kate McKenna, Report of the Fort Ord Reuse Authority (FOR A) Dissolution Process, January 22, 2018, p. 4. LAFCO staff explain that the transition plan is required in order to "*lay the foundation for future LAFCO actions such as annexations by local agencies to ensure the provision of municipal services (i.e. water, sewer fire, etc.)*" *Id.*, emphasis added.

The Initial Study suggests that the rationale for the annexation is to give existing customers a vote. Annexation Initial Study, p. 9. LandWatch has also been advised that MCWD seeks annexation to further its objective to qualify as a Groundwater Sustainability Agency under the Sustainable Groundwater Management Act. If MCWD intends to pursue the annexation for these reasons, and since it has seen fit to defer annexation of other developable portions of the Ord Community, there is no reason that it needs to annex *any* area that is not currently developed and currently being served with water. The Initial Study indicates that the annexation would include parcels in which hundreds of addition water service hook-ups would be required or that are not currently receiving water service. Annexation Initial Study, pp. 16-17, Table 2. LandWatch's concern that MCWD not assume plenary authority over provision of water for future development without a commitment to avoid or mitigate impacts would be addressed in part if the annexation were limited to just those parcels for which MCWD is now actually providing service.

In a telephone conversation on February 16, 2018 between LandWatch and Keith Van Der Maaten, Mr. Van Der Maaten indicated that restricting the area of annexation to parcels with current service may be problematic. He suggested that MCWD may feel an

obligation to provide service to areas without current water service but for which building permits or vesting subdivision maps had been issued, or even for areas without such entitlements but for which a specific plan had been approved, or even merely initiated, or even for areas for which MCWD had only provided a Water Supply Assessment. He also suggested that denial of water service to these areas might be considered a taking.

There are several responses to this concern. First, MCWD's authority to deny hookups in the event of a water shortage, which clearly exists today, includes authority to deny service to proposed development for which there is an existing subdivision map. *Building Industry Assn. v. Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641; *see also Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal.App.3d 512; *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2004) 117 Cal.App.4th 13. Second, MCWD already plans to consider annexation of the Ord Community in phases, so there is no reason not to postpone annexation of currently undeveloped parcels until MCWD has provided adequate environmental review. Again, we note that MCWD's interests in the annexation – providing governance participation to the existing customers and facilitation of MCWD's SGMA role – can be met without annexing undeveloped parcels.

Finally, to the extent that the annexation of any of the Ord Community will provide bureaucratic momentum for MCWD to annex the rest, LandWatch opposes that annexation unless and until MCWD provides adequate environmental review of any increase in groundwater pumping to support the Ord community. At a minimum that review must include the evaluation of the impacts of providing water for all of the foreseeable Ord community development as well as other cumulative projects affecting the Deep Aquifer or contributing to seawater intrusion.

LandWatch joins in the objections to the proposed annexation made by other members of the public and by public agencies. LandWatch remains willing to continue its discussions with MCWD staff to resolve its concerns with the proposed annexation. Please let us know if you would like to confer further toward that end. In the meantime, LandWatch asks that the MCWD Board not certify an inadequate CEQA document or act on the annexation at its February 20 meeting.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

Attachment:

Timothy Parker, letter to John Farrow, re Groundwater Impacts from Increased Pumping to Support Ord Community Development, February 15, 2018

References: to be provided electronically via thumb drive

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ATTACHMENT - Timothy Parker, letter to John Farrow,
re Groundwater Impacts from Increased Pumping to
Support Ord Community Development, February 15, 2018

February 15, 2018

John Farrow
M.R. Wolfe & Associates, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102

Re: Groundwater Impacts from Increased Pumping to Support Ord Community Development

Dear Mr. Farrow:

At your request, I have reviewed the Draft Initial Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation together with the documents cited below. As set out in the discussion below, increased pumping to support new development in the Ord Community would aggravate existing seawater intrusion and further deplete the Deep Aquifer. The reported existence of an area of relatively fresher water in what Marina Coast Water District terms the North Marina Area does not change this conclusion. My resume is attached.

1. Increased pumping for new development in the Ord community would aggravate seawater intrusion and further deplete the Deep Aquifer.

As explained in my October 8, 2016 memorandum regarding the proposal to increase groundwater pumping to support the Monterey Downs project in the Ord community, seawater intrusion continues in the Salinas Valley Groundwater Basin (SVGB) due to overdraft conditions, despite various groundwater management projects.¹ The situation has not improved since my 2016 memorandum. The most recent MCWRA mapping shows continued substantial increase in seawater intruded areas, which have occurred *despite* reductions in MCWD pumping during the 2006-2015 period.² Groundwater levels continue

¹ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016.

² MCWRA, Historic Seawater Intrusion Map, Pressure 400-Foot Aquifer, June 7, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=19378>; MCWRA, Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer, June 7, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=19376>; MCWD, 2015 Urban Water Management Plan (UWMP), Table 4.1 (reporting total MCWD pumping declined from 4,295 afy to 3,228 afy in that period), available at http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.

to decline, especially in the 400-foot aquifer.³ MCWRA reports that acreage within the 500 mg/l or greater Chloride contour in the 400-foot aquifer has increased from 11,882 acres in 2005 to 17,125 acres in 2015.⁴ Furthermore, because increases in intrusion may lag periods of drought, there may be substantial increases in intrusion still to come in response to the recent 4-year drought.⁵

In light of the continuing advance of seawater intrusion, MCWRA staff have recommended a moratorium on new wells in the Pressure 400-Foot Aquifer within an "Area of Impact" proximate to the 500 mg/l Chloride front.⁶ MCWRA also recommends a moratorium on new wells within the entirety of the Deep Aquifers of the 180/400 Foot Aquifer Subbasin pending investigation of its viability as a source of water ("Deep Aquifer" has been called variously including the 900-foot Aquifer, and herein is used to refer to multiple water-bearing units underlying the Pressure 400-Foot Aquifer).⁷

In sum, as set out in my 2016 memorandum and confirmed by subsequent investigations, future increased groundwater pumping above existing levels, particularly from the areas proximate to the seawater intrusion front, will contribute to seawater intrusion. Because MCWD's current production wells serving the Ord community are located just inland of the seawater intrusion front in the 400-foot and Deep aquifers, increased pumping would aggravate seawater intrusion.⁸

MCWD has reported that its total pumping is a small fraction of total SVGB pumping.⁹ As I explained in my 2016 memorandum, the relevant question for assessing the cumulative impact of additional pumping is not whether that amount is large compared to total SVGB pumping, but whether it represents a considerable increase in the magnitude of annual overdraft.¹⁰ An increase of 2,492 afy to meet the projected increase in Ord community

³ MCWRA, presentation of Groundwater Level Contours And Seawater Intrusion Maps, July 13, 2017, available at <http://www.co.monterey.ca.us/home/showdocument?id=31294>.

⁴ *Id.*

⁵ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 2-3.

⁶ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, pp. 2-9, available at <http://www.co.monterey.ca.us/home/showdocument?id=57394>.

⁷ *Id.*

⁸ MCWD, 2015 Urban Water Management Plan (UWMP), pp. 35, 45, available at http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf.

⁹ MCWD, 2015 UWMP, p. 38; MCWD, Draft Initial Study/Negative Declaration, Ord Community Sphere of Influence Amendment and Annexation (Annexation Initial Study), p. 49.

¹⁰ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 19-20.

demand from 2020 to 2035¹¹ would be a considerable increase in the existing 12,000 afy to 19,000 afy overdraft of the Pressure Subarea. And that pumping would make a considerable contribution to the existing seawater intrusion problem.

The Deep Aquifer contains ancient water and there is no evidence that it is recharged except incidentally by leakage from overlying aquifers and via well-perforations completed in both the Deep and shallower aquifers, so any pumping from the Deep aquifer is groundwater mining.¹² In addition, any increase in pumping from the Deep Aquifer will likely induce increased seawater intrusion in the overlying 180- and 400-foot aquifers through leakage.¹³ Any increase in pumping would simply lead to further depletion of this resource. As noted, MCWRA has recently recommended a moratorium on new pumping from the Deep Aquifer.

2. The reported existence of an area of relatively fresh water behind the seawater intrusion front does not alter the conclusion that increased pumping will contribute to seawater intrusion.

In connection with its opposition to the proposed location of the source water wells for the proposed California-America Water Company desalination plant, MCWD has engaged hydrologist Curtis Hopkins to evaluate water quality data from the test well for that project.¹⁴ MCWD has also recently arranged for the collection and analysis of airborne electromagnetic (AEM) data to characterize the aquifer in an area that MCWD identifies as the North Marina Area of the Salinas Valley Groundwater Basin.¹⁵ These analyses disclose the presence of some areas of relatively fresher water located north of, i.e. behind, the seawater intrusion front.¹⁶

¹¹ MCWD, Annexation Initial Study, p. 50

¹² Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-17; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

¹³ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-14; MCWD, 2015 UWMP, p. 50, citing WRIME, Deep Aquifer Investigative Study, 2003; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

¹⁴ Curtis Hopkins, North Marina Area Groundwater Data and Conditions, May 26, 2015, provided as Appendix E, pp. E-15 to E-50, of the MCWD, 2015 UWMP, available at http://www.mcwd.org/docs/engr_files/MCWD%202015%20UWMP%20Appendices_Final.pdf.

¹⁵ Ian Gottschalk and Rosemary Knight, Preliminary Interpretation of SkyTEM Data Acquired in the Marina Coast Water District, June 16, 2017.

¹⁶ That water is not freshwater in the sense of being potable, because it does not meet the 500 mg/l chloride drinking water standards. MCWD's consultants characterize it as freshwater because it meets a 3,000 mg/l TDS threshold, but its

In its response to my 2016 memorandum submitted by LandWatch in connection with the Monterey Downs project EIR, MCWD has previously argued that Curtis Hopkins' analysis indicates that "beneficial conditions have developed (or have always existed) in the North Marina Area of the 180-400 Foot Aquifer Subbasin and may be contrary to information published by the Monterey County Water Resources Agency (MCWRA)."¹⁷ MCWD states that, because of this new information about "favorable groundwater conditions within the North Marina Area," its 2015 Urban Water Management Plan (UWMP) reflects a much different understanding of groundwater conditions than its 2010 UWMP.¹⁸

As noted, seawater intrusion will continue to occur in the SVGB for the foreseeable future because continued overdraft conditions preclude protective elevations. However, MCWD argues that findings by its consultant Hopkins contained in the 2015 UWMP contradict my conclusion with respect to seawater intrusion "at least as applied to the North Marina Area."¹⁹

But MCWD does not pump groundwater from the North Marina Area behind the MCWRA-mapped seawater intrusion front; its wells are located inland of the seawater intrusion front.²⁰ Furthermore, the reported area of fresher water in the North Marina Area is not in fact potable.²¹ The UWMP admits with respect to the fresher water area behind the seawater intrusion front in the North Marina Area, "[f]uture use of this area for a potable groundwater supply may be unlikely; however, these conditions do show a retardation of seawater intrusion in these shallower aquifer zones in this coastal portion of the Salinas Valley Groundwater Basin, which provides some protection for inland uses of the 180-ft Aquifer."²²

Despite the UWMP claim that the fresher water area in the North Marina Area provides some protection for inland uses of the 180-ft Aquifer, the 2015 UWMP does not dispute that seawater intrusion is a continuing problem caused by overdraft of the SVGB.²³ The UWMP acknowledges that the seawater intrusion front continues to advance inland, that this has required the historic relocation and deepening of MCWD wells, and that it continues to

chloride levels exceed 1,000 mg/l in the study area. See Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, pp. 3-4.

¹⁷ MCWD, Response to Timothy Parker Technical Memorandum Dated October 8, 2016, p. 5.

¹⁸ *Id.*

¹⁹ *Id.*, p. 6, emphasis added

²⁰ MCWD, 2015 UWMP, pp. 35, 45.

²¹ Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, pp. 3-4.

²² MCWD, 2015 UWMP, p. 48.

²³ *Id.*, pp. 38, 43-45, 54-55

threaten its existing wells.²⁴ Consistent with my 2016 memorandum, the UWMP acknowledges that the reductions in agricultural pumping that were projected to occur in the analysis of the Salinas Valley Water Project have not in fact occurred.²⁵ And as I previously explained, the UWMP acknowledges that additional groundwater management projects may be required to halt seawater intrusion;²⁶ those projects are not currently committed or funded.²⁷

With respect to the North Marina Area, the UWMP discloses that the recent data "may just reveal the groundwater conditions in an area previously lacking in data."²⁸ If so, it is evident that the existence of an area of relatively fresher water in the North Marina Area has not in fact retarded the historic advance of seawater intrusion, which has occurred *despite* groundwater conditions in the North Marina Area.²⁹ In this connection, it is important to understand that the MCWRA seawater intrusion mapping is based on sampling of production wells and represents an advance of the area in which groundwater exceeds the 500 mg/l chloride drinking water standard that can no longer be used for potable water. As the 2015 UWMP reports, MCWD has had to relocate its production wells due to the continuing advance of this seawater intrusion front, and its existing wells remain threatened.³⁰

In addition, there is no evidence that the relatively fresher water in the North Marina Area provides any recharge to the Deep Aquifer, from which MCWD pumps groundwater for the Ord community. The Deep Aquifer is increasingly recognized as geologically isolated water without any substantial recharge source.³¹ As the 2003 WRIME report and my 2016 memorandum explain, portions of the Deep Aquifer may be recharged through leakage in small amounts by water from the overlying aquifers.³² To the extent that the Deep Aquifer

²⁴ *Id.*, p. 44.

²⁵ *Id.*, p. 55.

²⁶ *Id.*

²⁷ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 7, 26-27.

²⁸ *Id.*, p. 48.

²⁹ Hydrological Working Group, Memorandum Responding To Comments On HWG Hydrogeologic Investigation Technical Report, January 4, 2018, p. 7 ("It is questionable how protective these groundwater levels are given the historic extent of seawater intrusion in the project area").

³⁰ *Id.*, p. 45.

³¹ Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp. 14-17; MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, October 2017, p. 54.

³² Timothy Parker to John Farrow, Technical Memorandum, Oct. 8, 2016, pp.

14-16, citing WRIME, Deep Aquifer Investigative Study, 2003.

is recharged by overlying aquifers, increased pumping of the Deep Aquifer has the potential to induce seawater intrusion in those overlying aquifers.³³

Sincerely,



Timothy K. Parker, PG, CEG, CHG
Principal Hydrogeologist

³³ *Id.*

RESUME

Timothy K. Parker, PG, CEG, CHG
Principal

WORK EXPERIENCE

2009 – Present: Parker Groundwater, President/Principal. Sacramento, California. Privately owned business, specializing in strategic groundwater planning, groundwater monitoring, groundwater modeling, groundwater recharge and aquifer storage recovery projects, program implementation, stakeholder facilitation, groundwater monitoring, policy and regulatory analysis, environmental document review and litigation support. Provides strategic planning, policy consulting and groundwater technical expertise to public and private sector clients to develop effective, sustainable solutions to complex problems in the water and evolving environmental and energy industries.

2005 – 2009: Schlumberger Water Services, Principal Hydrogeologist. Sacramento, California. Provided hydrogeologic expertise and project management on groundwater recharge and aquifer storage recovery projects, groundwater monitoring, groundwater resources management, and groundwater contaminant projects for public and private sector clientele. Application of advanced oilfield tools and technologies to groundwater projects. Integration of groundwater quality monitoring and protection on CO2 sequestration projects; liaison to Schlumberger Carbon Services, including planning, scope development, technical implementation, facilitation, and oversight. **Business Development** activities included strategic planning, prospect assessments, sales presentations, targeted workshops, client development and exploitation. Mentored and provided direction to staff; developed, tracked and controlled projects; worked closely with clients and other public and private organizations to implement projects on schedule, on budget with high level of quality.

2001 – 2005: California Department of Water Resources, Division of Planning and Local Assistance, Conjunctive Water Management Branch, Senior Engineering Geologist. Provided local technical and economic assistance to Sacramento and San Joaquin Valley groundwater authorities and water districts planning, developing, and implementing conjunctive water projects, groundwater recharge and aquifer storage recovery projects, and local and regional groundwater monitoring programs. Elements include developing technical scope, implementing work, providing geologic and groundwater technical expertise, attending and speaking at public meetings. **Central District, Groundwater Planning Section,** Sacramento, California (early 2001 prior to joining CWMB). **Senior Engineering Geologist, Groundwater Planning Section.** Elements included: Integrated Storage Investigations Program conjunctive use project technical support, coordination, and project management; technical support

on local groundwater monitoring and subsidence programs; technical support on Bulletin 118; Proposition 13 groundwater grant applications screening and ranking process for Central District geographic area. Supervised and provided direction to staff; developed, tracked and controlled program budgets; worked closely with other DWR groups, agencies and outside organizations to develop additional local assistance opportunities for DWR.

2000-2001: California Department of Conservation, Division of Mines and Geology, Sacramento, California. Associate Engineering Geologist. Responsible for: multi-year aerial photograph review, identification of landslides and potentially unstable areas, field reconnaissance and confirmation, preparation of maps and images using MapInfo, Vertical Mapper, ArcView, Spatial Analyst, Model Builder, and ArcInfo working closely with GIS specialists; assisting in development of GIS methodologies and database for Northern California watersheds assessment/restoration project; review of timber harvest plans and pre-harvest inspections; review of regional CEQA documents as related to engineering geologic issues; watershed assessment; technical presentations at multi-agency meetings and landslide/mass wasting public workshops.

1997-2000: CalEPA Department of Toxic Substances Control, Stringfellow Branch, Sacramento, California. Hazardous Substances Engineering Geologist. Responsible for: groundwater monitoring and analysis; developing approach and preparing a work plan for a Stringfellow site revised hydrogeologic conceptual model; researching, providing, and maintaining a comprehensive environmental data management system; assembling and contracting with an expert panel for consultation on the site; evaluating an existing MODFLOW porous media groundwater flow model; providing direction on the strategy and approach for the development of a revised groundwater flow and fate & transport model for the Stringfellow site; providing input on an as needed basis in support of the litigation and community relations elements of the project.

1993 - 1997: Law Engineering & Environmental Services, Inc., Sacramento, California. Manager Project Management. Responsible for supervising and providing direction to senior project managers; maintaining appropriate tracking system and controls for assurance of successful execution of scope, schedule and budget of major projects; maintaining quality assurance and controls on projects. Responsibilities included development/implementation of group budget spending plan, establishing performance standards and evaluating program progress and quality, staff recruiting, mentoring, maintaining utilization, business development, proposal preparation, commercial and government project marketing, client maintenance. **Project Manager and Senior Hydrogeologist** on hydrogeologic evaluations, site and regional groundwater quality monitoring programs, hazardous substance site investigations and remediation. Responsibilities included technical direction of projects, project scoping, schedule, budget, supervision of field activities, preparation of documents, developing cost-effective strategies for follow-on

investigations and removal actions, and negotiating with state regulators on three Beale Air Force projects totaling more than \$15 million.

1988 - 1993: Dames & Moore, Sacramento and Los Angeles, California. Senior Geologist. Provided hydrogeologic technical support, project management, regulatory compliance, technical/regulatory strategy, and on a variety of commercial and industrial DTSC- and RWQCB-lead hazardous substance sites. Responsibilities included project technical direction, scope implementation, budgetary control, groundwater quality monitoring and analysis, supervision of field investigations, document preparation, client interface, negotiation with regulatory agencies on projects totaling approximately \$5 million.

1986 - 1988: California Department of Health Services, Toxic Substances Control Division, Southern California Region, Assessment and Mitigation Unit, Los Angeles, California. Project Manager in the Assessment and Mitigation Unit. Responsibilities included development and implementation of work plans and reports for, and regulatory oversight of, State Superfund preliminary site assessments, groundwater quality monitoring and analysis, remedial investigations, feasibility studies, remedial action, and interim remedial measures. **Engineering Geologist.** Provided technical support to Permitting, Enforcement, and Site Mitigation Unit staff, including evaluation of hydrogeologic assessments, groundwater quality monitoring programs, work plans, and reports on federal and state Superfund sites and active facilities; assistance in budget preparation; assistance in zone drilling contract review.

1983-86: Independent Consultant, Sacramento, California. Provided technical assistance on variety of geologic and geophysics projects to other independent consultants in local area.

1982: Gasch & Associates, Sacramento, California. Geologic assistant conducting shallow seismic reflection surveys in the Sierra Nevada for buried gold-bearing stream deposits.

1981 - 1982: Geologic Assistant, Coast Ranges, Avawatz Mountains, White Mountains, and Kinston Peak Range. Geologic Assistant on various geological field studies, including gravity surveys, magnetic surveys, landslide and geologic mapping projects.

PROFESSIONAL REGISTRATION

California Professional Geologist No. 5594
California Certified Engineering Geologist No. 1926
California Certified Hydrogeologist No. 0012

PROFESSIONAL AFFILIATIONS

California Department of Water Resources, Public Advisory Committee,
Water Plan Update 2013

2010-2013: Appointed to participate on PAC and to lead new Groundwater Caucus

Department of Interior, Advisory Committee on Water Information, Subcommittee on Ground Water

2010-Present: Member – Work Group for Pilot Project Implementation, Nationwide Groundwater Monitoring Network

2007-2010: Co-Chair - Work Group on Implementation for development of the Framework for a Nationwide Ground Water Monitoring Network

2007-2010: Member - Work Group on Network Design for development of the Framework for a Nationwide Ground Water Monitoring Network

National Ground Water Association

2014-Present: Director - Scientists and Engineers Division

2007- 2010: Director - Scientists and Engineers Division

2007 - 2009: Member - Government Affairs Committee

2007 - Present: Chair - Groundwater Protection and Management Subcommittee

2005 – Present: Chair - Regional Groundwater Management Task Force, Government Affairs Committee

2004 – 2005, 2007,2009-10: Chair – Theis Conference Committee

2002 – Present: Member – Theis Conference Committee

2002 – Present: Member - Regional Groundwater Management Task Force, Government Affairs Committee

2003 – Present: Member – Groundwater Protection and Management Subcommittee

2009 – Present: Member - ASR Task Force

2009 – Present: Member - Hydraulic Fracturing Task Force

2008 – 2009: Member – CO2 Sequestration Task Force

American Ground Water Trust

2009 – 2012: Chair

2005 - 2013: Director

California Groundwater Coalition

2007-Present: Director

Groundwater Resources Association of California

2000 – Present: Director

2000 – 2001: President State Organization

2001 – Present: Legislative Committee Chair

1998-1999 Vice President

1996-1997 Secretary

1995-1996 President Sacramento Branch

1993-1994 Member-at-Large Sacramento Branch

ACADEMIC BACKGROUND

BS 1983, Geology, University of California, Davis

Graduate studies in hydrogeology, hydrology, engineering geology, waste management engineering

Selected Publications

California Groundwater Management, Second Edition, Groundwater Resources Association of California, co-author and project manager, 2005.

Water Contamination by Low Level Organic Waste Compounds in the Hydrologic System, in Water Encyclopedia, Wiley, 2004.

Potential Groundwater Quality Impacts Resulting from Geologic Carbon Sequestration, Water Research Foundation, co-author, 2009.

Aquifer Storage and Recovery in the US, ASR 9, American Ground Water Trust, Orlando Florida, September 2009 – a compilation of key ASR issues on DVD, contributing editor and speaker, 2010.

Sustainability From The Ground Up – Groundwater Management In California – A Framework, Association of California Water Agencies, principal author, 2011.

ISMAR9 Call to Action: Sustainable Groundwater Management Policy Directives, Principal Author, 2016.



January 18, 2017

Via e-mail and hand delivery

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
11 Reservation Road,
Marina, CA 93933
priso@mcwd.org

Subject: Negative Declaration and Initial Study for Ord Community Sphere of Influence
Amendment and Annexation for the Marine Coast Water District (MCWD)

Dear Members of the Board of Directors:

LandWatch Monterey County has reviewed the [Initial Study and Negative Declaration](#) for the proposed project. The Salinas Valley Groundwater Basin (SVGB) is [critically overdrafted](#) and has been so identified by the [Department of Water Resources](#); and, because of that cumulative overdraft, seawater intrusion continues to advance inland, rendering large portions of the aquifer unusable. Any action that furthers and facilitates increased pumping from the aquifer, including the proposed annexation of the Ord Community to MCWD's service area, will make a considerable contribution to the existing significant cumulative impact.

Because MCWD must acknowledge the existence of a significant cumulative impact to which the annexation will make a considerable contribution, MCWD may not approve the annexation without preparing an environmental impact report in which MCWD should propose mitigation to address significant impacts. Pending preparation of an environmental impact report, LandWatch asks that MCWD decline to certify the proposed negative declaration or to approve the annexation.

1. The project will cause physical impacts on the environment by facilitating increased pumping from the SVGB.

The Initial Study repeatedly claims that the project will have no physical effect on the environment because, it claims, MCWD already intends to provide service to the Ord community. However, regardless of its prior intentions, MCWD is not legally obligated to provide a water supply that it cannot provide without causing harm to the aquifer. That is, MCWD need not commit itself to serve the Ord Community with water that it cannot

safely and sustainably produce. MCWD's decision to annex the Ord Community would constitute a commitment to serve this community with increasing amounts of water, a significant portion of which MCWD intends to provide through increased groundwater pumping. For example, the Initial Study projects that MCWD will increase its water service to the Ord Community by over 2,492 acre-feet/year (afy) between 2020 and 2035. Initial Study, p. 50. The reason for this increase in demand is the expectation that currently undeveloped parcels will become developed in accordance with the Fort Ord Reuse Plan and the General Plans of the FORA member agencies. This proposed increase in water supplied by MCWD, partially provided by increased groundwater pumping, would clearly have physical impacts on the environment.

2. Overdraft and seawater intrusion in the SVGB continues and existing groundwater management efforts are not sufficient to mitigate or halt it.

In connection with the [Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan \(SCH201291056\) dated October 12, 2016](#), LandWatch and its hydrologist Timothy Parker submitted extensive comments. We incorporate those comments by reference and provide copies herewith. We note that provision of water for the proposed development of the Monterey Downs project is precisely the kind of future water supply commitment that the MCWD annexation would facilitate because the Monterey Downs project purported to be consistent with the Fort Ord Reuse Plan and with the General Plans of the City of Seaside and Monterey County.

As Mr. Parker substantiates, cumulative pumping in the Salinas Valley Groundwater Basin and its Pressure Subarea has resulted in aquifer depletion and associated seawater intrusion, and current groundwater management efforts are not sufficient to avoid this significant cumulative impact. This conclusion is not controversial and is well documented by the technical reports cited by Mr. Parker, which we also incorporate by reference.

3. The Initial Study fails to evaluate the effects of increased pumping, instead relying on the outdated Fort Ord Reuse Plan EIR.

The Initial Study purports to rely on and incorporate by reference the 1997 Fort Ord Reuse Plan Program EIR. The Initial Study claims incorrectly that "there have been no substantial changes in the environmental setting of the proposed area that would warrant new analyses." Initial Study, p. 23. The Initial Study claims that policies, programs and mitigation measures in the Fort Ord Reuse plan reduced impacts to a less than significant level. Initial Study, pp. 23, 52.

In fact, there is significant new information since 1997 that demonstrates that the analysis in the Reuse Plan EIR is outdated and that new analysis is warranted. This information includes, for example,

- DWR, Critically Overdrafted Basins, January 2016 – identifying the Salinas Valley Groundwater Basin as critically overdrafted and therefore requiring an accelerated Groundwater Sustainability Plan under the Sustainable Groundwater Management Act.
- MCWRA, State of the Salinas River Groundwater Basin, January, 2015 – identifying existing pumping from the Basin as unsustainable and

recommending pumping reductions in the Pressure Subarea from which this project proposes to increase pumping.

- MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013 – acknowledging the need for additional groundwater management projects to deliver water to replace coastal area pumping.
- Testimony of Robert Johnson, MCWRA, to Monterey County Planning Commission, Oct. 29, 2014 – acknowledging that the demand projections used for the Salinas Valley Water Project understated actual demand, that the Salinas Valley Water project would not be sufficient to halt seawater intrusion, and that additional groundwater management projects are needed.
- MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017 – acknowledging that seawater intrusion has leapfrogged forward through 2015 and recommending that pumping cease in the areas of impact, recommending a moratorium on extractions from new wells in the 900-foot Deep Aquifer,

This and other information cited by Mr. Parker demonstrates that there have in fact been substantial changes in the environmental setting of the proposed area over the past 20 years that would warrant new analyses. First, seawater intrusion has advanced another two miles inland since the 1997 Reuse Plan EIR, constituting a substantially more severe significant effect than shown in the Reuse Plan EIR. Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and could not have been known" at the time of the Reuse Plan EIR. Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by Reuse Plan policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the Reuse Plan itself.

4. The Initial Study assumes without evidence that there would be no significant impacts as long as pumping stays within the 6,600 afy allocation.

The Initial Study projects that MCWD may pump up to its 6,600 afy allocation of SVGB groundwater to meet projected demand through 2035. Initial Study, pp. 50-51. The Initial Study does not provide any discussion of the impacts of increased pumping, but it implies that there would be no significant impact as long as groundwater pumping stays within the 6,600 afy allocation of SVGB groundwater that was assigned to MCWD and then sub-assigned to the FORA member agencies. This same assumption was made in the Monterey Downs EIR, and Mr. Parker's comments establish that it is fundamentally flawed.

Mr. Parker establishes that the Base Reuse Plan EIR does not assume that 6,600 afy can be pumped without significant impacts. Instead, it expressly provides that additional water supplies will have to be obtained instead of relying on the 6,600 afy allocation if seawater intrusion continues. Mr. Parker writes:

The BRP PEIR impact analysis qualifies any reliance on the 6,600 afy allocation by stating that a potable water supply is "assumed to be assured from well water until a replacement is made available by the MCWRA, but only 'provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer.'" (BRP PEIR p. 4-53 (emphasis added)). It states that the 6,600 afy "could" support the first phase of Ord community development through 2015 and then notes "given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to 'assure' even the 6,600 afy." (BRP PEIR p. 4-53.) Thus, the BRP EIR evaluates the impacts of the BRP through 2015 in two distinct analyses, one of which assumes that 6,600 afy can be supplied without impacts and the other of which assumes that it cannot. In particular, it provides that "[a]ssuming groundwater wells on former Fort Ord were able to supply 6,600 afy," an additional 7,932 afy of supply would be required by 2015. (BRP PEIR, p. 4-53.) However, it then provides in the alternative that "[i]f groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley Aquifer," additional supplies would have to be developed sooner, and even further recommends "that an alternate water supply source, such as on-site storage facilities, be considered." (BRP PEIR, p. 4-54.)

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members "shall ensure additional water supply." Policy B-2 requires conditioning project approval on verification of an "assured long-term water supply." Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD "to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan." Program C-3.1 requires the member agencies to work with the water agencies "to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies." MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.¹ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had "exceeded safe yield, as indicated by seawater intrusion and water levels below sea level." (BRP PEIR p. 4-63.) The BRP PEIR states that the "conditions of the 900-foot aquifer are uncertain", including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to "affirm the local jurisdictions' commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies." (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to

¹ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies "to mitigate further seawater intrusion" by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR's cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: "existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3)." (BRP PEIR p. 5-5 (emphasis added).)

In sum, unlike the Monterey Downs DSEIR, the BRP PEIR does not assume that the 6,600 afy entitlement is a sufficient basis to determine whether there will be a significant water supply impact from continued groundwater pumping.²

Here, the Annexation Initial Study makes precisely the same unfounded assumption that was made in the Monterey Downs EIR that pumping may be increased up to the 6,600 afy allocation without significant impacts. The assumption is belied by both the Reuse Plan EIR and the fact of 20 more years of continued seawater intrusion.

5. 6,600 afy does not constitute baseline use.

The 6,600 afy allocation does not represent baseline pumping. Thus, MCWD may not simply assume that pumping within the 6,600 allocation is not a new impact.

First, the average pumping at the time that Fort Ord was in use by the Army was never 6,600 afy. That amount represents a single peak year pumping in 1984. The 1993 Army/MCWRA agreement reports that average pumping from 1988-1992, the period that brackets the 1991 closure decision, was about 5,200 afy. Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c.

Second, the Reuse Plan EIR does not identify 6,600 afy as the baseline use. The discussion of water supply in the section captioned "environmental setting" references the Army/MCWRA agreement that "6,600 acre feet per year (afy) of water is available from the Salinas Valley groundwater basin for Former Fort Ord land uses, provided that such provisions do not aggravate or accelerate the existing seawater intrusion." Reuse Plan EIR, p. 4-49. However, the discussion in this section does not identify any prior pumping amounts, and a reference to an agreement regarding future pumping does not even purport to identify historic baseline pumping. As Mr. Parker explains, the Reuse Plan EIR provides that mitigation would be required for any pumping that would lead to an increase in seawater intrusion, even if this occurs before the 6,600 afy allocation is pumped. The Reuse Plan EIR's discussion of the environmental setting with respect to water supplies identifies the 6,600 afy figure as the allocation in the MCWRA/Army agreement, not as baseline use. The discussion expressly provides that this allocation is available only "provided that such provisions do not aggravate or accelerate the existing seawater intrusion." Reuse Plan EIR, p. 4-49.

Third, if the Reuse Plan EIR adopts any baseline figure for Salinas Valley Groundwater Basin pumping on the Former Fort Ord, that figure is not 6,600 afy. The figure may be the 5,100 afy average pumping for the 4 to 5 years immediately prior to 1991, based on

² Timothy Parker, Technical Memorandum to John Farrow, Oct. 8, 2016, pp. 8-9.

the Army's NEPA documents. In Section 1.2.2, Baseline Determination, the Reuse Plan EIR expressly adopts the Army's NEPA document baseline: "As with the Army's FEIS and DSEIS, this EIR determines whether the proposed project may have a significant effect on the environment based on physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." Reuse Plan EIR, p. 1-3. The Reuse Plan EIR states that this approach "complies with Section 21083.8.1 of the Public Resources Code and utilizes the extensive research already conducted for the Army's NEPA documents, which use the same baseline year." *Id.* Section 21083.8.1 permits a reuse plan EIR or EIS to rely on conditions at the time of the closure decision as a baseline provided that certain procedures are followed.³

The Reuse Plan EIR then identifies the specific NEPA documents that were used to determine the Environmental Setting for water supply analysis. Reuse Plan EIR, pp. 1-3, 1-10 (Table 1.9-1). These include the Army's December 1995 Draft SEIS, the Army's June 1993 Final EIS Volume 1, and the Army's April 1992 "Other Physical Attributes Baseline Study of Fort Ord, California." These documents identify the baseline water use from the Salinas Valley Groundwater Basin as 5,100 afy, not as 6,600 afy, as follows:

- The 1996 Final SEIS states that "[a]s reported in the final EIS (Volume 1, page 4-56), average water demand on Fort Ord was 5,100 acre-feet (af) during 1986-1989. Water use has declined in recent years with the decrease in the number of personnel living on and occupying the base. Annual water use was 5,634 af in water year 1992, 3,971 af in 1993, and 3,235 af in 1994."⁴
- The June 1993 Final EIS states that "[a]nnual water consumption decreased from a high of 6,600 acre-feet in 1984 to an average of 5,100 acre-feet during

³ These procedures include circulation of proposed baseline conditions to affected agencies "prior to circulating a draft EIR" followed by a public hearing at which "the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions." Guidelines, § 15229(a)(1), (2). Although the BRP PEIR states that it availed itself of the Public Resources Code § 21083.8.1 baseline provisions and that baseline conditions are as of the September 1991 closure decision (Reuse Plan EIR, p. 1-3), there is no evidence that FORA actually followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify baseline water use conditions in a document circulated before the PEIR and to state an intent to adopt that as the baseline. See FORA, Resolution 97-6, June 13, 1997 (Certifying BRP PEIR and discussing proceedings and hearings). CEQA does not authorize FORA to rely on the Army's prior compliance with these procedures, if in fact the Army did comply.

⁴ Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, p. 4-11, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538/Section_4.pdf. The quote from the Final SEIS is of the unchanged text of the 1995 Draft SEIS.

1986-1989.”⁵ Table 4.5-2 identifies 5,100 afy as the average pumpage for Fort Ord.⁶

- The April 1992 *Other Physical Attributes Baseline Study of Fort Ord, California*, provides a table of annual pumping, from which it is apparent that average annual pumping from 1986-1989 is 5,083 afy and the average from 1986-1990 is 5,126 afy.⁷ That 1992 report identified declining water use from 1980 to 1990, except for the single year 1984.⁸

In sum, if the Army actually followed the procedures of Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to adopt a baseline figure and if FORA also complied with those procedures, then the baseline water use was not 6,600 afy but only 5,100 afy. The outlier 6,600 afy figure from 1984 could not have been used as a baseline because it does not represent the “physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991).” Reuse Plan EIR, p. 1-3; see Public Resources Code § 21083.8.1(c).

Fourth, even if FORA or the Army had followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify a baseline condition for water, they were required to “state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process.” Public Resources Code, § 21083.8.1(c)(C). The Reuse Plan EIR does explain how the 6,600 afy figure is to be integrated into its analysis and mitigation of water supply impacts. Reuse Plan EIR, pp. 4-49, 4-53 to 4-54. And that discussion does not indicate an intent to treat 6,600 afy as a baseline condition within which there is no significant impact, because it requires mitigation even if the 6,600 afy allocation is not pumped in full. CEQA does not permit the imposition of mitigation unless there are significant impacts. Guidelines, § 15126.4(a)(3). Thus, treating 6,600 afy as a baseline “no impact” level is inconsistent with the fact that Reuse Plan EIR repeatedly states that use of the 6,600 afy allocation is only to be permitted if it does not contribute to seawater intrusion and that mitigation may be required even if water use does not rise to 6,600 afy. See Reuse Plan EIR, pp. 4-49, 4-53 to 4-54.

And the Army’s EIS also makes clear that 1) there is no categorical right to pump 6,600 afy, and 2) even the right to pump up to 5,200 afy is subject to a no-harm condition:

MCWRA will not object to Fort Ord/POM Annex withdrawal from the basin of up to 6,600 af/yr, provided that no more than 5,200 af/yr are withdrawn from the

⁵ Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

⁶ *Id.* at 4-59.

⁷ US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California*, April 1992, p. 1-6, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf.

⁸ *Id.* at 1-6, 1-14.

180-foot aquifer and 400-foot aquifer and that such withdrawals do not threaten to aggravate or accelerate the existing seawater intrusion problem.⁹

Fifth, Public Resources Code, § 21083.8.1(c)(A) provides that “[p]rior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement.” The Reuse Plan EIR does in fact require further analysis of physical conditions than the analysis provided in the EIR. For example, Program C-3.1 requires determination of the safe yield of the portion of Fort Ord overlying the Salinas Valley Groundwater Basin “to determine available water supplies.” Reuse Plan EIR, p. 4-55. Program C-3.2 require further investigation of seawater intrusion in the context of the Salinas Valley Basin Management Plan and measures to prevent further intrusion. Again, these provisions are simply inconsistent with treating 6,600 afy as a permissible baseline use that would not constitute a significant impact.

6. 6,600 afy is not a safe yield.

MCWD cannot argue that 6,600 afy represents its share of the safe yield for the SVGB, i.e., an amount that MCWD can pump without significant impact. Safe yield or sustainable yield is defined as “the amount of groundwater that can be pumped annually on a long-term basis without causing undesirable results.”¹⁰ The Final EIS for the Fort Ord base closure and reuse also acknowledges that 1) safe yield must be determined for the entire groundwater basin and 2) pumping for Fort Ord already exceeded safe yield as of 1993:

The concept of safe yield is meaningful only when applied to an entire groundwater basin. The amount of yield available to individual users within the basin depends of the amounts and locations of pumping by other users. In the Salinas Valley groundwater basin, present pumping in and near Fort Ord exceeds safe yield in the 180-foot and 400-foot aquifers, as indicated by continuing seawater intrusion and water levels below sea level in those aquifers. This indicates that the yield from the 180-foot and 400-foot aquifers for Fort Ord is less than its present pumpage, assuming that pumping by other users remains unchanged.¹¹

Base Reuse Plan Hydrology and Water Quality Program C 3-1 requires that member agencies work with MCWRA to determine safe yield to determine available water supplies. For example, the Reuse Plan EIR provides for the City of Seaside:

⁹ Dept. of the Army, Final Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse, June 1996, p. 4-11, emphasis added, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538//Section_4.pdf.

¹⁰ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

¹¹ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57.

The City shall continue to work with the MCWRA and the MPWMD to estimate the safe yield in the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and the Seaside groundwater basins to determine available water supplies.

Reuse Plan EIR, p. 4-55. Similar provisions apply to the other member agencies. There is no evidence that the member agencies or MCWD have worked with MCWRA to determine safe yield for the Fort Ord area.

Furthermore, as the Final EIS for the Fort Ord base closure and reuse indicates, the concept of safe yield only makes sense for a basin as whole, not just the Fort Ord area. MCWRA's most recent determination of the sustainable or safe yield for the Salinas Valley Groundwater Basin and the Pressure Subarea indicates that pumping has been and remains in excess of safe yield. In particular, the 2016 State of the Salinas Valley Groundwater Basin report indicates that the safe yield of the Pressure Subarea is about 110,000 to 117, 000 afy and that existing pumping already exceeds this yield by about 12,000 to 19,000 afy.¹² The safe yield for the Salinas Valley Groundwater Basin as a whole (the four subareas constituting Zone 2C, the assessment area for the Salinas Valley Water Project) is from 499,000 to 506,000 afy, and existing pumping already exceeds this yield by 17,000 to 24,000 afy.¹³

7. The Initial Study fails to provide an adequate cumulative analysis and it may not tier from the Reuse Plan EIR.

The Initial Study claims that cumulative impacts were adequately evaluated in prior environmental documents, presumably the Reuse Plan EIR. Initial Study, p. 82. However, changed circumstances, new information, and changes in the Reuse Plan itself that have occurred since the Reuse Plan EIR require reexamination of the cumulative analysis and preclude tiering. Accordingly, MCWD is obliged to prepare a new water supply analysis and not to tier from the water supply analysis in the Reuse Plan EIR.

Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, there are changed circumstances and new information that bar reliance on the out-of-date cumulative analysis. As discussed above, information cited by Mr. Parker demonstrates that there have in fact been substantial changes in the environmental setting of the proposed area that would warrant new analyses. First, seawater intrusion has advanced another two miles inland since the 1997 Reuse Plan EIR, constituting a substantially more severe significant effect than shown in the Reuse Plan EIR. Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and

¹² MCWRA, State of the Salinas Valley Groundwater Basin, 2016, p. 4-25, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

¹³ *Id.* at 4-26.

could not have been known" at the time of the Reuse Plan EIR. Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by Reuse Plan policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the Reuse Plan itself. Most significantly, MCWD has not yet implemented the long-term water supply replacement projects that are mandated by the Reuse Plan and its EIR in the event that seawater intrusion continues.

Case law is clear that additional analysis of water supply impacts is required under section 21166 when new information shows more severe impacts or the planned water sources are not implemented timely:

To the extent that a subsequent subdivision proposal relies on different water sources than were proposed in the specific plan it implements, or the likely availability of the intended water sources has changed between the time of the specific plan and the subdivision application (or more has been learned about the effects of exploiting those sources), changes in the project, the surrounding circumstances or the available information would exist within the meaning of section 21166, requiring additional CEQA analysis under that section . . .

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412,438; see also *id.* at 431, n. 7. Here, the new information about the severity of cumulative impacts, changes to circumstances, and to the project itself with regard to water supply are subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 and therefore tiering, at least for the water supply analysis, is not permitted. The Initial Study erred by not providing a new analysis of water supply impacts, in particular, a new cumulative analysis.

Finally, even if tiering were permitted, MCWD must still assess whether the incremental effects of the Project would be considerable when viewed in the context of past, present, and probable future projects. Guidelines, § 15152(f)(2). We note that the California Supreme Court has clarified that additional review of a subsequent project may be required in a tiering context even where 21166 does not apply:

The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR's." (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then "CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." (*Ibid.* citing Pub. Resources Code, § 21094, subs. (a), (c).)

Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist. (2016) 207 Cal. Rptr. 3d 314, slip op. at p. 11 (emphasis added).

8. The Initial Study fails to disclose that increased pumping by MCWD to supply the Ord community through 2035 would make a considerable contribution to a significant cumulative impact.

By way of background, cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project's own effect is a considerable contribution. Guidelines, § 15130(a); see Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be "individually minor but collectively significant." *Communities for a Better Environment v. California Resources Agency* ("CBE v. CRA") (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- "define the scope of the area affected by the cumulative effect,"
- explain "the geographic limitation used,"
- identify the past, present, and future projects "producing related or cumulative impacts" or provide projections of the conditions "contributing to the cumulative effect,"
- provide a "summary of the expected environmental effects to be produced by those projects." Guidelines, § 15130(b)(3), (4).

In step two, if there is a significant cumulative effect, the agency must determine whether the project's contribution is "considerable," i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." *CBE v. CRA, supra*, 103 Cal.App.4th at 119. The determination whether a project's effects are a considerable contribution to a significant cumulative impact requires an acknowledgement of the existence of that cumulative impact and assessment of its severity because "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *Communities for a Better Environment v. California Resources Agency* ("CBE v. CRA") (2002) 103 Cal.App.4th 98, 120.

Here, there is overwhelming evidence that a step-one determination must conclude that there is a significant regional cumulative impact from groundwater pumping by past, present, and reasonably foreseeable future projects, including the Monterey Downs project. The evidence, including Mr. Parker's comments, shows that

- there has been and still is an ongoing significant cumulative impact to groundwater resources in the form of declining groundwater levels and seawater intrusion due to over-pumping of groundwater;
- this impact is due to basin-wide pumping, not just pumping within the Reuse Plan area;
- this impact has not been avoided by existing groundwater management projects;

- there are no committed, funded groundwater management projects that will avoid this impact in the foreseeable future; and
- the impact will be aggravated by increases in pumping to support future development, including projected increases in agricultural pumping and new urban development such as the Ord community buildout.

Given this evidence, and the complete lack of analysis of relevant cumulative conditions in the Initial Study, the omission of an adequate cumulative analysis is prejudicial to informed decision making and public participation.

Furthermore, the Initial Study presents no contrary evidence to support a step-one finding that there is no significant cumulative impact from cumulative groundwater pumping – an issue that the Initial Study simply fails to address. The lack of analysis precludes any step-one conclusion or finding that there is not a significant cumulative impact.

The lack of analysis also precludes any step-two conclusion that increased water demand for the Ord buildout does not constitute a considerable contribution to a significant cumulative impact. Any implied approach to a step-two conclusion based on the relatively small percentage of basin pumping undertaken by MCWD or the fact that the pumping may be from the 900-foot aquifer would be based on a legally and factually erroneous approach to cumulative analysis. Indeed, the Initial Study argues that the MCWD pumping is only 1% of total Salinas Valley Groundwater Basin pumping. Initial Study, p. 49. Any implication that this means that pumping to support the Ord buildout it is not a considerable contribution to a significant cumulative impact is wrong as a matter of law and fact.

An EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* ("LAUSD") (1997) 58 Cal.App.4th 1019, 1025-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 117-118, 121. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,718, the Court rejected the agency's "ratio" theory that found impacts not to be a considerable contribution merely because they were a relatively small percent of the total impact. *Id.* at 720. Because the relevant question was "whether any additional amount" of incremental impact "should be considered significant in light of the serious nature" of the problem (*id.* at 718), a valid determination whether a project's contribution is considerable must reflect the severity of the cumulative problem. "[T]he greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE v. CRA, supra*, 103 Cal.App.4th at 120. Thus, even an "individually minor" impact may be "cumulatively considerable." *Id.*; see also Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.

As Mr. Parker explains, what is relevant is whether marginal increases in pumping will be a considerable contribution in light of the severity of the overdraft and seawater intrusion problem. Because seawater intrusion is caused by the problem of overdraft, not by total pumping, the severity of the cumulative problem should be measured in terms of

the size of the overdraft or the amount of induced seawater intrusion. Here, the basin as a whole and the Pressure Subarea are in overdraft and, as Mr. Parker explains, any additional pumping will induce seawater intrusion equal to about 75% of the volume pumped. Furthermore, coastal pumping is more problematic than inland pumping. Thus, as Mr. Parker explains, the increase in pumping demand should be evaluated in light of the annual Pressure Subarea overdraft of 12,000 to 19,000 afy, not in relation to the 500,000 afy of total pumping in the Salinas Valley Groundwater Basin. Viewed in this light, and viewed in the light of the current recommendations by MCWRA that existing pumping be reduced in the Pressure Subarea, the marginal increase in pumping of 2,492 afy to support future Ord community buildout is a considerable contribution.

Finally, MCWD cannot argue that pumping to support the Ord buildout would be less than a considerable contribution to significant groundwater impacts because some portion of that pumping would come from the 900-foot Aquifer, also known as the Deep Aquifer. Based on available stratigraphic analysis and modeling, Mr. Parker demonstrates that increased pumping from the Deep Aquifer will also cause depletion of the 180-Foot and 400-Foot Aquifers because those aquifers are the source of recharge to the Deep Aquifer. Mr. Parker also demonstrates that increased pumping from the Deep Aquifer will aggravate seawater intrusion to the 180-Foot and 400-Foot Aquifers. Increased pumping from the Deep Aquifer may deplete that aquifer and it may also induce seawater intrusion into the Deep Aquifer itself. Finally, MCWRA has now recommended a moratorium new pumping from the 900-foot Aquifer.¹⁴

9. Other matters

In addition, many of LandWatch's 2011 comments on the previous project and environmental document have never been addressed. We have the following additional comments on the revised project and environmental document:

- a. **Project Description.** Marina Coast Water District (MCWD) currently is working with the Salinas Valley Basin Groundwater Sustainability Agency to address requirements of the Groundwater Sustainability Act. Under the proposed project, MCWD would be able to more effectively address the Act's requirements because it would have the authority to levy fees and/or taxes to fund needed projects. The Initial Study should identify this as a project outcome.
- b. **General Plan Consistency with Base Reuse Plan.** The document finds that all General Plans and/or project EIRs are consistent with the Reuse Plan EIR (p. 18) The germane consistency determination is consistency of General Plans, etc. with the FORA Reuse Plan, not the FORA Reuse Plan EIR. Please identify those general plans that have not had a consistency determination, e.g., 2010 Monterey County General Plan. Revise the following statement as needed:
- c. **Table 3.** The table identifies Water and Wastewater Service providers. It shows MCWD as providing water service to the City of Seaside. The

¹⁴ MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp 2-3, available at <http://www.co.monterey.ca.us/home/showdocument?id=57394>

referenced 2003 City of Seaside General Plan identifies MCWD as working on the Regional Urban Water Augmentation Project for the former Fort Ord; however, the table should be augmented to identify the California American Water as the primary water provider. Table 3 also identifies MCWD as providing water service to the City of Monterey. MCWD's service would only apply to the City of Monterey projects on the former Fort Ord. The table should be augmented to identify the California American Water as the primary water provider and MPWMD as the agency charged with overseeing the water resources in the non-Fort Ord areas.

