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May 15, 2024

Mayor Ian Oglesby and City Council
City of Seaside
440 Harcourt Avenue
Seaside California 93955
via email: ddavis@ci.seaside.ca.us; CityClerk@ci.seaside.ca.us

Re: Final Environmental Impact Report for Seaside 2040; Public Comment item 8A

Dear Mayor Oglesby and Members of the City Council:

On behalf of LandWatch Monterey County ("LandWatch"), we submit the following comments on the Environmental Impact Report ("EIR") for the Seaside General Plan Update (the "project"), also referred to as Seaside 2040.

LandWatch commends the City for its efforts to largely focus future growth on city-centered, infill development along the City's key transportation corridors, Fremont, Del Monte, and Broadway. By growing up and not out, the City's plans promise to revitalize its downtown core, meet state-mandated housing requirements, and also reduce vehicle miles travelled and greenhouse gas emissions. Were it not for one glaring exception, the City's General Plan Update would be laudable.

That exception is Seaside East, 635-acres of natural lands on the former Fort Ord that the City seeks to develop, despite the significant impacts to rare biological resources and the aggravation to an already overtaxed water supply. Development in Seaside East will also serve to generate more sprawl, with housing isolated from the rest of the City by General Jim Moore Boulevard, a four-lane arterial road. These long-term impacts far outweigh any gains that the City hopes to realize in pursuing an unwise development.

The Seaside East development plan should be removed from Seaside 2040.

Critically, development of Seaside East is not needed. The City does not need to develop the area to meet its housing goals. Seaside East is not included in the site inventory for the recently adopted Housing Element. The Housing Element and Seaside 2040 provide ample infill development sites to meet the growth in housing projected by the Association of Monterey Bay Area Governments ("AMBAG") and to meet the Regional Housing Needs Allocation ("RHNA") without any development of Seaside East.

Nor is Seaside East needed to meet foreseeable job growth. The EIR demonstrates that there are ample infill sites to meet the AMBAG jobs projections or to meet even the EIR's inflated projections of employment space without any development of Seaside East.

Indeed, the EIR admits that its projections of jobs, housing, and population growth are from two to three times greater than the projections made by AMBAG, which is the regional organization charged with making accurate demographic projections to allocate RHNA and to manage billions of dollars of regional transportation funding provided by the state and federal governments. It is simply not credible that AMBAG got it so wrong.

Indeed, the EIR's projections of future growth not only conflict with AMBAG's projections, but they are internally inconsistent. The EIR's conflicting projections of future development render its project description and its analyses of impacts informationally inadequate under CEQA. And overstated development projections do not simply make the EIR "conservative." Because many impacts depend on the balance of jobs and housing, overstating either number matters.

The EIR's analysis of water supply impacts fails to meet the requirements of CEQA and SB 610. The EIR fails to reconcile the growth and water demand assumptions in the Urban Water Management Plans, on which it relies, with the EIR's own assumptions regarding growth. Because the Urban Water Management Plans understate demand growth from Seaside and from other jurisdictions reliant on the same water supply, the EIR fails to disclose the severity of the water supply impacts. Indeed, the EIR fails to identify the magnitude of the supply shortfall at all. And the EIR's one-paragraph analysis of cumulative water supply impacts is entirely inadequate.

The EIR also fails to disclose the 6,160-unit cap on new residential units in the former Fort Ord. This cap precludes service of groundwater by the Marina Coast Water District ("MCWD") to new residential units in Seaside East. Nor does the EIR disclose that Seaside's allocation of MCWD's groundwater supplies is less than Seaside's projected demand or that there is no plan for a potable water supply other than the impermissible use of groundwater for the Fort Ord area. Even if there were such a plan, the EIR is inadequate because it fails to disclose the impacts of constructing and operating needed additional water supplies.

The EIR violates CEQA by relying on mitigation that simply bars future development if water supplies do not materialize. CEQA requires more. Here, the EIR fails to identify future water supplies; to disclose the uncertainty and the impacts of constructing and operating these future water supplies; and to discuss the impacts of, and mitigation for, curtailing planned development if these water supplies do not materialize.

The EIR fundamentally errs by declining to evaluate an alternative that would forego development of Seaside East. The EIR's rationale for not evaluating this alternative – that it would not meet each of the fifteen project objectives – is legally and factually erroneous.

The analyses of the two alternatives that the EIR does evaluate that would reduce the level of development in Seaside East are fundamentally flawed. These alternatives are

based on conflicting assumptions about growth. For example, they are described as reducing the number of housing units in Seaside East by more units than the preferred Seaside 2040 project proposes in the first place, clearly not a possible scenario.

For these reasons, discussed in greater detail below, the City must revise and recirculate an adequate EIR. Until then, the City must not certify the EIR or approve the project.

A. Inadequate and conflicting project description

An EIR's project description must accurately describe a finite project. (*County of Inyo v City of Los Angeles* (1977) 71 CA3d 185, 199.) "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Id.* at 192.) An EIR's description of the project should identify the project's main features and other information sufficient to foster a complete and informative evaluation of the project's environmental impacts. (*San Joaquin Raptor Rescue Ctr. v County of Merced* (2007) 149 CA4th 645, 654.) A shifting project description, e.g. a shifting description of the size of the project, cannot support an adequate analysis of impacts. (*Id.* at 656.)

1. Conflicting projections of housing units for the preferred project

The description of the project includes growth projections through 2040 for housing units. These projections appear throughout the EIR. Set forth below is a list of key projections of housing units and jobs.

- Chapter 2, Project Description
    - Table 2-4, Seaside 2040 Growth Forecast
        - Housing to increase by 3,230 units, from 10,913 units in 2015 to 14,143 units in 2040, referencing Appendix B, Raimi + Associates, Seaside General Plan Update (Seaside 2040) Growth Projections, Feb. 20, 2018 ("Raimi")
    - Table 2-6, Forecast Demand for New Development through 2040
        - Housing to increase by 4,050 units through 2040 (baseline date and beginning and ending counts not specified), referencing Appendix B, Raimi
- Chapter 4.12, Population and Housing, Table 4.12-4, Seaside Population, Housing, and Employment
    - Housing to increase by 4,050 units, from 10,093 units in 2010 to 14,143 units in 2040, referencing Appendix B, Raimi
- Chapter 6, Alternatives,
    - Table 6-1, Alternative 2 Development Demand Comparison Through 2040,
        - Housing units to be 4,050 in 2040 for preferred project, referencing Appendix B, Raimi

        - Housing units in Seaside East would decrease by 2,360 units under Alternative 2, resulting in a total of 1,690 units city-wide in 2040 under Alternative 2.
    - Table 6-2, Alternative 3 Development Demand Comparison Through 2040
        - Housing units to be 4,050 in 2040 for preferred project, referencing Appendix B, Raimi
        - Housing units in Seaside East would decrease by 2,360 units under Alternative 3, resulting in a total of 1,690 units city-wide in 2040 under Alternative 3.
- Appendix B, Raimi + Associates, Seaside General Plan Update (Seaside 2040) Growth Projections, Feb. 20, 2018
    - Table 1, All Projections Summary
        - City-wide growth in housing units projected to be 4,050 units by 2040, of which 995 units are projected in Seaside East
        - City wide employment growth projected to be 4,604 jobs, of which 2,051 are projected in Seaside East
    - Table 15, Projections for Residential Units in Seaside East
        - Housing units for Seaside East projected to be 995 units in 2040
    - Table 16, Projections for Employment in Seaside East
        - Employment growth for Seaside East is 2,017 jobs
    - Table 18, Historic Household Unit Growth in Seaside
        - Reports there were 11,005 housing units in Seaside in 2000, 10,872 in 2010, and 10,915 in 2017 for a 0.4% growth over 17 years, referencing Dept. of Finance data
    - Table 19, Projection Comparison to AMBAG Estimate
        - Projects that housing units would grow by 3,230 units between 2015 and 2040 under the "Seaside GP 2040 Growth projections"
        - Reports that under AMBAG's 2018 projections, housing would grow only 1,429 units between 2015 and 2040
- Appendix C, Hexagon Transportation Consultants, Inc., City of Seaside Proposed General Plan VMT Analysis, Dec. 7, 2022 ("Hexagon")
    - Table 1, Land Use Comparison
        - City wide growth in housing units projected to be 4,015 units from 2015 to 2040

The growth projections in the EIR suffer from several critical defects, which renders the project description inadequate. These defects are set forth below.

a. Housing growth projections lack a consistent baseline.

An EIR must evaluate impacts with reference to baseline conditions, which is normally the conditions as of the issuance of the Notice of Preparation ("NOP"). (CEQA Guidelines, § 15125.) Here, the projections of the project's growth do not use a common baseline. Instead, they use a baseline year of 2015 or 2010 instead of the year that the Notice of Preparation ("NOP") was issued. CEQA requires an agency to justify using a

baseline other than the existing conditions as of the commencement of environmental review, which, here, was in July 2017 with the issuance of the NOP. Yet Table 2-4 and Appendix B Table 19 both use 2015 rather than 2017 as a baseline year from which to determine housing growth of 3,230 units from 2015 to 2040.

Furthermore, Table 4.12-4 uses 2010 as the baseline year from which to determine that housing growth will be 4,050 units.[1]

Even more problematically, and as discussed further below, the Hexagon analysis in Appendix C uses 2015 as the baseline year, but projects a growth of 4,015 housing units from 2015 to 2040, rather than the growth of 3,230 units stated in Table 2-4 and Appendix B Table 19.

Thus, these differing projections of housing unit growth use at least two different years as the baseline, neither of which is the project's actual 2017 baseline. Both of these baselines include growth prior to the baseline year that has presumably already occurred and is therefore not attributable to the project.

b. Differences in projections from 2010 and 2015 baselines cannot be attributed to actual growth from 2010 to 2015.

The 820-unit (25%) differences in the 4,050-unit 2010-baseline projection in Table 4.12-4 and the 3,230-unit 2015-baseline projection in Table 2-4 and Appendix C Table 19 cannot be accounted for by growth between 2010 and 2015.

Why? Because the EIR itself reports that housing growth was only 43 units between 2010 and 2017. (DEIR, App. B, Table 18.) The Association of Monterey Bay Area Governments ("AMBAG") reports that the growth in housing from 2010 to 2015 was only 41 units and that growth in the decade from 2010 to 2020 was only 48 units.[2]

In short, the 820-unit difference in these 2010-based and the 2015-based projections cannot be explained based on the actual growth from 2010 to 2015.[3] So not only do the projections use different baselines, they are inconsistent.

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[1] The Raimi projection of 4,050 units of housing growth in Appendix B, Table 1 and in Chapter 2, Table 2-6 do not specify the baseline year.

[2] AMBAG, Final 2022 Regional Growth Forecast, Nov. 18, 2020 ("AMBAG 2020") , Att. 2, p. 2, available at https://www.ambag.org/sites/default/files/2020-12/Final%20Draft%202022%20Regional%20Growth%20Forecast_PDF_A.pdf.

[3] Appendix C, Table 19 also projects growth from 2020 to 2040 – as 3,017 housing units. But 2020 is not the baseline year either, so the EIR still has not provided a description of planned or foreseeable housing growth over the baseline conditions. And, again, the 1,033 unit difference in the 4,050 unit projection and the 3,017 unit projection

c. Housing growth projections are internally inconsistent.

Even the growth projections that use the same 2015 baseline are inconsistent with each other.

The 4,015-unit housing growth from 2015 to 2040 that Hexagon assumes in Appendix C cannot be reconciled with the 3,230-unit growth from 2015 to 2040 assumed in Table 2-4 and Appendix C Table 19. All three of these projections purport to measure growth from 2015 to 2040, but the Hexagon projection is 24% greater.

As discussed below, the Hexagon projections were used in the EIR's analyses of VMT, air quality, noise, carbon monoxide, and toxic air contaminants. Thus, the final EIR's comment response claiming that the "growth forecast provided by Table 2-4 [which] compares growth between 2015 and 2040 . . . are the numbers used throughout the Draft EIR" is simply not accurate. (FEIR, p. 2-29.)

As discussed above, the 4,050-unit housing growth in Table 2-6, Table 4.12-4, and Appendix C, Table 1 cannot be reconciled with the 3,230-unit housing growth in Table 2.4 and Appendix B, Table 19. The 820-unit difference does not represent growth between 2010 and 2015, which was only 41 units. This 25% unexplained difference in the description of the size of the project renders suspect all of the analyses in the EIR that are affected by the magnitude of growth.

d. Misstatement of the 2010 housing units suggests that the analyst adjusted the 2010 figure to force a match between bottom-up and top-down projections.

