

March 21, 2024

Christy Sabdo, AICP
Senior Associate Planner
City of Monterey Planning Division
580 Pacific Street
Monterey, CA 93940
sabdo@monterey.org

Re: Monterey 2031 General Plan Update Draft EIR Comments

Dear Ms. Sabdo:

LandWatch Monterey County supports a housing element that provides dense, infill housing in existing urbanized areas affordable to those who live and work in the City of Monterey. Environmental justice demands affordable housing that minimizes environmental harms.

Accordingly, LandWatch urges the City to adopt the Relocated Housing Alternative, which would provide denser infill housing sufficient to meet the City's 6th Cycle Regional Housing Needs Allocation (RHNA) while avoiding significant environmental impacts to the City's natural lands in the former Fort Ord.

While we appreciate inclusion of the Relocated Housing Alternative in the draft EIR (DEIR), the DEIR is inadequate under CEQA. It fails to disclose the scope of the water supply and biological resource impacts that the proposed project would cause in the former Fort Ord.

Moreover, the DEIR presents an inadequate analysis of the Relocated Housing Alternative. It erroneously fails to find this alternative environmentally superior despite the EIR's own detailed comparisons of its impacts. It also erroneously concludes that it would provide insufficient lower income housing.

The DEIR's water supply analysis does not meet CEQA's legal requirement to provide an accounting of supply and demand. The mandatory SB 610 Water Supply Analysis simply omits the demand from the Marina Coast Water District (MCWD) service area in Fort Ord. The DEIR's reliance on MCWD's 2020 Urban Water Management Plan (UWMP) instead cannot cure this error because it does not constitute a valid Water Supply Analysis and because the now dated 2020 UWMP admittedly fails to include the proposed new demand for residential water supplies from the City. The 2020 UWMP also omits new demand from other jurisdictions in the former Fort Ord. Because

the DEIR does not provide an accurate accounting of the Fort Ord demand and supply for this project or other cumulative projects, it does not and cannot disclose the magnitude of the water supply shortfall.

The DEIR's water supply analysis for Fort Ord also fails to acknowledge and assess two critical constraints on the City's access to water for Fort Ord. First, the DEIR fails to disclose that, under its settlement agreement with LandWatch and Keep Fort Ord Wild, MCWD cannot provide new residential hookups for Fort Ord housing development because it is bound by a 6,160-unit cap on new residential hookups, a limitation that has already been reached. Second, the DEIR fails to disclose that the City's entitlement to MCWD groundwater is limited to 65 AFY, an amount that is woefully inadequate to supply the 1,660 houses the proposed project would locate in Fort Ord.

The DEIR proposes illusory water supply mitigation in the form of an unenforceable directive to MCWD, an independent agency, that MCWD provide more water by resuming production from its mothballed desalination facility and by undertaking a new water supply project. The DEIR also inconsistently concludes that there will be no impacts from new water supply facilities, even though the Mitigation Measure UTIL-2 purports to demand that MCWD provide a new facility.

The EIR admits that MCWD has no funding or plan to provide additional water supplies to Fort Ord and that no other feasible water supply source has been identified. In light of this admission, the City cannot legally include the Fort Ord housing units in its Housing Element. The Housing Element Law requires that an adequate water supply for proposed units must "be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service. . . ." (Gov. Code, § 65583.2(b)(5)(B).) This requirement is not met.

The DEIR's discussion of biological resource impacts is inadequate because it lacks essential environmental setting information as to the locations and extent of sensitive species and fails to acknowledge the presence of sensitive natural communities in the majority of the lands proposed for development. It also fails to disclose the extent of wetlands and the additional constraints on development imposed by federal protection of upland areas used by the California Tiger Salamander. It also relies on outdated and incomplete data sources that fail to disclose that the City's Fort Ord land is a major wildlife corridor. Without this setting information, the EIR cannot and did not assess the significance of impacts or the feasibility of avoidance and minimization measures that would be required for development, including the likelihood that impacts would remain unavoidably significant because mitigation is simply infeasible.

The DEIR assesses two substantive alternatives to the proposed project. The Increased Workforce Housing Alternative would increase housing units but forgo development of 50 acres of grazing land. The Relocated Housing Alternative would forgo Fort Ord development and increase the density of development in already-urbanized areas to replace this housing. The DEIR's comparison of these two alternatives is flawed. Its conclusion that the Increased Workforce Housing Alternative is environmentally superior is directly contradicted by its detailed comparisons of the proposed project and the alternatives. The Relocated Housing Alternative reduces more significant impacts

than the Increased Workforce Housing Alternative (seven rather than five), and it causes no increase in the severity of other significant impacts, whereas the Increased Workforce Housing Alternative aggravates four other significant impacts. Clearly, the Relocated Housing Alternative is environmentally superior.

Finally, the EIR's conclusion that the Relocated Housing Alternative would not provide sufficient lower income units to meet the City's RHNA obligation is unsupported and incorrect. The Relocated Housing Alternative is supposed to increase densities in five already urbanized areas in order to relocate the Fort Ord units. But the EIR unaccountably assumes that the Fort Ord units would not be relocated despite the increased density. In fact, the increased densities of the areas already identified for lower income units in these five urbanized areas under the proposed project would provide 388 more lower income units, more than making up for the 220 lower income units proposed for Fort Ord.

Indeed, it is the proposed project that would not provide sufficient lower income units, because the EIR admits that only 240 market rate units could be developed during the 6th Cycle, which would provide only 24 lower income units under the proposed inclusionary housing ordinance. Unlike the Relocated Housing Alternative, the proposed project would therefore fall short of the RHNA goal for lower income units.

Our detailed comments follow. LandWatch staff and consultants would be delighted to meet with you to review our comments and analysis.

A. Fort Ord lacks sufficient water supplies for the proposed housing, and the DEIR's water supply analysis is inadequate.

The project description includes capacity for 5,787 residential units, of which 1,660 would be in the Fort Ord/Ryan Ranch area. (DEIR, pp. 2-10, 2-15.) Buildout of these 5,787 units is assumed by the horizon year 2031. (DEIR, p. ES-4, 2-21, 2-25.) Water supply for the Fort Ord area would be provided by Marina Coast Water District (MCWD) and for the rest of the project by Cal-Am. (DEIR, pp. 3.14-1, 3.14-6.)