Thank you for the opportunity to review the document.

Sincerely,



Michael DeLapa
Executive Director

References – provided via digital electronic media:

1. Timothy Parker, Technical Memorandum to John Farrow, Oct. 8, 2016.
2. John Farrow, letter to City of Seaside City council re Monterey Downs FSEIR, Oct. 12, 2016.
3. WRIME, Deep Aquifer Investigative Study, 2003.

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13. MCWD, 2015 draft UWMP, available at http://www.mcwd.org/docs/agenda_minutes/2016-06-06_board/Item%2011-A%20-%20MCWD%20Draft%202015%20UWMP%20v20160520.pdf.
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15. Transcript of Monterey County Planning Commission, Oct. 29, 2014, available in video file at http://monterey.granicus.com/MediaPlayer.php?view_id=14&clip_id=2745.
16. Ground Water Summary Reports published by MCWRA in 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php.
17. MCWRA, Salinas Valley Water Project Engineers Report, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/documents/SVWP%20final_engineers_report.pdf.
18. Monterey County General Plan DEIR, available at <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/draft-environmental-impact-report-deir>.
19. MCWRA, Salinas Valley Water Project Phase II, Overview, Background, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.
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21. MCWRA, Salinas Valley Water Project Phase II website, Project Description, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.
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Via Hand Delivery and E-mail

City of Seaside City Council
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440 Harcourt Avenue
Seaside, CA 93955
e-mail: CityClerk@ci.seaside.ca.us

Re: Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056)

Dear Members of the City Council:

On behalf of LandWatch Monterey County (“LandWatch”) we write regarding the Final Supplemental Environmental Impact Report (“FSEIR”) and the Draft Supplemental Environmental Impact Report (“DSEIR”) (together, the “SEIR”) for the Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (“Project”) and regarding the proposed approval of Project entitlements.

The FSEIR fails adequately to address the issues raised by public comments on the DSEIR made by LandWatch and others. In addition, approval of those project entitlements is inconsistent with the Fort Ord Reuse Plan (also known as the Base Reuse plan or “BRP”).

LandWatch reiterates its request that the City revise and recirculate the SEIR to address the defects set out in its comments.

A. Summary of comments

WATER ANALYSIS INADEQUATE: The SEIR fails to meet CEQA’s requirements for an adequate analysis of water supply impacts because it assumes uncritically that there would be no significant impacts to the Salinas Valley Groundwater Basin as long as pumping to support Fort Ord demand does not exceed the 6,600 afy that MCWRA “allocated” to the Army in 1993. Thus, it concludes that there would be no significant impact for Phases 1-3 of the project because water for those phases could be supplied from uncommitted portions of the 6,600 afy allocation. The SEIR does not support this conclusion with any actual analysis of impacts to the basin from increased pumping; it simply assumes that 6,600 afy can be pumped without impact. As the comments below and the attached letter from hydrologist Timothy Parker explains that assumption is completely unfounded:

- 6,600 afy does not represent a baseline or “no new impact” pumping level for Fort Ord. In fact, the SEIR identifies baseline pumping as the currently existing level of pumping – variously reported by the SEIR as from 1,650 afy to 2,311 afy.
- 6,600 afy does not represent a safe yield for Fort Ord pumping. Safe yield cannot be determined for the Fort Ord area by itself because it must be determined for the hydrologically interconnected Salinas Valley Groundwater Basin as a whole. MCWRA’s 2016 State of the Salinas Valley Groundwater Basin report explains that the existing level of groundwater pumping is well beyond the Basin’s safe yield. The California Department of Water Resource’s identification of the Salinas Valley Groundwater Basin as critically overdrafted confirms this. So does Mr. Parker’s attached technical memorandum.
- Contrary to the out-of-date 2010 MCWD Urban Water Management Report relied upon by the SEIR, the Salinas Valley Water Project will not halt seawater intrusion and balance the Basin hydrologically. MCWRA now acknowledges that the existing groundwater management projects, including the Salinas Valley Water project, are insufficient to accomplish this, and that additional groundwater management projects would be needed. These projects are not approved, environmentally reviewed, or funded. The SEIR simply ignores this information, despite Seaside’s obligation under the BRP to cooperate with MCWRA in addressing seawater intrusion and determining the safe yield.
- The SEIR fails to provide a discussion and analysis of actual physical impacts from increased pumping as CEQA requires. The SEIR improperly assumes that as long as a water supply has been allocated on paper, there is no need to discuss the physical impacts from using that supply. The SEIR gets this entirely wrong: as the California Supreme Court has explained, the “ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 (emphasis in original).
- The SEIR fails to provide an adequate discussion of cumulative water supply impacts. The DSEIR purports to “tier” from the program EIR for the Base Reuse Plan, but then does not even summarize that document’s conclusion. The Base Reuse plan PEIR concludes that cumulative impacts, viewed at the relevant geographic scale of the Salinas Valley Groundwater Basin, are significant and unavoidable. The Monterey Downs SEIR looks only at Fort Ord demand, improperly conflating its project-specific and cumulative analyses, and then claims that there would be no significant cumulative impact as long as total Fort Ord demand remains within the 6,600 afy allocation. This ostrich-like approach ignores

the fact that there is already a significant cumulative impact and that additional pumping will aggravate overdraft and seawater intrusion.

PARTIAL PROJECT NOT ANALYZED: The SEIR admits that a water supply for Phases 4-6 is uncertain and so proposes simply not building Phases 4-6 as a mitigation measure for water supply impacts. Despite LandWatch's request and CEQA's mandate, the SEIR fails to assess the impact of not building these phases. Not building Phases 4-6 would render the project primarily residential and eliminate most of the commercial and jobs-creating uses. This would render the project inconsistent with Seaside and BRP policies mandating a strong jobs to housing ratio. It would also force residents to travel farther for jobs and shopping, increasing vehicle trips per capita and aggravating GHG impacts, which are based on per capita CO2 emissions. And not building the hotels, commercial space, and racetrack would render the fiscal effects of the project negative.

GHG ANALYSIS INADEQUATE: The FSEIR violates CEQA because it fails to disclose the actual basis of the numerous mitigation credits taken for GHG reduction measures. The DSEIR takes 25 distinct credits for project features to reduce the projected GHG emissions. When LandWatch asked for the specific assumptions that would justify these credits, the FSEIR simply referred LandWatch to documentation that confirms that project-specific assumptions are required, but does not provide those assumptions for this project. Thus, there is no evidence in the record that the claimed GHG reductions are warranted, and the FSEIR violates CEQA because it fails to provide good-faith reasoned responses to comments.

GHG MITIGATION INADEQUATE: The SEIR admits that GHG impacts will remain significant and unavoidable even after implementation of proposed mitigation. CEQA requires that the City adopt all feasible mitigation as long as impacts remain significant. CEQA also requires that the City respond to each mitigation measure proposed by the public and either adopt it or explain why it would not be effective or feasible. The FSEIR fails to respond at all to numerous feasible GHG mitigation proposed by the Monterey Bay Unified Air Pollution Control Agency and by LandWatch. The FSEIR rejects other mitigation, such as mandated solar electrical and water heating systems, without any showing that it is infeasible or ineffective. This violates CEQA.

FSEIR TAKES UNJUSTIFIED VEHICLE TRIP REDUCTION CREDIT AND REFUSES TO EXPLAIN IT: The traffic analysis assumes that 28% of vehicle trips will remain within the project site. Caltrans, TAMC, and LandWatch objected that this so-called "internal capture" rate is unjustified and unjustifiable. The FSEIR claimed that it provided documentation to Caltrans in response to its objection and that Caltrans had made no further objection. Not true. Caltrans has continued to object. Regardless, giving documentation to Caltrans does not answer the objections and questions raised by TAMC and LandWatch. The FSEIR also claims that the trip capture data is in the

DSEIR. This is not true. Indeed, if it were, it would not have been necessary to furnish the information privately to Caltrans.

TRAFFIC ANALYSIS AND MITIGATION IS INADEQUATE: The traffic analysis contains a number of additional flaws.

- The proposed mitigation for special event traffic, events which could occur as frequently as 125 times per year, is a to-be-determined-later "Events Management Plan." This mitigation is entirely ad hoc with no standards for what level of congestion will be permitted. This violates CEQA's requirement for specific performance standards when formulation of mitigation is deferred until after project approval.
- As Caltrans objected, the FSEIR fails to apply Caltrans' level of service standard in its analysis of the significance of impacts, even though it applies the adopted service standards for other jurisdictions (e.g., Marina, the County). Caltrans' goal is to maintain service at the cusp of LOS C and D. The FSEIR ignores impacts unless service degrades to LOS D, and thus fails to disclose additional significant impacts to Caltrans' facilities.
- The SEIR admits dozens of significant impacts to roads and intersections that will not be mitigated. LandWatch proposes that impacts to freeway ramps could be addressed with ramp metering and that the project should make fair share payments for this. The FSEIR responds that ramp metering is not planned by Caltrans so is infeasible. This is not true. Caltrans' current plan for the SR 1 corridor in the project vicinity expressly plans ramp metering. Again, the FSEIR's comment responses fail to evince good-faith.

NOISE ANALYSIS IS DEEPLY FLAWED: Noise from recreational areas of the project, including the Sports Arena, horse track, swimming center, and other equestrian facilities, noise from project construction, and noise from project traffic will exceed noise standards adopted by the Fort Ord Reuse Plan and the City of Seaside. Despite LandWatch's objections, the SEIR fails to acknowledge this and to provide a legally adequate noise analysis:

- The SEIR ignores one whole category of noise standards from the Base Reuse Plan, which are specifically intended to protect sensitive uses from loud short-term noise from activities like construction, sports events, and musical concerts. Unlike the 24-hour average noise standards, these so-called "statistical" noise standards regulate peak noise events and cumulative noise for intervals of 1, 5, 15, and 30 minutes in an hour. Without these standards, highly annoying short-term noise would be permitted, such as crowd cheering, PA systems, musical events, and swimming pool timing horns. Seaside has failed to adopt the BRP's statistical

noise standards even though the BRP mandates that it do so and in fact bars it from approving any projects in Fort Ord until it does so.

- The SEIR's analysis and mitigation of construction noise contains no quantitative analysis to determine if the project would exceed applicable standards, despite express requirements in the Seaside noise ordinance and BRP policies for quantitative assessment. Mitigation does not require the construction noise to meet any noise standard. Noise engineer Derek Watry demonstrates that construction noise would exceed applicable standards and that mitigation to meet applicable standards is infeasible.
- The SEIR's analysis of stationary noise impacts, e.g., noise from recreational facilities, fails to identify a consistent threshold of significance so it is unclear how the SEIR determines significance. Furthermore, the only noise standard mentioned in the proposed mitigation differs from the noise standards discussed in the qualitative assessment of the significance of impacts. And again, the SEIR fails to provide the required quantitative assessment of noise levels with and without mitigation.
- The SEIR fails to assess and mitigate noise impacts to open space users. BRP policies mandate strict standards to protect passively used open space, and information in the FSEIR indicates that this standard is not met. Passive open space use will be directly adjacent to the noisiest portions of the project. Numerous comments have objected to the imposition of the project's noise on this use.
- The traffic noise analysis is flawed because the analysis fails to protect outdoor uses by failing to measure impacts at the property line as required by both the City's noise ordinance and the BRP. Furthermore, the FSEIR refused to provide essential information to understand the traffic noise analysis requested by LandWatch: the identification of the land use and applicable noise standards on the road segments affected by the project. As Mr. Watry explains, for at least one segment, this omission obscures the fact that the project will contribute considerably to a significant cumulative noise impact.

THE PROJECT IS INCONSISTENT WITH THE BASE REUSE PLAN: The project conflicts with numerous noise policies in the BRP. Seaside has failed to adopt required BRP noise standards and has failed to undertake noise analysis required by BRP policies. Project noise will exceed standards in several BRP noise policies. The SEIR admits that the project is inconsistent with BRP water policies requiring additional water supplies and prohibiting approval of a development project without an assured long-term water supply. If water supply limitations result in a predominately residential project and

a failure to build out the commercial and recreational uses, the project will conflict with BRP (and Seaside) policies mandating a balanced jobs/housing ratio.

BELATED ELIMINATION OF RACING RENDERS ANALYSIS INVALID: The last-minute elimination of horse-racing from the list of allowed uses does not actually ensure that racing will not be permitted by a subsequent interpretation or revision of the specific plan, particularly if regulation of racing is found to be preempted by state law. If Seaside were serious about the racing ban, it could and should make the ban enforceable by identifying it as CEQA mitigation and by banning horseracing by ordinance.

Horseracing is an integral part of the economic justification for the project, representing 40% of the jobs and the primary attraction that would generate hotel taxes, without which the Wildan Report indicates that the project would be a fiscal loss for Seaside. There is no analysis that would suggest that other uses will replace these equestrian jobs and revenues.

And even if Seaside is not concerned about fiscal consequences of the bait-and-switch strategy saddling it with unbalanced residential construction, Seaside is still accountable for the inadequate environmental analysis. Without the commercial and jobs uses assumed in the SEIR, the assumed jobs/housing balance will not materialize. This would result in inconsistencies with Seaside and BRP policies, including policies intended to minimize transportation and air pollution impacts and conserve water supplies to support balanced growth.

For all of these reasons, LandWatch urges the Seaside City Council to decline to certify the inadequate SEIR and to decline to approve project entitlements.

Detailed comments are set out below and in the attached letters from hydrologist Timothy Parker and noise engineer Derek Watry.

B. The SEIR fails as an informational document because its discussion of groundwater impacts is incomplete and inadequate.

Because the FSEIR fails to provide adequate responses to the issues LandWatch raised in its DSEIR comments, LandWatch asked hydrogeologist Timothy Parker to review the SEIR and relevant documentation. Mr. Parker's comments are attached and incorporated by reference in the discussion below.

1. The FSEIR fails to respond adequately to comments objecting to reliance on the 6,600 afy allocation as the basis to find impacts less than significant.

LandWatch objected that the DSEIR improperly concludes that project-specific and cumulative impacts would be less than significant in Phases 1-3 based on the fact that

a portion of the 6,600 afy allocation to Fort Ord from the 1993 annexation agreement remains unallocated and thus available to the Project. Comment PO 208-22.

The SEIR consistently implies or states that impacts would be less than significant as long as the 6,600 afy “allocation” to Fort Ord, or the “sub-allocation” to the City of Seaside and/or the County of Monterey that remains available to the project, is not exceeded. See DSEIR at 4.8-34 to 35 (project-specific groundwater supply impact less than significant through Phase 3 because “Project would only use groundwater that is within MCWD’s existing 6,600 AFY allocation”), 4.8-46 (same for cumulative water quality impact), 4.19-22 to 25 (project specific water supply impact less than significant through phase 3 and “potentially significant” for Phases 4-6), 4.19-32 (“project-related cumulatively considerable water supply impacts” are “significant and unavoidably cumulatively-considerable” for Phases 4-6).¹

Thus, the DSEIR’s clear implication is that as long as total pumping for Fort Ord does not exceed the 6,600 afy allocation, there would be no significant impact.

LandWatch objected that this conclusion is unwarranted because the 6,600 afy does not represent either a baseline usage or a safe yield determination. The FSEIR admits that the 6,600 afy is neither a baseline nor a safe yield. FSEIR, p. 11.4-1027. However, the FSEIR response fails to provide the required good-faith reasoned analysis

¹ DSEIR section 4.19 outlines the allocation of the 6,600 afy to the various jurisdiction within the Ord Community in Table 4.19-2, Groundwater Allocation by Jurisdiction. DSEIR, p. 4.19-4. Section 4.19 then identifies the sub-allocations to projects within the City of Seaside and the County of Monterey in Table 4.19-4, Groundwater Sub-Allocations, concluding that there is 412.9 afy of “City/County Unallocated” water supply. DSEIR, p. 4.19-5. DSEIR section 4.19 explains that the project’s potable demand for Phases 1-4 would be 410.8 afy, which is within the “existing unallocated water supply of 412.9 AFY” and therefore “a less than significant impact concerning potable water demand” is concluded for Project Phases I through IV.” DSEIR, p. 4.19-23. Section 4.19 then explains that there is only sufficient “unallocated non-potable water supply” for Phases 1-3 and that therefore a “potentially significant impact is identified for Project Phases IV through VI.” DSEIR, p. 4.19-24. Section 4.19 proposes Mitigation Measure W-1, which would require “proof of an adequate water supply” that ensures “current unused water supply is allocated” before future development is permitted. Section 4.19 then concludes that “given the uncertainties involving the water supply options, sufficient water supplies would not be endured to Phases IV through VI. Therefore impacts concerning water supply availability would remain significant and unavoidable.” DSEIR, p. 4.19-26.

Section 4.19 uses the same arithmetic to conclude that the “project-related cumulatively considerable water supply impacts” are less than significant for phases 1-3 but significant and unavoidable for phases 4-6 due to “the uncertainties involving the water supply options.” DSEIR, p. 4.19-32.

DSEIR section 4.8 references the discussion in section 4.19 and states that impacts from Phases 4-6 would be “potentially significant” because “additional groundwater would be needed to be acquired to meet the remainder of the Project’s groundwater demand for Phases IV through VI.” DSEIR, p. 4.8-34. Section 4.8 goes on to explain that because of “uncertainties involving the water supply options, sufficient water supplies would not be ensured to Phases IV through VI. Therefore impacts in this regard would be significant and unavoidable.” DSEIR, pp. 4.8-34 to 4.8-35.

Section 4.8 draws the same conclusions regarding cumulative impacts as section 4.19.

because 1) it mischaracterizes LandWatch’s comments and 2) it implies that there is no connection between the 6,600 afy allocation and the remaining unclaimed portions of the sub-allocations to the City and County:

The commenter’s following assertions are incorrect: (1) SEIR does not conclude that water supply impacts would be less than significant if total water demand for Project buildout is below 6,600 AFY; and (2) SEIR does not conclude that water supply impacts would be less than significant if total water demand for Phases I-III is below 6,600 AFY. Rather, DSEIR page 4.19-30 states that under the 1993 Agreement, 6,600 AFY of the Salinas Basin groundwater is available for use on Ord Community Service Area lands, not limited only to the Project. As stated in MR 11.3.9 (Water) and Response PO 208-5, DSEIR page 4.19-23 concludes that Phases I-IV would have a less than significant impact concerning potable water demand because the existing unallocated potable water supply of 412.9 AFY (from the 1,722 AFY of groundwater FORA allocated to the City and County) would be sufficient to meet the total potable water demand of approximately 410.8 AFY for these phases combined. Furthermore, as stated in MR 11.3.9 (Water) and Response PO 208-5, DSEIR page 4.19-26 concludes that sufficient water supplies cannot be assured to Phases IV-VI at this time, despite implementation of feasible mitigation (Mitigation Measure W-1); therefore, impacts concerning water supply availability would remain significant and unavoidable. As can be seen from these statements, the above conclusions are not premised on the assumption that the 6,600 AFY allocation from the Agreement either represents the baseline condition or the safe yield from the affected aquifers, on which to base the Project’s water supply analysis, as falsely asserted by commenter.”

FSEIR p. 11.4-1027, emphasis added.

First, LandWatch did not suggest, as the FSEIR states, that the DSEIR finds impacts less than significant as long as the Project itself does not use 6,600 afy. LandWatch objected that “the DEIR assumes that as long as the Project does not exceed its allocation of a portion of the 6,600 ‘entitlement’ there will be no significant water supply impacts.” PO 208-22.

Second, the response simply ignores the fact that the sub-allocations to the City and the County that will not be exceeded until Phase 4 represent portions of the 6,600 afy allocation and that the DSEIR clearly identifies exceeding the 6,600 afy allocation as the basis for a significant impact. For example, in discussing the rationale for its conclusion that project-specific impacts are less than significant through Phase 3 but not after that, the DSEIR explains that “the Ord Community is allocated 6,600 AFY of groundwater” and that “[t]he project would only use groundwater that is within the MCWD’s existing allocation.” DSEIR, p. 4.8-34; *see* DSEIR, p. 4.9-9 (identifying the 1993 Annexation Agreement as the source of this allocation); 4.19-4 to 5 (explaining that the groundwater allocation by jurisdiction is based on FORA’s sub-allocation of the 6,600 afy allocation

to the Ord Community); *see also* FSEIR, p. 11.4-1027 (“sufficient water supplies cannot be assured to Phases IV-VI at this time, despite implementation of feasible mitigation (Mitigation Measure W-1); therefore, impacts concerning water supply availability would remain significant and unavoidable”)

Indeed, if exceeding the 6,600 afy allocation is not the basis on which the SEIR identifies a significant cumulative impact, then the SEIR fails to provide any clear threshold for that conclusion. The FSEIR itself confirms that “groundwater supply is determined by the allocations and sub-allocations shown in DSEIR Tables 4.19-3 and 4.19-4.” FSEIR p. 11.4-1027. These tables clearly indicate that the groundwater supply to the Ord Community is 6,600 afy. DSEIR, p. 4.19-4.

2. The SEIR’s assumption that the project’s Phase 1-3 impact is less than significant because it is within the 6,600 afy allocation is not supported by analysis in the SEIR and is not accurate.

It is clear that the SEIR assumes that 1) there will be no significant cumulative impact from all BRP projects taken together as long as their combined water use is less than 6,600 afy, and 2) the Project itself will not make a considerable contribution to a significant cumulative impact as long as its water use does not exceed the portion of that 6,600 afy that has not been allocated to other projects.

Because the SEIR assumes that there would be no significant cumulative impact (and no considerable contribution to a significant cumulative impact) as long as Fort Ord projects stay within the 6,600 afy entitlement, it fails to consider the possibilities that, even if the 6,600 afy threshold is not crossed, 1) there is already a significant cumulative impact from existing pumping, 2) that increased pumping from all projects including Monterey Downs in the future may result in a significant cumulative impact, and 3) increased pumping for the Monterey Downs project may be a considerable contribution to a significant cumulative impact.

In fact, the SEIR’s conclusions that there is no significant cumulative impact as long as total Fort Ord pumping stays within 6,600 afy and that there is no considerable contribution to such an impact if the project does not exceed its sub-allocation of that 6,600 afy are legally flawed and factually unsupported.

As the California Supreme Court has explained, the “ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (“*Vineyard*”) (2007) 40 Cal.4th 412, 434 (emphasis in original). The SEIR gets this exactly wrong, focusing on whether there is a water source (i.e., a portion of the 6,600 afy allocation) for the project instead of discussing the impact of using that water source.

As Mr. Parker explains, the existence of the 6,600 afy allocation to Fort Ord does not establish that additional pumping within that 6,600 afy would have not significant impact. Mr. Parker demonstrates the following:

- The BRP Program Environmental Impact Report (“PEIR”) did not assume that 6,600 afy could be pumped without impact. That document expressly provided that pumping within this allocation might in fact cause additional seawater intrusion, and it required specific mitigation that was intended to avoid this outcome. This includes the duty to determine safe yield and to accelerate the provision of additional water supply if groundwater pumping were unable to supply 6,600 afy without causing further seawater intrusion. BRP PEIR, pp. 4-49, 4-53 to 4-54.
- In fact, even though the allocated 6,600 afy has not yet been pumped, seawater intrusion has been exacerbated by cumulative pumping since the BRP PEIR was certified (e.g., another 2 miles advance of the seawater intrusion front) and will be exacerbated in the future by any additional pumping, including pumping to support the Project, whether from the 180-foot, 400-foot, or 900-foot aquifers.

Nor does the purported “reliability” of the water supply demonstrate that its use is without significant impacts. Mr. Parker demonstrates the following:

- The fact that the capacity of the Salinas Valley Groundwater Basin (“SVGB”) is large enough to smooth out year-to-year climatic variations does not mean that this pumping does not deplete the aquifer over time. In fact, an ongoing annual average rate of depletion of the Salinas Valley Groundwater Basin since the 1930’s has caused more than 5 miles of seawater intrusion. Thus, the groundwater supply may be “reliable” only in the sense that there would be available water in normal, single, and multiple dry years, the analytic periods required by the Water Code for an urban water management plan. But using that water exacerbates an overdraft condition and exacerbates seawater intrusion.
- The claim in MCWD’s WSA and 2010 UWMP that the Salinas Valley Water Project (“SVWP”) ensures a “reliable supply” in the sense of a “no impact” supply is not accurate. The Salinas Valley Water Project’s 2002 modeling assumptions for cumulative demand have not proved accurate. Demand substantially exceeds the levels at which the Salinas Valley Water Project modeling assumed seawater intrusion would be controlled. The Monterey County Water Resources Agency (“MCWRA”) now admits that the Salinas Valley Water Project will not halt seawater intrusion and that additional projects are needed. The most recent comprehensive report on the state of the Salinas Valley Groundwater Basin indicates that existing pumping from the basin as a whole is not sustainable. The report documents that the safe or sustainable yield of the Pressure Subarea, the subarea from which the project would draw its

water, is only 110,000 to 117,000 afy, but groundwater pumping exceeds this yield by about 12,000 to 19,000 afy.

- The fact that seawater intrusion has not been detected yet in the 900-foot aquifer does not mean that pumping the 900-foot aquifer is without impact. Existing stratigraphy and modeling show that pumping the 900-foot aquifer will induce seawater intrusion in the upper aquifers, i.e., the 180-foot and 400-foot aquifers. And pumping the 900-foot aquifer may lead to seawater intrusion in the 900-foot aquifer through either of two routes: a direct hydraulic connection with the bay or through inter-aquifer transfer. The SEIR fails to address this, despite LandWatch comments asking for just this information.

3. 6,600 afy does not constitute baseline use.

It is clear that the 6,600 afy allocation does not represent baseline pumping. Thus, the City may not simply assume that pumping within the 6,600 allocation is not a new impact.

First, in response to LandWatch's comments, the FSEIR denies that 6,600 afy is intended to represent either a baseline or safe yield. FSEIR, p. p. 11.4-1027.

Second, in response to LandWatch's request that the SEIR actually identify baseline use (PO 208-10, 208-14), the FSEIR references Master Response 11.3.9 and the discussions in the DSEIR sections 4.8 and 4.19. FSEIR, pp. 11.4-1022-1023. The FSEIR's Master Response 11.3.9 identifies baseline conditions for MCWD's Fort Ord area as the 2015 consumption of 1,650 afy (of which total the City was using 505 afy and the County 55 afy). FSEIR, p. 11.3-9. Section 4.19 of the DSEIR reports baseline pumping in the Ord Community Service Area from 2001 to 2010 as 2,311 afy, based on the MCWD Water Supply Assessment. DSEIR, p. 4.19-1 to 4.19-2. (Section 4.8 of the DSEIR reports pumping capacity and planned future pumping, but not baseline pumping. DSEIR, pp. 4.8-8 to 4.8-10, 4.8-33 to 4.8-35.) Regardless whether baseline pumping is assumed to be the 1,650 pumped in 2015 or the 2,311 afy average from 2001 to 2010, it is clear that the baseline is not 6,600 afy.

Third, the average pumping at the time that Fort Ord was in use by the Army was never 6,600 afy. That amount represents a single peak year pumping in 1984. The 1993 Army/MCWRA agreement reports that average pumping from 1988-1992, the period that brackets the 1991 closure decision, was about 5,200 afy. Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c.

Fourth, the BRP PEIR does not identify 6,600 afy as the baseline use. The discussion of water supply in the section captioned "environmental setting" references the Army/MCWRA agreement that "6,600 acre feet per year (afy) of water is available from the Salinas Valley groundwater basin for Former Fort Ord land uses, provided that

such provisions do not aggravate or accelerate the existing seawater intrusion." BRP PEIR, p. 4-49. However, the discussion in this section does not identify any prior pumping amounts, and a reference to an agreement regarding future pumping does not even purport to identify historic baseline pumping. As Mr. Parker explains, the BRP PEIR provides that mitigation would be required for any pumping that would lead to an increase in seawater intrusion, even if this occurs before the 6,600 afy allocation is pumped. The BRP PEIR's discussion of the environmental setting with respect to water supplies identifies the 6,600 afy figure as the allocation in the MCWRA/Army agreement, not as baseline use. The discussion expressly provides that this allocation is available only "provided that such provisions do not aggravate or accelerate the existing seawater intrusion." BRP PEIR, p. 4-49.

Fifth, if the BRP PEIR adopts any baseline figure for Salinas Valley Groundwater Basin pumping on the Former Fort Ord, that figure is not 6,600 afy. The figure may be the 5,100 afy average pumping for the 4 to 5 years immediately prior to 1991, based on the Army's NEPA documents. In Section 1.2.2, Baseline Determination, the BRP PEIR expressly adopts the Army's NEPA document baseline: "As with the Army's FEIS and DSEIS, this EIR determines whether the proposed project may have a significant effect on the environment based on physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." BRP PEIR, p. 1-3. The BRP PEIR states that this approach "complies with Section 21083.8.1 of the Public Resources Code and utilizes the extensive research already conducted for the Army's NEPA documents, which use the same baseline year." *Id.* Section 21083.8.1 permits a reuse plan EIR or EIS to rely on conditions at the time of the closure decision as a baseline provided that certain procedures are followed.²

The BRP PEIR then identifies the specific NEPA documents that were used to determine the Environmental Setting for water supply analysis. BRP PEIR, pp. 1-3, 1-10 (Table 1.9-1). These include the Army's December 1995 Draft SEIS, the Army's June 1993 Final EIS Volume 1, and the Army's April 1992 "*Other Physical Attributes Baseline Study of Fort Ord, California*." These documents identify the baseline water use from the Salinas Valley Groundwater Basin as 5,100 afy, not as 6,600 afy, as follows:

² These procedures include circulation of proposed baseline conditions to affected agencies "prior to circulating a draft EIR" followed by a public hearing at which "the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions." Guidelines, § 15229(a)(1), (2). Although the BRP PEIR states that it availed itself of the Public Resources Code § 21083.8.1 baseline provisions and that baseline conditions are as of the September 1991 closure decision (BRP PEIR p. 1-3), there is no evidence that FORA actually followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify baseline water use conditions in a document circulated before the PEIR and to state an intent to adopt that as the baseline. See FORA, Resolution 97-6, June 13, 1997 (Certifying BRP PEIR and discussing proceedings and hearings). CEQA does not authorize FORA to rely on the Army's prior compliance with these procedures, if in fact the Army did comply.

- The 1996 Final SEIS states that “[a]s reported in the final EIS (Volume 1, page 4-56), average water demand on Fort Ord was 5,100 acre-feet (af) during 1986-1989. Water use has declined in recent years with the decrease in the number of personnel living on and occupying the base. Annual water use was 5,634 af in water year 1992, 3,971 af in 1993, and 3,235 af in 1994.”³
- The June 1993 Final EIS states that “[a]nnual water consumption decreased from a high of 6,600 acre-feet in 1984 to an average of 5,100 acre-feet during 1986-1989.”⁴ Table 4.5-2 identifies 5,100 afy as the average pumpage for Fort Ord.⁵
- The April 1992 *Other Physical Attributes Baseline Study of Fort Ord, California*, provides a table of annual pumping, from which it is apparent that average annual pumping from 1986-1989 is 5,083 afy and the average from 1986-1990 is 5,126 afy.⁶ That 1992 report identified declining water use from 1980 to 1990, except for the single year 1984.⁷

In sum, if the Army actually followed the procedures of Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to adopt a baseline figure and if FORA also complied with those procedures, then the baseline water use was not 6,600 afy but only 5,100 afy. The outlier 6,600 afy figure from 1984 could not have been used as a baseline because it does not represent the “physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991).” BRP PEIR, p. 1-3; see Public Resources Code § 21083.8.1(c).

Sixth, even if FORA or the Army had followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify a baseline condition for water, they were required to “state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process.” Public Resources Code, § 21083.8.1(c)(C). The BRP PEIR does explain how the 6,600 afy figure is to be integrated into its analysis and mitigation of water supply impacts. BRP PEIR, pp. 4-49, 4-53 to 4-54. And that discussion does not indicate an intent to treat 6,600 afy as a baseline condition within which there is no significant impact, because it requires mitigation even if the 6,600 afy allocation is not pumped in

³ Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, p. 4-11, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538/Section_4.pdf. The quote from the Final SEIS is of the unchanged text of the 1995 Draft SEIS.

⁴ Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348/Section_4/section_4.5.pdf.

⁵ *Id.* at 4-59.

⁶ US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California*, April 1992, p. 1-6, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202/Section_1.pdf.

⁷ *Id.* at 1-6, 1-14.

full. CEQA does not permit the imposition of mitigation unless there are significant impacts. Guidelines, § 15126.4(a)(3). Thus, treating 6,600 afy as a baseline “no impact” level is inconsistent with the fact that BRP PEIR repeatedly states that use of the 6,600 afy allocation is only to be permitted if it does not contribute to seawater intrusion and that mitigation may be required even if water use does not rise to 6,600 afy. See BRP PEIR, pp. 4-49, 4-53 to 4-54.

And the Army’s EIS also makes clear that 1) there is no categorical right to pump 6,600 afy, and 2) even the right to pump up to 5,200 afy is subject to a no-harm condition:

MCWRA will not object to Fort Ord/POM Annex withdrawal from the basin of up to 6,600 af/yr, provided that no more than 5,200 af/yr are withdrawn from the 180-foot aquifer and 400-foot aquifer and that such withdrawals do not threaten to aggravate or accelerate the existing seawater intrusion problem.⁸

Seventh, Public Resources Code, § 21083.8.1(c)(A) provides that “[p]rior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement.” The BRP PEIR does in fact require further analysis of physical conditions than the analysis provided in the EIR. For example, Program C-3.1 requires determination of the safe yield of the portion of Fort Ord overlying the Salinas Valley Groundwater Basin “to determine available water supplies.” BRP PEIR, p. 4-55. Program C-3.2 require further investigation of seawater intrusion in the context of the Salinas Valley Basin Management Plan and measures to prevent further intrusion. Again, these provisions are simply inconsistent with treating 6,600 afy as a permissible baseline use that would not constitute a significant impact.

4. 6,600 afy is not a safe yield.

Safe yield or sustainable yield is defined as “the amount of groundwater that can be pumped annually on a long-term basis without causing undesirable results.”⁹ The FSEIR admits that 6,600 afy does not represent a safe yield figure for pumping to support Fort Ord reuse. FSEIR, p. 11.4-1027.

⁸ Dept. of the Army, Final Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse, June 1996, p. 4-11, emphasis added, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538/Section_4.pdf.

⁹ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348/Section_4/section_4.5.pdf.

The Final EIS for the Fort Ord base closure and reuse also acknowledges that 1) safe yield must be determined for the entire groundwater basin and 2) pumping for Fort Ord already exceeded safe yield as of 1993:

The concept of safe yield is meaningful only when applied to an entire groundwater basin. The amount of yield available to individual users within the basin depends of the amounts and locations of pumping by other users. In the Salinas Valley groundwater basin, present pumping in and near Fort Ord exceeds safe yield in the 180-foot and 400-foot aquifers, as indicated by continuing seawater intrusion and water levels below sea level in those aquifers. This indicates that the yield from the 180-foot and 400-foot aquifers for Fort Ord is less than its present pumpage, assuming that pumping by other users remains unchanged.¹⁰

Base Reuse Plan Hydrology and Water Quality Program C 3-1 requires that Seaside work with MCWRA to determine safe yield to determine available water supplies:

The City shall continue to work with the MCWRA and the MPWMD to estimate the safe yield in the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and the Seaside groundwater basins to determine available water supplies.

BRP PEIR, p. 4-55. There is no evidence in the record that Seaside has in fact worked with MCWRA to determine safe yield for the Fort Ord area. LandWatch's DSEIR comments specifically requested a water balance analysis showing sustainable yields for the 180, 400, and 900 foot aquifers, i.e., the amounts that could be pumped without mining or depleting the aquifers. PO 208-10, 208-14. The FSEIR did not provide this information. FSEIR, pp. 11.4-1023, 11.3-7 to 11.3-11.3-17.

Furthermore, as the Final EIS for the Fort Ord base closure and reuse indicates, the concept of safe yield only makes sense for a basin as whole, not just the Fort Ord area. MCWRA's most recent determination of the sustainable or safe yield for the Salinas Valley Groundwater Basin and the Pressure Subarea indicates that pumping has been and remains in excess of safe yield. In particular, the 2016 State of the Salinas Valley Groundwater Basin report indicates that the safe yield of the Pressure Subarea is about 110,000 to 117, 000 afy and that existing pumping already exceeds this yield by about 12,000 to 19,000 afy.¹¹ The safe yield for the Salinas Valley Groundwater Basin as a whole (the four subareas constituting Zone 2C, the assessment area for the Salinas

¹⁰ Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57.

¹¹ MCWRA, State of the Salinas Valley Groundwater Basin, 2016, p. 4-25, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

Valley Water Project) is from 499,000 to 506,000 afy, and existing pumping already exceeds this yield by 17,000 to 24,000 afy.¹²

Instead of providing current information about safe yield for the basin, the FSEIR recites the out-of-date claim in the MCWD 2010 UWMP that the Salinas Valley Water Project is expected to balance the basin by resulting in a "net increase in storage of about 6,000 ac-ft annually." FSEIR, p. 11.4-1025. As Mr. Parker demonstrates, this claim is simply unsupported in light of current information:

- The Salinas Valley Water Project EIR's modeling analysis claimed only that the Salinas Valley Water Project would balance the basin on the basis of 1995 demand levels, of about 473,000 afy.
- The Salinas Valley Water Project modeling projected that basin-wide demand would decline from 1995 to 2030 from 473,000 afy to 443,000 afy; however demand has averaged over 500,000 afy since 1995.
- MCWRA has acknowledged that the demand assumptions used for the Salinas Valley Water Project modeling did in fact understate basin-wide demand.
- MCWRA now acknowledges that additional future groundwater management projects, in addition to the existing projects such as the Salinas Valley Water Project, are required to mitigate and avoid future seawater intrusion.
- MCWRA's current analysis, based on 2013 modeling by Geoscience, calls for using 130,000 afy of surface water from the Salinas River to deliver additional water for coastal use, above and beyond the amount that can be provided by the Salinas Valley Water Project, in order to reduce coastal pumping and to establish the necessary groundwater elevations to prevent seawater intrusion.
- There is no certainty that seawater intrusion will be mitigated or avoided because the projects that are required to deliver this additional water are not committed, funded, or environmentally reviewed.

The FSEIR's continued reliance on the out-of-date claims for the Salinas Valley Water Project made in the MCWD 2010 UWMP are unaccountable in light of the MCWRA's open and public work on the continuing problem of seawater intrusion since 2010. The City of Seaside is required by BRP Hydrology and Water Quality Policy C-3 to "work with" MCWRA "to estimate the current safe yield" and to "participate in implementing measures to prevent future intrusion." DSEIR, p. 4.8-20. It is difficult to believe that the City has honored this policy obligation if it remains ignorant of MCWRA's current analysis of the seawater intrusion problem.

¹² *Id.* at 4-26.

Regardless, the City cannot claim that additional pumping in the Fort Ord area up to 6,600 afy would be without impact on the grounds that 6,600 afy represents a safe yield level for Fort Ord pumping.

5. The SEIR must provide an adequate and independent cumulative analysis of water supply impacts because it may not rely on tiering from the BRP PEIR.

Changed circumstances, new information, and changes in the BRP itself that have occurred since the BRP PEIR require reexamination of the cumulative analysis and preclude tiering. Accordingly, the City is obliged to prepare a new water supply analysis and not to tier from the water supply analysis in the BRP PEIR.

As LandWatch has objected, the SEIR may not tier from the BRP PEIR, at least with respect to the water supply discussion. Public Resources Code § 21094(b) bars tiering if the Project is not consistent with the plan for which the first tier EIR was prepared. The SEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policies B-1 and B-2, which policies require additional water supplies and prohibit approval of a development project without an assured long-term water supply. DSEIR, p. 4.9-10; FSEIR 14.4-1020.

Public Resources Code § 21094(b) also bars tiering if the project is not consistent with the applicable General Plan. The project is inconsistent with Seaside's General Plan, as is evident from the need for substantial amendments to that General Plan. The FSEIR's argument that the Project would be consistent with the General Plan after amendment would simply read this section of Public Resources Code § 21094(b) out of the statute because the State Planning and Zoning law bars approval of projects that are inconsistent with the General Plan. Furthermore, if the Project is inconsistent with the General Plan, there can be no assurance that its impacts were adequately assessed by the General Plan EIR.

Most problematically, Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, there are changed circumstances and new information that bar reliance on the out-of-date cumulative analysis.

First, seawater intrusion has advanced significantly since the 1997 BRP PEIR, constituting a substantially more severe significant effect than shown in the BRP PEIR. See Guidelines § 15162(a)(3)(B) ("Significant effects previously examined will be substantially more severe than shown in the previous EIR"). Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[. . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and could not have been known" at the time of the BRP PEIR.

Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by BRP policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the BRP project itself. Public Resources Code § 21166(a). Indeed, the FSEIR admits that there have been substantial changes within the meaning of Public Resources Code § 21166. FSEIR at 14.4-1017 (acknowledging that the "various changes in the environmental and/or regulatory setting over the years" requires an SEIR). One of the admitted change in circumstances or changes in the BRP project is the "uncertainty" regarding "previously identified long-term water supply options," i.e., the options identified by the BRP PEIR as the purported basis for finding impacts less than significant. DSEIR p. 4.8-47. The DSEIR acknowledges that, in light of this uncertainty, it is no longer possible to find, as the BRP PEIR found, that the project's "adherence to the BRP policies and programs (as outlined below) and additional mitigation measures" would adequately mitigate impacts for all phases of the project.

The FSEIR admits that "MCWD has not implemented their long-term water supplies options to date" but apparently offers the excuse that this is "because the reuse of the former Army base slowed down considerably during the economic downturn beginning in 2008." FSEIR p. 11.4-1026. This misinterprets the BRP PEIR's water supply policies and mitigation requirements by implying that there is no obligation to provide any additional supply until 6,600 afy has been allocated to approved development projects. As discussed above and in Mr. Parker's comments, the BRP PEIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from the Salinas Valley Groundwater Basin to support uses on Fort Ord without causing further seawater intrusion, and its policies and mitigation do not permit the agencies to delay a solution if seawater intrusion persists. BRP PEIR, pp. 4-49, 4-53 to 4-54. As Mr. Parker demonstrates, seawater intrusion has advanced another two miles since the BRP PEIR was certified.

Case law is clear that additional analysis of water supply impacts is required under section 21166 when new information shows more severe impacts or the planned water sources are not implemented timely:

To the extent that a subsequent subdivision proposal relies on different water sources than were proposed in the specific plan it implements, or the likely availability of the intended water sources has changed between the time of the specific plan and the subdivision application (or more has been learned about the effects of exploiting those sources), changes in the project, the surrounding circumstances or the available information would exist within the meaning of section 21166, requiring additional CEQA analysis under that section . . .

Vineyard, supra, 40 Cal.4th at 438; see also *id.* at 431, n. 7. Here, the new information about the severity of cumulative impacts, changes to circumstances, and to the project

itself with regard to water supply are subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 and therefore tiering, at least for the water supply analysis, is not permitted. The SEIR erred by not providing a new analysis of water supply impacts, in particular, a new cumulative analysis.

6. Even if tiering were proper, the City must assess whether the project makes a considerable contribution to a significant cumulative effect.

Finally, even if tiering were permitted, the City must still assess whether the incremental effects of the Project would be considerable when viewed in the context of past, present, and probable future projects.” Guidelines, § 15152(f)(2). We note that the California Supreme Court has clarified that additional review of a subsequent project may be required in a tiering context even where 21166 does not apply:

The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIRs.” (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then “CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.” (*Ibid.* citing Pub. Resources Code, § 21094, subs. (a), (c).)

Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist. (2016) 207 Cal. Rptr. 3d 314, slip op. at p. 11 (emphasis added).

The determination whether a project’s effects are a considerable contribution to a significant cumulative impact requires an acknowledgement of the existence of that cumulative impact and assessment of its severity because “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” *Communities for a Better Environment v. California Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 120. Here, as discussed below, the SEIR simply fails to provide this assessment because it fails to provide an adequate cumulative analysis.

7. The SEIR fails to provide an adequate cumulative analysis of water supply impacts because it fails to acknowledge the existence of a significant regional cumulative impact and improperly limits the scope of cumulative analysis to the BRP area.

The DSEIR’s cumulative analysis of water supply impacts is inadequate because 1) it is limited to the area subject to the BRP PEIR, i.e., former Fort Ord, and 2) it fails to consider in the first instance whether there is a significant cumulative impact from cumulative regional groundwater pumping. DSEIR 4.8-47, 4.19-30 to 4.19-32. Furthermore, to the extent that the FSEIR implies that cumulative impacts may be ignored because the project’s contribution is a relatively small part of basin-wide pumping, the FSEIR is legally and factually in error.

By way of background, cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project’s own effect is a considerable contribution. Guidelines, § 15130(a); see Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be “individually minor but collectively significant.” *Communities for a Better Environment v. California Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- “define the scope of the area affected by the cumulative effect,”
- explain “the geographic limitation used,”
- identify the past, present, and future projects “producing related or cumulative impacts” or provide projections of the conditions “contributing to the cumulative effect,”
- provide a “summary of the expected environmental effects to be produced by those projects.” Guidelines, § 15130(b)(3), (4).

In step two, if there a significant cumulative effect, the agency must determine whether the project’s contribution is “considerable,” i.e., “whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect.” *CBE v. CRA, supra*, 103 Cal.App.4th at 119.

- a. The DSEIR errs by purporting to tier from the BRP PEIR but failing to summarize its cumulative groundwater analysis and conclusions.

Notably, the geographic scope of the BRP PEIR’s cumulative analysis was regional, including the Salinas Valley Groundwater Basin as a whole, and it found significant unavoidable cumulative impacts. BRP PEIR, p. 5-5. The DSEIR does not acknowledge this; indeed, despite its claim that it tiers from the BRP PEIR, the DSEIR fails even to summarize the regional cumulative analysis from the BRP PEIR. As

discussed above, tiering is not appropriate here. However, if it were proper, then the DSEIR would be inadequate because it fails to summarize the discussion.

b. The cumulative analysis is inadequate because it fails to justify limiting the geographic scope of analysis to the BRP area.

There is no justification for limiting the geographic scope of the cumulative analysis to the BRP area (former Fort Ord) because the seawater intrusion and aquifer depletion impacts are due to pumping throughout the Salinas Valley Groundwater Basin.

The FSEIR claims that “[t]he geographic scope of the area affected by the Project’s cumulative effect is the former Fort Ord (BRP boundaries).” FEIR 11.4-1024. This is not true. Nor is the FSEIR’s claim true that the area affected by the Project’s impact limited to the MCWD service area. *Id.* As Mr. Parker explains, the area that would be affected by project pumping includes the Pressure Subbasin and the Salinas Valley Groundwater Basin as a whole since these areas are hydraulically interconnected.

More importantly, CEQA does not define the geographic scope of cumulative analysis based on the area affected but based on the location of the cumulative projects that cause effects in the same area that the project causes effects. The Guidelines require identification of projects “producing related or cumulative impacts” or projections of conditions “contributing to the cumulative effect.” Guidelines §15130(b)(1). Case law is clear that it is improper to omit relevant past, present, and future projects that create related impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214 (failure to consider all relevant projects in its cumulative impact analysis is an “overarching legal flaw”); *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430-432 (failure to justify omission of offshore emissions is failure to comply with CEQA’s legal mandates); *San Joaquin Raptor Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739-741 (omission of other known development projects).

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724 the court invalidated an EIR’s cumulative air quality impact analysis not because its conclusions were unsupported by substantial evidence, but because the agency there – as here – had failed to conduct the analysis in the legally required manner by omitting consideration of all “past, present, and reasonably foreseeable probable future projects.” *Id.* at 720, 724. The court rejected the agency’s argument that it must defer to any substantial evidence within an EIR to support to support of the scope of cumulative analysis. *Id.* at 721-724. The court held that when an EIR’s analysis fails to consider required factual information, the error is one of law, not fact, because the exclusion of relevant information improperly burdens the public to provide the relevant analysis. *Id.* at 724.

Again, as Mr. Parker explains, it is indisputable that projects and pumping outside the BRP area affect aquifer depletion and seawater intrusion within the BRP area. For

example, this is acknowledged by the BRP PEIR (at p. 5-5, acknowledging that regional growth could cumulatively affect aquifers and cause further overdraft and seawater intrusion), the MCWD 2010 UWMP (at p. 29, acknowledging that basin-wide pumping causes declining water levels in Pressure Subarea), and the Army’s 1993 FEIS (at p. 4-57, acknowledging that the available yield without seawater intrusion depends on the amount of pumping throughout the basin).

Responding to Comment PO 208-16 objecting to the truncated scope of cumulative analysis, the FSEIR asserts that it has simply made the choice to rely on a summary of projections and has chosen the BRP as the source of that summary. FSEIR p. 11.4-1024. However, reliance on a summary of projections in an adopted plan is impermissible if there is evidence that the geographic scope is drawn too narrowly. *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1216-1217.

The FSEIR claims that its response PO 208-5 explains why the geographic scope was limited to the BRP. FSEIR pp. 11.4-1020, response PO 208-4, and p. 11.4-1023, response PO 208-15. However, response 208-5 does not justify the limitation of the geographic scope. That response purports to address objections that the DSEIR inadequately identifies and characterizes the pumping source aquifer(s), fails to identify other wells and cumulative pumping in the 900-foot aquifer, and fails to discuss recharge, saline contamination and sustained yield of the 900-foot aquifer. Response 208-5 makes the following points, which do not even purport to justify the geographic limitation:

- It claims it is speculative to state whether the 180-foot, 400-foot, or the 900-foot aquifer would supply Project water since they are connected hydraulically and the 180-foot and 400-foot aquifers are recharging the 900-foot aquifer. FSEIR 11.4-1020. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the 900-foot aquifer is “in reality a series of aquifers, not all of which are hydraulically connected.” FSEIR p. 11.4-1020. This claim, which on its face contradicts the claim that all of the aquifers are hydraulically connected, does not explain why the scope of cumulative analysis is limited to the BRP area.
- It claims that the deep aquifer (the 900-foot aquifer) is not experiencing seawater intrusion. FSEIR p. 11.4-1021. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It reiterates that the threshold of significance is substantial depletion of groundwater supplies or interference with recharge such that there would be a net deficit in aquifer volume or lowering of groundwater table level. FSEIR p. 11.4-1020. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It states that mitigation will be required, that the impact will be significant and unavoidable for phases 4-6, and that a statement of overriding considerations will be required. FSEIR p. 11.4-1020 to 1021. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the DSEIR relied on the MCWD UWMP, which discussed the Salinas Valley Groundwater Basin. This claim admits that the relevant geographic scope of cumulative analysis should be the Salinas Valley Groundwater Basin.
- It claims that there is adequate pumping capacity, that the project would be required to submit proof of adequate water supply before development is allowed, that the project does not overlay areas subject to seawater intrusion, and that all of this means that it will not cause any increase in seawater intrusion. FSEIR p. 11.4-1021. This claim, which on its face is inconsistent with the well-established fact that all Salinas Valley Groundwater Basin pumping, and especially coastal pumping, is causing an increase in seawater intrusion, does not in any event explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the Project will not interfere with recharge. FSEIR p. 11.4-1021 to 1022. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.
- It states that the Ord area is limited to 6,600 afy from the Salinas Valley Groundwater Basin and that not all of this has been allocated. FSEIR p. 11.4-1022. This claim admits that the relevant geographic scope of cumulative analysis should be the Salinas Valley Groundwater Basin.
- It claims that the DSEIR's analysis is based on the 2010 UWMP and that therefore "the details concerning aquifer operations do not affect the DSEIR's analysis," which is "considered sufficient to allow decision-makers to make an informed decision concerning the project's impacts." FSEIR p. 11.4-22. Again, this claim does not address the relevant geographic scope of cumulative analysis.