Furthermore, the 2010 housing datum in Table 4.12-4 was misstated. In Appendix C, Table 18, Raimi reports 2010 housing units as 10,872 units, citing Department of Finance data. This is the same figure reported by AMBAG.[4] However, Table 4.12-4 reports 2010 housing units as only 10,093 units, citing Raimi, even though Raimi reports 10,872 units. Table 4.12-4 then calculates the 4,050-unit growth projection as the difference between a 2010 baseline of 10,093 units and a 2040 projection of 14,143 units, citing Raimi for both figures.

It might appear that the 4,050 unit projection in Table 4.12-4 was an error attributable just to the mistake in the 2010 baseline figure in Table 4.12-4, but for the fact that the Raimi analysis in Appendix B purports to arrive at the same 4,050 unit figure using an independent approach.

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cannot be accounted for as growth between 2010 and 2020, because AMBAG reports that housing growth in that decade was only 48 units. (AMBAG, 2020, Att. 2, p. 2.)

[4] AMBAG 2020, Att. 2, p. 2.

The Raimi memorandum in Appendix B purports to provide a kind of bottom-up projection of expected development based on an assessment of both "potential capacity for new development" and "a realistic growth adjustment" that was "applied to this potential development capacity." (See, e.g., DEIR, App. B, p. 3.) The assignment of a "realistic growth adjustment" was purportedly based on unexplained considerations of "census data, historic growth data, knowledge of the Seaside market and development community, staff recommendations, and regional growth projections from the Association of Monterey Bay Area Governments (AMBAG)." (DEIR, App. B, p. 1.)

These ad hoc "adjustments" were made separately in Tables 2 through 7 for neighborhood areas zoned low density, neighborhood areas zoned medium density, neighborhood general areas, neighborhood high density areas, mixed-use low density areas, and mixed use high density areas. Similar "adjustments" were provided in Tables 13 through 15 for three existing specific plan areas, three existing development projects, and for the three zoning densities projected for the Seaside East area. Each of these distinct analyses of acreage, potential capacity and the purported "realistic growth" resulted in a bottom-up projection of housing unit growth through 2040. These 13 separate housing unit growth projections were summed in Appendix B, Table 1 to get the same 4,050 housing units forecast as set out in Table 4.12-4.

In sum, the 4,050-unit 2040-growth projection was purportedly derived from the bottom-up Raimi analyses in Appendix B, which came to 4,050 units. The same 4,050-unit bottom-up growth projection derived by Raimi in Appendix B was purportedly <u>separately</u> derived from the top-down analysis in Table 4.12-4, which simply subtracts the purported 2010 aggregate datum of 10,093 units from the 2040 aggregate projection of 14,143 units to derive the same 4,050 growth figure.

But, as noted, the 10,093-unit count for 2010 aggregate housing in Table 4.12-4 is simply wrong – it is 779 units lower than the actual 2010 aggregate count of 10,872. Furthermore, the 2040 aggregate housing unit projection of 14,143 only appears in Appendix B in one place, in Table 19, where it is the projected outcome of adding only 3,230 units of growth between 2015 and 2040 to the 2015 actual housing unit count of 10,913 units. That is, Appendix B did not derive the 14,143 projection of 2040 housing units by adding 4,050 units to some baseline figure. Indeed, the EIR presents no justification for assuming that the 14,143 projection has anything to do with a growth of 4,050 units.

In fact, the misstatement of the purported 2010 baseline as 10,093 units instead of 10,872 units appears to be a deliberate effort to force the top-down derivation of 4,050 unit growth in Table 4.12-4 to match the bottom-up projection of the 4,050 units in the "realistic growth" analyses in Appendix B. At any rate, these numbers cannot be reconciled.

Critically, the methodology in Appendix B purports to project new development made possible by the assumed land use designations in various parts of the City and some judgment about "realistic growth" that will take place in the future. This exercise does not purport to include growth that had already occurred between 2010 and 2015; it is a bottom-up projection for the new development through 2040 made possible by the new General Plan land use designations that are not yet in effect. So the Appendix B projection of 4,050 units of housing growth through 2040 (App. B, Tables 1 through 7, and 12 through 15) cannot be reconciled with the 3,230-unit 2015 to 2040 housing growth assumed in the EIR's Table 2-4 and in Appendix C's Table 19.

Nor can the Raimi bottom-up projection of 4,604 new jobs by 2040 in Appendix B be reconciled with the EIR's Table 2-4 projection of 2,744 new jobs from 2015 to 2040.

e. Employment space projections for the preferred project are inconsistently described, implying incorrectly that Seaside East development is needed to support employment growth.

The EIR inconsistently describes employment space projections, implying incorrectly that Seaside East development is necessary to meet employment goals.

The EIR claims employment projections are based on 100% buildout except in Seaside East, where only a 35% buildout was assumed. (DEIR, p. 2-23, fn 1.) This is not accurate. In fact, the employment space projections in Appendix B for areas other than Seaside East do not assume 100% buildout of available space designated for employment use. Instead, the Appendix B growth projections for employment space correlated with job growth apply "realistic growth adjustments" to the "total net new growth capacity" ranging from 20% to 30% in Tables 8 through 12, which cover the infill areas of the City outside of Seaside East.

This means that even if Seaside East were not developed, the remaining 80% to 70% of the net new growth capacity in the infill areas of the City would be available to support substantial additional employment growth. Thus, the EIR misleadingly implies that Seaside East development is essential for employment growth.[5]

[5] Furthermore, Appendix B is internally inconsistent. Appendix B, Table 1 shows 2,051 new jobs in Seaside East, not the 2,017 new jobs projected in Appendix B, Table 16.

2. The housing unit and employment growth projections lack foundation and are greatly overstated in comparison to AMBAG's Regional Growth Forecast. Development of Seaside East is not necessary to meet housing and employment demand.

The projections in Appendix B, Table 1 of 4,604 new jobs purport to be based on assumptions about the percentages of various areas that will develop or redevelop for employment space uses – ranging from 20% to 35% - and assumptions about the mix of job types for which employment space would be developed. Appendix B also provides a projection of 4,050 new dwelling units based on the same methodology.

AMBAG now projects a 1,684-unit growth in Seaside housing from 2020 to 2040, only 42% of the EIR's projection.[6] AMBAG's 2018 projections, cited by the EIR, projected only a 216-unit growth from 2020 to 2040, only 5% of the EIR's 4,050-unit projection.[7]

AMBAG now projects employment growth in Seaside from 2020 to 2040 of only 814 jobs, only 18% of the EIR's projection.[8] AMBAG's 2018 projections, cited by the EIR, projected only an additional 1,138 jobs from 2020 to 2040.[9]

Thus, depending on the comparison to AMBAG 2018 or AMBAG 2020, the EIR assumes that housing will grow from two to twenty times as much as AMBAG projects and that employment will grow from two and a half to more than five times as much.

AMBAG is the federally designated Metropolitan Planning Organization charged with developing periodic projections of population, employment, and housing to support federally funded transportation planning for the tri-county Monterey Bay region.[10] Every four years, AMBAG is charged to prepare a long-range Metropolitan Transportation Plan as well as the state-mandated Sustainable Communities Strategy under SB 375.[11]

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[6] AMBAG 2020, Att. 2, p. 2.

[7] AMBAG, Regional Growth Forecast, 2018 ("AMBAG 2018"), p. 35, available at https://ambag.org/sites/default/files/2020-01/08-AMBAG_MTP-SCS_AppendixA_PDFA.pdf.

[8] AMBAG 2020, Att. 2, p. 3.

[9] AMBAG 2018, p. 30.

[10] AMBAG, Plan Directory, available at https://www.ambag.org/planning.

[11] AMBAG, 2045 Metropolitan Transportation Plan & the Sustainable Communities Strategy, available at https://ambag.org/plans/2045-metropolitan-transportation-plan-

To develop these plans, AMBAG must project regional housing, job growth, and population. AMBAG develops these projections using expert demographers and extensive data collections.[12] The most recent regional growth forecast was developed by the Population Reference Bureau, which takes a jobs-based approach to forecasting trends in growth for the region. The Regional Growth Forecast documents this methodology in detail.

Critically, AMBAG develops its forecasts through consultation with all of the local land use jurisdictions, including Seaside, which is represented on the AMBAG Board of Directors.[13] Every four years, AMBAG adopts a regional growth forecast, projecting housing, job, and population growth for each local land use jurisdiction. These projections must be justified and accurate because they are used as the basis to allocate billions of dollars of transportation funding. For example, the 2045 Metropolitan Transportation Plan/Sustainable Communities Strategy ("MTP/SCS") plans the use of $13.5 billion in federal, state, and local transportation funds.[14]

By contrast, the population, housing, and employment projections set out in the EIR were developed by an EIR consultant six years ago without any documentation of the methodology. The Raimi memorandum simply claims that staff considered five items: "census data, historic growth data, knowledge of the Seaside market and development community, staff recommendations, and regional growth projections from the Association of Monterey Bay Area Governments (ABAG)." (DEIR, App. B, p. 1.) But Appendix B admits that its population projections are three times higher than AMBAG's 2018 projections, and that its housing and employment projections are twice as high as AMBAG's 2018 projections. (DEIR, App. B, p. 1 and Table 19.) And Appendix B admits that its growth rates are several times higher than historic growth rates based on census data. (DEIR, App. B, pp. 13-15.) So it is clear that census data, AMBAG forecasts, and historic growth data – three of the five items cited – do not support the Raimi projections.

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sustainable-communities-strategy; California Air Resources Board, What are Sustainable Community Strategies?, available at https://ww2.arb.ca.gov/our-work/programs/sustainable-communities-program/what-are-sustainable-communities-strategies.

[12] AMBAG 2020.

[13] *Id.*

[14] AMBAG, MTP/SCS, June 2022, p. ES-7, available at https://ambag.org/sites/default/files/2023-04/REVISED2_AMBAG_MTP-SCS_Final_EntireDocument_PDFA_Updated041923.pdf.

That leaves only the other two items – the purported "knowledge of the Seaside market and development community" and "staff recommendations" – as the justification for the substantial divergence between the accepted regional growth forecast and the Raimi growth projections used by the EIR. The method used by Raimi to project development was to determine for each of thirteen plan areas the maximum growth that would be permitted under the proposed land use designation and then to apply a "realistic growth adjustment" of from 20% to 35% of that maximum to project "realistic" growth. The Raimi memorandum does not explain the basis for determining these "realistic growth adjustments." In effect, the "realistic growth adjustments," which constitute the basis for the growth projections exceeding AMBAG's expert projections, are pulled out of thin air. Nowhere does the EIR explain how "knowledge of the Seaside market and development community" and "staff recommendations" could reasonably override the census data, AMBAG's expert forecasts, and historic growth data by factors of two, or three, or five. The EIR fails to supply the facts and analysis that CEQA requires, offering nothing more than conclusions.

The Raimi memorandum defends its growth projections by characterizing them as "worst case assumptions" and "conservative for the purposes of the environmental analysis." (DEIR, App. B, p. 1.) It may be conservative to overstate the growth that determines the severity of some environmental impacts. However, it is simply misleading to overstate growth as a reason to reject an alternative that would eliminate development of Seaside East.

Furthermore, as discussed below, the EIR does <u>not</u> in fact consistently rely on either the Raimi growth projections in Appendix B or the inconsistent growth projections set out in Tables 2-4 or Table 4.12-4 of the EIR.

Also as discussed below, because some impacts are determined by the <u>relation</u> of jobs to housing, not by their absolute levels, it is not necessarily conservative to overstate either figure. CEQA requires an accurate project description to support meaningful analysis.

3. The development acreage assumptions used by the EIR for Seaside East are inconsistent with the General Plan document.

Raimi's projections of housing and employment space development for Seaside East in Tables 15 and 16 of Appendix C to the EIR are based on multiplying the total acreage for each land use designation by its "Assumed Realistic Density" to derive "Total Net New Growth Capacity." (DEIR, App. C, Tables 15, 16.) This "Total Net New Growth Capacity" is then discounted by a percentage "Realistic Growth Adjustment," which for the Seaside East residential and employment space development is assumed to be 35%. As discussed above, this Realistic Growth Adjustment is not founded on any supporting evidence that would provide an analytic link between actual demand for housing and Raimi's "realistic growth adjustments."