Even though Fort Ord and Ryan Ranch would have different water suppliers, the EIR and the Site Inventory treat the Fort Ord/Ryan Ranch area as a unit. (DEIR, p. 2-15, GPU, Appendix A, Sites Inventory [listing 1,660 units for six parcels identified as within "Ryan Ranch/Fort Ord"].) However, it appears that the bulk of the combined Ryan Ranch/Fort Ord housing site – three City owned parcels totaling 93.69 acres - is in fact in Fort Ord. It appears that the other three privately owned parcels totaling 3.3 acres may be in Ryan Ranch. If the Fort Ord housing units on 93.69 acres were at the same density as the Ryan Ranch units on 3.3 acres, then 94% of the units – or 1,555 units – would be on Fort Ord land and be serviced by MCWD.

Preliminarily, we note that the EIR's failure to disaggregate unit counts by water supplier renders the project description inadequate to support necessary analysis. Furthermore, the site inventory's identification of at most 96.99 acres of housing site land in the combined Ryan Ranch/Fort Ord

area is inconsistent with the description in the EIR of Fort Ord as containing “approximately 127 acres of vacant land . . . potentially available for development with housing and other uses.” (DEIR, p. 2-14.)

CAL-AM SERVICE AREA: Based on a Water Supply Assessment from Cal-Am, the EIR concludes that the water supply impact in the Cal-Am service area would be significant and unavoidable because, Cal-Am claims that without its proposed desalination project demand would exceed supply in some years. (DEIR, pp. 3.14-24 to 3.14-27.) The EIR does not disclose that Cal-Am’s supply and demand analysis is contested by the Monterey Peninsula Water Management District, MCWD, and Monterey One Water and that the California Public Utilities District is in the midst of proceedings in which these public agencies are challenging Cal-Am’s supply and demand analysis.

MCWD SERVICE AREA: Based on the 2020 MCWD Urban Water Management Plan, the EIR concludes that the water supply impact in the MCWD service area, i.e., Fort Ord, would be significant and unavoidable because MCWD “does not currently have a plan or funding in place” to provide sufficient water supplies. (DEIR, p. 3.14-28.)

1. Inclusion of Fort Ord sites in the Site Inventory violates the Housing Element Law because there is no existing or mandatory plan or program for providing water.

The Housing Element Law requires that an adequate water supply must “be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service. . .” (Gov. Code, § 65583.2(b)(5)(B).) Whereas Cal-Am does have a program or plan to supply water, albeit in unnecessary quantities, the EIR admits that MCWD does not. In particular, the EIR states that “MCWD does not currently have a plan or funding in place to reactivate the pilot seawater desalination plant or procure additional supply from Phase 2 of the Pure Water Monterey Expansion Project. No other feasible sources of additional water supply have been identified. Therefore, this impact is considered significant and unavoidable.” (DEIR, pp. 3.14-28 to 3.14-29.)

Furthermore, as discussed below, MCWD has never planned to supply more than 65 AFY to Monterey. Also, as discussed below, MCWD is barred from providing more than 6,160 hookups for new residential units and MCWD has already committed to those hookups.

2. The Water Supply Assessment is inadequate under SB 610 and CEQA.

a. Legal requirements under CEQA and SB 610 for supply and demand accounting

An agency proposing a development of more than 500 residential units must prepare or have prepared a Water Supply Assessment (WSA). (Water Code, § 10912(a)(1).) The WSA must disclose “whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and

planned future uses, including agricultural and manufacturing uses.” (Water Code, § 10910(c)(3), (4).)

CEQA case law also requires that an agency disclose the sufficiency of available supply to meet demand from a project, existing users, and foreseeable future users. The California Supreme Court has held that a “discussion of total supply and demand is necessary to evaluate ‘the long-term cumulative impact of development on water supply.’” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 441.) *Vineyard* holds that it is not sufficient to cite demand and supply data in related planning documents without reconciling their inconsistencies with the EIR’s assumptions and presenting a clear picture of the sufficiency or insufficiency of the water supply to meet the demand identified in the EIR for the project. While an EIR may ultimately conclude that the water supply is uncertain, it must provide a consistent and coherent account of project demand and how that demand is reflected in the related planning documents on which it relies. The *Vineyard* EIR failed to meet the obligation to show at least a rough balance between water supply and demand because it failed to explain and reconcile the differing water demand assumptions in a related planning document on which it relied, the Water Forum FEIR, and the demand assumptions in the project EIR itself. (*Vineyard* at 439.) Such “factual inconsistencies and lack of clarity” preclude substantial evidence to support conclusions about water supply and demand. (*Id.*) It is not sufficient for informed decision making to present “seemingly inconsistent figures for future total area demand and surface water supply, with no plainly stated, coherent analysis of how the supply is to meet the demand.” (*Id.* at 445; *see also* 447 [failure to show how inconsistent supply and demand figures “match up” “results in a lack of substantial evidence”].)

Where there is an adverse impact due to a shortfall in water supplies, it is not sufficient simply to label this impact significant and unavoidable; the EIR must contain “some information about how adverse the adverse impact will be.” (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

In sum, SB 610, *Vineyard*, and *Santiago* hold that an accurate accounting of projected supply, demand, and any resulting shortfall is mandatory.

Finally, SB 610 permits an agency preparing a WSA to rely on the supply and demand data in an Urban Water Management Plan, but only “if the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan.” (Water Code, § 10910(c)(3), (4).)

b. The EIR and its WSA fail to provide the required accounting of water supply and demand.

The WSA provided as Appendix I to the EIR fails to include the water supply and demand for the MCWD service area. This WSA is the only WSA provided for the project, but it omits the MCWD demand for the 1,660 Fort Ord units, or, as we proposed to disaggregate the Fort Ord units from the Ryan Ranch units above based on relative acreage, at least 1,555 units. Thus, the WSA fails on

its face to provide the total projected water supplies and demand for the project, and it fails to address or answer the question whether there will be sufficient supplies for the entire project over average, single dry, and multiple dry years.