In sum, the SEIR is inadequate because it fails to justify the geographic limitation of its cumulative analysis to the BRP area. And the SEIR's cumulative analysis is inadequate because it fails to list projects "producing related or cumulative impacts" or to provide a

summary of projections of conditions "contributing to the cumulative effect." Guidelines §15130(b)(1).

- c. Failure to consider whether there is a significant cumulative impact from cumulative regional groundwater pumping is legally erroneous; failure to identify such an impact is a critical factual omission.

As noted, cumulative analysis may require two distinct determinations: whether there is a significant cumulative impact from all relevant projects and, if so, whether the project under review makes a considerable contribution to that impact.

Nowhere in a step-one analysis does the DSEIR consider whether, much less acknowledge that, there is a significant cumulative impact caused by groundwater pumping from regional projects or, alternatively, conclude that there is no significant cumulative impact from regional projects. Indeed, the DSEIR erroneously fails to distinguish between the single-step analysis required for a project-specific significance determination and the two-step analysis required for cumulative significance determinations. Instead, the DSEIR offers essentially the same analysis and conclusions for both its project-specific and cumulative analyses of groundwater supply impacts. It finds both the project specific impacts and the cumulative impacts to be less than significant for Phases 1-3, because an unallocated portion of the 6,600 afy allocation is available, and unavoidably significant for Phases 4-6, because additional sources of water are not certain. DSEIR, pp. 4.8-34 to 4.8-35 (project-specific groundwater impact), 4.8-47 to 4.8-48 (cumulative groundwater impact), 4.19-31 to 4.19-32 (project-specific water supply impact), 4.19-24 to 4.19-26 (cumulative water supply impact). The cumulative analysis does not even purport to provide the required two-step analysis that would include a step-one determination whether there is a significant cumulative impact and a step-two determination whether the project makes a considerable contribution to it.

Again, this error reflects the fundamental confusion of the question as to whether there is an available water supply with the question of whether there will be impacts from using that supply.

Here, there is overwhelming evidence that a step-one determination must conclude that there is a significant regional cumulative impact from groundwater pumping by past, present, and reasonably foreseeable future projects, including the Monterey Downs project. The evidence, including Mr. Parker's comments, shows that

- there has been and still is an ongoing significant cumulative impact to groundwater resources in the form of declining groundwater levels and seawater intrusion due to over-pumping of groundwater;
- this impact is due to basin-wide pumping, not just pumping within the BRP area;
- this impact has not been avoided by existing groundwater management projects;

- there are no committed, funded groundwater management projects that will avoid this impact in the foreseeable future; and
- the impact will be aggravated by increases in pumping to support future development, including projected increases in agricultural pumping and new urban development such as the Monterey Downs project.

Given this evidence, and the complete lack of analysis of relevant cumulative conditions in the Monterey Downs SEIR, the omission of an adequate cumulative analysis is prejudicial to informed decision making and public participation.

Furthermore, the SEIR presents no contrary evidence to support a step-one finding that there is no significant cumulative impact from cumulative groundwater pumping – an issue that the DSEIR simply fails to address. The lack of analysis precludes any step-one conclusion or finding that there is not a significant cumulative impact.

The lack of analysis also precludes any step-two conclusion that project's water demand does not constitute a considerable contribution to a significant cumulative impact. And, as discussed below, any implied approach to a step-two conclusion based on the relatively small percentage of basin pumping undertaken by MCWD or the fact that the pumping may be from the 900-foot aquifer would be based on a legally and factually erroneous approach to cumulative analysis.

- d. Any implication that pumping by MCWD is less than significant, or less than cumulatively considerable would be legally and factually flawed.

Responding to LandWatch's objections to the DSEIR's cumulative analysis, the FSEIR argues that agricultural water use consumes 95% of Salinas Valley Groundwater Basin water and that urban use consumes only 5%, and that the MCWD pumping is only 1% of total Salinas Valley Groundwater Basin pumping, apparently implying some kind of support for the DSEIR's conclusion that cumulative impacts for Phases 1-3 would be less than significant. FSEIR p. 11.4-1024 ("these details provide further clarification of the cumulative impacts associated with groundwater demand and supply . . ."). If the implication of this discussion is that the project does not make a considerable contribution to a significant cumulative impact, it is wrong as a matter of law and fact.

An EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* ("LAUSD") (1997) 58 Cal.App.4th 1019, 1025-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 117-118, 121. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,718, the Court rejected the agency's "ratio" theory that found impacts not to be a

considerable contribution merely because they were a relatively small percent of the total impact. *Id.* at 720. Because the relevant question was "whether any additional amount" of incremental impact "should be considered significant in light of the serious nature" of the problem (*id.* at 718), a valid determination whether a project's contribution is considerable must reflect the severity of the cumulative problem. "[T]he greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE v. CRA, supra*, 103 Cal.App.4th at 120. Thus, even an "individually minor" impact may be "cumulatively considerable." *Id.*; *see also* Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.

As Mr. Parker explains, it is irrelevant whether groundwater is used for agriculture or urban uses – it depletes the same basin. And the magnitude of existing pumping by MCWD or others is also irrelevant. What is relevant is whether marginal increases in pumping will be a considerable contribution in light of the severity of the overdraft and seawater intrusion problem. Because seawater intrusion is caused by the problem of overdraft, not by total pumping, the severity of the cumulative problem should be measured in terms of the size of the overdraft or the amount of induced seawater intrusion. Here, the basin as a whole and the Pressure Subarea are in overdraft and, as Mr. Parker explains, any additional pumping will induce seawater intrusion equal to about 75% of the volume pumped. Furthermore, coastal pumping is more problematic than inland pumping. Thus, as Mr. Parker explains, the project's 250 afy increase in pumping demand should be evaluated in light of the annual Pressure Subarea overdraft of 12,000 to 19,000 afy, not in relation to the 500,000 afy of total pumping in the Salinas Valley Groundwater Basin. Viewed in this light, and viewed in the light of the current recommendations by MCWRA that existing pumping be reduced in the Pressure Subarea, the project's marginal pumping demand is a considerable contribution.

And, in any event, the Monterey Downs SEIR does not address the legally relevant questions because it fails in the first instance to identify the severity of the cumulative problem and fails in the second instance to consider the project's impact in light of that severity.

Any implication that the project's pumping is not a considerable contribution because it is small in comparison to total basin-wide pumping would make the same error as made in *Kings County* by focusing on the ratio of the project's pumping to the overall aquifer pumping or capacity and using these comparisons to "trivialize the project's impact" without putting Project demand in the context of the serious nature of the cumulative problem. *Kings County, supra*, 221 Cal.App.3d at 718. An EIR is legally inadequate if it is "focused upon the individual project's relative effects and omit[s] facts relevant to an analysis of the collective effect." *Id.* at 721.

Furthermore, it is clear that the FSEIR bases its significance conclusions solely on the availability of water supply, not the effects of using that supply or the relative magnitude of pumping. For example, despite the fact that the demand for Phases 1-3 is

approximately equal to the demand for Phases 4-6, the SEIR finds Phase 1-3 demand to have a less than significant impact and phase 4-6 demand to have an unavoidably significant impact.

Finally, the SEIR cannot be used to argue that project pumping would be less than a considerable contribution to significant groundwater impacts because some portion of that pumping would come from the 900-foot Aquifer, also known as the Deep Aquifer. Mr. Parker demonstrates, based on available stratigraphic analysis and modeling, that increased pumping from the Deep Aquifer will also cause depletion of the 180-Foot and 400-Foot Aquifers because those aquifers are the source of recharge to the Deep Aquifer. Mr. Parker also demonstrates that increased pumping from the Deep Aquifer will aggravate seawater intrusion to the 180-Foot and 400-Foot Aquifers. Increased pumping from the Deep Aquifer may deplete that aquifer and it may also induce seawater intrusion into the Deep Aquifer itself. Because the SEIR declined to discuss the relation of the 180-Foot, 400-Foot, and Deep Aquifers or to provide any assessment of impacts to the three aquifers in response to LandWatch's comments and questions, the SEIR provides no evidence to the contrary.

8. The SEIR's conclusion regarding phases 4-6 are not based on adequate analysis and the SEIR fails to discuss impacts from alternative water supplies.

As discussed, the SEIR errs by concluding without adequate analysis that water supply impacts for Phases 1-3 of the project would be less than significant and would not make a considerable contribution to a significant cumulative impact. The SEIR does acknowledge that supplying water for Phases 4-6 would be a significant unavoidable impact. However, the SEIR bases this conclusion solely on the fact that the Phase 4-6 water supply cannot be made available from the unallocated portion of the 6,600 afy allocation and that additional water supplies are uncertain, not based on any analysis of physical impacts on the environment from the water that is likely to be used by Phases 4-6.

Where a water supply is uncertain, an agency must identify alternative supplies and discuss the environmental impacts of tapping those sources. *Vineyard, supra*, 40 Cal.4th at 430, 431, 434. As LandWatch objected, the SEIR fails to provide any discussion of the environmental impacts of developing and providing alternative water supplies, such as the proposed desalinated or recycled water supplies. For example, the SEIR identifies the Regional Urban Water Augmentation Project ("RUWAP") and desalination as possible future water supply. DSEIR, pp. 4.19-7 to 4.19-9, 4.19-25 to 4.19-26; FSEIR pp. 11.3-13 to 11.3-15. However, despite LandWatch's request for a discussion of the environmental impacts of alternative supplies (PO 208-25), neither the DSEIR nor the FSEIR provide any information about these environmental impacts.

The FSEIR admits that "[s]ome of these water supply options were evaluated in past agency documents, as discussed in the DSEIR Section 4.9 [sic, 4.19], Water." However, nothing in the discussion of future water supplies in Section 4.19 even

mentions the potential environmental impacts of those water supply projects. DSEIR, pp. 4.19-7 to 4.19-9, 4.19-25 to 4.19-26.

Instead of making good-faith efforts to investigate and provide the available information about the environmental effects of alternative water supplies, the FSEIR states that "[b]ecause it is unknown at this time what those environmental impacts would be, the DSEIR concluded that the impact with the provision of water for phases IV through VI could be significant and unavoidable." FSEIR, p. 11.4-1028. The contention that the environmental impacts of the RUWAP project "are unknown at this time" is not true. MCWD has certified four separate environmental reviews of the RUWAP project from 2004 to 2016, including the September 2004 Final EIR, the October 2006 Addendum No. 1, the February 2007, Addendum No. 2, and the April 2016 Addendum No. 3.¹³ The SEIR could and should have discussed this available information, which it could have done by tiering and incorporation by reference. Furthermore, an agency may not simply label an impact unavoidably significant in order to dispense with analysis. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.

9. Significant new information since the DSEIR was released requires recirculation.

An agency must recirculate a draft EIR for public comments and responses when there is significant new information after the draft EIR is released but prior to certification. Guidelines, § 15088.5(a). Recirculation of a draft EIR for public comment and response is required where the record shows that a potentially significant impact, or the efficacy of mitigation, was not evaluated in the draft EIR. *Vineyard, supra*, 40 Cal.4th at 447-448 (potential impact to salmon); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 (water supply mitigation). The new information triggering the obligation to recirculate may appear in the FEIR or in post-FEIR material. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95; *Save our Peninsula Committee v. Monterey County Board of Supervisors* ("Save Our Peninsula") (2001) 87 Cal.App.4th 99, 131. The purpose of recirculation is to provide the public the same opportunity to evaluate the new information and the validity of the EIR's conclusions as it had for information in the draft EIR. *Save Our Peninsula, supra*, 87 Cal.App.4th at 131; *Sutter Sensible Planning v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* ("Laurel Heights II") (1993) 6 Cal.4th 1112, 1132.

¹³ Marina Coast Water District ("MCWD"), Notice of Determination, Regional Urban Water Augmentation Project, June 2, 2005; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 1, December 18, 2006; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 2, Feb. 24, 2009; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 3, April 19, 2016.

Here, significant new information includes (1) new information showing a new or more severe significant impact resulting from the project (Guidelines, § 15088.5(a)(1), (2); *Laurel Heights II*, *supra*, 6 Cal.4th at 1130) and (2) new information showing that the draft EIR was “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded” (CEQA Guidelines, § 15088.5(a)(4); *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052).

As discussed by Mr. Parker, the DSEIR relies on the MCWD Water Supply Assessment contention that the groundwater supply is “reliable,” which in turn relies on the contention in the MCWD 2010 UWMP that the Salinas Valley Water Project will result in an average annual basin-wide water surplus of 6,000 acre feet instead of an average annual water deficit.¹⁴ However, the contention that the Salinas Valley Water Project will balance the basin and prevent seawater intrusion is no longer tenable in light of significant new information that does not appear in the draft EIR. In addition to Mr. Parker’s comments this information also includes DWR findings, MCWRA groundwater studies, and MCWRA testimony cited by Mr. Parker, including for example:

- DWR, Critically Overdrafted Basins, January 2016 – identifying the Salinas Valley Groundwater Basin as critically overdrafted and therefore requiring an accelerated Groundwater Sustainability Plan under the Sustainable Groundwater Management Act.
- MCWRA, State of the Salinas River Groundwater Basin, January, 2015 – identifying existing pumping from the Basin as unsustainable and recommending pumping reductions in the Pressure Subarea from which this project proposes to increase pumping.
- MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013 – acknowledging the need for additional groundwater management projects to deliver water to replace coastal area pumping.
- Testimony of Robert Johnson, MCWRA, to Monterey County Planning Commission, Oct. 29, 2014 – acknowledging that the demand projections used for the Salinas Valley Water Project understated actual demand, that the Salinas Valley Water project would not be sufficient to halt seawater intrusion, and that additional groundwater management projects are needed.

This information demonstrates, contrary to the out-of-date 2010 UWMP relied upon by the DSEIR, that the Salinas Valley Water Project will not balance the basin hydrologically and will not halt seawater intrusion. Thus, the information demonstrates a new or more severe impact than disclosed by the DSEIR and demonstrates that the

¹⁴ See DSEIR, p. 4.8-34; MCWD, Water Supply Assessment and Written Verification of Supply for Monterey Downs Specific Plan, 2012, pp. 22-23; MCWD, 2010 UWMP, p. 53.

DSEIR was so fundamentally inadequate as to deny the public a meaningful opportunity for comment and response.

10. The SEIR fails to respond adequately to comments regarding water supply issues.

Responses in a final EIR to substantive comments on a DEIR must contain fact-based analysis. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (duty to provide “good faith, reasoned analysis in response”); Guidelines, § 15088(c) (“Conclusory statements unsupported by factual information will not suffice”). For example, in *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, an agency violated CEQA by providing only conclusory responses to comments. The court held the agency had a duty to address comments “in detail,” providing “specific factual information” as had been requested by the commenter. *Id.* at 359. Where comments seek omitted facts or analysis essential to a draft EIR’s conclusions, the failure to correct those omissions “renders the EIR defective as an informational document.” *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244 (failure to provide reasoned analysis in response to comments pointing out uncertainty of water supply).

An agency must provide specific information to support its conclusions as to the adequacy of water supplies. *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772 (insufficient to claim that “all available data” showed there was sufficient water supply without providing the data). In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (“SCOPE”) (2003) 106 Cal.App.4th 715, 722, responses to comments questioning a water supply analysis were inadequate because they failed to provide any facts, data, or estimates from the Department of Water Resources, the agency that would supply the water. Citing *Cleary*, *supra*, 118 Cal.App.3d at 357, the court explained:

Problems raised by the public and responsible experts require a good faith reasoned analysis in response. [Citation.] The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not “swept under the rug.”

Id. at 723.

As Mr. Parker explains, the FSEIR fails to provide good-faith reasoned analysis in response to LandWatch’s comments and questions regarding pumping from the 180-foot, 400-foot, and 900-foot aquifers under baseline and future conditions. See comment PO 208-5. The FSEIR fails to identify the studies cited by the DSEIR including the “recent stratigraphic analyses” that “have indicated” a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers. See comment PO 208-5. The FSEIR fails to respond adequately to LandWatch’s comments asking for an explanation of the DSEIR’s claims regarding the hydraulic connections between the 180-foot, 400-foot, and 900-foot

aquifers. See comment PO 208-6. The FSEIR fails to provide adequate responses to LandWatch's comments asking whether recharge to the 900-foot aquifer from the seawater-intruded 180-foot and 400-foot aquifers could contaminate the 900-foot aquifer, whether increased pumping in the 900-foot aquifer would increase this risk, and how much pumping from the 900-foot aquifer is sustainable. See PO 208-7 through 208-11.

As discussed above, the FSEIR fails to respond adequately to comments objecting to reliance on the 6,600 afy allocation as the basis to find impacts less than significant. See, e.g., comment PO 208-22. The FSEIR also fails to respond adequately to LandWatch's request for a discussion of the environmental impacts of alternative water supplies. See comment PO 208-25.

11. The SEIR fails to provide an adequate discussion of the effect of not building Phases 4-6.

Where mitigation includes the possibility of not building later phases of a project due to lack of water, an agency must discuss "the environmental impacts of curtailing the project before completion." *Vineyard Citizens, supra*, 40 Cal.4th at 444. Here, buildout of only part of the project has the potential to aggravate certain environmental impacts, but the SEIR fails to disclose this.

The FSEIR confirms that phases 1-3 are in fact disproportionately residential compared to full buildout of the project: building only phases 1-3 would yield 47% of the residential plan but only 26% of the jobs-generating commercial uses. FSEIR, p. 11.3-2.

An unbalanced jobs/housing ratio for the project would result in greater per capita impacts from transportation and transportation-related air pollutants and GHG emissions as residents would be required to travel to more distant jobs. It would also frustrate BRP and City policies related to jobs/housing balance and economic development. Evidence for this is as follows:

First, the BRP relies on maintenance of a strong jobs/housing balance to manage travel demand and to minimize transportation-related impacts:

3.5.5 Demand Management

The proposed roadway network addresses many of the key issues raised and much of the increased transportation demand that will result from the reuse of the former Fort Ord. To supplement the roadway improvements, there are a number of strategies that can be pursued to reduce the demand for vehicle trips. Taking steps to reduce the number of vehicle trips can also lead to reduced infrastructure costs. Land use and transportation strategies are incorporated into the Reuse Plan to reduce vehicle demand and encourage walking and bicycle use.

Jobs/Housing Balance

Providing a jobs/housing balance is intended to encourage employers to locate in areas where there are significantly more residents than jobs and to add housing development near employment centers. Efforts to create a jobs/housing balance should ensure that the jobs provided are compatible with the skill-levels and income expectations of nearby residents. Developing jobs and housing in proximity to each other provides an opportunity to reduce the travel demands on key regional facilities by reducing the length of the trip and/or shifting a vehicle trip to an alternative mode. The Reuse Plan seeks to achieve a better job/housing balance within the former Fort Ord. The desired result of this balance is the reduced demand on those regional roadways connecting employees living off-base with employment centers on-base.

BRP, p. 120. The BRP seeks to generate 45,000 to 46,000 jobs and 17,000 dwelling units to ensure that there are 2.67 jobs per household (2.06 counting the student population). BRP, p. 92. The BRP also counts on mixed use development to reduce transportation demand. BRP, p. 121.

Second, the DSEIR relies on jobs generated by the project and a mix of office, retail, commercial and residential uses from full buildout of the project to project a reduction of trips by 28% compared to development of just residential or just commercial uses. DSEIR, p. 4.16-63. The FSEIR also argues that this 28% "internal capture" is justified based on the fact that the project would include a mix of jobs and housing. FSEIR, p. 11.4-17. This internal capture would significantly reduce per capita transportation and GHG impacts through reduced vehicle trips compared to a primarily residential development project in which residents had to commute longer distances and to travel longer distances to shop. However, the internal capture rate would be reduced if the project did not provide a robust mix of land use types, including commercial, retail, residential, and recreation and/or if it did not provide as many jobs per unit of housing.

Third, the SEIR assesses the significance of the GHG impact based on a per capita basis. DSEIR, p. 4.6-13 to 4.6-14. Mobile source emissions amount to 29,062 tons of the project's total 49,174 tons of CO₂ – about 59% of the total. If internal capture were reduced because the mix of land uses were not as diverse and the jobs/housing ratio were not as high as assumed, then the per capita vehicle trips would increase (even if total trips did not increase), resulting in higher per capita GHG impacts. The DSEIR already finds GHG impacts to be unavoidably significant because GHG emissions exceed the per capita threshold of significance. An unbalanced jobs/housing ratio resulting from failure to build out Phases 4-6 would further aggravate an already significant GHG impact.

Fourth, the SEIR also identifies an unbalanced jobs/housing ratio as a potential inconsistency with the Seaside General Plan and a source of potential impacts in its analysis of population and housing impacts, impacts that are avoided only because the full project is projected to provide many jobs in proportion to its housing units. DSEIR,

pp. 4.9-20, 4.11-15. Seaside identifies a jobs/housing ratio target of 1.5:1. DSEIR, p. 4.9-20.

Fifth, the BRP also contains goals and policies intended to ensure a strong jobs/housing balance. As noted, the BRP jobs/housing goal is a ratio of 2.67. BRP, p. 92. The BRP’s Development and Resource Management Plan (“DRMP”) is intended to ensure that development goals are met within resource constraints. The DRMC sets an objective of replacing the 18,000 jobs lost by the base closure by 2015. BRP, p. 199. Critical to meeting that goal are the coordinated Residential Development Program (DRMP § 3.11.5.4(b)) and Industrial and Job Creation Program (DRMC, § 3.11.5.4(c)), which limit residential development until the 18,000 jobs goal is met in order to prevent using up the limited water supply to support unbalanced residential development. BRP, pp. 197-199. A large development project that consumes water supply without doing its fair share to create jobs is inconsistent with the BRP jobs/housing policies.

Because the FSEIR declined to address the issue in response to LandWatch’s questions (FSEIR, p. 11.4-1028), we examined the effect of not building the relatively jobs-rich Phases 4-6, which contain the lion’s share of the commercial and recreational facilities.

We note that the DSEIR is equivocal as to the actual volumes of jobs and the effect on the jobs/housing ratio. The DSEIR provides two widely varying claims regarding the numbers of jobs, although both claims are advanced to support the contention that buildout of the project would improve Seaside’s existing jobs/housing ratio, which is currently housing-rich and jobs-poor. In particular, the DSEIR states the project would create 1,743 new jobs in its analysis of the project’s consistency with Seaside General Plan Policy LU 1.2, a policy that requiring the City to encourage development that is job intensive:

As concluded in Section 4.11, *Population and Housing*, the Project would generate approximately 1,743 new jobs, which would beneficially impact the City’s jobs-to-housing ratio, increasing it from 0.67 to 0.75. The Project would be in furtherance of the City meeting its jobs/housing ratio of 1.5:1.

DSEIR, p. 4.9-20, emphasis added. However, Section 4.11 actually states that the project would generate 2,758 new jobs:

“Finally, the Project would generate approximately 2,758 new jobs, which would beneficially impact the City’s jobs-to-housing ratio, increasing it from 0.67 to 0.83.”

DSEIR, p. 4.11-15, emphasis added.

The difference in the DSEIR’s two jobs estimate is equal to the 1,015 projected “equestrian” jobs identified in the fiscal analysis of the project.¹⁵ Of the equestrian jobs, 976 are tied to Phases 4-6 and would not be generated if these Phases were not constructed, especially the Phase 6 Sports Arena and race track which, by itself, is projected to create 950 of the equestrian jobs.¹⁶ Most of the non-equestrian jobs are also tied to Phases 4-6.

In fact, only 620 total jobs, equestrian and non-equestrian, would be generated by phases 1-3; the remaining 1,771 jobs depend on phases 4-6 and would not occur if these phases were not constructed due to a lack of water supply.¹⁷

Phases 1-3 would include 473 dwelling units from RES-1 and 124 dwelling units from RES-2, for a total of 597 dwelling units.¹⁸ Phases 4-6 would include 426 units from RM and 256 units from RES-3, for a total of 683 units.¹⁹ Thus, the jobs/housing ratio for Phases 1-3 would be 620 jobs/597 housing units, a ratio of 1.04. The jobs/housing ratio for Phases 4-6 would be 1771 jobs/ 683 housing units, a ratio of 2.59. At full buildout, the jobs/housing ratio would be 2,391 on-site jobs/1280 housing units, a ratio of 1.87.

	Phases 1-3	Phases 4-6	Full Buildout
On site jobs	620	1,771	2,391
Housing units	597	683	1,280
Jobs/housing ratio	1.04	2.59	1.87

Including the 297 jobs generated by the project’s economic effects in Seaside rather than on the project site itself (*see* Wildan, Table 28) the jobs/housing ratio at buildout would be 2,658 jobs/1280 housing units, a ratio of 2.08. (Modeling for these off-site jobs assumes that they would be driven by overall economic activity attributed to the project, not to specific activities; and therefore these off-site jobs would presumably be spread among the six phases.)

¹⁵ Willdan, Monterey Downs Fiscal and Economic Analysis, Aug. 2015, p. iv.

¹⁶ *Id.* at 17.

¹⁷ *Id.*, Table 8. Table 8 reports only on-site employees. Thus, its 2,391 total jobs do not include the 290 jobs from ongoing operations generated in Seaside that are identified in Table 28. These 290 Table 28 jobs in Seaside plus the 2,391 Table 8 jobs within the project account for 2,681 of the 2,758 total jobs reported by the DSEIR at page 4.11-15. It is unclear what accounts for additional 77 jobs reported by the DSEIR.

¹⁸ MDSP, Figure 8-1 (phasing plan); DSEIR, Table 2-2 (land use summary).

¹⁹ *Id.*

Notably, the BRP sets a goal for the jobs/housing ratio of 2.67, based on 45,000 to 46,000 jobs and 17,000 housing units. BRP, p. 92. Omitting the CSUMB students, the BRP goal is 2.06. Thus, full buildout of the project, including the 950 equestrian jobs created in phase 6 and the off-site jobs created in Seaside, would be required to meet the BRP goal of 2.06 jobs per housing unit.

In sum, if Phases 4-6 were not build due to a lack of water:

- The project would not meet the BRP jobs/housing goal intended to minimize transportation and other impacts because the 1.04:1 jobs/housing ratio for Phases 1-3 is well below the BRP's target jobs/housing ratio of at least 2.06:1.
- The project would not contribute as projected in the DSEIR in meeting Seaside's jobs/housing policies. A project with a jobs/housing ratio below the City's 1.5:1 target, e.g., the 1.04:1 ratio in Phases 1-3, cannot contribute to attainment of the 1.5:1 ratio called for by Seaside General Plan Policy ED-8.1. Approving a project with a jobs/housing ratio below the 1.5:1 target, especially a project that will account for the lion's share of future growth in Seaside, effectively frustrates attainment of that target ratio. The draft general plan consistency findings for the City Council meeting state that the full project would add 1,280 housing units to Seaside's existing 11,335 units and add 2,758 jobs to Seaside's existing 7,790 jobs, thereby improving the jobs/housing ratio from 0.69:1 to 0.84:1. However, if only phases 1-3 are build, the resulting 8,410 jobs and 11,937 housing units would provide a jobs housing ratio of only 0.70. The post-project jobs/housing ratio would be essentially unchanged if only Phases 1-3 were built.
- Permitting top-heavy residential development would also be inconsistent with Seaside General Plan Policy LU-1 to encourage regional commercial and visitor serving use and its Policies ED-1.1 and ED 5.1 to establish a diverse mix of businesses and tax sources, because the city would have consumed a major portion of its water-constrained development capacity without advancing those policies.
- Failure to meet the BRP jobs/housing goal would be inconsistent with the BRP's DRMP § 3.11.5.4(b), (c) provisions to balance residential and job-creating development to ensure that water remains available for job-creating development.
- And failure to fulfill the DSEIR's own assumptions regarding the mix of development types and the jobs/housing ratio would increase the per capita GHG emissions over the level projected by the DSEIR, aggravating an already significant GHG impact.

The SEIR should have provided an analysis of these entirely foreseeable outcomes.

Furthermore, because there are significant unmitigated impacts, CEQA requires that the City adopt a statement of overriding considerations to approve the project. An analysis of the fiscal effect of building only the first three phases is clearly relevant to any findings regarding fiscal and job impacts since fiscal and job benefits are cited as overriding considerations. However, as discussed, the jobs benefits would be greatly reduced if only phases 1-3 were built. And the economic benefits of the project are critically dependent on building Phases 4-6. For example, without the hotel uses in Phase 4 there would be at most half of the projected transient occupancy taxes and the net impact of the project on Seaside's general fund may be negative instead of positive.²⁰

In response to LandWatch's request for an analysis of the effect of building only Phases 1-3, the FSEIR claims that any such analysis would be "speculative" since 1) the project phasing plan is subject to change and 2) the DSEIR conservatively assumes full buildout of all phases. FSEIR, pp. 11.3-1, 11.4-1028. The claim that the phasing plan is subject to change is a red herring. The Specific Plan calls for developing certain specific residential and commercial areas in Phases 1-3. Specific Plan, p. 8-1 and Figure 8.1. This is how the project is described and it is how it should be evaluated in the EIR; otherwise the EIR simply fails to provide an adequate and stable project description as CEQA requires. Guidelines, §15124. Indeed, the EIR's water supply analysis is in fact predicated on the specific phasing plan set out in section 8.2 of the Specific Plan, with demand calculated separately for these phases. Because the DDSEIR treats the phasing plan as adequately settled for some of its analyses, it is unreasonable to characterize the phasing plan as "speculative" when the public asks for additional analysis predicated on that same phasing plan.

The FSEIR's argument that the phasing does not matter because the overall analysis conservatively assumes buildout of all phases simply ignores the question LandWatch posed, which is whether there would be different or more intense impacts in some environmental areas if less than the full project were built. As discussed, a predominately residential project would aggravate the jobs/housing balance and increase the per capita transportation, air pollution, and GHG impacts. These are different and potentially more intense impacts.

The FSEIR states that the city could require changes to the phasing plan if it later concludes that "a different land use mix is required to address environmental issues/constraints including available water supply limits." FSEIR, p. 11.4-1029. If this contention is that the City might later decide to adopt mitigation intended to address impacts from unbalanced development and a poor jobs/housing mix, then it is entirely unsupported by analysis of these impacts in this EIR and constitutes improper deferral of both analysis and mitigation. The FSEIR simply fails to provide any answer to the

²⁰ *Id.*, Table 25.

questions raised by LandWatch as to the effects of not building part of the project due to lack of water.

12. The SEIR relies on inadequate fair share payments to mitigate water supply impacts.

Impact fees are permissible mitigation for cumulative impacts as long as a project pays a fair share of a committed project that has been environmentally reviewed and found adequate. However, a mitigation measure calling for payment of unspecified mitigation fees for project that may not be built is not adequate mitigation. LandWatch requested that the SEIR identify the mitigation projects and fair shares that would be required of the project under mitigation Measure W-3. Comment PO 208-30. The DSEIR and FSEIR refer only to the “appropriate FORA fees, a portion of which is allocated for water supply augmentation improvements.” DSEIR, p. 4.19-28; FSEIR, p. 11.4-1030. Despite LandWatch’s request, the SEIR fails to identify the amount of the fee or the projects for which it will pay.

C. The FSEIR fails to provide good-faith reasoned responses to comments seeking the basis of the DSEIR’s GHG mitigation claims.

As LandWatch objected (comments 208-71 to 208-80), the DSEIR’s analysis of GHG emissions fails to clarify the specific measures for which mitigation credit is taken and fails to specify the assumptions behind that mitigation credit. LandWatch objected that the reductions were taken through the CalEEMod emissions modeling software, but that the DSEIR fails adequately to describe, specify, quantify, or justify each GHG emission reduction feature for which credit was taken. In response, the FSEIR directs the public to pages 38-39 of CaEEMod 2013 User’s Guide and unspecified pages of CAPCOA’s 2010 546-page report, Quantifying Greenhouse Gas Mitigation Measures. Here is the FSEIR’s response:

The GHG emission reduction features used in CalEEMod for the Project are specifically listed in DSEIR Appendix 10.2 for each of the Project operations modeling scenario (pages 234-265 of the PDF), and are based on CAPCOA’s Quantifying Greenhouse Gas Mitigation Measures document (refer to pages 38 and 39 of the CalEEMod User’s Guide Version 2013.2, <http://www.aqmd.gov/docs/default-source/caleemod/usersguide.pdf?sfvrsn=2>). Definitions of the mitigation measures and terms used in CalEEMod (and in quantifying the mitigated Project GHG emissions) can be found at <http://www.capcoa.org/wpcontent/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.

CalEEMod conservatively programs the reductions from the CAPCOA research and guidance, and prevents double counting. The CalEEMod outputs for mitigated GHG emissions do not provide a breakdown by specific mitigation measures. Rather, the mitigated emissions outputs are displayed by emission

source (i.e., area, mobile, energy). For example, in the “mobile” category of the modeling outputs, all programmed vehicle trips, VMT and mobile-source GHG emissions reductions from the CAPCOA mitigation measures which are applicable to the Project are clearly listed, and a review of those pages shows that the specific model inputs are the same as those listed in the comment. This methodology discloses the particular GHG emissions reductions claimed for each applicable CAPCOA mitigation measure by emission source, which represents the justification for the modeled reductions which commenter falsely asserts is missing in the DSEIR.

In response to the full paragraph below the bulleted list in this comment, the calculated GHG reduction credits are already built into CalEEMod for each applicable CAPCOA mitigation measure selected. The empirical basis behind the underlying assumptions, parameters or values for these measures and reductions are detailed in the above-referenced CAPCOA document. Therefore, it is inappropriate for this DSEIR to cite such empirical evidence or to “justify” the conclusions already documented in the CAPCOA document that such features “will in fact reduce VMT”, vehicle trips or mobile-source GHG emissions, as incorrectly asserted by commenter. This same logic applies to commenter’s incorrect assertions in the next paragraph regarding non-mobile-source GHG emissions reductions (i.e., area, energy) for each applicable CAPCOA mitigation measure selected.

In conclusion, commenter fails to provide evidence that any applicable CAPCOA mitigation measure to reduce GHG emissions for the Project is missing from the CalEEMod runs in DSEIR Appendix 10.2. Therefore, since the DSEIR clearly discloses this information, recirculation of the document as suggested by commenter is not warranted.

FSEIR, pp. 11.4-1048 to 11.4-1049.

Preliminarily, we note that neither the DSEIR’s discussion of GHG impacts (Section 4.6) nor its Appendix 10.2 analyzing GHG impacts makes any reference whatsoever to the CAPCOA guidance document, Quantifying Greenhouse Gas Mitigation Measures, that the FSEIR identifies for the first time as the source of information justifying the GHG mitigation credits.

The CalEEMod User’s Guide does provide at pages 38-39 that the mitigation is based on mitigation measures specified in the CAPCOA report and that the CalEEMod user is supposed to follow the instructions in the CalEEMod “mitigation module” to enter the various data required by the mitigation measures specified in CAPCOA’s report. However, neither CalEEMod nor the CAPCOA report provide the information LandWatch requested, which is necessarily specific to this project.

Fact Sheets in Chapter 7 of the CAPCOA report identify a number of specific mitigation measures. The CAPCOA Fact Sheets provide formulae for calculating GHG reductions that are dependent on provision of project-specific assumptions and that result in greatly varying ranges of emission reductions depending on those assumptions. For example, CAPCOA indicates that the GHG reduction credit for the measure identified as “increased density” (CAPCOA mitigation measure “LUT-1”) can range from 0.8% to 30% because it depends on three project-specific variables: housing units per acre, jobs per acre, and the selection of one of two different assumptions about the elasticity of VMT with respect to density.

The FSEIR claims that “the emission reduction features used in CalEEMod for the Project are specifically listed in DSEIR Appendix 10.2 for each of the Project operations modeling scenario (pages 234-265 of the PDF).” FSEIR, pp. 11.4-1048. However, the cited pages simply identify the category of emission reduction but fail to set out the critical project-specific assumptions that were used in the analysis. These are the data that LandWatch specifically requested (comment PO 208-79), explaining that the range of effectiveness of the GHG mitigation measures is dependent on accurate assumptions. The CalEEMod user was required to enter these project-specific assumptions, but the CalEEMod output in the DSEIR Appendix 10.2 does not report these assumptions.

MOBILE SOURCE GHG MITIGATION: The table below lists the data required by CAPCOA for the seven mobile source (transportation) mitigation measures that were presumably provided by the air quality analyst pursuant to the data requirements of CalEEMod. See CalEEMod user’s Guide, p. 41. The missing information is the data that LandWatch requested and that the FSEIR simply refused to provide:

Mobile source mitigation feature identified in Appendix 10.2	CAPCOA measure	Project-specific data required by CAPCOA and/or CalEEMod, <u>but not provided in DSEIR or FSEIR despite LandWatch’s request</u>	Project-specific range of effectiveness in reducing GHG emissions
Increase density	LUT-1	-housing units per acre; -jobs per acre; -elasticity of VMT with respect to density Note: two possible elasticity values from the literature are identified.	0.8% to 30%
Increase diversity	LUT-3	-percentage of each land use type in the project (land use types include residential, retail, park, open space, or office)	9% to 30%
Improve walkability design	LUT-8	-intersections per square mile; -elasticity of VMT with respect to percentage of intersections (Note: two possible elasticity approaches from the literature are identified.)	3% to 21.3%
Increase transit accessibility	LUT-5	-distance to transit station in project; -transit mode share for typical ITE development (Note: this project contains numerous ITE categories so it is unclear which “typical mode share” was assumed, or whether a blended mode share was determined)	0.5% to 24.6%
Integrate below market rate housing	LUT-6	-percentage of units in project that are deed-restricted BMR housing	0.04% to 1.2%
Improve pedestrian network	SDT-1	-information regarding extent of pedestrian accommodation	0% to 2%
Expand transit network	TST-3	-percent increase in transit network coverage; -existing transit mode share; -project location: urban center, urban, or suburban	0.1 to 8.2%

As is evident, the range of effectiveness of the above mobile source measures is critically dependent on the specific assumptions describing the project. The public has no way to evaluate the accuracy of the analysis or to challenge the applicability of the assumptions. Contrary to the FSEIR, the citations to the CalEEMod User's Guide and CAPCOA do not provide the information that LandWatch requested, and it is not provided in Section 4.6 or Appendix 10.2 of the DSEIR..

AREA SOURCE GHG MITIGATION: The picture for the five mitigation credits taken for area sources is even more opaque. The DSEIR identifies four categories of credit for use of low VOC paints and another credit for requiring natural gas hearths as measures for which operational emission reduction credits were taken. The FSEIR states that the CalEEMod credits are based on CAPCOA mitigation measures. However, CAPCOA does not mention low VOC paints, and the CalEEMod User's Guide does not identify a CAPCOA mitigation measure related to low VOC paints. Instead CalEEMod identifies a credit based on unspecified SCAQMD (South Coast Air Quality Management District) assumptions and apparently requiring assumptions regarding paint reapplication rates and VOC contents. CalEEMod User's Guide, p. 32. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

CalEEMod's discussion of its credit for all natural gas hearths states only that the use of natural gas hearths is "consistent with the mitigation number A-1 in the CAPCOA Quantifying GHG mitigation document."²¹ CalEEMod User's Guide, p. 42. However, Mitigation number A-1 is for prohibition of gas powered landscaping equipment and CAPCOA does not mention a credit for requiring natural gas hearths. CAPCOA, p. 69. There is no apparent connection between CAPCOA's credit for prohibiting gas powered landscaping equipment and CalEEMod's credit for requiring gas-powered hearths. If there is, neither CAPCOA, the CalEEMod User's Guide, nor the SEIR explain that connection.

Furthermore, neither the SEIR nor CalEEMod nor CAPCOA identify the GHG reduction percentage claimed for these low VOC paints and natural gas hearths.

WATER SUPPLY GHG MITIGATION: The DSEIR claims four credits for low flow bathroom faucets, kitchen faucets, toilets, and showers, which CalEEMod indicates are based on CAPCOA measure WUW-1. This measure has a range of effectiveness of 17-31% and requires specification of the percent flow reduction. CalEEMod User's Guide, p. 43; CAPCOA, p. 348. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

The DSEIR claims another GHG mitigation credit for reclaimed water use. CalEEMod requires specification of the percent of indoor water use and the percent of

²¹ The CalEEMod User's Guide provides data entry screens to specify hearths and woodstoves and to override regulatory limits on these, but these screens do not appear to relate to emission credits for requiring all natural gas hearths. CalEEMod User's Guide, pp. 31-32.

outdoor water use. CalEEMod User's Guide, p. 43. This information is not provided in the DSEIR or FSEIR. CAPCOA requires specification of reclaimed water use and total non-potable water use and identifies a range of effectiveness of up to 40%. CAPCOA, p. 332. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

Furthermore, the actual commitment to use recycled water for the project is unclear because the SEIR acknowledges that provision of recycled water is uncertain. DSEIR, pp. 4.19-26, 4.19-32, 4.19-33. If a credit is taken for recycled water use in the GHG mitigation analysis, the public has no way to understand how much recycled water is assumed to be used, where it is assumed to be used, and the consistency of those assumptions with the discussions of recycled water elsewhere in the SEIR.

SOLID WASTE GHG MITIGATION: The DSEIR claims a credit for solid waste recycling and composting services. CalEEMod does not indicate what data must be supplied, but states that this credit corresponds to CAPCOA's measure SW-1. CalEEMod User's Guide, p. 43. CAPCOA indicates that this measure requires an estimate of the number of residents, building square footage for office and retail uses, visitors to public venues, employees for other commercial buildings, waste disposal methods, and amount of waste diverted to recycling or composting. CAPCOA, p. 393. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request. It is unclear how CalEEMod determines the credit because the CalEEMod User's Guide referenced by the FSEIR as the source of the information LandWatch requested does not in fact explain the basis of the credit.

CONSTRUCTION GHG MITIGATION: The DSEIR Appendix 10.2 claims a mitigation credit for seven construction measures including:

- Use Cleaner Engines for Construction Equipment
- Use DPF for Construction Equipment
- Replace Ground Cover
- Water Exposed Area
- Water Unpaved Roads
- Reduce Vehicle Speed on Unpaved Roads
- Clean Paved Roads

The CalEEMod User's Guide discussion of construction assumptions does not identify the source of these measures and does not illustrate input screens with mitigation options. See CalEEMod User's Guide, pp. 24-27. None of the seven measures listed in Appendix 10.2 appear to correspond to items in CAPCOA's list of five construction mitigation measures, C-1 to C-5. See CAPCOA, pp. 409-432. In short, the FSEIR's contention that all of the GHG mitigation credits "are based on CAPCOA's Quantifying Greenhouse Gas Mitigation Measures document" is apparently not true. FSEIR, p. 11.4-1048. If there is some relation between the CAPCOA construction mitigation measures and the

CalEEMod construction measures for which credit is taken in Appendix 10.2, it remains unclear.

As with the other CAPCOA mitigation measures, the CAPCOA construction mitigation measures have a wide range of effectiveness depending on the specific assumptions provide, e.g., assumptions about specific carbon-based fuels used, about use of electric or hybrid equipment, idling limitations beyond regulatory requirements, the use of a heavy duty off road vehicle plan, and the use of a construction vehicle inventory tracking system. CAPCOA, pp. 409-432. It is clear that the effectiveness of construction GHG mitigation depends on these specific assumptions. However, the SEIR does not provide this information, despite LandWatch's request.

In sum, the SEIR relies on a study of unmitigated and mitigated GHG impacts to assess the extent of the GHG impact. That study uses a software tool, CalEEMod, that requires specific assumptions about what mitigation will actually be undertaken by the Project in 25 specific contexts related to mobile sources, area sources, water, solid waste, and construction. The effectiveness of the GHG mitigation varies widely based on these specific assumptions. Because the assumptions are not in the DSEIR Appendix 10.2, LandWatch requested them. However, the FSEIR simply failed to provide the requested information.

D. The FSEIR fails to respond adequately to comments proposing additional mitigation for GHG impacts.

The DSEIR concludes that, despite the mitigation measures proposed in the DSEIR, GHG impacts will be significant and unavoidable. DSEIR, p. 4.6-22. Accordingly, LandWatch and the Monterey Bay Unified Air Pollution Control District ("MBUAPCD") proposed a number of additional mitigation measures. While the FSEIR does indicate that some of the measures proposed by LandWatch will be implemented as project features or as a result of Title 24 compliance, the FSEIR fails to respond adequately to other proposed mitigation measures. The FSEIR states that the lead agency need only "focus on mitigation measures that are feasible, practical, and effective." FSEIR, p. 11.4-1051. However, the FSEIR does not demonstrate that the proposed measures that it did not discuss are not feasible, practical, and effective.

For each of the following proposed mitigation measures the FSEIR fails to provide any discussion, much less to demonstrate that the proposed measure is not feasible, practical, and effective:

- Use passive solar design and provide shade on at least 30% of onsite impervious surfaces, including parking areas, driveways, walkways, plazas, patios, etc. (excluding roofs).
- Use light colored "cool" roofs with high-albedo materials (reflectance of at least 0.3) for 30% of the Project's non-roof impervious surfaces.

- Use thermal pool covers and efficient pumps and motors for apartments, commercial pools and spa uses.
- Educate residents, customers and tenants on energy efficiency.
- Design outdoor water features for low flow pumps and places where shading can be provided.
- Use low-impact development practices.
- Provide educational information about water conservation.
- Provide educational information about reducing waste and available recycling services.
- Incorporate public transit into the Project design.
- Provide free or low-cost monthly transit passes for students, employees, residents, and customers.²²
- Provide secured bicycle parking for all apartments, flats, and commercial uses.
- Provide a low- or zero-emission trolley at the County Walk.
- Provide convenient locations accessible by public transportation for car sharing and car pools for all events.
- Provide housing units for all track workers within walking distance of work.
- Use alternative-fueled (e.g., bio-diesel, electric) construction vehicles/equipment for at least 15% of the fleet.
- Use local building materials where reasonably available (i.e., within the general Monterey Bay area defined as Monterey County, Santa Cruz County, and San Benito County)
- Recycle at least 50% of construction waste or demolition materials.
- Exceed Title 24 building envelope energy efficiency standards (applicable at the time of the building permit issuance) by 20%.
- Install programmable thermostat timers and smart meters.
- Obtain third-party heating, ventilation, and air conditioning commissioning and verification of energy savings.
- Install green roofs.
- Install tankless water heaters.
- HVAC duct sealing.
- Increase roof/ceiling insulation.
- Install high-efficiency area lighting.
- Maximize interior day light.
- Install rainwater collection systems.
- Restrict the use of water for cleaning outdoor surfaces and prohibit systems that apply water to non-vegetated surfaces.

²² The FSEIR admits that its voluntary approach to transit subsidy is less effective, but does not claim that, or explain why, the more effective mitigation proposed by LandWatch is infeasible.

- Use only electric-powered landscaping equipment (not gas powered).
- Require off-site mitigation including:
 - Paying for energy-efficiency upgrades of existing homes and business.
 - Installing off-site renewable energy.
 - Paying for off-site waste reduction.
 - Off-site mitigation must be maintained in perpetuity to match the length of Project operations to provide ongoing annual emission reductions.
- Carbon Offsets - Purchase offsets from a validated source to offset annual GHG emissions

In addition to ignoring the above proposals, the FSEIR makes no response to MBUAPCD's proposal to require a hotel shuttle to local destinations.

The FSEIR sole response to MBUAPCD's proposal for a three-year funding commitment for a new transit route to serve the Gigling Road transit stop is that the proposal "has been noted." FSEIR, p. 11.4-379. This is not an adequate response. It certainly does not demonstrate that the proposal is not feasible, practical, and effective.

LandWatch and MBUAPCD proposed requiring onsite solar power generation and solar water heating. Responding to MBUAPCD, the FSEIR stated that this mitigation would be "speculative" because the "exact location, size, height, building orientation, etc. of the new buildings on the Project site are unknown at the time." FSEIR, p. 11.4-379. Calling the mitigation "speculative" for this reason is incoherent. In fact, the Specific Plan locates and orients major buildings and lays out illustrative residential lots and building sites in section 2. More fundamentally, the architectural guidelines in section 5 and development guidelines in section 6 of the Specific Plan specify numerous building and site layout features, and could be modified to require accommodation and inclusion of solar electrical and solar water heating panels unless specific, enumerated considerations (e.g., the presence of a heritage tree shading all available roof) made such an accommodation infeasible.

The FSEIR's response improperly assumes that mitigation through solar energy capture must take a back seat to all other considerations and that no mitigation vial solar energy can be required for any building unless that mitigation is feasible for all buildings. This misreads CEQA's mitigation requirements because CEQA requires modification of a proposed project in order to address significant environmental impacts unless the mitigation is in fact infeasible or the mitigation is not required to render impacts less than significant:

A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

Guidelines, § 15021(a)(2). In determining that mitigation is infeasible, an agency must identify "specific economic, environmental, legal, social, and technological factors." Guidelines, § 15021(a)(3) (emphasis added). The FSEIR has not done so.

E. The analysis and mitigation of transportation impacts is inadequate.

1. The SEIR fails to provide the analysis of claimed internal trips despite LandWatch's request for this information.

An EIR "must contain facts and analysis, not just the agency's bare conclusions or opinions." *Laurel Heights Improvement Assn. v. Regents of University of California* ("Laurel Heights I") (1988) 47 Cal.3d 376, 404. Even if an agency's conclusions or opinions are ultimately proven correct, statements unsupported by facts and meaningful analysis are not sufficient: "*the critical point [is] that the public must be equally informed.*" *Id.* (emphasis in original). The requisite facts and analysis supporting an agency's conclusions must be in an EIR, not scattered elsewhere throughout an administrative record. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706 ("whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report"); *Vineyard, supra*, 40 Cal.4th at 442 ("To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA").