Equally problematic is the fact that the acreage assumptions for Seaside East development used by Raimi in Appendix C are inconsistent with the land use designations in the Seaside 2040 General Plan document. In particular, the Seaside 2040 land uses set out in Table 3 call for a minimum of 95 acres of Neighborhood Low and a minimum of 95 acres of Neighborhood Medium, whereas the Raimi projections call for only 54 acres of Neighborhood Low and 67 acres of Neighborhood Medium.[15] (Seaside 2040, p. 84, Table 3; DEIR, App. C, p. 12.)

Applying Raimi's stated assumptions about realistic development, Raimi's understatement of Neighborhood Low acreage understates projected Neighborhood Low development by 93 units (95 acres minus 54 acres times 6.5 du/ac times the 35% "realistic growth adjustment"). Raimi's understatement of Neighborhood Medium acreage understates development by 257 units (95 acres minus 67 acres times 15 du/ac times the 35% "realistic growth adjustment"). In short, applying Raimi's own logic and analysis to the actual acreage in the General Plan land use designations, Raimi has understated development in Seaside East by at least 350 housing units, i.e., about 35%.[16]

The point is not that there is any likely demand for these additional 350 units, but that Raimi's projections, which are based on nothing more than multiplying acreage by a "realistic growth adjustment" percentage pulled out of thin air, are untethered to any analytic basis to determine actual demand for housing. Furthermore, even if Raimi's assumptions and methodology were provided to the public and were valid, the EIR's Appendix C development projections are not consistent with the proposed project.

4. The EIR uses inconsistent growth projections in its analyses.

The final EIR claims in its comment responses that the EIR's analyses are based on the growth projections in Table 2-4. (FEIR, p. 2-29.) This is not accurate.

VMT: The VMT analysis is not based on the projected growth of 3,230 housing units and 2,744 jobs growth between 2-15 and 2040 in Table 2-4. Instead, the Hexagon VMT analysis memo in Appendix C states that its analysis assumes that the General Plan Update will increase residential units by 4,015 units from 2015 through 2040 and employment by 2,899 jobs in the same period. (App. C, Hexagon Transportation, Dec. 7,

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[15] Furthermore, the General Plan document calls for 30 acres of Public uses, whereas Raimi projects only 25 acres. (Seaside 2040, p. 84, Table 3; DEIR, App. C, p. 12)

[16] Furthermore, the 95 acres for Neighborhood Low and Neighborhood Medium in the General Plan document are a minimum; the General Plan document would permit up to 20% of the 635-acre Seaside East site to be used for Neighborhood Low and Neighborhood Medium, which would permit 127 acres of each. If 127 acres of each use were permitted, Appendix C understates housing by 481 units.

2022, p. 4.) It is impossible to reconcile these substantially different assumptions about growth which apply to the same 2015 to 2040 period.

Nor can the assumed growth of 2,889 jobs in the VMT analysis be reconciled with the assumed growth of 4,604 jobs in Appendix B, Table 1 and EIR Table 4.12-4.

The VMT analysis (DEIR, pp. 4.14-27 to 4.14-28) is critically dependent on accurate projections of new housing and employment since these are the variables used in the AMBAG Travel Demand Model. (DEIR, App. C, Hexagon, pp. 2, 4.) Hexagon explains that the analysis is based on projected new employment and residential land uses:

> Per OPR's technical advisory, for general plan-level VMT analysis, only the proposed new (compared to existing conditions) land uses will be analyzed. Residential (home-based) VMT per capita is the recommended metric to evaluate CEQA-related transportation impacts for residential land uses. Employment (home-to-work) VMT is the recommended metric for employment generating land uses.

(DEIR, App. C, Hexagon, p. 3.) And the relation of jobs to housing determines the VMT. (See, e.g., DEIR, p.p. 6-24, 6-31 [VMT effects of alternative assumptions about jobs and housing].) Critically, the EIR claims that VMT could be greater if there were fewer housing units in the City and lesser if there were more housing units. (*Id*.) So the fact that the Hexagon analysis assumes many more housing units than assumed in EIR Table 2-4 does not make it more "conservative." Thus, the final EIR's argument that higher unit projections make the EIR's analysis more "conservative" (FEIR, p. 2-29) is not borne out by the actual analyses.

In sum, the use of inconsistent growth assumptions that are not explained or justified in the EIR renders the VMT analysis without evidentiary support.

AIR QUALITY: The air quality analysis purports to rely on consistency with Air Quality District's population-growth forecasts as the basis for determining the impact significance. (DEIR, p. 4.2-15 to 4.2-16.) The EIR acknowledges that the Air District's forecasts are based on the AMBAG population forecasts, which it admits would be exceeded by the EIR's projections. Despite this, the EIR claims that various General Plan policies would render the air quality impacts less than significant. The primary basis of the conclusion that impacts would be less than significant is the claim that these policies would result in development that would reduce VMT:

> Although Seaside 2040 would increase the development capacity of Seaside, and thus, increase the city's projected population beyond current AMBAG forecasts, goals and policies contained in Seaside 2040 would ensure that development occurs primarily within mixed-use areas. Developing mixed-use areas allows for mobility between different land uses, such as home and retail shopping, by active transportation modes. By facilitating active transportation modes, such as walking

> and bicycling, fewer trips are made or required in personal vehicles, resulting in fewer vehicle miles traveled (VMT). As described in Section 4.14, *Transportation*, the proposed 2040 General Plan would reduce the forecasted rate of vehicle miles traveled (VMT) per capita for the three-county AMBAG region in 2040. Reducing VMT per capita would equate to a reduction in the emissions of pollutants associated with vehicle travel in the region, such as CO in vehicle exhaust and PM10 in brake dust.

(DEIR, p. 4.2-21.) Again, however, the VMT analysis in Appendix C is based on growth projections for employment and housing that are inconsistent with those set out in Table 2-4, Table 4.12-4, and Appendix B. And again, there is no evidentiary support for the inconsistent jobs and housing data used by Hexagon in the VMT analysis. Since the air quality analysis depends on the VMT analysis, it too lacks evidentiary support.

Furthermore, a reduction in VMT per capita might not "equate to" aggregate emissions reductions if the total population increases enough to offset the per capita reduction. Because the EIR does not consider this question, and because it fails to provide a consistent projection of how much the population will increase, there is no evidentiary support for the conclusion that aggregate emissions would in fact be reduced.

NOISE AND AIR CONTAMINANTS: Similarly, the Hexagon analysis with its inconsistent assumptions regarding growth of housing and jobs was used to project roadway noise impacts (DEIR, 4.11-11), exposure to carbon monoxide concentrations (DEIR, p. 4.2-22), and exposure to Toxic Air Contaminants (DEIR, p. 4.2-24.) These analyses lack evidentiary support because they are based on inconsistent and unjustified assumptions regarding housing and jobs.

WATER SUPPLY: As discussed below, the analysis of water supply impacts entirely fails to relate the growth projections in the EIR's Chapter 2, Chapter 4.12, or Appendix B to the growth projections contained in the 2020 Urban Water Management Plans ("UWMPs") for CalAm and Marina Coast Water District, on which the EIR's impact analyses rely, and which are incorporated into the EIR by reference. (DEIR, p. 4.16-1.) Indeed, the EIR admits that the UWMPs are based on "different types of assumptions to make water demand estimates" and that the EIR has not presented an "apples to apples" comparison. (DEIR, App. F, p. 27; see also DEIR, pp. 4.16-1, 4.16-21 and DEIR, App. F, p. 14.)

These 2020 UWMPs are based on the plans of local jurisdictions as of 2020 or the AMBAG population projections.[17] However, the Seaside 2040 General Plan Update projects substantially more growth than Seaside's current general plan. (App. C, Hexagon

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[17] MCWD UWMP, pp. 22-26, App. C [Seaside projections based on existing plans, including 5th Cycle General Plan Housing Element]; CalAm UWMP, p. 3-5 [using AMBAG regional growth forecast].

December 7, 2022, p. 1, Table 1, Land Use Comparison [comparing households, jobs, and population for the current General Plan buildout to the year 2040 proposed general plan buildout].) And the EIR acknowledges that its growth projections are two or three times higher than AMBAGs projections. (DEIR, App. B, Raimi, p. 1.) Thus, it is clear that the water supply analyses are based on inconsistent growth projections.

5. The housing and employment growth assumptions for Alternatives 2 and 3, which would reduce development of Seaside East, are inconsistent and unjustified.

Alternatives 2 and 3 purport to reduce the number of housing units and other development in Seaside East. These alternatives are described as reducing development intensity in Seaside East, but not in the rest of the City. (DEIR, pp. 6-10 to 6-11, 6-18 to 6-19.)

Alternative 2, "Proposed Seaside 2040 with Reduced Density," purportedly would reduce density by reducing the number of units. The description of the reduction in development density appears in Table 6-1, which sets out the numbers of residential units and jobs and the employment space for the preferred project and separately for Alternative 2. (DEIR, pp. 6-10 to 6-11.)

Alternative 3 purportedly would reduce the development footprint in Seaside East by increasing density and focusing on multi-family residential development in that area. (DEIR, pp. 6-18 to 6-19.)

The EIR states that Alternatives 2 and 3 would not change any of the land use designations, goals, or policies that affect other portions of the preferred project, i.e., the portions of the Seaside 2040 General Plan outside of Seaside East. (DEIR, pp. 6-11, 6-19.) All of the unit reductions in alternatives 2 and 3 are described as taking place within the Seaside East Specific Plan area. (DEIR, pp 6-10 ["This alternative would build on the preservation of natural areas within the future Seaside East Specific Plan area by reducing the amount and density of new development compared to the proposed Seaside 2040"], p. 6-11 ["approximately 2,360 fewer dwelling units would be constructed within the future Seaside East Specific Plan area"], 6-18 ["this alternative would build on the preservation of natural areas within the future Seaside East Specific Plan area by reducing the amount of new development compared to the proposed Seaside 2040"], 6-19 ["approximately 2,360 fewer dwelling units would be constructed within the future Seaside East Specific Plan area under Alternative 3"].) The analyses of impacts under Alternatives 2 and 3 are focused on changes that would occur as a result of reductions of development within the Seaside East area. The final EIR reiterates that Alternatives 2 and 3 are assumed only to reduce the level of development in Seaside East: "Alternatives 2 and 3 would both reduce the allowable development in the undeveloped Seaside East Area as compared to Seaside 2040, with buildout concentrated in existing infill areas." (FEIR, pp. 2-37 to 2-38.)

The assumptions regarding dwelling units for the preferred project and Alternatives 2 and 3 in the Alternatives section are inconsistent with the description of the preferred project and the projections of future development. Indeed, the assumptions are essentially incoherent because they call for reductions of development in Seaside East compared to the preferred project that are greater than the level of development assumed for Seaside East in the preferred project. That is, both Alternatives 2 and 3 propose to cut more housing units from Seaside East than are actually proposed for it under the preferred plan.

The preferred plan projection of a total city-wide housing growth of 4,050 units in Appendix B, Table 2-6, and Table 4.12-4 includes only 995 new residential units in Seaside East. (DEIR, App. B, Tables 15 and 1.) However, Both Alternative 2 and Alternative 3 purport to reduce total city-wide housing units by reducing the scale of Seaside East by 2,360 residential units. (DEIR, pp. 6-10 to 6-11, Table 6-1, and pp. 6-18 to 6-19, Table 6-2; FEIR, p. 2-39.) It would not be possible to reduce the proposed 995 units in Seaside East by 2,360 units.

Nor does it make sense to project a population reduction for Alternatives 2 and 3 of 7,316 persons, because this reduction is based on this purported decrease of 2,360 units, each with a 3.1 person per unit occupancy. Again, it would not be possible to reduce the 995-unit Seaside East area by 2,360 units.

Despite this, the Alternative 2 and Alternative 3 impact analyses expressly assume there would be 2,360 fewer housing units in Seaside East. (DEIR, pp. 6-16 [VMT impact analysis], 6-17 [utilities and service systems impact analysis], 6-19 [air quality impact analysis]; FEIR, pp. 2-39 to 2-40 [water supply impact analysis].)

Furthermore, Alternative 2 gets the employment reductions wrong too. Alternative 2 assumes that reducing the development in Seaside East would reduce total jobs by 2,273 jobs. (DEIR, Table 6-1.) This appears to be a subtraction error since the change in Table 6-1 from the 4,759 jobs under the preferred project vs. 3,486 under Alternative 2 would only be 1,273 fewer jobs, not 2,273 jobs. Indeed, Appendix B job projections only assume that Seaside East would have 2,051 jobs under the preferred project so it would be impossible to reduce these projected Seaside East jobs by 2,273 jobs. (Deir, App. B, Table 1.) Despite this, the Alternative 2 analyses of impacts expressly assume there would be 2,273 fewer jobs in Seaside East. (DEIR, pp. 6-14 [hazardous materials impacts], 6-15 [population and housing impacts].)

