

September 21, 2023

Anthony Errichetto
Division of Housing Policy Development
Land Use & Local Government Relations
Planning Grants & Incentives
Department of Housing & Community Development
2020 W. El Camino Avenue, Suite 550 | Sacramento, CA 95833
Email: Anthony.Errichetto@hcd.ca.gov

Re: Improper reliance on Fort Ord land for site inventories

Dear Mr. Errichetto:

I write on behalf of LandWatch Monterey County to advise HCD that the Monterey County land use jurisdictions with land on the former Fort Ord face a significant water supply constraint in relying on that land to meet their obligations to identify adequate sites for their 6th Cycle RHNA obligations.

The only potentially available water supply for new residential development in Fort Ord is groundwater supplied by the Marina Coast Water District (MCWD). That groundwater supply is limited to a total of 6,160 new residential units under the terms of a [settlement agreement between MCWD, LandWatch, and Keep Fort Ord Wild](#). Because local land use jurisdictions have already issued entitlements for at least 6,150 new residential units, there is a legal groundwater supply for at most ten additional units.

Despite this, the site inventories proposed by local land use jurisdictions have relied on the expectation that thousands of additional new residential units could be developed. For example, the City of Monterey is relying on 2,089 new units in Fort Ord and the City of Del Rey Oaks is relying on 312. These units would exceed the 6,160-unit cap. MCWD cannot provide groundwater supplies to these units without violating its settlement agreement.

Furthermore, even if there were no collective cross-jurisdictional cap on the number of permitted units of new residential development in Fort Ord, that development would be limited by the allocations of groundwater supply to each jurisdiction. Some jurisdictions, e.g., the City of Monterey, lack a water supply allocation sufficient to support the number of units proposed in their site inventories.

Both the 6,160-unit cap on new residential units and the system of jurisdictional allocations were adopted as mitigation for the significant impacts to the groundwater resources caused by new development in Fort Ord, including aquifer depletion, falling groundwater levels, and seawater intrusion. The cities cannot simply abandon this previously adopted mitigation.

In comments on their draft Housing Elements, LandWatch has pointed out this problem to these land use jurisdictions. LandWatch has asked the jurisdictions (1) to revise their site inventories and adopt policies and programs to rely only on available infill development sites outside Fort Ord and (2) to ensure that the environmental impact reports for their housing elements assess alternatives that do not rely on new development in Fort Ord. *LandWatch now asks HCD to direct these jurisdictions to take both of these steps.*

A. Sites included in a site inventory must have an existing water supply or there must be a mandatory plan or program to supply water.

In order to count a site in its inventory, a land use jurisdiction must demonstrate that utilities, including water supply, are either available or subject to a “mandatory program or plan.”

Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development.

(Gov. Code, § 65583.2(b)(5)(B).) As discussed below, the local jurisdictions’ site inventories fail to acknowledge the lack of an existing or mandatory planned water supply. In particular, they fail to acknowledge the binding limits on groundwater supply in the form of the 6,160-unit cap and the jurisdictional allocations and the lack of any mandatory program or plan to provide an alternative to reliance on groundwater.

B. The Fort Ord groundwater allocations do not support proposed site inventories.

MCWD has jurisdiction as the sole water supplier in the former Fort Ord. The allocation of groundwater supplies in the former Fort Ord is spelled out in Appendix E to the MCWD 2020 Urban Water Management Plan (“UWMP”).¹ 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).”² The UWMP explains that MCWD owns and operates the Ord Community groundwater system and underlying groundwater extraction rights.³ The UWMP

¹ MCWD, 2020 Urban Water Management Plan, Appendices, Appendix E, available at https://www.mcwd.org/docs/engr_files/edfp/uwmp/MCWD%202020%20UWMP%20Appendices_20210625.pdf

² Id., p. 58.

³ Id.

explains that the rights to use groundwater were allocated among the land use jurisdictions.⁴ For example, the City of Monterey was allocated 65 AFY,⁵ which is sufficient to support about 260 residential units using the water use factors employed by the UWMP for typical residential units.⁶ The City of Monterey Draft Housing element circulated for public comment *admits* that the city has only sufficient “water credits” for 240 units in Fort Ord.⁷

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.”⁸ Thus, once a land use jurisdiction has exhausted its groundwater allocation through approval of previous projects, MCWD will not commit to provide additional groundwater.

Even though the City of Monterey’s groundwater allocation would support only about 250 new units, Program 1-H Fort Ord/Ryan Ranch Specific Plan in the City of Monterey’s draft Housing Element calls for siting **2,100** new units in Fort Ord and Ryan Ranch. Based on the relative acreage identified in the site inventory, 2,089 of these units would be in Fort Ord and only 11 in Ryan Ranch.⁹ Thus, the City of Monterey’s proposed Fort Ord site inventory exceeds the City of Monterey’s groundwater allocation by at least 1,750 units. This represents about half of the City’s RHNA allocation.¹⁰

C. The 6,160 new unit cap does not support proposed site inventories either.

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.¹¹ Although FORA ceased to

⁴ Id., p. 59 and Table 1.