As LandWatch objected in its DSEIR comments (PO 208-34), the DSEIR fails to provide the basis for its claim that 28% of vehicle trips would be internal to the project site. Since the 28% reduction in external trips would substantially reduce transportation impacts to facilities outside the project area and would substantially reduce both criteria pollutants (NOx, PM-10, etc) and GHG emissions, the 28% assumption is a critical parameter. LandWatch asked whether this internal trip rate was based on the standard traffic analysis methodology (ITE's Trip Generation Handbook) or some other methodology. And LandWatch asked that the City show its work by providing the facts and analysis behind this 28% internal trip rate assumption.

In response, the FSEIR refers LandWatch to its response to PA 3-1, a comment in which Caltrans also objected that the 28% internal trip rate was unsupported by analysis and appears to be inconsistent with the standard ITE methodology. In response to Caltrans, the FSEIR states that "[t]he requested documentation was provided to the commenter shortly after the request was received by the City, and no further comments were received from Caltrans." But provision of the documentation to Caltrans does not address LandWatch's concerns. Thus, the response to LandWatch that simply references response PA-3 is entirely inadequate, violating CEQA's requirement for good-faith reasoned analysis in response to comments. Guidelines, §15088.

And the FSEIR's claim that Caltrans has accepted the internal capture analysis is not true. Caltrans wrote on August 30, 2016 to reiterate its objection to the "exaggerated internal capture rate" and the use of an unjustified method to determine internal capture.

And even if Caltrans had been persuaded that 28% was justified, based on privately shared data or analysis, it is not sufficient to tell the public only that there is some expert opinion that supports or acquiesces in an EIR's conclusion. Substantial evidence requires an EIR to present the facts and analysis, not just raw opinion.

The FSEIR claims that "the data supporting this traffic impact analysis, including trip capture rates, is included in DSEIR Appendix 10.8, *Traffic Impact Analysis Data*." FSEIR, p. 11.4-1031. This is not true. Appendix 10.8 contains 723 pages of computer output sheets for the Level of Service Computation Reports for the affected intersections under the no-project, with-project, and with-mitigation scenarios under existing, 2018, and 2035 conditions. Nothing in that output for intersection LOS would enable the public to reconstruct the basis of the 28% internal capture analysis. Indeed, if the 28% internal trip claim could have been validated with reference to the materials in the DSEIR, then Caltrans would not have needed to ask for the analysis and the City would not have needed to supply the "requested documentation" to Caltrans in response to its comment.

The FSEIR's response to Caltrans indicates that the trip distribution patterns were developed through customization of the AMBAG travel demand model. This information is clearly not supplied in Appendix 10.8, which provides no information about the AMBAG model.

The FSEIR claims that the ITE methodology would understate internal capture because it omits "site interaction" for the equestrian facilities, the hotels, the tennis club, warehousing, and cemetery land uses. Site interactions must be determined through empirical analyses of similar mixed-use development projects. Thus, ITE's handbook provides internal capture data for various mixed use combinations based on empirical studies that compare stand-alone development trip rates to mixed use trip rates.²³ Additional empirical studies are available that supplement the ITE data sets and that include site interactions for additional uses such as hotels. For example, a 2014 analysis by the Center for Urban Transportation Research ("CUTR") reports data sets that do include hotel uses.²⁴ But the analysis of capture is based on a number of factors, none of which were revealed to the public here. For example, the CUTR report indicates that site interactions decrease as proximity decreases, so a sprawling 711-acre suburban-style project would have a lower capture rate than a smaller, denser urban mixed-use project,

²³ Institute of Transportation Engineers, *Trip Generation Handbook*, 2nd Ed.

²⁴ Center for Urban Transportation Research, *Trip Internalization in Multi-use Developments*, April 2014, available at http://www.dot.state.fl.us/research-center/Completed_Proj/Summary_PL/FDOT-BDK84-977-10-rpt.pdf.

all other factors being equal.²⁵ CUTR indicates that proximity factors should be used in the analysis for any development bigger than 55 acres.²⁶ However, here the public has no way to evaluate whether or how this was done. What is missing in the Monterey Downs SEIR is any evidence that the internal capture rate is based on empirical data, or, any disclosure of that empirical data.

The FSEIR states that after assigning trips to the roadway network using the AMBAG model "it was determined that approximately 28 percent of the total trips generated by the proposed Specific Plan land uses would travel to another zone within the Specific plan." FSEIR, p. 11.4-17. However, the SEIR does not explain how "it was determined." The FSEIR provides no empirical analysis to the public that would support the validity of the internal capture.

2. The SEIR fails to provide adequate performance standards for Mitigation measure TRA-8.

Mitigation Measure TRA-8 provides for an entirely ad hoc response to special event traffic, including events that may attract thousands of vehicles to the Sports Arena. The requirement to prepare an Events Management Plan does not include any performance standard for acceptable levels of congestion. The FSEIR fails to respond adequately to LandWatch's concern that the measure improperly delegates mitigation to an unelected official without providing a meaningful performance standard. The FSEIR also fails to respond adequately to LandWatch's concern that the traffic control measures all remain optional under the phrasing of Mitigation Measure TRA-8. DSEIR, p. 4.17-85 (the "measures may include. . ."). There is no assurance that any effective or reasonable traffic control measures will be implemented since there is neither a congestion relief performance standard nor a requirement to use any particular traffic control measure.

The FSEIR claims that an Events Management Plan cannot be prepared in advance, but the DSEIR states that the applicant will in fact be required to prepare an "annual special events traffic and emergency services management plan." DSEIR, p. 4.17-83. If such a plan can be prepared a year in advance for the 125 or more days of special events, then it is unreasonable to claim that the SEIR could not provide even the sample plan requested by LandWatch.

3. Recirculation is required because the FSEIR identifies a new significant impact at intersection 49, SR-1 NB Ramps at Reservation Road.

The FSEIR acknowledges that impacts to intersection 49, SR-1 NB Ramps at Reservation Road, will remain significant and unmitigated. FSEIR, p. 11.4-1040 to 11.4-1043. This was not disclosed in the DSEIR. The FSEIR's acknowledgement constitutes

²⁵ *Id.* at 82.

²⁶ *Id.* at 84-85.

significant new information that requires recirculation because it discloses a new significant impact. Guidelines §15088.5(a)(1).

4. The SEIR fails to identify a significant impact at intersection 38, SR 1 SB Ramps at Imjin Parkway.

Recirculation is required because the DSEIR fails to disclose a significant unmitigated impact at intersection 38, SR 1 SB Ramps at Imjin Parkway, under 2018 conditions. The LOS calculations in DSEIR Appendix 10.2 for mitigated conditions under both the existing and 2018 scenarios assume that a signal has been installed at this location pursuant to Mitigation Measure TRA-5. App. 10.2, pdf pages 689, 706. Under existing AM conditions with mitigation, the average delay is 52.6 seconds yielding a LOS D, which the DSEIR treats as a less than significant impact. App. 10.2, pdf page 689; DSEIR, p. 4.17-75 (Table 4.17-14). Under 2018 AM conditions, the average delay is degraded to 62.4 seconds, yielding LOS E. App. 10.2, pdf page 706. Thus, despite the traffic signal mitigation, there would be a significant impact because the LOS E is below the acceptable LOS for Caltrans facilities. Additional mitigation improvements should be proposed for this facility; or, if that is infeasible, the impact should be identified as unavoidable.²⁷

The DSEIR unaccountably and erroneously indicates in Table 4.17-20 that the mitigated AM LOS at intersection 38 would be LOS B, based on an average delay of 14.1 seconds. DSEIR, p. 4.17-93. This is an error because it is unsupported by the technical appendix.

5. The SEIR fails to apply the Caltrans LOS standard for determining significance.

As Caltrans objected, the SEIR fails to acknowledge that Caltrans requires maintenance of a Level of Service at the cusp of LOS C and LOS D on SR1 facilities. Comment PA 3-2. The FSEIR claims that a 2006 planning document would justify this approach, but Caltrans has pointed out that this document does not apply to traffic management or operations.²⁸

The DSEIR states in the section identifying thresholds of significance for each jurisdiction that an impact to a Caltrans facility would be significant if the project would “result in a LOS lower than the transition between LOC C and LOS D” or if the project

²⁷ While the DSEIR identifies the impact under existing conditions as unavoidably significant, it fails to do so under 2018 conditions. DSEIR, pp. 4.17-130 to 4.17-131. Furthermore, the only basis for characterizing the impact as unavoidably significant under existing conditions is the fact that the required mitigation improvements, widening the intersection and installing a traffic signal, are not under the lead agency’s jurisdiction. DSEIR, p. 4.17-84.

²⁸ John Olejnic, Caltrans, to Rick Medina, Seaside, Aug. 30, 2016.

would add a trip to “an existing state highway facility [that] is operating at less than the appropriate target LOS.” DSEIR, pp. 4.17-47 to 4.17-48. The DSEIR identifies the “LOS Std.” for every intersection or ramp, roadway segment, or freeway segment that is under Caltrans jurisdiction as “C/D,” not as “D.” DSEIR, Tables 4.17-13, 4.17-14, 4.17-19, 4.17-21, 4.17-25. Despite stating that the threshold of significance is the C/D transition and designating it in the tables, the DSEIR unaccountably fails to acknowledge impacts are significant where the project causes degradation of service to below the C/D transition or where it adds trips to a facility that operates below the C/D transition. Instead, the DSEIR only treats impacts to Caltrans’ facilities as significant if they operate below LOS D. For example, for existing plus project conditions the DSEIR fails to identify a significant impact despite LOS below the C/D transition at intersection 42 in Table 4.17-13, at intersection 38 in Table 4.17-15, at six SR 1 segments in Table 4.17-16, and at ten ramps in Table 4.17-17. The DSEIR similarly fails to identify significant impacts with reference to the stated LOS C/D threshold of significance under interim 2018 and cumulative conditions.

In sum, the SEIR’s failure to honor Caltrans’ LOS standard in determining significance is unaccountable since 1) it honors and applies the adopted LOS standards of other agencies, including the County of Monterey and the City of Marina, in assessing impacts to their facilities, 2) it expressly identifies the LOS C/D transition as the threshold for significant impacts, and 3) Caltrans has repeatedly and specifically advised Seaside that its standards requires LOS C/D, ever since the scoping meeting for this project.²⁹ The contradiction in the stated significance thresholds and the threshold actually applied and the failure to approach significance determination consistently among the various jurisdictions vitiates substantial evidence for the SEIR’s conclusions. It also demonstrates a results-driven approach to analysis. The SEIR should be revised and recirculated to assess and mitigate impacts with reference to the actual Caltrans standards, as identified in the DSEIR.

6. The FSEIR fails to respond adequately to proposed mitigation in the form of ramp metering.

LandWatch requested that ramp metering be proposed by the SEIR to address significant and unmitigated impacts to freeway ramps. In response, the FSEIR simply refers LandWatch to the discussion in the DSEIR at page 4.17-80, which the FSEIR claims establishes the infeasibility of this mitigation. FSEIR, p. 11.4-1043. However the DSEIR’s discussion states only that ramp metering is not currently planned and is not within the jurisdiction of the lead agency to implement. DSEIR, p. 4.17-80.

In fact, contrary to the DSEIR, ramp metering is part of Caltrans planning for SR 1 segment 14, which includes the portions of SR 1 evaluated in the SEIR. Caltrans’ Transportation Concept Report for State Route 1 in District 5 identifies ramp metering as

²⁹ *Id.*

an important part of the Intelligent Transportation Systems (“ITS”) strategy to optimize traffic flow that will be managed by Caltrans Traffic Management Center.³⁰ Caltrans specifically identifies ramp metering as part of the measures it plans to implement to maintain acceptable LOS on SR 1 segment 14:

a combination of widening, operational improvements, and enhanced alternatives to travel by single occupant vehicles will be required. ITS elements such as loop detection and ramp metering will be a major component of operational improvements.³¹

Caltrans states that Ramp metering is planned specifically for SR 1 “between SR 68 West and Reservation Road,” which would include all of the ramps evaluated in the SEIR:

Intelligent Transportation Systems (ITS) – ITS will play a critical role in managing operations on State Route 1 in Monterey County. ITS projects have been implemented in the County and additional projects have a high priority. When the Central Coast ITS Strategic Plan is fully implemented, the following elements will be available on Route 1 in Monterey County:

- Smart call boxes from San Luis Obispo/Monterey County line to Monterey/Santa Cruz County line
- Traffic surveillance stations (loop detectors) through Segments 14 (freeway portion) and 15
- CCTV camera installation *and freeway control ramp metering between SR 68 West and Reservation Road* . . .³²

The DSEIR and FSEIR offer no evidence that ramp metering would not be effective at reducing or avoiding impacts, and it is clear that Caltrans believes that ramp metering would be effective at the ramps under review. The DSEIR and FSEIR provide no evidence that Caltrans would not accept fair share payments toward ramp metering and consider implementing ramp metering if it were proposed in the SEIR; and the fact that Caltrans actually plans to implement metering indicates that Caltrans would be receptive.

³⁰ Caltrans, Transportation Concept Report for State Route 1 in District 5, April 2006, p. 10-11, available at http://www.dot.ca.gov/dist05/planning/sys_plan_docs/ctr_factsheet_combo/mon_sr1_ctrfs.pdf. Ramp metering is a “traffic management strategy that utilizes a system of traffic signals on freeway entrance and connector ramps to regulate the volume of traffic entering a freeway corridor. This is to maximize the efficiency of the freeway and thereby minimize the total delay in the transportation corridor.” *Id.*, Appendix A.

³¹ *Id.* at 46, emphasis added

³² *Id.* at 44, underlining in original, italics and bolding added.

CEQA does not permit an agency to dismiss mitigation suggestions from the public without good-faith reasoned analysis. The fact that the mitigation is within another agency’s jurisdiction is not a sufficient basis to decline to consider it. CEQA specifically requires an agency to make findings as to whether mitigation is “within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.” Public Resources Code, §21081(a)(2). And indeed the DSEIR proposes numerous other traffic improvements that are not within the jurisdiction of the lead agency (e.g., mitigation Measures TRA-2, 4, 5, 6, and 7).

Seaside may require fair share payments toward effective mitigation measures, including ramp metering, and may even provide that if Caltrans declines to implement the measure the fair share funds can be returned. Seaside may also conclude that the impacts for which these mitigation measures are proposed will remain significant and unavoidable due to its lack of jurisdiction to require implementation. But Seaside cannot simply decline to consider mitigation proposed by the public on the grounds that it lacks legal authority to compel that mitigation be implemented or based on the false claim that this mitigation is not currently planned by Caltrans.

F. The analysis and mitigation of noise impact is inadequate.

LandWatch engaged noise consultant Derek Watry to review the discussion of noise in the DSEIR, LandWatch’s comments, and the FSEIR’s response. His comments are attached and incorporated by reference.

1. The analysis of noise is inadequate under CEQA because it fails to recognize that non-compliance with statistical noise standards may be a significant impact.

Statistical noise standards (“Ln” standards or “Exceedence Level” standards) are standards for the noise levels that may not be exceeded for various periods of time. See DSEIR, p. 4.10-3, Table 4.10-2, Noise Descriptors. For example, BRP Noise Policies B-1, B-2, B-3, and B-5 apply the statistical noise standards from BRP Table 4.5-3, which is reproduced in the DSEIR as Table 4.10-7. See DSEIR, pp. 4.10-9 (Table 4.10-7) and 4.10-10 (BRP noise policies). Under the BRP’s statistical noise standards applicable from 7 am to 10 pm, noise may not ever exceed 65 dBA, may not exceed 60 dBA for more than 1 minute, may not exceed 55 dBA for more than 5 minutes, may not exceed 50 dBA for more than 15 minutes, and may not exceed 45 dBA for more than 30 minutes. e.g., for one minute, five minutes, ten minutes, 15 minutes, or 30 minutes. Permissible noise levels are dBA less from 10 pm to 7am. The BRP applies these statistical noise standards at the property line.

As Mr. Watry explains, BRP Noise Policies and programs expressly require compliance with the BRP statistical noise standards. This SEIR identifies exceeding applicable noise standards as a significant impact. DSEIR, p. 4.10-12. The BRP PEIR specifically identifies the expectation that construction noise and stationary noise, including noise from a proposed amphitheater, would be required to comply with the

BRP's statistical noise standards as a basis to conclude that these noise sources would be less than significant. BRP PEIR, pp. 4-139 to 4-140, 4-146, 4-149.

Statistical noise standards may be applied in addition to and independent of 24-hour average noise standards ("CNEL" or "Ldn" standards). See DSEIR, p. 4.10-3, Table 4.10-2, "Community Noise Equivalent level (CNEL)" noise descriptor. The BRP Noise Policies B-1, B-2, B-3, and B-5 do in fact also and independently apply the 24-hour average CNEL noise standards from BRP Table 4.5-3, which is reproduced in the DSEIR as Table 4.10-6. See DSEIR, pp. 4.10-9 (Table 4.10-6) and 4.10-10 (BRP noise policies).

LandWatch's DSEIR comments objected that the DSEIR fails to apply statistical noise standards from the BRP or from any source to determine the significance of noise impacts. The FSEIR responded that these standards are not relevant. FSEIR, p. 11.4-1053. As Mr. Watry explains, that claim is not true.

Statistical noise standards are in fact highly relevant to determining annoyance from noise, particularly when a noise source is not continuous over a 24-hour period but instead consists of short-term, episodic and/or irregular loud noise such as noise from the recreational events at the project. The rationale for applying statistical noise standards in addition to 24-hour noise standards is that irritation can be caused by short periods of relatively loud noise, even if the average noise level complies with standards for longer periods, e.g., a 24-hour average CNEL standards. The BRP includes both 24-hour standards and statistical noise standards for just this reason.

Mr. Watry explains that stationary noise and construction noise from the Project will exceed the BRP's statistical noise standards and that this will substantially adversely affect sensitive receptors adjacent to the project. For example, maximum noise from cheering crowds at the Sports Arena would exceed the BRP allowable maximum noise level at the Oak Oval. Cheering noise that continues for as little as one minute per hour would exceed the BRP statistical noise limits at the Oak Oval and at the nearest residential receptor. Grandstand noise and the swimming pool timing system noise would exceed the BRP's statistical limit for maximum noise levels. Construction noise would exceed the BRP statistical limits.

The SEIR errs by uncritically relying only on 24-hour noise standards to determine significance despite evidence that episodic loud noise events will in fact result in substantial irritation to noise receptors and without any analysis of the effects of shorter-duration noise events on the ambient conditions.³³ *Berkeley Keep Jets Over the*

³³ Although the DSEIR references the City's 65 dBA maximum noise standard in its discussion of the mitigation of stationary noise impacts (DSEIR, p. 4.10-24), that reference is insufficient because (1) the City's maximum noise standard is not the same as the BRP's statistical noise standards, which include a more restrictive 0-minute (maximum) standard and which include standards for intervals greater than 0 minutes (compare DSEIR Table 4.10-4 to Table 4.10-7), (2) the 65 dBA maximum noise standard was not apparently used to determine the significance of impacts (DSEIR, pp. 4.10-18 to 4.10-24).

Bay Comm. v. Bd. of Port Comm'rs (2001) 91 Cal. App. 4th 1344, 1381-82; *see also Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant"). The SEIR also errs by failing to acknowledge that the project is inconsistent with the BRP policies that mandate compliance with the BRP's statistical noise standards. Guidelines, §15125(d).

2. Analysis of construction noise is inadequate.

The DSEIR announces that that construction impacts would be significant if any of the standards in the City's General Plan or noise ordinance or other applicable plans (e.g., the BRP) were exceeded. DSEIR p. 4.10-12. However, the DSEIR provides no actual quantitative assessment of whether construction activities would exceed any of the applicable standards (i.e., the 24-hour average, maximum, or statistical standards promulgated by either the City or the BRP), despite the express requirement in Seaside's Municipal Code §17.30.060(G)(6) for a quantitative analysis of noise levels post-mitigation. The DSEIR also ignores the effects of construction noise on open space users even though these users are sensitive receptors and will be located immediately adjacent to the project site.

Thus there is no substantial evidence to support a conclusion that construction noise would not exceed applicable standards. However, there is evidence that construction noise would exceed applicable standards.

As Mr. Watry explains, the BRP statistical noise standards are clearly relevant to the significance of construction noise impacts. As explained above, the BRP PEIR specifically referenced the expectation that projects would meet the BRP statistical noise standards as one basis for finding construction noise impact to be less than significant. However the SEIR fails to apply these standards and improperly dismisses their relevance. Mr. Watry demonstrates that construction noise would exceed the BRP statistical noise standards.

Construction noise would also exceed the 65 dBA maximum allowable noise level for residential uses in the City's noise ordinance.

3. Mitigation of construction noise is inadequate.

CEQA requires that mitigation address the significant impacts identified in the EIR and do so with adequate certainty. Guidelines 15126.4(a)(2) (measures must be "fully enforceable"). A threshold of significance is a criterion "non-compliance with which" means the effect is significant and "compliance with which" means it is less than significant, e.g., adequately mitigated. Guidelines, § 15064.7(a). Mitigation must address the significant impact that is "identified in the EIR," and "as identified in the EIR." Guidelines, §§ 15126.4(a)(1)(A), 15091(a)(1). *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-658 holds that an EIR must clearly state

its significance threshold; in particular, it must do so to inform discussion of proposed mitigation measures.

Here, although the DSEIR identifies the noise standards in the City's General Plan, noise ordinance, and/or the BRP as the significance thresholds, Mitigation NOI-1 for construction noise impacts lacks any performance standard that would ensure that the purported significance thresholds are met. As Mr. Watry explains, the provisions of Mitigation NOI-1 simply do not require that construction noise meet any adopted standards, much less the standards that the DSEIR purports to apply to determine significance of impacts. The actual provisions in NOI-1 – notice, complaint resolution, siting stationary equipment, and limiting work to daylight hours – would not ensure that applicable standards are met.

Furthermore, Mr. Watry explains that it is unlikely that construction noise could meet the adopted standards, particularly the statistical noise standards. The nature of the noise sources, e.g. diesel equipment with elevated exhaust stacks, and the area extent of construction activity renders mitigation by noise barrier infeasible. The SEIR itself provides no evidence that mitigation could feasibly meet adopted standards, despite the Seaside noise ordinance that requires a quantitative demonstration of the efficacy of mitigation. Because mitigation is not demonstrably feasible, its formulation cannot be deferred. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-96. The SEIR must be revised to formulate mitigation that would meet the applicable Seaside and BRP noise standards.

4. The SEIR improperly concludes that impacts are less than significant if mitigation is not feasible.

The FSEIR improperly injects a consideration of feasibility into the determination of significance by implying that construction noise would be less than significant because the proposed mitigation “would minimize construction noise to the maximum extent feasible.” FSEIR, p. 11.4-1056. CEQA neither requires nor allows lead agencies to consider costs or feasibility in determining the significance of impacts. Guidelines, §§15064, 15064.4, 15064.5, 15065, 15126.2, 15130, 15355, 15382. Under CEQA, feasibility considerations arise only in the context of determining if feasible mitigation measure are available after significance is determined (Public Resources Code, §21081(a)(3), Guidelines, §§15091(a)(3), 15364), and the determination of “acceptable” environmental harm arises only in the final step of the CEQA analysis in the context of a statement of overriding considerations. *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368-369; Public Resources Code, §21081(b).

The FSEIR also improperly injects the issue of feasibility into its determination of the significance of stationary noise impacts. The FSEIR argues that BRP Noise Policy B-1 requires that BRP's 24-hour and statistical noise standards be met only “where feasible and practical.” FSEIR, p. 11.4-1056. The FSEIR then argues that application of the

BRP's “statistical noise Ln standards are not practicable for use in the Project's context.” FSEIR, p. 11.4-1056. It would be error to reject use of the BRP's statistical noise standards to determine significance based on a determination that the project cannot feasibly meet those standards.

The FSEIR also improperly injects the issue of infeasibility into the determination of the significance of noise from the City Corporation Yard and fire station. Siren and horn noise from fire trucks (at least 101 dBA Lmax at 50 feet – see DSEIR, p. 4.10-20) would exceed the City's 65 dBA maximum exterior noise standard (DSEIR, Table 4.10-7). Low speed truck maneuvering in the City Corporation Yard would generate 75 dBA Lmax at 50 feet, which would also exceed the City's 65 dBA Lmax standard. DSEIR, p. 4.10-20. The FSEIR argues that “such noise sources are exempt from the City's Noise Ordinance (pursuant to SMC Section 9.12.040) and therefore by extension, CEQA significance thresholds do not apply.” FSEIR, p. 11.4-1057, emphasis added. While legal considerations may justify a conclusion that mitigation is legally infeasible (Guidelines, § 15364), the significance of the unmitigated impact cannot be denied on the basis that mitigation is infeasible.

In sum, if the project cannot meet applicable noise standards, the City should identify the impact as significant and unmitigated. CEQA does not permit the City to conclude that noise is less than significant simply because mitigation is infeasible.

5. Analysis of stationary noise impact is inadequate because it fails to employ a consistent threshold of significance, fails to compare projected noise to any of these thresholds, and fails to consider relevant noise events.

There are three fundamental flaws in the SEIR's evaluation of stationary noise sources.

First, the SEIR fails to set out significance thresholds for stationary noise sources coherently. Determining significance of impacts requires “careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.” Guidelines, §15064(b). An EIR must clearly identify and apply standards of significance. *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655. As Mr. Watry documents, the DSEIR identifies several completely different thresholds:

- The threshold identification at DSEIR p. 4.10-12 says stationary noise (i.e., noise discussed in Impact Statement 4.10-3) is a significant impact only if the project causes a substantial permanent increase in ambient noise.
- The discussion of threshold of significance at DSEIR p.4.10-13 to 4.10-14 states that stationary noise would be significant if it cause an exceedance

of Seaside's Municipal Code standards at Tables 3-2 and 3-3.³⁴ These tables provide absolute noise standards, not noise standards expressed as an allowable increase. For example, these noise standards permit a maximum exterior noise level of 65 dBA for residential uses and a normally acceptable 24-hour average exterior residential noise level of 55 dB CNEL.

- The discussion of stationary source impacts actually purports to determine significance of noise from residential uses, non-residential mechanical equipment, equestrian event noise, swim center, and swim event center and pool activity based on whether it exceeds the BRP absolute standards of 50 to 55 dBA for residential uses, not, as stated earlier, based on whether it exceeds Seaside's absolute standards. See DSEIR pp. 4.10-19 to 4.10-24. The BRP standard referenced is apparently from DSEIR Table 4.10-6, BRP's land use compatibility matrix, which specifies normally acceptable noise for single family residential use at 50-55 CNEL or Ldn. The confusion as to whether significance is determined by using Seaside's standards or the BRP standards is consequential because those standards differ. For example, the BRP has a 50 CNEL normally acceptable standard for passively used open space but the City has no standard for that use. And the BRP has a less restrictive standard than the City for multi-family residential use.

In short, the SEIR errs because it is impossible for the public to understand what threshold the SEIR applies to determine significance of stationary sources.

Second, the SEIR fails to provide any actual analysis that would support the determination of significance using the 24-hour average thresholds of significance identified as applicable standards. The SEIR identifies various 24-hour noise standards as applicable; however, for a number of critical noise sources (e.g., crowd noise, musical events), the SEIR does not actually determine the 24-hour average noise that the project would produce. For example, there is no analysis of the projected 24-hour average noise produced by events in Planning Areas REC-2, C-1, or REC-1. Instead, the DSEIR's discussion of significance repeatedly and erroneously compares peak or short term noise generated by the project to 24-hours standards.

In fact, the project description is not sufficient to enable the determination of 24-hour average noise impacts. Planning Areas REC-2, C-1, and REC-1 would permit noise from many different sources, such as musical events, equestrian events, swim meets, dog shows, and other sporting events. As Mr. Watry explains, the SEIR lacks an adequate description of the average noise generated by, or the duration of, the events in these areas

³⁴ In the Municipal Code at §17.030.060(E) these are currently identified as Tables 3-3 and 3-4. They are reproduced in the DSEIR as Tables 4.10-4 and 4.10-5.

to support determination of 24-hour average noise levels.³⁵ The FSEIR admits that "the exact activities associated with these potential uses is not known at this time" FSEIR, pp. 11.4-1057 to 11.4-1058. Thus, the EIR is inadequate because it fails to provide a project description that is sufficient to enable analysis of impacts (Guidelines, §15024) and fails to provide an adequate determination of the significance of impacts (Guidelines, §§ 15064, 15126.2). Furthermore, as Mr. Watry explains, the analysis also confusingly compares peak noise levels to noise standards measured by a 24-hour average noise level.

Third, the discussion fails to apply statistical noise standards from the BRP or any standard that would determine significance of annoyance from high volume, transient noise events. Mr. Watry explains that short duration noise, e.g., crowd noise, would in fact exceed the BRP's statistical noise standards and would be a substantial source of irritation to sensitive receptors, including open space users. Thus, the SEIR errs by uncritically relying only on 24-hour noise standards to determine significance despite evidence that episodic loud noise events will in fact result in substantial irritation to noise receptors and without any analysis of the effects of shorter-duration noise events on the ambient conditions. *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1381-82; *see also Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant").

The SEIR's errors are prejudicial because the public has no clear picture of the SEIR's thresholds and no clear description of the project's actual noise generation and because it is clear that applicable noise standards would be exceeded.

6. Mitigation of stationary noise impacts is inadequate.

CEQA requires an EIR to describe "feasible measures which could minimize significant adverse impacts." Guidelines, § 15126.4(a)(1). Mitigation must be fully enforceable and certain. Guidelines, § 15126.4(a)(2). Here, the SEIR fails to discuss or propose effective, enforceable mitigation for stationary source noise.

First, the mitigation in NOI-2 calls for meeting "the 65 dBA standard in the Fort Ord Reuse Plan, and Seaside Municipal Code Sections 9.12 (Noise Regulations) and 17.30.060 (Noise Standards)." DSEIR, p. 4.10-24. As Mr. Watry explains, this reference to "the 65 dBA standard" is entirely ambiguous and therefore not enforceable with any certainty. NOI-2 fails to specify whether the standard is a 24-hour average standard (i.e., a CNEL or Ldn metric) or a standard for the maximum noise level in an instant (e.g., the BRP statistical noise standard for zero minutes in Table 4.10-7). If it is a 24-hour CNEL

³⁵ The project description also fails to provide information sufficient to determine noise using statistical noise standards, e.g., to determine if crowd noise would exceed the 1 minute, 5 minute, 15 minute or 30 minute standards.

standard, then NOI-2 fails to explain how it is related to or derived from the actual standards in the Seaside noise regulations and the BRP. These standards include Seaside's "Noise/Land Use Compatibility Matrix" (DSEIR Table 4.10-5), Seaside's "Maximum Interior and Exterior Noise Standards" (DSEIR Table 4.10-4) or BRP's "Land Use Compatibility Criteria for Exterior Community Noise" (DSEIR, Table 4.10-6). NOI-2 implies that the project must meet both Seaside and BRP standards; however, the Seaside and BRP CNEL standards are not uniform with respect to allowable noise levels or even with respect to classification of land uses. It is simply unclear what standard must be met.

Second, the "65 dBA standard" referenced in NOI-2 is not the standard that the DSEIR used to determine the significance of impacts. The entire discussion of the significance of stationary noise was based on a determination whether project noise would exceed the BRP's 24-hour standard of 50-55 CNEL, which was repeatedly referenced in that discussion. DSEIR, pp. 4.10-19 (claiming non-residential stationary noise is "below the BRP's noise standards," referencing Table 4.10-6, and "therefore impacts would be less than significant"), 4.10-21 (referencing BRP's residential noise standard of 50 to 55 dBA in discussing significance of REC-2 Planning Area noise), 4.10-22 (claiming swim center noise is less than significant because it is within "BRP's standard of 50 to 55 dBA (exterior) for residential uses.") Indeed, the BRP's normally acceptable CNEL noise standard was also used to assess the significance of traffic noise impacts. FSEIR, p. 11.4-1054 (referencing the BRP's normally acceptable noise limit for multi-family housing of 60 CNEL). Using a different standard to determine the significance of impacts than is used to determine the efficacy of mitigation violates both common sense and CEQA because mitigation must address the significant impact that is "identified in the EIR," and "as identified in the EIR." Guidelines, §§ 15126.4(a)(1)(A), 15091(a)(1).

Third, NOI-2 fails to specify that compliance is required with BRP's 50 dBA CNEL standard for open space uses, not just its standard for residential uses. See DSEIR, p. 4.10-9 (Table 4.10-6, BRP noise standards). As Mr. Watry explains, compliance may not be possible, especially if the FSEIR is correct that this standard is already exceeded in open space areas.

Fourth, NOI-2 fails to specify that compliance with the mitigation must be determined at the property line, as is required by both the BRP standards and the Seaside Municipal Code. DSEIR, p. 4.10-9; BRP, pp. 411-412; Seaside Municipal Code, § 17.30.060(H).

Fifth, NOI-2 fails to specify that, even if the project meets 24-hour average noise standards, it must also mitigate short-term loud noise events by complying with the BRP's statistical noise standards. See DSEIR, p. 4.10-p. Table 4.10-7.

Sixth, as Mr. Watry explains, effective mitigation is uncertain, e.g., mitigation for crowd noise. Mr. Watry explains that mitigation of via a barrier or berm is not described

and that obtaining the necessary noise attenuation by barrier for the noise sources at REC-2 and C-1 is simply implausible. Indeed, the FSEIR admits that the effectiveness of mitigation is unknown:

The DSEIR identifies Mitigation Measures NOI-2 and NOI-3 that require noise management and attenuation associated with the sports arena and swim center that is proportional to the noise generated at these facilities. As the exact activities associated with these potential uses is not known at this time, it is not possible for the DSEIR to quantify the measurable extent to which implementation of such performance standards would reduce noise events to less than significant levels. The mitigation measures include performance standards to ensure that exceedances of noise standards would not occur. The listed performance standards are comprehensive but are not intended to be exhaustive, nor does CEQA require such standards.

FSEIR, pp. 11.4-1057 to 11.4-1058, emphasis added. Where mitigation is not known to be feasible, CEQA does not permit deferral of its formulation, regardless whether performance standards are proposed. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-96. Accordingly, it is improper to defer the formulation of the Noise Management Plan called for by NOI-2. The Noise Management Program must be specified now and the SEIR must demonstrate that it would be effective with reference to unambiguously identified performance standards.

Furthermore, the FSEIR's statement that post-mitigation noise levels cannot be determined is an admission that the City is failing to comply with the City noise ordinance at SMC § 17.30.060(G)(5), (6) and BRP Noise Policy B-3, both of which mandate that he City identify mitigation and assess post-mitigation noise levels.

Seventh, the mitigation proposed for the swim center under NOI-3 is inadequate because it does not address the admittedly significant impact from the Time System.

7. The analysis and mitigation of impacts to open space use is inadequate.

The BRP FEIR acknowledges that open space, park, and recreation areas are noise-sensitive areas. BRP PEIR, p. 4-132. It is clear that the open space in the project vicinity is in fact extensively used for passive recreation by numerous members of the public, many of whom have objected to the project's impacts, including the noise impacts. See comment letters by Elizabeth Murray, Fort Ord Recreation Trails Friends, Suzanne Worcester, Eric Petersen, Monterey Off-road Cycling Association, Susan Schiavone, Robert McGinley, Cameron Binkley, Tim Townsend, Cosma Bua.

The BRP requires protection of open spaces via a 50 dBA CNEL/Ldn noise standard specifically applicable to passively used open space; via statistical noise standards applicable at the property line of noise-generating uses; and via Policy B-8, barring a 3 dB Ldn/CNEL increase where noise levels are already over the 50 dBA

standard. See DSEIR, pp. 4.10-8 to 4.10-11. Inconsistency with these policies should be identified as a significant environmental impact and as, discussed below, as a reason that the project should not be approved based on inconsistency with the Fort Ord Reuse Act.

First, the proposed mitigation of stationary noise in NOI-2 that identifies only a “65 dBA standard” clearly fails to mandate compliance with the BRP’s 50 dBA CNEL/Ldn open space noise standard.

Second, as Mr. Watry explains, responding to LandWatch’s request for baseline open space noise levels, the FSEIR states that the baseline CNEL noise level for passively used open space is within a decibel of the 52.3 dBA Leq noise level measured at the baseline measurement location #2.³⁶ FSEIR, p. 11.4-1052. Thus, according to the SEIR, the noise level for open space already exceeds the BRP’s 50 Ldn/CNEL standard.³⁷ Thus, BRP Policy B-8 would come into play, and would bar any noise increase over 3 dBA Ldn/CNEL. The SEIR fails to provide any assessment to determine whether project noise would increase noise by 3 dBA at the property line; thus, there is no substantial evidence that the project would comply with BRP Noise Policy B-8. Non-compliance with a policy intended to protect noise-sensitive open space uses would be a significant impact.

Third, the analysis of stationary noise impacts fails to disclose that the project will cause noise in excess of the BRP’s statistical noise standards in the open space areas

³⁶ Baseline information must be presented in the draft EIR, not later in the EIR process. Guidelines, § 15120(c) (draft EIR must contain information required by Guidelines, § 15125); *Save Our Peninsula v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 120-124, 128; *Communities for a Better Env’t v. City of Richmond* (“CBE v. Richmond”)(2010) 184 Cal. App. 4th 70, 89. However, here, the DSEIR fails to provide any assessment of the existing noise levels in open space areas that would be affected by the project. This information was not provided until the FSEIR, responding to LandWatch’s objection, claimed that noise levels measured on a roadway at 8th and Gigling was representative of open space noise levels. FSEIR, p. 11.4-1052.

³⁷ There is reason to doubt the FSEIR’s claim that the measurement of noise at location # 2 is in fact typical of open space noise levels. DSEIR Appendix A-7 indicates and demonstrates by photograph that the noise measurement was taken on the shoulder of 8th Avenue over a ten minute period and that the dominant noise source was passing cars. The open space adjacent to REC-2 and REC-1 would not be proximate to existing vehicle traffic.

If the baseline measurement is not accurate, then the SEIR violates CEQA because an EIR must describe the existing environmental setting so that it considers impacts “in the full environmental context.” Guidelines, § 15125(a), (c). An accurate baseline is critical because impact assessment must be based on “changes in the existing physical conditions in the affected area.” Guidelines, § 15126.2(a); see *Neighbors For Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

Without accurate baseline noise levels for open space areas, it is impossible to determine whether and to what extent the project would cause noise increases, which may be significant impacts under CEQA. Nor is it possible to determine if the project would be consistent with BRP Noise Policy B-8, which bars a 3 dB increase in noise to open space areas that are already over the normally acceptable level of 50 dBA CNEL. DSEIR, pp. 4.10-9, 4.10-11.

adjacent to REC-2, as Mr. Watry demonstrates. The proposed mitigation in NOI-2 fails to mandate compliance with statistical noise standards.

Fourth, even if the mitigation were revised to require compliance with the BRP’s open space noise standards, there is no evidence that mitigation is feasible and substantial evidence to the contrary. Again, the deferral of the formulation of the Noise Management Program called for by NOI-2 in the face of uncertainty violates CEQA.

8. The SEIR fails to identify a substantial increase in traffic noise as a significant impact.

The DSEIR’s significance thresholds for both project-specific and cumulative impacts depend on a determination of the project-caused traffic noise increase and a determination whether the resulting combined noise from the Project and other development would exceed noise standards for the receiving property use. In particular, the DSEIR finds project-specific impacts to be significant only if total noise (existing traffic noise plus project traffic noise) exceeds “the applicable exterior standard at a noise sensitive land use” and the Project itself contributes 3 dB to that noise level. DSEIR p. 4.10-13. The DSEIR’s two-step cumulative analysis first determines whether all future projects combined with the Monterey Downs project will cause a 3 dB increase and result in a noise level over the applicable standard. If so, the second step determines whether the Monterey Downs project contributes at least 1 dB to the future noise level. DSEIR p. 4.10-13.

Thus, in both analyses, it is necessary to determine whether traffic noise levels at the receiving property will exceed the applicable absolute noise thresholds for the receiving property’s land use.

This approach to significance determination is inadequate because it fails to acknowledge that there may be a significant impact due to a substantial noise increase even if the resulting absolute noise does not exceed the applicable standard. An agency may not take refuge in a project’s compliance with some regulatory standard when there is evidence that, notwithstanding that compliance, impacts are significant. *Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant”). The possibility that a noise increase may be significant even if the absolute regulatory standard is not exceeded is expressly recognized in the CEQA Guidelines, quoted by the DSEIR, which identify a significant impact if a project either causes a substantial increase in ambient noise or causes noise in excess of applicable standards. DSEIR, p. 4.10-12. The possibility is also recognized by

BRP Noise Policy B-6, which bars a noise increase over 5 dBA Ldn/CNEL even where noise is within the normally acceptable range.³⁸ DSEIR, p. 4.10-10.

As Mr. Watry explains, and as LandWatch objected in comment PO 208-91, the project will cause a significant impact and a violation of BRP Policy B-6 by increasing noise by more than 5 dBA at 7th Avenue between Gigling and Colonel Durham and at 8th Street between Inter Garrison and 6th. DSEIR, pp. 4.10-25, 4.10-26 to 4.10-27 (Table 4.10-11).

The FSEIR's response to LandWatch's objection is disingenuous. It claims that existing noise barriers would attenuate the traffic noise. FSEIR, p. 11.4-1054. As Mr. Watry explains, the presence of barriers does not affect the analysis: the increase in noise with and without the project would be the same regardless of the presence of barriers.

The FSEIR response is also disingenuous in claiming that interior noise levels would be maintained in residences on these road segments. FSEIR, p. 11.4-1054. The absolute level of interior noise levels is simply not relevant to the issue LandWatch raised, which is the increase in exterior noise levels. Impacts to exterior noise levels are an independent issue, as is evident from the fact that both Seaside and the BRP provide distinct standards for exterior and interior noise levels.

Finally, the FSEIR's observation that noise was modeled at 100 feet from the roadway centerline instead of the property line is also not relevant to this issue. As discussed below, both the Seaside noise ordinance and the BRP mandate noise analysis be at the property line. Regardless, even if it were correct to assess noise impacts at 100 feet instead of at the property line, here the noise increases modeled at 100 feet do exceed 5 dBA CNEL/Ldn in violation of BRP Policy B-6.

9. The SEIR's failures to measure noise impacts at the property line as mandated by the BRP and Seaside noise ordinance results in a failure to disclose a significant impact and a violation of BRP Policy B-6.

The traffic noise analysis assesses noise at 100 feet from the roadway centerline rather than at the property line of the receiving use. Thus, as LandWatch objected (PO 208-106) and Mr. Watry explains, the DSEIR errs by failing to honor the explicit requirements in both the Seaside noise ordinance and the BRP policies that noise be measured and controlled at the property line. SMC, § 17.30.060(E)(1)(a), (H); BRP Noise Policies B-6, B-7, B-8. The express purpose of the requirement to determine impacts at the property line is to protect outdoor uses. SMC, § 17.30.060(F) (obligation

³⁸ The policy bars an increase over 3 dBA Ldn/CNEL if noise is over the normally acceptable range.

to mitigate transportation noise impacts in order to "maintain outdoor and indoor noise levels" in compliance with standards).

As Mr. Watry explains, the error results in a failure to disclose a significant impact. The DSEIR's criteria for a project-specific impact is a 3 dBA CNEL increase where noise would exceed the applicable standard. On Gigling Road between 6th and 7th Avenues, noise would exceed the 60 dBA CNEL standard at the receiving residential use property line, even though it would not exceed the 60 dBA CNEL at standard at 100 feet from the roadway centerline, and the project would cause more than a 3 dBA CNEL increase. This should be identified as a significant impact. It should also be identified as an inconsistency with BRP Policy B-6, which bars a 3 dBA increase where noise exceeds the BRP's normally acceptable residential use standard "measured at the property line." DSEIR, p. 4.10-10.

10. The SEIR is informationally inadequate because it fails to identify land use noise thresholds and applicable standards for roadway segments affected by project; and because of this the SEIR fails to disclose considerable contribution to a significant cumulative impact on 2nd Avenue.

As LandWatch objected, the traffic noise analysis fails to identify the type of receiving land use (e.g., single family residential, multi-family residential, commercial) at each affected roadway segment, and this matters because the analysis purports to apply a different noise standard based on the type of land use. Comment PO 208-107. Nothing in DSEIR Tables 4.10-11, 4.10-12, or 4.10-13 listing noise levels and determining significance of impacts for various roadway segments identifies the adjacent land uses for these segments or the applicable noise standard. It is thus impossible for the public to see what noise impacts would occur at each type of land use or what noise standard the DSEIR actually applies.

The FSEIR claims that the DSEIR "considers the specific noise standards to each relevant land use" and that "the analysis reviewed the distance of the receivers to the roadway and the location of existing barriers to determine if an impact would actually occur." FSEIR p. 11.4-1058. If this level of analysis was actually undertaken, it does not appear anywhere in the DSEIR.

For example, the FSEIR claims that the DSEIR applies a 55 dBA standard for single family residential uses and a 60 dBA standard for multi-family residential use. FSEIR p. 11.4-1058 (Response PO 208-108.) However, Tables 4.10-11, 4.10-12, and 4.10-13 do not provide any indication of the actual uses for the affected segments that would allow the public to verify this claim.

The FSEIR failed to provide the requested information even though it claims that this information was developed in the noise analysis. The FSEIR claims that that the

noise analysis “considers the specific noise standards to each relevant land use” and that it “reviewed the distance of the receivers to the roadway and the location of existing barriers to determine if an impact would actually occur.” FSEIR p. 11.4-1058. If the specific land uses and applicable noise standards were in fact determined in the noise analysis, then there was no reason for the FSEIR to have failed to provide this available information in response to LandWatch’s request. Instead of providing the information for each roadway segment, the FSEIR provides only two cursory examples, claiming that residential uses on two segments have barriers; the FSEIR then claims that other sensitive receptors are “generally” located more than 100 feet from the centerline. FSEIR p. 11.4-1054. This is not responsive to the request for specific land uses and applicable standards.³⁹

Mr. Watry explains that there is at least one roadway segment where the SEIR’s lack of care in analysis and its failure to respond to comments with available information is prejudicial, because the SEIR fails to disclose that the project would make a considerable contribution to a significant cumulative impact based on the SEIR’s own criteria. Noise levels on 2nd Avenue between Inter Garrison Road and 8th Street would meet the DSEIR’s criteria for a considerable contribution to a significant cumulative impact because 1) the cumulative noise level would exceed the applicable 60 dBA CNEL standard for multi-family residential use and educational use; 2) the cumulative increase is greater than 3 dBA; and 3) the project adds more than 1 dBA. This is just one example of a prejudicial failure to provide adequate disclosure. Because the SEIR fails to identify receiving land uses and applicable standards for each affected segment, the public cannot determine if there are more.

11. Seaside may not approve the Project because it is inconsistent with Base Reuse Plan noise policies.

Under the Fort Ord Reuse Act, Seaside may not approve a development project that is not consistent with the BRP. Gov. Code, § 67675.8(b)(1). The project is not consistent with BRP noise policies as discussed above and detailed below.

The determinations of consistency with the BRP is not the same determination as the determination of significance under CEQA. Where a plan calls for the use of a particular method of analysis and compliance with particular standards, an agency must actually use the required analysis and standards in determining consistency. *Endangered Habitats League, Inc. v. Cty. of Orange* (2005) 131 Cal. App. 4th 777, 783 (agency may not substitute VC method for determining traffic impacts where plan calls for use of the HCM method). The EIR does not provide this analysis.

³⁹ Furthermore, it appears that the FSEIR may be claiming that applicable noise standards are met because residential structures are “generally” located more than 100 feet from the centerline. As discussed, this would not demonstrate that the exterior standard is met at the property line and that outdoor uses are protected. And even if it were appropriate to evaluate impacts at 100 feet from the centerline, the FSEIR’s assertion that the protected use (presumably the residence itself) is “generally” more than 100 feet from the centerline suggests that either (1) there are exceptions or (2) the analysis did not in fact verify this claim.

- a. The project is inconsistent with BRP noise policies requiring projects to evaluate and to meet statistical noise standards; and unless and until Seaside adopts the required BRP Noise Programs it may not approve this project.

The project is inconsistent with the BRP because 1) it does not comply with the BRP’s statistical noise standards and 2) the City has failed to adopt those standards.

Mr. Watry has explained that construction noise and stationary noise from the project will violate the statistical noise standards, and that proposed mitigation will not ensure that the project will meet the statistical noise standards. Compliance with these standards is unambiguously required by BRP Noise Policy A-1 and Noise Program A-1.2, which specifically require Seaside to enact the BRP’s statistical noise standards (the standards shown in Table 4.5-4) into its noise ordinance and to apply those standards in the Former Fort Ord area.⁴⁰ BRP, pp. 412-413. Seaside has not enacted these standards; the only standards in Seaside’s noise ordinance are 24-hour CNEL or Ldn standards. Seaside Municipal Code, § 17.30.060(E), Tables 3-3 and 3-4.

Furthermore, FORA bars approval of development entitlements for this project unless and until Seaside actually adopts the Noise Programs as specified in the BRP, i.e., adopts a noise ordinance that contains the statistical noise standards mandated by the BRP:

No development entitlement shall be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken appropriate action, in the discretion of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

Fort Ord Reuse Authority Master Resolution, § 8.02.040.

Contrary to the FSEIR, these standards are clearly relevant to determining significant impacts under CEQA. And, regardless of CEQA’s provisions, the Fort Ord Reuse Act makes adoption and application of these standards in the Fort Ord area mandatory as provided by the BRP provisions.

In addition to Noise Policy A-1 and Noise Program A-1.2, Noise Policy B-1 mandates compliance with the statistical noise standards in Table 4.5-4 for existing residences and other existing noise-sensitive uses where feasible and practical. BRP, p. 414. Noise Policy B-2 mandates that new development not adversely affect any existing or proposed uses by complying with the statistical noise standards in Table 4.5-4 for all

⁴⁰ The BRP adopts identical standards and policies for Seaside and the County of Monterey, so the entire project areas is subject to the same requirements. BRP, pp. 413-417.

new development. BRP, p. 414. This means that new development may not adversely affect existing uses and that it may not generate noise levels that would adversely affect other portions of the new development. Noise Policy B-5 requires that if it is not feasible or practical to meet the statistical noise standards, the City must either provide noise barriers for new development or ensure that interior standards are met.