In addition, the projections of total employment space are inconsistently stated in the Alternatives section. Tables 6-1 and 6-2 in the Alternatives chapter identify 1,072,793 sf of total employment space for the preferred project and 810,000 sf for Alternatives 2 and 3. (DEIR, pp. 6-10 to 6-11, 6-18 to 6-19.) However, EIR Table 2-6 in the project description chapter and the Raimi projections in EIR Appendix B identify 2,646,708 sf of total employment space for the preferred project. (DEIR, p. 2-2; DEIR, App. B, Tables 8 through 13 and 16.) No explanation is provided for the discrepancy.

Furthermore, the discussion of employment projections in the project description chapter states that the EIR assumes 100% buildout for all areas except Seaside East, where a 35% buildout is assumed. (DEIR, p. 2-23, fn 1.) In fact, the Appendix B assumptions about "realistic growth" in employment space project only from 20% to 30% buildout of capacity for employment land uses outside of Seaside East. (DEIR, App. B, Tables 9-12.) Thus, there is substantial remaining employment space capacity in the City without the development of Seaside East. Accordingly, there is no evidence that the proposed elimination of some of the Seaside East employment space would eliminate the jobs projected to occupy that space since employment space can be developed elsewhere in the City. That is, if there is demand for employment space to support the EIR's projection of job growth in Seaside, then the EIR presents no evidence that this demand cannot be met without developing Seaside East. The Alternatives section simply does not explain why it assumes that the reduction of potential employment space in Seaside East precludes development of the available employment space opportunities elsewhere in the City. Again, the growth projections have been inconsistently presented to suggest that Seaside East development is essential to supporting the assumed demand for jobs growth in Seaside.

In sum, the evaluation of the two alternatives that would reduce the scale of development in Seaside East is premised on inconsistent assumptions about housing units, employment space, population, and jobs. Indeed, Alternatives 2 and 3 assume reductions in jobs and housing units in the Seaside East development that are greater than the number of housing units and jobs assumed in the analysis of the Seaside East development for the preferred project. This is clearly not possible. Yet the analyses of impacts depend on these assumptions. No valid conclusions as to the comparative impacts of Alternatives 2 and 3 compared to the preferred project can be drawn from these analyses.

6. **Alternatives 2 and 3, as described in the draft EIR, lack any discernable mechanism to attain their objectives to change Seaside East development patterns because the draft EIR expressly states that there would be no change to land use designations. The final EIR then contradicts the draft EIR's statement that there would be no change to land use designations, but without identifying those changes.**

The draft EIR states that Alternative 2 would "reduc[e] the amount and density of new development compared to the proposed Seaside 2040" (DEIR, p. 6-10) but that "the land use designation of future Seaside East Specific Plan would not change from the proposed Seaside 2040" (DEIR, p. 6-11). The draft EIR states that Alternative 3 would also "reduc[e] the amount and density of new development compared to the proposed Seaside 2040" (DEIR, p. 6-18) and, again, that "the land use designation of future Seaside East Specific Plan would not change from the proposed Seaside 2040" (DEIR, p. 6-19.) The draft EIR characterizes the outcome of Alternative 2 as less dense development and the outcome of alternative 3 as an increase in multi-family residential units and more compact development. (DEIR, pp. 6-10, 6-18.)

LandWatch objected that the EIR fails to identify any mechanism to limit the location or quantity of new development in Seaside East under Alternatives 2 and 3. (FEIR, p. 2-27.) If, as the draft EIR states, no change would be made to the preferred project's land use designations under Alternatives 2 and 3, then some other mechanism would be required. In seeking information about the mechanism to limit the location and growth of development under these two alternatives, LandWatch reasonably sought information about which portions of the 635-acre Seaside East area would be developed and which would be left in a natural state. For example, the claims in the alternatives analyses that biological resource impacts would be reduced under Alternatives 2 and 3 are critically dependent on both a reduction in the development areas and the location of those areas with respect to existing biological resources because most of the 635-acre site is occupied by a sensitive natural community (Central Maritime Chapparal) or is host to protected plant species (e.g., Sand Gilia). With no change in land use designations, there could be no assurance that biological resource impacts would be reduced.

Instead of providing information about development restrictions in Alternatives 2 and 3 in response to comments, the final EIR simply contradicts the draft EIR's statement that there would be no changes to land use designations.

> The aim of Alternative 2 is to develop the future Seaside East Specific Plan area with new and diverse neighborhoods while preserving natural areas and resources, consistent with the strategy contained in Seaside 2040. This would be achieved by changing the proposed land use designations in a way that reduces the amount and density of new development in Seaside East, as compared to the proposed Seaside 2040. Therefore, the "mechanisms" to reduce development are modified land use designations.
>
> …
>
> The aim of Alternative 3 is to develop the future Seaside East Specific Plan area with new and diverse neighborhoods while preserving natural areas and resources, consistent with the strategy contain in the proposed Seaside 2040. This would be achieved by changing the proposed land use designations in a way that reduces the amount of new development in Seaside East, as compared to the proposed Seaside 2040. Additionally, less employment would be constructed as compared to Seaside 2040 because less commercial and retail space would be constructed. Therefore, the "mechanisms" to reduce development are modified land use designations.

(FEIR, p. 2-37.)

Furthermore, while directly contradicting the draft EIR to admit there would be modified land use designations, the final EIR does not explain how the land use designations would be modified or how those modifications might affect the "Conceptual Land use Mix in Seaside East." (Seaside 2040, p. 84, Table 3.) It is impossible to determine what permissible development Alternatives 2 and 3 would provide. The final EIR's comment

responses do not meet CEQA's requirement for good faith, reasoned analysis. The direct contradiction between the draft and final EIR's regarding land use designations renders the alternatives analysis inadequate.

B. Failure to evaluate the alternative to preserve the Seaside East lands undeveloped was error.

The feasibility of alternatives arises at two junctures in the EIR process: "(1) in the assessment of alternatives in the EIR; and (2) during the agency's later consideration of whether to approve the project;" and "different factors come into play at each stage." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981 (*CNPS*), citing *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*).) When selecting alternatives to analyze in an EIR, the standard is whether the alternative is "potentially feasible." *(Mira Mar, supra*, 119 Cal.App.4th at 489; CEQA Guidelines, § 15126.6(a).) In the second phase, at the time of project approval, after an adequate EIR and alternatives analysis has been prepared, the decision-maker evaluates whether alternatives are actually feasible, and may reject alternatives on grounds of actual infeasibility even though the EIR found them potentially feasible and analyzed them. (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 (*Watsonville*) [citing *CNPS, supra*, at 981, 999-1000 and *Mira Mar*, *supra*, at 489]; CEQA Guidelines, § 15091(a)(3).)

It is an abuse of discretion for an agency to exclude a potentially feasible alternative that would substantially reduce significant impacts from analysis in the EIR simply because it does not meet <u>all</u> project objectives. (*Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1304 ["limited-water alternative could not be eliminated from consideration solely because it would impede to some extent the attainment of the project's objectives"]; *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 [agency's refusal to analyze a reduced development alternative because it failed to meet two of 12 project objectives was legal error].)

The EIR acknowledges significant unmitigable impacts to cultural resources and related to wildfire. (DEIR, p. 5-4.) The draft EIR acknowledges potentially significant impacts requiring mitigation with respect to aesthetics, noise and water supply. As explained in draft EIR comments, development of the Seaside East lands would also have significant impacts related to biological resources. For all these reasons, assessment of an alternative that omits development of Seaside East is warranted because this alternative would avoid or lessen these impacts.

Despite this, the draft EIR improperly eliminates this potentially feasible alternative from detailed discussion, arguing that it would not meet Objectives 6, 9, 10, 11, and 12 of the fifteen stated project objectives. The final EIR then admits that the no-Seaside East alternative would in fact be consistent with Objectives 6 and 12, which concern development of the Campus Town area and the preservation of habitat (FEIR, p. 2-36),

leaving at most an argument about consistency with 3 of the fifteen objectives, i.e., Objectives 9, 10, and 11.

The no-Seaside East alternative would conflict with Objective 9 to "Develop Seaside East with sustainable neighborhoods and the preservation of natural areas," because that Objective has been so narrowly drawn.

However, the no-Seaside East alternative is at most partially inconsistent with objective 10, "Construct new and enhance existing parks," because that objective is not limited to the Seaside East area. Presumably, the City would comply with the mandate to provide sufficient parks for new development in other areas of the City. And the objective to "enhance existing parks" could only take place in other areas of the City because there are no existing parks to enhance in Seaside East.

Regarding Objective 11, "Create an active trail network," the final EIR states that "trails have been proposed for the area and changes in land uses in the Seaside East Specific Plan area would not impede the development of these trails." (FEIR, p. 2-36.) This response is absurd. The issue is not whether developing Seaside East would preclude or impede these trails, but whether not developing Seaside East would do so. Furthermore, the fact that trails have already been proposed for the Seaside East area demonstrates that development of the area is not required in order to meet Objective 11. Indeed, the final EIR also admits that other provisions in the Seaside 2040 General Plan will ensure development of trails: "the proposed project would include goals (Goal PO-2, Goal PO-4, and Goal LUD-17) that encourage the development of trails connecting to the Fort Ord National Monument, parks, Fort Ord Regional Trail and Greenway (FORTAG), or other recreational destinations." (*Id.*) The EIR presents no evidence that development of Seaside East is essential to meeting Objective 11.

In sum, the no-Seaside East alternative is at most inconsistent with Objective 9, at most partially inconsistent with Objective 10, and not inconsistent with any other objectives.

But even if the no-Seaside East alternative were inconsistent with Objectives 9, 10, and 11 as the final EIR now claims, the EIR still errs as a matter of law by eliminating the alternative to preserve the Seaside East lands on the basis of inconsistency with just three of the 15 project objectives. (*Habitat & Watershed Caretaker, supra,* 213 Cal.App.4th at 1304; *Watsonville Pilots Assn., supra,* 183 Cal.App.4th at 1087.)

The draft EIR argues that the no-Seaside East alternative is "legally infeasible, infeasible due to policy considerations, and economically infeasible." (DEIR, p. 6-2.) The EIR provides no explanation whatsoever as to these legal, policy, or economic considerations. For example, development of Seaside East is not required by the City's housing element, which does not include Seaside East in its site inventory or its programs to provide

adequate sites.[18] Furthermore, the EIR errs by failing to recognize that CEQA does not permit an agency to decline to assess a potentially feasible alternative simply for failure to meet a minority of the project's objectives. The correct course is to inform the public and decision makers by providing an analysis of the potentially feasible no-Seaside East Alternative and to reserve the judgement as to actual infeasibility until the agency arrives at the project approval stage.

C. The EIR's assessment and mitigation of water supply impacts is inadequate.

1. The EIR fails to provide an adequate discussion of the uncertainty of water supplies.

a. The EIR and its Water Supply Assessment fail to reconcile the growth and demand assumptions in the Urban Water Management Plans, on which they rely, with the EIR's own assumptions regarding growth.

Seaside is served by three distinct water providers, each with a separate service area: CalAm, the Seaside Municipal Water System (SMWS), and Marina Coast Water District (MCWD). Cal-Am and MCWD also provide water supplies to customers in areas outside of Seaside.

The EIR's analysis of supply and demand is based on the Water Supply Assessment ("WSA") in its Appendix F and on two Urban Water Management Plans ("UWMPs"), one for the CalAm service area, which includes Seaside and other areas on the Monterey Peninsula, and one for the Marina Coast Water District ("MCWD"), which is the exclusive water supplier to Seaside land on the former Fort Ord, including the Seaside East area and which also supplies water to the city of Marina. (DEIR, p. 4.16-1.) The EIR and the WSA incorporate these two UWMPs by reference. (DEIR, pp. 4.9-1 to 4.9-2; 4.16-1; WSA p. 13.)

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

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[18] City of Seaside, 2023-2031 Housing Element, Adopted December 2023, available at https://seaside2040.com/wp-content/uploads/2024/03/Seaside-2023-2031-Adopted-HE_for-HCD_March2024_v1.pdf.

demand is reflected in the related planning documents on which it relies. The EIR at issue in *Vineyard* 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.) These kind of "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"].)