If a water supplier does not provide a WSA, then the CEQA lead agency must provide the analysis itself. (Water Code, § 10910(b).) The DEIR does not purport to provide a WSA for the MCWD service area. Instead, its discussion relies on the 2020 MCWD UWMP. (DEIR, pp. 3.14-6 to 3.14-8, 3.14-26 to 3.14-29.) Not only is the UWMP not a WSA, but the EIR admits that “the 2020 UWMP does not fully account for the RHNA allocations of the other communities served by MCWD, including the cities of Marina, Seaside, and Del Rey Oaks and unincorporated portions of Monterey County.” (DEIR, p. 3.14-28.)

In fact, the 2020 MCWD UWMP assumes that the water demand from the City of Monterey through 2040 would be only 130 AFY, for which only 65 AFY is actually allocated. (DEIR, p. 3.14-28, Table 3.14-5; see also MCWD 2020 UWMP, pp. 23, 27.) Since the EIR admits that the 65 AFY allocation is sufficient for only 240 housing units, the 130 AFY demand figure in the 2020 UWMP represents demand from at most 480 units. Thus, the demand projection in the MCWD 2020 UWMP omits at least the demand for 1,180 to 1,075 housing units (depending on whether the Fort Ord area is planned for 1,660 units or 1,555 units). Based on the assumption that 65 AFY are required for 240 units, the omitted demand is at least 320 to 291 AFY for the omitted 1,180 to 1,075 housing units.

As the DEIR admits (DEIR, p. 3.14-28), the 2020 UWMP omits portions of the 6th Cycle RHNA demand for other jurisdictions now planning to increase previously planned Fort Ord development to meet RHNA targets. For example, the City of Seaside is now planning through its Seaside 2040 General Plan Update to include 995 housing units and 2.6 million square feet of employment space supporting 2,051 jobs in “Seaside East,” a development area within the former Fort Ord that would have to be served by MCWD. (Seaside GPU DEIR, App. B, Tables 1, 15, and 16.¹) This demand is also not included in the MCWD 2020 UWMP, which is based on assumptions about growth that were included in Seaside’s planning documents as of 2020. (MCWD UWMP, pp. 22-26, App. C [Seaside growth projections are based on existing plans, including 5th Cycle General Plan Housing Element].) The proposed Seaside 2040 General Plan Update projects substantially more growth than Seaside’s general plan as of 2020. (Seaside GPU DEIR, App. C, Hexagon December 7, 2022, p. 1, Table 1, Land Use Comparison [comparing households, jobs, and population for 2015, the current General Plan buildout, and the year 2040 proposed general plan buildout].) The DEIR here fails to account for any of this foreseeable demand that was not included in the 2020 UWMP.

These increased and competing demands for new development water supply from MCWD, above the demand levels assumed in the 2020 UWMP, are well known to the local jurisdictions. (See Monterey County Weekly, “Despite obstacles, Monterey and Del Rey Oaks plan to use Fort Ord land

¹ Available at https://seaside2040.com/wp-content/uploads/2023/10/Seaside-2040-DEIR-with-Appendices_ocr.pdf.

for housing,” Oct. 5, 2023.²) It is unreasonable for the DEIR not to have disclosed these new sources of water demand in the MCWD Fort Ord service area. This non-disclosure vitiates both the non-cumulative and cumulative water supply analyses. Both a WSA and a valid cumulative analysis must account for all cumulative demand that would be met by the project’s supplier.

The EIR simply fails to provide what SB 610 and CEQA case law require: an accounting of the relation of supply and demand in the MCWD service area for Fort Ord and a disclosure of just how adverse the impact to water supplies would be. These omissions are material since the EIR assumes that the undisclosed shortfall in MCWD supplies could be addressed with as little as 300 AFY from resumption of the mothballed desalination facility or an undisclosed supply from “Phase 2 of the Pure Water Monterey Project,” both projects for which the EIR admits there is neither a plan nor funding. (DEIR, pp. 3.14-28.) Even if there were a plan or funding, the evidence indicates that the shortfall is much greater than 300 AFY.

3. The EIR fails to disclose that MCWD cannot provide new residential hookups for Fort Ord housing development because it is bound to honor a 6,160-unit cap on new hookups, a limitation that has already been reached.

The Draft EIR makes no mention of a critical constraint on a water supply for areas served by MCWD, including all of the former Fort Ord area.

As part of the Fort Ord Reuse Plan, the Fort Ord Reuse Agency imposed a 6,160-unit cap on new residential development in order to protect groundwater resources.³ Although FORA ceased to exist in 2020, MCWD is committed to honor the 6,160-unit cap under the terms of a [settlement agreement between MCWD, LandWatch, and Keep Fort Ord Wild](#).⁴ The 6160-unit cap applies to units served with groundwater. All of MCWD’s potable water supply is groundwater. (MCWD UWMP, p. 37.)

In order to ensure that land use jurisdictions did not approve entitlements for new residential development in excess of the cross-jurisdictional 6,160 cap on new units, FORA required that each

² Available at https://www.montereycountyweekly.com/news/local_news/despite-obstacles-monterey-and-del-rey-oaks-plan-to-use-fort-ord-land-for-housing/article_710ab000-62ef-11ee-9781-5795df508bbf.html.

³ FORA, Development and Resource Management Plan, p. 132, Program 3.11.5.5(b)(2), available at <https://www.fora.org/Reports/DevResourcePlan.pdf>.

⁴ MCWD, LandWatch Monterey County, and Keep Fort Ord Wild, Settlement Agreement, September 17, 2018, available at <https://landwatch.org/pages/issuesactions/fortord/091918-MCWD-Settlement-Agreement.pdf>.

land use jurisdiction report annually the number of new residential units for which it had granted entitlements.⁵ Based on those entitlements, it is clear that there is no scope to approve additional projects reliant on groundwater in Fort Ord without violating the 6,160-unit cap.