The SEIR has not evaluated impacts in terms of statistical noise standards and has not determined feasibility of compliance with these standards. This violates Noise Policy B-3, which requires analysis of impacts and mitigation with reference to statistical noise standards before accepting development applications as complete. The project is not in compliance with the analysis requirements in Noise Policy B-3, and the City cannot conclude that it is in compliance with Noise Policies B-1 and B-2, until the City completes the required analysis and considers feasible mitigation and alternatives.

- b. Seaside has failed to adopt the BRP's 24-hour noise standards in its noise ordinance as mandated by BRP Noise Policy A-1 and may not approve the project until it has done so.

BRP Noise Policy A-1 and Programs A-1.1 and A-1.2 mandate that Seaside adopt by ordinance and apply the 24-hour noise standards set out in BRP Table 4.5-3. *See* BRP, pp. 411, 413. Seaside has not done so because the 24-hour noise standards in its ordinance differ from the BRP's standards. *Compare* Seaside Municipal Code, §17.30.060(E), Table 3-4 to BRP Table 4.5-3 (or *compare* DSEIR, Table 4.10-5 to Table 4.10-6, which contain these differing noise standards). For example, Seaside's noise ordinance lacks any standard for passively used open space, whereas the BRP provides that at most a 50 dBA noise level is "normally acceptable." Seaside's ordinance provides that 65 dBA is "conditionally acceptable" for single family residential use, whereas the BRP provides that at most 60 dBA is "conditionally acceptable" for that use.

As discussed, the SEIR is unclear as to the noise standards it uses to determine the significance of project noise impacts and to require mitigation under CEQA, referencing both the Seaside General Plan and noise ordinance standards and the BRP noise standards.⁴¹ DSEIR, pp. 4.10-13 to 4.10-14, 4.10-19 to 4.10-24. Thus, it is impossible to determine to what standards the project would be held or even whether proposed mitigation is feasible. Not only does this violate CEQA, but there can be no substantial evidence that the project would be consistent with the BRP Noise Policy A-1 and Program A-1.1, which require application of the BRP noise standards.

Again, FORA bars approval of development entitlements for this project unless and until Seaside actually adopts the Noise Programs as specified in the BRP, i.e., adopts a noise ordinance that contains the 24-hour noise standards mandated by the BRP. Fort Ord Reuse Authority Master Resolution, § 8.02.040.

⁴¹ The Seaside General Plan Noise standards are substantially similar to the standards in its noise ordinance. *See* Seaside 2004 General Plan, p. N-5.

- c. The project is inconsistent with the BRP policies requiring protection of open space uses from noise.

The BRP contains several policies that mandate evaluation of noise impacts to open space uses and compliance with noise standards for open space receptors. BRP Noise Policies A-1, B-1, B-2, and B-5 require compliance with the 24-hour average noise standards for open space specified in BRP Table 4.5-3 (reproduced in DSEIR as Table 4.10-6). *See* BRP, pp. 411, 413-414.

As discussed, Seaside has failed to comply with BRP Noise Policy A-1 and Programs A-1.1 and A-1.2 mandating inclusion of the BRP's 24-hour noise standards in the Seaside noise ordinance and application of that standard to projects in Fort Ord. As a result, the Seaside noise ordinance omits the BRP's 50 dBA CNEL standard for passively used open space.

Furthermore, as Mr. Watry explains, the SEIR fails to provide an adequate assessment of the project's compliance with BRP open space noise standards by 1) failing to assess compliance with BRP statistical noise standards, 2) failing to determine 24-hour average noise levels at affected open space proximate to the project and failing to assess compliance with the BRP's 50 CNEL normally acceptable noise standard for open space use, and 3) failing to specify that mitigation must meet relevant noise standards for open space, e.g., the BRP 24-hour average and statistical noise standards. The failure of assessment and mitigation is not only a violation of CEQA, but also of BRP Policy B-3, which requires that an acoustical study be submitted prior to accepting a development application as complete that evaluates a project's compliance with Table 4.5-3 and Table 4.5-4 noise standards and proposes necessary mitigation.

Mr. Watry has explained that construction noise and stationary noise from the project will in fact exceed the statistical noise standards in BRP Table 4.5-4, and that there is no assurance that proposed mitigation will ensure that the project will meet these statistical noise standards or even meet applicable 24-hour average standards. In light of the City's failure to evaluate open space noise impacts and the evidence that the project will not meet open space noise standards, there can be no substantial evidence that the project is consistent with BRP Policies A-1, B-1, B-2, and B-5.

Finally, BRP Noise Policy B-8 bars any noise increase of 3 dBA Ldn or more at the property line where ambient noise already exceeds the normally acceptable open space standard of 50 dBA. BRP, p. 415. The FSEIR indicates that open space noise already exceeds that standard, by claiming that monitored noise at Site 2 represents existing ambient open space noise levels. FSEIR, p. 11.4-1052. As Mr. Watry explains, the SEIR fails to make any determination whether noise levels would increase by 3 dBA at open space locations adjacent to the project or to impose mitigation that would ensure compliance. Thus, there can be no substantial evidence that the project complies with BRP Noise Policy B-8.

d. The project is inconsistent with BRP Policy B-6.

BRP Noise Policy B-6 bars a 5 dBA Ldn noise increase to residential uses caused by new development where ambient noise levels for those residential uses are not above the normally acceptable level in BRP Table 4.4-3. BRP, p. 414. BRP Table 4.4-3 provides that the normally acceptable noise level for single family residential uses is 50-55 dBA Ldn and for multi-family residential use it is 50 to 60 Ldn. BRP, p. 411.

Traffic noise from the project will increase noise by more than 5 dBA at a number of locations, even though the SEIR does not conclude that noise will exceed the 60 dBA Ldn standard. For example:

- noise on 7th Avenue between Gigling Road and Colonel Durham Street will increase by 6.3 dBA under existing with project conditions (DSEIR, Table 4.10-11);
- noise on 8th Street between Inter Garison Road and 6th Avenue will increase by 5.1 dBA under existing with project conditions (DSEIR, Table 4.10-11);
- noise on 7th Avenue between Gigling Road and Colonel Durham Street will increase by 6.4 dBA under 2035 with project conditions (DSEIR, Table 4.10-12).

These noise increases violate BRP Policy B-6.

As Mr. Watry explains, the FSEIR's argument that the noise determination in the DSEIR is 100 feet from the roadway and that there are intervening structures is simply irrelevant. BRP Noise Policy B-6 requires measurement at the property line, and if the noise increase exceeds 5 dBA at 100 feet, the increase will exceed 5 dBA at locations closer to the source. Furthermore, the effect of intervening structures on total noise levels would be the same for both pre-and post-project noise, so the increase in noise would still be 5 dBA regardless of intervening structures.

The FSEIR's argument that provision of interior noise mitigation as required by BRP Noise Policy B-5 would somehow ensure compliance with Policy Noise B-6 is also irrelevant. The two BRP policies are distinct and independent requirements, and are intended to attain different standards. Provision of interior noise mitigation would do nothing to ensure that exterior noise standards are met at the property line.

- e. The project is inconsistent with both BRP policies and the Seaside Municipal Code provisions that require noise to be assessed and standards to be met at the property line.

Compliance with exterior noise standards must be determined based on noise levels "measured at the property line of the noise-sensitive land use receiving the noise" under SMC, § 17.30.060(H); *see also* SMC, § 17.30.060E(1)(a) (no use may generate noise in excess of standards "as the noise is measured at the property line of a noise sensitive land use identified in Tables 3-3 and 3-4"). BRP's statistical noise standards and its 24-hour average noise standards, compliance with which is mandated by BRP Noise Policies A-1, B-1, B-2, B-3, and B-5, are expressly "applicable at the property line." BRP PEIR, pp. 411-412, Tables 4.5-3 and 4.5-4. BRP Noise Policies B-6, B-7, and B-8, which bar certain noise increases depending on ambient conditions, are all enforceable as "measured at the property line." BRP, pp. 414-415.

As Mr. Watry explains, the purpose of determining compliance at the property line is in part to protect noise-sensitive outdoor land uses that cannot be protected by building insulation or HVAC systems. Despite this, the SEIR fails to determine traffic noise impacts at the property line of the receiving land uses.

12. The SEIR fails to acknowledge that it would be inconsistent with Municipal Code section 17.30.060(F) to site new noise-sensitive uses where traffic noise causes an exceedance of City standards.

LandWatch objected that the DSEIR fails to acknowledge that Seaside Municipal Code section 17.30.060(F) bars any new noise-sensitive uses in areas where the standards in Table 3-4 (reprinted as DSEIR Table 4.10-5) are or would be exceeded unless mitigation ensures meeting both indoor and outdoor standards, as determined at the property line. Comments PO 208-92, 208-110. Portions of the project would be sited in areas that exceed or will exceed the Table 3-4 standards at the property line. For example, the project would include residential uses on Gigling Road between 8th Avenue and 7th Avenue. DSEIR, Figure 2-16. Traffic noise at 57.9 CNEL at 100 feet from the roadway centerline would exceed the City's 55 CNEL normally acceptable residential standard on that segment. DSEIR, Table 4.10-12; SMC §17.30.060(E) (Table 3-4). Regardless whether this is deemed a significant impact under CEQA, the City must acknowledge that it is an inconsistency with its noise ordinance.

The FSEIR responds by arguing that the noise levels are determined at 100 feet and that there are intervening barriers and that sensitive uses are "generally" located more than 100 feet from the centerline. FSEIR, p. 11.4-1054. This misreads the ordinance, which clearly states that "exterior noise levels shall be measured at the property line of the noise-sensitive land use receiving the noise" in order to "maintain outdoor and indoor noise levels on the receptor site in compliance with Tables 3-3 and 3-4." SMC, § 17.30.060(H), (F).

G. The elimination of references to horse racing as an allowed use in the specific plan does not ensure that horse racing will not be permitted.

At the eleventh hour, staff now proposes to eliminate horse-racing as an allowed use from the specific plan. The specific plan would still permit construction of horse-racing facilities, including the track (now termed a “training track”) and the grandstand. Nothing in the proposed conditions of approval would actually ban horse-racing or preclude identifying it as an allowed use in a future interpretation or revision of the specific plan. The applicant would remain free to condition sales of residential properties on acceptance of this potential future use.

The City has prepared an SEIR that assumes that horse-racing would be an allowed use. If horse-racing were identified as an allowed use in a future interpretation or revision of the specific plan, the applicant would likely argue that certification of the SEIR would obviate the need for additional environmental review.

Not only could the City easily identify horse-racing as an allowed use in a future interpretation or revision of the specific plan, regulation of horse-racing could be found to be preempted by statute and state regulation and not subject to a municipal veto. Indeed, a city official has acknowledged as much:

Malin acknowledged, the racing enterprise could be re-inserted into the plan at some point.

“...In both a conceptual and practical sense, horse racing is a legal business. Conceptually, cities can’t generally prohibit legal businesses from operating in a community, particularly those that are as much creatures of state regulation as horse racing is. Conceptually, horse racing could come to almost any city with infrastructure that exists (or may be constructed) to support it. Practically speaking, should the project move forward, it would be very difficult to add horse racing back into the project if homes are sold without that use allowed within the first approvals.

Monterey Bay Partisan, [Seaside officials want to remove horse racing from Monterey Downs venture, at least for now](http://www.montereybaypartisan.com/2016/09/05/seaside-officials-want-to-remove-horse-racing-from-monterey-downs-venture-at-least-for-now), Sept. 5, 2016, available at <http://www.montereybaypartisan.com/2016/09/05/seaside-officials-want-to-remove-horse-racing-from-monterey-downs-venture-at-least-for-now>.

If the City is serious about precluding horse-racing at the site, it should take steps that would inhibit or effectively ban the use. For example, the City could disallow the construction of a “training-track” and grandstand. The City could acknowledge that the horse-racing use would contribute to substantial adverse environmental impacts to traffic and noise and, accordingly, identify a ban on horse-racing as required mitigation. The City could simply ban horse-racing by ordinance.

If the City does not believe it has the authority to ban horse-racing under state law and does not take the other actions that could inhibit horse-racing, then its elimination of references to horse-racing in the specific plan is a hollow and cynical exercise intended to assuage horse-racing opponents without actually addressing their concerns.

H. The elimination of references to horse racing as an allowed use in the specific plan renders the SEIR’s project description unstable.

An adequate project description must be stable and accurate in order to support public participation and informed decision making. Guidelines, § 15124; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197-198. An inaccurate project description vitiates the EIR’s analysis; that is, a failure of description causes a failure of analysis. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396-397. An inconsistent project description also vitiates adequate analysis. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654-657, 672. A curtailed and shifting project description that precludes informed public participation and decision making is a prejudicial failure to proceed as required by law. *San Joaquin Raptor v. Merced, supra*, 149 Cal.App.4th at 655, 672.

The last-minute elimination of horse-racing from the specific plan renders the project description prejudicially unstable. The analysis of impacts was expressly predicated on the assumption that horse-racing would occur, and, without that use, the SEIR’s analyses are no longer justified. For example, as discussed above, 950 of the project’s projected 2,391 on-site jobs are identified as equestrian jobs associated with the Phase 6 construction of the horse-racing facilities. There is no analysis that would support a finding that other uses would replace those jobs. Without those jobs, there would only be 1,441 jobs at buildout, resulting in a jobs/housing ratio of 1,441 jobs/1,280 housing units, a ratio of 1.13. SEIR’s analyses that are dependent on a strong jobs/housing ratio are invalid. As discussed above, the project would not meet the BRP jobs/housing goal or contribute to meeting the Seaside goal. A reduction in the jobs/housing ratio would result in increased per capita off-site vehicle trips and aggravate the significant per-capita GHG impact.

The elimination of the horse-racing use, if it is in fact eliminated, is significant new information that requires recirculation of a draft EIR to re-assess impacts that are dependent on the DSEIR’s assumptions about race track jobs and land uses. Guidelines, § 15088.5(a).

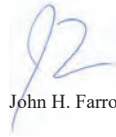
I. The project is inconsistent with the Base Reuse Plan.

Under the Fort Ord Reuse Act, Seaside may not approve a development project that is not consistent with the BRP. Gov. Code, § 67675.8(b)(1). As discussed above, the project is inconsistent with a number BRP noise policies and programs. In addition,

the SEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policies B-1 and B-2, which policies require additional water supplies and prohibit approval of a development project without an assured long-term water supply. DSEIR, p. 4.9-10; FSEIR 14.4-1020. As discussed above, approval of the project with mitigation that may compel construction of only Phases 1-3 is inconsistent with BRP policies mandating a balanced jobs/housing ratio, including DRMP § 3.11.5.4(b), (c).

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John H. Farrow

JHF:hs

Cc: Michael Delapa

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Attachment – Timothy Parker to John Farrow, October 8, 2016,
Technical Memorandum

Technical Memorandum

October 8, 2016

To: John H. Farrow, M.R. Wolfe Associates, P.C., Attorneys-at-Law

From: Timothy K. Parker, PG, CEG, CHG, Parker Groundwater

Subject: Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR)

At your request, I have reviewed the Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (FSEIR) together with the documents cited in the discussion below. My conclusions are set out below.

I am a California Professional Geologist (License #5584), Certified Engineering Geologist (License # EG 1926), and Certified Hydrogeologist (License #HG 12), with over 25 years of geologic and hydrologic professional experience. I serve as a member of the Technical Advisory Committee to the Monterey County Water Resources Agency in connection with its ongoing study of the Salinas Valley Groundwater Basin that is mandated by Policy PS 3.1 of the 2010 Monterey County General Plan. The purpose of that study is to evaluate historic data and trends in seawater intrusion and groundwater levels in the Salinas Valley Groundwater Basin, to evaluate the likely future groundwater demand, to determine whether groundwater level declines and seawater intrusion are likely to continue through 2030, and to make recommendations for action. This study has not been concluded, but a preliminary report was released in January 2015 by the prime consultant for the PS-3.1 study.¹ My Resume and Project Experience are attached.

A. Cumulative pumping in the Salinas Valley Groundwater Basin (SVGB) and its Pressure Subarea has resulted in aquifer depletion and associated seawater intrusion, and current groundwater management efforts are not sufficient to avoid this significant cumulative impact.

1. Overdraft and seawater intrusion in the Salinas Valley Groundwater Basin

The project will obtain its water supply from wells in the 180/400-Foot Aquifer Subbasin ("180/400-Foot Aquifer" or "Pressure Subarea") at the northwest end of the Salinas Valley

¹ MCWRA, State of the Salinas River Groundwater Basin, January, 2015, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

Groundwater Basin. DSEIR p. 4.19-2 to 4.19-3. The Pressure Subarea is one of the eight subbasins making up the Salinas Valley Groundwater Basin (SVGB).² Overdraft in the Pressure Subarea has averaged about 2,000 acre-feet per year (“afy”) from 1944 to 2014, and the Basin as a whole is “currently out of hydrologic balance by approximately 17,000 to 24,000 afy.”³ Pumping from the Basin has exceeded recharge since the 1930s, causing seawater intrusion as inland groundwater elevations dropped below sea level, permitting the hydraulically connected seawater to flow inland.⁴ Seawater intrusion has advanced more than 5 miles inland, rendering significant groundwater unusable for irrigation or domestic uses.⁵

The rate of seawater intrusion is variable, increasing and decreasing with changes in precipitation, but the long-term trend has been a progressive advance in both the 180-foot and 400-foot aquifers.⁶ The current prognosis for the Pressure Subarea is for further seawater intrusion due to continued groundwater elevations below sea-level including the latent effects of the recent drought:

The fact that groundwater elevations are well below the documented protective elevations indicates that the P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that this situation will be reversed in the coming years, particularly if the current drought conditions continue. Based on the observed time lag (latency) between the end of the historic drought (WY 1991) and the end of the resulting chloride concentration increase (around 1999), one can predict that the 2013 chloride levels reported for coastal wells could show upward concentration trends over the coming years as the SWI front advances, even if wetter climate conditions return. The study area has had three straight years of severe drought

² MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley (“Protective Elevations”), 2013, p. 2, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/documents/ProtectiveElevationsTechnicalMemorandum.pdf; MCWRA, State of the Salinas River Groundwater Basin, 2015, Section 3.

³ MCWRA, State of the Salinas River Groundwater Basin, pp. 6-3.

⁴ MCWRA, Protective Elevations, pp. 4–5; MCWRA, State of the Basin, pp. 2-4, 5-2; MCWRA, Salinas Valley Water Project Draft EIR (“SVWP DEIR”), 2001, pp. 1-2 to 1-8, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/documents/DEIR_EIS_2001/2001%20SVWP_DEIR_2001.pdf.

⁵ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-2 to 5-6; *see also* California Department of Water Resources, Bulletin 118, Salinas Valley Groundwater Basin, 180/400 Foot Aquifer Subbasin, available at <http://www.water.ca.gov/groundwater/bulletin118/basindescriptions/3-04.01.pdf>.

⁶ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-2 to 5-9.

conditions, and continued drought conditions are projected to cause substantial declines in both groundwater head (Section 3.4) and storage (Section 4.4).⁷

The California Department of Water Resources (DWR) is required by the Sustainable Groundwater Management Act to designate as “critically overdrafted” those groundwater basins for which “continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.”⁸ DWR identified the 180/400-Foot Aquifer of the Salinas Valley Groundwater Basin as critically overdrafted in January 2016.⁹

2. Efforts to control seawater intrusion

The Monterey County Water Resources Agency (“MCWRA”) and predecessor agencies have implemented several projects to address seawater intrusion by storing surface water, increasing recharge, and reducing groundwater pumping along the coast.¹⁰ These include the Nacimiento and San Antonio Reservoirs, water recycling to support the Castroville Seawater Intrusion Project, and the Salinas Valley Water Project (SVWP). The SVWP is the most recent of these projects, completed in 2010.

The EIR for the SVWP explains that seawater intrusion is determined by the amount and location of pumping, and varies in response to annual patterns of precipitation. Because coastal pumping causes greater intrusion impacts, the most effective mitigation for seawater intrusion is a reduction of pumping in coastal areas.¹¹ However, total pumping in the hydraulically connected SVGB also matters:

[P]umping in the coastal area closest to the seawater intrusion front has a greater influence on seawater intrusion than pumping in a valley area more distant from the front. Nevertheless, pumping in each area affects seawater intrusion because each subarea draws water from the same Basin.¹²

⁷ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-7 to 5-8, see Tables 3-2 and 4-6 in Sections 3.4 and 4.4.

⁸ DWR, Critically Overdrafted Basins, available at <http://www.water.ca.gov/groundwater/sgm/cod.cfm>.

⁹ DWR, Critically Overdrafted Basins (1/2016), available at http://www.water.ca.gov/groundwater/sgm/pdfs/COD_BasinsTable.pdf.

¹⁰ Marina Coast Water District (MCWD), Urban Water Management Plan (UWMP), 2010, pp. 30-31.

¹¹ MCWRA, SVWP Final EIR, p. 2-36, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/documents/Final%20EIR-EIS%20SVWP_RTC-Vol%201.pdf.

¹² MCWRA, SVWP Final EIR, p. 2-35 to 2-36 (emphasis in original).

The 2002 SVWP EIR predicted that the SVWP could halt seawater based on the amount and location of 1995 demand.¹³ However, it could not assure that the SVWP would halt seawater intrusion in 2030, even though total demand was estimated to decline, because of projected urban growth and associated higher demand in the northern end of the Basin, e.g., the Fort Ord area.¹⁴

As noted in Section 3.2.4, overall water demand in the Basin is anticipated to decline by 2030, but total urban needs are projected to increase from 45,000 acre-feet per year (AFY) in 1995 to 85,000 AFY (a 90% increase) based on projected growth, a large part of which is expected to occur in the northern end of the valley. The modeling shows that with projected 2030 demands, seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term.¹⁵

The SVWP EIR also cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.”¹⁶

3. Seawater intrusion will not be controlled by current management efforts because demand has exceeded projections.

Attachment 1 presents a discussion of the SVWP modeling assumptions compared to subsequent conditions and a discussion of MCWRA’s current acknowledgement and scientific documentation that the existing groundwater management projects are not sufficient to halt seawater intrusion in the SVGB. Attachment 1 demonstrates that:

- The SVWP EIR assumed that Basin groundwater pumping would decline substantially from 1995 to 2030, from 463,000 afy to 443,000 afy, based on large expected reductions in agricultural pumping, which dominates Basin water demand. However, groundwater pumping in the 20 years since 1995 substantially exceeded 1995 levels, averaging well over 500,000 afy.
- Modeling for the SVWP understated the level of post-1995 pumping that has actually occurred and that, in any event, the SVWP EIR only claimed the SVWP would halt seawater intrusion based on 1995 land use.
- The existing groundwater management projects have only been able to slow seawater intrusion. While reports show that the rate of seawater intrusion has

¹³ MCWRA, SVWP DEIR, pp. 3-23 to 3-24.

¹⁴ Id.

¹⁵ MCWRA, SVWP Final EIR, p. 91.

¹⁶ MCWRA, SVWP Draft EIR, p. 7-7.

declined since the last drought-induced spike in intrusion during 1997-1999, intrusion continues. Furthermore, a new drought-induced spike, which typically follows a drought after a lag period of some years, is now likely to occur due to the latent effects recent drought.¹⁷

- Thus, MCWRA has concluded that a new project or projects supplying an additional 48,000 afy of groundwater recharge, over and above that supplied by the SVWP, would be required in order to maintain protective groundwater elevations sufficient to control seawater intrusion.

B. The Monterey Downs SEIR’s discussion of water supply impacts focuses on water supply allocation and reliability of pumping systems and assumes that the Salinas Valley Water Project will halt seawater intrusion.

The DSEIR reports that, pursuant to a 1993 agreement annexing the Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency, Marina Coast Water District (MCWD) may withdraw up to 6,600 afy from the SVGB for use in the Ord Community. (DSEIR p. 4.8-9.) The DSEIR reports that the Fort Ord Reuse Authority (FORA) has sub-allocated this 6,600 afy to the member agencies that have local land use jurisdiction in the Ord Community; that those member agencies have in turn allocated some of their sub-allocations to approved development projects; and that Seaside and Monterey County still retain 412.9 afy of their respective sub-allocations that have not yet been committed to approved projects. (DSEIR p. 4.19-2 to 4.19-5.) The DSEIR concludes that this unallocated water would be sufficient to support Phases 1-3 of the project, but that additional water supplies would be required for Phases 4-6. (DEIR p. 4.19-24, 4.8-34.)

The Monterey Downs DSEIR concludes that Phases 1-3 of the project will not have a significant impact on groundwater because (1) those phases “would only use groundwater that is within MCWD’s existing 6,600 AFY allocation” and (2) “MCWD’s groundwater supply is considered reliable on a quantity and quality basis.” (DSEIR p. 4.8-34; see DSEIR p. 4.19-32.) As discussed in the next two sections, neither of these two reasons for concluding the impact is not significant are justified.

The conclusion that “MCWD’s groundwater supply is considered reliable on a quantity and quality basis” (DSEIR p. 4.8-34) is taken from the Water Supply Assessment (WSA).¹⁸ The WSA information is taken in turn from the MCWD 2010 Urban Water Management Plan (UWMP).¹⁹ In support of the claim that the water supply is “reliable” the FSEIR also cites studies estimating project water demand and evaluating stormwater runoff and recharge; however these additional documents are concerned with project demand estimates, sewer

¹⁷ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-7 to 5-8.

¹⁸ MCWD, Water Supply Assessment and Written Verification of Supply for Monterey Downs Specific Plan, 2012, pp. 22-23.

¹⁹ MCWD, Urban Water Management Plan (UWMP), 2010, p. 53.

usage estimates, and stormwater runoff, and do not provide any discussion of groundwater impacts to the SVGB due to increased pumping that is not contained in the WSA and UWMP.²⁰

The UWMP's discussion of water supply "reliability" cited by the WSA is expressly based on the claims that the SVWP will in fact eliminate overdrafting and prevent saline contamination and that pumping will respect "long-term safe yields:"

5.1 Water Supply Reliability - Single and Multiple Dry Year and Demand Comparison

The Urban Water Management Planning Act requires a description of a water provider's supply reliability and vulnerability to shortage for an average water year, a single dry year or multiple dry years. Such analysis is most clearly relevant to water systems that are supplied by surface water. Since the bulk of MCWD's supply is groundwater and the remainder is from desalinated supply, short- and medium-term hydrologic events over a period of less than five years usually have little bearing on water availability. Groundwater systems tend to have large recharge areas. The Salinas Basin is aided by two large storage reservoirs, Nacimiento and San Antonio, providing about 700,000 ac-ft of storage. These reservoirs regulate surface water inflow to the basin shifting winter flows into spring and summer releases for consumptive use, which also allows for increased basin recharge. The Salinas Valley Water Project is expected to increase the average level of groundwater storage, moving the basin from a situation where average storage is declining to a net increase in storage of about 6,000 ac-ft annually. Provided groundwater is protected from contamination and long-term safe yields in the basin are respected, water is available annually without regard to short-term droughts. This is due to the large storage volume of the basin that can be utilized to offset annual variations in surface runoff. Therefore, MCWD's groundwater supply is fully available in annual average, single dry year and multiple dry years.²¹

The 2010 UWMP discusses previous groundwater management efforts including the Nacimiento and San Antonio reservoirs and the Castroville Seawater Intrusion Project (CSIP).²² The UWMP then states that the SVWP was developed to "fully eliminate basin

²⁰ See e.g., DSEIR pp. 4.8-48 to 4.8-49, FSEIR, pp. 11.4-1623, 11.4-1628 to 11.4-1629, 11.4-1611, 11.4-1569, 11.4-1574, 11.4-1575, 11.4-1585, citing Monterey Horse Park Project Water Demand and Sewage Generation (Horse Park Water Sewer) (Whitson Engineers, August 16, 2012); Water Supply Assessment and Written Verification of Supply for the Monterey Downs Specific Plan (Schaaf & Wheeler Consulting Engineers, November 6, 2012); Water Supply Assessment for the Monterey Downs Specific Plan Update to Table 5-2 (Marina Coast Water District, November 28, 2012); City of Seaside - Monterey Downs WSA Supplement (Diamond West Incorporated, February 21, 2014); and Monterey Downs Water and Sewer Demand Study (WSDS) (Diamond West Incorporated, September 24, 2012).

²¹ MCWD, 2010 UWMP, p. 53.

²² MCWD, 2010 UWMP, pp. 30-31.

overdraft and seawater intrusion," and claims that "MCWRA modeling concludes that this component will eliminate basin overdraft and intrusion."²³ The 2010 UWMP reports that the SVWP assumes that there will be a 20,000 afy reduction in SVGB demand by 2030, consistent with the SVWP EIR's modeling assumptions.²⁴ The 2014 WSA Supplement prepared by Diamond West on behalf of the applicant reports these UWMP claims that the SVWP will reverse the overdraft condition (result in a "net increase in storage of about 6,000 ac-ft annually"), avoid saline contamination, and that SVGB demand is projected to decline 20,000 afy by 2030.²⁵

However, the DSEIR, the WSA, and the WSA Supplement all fail to report that the UWMP acknowledges that the seawater intrusion front continues to advance in the vicinity of the Marina and Ord Community, and threatens the wells supplying the Ord Community.²⁶ They also fail to report that the UWMP states that the SVWP is expected to halt seawater intrusion only based on a 1995 pumping baseline, that "it is uncertain whether this outcome will be borne out at currently expected levels of pumping increases in the coastal margins of the Pressure subarea," and that MCWRA has also documented that the SVWP "may not halt intrusion in the long run and that additional surface water delivers into the coastal region" may be needed.²⁷ Neither the SEIR, the WSA, or the WSA Supplement discuss MCWRA's current reports and documentation, discussed in Attachment 1, that (1) SVGB demand has exceeded the demand projections used by the SVWP modeling, (2) actual pumping in the SVGB is unsustainable without adverse impacts because it exceeds the long-term safe yield, and (3) additional groundwater management projects, which are neither committed nor funded, are needed to halt seawater intrusion caused by current pumping because the SVWP will not do so.

C. The Monterey Downs SEIR analysis is based on the unfounded assumption that there would be no significant impact as long as total Fort Ord pumping is less than 6,600 afy; however, any additional pumping will further aggravate existing seawater intrusion regardless of whether portions of the 6,600 afy remain unallocated.

As noted, a major premise of the SEIR's conclusion that water supply impacts for Phases 1-3 are not significant is that the project "would only use groundwater that is within MCWD's existing 6,600 AFY allocation." (DSEIR p. 4.8-34.) However, the existence of a water supply

²³ MCWD, 2010 UWMP, p. 31.

²⁴ MCWD, 2010 UWMP, p. 41.

²⁵ Diamond West, WSA Supplement, 2014, p. 13.

²⁶ See MCWD, 2010 UWMP, p. 36.

²⁷ MCWD, 2010 UWMP, p. 42.

entitlement does not imply that there are no impacts from using that water. The relevant question for CEQA impact analysis is whether increased pumping to support the project will cause physical impacts, regardless of any entitlement to use that water. As discussed below, additional pumping in the SVGB, especially in the coastal areas, will in fact aggravate seawater intrusion, but the DSEIR does not acknowledge this as a relevant basis for impact analysis.

The SEIR purports to tier from the Program EIR prepared for the Base Reuse Plan in 1997 (the BRP PEIR). However, the BRP PEIR did not assume that there would be no significant groundwater impacts unless and until Ord Community pumping reaches 6,600 afy. The BRP PEIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from beneath Fort Ord without causing further seawater intrusion, and its mitigation does not permit the agencies to delay a solution if intrusion persists.

The BRP PEIR impact analysis qualifies any reliance on the 6,600 afy allocation by stating that a potable water supply is “assumed to be assured from well water until a replacement is made available by the MCWRA,” but only “provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer.” (BRP PEIR p. 4-53 (emphasis added)). It states that the 6,600 afy “could” support the first phase of Ord community development through 2015 and then notes “given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to ‘assure’ even the 6,600 afy.” (BRP PEIR p. 4-53.) Thus, the BRP EIR evaluates the impacts of the BRP through 2015 in two distinct analyses, one of which assumes that 6,600 afy can be supplied without impacts and the other of which assumes that it cannot. In particular, it provides that “[a]ssuming groundwater wells on former Fort Ord were able to supply 6,600 afy,” an additional 7,932 afy of supply would be required by 2015. (BRP PEIR, p. 4-53.) However, it then provides in the alternative that “[i]f groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley Aquifer,” additional supplies would have to be developed sooner, and even further recommends “that an alternate water supply source, such as on-site storage facilities, be considered.” (BRP PEIR, p. 4-54.)

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members “shall ensure additional water supply.” Policy B-2 requires conditioning project approval on verification of an “assured long-term water supply.” Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD “to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan.” Program C-3.1 requires the member agencies to work with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water

supplies.” MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.²⁸ Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” (BRP PEIR p. 4-63.) The BRP PEIR states that the “conditions of the 900-foot aquifer are uncertain”, including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies.” (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies “to mitigate further seawater intrusion” by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR’s cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: “existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3).” (BRP PEIR p. 5-5 (emphasis added).)

In sum, unlike the Monterey Downs DSEIR, the BRP PEIR does not assume that the 6,600 afy entitlement is a sufficient basis to determine whether there will be a significant water supply impact from continued groundwater pumping.

As discussed above, the problem of seawater intrusion continues its march inland, requiring deeper replacement wells as the volume of usable groundwater declines, and has not been solved in the 19 years since the certification of the 1997 BRP PEIR. In fact, since the certification of the 1997 BRP PEIR, seawater intrusion maps and tables demonstrate an advance of over 2 miles in the seawater intrusion front in the 180-foot aquifer in the Fort Ord area and substantial advances elsewhere in both the 180-foot and 400-foot aquifers have occurred.²⁹ As the UWMP discloses, as wells have become contaminated, it has been necessary to drill new wells farther inland and to increase pumping from the as-yet uncontaminated 900-foot aquifer.³⁰ And there are no currently committed, funded projects that are expected to solve the problem. As discussed below, the SEIR presents no evidence that pumping from the 900-foot aquifer will avoid aggravation of seawater intrusion, and

²⁸ MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

²⁹ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, pp. 5-2 to 5-5.

³⁰ MCWD, 2010 UWMP, pp. 33-37.

there is clear evidence to the contrary. In light of this, the SEIR should disclose that increased pumping to support Phases 1-3 of the project would have a potentially significant impact or could make a considerable contribution to a significant cumulative impact on the groundwater aquifer from which the project would be supplied.

The most recent comprehensive study to the SVGB demonstrates that there is a direct connection between any additional groundwater pumping in the Pressure Subarea and increased seawater intrusion. The 2015 State of the Salinas Valley Groundwater Basin Report indicates that the Pressure Subarea remains in overdraft and that groundwater elevations are well below documented protective elevations.³¹ Thus, it concludes that the “P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that this situation will be reversed in the coming years, particularly if the drought conditions continue.”³² The report also states that “groundwater elevations well below the protective elevations indicate that the P-400 Aquifer continues to be susceptible to SWI, particularly if the current drought conditions continue into the coming years.”³³ The report recommends reducing existing pumping in the Pressure Subarea because “the current distribution of groundwater extractions is not sustainable.”³⁴ The report explain that over the period of analysis, from 1953 to 2013, there has been an average loss of storage for the entire SVGB of from 17,000 afy to 24,000 afy.³⁵ “Seawater intrusion can account for 18,000 afy of the total storage loss of 24,000 afy.”³⁶ In short, each additional acre-foot of pumping in the Pressure Subarea induces an additional 0.75 acre-foot of seawater intrusion.

D. The Monterey Downs SEIR analysis is based on the unfounded assumption that there would be no significant impact as long as supply is “reliable.”

As noted above, the other major premise of the SEIR’s conclusion that water supply impacts for Phases 1-3 would not be significant is that “MCWD’s groundwater supply is considered reliable on a quantity and quality basis.” (DSEIR p. 4.8-34.) Here, “reliability” as the term is used in the DSEIR, WSA, and UWMP, does not imply that there would be no significant groundwater impact from using the supply.

First, a UWMP and a WSA are required to address “reliability” of a water supply, by which the law simply requires analysis of whether water will be available during normal, single

³¹ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-7.

³² MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-7.

³³ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 5-8.

³⁴ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. 6-3.

³⁵ MCWRA, State of the Salinas Valley Groundwater Basin, 2015, p. ES-16.

³⁶ MCWRA, State of the Salinas Valley Groundwater Basin, 2015,, p. ES-16.

dry, and multiple dry years.³⁷ A groundwater water supply may be reliable, in the sense that water would remain available even during a multi-year drought, even though the use of that water causes significant impacts to the aquifer. For example, notwithstanding the ongoing seawater intrusion caused by continuing overdraft conditions, MCWD and other users have thus far been able to move pumping inland and to tap deeper aquifers to secure groundwater supplies. However, the ability to pump from an underground reservoir of stored groundwater that is large enough to smooth out climatic variation simply does not imply that this pumping is without impacts, such as groundwater depletion, mining and further aggravation of seawater intrusion.

Second, the WSA and 2010 UWMP cite the purported efficacy of the SVWP as the basis for claiming that the water supply is “reliable.” However, the claims these documents make for the SVWP are overstated, since the SVWP EIR did not indicate that seawater intrusion would be halted with any certainty by 2030, and these documents are now outdated since the MCWRA now has documented that the SVWP will not in fact prevent continuing seawater intrusion. As discussed in Attachment 1, the future demand assumptions made by the SVWP EIR and used for modeling the efficacy of the SVWP projected declining water usage in the SVGB, from 463,000 afy in 1995 to 443,000 afy in 2030. Reported pumping in the 20 years since 1995 has not declined but has in fact averaged 502,161 afy (and adjusted to include an estimate for non-reporting wells in these zones, the average is 529,024 afy). Thus, MCWRA reports document that the SVWP will not halt seawater intrusion. To halt seawater intrusion, the County must reduce coastal pumping by 48,000 afy, which would require securing additional surface water supplies to be used to replace that groundwater pumping in coastal areas.³⁸

Third, the WSA cites the fact that the 900-foot aquifer has not yet shown signs of seawater intrusion as evidence of a “reliable” supply.³⁹ The fact that MCWD has so far been able to relocate wells, deeper or farther inland, to find a water supply not yet subject to intrusion does not mean that increased pumping does not cause additional impacts. Furthermore, as discussed below neither the WSA nor the SEIR provide an adequate discussion of the potential impacts from increased pumping of the 900-foot Aquifer (the Deep Aquifer), which include impacts to the overlying 180-foot and 400-foot aquifers of the Pressure Subarea and impacts to the 900-foot aquifer itself. As discussed below, increased pumping of the 900-foot aquifer may induce increased seawater intrusion into the overlying 180-foot

³⁷ Water Code §§ 10631(c) (UWMP must assess reliability for average, single dry, and multiple dry years), 10910(c)(3) (WSA must discuss water availability during normal, single dry, and multiple dry water years); see MCWD, 2010 UWMP p. 53 (reliability discussion); MCWD, WSA, pp. 3, 22-23 (reliability discussion).

³⁸ MCWRA, Protective Elevations, pp.1, 11.

³⁹ MCWD, WSA, p. 23.

and 400-foot aquifers, will deplete the 900-foot aquifer itself, and it may in fact result ultimately in seawater intrusion into the 900-foot aquifer.

E. Increased pumping of the 900-foot aquifer will deplete the 900-foot aquifer, may induce additional seawater intrusion, and neither the DSEIR nor FSEIR provide an adequate discussion of this.

LandWatch's Comments PO 208-5 to 208-14 request information about the specific aquifers from which water will be pumped because (1) the DSEIR implies that water can be supplied safely from the 900-foot aquifer even if the 180-foot and 400-foot aquifers are contaminated by seawater, but (2) it also states that there is a hydraulic connection and recharge relation between the 180-foot, 400-foot, and 900-foot aquifers. LandWatch's comments reflect the concern that increased pumping from the 900-foot aquifer could further intrude the 180-foot and 400-foot aquifers and may also intrude the 900-foot aquifer itself. The FSEIR does not supply the requested information and improperly dismisses its relevance because it fails to acknowledge that increased pumping from the 900-foot (Deep) aquifer may induce increased seawater intrusion in the hydraulically connected upper aquifers and fails to discuss risks to the 900-foot aquifer.

1. The FSEIR fails to address LandWatch's comments and requests for information.

LandWatch asked how much is pumped from each of the 180-foot, 400-foot, and 900-foot aquifers under baseline conditions and how much will be pumped in the future. (Comment PO 208-5.) In response the FSEIR states that the DSEIR's analysis is "based on the adopted MCWD 2010 UWMP, and the details concerning aquifer operations do not affect the DSEIR's analyses." (FSEIR, p. 14-4-1022.) However, the UWMP does not provide the requested information regarding existing and projected pumping by aquifer. (Note that Table 4.8-1 in the DSEIR provides pumping capacity by well and by aquifer, but it does not provide baseline or projected pumping volumes. (DSEIR, p. 4.8-10.))

LandWatch asked that the SEIR identify studies cited by the DSEIR, in particular the "recent stratigraphic analyses" that "have indicated" a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers. (Comment PO 208-5.) The FSEIR repeated the DSEIR's claim and cited the MCWD 2010 UWMP (FSEIR, p. 11.4-1020), but it did not identify the recent stratigraphic analyses. The MCWD UWMP does not provide stratigraphic analysis. The UWMP does cite WRIME's 2003 "Deep Aquifer Investigative Study," which may possibly be one of the stratigraphic analyses referenced by the DSEIR, although this is unclear because it is not recent.⁴⁰ However, as discussed below, WRIME 2003 indicates that increased pumping of the 900-foot aquifer will not be without impacts.

LandWatch asked that the SEIR explain the DSEIR's claims that 1) evidence now shows a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers and 2) the 900-

⁴⁰ MCWD 2010 UWMP, p. 36.

foot aquifer is a series of aquifers not all of which are hydraulically connected. (PO 208-5.) LandWatch asked whether this implied that only portions of the 900-foot aquifer are connected to and recharged by the 180-foot and 400-foot aquifers. (PO 208-5.) LandWatch asked if there is in fact any recharge other than from the 180-foot and 400-foot aquifers. (PO 208-5.) However, the FSEIR simply repeated the DSEIR's discussion (FSEIR p. 11.4-1020) without addressing these questions.

LandWatch asked if the wells in the 900-foot aquifer that would support the project are in an area of that aquifer that is recharged by the 180-foot and 400-foot aquifers. (PO 208-6.) The FSEIR again simply repeated the DSEIR's claims that 1) evidence now shows a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers and 2) the 900-foot aquifer is a series of aquifers not all of which are hydraulically connected and then stated that "it would be speculative to state exactly which aquifer would supply the Project, since they are connected hydraulically." (FSEIR p. 11.4-1022.) As discussed below, a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers means that all pumping will continue to aggravate depletion of the upper aquifers and increase seawater intrusion, and where the deeper 900-foot aquifer is isolated it will cause significant depletion of the 900-foot deeper aquifer, which the SEIR fails to disclose.

The DSEIR's statement that portions of the 900-foot aquifer are not hydraulically connected to other portions of the 900-foot aquifer would allow for the possibility that those unconnected portions are also isolated from the 180-foot and 400-foot aquifers, which would be highly relevant to whether pumping those areas would affect seawater intrusion in the 180-foot and 400-foot aquifers. The FSEIR fails to address this possibility. However, as discussed below, even though there are two distinct aquifers of the Deep Aquifer system,⁴¹ increased pumping from the deeper of these two aquifers is not viable due to the lack of yield.⁴² Furthermore, evidence from WRIME's 2003 Deep Aquifer Investigative Study indicates that increased pumping from the upper Deep Aquifer will increase the ongoing depletion of the upper aquifers and has the associated potential to increase seawater intrusion.⁴³

LandWatch requested that the SEIR explain whether recharge to the 900-foot aquifer from the seawater-intruded 180-foot and 400-foot aquifers could contaminate the 900-foot aquifer, whether increased pumping in the 900-foot aquifer would increase this risk, and how much pumping from the 900-foot aquifer is sustainable. (PO 208-7 through 208-11.) The FSEIR states that "the 900-foot aquifer is not expected to be contaminated by saltwater through recharge from the 180-foot and 400-foot aquifer, as the MCWD wells are outside of the area currently affected by seawater intrusion." (FSEIR p. 11.4-1022 (emphasis added).)

⁴¹ WRIME, Deep Aquifer Investigative Study, 2003, p. 5-1.

⁴² WRIME, Deep Aquifer Investigative Study, 2003, p. 4-7.

⁴³ WRIME, Deep Aquifer Investigative Study, 2003, pp. 5-1 to 5-2.

The response misses the point that there is a significant potential for future contamination of the 900-foot aquifer as seawater intrusion advances to the areas where there is vertical connectivity between all of the aquifers. The response simply fails to make any assessment of this potential as requested by comments. As discussed above and in the attachment, current studies confirm that the seawater intrusion front does in fact continue to advance due to groundwater pumping in excess of recharge. As discussed immediately below, studies confirm that there is vertical connectivity between the 180-, 400-, and 900-foot aquifers. That connectivity, and the induced leakage from the upper aquifers as the Deep Aquifer system is pumped, provides a preferential pathway for seawater intrusion into the Deep Aquifer system.

The FSEIR's responses also miss the point that increased pumping from the 900-foot aquifer further contributes to the existing intrusion of the 180-foot and 400-foot aquifers. The UWMP cites WRIME's 2003 "Deep Aquifer Investigative Study" as evidence that pumping from the Deep Aquifer will in fact induce increased seawater intrusion to the upper aquifers due to vertical connectivity between the three aquifers.⁴⁴ However, neither the WSA nor the SEIR, which cite other portions of the UWMP, report this conclusion from the UWMP.

2. Increased pumping from the Deep Aquifer system will deplete the 900-foot aquifer and may induce additional seawater intrusion.

Analysis in WRIME 2003 supports the conclusion that increased pumping from the 900-foot aquifer would induce additional intrusion into the 180-foot and 400-foot aquifers:

The response curves indicate that additional increases in the deep aquifer groundwater pumping in the coastal areas may induce additional reduction in the groundwater heads, and subsequently additional landward subsurface flows from across the coastline.⁴⁵

Modeling in WRIME 2003 indicates that increasing pumping of the deep aquifer by 1,400 afy over the 2,400 afy baseline 2003 pumping level would lower groundwater levels in the 180-foot, 400-foot, and Deep Aquifers, would induce vertical flows from the upper to the lower aquifers, and would induce substantial coastal groundwater flow, i.e., seawater intrusion.⁴⁶ In short, increased pumping from the Deep Aquifer systems appears likely to induce seawater intrusion in the upper aquifers (the 180-foot and 400-foot aquifers) even if

⁴⁴ MCWD, 2010 UWMP, p. 36.

⁴⁵ WRIME, Deep Aquifer Investigative Study, 2003, p. 5-2, attached.

⁴⁶ WRIME, Deep Aquifer Investigative Study, 2003, pp. 4-11 to 4-12.

the Deep Aquifers are not yet intruded. The SEIR fails to discuss or disclose this, even in response to LandWatch's questions.

WRIME 2003 provides further evidence that there are two distinct 900-foot aquifers. In particular, it concludes that the uppermost deep aquifer is in the Paso Robles Formation and the lowermost is in the Purisima Formation and that the "Purisima Formation is relatively isolated hydraulically from the overlying Paso Robles Formation near the coast."⁴⁷ However, the lack of hydraulic connection between the two distinct aquifers of the Deep Aquifer system does not matter with respect analysis of induced seawater intrusion. This is because WRIME 2003 concludes that recharge to both the Paso Robles and Purisima portions of the deep aquifer come from the overlying aquifers: "[t]he areal distribution and stratigraphic location of the Paso Robles and Purisima Formations limit recharge to leakage from overlying aquifers," i.e., the 180-foot and 400-foot aquifers.⁴⁸ Furthermore, as noted, increased pumping from the lower Deep Aquifer is not viable due to lack of potential yield.⁴⁹

WRIME 2003 concludes that there was an equilibrium between pumping from the 900-foot aquifer and its recharge from the overlying aquifers back in 2003.⁵⁰ It also concludes that "the volume of groundwater in storage in the lower aquifers is small" and that "[i]ncreased production would likely come from increased leakage."⁵¹ Thus, it concludes that increases in pumping of the 900-foot aquifer may induce additional intrusion in the upper aquifers.⁵² Only a small portion of coastal pumping came from the Deep Aquifer in 2003. The SVWP EIR reports that 90% of groundwater pumping north of Salinas came from the 400-foot aquifer and only 5% from deep aquifer as of 2003.⁵³ Thus, the shift from the 400-foot to the 900-foot aquifer to support increased pumping for the Ord Community since 2003 will likely upset that equilibrium noted by WRIME and will have a potentially substantial effect on the 900-foot and overlying aquifers, either by depleting the 900-foot aquifer, by increasing the induced seawater intrusion in the upper aquifers, or both.

⁴⁷ WRIME 2003, pp. 5-1 to 5-2.

⁴⁸ WRIME 2003, p. 5-1.

⁴⁹ WRIME, Deep Aquifer Investigative Study, 2003, p. 4-7.

⁵⁰ WRIME 2003, p. 5-1.

⁵¹ WRIME 2003, p. 5-1.

⁵² WRIME 2003, p. 5-2.

⁵³ SVWP DEIR, pp. 5.3-1 to 5.3-3.

In sum, the implications from WRIME 2003 are, first, that pumping from the 900-foot aquifer may continue to induce seawater intrusion to the aquifers above it because those aquifers will be induced to leak downward to provide recharge.⁵⁴

Second, if increased leakage from the upper aquifers were less than the increased pumping rate, the 2003 equilibrium between recharge and pumping would be upset and the 900-foot aquifer would be depleted because the only source of recharge is the overlying aquifers and the "volume of groundwater in storage in the lower aquifers is small."⁵⁵ Thus, increased pumping of the 900-foot aquifer must either deplete the 900-foot aquifer via mining or induce seawater intrusion in the upper aquifers by increasing their leakage, neither of which are acknowledged by the SEIR.

Third, if and when the seawater intrusion front of the 180-foot and 400-foot aquifers moves inland over the areas of vertical connectivity between the 180-foot, 400-foot, and 900-foot aquifers, increased pumping of the 900-foot aquifer may result in its recharge with saline contaminated water from the 180-foot and 400-foot aquifers. Interaquifer flow from a contaminated upper aquifer to a lower aquifer as a source of salinity contamination of the lower aquifer has already been documented between the 180-foot and 400-foot aquifers in the Fort Ord area due to thin or missing aquitard, direct hydraulic connection, or wells that act as conduits between aquifers.⁵⁶ The agricultural wells that also tap the Deep Aquifer system⁵⁷ typically have long screened intervals to maximize production; and this cross connection of multiple aquifers increases the potential for downward vertical migration of contamination.⁵⁸ Interaquifer flow from well bores is common. For example, in the Santa Clara Valley, USGS estimated that the majority of recharge to deeper zone aquifers was from well bores.