Matching supply and demand based on accurate and consistent projections is important for another reason. 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.) At minimum, this requires that the magnitude of the shortfall be disclosed.

SB 610 also requires an agency preparing a WSA to provide an accurate and consistent projection of supply and demand because the WSA must determine "whether the public water system's total projected water supplies available 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 the public water system's existing and planned future uses, including agricultural and manufacturing uses." (Water Code, § 10910(c)(3).)

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

Critically, SB 610 permits an agency preparing a WSA to rely on the supply and demand data in an Urban Water Management Plan 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).)

Here, the EIR relies on, but does not even attempt to reconcile, inconsistent and understated demand assumptions in the CalAm and MCWD UWMPs. Instead, the EIR admits that "each of the three separate water suppliers have used different types of assumptions to make water demand estimates. Therefore, an 'apples to apples' comparison of forecasted water demand associated with growth projections is not possible based on available published data."[19] (WSA, p. 27; see also WSA p. 14 and

[19] The third water supplier is the Seaside Municipal Water System, for which the EIR does not identify an UWMP.

DEIR, pp. 4.16-1, 4.16-21.) The EIR also claims that "consistent data for water usage throughout the General Plan area is not available." (WSA, p. 9.) But *Vineyard* holds that an agency that wants to rely on a related planning document for its water supply analysis must provide consistent data or reconcile the inconsistencies in the data on which it relies. As discussed below, the data regarding the magnitude of demand in excess of that assumed in the UWMP is available, but the EIR has made no effort to disclose it.

The WSA claims that "if the projected water demand associated with the proposed project was accounted for in the most recently adopted UWMP, the water supplier may use the demand projections from the UWMP in preparing the WSA." (WSA, p. 14.) But the WSA and EIR both admit that the UWMPs "have used different types of assumptions to make water demand estimates." (WSA, pp. 14, 27; EIR, pp. 4.16-1, 4.16-21.) The final EIR observes irrelevantly that the 2020 UWMPs relied on by the EIR will be updated in 2025 to reflect the changes in water demand from new demand, including that from Seasider 2040. (FEIR, p. 2-34.) That is not sufficient because "CEQA's demand for meaningful information 'is not satisfied by simply stating information will be provided in the future.'" (*Vineyard* at 431.)

CalAm Service Area Demand: The EIR admits that its own assumptions for growth of population, housing, and jobs do in fact exceed the assumptions in the Cal-Am UWMP because the UWMP relies on the AMBAG projections:

> The development proposed by Seaside 2040 exceeds AMBAG's population growth projections for the region. Therefore, the water demands associated with Seaside 2040 exceed the demand forecasted in the 2021 CalAm UWMP, and the proposed project is not entirely accounted for in the UWMP.

(DEIR, p. 4.16-5.) Nonetheless, the EIR and its WSA still rely on the CalAm UWMP, even while admitting that the UWMP understates water demand. Reliance on an UWMP that fails to include project demand is error. (Water Code, § 10910(c)(3).)

An analysis of current demand in the CalAm service area that does not simply rely on the now dated 2020 CalAm UWMP was clearly feasible, as is evident from the fact that the City of Monterey obtained an updated WSA from CalAm for the CalAm service area to support its own General Plan Update.[20] The EIR's claim that a more thorough analysis was not possible is inaccurate. (FEIR, p. 2-344.)

MCWD Service Area Demand: The EIR and WSA also rely on the MCWD UWMP even though that UWMP also understates demand.

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[20] City of Monterey, Monterey 2031 General Plan Update EIR, Volume 2b , Appendix I, CalAm, Water Supply Assessment for City of Monterey, December 2023, available at bb6cfc28452329b88524bd98165f1cea_00_Vol_2b.pdf (amazonaws.com).)

The MCWD 2020 UWMP 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 projections based on existing plans, including General Plan Housing Element].) As discussed above, the Hexagon analysis in EIR Appendix C indicates that the proposed Seaside 2040 General Plan Update projects substantially more growth than Seaside's general plan that was in effect in 2020. (App. C, Hexagon, December 7, 2022, p. 1, Table 1, Land Use Comparison [comparing households, jobs, and population for the current General Plan buildout and the year 2040 proposed general plan buildout].)

Although, as discussed above, the EIR's own assumptions regarding growth in housing and employment are inconsistent and contradictory, it should have been possible for the EIR's water supply analysis to determine and disclose by how much the project's demand in the MCWD service area would exceed previous projections of Seaside demand. MCWD's UWMP Appendix C, Land Use Forecast and Water Demand Projections by Jurisdiction, provides detailed assumptions about the projected sources of demand from Seaside and other jurisdictions in MCWD's the Ord community service area. (MCWD UWMP, App. C.) It should have been possible to determine how the Seaside 2040 land use assumptions differ from those set out in the UWMP's Appendix C.

Furthermore, the EIR and WSA should have disclosed available information about other jurisdictions' proposed increases in demand over the amounts set out in the 2020 MCWD UWMP. For example, the MCWD UWMP demand projection of 130 AFY through 2040 for the City of Monterey's land on the former Fort Ord are based on the assumption that Monterey will develop only some industrial and City office uses. (MCWD, UWMP, App. C, pp. C1-1, C3-10.) But that has changed dramatically. The City of Monterey's housing element now calls for locating 1,660 new housing units in the former Fort Ord.[21] The City of Monterey admits that the 65 AFY of water actually allocated to it by MCWD is only sufficient to support development of 240 housing units.[22] The MCWD UWMP projects actual total demand from Monterey of twice its allocation, i.e., 130 AFY not just the 65 AFY allocated to Monterey. (MCWD UWMP, App. C, Table C-1.) But if 65 AFY suffices for 240 homes, then the MCWD UWMP's 130 AFY demand projection for Monterey would only suffice for 480 of the 1,660 housing units Monterey now plans for the Fort Ord area. The UWMP does not include demand for the other 1,180 homes.

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[21] City of Monterey, 2023-2031 Housing Element, Revised Draft, Vol. 1, December 8, 2023, pp. 3-18 to 3-19. Map 3-10, Table 3-4, , available at 715b07c3e8031a4a493c73e31fcc1208_Revised_Draft_HE_Volume_1.pdf (amazonaws.com).

[22] City of Monterey, Monterey 2031 General Plan Update EIR, Feb. 9, 2024, p. 2-15, available at 3ae1faf6c8c07d8c575ffca57e157796_Vol_1_Compiled.pdf (amazonaws.com).

The City of Seaside was obviously aware of competing demand from other jurisdictions for water from MCWD to support Fort Ord development, as is evident from correspondence from LandWatch copying the City and from the Seaside City Attorney's own objection to MCWD's plan to supply water to the City of Monterey.[23]

Again, because the information was available about planned development in excess of the levels assumed in the 2020 UWMP, the EIR's claim that a more thorough analysis was not possible is inaccurate. (FEIR, p. 2-34.) Again, reliance on an UWMP that fails to include project demand is error. (Water Code, § 10910(c)(3).) And failure to include foreseeable cumulative demand from other projects such as the Monterey Housing Element is also error. (CEQA Guidelines, § 15130(b).)

The WSA claims that the MCWD UWMP somehow includes the new demand from the project. After excerpting the MCWD Table 6-2 showing aggregate demand in single and multiple dry years, information that is mandatory in an adequate water supply analysis, the WSA argues:

> As discussed in Section 3.4, the growth assumptions used by MCWD accounted for the types of development and redevelopment of Fort Ord that are proposed under Seaside 2040. Therefore, the water demands projected in Table 11 include the water demand associated with the implementation of the projects proposed under Seaside 2040.

(WSA, p. 33.) But the WSA makes no effort, in Section 3.4 or elsewhere, to compare the growth assumptions used by MCWD with those proposed under Seaside 2040. (See e.g., WSA, Section 3.4, pp. 13-14.) Instead, the WSA disclaims the possibility of any "apples to apples" comparison. (WSA, p. 14.) And because the WSA states that the "amount of potential increase in water demand associated with Seaside 2040 has not been quantified for the purposes of this WSA" (WSA, p. 35), the WSA cannot logically claim to have provided any evidence that this demand was in fact included in the 2020 UWMP. To repeat, the WSA provides no evidence that the MCWD UWMP does in fact include the Seaside 2040 demand. Furthermore, as set out above, the evidence in the EIR itself (e.g. the Hexagon comparison of current vs. proposed General Plan housing, jobs, and population assumptions) and elsewhere (e.g., comparison of the 2020 UWMP demand assumptions to the current the Monterey Housing Element) demonstrates that the 2020 UWMP clearly does not include the demand from the proposed level of development in Seaside 2040 or, cumulatively, in the Monterey Housing Element.

WSA Inconsistencies: The assumptions regarding growth in the WSA are inconsistent with the EIR. The EIR projects 690,851 sf of retail space, but the WSA projects 790,851 sf. (DEIR, Table 26; WSA, Table 1.) The EIR projects 1,084,691 sf of service industry

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[23] Michael DeLapa, letter to Anthony Errichetto, Sept. 21, 2023, attached; Sheri Damon, letter to Marina Coast Water District, Sept. 19, 2203, attached.

space, but the WSA projects 1,018,490 sf. (Id.) The WSA projects 4,050 new housing units, but the EIR projects only 3,230 new housing units. (DEIR Table 2-4; DEIR, App. B, Table 19.)

Furthermore, like the EIR's demand projections, the WSA's demand projections are internally inconsistent. Table 1 purports to calculate the total demand for the Seaside 2040 Growth Forecast of 1,896 AFY. (WSA, p. 8.) Table 2 on the next page purports to show "the incremental water demand associated with buildout over the lifespan of the proposed project, as added to existing conditions" as only 1,272 AFY. (WSA, p. 9.) It is simply incoherent to claim that the sum of project demand and demand from "existing conditions" in Table 2 could be less than the demand in Table 1 for the project by itself.

It is possible that the reduced demand set out in Table 2 as compared to Table 1 is intended to reflect the incremental water demand for the project's new development after discounting for redevelopment that replaces existing water use, and that the EIR's statement that these Table 2 totals are being "added to existing conditions" is just wrong. If so, the WSA and EIR fail to provide any basis such an analysis. Nowhere do the EIR or WSA quantify the expected development under Seaside 2040 through redevelopment as opposed to new greenfield development.

Finally, the purported quantification of the project's demand in WSA Tables 1 and 2 is suspect in light of the WSA statement that the "amount of potential increase in water demand associated with Seaside 2040 has not been quantified for the purposes of this WSA." (WSA, p. 35.)

b. The EIR fails to acknowledge supply constraints in the former Fort Ord area served by MCWD, including the 6,160-unit cap on new residential hookups or the shortfall in Seaside's allocation of available groundwater.

(1) The EIR fails to acknowledge the 6,160-unit cap on new residential units, which precludes service of groundwater to the MCWD service area in the former Fort Ord.

The EIR makes no mention of a critical constraint on a water supply for areas served by MCWD in 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.[24] Although FORA ceased to exist in 2020, MCWD is committed to honoring the 6,160-unit cap

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

under the terms of a settlement agreement between MCWD, LandWatch, and Keep Fort Ord Wild.[25]

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 land use jurisdiction report annually the number of new residential units for which it had granted entitlements.[26]

The 6,160-unit cap applies to units served with groundwater. All of MCWD's potable water supply is groundwater. (MCWD UWMP, p. 37.)

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 itself in 2020 in connection with the Campus Town project in Seaside and based on then current FORA records, indicated that all but ten of the 6,160 units had already been approved.[27] 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 overcommitting the 6,160-unit cap.[28]

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

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[25] 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.

[26] *Id.*

[27] City of Seaside, Campus Town FEIR, 2020, pp. 3-169 to 3-170.

[28] 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.

LandWatch had previously put Seaside on notice of its objection to reliance on Fort Ord land for future development in light of the 6,160-unit cap.[29] LandWatch's comments on the draft EIR again objected to the failure to disclose and discuss the 6,160-unit cap on new residential units. (FEIR, p. 2-26, Comment 12.) By simply ignoring this concern, the final EIR failed to provide adequate, good faith responses to comments raising a critical issue. (FEIR, pp. 2-33 to 2-34, Response O-1.12.)

(2) The EIR fails to acknowledge that Seaside's allocation of potable groundwater through MCWD is less than its projected demand.