⁵ Id.

⁶ Id, Appendix C, pp. 13-32.

⁷ City of Monterey, 2023-2031 Housing Element, p. 3-16, available at available at https://ehq-production-us-california.s3.us-west-1.amazonaws.com/ed3035ea86b4e07899a4eb5e79f986a1e3f48100/original/1691082677/73c699e1b4185320ef4945bb60bdf1fd_2023-2031_Public_Review_Draft_HE.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKICO37GBEP%2F20230920%2Fus-west-1%2Fs3%2Faws4_request&X-Amz-Date=20230920T212609Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=c5e9d6ac1fb76e9a6ad5b9dd1ca0fcba44173c345f90ff00eb180e826838b289.

⁸ MCWD, 2020 Urban Water Management Plan, p. 65, available at https://www.mcwd.org/docs/2021_uwmp/DRAFT_MCWD_2020_UWMP_v20210520.pdf.

⁹ City of Monterey, 2023-2031 Housing Element, p. 4-6 [Program 1-H Fort Ord/Ryan Ranch Specific plan], Appendix A, Table A [nine Fort Ord and Ryan Ranch sites listed with acreage and 2,100 total unit count].

¹⁰ Michael DeLapa, [letter to City of Monterey](#), re Comments on the City of Monterey Draft Housing Element and on the Scope of Its CEQA Review, Aug. 7, 2023

¹¹ FORA, Development and Resource Management Plan, p. 132, Program 3.11.5.5(b)(2), available at <https://www.fora.org/Reports/DevResourcePlan.pdf>.

exist in 2020, MCWD is committed to honor the 6,160-unit cap under the terms of a [settlement agreement between MCWD, LandWatch, and Keep Fort Ord Wild](#).¹²

In order to ensure that land use jurisdictions did not approve entitlements for new residential development in excess of the cross-jurisdictional 6,160 cap on new units, FORA required that each land use jurisdiction report annually the number of new residential units for which it had granted entitlements.¹³ Although FORA has been dissolved and MCWD has assumed the responsibility to enforce the 6,160-unit cap, it is unclear whether MCWD continues to track the number of newly approved residential *units*. MCWD's 2020 Urban Water Management Plan makes no reference to its obligation not to furnish water in excess of the 6,160-unit cap. And, although MCWD tracks each jurisdiction's "sub-allocations" to specific projects and updates this list at the time it publishes a water supply assessment for a new project, MCWD's sub-allocations table reports only the *volume of water* in AFY that has been committed to newly approved projects, not the number of new residential units.¹⁴ In order to enforce *both* the jurisdictional water allocations in AFY *and* the cross-jurisdictional 6,160-unit cap, MCWD should track the cumulative number of entitled units in all jurisdictions, just as FORA did. MCWD should not issue a will-serve letter or a water supply verification for proposed projects that would exceed the 6,160-unit cap.

It is clear that there is little or 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 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*.¹⁵ 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 unit cap.¹⁶

Because there are at most ten units left under the 6,160-unit cap, no jurisdiction should include Fort Ord units in its site inventory unless those units are "pipeline" units that were previously

¹² 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>

¹³ *Id.*

¹⁴ MCWD, 2020 Urban Water Management Plan, Appendices, pp. 60-64, Appendix C, pp. 3-4 and Table 2.

¹⁵ City of Seaside, [Campus Town FEIR](#), 2020, pp. 3-169 to 3-170.

¹⁶ 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 to 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.

entitled and have been accounted for as within the 6,160-unit cap. Thus, for example, it may be appropriate for the City of Marina to include the Dunes and Sea Haven projects in Fort Ord as pipeline projects in its site inventory because those projects were approved before new approvals exhausted the 6,160-unit cap.¹⁷ And, if the 2020 Campus Town FEIR accounting of the prior approvals subject to the 6,160-unit cap is accurate, it may be appropriate for the City of Seaside to include those parts of the 1,485-unit Campus Town project expected to be developed by 2031 as part of its site inventory.¹⁸ *However, no jurisdiction should include in its site inventory any units within Fort Ord that are not part of a previously approved project that was within the 6,160-unit cap.*

As MCWD explains, the Cities of Monterey and Del Rey Oaks have yet to approve any residential development projects in Fort Ord.¹⁹ Thus, any reliance on Fort Ord sites in their housing elements would run afoul of the 6,160-unit cap. Unfortunately, both cities rely on Fort Ord sites: Monterey relies on 2,089 previously unapproved Fort Ord sites and Del Rey Oaks relies on 312.^{20, 21} HCD should not permit their housing elements to rely on these units.