There is already possible evidence of potential seawater intrusion into the Deep Aquifer system provided in the State of the Salinas River Groundwater Basin Report. Two Deep Aquifer hydrographs in the Pressure Subarea show increasing Chloride indices; one of which more than doubled between 1980 and 2013; the other showed an increasing trend

⁵⁴ WRIME 2003, p. 5-1 ("increased production would likely come from increased leakage").

⁵⁵ WRIME 2003, p. 5-1.

⁵⁶ MCWRA, State of the Salinas River Groundwater Basin, p. 5-8.

⁵⁷ MCWD, 2015 draft UWMP, p. 38, available at http://www.mcwd.org/docs/agenda_minutes/2016-06-06_board/Item%2011-A%20-%20MCWD%20Draft%202015%20UWMP%20v20160520.pdf.

⁵⁸ Hanson, et al., Comparison of groundwater flow in Southern California coastal aquifers, Geological Society of America, Special Paper 454, 2009, pp. 6-7, 11, 13, 14, 19, 26, available at https://www.researchgate.net/publication/279335540_Comparison_of_groundwater_flow_in_Southern_California_coastal_aquifers.

until sampling stopped in about 2000.⁵⁹ The Report does not address this trend in Chloride concentration in the Deep Aquifer in the narrative. However it does note that the groundwater levels "exhibit an overall steady decline since approximately 2003."⁶⁰ The Report states that of 580 measurement points used in the study, only 12 are screened with the Deep Aquifer in the Pressure Subarea,⁶¹ underscoring the dearth of groundwater level and groundwater quality data available for the Deep Aquifer in the Pressure Subarea, and associated higher uncertainty for predicting the potential for significant impacts from the pumping deeper in the basin.

Finally, the SEIR also fails to disclose and discuss the fact that the 900-foot aquifer itself may be open to Monterey Bay, providing a direct route for seawater intrusion to that aquifer without mediation by the upper aquifers. The BRP PEIR states that "there is no evidence that the Deep Zone is not connected to the ocean." (BRP PEIR, p. 4-57.) The recent State of the Basin report also states that "[u]nlike the P-180 and P-400 Aquifers, it is not known whether the or not the Pressure Deep Aquifer is hydraulically connected to the ocean."⁶² If it is connected, there is an additional path to intrusion into the 900-foot aquifer that could be induced by increased pumping.

F. The Monterey Downs SEIR fails to provide an adequate cumulative analysis because the relevant scope of cumulative analysis is the hydraulically connected SVGB, not merely the BRP area, and because there is no basis to deem an additional 250 afy of pumping to be less than a considerable contribution to a significant cumulative impact merely because it represents a small percentage of total SVGB pumping.

LandWatch objected that the DSEIR limits the geographic scope of the cumulative analysis of groundwater supply impacts to Fort Ord projects. (DEIR 4.8-47, 4.19-30 to 4.19-32.) Thus, the DSEIR does not provide baseline or projected future demand for the Pressure Subarea or the SVGB as a whole, or identify either the projects that would contribute to the cumulative impacts or a summary of projections of the water demand of those projects. As discussed, it is well understood that, while coastal pumping has the greatest effect, seawater intrusion is a result of cumulative overpumping from all areas of the SVGB, because these areas are hydraulically connected.⁶³ The fact that actual current baseline pumping for the SVGB as a whole is well in excess of the pumping assumed in the SVWP EIR, and that this pumping is projected to substantially exceed the level assumed by the SVWP EIR, is highly

⁵⁹ MCWRA, State of the Salinas River Groundwater Basin, Figure 3-8.

⁶⁰ MCWRA, State of the Salinas River Groundwater Basin, p. 3-16.

⁶¹ MCWRA, State of the Salinas River Groundwater Basin, p. 3-16.

⁶² MCWRA, State of the Salinas River Groundwater Basin, p. 6-4.

⁶³ MCWRA, SVWP Final EIR, p. 2-35 to 2-36.

relevant to the analysis of the extent of cumulative impacts in the form of seawater intrusion.

As LandWatch pointed out, the BRP PEIR did assess cumulative impacts of Fort Ord groundwater pumping in the regional context of total demands on the SVGB and, indeed, concluded that the cumulative impact of the BRP was significant and unavoidable. (BRP PEIR p. 5-5.) The Monterey Downs SEIR does not report this analysis or conclusion.

The FSEIR acknowledges that the geographic scope of the SEIR's cumulative analysis does not coincide with the geography in the BRP PEIRs' cumulative impact analysis because it is limited to the BRP area, unlike the BRP PEIR's regional analysis. (FSEIR p. 11.4-1024.) The FSEIR argues that the DSEIR has simply made the choice to rely on a summary of projections and has chosen the summary of projections of the BRP area's future water demand, which does not include demand outside of the Ord Community. (FSEIR p. 11.4-1024.) However, the fact that CEQA may permit an agency to use a summary of projections to identify relevant cumulative impact sources cannot justify the arbitrary choice of a summary of projections for a geographic area that is too limited to support a meaningful cumulative analysis.

Although the DSEIR lacks any SVGB baseline data, the FSEIR provides a belated estimate of total current pumping in the SVGB. (FSEIR p. 11.4-1023 to 1024.) However, the FSEIR does not use this baseline data in any way, e.g., by relating it to an analysis of groundwater impacts or to the modeling for the Salinas Valley Water Project that was uncritically cited by the 2010 MCWD UWMP and the Diamond West WSA Supplement.⁶⁴ Nor do the FSEIR or DSEIR provide any assessment of future total pumping in the SVGB, despite LandWatch's objection that this data is needed for an adequate analysis.

Instead, the FSEIR argues that the DSEIR relied on the MCWD 2010 UWMP analysis of seawater intrusion, and that its "impact analysis is based on the 2010 UWMP, which encompasses the MCWD service area." (FSEIR pp. 11.4-1023, 11.4-1025.) The FSEIR then recites a section of the UWMP that relies on the future efficacy of the Salinas Valley Water Project to control seawater intrusion and maintain groundwater elevations, including the out-of-date and incorrect claim that the SVWP will result in a 6,000 afy surplus in the SVGB. (FSEIR p. 11.4-1025, quoting MCWD 2010 UWMP, p. 53.) The FSEIR's response fails to provide the requested information regarding existing and future groundwater pumping in the SVGB and fails to relate that information to a sustainable level of pumping that does not cause depletion or seawater intrusion. The response also fails to explain why limiting the scope of the cumulative analysis to the BRP area is justified in light of the hydraulic connection of the SVGB as a whole to the BRP area.

Most significantly, the FSEIR's responses fail to disclose the fact that there is an existing significant cumulative impact that is not projected to be mitigated by existing groundwater

⁶⁴ See MCWD, 2010 UWMP, pp. 31, 41; Diamond West, WSA Supplement, 2014, p. 13.

management projects and that any additional pumping, including the pumping of the unallocated portion of the 6,600 afy entitlement, will aggravate this condition.

The FSEIR claims that its response to LandWatch's comment PO 208-5 explains why the geographic scope of the cumulative analysis is limited to the BRP area. (FSEIR pp. 11.4-1020, response to PO 208-4, and p. 11.4-1023, response to PO 208-15.) The response to PO 208-5 does not justify the limitation of the geographic scope to the Fort Ord area. That response purports to address LandWatch's objections that the DSEIR inadequately identifies and characterizes the pumping source aquifer(s) within Fort Ord, fails to identify other wells and cumulative pumping in the 900-foot aquifer, and fails to discuss recharge, saline contamination and sustained yield of the 900-foot aquifer. (FSEIR, pp. 11.4-1020 to 11.4-1022.) To the extent that the response addresses the SRGB outside the Fort Ord area at all, it is only to repeat the DSEIR's claims that its analysis is based on the UWMP and that the UWMP discusses seawater intrusion in the SVGB. Like the DSEIR, the FSEIR does not actually report or evaluate the 2010 UWMP's conclusions about the SVGB or address the post-2010 information indicating that seawater intrusion is not under control.

The FSEIR argues that agricultural water use consumes the majority of SVGB water and that the MCWD pumping is only 1% of total SVGB pumping. (FSEIR p. 11.4-1024.) This argument fails to recognize that coastal pumping like MCWD's particularly aggravates seawater intrusion, that this coastal pumping must be reduced and replaced now to halt seawater intrusion.⁶⁵ It also fails to recognize that it is simply irrelevant how the pumped groundwater is used:

... the ability to halt seawater intrusion, now and in the future, is not based on whether it is delivered to agricultural uses or urban uses. Both of these uses draw the same water from the same groundwater basin. Reducing withdrawal of groundwater in the northern Salinas Valley, whether through replacement of agricultural or urban pumping, has the same effect.⁶⁶

If the implication of the FSEIR's claim that MCWD pumping amounts to only 1% of total SVGB pumping is that this pumping, or the increased pumping for the Monterey Downs project, does not constitute a considerable contribution to seawater intrusion, neither the FSEIR nor the DSEIR actually state this as the basis of the cumulative impact analysis. However, if the claim were made, it would not be accurate. CEQA does not permit an agency simply to dismiss a project's impact as less than a considerable contribution because it is relatively small. The potential significance must be evaluated in the context of the severity of the cumulative impact, which the SEIR fails to do.

⁶⁵ MCWRA, SVWP DEIR, p. 3-23; MCWRA, Protective Elevations, pp. 1, 11.

⁶⁶ MCWRA, SVWP DEIR, p. 7-8.

Here, the magnitude of the annual storage change in the Pressure Subarea that has caused seawater intrusion is from about -200 afy to about -1,600 afy over the period from 1944 to 2013.⁶⁷ From 1959 to 2013, the average change in storage was from -50 afy to -500 afy.⁶⁸ The estimated safe or sustainable yield for the Pressure Subarea, i.e., the level of pumping that could be sustained without seawater intrusion, is from 110,000 to 117,000 afy, but groundwater pumping exceeds this yield by about 12,000 to 19,000 afy.⁶⁹ The significance of the proposed increase in pumping to support Phases 1-3 of the project, which would be at least 250.6 afy, and which may come to 396.3 afy if the currently unavailable recycled water does not materialize (DSEIR, p. 4.19-23), should be assessed in relation to these figures, not in relation to the entire 500,000+ afy pumping from the SVGB, because seawater intrusion is caused by marginal effects, i.e., storage changes (aquifer depletion) and pumping in excess of sustainable yield, not by total pumping. The SEIR does not provide this comparison. In view of the recognition that coastal pumping must be reduced to address seawater intrusion,⁷⁰ there is no longer any cushion for increased pumping and any additional pumping at the margin should be deemed a considerable contribution.

⁶⁷ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-12 (average storage change, depending on the storage coefficient value).

⁶⁸ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-25.

⁶⁹ MCWRA, State of the Salinas Valley Groundwater Basin, p. 4-25.

⁷⁰ MCWRA, Protective Elevations, pp. 1, 11; MCWRA, State of the Salinas Valley Groundwater Basin, p. 6-3.

Attachment 1 – Modeling assumptions and outcomes for the SVWP; MCWRA’s acknowledgment that the SVWP will not halt seawater intrusion

1. The SVWP EIR did not project that the SVWP would halt long-term seawater intrusion.

MCWRA prepared and certified an EIR for the SVWP in 2001 and 2002. (MCWRA, SVWP EIR, 2002.) Based on specific assumptions about future demand and safe yield (discussed below), the SVWP EIR projected that the proposed SVWP “would reverse the annual reduction in groundwater storage to an approximately 2,500 AFY increase in groundwater storage.” (SVWP FEIR 3-30.) Thus, it projected that seawater intrusion could be halted. However, the SVWP EIR qualified this conclusion in two critical respects.

First, the SVWP EIR cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.” (SVWP EIR, p. 7-7.) So the conclusion was tied to specific assumptions regarding water use. As discussed below, future water use is projected to exceed the levels projected in the SVWP EIR. Indeed, MCWRA’s Rob Johnson acknowledged to the Monterey County Planning Commission that the SVWP EIR demand projections were not accurate and that pumping was more than projected. (Transcript of Monterey County Planning Commission, Oct. 29, 2014, p. AR005187; available in video file at http://monterey.granicus.com/MediaPlayer.php?view_id=14&clip_id=2745.)

Second, the SVWP EIR acknowledged that the proposed project would only halt seawater intrusion based on 1995 levels of demand:

While the SVIGSM indicates that seawater intrusion will be halted by the project (in conjunction with the CSIP deliveries) based on current (1995) demands, with a projected increase in water demands (primarily associated with urban development) in the north valley area in the future, seawater intrusion may not be fully halted based on year 2030 projections. For the year 2030, modeling indicates seawater intrusion may be 2,200 AFY with surface water deliveries only to the CSIP area. (SVWP DEIR, p. 3-23.)

The Department of the Interior pointed out that the SVWP EIR contradicts itself in stating that “the proposed action would halt seawater intrusion” and also that “hydrologic modeling shows that the project may not halt seawater intrusion in the long-term future” and asked for clarification. (SVWP FEIR, p. 2-82, comment 2-12.) In response, the SVWP FEIR again acknowledged that its modeling only showed that the SVWP would “halt seawater intrusion in the near term” based on 1995 water demand. (SVWP FEIR, p. 2-91.) However, with anticipated 2030 demand, that modeling showed that “seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term.” (SVWP FEIR, p. 2-91.) The 2010 Monterey County General Plan EIR itself acknowledges

that the SVWP may only halt seawater intrusion in the short term. (2010 General Plan EIR, p. 4.3-38.)

Questioned about this at the October 29, 2014 Monterey County Planning Commission hearing, MCWRA’s Rob Johnson acknowledged that the SVWP would only halt seawater intrusion based on 1995 land use. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014, p. AR005188.) As discussed below, Mr. Johnson also acknowledged that groundwater pumping is higher than anticipated by the SVWP EIR and that an additional 58,000 af/y of groundwater, beyond that provided by the current suite of water supply projects, is still needed to halt seawater intrusion. (*Id.*, pp. AR005178-005179, 005189-005190.)

2. As MCWRA acknowledges, groundwater pumping has exceeded the level assumed in the SVWP EIR, and this vitiates its analysis, which was expressly based on the assumption that groundwater pumping would decline over time.

MCWRA reports show that pumping is much higher than predicted by the SVWP EIR. To determine the extent of overdrafting and seawater intrusion, the SVWP EIR relied on modeling provided by the Salinas Valley Integrated Ground and Surface Water Model (“SVGISM”), which in turn was based on assumptions regarding land use, population, and water use. (SVWP EIR, pp. 5-1 (identifying baseline and future conditions), 5.3-10 to 5.3-11 (overview of SVGISM), 7-4 to 7-5 (detailing major assumptions used in the SVGISM regarding population and irrigated acreage).)

As set out in the table below, the SVWP EIR reported its assumptions and modeling results for two scenarios: 1995 baseline conditions and 2030 future conditions:

SVWP EIR: population and land use assumptions with baseline and projected water use	1995	2030
Population	188,949 persons	355,829 persons
Urban water pumping	45,000 afy	85,000 afy
Farmland	196,357 acres	194,508 acres
Agricultural water pumping	418,000 afy	358,000 afy

Source: SVWP EIR, pp. 1-7 (Table 1-2, “Estimated Existing and Future Water Conditions”); pp. 5-1, 6-3, 7-3, 7-10 (identifying baseline and future conditions).

The SVWP EIR assumed that agricultural water use would decline by 60,000 afy from 1995 to 2030 due to a 5% increase in water conservation, changes in crop uses, and a 1,849 acre

decrease in irrigated agricultural acreage. (SVWP EIR pp. 1-7, 7-5, 7-10.) The SVWP EIR assumed that urban water use would increase by 40,000 afy between 1995 and 2030 based on population growth and an assumed 5% per capita reduction in water demand due to conservation. (SVWP EIR, pp. 1-7, 7-5.)

In sum, the SVWP EIR assumed that groundwater pumping in Zone 2C would decline 20,000 afy over a 35 year period, from a total of 463,000 afy in 1995 to 443,000 afy in 2030.

In fact, in the first 20 years since 1995 pumping has greatly exceeded the SVWP EIR projection. Reported groundwater pumping in Zones 2, 2A, and 2B has averaged 502,161 afy. Adjusted to include an estimate for non-reporting wells in these zones, the average is 529,024. These data are based on the annual Ground Water Summary Reports published by MCWRA in 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php. The data are summarized in the table below.

Year	Ag	Urban	Total	Percent of wells not reporting	Total divided by percent of wells reporting to adjust for non-reporting wells
1995	462,268	41,884	504,512	2%	514,808
1996	520,804	42,634	563,438	4%	586,915
1997	551,900	46,238	598,139	7%	643,160
1998	399,521	41,527	441,048	7%	474,245
1999	464,008	40,559	504,567	9%	554,469
2000	442,061	42,293	484,354	11%	544,218
2001	403,583	37,693	441,276	18%	538,141
2002	473,246	46,956	520,202	7%	559,357
2003	450,864	50,472	501,336	3%	516,841
2004	471,052	53,062	524,114	3%	540,324
2005	443,567	50,479	494,046	2%	504,129
2006	421,634	49,606	471,240	4%	490,875
2007	475,155	50,440	525,595	3%	541,851
2008	477,124	50,047	527,171	3%	543,475
2009	465,707	45,517	511,224	3%	527,035

2010	416,421	44,022	460,443	3%	474,684
2011	404,110	44,474	448,584	3%	462,458
2012	446,620	42,621	489,241	3%	504,372
2013	462,873	45,332	508,205	3%	523,923
2014	480,160	44,327	524,487	2%	535,191
20 year average			502,161 afy		529,024 afy

Source: Ground Water Summary Reports published by MCWRA, 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php.

The reported pumping data does not include any pumping from the portion of Zone 2C that is located outside of Zones 2, 2A, and 2B. (See Monterey County 2010 General Plan FEIR, pp. S-13, S-127.) The County estimated that this pumping amounted to at least 4,574 afy in 2005. (Monterey County 2010 General Plan FEIR, p. S-136.) Adding this to the adjusted average pumping total for Zones 2, 2A, and 2B, average pumping has been 533,598. This is 70,598 afy higher than the SVWP EIR's 1995 baseline and 90,598 afy higher than its projected 2030 demand.

As noted, the SVWP EIR analysis was based on specific assumptions about future water demand, and it cautioned that "any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion." (SVWP DEIR, p. 7-7.)

In sum, for more than half of the planning period covered by the SVWP EIR's 1995-2030 projections, groundwater pumping has greatly exceeded its assumed demand levels. The amount by which actual demand exceeds assumed demand is two to three times greater than the amount of water that the SVWP was expected to provide.⁷¹

MCWRA's Rob Johnson acknowledged that actual demand has exceeded the SVWP EIR's projections. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014,

⁷¹ The SVWP was intended retain up to an additional 30,000 afy of water in dams and then provide about 9,700 afy of that water to the Castroville Seawater Intrusion Project ("CSIP") to replace groundwater pumping, about 10,000 afy to increase basin recharge, and another 10,000 afy for instream flow augmentation. Monterey County 2010 General Plan DEIR, pp. 4.3-36 to 4.3-38; Monterey County 2010 General Plan FEIR 2-68 to 2-71. The Monterey County General Plan DEIR, FEIR Supplemental materials, and FEIR are available at <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/draft-environmental-impact-report-deir>, <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/supplemental-material-to-final-environmental>, <http://co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/resources-documents/2010-general-plan/final-environmental-impact-report-feir>.

p. AR005187.) Mr. Johnson acknowledged that additional water supply projects delivering at least 58,000 afy will be required to halt seawater intrusion. (*Id.* pp. AR005178-005179, 005189-005190)

The growth in pumping is associated with increases in agricultural land use. As noted, the SVWP EIR assumed that irrigated agricultural acreage would decrease from 196,357 acres in 1995 to 194,508 acres in 2030. (SVWP EIR, p. 7-10.) However, agricultural acreage has actually increased since 1995.

- The SVWP Engineers Report reports that there were 212,003 acres of irrigated farmland in Zone 2C as of 2003. (SVWP Engineers Report, pp. 3-10, 3-15 (Tables 3-5 and 3-9 providing acreage totals for "Irrigated Agriculture"), available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_1/salinas_valley_water_project_1.php.) This is substantially more irrigated acreage than the 196,357 acres that the SVWP EIR reported for 1995. (SVWP EIR, p. 7-10.) The SVWP Engineers Report data were based on "parcel information, including land use, acreage, zone and other data" developed by MCWRA. (Engineers Report, p. 3-10.)
- The 2010 Monterey County General Plan EIR reported Department of Conservation farmland mapping data showing an increase of 8,209 acres of habitat converted to new farmland from 1996-2006 but only 2,837 acres of existing agricultural land lost to urban use. Monterey County 2010 General Plan DEIR, pp. 4.9-46 and 4.2-7 (showing farmland gains and losses 1996-2006 based on FMMP data). This represents a net gain of farmland of 5,372 acres, and does not account for additional water demands from multiple crops (2-4) per acre per season.

Furthermore, there is every reason to believe that the increase in irrigated acreage will continue and that the decrease in irrigated agricultural land between 1995 and 2030 projected in the SVWP EIR will not occur. Based on the past data related to conversion of habitat to farmland, the 2010 Monterey County General Plan DEIR projected that future agricultural acreage would increase from 2008 to 2030, and the General Plan FEIR admitted that the large future net increase in farmland would create additional water demand not anticipated by the SVWP EIR: 17,537 afy of water. (Monterey County 2010 General Plan DEIR, p. 4.9-64 (Table 4.9-8); Monterey County 2010 General Plan FEIR, pp. 2-38, 4-129 (revised table 4.9-8), S-19 to S-20, S-137 to S-138 (revised Table 4.3-9(c), note 7)).

3. MCWRA also acknowledges that the existing SVWP will not halt seawater intrusion and that additional water supply projects are required.

The MCWRA has acknowledged that the SVWP will not in fact be sufficient to halt seawater intrusion. In testimony to the Monterey County Planning Commission, MCWRA's Rob Johnson stated that the SVWP is not the final water project needed to halt seawater intrusion and that it will in fact be necessary to find additional water supplies totaling at least 58,000 afy to achieve this. (Transcript of Monterey County Planning Commission Hearing, Oct. 29, 2014, AR005164, 005178-005179, 005189-005190) The 58,000 afy figure

is based on modeling performed by MCWRA in connection with its efforts to secure surface water rights on the Salinas River in order to mitigate seawater intrusion.

The MCWRA now seeks, under a settlement agreement with the State Water Resources Control Board, to perfect surface water rights to 135,000 afy of Salinas River water in order to construct an additional Salinas Valley water project to attempt to halt seawater intrusion. (See MCWRA, Salinas Valley Water Project Phase II, Overview, Background, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php.) MCWRA seeks to retain the right to the surface water entitlement by asserting the need for another project to halt seawater intrusion. Modeling undertaken for the MCWRA in 2013, establishes that an additional 135,000 afy of surface water flows will be needed in order to supply the additional 60,000 afy of groundwater that is now projected to be required to maintain groundwater elevations and a protective gradient to prevent further seawater intrusion. (Geoscience, Protective Elevations to Control Seawater Intrusion, Nov. 13, 2013, p. 11, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php (link to "Technical Memorandum.")) The MCWRA has not yet conducted environmental review for a new project to supply the needed water. (See MCWRA, Salinas Valley Water Project Phase II, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.) There is no assured funding source for it.

Although the MCWRA website refers to the currently proposed new project as "SVWP Phase II," it is not the same project that was identified as a potential second phase of the SVWP in the 2001/2002 SVWP EIR. The second phase of the SVWP envisioned in the 2001/2002 SVWP EIR would have consisted of only an additional 8,600 afy of Salinas river diversion, increased use of recycled water, supplemental pumping in the CSIP area, and a pipeline and delivery to an area adjacent to the CSIP area. (SVWP EIR, p. 3-23 to 3-24.) The currently proposed project is much larger in scope and would include different and more extensive infrastructure: it would divert an additional 135,000 afy at two new diversion facilities and would deliver that water through injection wells, percolation ponds, direct supply of raw water, or a treatment system. (MCWRA, SVWP Phase II website, Project Description, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php)

To my knowledge, neither the SVWP Phase II project identified at the conceptual level in the 2001/2002 SVWP EIR nor the newly proposed SVWP Phase II has been planned at any level of significant detail or environmentally reviewed. The SVWP EIR and the Monterey County 2010 General Plan EIR both acknowledge that impacts related to the initially conceived second phase project have not been evaluated, and the Monterey County 2010 General Plan EIR treated these impacts as significant and unavoidable because they remain largely unknown. (SVWP FEIR, pp. 2-92, 2-243; Monterey County 2010 General Plan, p. 4.3-146.)

The phase two project now being discussed has not had any environmental review, but it would likely result in significant potential environmental impacts, based on MCWRA's determination that an EIR is required. (MCWRA Notice of Preparation of EIR, Salinas Valley Water Project Phase II, June 2014, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.)

Finally, the 2015 MCWRA State of the Salinas Valley Groundwater Basin report establishes that the SVGB as a whole and the Pressure Subarea are both being pumped unsustainably in excess of safe yield.⁷² This overdraft condition has caused, is causing, and will continue to cause seawater intrusion, particularly in the 180-foot and 400-foot aquifers of the Pressure Subarea.⁷³

In sum, the water supply provided by the SVWP is well documented to be insufficient to prevent cumulative groundwater pumping from further aggravating seawater intrusion. Major additional water supply projects with currently unknown potential environmental impacts will be required to address this significant cumulative impact.



⁷² MCWRA, State of the Salinas River Groundwater Basin, pp. 4-25 to 4-26.

⁷³ MCWRA, State of the Salinas River Groundwater Basin, pp. 5-1 to 5-8, 6-1 to 6-4.

RESUME

Timothy K. Parker, PG, CEG, CHG
Principal

WORK EXPERIENCE

2009 – Present: Parker Groundwater, President/Principal. Sacramento, California. Privately owned business, specializing in strategic groundwater planning, groundwater monitoring, groundwater modeling, groundwater recharge and aquifer storage recovery projects, program implementation, stakeholder facilitation, groundwater monitoring, policy and regulatory analysis, environmental document review and litigation support. Provides strategic planning, policy consulting and groundwater technical expertise to public and private sector clients to develop effective, sustainable solutions to complex problems in the water and evolving environmental and energy industries.

2005 – 2009: Schlumberger Water Services, Principal Hydrogeologist. Sacramento, California. Provided hydrogeologic expertise and project management on groundwater recharge and aquifer storage recovery projects, groundwater monitoring, groundwater resources management, and groundwater contaminant projects for public and private sector clientele. Application of advanced oilfield tools and technologies to groundwater projects. Integration of groundwater quality monitoring and protection on CO2 sequestration projects; liaison to Schlumberger Carbon Services, including planning, scope development, technical implementation, facilitation, and oversight. **Business Development** activities included strategic planning, prospect assessments, sales presentations, targeted workshops, client development and exploitation. Mentored and provided direction to staff; developed, tracked and controlled projects; worked closely with clients and other public and private organizations to implement projects on schedule, on budget with high level of quality.

2001 – 2005: California Department of Water Resources, Division of Planning and Local Assistance, Conjunctive Water Management Branch, Senior Engineering Geologist. Provided local technical and economic assistance to Sacramento and San Joaquin Valley groundwater authorities and water districts planning, developing, and implementing conjunctive water projects, groundwater recharge and aquifer storage recovery projects, and local and regional groundwater monitoring programs. Elements include developing technical scope, implementing work, providing geologic and groundwater technical expertise, attending and speaking at public meetings. **Central District, Groundwater Planning Section,** Sacramento, California (early 2001 prior to joining CWMB). **Senior Engineering Geologist, Groundwater Planning Section.** Elements included: Integrated Storage Investigations Program conjunctive use project technical support, coordination, and project management; technical support

on local groundwater monitoring and subsidence programs; technical support on Bulletin 118; Proposition 13 groundwater grant applications screening and ranking process for Central District geographic area. Supervised and provided direction to staff; developed, tracked and controlled program budgets; worked closely with other DWR groups, agencies and outside organizations to develop additional local assistance opportunities for DWR.

2000-2001: California Department of Conservation, Division of Mines and Geology, Sacramento, California. Associate Engineering Geologist. Responsible for: multi-year aerial photograph review, identification of landslides and potentially unstable areas, field reconnaissance and confirmation, preparation of maps and images using MapInfo, Vertical Mapper, ArcView, Spatial Analyst, Model Builder, and ArcInfo working closely with GIS specialists; assisting in development of GIS methodologies and database for Northern California watersheds assessment/restoration project; review of timber harvest plans and pre-harvest inspections; review of regional CEQA documents as related to engineering geologic issues; watershed assessment; technical presentations at multi-agency meetings and landslide/mass wasting public workshops.

1997-2000: CalEPA Department of Toxic Substances Control, Stringfellow Branch, Sacramento, California. Hazardous Substances Engineering Geologist. Responsible for: groundwater monitoring and analysis; developing approach and preparing a work plan for a Stringfellow site revised hydrogeologic conceptual model; researching, providing, and maintaining a comprehensive environmental data management system; assembling and contracting with an expert panel for consultation on the site; evaluating an existing MODFLOW porous media groundwater flow model; providing direction on the strategy and approach for the development of a revised groundwater flow and fate & transport model for the Stringfellow site; providing input on an as needed basis in support of the litigation and community relations elements of the project.

1993 - 1997: Law Engineering & Environmental Services, Inc., Sacramento, California. Manager Project Management. Responsible for supervising and providing direction to senior project managers; maintaining appropriate tracking system and controls for assurance of successful execution of scope, schedule and budget of major projects; maintaining quality assurance and controls on projects. Responsibilities included development/implementation of group budget spending plan, establishing performance standards and evaluating program progress and quality, staff recruiting, mentoring, maintaining utilization, business development, proposal preparation, commercial and government project marketing, client maintenance. **Project Manager and Senior Hydrogeologist** on hydrogeologic evaluations, site and regional groundwater quality monitoring programs, hazardous substance site investigations and remediation. Responsibilities included technical direction of projects, project scoping, schedule, budget, supervision of field activities, preparation of documents, developing cost-effective strategies for follow-on

investigations and removal actions, and negotiating with state regulators on three Beale Air Force projects totaling more than \$15 million.

1988 - 1993: Dames & Moore, Sacramento and Los Angeles, California. **Senior Geologist**. Provided hydrogeologic technical support, project management, regulatory compliance, technical/regulatory strategy, and on a variety of commercial and industrial DTSC- and RWQCB-lead hazardous substance sites. Responsibilities included project technical direction, scope implementation, budgetary control, groundwater quality monitoring and analysis, supervision of field investigations, document preparation, client interface, negotiation with regulatory agencies on projects totaling approximately \$5 million.

1986 - 1988: California Department of Health Services, Toxic Substances Control Division, Southern California Region, Assessment and Mitigation Unit, Los Angeles, California. **Project Manager** in the Assessment and Mitigation Unit. Responsibilities included development and implementation of work plans and reports for, and regulatory oversight of, State Superfund preliminary site assessments, groundwater quality monitoring and analysis, remedial investigations, feasibility studies, remedial action, and interim remedial measures. **Engineering Geologist**. Provided technical support to Permitting, Enforcement, and Site Mitigation Unit staff, including evaluation of hydrogeologic assessments, groundwater quality monitoring programs, work plans, and reports on federal and state Superfund sites and active facilities; assistance in budget preparation; assistance in zone drilling contract review.

1983-86: Independent Consultant, Sacramento, California. Provided technical assistance on variety of geologic and geophysics projects to other independent consultants in local area.

1982: Gasch & Associates, Sacramento, California. Geologic assistant conducting shallow seismic reflection surveys in the Sierra Nevada for buried gold-bearing stream deposits.

1981 - 1982: Geologic Assistant, Coast Ranges, Avawatz Mountains, White Mountains, and Kinston Peak Range. Geologic Assistant on various geological field studies, including gravity surveys, magnetic surveys, landslide and geologic mapping projects.

PROFESSIONAL REGISTRATION

California Professional Geologist No. 5594
California Certified Engineering Geologist No. 1926
California Certified Hydrogeologist No. 0012

PROFESSIONAL AFFILIATIONS

California Department of Water Resources, Public Advisory Committee, Water Plan Update 2013

2010-2013: Appointed to participate on PAC and to lead new Groundwater Caucus

Department of Interior, Advisory Committee on Water Information, Subcommittee on Ground Water

2010-Present: Member – Work Group for Pilot Project Implementation, Nationwide Groundwater Monitoring Network
2007-2010: Co-Chair - Work Group on Implementation for development of the Framework for a Nationwide Ground Water Monitoring Network
2007-2010: Member - Work Group on Network Design for development of the Framework for a Nationwide Ground Water Monitoring Network

National Ground Water Association

2014-Present: Director - Scientists and Engineers Division
2007 - 2010: Director - Scientists and Engineers Division
2007 - 2009: Member - Government Affairs Committee
2007 - Present: Chair - Groundwater Protection and Management Subcommittee
2005 – Present: Chair - Regional Groundwater Management Task Force, Government Affairs Committee
2004 – 2005, 2007, 2009-10: Chair – Theis Conference Committee
2002 – Present: Member – Theis Conference Committee
2002 – Present: Member - Regional Groundwater Management Task Force, Government Affairs Committee
2003 – Present: Member – Groundwater Protection and Management Subcommittee
2009 – Present: Member - ASR Task Force
2009 – Present: Member - Hydraulic Fracturing Task Force
2008 – 2009: Member – CO2 Sequestration Task Force

American Ground Water Trust

2009 – 2012: Chair
2005 - 2013: Director

California Groundwater Coalition

2007-Present: Director

Groundwater Resources Association of California

2000 – Present: Director
2000 – 2001: President State Organization
2001 – Present: Legislative Committee Chair
1998-1999 Vice President
1996-1997 Secretary
1995-1996 President Sacramento Branch
1993-1994 Member-at-Large Sacramento Branch

ACADEMIC BACKGROUND

BS 1983, Geology, University of California, Davis

Graduate studies in hydrogeology, hydrology, engineering geology, waste management engineering

Selected Publications

California Groundwater Management, Second Edition, Groundwater Resources Association of California, co-author and project manager, 2005.

Water Contamination by Low Level Organic Waste Compounds in the Hydrologic System, in Water Encyclopedia, Wiley, 2004.

Potential Groundwater Quality Impacts Resulting from Geologic Carbon Sequestration, Water Research Foundation, co-author, 2009.

Aquifer Storage and Recovery in the US, ASR 9, American Ground Water Trust, Orlando Florida, September 2009 – a compilation of key ASR issues on DVD, contributing editor and speaker, 2010.

Sustainability From The Ground Up – Groundwater Management In California – A Framework, Association of California Water Agencies, principal author, 2011.

ISMAR9 Call to Action: Sustainable Groundwater Management Policy Directives, Principal Author, 2016.

Attachment – Derek Watry to John Farrow, October 7, 2016



WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

7 October 2016

Mr. John Farrow
M. R. Wolfe & Associates, P. C.
555 Sutter Street, Suite 405
San Francisco, California 94102

Subject: *Monterey Downs and Monterey Horse Park and Central Coast Veteran Cemetery Specific Plan Subsequent Environmental Impact Report*
Review of EIR Noise Analysis

Dear Mr. Farrow:

As requested, we have reviewed the noise analysis information in the Draft and Final Subsequent Environmental Impact Reports for the Monterey Downs and Monterey Horse Park and Central Coast Veteran Cemetery Project proposed on the former Fort Ord Army Base near Seaside, California. This letter discusses elements of the noise analysis that we find deficient in some way.

Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 50 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

Issue #1: The SEIR fails to assess noise with reference to the BRP’s statistical noise standards

The Fort Ord Base Reuse Plan (BRP) established a number of policies and programs to regulate noise during the future development of the former Army base. Program A-1.2 established Noise Level Performance Standards for Non-Transportation Noise Sources, reproduced in the DSEIR on p. 4.10-9 as Table 4.10-7:



Monterey Downs
Review of EIR Noise Analysis

Cumulative Minutes in Any One Hour	7 AM – 10 PM	10 PM – 7 AM	Statistical Descriptor
0 minutes (maximum)	65 dBA	60 dBA	L ₀ or L _{max}
1 minute	60 dBA	55 dBA	L ₂
5 minutes	55 dBA	50 dBA	L ₈
15 minutes	50 dBA	45 dBA	L ₂₅
30 minutes	45 dBA	40 dBA	L ₅₀

These limits apply at the property line.

In acoustics, the noise levels that are comparable to these limits are called *statistical noise levels* because they represent the statistical distribution of time-varying sound levels during the measurement. For example, the noise level exceeded 50% of the time, denoted L₅₀, is the median noise level during measurement – half the time it was louder than this level, half the time it was quieter. If the measurement period is one hour, the L₅₀ corresponds to the noise level exceeded 30 minutes of the hour and not exceeded the other 30 minutes. Similarly, the L₂₅ (25% of the time) corresponds to the level that was exceeded for 15 minutes of the hour and not exceeded the other 45 minutes.

Standards such as those in the table above recognize that noise level for most human activities vary over time and also that most people are able to tolerate some louder noise levels without excessive irritation if they are interspersed with lower noise levels. These standards are more sophisticated than a maximum level and/or a daily average level. While the former is useful and is, in fact, still included as the “0 minutes” or L_{max} standard, these cumulative minute standards recognize that there is a substantial difference in irritation to sensitive noise receptors between a noise that is 64 dBA for 59 seconds as opposed to 59 minutes. Meanwhile, the daily average metrics that are ubiquitously used in land use planning are also useful for high level planning, but often fail to adequately address noise sources that persist for only a few hours at a time such as sporting events (because the noise from the event is averaged over 24 hours).

LandWatch objected that the DSEIR fails to apply the BRP’s cumulative-minutes noise standards for non-transportation sources in Comment PO 208-90. LandWatch in Comment PO 208-116 also pointed out that the City has failed to incorporate these BRP standards into its Municipal Code as mandated by the BRP.¹

¹ We note that the City’s Municipal Code at section 17.30.060E, Table 3-3, contains maximum interior and exterior noise standards. This table does not provide the same standards as the BRP’s cumulative-minutes noise standards because 1) it only provides the L₀ maximum standard and omits standards for 1, 5, 15, and 30 minute cumulative noise, 2) it provides a different maximum standard for different receiving land uses unlike the BRP, which applies a uniform standard regardless of the land use,

The FSEIR's response to Comment PO 208-90 claims that the cumulative-minutes or "statistical L_n " standards in the BRP are not relevant to its analysis:

The BRP statistical noise standards would not apply to occasional events at the Project site (e.g., swim meets, horse racing, etc.). The statistical L_n standards are appropriate for short-term event/impulsive noise and not longer-term event noise such as the activities associated with the proposed Project. For an impulsive noise, the level rises sharply and then falls rapidly (e.g., hammering, shooting, firecracker noise, etc.). The equivalent sound (L_{eq}) level, based on an energy average rather than statistical averages (such as L_{50}), which was found to correlate better with the majority of the population's subjective response. As a result, statistical L_n standards are not appropriate to use in the Project analysis since anticipated events at the swim center and/or Horse Park would be continuous and would not occur in one, five, 15, or 30 minute increments. [FSEIR p. 11.4-1053]

The rationale of this argument is unsupported and simply untrue. Contrary to the FSEIR response to Comment PO 208-90, cumulative-minutes noise standards are not relevant only to short-duration "impulsive" noise like hammering or firecrackers. The cumulative-minutes standards are precisely designed to assess events such as those proposed at the swim center and Horse Park. Swim and horse events persist over several hours, and the noise levels during these events will vary. Relying only on an assessment of the maximum noise level and/or daily average noise level would be inappropriate for the reasons stated above. Conversely, the cumulative-minutes standards, which apply to the sound levels in any given hour, are well suited because the "per hour" time scale matches those of the events and the various cumulative minute limits allow for a reasonable amount of noise level variation during the event. The statement that "The statistical L_n standards are appropriate for short-term event/impulsive noise and not longer-term event noise such as the activities associated with the proposed Project" is simply untrue.

The BRP makes it clear that statistical noise standards are a fundamental part of noise regulation on the former Fort Ord:

- The BRP mandates that the City incorporate statistical noise standards into its noise ordinance (BRP Program A-1.2),

and 3) its maximum standard is more lenient than the BRP's maximum standard for all uses other than residential and schools. Complicating matters, Table 3-3 contains a footnote indicating that the levels in the table are not, in fact, L_0 or L_{max} standards but, rather, CNEL standards. The CNEL metric is not a statistical metric at all; it is a 24-hour weighted-average. A fuller discussion of this is presented under Issue #2, Footnote 3.

- The BRP mandates that statistical noise standards be met for existing uses where feasible and practicable (Policy B-1),
- The BRP mandates that any new development complies with statistical noise standards in order to ensure it does not adversely affect existing or proposed uses (Policy B-2), subject to a narrow exception for infeasibility that still requires noise barriers or acoustical treatment (Policy B-5), and
- The BRP mandates that statistical noise standards be used to evaluate adverse effects and to identify mitigation in noise studies for new development in order to ensure that existing and proposed uses would not be adversely affected (Policy B-3).

Thus, application of the BRP cumulative-minutes noise standards is clearly relevant to determining whether the Project is consistent with the BRP.

We note that the FSEIR does not assert that none of the BRP standards apply under CEQA, Appendix G, which establishes that a noise impact is significant if the Project would "expose persons to, or generate noise levels in excess of, standards established in the local general plan or noise ordinance, or applicable standards of other agencies." Clearly, the BRP standards are applicable standards to the proposed project. In fact, the DSEIR repeatedly acknowledges the applicability of the BRP 24-hour average standards in its assessment of stationary noise impacts. [DSEIR at pp. 4.10-19 to 4.10-24] There is no rationale for utilizing some of the BRP standards and eschewing others.

Issue #2: Analysis of stationary, non-transportation noise sources is inadequate in terms of quantitative calculations, significance assessment, and mitigation measures.

The proposed Project would construct several major sports and entertainment facilities including a sports arena, an equestrian center, and a swim center. It would also provide the City of Seaside with a new Corporation Yard and Fire Station. These are large, complex facilities that each have many sources associated with them. Therefore, the noise analysis must likewise be detailed and complex. It is not. Rather, the calculations are all of the "back of the envelope" variety, the assessments utilize only some of the many applicable thresholds of significance, and, therefore, the mitigation measures are inadequate.

In the following section, we briefly point out various inadequacies of the DSEIR's stationary noise impact analysis, Section IMPACT 4.10-3 beginning on p. 4.10-18:

Seaside Corporation Yard and Fire Station Noise

The DSEIR states that noise impacts from yard activities, trucks, sirens, bells, and horns would be less than significant because these are all explicitly exempted from the Seaside Noise Ordinance limits. While it is true that these are exempt from normal community noise limits, this does not render the noises harmless. Rather, it is an acknowledgement by society that the

benefits of sirens, horns, bells, etc. overrides the harm done by them. Interestingly, the DSEIR presents detailed noise level information about how loud sirens are, even as it disavows the need for assessing it.

Equestrian Event Noise

Sports Arena. The project includes a 6,500-seat, indoor, sports arena, and the noise analysis states that the noise levels associated with “cheering crowds” could be as high as 110 dBA indoors and 90 dBA outdoors. [DSEIR at p. 4.10-21] The document does not state where the outdoor calculation was made, however, it does state that the outdoor level would be “above the normally acceptable noise limits for residential areas”. While this seems to imply that the 90 dBA level occurs at the property line, that seems unlikely. This statement is most likely an erroneous assessment.

Insufficient information is given to calculate precisely what the maximum noise level would be at either of the two closest receptors, the homes 1,850 ft to the southwest and the Oak Oval trails 550 ft to the south, because the DSEIR does not indicate at what distance the stated maximum noise levels occur. However, assuming the 90 dBA occurs at a standardized distance of 50 ft, the noise levels would be on the order of 75 dBA at Oak Oval and about 65 dBA at the residences.² The former is well over the maximum allowed by the BRP as reproduced in DSEIR Table 4.10-7, and the latter is equal to the maximum. Furthermore, the BRP limits are lower for sounds that persist for more than 1 second (the maximum noise level is literally the single loudest second in an hour). We note that the FSEIR states that “the DSEIR provides reference noise levels associated with certain activities but does not use maximum or peak levels.” [FSEIR p. 11.4-1058] This would imply that the 90 dBA noise level does in fact persist for more than one second per hour. If loud cheering cumulatively occurred over 1 minute during an hour, the applicable BRP limit would be 60 dBA. If cheering cumulatively occurred over 5 minutes, the applicable BRP limit would be 55 dBA. The DSEIR analysis is too simplified to capture, and therefore, assess this level of complexity.

Outdoor Grandstand. The horse track will have a 1,500 seat outdoor grandstand on one side. The DSEIR states that noise levels associated with the training track would range from 80 to 110 dBA. [DSEIR at p. 4.10-21] These noise levels are presumably outdoors, so would propagate freely into the surrounding area. Despite this there is no assessment whatsoever of this project noise source.

² The DSEIR states that recreational users in the Oak Oval will be 550 feet south of the track and arena. [DSEIR at p. 4.10-21] However, DSEIR Figure 2-14 shows the sports arena and race track itself would be directly adjacent to the Oak Oval and to passively used open space to the north (CSUMB property) and to the east (BLM property). Thus, distances to some open space uses would be less than 550 feet and noise levels would be higher.

The grandstands are under the Sports Arena roof overhang which may serve to amplify cheering noise by reflecting it, but, ignoring that, simple estimates of maximum noise levels at the residences and Oak Oval as was done above are 95 and 85 dBA, respectively. These levels are considerably greater than the BRP maximum daytime noise limit of 65 dBA. As stated above, there are other, more restrictive noise limits for longer duration noise, but the DSEIR analysis did not make the calculations that would be necessary to determine compliance with them, nor does the DSEIR describe the horse racing and other activities sufficiently to enable independent estimates.

Concerts and Music Festival. The DSEIR states that concerts and a music festival will be held in Planning Area REC-2, but it does not indicate where. [DSEIR at p. 4.10-21] Furthermore, there is no estimation of concert noise and, therefore, no significance assessment.

Mitigation Measure NOI-2. The DSEIR’s own noise analysis clearly indicates that crowd noise will most likely be the loudest noise associated with the project (exceeded only, potentially, by amplified music noise levels which were not analyzed). As discussed above, crowd noise could exceed the BRP maximum noise limit of 65 dBA by up to 30 dB. However, despite the assertion that “a Noise Management Program shall be prepared to provide sufficient noise attenuation measures to meet the 65 dBA standard”, the only mitigation measure mentioned that could possibly reduce crowd noise is a “sound barrier or berm”. [DSEIR at p. 4.10-24] No technical analysis or even conceptual drawings of such a barrier or berm are provided. It is implausible that any realizable berm or barrier could be high enough and of sufficient extent to provide 30 dB of noise attenuation for an entire sports arena and horse track with outdoor, presumably raked grandstands, not to mention reflections off the roof overhang. Noise reduction between 5 and 10 dB is much more likely.

Furthermore, the identification of the applicable noise standard for mitigation in NOI-2 is ambiguous. NOI-2 calls for meeting “the 65 dBA noise standard in the Fort Ord Reuse Plan, and Seaside Municipal Code Sections 9.12 (Noise Regulations) and 17.30.060 (Noise Standards).” It is unclear what standard would be applied because NOI-2 does not identify the applicable noise metric, e.g., a 24-hour CNEL standard or a particular statistical L_n standard for a specified cumulative number of minutes. Nor does NOI-2 specify the relevant jurisdiction (Seaside or BRP) from which it derives the “65 dBA noise standard.” The DSEIR’s discussion and tables of the Seaside’s and BRP’s standards do not make this clear by context. For example, in discussing significance, the DSEIR references only the BRP’s normally acceptable noise limits for residential land uses, which is a CNEL standard, i.e., a 24-hour weighted-average standard, but this standard is 50 to 55 dBA CNEL, not 65 dBA CNEL. [DSEIR, Table 4.10-6] The BRP does include in its statistical noise standards a 65 dBA maximum noise standard for a cumulative period of 0 minutes (the L₀ standard), but that 65 dBA standard is a not a 24-hour standard but a standard for the maximum noise level permitted for a single instant. [DSEIR, Table 4.10-7] The City’s normally acceptable residential standard is 55 CNEL. [DSEIR, Table 4.10-5] The City also identifies 65 CNEL as the maximum exterior noise standard for residential uses. [DSEIR, Table 4.10-4] However, this 65 dBA CNEL standard is not referenced in the discussion of significance and it is unclear why it would take precedence over the City’s

normally acceptable residential standard of 55 CNEL, particularly since the DSEIR consistently uses normally acceptable noise standards in its discussion of the significance of noise impacts.³

Thus, NOI-2 fails to clarify what noise standard would be required for mitigation because it fails to specify the metric and jurisdiction for the “65 dBA noise standard.” In any event, NOI-2 clearly fails to apply the same 50 to 55 CNEL standard that was used in the discussion of the significance of stationary noise impacts.

Furthermore, NOI-2 also omits any reference to meeting the BRP’s 50 dBA CNEL standard (24-hour standard) for open space uses. [DSEIR, Table 4.10-6] It is not clear from the information provided in the DSEIR that the 24-hour average noise level generated by uses within Planning Area REC-2 would meet this standard.⁴

Finally, NOI-2 fails to specify that, even if the project meets the CNEL 24-hour average noise standards, it must also mitigate short-term noise sources that exceed each of the BRP’s L_n statistical noise standards, not just the BRP’s 65 dBA L_0 standard (i.e., it must meet the L_2 , L_8 , L_{25} , L_{50} standards too).

³ The DSEIR Table 4.10-4 is taken from the City’s noise ordinance at section 17.30.060E(1)(b), which lists “Maximum Interior and Exterior Noise Standards” with a footnote identifying these standards as CNEL standards. The CNEL label may not have been intended; and the “Maximum Interior and Exterior Noise Standards” may have been intended to represent the statistical L_0 standard for the maximum noise permitted for a given instant rather than 24-hour average standards. We suggest this for several reasons. First, there appears to be no clear relation between these exterior noise standards and the “Noise/Land Use Compatibility Matrix” table providing “Normally Acceptable” and “Conditionally Acceptable” CNEL noise standards in the same section. The two tables do not use the same land use classifications, and the Maximum Interior and Exterior Noise Standards do not correspond either to the “Normally Acceptable” noise levels or to the “Conditionally Acceptable” noise levels in the Noise/Land Use Compatibility Matrix (compare DSEIR Table 4.10-4 to 4.10-5, reproducing the two tables). Second, section 17.30.060E(1)(a) bars noise in excess of the standards in either table, but, if both tables were intended to be CNEL standards, it would be difficult to determine which table’s standard applies. A more intelligible regulatory structure (e.g., the BRP’s regulatory structure set out in DSEIR Tables 4.10-6 and 4.10-7) would require meeting a CNEL standard and an L_n standard.