The most recent systematic accounting of the unit cap, prepared by the City of Seaside in 2020 in connection with the Campus Town project in Seaside and based on current FORA records, indicated that all but ten of the 6,160 units had already been entitled.⁶ Furthermore, that accounting likely undercounts approved new residential units by up to 608 units, which would mean that no additional units can be entitled without further overcommitting the unit cap.⁷

The omission of this information renders the description of the environmental setting and the analysis of water supply and demand inadequate.

4. The EIR fails to disclose that the City's entitlement of MCWD groundwater is limited to 65 AFY.

MCWD has jurisdiction as the sole water supplier in the former Fort Ord. The allocation of groundwater supplies in the former Fort Ord to each land use jurisdiction is spelled out in Appendix E to the MCWD 2020 Urban Water Management Plan ("UWMP").⁸ The UWMP acknowledges that the "[p]otable water supply for the former Fort Ord (MCWD Ord Community service area) comes from the Monterey Subbasin of the Salinas Valley Groundwater Basin (SVGB)."⁹ The UWMP explains that MCWD owns and operates the Ord Community groundwater system and

⁵ Id.

⁶ City of Seaside, [Campus Town FEIR](#), 2020, pp. 3-169 to 3-170.

⁷ First, the Campus Town accounting omits the 223-unit Bayview Community development and the 297-unit Sun Bay Apartments, both in Seaside, and both approved, built, and occupied. (FORA, Development Projects, 2014, available at <https://www.fora.org/Projects.html>.) Second, it omits the approved but not yet built 88-unit Seaside Senior Living project, based on the spurious claim that it is not a residential use but a "Business and Professional Services use," citing Seaside Municipal Code ("SMC") §§ 17.12.020 and 17.98.020. Nothing in those SMC sections references the Development Resource and Management Plan that governs the 6,160-unit cap, much less discusses what counts as a new residential use under the 6,160-unit cap. To the contrary, Section 17.12.20 *includes* "professional offices, convalescent homes, and care facilities" in the high-density residential zoning district and it lists care facilities as a "residential" use. And the definition of "residential care facility" in Section 17.98.020 does not characterize this use as non-residential.

⁸ MCWD, 2020 Urban Water Management Plan, Appendices, Appendix E, available at https://www.mcwd.org/docs/enr_files/edfp/uwmp/MCWD%202020%20UWMP%20Appendices_20210625.pdf.

⁹ Id., p. 58.

underlying groundwater extraction rights.¹⁰ The UWMP explains that the rights to use groundwater were allocated among the land use jurisdictions.¹¹ For example, the City of Monterey was allocated only 65 AFY.¹² The UWMP explains that MCWD will issue a water supply verification required by SB 221 or a will-serve letter for a final subdivision map only “up to the point where a given land use jurisdiction’s allocation is fully allocated to projects.”¹³ Thus, once a land use jurisdiction has exhausted its groundwater allocation through approval of previous projects, MCWD will not commit to provide additional groundwater. MCWD’s UWMP reflects this fact by identifying the difference between Monterey’s assumed 130 AFY demand and its 65 AFY allocation as a “shortage.” (UWMP, p. 62, Table 5.3, “Ord Community Groundwater Shortfalls.”)

The EIR’s water supply discussion fails to disclose that the 65 AFY allocation represents a firm limit on planned or available potable water supply for Fort Ord development.¹⁴ Instead, the EIR’s project description section implies that the 65 AFY allocation is merely a near-term housing opportunity, not a long-term limitation on feasible development in Fort Ord, as follows:

Further, with the closure of Fort Ord, an allotment of 65-acre-feet of water was set aside for the City (an amount sufficient for 240 new homes), potentially making Fort Ord one of the more feasible locations for housing development in the near term.

(DEIR, p. 2-15.) The failure to disclose the 65 AFY allocation as a limitation on available supplies renders the description of the environmental setting and the analysis of water supply and demand inadequate.

5. The EIR fails to disclose the magnitude of the water supply shortfall.

The only reference to the magnitude of a water supply shortfall for Fort Ord development is an entirely unexplained figure in Mitigation Measure UTIL-2, which purports to direct MCWD to increase water supply and states that these “measures shall be sufficient to generate an additional 199.2 AFY by 2030, as needed to support new development within the City of Monterey that will be served by MCWD.” (DEIR, p. 3.14-29.) Nowhere does the EIR explain how this 199.2 AFY figure was derived.

¹⁰ Id.

¹¹ Id., p. 59 and Table 1

¹² Id.

¹³ MCWD, 2020 Urban Water Management Plan, p. 65, available at https://www.mcwd.org/docs/engr_files/edfp/uwmp/MCWD_2020_UWMP_20210630.pdf.

¹⁴ As the EIR admits (DEIR, p. 3.14-28), MCWD has no committed plan or funding to provide additional potable water.

A 199.2 AFY shortfall cannot represent the actual magnitude of MCWD's total shortage or the shortage in water allocated to Monterey.

First, a 199.2 AFY shortfall cannot represent MCWD's total shortfall in 2030. As discussed above, MCWD has service responsibility for the whole of the Fort Ord area, including service to other jurisdictions that are now planning to increase their development in Fort Ord beyond the levels assumed in the MCWD UWMP. The EIR provides no assessment of the total increase in cumulative demand across jurisdictions for MCWD water supplies, but it admits that the UWMP does not include Monterey's current RHNA demand. (DEIR, p. 3.14-28.) And, as discussed above, other jurisdictions are planning substantially more development in Fort Ord than assumed in the MCWD 2020 UWMP, which the EIR admits. Accordingly, if the 199.2 AFY figure was derived in reliance on supply and demand projections in the MCWD UWMP, it is not accurate and certainly understates the cumulative shortfall.

Second, a 199.2 AFY shortfall cannot represent the shortfall of water allocated to Monterey. As discussed, Monterey's allocation is only 65 AFY. Monterey plans at least 1,555 units, and perhaps 1,660 units, on Fort Ord, and the EIR assumes that each unit requires 0.27 AFY. (65 AFY divided by 240 units – see DEIR, p. 2-15.) This implies a water demand of from 421 AFY to 448 AFY, which is 356 to 383 AFY short of the 65 AFY allocation.