Finally, MCWD must enforce the 6,160-unit cap prospectively – by refusing water supply verifications, will-serve letters, and hookups to projects that are approved after previously approved projects have exhausted the 6,160-unit cap. The alternative suggested by MCWD staff in comments to the media, a “first-come-first-served” approach to future water supply hookups that ignores the priority of water supply for earlier projects approved within the 6,160 cap, would generate uncertainty, inter-jurisdictional conflict, and the chaos of broken commitments. Jurisdictions and project developers have planned and invested on the basis of the availability of water supplies for projects that will take years to build out, and those plans are now settled investment-backed expectations. Promised water supplies should not be arbitrarily withdrawn in favor of later-approved projects. MCWD has issued, and developers have relied on, will-serve letters and SB 610 and SB 221 water supply assessments attesting to the availability of groundwater supplies for these previously approved developments. If MCWD were to promise or provide groundwater supplies to new projects whose units exceed 6,160-unit cap, MCWD would be unable to honor its existing commitments to previously approved projects. Indeed, MCWD may expect claims from those developers who relied on MCWD’s earlier commitments to furnish water.

¹⁷ City of Marina, 2023-2031 Housing Element Update, July 2023, p. 2-3, Table 2-2, available at <https://cityofmarina.org/DocumentCenter/View/13414/City-of-Marina-20232031-Housing-Element?bidId=>.

¹⁸ City of Seaside, 2023-2031 Housing Element Technical Appendix, pp. APP-79, APP-82, and Table APP-45, available at https://seaside2040.com/wp-content/uploads/2023/07/Seaside-HE-Technical-Appendix_clean_HCD.pdf

¹⁹ MCWD, Urban Water Management Plan, Appendices p. 60, Appendix E, p. 3.

²⁰ City of Monterey, 2023-2031 Housing Element, p. 4-6 [Program 1-H Fort Ord/Ryan Ranch Specific plan], Appendix A, Table A [nine Fort Ord and Ryan Ranch sites listed with acreage and 2,100 total unit count]; City of Del Rey Oaks, 6th Cycle Housing element Update, pp. 3-12 to 3-21, available at https://www.delreyoaks.org/sites/default/files/fileattachments/community_development_and_planning/page/5976/6th_cycle_public_review_draft_housing_element_update_may_2023.pdf

²¹ Because the County of Monterey has not yet submitted a draft housing element for public review, it is not clear whether it proposes to rely on development of Fort Ord sites that were not previously approved.

Finally, HCD should not approve a set of housing element site inventories that rely on a common pool of groundwater resources that is simply not adequate to serve all of the proposed sites. If MCWD ignores the priority of projects in Jurisdiction A that were approved earlier within the 6,160-unit cap in order to provide hookups to projects approved in Jurisdiction B after the cap was exhausted, it will effectively reduce the number of new units that Jurisdiction B can develop. As long as the 6,160-unit cap is in place, the total number of new units in Fort Ord cannot be increased beyond 6,160. While it is perhaps understandable that Jurisdiction A may want to ignore this fact, as the agency with responsibility for the integrity of all of the regional housing elements, HCD cannot afford to. For example, HCD cannot permit the Cities of Marina and Seaside to rely on the Dunes, Sea Haven, and Campus Town projects if it also permits the City of Monterey to adopt a site inventory that would deprive these previously approved projects of their promised water supply.

D. There is no existing non-groundwater supply or mandatory program or plan in place to provide an alternative to groundwater.

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 denying that water to previously approved projects and sowing chaos in settled plans and investment-backed expectations.

If there is no existing or permissible *groundwater* supply, then inclusion of a site in a site inventory requires that some *alternative* water supply must “be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service. . .” (Gov. Code, § 65583.2(b)(5)(B).) However, there is no mandatory program or plan in place by which MCWD could supply an alternative source of potable water in excess of the collective 6,160-unit cap or in excess of the jurisdictional water supply allocations for some local jurisdictions.

MCWD’s 2020 Urban Water Management Plan discusses the inchoate 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 current development projections. 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 AFY allocation.²² For example, as noted above, the City of Monterey would require a water supply augmentation plan or program in order to adopt its proposed site inventory because its AFY allocation would at most serve about 250 units and because it cannot issue new residential unit approvals in excess of the cumulative 6,160-unit cap without reducing the number of units that could be built in another jurisdiction.

²² MCWD, Urban Water Management Plan, pp. 64-65.

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. However, it is clear that there is no committed, much less approved or funded “mandatory program or plan” in place to provide the necessary potable water supplies.

MCWD has worked with Monterey One Water (M1W) to provide recycled water transmission facilities, but the only “mandatory program or 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.²³ The most recent and applicable Urban Water Management Plan indicates that MCWD has no program or plan in place to address the shortfall in potable water supplies.

