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Via e-mail and hand delivery

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
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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 CoastCemetery 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 Amy'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

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[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:

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[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

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[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, subds. (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 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 CalApp.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 imapct 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 <u>marginal increases</u> 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.

References – available at referenced website:

4. Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, 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.

5. Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf

6. US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California,* April 1992, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf.

7. MCWRA, State of the Salinas Valley Groundwater Basin, 2016, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf

8. Monterey County Water Resources Agency (MCWRA), Protective Elevations to Control Seawater Intrusion in the Salinas Valley ("Protective Elevations"), 2013, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/documents/ProtectiveElevationsTechnicalMemorandum.pdf.

9. MCWRA, Salinas Valley Water Project Draft EIR ("SVWP DEIR"), 2001, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/documents/DEIR_EIS_2001/2001%20SVWP_DEIR_2001.pdf.

10. DWR, Critically Overdrafted Basins, available at http://www.water.ca.gov/groundwater/sgm/cod.cfm.

11. DWR, Critically Overdrafted Basins (1/2016), available at http://www.water.ca.gov/groundwater/sgm/pdfs/COD_BasinsTable.pdf.

12. MCWRA, Salinas Valley Water Project Final EIR, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/documents/Final%20EIR-EIS%20SVWP_RTC-Vol%201.pdf.

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.

14. 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.

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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