6. Proposed water supply mitigation is inadequate.

Mitigation Measure UTIL-2 to address the lack of a water supply provides:

MCWD shall implement measures to increase sources of water supply, including reactivation of the pilot seawater desalination plant and Indirect Potable Reuse of advanced treated water from the Pure Water Monterey project. The measures shall be sufficient to generate an additional 199.2 AFY by 2030, as needed to support new development within the City of Monterey that will be served by MCWD. (DEIR, p. 3.14-29.)

This mitigation measure is inadequate under CEQA because it is not enforceable. (CEQA Guidelines, § 15126.4(a)(2).) The measure is legally infeasible because the City of Monterey does not have authority to require MCWD, an independent special district, to implement measures to provide additional water supply. The measure is also inadequate because, as the EIR admits, MCWD has no plan or funding to implement this mitigation.

As discussed below, the elimination of proposed development on Fort Ord lands is feasible mitigation and a feasible project alternative since needed RHNA development can in fact be relocated elsewhere in the City not dependent on MCWD water supplies. The EIR should propose this feasible mitigation instead.

7. The EIR fails to disclose the impacts of new water supply facilities.

The EIR concludes that, with respect to water supplies for the MCWD service area, the project would not result in “relocation or construction of new or expanded water . . . facilities, the construction or relocation of which could cause significant environmental effects.” (DEIR, p. 3.14-29.) The stated rationale for this conclusion is that “MCWD owns a pilot desalination plant which if reactivated could provide 300 AFY of additional water supply to meet additional demand within its service area, including additional demand from new development at Fort Ord as part of the Proposed Plan. Therefore, implementation of the Proposed Plan would not require the construction of new or the expansion of existing regional water facilities over and above existing and planned facilities.” (DEIR, p. 3.14-29.)

This claim is inconsistent with Mitigation measure UTIL-2, which directs MCWD to reactivate its mothballed desalination plant and to implement a new project it calls “Indirect Potable Reuse of advanced treated water from the Pure Water Monterey project.” Because indirect potable reuse is not an existing facility, its implementation may cause significant environmental effects, which the EIR must be revised to disclose.

The existing indirect potable reuse of 3,500 AFY of treated water supplied by Pure Water Monterey discussed in the EIR is not water for the MCWD service area; it is for the Cal-Am service area. (DEIR, p. 3.14-6.)

The EIR identifies a possible MCWD indirect potable reuse project as one of the potential projects and management actions described in the Groundwater Sustainability Plan for the Monterey Subbasin that MCWD may pursue in the future. (DEIR, p. 3.9-23, citing Marina Coast Water District Groundwater Sustainability Agency & Salinas Valley Basin Groundwater Sustainability Agency, Groundwater Sustainability Plan Monterey Subbasin, 2022 (Monterey Subbasin GSP)¹⁵; see also DEIR, p. 2.9-27.) The EIR admits that indirect potable reuse for the MCWD service area has so far only undergone a feasibility study and that it is neither funded nor planned. (DEIR, pp. 3.14-8, 3.14-28 to 3.14-29.) The Monterey Subbasin Groundwater Sustainability Plan confirms that this project has not yet been selected for implementation, funded, or undergone CEQA review. (Monterey Subbasin GSP, pp. 9-36 to 9-44.) Accordingly, it would be a new project, and if this project depends on its implementation, the DEIR must disclose its environmental impacts.

B. Biological resources

In general, the DEIR is inadequate because it fails to conduct any local field studies or analyses to evaluate the feasibility of even a general program of anticipated biological impacts mitigation measures relating to the City's lands on the former Fort Ord. Without this environmental setting information, the EIR does not and cannot assess the significance of impacts.

Furthermore, if mitigation is not demonstrably feasible, mitigation measures may not be deferred. Here, the evidence is that mitigation is so uncertain that the EIR must specify the mitigation now. That specification must address more than mitigation ratios and protocols but the uncertainty

¹⁵ Available at <https://svbgsa.org/monterey-subbasin>.

itself, which requires disclosure of the geographic location and extent of the covered species and natural communities as well as the availability of mitigation lands.

1. Sensitive species

Contrary to what is stated in the DEIR, Impact 3.4-1 would not be mitigable to a less than significant level because mitigation MM-BIO-4 would be infeasible. The City's former Fort Ord lands include occurrences of sensitive species and sensitive plant communities whose extent is great enough that the anticipated project-level avoidance and minimization would be infeasible, rendering the future projects unviable. These limitations should be identified with a program level analysis in the EIR that includes field-based quantification of the distribution of the species.

Examples of special status species on former Fort Ord lands with within-City extents large enough to be unavoidable to development projects include: (1) sandmat manzanita, (2) monterey ceanothus, and (3) Yadon's piperia, an endangered orchid. The EIR's description of the environmental setting is inadequate, and its conclusions about the feasibility of mitigation, are unfounded without documentation of the range and extent of these species.

2. Sensitive communities

The DEIR is inadequate in stating that Impact 3.4-2 on sensitive natural communities would be less than significant because the DEIR is incorrect - at least on the former Fort Ord - when it states that such areas "are located primarily in the open space designations for the Planning Area and do not overlap with proposed sites for development." (DEIR, p. 3.4-33.) The entire area of the City's former Fort Ord lands are designated for Mixed Use Development under the proposed plan update, and the majority of this area is currently occupied by sensitive plant communities, including: (1) sandmat manzanita maritime chaparral, (2) woollyleaf manzanita maritime chaparral, (3) Toro manzanita maritime chaparral, (4) vernal pools and other wetlands.