⁴ Meeting the open space noise standard would not be possible if, as discussed in Issue # 4 below, the FSEIR is correct that the 52.3 Leq noise measured at Site 2 [DSEIR, Table 4.10-3] is “representative of ambient levels at the open space and passive recreation areas” and that the short term Leq measurement is close to the CNEL value. [FSEIR, p. 11.4-1052] If ambient open space noise already exceeds the BRP standard, then the DSEIR should have considered whether the project’s incremental noise would make a considerable contribution to a significant cumulative impact. Note that BRP Noise Policy B-8 bars an increase over 3 dBA measured at the property line where ambient daily-weighted-average noise levels (L_{dn} – roughly equivalent to CNEL) already exceeds the normally acceptable noise range for open space use. [DSEIR, p. 4.10-11]

Swim Event Spectator and Pool Noise

The DSEIR discussed two primary noise sources from the outdoor swim center: crowd noise and starting system noise. Regarding crowd noise, although the DSEIR states that the “worst case would be . . . approximately 2,000 spectator adults” for 11½ hours, it makes no effort to estimate any noise level from the cheering supporters despite having done so for the sports arena and equestrian grandstands. [DSEIR at p. 4.10-22] Given that the Swim Center is closer to the nearest noise sensitive receptor than is the Equestrian Center (300 ft as opposed to 550 ft), it is very likely that crowd noise during “worst case” swim events will exceed the BRP maximum noise limits as will crowd noise from equestrian events.

The DSEIR does calculate the noise level from the starting system (a very loud “beep; also referred to by its proprietary name, the Time System) at the nearest receptor. The level, 70.4 dBA, exceeds the maximum of 65 dBA allowed for non-transportation noises by the BRP. [DSEIR, Table 4.10-7]

The DSEIR erroneously compares the 70.4 dBA maximum level from the starting system to the BRP 24-hour, weighted daily average criteria rather than the appropriate maximum noise level, but, albeit inadvertently, the preparers do correctly conclude that “the Time System would exceed the BRP’s exterior noise standard for residential uses” and indicate that “Mitigation Measure NOI-3 is required for specific control measures to ensure noise impacts . . . would be less than significant”. However, Mitigation Measure NOI-3 contains no actual sound-reducing measures for the Time System. Therefore, the Time System noise should be identified as a significant noise impact.

As with crowd noise from the equestrian event areas, mitigation of spectator noise so as to meet the BRP noise standards is not likely to be feasible.

Confusion Over Significance Criteria

In the discussions above, we pointed out several times that the noise levels either do or, when not calculated by the DSEIR preparers, would likely exceed the maximum noise limit of 65 dBA for non-transportation sources established by the BRP. The noises discussed – crowd cheering, amplified music, the starting “beeps” for swim meets – are appropriately assessed by the maximum level and the other cumulative minute limits, though this has not been done. In the DSEIR, every one of these noises is apparently only assessed using the 24-hour, weighted daily average criteria from the BRP, namely, 50 to 55 L_{dn} or CNEL.⁵ We say “apparently” because the DSEIR does not expressly say that. Rather, it makes statements such as “The normally acceptable limits for residential land uses, according to the BRP, range from 50 dBA to 55 dBA”. Considering the numerical values in DSEIR Tables 4.10-6 and 4.10-7, the 50 dBA to 55 dBA standard would appear to be the “normally acceptable” 24-hour average (L_{dn} or CNEL) criteria

⁵ We note also that the DSEIR indicates that significance of noise in Impact Statement 4.10-3 will be determined by whether the project causes a substantial noise increase over ambient levels. [DSEIR at p. 4.10-12] However, none of the DSEIR’s discussion of the significance of stationary noise source impacts considers the magnitude of noise increases. Instead, it references absolute noise standards, albeit unclearly,

for exterior community noise at residences. This is confusing because the simple noise calculations presented in the DSEIR for comparison to stated standards are clearly not 24-hour average levels. Thus, it appears that the DSEIR erroneously compares what are peak or short term noise levels to 24-hour standards. For example, after stating that “the normally acceptable noise limits for residential land uses, according to the BRP, range from 50 dBA to 55 dBA” the DSEIR reports that “noise levels from the sports arena would be as high as 90 dBA, which is above the normally acceptable noise limits for residential uses.” [DSEIR at p. 4.10-21] The 90 dBA figure is clearly not a 24-hour average noise level, even though the referenced BRP standard is a 24-hour standard.

Furthermore, in order to determine the 24-hour average noise levels the analyst would need information about the location, duration, and intensity of each noise source, which the DSEIR does not provide. Finally, adding to the confusion, Mitigation Measure NOI-2 apparently refers to a different standard than did the DSEIR’s discussion of the significance of event noises precipitating the need for mitigation. As discussed above, MM NOI-2 is unclear what metric or jurisdiction is intended by its reference to “the 65 dBA standard”. NOI-2 might be referring to the BRP’s 65 dBA L_0 standard, the statistical standard identifying the maximum noise permitted for a single instant [DSEIR, Table 4.10-7] Alternatively, it might be the City’s maximum residential standard of 65 CNEL, the maximum 24-hour average standard. Regardless, the 65 dBA standard referenced in NOI-2 is clearly not the same standard as the BRP’s 50 to 55 dBA CNEL normally acceptable noise limit for residential uses that was consistently identified in the discussion of the significance of noise impacts. Nor does the NOI-2 reference provide an unambiguous standard to be met through mitigation.

In summary, the DSEIR presents detailed descriptions of all applicable standards, but then fails to utilize them completely, correctly, or consistently.

Issue #3: Analysis and mitigation of construction noise is inadequate

As reproduced in the DSEIR, Program A-1.2 of the Fort Ord Base Reuse Plan (BRP) states:

The City shall adopt a noise ordinance to control noise from non-transportation source, *including construction noise*, that incorporates the performance standards shown in [DSEIR, Table 4.10-7]. [DSEIR at p. 4.10-9; emphasis added]

Despite this explicit direction to apply this applicable standard, the DSEIR failed to calculate *any* noise level or to make *any* quantitative assessment against *any* applicable standard. However, the DSEIR does provide sufficient information to enable us to make and assess a simple example that demonstrates that the BRP Program A-1.2 limits will be exceeded.

The DSEIR states:

- Construction noise levels attenuate at 6 dB per doubling of distance (p. 4.10-14)
- Dozers generate levels of 82 dBA at 50 ft (Table 4.10-8)

- Dozers are typically utilized 40% of the time (Table 4.10-8)
- The closest residential receptor is 200 ft away (p. 4.10-15)

Using this information, one can calculate that for 24 minutes per hour (40% of the time) dozer noise at the nearest residence will be 70 dBA (attenuated 12 dB because the distance is doubled twice from 50 to 200 ft). Because the time period is between 15 and 30 minutes, the applicable standard from DSEIR Table 4.10-7 is that for 30 minutes, specifically, 45 dBA.

This simple calculation and assessment demonstrates that a single piece of heavy equipment will cause the BRP noise standards to be grossly exceeded. A standard construction noise analysis typically considers the noise from the three loudest pieces of equipment.

The BRP non-transportation noise standards are restrictive, but the DSEIR repeatedly applies other BRP standards elsewhere in the document, so there is no question about their applicability to this project, in general, and to construction noise, in particular.

The FSEIR’s contention that noise mitigation will be adequate is not supported by any actual analysis, as is required by Seaside Municipal Code section 17.30.060G(6), which requires that the City “estimate noise exposure after prescribed mitigation measures are implemented.”

Mitigation NOI-1 contains no actual standards for acceptable off-site noise levels. The provisions that Mitigation Measure NOI-1 does include will not ensure that the significance thresholds (i.e., the adopted noise standards) are met. For example, compliance with muffler and noise attenuation regulations will not ensure that noise levels are acceptable because the equipment will still generate noise that can cause exceedance of off-site standards, as evident from the stated construction equipment noise levels in DSEIR Table 4.10-8. Notice to neighbors and a complaint response arrangement will not attenuate noise or ensure that noise standards are met, particularly when the remedy is merely to take “reasonable measures” without any obligation to meet noise standards. Siting stationary equipment will not ensure that off-site standards are met because there is no requirement to meet standards; and it will do nothing to address mobile equipment noise which is likely to be a substantial source of the off-site noise impacts. And limiting hours will not ensure that standards are met, since those standards also limit noise during the day.

In our experience, it would likely be infeasible to meet the strict BRP and City noise standards during a construction project of this magnitude, especially the BRP statistical noise standards. For example, using noise barriers would be impractical as a method to attenuate heavy diesel equipment noise due to the elevated exhaust stack heights and the extensive areas of earth moving and tree removal planned.

Issue #4: Noise assessment of passively used open space impacts is inadequate

As with many former military bases, the former Fort Ord site presents the local community with a large, undeveloped tract of land, something that is rare along otherwise developed stretches of the California coastline. The noise policies and programs in the BRP explicitly recognize the unique opportunities for quiet, passive enjoyment of these lands by, for example, including a land use compatibility criterion for "Passively Use Open Spaces" [DEIR at p. 4.10-9, Table 4.10-6]. Like most land use compatibility criteria, these are cast in terms of the *day-night equivalent level* (L_{dn}) or the essentially equivalent *community noise equivalent level* (CNEL). Both of these are metrics that average the noise level over a 24-hour period with extra emphasis (weighting) on the evening and/or nighttime hours. The BRP also includes cumulative-minute or statistical standards that apply to non-transportation noises. These standards are fairly restrictive, again signaling that the intent of the BRP is to preserve the uniquely quiet environment provided by the former base lands.

The noise measurement made for the DEIR used to represent the open areas was made along a roadway, 8th Avenue, that cuts through the open area site. As a technical basis for subsequent analysis, the measurement is questionable because it was only made for 10 minutes. [DEIR at p. 4.10-2] However, in FSEIR response to Comment PO 208-86, the preparers state that "Noise sources in the project area (i.e., traffic and mechanical equipment) become less active and generate less noise in the project area during the nighttime period. As a result, the variance between L_{eq} and CNEL is typically less than one dBA in areas such as the project site. Therefore, short term noise measurements are appropriate for the project."⁶ [FSEIR at p. 11.4-1052] Given that the reported L_{eq} for the 10-minute sample is 52.3 dBA, the open space CNEL – according to the DSEIR – should be between 51.3 and 53.3 CNEL.

The BRP standard for normally acceptable noise levels for passively used open space is CNEL 50. Since the baseline noise level exceeds this, BRP Noise Policy B-8 applies:

Noise Policy B-8: If the ambient DNL [i.e., L_{dn} or CNEL] exceeds the normally acceptable noise range for public or institutional uses (passively and actively used open spaces; auditoriums, concert halls, and amphitheaters; schools, libraries, churches, hospitals and nursing homes; golf courses, riding stables, water recreation areas, and cemeteries), as identified in Fort Ord Reuse Plan (refer to Table 4.10-6), new development shall not increase ambient L_{dn} by more than 3 dBA measured at the property line. [DSEIR at p. 4.10-11]

Passive open space users will be the closest sensitive users to the project, frequently within 200 feet of the project or closer, since many trails are adjacent to or actually intersect the site boundaries.⁷ [DSEIR

⁶ The "Leq" is the average noise level over the 10 minute sample.

⁷ The DSEIR claims that recreational users in the Oak Oval will be 550 feet south of the track and arena. [DSEIR at p. 4.10-21] However, DSEIR Figure 2-14 shows the sports arena and race track itself would be directly adjacent to the Oak Oval and to passively used open space to the north (CSUMB property) and to the east (BLM property). Thus, distances to open space uses would be much less than 550 feet, especially where trails intersect the Project site.

at pp. 4.16-2 and 4.16-4 (trail maps, without scale), pp 2-58 and 2-60 (tentative map with scale)]. Those users will be exposed to uses that generate substantial noise, including uses at REC-2 (the horse race track, training, and special events facility), REC-1 (the horse park, also hosting events and visitor uses), and R3 (residential use). [DSEIR at pp. 2-28 to 2-36 (summary of plan)] Despite this, the DEIR does not present any estimate of the L_{dn} or CNEL levels at these open space areas for the days in which there would be events at the equestrian center or the swim center, nor does it present any estimates of the statistical noise level distribution in the open space areas. Therefore, it fails to assess the noise impacts against the policies and programs of the BRP that were specifically enacted to regulate noise levels on the former base lands.

Although the DSEIR lacks adequate analysis, we can infer that noise impacts to open space land immediately adjacent to Planning Area REC-2 to the north, east, and south, where the Sports Arena and racing facility are to be located, would in fact exceed the 65 dBA L_0 (L_{max}) noise level permitted by the BRP statistical noise standards for non-transportation noise sources [DSEIR, Table 4.10-7] The DSEIR states that event noise outside the sports arena would be as high as 90 dBA. [DSEIR, p. 4.10-21] As discussed above, this level at the sports arena implies a level on the order of 75 dBA at the Oak Oval 550 ft way, and even higher levels at the closest trails. Depending on the duration and level of noise from REC-2, other statistical noise thresholds may be exceeded as well. As discussed above, mitigation of noise from the sports arena and race track by sound barrier or berm would be infeasible.

In summary, the DEIR's noise analysis fails to adequately assess the noise impacts of the proposed development on the open spaces that afford a unique opportunity for quiet enjoyment by hiking through unspoiled lands on the former army base. The noise levels from the proposed developments are not quantified in the same metrics as used in the BRP, making assessment with its germane policies and programs impossible.

Issue #5: Assessment of long-term mobile noise impacts fails to follow CEQA guidelines

With respect to noise impact analysis, the CEQA guidelines, as faithfully reproduced on page 4.10-12 of the DSEIR, state:

"... a project impact would be considered significant if the project would:

- Expose persons to, or generate, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies . . .
- Substantially permanently increase ambient noise levels in the project vicinity above levels existing without the project . . ."

In the assessment of long-term mobile noise impacts, the DSEIR notes that "The Project would increase noise levels on the surrounding roadways by a maximum of 6.3 dBA along 7th Avenue (between Gigling Road and Colonel Durham Street) and 5.1 dBA along 8th Street (between Inter Garrison Road and 6th Avenue)", goes on to state that "... the resultant noise level along each

of these roadway segments would not exceed the City's land use compatibility criteria of 60 dBA", and then concludes "as the resultant 'With Project' traffic noise levels do not exceed the applicable land use compatibility criteria, impacts would not occur in this regard". [DSEIR at p. 4.10-25] This analysis addresses the first CEQA guideline presented above, but does not address the second.

BRP Noise Policy B-6 presents unambiguously clear criteria to assess the relative increase in ambient levels:

Noise Policy B-6: If the ambient day-night average sound level (DNL) [i.e., L_{dn} or CNEL] exceeds the normally acceptable noise range for residential uses (low density single family, duplex, and mobile homes; multi-family; and transient lodging), as identified in Fort Ord Reuse Plan (refer to Table 4.10-6), new development shall not increase ambient DNL in residential areas by more than 3 dBA measured at the property line. If the ambient DNL is within the normally acceptable noise range for residential uses, new development shall not increase the ambient DNL by more than 5 dBA measured at the property line. [DSEIR at p. 4.10-10; emphasis added]

Based on the CEQA guideline and this applicable policy, the noise level increases along 7th and 8th Avenues should be identified as significant impacts.

This issue was raised by the LandWatch group during the public comment period [Comment PO 208-91]. The response in the FSEIR fails to address the issue, however. The response states that the noise prediction model does not account for intervening structures, barriers, or topography, and that "The model's purpose is to directly compare the Project's effects based on the traffic that it would add to the modeled roadways." It goes on to say that there are existing barriers, implying that this would render the noise level increase less than 5 dBA. It doesn't because the barriers would have exactly the same effect on the "existing without project" and "existing with project" calculations. For example, if noise 100 feet from the centerline without the project were 50 L_{dn} and with the project were 55 L_{dn} , there would be a 5 dBA increase. If there were a barrier providing 3 dB of attenuation, then the noise without the project would be 47 L_{dn} and the noise with the project would be 52 L_{dn} , and there would still be a 5 dB increase. So, in fact, the model does exactly what's needed to assess the noise following the "permanently increase" CEQA guideline – it calculates the relative increase. Now, this does imply that the absolute levels predicted by the model as presented in Tables 4.10-11 and 4.10-12 may not be correct, but this makes no difference to the relative increase analysis.

Finally, the FSEIR response also states that the analysis was done at a standardized distance of 100 ft rather than at the property line distance where the criteria apply. Again, while this means that the absolute noise level values presented in the tables are incorrect for the property line, the relative differences between the "without project" and "with project" levels are correct.

In summary, the DSEIR failed to follow the CEQA guideline to assess relative increases in noise levels caused by a project in addition to the resultant absolute levels. Had it done so, it's clear that the noise level increases along 7th and 8th Avenues would have been identified as significant impacts.

Issue #6: The DSEIR fails to determine traffic noise impacts at the property line as is required by the municipal code and base reuse plan to protect outdoor uses

The DSEIR finds project-specific impacts to be significant "when a permanent increase in ambient noise levels of 3.0 dB occur upon Project implementation and the resulting noise level exceeds the applicable exterior standard at a noise sensitive use". [DSEIR at p. 4.10-13]

The DSEIR's two-step cumulative analysis first determines whether all future projects combined with the Monterey Downs Project will cause a 3 dB increase and result in a noise level over the applicable standard. If so, the second step determines whether the Monterey Downs Project contributes at least 1 dB to the future noise level. [DSEIR at p. 4.10-13]

In both analyses, it is necessary to determine whether traffic noise levels will exceed applicable thresholds for the receiving property's land use. It is clear that the City standards are intended to protect outdoor uses by requiring measurement at the property line of the receiving use. Seaside Municipal Code section 17.30.060H provides that "exterior noise levels shall be measured at the property line of the noise-sensitive land use receiving the noise". Seaside Municipal Code section 17.30.060F states that its standards are intended to "maintain outdoor and indoor noise levels on the receptor sites in compliance with Tables 3-3 and 3-4". Seaside Municipal Code section 17.30.060F(2) provides that noise mitigation must attain noise standards "at the property line". Similarly, BRP Policies require protection of exterior uses by determining noise impacts at the property line. BRP's statistical noise standards specify that they are applicable "at the property line". [DSEIR at p. 4.10-9] BRP Noise Policies B-6, B-7, and B-8 all bar specified noise increases "at the property line". [DSEIR at pp. 4.10-10 to 4.10-11]

Because the DSEIR fails to determine the actual noise at the property line, there is no evidence that the Project will comply with Seaside Municipal Code or BRP Policy noise standards. Nor is there evidence that the Project will meet the DSEIR's own significance thresholds, because those thresholds are expressed in terms of compliance with Seaside Municipal Code or BRP Policy noise standards.

The error is consequential. For example, the FSEIR indicates that the multi-family residential housing along Gigling Road must meet a 60 CNEL noise standard. [FSEIR p. 11.4-1054] The DSEIR indicates that the 60 CNEL noise contour (the distance from the roadway centerline at which noise level will be 60 CNEL) is from 70 feet along Gigling Road from 7th to 6th Avenue. [DSEIR at p. 4.10-30, Table 4.10-12, entry for Gigling Road] Since the distances from the roadway centerline to the adjacent property lines is less than 70 feet, noise would exceed the

60 CNEL threshold at the property line and Table 4.10-12 indicates that the noise with the project will be 3.0 dB higher than without it. The DSEIR failed to identify this impact because it used the arbitrary analysis distance of 100 ft rather than the distance to the property line as required by the SMC and the BRP. Adding more than 3 dBA to a location where noise exceeds the normally acceptable residential standard also violates BRP Policy B-6. [DSEIR, p. 4.10-10]⁸

As a side note, the FSEIR argues that the City would ensure interior noise attenuation, but that would not mitigate exterior noise or protect outdoor uses, thereby forsaking the intent and purpose of the exterior noise limits in both the SMC and the BRP. [FSEIR p. 11.4-1054]

Issue #7: DSEIR failed to identify significant noise impact along 2nd Avenue

The cumulative noise analysis in the DSEIR, which is essentially a future traffic noise level analysis, is presented in Table 4.10-13. The structure of this table is a listing of sections of roadway and, for each one, the existing and future noise levels, the total increase in noise level, and the increase in noise level attributable to the project. The significance threshold for assessing cumulative noise is multi-tiered and presented on p. 4.10-13 of the DSEIR. In summary, the project would contribute significantly to a cumulative noise impact if the following three conditions are met:

1. The cumulative “future with project” noise level is 3 dB or higher than the existing conditions,
2. The resulting noise level exceed the applicable exterior standard for the sensitive land use, and
3. The “future with project” noise level is 1 dB or higher than the “future without project” noise level. In other words, the project contributes at least 1 dB to the future noise level.

In Comment PO 208-107 on the DSIER, LandWatch requested that Table 4.10-13 include the relevant land use category for each road segment and the corresponding applicable exterior noise standard to facilitate understanding of the analysis. This was not done in the FSEIR. Had it been, at least one significant impact would have been identified that the FSEIR fails to identify.

The land use along 2nd Avenue between Inter Garrison Road and 8th Street includes multi-family housing. Based on usage for multi-family housing, the City of Seaside standard for normally

⁸ Contrary to the FSEIR at p. 11.4-1054, there is no soundwall or berm that would reduce traffic noise levels on Gigling Road between 6th and 7th Avenues. This is evident from Google street-view and/or satellite imagery.

acceptable compatibility is 55 CNEL and the BRP standard for normally acceptable compatibility is 60 CNEL. It is clear from statements in the DSEIR that it considers the higher of these, 60 CNEL, to be the standard, for multi-family residential use. For example, when discussing project-specific (i.e., non-cumulative) future noise levels, the DSEIR states, “Future With Project noise levels along these segments would be less than 60 dBA, which is within the normally acceptable land use compatibility criteria for residences.”⁹ [DSEIR at p. 4.10-28]. Similarly, the FSEIR identifies the 60 dBA limit from the BRP as the relevant standard for determining whether traffic noise is over the applicable standard for multi-family residential use. [FSEIR at p. 11.4-1054]

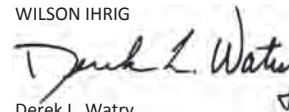
In Table 4.10-13, the difference between the existing and the cumulative future-with-project noise levels is 9.0 dBA, the future-with-project noise level is 63.5 dBA, and the incremental difference between future-with-project and future-without-project noise levels is 2.4 dBA. One slight complication is that the Table 4.10-13 assessment is made 100 ft from the roadway centerline rather than at the property line which is actually farther away at about 140 ft. Correcting for the difference in distance using the standard line-source attenuation factor of 3 dB per doubling of distance, the absolute future-with-project noise level at the property line is 62.0 dBA. So, the absolute noise level exceeds the applicable standard, the total increase exceeds 3 dB, and the project’s contribution exceeds 1 dB. Therefore, according to the DSEIR’s adopted threshold of significance and analysis, the noise impact along 2nd Avenue between Inter Garrison Road and 8th Street should have been identified as significant.

* * * * *

Please call us if you have any questions regarding this review.

Very truly yours,

WILSON IHRIG



Derek L. Watry
Principal

⁹ Land use on the east side of 2nd Avenue includes educational uses (CSUMB). The City and BRP standards for educational uses are also 55 and 60 CNEL respectively.

4.25 RESPONSE TO COMMENT LETTER X: JOHN FARROW

Overview Comment

The comment letter is from counsel for LandWatch and this an overview comment. Detailed comments are provided in the letter and responses to those comments are provided below.

X-1 The comment makes a generalized statement regarding water supply impacts with detailed comments to follow. The comment accurately reiterates statements from the Draft EIS/EIR.

X-2 The comment includes statements regarding groundwater, seawater intrusion, and water supply impacts, which are described in various sections of the Draft EIS/EIR. Section 3.10.5, *Groundwater Hydrology*, in Section 3.10, *Hydrology and Water Quality*, of the Draft EIS/EIR discusses environmental setting for groundwater in the Salinas Valley Groundwater Basin (SVGB) and Seaside Basin. More specifically, Section 3.10.7.1, *SVGB Water Quality*, and Section 3.10.7.2, *Seaside Basin Water Quality*, discuss the seawater intrusion conditions of these basins.

The potential impacts associated with water quality, including seawater intrusion, and groundwater (or aquifer) depletion are discussed in Section 4.10, *Hydrology and Water Quality*. Specifically related to these issues, as identified in Section 4.10.1.1, *Thresholds of Significance*, an impact is considered to be significant and require mitigation if it would result in:

- violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality; or
- substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin.

As identified in the No Action Alternative impact analysis on page 4.10-2, development activities could result in the depletion of groundwater supplies or interfere with groundwater recharge for projects that utilize groundwater and for projects that increase impervious surfaces. However, development activities under the No Action Alternative would be subject to California regulations governing water use and groundwater, including, but not limited to, the Sustainable Groundwater Management Act, Reuse Plan and applicable local plans.

The impact analysis for the Proposed Action on page 4.10-2 states that where the Proposed Action Alternative differs from the No Action Alternative is the increase in the development acreage and future development activities would occur at a faster pace due to the issuance of the base-wide ITPs by the Wildlife Agencies. As a result, impacts to hydrology and water quality would increase from those described under the No Action Alternative.

This impact discussion also refers the reader to Section 4.1.1.3, *Approach to Analysis of Resources Considered*, of the Draft EIS/EIR. This reference is added to the majority of the impact discussions due to the complexity of the analysis required under NEPA and CEQA and avoid redundancy in repeating the assumptions and approach to analysis for to the Proposed Action and alternatives in every impact discussion. Section 4.1 provides an introduction to Chapter 4, *Environmental Consequences*, describing:

- previous and future environmental review (Section 4.1.1);
- baseline (Section 4.1.1.1);
- resources considered in detail (Section 4.1.1.2);
- approach to analysis (Section 4.1.1.3);

- resources not considered (Section 4.1.1.4);
- thresholds of significance and level of affect (Section 4.1.2); and
- cumulative effects (Section 4.1.3)

As described on page 4.1-8 of the Draft EIS/EIR, future development activities are not part of the “project” under CEQA that are subject to approval by the CEQA lead agency and Permittees, are not part of the “project” under CEQA that would be subject to permitting by the CDFW, and are not part of the “action” under NEPA that would be subject to permitting by the USFWS (please refer to Section 1.7, *Decisions to be Made*, of the Draft EIS/EIR). The EIS/EIR “project” under CEQA and “action” under NEPA consists of the approval and implementation of the Draft HCP and issuance of the associated take permits, but not the actual construction of or discretionary entitlements of future development activities. Thus, the environmental impacts of future development activities in the Plan Area would not directly result from the decisions to be made for the Proposed Action. However, since future development activities are covered activities for which the ITPs would address take, the potential environmental impacts of future development activities, as well as all other covered activities proposed for coverage under the ITPs, are addressed in the Draft EIS/EIR.

All covered activities are subject to the approval of the Permittees with jurisdiction over such projects. The issuance of the ITPs by the Wildlife Agencies provides compliance only with the ESA and CESA. Approval of the proposed Draft HCP does not confer or imply approval to implement the covered activities. Rather, as part of the standard approval process, individual projects will be considered for further environmental analysis and generally will receive separate, project-level environmental analysis under CEQA and, in some cases, NEPA for those projects involving Federal agencies. However, the EIS/EIR is intended to provide compliance with CEQA and NEPA for the approval of the Draft HCP and issuance of associated ITPs. As discussed above, because the Proposed Action facilitates the covered activities by addressing certain of the various statutory and regulatory requirements tied to project authorization (e.g., ESA and CESA), reasonably foreseeable environmental effects of the covered activities are discussed in the Draft EIS/EIR to provide context for the analysis of the Proposed Action and various alternatives. As described in Section 4.1.1, *Previous and Future Environmental Review*, it would be speculative to identify project-specific impacts and mitigation.

As described in Section 4.1.1, *Previous and Future Environmental Review*, the Draft EIS/EIR assumes that future development within the Plan Area will occur consistent with the development assumptions contained in the Reuse Plan and the relevant land use plans of the affected land use jurisdictions. The reasonably foreseeable environmental effects of these activities are assessed using the EIRs for those respective plans. As a result, Sections 4.2 through 4.16 of this chapter may incorporate certain information or analysis available from previous environmental documents. NEPA and CEQA regulations allow information or analysis previously presented in another document to be incorporated by reference into an EIS or EIR. If the analysis and assumptions used in the referenced document are determined to be appropriate for the Draft EIS/EIR analysis, a brief summary or description of the incorporated information or analysis will be provided, including pertinent page numbers or other relevant identifying information (40 CFR 1502.21, 43 CFR 46.135, and CEQA Guidelines § 15150[c]). These plans provide a broad outline for future development land use patterns within the former Fort Ord. In addition, the Draft EIS/EIR assumes that all future development activities will be required to comply with all applicable Fort Ord Reuse Plan and/or applicable land use plan goals, policies, and implementation measures, as well as the applicable programmatic mitigation measures identified in each of the respective plan EIRs. While the reasonably foreseeable environmental effects of these activities are assessed in the Draft EIS/EIR, it would

be speculative to identify more detailed, project-specific impacts and mitigation measures for future development activities under each EIS/EIR alternative than what has been identified in the various plan EIRs at a programmatic level.

As described in Section 4.1.1.3, *Approach to Analysis of Resources Considered*, the Proposed Action is clearly defined and summarized into two categories: Category 1 – Development activities, and Category 2 – Habitat management activities. As described in Section 4.1.1, *Previous and Future Environmental Review*, because information about the precise amounts, specific locations, and actual timing of future development projects over the 50-year study period is incomplete, these future development activities are analyzed at a program level in the Draft EIS/EIR. Because the amounts, locations, and timing of the habitat management activities are adequately defined in the Draft HCP, habitat management activities are analyzed at a project level in the Draft EIS/EIR.

As stated in Section 4.1.1.2, *Resources Considered in Detail in this EIS/EIR*, in Sections 4.2-4.16, the level of detail used when describing environmental impacts for each resource topic varies in proportion to their significance, meaning that severe impacts are described in more detail than less consequential impacts, as required by 40 CFR 1502.2(b) and CEQA Guidelines § 15126.2(a). The purpose is to help decision-makers and the public focus on each alternatives' key effects. CEQA requires that an EIR be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make an informed decision. An evaluation of the environmental effects of a proposed project under CEQA need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible (CEQA Guidelines § 15151).

Further, CEQA Guidelines § 15204 (a) states "...reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters."

An EIR is required only to analyze the direct impacts and reasonably foreseeable non-speculative indirect impacts on the environment. An EIR is required to evaluate a particular environmental impact only to the extent that it is "reasonably feasible" to do so (CEQA Guidelines § 15151). More generally, "the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project" (CEQA Guidelines Section 15204(a)). As a corollary to this rule, CEQA does not require a lead agency to engage in speculative analysis (CEQA Guidelines § 15145). If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact" (CEQA Guidelines § 15145). As stated above, the Draft EIS/EIR's conclusion regarding the speculative analysis of future development activities is discussed in Section 4.1.1, *Previous and Future Environmental Review*.

As the court in *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014), 227 Cal.App.4th 1036, 1060–61, explained: An EIR is not required to engage in speculative analysis (CEQA Guidelines § 15145). Indeed, this core principle is well established in the guidelines and case law. While a lead agency must use its "best efforts" to evaluate environmental effects, including the use of reasonable forecasting, "foreseeing the unforeseeable" is not required, nor is predicting the unpredictable or quantifying the unquantifiable (CEQA Guidelines § 15064, subd. (d)(3) ["A change that is speculative or unlikely to occur is not reasonably foreseeable"]; *Cadiz Land Co. v. Rail Cycle* (2000), 83 Cal.App.4th 74, 107–108 ["agency is required to forecast only to the extent that an activity

could be reasonably expected under the circumstances”]. This rule rests on both economic and practical considerations. It has long been recognized that premature attempts to evaluate effects that are uncertain to occur or whose severity cannot reliably be measured is “a needlessly wasteful drain of the public fisc.” (*Environmental Council of Sacramento v. City of Sacramento* (2006), 142 Cal.App.4th 1018, 1031; (see, e.g., *Save Round Valley Alliance v. County of Inyo* (2007), 157 Cal.App.4th 1437, 1450–1451 [an EIR for a subdivision of single-family residences was not deficient in failing to consider the possibility that the future lot owners might build a second dwelling on their lot pursuant to a local ordinance allowing such dwellings, because the possibility was remote and speculative].) As explained in response to this comment, the Draft EIS/EIR’s analysis of the project’s potential impacts uses reasonable assumptions and is consistent with CEQA’s requirements and thresholds of significance. The analysis of future development activities and their impacts on the environment is extremely speculative and beyond the scope of CEQA.

As explained in *Environmental Council*: “The sufficiency of an EIR as an informative document is judged `in light of what is reasonably feasible.’ (Guidelines, § 15151.)” (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal. App. 3d 671, 681, 246 Cal. Rptr. 317.) It is unnecessary to engage in “sheer speculation as to future environmental consequences,” and it is unreasonable to expect an EIR to “produce detailed information about the environmental impacts of a future regional facility whose scope is uncertain and which will in any case be subject to its own environmental review.” (*Atherton v. Board of Supervisors* (1983) 146 Cal.App.3d 346, 350-351 [194 Cal.Rptr. 203]; *Ibid.*) The degree of specificity in an EIR need only correspond to the degree of specificity involved in the underlying activity which is described in the EIR (CEQA Guidelines § 15147; *Atherton v. Board of Supervisors*, supra, 146 Cal.App.3d 346, 350-351.) Here, the underlying activity consists of implementation the Draft HCP. Until specific measures or projects are adopted and the details fleshed out, the environmental impacts remain “abstract and speculative.” (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal. App. 3d 1011, 1025, 280 Cal. Rptr. 478.) It is both impractical and useless to consider the multitude of potential environmental impacts before the financial feasibility is determined and the scope of the project is defined. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal. App. 3d 223, 237, 242 Cal. Rptr. 37.) Simply put, “[a]n EIR is not required to include speculation as to future environmental consequences of future development that is unspecified and uncertain.” (*National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal. App. 4th 1505, 1515, 50 Cal. Rptr. 2d 339.)

Applying the described approach to the analysis and NEPA and CEQA Guidelines, the Draft EIS/EIR determined that impacts to hydrology and water quality under the Proposed Action would increase from those described under the No Action Alternative, and, therefore, development activities could result in the depletion of groundwater supplies or interfere with groundwater recharge for projects that utilize groundwater and for projects that increase impervious surfaces.

Development activities under the Proposed Action Alternative would be subject to California regulations governing water use and groundwater, including, but not limited to, the Sustainable Groundwater Management Act, Reuse Plan and applicable local plans. As described on page 4.1-8 of the Draft EIS/EIR and repeated throughout the Draft EIS/EIR, environmental impacts resulting from the construction and operation of future development activities would be evaluated on a project-by-project basis pursuant to NEPA and CEQA, as applicable, and potentially significant impacts would be identified and mitigated pursuant to the requirements of appropriate laws and regulations.

The environmental setting and environmental consequences for water supply are addressed in Section 3.16, *Utilities*, and Section 4.16, *Utilities*, respectively. As identified in Section 4.16.1.1, *Thresholds of Significance*, impacts to water supply are considered to be significant

and require mitigation if the project would have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years. Similar with the analysis for hydrology and water quality, additional development as a result of the buildout of the former Fort Ord would result in increased water demand under the Proposed Action Alternative. In light of the existing, regionwide water supply shortage, this increased demand on water would represent a potentially significant impact. The need for additional water supply would be evaluated and necessary improvements would be implemented on a project-by-project basis. Potentially significant impacts would be identified and mitigated pursuant to the requirements of each law/regulation. Implementation of the Draft HCP may require temporary irrigation to support habitat restoration and enhancement activities; however, a permanent water source to support habitat management activities would not be required. As a result, impacts to water supply associated with habitat management activities are less than significant.

The Proposed Action Alternative consists of the approval and implementation of the Draft HCP and issuance of the associated take permits, but not the actual construction of or discretionary entitlements of future development activities. An EIR need not establish the likelihood that water will be available to satisfy all future development; rather, it merely must discuss the reasonably foreseeable impacts of supplying water to the project and consider mitigation measures (*Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1291–1292 (Sixth District Court of Appeal)). As stated, the “project” is the implementation of the HCP, which consists of implementing the identified habitat management activities. The habitat management activities associated with implementing the Draft HCP would consist of ground-disturbance during revegetation, restoration, enhancement, existing road, trail, and firebreak maintenance activities. However, these activities would not result in groundwater pumping that would deplete the aquifer and result in seawater intrusion or require a permanent water source. As such, the Draft EIS/EIR determined the Proposed Action Alternative would have less-than-significant impacts to hydrology and water quality and water supply.

As described in Section 4.1.1, *Previous and Future Environmental Review*, it would be speculative to identify project-specific impacts and mitigation for future development activities. Because the precise details of future development activities are not known at this time, and the future water source, location of water source, or water demand are not known, FORA, USFWS, and LandWatch cannot speculate as to the potential site-specific effects. The claim that groundwater will be impacted is not based on substantial evidence and further to assess these impacts in the Draft EIS/EIR would be misleading.

The goal behind CEQA is “to compel government at all levels to make decisions with environmental consequences in mind.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393, 253 Cal.Rptr. 426, 764 P.2d 278 (Laurel Heights)). CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th at p. 1197, citing § 21005, subd. (b).) "The question whether an EIR is sufficient as an informative document depends on the lead agency's compliance with CEQA's requirements for the contents of an EIR: whether the EIR reflects a reasonable, good faith effort to disclose and evaluate environmental impacts and to identify and describe mitigation measures and alternatives; and whether the final EIR includes reasonable responses to comments on the draft EIR raising significant environmental issues." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2009) § 11.37, p. 566)

The information contained in the Draft EIS/EIR provides a basis from which the decision-makers can make a determination regarding the effects of the implementing the Draft HCP.

The Draft EIS/EIR addresses the environmental concerns posed by implementing the Draft HCP and issuing the ITPs and provides information to the extent it was available at the time. CEQA requires nothing more (CEQA Guidelines § 15151). The Draft EIS/EIR has been prepared with sufficient analysis to provide decision-makers with information to enable them to make a decision on project approval that takes into account environmental consequences. The Draft EIS/EIR adequately addresses future development activities at a program level and habitat management activities at a project-level. The EIS/EIR assumes that future development within the Plan Area will occur consistent with the development assumptions contained in the Reuse Plan and the relevant land use plans of the affected land use jurisdictions. The reasonably foreseeable environmental effects of these activities are assessed using the EIRs for those respective plans. The analysis of future development activities is adequate with respect to satisfying CEQA requirements, while stopping short of providing misleading speculation. The information provided in the environmental setting of Draft EIS/EIR is sufficient to support the analysis of the environmental consequences associated with implementing habitat management activities at a project-level.

X-3 Please refer to Response X-2.

X-4 The EIS/EIR assumes that future development within the Plan Area will occur consistent with the development assumptions contained in the Reuse Plan and the relevant land use plans of the affected land use jurisdictions. Future development activities are not part of the “project” under CEQA that are subject to approval by the CEQA lead agency and Permittees, are not part of the “project” under CEQA that would be subject to permitting by the CDFW, and are not part of the “action” under NEPA that would be subject to permitting by the USFWS (please refer to Section 1.7, *Decisions to be Made*, of the Draft EIS/EIR). As such, The Draft EIS/EIR has been prepared with sufficient analysis to provide decision-makers with information to enable them to make a decision on project approval that takes into account environmental consequences. Please refer Response X-2.

Further, a Subsequent EIS and Subsequent EIR is required when specific triggers occur *after certification or adoption* of the environmental document. The Draft EIS/EIR has not been certified and, therefore, the preparation of a Subsequent EIS and EIR would not be in compliance with NEPA and CEQA regulations.

X-5 Please refer to Responses X-2 and X-4.

X-6 Please refer to Responses X-2 and X-4.

X-7 Please refer to Responses X-2 and X-4.

X-8 Please refer to Responses X-2 and X-4.

X-9 Please refer to Responses X-2 and X-4.

X-10 Please refer to Responses X-2 and X-4.

X-11 Please refer to Responses X-2 and X-4.

X-12 Please refer to Responses X-2 and X-4 and Master Response #1: Funding and Cost of Implementing the Draft HCP.

Attachments to LandWatch Letter

The LandWatch comment letter submits numerous and lengthy attachments, including comments on another jurisdiction’s EIR for a development project which has since been disapproved and then, suggests that these comments should be considered as comments on the Draft EIS/EIR. The attachments include comment letters on specific projects and related water impacts and are not specific to the Draft HCP. The comment letter attempts to join the now defunct Monterey Downs project as a part of the Draft EIS/EIR.

Please refer to Responses X-2 and X-4. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

December 14, 2019

Via E-mail

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Re: Draft Fort Ord Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR)

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

We offer the following comments to supplement the comments we submitted on December 10, 2019 on the Fort Ord Multispecies Habitat Conservation Plan (“HCP” or “proposed HCP”) and the Draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”). We are concerned that FORA’s analysis comparing the costs of the proposed HCP to the no-action alternative is seriously flawed, and we seek reconciliation of the inconsistencies in the analyses.

In our December 10, 2019 comments we urged the agencies to compare the cost of the proposed HCP to the cost of the no-action alternative. The comparison is obviously relevant to prudent fiscal management. The comparison will also reveal whether the analysis of funding assurances for the proposed HCP is well founded, or whether it is contradicted by other analyses prepared by FORA of the costs of habitat management.

The costs of the no-action alternative would include the costs to agencies that own habitat reserve land of any continuing obligations under the 1997 Habitat Management Plan (“HMP”) and the cost to developers to obtain individual ITPs for development projects in the future. In this connection, we urged the agencies to make a careful determination of their actual continuing obligations under the HMP and to determine if there are available means to reduce those obligations, including conveying away the reserve lands, negotiating reduced obligations with the wildlife agencies to reflect the actual scope of Fort Ord development, and/or obtaining funding from future developers of the Fort Ord land who need mitigation banking to obtain project-specific ITPs.

It appears that FORA’s claims that the proposed HCP would be less costly overall than the no-action alternative may be founded on a FORA staff report, “Habitat Management Plan

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Responsibilities Analysis” (“HMP Responsibilities Analysis”).¹ LandWatch asks that the response to these comments indicate whether there is in fact any other analysis of the cost of the no-action alternative and provide that analysis.

The HMP Responsibilities Analysis conflicts with the analyses in the HCP and the HCP EIS/EIR in two important respects, which must be resolved. In addition, the HMP Responsibilities Analysis contains a conceptual error: it fails to recognize that developer payments to agencies for mitigation banking would reduce agency habitat management costs in the no-action alternative.

CONFLICTING ASSUMPTIONS REGARDING USE OF HMP HABITAT RESERVE LAND FOR DEVELOPMENT PROJECT MITIGATION: First, contrary to the EIS/EIR, the HMP Responsibilities Analysis states that the HMP habitat reserve lands *could in fact be used to mitigate take that occurs on the land designated for development even if the basewide HCP is not adopted:*

If USFWS and CDFW are willing to negotiate permits relating to former Fort Ord development parcels without a basewide HCP, acreages within the Habitat Reserves could serve to mitigate for take.

(HMP Responsibilities Analysis, p. 14.) By contrast, the HCP EIS/EIR assumes that in the no-action alternative, the HMP’s habitat reserve areas could *not* be used as the mitigation land for take on the vegetated land designated for development. The EIS/EIR assumes that mitigation for the take by development projects would have to occur either outside Fort Ord or on the vegetated development land itself. Thus, the EIS/EIR assumed that only 25% of the vegetated development land could actually be developed in the no-action alternative. ((EIS/EIR, p. 2-6; *see also* EIS/EIR, p. 4.4-4). The EIS/EIR ignores the fact that development projects can be credited for mitigation through conservation and management of land designated as Habitat Management Areas under the HMP.

FAILURE TO REDUCE AGENCY HABITAT MANAGEMENT COSTS BY THE AMOUNTS PAID BY PRIVATE DEVELOPERS FOR MITIGATION BANKING: Despite the assumption in the HMP Responsibilities Analysis that mitigation for development in areas designated for development *could* rely on acreages within the Habitat Reserves to mitigate for take, the analysis fails to reflect that synergy in its discussion of the total agency cost to fulfill HMP obligations and developer cost to pay for project-specific individual ITPs.

The sole analysis of the cost of individual ITP’s, tacked onto the report in a final paragraph, assumes that 600 acres of land would be developed and would have to pay \$50,000 per acre for mitigation banking, a \$30 million cost to the private developers. (HMP Responsibilities Analysis, p. 17.) The discussion then states that this \$30 million would be “above and beyond the \$35.1 to \$52.3 million required for HMP management requirements.”

¹ Mary Israel, FORA Associate planner, Habitat Management Plan Responsibilities Analysis, February 28, 2019, available as pdf pages 51-68 at <https://www.fora.org/Board/2019/Packet/030819BrdPacket.pdf>

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(continued)

Y-1

Y-2

(*Ibid.*) Based only on this analysis, the HMP Responsibilities Analysis states that “this estimated cost far exceeds estimated basewide HCP costs.” (*Ibid.*) *This fails to account for the possibility that private developers could pay that \$30 million to the agencies that own the habitat reserve lands, thereby reducing those agencies’ costs by \$30 million.* In effect, the HMP Responsibilities Analysis double counts the cost of meeting HMP obligations and the cost of mitigation banking for private development.

Y-2
(continued)

Indeed, if private developers are in fact willing to pay \$50,000 per acre to mitigate take for one species, the developer payments to the agencies that own the HMP habitat reserve lands for mitigation banking would likely exceed the 30% portion of the CFD taxes that FORA has allocated for habitat management and on which the proposed basewide HCP proposes to rely. The agencies may be able to substantially defray or eliminate their continuing obligations for HMP management if they are permitted to act as mitigation bankers for private development. This option needs to be explore carefully.

FAILURE TO PROVIDE ANY MEANINGFUL DETAIL IN THE HMP-ONLY COST ANALYSIS: The HMP Responsibilities Analysis does not provide any actual detail supporting its calculation that the agency cost to run the HMP would total \$1.5 million. LandWatch asks that the response to these comments provide the details of the HMP-only cost analysis, which purports to be “based on the HCP cost model prepared by FORA’s HCP consultant ICF.” (HMP Responsibilities Analysis, p. 16.) In particular, please identify the costs that would be common to both the proposed HCP and the HMP-only analysis. Please separately identify the costs that would be unique to the HCP, i.e, the costs that make up the difference between the HMP-only cost of \$1.5 million per year and the HCP cost of \$2.5 million per year. What activities account for the additional \$1 million in HCP costs?

Y-3

FORA has claimed that the HCP would attain economies of scale compared to the no-action alternative. Please identify these scale economies in sufficient detail that the agencies can understand whether they would justify the 50-year financial commitment to the HCP.

THE ENDOWMENT NEEDED FOR A \$2.5 MILLION PER YEAR HCP CANNOT BE THE SAME AS THAT FOR THE \$1.5 MILLION PER YEAR HMP-ONLY: The HMP Responsibilities Analysis assumes annual management cost just to meet the existing HMP obligations of \$1.5 million. (HMP Responsibilities Analysis, p. 4, Table 1.) To fund that continuing obligation and start up costs, the HMP Responsibilities Analysis assumes that the agencies (or a JPA formed to manage the HMP obligations) would need to set aside \$35.1 to \$52.3 million, assuming investment returns of 4.5% to 3%. (HMP Responsibilities Analysis, p. 16.)

Y-4

By contrast, the HCP assumes annual management costs of \$2.5 million would only require a \$51 million endowment, consisting of the \$16 million FORA will have set aside by 2020 plus an additional \$35 million collection of CFD taxes in the next seven years. (HCP, Tables 9.1a and 9-6 [annual cost] and Table 9-6 [cost and funding sources].) Elsewhere, the HCP identifies the required endowment as only \$49 million. (HCP, Table 9-8.) The HCP analysis assumes comparable investment returns of 4.5% to 4.2%. The subsequent EPS



Sensitivity Analysis memorandum, which purports to provide a more refined analysis of the proposed HCP funding options, assumes that the HCP endowment need only be from \$37 million to \$43 million. (EPS, Sensitivity Analysis and Cost Allocation Alternatives, Nov. 13, 2019, p. 6, Figure 3.)

The endowment analysis in the HMP Responsibilities Analysis is fundamentally at odds with the analyses prepared by EPS for the proposed HCP. To put it bluntly, *it makes no sense that the proposed HCP program, which spends \$2.5 million per year, needs an endowment no larger than the endowment for the HMP program, which spends only \$1.5 million per year.* If the HMP's annual operating cost is only 60% of the HCP's cost, the endowment should be only 60%.

The agencies cannot rely on the HMP Responsibilities Analysis as the basis of a cost comparison of the proposed HCP and the no-action alternative. LandWatch asks that FORA provide a detailed and apples-to-apples analysis of the costs of the proposed project and the no-action alternative in response to these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

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Y-4
(continued)

4.26 RESPONSE TO COMMENT LETTER Y: JOHN FARROW

Overview Comment

The comment letter is from counsel for LandWatch and this overview comment provides a summary of the key issues detailed in the comment letter. Responses to these key issues are provided below.

Y-1 The comment references the HMP Responsibilities Analysis attached to the FORA staff report for Agenda Number 8e.i from the FORA Board meeting on March 8, 2019, which was prepared as preliminary cost estimate of HMP implementation. This preliminary exercise was conducted at the request of the FORA Administrative Committee and Board of Directors and occurred prior to publication of the Draft EIS/EIR and Draft HCP. As described in the staff report, it is difficult to estimate with accuracy how much reserve management or conservation of species within the HMAs would cost. This preliminary exercise was a broad-brush, high-level analysis of the potential costs of implementing the HMP and was not prepared to support the analysis in the Draft EIS/EIR and Draft HCP.

This preliminary cost estimate was an attempt to provide the requested information; however, its accuracy and assumptions were not available for review and, thus, its conclusions were not widely supported. As a result, per the request of the FORA Administrative Committee and as part of the HWG discussions, FORA and its consultants conducted a more-detailed, draft cost analysis of HMP responsibilities. For this exercise, FORA and its consultants estimated cost for each jurisdiction to implement the HMP as separate entities. This approach fundamentally differed from the HCP cost estimate because the economies of scale gained by managing the HMAs collectively under the HCP are lost. For the draft cost analysis for implementing HMP responsibilities, it was assumed that each jurisdiction would need to procure its own equipment, staff, and labor for managing habitat. This estimate also did not include cost estimates for developers to obtain individual ITPs and it would be speculative to identify project-specific impacts and mitigation for future development projects (please refer to Response X-2). This estimate was presented at the February 21, 2020, HWG meeting <https://fora.org/HWG/HMP-Cost%20Est%20Presentation-022120.pdf>. The draft HMP cost analysis of HMP responsibilities is presented in Appendix D.