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 UWMP.[30] 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)."[31] The UWMP explains that MCWD owns and operates the Ord Community groundwater system and underlying groundwater extraction rights.[32] The UWMP explains that the rights to use groundwater were allocated among the land use jurisdictions.[33] For example, the City of Seaside was allocated 1,012 AFY, which falls short of the 2040 demand projected in the 2020 UWMP for Seaside of 1,698 AFY.[34] 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."[35] Thus, once a land use jurisdiction

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29 Michael DeLapa, letter to Anthony Errichetto, Sept. 21, 2023.

30 MCWD, 2020 Urban Water Management Plan, Appendices, Appendix E2, Schaaf & Wheeler Memorandum, Jurisdictional Water Allocations within the Ord Community, April 30, 2021, available at https://www.mcwd.org/docs/engr_files/edfp/uwmp/MCWD%202020%20UWMP%20Appendices_20210625.pdf

31 *Id.*, p. 58.

32 *Id.*

33 *Id.*, p. 59 and Table 1.

34 *Id.*

35 MCWD, 2020 Urban Water Management Plan, p. 65, available at https://www.mcwd.org/docs/2021_uwmp/DRAFT_MCWD_2020_UWMP_v20210520.pdf.

has exhausted its groundwater allocation through approval of previous projects, MCWD will not commit to providing additional groundwater. MCWD's UWMP reflects this fact by identifying the difference between Seaside's assumed demand and its allocation as a "shortage."[36]

The EIR admits that Seaside was allocated only 1,012.5 AFY and that "some jurisdictions" "have shortages" under these allocations. (DEIR, pp. 4.16-3 and 4.16-4.) The EIR does not acknowledge that Seaside is in fact one of the jurisdictions with a projected shortage. Instead, it misleadingly states that the MCWD UWMP found that the total 2040 demand across all Ord community jurisdictions of 6,610 AFY "would be adequately served by the anticipated supply of 6,600 AFY." (DEIR, p. 4.16-4.) Buried in Appendix C is the acknowledgment that Seaside has a shortage, which is in fact the largest projected allocation shortage of any of MCWD's jurisdictions, 686 AFY. (WSA, p. 14.) And, as discussed above, that 686 AFY shortage is in fact larger under Seaside 2040 because Seaside 2040 proposes more development than the UWMP assumes. This is not adequate disclosure. For example, nowhere does the EIR acknowledge that under MCWD's allocation rules and the 6,160-unit cap, Seaside simply has no ability to use groundwater to supply the potable demand for Seaside East, or, as discussed below, that there is no plan or commitment to a project to provide this needed potable supply.

c. The EIR fails to acknowledge the uncertainty of a potable water supply for Fort Ord development.

As discussed above, MCWD, which is the exclusive water supplier to the former Fort Ord, does not have the legal authority to provide groundwater to newly approved Fort Ord residential developments without violating its settlement agreement with LandWatch and Keep Fort Ord Wild. Nor will MCWD provide groundwater to Seaside in excess of Seaside's allocation.

The EIR claims that "MCWD is pursuing water supply projects" to address the allocation shortages. (DEIR, p. 4.16-4.) The EIR identifies these "additional future supply sources" as (1) desalinated water that is part of the Monterey Peninsula Water Supply Project; (2) MCWD's idle 300 AFY desalination facility that purportedly "could be restored to function," (3) the proposed Moss Landing Deep Water Desal LLC's Monterey Bay Regional Water Project that is "not likely to serve the Seaside area;" (4) recycled water to be provided through the Regional Urban Water Augmentation Project (RUWAP) and the Pure Water Monterey Project; (5) recycled water to be provided to CalAm by the Pure Water Monterey Project. WSA, pp. 31-34.)

However, none of these water supplies would provide potable water to the Seaside East area. The CalAm recycled and desalinated water supplies would only support that portion of Seaside within the CalAm service area, which does not include the former Fort Ord. (DEIR, Figure 4.16-1, Water Districts.) As discussed below, the recycled water will

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[36] MCWD, UWMP, p. 62, Table 5.3, "Ord Community Groundwater Shortfalls."

not meet the demand for potable water. There is no evidence that MCWD has a plan or funding to resume use of its idle desalination facility and substantial evidence that there is no such plan or funding.

MCWD's 2020 Urban Water Management Plan discusses the status of planning efforts to augment its insufficient groundwater supplies. The UWMP explains that at least 2,400 AFY of additional water supply was projected to be required to meet the initial development plans for Fort Ord. It acknowledges that there is a shortfall of at least 1,753 AFY through 2040 based on the then-current development projections. (MCWD UWMP, p. 66.) It also acknowledges that water supply augmentation is required because some land use jurisdictions have insufficient allocations for future development and MCWD will not issue water supply verifications or will-serve letters that would result in a jurisdiction exceeding its allocation.[37]

In 2005, FORA and MCWD "endorsed" the "hybrid" alternative from the September 2004 Regional Urban Water Augmentation Project ("RUWAP") EIR, which called for new projects to provide irrigation water through recycling and potable water via desalination.[38] However, there is no committed plan, much less any approved or funded plan, in place to provide the necessary additional potable water supplies for the former Fort Ord area.

The RUWAP recycled water project mentioned in the EIR is intended to supply non-potable recycled water, not potable water. MCWD has worked with Monterey One Water (M1W) to provide recycled water transmission facilities, but the only plan in place is for the provision of up to 1,427 AFY of recycled water, which is suitable only for irrigation, not potable water supplies.[39]

The MCWD UWMP demonstrates that MCWD has no program or plan in place to address the shortfall in potable water supplies. In particular, the UWMP discussion of future water supplies provides no evidence that MCWD or any other agency is planning to provide the desalinated water that the EIR projects will somehow become available beginning in 2030 to balance demand and supply (DEIR, Table 4.16-1.)

The UWMP mentions that a 2007 report was published for the RUWAP desalination component evaluating a 1,500 AFY project. (UWMP, p. 72.) However, the UWMP's discussion of desalination projects does not identify any ongoing RUWAP desalination project, only the RUWAP recycled water project.

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37 MCWD, Urban Water Management Plan, pp. 64-65.

38 *Id.*, p. 62.

39 *Id.*, pp. 67-68.

Nothing in the UWMP indicates that the RUWAP desalination project has proceeded past the 2007 report. Indeed, the UWMP effectively acknowledges that the desalination component of the RUWAP project has fallen through by discussing other desalination projects instead. These include the failed Cal-Am Coastal Water Project and the subsequent failure of the Cal-Am/MCWD Regional Desalination Project, in which MCWD was to be a partner, but which resulted in litigation but no water.[40] Cal-Am's current desalination project, mentioned in the MCWD UWMP, would serve the Monterey Peninsula, but it would not provide any water to MCWD; and, indeed, MCWD is now in litigation with Cal-Am over the desalination project's adverse impacts to MCWD's groundwater supplies and other issues.[41]

The UWMP mentions another desalination project that is being "considered," the Deep Water Desal LLC's Monterey Bay Regional Project, but there is no local agency sponsor and there has been no environmental review.[42] Furthermore, the WSA admits that this desalination project is "not likely to serve the Seaside area." (WSA, p. 32.)

The UWMP acknowledges that MCWD' own small desalination facility was a pilot facility to test the use of beach wells but that it is no longer functional.[43] Nothing in the UWMP indicates that this facility could be restored to function, or that MCWD has any plan or funding to do so.[44] Significantly, the City of Monterey reports that there is no MCWD plan or funding for a desalination project. In its analysis of the MCWD water supply to support Fort Ord development, the EIR for the Monterey General Plan Update explains 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."[45]

The UWMP does not discuss any other desalination project or plan.

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40 *Id.*, pp. 72-74.

41 *Id.*, pp. 71-73.

42 *Id.*, p. 73.

43 *Id.*, p. 72.

44 Furthermore, its 300 AFY capacity would be insufficient to provide the desalinated water that the EIR assumes would somehow be provided.

45 City of Monterey, Monterey 2031 General Plan Update EIR, Feb. 9, 2024, pp. 3.14-28 to 3.14-29.

In short, there is no evidence in the EIR, or the UWMP, of an existing or planned desalination project on the horizon that could supply potable water to meet development needs in the former Fort Ord.

Like the UWMP, the WSA discusses the RUWAP program for recycled water (WSA, p. 32), but it does not discuss any current potable supply program under RUWAP. The only reference to RUWAP and a potable water supply in the WSA is the single sentence in the conclusion mentioning "MCWD's RUWAP recycled water use and desalination plant projects" as part of a portfolio of projects under development. (WSA, p. 35.) Again, however, there is simply no evidence that the RUWAP desalination project has progressed since 2007 and all the evidence is that it was superseded by desalination projects that have failed or that will not serve Fort Ord.

The EIR itself does not mention RUWAP.

Despite this, the EIR misleadingly implies that the shortage in MCWD water supplies will be made up with desalination. The EIR uncritically reprints the MCWD UWMP Table 5.4, Projected Demand by Source, as EIR Table 4.16-1, MCWD Water Supplies – Current and Projected." Both tables include a desalinated water supply row, showing 299 AFY in 2030 and 483 AFY in 2040. (DEIR, p. 4.16-4; MCWD UWMP, p. 62.) However, the desalination figures do not represent a supply based on some planned desalination project. In fact, the desalination supply numbers do not represent a project or plan at all, but simply the shortfall between average demand for 2030 and 2040 and the expected available groundwater and recycled water supplies. (Compare UWMP Table 6.2 [water demand] to UWMP Table 5.4.) Indeed, the UWMP admits that its projected desalination supply figures simply represents "the net potable shortfall after recycled water is supplied." (MCWD UWMP, p. 62 and Table 5.4.) Thus, the projected desalination supply quantity in MCWD's UWMP is nothing more than an arithmetic plug to balance demand and supply. The desalination figures are entirely speculative because they do not represent any existing or planned desalination project.

In sum, the EIR fails to acknowledge that a potable water supply for development of Seaside East is uncertain and misleadingly represents desalination as a real program by including it in Table 4.16-1 as part of the "current and projected" water supplies.

d. The EIR and WSA fail to identify the magnitude of the shortfall in available supply, and the discussion of the shortfall is incoherent.

Vineyard Citizens holds that an EIR must provide consistent and accurate information about demand and supply to demonstrate either that there is a "rough balance" or that the water supply is in fact uncertain. (*Vineyard* at 439-446.) Where there is an adverse impact due to a shortfall in water supplies, 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.) The EIR fails to provide this information.

Draft EIR Table 4.16-1, MCWD Water Supplies – Current and Projected," and WSA Table 10, Water Supply and Demand Projections (AFY) for CalAm and MCWD, misleadingly imply that there is no shortfall in the MCWD service area. (DEIR, p. 28; WSA, p. 28.) As noted, the tables are misleading because they assume the availability of desalinated water for which there is no existing or planned facility. The tables are also misleading because they fail to reflect the fact that Seaside's allocation of MCWD's water supply is not sufficient to meet the demand projected. Again, the fact that there will be at least a 686 AFY shortfall in Seaside's allocation in 2040 is buried in the EIR's Appendix F. (WSA, p. 14.)

Furthermore, the allocation shortage figure buried in Appendix F is based not on the current EIR's growth projections for the General Plan Update, but on the out-of-date growth projections available when the 2020 UWMP was prepared. Again, the EIR admits that "each of the three separate water suppliers have used different types of assumptions to make water demand estimates. Therefore, an 'apples to apples' comparison of forecasted water demand associated with growth projections is not possible based on available published data." (WSA, p. 27; see also WSA p. 14, EIR, pp. 4.16-1, 4.16-21.) As discussed above, projected demand from both Seaside and Monterey exceed the demand assumed in the 2020 UWMP.

Additionally, the shortage figure buried in Appendix F does not reflect the fact that MCWD is barred from providing groundwater-based water supply to new residential units in the former Fort Ord by its settlement agreement with LandWatch and Keep Fort Ord Wild. Notably, that settlement agreement is not mentioned in the EIR, the WSA, or the MCWD UWMP itself.

The WSA admits that "the amount of potential increase in water demand associated with Seaside 2040 has not been quantified for the purposes of this WSA, because doing so would be highly speculative." (WSA, p. 35.) Having characterized demand projections as speculative, the WSA then states that there is a shortfall "[b]ased on the demand projections presented herein," but without providing any estimate of its magnitude:

> Based on existing and foreseeable water supplies in the project area, the City of Seaside does not presently have sufficient water supplies to achieve the complete buildout proposed by Seaside 2040. Based on the water demand projections presented herein, projected total water supplies available during normal, single dry, and multiple dry water years over a 20-year projection are not presently sufficient to meet the water demands of the proposed project in addition to the public water systems' existing and planned future uses, including agricultural and manufacturing uses.