3. Wetlands

The DEIR is inadequate in stating that Impact 3.4-3 on wetlands would be less than significant because it fails at a programmatic level to evaluate the distinct possibility that no development projects may be feasible in the City's former Fort Ord lands while complying with all applicable laws, regulations, policies, and agreements relating to wetlands, vernal pools, and runoff. The west edge of the City's former Fort Ord lands includes a vernal pool complex with numerous native wetland species and - via a sequence of USFWS Biological Opinions - a federally regulated role in protecting habitat for endangered California Tiger Salamander. Impacts to this area are unmitigable as no sufficient mitigation habitat exists. The area and required setbacks could not be developed. Federally mandated restrictions also exist relating to runoff reaching the Frog Pond Natural Area Expansion, immediately downstream from City land. Any flow detention infrastructure relating to this requirement would need to be in areas outside the vernal pool complex and associated setbacks. Such areas are occupied by sensitive upland species and communities. This presents the possibility that none of the City's former Fort Ord lands are feasibly developed under

the Mixed Use designation. Such constraints should be evaluated at a programmatic level, and not left to future project proposals, because they have wide-reaching impacts for the remainder of the City's General Plan, particularly relating to attainment of housing targets.

4. Habitat Connectivity

The DEIR is inadequate in stating that Impact 3.4-4 to movement corridors would be less than significant because in making this determination, it primarily relies on information that is completely inappropriate for habitat connectivity analysis in relation to City's former Fort Ord lands. The analysis relied primarily on the California Essential Habitat Connectivity (CEHC) project (Spencer et al. 2010), and a version of it available through the CDFW BIOS Habitat Connectivity Viewer. CEHC was a state-wide analysis, with Monterey-area information so coarse, inaccurate, and out-dated that it failed to recognize the former Fort Ord as a substantially natural and conserved area (CEHC 2010 Figures 2.1, 2.2, 2.5), despite it being one of the most important conserved natural areas in the California Central Coast Region.

CEHC essentially assumed that Fort Ord was still an Army base. This led to a failure in the CEHC analysis to recognize Fort Ord as a habitat node (Fig. 2.7) or even as a conserved area (Fig. 2.9) despite the existence of the Fort Ord National Monument and its predecessor, the Fort Ord Natural Resource Management Area (designated in 1997 under the Fort Ord Habitat Management Plan). These are fundamental errors that undermine any attempt to use CEHC to analyze the role of the City's lands in maintaining habitat connectivity. For example, because of the deficiencies in CEHC, Figure 3.4-3 of the DEIR incorrectly obscures habitat connectivity near the Ryan Ranch Disc Golf Course between the Santa Lucia Range and the former Fort Ord region via Jacks Peak; failing to even recognize Jacks Peak Regional Park and Fort Ord National Monument as "Natural Areas".

The DEIR also cited the Fort Ord Habitat Management Plan (1997) as designating no habitat corridors in the City's former Fort Ord lands. This also was a misuse of inapplicable information; the HMP corridor parcels were only designated to connect habitats within Fort Ord, not between Fort Ord and outside areas. (HMP, p. 2-13.) In fact, when one views the original 1996 Land Use Concept approved by the Fort Ord Reuse Authority (not the unapproved 2001 republication), a corridor of "open space/recreation" and "habitat management" is designated through City of Monterey land between areas to the south and what is now the Fort Ord National Monument.

The other two documents cited were municipal planning documents from the 1980s, hardly viable sources of habitat information within a contemporary planning framework. A much more granular analysis is required. No previous analysis is fully adequate. One of the most recent analyses was commissioned by TAMC in relation to Highway 68, and it was also flawed. For example, the only sensitive species reported as roadkill by this survey was an American badger killed where there is an existing habitat corridor on City of Monterey land near the Ranch Ranch Disc Golf course. But the TAMC analysis failed to recognize this and instead focused on the numerically greater detection of mule deer using culverts, which in turn was biased by the fact that remote cameras are more easily installed in culverts than along un-culverted sections of highway such as exist where the badger was killed. The reality is that the physically largest habitat corridor between Fort Ord

and areas to the south (Monterra, Jacks Peak, and the broader Santa Lucia Range) occurs through City of Monterey lands on the former Fort Ord, and sensitive mammals such as badger (which are found on Fort Ord) are using this corridor. The existing general plan (2005-2016) rightly designates this entire corridor for parks, recreation, and open space. The proposed update retains the designation for the non-Fort Ord lands (where the Ranch Disc Golf Course is located). It should also retain the designation for the adjacent Fort Ord lands. Only this would likely support the DEIR's conclusion of less than significant impact.

C. Alternatives

Other than the obligatory no-project alternative, the EIR assesses two alternatives. The Relocated Housing Alternative, designed to avoid significant water supply, biological, and hazardous materials impacts at Fort Ord, would relocate the proposed 1,660 units of Ryan Ranch/Fort Ord housing to the existing urbanized portions of the City by increasing permitted density and heights in the downtown area and key commercial corridors, including North Fremont Street, Lighthouse Avenue, Del Monte Avenue, Garden Road, Pacific Avenue, Munras Avenue, and Abrego Street. (DEIR, p. 4-3.) The DEIR assumes that the Relocated Housing Alternative would result in only 4,183 housing units instead of the 5,787 units under the proposed plan. (DEIR, p., 4-4, Table 4-1.)

The Increased Workforce Housing Alternative, designed to avoid the loss of 50 acres of grazing land and reduce VMT impacts, would replace office and visitor-serving uses with high density housing in the Downtown, Cannery Row, Lighthouse Avenue, North Fremont Street, Pacific Avenue, Munras Avenue, and Abrego Street locations; transform Del Monte Avenue into a high-density residential corridor; and increase multifamily housing at Fort Ord. (DEIR, p. 4-3.) The development of the 50-acre MPUSD site would not proceed. The Increased Workforce Housing Alternative would increase the number of housing units to 9,830 and reduce the number of new jobs to better balance jobs and housing to reduce VMT. (DEIR, pp. 4-3 to 4.4.)

The DEIR finds that the Increased Workforce Housing Alternative is environmentally superior “because it avoids the Proposed Plan’s significant and unavoidable impact pertaining to agricultural resources and reduces the severity of significant and unavoidable impacts related to air quality.” (DEIR, p. 4-22.) The DEIR acknowledges that the Relocated Housing Alternative reduces “the number of impacts compared to the Proposed Plan, although it would have a worse impact on an already significant and unavoidable impact on water supply.” The DEIR also claims that the Relocated Housing Alternative would not meet the RHNA objective to provide sites for the City’s share of Very Low and Low income housing units. (DEIR, p. 4-22.)