This analysis provided a more-detailed estimate based on specific and identified assumptions and supersedes the March 2019 estimate. *However*, as with the preliminary cost estimate prepared in March 2019, one of the same major limitations of the analysis was identified:

The Resource Management Plans for the HMAs have not been developed: there are not enough details about “what will be done” and “how much” to manage and restore in order to accurately estimate the cost of the HMP implementation.[emphasis added]

This draft cost estimate was developed by adapting the HCP cost model to the high-level (i.e., less detailed) management responsibilities identified in the HMP. Using the same or similar cost estimates for the same or similar tasks identified in the HCP and HMP allowed for comparison of relative costs between implementing the HCP as a whole versus implementing the HMP by each jurisdiction separately.

The Draft EIS/EIR and Draft HCP were published in November 2019, and this preliminary cost estimate is not included, referenced, or relied upon for any of the determinations presented in those documents. CEQA Guidelines § 15204(a) states that “In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated.”

The Draft EIS/EIR and Draft HCP are the subjects of public review. The preliminary cost estimate is outdated, and decision-makers should consider the updated analysis with the understanding of its limitations. As such, the conclusions in the preliminary cost estimate should not be compared to the Draft EIS/EIR or Draft HCP.

Y-2 The comment states that HMP costs could be reduced through establishment of mitigation banks. Please refer to Response Y-1. CEQA Guidelines § 15204(a) also states “reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

While mitigation banking may be an option to reduce costs of HMP implementation, it is not reasonable to suggest that the lead agencies perform an exhaustive analysis of the potential funding sources for HMP implementation, which is a component of the No Action Alternative.

Y-3 Please refer to Responses Y-1 and Y-2. The loss of economies of scale are presented in Slide 19 of the presentation at the February 21, 2020, HWG meeting, which can be accessed here: <https://fora.org/HWG/HMP-Cost%20Est%20Presentation-022120.pdf>. If the HCP is not approved and base-wide ITPs are not issued, HMA land managers would be individually responsible for: the cost of implementing habitat management activities under the HMP, preparing their own management plans; negotiating plan approval with the regulatory agencies; complying with NEPA and CEQA; and acquiring any necessary permits from the regulatory agencies. Completing these requirements individually results in a loss to the economies of scale under the HCP, where costs are shared.

Y-4 Please refer to Response Y-2 and Master Response #1: Funding and Cost of Implementing the Draft HCP.

The EPS Sensitivity Analysis memorandum does not purport to provide a more refined analysis of the proposed HCP funding options and was not intended to replace the cost analysis in the HCP. As expressly stated in the memorandum, the cost sensitivity analyses are not based on an analysis of habitat management costs relative to anticipated development and are instead based on hypothetical cost reduction scenarios to illustrate the associated financial modeling dynamics. The EPS Sensitivity Analysis is not relevant to this comment.

Other portions of this comment refer to the HMP versus HCP endowment funding requirements, stating that it doesn’t make sense that the HCP costs would require a \$51M endowment to fund \$2.5 million in annual costs while the HMP would need \$35-52 million to fund \$1.5 million in annual costs.

- The HMP endowment requirement assumes investment returns of 3.0 - 4.5% versus HCP assumed investment returns of 4.2 - 4.5%. Because a higher pay-out rate generates a lower endowment requirement, the HCP endowment estimate is only comparable to the lower end endowment requirements assumed for the HMP.
- The HCP costs to be funded by the endowment are \$2.2 million, not \$2.5 million – at a 4.5 percent pay-out rate, this equates to a \$6.7 million difference in endowment funding requirements.
- Because the HCP endowment funding strategy considers three discrete timeframes (initial costs, permit term costs, and post-permit term costs), the HCP endowment funding strategy includes a principal drawdown feature. This feature allows the

endowment principal to be drawn down over the permit term to reach levels needed to fund the post-permit term costs in perpetuity. HCP post-permit term costs are estimated to approximate \$1.3 million annually.



[EXTERNAL] Comments on Fort Ord Habitat Conservation Plan

1 message

Bartholomew Kowalski [REDACTED]
To: fw8fortordhcp@fws.gov

Mon, Dec 16, 2019 at 5:00 PM

Dear Mr. Henry

I am writing you in support of the Fort Ord Habitat Conservation Plan (HCP). As you know, it took many years for this document to be completed. During that time, many of the recipients of the Fort Ord parcels had requirements for habitat management activities under the Habitat Management Plan (HMP), such as removal of invasive weeds and erosion control, which are listed in the deeds. Unfortunately, some of the land recipients have not been complying with these requirements. The result is that while the Army, BLM, and State Parks spent millions of dollars and thousands of man hours treating weeds on the Fort Ord National Monument, adjacent lands have stands of pampas grass that not only degrade the parcels in which they are present, but also spread their seed to areas where managers are trying to control and eradicate these invasive species.

Z-1

Z-2

The HCP provides for a funding structure to manage natural resources on the former Fort Ord including invasive weed management which would provide all HCP partners with money necessary to alleviate this problem.

Z-3

Additionally, the HCP provides an opportunity for coordinated wildfire prevention. If the past is any indication, I am afraid that without cooperation described in the HCP, many of the natural areas along the urban interface will become overgrown and will pose an increased fire risk at a time when California is seeing record destruction from wildfires that spread to urban areas.

Z-4

As a resident of northern Monterey County I support the HCP being approved and implemented to better manage our rare species, invasive plants, and wildfire prevention.

Z-5

Sincerely,

Bart Kowalski

--
Bart Kowalski, MS

Follow my Adventures with Wildlife
TrackandSeek.org

4.27 RESPONSE TO COMMENT LETTER Z: BARTHOLOMEW KOWALSKI

- Z-1** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- Z-2** The comment states that some of the land recipients have not been complying with the HMP. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- Z-3** The comment accurately identifies that the Draft HCP provides for a funding structure to management natural resources including invasive weed management. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- Z-4** The comment accurately describes that the Draft HCP provides an opportunity for coordinated wildfire prevention. The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- Z-5** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.

Fort Ord Community Advisory Group
Email: focagemail@yahoo.com

"The Fort Ord Community Advisory Group (FOCAG) is a public interest group formed to review, comment, and advise on the remediation (cleanup) of the Fort Ord Army Base Superfund Site, to ensure that human health, safety, and the environment are protected to the greatest extent possible." - Mission Statement

Re: Responses to DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

PROJECT TITLE: Fort Ord Multi-Species Habitat Conservation Plan (Former Fort Ord HCP)

PROJECT LOCATION: Former Fort Ord, including areas within the Cities of Seaside, Marina, Monterey, and Del Rey Oaks and County of Monterey, California

CEQA Lead Agency: Fort Ord Reuse Authority, % Stan@fora.org

NEPA Lead Agency: U.S. Fish and Wildlife Service, % [Stephen P. Henry](mailto:Stephen.P.Henry@fws.gov)

Public Review Period: November 1, 2019 through December 16, 2019

December 16, 2019

Dear FORA and U.S. Fish and Wildlife Service,

The FOCAG has the following comments;

1) The Laguna Seca Recreation Area was created as a Monterey County Park circa 1974. The United States Army needed a governmental entity to turn the property over to. United State's Congressman Bert Talcott facilitated the transfer. At the time he felt the County would be a better steward of the gift than the State or Federal Government would be. An E.I.R. in Monterey County was prepared in 1977 regarding this new County Park and its uses

Since that time there has been expansion of the race track from 9 to 11 turns, as well as the use of Lookout Ridge and Wolf Hill for additional parking. Access and egress has been channeled through areas of former Fort Ord. Both the the number and size of events has increased dramatically, but without adequate environmental review. The Use Permit entitlements granted by previous Monterey County Board of Supervisors have been exceeded.

AA-1

AA-2

AA-3

The HCP Public Draft, Volume 1, page 2-28, Section 2.3.9 contains a counted seven sentences. Although threatened species are identified, there is no analysis of the impacts that the both the size and the frequency of events the the Laguna Seca Recreation Area is having upon them. We ask that a separate EIR be prepared for this Laguna Seca Recreation Area. In addition to impacts to threatened species, It will also have to take into account water usage, traffic issues, and the frequency and duration of noise, including unlimited sound noise impacts to not only threatened species but to surrounding area residents.

AA-4

2) This Draft document fails to take into account the Monterey County adopted and recorded Official Plan Lines for California State Highway 68 including the Corral de Tierra Bypass. These Official Plan Lines were adopted in 1977. State Highway 68 borders former Fort Ord. The Official Plans Lines for the Corral de Tierra Bypass are different than what was called the Fort Ord Bypass Plan Lines studied in 1992 and included with the adopted 1997 FORA Reuse Plan. The transfer of much of former Fort Ord to BLM, was done rather quickly, with BLM not fully knowing of former transportation commitments, AND the California Department of Transportation not being fully apprised. Highway 68 is a designated State Scenic Highway.

AA-5

3) Section 4.4.2 Proposed Development Adjacent to Plan Area needs to be updated and corrected. For example, the approved Corral de Tierra Shopping Center was allowed a lot line adjustment on two existing parcels, but not an increase to seven individual parcels. The groundwater contamination issue is not mentioned. Also, the Ferrini Ranch may be sold to the Monterey County Ag Land Trust.

AA-6

4) The beaches of the Fort Ord Dunes State Park have homeless people living on them. Also, nearby college students and others visit theses beaches frequently, many going off trails. The remaining lead bullet fragments and lead dust on the areas here are a health threat to humans and other living organisms. However, the California Department of Parks and Recreation has still not put up Proposition 65 signage warning the public of the threat.

AA-7

5) In Volume 2 of this Former Fort Ord Habitat Conservation Plan document, under "Preventing the Spread of Invasive Plants, Best Management Practices for Land Managers 3rd Edition", I call your attention to Section II, #10, Fire and Fuel Management BMP's, p.p. 35-47;

AA-8

Page 36 of this section states:

“Wildfire is a natural part of California ecosystems. The structure and composition of most California plant communities are dependent on the periodic occurrence of fire.”

Please know the FOCAG finds this BLM assumption particularly troubling. Please do reference the extensive Scoping Comments prepared by H.O.P.E. (Helping Our Peninsula’s Environment). H.O.P.E.’s scoping comments prepared for this Former Fort Ord Habitat Conservation Plan offer extensive evidence and analysis of this specific area of California, i.e., the Monterey Peninsula (including former Fort Ord). Natural wild fires caused by lightening are rare here. The United State’s Army unintentionally set the Army base on fire when it was an Infantry Training Base and the West Coast CDC Center. The United States Army BRAC intentionally set portions of the former Army Base on fire (many times) to rid areas of leftover unexploded ammunition. These latter were called Army Prescribed Burns. Unhealthful choking smoke was imposed on both the Monterey Peninsula and surrounding populated areas.

AA-8
(continued)

Please do correct the unfounded assumptions, and do suggest and recommend healthful alternatives to Prescribed Burns, such as mechanical clearing, or more grazing of sheep and goats.

AA-9

Also, the residential areas surrounding former Fort Ord are having trouble obtaining and/or keeping Fire Insurance on their homes. Fire Insurance rates have gone up too. BLM should be a good neighbor and a good steward of the land. This Habitat Conservation Plan should be specific to Former Fort Ord and NOT a compilation of off-the-shelf practices used elsewhere. Don’t you agree? If not, why not?

AA-10

Thank you for the opportunity to comment.

AA-11

Mike Weaver, Co-Chair
FOCAG
831-484-2243

4.28 RESPONSE TO COMMENT LETTER AA: MICHAEL WEAVER

- AA-1** The comment introduces the comments in the letter as follows. No response is required.
- AA-2** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- AA-3** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- AA-4** The comment accurately states that Section 2.3.9 of the Draft HCP contains seven sentences and does not contain an analysis of impacts to threatened species from the size and frequency of events at the Laguna Seca Recreation Area. The comment further requests a separate EIR be prepared for the Laguna Seca Recreation Area, and address water usage, traffic issues, and the frequency and duration of noise, including noise impacts to threatened species and surrounding residents.
- Please refer to Responses E-12 and E-15, which describe the level of analysis in the Draft EIS/EIR.
- AA-5** The comment states that “this Draft document” fails to take into account the Monterey County adopted and recorded Official Plan Lines for California State Highway 68 including the Corral de Tierra Bypass.
- Section 2.3.6.5 on page 2-43 of the Draft EIS/EIR and Section 3.3.6.1 on page 3-46 of the Draft HCP describe the Transportation Easement-State Route 68 Corridor referenced in the comment. As stated in these sections, any work or project proposed by Caltrans is not included as a covered activity in the Draft HCP and is not analyzed in the Draft EIS/EIR. Any work or project proposed by Caltrans would require Caltrans to consult directly with the USFWS and CDFW and independently obtain all necessary permits, authorizations, and approvals from those agencies and landowners.
- AA-6** The comment requests updates and corrections to the text in Section 4.4.2 of the Draft HCP. The comment requests that the description of the approved Corral de Tierra Shopping Center be corrected to identify the lot line adjustment and recent status of the Ferrini Ranch. The correction has been made to section of the Draft HCP. Please refer to **Chapter 6, Revisions to the Draft HCP**.
- The comment further requests that a discussion of groundwater contamination and the potential sale of land be included in Section 4.4.2 of the Draft HCP. The purpose of this section is to discuss proposed development adjacent to the Plan Area. Groundwater contamination is addressed in Sections 3.9 and 4.9 in the Draft EIS/EIR. As a result, this revision was not included in the Draft HCP.
- AA-7** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- AA-8** The comment calls attention to Appendix E of the Draft HCP and expresses concerns with a statement in BLM’s best management practices included on page 36 of Exhibit C: “Wildfire is a natural part of California ecosystems. The structure and composition of most California plant communities are dependent on the periodic occurrence of fire.” The comment characterizes this BLM statement as being “particularly troubling” and requests that the scoping comments prepared by H.O.P.E. (Helping Our Peninsula’s Environment) be referenced in regard to natural wildfires in the area. The comment states that natural wildfires caused by lightning are rare and the Army unintentionally set fires, imposing unhealthful smoke in the area.

Regardless of the cause(s) of wildfire on the former Fort Ord, numerous scientific studies have analyzed the effects of fire on natural communities. In particular, studies have shown that fires and other disturbance mechanisms are important factors in maintaining and rejuvenating the maritime chaparral community, a sensitive natural community addressed in the Draft HCP. Please refer to Section 5.5.3.3, *Prescribed Burning and Alternative Vegetative Management*, in the Draft HCP.

As stated in Section 1.8.1.1, *Notice of Intent/Notice of Preparation*, in the Draft EIS/EIR, a scoping period was initiated on June 20, 2005, and extended until July 21, 2005. Comment letters received during the scoping period, including the letter from H.O.P.E., are included in Appendix A of the Draft EIS/EIR.

As stated in Section 1.8.1.2, *Issues Raised During Public Scoping*, in the Draft EIS/EIR, air quality issues resulting from prescribed burns were identified as key issues to be analyzed. Sections 3.3 and 4.3 of the Draft EIS/EIR address the potential air quality impacts related to prescribed burns. The Draft EIS/EIR determined that prescribed burns may result in potentially significant impacts to air quality and identified MMs AQ-3 and AQ-4 to reduce impacts to a less-than-significant level (please refer to page 4.3-14 of the Draft EIS/EIR).

AA-9 The comment requests correcting the unfounded assumptions regarding natural wildfire and suggests and recommends healthful alternatives to prescribed burns, such as mechanical clearing or more grazing of sheep and goats.

Please refer to Response AA-8 regarding assumptions related to the importance of fire for natural communities.

Section 5.4.9, *Avoidance and Minimization Measures for Prescribed Burning and Alternative Vegetative Management*, describes the alternative vegetative management activities that would occur under the Draft HCP, including, but not limited to, mechanical clearing and grazing.

AA-10 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.

AA-11 The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.



FORT ORD RECREATION TRAILS FRIENDS



December 16, 2019

Sent via Email: fw8fortordhcp@fws.gov

Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Subject: FORT Friends Comments on Draft EIS/EIR for Fort Ord Multi-Species Habitat Conservation Plan (HCP)

Dear USFWS:

These comments are written on behalf of the Fort Ord Recreation Trails (FORT) Friends board of directors, which discussed this issue on November 25, 2019. FORT Friends is a 501(c)(3) non-profit organization comprised of many types of recreationists (hikers, road and mountain bikers, equestrians, trail runners, naturalists, etc.). We work to preserve and expand public access to Fort Ord trails and encourage volunteerism to give back to the community and the environment.

BB-1

The HCP and its EIS/EIR are lengthy documents difficult for the layperson to understand. Thus, these comments are more general in nature. As an advocate for responsible public access and recreational enjoyment of Fort Ord trails, FORT Friends supports any HCP alternative that enables activities such as multi-user trail recreation (roads, fire roads and single-track), occasional race events, trail maintenance, new trail construction or trail re-routing in coordination with land managers. FORT Friends previously wrote letters of support for the FORTAG trail system, which will enable safer access to trailheads by the public and encourage bicycle commuting.

BB-2

As part of the CEQA process, in 2018 FORT Friends wrote a letter to lead agency FORA questioning the need for and proposed alignment of the Northeast-Southwest "Connector" (previously called the "Eastside Parkway"). FORT Friends is very concerned about the adverse impacts of the proposed Connector roadway to recreation, public safety, habitat and wildlife. The "Happy Trails" area that would be most impacted contains many trails that are valuable to the public due to their close proximity to primary trailheads (8th and Gigling, Intergarrison/Jerry Smith, and East Garrison/Travel Camp) and the gentle terrain, which is great for young and old to enjoy. These trails are also part of Monterey County's FORHA recreation trail plan.

BB-3

Given the lack of progress on the Connector EIR, the many problems associated with the proposed Connector, and the impending demise of FORA in June 2020, FORT Friends questions whether the Connector should be included as a covered project in the HCP. FORT Friends recommends that it be removed from Table 2-9a on page 2-20 and Figure 2-5 on page 2-21. If some type of connector road is deemed to be actually needed in the future and a more acceptable alignment is selected, the future road project could be added as a covered activity under the Adaptive Management options that are described in the HCP.

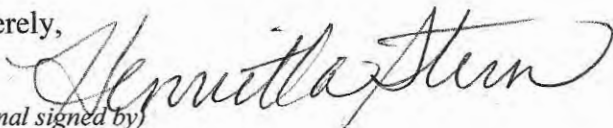
BB-4

Thank you for your consideration of these comments. Please keep FORT Friends on the mailing list for future opportunities to participate in this process. The FORT Friends contact person is Henrietta Stern at the address on the bottom of page 1 (see footer). The contact email is: fortfriends.prez@gmail.com.

BB-5

Thank you for your consideration of these comments.

Sincerely,



(original signed by)

Henrietta Stern, President

Cc: FORT Friends Board

4.29 RESPONSE TO COMMENT LETTER BB: HENRIETTA STERN

- BB-1** The comment identifies that the comments are written on behalf of the Fort Ord Recreation Trails (FORT) Friends board of directors. No response is required.
- BB-2** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- BB-3** The comment provides opinion on a proposed roadway, the Northeast-Southwest Connector, within the former Fort Ord.

As described in Response E-12, the Proposed Action is clearly defined and summarized into two categories: Category 1 – Development activities, and Category 2 – Habitat management activities. Development activities on the former Fort Ord are analyzed in the Draft EIS/EIR at a program level, and that habitat management activities are analyzed in the Draft EIS/EIR at a project level. The Northeast-Southwest Connector is considered a potential future development activity and falls within Category 1.

As also outlined in Response E-12, future development activities are not part of the “project” under CEQA that are subject to approval by the CEQA lead agency and Permittees, are not part of the “project” under CEQA that would be subject to permitting by the CDFW, and are not part of the “action” under NEPA that would be subject to permitting by the USFWS (please refer to Section 1.7, *Decisions to be Made*, of the Draft EIS/EIR). The EIS/EIR “project” under CEQA and “action” under NEPA consists of the approval and implementation of the Draft HCP and issuance of the associated take permits, but not the actual construction of or discretionary entitlements of future development activities. Thus, the environmental impacts of future development activities, including the Northeast-Southwest Connector, in the Plan Area would not directly result from the decisions to be made for the Proposed Action. However, since future development activities are covered activities for which the ITPs would address take, the potential environmental impacts of future development activities as well as all other covered activities proposed for coverage under the ITPs are addressed in the Draft EIS/EIR.

As summarized in Response E-15, all covered activities, including Category 1 and Category 2, are subject to the approval of the Permittees with jurisdiction over such projects. The issuance of the ITPs by the Wildlife Agencies provides compliance only with the ESA and CESA. Approval of the proposed Draft HCP does not confer or imply approval to implement the covered activities. Rather, as part of the standard approval process, individual projects will be considered for further environmental analysis and generally will receive separate, project-level environmental analysis under CEQA and, in some cases, NEPA for those projects involving Federal agencies. However, the EIS/EIR is intended to provide compliance with CEQA and NEPA for the approval of the Draft HCP and issuance of associated ITPs. As discussed above, because the Proposed Action facilitates the covered activities by addressing certain of the various statutory and regulatory requirements tied to project authorization (e.g., ESA and CESA), reasonably foreseeable environmental effects of the covered activities are discussed herein to provide context for the analysis of the Proposed Action and various alternatives.

As mentioned in the comment, the proposed Northeast-Southwest Connector project is undergoing environmental review and FORA is preparing an EIR. If the roadway project is approved, the project would likely require ITPs from the USFWS and CDFW, in addition to other permits and approvals from responsible agencies. While the issuance of the base-wide ITPs would provide take authorization for this project, it would still require completion of its environmental review process and obtain other required permits and approvals.

BB-4 The comment recommends removal of the Northeast-Southwest Connector project as a covered activity in the Draft HCP and suggests that it could be added later under the Adaptive Management options described in the HCP.

Removing and adding the referenced roadway project from the HCP would likely require a major amendment to the HCP, as described in Section 8.4, *Minor and Major Amendments*, in the Draft HCP. Major amendments often require amendments to the Wildlife Agencies' decision documents, including the NEPA/CEQA document, permit, Biological Opinion, and findings and recommendations document. Major amendments will often require additional public review and comment.

In addition, to remove this proposed project from the Draft HCP and Draft EIS/EIR would require significant revisions to these documents beyond the two revisions requested in the comment. Section 4.2.1, *Development in Designated Development Areas and Borderlands*, in the Draft HCP describes the methodology for assessing take within these land use designations. The HCP assumes that all biological resources in the designated development areas would be eliminated. An analysis of individual projects was not conducted within designated development areas. Because the proposed project was included in the take assessment for designated development areas, a revised take assessment would need to be prepared, resulting in significant revisions to the Draft EIS/EIR and Draft HCP and significant cost and delay in the ITP process.

As mentioned in Response BB-3, the take authorization that would be provided through HCP approval and issuance of base-wide ITPs does not provide any guarantee that any specific future project will be approved and constructed. Given the significant revisions that would be required, increase in cost and delay of the ITP process, and that issuance of the ITPs and approval of the HCP would not result in approval of the referenced project, the requested removal of the Northeast-Southwest Connector project was not made to the Draft HCP or Draft EIS/EIR.

BB-5 Comment is acknowledged. No response is required.



Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>

[EXTERNAL] Request for extension of comment deadline for Fort Ord HCP

2 messages

Fred Watson [REDACTED]
To: fw8fortordhcp@fws.gov

Mon, Dec 16, 2019 at 9:29 AM

Dear USFWS staff,

Can I have a 1-week extension to the deadline for comments on the Fort Ord HCP?

CC-1

Thank you,

Fred

Fred Watson, PhD
[REDACTED]

Ventura Fort Ord HCP, FW8 <fw8fortordhcp@fws.gov>
To: Fred Watson [REDACTED]

Mon, Dec 16, 2019 at 7:04 PM

Good evening Mr. Watson,

We are not able to officially extend our public comment period on the Notice of Availability for the Fort Ord Draft HCP and Draft EIS/EIR. However, we encourage you to submit your comments as close to the December 16th deadline as possible. We may be able to address your comments received after December 16, but cannot guarantee this. Our office will work with FORA to address the public comments on their Draft HCP and the Draft EIS/EIR in the coming weeks, so the sooner you can provide us with your comments the better the chances are that we will have the opportunity and time to consider them in our decision process.

Please let me know if you have any additional questions or concerns. We appreciate you reaching out to us regarding this matter.

Best regards,
Leilani Takano

Assistant Field Supervisor
Ventura Fish and Wildlife Service

[Quoted text hidden]

4.30 RESPONSE TO COMMENT LETTER CC: FRED WATSON

CC-1 The commenter requests a 1-week extension to the deadline for comments on the Fort Ord HCP.

As provided in the response to the commenter's email, the USFWS states that the public comment period cannot be extended but encourages the commenter to submit comments as close to the December 16th deadline as possible.

To date, the commenter has not submitted any additional comments. No response is required.



Conservation science for a healthy planet

3820 Cypress Drive, #11 Petaluma, CA 94954

T 707.781.2555 | F 707.765.1685

pointblue.org

December 16, 2019

Steven P. Henry
 Ventura Fish and Wildlife Office
 US Fish and Wildlife Service
 2493 Portola Road, Suite B, Ventura, CA 93003

Dear Sir,

Thank you for the opportunity to comment on the Fort Ord Multi-Species Habitat Conservation Plan (HCP) and Draft EIS/EIR. Point Blue Conservation Science has monitored the population status and reproductive success of western snowy plovers (*Charadrius nivosus nivosus*) in the Monterey Bay area since 1984 and has worked in collaboration with California State Parks and USFWS to recover the Monterey Bay population since the federal listing in 1993. The following comments are specific to the effects of the implementation of the HCP on the snowy plover at the proposed Fort Ord Dunes State Park (FODSP). We strongly support the conservation strategy within the HCP and we believe that it can be strengthened by considering the following:

DD-1

1. Impact Assessment (Chapter 4)

The assessment of impacts within the HCP does not adequately account for the cumulative impacts that other proposed beach-front developments in the southern Monterey Bay region will have at FODSP. The proposed developments to the south of FODSP (i.e. Monterey Bay Shores, The Collections) are likely to have substantial adverse effects on snowy plovers at FODSP, resulting from significant increases in human use at beaches along the southern shoreline of the park. Human use of snowy plover nesting beaches in Monterey Bay has increased over the past decade (Point Blue unpubl. data, Neuman et al. 2019), resulting in significant degradation of nesting habitat at some locations where human use is not properly managed. While we support the strategy and mechanisms within the HCP for management of human impacts at FODSP, we remain concerned that the magnitude of impacts will be greater than anticipated when considering the combined effects of HCP implementation and the proposed beach-front developments adjacent to the south end of the park.

DD-2

2. Conservation Strategy (Chapter 5)

Human-subsidized (i.e. commensal) predator species currently are the primary cause of loss of snowy plover nests in the Monterey Bay area. In 2019, corvids (common ravens and American crows) were responsible for 59% of snowy plover nest loss in Monterey Bay and 50% of nest loss at Fort Ord. Accordingly, the links between predator control and the benefits it provides to snowy plovers should be explicit within the Conservation

DD-3

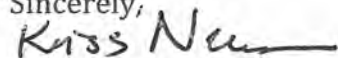
Strategy outlined in the HCP. However, control of human-subsidized predators is not emphasized within the framework of the natural community goals and objectives for coastal strand and dunes or the species goals and objectives for the snowy plover, and is mentioned only once within the framework of the required mitigation measures. We believe the Conservation Strategy for snowy plovers can be strengthened by establishing more explicit links between control of human-subsidized predators and the natural community goals, species goals and mitigation measures. Specifically, Objective 10.3 and Mitigation Measure 26 reference control of "non-native species", and "introduced species, roaming and feral animals, and other pests" respectively. These should be broadened to include human-subsidized predators with explicit reference to the benefits provided to snowy plovers.

DD-3
(cont.)

Thank you for the opportunity to comment.

DD-4

Sincerely,



Kriss Neuman

Lead Ecologist

Monterey Coastal Program

Point Blue Conservation Science

CC: Manuel Oliva, CEO

Catherine Hickey, Conservation Director

Reference:

Neuman KK, Stenzel LE, Warriner JC, Eyster C, Barbaree B, Dixon D, Haile E, Palkovic A, Hickey C. 2019. Reproductive success and breeding population size of snowy plovers in the Monterey Bay region, California, in 2019. Point Blue Conservation Science, unpubl. report. 40pp.

4.31 RESPONSE TO COMMENT LETTER DD: KRISS NEUMAN

DD-1 The comment introduces the comments in the letter as follows. No response is required.

DD-2 The HCP is required to assess the impacts of covered activities within the context of the existing conditions in the HCP Plan Area. The effects analyzed in Chapter 4 (except for Section 4.4, *Cumulative Impacts*), therefore, analyze the effects of the covered activities, which are by definition, within the Plan Area.

The HCP Handbook (U.S. Fish and Wildlife Service and National Marine Fisheries Service 2016) states, "...the applicant must specify in the HCP the impacts that will likely result from the take of a covered species, and what steps they will take to minimize and mitigate the impacts of the taking." The analysis of impacts provided in the HCP is necessarily limited to the impacts of covered activities within the Plan Area.

Some activities and projects beyond the scope of the HCP may contribute to cumulative impacts on HCP covered species. An analysis of cumulative effects is not required in an HCP. The HCP, however, includes a cumulative effects analysis to support the Federal Biological Opinion that will conclude the USFWS Section 7 internal consultation process.

Specific projects and activities not covered by this HCP that may, in conjunction with this HCP, have an impact on HCP species are identified in the EIR for this HCP.

DD-3 A western snowy plover-specific biological objective (Objective 13.2c) was added to Section 5.3.3.2, *HCP Animal Species* to emphasize the need to control human-subsidized predators. Please refer to **Chapter 6, Revisions to the Draft HCP**.

Note that the conservation strategy addresses predator control in AMM-22 and AMM-27, 13th bullet point. AMM-22 and AMM-27 include measures to minimize attraction of potential predators (avian and commensal) within or adjacent to western snowy plover habitat, and demographic monitoring performed during the nesting period will include informal predator surveys concurrently with nest monitoring that will be used to inform the adaptive management program. AMM-27 explicitly addresses human-facilitated predators at FODSP and their impact on western snowy plovers.

The benefits of targeted predator control in improving reproductive success (hatch rates and fledging success) of western snowy plovers on Monterey Bay beaches is discussed in Section 2.2.6. In addition, Section 4.3.6.1, *Development*, discusses the potential for indirect effects on western snowy plover from the increase in human presence through facilitation of predators that thrive on human activity (i.e., corvids, raccoons).

In sum, predator control for western snowy plovers is an integral part of the HCP conservation strategy. However, the addition of text to specifically reference commensal predators, and, thus, establish a more explicit link between control of these species and achievement of the biological goals and objectives for the western snowy plover, was included.

DD-4 Comment is acknowledged. No response is required.



Sustainable Seaside

1739 Havana Street, Seaside CA 93955 (831) 915-7257
info@sustainablemontereycounty.com
www.sustainablemontereycounty.org

Friday, December 16, 2019

Stephen P. Henry
Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B,
Ventura, CA 93003
fw8fortordhcp@fws.gov

Board of Directors
c/o Michael Houlemard
Fort Ord Reuse Authority
920 2nd Ave. Suite A, Marina, CA 93933
Michael@fora.org
Board@fora.org

Re: **Draft Fort Ord Habitat Conservation Plan (HCP)**

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

Sustainable Seaside takes issue with the Draft Fort Ord Habitat Conservation Plan (HCP) for several reasons that we feel are critical to the legal and financial viability of the proposed HCP.

EE-1

Encumbering a new Joint Powers Agreement (JPA) with the funding liability for HCP/ITP conditions for 50+ years without an actual funding obligation exposes the JPA members to undue risks. There is further risk in proposing that the JPA Agreement defer cost-apportionment determination and financing procedures until after the five jurisdictions and seven participating agencies are locked into 50 years of liability for HCP costs.

EE-2

There are inconsistencies in the draft plan that expose critical gaps in the HCP analysis. Given the expressed need for rapid accumulation of the Endowment Funding to cover HCP spending, there is no disclosure concerning the risk of relying on a consistent 4% annual return on interest from the Endowment Fund in a fluctuating market where recent money market funds barely return 2%. Furthermore, the assumption that all remaining Fort Ord development will occur by 2030, with a build-out rate of 443 units per year, when the historic rate of development in Fort Ord between 1997 and April 30, 2019 was only 64 units per year, appears to be an unrealistic projection.

EE-3

And finally, the HCP draft is weighted in favor of the HCP without a full legal and financial analysis of the benefits of the no-action alternative compared to the HCP.

EE-4

Yours sincerely,

Catherine Crockett
Sustainable Seaside Chair



4.32 RESPONSE TO COMMENT LETTER EE: CATHERINE CROCKETT

- EE-1** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- EE-2** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- EE-3** The comment is not on the environmental analysis in the Draft EIS/EIR and no response is required.
- EE-4** Please refer to responses to Letter V and Master Response #1: Funding and Cost of Implementing the Draft HCP.



www.morcambt.org

December 16, 2019

Email: fw8fortordhcp@fws.gov

Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Subject: MORCA Comments on Draft EIS/EIR for Fort Ord Multi-Species Habitat Conservation Plan (HCP)

Dear USFWS:

MORCA (Monterey Off-Road Cycling Association), an all-volunteer 501-c-3 non-profit organization, is the voice of responsible mountain biking in Monterey County, and a chapter of IMBA (International Mountain Bicycling Association). We advocate for trail access and give back to the community through extensive volunteerism, primarily at the Fort Ord National Monument. MORCA works closely with the Bureau of Land Management (BLM) by performing monthly trail work totaling more than 1,100 hours each year, including sustainable design, construction and maintenance to benefit all trail users. We are viewed as a valued partner by BLM, and enjoy an excellent relationship with BLM managers, rangers and staff (reference: Eric Morgan, BLM Manager). MORCA/IMBA was also instrumental in the creation of the Fort Ord National Monument by providing legal assistance and trips to Washington DC to speak directly with our elected representatives. In 2019, MORCA used an \$18,000 grant to sign trails in the County –owned area (Travel Camp vicinity) in partnership with Monterey County Resource Management Agency staff. To learn more about MORCA, visit our website at: www.morcambt.org.

FF-1

The HCP and its EIS/EIR are lengthy documents difficult for the layperson to understand. Thus, these comments are more general in nature. As an advocate for responsible mountain bike access, which includes sustainable trail stewardship in keeping with environmental principles, MORCA supports any HCP alternative that enables activities such as multi-user trail recreation (roads, fire roads and single-track), occasional race events, trail maintenance, new trail construction or trail re-routing in coordination with land managers. MORCA has previously written letters of support for the FORTAG trail system, which will enable safer access to trailheads by cyclists and encourage bicycle commuting.

FF-2

As part of the CEQA process, MORCA previously wrote a letter to lead agency FORA questioning the need for and proposed alignment of the Northeast-Southwest "Connector" (previously called the "Eastside Parkway"). Given the lack of progress on

FF-3

the Connector EIR, the many problems associated with the proposed Connector, and the impending demise of FORA in June 2020, MORCA questions whether the Connector should be included as a covered project in the HCP. MORCA recommends that it be removed from Table 2-9a on page 2-20 and Figure 2-5 on page 2-21. If some type of connector road is deemed as actually needed in the future and a more acceptable alignment is selected, the future road project could be added as a covered activity under the Adaptive Management options that are described in the HCP.

FF-3
(continued)

Thank you for your consideration of these comments. Please keep MORCA on the mailing list for future opportunities to participate in this process. The MORCA contact person is Henrietta Stern at the address on the bottom of page 1 (see footer). The MORCA board of directors can be reached at: morca@morcamtb.org.

FF-4

Sincerely,



Henrietta Stern
Secretary

Cc: MORCA board

C:\Users\tom\Desktop\Word Henri\MORCA\CommentLetters\20191216_EIREISforFtOrdHCP.docx

4.33 RESPONSE TO COMMENT LETTER FF: HENRIETTA STERN

- FF-1** The comment introduces the Monterey Off-Road Cycling Association (MORCA). No response is required.
- FF-2** The comment provides opinion on the Proposed Action. The comment is referred to the decision-makers for their consideration.
- FF-3** Please refer to Responses BB-3 and BB-4.
- FF-4** Comment is acknowledged. The MORCA will remain on the project's notification list and will continue to be notified of this process. No response is required.

California Native Plant Society

2707 K Street, Ste. 1 • Sacramento, CA 95816-5113 • (916)447-2677 • FAX (916)447-2727

Monterey Bay Chapter – P.O. Box 221303, Carmel, CA 93923

December 16, 2019

Sent via email to: fw8fortordhcp@fws.gov
Leilani Takano, takano@fws.gov

COMMENTS ON DRAFT HCP and EIS FOR FORT ORD, Monterey County, CA

Thank you for the opportunity to provide comments on the Draft Habitat Conservation Plan for Eight Species At Fort Ord, and the Draft EIS for the HCP. Please accept the following comments.:

GG-1

1. The Monterey Bay Chapter of the California Native Plant Society (MB-CNPS) has had a nearly 50-year history of plant and habitat conservation efforts at the Fort Ord former military installation. In the early 1970's, the Chapter worked with Base Command to establish 10 Native Plant Reserves that protected the finest examples of native habitat types within the mosaic of rich Mediterranean natural communities on the military base. Wetlands, Maritime Chaparral, "Sandhill Oak" Woodlands, Dune Scrub and concentrations of special status plant species were identified by CNPS and conserved by the Army. In the early 1990's, three additional Native Plant Reserves were identified. The conservation of ALL 13 reserves in perpetuity was formalized through mitigation agreements signed jointly by the Monterey Bay Chapter of CNPS and the U.S. Army.

GG-2

We note that Plant Reserve #3 has not been identified as a permanently conserved area, as per mitigation agreements executed by the Army Base Command and MB-CNPS.

GG-3

We note that an additional (14th) Plant Reserve, referred to by MB-CNPS as Plant Reserve 1 North, has not been identified in the Draft HCP and EIS. This additional Plant Reserve was established in Parcel E29a.1 by a fully executed agreement in 1998, as amended in 1999, by the President of MB-CNPS, the Mayor of Del Rey Oaks and the Executive Director of the Fort Ord Reuse Authority (FORA). Pant Reserve 1 North supports the CA endangered Seaside bird's beak and the federally threatened Monterey spineflower, in addition to extremely high-quality examples of Maritime Chaparral. This Reserve has not officially been surveyed for the presence of federally endangered Yadon's Piperia. This 5.65-acre parcel, which is within Del Rey Oaks jurisdiction, is incorrectly designated as a development area in the Draft HCP and EIS.

GG-4

Seaside bird's beak is a hemi-parasitic plant and it may not be possible to mitigate for potential impacts to this species since no substantive life history and host plant information is available to inform revegetation or habitat restoration efforts.

GG-5

The Draft HCP and EIS must be amended to note that the MB-CNPS Plant Reserves are conservation areas to be protected in perpetuity, in particular Plant Reserve #3 and 1 North. Reserve #3 is in the jurisdiction of Seaside and Reserve 1 North is in the jurisdiction of Del Rey Oaks – these cities must manage the Plant Reserves in perpetuity for their important conservation values and rare plant populations (page 5-45).

GG-6



2. A 50-year permit for take, or incidental take of special status species is beyond a reasonable time-frame and adaptive management strategies outlined in the Draft HCP do not adequately address potential habitat and species population changes that will occur as current climate conditions alter. In addition, the eventual build-out of Fort Ord will substantially modify the natural ecological condition and dynamics of remaining habitat stands that support special status species. The Draft HCP fails to adequately account for the impacts of climate change and build-out, and incorrectly bases its perpetual 50-year recommendations and protocols on existing conditions. The Draft HCP incorrectly assumes that adaptive management strategies will be implemented to address plant or animal migration and changing population dynamics as climate changes. It remains unclear who, or what entity will be monitoring, evaluating and potentially determining whether adaptive management steps must be undertaken.

GG-7

3. The list of Permittees noted in the Draft HCP does not consider future ownership of Fort Ord lands by any other federal, state, local, or Tribal ownership entity that may acquire lands from one of the jurisdictions noted on page ES-2.

GG-8

4. General development areas have previously been identified, however in the future these areas may become of critical importance to the survival of special status plants and animal as climate changes. The classification of development lands is entirely based on current conditions. Current conditions will not remain static, therefore the classification of development lands must be reconsidered.

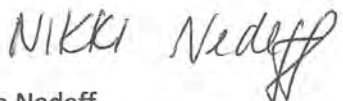
GG-9

5. Ferrini Ranch, page 4-42: this holding has been encumbered by a Conservation Easement held by the Ag Land Trust and only a handful of residential homes will be constructed. The HCP should be amended to reflect this land use change.

GG-10

Thank you for your consideration.

Sincerely,



Nicole Nedeff
Conservation Committee

cc: Board of Directors
Brandon Sanderson, CDFW

4.34 RESPONSE TO COMMENT LETTER GG: NICOLE NEDEFF

- GG-1** The comment introduces the comments in the letter as follows. No response is required.
- GG-2** The comment provides a history of the 13 plant reserves established through agreements with the Army and the Monterey Bay Chapter of the California Native Plant Society (MB-CNPS). The comment is not specific to the environmental analysis in the Draft EIS/EIR and no response is required.
- GG-3** The comment notes that Plant Reserve #3 has not been identified as a permanently conserved area, as per the mitigation agreements executed by the Army and MB-CNPS. Please refer to Response J-7. The comment is not specific to the environmental analysis in the Draft EIS/EIR and no response is required.
- GG-4** The comment notes that 13 reserves were established in agreements between the MB-CNPS and Army and that an additional (14th) Plant Reserve, referred to by MB-CNPS as Plant Reserve 1 North, was established in Army Parcel 29a.1. The comment states that this reserve was not identified in the Draft HCP and Draft EIS/EIR. The comment also states that the parcel is incorrectly designated as a development area in the Draft HCP.

The preparers of the Draft HCP and Draft EIS/EIR are aware of Plant Reserve 1 North; however, in a review of the agreement, as amended, the boundaries of this plant reserve are not specified. As such, a label depicting the location and footnote were added to Figure 4.4-1 in the Draft EIS/EIR. In addition, the plant reserve discussion on page 4.4-24 of the Draft EIS/EIR was updated to include this information and correctly identify the number of reserves. In addition, Figure 4.4.-1 was corrected to depict all the plant reserves. Please refer to **Chapter 7, Changes to the Draft EIS/EIR**.

Army Parcel 29a.1 is correctly identified as a designated development area under the HMP in the Draft EIS/EIR and Draft HCP. Please refer to Response J-7.

- GG-5** The comment states that it may not be possible to mitigate for impacts to seaside bird's beak since no substantive life history and host plant information is available to inform revegetation or habitat restoration efforts.

This comment is acknowledged. The limited information for this species is discussed in Section 6.6.4 of the Draft HCP, page 6-26. Due to similar concerns expressed by the CDFW, AMM-12: Implement planning, protocol-level surveys and seed collection for state listed plant species, was included in the Draft HCP; please refer to Section 5.4.1.6, *State-Listed Plant Species* on page 5-22. The Draft HCP also includes a biological objective (Objective 2.5) and MM-5 to restore habitat for seaside bird's beak. Monitoring Measure-13 requires conducting effects monitoring to evaluate the success of specific management practices. Monitoring goals for this species are identified in Section 6.6.4.2 on page 6-27 of the Draft HCP. In the event habitat management does not produce the desired outcome, adaptive management measures will be informed and implemented based on the monitoring results. Please refer to Section 6.8, *Adaptive Management*, on page 6-46 of the Draft HCP for a detailed discussion of these measures.

- GG-6** As discussed in Responses G-3 and G-4, the Draft HCP and Draft EIS/EIR identify the accurate land use designations under the HMP for the MB-CNPS Plant Reserves and corrections have been made as noted. However, the responsibilities required by the MB-CNPS Plant Reserve agreements are to be implemented by the parties to the agreements are not within the scope of the Draft HCP or Draft EIS/EIR. Therefore, the requested amendment was not made to the Draft HCP or Draft EIS/EIR.

GG-7 The HCP Handbook (U.S. Fish and Wildlife Service and National Marine Fisheries Service 2016) states, “[t]he regulations for incidental take permits tell us to set the duration of permits for a period long enough so that the permittee has adequate assurances to commit funding for the HCP, including conservation activities and land use restrictions.” The HCP Handbook also provides a list of considerations including: (1) duration of planned covered activities; (2) availability of sufficient information to develop a conservation program and determine effects to covered species over the proposed permit duration; (3) amount of certainty that the conservation plan will enhance habitat and increase long-term survival of covered species; (4) ability of the monitoring and adaptive monitoring program to address risk and uncertainty; and (5) sufficiency of the funding strategy for the conservation program. All of the above factors are considered when determining a proposed permit term and are reviewed by the Wildlife Agencies when making a determination about issuance of an incidental take permit.

The Draft HCP implements conservation actions that protect a variety of landscapes over a large scale which provides flexibility for shifts in range and distribution of species and natural communities due to climate change. The design of HMAs provides a large contiguous area across which natural communities and species can move over time. In addition to the conservation actions, the monitoring actions will allow for the early detection of trends driven by climate change over multiple scales. Some loss of natural habitat due to development is included under the HCP; however, the HCP also includes funding mechanisms to maintain and restore habitat in the plan area in perpetuity, and the mitigation strategy has been designed to meet federal and state regulatory standards. Federal standards require that the mitigation strategy will fully offset the impacts of the taking on each of the covered species, and state standards require the mitigation strategy will “fully mitigate” the impacts of the covered activities on each state-listed species.

Information obtained from compliance and effectiveness monitoring will be used, as appropriate, to adjust AMM and MM implementation using adaptive management. Critical decisions affecting management of the HCP are expected to occur when monitoring results indicate that previously employed management measures do not produce desired results, that circumstances have changed, or that biological conditions are different from those originally estimated for the HCP.

The Cooperative holds the responsibility for working with the Permittees and BLM to implement HCP compliance monitoring. In addition, the Cooperative is responsible for all effectiveness monitoring, however it has the authority to contract the work to HMA managers or consultants as needed. Finally, the Technical Advisory Committee will be responsible for annual review and evaluation of monitoring results against compliance and biological thresholds for the HCP species and will recommend adjustments to implementation of HCP required actions as appropriate. The Wildlife Agencies will be responsible for review and comment on the annual reports that summarize HCP implementation, monitoring results, and provide suggestions for changes to monitoring and management as identified through the adaptive management program.

GG-8 The list of Permittees provided in the HCP includes the non-Federal agencies and organizations jointly applying to the USFWS and CDFW for Federal and State incidental take permits (ITPs) for endangered and threatened species.

Non-Federal HMAs have specific land use covenants for compliance with the Habitat Management Plan (HMP) which are permanently part of the deeds to the land. In the case of a sale, any future owner would be required to participate in the HMP in perpetuity. The deed restrictions and conservation easements applicable to the non-Federal HMAs will ensure the continuance of mitigation and adaptive management under any ownership if the land is sold.

In addition, programmatic HCPs (i.e., HCPs that cover a variety of projects and activities like the Fort Ord Multi-Species HCP) can extend take coverage provided by the ITPs to third parties that commit to complying with the terms and conditions of the HCP. The HCP Handbook refers to these parties as *enrollees*. Enrollees are legally bound to the terms and conditions of the HCP through issuance of a *certificate of inclusion*. The HCP Handbook defines “certificate of inclusion” as, “instruments created under an HCP for the purpose of conveying take authority to enrollees.” In the case of a land sale to a new owner who is not already a Permittee under the HCP, this process could be implemented. Section 7.9.1.1 provides additional detail regarding the Property Transfer and Land Acquisition process.

- GG-9** Please refer to Response C-5.
- GG-10** Please refer to Response AA-6.



Gavin Newsom
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Kate Gordon
Director

December 17, 2019

Josh Metz
Fort Ord Reuse Authority
920 2nd Ave, Suite A
Marina, CA 93933

Subject: Fort Ord Multi-Species Habitat Conservation Plan
SCH#: 2005061119

Dear Josh Metz:

The State Clearinghouse submitted the above named EIR to selected state agencies for review. The review period closed on 12/16/2019, and the comments from the responding agency (ies) is (are) available on the CEQA database for your retrieval and use. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

HH-1

Please note that Section 21104(c) of the California Public Resources Code states that:

“A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.”

HH-2

Check the CEQA database for submitted comments for use in preparing your final environmental document: <https://ceqanet.opr.ca.gov/2005061119/2>. Should you need more information or clarification of the comments, **we recommend that you contact the commenting agency directly.**

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

HH-3

Sincerely,

Scott Morgan
Director, State Clearinghouse

cc: Resources Agency

4.35 RESPONSE TO COMMENT LETTER HH: SCOTT MORGAN

- HH-1** The comment states that the State Clearinghouse submitted the Draft EIS/EIR to selected State agencies for review, and comments received are available on the CEQA database.
- HH-2** The comments cites PRC Section 21104(c) describing the provision of comments by a responsible agency or other public agency. Comment is acknowledged and no response is required.
- HH-3** The comment states that the CEQA database for submitted comments should be checked for use in preparing the final environmental document. One comment letter from the CDFW, which is addressed as Letter E in this Final EIS/EIR, was submitted and downloaded from the database. The comment letter acknowledges that FORA has complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to CEQA. Comment is acknowledged and no response is required.

Fort Ord Multi-Species Habitat Conservation Plan
Draft Environmental Impact Statement/Environmental Impact Report

Comment Card

Name: Roelof Wj "branda" Date: _____

Address/Email: _____

Comments: No outreach to

the community.

[Signature]

II-1

Please Return (one of three methods):

By Mail:

Stephen P. Henry, Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B, Ventura, CA 93003

By Email:

fw8fortordhcp@fws.gov

By Fax:

805-644-3958 (please also send a physical copy of the correspondence to ensure receipt)

4.36 RESPONSE TO COMMENT LETTER II: ROELOF WIJBRANDUS

- II-1** The comment states that there was no outreach to the community. This comment was received by an individual attending the noticed public meeting on the Draft EIS/EIR and Draft HCP on November 20, 2019. Please refer to Section 1.8, *Public Involvement*, of the Draft EIS/EIR and Section 1.5, *Public Review* of the Draft EIS/EIR, for an extensive list of public outreach efforts and opportunities for participation. All public review procedures were followed in accordance with NEPA and CEQA requirements.