(WSA, p. 35.) The EIR also recites this language and concludes that there is a shortage, but, again, without providing any estimate of its magnitude. (DEIR, p. 4.16-22.) The public is simply not informed about how adverse the impact would be.

The WSA's contention that "the amount of potential increase in water demand associated with Seaside 2040 has not been quantified for the purposes of this WSA, because doing so would be highly speculative" is contradicted by the fact that the WSA does in fact include what purport to be such estimates. (WSA, pp. 8, 9, Tables 1 and 2.) As noted above, WSA Table 2 sets out the "anticipated incremental water demand associated with buildout over the lifespan of the proposed project, as added to existing conditions" – a total of 1,272 AFY. (WSA, p. 9.) The EIR repeats this figure. (DEIR, p. 4.16-22.)

Furthermore, as noted, this 1,272 AFY figure, which purports to represent the project's demand added to existing demand, is unaccountably less than the 1,896 AFY demand figure calculated for the project alone in WSA Table 1. (WSA, pp. 8-9.)

And even if it were possible to know which figure is correct, a fundamental problem is that this demand figure includes demand from all development throughout the City, whether served by CalAm, MCWD, or the Seaside Municipal Water System. To determine for each service area the existence and magnitude of a water supply shortfall, the EIR must disaggregate demand and supply by service area or supplier. Without this information, there is simply no way to determine if the increase in Seaside demand in a particular service area, e.g., the MCWD service area in Fort Ord, can be met by the water provider for that service area. Informed decision-making, especially as to alternatives that might reduce or eliminate demand in service areas with significant shortages, requires that the shortfalls be identified by service area.

For example, as explained above, it is evident that the availability of supply for development of Seaside East is severely constrained by the 6,160-unit cap, the City of Seaside groundwater allocation shortage, and the lack of any project or plan to supply potable water to the former Fort Ord area. Because the EIR fails to disclose the existence or magnitude of this shortage, it is insufficient as an informational document.

2. Alternatives analysis fails to reflect water supply constraints.

As noted, the EIR and WSA fail to disaggregate water demand by service area. However, measuring service area demand against the differing water supply constraints for each service area is necessary to weigh alternatives about where the City should plan growth.

In particular, it is clear that the Fort Ord area faces substantially more severe water supply constraints than other areas in the City. MCWD, the supplier for this area, will not permit Seaside to exceed its allocated share of groundwater, and, based on information available before Seaside proposed its General Plan Update, MCWD projects that this shortage will be at least 686 AFY. (MCWD UWMP, p. 62.) Furthermore, even if there were not a shortfall in this allocation, MCWD's settlement agreement with LandWatch and Keep Fort Ord Wild precludes any additional groundwater supply for new residential units in the former Fort Ord.

Despite this, the Alternatives analyses in the draft EIR failed to acknowledge that developing fewer units overall and fewer units in Fort Ord would reduce water supply impacts. The draft EIR incorrectly claims that hydrology and water quality impacts under Alternative 2 would be "similar" to the impacts for the preferred project even though this alternative would purportedly reduce the number of residential units by 2,360 units. (DEIR, pp. 6-10, 6-14.)

Incredibly, the draft EIR claimed in its analysis of utilities and service systems impacts for Alternative 2 that the water supply impacts would be greater than the preferred project even though it would greatly reduce the amount of development. While the final EIR purports to correct this error (FEIR, p. 2-40), its analysis is still based on the assumption that Alternatives 2 and 3 would reduce Seaside East development in Fort Ord by 2,360 residential units compared to the preferred project. Such a reduction is not possible in light of the EIR's projection that the preferred project would develop only 995 residential units in Seaside East.

3. The EIR does not discuss the impacts of providing water supplies from existing or future sources.

(a) Future potable supplies are not identified and impacts and mitigation not disclosed.

Vineyard holds that an agency errs by failing to include in the EIR a discussion of the impacts of proposed new water supplies. (*Vineyard* at 446.) *Vineyard* holds that where an agency cannot identify future water supply sources with certainty, it must acknowledge the uncertainty, identify possible alternative sources, and disclose the impacts of developing those sources or curtailing the project:

> The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project. If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact. (§ 21100, subd. (b).) In approving a project based on an EIR that takes this approach, however, the agency would also have to make, as appropriate to the circumstances, any findings CEQA requires regarding incorporated mitigation measures, infeasibility of mitigation, and overriding benefits of the project (§ 21081) as to each alternative prong of the analysis.

(*Vineyard* at 434.) As noted above, the EIR projects the availability of desalinated water beginning in 2030, and its Table 4.16-1 projects that just enough desalinated water will be available to cover the gap between demand and supply. This water supply is clearly uncertain because nowhere do the EIR, the WSA, or the UWMP identify a specific project that would provide this supply or any other specific potable water source to meet the shortage in Fort Ord. Nor does the EIR acknowledge the degree of uncertainty as to this needed potable water supply or discuss alternative sources that would provide potable supply to Fort Ord.

Because the EIR fails to identify any specific project to provide a potable water supply to Fort Ord, it also fails to disclose the foreseeable environmental impacts or mitigation for any project that would be needed to provide the missing potable water supply. The EIR provides no basis to make findings as to the impacts, mitigation measures, mitigation infeasibility, or overriding benefits for any alternative source of potable supply.

LandWatch objected in comments on the draft EIR that the EIR fails to discuss the impacts of providing water supplies from future sources. In response, the final EIR argues that this information is provided under Impact UTIL-7 and Impact HYD-7 and throughout sections 4.9 and 4.16 of the EIR. (FEIR, p. 2-35.) However, nothing in the draft EIR discusses the impacts of constructing or operating a future potable water supply for Fort Ord. As discussed, the only suggestion of a future potable water supply to address shortages in existing supplies is the unexplained reference to an unspecified desalination project. The EIR does not identify a desalination project that could serve Fort Ord, and it provides no discussion of the impacts of constructing or operating such a facility.

Vineyard holds that if the impacts of the proposed new water supplies have been discussed in some related planning document, e.g., an EIR for a water supply project, the EIR relying on those supplies can and must discuss the impacts of that water supply and incorporate any mitigation from that EIR. (*Vineyard* at 446.) The EIR fails to do this for any future potable water supply for Fort Ord. For example, if the RUWAP desalination project were still being considered and it were among the alternative water supplies the EIR were disclosing as possible alternative supplies, then the EIR should have disclosed the impacts identified in the RUWAP EIR and incorporated the mitigation required for that project. The EIR does not do so for the RUWAP desalination proposal. Nor does the EIR discuss impacts or mitigation for any other future potable water supply for Fort Ord.

(b) Impacts of other future water supplies are not disclosed.

To the extent that the EIR relies on any future water program, *Vineyard* requires that it discuss the significant impacts of that program and incorporate mitigation for those impacts.

The EIR purports to rely on a recycled water project under the RUWAP program, non-potable recycled water from the Pure Water Monterey project, and, for the CalAm service area, a proposed desalination plant. (DEIR, p. 4.16-9.) The EIR fails to disclose the significant impacts of these projects or to incorporate their mitigation measures. For example, because the CalAm project has undergone environmental review by the CPUC, and a mitigation plan has been adopted by both the CPUC and the Coastal Commission, the EIR could and should have disclosed impacts and mitigation from those documents.[46] It does not. The EIR could and should also have disclosed impacts and incorporated mitigation related to the recycled water projects on which it relies. It does not.[47]

4. The EIR improperly relies on mitigation conditioning development on a water supply instead of providing the required analyses.

Vineyard holds that an EIR may not substitute a provision precluding further development for identification and analysis of the project's intended and likely water sources.

> Real parties also assert that the FEIR's mitigation measure WS–1, which states that entitlements for development within the Sunrise Douglas project shall not be granted without firm proof of available water supplies, assures that water will be available for later phases of the project. As discussed earlier, however, an EIR may not substitute a provision precluding further development for identification and analysis of the project's intended and likely water sources. "While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built." (*Stanislaus Natural Heritage, supra,* 48 Cal.App.4th at p. 206, 55 Cal.Rptr.2d 625.) A provision like WS–1 could serve to *supplement* an EIR's

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[46] See, e.g., California Public Utilities Commission, Decision Approving A Modified Monterey Peninsula Water Supply Project, Adopting Settlement Agreements, Issuing Certificate Of Public Convenience And Necessity And Certifying Combined Environmental Report, Sept. 20, 2018, available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M229/K424/229424336.PDF; California Public Utilities Commission, CEQA Findings and Mitigation Monitoring and Reporting Program for the Monterey Peninsula Water Supply Project, Aug. 13, 2018, available at pdf pages 4 et seq. of https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M221/K841/221841618.PDF.

[47] The EIR provides only an inactive purported link to a RUWAP Phase II pipeline report at WSA 38, citing "2020. Regional Urban Water Augmentation Program (RUWAP) Phase II – Distribution Pipelines. Project Information Sheet. July 17. Accessed here: https://www.mcwd.org/docs/ruwap/Project%20Information%20Sheet%208-3-20.pdf." The EIR does not discuss or disclose the impacts of constructing or operating this project.

> discussion of the impacts of exploiting the intended water sources; in that case, however, the EIR, in order adequately to inform decision makers and the public, would then need to discuss the probability that the intended water sources for later phases of development will not eventuate, the environmental impacts of curtailing the project before completion, and mitigation measures planned to minimize any such significant impacts. The Sunrise Douglas FEIR did not attempt such an analysis. In this respect as well, the County erred procedurally.

(*Vineyard* at 444.) Despite this, the EIR here relies on Mitigation Measure UTIL-1, which provides only that future projects will not be approved without proof of a water supply from a "water verification report" to be obtained later:

> The City shall not approve individual projects envisioned under Seaside 2040 until proof of water supply availability is provided. Any future project proposed under Seaside 2040 that meets the definition of a "Project" under California Water Code Section 10912 will be required to prepare a Water Supply Assessment prior to project implementation. For those individual projects that are subject to California Water Code Section 10910, the City will use the prepared WSA (Appendix F to this Draft EIR) to assess water supply sufficiency.
>
> Any future project proposed under Seaside 2040 that does not meet the definition of a "Project" under California Water Code Section 10912 will be required to provide the City a Water Verification Report from the local water supplier. The City shall prohibit applicants from proceeding with project implementation activities until a Water Verification Report has been issued.

(DEIR, p. 4.16-28.) Responding to LandWatch's objections that the draft EIR improperly relies on Mitigation Measure UTIL-1 in violation of CEQA, the final EIR simply reiterates the mitigation proposal to require water supply verification before development approval. (FEIR, p. 2-35.) The final EIR does not remedy the draft EIR's failures.[48]

The EIR repeatedly substitutes discussion of Mitigation Measures UTIL-1 for identification of future water supplies, a disclosure of their uncertainty, and the impacts of constructing and operating these future water supplies – precisely what *Vineyard* forbids. (E.g., DEIR, pp. 4.16-22, 4.16-25, 5-17; DEIR, App. F, pp. 12, 35.) The EIR

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[48] The final EIR argues that the water supply verification in Mitigation Measure UTIL-1, which would apply to all projects large and small, is more universal than SB 610's mandate for a Water Supply Assessment, which only applies to large projects. (FEIR, p. 2-35.) The final EIR misses the point that the EIR's reliance on a water supply verification as mitigation violates CEQA because the EIR fails to identify future water supplies, disclose their uncertainty, assess and propose mitigation for the impacts of constructing and operating these future water supplies, and disclose and propose mitigation for the impacts of curtailing the project due to lack of water.

references "a portfolio of new water sources . . . under development" and then lists "CalAm's Pure Water Monterey, Monterey Peninsula Water Supply Project, and MCWD's Regional Urban Water Augmentation Program recycled water use and desalination plant projects." (DEIR, p. 4.16-22.) However, as discussed above, the EIR fails to discuss the impacts of constructing and operating these water supply projects. Most problematically, the EIR fails to identify or disclose the uncertainty of the potable water supply for the MCWD Fort Ord area that would be needed if development proceeds in Seaside East.