The DEIR lacks substantial evidence for these conclusions, each of which is directly contradicted by the evidence in the EIR itself. The EIR demonstrates that the Relocated Housing Alternative would not have a “worse impact” on water supply but would entirely avoid the water supply impact in the MCWD service area; would reduce seven significant impacts compared to the proposed project; and would not increase the severity of any significant impacts. By contrast, the Increased Workforce Housing Alternative would reduce only five significant impacts compared to the proposed project;

and would increase the severity of four significant impacts. Finally, there is no evidence that the Relocated Housing Alternative would not provide sites for the RHNA share of very low and low income units and substantial evidence it would provide more lower income units than the proposed project. These points are discussed below.

1. The Relocated Housing Alternative is environmentally superior because it reduces seven significant impacts and increases none, whereas the Increased Workforce Housing Alternative reduces only five and increases four.

The EIR's alternatives comparison table indicates for each potential impact caused by the proposed project whether it is of no impact (NI), less than significant without mitigation (LTS), potentially significant but less than significant with mitigation (LTSM), or unavoidably significant even with mitigation (SU). (DEIR, pp. 4.2-22 to 4.2-25, Table 4-2.) The table then indicates for each alternative whether its impacts are less than, the same as, or greater than the impacts of the proposed project.

Alternatives should be designed to reduce significant impacts that would otherwise require mitigation or that are significant and unavoidable despite mitigation. Thus, the efficacy of the alternatives should be assessed with reference to whether they avoid or reduce the proposed project's LTSM or SU impacts.

Considering just the LTSM and SU impacts of the proposed project, Table 4-2 indicates that the Relocated Housing Alternative would avoid or reduce the following seven impacts, five of which are SU and two of which are LTSM:

- 3.3-1 Air Quality Plan (SU -)
- 3.3-2 Increase in Criteria Pollutant (SU -)
- 3.3-3 Sensitive Receptors (SU -)
- 3.4-1 Special-Status Species (LTSM -)
- 3.8-4 Hazardous Materials Site (LTSM -)
- 3.14-1 Relocation or Expansion of Utilities (SU -)
- 3.14-2 Water Supply (SU -)

The Relocated Housing Alternative would not increase any LTSM or SU impacts compared to the proposed project.

By contrast, the Increased Workforce Housing Alternative reduces only the following five LTSM and SU impacts of the proposed project, four of which are SU and one of which is LTSM:

- 3.2-3 Farmland Conversion (SU-)
- 3.6-2 Conflict with an Applicable Plan, Policy, or Regulation [re Energy, GHG, Climate Change] (SU-)
- 3.13-2 VMT (SU-)
- 3.15-1 Emergency Response/Evacuation [wildfire] (SU-)
- 3.15-3 Infrastructure [Wildfire] (LTSM-)

And the Increased Workforce Housing Alternative aggravates four LTSM or SU impacts of the proposed project, three of which are SU and one of which is LTSM:

- 3.6-1 Generate GHG Emissions (SU+)
- 3.12-1 Fire, Police, Schools, Parks, or Other Public Facilities (LTSM+)
- 3.14-1 Relocation or Expansion of Utilities (SU+)
- 3.14-2 Water Supply (SU+)

Thus, by the EIR's own accounting, the Relocated Housing Alternative reduces more SU impacts and more LTSM impacts than the Increased Workforce Housing Alternative does. And the Relocated Housing Alternative does not increase any SU or LTSM impacts, whereas the Increased Workforce Housing increases three SU impacts and one LTSM impact.

There is no substantial evidence that the Increased Workforce Housing Alternative is environmentally superior. The evidence in the EIR itself is that the Relocated Housing Alternative is environmentally superior.

2. The EIR errs in its conclusion that the Relocated Housing Alternative would not meet the objective of accommodating very low and low income RHNA units.

The EIR's discussion of the Relocated Housing Alternative concludes that it would not meet the objective to accommodate the City's very low and low income RHNA. (DEIR, p. 4-22.) The EIR states that the Relocated Housing Alternative would provide only 4,183 units, which is 1,604 units fewer than the proposed project's 5,787 units. The 1,604-unit reduction represents nearly all of the projected 1,660 units for the Ryan Ranch/Fort Ord area in the proposed project.

The fact that the total number of units is reduced by essentially all of the proposed Fort Ord units indicates that the EIR preparers have simply ignored the provision in the Relocated Housing Alternative intended to relocate housing from Fort Ord to the urbanized portions of the City by increasing "permitted density and heights in the downtown area and key commercial corridors, including North Fremont Street, Lighthouse Avenue, Del Monte Avenue, Garden Road, Pacific Avenue, Munras Avenue, and Abrego Street." (DEIR, p. 4-3.)

It makes no sense to have included provisions in the Relocated Housing Alternative intended to relocate housing through increased density if those provisions were assumed to be ineffective. Notably, the Increased Workforce Housing analysis assumes that its density increases would be effective in increasing housing units: it is assumed to increase housing units from 5,787 units to 9,830 units by provisions to "replace office and visitor-serving uses with high density housing the Downtown, Cannery Row, Lighthouse Avenue, North Fremont Street, Pacific Avenue, Munras Avenue, and Abrego Street locations; transform Del Monte Avenue into a high-density residential corridor; and increase multifamily housing at Fort Ord." (DEIR, pp. 4-3 to 4-4.) If such increased density provisions are effective for the Increased Workforce Housing Alternative, they should be effective for the Relocated Housing Alternative.

The EIR offers no analysis, and thus no evidence, to support its conclusion that the Relocated housing alternative would not provide sufficient very low and low income units to meet the City's RHNA. It appears that the EIR simply neglected to assess the effect of the increased densities and height limits.

Information in the Site Inventory section of the Housing Element indicates that increased height limits and permitted densities would in fact provide enough additional very low and low income units in the North Fremont Street, Lighthouse Avenue, Del Monte Avenue, Garden Road, Pacific Avenue, Munras Avenue, and Abrego Street areas to more than make up for the loss of the projected 220 units of very low and low income units in Fort Ord.