For example, the UWMP acknowledges that the desalination component of the RUWAP project has simply fallen through with the failures of the Cal-Am Coastal Water Project and the subsequent Cal-Am/MCWD Regional Desalination Project, which resulted in litigation but no water. Cal-Am’s current desalination project 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.²⁴ 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.²⁵ In short, there is no desalination project on the horizon that could even arguably be characterized as a mandatory program or plan.

The UWMP states that “MCWD is *considering* indirect potable reuse of advanced treated water as an alternative to the desalination portion of the RUWAP.”²⁶ Merely “considering” such a program or plan does not qualify it as a mandatory program or plan.

Similarly, the UWMP acknowledges that MCWD has only “considered” and “studied” diversion of Salinas River surface water supplies, which would require complex project approvals and water rights modifications involving MCWRA, the SWRCB, and the SVGBGSA.²⁷ Use of surface water supplies has not risen to the status of a mandatory program or plan. Finally, the UWMP states that stormwater capture is not feasible.²⁸

In sum, there is no mandatory program or plan that is sufficient to provide the potable water component of the 20-year old RUWAP. HCD should not permit the local jurisdictions to rely on non-groundwater sources to justify inclusion of Fort Ord sites in site inventories.

²³ Id., pp. 67-68.

²⁴ Id., pp. 71-73.

²⁵ Id., p. 73.

²⁶ Id., p. 68, emphasis added.

²⁷ Id., p. 63.

²⁸ Id., p. 64.

E. HCD should advise local jurisdictions not to rely on Fort Ord sites that are not already approved for residential development.

HCD should advise jurisdictions not to rely on Fort Ord sites that have not been previously approved for several reasons. First, as argued above, reliance on such sites would violate Government Code Section 65583.2(b)(5)(B) because there are no mandatory programs or plans for water supply for projects that were not included in the set of pipeline projects previously approved.

Second, land use jurisdictions will not be able to meet the mandates to find that projects have an adequate water supply under SB 610 and SB 221.

Third, the 6,160-unit cap and the jurisdictional water allocations were adopted as mitigation measures under CEQA for significant groundwater impacts caused by new development in Fort Ord. Even if the 6,160-unit cap were not enforceable by virtue of the settlement agreement, CEQA does not permit an agency simply to abandon prior mitigation measures. Each jurisdiction proposing that its site inventory rely on Fort Ord units in excess of the 6,160-unit cap, or units not supported by its jurisdictional water allocation, would have to make findings based on a CEQA review supported by substantial evidence to justify its failure to honor the previous mitigation, e.g., findings that alternative equally effective mitigation would be adopted or that the mitigation was no longer necessary.²⁹

In addition, CEQA requires that the EIR for the adoption of the housing element, and EIRs for future individual development projects, meet specific requirements regarding water supplies. An adequate environmental impact analysis must cover all stages of project development, future water supplies must be reasonably likely to be available, and possible replacement sources and the impacts of using those sources must be evaluated if the identified future supplies cannot confidently be determined to be available.³⁰ On this record, the Cities of Monterey and Del Rey Oaks are unlikely to be able to prepare an adequate EIR without acknowledging the lack of water supplies and the impacts that would be triggered by provision of replacement water supplies.

Finally, CEQA requires that an EIR assess a range of reasonable alternatives to a project that can reduce or avoid significant impacts.³¹ This obligation is triggered here by significant impacts to groundwater resources and/or impacts related to provision of alternative sources of water because existing groundwater cannot be used. Thus, the land use jurisdictions should consider alternatives to the site inventory that do not rely on Fort Ord sites. LandWatch has pointed out that the City of Monterey has adequate infill sites to meet its RHNA obligations without Fort Ord. *We ask that HCD require the cities to look at infill alternatives in their housing element EIRs.*

²⁹ [Napa Citizens for Honest Gov't v Napa County Bd. of Supervisors \(2001\) 91 Cal.App.4th 342](#), 359; [Katzeff v Department of Forestry & Fire Protection \(2010\) 181 Cal.App.4th 601](#), 614; [Lincoln Place Tenants Ass'n v City of Los Angeles \(2005\) 130 Cal.App.4th 1491](#), 1508.

³⁰ [Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova \(2007\) 40 Cal.4th 412](#).

³¹ 14 C.C.R. § 15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Delapa". The signature is stylized with a large initial "M" and a long horizontal stroke at the end.

Michael Delapa
Executive Director
LandWatch Monterey County

Cc: Sohab Mehmood, California Housing and Community Development
 Remleh Scherzinger, General Manager, Marina Coast Water District
 Hans Uslar, City Manager, City of Monterey
 John Guertin, City Manager, City of Del Rey Oaks
 Layne Long, City Manager, City of Marina
 Jaime Fontes, City Manager, City of Seaside
 Sonia M. De La Rosa, County Administrative Officer, Monterey County