Nor does the EIR disclose or discuss "the environmental impacts of curtailing the project before completion, and mitigation measures planned to minimize any such significant impacts," as required by Vineyard. (*Vineyard* at 444.) If the City were to commence but then curtail development of Seaside East due to lack of water, the incomplete development would result in substantial environmental impacts. For example, the EIR contends that obtaining the expected VMT reductions and avoiding air quality impacts depends on building out a particular level and balance of housing and employment space. (DEIR, App. C, Hexagon, City of Seaside Proposed General Plan VMT Analysis, Dec. 7, 2022; DEIR, 4.14-27 to 4.14-28.) As discussed above, the EIR also contends that impacts related to air quality, noise, and air toxics are determined by the relation of housing and jobs. The EIR's discussion of population and housing impacts also depends on a "balanced jobs/housing ratio." (DEIR, p. 5-15.) As evidence that impacts will be less than significant, the EIR repeatedly cites Policy LUD-22, which calls for "balanced, diverse, and sustainable growth" including a "balanced land use mix" in Seaside East, and Goal LUD-1, which calls for "balanced land uses." (E.g., DEIR, p. 4.1-28 [aesthetics impacts]; 4.2-18 [air quality impacts]; 4.3-23, 4.3-33 [biological resources impacts]; 4.10-13. 4.10-14, 4.10-15, 4.10-16, 4.10-17 [land use and planning impacts]; 4.12-11, 4.12-12, 5-15 [population and housing impacts]; 4.12-23, 4.14-24 [transportation impacts].) If the proposed balanced development of Seaside East were disrupted by the lack of water, impacts that the EIR finds less than significant based on that balance would become significant. The EIR has not considered the impacts that could result from stalled or foreclosed development of Seaside East or proposed mitigation for those impacts.

Furthermore, the EIR and its Biological Resources Assessment both rely on the proposed, but never adopted, FORA Habitat Conservation Plan (HCP) to mitigate biological resource impacts. (DEIR, p. 4.3-28, 4.3-35, 4.3-38; DEIR, App. C, p. 5, 11, 30, 33.) Even though the final EIR now claims that the draft EIR and Biological Resources Assessment do not rely on that HCP (FEIR, pp. 2-30, 2-18), the text of both the General Plan and the EIR continue to reference that HCP and rely on it as the primary conservation planning document for the recipients of Fort Ord lands. That proposed HCP, and any other HCP that might be adopted to address impacts to protected species, depend for their implementation on a stream of future funding from development projects, typically paid as impact fees when building permits are pulled. If development of Seaside East begins but is stalled by lack of water supply, it is foreseeable that needed habitat protection and mitigation funding will not be available. An empty subdivision has

the potential to destroy biological resources without providing the funds for mitigation. Mitigation to address this foreseeable contingency might be available, e.g., a requirement that all mitigation funding for Seaside East biological resources impacts be escrowed in advance of any ground disturbance, but the EIR has not proposed this.

In sum, the EIR has simply failed to address the consequence of curtailing or foreclosing Seaside East development due to lack of water supply.

5. Mitigation Measure UTIL-1 calls for tiering from the Water Supply Assessment even though the EIR admits that the WSA is not based on accurate or "apples to apples" demand estimates.

Even if Mitigation Measure UTIL-1 did not suffer from the defects identified above, it would not suffice because it provides that future water supply verifications will rely on the inadequate water supply analysis in this EIR. In particular, it provides that "[f]or those individual projects that are subject to California Water Code Section 10910, the City will use the prepared WSA (Appendix F to this Draft EIR) to assess water supply sufficiency." (DEIR, p. 4.16-28.) In short, the future water supply verifications would recycle the EIR's inadequate analysis. There are several problems here that render this mitigation illusory and ineffective.

The WSA admits that an "apples to apples" comparison of water use and water demand is not possible based on the available data. The EIR admits that "the water demands associated with Seaside 2040 exceed the demand forecasted in the 2021 CalAm UWMP, and the proposed project is not entirely accounted for in the UWMP." (DEIR, p. 4.16-5.) As for the MCWD UWMO, as explained above, the level of development proposed for Seaside 2040 also exceeds the level assumed in that UWMP. By suggesting that better data might be available in the 2025 UWMPs, the final EIR again acknowledges the insufficiency of the data in the WSA. (FEIR, p. 2-34.) Finally, the fundamental conclusion of the WSA is that supplies are <u>not</u> sufficient:

> Based on the information provided in this WSA, there are not sufficient projected total water supplies available during normal, single dry, and multiple dry water years over a 20-year projection which will meet the projected water demand associated with full buildout of the General Plan Area, in addition to the public water systems' existing and planned future uses, including agricultural and manufacturing uses.

(DEIR, App. F, WSA, p. 15; see also p. 35 [same].) It makes no sense to rely on an admittedly incomplete WSA, which admittedly understates water demand, and which still concludes that supplies are insufficient, as the basis for future water supply assessments.

6. Cumulative analysis of water supply impacts is inadequate.

The cumulative analysis of water supply impacts consists of the following single conclusory paragraph:

> Water supply in the cumulative impact analysis area is derived from a variety of sources that vary depending on the location. As discussed in Section 4.16, Utilities and Service Systems, and in the Water Supply Assessment (Appendix F), Seaside does not have sufficient existing water supply to serve complete buildout of Seaside 2040, and Mitigation Measure UTIL-1 would be required to ensure that proof of water supply availability is provided prior to approval of individual development projects. While Mitigation Measure UTIL-1 would reduce potentially significant impacts resulting from Seaside 2040, it is likely that cumulative development would similarly not have sufficient existing water supply to serve projected growth in the cumulative impact analysis area. Therefore, cumulative water supply impacts would be significant, but Seaside 2040 would not result in a considerable contribution to this cumulative impact.

(DEIR, pp. 5-17 to 5-18.)

The "ultimate question" in a CEQA water supply analysis is "not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project." (*Vineyard* at 434.) Thus, the EIR was required to determine whether pumping to supply groundwater for the project in the MCWD service area, particularly the substantial proposed development in Seaside East, contributes considerably to a significant cumulative Basin overdraft condition and associated seawater intrusion.

Cumulative impact analysis is a two-step process that requires an agency to determine: (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. (CEQA Guidelines, § 15130(a); see Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39; Remy, Thomas, et al., Guide to CEQA (11th Ed., 2007), pp. 474-475.) CEQA requires an agency to support both its step one and step two determinations with "facts and analysis." (CEQA Guidelines, §15130(a)(2) (step one), (a)(3) (step two).)

In step one, the agency must determine whether the combined effect of the project and other past, present and/or future projects "when considered together" 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.) Thus, step one must identify all sources of "related impacts," either by listing projects causing the cumulative impact or by

providing "a summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect." (CEQA Guidelines, § 15130(b)(1)(A), (B).) Identifying these sources of the cumulative effect is a distinct requirement from identifying the cumulative effect itself. (CEQA Guidelines, § 15130(b)(1), (4).) Omission of sources of cumulative impact without justification is error. (*Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal. App. 3d 421, 428-432.) Where relevant to cumulative impacts, an EIR must disclose cumulative water supply and demand. (*Vineyard, supra*, 40 Cal.4th at 441; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728-729.)

In step two of a cumulative analysis, the agency must separately consider whether a project's contribution to a cumulatively significant effect is "considerable." This determination must be made in the "context of the existing cumulative effect" 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." (*CBE v. CRA, supra*, 103 Cal.App.4th at 119-120.) Thus, an EIR may not dismiss a project's contribution simply because it is relatively small. (*Id.* at 117-118, 121; *Kings County, supra*, 221 Cal.App.3d at 720-721*; Los Angeles Unified School Dist. v. City of Los Angeles* ("*LAUSD*") (1997) 58 Cal.App.4th 1019, 1025-1026.)

Thus, here, the threshold question for cumulative analysis is whether total water demand from all sources plus the project exceeds the water supply sustainable without overdraft, seawater intrusion, or significant impacts from the construction and operation of additional water supply facilities. If so, the secondary question is whether the Project would make a considerable contribution to that cumulative impact. The EIR prejudicially fails to provide the information and analysis required to make these determinations. Its one-paragraph conclusory cumulative analysis is woefully inadequate.

First, it provides no description of the geographic scope of the cumulative analysis, which violates CEQA. (CEQA Guidelines, § 15130(c)[" Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used'].). Seaside is served by three distinct water providers who obtain water supplies from different sources and serve different areas of cumulative demand. The cumulative analysis entirely fails to identify the geographic scope of its cumulative impact analysis and fails to provide any discussion or justification of the geographic scope, or scopes, of the cumulative analysis of water supply impacts. The EIR fails to inform the public or decision makers if the cumulative analysis is based on a single geographic scope or three separate scopes based on the three distinct suppliers and their service areas. The EIR fails to disclose whether the scope of the cumulative analysis is the service areas from which demand originates or includes the groundwater aquifers shared by Seaside's suppliers and other groundwater users, which would be a larger area. Since there are clearly distinct supply constraints and distinct demand sources in the three service areas, the cumulative analysis should have addressed these differences.

The cumulative analysis also fails to provide any quantitative assessment of cumulative supply and demand or any quantitative or qualitative assessment of the magnitude of the cumulative impact, which also violates CEQA. (CEQA Guidelines, § 15130(b)(2)[analysis must identify list of projects with related impacts or a summary of projections that evaluate conditions contributing to the cumulative effect]; CEQA Guidelines, § 15130 (b)(4) and (5) [analysis must summarize cumulative effects and examine mitigation].) While the UWMPs include some supply and demand data, the EIR admits that it fails to present an apples-to-apples analysis of demand and supply because these UWMPs rely on different demand assumptions. The EIR admits and demonstrates that its own growth and demand projections exceed those assumed in the UWMPs. As discussed, the EIR fails to reconcile these differing assumptions for water demand. And, as discussed, the EIR also fails to disclose the increases in other sources of cumulative demand not included in these UWMPs, e.g., previously unanticipated cumulative demand for MCWD's water supplies from the City of Monterey.

The failure to discuss the total cumulative demand in light of the increase in Seaside demand over the UWMP assumptions results in a failure to identify and assess the magnitude of the cumulative impact, for which Seaside's future demand represents a portion. For the MCWD service area, Seaside's future demand to support Seaside East would be a substantial portion of cumulative demand, particularly since MCWD's sole existing or planned source of potable water remains groundwater and there are no current plans to provide sufficient potable water to support Seaside East. And, as discussed, even if there were such plans, the EIR does not disclose their impacts or incorporate their mitigation. In sum, the EIR fails to disclose the magnitude of the cumulative impact to the aquifer from which potable water supplies for Seaside East would be drawn, or, alternatively, the nature and magnitude of the impacts of providing some other cumulative potable water supply.

Finally, it is fundamental error to assume that just because a project would not by itself cause a significant impact it does not make a considerable contribution to a cumulative impact. The point of cumulative analysis is to identify those situations in which the project's impact is less than significant individually but cumulatively considerable. However, the cumulative impact discussion in the EIR provides no explanation whatsoever for its conclusion that, although there is a significant cumulative impact, "Seaside 2040 would not result in a considerable contribution to this cumulative impact." The evidence is to the contrary, at least for the Seaside East portion of the project. Seaside has the largest projected shortfall in the MCWD groundwater allocation. And Seaside East would substantially exacerbate this shortfall.

Understatement of the cumulative shortfall for MCWD is particularly problematic. CEQA provides that "the 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 119-120.) Whereas the 2020 UWMP Table 5.4 purports to provide just enough groundwater, recycled water and desalinated water to meet projected cumulative demand, the UWMP does not indicate

that there would be any surplus water. (MCWD, 2020 UWMP, p. 62, Table 5.4, Projected Demand by Source [acknowledging that the desalination component, from some unspecified desalination project, represents "the net potable shortfall after recycled water is supplied"].) Addition of unforeseen demand from Monterey and Seaside would exacerbate the cumulative condition reflected in Table 5.4 and result in a shortfall. Since, as demonstrated above, Seaside 2040 increases demand beyond the level assumed in the 2020 UWMP, the supply assumed in the 2020 UWMP Table 5.4 would not be sufficient. Seaside's new demand, which would tip the cumulative water supply equilibrium from sufficient to insufficient, is clearly a considerable contribution to a significant cumulative impact.

In sum, the EIR fails to disclose the severity of the cumulative impact and provides no basis for its conclusion that the project would not make a considerable contribution to this impact.

D. Conclusion

For all of the foregoing reasons the City must revise and recirculate an adequate EIR. LandWatch remains willing to meet with City staff and decision makers to discuss revisions to Seaside 2040 and its CEQA analysis that would address the flaws identified above. Meanwhile, the City should not certify the EIR or approve the project.

Yours sincerely,

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

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Submitted with this letter:

- Michael DeLapa, letter to Anthony Errichetto, Sept. 21, 2023
- Sheri Damon, letter to Marina Coast Water District, Sept. 19, 2023