The Site Inventory identifies relevant constraints for lower income units and provides that all sites meeting these constraints were counted toward the lower income unit RHNA. First, the Site Inventory points out that sites for lower income units must "be of appropriate size, be free from environmental constraints, be zoned to accommodate housing, have appropriate development standards, and be served by public facilities." (Housing Element p. 3-2.) The Site Inventory states that "[s]ites meeting the criteria established in State law for lower income RHNA sites were counted toward the City's Low and Very Low Income RHNA allocation; other sites were attributed to the City's Above Moderate RHNA allocation." (Housing Element, p. 3-10, emphasis added.) Generally, the State law safe harbor criteria for very low and low income sites are met if the Site Inventory (1) provides by-right development for sites used in prior RHNA cycles, (2) zones or proposes to zone at Mullin density, which for Monterey County is 20 units per acre, and (3) counts only parcels that meet the parcel size limitations, which are over ½ acre and under 10 acres. (HCD, Site Inventory Handbook, June 10, 2020, pp, 11-18.¹⁶)

The site inventory further clarifies that "Low and Very Low RHNA capacity has been attributed to sites that meet the suitability criteria outlined in State law, including parcel size, location, and zoning. Infill sites that do not meet the established suitability criteria are assumed to develop with market rate housing and that capacity has been assigned to above moderate income households. However, the City has adopted an Inclusionary Ordinance which requires that 20 percent of new units in projects of six or more units be affordable to moderate and low income households and through Program 2-I in the Housing Action Plan (Chapter 4), the ordinance will be revised to specify that 10 percent of the units provided must be affordable to moderate income households and 10 percent must be affordable to low income households. Accordingly, 10 percent of the total above moderate infill development capacity has been reallocated to moderate income RHNA, and 10 percent to lower income RHNA." (Housing Element, p. 3-29.)

In short, any parcel identified for lower income units in the Site Inventory can be assumed to meet the criteria for lower income units.

¹⁶ Available at https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf.

Following these criteria, and based on the assumed permitted densities at various sites, the Site Inventory determines that 973 lower income units can be provided at North Fremont Street, Lighthouse Avenue, Del Monte Avenue, Garden Road, Pacific Avenue, Munras Avenue, and Abrego Street areas. For example, the Site Inventory assumes that the Garden Road area would be zoned to permit 50 units per acre and then calculates that, at this density, 515 lower income units could be developed. (Housing Element, p. 3-15.) If the allowed density of these units were increased from 50 to 60 units per acre, i.e., a 20% density increase, then the number of lower income units on the same areas already assumed to meet the criteria to accommodate lower income units could be increased 20%, i.e., 103 units.

The table below applies the percentage increases in allowed density to each of the five areas that would be upzoned in the Relocated Housing Alternative. The table demonstrates that, if the various densities assumed for the areas already identified as eligible for lower income units were increased to 60 units per acre, an additional 388 lower income units could be provided.

Site	Proposed project units/acre	Proposed project lower income units	Relocated Housing Alternative units/acre	RH Alternative density increase	RH Alternative lower income units
North Fremont Street (HE, p. 3-11)	45	263	60	33%	351
Lighthouse Ave. (HE, p. 3-14)	30	31	60	100%	62
Del Monte Ave. (HE, p. 3-18)	30	126	60	100%	252
Garden Road (HE, p. 3-15)	50	515	60	20%	618
Pacific, Munras, Abrego (HE, pp. 3-15, 3-18 [max density 29 units/acre])	29	38	60	107%	79
Totals		973			1,361

Since the Fort Ord site was assumed to provide only 220 lower income units, and the Relocated Housing Alternative can be seen to provide 388 more lower income units than the proposed project, the upzoning would more than compensate for the elimination of Fort Ord housing. An additional benefit of the upzoning is that it would provide more moderate income and above moderate income units as well.

3. The Housing Element overcounts potential affordable units at Fort Ord because it mischaracterizes the inclusionary housing ordinance and ignores site development constraints that cannot be resolved in the 6th Cycle.


The Housing Element claims that 220 of the 1,660 units proposed for Ryan Ranch/Fort Ord would be made available to lower income families and 220 made available to moderate income families “consistent with the City’s inclusionary ordinance.” (Housing Element, p. 3-19.) This is inaccurate. As set out in proposed Program 2-I, the current and planned inclusionary housing ordinance only mandates 20% of total units be made affordable, 10% for lower income and 10% for moderate income units. (Housing Element, p. 4-14.) Thus, of the 1,660 total units planned for Ryan Ranch/Fort Ord, at most 166 would be required to be made affordable to lower income households, and at most 166 made affordable to moderate income households – not the 220 lower income and 220 moderate income units.

Furthermore, counting all of these 166 lower income units and 166 moderate income units in Fort Ord toward the 6th Cycle RHNA is inconsistent with the admission in the Housing Element that at most 240 total units could be developed before 2031 due to water supply constraints and the timeline for remediation of hazardous materials. (Housing Element, pp. 2-14 to 2-15.) Under the inclusionary housing ordinance, only 10% of the units or 24 units must be affordable to lower income households and only 10% or 24 units must be affordable to moderate income households.

Thus, the Housing Element overcounts affordable units by 196 units (220 counted units less the 24 units actually required and feasible in the 6th Cycle). The 196-unit overcount of lower income units exceeds the 161-unit buffer or surplus of units over the RHNA requirement for lower income units. (Housing Element, p. 3-30, Table 3-4.) The 196-unit overcount of moderate income units also exceeds the 44 unit buffer for moderate income units. Thus, the proposed project would fail to provide sufficient affordable units, whereas the Relocated Housing Alternative would provide them.

In conclusion, LandWatch urges the City to adopt the Relocated Housing Alternative to better meet its RHNA obligations and to minimize significant environmental impacts. If the City chooses not to adopt this alternative, it must revise and recirculate the draft EIR to correct the flaws discussed above in the analysis of biological and water supply impacts caused by developing housing on Fort Ord land.

Sincerely,



Michael DeLapa
Executive Director